

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

In re:

ARMSTRONG ENERGY, INC., *et al.*,¹

Debtors.

)
) Case No. 17-47541-659
) CHAPTER 11
)
) (Joint Administration Requested)
)
)
) Hearing Date: November 2, 2017
) Hearing Time: 1:15 p.m. CT
) Hearing Location: Courtroom 7 North
)

**DEBTORS' MOTION FOR ENTRY OF
INTERIM AND FINAL ORDERS PURSUANT TO
11 U.S.C. §§ 105, 361, 362, 363, AND 507 AND BANKRUPTCY
RULES 2002, 4001 AND 9014 (I) AUTHORIZING DEBTORS'
USE OF CASH COLLATERAL, (II) GRANTING ADEQUATE PROTECTION
TO THE PREPETITION SECURED PARTIES, (III) MODIFYING
THE AUTOMATIC STAY AND (IV) SCHEDULING A FINAL HEARING**

Armstrong Energy, Inc. and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors"),² respectfully state the following in support of this motion:

Relief Requested

1. The Debtors seek entry of interim and final orders (respectively, the "Proposed Interim Order" and the "Proposed Final Order" and, together, the "Cash Collateral Orders").³

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Armstrong Energy, Inc. (4058); Armstrong Air, LLC (2017); Armstrong Coal Company, Inc. (0349); Armstrong Coal Sales, LLC (8643); Armstrong Energy Holdings, Inc. (5664); Armstrong Logistics Services, LLC (0392); Thoroughfare Mining, LLC (7890); Western Diamond LLC (9356); Western Land Company, LLC (9821). The location of the Debtors' service address is: 7733 Forsyth Boulevard, Suite 1625, St. Louis, Missouri 63105.

² A detailed description of the Debtors and their businesses, and the facts and circumstances supporting this motion and the Debtors' chapter 11 cases, are set forth in greater detail in the *Declaration of Alan Boyko of Armstrong Energy, Inc., in Support of Chapter 11 Petitions and First Day Motions* (the "First Day Declaration"), filed contemporaneously herewith and incorporated by reference herein.

(a) authorizing the Debtors to use Cash Collateral⁴ subject to the terms and conditions set forth in the Interim Order, (b) granting certain adequate protection to the Prepetition Secured Parties, and (c) scheduling a final hearing (the “Final Hearing”) within approximately 30 days of the Petition Date to consider approval of this motion on a final basis.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the Eastern District of Missouri (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and Rule 81.901(B)(1) of the Local Rules of the United States District Court for the Eastern District of Missouri. The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are sections 105, 361, 362, 363, and 552 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”) and Bankruptcy Rules 2002, 4001, and 9014.

Background

5. The Debtors produce low-chlorine, high-sulfur thermal coal from the Illinois Basin, with both surface and underground mines. The Debtors market their coal primarily to

³ A copy of the Proposed Interim Order and the Proposed Final Order will be provided to the Notice Parties (as defined below) and made available on the Debtors’ case information website at <https://www.donlinrecano.com/armstrong>.

⁴ Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Interim Order.

proximate and investment grade electric utility companies as fuel for their steam-powered generators. Based on 2016 production, the Debtors are the sixth largest producer in the Illinois Basin and the second largest in Western Kentucky.

6. On the date hereof (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors have filed a motion seeking joint administration of their chapter 11 cases under Bankruptcy Rule 1015(b). The Debtors are operating their businesses as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no committees have been appointed or designated.

The Debtors Have an Immediate Need to Use Cash Collateral

7. The Debtors’ access to Cash Collateral is absolutely necessary to preserving and maximizing value for the Debtors’ stakeholders. The Debtors use Cash Collateral in the ordinary course of business to procure goods and services from vendors, pay their employees, and satisfy other working capital needs. Absent approval of the Interim Order, the Debtors will be effectively unable to generate revenue, operate their businesses, or pay the many individuals who report to work each day. These chapter 11 estates would be immediately and irreparably harmed if this were to occur. Importantly, the Debtors are not seeking to operate their businesses or finance the administration of these chapter 11 cases with debtor-in-possession financing, and instead are relying entirely on Cash Collateral to fund operations and these chapter 11 cases. Without access to Cash Collateral, the Debtors would be forced to seek postpetition financing, which would impose increased costs and delays on these chapter 11 estates, potentially jeopardizing the Debtors’ restructuring efforts to the detriment of all stakeholders. Thus, the Debtors respectfully request authority to use Cash Collateral solely on an interim basis subject to the terms and conditions set forth in the Interim Order.

8. As further set forth herein, the Cash Collateral Orders generally provide adequate protection in the form of new liens, superpriority claims, and replacement liens, among other things, to protect against any diminution in value arising from the Debtors' use of Cash Collateral or the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code. The Debtors further propose to use said Cash Collateral pursuant to a budget annexed to the Interim Order as **Exhibit A** (as amended from time to time, the "Budget"), subject to permitted variances, thereby providing assurance to vendors, lessors, and other parties in interest that the Debtors will continue operating in the ordinary course, as well as clarity around the Debtors' proposed uses of Cash Collateral during the pendency of these chapter 11 cases.

9. Access to existing Cash Collateral on an interim basis will provide the Debtors with the liquidity necessary to fund these chapter 11 cases. Without such access to liquidity, the Debtors' ability to navigate through the chapter 11 process will be compromised. As a result, the Debtors have an immediate need to secure access to the Cash Collateral to ensure sufficient liquidity throughout the pendency of these chapter 11 cases.

The Debtors' Prepetition Capital Structure

10. Debtor Armstrong Energy, Inc. ("Armstrong") is the issuer of certain 11.75% Senior Secured Notes due 2019 (the "Secured Notes") issued pursuant to that certain Indenture dated as of December 21, 2012 (as amended by that certain First Supplemental Indenture dated as of September 19, 2013, that certain Second Supplemental Indenture dated as of July 24, 2014, that certain Third Supplement Indenture dated as of August 14, 2014, and that certain Fourth Supplemental Indenture dated as of January 29, 2015, the "Secured Notes Indenture"), with Wells Fargo Bank, National Association as the "Senior Notes Trustee," and Armstrong Air,

LLC, Armstrong Coal Company, Inc., Armstrong Energy Holdings, Inc., Western Diamond LLC, and Western Land Company, LLC, as guarantors. Interest is payable on the Secured Notes bi-annually, on June 15 and December 15. The Secured Notes mature on December 15, 2019. The Secured Notes are secured by a first lien on the Debtors' owned and leased real property, coal mines, reserves, inventory, receivables, stock of subsidiaries, and certain other assets, including cash maintained in controlled accounts. As of the Petition Date, approximately \$200 million of principal remains outstanding under the Secured Notes.

11. Armstrong elected to forgo the \$11,750,000 interest payment due under the Secured Notes on June 15, 2017 (the "June 2017 Interest Payment"). As of the Petition Date, Armstrong has not made such payment.

Concise Statement of the Material Terms of the Interim Order

12. The following summarizes the material terms of the Interim Order⁵ in accordance with Bankruptcy Rule 4001(b):

Material Terms	Summary of Material Terms	Para(s). of Interim Order
Entities with an Interest in Cash Collateral Fed. R. Bankr. P. 4001(b)(1)(B)(i)	Wells Fargo Bank, National Association as indenture and collateral trustee (the " <u>Secured Notes Trustee</u> "), and each of the noteholders under the Secured Notes Indenture (the " <u>Secured Noteholders</u> " and, together with the Secured Notes Trustee, the " <u>Prepetition Secured Parties</u> ").	¶ B
Purpose for Use of Cash Collateral Fed. R. Bankr. P. 4001(b)(1)(B)(ii)	In accordance with the terms and conditions of the Cash Collateral Orders for working capital and general corporate purposes of the Debtors, including the payment of the costs and expenses of administering the Cases and pursuing the Restructuring Transactions.	¶ F
Budget Fed. R. Bankr. P. 4001(b)(1)(B)(ii)	All use of Cash Collateral by the Debtors shall be pursuant to a 13-week budget (the " <u>Initial Budget</u> ," and as such budget may be modified or extended from time to time by the Debtors as set forth in paragraphs 2 and 3(e)(v) of the Interim Order, the " <u>Budget</u> "). The Initial Budget is attached to the Interim Order as <u>Exhibit A</u> . For any four-week period set forth in the Budget commencing the first full	¶ 2

⁵ The summary of the Interim Order is qualified in all respects by reference to the Interim Order, and to the extent of any inconsistency between this motion and the Interim Order, the Interim Order shall govern.

	<p>week following the Petition Date, the total net receipts shall not be less than 85% of the budgeted amount and the operating disbursements shall not exceed 115% (<i>provided</i> that Allowed Professional Fees and payments to the U.S. Trustee shall not be subject to such operating disbursement test) of the budgeted amount on an individual line item basis or on an aggregate basis (each, a “<u>Permitted Deviation</u>”); <i>provided</i> that any unused amount for any line item in the Budget during any four-week budget period may be carried forward into the next four-week budget period with respect to the same line. The Secured Notes Trustee, acting at the direction of the Ad Hoc Group, may, in accordance with the terms of such direction, agree in writing to the use of the Cash Collateral in a manner or amount which does not conform to the manner or amount, as applicable, set forth in the Budget (including, for the avoidance of doubt, after giving effect to the Permitted Deviation) (each such approved non-conforming use of Cash Collateral, a “<u>Non-Conforming Use</u>”). If such written consent is given (which consent may be given through email by the Secured Notes Trustee’s counsel), the Debtors shall be authorized pursuant to the Cash Collateral Orders to use Cash Collateral for any such Non-Conforming Use without further Court approval, and the Prepetition Secured Parties shall be entitled to all of the protections specified in the Interim Order for any such Non-Conforming Use; <i>provided</i> that each such permitted Non-Conforming Use shall be deemed a modification to the Budget for all testing purposes. The Debtors shall provide notice of any material Non-Conforming Use to counsel for any statutory committee appointed in the Cases, if any (each, a “<u>Committee</u>”), and the United States Trustee.</p>	
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<p>Termination Date / Termination Events</p> <p>Fed. R. Bankr. P. 4001(b)(1)(B)(iii)</p>	<p>The Debtors' right to use the Cash Collateral pursuant to the Interim Order shall terminate (the date of any such termination, the "<u>Termination Date</u>") without further notice or court proceeding on the earlier to occur of: (i) the date that is forty-five (45) days after the Petition Date (unless such period is extended by mutual agreement of the Secured Notes Trustee, acting at the direction of the Ad Hoc Group) if the Final Order has not been entered by this Court on or before such date; and (ii) five (5) business days following the delivery of a written notice (any such notice, a "<u>Default Notice</u>") by the Secured Notes Trustee or counsel to the Ad Hoc Group to the Debtors, with a copy to Kirkland & Ellis LLP, counsel to Knight Hawk, the United States Trustee and counsel to the Committee (any such five-business-day period of time, the "<u>Default Notice Period</u>") of the occurrence of a Termination Event set forth below unless such occurrence is cured by the Debtors or waived by the Secured Notes Trustee as directed by the Ad Hoc Group prior to the expiration of the Default Notice Period with respect thereto, <i>provided</i> that, if a hearing to consider relief from the automatic stay, any other appropriate relief in connection with delivery of the Default Notice, or continued use of Cash Collateral (as may be held on an expedited basis as set forth in this paragraph) is requested to be heard within such five (5) business day period but is scheduled for a later date by the Court, the Default Notice Period shall be automatically extended to the date of such hearing, but in no event by more than two business days:</p> <ul style="list-style-type: none"> (a) The failure to comply with any of the Case Milestones set forth in section 3(g) of this Interim Order or any similar milestones set forth in the RSA; (b) Any termination of the RSA that is caused by a breach of the Debtors of their obligations under the RSA; (c) Any termination of the Transaction Agreement that is caused by a breach of the Debtors of their obligations thereunder; (d) The dismissal of the Cases or the conversion of the Cases to cases under Chapter 7 of the Bankruptcy Code; (e) The entry by this Court of an order granting relief from the automatic stay imposed by section 362 of the Bankruptcy Code to any entity other than the Prepetition Secured Parties with respect to the Prepetition Collateral or the Collateral without the written consent of the Secured Notes Trustee, acting at the direction or with the consent of the Ad Hoc Group and the Secured Notes Trustee, which consent may be withheld in their sole discretion; <i>provided</i> that the foregoing shall not apply if all such subject Prepetition Collateral or Collateral to which the stay has been extended has a fair market value under \$250,000 in the aggregate; (f) The appointment or election of a trustee, examiner 	
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	<p>with expanded powers or any other representative with expanded powers relating to the operation of the businesses in the Cases;</p> <p>(g) The filing of a plan of reorganization (other than the Proposed Plan) for and by the Debtors that is not supported by the Ad Hoc Group and the Secured Notes Trustee;</p> <p>(h) The failure by the Debtors to make any payment required pursuant to this Interim Order when due;</p> <p>(i) The failure by the Debtors to deliver to the Secured Notes Trustee and Ad Hoc Group any of the documents or other information required to be delivered pursuant to this Interim Order when due or any such documents or other information shall contain a material misrepresentation;</p> <p>(j) The loss of the Debtors' exclusive right to file a plan pursuant to section 1121 of the Bankruptcy Code, regardless of how or when the Debtors lose such right;</p> <p>(k) The failure by the Debtors to adhere to the Budget except, in each instance, with respect to Permitted Deviations or Non-Conforming Uses;</p> <p>(l) The failure by the Debtors to observe or perform any of the material terms or material provisions contained in the Interim Order;</p> <p>(m) The Debtors shall create, incur or suffer to exist any postpetition liens or security interests on the Collateral other than those permitted pursuant to paragraph 5 of this Interim Order;</p> <p>(n) The Debtors shall create, incur or suffer any other post-petition claim which is <i>pari passu</i> with or senior to the Adequate Protection Claims, other than the Carve Out;</p> <p>(o) A filing by any Debtor of any motion, pleading, application or adversary proceeding challenging the validity, enforceability, perfection or priority of the liens securing the Secured Notes or asserting any other cause of action against and/or with respect to the Secured Notes Indebtedness, the Prepetition Collateral securing the Secured Notes or any of the Prepetition Secured Parties (or if the Debtors support, or fail to object to, any such motion, pleading, application or adversary proceeding commenced by any third party);</p> <p>(p) The entry of an order reversing, staying, vacating or</p>	
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	<p>otherwise modifying in any material respect the terms of this Interim Order without the consent of the Ad Hoc Group and the Secured Notes Trustee</p> <p>Each of subparagraph (a) through (p) is referred to as a “<u>Termination Event</u>.” Upon and after delivery of the Default Notice, the Debtors and each of the Secured Notes Trustee and the Ad Hoc Group consent to a hearing on an expedited basis to consider whether (x) a Termination Event has occurred, (y) the automatic stay may be lifted so that the Prepetition Secured Parties may exercise any and all of their respective rights and remedies in respect of the Collateral in accordance with the Interim Order, the applicable Secured Notes Documents, or applicable law, or (z) to consider any other appropriate relief (including, without limitation (i) the Secured Notes Trustee, acting at the direction of the Ad Hoc Group, foreclosing upon and selling all or a portion of the Prepetition Collateral or Collateral to collect any amounts due to the Prepetition Secured Parties under the Secured Notes Indenture or pursuant to the Interim Order and apply the same in accordance with the Secured Notes Documents (ii) to the extent relevant, what is the quantum of the Collateral Diminution and (iii) the Debtors’ use of Cash Collateral on a nonconsensual basis); <i>provided</i> that the rights of the Debtors to oppose any relief requested by the Prepetition Secured Parties and/or the Ad Hoc Group (and the rights of any Prepetition Secured Party or the Ad Hoc Group to oppose any request for relief by the Debtors or any other party-in-interest, including for the use of Cash Collateral on a nonconsensual basis) are, in each case, fully reserved. During the Default Notice Period, the Debtors shall be entitled to continue to use the Cash Collateral in accordance with the terms of the Budget and this Interim Order. Any delay or failure of a Prepetition Secured Party to exercise rights under the Secured Notes Documents or the Interim Order shall not constitute a waiver of their respective rights hereunder, thereunder or otherwise. Notwithstanding the occurrence of the Termination Date or anything herein, all of the rights, remedies, benefits and protections provided to the Prepetition Secured Parties under the Secured Notes Documents and the Interim Order shall survive the Termination Date.</p>	
<p>Proposed Adequate Protection</p> <p>Fed. R. Bankr. P. 4001(b)(1)(B)(iv)</p>	<p>As adequate protection for, and to secure payment of an amount equal to the Collateral Diminution, and as an inducement to the Prepetition Secured Parties to permit the Debtors’ use of the Cash Collateral and other Prepetition Collateral as provided for in the Interim Order, the Debtors hereby grant the following:</p> <p>(a) Adequate Protection Liens. Effective as of the Petition Date and in each case perfected without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, or by possession or control, the following security interests and liens (all such liens and security interests, the “<u>Adequate Protection Liens</u>”) are hereby granted to the Secured Notes Trustee, for the benefit of the Secured Noteholders, (all property identified in clauses (i) and (ii) of this paragraph 3(a) being collectively referred to as the “<u>Collateral</u>”), subject only to the Carve Out (as defined herein) and Senior Permitted Liens as provided below:</p>	¶ 3

	<p>i. Liens Senior to Other Liens. A valid, binding, continuing, enforceable, fully-perfected first priority senior priming security interest in and lien on the Prepetition Collateral and all of the Debtors' now owned and hereafter-acquired real and personal property, assets and rights of any kind or nature, wherever located, including, without limitation, all prepetition and postpetition property of the Debtors' estates, and the proceeds, products, rents and profits thereof, whether arising from section 552(b) of the Bankruptcy Code or otherwise, including, without limitation, coal properties and leases (and as-extracted collateral, goods and fixtures relating thereto), mining and related permits (to the extent the Debtors can grant liens on such permits), the economic value of any permit or similar right that cannot be subject to a lien under applicable law, accounts receivable, other rights to payment, cash, inventory, general intangibles, contracts, servicing rights, servicing receivables, securities, chattel paper, owned real estate, real property leaseholds, fixtures, machinery, equipment, deposit accounts, patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, claims and causes of action (including those arising under section 549 of the Bankruptcy Code) and all proceeds of the foregoing, other than Avoidance Actions, which Adequate Protection Liens, subject to entry of the Final Order, shall have recourse to the proceeds or property recovered in respect of any Avoidance Actions, subject only to valid, perfected and enforceable prepetition liens (if any) which are senior to the Prepetition Secured Parties' liens or security interests as of the Petition Date or to valid and unavoidable liens in existence immediately prior to the Petition Date that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code (each, a "<u>Senior Permitted Lien</u>"); <i>provided</i> that the foregoing collateral shall not include assets or property (other than Prepetition Collateral, including Cash Collateral) upon which, and solely to the extent that, the grant of an Adequate Protection Lien, as contemplated in the Interim Order, would constitute a default or event of default thereunder (and such default would not be excused by operation of the Bankruptcy Code), but shall include the proceeds thereof.</p> <p>ii. Liens Junior to Existing Liens. A valid, binding, continuing, enforceable, fully-perfected junior lien on and security interest in all</p>	
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	<p>prepetition and postpetition property of the Debtors (other than the property described in clause (i) of this paragraph 3(a)), whether now existing or hereafter acquired, that is subject to a Senior Permitted Lien; <i>provided</i> that the foregoing collateral shall not include assets or property (other than Prepetition Collateral, including Cash Collateral) upon which, and solely to the extent that, the grant of an Adequate Protection Lien as contemplated in the Interim Order, would constitute a default or event of default thereunder (under such default would not be excused by operation of the Bankruptcy Code), but shall include the proceeds thereof.</p> <p>(b) Adequate Protection Claims. An allowed administrative claim (the “<u>Adequate Protection Claims</u>”) against each of the Debtors on a joint and several basis with priority over any and all other administrative claims against the Debtors now existing or hereafter arising in the Cases (subject only to the Carve Out (as defined herein)), including all claims of the kind specified under sections 503(b) and 507(b) of the Bankruptcy Code, which administrative claim shall have recourse to and be payable from all prepetition and postpetition property of the Debtors including, without limitation, subject to entry of the Final Order, the proceeds or property recovered in respect of any Avoidance Actions.</p> <p>(c) Other Covenants. The Debtors shall maintain their cash management arrangements in a manner consistent with the interim order granting the <i>Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue to Operate Their Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Business Forms, and (D) Continue to Perform Intercompany Transactions, and (II) Granting Related Relief</i>, entered or to be entered substantially contemporaneously herewith. The Debtors shall not use, sell, lease or otherwise dispose of any material assets outside the ordinary course of business, or seek authority of this Court to do any of the foregoing, without prior written consent of the Secured Notes Trustee, acting at the direction of the Ad Hoc Group. The Debtors shall comply with the covenants contained in Sections 4.03 and 4.04 of the Secured Notes Indenture regarding the maintenance and insurance of the Prepetition Collateral and the Collateral. The Debtors shall, on a reasonable basis, provide the Ad Hoc Group and the Secured Notes Trustee access to all information and materials relating to the Debtors’ businesses, financial condition and projections and the Chapter 11 Cases, including reasonable access to the Debtors’ management and properties; <i>provided</i> that the Debtors may condition such access upon execution by such party of a reasonable non-disclosure agreement that the</p>	
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	<p>Debtors will complete with such party as expediently as reasonably practicable. The Debtors shall continue to actively engage the chief restructuring officer provided by FTI Consulting, Inc. (the “<u>CRO</u>”) in their business and operations and otherwise ensure that the CRO is properly utilized, including requesting that the CRO perform some or all of the services described in the CRO’s engagement letter, which engagement letter shall only be modified with written consent of the Ad Hoc Group.</p> <p>(d) Fees and Expenses. As additional adequate protection, the Debtors shall pay in cash: (i) immediately upon the entry of the Interim Order, the reasonable professional fees, expenses and disbursements (including, but not limited to, the fees, expenses and disbursements of counsel and third-party consultants, including financial consultants and auditors) incurred by the Ad Hoc Group arising prior to the Petition Date which shall include the reasonable professional fees, expenses, and disbursements incurred by the Ad Hoc Group (but not Knight Hawk) in connection with the Restructuring Transactions and the Restructuring Documents (“<u>Transaction Costs</u>”) by the Ad Hoc Group; (ii) the reasonable professional fees, expenses and disbursements (including, but not limited to, the fees, expenses and disbursements of counsel and third-party consultants, including financial consultants and auditors) incurred by the Ad Hoc Group arising subsequent to the Petition Date, including Transaction Costs; and (iii) immediately upon entry of the Interim Order, the reasonable fees, expenses and disbursements of the Secured Notes Trustee and legal counsel to the Secured Notes Trustee incurred prior to the Petition Date, including Transaction Costs; and (iv) the reasonable fees, expenses, and disbursements of the Secured Notes Trustee and legal counsel to the Secured Notes Trustee incurred subsequent to the Petition Date, including Transaction Costs. The payment of the fees, expenses and disbursements set forth in this paragraph 3(e) of the Interim Order (including professional fees and expenses of Paul, Weiss, Rifkind, Wharton & Garrison LLP, Houlihan Lokey, Inc., one local bankruptcy counsel to the Ad Hoc Group, one local Kentucky and/or regulatory counsel to the Ad Hoc Group, the Secured Notes Trustee and legal counsel to the Secured Notes Trustee) shall be made within ten (10) business days after the receipt by the Debtors and the United States Trustee of invoices thereof (subject in all respects to applicable privilege or work product doctrines) and without the necessity of filing formal fee applications, including such amounts arising before and after the Petition Date.</p> <p>(e) Reporting. As additional adequate protection to the Prepetition Secured Parties, the Debtors shall provide the following reporting to the Secured Notes Trustee and Ad Hoc Group, as applicable:</p>	
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	<ul style="list-style-type: none"> i. Weekly (or less frequently as may be agreed to by and among the Debtors, the Ad Hoc Group and the Secured Notes Trustee) calls with the Ad Hoc Group, the Secured Notes Trustee and their respective advisors; ii. A copy of each update to the Debtors' business plan as soon as reasonably practicable after it becomes available, together with a reconciliation to the prior business plan; iii. Presentations by the Debtors and/or their advisors during normal business hours to the Secured Notes Trustee, the Ad Hoc Group and/or their respective advisors at times and places as the Secured Notes Trustee or Ad Hoc Group may reasonably request in writing (including via electronic mail) with reasonable prior notice; iv. Promptly, but in any event no later than the twentieth (20th) day of each calendar month, a report as of the last day of the preceding calendar month, in form and detail reasonably acceptable to the Secured Notes Trustee and Ad Hoc Group, of (a) the Debtors' accounts payable and disbursements for such month, (b) an accounts payable and an accounts receivable aging report, and (c) all written demands or claims made, related to, or asserting any liens in respect of property or assets of the Debtors (including liens imposed by law, such as landlord's, vendors', suppliers', carriers', warehousmen's, repairmen's, construction contractors', workers' and mechanics' liens and other similar liens) if the amount demanded or claimed exceeds \$50,000 individually or \$200,000 in the aggregate; <i>provided</i> that provisions (a) and (b) hereof may be satisfied by filing the Debtors' monthly operating report containing such information and serving such report on counsel for the Secured Notes Trustee and counsel for the Ad Hoc Group; v. (A) On or before the last Friday of each calendar month, an updated rolling 13-week cash flow forecast of the Debtors and their subsidiaries substantially in the form of the Initial Budget (each, a "<u>Proposed Budget</u>"), which Proposed Budget shall become the Budget effective as of the fifth business day of the next calendar month if the Secured Notes Trustee, acting at the direction of the Ad Hoc Group, does not object (whether written or not) prior to such Proposed Budget becoming effective; and (B) on or before each Wednesday of each calendar week, (1) a weekly report of receipts, disbursements and a reconciliation of actual expenditures and 	
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	<p>disbursements with those set forth in the Budget for the prior week (and on a cumulative four-week basis), which report and reconciliation shall be in form and detail reasonably satisfactory to the Ad Hoc Group and the Secured Notes Trustee (the “<u>Budget Reconciliation</u>”) and (2) a statement setting forth in reasonable detail the cash balance for each deposit account of the Debtor and its subsidiaries as of the previous Friday;</p> <p>vi. Promptly, and in any event no later than the thirtieth (30th) day following the end of each month, beginning with the month ended November 30, 2017, a monthly and year-to-date income statement, balance sheet and monthly and year-to-date detail of capital expenditures;</p> <p>vii. Such other reports and information as the Secured Notes Trustee or Ad Hoc Group may reasonably request.</p> <p>(f) Asset Sales; Application of Proceeds. Except as contemplated by the Restructuring Documents, unless otherwise agreed to by the Secured Notes Trustee, acting at the direction or with the consent of the Ad Hoc Group, in writing (which may be via email), all non-ordinary course sales and other dispositions (including casualty and condemnation events) of Collateral (“<u>Collateral Sales</u>”) shall be in exchange for 100% cash consideration. Except as contemplated by the Restructuring Documents, any proposed property exchange with respect to Collateral that is not in exchange for 100% cash consideration shall be subject to the prior written consent of the Secured Notes Trustee, acting at the direction or with the consent of the Ad Hoc Group, which consent shall not be unreasonably withheld; all proceeds from Collateral Sales, as well as extraordinary receipts of any kind, shall be applied in accordance with the Secured Notes Documents unless otherwise agreed by the Secured Notes Trustee, acting at the direction of or with the consent of the Ad Hoc Group, in writing (which may be via email).</p> <p>(g) Case Milestones. Unless otherwise extended under the RSA with the consent of the Ad Hoc Group, the Debtors shall ensure compliance with the following case milestones:</p> <ol style="list-style-type: none"> 1. By no later than the Petition Date, the Debtors shall file a motion in form and substance reasonably acceptable to the Ad Hoc Group and Secured Notes Trustee (the “<u>Expense Reimbursement</u>”) providing for, among other things, the approval of an expense reimbursement of Knight Hawk’s reasonable and documented fees and expenses acceptable to the Ad Hoc Group, Secured Notes Trustee and 	
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	<p>Knight Hawk with respect to the Sale.</p> <ol style="list-style-type: none"> 2. By no later than seven (7) days following the Petition Date, the Debtors shall file the Proposed Plan and related disclosure statement, each in form and substance reasonably acceptable to the Ad Hoc Group and Secured Notes Trustee and the proposed Plan in form and substance reasonably acceptable to Knight Hawk. 3. By no later than thirty-one (31) days following the Petition Date, the Court shall have entered an order in form and substance acceptable to the Ad Hoc Group, Secured Notes Trustee, and Knight Hawk approving the expense reimbursement set forth in the Expense Reimbursement Motion or an expense reimbursement otherwise acceptable to the Ad Hoc Group, the Secured Notes Trustee, and Knight Hawk. 4. By no later than sixty (60) days following the Petition Date, the Court shall have entered an order reasonably acceptable to the Ad Hoc Group and Secured Notes Trustee approving the disclosure statement and plan solicitation procedures with respect to the Proposed Plan, each of which must be reasonably acceptable to the Ad Hoc Group and Secured Notes Trustee. 5. By no later than seventy-five (75) days following the Petition Date, the Debtors shall share with the advisors to the Ad Hoc Group a draft budget for winding down the Debtors' operations and the Chapter 11 Cases after confirmation of the Plan, which includes an anticipated funding need in an amount acceptable to the Ad Hoc Group. 6. By no later than one hundred (100) days following the Petition Date, the Court shall enter an order reasonably acceptable to the Ad Hoc Group, Secured Notes Trustee and, with respect to the provisions of the order(s) that involve the Royalty Agreements, Thoroughbred Resources, L.P., confirming the Proposed Plan and approving the Sale (the "<u>Confirmation and Sale Order</u>"). 7. By no later than fifteen (15) days following entry of the Confirmation and Sale Order, the effective date of the Plan shall occur and the Sale shall be consummated. 	
<p>Carve Out Fed. R. Bankr. P. 4001(c)(1)(B)</p>	<p>The Interim Order provides a "Carve Out" of certain statutory fees, allowed professional fees of the Debtors, and Carve Out Reserves, all as detailed in the Interim Order.</p> <p>(a) Carve Out. For purposes of the Interim Order, the the "<u>Carve</u></p>	<p>¶ 6</p>

	<p><u>Out</u>” means the sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to \$50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, but subject to paragraph 18, all unpaid fees and expenses (the “<u>Allowed Professional Fees</u>”) incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the “<u>Debtor Professionals</u>”) and any Committee appointed in the Cases (the “<u>Committee Professionals</u>” and, together with the Debtor Professionals, the “<u>Professional Persons</u>”) at any time before or on the first business day following delivery by the Secured Notes Trustee of a Carve Out Trigger Notice (as defined below), whether allowed by the Court prior to or after delivery of a Carve Out Trigger Notice; and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed \$1,250,000 incurred after the first business day following delivery by the Secured Notes Trustee of the Carve Out Trigger Notice, plus an amount solely for the benefit of MAEVA Group, LLC, equal to the Completion Fee (as defined in that certain Advisory Agreement between MAEVA Group, LLC and Armstrong Energy, Inc. and its subsidiaries dated as of May 3, 2016 (as amended by the First Amendment to the Advisory Agreement dated as of October 31, 2017)) to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the “<u>Post-Carve Out Trigger Notice Cap</u>”). For purposes of the foregoing, “<u>Carve Out Trigger Notice</u>” shall mean a written notice delivered by email (or other electronic means) by the Secured Notes Trustee to the Debtors, their lead restructuring counsel, counsel to Knight Hawk, the U.S. Trustee, and counsel to the any statutory committee appointed in the Cases, which notice may be delivered following the occurrence and during the continuation of an Event of Default hereunder, stating that the Post-Carve Out Trigger Notice Cap has been invoked.</p> <p>(b) Carve Out Reserve Account. The Carve Out amounts for the fees and expenses of the Professional Persons shall be invoiced to the Debtors monthly and promptly deposited into an escrow account established by the Debtors and held in trust to pay Allowed Professional Fees of Professional Persons benefitting from the Carve Out prior to any and all other claims, with such funds being subject to the respective interests of the Prepetition Secured Parties such that any residual amount (the “<u>Residual Amount</u>”) will be paid as provided in the Carve Out Reserve Account Priority (as defined below), but only after payment of all Allowed Professional Fees of Professional Persons benefitting from the Carve Out (the “<u>Carve Out Reserve Account</u>”). Allowed Professional Fees of Professional Persons benefitting from the</p>	
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	<p>Carve Out shall be paid from the Carve Out Reserve Account. The “<u>Carve Out Reserve Account Priority</u>” is the following payment priority from the Carve Out Reserve Account to the extent of the Residual Amount: <u>first</u>, to pay the Secured Notes Trustee for application in accordance with the Secured Notes Documents, unless the Secured Notes Indebtedness has been indefeasibly paid in full, in cash, and <u>second</u>, any remaining amount shall be retained by the Debtors’ bankruptcy estates.</p> <p>(c) On the day on which a Carve Out Trigger Notice is given by the Secured Notes Trustee to the Debtors with a copy to counsel to any statutory committee appointed in the Cases (the “<u>Termination Declaration Date</u>”), the Debtors shall utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund the Carve Out Reserve Account in an amount equal to the accrued and then unpaid Allowed Professional Fees that have not yet been deposited in the Carve Out Reserve Account plus the Post-Carve Out Trigger Notice Cap <i>provided</i> that the Debtors may use Cash Collateral in accordance with the Budget during the Default Notice Period.</p> <p>(d) Notwithstanding anything to the contrary in the Secured Notes Documents, the Interim Order, or the Final Order, following delivery of a Carve Out Trigger Notice, the Secured Notes Trustee shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve Out Reserve Account has been fully funded. Further, notwithstanding anything to the contrary in the Interim Order, (i) disbursements by the Debtors from the Carve Out Reserve Account shall not constitute Obligations (as defined in the Secured Notes Documents) or increase or reduce the Secured Notes Indebtedness, (ii) the failure of the Carve Out Reserve Account to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve Out, and (iii) in no way shall the Budget, Carve Out, Post-Carve Out Trigger Notice Cap, Carve Out Reserve Account, or any of the foregoing be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors. For the avoidance of doubt and notwithstanding anything to the contrary herein or in the Final Order, or the Secured Notes Documents, the Carve Out shall be senior to all liens and claims securing the Prepetition Collateral, the Adequate Protection Obligations, and any superpriority claim, and any and all other forms of adequate protection, liens, or claims securing the Senior Notes Indebtedness.</p> <p>(e) Payment of Allowed Professional Fees Prior to the Termination Declaration Date. Any payment or reimbursement made prior to the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall not reduce the Carve Out.</p> <p>(f) Payment of Carve Out On or After the Termination Declaration Date. Any payment or reimbursement made on or after the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall permanently</p>	
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	reduce the Carve Out on a dollar-for-dollar basis.	
Stipulations of the Debtors Fed. R. Bankr. P. 4001(c)(1)(B)(iii)	<p>The Interim Order contains certain stipulations by the Debtors, among other things, to:</p> <ul style="list-style-type: none"> the amount of the claims of the Prepetition Secured Parties as of the Petition Date; the validity and priority of the liens and security interests securing the Secured Notes Indebtedness under the Secured Notes Documents; the lack of a basis to challenge or avoid the validity, enforceability, priority, or perfection of the liens and security interests securing the Secured Notes Indebtedness; the validity and amount of the missed June 2017 Interest Payment; and the fact that all the Debtors' cash, in each case subject to certain exceptions set forth in the Interim Order, is Cash Collateral of the Prepetition Secured Parties in accordance with their respective rights and priorities under the Secured Notes Documents. 	¶ B
Binding Effect of the Debtors' Stipulations on Third Parties Fed. R. Bankr. P. 4001(b)(1)(B)(iii);	<p>Subject to the Debtors' reservation of rights under paragraph 16 of the Interim Order, the stipulations and admissions contained in the Interim Order, including without limitation, in paragraph B of the Interim Order, shall be binding upon the Debtors and any successor thereto in all circumstances, subject to certain exceptions.</p>	¶ 17
Committee Challenge Deadline Fed. R. Bankr. P. 4001(b)(1)(B)	<p>The stipulations and admissions contained in paragraphs B, C, D and E of the Interim Order: (i) shall be binding upon the Debtors for all purposes; and (ii) shall be binding upon all other parties in interest, including the Committee, if any, for all purposes unless and only to the extent (1) a party other than the Debtors (subject in all respects to any agreement or applicable law which may limit or affect such entities right or ability to do so) has properly filed an adversary proceeding or contested matter by no later than the date that is sixty (60) days from the date of entry of the Interim Order (or, in the case of a Committee, if any, seventy-five (75) days from the date such Committee is appointed, but in no event later than the date that is ninety (90) days from the Petition Date (the "<u>Committee Challenge Deadline</u>")), (x) challenging the amount, validity, enforceability, priority or extent of the Secured Notes Indebtedness or the Prepetition Secured Parties' security interests in and liens upon the Prepetition Collateral, or (y) otherwise asserting any claims or causes of action against the Prepetition Secured Parties on behalf of the Debtors' estates, and (2) a final decision has been rendered in favor of the plaintiff in any such timely and properly filed adversary proceeding or contested matter. If no such adversary proceeding or contested matter is properly filed as of such dates or to the extent a final decision in favor of the plaintiff is not rendered in any such proceeding, then: (a) the Debtors' admissions and releases contained in paragraphs B, C, D and E of the Interim Order shall be binding on all parties in interest, including any Committee; (b) the obligations of the Debtors under the Secured Notes Documents, including the June 2017 Interest Payment, shall constitute allowed</p>	¶ 17

	secured claims for all purposes in the Cases, and any subsequent Chapter 7 case(s); (c) subject only to the Senior Permitted Liens, the Prepetition Secured Parties' security interests in and liens upon the Prepetition Collateral shall be deemed to have been, as of Petition Date, legal, valid, binding, and perfected first-priority security interests and liens, not subject to recharacterization, subordination or otherwise avoidable; and (d) the Secured Notes Indebtedness and the Prepetition Secured Parties' security interests in and liens on the Prepetition Collateral shall not be subject to any other or further challenge by the Committee or any other party in interest seeking to exercise the rights of the Debtors' estates, including, without limitation, any successor thereto. If any such adversary proceeding or contested matter is properly filed as of such dates, the Debtors' admissions and releases contained in paragraphs B, C, D and E of the Interim Order shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) except to the extent that such admissions and releases were expressly and successfully challenged in such adversary proceeding or contested matter. Nothing contained in the Interim Order shall be deemed to grant standing to the Committee or any other party to commence any such adversary proceeding or contested matter.	
506(c) Waiver Fed. R. Bank. P. 4001(c)(1)(B)(x)	Subject to entry of the Final Order, all rights to surcharge any Prepetition Collateral or Collateral under section 506(c) of the Bankruptcy Code or any other applicable principle or equity or law shall be and are hereby finally and irrevocably waived, and such waiver shall be binding upon the Debtors and all parties in interest in the Cases; <i>provided</i> that the Debtors reserve the right to seek the nonconsensual use of Cash Collateral on any basis, and the Prepetition Secured Parties reserve their rights to contest any assertion on any basis.	¶ 10
Section 552(b) Waiver Fed. R. Bank. P. 4001(c)(1)(B)	The Prepetition Secured Parties shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and, subject to entry of the Final Order, the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to the Prepetition Secured Parties with respect to proceeds, products, offspring or profits of any of the Prepetition Collateral or the Collateral.	¶ 22

Basis for Relief

I. The Debtors' Request to Use Cash Collateral and Proposed Adequate Protection Is Appropriate.

13. Section 363 of the Bankruptcy Code governs the Debtors' use of property of their estates, including Cash Collateral.⁶ Pursuant to section 363(c)(2) of the Bankruptcy Code, a

⁶ The Bankruptcy Code defines "cash collateral" as follows:

debtor may use cash collateral as long as “(A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.”

14. Section 363(e) provides for adequate protection of interests in property when a debtor uses cash collateral. Further, section 362(d)(1) of the Bankruptcy Code provides for adequate protection of interests in property due to the imposition of the automatic stay. *See In re Cont'l Airlines*, 91 F.3d 553, 556 (3d Cir. 1996). While section 361 of the Bankruptcy Code provides examples of forms of adequate protection, such as granting replacement liens and administrative claims, courts decide what constitutes sufficient adequate protection on a case-by-case basis. *In re Martin*, 761 F.2d 472, 474 (8th Cir. 1985) (“[S]uch matters ‘are [to be] left to case-by-case interpretation and development.’”); *In re Swedeland Dev. Grp., Inc.*, 16 F.3d 552, 564 (3d Cir. 1994); *In re Satcon Tech. Corp.*, 2012 WL 6091160, at *6 (Bankr. D. Del. Dec. 7, 2012); *In re N.J. Affordable Homes Corp.*, 2006 WL 2128624, at *14 (Bankr. D.N.J. June 29, 2006); *In re Columbia Gas Sys., Inc.*, 1992 WL 79323, at *2 (Bankr. D. Del. Feb. 18, 1992); *see also In re Dynaco Corp.*, 162 B.R. 389, 394 (Bankr. D.N.H. 1993) (citing 2 Collier on Bankruptcy ¶ 361.01[1] at 361–66 (15th ed. 1993) (explaining that adequate protection can take many forms and “must be determined based upon equitable considerations arising from the particular facts of each proceeding”)).

Cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest and includes the proceeds, products, offspring rents, or profits of property and the fees, charges, accounts or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties subject to a security interest as provided in section 552(b) of this title, whether existing before or after the commencement of a case under this title.

11 U.S.C. § 363(a).

15. 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 of the Bankruptcy Code is limited to use-based decline in value).

A. The Proposed Adequate Protection for the Prepetition Secured Parties Is Sufficient.

16. As set forth above, the Debtors propose to provide the Prepetition Secured Parties with five primary forms of adequate protection (collectively, the "Adequate Protection"):

1. **Adequate Protection Liens.** The Debtors will provide adequate protection liens to the Secured Notes Trustee, for the benefit of the Secured Noteholders, to the extent of any diminution in value of their interests in the Prepetition Collateral, including Cash Collateral, subject to the Carve Out.
2. **Adequate Protection Superpriority Claims.** The Debtors will grant allowed superpriority administrative claims against the Debtors now existing or hereafter arising in the Cases (subject only to the Carve Out) pursuant to sections 503(b) and 507(b) of the Bankruptcy Code, which administrative claim shall have recourse to and be payable from all prepetition and postpetition property of the Debtors including, without limitation, subject to entry of the Final Order, the proceeds or property recovered in respect of any Avoidance Actions.
3. **Additional Adequate Protection.**
 - a. **Fees and Expenses.** The Debtors will pay the reasonable and documented fees and expenses incurred by the Ad Hoc Group and the legal counsel to the Secured Notes Trustee, including the reasonable professional fees, expenses and disbursements (of counsel and other third-party consultants) incurred by the Ad Hoc Group and the legal counsel to the Secured Notes Trustee.

b. **Reporting.** As additional adequate protection to the Prepetition Secured Parties, the Debtors shall provide the following reporting to the Secured Notes Trustee and Ad Hoc Group, as applicable:

- (i) Weekly (or less frequently as may be agreed to by and among the Debtors, the Ad Hoc Group and the Secured Notes Trustee) calls with the Ad Hoc Group, the Secured Notes Trustee and their respective advisors;
- (ii) A copy of each update to the Debtors' business plan as soon as reasonably practicable after it becomes available, together with a reconciliation to the prior business plan;
- (iii) Presentations by the Debtors and/or their advisors during normal business hours to the Secured Notes Trustee, the Ad Hoc Group and/or their respective advisors at times and places as the Secured Notes Trustee or Ad Hoc Group may reasonably request in writing (including via electronic mail) with reasonable prior notice;
- (iv) Promptly, but in any event no later than the twentieth (20th) day of each calendar month, a report as of the last day of the preceding calendar month, in form and detail reasonably acceptable to the Secured Notes Trustee and Ad Hoc Group, of (a) the Debtors' accounts payable and disbursements for such month, (b) an accounts payable and an accounts receivable aging report, and (c) all written demands or claims made, related to, or asserting any liens in respect of property or assets of the Debtors (including liens imposed by law, such as landlords', vendors', suppliers', carriers', warehousmen's, repairmen's, construction contractors', workers' and mechanics' liens and other similar liens) if the amount demanded or claimed exceeds \$50,000 individually or \$200,000 in the aggregate; *provided* that provisions (a) and (b) hereof may be satisfied by filing the

Debtors' monthly operating report containing such information and serving such report on counsel for the Secured Notes Trustee and counsel for the Ad Hoc Group;

- (v) (A) On or before the last Friday of each calendar month, an updated rolling 13-week cash flow forecast of the Debtors and their subsidiaries substantially in the form of the Initial Budget (each, a "Proposed Budget"), which Proposed Budget, upon written approval by the Ad Hoc Group, shall become the Budget effective as of the fifth day of the next calendar month if the Secured Notes Trustee, acting at the direction of the Ad Hoc Group, does not object prior to such Proposed Budget becoming effective; and (B) on or before each Wednesday of each calendar week, (1) a weekly report of receipts, disbursements and a reconciliation of actual expenditures and disbursements with those set forth in the Budget for the prior week (and on a cumulative four-week basis), which report and reconciliation shall be in form and detail reasonably satisfactory to the Ad Hoc Group and the Secured Notes Trustee (the "Budget Reconciliation") and (2) a statement setting forth in reasonable detail the cash balance for each deposit account of the Debtor and its subsidiaries as of the previous Friday;
 - (vi) Promptly, and in any event no later than the thirtieth (30th) day following the end of each month, beginning with the month ended November, 2017, a monthly and year-to-date income statement, balance sheet and monthly and year-to-date detail of capital expenditures;
 - (vii) Such other reports and information as the Secured Notes Trustee or Ad Hoc Group may reasonably request.
4. **Asset Sales; Application of Proceeds.** Except as contemplated by the Restructuring Documents, unless otherwise agreed to by the Secured Notes Trustee, acting at the direction or with the consent

of the Ad Hoc Group, in writing (which may be via email), all non-ordinary course sales and other dispositions (including casualty and condemnation events) of Collateral ("Collateral Sales") shall be in exchange for 100 percent cash consideration. Except as contemplated by the Restructuring Documents, any proposed property exchange with respect to Collateral that is not in exchange for 100 percent cash consideration shall be subject to the Secured Notes Trustee's, acting at the direction or with the consent of the Ad Hoc Group, prior written consent, which shall not be unreasonably withheld; all proceeds from Collateral Sales, as well as extraordinary receipts of any kind, shall be applied in accordance with the Secured Notes Documents unless otherwise agreed by the Secured Notes Trustee, acting at the direction of or with the consent of the Ad Hoc Group, in writing (which may be via email).

5. Case Milestones. Unless otherwise extended under the RSA with the consent of the Ad Hoc Group, the Debtors shall ensure compliance with the following case milestones:

- a. By no later than the Petition Date, the Debtors shall file a motion in form and substance reasonably acceptable to the Ad Hoc Group and Secured Notes Trustee (the "Expense Reimbursement Motion") providing for, among other things, the approval of an expense reimbursement of Knight Hawk's reasonable and documented fees and expenses acceptable to the Ad Hoc Group, Secured Notes Trustee, and Knight Hawk with respect to the Sale.
- b. By no later than seven (7) days following the Petition Date, the Debtors shall file the Proposed Plan and related disclosure statement, each in form and substance reasonably acceptable to the Ad Hoc Group and Secured Notes Trustee and the proposed Plan in form and substance reasonably acceptable to Knight Hawk.
- c. By no later than thirty-one (31) days following the Petition Date, the Court shall have entered an order in form and substance acceptable to the Ad Hoc Group, Secured Notes Trustee, and Knight Hawk approving the expense reimbursement set forth in the Expense Reimbursement Motion or an expense reimbursement otherwise acceptable to the Ad Hoc Group, Secured Notes Trustee, and Knight Hawk.
- d. By no later than sixty (60) days following the Petition Date, the Court shall have entered an order reasonably acceptable

to the Ad Hoc Group and Secured Notes Trustee approving the disclosure statement and plan solicitation procedures with respect to the Proposed Plan, each of which must be reasonably acceptable to the Ad Hoc Group and Secured Notes Trustee.

- e. By no later than seventy-five (75) days following the Petition Date, the Debtors shall share with the advisors to the Ad Hoc Group a draft budget for winding down the Debtors' operations and the Chapter 11 Cases after confirmation of the Plan, which includes an anticipated funding need in an amount acceptable to the Ad Hoc Group.
- f. By no later than one hundred (100) days following the Petition Date, the Court shall enter an order reasonably acceptable to the Ad Hoc Group, Secured Notes Trustee and, with respect to the provisions of the order(s) that involve the Royalty Agreements, Thoroughbred Resources, L.P., confirming the Proposed Plan and approving the Sale (the "Confirmation and Sale Order").
- g. By no later than fifteen (15) days following entry of the Confirmation and Sale Order, the effective date of the Plan shall occur and the Sale shall be consummated.

17. The Debtors respectfully submit that the proposed Adequate Protection is sufficient to protect the Prepetition Secured Parties from any diminution in value to the Collateral during the interim period. *See In re 495 Cent. Park Ave. Corp.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992) (evaluating "whether the value of the debtor's property will increase as a result of the" use of collateral in determining sufficiency of adequate protection); *In re Salem Plaza Assocs.*, 135 B.R. 753, 758 (Bankr. S.D.N.Y. 1992) (holding that 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). In light of the foregoing, the Debtors submit that the proposed Adequate Protection to be provided for the benefit of the Prepetition Secured Parties is appropriate. The Debtors' proposed Adequate Protection is not only necessary to protect the Prepetition Secured Parties against any diminution in value, but is

also fair and appropriate on an interim basis under the circumstances of these chapter 11 cases to ensure the Debtors are able to continue using the Cash Collateral in the near term for the benefit of all parties in interest and these chapter 11 estates.

II. Failure To Obtain the Immediate Interim Use of Cash Collateral Would Cause Immediate and Irreparable Harm.

18. Bankruptcy Rule 4001(b) provides that a final hearing on a motion to use cash collateral pursuant to section 363 of the Bankruptcy Code may not be commenced earlier than 14 days after the service of such motion. However, the Court is authorized to conduct a preliminary expedited hearing on this motion and authorize the Debtors' proposed use of Cash Collateral to the extent necessary to avoid immediate and irreparable harm to the Debtors' estates. *See* Fed. R. Bankr. P. 4001(b)(2).

19. The Debtors have an immediate postpetition need to use Cash Collateral. The Debtors cannot maintain the value of their estates during the pendency of these chapter 11 cases without access to cash. The Debtors will use cash to, among other things, implement and confirm a chapter 11 plan, continue to operate their business units in the ordinary course of business, procure goods and services from vendors of their businesses, pay their employees, and satisfy other working capital needs during these chapter 11 cases. The Debtors believe that substantially all of their available cash constitutes the Prepetition Secured Parties' cash collateral, as that term is used in section 363(c) of the Bankruptcy Code. The Debtors will therefore be unable to proceed with their proposed restructuring, operate their businesses in the near term, or otherwise fund these chapter 11 cases without access to Cash Collateral, and will suffer immediate and irreparable harm to the detriment of all creditors and other parties in interest. In short, the Debtors' ability to finance their operations and the availability of sufficient

working capital and liquidity to the Debtors through the use of Cash Collateral is vital to preserve and maximize the value of the Debtors' estates.

20. The Debtors, therefore, seek immediate authority to use the Cash Collateral on an interim basis and as set forth in this motion and in the Interim Order to prevent immediate and irreparable harm to their estates pending the Final Hearing pursuant to Bankruptcy Rule 4001(b). Accordingly, to the extent that the Debtors require the use of Cash Collateral, the Debtors respectfully submit that they have satisfied the requirements of Bankruptcy Rule 4001 to support an expedited preliminary hearing and immediate Cash Collateral availability on an interim basis.

III. The Highlighted Provisions Are Appropriate and Justified Under the Circumstances of These Chapter 11 Cases.

21. The Debtors believe that each of the Highlighted Provisions is justified and necessary in the context and circumstances of these chapter 11 cases.

A. The Scope of the Carve Out Is Appropriate.

22. The proposed Adequate Protection is subject to the Carve Out. Without the Carve Out, the Debtors and other parties in interest may be deprived of certain rights and powers because the services for which professionals may be paid in these chapter 11 cases would be restricted. *See In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (observing that courts insist on carve-outs for professionals representing parties in interest because "[a]bsent such protection, the collective rights and expectations of all parties-in-interest are sorely prejudiced"). The Carve Out does not directly or indirectly deprive the Debtors' estates or other parties in interest of possible rights and powers. Additionally, the Carve Out protects against administrative insolvency during the course of these chapter 11 cases by ensuring that assets remain for the payment of the Clerk of the Court or U.S. Trustee fees and professional fees of the Debtors.

B. The Findings of Validity, Perfection, or Amount of Prepetition Liens and Challenge Period Are Appropriate.

23. Bankruptcy Rule 4001(b)(1)(B) requires explicit disclosure of each party with an interest in the Prepetition Collateral, the purposes for and duration of the use of the Cash Collateral, and any provisions that bind the estate or other parties in interest with respect to the validity, perfection, or amount of the secured creditor's prepetition lien. Here, the concise statement provided in the Interim Order provides adequate disclosure of each of the foregoing, including references to the applicable section of the relevant source documents.

24. As part of the Interim Order, the Debtors agree and stipulate that the Secured Notes Indebtedness are valid, binding, perfected, enforceable, first priority liens and security interests against the Prepetition Collateral, subject in each case to the Prepetition Secured Parties' respective rights in such collateral. Nonetheless, the Interim Order further provides that, subject to certain limitations, the committee (if any) or any other party in interest, in each case, with requisite standing, may file an adversary proceeding challenging the validity, enforceability, priority, or extent of the Secured Notes Indebtedness or the liens on the Prepetition Collateral securing the Secured Notes Indebtedness by no later than the date that is the later of: (a) in the case of any such adversary proceeding filed by a party in interest with requisite standing other than the committee, sixty (60) days after the date of entry of the Interim Order and (b) in the case of any such adversary proceeding filed by the committee (if any), seventy-five (75) days after the appointment of the committee, but in no event later than the date that is ninety (90) days from the Petition Date.

IV. The Automatic Stay Should Be Modified on a Limited Basis.

25. The relief requested herein contemplates a modification of the automatic stay to permit the Debtors to grant the security interests and liens described above to the Prepetition

Secured Parties, and to perform such acts as may be requested to assure the perfection and priority of such security interests and liens. Stay modifications of this kind are ordinary and standard features for the use of cash collateral, and, in the Debtors' business judgment, are reasonable and fair under the present circumstances.

The Requirements of Bankruptcy Rule 6003 Are Satisfied

26. Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable harm." For the reasons discussed above, authorizing the Debtors' use of Cash Collateral, subject to the terms and conditions set forth in the Interim Order, granting certain adequate protection to the Prepetition Secured Parties, and granting the other relief requested herein is integral to the Debtors' ability to transition their operations into these chapter 11 cases. Failure to receive such authorization and other relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors' operations at this critical juncture. For the reasons discussed herein, the relief requested is necessary in order for the Debtors to operate their businesses in the ordinary course and preserve the ongoing value of the Debtors' operations and maximize the value of their estates for the benefit of all stakeholders. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

Request for Final Hearing

27. Pursuant to Bankruptcy Rule 4001(c)(2), the Debtors request that the Court set a date for the Final Hearing that is as soon as practicable and fix the date and time prior to the Final Hearing for parties to file objections to the relief requested by this motion.

Waiver of Bankruptcy Rules 6004(a), 6004(h), and 4001(a)(3)

28. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h). Furthermore, the Debtors request a waiver of the stay of the effectiveness of the order approving this motion under Bankruptcy Rule 4001(a)(3). Bankruptcy Rule 4001(a)(3) provides that “[an] order granting a motion for relief from an automatic stay made in accordance with Rule 4001(a)(1) is stayed until the expiration of fourteen days after entry of the order, unless the court orders otherwise.” As set forth herein, the use of Cash Collateral is necessary to allow the Debtors to operate their business, transition smoothly into these chapter 11 cases, and reorganize. Furthermore, allowing the Debtors’ use of Cash Collateral will prevent irreparable harm to the Debtors’ estates. Accordingly, the Debtors submit that ample cause exists to justify the waiver of the 14-day stay imposed by Bankruptcy Rule 4001(a)(3).

Reservation of Rights

29. Nothing contained in this motion or any actions taken by the Debtors pursuant to relief granted in the Proposed Interim Order and Proposed Final Order is intended or should be construed as: (a) an admission as to the validity of any particular claim against a Debtor entity; (b) a waiver of the Debtors’ rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors’ rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise)

satisfied pursuant to this motion are valid, and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens.

Notice

30. The Debtors will provide notice of this motion to: (a) the Office of the United States Trustee for the Eastern District of Missouri; (b) the holders of the 50 largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to the indenture trustee under the Debtors' 11.75% senior secured notes due 2019; (d) counsel to the ad hoc group of holders of the Debtors' 11.75% senior secured notes due 2019; (e) counsel to Knight Hawk Holdings, LLC; (f) the United States Attorney's Office for the Eastern District of Missouri; (g) the Internal Revenue Service; (h) the Environmental Protection Agency; (i) the office of the attorneys general for the states in which the Debtors operate; (j) the Securities and Exchange Commission; and (k) any party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the "Notice Parties"). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

31. No prior request for the relief sought in this motion has been made to this or any other court.

[Remainder of page intentionally left blank]

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

St. Louis, Missouri

Dated: November 1, 2017

/s/ Richard W. Engel, Jr.

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