

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

In re:	§	
	§	
OFFSHORE SPECIALTY	§	Case No. 17-35623
FABRICATORS, LLC,	§	
	§	(Chapter 11)
DEBTOR.	§	(Emergency Hearing Requested)

**EMERGENCY MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS  
(I) AUTHORIZING DEBTOR TO OBTAIN FINANCING PURSUANT TO 11 U.S.C. §§  
105, 362, 364(c), 364(d) AND 364(e); (II) SCHEDULING A FINAL HEARING PURSUANT  
TO BANKRUPTCY RULES 2002 AND 4001; AND (III) GRANTING RELATED RELIEF**

A HEARING WILL BE CONDUCTED ON THIS MATTER ON OCTOBER 24, 2017 AT 2:00 P.M. (CT) IN COURTROOM 404, 4TH FLOOR, UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF TEXAS, 515 RUSK, HOUSTON, TX 77002.

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 14 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

EMERGENCY RELIEF HAS BEEN REQUESTED. THE COURT HAS SET A HEARING ON THIS MOTION ON AN EMERGENCY BASIS; ACCORDINGLY, YOU HAVE LESS THAN 21 DAYS TO ANSWER. IF YOU OBJECT TO THE REQUESTED RELIEF OR IF YOU BELIEVE THAT THE EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU SHOULD FILE AN IMMEDIATE RESPONSE.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

TO THE HONORABLE MARVIN ISGUR, UNITED STATES BANKRUPTCY JUDGE:

Offshore Specialty Fabricators, LLC, the above-captioned debtor (the “Debtor”), files this motion (this “Motion”) pursuant to §§ 105, 362, 364(c), 364(d) and 364(e) of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 4001, and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Bankruptcy Rule 4001-1(b), seeking entry of an interim order, substantially in the form attached hereto (the “Interim Order”) and a final order (the “Final Order”)<sup>1</sup>: (i) authorizing the Debtor to (a) obtain secured post-petition financing (the “DIP Facility”) pursuant to the terms of the Proposed DIP Loan Term Sheet dated October 20, 2017, among Debtor, as borrower (in the capacity as a borrower, the “Borrower”), Offshore Express, LLC, as guarantor, and Schumann/Steier Holdings, LLC (the “DIP Lender”), a copy of which in substantially final form is attached hereto as **Exhibit A** (the “Term Sheet”; together with all agreements, documents, certificates and instruments delivered or executed from time to time in connection therewith, the “DIP Loan Documents”), (ii) scheduling a hearing (the “Final Hearing”) to consider entry of the Final Order, and (iii) granting related relief. In further support of this Motion, the Debtor respectfully represents as follows:

### **PRELIMINARY STATEMENT**

1. By this Motion, the Debtor seeks immediate access to a secured \$3 million debtor-in-possession financing facility it has obtained from the DIP Lender, of which \$300,000 has been wired to Diamond McCarthy LLP’s trust fund account, held in Escrow, pending a ruling on the Motion. The DIP Facility is required to ensure that the Debtor is able to: (i) insure and maintain the derrick barges William Kallop and Swing Thompson (collectively, the “Barges”); (ii) pay on-going expenses of the Debtor’s routine operations, including payroll, and have funds to pay the professionals retained by the estate; (iii) pay the fees to the DIP Lender as required by

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<sup>1</sup> The Debtor will file the form of Final Order prior to the Final Hearing (as defined herein).

the Term Sheet; and (iv) preserve its other assets for the benefit of its secured and unsecured creditors. No other financing or liquidity is immediately available to the Debtor on an unsecured basis.

2. The Debtor filed this Chapter 11 Case in order to have the time to either orderly liquidate the Barges such that the Barges will fetch the highest price at a Bankruptcy Code § 363 sale or restructure the business and capital structure of OSF.

3. At this time, the Debtor does not have access to cash to operate its business and pay the normal costs of Debtor's business during the winter period. The Debtor has approximately \$12,000 in cash. Thus, without debtor-in-possession financing, the Debtor would be forced to cease operations immediately.

4. Through the DIP Facility, the Debtor will have access to the cash to preserve its operations until its exit from chapter 11. Moreover, it permits the Debtor to pursue an orderly sale of its Barges instead of having them liquidated in a fire sale, if the decision is made to pursue that route.

5. On October 23, 2017, the DIP Lender will have wired \$300,000.00 into Diamond McCarthy, LLP's trust fund account, to be held in Escrow pursuant to a separate Escrow Agreement and not used until approval of this Motion.

6. The Debtor's inability to immediately access the DIP Facility is harmful to the Debtor's estate, creditors, and all other parties-in-interest. Absent the liquidity provided by the DIP Facility, the Debtor would have to immediately cease operating.

7. The Debtor is prepared to demonstrate at the hearing on this Motion that the relief requested herein represents a sound exercise of business judgment and should be approved.

### **JURISDICTION**

8. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Non-debtor affiliate and Guarantor, Offshore Express, LLC has consented to the jurisdiction of this court and the entry by this court of final orders in connection with any issues arising in connection with the DIP Loan, its Guarantee, and the Collateral for either of them.

9. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

10. The statutory bases for the relief requested herein are §§ 105, 362, 364(c), 364(d) and 364(e) of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, and 6004, and Local Bankruptcy Rule 4001-1(b).

### **COMPANY BACKGROUND**

11. The Debtor is a Louisiana limited liability company with offices in Houston, Texas and Houma, Louisiana. All of the executive officers of the Debtor are located in Houston, Texas and maintain an office at 20445 State Highway 249, Suite 280, Houston, TX 77070. In Houma, Louisiana, the Debtor has five (5) employees and leases land from Offshore Express, LLC (“OE”) on which it maintains a yard for the Barges, as defined below.

12. OSF’s primary business is to operate two derrick barges, the DB William Kallop (1765 short tons) and DB Swing Thompson (1320 short tons) (collectively, the “Barges”), which are used to install and decommission offshore platforms in the Gulf of Mexico. The Barges are outfitted with large cranes that are used to lift and move platforms. The Barges have some of the largest and most powerful floating cranes operating in the Gulf of Mexico.

13. The Debtor generates revenue by operating the Barges for offshore companies at negotiated day rates, or for lump-sum qualified turnkey amounts.

14. Given the Barge's size and configuration, they are operated only during the summer months. During the off-season, the Debtor maintains and repairs the Barges and submits bids for the next year's work. OSF is now in the off-season.

15. All of the Debtor's membership interests are owned by Offshore Domestic Group, LLC ("ODG"). ODG is owned by Offshore Exploration and Production, LLC ("OE&P"), which is a holding company. OE&P is owned by William M. Kallop.

16. The Debtor has nine (9) employees, including Tambrey ("Tammy") T. Naron, the CEO; Bill Billman, the COO; and David Weinhoffer, the CRO, who reside and work out of OSF's Houston office.

17. Like other companies serving the offshore oil and gas industry, the Debtor's business has faced significant challenges in the last two years.

18. In 2016, the company at the time headed by Steve Williams suffered a serious financial set back. OSF had a large receivable from Montco Oilfield Contractors, LLC ("MOC") in the approximate amount of \$10,000,000. MOC filed chapter 11 and OSF became MOC's second largest unsecured creditor.

19. Due to a liquidity crisis at OSF, OSF then could not pay the other parties whom OSF relied on to take and bring back the Barges from various jobs. As a result, the vendors of OSF began filing maritime liens against the Barges.

20. The maritime lien creditors commenced an action in the Eastern District of Louisiana (the "District Court") in March, 2017 to arrest the Barges and collect amounts owed to them. At this time, the Debtor believes maritime liens and statutory liens of approximately \$8,000,000 have been asserted and filed against the Barges.

21. The District Court had scheduled a sheriff's auction for October 2, 2017 at 10:00 a.m. in New Orleans, Louisiana.

22. On October 1, 2017 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

23. Since the Petition Date, the Debtor has continued to operate and manage its business in the ordinary course pursuant to Bankruptcy Code §§ 1107 and 1108.

24. As of the date hereof, an official committee of unsecured creditors has not been appointed in this case.

### **PREPETITION CLAIMS AGAINST THE DEBTOR**

25. The Debtor holds the following debt:

a) **Maritime Lien Claimants:** Under federal maritime law, creditors who provide services to a vessel, or suffer damages caused by a vessel, automatically obtain a lien on the vessel securing payment for their claims ("Maritime Lien Claimants"). The Debtor estimates that the total value of maritime claims secured by the Barges is \$7.9 million.

b) **Other Secured Parties:** There is one creditor whose claim is secured by a non-maritime lien on certain equipment. The Debtor believes that this creditor has a claim in the amount of \$28,000.

c) **Insurance-Related Claims:** The Debtor has purchased protection and indemnity ("P&I") insurance, hull insurance, and excess insurance covering claims arising from the operation of the Barges. Currently, the Debtor faces potential liabilities from injured claimants in excess of \$2.5 million.

d) **Unsecured Debt:** The Debtor has unsecured debt as follows:

i. **Trade Creditors:** The Debtor incurs debt to various trade creditors who provide goods or services used in the Debtor's operations. The Debtor estimates that it owes \$4 million to trade creditors.

ii. **Affiliate Claims:** The Debtor owes approximately \$32 million to affiliated entities, including OE&P, ODG and OE.

### **THE DEBTOR'S IMMEDIATE LIQUIDITY NEEDS**

26. The Debtor has faced a number of financial challenges that have exhausted its liquidity, including, among others, operating losses due to the arrest of its Barges. Recognizing this liquidity crunch, the Debtor's advisors have worked closely with the Debtor's management team to analyze the incremental liquidity necessary to maintain operations while the parties finalize a strategy for exiting chapter 11.

27. The Debtor has prepared a debtor-in-possession budget setting forth the Debtor's anticipated cash receipts and expenditures for the thirteen-week period following the date of this Motion. A copy of the budget is attached hereto as **Exhibit B** (the "Initial Approved Budget"). The Initial Approved Budget set forth the Debtor's good-faith projection of all weekly cash receipts and disbursements in connection with the operation of the Debtor's business during such period.

28. Because the Debtor is entering the winter off-season, the Initial Approved Budget contemplates paying only those expenses that are absolutely necessary to maintain the Debtor's business, including insurance premiums, off-season employee salaries, and utilities. The Initial Approved Budget also accounts for fees and interest expenses associated with post-petition financing and professional fees, including professional fees related to the MOC bankruptcy and fees to collect on a significant judgment.

29. In light of the Debtor's minimal cash balances, the Debtor's inability to access the DIP Facility would materially and perhaps irreparably harm the Debtor's value as a whole. Most importantly, the Debtor would be unable to pay its employees or insure its vessels. In sum, absent the ability to immediately access the liquidity provided under the DIP Facility, the Debtor faces a material diminution in value of its assets and operations.

### **DEBTOR'S EFFORTS TO OBTAIN FINANCING**

30. The Debtor's management and professionals have worked diligently to locate potential sources of post-petition financing. Lenders, including the DIP Lender, have also come forward with various competing financing proposals. However, no lender has been willing to provide the Debtor with financing on an unsecured basis. Taking all of its current circumstances into consideration, the Debtor has concluded that the best source of post-petition financing available to them was from the DIP Lender.

### **RELIEF REQUESTED**

31. For the reasons set forth herein, the Debtor seeks authorization to enter into to the DIP Loan Documents, which will allow it to obtain the funds available through the DIP Facility pursuant to the terms set forth in this Motion, the DIP Loan Documents, the Interim Order, and the Final Order. If approved, the Debtor would be able to draw up to \$300,000 on an interim basis. Specifically, by this Motion, the Debtor seeks the following relief:

- (a) authorizing the Debtor to obtain the DIP Facility pursuant to the terms of the DIP Loan Documents;
- (b) authorizing the Debtor to execute and deliver the DIP Loan Documents;
- (c) granting to the DIP Lender continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected post-petition security interests in and liens (the "DIP Liens"), on all assets of the Debtor, *save and except for* the Barges DB Swing Thompson and DB William Kallop (the "Collateral");



- (d) granting the DIP Lender an allowed Superpriority Claim subject to the Carve-Out;
- (e) In order to secure the DIP Obligations, and effective immediately upon the entry of the Interim Order, granting the DIP Lender continuing valid, binding, enforceable, non-avoidable, and automatically and properly perfected first priority liens on the real estate assets of non-debtor Offshore Express, LLC, the legal description is contained in the DIP Loan Documents;
- (f) scheduling a Final Hearing to consider entry of the Final Order; and
- (g) waiving of any applicable stay and providing for the immediate effectiveness of the Interim Order.

### **SUMMARY OF PRINCIPAL TERMS OF DIP FACILITY**

32. Pursuant to Bankruptcy Rule 4001(b), (c), and (d), the following is a concise statement and summary of the proposed material terms of the DIP Facility, as specified in the Term Sheet and the Interim Order:<sup>2</sup>

<b>Material Provision</b>	<b>Summary Description of Material Provision</b>
<b>DIP Credit Agreement Parties</b> Fed. R. Bankr. P. 4001(c)(1)(B)	<b><u>Borrower:</u></b> Offshore Specialty Fabricators, LLC <b><u>Guarantor:</u></b> Offshore Express, LLC <b><u>DIP Lender:</u></b> Schumann/Steier Holdings, LLC
<b>Amount of Borrowing</b> Fed. R. Bankr. P. 4001(c)(1)(B)	The DIP Facility shall comprise a commitment for up to \$3 million which will be funded through an Interim Draw and a Final Draw.
<b>Purpose/Use of Funds</b> Fed. R. Bankr. P. 4001(c)(1)(B)	The proceeds of the DIP Facility shall generally be used (1) to finance working capital needs, specified capital expenditures and general corporate purposes of the Debtor, all in accordance with the applicable DIP Budget; (2) to pay the fees, costs and expenses incurred by the Debtor in connection

<sup>2</sup> This summary is qualified, in its entirety by the provisions of the DIP Loan Documents and the Interim Order. Unless otherwise set forth in this summary, capitalized terms used within this summary shall have the meanings ascribed to them in a DIP Credit Agreement. The Checklist Form and Comments for Motions and Orders Pertaining to the Use of Cash Collateral and Post-Petition Financing (appended to the General Order in the Matter of Procedures of Complex Chapter 11 Cases as Appendix J) is attached hereto as **Exhibit C**.

Material Provision	Summary Description of Material Provision
	with its chapter 11 case; and (3) to pay the fees, costs, and expenses of the DIP Lender.
<b>Maturity Date</b> Fed. R. Bankr. P. 4001(b)(1)(ii) and (c)(1)(B)	Earliest of six (6) months, or an Event of Default, or the Effective Date of a Plan of Reorganization.
<b>Interest Rate</b> Fed. R. Bankr. P. 4001(c)(1)(B)	LIBOR + 15% with a LIBOR floor of 3%
<b>Fees</b> Fed. R. Bankr. P. 4001(c)(1)(B)	<p><b><u>Commitment Fee:</u></b> 2.5% of the Facility Amount, payable upon funding of the Interim Draw.</p> <p><b><u>Due Diligence Expense Reimbursement:</u></b> Reasonable expenses of \$20,000 to be invoiced upon the Debtor's Interim Draw.</p> <p><b><u>Collateral Monitoring Fee:</u></b> \$11,000 per month.</p>
<b>Events of Default</b> Fed. R. Bankr. P. 4001(b)(1)(B) and (c)(1)(B)(iii)	<p>One or more of the following events shall constitute an "Event of the Default":</p> <ul style="list-style-type: none"> <li>• (a) the Debtor shall fail to pay any principal or interest on the DIP Obligations or any fee or any other amount of any DIP Obligations when and as the same shall become due and payable, whether at the due date thereof or at the date fixed for prepayment thereof, by acceleration or otherwise.</li> <li>• (b) Guarantor permits any other lien to be placed on its collateral or a receivership is granted with respect to the collateral or the Guarantor.</li> <li>• (c) any representation or warranty made or deemed made by or on behalf of the Debtor or Guarantor in connection with any DIP Credit Agreement or any amendment or modification of any other Loan Document or waive under such loan document, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with any loan documents or any amendment or modification</li> </ul>

Material Provision	Summary Description of Material Provision
	<p>thereof or waiver thereunder, shall prove to have been incorrect in any material respect when made or deemed made (unless such representation or warranty was already qualified by materiality, in which case such representation or warranty shall simply have been true and correct).</p> <ul style="list-style-type: none"> <li>• (d) the Debtor or Guarantor shall fail to observe or perform any covenant, condition or agreement contained in the DIP Credit Agreement or any other Loan Document, and such failure shall continue unremedied for a period of 30 days after the earlier to occur of (1) notice thereof from the DIP Lender to the Debtor or (2) a Responsible Officer of the Debtor otherwise becoming aware of such default.</li> <li>• (e) except as a result of the commencement of the Chapter 11 Case, and to the extent the relevant holder remains subject to the automatic stay imposed thereby, the Debtor shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any material indebtedness, when and as the same shall become due and payable.</li> <li>• (f) except as a result of the commencement of the Chapter 11 Case, and to the extent the relevant holders remain subject the automatic stay imposed thereby, any event or condition occurs that results in scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any material indebtedness or any trustee or agent on its or their behalf to cause any material indebtedness to become due, or to require the redemption thereof or any offer to redeem to be made in respect thereof, prior to its scheduled maturity or require the Debtor to make an offer in respect thereof provided that this shall not apply to secured Debt that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Debt.</li> <li>• (g) the Bankruptcy Court shall enter, or the Debtor shall seek or support the entry of any order: <ul style="list-style-type: none"> <li>○ (i) amending, supplementing, altering, staying,</li> </ul> </li> </ul>

Material Provision	Summary Description of Material Provision
	<p>vacating, rescinding or otherwise modifying the Interim DIP Order, the Final DIP Order, or any other order in any manner which could reasonably be expected to result in Material Adverse Effect,</p> <ul style="list-style-type: none"> <li>○ (ii) appointing a Chapter 11 trustee that is not appointed as a result of a motion filed by the DIP Lender, a responsible officer or an examiner pursuant to Section 1104 of the Bankruptcy Code with enlarged powers relating to the operation of the business of the Debtor (powers beyond those set forth in Section 1106(a)(3) and (4) and 1106(b) of the Bankruptcy Code) in the Chapter 11 Case, unless such motion is agreed to by the DIP Lender,</li> <li>○ (iii) dismissing the Chapter 11 Case or converting the Chapter 11 Case to a Chapter 7 case,</li> <li>○ (iv) granting relief from the automatic stay under Section 362 of the Bankruptcy Code to the holder of any claim against the Debtor, which order enables the holder of such claim to exercise any right or remedy against any property of the Debtor, or</li> <li>○ (v) except with respect to a proposed § 363 sale, approving the sale, lease, alienation or other disposition of all or substantially all of the assets, properties or equity interests of the Debtor and its affiliates pursuant to § 363 of the Bankruptcy Code or otherwise, without the consent of the DIP Lender and approval of the Bankruptcy Court.</li> </ul> <ul style="list-style-type: none"> <li>● (h) The Debtor or any affiliate shall seek to, or shall support (in any such case by way of motion or other pleading filed with the Bankruptcy Court or any other writing to another party-in-interest executed by or on behalf of the Debtor or any affiliate), any other Person's motion to disallow, in whole or in part, the</li> </ul>

Material Provision	Summary Description of Material Provision
	<p>DIP Lender's claims or to challenge the validity and enforceability of the DIP Liens.</p> <ul style="list-style-type: none"> <li>• (i) An application shall be filed by the Debtor or Guarantor for the approval of, or there shall otherwise arise, any other Superpriority Claim in the Chapter 11 Case which is <i>pari passu</i> with or senior to the claims of the DIP Lender against the Debtor unless after giving effect to the transactions contemplated by such application, all Secured Obligations (whether contingent or otherwise) shall be paid in full in cash. The entry of an order authorizing the obtaining of credit or the incurrence of Debt by the Debtor that is secured by a Lien or any or all of the Collateral, which is senior to or <i>pari passu</i> with the security interests and liens against the Collateral that is granted to the DIP Lender.</li> <li>• (j) From and after the date of entry thereof, the Interim Order shall cease to be in full force and effect (or shall have been vacated, stayed for a period in excess of five (5) days, reversed, modified or amended), in each case without the consent of the DIP Lender, and the Final Order shall not have been entered prior to such cessation (or vactur, stay, reversal, modification or amendment).</li> <li>• (k) The Final DIP Order shall not have been entered by the Bankruptcy Court on or before November 6, 2017 or from and after the date of entry thereof, the Final DIP Order shall cease to be in full force and effect (or shall have been vacated, stayed for a period in excess of five (5) days, reversed, modified or amended), in each case without the consent of the DIP Lender.</li> <li>• (l) The Debtor shall make any payment on any Debt incurred before the Petition Date, other than as permitted under the Interim DIP Order or Final DIP Order, the DIP Budget, or as permitted hereunder and other than any payment of any Debt owing to the Debtor and any payment approved by the Bankruptcy Court of any Debt.</li> <li>• (m) The Debtor shall fail to comply with the terms of</li> </ul>

Material Provision	Summary Description of Material Provision
	<p>the Interim or Final DIP Orders.</p> <ul style="list-style-type: none"> <li>• (n) Any final judgments shall be entered against the Debtor or Guarantor and shall not have been paid, discharged or vacated or had execution thereof stayed pending appeal within thirty days after entry or filing of such judgments; or there shall be entered against the Debtor or any affiliate a nonmonetary judgment, order or decree with respect to any claim or liability that accrued after the Petition Date which has or could be reasonably expected to have a Material Adverse Effect, and there shall be any period of thirty consecutive days during which a stay of enforcement of such judgment, decree or order, by reason of a pending appeal or otherwise, shall not be in effect.</li> <li>• (o) The Loan Documents after delivery thereof shall for any reason, except to the extent permitted by the terms thereof, cease to be in full force and effect and valid, binding and enforceable in accordance with their terms against the Debtor or shall be repudiated by the Debtor or Guarantor, or cease to create a valid and perfected Lien of the priority required thereby on any of the collateral purported to be covered thereby, except to the extent permitted by the terms of the DIP Credit Agreement, or the Debtor or any affiliate shall so state in writing.</li> <li>• (p) The commencement of any action against the DIP Lender by or on behalf of the Debtor, Guarantor, or any of its affiliates or any of their respective agents.</li> <li>• (q) David Weinhoffer (or such other person the DIP Lender may consent to, in its sole discretion) shall cease to serve as the CRO of the Debtor and is not replaced within seven (7) days by a Person acceptable to the DIP Lender.</li> <li>• (r) The entry of an order authorizing recovery by any Person from the Collateral or any adequate protection Liens granted with respect thereto for any costs of preservation or disposition thereof under Section 506(c) of the Bankruptcy Code or (except as provided in the Final Order) authorizing the use of cash</li> </ul>

Material Provision	Summary Description of Material Provision
	<p>collateral without consent in writing by the DIP Lender. The entry of an order granting adequate protection with respect to Pre-Petition Indebtedness, other than as provided in the Interim Order or the Final Order, or as otherwise approved by the DIP Lender and the Bankruptcy Court.</p> <ul style="list-style-type: none"> <li>• (s) The filing by Debtor or any affiliate of any motion or proceeding which could reasonably be expected to result in material impairment of the DIP Lender's rights under this Agreement; or a final determination by the Bankruptcy Court (or any other court of competent jurisdiction) with respect to any motion or proceeding brought by any other party which results in any material impairment of the DIP Lender's rights under the DIP Credit Agreement.</li> <li>• (t) The Debtor, Guarantor, or any affiliate shall file, support, or seek confirmation of a plan of reorganization or liquidation, or such plan of reorganization or liquidation shall be confirmed in the Chapter 11 Case, which does not provide for both termination of the Commitment and payment in full of the DIP Obligations in cash on the effective date of such plan, without the prior written consent of the DIP Lender.</li> <li>• (u) The entry of an order dismissing the Chapter 11 Case that does not provide for the termination of the Commitment and payment in full of the DIP Obligations in cash prior to dismissal, without the prior written consent of the DIP Lender; and</li> <li>• (v) Any motions to sell the Collateral or approve procedures regarding the same, any plan or disclosure statement or supplements or amendments thereto, or any orders approving or amending any of the foregoing are not in form and substance reasonably acceptable to the DIP Lender.</li> <li>• (w) The appointment of a receivership over the Guarantor or any affiliate of the Debtor or Guarantor which might affect the Collateral.</li> </ul>

Material Provision	Summary Description of Material Provision
	<ul style="list-style-type: none"> <li>(x) The Debtor shall exceed any line item in the DIP Budget by more than ten percent (10%) in any given week.</li> </ul>
<p><b>Liens and Priorities</b> Fed. R. Bankr. P. 4001(c)(1)(B)(i), (ii)</p>	<p><u>Non-Debtor Liens:</u> In order to secure the DIP Obligations, effective immediately upon entry of the Interim Order, the DIP Lender shall be granted continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected first-priority liens on the real estate assets of non-debtor Offshore Express, LLC, the legal descriptions of which are contained in Exhibit A.</p> <p><u>Debtor Liens:</u> In order to secure the DIP Obligations, effective immediately upon entry of the Interim DIP Order, the DIP Lender shall be granted continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected post-petition security interests in and liens , on all assets of the Debtor, save and except for the Barges DB Swing Thompson and DB William Kallop.</p> <p>To the extent permissible under the Bankruptcy Code, pursuant to Bankruptcy Code §364(c)(2), the DIP Liens shall be senior in priority and superior to any security, mortgage, collateral interest, lien or claim on or to any of the DIP Collateral.</p>
<p><b>Conditions</b> <b>Precedent to All Drawing</b> Fed. R. Bankr. P. 4001(c)(1)(B)</p>	<p>The Final Draw shall be funded upon entry of an order by the Bankruptcy Court granting final approval of the DIP Facility that is in form and substance acceptable to the DIP Lender in its sole and absolute discretion.</p>

33. As a condition to obtaining the proposed DIP Facility, the DIP Lender has agreed with the Debtor to certain provisions that may be considered significant provisions to be highlighted to the Court and the parties-in-interest for purposes of the Court's complex



procedures for chapter 11 cases (such provisions, the “Complex Case Disclosure Provisions.”)<sup>3</sup>.

These provisions include:

Material Provision	Summary Description of Material Provision
<b>Super-Priority Administrative Expense</b>	<p>Upon entry of the Interim Order, the DIP Lender shall be granted, pursuant to § 364(c)(1) of the Bankruptcy Code, an allowed Superpriority Claim against the Debtor in the Chapter 11 Case and any successor cases for all DIP Obligations. To the extent permissible under the Bankruptcy Code, the Superpriority Claim shall be subordinate only to the DIP Liens. To the extent permitted by the Bankruptcy Code, the Superpriority Claim (a) shall otherwise have priority over any and all administrative expense claims and unsecured claims against the Debtor and its estate in the Chapter 11 Case and any successor cases, at any time existing or arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to Bankruptcy Code Sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c), 507(a), 507(b), (except as set forth in the Interim Order), 546(c), 546(d), 726 (to the extent permitted by law) 1113 and 1114, and any other provision of the Bankruptcy Code, as provided under section 364(c)(1) of the Bankruptcy Code; and (b) shall at all times be senior to the rights of the Debtor and its estate, and any successor trustee or other estate representative to the extent permitted by law, but subject to the Carve-Out.</p> <p>“<u>Carve-Out</u>” shall mean the sum of (i) fees and expenses incurred by bankruptcy professionals whose retention has been (x) approved by the Bankruptcy Court which are unpaid as of the delivery of the Carve Out Trigger Notice (as defined below) and (y) provided for in the Approved Budget; (ii) fees and expenses in an amount not to exceed \$25,000 incurred from and after the delivery of the Carve Out Trigger Notice (as defined below) by bankruptcy professionals whose retention has been approved by the Bankruptcy Court (the “<u>Post-Termination Fee Carve Out</u>”), including fees owed pursuant to</p>

<sup>3</sup> Complex Case Disclosure Provisions refer to those provisions that: (a) grant cross-collateralization protection (other than replacement liens or other adequate protection) to prepetition secured creditors; (b) deem prepetition secured debt to be postpetition debt or that use postpetition loans from a prepetition secured creditor to pay part or all of that secured creditor’s prepetition debt, other than as provided in section 552(b) of the Bankruptcy Code; (c) bind the bankruptcy estates or any parties in interest with respect to the validity, perfection, or amount of the secured creditor’s prepetition lien or debt or the waiver of claims against the secured creditor; (d) waive or limit the estate’s rights under section 506(c) of the bankruptcy code; (e) grant prepetition secured creditors liens on the debtor’s claims and causes of action arising under chapter 5 of the Bankruptcy Code; (f) impose deadlines for the filing of a plan or disclosure statement; and (g) grant an administrative claim.

Material Provision	Summary Description of Material Provision
	28 U.S.C. § 1930 or fees owed the clerk of the Bankruptcy Court. “ <u>Carve Out Trigger Notice</u> ” shall mean the written notice, including by email, delivered by the DIP Lender to the Debtor, its counsel, the U.S. Trustee, and the counsel to the Creditors’ Committee, if any, appointed in the Chapter 11 Case, which notice may be delivered following the occurrence and continuation of an Event of Default or the Termination Date in accordance with the terms of the DIP Loan Documents.

34. The explanation for the inclusion of these Complex Case Disclosure Provisions is that without such Complex Case Disclosure Provisions, the DIP Lender would be unwilling to provide the DIP Facility, and as a result, the Debtor would not be able to access needed liquidity provided by the DIP Facility. Indeed, the Debtor has been unable to obtain post-petition financing on any other basis.

35. Further, the DIP Facility is also secured by security interests in real estate owned by OE. As mentioned above, the Debtor currently leases land from OE in order to operate its business. The liens and claims granted by the Debtor’s estate include a collateral assignment of its leasehold interests in the real property.

36. Each of the provisions of the DIP Facility as outlined above are reasonable and appropriate under the facts and circumstances of this Chapter 11 Case. The Debtor negotiated the DIP Facility at arms’-length and has determined that it is the best proposal under the circumstances. Further, the DIP Facility is essential to the Debtor’s ability to preserve its assets and business operations and proceed successfully in this chapter 11 case. The terms outlined above, as well as the other terms and conditions are required terms of the DIP Facility.

37. The DIP Facility does not impose any lien on the Barges. Rather, it is secured with outside collateral to the benefit of the estate and its creditors. Such collateral contribution is

being made as a good-faith and discretionary contribution to the Debtor from OE because both companies believe that the best way to maximize value is to allow sufficient time to pursue all possible go-forward options. A forced liquidation like that advocated by some creditors will not achieve this objective.

### **BASIS FOR RELIEF**

38. Bankruptcy Code § 364 distinguishes among (a) obtaining unsecured credit in the ordinary course of business, (b) obtaining unsecured credit outside the ordinary course of business, and (c) obtaining credit with specialized priority or with security. If a debtor-in-possession cannot obtain postpetition credit on an unsecured basis, then pursuant to § 364(c) of the Bankruptcy Code, a court may authorize the obtaining of credit or the incurring of debt, repayment of which is (i) entitled to superpriority administrative expense status, (ii) secured by a senior lien on unencumbered property, (iii) secured by a junior lien on encumbered property, or (iv) a combination of the foregoing. Because the Debtor proposes to obtain financing under the DIP Facility that is secured both by junior and senior liens on the Debtor's property, the approval of the DIP Facility is governed by §§ 364(c)(2) & 364(c)(3) of the Bankruptcy Code.

#### **A. Financing Under § 364(c)**

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

- (1) with priority over any or all administrative expenses of the kind specified in § 503(b) or 507(b) of the Bankruptcy Code;
- (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or

- (3) secured by a junior lien on property of the estate that is subject to a lien.

Thus, a debtor may, in the exercise of its business judgment, incur secured debt if the debtor has been unable to obtain adequate unsecured credit, and the proposed borrowing is in the best interests of its estate. *See, e.g., In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990) (stating that, with respect to postpetition credit, courts “permit debtors in possession to exercise their basic business judgment consistent with their fiduciary duties”); *In re Simasko Production Co.*, 47 B.R. 444, 448-9 (D. Colo. 1985) (authorizing interim financing where the debtor’s best business judgment indicated financing was necessary and reasonable for benefit of estate); *Richmond Leasing Co. v. Capital Bank, NA.*, 762 F.2d 1303, 1311 (5th Cir. 1985) (noting that “more exacting scrutiny [of the debtor’s business decisions] would slow the administration of the debtor’s estate and increase its cost, interfere with the Bankruptcy Code’s provision for private control of administration of the estate, and threaten the court’s ability to control a case impartially”); *see also* 3 Collier on Bankruptcy ¶ 364.03, at 364-7-18 (15th ed. rev.).

40. The statutory requirement for obtaining postpetition credit under § 364(c) of the Bankruptcy Code is a finding, made after notice and hearing, that the debtor-in-possession is “unable to obtain unsecured credit allowable under § 503(b)(1) of [the Bankruptcy Code] as an administrative expense.” *See Ames Dep't Stores*, 115 B.R. at 37–39 (holding that a debtor must show it has made a reasonable effort to seek other sources of financing under Bankruptcy Code §§ 364(a) and (b)); *In re Crouse Group, Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987), modified on other grounds, 75 B.R. 553 (Bankr. E.D. Pa. 1987) (debtor seeking secured credit under Bankruptcy Code § 364(c) must prove it was unable to obtain unsecured credit pursuant to Bankruptcy Code § 364(b)); *In re McKenzie Energy Corp.*, 228 B.R. 854, 874 (S.D. Tex. 1998) (“The court, after notice and a hearing, may authorize the obtaining of credit or the incurring of

debt secured by a senior or equal lien on property of the estate that is subject to a lien only if—  
(A) the trustee is unable to obtain such credit otherwise . . .”).

41. In addition, courts have articulated a three-part test to determine whether a debtor may obtain financing under § 364(c):

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

*In re Aqua Assocs.*, 123 B.R. 192, 195–96 (Bankr. E.D. Pa. 1991) (applying the above test and holding that “[o]btaining credit should be permitted not only because it is not available elsewhere, which could suggest the unsoundness of the basis for the use of the funds generated by credit, but also because the credit acquired is of significant benefit to the debtor’s estate and the terms of the proposed loan are within the bounds of reason, irrespective of the inability of the debtor to obtain comparable credit elsewhere”); *Ames Dep’t Stores*, 115 B.R. at 37–39.

42. To show that the financing required is not obtainable on an unsecured basis, a debtor need only demonstrate “by a good faith effort that credit was not available without” the protections of § 364(c). *Bray v. Shenandoah Fed. Savs. & Loan Ass’n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986). “The statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable.” *Id.*; see also *Pearl-Phil GMT (Far East) Ltd v. Caldor Corp.*, 266 B.R. 575, 584 (S.D.N.Y. 2001) (authorizing superpriority administrative expenses where debtors could not obtain credit as an administrative expense). When few lenders are likely to be able and willing to extend the necessary credit to a debtor, “it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing.” *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff’d sub*

*nom. Anchor Savs. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n.4 (N.D. Ga. 1989); *see also Ames Dep't Stores*, 115 B.R. at 40 (approving financing facility and holding the debtor made reasonable efforts to satisfy the standards of § 364(c) where it approached four lending institutions, was rejected by two, and selected the most favorable of the two offers it received).

43. The Debtor attempted to secure financing on terms other than a secured basis, but given the Debtor's asset base and balance sheet, they were unable to do so. The Debtor has been unable to obtain: (i) adequate unsecured credit allowable under § 503(b)(1) of the Bankruptcy Code as an administrative expense; (ii) credit for money borrowed secured solely by a lien on property of the estate that is not otherwise subject to a lien; or (iii) credit for money borrowed secured solely by a junior lien on property of the estate which is subject to a lien, in each case, on more favorable terms and conditions than those provided in the DIP Facility.

44. Thus, the Debtor believes entering a DIP Facility with superpriority administrative claims, first priority liens on the Debtor's unencumbered property is appropriate under the circumstances of this Chapter 11 Case. Based on the Debtor's knowledge of prevailing market terms and rates for similar credit facilities, as well as the poor state of the credit markets, the Debtor strongly believes that it is unable to obtain unsecured financing from any capital source on similar or more favorable terms.

45. The DIP Facility is also necessary to preserve the assets of the Debtor's estate. The Barges—the Debtor's primary assets—require maintenance and insurance. In order to fund those expenses, the Debtor needs access to the liquidity provided by the DIP Facility. The DIP Facility will also assure that the Debtor has working capital to maintain its limited operations during the off-season, thus preserving the estate's value in the event of a reorganization. Finally,

the DIP facility will ensure that the Debtor can continue seeking to recover from the MOC bankruptcy and a civil judgment.

46. Finally, the terms of the DIP Facility are fair, reasonable, and appropriate. The proposed DIP Facility subjects the security interests and administrative expense claims of the DIP Lender to the Carve-Out. Such carve-outs for professional fees have been found to be reasonable and necessary to ensure that a debtor's estate and any statutory committee can obtain appropriate assistance from counsel and other professionals. *See, e.g., Ames*, 115 B.R. at 40; *In re United Retail*, No. 12-10405, 2012 WL 1388894 (Bankr. S.D.N.Y. Feb. 1, 2012); *In re Eastman Kodak Co.*, Case No. 12-10202, ECF No. 54 (Bankr. S.D.N.Y. Jan. 19, 2012); *In re Gen. Maritime Corp.*, Case No. 11-15285, 2011 WL 6841191 (Bankr. S.D.N.Y. Nov. 17, 2011).

47. The Carve-Out protects against administrative insolvency during the course of this chapter 11 case by ensuring assets remain for the payment of U.S. Trustee fees and professional fees notwithstanding the grant of administrative liens and claims under the DIP Facility.

48. Likewise, the fees required by the DIP Lender under the DIP Facility are reasonable and appropriate under the circumstances. The proposed fees under the DIP Facility, including the 2.5% commitment fee, the due diligence expense reimbursement, and the \$11,000 monthly collateral monitoring fee, are within the parameters of market fee structures for similar post-petition financings. Indeed, courts routinely authorize similar lender incentives beyond the explicit liens and other rights specified in § 364. *See In re Defender Drug Stores, Inc.*, 145 B.R. 312, 316 (B.A.P. 9th Cir. 1992) (approving a debtor-in-possession financing facility that included a lender "enhancement fee"); *In re Korea Chosun Daily Times, Inc.*, 337 B.R. 773, 783 (Bankr. E.D.N.Y. 2005) (stating that postpetition financing arrangements under § 364 "may include the

payment of a loan commitment fee and reimbursement of reasonable fees and expenses in the event that the financing arrangement is not consummated.”); *In re Mayco Plastics Inc.*, 379 B.R. 691, 698–99 (Bankr. E.D. Mich. 2008) (stating that § 364 provides “certain incentives that a trustee or debtor in possession may offer, with court approval, to induce potential lenders to undertake the risks involved in providing post-petition financing to a bankruptcy estate . . . . The greater the debtor’s inability to obtain the necessary post-petition financing, the greater the inducements the debtor may offer to obtain such debt. Similarly, the greater the risk undertaken by the post-petition lender, the more heightened its need becomes to obtain the additional inducements that §§ 364(c) and (d) permit the Court to authorize a debtor to offer.”) (citations omitted).

49. The Debtor is unable to obtain alternate credit sources, the terms of the DIP Facility have been negotiated at arms-length and are not principally for the benefit of a creditor to the detriment of other parties-in-interest, and the Debtor’s believes, in its business judgment, the DIP Facility is in the best interest of all parties involved. The terms of the DIP Facility are in the realm of the incentives contemplated by § 364 to induce potential lenders to undertake the risks involved in providing post-petition financing to a bankruptcy estate.

50. For these reasons, the Debtor submits that entry into the DIP Facility is in the best interests of the Debtor’s estate, is necessary to preserve the value of estate assets, and is an exercise of the Debtor’s sound and reasonable business judgment. The Debtor respectfully requests the Court to authorize the Debtor to provide the DIP Lender an administrative expense status for any obligations arising under the DIP Loan Documents as provided for in § 364(c)(1) of the Bankruptcy Code.



**B. Financing Under § 364(d)**

51. In addition to authorizing financing under section 364(c) of the Bankruptcy Code, courts also may authorize a debtor to obtain post-petition credit secured by a lien that is senior or equal in priority to existing liens on the encumbered property, without the consent of the existing lien holders, if the debtor cannot otherwise obtain such credit and the interests of existing lien holders are adequately protected. See 11 U.S.C. § 364(d)(1). To the extent necessary, the Debtor seeks approval of the DIP Facility under § 364(d)(1) of the Bankruptcy Code.

52. When determining whether to authorize a debtor to obtain credit secured by a “priming” lien as authorized by § 364(d) of the Bankruptcy Code, courts focus on whether the transaction will enhance the value of the debtor’s assets. Courts consider a number of factors, including:

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

*See, e.g., Bland v. Farmworker Creditors*, 308 B.R. 109, 113-14 (S.D. Ga. 2003); *see also* 3 Collier on Bankruptcy ¶ 364.05 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The Debtor

respectfully submits the DIP Facility is appropriate under this analysis and the facts of this chapter 11 case.

53. First, the Debtor and its advisors explored a variety of possible financing sources, and ultimately determined the DIP Lenders offered the best option for obtaining the post-petition financing the Debtor requires.

54. Second, the Debtor requires immediate access to the DIP Facility to provide adequate liquidity for the operation and maintenance of the Debtor's assets and to preserve and enhance the value of its estate for the benefit of all creditors and other parties-in-interest. Absent the DIP Facility, the Debtor would be unable to operate or maintain its business. Accordingly, value will be lost and the Debtor's ability to effectuate a going-concern transaction will be significantly threatened. Conversely, the Debtor's access to liquidity will benefit all stakeholders—including the secured parties being primed—by facilitating the Debtor's efforts to preserve and enhance the value of the Debtor's assets.

55. Third, the DIP Facility will provide access to up to \$3 million for the Debtor to maintain its operations and assets during this Chapter 11 Case. Accordingly, the terms of the DIP Facility are reasonable and adequate to support the Debtor's operations and restructuring activities while this Chapter 11 Case is pending.

56. Fourth, the Debtor and the DIP Lenders negotiated the DIP Facility in good faith and at arms-length, and the DIP Facility reflects the most favorable terms on which the DIP Lenders were willing to offer financing. Thus, and as set forth above, entry into the DIP Facility is an exercise of sound and reasonable business judgment of the Debtor and in the best interest of the Debtor and its creditors.

57. Finally, it is important to note that the Debtor has very few creditors whose claims are secured by non-maritime assets. The Debtor has or is in the process of obtaining consents from the non-maritime secured parties to the priming liens.

(i) Adequate Protection under § 364(d)

58. A debtor may obtain post-petition credit “secured by a senior or equal lien on property of the estate that is subject to a lien only if “the debtor, among other things, provides “adequate protection” to those parties whose liens are primed. *See* 11 U.S.C. § 364(d)(1)(B). What constitutes adequate protection is decided on a case-by-case basis, and adequate protection may be provided in various forms, including payment of adequate protection fees, payment of interest, or granting of replacement liens or administrative claims. *See, e.g., In re Realty Sw. Assocs.*, 140 B.R. 360 (Bankr. S.D.N.Y. 1992); *In re Beker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986) (the application of adequate protection “is left to the vagaries of each case, but its focus is protection of the secured creditor from diminution in the value of its collateral during the reorganization process” (citations omitted)). The DIP Facility will provide adequate protection of any non-maritime secured party’s interest in the DIP Collateral by ensuring that the Debtor maintains the value of its enterprise.

**C. DIP Lender Should Be Deemed a Good-Faith Lender Under § 364(e)**

59. Section 364(e) of the Bankruptcy Code protects a good-faith lender’s right to collect on loans extended to a debtor, and its rights in any lien or security interest securing those loans, even if the authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal. Section 364(e) provides as follows:

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

authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

11 U.S.C. § 364(e).

60. As explained in detail herein, the DIP Facility is the result of the Debtor's reasonable and informed determination that the DIP Lender offered the most favorable terms on which to obtain needed post-petition financing, and of extended arm's-length, good-faith negotiations between and among the Debtor and the DIP Lender. The terms and conditions of the DIP Facility are fair and reasonable, and the proceeds of the DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code and the DIP Budget. Further, no consideration is being provided to any party to the DIP Facility other than as described herein. Accordingly, the Court should find the DIP Lender is a "good faith" lenders within the meaning of § 364(e) of the Bankruptcy Code and are entitled to all of the protections afforded thereby.

**D. Request for Modification of the Automatic Stay**

61. Bankruptcy Code § 362 provides for an automatic stay upon the filing of a bankruptcy petition. The proposed Interim Order contemplates the modification of the automatic stay (to the extent applicable) to the extent necessary to implement the terms of the Interim Order. Stay modification provisions of this sort are ordinary and usual features of DIP financing facilities and, in the Debtor's business judgment, are reasonable under the present circumstances. Accordingly, the Debtor respectfully requests the Court to authorize the modification of the automatic stay in accordance with the terms set forth in the Interim Order and the Term Sheet.

**E. Debtor Requires Immediate Access to the Cash Collateral and the DIP Facility**

62. The Debtor is seeking immediate access to \$300,000 of the DIP Facility, pursuant to the terms of the Interim Order, to ensure that it has the liquidity necessary to fund (i) insurance

payments; (ii) limited, ordinary-course business operations, and (iii) the administration of this chapter 11 case.

63. This Court may grant interim relief in respect of a motion filed pursuant to § 364 of the Bankruptcy Code where, as here, interim relief is “necessary to avoid immediate and irreparable harm to the estate pending a final hearing.” FED. R. BANKR. P. 4001(c)(2).

64. Bankruptcy Rule 4001(c)(2) governs the procedures for obtaining authorization to obtain postpetition financing and provides, in relevant part:

The court may commence a final hearing on a motion for authority to obtain credit no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a hearing before such 14 day period expires, but the court may authorize the obtaining of credit only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

65. The Debtor has an immediate post-petition need to access the funds provided by the DIP Facility. The Debtor cannot maintain the value of its estate during the pendency of its Chapter 11 Case without access to cash. The Debtor will be unable to operate its business as a going-concern in the near-term without the ability to access the DIP Facility, and will suffer immediate and irreparable harm to the detriment of all creditors and other parties-in-interest. Moreover, without payment of professional fees, the Debtor will be unable to pursue recoveries relating to the MOC bankruptcy and a significant civil judgment.

66. The Debtor will use the cash available under the DIP Facility to, among other things, procure insurance, pay its employees, and satisfy other working capital needs during the Chapter 11 Case. In short, the Debtor’s ability to finance its operations and the availability of sufficient working capital and liquidity to the Debtor through the use of the DIP Facility is vital to the preservation and maintenance of the value of the Debtor’s estate.

67. The Debtor, therefore, seeks immediate authority to access the DIP Facility on an interim basis and as set forth in this Motion and in the Interim Order to prevent immediate and irreparable harm to its estate pending the Final Hearing pursuant to Bankruptcy Rules 4001(b) and 4001(c). Accordingly, to the extent the Debtor requires post-petition financing, the Debtor respectfully submits they have satisfied the requirements of Bankruptcy Rule 4001 to support an expedited preliminary hearing and immediate DIP Facility availability on an interim basis.

**REQUEST FOR FINAL HEARING**

68. Pursuant to Bankruptcy Rules 4001(c)(2), the Debtor requests the Court set a date for the Final Hearing 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.

**WAVIER OF BANKRUPTCY RULES REGARDING  
NOTICE OF STAY OF AN ORDER**

69. To implement the foregoing successfully, the Debtor seeks a waiver of the notice requirements under Bankruptcy Rule 6004(a) and any stay of an order granting the relief requested herein pursuant to Bankruptcy Rules 6004(h), 7062, 9014 or otherwise for all of the reasons described above.

**EMERGENCY CONSIDERATION**

70. The Debtor requests emergency consideration of this Motion. Any delay in granting the relief requested could hinder the Debtor's operations and cause irreparable harm. As such, the Debtor believes that emergency consideration is necessary and requests that this Motion be heard at the Debtor's hearing on Tuesday, October 24, 2017 at 2:00 p.m.

**NOTICE**

71. Notice of this Motion has been provided by e-mail, facsimile, or overnight delivery to: (a) the Office of the United States Trustee for the Southern District of Texas; (b) the

Debtor's 20 largest unsecured creditors; (c) the Debtor's maritime lien creditors; and (d) those persons who have formally appeared in the Chapter 11 Case and requested service pursuant to Bankruptcy Rule 2002;

**NO PRIOR REQUEST**

72. No prior motion for the relief requested herein has been made to this Court or any other court.

**CONCLUSION**

**WHEREFORE**, premises considered, the Debtor respectfully requests that the Court enter the Order, substantially in the form attached hereto as, approving the relief requested in the Motion on an interim basis, and grant such other and further relief as the Court may deem just and proper.

Dated: October 22, 2017

Respectfully submitted,

DIAMOND McCARTHY LLP

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*Proposed Counsel for Office Specialty  
Fabricators, LLC*

**CERTIFICATE OF SERVICE**

I certify that on October 22, 2017, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Kyung S. Lee  
Kyung S. Lee



# Exhibit A

**IN RE: OFFSHORE SPECIALTY FABRICATORS, LLC**  
**PROPOSED DIP LOAN TERM SHEET**

<b>Debtor</b>	Offshore Specialty Fabricators, LLC
<b>Guarantor</b>	Offshore Express, LLC
<b>DIP Lender</b>	Schumann/Steier Holdings, LLC
<b>Definitions</b>	Any capitalized words not defined herein shall be defined in the loan documents.
<b>Facility Amount; Conditions to Funding</b>	The DIP Facility shall comprise a commitment for up to \$3,000,000 (" <u>Commitment</u> ") which will be funded through an Interim Draw and a Final Draw.
<b>Use of Proceeds</b>	The proceeds of the DIP Facility shall generally be used (1) to finance working capital needs, specified capital expenditures and general corporate purposes of the Debtor, all in accordance with the applicable DIP Budget; (2) to pay the fees, costs and expenses incurred by the Debtor in connection with its chapter 11 case; and (3) to pay the fees, costs, and expenses of the DIP Lender.
<b>Interest Rate</b>	LIBOR + 15% with a LIBOR floor of 3%
<b>Commitment Fee</b>	2.5% of the Facility Amount, payable upon funding of the Interim Draw.
<b>Collateral Monitoring Fee</b>	\$11,000 per month.
<b>Due diligence expense reimbursement</b>	Reasonable expenses of \$20,000 to be invoiced upon the Debtor's Initial Draw.
<b>Interim Draw</b>	Upon execution of this term sheet, \$300,000 funded into Diamond McCarthy, LLP's trust fund account, to be held in trust and not used until approval of the Interim DIP Motion to be filed in a form acceptable to the DIP Lender in its sole discretion.
<b>Final Draw and availability thereof</b>	The Final Draw shall be funded upon entry of an order by the Bankruptcy Court granting final approval of the DIP Facility that is in form and substance acceptable to the DIP Lender in its sole discretion.
<b>Maturity</b>	Earliest of six (6) months, or an Event of Default, or the Effective Date of a Plan of Reorganization.
<b>Jurisdiction</b>	Guarantor hereby agrees that the DIP Loan and the Guaranty are and shall be core matters within the meaning of 28 U.S.C. § 157, and any issue arises with respect to the DIP Loan or the Guaranty

	such are held to be “related to” the Debtor’s Chapter 11 Case, pursuant to 28 U.S.C. 1334. Debtor and Guarantor both consent to the jurisdiction of the Bankruptcy Court including the entry of final orders by such court.
<b>Liens</b>	<p><u>Non-Debtor Liens:</u> In order to secure the DIP Obligations, effective immediately upon entry of the Interim Order, the DIP Lender shall be granted continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected first-priority liens on the real estate assets of non-debtor Offshore Express, LLC, the legal descriptions of which are contained in <b>Exhibit A</b>.</p> <p><u>Debtor Liens:</u> In order to secure the DIP Obligations, effective immediately upon entry of the Interim DIP Order, the DIP Lender shall be granted continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected post-petition security interests in and liens , on all assets of the Debtor, save and except for the Barges DB Swing Thompson and DB William Kallop.</p>
<b>Priority of Liens</b>	To the extent permissible under the Bankruptcy Code, pursuant to Bankruptcy Code §§ 364(c)(2) & § 364(d), the DIP Liens shall be senior in priority and superior to any security, mortgage, collateral interest, lien or claim on or to any of the DIP Collateral.
<b>Superpriority Claim</b>	Upon entry of the Interim Order, the DIP Lender shall be granted, pursuant to § 364(c)(1) of the Bankruptcy Code, an allowed Superpriority Claim against the Debtor in the Chapter 11 Case and any successor cases for all DIP Obligations. To the extent permissible under the Bankruptcy Code, the Superpriority Claim shall be subordinate only to the DIP Liens. To the extent permitted by the Bankruptcy Code, the Superpriority Claim (a) shall otherwise have priority over any and all administrative expense claims and unsecured claims against the Debtor and its estate in the Chapter 11 Case and any successor cases, at any time existing or arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to Bankruptcy Code Sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c), 507(a), 507(b), (except as set forth in the Interim Order), 546(c), 546(d), 726 (to the extent permitted by law) 1113 and 1114, and any other provision of the Bankruptcy Code, as provided under section 364(c)(1) of the Bankruptcy Code; and (b) shall at all times be senior to the rights of the Debtor and its estate, and any successor trustee or other estate representative to the extent permitted by law, but subject to

	<p>the Carve-Out</p> <p>“Carve-Out” shall mean the sum of (i) fees and expenses incurred by bankruptcy professionals whose retention has been (x) approved by the Bankruptcy Court which are unpaid as of the delivery of the Carve Out Trigger Notice (as defined below) and (y) provided for in the Approved Budget; (ii) fees and expenses in an amount not to exceed \$25,000 incurred from and after the delivery of the Carve Out Trigger Notice (as defined below) by bankruptcy professionals whose retention has been approved by the Bankruptcy Court (the “<u>Post-Termination Fee Carve Out</u>”), including fees owed pursuant to 28 U.S.C. § 1930 or fees owed the clerk of the Bankruptcy Court. “<u>Carve Out Trigger Notice</u>” shall mean the written notice, including by email, delivered by the DIP Lender to the Debtor, its counsel, the U.S. Trustee, and the counsel to the Creditors’ Committee, if any, appointed in the Chapter 11 Case, which notice may be delivered following the occurrence and continuation of an Event of Default or the Termination Date in accordance with the terms of the DIP Loan Documents.</p>
<p><b>Events of Default</b></p>	<p>One or more of the following events shall constitute an “Event of the Default”:</p> <ul style="list-style-type: none"> <li>• (a) the Debtor shall fail to pay any principal or interest on the DIP Obligations or any fee or any other amount of any DIP Obligations when and as the same shall become due and payable, whether at the due date thereof or at the date fixed for prepayment thereof, by acceleration or otherwise.</li> <li>• (b) Guarantor permits any other lien to be placed on its collateral or a receivership is granted with respect to the collateral or the Guarantor.</li> <li>• (c) any representation or warranty made or deemed made by or on behalf of the Debtor or Guarantor in connection with any DIP Credit Agreement or any amendment or modification of any other Loan Document or waive under such loan document, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with any loan documents or any amendment or modification thereof or waiver thereunder, shall prove to have been incorrect in any material respect when made or deemed made (unless such representation or warranty was already qualified by materiality, in which case such representation or warranty shall simply have been true and correct).</li> </ul>

- (d) the Debtor or Guarantor shall fail to observe or perform any covenant, condition or agreement contained in the DIP Credit Agreement or any other Loan Document, and such failure shall continue unremedied for a period of 30 days after the earlier to occur of (1) notice thereof from the DIP Lender to the Debtor or (2) a Responsible Officer of the Debtor otherwise becoming aware of such default.
- (e) except as a result of the commencement of the Chapter 11 Case, and to the extent the relevant holder remains subject to the automatic stay imposed thereby, the Debtor shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any material indebtedness, when and as the same shall become due and payable.
- (f) except as a result of the commencement of the Chapter 11 Case, and to the extent the relevant holders remain subject the automatic stay imposed thereby, any event or condition occurs that results in scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any material indebtedness or any trustee or agent on its or their behalf to cause any material indebtedness to become due, or to require the redemption thereof or any offer to redeem to be made in respect thereof, prior to its scheduled maturity or require the Debtor to make an offer in respect thereof provided that this shall not apply to secured Debt that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Debt.
- (g) the Bankruptcy Court shall enter, or the Debtor shall seek or support the entry of any order:
  - (i) amending, supplementing, altering, staying, vacating, rescinding or otherwise modifying the Interim DIP Order, the Final DIP Order, or any other order in any manner which could reasonably be expected to result in Material Adverse Effect,
  - (ii) appointing a Chapter 11 trustee that is not appointed as a result of a motion filed by the DIP Lender, a responsible officer or an examiner pursuant to Section 1104 of the Bankruptcy Code with enlarged powers relating to the operation of

	<p>the business of the Debtor (powers beyond those set forth in Section 1106(a)(3) and (4) and 1106(b) of the Bankruptcy Code) in the Chapter 11 Case, unless such motion is agreed to by the DIP Lender,</p> <ul style="list-style-type: none"><li>○ (iii) dismissing the Chapter 11 Case or converting the Chapter 11 Case to a Chapter 7 case,</li><li>○ (iv) granting relief from the automatic stay under Section 362 of the Bankruptcy Code to the holder of any claim against the Debtor, which order enables the holder of such claim to exercise any right or remedy against any property of the Debtor, or</li><li>○ (v) except with respect to a proposed § 363 sale, approving the sale, lease, alienation or other disposition of all or substantially all of the assets, properties or equity interests of the Debtor and its affiliates pursuant to § 363 of the Bankruptcy Code or otherwise, without the consent of the DIP Lender and approval of the Bankruptcy Court.</li></ul> <ul style="list-style-type: none"><li>● (h) The Debtor or any affiliate shall seek to, or shall support (in any such case by way of motion or other pleading filed with the Bankruptcy Court or any other writing to another party-in-interest executed by or on behalf of the Debtor or any affiliate), any other Person's motion to disallow, in whole or in part, the DIP Lender's claims or to challenge the validity and enforceability of the DIP Liens.</li><li>● (i) An application shall be filed by the Debtor or Guarantor for the approval of, or there shall otherwise arise, any other Superpriority Claim in the Chapter 11 Case which is <i>pari passu</i> with or senior to the claims of the DIP Lender against the Debtor unless after giving effect to the transactions contemplated by such application, all Secured Obligations (whether contingent or otherwise) shall be paid in full in cash. The entry of an order authorizing the obtaining of credit or the incurrence of Debt by the Debtor that is secured by a Lien or any or all of the Collateral, which is senior to or <i>pari passu</i> with the security interests and liens against the Collateral that is granted to the DIP Lender.</li></ul>
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- (j) From and after the date of entry thereof, the Interim Order shall cease to be in full force and effect (or shall have been vacated, stayed for a period in excess of five (5) days, reversed, modified or amended), in each case without the consent of the DIP Lender, and the Final Order shall not have been entered prior to such cessation (or vactur, stay, reversal, modification or amendment).
- (k) The Final DIP Order shall not have been entered by the Bankruptcy Court on or before November 6, 2017 or from and after the date of entry thereof, the Final DIP Order shall cease to be in full force and effect (or shall have been vacated, stayed for a period in excess of five (5) days, reversed, modified or amended), in each case without the consent of the DIP Lender.
- (l) The Debtor shall make any payment on any Debt incurred before the Petition Date, other than as permitted under the Interim DIP Order or Final DIP Order, the DIP Budget, or as permitted hereunder and other than any payment of any Debt owing to the Debtor and any payment approved by the Bankruptcy Court of any Debt.
- (m) The Debtor shall fail to comply with the terms of the Interim or Final DIP Orders.
- (n) Any final judgments shall be entered against the Debtor and shall not have been paid, discharged or vacated or had execution thereof stayed pending appeal within thirty days after entry or filing of such judgments; or there shall be entered against the Debtor or any affiliate a nonmonetary judgment, order or decree with respect to any claim or liability that accrued after the Petition Date which has or could be reasonably expected to have a Material Adverse Effect, and there shall be any period of thirty consecutive days during which a stay of enforcement of such judgment, decree or order, by reason of a pending appeal or otherwise, shall not be in effect.
- (o) The Loan Documents after delivery thereof shall for any reason, except to the extent permitted by the terms thereof, cease to be in full force and effect and valid, binding and enforceable in accordance with their terms against the Debtor or shall be repudiated by the Debtor or Guarantor, or cease to create a valid and perfected Lien of the priority required thereby on any of the collateral

	<p>purported to be covered thereby, except to the extent permitted by the terms of the DIP Credit Agreement, or the Debtor or any affiliate shall so state in writing.</p> <ul style="list-style-type: none"><li>• (p) The commencement of any action against the DIP Lender by or on behalf of the Debtor or any of its affiliates or any of their respective agents.</li><li>• (q) David Weinhoffer (or such other person the DIP Lender may consent to, in its sole discretion) shall cease to serve as the CRO of the Debtor and is not replaced within seven (7) days by a Person acceptable to the DIP Lender.</li><li>• (r) The entry of an order authorizing recovery by any Person from the Collateral or any adequate protection Liens granted with respect thereto for any costs of preservation or disposition thereof under Section 506(c) of the Bankruptcy Code or (except as provided in the Final Order) authorizing the use of cash collateral without consent in writing by the DIP Lender. The entry of an order granting adequate protection with respect to Pre-Petition Indebtedness, other than as provided in the Interim Order or the Final Order, or as otherwise approved by the DIP Lender and the Bankruptcy Court.</li><li>• (s) The filing by Debtor or any affiliate of any motion or proceeding which could reasonably be expected to result in material impairment of the DIP Lender's rights under this Agreement; or a final determination by the Bankruptcy Court (or any other court of competent jurisdiction) with respect to any motion or proceeding brought by any other party which results in any material impairment of the DIP Lender's rights under the DIP Credit Agreement.</li><li>• (t) The Debtor shall file, support, or seek confirmation of a plan of reorganization or liquidation, or such plan of reorganization or liquidation shall be confirmed in the Chapter 11 Case, which does not provide for both termination of the Commitment and payment in full of the DIP Obligations in cash on the effective date of such plan, without the prior written consent of the DIP Lender.</li><li>• (u) The entry of an order dismissing the Chapter 11 Case that does not provide for the termination of the Commitment and payment in full of the DIP Obligations in cash prior to dismissal, without the prior written consent of</li></ul>
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	<p>the DIP Lender; and</p> <ul style="list-style-type: none"> <li>• (v) Any motions to sell the Collateral or approve procedures regarding the same, any plan or disclosure statement or supplements or amendments thereto, or any orders approving or amending any of the foregoing are not in form and substance reasonably acceptable to the DIP Lender.</li> <li>• (w) The appointment of a receivership over the Guarantor or any affiliate of the Debtor or Guarantor which might affect the Collateral.</li> <li>• (x) The Debtor shall exceed any line item in the DIP Budget by more than ten percent (10%) in any given week.</li> </ul>
<p><b>Rights and Remedies Upon Event of Default</b></p>	<p>Immediately upon the occurrence and during the continuation of an Event of Default, the DIP Lender may declare</p> <ul style="list-style-type: none"> <li>• (i) all DIP Obligations owing under the DIP Loan Documents to be immediately due and payable,</li> <li>• (ii) the termination, reduction or restriction of any further commitment to extend credit to the Debtor to the extent any such Commitment remains,</li> <li>• (iii) the termination of the DIP Credit Agreement and any other DIP Loan Documents as to any future liability or obligation of the DIP Lender, but without affecting any of the DIP Liens or the DIP Obligations, and/or</li> <li>• (iv) the termination, reduction or restriction on the ability of the Debtor to use any Cash Collateral.</li> </ul>
<p><b>Budget and Reporting Provisions</b></p>	<p>The proceeds of loans made under the DIP Facility may only be used to pay those costs and expenses contained in the DIP Budget, at the times and for the purposes identified in such DIP Budget. The Debtor shall provide the DIP Budget on a weekly basis to the DIP Lender, showing actual amounts spent for such week. The DIP Budget, and any modification to or amendment or update of the DIP Budget, shall be in form and substance acceptable to the DIP Lender, in its sole and absolute discretion. The DIP Budget may be amended or modified in writing from time to time only with the written consent of the DIP Lender in its sole and absolute discretion, and such amendment or modification shall not require the consent of the U.S. Trustee or approval of the Court. The</p>

	<p>Debtor shall update the DIP Budget from time to time (provided that any update shall be in in form and substance acceptable to the DIP Lender in its sole and absolute discretion, and shall be only deemed to be amended or modified based on their written consent), in accordance with the DIP Loan Documents. Any such modification of the DIP Budget, other than regular updates, shall be filed with the Court.</p>
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**EXHIBIT A**

**LEGAL DESCRIPTIONS OF NON-DEBTOR DIP COLLATERAL**

**Parcel 27997**

LOT 20 OF THE HOUMA TERREBONNE INDUSTRIAL PARK SUBD. CB 2019/219

**Parcel 40580**

TRACT A-B-C-D-A, AS SHOWN ON "SURVEY OF TRACT A-B-C-D-A IN SECTION 48 T17S R17E"

**Parcel 41002**

A LOT 400' FRONT ON MENARD ROAD BY 500' AS SHOWN ON MAP SHOWING PROPOSED PURCHASE FROM WALTER LAND CO., IN SECTION 48 T17S R17E, RECORDED CB 603/167. CB 1110/508

**Parcel 41003**

LOT 435.25' FRONT ON MENARD ROAD BY DEPTH OF 500/540.42' AND A WIDTH OF 231.41' ACROSS THE REAR. SAID LOT LOCATED 2,517' EAST OF HIGHWAY 315. LOCATED IN SECTIONS 47 & 48 T17S R17E. CB 1090/151

**Parcel 41004**

TRACT 450' FRONT ON EAST SIDE HWY. 315 BY DEPTH TO CENTER LINE OF HOUMA NAVIGATION CANAL CONTAINING 29.12 ACRES ON "PLAT SHOWING A TRACT OF LAND PURCHASED BY JOHN D. MONTEIRO DEVELOPMENT COMPANY FROM WALTER LAND COMPANY IN SECTIONS 47 & 48 T17S R17E" CB 1201/189

**Parcel 41005**

A LOT 200 X 500 FT. ON THE NORTH SIDE OF MENARD ROAD. LOCATED 2,317 FT. EAST OF HWY. 315 AS SHOWN ON "MAP SHOWING PROPOSED PURCHASE FROM WALTER LAND COMPANY IN SECTION 48 AND/OR 47 T17S R17E." CB 1255/794

**Parcel 41006**

A CERTAIN TRACT OF LAND MEASURING 200' ON MENARD ROAD X DEPTH OF 500' TO THE CENTERLINE OF A DREDGED MARINE SLIP, AND MORE PARTICULARLY DESCRIBED ON PLAT RECORDED CB 692/835 CONTAINING 2.30 ACRES. CB 1255/370

**Parcel 41007**

TRACTS A-B-C-D-A, B-C-E-F-B & F-G-H-E-F CONTAINING 2.32 ACRES EACH AS SHOWN ON "SURVEY OF TRACT A-B-C-D-A, TRACT B-C-E-F-B & TRACT F-G-H-E-F BELONGING TO WALTER LAND CO. IN SECTION 48 T17S R17E." CB 1230/749

**Parcel 41432**

WEST 1/2 OF TRACT A-B-C-D-A "SURVEY OF A PROPOSED PURCHASE FROM WALTER LAND CO. IN SECTION 48, T17S - R17E. CB 2107/122.

# Exhibit B

13-Week Cashflow Projection

	10/1/17	10/8/17	10/15/17	10/22/17	10/29/17	11/5/17	11/12/17	11/19/17	11/26/17	12/3/17	12/10/17	12/17/17	12/24/17	12/31/17	TOTAL/s
SouthCoast Diesel Rent	1,200					1,200				1,200					
Total Revenue	1,200	-	-	-	-	1,200	-	-	-	1,200	-	-	-	-	
<b>Cost of Maintaining Barges</b>															
OSF Crew / Security	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	42,000
OSF Mgt. Crew on-Site (Dan)	2,700	2,700	2,700	2,700	2,700	2,700	2,700	2,700	2,700	2,700	2,700	2,700	2,700	2,700	37,800
Materials/Fuel/Cordage	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	14,000
Utilities	3,260	3,260	3,260	3,260	3,260	3,260	3,260	3,260	3,260	3,260	3,260	3,260	3,260	3,260	45,640
Housekeeping	400	400	400	400	400	400	400	400	400	400	400	400	400	400	5,400
Consummables	300	300	300	300	300	300	300	300	300	300	300	300	300	300	4,200
DB Insurance	-	-	147,634	-	-	-	-	147,634	-	-	-	147,634	-	-	442,902
Total Cost of Maintaining Barges	10,660	10,660	158,294	10,660	10,660	10,660	10,660	158,294	10,660	10,660	10,660	158,294	10,660	10,460	591,942
<b>Gross Cost of Maintaining Barges</b>	<b>(9,460)</b>	<b>(10,660)</b>	<b>(158,294)</b>	<b>(10,660)</b>	<b>(10,660)</b>	<b>(9,460)</b>	<b>(10,660)</b>	<b>(158,294)</b>	<b>(10,660)</b>	<b>(9,460)</b>	<b>(10,660)</b>	<b>(158,294)</b>	<b>(10,660)</b>	<b>(10,460)</b>	<b>(588,342)</b>
<b>SG&amp;A</b>															
Payroll (includes taxes & benefits)	39,050	39,050	39,050	39,050	39,050	39,050	39,050	39,050	39,050	39,050	39,050	39,050	39,050	39,050	546,700
Office Expenses	400	400	400	400	400	400	400	400	400	400	400	400	400	400	5,600
Legal Fees - P&I Claims	?	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	39,000
Legal Fees - MOC Bankruptcy	4,286	4,286	4,286	4,286	4,286	4,286	4,286	4,286	4,286	4,286	4,286	4,286	4,286	4,286	60,004
Legal Fees - Linder Oil	-	-	-	-	-	5,000	-	-	-	5,000	-	-	-	-	10,000
P&I Maintenance & Cure (1@\$20/day; 2@ \$30/day)	560	560	560	560	560	560	560	560	560	560	560	560	560	560	7,840
Utilities & Computer Services	1,195	1,195	1,195	1,195	1,195	1,195	1,195	1,195	1,195	1,195	1,195	1,195	1,195	1,195	16,730
Misc / Travel-On-Site Mgt.	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	21,000
Insurance - (medical, dental, life)	4,094	4,094	4,094	4,094	4,094	4,094	4,094	4,094	4,094	4,094	4,094	4,094	4,094	4,094	57,316
Total	51,085	54,085	54,085	54,085	54,085	59,085	54,085	54,085	54,085	59,085	54,085	54,085	54,085	54,085	764,190
<b>Operating Income</b>	<b>(\$60,545)</b>	<b>(\$64,745)</b>	<b>(\$212,379)</b>	<b>(\$64,745)</b>	<b>(\$64,745)</b>	<b>(\$68,545)</b>	<b>(\$64,745)</b>	<b>(\$212,379)</b>	<b>(\$64,745)</b>	<b>(\$68,545)</b>	<b>(\$64,745)</b>	<b>(\$212,379)</b>	<b>(\$64,745)</b>	<b>(\$64,545)</b>	<b>(\$1,352,532)</b>
<b>Professional/Financing Fees - Bk</b>															
Diamond McCarthy		37,500		37,500		37,500		37,500		37,500		37,500		212,500	437,500
Creditors Committee		25,000				25,000				25,000				25,000	100,000
Trustee Fees		10,000				10,000				10,000				10,000	40,000
Commitment Fee				75,000											75,000
DIP Interest - 18%		-				-				-				198,000	198,000
DIP Due Diligence and Monitoring Fee					31,000				11,000					11,000	53,000
<b>Total Bankruptcy Expense</b>		(\$72,500)	\$-	(\$112,500)	(\$31,000)	(\$72,500)	\$-	(\$37,500)	(\$11,000)	(\$72,500)	\$-	(\$37,500)	\$-	(\$456,500)	(\$903,500)
Total	(\$60,545)	(\$137,245)	(\$212,379)	(\$177,245)	(\$95,745)	(\$141,045)	(\$64,745)	(\$249,879)	(\$75,745)	(\$141,045)	(\$64,745)	(\$249,879)	(\$64,745)	(\$521,045)	(\$2,256,032)
<b>Cumulative Total</b>		<b>(\$197,790)</b>	<b>(\$410,169)</b>	<b>(\$587,414)</b>	<b>(\$683,159)</b>	<b>(\$824,204)</b>	<b>(\$888,949)</b>	<b>(\$1,138,828)</b>	<b>(\$1,214,573)</b>	<b>(\$1,355,618)</b>	<b>(\$1,420,363)</b>	<b>(\$1,670,242)</b>	<b>(\$1,734,987)</b>	<b>(\$2,256,032)</b>	<b>(\$2,256,032)</b>

# Exhibit C

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>In re:</b>	§	
	§	
<b>OFFSHORE SPECIALTY FABRICATORS, LLC</b>	§	<b>CASE NO. 17-35623</b>
	§	
<b>DEBTOR.</b>	§	<b>(Chapter 11)</b>
	§	

**ATTORNEY CHECKLIST CONCERNING MOTIONS  
AND ORDERS PERTAINING TO USE OF CASH COLLATERAL AND  
POST-PETITION FINANCING (WHICH ARE IN EXCESS OF TEN (10) PAGES)**

Motions and orders pertaining to cash collateral and post-petition financing matters tend to be lengthy and complicated. Although the Court intends to read such motions and orders carefully, it will assist the Court if counsel will complete and file this checklist. All references are to the Bankruptcy Code (§) or Rules (R).

**PLEASE NOTE:**

“\*” Means generally not favored by Bankruptcy Courts in this District.

“\*\*” Means generally not favored by Bankruptcy Courts in this District without a reason and a time period for objections.

If your motion or order makes provision for any of the following, so indicate in the space provided:

**CERTIFICATE BY COUNSEL**

This is to certify that the following checklist fully responds to the Court’s inquiry concerning material terms of the motion and/or proposed order:

Yes, at Page/Exhibit  
Y means yes; N means no  
N/A means not applicable  
(Page Listing Optional)



1. **Identification of Proceedings:**
  - (a) Preliminary or final motion/order (circle one) ..... N/A
  - (b) Continuing use of cash collateral (§ 363)..... N
  - (c) New financing (§ 364)..... Y
  - (d) Combination of §§ 363 and 364 financing..... Y
  - (e) Emergency hearing (immediate and irreparable harm) ..... Y
  
2. **Stipulations:**
  - (a) Brief history of debtor’s businesses and status of debtor’s prior relationships with lender ..... Y
  - (b) Brief statement of purpose and necessity of financing..... Y
  - (c) Brief Statement of type of financing (i.e., accounts receivable, inventory) ..... Y
  - \*\* (d) Are lender’s pre-petition security interest(s) and liens deemed valid, fully perfected and non-avoidable ..... N/A
    - (i) Are there provisions to allow for objections to above? ..... N/A
  - (e) Is there a post-petition financing agreement between lender and debtor?.... Y
    - (i) If so, is agreement attached? ..... N
  - \*\* (f) If there is an agreement are lender’s post-petition security interests and liens deemed valid, fully perfected and non-avoidable? ..... Y
  - (g) Is lender undersecured or oversecured (circle one) ..... N/A
  - (h) Has lender’s non-cash collateral been appraised ..... Y
    - (i) *Insert date of latest appraisal* ..... 06/17
  - (i) Is debtor’s proposed budget attached? ..... Y
  - (j) Are all pre-petition loan documents identified? ..... N/A
  - (k) Are pre-petition liens on single or multiple assets (circle one) ..... N/A
  - (l) Are there pre-petition guaranties of debt? ..... N
    - (i) Limited or unlimited? (circle one) ..... N/A
  
3. **Grant of Liens:**
  - \* (a) Do post-petition liens secure pre-petition debts? ..... N
  - \* (b) Is there cross-collaterization? ..... N
  - \*\* (c) Is the priority of post-petition liens equal to or higher than existing liens? ..... Y
  - \*\* (d) Do post-petition liens have retroactive effect? ..... N
  - (e) Are there restrictions granting further liens or liens of equal to or higher priority? ..... N
  - \* (f) Is lender given liens on claims under §§ 506(c), 544-50 and 522? ..... N
    - \*\* (i) Are lender’s attorneys’ fees to be paid? ..... Y
    - (ii) Are debtor’s attorneys’ fees excepted from § 506(c)? ..... Y
  - \* (g) Is lender given liens upon proceeds of causes of action under §§ 544, 547 and 548? ..... N
  
4. **Administrative Priority Claims:**
  - (a) Is lender given an administrative priority? ..... Y
  - (b) Is administrative priority higher than § 507(a)? ..... Y

- (c) Is there a conversion of pre-petition secured claim to post-petition administrative claim by virtue of use of existing collateral? ..... N
5. **Adequate Protection (§ 361):**
- (a) Is there post-petition debt service? ..... N
- (b) Is there a replacement/addition § 361(l) lien? (circle one or both)..... N
- \*\* (c) Is the lender's claim given super-priority?  
 (§ 364(c) or (d)) [designate] ..... Y -  
364(c),(d)
- (d) Are there guaranties? ..... N
- (e) Is there adequate Insurance coverage? ..... Y
- (f) Other? ..... Y
6. **Waiver/Release Claims v. Lender:**
- \*\* (a) Debtor waives or release claims against lender, including, but not limited to, claims under §§ 506(c), 544-550, 552, and 553 of the Code? ..... Y
- \*\* (b) Does the debtor waive defenses to claim or liens of lender? ..... Y
7. **Source of Post-Petition Financing (§ 364 Financing):**
- (a) Is the proposed lender also the pre-petition lender? ..... N
- (b) New post-petition lender? ..... Y
- (c) Is the lender an insider? ..... N
8. **Modification of Stay:**
- \*\* (a) Is any modified lift of stay allowed? ..... Y
- \*\* (b) Will the automatic stay be lifted to permit lender to exercise self-help upon default without further order? ..... Y
- (c) Are there any other remedies exercisable without further order of court? ..... N
- (d) Is there a provision that any future modification of order shall not affect status of debtor's post-petition obligations to lender? ..... Y
9. **Creditor's Committee:**
- (a) Has creditor's committee been appointed? ..... N
- (b) Does creditors' committee approve of proposed financing? ..... N/A
10. **Restrictions on Parties in Interest:**
- \*\* (a) Is a plan proponent restricted in any manner, concerning modification of lender's rights, liens and/or causes? ..... Y
- \*\* (b) Is the debtor prohibited from seeking to enjoin the lender in pursuit of rights? ..... N
- \*\* (c) Is any party in interest prohibited from seeking to modify this order? ..... N
- (d) Is the entry of any order conditioned upon payment of debt to lender? ..... N
- (e) Is the order binding on subsequent trustee on conversion? ..... Y
11. **Nunc Pro Tunc:**
- (a) Does any provision have retroactive effect?..... N

12. **Notice and Other Procedures:**

- (a) Is shortened notice requested? ..... Y
- (b) Is notice requested to shortened list? ..... N
- (c) Is time to respond to be shortened? ..... N
- (d) If final order sought, have 15 days elapsed since service of motion pursuant to Rule 4001(b)(2)? ..... N/A
- (e) If preliminary order sought, is cash collateral necessary to avoid immediate and irreparable harm to the estate pending a final hearing? ..... Y
- (f) Is a Certificate of Conference included? ..... N
- (g) Is a Certificate of Service included?..... Y
- (h) Is there verification of transmittal to U.S. Trustee included pursuant to Rule 9034? ..... N
- (i) Has an agreement been reached subsequent to filing motion? ..... N/A
  - (i) If so, has notice of the agreement been served pursuant to Rule 4001(d)(4)? ..... N/A
  - (ii) Is the agreement in settlement of motion pursuant to Rule 4001(d)(4)? .. N/A
  - (iii) Does the motion afford reasonable notice of material provisions of agreement pursuant to Rule 4001(d)(4)? ..... N/A
  - (iv) Does the motion provide for opportunity for hearing pursuant to Rule 9014? ..... N/A

Dated: October 22, 2016

Houston, Texas

Respectfully submitted,

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