

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION

IN RE: : Case No. 17-60251
: :
SEVEN HILLS CONSTRUCTION, LLC : Chapter 11
: :
: Judge Rebecca B. Connelly

NOTICE OF FILING OF DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING DEBTOR (A) TO OBTAIN POSTPETITION FUNDING PURSUANT TO 11 U.S.C. §§ 105, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(D)(1) AND 364(e) AND (B) TO UTILIZE CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363, (II) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED CREDITORS PURSUANT TO 11 U.S.C. §§ 361, 363 AND 364 AND (III) SCHEDULING FINAL HEARING PURSUANT TO BANKRUPTCY RULES 4001 (b) AND (c) AND RELATED RELIEF

PLEASE TAKE NOTICE that on February 8, 2017 (the "Petition Date"), Seven Hills Construction, LLC (the "Debtor") filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") with the United States Bankruptcy Court for the Western District of Virginia (the "Court") commencing the above-captioned Chapter 11 Cases.

PLEASE TAKE FURTHER NOTICE the Debtor also requests an expedited hearing before the Court (the "Hearing") to consider *Debtors' Motion for Entry of Interim and Final Orders (i) Authorizing Debtor (A) To Obtain Postpetition Funding Pursuant to 11 U.S.C. §§ 105, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363, (ii) Granting Adequate Protection to Prepetition Secured Creditors Pursuant to 11 U.S.C. §§ 361, 363 and 364 and (iii) Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001 (b) and (c)* (the "Motion") filed on February 13, 2017.

PLEASE TAKE FURTHER NOTICE that the Court has scheduled the Hearing on **February 15, 2017 at 11:00 A.M.** (prevailing Eastern time) before the Honorable Rebecca B. Connelly, at the U.S. Bankruptcy Court, 116 N. Main St., Harrisonburg, Virginia 22802.

PLEASE TAKE FURTHER NOTICE that your rights may be affected. You should read the Motion and Proposed Interim Order carefully and discuss them with your attorney, if you have one in the Chapter 11 case. (If you do not have an attorney, you may wish to consult one).

PLEASE TAKE FURTHER NOTICE that if you do not want the Court to grant the relief requested in the Motion, or if you want the Court to consider your views on the Motion, then you or your attorney must attend the Hearing.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Motion and may enter orders granting the relief requested in the Motion.

Dated: February 13, 2017

Respectfully Submitted,

**SEVEN HILLS CONSTRUCTION, LLC
By Counsel**

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Proposed Counsel for the Debtor/Movant

CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2017 a copy of the foregoing notice *Debtors' Motion for Entry of Interim and Final Orders (i) Authorizing Debtor (A) To Obtain Postpetition Funding Pursuant to 11 U.S.C. §§ 105, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363, (ii) Granting Adequate Protection to Prepetition Secured Creditors Pursuant to 11 U.S.C. §§ 361, 363 and 364 and (iii) Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001 (b) and (c)* were served by first class mail or electronically transmitted to all the parties listed in the matrix maintained in this case, including the following:

- (a) U.S. Trustee;
- (b) the attorneys for the Debtor's proposed DIP Lender;
- (c) those creditors holding secured claims against the Debtor's estate; and
- (d) those creditors holding unsecured claims against the Debtor's estate.

Dated: February 13, 2017

Respectfully Submitted,

By: /s/ Beth C. Driver
Beth C. Driver, Counsel

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION**

IN RE: : **Case No. 17-60251**
: **SEVEN HILLS CONSTRUCTION, LLC** : **Chapter 11**
: **Judge Rebecca B. Connelly**

**DEBTOR'S MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
(I) AUTHORIZING DEBTOR (A) TO OBTAIN POST-PETITION DATE FUNDING PURSUANT
TO 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1)
AND 364(e) AND (B) TO UTILIZE CASH COLLATERAL PURSUANT TO
11 U.S.C. § 363, (II) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED
CREDITORS PURSUANT TO 11 U.S.C. §§ 361, 362, 363 AND 364 AND (III) SCHEDULING
FINAL HEARING PURSUANT TO BANKRUPTCY RULES 4001(b) AND (c)**

Pursuant to Sections 105, 361, 362, 363(c)(2), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code") and Rules 2002 and 4001 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Seven Hills Construction, LLC, as Debtor and debtor in possession (collectively, the "Debtor") in these proceedings, files this Motion (the "Motion") for entry of an interim and final order, the interim order in the form attached hereto as **Exhibit A** (the "Interim Order"), (a) authorizing the Debtor, on an interim basis, to enter into the Superpriority Debtor-in-Possession Funding Agreement, for post-Petition Date funding up to an aggregate principal amount not to exceed \$250,000 to (i) fund the operational and working capital needs of the Debtor as identified in the Budget, (ii) pay the fees, costs and expenses incurred by the Debtor in connection with this Chapter 11 case (this "Case"); and (iii) pay all reasonable fees, costs, and expenses incurred by the DIP Lender; (b) authorizing the Debtor's use of cash collateral ("Cash Collateral"), and all other collateral; (c) granting senior liens and superpriority administrative expense claims; and (d) authorizing the Debtor, subject to and effective upon entry of the Final Order (as defined below) granting the foregoing relief, to waive any right to surcharge against collateral pursuant to Section

506(c) of the Bankruptcy Code. The Debtor also requests that the Court schedule a hearing to consider approval of the DIP Funding arrangement and authorize the relief granted in the Interim Order on a final basis (the "Final Order" and, together with the Interim Order, the "DIP Orders"). In support of this Motion, the Debtor respectfully represents as follows:

Preliminary Statement

1. By this Motion, the Debtor seeks immediate access to its proposed post-February 8, 2017 (the "Petition Date") funding in order to ensure its continued operation. The Debtor intends to preserve its business and continue to explore various strategic alternatives through the use of post-Petition Date superpriority funding not to exceed \$250,000 (the "DIP Funding") in accordance with the terms of the Loan Commitment Letter between Debtor and the Bank of the James (the "Bank" and/or "DIP Lender") a copy of which is attached hereto as **Exhibit B**. The DIP Funding will provide the Debtor the necessary liquidity to fund its operations and preserve, protect and maximize the value of its assets during the course of this Case. The DIP Funding is essential to stabilize the operations of the Debtor's business and the Debtor's efforts to consummate a value-maximizing restructuring transaction.

2. The Debtor is a Delaware limited liability company that was organized and initially capitalized in June, 2006. In recent months, as operating losses mounted, the owner injected substantial funds into the Debtor. The owner, Thomas J. Hockycko, continues to own all of the membership interest in the Debtor. The Debtor's assets consist chiefly of equipment and accounts receivable. If liquidated immediately, the total proceeds probably would not exceed \$200,000.00. In addition to Bank debt, the Debtor has unliquidated and disputed claims by two surety companies of approximately \$2.8 million and trade debt of approximately \$1.4 million.

3. With the funds from the DIP Funding, the Debtor will have sufficient time and breathing room to bid on new projects. Absent access to the DIP Funding, the Debtor will not have adequate cash on hand to maintain operations (even at a minimal level), resulting in immediate liquidation, severe employee dissipation and crippling losses for vendors. Obtaining the DIP Funding on the terms proposed

is well within the sound discretion of the Debtor as it will allow the Debtor to stabilize its operations and preserve and maximize the value of its estate for the benefit of all parties in interest.

4. Moreover, the Debtor's decision to enter into the DIP Funding was made after exploring other available strategic alternatives. After evaluating its options and assessing the state of the financing markets, the Debtor has determined that the DIP Funding as set forth in the Loan Commitment Letter with the Bank represents the most reasonable and viable option for obtaining the additional liquidity necessary to sustain the Debtor's operations as it pursues restructuring transaction in Chapter 11 for the benefit of its creditors.

5. For the reasons set forth herein, the Debtor believes that authorization to obtain the DIP Funding and use the Cash Collateral is in the best interests of the Debtor, its estate and its stakeholders and should be granted.

Background and Jurisdiction

6. On the Petition Date, the Debtor commenced with this Court a voluntary case under Chapter 11 of the Bankruptcy Code. The Debtor is authorized to operate its business and manage its properties as debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No official committee has been appointed.

7. Additional information about the Debtor's business and the events leading up to the Petition Date can be found in the Declaration of Thomas Hockycko, president of the Debtor (the "Hockycko Declaration"), which is attached as **Exhibit C** and is incorporated herein by reference.

8. The Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and may be determined by the Court. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The predicates for relief requested herein are Sections 361, 362, 363 and 364 of the Bankruptcy Code and Bankruptcy Rules 2002, 4001 and 6004.

Concise Summary of Terms of the DIP Funding

9. In accordance with Bankruptcy Rules 4001(b), (c) and (d), the following summarizes the significant terms of the DIP Funding arrangement and the Interim Order. The Debtor believes that the following provisions of the DIP Funding arrangement and the Interim Order are justified and necessary in the context and circumstances of this Case.

MATERIAL TERMS OF THE DIP FUNDING FACILITY	
Borrower	Seven Hills Construction, LLC
Guarantor	Thomas Hockycko
DIP Lender	Bank of the James
Use of Proceeds	The proceeds of the DIP Funding shall be used to: (i) pay certain fees, costs and expenses associated with this Case and the companion case of Thomas and Regina Hockycko, (ii) fund the operational needs of the Debtor necessary to stabilize the operations and preserve, protect and maximize the value of the estate assets and (iii) pay the fees, costs and expenses incurred in connection with the foregoing, in accordance with the terms of the Loan Commitment Letter attached at <u>Exhibit B</u> and the Budget attached as <u>Exhibit D</u> .
Commitments	The DIP Funding is a maximum of \$250,000 superpriority facility under the DIP Lender’s Loan Documents. The determination of the documentation of DIP Funding shall be within the sole discretion of the DIP Lender
Termination Date	The DIP Funding shall terminate on the earliest of: (i) one year from the approval of the DIP Funding; or (ii) the occurrence of an Event of Default.
Fees	Lender Expenses: All reasonable fees and out-of-pocket costs and expenses incurred by DIP Lender, incurred both prior to and after the Petition Date, in monitoring, administering or providing funding, or enforcing its rights and remedies hereunder, except that, notwithstanding the foregoing, the Debtor shall not be responsible for any such fees, costs and expenses caused by Lender’s gross negligence, willful misconduct, breach of an enforceable contractual obligation, or breach of a court order.
Interest Rate	Prime Rate plus 1% with a floor of 5%.
Collateral, Priority, Adequate Protection	<u>Collateral:</u> All tangible and intangible property of the Debtor arising or created before or after the Petition Date. Excluded are accounts receivable from Veterans Administration contracts where Aegis Security Insurance Company was or is a surety unless those accounts receivable exceed the amounts owed to Aegis. Collateral includes a second lien upon the residence of the Guarantor, subject to an existing deed of trust in favor of Wells Fargo Home Mortgage, and the Guarantor’s interest in the Debtor, although the Bank will be paid only 50% of the proceeds from the sale of any equity interest in the Debtor up to the outstanding debt of the DIP Lender. Also, the DIP Lender will have electronic access to Debtor accounts and the Debtor shall promptly provide information and documentation as requested as to any payments. The Debtor shall execute a control agreement to grant the DIP Lender a lien in the Debtor’s DIP accounts. Debtor and/or Guarantor shall assign

	<p>to the DIP Lender a \$500,000 life insurance policy on the Guarantor.</p> <p>Superpriority Claims: The funds advanced in accordance with the DIP Funding arrangement shall be an allowed administrative expense claim against the Debtor and shall have priority over any and all administrative expenses and all other claims against the Debtor, now existing or hereafter arising, of any kind whatsoever.</p> <p>DIP Liens: Subject only to the Carve-Out, the funds advanced in accordance with the DIP Funding arrangement shall be secured by a first-priority lien on the Collateral and a second priority lien on the Guarantor’s house.</p> <p>Adequate Protection: Replacement lien under Section 361(2) and other relief under Section 361(3) as provided by DIP Funding arrangement as set forth herein, which is intended to maximize the value of the Collateral thereby resulting in the realization of the indubitable equivalent of the Bank’s interest in the Collateral.</p> <p>Existing Indebtedness: The pre-Petition indebtedness owed to the DIP Lender shall be secured by a second priority lien on all of the Collateral.</p>
Carve-Out	<p>The DIP Lender's security interests in the Collateral and Superpriority Claims are subject to a carve-out (the “Carve-Out”) of: (i) all fees required to be paid to the clerk of the Court and to the U.S. Trustee pursuant to 28 U.S.C. § 1930; and (ii) accrued but unpaid fees and expenses of counsel retained by the Debtor and allowed by the Court in this case and the companion case of Thomas and Regina Hockycko (such allowed fees and expenses, “Professional Fees”). The DIP Lender will pay from the DIP Funding \$10,000.00 per month to bankruptcy counsel to be held in trust pending allowance of fees and expenses by the Court. In no event shall any of the Carve-Out be used to pay any fees or expenses of any person retained in a Chapter 7 case under Section 326, 327 or 328 of the Bankruptcy Code.</p>
Covenants	<p>The covenants are usual and customary for financings of this type, including, without limitations, provision of information regarding collateral, provision of certain financial information, provision of a budget variance report and budget results, maintenance of properties and insurance, and access to Debtor's records and inventory. Real-time electronic access to Debtor’s DIP bank accounts (Bank is not on U.S. Trustee list of approved depositories). Debtor will promptly provide Bank with details and documentation for any payments upon request. Debtor will execute a control agreement to provide the Bank with a lien on the funds in the DIP bank accounts. The Debtor and the Guarantor have agreed to further covenants regarding the issuance, sale, or other transfer of equity interests of the Debtor. The Debtor's use of the DIP proceeds shall be in accordance with the terms of the Budget.</p>
Events of Default	<p>Usual and customary events of default for financings of this type, including, without limitations, failure to comply with the approved Budget, material breach of the Interim Order, breaches of representations and warranties, conversion to Chapter 7, appointment of Chapter 11 trustee,</p>
Limitations on Use of DIP Funding and Cash Collateral	<p>Debtor shall provide to DIP Lender with each funding request information to support such funding request. Debtor shall provide to DIP Lender on a monthly basis borrowing base and accounts payable reports together with an income</p>

	statement and a balance sheet.
Automatic Stay	The Interim Order vacates and modifies the automatic stay to the extent necessary to permit the DIP Lender, upon the occurrence and during the continuation of any Event of Default, and upon five (5) business days' written notice to the Debtor, the U.S. Trustee and counsel to the Committee (if any), to exercise all rights and remedies of the DIP Lender provided for in this Interim Order, the Loan Commitment Letter, or applicable law, including, without limitation: (A) terminating the DIP Funding; (B) declaring all or any portion of the DIP Loan Funding and the Current Funding to be due and payable; and (C) realizing on any or all Collateral and exercise any and all remedies, including enforcement of the Debtor's obligations regarding the orderly liquidation of the Collateral.

Basis for Relief

A. The Debtor Should Be Authorized to Obtain the DIP Funding Under Section 364 of the Bankruptcy Code

10. The Debtor meets the requirements for relief under Section 364 of the Bankruptcy Code, which permits a debtor to obtain post-petition financing and, in return, to grant superpriority administrative status and liens on its property. Specifically, Section 364(c) of the Bankruptcy Code provides as follows:

If the trustee is unable to obtain unsecured credit allowable under Section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt:

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

11 U.S.C. § 364(c). Further, Section 364(d) of the Bankruptcy Code provides:

- (1) 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; and

(B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

(2) In any hearing under this subsection, the trustee has the burden of proof on the issue of adequate protection.

11 U.S.C. § 364(d).

11. Provided that an agreement to obtain secured credit is consistent with the provisions of, and policies underlying, the Bankruptcy Code, courts grant a debtor considerable deference in exercising its sound business judgment in obtaining such credit. *See, e.g., In re YLW 97th Holdings, I, LLC*, 423 B.R. 421, 441 (Bankr. S.D.N.Y. 2010); *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("[C]ases consistently reflect that the court's discretion under Section 364 [of the Bankruptcy Code] is to be utilized on grounds that permit [a debtor's] reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest."); *In re Farmland Indus., Inc.*, 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003) (noting that approval of post-petition financing requires, *inter alia*, an exercise of "sound and reasonable business judgment").

12. Further, in determining whether the Debtor has exercised sound business judgment in deciding to enter into the DIP Funding arrangement, the Court may appropriately take into consideration non-economic benefits to the Debtor offered by the proposed post-Petition Date facility. For example, in *In re ION Media Networks, Inc.*, the Bankruptcy Court for the Southern District of New York held that:

Although all parties, including the Debtor and the Committee, are naturally motivated to obtain financing on the best possible terms, a business decision to obtain credit from a particular lender is almost never based purely on economic terms. Relevant features of the financing must be evaluated, including non-economic elements such as the timing and certainty of closing, the impact on creditor constituencies and the likelihood of a successful reorganization. This is particularly true in a bankruptcy setting where cooperation and established allegiances with creditor groups can be a vital part of building support for a restructuring that ultimately may lead to a confirmable reorganization plan. That which helps foster consensus may be preferable to a notionally better transaction that carries the risk of promoting unwanted conflict.

Case No. 09-13125, 2009 WL 2902568, at *4 (Bankr. S.D.N.Y. July 6, 2009).

13. Here, given all the facts and circumstances present in this Case, the Debtor has amply satisfied the necessary conditions under Sections 364(c) and (d) of the Bankruptcy Code for authority to enter into the DIP Funding arrangement. The Debtor exercised proper business judgment in securing DIP Funding on terms that are fair, reasonable and the best available to it in the current market. Moreover, the Debtor approached two other banks for financing on similar or better terms than the DIP Funding but was not otherwise able to obtain credit on an unsecured or administrative expense basis. For all the reasons discussed further below, therefore, the Court should grant the Debtor's request to enter into the DIP Funding pursuant to Sections 364(c) and (d) of the Bankruptcy Code.

i. The Debtor Exercised Sound and Reasonable Business Judgment in Deciding to Enter into the DIP Funding

14. Based on the facts of this Case, the DIP Funding represents a proper exercise of the Debtor's business judgment. Bankruptcy courts routinely defer to the debtor's business judgment on most business decisions, including decisions about whether and how to borrow money. *Grp. of Institutional Investors v. Chi., Milwaukee, St. Paul & Pac. R.R.*, 318 U.S. 523, 550 (1943); *In re Simasko Prod Co.*, 47 B.R. 444, 449 (Bankr. D. Colo. 1985) ("Business judgments should be left to the board room and not to this Court."); *In re Lifeguard Indus., Inc.*, 37 B.R. 3, 17 (Bankr. S.D. Ohio 1983). "More exacting scrutiny 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." *Richmond Leasing Co. v. Capital Bank, N A.*, 762 F.2d 1303, 1311 (5th Cir. 1985).

15. In general, a bankruptcy court defers to a debtor's business judgment regarding the need for, and the proposed use of, funds, unless the debtor's decision improperly leverages the bankruptcy process or its purpose is not so much to benefit the estate as it is to benefit a party in interest. *See Ames*

Dep 't Stores, 115 B.R. at 40; *see also In re Curlew Valley Assocs.*, 14 B.R. 506, 511-13 (Bankr. D. Utah 1981). Courts generally will not second-guess a debtor's business decisions when those decisions involve "a business judgment made in good faith, upon a reasonable basis, and within the scope of [its] authority under the [Bankruptcy] Code." *Id.* at 513-14 (footnote omitted).

16. To determine whether the business judgment test is met, "the court 'is required to examine whether a reasonable business person would make a similar decision under similar circumstances.'" *In re Dura Auto. Sys. Inc.*, Case No. 06-11202 (KJC), 2007 Bankr. LEXIS 2764, at *272 (Bankr. D. Del. Aug. 15, 2007) (quoting *In re Exide Techs., Inc.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006)).

17. Here, the Debtor has exercised sound business judgment in determining that the DIP Funding is appropriate. This DIP Funding will allow the Debtor to stabilize business operations while it explores its options for reorganizing; without the DIP Funding, the Debtor would be forced to cease operations immediately, most certainly resulting in a forced liquidation. The Debtor's decision is therefore sound and reasonable under the circumstances. The terms of the DIP Funding are also fair and reasonable in light of current market conditions. The DIP Funding offers the best of the financing options available to the Debtor.

ii. The Debtor Meets the Conditions Necessary Under Section 364(c) to Obtain Post-Petition Date Financing on a Senior Secured and Superpriority Basis

18. Section 364(c) of the Bankruptcy Code authorizes a debtor to obtain post-petition financing on a secured or superpriority basis, or both, where the Court finds, after notice and a hearing, that the debtor is "unable to obtain unsecured credit allowable under Section 503(b)(1) of the [the Bankruptcy Code]" 11 U.S.C. § 364(c).

19. Courts have articulated a three-part test to determine whether a debtor is entitled to obtain financing under Section 364(c) of the Bankruptcy Code. Specifically, courts look to whether:

- (a) the debtor is unable to obtain unsecured credit under Section 364(b), i.e., by allowing a lender only an administrative expense claim;

- (b) the credit transaction is necessary to preserve the assets of the estate; and
- (c) the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and the proposed lender.

In re Ames Dep 't Stores, Inc., 115 B.R. 34, 37-39 (Bankr. S.D.N.Y. 1990); accord *In re St. Mary Hosp.*, 86 B.R. 393, 401 (Bankr. E.D. Pa. 1988); *In re Crouse Grp., Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987).

20. In order to satisfy this test, a debtor need only demonstrate “by a good faith effort that credit was not available” to the debtor on an unsecured or administrative expense basis. *Bray v. Shenandoah Fed. Savs. & Loan Ass'n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986). “The statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable.” *Id.*; see also *Pearl-Phil GMT (Far East) Ltd. v. Caldor Corp.*, 266 B.R. 575, 584 (S.D.N.Y. 2001) (superpriority administrative expenses authorized where debtor could not obtain credit as an administrative expense). This is true especially when time is of the essence. *In re Reading Tube Indus.*, 72 B.R. 329, 332 (Bankr. E.D. Pa. 1987). When few lenders are likely to be able and willing to extend the necessary credit, “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).

21. Here, the Debtor has used reasonable, good faith efforts to try to obtain credit other than on a secured superpriority basis. The Debtor was unable to solicit any viable proposals for financing on an unsecured or administrative expense basis.

22. The Court should therefore authorize the Debtor to provide the DIP Lender superpriority administrative expense status for any obligations arising under the DIP Funding arrangement as provided for in Section 364(c)(1) of the Bankruptcy Code.

- iii. The Debtor Should Be Authorized to Obtain Post-Petition Date Financing Secured by Liens that are Senior to the Liens Securing the Prepetition Credit Agreement

23. In addition to authorizing financing under Section 364(c) of the Bankruptcy Code, a court may also authorize a debtor to obtain post-petition credit secured by a lien that is senior in priority to existing liens on the encumbered property if the debtor cannot otherwise obtain such credit and the interests of existing lien holders are adequately protected or consent is obtained. *See* 11 U.S.C. § 364(d)(1).

24. Based on a review of the Debtor's records and of pertinent UCC filings, the Debtor believes, the Bank holds the only perfected secured claims against Debtor.¹

25. When determining whether to authorize a debtor to obtain credit secured by a lien that is senior or equal to a prepetition lien as authorized by Section 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, without limitation:

- 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 businesses;
- 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., Ames Dep 't Stores, 115 B.R. at 37-39; *Bland v. Farmworker Creditors*, 308 B.R. 109, 113-14 (S.D. Ga. 2003); *Farmland Indus.*, 294 B.R. at 862-79; *see also* 3 Collier on Bankruptcy, 364.04[1] (16th ed.).

26. The DIP Funding satisfies each of these factors. First, the Debtor explored a variety of possible financing sources. The Debtor conducted lengthy arm's-length negotiations with the DIP Lender,

¹ This assertion is based on an initial preliminary review of the UCC filings and Debtor's records. The Bank filed a financing statement in the Debtor's jurisdiction of organization within the 90 days preceding the filing of the Case. Nothing herein shall prevent the Debtor from challenging the validity, priority, or extent of any debts or claims.

and the ultimate agreement reflects the most favorable terms on which the Debtor was able to obtain funding. The Debtor is not able to obtain financing on equal or better terms from the DIP Lender, or any other source known to it, without granting liens senior in priority to pre-Petition Date liens.

27. Second, the Debtor needs the funds to be provided under the DIP Funding to preserve the value of their estates for the benefit of all creditors and other parties in interest. Absent the DIP Funding, the Debtor will be unable to preserve its assets, stabilize and operate its business or prosecute this Case. Providing the Debtor with the liquidity necessary to preserve its going concern value through the pendency of this Case is in the best interests of all stakeholders.

28. Third, the terms of the DIP Funding are reasonable and adequate to support the Debtor's operational activities through the pendency of this Case, as the DIP Funding will allow the Debtor to maintain its operations and preserve its assets and its relationships with key constituents notwithstanding the commencement of this Case.

29. Fourth, the Debtor and the DIP Lender negotiated the DIP Funding arrangement in good faith and at arm's-length, and the Debtor's entry into the DIP Funding arrangement as outlined in this Motion and the Loan Commitment Letter is an exercise of its sound business judgment. The DIP Funding is on the most favorable terms available to the Debtor in the current market. In light of all these factors, therefore, it is clear that the Debtor should be authorized to secure the DIP Funding with liens senior in priority to those securing the prepetition Loan Documents.

iv. The Interests of the Prepetition Secured Creditor Are Adequately Protected

30. 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. *See, e.g., In re Masello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996) ("the determination of adequate protection is a fact- specific inquiry . . . left to the vagaries of each case. The critical purpose of adequate protection is to guard against the diminution of a

secured creditor's collateral during the period when such collateral is being used by the debtor in possession).

31. To account for any potential diminution in value in the event that the Bank, the prepetition secured creditor, is disgorged of the proceeds of the DIP Funding, yet continue to hold valid, enforceable liens on the Prepetition Collateral, the Debtor will provide adequate protection to the Bank in the form of section 507(b) claims and replacement liens upon all Collateral. More to the point, however, in this Case the DIP Lender is the same entity as the prepetition secured lender, and it has consented to the DIP Funding arrangement. At any rate, the form of adequate protection provided is fair, reasonable, and sufficient to satisfy the requirements of section 364(d)(1)(B) of the Bankruptcy Code.

32. Accordingly, the Court should find that the adequate protection provided to the prepetition secured creditor is fair and reasonable, and satisfies the requirements of Section 364(d)(1)(B) of the Bankruptcy Code.

B. The Debtor Should Be Authorized to Use the Cash Collateral

33. Section 363(c) of the Bankruptcy Code governs a debtor's use of a secured creditor's cash collateral. Specifically, that provision provides, in pertinent part, that:

The trustee may not use, sell, or lease cash collateral . . . unless-

- (A) each entity that has an interest in such cash collateral consents; or
- (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this Section [363].

11 U.S.C. § 363(c)(2). Further, Section 363(e) provides that "on request of an entity that has an interest in property . . . proposed to be used, sold or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest." 11 U.S.C. § 363(e).

34. The Debtor has satisfied the requirements of Sections 363(c)(2) and (e), and should be authorized to use the Cash Collateral. The Bank is the only entity believed to have a perfected interest in the cash collateral and has consented to its use in accordance with the terms set forth herein and upon approval of the DIP Funding arrangement. Accordingly, the Court should authorize the Debtor to use the Cash Collateral under Section 363(c)(2) of the Bankruptcy Code.

C. The Scope of the Carve-Out Is Appropriate

35. The DIP Funding 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 retain assistance from counsel. *See Ames*, 115 B.R. at 40. The DIP Funding does not directly or indirectly deprive the Debtor's estate or other parties in interest of possible rights and powers by restricting the services for which professionals may be paid in this Case. *Id.* at 38 (observing that courts insist on carve-outs for professionals representing parties-in-interest because "[a]bsent such protection, the collective rights and expectations of all parties-in-interest are sorely prejudiced"). Additionally, the Carve-Out protects against administrative insolvency during the course of this Case by ensuring that assets remain for the payment of U.S. Trustee fees and professional fees of the Debtor notwithstanding the grant of superpriority and administrative liens and claims under the DIP Funding. Courts in Virginia and others routinely approve carve-outs agreed to by the Debtor and its DIP Lender. *See, e.g., In re Dave's Downtown Taverna, LLC*, Case No. 12-51585 (RBC) (Bankr. W.D. Va. December 21, 2012); *In re AMF Bowling Worldwide, Inc.*, Case No. 12-36495 (KRH) (Bankr. E.D. Va. Dec. 18, 2012); *In re Bear Island Paper Co., L.L.C.*, Case No 10-31202 (DOT) (Bankr. E.D. Va. Mar. 31, 2010); *In re Quebecor World (USA) Inc.*, Case No. 08- 10152 (JMP) (Bankr. S.D.N.Y. Jan. 23, 2008).

D. The DIP Lender Should Be Deemed a Good Faith Lender under Section 364(e)

36. Section 364(e) of the Bankruptcy Code protects a good faith lender's right to collect on loans extended to a debtor, and its right in any lien securing those loans, even if the authority of the debtor

to obtain such loans or grant such liens is later reversed or modified on appeal. Section 364(e) of the Bankruptcy Code provides that:

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

11 U.S.C. § 364(e).

37. As explained in detail herein, the DIP Funding arrangement 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 the Debtor and the DIP Lender. The terms and conditions of the DIP Funding arrangement are fair and reasonable, and the proceeds of the DIP Funding will be used only for purposes that are permissible under the Bankruptcy Code. Accordingly, the Court should find that the DIP Lender is a "good faith" lender within the meaning of Section 364(e) of the Bankruptcy Code, and is entitled to all of the protections afforded by that Section.

E. Modification of the Automatic Stay Is Warranted for the DIP Lender

38. The DIP Funding Arrangement and the Interim Order contemplate that the automatic stay arising under Section 362 of the Bankruptcy Code shall be vacated or modified to the extent necessary to permit the DIP Lender to exercise, upon the occurrence and during the continuation of any Event of Default, all rights and remedies as provided for in the Loan Commitment Letter, and to take various other actions without further order of or application to the Court.

39. Stay modification provisions of this sort are ordinary features of DIP financing and, in the Debtor's business judgment, are reasonable under the circumstances. *See, e.g., In re AMF Bowling Worldwide, Inc.*, Case No. 12-36495 (KRH) (Bankr. E.D. Va. Dec. 18, 2012); *In re Roomstore, Inc.*, Case No. 11-37790 (KLP) (Bankr. E.D. Va. Jan. 5, 2012); *In re Canal Corp. f/k/a Chesapeake Corp.*, Case No.

08-36642 (DOT) (Bankr. E.D. Va. Feb. 3, 2009); *In re Circuit City Stores, Inc.*, Case No. 08-35653 (KRH) (Bankr. E.D. Va. Dec. 23, 2008); *In re Patriot Coal Corp.*, Case No. 12-12900 (SCC) (Bankr. S.D.N.Y. Aug. 3, 2012).

F. The Debtor Requires Immediate Access to the DIP Funding.

40. The Court may grant interim relief in respect of a motion filed pursuant to Section 363(c) or 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. R. 4001(b)(2), (c)(2). In examining requests for interim relief under this rule, courts generally apply the same business judgment standard applicable to other business decisions. *See Ames Dep't Stores*, 115 B.R. at 36.

41. The Debtor will suffer immediate and irreparable harm if the interim relief requested herein, including authorizing the Debtor to borrow pursuant to the DIP Funding arrangement as needed to fund the Budget, is not granted promptly after the Petition Date. The Debtor has insufficient cash to pay those obligations necessary to preserve and maintain its assets without immediate access to the DIP Funding. Accordingly, the Debtor has an immediate need for access to liquidity to, among other things, satisfy its working capital and operational needs, all of which is required to preserve and maintain the Debtor's value for the benefit of all parties in interest. The importance of a debtor's ability to secure post-petition financing to prevent immediate and irreparable harm to its estate has been repeatedly recognized by other bankruptcy courts in similar situations. *See, e.g., In re Va. United Methodist Homes of Williamsburg, Inc.*, Case No. 13-31098 (KRH) (Bankr. E.D. Va. Mar. 6, 2013) (order approving post-petition financing on an interim basis); *In re AMF Bowling Worldwide, Inc.*, Case No. 12-36495 (KRH) (Bankr. E.D. Va. Nov. 14, 2012) (same); *In re Roomstore, Inc.*, Case No. 11-37790 (KLP) (Bankr. E.D. Va. Dec. 14, 2011) (same); *In re Bear Island Paper Co., L.L.C.*, Case No. 10-31202 (DOT) (Bankr. E.D. Va. Feb. 26, 2010) (same); *In re Patriot Coal Corp.*, Case No. 12-12900 (ALG) (Bankr. S.D.N.Y. July 11, 2012); *In re Eastman Kodak Co.*, Case No. 12-10202 (ALG) (Bankr. S.D.N.Y. Jan. 20, 2012) (same); *In re Lyondell Chem. Co.*, Case No. 09-10023 (REG) (Bankr. S.D.N.Y. Jan. 8, 2009) (same).

Accordingly, for the reasons set forth above, prompt entry of the Interim Order is necessary to avert immediate and irreparable harm to the Debtor's estates and is consistent with, and warranted under, Bankruptcy Rules 4001(b)(2) and (c)(2).

Request for Final Hearing

42. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtor requests that the Court set a date that is no longer than 30 days from the entry of the Interim Order as the Final Hearing.

Request for Waiver of Stay

43. The Debtor further seeks a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), "a[n] order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." As set forth above, the DIP Funding is essential to prevent irreparable damage to the Debtor's property and enterprise value. Accordingly, the Debtor submits that ample cause exists to justify a waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h), to the extent it applies.

No Previous Request

44. No previous request for the relief sought herein has been made by the Debtor to this or any other court.

WHEREFORE, the Debtor respectfully requests that the Court grant the relief requested herein and such other and further relief as is just and proper.

Dated: February 13, 2017

Respectfully Submitted,

SEVEN HILLS CONSTRUCTION LLC

By Counsel

By: /S/ Dale A. Davenport
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Proposed Counsel for the Debtor/Movant

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION**

IN RE: : **Case No. 17-60251**
 :
SEVEN HILLS CONSTRUCTION, LLC : **Chapter 11**
 :
Debtor : **Judge Rebecca B. Connelly**

**INTERIM ORDER (I) AUTHORIZING DEBTOR TO OBTAIN LIMITED POST- PETITION
DATE FUNDING PURSUANT TO 11 U.S.C. §§ 105, 364(c)(1),
AND 364(e); (II) AUTHORIZING DEBTOR TO USE CASH COLLATERAL
BY CONSENT; AND (III) SCHEDULING FINAL HEARING UNDER
BANKRUPTCY RULE 4001**

Upon the motion (the “Motion”) of Seven Hills Construction, LLC, as debtor and debtor in possession in these proceedings (the “Debtor”), by its proposed counsel, for entry of an order authorizing the Debtor to obtain limited post-Petition Date Funding pursuant to Sections 105, 364(c), and 364(e) of Title 11 of the United States Code (the “BankruptcyCode”), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and the corresponding Local Rules for the United States Bankruptcy Court for the Western District of Virginia (the “Local Rules”), as more fully described in the Motion with such funding to be made on the following terms:

MATERIAL TERMS OF THE DIP FUNDING FACILITY	
Borrower	Seven Hills Construction, LLC
Guarantor	Thomas Hockycko
DIP Lender	Bank of the James
Use of Proceeds	The proceeds of the DIP Funding shall be used to: (i) pay certain fees, costs and expenses associated with this Case and the companion case of Thomas and Regina Hockycko, (ii) fund the operational needs of the Debtor necessary to stabilize the operations and preserve, protect and maximize the value of the estate assets and (iii) pay the fees, costs and expenses incurred in connection with the foregoing, in accordance with the terms of the Loan Commitment Letter attached as Exhibit A .
Commitments	The DIP Funding is a maximum of \$250,000 superpriority facility under the DIP Lender’s Loan Documents. The determination of the documentation of DIP

EXHIBIT A

[Exhibits to this Exhibit Order omitted for brevity. Please see the same exhibits, as referenced in the motion.]

	Funding shall be within the sole discretion of the DIP Lender.
Termination Date	The DIP Funding shall terminate on the earliest of: (i) one year from the entry of this Order or (ii) the occurrence of an Event of Default.
Fees	Lender Expenses: All reasonable fees and out-of-pocket costs and expenses incurred by DIP Lender, incurred both prior to and after the Petition Date, in monitoring, administering or providing funding, or enforcing its rights and remedies hereunder, except that, notwithstanding the foregoing, the Debtor shall not be responsible for any such fees, costs and expenses caused by Lender's gross negligence, willful misconduct, breach of an enforceable contractual obligation, or breach of a court order.
Interest Rate	Prime Rate plus 1% with a floor of 5%.
Collateral, Priority, Adequate Protection	<p><u>Collateral:</u> All tangible and intangible property of the Debtor arising or created before or after the Petition Date. Excluded are accounts receivable from Veterans Administration contracts where Aegis Security Insurance Company was or is a surety except to the extent the accounts receivable exceed the amounts owed to Aegis Security Insurance Company. Collateral includes a second lien upon the residence of the Guarantor, subject to an existing deed of trust in favor of Wells Fargo Home Mortgage, and the Guarantor's interest in the Debtor, although the DIP Lender will be paid only 50% of the proceeds from the sale of any equity interest in the Debtor up to the outstanding debt of the Bank. Also, the DIP Lender will have electronic access to Debtor accounts and the Debtor shall promptly provide information and documentation as requested as to any payments. The Debtor shall execute a control agreement to grant the DIP Lender a lien in the Debtor's DIP accounts. Debtor and/or Guarantor shall assign to the DIP Lender a \$500,000 life insurance policy on the Guarantor.</p> <p><u>Superpriority Claims:</u> The funds advanced in accordance with the DIP Funding arrangement shall be an allowed administrative expense claim against the Debtor, and shall have priority over any and all administrative expenses and all other claims against the Debtor, now existing or hereafter arising, of any kind whatsoever.</p> <p><u>DIP Liens:</u> Subject only to the Carve-Out, the funds advanced in accordance with the DIP Funding arrangement shall be secured by a first-priority lien on the Collateral and a second priority lien on the Guarantor's house.</p> <p><u>Adequate Protection:</u> Replacement lien under Section 361(2) and other relief under Section 361(3) as provided by DIP Funding arrangement as set forth herein, which is intended to maximize the value of the Collateral thereby resulting in the realization of the indubitable equivalent of the Bank's interest in the Collateral.</p> <p><u>Existing Indebtedness:</u> The pre-Petition indebtedness owed to the DIP Lender shall be secured by a second priority lien on all of the Collateral</p>
Carve-Out	The DIP Lender's security interests in the Collateral and Superpriority Claims are subject to a carve-out (the "Carve-Out") of: (i) all fees required to be paid to the clerk of the Court and to the U.S. Trustee pursuant to 28 U.S.C. § 1930; and (ii) accrued but unpaid fees and expenses of counsel retained by the Debtor and allowed by the Court in this case and the companion case of Thomas and Regina Hockycko (such allowed fees and expenses, "Professional Fees"). The DIP Lender

	will pay from the DIP Funding \$10,000.00 per month to bankruptcy counsel to be held in trust pending allowance of fees and expenses by the Court. In no event shall any of the Carve-Out be used to pay any fees or expenses of any person retained in a Chapter 7 case under Section 326, 327 or 328 of the Bankruptcy Code.
Covenants	The covenants are usual and customary for financings of this type, including, without limitations, provision of information regarding collateral, provision of certain financial information, provision of a budget variance report and budget results, maintenance of properties and insurance, and access to Debtor's records and inventory. The Debtor and the Guarantor have agreed to further covenants regarding the issuance, sale, or other transfer of equity interests of the Debtor. The Debtor's use of the DIP proceeds shall be in accordance with the terms of the Budget attached as Exhibit B .
Events of Default	Usual and customary events of default for financings of this type, including, without limitations, failure to comply with the approved Budget, material breach of the Interim Order, breaches of representations and warranties, conversion to Chapter 7, appointment of Chapter 11 trustee,
Limitations on Use of DIP Funding and Cash Collateral	Debtor shall provide to DIP Lender with each funding request information to support such funding request. Debtor shall provide to DIP Lender on a monthly basis borrowing base and accounts payable reports together with an income statement and a balance sheet.
Automatic Stay	The Interim Order vacates and modifies the automatic stay to the extent necessary to permit the DIP Lender, upon the occurrence and during the continuation of any Event of Default, and upon five (5) business days' written notice to the Debtor, the U.S. Trustee and counsel to the Committee (if any), to exercise all rights and remedies of the DIP Lender provided for in this Interim Order, the Loan Commitment Letter, or applicable law, including, without limitation: (A) terminating the DIP Funding; (B) declaring all or any portion of the DIP Loan Funding to be due and payable; and realizing on any or all Collateral and exercise any and all remedies, including enforcement of the Debtor's obligations regarding the orderly liquidation of the Collateral.

and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the requested relief being a core proceeding under 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided; and no other or further notice need be provided; and the relief requested in the Motion being in the best interests of the Debtor, its estates, its creditors and other parties in interest; and the Court having reviewed the Motion and having held a hearing with appearances of parties in interest noted in the transcript thereof (the "Hearing"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and the Court having determined that immediate relief is

necessary to avoid irreparable harm; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefore, it is ACCORDINGLY ORDERED AS FOLLOWS:

1. The relief requested in the Motion is hereby granted on an interim basis.
2. All objections to the interim relief sought in the Motion, to the extent not withdrawn or otherwise resolved, are hereby overruled.
3. The Debtor is authorized, but not directed, to enter into the DIP Funding on an interim basis and to the extent consistent with the terms of this Interim Order.
4. The Debtor is authorized, but not directed, to borrow money and incur indebtedness up to an aggregate principal amount of \$250,000 pursuant to the DIP Funding arrangement to stabilize operations and otherwise pay for the financial needs of the Debtor during the pendency of this bankruptcy case. The Debtor is authorized to execute all of the loan documents associated with the DIP Funding.
5. The Debtor is authorized pursuant to Section 363(b)(2)(c)(2)(A) of the Bankruptcy Code to use cash collateral as set forth in the Motion, pursuant to the consent of Bank of the James, which appears to be the only entity that has a perfected security interest in such cash collateral, as evidenced by the endorsement of its counsel hereon.
6. The Debtor is authorized and empowered to take all actions necessary to implement the relief granted in this Order.
7. Upon entry of this Interim Order, the DIP Funding and the pre-Petition obligations of the Debtor to the Bank shall constitute and represent valid, binding, and non-avoidable obligations of the Debtor enforceable against the Debtor in accordance with the terms of this Interim Order for all purposes during this Chapter 11 Case, any subsequently converted case of the Debtor under Chapter 7 of the Bankruptcy Code or after the dismissal of this Chapter 11 Case. No obligation, payment, right, or transfer under the DIP Funding or this Interim Order shall be stayed, restrained, voidable, avoidable or recoverable under the Bankruptcy Code or under any applicable law (including

without limitation, under Sections 502(d), 548 or 549 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law), or subject to any defense, reduction, setoff, recoupment or counterclaim.

8. The liens granted to the Bank pursuant to this Interim Order shall constitute valid, enforceable, nonavoidable and duly perfected liens (first priority for the lien associated with the DIP Funding and second priority for lien associated with the pre-Petition obligations of the Debtor to the Bank) and the Bank shall not be required to file financing statements or deeds of trust to perfect its liens.

9. The Bank shall have the right to credit bid up to the amount of the DIP Funding and the pre-Petition obligations of the Debtor to the Bank at any sale of the Collateral.

10. Subject to the entry of the Final Order, except to the extent of the Carve-Out, no expenses of administration of the this case or any future proceeding that my result therefrom shall be charged against the Collateral pursuant to section 506 (c) of the Bankruptcy Code.

11. Pursuant to Section 364(c)(1) of the Bankruptcy Code, any amounts advanced to the Debtor under the DIP Funding arrangement shall constitute allowed administrative expense claims against the Debtor, and pursuant to Section 364(c)(1) of the Bankruptcy Code shall have priority over any and all administrative expenses and all other claims against the Debtor, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in Sections 503(b) and 507(b) of the Bankruptcy Code as well as Sections 331, 503(b), 506(c), 507(a), 507(b), 546, 726, 1113 or 1114 of the Bankruptcy Code (the "Superpriority Claims"), whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which Superpriority Claims shall be payable from and have recourse to all pre- and post-petition property of the Debtor and all proceeds thereof, excluding avoidance actions brought pursuant to Chapter 5 of the Bankruptcy Code and proceeds thereof.

12. If an order dismissing this Chapter 11 Case under Section 1112 of the Bankruptcy Code, or otherwise, is at any time entered, such order shall provide (in accordance with Sections 105 and 349 of the Bankruptcy Code) that (i) the Superpriority Claims granted pursuant to this Interim Order shall continue in full force and effect and shall retain and maintain their priorities as provided in this Interim Order until all obligations under the DIP Funding arrangement shall have been indefeasibly paid and satisfied in full (and that such Superpriority Claims shall, notwithstanding such dismissal, remain binding on all parties in interest); and (ii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing such Superpriority Claims referred to in clause (i) above.

13. If any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated, or stayed, such reversal, modification, vacation, or stay shall not affect the validity, priority, or enforceability of any obligations incurred or liens granted under the DIP Funding arrangement.

14. Except as expressly provided in this Interim Order, the Superpriority Claims granted by the provisions of this Interim Order shall survive, and shall not be modified, impaired or discharged by (i) the entry of an order converting this Chapter 11 Case to a case under Chapter 7, dismissing this Chapter 11 Case, or by any other act or omission; or (ii) the entry of an order confirming a plan of reorganization (or a plan of liquidation) in this Chapter 11 Case. The terms and provisions of this Interim Order shall continue in this Chapter 11 Case, in any successor case, or in any superseding Chapter 7 case under the Bankruptcy Code. The Superpriority Claim and all other rights and remedies of the DIP Lender granted by the provisions of this Interim Order shall continue in full force and effect until any and all such obligations incurred under the DIP Funding arrangement are indefeasibly paid and satisfied in full.

15. This Interim Order shall be immediately effective and enforceable upon its entry, and there shall be no stay of execution of effectiveness of this Interim Order.

16. Objections to the entry of the Final Order shall be in writing and shall be filed with the Clerk of this Court, on or before 4:00 p.m. (prevailing Eastern time) on the date that is five (5)

business days prior to the Final Hearing, with a copy served upon proposed counsel to the Debtor.

17. The Final Hearing is scheduled for _____, 2017 at _____ p.m. (prevailing Eastern time) before the Bankruptcy Court for the Western District of Virginia at its Courtroom in _____, Virginia.

Dated:

Chief United States Bankruptcy Judge

We ask for this:

Counsel for the Debtor

Counsel for Bank of the James

Seen:

Trial Counsel, United States Trustee

February __, 2017

Mr. Thomas J. Hockycko
President
Seven Hills Construction, LLC
21430 Timberlake Road PMB #326
Lynchburg, VA 24502

Dear Mr. Hockycko,

On behalf of Bank of the James (the “Bank”), I am pleased to offer the following Borrower in possession financing commitment, subject to the terms and conditions outlined below:

COURT APPROVAL	The terms and conditions contained herein shall be set forth in definitive loan documents (the “Documents”) and must be approved and ratified by the court in the Borrower’s Chapter 11 proceedings and not be subject to appeal.
BORROWER:	Seven Hills Construction, LLC (“Borrower” or “Seven Hills”)
LOAN AMOUNTS:	Bank of the James note numbers 5814079 and 5816371 (the “Existing Notes”). Copies of the existing notes and related documents are attached hereto as Exhibits A and B. Additional line of credit of \$250,000 (the “New Note”). A form of note and the related documents are attached hereto as Exhibit C.
TERM AND PAYMENTS:	<u>Existing Notes:</u> <ul style="list-style-type: none">Note No. 5814079 has matured and shall be renewed on the current terms and conditions with a maturity date

EXHIBIT B

	<p>of January [], 2018. Payments will be made as set forth in the renewal note. The principal balance as of the date of this letter is approximately \$743,916.62.</p> <ul style="list-style-type: none"> Note No. 5816371 will be paid pursuant to its terms and conditions. The principal balance as of the date of this letter is approximately \$166,356.52. <p><u>New Note.</u> Borrower shall pay interest only, monthly in arrears, on the New Note. The New Note will mature twelve months from the closing date at which time all sums due to the Bank shall be due and payable, subject to renewal consideration.</p>
ADVANCES ON NEW NOTE:	The Bank shall advance Borrower sums under the New Note only if such requests are of the types and in the amounts consistent with the Budget and the terms of the loan documents.
INTEREST RATE:	<p>The interest rate on Existing Notes shall be unchanged.</p> <p>The interest rate on the New Note shall be Wall Street Journal Prime Rate plus 1.00% with a minimum rate of 5.00%.</p>
LOAN FEE:	No loan fee, provided that Borrower will pay all recording, filing, appraisal, and similar fees.
PREPAYMENT PENALTY	None
COLLATERAL:	<p>Subject to liens granted and properly perfected prior to the petition date, if any, all obligations to the Bank of the Borrower (including sums due pre-petition and sums due under or in respect of the DIP Facility) will be secured by (excepted as expressly provided to the contrary) a first priority perfected security interest pursuant to Section 364(c)(2) and (c)(3) and Section 364(d) of the Bankruptcy Code, as applicable, in the following:</p> <ul style="list-style-type: none"> All accounts receivable. All deposit accounts. Proceeds from all avoidance power claims and actions under Sections 547, 548, and 549 of the Bankruptcy Code relating to preferences, fraudulent conveyances, and post-petition transfers of assets.

	<ul style="list-style-type: none">• Proceeds from all of Borrower's or its affiliates' causes of action against Carothers Construction Company, along with damages or other proceeds arising from such causes of action, not to exceed the amount owed to the Bank on all outstanding debt. As used herein, causes of action shall include all claims arising from contract, commercial tort, or otherwise.• All of the outstanding ownership interests in the Borrower. Bank must have ability to transfer by foreclosure or otherwise the full rights of ownership and not just a profits interest.• All unissued membership interests of Borrower. As set forth under "Covenants" below, neither Borrower nor Guarantor shall transfer existing membership interest or issue new membership interests in Seven Hills without the prior written consent of the Bank. Unless waived in writing, the Bank shall receive 50% of the proceeds from any such sale(s), not to exceed the outstanding debt owed by Borrower to the Bank at the time of the closing of such transaction.• Real property and improvements owned by the Chapter 11 estate of Thomas and Regina Hockycko located at 313 St. Andrews Circle, Lynchburg, Virginia 24503 (the "real property"). The amount secured by the deed of trust will be \$475,000. This will be a valid and enforceable second priority deed of trust, subject only to the existing deed of trust in favor of Wells Fargo Home Mortgage with an outstanding principal balance of approximately \$67,000.• Assignment of a \$500,000 life insurance policy on Thomas J. Hockycko. <p>Subject to the entry of a final order, the liens securing the DIP Facility will not be subject to Sections 510, 549, 550, and 551 of the Bankruptcy Code nor shall the DIP Collateral be surcharged pursuant to Section 506(c) of the Bankruptcy Code.</p> <p>Sums advanced under the DIP facility will be entitled to super priority administrative claim status pursuant to</p>
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	<p>section 364(c)(1) of the Bankruptcy Code.</p>
<p>DEPOSIT ACCOUNTS</p>	<p>All of the Borrower’s collections, cash on hand and proceeds from the Loan shall be deposited solely into accounts held by the Borrower at institutions for which Bank has in place a control agreement satisfactory to the Bank in its sole discretion (the “Cash Controlled Accounts”). So long as no Default (as defined in the Loan Documents) or Event of Default has occurred under the DIP Facility, the Borrower will be able to withdraw amounts from the Cash Controlled Accounts, to make payments of the types and in the amounts consistent with the Budget.</p> <p>In connection with the foregoing, the Borrower shall seek the entry of appropriate orders (to the extent not already entered), providing for the opening of any DIP Controlled Accounts, in form and substance satisfactory to the Bank in its sole discretion.</p>
<p>ADDITIONAL TERMS AND CONDITIONS:</p>	<p>The Collateral must secure the new and existing amounts and obligations owed to the Bank.</p> <p>Borrower shall comply with the budget approved by the Bankruptcy Court in connection with the DIP Facility.</p> <p>Borrower shall waive any and all avoidance claims against the Bank.</p> <p>The Borrower and Guarantor shall release any and all claims that it has against the Bank.</p>
<p>BORROWER’S COVENANTS:</p>	<p>All covenants customarily contained in Bank’s loan documents.</p> <p>Borrower will not issue, sell or transfer any interest in the company without the express written consent of the Bank.</p> <p>Guarantor will not sell any part of his interest in the Borrower without the express written consent of the Bank.</p> <p>The Borrower will not take any action or allow any action to be taken that would cause the Borrower to lose its classification as a Service-Disabled-Veteran Owned entity.</p> <p>Mr. and Mrs. Hockyco will not increase the amount due to the institution secured by the first deed of trust on 313 St. Andrews Circle above the amount due on the date the loan</p>

	<p>documents are executed.</p> <p>Compliance with a budget approved by the Bank and the Bankruptcy Court.</p>
GUARANTOR:	Thomas J. Hockycko
INSURANCE:	Evidence of insurance insuring the real property up to its full market value minus the value of the land with a standard loss payable clause showing Bank of the James, 828 Main Street, Lynchburg, VA 24504, as second mortgagee
FLOOD CERTIFICATION:	Bank, at Borrower's expense, shall obtain a flood certification documenting that the real property is not located in a flood or mudslide area. Flood Insurance will be required if the property improvements are determined to be in a flood hazard area.
FINANCIAL REPORTING:	Monthly borrowing base reports and accounts payable reports must be submitted by the 15 th of each month along with a year-to-date profit-and-loss statement and balance sheet for each proceeding month in order to track the financial progress of the company.
FINANCIAL INFORMATION:	For so long as any amounts are due under this commitment, the borrower and the guarantor shall provide to the Bank annual financial statements and federal tax returns as requested by the Bank.
DOCUMENTS:	<p>The borrower, guarantor and grantors agree to execute all documents necessary to properly evidence the loan and the security to be given to the Bank in reference thereto. The documents shall herein be referred to as the "loan documents."</p> <p>The loan shall be made at no cost to the Bank, and the borrower shall pay all legal fees and other costs incurred by the Bank regarding the loan whether closed or not.</p>

<p>TERM OF COMMITMENT:</p>	<p>This commitment shall terminate in the event of the Borrower's or Guarantor's failure to comply with the provisions of this commitment or the failure of the Bankruptcy Court to approve the terms and conditions of the commitment.</p>
<p>WARRANTIES:</p>	<p>The borrower and guarantor represent and warrant to the Bank that: all information that has been furnished to the Bank prior to this commitment being issued is true and accurate; all financial statements, certificates and other information furnished, or to be furnished to the Bank are, or shall be true and accurate. This commitment, when accepted, and all documents and instruments to be executed and delivered to the Bank in connection with this commitment, shall be duly authorized, valid, enforceable, and binding on the parties thereunto.</p>
<p>SURVIVAL:</p>	<p>The terms and conditions of this commitment shall survive the closing and shall continue to be binding on the borrower, its personal representative, successors, or assigns and the guarantor, its heirs, personal representative or assigns. Any violation of the terms, conditions, and covenants of the loans commitment shall constitute a default under the note and loan documents. By the execution of the promissory note(s) reflecting the terms and conditions outlined in the commitment, the borrower(s) and/or guarantor(s) are bound by the terms of this commitment.</p>
<p>ACCEPTANCE:</p>	<p>An original copy of this commitment must be executed by the borrower and/or guarantor and returned to the Bank on or before February [], 2017. Any extension of such time must be in writing.</p>
<p>EXPIRATION OF COMMITMENT:</p>	<p>To cause this commitment to remain in effect the loan must be closed on or before February [], 2017, Any extension of such date must be in writing and signed by an officer of the Bank.</p>

On behalf of Bank of the James, I appreciate the opportunity to provide this financing package. If the preceding terms and conditions are acceptable to you, please sign the acknowledgement below and return the original to me.

Sincerely,

Christopher P. Taylor
Sr. Vice President

The foregoing terms and conditions are agreed to and accepted this _____ day of February, 2017

Borrower:
Seven Hills Construction, LLC

By: _____ Date _____
Thomas J. Hockycko

Guarantor:

_____ Date: _____
Thomas J. Hockycko

Deed of Trust Grantors:

_____ Date: _____
Thomas J. Hockycko

_____ Date: _____
Regina Hockycko

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION**

IN RE: : **Case No. 17-60251**
: **SEVEN HILLS CONSTRUCTION, LLC** : **Chapter 11**
: **Judge Rebecca B. Connelly**

**DECLARATION OF THOMAS HOCKYCKO IN SUPPORT OF THE DEBTOR'S CHAPTER 11
PETITION AND INITIAL PLEADINGS**

1. I am the sole member and owner of Seven Hills Construction, LLC ("Seven Hills"), a Delaware limited liability company headquartered in Lynchburg, Virginia. I am familiar with the history, past day-to-day operations, businesses and financial affairs of the company.

2. I submit this declaration (the "Declaration") (i) in support of the petition (the "Petition") of Seven Hills for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"), (ii) pursuant to 28 U.S.C. § 1746 in support of Seven Hills' petition and contemporaneously-filed requests for relief in the form of motions and applications (the "Initial Motions") and (iii) to assist the Court and other interested parties in understanding the circumstances giving rise to the commencement of this Chapter 11 case. I personally have reviewed all of the Initial Motions, and it is my belief that the relief sought therein is essential to the uninterrupted stabilization of Seven Hills' assets and business affairs and to Seven Hills' efforts to reorganize or preserve and properly dispose of its assets in these bankruptcy cases.

3. Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge, discussions with legal counsel, my review of relevant documents, information provided to me by employees of Seven Hills, or my opinion based upon experience, knowledge and information concerning the operations of Seven Hills and the construction industry as a whole. If called upon to testify, I would testify competently to the facts set forth in this Declaration. Unless otherwise

indicated, any financial information contained herein is unaudited and provided on a consolidated basis.

Commencement of Reorganization Proceedings

4. On February 8, 2017 (the "Petition Date"), Seven Hills filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Seven Hills intends to continue in the possession of its property and the management of its business as Debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

5. Part I of this declaration describes Seven Hills' business, Part II describes the circumstances giving rise to the commencement of these Chapter 11 cases and Part IV describes the Initial Motions.

I. The Seven Hills' Business

6. Seven Hills, a Delaware limited liability company, was formed in 2006. Its principal place of business is in Salisbury, NC although it operates in numerous states and most recently has been headquartered in Lynchburg, Virginia.

7. Since its formation, Seven Hills has qualified as a Service-Disabled Veteran-Owned Small Business ("SDVO"). Being a SDVO makes it eligible for set-asides in federal contracts for construction work performed on government buildings.

8. Seven Hills' work has consisted primarily of these federal contracts that it is awarded through the government bidding process. Seven Hills' contracts have been primarily for work performed at Department of Defense facilities.

9. Initially, Seven Hills operated as a general contractor on construction projects.

10. In 2013, Seven Hills elected to focus its business operations on commercial roofing instead of serving as the general contractor for these government contracts. The goal in doing so was that Seven Hills would realize larger profits.

II. Events Leading up to Chapter 11

11. In its effort to focus on commercial roofing projects, Seven Hills entered into several

large contracts with a general contractor. Seven Hills served as the roofing subcontractor on the projects. On all of these contracts, Seven Hills was bonded by a surety company.

12. Over the course of these projects, the general contractor, Carothers Construction, Inc. (“Carothers”), alleged defaults in performance of Seven Hills, which Seven Hills has continuously disputed but did not have the resources to obtain a judicial resolution of the claims and allegations.

13. Seven Hills was never fully paid by Carothers on three of the projects with Carothers even though they were essentially completed.

13. The surety company became involved in these projects due to the claims made on Seven Hills’ bonds by Carothers.

14. During this time, as sole member of Seven Hills, I placed more money into the business in hope of shoring up the negative financial situation that these allegations created. The financial problems created by these contracts had a trickledown effect and resulted in additional defaults of other contracts.

15. On May 10, 2016, the Developers Surety and Indemnity Company (“Developers”) filed a lawsuit in the United States District Court Western District of Virginia against Seven Hills and myself and my wife, personally. Developers was able to obtain a preliminary injunction which prohibited any nonbusiness use and/or encumbrance of the business assets.

16. Due the claims made by Carothers outlined above, the claims made on Seven Hills by various creditors and sureties, and the bidding schedule for federal government projects, Seven Hills has had little to no cash revenue for the past three months. This time period of low revenue paired with the preliminary injunction currently in place has made it nearly impossible for Seven Hills to fund its operations and service its existing debts.

17. As of February 8, 2016 (the “Petition Date), Seven Hills had limited assets. It had less than \$2,000.00 in its bank accounts. Its net accounts receivable do not exceed \$130,000.00. Its personal property, including tools, equipment, and vehicles are believed to be valued at approximately

\$22,000.00. Seven Hills owns no real estate.

18. I have depleted the majority of my own resources in an effort to preserve Seven Hills. I estimate that I have loaned approximately \$700,000.00 to Seven Hills.

19. My wife and I are both over 65 years of age. We have very few personal creditors. The overwhelming majority of our debt was incurred in connection with Seven Hills. The value of our personal property (not including qualified retirement accounts or the funds I am owed by Seven Hills, but including deposit accounts) is not believed to exceed \$50,000.00, though we are still in the process of finalizing bankruptcy schedules in our individual Chapter 11 case. I have a 401(k) with an estimated value of \$74,000.00 and 3 IRA's that total approximately \$31,000.00. Our most valuable asset is our residence, located at 313 St. Andrews Circle, Lynchburg, VA 24503, the tax assessed value of which is \$463,400.00. This property is owned as tenants by the entirety and is subject to a Deed of Trust in favor of Wells Fargo with a balance due of approximately \$64,000.00.

20. Prior to filing its bankruptcy petition, in order to mitigate losses its Seven Hills and reduce claims against Seven Hills and my wife and me as guarantors, Seven Hills voluntarily defaulted on seven contracts that were bonded by Aegis Security Insurance Company ("Aegis"). All of these contracts except one were going to result in a loss to Seven Hills. Furthermore, Aegis had the right pursuant to its Indemnity Agreement to redirect payment to Aegis on any contracts with the same property owner. Aegis has agreed not to object to Seven Hills' request for debtor in possession financing and not to assert a claim to the proceeds of any present or future contract for which it did not or does not provide a bond.

21. Seven Hills will begin placing bids on new government projects this month and next, and if awarded the jobs, will begin receiving revenues from those jobs no later than July 2017.

22. Going forward, Seven Hills plans to serve as a general contractor on the projects it is awarded bids for and to use a large subcontractor with its own bonding capabilities to avoid any similar situation in the future.

23. Seven Hills seeks the protections afforded it through the bankruptcy process in order

address its current cash flow problem until it is awarded new projects and receives revenues from those projects.

III. Initial Motions

Seven Hills' Motion for Entry of Interim and Final Orders (I) Authorizing Seven Hills (A) to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(d)(2), 364(d)(3), 364(d)(1) and 364(e) and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363, (II) Granting Adequate Protection To Prepetition Secured Creditors Pursuant To 11 U.S.C. §§ 361, 362, 363 And 364 And (III) Scheduling Final Hearing Pursuant To Bankruptcy Rules 4001(B) And (C)

24. Seven Hills requests entry of an interim and a final order authorizing Seven Hills to obtain post-Petition financing and to utilize cash collateral based on the terms contained in the proposed interim order attached to the Debtor-In-Possession (“DIP”) financing motion, and specifically including disbursements set forth in the budget attached as Exhibit B to the DIP financing motion.

25. For reasons explained in the motion, Seven Hills is not a candidate for an institutional, outside loan at a reasonable interest rate. Seven Hills has inquired with two community banks as well as two private lenders, all of which have no interest in loaning Seven Hills money due to the financial condition of Seven Hills and the lack of available collateral due to the preliminary injunction. The Bank is willing to fund the business, after application of account revenues, to help it survive this time period of low revenues. The financing terms offered by the Bank are very favorable, reflecting its interest in a restructuring that permits payment of its claims.

26. The DIP financing arrangements will address Seven Hills’ liquidity needs, enable Seven Hills to preserve its value as a going concern and provide Seven Hills the opportunity to consummate a restructuring transaction that will maximize recoveries to all parties in interest in the form of a plan of reorganization.

27. Importantly, the terms of the DIP financing arrangement are fair and reasonable. I believe Seven Hills’ request to approve this motion should be granted for three reasons. First, it contains the best available terms available to Seven Hills. Second, it provides Seven Hills with funds to continue

the operation of the business and preserve the value of the business. Third, no prospective DIP lenders would fund on a junior basis or unsecured basis.

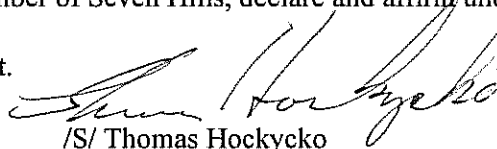
28. I believe that the process undertaken by Seven Hills was reasonable and it produced the best available financing option given the circumstances.

29. Seven Hills greatly needs the liquidity offered by the DIP financing arrangements in order to operate. Those arrangements will also send a strong signal of Seven Hills' intent to continue operating in Chapter 11 for the benefit of their estates and creditors. Accordingly, if approved, it will preserve and enhance the value of Seven Hills' business and, as such, is in the best interest of Seven Hills' estate and creditors.

IV. Conclusion

30. I respectfully request that all of the relief requested in the Initial Motions, and such other further relief as may be just and proper, be granted.

31. I, the undersigned sole member of Seven Hills, declare and affirm under penalty of perjury that the foregoing is true and correct.



/S/ Thomas Hockycko
THOMAS HOCKYCKO

Dated: February 13, 2017


By: /S/ Beth C. Driver

Dale A. Davenport (VSB #016268)
ddavenport@hooverpenrod.com
Hannah W. Hutman (VSB#79635)
hhutman@hooverpenrod.com
Beth C. Driver (VSB#83838)
bdriver@hooverpenrod.com
HOOVER PENROD PLC
342 South Main Street
Harrisonburg, Virginia 22801
540/433-2444
540/433-3916 (Facsimile)
Proposed Counsel for the Debtor/Movant

	February 2017	March 2017	April 2017	May 2017	June 2017	July 2017
MONTHLY REVENUE	\$0.00	\$0.00	\$32,000.00	\$0.00	\$0.00	\$96,000.00
<i>Debtor anticipates additional revenue beginning in May 2017 in an amount TBD based on contracts awarded</i>						
MONTHLY EXPENSES						
Payroll						
President	\$10,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00
General Manager	\$10,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00
Admin/Payroll	\$2,708.00	\$2,708.00	\$2,708.00	\$2,708.00	\$2,708.00	\$2,708.00
Superintendent	\$2,708.00	\$2,708.00	\$2,708.00	\$2,708.00	\$2,708.00	\$2,708.00
Estimator	\$2,800.00	\$2,800.00	\$2,800.00	\$2,800.00	\$2,800.00	\$2,800.00
Project Manager	\$2,708.00	\$2,708.00	\$2,708.00	\$2,708.00	\$2,708.00	\$2,708.00
Total	\$30,924.00	\$20,924.00	\$20,924.00	\$20,924.00	\$20,924.00	\$20,924.00
Taxes & Insurance						
941	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00
State	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00
Payroll	\$765.00	\$765.00	\$765.00	\$765.00	\$765.00	\$765.00
Worker's Comp. Ins.	\$4,400.00	\$4,400.00	\$4,400.00	\$4,400.00	\$4,400.00	\$4,400.00
Auto Insurance	\$750.00	\$750.00	\$750.00	\$750.00	\$750.00	\$750.00
Total	\$9,915.00	\$9,915.00	\$9,915.00	\$9,915.00	\$9,915.00	\$9,915.00
Operating Expenses						
Internet	\$245.00	\$245.00	\$245.00	\$245.00	\$245.00	\$245.00
Vehicle Allowance	\$600.00	\$600.00	\$600.00	\$600.00	\$600.00	\$600.00
Sprint	\$775.00	\$775.00	\$775.00	\$775.00	\$775.00	\$775.00
Rent	\$200.00	\$200.00	\$200.00	\$200.00	\$200.00	\$200.00
Supplies/Postage	\$200.00	\$200.00	\$200.00	\$200.00	\$200.00	\$200.00
Fuel	\$1,200.00	\$1,200.00	\$1,200.00	\$1,200.00	\$1,200.00	\$1,200.00
Travel	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00
401(k) Service Charge	\$400.00	\$400.00	\$400.00	\$400.00	\$400.00	\$400.00
General Liability	\$2,000.00	\$2,000.00	\$2,000.00	\$2,000.00	\$2,000.00	\$2,000.00
BOTJ Interest Only Payment	\$1,042.00	\$1,042.00	\$1,042.00	\$1,042.00	\$1,042.00	\$1,042.00
BOTJ Required Life Insurance	\$400.00	\$400.00	\$400.00	\$400.00	\$400.00	\$400.00
Attorney Fees (Hoover Penrod)	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00
Arkansas Inspection Expenses	\$15,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Total	\$33,062.00	\$18,062.00	\$18,062.00	\$18,062.00	\$18,062.00	\$18,062.00
Total Expenses	\$73,901.00	\$48,901.00	\$48,901.00	\$48,901.00	\$48,901.00	\$48,901.00
Net Income	-\$73,901.00	-\$48,901.00	-\$16,901.00	-\$48,901.00	-\$48,901.00	\$47,099.00

EXHIBIT D