

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

In re:	)	
	)	Chapter 11
Energy Alloys Holdings, LLC, <i>et al.</i> , ¹	)	Case No. 20-12088 (MFW)
Debtors.	)	(Joint Administration Requested)
	)	
	)	

**DECLARATION OF BRYAN GASTON IN SUPPORT
OF DEBTORS' CHAPTER 11 PETITIONS AND FIRST DAY MOTIONS**

I, Bryan Gaston, do hereby submit this declaration (the “**Declaration**”) and declare under penalty of perjury that the following information is true to the best of my knowledge, information and belief:

1. I am the Chief Restructuring Officer (“**CRO**”) of Energy Alloys Holdings, LLC, a Delaware limited liability company (“**EAH**”), and its affiliates that are debtors and debtors-in-possession (collectively, the “**Debtors**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”). I am authorized to submit this declaration (the “**First Day Declaration**”) on behalf of the Debtors.

2. I am a Senior Managing Director at Ankura Consulting Group, LLC (“**Ankura**”), based out of its office at 2 Houston Center, 909 Fannin Street, Suite 2450, Houston, Texas 77010. I have over 27 years of experience, which includes 16 years advising distressed companies and creditors both in an out of court. This experience includes serving in interim management and financial roles and as a testifying witness in several energy and non-energy restructuring matters,

¹ The Debtors, together with the last four digits of each Debtor’s federal tax identification number, are: Energy Alloys Holdings, LLC (4144); Energy Alloys, L.L.C. (9944); Energy Alloys Louisiana, LLC (0623); Energy Alloys Canada Holding, L.L.C. (0382); Energy Alloys Services, L.L.C. (4284); Energy Alloys Cayman Holding, L.L.C. (3484); Energy Alloys Mexico Holding Co. - Majority, LLC (9165); Energy Alloys Mexico Holding Co. - Minority, LLC (N/A). The mailing address for the Debtors is 9450 Pinecroft Drive, P.O. Box 8819, The Woodlands, TX 77380.

including *Buccaneer Resources, LLC*, Case No. 14-60041 (Bankr. S.D. Tex.), *Rotary Drilling Tools USA LLC*, Case No. 16-33433 (Bankr. S. D. Tex.), *Texas Pellets, Inc.*, Case No. 16-90126 (Bankr E.D. Tex.), and *Emerge Energy Services LP*, Case No. 19-11563 (Bankr. D. Del.).

3. I am generally familiar with the Debtors' business, day-to-day operations, financial matters, results of operations, cash flows, and underlying books and records. All facts set forth in this First Day Declaration are based upon my personal knowledge of the Debtors' business, operations, and related financial information gathered from my review of their books and records, relevant documents, and information supplied to me by members of the Debtors' management team and advisors. If called to testify, I could and would testify competently to the facts set forth in this First Day Declaration.

4. On the date hereof (the "**Petition Date**"), the Debtors filed voluntary petitions (collectively the "**Petitions**") for relief in the United States Bankruptcy Court for the District of Delaware (the "**Court**") commencing the Chapter 11 Cases under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "**Bankruptcy Code**").

5. I submit this Declaration on behalf of the Debtors in support of the Debtors' (a) Petitions for relief that were filed under chapter 11 of the Bankruptcy Code and (b) "first day" motions, which are being filed concurrently herewith (collectively, the "**First Day Motions**"). The Debtors seek the relief set forth in the First Day Motions to minimize the adverse effects caused by the commencement of these Chapter 11 Cases on their business. I have reviewed the Petitions and the First Day Motions, or have otherwise had their contents explained to me, and it is my belief that the relief sought therein is essential to ensure the uninterrupted operation of the Debtors' business and to successfully maximize the value of the Debtors' estates.

6. Parts I through III of this Declaration provide an overview of the business and history, corporate structure, and capital structure of the Debtors. Part IV provides an overview of the circumstances leading to the commencement of the Chapter 11 Cases, and Part V addresses the First Day Motions with respect to which the Debtors are seeking immediate relief to avoid irreparable harm to their businesses and to promote a smooth transition into chapter 11.

I. Overview of the Debtors' Businesses and History

7. Founded in 1995, the Debtors and their non-debtor affiliates (collectively, the “**Non-Debtor Entities**” and, together with the Debtors, collectively, the “**Company**”) are a privately-owned distributor and reseller of tube and bar products sold into the oil and gas industry for the exploration of hydrocarbons. The Company operates through two distinct business segments governed largely by geography, with the Debtors having primarily operated in the United States and Canada (the “**Western Hemisphere**”)² and the Non-Debtor Entities operating in Asia, Europe, and the Middle East (the “**Eastern Hemisphere**”). While there is shared management, select shared resources and administrative functions as well as some overlap between the customers and vendors of the Western Hemisphere and Eastern Hemisphere, the two segments generally function independent of each other.

8. Prior to the Debtors' wind down of business operations in the Western Hemisphere (as more fully described below), Debtor Energy Alloys L.L.C. (“**Energy Alloys**”) was the Debtors' principal operating entity. Through Energy Alloys, the Debtors provided critical materials, namely, carbon, alloy, stainless and nickel solid bar and tube-based products, to global oil field service manufacturers. Additionally, the Debtors' capabilities allowed the Debtors to assist

² Prior to the Petition Date the Debtors also operated in Canada. The Debtors wound down their Canadian operations prior to the Petition Date as set forth below.

customers with all stages of the supply chain process. Indeed, Energy Alloys offered customers supply chain and logistics services such as continuous heat treatment, production of finished or semi-finished parts, ultrasonic testing, inspection, tracing, and packaging.

9. In April 2020, the Debtors' Western Hemisphere operations employed approximately 130 full-time personnel. However, as of the Petition Date, this number has been reduced to approximately 16 full-time, salaried employees, as well as two Independent Contractors.

II. Corporate Structure

10. EAH is a holding company that wholly owns Energy Alloys. Blackstone/GSO Capital Solutions Fund L.P. and GSO CSOMF Energy Alloys, Inc. (together with Blackstone/GSO Capital Solutions Fund L.P., "**GSO**") have been the majority equity holders of EAH since approximately November 2011.

11. Energy Alloys owns and controls 100% of Debtors Energy Alloys Louisiana, LLC, Energy Alloys Canada Holding, L.L.C., Energy Alloys Services, L.L.C., Energy Alloys Cayman Holding, L.L.C., Energy Alloys Mexico Holding Co. - Majority, LLC, and Energy Alloys Mexico Holding Co. - Minority, LLC (collectively, the "**Subsidiary Debtors**"). Energy Alloys and certain of the Subsidiary Debtors in turn collectively own and control 100% of the Non-Debtor Entities. A corporate organizational chart is attached hereto as **Exhibit A**.

III. Prepetition Capital Structure

12. Prior to August 2019, certain of the Debtors were party to that certain *Amended and Restated Credit Agreement*, dated as of August 9, 2016, (as amended, restated, supplemented and otherwise modified from time to time), with Wells Fargo, as administrative agent, and the lenders party thereto, consisting of a revolving credit facility with a limit of \$80,000,000 (the "**Wells Fargo Facility**").

13. In August 2019, the Company refinanced the Wells Fargo Facility in the course of entering into the Debtors' present capital structure, as described below. The proceeds of such refinancing were used to pay off and terminate the Wells Fargo Facility, as well as cancel existing letters of credit related thereto, in advance of the November 2019 maturity date of the facility.

14. Energy Alloys is the primary obligor on the Debtors' funded indebtedness. As of the Petition Date, the Debtors have approximately \$97.3 million of aggregate funded indebtedness, comprised of approximately: (i) \$6.964 million outstanding under the First Lien Credit Facility (as defined herein); (ii) \$77.4 million outstanding under the Second Lien Credit Facility (as defined herein); and (iii) \$12.9 million outstanding under the Wingfoot Loan (as defined herein). In addition, as of the Petition Date, the Debtors have approximately \$38.45 million in unsecured debt, including approximately \$31.45 million owed to certain Non-Debtor Entities pursuant certain Intercompany Loans (as defined herein).³

A. *First Lien Credit Facility*

15. The Debtors have outstanding secured debt pursuant to that certain *Credit Agreement*,⁴ dated as of August 28, 2019 (as amended, supplemented, restated or otherwise modified from time to time, the "**First Lien Credit Agreement**," and together with the other Loan Documents under and as defined in the First Lien Credit Agreement, the "**First Lien Loan Documents**"), among Energy Alloys, as the borrower, the certain other Debtors party thereto

³ The Non-Debtors owe the Debtors approximately \$14.6 million in trade accounts receivable. This receivable balance has not been setoff against the aggregate Intercompany Loan balance. Additionally, the Non-Debtor Entities with operations in the Eastern Hemisphere also have a first lien debt facility (the "**Non-Debtor Credit Facility**") in the amount of approximately \$10 million (of which approximately \$5.4 million remains outstanding as of the Petition Date) with IGF Business Credit Limited ("**IGF**"). Energy Alloys is a guarantor under the Non-Debtor Facility, which is secured by the majority of the Non-Debtor Entities' assets. On or about September 4, 2020, the Non-Debtor Entities and IGF agreed to a forbearance of the Non-Debtor Credit Facility for a period of no less than 90 days.

⁴ Any summary of any agreement discussed in this First Day Declaration is qualified in its entirety by the terms of that agreement.

(together with Energy Alloys, the “**Credit Parties**”),⁵ Sixth Street Specialty Lending, Inc. (f/k/a TPG Specialty Lending, Inc.), as the Agent (as defined therein) (in such capacity, the “**First Lien Agent**”) for the lenders party thereto (together with the First Lien Agent, collectively, the “**First Lien Secured Parties**”). The First Lien Credit Agreement provides for, among other things, a \$25 million fixed term loan, a \$15 million delayed draw term loan, and a \$20 million revolving loan (the “**First Lien Credit Facility**”).

16. As of the Petition Date, the outstanding amounts owed by Energy Alloys under the First Lien Facility are approximately: \$6.964 million in respect of the fixed term loan⁶ (collectively, together with all accrued and unpaid interest thereon, and any fees, expenses, indemnification obligations, guarantee obligations, and reimbursement obligations, including, without limitation, any attorneys’, accountants, consultants’, appraisers’ and financial and other advisors’ fees that are chargeable, reimbursable or otherwise payable under the First Lien Loan Documents, and any other costs, charges or amounts incurred or accrued prior to the Petition Date in accordance with the First Lien Credit Facility, and further including all “Obligations” as described in the First Lien Credit Agreement, including all obligations with respect to cash management services and bank products, and all interest, fees, costs and other charges, the “**First Lien Obligations**”). Energy Alloys is liable as borrower for the First Lien Obligations, with the other Credit Parties as guarantors, and such obligations are secured by first priority liens on and security interests in substantially all of the Credit Parties’ property, including the Debtors’ real property in Conroe, Texas (the “**Conroe Property**”) and, subject to the Wingfoot Cap (as defied

⁵ The following Debtors are Credit Parties: Energy Alloys, Energy Alloys Louisiana, LLC, Energy Alloys Canada Holding, L.L.C., Energy Alloys Services, L.L.C., Energy Alloys Mexico Holding Co. - Majority, LLC, and Energy Alloys Mexico Holding Co. - Minority, LLC.

⁶ Prior to the Petition Date the revolving loan and delayed draw loan were paid down in full.

herein), the Wingfoot Property (as defined herein), all stock and stock equivalents of the domestic subsidiaries of Energy Alloys and the first tier foreign affiliates of Energy Alloys, as well as by EAH's equity interest in Energy Alloys (collectively, the "**Prepetition Collateral**") in favor of the First Lien Secured Parties.

B. Second Lien Facility

17. The Debtors also have outstanding secured debt to GSO (as Second Lien Lenders (as defined herein)) pursuant to that certain *Credit Agreement*, dated as of August 28, 2019 (as amended, supplemented, restated or otherwise modified from time to time, the "**Second Lien Credit Agreement**," and together with the other Loan Documents under and as defined in the Second Lien Credit Agreement, the "**Second Lien Loan Documents**"), among Energy Alloys, the other Credit Parties, and Wilmington Trust, National Association ("**Wilmington Trust**"), as Agent (as defined therein) (the "**Second Lien Agent**") for the Lenders (as defined therein) (the "**Second Lien Lenders**" and, together with the Second Lien Agent, collectively, the "**Second Lien Secured Parties**"). The Second Lien Credit Agreement provides for, among other things, a \$60 million fixed term loan and \$9 million delayed draw term loan (the "**Second Lien Credit Facility**").

18. As of the Petition Date, the outstanding amount owed by the Debtors under the Second Lien Credit Facility is approximately \$77.4 million (collectively, together with any costs and other charges or amounts paid, incurred or accrued prior to the Petition Date in accordance with the Second Lien Credit Facility, and further including all "Obligations" as described in the Second Lien Credit Agreement, including all obligations with respect to cash management services and bank products, and all interest, fees, costs and other charges allowable under section 506(b) of the Bankruptcy Code, the "**Second Lien Obligations**"). Energy Alloys is liable as borrower for the Second Lien Obligations, with the other Credit Parties as guarantors, and such obligations are

secured by second priority liens on and security interests in the Prepetition Collateral (other than the Wingfoot Property), in favor of the Second Lien Secured Parties.

C. Wingfoot Loan

19. Energy Alloys also owns real property on Wingfoot Road in Houston, Texas (the “**Wingfoot Property**”).⁷ Energy Alloys previously pledged the Wingfoot Property as collateral to secure the Wells Fargo Facility. In early 2018, Energy Alloys entered into a \$10 million secured credit facility with Wilmington Trust, as agent (the “**Wingfoot Agent**”) for the lenders from time to time party thereto (the “**Wingfoot Lenders**,” and, together with the Wingfoot Agent, the “**Wingfoot Secured Parties**”), secured by the Wingfoot Property (the “**Wingfoot Loan**”). Simultaneously, Energy Alloys and Wells Fargo amended the Wells Fargo Facility to remove the Wingfoot Property from the Wells Fargo Facility and to add certain machinery as replacement collateral.

20. Energy Alloys is liable as borrower for the Wingfoot Loan, with the other Credit Parties as guarantors. Such obligations are secured by first priority liens on and security interests in the Wingfoot Property in favor of the Wingfoot Secured Parties, subject to the First Lien Secured Parties’ \$2 million senior lien on the Wingfoot Property pursuant to the fourth amendment to the First Lien Credit Agreement, dated June 9, 2020, which effectively placed the First Lien Secured Parties ahead of the Wingfoot Secured Parties on the first \$2 million of any proceeds from the sale of the Wingfoot Property (the “**Wingfoot Cap**”). As of the Petition Date, approximately \$12.9 million remains outstanding with respect to the Wingfoot Loan.

⁷ In addition to their real property holdings in Texas, the Debtors lease certain warehouse and office space (the “**Leased Premises**”). The Debtors intend to file a motion seeking authority to reject the Leased Premises.

D. Intercompany Loans and Other Unsecured Debt

21. Prior to the Petition Date, Energy Alloys, as borrower, and certain Non-Debtor Entities, each as a lender, entered into four unsecured intercompany loan agreements (the “**Intercompany Loans**” and each an “**Intercompany Loan**”).⁸ As of the Petition Date, approximately \$31.45 million remains outstanding under the Intercompany Loans.⁹ The Debtors books and records indicate approximately \$7.0 million outstanding in other unsecured liabilities with third parties as of the Petition Date.

IV. Circumstances Leading to Commencement of the Chapter 11 Cases

A. Declining Product Demand and Challenges in the Oil & Gas Industry

22. In 2019, the Debtors’ net revenues were approximately \$88.2 million. However, in late 2019 and into the first quarter of 2020, the Debtors began to experience a softening in demand for their products combined with eroding margins resulting from pricing pressure. Demand for the Debtors’ products is heavily dependent on the amount of oil and gas exploration which in turn is dependent upon commodity pricing.

23. In March 2020 an industry down-turn was further exacerbated by a Russia–Saudi Arabia oil price war, which reportedly was triggered by Saudi Arabia in response to Russia’s refusal to reduce oil production to keep oil prices at a moderate level. This economic conflict resulted in an immediate and significant drop in the price of oil during the spring of 2020. While

⁸ Energy Alloys is the borrower under the following Intercompany Loan agreements: (i) First Revised Intercompany Loan Agreement by and between Energy Alloys and Energy Alloys Korea, Ltd., dated August 20, 2019; (ii) First Revised Intercompany Loan Agreement by and between Energy Alloys and Energy Alloys Korea, Ltd., dated August 20, 2019; (iii) First Revised Intercompany Revolving Loan Agreement by and between Energy Alloys and Energy Alloys International Middle East Ltd (Dubai Branch), dated August 20, 2019; and (iv) First Revised Intercompany Revolving Loan Agreement by and between Energy Alloys and Energy Alloys UK Ltd. (“**EA UK**”), dated August 20, 2019.

⁹ Energy Alloys and non-Debtors Energy Alloys International Holdings B.V. (“**EA Netherlands**”) and EA UK are party to a fifth unsecured intercompany loan, pursuant to which Energy Alloys is the lender and EA Netherlands is the borrower. As of the Petition Date, approximately £(GBP)4,400,000 remains outstanding under the loan to EA Netherlands.

this situation has since stabilized, and the oil and gas industry has experienced only a modest recovery, any gains were largely eliminated by the world-wide economic downturn caused by the COVID-19 pandemic. These factors impacted the Company's global business as a whole, but the impact has been more pronounced in the Debtors' Western Hemisphere operations, which also are far more heavily leveraged.

B. Prepetition Restructuring, Wind Down, and Marketing Efforts

24. In January 2020 the Debtors began to implement several restructuring alternatives including replacing their chief executive officer, listing the Conroe Property for sale to consolidate operations at the Wingfoot Property, implementing a series of headcount reductions and negotiating short term rent relief on two of its three leases for warehouse and office space.

25. In March 2020, the Debtors continued their restructuring efforts by retaining Ankura to advise the Debtors on various restructuring and strategic alternatives. After considerable discussion and analyses the Debtors determined that these initial restructuring actions were insufficient to address the speed and severity of financial distress facing the debtors' Western Hemisphere business. Therefore, the Debtors concluded that in order to maximize the value of their estates, it was necessary to begin an orderly liquidation of their Western Hemisphere assets and to begin evaluating a possible sale of the Company's more stable and profitable Eastern Hemisphere operations on a going concern basis.

26. In May 2020, the Debtors, together with their advisors began negotiations with the First Lien Secured Parties to support and fund an orderly wind down of the Debtors' Western Hemisphere operations through the liquidation of their assets. These negotiations culminated in a June 9, 2020 amendment to the First Lien Credit Agreement that, among other things, established certain milestones for the Debtors' orderly wind down and exit from the Western Hemisphere.

Contemporaneously therewith, the Debtors announced the difficult decision to exit Western Hemisphere operations to key constituents (e.g., employees, vendors and customers) and selected Hilco Industrial, LLC, Hilco Industrial Acquisitions Canada ULC, Hilco Valuation Services, LLC, Hilco Real Estate, LLC, and Hilco Receivables, LLC (collectively, “**Hilco**”) to assist the Debtors with the marketing and sale of their Western Hemisphere assets, including the Conroe and Wingfoot Properties. Hilco’s selection occurred through a competitive process and was based on Hilco’s position as a global leader in the marketing and sale of both healthy and distressed assets with three core corporate practices: valuation, monetization and advisory services.

27. In June 2020, as part of their wind down efforts, the Debtors (i) initiated settlement discussions with select, large unsecured creditors, (ii) began transitioning various corporate and administrative functions historically performed by the Debtors on behalf of the Eastern Hemisphere operations to Non-Debtor Entity personnel, and (iii) retained Moelis & Company (“**Moelis**”) as investment banker to assist the Company with marketing its assets in the Eastern Hemisphere (the “**Eastern Hemisphere Assets**”), including the Debtors’ equity interests in the Non-Debtor Entities (the “**Non-Debtor Equity**”). Over the next few months, the Debtors accelerated the wind down of their Western Hemisphere operations, including selling all their Western Hemisphere inventory in a transaction to a single party on June 30, 2020. Over the subsequent 60 days, the Debtors sold all of their machinery and equipment (the “**M&E Assets**”) in North America through a series of private sale transactions then culminating in an auction conducted on August 18-19, and the continued sale listing of the Conroe Property and a new listing of the Wingfoot Property for sale. As of the Petition Date, the Debtors’ primary assets include the Wingfoot Property, the Conroe Property, a large specialized order assigned to a third party with

residual economics, legacy accounts receivable, the Non-Debtor Equity, and approximately \$661,000 in cash.

28. As part of the Debtors' efforts to market the Eastern Hemisphere Assets, including the Non-Debtor Equity, in July 2020 Moelis began working with the Debtors' management and advisors to perform diligence and to prepare to conduct a robust marketing process for a potential Eastern Hemisphere transaction. These activities included but were not limited to analysis of historical and preparation of projected financial results, preparation of a confidential information memorandum ("**CIM**"), creation and population of a virtual data room ("**VDR**"), and creation of an initial buyers list. Then, in early August 2020, Moelis commenced its marketing process by contacting fifty-eight potential strategic and financial buyers (collectively, the "**Interested Parties**") to garner interest in pursuing a transaction. Approximately eleven Interested Parties executed a confidentiality and non-disclosure agreement to review certain confidential business and financial information of the Non-Debtors, receive a CIM, obtain access to the VDR and other diligence materials and the opportunity to participate in management presentations. In connection with the marketing process, Moelis invited such Interested Parties that to submit initial, non-binding indications of interest (the "**IOIs**") by no later than August 28, 2020 (Eastern Time) (the "**Initial IOI Deadline**").

29. Moelis received IOIs from multiple Interested Parties, including certain IOIs after the Initial IOI Deadline. The Debtors, with the assistance of their advisors, are in the process of evaluating the IOIs and intend to file with the Court a motion establishing procedures for the continued marketing and sale of the Eastern Hemisphere Assets, including the Non-Debtor Equity.

30. Concurrently with their efforts to market the Eastern Hemisphere Assets, including the Non-Debtor Equity, the Debtors continued to engage with various stakeholders, including with

certain select, large unsecured creditors, in an effort to facilitate a consensual, out of court restructuring. Notwithstanding the overall success of the Debtors' wind down efforts, in mid-August 2020 it became apparent that sufficient out of court settlements with unsecured creditors could not be achieved and the Debtors determined that the commencement of these Chapter 11 Cases was necessary to facilitate a restructuring and continue the marketing and sale of the Debtors' remaining assets.

V. First Day Motions

31. Contemporaneously herewith, the Debtors have filed with the Court certain First Day Motions seeking orders granting various forms of relief intended to minimize the adverse effects caused by the commencement of the Chapter 11 Cases on their business and to facilitate the efficient administration of the Chapter 11 Cases.

A. *Joint Administration Motion*¹⁰

32. By the Joint Administration Motion, the Debtors request entry of an order directing the joint administration of their Chapter 11 Cases and the consolidation thereof for procedural purposes only. Specifically, the Debtors request that the Clerk of this Court maintain one file and one docket for all of the Chapter 11 Cases, which file and docket shall be the file and docket for EAH, and that the Chapter 11 Cases be administered under a consolidated caption. The Debtors also propose to include a footnote in each pleading filed and notice mailed by the Debtors, listing the Debtors in the Chapter 11 Cases and the last four digits of their tax identification numbers (as available) along with the Debtors' mailing address. The Debtors also request that a notation be

¹⁰ The "**Joint Administration Motion**" means the *Motion of Debtors for Order Authorizing Joint Administration*, filed contemporaneously herewith.

entered on each of the Debtors' respective dockets (except that of EAH) to reflect the joint administration of the Chapter 11 Cases under the case of EAH.

33. I believe that joint administration of the Chapter 11 Cases is warranted because it will ease the administrative burden on the Court and all parties in interest. I expect that notices, applications, motions, other pleadings, hearings, and orders in the Chapter 11 Cases may affect all of the Debtors. If each Debtor's case were administered independently, there would be a number of duplicative pleadings and overlapping service. I believe that this unnecessary duplication of identical documents would be wasteful of the resources of the Debtors' estates, as well as the resources of this Court and of other parties in interest.

*B. Claims Agent Retention Application*¹¹

34. By the Claims Agent Retention Application, the Debtors seek entry of an order authorizing the Debtors to employ and retain Epiq Corporate Restructuring, LLC ("**Epiq**") in the Chapter 11 Cases effective *nunc pro tunc* to the Petition Date. I believe that this retention is the most effective and efficient manner of noticing the creditors and parties in interest of the filing of the Chapter 11 Cases and other developments. In view of the number of anticipated claimants and the complexity of the Debtors' businesses, I believe that the appointment of a notice and claims agent is both necessary and in the best interests of the Debtors' estates and creditors because the Debtors will be relieved of the burdens associated with the notice and claims processing services to be provided by Epiq. Relieved of such burdens, the Debtors will be able to devote their full attention and resources to maximizing value for their stakeholders and facilitating the orderly administration of the Chapter 11 Cases.

¹¹ The "**Claims Agent Retention Application**" means the *Application of Debtors for Appointment of Epiq Corporate Restructuring, LLC as Claims and Noticing Agent Effective as of Petition Date*, filed contemporaneously herewith.

35. In its capacity as Claims and Noticing Agent, Epiq will, among other things, distribute notices and transmit, receive, process, docket, and maintain proofs of claim filed in connection with the Chapter 11 Cases. Accordingly, on behalf of each of the Debtors, I respectfully submit that the relief requested in the Claims Agent Retention Application should be granted.

C. *Cash Management Motion*¹²

36. By the Cash Management Motion, the Debtors request entry of interim and final orders (i) authorizing the Debtors to continue to use their Cash Management System; (ii) authorizing the continued performance of Intercompany Transactions; (iii) waiving certain bank account and related requirements of the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”); and (iv) granting related relief.

37. The Debtors Cash Management System, an interrelated network of bank accounts (the “**Bank Accounts**”),¹³ is critical to the Debtors’ operations during these Chapter 11 Cases and maximizing the value of the Debtors’ estates. As described more fully in the Cash Management Motion, the Debtors use the Cash Management System in the ordinary course of business to collect, concentrate, and disburse funds generated by their businesses. The Cash Management System also enables the Debtors to facilitate their cash forecasting and reporting, monitor the

¹² The “**Cash Management Motion**” means the *Motion of Debtors for Interim and Final Orders (I) Authorizing Continued Use of the Debtors’ Existing Cash Management System and Bank Accounts; (II) Authorizing Continued Performance of Intercompany Transactions; and (III) Granting Related Relief*, filed contemporaneously herewith. Capitalized terms used, but not otherwise defined, in this section shall have the respective meanings ascribed to them in the Cash Management Motion.

¹³ The Bank Accounts include the Agent Restricted Account, which is a loan account at PNC in the name of Energy Alloys. The Agent Restricted Account was established in connection with the First Lien Credit Facility, and serves as a control mechanism for the First Lien Secured Parties. Cash balances in the Main Blocked Account at the end of each day are automatically swept into the Agent Restricted Account on the following day. The sweep mechanism increases the Agent Restricted Account’s negative value as the balance of money swept into the account. Before funds in Agent Restricted Account can be transferred to the Debtor’s Main Operating Account, the First Lien Agent must approve the transfer and use of such funds by the Debtor. The Debtors anticipate maintaining the Agent Restricted Account and the associated sweep mechanism until the First Lien Credit Facility is paid off.

global collection and disbursement of funds, and maintain control over the administration of the Bank Accounts.

38. The Debtors' ability to continue using the Cash Management System and Bank Accounts during the Chapter 11 Cases is essential to maintaining the Debtors' business and maximizing the value of their estates. Requiring the Debtors to adopt new cash management systems and open new bank accounts would be expensive, onerous, and disruptive. For the aforementioned reasons, I believe that maintaining the existing Cash Management System without disruption is in the best interests of the Debtors, their estates, and all interested parties. Accordingly, the Debtors request that they be allowed to maintain and continue to use the Cash Management System, including maintenance of their existing Bank Accounts.

39. The Debtors also request that they be authorized to continue certain Intercompany Transactions, which are an essential component of the Debtors' operations and the Cash Management System. In the ordinary course of business, the operation of the Cash Management System results in Intercompany Transactions between Debtors Energy Alloys Canada Holding, LLC ("**EA Canada**") and Energy Alloys (the "**Debtor Intercompany Transaction**"). The Debtors expect minimal Debtor Intercompany Transactions to occur postpetition due to the cessation of the Debtors' business operations in Canada. In addition, the Debtors maintain business relationships with certain of the Non-Debtor Entities, which result in certain Intercompany Transactions as between Energy Alloys and the Non-Debtor Entities (and the "**Non-Debtor Intercompany Transactions**"). The Non-Debtor Intercompany Transactions are typically in the form of non-cash book entries on account of certain IT services (i.e., phones and internet) provided by Energy Alloys to the Non-Debtors. The Non-Debtor Intercompany Transaction also include non-cash book entries related to interest owed by Energy Alloys to certain

of the Non-Debtor Entities on account of the Intercompany Loans.¹⁴ The only Non-Debtor Intercompany Transactions involve cash flowing from the Non-Debtors to the Debtors related to certain shared insurance policies.

40. In connection with the Intercompany Transactions, there may be claims owing by one Debtor to another Debtor (the “**Debtor Intercompany Claims**”) or from Energy Alloys to a Non-Debtor Entity (the “**Non-Debtor Intercompany Claims**,” and together with the Debtor Intercompany Claims, collectively, the “**Intercompany Claims**”). When an Intercompany Transaction occurs, the applicable Debtor or Non-Debtor Entity records a receivable, and the applicable Debtor or Non-Debtor Entity affiliate records a payable.

41. Any interruption of the Intercompany Transactions would severely disrupt the Debtors’ operations and result in great harm to the Debtors’ estates and their stakeholders. Accordingly, the Debtors seek authority—and, to the extent applicable, relief from the automatic stay—to continue the Intercompany Transactions in the ordinary course of business on a postpetition basis, in a manner substantially consistent with the Debtors’ past practice, subject to the terms of the orders approving the Cash Management Motion.

42. Additionally, to ensure that any one Debtor will not fund, at the expense of its creditors, the operations of any other Debtor, the Debtors request that, pursuant to sections 503(b)(1) and 364(b) of the Bankruptcy Code, all Debtor Intercompany Claims arising after the Petition Date be accorded administrative expense priority, subject and junior in all respects to any superpriority claims pursuant to any order approving the Debtors’ consensual use of cash collateral. If such Debtor Intercompany Claims are accorded such status, each Debtor using funds

¹⁴ The Debtors are not seeking authority in the Cash Management Motion to make any postpetition cash payments on account of the Intercompany Loans.

that flow through the Cash Management System will continue to bear the ultimate responsibility for its ordinary course transactions with Debtor affiliates. As the Debtors' funds are aggregated in the Cash Management System, the Debtors track all fund transfers in their accounting system and have the ability to identify and account for all Intercompany Transactions, including all cash receipts and disbursements. The Debtors anticipate that the Debtor Intercompany Claims will be recorded on the Debtors' books and records and not cash settled.

43. The Debtors also seek a waiver of certain requirements (the “**UST Guidelines**”) of the U.S. Trustee, including a waiver of the requirement that they close the Bank Accounts and open new DIP Accounts. The Debtors' ability to continue using the Bank Accounts is essential to maximizing value of the Debtors' estates and promoting the best interests of all parties. It prevents disruption to direct customer payments into these accounts and expedites collection for accounts receivables. Nonetheless, the Debtors request authority, with the consent of the First Lien Agent in its sole discretion and upon the execution of applicable Control Agreements (as defined in the Cash Management Motion) to open any new Bank Accounts or close any existing Bank Accounts as they may deem necessary and appropriate in the ordinary course; *provided that* the Debtors give notice to the U.S. Trustee and any statutory committees appointed in the Chapter 11 Cases within fifteen days of closing or opening a Bank Account; *provided further* that the Debtors open any such new Bank Account at a bank that has executed a Uniform Depository Agreement with the U.S. Trustee, or at a bank willing to immediately execute such an agreement.

44. The Debtors also seek a waiver of the UST Guideline to establish specific DIP Accounts for payroll and tax payments and to deposit into the tax accounts sufficient funds to pay any payroll tax liability (when incurred). The Debtors believe that they can meet their payroll and tax obligations most efficiently through the Bank Accounts in accordance with existing practices,

and that requiring new payroll and tax DIP Accounts would be both unnecessary and highly disruptive to their business. The Debtors are—and expect to remain—current on all payroll taxes. If the Debtors were required to change their existing practices and deposit sufficient funds to pay any tax liability associated with the Debtors’ payroll, the resulting inefficiencies would only diminish the value of the Debtors’ estates. Further, the Debtors will ensure that the U.S. Trustee can appropriately monitor and ascertain that the Debtors’ payroll taxes are satisfied.

45. The Debtors further request a waiver of the requirement that they immediately modify their checks and Business Forms to bear the designation “Debtor in Possession.” Immediately modifying the Debtors’ checks and changing the Debtors’ correspondence, and other Business Forms would be expensive, unnecessary, and burdensome to the Debtors’ estates. Further, such changes would be disruptive to the Debtors’ business operations and would not confer any benefit upon those dealing with the Debtors.

46. Additionally, the Debtors request authorization to pay Bank Fees and similar service charges to prevent any disruption to the Cash Management System and their Bank Accounts, thereby assisting them in accomplishing a smooth transition to operating in chapter 11.

47. To reiterate, the Cash Management System is an ordinary course and essential business practice. Compelling the Debtors to alter their current cash management practices and to modify the Cash Management System to comply with the UST Guidelines outlined above would risk disruption to the Debtors’ business and jeopardize the Debtors’ ability to maximize value for any parties in interest.

48. I believe that the relief requested in the Cash Management Motion is in the best interests of the Debtors’ estates, their creditors and all other parties in interest and constitutes a critical element in achieving a successful and smooth transition to chapter 11. Accordingly, on

behalf of the Debtors, I respectfully submit that the relief requested in the Cash Management Motion should be granted.

*D. Wages Motion*¹⁵

49. By the Wages Motion, the Debtors seek entry of interim and final orders (i) authorizing, but not directing, the Debtors, in their sole discretion, to (a) pay prepetition wages, salaries, compensation, reimbursable expenses, and other obligations on account of the Compensation and Benefits Programs (as defined herein) in the ordinary course of business and (b) continue to administer the Compensation and Benefits Programs and (ii) granting related relief.

50. As of the Petition Date, the Debtors have a workforce of approximately 16 employees (collectively, the “**Employees**”) as well as Independent Contractors (as defined below) (and together with the Employees, the “**Workforce**”). As described more fully in the Wages Motion, the Debtors pay wages, salaries, compensation, reimbursable expenses, and other administrative fees, obligations, and premiums in connection with their various compensation and benefits programs (each as defined herein and collectively the “**Compensation and Benefits Programs**”), including (i) Compensation Obligations (including include Employee Obligations, Payroll Processing Fees, Withholding Obligations, and Independent Contractor Obligations), (ii) Reimbursement Obligations (including Out of Pocket Expenses, Business Expense Cards, Auto Reimbursement, Cell Phone Allowance, and Independent Director Fees and Expenses),

¹⁵ The “**Wages Motion**” means the *Motion of Debtors for Interim and Final Orders (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Compensation, Reimbursable Expenses, and Other Obligations on Account of Compensation and Benefits Programs and (B) Continue Compensation and Benefits Programs and (II) Granting Related Relief*, filed contemporaneously herewith. Capitalized terms used, but not otherwise defined, in this section shall have the respective meanings ascribed to them in the Wages Motion.

(iii) Employee Benefits Programs (including Medical Benefit Programs, Paid Time Off, and the Defined Contribution Plan), and (iv) Severance and Retention Obligations.¹⁶

51. As of the Petition Date, the Debtors estimate that they owe approximately \$183,500 on account of the Compensation and Benefits Programs, all of which will become due and payable during the interim period.

52. I believe that many of the obligations in connection with the Compensation and Benefits Programs may constitute priority claims under sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code. To the extent such obligations in connection with the Compensation and Benefits Programs constitute priority claims, the Debtors will be required to pay such claims in full to confirm a chapter 11 plan. Thus, granting the relief sought in the Wages Motion would only cause such Workforce claims to be paid in the initial stages of the Chapter 11 Cases, rather than at the plan confirmation stage.

53. Any delay in paying the obligations in connection with the Compensation and Benefits Programs or failure to maintain the Compensation and Benefits Programs and pay related administrative obligations will adversely impact the Debtors' relationships with their Workforce and could irreparably impair Workforce morale, dedication, confidence, and cooperation. In addition, many Employees might immediately seek employment elsewhere. The Debtors' ability to preserve their businesses through the Chapter 11 Cases and implement an orderly liquidation of their Western Hemisphere operations is dependent on the expertise and continued enthusiasm and service of their Workforce. Their skills, knowledge, and understanding of the Debtors' operations and infrastructure are essential to preserving operational stability and efficiency. The Workforce's

¹⁶ For the avoidance of doubt, the Debtors are not seeking any form of relief with respect to payments of the Severance Obligations and Retention Obligations in connection with this Motion.

support for the Debtors' restructuring efforts in the Chapter 11 Cases is critical to the success of those efforts. At this early stage, the Debtors simply cannot risk the substantial damage to their businesses that would inevitably attend any decline in their Workforce's morale attributable to the Debtors' failure to pay obligations in connection with the Compensation and Benefits Programs.

54. Absent an order granting the relief requested in the Wages Motion, many members of the Workforce would undoubtedly suffer hardship, distraction, and, in many instances, serious financial difficulties, as the amounts in question are needed to enable certain members of the Workforce to pay their daily living expenses and support their families. Furthermore, if the Court does not authorize the Debtors to honor their various obligations under the Employee Benefit Programs, including the Health Care Plans, Employees will not receive appropriate coverage and be at risk to pay certain healthcare-related obligations. The loss of such coverage will result in considerable anxiety for Employees (and likely attrition) at a time when the Debtors need such Employees to perform at peak efficiency. Workforce-member attrition would cause the Debtors to incur additional expenses to find appropriate and experienced replacements, severely disrupting the Debtors' operations at a critical juncture. Consequently, all of the Debtors' creditors will benefit if the requested relief is granted.

55. Additionally, payment of the Payroll Processing Fees, and the other administrative fees in connection with the Compensation and Benefits Programs also is necessary. Without the continued services of the Payroll Processors, and the Debtors' other benefit administrators, the Debtors will be unable to continue to honor their obligations to their Workforce in an efficient and cost-effective manner and maintain their employee base, both of which are critical to the smooth functioning of the Debtors' operations.

56. Further, many federal, state, and local statutes impose personal liability on officers and directors of companies for certain Payroll Taxes and other Withholding Obligations. To the extent that the relevant Payroll Taxes and other Withholding Obligations remain unpaid by the Debtors, the Debtors' directors, officers, and executives may be subject to lawsuits or criminal prosecution during the pendency of the Chapter 11 Cases. Any such lawsuit or criminal prosecution (and the ensuing potential liability) would distract the Debtors and their officers, directors, and executives from devoting their full attention to the Debtors' business and the orderly administration of the Chapter 11 Cases. The Debtors believe that these distractions would materially undermine their ability to operate in the ordinary course of business and to administer the Chapter 11 Cases, with resulting detriment to any parties in interest.

57. I believe that the relief requested in the Wages Motion is in the best interests of the Debtors' estates, their creditors and all other parties in interest and constitutes a critical element in achieving a successful and smooth transition to chapter 11. Accordingly, on behalf of the Debtors, I respectfully submit that the relief requested in the Wages Motion should be granted.

*E. Taxes Motion*¹⁷

58. The Debtors seek entry of interim and final orders (a) authorizing, but not directing, the Debtors to pay certain prepetition taxes, assessments, fees, and other charges in the ordinary course of business, including any such taxes, assessments, fees, and charges determined subsequently upon audit or otherwise to be owed (collectively, the "**Taxes and Fees**"), and (b) granting related relief.

¹⁷ The "**Taxes Motion**" means the *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing Debtors to Pay Certain Prepetition Taxes and Fees and (II) Granting Related Relief*, filed contemporaneously herewith. Capitalized terms used, but not otherwise defined, in this section shall have the respective meanings ascribed to them in the Taxes Motion.

59. In the ordinary course of the Debtors' businesses, the Debtors collect, withhold and incur (a) franchise taxes, (b) sales and use taxes, and (c) real and personal property taxes.

60. The Debtors incur franchise and business taxes assessed by certain Authorities to operate their business in those jurisdictions ("**Franchise Taxes**"). Franchise Taxes vary by jurisdiction, but are typically a flat fee-rate. The Debtors estimate that, as of the Petition Date, they have no outstanding Franchise Taxes.

61. The Debtors incur and collect from customers a variety of foreign, state and local sales taxes, gross receipts taxes, and similar obligations, including Canadian goods and services taxes and harmonized sales taxes, in connection with the sale of various products in connection with the Debtors' businesses (collectively, the "**Sales Taxes**"). The Debtors also incur use taxes from purchasing various inventory, supplies, or other goods utilized by the Debtors in the ordinary course of business (collectively, the "**Use Taxes**" and, together with Sales Taxes, "**Sales and Use Taxes**"). As a general matter, the Debtors are required to remit Sales and Use Taxes on a quarterly or annual basis, depending on the applicable Authority. The Debtors estimate that as of the Petition Date, they owe approximately \$22,000 in Sales and Use Taxes.

62. Laws in many of the jurisdictions where the Debtors operate generally grant the applicable Authorities the power to levy property taxes against the Debtors' real and personal property ("**Real and Personal Property Taxes**"). Under state and local law, Authorities may assert a lien on property for unpaid Real and Personal Property Taxes. The Debtors typically incur Real and Personal Property Taxes. The Debtors generally pay Real and Personal Property Taxes on an annual basis directly to the applicable Authority, although certain jurisdictions permit the Debtors to pay such taxes in installments. As of the Petition Date, the Debtors believe they have no outstanding Real and Personal Property Taxes, and the Debtors anticipate that no Real and

Personal Property Taxes will become due and payable during the pendency of the Chapter 11 Cases.

63. I believe that payment of the prepetition Taxes and Fees is critical to the Debtors' chapter 11 strategic wind down efforts and to avoid immediate and irreparable harm to the Debtors' estates. Nonpayment of the Taxes and Fees may cause certain Authorities to take precipitous action, including filing liens, seeking to lift the automatic stay, assessing penalties or interest on past-due taxes, or pursuing payment of the Taxes and Fees from the Debtors' directors, officers, and other employees, any of which would disrupt the Debtors' day-to-day operations and could potentially impose significant costs and burdens on the Debtors' estates. Further, failure to satisfy the Taxes and Fees may jeopardize the Debtors' maintenance of good standing to operate in the jurisdictions in which they conduct business. Prompt payment of the Taxes and Fees will avoid these unnecessary and potentially costly and burdensome governmental actions.

64. I believe that the relief requested in the Taxes and Fees Motion is in the best interests of the Debtors' estates, their creditors and all other parties in interest and constitutes a critical element in achieving a successful and smooth transition to chapter 11. Accordingly, on behalf of the Debtors, I respectfully submit that the relief requested in the Taxes Motion should be granted.

*F. Insurance Motion*¹⁸

65. By the Insurance Motion, the Debtors seek entry of interim and final orders (i) authorizing, but not directing, the Debtors, in their sole discretion, to: (i) authorizing, but not

¹⁸ The "**Insurance Motion**" means the *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Continue to Maintain Their Insurance Policies and Programs, (B) Maintain Premium Financing Arrangements and (C) Honor All Insurance Obligations, and (II) Granting Related Relief*, filed contemporaneously herewith. Capitalized terms used, but not otherwise defined, in this section shall have the respective meanings ascribed to them in the Insurance Motion.

directing, the Debtors, in their sole discretion, to (a) maintain, continue and renew the Insurance Policies, (b) maintain, continue and renew their arrangements for Premium Financing, and (c) pay and honor all Insurance Obligations and (ii) granting related relief.

66. In the ordinary course of their business, the Debtors maintain various insurance policies providing coverage for, among other things, automobile liability, stock throughput for goods in transit, umbrella coverage, general liability, excess liability, directors' and officers' liability ("**D&O Policies**"), workers' compensation, and other insurance policies (collectively, the "**Insurance Policies**") for themselves and for the benefit of their non-debtor affiliates (the "**Non-Debtor Entities**") through several private insurance carriers (collectively, the "**Insurance Carriers**").

67. The Debtors employ Marsh USA Inc. ("**Marsh**") and Cobbs Allen Capital, LLC dba CAC Specialty dba CAC Specialty ("**CAC**") and, together with Marsh, the "**Brokers**") to assist them with the procurement and management of the Insurance Policies. Amounts due to the Marsh for financed policy premiums are paid to it through the Premium Finance Agreement and amounts due to Marsh and CAC for non-financed policy premiums are included in the applicable Insurance Premiums (the "**Brokers' Fees**") paid directly to the Brokers. The employment of the Brokers allows the Debtors to obtain and manage the Insurance Policies in an optimal, economic, reasonable and prudent manner and to realize considerable savings in the procurement of such policies. Accordingly, the Debtors believe that it is in the best interest of the creditors and estates to continue their business relationships with the Brokers. As of the Petition Date, all Brokers' Fees have been paid in full to the Brokers.

68. The Insurance Policies renew on June or July of each year for 12-month terms, and the Insurance Premiums, which are determined annually, are due either in their entirety at policy

inception or in periodic installments throughout the policy term. As described more fully in the Insurance Motion, certain of the Insurance Policies obtained and paid for by the Debtors also benefit the Non-Debtor Entities (the “**Shared Insurance Policies**”).¹⁹ In these instances, the Debtors are the named insured on each Shared Insurance Policy, which in turn provides the Non-Debtor Entities with the necessary insurance coverage. The Debtors’ aggregate annual Insurance Premiums under the Insurance Policies total approximately \$1,672,444,79.²⁰ As of the Petition Date, the Debtors owe approximately \$600,000 on account of the Insurance Premiums and the Brokers’ Fees with respect to Marsh, which are to be paid in equal monthly installments of \$86,854.56 in connection with the Premium Financing described below and in the Insurance Motion.

69. Because it is often not economically advantageous for the Debtors to pay the Insurance Premiums on a lump-sum basis, and in an effort to manage cash flows most efficiently, the Debtors finance approximately \$852,445.79 of certain of their Insurance Premiums as well as the Brokers’ Fees attributable to Marsh, pursuant to a premium financing agreement (the “**Premium Finance Agreement**”) with BankDirect Capital Finance (the “**PFA Lender**”). Pursuant to the Premium Finance Agreement, the PFA Lender received a down payment of \$190,000.00 and receives monthly payments in the amount of \$86,854.56 (the “**Monthly PFA**

¹⁹ In anticipation of the Chapter 11 Cases and prior to the Petition Date, the Non-Debtor Entities made a one-time payment of \$650,000 to the Debtors on account of the Non-Debtor Entities’ allocated portion of the Insurance Premiums previously paid or financed by the Debtors related to the Shared Insurance Policies for the 2020–2021 policy period. During the Chapter 11 Cases, the Debtors will bill and collect from the Non-Debtor Entities on a monthly basis not less than \$39,000 as reimbursement for the Non-Debtor Entities’ share of the Monthly PFA Payment for the remainder of the term of the Premium Financing Agreement. For future policy periods after 2020-2021, the Non-Debtor Entities will directly obtain all of their own insurance policies (the “**Future Non-Debtor Insurance Policies**”) and pay all of the obligations, including any premiums, related to such Future Non-Debtor Insurance Policies (the “**Future Non-Debtor Insurance Obligations**”). For the avoidance of doubt, the Debtors are not seeking authority to pay any Future Non-Debtor Insurance Obligations in the Insurance Motion.

²⁰ This amount does not include a one-time, prepetition payment of approximately \$1 million related to certain run-off coverage under the D&O Policies.

Payment”) in satisfaction of the approximately \$852,444.79 financed under the Premium Finance Agreement and the 4.1% annual interest related thereto.. The Debtors’ obligations under the Premium Finance Agreement are secured by all sums due under the Premium Finance Agreement and any unearned premiums or other amounts that may become payable thereunder.

70. In addition to the Insurance Premiums, under the Debtors’ stock throughput policy with Lloyds of London, the Debtors are required to pay a policy fee (the “**Policy Fees**”) and certain tax/stamp amounts (the “**Insurance Taxes**” and, together with the Monthly Premium Financing Payment and the Policy Fee, the “**PFA Obligations**”), as part of their annual renewal costs. According to the latest Premium Finance Agreement, the annual Policy Fee is approximately \$114.39, and the annual Insurance Taxes are approximately \$3,698.57. As of the Petition Date, all Policy Fees and Insurance Taxes have been paid in full to the applicable counterparties by Bank Direct and are being financed by the Debtors as part of the Premium Financing Agreement.

71. Finally, pursuant to the Insurance Policies, the Debtors are subject to various deductibles or self-insured retention amounts (collectively, the “**Insurance Deductibles**”) depending on the type of claim and insurance policy involved. As of the Petition Date, the Debtors do not believe that any prepetition obligations related to the Insurance Deductibles exist, however, out of an abundance of caution, the Debtors seek the authority, but not the direction, in their sole discretion, to pay any unpaid prepetition Insurance Deductibles that may arise postpetition.

72. I believe that the ordinary course maintenance of their necessary insurance coverage, including paying all Insurance Obligations, satisfying all postpetition commitments to the Insurance Carriers, renewing the Insurance Policies, or entering into new insurance arrangements, without further order of the Court, is necessary and essential to the Debtors’ achievement of their chapter 11 objectives, especially where, as here, the Debtors’ failure to take

all actions necessary to honor their obligations to and preserve their relationships with the Insurance Carriers could have disastrous consequences for the Debtors' estates.

73. Even where coverage is not expressly required by applicable law, the Debtors are nevertheless compelled by sound business practice to maintain essential insurance coverage because the failure to pay such obligations could result in the cancellation of the Insurance Policies, the Debtors' inability to obtain renewal of the Insurance Policies on terms that are as competitive, and the violation of the Operating Guidelines, the various applicable federal and state laws and regulations, various contractual commitments, and the fiduciary duties of the debtors in possession. Each of these outcomes would be detrimental to the Debtors, their creditors, and their estates.

74. I believe that the relief requested in the Insurance Motion is in the best interests of the Debtors' estates, their creditors and all other parties in interest and constitutes a critical element in achieving a successful and smooth transition to chapter 11. Accordingly, on behalf of the Debtors, I respectfully submit that the relief requested in the Insurance Motion should be granted.

*G. Utilities Motion*²¹

75. By the Utilities Motion, the Debtors seek entry of interim and final orders (a) approving an adequate assurance deposit as adequate assurance of postpetition payment to the Utility Providers, (b) establishing procedures for resolving any subsequent requests by the Utility

²¹ The "**Utilities Motion**" means the *Motion of Debtors for Entry of Interim and Final Orders (I) Establishing Procedures for Determining Adequate Assurance of Payment, (II) Finding Utilities Adequately Assured of Payment, (III) Prohibiting Utilities from Altering, Refusing, or Discontinuing Utility Services, and (IV) Granting Related Relief*, filed contemporaneously herewith. Capitalized terms used, but not otherwise defined, in this section shall have the respective meanings ascribed to them in the Utilities Motion.

Providers for additional adequate assurance of payment, (c) prohibiting the Debtors' Utility Providers from altering or discontinuing service, and (d) granting related relief.

76. In the ordinary course of business, the Debtors regularly incur expenses for water, gas, electricity, sewer, waste services, phone and internet services, and other similar services (collectively, the “**Utility Services**”) provided by approximately 15 service providers (collectively, the “**Utility Providers**”).²²

77. The Debtors intend to pay postpetition obligations owed to Utility Providers in a timely manner. The Debtors expect that their cash on hand will be sufficient to timely pay all postpetition obligations owed to the Utility Providers in the ordinary course of business.

78. However, to provide additional adequate assurance to the Utility Providers as required under section 366(c) of the Bankruptcy Code, the Debtors propose to deposit into a segregated account for the benefit of the Utility Providers (the “**Utility Deposit Account**”) an amount equal to two weeks of Utility Services, calculated based on a historical average over the last three months (the “**Adequate Assurance Deposit**”). The aggregate amount of the proposed Adequate Assurance Deposit is approximately \$35,000. The Adequate Assurance Deposit will be held by the Debtors in the Utility Deposit Account for the benefit of the Utility Providers during the pendency of the Chapter 11 Cases.

79. Notwithstanding the Proposed Adequate Assurance, if any Utility Provider believes that additional assurance is required, the Debtors propose that such request be addressed pursuant to the Adequate Assurance Procedures. If the Court does not approve the proposed Additional

²² A non-exclusive list of the Utility Providers and the Utility Services they provide is attached to the Utilities Motion as Exhibit A.

Adequate Assurance Procedures, the Debtors could be forced to address requests from the Utility Providers in a manner that would be detrimental to the value of their estates.

80. Uninterrupted Utility Services are essential to the smooth transition of the Debtors' assets in the Chapter 11 Cases and, therefore, the preservation of the value of the Debtors' estates. Further, as the Debtors look to market and sell their real property assets, uninterrupted Utility Services will be critical to that process, and will help facilitate an efficient transition of these assets to any prospective buyer. Should any Utility Provider alter, refuse or discontinue service, even for a brief period, the Debtors' anticipated expeditious timeline for the Chapter 11 Cases could be severely disrupted. The impact of this disruption on the Debtors' revenue would be harmful and could jeopardize the value of the Debtors' estates.

81. The relief requested in the Utilities Motion will ensure that the Debtors' chapter 11 strategic wind down efforts will not be disrupted. Furthermore, the relief requested provides the Utility Providers with a fair and orderly procedure for addressing requests for additional or different adequate assurance. Without the Adequate Assurance Procedures, the Debtors could be forced to address numerous requests by Utility Providers in an unorganized manner at a critical period in the Chapter 11 Cases and during a time when the Debtors' efforts could be more productively focused on the strategic wind down of the Debtors' estates for the benefit of all parties in interest.

82. I believe that the relief requested in the Utilities Motion is in the best interests of the Debtors' estates, their creditors and all other parties in interest and constitutes a critical element in achieving a successful and smooth transition to chapter 11. Accordingly, on behalf of the Debtors, I respectfully submit that the relief requested in the Utilities Motion should be granted.

H. *Cash Collateral Motion*²³

83. By the Cash Collateral Motion, the Debtors seek entry of interim and final orders (i) authorizing the Debtors to use “cash collateral” (as defined in section 363(a) of the Bankruptcy Code) (“**Cash Collateral**”), on an interim basis and subject to the terms of the Interim Order and in accordance with the Budget, during the period beginning on the date of entry of the Interim Order and ending on the Termination Date; (ii) granting adequate protection to the Prepetition Secured Parties, pursuant to sections 361, 362 and 363(e) of the Bankruptcy Code, for any diminution in the value of their respective interests in the Prepetition Collateral as set forth therein; (iii) modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to permit the Debtors and the Prepetition Secured Parties to implement and effectuate the terms and provisions of the Interim Order and the Final Order; (iv) subject solely to entry of the Final Order, waiving (a) except to the extent of the Carve Out, the Debtors’ ability to surcharge against the Prepetition Collateral or the Adequate Protection Collateral pursuant to section 506(c) of the Bankruptcy Code, or any other applicable principle of equity or law, and (b) the applicability of the “equities of the case” exception under section 552(b) of the Bankruptcy Code; (v) scheduling a final hearing (the “**Final Hearing**”) to consider entry of the Final Order authorizing on a final basis, among other things, the use of Cash Collateral and the provision of adequate protection to the Prepetition Secured Parties; (vi) waiving any applicable stay (including under Bankruptcy Rule 6004) and provision for immediate effectiveness of the Interim Order; and (vii) granting related relief.

²³ The “**Cash Collateral Motion**” means *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors’ Use of Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001 and (IV) Granting Related Relief*, filed contemporaneously herewith. Capitalized terms used, but not otherwise defined, in this section shall have the respective meanings ascribed to them in the Cash Collateral Motion.

84. The Debtors' Prepetition Secured Obligations are secured by the Prepetition First Priority Liens, the Prepetition Second Priority Liens, and the Wingfoot Liens, as applicable and subject to the respective Intercreditor Agreements, in substantially all of the Prepetition Collateral, including Cash Collateral.

85. The Debtors require immediate access to liquidity to ensure that they are able to continue their strategically planned wind down during these Chapter 11 Cases, including funding the potential sale or other disposition of all or substantially all of the Debtors' assets, including the Specified Assets. Substantially all of the Debtors' total cash on hand as of the Petition Date is subject to the liens of the Prepetition Secured Parties and thus constitutes Cash Collateral. The Debtors have determined that this existing cash, together with cash generated from operations and from proceeds of the sale of the Specified Assets, including the Wingfoot Property in excess of the Wingfoot Cap, made available under the Budget, will be sufficient to operate their businesses and continue paying their debts as they come due. The consensual use of Cash Collateral will save the Debtors significant interest and potential fees and costs that would be incurred if the Debtors had to secure traditional debtor-in possession financing.

86. Absent authority to use Cash Collateral, even for a limited period of time, the Debtors' would be unable to fund operations necessary to effectuate their wind down and asset sales, causing immediate and irreparable harm to the Debtors, their respective estates, and their creditors. Accordingly, the use of Cash Collateral is critical to maximize the value of the Debtors' estates.

87. During the interim period, the Debtors will fund operations and costs of administering their estates in accordance with the Initial Budget, a copy of which is annexed to the Interim Order as Exhibit A thereto. Thereafter, the Debtors will seek authority to use Cash

Collateral in accordance with the Final Order, a proposed form of which will be submitted to the Court before the Final Hearing on the Cash Collateral Motion.

88. During the 13-week Budget Period commencing on the Petition Date, the Debtors have agreed to use Cash Collateral in accordance with the Initial Budget. Every two weeks (beginning the first two full weeks after the Petition Date), the Debtors shall provide a Budget Variance Report to the First Lien Agent, the Second Lien Agent, and their respective counsel from the previous two weeks comparing the actual cash receipts and disbursements of the Debtors with the receipts and disbursements in the applicable Budget. The Budget Variance Report shall include, among other things, (a) details regarding amounts paid under any order of the Court (other than postpetition claims paid in the ordinary course of the Debtors' business); (b) a detailed comparison, including commentary, of each week's performance against the Budget; (c) a detailed comparison, including commentary, of aggregate performance since the commencement of the Budget against such Budget; (d) any and all transfers, distributions, dividends, payments, contributions, incurrence of any obligations by any Debtor to or for the benefit of any affiliate (other than to any other Debtor), including any intercompany or affiliate transactions with any non-Debtor affiliate; and (e) any payments on account of any employee retention and/or incentive plan. Subject to the ability of the First Lien Agent and the Second Lien Agent to allow any variance in their respective sole discretion, the Debtors shall not allow "Total Operating Disbursements," or "Prof-Restructuring" (other than (x) adequate protection payments under the Interim Order, or (y) any employee retention or incentive payments that have been authorized in writing by the First Lien Agent and the Second Lien Agent in their respective sole discretion, which (x) and (y) shall be excluded from "Total Operating Disbursements") to have an unfavorable variance of 10% or more from the applicable line item in the Budget for the relevant Testing Period; provided,

however, that in no event shall any deviation in the amount of fees and/or expenses of the Prepetition Secured Parties or any of their respective professionals that is in excess of the amounts set forth in the Budget for such parties be included in the calculation of a budget variance and any such amounts in excess of those set forth in the Budget for such parties shall be excluded when calculating the applicable variance thereunder. The Debtors are required to expend Cash Collateral and proceeds thereof in accordance with the purposes, and in the time periods set forth in the Budget.

89. In exchange for the Prepetition Secured Parties' consent to the Debtors' use of Cash Collateral, the Debtors have agreed to, among other things, provide adequate protection to the Prepetition Secured Parties. As adequate protection for any Collateral Diminution of the First Lien Secured Parties' interest in the Prepetition Collateral, the First Lien Secured Parties are granted (i) the First Lien Superpriority Claim, subject and subordinate only to the First Lien Carve Out, (ii) the First Lien Adequate Protection Liens, subject and subordinate only to the First Lien Carve Out and the Permitted Prior Liens, (iii) payment of postpetition interest, in cash, when due and payable under, and pursuant to the terms of the First Lien Credit Agreement, and (iv) payment of (a) all fees, including any contractual agency fees, of the First Lien Agent set forth in the First Lien Credit Agreement on the respective dates for the payment of all such fees as provided in the First Lien Credit Agreement, and (b) all reasonable and documented out-of-pocket costs of the First Lien Agent, including the fees, disbursements and other charges of the First Lien Agent Professionals. As adequate protection for any Collateral Diminution of the Wingfoot Secured Parties' and Second Lien Secured Parties' interests in the Wingfoot Property and Prepetition Second Lien Collateral, respectively, the Wingfoot/Second Lien Secured Parties are granted (i) the Wingfoot/Second Lien Superpriority Claim, subject and subordinate only to the Carve Out, the

First Lien Superpriority Claim and the Prepetition First Lien Secured Obligations, (ii) the Wingfoot/Second Lien Adequate Protection Liens, subject and subordinate only to the Carve Out, Permitted Prior Liens, First Lien Adequate Protection Liens and the Prepetition First Priority Liens, and subject further to the Intercreditor Agreements (as applicable); and (iii) subject to certain limitations set forth in the Interim Order payment of (a) all fees, including any contractual agency fees, of the Second Lien Agent set forth in the Second Lien Credit Agreement on the respective dates the payment of all such fees as provided in the Second Lien Credit Agreement and (b) all reasonable and documented out-of-pocket costs of the Second Lien Agent, including the fees, disbursements and other charges of the Second Lien Agent Professionals. Finally, the Debtors have also agreed to provide certain other adequate protection in the form of Sales Milestones and Other Covenants, each as set forth in the Interim Order.

90. I believe that the adequate protection provided to the Prepetition Secured Parties is fair and reasonable under the circumstances, and I believe that the Debtors' use of Cash Collateral, as set forth in the Budget, is reasonable under the circumstances and necessary for the Debtors to faithfully prosecute these Chapter 11 Cases.

I certify under penalty of perjury that the foregoing is true and correct based upon my knowledge, information and belief as set forth in this Declaration.

Dated: September 9, 2020
Houston, Texas

/s/ Bryan Gaston
Bryan Gaston
Proposed Chief Restructuring Officer

Exhibit A

Corporate Organizational Chart

Corporate Organizational Chart

