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Honorable Frank L. Kurtz
Chapter 11
Hearing Date: June 13, 2019
Hearing Time: 10:30 a.m.

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11 UNITED STATES BANKRUPTCY COURT
12 EASTERN DISTRICT OF WASHINGTON

13 In re
14 ASTRIA HEALTH, *et al.*,
15 Debtors.¹

Case No. 19-01189-FLK11
RESPONSE TO OFFICIAL
COMMITTEE OF UNSECURED
CREDITORS' OBJECTION TO
DEBTORS' MOTION FOR FINAL
ORDER AUTHORIZING POST-
PETITION FINANCING, USE OF
CASH COLLATERAL AND
RELATED RELIEF

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20 UMB Bank, N.A., as bond trustee, and Lapis Advisers, LP, as agent (together,
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22 ¹ The Debtors, along with their case numbers, are as follows: Astria Health
23 (19-01189-11), Glacier Canyon, LLC (19-01193-11), Kitchen and Bath Furnishings,
24 LLC (19-01194-11), Oxbow Summit, LLC (19-01195-11), SHC Holdco, LLC (19-
25 01196-11), SHC Medical Center-Toppenish (19-01190-11), SHC Medical Center-
26 Yakima (19-01192-11), Sunnyside Community Hospital Association (19-01191-
11), Sunnyside Community Hospital Home Medical Supply, LLC (19-01197-11),
Sunnyside Home Health (19-01198-11), Sunnyside Professional Services, LLC (19-
01199-11), Yakima Home Care Holdings, LLC (19-01201-11), and Yakima HMA
Home Health, LLC (19-19-01200-11).



1 the “Lenders”), make this filing in response to the Committee’s “objection” to the
2 “*Emergency Motion of Debtors for Final Order (I) Authorizing the Debtors to*
3 *Obtain Postpetition Financing; (II) Granting Security Interests and Superpriority*
4 *Administrative Expense Status; (III) Granting Adequate Protection to Certain*
5 *Prepetition Secured Credit Parties; (IV) Modifying the Automatic Stay; (V)*
6 *Authorizing the Debtors to Enter into Agreements with JMB Capital Partners*
7 *Lending, LLC; (VI) Authorizing Use of Cash Collateral; and (VII) Granting Related*
8 *Relief*” [Docket No. 15] (the “Financing Motion”).

12 **BACKGROUND**

13 The Lenders filed an objection to the Financing Motion based on, among other
14 grounds, the Debtors’ failure to provide mandatory adequate protection for the
15 Lenders’ interests in the Debtors’ assets, including cash collateral. *See “Objections*
16 *to Debtors’ Motion for Final Order Authorizing Post-Petition Financing, Use of*
17 *Cash Collateral and Related Relief*” [Docket No. 226] (the “Lenders’ Objection”).²

18
19 The Committee filed an “objection” to the Financing Motion too [Docket No.
20 224] (the “Committee Objection”). Though styled as an objection to the Financing
21 Motion, the Committee Objection does not actually oppose the Financing Motion.
22 The Committee Objection instead attacks certain adequate protection that is required
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26 ² Unless otherwise defined herein, all capitalized terms have the meaning ascribed to such terms as in the Lenders’ Objection.

1 in these cases. The Committee first argues the Lenders are adequately protected by
2 (a) an alleged equity cushion on the Lapis Prepetition Collateral; (b) replacement
3 liens; and (c) a limited administrative expense superpriority claim that carves out
4 potentially material property of the estate. The Committee argues that the Lenders’
5 requests for any adequate protection beyond these terms should be denied.
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8 Given the apparent pivot to a “battle of forms” in connection with the
9 Financing Motion, a proposed form of Final Order that would be acceptable to the
10 Lenders as it relates to adequate protection issues is attached as Exhibit A.
11

12 ARGUMENT

13 **A. The Lenders are not Adequately Protected**

14 The Committee argues that the Debtors have demonstrated the Lenders are
15 adequately protected as required by the Bankruptcy Code. *See Committee*
16 *Objection*, pp. 7-15. The Committee’s arguments on these adequate protection
17 points are a rehash of, and present nothing new to, the Debtors’ “equity cushion”
18 arguments. For the reasons set forth in the Lenders’ Objection, the Court should
19 find that the Lenders are not adequately protected and, therefore, should condition
20 relief on the Financing Motion on the consent terms set forth in the Lenders’
21 Objection.
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1 **B. The Described Adequate Protection is Necessary and Appropriate**

2 The adequate protection described in the Lenders’ Objection is typical in
3 hospital and similar bankruptcy cases around the country – including cases involving
4 the same firm that has been proposed as counsel for the Committee and the Debtor.
5 The Committee incorrectly argues that any “additional” adequate protection to the
6 Lenders beyond what the Debtors have already offered is “unnecessary” in these
7 chapter 11 cases. Committee Objection, p. 15.

10 **1. Replacement Liens are not Sufficient.**

11 The Committee wrongly suggests that replacement liens should suffice in
12 these cases since they include post-petition accounts receivable that are otherwise
13 excluded from the Lenders’ collateral under Bankruptcy Code Section 552.
14 Committee Objection, p. 14. The Committee omits any financial detail to support
15 its assertion that material “new assets” will in fact be subject to the replacement lien
16 or that those assets will be remotely sufficient. The Committee ignores both the
17 priming features of the proposed DIP loan, and, more importantly, the reality that
18 the Debtors’ post-petition accounts receivable are unlikely to cover more than the
19 accounts receivable that existed as of the petition date (and are part of the Lenders’
20 existing collateral) that are being consumed in these cases (if they are even sufficient
21 to do that).

1 **2. The Committee’s Suggested Superpriority Claims are not**
2 **Sufficient.**

3 The Committee’s argument that the Lenders are receiving adequate protection
4 through a truncated Section 507(b) claim is also wrong. The Lenders’ claims are
5 secured by substantially all of the Debtors’ assets. The Lenders’ concerns with the
6 shortcomings of any superpriority claim are similar to their concerns with any
7 replacement liens; it is speculative any assets with material value may exist to satisfy
8 any Section 507(b) claims the Lenders may have in these cases.
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10

11 The Court should reject the Committee’s efforts to carve out assets from the
12 funds or claims against which the Lenders do have recourse if a Section 507(b) claim
13 is made. The Committee suggests that “Excluded Avoidance Actions” and
14 “Commercial Tort Claims”³ are entitled to special status that should prevent the
15 Lenders from asserting superpriority administrative claims against them.
16
17 Committee Objection, p. 19. The Committee asserts that “avoidance actions and
18 proceeds may provide a key source of recovery for the unsecured creditors.” Id., p.
19 20. The Committee argues that Commercial Tort Claims should be pursued for the
20 benefit of unsecured creditors because the “pre-petition actions of the Debtors’
21 accounts receivable vendor were a significant contributing factor in the Debtors’
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25 ³ The Lenders also reserve all rights concerning the Committee’s clear attempt
26 to mis-characterize the Debtors’ breach of contract and related claims against its
incumbent revenue cycle vendor as “commercial torts”.

1 need to file for chapter 11 protection and the vendor's actions directly harmed the
2 Debtors' unsecured creditors[.]” Id.
3

4 The carve out the Committee suggests “rewrites” the priorities set forth in
5 Section 507(b) of the Bankruptcy Code. Section 507(b) provides that:
6

7 If the trustee [or debtor in possession], under section 362, 363, or 364
8 of this title, provides adequate protection of the interest of a holder of a
9 claim secured by a lien on property of the debtor and if, notwithstanding
10 such protection, such creditor has a claim allowable under subsection
11 (a)(2) of this section arising from the stay of action against such
12 property under section 362 of this title, from the use, sale, or lease of
13 such property under section 363 of this title, or from the granting of a
14 lien under section 364(d) of this title, then such creditor's claim under
15 such subsection shall have priority over every other claim allowable
16 under such subsection.

17 11 U.S.C. § 507(b). The Bankruptcy Code is absolute in granting superpriority
18 status if there is a failure of adequate protection for the Lenders' collateral position.
19 It does not recognize exclusions as the Committee suggests. Section 507(b) provides
20 a safety net when adequate protection otherwise fails. The Court should deny the
21 Committee's attempt to punch holes in that safety net and legislate changes to the
22 Bankruptcy Code.

23 Avoidance actions and litigation claims are indistinguishable from other
24 resources for adequate protection purposes. Many courts, for example, including
25 courts in the 9th circuit, have held that adequate protection can include superpriority
26 claims and even liens on avoidance actions. *See In re Furr*s, 294 B.R. 763 (D.N.M.

1 2003) (recognizing bankruptcy court’s grant of liens on debtor’s avoidance claims);
2 *In re Motors Liquidation Co.*, 460 B.R. 603 (Bankr. S.D.N.Y. 2011) (“there is no
3 hard and fast prohibition against granting liens on avoidance actions or granting
4 superpri[ority] claims that would have the same economic substance”); *In re MF*
5 *Global Holdings, Ltd*, 2011 Bankr. LEXIS 4911, 14 (Bankr. S.D.N.Y. December 4,
6 2011) (providing in final cash collateral order that “[s]uperpriority [c]laims shall be
7 payable from all property of the Debtors’ estates, including (without limitation) from
8 the proceeds of any avoidance actions”); *In re Applied Theory Corp.*, 2008 Bankr.
9 LEXIS 1373, 3 (Bankr. S.D.N.Y. April 24, 2008) (proceeds of avoidance actions
10 can be encumbered “or made available to satisfy superpriority claims”); *In re*
11 *Qualitech Steel Corp.*, 276 F.3d 245 (7th Cir. 2001) (recognizing bankruptcy court’s
12 grant of liens on avoidance actions); *Mellon Bank, N.A. v. Dick Corporation*, 351
13 F.3d 290 (7th Cir 2003) (in related case, upholding bankruptcy court power to grant
14 adequate protection liens in avoidance actions); *Unsecured Creditors’ Comm. v.*
15 *Jones Truck Lines, Inc.*, 156 B.R. 608 (W.D. Ark. 1992) (approving liens on
16 avoidance actions as adequate protection for use of cash collateral).
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23 The Lenders’ rights to assert claims under Section 507(b) against all potential
24 debtor resources is appropriate here as a matter of fairness because it is far from clear
25 that the *status quo* will be maintained with respect to the Lenders’ security interests
26

1 in the Debtors' assets given the proposed priming liens to the DIP Lender and the
2 Debtors' financial condition. The Committee's suggested limits on the recourse for
3 507(b) claims could result in an inappropriate scenario where the Lenders' have
4 unsatisfied 507(b) claims and there are funds in the estate from these "carved out"
5 assets, yet the Lenders are deprived of access to those assets.
6
7

8 It bears emphasis that the Lenders are only seeking a superpriority claim, and
9 Section 507(b) applies, to the extent their prepetition collateral position is harmed.
10 Pending that determination, the adequate protection requested by the Lenders in the
11 form of a full Section 507(b) claim, as contemplated by Section 507(b), is necessary
12 and required to protect the Lenders from diminution in the value of their collateral.
13 *In re Carbone Companies, Inc.*, 395 B.R. 631, 635 (Bankr. N.D. Ohio 2008)
14 (observing that if a debtor's proposed protections do not adequately preserve the
15 creditor's interest in the cash collateral as it existed on the petition filing date, then
16 the creditor is not adequately protected).
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20 **3. The Lenders Should not Face Additional Surcharge or Equities of**
21 **the Case Threats.**

22 The Committee argues that despite the carve out for estate professionals and
23 other purposes as reflected in the Financing Motion, the significant priming liens,
24 and other features of the proposed DIP loan, the Lenders' collateral should remain
25 subject to even further surcharge under Section 506(c) and claims that the Lenders'
26

1 liens should be limited under the “equities of the case” exception under Section 552.
2 See Committee Objection, pp. 16-19. The Committee argues that relief from these
3 threats is “not appropriate in these cases”. Id., p. 18.
4

5 The Lenders’ requests for relief from further surcharge under these terms is
6 “market” for cases of this type. See *In re Aceto Corporation, et al.*, Case No. 19-
7 13448, Docket No. 141, ¶¶ 44, 46 (Bankr. D. N.J. Mar. 15, 2019); *In re Ocean*
8 *Services, LLC, et al.*, Case No. 18-13512, Docket No. 150, ¶¶ 4, 5(h) (Bankr. W.D.
9 Wash. Dec. 13, 2018); *In re Promise Healthcare Group, LLC, et al.*, Case No. 18-
10 12491, Docket No. 218, ¶¶ 45, 47 (Bankr. D. Del. Dec. 4, 2018).⁴
11

12 This relief is especially critical here since if granted on a final basis, the
13 Financing Motion will already permit a raid on the Lenders’ existing secured
14 property interests for more than \$14.7 million of principal in additional DIP loans,
15 \$360,000 per month in interest (assuming a full draw on the proposed \$36 million),
16 penalties (including a \$3.6 million fee if the loan is not paid off by December 31,
17 2019), charges (including more than \$1 million in commitment fees and funding
18 fees), and other fees (including a \$1.8 million exit fee). The Lenders should not be
19 subject to further raids on their collateral under Section 506(c) or 552.
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25 ⁴ For convenience, copies of orders cited herein that are not included with
26 citations to LEXIS or otherwise are attached as Exhibit B. A hard copy binder
containing the Exhibit B documents is also being transmitted to the Court for
delivery prior to the June 13 hearing.

1 **4. Any Committee Investigation or Challenge to the Lenders’ Claims**
2 **Should be Subject to Customary Restrictions**

3 Any Committee investigation or challenge of the Lenders’ claims should be
4 subject to customary restrictions. The Committee Objection includes a proposed
5 order that would provide the Committee virtually unlimited access to the Lenders’
6 Cash Collateral to fund attacks on the Lenders’ position and virtually unlimited time
7 to assert those challenges. See Committee Objection at Exhibit A. The Committee
8 argues it “must be afforded an adequate time period and budget” to investigate the
9 Lenders’ liens and claims against the Debtors. Committee Objection, p. 21. The
10 Committee further argues that any “challenge deadlines” should not be applicable to
11 “[a]ny other claims or causes of action that the Debtors’ estates may have against
12 the [Lenders].” Id.

13
14 There is nothing novel about common sense restrictions on the Committee’s
15 rights to investigate and pursue any claims against the Lenders in these cases.
16 Common sense restrictions on the Committee’s rights to investigate and pursue
17 claims against the Lenders are consistent with similar orders in other cases, including
18 orders from cases where the committee was represented by the same firm that has
19 been proposed as counsel for the Committee in this case. See, e.g., *In re Ocean*
20 *Services, LLC, et al.*, Case No. 18-13512, Docket No. 150, ¶ 5(a) (Bankr. W.D.
21 Wash. Dec. 13, 2018) (providing that “[n]o Prepetition Credit Agreement Collateral

1 and no part of the Professional Fund” may be used to challenge a claim or lien
2 “arising under the Prepetition Credit Agreement loan documents” or to assert any
3 claim against the debtors’ prepetition secured lender); *In re Seattle Proton Center,*
4 *LLC*, Case No. 18-14380, ¶ 8 (Bankr. E.D. Wash. Nov. 19, 2018) (providing that the
5 debtor releases any and all claims against its prepetition secured lender as of the date
6 of that order); *In re Door to Door Storage, Inc.*, Case No. 16-15618, Docket No.
7 160, ¶ 8 (Bankr. W.D. Wash. Jan. 19, 2017) (providing that a secured creditor’s
8 collateral cannot be used to challenge the creditor’s claim or lien, or to assert any
9 claim against the creditor); *In re Aceto Corporation, et al.*, Case No. 19-13448,
10 Docket No. 141, ¶ 40 (Bankr. D. N.J. Mar. 15, 2019) (limits the funds available to
11 the committee to undertake an investigation of prepetition secured parties); *In re*
12 *Promise Healthcare Group, LLC, et al.*, Case No. 18-12491, Docket No. 218, ¶ 40
13 (Bankr. D. Del. Dec. 4, 2018 (limiting the monies available to fund the committee’s
14 investigation). The Lenders should not be required to fund an open checkbook in
15 connection with any investigation or prosecution of claims against them. The
16 Lenders made an initial suggestion of a \$20,000 investigation budget. The
17 Committee has not attempted to negotiate any specific budget for these purposes.

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24 The Lenders propose the following provision in any further order on the
25 Financing Motion to resolve these issues:
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1 Investigation Period and Challenge. Notwithstanding any other term of
2 this Order, an adversary proceeding or contested matter challenging the
3 amount of the Outstanding Lapis 2017 Loan Obligations or
4 Outstanding Lapis 2019 Loan Obligations, the validity, extent,
5 enforceability, perfection, or priority of the Lapis Secured Parties'
6 security interests and liens in respect thereof, or otherwise asserting any
7 claims or causes of action against the Lapis Secured Parties, on behalf
8 of the Debtors' estates (a "Challenge"), may be filed by any Committee
9 no more than seventy-five (75) days after the Petition Date (such period
10 of time, the "Investigation Period"). Any Committee shall be and is
11 hereby granted standing and authority to file a Challenge raising any
12 and all claims and defenses relating thereto. To the extent no Challenge
13 against the Lapis Secured Parties is commenced during the
14 Investigation Period then (i) any repayment of the Debtors' obligations
15 to the Lapis Secured Parties shall be deemed final and indefeasible, not
16 subject to subordination or recharacterization, and otherwise
17 unavoidable, (ii) the Lapis Secured Parties' claims against the Debtors
18 under the applicable 2017 Lapis Loan Documents and 2019 Lapis Loan
19 Documents shall constitute allowed claims, not subject to
20 subordination, offset, recoupment, recharacterization, and otherwise
21 unavoidable, for all purposes in the Chapter 11 Cases and any
22 subsequent Chapter 7 case or cases, (iii) the Lapis Secured Parties' liens
23 on Lapis Prepetition Collateral shall be deemed legal, valid, binding,
24 perfected, not subject to defense, counterclaim, offset of any kind,
25 subordination and otherwise unavoidable, (iv) the Lapis Secured
26 Parties' liens on Lapis Prepetition Collateral and claims shall not be
subject to any other or further claims, causes of action, or challenges by
any party in interest including, without limitation, any successor
thereto; and (v) the Lapis Secured Parties and their affiliates, agents,
attorneys, officers, directors, and employees, shall be deemed released
of all claims and/or causes of action by, and liabilities owing to, the
Debtors, any Committee, the Debtors' estates, all parties in interest, and
any subsequently appointed trustee arising out of or based on any facts
or circumstances occurring prior to the date hereof; provided that if one
or more claims are timely under this Paragraph and properly filed, then
except for such claims, all other potential claims and causes of action
are hereby deemed forever waived and barred.

1 **5. The Lenders are Entitled to Adequate Protection Interest**
2 **Payments**

3 The Lenders should receive adequate protection payments as well. Courts
4 have recognized that adequate protection may include periodic payments of amounts
5 due on obligations such as the obligations owed to the Lenders here. *See In re*
6 *Calpine Corp.*, 365 B.R. 392, 397 (Bankr. S.D.N.Y. 2007); *In re Revco D.S., Inc.*,
7 901 F.2d 1359 (6th Cir. 1990) (acknowledging lower court’s approval of adequate
8 protection that included payments on prepetition bonds). Adequate protection
9 payments are appropriate under the circumstances of these cases.
10

11 The Committee’s primary issue appears to be that “a draw on the DIP
12 Financing will be extremely costly to the Debtors’ estates[.]” Committee Objection,
13 p. 16. Tellingly, the Committee does not object to the Debtors’ entry into such an
14 “extremely costly” loan *per se*. The Debtors in fact indicated at the May 8, 2019
15 hearing on the Financing Motion that the Debtors intend to draw the full \$36 million
16 regardless of whether it is needed. *See Hearing Transcript*, at p. 1.⁵ With the Debtors
17 planning to draw the DIP loan balance anyway, the Committee’s position is
18 meaningless.
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20 Postpetition payments are otherwise a common form of adequate protection,
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22 ⁵ The hearing transcript is an exhibit to the Lenders’ Objection.
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1 both in Washington State and elsewhere. *See In re Soas, LLC*, Case No. 19-10928,
2 Docket No. 36, ¶ 5(vii) (Bankr. W.D. Wash. April 1, 2019) (providing monthly
3 interest payments as part of the adequate protection to a lender on account of the
4 debtor’s use of cash collateral); *In re Ocean Services, LLC, et al.*, Case No. 18-
5 13512, Docket No. 150, ¶ 5(a) (Bankr. W.D. Wash. Dec. 13, 2018) (same); *In re The*
6 *Dry Eye Company, LLC*, Case No. 18-12353, Docket No. 29, ¶ 2(f) (Bankr. W.D.
7 Wash. July 6, 2018) (providing monthly payments as part of adequate protection for
8 use of cash collateral); *In re Ries Productions LLC*, Case No. 18-10636, Docket No.
9 24, ¶ 3(a) (Bankr. W.D. Wash. Feb 23, 2018) (providing monthly adequate
10 protection payments in the form of “all current debt service payments”); *In re*
11 *Morehead Memorial Hospital*, Case No. 17-10775, Docket No. 480, ¶ 10(a) (Bankr.
12 M.D. N.C. Dec. 21, 2017) (providing interest payments to secured creditor as part
13 of adequate protection for the use of cash collateral); *In re Door to Door Storage,*
14 *Inc.*, Case No. 16-15618, Docket No. 160, ¶ 5(a) (Bankr. W.D. Wash. Jan. 19, 2017)
15 (providing interest payments to secured creditor as part of adequate protection for
16 the use of cash collateral); *In re Aceto Corporation, et al.*, Case No. 19-13448,
17 Docket No. 141, ¶ 16 (Bankr. D. N.J. Mar. 15, 2019) (providing adequate protection
18 payments to prepetition lenders in the form of, *inter alia*, accrued and unpaid fees
19 and interest).

1 More importantly, the Committee ignores Section 506, which entitles the
2 Lenders to postpetition interest on their claims if, as the Debtors and the Committee
3 argue, the Lenders are oversecured. If the Debtors are permitted to impose the
4 proposed financing on the Lenders on the purported basis that the Lenders are
5 oversecured, the Lenders should receive the postpetition interest to which they are
6 entitled under the Bankruptcy Code.
7
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9 **6. The Committee’s Remaining Objections Should be Overruled**

10 Finally, the Court should reject the hodgepodge of other complaints raised by
11 the Committee concerning the Lenders’ adequate protection needs and the Lenders’
12 ability to raise these arguments in the context of the June 2019 hearing. For the
13 reasons specified in the Lenders’ Objection, the Lenders’ objections to the Financing
14 Motion are appropriate in the context of the anticipated hearing, and the Lenders are
15 willing to consent to the Financing Motion, but only if appropriate adequate
16 protection is given.
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20 **RESERVATION OF RIGHTS**

21 The Lenders reserve all rights to supplement and/or amend the foregoing
22 arguments at any time prior to the Final Hearing.
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1 CONCLUSION

2 WHEREFORE, the Lenders request that the Court (i) condition and otherwise
3
4 limit relief on the Financing Motion in order to provide the Lenders with the forms
5 of adequate protection requested in the Lenders’ Objection; (ii) overrule the
6 Committee’s Objection; and (iii) grant such further relief as the Court deems
7 appropriate.
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9 [signatures follow]
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2 DATED this 11th day of June, 2019.
3

4 MILLER NASH GRAHAM & DUNN LLP

5
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88430865v.4

Exhibit A

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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON**

IN RE:

ASTRIA HEALTH, et al.

Debtors.¹

Lead Case No. 19-01189-11

Jointly Administered

INTERIM/FINAL ORDER (I) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING; (II) GRANTING SECURITY INTERESTS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS; (III) GRANTING ADEQUATE PROTECTION TO CERTAIN PREPETITION SECURED CREDIT PARTIES; (IV) MODIFYING THE AUTOMATIC STAY; (V) AUTHORIZING THE DEBTORS TO ENTER INTO AGREEMENTS WITH JMB CAPITAL PARTNERS LENDING, LLC; (VI)

¹ The Debtors, along with their case numbers, are as follows: Astria Health (19-01189-11), Glacier Canyon, LLC (19-01193-11), Kitchen and Bath Furnishings, LLC (19-01194-11), Oxbow Summit, LLC (19-01195-11), SHC Holdco, LLC (19-01196-11), SHC Medical Center-Toppenish (19-01190-11), SHC Medical Center-Yakima (19-01192-11), Sunnyside Community Hospital Association (19-01191-11), Sunnyside Community Hospital Home Medical Supply, LLC (19-01197-11), Sunnyside Home Health (19-01198-11), Sunnyside Professional Services, LLC (19-01199-11), Yakima Home Care Holdings, LLC (19-01201-11), and Yakima HMA Home Health, LLC (19-19-01200-11)..

Interim DIP/Cash Collateral Order

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**AUTHORIZING USE OF CASH COLLATERAL;
~~AND (VII) SCHEDULING A FINAL HEARING
AND (VIII) GRANTING RELATED RELIEF~~**

1
2 THIS MATTER having come before the Court upon the motion (the
3 “**Motion**”)² of the above-captioned debtors (the “**Debtors**” or the “**Borrowers**”) in
4 the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), pursuant to
5 sections 105, 361, 362, 363, 364 and 507 of title 11 of the United States Code, (11
6 U.S.C. §§ 101 *et seq.*, as amended, the “**Bankruptcy Code**”), Rules 2002 and 4001
7 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and
8 Rules 2002-1 and 4001-3 of the Local Bankruptcy Rules of the United States
9 Bankruptcy Court for the Eastern District of Washington (“**LBR**”), seeking entry
10 of an interim order (the “**Interim Order**”) and a final order (the “**Final Order**”)
11 granting *inter alia*:

12 i. authority, pursuant to sections 105, 363, and 364(c) and 364(d) of the
13 Bankruptcy Code, for each of the Debtors, jointly and severally, to obtain senior
14 secured ~~postpetition~~postpetition financing (“**DIP Facility**”) in an aggregate
15 principal amount of up to \$36 million (of which (x) \$28 million (the “**Interim**
16 **Advance**”) ~~shall be~~was made available to the Debtors upon entry of ~~this~~the Interim
17 Order upon satisfaction or waiver of the borrowing conditions set forth in the DIP
18 Loan Documents (as defined below) and ~~may be drawn in a single draw on the~~
19

20 ² Unless stated otherwise, capitalized terms used but not otherwise defined herein
21 shall have the meanings ascribed to them in the Motion or the DIP Loan
Agreement (as defined below), as applicable.

1 ~~Closing Date and (y) subject to entry of the Final Order,~~(y) the balance shall be
2 made available to the Debtors upon entry of this Final Order at intervals and in
3 amounts set forth in the DIP Loan Agreement (as defined below));

4 ii. authority (a) for the Debtors to enter into that certain Senior Secured,
5 Super-Priority Debtor-in-Possession Loan and Security Agreement, among the
6 Debtors as Borrowers, the non-filing affiliates of the Debtors party thereto as
7 guarantors, and JMB Capital Partners Lending, LLC, as Lender (the “**DIP**
8 **Lender**”) in substantially the same form as attached hereto as **Exhibit 1** (as
9 amended, restated, supplemented or otherwise modified from time to time in
10 accordance with the terms thereof, the “**DIP Loan Agreement**” and, together with
11 any ancillary, collateral or related documents and agreements, the “**DIP Loan**
12 **Documents**”);

13 iii. authority for the Debtors to use the DIP Facility and the proceeds
14 thereof in accordance with the DIP Loan Documents to (a) fund the post-petition
15 working capital needs of the Debtors during the pendency of the Chapter 11 Cases,
16 (b) pay fees, costs and expenses of the DIP Facility on the terms and conditions
17 described in the DIP Loan Documents, (c) pay all Outstanding Prepetition Banner
18 Bank Obligations and Outstanding Prepetition MidCap Obligations (each as
19 defined below) and (d) pay the allowed administrative costs and expenses of the
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1 Chapter 11 Cases, in each case, solely in accordance with the DIP Loan Documents
2 (including the Budget), ~~this~~the Interim Order, and ~~the~~this Final Order;

3 iv. authority for the Debtors to grant to the DIP Lender valid, enforceable,
4 non-avoidable, automatically and fully perfected security interests, liens and
5 superpriority claims, including allowed superpriority administrative expense claims
6 pursuant to sections 364(c)(1) and 507(b) of the Bankruptcy Code, subject only to
7 the Carve-Out and liens pursuant to sections 364(c)(2), 364(c)(3) and 364(d)(1) of
8 the Bankruptcy Code in the DIP Collateral (as defined below) (and all proceeds
9 thereof), including, without limitation, all property constituting “Cash Collateral,”
10 as defined in section 363(a) of the Bankruptcy Code, (“**Cash Collateral**”), to
11 secure all DIP Obligations (as defined below), as more fully set forth in this
12 ~~Interim~~Final Order, subject only to the Carve-Out (as defined below);

13 v. ~~subject to and only effective upon entry of the Final Order,~~ waiver by
14 the Debtors of all rights to surcharge against the collateral of the DIP Lender and
15 Lapis Secured Parties pursuant to section 506(c) of the Bankruptcy Code;

16 vi. ~~subject to and only effective upon entry of the Final Order,~~ waiver of
17 the equitable doctrine of marshaling or any other similar doctrine with respect to
18 any collateral of the DIP Lender;

19 vii. providing adequate protection to the Lapis Secured Parties to the
20 extent set forth herein;

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1 viii. modification of the automatic stay to the extent hereinafter set forth
2 and waiving the 14-day stay provisions of Bankruptcy Rules 4001(a)(3) and
3 6004(h); ~~ix. the scheduling of a final hearing (the “Final Hearing”) on the Motion~~
4 ~~for June 4, 2019, at 10:00 am (Pacific Time) to consider entry of the Final Order~~
5 ~~inter alia, authorizing borrowings under the DIP Facility on a final basis and~~
6 ~~approving notice procedures with respect thereto; and~~

7 ix. ~~*~~related relief.

8 The Court having considered the Motion and the exhibits attached thereto,
9 the evidence submitted or adduced and the arguments of counsel made at the
10 interim hearing held on May 8, 2019 (the “Interim Hearing”) and the final hearing
11 held on June 13, 2019 (the “Final Hearing”) and having found that due and proper
12 notice (the “Notice”) of the Motion the Interim Hearing and the ~~Interim~~Final
13 Hearing having been served by the Debtors in accordance with Bankruptcy Rule
14 4001 and 9006 and LBR 2002-1 on (i) the Office of the United States Trustee for
15 the Eastern District of Washington, (ii) counsel for the Prepetition Secured
16 Creditors, (iii) counsel for the DIP Lender, (iv) all alleged secured creditors, (v)
17 counsel for the Committee (defined below), (vi) the thirty largest general unsecured
18 creditors appearing on the list filed in accordance with Bankruptcy Rule 1007(d),
19 and (vii) any parties requesting special notice; and the ~~Interim~~Final Hearing to
20 consider the ~~interim~~final relief requested in the Motion having been held and
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1 concluded; and all objections, if any, to the interimfinal relief requested in the
2 Motion having been withdrawn, resolved or overruled by the Court; and it
3 appearing to the Court that granting the interim relief requested is necessary to
4 avoid potential immediate and irreparable harm to the Debtors and their estates and
5 otherwise is fair and reasonable and in the best interests of the Debtors, their
6 estates, and their creditors and equity holders, and is essential for the continued
7 operation of the Debtors' businesses and represents a sound exercise of the
8 Debtors' business judgment; and after due deliberation and consideration, and for
9 good and sufficient cause appearing therefor;

10 **THIS COURT HEREBY MAKES THE FOLLOWING FINDINGS OF**
11 **FACT AND CONCLUSIONS OF LAW BASED UPON THE MOTION, THE**
12 **REPRESENTATIONS OF COUNSEL AND EVIDENCE SUBMITTED**
13 **PRIOR TO AND DURING THE INTERIMFINAL HEARING.³**

14 A. Petition Date. On May 6, 2019 (the "Petition Date"), the Debtors
15 filed voluntary petitions under chapter 11 of the Bankruptcy Code in the United
16 States Bankruptcy Court for the Eastern District of Washington (the "Court")
17 commencing these Chapter 11 Cases.

18 B. Debtors in Possession. The Debtors are continuing in the
19 management and operation of their businesses and properties as debtors in
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21 ³ To the extent, any findings of fact constitute conclusions of law, they are adopted
as such, and vice versa, pursuant to Fed. R. Bankr. P. 7052.

1 possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee
2 or examiner has been appointed in these Chapter 11 Cases.

3 C. Notice. Notice of the ~~Interim~~Final Hearing and the relief requested in
4 the Motion has been provided by the Debtors to certain parties in interest,
5 including on (i) the Office of the United States Trustee for the Eastern District of
6 Washington, (ii) counsel for the Prepetition Secured Creditors, (iii) counsel for the
7 DIP Lender, (iv) all alleged secured creditors, (v) counsel to the Committee, (vi)
8 the thirty largest general unsecured creditors appearing on the list filed in
9 accordance with Rule 1007(d), and (~~vi~~vii) any parties requesting special notice.

10 D. Jurisdiction and Venue. This Court has core jurisdiction over the
11 persons and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334.
12 Consideration of the Motion constitutes a core proceeding under 28 U.S.C. §
13 157(b)(2). Venue for the Chapter 11 Cases and proceedings on the Motion is
14 proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

15 E. Committee Formation. On May 23, 2019, the United States Trustee
16 for the Eastern District of Washington (the "U.S. Trustee") appointed an official
17 committee of unsecured creditors in these Chapter 11 Cases pursuant to section
18 1102 of the Bankruptcy Code (the "Committee").

19 E. ~~E.~~ No Credit Available on More Favorable Terms. The Debtors are
20 unable to procure financing in the form of unsecured credit allowable as an
21 administrative expense under §§ 364(a), 364(b), or 503(b)(1) of the Bankruptcy

1 Code and have been unable to procure the necessary financing on terms more
2 favorable, taken as a whole, than the financing offered by DIP Lender pursuant to
3 the DIP Loan Documents.

4 G. ~~F.~~ Best Interests of Estates. It is in the best interests of the Debtors'
5 estates and creditors that the Debtors be allowed to enter into the DIP Facility to
6 obtain postpetition secured financing from the DIP Lender under the terms and
7 conditions set forth herein and in the DIP Loan Documents, as such financing is
8 necessary to avoid immediate and irreparable harm to the Debtors' estates and for
9 the continued operation of the Debtors' businesses.

10 H. ~~G.~~ Good Faith. The extension of credit and financial accommodations
11 under the DIP Loan Documents are fair, reasonable, in good faith, negotiated at
12 arm's length, reflect the Debtors' exercise of prudent business judgment, and are
13 supported by reasonably equivalent value and fair consideration. Accordingly, the
14 DIP Lender is entitled to the protections of Bankruptcy Code section 364(e).

15 I. ~~H.~~ Good Cause. The relief requested in the Motion is necessary,
16 essential and appropriate, and is in the best interest of and will benefit the Debtors,
17 their creditors and their estates, as its implementation will, among other things,
18 provide the Debtors with the necessary liquidity to (1) minimize disruption to the
19 Debtors' businesses and ongoing operations, (2) preserve and maximize the value
20 of the Debtors' estates for the benefit of all the Debtors' creditors, and (3) avoid

1 potential immediate and irreparable harm to the Debtors, their creditors, their
2 businesses, their employees, and their assets.

3 J. ~~J.~~ *Necessity of DIP Facility Terms.* The terms of the DIP Loan
4 Documents ~~and~~, the Interim Order and this Final Order assuring that the liens and
5 the various claims, superpriority claims, and other protections granted in the
6 Interim Order and this Final Order will not be affected by any subsequent reversal
7 or modification of the Interim Order or ~~any other order~~ Final Order, as provided in
8 section 364(e) of the Bankruptcy Code, which is applicable to the postpetition
9 financing arrangement contemplated in the DIP Loan Documents, are necessary in
10 order to induce the DIP Lender to provide postpetition financing to the Debtors.

11 K. ~~J.~~ *Need for Post-Petition Financing.* The Debtors do not have
12 sufficient and reliable sources of working capital, including cash collateral, to
13 continue to operate their businesses in the ordinary course of business without the
14 financing requested in the Motion. The Debtors' ability to maintain business
15 relationships with their vendors, suppliers and customers, to pay their employees,
16 and to otherwise fund their operations is essential to the Debtors' continued
17 viability as the Debtors seek to maximize the value of the assets of their estates for
18 the benefit of all creditors of the Debtors. The ability of the Debtors to obtain
19 sufficient and stable working capital and liquidity through the proposed
20 post-petition financing arrangements with the DIP Lender as set forth in ~~this~~ the
21 Interim Order, this Final Order and the DIP Loan Documents is vital to the

1 preservation and maintenance of the going concern value of each Debtor.
2 Accordingly, the Debtors have an immediate need to obtain the postpetition
3 financing in order to, among other things, permit the orderly continuation of the
4 operation of their businesses, minimize the disruption of their business operations,
5 and preserve and maximize the value of the assets of the Debtors' bankruptcy
6 estates in order to maximize the recovery to all creditors of the estates.

7 L. ~~K.~~ Need to Use Cash Collateral. The Debtors need to use Cash
8 Collateral, in order to, among other things, preserve, maintain and maximize the
9 value of their assets and businesses. The ability of the Debtors to maintain
10 liquidity through the use of Cash Collateral is vital to the Debtors and their efforts
11 to maximize the value of their assets. Accordingly, the Debtors have demonstrated
12 good and sufficient cause for the relief granted herein.

13 M. ~~L.~~ Sections 506(c) and 552(b). As material inducement to the DIP
14 Lender to agree to provide the DIP Facility, and in exchange for the DIP Lender's
15 agreement to subordinate their superpriority claims to the Carve-Out, ~~subject to~~
16 ~~entry of the Final Order,~~ this Court approves (i) the waiver by Debtors of any
17 equities of the case exceptions under section 552(b) of the Bankruptcy Code and
18 (ii) the waiver by Debtors of the provisions of section 506(c) of the Bankruptcy
19 Code. As material inducement to the Lapis Secured Parties to agree to consent to
20 the DIP Facility, and in exchange for the Lapis Secured Parties' agreement to
21 subordinate their superpriority claims to the Carve-Out, this Court approves the

1 waiver by Debtors of any equities of the case exceptions under section 552(b) of
2 the Bankruptcy Code and the waiver by Debtors of the provisions of section 506(c)
3 of the Bankruptcy Code as it may apply to those parties or their collateral.

4 N. ~~M.~~ Priming of Prepetition Liens. The priming of the Lapis
5 Subordinated Sunnyside Liens and Lapis Subordinated A/R Liens by the DIP
6 Lender under section 364(d)(1) of the Bankruptcy Code, solely to the extent set
7 forth in the DIP Loan Documents and as further described below, will enable the
8 Debtors to obtain the DIP Facility and, among other benefits, continue to operate
9 their businesses for the benefit of their estates and stakeholders.

10 O. ~~N.~~ Pre-Petition Debt. The Debtors were, prior to the Petition Date,
11 party to the following agreements, with the following parties (collectively, the
12 **“Prepetition Secured Parties”**):

13 (a) *Banner Bank Prepetition Debt.*

- 14 a. Prior to the commencement of the Chapter 11 Cases,
15 Sunnyside Community Hospital Association
16 (“**Sunnyside**”) entered into various Business Loan
17 Agreements, dated December 30, 2010, May 19, 2015,
18 March 21, 2016, August 2, 2016, October 6, 2016, March
19 21, 2017, and May 4, 2018, each between Banner Bank
20 and Sunnyside (as each such agreement has been
21 amended, modified, or supplemented to date, the
“**Banner Bank Loan Documents**”), providing Sunnyside
with financing in the aggregate principal amount of
\$27,006,225. The advances made pursuant to the Banner
Bank Loan Documents are secured by a first priority lien
(the “**Banner Senior Sunnyside Liens**”) on all personal
property and certain real property of Sunnyside as set
forth in the Banner Bank Loan Documents and associated

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documents (such assets the "**Banner Bank Collateral**"). As of the Petition Date, Sunnyside is indebted to Banner Bank in the approximate principal amount of \$10.6 million.

(b) *MidCap Financial Prepetition Debt.*

a. Prior to the commencement of the Chapter 11 Cases, SHC Holdco, LLC ("**Holdco**"), SHC Medical Center – Yakima ("**Yakima**"), SHC Medical Center – Toppenish ("**Toppenish**"), Yakima Home Care Holdings, LLC, and Yakima HMA Home Health, LLC, as co-borrowers (collectively, the "**MidCap Borrowers**"), entered into that certain Credit and Security Agreement dated September 18, 2017 (the "**MidCap Credit Agreement**") and those related loan documents (all as amended, modified, or supplemented to date, collectively with the MidCap Credit Agreement, the "**MidCap Loan Documents**"), with the lenders party thereto (the "**MidCap Lenders**") and MidCap Financial Trust as agent for the MidCap Lenders (the "**MidCap Agent**"), providing the MidCap Borrowers with a revolving loan facility in the maximum principal amount of \$15 million. The advances made pursuant to the MidCap Credit Agreement are secured by a ~~properly~~ perfected first priority lien and security interest (the "**MidCap Senior A/R Liens**") on the assets of the MidCap Borrowers set forth in Schedule 9.1 to the MidCap Credit Agreement (such assets, the "**MidCap A/R Collateral**"). As of the Petition Date, the MidCap Borrowers are indebted to the MidCap Lenders in the approximate principal amount of \$10.7 million.

(c) *Lapis Prepetition Debt.*

a. Pursuant to that certain Bond Indenture, dated as of November 1, 2017, between Washington Health Care Facilities Authority (the "**Authority**"), as issuer and UMB Bank, N.A. as the bond trustee (the "**Bond Trustee**") for the bondholders, certain entities affiliated with Lapis Advisers, L.P., the Authority issued \$27

1 million of tax-exempt Washington Health Care Facilities
2 Authority Revenue Bonds, Series 2017A (the “**Series**
3 **2017A Bonds**”) and \$8.4 million of tax-exempt
4 Washington Health Care Facilities Authority Revenue
5 Bonds, Series 2017B (the “**Series 2017B Bonds**” and,
6 together with the Series 2017A Bonds, collectively the
7 “**2017 Bonds**”).

- 8 b. Also on November 1, 2017, Yakima, Toppenish, Holdco,
9 and ~~Astria-Health~~, as co-borrowers (the “**Lapis 2017**
10 **Loan Borrowers**”), entered into a Loan and Security
11 Agreement (the “**Lapis 2017 Loan Agreement**”) with the
12 Authority, wherein the Authority loaned the proceeds of
13 the sale of the 2017 Bonds (\$35.4 million) (the “**Lapis**
14 **2017 Loan**”) to the Lapis 2017 Loan Borrowers.
15 ~~Sunnyside and Kitchen and Bath Furnishings, LLC~~ Each
16 of the other Debtors, as well as certain other non-filing
17 affiliates, as guarantors (the “**Lapis 2017 Loan**
18 **Guarantors**”), entered into a Continuing Guaranty (the
19 “**Lapis 2017 Loan Guaranty**” and together with the
20 Lapis 2017 Loan Agreement and all other documents
21 evidencing or securing the Lapis 2017 Loan, the “**Lapis**
2017 Loan Documents”), dated November 1, 2017,
wherein the Lapis 2017 Loan Guarantors agreed to
guaranty the obligations of the Lapis 2017 Loan
Borrowers under the Lapis 2017 Loan. The advances
made pursuant to the Lapis 2017 Loan are secured by
substantially all of the assets of all of the Debtors,
including (i) a first priority lien (the “**Lapis 2017 SHC**
Holdco Liens”) on the assets of the Lapis 2017 Loan
Borrowers not subject to the MidCap Senior A/R Liens,
(ii) a junior lien (the “**Lapis 2017 A/R Liens**”) on the
assets of the Lapis 2017 Loan Borrowers subordinate and
subject to the MidCap Senior A/R Liens, and (iii) a ~~junior~~
lien (the “**Lapis 2017 Sunnyside Liens**”) on the assets of
the Lapis 2017 Loan Guarantors subordinate and subject
to the Banner Senior Sunnyside Liens (collectively, the
“**Lapis 2017 Loan Collateral Liens**”). See Intercreditor
and Lien Subordination Agreement, dated as of
November 1, 2017 (as amended, modified, or

1 supplemented to date), by and among the Bond Trustee,
2 MidCap Funding IV Trust, a Delaware statutory trust, as
3 successor-by-assignment to MidCap Financial Trust, in
4 its capacity as the MidCap Agent, Astria, the Lapis 2017
5 Loan Borrowers and Sunnyside. As of the Petition Date,
6 the amounts owing on the 2017 Lapis Loan include (i)
7 unpaid principal in the amount of approximately \$35.4
8 million of principal is outstanding under the Lapis 2017
9 Loan \$35,400,000; (ii) accrued but unpaid interest in the
10 amount of \$1,332,417; and (iii) accrued and unpaid fees
11 and expenses of the Bond Trustee, including professional
12 fees (the “Outstanding Prepetition 2017 Lapis Loan
13 Obligations”).

14 c. Prior to the commencement of the Chapter 11 Cases,
15 ~~Astria Health and Sunnyside, Sunnyside, Sunnyside~~
16 ~~Professional Services, LLC, Sunnyside Community~~
17 ~~Hospital Home Medical Supply, LLC, Sunnyside Home~~
18 ~~Health, Kitchen and Bath Furnishings, LLC, Oxbow~~
19 ~~Summit, LLC and certain non-filing affiliates~~ as
20 co-borrowers (the “Lapis 2019 Loan Borrowers”),
21 entered into a Credit Agreement dated January 18, 2019
(the “Lapis 2019 Loan Agreement”) with Lapis
Advisers LP (“Lapis Agent”), as agent for lenders party
thereto (the “Lapis 2019 Loan Lenders”), whereby the
Lapis 2019 Loan Lenders agreed to make advances to the
Lapis 2019 Loan Borrowers in the principal amount of up
to \$10 million (the “Lapis 2019 Loan”). ~~Holder,~~
~~Yakima, Toppenish, Glacier Canyon, LLC, Yakima~~
~~Home Care Holdings, LLC, Yakima HMA Home Health,~~
~~LLC~~ The remaining Debtors, as well as certain other
non-filing affiliates, as guarantors (the “Lapis 2019 Loan
Guarantors”), entered into a Continuing Guaranty (the
“Lapis 2019 Loan Guaranty” and together with the
Lapis 2019 Loan Agreement, and all other documents
evidencing or securing the Lapis 2019 Loan the “Lapis
2019 Loan Documents”), dated January 18, 2019,
wherein the Lapis 2019 Loan Guarantors agreed to
guaranty the obligations of the Lapis 2019 Loan
Borrowers under the Lapis 2019 Loan. The advances
made pursuant to the Lapis 2019 Loan are secured by

1 substantially all of the assets of all of the Debtors,
2 including (i) a junior lien (the “**Lapis 2019 Sunnyside**
3 **Liens**” and together with the Lapis 2017 Sunnyside
4 Liens, the “**Lapis Subordinated Sunnyside Liens**”)
5 on the assets of the Lapis 2019 Borrowers subordinate and
6 subject to the Banner Senior Sunnyside Liens and liens
7 on the assets of the Lapis 2019 Borrowers associated with
8 the Lapis 2017 Loan, (ii) a junior lien (the “**Lapis 2019**
9 **SHC Holdco Liens**” and together with the Lapis 2017
10 SHC Holdco Liens, the “**Lapis Senior Holdco Liens**”)
11 on the assets of the Lapis 2019 Loan Guarantors not
12 subject to the MidCap Senior A/R Liens as set forth in the
13 Lapis 2019 Loan Documents, and (iii) a junior lien (the
14 “**Lapis 2019 A/R Liens**” and together with the Lapis
15 2017 Priority A/R Liens, the “**Lapis Subordinated A/R**
16 **Liens**”)
17 on the MidCap Priority Collateral (such assets,
18 the “**Lapis 2019 Collateral Loan Liens**” and together
19 with the Lapis 2017 Loan Collateral, the “**Lapis**
20 Prepetition Liens”)
21 and all asserts of the Debtors and the
Debtors’ estates that are subject to the Lapis Prepetition
Liens, the “**Lapis Prepetition Collateral**”). As of the
Petition Date, the amounts owing on the 2019 Lapis Loan
include (i) unpaid principal in the amount of
~~approximately \$10 million of principal is outstanding~~
~~under the Lapis 2019 Loan~~ \$10,000,000; (ii) accrued but
unpaid interest in the amount of \$477,534; and (iii)
accrued and unpaid fees and expenses of the Lapis Agent,
including professional fees (the “**Outstanding**
Prepetition 2019 Lapis Loan Obligations”).

16 d. As used herein “**Prepetition Credit Liens**” shall mean
17 the Banner Senior Sunnyside Liens, MidCap Senior A/R
18 Liens, Lapis Senior Holdco Liens, Lapis Subordinated
19 A/R Liens, and Lapis Subordinated Sunnyside Liens. As
used herein “**Prepetition Collateral**” shall mean the
Banner Bank Collateral, MidCap A/R Collateral, and
Lapis Prepetition Collateral.

20 P. ~~Q.~~ *Adequate Protection.* The Bond Trustee, on behalf of itself and the
21 holders of the 2017 Bonds (the “**Bondholders**”) and the Lapis Agent, on behalf of

1 itself and the Lapis 2019 Loan Lenders (collectively, the “**Lapis Secured Parties**”)
2 are entitled to receive adequate protection on account of their interests in the Lapis
3 Prepetition Collateral pursuant to sections 361, 362, and 363 of the Bankruptcy
4 Code ~~solely to the extent of any diminution in the value of their interests in the~~
5 ~~Lapis Prepetition Collateral (including Cash Collateral)~~. As part of the adequate
6 protection provided by this **InterimFinal** Order, the Lapis Secured Parties shall
7 receive, among other things, replacement liens, and superpriority claims (to the
8 extent that the Lapis Secured Parties had valid and perfected liens on and security
9 interests in the Lapis Prepetition Collateral) and reporting information, subject and
10 subordinate to the Carve-Out. The terms of the Adequate Protection Obligations
11 (defined herein) are fair and reasonable, reflect the Debtors’ prudent exercise of
12 business judgment and ~~are sufficient~~ the Lapis Secured Parties have on these terms
13 indicated that they will consent to allow the Debtors’ use of the Lapis Prepetition
14 Collateral (including the Cash Collateral) and to permit the priming of the Lapis
15 Prepetition Collateral and other relief granted in this **InterimFinal** Order.

16 Q. P-Immediate Entry. Sufficient cause exists for immediate entry of this
17 **InterimFinal** Order pursuant to Bankruptcy Rule 4001(c)(2).

18 Based upon the foregoing findings and conclusions, the Motion and the
19 record before the Court with respect to the Motion, and good and sufficient cause
20 appearing therefor,

21 **IT IS HEREBY ORDERED** that:

1 1. DIP Facility Approval. The DIP Facility is hereby approved on a final
2 basis on the terms of this Order. Any objections to the ~~interim~~final relief requested
3 in the Motion that have not been withdrawn, waived or settled on the terms of this
4 Order, and all reservations of rights included therein, are hereby denied and
5 overruled, ~~except as reserved on the record at the hearing on May 8, 2019.~~ The
6 Debtors are authorized, pursuant to section 364 of the Bankruptcy Code, to enter
7 into and be a party to the DIP Facility pursuant to the DIP Loan Documents (with
8 such changes, if any, as were authorized to be made as amendments to the DIP
9 Loan Documents in accordance with this ~~Interim~~Final Order), to perform under the
10 DIP Loan Documents and such other and additional documents necessary or
11 desired to implement the DIP Facility or the DIP Loan Documents, and to obtain
12 postpetition secured financing from the DIP Lender, to avoid immediate and
13 irreparable harm to the Debtors' estates.

14 2. DIP Obligations. The DIP Loan Documents shall constitute and
15 evidence the valid and binding effect of the Debtors' obligations under the DIP
16 Facility, which DIP Obligations shall be legal, valid, and binding obligations of the
17 Debtors party thereto and enforceable against the Debtors, their estates, any
18 successors thereto, including, without limitation, any trustee appointed in any of
19 the Debtors' cases, or in any case under chapter 7 of the Bankruptcy Code upon the
20 conversion of any such cases, or in any other proceedings superseding or related to
21 any of the foregoing, any successors thereto, and any party determined to be the

1 beneficial owner of the DIP Collateral by this Court. The Debtors and their
2 successors shall be jointly and severally liable for repayment of any funds
3 advanced pursuant to the DIP Loan Documents, together with interest thereon, at
4 the times and in the amounts set forth in the DIP Loan Documents and all
5 Obligations as defined and provided for in the DIP Loan Agreement (collectively,
6 the "**DIP Obligations**"). No obligation, payment, transfer or grant of security
7 under the DIP Loan Documents or ~~the Interim~~this Final Order, with respect to the
8 DIP Facility shall be stayed, restrained, voided, voidable or recoverable under the
9 Bankruptcy Code or under any applicable non-bankruptcy law, or subject to any
10 defense, reduction, setoff, recoupment or counterclaim.

11 3. Authorization to Borrow. ~~Upon entry of this Interim Order and during~~
12 ~~the period prior to entry of the Final Order, the~~The Debtors are immediately
13 authorized to borrow from the DIP Lender under the DIP Facility, ~~the Interim~~
14 ~~Advance of up to \$28 million~~ the amounts set forth in the DIP Loan Agreement,
15 subject to the terms and conditions set forth in the DIP Loan Documents and this
16 ~~Interim~~Final Order. Subject to the terms and conditions of this ~~Interim~~Final Order
17 and the DIP Loan Documents, the Debtors are authorized to use Cash Collateral
18 until the earlier of (a) the Maturity Date and (b) the date upon which the Debtors'
19 right to use Cash Collateral is terminated hereunder ~~as a result of an Event of~~
20 ~~Default (as defined in the DIP Loan Agreement) which remains continuing and has~~

1 ~~not been waived by the DIP Lender.~~ Once repaid, the DIP Facility Loans incurred
2 may not be re-borrowed.

3 4. Use of Proceeds. The Debtors shall use advances of credit under the
4 DIP Facility (the “**DIP Facility Loans**”) only for the express purposes specifically
5 set forth in this ~~Interim~~Final Order and the DIP Loan Documents. The Debtors are
6 authorized to use the proceeds of the DIP Facility Loans to (a) fund the
7 post-petition working capital needs of the Debtors during the pendency of the
8 Chapter 11 Cases, (b) pay fees, costs and expenses of the DIP Facility on the terms
9 and conditions described in the DIP Loan Documents, (c) pay all Outstanding
10 Prepetition Banner Bank Obligations and Outstanding Prepetition MidCap
11 Obligations; and (d) pay the allowed administrative costs and expenses of the
12 Chapter 11 Cases, in each case, solely in accordance with the DIP Loan Documents
13 (including, but not limited to, the Budget) and this ~~Interim~~Final Order.
14 Notwithstanding anything herein, the extensions of credit under the DIP Facility
15 shall not constitute cash collateral of the Prepetition Secured Parties.

16 5. Repayment of Certain Outstanding Prepetition Secured Loan
17 Obligations. Upon entry of this Interim Order, the Debtors shall use the proceeds
18 of the DIP Facility to pay (a) all outstanding obligations now due and payable to
19 Banner Bank under the Banner Bank Loan Documents in full (including
20 obligations that accrued postpetition) (the “**Outstanding Prepetition Banner**
21 **Bank Obligations**”), in accordance with the terms, conditions, and procedures set

1 forth in the DIP Loan Documents, and (b) all outstanding obligations now due and
2 payable to the MidCap Lenders under the MidCap Loan Documents in full
3 (including obligations that accrued postpetition) (the “**Outstanding Prepetition**
4 **MidCap Obligations**”), in accordance with the terms and conditions of the Banner
5 Bank Loan Documents and MidCap Loan Documents and the terms, conditions,
6 and procedures set forth in the DIP Loan Documents. In connection with the
7 payment of the Outstanding Prepetition Banner Bank Obligations and the
8 Outstanding Prepetition MidCap Obligations, the parties shall be authorized and
9 directed to execute the Banner Bank Payoff Letter and the MidCap Payoff Letter,
10 attached hereto as (collectively, the “**Payoff Letters**”). For purposes of calculating
11 and paying the Outstanding Prepetition MidCap Obligations, MidCap shall be
12 entitled to apply any collections it received after the Petition Date, and the
13 automatic stay is hereby modified to permit MidCap to apply such payments. The
14 terms and conditions contained in the Payoff Letters shall be binding on the
15 Debtors, their respective estates, and the Committee (defined below) (individually
16 or on behalf of the Debtors’ estates), except as provided below, as well as all other
17 parties in interest with respect to the Banner Bank Loan Documents and the
18 MidCap Loan Documents; provided, however, notwithstanding the foregoing
19 nothing in this Interim Order, including paragraphs N herein, or the payment of the
20 Outstanding Prepetition Banner Bank Obligations and Outstanding Prepetition
21 MidCap Obligations shall prejudice the rights of any official committee of

1 unsecured creditors appointed in these Chapter 11 Case (the “**Committee**”), if
2 subsequently formed, to assert any claims the Debtors’ estates may hold against the
3 Prepetition Secured Parties to the extent the Committee has the standing to assert
4 such claims and provided such claims are asserted timely in accordance with the
5 requirements of the Bankruptcy Code or as otherwise hereafter ordered by this
6 Court; provided, further, that nothing in this Interim Order shall be construed or
7 deemed a waiver of any claims or defenses that Banner Bank or MidCap may have
8 in response to any claims asserted by the Committee, including, without limitation,
9 any rights or obligation that survive the payoff of the Outstanding Petition Banner
10 Bank Obligations and Outstanding Prepetition MidCap Obligations under the
11 Banner Bank Loan Documents and the MidCap Loan Documents, respectively. In
12 the event a claim is asserted against MidCap or the MidCap Lenders, including,
13 without limitation, (a) any challenge to the validity, enforceability, or priority of
14 the MidCap Loan Documents or the MidCap Senior A/R Liens, (b) a claim to
15 recover any payments made to MidCap Lenders under the MidCap Loan
16 Documents, including, without limitation, payment of the Outstanding Prepetition
17 MidCap Obligations, or (c) any other claim arising out of, or under the MidCap
18 Loan Documents and the MidCap Lenders’ and Borrowers’ relationship thereunder
19 (collectively, a “**Challenge**”), and MidCap and the MidCap Lenders successfully
20 defend such Challenge, Debtors shall promptly reimburse MidCap and MidCap
21 Lenders all of their reasonable fees and expenses, including their attorneys’ fees

1 and expenses, incurred in connection with responding to and defending the
2 Challenge (the "**Challenge Claim**"). Without limiting the foregoing, the
3 Challenge Claim shall be an allowed secured claim secured by the same assets as
4 secure the DIP Facility under this Order and the DIP Loan Documents, subject only
5 to the DIP Liens, and shall be an allowed administrative expenses under sections
6 503(b) and 507(a)(2) of the Bankruptcy Code.

7 6. Budget and Reporting. Except as otherwise provided herein or
8 approved by the DIP Lender, the proceeds from the DIP Facility and all cash now
9 held or hereafter received during the Chapter 11 Cases, including Cash Collateral,
10 shall be used only in compliance with the terms of the DIP Loan Documents,
11 including the Budget. The Debtor shall comply with the reporting requirements
12 and obligations set forth in the DIP Loan Agreement.

13 7. Payment of DIP Fees and Expenses. The (a) Commitment Fee; (b)
14 Funding Fee; (c) Work Fee, which shall serve as a retainer for the DIP Lender's
15 counsel; (d) Exit Fee; and (e) Stated Maturity Fee are each hereby approved, and
16 the Debtors are hereby authorized and directed to and shall pay such fees in
17 accordance with, and on the terms set forth in this **InterimFinal** Order and the DIP
18 Loan Documents, as modified herein. The Debtors are also hereby authorized and
19 directed to pay upon demand, all other reasonable fees, costs, expenses and other
20 amounts payable under the terms of this **InterimFinal** Order and the DIP Loan
21

1 Documents and all other reasonable fees and out-of-pocket costs and expenses of
2 the DIP Lender in accordance with the terms of this ~~Interim~~Final Order and the
3 DIP Loan Documents (including, without limitation, the reasonable and
4 documented fees and out-of-pocket costs and expenses of Arent Fox LLP as
5 counsel and Southwell & O'Rourke, P.S. as local counsel to the DIP Lender to the
6 extent not covered by the portion of the Work Fee paid prior to the Petition Date),
7 subject to receiving a written invoice therefor. None of such reasonable fees, costs,
8 expenses or other amounts shall be subject to Court approval except as otherwise
9 provided herein or required to be submitted in any particular format, and no
10 recipient of any such payment shall be required to file with respect thereto any
11 interim or final fee application with this Court; provided, however, that copies of
12 any such invoices shall be provided contemporaneously to the U.S. Trustee Lapis
13 Secured Parties and the Committee; provided further, however, that such invoices
14 provided to the Committee or Lapis Secured Parties may be redacted to the extent
15 necessary to delete any information subject to the attorney-client privilege, or any
16 information constituting attorney work product, ~~or any other confidential~~
17 ~~information~~ (the "**Redactions**"), and the provision of such invoices shall not
18 constitute a waiver of the attorney-client privilege or any benefits of the attorney
19 work product doctrine. If the U.S. Trustee, Lapis Secured Parties or the Committee
20 objects to the reasonableness of the fees and expenses of the DIP Lender, and such
21 objection cannot be resolved within ten (10) days of receipt of such invoices, the

1 U.S. Trustee Lapis Secured Parties or the Committee may file with the Court and
2 serve on the DIP Lender, an objection to the reasonableness of such fees and
3 expenses (each, a “**Reasonableness Fee Objection**”). Without limiting the
4 foregoing, if the Committee ~~objects~~ or Lapis Secured Parties objects to the
5 Redactions and such objection cannot be resolved within ten (10) days of receipt of
6 such invoices, the DIP Lender shall file with the Court and serve on the Debtors,
7 the Committee Lapis Secured Parties and the U.S. Trustee a request for Court
8 resolution of the disputes concerning the propriety of the disputed Redactions
9 (each, a “**Redaction Fee Objection**,” and each Reasonableness Fee Objection and
10 Redaction Fee Objection may be referred to herein generally as a “**Fee**
11 **Objection**”). The Debtors shall pay, in accordance with the terms and conditions of
12 this ~~Interim Order and the~~ Final Order, within ten (10) days after receipt of the
13 applicable invoice (a) the full amount invoiced if no Fee Objection has been timely
14 filed, and (b) the undisputed fees, costs, and expenses reflected on any invoice to
15 which a Fee Objection has been timely filed. All such unpaid reasonable fees,
16 costs, expenses and other amounts owed or payable to the DIP Lender shall be
17 secured by the DIP Collateral, subject and subordinate to the Carve-Out, and
18 afforded all of the priorities and protections afforded to the DIP Obligations
19 (subject to and subordinate to the Carve-Out) under this ~~Interim~~ Final Order, and
20 the DIP Loan Documents, until such time as the unpaid reasonable fees, costs,
21

1 expenses and other amounts owed or payable to the DIP Lender have been paid or
2 disallowed pursuant to an order of the Court resolving any such Fee Objection.

3 8. Indemnification. The Debtors are hereby authorized to and hereby
4 agree to indemnify and hold harmless the DIP Lender and its affiliates, directors,
5 officers, employees, agents, attorneys, or any other Person affiliated with or
6 representing the DIP Lender (collectively, an “**Indemnified Party**”) from and
7 against: (a) all obligations, demands, claims, damages, losses and liabilities
8 (including, without limitation, reasonable fees and disbursements of counsel)
9 (collectively, “**Indemnity Claims**”) as set forth in the DIP Loan Documents
10 including those asserted by any other party in connection with the transactions
11 contemplated by the DIP Loan Documents; and (b) all losses or expenses incurred,
12 or paid by the DIP Lender from, following, or arising from the transactions
13 contemplated by the DIP Loan Documents (including reasonable and documented
14 attorneys’ fees and expenses), except ~~for~~ with respect to (a) and (b) above, for (i)
15 any fees, costs, expenses and other amounts disallowed pursuant to an order of the
16 Court resolving any Fee Objections, and (ii) Indemnity Claims and/or losses
17 directly caused by the DIP Lender’s gross negligence, or willful misconduct or bad
18 faith of DIP Lender. In the case of an investigation, litigation or other proceeding
19 to which the indemnity in this paragraph applies, such indemnity shall be effective
20 whether or not such investigation, litigation or proceeding is brought by any of the
21 Debtors or any of their respective directors, security holders or creditors, ~~an~~

1 ~~Indemnified Party~~ or any other Person or an Indemnified Party is otherwise a party
2 thereto and whether or not the transactions contemplated hereby are consummated.
3 No Indemnified Party shall have any liability (whether direct or indirect, in
4 contract, tort or otherwise) to any Debtor or any of its subsidiaries or any
5 shareholders or creditors of the foregoing for or in connection with the transactions
6 contemplated hereby, except to the extent such liability is determined by a court of
7 competent jurisdiction in a final non-appealable judgment or order to have resulted
8 solely from such Indemnified Party's gross negligence ~~or~~, willful misconduct or
9 bad faith. All indemnities of the Indemnified Parties shall constitute DIP
10 Obligations secured by the DIP Collateral subject and subordinate to the Carve-Out
11 and afforded all of the priorities and protections afforded to the DIP Obligations
12 (subject to and subordinate to the Carve-Out) under ~~this~~the Interim Order, ~~the~~this
13 Final Order and the DIP Loan Documents.

14 9. Use of Cash Collateral. The Debtors are authorized to use Cash
15 Collateral in accordance with and pursuant to this ~~Interim~~Final Order and the DIP
16 Loan Documents. ~~Prior to the Maturity Date and until indefeasible payment in full~~
17 ~~of the DIP Obligations, the~~The Debtors agree that they will not use or seek to use
18 Cash Collateral other than pursuant to the terms of this ~~Interim~~Final Order.

19 10. DIP Superpriority Claims. In accordance with section 364(c)(1) of the
20 Bankruptcy Code, the DIP Obligations shall constitute allowed senior
21 administrative expense claims against each Debtor and their estates (the "DIP

1 Superpriority Claims”) with priority in payment over any and all administrative
2 expenses at any time existing or arising, of any kind or nature whatsoever,
3 including, without limitation, the kinds specified or ordered pursuant to any
4 provision of the Bankruptcy Code, including, but not limited to, sections 105, 326,
5 328, 330, 331, 503(b), 506(c) ~~(subject to the entry of the Final Order with respect~~
6 ~~to section 506(e) only)~~, 507(a), 507(b), 726, 1113 and 1114 of the Bankruptcy
7 Code or otherwise, including those resulting from the conversion of any of the
8 Chapter 11 Cases pursuant to section 1112 of the Bankruptcy Code, whether or not
9 such expenses or claims may become secured by a judgment lien or other
10 non-consensual lien, levy or attachment; provided, however, that the DIP
11 Superpriority Claims shall be subject to and subordinate to only the Carve-Out;
12 provided, further that subject and subordinate to the Carve-Out, the DIP
13 Superpriority Claims shall have recourse to and be payable from all prepetition and
14 postpetition property and assets of the Debtors and the estates and all DIP
15 Collateral and all proceeds thereof, and (a) any and all avoidance power claims or
16 causes of action under sections 544, 545, 547, 548 through 551 and 553(b) of the
17 Bankruptcy Code (the “Avoidance Actions”) and the proceeds thereof, (b)
18 prepetition tort claims, including claims against the Debtors’ current and former
19 directors and officers (if any) and the proceeds thereof; and (c) any deposit in
20 connection with a proposed Sale (whether terminated or otherwise) that becomes
21 property of the Debtors’ estates (a “Sale Deposit”) subject, however, only to the

1 senior lien rights of a stalking horse purchaser and such stalking horse bid
2 protections as may be approved by this Court (collectively, the “Adequate
3 Protection Assets”).

4 11. DIP Liens.

5 (a) ~~Effective immediately as of the entry of this Interim Order, as~~ As
6 security for the DIP Obligations, the DIP Lender is granted, continuing, valid,
7 binding, enforceable, non-avoidable, and automatically and properly perfected
8 security interests in and liens (collectively, the “**DIP Liens**”) on all DIP Collateral
9 as collateral security for the prompt and complete performance and payment when
10 due (whether at the Stated Maturity Date (i.e. December 31, 2019), by acceleration,
11 or otherwise) of the DIP Obligations, subject and subordinate to the Carve-Out.

12 The term “**DIP Collateral**” means collectively all pre-petition and post-petition
13 real property and all pre-petition and post-petition tangible and intangible personal
14 property of each Borrower, in each case wherever located and whether now owned
15 or hereafter acquired, including, but not limited to all accounts, contracts rights,
16 chattel paper, cash, general intangibles, investment property, machinery,
17 equipment, goods, inventory, furniture, fixtures, letter of credit rights, books and
18 records, deposit accounts, documents, instruments, commercial tort claims, leases
19 and leaseholds and rents, avoidance actions under section 549 and related
20 recoveries under section 550 of the Bankruptcy Code, together with all proceeds of
21 each of the forgoing, including insurance proceeds (as each such term above is

1 defined in the UCC, to the extent applicable), ~~and, subject to Final Order,~~
2 ~~including but shall not otherwise include~~ the proceeds and recoveries from
3 Avoidance Actions (the “**Avoidance Action Proceeds**”).

4 (b) ~~Subject to the entry of the Final Order, to~~ To the fullest extent
5 permitted by the Bankruptcy Code or applicable law, and except as otherwise set
6 forth herein, any provision of any lease other than a real property lease, loan
7 document, easement, use agreement, proffer, covenant, license, contract,
8 organizational document, or other instrument or agreement that requires the
9 consent or the payment of any fees or obligations to any entity in order for any of
10 the Debtors to pledge, grant, mortgage, sell, assign, or otherwise transfer any fee or
11 leasehold interest or the proceeds thereof or other DIP Collateral, shall have no
12 force or effect with respect to the DIP Liens on such leasehold interests or other
13 applicable DIP Collateral or the proceeds of any assignment and/or sale thereof by
14 any Debtor, in favor of the DIP Lender in accordance with the terms of the DIP
15 Loan Documents, or this ~~Interim~~ Final Order, subject and subordinate to the
16 Carve-Out.

17 12. Priority of DIP Liens.

18 (a) To secure the DIP Obligations, ~~immediately upon and effective~~
19 ~~as of entry of this Interim Order,~~ the DIP Lender, is hereby granted on a final basis,
20 continuing, valid, binding, enforceable, non-avoidable, and automatically and
21

1 properly perfected DIP Liens in the DIP Collateral as follows, in each case subject
2 and subordinate to the Carve-Out:

3 (i) *Liens Priming the Prepetition Credit Liens.* Pursuant to
4 364(d)(1) of the Bankruptcy Code, valid, binding, continuing,
5 enforceable, non-avoidable automatically and fully perfected first
6 priority senior priming liens and security interests in all DIP
7 Collateral, regardless of where located, ~~which~~provided such senior
8 priming liens and security interests in favor of the DIP Lender shall be
9 senior to all Prepetition Credit Liens other than the Lapis Senior
10 Holdco Liens. For the avoidance of doubt, as a result of the priming of
11 the Prepetition Credit Liens (other than the Lapis Senior Holdco
12 Liens) pursuant to this ~~Interim~~Final Order, the DIP Lender shall have
13 a first priority senior priming lien and security interest in, among other
14 things, (A) all of the assets of Sunnyside and its debtor and non-debtor
15 subsidiaries, including but not limited to, the Banner Bank Collateral,
16 (B) the MidCap A/R Collateral, ~~and~~ (C) the Debtors' prepetition and
17 postpetition commercial tort claims, including but not limited all
18 claims and causes of action ~~(i)~~ against the Debtors' officers and
19 directors, and ~~(ii)~~D) the Debtors' prepetition and postpetition claims
20 related to accounts receivable collections, and the proceeds thereof
21 (regardless of whether such proceeds arise from damages to the
Prepetition Collateral).

(ii) *Liens on Unencumbered Property.* Pursuant to section
364(c)(2) of the Bankruptcy Code, valid, binding, continuing,
enforceable, non-avoidable automatically and fully perfected first
priority liens on and security interests in all DIP Collateral that is not
otherwise subject to any Permitted Prior Lien. As used herein, the
term "**Permitted Prior Lien**" shall mean any valid, enforceable, and
non-avoidable liens on and security interests in the DIP Collateral that
(A) were perfected prior to the Petition Date (or perfected on or after
the Petition Date to the extent permitted by Section 546(b) of the
Bankruptcy Code), (B) are not subject to avoidance, disallowance, or
subordination pursuant to the Bankruptcy Code or applicable
non-bankruptcy law, and (C) are senior in priority to the DIP Liens
under applicable law and after giving effect to any lien release,
subordination or inter-creditor agreements; provided, however, that
the DIP Liens shall have priority over all Prepetition Credit Liens
other than the Lapis Senior Holdco Liens; provided further, that any

1 properly perfected liens on the Debtors' assets held by (i) TIAA
2 Commercial Finance, Inc. and (ii) Lower Valley Credit Union are
Permitted Prior Liens and shall not be primed by the DIP Liens; and

3 (iii) *Liens Junior to Certain Other Liens.* Pursuant to section
4 364(c)(3) of the Bankruptcy Code, valid, enforceable, non-avoidable
5 automatically and fully perfected junior liens on and security interests
6 in all DIP Collateral (other than as set forth in clauses (i) and (ii))
subordinate only to the Lapis Senior Holdco Liens ~~and~~ the Permitted
Prior Liens and the Carve-Out.

7 (b) Except as expressly set forth herein, and subject and subordinate to
8 the Carve-Out the DIP Liens and the DIP Superpriority Claims shall not be made
9 junior to or *pari passu* with (1) any lien, security interest or claim heretofore or
10 hereinafter granted in any of the Chapter 11 Cases or any successor cases, and shall
11 be valid and enforceable against the Debtors, their estates, any trustee or any other
12 estate representative appointed or elected in the Chapter 11 Cases or any successor
13 cases and/or upon the dismissal or conversion of any of the Chapter 11 Cases or
14 any successor cases, (2) any lien that is avoided and preserved for the benefit of the
15 Debtors and their estates under section 551 of the Bankruptcy Code or otherwise,
16 (3) any intercompany or affiliate lien or claim; and (4) ~~subject to entry of the Final~~
17 ~~Order~~; any liens arising after the Petition Date excluding any liens or security
18 interests granted in favor of any federal, state, municipal or other governmental
19 unit, commission, or board for any liability of the Debtors.

20 (c) *Existing Liens.* TIAA Commercial Finance, Inc. and Lower Valley
21 Credit Union have asserted secured claims against property of the Debtors.

1 Notwithstanding any statement herein that is contrary to the existence or priority of
2 such secured claims, any grant of a security interest to the DIP Lender is junior and
3 subordinate in priority to any properly perfected liens on the DIP Collateral assets
4 held by TIAA Commercial Finance, Inc. and Lower Valley Credit Union.

5 13. Adequate Protection of Lapis Secured Parties. The Lapis Secured
6 Parties are entitled, pursuant to sections 361, 362, 363(e), 364(d)(1) and 507 of the
7 Bankruptcy Code, to adequate protection of their interests in all the Lapis
8 Prepetition Collateral, ~~including Cash Collateral, in an amount equal to the~~
9 ~~aggregate diminution in value of~~ (to the extent that the Lapis Secured Parties² had
10 valid and perfected liens on and security interests in the Lapis Prepetition
11 Collateral), ~~(including Cash Collateral)~~ from and after the Petition Date, ~~if any, for~~
12 ~~any reasons provided under the Bankruptcy Code. In consideration for the~~
13 ~~foregoing,~~ the subject and subordinate to the Carve-Out. The Lapis Secured Parties,
14 are hereby granted the following ~~in the amount of such diminution~~ (collectively,
15 the “**Adequate Protection Obligations**”):

16 (a) *Lapis 2017 Loan Adequate Protection Liens.* The Bond
17 Trustee, on behalf of itself and the Bondholders, is hereby granted (effective and
18 perfected upon the date of this ~~Interim~~Final Order and without the necessity of any
19 mortgages, security agreements, pledge agreements, financing statement or other
20 agreements) in the amount equal to the aggregate diminution in value of the
21

1 interests in the Lapis 2017 Loan Collateral (including Cash Collateral) from and
2 after the Petition Date, if any, ~~for any reasons provided under the Bankruptcy Code~~
3 (the "**Lapis 2017 Loan Adequate Protection Claim**"), a valid, perfected
4 replacement security interest in and lien upon ~~any and all assets subject (i) to the~~
5 ~~Lapis First Priority SHC Holder Liens, subordinate to the Carve-Out, and (ii) to~~
6 ~~the Lapis 2017 Sunnyside Liens and Lapis 2017 A/R Liens, subordinate to (A) the~~
7 ~~DIP Liens and (B) all real, personal, tangible and intangible assets of all of the~~
8 ~~Debtors or their estates of every kind and nature, whether acquired or arising~~
9 ~~before or after the Petition Date, other than Avoidance Actions, subject only to the~~
10 ~~Lapis Prepetition Liens, the DIP Liens, and the Carve-Out (the "**Lapis 2017 Loan**~~
11 ~~**Replacement Liens**".~~ The 2017 Lapis Loan Replacement Liens granted pursuant
12 to this paragraph shall be senior to the 2019 Lapis Loan Adequate Protection
13 Claims, provided nothing herein shall affect the terms of any intercreditor
14 arrangements between the Lapis Secured Parties.

15 (b) *Lapis 2019 Loan Adequate Protection Liens.* The Lapis Agent,
16 on behalf of itself and the Lapis 2019 Loan Lenders, is hereby granted (effective
17 and perfected upon the date of this ~~Interim~~Final Order and without the necessity of
18 any mortgages, security agreements, pledge agreements, financing statement or
19 other agreements), in the amount equal to the aggregate diminution in value of the
20 interests in the Lapis 2019 Loan Collateral (including Cash Collateral) from and
21 after the Petition Date, ~~if any, for any reasons provided under the Bankruptcy Code~~

1 (the “**Lapis 2019 Loan Adequate Protection Claim**”), a valid, perfected
2 replacement security interest in and lien upon ~~any and all assets subject (i) to the~~
3 ~~Lapis 2019 SHC Holdeo Liens, subordinate to the Carve-Out, and (ii) to the Lapis~~
4 ~~2019 Sunnyside Liens and Lapis 2019 A/R Liens, subordinate to (A) the DIP Liens~~
5 ~~and (B) all real, personal, tangible and intangible assets of all of the Debtors or~~
6 ~~their estates of every kind and nature, whether acquired or arising before or after~~
7 ~~the Petition Date, other than Avoidance Actions, subject only to the Lapis~~
8 ~~Prepetition Liens, the DIP Liens and the Carve-Out (the “**Lapis 2019 Loan**~~
9 ~~**Replacement Liens**” and together with the Lapis 2017 Loan Replacement Liens,~~
10 the “**Adequate Protection Liens**”). The Adequate Protection Liens and Lapis
11 Prepetition Liens shall not be subject or subordinate to any lien or security interest
12 that is avoided and preserved for the benefit of the Debtor and its estate under
13 Section 551 of the Bankruptcy Code.

14 (c) Lapis 2017 Loan 507(b) Claims. The Bond Trustee, on behalf
15 of itself and the Bondholders, is hereby granted, an allowed superpriority
16 administrative expense claim as provided in section 507(b) of the Bankruptcy Code
17 in the amount of Lapis 2017 Loan Adequate Protection Claim with, except as set
18 forth in this Final Order, priority in payment over any and all administrative
19 expenses of the kind specified or ordered pursuant to any provision of the
20 Bankruptcy Code (the “**Lapis 2017 Loan 507(b) Claims**”); which Lapis 2017

1 Loan 507(b) Claims shall have recourse to and be payable from all Adequate
2 Protection Assets. The Lapis 2017 Loan 507(b) Claims shall be subject and
3 subordinate only to the Carve-Out and the DIP Superpriority Claims. The Lapis
4 Secured Parties shall not receive or retain any payments, property or other amounts
5 in respect of the Lapis 2017 Loan 507(b) Claims unless and until the DIP
6 Obligations (other than contingent indemnification obligations as to which no
7 claim has been asserted) have indefeasibly been paid in cash in full and all DIP
8 Commitments terminated. The 2017 Lapis Loan 507(b) Claims shall be senior to
9 the Lapis 2019 Loan 507(b) Claims, provided nothing herein shall affect the terms
10 of any intercreditor arrangements between the Lapis Secured Parties.

11 (d) ~~(e)~~ *Lapis 2019 Loan 507(b) Claims.* The Lapis Agent, on behalf
12 of itself and the Lapis 2019 Loan Lenders, is hereby granted, an allowed
13 superpriority administrative expense claim as provided in section 507(b) of the
14 Bankruptcy Code in the amount of Lapis 2019 Loan Adequate Protection Claim
15 with, except as set forth in this ~~Interim~~Final Order, priority in payment over any
16 and all administrative expenses of the kind specified or ordered pursuant to any
17 provision of the Bankruptcy Code (the “**Lapis 2019 Loan 507(b) Claims**”); which
18 the Lapis 2019 Loan 507(b) Claims shall have recourse to and be payable from all
19 ~~of the DIP Collateral~~ Adequate Protection Assets. The Lapis 2019 Loan 507(b)
20 Claims shall be subject and subordinate only to the Carve-Out and the DIP
21 Superpriority Claims and the Lapis 2017 Loan 507(b) Claims. The Lapis Secured

1 Parties shall not receive or retain any payments, property or other amounts in
2 respect of the Lapis 2019 Loan 507(b) Claims unless and until the DIP Obligations
3 (other than contingent indemnification obligations as to which no claim has been
4 asserted) have indefeasibly been paid in cash in full and all DIP Commitments
5 terminated.

6 ~~(d) — Lapis 2017 Loan 507(b) Claims. The Bond Trustee, on behalf~~
7 ~~of itself and the Bondholders, is hereby granted, an allowed superpriority~~
8 ~~administrative expense claim as provided in section 507(b) of the Bankruptcy Code~~
9 ~~in the amount of Lapis 2017 Loan Adequate Protection Claim with, except as set~~
10 ~~forth in this Interim Order, priority in payment over any and all administrative~~
11 ~~expenses of the kind specified or ordered pursuant to any provision of the~~
12 ~~Bankruptcy Code (the “Lapis 2017 Loan 507(b) Claims”); which Lapis 2017~~
13 ~~Loan 507(b) Claims shall have recourse to and be payable from all of the DIP~~
14 ~~Collateral. The Lapis 2017 Loan 507(b) Claims shall be subject and subordinate~~
15 ~~only to the Carve-Out and the DIP Superpriority Claims. The Lapis Secured~~
16 ~~Parties shall not receive or retain any payments, property or other amounts in~~
17 ~~respect of the Lapis 2017 Loan 507(b) Claims unless and until the DIP Obligations~~
18 ~~(other than contingent indemnification obligations as to which no claim has been~~
19 ~~asserted) have indefeasibly been paid in cash in full and all DIP Commitments~~
20 ~~terminated.~~

1 (e) *Lapis Secured Parties Information.* As additional adequate
2 protection of the Lapis Secured Parties' security interests in the Lapis Prepetition
3 Collateral, the Debtors shall contemporaneously provide the Lapis Secured Parties
4 with any reporting provided to the DIP Lender under the DIP Loan Agreement. The
5 Lapis Secured Parties shall be deemed to be an additional notice party for purposes
6 of the DIP Facility and all parties thereto shall provide the Lapis Secured Parties
7 contemporaneous copies of all notices given pursuant thereto. The Debtors shall
8 additionally provide the Lapis Secured Parties any reports and information as the
9 Lapis Secured Parties may reasonably request from time to time.

10 (f) *Other Adequate Protection.* As adequate protection for the
11 Lapis Secured Parties' interests in the Lapis Prepetition Collateral, the Lapis
12 Secured Parties are hereby provided the following adequate protection:

- 13 i. Allowance of Claims. Subject to the terms set forth in
14 paragraph (f)(ix) below, reflecting the Investigation Period and
15 rights of a Committee to pursue a Challenge (each as defined
16 below), the entry of a Final Order shall be a conclusive and
17 binding determination on all parties (x) as to the amount and
18 validity of the Outstanding Prepetition 2017 Lapis Loan
19 Obligations and Outstanding Prepetition 2019 Lapis Loan
20 Obligations set forth in this Order as well as the validity and
21 enforceability of the 2017 Lapis Loan Documents and 2019
Lapis Loan Documents, and (y) as to the scope, extent,
perfection, validity, priority and enforceability, in all respects,
of the Lapis Secured Parties' security interests and liens in the
Lapis Prepetition Collateral;
- ii. Release. Subject to the terms set forth in paragraph (f)(ix)
below, reflecting the Investigation Period and rights of a
Committee to pursue a Challenge, the entry of a Final Order

1 shall be a conclusive and binding determination on all parties
2 that the Lapis Secured Parties and their affiliates, agents,
3 attorneys, officers, directors, and employees shall be and hereby
4 are released of all claims, causes of action by and liabilities
5 owing to any Debtor arising out of or based upon or related to,
6 in whole or in part, the 2017 Lapis Loan Documents, the 2019
7 Lapis Loan Documents, and any aspect of the prepetition
8 relationship between the Lapis Secured Parties and the Debtors
9 and any other acts or omissions by the Lapis Secured Parties in
10 connection with the foregoing;

11 iii. Adequate Protection Payments. The Debtors shall make
12 monthly adequate protection payments on the tenth day of each
13 calendar month to the Lapis Secured Parties. Each monthly
14 adequate protection payment shall be in the amount of one
15 month of postpetition, non-default contractual interest on the
16 outstanding principal amount of the Outstanding Prepetition
17 2017 Lapis Loan Obligations and Outstanding Prepetition 2019
18 Lapis Loan Obligations (provided, however, the Lapis Secured
19 Parties reserve all rights to assert claims for any other amounts
20 to which they are entitled in connection with any claims
21 asserted in the Chapter 11 Cases). To the extent the Court
enters a final and non-appealable order that determines that the
foregoing payments are not properly characterized as
postpetition interest, those payments may be re-characterized as
payments applied to prepetition amounts of the Lapis Secured
Parties' claims;

15 iv. Conforming Plan and Alternative Process. The Debtors shall
16 pursue a Conforming Plan and/or an Alternative Process in the
17 Chapter 11 Cases subject to timing and other conditions
18 reasonably acceptable to the Lapis Secured Parties. A
19 Conforming Plan means a bankruptcy plan that pays off or
20 reinstates the Lapis 2017 Loan and Lapis 2019 Loan on the
21 terms of the Lapis 2017 Loan Documents and Lapis 2019 Loan
Documents on the effective date thereof. An Alternative
Process means the retention of an investment banker reasonably
acceptable to the Lapis Secured Parties and the commencement
of a strategic process to solicit proposals for the sale of
substantially all of the Debtors' assets or refinance the DIP

1 Loan, Lapis 2017 Loan and Lapis 2019 Loan on the terms
2 thereof.

3 v. Financing Matters. The Lapis Secured Parties shall have the
4 right (but not the obligation) to match any terms offered, and
5 therefore be the provider for any further DIP financing that
6 becomes necessary in these cases. The Debtors and shall use
7 good faith efforts to expedite the repayment or refinance of the
8 existing DIP Loans on or before December 31, 2019.

9 vi. Budget. The Budget shall at all times be subject to approval in
10 advance by the Lapis Secured Parties;

11 vii. Compliance with Debt Documents. The Debtors shall comply
12 with those terms and provisions of the 2017 Lapis Loan
13 Documents and 2019 Lapis Loan Documents relating to the
14 maintenance and insurance of their assets and financial
15 reporting, as well as, with respect to the 2017 Lapis Loan
16 Documents, the tax exemption for the Bonds;

17 viii. No use of Funds to Challenge Debt Documents. Subject to the
18 proviso at the end of this Paragraph, no amounts under the
19 Carve Out, the DIP Facility, the Lapis Prepetition Collateral,
20 Adequate Protection Liens, other cash derived by the Debtors
21 during the Chapter 11 Cases, any post petition financing or
 proceeds thereof shall be used for the purpose of: (i) contesting
 or raising any defenses to, the validity, extent, perfection,
 priority, or enforceability of any claims the Lapis Secured
 Parties have against any Debtor or the liens with respect thereto
 or any other rights or interests of the Lapis Secured Parties; (ii)
 asserting any claims or causes of action, including, without
 limitation, avoidance actions against the Lapis Secured Parties
 or invoking the equitable doctrine of “marshaling” or any other
 similar doctrine with respect to any Lapis Prepetition Collateral
 or otherwise; (iii) preventing, hindering, or delaying the
 enforcement or realization permitted by this Order or any other
 order in the Chapter 11 Cases, by the Lapis Secured Parties; (iv)
 incurring indebtedness except as permitted by this Order; (v)
 funding acquisitions, capital expenditures, capital leases or
 other transactions not in the ordinary course of the Debtors’
 business other than as set forth in the Budget; (vi) modifying
 the rights of the Lapis Secured Parties; or (vii) pursuing any

1 plan of reorganization that is not consented to by each the Lapis
2 Secured Parties; **provided**, up to \$20,000 of the amounts
3 otherwise allocated to any Committee for expenses and fees
4 under the Budget may be used by any Committee during the
5 Investigation Period (as defined below) to investigate the
6 validity, enforceability, perfection, priority, or extent of any
7 claim or lien asserted by the Lapis Secured Parties against the
8 Debtors;

9 ix. Investigation Period and Challenge. **Notwithstanding any**
10 **other** term of this Order, an adversary proceeding or contested
11 matter challenging the amount of the Outstanding Prepetition
12 2017 Lapis Loan Obligations or Outstanding Prepetition 2019
13 Lapis Loan Obligations, the Lapis 2017 Loan Documents, the
14 Lapis 2019 Loan Documents, the validity, extent,
15 enforceability, perfection, or priority of the Lapis Secured
16 Parties' security interests and liens in respect thereof, or
17 otherwise asserting any claims or causes of action against the
18 Lapis Secured Parties, on behalf of the Debtors' estates (a
19 "Challenge"), may be filed by any Committee no more than
20 seventy-five (75) days after the Petition Date (such period of
21 time, the "Investigation Period"). Any Committee shall be and
is hereby granted standing and authority to file a Challenge
raising any and all claims and defenses relating thereto. To the
extent no Challenge against the Lapis Secured Parties is
commenced during the Investigation Period then (i) any
repayment of the Debtors' obligations to the Lapis Secured
Parties shall be deemed final and indefeasible, not subject to
subordination or recharacterization, and otherwise unavoidable,
(ii) the Lapis Secured Parties' claims against the Debtors under
the applicable 2017 Lapis Loan Documents and 2019 Lapis
Loan Documents shall constitute allowed claims, not subject to
subordination, offset, recoupment, recharacterization, and
otherwise unavoidable, for all purposes in the Chapter 11 Cases
and any subsequent Chapter 7 case or cases, (iii) the Lapis
Secured Parties' liens on Lapis Prepetition Collateral shall be
deemed legal, valid, binding, perfected, not subject to defense,
counterclaim, offset of any kind, subordination and otherwise
unavoidable, (iv) the Lapis Secured Parties' liens on Lapis
Prepetition Collateral and claims shall not be subject to any
other or further claims, causes of action, or challenges by any

1 party in interest including, without limitation, any successor
2 thereto; and (v) the Lapis Secured Parties and their affiliates,
3 agents, attorneys, officers, directors, and employees, shall be
4 deemed released of all claims and/or causes of action by, and
5 liabilities owing to, the Debtors, any Committee, the Debtors'
6 estates, all parties in interest, and any subsequently appointed
7 trustee arising out of or based on any facts or circumstances
8 occurring prior to the date hereof; provided that if one or more
9 claims are timely under this Paragraph and properly filed, then
10 except for such claims, all other potential claims and causes of
11 action are hereby deemed forever waived and barred;

12 x. Good Faith. In accordance with Section 364(e) of the
13 Bankruptcy Code, in the event any provisions of this Order are
14 modified, amended, or vacated, no such modification,
15 amendment or vacation shall affect the validity and
16 enforceability of any lien or priority authorized or created for
17 the benefit of the Lapis Secured Parties hereby. Any claim
18 granted to the Lapis Secured Parties hereunder arising prior to
19 the effective date of such modification, amendment, or vacation
20 shall be governed in all respects by the original provisions of
21 this Order and the Lapis Secured Parties shall be entitled to all
of the rights, remedies, privileges and benefits, including the
liens and priorities granted herein, with respect to any such
claim;

xii. Environmental Claims. None of the Lapis Secured Parties
shall be deemed to be in control of the operations of the Debtors
or to be acting as a "responsible person," "managing agent," or
"owner or operator" (as such terms or any similar terms are
used in the United States Comprehensive Environmental
Response, Compensation, and Liability Act or any similar
Federal or state statute or regulation) with respect to the
operation or management of the Debtors;

xiii. Rights to Seek Further Relief. Nothing herein shall (i)
preclude the Lapis Secured Parties from seeking any other relief
that it may deem appropriate, including relief from the
automatic stay, or (ii) prevent the Lapis Secured Parties from
asserting at some later time that their liens and security interests
in the Prepetition Collateral are not being adequately protected;

1 xiii. Termination Rights. The Debtors' rights to use Lapis
2 Prepetition Collateral under this Order shall terminate
3 immediately upon the occurrence of (i) an Event of Default
4 under the DIP Facility; (ii) the failure of any Debtor to cure any
5 default in its obligations to comply with, keep, observe, or
6 perform any of its agreements or undertakings under this Order
7 that is not otherwise subject to any specific termination right
8 hereunder after five days written notice of any failure to so
9 comply; (iii) the Chapter 11 Cases or any of them are dismissed
10 or converted to a case under Chapter 7 of the Bankruptcy Code;
11 (iv) an adversary proceeding or contested matter is commenced
12 or joined by any Debtor challenging the amount, validity,
13 enforceability, priority, or extent of any Secured Lender's liens,
14 security interests, or claims; (v) the earlier of (1) the date of the
15 entry of an order of this Court appointing a Chapter 11 trustee
16 or an examiner with enlarged powers (beyond those set forth in
17 Sections 1104(c) and 1106(a)(3) and (4) of the Bankruptcy
18 Code) for any Debtor; or (2) the date any Debtor files a motion,
19 application, or other pleading consenting to or acquiescing in
20 any such appointment; (vi) an order is entered in the Chapter 11
21 Cases over the objection of the Lapis Secured Parties approving
financing pursuant to Section 364 of the Bankruptcy Code that
would grant an additional security interest or a lien on any
Lapis Prepetition Collateral or granting a superpriority
administrative claim that is equal or superior to the
superpriority administrative claim granted to the Lapis Secured
Parties under this Order; (vii) the date that is 180 days after the
Petition Date. Upon the occurrence of any of the foregoing,
without further order from the Court, the automatic stay of
Section 362 of the Bankruptcy Code is modified to the extent
necessary to permit, the Lapis Secured Parties effective on the
fifth (5th) day after the occurrence of any Termination Date, to
exercise all rights and remedies against Lapis Prepetition
Collateral to satisfy the obligations under the applicable 2017
Lapis Loan Documents and 2019 Lapis Loan Documents;

19 xiv. Credit Bid. The Lapis Secured Parties shall have the right to
20 "credit bid" and shall be deemed a "qualified bidder" during
21 any sale of Lapis Prepetition Collateral, including any sales
occurring pursuant to Section 363 of the Bankruptcy Code or
included as part of any plan of reorganization;

1 xv. Marshalling. In no event shall the Lapis Secured Parties be
2 subject to the equitable doctrine of “marshaling” or any other
3 similar doctrine; and

4 xvi. Automatic Stay. This Order shall be deemed a request by the
5 Lapis Secured Parties for relief from the automatic stay of
6 Section 362 of the Bankruptcy Code and for adequate
7 protection as of the Petition Date for purposes of Section 507(b)
8 of the Bankruptcy Code. The automatic stay of Section 362 of
9 the Bankruptcy Code is hereby modified to permit (i) the Lapis
10 Secured Parties to exercise possession, control, use, and/or
11 distribution of any funds held by it as permitted under the 2017
12 Lapis Loan Documents and 2019 Lapis Loan Documents, and
13 (ii) the Debtors and Lapis Secured Parties to take any action
14 specifically authorized or contemplated by this Order.

15 14. Carve-Out.

16 (a) *Carve-Out.* As used in this ~~Interim~~Final Order, the term
17 “**Carve-Out**” means, collectively, the sum of: (i) all fees required to be paid to the
18 Clerk of the Court and to the U.S. Trustee pursuant to 28 U.S.C. §1930(a) and 31
19 U.S.C. § 3717; (ii) the reasonable fees and expenses up to \$15,000 incurred by a
20 trustee under section 726(b) of the Bankruptcy Code; and (iii) the aggregate
21 amount of unpaid fees and expenses of the Debtors’ and the Committee ~~(which~~
~~order has not been reversed, vacated or stayed unless such stay is no longer~~
~~effective)~~ under sections 327(a), 328 or 1103(a) of the Bankruptcy Code (the
“**Case Professionals**”), to the extent such fees and expenses are allowed and
payable pursuant to an order of the Court (which order has not been reversed,
vacated or stayed) (“**Allowed Professional Fees**”), and the reimbursement of
out-of-pocket expenses allowed by the Court and incurred by the members of the

1 Committee in the performance of their duties (but excluding fees and expenses of
2 third party professionals employed by such members) (“**Committee Expenses**”),
3 which amount under this clause (iii) shall not exceed the sum of: (x) an aggregate
4 amount per week limited to the amount set forth in the Budget for Allowed
5 Professional Fees and Committee Expenses incurred prior to the delivery of a
6 Carve-Out Trigger Notice (and if such amount exceeds the amount set forth in the
7 Budget, each Case Professional and/or Committee member shall receive the portion
8 of its Allowed Professional Fees and/or Committee Expenses, as appropriate, on a
9 pro rata basis), provided (i) the Maturity Date has not occurred or (ii) Event of
10 Default has not occurred or continuing (the “**Pre Carve-Out Notice Trigger**
11 **Cap**”) plus (y) \$75,000 for Allowed Professional Fees and Committee Expenses
12 incurred from and after the delivery of the Carve-Out Trigger Notice (defined
13 below) (the “**Post Carve-Out Notice Cap**” together, with the Pre Carve-Out
14 Notice Trigger Cap, the “**Carve-Out Cap**”). No portion of the Carve-Out or any
15 Cash Collateral may be used in violation of this **InterimFinal** Order. Nothing in
16 this **InterimFinal** Order or otherwise shall be construed to increase the Carve-Out if
17 actual (i) Allowed Professional Fees of any Case Professional or (ii) Committee
18 Expenses are higher in fact than Carve-Out Cap amount. Any funds held by the
19 Debtors upon the delivery of a Carve Out Trigger Notice shall be applied dollar for
20 dollar, against the Carve Out.

1 (b) *Carve-Out Trigger Notice.* As used herein, the term
2 **“Carve-Out Trigger Notice”** means a written notice provided by the DIP Lender
3 to the Debtors, counsel to the Lapis Secured Parties, Committee, and the U.S.
4 Trustee that the Post Carve-Out Notice Trigger Cap is invoked, which notice may
5 be delivered following the occurrence and during the continuance of an Event of
6 Default and/or acceleration of the DIP Obligations under the DIP Loan Documents.
7 Upon delivery of the Carve-Out Trigger Notice to the Debtors (the **“Termination**
8 **Declaration Date”**), the Debtors shall provide notice by email and facsimile to all
9 Case Professionals, at the email addresses and facsimile numbers set forth in each
10 Professional’s notice of appearance filed with the Bankruptcy Court (or, if there is
11 no such notice of appearance, at such Professional’s last known email address and
12 facsimile number) within one (1) day after the Debtors’ receipt of a Carve-Out
13 Trigger Notice informing them that such Carve-Out Trigger Notice has been
14 received and further advising them that the Debtors’ ability to pay such Case
15 Professionals and Committee Expenses is subject to and limited by the Post
16 Carve-Out Notice Trigger Cap.

17 (c) *Payment of Allowed Professional Fees Prior to Termination*
18 *Declaration Date.* Any payment or reimbursement made prior to the occurrence of
19 the Termination Declaration Date in respect of any Allowed Professional Fees and
20 Committee Expenses shall not reduce the Carve Out.
21

1 (d) *Payment of Carve-Out on or After the Termination Declaration*

2 *Date.* Any payment or reimbursement made on or after the occurrence of the
3 Termination Declaration Date in respect of any Allowed Professional Fees and
4 Committee Expenses shall permanently reduce the Carve-Out on a dollar-for-dollar
5 basis. Any funding of the Carve-Out shall be added to, and made a part of the DIP
6 Obligations secured by the DIP Collateral and shall be otherwise entitled to the
7 protections granted under this ~~Interim~~Final Order, the DIP Loan Documents, the
8 Bankruptcy Code and applicable law.

9 (e) *Objection Rights.* Nothing contained herein or in the DIP Loan
10 Documents, including the inclusion of line items in the Budget for Professional
11 Fees, is intended to constitute, nor shall be construed as consent to the allowed of
12 any Case Professional's fees, costs and expenses by any party and shall not affect
13 the rights of the Debtors, the DIP Lender, the Committee, the Lapis Secured Parties
14 or any other party in interest to object to the allowance and/or payment of any such
15 amounts incurred or requested.

16 (f) *Carve-Out Priority.* The Carve-Out shall be senior in all
17 respects to the DIP Liens, the DIP Superpriority Claims, the Prepetition Credit
18 Liens, the liens and/or claims of any Lapis Secured Parties, and any and all other
19 forms of adequate protection, liens or claims securing the DIP Obligations, the
20 Adequate Protection Obligations and/or the obligations of any Prepetition Secured
21 Parties or Lapis Secured Parties.

1 15. Bankruptcy Code Sections 506(c) and 552(b) Waivers. ~~Subject to~~
2 ~~entry of a Final Order, without~~Without limiting the Carve-Out, the Debtors
3 irrevocably waive and shall be prohibited from asserting (i) any surcharge claim,
4 under section 506(c) of the Bankruptcy Code or otherwise, for any costs and
5 expenses incurred in connection with the preservation, protection or enhancement
6 of, or realization by the DIP Lender upon the DIP Collateral and no costs or
7 expenses of administration that have been or may be incurred in any of the Chapter
8 11 Cases at any time shall be charged against the DIP Lender or its claims or liens
9 (including any claims or liens granted pursuant to this ~~Interim~~Final Order), and (ii)
10 the “equities of the case” exception under section 552(b) of the Bankruptcy Code
11 in connection with the DIP Facility. As material inducement to the Lapis Secured
12 Parties to agree to the use of their prepetition collateral, the Debtors irrevocably
13 wave and shall be prohibited from asserting, and this Court approves the waiver
14 by Debtors of, any equities of the case exceptions under section 552(b) of the
15 Bankruptcy Code and the waiver by Debtors of the provisions of section 506(c) of
16 the Bankruptcy Code as those relate to the Lapis Secured Parties and the Lapis
17 Prepetition Collateral.

18 16. Application of Proceeds. ~~Subject to the entry of the Final Order, in~~In
19 no event shall the DIP Lender be subject to the equitable doctrine of “marshaling”
20 or any other similar doctrine with respect to the DIP Collateral, and all proceeds
21 thereof shall be received and used in accordance with this ~~Interim~~Final Order.

1 17. Disposition of Collateral. The Debtors shall not sell, transfer, lease,
2 encumber or otherwise dispose of any portion of the DIP Collateral, other than in
3 the ordinary course of business or in connection with the payments contemplated
4 under this ~~Interim~~Final Order, including the Carve-Out, without the prior written
5 consent of the DIP Lender (and no such consent shall be implied from any other
6 action, inaction or acquiescence by the DIP Lender) or order of this Court;
7 provided for the avoidance of doubt the Debtors shall comply with Section 6.4 of
8 the DIP Loan Agreement and further provided, nothing herein shall modify the
9 Debtors' obligations under the Bankruptcy Code to seek Court approval for
10 transactions outside the ordinary course of business. Notwithstanding anything
11 otherwise provided herein, 100% of any net cash proceeds of any sale of DIP
12 Collateral outside of the ordinary course of business shall, subject to the
13 satisfaction of the Carve-Out and the lien priorities outlined in paragraph 12 herein,
14 be used to immediately satisfy the DIP Obligations, until paid in full.

15 18. Restrictions on Granting Postpetition Liens. Other than the Carve-Out
16 or as otherwise provided in ~~this~~the Interim Order, ~~the~~this Final Order or the DIP
17 Loan Documents, no claim or lien having a priority superior or *pari passu* with
18 those granted by this ~~Interim~~Final Order and the DIP Loan Documents to the DIP
19 Lender shall be granted or permitted by any order of this Court heretofore or
20 hereafter entered in the Chapter 11 Cases, and the Debtors will not grant any such
21 mortgages, security interests or liens in the DIP Collateral (or any portion thereof)

1 or to any other parties pursuant to section 364(d) of the Bankruptcy Code or
2 otherwise, while (i) any portion of the DIP Facility, any DIP Facility Loans or any
3 other DIP Obligations, are outstanding or (ii) the DIP Lender has any Commitment
4 under the DIP Loan Documents. For avoidance of doubt, there shall be no
5 restriction and this paragraph shall not apply and excludes any liens or security
6 interests granted in favor of any federal, state, municipal or other governmental
7 unit, commission, board or court for any liability of the Debtors.

8 19. Automatic Effectiveness of Liens. The DIP Liens shall not be subject
9 to a challenge and shall attach and become valid, perfected, binding, enforceable,
10 non-avoidable and effective by operation of law as of the date of the entry of this
11 ~~Interim~~Final Order on a final basis, without any further action by the Debtors and
12 the DIP Lender, respectively, and without the necessity of execution by the Debtors
13 or the filing or recordation, of any financing statements, security agreements,
14 deposit control agreements, vehicle lien applications, mortgages, filings with a
15 governmental unit (including, without limitation, the U.S. Patent and Trademark
16 Office or the Library of Congress), or other documents or the taking of any other
17 actions. All DIP Collateral shall be free and clear of other liens, claims and
18 encumbrances, except as provided in the DIP Loan Documents, and this
19 ~~Interim~~Final Order. If the DIP Lender hereafter requests that the Debtors execute
20 and/or deliver to the DIP Lender financing statements, control agreements,
21 mortgages, or other documents considered by the DIP Lender to be reasonably

1 necessary or desirable to further evidence the perfection of the DIP Liens the
2 Debtors are hereby authorized and directed to execute and/or deliver such
3 financing statements, control agreements, mortgages, and documents, and the DIP
4 Lender is hereby authorized to file or record such documents in its discretion
5 without seeking modification of the automatic stay under section 362 of the
6 Bankruptcy Code, in which event all such documents shall be deemed to have been
7 filed or recorded at the time and on the date of the entry of this ~~Interim~~Final Order;
8 provided, however, no such filing or recordation shall be necessary or required in
9 order to create or perfect the DIP Liens. The DIP Lender, in its sole discretion,
10 may file a photocopy of this ~~Interim~~Final Order as a financing statement with any
11 filing or recording office or with any registry of deeds or similar office, in addition
12 to, or in lieu of, such financing statements, notices of liens or similar statements.⁴

13 20. Protection Under Section 364(e) of the Bankruptcy Code. The DIP
14 Lender has acted in good faith in connection with this ~~Interim~~Final Order and its
15 reliance on this ~~Interim~~Final Order is in good faith. The reversal or modification
16 on appeal of the authorizations under section 364 of the Bankruptcy Code
17 contained in this ~~Interim~~Final Order does not affect the validity of any DIP
18 Obligation or the DIP Liens, or the Adequate Protection Liens whether or not the
19 DIP Lender or Prepetition Secured Parties (as applicable) knew of the pendency of
20 the appeal, unless such authorization and incurrence of DIP Obligations and DIP
21 ⁴ The provisions of section 1146(a) of the Bankruptcy Code do not apply herein.

1 Lien and advance of the DIP Facility Loan under 364 of the Bankruptcy Code in
2 this ~~Interim~~Final Order and the Final Order, were stayed pending appeal.

3 21. Reservation of Rights of the DIP Lender. Notwithstanding any other
4 provision of this ~~Interim~~Final Order to the contrary, the entry of this ~~Interim~~Final
5 Order is without prejudice to, and does not constitute a waiver of, expressly or
6 implicitly, or otherwise impair: (i) any of the rights of the DIP Lender under the
7 Bankruptcy Code or under non-bankruptcy law, including, without limitation, the
8 right of any of such parties to (a) request modification of the automatic stay of
9 section 362 of the Bankruptcy Code, (b) request dismissal of any of these Chapter
10 11 Cases, conversion of any of these Chapter 11 Cases to cases under chapter 7, or
11 appointment of a chapter 11 trustee or examiner with expanded powers in any of
12 these Chapter 11 Cases, (c) seek to propose, subject to the provisions of section
13 1121 of the Bankruptcy Code, a chapter 11 plan or plans; or (ii) any other rights,
14 claims, or privileges (whether legal or equitable or otherwise) of the DIP Lender.
15 The delay in or failure of the DIP Lender to seek relief or otherwise exercise their
16 respective rights and remedies shall not constitute a waiver of any of the DIP
17 Lender's rights and remedies.

18 22. Right to Credit Bid.

19 (a) *DIP Lender.* Pursuant to section 363(k) of the Bankruptcy
20 Code, unless the Court orders otherwise for cause as provided under section 363(k)
21 of the Bankruptcy Code, the DIP Lender shall have the right to credit bid the total

1 of the DIP Obligations for any or all of the DIP Collateral at a sale, lease or other
2 disposition of such DIP Collateral outside the ordinary course of business
3 (including any auction or similar sales), whether pursuant to a plan of
4 reorganization or a motion pursuant to section 363 of the Bankruptcy Code or
5 otherwise (which credit bid rights under section 363(k) of the Bankruptcy Code or
6 otherwise shall not be impaired in any manner).

7 (b) A credit bid may be applied only to reduce the cash
8 consideration with respect to those assets in which the party submitting such credit
9 bid holds a perfected security interest. The DIP Lender shall be considered a
10 “Qualified Bidder” with respect to their rights to acquire all or any of the assets by
11 credit bid.

12 23. Remedies and Notice Upon the Occurrence of Maturity Date or Event
13 of Default. ~~Subject to entry of a Final Order, upon~~ Upon prior written notice by the
14 DIP Lender to counsel for the Debtors, counsel for the Prepetition Secured Parties,
15 the Committee, and the U.S. Trustee of the occurrence of an Event of Default (each
16 as defined in the DIP Loan Documents and incorporated herein by reference) and
17 without further order of the Court, the DIP Lender may (i) declare the DIP
18 Obligations to be immediately due and payable; (ii) terminate the DIP Lender’s
19 commitment under the DIP Facility (other than the Carve-Out) or use of Cash
20 Collateral; (iii) charge default rate interest; and/or (iv) upon five (5) business days’
21 notice to counsel to the Debtors, counsel to the Prepetition Secured Creditors, the

1 Committee and the U.S. Trustee, exercise all default-related rights and remedies
2 against the DIP Collateral, without further order of or application or motion to the
3 Bankruptcy Court, and without restriction or restraint by any stay under sections
4 362 and 105 of the Bankruptcy Code or otherwise, provided however, that during
5 the five (5) business day notice period, any party in interest shall have the right to
6 file a pleading in opposition to the DIP Lender's exercise of rights and remedies
7 including the delivery of the Carve-Out Trigger Notice; provided further that,
8 unless otherwise ordered by the Court, the only issue that may be raised by any
9 party in such pleading shall be whether in fact, an Event of Default has occurred
10 and is continuing; but provided further that, if an Event of Default occurs as a
11 result of the Debtors' failure to indefeasibly satisfy the DIP Obligations by the
12 Stated Maturity Date (as defined in the DIP Loan Documents), the above
13 referenced five (5) day notice period shall not apply and the Debtors and all other
14 interested parties shall not have any challenge rights, except as may be otherwise
15 ordered by the Court.

16 24. Modification of Stay. Subject to the terms set forth herein, the
17 automatic stay imposed under section 362(a) of the Bankruptcy Code is hereby
18 modified as necessary to effectuate all of the terms, rights, benefits, privileges,
19 remedies and provisions of this ~~Interim~~Final Order, and the DIP Loan Documents
20 including without limitation, to permit the DIP Lender to exercise all rights and
21 remedies provided for in the DIP Loan Documents and take any and all actions

1 provided therein, in each case, in accordance with paragraph 23 of this
2 ~~Interim~~Final Order.

3 25. Survival of DIP Liens, DIP Superpriority Claims, and Other Rights.

4 ~~If, in accordance with section 364(e) of the Bankruptcy Code, this Interim Order~~
5 ~~does not become a final non-appealable order, if~~ a trustee terminates this
6 ~~Interim~~Final Order, or if any of the provisions of this ~~Interim~~Final Order are
7 hereafter modified, amended, vacated or stayed by subsequent order of this Court
8 or any other court, such termination or subsequent order shall not affect the
9 priority, validity, enforceability or effectiveness of (or subordination to the
10 Carve-Out of) any lien, security interests or any other benefit or claim authorized
11 hereby with respect to any DIP Obligations or Adequate Protection Obligations
12 incurred prior to the effective date of such termination or subsequent order. All
13 such liens, security interests, claims and other benefits shall be governed in all
14 respects by the original provisions of this ~~Interim~~Final Order, and the DIP Lender
15 and Lapis Secured Parties shall be entitled to all the rights, remedies, privileges
16 and benefits granted herein, including the liens and priorities granted herein, with
17 respect to any DIP Loan and Adequate Protection Obligations, subject to the
18 Carve-Out.

19 26. Survival of this ~~Interim~~Final Order. The provisions of this
20 ~~Interim~~Final Order and any actions taken pursuant hereto shall survive the entry of
21 any order: (i) confirming any plan of reorganization in any of the Chapter 11

1 Cases; (ii) converting any of the Chapter 11 Cases to a chapter 7 case; or (iii)
2 dismissing any of the Chapter 11 Cases, and the terms and provisions of this
3 ~~Interim~~Final Order as well as the DIP Superpriority Claims and the DIP Liens in
4 the DIP Collateral granted pursuant to this ~~Interim~~Final Order and the DIP Loan
5 Documents shall continue in full force and effect notwithstanding the entry of any
6 such order. Such claims and liens shall maintain their priority as provided by this
7 ~~Interim~~Final Order and the DIP Loan Documents, and to the maximum extent
8 permitted by law, until all of the DIP Obligations are indefeasibly paid in full in
9 cash and discharged or otherwise treated under a plan of reorganization, which is
10 reasonably acceptable to the DIP Lender. In no event shall any plan of
11 reorganization be allowed to alter the terms of repayment of any of the DIP
12 Obligations from those set forth in the DIP Loan Documents unless agreed to by
13 and among the Debtors ~~and~~, the DIP Lender, the Committee and the Lapis Secured
14 Parties.

15 27. Modifications of DIP Loan Documents. The Debtors and the DIP
16 Lender are hereby authorized to implement, in accordance with the terms of the
17 DIP Loan Documents, any non-material modifications of the DIP Loan Documents
18 with not less than three (3) business days' advance written notice to the Lapis
19 Secured Parties and Committee but otherwise without further notice, motion or
20 application to, order of or hearing before, this Court. Any material modification or
21 amendment to the DIP Loan Documents or any non-material modification to which

1 the Lapis Secured Parties or Committee has objected by notice to the Debtors and
2 DIP Lender within the advance notice period described above shall only be
3 permitted pursuant to an order of this Court, after being submitted to this Court
4 upon five (5) business days' notice to the U.S. Trustee, counsel to the Committee,
5 and counsel to the Lapis Secured Parties, each of whom reserves all rights and
6 objections with respect to any such material modification or amendment; provided,
7 that any forbearance from, or waiver of, (i) a breach by the Debtors of a covenant
8 representation or any other agreement or (ii) a default or an Event of Default, in
9 each case under the DIP Loan Documents shall not require an order of this Court,
10 provided that the Debtor or DIP Lender provide prior notice of such forbearance or
11 waiver to counsel to the Lapis Secured Parties and Committee. In the event of any
12 inconsistency between this InterimFinal Order and the DIP Loan Agreement, this
13 InterimFinal Order shall control.

14 28. Insurance Policies. Upon entry of this InterimFinal Order, on each
15 insurance policy maintained by the Debtors which in any way relates to the DIP
16 Collateral: (i) the DIP Lender shall be, and shall be deemed to be, without any
17 further action by or notice to any person, named as additional insureds; and (ii) the
18 DIP Lender shall be and shall be deemed to be, without any further action by or
19 notice to any person, named as loss payee for DIP Collateral on which the DIP
20 Lien holds a first priority lien. The Debtors are hereby authorized on a final basis,
21 to and shall take any actions necessary to have the DIP Lender be added as an

1 additional insured and loss payee on each insurance policy maintained by the
2 Debtors consistent with this ~~Interim~~Final Order and the DIP Loan Agreement
3 which in any way relates to the DIP Collateral.

4 29. Financial Information. The Debtors shall deliver to the DIP Lender,
5 the Committee and Lapis Secured Parties such financial and other information
6 concerning the business and affairs of the Debtors and any of the DIP Collateral as
7 may be required pursuant to the DIP Loan Documents and/or as the DIP Lender,
8 Committee and/or Lapis Secured Parties shall reasonably request from time to time.
9 The Debtors shall allow the DIP Lender access to the premises in accordance with
10 the terms of the DIP Loan Documents for the purpose of enabling the DIP Lender
11 to inspect and audit the DIP Collateral and the Debtors' books and records.

12 30. Proofs of Claim. Notwithstanding any order entered by the
13 Bankruptcy Court in relation to the establishment of a bar date in the Chapter 11
14 Cases to the contrary, or otherwise, neither the DIP Lender nor the Lapis Secured
15 Parties shall ~~not~~ be required to file proofs of claim in the Chapter 11 Cases for any
16 claim allowed herein.

17 31. Successors and Assigns. The relief set forth in this Order shall be
18 binding on each Debtor, its successors and assigns, including any trustee appointed
19 under chapter 11 or chapter 7 of the Bankruptcy Code.

20 32. Immediate Effect of Order. The terms and conditions of this
21 ~~Interim~~Final Order shall be effective and immediately enforceable upon its entry by

1 the Clerk of the Court notwithstanding any potential application of Bankruptcy
2 Rule 6004(h) or otherwise. Furthermore, to the extent applicable, the notice
3 requirements and/or stays imposed by Bankruptcy Rules 4001(a)(3), 6003(b), and
4 6004(a) are hereby waived for good and sufficient cause. The requirements of
5 Bankruptcy Rules 4001, 6003, and 6004, in each case to the extent applicable, are
6 satisfied by the contents of the Motion.

7 ~~32. Notwithstanding any other provision of this Interim Order, the~~
8 ~~findings of fact and rulings of law herein are for purposes of this Interim Order~~
9 ~~only, and are without prejudice to, and shall not constitute any waiver of, the~~
10 ~~rights, claims and defenses of the Lapis Secured Parties or the Debtors in~~
11 ~~connection with any further interim order or any Final Order on the Motion, all of~~
12 ~~which shall be and hereby are reserved.~~

13
14
15 ///End of Order///

16
17 PRESENTED BY:

18 /s/ James L. Day

19 JAMES L. DAY (WSBA #20474)
20 BUSH KORNFIELD LLP

21 SAMUEL R. MAIZEL (*Pro Hac Vice* pending)
SAM J. ALBERTS (WSBA #22255)

1 DENTONS US LLP

2 *Proposed Attorneys for the Chapter 11*
3 *Debtors and Debtors In Possession*

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EXHIBIT 1

DIP LOAN AGREEMENT

Exhibit B

In re Aceto Corporation, et al., Case No. 19-13448 (Bankr. D. N.J. Mar. 15, 2019)



UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
Caption in Compliance with D.N.J. LBR 9004-1

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In re:
ACETO CORPORATION, *et al.*,¹
Debtors.

Order Filed on March 15, 2019
by Clerk
U.S. Bankruptcy Court
District of New Jersey

Chapter 11
Case No. 19-13448 (VFP)
(Jointly Administered)

FINAL ORDER (I) AUTHORIZING DEBTOR IN POSSESSION FINANCING PURSUANT TO 11 U.S.C. §§ 105(a), 362 AND 364(e) AND (d); (II) AUTHORIZING THE USE OF CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363; (III) GRANTING ADEQUATE PROTECTION PURSUANT TO 11 U.S.C. § 361 AND 363; (IV) GRANTING LIENS AND SUPERPRIORITY ADMINISTRATIVE CLAIMS PURSUANT TO 11 U.S.C. § 364(c); (V) MODIFYING THE AUTOMATIC STAY; AND (VI) GRANTING RELATED RELIEF

The relief set forth on the following pages, numbered two (2) through and including sixty eight (68), is hereby **ORDERED**

DATED: March 15, 2019

Honorable Vincent F. Papalia
United States Bankruptcy Judge

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor's taxpayer identification number are as follows: Aceto Corporation (0520); Aceto Agricultural Chemicals Corporation (3948); Aceto Realty LLC (7634); Rising Pharmaceuticals, Inc. (7959); Rising Health, LLC (1562); Acetris Health, LLC (3236); PACK Pharmaceuticals, LLC (2525); Arsynco, Inc. (7392); and Acci Realty Corp. (4433).

Debtors: Aceto Corporation, *et al.*

Case No: 19-13448 (VFP)

Caption: Final Order (I) Authorizing Debtor In Possession Financing Pursuant To 11 U.S.C. §§ 105(a), 362 And 364(c) And (d); (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 363; (III) Granting Adequate Protection Pursuant To 11 U.S.C. § 361 And 363; (IV) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 364(c); (V) Modifying The Automatic Stay, And (VI) Granting Related Relief

Upon the motion, dated February 19, 2019 [D.I. 17] (the "DIP Motion") of Aceto Corporation and its affiliated debtors and debtors in possession (collectively, the "Debtors" or "DIP Borrowers") in the above-captioned chapter 11 cases (collectively, the "Cases"), seeking entry of an interim order and a final order (this "Final Order") pursuant to sections 105, 361, 362, 363, 364, 506, 507 and 552 of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 4001-3 of the Local Rules for the United States Bankruptcy Court for the District of New Jersey (the "Local Rules"), *inter alia*:

(i) authorizing, on a final basis, the Debtors to obtain senior secured, postpetition financing on a superpriority basis consisting of a senior secured superpriority credit facility in the aggregate principal amount of up to \$60,000,000, consisting of revolving loans to be made from time to time by the DIP Lenders (defined below) to the DIP Borrowers (the "DIP Revolving Loans"), and including a sub-limit for standby letters of credit not to exceed \$1,750,000 (the "DIP Letters of Credit"), and together with the DIP Revolving Loans, the "DIP Facility") pursuant to the terms and conditions of that certain *Senior Secured, Priming and Superpriority Debtor-In-Possession Credit Agreement* dated as of February 21, 2019 (as the same may be amended, restated, supplemented, waived or otherwise modified from time to time, in accordance with the terms hereof, including amendments as set forth in Exhibit A hereto, the "DIP Credit Agreement"), by and among the DIP Borrowers, as borrowers and guarantors, Wells Fargo Bank, National Association, as administrative agent (in such capacity, the "DIP

Debtors: Aceto Corporation, *et al.*

Case No: 19-13448 (VFP)

Caption: Final Order (I) Authorizing Debtor In Possession Financing Pursuant To 11 U.S.C. §§ 105(a), 362 And 364(c) And (d); (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 363; (III) Granting Adequate Protection Pursuant To 11 U.S.C. § 361 And 363; (IV) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 364(c); (V) Modifying The Automatic Stay; And (VI) Granting Related Relief

Administrative Agent") for and on behalf of itself and the other lenders party thereto (collectively, the "DIP Lenders") and certain DIP Lenders as issuers of the DIP Letters of Credit (collectively with the DIP Administrative Agent, the DIP Lenders and certain of their affiliates, the "DIP Secured Parties");

(ii) approving the terms and authorizing the Debtors to execute and deliver the DIP Credit Agreement and any other agreements and documents related thereto (together with the DIP Credit Agreement, the "DIP Loan Documents") and to perform such other acts as may be necessary or desirable in connection with the DIP Loan Documents and this Final Order;

(iii) approving as part of the DIP Facility, the refinancing of Revolving Loans under (and as defined in) the Prepetition Credit Agreement (defined below) in the aggregate principal amount of \$23,000,000, that are held by those Prepetition Lenders (defined below) that are also participating in the DIP Facility as DIP Lenders;

(iv) authorizing borrowings of DIP Loans during the period between the entry of the Interim Order (defined below) and entry of this Final Order in an aggregate principal amount of not more than the sum of (a) \$15,000,000 (the "Interim DIP Loan Amount"), provided that the DIP Letters of Credit shall constitute usage of the Interim DIP Loan Amount, plus (b) such refinanced Revolving Loans;

(v) granting to the DIP Administrative Agent, the DIP Lenders, and the other DIP Secured Parties, as holders of the Secured Obligations (as defined in the DIP Credit Agreement) on account of the DIP Facility owing under the DIP Loan Documents, and on account of

Debtor: Axiom Corporation, et al

Case No: 19-13448 (VFP)

Captions: Final Order (i) Appointing Debtor as Receiver on Financing Pursuant To 11 U.S.C. §§ 106(a), 363 and 364(a) And (ii) (i) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 363 (iii) Granting Adequate Protection Pursuant To 11 U.S.C. § 361 and 363 (iv) Granting Liens And Superiority Administrative Claims Pursuant To 11 U.S.C. § 561(b), (v) Modifying The Automatic Stay, And (vi) Granting Related Relief

Banking Services and Swap Agreements (as such terms are defined in the DIP Credit Agreements), provided to DIP Secured Parties (collectively the "DIP Obligations") allowed unperfected secured claims and expense claim status with respect to the DIP Obligations.

(iv) creating or to DIP Administrative Agent for the benefit of itself, the DIP Lenders and the other DIP Secured Parties, as security for the DIP Obligations, automatically perfected security interests in and liens on all of the DIP Collateral (as defined below), including all property constituting "cash collateral" as defined in section 541(a) of the Bankruptcy Code ("Cash Collateral"), which liens shall be subject to the priorities set forth herein.

(v) authorizing the use of the proceeds of the DIP Facility and Cash Collateral to, among other things, make payments in accordance with the Approved Budget (indicated below), subject to the limitations permitted in the DIP Credit Agreements, for operating expenses, fees and expenses under the DIP Facility, and administrative expenses including budgeted professional fees, all subject to the conditions set forth in the DIP Loan Documents and/or the Final Order.

(vi) authorizing the Debtors to use the Prepetition Collateral (as defined below), including Cash Collateral, and providing adequate protection to the Prepetition Secured Parties to the extent of any diminution in value of their interests in the Prepetition Collateral resulting from the imposition of the automatic stay, the Debtors' use, sale, or lease of the Prepetition Collateral, and the granting of their respective interests in the Prepetition Collateral ("Diminution in Value"), and

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Debtors: Aceto Corporation, et al.

Case No: 19-13448 (VFP)

Caption: Final Order (I) Authorizing Debtor In Possession Financing Pursuant To 11 U.S.C. §§ 105(a), 362 And 364(c) And (d); (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 363; (III) Granting Adequate Protection Pursuant To 11 U.S.C. § 361 And 363; (IV) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 364(c); (V) Modifying The Automatic Stay; And (VI) Granting Related Relief

(ix) vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Loan Documents and this Final Order.

The Court having considered the DIP Motion, the exhibits attached thereto, the *Declaration of Rebecca A. Roof in Support of First Day Relief* [D.I. 19] (the "First Day Declaration"), the *Declaration of Scott Mates In Support of the DIP Motion* attached to Exhibit A to the DIP Motion (the "DIP Declaration"), the DIP Loan Documents, and the evidence submitted and argument made at the interim hearing held on February 21, 2019 (the "Interim Hearing") and the final hearing held on March 15, 2019 (the "Final Hearing"); and the Court having entered the Interim Order (I) Authorizing Debtor In Possession Financing Pursuant To 11 U.S.C. §§ 105(a), 362 And 364(c) And (d); (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 363; (III) Granting Adequate Protection Pursuant To 11 U.S.C. § 361 And 363; (IV) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 364(c); (V) Modifying The Automatic Stay, (VI) Scheduling A Final Hearing Pursuant To Bankruptcy Rule 4001; And (VII) Granting Related Relief; [D.I. 36] (the "Interim Order"); and adequate and sufficient notice of the Interim Hearing and Final Hearing having been given under the circumstances and in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and all applicable Local Rules; and the Interim Hearing and the Final Hearing having been held and concluded; and all objections, if any, to the relief requested in the DIP Motion having been withdrawn, resolved or overruled by the Court; and it appearing that approval of the relief requested in the DIP Motion

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Debtors: Aceto Corporation, et al.

Case No: 19-13448 (VFP)

Caption: Final Order (I) Authorizing Debtor In Possession Financing Pursuant To 11 U.S.C. §§ 105(a), 362 And 364(c) And (d); (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 363; (III) Granting Adequate Protection Pursuant To 11 U.S.C. § 361 And 363; (IV) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 364(c); (V) Modifying The Automatic Stay; And (VI) Granting Related Relief

on a final basis is fair and reasonable and in the best interests of the Debtors and their estates, and is essential for the continued operation of the Debtors' businesses and the preservation of the value of the Debtors' assets; and it appearing that the Debtors' entry into the DIP Credit Agreement and the other DIP Loan Documents is a sound and prudent exercise of the Debtors' business judgment; and after due deliberation and consideration, and good and sufficient cause appearing therefor;

BASED UPON THE RECORD ESTABLISHED AT THE INTERIM HEARING AND AT THE FINAL HEARING, THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:²

A. **Petition Date.** On February 19, 2019 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of New Jersey (the "Court").

B. **Debtors in Possession.** The Debtors have continued in the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

C. **Jurisdiction and Venue.** This Court has jurisdiction over the Cases and this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference to the*

² The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

Page

Debtors Aceto Corporation, et al.

Case No. 19-13448 (VFP)

Caption: Final Order (I) authorizing Debtor to Possession Financing Pursuant To 11 U.S.C. §§ 105(a), 362 And 364(c) And (d); (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 303; (III) Granting Adequate Protection Pursuant To 11 U.S.C. § 361 And 403; (IV) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 364(c); (V) Modifying The Automatic Stay; And (VI) Granting Related Relief

Bankruptcy Court Under Title 11 of the United States District Court for the District of New Jersey, dated September 16, 2012 (Stumble CJ), Notice by the Court and proceedings in the DIP Motion to proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409 and this matter is a case proceeding pursuant to 28 U.S.C. § 157(d)(2).

D. Committee Formation. On February 27, 2013, the United States Trustee for the District of New Jersey (the "U.S. Trustee") appointed an official committee of unsecured creditors to these cases pursuant to section 1103 of the Bankruptcy Code (the "Committee") which consists of (i) Willington Trust, National Association; (ii) Amgen/Amgen Pharma USA, Inc.; (iii) EDC Limited; (iv) Ingenu Pharmaceuticals, NJ, LLC; and (v) Tdmg Pharma (EU) BV LTD.

E. Notice. Notice of the DIP Motion, the Interim Hearing and the Final Hearing has been provided to all creditors in the Bankruptcy Code, the Bankruptcy Rules and the Local Rules, and no other or further notice of the DIP Motion will respect to the relief requested at the Final Hearing or the entry of this Final Order shall be required.

F. Debtors' Stipulations. After consultation with their advisors, the Debtors' actual stipulations acknowledge and agree subject to Paragraph 12 hereof as follows (collectively, the "Debtors' Stipulations"):

(i) Prepetition Loan Facility. Pursuant to that certain Second Amended and Restated Credit Agreement dated as of December 21, 2016 (as amended, restated, supplemented, or otherwise modified from time to time, the "Prepetition Credit Agreement";

Debtors: Aceto Corporation, *et al.*

Case No: 19-13448 (VFP)

Caption: Final Order (I) Authorizing Debtor In Possession Financing Pursuant To 11 U.S.C. §§ 105(a), 362 And 364(c) And (d); (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 363; (III) Granting Adequate Protection Pursuant To 11 U.S.C. § 361 And 363; (IV) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 364(c); (V) Modifying The Automatic Stay; And (VI) Granting Related Relief

and collectively with the other loan documents and any other agreements and documents executed or delivered in connection therewith, each as amended, restated, supplemented, waived or otherwise modified from time to time, the "Prepetition Loan Documents"), among (a) Aceto Corporation, as borrower thereunder (the "Prepetition Loan Borrower"), (b) certain of the other Debtors, as guarantors³ thereunder (collectively, the "Prepetition Loan Guarantors"); and together with the Prepetition Loan Borrower, collectively, the "Prepetition Loan Parties"), (c) Wells Fargo Bank, National Association, as administrative agent (in such capacity, the "Prepetition Administrative Agent")⁴; (d) the Lenders party thereto (the "Prepetition Lenders"), and together with the Prepetition Administrative Agent and certain of their affiliates providing banking services and acting as counterparties in swap transactions, the "Prepetition Secured Parties"), the Prepetition Secured Parties provided revolving credit, term loans, and other financial accommodations to the Prepetition Loan Borrower pursuant to the Prepetition Loan Documents (the "Prepetition Loan Facility").

(ii) Prepetition Obligations. The Prepetition Loan Facility provided the Prepetition Loan Borrower with, among other things, (a) up to \$100,000,000 aggregate principal amount of revolving loans (the "Prepetition Revolving Loans"), and (b) \$120,000,000 in term loans (the "Prepetition Term Loans"). As of the Petition Date, (A) the aggregate principal

³ The guarantors under the Prepetition Loan Documents are Rising Pharmaceuticals, Inc., PACK Pharmaceuticals, LLC, Rising Health, LLC, and Aceto Agricultural Chemicals Corp.

⁴ Wells Fargo Bank serves as both the DIP Administrative Agent and the Prepetition Administrative Agent. Most of the Prepetition Lenders under the Prepetition Credit Agreement are DIP Lenders under the DIP Credit Agreement.

Debtors: Aceto Corporation, et al.

Case No: 19-13448 (VFP)

Caption: Final Order (I) Authorizing Debtor In Possession Financing Pursuant To 11 U.S.C. §§ 105(a), 362 And 364(c) And (d); (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 363; (III) Granting Adequate Protection Pursuant To 11 U.S.C. § 361 And 363; (IV) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 364(c); (V) Modifying The Automatic Stay; And (VI) Granting Related Relief

amount of loans outstanding under the Prepetition Loan Facility was not less than \$205,000,000, including not less than \$85,000,000 of Prepetition Revolving Loans and \$120,000,000 of Prepetition Term Loans, (B) \$1,737,324 undrawn face amount of letters of credit issued under the Prepetition Loan Facility (collectively, the "Prepetition Letters of Credit") and (C) certain obligations in respect of banking services provided by, and swap transactions with, Prepetition Secured Parties (collectively, together with accrued and unpaid interest, fees, costs and other charges under the Prepetition Loan Documents, the "Prepetition Obligations"). Each of the Prepetition Loan Parties has jointly and severally, absolutely, unconditionally and irrevocably guaranteed the Prepetition Obligations of the other Prepetition Loan Parties.

(iii) Prepetition Agent's Liens and Prepetition Collateral. Prior to the Petition Date, the Prepetition Loan Parties granted to the Prepetition Administrative Agent, for the benefit of itself and the other Prepetition Secured Parties, a first priority security interest in and continuing lien (the "Prepetition Agent's Liens") on the Collateral (as defined in the Prepetition Credit Agreement) (the "Prepetition Collateral"), including but not limited to Cash Collateral.

(iv) Validity, Perfection, and Priority of Prepetition Agent's Liens and Prepetition Obligations. The Debtors acknowledge and agree that as of the Petition Date (a) the Prepetition Agent's Liens on the Prepetition Collateral were valid, binding, enforceable, non-avoidable, and properly perfected and were granted to, or for the benefit of, the Prepetition Secured Parties for fair consideration and reasonably equivalent value; (b) the Prepetition

Debtors: Aceto Corporation, *et al.*

Case No: 19-13448 (VFP)

Caption: Final Order (I) Authorizing Debtor In Possession Financing Pursuant To 11 U.S.C. §§ 105(a), 362 And 364(c) And (d); (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 363; (III) Granting Adequate Protection Pursuant To 11 U.S.C. § 361 And 363; (IV) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 364(c); (V) Modifying The Automatic Stay; And (VI) Granting Related Relief

Agent's Liens were senior in priority over any and all other liens on the Prepetition Collateral, subject only to certain liens senior by operation of law or otherwise permitted by the Prepetition Loan Documents (solely to the extent any such permitted liens were valid, properly perfected, non-avoidable, and senior in priority to the Prepetition Agent's Liens as of the Petition Date, the "Permitted Prior Liens"); (c) the Prepetition Obligations constitute legal, valid, binding, and non-avoidable obligations of the Prepetition Loan Parties enforceable in accordance with the terms of the applicable Prepetition Loan Documents; (d) no offsets, recoupments, challenges, objections, defenses, claims, or counterclaims of any kind or nature to any of the Prepetition Agent's Liens or Prepetition Obligations exist, and no portion of the Prepetition Agent's Liens or Prepetition Obligations is subject to any challenge or defense including avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (e) the Debtors and their estates have no claims, objections, challenges, causes of action, and/or choses in action, including avoidance claims under chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions for recovery or disgorgement, against any of the Prepetition Secured Parties or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees arising out of, based upon or related to the Prepetition Loan Facility; (f) the Debtors waive, discharge, and release any right to challenge any of the Prepetition Obligations, the priority thereof, and the validity, extent, and priority of the Prepetition Agent's Liens securing the Prepetition Obligations; and (g) the Prepetition Obligations

Stage 11

Debtor: Aceto Corporation, et al.

Case No: 19-13448 (VFP)

Caption: Final Order (i) Authorizing Debtor to Postpetition Financing Pursuant To 11 U.S.C. §§ 105(n), 362 And 364(c) And (d); (ii) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 363; (iii) Granting Adequate Protection Pursuant To 11 U.S.C. § 361 And 363; (iv) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 364(e); (v) Modifying The Automatic Stay; And (vi) Granting Related Relief

...continue allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code.

(c) No Control None of the DIP Administrative Agent, the DIP Lender or the Protection Secured Parties controls the Debtor or their properties or operations, has authority to determine the manner in which any of the Debtor's operations are conducted, or to control person or insider of the Debtor or any of their affiliates by virtue of any of the actions taken with respect to, in connection with, related to, or arising from the Interim Order, the Final Order, the DIP Facility, the DIP Loan Documents, the Protection Lien Facility and the Protection Lien Documents.

(d) Cash Collateral All of the Debtor's cash, including any cash in demand accounts of the Debtor, wherever located, constitutes Cash Collateral of the Protection Secured Parties.

(e) Findings Regarding Corporate Authority Each Debtor has all requisite corporate or limited liability company authority to execute and deliver the DIP Loan Documents to which it is a party and to perform its obligations thereunder.

Findings Regarding Postpetition Financing

(i) Request for Postpetition Financing The Debtor seeks authority on a final basis to continue (A) using Cash Collateral on the terms described herein, and (B) borrowing under the DIP Facility on the terms described herein and in the DIP Loan Documents.

Debtors: Aceto Corporation, *et al.*

Case No: 19-13448 (VFP)

Caption: Final Order (I) Authorizing Debtor In Possession Financing Pursuant To 11 U.S.C. §§ 105(a), 362 And 364(c) And (d); (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 363; (III) Granting Adequate Protection Pursuant To 11 U.S.C. § 361 And 363; (IV) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 364(c); (V) Modifying The Automatic Stay, And (VI) Granting Related Relief

to refinance certain of the Prepetition Obligations, to administer their Cases, and to fund their operations.

(ii) Priming of the Prepetition Agent's Liens. The priming of the Prepetition Agent's Liens on the Prepetition Collateral under section 364(d) of the Bankruptcy Code, as contemplated by the DIP Facility and as further described below, will enable the Debtors to continue borrowing under the DIP Facility and to continue to operate their businesses to the benefit of their estates and creditors. The Prepetition Secured Parties are each entitled to receive adequate protection as set forth in the Interim Order and this Final Order, provided, that the Prepetition Secured Parties' adequate protection shall be on terms acceptable to the Prepetition Administrative Agent, pursuant to sections 361, 363, and 364 of the Bankruptcy Code.

(iii) Need for Postpetition Financing and Use of Cash Collateral. Since the Petition Date, the Debtors had a need to use Cash Collateral and to obtain credit pursuant to the DIP Facility in order to, among other things, administer and preserve the value of their estates. The ability of the Debtors to maintain business relationships with their vendors, suppliers and customers, to pay their employees and otherwise to finance their operations requires the availability of working capital from the DIP Facility and the use of Cash Collateral, the absence of either of which would immediately and irreparably harm the Debtors, their estates and parties in interest. The Debtors do not have sufficient available sources of working capital and

Debtor: Auto Computer, et al

Case No. 19-13448 (VFP)

Chapter 11 Final Order (I) Authorizing Debtor In Possession Financing Pursuant To 11 U.S.C. §§ 361(a), 362 And 364(c) And (d); (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 363; (III) Granting Adequate Protection Pursuant To 11 U.S.C. § 361 And 362; (IV) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 364(e); (V) Modifying The Automatic Stay, And (VI) Granting Related Relief

financing to operate their businesses or maintain their properties in the ordinary course of business through the DIP Facility and authorized use of Cash Collateral

(1) On Credit Available on More Favorable Terms. As set forth in more detail in the DIP Declaration, given their current financial condition, business operations, and capital structure, the Debtors have been and continue to be unable to obtain financing from sources other than the DIP Lenders on terms more favorable than the DIP Facility. The Debtors are unable to obtain unsecured credit allowable under Bankruptcy Code section 507(d) as an administrative expense. The Debtors have also been unable to obtain (i) unsecured credit having priority over that of administrative expenses of the kind specified in sections 503(b), 507(a) and 507(b) of the Bankruptcy Code, (ii) credit secured solely by a lien on property of the Debtors and their estates that is not otherwise subject to a lien, or (iii) credit secured solely by a junior lien on property of the Debtors and their estates that is subject to a lien. As described in the First Day Declaration and the DIP Declaration, financing on a position less on better terms is not otherwise available without granting the DIP Administrative Expense. In the benefit of itself and the other DIP Secured Parties, upon the terms set forth in the Incentive Order, the DIP Loan Documents and this Final Order: (1) perfected security interests in and liens on the Debtors' existing and after-acquired assets, (2) superpriority claims and liens; (3) the other provisions set forth in the Incentive Order and the Final Order, and (4) a refinancing of certain of the Prepetition Obligations.

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Debtors: Aceto Corporation, et al.

Cause No: 19-13448 (VFP)

Caption: Final Order (7) Authorizing (I) Use In Possession Financing Pursuant To 11 U.S.C. §§ 363(a), 363 and 363(c) And (d); (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 363; (III) Granting Adequate Protection Pursuant To 11 U.S.C. § 361 and 362; (IV) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 364(c); (V) Modifying The Automatic Stay; And (VI) Granting Related Relief

(v) Use of proceeds of the DIP Facility. As a condition to entry into the DIP Loan Agreement, the extending of credit under the DIP Facility and the authorization to use Cash Collateral, the DIP Administrative Agent, the DIP Lenders, and the Prepetition Secured Parties required authorization to operate and the Debtors have agreed that proceeds of the DIP Facility shall be used in each case in a manner consistent with the terms and conditions of this Final Order and the DIP Loan Documents and in accordance with the 11-week budget (including the Professional Fee Budget (defined herein)) attached hereto as Schedule L (as the same may be modified from time to time in accordance with the Loan Documents and the Final Order), consistent with the terms of the DIP Loan Documents and subject to such variations as permitted in the DIP Credit Agreement (the "Approved Budget"), solely for (i) working capital, (ii) payment of costs of administering the Cases, (iii) payment of such other prepetition obligations as set forth in the Approved Budget, or otherwise reasonably attributable to the DIP Administrative Agent, and as approved by the Court; (d) payment of interest, fees, expenses and other amounts (including legal and other professional fees and expenses of the DIP Administrative Agent) owed under the DIP Loan Documents; (e) payment of certain adequate protection amounts to the Prepetition Secured Parties; (f) the Roll Up Loans and DIP Letters of Credit as set forth below; and (g) other general operating purposes of the Debtors permitted by the Approved Budget and the DIP Loan Documents.

(vi) Roll-Up Loans. Immediately upon the entry of the Injunction Order, without any further action by the Debtors or any other party, Prepetition Remaining Loans shall

Debtors: Aceto Corporation, et al.

Case No: 19-13448 (VFP)

Caption: Final Order (I) Authorizing Debtor In Possession Financing Pursuant To 11 U.S.C. §§ 105(a), 362 And 364(c) And (d); (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 363; (III) Granting Adequate Protection Pursuant To 11 U.S.C. § 361 And 363; (IV) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 364(c); (V) Modifying The Automatic Stay; And (VI) Granting Related Relief

the Prepetition Credit Agreement in the aggregate principal amount of \$23,000,000 held by Prepetition Lenders that are also participating in the DIP Facility as DIP Lenders (collectively, the "Roll-Up Loans") were refinanced and deemed to constitute a like principal amount of DIP Loans. The replacement and refinancing of the Roll-Up Loans was, and under this Final Order, shall be authorized as compensation for, in consideration for, and solely on account of, the agreement of the DIP Lenders to fund amounts, and provide other consideration to the Debtors, under the DIP Facility and not as payments under, adequate protection for, or otherwise on account of, any Prepetition Obligations. The DIP Administrative Agent and the DIP Lenders would not be willing to have extended or to continue to provide the DIP Facility or extend credit to the Debtors thereunder without the refinancing of the Roll-Up Loans as DIP Loans. The replacement and refinancing of the Roll-Up Loans as DIP Loans enabled the Debtors to obtain urgently needed financing that they need to administer these Cases and to fund their operations.

(vii) DIP Letters of Credit. The DIP Facility includes a sub-limit for the DIP Letters of Credit, in an aggregate amount not to exceed \$1,750,000, and the Prepetition Letters of Credit outstanding under the Prepetition Credit Agreement was, and under this Final Order, shall be deemed to constitute DIP Letters of Credit outstanding and issued under the DIP Credit Agreement.

(viii) Application of Proceeds of Collateral. As a condition to entry into the DIP Loan Agreement, the extension of credit under the DIP Facility and authorization to use Cash Collateral, the Debtors, the DIP Administrative Agent, the DIP Lenders, the other DIP

Debtors: Aceto Corporation, *et al.*

Case No: 19-13448 (VFP)

Caption: Final Order (I) Authorizing Debtor In Possession Financing Pursuant To 11 U.S.C. §§ 105(a), 362 And 364(c) And (d); (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 363; (III) Granting Adequate Protection Pursuant To 11 U.S.C. § 361 And 363; (IV) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 364(c); (V) Modifying The Automatic Stay; And (VI) Granting Related Relief

Secured Parties and the Prepetition Secured Parties have agreed that as of and commencing on the date of the Interim Hearing, the Debtors shall apply the proceeds of DIP Collateral in accordance with this Final Order and as provided in the DIP Loan Documents.

J. Adequate Protection. The Prepetition Administrative Agent, for the benefit of itself and the other Prepetition Secured Parties, is entitled to receive adequate protection to the extent of any Diminution in Value of its and the Prepetition Secured Parties' interests in the Prepetition Collateral. Pursuant to sections 361, 363 and 507(b) of the Bankruptcy Code, the Prepetition Secured Parties have received and will continue to receive (a) adequate protection liens and superpriority claims, as set forth in paragraphs 12 and 14 of the Interim DIP Order and paragraphs 12 and 14 herein, and (b) current payment of interest, fees and expenses, as set forth in paragraphs 16 and 35 of the Interim Order and paragraphs 16 and 35 herein.

K. Sections 506(c) and 552(b). In light of: (i) the DIP Administrative Agent's, DIP Lenders' and other DIP Secured Parties' agreement that their liens and superpriority claims shall be subject to the Carve Out and the Permitted Prior Liens, (ii) the Prepetition Administrative Agent's and the other Prepetition Secured Parties' agreement that their liens shall be subject to the Carve Out and the Permitted Prior Liens and subordinate to the DIP Liens, and (iii) the payment of expenses as set forth in the Approved Budget in accordance with and subject to the terms and conditions of this Final Order and the DIP Loan Documents, (a) the Prepetition Secured Parties are each entitled to a waiver of any "equities of the case"

Debtors: Aceto Corporation, et al.

Case No: 19-13448 (VFP)

Caption: Final Order (I) Authorizing Debtor In Possession Financing Pursuant To 11 U.S.C. §§ 105(a), 362 And 364(c) And (d); (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 363; (III) Granting Adequate Protection Pursuant To 11 U.S.C. § 361 And 363; (IV) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 364(c); (V) Modifying The Automatic Stay; And (VI) Granting Related Relief

exception under section 552(b) of the Bankruptcy Code, and (b) the DIP Administrative Agent, the DIP Lenders and the other Prepetition Secured Parties are each entitled to a waiver of the provisions of section 506(c) of the Bankruptcy Code.

L. Good Faith of the DIP Administrative Agent and DIP Lenders.

(i) Willingness to Provide Financing. The DIP Lenders have indicated a willingness to provide financing to the Debtors subject to: (a) entry of the Interim Order and this Final Order; (b) approval of the terms and conditions of the DIP Facility and the DIP Loan Documents; (c) satisfaction of the closing conditions and conditions to the extension of credit set forth in the DIP Loan Documents; and (d) findings by this Court that the DIP Facility is essential to the Debtors' estates, that the DIP Administrative Agent, the DIP Lenders and the other DIP Secured Parties are extending credit to the Debtors pursuant to the DIP Loan Documents in good faith, and that the DIP Administrative Agent's, the DIP Lenders' and the other DIP Secured Parties' claims, superpriority claims, security interests and liens and other protections granted pursuant to the Interim Order, this Final Order and the DIP Loan Documents will have the protections provided by section 364(e) of the Bankruptcy Code.

(ii) Business Judgment and Good Faith Pursuant to Section 364(e). The terms and conditions of the DIP Facility and the DIP Loan Documents, and the interest and fees paid and to be paid thereunder, are fair, reasonable, and the best available to the Debtors under the circumstances, are ordinary and appropriate for secured financing to debtors in possession, reflect the Debtors' exercise of prudent business judgment consistent with their

Debtors: Aneto Corporation, et al

Case No: 19-13448 (VFP)

Caption: Final Order re Authority, Order to Preserve Pursuant to 11 U.S.C. §§ 105(a), 362 and 361(b) and (c); (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 363; (III) Granting Adequate Protection Pursuant To 11 U.S.C. § 361 and 363; (IV) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 363(c); (V) Modifying The Automatic Stay; And (VI) Granting Related Relief

fiduciary duties, and are supported by reasonably equivalent value and consideration. The terms and conditions of the DIP Facility and the use of Cash Collateral were negotiated in good faith and at arms' length among the Debtors, the DIP Administrative Agent, the DIP Lenders and the Prepetition Secured Parties, with the assistance and counsel of their respective advisors. Use of Cash Collateral and credit to be extended under the DIP Facility shall be deemed to have been allowed, advanced, made or extended in good faith by the DIP Administrative Agent, the DIP Lenders and the Prepetition Secured Parties within the meaning of section 541(c) of the Bankruptcy Code.

(b) Final Hearing. Notice of the Final Hearing and the relief requested by the DIP Motion has been provided by the Debtors, whether by facsimile, electronic mail, overnight courier or hand delivery, to certain parties-in-interest, including: (i) the U.S. Trustee; (ii) counsel to the Prepetition Administrative Agent; (iii) counsel to the DIP Agent and the DIP Lenders; (iv) counsel to the Committee; and (v) those entities or individuals included on the Debtors' list of (a) largest unsecured creditors on a consolidated basis. Under the circumstances, such notice of the DIP Motion, the relief requested therein, and the Final Hearing complied with Bankruptcy Rules 4001(b), (c) and 601, and the Local Rules, and any other notice need be provided in order to the Final Order.

Based upon the foregoing findings and conclusions, the findings and conclusions made in the Interim Order, the DIP Motion, the Proposed Declaration, the DIP Declaration, and

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Debtors: Aceto Corporation, *et al.*

Case No: 19-13448 (VFP)

Caption: Final Order (I) Authorizing Debtor In Possession Financing Pursuant To 11 U.S.C. §§ 105(a), 362 And 364(c) And (d); (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 363; (III) Granting Adequate Protection Pursuant To 11 U.S.C. § 361 And 363; (IV) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 364(c); (V) Modifying The Automatic Stay; And (VI) Granting Related Relief

the record before the Court with respect to the DIP Motion, and after due consideration and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED that:

1. **Final Financing Approved** The DIP Motion is granted as set forth herein, the Final Financing (as defined below) is authorized and approved, and the use of Cash Collateral is authorized, in each case on a final basis and subject to the terms and conditions set forth in the DIP Loan Documents and this Final Order. Except as modified herein, all findings of fact, conclusions of law, and authorizations made by this Court in the Interim Order are hereby ratified and incorporated herein by reference as though set forth fully below. All objections to the DIP Motion and this Final Order to the extent not withdrawn, waived, settled, or resolved, and all reservations of rights included therein, are hereby denied and overruled.

DIP Facility Authorization

2. **Authorization of the DIP Facility**. The DIP Facility, including the refinancing of all the Roll-Up Loans as DIP Loans and the treatment of all the Prepetition Letters of Credit as DIP Letters of Credit, is hereby approved on a final basis. The Debtors are expressly and immediately authorized and directed on a final basis to continue borrowing under the DIP Loan Documents and under the DIP Facility, and to incur and to perform the DIP Obligations in accordance with, and subject to, the terms of this Final Order and the DIP Loan Documents, and to execute and deliver all instruments, certificates, agreements, and documents which may be required or necessary for the performance by the Debtors under the DIP Facility and the creation

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Debtor: [REDACTED] Corporation, et al.

Case No: 19-13448 (VFP)

Caption: Final Order (I) authorizing Debtor to Possess or Exercise Powers To (1) U.S.C. § 362 (with 362 and 361(a) And (d)), (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 364, (III) Granting Adequate Protection Pursuant To 11 U.S.C. § 361 And 362, (IV) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 541(c), (V) Modifying The Automatic Stay, And (VI) Granting Related Orders

and perfection of the DIP Liens described in and provided for by the Interim Order, this Final Order and the DIP Loan Documents, including such of Debtors providing to joint and several guarantors of all of the DIP Obligations. Nothing in this Final Order shall be deemed to limit or modify the obligations set forth in the Interim Order or affect the roll-up and replacement and refinancing of the roll-up loans, and upon the Presentation Letters of Credit or DIP Letters of Credit. The Debtors are further guaranteed and directed as a first duty to pay, to conform with the Interim Order and this Final Order, the principal, interest, fees (including charges and other amounts identified in the DIP Loan Documents as such amounts become earned, due and payable and without need to obtain further Court approval, including letter of credit fees (including issuance, renewal, and other related charges), various line fees, commitment fee, administrative fees, and the fees and disbursements of the DIP Administrative Agent's attorneys, advisors, accountants, and other consultants, whether or not such fees arise before or after the Pendency Date and to take any other actions that may be necessary or appropriate, all in the extent provided in the Interim Order, this Final Order or the DIP Loan Documents. All collections and proceeds, whether from ordinary course collections, asset sales, debt or equity issuances, insurance recoveries, condemnations, or otherwise, will be deposited and applied as required by the Final Order and the DIP Loan Documents. Upon execution and delivery, the DIP Loan Documents shall represent valid and binding obligations of the Debtors, interest in and control of the Debtors and their estates as provided with their terms.

Debtors: Aceto Corporation, *et al.*

Case No: 19-13448 (VFP)

Caption: Final Order (I) Authorizing Debtor In Possession Financing Pursuant To 11 U.S.C. §§ 105(a), 362 And 364(c) And (d); (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 363; (III) Granting Adequate Protection Pursuant To 11 U.S.C. § 361 And 363; (IV) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 364(c); (V) Modifying The Automatic Stay; And (VI) Granting Related Relief

3. Authorization to Borrow. From the entry of this Final Order through and including the Maturity Date (defined below), and subject to the terms and conditions set forth in the DIP Loan Documents and this Final Order, the Debtors are hereby authorized on a final basis to continue to use Cash Collateral, and borrow up to the full amount of DIP Revolving Loans, consistent with the Approved Budget, subject to the variances permitted under the DIP Credit Agreement (the "Final Financing"), through the Maturity Date.

4. DIP Obligations. The DIP Loan Documents, the Interim Order and this Final Order shall constitute and evidence the validity and binding effect of the Debtors' DIP Obligations, which DIP Loan Documents, Interim Order, Final Order and DIP Obligations shall be enforceable against the Debtors, their estates and any successors thereto, including any trustee appointed in the Cases, or in any case under chapter 7 of the Bankruptcy Code upon the conversion of any of the Cases, or in any other proceedings superseding or related to any of the foregoing (collectively, the "Successor Cases"). The DIP Obligations include all loans and any other indebtedness or obligations, contingent or absolute, which may now or from time to time be owing by any of the Debtors to the DIP Administrative Agent, any DIP Lender or any other DIP Secured Party, in each case, under, or secured by, the DIP Loan Documents or this Final Order, including all principal, accrued interest, costs, fees, expenses and other amounts under the DIP Loan Documents. Without limiting the foregoing, the DIP Obligations shall also include cash management, bank product exposure and swap transaction obligations to the extent described in, or secured by, the DIP Loan Documents, including all Banking Services

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Debtors' Asset Liquidation

Case No. 19-13448-VFP

Complaint Final Order (I) Authorizing Debtor to Possess and Operate Pursuant To 11 U.S.C. §§ 541(b)(6), 542(a)(2), 541(c)(2) And (d), (e) (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 363, (III) Granting Adequate Protection Pursuant To 11 U.S.C. § 361 And 363, (IV) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 503(c), (V) Modifying The Automatic Stay And (VI) Granting Related Relief

Obligations (as defined in the DIP Credit Agreement) and Swap Agreement Obligations (as defined in the DIP Credit Agreement). The Debtors shall be jointly and severally liable for the DIP Obligations. The DIP Obligations shall be due and payable, without notice or demand, and the use of Cash Collateral shall automatically cease on the Maturity Date. No obligation, payment, transfer, or grant of collateral security hereunder or under the DIP Loan Documents shall be stayed, recharacterized, voidable, or unenforceable under the Bankruptcy Code or under any applicable law (including under sections 541, 544, and 547 of the Bankruptcy Code or under any applicable state Uniform Voidable Transactions Act, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar state or common law) or subject to any avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable or otherwise), counterclaim, cross-claim, defense, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity. The Debtors are authorized (but not directed), in any payoff letter or similar document now or hereafter entered upon payment in full of their DIP Obligations to provide a full and complete waiver and release of claims in favor of the DIP Administrators under the DIP Loan Documents and any other DIP Related Party.

DIP Liens. In order to ensure the DIP Obligations pursuant to sections 541, 542, 364(c)(2), 364(d)(3), and 364(d) of the Bankruptcy Code, the DIP Administrative Agent, for the benefit of itself and the DIP Lenders, was granted immediately upon entry of the Instant Order, and is hereby granted on a final basis, superpriority secured

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Debtors: Aceto Corporation et al

Case No. 19-13448 (VFP)

Caption: Final Order (I) Authorizing Debtor to Reorganize Following Petition To 11 U.S.C. §§ 105(a), 302 And 304(c) And (d), (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 363, (III) Granting Adequate Protection Pursuant To 11 U.S.C. § 361 And 302, (IV) Granting Liens And Superiority Administrative Claims Pursuant To 11 U.S.C. § 364(f), (V) Modifying The Automatic Stay, And (VI) Granting Related Relief

binding, enforceable, non-avoidable, and automatically and properly perfected possession security interests in and liens (collectively, the "DIP Liens") on all personal property, wherever now existing or hereafter arising and wherever located, tangible and intangible, of each of the Debtors (collectively, the "DIP Collateral"), including (a) all cash, cash equivalents, deposit accounts, securities accounts, accounts, other receivables (including credit card receivables, if any), chattel paper, contract rights, inventory (wherever located), instruments, documents, securities (whether or not marketable) and investment property (including all of the issued and outstanding capital stock of each of its subsidiaries), hedge agreements, furniture, fixtures, equipment (including documents of title), goods, franchise rights, trade names, trademarks, servicemarks, copyrights, patents, license rights, intellectual property, goodwill, intangible (including, for the avoidance of doubt, payment intangibles), rights to the proceeds of claims (including tax refunds and any other extraordinary payments), support obligations, guarantees, letters of credit rights, commercial tenancies, causes of action and all subrogation, indemnification rights, all present and future intercompany debt, books and records related to the foregoing, accounts and proceeds in the foregoing, wherever located, including insurance or other proceeds, (b) any proceeds arising through pursuant to chapter 9 of the Bankruptcy Code or applicable state law equivalents, and the proceeds thereof, and (c) all other personal property and assets of the Debtors whether or not subject to valid, perfected, enforceable, and binding liens on the Petition Date. Notwithstanding the foregoing, DIP Collateral shall not include any interest in leaseholdings which the granting of the DIP Liens thereon would

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Debtor: Aegion Corporation, et al

Case No: 19-13448 (VFP)

Caption: Final Order (I) Authorizing Debtor To Perceive Proceeds Pursuant To 11 U.S.C. §§ 107(a), 362 And 364(c) And (d); (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 364 (U) Granting Adequate Protection Pursuant To 11 U.S.C. § 361 and 363; (IV) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 504(c), (V) Modifying The Automatic Stay And (VI) Granting Related Relief

collateral of breach or termination other than (a) the extent such breach or termination would be rendered ineffective pursuant to applicable law (including applicable state law or the Bankruptcy Code) or any other Excluded Property (as defined in the DIP Credit Agreement) law shall, in any event, include the proceeds of such collateral and likewise shall include Excluded Property.

6. **DIP Lien Priority** The DIP Liens securing the DIP Obligations are valid, automatically perfected, non-avoidable and superior in any security collateral interest, lien or claim to any of the DIP Collateral, except that the DIP Liens shall be subject to the Claims set forth in the Final Order and shall otherwise be junior only to Permitted Prior Liens. Other than as set forth herein or in the DIP Loan Documents, the DIP Liens shall not be made subject to or participate with any security interests heretofore or hereinafter granted in the Cases or any Successor Cases, and shall be valid and enforceable against any trustee appointed in the Cases or any Successor Cases, upon the conversion of any of the Cases to a case under chapter 7 of the Bankruptcy Code (or an any other Successor Case) and/or upon the dismissal of any of the Cases or Successor Cases. The DIP Liens shall not be subject to sections 541 or 551 of the Bankruptcy Code. No lien is intended and preserved for the benefit of the estate pursuant to section 551 of the Bankruptcy Code shall be participatory with or senior to the DIP Liens.

7. **DIP Superpriority Claims** The DIP Administrative Agents on behalf of and the DIP Lenders and the other DIP Secured Parties are granted upon entry of

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Debtors: Aceto Corporation, et al.

Case No: 19-13448 (VFP)

Caption: Final Order (I) Authorizing Debtor In Possession Financing Pursuant To 11 U.S.C. §§ 105(a), 362 And 364(c) And (d); (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 363; (III) Granting Adequate Protection Pursuant To 11 U.S.C. § 361 And 363; (IV) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 364(c); (V) Modifying The Automatic Stay; And (VI) Granting Related Relief

the Interim Order and is hereby granted on a final basis, pursuant to section 364(c)(1) of the Bankruptcy Code, an allowed superpriority administrative expense claim in each of the Cases and any Successor Cases (collectively, the "DIP Superpriority Claims") for all DIP Obligations: (a) subject only to the Carve Out, having priority over any and all administrative expense claims and unsecured claims against the Debtors or their estates in any of the Cases and any Successor Cases, at any time existing or arising, of any kind or nature whatsoever, including administrative expenses under any provision of the Bankruptcy Code; and (b) which claims shall at all times be senior to the claims of the Debtors and their estates, and any successor trustee or other estate representative to the extent permitted by law.

8. No Obligation to Extend Credit. The DIP Administrative Agent and DIP Lenders shall have no obligation to make any loan or advance under the DIP Loan Documents, unless all of the conditions precedent to the making of such extension of credit under the DIP Loan Documents and this Final Order have been satisfied in full or waived by the DIP Administrative Agent and in accordance with the terms of the DIP Credit Agreement.

9. Use of Proceeds of DIP Facility. From and after the date of entry of the Interim Order and the subsequent occurrence of the Effective Date (as defined in the Interim Order), the Debtors shall use advances of credit under the DIP Facility in accordance with the Approved Budget (subject to such variances as permitted in the DIP Credit Agreement), only for the purposes specifically set forth in the Interim Order, this Final Order and the DIP

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Debtors: Aceto Corporation, *et al.*

Case No: 19-13448 (VFP)

Caption: Final Order (I) Authorizing Debtor In Possession Financing Pursuant To 11 U.S.C. §§ 105(a), 362 And 364(c) And (d); (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 363; (III) Granting Adequate Protection Pursuant To 11 U.S.C. § 361 And 363; (IV) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 364(c); (V) Modifying The Automatic Stay; And (VI) Granting Related Relief

Loan Documents, and in compliance with the terms and conditions of the Interim Order, this Final Order and the DIP Loan Documents.

10. **Roll-Up Loans.** Immediately upon entry of the Interim Order, without any further action by the Debtors or any other party, and as a condition to the provision of liquidity under the DIP Facility, all Roll-Up Loans were replaced and refinanced and now constitute DIP Loans. Prepetition Lenders that are not DIP Lenders shall not be entitled to share in any payments made in respect of any Roll-Up Loans.

11. **Authorization to Use Cash Collateral.** Subject to the terms and conditions of this Final Order, the DIP Facility, and the DIP Loan Documents and in accordance with the Approved Budget (subject to such variances as permitted in the DIP Credit Agreement), the Debtors are authorized to use Cash Collateral until the Maturity Date. Nothing in this Final Order shall authorize the disposition of any assets of the Debtors or their estates outside the ordinary course of business, or any Debtor's use of any Cash Collateral or other proceeds resulting therefrom, except as permitted in this Final Order, the DIP Facility, the DIP Loan Documents, and in accordance with the Approved Budget (subject to the variances permitted by the DIP Credit Agreement).

12. **Adequate Protection Liens.** Pursuant to sections 361, 363(e), 364(c) and 364(d) of the Bankruptcy Code, as adequate protection of the interests of the Prepetition Secured Parties in the Prepetition Collateral to the extent of any Diminution in Value of such interests in the Prepetition Collateral, the Debtors granted upon entry of the Interim

Debtors: Aceto Corporation, et al.

Case No: 19-13448 (VFP)

Caption: Final Order (I) Authorizing Debtor In Possession Financing Pursuant To 11 U.S.C. §§ 105(a), 362 And 364(c) And (d); (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 363; (III) Granting Adequate Protection Pursuant To 11 U.S.C. § 361 And 363; (IV) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 364(c); (V) Modifying The Automatic Stay; And (VI) Granting Related Relief

Order and hereby grant on a final basis to the Prepetition Administrative Agent, for the benefit of itself and the Prepetition Lenders, continuing, valid, binding, enforceable, and perfected postpetition security interests in and liens on the DIP Collateral (the "Adequate Protection Liens").

13. **Priority of Adequate Protection Liens.**

(a) The Adequate Protection Liens shall be subject to the Carve Out as set forth in this Final Order and shall otherwise be junior only to: (i) the Permitted Prior Liens; (ii) the DIP Liens; and (iii) the Prepetition Agent's Liens. The Adequate Protection Liens shall be senior to all other security interests in, liens on, or claims against any of the DIP Collateral.

(b) Except as provided herein or in the DIP Credit Agreement, the Adequate Protection Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter in the Cases or any Successor Cases, and shall be valid and enforceable against any trustee appointed in any of the Cases or any Successor Cases, or upon the dismissal of any of the Cases or Successor Cases. The Adequate Protection Liens shall not be subject to sections 510, 549, or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of the estate pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the Prepetition Agent's Liens or the Adequate Protection Liens.

14. **Prepetition Superpriority Claim.** As further adequate protection of the interests of the Prepetition Administrative Agent and the other Prepetition Secured Parties in the Prepetition Collateral to the extent of any Diminution in Value of such interests, the

Debtors: Aceto Corporation, et al.

Case No: 19-13448 (VFP)

Caption: Final Order (I) Authorizing Debtor In Possession Financing Pursuant To 11 U.S.C. §§ 105(a), 362 And 364(c) And (d); (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 363; (III) Granting Adequate Protection Pursuant To 11 U.S.C. § 361 And 363; (IV) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 364(c); (V) Modifying The Automatic Stay; And (VI) Granting Related Relief

Prepetition Administrative Agent, on behalf of itself and the other Prepetition Secured Parties, was granted upon entry of the Interim Order and is hereby granted on a final basis an allowed superpriority administrative expense claim with respect to the Prepetition Obligations in each of the Cases and any Successor Cases under sections 503 and 507(b) of the Bankruptcy Code (the "Prepetition Superpriority Claim").

15. **Priority of the Prepetition Superpriority Claim.** The Prepetition Superpriority Claim shall be subject to the Carve Out as set forth in this Final Order and shall otherwise be junior only to the DIP Superpriority Claims and the DIP Obligations secured by the DIP Collateral. The Prepetition Superpriority Claim shall have priority over all other administrative expense claims and unsecured claims against the Debtors or their estates, now existing or hereafter arising, of any kind or nature whatsoever, including administrative expenses under any provision of the Bankruptcy Code.

16. **Adequate Protection Payments and Protections for Prepetition Parties.** As further adequate protection, the Debtors are authorized and directed on a final basis to provide adequate protection payments to the Prepetition Administrative Agent for the account of the Prepetition Lenders, as follows: (i) the current payment from time to time of fees and expenses incurred before or after the Petition Date by the Prepetition Administrative Agent and any Prepetition Lender (including the reasonable fees, out-of-pocket expenses, and disbursements of counsel, financial advisors, auditors, third-party consultants and other vendors), in accordance with paragraph 35 hereof; (ii) the current payment from time to time of accrued

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Debtors: Aceto Corporation, et al.

Case No: 19-13448 (VFP)

Caption: Final Order (I) Authorizing Debtor In Possession Financing Pursuant To 11 U.S.C. §§ 105(a), 362 And 364(c) And (d); (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 363; (III) Granting Adequate Protection Pursuant To 11 U.S.C. § 361 And 363; (IV) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 364(c); (V) Modifying The Automatic Stay; And (VI) Granting Related Relief

and unpaid fees and interest at non-default rates under the Prepetition Loan Documents, including any such fees and interest that is accrued and unpaid as of the Petition Date; and (iii) the payment on the Maturity Date of (A) a waiver fee, as and to the extent provided in Section 2.12(e) of the Prepetition Credit Agreement and subject to reduction as set forth therein, and (B) default interest accrued from the Petition Date at 2% per annum on the Prepetition Obligations as provided in Section 2.13(c) of the Prepetition Credit Agreement; subject, in each case, to recharacterization pursuant to further order of the Court as and to the extent provided under section 506(b) of the Bankruptcy Code, and all rights of such Prepetition Secured Parties in connection therewith are expressly reserved.

17. **Adequate Protection Reservation.** Nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the Prepetition Secured Parties hereunder (if any) is insufficient to compensate for any Diminution in Value of their respective interests in the Prepetition Collateral during the Cases or any Successor Cases. The receipt by the Prepetition Secured Parties of the adequate protection provided herein shall not be deemed an admission that the interests of the Prepetition Secured Parties are adequately protected. Further, this Final Order shall not prejudice or limit the rights of the Prepetition Administrative Agent or the Prepetition Lenders to seek additional relief with respect to the use of Cash Collateral or for additional adequate protection in a manner consistent with the Prepetition Loan Documents, and all parties-in-interests' rights are reserved with respect thereto. Without limiting the generality of the foregoing, until (a) the

Debtors: Aceto Corporation, et al.

Case No: 19-13448 (VFP)

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indefeasible payment in full of all DIP Obligations and Prepetition Obligations, (b) the commitments to lend under the DIP Facility have terminated, (c) all objections and challenges to (i) the liens and security interests of the Prepetition Administrative Agent (including, without limitation, liens granted for adequate protection purposes) and/or (ii) the Prepetition Obligations have been waived, denied or barred in full, and (d) all of the Debtors' Stipulations have become binding on their estates and parties in interest, all liens and security interests of the Prepetition Administrative Agent (including, without limitation, liens granted for adequate protection purposes) shall remain valid and enforceable with the same continuing priority as described herein as and to the extent set forth herein and subject to paragraph 42 hereof.

**Provisions Common to DIP Financing
and Use of Cash Collateral**

18. **Amendment of the DIP Loan Documents.** Subject to the terms and conditions of the applicable DIP Loan Documents, the Debtors and the DIP Agent and DIP Lenders may from time to time make technical, ministerial or non-material amendments, modifications, supplements or waivers to any DIP Loan Document (collectively, "Non-Material DIP Amendments") without further order of the Court; provided that extending the Sale Milestones or the Maturity Date shall be deemed a Non-Material DIP Amendment; provided further that the Debtors shall provide the Committee with written notice of such Non-Material DIP Amendments promptly upon the execution thereof. In the case of a material amendment, modification, supplement or waiver to the DIP Loan Documents (collectively, "Material DIP

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Debtors: Aceto Corporation, *et al.*

Case No: 19-13448 (VFP)

Caption: Final Order (I) Authorizing Debtor In Possession Financing Pursuant To 11 U.S.C. §§ 105(a), 362 And 364(c) And (d); (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 363; (III) Granting Adequate Protection Pursuant To 11 U.S.C. § 361 And 363; (IV) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 364(c); (V) Modifying The Automatic Stay; And (VI) Granting Related Relief

Amendments”), the Debtors shall provide prior written notice (which shall be provided through electronic mail) to co-counsel for the Committee and the U.S. Trustee, each of whom shall have ten (10) days from the date of such notice to object in writing to such Material DIP Amendment. If the Committee and U.S. Trustee indicate that they have no objection to the Material DIP Amendment (or if no objections are timely received), the Debtors may proceed to execute the Material DIP Amendment, which shall become effective immediately upon execution. If the Committee or U.S. Trustee timely objects to such Material DIP Amendment, approval of the Court (which may be sought on an expedited basis) will be necessary to effectuate the Material DIP Amendment; *provided* that such Material DIP Amendment shall be without prejudice to the right of any party in interest to be heard. Any Material DIP Amendment that becomes effective in accordance with this paragraph shall promptly be filed with the Court.

19. **Budget Maintenance.** The use of borrowings under the DIP Facility and the use of Cash Collateral shall be in accordance with the Approved Budget, subject in all respects to the variances set forth in the DIP Credit Agreement. No later than the first Wednesday of each month, the Debtors shall simultaneously deliver to the DIP Administrative Agent and co-counsel for the Committee⁵, an updated 13-week budget. The updated budget shall be approved in writing (including by email) by, and shall be in form and substance reasonably satisfactory to, the DIP Administrative Agent. Such updated budget shall not be effective until

⁵ Unless otherwise agreed to by the Debtors in writing, any and all documents provided to co-counsel for the Committee pursuant to this Final Order shall be subject to the confidentiality agreement entered into by and between the Debtors, the members of the Committee, and the Committee’s advisors.

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Debtors: Aceto Corporation, *et al.*

Case No: 19-13448 (VFP)

Caption: Final Order (I) Authorizing Debtor In Possession Financing Pursuant To 11 U.S.C. §§ 105(a), 362 And 364(c) And (d); (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 363; (III) Granting Adequate Protection Pursuant To 11 U.S.C. § 361 And 363; (IV) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 364(c); (V) Modifying The Automatic Stay; And (VI) Granting Related Relief

so approved and once so approved shall be deemed the "Approved Budget"; *provided, however* that in the event that the DIP Administrative Agent and the Debtors cannot agree as to an updated, modified or supplemented budget, then the existing Approved Budget shall continue in effect, and any variance shall be determined by reference to such Approved Budget, *provided* that notwithstanding anything to contrary contained herein any amounts budgeted for Case Professionals (defined below) retained by the Committee, as set forth in the Professional Fee Budget (defined herein), may not be reduced, amended or modified in any current or future period without the written consent of such Committee professional, and any unused amounts budgeted for Case Professionals retained by the Committee in excess of the amount incurred by such Case Professionals during such budget period may be carried forward to a subsequent, or carried back to a prior, budget period. If a Prepayment Event occurs as a result of the sale of Pharma Assets (as defined in the DIP Credit Agreement) prior to the Maturity Date (defined below) and the aggregate Net Proceeds (as defined in the DIP Credit Agreement) from such event are insufficient to fully fund the Carve Out as set forth in this Interim Order and to repay in full the DIP Obligations and the Prepetition Obligations, then within five (5) business days following the occurrence of such Prepayment Event, the Debtors shall deliver to the DIP Administrative Agent a revised 13-week budget that removes any amounts previously allocated solely to the operation of the Pharma Assets during the forecasted period from and after the occurrence of such Prepayment Event through the end of the then-current budget period. Such revised budget shall be in form and substance reasonably acceptable to the DIP Administrative

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Debtors: Aceto Corporation, *et al.*

Case No: 19-13448 (VFP)

Caption: Final Order (I) Authorizing Debtor In Possession Financing Pursuant To 11 U.S.C. §§ 105(a), 362 And 364(c) And (d); (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 363; (III) Granting Adequate Protection Pursuant To 11 U.S.C. § 361 And 363; (IV) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 364(c); (V) Modifying The Automatic Stay; And (VI) Granting Related Relief

Agent and once so approved shall be deemed the "Approved Budget"; *provided* that any dispute related to such revised budget shall be resolved by the Court. Each updated budget delivered to the DIP Administrative Agent shall be accompanied by such supporting documentation as reasonably requested by the DIP Administrative Agent and shall be prepared in good faith, with due care and based upon assumptions the Debtors believe to be reasonable. A copy of any Approved Budget shall be simultaneously delivered to co-counsel for the Committee, and the U.S. Trustee immediately after it has been approved by the DIP Administrative Agent.

20. Budget Compliance. The Debtors shall at all times comply with the Approved Budget, on the terms and subject to the variances set forth in the DIP Credit Agreement; *provided however*, notwithstanding anything contained herein or in the DIP Loan Documents, the fees and expenses incurred by the Prepetition Secured Parties or the DIP Administrative Agent and their professionals shall not be tested for budget or variance purposes. No later than Wednesday of each week, the Debtors shall deliver to the DIP Administrative Agent and counsel for the Committee, a report comparing the Debtors' actual results under the Approved Budget for the immediately preceding week on a line item basis compared to the projections on the Approved Budget, and an analysis of any variances (the "Variance Report"). The Debtors shall provide all other reports and information as required in the DIP Credit Agreement. The Debtors' failure to comply with the Approved Budget (on the terms and subject to the permitted variances set forth in the DIP Credit Agreement) or to provide the reports and

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Debtors: Axon Corporation et al.

Case No. 19-13448 (VFP)

Caption: Final Order (I) Authorizing Entry In Possession Pursuant To 11 U.S.C. § 541(e), 302 And 361(c) And (d); (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 363 (D); Granting Adequate Protection Pursuant To 11 U.S.C. § 361 and 363; (IV) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 361(c) (V) Modifying The Automatic Stay; And (VI) Granting Related Relief

other obligations required in the DIP Credit Agreement, in each case, in accordance with and subject to the DIP Credit Agreement, shall constitute an Event of Default.

(1) Modification of Automatic Stay. The automatic stay imposed

under section 362(a) of the Bankruptcy Code is hereby modified as necessary to effectuate all of the terms and provisions of this Final Order, including to: (i) permit the Debtors to pursue a final sale of the DIP Liens, Adequate Protection Liens, DIP Superpriority Liens, and Prepetition Superpriority Claims; (ii) permit the Debtors to perform such acts as the DIP Administrative Agent and the Prepetition Administrator Axon may reasonably request to secure the perfection and priority of the liens granted hereunder; (iii) permit the Debtors to incur all liabilities and obligations to the DIP Administrative Agent, DIP Lenders, and other DIP Secured Parties under the DIP Loan Documents, the DIP Facility, and this Final Order, as applicable; and (iv) authorize the Debtors to make payments in accordance with the terms of the Interim Order, this Final Order and the DIP Loan Documents.

(2) Perfection of DIP Liens and Adequate Protection Liens. (A)

This Final Order shall be sufficient and conclusive evidence of the creation, validity, perfection, and priority of all liens granted under the Interim Order, this Final Order and combined hereunder, including the DIP Liens and the Adequate Protection Liens, without the necessity of filing or recording any financing statement, fixture filing, notice or other instrument or document which may otherwise be required under the laws or regulation of any jurisdiction as the taking of any such action is valid as to perfect the DIP Liens and the Adequate Protection Liens, or to

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Debtors: Asset Corporation, et al

Case No: 19-13448 (VFP)

Caption: Final Order (I) Authorizing Debtor to Prosecute Financial Foreclosure To 11 U.S.C. § 505(a), 562 and 564(c) And (d); (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 363; (III) Granting Adequate Protection Pursuant To 11 U.S.C. § 361 And 363; (IV) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 541(c); (V) Modifying The Automatic Stay; And (VI) Granting Related Relief

evidence or settle the DIP Administrative Agent, the DIP Lenders, any other DIP Secured Parties and the Prepetition Secured Parties in the priority granted herein, subject to the terms and conditions of the DIP Liens and the DIP Superpriority Claims shall be deemed to have been filed or recorded as of the Reorganization Date, provided, however, that no such filing or recording shall be necessary or required in order to create or perfect the DIP Liens or the Adequate Protection Liens. The Debtors are authorized to execute and deliver promptly upon demand of the DIP Administrative Agent and the Prepetition Administrative Agent all such financing statements, fixture filings, assignments, notices, and other documents as the DIP Administrative Agent or the Prepetition Administrative Agent may reasonably request. The DIP Administrative Agent and the Prepetition Administrative Agent, in its discretion, may file a photostatic copy of the Final Order as a financing statement or fixture filing, with any filing or recording office, in addition to or in lieu of such financing statements, fixture filings, assignments, notices or other documents, to the extent that the Prepetition

Debtors: Aceto Corporation, et al.

Case No: 19-13448 (VFP)

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Administrative Agent is the secured party under any security agreement, credit card processor notices or agreements, bailee letters, custom broker agreements, financing statement, fixture filing, deposit account control agreement, deposit account instruction agreement or any other collateral documents or relevant Prepetition Loan Documents then automatically and without further action, (i) the DIP Administrative Agent shall be deemed to be a secured party under such documents, (ii) the DIP Obligations, together with any refinancings or replacements thereof, shall be deemed to be secured obligations under such documents, and (iii) the applicable provisions of such documents shall apply to the DIP Obligations. To the extent the Prepetition Administrative Agent is listed as loss payee or additional insured under any of the Debtors' insurance policies, the DIP Administrative Agent shall also be deemed to be the secured party listed under such documents or to be the loss payee or additional insured, as applicable.

23. Application of Proceeds of Collateral. As a condition to the continued extension of credit under the DIP Facility and the continued authorization to use Cash Collateral, the Debtors have agreed that as of and commencing on the date of the Interim Hearing, the Debtors shall apply all proceeds of DIP Collateral (including, without limitation, Cash Collateral) and other payments received by the Debtors in respect of the DIP Collateral, including whether sold in the ordinary course or otherwise, as provided in the DIP Credit Agreement.

24. Protections of Rights of DIP Secured Parties and Prepetition Secured Parties.

Case No. 19-13448-VFP
Debtors Arco Corporation, et al
Court No. 19-13448-VFP
Caption Final Order (I) authorizing Debtor's Postpetition Financing Pursuant To 11 U.S.C. § 542(a), 362 And 362(a) And (d); (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 542; (III) Granting Adequate Protection Pursuant To 11 U.S.C. § 361 And 362; (IV) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 541(c); (V) Modifying The Automatic Stay; And (VI) Granting Related Relief

(a) Unless the DIP Administrative Agent and the Prepetition Administrative Agent, as applicable, shall have provided prior written consent, all DIP Obligations and all Prepetition Obligations have been, or contemporaneously will be, indefeasibly paid in full in cash and the liability commitments under the DIP Facility have terminated. No entry on any of these cases or any subsequent case of any order (or request to the Court by the Debtor or any other representative (which shall not include the Committee) for entry of any order) that authorizes any of the following shall constitute an Event of Default under the Final Order: (i) the obtaining of credit or the incurring of indebtedness that is secured by a security interest or other lien on all or any portion of the DIP Collateral or Prepetition Collateral and that is entitled to administrative priority status in each case that is superior to or pari passu with the DIP Liens, the DIP Superpriority Claims, the Prepetition Agent's Liens, the Adequate Protection Liens, and/or the Prepetition Lender's Superpriority Claims; (ii) the use of Cash Collateral for any purpose other than as permitted in the DIP Loan Documents and the Final Order; or (iii) any modification of any "DIP Secured Parties" or any Prepetition Loan Parties' rights under the Automatic Stay, the Final Order, the DIP Loan Documents or the Prepetition Loan Documents, as applicable, and respect to any DIP Obligations or Prepetition Obligations.

(b) Unless the DIP Administrative Agent and Prepetition Obligations have been indefeasibly paid in full in cash, the Debtor shall file certain books, records, and documents in the federal court as required by the DIP Loan Documents, all consistently compliant with, and

Debtors: Aceto Corporation, et al.

Case No: 19-13448 (VFP)

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with, and provide to the DIP Administrative Agent all such information and documents that any or all of the Debtors are obligated to provide under the DIP Loan Documents or the provisions of this Final Order; (iii) upon reasonable advance notice, permit the DIP Administrative Agent, and the duly authorized representatives or agents of the DIP Administrative Agent, to visit and inspect any of the Debtors' respective properties, to examine and make abstracts or copies from any of their respective books and records, to tour the Debtors' business premises and other properties, and to discuss, and provide advice with respect to, their respective affairs, finances, properties, business operations, and accounts with their respective officers, employees, independent public accountants, and other professional advisors; (iv) permit the DIP Administrative Agent, and the duly authorized representatives or agents of the DIP Administrative Agent to consult with the Debtors' management and advisors on matters concerning the Debtors' businesses, financial condition, operations, and assets; and (v) upon reasonable advance notice, permit the DIP Administrative Agent to conduct, at its discretion and at the Debtors' cost and expense, field audits, collateral examinations, liquidation valuations, and inventory appraisals at reasonable times in respect of any or all of the DIP Collateral and Prepetition Collateral in accordance with the DIP Loan Documents and the Prepetition Loan Documents.

25. **Credit Bidding.** In connection with any sale process authorized by the Court, the DIP Administrative Agent and the Prepetition Administrative Agent may credit bid up to the full amount of outstanding DIP Obligations and Prepetition Obligations, as

Debtors: Aceto Corporation, et al.

Case No: 19-13448 (VFP)

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applicable, including any accrued interest and expenses (each a "Credit Bid"), together with any cash component included in any winning bid, in any sale of the Debtors' assets, whether such sale is effectuated through section 363 or section 1129 of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise. Each of the DIP Administrative Agent and the Prepetition Administrative Agent, as applicable, shall be considered a "Qualified Bidder" with respect to its rights to acquire all or any of the Debtors' assets by Credit Bid.

26. **Subsequent Financing.** If the Debtors, any trustee, any examiner with expanded powers, or any responsible officer subsequently appointed in these Cases or any Successor Cases, shall request authority to obtain credit or incur debt pursuant to Bankruptcy Code sections 364(b), 364(c), or 364(d) or in violation of the DIP Loan Documents at any time prior to the indefeasible repayment in full of all DIP Obligations and Prepetition Obligations, the full cash collateralization of the DIP Letters of Credit at 105% of the face amount thereof, and the termination of the DIP Administrative Agent's and the DIP Lenders' obligation to extend credit under the DIP Facility, and such facilities are proposed to be secured by any DIP Collateral, then such request shall constitute an Event of Default.

27. **Cash Collection.** From and after the date of the entry of the Interim Order, all collections and proceeds of any DIP Collateral or Prepetition Collateral or services the possession, custody, or control of any Debtor, or to which any Debtor is now or shall become entitled at any time, shall continue to be promptly deposited in the same deposit accounts into which the collections and proceeds of the Prepetition Collateral were deposited under the

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Debtors: Aceto Corporation, et al.

Case No: 19-13448 (VFP)

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Prepetition Loan Documents (or in such other accounts as are designated by the DIP Administrative Agent from time to time) (collectively, the "Cash Collection Accounts"), which accounts shall be subject to the sole dominion and control of the DIP Administrative Agent. All proceeds and other amounts in the Cash Collection Accounts, may be used as permitted to be used in accordance with the DIP Credit Agreement and the Approved Budget. The Debtors shall maintain no accounts except those identified in the DIP Credit Agreement and in any cash management order entered by the Court (a "Cash Management Order").

28. Maintenance of DIP Collateral. Until the Maturity Date, the Debtors shall: (a) insure the DIP Collateral as required under the DIP Facility or the Prepetition Loan Facility, as applicable; and (b) maintain the cash management system in effect as of the Petition Date, as modified by any Cash Management Order, or as otherwise required by the DIP Loan Documents or this Final Order.

29. Disposition of DIP Collateral. Until, or contemporaneously with, the Maturity Date, except for the Sale Orders referenced in Section 32 below, the Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral or Prepetition Collateral other than in the ordinary course of business without the prior written consent of the DIP Administrative Agent and Prepetition Administrative Agent, as applicable (and no such consent shall be implied, from any other action, inaction or acquiescence by the DIP Administrative Agent, DIP Lenders, the Prepetition Administrative Agent, or the Prepetition

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Debtors: Aceto Corporation, *et al.*

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Lenders), except as otherwise provided for in the DIP Loan Documents or otherwise ordered by the Court.

30. **DIP Maturity Date.** The commitment of the DIP Lenders shall terminate and all amounts owing under the DIP Facility shall be due and payable, subject to the Carve Out, on the earliest to occur of the following (in any event and subject to extension(s) as provided under the DIP Credit Agreement, the "Maturity Date"): (a) June 7, 2019, or such date as may be extended pursuant to Section 2.04 of the DIP Credit Agreement; (b) the date on which Debtors consummate the transactions for the sale or disposition of all or substantially all of their Chemical Assets (as defined in the DIP Motion); and (c) the acceleration or the maturity of the DIP Loans and the termination of the DIP Facility after the occurrence and during the continuance of an Event of Default under the DIP Credit Agreement, subject to the Remedies Notice Period (as defined below). The Debtors may continue to enter into Swap Agreements with a DIP Lender or a Prepetition Secured Party, in the ordinary course of business, provided that such transactions have a stated termination date prior to June 7, 2019. On the Maturity Date: (x) all applicable DIP Obligations shall be immediately due and payable, all commitments to extend credit under the DIP Facility will terminate, all outstanding DIP Letters of Credit shall be cash collateralized in an amount equal to 105% of the face amount thereof, and such DIP Letters of Credit cash collateral shall not be subject to or subordinate to the Carve Out; (y) all authority to use Cash Collateral shall cease; and (z) the DIP Administrative Agent shall be entitled to

Debtors: Aceto Corporation, et al.

Case No: 19-13448 (VFP)

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exercise all other rights and remedies under the DIP Loan Documents in accordance with this Final Order.

31. **Events of Default.** The occurrence of any of the following events, unless waived by the DIP Administrative Agent in writing and in accordance with the terms of the DIP Credit Agreement, shall constitute an event of default (an "Event of Default"): (a) the failure of the Debtors to perform, in any respect, any of the material terms, provisions, conditions, covenants, or obligations under this Final Order, including the failure to comply with the Sale Milestones (as defined below), (b) the failure of the Debtors to comply with the Approved Budget on the terms and subject to the permitted variances set forth in the DIP Credit Agreement; or (c) the occurrence of any other "Event of Default" under the DIP Loan Documents.

32. **Sale Milestones.** As a condition to the continued access to the DIP Facility and the continued use of Cash Collateral, the Debtors shall meet the following milestones for progress in connection with a sale process under Section 363 of the Bankruptcy Code (the "Sale Milestones"):

(a) not later than seven (7) days following the Effective Date, cause the Sale Procedure Motion (as defined in the DIP Credit Agreement) to be filed with the Court;

(b) if a Pharma Assets Stalking Horse APA (as defined in the DIP Credit Agreement) is not signed by the parties thereto on or prior to the Effective Date, then, either:

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Debtor: Astra Corporation and

Case No: 19-13448 (VFP)

Caption: Final Order of Appointment of Trustee to Preserve Financing Pursuant to 11 U.S.C. §§ 1001a, 302 and 303(a) and (b), (c) Authorizing the Use of Cash Collateral Pursuant to 11 U.S.C. § 363, (d) Granting Adequate Protection Pursuant to 11 U.S.C. § 361 and 363, (e) Granting Liens and Superpriority Administrative Claims Pursuant to 11 U.S.C. § 506(b), (f) Modifying the Amount Due and (g) Granting Related Relief

(1) not later than fourteen (14) days after the Effective Date (A) execute and deliver a Pharma Assets Stripping Floor APA (as defined in the DIP Credit Agreement) with the other parties hereto and deliver a copy of such execute agreement, certified to be true and correct to the DIP Administrative Agent, together with evidence reasonably satisfactory to the DIP Administrative Agent that the Borrowers have received the deposit from the purchaser hereunder (to be held in escrow pursuant to the terms of the applicable Pharma Assets Stripping Floor APA (as defined in the DIP Credit Agreement)) and (B) not later than five (5) days after execution and delivery of such Pharma Assets Stripping Floor APA (as defined in the DIP Credit Agreement), file a sale procedure motion and (C) begin seeking to sell the Pharma Assets (as defined in the DIP Credit Agreement) in one or more sales under Section 363 of the Bankruptcy Code together with a copy of a form asset purchase agreement for the Pharma Assets (as defined in the DIP Credit Agreement) and a proposed sale procedure order establishing an auction process and bid procedure to be used in the "Pharma Assets Sale Procedure Order", both in form and substance reasonably satisfactory to the DIP Administrative Agent or

(2) not later than fourteen (14) days after the Effective Date submit to the DIP Administrative Agent a wind-down or liquidation plan with respect to the orderly liquidation of accounts receivable, inventory and other Pharma Assets (as defined in the DIP Credit Agreement) constituting collateral or property of the Debtors subject to the Proposition Agent's validly perfected liens in form and substance reasonably satisfactory to the DIP Administrative Agent (the "Pharma Liquidation Plan").

(3) not later than thirty (30) days following the Effective Date, obtain entry of the Sale Procedure Order (as defined in the DIP Credit Agreement) and the Pharma Assets Sale Procedure Order if any;

(4) not prior to the Challenge Deadline or later than forty (40) days following the entry of the Sale Procedure Order (as defined in the DIP Credit Agreement) or if the Sale Procedure Order and the Pharma Assets Sale Procedure Order, if any, is entered or modified March 7, 2019, not later than forty five (45) days following the entry of the Sale Procedure Order (as defined in the DIP Credit Agreement) and the Pharma Assets Sale Procedure Order if any, obtain the approval of this court for

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Caption: Final Order (I) Authorizing Debtor In Possession Financing Pursuant To 11 U.S.C. §§ 105(a), 362 And 364(c) And (d); (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 363; (III) Granting Adequate Protection Pursuant To 11 U.S.C. § 361 And 363; (IV) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 364(c); (V) Modifying The Automatic Stay; And (VI) Granting Related Relief

(1) the sale of the Chemical Assets (as defined in the DIP Credit Agreement) pursuant to an asset purchase agreement and an order of the Court, and if applicable, the sale of the Pharma Assets (as defined in the DIP Credit Agreement), pursuant to an asset purchase agreement and an order of the Court, in the case of each such asset purchase agreement and order, in form and substance reasonably satisfactory to the DIP Administrative Agent and the required lenders to the DIP Credit Agreement (each such order, a "Sale Order" and collectively, the "Sale Orders"); and

(2) if applicable, the Pharma Liquidation Plan pursuant to an order of the Court in form and substance reasonably satisfactory to the DIP Administrative Agent and the required lenders to the DIP Credit Agreement;

(e) not later than thirty (30) days following the entry of the respective Sale Order, consummate the sale of the Chemical Assets (as defined in the DIP Credit Agreement) and, if applicable, the sale of the Pharma Assets (as defined in the DIP Credit Agreement), pursuant to Section 363 of the Bankruptcy Code on the terms of the applicable asset purchase agreement and order of the Court, as such asset purchase agreement and order may be amended or otherwise modified in a manner reasonably satisfactory to DIP Administrative Agent and the required lenders to the DIP Credit Agreement.

The Debtors have satisfied the Sale Milestones referenced in sections (a), (b) and, with respect to entry of the Sale Procedure Order, (c) above. For the avoidance of doubt, the failure of the Debtors to comply with any of the remaining Sale Milestones shall constitute an Event of Default under the DIP Credit Agreement and this Final Order. Each material document or material transaction referenced in connection with the Sale Milestones shall be in form, detail and substance reasonably satisfactory to the DIP Administrative Agent.

33. **Rights and Remedies Upon Event of Default.** Immediately upon the occurrence and during the continuation of an Event of Default, notwithstanding the

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provisions of section 362 of the Bankruptcy Code, without any application, motion or notice to, hearing before, or order from the Court, but subject to the terms of this Final Order the DIP Administrative Agent may declare (any such declaration shall be referred to herein as a "Termination Declaration") (a) all DIP Obligations owing under the respective DIP Loan Documents to be immediately due and payable, (b) the termination, reduction or restriction of any further commitment to extend credit to the Debtors under the DIP Facility, (c) termination of the DIP Facility and the DIP Loan Documents as to any future liability or obligation of the DIP Administrative Agent and the DIP Lenders, but without affecting any of the DIP Liens or the DIP Obligations, and may deliver the Carve Out Trigger Notice (defined below) to the Debtors, the U.S. Trustee, and co-counsel for the Committee, and (d) a termination, reduction or restriction on the ability of the Debtors to use Cash Collateral. The Termination Declaration shall include notice of the occurrence of the Event of Default and shall be given by electronic mail to counsel to the Debtors, co-counsel for the Committee, and the U.S. Trustee. The automatic stay in the Cases otherwise applicable to the DIP Administrative Agent, the DIP Lenders, and the Prepetition Loan Parties is hereby modified so that five (5) business days after the date a Termination Declaration is delivered (the "Remedies Notice Period"), the DIP Administrative Agent and the DIP Lenders shall be entitled to exercise their rights and remedies in accordance with the DIP Loan Documents and this Final Order to satisfy the DIP Obligations, DIP Superpriority Claim, and DIP Liens; provided that upon the repayment in full of the DIP Obligations following the expiration of the Remedies Notice Period, the Prepetition

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Administrative Agent shall be entitled to exercise its rights and remedies in accordance with the Prepetition Loan Documents and this Final Order to satisfy the Prepetition Obligations, the Adequate Protection Liens, and the Prepetition Lender Superpriority Claim; *provided however* that following the delivery of a Termination Declaration, and during the Remedies Notice Period, the Debtors are authorized to use Cash Collateral to pay critical expenses to preserve the value of the Debtors' estates. In furtherance of the foregoing, and following the expiration of the Remedies Notice Period (but subject to the funding of the Carve Out), the Debtors and the financial institutions where the Debtors' Cash Collection Accounts are maintained (including those accounts identified in any Cash Management Order) are authorized to remit, without offset or deduction, funds in such Cash Collection Accounts to the DIP Administrative Agent, for deposit into any Cash Collection Accounts maintained with the DIP Administrative Agent, upon receipt of any direction to that effect from the DIP Administrative Agent. During the Remedies Notice Period, the Debtors and/or the Committee shall be entitled to seek an emergency hearing within the Remedies Notice Period. Unless the Court orders otherwise (whether during the Remedies Notice Period or within five (5) business days of the expiration thereof), the automatic stay, as to DIP Administrative Agent, the DIP Lenders, the Prepetition Administrative Agent and the other Prepetition Secured Parties, as applicable, shall automatically be terminated at the end of the Remedies Notice Period without further notice or order. Upon expiration of the Remedies Notice Period or within five (5) business days of the expiration thereof, the DIP Administrative Agent, the DIP Lenders, the other DIP Secured Parties, the Prepetition Administrative Agent and

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Caption: Final Order (I) Authorizing Debtor In Possession Financing Pursuant To 11 U.S.C. § 361; (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 363; (III) Granting Adequate Protection Pursuant To 11 U.S.C. § 361; (IV) Granting Lease And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 364(c); (V) Modifying The Agreement Stay And (VI) Granting Related Relief

The other Prepetition Secured Parties shall be permitted to exercise all remedies set forth herein in the DIP Loan Documents or the Prepetition Loan Documents, as applicable, and as otherwise available at law without further order of or application of motion to the Court.

34. Good Faith Under Section 304(a) of the Bankruptcy Code. The

DIP Administrative Agent, the DIP Lenders, the Prepetition Administrative Agent, and the Prepetition Lenders have acted in good faith in connection with the Interim Order and this Final Order and are entitled to rely upon the provisions granted herein in the Interim Order and by Section 304(a) of the Bankruptcy Code. Based on the findings set forth in the Interim Order and the Final Order and the record made during the Interim Hearing and the Final Hearing, and in accordance with Section 304(a) of the Bankruptcy Code, in the event any or all of the provisions of the Interim Order or the Final Order are breached, reargued, reconsidered, reversed, modified, annulled, or vacated by any subsequent order of the Court or any other court, the DIP Administrative Agent, the DIP Lenders, the Prepetition Administrative Agent, and the Prepetition Lenders are entitled to the protections provided in Section 304(a) of the Bankruptcy Code to the maximum extent permitted by law.

35. Lender Expenses. The Debtors are authorized and directed to pay

(a) all reasonable and documented fees and expenses incurred by the Prepetition Administrative Agent and any Prepetition Lender in act with the Interim DIP Order (with respect to invoices submitted to the Debtors prior to entry of this Final DIP Order) and in paragraph 18 hereof and
(b) all reasonable and documented fees and expenses of the DIP Administrative Agent and any

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DIP Lender as provided in the DIP Loan Documents (including attorneys' fees, monitoring and appraisal fees, financial advisory fees, fees and expenses of other consultants, and indemnification and reimbursement of fees and expenses). Summary invoices for payment of the foregoing fees and expenses shall be simultaneously provided to counsel for the Debtors and the Committee, without waiver of privilege or confidentiality. If no written objection (which shall be limited to the reasonableness of the amount of such fees and expenses) to payment is provided to the party submitting such invoice, setting forth with specificity the basis for such objection, within ten (10) calendar days after receipt of such summary invoices (the "Fee Objection Period") by counsel for the Debtors and the Committee, then, without further order of, or application to, the Court or notice to any other party, such fees and expenses shall be promptly paid by the Debtors. If an objection (which shall be limited to the reasonableness of the amount of such fees and expenses) is made and provided by counsel for the Debtors or the Committee as provided herein within the Fee Objection Period to payment of the invoiced fees and expenses, then only the disputed portion of such fees and expenses shall not be paid until the objection is resolved by the applicable parties in good faith or by order of the Court, and the undisputed portion shall be promptly paid by the Debtors. Subject to the foregoing, payment of all such fees and expenses shall not be subject to allowance by the Court, and no attorney or advisor to the DIP Administrative Agent, the DIP Lenders, the Prepetition Administrative Agent or the Prepetition Lenders shall be required to file an application seeking compensation for services or reimbursement of expenses with the Court.

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36. **Indemnification.** The Debtors shall indemnify and hold harmless the DIP Administrative Agent and the DIP Lenders in accordance with and subject to the terms and conditions of the DIP Loan Documents.

37. **Proofs of Claim.** The DIP Administrative Agent, the DIP Lenders, the other DIP Secured Parties and the Prepetition Secured Parties will not be required to file proofs of claim or request for payment of any administrative expense in any of the Cases or Successor Cases for any claim allowed herein. Notwithstanding any order entered by the Court in relation to the establishment of a bar date in any of the Cases or Successor Cases to the contrary, the Prepetition Administrative Agent, on behalf of itself and the Prepetition Secured Parties, is hereby authorized and entitled, in its sole discretion, but not required, to file (and amend and/or supplement, as it sees fit) a proof of claim and/or aggregate proofs of claim in each of the Cases or Successor Cases with respect to the Prepetition Obligations. Any proof of claim filed by the Prepetition Administrative Agent shall be deemed to be in addition to and not in lieu of any other proof of claim that may be filed by any of the Prepetition Secured Parties. Any order entered by the Court in relation to the establishment of a bar date shall not apply to any claim of the DIP Administrative Agent, the other DIP Secured Parties, the Prepetition Administrative Agent and the other Prepetition Secured Parties arising under, or in connection with, the DIP Loan Documents or the Prepetition Loan Documents, as applicable.

38. **Rights of Access and Information.** Without limiting the rights of access and information afforded the DIP Administrative Agent and the DIP Lenders under the

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DIP Loan Documents, the Debtors shall be, and hereby are, required to afford representatives, agents and/or employees of the DIP Administrative Agent and the Prepetition Administrative Agent reasonable access to the Debtors' premises and their books and records in accordance with the DIP Loan Documents and the Prepetition Loan Documents, as applicable, and shall reasonably cooperate, consult with, and provide to such persons all such information as may be reasonably requested. In addition, the Debtors authorize their independent certified public accountants, financial advisors, investment bankers and consultants, to cooperate, consult with, and provide to the DIP Administrative Agent and the Prepetition Administrative Agent all such information as may be reasonably requested with respect to the business, results of operations and financial condition of any of the Debtors.

39. Carve Out. Notwithstanding anything contained herein to the contrary, the DIP Liens, DIP Superpriority Claim, the Prepetition Liens, the Permitted Prior Liens, the Adequate Protection Liens and the Prepetition Superpriority Claim are all subordinate to the following (collectively, the "Carve Out"):

A. All reasonable fees and expenses up to \$50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code.

B. Allowed administrative expenses pursuant to 28 U.S.C. § 1930(a)(6) for fees, together with the statutory rate of interest, payable to the Office of the United States Trustee, as determined by agreement of the U.S. Trustee or by final order of this Court and 28

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U.S.C. § 156(c) for fees required to be paid to the Clerk of this Court as of the date of such Prepayment Event or the delivery of such Carve Out Trigger Notice,⁶ as applicable;

C. All accrued and unpaid fees (irrespective of when payable as approved by the Court), disbursements, costs and expenses, allowed at any time by this Court and incurred by professionals retained by the Debtors or the Committee (the "Case Professionals") from and after the Effective Date through the delivery of such Carve Out Trigger Notice (other than any sale success or transaction fees payable in respect of such Prepayment Event that are payable from proceeds other than the Net Proceeds thereof), not to exceed the amounts in the Professional Fee Budget for such Case Professionals for such period, and net of any retainers; ; and

D. All accrued and unpaid fees and expenses incurred by the Case Professionals from and after the date of delivery of such Carve Out Trigger Notice, irrespective of when payable as approved by the Court, in an aggregate amount not to exceed \$600,000 for Case Professionals (the sum of amounts under clauses (A), (B), (C), and (D) as of any date of determination, the "Carve Out Cap").

Upon a sale of DIP Collateral outside the ordinary course of business, which constitutes a Prepayment Event (as defined in the DIP Credit Agreement) prior to the delivery of a Carve Out Trigger Notice, an aggregate amount up to the Carve Out Cap shall be funded into a reserve

⁶ A "Carve Out Trigger Notice" shall mean a written notice delivered by the DIP Administrative Agent to the Debtors and their counsel, the U.S. Trustee, and co-counsel to the Committee, which notice may be delivered at any time by the DIP Administrative Agent following the occurrence and continuance of any Event of Default and, in any case, shall specify that it is a "Carve Out Trigger Notice". The Carve Out Trigger Notice shall be deemed to have been delivered on the scheduled maturity date without the necessity of the delivery of any such notice.

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account of the Debtors (which may be held by Lowenstein Sandler, LLP, as bankruptcy counsel to the Debtors) with the available Net Proceeds (as defined in the DIP Credit Agreement) resulting from such sale of DIP Collateral, and the Carve Out in respect of such Prepayment Event (as Defined in the DIP Credit Agreement) shall be fully satisfied if and when proceeds of such DIP Collateral that is equal to the Carve Out Cap have been funded to such reserve account.

After the delivery of a Carve Out Trigger Notice, an aggregate amount up to the Carve Out Cap shall be funded, whether from cash on hand or from the sale of any DIP Collateral (whether or not constituting a Prepayment Event), receipt of Cash Collateral, or otherwise, into a reserve account of the Debtors (which may be held by Lowenstein Sandler, LLP, as bankruptcy counsel to the Debtors).⁷ Following the delivery of a Carve Out Trigger Notice, the Carve Out shall be fully satisfied as proceeds of DIP Collateral are funded to such reserve account from time to time in an aggregate amount, together with any then balance in such account as of the date of such delivery, that is equal to the Carve Out Cap determined as of the date of such delivery. The Carve Out Cap shall be reduced on a dollar-for-dollar basis by any payments of fees or expenses of the Case Professionals made from such reserve account. Following the full funding of the Carve Out Cap on or after the date of delivery of the Carve Out Trigger Notice, none of the DIP Administrative Agent, the DIP Lenders, the other DIP Secured Parties and the

⁷ The Debtors and Lowenstein Sandler, as applicable, shall be authorized to remit payment from the reserve account to Case Professionals from time to time as may be payable pursuant to any order of the Court setting forth interim compensation procedures for Case Professionals.

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Prepetition Secured Parties shall have any further liability whatsoever for the Carve Out or any subordination in respect thereof.

Nothing herein, including the inclusion of line items in the Professional Fee Budget for Case Professionals, shall be construed as consent to the allowance of any particular professional fees or expense of the Debtors, of the Committee, or of any other person or shall affect the right of the DIP Administrative Agent, the Prepetition Administrative Agent, or the Prepetition Lenders to object to the allowance and payment of such fees and expenses. The DIP Administrative Agent, the DIP Lenders, the other DIP Secured Parties and the Prepetition Secured Parties shall not be responsible for the direct payment or reimbursement of any fees or disbursements of any Case Professionals incurred in connection with the Cases or any Successor Cases under any chapter of the Bankruptcy Code. Nothing in the Interim Order, this Final Order or otherwise shall be construed to obligate the DIP Administrative Agent, the DIP Lenders, any other DIP Secured Party or the Prepetition Secured Parties in any way to pay compensation to or to reimburse expenses of any Case Professional, or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement. For the avoidance of doubt and notwithstanding anything contained in the Interim DIP Order, this Final DIP Order, the DIP Loan Documents or the Prepetition Loan Documents, the Carve Out shall be senior to the DIP Liens, the DIP Superpriority Claim, the Prepetition Liens, the Adequate Protection Liens, the Prepetition Superpriority Claim the Permitted Prior Liens, any and all other forms of adequate

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protection, liens, or claims securing the DIP Obligations, the DIP Collateral and the Prepetition Obligations granted hereunder, or otherwise.

40. Limitations on Use of DIP Proceeds, Cash Collateral, and Carve Out

Except as otherwise set forth in the DIP Loan Documents or in this Final Order, the DIP Facility, the DIP Collateral, the Prepetition Collateral, the Cash Collateral and the Carve Out may not be used in connection with: (a) except to contest the occurrence of an Event of Default, preventing, hindering, or delaying any of the DIP Administrative Agent's, the DIP Lenders', or the Prepetition Secured Parties' enforcement or realization upon any of the DIP Collateral or Prepetition Collateral; (b) using or seeking to use Cash Collateral except as provided for in this Final Order and the DIP Loan Documents; (c) selling or otherwise disposing of DIP Collateral except as provided in the DIP Loan Documents; (d) using or seeking to use any insurance proceeds constituting DIP Collateral except as provided in the DIP Loan Documents; (e) incurring Indebtedness (as defined in the DIP Credit Agreement) not permitted by the DIP Credit Agreement without the prior consent of the DIP Administrative Agent; (f) seeking to amend or modify any of the rights granted to the DIP Administrative Agent, the DIP Lenders, or the Prepetition Secured Parties under the Interim Order, the Final Order, the DIP Loan Documents, or the Prepetition Loan Documents; (g) objecting to or challenging in any way the DIP Liens, the DIP Obligations, the Prepetition Liens, the Prepetition Obligations, the DIP Collateral (including Cash Collateral) or, as the case may be, Prepetition Collateral, or any other claims or liens, held by or on behalf of any of the DIP Administrative Agent, the DIP Lenders, or the Prepetition

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Secured Parties, respectively; (h) asserting, commencing, or prosecuting any claims or causes of action whatsoever, including any actions under chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions to recover or disgorge payments, against any of the DIP Administrative Agent, the DIP Lenders, the Prepetition Secured Parties, or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees; (i) litigating, objecting to, challenging, or contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the DIP Obligations, the DIP Liens, the Prepetition Liens, the Prepetition Obligations or any other rights or interests of any of the DIP Administrative Agent, the DIP Lenders, or the Prepetition Secured Parties; or (j) seeking to subordinate, recharacterize, disallow or avoid the DIP Obligations or the Prepetition Obligations; *provided, however,* that up to \$75,000 of the proceeds of the DIP Collateral, Cash Collateral and/or Prepetition Collateral may be used by the Committee to investigate (but not commence a formal Challenge to) the liens and claims held by, and any potential claims or causes of action against, the Prepetition Secured Parties, including, without limitation, in respect of the validity, enforceability, perfection, priority or extent of the Prepetition Liens, the Prepetition Loan Documents, or the Prepetition Obligations.

41. **Payment of Compensation.** Nothing herein shall be construed as a consent to the allowance of any professional fees or expenses or shall affect the right of the DIP Administrative Agent, the DIP Lenders, or the Prepetition Secured Parties to object to the allowance and payment of such fees and expenses. So long as no Event of Default has occurred

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and been declared by the DIP Administrative Agent in connection with the Declaration Notice, the Debtors shall be permitted to pay fees and expenses allowed and payable by final order under sections 328, 330, and 331 of the Bankruptcy Code or pursuant to any other order of the Court setting forth the procedures for interim payment of fees and expenses of Case Professionals, as the same may be due and payable to the extent the same were accrued and to the extent permitted in the most recent Professional Fee Budget (defined below) provided by the Debtors and reasonably acceptable to the DIP Administrative Agent. Subject to Paragraph 19 hereof, no variance in excess of the total amount of anticipated accrued fees and expenditures set forth on the professional fees monthly accrual forecast schedule included in the Approved Budget (the "Professional Fee Budget") for any period (with any period of a week being pro-rated portion of the amount therein for the appropriate month), will be payable from the DIP Collateral absent prior consent of the DIP Administrative Agent. Nothing herein shall prohibit or otherwise limit the payment of any allowed sale success or transaction fee of a Case Professional approved by the Court, provided that this sentence shall not affect the amount of the Carve Out Cap. Notwithstanding anything contained herein or in the DIP Loan Documents to the contrary, nothing herein or in the DIP Loan Documents (including, without limitation, any line item contained in any budget) shall in any way prohibit, impair or otherwise limit the incurrence or allowance of any of the fees and expenses of any of the Case Professional or the ability of any of the Case Professionals to assert administrative expenses on account of such fees and expense against any of the Debtors.

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Caption: Final Order (I) Authorizing Debtor In Possession Financing Pursuant To 11 U.S.C. §§ 105(a), 362 And 364(c) And (d); (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 363; (III) Granting Adequate Protection Pursuant To 11 U.S.C. § 361 And 363; (IV) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 364(c); (V) Modifying The Automatic Stay; And (VI) Granting Related Relief

42. **Effect of Stipulations on Third Parties.**

(a) *Generally.* The admissions, stipulations, agreements, releases, and waivers set forth in the Interim Order and this Final Order (including the Debtors' Stipulations, collectively, the "Prepetition Lien and Claim Stipulations") are and shall be binding on the Debtors. In addition, the Prepetition Lien and Claim Stipulations shall be binding on any subsequent trustee, responsible person, examiner with expanded powers, any other estate representative, and all creditors and parties in interest and all of their successors in interest and assigns, including the Committee, unless, and solely to the extent that, the Committee as a party in interest with standing and requisite authority (as to the Debtors and all other estate representatives, creditors and parties in interest any Challenge (as defined below) is irrevocably waived and relinquished) (i) has timely filed the appropriate pleadings, and timely commenced the appropriate proceeding required under the Bankruptcy Code and Bankruptcy Rules, challenging the Prepetition Lien and Claim Stipulations (each such proceeding or appropriate pleading commencing a proceeding or other contested matter, a "Challenge") on such date that is (A) the earlier of (x) April 22, 2019 or (y) the date that is two (2) business days prior to the commencement of the hearing in respect of the approval of the sale of the Pharma Assets (which date and time of the sale hearing in connection with the sale of the Pharma Assets shall be no earlier than April 8, 2019), (B) such other date as may be agreed in writing by counsel for the Committee and the Prepetition Administrative Agent (upon notice to the Debtors), or (C) such later date as extended by this Court for good cause shown pursuant to an application filed by a

Debtors: Aceto Corporation, et al.

Case No: 19-13448 (VFP)

Caption: Final Order (I) Authorizing Debtor In Possession Financing Pursuant To 11 U.S.C. §§ 105(a), 362 And 364(c) And (d); (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 363; (III) Granting Adequate Protection Pursuant To 11 U.S.C. § 361 And 363; (IV) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 364(c); (V) Modifying The Automatic Stay; And (VI) Granting Related Relief

party in interest prior to the expiration of the such date (the "Challenge Deadline"), and (ii) this Court enters judgment in favor of the plaintiff or movant in any such timely and properly commenced Challenge proceeding and any such judgment has become a final judgment that is not subject to any further review or appeal; *provided, however*, that if the Committee commences a Challenge and simultaneously files a motion with the Court seeking standing and authority to pursue such Challenge (a "Standing Motion") prior to the Challenge Deadline, the Challenge Deadline shall be automatically tolled for the Committee (and no other party), solely with respect to the Challenge alleged in the Standing Motion to such date that is three (3) business days after the date on which such Standing Motion is granted or denied by an order of the Court. Notwithstanding the foregoing, if a chapter 11 trustee is appointed or the Cases are converted to chapter 7 prior to the expiration of the Challenge Deadline, (1) the chapter 11 trustee or chapter 7 trustee, as applicable, shall have until the later of the Challenge Deadline or the tenth (10th) day after the appointment of the chapter 11 trustee or the conversion of the Cases to chapter 7, as applicable, to commence a Challenge, subject to any further extension by order of the Court for cause; and (2) if the Committee has asserted a Challenge prior to the Challenge Deadline, the chapter 11 trustee or chapter 7 trustee will stand in the shoes of the Committee in such Challenge.

(b) *Binding Effect.* To the extent no Challenge is timely and properly commenced by the Challenge Deadline, or to the extent such proceeding does not result in a final and non-appealable judgment or order of this Court that is inconsistent with the Prepetition Lien

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Debitors' Asset Disposition #11

Case No: 19-13448 (VFP)

Capacity: Final Order (I) Authorizing Debitors to Possession Financial Pursuant To 11 U.S.C. § 541; (II) 11 U.S.C. § 542 And 543; (III) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 542; (IV) Granting Adequate Protection Pursuant To 11 U.S.C. § 561 And 562; (V) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 562(c); (VI) Modifying The Automatic Stay; And (VII) Granting Related Relief

and Plan Obligations, then without further notice, demand, or application to order of, or hearing before this Court and without the need or requirement to file any proof of claim, the Proprietary Lien and Claim Stipulations shall become binding, conclusive and final on any person, entity, or party to interest in the Debtor and their successors and assigns, and in any Successor Case for all purposes and shall not be subject to challenge or appeal by any party in interest, including a trustee responsible individual examiner with expanded powers or other representative of the Debtor, within Notwithstanding anything to the contrary herein if any such proceeding is properly and timely commenced, the Proprietary Lien and Claim Stipulations shall nonetheless remain binding on all other parties to interest and parties as provided in subparagraph (A) above except to the extent that any of such Proprietary Lien and Claim Stipulations is expressly the subject of a timely and properly filed Challenge which Challenge is successful as set forth in a final judgment as provided in subparagraph (A) above. In the event any such Challenge proceeding is timely and properly commenced, the Proprietary Secured Parties shall be entitled to payment of the related costs and expenses, including but not limited to, reasonable attorneys' fees in defending themselves in any such proceeding or adequate protection. If any Challenge is timely commenced prior to the Challenge Deadline, the Proprietary Lien and Claim Stipulations shall nonetheless remain binding and conclusive on all parties to interest (including the Committee), except as to any such Proprietary Lien and Claim Stipulations that are the subject of a timely and properly filed Challenge which is successful and

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Debtors: Aceto Corporation, *et al.*

Case No: 19-13448 (VFP)

Caption: Final Order (I) Authorizing Debtor In Possession Financing Pursuant To 11 U.S.C. §§ 105(a), 362 And 364(c) And (d); (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 363; (III) Granting Adequate Protection Pursuant To 11 U.S.C. § 361 And 363; (IV) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 364(c); (V) Modifying The Automatic Stay; And (VI) Granting Related Relief

successfully challenged in an adversary proceeding or contested matter in respect of such Challenge.

43. **No Third Party Rights.** Except as explicitly provided for herein, this Final Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect, or incidental beneficiary.

44. **Section 506(c) Claims.** No costs or expenses of administration which have been or may be incurred in the Cases at any time shall be charged against the DIP Administrative Agent, the DIP Lenders, the Prepetition Secured Parties, or any of their respective claims, the DIP Collateral, or the Prepetition Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code, or otherwise, without the prior written consent of the DIP Administrative Agent, the DIP Lenders or the Prepetition Administrative Agent, as applicable, and no such consent shall be implied from any other action, inaction, or acquiescence by any such agents or lenders.

45. **No Marshaling/Applications of Proceeds.** The DIP Administrative Agent, the DIP Lenders, and the Prepetition Secured Parties shall not be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the DIP Collateral or the Prepetition Collateral, as the case may be, and proceeds shall be received and applied pursuant to this Final Order and the DIP Loan Documents notwithstanding any other agreement or provision to the contrary; *provided, however*, that notwithstanding anything contained herein, the DIP Loan Documents or the Prepetition Loan Documents to the contrary,

Debtors: Aceto Corporation, *et al.*

Case No: 19-13448 (VFP)

Caption: Final Order (I) Authorizing Debtor In Possession Financing Pursuant To 11 U.S.C. §§ 105(a), 362 And 364(c) And (d); (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 363; (III) Granting Adequate Protection Pursuant To 11 U.S.C. § 361 And 363; (IV) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 364(e); (V) Modifying The Automatic Stay; And (VI) Granting Related Relief

each of the Prepetition Secured Parties and the DIP Secured Parties shall use commercially reasonable efforts to first proceed against and resort to all material DIP Collateral and all material Prepetition Collateral (other than avoidance actions arising under Chapter 5 of the Bankruptcy Code or applicable state law equivalents ("Avoidance Actions") and the proceeds thereof), before proceeding against and resorting to Avoidance Actions and the proceeds thereof to satisfy the DIP Obligations, the DIP Liens, the Prepetition Obligations, the Prepetition Liens, the Adequate Protection Claim and/or the Adequate Protection Liens, as applicable.

46. Section 552(b). The Prepetition Secured Parties shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to the Prepetition Secured Parties, with respect to proceeds, product, offspring or profits of any of the Prepetition Collateral.

47. Access to DIP Collateral. Notwithstanding anything contained herein to the contrary and without limiting any other rights or remedies of the DIP Administrative Agent exercisable on behalf of the DIP Lenders contained in this Final Order, the DIP Loan Documents, or otherwise available at law or in equity, and subject to the terms of the DIP Loan Documents, upon written notice to the landlord of any leased premises that an Event of Default has occurred and is continuing, the DIP Administrative Agent may, subject to the applicable notice provisions in any separate applicable agreement by and between such landlord and the DIP Administrative Agent, enter upon any leased premises of the Debtors for the purpose

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Endorse: Acorn Corporation, et al
Case No.: 19-13448 (VFP)
Caption: First Order (I) Authorizing Debtors To Prepay or Finance Pursuant To 11 U.S.C. § 542(c), 562 And 541(c) And (d); (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 541, (E) Granting Adequate Protection Pursuant To 11 U.S.C. § 361 And 361-1(V) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 364(c); (VI) Modifying The Adequacy Stay, And (VII) Granting Related Relief

of overriding any remedy with respect to DIP Collateral created hereon and shall be entitled to all of the Debtors' rights, privileges and responsibilities as lesser under such laws without interference from the Debtors' Creditors. Nothing herein shall require the DIP Administrative Agent to accept the laws as a condition to the rights afforded in this paragraph.

(f) Limits on Lender Liability. Nothing in the Interim Order, this Final Order, any of the DIP Loan Documents, or any other documents related therein shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Administrative Agent, the DIP Lenders or the Prepaid Secured Parties of any liability (including claims arising from any activities by the Debtors in the operation of their businesses or in connection with the administration of these Cases) The DIP Administrative Agent and the DIP Lenders shall not, solely by reason of having made loans under the DIP Facility, be deemed in control or the operation of the Debtors or to be liable as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors (as such terms, in any similar terms used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. as amended, or any similar federal or state statute). Nothing in the Interim Order, this Final Order or the DIP Loan Documents shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Administrative Agent, the DIP Lenders, or any of the Prepaid Secured Parties of any liability for any claims arising from the preparation or performance activities of any of the Debtors.

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DAVID: Acorn Corporation et al

Case No: 19-13448 (VFP)

Section: Final Order (I) Authorizing Liens In Possession Pursuant To 11 U.S.C. § 542 (a), (b) And (c); (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 542 (a), (b) And (c); (III) Authorizing Protection Pursuant To 11 U.S.C. § 541 And 542; (IV) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 542 (a), (b) And (c); (V) Modifying The Automatic Stay, And (VI) Granting Related Relief

49. Insurance Proceeds and Policies As of the entry of the Order

and to the fullest extent provided by applicable law, the DIP Administrative Agent (the Agent) and the Trustee (the Trustee) shall, on behalf of the Proprietor (the Proprietor), and any Debtor, to be, without any further action or notice, warrant or additional release, and here, pay or cause to be paid, any and all insurance proceeds payable by or for the Debtors that in any way relate to the DIP Collateral or proceeds thereof.

50. Joint and Several Liability Nothing in this Final Order shall be

construed to constitute a substantive consolidation of any of the Debtors' claims, to be binding on any Debtor, or to constitute a discharge of any of the Debtors' obligations. All the Debtors shall be jointly and severally liable for the obligations of the DIP and Documents.

51. No Superior Rights of Reclamation There is no integrated

claim of the DIP Parity and the Proprietor Loan Documents, or the event of any alleged rights of reclamation or security (whether asserted under section 542(c) of the Bankruptcy Code or otherwise) that is deemed to have priority over the DIP Loans provided that nothing contained herein shall prejudice the rights, if any, of holders of reclamation claims or holders of claims for return of goods, from asserting such rights and claims, and (ii) the rights of the Debtors and other parties-in-interest from opposing any such asserted rights, reclamation claims or claims for return of goods, and nothing herein shall be deemed a determination as to the extent, priority or validity of any rights of holders of reclamation claims or asserted claims for reclamation or

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Case No: 19-13448 (VFP)

Caption: Final Order (I) Authorizing Debtor In Possession Financing Pursuant To 11 U.S.C. §§ 105(a), 363 and 364(f) And (d); (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 363; (III) Granting Adequate Protection Pursuant To 11 U.S.C. § 361 And 362; (IV) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 364(c); (V) Modifying The Automatic Stay; And (VI) Granting Related Relief

relief of product, provided further, that such asserted rights and claims, to the extent valid, shall be junior to the DIP Liens, the Prepetition Liens, the Adequate Protection Liens and the Permitted Superpriority Claims, as applicable.

52. Rights Preserved Notwithstanding anything herein to the contrary,

the entry of this Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly to) the DIP Administrative Agent's, the DIP Lenders' and the Prepetition Administrative Agent's right to seek any other or supplemental relief in respect of the Debtors; (b) any of the rights of any of the DIP Administrative Agent, the DIP Lenders, and/or the Prepetition Administrative Agent under the Bankruptcy Code or under non-bankruptcy law, including the right to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code; (ii) request dismissal of any of the Cases or Successor Cases, conversion of any of the Cases to cases under chapter 7, or appointment of (chapter 11) trustee or committee with expanded powers; or (iii) propose, subject to the provisions of section 1121 of the Bankruptcy Code a chapter 11 plan or plans; or (c) any other rights, claims or privileges (whether legal, equitable or otherwise) of any of the DIP Administrative Agent, the DIP Lenders, or the Prepetition Secured Parties. Notwithstanding anything herein to the contrary, the entry of this Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the Debtors', the Committee's, or any party to this case, right to oppose any of the relief requested in accordance with the immediately preceding sentence except as expressly set forth in this Final Order.

Debtors: Aceto Corporation, *et al.*

Case No: 19-13448 (VFP)

Caption: Final Order (I) Authorizing Debtor In Possession Financing Pursuant To 11 U.S.C. §§ 105(a), 362 And 364(c) And (d); (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 363; (III) Granting Adequate Protection Pursuant To 11 U.S.C. § 361 And 363; (IV) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 364(c); (V) Modifying The Automatic Stay; And (VI) Granting Related Relief

53. **No Waiver by Failure to Seek Relief.** The failure of the DIP Administrative Agent, the DIP Lenders, or Prepetition Secured Parties to seek relief or otherwise exercise their rights and remedies under this Final Order, the DIP Loan Documents, the Prepetition Loan Documents, or applicable law, as the case may be, shall not constitute a waiver of any of the rights hereunder, thereunder, or otherwise.

54. **Binding Effect of Final Order.** Immediately upon execution by this Court, the terms and provisions of this Final Order shall become valid and binding upon and inure to the benefit of the Debtors, the DIP Administrative Agent, the DIP Lenders, the Prepetition Secured Parties, all other creditors of any of the Debtors, the Committee, and all other parties-in-interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in any of the Cases, any Successor Cases, or upon dismissal of any Case or Successor Case.

55. **No Modification of Final Order.** Until and unless the DIP Obligations and the Prepetition Obligations have been indefeasibly paid in full in cash (such payment being without prejudice to any terms or provisions contained in the DIP Facility which survive such discharge by their terms), and all commitments to extend credit under the DIP Facility have been terminated, the Debtors irrevocably waive the right to seek and shall not seek or consent to, directly or indirectly: (a) without the prior written consent of the DIP Administrative Agent and the Prepetition Administrative Agent, (i) any modification, stay, vacatur or amendment to this Final Order; or (ii) a priority claim for any administrative expense

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Caption: Final Order (I) Authorizing Debtor In Possession Financing Pursuant To 11 U.S.C. §§ 105(a), 362 And 364(c) And (d); (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 363; (III) Granting Adequate Protection Pursuant To 11 U.S.C. § 361 And 363; (IV) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 364(c); (V) Modifying The Automatic Stay; And (VI) Granting Related Relief

or unsecured claim against the Debtors (now existing or hereafter arising of any kind or nature whatsoever, including any administrative expense of the kind specified in sections 503(b), 506(c), 507(a) or 507(b) of the Bankruptcy Code) in any of the Cases or Successor Cases, equal or superior to the DIP Superpriority Claims or Prepetition Superpriority Claim, other than the Carve Out; (b) without the prior written consent of the DIP Administrative Agent and the Prepetition Administrative Agent, for any order allowing use of Cash Collateral resulting from DIP Collateral or Prepetition Collateral; (c) without the prior written consent of the DIP Administrative Agent, any lien on any of the DIP Collateral with priority equal or superior to the DIP Liens, except as specifically provided in the DIP Loan Documents; or (d) without the prior written consent of the Prepetition Administrative Agent, any lien on any of the DIP Collateral with priority equal or superior to the Prepetition Liens or Adequate Protection Liens (other than the DIP Liens and the Carve Out). The Debtors irrevocably waive any right to seek any amendment, modification or extension of this Final Order without the prior written consent, as provided in the foregoing, of the DIP Administrative Agent and the Prepetition Administrative Agent, and no such consent shall be implied by any other action, inaction or acquiescence of the DIP Administrative Agent or the Prepetition Administrative Agent.

56. **Final Order Controls.** In the event of any inconsistency between the terms and conditions of the DIP Loan Documents and of the Interim Order and/or this Final Order, the provisions of this Final Order shall govern and control.

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Debtors: Aceto Corporation, *et al.*

Case No: 19-13448 (VFP)

Caption: Final Order (I) Authorizing Debtor In Possession Financing Pursuant To 11 U.S.C. §§ 105(a), 362 And 364(c) And (d); (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 363; (III) Granting Adequate Protection Pursuant To 11 U.S.C. § 361 And 363; (IV) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 364(c); (V) Modifying The Automatic Stay, And (VI) Granting Related Relief

57. **Survival.** The provisions of this Final Order and any actions taken pursuant hereto shall survive entry of any order which may be entered converting any of the Cases to a case under chapter 7 of the Bankruptcy Code or dismissing any of the Cases or any Successor Cases. The terms and provisions of this Final Order, including the claims, liens, security interests, and other protections granted to the DIP Administrative Agent, DIP Lenders, the other DIP Secured Parties and Prepetition Secured Parties granted pursuant to the Interim Order, and this Final Order and/or the DIP Loan Documents, notwithstanding the entry of any such orders, shall continue in the Cases, in any Successor Cases, or following dismissal of the Cases or any Successor Cases, and shall maintain their validity, enforceability and priority as provided by this Final Order until: (i) in respect of the DIP Facility, all the DIP Obligations, pursuant to the DIP Loan Documents and this Final Order, have been indefeasibly paid in full in cash, and all commitments to extend credit under the DIP Facility are terminated, and (ii) in respect of the Prepetition Loan Facility, all of the Prepetition Obligations pursuant to the Prepetition Loan Documents and this Final Order have been indefeasibly paid in full in cash, and the Challenge Deadline has passed without a Challenge being asserted. The terms and provisions concerning the indemnification of the DIP Administrative Agent, the DIP Lenders and the other DIP Secured Parties shall continue in the Cases, in any Successor Cases, following dismissal of the Cases or any Successor Cases, following termination of the DIP Loan Documents and/or the indefeasible repayment of the DIP Obligations.

Debtors: Aceto Corporation, *et al.*

Case No: 19-13448 (VFP)

Caption: Final Order (I) Authorizing Debtor In Possession Financing Pursuant To 11 U.S.C. §§ 105(a), 362 And 364(c) And (d); (II) Authorizing The Use Of Cash Collateral Pursuant To 11 U.S.C. § 363; (III) Granting Adequate Protection Pursuant To 11 U.S.C. § 361 And 363; (IV) Granting Liens And Superpriority Administrative Claims Pursuant To 11 U.S.C. § 364(c); (V) Modifying The Automatic Stay; And (VI) Granting Related Relief

58. *Nunc Pro Tunc Effect of this Final Order.* This Final Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be enforceable *nunc pro tunc* to the Petition Date immediately upon execution thereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062 or 9024 or any other Bankruptcy Rule or Local Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Final Order shall be immediately effective and enforceable upon its entry, and there shall be no stay of execution or effectiveness of this Final Order.

59. *Retention of Jurisdiction.* The Court has and will retain jurisdiction to enforce the terms of, any and all matters arising from or related to the DIP Facility, and/or this Final Order.

SECRET

Approved Under

**ACETO Consolidated (Chem Plus + Rising Pharma)
Professional Fees Monthly Accrual Forecast Schedule**

	As of 03/14/19					
	Amount in \$000's USD					
	Actual / Forecast:	Forecast	Forecast	Forecast	Forecast	Forecast
Month Ending:	02/28/19	03/31/19	04/30/19	05/31/19	06/30/19	Total
Professional Fees	3,017	8,214	6,664	4,839	4,364	27,098
Cumulative	3,017	11,231	17,895	22,734	27,098	27,098

Notes:

February includes post-petition period only

The above estimates are on an accrual basis and do not reflect the potential holdbacks for retained professionals

Does not include success fees

EXHIBIT A

DIP Credit Agreement Amendment

~~EXHIBIT A~~
~~FINAL ORDER~~

**500,000,000 SENIOR SECURED, PRIMING AND SUPERPRIORITY
DEBTOR-IN-POSSESSION CREDIT AGREEMENT**

dated as of

February 21, 2019
~~(amended effective March 15, 2019)~~

among

ACETO CORPORATION
and its Subsidiaries party hereto
as debtors and debtors-in-possession,

the Lenders party hereto,

and

WELLS FARGO BANK, NATIONAL ASSOCIATION,
Administrative Agent and Collateral Agent.

11-11-19

(j) any material provision of any Loan Document shall for any reason cease to be in full force and effect in accordance with its terms or any Borrower or any of its Subsidiaries shall so assert in writing;

(k) a Change in Control shall have occurred;

(l) any of the Liens purported to be granted pursuant to any Collateral Document shall fail or cease for any reason to be legal, valid and enforceable liens on the Collateral purported to be covered thereby or shall fail or cease to have the priority purported to be created thereby;

(m) (i) the subordination provisions of the documents evidencing or governing any Subordinated Indebtedness (the "Subordination Provisions") shall, in whole or in part, terminate, cease to be effective or cease to be legally valid, binding and enforceable against any holder of the applicable Subordinated Indebtedness; or (ii) any Borrower or any other Loan Party shall, directly or indirectly, disavow or contest in any manner (A) the effectiveness, validity or enforceability of any of the Subordination Provisions, (B) that the Subordination Provisions exist for the benefit of the Prepetition Agent and the other Secured Parties (as defined in the Prepetition Credit Agreement) or (C) that all payments of principal of, or premium and interest on, the applicable Subordinated Indebtedness, or realized from the liquidation of any property of any Loan Party, shall be subject to any of the Subordination Provisions; or

(p) the occurrence of any of the following in any Chapter 11 Case:

(i) ~~the bringing of a motion, taking of any action or the filing of any plan of reorganization or disclosure statement attendant thereto, or the entry of any order by the Bankruptcy Court in any Chapter 11 Case: (A) that (in the case of Borrowers, any other Loan Party or any bankruptcy estate representative (which shall not include any Committee)) requests or seeks authority for Borrowers or any other Loan Party to obtain additional financing under sections 364(c) or (d) of the Bankruptcy Code not otherwise permitted pursuant to this Agreement, and in the case of any such request or application from any Committee, such request or application is not dismissed with prejudice or otherwise resolved to the satisfaction of the Administrative Agent in its exclusive judgment prior to the Challenge Deadline (as defined in the Interim/Final Order); (B) except as expressly provided in the Interim Order and/or the Final Order (as applicable) in respect of the Carve-Out, to grant any Lien other than Prepetition Agent's Adequate Protection Liens upon or affecting any Collateral; (C) that (in the case of Borrowers, any other Loan Party or any bankruptcy estate representative (which shall not include any Committee)), and except as expressly provided in the Interim Order or the Final Order, as the case may be, in respect of the Carve-Out, to use cash collateral or Collateral of the Administrative Agent under section 363(c) of the Bankruptcy Code without the prior written consent of the Administrative Agent; (D) that (in the case of any Borrower or any other Loan Party) requests or seeks authority for or that (in the case of an order entered by the Bankruptcy Court on account of a request by any Borrower or any other Loan Party) approves or provides authority to take any other action or actions materially adverse to the Administrative Agent, the Lenders, or their rights and remedies hereunder or their interest in the Collateral or the Prepetition Agent, the Prepetition Lenders, or their rights and remedies under the Prepetition Credit Agreement or the Bankruptcy Court Orders or the interests of the Prepetition Agent or the Prepetition Lenders in the Collateral; or (E) the entry of any order by the Bankruptcy Court in any Chapter 11 Case granting relief as described in subclauses (A) through (D) of this clause (p)(i);~~

(iii) the filing of any plan of reorganization or disclosure statement submitted pursuant to any order or indirect amendment to such plan or disclosure statement that does not provide for the payment (or cash collateralization) in full in cash of all Secured Obligations hereunder and all Remaining Prepetition Obligations under the Prepetition Credit Agreement on the effective date of such plan or the loss by Borrowers of an owner Loan Party of the executive right to the said notice recipients of a plan or reorganization;

(iv) the start of an order in any of the Chapter 11 Cases confirming a plan or plans of reorganization that does not contain a provision for termination of the Commitments and repayment (or cash collateralization) in full in cash of the Secured Obligations under this Agreement and all Remaining Prepetition Obligations of the Prepetition Credit Agreement on or before the effective date of such plan or plans;

(v) the entry of an order awarding supplemental equity, voting, trustee or otherwise modifying the Loan Documents or the Interim Order or the Final Order without the written consent of the Administrative Agent;

(vi) the Interim Order is not entered within three (3) Business Days following the Petition Date;

(vii) the Final Order is not entered on or before the deadline set forth in the Interim Order (Fixed Fee Fee Schedule);

(viii) the payment of, or application by Borrowers or any other Loan Party for, liability to pay any prepetition claim without the Administrative Agent's prior written consent under terms as provided under the Interim Order or Final Order or any amendment of the bankruptcy court in form and substance reasonably acceptable to the Administrative Agent and as set forth in the Approved Budget or unless otherwise permitted under this Agreement;

(ix) the appointment of an interim or permanent trustee in any Chapter 11 Case or the appointment of a receiver or an assignee under section 1104 of the Bankruptcy Code in any Chapter 11 Case with expanded powers (beyond those set forth in sections 1104(a) and 1104(a)(4) of the Bankruptcy Code) to operate or manage the financial affairs, the business, or reorganization of Borrowers or any other party to conduct an investigation of proposed reorganization under the Administrative Agent's orders or against the Prepetition Agent or Prepetition Lenders or a sale under such the sale contemplated by a plan or order without the Administrative Agent's consent; or if or substantially all of Borrowers' assets either through a sale under section 363 of the Bankruptcy Code through a reorganized plan of reorganization in the Chapter 11 Case or otherwise that does not provide for payment (or cash collateralization) in full in cash of the Secured Obligations hereunder, the termination of the Commitments and the payment in full in cash of all Remaining Prepetition Obligations under the Prepetition Credit Agreement;

(x) the absence of any Chapter 11 Case or the commencement of any Chapter 11 Case under Chapter 12 or Chapter 13 of the Bankruptcy Code, or any other order that shall be a violation of other planing writing or

dismissal of any Chapter 11 Case under section 1112 of the Bankruptcy Code or otherwise;

(x) the entry of an order by the Bankruptcy Court granting relief from or modifying the automatic stay of section 362 of the Bankruptcy Code (A) to allow any creditor to execute upon or enforce a Lien on any Collateral, or (B) with respect to any Lien on any Collateral of, or the granting of any Lien on any Collateral to, any state or local environmental or regulatory agency or authority, which in either case would have a Material Adverse Effect;

(xi) the entry of an order in any Chapter 11 Case avoiding or requiring disgorgement or repayment of any portion of the payments made on account of the Secured Obligations owing under this Agreement or the other Loan Documents or the Remaining Prepetition Obligations owing under the Prepetition Credit Agreement or the other Prepetition Loan Documents;

(xii) the failure of Borrowers to perform any of its material obligations under the Interim Order or the Final Order or any violation of any of the material terms of the Interim Order or the Final Order;

(xiii) the challenge by Borrowers, any other Loan Party or any Committee to the validity, extent, perfection or priority of any Liens granted under the Prepetition Credit Agreement or any of the other Prepetition Loan Documents, the Liens granted under the Loan Documents or the filing by any such Person of any claim or cause of action against the Administrative Agent, any Lender, the Prepetition Agent or any Prepetition Lender, and in the case of any such challenge, claim or cause of action by any Committee, such challenge, claim or cause of action is not dismissed with prejudice or otherwise resolved to the satisfaction of the Administrative Agent in its exclusive judgment prior to the Challenge Deadline (as defined in the Interim Order);

(xiv) the remittance, use or application of the proceeds of Collateral other than in accordance in all material respects with the Approved Budget, the bankruptcy Court Orders and this Agreement; or

(xv) the entry of an order in any of the Chapter 11 Cases granting any other super priority administrative claim or Lien (other than the Prepetition Agent's Adequate Protection Liens and as are expressly set forth in the Interim Order and/or the Final Order (as applicable) with respect to the Carve-Out) equal or superior to that granted to the Administrative Agent, on behalf of itself and Lenders without the consent in writing of the Administrative Agent;

then, and in every such event, and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower's Representative, take any or all of the following actions, at the same or different times: (i) terminate the Commitments, whereupon the Commitments shall terminate immediately; (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of any Borrower accrued hereunder, shall become due and payable immediately, in each case without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; (iii) increase the rate of interest applicable to the Loans and other Obligations as set forth in

Section 2.13(c) of this Agreement; (iv) deliver a Carve-Out Trigger Notice; and (v) as provided in Section 7.02, exercise any other rights and remedies provided to the Administrative Agent and the Lenders under the Loan Documents or at law or equity, including all remedies provided under the UCC. Notwithstanding the foregoing or anything herein to the contrary, in no event shall the implementation or consummation of the transactions contemplated by the Pharma Liquidation Plan result in the occurrence of an Event of Default hereunder.

SECTION 7.02. Vacation of Automatic Stay; Other Remedies. Upon the occurrence and during the continuance of an Event of Default, the Administrative Agent may, and at the request of the Required Lenders shall, deliver notice of the exercise of any or all of the following remedies as provided in the applicable Bankruptcy Court Order (which notice may be delivered concurrently with the exercise of the other remedies specified in Section 7.01) and the expiry of a five (5) Business Day period following such delivery: (a) the automatic stay provided in section 362 of the Bankruptcy Code shall be deemed automatically vacated without further action or order of the Bankruptcy Court; and (b) the Administrative Agent and the Lenders shall be entitled to exercise all of their respective other rights and remedies under the Loan Documents, including, without limitation, all rights and remedies with respect to the Collateral provided for by the Collateral Documents in accordance with the terms thereof or any other remedies provided by applicable law or in equity; provided, however, that if any party challenges, within the five (5) Business Day period, the occurrence of the Event of Default, the Administrative Agent may not take any action with respect to the alleged Event of Default until such time as the Bankruptcy Court rules on any such asserted challenge and then only in conformity with any such ruling of the Bankruptcy Court.

ARTICLE VIII

The Administrative Agent

SECTION 8.01. Appointment. On the Effective Date, each of the Lenders, on behalf of itself and any of its Affiliates that are Secured Parties and each Issuing Bank hereby irrevocably appoints the Administrative Agent as its agent and authorizes the Administrative Agent to take such actions on its behalf, including execution of the other Loan Documents, and to exercise such powers as are delegated to the Administrative Agent by the terms of the Loan Documents, together with such actions and powers as are reasonably incidental thereto. In addition, to the extent required under the laws of any jurisdiction other than the U.S., each of the Lenders and the Issuing Banks hereby grant to the Administrative Agent any required powers of attorney to execute any Collateral Document governed by the laws of such jurisdiction on such Lender's or such Issuing Bank's behalf. The provisions of this Article are solely for the benefit of the Administrative Agent and the Lenders (including the Issuing Banks), and the Loan Parties shall not have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" as used herein or in any other Loan Documents (or any similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

SECTION 8.02. Rights as a Lender. The bank serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent, and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such bank and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with any Loan Party or any Subsidiary

In re Door to Door Storage, Inc., Case No. 16-15618 (Bankr. W.D. Wash. Jan. 19,
2017)

Below is the Order of the Court.



Christopher M. Alston
U.S. Bankruptcy Judge

(Dated as of Entered on Docket date above)

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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In re

DOOR TO DOOR STORAGE, INC.
20425 72ND AVE. S.
KENT, WA 98032
Tax ID 91-1698980,

Debtor.

No. 16-15618

FINAL ORDER: (1) AUTHORIZING USE
OF CASH COLLATERAL AND
GRANTING ADEQUATE PROTECTION,
AND (2) APPROVING POST-PETITION
LOAN FACILITY

This matter came before the Court on the motion ("Motion") of Door to Door Storage, Inc. ("Debtor"), debtor-in-possession herein, pursuant to §§ 105, 361, 362, 363 and 364 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules 4001-3 and 9013-1(d)(2)(E) of the Local Rules of Bankruptcy Procedure for the Western District of Washington (the "Local Rules"), for the entry of an order authorizing Debtor's use of cash collateral pursuant to a Budget (defined below), authorizing Debtor to grant adequate protection in favor of JPMorgan Chase Bank, N.A. ("Secured Party"), and approving Debtor's post-petition financing.

FINAL ORDER: (1) AUTHORIZING USE OF CASH
COLLATERAL AND GRANTING ADEQUATE
PROTECTION, ETC. – Page 1

BUSH KORNFELD LLP
LAW OFFICES
601 Union St., Suite 5000
Seattle, Washington 98101-2373
Telephone (206) 292-2110
Facsimile (206) 292-2104

Below is the Order of the Court.

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FINDINGS AND CONCLUSIONS

The Court has reviewed the files and records herein and makes the following findings of fact and reaches the following conclusions of law based on the written submissions of Debtor and representations made at the hearing on the Motion:

A. Debtor filed its petition for relief under Chapter 11 of the Bankruptcy Code (“Case”) on November 7, 2016 (the “Petition Date”). Debtor retains control over its assets and continues to operate its business pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

B. Debtor sent notice of the hearing on the Motion to the Secured Party, each other person identified in the records of the Washington Secretary of State as the secured party with respect to an effective financing statement filed with respect to Debtor, each entity with an interest in Debtor’s property, the U.S. Trustee, the U.S. Attorney’s Office, the twenty largest unsecured creditors, state and federal taxing authorities, and all entities listed on the mailing matrix kept by the Clerk of the Court at the time of the notice. Such notice is adequate and reasonable under the circumstances pursuant to Bankruptcy Rules 4001 and Local Rules 4001-3 and 9013-1(d)(2)(E).

C. Debtor provides storage to approximately 8,000 customers across the United States. Specifically, Debtor stores individual containers, or pods, containing customers’ personal property. Debtor also provides moving services, though has recently made the decision to discontinue these services.

D. The Debtor and Secured Party are parties to an Amended and Restated Credit Agreement dated as of February 6, 2015 (as amended from time to time, the “Credit Agreement”), as amended by the First Amendment to Credit Agreement dated August 26, 2015, the Second Amendment to Amended and Restated Credit Agreement dated December 2, 2015, and the Third Amendment to Amended and Restated Credit Agreement dated May 5, 2016.

E. Under the Credit Agreement and various instruments and agreements executed or made in connection with the Credit Agreement (collectively, the “Loan Documents”), the Debtor incurred

Below is the Order of the Court.

1 various obligations to the Lender (all such obligations, the "Obligations"), including Obligations that
2 are unmatured, contingent, and unliquidated.

3 F. As of the Petition Date, the aggregate amount of outstanding Obligations was not less
4 than \$4,006,202.35, including unpaid principal of \$4,000,000, interest accrued through and including
5 the Petition Date of \$6,202.35, and fees, costs, charges, and other amounts.

6 G. The Obligations are secured by security interests in and rights of setoff with respect to
7 the collateral (the "Collateral") identified in the Continuing Security Agreement dated January 10,
8 2014 (the "Security Agreement") between the Debtor and Secured Party, including property now
9 owned and hereafter acquired, and proceeds and products thereof. The Collateral includes the
10 Debtor's accounts; chattel paper; deposit accounts and other payment obligations of financial
11 institutions; documents; equipment, including any documents and certificates of title issued with
12 respect to any of the equipment; general intangibles and any right to a refund of taxes paid at any time
13 to any governmental entity; instruments; inventory, including any documents and certificates of title
14 issued with respect to any of the inventory; investment property; financial assets; and letter-of-credit
15 rights. In addition, the Collateral includes all proceeds, products, and supporting obligations of the
16 Collateral, including stock rights, subscription rights, dividends, stock dividends, stock splits, or
17 liquidating dividends, and all cash, accounts, chattel paper, instruments, investment property, financial
18 assets, and general intangibles arising from the sale, rent, lease, casualty loss or other disposition of
19 the Collateral, and any Collateral returned to, repossessed by or stopped in transit by the Debtor, and
20 all insurance claims relating to any of the Collateral. The Collateral also includes all of the Debtor's
21 right, title and interest in and to all books, records and data relating to the Collateral, regardless of the
22 form of media containing such information or data, and all software necessary or desirable to use any
23 of the Collateral or to access, retrieve, or process any of such information or data.

H. Debtor stipulates that as of the Petition Date, the Secured Party's security interests and
rights of setoff in and with respect to the Collateral (collectively, the "Security Interests") constitute

Below is the Order of the Court.

1 valid, binding, enforceable (except to the extent stayed by operation of section 362 of the Bankruptcy
2 Code), attached, and perfected liens on Debtor's property, not subject to subordination or avoidance.

3 I. Debtor stipulates that, as of the Petition Date, no offsets, defenses or counterclaims to
4 the Obligations exist, and no portion of the Obligations is subject to avoidance or subordination
5 pursuant to the Bankruptcy Code or applicable non-bankruptcy law.

6 J. As detailed in the Motion and demonstrated by the Budget, Debtor requires the use of
7 Cash Collateral and proceeds of postpetition financing to continue its ongoing operations in the
8 ordinary course of business, and to avoid disruption of such operations. The Debtor is unable to
9 obtain unsecured credit or financing, and the Court finds and concludes that Debtor and the estate will
suffer immediate and irreparable harm if the relief approved hereby is not granted.

10 K. Pursuant to the terms of a Credit Agreement ("DIP Agreement"), attached hereto as
11 Exhibit A, and related documents (collectively, including the DIP Agreement, the "DIP Loan
12 Documents"), the Debtor has obtained postpetition financing ("DIP Loan") from the Bennett Dorrance
13 Trust Dated April 21, 1989, As Amended ("Trust" or "DIP Lender"), a trust controlled by Bennett
14 Dorrance. DTDMore Ventures, LLC, an entity controlled by Bennett Dorrance, is the majority
15 shareholder of the Debtor but is not owed money from the Debtor as a creditor as of the Petition Date.
16 The Debtor's obligations under the DIP Agreement shall be referred to as the "DIP Obligations." The
17 DIP Loan is not available to the Debtor unless agrees to and complies with all of the DIP Obligations.
18 Based on the representation of the DIP Lender's counsel on the record at a hearing on the Motion held
19 November 9, 2016, the DIP Lender is fully authorized to enter into the DIP Loan Documents and
20 perform all of the terms contained therein, and the DIP Loan Documents and the terms thereof do not
21 violate any of the terms of the trust documents governing the Trust. The material DIP Obligations
22 include the following:

- 23 i. Loan Amount: \$1,000,000, of which \$150,000 is earmarked for retention
payments to the Debtor's employees, to the extent approved by the Court.

Below is the Order of the Court.

1 ii. Maturity Date: Earlier of: a) December 31, 2017; b) confirmation of Debtor's
2 Chapter 11 Plan; c) sale of all or substantially all of the Borrower's assets;
3 d) appointment of a Trustee in this Case; or e) conversion of this case to a case under
4 Chapter 7.

5 iii. Interest Rate: Five percent (5%) per annum, accruing monthly in arrears.

6 iv. Fees: None.

7 v. Collateral: Security interest in the Debtor's assets junior to the security interest
8 of the Secured Party, including any Adequate Protection Liens granted hereunder,
9 under the Interim Order, or under the Second Interim Order.

10 vi. Advances: Multiple Advances (non-revolving).

11 vii. Priority: Claim under § 507(b) of the Bankruptcy Code, junior to the Adequate
12 Protection Obligations.

13 L. The Debtor explored postpetition financing with both the Secured Lender and the DIP
14 Lender and concluded that the terms of the proposed DIP Loan were more beneficial and less costly to
15 the estate than any other available financing. The Debtor and the DIP Lender negotiated the terms of
16 the DIP Loan Documents in good faith and at arms-length. As such, the DIP Loan Documents will be
17 deemed to have been made and entered into in good faith as required by, and within the meaning of,
18 section 364(e) of the Bankruptcy Code, and the DIP Lender is entitled to the protections of
19 section 364(e) of the Bankruptcy Code.

20 M. The terms of the DIP Loan Documents are fair and reasonable, reflect the Debtor's
21 exercise of prudent business judgment consistent with its fiduciary duties, and are supported by
22 reasonably equivalent value and fair consideration.

23 N. On November 10, 2016, this Court entered an Interim Order: (1) Authorizing Use of
Cash Collateral and Granting Adequate Protection, (2) Approving Post-Petition Loan Facility, and
(3) Setting a Final Hearing (the "Interim Order"). The Interim Order set the final hearing on the
Motion for December 7, 2016, at 9:30 a.m. The Debtor provided timely and adequate notice of that

Below is the Order of the Court.

1 hearing to all parties listed in Recital B, above. At the request of the Committee, the Debtor agreed to
2 continue the final hearing on the Motion to January 20, 2017 at 1:30 p.m., and this Court entered the
3 Second Interim Order: (1) Authorizing Use of Cash Collateral and Granting Adequate Protection, (2)
4 Approving Post-Petition Loan Facility, and (3) Setting a Final Hearing (the "Second Interim Order").
5 No creditor or party-in-interest filed an objection to or response with respect to the proposed entry of a
6 final order by the first deadline set for filing objections and responses.

7 O. This Court concludes that entry of this Order is in the best interests of the Debtor's
8 creditors and its estate because its implementation, among other things, will allow for the Debtor to
9 remain in business by providing the working capital necessary to sustain ongoing working-capital
10 requirements and to partially fund the expenses of this chapter 11 case. Absent the entry of this Order,
11 the Debtor's estate would be immediately and irreparably harmed.

12 P. The Collateral includes cash proceeds (the "Cash Collateral") that is considered "cash
13 collateral" under section 363(a) of the Bankruptcy Code. Debtor represents that it is unable to obtain
14 unsecured financing and, except for the Cash Collateral and the DIP Loan, has no source from which
15 to fund the budgeted expenses necessary to preserve and protect the assets of the estate. The Debtor
16 requires use of both Cash Collateral and the proceeds of the DIP Loan to continue its operations
17 uninterrupted and to avoid irreparable harm to its business and its estate.

18 Q. Pursuant to §§ 361, 362, 363 and 364 of the Bankruptcy Code, Debtor has agreed to
19 provide adequate protection of the Secured Party's interests in the Collateral on the terms provided for
20 herein and in accordance with the budget attached hereto as Exhibit B (as amended in accordance
21 herewith, the "Budget").

22 R. With respect to Debtor's daily collections and flow of funds, customer credit-card
23 payments are typically deposited into a merchant account maintained by Debtor at Secured Party
24 ("Merchant Account"), while other payments/collections are deposited into a cash depository account
25 located at Secured Party ("Cash Depository Account"). Each of these accounts are zeroed out each
26 day and transferred into a concentration account maintained at Secured Party ("Concentration

Below is the Order of the Court.

1 Account”). In locations without a branch of Secured Party, Debtor maintains a checking account with
2 Bank of America into which payments are deposited and then transferred to the Cash Depository
3 Account. The balance maintained in the Bank of America checking account is less than \$10,000.

4 S. As part of the Budget and the Debtor’s request to use Cash Collateral, Debtor proposes
5 to create and fund a professional fund (“Professional Fund”) on a postpetition basis to pay the
6 professional fees and costs incurred by the Debtor and the Official Unsecured Creditors Committee
7 (“Committee”) as the Court may authorize and allow by subsequent order following notice and
8 hearing. Debtor proposes to deposit all funds budgeted for the Professional Fund with Bush Kornfeld
9 LLP, attorneys for the Debtor, where such funds would be held in trust pending further order of the
10 Court following notice and hearing. Debtor believes that the proposed Professional Fund is
11 appropriate given the size and nature of this Case and the appointment and participation of a
12 Committee in this Case.

13 T. This Court has jurisdiction over these proceedings and the parties and property affected
14 by this Order pursuant to 28 U.S.C. §§ 157(b) and 1334. Consideration of the Motion constitutes a
15 core proceeding as defined in 28 U.S.C. § 157. Venue is proper before this Court pursuant to 28
16 U.S.C. §§ 1408 and 1409.

17 U. All of the proposed relief proposed by the Court with respect to Cash Collateral use,
18 grant of adequate protection to the Secured Lender, or the terms of the DIP Loan Documents is
19 consistent with this Court’s Guidelines for Cash Collateral and Financing Stipulations.

20 V. Based on the record before this Court, including the Budget, the fact that ongoing
21 operations will continue to maximize the value of the Debtor’s assets and estate, and the granting of
22 adequate protection as set forth herein, the Court finds that the interests of the Secured Party are
23 adequately protected, as contemplated by §§ 361, 362, 363 and 364 of the Bankruptcy Code.

Below is the Order of the Court.

ORDER

Based on the foregoing findings and conclusions, it is hereby

ORDERED as follows:

1. Motion Granted. The Motion is granted pursuant to the terms and conditions of this Order with respect to the Debtor's proposed use of Cash Collateral, grant of Adequate Protection, and the DIP Loan. The Debtor is authorized to enter into the DIP Loan Documents and to incur and perform the DIP Obligations, subject to any limitations set forth in this Order.

2. Use of Cash Collateral and DIP Loan. Subject to the terms and conditions of this Order, Debtor is authorized to use Cash Collateral and proceeds of the DIP Loan (a) during the Adequate-Protection Period (as defined below), (b) for the purposes identified in the Budget, and (c) in amounts, for each two-week period set forth in the Budget, not to exceed the aggregate amount authorized under the Budget for that two-week period, subject only to the adjustments permitted under paragraph 3, below. The "Adequate-Protection Period" begins on the date of the entry of the Interim Order and ends on the Termination Date (as defined below). From and after the Termination Date, Debtor may not use, sell, or lease any Collateral.

3. Budget. Without Secured Party's prior written consent and subject only to subsections (a) through (c) of this section, Debtor is not authorized to use Cash Collateral or proceeds of the DIP Loan except in accordance with the Budget and this Order.

a. With prior notice to and/or approval of Secured Party, Debtor may reallocate payments from Cash Collateral among line items in the Budget.

b. The Budget may be amended from time to time with the written consent and/or at the request of Secured Party, the DIP Lender, and Debtor and on notice to the Committee,

Below is the Order of the Court.

1 but Debtor is authorized to use Cash Collateral and proceeds of the DIP Loan in accordance
2 with the amended Budget only if (i) the amended Budget is in a form and substance acceptable
3 to Secured Party and the DIP Lender, (ii) Debtor complies with this Order and its obligation
4 hereunder to limit its use of Cash Collateral and proceeds of the DIP Loan in accordance with
5 the Budget (as amended) and (iii) the amended Budget is filed by Debtor with the Court
6 promptly.

7 c. Debtor may pay expenses contemplated in the Budget if either (i) for each two-
8 week period set forth in the Budget, Debtor's total payments for expenses in that two-week
9 period do not exceed by more than fifteen percent the total amount of payments for expenses
10 contemplated under the Budget for that two-week period, or (ii) for the period beginning on
11 the Petition Date and ending on the date of the payment, Debtor's total payments for expenses
12 in that period do not exceed by more than ten percent the total amount of payments for
13 expenses contemplated under the Budget for that period.

14 4. Carve-Out. The Debtors are also authorized to use Cash Collateral and proceeds of the
15 DIP Loan to pay the following costs, fees and expenses (collectively, the "Carve-Out"): (a) the unpaid
16 fees due and payable to the Clerk of the Court and the Office of the United States Trustee pursuant to
17 28 U.S.C. § 1930; and (b) contributions to the Professional Fund to the extent authorized under the
18 Budget through the Termination Date.

19 5. Adequate Protection. As adequate protection for the Debtor's use of Cash Collateral:

20 a. The Debtor shall pay to the Secured Party current interest at the non-default rate
21 under the Loan Documents on the interest payment dates set forth in the Loan Documents.
22 Although it is not currently doing so, Secured Party reserves the right to accrue interest at the
23 default rate of three percent (3%) per annum above the non-default rate to the extent it is

Below is the Order of the Court.

1 legally entitled to charge and collect such default rate under its Loan Documents and
2 applicable bankruptcy law. If the Secured Party so elects in the future, it shall provide the
3 Debtor with advance notice of its intent to do so, as the Debtor asserts that such action would
4 be in violation of the automatic stay imposed by § 362, and the Debtor reserves its rights to
5 take the position that the Secured Party is not legally entitled to charge and collect interest at
6 the default rate and to seek the Court's determination of the issue.

7 b. As set forth in the Budget, the Debtor shall pay the reasonable fees and
8 expenses of financial and legal advisors engaged by the Secured Party, including fees and costs
9 incurred prior to the entry of this Order.

10 c. The Debtor shall provide the Secured Party with financial and other reporting in
11 compliance with the Loan Documents.

12 d. The Secured Party is hereby granted valid, binding, enforceable and perfected
13 replacement liens on and security interests in (the "Adequate Protection Liens") all
14 Postpetition Collateral (as defined below), to secure an amount (the "Adequate Protection
15 Obligations") equal to the decrease, if any, in the value of the Secured Party's interest in the
16 Collateral, including any decrease resulting from the stay of action with respect to, use of, sale
17 of, lease by, or grant of a lien on any Collateral.

18 e. The "Postpetition Collateral" consists of (1) the Collateral and all property of
19 Debtor that is of the same type and nature as the Collateral, tangible or intangible, wherever
20 located, whether now owned or hereafter acquired or arising, and all proceeds, products, rents
21 and profits of all of the foregoing, including, without limitation, property acquired or created
22 after the Petition Date, and (2) all other property of the Debtor of any kind and nature, whether
23 real or personal, tangible or intangible, wherever located, whether now owned or hereafter

Below is the Order of the Court.

1 acquired or arising, and all proceeds, products, rents and profits thereof, including, without
2 limitation, all cash, accounts, chattel paper, deposit accounts, documents, equipment, general
3 intangibles, instruments, investment property, letters of credit rights, vehicles, goods, accounts
4 receivable, inventory, cash-in-advance deposits, real estate, machinery, intellectual property
5 (including trademarks and trade names), licenses, causes of action, rights to payment,
6 including tax-refund claims, insurance proceeds and tort claims and the proceeds, products,
7 rents and profits of all of the foregoing. The Postpetition Collateral does not include Debtor's
8 claims for relief arising under the Bankruptcy Code, such as those arising under sections
9 506(c), 544, 545, 547, 548, and 549 of the Bankruptcy Code.

10 f. The Adequate Protection Liens shall have priority over all liens, claims,
11 encumbrances, and interests of every kind and nature, whether created before or after the
12 Petition Date, as well as the liens granted to the DIP Lender, junior and subject only to (a) any
13 valid, enforceable, perfected and unavoidable lien on Debtor's assets and property in existence
14 as of the Petition Date or duly perfected after the Petition Date in accordance with
15 section 546(b) of the Bankruptcy Code, and (b) the Carve-Out, and shall be effective as of the
16 date of the entry of the Interim Order without any further action by the Debtors or the Secured
17 Party and without the necessity of the execution, filing or recordation of any financing
18 statements, security agreements, lien applications or other documents.

19 g. In accordance with section 552(b) of the Bankruptcy Code, proceeds, products,
20 offspring and profits of the Collateral—and all property and assets of the Debtor that are of the
21 same type and nature as the Collateral—created or acquired by the Debtors on or after the
22 Petition Date are hereby deemed to be Collateral.
23

Below is the Order of the Court.

1 h. If on any date Debtor receives proceeds from the Collateral, then, within seven
2 days of the date of receipt, Debtor shall pay to Secured Party an aggregate amount equal to
3 100 percent of the net proceeds (after payment of any commissions, costs, or taxes associated
4 with such disposition) received by Debtor, up to the amount of the outstanding Obligations,
5 unless the Secured Party consents in writing to the Debtor's retention of all or part of such
6 proceeds to be used in its operations. Debtor shall deliver notice to Secured Party no later than
7 10:00 a.m. (Pacific Time) one business day prior to the payment to Secured Party specifying
8 the date and amount of the payment to Secured Party.

9 i. Debtor shall continue to maintain insurance on its assets as the same existed as
10 of the Petition Date.

11 j. Debtor shall provide to each Secured Party, the DIP Lender, and the Committee,
12 on or before the 15th day of each month, a report reflecting actual revenues and expenses for
13 the prior month, as compared to the Budget for that month.

14 k. In accordance with section 507(b) of the Bankruptcy Code, if, notwithstanding
15 the foregoing protections, Secured Party has a claim allowable under section 507(a)(2) of the
16 Bankruptcy Code arising from the stay of action against Collateral, from the use, sale, or lease
17 of Collateral, or from the granting of any lien on the Collateral, then Secured Party's claim
18 shall have priority over every other claim and administrative expense allowable under section
19 507(a)(2) of the Bankruptcy Code.

20 6. Evidence of Adequate Protection Liens. This Order shall be sufficient for, and
21 conclusive evidence of, the priority, perfection, and validity of the Adequate Protection Liens.

22 7. Professional Fund. The Professional Fund is approved with Debtor to fund the
23 amounts consistent with the Budget for that purpose. The Professional Fund shall be deposited and

Below is the Order of the Court.

1 maintained in the trust account of Bush Kornfeld LLP, attorneys for Debtor, where such funds shall be
2 held in trust pending further order of the Court following notice and hearing for the pro rata benefit of
3 the professionals engaged by the Debtor and the Committee. To the extent the amounts deposited into
4 the Professional Fund exceed the allowed fees and costs of those professionals, such excess funds
5 shall remain subject to the rights of the Secured Party.

6 8. Limitations on Use of Collateral. Except to the extent permitted by paragraph 9 below,
7 no Collateral and no part of the Professional Fund may be used by any entity to assert any of the
8 following challenges (each, a "Lender Claim"): (a) to object, contest or raise any defense to, the
9 validity, perfection, priority, extent or enforceability of obligations or security interests arising under
10 the Loan Documents, (b) to assert any action for preferences, fraudulent transfers, or other avoidance
11 claims against the Secured Party, (c) to prevent, hinder or otherwise delay the Secured Party's
12 assertion, enforcement or realization on the Collateral in accordance with the Loan Documents, the
13 Interim Order, the Second Interim Order, or this Order, or (d) to seek to modify, without their consent,
14 any of the rights granted to the Secured Party hereunder, under the Interim Order, the Second Interim
15 Order, or under the Loan Documents.

16 9. Exceptions to Limitations on Use of Collateral. The advisors to the Committee may
17 review the Loan Documents at an expense not to exceed \$10,000. The restrictions imposed by
18 paragraph 8 above shall not apply to any Lender Claim to the extent that (a) a party-in-interest has
19 filed an adversary proceeding or contested matter with respect to such Lender Claim by no later than
20 January 16, 2017, and (b) there is a final order in favor of the plaintiff sustaining any such Lender
21 Claim.

22 10. Provisions Regarding DIP Loan. With respect to the DIP Obligations and the DIP Loan
23 Agreement:

Below is the Order of the Court.

1 a. The DIP Loan and the DIP Loan Documents are approved subject to the following
2 clarifications:

3 (1) If the DIP Lender declares a Default under the terms of the DIP Loan,
4 its right to pursue remedies against the Debtor and/or the DIP Facility Collateral shall
5 be subject to notice and hearing before this Court. The DIP Lender shall have the right
6 to set a hearing requesting relief due to a Default on seven (7) days' notice to the
7 Debtor, the Secured Lender, the Committee, the United States Trustee, and any parties
8 requesting special notice.

9 (2) Section 8.10 of the DIP Agreement shall be amended so that the existing
10 Section 8.10 is deleted in its entirety and replaced with the following:

11 8.10 Waivers. To the extent not prohibited by applicable Legal
12 Requirements, Borrower waives any right of demand, presentment, dishonor or
13 protest with regard to the Note. Borrower further agrees that any forbearance or
14 delay by Lender with regard to the enforcement of any remedy under the Note
15 and/or this Agreement shall not constitute a waiver of Lender's right to take
16 such enforcement action at a later time. No modification, forbearance, or waiver
17 of any of Lender's rights under the Note and/or this Agreement shall be
18 effective unless the same is in writing and is signed by Lender and shall only
19 apply to the specific matters referenced in such writing.

20 b. The Debtor shall comply with and perform, and is bound by, all of the terms,
21 conditions, and provisions contained in the DIP Loan Documents, and the Debtor is
22 authorized, directed, and obligated to repay and perform each DIP Obligation, including the
23 obligation to repay each loan advanced after the Petition Date with interest, fees, expenses, and

Below is the Order of the Court.

1 other charges and amounts, in accordance with and subject to the terms and conditions set
2 forth in the DIP Loan Documents.

3 c. None of the DIP Loan Documents, nor any provision thereof nor any right arising
4 under any provision thereof, is voidable or avoidable under section 548 of the Bankruptcy
5 Code, under any applicable state Uniform Voidable Transactions Act, Uniform Fraudulent
6 Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law, or
7 otherwise.

8 d. The Debtor is expressly authorized to borrow from the DIP Lender, on the terms and
9 subject to the conditions and limitations in availability set forth in the DIP Loan Documents,
10 postpetition loans in an original principal amount not to exceed \$1,000,000 outstanding at any
11 time, and to incur the DIP Obligations.

12 e. Pursuant to section 364(c)(1) of the Bankruptcy Code, all DIP Obligations shall
13 constitute allowed claims (the "Superpriority Claims") against the Debtor with priority over
14 any and all administrative expenses and claims under section 507(b) of the Bankruptcy Code,
15 junior only to the Obligations, the Adequate Protection Obligations, and any other claims and
16 rights to the reimbursement of expenses in favor of the Secured Lender.

17 f. As security for the DIP Obligations, the DIP Lender shall have and is hereby granted
18 (effective on the date of the Interim Order and without the necessity of the execution by the
19 Debtor of mortgages, security agreements, pledge agreements, financing statements, or other
20 documents or instruments) valid and perfected security interests and liens (the "DIP Facility
21 Liens") in and on all assets of the Debtor, whether now owned or hereafter acquired, wherever
22 located, and whether now existing or hereafter arising, as well as all proceeds, products, rents,
23 and profits of the foregoing (collectively, the "DIP Facility Collateral"), but not including

Below is the Order of the Court.

1 Debtor's claims for relief arising under the Bankruptcy Code, including those arising under
2 sections 506(c), 544, 545, 547, 548, and 549 of the Bankruptcy Code. The DIP Lender may,
3 but it not required to, file the Interim Order, the Second Interim Order, and/or this Order with
4 any appropriate state or local office as proof of the existence and perfection of the DIP Facility
5 Liens, and may, but is not required to, file financing statements and other customary
6 documentation necessary to record and/or perfect the same under applicable non-bankruptcy
7 law. The DIP Facility Liens shall be junior and subordinate to the liens of the Secured Party
8 against the Collateral, the Adequate Protection Liens granted the Secured Party hereunder and
9 under the Interim Order, the Second Interim Order, and this Order, and any existing, valid lien
10 against any of the DIP Facility Collateral as of the Petition Date.

11 g. The DIP Lender's rights, including the DIP Liens and the Superpriority Claims, shall
12 be exclusive of and independent of the Carve-Out.

13 h. All DIP Facility Liens are binding and perfected automatically upon the entry of the
14 Interim Order. The DIP Lender will not be required to file or serve financing statements,
15 mortgages, notices of lien, or similar instruments which otherwise may be required under
16 federal or state law in any jurisdiction, or take any action, including taking possession, to
17 validate and perfect the DIP Facility Liens.

18 i. The DIP Lender and the Debtor have negotiated the DIP Obligations and the DIP Loan
19 Documents in good faith and at arms-length. Thus, the DIP Lender is entitled to the full
20 protection of section 364(e) of the Bankruptcy Code with respect to the DIP Obligations and
21 the DIP Facility Liens if this Order, the Second Interim Order, the Interim Order, or any
22 finding, adjudication, or authorization contained in those orders is stayed, vacated, reversed, or
23 modified on appeal. Any stay, modification, reversal, or vacation of this Order will not affect

Below is the Order of the Court.

1 the validity of any DIP Obligations incurred prior to the DIP Lender's actual receipt of written
2 notice of the effective date of any such stay, modification, reversal, or vacation.

3 Notwithstanding any such stay, modification, reversal, or vacation, all financing extended to
4 the Debtor pursuant to this Order and all DIP Obligations incurred by the Debtor pursuant
5 hereto prior to the DIP Lender's actual receipt of written notice of the effective date of any
6 such stay, modification, reversal, or vacation shall be governed in all respects by the original
7 provisions hereof, and the DIP Lender shall be entitled to all the rights, privileges, and
8 benefits, including, without limitation, the liens, security interests, and first priorities granted
9 herein with respect to all such DIP Obligations.

10 11. Termination Date. The Adequate-Protection Period ends on the earliest date (the
11 "Termination Date") when one or more of the following conditions has occurred or has been met.

- 12 a. The maturity, whether by acceleration or otherwise, of the principal amount of
13 the DIP Obligations.
- 14 b. The Court enters an order converting the Case to a case under chapter 7 of the
15 Bankruptcy Code, or the Debtor has filed a motion or has not timely opposed a motion seeking
16 such relief.
- 17 c. The Court enters an order dismissing the Case, or the Debtor has filed a motion
18 or has not timely opposed a motion seeking such relief.
- 19 d. The Debtor fails to comply with this Order.
- 20 e. The Court enters any order that stays, modifies, or reverses the Interim Order,
21 the Second Interim Order, or this Order.
- 22 f. The Court enters an order granting relief from the automatic stay so as to allow
23 a third party to proceed against any Collateral.

Below is the Order of the Court.

1 Presented by:

2 BUSH KORNFELD LLP

3
4 By /s/ Armand J. Kornfeld
5 Armand J. Kornfeld, WSBA #17214
6 Aimee S. Willig, WSBA #22859
7 Christine M. Tobin-Presser, WSBA #27628
8 Attorneys for Debtor-in-Possession

9
10 Agreed; Notice of Presentation Waived:

11 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

12
13 By /s/ Ori Katz

14 Ori Katz
15 Matt R. Klinger
16 Proposed Main Counsel for the Official
17 Committee of Unsecured Creditors

18 SCHLEMLEIN GOETZ FICK & SCRUGGS, PLLC

19
20 By /s/ Richard G. Birinyi
21 Richard G. Birinyi, WSBA #9212
22 Proposed Local Counsel for the Official
23 Committee of Unsecured Creditors

DAVIS WRIGHT TREMAINE LLP

By /s/ Hugh McCullough
Hugh McCullough, WSBA #41453
Attorneys for JPMorgan Chase Bank, N.A.

FINAL ORDER: (1) AUTHORIZING USE OF CASH
COLLATERAL AND GRANTING ADEQUATE
PROTECTION, ETC. – Page 19

BUSH KORNFELD LLP
LAW OFFICES
601 Union St., Suite 5000
Seattle, Washington 98101-2373
Telephone (206) 292-2110
Facsimile (206) 292-2104

Below is the Order of the Court.

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THE TRACY LAW GROUP PLLC

By /s/ J. Todd Tracy
J. Todd Tracy, WSBA #17342
Bennett Dorrance Trust dated April 21, 1989, as Amended

BALLARD SPAHR LLP

By /s/ Dean C. Waldt
Dean C. Waldt, admitted *Pro Hac Vice*
Bennett Dorrance Trust dated April 21, 1989, as Amended

FINAL ORDER: (1) AUTHORIZING USE OF CASH
COLLATERAL AND GRANTING ADEQUATE
PROTECTION, ETC. – Page 20

BUSH KORNFELD LLP
LAW OFFICES
601 Union St., Suite 5000
Seattle, Washington 98101-2373
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Facsimile (206) 292-2104

Below is the Order of the Court.

EXHIBIT A

Below is the Order of the Court.

THE INDEBTEDNESS EVIDENCED BY THIS INSTRUMENT IS SUBORDINATED TO THE PRIOR PAYMENT IN FULL OF THE SENIOR OBLIGATIONS (AS DEFINED IN THE SUBORDINATION AGREEMENT HEREINAFTER REFERRED TO) PURSUANT TO, AND TO THE EXTENT PROVIDED IN, THAT CERTAIN SUBORDINATION AGREEMENT DATED AS OF NOVEMBER 10, 2016, BY AND AMONG DOOR TO DOOR STORAGE, INC., BENNETT DORRANCE TRUST DATED APRIL 21, 1989, AS AMENDED, AND JPMORGAN CHASE BANK, N.A., AS IT MAY BE AMENDED FROM TIME TO TIME.

CREDIT AGREEMENT

THIS CREDIT AGREEMENT (this “**Agreement**”) is dated effective as of November 10, 2016 and is by and between BENNETT DORRANCE TRUST DATED APRIL 21, 1989, AS AMENDED (together with its successors and assigns, the “**Lender**”), whose address is 7600 East Doubletree Ranch Road, Suite 300, Scottsdale, Arizona 85258, and DOOR TO DOOR STORAGE, INC., a Washington corporation (the “**Borrower**”), whose address is 20425 72nd Avenue, South, Suite 200, Kent, Washington 98032.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower and the Lender agree as follows, subject only to the prior approval of this Agreement by the Bankruptcy Court (as defined below):

ARTICLE I: CREDIT FACILITIES.

- 1.1 Scope.** This Agreement, unless otherwise agreed to in writing by the Lender and the Borrower or prohibited by any Legal Requirement, governs the Credit Facilities. The maximum principal amount of the Credit Facilities is \$1,000,000.00. The Credit Facilities are a line of credit (up to \$150,000.00 of which shall be used for employee retention payments) that is being provided to the Borrower in the form of debtor-in-possession financing in connection with its Chapter 11 case pending in the United States Bankruptcy Court for the Western District of Washington (the “**Bankruptcy Court**”). The Borrower may prepay the Credit Facilities in whole or in part at any time without premium or penalty upon written notice to the Lender.
- 1.2 Security.** The Credit Facilities will be secured by liens and security interests on all assets of the Borrower (collectively, the “**Subordinate Liens**”), subordinate only to the existing prior first priority liens and security interests on the Borrower’s assets held by JPMorgan Chase Bank, N.A., a national banking association (“**Chase**”), and, to the extent valid and enforceable, the prior liens in equipment asserted by Pacific Office Automation Inc., an Oregon corporation.

ARTICLE II: DEFINITIONS AND INTERPRETATIONS.

- 2.1 Definitions.** As used in this Agreement, the following terms have the following respective meanings:

Below is the Order of the Court.

- (a) **"Affiliate"** means any Person which, directly or indirectly controls or is controlled by or under common control with, another Person, and any director or officer thereof; however, the Lender is under no circumstances to be deemed an Affiliate of the Borrower or any of the Subsidiaries.
- (b) **"Authorizing Documents"** means certificates of authority to transact business, certificates of good standing, borrowing resolutions, appointments, officer's certificates, certificates of incumbency, and other documents which empower and authorize or evidence the power and authority of all Persons (other than the Lender) executing any Related Document or their representatives to execute and deliver the Related Documents and perform the Person's obligations thereunder.
- (c) **"Bankruptcy"** means the Chapter 11 bankruptcy case commenced by the Borrower in the Bankruptcy Court.
- (d) **"Bankruptcy Court"** means the United States Bankruptcy Court for the Western District of Washington.
- (e) **"Collateral"** means all Property of the Obligors, now or in the future subject to any Lien in favor of the Lender, securing or intending to secure any of the Liabilities in favor of the Lender. The Collateral shall consist of all Property of the Obligors, and all Liens in such Collateral shall be Subordinate Liens.
- (f) **"Credit Facilities"** means all extensions of credit from the Lender to the Borrower, whether now existing or hereafter arising, including but not limited to those described in Section 1.1.
- (g) **"Equity Interests"** means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such Equity Interest.
- (h) **"GAAP"** means generally accepted accounting principles in effect from time to time in the United States of America, consistently applied.
- (i) **"Legal Requirement"** means any law, ordinance, decree, requirement, order, judgment, rule, regulation (or interpretation of any of the foregoing) of any foreign governmental authority, the United States of America, any state thereof, any political subdivision of any of the foregoing or any agency, department, commission, board, bureau, court or other tribunal having jurisdiction over the Lender, any Pledgor or any Obligor or any of its Subsidiaries or their respective Properties or any agreement by which any of them is bound.
- (j) **"Liabilities"** means all indebtedness, liabilities and obligations of every kind and character of the Borrower or any other Obligor to the Lender, whether the obligations, indebtedness and liabilities are individual, joint and several, contingent or otherwise, now or hereafter existing, including, without limitation,

Below is the Order of the Court.

all liabilities, interest, costs and fees, arising under or from any note, open account, overdraft, lease, endorsement, surety agreement, guaranty or acceptance, whether payable to the Lender or to a third party and subsequently acquired by the Lender, any monetary obligations (including interest) incurred or accrued during the pendency of any bankruptcy, insolvency, receivership or other similar proceedings, regardless of whether allowed or allowable in such proceeding, and all renewals, extensions, modifications, consolidations, rearrangements, restatements, replacements or substitutions of any of the foregoing.

(k) “**Lien**” means any mortgage, deed of trust, pledge, charge, encumbrance, security interest, collateral assignment or other lien or restriction of any kind.

(l) “**Note**” means the Promissory Note of even date herewith evidencing the Credit Facilities.

(m) “**Obligor**” means any Borrower, Pledgor, guarantor, surety, co-signer, endorser, general partner or other Person who may now or in the future be obligated to pay any of the Liabilities.

(n) “**Organizational Documents**” means, with respect to any Person, certificates of existence or formation, documents establishing or governing the Person or evidencing or certifying that the Person is duly organized and validly existing in accordance with all applicable Legal Requirements, including all amendments, restatements, supplements or modifications to such certificates and documents as of the date of the Related Document referring to the Organizational Document and any and all future modifications thereto approved by the Lender.

(o) “**Person**” means any individual, corporation, partnership, limited liability company, joint venture, joint stock association, association, Lender, business trust, trust, unincorporated organization, any foreign governmental authority, the United States of America, any state of the United States and any political subdivision of any of the foregoing or any other form of entity.

(p) “**Pledgor**” means any Person providing Collateral.

(q) “**Property**” means any interest in any kind of property or asset, whether real, personal or mixed, tangible or intangible.

(r) “**Related Documents**” means this Agreement, the Note, all loan agreements, credit agreements, reimbursement agreements, security agreements, intercreditor agreements, mortgages, deeds to secure debt, deeds of trust, pledge agreements, assignments, guaranties, and any other instrument or document executed in connection with this Agreement or with any of the Liabilities, including the Promissory Note and the security agreement, each of even date herewith, in each case, as the same may be amended, modified, supplemented or restated from time to time.

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(s) “**Subsidiary**” means, as to any particular Person (the “**parent**”), a Person the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of the date of determination, as well as any other Person of which fifty percent (50%) or more of the Equity Interests is at the time of determination directly or indirectly owned, controlled or held, by the parent or by any Person or Persons controlled by the parent, either alone or together with the parent.

2.2 Interpretations. Whenever possible, each provision of the Related Documents shall be interpreted in such manner as to be effective and valid under applicable Legal Requirements. If any provision of this Agreement cannot be enforced, the remaining portions of this Agreement shall continue in effect. In the event of any conflict or inconsistency between this Agreement and the provisions of any other Related Documents, the provisions of this Agreement shall control. Use of the term “including” does not imply any limitation on (but may expand) the antecedent reference. Any reference to a particular document includes all modifications, supplements, replacements, renewals or extensions of that document, but this rule of construction does not authorize amendment of any document without the Lender’s consent. Section headings are for convenience of reference only and do not affect the interpretation of this Agreement. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP. Whenever the Lender’s determination, consent, approval or satisfaction is required under this Agreement or the other Related Documents or whenever the Lender may at its option take or refrain from taking any action under this Agreement or the other Related Documents, the decision as to whether or not the Lender makes the determination, consents, approves, is satisfied or takes or refrains from taking any action, shall be in the sole and exclusive discretion of the Lender, and the Lender’s decision shall be final and conclusive.

ARTICLE III: CONDITIONS PRECEDENT TO EXTENSION OF CREDIT.

3.1 Conditions Precedent to Extension of Credit. Before the first extension of credit governed by this Agreement, the Borrower shall deliver, or cause to be delivered, to the Lender, in form and substance satisfactory to the Lender:

(a) **Loan Documents.** The Note and, as applicable, the security agreements, the pledge agreements, financing statements, the intercreditor agreements, and any other opinions, certificates and documents which the Lender may require to give effect to the transactions described in this Agreement or the other Related Documents, including, without limitation, to create in favor of the Lender the Subordinate Liens on all of the Borrower’s Property;

(b) **Organizational and Authorizing Documents.** The Organizational Documents and Authorizing Documents of the Borrower and any other Persons (other than the Lender) executing the Related Documents in form and substance

Below is the Order of the Court.

satisfactory to the Lender that at a minimum: (i) document the due organization, valid existence and good standing of the Borrower and every other Person (other than the Lender) that is a party to this Agreement or any other Related Document; (ii) evidence that each Person (other than the Lender) which is a party to this Agreement or any other Related Document has the power and authority to enter into the transactions described therein; and (iii) evidence that the Person signing on behalf of each Person that is a party to the Related Documents (other than the Lender) is duly authorized to do so; and

(c) **Additional Approvals, Opinions, and Documents.** Such other approvals, opinions and documents as the Lender may reasonably request; and

(d) **Bankruptcy Court Approval.** An Order, in form and substance acceptable to the Lender, entered by the Bankruptcy Court (the "**Approval Order**"), which must include provisions approving the Loan Documents, authorizing the Borrower to enter into the Credit Facilities and execute the Loan Documents, authorizing the Lender to extend credit and make advances to the Borrower under the terms of the Loan Documents, authorizing the Borrower to grant the Subordinate Liens in favor of the Lender, deeming the Subordinate Liens to be fully perfected upon entry of the Approval Order, authorizing the Borrower to make interest payments to the Lender under the terms of the Loan Documents and to repay the Credit Facilities under the terms of the Loan Documents, and providing the Lender with a super-priority administrative claim (junior only to the claims in favor of Chase) to secure the payment of the Credit Facilities with priority over any and all administrative expenses under Section 503(b) and Section 507(a)(2) of the Bankruptcy Code.

ARTICLE IV: AFFIRMATIVE COVENANTS.

The Borrower agrees to do, and cause its Subsidiaries to do, each of the following:

- 4.1 **Insurance.** Maintain insurance with financially sound and reputable insurers, as currently maintained by the Borrower, covering its Property and business against those casualties and contingencies and in the types and amounts as are in accordance with sound business and industry practices, and furnish to the Lender, upon request of the Lender, reports on each existing insurance policy showing such information as the Lender may reasonably request together with appropriate loss payable endorsements in form and substance satisfactory to the Lender, naming the Lender as an additional insured and lender loss payee (as applicable) as its interests may appear with respect to all insurance coverage referred to above.
- 4.2 **Financial Records.** Maintain proper books and records of account accurately reflecting all financial transactions in accordance with GAAP and applicable Legal Requirements.

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- 4.3 Inspection.** Permit the Lender, its agents and designees to: (a) inspect and photograph its Property, to examine and copy files, books and records (including, without limitation, all records, statements and account balances related to each deposit, securities or other account maintained by such Person), and to discuss its business, operations, prospects, assets, affairs and financial condition with the Borrower's, the other Obligor's or their Subsidiaries' officers and accountants, at times and intervals as the Lender reasonably determines; (b) perform audits or other inspections of the Collateral, including all records, documents, statements, and account balances related to the foregoing; and (c) confirm with any Person any obligations and liabilities of the Person to the Obligors. The Borrower and the Obligors will, and will cause their respective Subsidiaries to cooperate with any inspection or audit. The Borrower will pay the Lender the reasonable costs and expenses of any audit or inspection of the Collateral (including fees and expenses charged internally by the Lender for asset reviews) promptly after receiving the invoice.
- 4.4 Financial Reports.** Furnish to the Lender whatever information, statements, books and records the Lender may from time to time reasonably request, to the extent reasonably available to the Borrower.
- 4.5 Legal Requirements; Agreements.** Comply with all Legal Requirements applicable to it and all material terms and conditions of all agreements, documents or instruments, whether now or hereafter existing, between it and any other Person.
- 4.6 Title to and Maintenance of Assets and Property.** Maintain good and marketable title to all of its Properties, and defend them against all claims and demands of all Persons at any time claiming any interest in them, and maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good order and condition, subject to wear and tear in the ordinary course of the business, and not permit any waste of any of those properties or equipment.
- 4.7 Additional Assurances.** Promptly make, execute and deliver any and all agreements, documents, instruments and other records that the Lender may request to evidence any of the Credit Facilities, cure any defect in the execution and delivery of any of the Related Documents, perfect any Lien, comply with any Legal Requirement applicable to the Lender or the Credit Facilities or describe more fully particular aspects of the agreements set forth or intended to be set forth in any of the Related Documents.
- 4.8 Banking Relationship.** Establish and maintain all of its banking depository and disbursement relationships with a national bank acceptable to the Lender.
- 4.9 Use of Proceeds.** Use up to \$150,000.00 of the proceeds of the Credit Facilities for employee retention payment, and use the remaining proceeds of the Credit Facilities solely for the purpose of funding ordinary and necessary business

Below is the Order of the Court.

expenses pre-approved by the Lender in a monthly cash budget to be submitted to the Lender for successive sixty (60) day periods commencing on the date of the entry of the Approval Order and updated for every sixty (60) day period thereafter. The Borrower may deviate from the cash budget by ten percent (10%) as to any line item without the prior authorization of the Lender. Any deviation in excess of that amount requires the prior written approval of the Lender.

ARTICLE V: NEGATIVE COVENANTS.

Without the written consent of the Lender, neither the Borrower nor any other Obligor will, and will not permit any of their respective Subsidiaries to:

- 5.1 Debt.** (a) Incur, contract for, assume, or permit to remain outstanding, indebtedness for borrowed money, installment obligations, or obligations under capital leases or operating leases, other than (i) unsecured trade debt incurred in the ordinary course of business, (ii) indebtedness owing to the Lender, (iii) indebtedness reflected in its latest financial statement furnished to the Lender prior to execution of this Agreement, and (iv) indebtedness outstanding as of the date hereof that has been disclosed to the Lender in writing; or (b) modify the terms of any indebtedness for borrowed money permitted under clause (a); or (c) prepay principal or interest on any indebtedness for borrowed money permitted under clause (a).
- 5.2 Use of Proceeds.** Use, or permit any proceeds of the Credit Facilities to be used, directly or indirectly, for any purpose other than specifically set forth in Section 4.9.
- 5.3 Conflicting Agreements.** Enter into any agreement containing any provision which would be violated or breached by the performance of its obligations under this Agreement or any of the other Related Documents.
- 5.4 Transfer of Ownership.** Permit (a) any pledge of or grant of any Liens on any Equity Interest in it or any Equity Interests owned by it or (b) any sale or other transfer of any Equity Interest in it or any Equity Interests owned by it.
- 5.5 Organizational Documents.** Alter, amend or modify any of the Organizational Documents of the Borrower or any Subsidiary of the Borrower.
- 5.6 Government Regulation.** (a) Be or become subject at any time to any Legal Requirement or list of any government agency (including, without limitation, the U.S. Office of Foreign Asset Control list) that prohibits or limits the Lender from making any advance or extension of credit to it or from otherwise conducting business with it, or (b) fail to provide documentary and other evidence of its identity as may be requested by the Lender at any time to enable the Lender to verify its identity or to comply with any applicable Legal Requirement.
- 5.7 Subsidiaries.** Form, create or acquire any Subsidiary unless the Subsidiary enters into a security agreement and guarantee with the Lender.

Below is the Order of the Court.

- 5.8 Transactions with Affiliates.** Enter into any transaction of any kind with any Affiliate of any Obligor other than arm's-length transactions with Affiliates that are otherwise permitted hereunder.

ARTICLE VI: REPRESENTATIONS.

- 6.1 Representations and Warranties by the Borrower.** To induce the Lender to enter into this Agreement and to extend credit or other financial accommodations under the Credit Facilities, the Borrower represents and warrants that each of the following statements is and shall remain true and correct throughout the term of this Agreement and until all Credit Facilities and all Liabilities under the Note and other Related Documents are paid in full, subject to those matters set forth in a written schedule delivered by the Borrower to and approved by the Lender, in its sole and absolute discretion:

(a) It is (i) duly organized, validly existing and in good standing in its jurisdiction of organization and its principal residence or chief executive office is at the address set forth herein and (ii) duly qualified and in good standing under the laws of each jurisdiction where its ownership, lease or operation of properties or conduct of the business requires such qualification, and is in compliance with all laws.

(b) Its name as it appears in this Agreement or the applicable Related Documents is its exact name as it appears in its Organizational Documents.

(c) The execution and delivery of this Agreement and the other Related Documents by the Borrower, and the performance of the obligations they impose, do not (i) violate any Legal Requirement, (ii) conflict with any agreement, document or instrument by which the Borrower or any Property of the Borrower is bound, (iii) require the consent or approval of any other Person other than approval of the Bankruptcy Court and Chase, or (iv) except for the Liens granted in favor of the Lender pursuant to the Related Documents, result in or require the creation or imposition of any Lien upon any of its Properties, revenues or assets.

(d) This Agreement and the other Related Documents have been duly authorized, executed and delivered by all parties thereto (other than the Lender) and are valid and binding agreements of those Persons, enforceable according to their terms, except as may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally and by general principles of equity.

(e) All balance sheets, profit and loss statements, and other financial statements and other information furnished to the Lender in connection with the Liabilities are accurate and fairly reflect the financial condition of the Persons to which they apply on their effective dates, including contingent liabilities of every type, which financial condition has not changed materially and adversely since those dates.

Below is the Order of the Court.

(f) There are no defenses or counterclaims, offsets or adverse claims, demands or actions of any kind, personal or otherwise, that the Borrower could assert with respect to this Agreement or the Credit Facilities.

(g) The execution and delivery of this Agreement and the other Related Documents by the Borrower to which it is a party and the performance of the obligations they impose, (i) are within the Borrower's powers, (ii) have been duly authorized by all necessary action of the Borrower's governing body, and (iii) do not contravene the terms of the Borrower's Organizational Documents or other agreement or document governing its affairs.

(h) It and its Subsidiaries (i) has good and marketable title to all real property owned by it, (ii) holds interests as lessee under valid leases in full force and effect with respect to all leased real and personal property used in connection with its business, and (iii) has good title to all of its other properties and assets reflected on its balance sheet.

(i) It and each of its Subsidiaries is in compliance with all Legal Requirements applicable to it and all material terms and conditions of all other agreements, documents or instruments, whether now or hereafter existing, between it and any other Person.

ARTICLE VII: DEFAULT/REMEDIES.

7.1 Events of Default/Acceleration. If any of the following events occurs (each a "Default"), the Lender shall have the option to declare the Note due immediately. In the event the Lender exercises this option, it shall deliver written notice of Default to the Borrower. The Borrower shall have the right to dispute any asserted Default, in which case the matter shall be set for determination by the Bankruptcy Court on an emergency basis to determine whether a Default has occurred. The Borrower shall not have the right to any advances under this Agreement while an asserted Default is pending and unless and until the Bankruptcy Court determines that a Default has not occurred.

(a) During the pendency of the Bankruptcy, the Borrower fails to pay when due any of the Liabilities or any other debt to any Person, or any amount payable with respect to any of the Liabilities, or under the Note, any other Related Document, or any agreement or instrument evidencing other debt to any Person.

(b) The Borrower: (i) fails to observe or perform or otherwise violates any other term, covenant, condition or agreement of any of the Related Documents; (ii) makes any materially incorrect or misleading representation, warranty, or certificate to the Lender; (iii) makes any materially incorrect or misleading representation in any financial statement or other information (excluding forecasts) delivered to the Lender; or (iv) defaults under the terms of any agreement or instrument relating to any debt for borrowed money (other than the

Below is the Order of the Court.

debt evidenced by the Related Documents), and the effect of such default will allow the creditor to declare the debt due before its stated maturity.

(c) In the event there is a default under the terms of any Related Document.

(d) There is any material loss, theft, damage, or destruction of any Collateral not covered by insurance or the Lender ceases to have a second-priority security interest in any of the Collateral.

(e) The Borrower fails to comply in any material respect with any Legal Requirement.

7.2 Remedies. Subject to the Borrower's rights and notice and hearing provisions set forth in Section 7.1, above, at any time after the occurrence of a Default, the Lender may do one or more of the following: (a) declare the Note to be immediately due and payable, with notice of acceleration, presentment and demand or protest or notice of any kind, all of which are hereby expressly waived; (b) exercise all rights of setoff that the Lender may have contractually, by law, in equity or otherwise; and (c) exercise any and all other rights pursuant to any of the Related Documents, at law, in equity or otherwise, including without limitation, the Uniform Commercial Code; provided, however, in the case of a Default of the type described in Section 7.1(f), all Liabilities, including without limitation those Liabilities under the Note, shall be immediately due and payable and this Agreement and the Related Documents shall be deemed terminated. The rights of the Lender under this Agreement and the other Related Documents are in addition to other rights, the Lender may have contractually, by law, in equity or otherwise, all of which are cumulative and hereby retained by the Lender.

ARTICLE VIII: MISCELLANEOUS.

8.1 Notice. Any notices and demands under or related to this Agreement shall be in writing and delivered to the intended party at its address stated in this Agreement, by one of the following means: (a) by hand; (b) by a nationally recognized overnight courier service; or (c) by certified mail, postage prepaid, with return receipt requested. Notice shall be deemed given: (i) upon receipt if delivered by hand; (ii) on the Delivery Day after the day of deposit with a nationally recognized courier service; or (c) on the third Delivery Day after the notice is deposited in the mail. "**Delivery Day**" means a day other than a Saturday, a Sunday or any other day on which national banking associations are authorized to be closed. Any party may change its address for purposes of the receipt of notices and demands by giving notice of the change in the manner provided in this provision.

8.2 No Waiver. No delay on the part of the Lender in the exercise of any right or remedy waives that right or remedy. No single or partial exercise by the Lender of any right or remedy precludes any other future exercise of it or the exercise of any other right or remedy. No waiver or indulgence by the Lender of any Default is

Below is the Order of the Court.

effective unless it is in writing and signed by the Lender, nor shall a waiver on one occasion bar or waive that right on any future occasion.

- 8.3 Integration; Severability.** This Agreement, the Note, and the other Related Documents embody the entire agreement and understanding between and among the Borrower, the other Obligors and the Lender, and supersede all prior agreements and understandings relating to their subject matter. If any one or more of the obligations of the Borrower or any Obligor under this Agreement, the Note, or the other Related Documents or any provision thereof is held to be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining obligations of the Borrower and the other Obligors and the remaining provisions shall not in any way be affected or impaired; and the invalidity, illegality or unenforceability in one jurisdiction shall not affect the validity, legality or enforceability of such obligations or provisions in any other jurisdiction.
- 8.4 Joint and Several Liability.** Each party executing this Agreement as an Obligor is individually, jointly and severally liable under this Agreement.
- 8.5 Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona (without giving effect to its laws of conflicts). As long as the Bankruptcy is pending, the Bankruptcy Court shall have exclusive jurisdiction over this Agreement and the Related Documents, and venue shall rest exclusively in the Bankruptcy Court.
- 8.6 Survival of Representations and Warranties.** Each Obligor understands and agrees that in extending the Credit Facilities, the Lender is relying on all representations, warranties, and covenants made by such Obligor in this Agreement, the Related Documents or in any certificate or other instrument delivered by such Obligor to the Lender under this Agreement or in any of the other Related Documents. Each Obligor further agrees that regardless of any investigation made by the Lender, all such representations, warranties and covenants will survive the making of the Credit Facilities and delivery to the Lender of this Agreement, shall be continuing in nature, and shall remain in full force and effect until such time as the Liabilities shall be paid in full.
- 8.7 Non-Liability of the Lender.** The relationship between the Borrower and the other Obligors on one hand and the Lender on the other hand shall be solely that of obligor and lender. The Lender shall have no fiduciary responsibilities to the Borrower or any other Obligor. The Lender undertakes no responsibility to the Borrower or any other Obligor to review or inform the Borrower or such Obligor of any matter in connection with any phase of the Borrower's or such Obligor's business or operations.
- 8.8 Counterparts.** This Agreement may be executed in multiple counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts, taken together, shall constitute one and the same agreement.

Below is the Order of the Court.

- 8.9 Advice of Counsel.** Each of the Borrower and the other Obligor acknowledges that it has had the opportunity to be advised by counsel in the negotiation, execution and delivery of this Agreement and all other Related Documents.
- 8.10 Waivers.** To the maximum extent not prohibited by applicable Legal Requirements, each Obligor waives (a) any right to receive notice of the following matters before the Lender enforces any of its rights: (i) any demand, diligence, presentment, dishonor and protest, or (ii) any action that the Lender takes regarding any Person, any Collateral, or any of the Liabilities, that it might be entitled to by law or under any other agreement; (b) any right to require the Lender to proceed against the Borrower, any other Obligor or any Collateral, or pursue any remedy in the Lender's power to pursue; (c) any defense based on any claim that any Obligor's obligations exceed or are more burdensome than those of the Borrower; (d) the benefit of any statute of limitations affecting liability of any Obligor or the enforcement hereof; (e) any defense arising by reason of any disability or other defense of the Borrower or by reason of the cessation from any cause whatsoever (other than payment in full) of the obligation of the Borrower for the Liabilities; and (f) any defense based on or arising out of any defense that the Borrower may have to the payment or performance of the Liabilities or any portion thereof. Each Obligor consents to any extension or postponement of time of its payment without limit as to the number or period, to any substitution, exchange or release of all or any part of any Collateral, to the addition of any other party, and to the release or discharge of, or suspension of any rights and remedies against, any Obligor. The Lender may waive or delay enforcing any of its rights without losing them. Any waiver affects only the specific terms and time period stated in the waiver. No modification or waiver of any provision of the Note is effective unless it is in writing and signed by the Person against whom it is being enforced. Without limiting any foregoing waiver, consent or agreement, each Obligor further waives any and all benefits under Arizona Revised Statutes Sections 12-1641 through 12-1646, inclusive, and Rule 17(f) of the Arizona Rules of Civil Procedure, including any revision or replacement of such statutes or rules hereafter enacted.
- 8.11 Time is of the Essence.** Time is of the essence under this Agreement and in the performance of every term, covenant and obligation contained herein.

ARTICLE IX: WAIVER OF SPECIAL DAMAGES.

THE BORROWER WAIVES, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW, ANY RIGHT THE UNDERSIGNED MAY HAVE TO CLAIM OR RECOVER FROM THE LENDER IN ANY LEGAL ACTION OR PROCEEDING ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES.

Below is the Order of the Court.

ARTICLE X: JURY WAIVER.

TO THE MAXIMUM EXTENT NOT PROHIBITED BY APPLICABLE LAW, THE BORROWER AND THE LENDER (BY ITS ACCEPTANCE HEREOF) HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED ON CONTRACT, TORT, OR OTHERWISE) BETWEEN THE BORROWER AND THE LENDER ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE OTHER RELATED DOCUMENTS. THIS PROVISION IS A MATERIAL INDUCEMENT TO THE LENDER TO PROVIDE THE FINANCING DESCRIBED HEREIN.

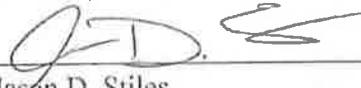
[SIGNATURE PAGE FOLLOWS]

Below is the Order of the Court.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the date and year set forth above.

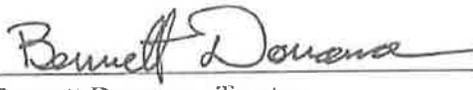
BORROWER:

DOOR TO DOOR STORAGE, INC., a
Washington corporation

By: 
Name: Jason D. Stiles
Title: Secretary

LENDER:

BENNETT DORRANCE TRUST DATED
APRIL 21, 1989, AS AMENDED

By: 
Bennett Dorrance, Trustee

Below is the Order of the Court.

EXHIBIT B

Door to Door Storage, Inc.
Weekly Cash Flow Plan (Post-Filing)
Confidential - Subject to Revision

	Projected Collections - 1/28 - 2/24: \$970,375				Projected Collections - 2/25 - 3/31: \$954,450				Projected Collections - 4/1 - 4/28: \$946,313			
	02/10/17	02/17/17	02/24/17	03/03/17	03/10/17	03/17/17	03/24/17	03/31/17	04/07/17	04/14/17	04/21/17	04/28/17
	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast
Projected Containers Under Rental	14,000	13,900	13,800	13,750	13,650	13,625	13,600	13,600	13,575	13,550	13,500	13,450
Proj. Storage & LBT Revenue/CUR	\$70,000	\$70,000	\$70,000	\$70,000	\$70,000	\$70,000	\$70,000	\$70,000	\$70,000	\$70,000	\$70,000	\$70,000
	35.0%	25.0%	20.0%	20.0%	20.0%	20.0%	15.0%	20.0%	35.0%	25.0%	20.0%	20.0%

Week Ending:	02/03/17	02/10/17	02/17/17	02/24/17	03/03/17	03/10/17	03/17/17	03/24/17	03/31/17	04/07/17	04/14/17	04/21/17	04/28/17	Total
Cash Inflows	Forecast													
Customer Payments (Net of CC Fees)	\$ 339,631	\$ 242,594	\$ 194,075	\$ 194,075	\$ 238,613	\$ 190,890	\$ 190,890	\$ 143,168	\$ 190,890	\$ 331,209	\$ 236,578	\$ 189,263	\$ 189,263	\$ 5,628,450

Operating Outflows by Category

	02/03/17	02/10/17	02/17/17	02/24/17	03/03/17	03/10/17	03/17/17	03/24/17	03/31/17	04/07/17	04/14/17	04/21/17	04/28/17	Total
	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast								
Payroll	-	125,000	-	133,000	-	125,000	-	133,000	-	125,000	-	133,000	-	1,555,000
Facility Rents, Utilities, Maint.	315,000	70,000	25,000	-	323,000	70,000	15,000	-	-	305,000	70,000	15,000	-	1,939,000
Moving Transportation	-	-	-	-	-	-	-	-	-	-	-	-	-	90,000
Ryder - LBT Services	70,000	-	105,000	-	90,000	-	70,000	-	-	25,000	-	70,000	20,000	833,000
Advertising	25,000	-	25,000	-	25,000	-	25,000	-	-	25,000	-	25,000	-	186,000
Branch Affiliate Services	5,000	-	5,000	-	5,000	-	5,000	-	-	5,000	-	5,000	-	64,000
Employee Benefits	37,500	2,000	2,000	2,000	37,500	2,000	2,000	2,000	2,000	37,500	2,000	2,000	2,000	252,500
American Express Charges	-	25,000	-	-	-	25,000	-	-	-	-	25,000	-	-	84,000
CapEx - New Containers	-	-	-	-	-	-	-	-	-	-	-	-	-	-
OFS - Outsourced IT Support	-	-	-	-	-	-	-	-	-	-	-	-	-	-
US Trustee Fees - Quarterly	-	-	-	-	-	-	-	-	-	-	-	-	-	20,400
JPMC - LOC Interest & Fees	8,000	2,000	10,000	-	8,000	2,000	10,000	-	-	8,000	2,000	10,000	-	115,000
Warehouse Relocation Costs	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Government/Taxes	5,000	-	-	-	5,000	-	-	-	-	5,000	-	-	-	45,000
Other Misc Expenses	25,000	35,000	50,000	25,000	25,000	35,000	25,000	50,000	25,000	25,000	35,000	50,000	25,000	667,800
Professional Fund	-	-	-	115,000	-	-	130,000	-	-	-	130,000	-	-	720,000
Total Operating Outflows	490,500	259,000	217,000	275,000	518,500	259,000	282,000	185,000	97,000	535,500	274,400	310,000	47,000	6,571,700

Net Cash Inflows/(Outflows)	\$ (150,869)	\$ (16,406)	\$ (22,925)	\$ (80,925)	\$ (279,888)	\$ (68,110)	\$ (91,110)	\$ (41,833)	\$ 93,890	\$ (204,291)	\$ (37,822)	\$ (120,738)	\$ 142,263	\$ (943,250)
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Cash Balance - Pre-Add'l Financing	\$ 212,744	\$ 446,338	\$ 423,413	\$ 342,488	\$ 212,600	\$ 144,490	\$ 203,380	\$ 161,548	\$ 255,438	\$ 51,147	\$ 163,325	\$ 42,588	\$ 334,850	\$ (515,150)
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Additional DIP Financing	250,000	-	-	150,000	-	150,000	-	-	-	150,000	-	150,000	-	850,000
DIP Interest	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Final Week End Cash Balance	\$ 462,744	\$ 446,338	\$ 423,413	\$ 492,488	\$ 212,600	\$ 294,490	\$ 203,380	\$ 161,548	\$ 255,438	\$ 201,147	\$ 163,325	\$ 192,588	\$ 334,850	\$ 334,850

Below is the Order of the Court.

In re Morehead Memorial Hospital, Case No. 17-10775 (Bankr. M.D. N.C. Dec. 21, 2017)

SO ORDERED.

SIGNED this 20th day of December, 2017.



Benjamin A. Kahn
BENJAMIN A. KAHN
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

IN RE:)	
)	Case No. 17-10775
MOREHEAD MEMORIAL HOSPITAL,)	
)	Chapter 11
Debtor.)	
_____)	

SEVENTH INTERIM ORDER (I) AUTHORIZING USE OF CASH COLLATERAL PURSUANT TO SECTIONS 361 AND 363 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 4001, (II) GRANTING ADEQUATE PROTECTION, (III) SCHEDULING FURTHER HEARING, AND (IV) GRANTING RELATED RELIEF

Upon the Debtor's *Motion of Debtor for (I) Interim Order (A) Authority Debtor to Use Cash Collateral, and (B) Scheduling Further Hearing Pursuant to Rule 4001 of the Federal Rules of Bankruptcy Procedure and (II) Further Order Authority Debtor to Use Cash Collateral on Further Basis* [ECF No. 19] (the "Cash Collateral Motion"), wherein the Debtor sought, among other things, (i) the entry of an interim order authorizing the Debtor's use of Cash Collateral (as defined below) on an interim basis (the "Interim Relief"), (ii) scheduling further hearings on the

relief requested in the Cash Collateral Motion (collectively, the “Interim Hearings”), and (iii) scheduling a final hearing on the Cash Collateral Motion to consider entry of a final order pursuant to Bankruptcy Rule 4001 (the “Final Hearing”); and upon the Interim Hearing on the Cash Collateral Motion held on July 14, 2017, after which the Court entered a stipulation authorizing the Debtor’s use of Cash Collateral (as defined below) on an interim basis through and including August 18, 2017 [ECF No. 40] (the “First Agreed Interim Order”) and scheduling a further Interim Hearing on the Cash Collateral Motion for August 16, 2017; and upon the Interim Hearing on the Cash Collateral Motion held on August 16, 2017, after which the Court entered a stipulation authorizing the Debtor’s use of Cash Collateral (as defined below) on an interim basis through and including September 1, 2017 [ECF No. 166] (the “Second Agreed Interim Order”) and scheduling a further Interim Hearing on the Cash Collateral Motion for August 30, 2017; and after the Interim Hearing on August 30, 2017, after which the Court entered a stipulation authorizing the Debtor’s use of Cash Collateral (as defined below) on an interim basis through and including September 15, 2017 [ECF No.] (the “Third Agreed Interim Order”) and scheduling a further Interim Hearing on the Cash Collateral Motion for September 13, 2017; and upon the Interim Hearing on the Cash Collateral Motion held on September 13, 2017, after which the Court entered a stipulation authorizing the Debtor’s use of Cash Collateral (as defined below) on an interim basis through and including September 29, 2017 [ECF No. 219] (the “Fourth Agreed Interim Order”) and scheduling a further Interim Hearing on the Cash Collateral Motion for September 27, 2017; and upon the Interim Hearing on the Cash Collateral Motion held on September 27, 2017, after which the Court entered a stipulation authorizing the Debtor’s use of Cash Collateral (as defined below) on an interim basis through and including November 17, 2017 [ECF No. 233] (the “Fifth Agreed Interim Order”) and scheduling a further Interim Hearing on the Cash Collateral Motion for November 15,

2017; and upon the Interim Hearing on the Cash Collateral Motion held on November 15, 2017, after which the Court entered a stipulation authorizing the Debtor's use of Cash Collateral (as defined below) on an interim basis through and including December 15, 2017 [ECF No. 426] (the "Sixth Agreed Interim Order," which together with the First Agreed Interim Order, Second Agreed Interim Order, Third Agreed Interim Order, Fourth Agreed Interim Order, Fifth Agreed Interim Order, and this Seventh Interim Order are referred to hereinafter as the "Cash Collateral Orders") and scheduling a further Interim Hearing on the Cash Collateral Motion for December 12, 2017, and after the Interim Hearing on December 12, 2017, the Court finds, on an interim basis, subject to the terms and conditions hereof, that (i) the Interim Relief requested in the Cash Collateral Motion is in the best interests of the Debtor, its estate and its creditors; (ii) the Interim Relief is necessary to provide the Debtor with sufficient cash and liquidity to avoid immediate and irreparable harm during the term of this order; (iii) in accordance with Rule 4001(a), (b) and (d) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), due and proper notice of the Cash Collateral Motion and the Interim Hearings has been given, and no other or further notice is necessary with respect to the Interim Relief; and (iv) upon the record herein, after due deliberation thereon, good and sufficient cause exists for the entry of this seventh interim order granting the Interim Relief as set forth herein (this "Seventh Interim Order").

Therefore, **THE COURT HEREBY FINDS AND CONCLUDES** that:

Background

A. The Motion is GRANTED and is incorporated by reference in this Seventh Interim Order, as interim findings, subject to further hearings from the Court.

B. On July 10, 2017 (the "Petition Date"), the Debtor commenced this Chapter 11 case (the "Chapter 11 Case") by filing a voluntary petition for relief under Chapter 11 of the United

States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, as amended (the “Bankruptcy Code”), in the United States Bankruptcy Court for the Middle District of North Carolina (the “Court”).

C. The Debtor continues to operate its business and manage its properties as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this Chapter 11 Case. On July 24, 2017, the Office of the United States Bankruptcy Administrator for the Middle District of North Carolina appointed an official committee of unsecured creditors (the “Committee”) pursuant to Section 1102(a) of the Bankruptcy Code.

D. The Court has jurisdiction, pursuant to 28 U.S.C. §§ 157(b) and 1334, over the Chapter 11 Case, and over the persons and property affected hereby. Consideration of the Cash Collateral Motion constitutes a core proceeding as defined in 28 U.S.C. § 157(b)(2). The statutory predicates for the relief sought herein are sections 105, 361, 363 and 507 of the Bankruptcy Code, and Bankruptcy Rules 4001(a), (b) and (d) and 6003.

E. The Debtor is a North Carolina non-profit corporation that owns and operates a 108-bed general acute care community hospital (the “Hospital”) in a 22-acre campus located at 117 East Kings Highway, Eden, North Carolina (the “Hospital Real Property”). Within the Hospital Real Property, the Debtor also owns and operates a 121-bed skilled nursing facility. In addition to the Hospital Real Property, the Debtor also owns several other parcels of real property located in Eden that are contiguous to, or in the general vicinity of, the Hospital Real Property (collectively, the “Additional Real Property”). The Additional Real Property is as follows:

Property Name	Location
Women’s Health Center	522 S. Van Buren Road, Eden, North Carolina
Dayspring Building	250 W. Kings Highway, Eden, North Carolina
Thompson Street Building	515 Thompson Street, Eden, North Carolina
Smith McMichael Cancer Center	516 S. Van Buren Road, Eden, North Carolina
Medical Office Building No. 1	518 S. Van Buren Road, Eden, North Carolina

Medical Office Building No. 2	520 S. Van Buren Road, Eden, North Carolina
Wright Diagnostic Center	618 Pierce Street, Eden, North Carolina

The Debtor's Capital Structure

a. 2005 Bond Transaction

F. On June 15, 2005, the Debtor issued FHA-insured North Carolina Medical Care Commission Mortgage Revenue Bonds, Series 2005 of \$47,675,000 (the "Series 2005 Bonds") to fund the costs of certain capital improvements of the Hospital's healthcare facilities and to refinance certain of its then-existing debt. The Series 2005 Bonds were issued pursuant to the Health Care Facilities Finance Act, Chapter 131A of the North Carolina General Statutes, as amended, and a Trust Indenture, dated as of June 15, 2005, between the North Carolina Medical Commission (the "Commission") and Wells Fargo Bank, N.A. (as successor to Wachovia Bank, N.A.), as Trustee (the "Trustee").

G. The proceeds of the Series 2005 Bonds were loaned by the Commission to the Debtor pursuant to a Loan Agreement, dated as of June 1, 2005, between the Commission and the Debtor. The obligations of the Debtor were evidenced by a Deed of Trust Note, dated as of June 15, 2005 (the "Series 2005 Note") from the Debtor to the Trustee for the Series 2005 Bonds. The Department of Housing and Urban Development ("HUD"), acting by and through the Federal Housing Commissioner ("FHA"), insured the advancement of funds pursuant to Section 242 of Title II of the National Housing Act, as amended. The Debtor entered into an FHA Regulatory Agreement, a Building Loan Agreement with Trustee, and certain other documents delivered to FHA and the Trustee, as beneficiary. In September 2008, final endorsement required by HUD was completed.

b. 2012 Refinance with Berkadia

H. In late 2012, the Debtor refinanced its Series 2005 Note obligations with a third-party commercial mortgage company, Berkadia Commercial Mortgage, LLC ("Berkadia"). The purpose of the refinance was to reduce the then-existing debt service payments.

I. On December 14, 2012, the Debtor executed a promissory note in favor of Berkadia in the amount of \$40,566,294 (the "Berkadia Note"). The proceeds of the Berkadia loan were put into an escrow account that was used to service the existing Series 2005 Bonds until they were eligible to be redeemed in May 2015.

J. Under the terms of the Berkadia Note, the interest rate on the new loan is a fixed rate of 3.59%. Principal and interest payments are due monthly until the Berkadia Note matures in April 2032. As of the Petition Date, the amount outstanding under the Berkadia Note is approximately \$33,848,885.

K. In conjunction with its refinancing, the Debtor entered into a new Regulatory Agreement with HUD (the "HUD Regulatory Agreement"). The Debtor was required to establish a Mortgage Reserve Fund (the "MRF") with the Trustee. The MRF provides, subject to HUD approval, funds to, among other things, cure or prevent a default, engage a consultant, or implement a turnaround plan for the Debtor. The Debtor is required to make quarterly payments to the MRF which, when coupled with investment income, will equal certain required levels of debt service funds. As of the Petition Date, the MRF had a balance of approximately \$5,347,588.80.

L. Berkadia asserts a perfected first priority security interest in certain of the Debtor's real property, including the Hospital Real Property, the Wright Diagnostic Center, and the Smith McMichael Cancer Center (collectively, the "Berkadia Real Property") by virtue of a Deed of Trust and Assignment of Rents, Profits, and Income filed on December 12, 2012 at Book 1447,

Page 31, in the Registry of Deeds of Rockingham County, North Carolina (the "Berkadia Deed of Trust," and together with the Berkadia Note, the "Berkadia Secured Financing Agreements").

M. Berkadia and HUD assert, together, a perfected first priority security interest in, among other things, the Debtor's accounts receivable, general intangibles, and health care insurance receivables (collectively, the "Berkadia and HUD Personal Property" and together with the Berkadia Real Property, the "Berkadia Prepetition Collateral") by virtue of that certain Security Agreement dated December 14, 2012 and a UCC Financing Statement filed with the North Carolina Secretary of State, File No. 20120114847A, on December 13, 2012. Together, the Berkadia Real Property and the Berkadia and HUD Personal Property shall constitute the Prepetition Collateral.

N. The Berkadia Note is insured by the FHA, an organizational unit of HUD, pursuant to a commitment of insurance for refinancing under the provisions of sections 242/241 and 223(a)(7) of Title II of the National Housing Act, issued to InnoVative Capital, LLC by Roger E. Miller, Agent of the Federal Housing Commissioner, dated November 20, 2012, assigned to Berkadia, as amended by that certain letter from Roger E. Miller, Agent for the Federal Housing Commissioner, to InnoVative Capital, LLC dated December 12, 2012 (the "FHA Commitment"). The FHA insurance endorsement is subject to compliance with the requirements and regulations and terms and conditions of a Regulatory Agreement dated December 14, 2012.

O. The Debtor owes approximately \$1.3 million to First-Citizens Bank & Trust Company ("First-Citizens") pursuant to a promissory note (the "First-Citizens Note"), and that debt is purportedly secured by a first priority security interest on the Dayspring Building and the Thomson Street Building, and an assignment of leases and rents to the Dayspring Building and the Thomson Street Building, by virtue of a Deed of Trust filed on November 1, 2007 at Book 1335,

Page 2151, in the Registry of Deeds of Rockingham County, North Carolina (the “First-Citizens Deed of Trust,” and together with the First-Citizens Note, the “First-Citizens Secured Financing Agreements and Assignments”). In addition, First-Citizens alleges contract and common law setoff rights against the Debtor’s First-Citizens deposit accounts. The real property, rents, and First-Citizens deposit accounts subject to the First-Citizens Deed of Trust shall be referred to as the First-Citizens Pre-Petition Collateral.

P. The Debtor is not aware of any other asserted liens or security interests against its real property, accounts receivable, general intangibles, health care insurance receivables, or rents, the proceeds of which would constitute “cash collateral” as that term is defined in the Bankruptcy Code (“Cash Collateral”).

Q. Without prejudice to the rights of any other party (but subject to the limitations thereon described below in Paragraph 21), the Debtor acknowledges and stipulates that, in accordance with the terms of the Berkadia Secured Financing Agreements, the Debtor is truly and justly indebted to Berkadia, without defense, counterclaim, or offset of any kind, and that as of the Petition Date, (i) the Debtor was liable to Berkadia in respect of loans made, and certain accrued and unaccrued interest, costs and fees, pursuant to the Berkadia Secured Financing Agreements in the aggregate amount of no less than \$33,848,885 (exclusive of certain interest and fees accrued and unpaid thereon and other costs, expenses and indemnities), and (ii) pursuant to the Berkadia Secured Financing Agreements, the Debtor is liable to Berkadia for accrued and unpaid interest, commitment fees, attorneys’ and advisors’ fees, Expenses and other out-of-pocket expenses, costs and indemnities (collectively, subsections (i) and (ii) of this section are the “Berkadia Note Obligations”).

R. Without prejudice to the rights of any other party (but subject to the limitations thereon described below in Paragraph 21), the Debtor acknowledges and stipulates that under the Berkadia Secured Financing Agreements and as security for repayment of the Berkadia Note Obligations, the Debtor granted to Berkadia and HUD security interests in, and liens upon, the Berkadia Pre-Petition Collateral.

S. Without prejudice to the rights of any party (but subject to the limitations thereon described below in Paragraph 21), the Debtor acknowledges and stipulates that Berkadia's security interests in, and liens on, the Berkadia Pre-Petition Collateral were properly perfected and are valid and enforceable first priority liens on and security interests in the Berkadia Pre-Petition Collateral. The Debtor further acknowledges that the Debtor's cash on hand and cash equivalents as of the Petition Date that constitute proceeds of the Berkadia Pre-Petition Collateral are cash collateral of Berkadia and HUD within the meaning of Section 363(a) of the Bankruptcy Code (the "Berkadia Cash Collateral"). Berkadia and HUD are entitled, pursuant to Sections 361 and 363(e) of the Bankruptcy Code, to adequate protection of their interests in the Berkadia Pre-Petition Collateral, including for the use of Berkadia Cash Collateral, the use, sale, or lease of the Berkadia Pre-Petition Collateral other than Berkadia Cash Collateral, and for the imposition of the automatic stay.

T. In accordance with Section 552(b) of the Bankruptcy Code, the Berkadia Pre-Petition Collateral includes, without limitation, all proceeds, products and profits of the Berkadia Pre-Petition Collateral, whether existing before or after the commencement of the Chapter 11 Case.

U. Without prejudice to the rights of any other party (but subject to the limitations thereon described below in Paragraph 21), the Debtor acknowledges and stipulates that, in accordance with the terms of the First-Citizens Secured Financing Agreements and Assignments,

the Debtor is truly and justly indebted to First-Citizens, without defense, counterclaim, or offset of any kind, and that as of the Petition Date, (i) the Debtor was liable to First-Citizens in respect of loans made, and certain accrued and unaccrued interest, costs, and fees, pursuant to the First-Citizens Secured Financing Agreements and Assignments in the aggregate amount of \$1,309,165.95 (exclusive of certain interest and fees accrued and unpaid thereon and other costs, expenses and indemnities), and (ii) pursuant to the First-Citizens Secured Financing Agreements and Assignments, the Debtor is liable to First-Citizens for accrued and unpaid interest, commitment fees, attorneys' and advisors' fees, Expenses and other out of pocket expenses, costs and indemnities (collectively, subsections (i) and (ii) of this section are the "First-Citizens Note Obligations").

V. Without prejudice to the rights of any other party (but subject to the limitations thereon described below in Paragraph 21), the Debtor acknowledges and stipulates that under the First-Citizens Secured Financing Agreements and Assignments and as security for repayment of the First-Citizens Note Obligations, the Debtor granted to First-Citizens security interests in, and liens upon, the First-Citizens Pre-Petition Collateral.

W. Without prejudice to the rights of any party (but subject to the limitations thereon described below in Paragraph 21), the Debtor acknowledges and stipulates that First-Citizens' security interests in, and liens on, the First-Citizens Pre-Petition Collateral were properly perfected and are valid and enforceable first priority liens on and security interests in the First-Citizens Pre-Petition Collateral. The Debtor further acknowledges that the Debtor's cash on hand and cash equivalents as of the Petition Date that constitute proceeds of the First-Citizens Pre-Petition Collateral are cash collateral of First-Citizens within the meaning of Section 363(a) of the Bankruptcy Code (the "First-Citizens Cash Collateral"). First-Citizens is entitled, pursuant to

Sections 361 and 363(e) of the Bankruptcy Code, to adequate protection of its interests in the First-Citizens Pre-Petition Collateral, including for the use of First-Citizens Cash Collateral, the use, sale, or lease of the First-Citizens Pre-Petition Collateral other than the First-Citizens Cash Collateral, and for the imposition of the automatic stay.

X. In accordance with Section 552(b) of the Bankruptcy Code, the First-Citizens Pre-Petition Collateral includes, without limitation, all proceeds, products and profits of the First-Citizens Pre-Petition Collateral, whether existing before or after the commencement of the Chapter 11 Case.

Y. The Debtor acknowledges and stipulates that, subject to the following exceptions, as of the Petition Date, all of the Debtor's cash and cash equivalents (the "Available Cash") are the proceeds, products, and profits of the Berkadia Pre-Petition Collateral and/or the First-Citizens Pre-Petition Collateral. The exceptions are (1) income from Medical Office Building No. 1, Medical Office Building No. 2, and the Women's Health Center; and (2) restricted donations from donors (collectively, the "Excepted Cash").

Z. The Debtor acknowledges and agrees that, except for the Excepted Cash, all of the Debtor's Available Cash held on the Petition Date together with any cash or cash equivalent proceeds of the Berkadia Pre-Petition Collateral received on or after the Petition Date shall constitute Berkadia Cash Collateral and/or the First-Citizens Pre-Petition Collateral.

AA. Without prejudice to the rights of any party (but subject to the limitations thereon described below in Paragraph 21), the Debtor acknowledges and agrees that (i) the Berkadia Note Obligations and the First-Citizens Note Obligations constitute legal, valid and binding obligations of the Debtor, enforceable in accordance with the terms of the Berkadia Secured Financing Agreements and the First-Citizens Secured Financing Agreements and Assignments (other than in

respect of the stay of enforcement arising from Section 362 of the Bankruptcy Code), (ii) no offsets, defenses or counterclaims exist to the currently outstanding Berkadia Note Obligations or the First-Citizens Note Obligations, (iii) the liens and security interests of Berkadia, HUD, and First-Citizens (the “Lenders”) are first priority, valid, enforceable, perfected, and not subject to avoidance, subordination, or challenge; and (iv) no portion of the Berkadia Note Obligations or the First-Citizens Note Obligations is subject to avoidance, subordination, or disallowance pursuant to the Bankruptcy Code or applicable non-bankruptcy law.

BB. Subject to the provisions of Paragraph 23 hereof, upon entry of this Seventh Interim Order, in light of the Lenders’ agreement to subordinate their rights of payment, liens, and super-priority/priority claims to the Carve-Out (as defined herein) and to also carve out from their liens and super-priority administrative claim rights under Chapter 5 of the Bankruptcy Code and their proceeds, to the extent set forth below, Berkadia and HUD are entitled to and shall receive with respect to the Berkadia Pre-Petition Collateral and any Berkadia Replacement Collateral, and First-Citizens is entitled to and shall receive with respect to the First-Citizens Pre-Petition Collateral and any First-Citizens Replacement Collateral, a waiver of the provisions of Section 506(c) of the Bankruptcy Code.

The Debtor’s Need for Use of Cash Collateral

CC. An immediate need exists for the Debtor to have access to the Berkadia Cash Collateral¹ in order to continue its operations, meet its payroll, and other necessary, ordinary course

¹ Prior Cash Collateral Orders applied to the use of both the Berkadia Cash Collateral and First-Citizens Cash Collateral. It is no longer necessary for the Debtor to have access to the First-Citizens Cash Collateral. Accordingly, this Seventh Interim Order does not authorize the Debtor to use the First-Citizens Cash Collateral, but rather requires the Debtor to escrow the First-Citizens Cash Collateral in its possession, custody, or control, for the exclusive benefit of First-Citizens subject to further order of the Court. Within five (5) business days from entry of this Seventh Interim Order, and thereafter within five (5) business days of receipt of First-Citizens Cash Collateral, Debtor shall provide to First-Citizens a written report accounting for all First-Citizens Cash Collateral in its possession, custody or control and specifically identify the amounts, months for which rental was received, and the bank account(s) in which the First-Citizens Cash Collateral is maintained.

business expenditures, administer and preserve the value of its estate, and maintain adequate access to cash in amounts customary and necessary for companies of this size in this industry to maintain customer and vendor confidence. The ability of the Debtor to finance its operations by way of working capital requires its access to cash resources, the absence of which would immediately and irreparably harm the Debtor, its estate, and its creditors. The Debtor requires these cash resources to operate its businesses, preserve the confidences of vendors, suppliers and customers, and to preserve the value of its businesses.

DD. The Debtor has requested that, pursuant to Section 363(c) of the Bankruptcy Code, Berkadia and HUD consent to the Debtor's use of Berkadia Cash Collateral and the Debtor's use, sale, and lease of the other Berkadia Pre-Petition Collateral in the ordinary course of business pursuant to the terms and conditions of this Seventh Interim Order during the Interim Cash Collateral Period (as defined below). The Debtor acknowledges and agrees that Berkadia and HUD are entitled to adequate protection pursuant to Sections 361 and 363(e) of the Bankruptcy Code with respect to Berkadia Cash Collateral and other Berkadia Pre-Petition Collateral, including, without limitation, to compensate Berkadia and HUD for any loss or diminution in the value of Berkadia Cash Collateral or other Berkadia Pre-Petition Collateral resulting from the Debtor's use of Berkadia Cash Collateral or the use, sale or lease of other Berkadia Pre-Petition Collateral in the ordinary course of business and the imposition of the automatic stay during the Interim Cash Collateral Period.

EE. Subject to the entry, and continued effectiveness, of this Seventh Interim Order, Berkadia and HUD have consented to the Debtor's use of Berkadia Cash Collateral and use, sale or lease of other Berkadia Pre-Petition Collateral in the ordinary course of business during the Interim Cash Collateral Period. The foregoing notwithstanding, nothing in this Seventh Interim

Order shall be construed as limiting or prohibiting Berkadia or HUD from objecting to any relief sought by the Debtor in the Chapter 11 Case, including, without limitation, any DIP Financing² or any motion for the further use of Berkadia Cash Collateral, other than the entry of this Seventh Interim Order and any Further Order entered on the Cash Collateral Motion (“Further Order”), provided such final order is on terms acceptable to Berkadia and HUD.

FF. The Interim Relief requested herein is, subject to the terms and conditions hereof, necessary, essential and appropriate for the continued operations of the Debtor’s businesses and the preservation of its estate and the value of the Debtor’s businesses.

GG. Good and sufficient cause has been shown for the entry of this Seventh Interim Order. Among other things, the entry of this Seventh Interim Order is in the best interests of the Debtor, its creditors, and its estate because it will enable the Debtor to (i) continue operating its businesses and avoid an immediate shutdown of operations, (ii) meet obligations for payroll, necessary expenditures, and other operating expenses, (iii) pay necessary fees and professional expenses under the Bankruptcy Code and make payments authorized under other orders entered by the Court, (iv) obtain needed goods and services, (v) retain vendor, patient and employee confidence, and (vi) maintain adequate cash resources customary and necessary for hospitals of this size, thereby avoiding immediate and irreparable harm to the Debtor’s estate.

HH. Prior notice of the Interim Hearing for entry of this Seventh Interim Order and the Interim Relief requested in the Cash Collateral Motion was provided by the Court to the Master Service List³, including (i) the office of the United States Bankruptcy Administrator for the Middle

² The term “DIP Financing” means any debtor-in-possession financing facility, cash loans or liquidity facility provided to the Debtor pursuant to Section 364 of the Bankruptcy Code secured by liens on and against property of the Debtor’s estate. Any party that provides the Debtor with DIP Financing shall be referred to as a “DIP Lender”.

³ As defined in the *Order Establishing Certain Notice and Case Management Procedures* [ECF No. 49].

District of North Carolina; (ii) all known parties asserting liens on the Debtor's assets; (iii) counsel to Berkadia; (iv) counsel to HUD; (v) counsel to First-Citizens; and (vi) proposed counsel to the Committee. Requisite, due and proper notice has been provided in accordance with Bankruptcy Rule 4001, which notice is sufficient for all purposes under the Bankruptcy Code and no other notice need be provided for entry of this Seventh Interim Order.

II. The Debtor has requested immediate entry of this Seventh Interim Order pursuant to Bankruptcy Rule 6004(g), and the Lenders have consented to the Interim Relief contained herein. Good and sufficient cause has been shown for the entry of this Seventh Interim Order.

NOW, based upon the Cash Collateral Motion of the Debtor and the record before the Court with respect to the Cash Collateral Motion made by the Debtor at the Interim Hearing, and good cause appearing therefor,

IT IS ORDERED, ADJUDGED AND DECREED effective immediately that:

1. The Cash Collateral Motion is GRANTED with respect to the Interim Relief on the terms and conditions set forth herein and the findings and conclusions above are incorporated by reference in this Seventh Interim Order.

2. (a) So long as no breach of the termination provisions pursuant to Section 16 hereof has occurred, this Seventh Interim Order shall remain in effect until the earliest of (i) the close of business on January 19, 2018, (ii) the conclusion of the further hearing on the Cash Collateral Motion authorizing the Debtor's continued use of Berkadia Cash Collateral (the "Further Hearing"), or (iii) the breach of the termination provisions provided in Paragraph 16 of this Seventh Interim Order (such period, as it may be extended pursuant to the following proviso, the "Interim Cash Collateral Period"). The Debtor's ability and authorization to use Berkadia Cash Collateral

during the Interim Cash Collateral Period shall at all times be subject to the termination provisions of Paragraph 16 of this Seventh Interim Order.

(a) During the Interim Cash Collateral Period, the Debtor waives any right to seek relief under the Bankruptcy Code, including, without limitation, under Sections 105(a) and 363(c)(2), to the extent any such relief would in any way restrict or impair the rights and remedies of Berkadia or HUD as set forth in this Seventh Interim Order; *provided, however*, (i) after the occurrence of a termination event set forth in Paragraph 16 hereof, the Debtor may seek entry of an Order authorizing the use of Cash Collateral over the Lenders' objection; (ii) at any time, the Debtor may seek to sell the Berkadia Pre-Petition Collateral and/or the First-Citizens Pre-Petition Collateral; and (iii) with respect to sub-paragraphs (i) and (ii) above, the Lenders reserve all rights and remedies, under the Bankruptcy Code, this Seventh Interim Order or otherwise, including, without limitation, the right to object to such relief. If the Debtor, or any other person, challenges the expiration or termination of the Interim Cash Collateral Period, any such objector's remedy shall be limited to requesting a hearing before the Court, with at least three (3) business days' written notice to the Lenders. In any such hearing, the sole issue before the Court shall be whether the Interim Cash Collateral Period expired or was terminated pursuant to the terms of this Seventh Interim Order.

Good Faith, Reliance and Conduct

3. The Debtor, Berkadia, HUD, and their respective agents, advisors, and employees have acted in good faith in negotiating, consenting, and agreeing to the Debtor's use of Berkadia Cash Collateral and the use, sale, and lease of other Berkadia Pre-Petition Collateral in the ordinary course of business as contemplated and provided by this Seventh Interim Order. The negotiation of the terms and provisions of this Seventh Interim Order has been conducted at arm's length, and the Court finds that such terms and conditions are fair and reasonable, under the circumstances,

and reflect the Debtor's exercise of reasonable business judgment consistent with the Debtor's fiduciary duties.

4. To the extent Berkadia or HUD is not secured in the Berkadia Pre-Petition Collateral, Berkadia or HUD shall not have Replacement Liens (as defined below) or a Super-Priority Claim (as defined below) with regard to any use of cash or cash equivalents that is not found to be their Cash Collateral pursuant to Section 363 of the Bankruptcy Code. In the event that any Court of competent jurisdiction determines, in a final non-appealable order, that Berkadia or HUD was undersecured or unsecured as of the Petition Date, and not entitled to be paid interest, fees, and related charges post-petition, then (i) the Debtor's obligations to make all payments and to comply with all other terms and conditions established by this Seventh Interim Order shall not terminate or abate, but all such payments of interest, fees, and related charges paid during the Interim Cash Collateral Period shall be applied to the secured principal amount of the Berkadia Note Obligations as of the Petition Date, or as may otherwise be provided in such order, and (ii) Berkadia and HUD shall be entitled to a hearing before the Court with at least three (3) business days' written notice to the Debtor and its counsel, re-examining the adequate protection of their secured interests in the Berkadia Pre-Petition Collateral, and Berkadia Replacement Collateral (as defined below), and the authority of the Debtor to use Berkadia Cash Collateral.

5. In exercising any of its rights or remedies, as and when permitted pursuant to this Seventh Interim Order or the Berkadia Secured Financing Agreements, Berkadia or HUD shall not be deemed to be in control of the operations of the Debtor.

6. Based on the findings set forth in this Seventh Interim Order, and Berkadia and HUD's reliance in good faith on the terms thereof, if any of the provisions of this Seventh Interim Order are hereafter modified, vacated, or stayed by an order of this Court or another court, such

stay, modification, or vacation shall not affect the validity and enforceability of any claim, lien, security interest, or priority authorized for Berkadia or HUD's benefit that is granted or attaches prior to the effective date of such stay, modification or vacation, and any use of Berkadia Cash Collateral or the use, sale, or lease of other Berkadia Pre-Petition Collateral in the ordinary course of business by the Debtor pursuant to this Seventh Interim Order prior to the effective date of such modification, stay, or vacation shall be governed in all respects by the original provisions of this Seventh Interim Order.

Authorized Use of Berkadia Cash Collateral

7. Cash Collateral. The Debtor is hereby authorized to use Berkadia Cash Collateral during the Interim Cash Collateral Period, subject to the conditions and limitations set forth herein.

8. Authorized Uses of Cash Collateral. The Debtor may use Berkadia Cash Collateral during the Interim Cash Collateral Period, to pay only the ordinary and reasonable expenses of operating its business that are necessary to avoid immediate and irreparable harm, which amounts are included (a) in the amounts and for the purposes set forth in the Budget described in Paragraph 11 herein, not to exceed 115% on a cumulative basis, and (b) the Trailing Expenses (as defined in Paragraph 22 herein).

9. Secured Financing Agreement Amendments. During the Interim Cash Collateral Period, the terms of the Berkadia Secured Financing Agreements shall continue in full force and effect except as may be modified by operation of law or pursuant to the terms of this Seventh Interim Order.

**Adequate Protection in Favor of Berkadia and HUD
for the Debtor's Use of Berkadia Cash Collateral**

10. Adequate Protection. On account of the Debtor's use of Berkadia Cash Collateral, its use, sale, or lease of the other Berkadia Pre-Petition Collateral, and the imposition of the

automatic stay pursuant to Section 362 of the Bankruptcy Code, in each case during the Interim Cash Collateral Period, Berkadia and HUD are hereby granted the following adequate protection pursuant to Sections 361 and 363(e) of the Bankruptcy Code:

(a) Interest, Fees and Costs. The Debtor shall pay Berkadia all interest, fees, and charges including, without limitation, all obligations, expenses, and other charges accruing under the Berkadia Secured Financing Agreements, regardless of whether such amounts appear on the Budget, subject to a full reservation of rights by the Debtor and the Committee to seek to recharacterize of such payments as payments of principal to the extent that it is determined that the claims of Berkadia is not oversecured pursuant to Section 506(b) of the Bankruptcy Code. All payments of interest shall be calculated at the applicable interest rate under the Berkadia Secured Financing Agreements, as applicable, in effect as of the Petition Date.

(b) Replacement Collateral and Replacement Liens for HUD and Berkadia. The Debtor hereby grants, assigns, and pledges to Berkadia and HUD valid, perfected, and enforceable liens and security interests (the "Berkadia Replacement Liens") in all of the Debtor's accounts receivable created from and after the Petition Date and all of the Debtor's right, title, and interest in, to, and under the Berkadia Pre-Petition Collateral, to the extent same existed on the Petition Date and the proceeds, products, offspring, rents, and profits of all of the foregoing, all as may otherwise be described in the Berkadia Secured Financing Agreements (collectively, the "Berkadia Replacement Collateral").

(c) Automatic Perfection of Berkadia Replacement Liens. The Berkadia Replacement Liens granted under this Seventh Interim Order shall be valid, perfected, and enforceable against the Berkadia Replacement Collateral as of the Petition Date without further filing or recording of any document or instrument or the taking of any further actions, and shall

not be subject to dispute, avoidance or subordination. Notwithstanding the automatic perfection of the Berkadia Replacement Liens granted pursuant to this Seventh Interim Order, Berkadia either hereby authorized, but not required, to file financing statements and other similar instruments in any jurisdiction, and to take any other action it deems necessary or appropriate in order to validate, evidence, or perfect such Berkadia Replacement Liens. A certified copy of this Seventh Interim Order may, in Berkadia's or HUD's discretion, be filed with any filing offices in addition to, or in lieu of, such financing statements or other similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Seventh Interim Order for filing. The Debtor is authorized and directed to execute and deliver all instruments and documents prepared by Berkadia or HUD and to pay all reasonable fees and expenses that are reasonably required or necessary to facilitate any such filings or recordings elected to be made by Berkadia or HUD.

(d) Priority of Berkadia Replacement Liens. The Berkadia Replacement Liens granted hereunder shall be subject and subordinate in priority to any liens, security interests, and other encumbrances, existing as of the Petition Date, or which attach to the Berkadia Replacement Collateral after the Petition Date, that are senior, valid, perfected, enforceable, and unavoidable, that are granted with Berkadia's or HUD's consent, or that are otherwise senior to the pre-petition liens in favor of Berkadia or HUD. The Berkadia Replacement Liens shall be valid and enforceable against any trustee appointed in the Chapter 11 Case, or in any subsequent proceeding affecting the Debtor, including any conversion of the Debtor's Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code.

(e) Taxes. The Debtor shall and hereby agrees to pay all post-petition federal, state, and county taxes (other than real property taxes) as and when due, regardless of whether such taxes appear on the Budget and any such payments in excess of amounts budgeted pursuant

to paragraph 11 below shall not be considered in calculating whether Debtor has exceeded the Budget and caused a default or termination event under this Seventh Interim Order.

(f) Super-priority Administrative Expense Claim for Berkadia. Subject and subordinate only to the Carve-Out (defined below), the Berkadia Note Obligations, to the extent that the stay under Section 362 of the Bankruptcy Code or the use, sale, or lease of the Berkadia Prepetition Collateral results in a decrease in Berkadia's interest in the Berkadia Prepetition Collateral, are hereby granted and entitled to status as an administrative expense claim (the "Berkadia Super-Priority Claim") pursuant to Section 507(b) of the Bankruptcy Code, with priority over all other administrative expense claims, now existing or hereafter arising, of the kind specified in or ordered pursuant to Sections 105, 326, 330, 331, 351, 503(b), 506(c), 507(a), and 1114 of the Bankruptcy Code.

The Budget

11. Interim Budget. Attached to this Seventh Interim Order as Exhibit A is a budget (the "Budget") for the week ending December 15, 2017 through and including January 19, 2018, which has been prepared by the Debtor. The Budget reflects, on a line-item basis, anticipated cash receipts and expenditures and includes all necessary and required expenses which the Debtor expects to incur during the term of the Budget in order to avoid immediate and irreparable harm. The Debtor is authorized to use the Berkadia Cash Collateral only for payment of such items as is set forth in the "Cash Disbursements" category of the Budget, together with an allowance for a fifteen percent (15%) aggregate (and not line-item) variance on a rolling forward, cumulative basis and also subject to the terms and conditions set forth in the Berkadia Secured Financing Agreements and this Seventh Interim Order; provided, however, for purposes of calculating such variance, any line item reflecting payment of professional fees for Retained Professional (as defined in Paragraph 22) shall not be included and no such professional shall be entitled to be paid

more than is set forth on such line item (other than as set forth in Paragraph 22). Any disbursements by the Debtor other than for budgeted amounts that cause a 15% variance as set forth above, shall constitute a termination event in accordance with the provisions of this Seventh Interim Order unless Berkadia and HUD consent to those changes in writing or the Court enters an Order, after notice to Berkadia and HUD and a hearing. Berkadia, and, for avoidance of any doubt, HUD are not required to advance to the Debtor any amounts that may be available for lending under the Berkadia Secured Financing Agreements. So long as no defaults exist under this Seventh Interim Order, Berkadia and HUD shall consent to the use by the Debtor of such amounts of Berkadia Cash Collateral authorized for use by the Debtor pursuant to the terms and conditions of this Seventh Interim Order and the Budget.

Disclosure Required of the Debtor

12. Required Disclosure. As additional adequate protection for the benefit of Berkadia and HUD, the Debtor shall provide Berkadia and HUD the following information during the Interim Cash Collateral Period:

(a) Reporting. Copies of all reports as are required by the Berkadia Secured Financing Agreements, the HUD Regulatory Agreement, or such additional reports as Berkadia or HUD may reasonably request from time to time, all in form, detail and substance reasonably satisfactory to Berkadia and HUD;

(b) Copies of Documents. Copies of (i) all non-privileged reports, appraisals, business plans, investigations, or other similar documents provided to the Committee or any potential lender of post-petition financing, (ii) any and all audits prepared by the Debtor's accountants, and (iii) subject to the Debtor's reasonable best efforts, copies of every final version

of all non-privileged consultants' reports, appraisals, and business plans as they become available to the Debtor;⁴

(c) Communications Regarding Any Asset Sale, DIP Financing, or Plan of Reorganization. Weekly oral status reports concerning any asset sale, DIP Financing, or Plan of Reorganization or Liquidation involving the Debtor, together with copies of all non-privileged documents including, without limitation, letter(s) of intent, copies of draft and final versions of all consultants' reports, business plans, term sheets, equity purchase agreements, merger agreements, asset purchase agreements, Chapter 11 plan term sheets, draft Chapter 11 plans, and similar documents as they become available to the Debtor;

(d) Requests for Additional Information. Within two (2) business days or such other time period agreed to at the time of the request by Berkadia or HUD, the Debtor shall, to the extent possible, provide such requested non-privileged reports, analysis, documents, and information as reasonably requested; and

(e) Reports. The Debtor agrees to provide the following information to Berkadia and HUD, with copies to the Committee and the Bankruptcy Administrator's office:

(i) By Wednesday of each week, weekly cash flow report of the prior week with a comparison of the actual cash flow to the forecasted cash flow and an explanation of significant variances;

(ii) By Wednesday of each week, a 13-week cash flow forecast for the next 13 weeks;

⁴ With regard to Paragraph 12, Subparagraphs (b)(i), (b)(iii) and (c), to the extent any privilege is claimed, the Debtor shall provide Berkadia and HUD with a privilege log, within seven (7) business days of the Debtor providing such documents to any Official Committee or that become available to the Debtor, identifying the title of the document provided, preparer of the document, the legal privilege claimed and a general description of such document(s).

(iii) By Friday of each week, the Debtor's operations personnel shall speak with non-attorney representatives from Berkadia and HUD regarding the Debtor's operations, including the 13-week cash flow forecasts required in subsection (ii) above; and

(iv) By the end of each month, the Income Statement, Balance Sheet, and Cash Flow Statement for the preceding month starting with the Income Statement, Balance Sheet, and Cash Flow Statement for the month starting July 1, 2017 as attached to the monthly reports filed with the Court.

13. If the Debtor fails to deliver the reports, documents, information, and analysis to Berkadia or HUD by the dates and times required under Paragraph 12, Berkadia or HUD may request that the Court further restrict the Debtor's use of Cash Collateral, and the Debtor agrees that Berkadia or HUD's request shall be heard in an expedited manner by the Court with at least three (3) business days' written notice to the Debtor.

14. Access and Inspection. Upon written notice by Berkadia or HUD, to Debtor and its counsel, the Debtor shall, within a commercially reasonable time, permit any of Berkadia or HUD's agents, consultants, advisors, auditors, and employees (collectively, "Berkadia's Consultants") full and reasonable access, during normal business hours, to inspect, review, and photocopy or otherwise duplicate (as applicable) the Debtor's books, records, and place of business to verify the existence, condition, value, and location of property in which Berkadia or HUD hold liens or security interests. The Debtor shall permit, without material disruption to the operation of the Debtor's business, Berkadia's Consultants full access to examine the respective corporate, financial, and operating records, and, make copies thereof, inspect the assets, properties, operations, and affairs of the Debtor, visit any or all of the offices of the Debtor to discuss such

matters with its officers, independent auditors (and the Debtor hereby authorize such independent auditors to discuss such matters with the Berkadia's Consultants), and the Debtor shall cooperate with the Berkadia's Consultants in all respects. The Debtor shall provide Berkadia and Berkadia's Consultants, with commercial reasonable promptness, such financial information concerning the Debtor's cash flow projections, business plan, and other aspects of operations as such parties may reasonably request from time to time except matters and documents that are privileged.

Accounts

15. Cash Management Accounts. Except to the extent Section 345(b) of the Bankruptcy Code requires otherwise, the Debtor shall maintain the cash management system as in existence as of the Petition Date, in accordance with any interim or final order entered on the Debtor's *Motion for Order (A) Authorizing Continued Use of Existing Cash Management System and (B) Authorizing the Maintenance of Existing Bank Accounts* [ECF No. 4].

Termination of the Debtor's Ability to Use Cash Collateral

16. **Termination Events.** The Debtor's ability to use Berkadia Cash Collateral during the Interim Cash Collateral Period will terminate (i) immediately upon the occurrence of any event described in Subparagraphs (a), (c), (e), (f), (g), (h), or (j) below, or (ii) if any event described in any other subparagraph below shall occur, seven (7) business days after Berkadia or HUD delivers written notice to the Debtor that an event of default has occurred, unless such event of default has been substantially cured within such seven (7) business day period:

(a) the expiration of this Seventh Interim Order as provided in Paragraph 2 hereof, other than due to the entry of the Further Order or any other order of the Court approving the Debtor's use of Cash Collateral, without Berkadia and HUD's prior written consent to such extension of the Interim Cash Collateral Period;

(b) the Debtor's failure to comply with any of the material terms or conditions of this Seventh Interim Order;

(c) the modification or extension of this Seventh Interim Order, without providing Berkadia and HUD a minimum of three (3) business days prior written notice of the hearing on such modification or extension;

(d) an application is filed by the Debtor, without the prior written consent of Berkadia and HUD, which consent shall not be unreasonably withheld, for the approval of any claim arising under Section 507(b) of the Bankruptcy Code or any lien in the Chapter 11 Case which is *pari passu* with or senior to the Berkadia Super-Priority Claim, the First-Citizens Super-Priority Claim, the First-Citizens Replacement Liens, or the Berkadia Replacement Liens, including, in all cases, the Berkadia Super-Priority Claim, the Berkadia Replacement Liens, the First-Citizens Super-Priority Claim, the First-Citizens Replacement Liens, or other liens arising under or otherwise permitted by this Seventh Interim Order;

(e) the commencement by the Debtor of any action against (i) Berkadia, its agents, advisors, and/or employees, (ii) HUD, its agents, advisors, and/or employees, or (iii) First-Citizens, its agents, advisors, and/or employees, to subordinate, avoid, or disallow any liens, security interests, or claims made in connection with the Berkadia Note Obligations or the First-Citizens Note Obligations;

(f) (i) the Chapter 11 Case shall be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code; (ii) the Debtor's shall file a motion, or other pleading, seeking dismissal of any of its Chapter 11 Case under Section 1112 of the Bankruptcy Code, or otherwise; or (iii) a trustee under Chapter 11 of the Bankruptcy Code or an examiner with enlarged powers relating to the operation of the Debtor's businesses (powers beyond those set forth in Section

1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106 of the Bankruptcy Code shall be appointed or elected in the Chapter 11 Case;

(g) (i) the Debtor shall assert in any pleading filed in any court that any material provision of this Seventh Interim Order is not valid and binding for any reason, or (ii) any material provision of this Seventh Interim Order shall for any reason, other than the entry of the Further Order, or any other order of this Court approving the Debtor's use of Berkadia Cash Collateral or First-Citizens Cash Collateral, cease to be valid and binding without the prior written consent of the Lenders;

(h) the Debtor shall fail in any material respect to comply with any provisions in the Berkadia Secured Financing Agreements or the First-Citizens Secured Financing Agreements and Assignments governing the maintenance of the Debtor's properties or insurance thereon;

(i) in the event the Lenders consent in writing to any DIP Financing, the occurrence of a default, material breach, or termination event under the terms of such DIP Financing, or an order approving such DIP Financing, shall constitute an event of default under this Seventh Interim Order as though this Seventh Interim Order contained such provisions in its entirety; and

(j) the closing of a sale of substantially all of the Debtor's assets.

Upon the occurrence of written notice to the Debtor of a termination event as set forth above (and after the passage of any applicable cure period), Berkadia and HUD's consent to the Debtor's use of Cash Collateral shall automatically terminate and the Debtor may not use, sell, or lease Berkadia Cash Collateral and shall segregate and account for any Berkadia Cash Collateral in its possession, custody, or control, for the exclusive benefit of Berkadia and HUD subject to

further order of the Court. Such termination shall be without prejudice to the Debtor's request to use Berkadia Cash Collateral in the future.

Exercise of Remedies by the Lenders

17. Limitation on Exercise of Rights and Remedies. The Lenders shall not take any action during the Interim Cash Collateral Period to seize or take control over any of the Berkadia Cash Collateral, Berkadia Pre-Petition Collateral, Berkadia Replacement Collateral, the First-Citizens Cash Collateral, First-Citizens Pre-Petition Collateral, First-Citizens Replacement Collateral, or the Debtor's other property, nor shall they impose freezes of assets or seek to exercise any alleged right of setoff or recoupment, or exercise any other right or remedy against the Berkadia Pre-Petition Collateral, Berkadia Cash Collateral, Berkadia Replacement Collateral, the First-Citizens Cash Collateral, First-Citizens Pre-Petition Collateral, First-Citizens Replacement Collateral, or the Debtor's other property during the Interim Cash Collateral Period; provided, that the Lenders or any of them may do any of the foregoing after application to, and receiving authority from, the Court, to the extent necessary, upon a breach or violation by the Debtor of any of the terms or conditions of, or upon the termination of, this Seventh Interim Order.

18. Additional Relief. Notwithstanding any provision hereof, this Seventh Interim Order is without prejudice to the Lenders' rights to seek any other or additional relief in, or relating to, the Chapter 11 Case, including, without limitation, relief from the automatic stay pursuant to Section 362 of the Bankruptcy Code, and the filing of objections and/or claims relating to motions for adequate protection, or the use, sale, lease, or other disposition of the Berkadia Pre-Petition Collateral, Berkadia Replacement Collateral, Berkadia Cash Collateral, the First-Citizens Cash Collateral, First-Citizens Pre-Petition Collateral, or First-Citizens Replacement Collateral. Berkadia and First-Citizens expressly reserves their rights to claim that the provisions of this Seventh Interim Order do not constitute "adequate protection" for the purposes of Sections 361

and 363(c) and (e) of the Bankruptcy Code, or otherwise, and to request additional protection over and above the provisions of this Seventh Interim Order.

19. No Waiver. Except as expressly set forth herein, no rights of the Lenders are waived pursuant to, or modified by, this Seventh Interim Order. The Lenders' rights and remedies pursuant to the Berkadia Secured Financing Agreements, the First-Citizens Financing Agreements, and this Seventh Interim Order shall be cumulative, and the exercise or waiver of any such right or remedy shall not preclude or inhibit the exercise of any additional rights or remedies. The Lenders' failure, at any time or times hereafter, to require strict performance by the Debtor of any provision of this Seventh Interim Order shall not waive, affect, or diminish any right of the Lenders thereafter to demand strict compliance and performance herewith. Any failure or delay on the part of Berkadia or First-Citizens in the exercise of any rights, remedies, claims, powers, benefits, or privileges under the Berkadia Secured Financing Agreements, the First-Citizens Secured Financing Agreements and Assignments, or this Seventh Interim Order shall not constitute a waiver by the Lenders, subject the Lenders to any liability to any entity under this Seventh Interim Order, or preclude any other or further exercise of any such right or remedy or the exercise of any other right or remedy. None of the Lenders' rights or remedies under this Seventh Interim Order shall be deemed to have been suspended or waived by the Lenders unless such suspension or waiver is in writing and directed to the Debtor or the Court specifying such suspension or waiver.

20. No Reliance. In the negotiation of this Seventh Interim Order, the Lenders did not, and during the Interim Cash Collateral Period, the Lenders do not, have any obligation or duty to any other entity to exercise any of its rights, remedies, claims, powers, benefit, or privileges. No entity may rely upon any delay or failure or in any way seek to assert a defense to any obligation owing to the Lenders based on the Lenders' failure or delay to exercise rights or remedies.

Additional Provisions Governing Rights of the Parties

21. **Challenge Rights.** The findings contained in recital paragraphs of this Seventh Interim Order shall be binding upon all parties in interest, including without limitation, the Debtor and any Official Committee, unless (a) a party in interest (other than the Debtor but including any Official Committee) has filed an appropriate request for relief challenging the amount, validity, enforceability, perfection, or priority of (i) the Berkadia Note Obligations or Berkadia liens or HUD liens on the Berkadia Pre-Petition Collateral in respect thereof, or otherwise asserting any claims or causes of action against Berkadia or HUD relating to the Berkadia Note Obligations, or (ii) the First-Citizens Note Obligations or First-Citizens liens on the First-Citizens Pre-Petition Collateral in respect thereof, or otherwise asserting any claims or causes of action against First-Citizens relating to the First-Citizens Note Obligations, on behalf of the Debtor's estate, no later than the last to occur of: (1) ninety (90) days after the Petition Date; (2) 60 days after the appointment of an Official Committee; (3) 60 days after the filing of a Proof of Claim, unless such deadline is extended by order of the Court by agreement of the parties or for good cause shown, and (b) the Court subsequently enters a judgment in favor of the plaintiff in any such timely and properly filed adversary proceeding. If no such proceeding is commenced as of such date, the Berkadia Note Obligations and the First-Citizens Note Obligations shall constitute an allowed fully secured claim, not subject to subordination and otherwise unavoidable, and, in that event, for all purposes in the Chapter 11 Case and any subsequent Chapter 7 case, (i) Berkadia's liens, HUD's liens on the Berkadia Pre-Petition Collateral shall be deemed legal, valid, binding, perfected, not subject to defense, counterclaim, offset of any kind, subordination, and otherwise unavoidable, and Berkadia, HUD, the Berkadia Note Obligations and Berkadia liens and the HUD liens on the Berkadia Pre-Petition Collateral shall not be subject to any other or further challenge by any party in interest seeking to exercise the rights of the Debtor's estate, including without, limitation, any

successor thereto (including, without limitation, any Chapter 7 Trustee), and (ii) First-Citizens' liens on the First-Citizens Pre-Petition Collateral shall be deemed legal, valid, binding, perfected, not subject to defense, counterclaim, offset of any kind, subordination, and otherwise unavoidable, and First-Citizens, the First-Citizens Note Obligations and First-Citizens liens on the First-Citizens Pre-Petition Collateral shall not be subject to any other or further challenge by any party in interest seeking to exercise the rights of the Debtor's estate, including without, limitation, any successor thereto (including, without limitation, any Chapter 7 Trustee).

22. Carve-Out.

(a) The Debtor is authorized to use the Berkadia Cash Collateral to pay the professionals of the Debtor and any Official Committee retained or to be retained pursuant to Sections 327, 328 or 1103(a) (each a "Retained Professional," and collectively, the "Retained Professionals") the amount of allowed professional fees and disbursements incurred by the Retained Professionals only in accordance with the Professional Fees line item in the Budget (collectively, the "Budgeted Professional Fees"). Any provision of this Seventh Interim Order to the contrary notwithstanding, such authorization shall continue following a termination of the ability of the Debtor to use Berkadia Cash Collateral pursuant to Section 16(j) of this Seventh Interim Order.

(b) Any provision of this Seventh Interim Order to the contrary notwithstanding, the Berkadia Pre-Petition Collateral, the Berkadia Replacement Liens, and the Berkadia Super-Priority Claim shall be subject and subordinate to (collectively, the "Carve-Out"):

- (1) the post-petition expenses of the Debtor incurred in the ordinary course of the Debtor's operations to the extent such amounts were incorporated into the "Cash Disbursements" category contained in the budgets to the Cash Collateral Orders but not paid during such budget periods,
- (2)

the reasonable and necessary post-petition expenses of the Debtor incurred in the ordinary course of the Debtor's operations that accrued during such budget periods, but were not payable during such budget periods (collectively, the expenses referred to in subclauses (1) and (2) of this paragraph, the "Trailing Expenses")⁵ and (3) any fees and expenses of the Retained Professionals incurred and unpaid prior to the occurrence of a termination event hereunder in an amount no greater than the difference between (x) the Est. Professional Fee Accrual line item for the week in which the termination event occurs in the Budget and (y) amounts authorized by the Bankruptcy Court and actually paid before the termination event through the occurrence of the termination event for each respective Retained Professional, plus \$50,000, plus any quarterly fees pursuant to 28 U.S.C. § 1930(a)(6) and fees payable to the Clerk of the Court, plus fees payable to a chapter 7 trustee in an aggregate amount not to exceed \$10,000 incurred through the occurrence of the termination event. Professional fees not covered by the Carve-Out shall be subordinated to the Trailing Expenses. The Carve-Out shall continue following a termination of the ability of the Debtor to use Berkadia Cash Collateral pursuant to Section 16(j) of this Seventh Interim Order. Such termination shall not prohibit the Debtor from paying any amounts covered by the Carve-Out.

(c) Notwithstanding anything herein to the contrary, no Berkadia Pre-Petition Collateral, First-Citizens Pre-Petition Collateral, Cash Collateral, or any portion of the Carve-Out may be used to object to or contest in any manner, or raise any defenses to, the amount, validity, perfection, priority, extent, or enforceability of the Berkadia Note Obligations, the First-Citizens Note Obligations, or the liens securing the Berkadia Note Obligations or the First-Citizens Note Obligations, or to prosecute or assert any claims or causes of action against the Lenders. *Provided,*

⁵ For the purpose of calculating the Trailing Expenses attributable to the Debtor's accrued post-petition employee paid annual leave liability, such liability shall be offset by any employee paid annual leave taken post-petition.

however, that nothing in this paragraph shall prevent use of Cash Collateral for investigation purposes.

(d) Nothing herein shall be construed as consent to the allowance of, or a cap on, any fees and expenses of the Retained Professionals, or shall affect any party's right to object to the allowance and payment of such fees and expenses, all of such rights being expressly preserved. Nothing shall be construed as an allocation of any portion of the Est. Professional Fee Accrual line item in the Budget to any particular Retained Professional. All Retained Professionals may share in the Est. Professional Fee Accrual and the Carve-Out subject to the allowance of their fees and expenses pursuant to the Bankruptcy Code, the Bankruptcy Rules and Orders of this Court.

Miscellaneous

23. **Surcharge Waiver.** Upon entry of this Seventh Interim Order, no costs or expenses of administration that have been or may be incurred in the Chapter 11 Case through the end of the Interim Cash Collateral Period shall be charged against Berkadia, HUD, or any of their respective claims or the Berkadia Pre-Petition Collateral or the Berkadia Replacement Collateral pursuant to Section 105 or 506(c) of the Bankruptcy Code, or otherwise, without the prior written consent of Berkadia and HUD, and no such consent shall be implied from any action, inaction, or acquiescence by any agent of Berkadia or HUD. Notwithstanding anything to the contrary herein, except as provided in this Paragraph 23, nothing shall be construed as a waiver, limitation or subordination of the Debtor's or its estate's surcharge rights pursuant to Section 105 or 506(c) of the Bankruptcy Code or otherwise, absent further Order of the Court.

24. **Binding Effect.** The provisions of this Seventh Interim Order shall be binding upon and inure to the benefit of the Debtor and the Lenders. Such binding effect is an integral part of this Seventh Interim Order.

25. Force and Effect, Jurisdiction. In the event that any order dismissing the Chapter 11 Case is entered pursuant to Section 1112 of the Bankruptcy Code, or otherwise, (a) the Berkadia Note Obligations, Berkadia Replacement Liens, Berkadia Super-Priority Claim, and the First-Citizens Note Obligations granted to or for the benefit of the Lenders pursuant to this Seventh Interim Order shall continue in full force and effect and shall maintain its priorities as provided in this Seventh Interim Order until all of the Berkadia Note Obligations and the First-Citizens Note Obligations shall has been indefeasibly paid in full, and (b) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing such claims and liens.

26. Continuing Effect of Berkadia Secured Financing Agreements. Except to the extent this Seventh Interim Order expressly provides otherwise, the Debtor shall continue to faithfully perform, and be bound by, terms of the Berkadia Secured Financing Agreements and the First-Citizens Secured Financing Agreements and Assignments. In the case of any conflict between the terms of the Berkadia Secured Financing Agreements or the First-Citizens Secured Financing Agreements and Assignments and this Seventh Interim Order, this Seventh Interim Order shall control.

27. Titles and Headings. The titles and headings in this Seventh Interim Order are and shall be without substantive meaning or content of any kind whatsoever.

28. Time of the Essence. Time is of the essence as to all terms, conditions and provisions set forth in this Seventh Interim Order.

29. Amendment and Modification. The Lenders and the Debtor may make non-material modifications or amendments to the Budget in a writing signed by both parties without further order of this Court, and all actions taken pursuant to such modified Budget shall be and hereby are expressly authorized hereunder.

30. Immediate Effect. This Seventh Interim Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable immediately upon execution thereof.

FURTHER HEARING

31. Further Hearing. A Further Hearing to consider entry of further relief on the Debtor's use of the Cash Collateral is scheduled for January 17, 2018 at 9:30 a.m. before the Honorable Benjamin A. Kahn, United States Bankruptcy Judge, in Courtroom 1, United States Bankruptcy Court for the Middle District of North Carolina, 101 S. Edgeworth Street, Greensboro, NC 27401.

32. Retention of Jurisdiction. The Bankruptcy Court has and will retain jurisdiction to enforce this Seventh Interim Order according to its terms.

[END OF DOCUMENT]

EXHIBIT A

Confidential

Morehead Memorial Hospital
Management's Cash Flow Forecast Methodology

Cash Receipts

Total Cash Receipts

Total cash receipts are projected primarily based on historical admission and payor mix trends at the Hospital. In addition, the Hospital receives cash receipts from its Nursing Home, Physician Groups, and Student Health Offerings. These receipts have been forecast using historical averages and collection schedules. Further, the Hospital expects various non-patient receipts, such as proceeds from GAP programs, leases of owned property, and interest income. The various non-patient receipts forecast has been developed based on pre-existing agreements and supporting documentation, when available.

Cash Disbursements

Payroll
Payroll Taxes
Medical, Dental & Other Employee Benefits

Assumes current staffing levels remain consistent for the period and are based on historical payroll disbursements.
Assumes current staffing levels remain consistent for the period and are based on historical payroll tax disbursements.
Assumes current staffing levels remain consistent for the period and are based on historical benefit rates. The Hospital is self-insured for both medical and dental benefit programs. Insurance claims will vary week to week, however the average claim amount has been used for the past 12 months, along with fixed payments for stop-loss insurance and administration fees.
The Hospital utilizes outsourced services to assist with housekeeping, revenue cycle, cafeteria operations, and various administrative and medical services. The forecast is based on historical usage and payment trends with no major changes to future usage.

Contract Services

Contract Labor
Utilities
Equipment Lease
Building Lease
Operating Insurance
Supplies
Other

The Hospital utilizes outsourced doctor, nurse and other labor to supplement its workforce. The forecast is based on historical usage and payment trends with no major changes to staffing levels.
Utilities are forecast based on historical usage and payment trends with no major changes to future usage.
Equipment leases are forecast using equipment lease schedule agreements.
Building leases are forecast using building lease schedule agreements.
Insurance is based on current insurance policies and renewal rates.
Payments to the Hospital's suppliers are forecast using average usage over the past several months.
Other disbursements include funds required to participate in the state's GAP programs, cost report settlements, sales & use tax, insurance and patient refunds and medical malpractice settlements.

Contingency / Capex

These items are forecast using a combination of historical averages and invoice support.
Contingency / Capex expenditures are forecasted to be \$15,000 every week (roughly 1.0% of net patient revenue) and are incorporated to ensure the Hospital's ability to maintain patient safety and care levels.

Professional Fees
Quarterly Fees
Debt Service

Estimated based on assumptions regarding particular dates and professionals and assumes quarterly payments to various professionals through a court-approved process.
Quarterly fees owed to the Bankruptcy Court.
Does not include principal and interest payments to First Citizens or Berkadia.

Other

Est. Professional Fee Accrual
Est. Accrued Payables
Est. Accrued Payroll
Est. Accrued Medical Claims
Est. Accrued Post-Petition PAL

Estimated based on actual accruals and assumptions of future accruals for various professionals. Assumes quarterly payments to various professionals through a court-approved process.
Estimated based on actual accruals and assumptions of future accruals for various vendors.
Estimated based on bi-weekly payroll.
Estimated based on September 30, 2017 estimated outstanding medical claims.
Estimated based on run rate of post-petition paid annual leave accrual from July 10, 2017 through September 30, 2017.

Additional Notes

Force Majeure

Debtor shall not be held responsible or liable for any failure to achieve the forecast arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, natural disasters or government shutdowns resulting in delays in CMS payments.

**Morehead Memorial Hospital
Management's Cash Flow Forecast
(\$s)**

	Forecast 23 12/15/17	Forecast 24 12/22/17	Forecast 25 12/29/17	Forecast 26 1/5/18	Forecast 27 1/12/18	Forecast 28 1/19/18
Cash Receipts						
Total Cash Receipts	1,251,718	1,061,877	910,293	942,531	1,149,528	1,237,313
Cash Disbursements						
Payroll	(15,000)	(725,000)	(15,000)	(725,000)	(15,000)	(725,000)
Payroll Taxes	(6,900)	(333,500)	(6,900)	(348,000)	(7,200)	(348,000)
Medical, Dental & Other Employee Benefits	(226,835)	(150,602)	(137,000)	(132,000)	(224,278)	(110,000)
Contract Services	(213,894)	(214,908)	(419,681)	(354,648)	(239,768)	(206,514)
Contract Labor	(99,900)	(98,550)	(76,701)	(75,801)	(56,701)	(43,301)
Utilities	(84,000)	(42,922)	(61,500)	(23,857)	(10,208)	(11,511)
Equipment Lease	(50,907)	(28,826)	(30,607)	(10,777)	(16,918)	(22,081)
Building Lease	-	-	-	(11,190)	-	-
Operating Insurance	-	-	(7,167)	(93,131)	-	-
Supplies	(369,208)	(356,708)	(341,708)	(256,708)	(211,708)	(211,708)
Other	(48,000)	(3,000)	(3,000)	(3,000)	(3,000)	(48,000)
Contingency / Capex	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)
Professional Fees	(13,559)	-	-	-	-	-
Quarterly Fees	-	-	-	-	-	-
Debt Service	-	-	-	-	-	-
Total Cash Disbursements	(1,143,203)	(1,969,015)	(1,114,264)	(2,049,111)	(799,781)	(1,741,115)
Operating Cash Flow	108,515	(907,138)	(203,971)	(1,106,580)	349,748	(503,802)
Beginning Cash Balance	3,904,401	4,012,916	3,105,778	2,901,806	1,795,226	2,144,974
Cash Flow Prior to Add'l Financing	108,515	(907,138)	(203,971)	(1,106,580)	349,748	(503,802)
Ending Cash Balance	4,012,916	3,105,778	2,901,806	1,795,226	2,144,974	1,641,173
Est. Professional Fee Accrual	(1,055,096)	(1,115,060)	(1,175,025)	(1,234,990)	(1,294,955)	(1,354,920)
Est. Accrued Payables	(3,200,000)	(3,100,000)	(2,800,000)	(2,600,000)	(2,700,000)	(2,900,000)
Est. Accrued Payroll	(1,044,630)	(522,315)	(1,044,630)	(522,315)	(1,044,630)	(522,315)
Est. Accrued Medical Claims	(370,300)	(370,300)	(370,300)	(370,300)	(370,300)	(370,300)
Est. Accrued Post-Petition PAL	(1,052,000)	(1,096,000)	(1,140,000)	(1,184,000)	(1,228,000)	(1,272,000)
Est. Net Cash*	(2,709,110)	(3,097,898)	(3,628,149)	(4,116,379)	(4,492,911)	(4,778,363)

*Excludes 503(b)(9) claims and confirmation costs.
Note: Does not reflect agreed assumption of \$2 million of administrative claims.

In re Ocean Services, LLC, et al., Case No. 18-13512 (Bankr. W.D. Wash. Dec. 13, 2018)



Timothy W. Dore
U.S. Bankruptcy Court
(Dated as of Entered on Docket date above)

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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In re

OCEAN SERVICES, LLC,¹

Debtors.

No. 18-13512-TWD

FIFTH INTERIM ORDER:

- (1) AUTHORIZING USE OF CASH COLLATERAL AND GRANTING ADEQUATE PROTECTION,
- (2) APPROVING POST-PETITION LOAN FACILITY, AND
- (3) SETTING A FINAL HEARING

This matter came before the Court on the motion (the "Motion") of the Debtors, debtors-in-possession herein, pursuant to §§ 105, 361, 362, 363 and 364 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules 4001-3 and 9013-1(d)(2)(E) of the Local

¹ The Debtors are Ocean Services, LLC, Bankruptcy Case No. 18-13512, Ocean Carrier Holding, LLC, Bankruptcy Case No. 18-13513, Ocean Carrier Holding S. de R.L. de C.V., Bankruptcy Case No. 18-13514, Ocean Constructor Holding, LLC, Bankruptcy Case No. 18-13515, Ocean Intrepid Holding, LLC, Bankruptcy Case No. 18-13516, Ocean Starr Holding, LLC, Bankruptcy Case No. 18-13517, and Stabbert Maritime Holdings, LLC, Bankruptcy Case No. 18-13518.

FIFTH INTERIM ORDER: (1) AUTHORIZING USE OF CASH COLLATERAL AND GRANTING ADEQUATE PROTECTION, (2) APPROVING POST-PETITION LOAN FACILITY, AND (3) SETTING

A FINAL HEARING – Page 1

BUSH KORNFIELD LLP
LAW OFFICES
601 Union St., Suite 5000
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1 Rules of Bankruptcy Procedure for the Western District of Washington (the “Local Rules”), for the
2 entry of an order authorizing, on an interim basis, the Debtors’ use of cash collateral pursuant to a
3 Budget (defined below), authorizing the Debtors to grant, on an interim basis, adequate protection in
4 favor of the Senior Secured Lenders (each as defined herein), and to approve the Debtors’ proposed
5 post-petition financing. The Court has reviewed the files and records herein, makes the following
6 findings of fact, and reaches the following conclusions of law based on the written submissions of the
7 Debtors and representations made at the hearing on the Motion:

8 **FINDINGS AND CONCLUSIONS**

9 On an interim basis, the Court makes the following findings of fact and conclusions of law
10 with respect to the relief granted in this Order:

11 **General Background**

12 A. The Debtors filed their petitions for relief under Chapter 11 of the Bankruptcy Code
13 (“Case”) on September 7, 2018 (the “Petition Date”). The Debtors retain control over their assets and
14 continue to operate their business pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

15 B. The Debtors sent notice of the hearing on the Motion to: the Senior Secured Lenders
16 (as defined herein); creditors that may hold maritime liens (“Maritime Liens Creditors”) against the
17 four vessels owned by the Debtors (the “Vessels”); the U.S. Trustee; the U.S. Attorney’s Office; all of
18 their creditors; and state and federal taxing authorities. Such notice is adequate and reasonable under
19 the circumstances pursuant to Bankruptcy Rules 4001 and Local Rules 4001-3 and 9013-1(d)(2)(E).

20 **The Prepetition Credit Agreement**

21 C. As of the Petition Date, Debtor Stabbert Maritime Holdings, LLC (“Stabbert
22 Holdings”) was indebted to Columbia State Bank (“Columbia Bank”), Umpqua Bank, MUFG Union
23 Bank, N.A., and Washington Federal, National Association (each, a “Senior Secured Lender,” and

FIFTH INTERIM ORDER: (1) AUTHORIZING USE OF CASH
COLLATERAL AND GRANTING ADEQUATE PROTECTION, (2)
APPROVING POST-PETITION LOAN FACILITY, AND (3) SETTING
A FINAL HEARING – Page 2

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1 together the “Senior Secured Lenders”) under a reducing revolving line of credit in the approximate
2 amount of \$41,775,930.93 (the “Prepetition Credit Agreement Facility”). The terms of the Prepetition
3 Credit Agreement Facility are set forth in various loan documents, including the Third Amended and
4 Restated Credit Agreement dated as of January 20, 2016 (the “Prepetition Credit Agreement”),
5 between Debtor Stabbert Holdings as borrower and the Senior Secured Lenders as lenders, and as to
6 which Columbia Bank serves as Administrative Agent and Collateral Agent (“Agent”) for the Senior
7 Secured Lenders.

8 D. The Prepetition Credit Agreement is guaranteed by all of the Debtors, with the
9 exception of Stabbert Holdings, which is the Borrower and primary obligor, and is secured by (i) first
10 position preferred ship mortgages on all four of the Debtors’ Vessels (the “Prepetition Credit
11 Agreement Vessel Collateral”) and (ii) UCC-1 filings with the Washington State Department of
12 Licensing (specifically Filing No. 201215893047 on June 6, 2012, as continued) perfecting security
13 interests in all or substantially all of the Debtors’ personal property, including the Vessels,
14 appurtenances, accounts, contract rights, general intangibles, payment intangibles, inventory,
15 machinery and equipment, as well as all proceeds, products, charter hire, rents, and profits of the
16 foregoing (the “Prepetition Credit Agreement UCC Collateral” and, together with the Prepetition
17 Credit Agreement Vessel Collateral, the “Prepetition Credit Agreement Collateral”), pursuant to a
18 Second Amended and Restated Commercial Security Agreement dated as of January 20, 2016. The
19 loan documents relating to the Prepetition Credit Agreement including, but not limited to the
20 documents described in Paragraphs C-D herein are referred to as the “Prepetition Credit Agreement
21 Loan Documents.”

22 E. The Debtors stipulate that as of the Petition Date, the Senior Secured Lenders’
23 preferred ship mortgages and security interests in and with respect to the Prepetition Credit Agreement

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1 Collateral (collectively, the “Liens”) constituted valid, binding, enforceable (except to the extent
2 stayed by operation of section 362 of the Bankruptcy Code), attached, and perfected liens on the
3 Debtors’ property, not subject to subordination or avoidance.

4 F. The Debtors stipulate that, as of the Petition Date, they were indebted and liable to the
5 Senior Secured Lenders for the obligations under the Prepetition Credit Agreement (the “Prepetition
6 Credit Agreement Obligations”), that no offsets, defenses or counterclaims to the Prepetition Credit
7 Agreement Obligations exist, and no portion of the Prepetition Credit Agreement Obligations is
8 subject to avoidance or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy
9 law. The Debtors waive any right to contest the amount of, or to assert any defense, counterclaim or
10 offset with respect to the Prepetition Credit Agreement Obligations or the validity, priority or
11 enforceability of the Senior Secured Lenders’ Liens on the Prepetition Credit Agreement Collateral.

12 **The Restructuring and the Plan Support Agreement**

13 G. Prior to commencing the Cases, the Debtors, the Non-Debtor Guarantors referred to
14 below, and the Senior Secured Lenders agreed to a non-binding Term Sheet that contained certain
15 terms for a consensual restructuring of the Prepetition Credit Agreement Obligations and entered into
16 a Plan Support Agreement dated as of September 7, 2018 (the “Plan Support Agreement”) with
17 respect to the same. A copy of the Plan Support Agreement was filed in the Cases on September 11,
18 2018 under docket no. 31-1 and the Court has approved the Debtors’ motion to assume the Plan
19 Support Agreement.

20 H. Pursuant to the Plan Support Agreement, the parties agreed to certain terms relating to
21 the use of the Senior Secured Lenders’ cash collateral, including the terms of the Budget and a form of
22 Order, through the Termination Date referred to below in paragraph 11 of this Order. The Debtors
23

1 submitted their Amended Plan of Reorganization (“Plan”), and the Court entered an Order
2 Confirming Debtors’ Amended Plan of Reorganization on December 3, 2018 (“Confirmation Order”).

3 **Need for Use of Cash Collateral; Agreement to Provide DIP Loans**

4 I. As detailed in the Motion and demonstrated by the Budget, the Debtors require the use
5 of Cash Collateral and may need the proceeds of postpetition financing to continue their ongoing
6 operations in the ordinary course of business and to avoid disruption of such operations. The Debtors
7 are unable to obtain unsecured credit or financing, and the Court finds and concludes that Debtors and
8 their estates will suffer immediate and irreparable harm if the relief approved hereby is not granted.

9 J. The Debtors and the Senior Secured Lenders have agreed on the terms of a Fourth
10 Amended and Restated Credit Agreement (“Plan Credit Agreement”), attached to the Plan, and are in
11 the process of completing the conditions to the effectiveness of the Plan Credit Agreement. The
12 Plan’s effective date will be the date on which the Plan Credit Agreement is effective. While the
13 parties are completing the steps necessary to the Plan Credit Agreement’s effectiveness, the Senior
14 Secured Lenders have consented to the continued use of their cash collateral on an interim basis
15 pursuant to the terms of the Budget and this Fifth Interim Order, pending the completion or
16 termination of these efforts.

17 K. Pursuant to the terms of a Credit Agreement (“DIP Agreement”), attached as Exhibit A
18 to the First Interim Order referred to below, and related documents (collectively, including the DIP
19 Agreement, the “DIP Loan Documents”), the Debtors have proposed to obtain postpetition financing
20 (“DIP Loan”) from Daniel W. Stabbert and Cheryl Stabbert (together, the “DIP Lender”). The
21 Debtors’ obligations under the DIP Agreement shall be referred to as the “DIP Obligations.” The
22 material DIP Obligations include the following:

23
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- 1 i. Loan Amount/Deposit into Escrow: \$1,350,000. These funds ("DIP Funds")
2 have been deposited by the DIP Lender into an escrow ("DIP Loan Escrow")
3 maintained by Wanda Reif Nuxoll, P.S. ("DIP Loan Escrow Agent") and, other
4 than to provide funds to the Debtors for their use in this case, the DIP Funds
5 shall not be transferred out of the DIP Loan Escrow without further order of
6 this Court, after notice and hearing.
- 7 ii. Maturity Date: Earlier of: a) payment in full of the Prepetition Credit
8 Agreement Obligations under the terms of a confirmed Chapter 11 Plan; b) sale
9 of all or substantially all of the Borrower's assets; c) appointment of a Trustee
10 in this Bankruptcy Case; or d) conversion of this Bankruptcy Case to a case
11 under Chapter 7.
- 12 iii. Interest Rate: Prime Rate as published in the Wall Street Journal plus a margin
13 of 3.25%, accrued until Maturity.
- 14 iv. Fees: None.
- 15 v. Collateral: Subordinate preferred ship mortgages against the Debtors' Vessels,
16 junior to the Liens of the Senior Secured Lenders and to any valid, pre-existing
17 liens against the Vessels as of the Petition Date.
- 18 vi. Subordinate to Senior Secured Lenders: The DIP Loan shall be subordinate to
19 the Prepetition Credit Agreement Obligations and shall be subject to the
20 Intercreditor and Subordination Agreement entered into on October 17, 2017,
21 by the DIP Lender and the Agent, on behalf of the Senior Secured Lenders (the
22 "Subordination Agreement").
- 23 vii. Revolving Line of Credit: The DIP Loan shall be a revolving line of credit with
all payments on the DIP Loan made to the DIP Loan Escrow and available for
re-borrowing.
- viii. Priority: Claim under § 507(b) of the Bankruptcy Code.

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1 ix. Prepayment: No penalty.

2 L. The Debtors and the DIP Lender negotiated the terms of the DIP Loan Documents in
3 good faith and at arms-length and in conjunction with various agreements and negotiations with the
4 Senior Secured Lenders regarding an agreed restructuring of the Prepetition Credit Facility. As such,
5 the DIP Loan Documents will be deemed to have been made and entered into in good faith as required
6 by, and within the meaning of, section 364(e) of the Bankruptcy Code, and the DIP Lender is entitled
7 to the protections of section 364(e) of the Bankruptcy Code.

8 M. The terms of the DIP Loan Documents are fair and reasonable, reflect the Debtors'
9 exercise of prudent business judgment consistent with their fiduciary duties, and are supported by
10 reasonably equivalent value and fair consideration.

11 N. This Court concludes that entry of this Order is in the best interests of the Debtors'
12 creditors and their estates because its implementation, among other things, will allow the Debtors to
13 remain in business by providing the working capital necessary to sustain ongoing working-capital
14 requirements and to partially fund the expenses of this chapter 11 case. Absent the entry of this Order,
15 the Debtors' estates would be immediately and irreparably harmed.

16 O. The Prepetition Credit Agreement Collateral includes cash proceeds thereof ("Cash
17 Collateral") that is considered "cash collateral" under section 363(a) of the Bankruptcy Code. The
18 Debtors represent that they are unable to obtain unsecured financing and, except for the Cash
19 Collateral and the DIP Loan, have no source from which to fund the budgeted expenses necessary to
20 preserve and protect the assets of the estates. The Debtors require both the use of Cash Collateral and
21 the availability of the DIP Loan to ensure their ability to continue their operations uninterrupted and to
22 avoid the potential for irreparable harm to their business and their estates. The Debtors are affiliated
23

1 with a number of non-debtor entities that are guarantors of the Prepetition Credit Agreement
2 Obligations (“Non-Debtor Guarantors”). The Non-Debtor Guarantors provide certain services to the
3 Debtors, including payroll services and other support services, and funds are used among the Debtor
4 and Non-Debtor Guarantors in the ordinary course of business to operate all of these businesses. The
5 Budget assumes that these relationships remain intact and that Cash Collateral and DIP Funds will be
6 used in the ordinary course of business and in a manner consistent with historical operations of the
7 Debtors, including the Non-Debtor Guarantors, and the Debtors and Non-Debtor Guarantors
8 (excluding Stabbert Yacht and Ship Holding, LLC, Stabbert Marine and Industrial, LLC, and any
9 individual or trust that may be guarantors) have agreed that all of their cash flows will be subject to
10 the Budget and the terms of this Order. In addition to providing postpetition financing, the DIP
11 Lender has agreed to continue to allow the Debtors to utilize an American Express (“AMEX”) card
12 maintained in the DIP Lender’s name to pay for expenses that typically require a credit card, such as
13 employee travel and prepayment of vessel-related vendor expenses.

14 P. Pursuant to §§ 361, 362, 363 and 364 of the Bankruptcy Code, the Debtors have agreed
15 to provide adequate protection of the Senior Secured Lenders’ interests in the Cash Collateral on the
16 terms provided for herein and in accordance with the budget attached hereto as Exhibit A (as amended
17 in accordance herewith, the “Budget”).

18 Q. As part of the Budget and the Debtors’ request to use Cash Collateral, the Debtors
19 propose to create and fund a professional fund (“Professional Fund”) on a postpetition basis to pay the
20 professional fees and costs incurred by the Debtors as the Court may authorize and allow by
21 subsequent order following notice and hearing. The Debtors propose to deposit all funds budgeted for
22 the Professional Fund with Bush Kornfeld LLP (“Bush Kornfeld”), attorneys for the Debtors, where
23 such funds would be held in trust pending further order of the Court following notice and hearing,

1 except as provided in paragraph 7 below. The Debtors believe that the proposed Professional Fund is
2 appropriate given the size and nature of the Cases.

3 R. On September 13, 2018, this Court entered an Order: (1) Authorizing Use of Cash
4 Collateral and Granting Adequate Protection, (2) Approving Post-Petition Loan Facility, and
5 (3) Setting a Final Hearing (the "First Interim Order"). The First Interim Order set the final hearing
6 on the Motion for October 12, 2018, at 10:00 a.m. The Debtors provided timely and adequate notice
7 of that hearing to all parties listed in Recital B, above. The Court held a hearing on October 12, 2018,
8 and, upon stipulation of the Debtors and the Senior Secured Lenders, on October 15, 2018, this Court
9 entered an Order: (1) Authorizing Use of Cash Collateral and Granting Adequate Protection, (2)
10 Approving Post-Petition Loan Facility, and (3) Setting a Final Hearing (the "Second Interim Order").
11 The Second Interim Order set the final hearing for the Motion for October 30, 2018. On October 30,
12 2018, upon stipulation of the Debtors and the Senior Secured Lenders, this Court entered an Order: (1)
13 Authorizing Use of Cash Collateral and Granting Adequate Protection, (2) Approving Post-Petition
14 Loan Facility, and (3) Setting a Final Hearing (the "Third Interim Order"). The Third Interim Order
15 set the final hearing for the Motion for November 16, 2018. On November 16, 2018, upon stipulation
16 of the Debtors and the Senior Secured Lenders, this Court entered an Order: (1) Authorizing Use of
17 Cash Collateral and Granting Adequate Protection, (2) Approving Post-Petition Loan Facility, and
18 (3) Setting a Final Hearing (the "Fourth Interim Order"). The Fourth Interim Order set the final
19 hearing for the Motion for December 14, 2018. The Debtors now seek entry of this Fifth Interim
20 Order, with a final hearing to be set for January 4, 2019 (if needed).

21 S. This Court has jurisdiction over these proceedings and the parties and property affected
22 by this Order pursuant to 28 U.S.C. §§ 157(b) and 1334. Consideration of the Motion constitutes a
23

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1 core proceeding as defined in 28 U.S.C. § 157. Venue is proper before this Court pursuant to 28
2 U.S.C. §§ 1408 and 1409.

3 T. All of the relief proposed by the Debtors with respect to Cash Collateral use, grant of
4 adequate protection to the Senior Secured Lenders, and the terms of the DIP Loan Documents is
5 consistent with this Court's Guidelines for Cash Collateral and Financing Stipulations.

6 U. Based on the record before this Court, and solely for purpose of this Fifth Interim
7 Order, including the Budget, the fact that ongoing operations will continue to maximize the value of
8 the Debtors' assets and estate, and the granting of adequate protection as set forth herein, the Court
9 finds that, on an interim basis, the interests of the Senior Secured Lenders are adequately protected, as
10 contemplated by §§ 361, 362, 363 and 364 of the Bankruptcy Code. In addition, the Senior Secured
11 Lenders have consented to the use of their Cash Collateral in accordance with the terms of this Order,
12 satisfying the requirements of Section 363(c)(2)(A).

13 ORDER

14 Based on the foregoing findings, it is hereby

15 ORDERED as follows:

- 16 1. Motion Granted. The Motion is hereby granted on an interim basis pursuant to the
17 terms and conditions of this order with respect to the Debtors' proposed use of Cash Collateral, grant
18 of adequate protection to the Senior Secured Lenders, and borrowing of the DIP Loan (this "Fifth
19 Interim Order"). The Debtors are authorized to use Cash Collateral, grant adequate protection to the
20 Senior Secured Lenders, and to enter into the DIP Loan Documents, borrow the DIP Loan, and incur
21 and perform the DIP Obligations, in each case subject to any limitations set forth in this Order.
- 22 2. Use of Cash Collateral and DIP Loan. Subject to the terms and conditions of this Fifth
23 Interim Order, the Debtors are authorized to use Cash Collateral and proceeds of the DIP Loan (a)

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1 solely during the Interim Period (as defined below), (b) to pay the costs and expenses and for the
2 purposes identified in the Budget with respect to the Debtors' business operations and those of
3 affiliated Non-Debtor Guarantors' businesses, and (c) in amounts not to exceed the aggregate amount
4 authorized under the Budget, subject only to the adjustments permitted under paragraph 3, below. In
5 addition to the DIP Loan, the Debtors are authorized to utilize the DIP Lender's American Express
6 ("AMEX") card maintained in the DIP Lender's name as advances to pay various expenses incurred
7 in the ordinary course of business by the Debtors, including but not limited to employee travel
8 expenses and prepayment, when required, of Vessel-related vendors. The Debtors are authorized to
9 pay the amount of such expenses directly to AMEX each month. The "Interim Period" begins on the
10 date of the entry of this Fifth Interim Order and ends on the Termination Date (as defined below).
11 From and after the Termination Date, the Debtors may not use, sell, or lease any Prepetition Credit
12 Agreement Collateral without further authority of the Court.

13 3. Budget. The Debtors are authorized to use Cash Collateral and/or proceeds of the DIP
14 Loan in accordance with the Budget and this Fifth Interim Order, subject to the following provisions:

15 a. With prior written notice to the Agent for the Senior Secured Lenders and the
16 DIP Lender, the Debtors may reallocate expenses among line items in the Budget so long as
17 the average cost per day for Vessel Operating Expenses and Administrative Support Expenses,
18 both as defined below, do not exceed the limitations set forth herein.

19 b. The Budget may be amended from time to time with prior written notice to the
20 Agent, and the DIP Lender, so long as the average cost per day for Vessel Operating Expenses
21 and Administrative Support Expenses, both as defined below, do not exceed the limitations set
22 forth herein. The Debtors are authorized to use Cash Collateral and proceeds of the DIP Loan
23 in accordance with an amended Budget only if (i) the Debtors comply with this Fifth Interim

1 Order and their obligation hereunder to limit their use of Cash Collateral and proceeds of the
2 DIP Loan in accordance with the amended Budget, and (ii) the amended Budget is promptly
3 filed with the Court by the Debtors.

4 c. With respect to Administrative Support Expenses, the Debtors may exceed the
5 payment amounts contemplated by a line item of the Budget for a Budget period, so long as
6 the Debtors' total payments for the line item for the period do not exceed the budgeted amount
7 by more than ten percent (10%), provided, however, that the Debtors may roll forward any
8 expense in any line item to a later time and may pay that expense when due. The Debtors may
9 exceed the total amounts for Vessel Operating Expenses and Administrative Support Expenses
10 contemplated in the Budget for a Budget period so long as the Debtors' total payments for
11 Vessel Operating Expenses and Administrative Support Expenses in that period do not exceed
12 by more than seven and one-half percent (7.5%) the total amount of payments for such
13 expenses contemplated under the Budget for that period.

14 d. The Budget may be amended to reflect changes to Vessel Operating Expenses
15 (as defined in this paragraph 3.d.) resulting from a Vessel being on charter; mobilizing or
16 demobilizing for charter (including transit to delivery port and completion of regulatory and
17 client inspections ("Vessel Transition")); Warm Stacked; or Cold Stacked. For purposes of
18 this Order, "Warm Stacked" means a Vessel is not on charter but is being maintained with a
19 small crew and other necessary shore power and support so it may be ready to commence a
20 charter within a short period of time. "Cold Stacked" means a Vessel is not working, is not
21 crewed, has minimal shore power and other support and will require substantial expense and
22 time to prepare it to return to work. The Budget also may be amended to reflect fluctuations in
23 fuel prices, fluctuations in exchange rate between the Mexico peso and the US dollar,

1 fluctuations in interest rates, inflation in crewing rates, any personal injury and/or other
 2 insured claims, Vessel mid-term and special survey costs, emergency repairs or major
 3 equipment overhauls, mechanical failures, increased cost of insurance upon renewal and/or
 4 any advances required under insurance with respect to any claims that may arise, and
 5 mobilization and demobilization costs related to a charter, client requests that are reimbursable
 6 under a charter, and withholding and value added tax. Notwithstanding the foregoing, the
 7 average operating costs per day for a particular Vessel shall not exceed the following expenses
 8 when a Vessel is On Charter, Warm Stacked, or Cold Stacked:

Budgeted Vessel Operating Expenses Per Day			
Vessel	On Charter	Warm Stacked	Cold Stacked
Intrepid	\$ 15,000	\$ 10,000	
Constructor	\$ 15,000	\$ 8,000	
Carrier	\$ 16,000	\$ 8,000	\$ 1,500
Ocean Starr	\$ 10,000	(1)	\$ 1,500

(1) Vessel moored at Stabbert Marine & Industrial

15 e. The Debtors incur daily administrative support costs in addition to the Vessel
 16 Operating Expenses. These costs include, but are not limited to, maintaining its corporate
 17 office in Seattle, Washington and a satellite office in Ciudad del Carmen, Campeche, MX;
 18 staff engaged in the management of the business, business development and marketing, Vessel
 19 operations, recruiting and human resources, engineering services, purchasing, finance and
 20 accounting, and administration; travel costs related to business development and marketing
 21 and operations, regulatory costs required to oversee the operation of the Vessels, maintenance
 22 of information technology systems, communication and internet charges, banking, payroll
 23

1 processing and tax preparation fees (“Administrative Support Expenses”). The daily cost for
2 Administrative Support Expenses is budgeted at \$13,000.

3 f. To the extent that any of the items set forth in the Budget became due prior to
4 the Court’s entry of this Fifth Interim Order (but subsequent to the Petition Date), the Debtors
5 are authorized to use Cash Collateral and proceeds of the DIP Loan to pay such items after the
6 entry of the Fifth Interim Order and such items shall be treated as having been paid during the
7 week set forth in the Budget for purposes of determining whether the Debtors are in
8 compliance with the Budget. In addition, to the extent that any items set forth in the Budget
9 were incurred but not yet paid prior to the Termination Date, the Debtors shall nevertheless be
10 entitled to use Cash Collateral and/or DIP Loan Proceeds to pay such items.

11 g. Consistent with and as set forth in the Budget, the Debtors’ use of Cash
12 Collateral will be used in the ordinary course of business and in a manner consistent with
13 historical operations of the Debtors, including with respect to ongoing business with the Non-
14 Debtor Guarantors.

15 4. Carve-Out. The Debtors are also authorized to use Cash Collateral and proceeds of the
16 DIP Loan to pay the following costs, fees and expenses (collectively, the “Carve-Out”): (a) the unpaid
17 fees due and payable to the Clerk of the Court and the Office of the United States Trustee pursuant to
18 28 U.S.C. § 1930; and (b) contributions to the Professional Fund to the extent authorized under the
19 Budget and use of those funds to pay professional fees incurred by the Debtors, as authorized by this
20 Court, as may be limited by ¶ 8, below. Except to the extent of the Carve-Out, no expenses of
21 administration of the Cases shall be charged against or recovered from the Revolving Loan Collateral
22 pursuant to Section 506(c) of the Bankruptcy Code without the written consent of the Senior Secured
23 Lenders or upon Bankruptcy Court order, issued after notice and hearing, and not consent shall be

1 implied from any other action, inaction, or acquiescence of the Senior Secured Lenders. Nothing
2 herein shall be a waiver of the right of the Senior Secured lenders to object to any fee application of
3 any professional retained in the Cases.

4 5. Adequate Protection. As adequate protection for the Debtors' use of Cash Collateral:

5 a. The Debtors shall pay to the Senior Secured Lenders interest at the non-default
6 rate designated in the applicable Prepetition Credit Agreement on the interest payment dates
7 set forth in the Prepetition Credit Agreement and related loan documents. The Senior Secured
8 Lenders reserve the right to accrue interest at the default rate to the extent they are legally
9 entitled to charge and collect such default rate interest under their Prepetition Credit
10 Agreement and related loan documents, applicable bankruptcy law, and the terms of any
11 confirmed Chapter 11 Plan in these cases. The Debtors reserve their rights to challenge the
12 Senior Secured Lenders' rights to collect default rate interest after the Petition Date.

13 b. The reasonable fees and expenses of financial and legal advisors engaged by the
14 Senior Secured Lenders shall be accrued as an obligation of the Debtors, to the extent not paid
15 as provided for below, subject to this Court's determination of any dispute with respect to the
16 amount of such fees and expenses. Pursuant to the Budget, the Debtors have set aside \$40,000
17 for the 90 days from the period from the Petition Date through the Termination Date, as
18 defined in paragraph 11, below. Such funds shall be reserved for the sole purpose of paying a
19 portion of the Senior Secured Lenders' financial and legal advisory fees and expenses, and the
20 Debtors are directed to pay these funds, up to the amount of the cumulative reserve on hand, to
21 the Agent on the Effective Date. Such reserve is not intended and shall not limit the Lenders'
22 financial and legal advisory fees nor the Lenders' rights to payment from the Debtors or Non-
23 Debtor Guarantors for such fees and expenses.

1 c. The Debtors shall provide the Senior Secured Lenders with financial and other
2 reporting in compliance with this Order and the requirement of the Bankruptcy Code and
3 Rules.

4 d. The Senior Secured Lenders are hereby granted valid, binding, enforceable and
5 perfected replacement liens on and security interests in (the "Prepetition Credit Agreement
6 Adequate Protection Liens") all Postpetition Collateral (as defined below) of Debtors, other
7 than Debtor Stabbert Holdings (as defined below), to secure an amount (the "Prepetition
8 Credit Agreement Adequate Protection Obligations") equal to the decrease, if any, in the value
9 of the Senior Secured Lenders' interest in the Prepetition Credit Agreement Collateral.

10 e. The "Postpetition Collateral" consists of (1) all property of Debtors that is of
11 the same type and nature as the Prepetition Credit Agreement Collateral, tangible or
12 intangible, wherever located, whether now owned or hereafter acquired or arising, and all
13 proceeds, products, rents and profits of all of the foregoing, including, without limitation,
14 property acquired or created after the Petition Date, and (2) subject to entry of a final order, all
15 other property of the Debtors of any kind and nature, whether real or personal, tangible or
16 intangible, wherever located, whether now owned or hereafter acquired or arising, and all
17 proceeds, products, rents and profits thereof, including, without limitation, all cash, accounts,
18 chattel paper, deposit accounts, documents, equipment, general intangibles, instruments,
19 investment property, letter of credit rights, vehicles, goods, accounts receivable, inventory,
20 cash-in-advance deposits, real estate, machinery, intellectual property (including trademarks
21 and trade names), licenses, causes of action, rights to payment, including tax-refund claims,
22 insurance proceeds and tort claims and the proceeds, products, rents and profits of all of the
23 foregoing, including, without limitation, property acquired or created after the Petition Date.

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1 The Postpetition Collateral does not include Debtors' claims for relief arising under the
2 Bankruptcy Code, such as those arising under sections 506(c), 544, 545, 547, 548, 549, 550,
3 and 553 of the Bankruptcy Code.

4 f. The Prepetition Credit Agreement Adequate Protection Liens shall have priority
5 over all liens, claims, encumbrances, and interests of every kind and nature, whether created
6 before or after the Petition Date, as well as the liens granted to the DIP Lender, junior and
7 subject only to (a) any valid, enforceable, perfected and unavoidable lien on Debtors' assets
8 and property in existence as of the Petition Date or duly perfected after the Petition Date in
9 accordance with section 546(b) of the Bankruptcy Code, provided that the Prepetition Credit
10 Agreement Adequate Protection Liens shall have priority over any lien subject to the
11 Subordination Agreement, and (b) the Carve-Out, and shall be effective as of the date of the
12 entry of this Fifth Interim Order without any further action by the Debtors, the Senior Secured
13 Lenders, or the Agent, and without the necessity of the execution, filing or recordation of any
14 financing statements, security agreements, lien applications or other documents.

15 g. Except as set forth below, the Prepetition Credit Agreement Adequate
16 Protection Liens, respectively, shall have priority over all liens, claims, encumbrances, and
17 interests of every kind and nature, whether created before or after the Petition Date, as well as
18 the liens granted to the DIP Lender. The Prepetition Credit Agreement Adequate Protection
19 Liens shall be junior and subject only to (a) any valid, enforceable, perfected and unavoidable
20 lien on Debtors' assets and property in existence as of the Petition Date or duly perfected after
21 the Petition Date in accordance with section 546(b) of the Bankruptcy Code, provided,
22 however, that the Prepetition Credit Agreement Adequate Protection Liens shall have priority
23 over any valid, enforceable, perfected and unavoidable lien subject to the Subordination

1 Agreement, and (b) the Carve-Out, and shall be effective as of the date of the entry of this
2 Order without any further action by the Debtors or the Secured Party and without the necessity
3 of the execution, filing or recordation of any financing statements, security agreements, lien
4 applications or other documents.

5 h. In accordance with section 552(b) of the Bankruptcy Code, proceeds, products,
6 offspring and profits of the Prepetition Credit Agreement Collateral created or acquired by the
7 Debtors on or after the Petition Date are hereby deemed to be Prepetition Credit Agreement
8 Collateral.

9 i. The Debtors shall continue to maintain insurance on their assets as the same
10 existed as of the Petition Date.

11 j. By noon on Tuesday of each week (starting on Saturday and ending on
12 Sunday), starting on the Tuesday after the first full week after the Petition Date, the Debtors
13 shall provide the Agent with a report showing the budget-to-actual for the previous week
14 (“Budget-to-Actual Report”).

15 k. Without limitation to the other reports to be provided by them to the Agent, the
16 Debtors and Non-Debtor Guarantors shall provide the Agent with (i) an accounting for all
17 funds in the Mexican bank accounts closed by them since the Petition Date and (ii) copies of
18 all statements for the Mexican bank accounts maintained by them.

19 l. In accordance with section 507(b) of the Bankruptcy Code, if, notwithstanding
20 the foregoing protections, a Senior Secured Lender has a claim allowable under section
21 507(a)(2) of the Bankruptcy Code arising from the stay of action against the Prepetition Credit
22 Agreement Collateral from the use, sale, or lease of such collateral, or from the granting of any
23 lien on the collateral, then the Senior Secured Lender’s claim shall have priority over every

1 other claim and administrative expense allowable under section 507(a)(2) of the Bankruptcy
2 Code, but subordinate to the Carve-Out, in any amount equal to the decrease, if any, in the
3 value of that party's interest in the Prepetition Credit Agreement Collateral as a result of the
4 Debtors' use of Cash Collateral.

5 6. Evidence of Adequate Protection Liens. This Fifth Interim Order shall be sufficient
6 for, and conclusive evidence of, the priority, perfection, and validity of the Prepetition Credit
7 Agreement Adequate Protection Liens, and the Senior Secured Lenders shall not be required to file or
8 serve mortgages, UCC financing statements, notices of lien or similar instruments, or take any other
9 action in order to preserve the priority, perfection, and validity of the Prepetition Credit Agreement
10 Adequate Protection Liens.

11 7. Professional Fund. The Professional Fund is approved with Debtors to fund the
12 amounts consistent with the Budget for that purpose. The Professional Fund shall be held on deposit
13 and maintained in the trust account of Bush Kornfeld, attorneys for the Debtors, pending further order
14 of the Court following notice and hearing for the pro rata benefit of the professionals engaged by the
15 Debtors. To the extent amounts deposited into the Professional Fund exceed the allowed fees and
16 costs of those professionals when a final decree is entered in these cases, such excess funds shall
17 promptly be disbursed by Bush Kornfeld to the Agent for the benefit of the Senior Secured Lenders.

18 8. Limitations on Use of Cash Collateral. No Prepetition Credit Agreement Collateral
19 and no part of the Professional Fund, may be used by any entity to assert any of the following
20 challenges (each, a "Lender Claim"): (a) to object, contest or raise any defense to, the validity,
21 perfection, priority, extent or enforceability of the Liens arising under the Prepetition Credit
22 Agreement loan documents or (b) to assert any action for preferences, fraudulent transfers, or other
23 avoidance claims against a Senior Secured Lender or the Agent.

1 9. [Intentionally omitted].

2 10. Provisions Regarding DIP Loan. With respect to the DIP Obligations and the DIP
3 Loan Agreement:

4 a. The DIP Loan and the DIP Loan Documents are approved subject to the
5 following clarifications:

6 (1) If the DIP Lender declares a Default under the terms of the DIP Loan, its
7 right to pursue remedies against the Debtors and/or the DIP Facility Collateral shall be
8 subject to notice and hearing before this Court and shall be subject to the terms of the
9 Subordination Agreement in effect between the DIP Lender and the Senior Secured
10 Lenders, which Subordination Agreement shall remain fully enforceable at all times.

11 (2) Pending the final hearing on this matter, none of the provisions contained in
12 the DIP Loan Documents that provided for the Debtors to waive any legal rights of any
13 kind shall be enforceable.

14 b. The Debtors shall comply with and perform, and are bound by, all of the terms,
15 conditions, and waivers contained in the DIP Loan Documents, and the Debtors are
16 authorized, directed, and obligated to repay into the DIP Escrow and perform each DIP
17 Obligation, including the obligation to repay into the DIP Escrow each loan advanced after the
18 Petition Date with interest, fees, expenses, and other charges and amounts, in accordance with
19 and subject to the terms and conditions set forth in the DIP Loan Documents, and subject to
20 the terms of the Subordination Agreement.

21 c. None of the DIP Loan Documents, nor any provision thereof nor any right
22 arising under any provision thereof, is voidable or avoidable under section 548 of the
23 Bankruptcy Code, under any applicable state Uniform Voidable Transactions Act, Uniform

FIFTH INTERIM ORDER: (1) AUTHORIZING USE OF CASH
COLLATERAL AND GRANTING ADEQUATE PROTECTION, (2)
APPROVING POST-PETITION LOAN FACILITY, AND (3) SETTING

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1 Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common
2 law, or otherwise.

3 d. The DIP Lender shall make funds in the DIP Escrow available for the full
4 amount of the DIP Loan, \$1,350,000. Except as limited in the following sentence, the Debtors
5 are expressly authorized, during the Interim Period, to borrow from the DIP Lender by taking
6 draws from the DIP Loan Escrow, on the terms and subject to the conditions and limitations (if
7 any) on availability set forth in the DIP Loan Documents, postpetition loans in an original
8 principal amount not to exceed \$1,350,000 outstanding at any time, and to incur the DIP
9 Obligations. During the Interim Period, the Debtors' rights to borrow from the DIP Lender
10 shall be limited to fund cash account deficits, if any, or as necessary to pay expenses not
11 contained in the Budget, the payment of which would leave the Debtors with an unreasonably
12 small amount of cash available to continue to operate in the ordinary course of business. The
13 Debtors shall provide written notice to the Agent of any draws taken from the DIP Loan
14 Escrow and/or any repayments made into the DIP Loan Escrow. In addition, the Debtors shall
15 within two (2) business days of receipt thereof provide a copy to the Agent of each monthly
16 statement provided to the Debtors by the DIP Loan Escrow Agent. Other than being used to
17 fund draws to the Debtors, the DIP Funds shall remain in the DIP Loan Escrow through the
18 first to occur of (i) the Effective Date (when they shall be held and/or disbursed in accordance
19 with the terms of the Confirmation Order or, if not specifically addressed in the Confirmation
20 Order, the confirmed Chapter 11 Plan of the Debtors'), and (ii) the date of the closing of these
21 Cases (in which case they shall be held and/or disbursed in accordance with the terms of the
22 final decree closing these Cases), or (iii) pursuant to further order of this Court. The DIP Loan
23 Escrow Agent shall be bound by the terms of this Order.

1 e. Pursuant to section 364(c)(1) of the Bankruptcy Code, all DIP Obligations shall
2 constitute allowed claims (the “Superpriority Claims”) against the Debtors with priority over
3 any and all administrative expenses and claims under section 507(b) of the Bankruptcy Code,
4 junior only to the Prepetition Credit Agreement, the Prepetition Credit Agreement Adequate
5 Protection Obligations, and any other claims and rights to the reimbursement of expenses in
6 favor of the Senior Secured Lenders.

7 f. As security for the DIP Obligations, the DIP Lender shall have and is hereby
8 granted (effective on the date of this Order and without the necessity of the execution by the
9 Debtors of preferred ship mortgages, security agreements, pledge agreements, financing
10 statements, or other documents or instruments) valid and perfected security interests and liens
11 (the “DIP Facility Liens”) in and on all of the Debtors Vessels, as well as all proceeds,
12 products, charter hire, rents, and profits of the foregoing (collectively, the “DIP Facility
13 Collateral”). The DIP Lender may, but is not required to, file this Order with any appropriate
14 state or local office as proof of the existence and perfection of the DIP Facility Liens, and may,
15 but is not required to, file preferred ship mortgages and other customary documentation
16 necessary to record and/or perfect the same under applicable non-bankruptcy law. The DIP
17 Facility Liens shall be junior and subordinate to the liens of the Senior Secured Lenders
18 against the Prepetition Credit Agreement Collateral and the Prepetition Credit Agreement
19 Adequate Protection Liens granted the Senior Secured Lenders hereunder, and any other
20 existing, valid lien against any of the DIP Facility Collateral as of the Petition Date.

21 g. The DIP Lender’s rights, including the DIP Liens and the Superpriority Claims,
22 shall be exclusive of and independent of the Carve Out.
23

1 h. The DIP Lender and the Debtors have negotiated the DIP Obligations and the
2 DIP Loan Documents in good faith and at arms-length. Thus, the DIP Lender is entitled to the
3 full protection of section 364(e) of the Bankruptcy Code with respect to the DIP Obligations
4 and the DIP Facility Liens if this Order or any finding, adjudication, or authorization contained
5 herein is stayed, vacated, reversed, or modified on appeal. Any stay, modification, reversal, or
6 vacation of this Order will not affect the validity of any DIP Obligations incurred prior to the
7 DIP Lender's actual receipt of written notice of the effective date of any such stay,
8 modification, reversal, or vacation.

9 i. Notwithstanding any such stay, modification, reversal, or vacation, all financing
10 extended to the Debtors pursuant to this Order and all DIP Obligations incurred by the Debtors
11 pursuant hereto prior to the DIP Lender's actual receipt of written notice of the effective date
12 of any such stay, modification, reversal, or vacation shall be governed in all respects by the
13 original provisions hereof, and the DIP Lender shall be entitled to all the rights, privileges, and
14 benefits, including, without limitation, the liens, security interests, and first priorities granted
15 herein with respect to all such DIP Obligations.

16 11. Termination Date. The Interim Period ends on the earliest date (the "Termination
17 Date") when one or more of the following conditions has occurred or been met.

18 a. January 4, 2019, at 5:00 p.m., Pacific Time, unless extended by the Court.

19 b. The Court enters an order converting this case to a case under chapter 7 of the
20 Bankruptcy Code, or the Debtors have filed a motion or have not timely opposed a motion
21 seeking such relief.

22 c. The Court enters an order appointing or electing a trustee, examiner or any
23 other similar entity with expanded powers.

1 d. The Court enters an order dismissing this case, or the Debtors have filed a
2 motion or has not timely opposed a motion seeking such relief.

3 e. The Court enters any order that stays, modifies, or reverses this Fifth Interim
4 Order.

5 f. The Court enters an order granting relief from the automatic stay so as to allow
6 a third party to proceed against any Prepetition Credit Agreement Collateral, Cash Collateral
7 or DIP Facility Collateral.

8 12. Effect of Order. This Fifth Interim Order is effective immediately upon its entry, shall
9 be binding on the Debtors, all parties in interest in this case and their respective successors and
10 assigns, shall continue in full force and effect through the end of the Interim Period. With respect to
11 the relief granted to the Senior Secured Lenders and the DIP Lender in connection with the decrease,
12 if any, in the value of that party's interest in the Prepetition Credit Agreement Collateral and/or actual
13 funds advanced by the DIP Lender during the Interim Period, this Fifth Interim Order shall survive the
14 end of the Interim Period and entry of any other order, including any order that may be entered
15 confirming any plan of reorganization, any order converting this Case to any other chapter under the
16 Bankruptcy Code, and any order dismissing this Case.

17 13. Any stay, modification, reversal, or vacation of this Fifth Interim Order shall not affect
18 the validity of any obligation of any Debtor to the Senior Secured Lenders and the DIP Lender
19 incurred pursuant to this Fifth Interim Order. Notwithstanding any such stay, modification, reversal or
20 vacation, the use of Cash Collateral by the Debtors pursuant hereto prior to the effective date of such
21 stay, modification, reversal or vacation shall be governed in all respects by the original provisions
22 hereof, and the Senior Secured Lenders and the DIP Lender shall be entitled to all the rights,
23

1 privileges, and benefits, including, without limitation, Prepetition Credit Agreement Adequate
2 Protection Liens, the Postpetition Collateral, and the Adequate Protection Claims granted herein.

3 14. Objections Overruled. All objections to the Motion (if any) with respect to entry of
4 this Fifth Interim Order are hereby overruled.

5 15. Final Hearing. The final hearing on the Motion (the "Final Hearing") is hereby set for
6 Friday January 4, 2019, at 9:30 a.m. Pacific Time. Objections shall be due on December 28, 2018, no
7 later than 5:00 p.m., Pacific Time. Any reply shall be due on January 2, 2019, no later than Noon,
8 Pacific Time.

//End of Order//

9
10
11 Presented by:

12 BUSH KORNFELD LLP

13
14 By /s/ Armand J. Kornfeld
15 Armand J. Kornfeld, WSBA #17214
16 Thomas Buford, WSBA# 52969
17 Attorneys for Debtors
18
19
20
21
22
23

FIFTH INTERIM ORDER: (1) AUTHORIZING USE OF CASH
COLLATERAL AND GRANTING ADEQUATE PROTECTION, (2)
APPROVING POST-PETITION LOAN FACILITY, AND (3) SETTING
A FINAL HEARING – Page 25

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Stabbert Maritime Holdings, LLC
Weekly Cash Flow Report



Week ended Reporting week	12/8/2018 Actual	12/15/2018 1	12/22/2018 2	12/29/2018 3	1/5/2019 4	1/12/2019 5
Beginning Cash	5,296,150	6,014,664	5,255,169	6,225,790	5,225,585	6,009,100
Accounts receivable						
Intrepid	-	-	-	-	1,026,338	-
Constructor	715,000	-	-	-	-	314,014
Carrier	653,739	-	1,321,992	-	-	743,040
Other	28,827	-	-	-	-	16,068
Charter Deposit						
Received	-	-	-	-	-	-
Intrepid	-	-	-	-	-	-
Constructor	-	-	-	-	-	-
Carrier	-	-	-	-	-	-
Applied	-	-	-	-	-	(975,000)
Other	-	-	-	-	-	-
Other	25,000	-	-	-	-	25,000
Subordinated Loan	-	-	-	-	-	-
DIP Advances	-	-	-	-	-	-
Shipyard Admin Services Reimb	48,634	-	-	-	-	19,887
Forecast - Vessel Charter Receipts						
Interpid	-	-	-	-	-	-
Constructor	-	-	-	-	-	589,000
Carrier	-	-	-	-	-	-
Total Receipts	1,471,200	-	1,321,992	-	1,026,338	732,009
	1,471,200	1,471,200	2,793,192	2,793,192	3,819,530	4,551,539
Payroll & benefits						
Vessels						
Intrepid	(85,903)	-	(101,785)	-	-	(101,785)
Constructor	(95,877)	-	(75,108)	-	-	(75,108)
Carrier	(101,578)	-	(124,479)	-	-	(124,479)
Ocean Starr	-	-	-	-	-	-
Office - US	-	(92,148)	-	(92,148)	-	(103,005)
Office - MX	-	(8,017)	-	(8,017)	-	-
Benefits	(5,125)	(26,250)	-	-	-	-
Bonuses	-	-	-	(6,544)	-	-
Total Payroll & Benefits	(288,482)	(126,414)	(301,371)	(106,709)	-	(404,377)

EXHIBIT A

Stabbert Maritime Holdings, LLC
Weekly Cash Flow Report



Week ended	12/8/2018	12/15/2018	12/22/2018	12/29/2018	1/5/2019	1/12/2019
Reporting week	Actual	1	2	3	4	5
Accounts payable						
Intrepid	-	(75,000)		(211,186)		(111,186)
Constructor	-	(75,000)		(184,913)		(84,913)
Carrier	(223,913)	(119,374)		(97,800)		(97,800)
Ocean Starr	-	(21,550)		(11,005)		(11,005)
Office - US	(440)	(67,500)		(33,750)		(33,750)
Office - MX	-	(24,738)		(12,369)		(12,369)
Bank fees	(60)					
Credit cards	-	(87,000)				
		Paid by charterer when vessels are on charter. When off charter, included in AP above.				
Fuel						
Insurance	-	(75,373)	-	(322,474)		(107,324)
VAT	-	-	(50,000)			
Total Payables	(224,412)	(545,536)	(50,000)	(873,497)	-	(458,347)
Sale Proceeds						
Debt service						
Columba line of credit - principal						
Columba line of credit - interest	(231,369)				(242,823)	
DIP - interest						
Total Debt Service	(231,369)	-	-	-	(242,823)	-
Loans to SMI						
SMI / SYH	-	5,029				
MXP/USD Fund Transfer	(8,422)					
Total Transfers	(8,422)	5,029	-	-	-	-
Restructuring / Bankruptcy Costs						
Utility deposits						
Lender professional fees	-	(20,000)		(20,000)		
Professional Fund (Debtor)	-	(72,574)				(40,000)
US Trustee Fee						
Total Restructuring Costs	-	(92,574)	-	(20,000)	-	(40,000)
Ending Cash (min \$300k)	6,014,664	5,255,169	6,225,790	5,225,585	6,009,100	5,838,385

EXHIBIT A

In re Promise Healthcare Group, LLC, et al., Case No. 18-12491 (Bankr. D. Del.
Dec. 4, 2018)

ORIGINAL

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

-----X
 In re: : Chapter 11
 :
 PROMISE HEALTHCARE GROUP, LLC, *et al.*,¹ : Case No. 18-12491 (CSS)
 :
 Debtors. : (Jointly Administered)
 :
 -----X **Related D.I.: 17, 18, 54, 77**

FINAL ORDER (I) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING, (II) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL, (III) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (IV) GRANTING ADEQUATE PROTECTION TO THE PREPETITION ABL PARTIES, (V) MODIFYING AUTOMATIC STAY, (VI) SCHEDULING A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF

Upon the motion, dated November 5, 2018 [D.I. 17] (the “DIP Motion”) of Promise Healthcare Group, LLC (the “Company” or the “Borrower”) and its affiliated debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases (collectively, the “Cases”), seeking entry of an interim order and a final order (this “Final Order”) pursuant to sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d), 364(e),

¹ The Debtors in these Chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are as follows: HLP HealthCare, Inc. (8381), PH-ELA, Inc. (9180), Professional Rehabilitation Hospital, L.L.C. (5340), Promise Healthcare #2, Inc. (1913), Promise Healthcare Group, LLC (1895), Promise Healthcare Holdings, Inc. (2601), Bossier Land Acquisition Corp. (6644), HLP of Los Angeles, LLC (9102), HLP of Shreveport, Inc. (1708), HLP Properties at The Villages Holdings, LLC (0006), HLP Properties at the Villages, L.L.C. (1938), HLP Properties of Vidalia, LLC (4255), HLP Properties, Inc. (0068), Promise Healthcare of California, Inc. (9179), Promise Healthcare, Inc. (7953), Promise Hospital of Ascension, Inc. (9219), Promise Hospital of Baton Rouge, Inc. (8831), Promise Hospital of Dade, Inc. (7837), Promise Hospital of Dallas, Inc. (0240), Promise Hospital of East Los Angeles, L.P. (4671), Promise Hospital of Florida at The Villages, Inc. (2171), Promise Hospital of Louisiana, Inc. (4886), Promise Hospital of Lee, Inc. (8552), Promise Hospital of Overland Park, Inc. (5562), Promise Hospital of Phoenix, Inc. (1318), Promise Hospital of Salt Lake, Inc. (0659), Promise Hospital of Vicksburg, Inc. (2834), Promise Hospital of Wichita Falls, Inc. (4104), Promise Properties of Dade, Inc. (1592), Promise Properties of Lee, Inc. (9065), Promise Properties of Shreveport, LLC (9057), Promise Skilled Nursing Facility of Overland Park, Inc. (5752), Promise Skilled Nursing Facility of Wichita Falls, Inc. (1791), Quantum Health, Inc. (4298), Quantum Properties, L.P. (8203), St. Alexius Hospital Corporation #1 (2766), St. Alexius Properties, LLC (4610), Success Healthcare 1, LLC (6535), Success Healthcare 2, LLC (8861), Success Healthcare, LLC (1604), Vidalia Real Estate Partners, LLC (4947), LH Acquisition, LLC (2328), Promise Behavioral Health Hospital of Shreveport, Inc. (1823), Promise Rejuvenation Centers, Inc. (7301), Promise Rejuvenation Center at the Villages, Inc. (7529), and PHG Technology Development and Services Company, Inc. (7766). The mailing address for the Debtors, solely for purposes of notices and communications, is 999 Yamato Road, 3rd FL, Boca Raton, FL 33431.

and 507 of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 4001-2 of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) and unless otherwise ordered by this Court, *inter alia*:

(i) authorizing, on a final basis, the Debtors to obtain senior secured, superpriority postpetition financing on a superpriority basis consisting of a senior secured superpriority credit facility in the aggregate principal amount of up to \$85,000,000 (the “DIP Facility”) consisting, in turn, of (a) \$65,000,000 in aggregate principal amount of revolving loans (the “DIP Revolving Loans”) and commitments and (b) \$20,000,000 in aggregate principal amount of term loans (the “DIP Term Loans,” and together with the DIP Revolving Loans, the “DIP Loans”), pursuant to the terms and conditions of that certain *Senior Secured, Priming and Superpriority Debtor-In-Possession Credit Agreement* (as the same may be amended, restated, supplemented, waived or otherwise modified from time to time, the “DIP Agreement”), by and among the Debtors, as borrowers and guarantors, Wells Fargo Bank, National Association, as administrative agent (in such capacity, the “DIP Administrative Agent”) for and on behalf of itself and the other lenders party thereto (such lenders, collectively with the DIP Administrative Agent, the “DIP Lenders”), in the form of Exhibit A, attached hereto;²

(ii) authorizing the Debtors to execute and deliver the DIP Agreement and any other agreements, instruments, pledge agreements, guarantees, control agreements and other Loan Documents (as defined in the DIP Agreement) and documents related thereto, including any security agreements, mortgages, deeds of trust, intellectual property security agreements, control

² Upon entry of the Interim Order, all Prepetition ABL Obligations (as defined herein) consisting of Prepetition Revolving Loans (as defined herein) and all accrued and unpaid interest thereon and fees and expenses with respect thereto (i.e., in the aggregate amount of \$62,193,517.86) were fully-rolled into the DIP Facility and shall constitute DIP Obligations (as defined herein) hereunder.

agreements, or notes (as amended, restated, supplemented, waived, and/or modified from time to time, and collectively, with the DIP Agreement, the "DIP Documents") and to perform such other acts as may be necessary or desirable in connection with the DIP Documents;

(iii) granting to the DIP Administrative Agent, for the benefit of itself and the DIP Lenders, on account of the DIP Facility and all obligations owing thereunder and under, or secured by, the DIP Documents (collectively, and including all "Obligations" as described in the DIP Agreement, the "DIP Obligations") allowed superpriority administrative expense claim status in each of the Cases and any Successor Cases (as defined herein), subject only to the Carve Out (as defined below);

(iv) granting to the DIP Administrative Agent, for the benefit of itself and the DIP Lenders, automatically perfected security interests in and liens on all of the DIP Collateral (as defined herein), including all property constituting "cash collateral" as defined in section 363(a) of the Bankruptcy Code ("Cash Collateral"), which liens shall be subject to the priorities set forth herein;

(v) authorizing and directing the Debtors to pay the principal, interest, fees, expenses and other amounts payable under the DIP Documents as such become earned, due and payable, including, letter of credit fees (including issuance and other related charges), continuing commitment fees, closing fees, audit fees, appraisal fees, valuation fees, liquidator fees, structuring fees, arrangement fees, upfront fees, administrative agent's fees, the reasonable fees and disbursements of the DIP Administrative Agents' attorneys, advisors, accountants and other consultants, all to the extent provided in, and in accordance with, the DIP Documents;

(vi) authorizing the Debtors to use the assets or property granted as collateral to the Prepetition ABL Administrative Agent (the "Prepetition Collateral"), including the Cash

Collateral of the Prepetition ABL Parties under the Prepetition ABL Documents and (solely in the event and to the extent that Prepetition ABL Obligations (as defined herein) remain outstanding) providing adequate protection to the Prepetition ABL Parties for any diminution in value of their interests in the Prepetition Collateral, including Cash Collateral, resulting from the imposition of the automatic stay, the Debtors' use, sale, or lease of the Prepetition Collateral, including Cash Collateral, and the priming of their respective interests in the Prepetition Collateral, including Cash Collateral (including by the Carve Out) ("Diminution in Value"); and

(vii) vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Documents and this Final Order.

The Court having considered the DIP Motion, the exhibits attached thereto, the *Declaration of Andrew Hinkelman in Support of First Day Relief* [D.I. 18] (the "First Day Declaration"), the *Supplemental Declaration of Andrew Hinkelman in Support of the DIP Financing Motion* [D.I. 77] (the "DIP Declaration" and together with the First Day Declaration, the "Declarations"), the DIP Documents, and the evidence submitted and argument made at the interim hearing held on November 6, 2018 (the "Interim Hearing"), and the final hearing held on December 4, 2018 (the "Final Hearing"); and the Court having entered the *Interim Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition ABL Parties, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* [D.I. 54] (the "Interim Order"); and notice of the Interim Hearing and the Final Hearing having been given

in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and all applicable Local Rules [see D.I. 72 and 83]; and the Interim Hearing and the Final Hearing having been held and concluded; and all objections, if any, to the relief requested in the DIP Motion having been withdrawn, resolved (including as set forth in this Final Order) or overruled by the Court; and it appearing that approval of the relief requested in the DIP Motion on a final basis is fair and reasonable and in the best interests of the Debtors and their estates, and is essential for the continued operation of the Debtors' businesses and the preservation of the value of the Debtors' assets; and it appearing that the Debtors' entry into the DIP Agreement is a sound and prudent exercise of the Debtors' business judgment; and after due deliberation and consideration, and good and sufficient cause appearing therefor;

BASED UPON THE RECORD ESTABLISHED AT THE INTERIM HEARING AND AT THE FINAL HEARING, THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:³

A. **Petition Date.** On November 4, 2018 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (the "Court").

B. **Debtors in Possession.** The Debtors have continued in the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

C. **Jurisdiction and Venue.** This Court has jurisdiction over the Cases, the DIP Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and

³ The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

1334. Venue for the Cases and proceedings on the DIP Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

D. **Committee Formation.** On November 13, 2018, the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed an official committee of unsecured creditors in these Cases pursuant to section 1102 of the Bankruptcy Code (the "Committee").

E. **Notice.** Notice of the DIP Motion, the Interim Hearing and the Final Hearing have been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and no other or further notice of the DIP Motion with respect to the relief requested at the Final Hearing or the entry of this Final Order shall be required.

F. **Debtors' Stipulations.** After consultation with their attorneys and financial advisors, and without prejudice to the rights of parties-in-interest as set forth in paragraph 42 herein, the Debtors, on their behalf and on behalf of their estates, admit, stipulate, acknowledge, and agree as follows (paragraphs F(i) through F(xi) below are referred to herein, collectively, as the "Debtors' Stipulations"):

(i) *Prepetition ABL Facility.* Pursuant to that certain Credit Agreement dated as of March 21, 2016 (as amended, restated, supplemented, or otherwise modified from time to time, the "Prepetition ABL Agreement," and collectively with the Loan Documents (as defined in the Prepetition ABL Agreement) and any other agreements and documents executed or delivered in connection therewith (including, without limitation, various deposit account control agreements between the Prepetition ABL Administrative Agent (as defined herein) and City National Bank of Florida (collectively, the "CNB Control Agreements"); and various deposit account instruction agreements between the Prepetition ABL Administrative Agent and City

National Bank of Florida (the "CNB Instruction Agreements" and, collectively with the CNB Control Agreements, the "CNB Agreements"), each as may be amended, restated, supplemented, waived or otherwise modified from time to time, the "Prepetition ABL Documents"), among (a) the borrowers party thereto (the "Prepetition ABL Borrowers"), (b) the guarantors party thereto (the "Prepetition ABL Guarantors"), (c) Wells Fargo Bank, National Association, as administrative agent (in such capacity, the "Prepetition ABL Administrative Agent"); (d) the "Revolving Lenders" (the "Prepetition Revolving Lenders") and the "Term Loan Lenders" (the "Prepetition Term Loan Lenders") (each as defined in the Prepetition ABL Agreement) party thereto (the "Prepetition ABL Lenders," and collectively with the Prepetition ABL Administrative Agent, the "Prepetition ABL Parties"), the Prepetition ABL Lenders provided revolving credit, term loans, and other financial accommodations to the Prepetition Borrowers pursuant to the Prepetition ABL Documents (the "Prepetition ABL Facility").

(ii) *Prepetition ABL Obligations.* The Prepetition ABL Facility provided the Prepetition ABL Borrowers with, among other things, (a) up to \$65,000,000 aggregate principal amount of Revolving Loans (as defined in the Prepetition ABL Agreement) (the "Prepetition Revolving Loans"), and (b) \$15,000,000 in Term Loans (as defined in the Prepetition ABL Agreement) (the "Prepetition Term Loans"). As of the Petition Date, the aggregate principal amount outstanding under the Prepetition ABL Facility was \$76,632,557.26 (collectively, together with accrued and unpaid interest, bankers' acceptances, any reimbursement obligations (contingent or otherwise) in respect of bankers' acceptances, any fees, expenses and disbursements (including attorneys' fees, accountants' fees, auditor fees, appraisers' fees and financial advisors' fees, and related expenses and disbursements), treasury, cash management, bank product and derivative obligations, indemnification obligations, guarantee

obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Prepetition ABL Borrowers' or the Prepetition ABL Guarantors' obligations pursuant to, or secured by, the Prepetition ABL Documents, including all applicable "Obligations" as defined in the Prepetition ABL Agreement, and all interest, fees (including amendment fees), costs and other charges allowable under section 506(b) of the Bankruptcy Code, the "Prepetition ABL Obligations"), including \$61,657,557.26 in outstanding principal amount of Prepetition Revolving Loans and \$14,975,000.00 in outstanding principal amount of Prepetition Term Loans.

(iii) *Prepetition ABL Liens and Prepetition ABL Collateral.* As more fully set forth in the Prepetition ABL Documents and the DIP Motion, prior to the Petition Date, the Prepetition ABL Borrowers and the Prepetition ABL Guarantors granted to the Prepetition ABL Administrative Agent, for the benefit of itself and the Prepetition ABL Lenders and the Bank Product Providers (as defined in the Prepetition ABL Agreement), a first priority security interest in and continuing lien on (the "Prepetition ABL Liens") substantially all of their assets and property (which for the avoidance of doubt includes Cash Collateral), including mortgages on certain owned real property, the Collateral (as defined in the Prepetition ABL Agreement), and all proceeds, products, accessions, rents, and profits thereof, in each case whether then owned or existing or thereafter acquired or arising (collectively, the "Prepetition ABL Collateral"); for the avoidance of doubt, the Prepetition ABL Collateral includes the real property owned by Debtor St. Alexius Properties, LLC, and subject to a deed of trust in favor of the Prepetition ABL Administrative Agent dated March 12, 2018, as amended (the "St. Alexius Real Property"), subject only to the Permitted Prior Liens (as defined herein). Each of the Prepetition ABL

Guarantors has jointly and severally, absolutely, unconditionally and irrevocably guaranteed the Prepetition ABL Obligations.

(iv) *Reserved.*

(v) *Reserved.*

(vi) *Reserved.*

(vii) *Reserved.*

(viii) *Subordination, Intercreditor and Related Agreements and Arrangements.* The Prepetition ABL Administrative Agent (a) is party to (1) with certain of the Debtors and/or their affiliates, that certain Intercompany Subordination Agreement dated as of March 21, 2016 (the "Intercompany Subordination Agreement"), (2) with Debtor Promise Healthcare Group, LLC, that certain Intercreditor and Subordination Agreement dated as of March 21, 2016 (the "PHG Intercreditor Agreement"), (3) with Debtor Promise Healthcare Holdings, Inc., that certain Intercreditor and Subordination Agreement dated as of March 21, 2016 (the "PHH Intercreditor Agreement"), (4) with certain of the Debtors and/or their affiliates, that certain Intercreditor and Subordination Agreement dated as of March 21, 2016 (the "Intercompany Intercreditor Agreement" and, collectively with the Intercompany Subordination Agreement, the PHG Intercreditor Agreement and the PHH Intercreditor Agreement, the "Debtor Subordination Agreements"), (5) with certain former management personnel (and certain of their spouses) of certain of the Debtors and Wilmington Trust, National Association, as agent for such management personnel (and certain of their spouses) of certain of the Debtors, that certain Intercreditor and Subordination Agreement entered into as of March 21, 2016 (the "Individual Subordination Agreement"), (6) with Lion Financial, LLC, that certain Intercreditor Agreement dated as of March 21, 2016 (the "Lion Intercreditor Agreement"); (b) is, as successor in interest to MidCap Financial

Trust, a party to (1) with the Labor and Workforce Development Agency of the State of California (the "LWDA"), that certain Subordination Agreement and corresponding side letter, each dated as of February 18, 2014 (the "East Los Angeles Subordination Agreement"), (2) with the LWDA, that certain Subordination Agreement and corresponding side letter, each dated as of February 18, 2014 (the "Quantum Subordination Agreement"), (3) with the LWDA, that certain Subordination Agreement and corresponding side letter, each dated as of February 18, 2014 (the "Success Subordination Agreement" and, collectively with the East Los Angeles Subordination Agreement and the Quantum Subordination Agreement, the "LWDA Subordination Agreements"), (4) with certain of the Debtors and the Missouri Department of Revenue, that certain Agreement for Satisfaction of Tax Liability, Subordination of Liens, Claims and Encumbrances; and Mutual Release dated December 31, 2013 (the "MDOR Subordination Agreement"); and (c) upon its entry into the Prepetition ABL Documents, relied on (1) that certain Certificate of Subordination of Property From Federal Tax Lien (Form 669-D), as to Debtor Promise Healthcare, Inc., filed by the Internal Revenue Service on April 22, 2016, bearing Florida Secretary of State filing number 16FLR0003522-6 and including the "Additional Terms and Conditions to Subordinate the Notice of Federal Tax Lien" attached thereto ("IRS Certificate 522-6"), (2) that certain Certificate of Subordination of Property From Federal Tax Lien (Form 669-D), as to Debtor Promise Healthcare, Inc., filed by the Internal Revenue Service on April 22, 2016, bearing Florida Secretary of State filing number 16FLR0003523-4 and including the "Additional Terms and Conditions to Subordinate the Notice of Federal Tax Lien" attached thereto ("IRS Certificate 523-4"), (3) that certain Certificate of Subordination of Property From Federal Tax Lien (Form 669-D), as to Debtor Promise Hospital of East Los Angeles, L.P., filed by the Internal Revenue Service on April 22, 2016, bearing Florida Secretary of State filing number 16FLR0003525-9 and including the

“Additional Terms and Conditions to Subordinate the Notice of Federal Tax Lien” attached thereto (“IRS Certificate 525-9”), (4) that certain Certificate of Subordination of Property From Federal Tax Lien (Form 669-D), as to Debtor Quantum Health, Inc., filed by the Internal Revenue Service on April 22, 2016, bearing Florida Secretary of State filing number 16FLR0003524-2 and including the “Additional Terms and Conditions to Subordinate the Notice of Federal Tax Lien” attached thereto (“IRS Certificate 524-2”), (5) that certain Certificate of Subordination of Property From Federal Tax Lien (Form 669-D), as to Debtor Quantum Health, Inc., filed by the Internal Revenue Service on April 22, 2016, bearing Florida Secretary of State filing number 16FLR0003521-8 and including the “Additional Terms and Conditions to Subordinate the Notice of Federal Tax Lien” attached thereto (“IRS Certificate 521-8”), and (6) that certain Certificate of Subordination of Property From Federal Tax Lien (Form 669-D), as to Debtor St. Alexius Hospital Corporation, filed by the Internal Revenue Service on April 19, 2016, bearing Florida Secretary of State filing number 16FLR0003284-3 and including the “Additional Terms and Conditions to Subordinate the Notice of Federal Tax Lien” attached thereto (“IRS Certificate 284-3” and, collectively with IRS Certificate 522-6, IRS Certificate 523-4, IRS Certificate 525-9, IRS Certificate 524-2 and IRS Certificate 521-8, the “IRS Certificates”). The Debtor Subordination Agreements, the Individual Subordination Agreement, the Lion Intercreditor Agreement, the LWDA Subordination Agreements, the MDOR Subordination Agreement and the IRS Certificates are collectively referred to in this Final Order as the “Subordination Agreements.”

(ix) *Validity, Perfection, and Priority of Prepetition ABL Liens and Prepetition ABL Obligations.* The Debtors acknowledge and agree that as of the Petition Date (a) the Prepetition ABL Liens on the Prepetition Collateral were valid, binding, enforceable, non-avoidable, and properly perfected and were granted to, or for the benefit of, the Prepetition

ABL Parties for fair consideration and reasonably equivalent value; (b) the Prepetition ABL Liens were senior in priority over any and all other liens on the Prepetition Collateral, subject only to certain liens senior by operation of law (including any that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code) or otherwise permitted by the Prepetition ABL Documents (solely to the extent any such permitted liens were valid, properly perfected, non-avoidable, and senior in priority to the Prepetition ABL Liens as of the Petition Date (including to the extent set forth in the Individual Subordination Agreement, the "Permitted Prior Liens"); (c) the Prepetition ABL Obligations constitute legal, valid, binding, and non-avoidable obligations of the Debtors enforceable in accordance with the terms of the applicable Prepetition ABL Documents; (d) no offsets, recoupments, challenges, objections, defenses, claims, or counterclaims of any kind or nature to any of the Prepetition ABL Liens or Prepetition ABL Obligations exist, and no portion of the Prepetition ABL Liens or Prepetition ABL Obligations is subject to any challenge or defense including avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (e) the Debtors and their estates have no claims, objections, challenges, causes of action, and/or choses in action, including avoidance claims under chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions for recovery or disgorgement, against any of the Prepetition ABL Parties or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees arising out of, based upon or related to the Prepetition ABL Facility; (f) the Debtors have waived, discharged, and released any right to challenge any of the Prepetition ABL Obligations, the priority of the Debtors' obligations thereunder, and the validity, extent, and priority of the liens securing the Prepetition ABL Obligations; and (g) the Prepetition ABL

Obligations constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code.

(x) *No Control.* None of the DIP Administrative Agent, the DIP Lenders or the Prepetition ABL Parties controls the Debtors or their properties or operations, has authority to determine the manner in which any of the Debtors' operations are conducted or is a control person or insider of the Debtors or any of their affiliates by virtue of any of the actions taken with respect to, in connection with, related to, or arising from the Interim Order, this Final Order, the DIP Facility, the DIP Documents, the Prepetition ABL Facility and/or the Prepetition ABL Documents.

(xi) *Default by the Debtors.* The Debtors acknowledge and stipulate that they are in default of their obligations under the Prepetition ABL Documents, including as a result of the filing of the Cases, and that an Event of Default has occurred under the Prepetition ABL Documents. As of the Petition Date, therefore, interest is accruing on the Prepetition ABL Obligations at the default rate.

G. **Permitted Prior Liens.** Nothing herein shall constitute a finding or ruling by this Court that any alleged Permitted Prior Lien is valid, senior, enforceable, prior, perfected, or non-avoidable. Moreover, nothing shall prejudice the rights of any party-in-interest, including, but not limited to the Debtors, the DIP Administrative Agent, the Prepetition ABL Parties, or the Committee, to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any alleged Permitted Prior Lien, Other Prepetition Lien (as defined herein and including, without limitation, each lien, security interest, encumbrance or interest that is scheduled, treated or referenced as a "Permitted Lien" in or under the DIP Documents) and/or security interests. Although any alleged claim arising or asserted as a right of reclamation or

return (whether asserted under Section 546(c) of the Bankruptcy Code or otherwise) is not a Permitted Prior Lien, any alleged claim arising or asserted as a right of reclamation or return (whether asserted under Section 546(c) of the Bankruptcy Code or otherwise) shall have the same rights and priority with respect to the DIP Facility, DIP Liens and DIP Collateral as such claims had with respect to the Prepetition ABL Liens in the Prepetition ABL Collateral and the DIP Collateral. Debtor Quantum Properties, L.P. ("Quantum") anticipates that, within the first few weeks after the Petition Date, it will enter into an agreement (the "San Diego Purchase Agreement") for the sale (the "San Diego Sale") of certain improved real property located in San Diego, California (the "San Diego Property"). The gross cash purchase price (the "San Diego Purchase Price") for the San Diego Property under the San Diego Purchase Agreement is \$15,000,000. According to the sale milestones set forth on Schedule 2 hereto, the Debtors are required to consummate the sale of the San Diego Property no later than December 31, 2018. City National Bank of Florida ("CNB") holds a first-priority deed of trust against the San Diego Property (the "San Diego Deed of Trust"). Quantum is indebted to CNB in the approximate amount of \$4,300,000. However, the San Diego Deed of Trust also secures indebtedness of Debtors Promise Properties of Dade, Inc., Promise Properties of Lee, Inc., and HLP Properties at the Villages, L.L.C. (collectively, with Quantum, the "**CNB PropCo Debtors**") to CNB in the total aggregate approximate amount of \$34,000,000 (including Quantum's indebtedness to CNB). The Debtors stipulate that the value of CNB's collateral from CNB PropCo Debtors exceeds the amount of indebtedness of the CNB PropCo Debtors to CNB. Accordingly, the Debtors stipulate to the following adequate protection of CNB: (a) in connection with the San Diego Sale, CNB will forego \$6,000,000 of the proceeds from the San Diego Sale and consent to the remittance thereof to the DIP Administrative Agent, for the benefit of the DIP Lenders, and

application to the DIP Obligations as provided in this Order, provided that (i) the San Diego Purchase Price is not less than \$15,000,000; (ii) expenses in connection with the San Diego Sale paid from the San Diego Purchase Price do not exceed \$1,500,000 and, to the extent additional expenses, taxes, or commissions are required to be paid, all such expenses may only be paid from the San Diego Purchase Price with CNB's consent or pursuant to an order of the Court; and (iii) the San Diego Sale be consummated by December 31, 2018, and the net proceeds (after payment to DIP Administrative Agent of \$6,000,000, and the payment of the expenses, taxes and commissions related to the closing as set forth in subsection (ii) of this paragraph) are remitted to CNB within one business day after the closing of the San Diego Sale (provided that, in the event the expenses of the San Diego Sale are less \$1,500,000, the difference between \$1,500,000 and the actual expenses, commissions, and taxes paid shall also be remitted to CNB); and (b) the Debtors shall continue to make the regularly scheduled monthly payments of principal and interest as set forth in the Budget, as well as reimburse CNB its legal fees and costs, on a monthly basis, based upon invoices submitted by CNB to the Debtors and without separate motions and orders unless there is a good faith dispute in respect of the reasonableness of the fees and costs sought by CNB, in which case all amounts not the subject of any such dispute shall be paid. Such fees and costs sought by CNB will be due and payable no later than 10 business days after submission of the invoices to Debtors' counsel.

H. **Cash Collateral**. All of the Debtors' cash, including any cash in deposit accounts of the Debtors, wherever located, constitutes Cash Collateral of the Prepetition ABL Parties.

I. **Findings Regarding Corporate Authority.** Each Debtor has all requisite corporate power and authority to execute and deliver the DIP Documents to which it is a party and to perform its obligations thereunder.

J. **Subordination Agreements.** Pursuant to section 510 of the Bankruptcy Code, each of the Subordination Agreements and any other applicable intercreditor or subordination provisions contained in any of the Prepetition ABL Documents shall (i) remain in full force and effect, (ii) continue to govern the relative obligations, priorities, rights, and remedies of the parties thereto (including the relative priorities, rights and remedies of such parties with respect to the replacement liens and administrative expense claims and superpriority administrative expense claims granted to the Prepetition ABL Parties, or amounts payable, by the Debtors under the Interim Order, this Final Order or otherwise and the modification of the automatic stay), and (iii) not be deemed to be amended, altered, or modified by the terms of the Interim Order, this Final Order or the DIP Documents, unless expressly set forth herein or therein. For purposes of (and only of) construction of the Subordination Agreements, the DIP Facility shall be deemed to be an amendment, restatement, refinancing, modification and/or continuation of the Prepetition ABL Facility.

K. **Findings Regarding Postpetition Financing.**

(i) *Request for Postpetition Financing.* The Debtors seek authority on a final basis to continue (a) using Cash Collateral on the terms described herein, and (b) borrowing under the DIP Facility on the terms described herein and in the DIP Documents to refinance certain of the Prepetition ABL Obligations, to administer their Cases, and to fund their operations.

(ii) *Priming of the Prepetition ABL Liens.* The priming of the Prepetition ABL Liens on the Prepetition ABL Collateral under section 364(d) of the Bankruptcy

Code, as contemplated by the DIP Facility and as further described below, will enable the Debtors to continue borrowing under the DIP Facility and to continue to operate their businesses to the benefit of their estates and creditors. The Prepetition ABL Lenders are each entitled to receive adequate protection as set forth in the Interim Order and this Final Order, provided, that the Prepetition Term Loan Lenders' adequate protection shall be on terms acceptable to the Prepetition ABL Administrative Agent, pursuant to sections 361, 363, and 364 of the Bankruptcy Code, for any Diminution in Value of each of their respective interests in the Prepetition ABL Collateral (including Cash Collateral).

(iii) *Need for Postpetition Financing and Use of Cash Collateral.* Since the Petition Date, the Debtors have had a need to use Cash Collateral and to obtain credit pursuant to the DIP Facility in order to, among other things, administer and preserve the value of their estates. The ability of the Debtors to maintain business relationships with their vendors, suppliers and patients, to pay their employees and otherwise to finance their operations requires the availability of working capital from the DIP Facility and the use of Cash Collateral, the absence of either of which would immediately and irreparably harm the Debtors, their estates and parties in interest. The Debtors do not have sufficient available sources of working capital and financing to operate their businesses or maintain their properties in the ordinary course of business prior to entry of the Final Order without the DIP Facility and authorized use of Cash Collateral.

(iv) *No Credit Available on More Favorable Terms.* Given their current financial condition, financing arrangements, and capital structure, the Debtors have been and continue to be unable to obtain financing from sources other than the DIP Lenders on terms more favorable than the DIP Facility. The Debtors are unable to obtain unsecured credit allowable under

Bankruptcy Code section 503(b)(1) as an administrative expense. The Debtors have also been unable to obtain: (a) unsecured credit having priority over that of administrative expenses of the kind specified in sections 503(b), 507(a) and 507(b) of the Bankruptcy Code; (b) credit secured solely by a lien on property of the Debtors and their estates that is not otherwise subject to a lien; or (c) credit secured solely by a junior lien on property of the Debtors and their estates that is subject to a lien. As described in the Declarations, financing on a postpetition basis on better terms is not otherwise available without granting the DIP Administrative Agent, for the benefit of itself and the DIP Lenders: (1) perfected security interests in and liens on (each as provided herein) all of the Debtors' existing and after-acquired assets with the priorities set forth in paragraph 6 of the Interim Order and paragraph 6 hereof; (2) superpriority claims and liens; (3) the other protections set forth in the Interim Order and this Final Order; and (4) a refinancing of certain of the Prepetition ABL Obligations.

(v) *Use of proceeds of the DIP Facility.* As a condition to entry into the DIP Agreement, the extension of credit under the DIP Facility and the authorization to use Cash Collateral, the DIP Administrative Agent, the DIP Lenders, and the Prepetition ABL Parties required and continue to require, and the Debtors have agreed, that proceeds of the DIP Facility shall be used, in each case in a manner consistent with the terms and conditions of this Final Order and the DIP Documents and in accordance with the budget (as the same may be modified from time to time consistent with the terms of the DIP Documents and subject to such variances as permitted in the DIP Agreement, and as set forth in paragraphs 19 and 20 hereof, the "Budget"),⁴ solely for: (a) the repayment in cash in the amount of \$62,193,517.86 (consisting of \$61,657,557.26 of principal and accrued interest, fees, costs and expenses in the amount of

⁴ A copy the Budget is attached hereto as Schedule I.

\$535,960.60) from the proceeds of the DIP Loans to pay off the Prepetition Revolving Loans and the replacement and refinancing of such Prepetition Revolving Loans into DIP Obligations to the extent provided for in the Interim Order, this Final Order and the DIP Documents, and subject to the rights preserved in paragraph 42 of this Final Order; (b) working capital; (c) permitted payment of costs of administering the Cases; (d) payment of such other prepetition obligations as set forth in the Budget or otherwise approved by the DIP Administrative Agent in its sole discretion, and as approved by the Court; (e) payment of interest, fees, expenses and other amounts (including legal and other professionals' fees and expenses of the DIP Administrative Agent) owed under the DIP Documents; (f) payment of certain adequate protection amounts to the Prepetition ABL Parties, as set forth in paragraph 16 hereof; and (g) other general corporate purposes of the Debtors permitted by the Budget and the DIP Documents.

(vi) *Application of Proceeds of Collateral.* As a condition to entry into the DIP Agreement, the extension of credit under the DIP Facility and authorization to use Cash Collateral, the Debtors, the DIP Administrative Agent, the DIP Lenders and the Prepetition ABL Parties have agreed that as of and commencing on the date of the Interim Hearing, the Debtors shall apply the proceeds of DIP Collateral in accordance with this Final Order and as provided in the DIP Documents.

(vii) *Roll-up of Prepetition Revolving Loans.* Immediately upon the entry of the Interim Order, without any further action by the Debtors or any other party, all outstanding Prepetition ABL Obligations owing to the Prepetition Revolving Lenders and their affiliates in the amount of \$62,193,517.86 were converted into DIP Obligations under and as further described in the DIP Documents, with the outstanding principal amount of all Prepetition Revolving Loans being replaced and refinanced into DIP Obligations and all accrued interest, expenses, fees and

other sums due and payable in respect of the Prepetition Revolving Loans being replaced and refinanced into DIP Obligations and being paid in cash with the proceeds of the DIP Facility on the Closing Date (as defined in the DIP Agreement) (collectively, the “DIP Revolving Roll-Up Obligations”). The replacement and refinancing (or “roll-up”) with the DIP Revolving Roll-Up Obligations was, and under this Final Order, shall be authorized as compensation for, in consideration for, and solely on account of, the agreement of the Prepetition Revolving Lenders to fund amounts, and provide other consideration to the Debtors, under the DIP Facility and not as payments under, adequate protection for, or otherwise on account of, any Prepetition ABL Obligations. The Prepetition Revolving Lenders would not otherwise have consented to the use of their Cash Collateral or the subordination of their liens to the DIP Liens, and the DIP Administrative Agent and the DIP Lenders would not be willing to have extended or to continue to provide the DIP Facility or extend credit to the Debtors thereunder without the inclusion of the DIP Revolving Roll-Up Obligations in the DIP Obligations. Moreover, the replacement and refinancing of all outstanding Prepetition Revolving Loans into DIP Obligations (a) created greater availability under the DIP Facility, and (b) enabled the Debtors to obtain urgently needed financing that they need to administer these Cases and fund their operations. Because the DIP Revolving Roll-Up Obligations remain subject to the reservation of rights in paragraph 42 below, they will not prejudice the right of any other party in interest. The DIP Facility, the Interim Order and this Final Order do not contemplate or permit the roll-up of the Prepetition Term Loans.

L. **Adequate Protection**. The Prepetition ABL Administrative Agent, for the benefit of itself and the Prepetition ABL Parties, is entitled to receive adequate protection to the extent of any Diminution in Value of its and the Prepetition ABL Parties’ interests in the Prepetition Collateral. Pursuant to sections 361, 363 and 507(b) of the Bankruptcy Code, as

adequate protection: the Prepetition ABL Parties have received and will continue to receive (a) adequate protection liens and superpriority claims, as more fully set forth in paragraphs 12 and 14 herein, and (b) as set forth herein, current payment of interest, reasonable and documented fees and out-of-pocket expenses (including legal and other professionals' fees and expenses of the Prepetition ABL Administrative Agent whether arising before or after the Petition Date), as more fully set forth in paragraph 16 of the Interim Order and paragraph 16 herein.

M. **Sections 506(c) and 552(b)**. In light of: (i) the DIP Administrative Agent's and DIP Lenders' agreement that their liens and superpriority claims shall be subject to the Carve Out, (ii) the Prepetition ABL Administrative Agent's and the Prepetition ABL Lenders' agreement that their liens shall be subject to the Carve Out and subordinate to the DIP Liens, and (iii) the payment of expenses as set forth in the Budget in accordance with and subject to the terms and conditions of this Final Order and the DIP Documents, (a) the Prepetition ABL Parties are each entitled to a waiver of any "equities of the case" exception under section 552(b) of the Bankruptcy Code, and (b) the DIP Administrative Agent, the DIP Lenders and the Prepetition ABL Parties are each entitled to a waiver of the provisions of section 506(c) of the Bankruptcy Code.

N. **Good Faith of the DIP Administrative Agent and DIP Lenders.**

(i) *Willingness to Provide Financing.* The DIP Lenders have indicated a willingness to provide financing to the Debtors subject to: (a) entry of the Interim Order and this Final Order; (b) approval of the terms and conditions of the DIP Facility and the DIP Documents; (c) satisfaction of the closing conditions and conditions to the extension of credit set forth in the DIP Documents; and (d) findings by this Court that the DIP Facility is essential to the Debtors'

estates, that the DIP Administrative Agent and DIP Lenders are extending credit to the Debtors pursuant to the DIP Documents in good faith, and that the DIP Administrative Agent's and DIP Lenders' claims, superpriority claims, security interests and liens and other protections granted pursuant to the Interim Order, this Final Order and the DIP Documents will have the protections provided by section 364(e) of the Bankruptcy Code.

(ii) *Business Judgment and Good Faith Pursuant to Section 364(e).*

The terms and conditions of the DIP Facility and the DIP Documents, and the interest and fees paid and to be paid thereunder, are fair, reasonable, and the best available to the Debtors under the circumstances, are ordinary and appropriate for secured financing to debtors in possession, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and consideration. The terms and conditions of the DIP Facility and the use of Cash Collateral were negotiated in good faith and at arms' length among the Debtors, the DIP Administrative Agent, the DIP Lenders and the Prepetition ABL Parties, with the assistance and counsel of their respective advisors. Use of Cash Collateral and credit to be extended under the DIP Facility shall be deemed to have been allowed, advanced, made, or extended in good faith by the DIP Administrative Agent, the DIP Lenders and the Prepetition ABL Parties within the meaning of section 364(e) of the Bankruptcy Code.

O. **Final Hearing.** Notice of the Final Hearing and the relief requested in the DIP Motion has been provided by the Debtors, whether by facsimile, electronic mail, overnight courier or hand delivery, to certain parties-in-interest, including: (i) the U.S. Trustee; (ii) those entities or individuals included on the Debtors' list of 30 largest unsecured creditors on a consolidated basis; (iii) counsel to the Prepetition ABL Administrative Agent; (iv) the parties to the Subordination Agreements and/or their counsel; and (v) all other parties entitled to notice

under the Local Rules. In addition, Counsel for the Committee received notice of the Final Hearing and has had sufficient opportunity to review the DIP Motion, the Interim Order and this Final Order. The Debtors have made reasonable efforts to afford the best notice possible under the circumstances and no other notice is required in connection with the relief set forth in this Final Order.

Based upon the foregoing findings and conclusions, the findings and conclusions made in the Interim Order, the DIP Motion, the Declarations and the record before the Court with respect to the DIP Motion, and after due consideration and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED that:

1. **Final Financing Approved.** The DIP Motion is granted as set forth herein, the Final Financing (as defined herein) is authorized and approved, and the use of Cash Collateral on an interim basis is authorized, in each case on a final basis and subject to the terms and conditions set forth in the DIP Documents and this Final Order. Unless otherwise modified herein, all findings of fact, conclusions of law, and authorizations made by this Court in the Interim Order are hereby ratified and incorporated herein by reference as though set forth fully below. All objections to the DIP Motion and this Final Order to the extent not withdrawn, waived, settled, or resolved are hereby denied and overruled.

DIP Facility Authorization

2. **Authorization of the DIP Facility.** The DIP Facility, including the DIP Revolving Roll-Up Obligations, is hereby approved on a final basis. The Debtors are expressly and immediately authorized and empowered on a final basis to continue borrowing under the DIP Documents and under the DIP Facility, and to incur and to perform the DIP Obligations in accordance with, and subject to, the terms of this Final Order and the DIP Documents, and to

execute and deliver all instruments, certificates, agreements, and documents which may be required or necessary for the performance by the Debtors under the DIP Facility and the creation and perfection of the DIP Liens (as defined herein) described in and provided for by the Interim Order, this Final Order and the DIP Documents, including each of Debtors providing its joint and several guarantee of all of the DIP Obligations. Nothing in this Final Order shall be deemed to limit or modify the authorization set forth in the Interim Order of the Debtors to take such acts as were necessary or desirable in order to effect the roll up and replacement and refinancing with the DIP Revolving Roll-Up Obligations. The Debtors are hereby authorized and directed on a final basis to pay, in accordance with the Interim Order and this Final Order, the principal, interest, fees, payments, expenses, and other amounts described in the DIP Documents as such amounts become earned, due and payable and without need to obtain further Court approval, including closing fees, letter of credit fees (including issuance, fronting, and other related charges), unused line fees, arrangement fees, structuring fees, servicing fees, audit fees, appraisal fees, liquidator fees, administrative agent's fees, prepayment premiums, the reasonable and documented fees and disbursements of the DIP Administrative Agent's attorneys, advisors, accountants, and other consultants, whether or not such fees arose before or after the Petition Date, and whether or not the transactions contemplated hereby are consummated, to implement all applicable reserves and to take any other actions that may be necessary or appropriate, all to the extent provided in the Interim Order, this Final Order or the DIP Documents. All collections and proceeds, whether from ordinary course collections, asset sales, debt or equity issuances, insurance recoveries, condemnations, or otherwise, will be deposited and applied as required by this Final Order and, to the extent not inconsistent with this Final Order, the DIP Documents. Upon execution and delivery, the DIP Documents shall represent valid and binding obligations

of the Debtors, enforceable against each of the Debtors and their estates in accordance with their terms.

3. **Authorization to Borrow.** From the entry of this Final Order through the DIP Termination Date (as defined below), and subject to the terms, conditions, limitations on availability and reserves (as applicable) set forth in the DIP Documents and this Final Order, the Debtors are hereby authorized on a final basis to continue requesting extensions of credit up to an aggregate outstanding principal amount of not greater than \$85,000,000 at any one time outstanding under the DIP Facility consisting of (a) \$65,000,000 in aggregate principal amount of DIP Revolving Loans and commitments and (b) \$20,000,000 in aggregate principal amount of DIP Term Loans (the "**Final Financing**").

4. **DIP Obligations.** The DIP Documents, the Interim Order and this Final Order shall constitute and evidence the validity and binding effect of the Debtors' DIP Obligations, which DIP Documents, Interim Order, Final Order and DIP Obligations shall be enforceable against the Debtors, their estates and any successors thereto, including any trustee appointed in the Cases, or in any case under chapter 7 of the Bankruptcy Code upon the conversion of any of the Cases, or in any other proceedings superseding or related to any of the foregoing (collectively, the "**Successor Cases**"). The DIP Obligations include all loans and any other indebtedness or obligations, contingent or absolute, which may now or from time to time be owing by any of the Debtors to the DIP Administrative Agent or any of the DIP Lenders, in each case, under, or secured by, the DIP Documents or this Final Order, including all principal, accrued interest, costs, fees, expenses and other amounts under the DIP Documents. Without limiting the foregoing, the DIP Obligations shall also include cash management and bank product exposure to the extent described in, or secured by, the Prepetition ABL Documents (to

the extent outstanding as of the Petition Date) and DIP Documents (on and after the Petition Date), including all Bank Product Obligations (as defined in the DIP Agreement). The Debtors shall be jointly and severally liable for the DIP Obligations. The DIP Obligations shall be due and payable, without notice or demand, and the use of Cash Collateral shall automatically cease on the DIP Termination Date (as defined herein), except as provided in paragraph 33 herein. No obligation, payment, transfer, or grant of collateral security hereunder or under the DIP Documents (including any DIP Obligation or DIP Liens (as defined below), and including in connection with any adequate protection provided to the Prepetition ABL Parties hereunder) shall be stayed, restrained, voidable, avoidable, or recoverable, under the Bankruptcy Code or under any applicable law (including under sections 349, 502(d), 544, and 547 to 550 of the Bankruptcy Code or under any applicable state Uniform Voidable Transactions Act, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law), or subject to any avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), counterclaim, cross-claim, defense, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity, except as set forth in paragraph 42 below. The Debtors are authorized in any payoff letter or similar agreement into which they enter upon payment in full of their DIP Obligations to provide a full and complete waiver and release of claims in favor of the DIP Administrative Agent and the DIP Lenders and their respective related parties.

5. **DIP Liens.** In order to secure the DIP Obligations, pursuant to sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, the DIP Administrative Agent, for the benefit of itself and the DIP Lenders, was granted and immediately became effective upon entry of the Interim Order and is hereby granted on a final basis, continuing,

valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition security interests in and liens on (collectively, the “DIP Liens”) all real and personal property, whether now existing or hereafter arising and wherever located, tangible and intangible, of each of the Debtors (the “DIP Collateral”), including: (a) all cash, cash equivalents, deposit accounts, securities accounts, accounts, other receivables (including credit card receivables, if any), chattel paper, contract rights, inventory (wherever located), instruments, documents, securities (whether or not marketable) and investment property (including all of the issued and outstanding capital stock of each of its subsidiaries), hedge agreements, furniture, fixtures, equipment (including documents of title), goods, franchise rights, trade names, trademarks, servicemarks, copyrights, patents, license rights, intellectual property, general intangibles (including, for the avoidance of doubt, payment intangibles), rights to the payment of money (including tax refunds and any other extraordinary payments), supporting obligations, guarantees, letter of credit rights, commercial tort claims, causes of action, and all substitutions, indemnification rights, all present and future intercompany debt, fee interests in real property owned by the Debtors, books and records related to the foregoing, accessions and proceeds of the foregoing, wherever located, including insurance or other proceeds; (b) all owned real property interests, leased real property (including, for the avoidance of doubt, any ground leases) and all proceeds of all other leased real property; (c) actions brought under section 549 of the Bankruptcy Code to recover any unauthorized post-petition transfer of DIP Collateral; (d) the Debtors’ rights under sections 506(c) and, to the extent set forth in the preceding clause (c), 550 of the Bankruptcy Code and the proceeds thereof; and (e) all other DIP Collateral whether or not subject to valid, perfected, enforceable, and unavoidable liens on the Petition Date (including Permitted Prior Liens). For the avoidance of doubt, except as set forth in clause (c) of the preceding sentence, the DIP Collateral does not

include any avoidance actions or the proceeds of avoidance actions brought pursuant to chapter 5 of the Bankruptcy Code or applicable state law equivalents (the "Avoidance Actions"). Further, for the avoidance of doubt, for purposes of (and only of) securing the repayment of DIP Revolving Loans, the DIP Collateral shall not include any commercial tort claim (as such term is defined in the Uniform Commercial Code as in effect in the State of New York) arising on or prior to the Petition Date or the proceeds thereof (the "Commercial Tort Claims" and, collectively with the Avoidance Actions, the "Excluded Assets"). For purposes of securing the repayment of DIP Term Loans (but subject to Paragraph 46 of this Final Order), the DIP Collateral shall include the Commercial Tort Claims. Notwithstanding the foregoing, DIP Collateral shall not include any contract or license under which the granting of the DIP Liens thereon would constitute a breach or termination thereof other than to the extent such breach or termination would be rendered ineffective pursuant to applicable law (including applicable state law or the Bankruptcy Code) but shall, in any event, include the proceeds of such contracts and licenses. One or more of the Debtors and Freedom Medical, Inc. ("Freedom Medical"), are parties to that certain Equipment Rental Agreement dated 12/5/14 (the "Equipment Rental Agreement"). The Debtors' rights under the Equipment Rental Agreement are set forth therein. As to the rights of the Debtors and Freedom Medical under the Equipment Rental Agreement, DIP Collateral shall include only the Debtors' rights as set forth therein.

6. **DIP Lien Priority.** The DIP Liens securing the DIP Obligations are valid, automatically perfected, non-avoidable and superior to any security, mortgage, collateral interest, lien, or claim to any of the DIP Collateral, except that the DIP Liens shall be subject to the Carve Out as set forth in this Final Order and shall otherwise be junior only to Permitted Prior Liens; any valid, perfected, unavoidable liens or security interests in existence as of the Petition Date or

that are perfected subsequent to the Petition Date as permitted by Section 546(b) of the Bankruptcy Code (the “Other Prepetition Liens”); and, in the case of all real property owned by the Debtors other than the St. Alexius Real Property and other than as set forth in the Individual Subordination Agreement, to any and all liens, mortgages and deeds of trust that are (XX) valid, properly perfected and non-avoidable as of the Petition Date, and (YY) held by persons or entities other than the Debtors or any affiliate or shareholder of the Debtors (the “Prior Real Estate Liens”). Without limiting the generality of the foregoing sentence, as to the adequate protection of the Prior Real Estate Liens held by CNB: (a) in connection with the San Diego Sale, CNB shall forego \$6,000,000 of the proceeds from the San Diego Sale and consent to the remittance thereof to the DIP Administrative Agent, for the benefit of the DIP Lenders, and application to the DIP Obligations as provided in this Order, provided that (i) the San Diego Purchase Price shall not be less than \$15,000,000; (ii) expenses in connection with the San Diego Sale paid from the San Diego Purchase Price shall not exceed \$1,500,000 and, to the extent additional expenses, taxes, or commissions are required to be paid, all such expenses shall only be paid from the San Diego Purchase Price with CNB’s consent or pursuant to an order of the Court; and (iii) the San Diego Sale shall be consummated by December 31, 2018, and the net proceeds (after payment to DIP Administrative Agent of \$6,000,000, and the payment of the expenses, taxes and commissions related to the closing as set forth in subsection (ii) of this paragraph) shall be remitted to CNB within one business day after the closing of the San Diego Sale (provided that, in the event the expenses of the San Diego Sale are less \$1,500,000, the difference between \$1,500,000 and the actual expenses, commissions, and taxes paid shall also be remitted to CNB); and (b) the Debtors shall continue to make the regularly scheduled monthly payments of principal and interest as set forth in the Budget, as well as reimburse CNB its

reasonable and documented legal fees and costs, on a monthly basis, based upon invoices submitted by CNB to the Debtors, the U.S. Trustee and the Committee and without separate motions and orders unless there is a good faith dispute in respect of the reasonableness of the fees and costs sought by CNB, in which case all amounts not the subject of any such dispute shall be paid. Such fees and costs sought by CNB shall be due and payable no later than 10 business days after submission of the invoices to Debtors' counsel. Other than as set forth herein or in the DIP Documents, the DIP Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in the Cases or any Successor Cases, and shall be valid and enforceable against any trustee appointed in the Cases or any Successor Cases, upon the conversion of any of the Cases to a case under chapter 7 of the Bankruptcy Code (or in any other Successor Case), and/or upon the dismissal of any of the Cases or Successor Cases. The DIP Liens shall not be subject to section 510, 549 or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of the estate pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the DIP Liens.

7. **DIP Superpriority Claims**. The DIP Administrative Agent, on behalf of itself and the DIP Lenders was granted upon entry of the Interim Order and is hereby granted on a final basis, pursuant to section 364(c)(1) of the Bankruptcy Code, an allowed superpriority administrative expense claim in each of the Cases and any Successor Cases (collectively, the "**DIP Superpriority Claims**") for all DIP Obligations: (a) subject only to the Carve Out, having priority over any and all administrative expense claims and unsecured claims against the Debtors or their estates in any of the Cases and any Successor Cases, at any time existing or arising, of any kind or nature whatsoever, including administrative expenses of the kinds specified in or ordered pursuant to Bankruptcy Code sections 105, 326, 328, 330, 331, 364, 365, 503(a), 503(b),

507(a), 507(b), 546(c), 546(d), 726, 1113 and 1114, and any other provision of the Bankruptcy Code, as provided under section 364(c)(1) of the Bankruptcy Code; and (b) which shall at all times be senior to the rights of the Debtors and their estates, and any successor trustee or other estate representative to the extent permitted by law; provided, however, notwithstanding anything in the contrary in this Final Order, the DIP Superpriority Claims shall be payable from the Excluded Assets and/or the proceeds thereof only after the other sources of payment of the DIP Superpriority Claims are substantially exhausted; provided, further, however, that the DIP Superpriority Claims in the bankruptcy case of (XX) Success Healthcare 1, LLC, shall be junior to the superpriority administrative claim in the amount of up to \$1,911,155.35 of HHS (as defined herein) in such bankruptcy case as the terms and conditions of such HHS superpriority administrative claim are set forth in that certain Stipulation and Order dated ^{12/3} November __, 2018 [D.I. 197] (the "HHS Stipulation"), (YY) Promise Hospital of Baton Rouge, Inc., shall be junior to the superpriority administrative claim in the amount of up to \$45,880.45 of HHS in such bankruptcy case as the terms and conditions of such HHS superpriority administrative claim are set forth in the HHS Stipulation, and (ZZ) St. Alexius Hospital Corporation 1 shall be junior to the superpriority administrative claim in the amount of up to \$3,393.71 of HHS in such bankruptcy case as the terms and conditions of such HHS superpriority claim are set forth in the HHS Stipulation.

8. **No Obligation to Extend Credit.** The DIP Administrative Agent and DIP Lenders shall have no obligation to make any loan or advance, or to issue, amend, renew or extend any bankers' acceptance under the DIP Documents, unless all of the conditions precedent to the making of such extension of credit or the issuance, amendment, renewal, or extension of such bankers' acceptance under the DIP Documents and this Final Order have been satisfied in

full or waived by the DIP Administrative Agent and in accordance with the terms of the DIP Agreement.

9. **Use of Proceeds of DIP Facility.** From and after the Petition Date, the Debtors shall use advances of credit under the DIP Facility to effect the payment of the DIP Revolving Roll-Up Obligations and otherwise in accordance with the Budget (subject to such variances as permitted in the DIP Agreement), only for the purposes specifically set forth in the Interim Order, this Final Order and the DIP Documents, and in compliance with the terms and conditions of the Interim Order, this DIP Order and the DIP Documents. Neither the Interim Order nor this Final Order authorize the use of advances under the DIP Facility to effect any payment of the Prepetition Term Loans.

10. **DIP Revolving Roll-Up Obligations.** Immediately upon entry of the Interim Order, without any further action by the Debtors or any other party, and as a condition to the provision of liquidity under the DIP Facility, all outstanding Prepetition ABL Obligations owing to the Prepetition Revolving Lenders and their affiliates were refinanced and replaced with DIP Revolving Roll-Up Obligations that now constitute DIP Obligations. The Court approves such actions on a final basis. The authorization of the DIP Revolving Roll-Up Obligations remains subject to the reservation of rights set forth in paragraph 42 of this Final Order. No provision of the Interim Order or this Final Order authorizing the DIP Revolving Roll-Up Obligations shall adversely affect the Carve Out.

Authorization to Use Cash Collateral

11. **Authorization to Use Cash Collateral.** Subject to the terms and conditions of this Final Order, the DIP Facility, and the DIP Documents and in accordance with the Budget (subject to such variances as permitted in the DIP Agreement), the Debtors are authorized to use Cash Collateral until the DIP Termination Date; *provided, however*, that during

the Remedies Notice Period (as defined herein), the Debtors may use Cash Collateral solely to meet payroll obligations (other than severance) and pay expenses that the DIP Administrative Agent approves as critical to keeping the Debtors' business operating in accordance with the Budget, or as otherwise agreed by the DIP Administrative Agent in its sole discretion, and the Carve Out shall be funded following delivery of the Carve Out Trigger Notice (as defined herein) as provided in paragraph 39 of this Final Order. Nothing in this Final Order shall authorize the disposition of any assets of the Debtors or their estates outside the ordinary course of business, or any Debtor's use of any Cash Collateral or other proceeds resulting therefrom, except as permitted in this Final Order, the DIP Facility, the DIP Documents, and in accordance with the Budget.

12. **Adequate Protection Liens.** Subject to a timely and properly filed Challenge (as defined herein) commenced by the Challenge Deadline (as defined herein and which Challenge is successful as set forth in a final judgment), the Prepetition ABL Parties received adequate protection as described in the Interim Order and below in this Final Order, including in paragraphs 12 through 16. Pursuant to sections 361, 363(e), and 364(d) of the Bankruptcy Code, as adequate protection of the interests of the Prepetition ABL Parties in the Prepetition Collateral against any Diminution in Value of such interests in the Prepetition Collateral, the Debtors granted upon entry of the Interim Order and hereby grant on a final basis to the Prepetition ABL Administrative Agent, for the benefit of itself and the Prepetition ABL Parties, continuing, valid, binding, enforceable, and perfected postpetition security interests in and liens on the DIP Collateral (the "**Adequate Protection Liens**").

13. **Priority of Adequate Protection Liens.**

(a) The Adequate Protection Liens shall be subject to the Carve Out as set forth in this Final Order and shall otherwise be junior only to: (i) the Permitted Prior Liens; (ii) the Other Prepetition Liens; (iii) the DIP Liens; (iv) the Prepetition ABL Liens; and (v) the Prior Real Estate Liens. The Adequate Protection Liens shall be senior to all other security interests in, liens on, or claims against any of the DIP Collateral.

(b) Except as provided herein or in the DIP Agreement, the Adequate Protection Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter in the Cases or any Successor Cases, and shall be valid and enforceable against any trustee appointed in any of the Cases or any Successor Cases, or upon the dismissal of any of the Cases or Successor Cases. The Adequate Protection Liens shall not be subject to sections 510, 549, or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of the estate pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the Prepetition ABL Liens or the Adequate Protection Liens.

14. **Prepetition ABL Superpriority Claim**. As further adequate protection of the interests of the Prepetition ABL Administrative Agent and Prepetition Revolving Lenders in the Prepetition Collateral against any Diminution in Value of such interests in the Prepetition Collateral, the Prepetition ABL Administrative Agent, on behalf of itself and the Prepetition ABL Lenders, was granted upon entry of the Interim Order and is hereby granted on a final basis an allowed superpriority administrative expense claim in each of the Cases and any Successor Cases under sections 503 and 507(b) of the Bankruptcy Code (the "**Prepetition ABL Superpriority Claim**"); provided, however, notwithstanding anything to the contrary in this Final Order, the Prepetition ABL Superpriority Claims shall not be paid from the Excluded Assets.

15. **Priority of the Prepetition ABL Superpriority Claim.** The Prepetition ABL Superpriority Claim shall be subject to the Carve Out as set forth in this Final Order and shall otherwise be junior only to the DIP Superpriority Claims; provided, however, that the Prepetition ABL Superpriority Claim in the bankruptcy case of (XX) Success Healthcare 1, LLC, shall be junior to the superpriority administrative claim in the amount of up to \$1,911,155.35 of HHS (as defined herein) in such bankruptcy case as the terms and conditions of such HHS superpriority administrative claim are set forth in the HHS Stipulation, (YY) Promise Hospital of Baton Rouge, Inc., shall be junior to the superpriority administrative claim in the amount of up to \$45,880.45 of HHS in such bankruptcy case as the terms and conditions of such HHS superpriority administrative claim are set forth in the HHS Stipulation, and (ZZ) St. Alexius Hospital Corporation 1 shall be junior to the superpriority administrative claim in the amount of up to \$3,393.71 of HHS in such bankruptcy case as the terms and conditions of such HHS superpriority claim are set forth in the HHS Stipulation.. The Prepetition ABL Superpriority Claim shall have priority over all other administrative expense claims and unsecured claims against the Debtors or their estates, now existing or hereafter arising, of any kind or nature whatsoever, including administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326 (to the extent permitted by applicable law), 328, 330, 331, 365, 503(a), 503(b), 507(a) (including, to the extent permitted by applicable law, subsection (1) thereof), 506(c), 507(b), 546(c), 546(d), 726 (to the extent permitted under applicable law), 1113, and 1114 of the Bankruptcy Code.

16. **Adequate Protection Payments and Protections for Prepetition ABL Parties.** As further adequate protection (the "Prepetition ABL Adequate Protection Payments"), the Debtors are authorized and directed on a final basis to provide adequate protection to the

Prepetition ABL Parties in the form of payment in cash (and as to fees and expenses, without the need for the filing of a formal fee application) of (i) to the extent (if any) not paid under the Interim Order, the reasonable and documented fees, out-of-pocket expenses, and disbursements (including the reasonable and documented fees, out-of-pocket expenses, and disbursements of counsel, financial advisors, auditors, third-party consultants, and other vendors) incurred by the Prepetition ABL Administrative Agent arising prior to the Petition Date, and (ii) the reasonable and documented fees, out-of-pocket expenses, and disbursements (including the reasonable and documented fees, out-of-pocket expenses, and disbursements of counsel, financial advisors, auditors, third-party consultants, and other vendors) incurred (XX) by the Prepetition ABL Administrative Agent arising subsequent to the Petition Date, and (YY) to the maximum amount of \$40,000 per month, by the Prepetition Term Loan Lenders arising subsequent to the Petition Date and based upon invoices submitted by the Prepetition Term Lenders to the Debtors, the U.S. Trustee and any Committee and without separate motions and orders unless there is a good faith dispute in respect of the reasonableness of the fees and costs sought by the Prepetition Term Loan Lenders, in which case all amounts not the subject of any such dispute shall be paid (such fees and costs sought by the Prepetition Term Lenders shall be due and payable no later than 10 business days after submission of the invoices to Debtors' counsel). In addition, as and for adequate protection of the Prepetition Term Lenders, the automatic stay is hereby modified to permit the Prepetition Term Lenders to remove, as and when interest would otherwise be payable to the Prepetition Term Lenders under the Prepetition ABL Agreement, from the interest reserve funded by the Debtors prior to the Petition Date with respect to the Prepetition Term Loans, funds in the amount of then accrued, at the non-default interest rate, and unpaid interest; provided, however, that the Debtors shall have no other or further adequate protection obligation

or authority under the Interim Order or this Final Order to pay such interest. Solely to the extent provided for in the Prepetition ABL Agreement, until the earlier to occur of (a) receipt by the Prepetition ABL Administrative Agent and the Prepetition ABL Lenders of releases and discharges of claims and liabilities in form and substance satisfactory to the Prepetition ABL Administrative Agent and the Prepetition ABL Lenders in their sole discretion, or (b) the expiration of the Challenge Deadline (as defined herein) without the commencement of a Challenge (as defined herein), as part of the adequate protection provided under this paragraph 16, the Prepetition ABL Administrative Agent shall be entitled to current payment of all costs, expenses, and other amounts (including reasonable and documented attorneys' fees) incurred in connection with contingent indemnification, reimbursement or similar continuing obligations arising under the Prepetition ABL Agreement, the other Prepetition ABL Documents or otherwise in respect of the Prepetition ABL Obligations (the "Prepetition ABL Indemnification Obligations"), including in connection with or responding to (1) formal or informal inquiries and/or discovery requests, any adversary proceeding, cause of action, objection, claim, defense, or other challenge as contemplated in paragraph 42 hereof, or (2) any Challenge against the Prepetition ABL Administrative Agent or Prepetition ABL Lenders related to the Prepetition ABL Documents, the Prepetition ABL Obligations, or the Prepetition ABL Liens granted to the Prepetition ABL Administrative Agent, as applicable, whether in these Cases or independently in another forum, court, or venue. Subject to paragraph 35 of this Final Order, payment of costs, expenses, and other amounts (including reasonable and documented attorneys' fees) incurred by the Prepetition ABL Administrative Agent in connection with the Prepetition ABL Indemnification Obligations shall be made as and when they arise (and may be paid with the proceeds of the DIP Facility and/or from the proceeds of DIP Collateral), without further order of

this Court; *provided*, that (i) any such indemnification claims shall be subject to the terms of the Prepetition ABL Documents (including with respect to application of proceeds), (ii) the rights of parties in interest with requisite standing to object to any such indemnification claim(s) are hereby reserved in accordance with paragraph 42 hereof, and (iii) the Court shall reserve jurisdiction to hear and determine any such disputed indemnification claim(s). Upon the earlier to occur of (a) the DIP Termination Date or (b) delivery of the Carve Out Trigger Notice, the Debtors shall pay to the Prepetition ABL Administrative Agent, for the benefit of the Prepetition ABL Parties, \$150,000 into a non-interest bearing account maintained at Wells Fargo Bank, National Association (the "Prepetition ABL Indemnity Reserve"), to secure the Prepetition ABL Indemnification Obligations; *provided* that the Debtors shall not be required to fund the Prepetition ABL Indemnity Reserve if, at the time of the occurrence of the DIP Termination Date or the delivery of the Carve Out Trigger Notice (x) the Prepetition ABL Administrative Agent and the Prepetition ABL Lenders have received releases and discharges of claims and liabilities in form and substance satisfactory to the Prepetition ABL Administrative Agent and the Prepetition ABL Lenders in their sole discretion, or (y) the Challenge Deadline has passed without the commencement of a Challenge. The Prepetition ABL Indemnification Obligations shall be secured by a first lien on the Prepetition ABL Indemnity Reserve and the funds therein and by a lien on the Prepetition Collateral. The Prepetition ABL Administrative Agent (for itself and on behalf of the Prepetition ABL Parties) shall retain and maintain the Prepetition ABL Liens granted to the Prepetition ABL Administrative Agent as security for the amount of any Prepetition ABL Indemnification Obligations not capable of being satisfied from application of the funds on deposit in the Prepetition ABL Indemnity Reserve. The Prepetition ABL Indemnity Reserve, subject to satisfaction of the payment in full of the Prepetition ABL Indemnification

Obligations, shall be subject to the DIP Liens and the Adequate Protection Liens, subject to the priority set forth herein. The Prepetition ABL Indemnity Reserve (and the liens granted to and maintained by the Prepetition ABL Administrative Agent in accordance with this paragraph 16) shall be released and the funds applied in accordance with paragraph 23 of this Final Order upon the earlier to occur of (a) receipt by the Prepetition ABL Administrative Agent and the Prepetition ABL Lenders of releases and discharges of claims and liabilities in form and substance satisfactory to the Prepetition ABL Administrative Agent and the Prepetition ABL Lenders in their sole discretion, or (b) the expiration of the Challenge Deadline without the commencement of a Challenge.

17. **Adequate Protection Reservation.** Nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the Prepetition ABL Parties hereunder (if any) is insufficient to compensate for any Diminution in Value of their respective interests in the Prepetition Collateral during the Cases or any Successor Cases. The receipt by the Prepetition ABL Parties of the adequate protection provided herein shall not be deemed an admission that the interests of the Prepetition ABL Parties are adequately protected. Further, this Final Order shall not prejudice or limit the rights of the Prepetition ABL Parties to seek additional relief with respect to the use of Cash Collateral or for additional adequate protection in a manner consistent with the Prepetition ABL Documents, and all parties-in-interests' rights are reserved with respect thereto. Without limiting the generality of the foregoing paragraph 17, the Prepetition Term Loan Lenders, to the extent not inconsistent with the Prepetition ABL Documents, may raise and may appear and be heard on any issue in these Cases. In addition, and also without limiting the generality of the foregoing paragraph 17, until (a) the indefeasible payment in full of all DIP Obligations and

Prepetition ABL Obligations, (b) the commitments to lend under the DIP Facility have terminated, (c) all objections and challenges (including, without limitation, any Challenges (as defined herein)) to (XX) the liens and security interests of the Prepetition ABL Administrative Agent (including, without limitation, liens granted for adequate protection purposes) and/or (YY) the Prepetition ABL Obligations have been waived, denied or barred, and (d) all of the Debtors' Stipulations have become binding on their estates and parties in interest in accordance with paragraph 42 below, all liens and security interests of the Prepetition ABL Administrative Agent (including, without limitation, liens granted for adequate protection purposes) shall remain valid and enforceable with the same continuing priority as described herein.

**Provisions Common to DIP Financing
and Use of Cash Collateral**

18. **Amendment of the DIP Documents**. The DIP Documents may from time to time be amended, modified, or supplemented by the parties thereto without further order of the Court if the amendment, modification, or supplement is (a) non-material or non-adverse to the Debtors and (b) in accordance with the DIP Documents. In the case of a material amendment, modification, or supplement to the DIP Documents that is adverse to the Debtors' estates, the Debtors shall provide notice (which shall be provided through electronic mail) to counsel to the Committee, counsel to the Prepetition Term Loan Lenders, counsel to CNB and the U.S. Trustee (collectively, the "Notice Parties"), each of whom shall have ten (10) days from the date of such notice to object in writing to such amendment, modification or supplement. If all Notice Parties indicate that they have no objection to the amendment, modification or supplement (or if no objections are timely received), the Debtors may proceed to execute the amendment, modification or supplement, which shall become effective immediately upon execution. If a Notice Party timely objects to such amendment, modification or supplement, approval of the

Court (which may be sought on an expedited basis) will be necessary to effectuate the amendment, modification or supplement; *provided* that such amendment, modification or supplement shall be without prejudice to the right of any party in interest to be heard. Any material modification, amendment or supplement that becomes effective in accordance with this paragraph shall be filed with the Court.

19. **Budget Maintenance.** The use of borrowings under the DIP Facility and the use of Cash Collateral shall be in accordance with the Budget, subject in all respects to the variances set forth in the DIP Agreement. No later than December 20, 2018, the Debtors shall propose an updated Budget for the period from January 1, 2019, through and including the Maturity Date (as defined in the DIP Agreement). Thereafter, the Debtors shall propose an updated Budget on the twentieth (20th) day of each month for the period from the first day of the following month through the Maturity Date (as defined in the DIP Agreement). The Budget, and any modification to, or amendment or update thereof, shall be approved in writing (including by email) by, and shall be in form and substance satisfactory to, the DIP Administrative Agent in its sole discretion and such updated budget shall not be effective until so approved and, subject to the rights of the Committee as set forth in the following sentence, once so approved shall be deemed an approved Budget hereunder and under the DIP Documents. The Budget shall be updated, modified or supplemented by the Debtors with the written consent of the DIP Administrative Agent and with notice to, and in consultation with, the Committee, and upon the request of the DIP Administrative Agent from time to time in accordance with the DIP Agreement (provided that any update, modification or supplement shall be approved in writing by, and shall be in form and substance satisfactory to, the DIP Administrative Agent in its sole discretion), and no such updated, modified or supplemented budget shall be effective until so

approved and once approved shall be deemed the "Budget"; *provided, however* that in the event that the DIP Administrative Agent and the Debtors cannot agree as to an updated, modified or supplemented budget, the prior approved Budget shall continue in effect, with weekly details for any periods after the initial 13-week period to be derived in a manner reasonably satisfactory to the DIP Administrative Agent from the monthly budget prepared by the Debtors (and approved by the DIP Administrative Agent in its sole discretion prior to the Closing Date) for these Cases, and such disagreement shall give rise to an Event of Default under the DIP Agreement once the period covered by the prior approved Budget has terminated; *provided, however*, nothing herein shall prejudice the right of the Committee to challenge any material amendment to the Budget, which challenge may be asserted by an appropriate motion to be heard on an expedited basis. Each Budget delivered to the DIP Administrative Agent shall be accompanied by such supporting documentation as reasonably requested by the DIP Administrative Agent (which supporting documentation shall also be provided to the Committee) and shall be prepared in good faith, with due care and based upon assumptions the Debtors believe to be reasonable. A copy of any Budget (or updated Budget) shall be delivered to counsel for the Prepetition Term Loan Lenders, the Committee and the U.S. Trustee after (or if) it has been approved by the DIP Administrative Agent.

20. **Budget Compliance.** The Debtors shall at all times comply with the Budget, on the terms and subject to the variances set forth in the DIP Agreement. The Debtors shall provide all reports and other information as required in the DIP Agreement (subject to the grace periods provided therein) to the DIP Administrative Agent and the Committee so that they receive such reports and information at substantially the same time. The Debtors' failure to comply with the Budget (on the terms and subject to the variances set forth in the DIP

Agreement) or to provide the reports and other information required in the DIP Agreement shall constitute an Event of Default (as defined herein), following the expiration of any applicable grace period set forth in the DIP Agreement.

21. **Modification of Automatic Stay.** The automatic stay imposed under section 362(a)(2) of the Bankruptcy Code is hereby modified as necessary to effectuate all of the terms and provisions of this Final Order, including to: (a) permit the Debtors to grant on a final basis the DIP Liens, Adequate Protection Liens (if any), DIP Superpriority Claims, and Prepetition ABL Superpriority Claim (if adequate protection is necessary); (b) permit the Debtors to perform such acts as the DIP Administrative Agent and the Prepetition ABL Administrative Agent each may reasonably request to assure the perfection and priority of the liens granted herein; (c) permit the Debtors to incur all liabilities and obligations to the DIP Administrative Agent, DIP Lenders, and Prepetition ABL Parties under the DIP Documents, the DIP Facility, and this Final Order, as applicable; and (d) authorize the Debtors to pay, and the DIP Administrative Agent and the DIP Lenders to retain and apply, payments made in accordance with the terms of the Interim Order, this Final Order and the DIP Documents.

22. **Perfection of DIP Liens and Adequate Protection Liens.** This Final Order shall be sufficient and conclusive evidence of the creation, validity, perfection, and priority of all liens (including, without limitation, real property mortgages and deeds of trust) granted under the Interim Order, this Final Order and confirmed herein, including the DIP Liens and the Adequate Protection Liens (if any), without the necessity of filing or recording any financing statement, mortgage, deed of trust, notice, or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control

agreement, mortgage or deed of trust) to validate or perfect (in accordance with applicable non-bankruptcy law) the DIP Liens and the Adequate Protection Liens, or to evidence or entitle the DIP Administrative Agent, the DIP Lenders, and the Prepetition ABL Parties to the priorities granted herein. All DIP Collateral shall be free and clear of other liens, claims and encumbrances, except as described herein. Notwithstanding the foregoing, each of the DIP Administrative Agent and the Prepetition ABL Administrative Agent is authorized to file, in the applicable registries of deeds and other appropriate public records, as it in its sole discretion deems necessary or advisable, (i) notice of this Final Order, and (ii) such financing statements, security agreements, mortgages, deeds of trust, leasehold mortgages, notices of liens, and other similar documents to perfect in accordance with applicable non-bankruptcy law or to otherwise evidence the DIP Liens and the Adequate Protection Liens, and all such financing statements, mortgages, deeds of trust, leasehold mortgages, notices, and other documents shall be deemed to have been filed or recorded as of the Petition Date; *provided, however*, that no such filing or recordation shall be necessary or required in order to create or perfect the DIP Liens or the Adequate Protection Liens. The Debtors are authorized and directed to execute and deliver promptly upon demand to the DIP Administrative Agent and the Prepetition ABL Administrative Agent all such financing statements, mortgages, deeds of trust, leasehold mortgages, notices, and other documents as the DIP Administrative Agent or the Prepetition ABL Administrative Agent may reasonably request. Each of the DIP Administrative Agent and the Prepetition ABL Administrative Agent, in its discretion, may file a photocopy of this Final Order as a financing statement with any filing or recording office or with any registry of deeds or similar office, in addition to or in lieu of such financing statements, notices of lien, or similar instrument. To the extent that the Prepetition ABL Administrative Agent is the secured party under any security

agreement, mortgage, leasehold mortgage, landlord waiver, credit card processor notices or agreements, bailee letters, custom broker agreements, financing statement, deposit account control agreements, deposit account instruction agreements or any other collateral documents or relevant Prepetition ABL Documents then automatically and without further action, (i) the DIP Administrative Agent shall be deemed to be a secured party under such documents, (ii) the DIP Facility, together with any refinancings or replacements thereof, shall be deemed to be secured obligations under such documents, and (iii) the applicable provisions of such documents shall apply to the DIP Facility; all as fully and completely as if the DIP Administrative Agent was an original secured party in such documents and the DIP Facility was an original secured obligation in such documents; provided, however, that the foregoing provision shall not have the effect of relating back the attachment or perfection of the DIP Liens to any date or time prior to the Petition Date. To the extent the Prepetition ABL Administrative Agent is listed as loss payee or additional insured under any of the Debtors' insurance policies, the DIP Administrative Agent shall also be deemed to be the secured party under such documents or to be the loss payee or additional insured, as applicable. The Prepetition ABL Administrative Agent shall serve as agent for the DIP Administrative Agent for purposes of perfecting the DIP Administrative Agent's liens on all DIP Collateral that, without giving effect to the Bankruptcy Code and this Final Order, is of a type such that perfection of a lien therein may be accomplished only by possession or control by a secured party.

23. **Application of Proceeds of Collateral.** As a condition to the continued extension of credit under the DIP Facility and the continued authorization to use Cash Collateral, the Debtors have agreed that as of and commencing on the date of the Interim Hearing, the Debtors shall apply all net proceeds of DIP Collateral (including, without limitation, Cash

Collateral) and other payments received by the DIP Administrative Agent, including whether sold in the ordinary course or otherwise, as provided in the DIP Agreement.

24. **Protections of Rights of DIP Administrative Agent, DIP Lenders and Prepetition ABL Parties.**

(a) Unless the DIP Administrative Agent and the Prepetition ABL Administrative Agent, as applicable, shall have provided their prior written consent, or all DIP Obligations and all Prepetition ABL Obligations (excluding contingent indemnification obligations for which no claim has been asserted) have been, or contemporaneously will be, indefeasibly paid in full in cash and the lending commitments under the DIP Facility have terminated, any request to the Court for the entry in any of these Cases or any Successor Cases of any order (including any order confirming any plan of reorganization or liquidation) that authorizes any of the following shall constitute an Event of Default (as defined herein) under this Final Order: (i) the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage, deed of trust or collateral interest or other lien on all or any portion of the DIP Collateral or Prepetition Collateral and/or, except as set forth in Paragraph 7 or Paragraph 15 of this Final Order, that is entitled to administrative priority status, in each case that is superior to or *pari passu* with the DIP Liens, the DIP Superpriority Claims, the Prepetition ABL Liens, the Adequate Protection Liens, and/or the Prepetition ABL Superpriority Claim; (ii) the use of Cash Collateral for any purpose other than as permitted in the DIP Documents and this Final Order; (iii) except as set forth in the DIP Documents, the return of goods pursuant to section 546(h) of the Bankruptcy Code (or other return of goods on account of any prepetition indebtedness) to any creditor of any Debtor or any creditor's taking any setoff or recoupment against any of its prepetition indebtedness based upon any such return of goods pursuant to section 553 of the Bankruptcy Code or otherwise; or (iv) any

modification of any of the DIP Administrative Agent's, the DIP Lenders', or the Prepetition ABL Parties' rights under the Interim Order, this Final Order, the DIP Documents or the Prepetition ABL Documents, as applicable, with respect to any DIP Obligations or Prepetition ABL Obligations.

(b) Until the DIP Obligations (excluding contingent indemnification obligations for which no claim has been asserted) have been indefeasibly paid in full in cash, the Debtors shall (i) maintain books, records, and accounts to the extent and as required by the DIP Documents (and subject to the applicable grace periods set forth therein); (ii) reasonably cooperate with, consult with, and provide to the DIP Administrative Agent all such information and documents that any or all of the Debtors are obligated (including upon reasonable request by any of the DIP Administrative Agent) to provide under the DIP Documents or the provisions of this Final Order; (iii) upon reasonable advance notice, permit the DIP Administrative Agent, the Prepetition ABL Administrative Agent, and the duly authorized representatives or agents of each of the DIP Administrative Agent and the Prepetition ABL Administrative Agent, to visit and inspect any of the Debtors' respective properties, to examine and make abstracts or copies from any of their respective books and records, to tour the Debtors' business premises and other properties, and to discuss, and provide advice with respect to, their respective affairs, finances, properties, business operations, and accounts with their respective officers, employees, independent public accountants, and other professional advisors (other than legal counsel) as and to the extent required by the DIP Documents and/or the Prepetition ABL Documents; (iv) permit the DIP Administrative Agent, the Prepetition ABL Administrative Agent, and the duly authorized representatives or agents of each of the DIP Administrative Agent and the Prepetition ABL Administrative Agent to consult with the Debtors' management and advisors on matters concerning the Debtors' businesses, financial

condition, operations, and assets; and (v) upon reasonable advance notice, permit the DIP Administrative Agent and the Prepetition ABL Administrative Agent to conduct, at their discretion and at the Debtors' cost and expense, field audits, collateral examinations, liquidation valuations, and inventory appraisals at reasonable times in respect of any or all of the DIP Collateral and Prepetition Collateral in accordance with the DIP Documents and the Prepetition ABL Documents.

25. **Credit Bidding**. Subject to a timely and properly filed Challenge commenced by the Challenge Deadline (which Challenge is successful as set forth in a final judgment) and unless the Court orders otherwise for cause, in connection with any sale process authorized by the Court, the DIP Administrative Agent and the DIP Lenders may credit bid up to the full amount of outstanding DIP Obligations, including any accrued interest and expenses (each a "**Credit Bid**") in any sale of any DIP Collateral, whether such sale is effectuated through section 363 or section 1129 of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise, subject in each case to the rights and duties of the parties under the DIP Documents and to the provision of consideration sufficient to pay in full in cash any senior liens on the collateral that is subject to the credit bid. Each of the DIP Administrative Agent and the DIP Lenders shall be considered a "Qualified Bidder" with respect to its rights to acquire all or any of the DIP Collateral by Credit Bid.

26. **Proceeds of Subsequent Financing**. If the Debtors, any trustee, any examiner with expanded powers, or any responsible officer subsequently appointed in these Cases or any Successor Cases, shall request authority to obtain credit or incur debt pursuant to Bankruptcy Code sections 364(b), 364(c), or 364(d) or in violation of the DIP Documents at any time prior to the indefeasible repayment in full of all DIP Obligations, and the termination of the DIP Administrative Agent's and the DIP Lenders' obligation to extend credit under the DIP

Facility, including subsequent to the confirmation of any plan with respect to any or all of the Debtors and the Debtors' estates, and such facilities are proposed to be secured by any DIP Collateral, then such request shall constitute an Event of Default (as defined herein) under this Final Order.

27. **Cash Collection**. From and after the date of the entry of the Interim Order, all collections and proceeds of any DIP Collateral or Prepetition Collateral or services provided by any Debtor and all Cash Collateral (except as otherwise set forth in the DIP Agreement) that shall at any time come into the possession, custody, or control of any Debtor, or to which any Debtor is now or shall become entitled at any time, shall continue to be promptly deposited in the same lock-box and/or deposit accounts into which the collections and proceeds of the Prepetition Collateral were deposited under the Prepetition ABL Documents (or in such other accounts as are designated by the DIP Administrative Agent from time to time) (collectively, the "**Cash Collection Accounts**"), which accounts (except as otherwise set forth in the DIP Agreement) shall be subject to the sole dominion and control of the DIP Administrative Agent. All proceeds and other amounts in the Cash Collection Accounts shall be remitted to the DIP Administrative Agent for application in accordance with the DIP Documents and this Final Order. Unless otherwise agreed to in writing by the DIP Administrative Agent, or otherwise provided for herein, the Debtors shall maintain no accounts except those identified in any cash management order entered by the Court (a "**Cash Management Order**"). The Debtors and the financial institutions where the Debtors' Cash Collection Accounts are maintained (including those accounts identified in any Cash Management Order) are authorized and directed to remit, without offset or deduction, funds in such Cash Collection Accounts upon receipt of any direction to that effect from the DIP Administrative Agent (for the avoidance of doubt and

further to paragraph 22 of this Final Order, the DIP Administrative Agent shall be deemed to be a party to the CNB Agreements for purposes of this Final Order and any Cash Management Order). For the avoidance of doubt, nothing in the Interim Order, this Final Order or the DIP Documents shall modify the accounts into which the U.S. Department of Health & Human Services (“HHS”) and its component, the Centers for Medicare and Medicaid Services, provides reimbursement to the Debtors as payment for services rendered under the Medicare program. Furthermore, custody and control over the accounts to which the preceding sentence applies shall remain consistent with the applicable Medicare laws, regulations and enrollment agreements, including, but not limited to, the Electronic Funds Transfer (EFT) Authorization Agreement (Form CMS-588).

28. **Maintenance of DIP Collateral.** Until the indefeasible payment in full of all DIP Obligations, all Prepetition ABL Obligations, and the termination of the DIP Administrative Agent’s and the DIP Lenders’ obligation to extend credit under the DIP Facility, the Debtors shall: (a) insure the DIP Collateral as required under the DIP Facility or the Prepetition ABL Facility, as applicable; and (b) maintain the cash management system in effect as of the Petition Date, as modified by any Cash Management Order, or as otherwise required by the DIP Documents or this Final Order.

29. **Disposition of DIP Collateral.** Until, or contemporaneously with, the indefeasible payment in full of all DIP Obligations and Prepetition ABL Obligations, the Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral or Prepetition Collateral other than in the ordinary course of business without the prior written consent of the DIP Administrative Agent and Prepetition ABL Administrative Agent, as applicable (and no such consent shall be implied, from any other action, inaction or acquiescence

by the DIP Administrative Agent, DIP Lenders, the Prepetition ABL Administrative Agent, or the Prepetition ABL Parties, or from any order of this Court), except as otherwise provided for in the DIP Documents or otherwise ordered by the Court.

30. **DIP Termination Date**. The commitment of the DIP Lenders shall terminate and all amounts owing under the DIP Facility shall be due and payable on the earliest to occur of the following (in any event, the "DIP Termination Date"): (a) April 30, 2019; (b) the effective date of a plan of reorganization confirmed in the Cases; (c) the date on which Borrower consummates a transaction for the sale or disposition of all or substantially all of its assets; (d) the termination of the Commitments pursuant to Section 2.4 or Section 9.1 of the DIP Agreement; or (e) the date a Termination Declaration is delivered (as set forth below in paragraph 33). On the DIP Termination Date: (a) all applicable DIP Obligations shall be immediately due and payable, all commitments to extend credit under the applicable DIP Facility will terminate, other than as required in paragraph 39 with respect to the Carve Out, all treasury and cash management, hedging obligations and bank product obligations constituting Obligations (as defined in the DIP Agreement) shall be cash collateralized, and bankers' acceptances outstanding shall be cash collateralized in an amount equal to 105% of the face amount thereof, and such cash collateral shall not be subject to or subordinate to the Carve Out; (b) all authority to use Cash Collateral shall cease, *provided, however*, that during the Remedies Notice Period (as defined herein), the Debtors may use Cash Collateral to pay payroll obligations (other than severance) and other expenses that the DIP Administrative Agent approves as critical to keeping the Debtors' business operating subject to the Budget; *provided further* that following delivery of the Carve Out Trigger Notice (as defined herein), the Debtors shall be entitled to fund the Carve Out (as defined herein) in accordance with paragraph 39 of this Final Order; and (c)

upon the expiration of the Remedies Notice Period, the DIP Administrative Agent shall be entitled to exercise rights and remedies under the DIP Documents in accordance with this Final Order (including paragraph 33).

31. **Events of Default**. The occurrence of any of the following events, unless waived by the DIP Administrative Agent in writing and in accordance with the terms of the DIP Agreement, shall constitute an event of default (an "Event of Default"): (a) the failure of the Debtors to perform, in any respect, any of the terms, provisions, conditions, covenants, or obligations under this Final Order, including the failure to comply with the Case Milestones (as defined herein), or (b) the occurrence of an "Event of Default" under the DIP Agreement.

32. **Milestones**. As a condition to the continued access to the DIP Facility and the continued use of Cash Collateral, the Debtors shall comply with the Sale Transaction Milestones (as defined on Schedule 8.21 to the DIP Agreement attached as Exhibit A hereto), which milestones are also set forth on Schedule 2 hereto (as may be amended from time to time in accordance with the DIP Documents, the "Case Milestones"). For the avoidance of doubt, the failure of the Debtors to comply with any of the Case Milestones shall (a) constitute an Event of Default under the DIP Agreement and this Final Order; (b) subject to the expiration of the Remedies Notice Period (as defined below), result in the automatic termination of the Debtors' authority to use Cash Collateral under this Final Order; and (c) permit the DIP Administrative Agent, subject to paragraph 33, to exercise the rights and remedies provided for in this Final Order and the DIP Documents. For the avoidance of doubt, each document or transaction referenced on Schedule 2 and/or in connection with the Case Milestones shall be subject to the review and approval of the DIP Administrative Agent in its sole discretion.

33. **Rights and Remedies Upon Event of Default.** Immediately upon the occurrence and during the continuation of an Event of Default, notwithstanding the provisions of section 362 of the Bankruptcy Code, without any application, motion or notice to, hearing before, or order from the Court, but subject to the terms of this Final Order (and the Remedies Notice Period) (a) the DIP Administrative Agent may declare (any such declaration shall be referred to herein as a "Termination Declaration") (i) all DIP Obligations owing under the respective DIP Documents to be immediately due and payable, (ii) the termination, reduction or restriction of any further commitment to extend credit to the Debtors to the extent any such commitment remains under the DIP Facility, (iii) termination of the DIP Facility and the DIP Documents as to any future liability or obligation of the DIP Administrative Agent and the DIP Lenders, but without affecting any of the DIP Liens or the DIP Obligations, and (iv) that the application of the Carve Out has occurred through the delivery by the DIP Administrative Agent of the Carve Out Trigger Notice (as defined herein) to the Debtors, the U.S. Trustee, counsel to CNB and counsel to the Committee; and (b) the DIP Administrative Agent may declare a termination, reduction or restriction on the ability of the Debtors to use Cash Collateral. The Termination Declaration shall be given by electronic mail (or other electronic means) to counsel to the Debtors, counsel to the Committee, counsel to the Prepetition Term Loan Lenders, counsel to CNB and the U.S. Trustee. The automatic stay in the Cases otherwise applicable to the DIP Administrative Agent, the DIP Lenders, and the Prepetition ABL Parties is hereby modified so that five (5) business days after the date a Termination Declaration is delivered (the "Remedies Notice Period"), subject to first funding the Carve Out (as defined herein), the DIP Administrative Agent and the DIP Lenders shall be entitled to exercise their rights and remedies in accordance with the DIP Documents and this Final Order to satisfy the DIP Obligations, DIP

Superpriority Claims, and DIP Liens; *provided* that upon the repayment in full of the DIP Obligations, the Prepetition ABL Administrative Agent shall be entitled to exercise its rights and remedies in accordance with the Prepetition ABL Documents and this Final Order to satisfy the Prepetition ABL Obligations, the Adequate Protection Liens, and the Prepetition ABL Superpriority Claim. During the Remedies Notice Period, the Debtors and/or the Committee shall be entitled to seek an emergency hearing within the Remedies Notice Period. Unless the Court orders otherwise, the automatic stay, as to DIP Administrative Agent, the DIP Lenders, and the Prepetition ABL Administrative Agent, as applicable, shall automatically be terminated at the end of the Remedies Notice Period without further notice or order. Upon expiration of the Remedies Notice Period, the DIP Administrative Agent, the DIP Lenders, and, the Prepetition ABL Administrative Agent shall be permitted to exercise all remedies set forth herein, in the DIP Documents or the Prepetition ABL Documents, as applicable, and as otherwise available at law without further order of or application or motion to the Court consistent with the Subordination Agreements, the DIP Agreement and paragraph 29 of this Final Order.

34. **Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Final Order.** The DIP Administrative Agent, the DIP Lenders, and the Prepetition ABL Parties have acted in good faith in connection with the Interim Order and this Final Order and are entitled to rely upon the protections granted herein, in the Interim Order and by section 364(e) of the Bankruptcy Code. Based on the findings set forth in the Interim Order, this Final Order and the record made during the Interim Hearing and the Final Hearing, and in accordance with section 364(e) of the Bankruptcy Code, in the event any or all of the provisions of the Interim Order or this Final Order are hereafter reargued, reconsidered, reversed, modified, amended, or vacated by a subsequent order of this Court or any other court,

the DIP Administrative Agent, the DIP Lenders, and the Prepetition ABL Parties are entitled to the protections provided in section 364(e) of the Bankruptcy Code to the maximum extent set forth therein.

35. **DIP and Other Expenses.** The Debtors are authorized and directed to pay (a) all reasonable and documented prepetition and postpetition fees and out-of-pocket expenses due and outstanding as of the Petition Date of the Prepetition ABL Administrative Agent in accordance with the Prepetition ABL Documents, and (b) all reasonable and documented prepetition and postpetition fees and out-of-pocket expenses of the DIP Administrative Agent, the DIP Lenders, in connection with the DIP Facility, as provided in the DIP Documents including attorneys' fees, monitoring and appraisal fees, financial advisory fees, fees and expenses of other consultants, and indemnification and reimbursement of fees and expenses. Payment of all such fees and expenses shall not be subject to allowance by the Court. Such professionals shall deliver a reasonably detailed summary of services provided, which summary may be redacted or modified to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of such invoices shall not constitute any waiver of the attorney client privilege or of any benefits of the attorney work product doctrine) to the U.S. Trustee and counsel for the Committee contemporaneously with the delivery of such fee and expense statements to the Debtors. The U.S. Trustee reserves the right, subject to the approval of the Court, to request a non-redacted version of such summary. Any objections raised by the Debtors, the U.S. Trustee or the Committee with respect to such invoices must be in writing and state with particularity the grounds therefor and must be submitted to the applicable professional within ten (10) business days of the receipt of such invoice; if after ten (10) days such objection

remains unresolved, it will be subject to resolution by the Court. Pending such resolution, the undisputed portion of any such invoice will be paid promptly by the Debtors. Notwithstanding the foregoing, the Debtors are authorized and directed to pay on the Closing Date all reasonable and documented fees, costs, and out-of-pocket expenses of the DIP Administrative Agent, the DIP Lenders, and the Prepetition ABL Administrative Agent incurred on or prior to such date. No attorney or advisor to the DIP Administrative Agent, the DIP Lenders or any Prepetition ABL Party shall be required to file an application seeking compensation for services or reimbursement of expenses with the Court.

36. **Indemnification.** The Debtors shall indemnify and hold harmless the DIP Administrative Agent and the DIP Lenders in accordance with the terms and conditions of the DIP Agreement. Upon the repayment in full in cash of the DIP Revolving Loans, the Debtors shall pay \$500,000 from proceeds of the DIP Collateral into an indemnity account (the "DIP Indemnity Account") subject to first priority liens of the DIP Administrative Agent, for the benefit of the DIP Administrative Agent and the DIP Lenders. The DIP Indemnity Account shall secure contingent indemnification obligations and other contingent claims arising under the DIP Agreement, the other DIP Documents or otherwise in respect of the DIP Obligations until such time as the DIP Administrative Agent and the DIP Lenders receive releases and discharges of claims and liabilities in form and substance reasonably satisfactory to the DIP Administrative Agent and the DIP Lenders.

37. **Proofs of Claim.** The DIP Administrative Agent, the DIP Lenders, and Prepetition ABL Parties will not be required to file proofs of claim in any of the Cases or Successor Cases for any claim allowed herein. Notwithstanding any order entered by the Court in relation to the establishment of a bar date in any of the Cases or Successor Cases to the contrary,

the Prepetition ABL Administrative Agent, on behalf of itself and the Prepetition ABL Parties, is hereby authorized and entitled, in its sole discretion, but not required, to file (and amend and/or supplement, as it sees fit) a proof of claim and/or aggregate proofs of claim in each of the Cases or Successor Cases with respect to the Prepetition ABL Obligations. Any proof of claim filed by the Prepetition ABL Administrative Agent shall be deemed to be in addition to and not in lieu of any other proof of claim that may be filed by any of the Prepetition ABL Parties. Any order entered by the Court in relation to the establishment of a bar date in any of the Cases or Successor Cases shall not apply to any claim of the DIP Administrative Agent, the DIP Lenders, and the Prepetition ABL Parties arising under, or in connection with, the DIP Documents or the Prepetition ABL Documents, as applicable.

38. **Rights of Access and Information.** Without limiting the rights of access and information afforded the DIP Administrative Agent and the DIP Lenders under the DIP Documents, the Debtors shall be, and hereby are, required to afford representatives, agents and/or employees of the DIP Administrative Agent and the Prepetition ABL Administrative Agent reasonable access to the Debtors' premises and their books and records in accordance with the DIP Documents and the Prepetition ABL Documents, as applicable, and shall reasonably cooperate, consult with, and provide to such persons all such information as may be reasonably requested. The DIP Lenders may participate in any such visit or inspection at the expense of the Debtors as set forth in the DIP Documents. In addition, the Debtors authorize their independent certified public accountants, financial advisors, investment bankers and consultants, to cooperate, consult with, and provide to the DIP Administrative Agent and the Prepetition ABL Administrative Agent all such information as may be reasonably requested with respect to the business, results of operations and financial condition of any of the Debtors.

39. Carve Out.

(a) Subject to the terms and conditions contained in this paragraph 39, the DIP Liens, DIP Superpriority Claims, the Prepetition ABL Liens, the Adequate Protection Liens and the Prepetition ABL Superpriority Claim are all subordinate to the following (collectively, the “Carve Out”):

(i) Allowed administrative expenses pursuant to 28 U.S.C. § 1930(a)(6) for fees, together with the statutory rate of interest, payable to the Office of the United States Trustee, as determined by agreement of the U.S. Trustee or by final order of this Court and 28 U.S.C. § 156(c) for fees required to be paid to the Clerk of this Court;

(ii) All accrued and unpaid fees, disbursements, costs and expenses, allowed at any time by this Court and incurred by professionals retained by the Debtors or the Committee (the “Case Professionals”), through the date of service of a Carve Out Trigger Notice (as defined below), up to and as limited by the Budget amounts for each Case Professional or category of Case Professional through the date of service of said Carve Out Trigger Notice (including partial amounts for any Carve Out Trigger Notice given other than at the end of a week, and after giving effect to all carryforwards and carrybacks from prior or subsequent favorable budget variances for such Case Professional), less the amount of any prepetition retainers received by such Case Professionals and not previously returned or applied to fees and expenses; and

(iii) All accrued and unpaid fees, disbursements and expenses incurred by the Case Professionals from and after the date of service of a Carve Out Trigger Notice, to the extent allowed at any time, in an aggregate amount not to exceed \$200,000 (the “Carve Out Cap”) less the amount of any prepetition retainers received by such Case Professionals and not applied to

the fees, disbursements, costs and expenses set forth in clause (ii) above. The Carve Out Cap shall be reduced on a dollar-for-dollar basis by any payments of fees or expenses of the Case Professionals made after delivery of the Carve Out Trigger Notice in respect of fees and expenses incurred after delivery of the Carve Out Trigger Notice. For purposes of the foregoing, “Carve Out Trigger Notice” shall mean a written notice delivered by the DIP Administrative Agent to the Debtors and their counsel, the U.S. Trustee, counsel to CNB, counsel to the Prepetition Term Loan Lenders and lead counsel to the Committee, which notice may be delivered at any time by the DIP Administrative Agent (a) in connection with the repayment in full in cash of the DIP Obligations and the Prepetition ABL Obligations or (b) following the occurrence and continuance of any Event of Default and, in any case, shall specify that it is a “Carve Out Trigger Notice.” Coincident with the repayment in full in cash of the DIP Obligations and the Prepetition ABL Obligations (the date of such repayment, the “Repayment Date”), an amount equal to the Carve Out (as of the Repayment Date), shall, to the extent reflected in the most recent borrowing base certificate delivered to the DIP Administrative Agent by the Debtors and maintained as part of a reserve against the borrowing base, be funded (to the extent of any shortfall therein) with the proceeds of the DIP Facility (which shall then constitute DIP Obligations) and be included in the repayment amount). Following delivery of a Carve Out Trigger Notice, upon the funding of the Carve Out as of the date of the Carve Out Trigger Notice, none of the DIP Administrative Agent, the DIP Lenders, and the Prepetition ABL Parties shall have any further liability whatsoever for the Carve Out (including any amounts described in subsections (a)(i)-(iii) above) or any subordination in respect thereof.

(b) For the avoidance of doubt (but subject to subsection (a)(iii) above), the Carve Out shall be senior to the DIP Liens, the DIP Superpriority Claim, the Prepetition ABL

Liens, the Adequate Protection Liens and the Prepetition ABL Superpriority Claim, and any and all other forms of adequate protection, liens or claims securing the DIP Obligations and/or the Prepetition ABL Obligations.

(c) Nothing herein, including the inclusion of line items in the Budget for Case Professionals, shall be construed as consent to the allowance of any particular professional fees or expense of the Debtors, of the Committee, or of any other person or shall affect the right of the DIP Administrative Agent, the Prepetition ABL Administrative Agent, or the Prepetition ABL Parties to object to the allowance and payment of such fees and expenses. The DIP Administrative Agent, the DIP Lenders and the Prepetition ABL Parties shall not be responsible for the direct payment or reimbursement of any fees or disbursements of any Case Professionals incurred in connection with the Cases or any Successor Cases under any chapter of the Bankruptcy Code. Nothing in the Interim Order, this Final Order or otherwise shall be construed to obligate the DIP Administrative Agent, the DIP Lenders or the Prepetition ABL Parties in any way to pay compensation to or to reimburse expenses of any Case Professional, or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

40. **Limitations on Use of DIP Proceeds, Cash Collateral, and Carve Out.**

The DIP Facility, the DIP Collateral, the Prepetition Collateral, the Cash Collateral and the Carve Out may not be used in connection with: (a) except to contest the occurrence of an Event of Default, preventing, hindering, or delaying any of the DIP Administrative Agent's, the DIP Lenders', or the Prepetition ABL Parties' enforcement or realization upon any of the DIP Collateral or Prepetition Collateral; (b) using or seeking to use Cash Collateral except as provided for in this Final Order and the DIP Documents; (c) except as permitted in the DIP Documents, selling or otherwise disposing of DIP Collateral without the consent of the DIP

Administrative Agent; (d) except as permitted in the DIP Documents, using or seeking to use any insurance proceeds constituting DIP Collateral without the consent of the DIP Administrative Agent; (e) except as permitted in the DIP Documents, incurring Indebtedness (as defined in the DIP Agreement) without the prior consent of the DIP Administrative Agent; (f) seeking to amend or modify any of the rights granted to the DIP Administrative Agent, the DIP Lenders, or the Prepetition ABL Parties under the Interim Order, this Final Order, the DIP Documents, or the Prepetition ABL Documents, including seeking to use Cash Collateral and/or DIP Collateral on a contested basis; (g) objecting to or challenging in any way the DIP Liens, the DIP Obligations, the Prepetition ABL Liens, the Prepetition ABL Obligations, the DIP Collateral (including Cash Collateral) or, as the case may be, Prepetition Collateral, or any other claims or liens, held by or on behalf of any of the DIP Administrative Agent, the DIP Lenders, or the Prepetition ABL Parties, respectively; (h) asserting, commencing, or prosecuting any claims or causes of action whatsoever, including any actions under chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions to recover or disgorge payments, against any of the DIP Administrative Agent, the DIP Lenders, the Prepetition ABL Parties, or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees; (i) litigating, objecting to, challenging, or contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the DIP Obligations, the DIP Liens, the Prepetition ABL Liens, the Prepetition ABL Obligations or any other rights or interests of any of the DIP Administrative Agent, the DIP Lenders, or the Prepetition ABL Parties; or (j) seeking to subordinate, recharacterize, disallow or avoid the DIP Obligations or the Prepetition ABL Obligations; *provided, however*, that the Carve Out and such collateral proceeds and loans under the DIP Documents may be used for allowed fees and expenses, in an amount

not to exceed, subject to the Final Order, \$100,000 in the aggregate (the "Investigation Budget Amount"), incurred solely by the Committee, in investigating (but not prosecuting or challenging) the validity, enforceability, perfection, priority or extent of the Prepetition ABL Liens and the Prepetition ABL Obligations, in accordance with paragraph 42 of this Final Order; provided, however, that nothing in this Final Order shall prevent the Committee from seeking or obtaining payment and reimbursement of its professional fees and expenses from the Excluded Assets or the proceeds thereof or any other assets (or proceeds thereof) (if any) that are not subject to the DIP Liens or the Prepetition ABL Liens.

41. Payment of Compensation. Nothing herein shall be construed as a consent to the allowance of any professional fees or expenses or shall affect the right of the DIP Administrative Agent, the DIP Lenders, or the Prepetition ABL Parties to object to the allowance and payment of such fees and expenses. So long as an unwaived Event of Default has not occurred, the Debtors shall be permitted to pay fees and expenses allowed and payable by final order (that has not been vacated or stayed, unless the stay has been vacated) under sections 328, 330, 331, and 363 of the Bankruptcy Code, as the same may be due and payable, as reflected in the most recent Budget provided by the Debtors to the DIP Administrative Agent.

42. Effect of Stipulations on Third Parties.

(a) *Generally.* The admissions, stipulations, agreements, releases, and waivers set forth in the Interim Order and this Final Order as to the Prepetition ABL Parties, the DIP Administrative Agent, the DIP Lenders and the Prepetition ABL Facility (including the Debtors' Stipulations, collectively, the "Prepetition Lien and Claim Stipulations") are and shall be binding on the Debtors. In addition, the Prepetition Lien and Claim Stipulations shall be binding on any subsequent trustee, responsible person, examiner with expanded powers, any other estate

representative, and all creditors and parties in interest and all of their successors in interest and assigns, including the Committee, unless, and solely to the extent that, a party in interest with standing and requisite authority (other than the Debtors, as to which any Challenge (as defined below) is irrevocably waived and relinquished) (i) has timely filed the appropriate pleadings, and timely commenced the appropriate proceeding required under the Bankruptcy Code and Bankruptcy Rules, including as required pursuant to Part VII of the Bankruptcy Rules (in each case subject to the limitations set forth in this paragraph 42) challenging the Prepetition Lien and Claim Stipulations (each such proceeding or appropriate pleading commencing a proceeding or other contested matter, a "Challenge") no later than January 21, 2019 (the "Challenge Deadline"), as such applicable date may be extended in writing from time to time in the sole discretion of the Prepetition ABL Administrative Agent (with respect to the Prepetition ABL Documents), or by this Court for good cause shown pursuant to an application filed by a party in interest prior to the expiration of the Challenge Deadline; and (ii) this Court enters judgment in favor of the plaintiff or movant in any such timely and properly commenced Challenge proceeding and any such judgment has become a final judgment that is not subject to any further review or appeal. In the event that, on or before five (5) days prior to the expiration of the Challenge deadline (i.e., January 16, 2019, as to a Challenge Deadline of January 21, 2019), the Committee presents in good faith to the Prepetition ABL Administrative Agent findings that indicate that the Committee has a valid Challenge, the Challenge Deadline shall be tolled (as to the Committee only) through and including the earlier of (I) five (5) days after the Prepetition Agent declines to agree to the relief and/or remedy requested by the Committee in connection with such Challenge (which five (5) day period shall not be deemed to expire on any date earlier than the Challenge Deadline), or (II) January 31, 2019 (the dates referenced in this sentence may be extended in writing from time

to time in the sole discretion of the Prepetition ABL Agent). The Committee shall have standing and requisite authority to file a Challenge as to the amount of the claims of the Prepetition ABL Lenders and the Prepetition ABL Administrative Agent and as to the validity, extent and priority of the Prepetition ABL Liens; provided, however, that the Committee, absent a further order of the Court, shall not have standing or authority to file or prosecute any other Challenge, right, claim or cause of action. Notwithstanding the foregoing, if a chapter 11 trustee is appointed or the Cases are converted to chapter 7 prior to the expiration of the Challenge Deadline, (1) the chapter 11 trustee or chapter 7 trustee, as applicable, shall have until the later of the Challenge Deadline or the tenth (10th) day after the appointment of the chapter 11 trustee or the conversion of the Cases to chapter 7, as applicable, to commence a Challenge, subject to any further extension by order of the Court for cause; and (2) if the Committee has asserted a Challenge prior to the Challenge Deadline, the chapter 11 trustee or chapter 7 trustee will stand in the shoes of the Committee in such Challenge. For the avoidance of doubt, the Challenge Deadline shall not apply to the assertion or filing of claims or causes of action against any person or entity other than the Prepetition ABL Administrative Agent and the Prepetition ABL Lenders.

(b) *Binding Effect.* To the extent no Challenge is timely and properly commenced by the Challenge Deadline, or to the extent such proceeding does not result in a final and non-appealable judgment or order of this Court that is inconsistent with the Prepetition Lien and Claim Stipulations, then, without further notice, motion, or application to, order of, or hearing before, this Court and without the need or requirement to file any proof of claim, the Prepetition Lien and Claim Stipulations shall, pursuant to this Final Order, become binding, conclusive, and final on any person, entity, or party in interest in the Cases, and their successors and assigns, and in any Successor Case for all purposes and shall not be subject to challenge or objection by any party

in interest, including a trustee, responsible individual, examiner with expanded powers, or other representative of the Debtors' estates. Notwithstanding anything to the contrary herein, if any such proceeding is properly and timely commenced, the Prepetition Lien and Claim Stipulations shall nonetheless remain binding on all other parties in interest and preclusive as provided in subparagraph (a) above except to the extent that any of such Prepetition Lien and Claim Stipulations is expressly the subject of a timely and properly filed Challenge, which Challenge is successful as set forth in a final judgment as provided in subparagraph (a) above. To the extent any such Challenge proceeding is timely and properly commenced, the Prepetition ABL Parties shall be entitled to payment of the related costs and expenses, including, but not limited to, reasonable attorneys' fees, incurred under the Prepetition ABL Documents in defending themselves in any such proceeding as adequate protection. Upon a successful Challenge brought pursuant to this paragraph 42, the Court may fashion any appropriate remedy

(c) *Stipulations as to Other Parties.* For the avoidance of doubt, the deadlines set forth in Paragraph 42(a) shall not apply to the admissions, stipulations, agreements, releases and waivers set forth in the Interim Order and this Final Order as to extensions of credit, liens, pledges, mortgages or other claims (affirmative or otherwise) or encumbrances (the "Non-Prepetition ABL Parties' Claims") held or asserted by parties (the "Non-Prepetition ABL Parties") other than the Prepetition ABL Parties, the DIP Administrative Agent and/or the DIP Lenders. Furthermore, the Committee shall have standing and requisite authority to file a complaint against any such Non-Prepetition ABL Parties challenging the Non-Prepetition ABL Parties' Claims; provided, however, to the extent that the Debtors, in the Interim Order and this Final Order, made no such admission, stipulation, agreement, release and waiver against a Non-Prepetition ABL

Party, then such authority and standing shall remain with the Debtors, absent the Court ordering otherwise.

43. **Government Setoff/Recoupment Rights.** For the avoidance of doubt, nothing in the Interim Order, this Final Order or the DIP Documents shall affect, modify or impair any governmental unit's recoupment or setoff rights, claims, or defenses, and/or the priority of such recoupment and setoff rights, claims, and defenses. Nothing contained in this Order should be construed to relieve the Debtors of any legal duties or obligations to any governmental unit under applicable non-bankruptcy laws and regulations. Nothing contained in this Order should be construed to affect the exclusive jurisdiction of HHS to adjudicate and pay Medicare claims in the ordinary course; provided, however, that the Debtors, the Committee, the Prepetition ABL Administrative Agent and the DIP Administrative Agent reserve the right to contest HHS' exclusive jurisdiction at a later date.

44. **No Third Party Rights.** Except as explicitly provided for herein, this Final Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect, or incidental beneficiary.

45. **Section 506(c) Claims.** No costs or expenses of administration which have been or may be incurred in the Cases at any time shall be charged against the DIP Administrative Agent, the DIP Lenders, the Prepetition ABL Parties, or any of their respective claims, the DIP Collateral, or the Prepetition Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code, or otherwise, without the prior written consent of the DIP Administrative Agent, the DIP Lenders or the Prepetition ABL Administrative Agent, as applicable, and no such consent shall be implied from any other action, inaction, or acquiescence by any such agents or lenders.

46. **No Marshaling/Applications of Proceeds.** The DIP Administrative Agent, the DIP Lenders, and the Prepetition ABL Parties shall not be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the DIP Collateral or the Prepetition Collateral, as the case may be, and proceeds shall be received and applied pursuant to this Final Order and the DIP Documents notwithstanding any other agreement or provision to the contrary; provided, however, that, unless an Event of Default has occurred and remains in existence, the DIP Administrative Agent and the DIP Lenders shall use reasonable efforts (and, as a component of such efforts, shall endeavor to reasonably cooperate with the Debtors and the Committee) to satisfy claims on account of (i) DIP Revolving Loans from DIP Collateral that is also Prepetition Collateral or the proceeds thereof, and (ii) DIP Term Loans from DIP Collateral that is not Prepetition Collateral or the proceeds thereof; provided, further, however, that unless an Event of Default has occurred and remains in existence, the DIP Administrative Agent and the DIP Lenders shall use reasonable efforts (and, as a component of such efforts, shall endeavor to reasonably cooperate with the Debtors and the Committee) to satisfy claims on account of DIP Term Loans from assets constituting DIP Collateral that are not Commercial Tort Claims.

47. **Section 552(b).** The Prepetition ABL Parties shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the Prepetition ABL Parties, with respect to proceeds, product, offspring or profits of any of the Prepetition Collateral.

48. **Access to DIP Collateral.** Notwithstanding anything contained herein to the contrary (but subject to the last sentence of this paragraph 48, which shall control in the event

of any conflict) and without limiting any other rights or remedies of the DIP Administrative Agent exercisable on behalf of the DIP Lenders contained in this Final Order, the DIP Documents, or otherwise available at law or in equity, and subject to the terms of the DIP Documents, upon written notice to the landlord of any leased premises that an Event of Default or the DIP Termination Date has occurred and is continuing, the DIP Administrative Agent may, subject to the applicable notice provisions, if any, in this Final Order and any separate applicable agreement by and between such landlord and the DIP Administrative Agent, enter upon any leased premises of the Debtors for the purpose of exercising any remedy with respect to DIP Collateral located thereon and shall be entitled to all of the Debtors' rights, privileges and responsibilities as lessee under such lease without interference from the landlords thereunder. Nothing herein shall require the DIP Administrative Agent to assume any lease as a condition to the rights afforded in this paragraph. For the avoidance of doubt, subject to (and without waiver of) the rights of the DIP Administrative Agent and the DIP Lenders under applicable nonbankruptcy law, the DIP Administrative Agent and/or the DIP Lenders can only enter upon a leased premises in accordance with (i) a separate agreement with the landlord at the applicable leased premises or (ii) upon entry of an order of this Court obtained by motion of the DIP Administrative Agent and/or the DIP Lenders on such notice to the applicable landlord as shall be required by the Court.

49. **Limits on Lender Liability.** Nothing in the Interim Order, this Final Order, any of the DIP Documents, or any other documents related thereto shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Administrative Agent, the DIP Lenders or the Prepetition ABL Parties of any liability for any claims arising from any activities by the Debtors in the operation of their businesses or in connection with the

administration of these Cases. The DIP Administrative Agent and the DIP Lenders shall not, solely by reason of having made loans under the DIP Facility, be deemed in control of the operations of the Debtors or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., as amended, or any similar federal or state statute). Nothing in the Interim Order, this Final Order or the DIP Documents, shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Administrative Agent, the DIP Lenders, or any of the Prepetition ABL Parties of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors.

50. **Insurance Proceeds and Policies.** As of the entry of the Interim Order and to the fullest extent provided by applicable law, the DIP Administrative Agent (on behalf of the DIP Lenders) and the Prepetition ABL Administrative Agent (on behalf of the Prepetition ABL Lenders) were, and were deemed to be, without any further action or notice, named as additional insured and loss payee on each insurance policy maintained by the Debtors that in any way relates to the DIP Collateral or proceeds thereof.

51. **Joint and Several Liability.** Nothing in this Final Order shall be construed to constitute a substantive consolidation of any of the Debtors’ estates, it being understood, however, that Debtors shall be jointly and severally liable for the obligations hereunder and all DIP Obligations in accordance with the terms hereof and of the DIP Facility and the DIP Documents.

52. **No Superior Rights of Reclamation.** Based on the findings and rulings herein regarding the integrated nature of the DIP Facility and the Prepetition ABL Documents

and the relation back of the DIP Liens, in no event shall any alleged right of reclamation or return (whether asserted under section 546(c) of the Bankruptcy Code or otherwise) be deemed to have priority over the DIP Liens.

53. **Rights Preserved.** Notwithstanding anything herein to the contrary, the entry of this Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, subject to the DIP Documents, the Prepetition ABL Documents and the Subordination Agreements, as applicable: (a) the DIP Administrative Agent's, the DIP Lenders' and the Prepetition ABL Administrative Agent's right to seek any other or supplemental relief in respect of the Debtors; (b) any of the rights of any of the DIP Administrative Agent, the DIP Lenders, and/or the Prepetition ABL Administrative Agent under the Bankruptcy Code or under non-bankruptcy law, including the right to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of any of the Cases or Successor Cases, conversion of any of the Cases to cases under chapter 7, or appointment of a chapter 11 trustee or examiner with expanded powers, or (iii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans; or (c) any other rights, claims or privileges (whether legal, equitable or otherwise) of any of the DIP Administrative Agent, the DIP Lenders, or the Prepetition ABL Parties. Notwithstanding anything herein to the contrary, the entry of this Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the Debtors', the Committee's, or any party in interest's right to oppose any of the relief requested in accordance with the immediately preceding sentence except as expressly set forth in this Final Order.

54. **No Waiver by Failure to Seek Relief.** The failure of the DIP Administrative Agent, the DIP Lenders, or Prepetition ABL Parties to seek relief or otherwise

exercise their rights and remedies under this Final Order, the DIP Documents, the Prepetition ABL Documents, or applicable law, as the case may be, shall not constitute a waiver of any of the rights hereunder, thereunder, or otherwise of the DIP Administrative Agent, the DIP Lenders, the Prepetition ABL Parties, the Committee, or any party in interest.

55. **Binding Effect of Final Order.** Immediately upon execution by this Court, the terms and provisions of this Final Order shall become valid and binding upon and inure to the benefit of the Debtors, the DIP Administrative Agent, the DIP Lenders, the Prepetition ABL Parties, all other creditors of any of the Debtors, the Committee (and all other (if any) court-appointed committees), and all other parties-in-interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in any of the Cases, any Successor Cases, or upon dismissal of any Case or Successor Case.

56. **No Modification of Final Order.** Until and unless the DIP Obligations and the Prepetition ABL Obligations (other than contingent obligations with respect to then unasserted claims) have been indefeasibly paid in full in cash (such payment being without prejudice to any terms or provisions contained in the DIP Facility which survive such discharge by their terms), and all commitments to extend credit under the DIP Facility have been terminated, the Debtors irrevocably waive the right to seek and shall not seek or consent to, directly or indirectly: (a) without the prior written consent of the DIP Administrative Agent and the Prepetition ABL Administrative Agent, (i) any modification, stay, vacatur or amendment to this Final Order; or (ii) a priority claim for any administrative expense or unsecured claim against the Debtors (now existing or hereafter arising of any kind or nature whatsoever, including any administrative expense of the kind specified in sections 503(b), 506(c), 507(a) or 507(b) of the Bankruptcy Code) in any of the Cases or Successor Cases, equal or superior to the

DIP Superpriority Claims or Prepetition ABL Superpriority Claim, other than the Carve Out and other than as set forth in Paragraph 7 or Paragraph 15 of this Final Order; (b) without the prior written consent of the DIP Administrative Agent and the Prepetition ABL Administrative Agent for any order allowing use of Cash Collateral (other than as permitted during the Remedies Notice Period) resulting from DIP Collateral or Prepetition Collateral; (c) without the prior written consent of the DIP Administrative Agent, any lien on any of the DIP Collateral with priority equal or superior to the DIP Liens, except as specifically provided in the DIP Documents; or (d) without the prior written consent of the Prepetition ABL Administrative Agent, any lien on any of the DIP Collateral with priority equal or superior to the Prepetition ABL Liens or Adequate Protection Liens (other than the DIP Liens). The Debtors irrevocably waive any right to seek any amendment, modification or extension of this Final Order without the prior written consent, as provided in the foregoing, of the DIP Administrative Agent and the Prepetition ABL Administrative Agent, and no such consent shall be implied by any other action, inaction or acquiescence of the DIP Administrative Agent or the Prepetition ABL Administrative Agent.

57. **Continuing Effect of Subordination Agreement.** Nothing in this Final Order shall alter or affect the rights or obligations of the Debtors, the DIP Administrative Agent, the DIP Lenders, and the Prepetition ABL Parties under the Subordination Agreements.

58. **Final Order Controls.** In the event of any inconsistency between the terms and conditions of the DIP Documents, the Interim Order and/or this Final Order, the provisions of this Final Order shall govern and control.

59. **Discharge.** Subject to a timely and properly filed Challenge commenced by the Challenge Deadline (which Challenge is successful as set forth in a final judgment), the

DIP Obligations and the obligations of the Debtors with respect to the adequate protection provided herein shall not be discharged by the entry of an order confirming any plan of reorganization in any of the Cases, notwithstanding the provisions of section 1141(d) of the Bankruptcy Code, unless such obligations have been indefeasibly paid in full in cash (other than contingent indemnification obligations for which no claim has been asserted), on or before the effective date of such confirmed plan of reorganization, unless each of the DIP Administrative Agent, the DIP Lenders, and the Prepetition ABL Administrative Agent, as applicable, has otherwise agreed in writing.

60. **Survival.** The provisions of this Final Order and any actions taken pursuant hereto shall survive entry of any order which may be entered: (a) confirming any plan of reorganization in any of the Cases; (b) converting any of the Cases to a case under chapter 7 of the Bankruptcy Code; (c) dismissing any of the Cases or any Successor Cases; or (d) pursuant to which this Court abstains from hearing any of the Cases or Successor Cases. The terms and provisions of this Final Order, including the claims, liens, security interests, and other protections granted to the DIP Administrative Agent, DIP Lenders, and Prepetition ABL Parties granted pursuant to the Interim Order and this Final Order and/or the DIP Documents, notwithstanding the entry of any such orders described in (a)-(d), above, shall continue in the Cases, in any Successor Cases, or following dismissal of the Cases or any Successor Cases, and shall maintain their validity, enforceability and priority as provided by this Final Order until: (i) in respect of the DIP Facility, all the DIP Obligations, pursuant to the DIP Documents and this Final Order, have been indefeasibly paid in full in cash (other than contingent obligations with respect to then unasserted claims; such payment being without prejudice to any terms or provisions contained in the DIP Facility which survive such discharge by their terms), and all commitments to extend credit under

the DIP Facility are terminated, and (ii) in respect of the Prepetition ABL Facility, all of the Prepetition ABL Obligations pursuant to the Prepetition ABL Documents and this Final Order, have been indefeasibly paid in full in cash (other than contingent indemnification obligations for which no claim has been asserted) and the Challenge Deadline has passed without a Challenge being asserted. The terms and provisions concerning the indemnification of the DIP Administrative Agent and the DIP Lenders shall continue in the Cases, in any Successor Cases, following dismissal of the Cases or any Successor Cases, following termination of the DIP Documents and/or the indefeasible repayment of the DIP Obligations.

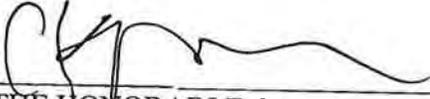
62. **Nunc Pro Tunc Effect of this Final Order.** This Final Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be enforceable *nunc pro tunc* to the Petition Date immediately upon execution thereof.

63. **Retention of Jurisdiction.** The Court has and will retain jurisdiction to enforce the terms of, any and all matters arising from or related to the DIP Facility, and/or this Final Order.

64. **Objection of Dallas County.** Notwithstanding anything in the Interim Order or this Final Order to the contrary, the objection of Dallas County [D.I. 162] is resolved as follows: the liens that are currently held by Dallas County against assets of Promise Hospital of Dallas, Inc. or that arise during the course of the bankruptcy case of Promise Hospital of Dallas, Inc., pursuant to applicable non-bankruptcy law shall neither be primed by nor subordinated to any liens granted pursuant to the Interim Order or this Final Order. Furthermore, from the proceeds of any sale of all or substantially all of the assets of Promise Hospital of Dallas, Inc., the amount of \$75,281.78 (i.e., 2.25 times the amount of Dallas County's claim against Promise

Hospital of Dallas, Inc., for 2018 ad valorem taxes shall be set aside by Promise Hospital of Dallas, Inc., in a segregated account as adequate protection for the secured claims of Dallas County simultaneously with the distribution of the proceeds of such sale to any other creditor. The liens of Dallas County shall attach to these proceeds to the same extent and with the same priority as the liens that Dallas County now holds against the assets of Promise Hospital of Dallas, Inc. The segregation of such funds shall be on the order of adequate protection and shall constitute neither the allowance of the claims of Dallas County against Promise Hospital of Dallas, Inc., nor a cap on the amounts it may be entitled to receive. Furthermore, the claims and liens of Dallas County shall remain subject to any objections or defenses that any party would otherwise be entitled to raise as to the amount of such claims or the priority, validity or extent of such liens. The funds may be distributed upon agreement among Dallas County, Promise Hospital of Dallas, Inc., the Committee and the DIP Administrative Agent, or by subsequent order of the Court, duly noticed to Dallas County.

Dated: December 4, 2018
Wilmington, Delaware



THE HONORABLE CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE

In re Ries Productions LLC, Case No. 18-10636 (Bankr. W.D. Wash. Feb 23,
2018)

Below is the Order of the Court.



Marc Barreca
U.S. Bankruptcy Judge

(Dated as of Entered on Docket date above)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON, AT SEATTLE

In re:

RIES PRODUCTIONS, LLC

DEBTOR

No. 18-10636

ORDER AUTHORIZING INTERIM
USE OF CASH COLLATERAL

THIS MATTER having come before this Court upon the motion (the "Motion") of Ries Productions LLC ("Ries"), the debtor-in-possession herein, pursuant to 11 U.S.C. §§105(a), 363(c)(2), seeking interim authority to use cash collateral (ECF Dkt. 4); the Court having considered the pleadings and files herein, having heard argument of counsel, if any, and being fully advised in the premises; the Court hereby makes the following preliminary findings of fact and conclusions of law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ORDER AUTHORIZING INTERIM USE OF CASH
COLLATERAL - 1

LARRY B FEINSTEIN
VORTMAN & FEINSTEIN
929 108TH AVE. N.E. STE. 1200
BELLEVUE, WA 98004
4255-643-9595

1 a. On February 16, 2018 (the “**Petition Date**”), Ries filed a voluntary petition for
2 relief pursuant to Chapter 11 of Title 11 of the United States Code.

3 b. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This
4 is a “core” proceeding within the meaning of 28 U.S.C. § 157(b)(2)(M), among other
5 provisions, and the Court has authority to enter this Order pursuant to 11 U.S.C. §§ 363 and
6 105, among other sections.

7 c. Various creditors have filed UCC-1 Financing Statements, including Home
8 Street Bank, which cover property of the estate that may be subject to cash collateral. Said
9 creditors are listed on Schedule D and/or Schedule F (if the financing statement appears to
10 have been terminated or expired.)

11 d. Debtor’s obligations under the various Loans are secured by said security
12 interests in and to all of Debtor’s presently owned and thereafter acquired inventory, accounts,
13 general intangibles, rights to payment, and equipment, together with all products and proceeds
14 of the foregoing

15 e. Debtor asserts that all of the estates’ revenue is derived from proceeds of sale
16 of inventory, which, together with all of the estate’s cash on hand as of the date of filing and
17 any post-petition proceeds pre-petition collateral, constitute cash collateral (the “**Cash**
18 **Collateral**”) as defined in 11 U.S.C. § 363(a).

19 f. The Court has found that Debtor’s estate has immediate and continuing need
20 for the use of the Cash Collateral to avoid immediate and irreparable harm to their business
21 and the Collateral. Without the ability to use the Cash Collateral, the estate will be unable to
22 pay ongoing ordinary expenses relating to the continued operation of the businesses.

23 g. Authorization of this interim use of Cash Collateral in accordance with the
24 interim budget attached to the Motion filed herein (ECF #2) (the “**Interim Budget**”) is in the
25 best interests of the estates and is necessary for the estate to avoid immediate and irreparable
26 harm pending a final hearing.

ORDER AUTHORIZING INTERIM USE OF CASH
COLLATERAL - 2

LARRY B FEINSTEIN
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1 **ORDER**

2 Based upon the foregoing findings and conclusions, it is hereby ORDERED as follows:

3 1. Debtor is authorized to use Cash Collateral as set forth in the Interim Budget
4 including the payment of prepetition payroll that becomes due and owing post-petition;
5 provided, however, that such authority shall expire on the earlier of: (i) any default hereunder
6 by Debtor; and (ii) April 19, 2018, unless extended by further order of this Court.

7 2. Subject to the terms, conditions and limitations of this Order, Debtor is
8 authorized to incur and timely pay only the operating expenses identified in the Interim Budget
9 and may incur such obligations and make such payments, without further approval of the
10 Court, provided that Debtor shall not use Cash Collateral to pay any pre-petition expense or
11 obligation of any person or entity except for the prepetition payroll that regularly will become
12 due post petition.

13 3. Debtor shall be in compliance with its obligations related to the Interim Budget
14 so long as the actual expenditures paid with Cash Collateral do not exceed the corresponding
15 expense line item set forth in the Budget by more than ten percent (10%), and the total amount
16 of Cash Collateral used does not exceed the total amount set forth in the Budget for all expenses
17 by more than five percent (5%) of the overall Budget on a monthly basis.

18 a. In addition to the payments set forth in the Debtor's budget, as adequate
19 protection payments, the Debtor shall make all current debt service
20 payments to HomeStreet commencing on March 5th and the 5th day of each
21 month thereafter until a Plan is confirmed herein or as otherwise modified
22 by further order of the court.

23 b. On or before March 15, 2018, the Debtor shall provide proof under the
24 pending Purchase and Sale Agreement between Paaso Properties LLC and
25 SDH Properties LLC that the feasibility contingency under Paragraph 5 has
26 been satisfied or waived.

ORDER AUTHORIZING INTERIM USE OF CASH
COLLATERAL - 3

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1 c. By not later than April 10, 2018, the Debtor shall deliver to HomeStreet
2 proof that the financing contingency contained in the existing Purchase and
3 Sale Agreement between Paaso Properties, LLC and SDH Properties, LLC
4 has been satisfied or waived.

5 d. On closing of the sale referenced above, which must close on or before April
6 19, 2018, the Debtor shall provide in closing for payment of sufficient funds
7 to fully satisfy all of the Debtor's indebtedness to HomeStreet, whether
8 owed in its capacity as borrower or guarantor (^{in an amount} ~~to include principal, accrued~~
9 ^{sufficient to satisfy all amounts} ~~interest at the default and non-default rate of interest, late charges, appraisal~~
10 ~~fees, reasonable attorneys fees, and other fees, charges or costs that may be~~
11 collectible under the loan documents).

12 4. All secured creditors shall retain all of their pre-petition security interests in all
13 pre-petition collateral, and all post-petition collateral of the same type including, without
14 limitation, the Cash Collateral, and this order does not impair, modify, or affect the priority of
15 secured claims against the estate. The Debtor shall maintain insurance on all assets of the estate
16 and provide proof of same to the UST and any creditor requesting same.

17 5. On an interim basis, replacement liens shall be granted to all said creditors in
18 their rank priority, and shall be valid, perfected and enforceable security interests and liens on
19 all post-petition assets of the estate of the same nature or type securing any pre-petition claim,
20 including the Cash Collateral and post-petition proceeds thereof without further filing or
21 recording of any document or instrument or any other action. ^{*} No further documentation shall
22 be necessary to evidence or perfect the lien or to give notice to third parties of the same.

23 6. On a monthly basis, within 7 calendar days after the end of each month, Debtors
24 shall also provide HomeStreet Bank, and any other secured creditor that requests same, a
25 statement showing payments by budgeted line item and deviations (both positive and negative)
26 from the Interim Budget for the prior monthly period. Debtors shall in all other respects file

ORDER AUTHORIZING INTERIM USE OF CASH
COLLATERAL - 4

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** to the same extent, validity and perfection status, of such creditors prepetition security interests*

1 timely the United States Trustee monthly operating reports showing compliance therein and
2 providing the secured creditor said UST MOR shall comply with this provision.

3 7. Nothing contained in this Order shall be construed in any form as (i) consent by
4 any secured creditor to any use of Cash Collateral or the Collateral, other than the specific uses
5 authorized and described in this Order, the Interim Budget and only during the duration of this
6 Order.

7 8. This Order shall take effect upon entry by the Court. Nothing contained in this
8 Order shall prejudice any party's rights to apply for an order prospectively modifying this
9 Order on appropriate grounds and after notice and opportunity for a hearing, or prejudice any
10 party's rights and arguments at the final hearing.

11 9. All notices, request and demands which any party is required or may desire to
12 give to any other party under the provisions of this Order must be in writing and delivered to
13 each party at the following address:

14 If to Debtors: Larry B. Feinstein
15 Vortman & Feinstein
16 929 108th Ave. NE Ste 1200
17 Bellevue, WA 98004
18 Email: feinstein1947@gmail.com

19 or such other address as any party may designate by written notice to all other parties. Each
20 notice, request and demand shall be deemed given or made as follows (a) if sent by e-mail or
21 facsimile transmission, upon receipt; or (b) if sent by mail, upon the earlier of the date of receipt
22 or three (3) business days after deposit in U.S. mail.

23 10. Upon any default of the terms of the cash collateral order, including without
24 limitation the failure to meet any milestone, make any payment, or deliver any report described
25 above, HomeStreet's consent to the use of cash collateral ~~shall automatically~~ ^{may} be withdrawn,
26 and HomeStreet shall be entitled to a hearing on shortened time regarding whether the

*upon
delivery
of
notice*

ORDER AUTHORIZING INTERIM USE OF CASH
COLLATERAL - 5

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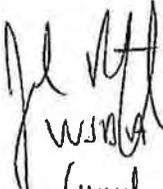
1 automatic stay should be modified, as well as any additional relief to which HomeStreet may
2 be entitled. In the event Debtor fails to comply with the terms of this Order, any other affected
3 creditor shall thereupon have the right, but not the obligation, to send written notice via
4 facsimile or e-mail transmission to Debtor's counsel of the default, and unless such default is
5 cured within five (5) business days following delivery of such notice, said creditor may file a
6 motion to terminate the Debtor's right to use cash collateral. Notwithstanding the foregoing,
7 Debtors may, on shortened notice, file a motion with the Court contesting the default or to
8 determine the adequacy of any tendered cure, in which case the right to utilize cash collateral
9 may be renewed at the hearing on the motion, subject to the requirements of 11 U.S.C. § 363.

10 11. A hearing on a final order authorizing use of the Cash Collateral shall be held
11 on April 19, 2018 at 9:30.

12 ##### End of Order #####

13 Presented by:
14 VORTMAN & FEINSTEIN

15
16 By /s/ Larry B Feinstein _____
17 Larry Feinstein, WSBA #6074
18 Attorneys for Debtor-in-Possession

19
20 
21 WSBA #33046
22 Counsel for HomeStreet Bank

23
24
25
26

ORDER AUTHORIZING INTERIM USE OF CASH
COLLATERAL - 6

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**Rias Productions LLC
Cash Collateral Budget**

	Jan - Dec 17 (12 month Total)	Average Monthly Budget 2017	Proposed Average Monthly Budget 2018
Income			
Sales	\$2,508.64	\$209.05	\$250.00
Repairs	\$8,336.20	\$694.68	\$1,000.00
Accessories	\$87,946.28	\$7,328.86	\$7,500.00
Engineering	\$22,166.51	\$1,847.21	\$2,000.00
Heads	\$11,526.50	\$960.54	\$1,000.00
Signs	\$70,819.50	\$5,901.63	\$6,000.00
Tripods			
Total Sales	\$203,303.63	\$16,941.97	\$17,750.00
Sales Discounts	-\$1,590.71	-\$132.56	\$0.00
Shipping and Delivery Income	\$5,365.25	\$447.10	\$450.00
Total Income	\$207,078.17	\$17,256.51	\$18,200.00
Cost of Goods Sold			
Freight and Shipping Costs	\$5,247.17	\$520.60	\$600.00
Raw Material	\$25,469.07	\$2,122.42	\$2,500.00
	\$31,716.24	\$2,643.02	\$3,100.00
Total COGS			
Gross Profit	\$175,361.93	\$14,613.49	\$15,100.00
Expense			
Advertising and Promotion	\$841.05	\$70.09	\$100.00
Automobile Expense	\$76.16	\$6.35	\$10.00
Computer and Internet Expenses	\$1,784.43	\$148.70	\$150.00
Consulting	\$240.00	\$20.00	\$20.00
Insurance Expense	\$4,995.50	\$416.29	\$450.00
Legal Expense	\$2,144.85	\$178.74	\$500.00
Office Supplies	\$6,000.39	\$500.03	\$500.00
Payroll Expenses	\$96,534.00	\$8,044.50	\$8,100.00
Rent Expense	\$0.00	\$0.00	\$1,300.00
Repairs and Maintenance	\$8,683.59	\$723.63	\$800.00
Shop Supplies	\$7,241.98	\$603.50	\$700.00
Taxes - Excise	\$2,208.37	\$184.03	\$200.00
Taxes - Licenses	\$582.00	\$48.50	\$50.00
Taxes - Property	\$5,943.69	\$495.31	\$500.00
Telephone Expense	\$4,930.12	\$410.84	\$420.00
Travel Expense	\$1,949.34	\$162.45	\$200.00
Utilities	\$12,741.21	\$1,061.77	\$1,100.00
Total Expense	\$156,896.68	\$13,074.72	\$15,100.00
Net Income	\$18,465.25	\$1,538.77	\$0.00

In re Seattle Proton Center, LLC, Case No. 18-14380 (Bankr. E.D. Wash. Nov. 19, 2018)



Timothy W. Dore
U.S. Bankruptcy Court
(Dated as of Entered on Docket date above)

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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In re
SEATTLE PROTON CENTER, LLC¹
Debtors.

Lead Case No. 18-14380-TWD

INTERIM ORDER:
(1) AUTHORIZING USE OF CASH
COLLATERAL AND GRANTING
ADEQUATE PROTECTION,
AND (2) SETTING A FINAL
HEARING

This matter came before the Court on the motion (the "Motion") of Seattle Proton Center, LLC, debtor-in-possession herein ("Debtor"), pursuant to §§ 105, 361, 362, 363 and 364 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules 4001-3 and 9013-1(d)(2)(E) of the Local Rules of Bankruptcy Procedure for the Western District of Washington (the "Local Rules"), for the entry of an order authorizing, on an interim basis, the Debtor's use of cash

¹ The Debtors are Seattle Proton Center, LLC, Bankruptcy Case No. 18-14380, Procure Seattle Holdings, LLC, Bankruptcy Case No. 18-14381, and Seattle Proton Center Holdings, Bankruptcy Case No. 18-14382.

INTERIM ORDER: (1) AUTHORIZING USE OF CASH COLLATERAL,
ETC.— Page 1

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1 collateral pursuant to a Budget (defined below), authorizing the Debtor to grant, on an interim basis,
2 adequate protection in favor of the Senior Secured Lenders (as defined herein). Capitalized terms not
3 defined herein shall have their meaning as ascribed in the Motion. The Court has reviewed the files
4 and records herein, makes the following findings of fact, and reaches the following conclusions of law
5 based on the written submissions of the Debtor and representations made at the hearing on the
6 Motion:

7 FINDINGS AND CONCLUSIONS

8 On an interim basis, the Court makes the following findings of fact and conclusions of law
9 with respect to the relief granted in this Order:

10 A. The Debtor filed a petition for relief under Chapter 11 of the Bankruptcy Code
11 (“Case”) on November 14, 2018 (the “Petition Date”). The Debtor retains control over its assets and
12 continue to operate its business pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

13 B. The Debtor provided notice of the hearing on the Motion to the Agent, Senior Secured
14 Lenders (defined herein), IBA Proton Therapy Inc., Ion Beam Applications, S.A., a Belgian Société
15 Anonyme, Seattle Cancer Care Alliance, the U.S. Trustee; the U.S. Attorney’s Office; and state and
16 federal taxing authorities. Such notice is adequate and reasonable under the circumstances pursuant to
17 Bankruptcy Rules 4001 and Local Rules 4001-3 and 9013-1(d)(2)(E).

18 C. As of the Petition Date, the Debtor was indebted in the approximate amount of
19 \$160,278,763 (the “Senior Secured Debt”) pursuant to that certain Amended and Restated Credit
20 Agreement, dated as of August 31, 2015 (as amended, amended and restated, supplemented or
21 otherwise modified from time to time, the “Credit Agreement”) by and among the Debtor and BNP
22 Paribas Fortis S.A./N.V. for itself as lender and hedge provider and as Agent (in such capacity, the
23 “Agent”), KBC Bank N.V., as lender and hedge provider, ING Belgium S.A./N.V., as lender and

INTERIM ORDER: (1) AUTHORIZING USE OF CASH COLLATERAL,
ETC.— Page 2

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1 hedge provider, Belfius Bank N.V./S.A., as lender and hedge provider, and Office National Du
2 Ducroire, as lender (collectively the “Senior Secured Lenders”).

3 D. Subject to the Order provisions set forth below, the Senior Secured Debt is secured by
4 liens on all or substantially all of the assets of the Debtor pursuant to, *inter alia*: (i) that certain
5 Security Agreement, dated as of January 20, 2011 and that certain Assignment, Pledge and Security
6 Agreement, dated as of August 24, 2010 and UCC-1 filings with the Delaware Division of
7 Corporations (specifically Filing No. 20103044686 on August 31, 2010, as continued); and that
8 certain Assignment, Pledge and Security Agreement, dated as of August 24, 2010; and (ii) as against
9 the Ground Lease, that certain Leasehold Deed of Trust² with Security Agreement, Assignment of
10 Leases and Rents and Fixture Filing Statement, dated January 20, 2011, and as amended pursuant to
11 that certain First Amendment to Leasehold Deed of Trust with Security Agreement, Assignment of
12 Leases and Rents and Fixture Filing Statement, dated as of August 31, 2015, entered into between the
13 Debtor and the Agent.

14 E. The Debtor stipulates, admits and agrees that as of the Petition Date, the Senior
15 Secured Lenders’ liens against the Debtor’s assets constitute valid, binding, enforceable (except to the
16 extent stayed by operation of section 362 of the Bankruptcy Code), attached, and perfected liens on
17 the Debtor’s property.

18 F. The Debtor stipulates, admits and agrees that, as of the Petition Date, it holds no
19 offsets, defenses or counterclaims in connection with the Senior Secured Debt and that no portion of

20
21 ² The Credit Agreement’s definition of “Permitted Liens” includes: (a) a Deed of Trust, Assignment of Leases
22 and Rents and Security Agreement and Fixture Filing made by UM Medicine/Northwest as grantor, in favor of U.S. Bank
23 National Association, recorded under King County Recorder’s No. 20071128001573; and (b) a Deed of Trust in favor of
Wells Fargo Bank, National Association, dated February 11, 2000, recorded under Recording No. 20000216000570, as
modified.

1 the Senior Secured Debt is subject to avoidance or subordination pursuant to the Bankruptcy Code or
2 applicable non-bankruptcy law.

3 G. As detailed in the Motion and demonstrated by the Budget, the Debtor requires the use
4 of Cash Collateral to continue its ongoing operations in the ordinary course of business and to avoid
5 disruption of such operations, including providing uninterrupted care to its patients. The Debtor is
6 unable to obtain unsecured credit or financing, and the Court finds and concludes that Debtor and its
7 estate will suffer immediate and irreparable harm if the relief approved hereby is not granted.

8 H. The Court concludes that entry of this Order is in the best interests of the Debtor's
9 creditors and its estate because its implementation, among other things, will allow the Debtor to
10 remain in business by providing the working capital necessary to sustain ongoing operations. Absent
11 the entry of this Order, the Debtor's estate would be immediately and irreparably harmed.

12 I. The Senior Secured Lenders' Prepetition Collateral include cash proceeds thereof
13 deemed "cash collateral" under section 363(a) of the Bankruptcy Code. The Debtor represents that it
14 is unable to obtain unsecured financing and, except for the Cash Collateral, has no source from which
15 to fund the budgeted expenses necessary to preserve and protect the assets of the estate. The Debtor
16 requires use of both Cash Collateral to continue its operations uninterrupted and to avoid irreparable
17 harm to its business and its estate.

18 J. The Senior Secured Lenders consent to the Debtor's use of Cash Collateral for an
19 initial period of 60 (sixty) days (commencing on the Petition Date, the "Lender Consent Period"),
20 pursuant to § 363(c)(2)(A) of the Bankruptcy Code. In addition, pursuant to §§ 361, 362, 363 and 364
21 of the Bankruptcy Code, the Debtor has agreed to provide adequate protection of the Senior Secured
22 Lenders' interests in the Cash Collateral on the terms provided for herein and in accordance with the
23 budget for the week ending November 16, 2018, through the week ending January 11, 2019 attached

INTERIM ORDER: (1) AUTHORIZING USE OF CASH COLLATERAL,
ETC.— Page 4

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1 hereto as Exhibit A (as amended in accordance herewith) and subject to review and approval by the
2 Agent on behalf of the Senior Secured Lenders, the "Budget"). Extensions of the Lender Consent
3 Period and additional Budgets, if necessary, will be submitted to this Court on a rolling basis
4 following review and approval of each such extension and Budget by the Agent on behalf of the
5 Senior Secured Lenders.

6 K. As part of the Budget and the Debtor's request to use Cash Collateral, the Debtor
7 proposes to create and fund a professional fund in the initial amount of \$300,000 ("Professional
8 Fund") on a postpetition basis to pay the professional fees and costs as the Court may authorize and
9 allow by subsequent order following notice and hearing. The Debtor proposes to deposit all funds
10 budgeted for the Professional Fund with Bush Kornfeld LLP, attorneys for the Debtor, where such
11 funds would be held in trust pending further order of the Court following notice and hearing. The
12 Debtor believes that the proposed Professional Fund is appropriate given the size and nature of this
13 case.

14 L. This Court has jurisdiction over these proceedings and the parties and property affected
15 by this Order pursuant to 28 U.S.C. §§ 157(b) and 1334. Consideration of the Motion constitutes a
16 core proceeding as defined in 28 U.S.C. § 157. Venue is proper before this Court pursuant to 28
17 U.S.C. §§ 1408 and 1409.

18 M. The Court finds that the circumstances of these cases support the approval on an
19 interim of the following provisions in this order discussed in the Court's Guidelines for Cash
20 Collateral and Financing Stipulations: the finding of the Senior Secured Creditors' lien (Finding of
21 Fact D); the Debtor's release of the Senior Secured Creditors (Order paragraph 7); and adequate
22 protection provided the Senior Secured Lenders (Order paragraph 5c).
23

INTERIM ORDER: (1) AUTHORIZING USE OF CASH COLLATERAL,
ETC.— Page 5

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1 N. Based on the record before this Court, including the Senior Secured Lenders' consent
2 to the Debtor's use of Cash Collateral, the Budget, the fact that ongoing operations will allow for
3 continued services to the Debtor's patients and for the maximization of the value of the Debtor's
4 assets and estate while the Debtor seeks confirmation of the Debtors' Prepackaged Plan of
5 Reorganization to affect the restructure of its liabilities as provided for therein ("Restructure"), and the
6 granting of adequate protection as set forth herein, the Court finds that, on an interim basis, the
7 interests of the Senior Secured Lenders are adequately protected, as contemplated by §§ 361, 362, 363
8 and 364 of the Bankruptcy Code.

9 **ORDER**

10 Based on the foregoing findings, it is hereby

11 ORDERED as follows:

12 1. Motion Granted. The Motion is granted as provided for herein on an interim basis
13 pursuant to the terms and conditions of this order with respect both the Debtor's proposed use of Cash
14 Collateral, grant of Adequate Protection, (this "Interim Order").

15 2. Until entry of a Final Order, the following provision contained in this Order shall bind
16 the Debtors only and not non debtor parties:

- 17 (a) Finding and Conclusion D as to the Senior Secured Debt lien position;
- 18 (b) Order paragraph 6(c) as to the Adequate Protection Lien as against claims for
19 relief arising under the Bankruptcy Code, such as those arising under sections
20 506(c), 544, 547, 548, 549, 550 and 553 of the Bankruptcy Code; and
- 21 (c) Order paragraph 8 as to releases of claims against the Senior Secured Lenders.
- 22
23

INTERIM ORDER: (1) AUTHORIZING USE OF CASH COLLATERAL,
ETC.— Page 6

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1 3. Use of Cash Collateral. Subject to the terms and conditions of this Interim Order, the
2 Debtor is authorized to use Cash Collateral (a) during the Interim Period (as defined below), and (b)
3 for the purposes identified in the Budget. The Debtor shall take reasonable steps to materially comply
4 with the Budget with respect to the expenses set forth therein. To the extent the Debtor is unable to
5 comply with the Budget due to events outside of its control, such as uncontrollable variable expenses,
6 delayed reimbursement from insurance payers, a material but unbudgeted repair expense, or other
7 similar unforeseeable and unpredictable expenses, the Debtor, subject to approval by the Agent on
8 behalf of the Senior Secured Lenders, may amend the Budget as set forth in paragraph 4.a., below.
9 The "Interim Period" begins on the date of the entry of this Interim Order and ends on the Termination
10 Date (as defined below).

11 4. Budget. The Debtor is authorized to use Cash Collateral in accordance with the Budget
12 and this Interim Order, subject to the following provisions:

13 a. The Budget may be amended from time to time subject to approval by the
14 Agent on behalf of the Senior Secured Lenders, and Debtor is authorized to use Cash
15 Collateral in accordance with an amended Budget if (i) the Debtor complies with this Interim
16 Order and its obligation hereunder to limit its use of Cash Collateral in accordance with the
17 amended Budget, and (ii) the amended Budget is promptly filed with the Court by the Debtor.

18 b. Without amending the Budget, the Debtor may pay (i) fees due and payable to
19 the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 that exceed the amounts
20 contemplated in the Budget; and (ii) Operating Expenses and Capital Expenditures (each as
21 defined in the Credit Agreement) that exceed the amounts contemplated in the Budget if:

22 (a) for expenses contained in any line item set forth in the Budget, the Debtor's total payments
23 for expenses in that line item do not exceed by more than fifteen percent (15%) the total

1 amount of payments for expenses contemplated under the Budget for that line item; or (b) for
2 the period beginning on the Petition Date and ending on the date of the payment, the Debtor's
3 total payments for expenses in that period do not exceed by more than ten percent (10%) the
4 total amount of payments for expenses contemplated under the entire Budget for that period.
5 Notwithstanding the above, the Debtor may roll forward any expense in any line item to a later
6 time and may pay that expense when due.

7 c. To the extent that any of the items set forth in the Budget became due prior to
8 the Court's entry of this Interim Order (but subsequent to the Petition Date), the Debtor is
9 authorized to use Cash Collateral to pay such items and such items shall be treated as having
10 been paid during the week set forth in the Budget for purposes of determining whether the
11 Debtor is in compliance with the Budget.

12 5. Carve-Out. The Debtor is additionally authorized to use Cash Collateral to pay the
13 following costs, fees and expenses (collectively, the "Carve-Out"): (a) the unpaid fees due and
14 payable to the Clerk of the Court and the Office of the United States Trustee pursuant to 28 U.S.C. §
15 1930; and (b) contributions to the Professional Fund to the extent authorized under the Budget.

16 6. Adequate Protection. As adequate protection for the Debtor's use of Cash Collateral:

17 a. The Debtor shall be obligated to pay for all reasonable, documented out-of-
18 pocket expenses incurred by the Agent and its Affiliates (as defined in the Credit Agreement)
19 (including the reasonable fees, charges and disbursements of counsel and financial advisor for
20 the Agent), as provided for under the Credit Agreement and in connection with the
21 Restructure, provided, however, that such expenses shall be paid from amounts available in
22 connection with the Transaction Funding Payment (as defined in that certain Finance Action
23 No. 1, dated as of March 15, 2018, by and among the parties hereto) until no further funds are

1 available from such Transaction Funding Payment (at which time the Debtor shall pay such
2 fees from Cash Collateral).

3 b. The Debtor shall provide the Secured Parties with financial and other reporting
4 in compliance with this Order and the requirement of the Bankruptcy Code and Rules.

5 c. The Senior Secured Lenders are hereby granted valid, binding, enforceable and
6 perfected replacement lien on and security interest in (the "Adequate Protection Lien") all
7 Postpetition Collateral (defined herein) of Debtor equal to the decrease, if any, in the value of
8 the Senior Secured Lenders' interest in the Prepetition Collateral. "Postpetition Collateral" is
9 all property of Debtor that is of the same type and nature as the Prepetition Collateral acquired
10 or created by the Debtor after the Petition Date and the Debtor's claims for relief arising under
11 the Bankruptcy Code, such as those arising under sections 506(c), 544, 547, 548, 529, 550 and
12 553 of the Bankruptcy Code.

13 d. The Adequate Protection Liens shall have priority over all liens, claims,
14 encumbrances, and interests of every kind and nature, whether created before or after the
15 Petition Date subject only to (a) any valid, enforceable, perfected and unavoidable lien on
16 Debtor's assets and property in existence as of the Petition Date or duly perfected after the
17 Petition Date in accordance with section 546(b) of the Bankruptcy Code, and (b) the Carve-
18 Out, and shall be effective as of the date of the entry of this Interim Order without any further
19 action by the Debtor or the Senior Secured Lenders and without the necessity of the execution,
20 filing or recordation of any financing statements, security agreements, lien applications or
21 other documents.

22 e. The Debtor shall continue to maintain insurance on its assets as the same
23 existed as of the Petition Date.

1 f. The Debtor shall provide to the Agent, on or before the 15th day of each month
2 (following the first full month after the Petition Date), a report reflecting actual revenues and
3 expenses for the prior month, as compared to the Budget for that month and showing all
4 variances from such Budget.

5 g. In accordance with section 507(b) of the Bankruptcy Code, if, notwithstanding
6 the foregoing protections, the Senior Secured Lenders have a claim allowable under section
7 507(a)(2) of the Bankruptcy Code from the use, sale, or lease of the Prepetition Collateral then
8 the Senior Secured Lenders' claim shall have priority over every other claim and
9 administrative expense allowable under section 507(a)(2) of the Bankruptcy Code.

10 7. Evidence of Adequate Protection Liens. This Interim Order shall be sufficient for, and
11 conclusive evidence of, the priority, perfection, and validity of the Adequate Protection Lien.

12 8. Release of Claim. Effective as of the date of the entry of this order the Debtors hereby
13 absolutely and unconditionally forever waive, discharge, acquit and release any and all "claims" (as
14 such term is defined in the Bankruptcy Code), counterclaims, demands, debts, accounts, contracts,
15 liabilities, causes of action, defenses or setoff rights, in each case arising from or related to any acts or
16 transactions occurring prior to the Petition Date against the Agent and the Senior Secured Lenders,
17 and with respect to each of the foregoing, their respective affiliates, agents, officers, directors,
18 employees and attorneys, of any kind, nature or description, whether known or unknown, foreseen or
19 unforeseen or liquidated or liquidated, whether arising at law or in equity or upon contract or tort or
20 under any state or federal law or otherwise, including any recharacterization, subordination, avoidance
21 or other claim arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code or under
22 any similar provisions of applicable state or federal law; provided, however, that nothing in this Order
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INTERIM ORDER: (1) AUTHORIZING USE OF CASH COLLATERAL,
ETC.— Page 10

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1 releases any party thereto from its contractual obligations under the Credit Agreement (or any related
2 Loan Document, as that term is defined in the Credit Agreement).

3 9. Professional Fund. The Professional Fund is approved, with the Debtor to fund the
4 amounts consistent with the Budget for that purpose. The Professional Fund shall be held on deposit
5 and maintained in the trust account of Bush Kornfeld LLP, attorneys for the Debtors, pending further
6 order of the Court following notice and hearing for the pro rata benefit of the professionals employed
7 in this case. To the extent the amounts deposited into the Professional Fund exceed the allowed fees
8 and costs of those professionals, such excess funds shall remain subject to the rights of the Senior
9 Secured Lenders.

10 10. Effect of Order. This Interim Order is effective immediately upon its entry, shall be
11 binding on the Debtor, all parties in interest in this Bankruptcy Case and their respective successors
12 and assigns, shall continue in full force and effect through the end of the Interim Period.

13 11. Objections Overruled. All objections to the Motion (if any) with respect to entry of
14 this Interim Order are hereby overruled.

15 12. Final Hearing. The final hearing at which the Debtor shall seek a final order on the
16 Motion ("Final Order") is hereby set for Friday, December 14, 2018 at 9:30 a.m., Pacific Time
17 ("Termination Date"). Objections shall be due on Friday, December 7, 2018, no later than 5:00 p.m.,
18 Pacific Time. Any reply shall be due on Tuesday, December 11, 2018, no later than 5:00 p.m., Pacific
19 Time.

20 // /End of Order/ //

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INTERIM ORDER: (1) AUTHORIZING USE OF CASH COLLATERAL,
ETC.— Page 11

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Presented by:

BUSH KORNFELD LLP

By /s/ Aimee S. Willig
Armand J. Kornfeld, WSBA #17214
Aimee S. Willig, WSBA #22859
Attorneys for Debtors-In-Possession

INTERIM ORDER: (1) AUTHORIZING USE OF CASH COLLATERAL,
ETC.– Page 12

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**Seattle Proton Center, LLC
Weekly Cash Flow Plan**

\$s in thousands

Week Ending:

	11/16/2018	11/23/2018	11/30/2018	12/7/2018	12/14/2018	12/21/2018	12/28/2018	1/4/2019	1/11/2019	1/18/2019	1/25/2019	2/1/2019	2/8/2019	Total
Net Collections	481	481	481	589	589	589	471	433	524	524	524	547	494	6,727
Cash Inflows	481	481	481	589	589	589	471	433	524	524	524	547	494	6,727
Payroll & Benefits	(31)	(415)	-	(350)	(30)	(350)	(31)	(425)	(30)	-	(406)	(65)	(380)	(2,513)
Advertising & Marketing	(25)	(5)	(5)	(5)	(205)	(30)	(5)	(5)	(5)	(5)	(200)	(5)	(5)	(505)
Legal	(5)	(5)	(5)	(5)	(5)	(5)	(5)	(5)	(5)	(5)	(5)	(5)	(5)	(65)
Repairs & Maintenance	(87)	(12)	(12)	(57)	(32)	(52)	(512)	(12)	(12)	(1,045)	(12)	(12)	(12)	(1,869)
Rent & Utilities	(4)	(131)	(4)	(4)	(4)	(56)	(75)	(4)	(4)	(4)	(131)	(4)	(4)	(429)
G&A	(15)	(87)	(50)	(18)	(50)	(87)	(50)	(18)	(15)	(15)	(167)	(18)	(15)	(605)
Supplies & Services	(15)	(15)	(15)	(40)	(15)	(15)	(15)	(15)	(53)	(15)	(15)	(15)	(15)	(258)
Restructuring Expenses														
Professional Fund	-	-	(300)	-	-	-	-	-	-	-	-	-	-	(300)
Utilities Deposit	(35)	-	-	-	-	-	-	-	-	-	-	-	-	(35)
U S Trustee Fee	-	-	-	-	-	-	(27)	-	-	-	-	-	-	(27)
CapEx	(5)	(5)	(5)	(5)	(5)	(5)	(5)	(5)	(5)	(5)	(5)	(5)	(5)	(65)
Cash Outflows	(222)	(675)	(396)	(484)	(346)	(600)	(725)	(489)	(129)	(1,094)	(941)	(129)	(441)	(6,671)
Net Cash Inflows/(Outflows)	259	(194)	85	105	243	(11)	(254)	(56)	395	(570)	(417)	418	53	56
Beginning Cash Balance	5,700	5,959	5,765	5,850	5,955	6,198	6,187	5,933	5,877	6,272	5,702	5,285	5,703	
Ending Cash Balance	5,959	5,765	5,850	5,955	6,198	6,187	5,933	5,877	6,272	5,702	5,285	5,703	5,756	

Confidential

EXHIBIT A

In re Soas, LLC, Case No. 19-10928 (Bankr. W.D. Wash. April 1, 2019)

Below is the Order of the Court.



Marc Barreca
U.S. Bankruptcy Judge

(Dated as of Entered on Docket date above)

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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In re

SOAS, LLC

Debtor.

No. 19-10928-MLB

EMERGENCY ORDER AUTHORIZING
INTERIM USE OF CASH COLLATERAL,
GRANTING INTERIM APPROVAL OF
ADEQUATE PROTECTION, AND
SETTING FINAL HEARING

THIS MATTER came before the Court on shortened time on Debtor's Emergency Motion for Order: (1) Authorizing Interim Use of Cash Collateral; (2) Granting Interim Approval of Adequate Protection; and (3) Setting Final Hearing, pursuant to 11 U.S.C. §§ 363(c) and (e), FRBP 4001(b)-(d), and Local Bankruptcy Rules 4001-3 and 9013-1(d)(2)(E) (the "Emergency Motion"). The Court has reviewed the Motion and the files and records in this case, has heard the statements of counsel on the record, and has been advised by the Debtor that Live Oak Bank Company ("Lender") claims a security interest in the Debtor's assets, including but not limited to, a security interest in the Debtor's accounts, inventory and cash, and in the profits and proceeds of the foregoing ("Cash Collateral"), and is

otherwise fully advised. Further, the Court finds that the notice given to creditors of this
EMERGENCY ORDER: (1) AUTHORIZING
INTERIM USE OF CASH COLLATERAL; (2)
GRANTING INTERIM APPROVAL OF ADEQUATE
PROTECTION; AND (3) SETTING FINAL
HEARING - 1

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hearing was adequate under the circumstances and that the Debtor has an immediate need for use of Cash Collateral to fund its current operations and to pay other operating expenses necessary to protect the estate from harm and preserve its value; now, therefore, it is hereby:

ORDERED that:

1. The Emergency Motion is hereby granted on an interim basis pursuant to the terms and conditions set forth below.

2. The Debtor is authorized to use the Lender's Cash Collateral on an interim basis, pending a final hearing, and subject to the limitations stated below. The Lender's Cash Collateral shall be used solely to pay the ordinary and necessary business expenses of the Debtor's business, as outlined in the budget attached hereto as **Exhibit A** (the "Budget"), pending the final hearing set below. The Debtor will not exceed any expense line item of the Budget by more than ten percent (10%), or generate less than ninety percent (90%) of revenue line item in the Budget, including accounts receivable, without additional Court approval after notice and hearing or alternatively, without Lender's prior written consent and without further order of the Court. The Debtor shall provide Lender with weekly budgets for the period commencing on April 1, 2019, not later than 12:00 noon on March 29, 2019.

3. Pursuant to §§ 361-363 of the Bankruptcy Code, as and for adequate protection for the Debtor's use of Cash Collateral (to the extent of any diminution in the value of the Lender's collateral after the filing of the Debtor's bankruptcy petition), Lender is hereby granted valid, binding, enforceable and perfected security interests and liens in the same priority as they existed prior to the petition date in this Chapter 11 case, in and to all personal property of the Debtor, whether now owned or hereafter acquired, wherever

EMERGENCY ORDER: (1) AUTHORIZING INTERIM USE OF CASH COLLATERAL; (2) GRANTING INTERIM APPROVAL OF ADEQUATE PROTECTION; AND (3) SETTING FINAL HEARING - 2

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located, that was subject to Lender’s security interests in the Debtor’s assets pre-petition, and all rents, profits, and proceeds generated therefrom (the “Replacement Liens”). The Replacement Liens are and shall be in addition to those liens against the Debtor’s assets that Lender held pre-petition, and shall remain in full force and effect notwithstanding any subsequent conversion or dismissal of this case.

4. Pursuant to Bankruptcy Code §§361, 362, 363(c)(2) and 363(e), as additional adequate protection in respect of any diminution in the value of their respective collateral, Steven Oliva, Hi-School Pharmacy Services, McKesson Corporation and Cardinal Health 110 LLC (“Junior Lienholders”) and the use of the Cash Collateral by the Debtor, the Debtor is hereby authorized to and does hereby grant to the Junior Lienholders a valid, binding, enforceable, and automatically perfected replacement lien and security interest (“Junior Lienholders Adequate Protection Lien”) in all of the Debtor’s post-petition assets of any kind or nature, whether real or personal property, tangible or intangible, wherever located, and the proceeds and products thereof, with the same status and priority as between the Junior Lienholders as existed pre-petition. Nothing in this paragraph shall constitute an admission or acknowledgement of the extent, validity or priority of any pre-petition security interest of Steven Oliva; Hi-School Pharmacy Services, LLC; or McKesson Corporation or Cardinal Health 110 LLC, and Debtor, Lender and Junior Lienholders reserve the right to challenge the extent (including pursuant to 11 U.S.C. §506), validity and priority of any Junior Lienholder.

EMERGENCY ORDER: (1) AUTHORIZING INTERIM USE OF CASH COLLATERAL; (2) GRANTING INTERIM APPROVAL OF ADEQUATE PROTECTION; AND (3) SETTING FINAL HEARING - 3

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5. As further adequate protection, the Debtor shall:

(i) Commencing April 5, 2019, and on or before 12 noon on each Friday thereafter, provide to Lender a report containing the following information:

(A) Cash income for the prior week and for the period since the Petition Date;

(B) Cash expenditures by Budget line items for the prior week and for the period since the Petition Date;

(C) A comparison of actual weekly and cumulative income and expenditures by line item to Budgeted weekly cumulative income and expenditures by line item;

(D) A listing of account receivables and work-in-progress, together with a schedule of contracts in progress, including an accounts receivable aging report.

ii. provide to Live Oak copies of Debtor's monthly financial reports;

iii. continue to maintain insurance on its place of business;

iv. not incur any indebtedness with priority over the liens of Live Oak;

v. not sell any of its assets, other than inventory and goods in the ordinary course of business without Bankruptcy Court approval;

EMERGENCY ORDER: (1) AUTHORIZING INTERIM USE OF CASH COLLATERAL; (2) GRANTING INTERIM APPROVAL OF ADEQUATE PROTECTION; AND (3) SETTING FINAL HEARING - 4

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vi. make no payments on pre-petition debts, except for pre-petition wages, salaries, medical insurance premiums and other benefits in an amount not to exceed the unsecured priority amounts set forth in 11 U.S.C. §507(a)(4) and (5), unless expressly consented to in writing by Live Oak, or approved by the Bankruptcy Court after notice and hearing; and

vii. make monthly interest-only payments to Live Oak in an amount equal to accrued interest at the rate of seven and a quarter percent (7.25%) per annum of the outstanding principal balance owing to Live Oak, without prejudice to the estate, the Debtor, any Committee if one is appointed, or any other party in interest to challenge the rate of interest at any final hearing or in a plan of reorganization. Payments shall commence on April 15, 2019 and shall continue on the fifteenth (15th) day of each month thereafter. To the extent that a component of rent paid to Dry Lake Land Stewardship LLC represented a partial payment to Live Oak, then the interest paid pursuant to this provision shall be credited against that component of the rent paid to Dry Lake Land Stewardship, LLC.

6. This Order shall operate to create, attach, and perfect the foregoing Replacement Liens granted to the Lender, without need for Lender to undertake any other perfection procedures (whether by means of filing, recordation, possession, or otherwise), and without regard to the procedures otherwise required under any otherwise applicable federal, state or local law; provided, however, that the Debtor shall execute such agreements, documents, and instruments (including, without limitation, UCC-1 financing statements) and take all other actions as Lender may reasonably request to evidence the security interests

EMERGENCY ORDER: (1) AUTHORIZING INTERIM USE OF CASH COLLATERAL; (2) GRANTING INTERIM APPROVAL OF ADEQUATE PROTECTION; AND (3) SETTING FINAL HEARING - 5

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referred to herein. Requests for additional execution of documents shall be directed to Debtor's counsel.

7. During the term of this Order, Debtor shall cooperate with Lender in providing full and reasonable access to information respecting the Lender's collateral and Cash Collateral, and the Debtor's financial condition, assets and liabilities, including without limitation, permitting Lender to inspect upon reasonable notice the Lender's Collateral and replacement collateral and the Debtor's books and records.

8. Nothing contained herein shall constitute a waiver or modification of the Lender's rights and priority in its existing collateral of the Debtor or the Lender's rights against third party guarantors, except as specifically stated in this Order, nor shall anything contained herein constitute a waiver of any claims or defenses that Debtor may have against Lender and/or the validity of its security interest.

9. The occurrence of any of the following shall be a termination event ("Termination Event") under this Order:

- (a) The Debtor fails to timely and fully perform or observe any material provision of this Order to be performed or observed by it, including, without limitation, any violation of the restrictions on the use of Cash Collateral, failure to make timely payment to Lender or the failure to timely provide reports and accountings as set forth in this order.
- (b) Conversion of the Debtor's chapter 11 case to a case under chapter 7 or the cessation of substantially all of the Debtor's customary and ordinary business activities.
- (c) Appointment of a chapter 11 trustee.

EMERGENCY ORDER: (1) AUTHORIZING INTERIM USE OF CASH COLLATERAL; (2) GRANTING INTERIM APPROVAL OF ADEQUATE PROTECTION; AND (3) SETTING FINAL HEARING - 6

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(d) The occurrence of an event of a post-petition default under the parties' loan documents, provided, however that the failure to make any payment on either the Term Loan or the Line of Credit during the term of this order shall not constitute a Termination Event.

(e) Exceed budget expense line item by more than ten percent (10%) or generating less than ninety percent (90%) of a budget revenue line item, including accounts receivable aging reports.

10. The Debtor consents and agrees and the Court hereby directs that upon the occurrence of a Termination Event, Lender shall be entitled to terminate the Debtor's use of Cash Collateral and cash or cash equivalent proceeds of any Adequate Protection Collateral and such rights under the cash collateral agreement of the Debtor shall immediately terminate unless the Court orders otherwise after a hearing on not less than 48 hours' notice. Lender's failure to take any action permitted under this paragraph upon the occurrence of a Termination Event shall in no manner constitute a waiver or abandonment of any rights whatsoever.

11. This Order shall not prejudice the rights of the Debtor or of Lender to seek such additional relief as it may deem appropriate including, without limitation, the right to (i) request additional adequate protection of the collateral or the Cash Collateral or relief from the automatic stay, (ii) request conversion of the Debtor's chapter 11 case to a case under chapter 7; (iii) request the appointment of a trustee or examiner or (iv) request dismissal of the Debtor's chapter 11 case for any reason.

12. In making decisions to permit or restrict the Debtor's use of Cash Collateral in connection with this Order, Lender shall not be deemed to be in control of the operations of the Debtor or to be acting as a "controlling person," "responsible person" or "owner or

EMERGENCY ORDER: (1) AUTHORIZING INTERIM USE OF CASH COLLATERAL; (2) GRANTING INTERIM APPROVAL OF ADEQUATE PROTECTION; AND (3) SETTING FINAL HEARING - 7

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operator” with respect to the operation or management of the Debtor (as such terms, or similar terms are used in the Internal Revenue Code or any state or federal statute).

Consistent therewith, Lender consents to permit the Debtor to use Cash Collateral pursuant to the terms and subject to the conditions of this Order. Lender’s consent shall not constitute or be deemed to constitute a joint venture or partnership of any kind between Lender and the Debtor.

13. If any or all of the provisions of this Order are hereafter terminated, modified, vacated or stayed by subsequent order of this or any other court, such termination, stay modification or vacation shall not affect the validity of any obligations of the Debtor to Lender incurred pursuant to this Order prior to the effective date of such termination, stay modification or vacation, and such termination, stay, modification or vacation shall not affect the validity, enforceability or priority of any claim granted hereby or any security interest and lien granted and authorized hereby with respect to the adequate protection provided to Lender.

14. No provision of this Order shall bind any trustee in bankruptcy (other than Debtor) or any Committee appointed pursuant to 11 U.S.C. §1102 with regard to the validity, perfection or amount of any secured party’s lien or debt, and further provided that no provision of this Order shall bind any trustee in bankruptcy (other than Debtor) with respect to the relative priorities of the secured parties’ lien against any other lien held by persons who are not party to this Order.

EMERGENCY ORDER: (1) AUTHORIZING INTERIM USE OF CASH COLLATERAL; (2) GRANTING INTERIM APPROVAL OF ADEQUATE PROTECTION; AND (3) SETTING FINAL HEARING - 8

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15. A final hearing on this matter shall be held on April 22, 2019, at 1:30 p.m., and may be continued from time to time (the "Final Hearing"). Any objections to the Emergency Motion shall be filed no later than April 17, 2019. The use of Cash Collateral by the Debtor shall be authorized upon the signing of this Order. This Order shall be effective through the date of the Final Hearing, or as may be extended by the Court.

END OF ORDER

Presented by:

THE TRACY LAW GROUP PLLC

By /s/ J. Todd Tracy
J. Todd Tracy, WSBA #17342
Steven J. Reilly, WSBA #44306
Attorneys for Debtor

Approved for Entry

WEINSTEIN & RILEY, P.S.

By /s/ Michael H. Hekman
Michael H. Hekman, WSBA #45538
Attorneys for Live Oak Banking Company

LAW OFFICES OF STEVEN C. HATHAWAY

By /s/ Steven C. Hathaway
Steven C. Hathaway, WSBA #24971
Attorneys for Dry Lake Land Stewardship LLC

EMERGENCY ORDER: (1) AUTHORIZING INTERIM USE OF CASH COLLATERAL; (2) GRANTING INTERIM APPROVAL OF ADEQUATE PROTECTION; AND (3) SETTING FINAL HEARING - 9

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In re The Dry Eye Company, LLC, Case No. 18-12353 (Bankr. W.D. Wash. July 6,
2018)

Below is the Order of the Court.



Christopher M. Alston
U.S. Bankruptcy Judge

(Dated as of Entered on Docket date above)

THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re

Case No. 18-12353

THE DRY EYE COMPANY, LLC,

ORDER APPROVING STIPULATION
FOR USE OF CASH COLLATERAL

Debtor-in-Possession.

This matter having initially come before the Court for a preliminary hearing on a shortened time basis on the Debtor's motion for authority to use cash collateral and to authorize payment of pre-petition wage claims, and the Court having continued the hearing and having entered an interim order authorizing use of cash collateral pending a final hearing, and the Court finding good cause to enter a final order authorizing use of cash collateral, it is hereby

ORDERED and ADJUDGED as follows:

Debtor may use cash collateral in which First Home Bank has an interest in accordance with and subject to the conditions set forth in the Stipulation for Use of Cash Collateral attached hereto as **Exhibit A** and its accompanying budget.

/// End of Order ///

Presented by:

/s/ Emily A. Jarvis

Emily A. Jarvis, WSBA #41841

Wells and Jarvis, P.S.

500 Union Street, Ste. 502, Seattle, WA 98101

ORDER APPROVING STIPULATION - 1

**THE HONORABLE CHRISTOPHER ALSTON
CHAPTER 11**

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

In re: Case No. 18-12353
The Dry Eye Company, LLC, Chapter 11 Case
Debtor-in-Possession.

Stipulation for Use of Cash Collateral

This Stipulation for Use of Cash Collateral is entered into this 5th day of July, 2018 between The Dry Eye Company, LLC, a Washington limited liability company, (“Debtor”) and First Home Bank, a Florida banking corporation (“FHB”), each acting through their undersigned counsel (“Stipulation”).

Recitals

A. At all times pertinent hereto, FHB has been a Florida banking corporation having its principal place of operations located at 700 Central Avenue, St. Petersburg, Florida 33701.

B. At all times pertinent hereto, Debtor has been a business duly organized under the laws of the State of Florida, with its principal place of business operations located at 20720 State Highway 305 NE, Suite 2A, Poulsbo, WA 98370.

C. On or about April 12, 2017, the Debtor executed and delivered to FHB that certain promissory note in the original principal amount of Two Hundred Thousand and 00/100 Dollars (200,000.00) (“Note”).

D. The Note was secured by that certain commercial security agreement executed by Debtor, in favor of FHB, dated April 12, 2017, (“Security Agreement”), granting to FHB a security

interest in all inventory, equipment, accounts, rights to payment, and tangibles, general intangibles, of the Debtor (collectively, “Collateral”).

E. FHB filed the following: (a) that certain UCC financing statement in the office of the Department of Licensing-Washington on April 5, 2017 as File Number 2017-095-9642-3 and with the Florida Department of State on April 12, 2017 as File Number 201700883125 (“Financing Statements”) covering all of the Debtor’s assets, including rights to payment and accounts receivable (“Cash Collateral”).

F. As additional partial consideration for the Note, Rebecca Eleanore Petris (“Guarantor”) executed and delivered to FHB an unlimited guarantee obligating herself to pay for any and all unpaid principal, interest, fees, costs, and disbursements associated with the Note and any other indebtedness then existing, or thereafter existing between FHB and the Debtor (“Guarantee”).

G. The Note, Security Agreement, Guarantee, and Financing Statements referenced herein, and all other documents executed in connection with the SBA loan shall hereinafter sometimes be referred to collectively as the “Loan Documents”. Unless otherwise defined herein, all capitalized terms used in this Stipulation shall have the same meanings defined in the Loan Documents.

H. The Collateral defined herein includes property that constitutes “cash collateral” as that term is defined at 11 U.S.C. Sec 363(a).

I. Pursuant to discussions and negotiations taking place between the Debtor and FHB, the parties have agreed to the use of cash collateral for such other time as may be approved by this Court on a longer term basis after notice of hearing and hearing on the same have occurred, subject to the terms and conditions set forth below.

J. FHB asserts that the principal amount owed on the Note is One Hundred Eighty Three Thousand and One and 38/100 Dollars (\$183,001.38) as of June 18, 2018.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties stipulate as follows:

1. Subject to the terms herein, FHB consents to the Debtor's use of cash collateral from June 14, 2018 ("Petition Date"), unless or until further order of the court.
2. The Debtor's use of cash collateral is subject to the following terms and conditions:
 - a. The Debtor will use cash to pay ordinary and necessary business expenses and administrative expenses for the items and in such use that will not vary materially from that provided for in the budget attached hereto as Exhibit "A", except for variations attributable to expenditures specifically authorized by Court order, or as otherwise authorized by FHB in writing, and those payments to FHB under the terms of this Stipulation. To the extent that there shall be any material increase in the amount of the expenses set forth in Exhibit "A" attached hereto, to the extent that the budget will be exceeded by more than ten per cent (10%) for any given monthly period of time, the Debtor must obtain written consent, in writing, from FHB for such increased expense, or Court order authorizing otherwise.
 - b. FHB shall have a lien in the same amount, priority, and extent as its pre-petition lien(s), on post-petition personal property of the Debtor now existing or hereafter created, acquired or arising, and all proceeds, products, additions, accessions, substitutions and replacements. Such lien is subordinated to the compensation and expense reimbursement allowed to any trustee hereafter appointed in the case. This order does not constitute a finding as to the nature or validity of any security interest asserted by FHB.
 - c. The Debtor will carry insurance on its assets, land, and buildings and will provide proof of insurance reasonably acceptable to FHB, including declaration pages for general liability and coverage.
 - d. The Debtor will provide FHB with such reports and documents as it may reasonably request. Without limiting the generality of the foregoing, the Debtor will provide all reports and financial information provided by the Debtor to the Office of the United States Trustee, and all attachments affixed thereto at the same time they are delivered to the United States Trustee, and by the 14th day of each calendar month, the Debtor will deliver an updated accounts receivable aging report, and monthly operating reports to be maintained under either a QuickBooks program, or Peachtree program, which shall include no less than a monthly balance sheet, profit

and loss statement, cash flow report, and general ledger. The Debtor will also provide FHB with its monthly bank account statements associated with any debtor in possession account maintained by the Debtor after the bankruptcy filing date.

- e. The Debtor will afford FHB the right to inspect the Debtor's books and records and the right to inspect and appraise any part of its collateral at any time during normal operating hours and upon reasonable notice to the Debtor and its attorneys.
 - f. The Debtor will make adequate protection payments to FHB by remitting monthly payments in the amount of Two Thousand Three Hundred Eighty Two and 03/100 Dollars (\$2,382.03) commencing on July 1 2018, and continuing thereafter on the 1st day of each subsequent month through the term of this adequate protection stipulation, or any extensions hereto.
 - g. All future revenues and income generated by the Debtor shall be deposited in the debtor in possession account(s) maintained at Peninsula Credit Union ("DIP Account"), and that all withdrawals, checks, payments, and transfers shall also be drawn out of the DIP Accounts.
3. Debtor's permitted use of cash collateral will cease if:
- i. Debtor defaults in performance of any obligation hereunder.
 - ii. FHB gives written notice of such default to Debtor and its counsel via either e-mail, facsimile transmission, or U.S. Mail.
 - iii. Such default is not cured within five (5) days from the date of sending or mailing, or faxing a notice of the default.
 - iv. In the event the default is not cured on, or within, five (5) days of the written notice of default FHB shall be entitled to request expedited relief from the automatic stay to pursue its rights.
 - v. Debtor's failure to timely pay any tax, including withholding, property, income, excise, use, occupancy, liquor, tobacco, or any other municipal, state or federal tax accruing at any time after the Petition Date.
 - vi. Debtor sells, conveys, transfers, or otherwise disposes of any of its assets or property out of the ordinary course of business unless otherwise approved by the bankruptcy court beforehand;
 - vii. The case is dismissed or converted to another chapter of the Code.

4. Debtor will not use the Collateral, including cash collateral, for any purpose which is not authorized by Title 11 of the code or by order of this Court.
5. Notwithstanding any restriction on the use of the Cash Collateral, FHB specifically approves, following the Petition Date, payments to the United States Trustee for quarterly fees and professional fees as may be allowed and approved by the Court.
6. None of the allowances set forth herein shall bind any subsequent Trustee should the pending case be converted to one under Chapter 7 of the Bankruptcy Code, nor shall anything herein constitute an admission by Debtor regarding the amount of FHB's allowed claim or the validity, priority or enforceability of any lien or security interest securing such claim.
7. To the extent permitted under Section 506(b) of the Code, Debtor agrees that there shall be allowed to FHB an amount equal to all reasonable fees and legal expenses incurred by FHB in connection with the negotiation, execution and delivery of this Agreement or the collection or enforcement or protection of this Agreement, or any extensions in the future, and that the same shall be included with any proof of claim to be filed on behalf of FHB during the pendency of these proceedings. The Debtor maintains the right to object to the attorneys' fees, costs, and disbursements in the event the Debtor concludes that they were not reasonably incurred by FHB. All such fees and costs shall ultimately be subject to Court allowance.
8. The parties hereby stipulate that all of the Recitals set forth herein are true and correct as of the date of the execution of this Agreement.

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Dated: July 5, 2018

/s/ Emily Jarvis

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ATTORNEYS FOR THE DRY EYE
COMPANY, LLC

Dated: July 5, 2018

/s/ Brett Wittner

Brett Wittner (#27657)
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ATTORNEYS FOR FIRST HOME BANK

Entered on Docket July 6, 2018

	June 16-30	July	August	September	October	November	December
INCOME							
Sales (products)	\$ 37,283	\$ 82,850	\$ 82,850	\$ 88,993	\$ 91,135	\$ 91,135	\$ 95,278
Sales (shipping)	\$ 7,850	\$ 17,000	\$ 17,000	\$ 17,850	\$ 18,700	\$ 18,700	\$ 19,550
Sales (sales tax collected)	\$ 68	\$ 150	\$ 150	\$ 158	\$ 165	\$ 165	\$ 173
Donations	\$ 50	\$ 400	\$ 100	\$ 100	\$ 100	\$ 100	\$ 100
Total cash receipts	\$ 45,050	\$ 100,400	\$ 100,100	\$ 105,100	\$ 110,100	\$ 110,100	\$ 115,100
COGS	\$ 22,742	\$ 45,568	\$ 45,568	\$ 47,846	\$ 50,124	\$ 50,124	\$ 52,403
EXPENSES							
Fulfillment fees	\$ 540	\$ 1,200	\$ 1,200	\$ 1,260	\$ 1,320	\$ 1,320	\$ 1,380
Packaging & labeling	\$ 563	\$ 1,250	\$ 1,250	\$ 1,313	\$ 1,375	\$ 1,375	\$ 1,438
Merchant fees	\$ 1,575	\$ 3,500	\$ 3,500	\$ 3,675	\$ 3,850	\$ 3,850	\$ 4,025
Shipping	\$ 6,030	\$ 13,400	\$ 13,400	\$ 14,070	\$ 14,740	\$ 14,740	\$ 15,410
Ecommerce software	\$ 600	\$ 1,200	\$ 1,200	\$ 1,200	\$ 1,200	\$ 1,200	\$ 1,200
E-COMMERCE & FULFILLMENT	\$ 9,308	\$ 20,550	\$ 20,550	\$ 21,518	\$ 22,485	\$ 22,485	\$ 23,453
Payroll	\$ 8,200	\$ 18,700	\$ 28,100	\$ 18,700	\$ 18,700	\$ 18,700	\$ 18,700
Health Insurance	\$ 1,250	\$ 1,250	\$ 1,250	\$ 1,250	\$ 1,250	\$ 1,250	\$ 1,250
PAYROLL & BENEFITS	\$ 9,450	\$ 19,950	\$ 29,350	\$ 19,950	\$ 19,950	\$ 19,950	\$ 19,950
Advertising / marketing	\$ 250	\$ 1,000	\$ -	\$ 1,500	\$ 1,500	\$ 2,000	\$ 2,000
Bank fees	\$ 10	\$ 10	\$ 10	\$ 10	\$ 10	\$ 10	\$ 10
Licenses, permits etc	\$ -	\$ 235	\$ 235	\$ -	\$ -	\$ -	\$ -
Facility							
Rent	\$ 1,900	\$ 1,900	\$ 1,900	\$ 1,900	\$ 1,900	\$ 1,900	\$ 1,900
Utilities	\$ 90	\$ 90	\$ 90	\$ 100	\$ 140	\$ 200	\$ 200
Phone & internet	\$ 225	\$ 225	\$ 225	\$ 225	\$ 225	\$ 225	\$ 225
Virtual receptionist	\$ 120	\$ 120	\$ 120	\$ 120	\$ 120	\$ 120	\$ 120
Mobile	\$ 120	\$ 120	\$ 120	\$ 120	\$ 120	\$ 120	\$ 120
Office expenses	\$ 100	\$ 250	\$ 250	\$ 250	\$ 250	\$ 250	\$ 250
Insurance	\$ 43	\$ 43	\$ 43	\$ 43	\$ 43	\$ 43	\$ 43
Professional fees							
CPA	\$ -	\$ 1,500	\$ -	\$ 200	\$ -	\$ 200	\$ -
Bookkeeper*	\$ -	\$ 320	\$ 320	\$ 320	\$ 320	\$ 320	\$ 320
Other	\$ -	\$ 115	\$ 115	\$ 115	\$ 115	\$ 115	\$ 115
US Trustee Fees	\$ -	\$ 650	\$ -	\$ -	\$ 1,950	\$ -	\$ -
Legal fees	\$ -	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000
Ad. protection payments First Home	\$ -	\$ 2,382	\$ 2,382	\$ 2,382	\$ 2,382	\$ 2,382	\$ 2,382
Event fees	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Taxes: Sales tax remittance	\$ -	\$ 350	\$ -	\$ -	\$ 458	\$ -	\$ -
Travel	\$ 350	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
ALL OTHER	\$ 3,208	\$ 10,310	\$ 6,810	\$ 8,285	\$ 10,532	\$ 8,885	\$ 8,585
TOTAL EXPENSES	\$ 44,707	\$ 96,377	\$ 102,277	\$ 97,598	\$ 103,091	\$ 101,444	\$ 104,490
CASH							
OVER (SHORT)	\$ 343	\$ 4,023	\$ (2,177)	\$ 7,502	\$ 7,009	\$ 8,656	\$ 10,610