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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

Northwest Senior Housing Corporation, *et al.*,¹

Debtors.

Chapter 11

Case No. 22-30659 (MVL)

(Jointly Administered)

Re: Docket No. 35, 112, 257, & 353

**THE TRUSTEE AND DIP LENDER’S REPLY TO THE OBJECTION OF
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO
THE DEBTORS’ POST-PETITION FINANCING MOTION**

UMB Bank, N.A., as successor master trustee and successor bond trustee (together, the “**Trustee**”) and debtor-in-possession lender (the “**DIP Lender**”) to the above-captioned debtors and debtors in possession (the “**Debtors**”), through its undersigned counsel, hereby files this reply to the *Objection of the Official Committee of Unsecured Creditors to the Debtors’ Post-Petition Financing Motion* [Docket No. 257] (the “**Objection**”) and respectfully states as follows:²

¹ The Debtors in these chapter 11 cases (the “**Chapter 11 Cases**”), along with the last four digits of each Debtor’s federal tax identification number, are Northwest Senior Housing Corporation (1278) and Senior Quality Lifestyles Corporation (2669). The Debtors’ mailing address is 8523 Thackery Street, Dallas, Texas 75225.

² Capitalized terms not defined herein shall have the meanings ascribed to such terms in the Objection.



REPLY

1. As an initial matter, the proposed DIP Facility and proposed DIP Order represent an arms-length negotiated package of rights and obligations. The Committee should not be entitled to simply pull certain rights and protections afforded the DIP Lender and Trustee out from underneath the lenders and expect them to commit to the proposed financing. The issue is whether the Debtors have exercised their business judgement in seeking to enter into the proposed financing—based upon the terms and conditions which are commercial, market and have been approved by numerous other courts, the DIP Lender and the Trustee believe the Debtors have exercised reasonable business judgement in proposing the DIP Facility and underlying DIP Order to the Court for approval.

2. Notwithstanding the foregoing, the DIP Lender and the Trustee have been in discussions with the Committee to address the issues raised in the Objection. As described more fully herein, the DIP Lender and the Trustee have made a number of concessions to address the issues raised in the Objection, as demonstrated in a new proposed Final Order (the “**Revised DIP Order**,” a redline of which is attached as **Exhibit A**), which has been shared with the Committee, resolves various Committee objections. However, certain issues (including recently raised new and/or supplemental to previous raised issues) remain in dispute and the DIP Lender and Trustee respectfully request the Court overrule the Objection on those disputed issues. The following is a summary of the issues raised in the Objection, the proposed revisions/modifications, and the status of each issue.

3. **Challenges to Debtor Stipulations.** *[Resolved]* The Committee requests that the Debtors’ stipulations regarding the Trustee and its collateral be expressly subject to the Committee’s Challenge. The Trustee has agreed to this revision.

4. **Diminution in Value.** *[Resolved]* The Committee objects to the following language in connection with a determination of diminution of value in the Trustee’s collateral: “to the effect that the funding of the DIP Loans and use of Cash Collateral constitutes a diminution in value of the Trustee’s Pre-Petition Collateral.” The Trustee has agreed to remove this language with all parties reserving their respective rights as to the extent and amount of any diminution claim.

5. **Cross-Collateralization Provision.** *[Partially Resolved]* The Committee alleges that the proposed Final Order contains a “Disguised Cross-Collateralization” provision that “has the potential effect of securing the Trustee’s Pre-Petition Bond Claim with liens on previously Unencumbered Assets.” Specifically the Committee in its Objection raised a concern relating to the following language: “The DIP Lender and Trustee shall be entitled to apply the payments or proceeds of the Post-Petition Collateral or the Pre-Petition Collateral as they deem appropriate” For the avoidance of doubt, there was no intention to cross-collateralize the Pre-Petition Bond Claim, and the DIP Lender, and the Trustee agreed to clarify the language cited by the Committee in its Objection which is provided for in the Revised DIP Order. The Committee now appears to be insisting on changes to other provisions of the Final Order (beyond the provision identified in its Objection) – to the extent the Committee suggests other changes are necessary, the DIP Lender and Trustee requests the Court overrule the Objection on this issue.

6. **Budget.** *[Partially Resolved]* The Committee requests notice of any new budgets and asks to be provided with all financial reporting delivered to the DIP Lender and Trustee. The DIP Lender has agreed to language in the proposed Revised DIP Order that provides the Committee with such relief. In addition, the DIP Lender is amenable to adding additional language to the Revised DIP Order that permits the Committee to raise an objection to an amendment to the

Budget within three (3) days, in which case such amendment will not become effective pending a further order of the Court.

7. **Payment of Resident Refunds.** *[Partially Resolved]* The Committee objects to the DIP Loans being used to repay pre-petition resident refund claims, as requested by the Debtors. The DIP Lender agrees with the Committee that such refund claims should not be paid at this time, and the DIP Lender has therefore objected to any line item that includes such claims in the Budget attached to the proposed Revised DIP Order and has not agreed to increase the amount of the DIP Loan to cover these costs.³ As to the Committee Objection that such funds should otherwise be reallocated to other line items, given that the DIP Facility was not increased to cover this proposed line item there are no funds to reallocate.

8. **Investigation Budget.** *[Partially Resolved]* The Committee objects to the amount of the DIP Loans that can be used to investigate claims against the Trustee. The DIP Lender has agreed to double the Committee's investigation budget of \$25,000 to \$50,000, and understands that this amount is acceptable to the Committee. To the extent the Committee suggests other changes are necessary, the DIP Lender and Trustee requests the Court overrule the Objection on this issue.

9. **Event of Default due to Challenge.** *[Partially Resolved]* The Committee in its Objection raised an issue concerning an Event of Default being triggered due to the initiation of a Challenge by a third-party (including the granting of standing in connection therewith). The DIP Lender has agreed to remove the applicable language as set forth in the Revised DIP Order.

10. **Releases.** *[Partially Resolved]* The Committee objects to the Debtors' releases of the DIP Lender and the Trustee. The Trustee has agreed to clarify that any releases of the Trustee

³ The DIP Lender understands that the Debtors may still be seeking this relief.

will be subject to a Challenge during the Investigation Period. However, because the DIP Loans are not subject to a Challenge, and because the DIP Facility is being approved in connection with the Revised DIP Order (as may be amended), the release of the DIP Lender is appropriate. Accordingly, the DIP Lender respectfully requests that the Objection be overruled in this regard.

11. **Investigation Period.** *[Suggested Compromise]* The Committee argues that the Investigation Period of fifty-three (53) days from the date of Committee formation is inadequate. The Committee in its Objection sought an Investigation Period of ninety (90) days. The DIP Lender and Trustee have agreed to extend the challenge period to seventy-five (75) days from the date of Committee formation.

12. **Lender Remedies.** *[Suggested Compromise]* The Committee contends that the remedy notice period of five (5) business days is too short and should be extended to fifteen (15) business days. Although the DIP Lender still believes that five (5) business days' notice is more than sufficient notice of a default, the DIP Lender and Trustee have agreed to extend the time the Debtors can continue using Cash Collateral (subject to the Budget) post-default notice from five (5) to ten (10) business days, and the time for the Debtors to seek relief from the Court from five (5) to ten (10) business days (with prior consent for an expedited hearing by the DIP Lender and Trustee).

13. **DIP Liens on Unencumbered Assets.** *[Partially Resolved]* The Committee objects to prepetition unencumbered assets of the Debtors being included in the Post-Petition Collateral securing the DIP Loans, including (a) the Entrance Fee Escrow Accounts, (b) Chapter 5 Causes of Action; and (c) Commercial Tort Claims, including claims against the Landlord.

14. As an initial point, the DIP Loans are new money loans and as part of the negotiated financing package are proposed to be secured by all of the Debtors' assets, regardless of whether

such assets were previously encumbered. This is standard relief any DIP lender would require as part of post-petition financing, and there is no justification for excluding assets that may not be subject to the pre-petition lien of a lender. *See, e.g., In re CICI's Holdings, Inc.*, Case No. 21-30146 (SGJ) (Bankr. N.D. Tex. 2021) [Docket No. 157] (granting a pre-petition lender acting as a DIP lender a lien in all of the debtors' prepetition and post-petition collateral subject to a carve-out); *In re Studio Movie Grill Holdings, LLC*, Case No. 20-32633 (SGJ) [Docket No. 280] (granting the same); *In re Trivascular Sales LLC*, Case No. 20-31840 (SGJ) (Bankr. N.D. Tex. 2020) [Docket No. 268] (granting the same); *In re Vista Proppants and Logistics, LLC*, Case No. 20-42002 (ELM) (Bankr. N.D. Tex. 2020) [Docket No. 219] (granting the same); *In re Tuesday Morning Corporation*, Case No. 20-31476 (HDH) (Bankr. N.D. Tex. 2020) [Docket No. 429] (granting the same); *In re GGI Holdings, LLC*, Case No. 20-31318 (HDH) (Bankr. N.D. Tex. 2020) [Docket No. 214] (granting the same).

15. The Committee fails to cite any support for this objection and is in fact contrary to not only market terms for post-petition loans but also is a back door effort of the Committee to increase the carve-out offered under the Revised DIP Order. Notwithstanding, and following discussions with the Committee, the DIP Lender has agreed to exclude from the Post-Petition Collateral all Chapter 5 Causes of Action and proceeds thereof. All other assets of the Debtors' estates, however, are properly included in the Post-Petition Collateral package, including the Debtors' interest in the Entrance Fee Escrow Accounts and the Commercial Tort Claims.

16. With respect to funds in the Entrance Fee Escrow Accounts, the DIP Lender has clarified that such escrowed funds shall not be (and were never intended to be) included in its Post-Petition Collateral unless and until those funds become property of the Debtors' estates. Therefore, the Post-Petition Collateral only includes the Debtors' interest in such funds pursuant to the terms

of the Escrow Agreement.⁴ The Debtors' interest in such funds are already subject to the Trustee's prepetition lien pursuant to the Escrow Agreement (i.e., not "unencumbered"), and are properly included in the Post-Petition Collateral package securing the DIP Loans.

17. Similarly, the Commercial Tort Claims, including the Landlord action, should be included in the Post-Petition Collateral. The DIP Lender is, *inter alia*, funding the costs of the Debtors' operations and administrative expenses of the Chapter 11 Cases based upon a package of rights and there is no reason to exclude assets of the estates from collateral securing a new-money post-petition financing (as evidenced by the absence of supportive case law in the Objection). Therefore, the DIP Lender respectfully submits that the inclusion of Commercial Tort Claims (including those against the Landlord) in its Post-Petition Collateral is appropriate and the DIP Lender requests the Court overrule the Objection on this issue.

18. **Adequate Protection Liens on Unencumbered Assets.** *[Partially Resolved]* Similar to the above, the Committee objects to the Trustee's adequate protection liens on certain of the Debtors' unencumbered assets, including (a) the Entrance Fee Escrow Accounts, (b) Chapter 5 Causes of Action; and (c) Commercial Tort Claims, including claims against the Landlord.

19. First, such adequate protection liens are only available to the extent the Trustee can prove diminution in the value of its prepetition collateral. Second, the adequate protection liens are part of the package of protections afforded the Trustee to obtain its consent to be primed by the DIP Facility. Finally, as with the above, the Trustee has agreed that (a) its adequate protection liens will not attach to Chapter 5 Causes of Action or their proceeds, and (b) its lien on funds relating to the Entrance Fee Escrow Accounts is limited to the Debtors' interest under the Escrow

⁴ As defined in the Debtors' Motion for Entry of an Order (I) Authorizing the Debtors to Continue (A) Escrowing Entrance Fees in the Ordinary Court and (B) Refunding Certain Entrance Fees During the Chapter 11 Cases and (II) Granting Related Relief [Docket No. 18].

Agreement (a lien it also had prepetition). Therefore, the Trustee requests the Court overrule the Objection on this issue.

20. **Trustee Credit Bid subject to Challenge.** *[Partially Resolved]* The Committee requests that the DIP Lender and Trustee's right to credit bid be subject to Section 363(k) of the Bankruptcy Code and the Committee's Challenge. In response, the Trustee has agreed that its credit bid right is explicitly subject to a Challenge. However, given that the DIP Facility is being approved upon entry of the Revised DIP Order (as may be amended), the DIP Lender's credit bid right should be unconditional. Therefore, the DIP Lender requests the Court overrule the Objection on this issue.

21. **Committee Budget and Carve-Out.** *[Suggested Compromise]* The Committee requests that the line item for Committee professional fees be increased in the proposed Budget. The Committee's Budget line item was prepared by the Debtors, and the DIP Lender has agreed to fund the amounts set forth in that Budget. Unfortunately, there are limited funds available to advance to the Debtors in these Chapter 11 Cases. To the extent a plan is confirmed, all reasonable fees and expenses of the Committee (as well as other estate professionals), as approved by the Court, will need to be paid on the effective date of such plan – thus the payment of fees under the Budget is mainly a timing issue and is not and was never intended to be a cap on fees. The Committee similarly requests that the Carve-out for post-termination professional fees be increased from \$300,000 to \$800,000. The DIP Lender believes that \$800,000 is unreasonable, but has agreed to increase the Carve-out to \$400,000 for post-termination professional fees (which Carve-out is in addition to all fees and expenses that have been incurred and not paid under the Budget as of the date of any Termination Event). The DIP Lender and Trustee request the Court overrule the Objection on this issue.

22. **Investigation Period Tolling.** *[Disputed]* The Committee requests the Court require the Debtors to provide the Committee with authority to conduct discovery in connection with any Challenge and grant the Committee standing. While the Committee may be entitled to such relief, it is inappropriate to seek a predetermination at this stage of the Chapter 11 Cases. The DIP Lender and Trustee have already agreed that any standing motion may be filed in connection with a Challenge and, given the now seventy-five (75) day Investigation Period, the Committee will have sufficient time to evaluate all issues relating to standing and discovery and to pursue any related relief as and when they see fit. Therefore, the DIP Lender and Trustee request the Court overrule the Objection on this issue.

23. **506(c) and 552(b) Waivers.** *[Disputed]* The Committee objects to the proposed Section 506(c) and 552(b) waivers; however, such waivers are part of the negotiated financing package along with the consent of the Trustee to have its liens primed and its cash collateral be used during the course of these proceedings. The DIP Lender and Trustee agreed to a Carve-out (now over \$400,000) so that estate professionals – including Committee professionals – would be paid even upon a Termination Event under the DIP Facility. The Trustee’s and DIP Lender’s agreement to a Carve-out was in consideration for the Debtors’ waiver of any surcharge rights under Section 506(c) of the Bankruptcy Code and the waiver of any claims under the “equities of the case” provision in Section 552(b) of the Bankruptcy Code. Moreover, the DIP Lender would not have agreed to the terms of the DIP Facility absent these waivers nor would the Trustee have consented to its liens being primed as well as consenting to the use of its cash collateral. Further, the DIP Lender’s agreement to fund the Chapter 11 Cases through the DIP Facility, the Trustee consent to be primed and Trustee’s and DIP Lender’s consent to Cash Collateral usage constitutes substantial and material consideration that justifies the request for a 506(c) waiver.

24. Courts in this district have approved similar Section 506(c) and 552(b) waivers in exchange for a lender's willingness to provide a carve-out for estate professionals. *See, e.g., In re Fresh Acquisitions, LLC*, Case No. 21-30721 (SGJ) (Bankr. N.D. Tex. 2021) [Docket No. 157] (granting both 506(c) and 552(b) waivers in the final DIP Order); *In re CICI's Holdings, Inc.*, Case No. 21-30146 (SGJ) (Bankr. N.D. Tex. 2021) [Docket No. 157] (granting the same); *In re Studio Movie Grill Holdings, LLC*, Case No. 20-32633 (SGJ) [Docket No. 280] (granting the same); *In re Trivascular Sales LLC*, Case No. 20-31840 (SGJ) (Bankr. N.D. Tex. 2020) [Docket No. 268] (granting the same); *In re Vista Proppants and Logistics, LLC*, Case No. 20-42002 (ELM) (Bankr. N.D. Tex. 2020) [Docket No. 219] (granting the same); *In re Tuesday Morning Corporation*, Case No. 20-31476 (HDH) (Bankr. N.D. Tex. 2020) [Docket No. 429] (granting the same); *In re GGI Holdings, LLC*, Case No. 20-31318 (HDH) (Bankr. N.D. Tex. 2020) [Docket No. 214] (granting the same).

25. Accordingly, the DIP Lender and Trustee respectfully submits that Section 506(c) and 552(b) waivers are appropriate and warranted under the facts and circumstances of these Chapter 11 Cases and request the Court overrule the Objection on this issue.

26. **Marshalling.** *[Disputed]* The Committee requests that the Court deny the waiver of the equitable doctrine of "marshaling" or any similar doctrine as to the Trustee and DIP Lender. But this waiver, in tandem with the Section 506(c) and 552(b) waivers, was in consideration for the Carve-out which will benefit the estate professionals (including the Committee's professionals), and is standard relief in DIP financings in the Northern District of Texas. *See, e.g., In re CICI's Holdings, Inc.*, Case No. 21-30146 (SGJ) (Bankr. N.D. Tex. 2021) [Docket No. 157] (waiving the equitable doctrine of "marshaling" or any similar doctrine with respect to the pre-petition lender's and DIP Lender's collateral); *In re Studio Movie Grill Holdings, LLC*, Case No.

20-32633 (SGJ) [Docket No. 280] (waiving the same); *In re Trivascular Sales LLC*, Case No. 20-31840 (SGJ) (Bankr. N.D. Tex. 2020) [Docket No. 268] (waiving the same); *In re Vista Proppants and Logistics, LLC*, Case No. 20-42002 (ELM) (Bankr. N.D. Tex. 2020) [Docket No. 219] (waiving the same); *In re Tuesday Morning Corporation*, Case No. 20-31476 (HDH) (Bankr. N.D. Tex. 2020) [Docket No. 429] (waiving the same); *In re GGI Holdings, LLC*, Case No. 20-31318 (HDH) (Bankr. N.D. Tex. 2020) [Docket No. 214] (waiving the same).

27. **DIP Lender’s Good Faith.** *[Disputed]* The Committee argues that a finding of good faith as to the DIP Lender is premature and thus should not be included in the Final Order. However, such relief is standard in connection with the approval of DIP financings. The DIP Loans are the result of arm’s length, good faith negotiations between the Debtors and the DIP Lender. The terms and conditions of the DIP Loans are not only fair and reasonable, but the proceeds of the DIP Loans will be used only for purposes that are permissible under the Bankruptcy Code. Further, a finding of “good faith” does not release the DIP Lender for future acts or liability, or otherwise affect the Committee’s Challenge rights with respect to the Trustee. Accordingly, the Court should find that the DIP Lender is a “good faith” lender within the meaning of section 364(e) of the Bankruptcy Code and is entitled to all of the protections afforded by that section.

28. **Maturity Date Extension.** *[Disputed]* The Committee requests that “to the extent the Bankruptcy Milestones are subsequently amended and the Plan’s effective date is extended beyond the DIP Facility’s current Maturity Date of December 31, 2022, the Maturity Date should automatically be extended to ensure the Debtor has sufficient funding to finance operations through the Plan’s effective date.”

29. The Debtors and the DIP Lender agreed to a package of terms and conditions for DIP Loans—which terms and conditions are “market” and otherwise commercially reasonable —

including that December 31, 2022 would be the outside maturity date. Any deviation from the maturity date (or the Bankruptcy Milestones) is a significant modification to the terms and conditions of the DIP Facility. The DIP Lender is unwilling to pre-commit to the automatic extension of the Maturity Date. Therefore, the DIP Lender and Trustee request the Court overrule the Objection on this issue.

30. **Challenges to the DIP Facility.** *[TBD]* The Committee requests that it be allowed “to challenge the liens and claims of the Trustee with respect to the DIP Facility and, in the event of a successful challenge, to unwind such roll-up or to seek disgorgement of any amounts paid to the Trustee by the Debtor.” It is unclear whether the Committee is seeking to challenge and seek disgorgement against the DIP Lender and/or the Trustee (given the reference to the Trustee and the DIP Facility in the Objection). The DIP Lender and Trustee have requested clarification and are awaiting a response from the Committee. If the Objection relates to the DIP Lender, it should be overruled – the DIP Facility is being approved through the proposed Revised DIP Order (as may be amended) and should not be subject to subsequent Challenge nor payments to the DIP Lender subject to disgorgement. If the Objection relates to the Trustee, then the Trustee has agreed that, upon a successful Challenge, payments made to the Trustee may be subject to disgorgement.

CONCLUSION

31. For the forgoing reasons, the DIP Lender and the Trustee respectfully requests that the Court (i) enter the proposed Revised DIP Order, (ii) overrule the Committee’s Objection to the extent set forth herein, and (iii) grant such other relief that the Court may deem appropriate.

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Dated: June 2, 2022

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DIP Lender*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 2, 2022, a true and correct copy of the foregoing Motion was served via electronic notification upon all parties that are registered or otherwise entitled to receive electronic notices in these cases pursuant to the ECF procedures in this District.

/s/ J. Frasher Murphy
J. Frasher Murphy

EXHIBIT A

Revised DIP Order Redline

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

Northwest Senior Housing Corporation, *et al.*,¹

Debtors.

Chapter 11

Case No. 22-30659 (MVL)

(Jointly Administered)

**FINAL ORDER (1) AUTHORIZING DEBTORS IN POSSESSION
TO OBTAIN POST-PETITION FINANCING; (2) AUTHORIZING DEBTORS IN
POSSESSION TO USE CASH COLLATERAL; (3) PROVIDING ADEQUATE
PROTECTION; AND (4) GRANTING LIENS, SECURITY INTERESTS
AND SUPERPRIORITY CLAIMS**

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtors' federal tax identification number, are Northwest Senior Housing Corporation (1278) ("NSHC") and Senior Quality Lifestyles Corporation (2669) ("SQLC"). The Debtors' mailing address is 8523 Thackery Street, Dallas, Texas 75225.

This Final Order (1) Authorizing Debtors in Possession to Obtain Post-Petition Financing; (2) Authorizing Debtors in Possession to Use Cash Collateral; (3) Providing Adequate Protection; and (4) Granting Liens, Security Interests and Superpriority Claims (this “Final Order”) is entered into by this Court after adequate notice of and hearings upon the *Emergency Motion for Interim Order and Final Order (1) Authorizing Debtors in Possession to Obtain Post-Petition Financing; (2) Authorizing the Debtors in Possession to Use Cash Collateral; (3) Providing Adequate Protection; and (3) Granting Liens, Security Interests and Superpriority Claims* (the “Motion”)², and upon the terms agreed to by and among the above-captioned debtors (the “Debtors”), UMB Bank, N.A., as the successor bond trustee (in such capacity, the “Bond Trustee”) under the Bond Indentures (as defined below), UMB Bank, N.A., as successor master trustee (the “Master Trustee” and together with the Bond Trustee, the “Trustee”) with respect to the Master Indenture (as defined below), and UMB Bank, N.A., in its capacity as Trustee, as lender (the “DIP Lender”) with respect to the DIP Credit Agreement (as defined below). Upon the terms of the Motion, the stipulations, acknowledgements and agreements of the Debtors, the DIP Lender and the Trustee (collectively, the “Parties”), the statements of the Parties and their counsel at the hearings on the Motion, and the record of the proceedings, the Court makes the following findings of fact and rulings of law:

FINDINGS OF FACT

The Debtors’ Chapter 11 Cases; Procedural Background; Jurisdiction and Notice

A. On April 14, 2022 (the “Petition Date”), the Debtors each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) and

² All defined terms not defined herein shall have the meaning ascribed in the Motion or in the DIP Credit Agreement, as applicable.

thereby commenced their cases thereunder (the “Chapter 11 Cases”). Since the Petition Date, the Debtors have been operating their businesses and managing their property as debtors and debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

B. The Court held a hearing to consider granting the relief requested in the Motion on an interim basis on April 18, 2022. Following such hearing, the Court entered an order granting the relief requested in the Motion on an interim basis, which order was entered by the Court on April 20, 2022 [Docket No. 112] (the “First Interim Order”).

C. On April 28, 2022, the Official Committee of Unsecured Creditors (the “Committee”) was appointed by the Office of the United States Trustee (the “U.S. Trustee”).

D. ~~The~~On May 11, 2022 the Court held a hearing to consider granting the relief requested in the Motion on a second interim basis ~~on May 11, 2022. Following~~and, following such hearing, on May 13, 2022, the Court entered an order granting the relief requested in the Motion on a second interim basis, ~~which order was entered by the Court on May 13, 2022~~ [Docket No. 228] (the “Second Interim Order”). On May 26, 2022 the Court held a hearing to consider granting the relief requested in the Motion on a third interim basis and, following such hearing, on May [], 2022, the Court entered an order granting the relief requested in the Motion on a third interim basis [Docket No. []] (the “Third Interim Order” and together with the First Interim Order and the Second Interim Order, the “Interim Orders”).

E. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. Venue of the Chapter 11 Cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

F. The Debtors have properly served notice of the Motion and the hearings thereon pursuant to sections 102, 105, 361, 362, 363 and 364 of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure 2002 and 4001, 6004, 9006, and 9014 and the Bankruptcy Local Rules which notice was sent to, among others (i) the U.S. Trustee; (ii) the holders of the thirty (30) largest unsecured claims against the Debtors on an aggregate basis, (iii) UMB Bank, N.A., as Trustee and counsel thereto, (iv) Lifespace, Inc. and counsel thereto, (v) Intercity Investment Properties, Inc. and counsel thereto; (vi) the United States Attorney's Office for the Northern District of Texas, (vii) the Committee and counsel thereto; (viii) the Internal Revenue Service, (ix) the United States Department of Justice, (x) the Texas State Attorney General, (xi) the United States Securities and Exchange Commission, (xii) the Texas Department of Insurance, and (xiii) any party that has requested notice pursuant to Bankruptcy Rule 2002 (the "Notice Parties"). Such notice is sufficient for all purposes under the Bankruptcy Code and the applicable Bankruptcy Rules in respect to the relief requested and no further notice of the relief sought in the Motion is necessary.

The Debtors and the Community

G. The Debtors own and operate a continuing care retirement community on approximately 16.25 acres of real property in Dallas, Texas known as "Edgemere" (the "Community").

H. The Debtors offer residential units for their residents (each a “Resident”) in independent living, assisted living, memory care, or skilled nursing units and provide those Residents with necessary healthcare services, multiple entertainment outlets and other social benefits. As of the Petition Date, the Debtors provide accommodations for more than 400 Residents. To provide the quality of care and safety the Residents require, as of April 13, 2022, the Debtors employ approximately 283 individuals to carry out the Debtors’ daily operations.

The Secured Bond Obligations

I. Pursuant to the Interim Orders, as reaffirmed by this Final Order, the Debtors admitted, stipulated, and agreed that NSHC is obligated to the Trustee for the benefit of the beneficial holders of the tax-exempt Bonds (as defined below), authorized and issued by the Tarrant County Cultural Education Facilities Finance Corporation (the “Issuer”), including (i) the Retirement Facility Revenue Bonds (Northwest Senior Housing Corporation – Edgemere Project) Series 2015A in the original aggregate principal amount of \$53,600,000 (the “2015A Bonds”) and the Retirement Facility Revenue Bonds (Northwest Senior Housing Corporation – Edgemere Project) Series 2015B in the original aggregate principal amount of \$40,590,000 (the “2015B Bonds”) and collectively with the 2015A Bonds, the “2015 Bonds”), issued pursuant to that certain Indenture of Trust, dated as of May 1, 2015 (the “2015 Bond Indenture”), by and between the Issuer and The Bank of New York Mellon Trust Company, National Association, as the prior bond trustee (the “Prior Bond Trustee”), and (ii) the Retirement Facility Revenue Bonds (Northwest Senior Housing Corporation – Edgemere Project), Series 2017 in the original aggregate principal amount of \$21,685,000 (the “2017 Bonds”) and collectively with the 2015 Bonds, the “Bonds”), issued pursuant to the Indenture of Trust, dated as of March 1, 2017 (the

“2017 Bond Indenture” and together with the 2015 Bond Indenture, the “Bond Indentures”), by and between the Issuer and the Prior Bond Trustee.

J. Pursuant to the Interim Orders, as reaffirmed by this Final Order, the Debtors admitted, stipulated, and agreed that the Issuer loaned the proceeds of the Bonds to NSHC pursuant to that certain Loan Agreement, dated as of May 1, 2015, by and between the Issuer and NSHC (the “2015 Loan Agreement”) and that certain Loan Agreement, dated as of March 1, 2017, by and between the Issuer and NSHC (the “2017 Loan Agreement” and together with the 2015 Loan Agreement, the “Loan Agreements”). NSHC used the proceeds of the Bonds primarily to (i) finance or refinance the cost of the acquisition, construction, renovation and equipping of the Community, including capital expenditures; (ii) fund various accounts and funds held by the Trustee; and (iii) pay certain costs associated with the issuance of the Bonds.

The Bond Claim

K. Pursuant to the Interim Orders, as reaffirmed by this Final Order, the Debtors admitted, stipulated, and agreed that as of the Petition Date, the amounts due and owing by NSHC with respect to the Bonds and the obligations under the Bond Documents (as defined below) are as follows (collectively, the “Bond Claim”):

- (i) Unpaid principal on the Bonds in the amount of \$109,185,000;
- (ii) Accrued but unpaid interest on the Bonds in the amount of \$2,543,919.22 as of April 13, 2022; and
- (iii) unliquidated, accrued and unpaid fees and expenses of the Trustee and its professionals incurred through the Petition Date. Such amounts, when liquidated, shall be added to the aggregate amount of the Bond Claim.

Security for the Bond Obligations

L. Pursuant to the Interim Orders, as reaffirmed by this Final Order, the Debtors admitted, stipulated, and agreed that the rights of the Issuer under the Loan Agreements were assigned to the Trustee. In addition, as security for its obligations with respect to the Bonds, NSHC entered into that certain Master Trust Indenture, Deed of Trust and Security Agreement dated as July 1, 2007, as supplemented by the Supplemental Indenture Number 1, dated as of July 1, 2007, the Supplemental Indenture Number 2, dated as of September 1, 2014 and the Supplemental Indenture Number 3, dated as of August 1, 2015 (as supplemented, the “Master Indenture”) between NSHC and JPMorgan Chase Bank, National Association, as the prior master trustee (the “Prior Master Trustee”) pursuant to which NSHC granted the Prior Master Trustee a security interest in the following assets of NSHC: (i) all revenue, accounts, accounts receivable, and Gross Revenues (as defined in the Master Indenture) of NSHC; (ii) all general intangibles, equipment, inventory and other personal property of NSHC; (iii) NSHC’s leasehold interest created by that certain Ground Lease, dated as of November 5, 1999 (the “Ground Lease”), by and between NSHC and Intercity Investment Properties, Inc. (the “Landlord”), including NSHC’s interests in the Premises, Land and Existing Improvements (as each are defined in the Ground Lease), and any and all appurtenances, rights and benefits relating thereto and to the use and occupancy thereof, as set forth in Section 2.1 of the Ground Lease; and (v) all funds held in the various accounts established under the Bond Indentures (all such collateral, the “Pre-Petition Bond Collateral” and the liens on such Pre-Petition Bond Collateral, the “Pre-Petition Liens”). The Bond Indentures, the Loan Agreements, the Master Indenture and any other document or agreement delivered as security for, or in respect of, the Bonds or NSHC’s obligations under any of such documents are collectively referred to herein as the “Bond

Documents.”

The Debtors’ Need for Use of Cash Collateral

M. The Debtors have requested the use of the Cash Collateral of the Trustee in connection with the Chapter 11 Cases. The Trustee does not consent to the use of its Cash Collateral, except upon the express terms of this Final Order.

N. Without the use of Cash Collateral, the Debtors’ continued operation as a going concern would be disrupted, the value of the underlying assets would significantly decline, and the Debtors and their residents, estates and creditors would be immediately and irreparably harmed without the use of cash collateral, the Debtors would not have the funds necessary to maintain the Community, provide financial information, pay employee compensation, payroll taxes, overhead and other expenses. The Debtors require use of cash collateral as provided herein.

The Debtors’ Need for Debtor-in-Possession Financing

O. A critical need exists for the Debtors to obtain funds to cover the operational, capital and administrative needs of the Community, solely to the extent set forth under the Budget and under the DIP Facility (as each is defined below). The Debtors are unable to obtain postpetition financing on an unsecured basis under sections 364(c)(1) or 503(b)(1) of the Bankruptcy Code. Further, the Debtors assert that they are also unable to obtain secured credit from sources other than the DIP Lender that would be allowable under sections 364(c)(2), 364(c)(3) and 364(d)(1) of the Bankruptcy Code for the purposes set forth in this Final Order. Further, the Trustee would not consent to any priming liens and would have argued that the Debtors could not have provided adequate protection for any such proposed financing.

P. In addition to the use of the Trustee's Cash Collateral, the DIP Lender has agreed to provide the requested DIP Loans (as defined below) under the DIP Facility and use of Cash Collateral in accordance with the terms contained in this Final Order, in the amounts, categories and times set forth in the Budget, which shall be used for the necessary operational costs associated with the Community and other costs and expenses of administration of the Chapter 11 Cases.

Q. Without the DIP Loans, the Debtors will be unable to pay necessary payroll, costs, and operating expenses, and obtain goods and services needed to preserve the Community in a manner that will avoid irreparable harm to the Debtors' estates and to the Community's residents. At this time, the Debtors' ability to finance the ongoing operation and availability of sufficient liquidity through the incurrence of new indebtedness for borrowed money and other financial accommodations as provided herein are vital to the preservation of the Community and maintenance of the going concern value of the Debtors' estates and to otherwise provide the necessary services to the residents of the Community.

R. The Debtors have requested that the DIP Lender provide advances (each a "DIP Loan") up to an aggregate amount of \$10,100,000, inclusive of amounts approved under the Interim Orders (the "DIP Facility"), which funds shall be used by the Debtors solely to the extent provided in the Budget attached as **Exhibit 1**.

S. The DIP Lender has provided the DIP Loans, subject to the terms and conditions set forth in the Interim Orders and the terms hereof, including the provisions of this Final Order providing that the Post-Petition Liens (as defined below) and the various claims, superpriority claims and other protections granted pursuant to this Final Order will not be affected by any

subsequent reversal or modification of this Final Order or any other order, as provided in section 364(e) of the Bankruptcy Code.

T. The DIP Lender's lending of the DIP Loans was conditioned upon the grant of a lien that: (a) primed and remained senior to the Trustee's Pre-Petition Liens; and (b) otherwise constituted a first priority lien in all Post-Petition Collateral (as defined below), subject only to the Carve-Out and [the liens set forth on Exhibit 2 hereto \(the "Permitted Liens](#) ~~(as defined in the [DIP Credit Agreement](#))~~³.

U. Pursuant to the Interim Orders, the Debtors admitted, stipulated, and agreed that the terms of the DIP Loans were negotiated in good faith and at arm's length among the Debtors and the DIP Lender; that the terms of the DIP Loans were at least as favorable to the Debtors as those available from alternative sources, under all of the circumstances; that given the current market conditions and under the particular circumstances of the Chapter 11 Cases, no other sources of funding were available; and that given the exigencies of the case, the Debtors believed the DIP Loans were the best and only option.

V. Pursuant to the Interim Orders, the Debtors admitted, stipulated, and agreed that the terms of the DIP Loans were fair and commercially reasonable under the circumstances, reflected the Debtors' exercise of their prudent business judgment consistent with their fiduciary duties, were supported by reasonably equivalent value and fair consideration, and were enforceable in accordance with applicable law. As such, the funds advanced were deemed to have been extended by the DIP Lender in "good faith" as that term is used in section 364(e) of the Bankruptcy Code and based upon the express reliance of the protections offered by section

³ [The Debtors, DIP Lender, Committee and Trustee reserve all rights with respect to Permitted Liens, including the right to challenge the priority, extent and validity of any Permitted Lien or the associated secured amount.](#)

364(e) of the Bankruptcy Code and the Post-Petition Liens and the Superpriority Claim (defined below), were entitled to the full protection of section 364(e) of the Bankruptcy Code, including in the event that the Interim Orders or any provision thereof was vacated, reversed or modified, on appeal or otherwise.

W. The Debtors shall continue to, segregate, remit, and deposit all Cash Collateral in the Debtors' accounts, possession, custody or control and which the Debtors may receive in the future, in accordance with applicable cash management orders entered by this Bankruptcy Court and as permitted by the DIP Credit Agreement.

Need for Adequate Protection to Trustee

X. Pursuant to the Bankruptcy Code and in light of the foregoing, the Debtors are required to provide adequate protection to the Trustee in respect of the use of the Pre-Petition Collateral (including Cash Collateral) and granting of the priming Post-Petition Liens. The Debtors wish to provide adequate protection of the security interests in and liens on the Pre-Petition Collateral pursuant to the terms set forth in this Final Order.

Y. The Debtors and the DIP Lender have represented to the Bankruptcy Court that they have negotiated at arm's length and have acted in good faith in the negotiation and preparation of the DIP Credit Agreement and this Final Order, have been represented by counsel, and intend to be and are bound by their respective terms. The terms and conditions of this Final Order and the DIP Documents reflect the Debtors' exercise of prudent business judgment under exigent circumstances and are consistent with their fiduciary duties and are supported by reasonably equivalent value and fair consideration.

Z. Good cause has been shown for the entry of this Final Order. The terms of this Final Order, inclusive of the adequate protection provided to the Trustee relating to the Pre-Petition Liens, are fair and commercially reasonable, reflect the Debtors' prudent business judgment consistent with their fiduciary duties and constitute reasonable equivalent value and fair consideration. Entry of this Final Order is in the best interest of the Debtors, their creditors, including the holders of the Bonds, and their estates.

AA. To the extent any portion of the foregoing constitute rulings of law, they shall constitute this Court's rulings with respect to the matters so-stated.

NOW THEREFORE, THE COURT ORDERS AS FOLLOWS:

Motion Granted

1. The Motion is hereby **GRANTED** in accordance with the terms and conditions set forth in this Final Order. Any objections to the Motion with respect to the entry of this Final Order that have not been withdrawn, waived, or settled, and all reservation of rights included therein, are hereby denied and overruled.

Approval of DIP Facility and DIP Loan Documents

2. On a final basis as set forth in this Final Order, the terms of the DIP Facility, that certain Priming Superpriority Debtor-in-Possession Credit Agreement between the Debtors and the DIP Lender (the “DIP Credit Agreement”) and all documents executed in connection therewith (collectively with the DIP Credit Agreement, the “DIP Loan Documents”) were deemed to be fair and reasonable, reflect the exercise of the Debtors’ prudent business judgment consistent with their fiduciary duties, and constitute reasonably equivalent value and fair consideration.

3. The Debtors are liable for the repayment in full of the DIP Loans and all DIP Obligations.

4. The DIP Facility and DIP Loan Documents have been negotiated in good faith and at arm’s length among the Debtors and the DIP Lender, and the DIP Loans shall be deemed to have been extended by the DIP Lender in good faith (as that term is used in section 364(e) of the Bankruptcy Code) and in express reliance upon, and with the full benefit of the protections afforded by, section 364(e) of the Bankruptcy Code, whether or not this Final Order or any provision thereof is vacated, reversed, or modified, on appeal or otherwise.

5. Absent the relief granted by this Final Order, the Debtors’ estates, residents and creditors would suffer immediate and irreparable harm. Accordingly, the entry of this Final Order and related authorization of Borrowings of the DIP Loans under the DIP Facility and DIP Loan Documents is in the best interests of the Debtors’ estates, their residents, and creditors.

6. The DIP Facility and DIP Loan Documents were and are again approved on a final basis, and the Debtors are hereby authorized to borrow the DIP Loans pursuant to the DIP Loan Documents, to be used in accordance with the Budget attached as **Exhibit 1**, itemizing on a

bi-weekly basis all uses, and anticipated uses, revenues projected to be received and all expenditures proposed to be made during such period, which Budget may be amended at the request of the Debtors and with the written consent of the DIP Lender (and prior notice to the Committee) and incorporated herein by reference (as it may be amended, supplemented, replaced or otherwise modified from time to time ~~solely~~ with the consent of the DIP Lender, in its ~~sole~~ discretion, and prior notice to the Committee, the “Budget”), the proceeds of which shall be used for such purposes as are expressly permitted under the DIP Loan Documents, this Final Order and the Budget; provided that the Committee reserves the right to object to any Budget amendment.

7. In furtherance of the foregoing and without further approval of this Court, the Debtors are authorized to perform all acts, to make, execute, and deliver all instruments and documents (including, without limitation, the execution or recordation of security agreements, mortgages, and financing statements), and to pay at the Maturity Date of the DIP Facility all fees, in each case that may be reasonably required or necessary for the Debtors’ performance of the DIP Loans, including, without limitation:

- (i) the execution, delivery, and performance of the DIP Loan Documents and any exhibits, schedules and other documents related thereto;
- (ii) the execution, delivery, and performance of one or more non-material amendments to the DIP Loan Documents, in each case in such form as the Debtors and the DIP Lender may agree, with prior notice to the Committee (it being understood that no further approval of the Court shall be required for amendments to the DIP Loan Documents that do not shorten the maturity of the extensions of credit thereunder, increase the commitments, or increase the rate of interest payable thereunder); provided that the Committee reserves the right to object to any DIP Loan Document amendment;
- (iii) the non-refundable payment to the DIP Lender of the reasonable costs and expenses as may be due from time to time in connection with the DIP Loans in accordance with the terms of the DIP Loan Documents; and

- (iv) the performance of all other acts required under the DIP Loan Documents in connection with the DIP Loans.

The DIP Loans

8. DIP Loans. Pursuant to sections 361 and 364 of the Bankruptcy Code and the terms and conditions hereof, until the occurrence of an Event of Default (as defined below), the Debtors are hereby authorized to continue borrowing the DIP Loans pursuant to the terms, conditions and provisions of this Final Order and the DIP Credit Agreement in an amount up to an aggregate amount of \$10,100,000 (inclusive of amounts approved under the Interim Orders) pursuant to the terms set forth herein and in the DIP Credit Agreement; provided, however, that the Debtors shall use the proceeds of the DIP Loans solely in compliance with the Budget and as expressly set forth herein.

9. Principal, Interest, Fees, Etc.

- (i) Interest shall accrue on the full amount of the DIP Loan Commitment from the Interim Order Entry Date through the Maturity Date at a simple rate per annum equal to ten percent (10%) (the "Applicable Rate").
- (ii) The DIP Lender will be entitled to a fee equal to two percent (2%) of the DIP Loan Commitment, which shall be fully earned upon the Interim Order Entry Date (the "Commitment Fee").
- (iii) Upon the occurrence and during the continuance of an Event of Default, the DIP Loan Commitment and any accrued interest, fees and other amounts owed under the DIP Credit Agreement (including the Commitment Fee), shall thereafter bear interest at a rate of twelve percent (12%) per annum.
- (iv) The principal, interest and any other obligations owed with respect to the DIP Loans, including the Commitment Fee (the "DIP Obligations") shall be due and payable upon the earlier of (i) the occurrence of an Event of Default; and (ii) December 31, 2022 (the "Maturity Date"). The DIP Loans may be voluntarily paid at any time with no penalty or premium.

10. Conditions to the DIP Loans. The continued funding of the DIP Loans is conditioned on the entry of this Final Order.

11. Disbursements of DIP Loans. The following conditions and processes shall govern the funding of the DIP Loans:

- (i) not less than four (4) business days prior to any borrowing date (each a "Borrowing Date"), the Debtors shall deliver to the DIP Lender a fully executed Borrowing Certificate (as defined below) no later than 10:00 a.m. (New York City time) on such date. Such Borrowing Certificate, a form of which is attached hereto as Exhibit B to the DIP Credit Agreement (each a "Borrowing Certificate"), shall specify the amount of the proposed DIP Loan and the Borrowing Date thereof, and shall certify that the amount of the proposed DIP Loan, after accounting for other available funds held by the Debtors, is reasonably expected to be needed to pay amounts coming due in the fourteen (14) days immediately following such Borrowing Date, as set forth in the Budget. On the Borrowing Date specified in any Borrowing Certificate, the DIP Lender shall disburse such funds to the Operating Account (as defined in the DIP Credit Agreement) and shall use reasonable efforts to make the funds available to the Debtors no later than 2:00 p.m. (New York City time) on the requested Borrowing Date.
- (ii) each request for a DIP Loan must exceed a minimum amount of \$100,000;
- (iii) such expenditures have not been subject to any prior requisition or payment or reimbursement from any other source;
- (iv) after making the DIP Loan requested, the aggregate outstanding principal amount of the DIP Loans will not exceed the lesser of the amount authorized under this Final Order and the DIP Credit Agreement;
- (v) the representations and warranties of the Debtors contained in the Final Order shall be true and correct in all material respects immediately prior to, and after giving effect to, the DIP Loan; and
- (vi) the Debtors are in compliance in all material respects with each of the covenants contained in the Final Order and the DIP Loan Documents.

12. Use of DIP Loan Proceeds. The DIP Loans shall be used solely as set forth in the Budget for: (a) the necessary operation and maintenance costs associated with the Community in the amounts and categories and time set forth in the Budget; and (b) other costs and expenses of administration of the Chapter 11 Cases in the amounts and categories and time set forth in the Budget.

13. Effectiveness of DIP Loans. From and after the entry of the Final Order (the “Effective Date”), the terms and conditions of the Interim Orders, as modified by this Final Order, constitute valid and binding obligations of the Debtors, enforceable against the Debtors in accordance with the terms of the Interim Orders, as modified by this Final Order, for all purposes during the Chapter 11 Cases, any subsequently converted cases of any of the Debtors under chapter 7 of the Bankruptcy Code or after the dismissal of the Chapter 11 Cases. No obligation, payment, transfer or grant of security under the Interim Orders or this Final Order shall be stayed, restrained, voidable, avoidable or recoverable under the Bankruptcy Code or under any applicable law (including without limitation, under sections 502(d), 548 or 549 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law), or subject to any defense, reduction, setoff, recoupment or counterclaim.

14. Payments to the DIP Lender and/or the Trustee. Any and all payments or proceeds remitted to the DIP Lender and/or the Trustee pursuant to the provisions of this Final Order or otherwise shall be received by the DIP Lender and/or the Trustee, free and clear of any claim, charge, assessment or other liability, including, without limitation, any such claim or charge arising out of or based on sections 506(c) and/or 552(b) of the Bankruptcy Code, whether directly or indirectly, all of which are hereby waived by the Debtors. In the event that it is determined by final order of the Court that the Trustee is not entitled under Bankruptcy Code section 506(b) to any postpetition interest, fees and expenses relating to the Bond Claim, then any payments or proceeds remitted to the Trustee shall reduce the Bond Claim held by the Trustee.

Security for the DIP Loan

15. Post-petition Liens. Pursuant to the Interim Orders, as reaffirmed by this Final Order, and pursuant to sections 364(c)(2), (c)(3) and (d) of the Bankruptcy Code and as security for the repayment of the DIP Loans and the obligations under the DIP Loan Documents, the DIP Lender was and is hereby granted valid, binding, enforceable and perfected first priority mortgages, pledges, liens and security interests (the “Post-Petition Liens”) in all currently owned or hereafter acquired property and assets of the Debtors of any kind or nature, whether real or personal, tangible or intangible, wherever located, now owned or hereafter acquired or arising and all proceeds, products, rents and profits thereof, including, without limitation, accounts, revenues, inventory, equipment, capital stock in subsidiaries, investment property, instruments, chattel paper, real estate, leasehold interests, contracts, general intangibles, patents, copyrights, trademarks, deposit accounts, intercompany claims, claims against affiliates, causes of action, tax refund claims, commercial tort claims, insurance proceeds and insurance premium refunds (all of the foregoing, the “Post-Petition Collateral”); provided, however, that the Post-Petition Collateral under this Final Order shall not include any and all cash or other property received by the Debtors in the form of gifts, charitable donations, bequests or grants that are by their terms, restricted in the manner in which they may be utilized by the Debtors to the extent, and only to the extent, that such restrictions would prohibit the granting of any such gifts, donations, bequests or grants as collateral (collectively, the “Charitable Assets”). ~~Post-Petition Collateral shall include~~ or actions for preferences, fraudulent conveyances or other avoidance power claims and any recoveries under sections 542, 544, 545, 547, 548 (exclusive of transferees under section 549), 550 and 553 and the Bankruptcy Code (collectively, the “Avoidance Actions”) ~~and~~ or the proceeds thereof. For the avoidance of doubt, Post-Petition Collateral shall also not include the

New Entrance Fees except to the extent the Debtors acquire an interest in such New Entrance Fees pursuant to the terms of the Escrow Agreement (both as defined in the Debtors' Motion for Entry of an Order (I) Authorizing the Debtors to Continue (A) Escrowing Entrance Fees in the Ordinary Court and (B) Refunding Certain Entrance Fees During the Chapter 11 Cases and (II) Granting Related Relief [Docket No. 18]).

16. The Post-Petition Liens are in addition to the superpriority administrative expense claim set forth in Paragraph 17 hereof, and pursuant to sections 364(c) and 364(d), are valid, binding, continuing, enforceable, fully-perfected, senior and priming on all Post-Petition Collateral that (a) will be and remain senior to the Pre-Petition Liens, Rollover Liens and Supplemental Liens granted to the Trustee as adequate protection for its Pre-Petition Liens; and (b) will otherwise constitute a first priority lien on all other assets of the Debtors, subject only to (i) Permitted Liens, ~~if any~~, and (ii) the Carve-Out.

17. Superpriority Administrative Expense Claim. Pursuant to the Interim Orders, as reaffirmed by this Final Order, the DIP Loans were and are granted the status of a superpriority administrative expense claim (the "Superpriority Claim") pursuant to section 364(c)(1) of the Bankruptcy Code, including, without limitation, having priority over all other unpaid administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546, 726, 1113 or 1114 of the Bankruptcy Code (subject only to the Carve-Out), and shall at all times be senior to the rights of the Debtors, any successor trustee or any creditor in the Chapter 11 Cases or any subsequent proceedings under the Bankruptcy Code, whether or not such expenses or claims may become secured by a

judgment lien or other nonconsensual lien, levy or attachment. The Superpriority Claim granted to the DIP Lender by this Paragraph 17 shall be payable from and have recourse to all pre-and postpetition property of the Debtors and all proceeds thereof.

Debtors' Use of Cash Collateral

18. Pursuant to the Interim Orders, as reaffirmed by this Final Order, the Debtors were and are hereby authorized to continue using cash collateral (as defined in section 363(a) of the Bankruptcy Code) constituting proceeds of accounts and revenues from operations of the Community (collectively, the "Cash Collateral"). Cash Collateral shall include, without limitation, the advances under the DIP Facility, but shall not include any other funds received by the Debtors during these proceedings.

19. The Debtors' use of Cash Collateral shall be solely as set forth in the Budget and as otherwise provided in this Final Order for: (a) the necessary ordinary course operation and maintenance costs associated with the Community in the amounts and categories and time set forth in the Budget; and (b) other costs and expenses of administration of the Chapter 11 Cases in the amounts and categories and time set forth in the Budget. Except on the term and conditions of this Final Order and the DIP Credit Agreement, the Debtors are prohibited from using Cash Collateral at any time or for any other purpose absent consent of the DIP Lender and the Trustee, or further order of the Bankruptcy Court.

Adequate Protection to Trustee for the Pre-Petition Liens and Pre-Petition Collateral Securing the Bond Claim

20. As provided in the Interim Orders and reaffirmed by this Final Order, as adequate protection of the Trustee's interests in the Pre-Petition Collateral, including Cash Collateral, pursuant to sections 361, 363 and 552(b) of the Bankruptcy Code, and the Trustee's consent to

the priming of its liens and claims pursuant to the Post-Petition Liens and the Superpriority Claim provided to the DIP Lender, the Trustee was and is provided the following adequate protection:

- (i) Rollover Liens. As adequate protection for any diminution in the value of the Pre-Petition Collateral, ~~including based upon the priming by the DIP Lender~~ (“Diminution”), the Trustee shall continue to have valid, binding, enforceable and perfected additional and replacement mortgages, pledges, liens and security interests in all Post-Petition Collateral and the proceeds, rents, products and profits therefrom, whether acquired or arising before or after the Petition Date, to the same extent, priority and validity that existed as of the Petition Date (such liens, the “Rollover Liens”); provided, however, the Rollover Liens shall be subject to the Post-Petition Liens, Permitted Liens and the Carve-Out;
- (ii) Supplemental Liens. As additional adequate protection for any Diminution, the Trustee shall have a valid, perfected and enforceable continuing supplemental lien on, and security interest in, all of the assets of the Debtors of any kind or nature whatsoever within the meaning of section 541 of the Bankruptcy Code, whether acquired or arising before or after the Petition Date, and the proceeds, rents, products and profits therefrom, exclusive of the Charitable Assets and the Avoidance Actions and any proceeds therefrom (collectively, the “Supplemental Liens”); provided, however, the Supplemental Liens shall be subject to the Post-Petition Liens, Permitted Liens and the Carve-Out; provided, further, that the Supplemental Liens shall not attach to the New Entrance Fees except to the extent the Debtors acquire an interest in such New Entrance Fees pursuant to the terms of the Escrow Agreement;
- (iii) Pre-Petition Superpriority Claim. As additional adequate protection for any Diminution, the Trustee shall receive a superpriority expense claim allowed under section 507(b) of the Bankruptcy Code (the “Pre-Petition Superpriority Claim”) against all assets of the Debtors’ estate. The Pre-Petition Superpriority Claim shall have priority over any and all other unpaid administrative expenses now existing or hereafter arising, of any kind whatsoever, of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546, 726, 1113 or 1114 of the Bankruptcy Code, and shall at all times be senior to the rights of the Debtors, any successor trustee or any creditor in the Chapter 11 Cases or any subsequent proceedings under the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other nonconsensual lien, levy or attachment; provided, however, the Pre-Petition Superpriority Claim shall be subject to the (i) the Post-Petition Liens, (ii) Permitted Liens, (iii) the Superpriority Claim, and (iv) the Carve-Out; and

- (iv) Financial Reports. The Debtors shall provide the Trustee with all reports, documents and other materials, including financial reports, as may be required in this Final Order and such other and further access to the Debtors' books and records, advisors and professionals as may be reasonably requested by the Trustee from time to time.

PROVISIONS COMMON TO THE DIP LOANS AND TRUSTEE AS HOLDER OF THE BOND CLAIM

Covenants

21. Covenants. The Debtors shall observe all covenants in this Final Order and the DIP Credit Agreement at all times prior to and after the Termination Date (as defined below).

The Debtors agree as follows (and the Parties acknowledge that failure to comply with such covenants shall constitute an Event of Default under this Final Order):

Budget and Reporting Covenants:

- (i) The Debtors shall comply with the Budget (subject to the permitted variances provided in the next immediate sentence), and shall not make any payments, or incur any obligations or liabilities, that are not projected and provided for in the Budget. On the last business day of every other week, payments for such cumulative period to date shall not exceed ten percent (10%) of the respective amounts, measured as to each line item in the Budget, and five percent (5%) of the respective amounts, measured on an aggregate basis, set forth for such cumulative period to date in the Budget (provided expenditures for estate professional fees shall not exceed one hundred percent (100%) of the amount allocated for such expenditures in the Budget for such cumulative period, provided further that estate professionals may carry forward any unused expenditures for estate professionals to pay unpaid estate professional fees and expenses that have been allowed pursuant to any orders of the Bankruptcy Court and may carry backward any unused expenditures for estate professionals, up to an aggregate amount of \$150,000 per month, to pay unpaid estate professional fees and expenses that have been allowed pursuant to any orders of the Bankruptcy Court); and receipts for such cumulative period to date shall not be less than ninety percent (90%) of the amounts, on an aggregate basis, set forth for such cumulative period to date in the Budget. This variance (the "Variance") shall be measured, on a rolling four week period (the "Measuring Period"); provided, however, that for purposes of calculating such Variances, (i) the first Measuring Period shall be the first two weeks after the Petition Date and the first two weeks of the Budget, and (ii) the second Measuring Period shall be the first through fourth weeks after the Petition Date and the first through fourth weeks of the Budget. Any budgeted expenditures not paid in a particular budget period

may be paid during a subsequent period and, for the purpose of calculating rolling four week variances set forth above, the Budget will be revised to move such expenditures to the later period, it being understood that such later period can be outside the four week period. Expenditures (except for professional fees which are addressed as noted above) may be paid in an earlier period in the reasonable discretion of the Debtors, in which event the Budget shall be deemed amended to move the expenditure into the week of the actual expenditure for the purpose of calculating rolling four week variances set forth above. The Debtors may, at any time, amend or reforecast the Budget, either for the period covered by the Budget or for any period thereafter, and the DIP Lender and Trustee may approve, with the prior notice to the Committee with the Committee's opportunity to object as set forth herein, or not approve such amendment in their sole and absolute discretion. Notwithstanding anything to the contrary in the foregoing, if the Debtors exceed, or on a commercially reasonable basis expect to exceed, any line item in the Budget by at least two hundred thousand dollars (\$200,000), they shall immediately notify the DIP Lender and the Trustee.

- (ii) The Debtors shall provide the following reports to the DIP Lender, the Trustee and the U.S. Trustee:
- a. no later than 5:00 p.m. (prevailing Eastern time) on Friday of every other week or if such Friday is not a business day, then the immediate succeeding business day, the "Bi-Weekly Budget Report" which means, a bi-weekly report (i.e., a report issued once in each two-week period) certified by an Authorized Officer for the Debtors, substantially in the same form as the Budget, indicating (i) a comparative reconciliation, on a line-by-line and aggregate basis, of actual cash receipts and disbursements against the cash receipts and disbursements forecast in the Budget, and the percentage variance thereof, for (A) the bi-weekly period ended on (and including) the immediately preceding Sunday, (B) a rolling four-week period, and (C) the cumulative period to date; and (ii) a written explanation of such variances;
 - b. at any time and from time to time that the Debtors receive any material written notice from any Governmental Body, the Debtors shall provide a copy of such notice to the DIP Lender and the Trustee within one (1) business day of receipt, and the Debtors shall provide to the DIP Lender and the Trustee copies of all material reports, certificates and notices that the Debtors may provide to any Governmental Body within one (1) business day of transmission;
 - c. a monthly reporting package, no later than thirty (30) days after the end of each calendar month, including cash flow, income statement, occupancy reports and balance sheet for such month, accounts payable and receivable reports with aging information; and

- d. as promptly as reasonably practicable from time to time following the DIP Lender's and/or the Trustee's reasonable request therefor, such other information (including historical information) regarding the operations, business affairs and financial condition of the Debtors, the progress of the Chapter 11 Cases and the Landlord Action (as defined in the DIP Credit Agreement), including prompt notice of any developments associated therewith, and/or compliance with the terms of any DIP Loan Document.

Bankruptcy Milestones

22. The Debtors agreed that failure to materially comply with the following milestone covenants (the "Bankruptcy Milestones") shall constitute an Event of Default, unless any such conditions have been waived or modified by the DIP Lender and/or the Trustee in their sole discretion:

- (i) On Tuesday of each week (or such other day as may be agreed upon by the Parties), the Debtors shall make available representatives reasonably acceptable to the DIP Lender and the Trustee for a telephone conference call with the DIP Lender and the Trustee, holders of the Bonds, and their respective agents, advisors and/or representatives to discuss the cash flows and operations of the Community, and such other matters as are relevant or are reasonably requested by the DIP Lender and the Trustee;
- (ii) Within seventy-five (75) days of the Petition Date, the Debtors shall provide drafts of the Disclosure Statement and Plan of Reorganization to the DIP Lender and the Trustee;
- (iii) Within ninety (90) days of the Petition Date, the Debtors shall file the Disclosure Statement and Plan of Reorganization, each in form and substance reasonably acceptable to the DIP Lender and Trustee;
- (iv) Within forty-five (45) days of the filing of the Disclosure Statement, the Bankruptcy Court shall have approved the Disclosure Statement and Solicitation Procedures;
- (v) Within seven (7) days of the approval of the Disclosure Statement, the Debtors shall have begun solicitation of the Plan of Reorganization;
- (vi) Within forty-five (45) days of the approval of the Disclosure Statement, the Bankruptcy Court shall have confirmed the Plan of Reorganization; and

- (vii) Within thirty (30) days of the Plan of Reorganization being confirmed, the effective date of the Plan of Reorganization shall have occurred.

23. The Debtors covenant and agree that they will use their best efforts to comply with each of the Bankruptcy Milestones. Each of the Bankruptcy Milestones may be extended or waived in writing by the DIP Lender and the Trustee. The Debtors shall promptly file with this Bankruptcy Court a notice of any such extension or waiver.

24. No Liens or Encumbrances. Prior to payment in full of the DIP Loans, the Debtors shall not sell, pledge, hypothecate, or otherwise encumber any Post-Petition Collateral (any such sale, pledge, hypothecation, or other transfer shall be void ab initio other than the adequate protection granted to the Trustee pursuant to this Final Order). Further, there shall be no other claim or expense having priority or being *pari passu* to the priority granted to the DIP Lender and the Trustee in this Final Order while any portion of the DIP Loans remain outstanding, except with respect to the Carve-Out and the Permitted Liens.

25. No Modification. Nothing contained herein shall alter or modify, or be deemed to alter or modify, the Bond Documents (or any other agreement to which the Trustee is party).

26. No Waiver. No consent by the DIP Lender or the Trustee to any administrative claims, including fees and expenses of professionals, sought to be assessed against or attributed to the Trustee, as applicable, in the Pre-Petition Collateral, or the Post-Petition Collateral pursuant to the provisions of sections 506(c) and/or 552(b) of the Bankruptcy Code or otherwise by, through or on behalf of the Debtors, shall be implied from any action, inaction or acquiescence.

27. No Challenge. Notwithstanding anything else herein, subject to the last sentence of this Paragraph 27, no amounts under the Carve-Out, the proceeds of the DIP Loans and the

proceeds of Pre-Petition Collateral (including Cash Collateral) and Post-Petition Collateral shall be used for the purpose of: (a) objecting to or contesting in any manner, or in raising any defenses to, the validity, extent, perfection, priority, or enforceability of (i) the Bond Claim or the Pre-Petition Liens, (ii) the DIP Loans or the Post-Petition Collateral with respect thereto, or (iii) any other rights or interests of the DIP Lender or the Trustee, (b) asserting any claims or causes of action, including, without limitation, any actions under chapter 5 of the Bankruptcy Code against the DIP Lender and/or the Trustee or the holders of the Bonds or invoking the equitable doctrine of “marshalling” or any other similar doctrine with respect to any of the Pre-Petition Collateral, the Post-Petition Collateral or otherwise; (c) preventing, hindering, or delaying the enforcement or realization by the DIP Lender or Trustee, as applicable, upon any of the Pre-Petition Collateral or Post-Petition Collateral; (d) incurring indebtedness except as permitted by the Interim Orders or this Final Order; (e) 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; (f) modifying any adequate protection granted the DIP Lender and/or the Trustee; or (g) commencing or prosecuting any motion, proceeding or cause of action against the DIP Lender and/or the Trustee, or their respective agents, attorneys, advisors or representatives.

Notwithstanding the foregoing, not more than ~~\$25,000~~\$50,000 of the Cash Collateral may be made available to reimburse the Committee, upon appropriate application therefor, for the Committee’s fees and expenses in investigating the validity, priority, perfection, and enforceability of the Trustee’s liens in the Pre-Petition Collateral.

Events of Default

28. Each of the following shall be considered an Event of Default (“Event of

Default”) under the DIP Facility and this Final Order:

- (i) the failure to make payments on the DIP Loans as and when due;
- (ii) the failure of the Debtors to pay all of their administrative expenses in full in accordance with and subject to the terms as provided for in the Budget;
- (iii) this Final Order becomes stayed, reversed, vacated, amended or otherwise modified in any respect without the prior written consent of the DIP Lender and the Trustee;
- (iv) failure to meet any of the Bankruptcy Milestones or other covenants set forth in this Final Order;
- (v) the occurrence of a termination event under a Plan Support Agreement (as defined in the DIP Credit Agreement) if and when the Debtors and the Trustee execute a Plan Support Agreement;
- (vi) the Debtors resolve the Landlord Action in a manner which is not consented to by the DIP Lender and the Trustee;
- (vii) the dismissal of the Chapter 11 Cases, conversion of the Chapter 11 Cases to chapter 7 cases, or suspension of the Chapter 11 Cases under section 305 of the Bankruptcy Code;
- (viii) the appointment of a chapter 11 trustee or an examiner with enlarged powers (beyond those set forth in section 1104(c) and 1106(a)(3) and (4) of the Bankruptcy Code);
- (ix) the granting of relief from the automatic stay to permit foreclosure with respect to a material asset of the Debtors, by any entity other than the DIP Lender or Trustee on any Post-Petition Collateral;
- (x) the entry of an order granting any superpriority claim which is senior or *pari passu* with the DIP Lender and/or the Trustee pursuant to this Final Order;
- (xi) the payment of or granting adequate protection with respect to prepetition indebtedness of the Debtors other than as set forth in the Budget or as provided for in this Final Order;
- (xii) the cessation of Post-Petition Liens, Rollover Liens, Adequate Protection Payments, Supplemental Liens, Superpriority Claims, or Pre-Petition Superpriority Claim granted pursuant to this Final Order to be valid, perfected and enforceable in all respects;
- (xiii) the filing of any Challenge (as defined below) to the Pre-Petition Liens or Pre-Petition Collateral by the Debtors, ~~or the Bankruptcy Court grants standing to~~

~~the Committee or another third party to pursue such Challenge;~~

- (xiv) the payment of estate professional fees by the Debtors other than to the extent set forth in the Budget;
- (xv) the occurrence of an Event of Default under the DIP Credit Agreement; or
- (xvi) failure to pay the amounts due under this Final Order by the Maturity Date.

Termination and Maturity

29. Notwithstanding anything herein, the Debtors shall no longer, pursuant to the Interim Orders, this Final Order or otherwise, be authorized to borrow funds and/or use Cash Collateral for any purpose hereunder upon the earliest of (a) the occurrence of an Event of Default or (b) the Maturity Date (such earlier date, the “Termination Date”), provided, however, that the DIP Lender and/or Trustee shall provide five (5) business days (the “Default Notice Period”) written notice via email to counsel to the Debtors, the U.S. Trustee, counsel to Dallas County and counsel to the Committee of any Event of Default (the “Default Notice”) and the Debtors may continue to use Cash Collateral pursuant to the Budget for ~~five~~ten (~~5~~10) ~~Business Days~~business days after receipt of such Default Notice while the Debtors or the Committee seeks an expedited hearing to contest whether an Event of Default has occurred (including the failure to meet a Bankruptcy Milestone), and the DIP Lender and the Trustee consent to the holding of such an expedited hearing within ~~five~~ten (~~5~~10) business days of such a filing (collectively, the “Debtor Default Period Rights”).

30. Notwithstanding the occurrence of an Event of Default, the DIP Lender and/or Trustee may elect in writing not to terminate the Debtors’ authority to borrow funds and/or use Cash Collateral hereunder, as applicable, to waive defaults hereunder, to forbear from the exercise of rights and remedies hereunder and, subject to Bankruptcy Court approval and the

approval of the DIP Lender, to modify the Maturity Date and any Event of Default. Any such continued extension of financial accommodations shall be without prejudice to the DIP Lender's ability to terminate funding.

31. Notwithstanding the occurrence of an Event of Default or anything herein to the contrary, all of the rights, remedies, benefits and protections provided to the DIP Lender and the Trustee shall survive the Termination Date. Upon the Termination Date, the principal of and accrued interest and all other amounts owed to the DIP Lender under the DIP Loans shall be immediately due and payable.

Exercise of Rights

32. (a) Subject to the Debtor Default Period Rights, without further order from the Bankruptcy Court, the automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to permit, upon the occurrence of any Event of Default, (i) the DIP Lender to cease making any advances under the DIP Facility, including the DIP Loans, and (ii) the DIP Lender, upon prior written notice to be filed with the Court, may exercise all of its rights and remedies under the DIP Credit Agreement or related documents.

(b) The DIP Lender ~~and Trustee~~ shall be entitled to apply the payments or proceeds of the Post-Petition Collateral as it deems appropriate to the obligations under the DIP Credit Agreement and the Trustee shall be entitled to apply the payments or proceeds of the Pre-Petition Collateral as ~~they deem~~ it deems appropriate to the Bond Claim, both subject to the Permitted Liens; and the Carve-Out, and in no event shall the DIP Lender or the Trustee be subject to the equitable doctrine of "marshalling" or any other similar doctrine with respect to any of the Post-Petition Collateral or otherwise. In the event that it is determined by final order of the Court

that the Trustee is not entitled under Bankruptcy Code section 506(b) to any postpetition interest, fees and expenses relating to the Bond Claim, then any payments or proceeds remitted to the Trustee shall reduce the Bond Claim held by the Trustee.

Release

33. Subject to Paragraph 34 herein, including any Challenge, as provided in the Interim Orders and reaffirmed by this Final Order, the Debtors released the DIP Lender and the Trustee, all holders of the Bonds, and their respective affiliates, agents, attorneys, officers, directors and employees of all claims and/or causes of action by, and liabilities owing to, the Debtors arising out of or based upon or related to, in whole or in part, the Bonds, and any aspect of the prepetition relationship between the Trustee and the Debtors and any other acts or omissions by the Trustee in connection with either the Bond Documents or its prepetition relationship with the Debtors. Further, subject to Paragraph 34 herein, the Debtors and their estates waived any and all rights to object to or contest the amount of the Bond Claim or the Trustee's security interests in the Pre-Petition Collateral and agreed that all such claims and security interests have been duly perfected and are in all respects valid and enforceable first priority security interests and liens, subject and subordinate only to (a) Post-Petition Liens to the extent set forth herein, (b) Permitted Liens; and (c) the Carve-Out. For the avoidance of doubt, the waiver and stipulation set forth in this Paragraph 33 shall not affect the Committee's rights under Paragraph 34 herein.

34. Investigation Period. Any party in interest (including the Committee, but excluding the Debtors) as to claims against the Trustee may file an adversary proceeding or contested matter (a “Challenge”) (a) challenging the amount, validity, extent, enforceability, perfection or priority of the Bond Claim or the Pre-Petition Liens in respect thereof, or (b) otherwise asserting any claims or causes of action against the Trustee and/or holders of the Bonds on behalf of the Debtors’ estates, notwithstanding any of the Debtors’ stipulations herein, so long as any Challenge is made on or before ~~June 20~~July 12, 2022 (such period of time, the “Investigation Period”). [NTD – 75 days] Any such Challenge brought after the conclusion of the Investigation Period shall be barred. If no Challenge is commenced by a party during the Investigation Period against the Trustee, and/or the holders of the Bonds, then as to such party, (a) the Bond Claim shall constitute an allowed claim, not subject to subordination or recharacterization and otherwise unavoidable, for all purposes in the Chapter 11 Cases and any subsequent chapter 7 case or cases, (b) the Pre-Petition Liens on the Pre-Petition Collateral shall be deemed legal, valid, binding, perfected, not subject to defense, counterclaim, offset of any kind, subordination and otherwise unavoidable, (c) the Trustee, the Bond Claim and the Pre-Petition Liens of the Trustee on the Pre-Petition Collateral 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 (d) the Trustee, all holders of the Bonds and their respective affiliates, agents, attorneys, officers, directors and employees, shall be deemed released of all claims and/or causes of action by the Debtors, the 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 further that if one or more

claims are timely under this Paragraph 34 and properly filed, then except for such claims, all other potential claims and causes of action are hereby deemed forever waived and barred. Notwithstanding the foregoing, no claims or cause of actions of any kind or nature may be asserted against the DIP Lender or the liens and claims granted to the DIP Lender under and/or related to the DIP Facility. Nothing in this Final Order shall be deemed to confer standing on the Committee or any other non-Debtor party-in-interest to commence a Challenge, and the Committee or other non-Debtor party in interest shall be required to move for standing and satisfy the applicable standard for obtaining standing to pursue estate causes of action; provided that a standing motion may be filed simultaneously with a Challenge.

35. Section 364(e); Section 506(c); Section 552(b). The DIP Lender shall be entitled to all of the benefits of section 364(e) of the Bankruptcy Code for all DIP Loans. Except to the extent of the Carve-Out and no expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the Post-Petition Collateral, the Pre-Petition Collateral or collateral subject to Rollover Liens and Supplemental Liens, pursuant to section 506(c) or 552(b) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the DIP Lender and the Trustee and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Lender and/or the Trustee.

Carve-Out

36. In partial consideration of the Debtors' acknowledgement of the debt due and owing and the Debtors' waiver of any claims under sections 506(c) and 552(b) of the Bankruptcy Code (upon entry of the Final Order), the DIP Lender and Trustee consent to the payment of certain expenses and professional fees incurred during the pendency of these Chapter 11 Cases that shall be superior in all instances to the liens and claims of the DIP Lender and Trustee and all other parties except Dallas County to the extent that it holds a Permitted Lien (the "Carve Out"). All rights to object to Dallas County's claim are reserved. For purposes hereof, the "Carve Out" means the sum of (a) an aggregate amount not to exceed the sum of: (i) the unpaid dollar amount of the fees and expenses of professionals retained by the Debtors or the Committee to the extent (A) incurred or accrued prior to the Termination Date and remaining unpaid and (B) provided for under the Budget, plus (ii) the dollar amount of the fees and expenses of the professionals retained by the Debtors to the extent incurred or accrued after the Termination Date in an aggregate amount not to exceed ~~\$300,000~~400,000, in each of (i) and (ii) to the extent allowed by the Bankruptcy Court at any time, whether by interim order, procedural order, or otherwise, plus (b) the statutory fees of the United States Trustee pursuant to 28 U.S.C. § 1930 and the fees of the Clerk of this Court plus any interest at the statutory rate, plus (c) ~~reasonable~~an aggregate amount not to exceed the sum of: (i) the unpaid dollar amount of the fees and expenses ~~up to \$25,000 incurred by~~of the patient care ombudsman to the extent (A) incurred or accrued prior to the Termination Date and remaining unpaid and (B) provided for under the Budget, plus (ii) the dollar amount of the fees and expenses of the patient care ombudsman ~~appointed in these Chapter 11 Cases~~to the extent incurred or accrued after the Termination Date in an aggregate amount not to exceed \$25,000, in each of (i) and (ii) to the extent allowed by the Bankruptcy

Court at any time, whether by interim order, procedural order, or otherwise. Prior to the payment of such fees and expenses from the amount available under the Carve Out, such professionals shall first apply any retainers held by such professional to their allowed fees and expenses. Nothing herein shall constitute a waiver of any right of the DIP Lender or Trustee to object to fees and expenses of any professionals or to challenge any assertion that any amount of the fees and expenses remain unpaid (or the Debtors' right to respond thereto). Except to the extent of and in consideration of the Carve Out, (a) no expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the DIP Lender, the Trustee, the Pre-Petition Collateral, or the Post-Petition Collateral pursuant to section 506(c) of the Bankruptcy Code or a similar principal of law; and (b) the "equities of the case" exception under section 552(b) of the Bankruptcy Code is waived as to the DIP Lender, the Trustee, the Pre-Petition Collateral, and the Post-Petition Collateral. Any payment or reimbursement made in respect of any Carve-Out Expenses incurred by any Debtor Professional on or after an Event of Default shall permanently reduce the Carve-Out on a dollar for dollar basis.

Credit Bid

37. The Debtors reaffirm that the DIP Lender and the Trustee have an absolute right to credit bid their respective obligations in any sale or other disposition of their respective collateral under the Bankruptcy Code; provided that the Trustee's right to credit bid is subject to any Challenge.

Miscellaneous

38. The Debtors shall execute and deliver to the DIP Lender and the Trustee as applicable, any and all such agreements, financing statements, instruments and other documents as such parties may reasonably request to evidence, confirm, validate or perfect the liens granted pursuant hereto. The Debtors are authorized to do and perform all acts, to make, execute and deliver all instruments and documents, including the DIP Loan Documents; provided, however, that this Final Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the Post-Petition Liens, Rollover Liens and Supplemental Liens to the DIP Lender and Trustee, as applicable, without the necessity of filing or recording any financing statement, mortgage, 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 to validate or perfect the Post-Petition Liens, Rollover Liens and Supplemental Liens or to entitle those liens to the priorities granted herein

39. Based on the findings herein set forth, and in accordance with section 364(e) of the Bankruptcy Code, in the event any or all of the provisions of this Final Order are hereafter modified, amended or vacated by a subsequent order of this or any other Court, no such modification, amendment or vacation shall affect the validity and enforceability of any lien or priority authorized or created hereby. Notwithstanding any such modification, amendment or vacation, any claim granted to the DIP Lender and the Trustee hereunder arising prior to the effective date of such modification, amendment or vacation shall be governed in all respects by the original provisions of this Final Order and the DIP Lender and the Trustee 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.

40. Payments to the DIP Lender. The DIP Lender, up to the amounts set forth in the Budget, will be paid its monthly reasonable and documented fees, costs and expenses contemplated under the DIP Credit Agreement, including, without limitation, legal and other professional fees and expenses (the “DIP Lender Fees”). In the absence of a Termination Event, within ten (10) business days of the DIP Lender charging the DIP Loans for payment of DIP Lender Fees, the DIP Lender will submit a written statement to counsel to the Debtors, the Trustee, the Committee and the U.S. Trustee itemizing the DIP Lender Fees in reasonably sufficient detail that the DIP Lender charged against the DIP Loans, and such parties shall have fourteen (14) days from the date of such statement to object to any amount in such statement. If the parties are unable to resolve an objection to a statement within a reasonable amount of time, any party subject to the dispute may seek resolution by motion from this Court. DIP Lender Fees shall be deemed allowed unless otherwise (i) agreed by the parties in writing, or (ii) ordered by the Court. The DIP Lender and their respective professionals shall not be required to comply with the U.S. Trustee Fee Guidelines or any other fee application and approval process. Upon a Termination Event, all DIP Lender Fees will be due and payable immediately.

41. Deemed Request for Stay Relief. This Final Order shall be deemed to constitute a request by the Trustee for relief from the automatic stay with respect to the Pre-Petition Collateral and for adequate protection as of the Petition Date and shall suffice for all purposes of section 507(b) of the Bankruptcy Code.

42. No Control. None of the DIP Lender, the Trustee or the holders of the Bonds 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, as amended, or any similar Federal or state statute) with respect to the operation or management of the Debtors, notwithstanding any consent to this Final Order and extending financial accommodations of any type, kind or nature under this Final Order.

43. To the extent obligations remain due and owing under the DIP Loans, such obligations of the Debtors in respect of the DIP Loans shall not be discharged by the entry of an order confirming a plan of reorganization or a plan of liquidation in the Chapter 11 Cases, but rather shall be required to be paid in full on the effective date of such plan.

44. No Third Party Beneficiaries. The provisions of this Final Order shall be binding upon and inure to the benefit of the DIP Lender, the Trustee, the Debtors and their respective successors and assigns (including any trustee or other fiduciary hereafter appointed as a legal representative of the Debtors or with respect to the property of the estates of the Debtors). No rights are created hereunder for the benefit of any third party, any creditor, or any direct, indirect or incidental beneficiary.

45. Modification of Stay. The automatic stay imposed by virtue of section 362 of the Bankruptcy Code is hereby vacated and modified insofar as necessary to permit (a) the Debtors to grant the Post-Petition Liens, the Rollover Liens and the Supplemental Liens to the DIP Lender and the Trustee, as applicable, (b) the Trustee to accept and receive disbursements and/or payments and to apply moneys pursuant to the Bond Documents, (c) the Parties to take any

action specifically authorized or contemplated by this Final Order and implement the DIP Facility, including the DIP Lender's ability to exercise all of its rights and remedies under the DIP Credit Agreement or related documents as provided herein, and (d) all acts, actions, and transfers contemplated herein, including without limitation, transfers or application of cash collateral and other funds to the DIP Lender as provided herein;

46. Effectiveness. The findings of fact and conclusions of law contained in this Final Order shall take effect immediately upon the Effective Date. The liens and claims granted to the DIP Lender and the Trustee under the Interim Orders and this Final Order, and the priority thereof, and any payments made pursuant to the Interim Orders and this Final Order, shall be binding (subject to the terms of this Final Order) on the Debtors, any successor trustee or examiner, and all creditors of the Debtors, as provided in section 364(e) of the Bankruptcy Code.

47. Any notice required hereunder shall be served on:

(a) *counsel to the Debtors:*

POLSINELLI PC
Attn: Bobby Guy
401 Commerce Street, St. 900
Nashville, TN 37219
Bguy@polsinelli.com

(b) *counsel to the Trustee:*

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
Attn: Daniel S. Bleck
One Financial Center
Boston, MA 02111
Dsbleck@mintz.com

(c) *the Office of the U.S. Trustee:*

Meredyth Kippes
Lisa Lambert
Earle Cabell Federal Building

1100 Commerce Street, Room 976
Dallas, TX 75242

Meredyth.a.kippes@usdoj.gov

Lisa.L.Lambert@usdoj.gov

Meredyth.a.kippes@usdoj.gov

Lisa.L.Lambert@usdoj.gov

(d) *counsel to the Committee:*

Foley & Lardner LLP
Attn: Thomas C. Scannell
2021 McKinney Avenue, Suite 1600
Dallas, TX 75201
Tscannell@foley.com

48. To the extent there exists any conflict between the Motion, any other motion, pleading, document, agreement or term sheet, any DIP Loan Document, the Interim Orders and the terms of this Final Order, this Final Order shall govern and control.

49. Notwithstanding anything contained herein to the contrary, nothing herein shall affect the rights of the Texas Health and Human Services Commission from exercising its rights of recoupment, but the Debtors or any trustee subsequently appointed shall retain its right to exhaust administrative remedies to contest the dollar amount of any recoupment(s) effectuated.

| **Exhibit 1**

| Budget

| **Exhibit 2**

| Permitted Liens

| 1. Liens of Dallas County for personal property tax

Document comparison by Workshare Compare on Monday, May 30, 2022
2:32:31 PM

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Rendering set	strikethrough

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Insertion	
Deletion	
Moved from	
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Format change	
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Split/Merged cell	
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