

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

In re

GUARDIAN ELDER CARE AT
JOHNSTOWN, LLC, d/b/a/ RICHLAND
HEALTHCARE AND REHABILITATION
CENTER, *et al.*,

Debtors.¹

GUARDIAN ELDER CARE AT
JOHNSTOWN, LLC, d/b/a/ RICHLAND
HEALTHCARE AND REHABILITATION
CENTER, *et al.*,

Movants,

v.

S&T BANK, N.A., PUBLIC CREDIT, LLC,
AND KEYBANK NATIONAL
ASSOCIATION,

Respondents.

Case No. 24-24-70299 (JAD)

Chapter 11

Jointly Administered

**THE OWNED PORTFOLIO/ANCILLARY DEBTORS' MOTION FOR INTERIM
AND FINAL ORDERS (I) AUTHORIZING (A) SENIOR SECURED,
SUPERPRIORITY POSTPETITION FINANCING AND (B) THE USE OF CASH
COLLATERAL; (II) GRANTING ADEQUATE PROTECTION; (III) MODIFYING
THE AUTOMATIC STAY; AND (IV) GRANTING RELATED RELIEF**

Guardian Elder Care at Beaver Falls, LLC (“**Beaver Falls OpCo**”); GEC Beaver Falls Real Estate, LLC (“**Beaver Falls PropCo**”); Guardian Elder Care at Fairmont, LLC (“**Fairmont OpCo**”); GEC Fairmont Real Estate, LLC (“**Fairmont PropCo**”); Guardian Elder Care at Monongahela, LLC (“**Monongahela OpCo**”); GEC Monongahela Real Estate, LLC

¹ The last four digits of Guardian Elder Care at Johnstown, LLC d/b/a Richland Healthcare and Rehabilitation Center’s federal tax identification number are 7907. Due to the large number of debtor entities in these Chapter 11 Cases, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ claims and noticing agent at <https://omniagentsolutions.com/Guardian>. The Debtors’ mailing address is: 8796 Route 219, Brockway, Pennsylvania 15824.

(“**Monongahela PropCo**”); Guardian Healthcare FOR HUD Master Tenant, LLC (the “**Master Tenant**,” together with Beaver Falls OpCo, Beaver Falls PropCo, Fairmont OpCo, Fairmont PropCo, Monongahela OpCo and Monongahela PropCo, the “**HUD Debtors**”); Guardian Elder Care at Bethel Park, LLC (“**Bethel Park OpCo**”); GEC Bethel Park Real Estate, LLC (“**Bethel Park PropCo**”); Guardian Elder Care at Greensburg, LLC (“**Greensburg OpCo**”); GEC Greensburg Real Estate, LLC (“**Greensburg PropCo**”); Guardian Elder Care at Lower Burrell, LLC (“**Lower Burrell OpCo**”); GEC Lower Burrell Real Estate, LLC (“**Lower Burrell PropCo**”); Guardian Elder Care at Munhall, LLC (“**Munhall OpCo**”); GEC Munhall Real Estate, LLC (“**Munhall PropCo**”); Guardian Elder Care at Brockway, LLC (“**Brockway OpCo**”); GEC Highland View, LP (“**Brockway PropCo**”); Guardian Healthcare FOR Group, LLC (“**HoldCo**”); Guardian Healthcare FOR LLC 99% Holdco, LLC (“**99% HoldCo**”); and Guardian Healthcare FOR LLC 1% Holdco, Inc. (“**1% HoldCo**,” collectively with Bethel Park OpCo, Bethel Park PropCo, Greensburg OpCo, Greensburg PropCo, Lower Burrell OpCo, Lower Burrell PropCo, Munhall OpCo, Munhall PropCo, Brockway OpCo, Brockway PropCo, HoldCo and 99% HoldCo, the “**Non-HUD Debtors**”) and Debtors Guardian Healthcare Pharmacy, LLC, Guardian Healthcare Rehabilitation Services, LLC, and Guardian Healthcare Home & Community Services, LLC (collectively, the “**Ancillary Debtors**,” and together with the Non-HUD Debtors, the “**Non-HUD/Ancillary Debtors**” and together with the HUD Debtors and Non-HUD Debtors, the “**Owned Portfolio/Ancillary Debtors**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), by and through their proposed undersigned counsel, file this motion (“**Motion**”) pursuant to sections 105, 361, 362, 363, 364 and 507(b) of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 4001, 6003 and 6004(h) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 4001-2 of the Local Rules for the United States

Bankruptcy Court for the Western District of Pennsylvania (the “**Local Rules**”) for entry of an interim order (the “**Interim Order**”), substantially in the form attached hereto as **Exhibit A**, and a final order (the “**Final Order**” and together with the Interim Order, the “**Proposed Orders**”), granting the following relief:

- i. authorizing the Owned Portfolio/Ancillary Debtors to obtain secured postpetition financing in the aggregate principal amount of \$6,500,000 (the “**DIP Facility**”) comprising: (a) a new money delayed line of credit in an aggregate principal amount of up to \$2,500,000 (the “**New Money DIP Loan**”) of which \$230,000 shall be made available to the Non-HUD/Ancillary Debtors upon entry of the Interim Order (subject to satisfaction of the applicable conditions precedent) (the “**Interim DIP Advance**”), and the remainder to become available to the Owned Portfolio/Ancillary Debtors upon entry of the Final Order; and (b) a delayed line of credit draw in an aggregate principal amount of \$4,000,000 to roll up (upon entry of the Final Order) the existing outstanding obligations under the Public Credit Prepetition Loan Documents (as defined below), subject to the terms and conditions of the Interim Order and the Debtor-in-Possession Loan and Security Agreement by and among the Owned Portfolio/Ancillary Debtors (including the HUD Debtors only upon entry of the Final Order), as Borrowers, S&T Bank, N.A. (“**S&T**”), as Administrative Agent (in such capacity, the “**DIP Agent**”), and S&T and Public Credit, LLC (“**Public Credit**” and collectively with the DIP Agent, and S&T (in its capacity as a lender under the DIP Facility), the “**DIP**

Lender Parties”), as lender, substantially in the form of Exhibit 1 of the Interim Order (the “**DIP Loan Agreement**”);

- ii. authorizing the Owned Portfolio/Ancillary Debtors (including the HUD Debtors only upon entry of the Final Order) to execute and deliver the DIP Loan Agreement, a promissory note in connection therewith, and any other agreements, instruments, pledge agreements, guarantees, control agreements and other loan documents and documents related thereto (including any security agreements, intellectual property security agreements, control agreements, or notes) (as amended, restated, supplemented, waived, and/or modified from time to time, and collectively with the DIP Loan Agreement, the “**DIP Loan Documents**”);
- iii. authorizing the Owned Portfolio/Ancillary Debtors (including the HUD Debtors only upon entry of the Final Order) to use proceeds of the DIP Facility as permitted in the DIP Loan Documents and in accordance with the Interim Order;
- iv. granting to the DIP Lender Parties on account of the DIP Facility and all obligations owing thereunder and under, or secured by, the DIP Loan Documents (collectively, and including all “Indebtedness” as described in the DIP Loan Agreement, the “**DIP Obligations**”) allowed superpriority administrative expense claim status in each of the Chapter 11 Cases of the Owned Portfolio/Ancillary Debtors (including the HUD Debtors only upon entry of the Final Order) and any Successor Cases (as defined below),

subject to the Carve Out (as defined below) and the priority as set forth herein;

- v. granting to the DIP Lender Parties automatically perfected security interests in and liens on all of the DIP Collateral (as defined below), including all property constituting “cash collateral” as defined in section 363(a) of the Bankruptcy Code, which liens shall be on the terms and subject to the relative priorities set forth in the Proposed Orders, subject to the Carve Out (as defined herein) and the Prepetition Permitted Liens (as defined herein), if any;
- vi. authorizing and directing the Non-HUD/Ancillary Debtors upon entry of the Interim Order, and the Owned Portfolio/Ancillary Debtors upon entry of the Final Order, to pay the principal, interest, fees, expenses and other amounts payable under the DIP Loan Documents as such become earned, due and payable, including, without limitation, the Transaction Expenses (as defined in the DIP Loan Agreement), all to the extent provided in, and in accordance with, the DIP Loan Documents as modified by the Interim Order;
- vii. authorizing the Owned Portfolio/Ancillary Debtors to use Cash Collateral (as defined below) in which KeyBank National Association (“**KeyBank**”), Public Credit and S&T (collectively, the “**Prepetition Secured Parties**”) have respective interests, and the granting of adequate protection to the Prepetition Secured Parties with respect to, *inter alia*, such use of their Cash Collateral;

- viii. modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to permit the Owned Portfolio/Ancillary Debtors, the DIP Lender Parties, and the Prepetition Secured Parties to implement and effectuate the terms and provisions of the DIP Loan Documents and Proposed Orders;
- ix. subject to entry of the Final Order, waiving (a) the Owned Portfolio/Ancillary Debtors' ability to surcharge against the Prepetition Collateral, DIP Collateral or Adequate Protection Collateral (each as defined below) pursuant to section 506(c) of the Bankruptcy Code or any other applicable principle of equity or law and (b) the applicability of the "equities of the case" exception under section 552(b) of the Bankruptcy Code;
- x. scheduling a final hearing to consider entry of the Final Order; and
- xi. granting related relief.

In support of this Motion, the Owned Portfolio/Ancillary Debtors rely on and incorporate by reference the *Declaration of Allen Wilen in Support of First Day Motions for Relief* (the "**First Day Declaration**"), and respectfully represent as follows:

Bankruptcy Rule 4001 and Local Rule 4001-2 Concise Statement²

1. Pursuant to Bankruptcy Rules 4001(b)(1) and (d) and Local Rule 4001-2, the Owned Portfolio/Ancillary Debtors submit the following concise statement of the material terms of the Interim Order:

² Any summary of the terms of the Interim Order contained in this Motion is qualified in its entirety by reference to the provisions of the Interim Order. To the extent there is a conflict between the Motion and the Interim Order, the Interim Order shall control. The Owned Portfolio/Ancillary Debtors reserve the right to supplement the statements made herein.

Summary of Material Terms		Location
Borrowers <i>Bankruptcy Rule 4001(c)(1)(B)</i>	Owned Portfolio/Ancillary Debtors <i>For the avoidance of doubt, the HUD Debtors shall not be considered a party to, or be bound by, the DIP Loan Documents absent the entry of a Final Order in form and substance acceptable to KeyBank and HUD or as otherwise ordered by the Court.</i>	Interim Order preamble DIP Loan Agreement preamble
DIP Lender Parties <i>Bankruptcy Rule 4001(c)(1)(B)</i>	S&T Bank and Public Credit. By way of disclosure, Public Credit is a wholly-owned subsidiary of Varischetti Holdings, LP, which is in turn owned by the 2011 IRR Trust FBO Peter C Varischetti, the 2011 IRR Trust FBO Frank A Varischetti and the 2011 IRR Trust FBO Nicholas D Varischetti.	Interim Order preamble DIP Loan Agreement preamble
Amount and Facility <i>Bankruptcy Rule 4001(c)(1)(B)</i>	Senior secured superpriority debtor in possession financing in the aggregate principal amount of \$6,500,000 (the “ DIP Facility ”) consisting of: (i) a new money delayed line of credit in an aggregate principal amount of up to \$2,500,000 (the “ New Money DIP Loan ”) of which \$230,000 of the New Money Loan (the “ Interim DIP Advance ”) shall be made available to the Non-HUD/Ancillary Debtors upon entry of the Interim Order (subject to satisfaction of the applicable conditions precedent), and the remainder to become available to the Owned Portfolio/Ancillary Debtors upon entry of a Final Order, acceptable to each of the DIP Lender Parties in their sole and absolute discretion; and (ii) a delayed line of credit draw in an aggregate principal amount of \$4,000,000 to roll up (upon entry of a Final Order) the existing outstanding obligations under the Public Credit Prepetition Loan Documents.	Interim Order preamble & ¶ 3 DIP Loan Agreement Recital D & Section 2.1 (a) & (b)
Maturity <i>Bankruptcy Rule 4001(c)(1)(B)</i>	The earlier of (i) 270 days after the Petition Date, (ii) conversion or dismissal of these Chapter 11 Cases, (iii) confirmation of a chapter 11 plan of reorganization, or (iv) upon a Material Adverse Change (as defined in the DIP Loan Agreement) in the Chapter 11 Cases, including, without limitation, failure of the Final Order to be approved by the Court within 35 days of the Petition Date.	DIP Loan Agreement Section 1.2(ddd)
Interest <i>Bankruptcy Rule 4001(c)(1)(B)</i>	<u>S&T Interest Rate:</u> Term SOFR Rate plus 5%. <u>Public Credit Interest Rate:</u> Prime Rate plus 0%, provided, however, at no time shall this interest rate be less than 3.75% per annum.	DIP Loan Agreement Section 2.1(g)

Summary of Material Terms		Location
Default Interest <i>Bankruptcy Rule 4001(c)(1)(B)</i>	S&T: 6% above S&T Interest Rate. <u>Public Credit</u>: 6% above Public Credit Interest Rate.	DIP Loan Agreement Section 2.1(h)
Purposes for Use of Proceeds of the DIP Facility <i>Bankruptcy Rule 4001(c)(1)(B)</i>	The proceeds of the DIP Facility shall be used, in each case in a manner consistent with the terms and conditions of the Interim Order and the DIP Loan Documents and in accordance with the Budget (as defined herein), solely for: (a) the replacement and refinancing of the Public Credit Prepetition Loan into an obligation under the DIP Facility solely to the extent provided for in the Final Order (subject to approval of KeyBank and HUD or as otherwise ordered by the Court) and the DIP Loan Documents (as the same may be modified by the Interim Order and the Final Order); (b) working capital; (c) permitted payment of costs of administering the Chapter 11 Cases; (d) payment of such other prepetition obligations as set forth in the Budget or otherwise approved by the DIP Lender Parties in their sole discretion, and as approved by the Court; (e) payment of interest, fees, expenses and other amounts (including legal and other professionals' fees and expenses of the DIP Lender Parties) owed under the DIP Loan Documents; (f) payment of certain adequate protection amounts to Public Credit; and (g) other general corporate purposes of the Non-HUD/Ancillary Debtors permitted by the Budget and the DIP Loan Documents.	Interim Order ¶ H(vi) DIP Loan Agreement Section 2.2
DIP Budget and Related Covenants <i>Bankruptcy Rule 4001(c)(1)(B)</i>	The DIP Facility is subject to the budget for (a) the Non-HUD/Ancillary Debtors on a consolidated basis and (b) the HUD Debtors on a consolidated basis (the “Budget”), copies of which are attached to the proposed Interim Order at <u>Exhibits 2(a)</u> and <u>2(b)</u>. <u>Budget Covenants</u> No later than the Thursday of each calendar week commencing on the first Thursday following the second full week after the Petition Date, and every two weeks thereafter, the Owned Portfolio/Ancillary Debtors shall deliver to the DIP Lender Parties, the Prepetition Secured Parties and their counsel an updated Budget for the subsequent 13-week period. The initial Budget and each subsequent Budget shall be in form and substance acceptable to the DIP Lender Parties and the Prepetition Secured Parties; <i>provided, however</i>, that unless and until the	Interim Order ¶¶ H(vi) & 16 DIP Loan Agreement Section 5.4

Summary of Material Terms	Location
	DIP Lender Parties and the Prepetition Secured Parties have approved such updated budget in their discretion, the Owned Portfolio/Ancillary Debtors shall still be subject to and be governed by the terms of the initial Budget or subsequent, updated Budget, as applicable, then in effect in accordance with the Interim Order. Every two (2) weeks following entry of the Interim Order, commencing on the first Thursday following the first two full weeks after entry of the Interim Order, the Owned Portfolio/Ancillary Debtors shall deliver to the DIP Lender Parties and the Prepetition Secured Parties and their counsel a variance report comparing, on a line-item basis, actual results to the Budget for the previous individual week on a weekly, cumulative, and four-week trailing basis. The Owned Portfolio/Ancillary Debtors shall test the Budget with respect to the cumulative net cash flow on the Thursday following the first two (2) full weeks after entry of the Interim Order on a two-week trailing basis (the “Budget Period”) and every other Thursday thereafter. The Owned Portfolio/Ancillary Debtors shall ensure that at no time any of the following occur (together, the “Budget Covenants”): (i) a negative variance of 10% or more from the “Cash Inflow” set forth in the Budget, to be tested on a cumulative basis over a rolling four (4) week period, <i>provided</i> that, in the event that any “Cash Inflow” budgeted to be received in any rolling four (4) week period is not actually received during such period, such “Cash Inflow” shall be deemed, for purposes of testing, to have been received during such period if it is received within one (1) calendar week after the end of such period; and (ii) a negative variance of 10% or more from the “Operating Cash Outflow,” tested every week on a cumulative rolling four (4) week basis; <i>provided, however</i>, that in any rolling four (4) week period that “Operating Cash Outflow” is less than the budgeted amount for such period, the amount by which “Operating Cash Outflow” is less may be carried forward and added to the subsequent period; <i>provided further, however</i>, that “Operating Cash Outflow” shall include disbursements made by the Owned Portfolio/Ancillary Debtors (including, but not limited to, any payments, expenditures or advances) other than disbursements for “Professional Services” as set forth in the Budget. For the avoidance of doubt, the Budget shall include a line item for

	Summary of Material Terms	Location
	“Professional Services” to be paid by the Owned Portfolio/Ancillary Debtors for informational purposes.	
Reporting <i>Bankruptcy Rule 4001(c)(1)(B)</i>	The Interim Order requires (and the Final Order will require) compliance with certain periodic reporting covenants that are usual and customary for debtor-in-possession financing like the DIP Facility, including the Budget Covenants above, and use of Cash Collateral.	Interim Order ¶¶ 13(v) & 16
Security and Priority <i>Bankruptcy Rule 4001(c)(1)(B)(i)</i>	In order to secure the DIP Obligations, effective immediately upon entry of the Interim Order, pursuant to sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, the DIP Lender Parties shall be granted, continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition security interests in and liens on (collectively, the “DIP Liens”) all real and personal property and other assets, whether now existing or hereafter arising and wherever located, tangible and intangible, of each of the Non-HUD/Ancillary Debtors and their bankruptcy estates (collectively, the “DIP Collateral”) as detailed in the Interim Order. For the avoidance of doubt, the DIP Collateral shall not include, and the DIP Liens shall not extend to encumber, any KeyBank Prepetition Collateral or any other property of the HUD Debtors for purposes of the Interim Order. Nothing in the Interim Order impairs the asserted validity, extent, or priority of any Public Credit Prepetition Liens granted by the HUD Debtors in the HUD Debtors’ Property or affecting KeyBank Prepetition Collateral. The DIP Liens securing the DIP Obligations shall be valid, automatically perfected, non-avoidable, senior in priority, and superior to any security, mortgage, collateral interest, lien, or claim to any of the DIP Collateral, except that the DIP Liens shall be subject to the S&T Prepetition Liens and the Carve Out. The DIP Liens shall consist of and be protected by the provisions of the Proposed Orders, including the following: <u>Priming DIP Liens on Prepetition Collateral.</u> Valid, binding, continuing, enforceable, and fully perfected, first priority (subject to Prepetition Permitted Liens, including the KeyBank Prepetition Liens, but only to the extent such permitted prior liens are senior by operation of law to the S&T Prepetition Liens and/or the Public Credit Prepetition Liens) security interests and liens	Interim Order ¶¶ 5–7 DIP Loan Agreement Sections 2.1(j) & 5.3

Summary of Material Terms	Location
	upon all DIP Collateral which is S&T Prepetition Collateral and/or Public Credit Prepetition Collateral, which security interests in and liens upon, pursuant to section 364(d)(1) of the Bankruptcy Code, shall be prior and senior in all respects to (i) the security interests and liens in favor of DIP Lender Parties with respect to DIP Collateral, other than the S&T Prepetition Liens, (ii) the Adequate Protection Liens with respect to the DIP Collateral, and (iii) any security interest in, or other lien upon, any DIP Collateral that on the Petition Date was not a properly perfected, valid, enforceable and unavoidable security interest or lien. For avoidance of doubt, the DIP Liens granted under the Interim Order shall not prime any lien arising from or relating to the real estate taxes or any lien in favor of KeyBank or otherwise encumber any of the KeyBank Prepetition Collateral or any other property of the HUD Debtors. Nothing in the Interim Order impairs the asserted validity, extent, or priority of any Public Credit Prepetition Liens granted by the HUD Debtors in the HUD Debtors' Property or affecting KeyBank Prepetition Collateral. <u>Liens Junior to Certain Other Liens.</u> Valid, binding, continuing, enforceable, and fully perfected, first priority security interests and liens upon all DIP Collateral that is not S&T Prepetition Collateral or Public Credit Prepetition Collateral (whether such DIP Collateral is in existence on, or created, acquired, arising after, the Petition Date), which security interests in and liens upon, pursuant to section 364(c)(3) of the Bankruptcy Code, shall be junior to (but only to) any properly perfected, valid, unavoidable, and enforceable Prepetition Permitted Liens. <u>Unencumbered Property.</u> Pursuant to Section 364(c)(2) of the Bankruptcy Code, valid, binding, continuing, enforceable, and fully perfected, first priority security interests and liens upon all prepetition and post-petition unencumbered real, personal and other property of the Non-HUD/Ancillary Debtors whether existing on the Petition Date or thereafter acquired (other than Avoidance Actions), that, on or as of the Petition Date or the date acquired (if acquired after the Petition Date)

Summary of Material Terms	Location
is not subject to a properly perfected, valid, enforceable and unavoidable lien. <u>First Lien on Avoidance Proceeds.</u> Subject to the entry of the Final Order, the DIP Lender Parties shall be granted valid, binding, enforceable, non-avoidable, and automatically and properly perfected post-petition security interests in and liens on the proceeds (the “Avoidance Proceeds”) of any claims or causes of action under chapter 5 of the Bankruptcy Code or any other avoidance actions under the Bankruptcy Code or state law of the Owned Portfolio/Ancillary Debtors and their estates (the “Avoidance Actions”). Subject to the Carve-Out, the DIP Obligations shall be entitled to superpriority administrative expense claim status as to the Non-HUD/Ancillary Debtors, with priority over any and all administrative expense claims (the “DIP Superpriority Claims”). Subject to entry of the Final Order providing such relief, (a) the DIP Collateral shall include, and the DIP Liens shall extend to encumber, the KeyBank Prepetition Collateral and any other property of the HUD Debtors; and (b) the DIP Superpriority Claims shall extend to all Owned Portfolio/Ancillary Debtors. As further security for the DIP Obligations to S&T, the Owned Portfolio/Ancillary Debtors understand that S&T and non-debtor Varischetti Investments, LP (“VILP”) have entered into a pledge agreement pursuant to which VILP has pledged to S&T certain deposit accounts. The Owned Portfolio/Ancillary Debtors are not a party to the pledge agreement.	
Proposed Adequate Protection <i>Bankruptcy Rules 4001(b)(1)(B)(iv) & 4001(c)(1)(B)(ii)</i>	Interim Order ¶ 13
The Owned Portfolio/Ancillary Debtors propose the following (collectively, the “Adequate Protection Obligations”) as adequate protection for the interests of the Prepetition Secured Parties in the Prepetition Collateral: 1. Subject only to the terms of the Interim Order, pursuant to sections 361 and 363(e) of the Bankruptcy Code and in consideration of the stipulations and consents set forth herein, the Owned Portfolio/Ancillary Debtors shall grant to the Prepetition Secured Parties, solely to the extent of any	

	Summary of Material Terms	Location
	diminution in value of the Prepetition Collateral, valid, binding, enforceable, non-avoidable, and automatically perfected, <i>nunc pro tunc</i> to the Petition Date, replacement liens on and security interests in (the “Adequate Protection Liens”) the post-petition property of the Owned Portfolio/Ancillary Debtors of the same priority, extent and amount as the Prepetition Secured Parties’ prepetition interest in the Prepetition Collateral, together with any proceeds, products or profits of the foregoing, whether arising under section 552(b) of the Bankruptcy Code (subject to entry of a Final Order) or otherwise (the “Adequate Protection Collateral”), <i>provided that</i> the Adequate Protection Collateral shall not include Avoidance Actions or Avoidance Proceeds. The Adequate Protection Liens are subject or subordinate only to the Carve-Out and Prepetition Permitted Liens, if any. 2. Subject to the Carve-Out, and junior to the DIP Superpriority Claims, the Adequate Protection Obligations shall be entitled to superpriority administrative expense claim status, with priority over any and all administrative expense claims (the “Adequate Protection Superpriority Claims”). 3. The Prepetition Secured Parties shall, as set forth below, receive from the Owned Portfolio/Ancillary Debtors against whom they have Prepetition Liens the following payments (collectively, “Adequate Protection Payments”): the Owned Portfolio/Ancillary Debtors shall pay in full, in cash and in immediately available funds, as and when such payments would have come due under the Prepetition Loans had the Chapter 11 Cases not been commenced, including but not limited to, all interest, fees, and other amounts, as applicable, which shall accrue and be payable at the applicable interest rate set forth, and at the times provided for, in the Prepetition Loan Documents. 4. The Owned Portfolio/Ancillary Debtors shall pay the fees, costs and expenses of the Prepetition Secured Parties in the manner set forth in paragraph 13 of the Interim Order. 5. The Owned Portfolio/Ancillary Debtors shall cooperate with, and to the extent appropriate, comply	

Summary of Material Terms		Location
	with all reporting requirements set forth in the Prepetition Loan Documents. In addition, the Owned Portfolio/Ancillary Debtors shall provide such additional reporting as the Prepetition Secured Parties shall reasonably require. 6. The Owned Portfolio/Ancillary Debtors shall permit representatives, agents, and employees of the Prepetition Secured Parties to have reasonable access to: (a) inspect the Owned Portfolio/Ancillary Debtors' assets and properties during normal business hours; (b) examine the Owned Portfolio/Ancillary Debtors' books and records; and (c) discuss the Owned Portfolio/Ancillary Debtors' affairs, finances, and condition with the Owned Portfolio/Ancillary Debtors' officers, management, financial advisors, attorneys and consultants, provided, however, that the Owned Portfolio/Ancillary Debtors shall not be required to disclose to the Prepetition Secured Parties information protected by the work product doctrine, the attorney-client privilege or any similar privileges.	
Stipulations as to Prepetition Claims and Liens <i>Bankruptcy Rule 4001(c)(1)(B)(iii)</i>	The Interim Order contains provisions or findings of fact that bind the Owned Portfolio/Ancillary Debtors' estates with respect to the validity, perfection or amount of the Prepetition Secured Creditors' claims and includes a waiver of claims against the Prepetition Secured Parties. The Owned Portfolio/Ancillary Debtors' stipulations shall be binding on third parties, subject to any Challenges as described below in accordance with Local Rule 4001-2(b)(1)(B).	Interim Order ¶¶ C & 14
Automatic Stay Waiver/Modification <i>Bankruptcy Rule 4001(c)(1)(B)(iv)</i>	Pursuant to the Interim Order, the automatic stay imposed by section 362 of the Bankruptcy Code shall be modified as necessary to permit the Owned Portfolio/Ancillary Debtors, the DIP Lender Parties, and each of the Prepetition Secured Parties to accomplish the transactions contemplated by the Interim Order.	Interim Order ¶ 26
Waiver/Modification of Applicability of Nonbankruptcy Law Relating to Perfection or Enforceability of Liens	The Interim Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the DIP Liens and Adequate Protection Liens, without the necessity of filing or recording any financing statement, deed of trust, mortgage, or other instrument or document which may otherwise be required under the law of any jurisdiction or the taking of any other action to validate or perfect the DIP Liens or Adequate Protection Liens, or to entitle the DIP	Interim Order ¶ 20

Summary of Material Terms		Location
<i>Bankruptcy Rule 4001(c)(1)(B)(vii)</i>	Liens or Adequate Protection Liens to the priorities granted herein.	
Releases <i>Bankruptcy Rule 4001(c)(1)(B)(viii)</i>	<i>Release of Prepetition Secured Parties.</i> Each of the Owned Portfolio/Ancillary Debtors, on behalf of themselves, and their respective successors and assigns and such Owned Portfolio/Ancillary Debtors' estate (collectively, "Releasors"), subject only to the Challenge Period, absolutely releases and forever discharges and acquits (i) the Prepetition Secured Parties, (ii) the respective successors, participants, assigns, directors, officers, attorneys, employees, financial advisors, consultants and other representatives of the Prepetition Secured Parties, (iii) the present and former shareholders, affiliates, subsidiaries, divisions, and predecessors of the Prepetition Secured Parties (the parties identified in clauses (i) through (iii), the "Releasees") of and from any and all claims and causes of action, including any so-called "lender liability" claims or defenses, that any Releasor may now or hereafter own, hold, have, or claim to have against the Releasees for, upon, or by reason of the Prepetition Secured Obligations, the Prepetition Liens, and the Prepetition Loan Documents, which arose or may have arisen at any time on or prior to the date of the Interim Order; <i>provided</i>, that such release shall be effective with respect to the Owned Portfolio/Ancillary Debtors upon entry of the Final Order, and shall not be effective with respect to the Owned Portfolio/Ancillary Debtors' estates until the expiration of the Challenge Period. <i>Release of DIP Lender Parties.</i> Upon entry of the Final Order, the Releasors absolutely release and forever discharge and acquit (i) the DIP Lender Parties, (ii) the respective successors, participants, assigns, directors, officers, attorneys, employees, financial advisors, consultants and other representatives of the DIP Lender Parties, (iii) the present and former shareholders, affiliates, subsidiaries, divisions, and predecessors of the DIP Lender Parties (the parties identified in clauses (i) through (iii), "DIP Lender Party Releasees") of and from any and all claims and causes of action, including any so-called "lender liability" claims or defenses, that any Releasor may now or hereafter own, hold, have, or claim to have against the DIP Lender Party Releasees for, upon, or by reason of the Public Credit Prepetition Loan and the Public Credit Prepetition	Interim Order ¶ 15(b) & (c)

Summary of Material Terms		Location
	Loan Documents, which arose or may have arisen at any time on or prior to the date of the Interim Order. Notwithstanding the foregoing, the DIP Lender Party Releasees who are officers or directors of the Owned Portfolio/Ancillary Debtors shall not be released from Prepetition Released Claims that arise from such officer or director acting in his/her capacity as an officer or director of the Owned Portfolio/Ancillary Debtors.	
Indemnification <i>Bankruptcy Rule 4001(c)(1)(B)(ix)</i>	Pursuant to the Interim Order the Non-HUD/Ancillary Debtors shall indemnify and hold harmless the DIP Lender Parties and their respective shareholders, partners, directors, agents, officers, subsidiaries and affiliates, successors and assigns, attorneys and professional advisors, in their respective capacities as such, in accordance with and only if and to the extent provided pursuant to the terms and conditions of the DIP Loan Agreement. Subject to the entry of the Final Order granting such relief, the foregoing indemnification obligations shall extend to the HUD Debtors.	Interim Order ¶ 31 DIP Loan Agreement Section 7.1
506(c) Waiver <i>Bankruptcy Rule 4001(c)(1)(B)(x)</i>	Subject to entry of the Final Order, no costs or expenses of administration which have been or may be incurred in the Chapter 11 Cases or any Successor Cases at any time shall be charged against the DIP Lender Parties, the Prepetition Secured Parties, their respective claims, the Prepetition Collateral, the DIP Collateral or the Adequate Protection Collateral, including Cash Collateral, pursuant to section 506(c) of the Bankruptcy Code without the prior written consent of the DIP Lender Parties and/or the Prepetition Secured Parties, respectively.	Interim Order ¶ 15 DIP Loan Agreement Section 2.1(j)(iii)
Entities with an Interest in Cash Collateral <i>Bankruptcy Rule 4001(b)(1)(B)(i)</i>	The Prepetition Secured Parties	Interim Order preamble
Purposes for Use of Cash Collateral <i>Bankruptcy Rule 4001(b)(1)(B)(ii)</i>	All Cash Collateral, including proceeds of the Prepetition Collateral, shall be used only for: (i) working capital; (ii) other general corporate purposes of the Owned Portfolio/Ancillary Debtors; (iii) the satisfaction of the costs and expenses of administering the Chapter 11 Cases of the Owned Portfolio/Ancillary Debtors, in accordance with the Budget. Further, all Cash Collateral of the HUD Debtors shall be used consistent with all restrictions and limitations set forth in the applicable regulatory agreement	Interim Order ¶ G

Summary of Material Terms		Location
	by and between each of the HUD Debtors and the secretary of HUD, and no Cash Collateral of the HUD Debtors shall be used for any purpose not permissible under such applicable regulatory agreements absent further order of this Court.	
Material Terms of the Use of Cash Collateral <i>Bankruptcy Rule 4001(b)(1)(B)(iii)</i>	Subject to the terms and conditions of the Interim Order and Final Order, at the times and for the purposes set forth in the Budget, the Owned Portfolio/Ancillary Debtors are authorized to use Cash Collateral until five (5) calendar days' after written notice of an Event of Default, as described below.	Interim Order ¶ 22
Duration of Use of Cash Collateral/ Events of Default <i>Bankruptcy Rules 4001(b)(1)(B)(iii) & 4001(c)(1)(B)</i>	The occurrence and continuance of any of the following events, unless such occurrence and continuance is waived in writing by the DIP Lender Parties and Prepetition Secured Parties in their sole discretion, shall constitute an event of default (collectively, the “Events of Default”): 1. The Final Order as it relates to the DIP Facility, which shall be in a form and substance (a) acceptable to the DIP Lender Parties in their respective sole and absolute discretion, and (b) acceptable to KeyBank and HUD or as otherwise ordered by the Court, is not entered within 35 days of the Petition Date; 2. The failure to have a Final Order as it relates to the use of Cash Collateral (whether it be consensual with the Prepetition Secured Parties pursuant to Bankruptcy Code Section 363(c)(2)(A) or with Bankruptcy Court approval pursuant to section 363(c)(2)(B) of the Bankruptcy Code), within 35 days of the Petition Date; 3. The failure by the Owned Portfolio/Ancillary Debtors to make, or cause to be made, any payment under the Interim Order or DIP Loan Agreement to the DIP Lender Parties and/or Prepetition Secured Parties when due; 4. The failure by the Owned Portfolio/Ancillary Debtors to deliver to the DIP Lender Parties and/or the Prepetition Secured Parties any of the material documents or other material information required to be delivered pursuant to the Interim Order when due or any such documents or other information shall contain a material misrepresentation;	Interim Order ¶ 21 DIP Loan Agreement Section 6.1

	Summary of Material Terms	Location
	5. The failure by the Owned Portfolio/Ancillary Debtors to comply with any Budget Covenants; 6. The Owned Portfolio/Ancillary Debtors shall grant, create, incur or suffer to exist any postpetition liens or security interests other than: (i) those granted pursuant to the Interim Order or the Final Order; (ii) carriers', mechanics', operator's, warehousemen's, repairmen's or other similar liens arising in the ordinary course of business for amounts outstanding as of the Petition Date, even if recorded after the Petition Date; (iii) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation; (iv) deposits to secure the payment of any postpetition statutory obligations, performance bonds and other obligations of a like nature incurred in the ordinary course of business; and (v) any Prepetition Permitted Liens; 7. An order shall be entered reversing, adversely amending, adversely supplementing, staying, vacating, or otherwise adversely modifying any material provision of the Proposed Orders without the written consent of the DIP Lender Parties and the Prepetition Secured Parties; 8. There shall be a breach by any of the Owned Portfolio/Ancillary Debtors of any provisions of the Proposed Orders or the DIP Loan Documents shall cease to be in full force and effect or shall have been reversed, modified, amended, stayed, vacated or subject to stay pending appeal, in the case of any modification or amendment; 9. The Owned Portfolio/Ancillary Debtors file a motion seeking approval to create, incur, or suffer to exist any claim that is <i>pari passu</i> with or senior to the DIP Superpriority Claims and/or the Adequate Protection Superpriority Claims (other than the DIP Superpriority Claims); 10. The Owned Portfolio/Ancillary Debtors shall create, incur, or suffer any other claim which is <i>pari passu</i> with or senior to the DIP Superpriority Claims; 11. Except for the DIP Superpriority Claims, the Owned Portfolio/Ancillary Debtors shall create, incur, or suffer	

	Summary of Material Terms	Location
	any other claim which is <i>pari passu</i> with or senior to the Adequate Protection Super-priority Claims; 12. The Owned Portfolio/Ancillary Debtors shall fail to achieve any agreed milestone as and when agreed; 13. The Court shall have entered an order dismissing any of the Chapter 11 Cases; 14. The filing of a proposed plan of reorganization or liquidation that is not acceptable to the Prepetition Secured Parties and/or the DIP Lender Parties; 15. The Court shall have entered an order converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code; 16. The Court shall have entered an order authorizing the appointment or election of a trustee or examiner with expanded powers or any other representative with expanded powers relating to the operation of the businesses in the Chapter 11 Cases; 17. The Court shall have entered an order granting relief from the automatic stay imposed by section 362 of the Bankruptcy Code to any entity other than the DIP Lender Parties and the Prepetition Secured Parties with respect to the DIP Collateral, the Adequate Protection Collateral or Cash Collateral without the written consent of the DIP Lender Parties and the Prepetition Secured Parties; 18. A filing by any of the Owned Portfolio/Ancillary Debtors of any motion, pleading, application or adversary proceeding challenging the validity, enforceability, perfection or priority of the liens securing the DIP Obligation or the Prepetition Secured Obligations or asserting any other cause of action against and/or with respect to the DIP Obligations, the Prepetition Secured Obligations, the DIP Collateral, the Adequate Protection Collateral, and Cash Collateral, or the DIP Lender Parties or the Prepetition Secured Parties (or if the Owned Portfolio/Ancillary Debtors support any such motion, pleading, application or adversary proceeding commenced by any third party); 19. The Owned Portfolio/Ancillary Debtors shall use Cash Collateral in any manner inconsistent with the Budget and the other terms of the Proposed Orders;	

Summary of Material Terms	Location
	20. The HUD Debtors shall use Cash Collateral in any manner inconsistent with the applicable regulatory agreements between such HUD Debtor and the Secretary of HUD; 21. The sale or transfer of any assets of any of the Owned Portfolio/Ancillary Debtors outside of the ordinary course of business without the prior consent and approval of the DIP Lender Parties and the Prepetition Secured Parties; 22. Impairment or failure to preserve the DIP Obligations, Prepetition Secured Obligations or Adequate Protection Obligations; or 23. Subject to the rights preserved in the Proposed Orders, the Court shall have entered an order avoiding, disallowing, subordinating or recharacterizing any claim, lien, or interest held by the Prepetition Secured Parties arising under the Prepetition Loan Documents, unless (i) the Owned Portfolio/Ancillary Debtors have sought a stay of such order within five (5) business days after the date of such issuance, and such order is stayed, reversed or vacated within ten (10) business days after the date of such issuance or (ii) the Prepetition Secured Parties have consented to such order in writing.
Milestones <i>Bankruptcy Rule 4001(c)(1)(B)</i>	Failure of the Owned Portfolio/Ancillary Debtors to meet any of the following milestones is an Event of Default: • On the Petition Date, the Owned Portfolio/Ancillary Debtors will file various first day motions reasonably acceptable to the Prepetition Secured Parties, including this Motion, seeking approval of the relief requested on an interim and final basis; • By 5 days after the Petition Date, the Debtors will file a proposed sale and bidding procedures motion (the “Sale Motion”) acceptable to the Prepetition Secured Parties, together with a motion to expedite the hearing on the foregoing; • By 5 days after the Petition Date, the Debtors will obtain approval of the Interim Order in a form acceptable to the Prepetition Secured Parties on an interim basis;

Summary of Material Terms	Location
	• By 22 days after the Petition Date, the Debtors will obtain the entry of an order from the Bankruptcy Court (the “Procedures Order”) approving the Bidding Procedures (as defined in the Sale Motion); • By 35 days after the Petition Date, the Debtors will obtain approval of the Final Order in a form acceptable to the Prepetition Secured Parties; • By 55 days after the Petition Date, shall be the Bid Deadline (as defined in the Procedures Order); • By 60 days after the Petition Date, to the extent that the Debtors receive more than one (1) Qualified Bid (as defined in the Procedures Order) by the Bid Deadline, the Debtors shall conduct a Bankruptcy sale pursuant to the Procedures Order; • By 65 days after the Petition Date, the Debtors will obtain a final order (the “Sale Order”) granting the relief requested in the Sale Motion and approving a sale of the assets of the Owned Portfolio Debtors pursuant to one or more Successful Bidder(s) (as defined in the Procedures Order); and • The Debtors shall have closed on the transactions authorized under the Sale Order: (i) on or before October 31, 2024 for the Non-HUD facilities, and (iii) on or before December 20, 2024.
Carve-Out <i>Bankruptcy Rules 4001(b)(1)(B)(iii) & 4001(c)(1)(B)</i>	The DIP Liens, DIP Superpriority Claim, Adequate Protection Liens (other than the Adequate Protection Liens granted to KeyBank, except to the extent provided in a Final Order), Adequate Protection Superpriority Claim, and Prepetition Liens (other than the KeyBank Prepetition Liens except to the extent provided in a Final Order) shall be subject only to the right of payment of the following expenses (collectively, the “Carve-Out”), to the extent provided in the Interim Order: (a) statutory fees payable to the Clerk of the Court and the U.S. Trustee pursuant to 28 U.S.C. § 1930(a) with respect to the Owned Portfolio/Ancillary Debtors; (b) the reasonable fees and costs of the Owned Portfolio/Ancillary Debtors’ claims and noticing agent; and (c) all unpaid fees and expenses (the “Allowed Professional Fees”) incurred by persons or firms Interim Order ¶¶ 17 & 19

Summary of Material Terms	Location
	retained by the Owned Portfolio/Ancillary Debtors or any Committee on or after the Petition Date pursuant to section 327, 328, 363, or 1103 of the Bankruptcy Code (each a “Professional” and collectively, “Professionals”) in a cumulative sum for the period prior to the occurrence of the delivery of a Carve-Out Trigger Notice (as defined herein), an amount not to exceed the lesser of (A) the aggregate weekly amounts budgeted for each such Professionals for such week in accordance with the Budget (to the extent a Carve-Out Trigger Notice is delivered mid-week, pro-rated for such week) and (B) the actual amount of such Allowed Professional Fees for each Professional incurred on or after the Petition Date up through and including the date a Carve-Out Trigger Notice is delivered, and (iv) Allowed Professional Fees of Professionals in an aggregate amount not to exceed \$125,000 incurred after delivery by the DIP Lender Parties or the Prepetition Secured Parties of written notice (which for the avoidance of doubt may be by electronic mail) of the occurrence of an Event of Default to the Owned Portfolio/Ancillary Debtors, the Owned Portfolio/Ancillary Debtors’ counsel, the U.S. Trustee, and counsel for any Committee, (the “Carve-Out Trigger Notice”), to the extent allowed by this Court (the amounts set forth in this clause (iv) being the “Post Carve-Out Trigger Notice Cap”, and the amounts set forth in clauses (i) through (iv) being the “Carve-Out Cap”). To the extent that proceeds of DIP Collateral or Adequate Protection Collateral are used to fund the Carve-Out, the DIP Lender Parties and/or the Prepetition Secured Parties shall be reimbursed from unencumbered assets, if any.

Local Rule 4001-2 Concise Statements		Location
Cross Collateralization <i>Local Rule 4001-2(b)(1)(A)</i>	The Interim Order does not provide for cross-collateralization, other than replacement liens and superpriority claims as adequate protection.	N/A
Stipulations <i>Local Rule 4001-2(b)(1)(B)</i>	The Interim Order contains provisions or findings of fact that bind the estates with respect to the validity, perfection or amount of the Prepetition Secured Parties' claims and includes a waiver of claims against the Prepetition Secured Lenders. The stipulations and admissions contained in the Interim Order, including without limitation, the Owned Portfolio/Ancillary Debtors' Stipulations, shall also be binding upon the Owned Portfolio/Ancillary Debtors' estates and all other parties in interest (except with respect to the Reservation), including the Committee (if any) or any chapter 7 or chapter 11 trustee appointed or elected for any of the Owned Portfolio/Ancillary Debtors (a "Trustee"), for all purposes unless (a) the Committee or any other party in interest, no later than the date that is sixty (60) days from entry of the Interim Order (the "Challenge Period"), has properly filed an adversary proceeding as required under the Bankruptcy Rules (y) challenging the amount, validity, enforceability, priority or extent of the Prepetition Secured Obligations or the Prepetition Liens on the Prepetition Collateral securing the Prepetition Secured Obligations, or (z) otherwise asserting any other claims, counterclaims, causes of action, objections, contests or defenses against the Prepetition Secured Parties on behalf of the Owned Portfolio/Ancillary Debtors' estates ((y) and (z), collectively, referred to herein as "Challenges"), and (b) the Court rules in favor of the plaintiff sustaining any such challenge or claim in any such duly filed adversary proceeding or contested matter; <i>provided</i>, that, as to the Owned Portfolio/Ancillary Debtors, all such Challenge(s) are hereby irrevocably waived and relinquished effective as of the Petition Date. The Owned Portfolio/Ancillary Debtors acknowledge that this Challenge Period is shorter than the time frame provided by Local Rule 4001-2(b)(1)(B). However, the timing of the stated Challenge Period is necessary in light of the expedited nature of the Chapter 11 Cases and the agreed upon Challenge Period was part of the "give and take" in negotiations with the DIP Lenders. In addition, the DIP Facility funding is critical to the success of these Chapter 11 Cases and the shortened Challenge Period is ultimately in the	Interim Order ¶ 14(i)

	best interest of the estates in light of the alternative of not obtaining the necessary DIP funding. Under the circumstances, the Owned Portfolio/Ancillary Debtors believe and assert that the stipulations and Challenge Period are reasonable.	
Section 506(c) Waiver <i>Local Rule 4001-2(b)(1)(C)</i>	Subject to entry of the Final Order, the costs or expenses of administration which have been or may be incurred in these Chapter 11 Cases or any Successor Cases at any time shall not be charged against the DIP Lender Parties, the Prepetition Secured Parties, their respective claims, the Prepetition Collateral, the DIP Collateral or the Adequate Protection Collateral, including Cash Collateral, pursuant to section 506(c) of the Bankruptcy Code without the prior written consent of the DIP Lender Parties and/or Prepetition Secured Parties, respectively.	Interim Order ¶ 15(a) DIP Loan Agreement Section 2.1(j)(iii)
Liens on Avoidance Actions <i>Local Rule 4001-2(b)(1)(D)</i>	Subject to entry of the Final Order, the DIP Lender Parties shall have liens on the proceeds of any claims and causes of action under chapter 5 of the Bankruptcy Code or any other avoidance actions under the Bankruptcy Code or state law of the Non-HUD/Ancillary Debtors and their estates (the “ Avoidance Actions ”) (other than actions brought pursuant to section 549 of the Bankruptcy Code), but not the Avoidance Actions themselves.	Interim Order ¶ 5
Provisions Deeming Prepetition Debt to be Postpetition Debt <i>Local Rule 4001-2(b)(1)(E)</i>	Subject to the entry of the Final Order in form and substance acceptable to KeyBank and HUD or as otherwise ordered by the Court, without any further action by the Owned Portfolio/Ancillary Debtors or any other party, an aggregate amount equal to the amount outstanding under the Public Credit Prepetition Loan (in the approximate amount of \$4,000,000) shall be repaid and refinanced with the proceeds of the DIP Facility, to effect a roll-up (the “Roll-Up”) of the entirety of the Public Credit Prepetition Loan into an obligation under the DIP Facility under and as further described in the DIP Loan Documents (the “DIP Roll-Up Obligations”). The Roll-Up of the Public Credit Prepetition Loan was a condition of Public Credit’s extension of the necessary New Money DIP Loan to the Non-HUD/Ancillary Debtors. The amount of the Roll-Up relative to the new money to be provided under the DIP Facility (a ratio of approximately 1.625:1) is consistent with or favorable to the Owned Portfolio/Ancillary Debtors when compared with ratios that have been approved in other cases in this District. <i>See, e.g., In re South Hills Operations, LLC</i>, Case No. 24-21217	Interim Order ¶¶ H(vii) & 11 DIP Loan Agreement Section 2.1(b)

	(CMB) (Bankr. W.D. Pa. June 17, 2024) (D.I. 257) (approving \$38 million financing with a \$25.5 million roll-up or 2.04:1 ratio); <i>In re Rockdale Marcellus</i>, No. 21-22080 (GLT) (Bankr. W.D. Pa. Oct. 18, 2021) (D.I. 271) (approving \$60 million financing with a \$40 million roll-up or 2:1 ratio); <i>In re R.E. Gas Development, LLC</i>, No. 18-22032 (JAD) (Bankr. W.D. Pa. July 11, 2018) (D.I. 427) (approving \$411 million financing with \$311 million roll-up or 3.11:1 ratio). The Roll-Up is part of a global negotiation of the DIP Facility terms. Without the Roll-Up, the Owned Portfolio/Ancillary Debtors would not receive the New Money DIP Loan that is necessary for the Owned Portfolio/Ancillary Debtors to maintain their operations and fund administrative expenses during these Chapter 11 Cases. Accordingly, the Owned Portfolio/Ancillary Debtors believe that the Roll-Up of Public Credit's prepetition debt is necessary and reasonable under the circumstances.	
Disparate Treatment of Professionals Under Carve-Out <i>Local Rule 4001-2(b)(1)(F)</i>	While the Budget has separate line items for the Debtors' and the Committees' Professionals, the Interim Order contains no provision for disparate treatment for Committee professionals, if any, with respect to the Carve-Out.	N/A
Non-Consensual Priming Liens <i>Local Rule 4001-2(b)(1)(G)</i>	Public Credit consents to the DIP Liens priming the Public Credit Prepetition Liens. The DIP Liens are not priming the S&T Prepetition Liens or the KeyBank Prepetition Liens.	Interim Order ¶ 6

Jurisdiction and Venue

2. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2). Venue of these cases and the Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

3. On the date hereof (the "**Petition Date**"), each of the above captioned debtors and debtors in possession (collectively, the "**Debtors**") commenced a case under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as

debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in the Chapter 11 Cases, and no committees have been appointed or designated.

4. A description of the Debtors' businesses, the reasons for commencing the Chapter 11 Cases, the relief sought from the Court, and the facts and circumstances supporting this Motion are set forth in the First Day Declaration filed contemporaneously herewith.

I. The Owned Portfolio/Ancillary Debtors' Prepetition Secured Indebtedness

A. KeyBank HUD-Insured Secured Debt

5. Beaver Falls HUD Loan. On November 18, 2021, Debtor Beaver Falls PropCo and KeyBank entered into a note and series of loan documents (collectively, the "**Beaver Falls HUD Loan Documents**"), pursuant to which Beaver Falls PropCo received a loan from KeyBank in the amount of \$11,981,300 (the "**Beaver Falls HUD Loan**"), which is insured by the United States Department of Housing and Urban Development ("**HUD**"). The obligations under the Beaver Falls HUD Loan are guaranteed by Debtors Master Tenant and Beaver Falls OpCo.

6. The Beaver Falls HUD Loan is secured by a first priority lien on, and security interest in (the "**KeyBank Beaver Falls Prepetition Liens**"), (i) a mortgage on the real property owned by Debtor Beaver Falls PropCo; (ii) a security interest in any related personal property located thereon, and an assignment of leases and rents with respect to the real property; (iii) a security interest in substantially all assets of Debtor Master Tenant; and (iv) a security interest in substantially all assets of Debtor Beaver Falls OpCo, as operator of the facility, including all fixtures, furniture, equipment and accounts receivable (collectively, the "**KeyBank Beaver Falls Prepetition Collateral**"), subject only to any Prepetition Permitted Liens.

7. Fairmont HUD Loan. On March 25, 2022, Debtor Fairmont PropCo and KeyBank entered into a note and series of loan documents (collectively, the “**Fairmont HUD Loan Documents**”), pursuant to which Debtor Fairmont PropCo received a HUD-insured loan from KeyBank in the amount of \$22,872,000 (the “**Fairmont HUD Loan**”). The obligations under the Fairmont HUD Loan are guaranteed by Debtors Master Tenant and Fairmont OpCo.

8. The Fairmont HUD Loan is secured by a lien on, and security interest in (the “**KeyBank Fairmont Prepetition Liens**”), (i) a first priority mortgage on the real property owned by Debtor Fairmont PropCo; (ii) a security interest in any related personal property located thereon, and an assignment of leases and rents with respect to the real property; (iii) a security interest in substantially all assets of Debtor Master Tenant; and (iv) a security interest in substantially all assets of Debtor Fairmont OpCo, as operator of the facility, including all fixtures, furniture, equipment and accounts receivable (the “**KeyBank Fairmont Prepetition Collateral**”), subject only to any Prepetition Permitted Liens and the Public Credit Prepetition Liens (as defined below).

9. Monongahela HUD Loan. On April 26, 2023, Debtor Monongahela PropCo (together with Debtor Beaver Falls PropCo and Debtor Fairmont PropCo, the “**Owned HUD PropCos**”) and KeyBank entered into a note and series of loan documents (collectively, the “**Monongahela Loan Documents**,” together with the Beaver Falls HUD Loan Documents and the Fairmont HUD Loan Documents, the “**KeyBank HUD Loan Documents**”), pursuant to which Debtor Monongahela PropCo received a HUD-insured loan from KeyBank in the amount of \$4,648,000 (the “**Monongahela HUD Loan**,” and together with the Beaver Falls HUD Loan and Fairmont HUD Loan, the “**HUD Loans**”). The obligations under the Monongahela HUD Loan are guaranteed by Debtors Master Tenant and Monongahela OpCo (together with Debtors Beaver

Falls OpCo and Fairmont OpCo, the “**Owned HUD OpCos**”).

10. The Monongahela HUD Loan is secured by a first priority lien on, and security interest in (the “**KeyBank Monongahela Prepetition Liens**”, and collectively with the KeyBank Beaver Falls Prepetition Liens and the KeyBank Fairmont Prepetition Liens, the “**KeyBank Prepetition Liens**”), (i) a mortgage on the real property owned by Monongahela PropCo; (ii) a security interest in any related personal property located thereon, and an assignment of leases and rents with respect to the real property; (iii) a security interest in substantially all assets of Debtor Master Tenant; and (iv) a security interest in substantially all assets of Debtor Monongahela OpCo, as operator of the facility, including all fixtures, furniture, equipment and accounts receivable (the “**KeyBank Monongahela Prepetition Collateral**,” collectively with the KeyBank Beaver Falls Prepetition Collateral and the KeyBank Fairmont Prepetition Collateral, the “**KeyBank Prepetition Collateral**”).

11. As of the Petition Date, the amount outstanding under the Beaver Falls HUD Loan is approximately \$11,207,000, the amount outstanding under the Fairmont HUD Loan is approximately \$22,381,000, and the amount outstanding under the Monongahela HUD Loan is approximately \$4,593,000.

B. The Public Credit Secured Debt

12. On March 22, 2024, the Owned HUD OpCos, and Debtors Bethel Park OpCo; Greensburg OpCo; Lower Burrell OpCo; Munhall OpCo; Holdco; 99% Holdco; and non-debtor Guardian Healthcare FOR LLC 1% Holdco Inc. (collectively, the “**Public Credit Prepetition Borrowers**”) entered into a Revolving Line of Credit Loan Agreement with Public Credit, as lender (collectively with all documents, notes, security agreements, guarantees, subordination agreements, deeds, instruments, indemnities, indemnity letters, fee letters, assignments,

amendments, and any other agreements delivered pursuant thereto or in connection therewith, the **“Public Credit Prepetition Loan Documents”**). Pursuant to the Public Credit Prepetition Loan Documents, Public Credit agreed to retire an existing secured credit facility and extend to the Public Credit Prepetition Borrowers a commercial revolving loan of credit in an amount of up to \$4,000,000 for working capital needs (the **“Public Credit Prepetition Loan”**).

13. The Public Credit Prepetition Loan is evidenced by a Note dated effective as of March 22, 2024, in the amount of \$4,000,000 in favor of Public Credit. In addition, pursuant to a Security Agreement dated effective as of March 22, 2024, between the Public Credit Prepetition Borrowers and Public Credit, the Public Credit Prepetition Loan is secured by liens on, and a security interest in (the **“Public Credit Prepetition Liens”**), all the Public Credit Prepetition Borrowers’ right, title and interest in all accounts (including healthcare insurance receivables and Medicaid and Medicare receivables), deposit accounts and inventory (the **“Public Credit Prepetition Collateral”**).

14. The Public Credit Prepetition Liens on the Public Credit Prepetition Collateral are junior to the liens granted to KeyBank in the same collateral, with the exception of Public Credit’s lien on the Public Credit Prepetition Collateral of Debtor Fairmont OpCo, in which Public Credit asserts that it holds the first position lien. The Debtors understand that KeyBank reserves its rights with respect to the determination of priority of liens in the assets of Fairmont OpCo.

15. As of the Petition Date, the amount outstanding under the Public Credit Prepetition Loan is approximately \$4,000,000.

C. The S&T Bank Secured Debt

16. Pursuant to a Loan Agreement dated effective as of December 27, 2022 (as amended from time to time and collectively with all documents, notes, security agreements,

guarantees, subordination agreements, deeds, instruments, indemnities, indemnity letters, fee letters, assignments, amendments, and any other agreements delivered pursuant thereto or in connection therewith, the “**S&T Owned Facilities Loan Documents**”) by and among S&T, as lender, and Debtors Lower Burrell PropCo, Munhall PropCo, Bethel Park PropCo, Greensburg PropCo, Brockway PropCo (collectively, the “**Owned Non-HUD PropCos**”), 99% Holdco, Lower Burrell OpCo, Munhall OpCo, Bethel Park OpCo, Greensburg OpCo and Brockway OpCo (collectively with the Owned Non-HUD PropCos, the “**Owned S&T Borrowers**”) as borrowers, S&T agreed to extend to the Owned S&T Borrowers a term loan in the amount of \$20,360,000 (the “**S&T Owned Facilities Loan,**” together with the HUD Loans and the Public Credit Prepetition Loan, the “**Prepetition Loans**”), which loan was evidenced by a Note dated effective as of December 27, 2022.

17. As security for their obligations under the S&T Owned Facilities Loan Documents, the Owned S&T Borrowers granted to S&T a first priority lien on substantially all of their real and personal property assets (the “**S&T Owned Facilities Prepetition Liens**”). Specifically, pursuant to a Security Agreement dated effective as of December 27, 2022, the Owned S&T Borrowers granted to S&T a security interest in, *inter alia*, their general intangibles, inventory, equipment, fixtures, investment property, deposit accounts and proceeds thereof, but specifically excluding Accounts including all accounts receivable and all Health-care-insurance receivable and proceeds thereof (the “**S&T Owned Facilities Prepetition Collateral**”).

18. In addition, pursuant to Mortgage and Security Agreements dated effective as of December 27, 2022 (the “**S&T Prepetition Mortgages**”), the Owned Non-HUD PropCos, as borrowers, granted to S&T first priority mortgages on their respective real property interests, and a security interest in all personal property, leases, rents and all other property interests related to

the mortgaged premises, which mortgages were duly recorded. The Owned Non-HUD PropCos likewise assigned to S&T all of their rights in and to any leases covering all or part of their respective real properties (collectively, the “**S&T Prepetition Mortgage Collateral**”).

19. The obligations of the Owned S&T Borrowers under the S&T Owned Facilities Loan Documents are guaranteed by the Ancillary Debtors. To secure their guaranty obligations, pursuant to a Security Agreement dated effective as of December 27, 2022, the Ancillary Debtors granted to S&T a first priority lien on, and security interest in (the “**S&T Ancillary Debtors Prepetition Liens**,” together with the S&T Owned Facilities Prepetition Liens and the S&T Prepetition Mortgages, the “**S&T Prepetition Liens**,” and together with KeyBank Prepetition Liens, and the Public Credit Prepetition Liens, the “**Prepetition Liens**”) all of their right, title and interest in their business assets, including all accounts (including all healthcare insurance receivables), general intangibles, inventory, equipment, fixtures, investment property, deposit accounts and proceeds thereof (together with the S&T Owned Facilities Prepetition Collateral and the S&T Prepetition Mortgage Collateral, the “**S&T Prepetition Collateral**,” and together with the KeyBank Prepetition Collateral and the Public Credit Prepetition Collateral are referred to herein as the “**Prepetition Collateral**”).

20. Moreover, as further security for the S&T Owned Facilities Loan, Debtor HoldCo and non-debtors Guardian Healthcare FIN Group, LLC, Guardian Healthcare Other Propco 99% Holdco, Guardian Healthcare Other PropCo 1% Holdco, LLC, Guardian Healthcare FOR Propco 100% Holdco, LLC, the 2011 Irrevocable Trust for Peter C. Varischetti dated December 9, 2011, the 2011 Irrevocable Trust or Nicholas D. Varischetti dated December 9, 2011, the Irrevocable Trust of Raymond L. Calhoun and Michelle L. Calhoun f/b/o Amanda R. Calhoun dated July 6, 2010 and the Irrevocable Trust of Raymond L. Calhoun and Michelle L. Calhoun f/b/o Justin M.

Calhoun dated July 6, 2010 pledged to S&T their right, title and interest in their respective interests in each of the S&T Owned Borrowers and any related distributions and proceeds.

21. All indebtedness, liabilities, and obligations under the KeyBank HUD Loan Documents, the Public Credit Prepetition Loan Documents and the S&T Owned Facilities Loan Documents (collectively, the “**Prepetition Loan Documents**”), specifically including all “Obligations” as defined therein, are referred to herein as the “**Prepetition Secured Obligations**”.

22. As of the Petition Date, the principal amount outstanding under the S&T Owned Facilities Loan is approximately \$16,500,000.

II. The Debtors’ Need for Post-Petition Financing and Access to Cash Collateral

23. As more fully described in the First Day Declaration, since the COVID-19 pandemic, the Debtors have struggled through a challenging business environment. Like many other skilled nursing facilities, the Debtors’ patient census (and the revenues related thereto) was negatively impacted by the pandemic, as various governmental policies led people to remain home and forced the closure of, or limitations on, certain businesses. The limitation imposed by the pandemic caused declines in occupancy as a result of reduced admissions and additional operating costs from increased infection control and preference regulations. The Debtors also suffered a decline in referrals to their facilities during the pandemic.

24. Following the pandemic, occupancy and revenue failed to return to pre-pandemic levels while labor costs increased. The increased costs, combined with meaningful decreases in reimbursements from managed care organizations and significant obligations related to nursing facility assessments, created an unsustainable liquidity position for the Debtors.

25. In an effort to combat such challenges and improve its liquidity position, the Debtors, among other things, (i) engaged professional advisors to assist with liquidity, financial,

operational and strategic planning issues, (ii) worked closely with their landlords to identify replacement operators for its facilities, (iii) actively engaged with their secured lenders regarding the outstanding liabilities, and (iv) significantly reduced overhead expenses to ensure that financial resources were directed to patient care. The Owned Portfolio/Ancillary Debtors also worked with an investment banker, Senior Living Investment Brokerage, to commence and execute an extensive prepetition marketing process to find one or more buyers and/or operators for their nursing home facilities.

26. The Owned Portfolio/Ancillary Debtors identified certain buyers (together, the “**Buyers**”) for the real property owned by the Owned HUD PropCos and Owned Non-HUD PropCos (together, the “**Owned PropCos**”). In addition to a purchase of the assets of the Owned PropCos, the Buyers also identified certain transferees to which the parties proposed to transfer the operations and certain assets of the Owned HUD OpCos and Owned Non-HUD OpCos (together, the “**Owned OpCos**”) pursuant to an Operations Transfer Agreement (the “**OTA**”).

27. Unfortunately, the transition of operations to the proposed new operators was not approved by the Pennsylvania Department of Health. This required the parties to quickly consider alternative operators. The Buyers have since located different operators. As such, the Debtors have determined that it is in the best interests of the Owned Portfolio/Ancillary Debtors’ estates, creditors and residents to transfer the Owned PropCos’ real estate to the Buyers pursuant to a stalking horse asset purchase agreement (the “**Stalking Horse APA**”) and transfer the operations of the Owned OpCos to new operators (together, the “**New Operators**,” and together with the Buyers, the “**Stalking Horse Bidders**”) pursuant to an OTA (the “**Stalking Horse OTA**”), subject to higher and better offers through a section 363 sale process. The Debtors expect to file a motion in the near term to approve sale procedures and the ultimate sale of the Owned Portfolio Debtors’

assets to the Stalking Horse Bidders or higher or better bidders (the “**Sale Motion**”).

28. As will be detailed in the Sale Motion, any sale of the Non-HUD Debtors’ assets requires both the cooperation, and certain concessions, from the primary secured creditor S&T. To that end, the Non-HUD Debtors entered into good faith negotiations with S&T regarding a proposed transaction to facilitate the sale of the facilities and the safe transfer of nursing home operations to new operators. On July 29, 2024, the Non-HUD Debtors and S&T entered into the Amended and Restated Release Agreement (the “**Release Agreement**”) pursuant to which, inter alia, S&T agreed to forgive \$3.2 million of the amount due and owing under the terms of the S&T Owned Facilities Loan Documents in exchange for (a) payment of the net proceeds from the sale of the Non-HUD Debtors’ assets, (b) payment of an additional amount of up to \$3.2 million from a source other than a Debtor, which source will be a non-debtor entity affiliated with the Non-HUD Debtors, (c) payment of any remaining amounts due under the S&T Prepetition Loan (the “**Shortfall Obligation**”) from the Ancillary Debtors; which Shortfall Obligation shall be secured in an amount of up to \$250,000 from a pledge of collateral from Varischetti Investments, LP, and (d) a release. The Debtors have described the Release Agreement herein for purposes of disclosure only and will seek Court approval of the Release Agreement in conjunction with the Sale Motion.

29. The DIP Facility and use of Cash Collateral is critical to the success of these Chapter 11 Cases, and is necessary to fund working capital needed to continue the Owned Portfolio/Ancillary Debtors’ operations during the section 363 sale process. Without chapter 11 protection and the availability of the debtor-in-possession financing and the use of Cash Collateral, the Owned Portfolio/Ancillary Debtors would likely be unable to pursue an orderly sale of their real property or transfer of their operations to new operators as a result of liquidity constraints and would likely be forced to shut down operations at the facilities to the detriment of the Owned

Portfolio/Ancillary Debtors' residents, employees and other parties in interest. Based on the Owned Portfolio/Ancillary Debtors' forecast, they will be unable to generate sufficient levels of operating cash flow in the ordinary course of business to cover both their operating costs going forward and the projected restructuring costs of these Chapter 11 Cases without the debtor-in-possession financing.

30. To ensure continued operations during these Chapter 11 Cases, provide funding for these cases, assure parties in interests of their ability to pay for postpetition obligations in the ordinary course, and pursue a sale process for the Owned Portfolio Debtors' assets and operations, the Owned Portfolio/Ancillary Debtors are seeking approval of a DIP Facility in the maximum aggregate principal amount of \$6,500,000. The liquidity to be provided by the DIP Facility will enable the Owned Portfolio/Ancillary Debtors to preserve and maximize the value of their estates for the benefit of all parties in interest.

III. The Owned Portfolio/Ancillary Debtors' DIP Financing / Cash Collateral Negotiations

31. The Owned Portfolio/Ancillary Debtors, through their Chief Restructuring Officer, with the advice and assistance of their professionals, engaged in extensive, good faith and arm's-length negotiations with the DIP Lender Parties and the Prepetition Secured Parties about the terms of the postpetition financing and use of Cash Collateral. As a result of those negotiations, the Owned Portfolio/Ancillary Debtors and DIP Lender Parties and the Prepetition Secured Parties reached agreement on the terms of a DIP Facility and use of Cash Collateral, as set forth in the Interim Order. As detailed in the First Day Declaration, and in light of the existing secured debt encumbering the assets of the Owned Portfolio/Ancillary Debtors, it was futile to attempt to obtain financing from a third-party who was not already a lender. Ultimately, the DIP Facility proposed was the best and only actionable financing proposal available to the Owned Portfolio/Ancillary

Debtors and provides necessary liquidity for the administration of these cases.

IV. The DIP Facility And Cash Collateral Are In the Best Interests of the Estates

32. The DIP Facility and continued use of Cash Collateral, as set forth in the Interim Order, and as will be set forth in the Final Order, will provide the liquidity needed to stabilize and fund the Owned Portfolio/Ancillary Debtors' operations during the course of these Chapter 11 Cases as the Owned Portfolio/Ancillary Debtors seek to preserve and maximize the value of their estates for the benefit of all parties in interest. Moreover, the liquidity provided under the DIP Facility and use of Cash Collateral, as applicable, is necessary to facilitate the administration of these Chapter 11 Cases, fund postpetition operations and restructuring expenses, and ensure that the Owned Portfolio/Ancillary Debtors are able to pursue a sale of the Owned PropCos' real property to a new buyer and transfer of the Owned OpCos' operations to new operators. The Owned Portfolio/Ancillary Debtors believe that approval of the DIP Facility and use of Cash Collateral, as applicable, is critical to assuring parties in interest of the Owned Portfolio/Ancillary Debtors' ability to maintain and consummate a transfer of their real property and operations through an asset purchase agreement and operations transfer agreement, respectively, or similar arrangement.

33. For these reasons and those set forth below, the Owned Portfolio/Ancillary Debtors believe that the DIP Facility will maximize the value of the Owned Portfolio/Ancillary Debtors' estates and is a sound exercise of the Owned Portfolio/Ancillary Debtors' business judgment. The Owned Portfolio/Ancillary Debtors believe that use of Cash Collateral is also in the best interests of the estates and a sound exercise of the Owned Portfolio/Ancillary Debtors' business judgment. Accordingly, the Owned Portfolio/Ancillary Debtors respectfully request that the Court enter the Interim Order and, as later applicable, the Final Order.

Relief Requested

34. The Owned Portfolio/Ancillary Debtors request entry of the Interim Order: (i) authorizing the Owned Portfolio/Ancillary Debtors to obtain the DIP Facility; (ii) authorizing the Owned Portfolio/Ancillary Debtors to execute and deliver the DIP Loan Documents in accordance with the terms of the DIP Loan Agreement; (iii) authorizing the Owned Portfolio/Ancillary Debtors to use proceeds of the DIP Facility as permitted in the DIP Loan Documents; (iv) granting the DIP Lender Parties the DIP Superpriority Claims; (v) granting the DIP Lender Parties the DIP Liens on all DIP Collateral; (vi) authorizing and directing the Non-HUD/Ancillary Debtors to pay on an interim basis, and the Owned Portfolio/Ancillary Debtors to pay on a final basis, the principal, interest, fees, expenses and other accounts payable under the DIP Loan Documents as such become earned, due and payable; (vii) authorizing the Owned Portfolio/Ancillary Debtors to continue to use Cash Collateral³ in which the Prepetition Secured Parties have an interest in accordance with the terms and conditions of the Interim Order, and granting adequate protection to the Prepetition Secured Parties to secure, *inter alia*, the use of Cash Collateral; (viii) modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to permit the Owned Portfolio/Ancillary Debtors, the DIP Lender Parties, and the Prepetition Secured Parties to implement and effectuate the terms and provisions of the Interim Order; (ix) waiving as to the DIP Lender Parties, subject to entry of the Final Order, (a) the Owned Portfolio/Ancillary Debtors' ability to surcharge against the Prepetition Collateral, DIP Collateral or Adequate Protection Collateral pursuant to section 506(c) of the Bankruptcy Code or any other applicable

³ As defined in the Interim Order, the term "**Cash Collateral**" shall be deemed to include, without limitation, each Owned Portfolio/Ancillary Debtor's "Cash Collateral" as defined under section 363 of the Bankruptcy Code, all deposits subject to setoff and cash arising from the collection or other conversion to cash of any and all property (whether real or personal) in which the Secured Parties have valid, unavoidable and perfected security interests, liens or mortgages, regardless of whether such security interests, liens, or mortgages existed as of the Petition Date or arise thereafter or pursuant to the Interim Order.

principle of equity or law and (b) the applicability of the “equities of the case” exception under section 552(b) of the Bankruptcy Code; (x) scheduling a final hearing to consider entry of the Final Order; and (xi) granting related relief.

Basis for Relief

I. The Owned Portfolio/Ancillary Debtors Should Be Authorized To Obtain Postpetition Financing On A Senior Secured And Superpriority Basis.

A. The Owned Portfolio/Ancillary Debtors Exercised Sound And Reasonable Business Judgment In Deciding To Enter Into The DIP Facility.

35. Provided that an agreement to obtain postpetition credit is consistent with the provisions of, and policies underlying, the Bankruptcy Code, courts grant a debtor considerable deference in exercising its sound business judgment in obtaining such credit. *See, e.g., In re L.A. Dodgers LLC*, 457 B.R. 308, 313 (Bankr. D. Del. 2011) (“[C]ourts will almost always defer to the business judgment of a debtor in the selection of the lender.”); *In re Barbara K. Enters., Inc.*, No. 08-11474, 2008 WL 2439649, at *14 (Bankr. S.D.N.Y. June 16, 2008) (“[Courts generally] defer to a debtor’s own business judgment so long as a request for financing does not ‘leverage the bankruptcy process’ and unfairly cede control of the reorganization to one party in interest.”) (internal citation omitted); *In re Trans World Airlines, Inc.*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving postpetition loan and receivables facility because such facility “reflect[ed] sound and prudent business judgment”); *In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (“[C]ases consistently reflect that the court’s discretion under section 364 [of the Bankruptcy Code] is to be utilized on grounds that permit [a debtor’s] reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest.”).

36. Courts emphasize that the business judgment rule is not an onerous standard and may be satisfied “as long as the proposed action appears to enhance the debtor’s estate.” *Crystalin, LLC v. Selma Props. Inc. (In re Crystalin, LLC)*, 293 B.R. 455, 463–64 (B.A.P. 8th Cir. 2003) (quoting *Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 566 n.16 (8th Cir. 1997) (internal alterations and quotations omitted)); *In re Pittsburgh Sports Assocs. Holdings Co.*, 239 B.R. 75, 87 (Bankr. W.D. Pa. 1999). Courts require only that the debtors “show that a sound business purpose justifies such actions.” *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (citations omitted); *see also In re Phx. Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987).

37. Under the circumstances, the Owned Portfolio/Ancillary Debtors’ determination to move forward with the DIP Facility is a sound exercise of their business judgment. Most importantly, without access to the DIP Facility, the Owned Portfolio/Ancillary Debtors will not be able to pay expenses necessary to sustain their operations, which would irreparably impair the value of the Owned Portfolio/Ancillary Debtors’ estates during these Chapter 11 Cases. The DIP Facility is currently the only available and viable source of liquidity to make such payments. In addition, the Owned Portfolio/Ancillary Debtors’ Chief Restructuring Officer negotiated the terms of the DIP Facility with the DIP Lender Parties in good faith, at arm’s length, and with the assistance of the Owned Portfolio/Ancillary Debtors’ advisors. Based on such negotiations, the Owned Portfolio/Ancillary Debtors believe the terms of the DIP Facility, as set forth in the Interim Order, and as will be set forth in the Final Order, are fair, reasonable, reflective of the market for financings of this type, offers a significant benefit to the Owned Portfolio/Ancillary Debtors’ estates, and is the best financing available under the circumstances. Moreover, the milestones in the Interim Order are tailored to comport with the timeline of the process for the sale of the Owned

Portfolio/Ancillary Debtors' assets and the transfer of their business operations. Accordingly, the Court should authorize the Owned Portfolio/Ancillary Debtors' entry into the DIP Facility as a reasonable exercise of the Owned Portfolio/Ancillary Debtors' business judgment.

B. The Owned Portfolio/Ancillary Debtors Meet The Conditions Necessary Under Section 364(d)(1) To Obtain Postpetition Financing On A Senior Secured And Superpriority Basis.

38. The Owned Portfolio/Ancillary Debtors propose to obtain financing under the DIP Facility by providing the DIP Lender Parties the DIP Liens and DIP Superpriority Claims pursuant to sections 364(c) and (d)(1) of the Bankruptcy Code. Specifically, the Owned Portfolio/Ancillary Debtors propose to provide the DIP Lender Parties first priority DIP Liens on the DIP Collateral, together with any proceeds, products or profits of the DIP Collateral, whether arising under section 552(b) of the Bankruptcy Code or otherwise (subject in each case to the Carve-Out and Prepetition Permitted Liens). Notably, the Interim Order does not permit the DIP Liens to prime any lien arising from or relating to the real estate taxes or any lien in favor of KeyBank or otherwise encumber any of the KeyBank Prepetition Collateral or any other property of the HUD Debtors.

39. The Owned Portfolio/Ancillary Debtors meet the requirements for relief under section 364(c) of the Bankruptcy Code, which permits a debtor, with Court authorization, to obtain postpetition financing and, in return, to grant superpriority administrative status and liens on its property. Specifically, section 364(c) of the Bankruptcy Code provides as follows:

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

(1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;

(2) secured by a lien on property of the estate that is not otherwise subject to a lien; or

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

11 U.S.C. § 364(c). In evaluating proposed postpetition financing under section 364(c) of the Bankruptcy Code, courts perform a qualitative analysis and consider whether (a) unencumbered credit or alternative financing without superpriority status is available to the debtor, (b) the credit transactions are necessary to preserve assets of the estate, and (c) the terms of the credit agreement are fair, reasonable, and adequate. *See, e.g., In re Los Angeles Dodgers*, 457 B.R. at 312; *In re Aqua Assoc.*, 123 B.R. 192, 195–99 (Bankr. E.D. Pa. 1991); *In re St. Mary Hosp.*, 86 B.R. 393, 401–02 (Bankr. E.D. Pa. 1988); *In re Crouse Group, Inc.*, 71 B.R. 544, 549–51 (Bankr. E.D. Pa. 1987); *see also Bland v. Farmworker Creditors*, 308 B.R. 109, 113–14 (S.D. Ga. 2003); *In re Ames Dep’t Stores*, 115 B.R. at 37–40.

40. Further, the Owned Portfolio/Ancillary Debtors meet the requirements for relief under section 364(d) of the Bankruptcy Code, which permits a debtor, with Court authorization, to obtain post-petition financing secured by liens that are senior to prepetition liens. Specifically, section 364(d) of the Bankruptcy Code provides as follows:

(1) The court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if:

(A) the trustee is unable to obtain such credit otherwise; and

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

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

11 U.S.C. § 364(d). Accordingly, the Owned Portfolio/Ancillary Debtors may incur “priming” liens under the DIP Facility if either (a) the Prepetition Secured Parties have consented or (b) the Prepetition Secured Parties’ interests in collateral are adequately protected.

41. Here, the Owned Portfolio/Ancillary Debtors satisfy the necessary conditions under section 364(c) and (d) of the Bankruptcy Code for authority to enter into the DIP Facility. Given the circumstances, the Owned Portfolio/Ancillary Debtors do not believe it would be possible to obtain credit on an unsecured, junior secured, or administrative expense basis. For all the reasons discussed further below, the Owned Portfolio/Ancillary Debtors respectfully submit that the Court should grant the Owned Portfolio/Ancillary Debtors’ request to enter into the DIP Facility pursuant to section 364(c) and (d) of the Bankruptcy Code.

1. The Owned Portfolio/Ancillary Debtors are unable to obtain financing on more favorable terms than the DIP Facility.

42. In order to satisfy this test, a debtor need only demonstrate “by a good faith effort that credit was not available without” the protections afforded to potential lenders by section 364(c) or 364(d) of the Bankruptcy Code. *In re Snowshoe Co., Inc.*, 789 F.2d 1085, 1088 (4th Cir. 1986) (“The statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable.”); *In re Pearl-Phil GMT (Far East Ltd. v. Caldor Corp.*, 266 B.R. 575, 584 (S.D.N.Y. 2001) (superpriority administrative expenses authorized where debtor could not obtain credit as an administrative expense); *In re Ames Dep’t Stores, Inc.*, 115 B.R. at 40 (approving financing facility and holding that debtor made reasonable efforts to satisfy the standards of section 364(c), to obtain less onerous terms where debtor approached four lending institutions, was rejected by two and selected the least onerous financing option from the remaining two lenders). This is especially true where time is of the essence. *See In re Reading Tube Indus.*, 72 B.R. 329, 332 (Bankr. E.D. Pa. 1987).

43. Moreover, in circumstances where only a few lenders likely can or will extend the necessary credit to a debtor on an unsecured or administrative priority basis, “it would be unrealistic or unnecessary to require [the debtor] to conduct such an exhaustive search for financing.” *Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff’d sub nom. Anchor Sav. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n.4 (N.D. Ga. 1989); *see also In re Snowshoe Co.*, 789 F.2d at 1088 (demonstrating that credit was unavailable absent the senior lien by establishment of unsuccessful contact with other financial institutions in the geographic area).

44. The Owned Portfolio/Ancillary Debtors communicated with both S&T Bank and Public Credit about their willingness to provide sufficient financing, including financing on a junior basis. Neither agreed to provide financing on an unsecured, non-superpriority basis, particularly in light of the challenges facing nursing facilities in Western Pennsylvania. *See generally In re South Hills Operations LLC*, Case No. 24-21217-CMB (Bankr. W.D. Pa. 2024) (chapter 11 bankruptcy for twenty-two debtors, including thirteen debtors that operate skilled nursing facilities in Western Pennsylvania); *In re Senior Choice, Inc.*, Case No. 24-70040-JAD (W.D. Pa. 2024) (chapter 11 bankruptcy for debtor that recently operated three senior living facilities in Western Pennsylvania).

45. As the Owned Portfolio/Ancillary Debtors’ senior secured lenders, S&T Bank and Public Credit were natural candidates to serve as the postpetition lenders on a superpriority basis, while the other parties failed to present a financing option that was actionable. Among other issues, any alternative lender funding on a super-priority basis would have had to either (i) gain the consent of S&T Bank and Public Credit to prime their respective Prepetition Secured Obligations or (ii) attempt to undertake (or cause the Owned Portfolio/Ancillary Debtors to undertake) a priming fight at considerable cost and with little practical likelihood of success. In addition, given

the circumstances facing the Owned Portfolio/Ancillary Debtors' businesses, the Owned Portfolio/Ancillary Debtors have not had any realistic prospects for raising alternative capital.

46. After carefully evaluating their options in light of such circumstances, the Owned Portfolio/Ancillary Debtors engaged in extensive, good faith, and arm's-length negotiations with S&T Bank and Public Credit to obtain the best financing terms available. Because the DIP Facility provides the Owned Portfolio/Ancillary Debtors with the liquidity they need to operate their businesses during these Chapter 11 Cases, the Owned Portfolio/Ancillary Debtors have concluded that the DIP Facility is in the best interests for the Owned Portfolio/Ancillary Debtors' estates, creditors and parties in interest. For these reasons, the Owned Portfolio/Ancillary Debtors submit that they have met the standard for obtaining the proposed DIP financing.

2. The DIP Facility is necessary to preserve the value of the Owned Portfolio/Ancillary Debtors' estates.

47. The Owned Portfolio/Ancillary Debtors, as debtors in possession, have a fiduciary duty to protect and maximize their estates' assets. *See In re Mushroom Transp. Co.*, 382 F.3d 325, 339 (3d Cir. 2004). The Owned Portfolio/Ancillary Debtors' access to postpetition financing is essential to their ability to effectively carry out that duty. Without the proceeds of the DIP Facility, the Owned Portfolio/Ancillary Debtors will be unable to fund critical payments in the ordinary course of business that are essential to the Owned Portfolio/Ancillary Debtors' continued operations, which would have irreparable consequences to the Owned Portfolio/Ancillary Debtors' estates and stakeholders. The DIP Facility will provide the Owned Portfolio/Ancillary Debtors with sufficient liquidity to fund their operations and maximize the value of their assets as they pursue a 363 sale process.

3. The terms of the DIP Facility are fair, reasonable, and adequate under the circumstances.

48. In considering whether the terms of postpetition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. *See In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003); *see also Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Trust Co. (In re Ellingsen MacLean Oil Co.)*, 65 B.R. 358, 365 (W.D. Mich. 1986) (a debtor may have to enter into hard bargains to acquire funds). The appropriateness of a proposed financing facility should also be considered in light of current market conditions. *See Transcript of Record at 740:4–6, In re Lyondell Chem. Co.*, No. 09-10023 (REG) (Bankr. S.D.N.Y. Feb. 27, 2009) (“[B]y reason of present market conditions, as disappointing as the [debtor-in-possession financing] pricing terms are, I find the provisions [of the financing] reasonable here and now.”).

49. Here, the terms of the DIP Facility set forth in the DIP Loan Agreement and Interim Order are fair, appropriate, reasonable, and adequate under the circumstances, and in the best interests of the Owned Portfolio/Ancillary Debtors, their estates and their creditors. As set forth in the First Day Declaration, the covenants and milestones included in the Proposed Orders are reasonable and are not designed to make the Owned Portfolio/Ancillary Debtors disproportionately susceptible to a breach of such terms. All terms regarding the DIP Facility were extensively negotiated by the Owned Portfolio/Ancillary Debtors and their advisors to ensure that the terms were as favorable to the Owned Portfolio/Ancillary Debtors as possible under the circumstances, and the Owned Portfolio/Ancillary Debtors believe that such terms represent fair consideration for the critical financing proposed to be provided by the DIP Lender Parties.

50. In particular, the Roll-Up is appropriate. Repaying prepetition debt (often referred to as a “roll-up”) is a common feature in debtor-in-possession financing arrangements. The

importance of “roll-up” features in DIP facilities has been repeatedly recognized by courts in this district and others, and such courts have granted relief similar to the relief requested herein. *See, e.g., In re South Hills Operations, LLC*, Case No. 24-21217 (CMB) (Bankr. W.D. Pa. June 17, 2024) (D.I. 257) (approving \$38 million financing with a \$25.5 million roll-up); *In re Rockdale Marcellus*, No. 21-22080 (GLT) (Bankr. W.D. Pa. Oct. 18, 2021) (D.I. 271) (approving \$60 million financing with a \$40 million roll-up); *In re R.E. Gas Development, LLC*, No. 18-22032 (JAD) (Bankr. W.D. Pa. July 11, 2018) (D.I. 427) (approving \$411 million financing with \$311 million roll-up). As set forth above, the DIP Facility will be used to roll up the entirety of the Public Credit Prepetition Loan (approximately \$4,000,000). This repayment is a sound exercise of the Owned Portfolio/Ancillary Debtors’ business judgment and is a material component of the structure of the DIP Facility. Without access to the additional liquidity provided under the DIP Facility, the Debtors will be unable to fund the necessary administrative costs of these Chapter 11 Cases and the sale process. Accordingly, the Owned Portfolio/Ancillary Debtors submit that the terms of the DIP Facility, including the Roll-Up, are fair, appropriate, reasonable, and adequate under the circumstances, and in the best interests of the Owned Portfolio/Ancillary Debtors, their estates and their creditors.

51. The Owned Portfolio/Ancillary Debtors have further satisfied section 364(d) of the Bankruptcy Code. When priming of liens is sought under section 364(d) of the Bankruptcy Code, the courts also examine whether prepetition secured creditors are being provided adequate protection for the value of their liens. *See In re Utah 7000, LLC*, No. 08-21869, 2008 WL 2654919, at *3 (Bankr. D. Utah July 3, 2008); *In re Beker Indus. Corp.*, 58 B.R. 725, 737 (Bankr. S.D.N.Y. 1986). The Bankruptcy Code does not expressly define “adequate protection.” Section 361 of the Bankruptcy Code, however, provides a non-exhaustive list of examples of adequate protection,

specifically including replacement liens. *See* 11 U.S.C. § 361. Section 361(3) of the Bankruptcy Code goes on to provide the flexible concept that adequate protection may also take other forms, so long as the relief “will result in the realization by [creditor] of the indubitable equivalent of such [creditor’s] interest in [cash collateral].” *See* 11 U.S.C. § 361.

52. Generally, courts decide what constitutes adequate protection on a case-by-case basis. *See, e.g., Resolution Trust Corp. v. Swedeland Dev. Grp., Inc. (In re Swedeland Dev. Grp., Inc.)*, 16 F.3d 552, 564 (3d Cir. 1994) (“[A] determination of whether there is adequate protection is made on a case by case basis.”); *In re N.J. Affordable Homes Corp.*, No. 05-60442, 2006 WL 2128624, at *14 (Bankr. D.N.J. June 29, 2006) (“The term ‘adequate protection’ is intended to be a flexible concept.”); *In re Columbia Gas Sys., Inc.*, Nos. 91-803, 91-804, 1992 WL 79323, at *2 (Bankr. D. Del. Feb. 18, 1992) (emphasizing that “the varying analyses and results contained in the . . . slew of cases demonstrate that what interest is entitled to adequate protection and what constitutes adequate protection must be decided on a case-by-case basis”); *see also In re Dynaco Corp.*, 162 B.R. 389, 394 (Bankr. D.N.H. 1993) (explaining that adequate protection can take many forms and “must be determined based upon equitable considerations arising from the particular facts of each proceeding”) (internal citation omitted).

53. In *Swedeland*, the Third Circuit pointedly noted that the purpose of adequate protection “is to insure that the creditor receives the value for which he bargained prebankruptcy.” *In re Swedeland Dev. Grp., Inc.*, 16 F.3d at 564 (quoting *In re O’Connor*, 808 F.2d 1393, 1396 (10th Cir. 1987)); *see also Shaw Indus., Inc. v. First Nat’l Bank of Pa. (In re Shaw Indus., Inc.)*, 300 B.R. 861, 865 (Bankr. W.D. Pa. 2003) (“The purpose of providing ‘adequate protection’ is to insure that a secured creditor receives in value essentially what he bargained for.”).

54. As described above, the DIP Liens are only priming the Public Credit Prepetition Liens on an interim basis, and Public Credit has consented to the priming of its Prepetition Liens. Nonetheless, the Owned Portfolio/Ancillary Debtors propose to provide a variety of adequate protection—including, the Adequate Protection Liens, Adequate Protection Superpriority Claims, and Adequate Protection Fees—to protect the interests of Public Credit in the Owned Portfolio/Ancillary Debtors’ property from any diminution in value of the Public Credit Prepetition Collateral resulting from the priming of the Public Credit Prepetition Liens, use of the Cash Collateral and the imposition of automatic stay (the “**Adequate Protection**”). The Owned Portfolio/Ancillary Debtors submit that the Adequate Protection as described herein is sufficient to satisfy the requirements of section 364(d)(1)(B) of the Bankruptcy Code.

II. The DIP Lender Parties Should Be Afforded Good Faith Protection Under Section 364(e) of the Bankruptcy Code.

55. Section 362(e) of the Bankruptcy Code protects a good faith lender’s right to collect on loans extended to a debtor, and its right in any lien securing those loans, even if the authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal. 11 U.S.C. § 364(e). Section 364(e) of the Bankruptcy Code provides as follows:

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

Id.

56. As described in detail above, the DIP financing is the result of (a) the Owned Portfolio/Ancillary Debtors’ reasonable and informed determination that the DIP Lender Parties offer the most favorable terms on which to obtain vital postpetition financing and (b) extensive

arm's-length, good faith negotiations between the Owned Portfolio/Ancillary Debtors and the DIP Lender Parties. The Owned Portfolio/Ancillary Debtors submit that the terms and conditions of the DIP Facility, as set forth in the DIP Loan Documents and Interim Order, are reasonable and appropriate under the circumstances, and the proceeds of the DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code. Accordingly, the Court should find that the DIP financing has been extended by the DIP Lender Parties in "good faith" within the meaning of section 364(e) of the Bankruptcy Code and, therefore, the DIP Lender Parties are entitled to the protections afforded thereby.

III. The Owned Portfolio/Ancillary Debtors Should Be Authorized to Use the Cash Collateral

57. The Owned Portfolio/Ancillary Debtors should be permitted to use Cash Collateral pursuant to section 363(c)(2) of the Bankruptcy Code, which provides, in relevant part, that a debtor "may not use, sell, or lease cash collateral . . . unless: (A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section." 11 U.S.C. § 363(c)(2). Section 363(e) of the Bankruptcy Code further provides that "on request of an entity that has an interest in property . . . to be used, sold or leased, by the trustee, the court . . . shall prohibit or condition such use, sale or lease as is necessary to provide adequate protection of such interest." *Id.* at § 363(e).

58. The Adequate Protection, described above, has been agreed to by each Prepetition Secured Parties and is intended to protect the Prepetition Secured Parties from any diminution in value of their interests in the Prepetition Collateral, as applicable, resulting from the Owned Portfolio/Ancillary Debtors' use thereof during the pendency of the Chapter 11 Cases. Without access to Cash Collateral, the Owned Portfolio/Ancillary Debtors will be unable to continue

operating. The Owned Portfolio/Ancillary Debtors believe the Adequate Protection is necessary and sufficient for the Owned Portfolio/Ancillary Debtors to continue to use Cash Collateral.

59. In light of the foregoing, the Owned Portfolio/Ancillary Debtors submit that the proposed Adequate Protection to be provided for the benefit of the Prepetition Secured Parties is appropriate. The Owned Portfolio/Ancillary Debtors' proposed Adequate Protection is not only necessary to protect the Prepetition Secured Parties against any Diminution in Value, but are also fair and appropriate on an interim basis under the circumstances of these Chapter 11 Cases to ensure the Owned Portfolio/Ancillary Debtors are able to continue using the Cash Collateral in the near term for the benefit of all parties in interest and their estates.

IV. The Scope of the Proposed Carve-Out is Reasonable and Appropriate

60. The DIP Loan Documents and Interim Order subject the security interests and administrative expense claims under the DIP Facility to the Carve-Out. Without the Carve-Out, the Owned Portfolio/Ancillary Debtors and other parties in interest may be deprived of certain rights and powers because the services for which professionals may be paid in these Chapter 11 Cases would be restricted. *See, e.g., In re Ames Dep't Stores*, 115 B.R. at 38 (observing that courts insist on carve-outs for professionals representing parties in interest because "[a]bsent such protection, the collective rights and expectations of all parties-in-interest are sorely prejudiced"). The Carve-Out does not directly or indirectly deprive the Owned Portfolio/Ancillary Debtors' estates or other parties in interest of possible rights and powers. Additionally, the Carve-Out protects against administrative insolvency during the course of these Chapter 11 Cases by ensuring that assets remain for payment of the Clerk of the Court and the U.S. Trustee fees, the fees and costs of the Debtors' claims and noticing agent, and Professional Fees.

V. The Automatic Stay Should Be Modified on a Limited Basis

61. The relief requested herein contemplates a modification of the automatic stay to (a) permit the Owned Portfolio/Ancillary Debtors to grant the DIP Liens, DIP Superpriority Claims, Adequate Protection Liens and Adequate Protection Superpriority Claim; (b) permit the Non-HUD/Ancillary Debtors (on an interim basis) and the Owned Portfolio/Ancillary Debtors (on a final basis) to incur all liabilities and obligations to the DIP Lender Parties, and the Owned Portfolio/Ancillary Debtors to incur all liabilities and obligations to the Prepetition Secured Parties, under the Proposed Orders; (c) subject to the Carve Out, authorize the Non-HUD/Ancillary Debtors (on an interim basis) and the Owned Portfolio/Ancillary Debtors (on a final basis) to pay, and the DIP Lender Parties to retain and apply, payments made in accordance with the terms of the Proposed Orders; and (d) authorize the DIP Lender Parties and Prepetition Secured Parties, subject to certain limitations in the Interim Order, to exercise remedies upon the occurrence and during the continuation of an event of default under the Interim Order. Stay modifications of this kind are ordinary and standard features for debtor in possession financing arrangements, and in the Owned Portfolio/Ancillary Debtors' business judgment, are reasonable and fair under the circumstances.

VI. Interim Relief Should Be Granted

62. Bankruptcy Rule 4001 provides that a final hearing on a motion for authority to use cash collateral or obtain credit may not be commenced earlier than 14 days after the service of such motion. Upon request, however, the court is authorized to conduct an interim expedited hearing on the motion at which it may authorize a debtor to use cash collateral or obtain DIP financing to the extent necessary to avoid immediate and irreparable harm to a debtor's estate pending a final hearing. *See* Fed. R. Bankr. P. 4001(b)(2) & 4001(c)(2). Section 363(c)(3) of the Bankruptcy Code authorizes the court to conduct a preliminary hearing and to authorize the use of

cash collateral “if there is a reasonable likelihood that the [debtor] will prevail at the final hearing under [section 363(e) of the Bankruptcy Code].” 11 U.S.C. § 363(c)(3).

63. Pending the Final Hearing, the Owned Portfolio/Ancillary Debtors require immediate access to Cash Collateral and the Non-HUD/Ancillary Debtors further require immediate access to proceeds of the DIP Facility to satisfy the day-to-day needs of their respective business operations. Access to liquidity will help to address any concerns of employees, vendors or residents regarding the Owned Portfolio/Ancillary Debtors’ financial health and ability to continue operations in light of these Chapter 11 Cases. The Owned Portfolio/Ancillary Debtors have an immediate need for liquidity to, among other things, maintain business relationships with their vendors and suppliers, pay payroll and certain benefits, and satisfy other essential working capital and operational needs, all of which are required to preserve and maintain the Owned Portfolio/Ancillary Debtors’ going concern value for the benefit of all parties in interest. In addition, the Budget establishes that the Owned Portfolio/Ancillary Debtors’ use of Cash Collateral and proceeds of the DIP Facility will not prejudice the DIP Lender Parties or Prepetition Secured Parties.

64. Accordingly, pursuant to section 363(c)(3) of the Bankruptcy Code and Bankruptcy Rule 4001(b) & (c), the Owned Portfolio/Ancillary Debtors request an expedited hearing to consider the Motion and entry of the Interim Order.

Bankruptcy Rule 4001(a)(3) Should Be Waived

65. The Owned Portfolio/Ancillary Debtors request a waiver of the stay of the effectiveness of the order approving this Motion under Bankruptcy Rule 4001(a)(3). Bankruptcy Rule 4001(a)(3) provides, “[a]n order granting a motion for relief from an automatic stay made in accordance with Rule 4001(a)(1) is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 4001(a)(3). As explained above and in the

First Day Declaration, access to proceeds of the DIP Facility and use of Cash Collateral is essential to prevent irreparable damage to the Owned Portfolio/Ancillary Debtors' operations. Accordingly, ample cause exists to justify the waiver of the 14-day stay imposed by Bankruptcy Rule 4001(a)(3), to the extent such stay applies.

The Requirements of Bankruptcy Rule 6003 Are Satisfied

66. Bankruptcy Rule 6003 empowers the Court to issue an order, within the Interim Period, granting a motion to "use . . . property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition" if such requested relief "is necessary to avoid immediate and irreparable harm." Fed. R. Bankr. P. 6003. For the reasons discussed above, entry of an interim order granting this Motion is integral to the Owned Portfolio/Ancillary Debtors' ability to successfully transition into chapter 11 and to avoid disruptions to the Owned Portfolio/Ancillary Debtors' operations and potential penalties, to the detriment of the Owned Portfolio/Ancillary Debtors' estates, residents and creditors. Accordingly, the Owned Portfolio/Ancillary Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

Waiver of Bankruptcy Rule 6004(h)

67. The Debtors also request that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). As described above, the relief requested in this Motion is necessary for the Owned Portfolio/Ancillary Debtors to preserve the value of their estates. Accordingly, the Owned Portfolio/Ancillary Debtors respectfully request that the Court waive the 14-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

Notice

68. Notice of this Motion will be given to the following parties, or, in lieu thereof, to their counsel: (i) the Office of the United States Trustee for the Western District of PA; (ii) the Debtors' 30 largest unsecured creditors on a consolidated basis; (iii) counsel to S&T Bank; (iv) counsel to the Cuarzo Landlords (as defined in the First Day Declaration); (v) counsel to KeyBank, N.A.; (vi) counsel to Public Credit LLC; (vii) the Pennsylvania Department of Health; (viii) the Pennsylvania Department of Human Services; (ix) the United States Attorney for the Middle and Western Districts of Pennsylvania and the Northern District of West Virginia; (x) the offices of the attorneys general for the states in which the Debtors operate; (xi) the Internal Revenue Service; (xii) the Unions (as defined in the First Day Declaration); (xiii) the Taxing Authorities; and (xiv) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors submit that no other or further notice is necessary.

Conclusion

WHEREFORE, the Owned Portfolio/Ancillary Debtors respectfully request the entry of the proposed Interim and Final Orders, granting the relief requested herein and such other and further relief as is just and proper.

Dated: July 29, 2024

SAUL EWING LLP

By: /s/ Jeffrey C. Hampton

Michael J. Joyce (PA Bar No. 311303)
One PPG Place, Suite 3010
Pittsburgh, PA 15222
Telephone: (412) 209-2539
Email: michael.joyce@saul.com

-and-

Jeffrey C. Hampton (PA Bar No. 59131)
Sabrina Espinal (PA Bar No. 331245)
1500 Market Street, 38th Floor
Philadelphia, PA 19102
Telephone: (215) 972-7777
Email: jeffrey.hampton@saul.com
sabrina.espinal@saul.com

-and-

Mark Minuti (*pro hac vice* pending)
Monique B. DiSabatino (PA Bar No. 306448)
Paige N. Topper (*pro hac vice* pending)
1201 N. Market Street, Suite 2300
Wilmington, DE 19801
Telephone: (302) 421-6800
Email: mark.minuti@saul.com
monique.disabatino@saul.com
paige.topper@saul.com

Proposed Counsel for Debtors and Debtors in Possession

Exhibit A

Proposed Interim Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

In re

GUARDIAN ELDER CARE AT
JOHNSTOWN, LLC, d/b/a/ RICHLAND
HEALTHCARE AND REHABILITATION
CENTER, *et al.*,

Debtors.¹

GUARDIAN ELDER CARE AT
JOHNSTOWN, LLC, d/b/a/ RICHLAND
HEALTHCARE AND REHABILITATION
CENTER, *et al.*,

v.

S&T BANK, N.A., PUBLIC CREDIT, LLC,
and KEYBANK NATIONAL
ASSOCIATION

Case No. 24-70299 (JAD)

Chapter 11

Jointly Administered

**INTERIM ORDER (I) AUTHORIZING THE NON-HUD/ANCILLARY DEBTORS TO
OBTAIN POSTPETITION FINANCING; (II) GRANTING LIENS AND PROVIDING
SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS; (III) AUTHORIZING
THE USE OF KEYBANK’S, PUBLIC CREDIT’S AND S&T BANK’S CASH
COLLATERAL; (IV) GRANTING ADEQUATE PROTECTION; (V) MODIFYING
THE AUTOMATIC STAY; AND (VI) GRANTING RELATED RELIEF**

Upon the motion (“**Motion**”)² of the Owned Portfolio/Ancillary Debtors (as defined below) for entry of an interim order (this “**Interim Order**”) and a final order (the “**Final Order**”), pursuant to sections 105, 361, 362, 363, 364(c)(2), 364 and 507(b) of chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2002, 4001, 6003, 6004, and 9014 of the

¹ The last four digits of Guardian Elder Care at Johnstown, LLC d/b/a Richland Healthcare and Rehabilitation Center’s federal tax identification number are 7907. Due to the large number of debtor entities in these Chapter 11 Cases, a complete list of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ claims and noticing agent at <https://omniagentsolutions.com/Guardian>. The Debtors’ mailing address is: 8796 Route 219, Brockway, Pennsylvania 15824.

² Capitalized terms used but not defined herein are defined in the Motion.

Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 4001-2 of the Local Rules of the United States Bankruptcy Court for the Western District of Pennsylvania (the “**Local Rules**”), among other things:

(a) authorizing Debtors Guardian Elder Care at Beaver Falls, LLC (“**Beaver Falls OpCo**”); GEC Beaver Falls Real Estate, LLC (“**Beaver Falls PropCo**”); Guardian Elder Care at Fairmont, LLC (“**Fairmont OpCo**”); GEC Fairmont Real Estate, LLC (“**Fairmont PropCo**”); Guardian Elder Care at Monongahela, LLC (“**Monongahela OpCo**”); GEC Monongahela Real Estate, LLC (“**Monongahela PropCo**”); Guardian Healthcare FOR HUD Master Tenant, LLC (the “**Master Tenant**,” together with Beaver Falls OpCo, Beaver Falls PropCo, Fairmont OpCo, Fairmont PropCo, Monongahela OpCo and Monongahela PropCo, the “**HUD Debtors**”); Guardian Elder Care at Bethel Park, LLC (“**Bethel Park OpCo**”); GEC Bethel Park Real Estate, LLC (“**Bethel Park PropCo**”); Guardian Elder Care at Greensburg, LLC (“**Greensburg OpCo**”); GEC Greensburg Real Estate, LLC (“**Greensburg PropCo**”); Guardian Elder Care at Lower Burrell, LLC (“**Lower Burrell OpCo**”); GEC Lower Burrell Real Estate, LLC (“**Lower Burrell PropCo**”); Guardian Elder Care at Munhall, LLC (“**Munhall OpCo**”); GEC Munhall Real Estate, LLC (“**Munhall PropCo**”); Guardian Elder Care at Brockway, LLC (“**Brockway OpCo**”); GEC Highland View, LP (“**Brockway PropCo**”); Guardian Healthcare FOR Group, LLC (“**HoldCo**”); Guardian Healthcare FOR LLC 99% Holdco, LLC (“**99% HoldCo**”); and Guardian Healthcare FOR LLC 1% Holdco, Inc. (“**1% HoldCo**,” collectively with Bethel Park OpCo, Bethel Park PropCo, Greensburg OpCo, Greensburg PropCo, Lower Burrell OpCo, Lower Burrell PropCo, Munhall OpCo, Munhall PropCo, Brockway OpCo, Brockway PropCo, HoldCo and 99% HoldCo, the “**Non-HUD Debtors**”) and Debtors Guardian Healthcare Pharmacy, LLC, Guardian Healthcare Rehabilitation Services, LLC, and Guardian Healthcare Home & Community Services,

LLC (collectively, the “**Ancillary Debtors**,” together with the Non-HUD Debtors, the “**Non-HUD/Ancillary Debtors**”) to obtain secured postpetition financing (with the attachment and priority specified herein) on a superpriority basis consisting of a secured superpriority credit facility in the aggregate principal amount of \$6,500,000 (the “**DIP Facility**”) consisting of: (i) a new money delayed line of credit in an aggregate principal amount of up to \$2,500,000 (the “**New Money DIP Loan**”) of which \$230,000 of the New Money DIP Loan (the “**Interim DIP Advance**”) shall be made available to the Non-HUD/Ancillary Debtors upon entry of this Interim Order (subject to satisfaction of the applicable conditions precedent), and the remainder to become available to the Non-HUD/Ancillary Debtors and the HUD Debtors (collectively, the “**Owned Portfolio/Ancillary Debtors**”)³ upon entry of a Final Order, acceptable to each of the DIP Lender Parties in their sole and absolute discretion; and (ii) a delayed line of credit draw in an aggregate principal amount of \$4,000,000 to roll up (upon entry of a Final Order) the existing outstanding obligations under the Public Credit Prepetition Loan Documents (as defined herein) (the “**Roll-Up DIP Advance**”), subject to the terms and conditions of this Interim Order and the Debtor-in-Possession Loan and Security Agreement by and among the Non-HUD/Ancillary Debtors, as Borrowers, S&T Bank, N.A. (“**S&T**”), as Administrative Agent (in such capacity, the “**DIP Agent**”), and S&T and Public Credit, LLC (“**Public Credit**” and collectively with the DIP Agent, and S&T (in its capacity as a lender under the DIP Facility), the “**DIP Lender Parties**”), as lenders, substantially in the form of **Exhibit 1** attached hereto (the “**DIP Loan Agreement**”);

(b) authorizing the Non-HUD/Ancillary Debtors to execute and deliver the DIP Loan Agreement, a Promissory Note in connection therewith, and any other agreements, instruments, pledge agreements, guarantees, control agreements and other loan documents and documents

³ For purposes of clarity, the Owned Portfolio/Ancillary Debtors shall not include any of the Cuarzo Portfolio Debtors (as defined in the First Day Declaration).

related thereto (including any security agreements, intellectual property security agreements, control agreements, or notes) (as amended, restated, supplemented, waived, and/or modified from time to time, and collectively with the DIP Loan Agreement, the “**DIP Loan Documents**”);

(c) authorizing the Non-HUD/Ancillary Debtors to use proceeds of the DIP Facility as permitted in the DIP Loan Documents and in accordance with this Interim Order;

(d) granting to the DIP Lender Parties on account of the DIP Facility and all obligations owing thereunder and under, or secured by, the DIP Loan Documents (collectively, and including all “Indebtedness” as described in the DIP Loan Agreement, the “**DIP Obligations**”) allowed super-priority administrative expense claim status in each of the Chapter 11 Cases of the Non-HUD/Ancillary Debtors and any Successor Cases (as defined herein), subject to the Carve Out (as defined herein) and subject to the priority as set forth herein, and as to all Owned Portfolio/Ancillary Debtors upon entry of a Final Order in form and substance acceptable to KeyBank and the United States Department of Housing and Urban Development (“**HUD**”) or as otherwise ordered by the Court;

(e) granting to the DIP Lender Parties automatically perfected security interests in and liens on all of the DIP Collateral (as defined herein), including all property constituting “cash collateral” as defined in section 363(a) of the Bankruptcy Code, which liens shall be on the terms and subject to the relative priorities set forth in this Interim Order, subject to the Carve Out (as defined herein) and any valid, perfected and unavoidable liens on or security interests in the Prepetition Collateral (as defined herein) that are senior to or *pari passu* with the Prepetition Liens (as defined herein) as permitted under the Prepetition Loan Documents (as defined herein) (the “**Prepetition Permitted Liens**”), if any;

(f) authorizing and directing the Non-HUD/Ancillary Debtors (and, upon entry of a Final Order in form and substance acceptable to KeyBank and HUD or as otherwise ordered by the Court, the HUD Debtors), to pay the principal, interest, fees, expenses and other amounts payable under the DIP Loan Documents as such become earned, due and payable, including, without limitation, the Transaction Expenses (as defined in the DIP Loan Agreement), all to the extent provided in, and in accordance with, the DIP Loan Documents as modified by this Interim Order;

(g) authorizing the Owned Portfolio/Ancillary Debtors to use Cash Collateral (as defined below) in which KeyBank National Association (“**KeyBank**”), Public Credit and/or S&T (collectively, the “**Prepetition Secured Parties**”) have respective interests in accordance with the terms and conditions of this Interim Order, and the granting of adequate protection to the Prepetition Secured Parties with respect to, *inter alia*, such use of their Cash Collateral;

(h) modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to permit the Owned Portfolio/Ancillary Debtors, the DIP Lender Parties, and/or the Prepetition Secured Parties to implement and effectuate the terms and provisions of the DIP Loan Documents and this Interim Order;

(i) subject to entry of the Final Order, waiving (i) the Owned Portfolio/Ancillary Debtors’ ability to surcharge against the Prepetition Collateral (as defined below), the DIP Collateral (as defined below) and/or the Adequate Protection Collateral (as defined below) pursuant to section 506(c) of the Bankruptcy Code or any other applicable principle of equity or law and (ii) the applicability of the “equities of the case” exception under 552(b) of the Bankruptcy Code;

(j) scheduling a final hearing (“**Final Hearing**”) to consider entry of the Final Order within twenty-eight (28) days of the Petition Date;

(k) waiving any applicable stay with respect to the effectiveness and enforceability of this Interim Order and, as later applicable, the Final Order (including a waiver pursuant to Bankruptcy Rule 6004(h)); and

(l) granting related relief;

and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue of this proceeding and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and due and appropriate notice of the Motion under the circumstances having been given and such notice having been good and sufficient; and the Court having conducted a hearing (the “**Interim Hearing**”) for interim relief on the Motion; and the Court having reviewed the Motion, the *Declaration of Allen Wilen in Support of First Day Motions for Relief* (“**First Day Declaration**”) filed contemporaneously with the Motion, the other evidence adduced by the parties, the representations of counsel, and the entire record made at the Interim Hearing; and the relief granted herein being reasonable, appropriate and in the best interests of the Owned Portfolio/Ancillary Debtors, and their creditors, their estates and all other parties in interest in these Chapter 11 Cases; and the Court having determined that the relief granted herein is necessary to avoid immediate and irreparable harm to the Owned Portfolio/Ancillary Debtors and their estates; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor:

THE COURT HEREBY FINDS AND CONCLUDES AS FOLLOWS:⁴

A. *Disposition.* The relief requested in the Motion is hereby granted on an interim basis on the terms set forth below. Any objections to the Motion and the entry of this Interim Order to the extent not withdrawn, waived, settled, or resolved, and all reservations of right (other than the Reservation (as defined herein)) are hereby denied, and overruled on the merits in their entirety. This Interim Order shall become effective immediately upon its entry.

B. *Notice.* In accordance with Bankruptcy Rules 2002, 4001(b), (c), and (d), and 9014, and the Local Rules, notice of the Interim Hearing and the emergency relief requested in the Motion has been provided by the Owned Portfolio/Ancillary Debtors. Under the circumstances, the notice given by the Owned Portfolio/Ancillary Debtors of the Motion, the relief requested herein, and the Interim Hearing complies with the applicable Bankruptcy Rules and Local Rules.

C. *Owned Portfolio/Ancillary Debtors' Representations and Stipulations.* Without prejudice to the rights of any other party, but in each case subject to the limitations contained in Paragraph 14 below, the Owned Portfolio/Ancillary Debtors acknowledge, represent, stipulate, and agree as follows (Paragraphs C(i) through C(vii)) are collectively defined as the “**Owned Portfolio/Ancillary Debtors' Stipulations**”):

(i) *KeyBank HUD-Insured Secured Debt.*

a. On November 18, 2021, Debtor Beaver Falls PropCo and KeyBank entered into a note and series of loan documents (collectively, the “**Beaver Falls HUD Loan Documents**”), pursuant to which Beaver Falls PropCo received a HUD-insured loan from KeyBank in the amount of \$11,981,300 (the “**Beaver Falls HUD Loan**”).

⁴ In accordance with Bankruptcy Rule 7052, any proposed finding of fact more properly classified as a proposed legal conclusion shall be deemed as such, and any proposed conclusion of law more properly classified as a proposed factual finding shall also be deemed as such.

b. The obligations under the Beaver Falls HUD Loan are guaranteed by Debtors Master Tenant and Beaver Falls OpCo.

c. The Beaver Falls HUD Loan is secured by a first priority lien on, and security interest in (the “**KeyBank Beaver Falls Prepetition Liens**”), (i) a mortgage on the real property owned by Debtor Beaver Falls PropCo; (ii) a security interest in any related personal property located thereon, and an assignment of leases and rents with respect to the real property; (iii) a security interest in substantially all assets of Debtor Master Tenant; and (iv) a security interest in substantially all assets of Debtor Beaver Falls OpCo, as operator of the facility, including all fixtures, furniture, equipment and accounts receivable (collectively, the “**KeyBank Beaver Falls Prepetition Collateral**”), subject only to any Prepetition Permitted Liens.

d. On March 25, 2022, Debtor Fairmont PropCo and KeyBank entered into a note and series of loan documents (collectively, the “**Fairmont HUD Loan Documents**”), pursuant to which Debtor Fairmont PropCo received a HUD-insured loan from KeyBank in the amount of \$22,872,000 (the “**Fairmont HUD Loan**”).

e. The obligations under the Fairmont HUD Loan are guaranteed by Debtors Master Tenant and Fairmont OpCo.

f. The Fairmont HUD Loan is secured by a lien on, and security interest in (the “**KeyBank Fairmont Prepetition Liens**”), (i) a first priority mortgage on the real property owned by Debtor Fairmont PropCo; (ii) a security interest in any related personal property located thereon, and an assignment of leases and rents with respect to the real property; (iii) a security interest in substantially all assets of Debtor Master Tenant; and (iv) a security interest in substantially all assets of Debtor Fairmont OpCo, as operator of the facility, including all fixtures, furniture, equipment and accounts receivable (the “**KeyBank Fairmont Prepetition Collateral**”),

subject only to any Prepetition Permitted Liens and the Public Credit Prepetition Liens (as defined below).

g. On April 26, 2023, Debtor Monongahela PropCo (together with Debtor Beaver Falls PropCo and Debtor Fairmont PropCo, the “**Owned HUD PropCos**”) and KeyBank entered into a note and series of loan documents (collectively, the “**Monongahela HUD Loan Documents**,” together with the Beaver Falls HUD Loan Documents and the Fairmont HUD Loan Documents, the “**KeyBank HUD Loan Documents**”), pursuant to which Debtor Monongahela PropCo received a HUD-insured loan from KeyBank in the amount of \$4,648,000 (the “**Monongahela HUD Loan**,” and together with the Beaver Falls HUD Loan and Fairmont HUD Loan, the “**HUD Loans**”).

h. The obligations under the Monongahela HUD Loan are guaranteed by Debtors Master Tenant and Monongahela OpCo (together with Debtors Beaver Falls OpCo and Fairmont OpCo, the “**Owned HUD OpCos**”).

i. The Monongahela HUD Loan is secured by a first priority lien on, and security interest in (the “**KeyBank Monongahela Prepetition Liens**”, and collectively with the KeyBank Beaver Falls Prepetition Liens and the KeyBank Fairmont Prepetition Liens, the “**KeyBank Prepetition Liens**”), (i) a mortgage on the real property owned by Monongahela PropCo; (ii) a security interest in any related personal property located thereon, and an assignment of leases and rents with respect to the real property; (iii) a security interest in substantially all assets of Debtor Master Tenant; and (iv) a security interest in substantially all assets of Debtor Monongahela OpCo, as operator of the facility, including all fixtures, furniture, equipment and accounts receivable (the “**KeyBank Monongahela Prepetition Collateral**,” collectively with the

KeyBank Beaver Falls Prepetition Collateral and the KeyBank Fairmont Prepetition Collateral, the “**KeyBank Prepetition Collateral**”), subject to any Prepetition Permitted Liens.

j. As of the Petition Date, the amount outstanding under the Beaver Falls HUD Loan is approximately \$11,207,000, the amount outstanding under the Fairmont HUD Loan is approximately \$22,381,000, and the amount outstanding under the Monongahela HUD Loan is approximately \$4,593,000.

(ii) *The Public Credit Secured Debt.*

a. On March 22, 2024, the Owned HUD OpCos, and Debtors Bethel Park OpCo; Greensburg OpCo; Lower Burrell OpCo; Munhall OpCo; Holdco; 99% Holdco; and 1% Holdco (collectively, the “**Public Credit Prepetition Borrowers**”) entered into a Revolving Line of Credit Loan Agreement with Public Credit, as lender (collectively with all documents, notes, security agreements, guarantees, subordination agreements, deeds, instruments, indemnities, indemnity letters, fee letters, assignments, amendments, and any other agreements delivered pursuant thereto or in connection therewith, the “**Public Credit Prepetition Loan Documents**”). Pursuant to the Public Credit Prepetition Loan Documents, Public Credit agreed to extend to the Public Credit Prepetition Borrowers a commercial revolving loan of credit in an amount of up to \$4,000,000 for working capital needs (the “**Public Credit Prepetition Loan**”).

b. The Public Credit Prepetition Loan is evidenced by a Note dated effective as of March 22, 2024, in the amount of \$4,000,000 in favor of Public Credit. In addition, pursuant to a Security Agreement dated effective as of March 22, 2024, between the Public Credit Prepetition Borrowers and Public Credit, the Public Credit Prepetition Loan is secured by liens on, and a security interest in (the “**Public Credit Prepetition Liens**”), all the Public Credit Prepetition Borrowers’ right, title and interest in all accounts (including healthcare insurance receivables and

Medicaid and Medicare receivables), deposit accounts and inventory (the “**Public Credit Prepetition Collateral**”).

c. The Public Credit Prepetition Liens on the Public Credit Prepetition Collateral are junior to the liens granted to KeyBank in the same collateral, with the exception of Public Credit’s lien on the Public Credit Prepetition Collateral of Debtor Fairmont OpCo, in which Public Credit asserts that it holds the first position lien. KeyBank reserves all rights with respect to determination of the priority of liens in the assets of Fairmont OpCo (the “**Reservation**”).

d. As of the Petition Date, the amount outstanding under the Public Credit Prepetition Loan is approximately \$4,000,000.

(iii) *The S&T Bank Secured Debt.*

a. Pursuant to a Loan Agreement dated effective as of December 27, 2022 (as amended from time to time and collectively with all documents, notes, security agreements, guarantees, subordination agreements, deeds, instruments, indemnities, indemnity letters, fee letters, assignments, amendments, and any other agreements delivered pursuant thereto or in connection therewith, the “**S&T Owned Facilities Loan Documents**”) by and among S&T, as lender, and Debtors Lower Burrell PropCo, Munhall PropCo, Bethel Park PropCo, Greensburg PropCo, Brockway PropCo (collectively, the “**Owned Non-HUD PropCos**”), 99% Holdco, Lower Burrell OpCo, Munhall OpCo, Bethel Park OpCo, Greensburg OpCo and Brockway OpCo (collectively with the Owned Non-HUD PropCos, the “**Owned S&T Borrowers**”) as borrowers, S&T agreed to extend to the Owned S&T Borrowers a term loan in the amount of \$20,360,000 (the “**S&T Owned Facilities Loan,**” together with the HUD Loans and the Public Credit Prepetition Loan, the “**Prepetition Loans**”), which loan was evidenced by a Note dated effective as of December 27, 2022.

b. As security for their obligations under the S&T Owned Facilities Loan Documents, the Owned S&T Borrowers granted to S&T a first priority lien on substantially all of their real and personal property assets (the “**S&T Owned Facilities Prepetition Liens**”). Specifically, pursuant to a Security Agreement dated effective as of December 27, 2022, the Owned S&T Borrowers granted to S&T a security interest in, *inter alia*, their general intangibles, inventory, equipment, fixtures, investment property, deposit accounts and proceeds thereof, but specifically excluding Accounts including all accounts receivable and all Health-care-insurance receivable and proceeds thereof (the “**S&T Owned Facilities Prepetition Collateral**”).

c. In addition, pursuant to Mortgage and Security Agreements dated effective as of December 27, 2022 (the “**S&T Prepetition Mortgages**”), the Owned Non-HUD PropCos, as borrowers, granted to S&T first priority mortgages on their respective real property interests, and a security interest in all personal property, leases, rents and all other property interests related to the mortgaged premises, which mortgages were duly recorded. The Owned Non-HUD PropCos likewise assigned to S&T all of their rights in and to any leases covering all or part of their respective real properties (collectively, the “**S&T Prepetition Mortgage Collateral**”).

d. The obligations of the Owned S&T Borrowers under the S&T Owned Facilities Loan Documents are guaranteed by the Ancillary Debtors. To secure their guaranty obligations, pursuant to a Security Agreement dated effective as of December 27, 2022, the Ancillary Debtors granted to S&T a first priority lien on, and security interest in (the “**S&T Ancillary Debtors Prepetition Liens**,” together with the S&T Owned Facilities Prepetition Liens and the S&T Prepetition Mortgages, the “**S&T Prepetition Liens**,” and together with KeyBank Prepetition Liens, and the Public Credit Prepetition Liens, the “**Prepetition Liens**”) all of their right, title and interest in their business assets, including all accounts (including all healthcare

insurance receivables), general intangibles, inventory, equipment, fixtures, investment property, deposit accounts and proceeds thereof (together with the S&T Owned Facilities Prepetition Collateral and the S&T Prepetition Mortgage Collateral, the “**S&T Prepetition Collateral**,” and together with the KeyBank Prepetition Collateral and the Public Credit Prepetition Collateral are referred to herein as the “**Prepetition Collateral**”).

e. Moreover, as further security for the S&T Owned Facilities Loan, Debtor HoldCo and non-debtors Guardian Healthcare FIN Group, LLC, Guardian Healthcare Other Propco 99% Holdco, Guardian Healthcare Other PropCo 1% Holdco, LLC, Guardian Healthcare FOR Propco 100% Holdco, LLC, the 2011 Irrevocable Trust for Peter C. Varischetti dated December 9, 2011, the 2011 Irrevocable Trust of Nicholas D. Varischetti dated December 9, 2011, the Irrevocable Trust of Raymond L. Calhoun and Michelle L. Calhoun f/b/o Amanda R. Calhoun dated July 6, 2010 and the Irrevocable Trust of Raymond L. Calhoun and Michelle L. Calhoun f/b/o Justin M. Calhoun dated July 6, 2010 pledged to S&T their right, title and interest in their respective interests in each of the S&T Owned Borrowers and any related distributions and proceeds.

f. All indebtedness, liabilities, and obligations under the KeyBank HUD Loan Documents, the Public Credit Prepetition Loan Documents and the S&T Owned Facilities Loan Documents (collectively, the “**Prepetition Loan Documents**”), specifically including all “Obligations” as defined therein, are referred to herein as the “**Prepetition Secured Obligations**”.

g. As of the Petition Date, the principal amount outstanding under the S&T Owned Facilities Loan is approximately \$16,500,000.

(iv) *Validity of Prepetition Liens and Prepetition Secured Obligations.* The Prepetition Liens are (a) valid, binding, perfected, duly recorded and enforceable liens on, and security interests in, the Owned Portfolio/Ancillary Debtors' respective right, title, and interest in, and to, the described Prepetition Collateral and (b) except with respect to the Reservation, not subject to, pursuant to the Bankruptcy Code or other applicable law (foreign or domestic), avoidance, disallowance, reduction, recharacterization, recovery, subordination (whether equitable, contractual, or otherwise), attachment, offset, recoupment, counterclaim, defense, "claim" (as defined in the Bankruptcy Code), impairment, or any other challenge of any kind by any person or entity. Each of the Owned Portfolio/Ancillary Debtors (i) irrevocably releases and waives, for itself and its estate, any right to challenge or contest in any way the (a) scope, extent, perfection, priority, validity, non-avoidability, or enforceability of the Prepetition Liens, (b) validity, or enforceability of the Prepetition Loan Documents or (c) the validity, enforceability, or priority of payment of the Prepetition Secured Obligations, and (ii) forever releases and waives, any claims, objections, challenges, counterclaims, causes of action, defenses, setoff rights, obligations, rights to subordinate, or any other liabilities, whether arising in equity or under the Bankruptcy Code or applicable nonbankruptcy law, against the Prepetition Secured Parties, or any of their respective affiliates, agents, attorneys, consultants, advisors, professionals, officers, directors, and employees from the beginning of time through the Petition Date.

(v) No portion of the Prepetition Secured Obligations or any payments made to the Prepetition Secured Parties or applied to or paid on account of the obligations owing under the Prepetition Loan Documents prior to the Petition Date is subject to any contest, attack, rejection, recovery, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization,

avoidance, or other claim, cause of action, or other challenge of any nature under the Bankruptcy Code or applicable non-bankruptcy law.

(vi) All cash of the Owned Portfolio/Ancillary Debtors, as of the Petition Date, wherever located, including cash held in deposit accounts, whether as original collateral or proceeds of the Prepetition Collateral, constitutes Cash Collateral (as defined below) of one or more of the Prepetition Secured Parties.

(vii) The Prepetition Secured Parties are entitled, pursuant to sections 361, 362(c)(2), 363(e), 364(d) and 507 of the Bankruptcy Code, to adequate protection of their respective interests in the Prepetition Collateral, including the Cash Collateral, to the extent of any diminution in the value of the Prepetition Collateral occurring from and after the Petition Date, in exchange for (a) the use of Cash Collateral and (b) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code.

D. *Cash Collateral.* For purposes of this Interim Order, the term “**Cash Collateral**” shall mean and include all “cash collateral,” as defined in section 363(a) of the Bankruptcy Code, all deposits subject to setoff and cash arising from the collection or other conversion to cash of any and all property (whether real or personal) in which the Prepetition Secured Parties have valid, perfected security interests, liens or other interests, regardless of whether such security interests, liens, or other interests existed as of the Petition Date or arise thereafter or pursuant to this Interim Order. For the avoidance of doubt, and for purposes of this Interim Order, references to Cash Collateral shall be limited to the Prepetition Secured Parties’ Cash Collateral.

E. *Findings Regarding the Prepetition Secured Parties’ Consent to Use of Cash Collateral.* The Prepetition Secured Parties have consented to the adequate protection provided for in this Interim Order; *provided, however*, that the consent of the Prepetition Secured Parties, the

use of the Prepetition Collateral (including Cash Collateral), and the sufficiency of the respective adequate protection provided for herein are expressly conditioned upon the entry of this Interim Order.

F. *Necessity of Use of Cash Collateral.* Good cause has been shown for the entry of this Interim Order. The Owned Portfolio/Ancillary Debtors have an immediate need to continue to use Cash Collateral to, among other things, fund the orderly continuation of their businesses, maintain the confidence of their employees, residents and vendors, pay their operating expenses, and preserve their going-concern value, consistent with the Budget (as defined below). In the absence of the availability of such liquidity in accordance with the terms hereof, the continued operation of the Owned Portfolio/Ancillary Debtors' businesses would not be possible, and serious and irreparable harm to the Owned Portfolio/Ancillary Debtors, their estates and their creditors would occur. The terms for the Owned Portfolio/Ancillary Debtors' use of Cash Collateral pursuant to this Interim Order are fair and reasonable, reflect the Owned Portfolio/Ancillary Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and constitute reasonably equivalent value and fair consideration. The relief requested in the Motion and entry of this Interim Order is therefore in the best interest of the Owned Portfolio/Ancillary Debtors and their estates, their creditors, and other parties in interest.

G. *Use of Cash Collateral.* All Cash Collateral, including proceeds of the Prepetition Collateral, shall be used only for: (i) working capital; (ii) other general corporate purposes of the Owned Portfolio/Ancillary Debtors; (iii) the satisfaction of the costs and expenses of administering the Chapter 11 Cases of the Owned Portfolio/Ancillary Debtors, in accordance with the Budget (as defined below). Further, all Cash Collateral of the HUD Debtors shall be used consistent with all restrictions and limitations set forth in the applicable regulatory agreement by and between each

of the HUD Debtors and the secretary of HUD, and no Cash Collateral of the HUD Debtors shall be used for any purpose not permissible under such applicable regulatory agreements absent further order of this Court.

H. *Findings Regarding Postpetition Financing.*⁵

(i) *Findings Regarding Corporate Authority.* Each Non-HUD/Ancillary Debtor has all requisite corporate power and authority to execute and deliver the DIP Loan Documents to which it is a party and to perform its obligations thereunder.

(ii) *Request for Postpetition Financing.* The Non-HUD/Ancillary Debtors seek authority to (a) use Cash Collateral on the terms described herein, and (b) enter into the DIP Facility on the terms described herein and in the DIP Loan Documents to refinance the Public Credit Prepetition Loan, to administer their Chapter 11 Cases, and to fund their operations. At the Final Hearing, each of the Owned Portfolio/Ancillary Debtors, including the HUD-Debtors, will seek final approval of the proposed post-petition financing and use of Cash Collateral arrangements pursuant to a proposed Final Order, which shall be in a form and substance (a) acceptable to the DIP Lender Parties in their respective sole and absolute discretion, and (b) acceptable to KeyBank and HUD or as otherwise ordered by the Court. The DIP Loan Documents provide that no funding under the DIP Facility in excess of the Interim DIP Advance shall be made by either DIP Lender Party to or for the benefit of any of the Non-HUD/Ancillary Debtors, unless the Final Order provides for the inclusion of the HUD Debtors in the DIP Facility.

(iii) *Priming of the Prepetition Liens.* The priming of the Public Credit Prepetition Liens on the assets of the Non-HUD/Ancillary Debtors under section 364(d) of the

⁵ For the avoidance of all doubt, and notwithstanding anything herein or in the DIP Loan Documents to the contrary, for purposes of this Interim Order only, no HUD Debtor shall be a party to the DIP Facility or shall grant any liens in favor of any of the DIP Lender Parties under the terms of the DIP Loan Documents or this Interim Order.

Bankruptcy Code, as contemplated by the DIP Facility and as further described and limited herein, will enable the Non-HUD/Ancillary Debtors to obtain the DIP Facility and to continue to operate their businesses to the benefit of their estates and creditors.

(iv) *Need for Postpetition Financing.* The Non-HUD/Ancillary Debtors have an immediate and ongoing need to obtain credit on an interim basis pursuant to the DIP Facility in order to, among other things, administer and preserve the value of their estates. The ability of the Non-HUD/Ancillary Debtors to maintain business relationships with their vendors, suppliers, and customers, to pay their employees, finance their operations, and maintain the high standard of care for their residents, requires the availability of working capital from the DIP Facility (along with the use of Cash Collateral), the absence of either of which would immediately and irreparably harm the Non-HUD/Ancillary Debtors, their estates, and parties-in-interest, including their residents. The Non-HUD/Ancillary Debtors do not have sufficient available sources of working capital and financing to operate their businesses, maintain their properties, or care for their residents in the ordinary course of business during the Interim Period without access to the DIP Facility (along with the authority to use of Cash Collateral as to the Owned Portfolio/Ancillary Debtors).

(v) *No Credit Available on More Favorable Terms.* Given their current financial condition, financing arrangements, and capital structure, the Non-HUD/Ancillary Debtors have been and continue to be unable to obtain financing from sources other than the DIP Lender Parties on terms more favorable than the DIP Facility. The Non-HUD/Ancillary Debtors are unable to obtain unsecured credit allowable under Bankruptcy Code section 503(b)(1) as an administrative expense. The Non-HUD/Ancillary Debtors have also been unable to obtain: (a) unsecured credit having priority over that of administrative expenses of the kind specified in

sections 503(b), 507(a) and 507(b) of the Bankruptcy Code; (b) credit secured solely by a lien on property of the Non-HUD/Ancillary Debtors and their estates that is not otherwise subject to a lien; or (c) credit secured solely by a junior lien on property of the Non-HUD/Ancillary Debtors and their estates that is subject to a lien. As described in the First Day Declaration, financing on a post-petition basis on better terms is not otherwise available without granting the DIP Lender Parties: (1) perfected security interests in and liens on (each as provided herein) all of the Non-HUD/Ancillary Debtors' existing and after-acquired assets with the priorities set forth in Paragraph 6 hereof; (2) superpriority claims against all assets of the Non-HUD/Ancillary Debtors; (3) the other protections set forth in this Interim Order, including the release of claims against the DIP Lender Parties; and (4) upon entry of a Final Order, refinancing of the Public Credit Prepetition Loan through the Roll-Up DIP Advance.

(vi) *Use of Proceeds of the DIP Facility.* As a condition to entry into the DIP Loan Agreement and the extension of credit under the DIP Facility, the DIP Lender Parties and the Non-HUD/Ancillary Debtors have agreed, that proceeds of the DIP Facility shall be used, in each case in a manner consistent with the terms and conditions of this Interim Order and the DIP Loan Documents and in accordance with the Budget (as defined herein), solely for: (a) the replacement and refinancing of the Public Credit Prepetition Loan into an obligation under the DIP Facility solely to the extent provided for in the Final Order (subject to approval of KeyBank and HUD or as otherwise ordered by the Court) and the DIP Loan Documents (as the same may be modified by this Interim Order and the Final Order); (b) working capital; (c) permitted payment of costs of administering the Chapter 11 Cases; (d) payment of such other prepetition obligations as set forth in the Budget or otherwise approved by the DIP Lender Parties in their sole discretion, and as approved by the Court; (e) payment of interest, fees, expenses and other amounts (including

legal and other professionals' fees and expenses of the DIP Lender Parties) owed under the DIP Loan Documents; (f) payment of certain adequate protection amounts to Public Credit; and (g) other general corporate purposes of the Non-HUD/Ancillary Debtors permitted by the Budget and the DIP Loan Documents. The DIP Lender Parties are relying upon the Budget in entering into the DIP Loan Agreement and the other DIP Loan Documents and providing the DIP Facility, and the DIP Lender Parties are relying upon the Budget in consenting to the terms of this Interim Order. All references in this Interim Order restricting the use of DIP Facility to payment of amounts consistent with the Budget shall mean the most recent approved Budget applicable to the Non-HUD/Ancillary Debtors.

(vii) *Roll-up of the Public Credit Prepetition Loan.* Subject to the entry of the Final Order in form and substance acceptable to KeyBank and HUD or as otherwise ordered by the Court, without any further action by the Owned Portfolio/Ancillary Debtors or any other party, an aggregate amount equal to the amount outstanding under the Public Credit Prepetition Loan (in the approximate amount of \$4,000,000) shall be repaid and refinanced with the proceeds of the DIP Facility, to effect a roll-up (the “**Roll-Up**”) of the entirety of the Public Credit Prepetition Loan into an obligation under the DIP Facility under and as further described in the DIP Loan Documents (the “**DIP Roll-Up Obligations**”). Subject to entry of the Final Order, the Roll-Up shall be authorized as compensation for, in consideration for, and solely on account of, the agreement of the DIP Lender Parties to fund amounts, and provide other consideration to the Non-HUD/Ancillary Debtors, under the DIP Facility and not as payments under, adequate protection for, or otherwise on account of, any obligations under the Public Credit Prepetition Loan. The DIP Lender Parties would not otherwise consent to the use of their Cash Collateral or the subordination of the Public Credit Prepetition Liens and the S&T Prepetition Liens to the DIP

Liens, and the DIP Lender Parties would not be willing to provide the DIP Facility or extend credit to the Non-HUD/Ancillary Debtors thereunder without the inclusion of the DIP Roll-Up Obligations in the DIP Obligations. The Non-HUD/Ancillary Debtors assert that the replacement and refinancing of the Public Credit Prepetition Loan through the Roll-Up: (a) will benefit the Non-HUD/Ancillary Debtors and their estates as a result of the DIP Lender Parties' agreement to provide "new money" availability under the DIP Facility in a manner favorable to the Non-HUD/Ancillary Debtors, and (b) will enable the Non-HUD/Ancillary Debtors to obtain urgently needed financing that they need to administer these Chapter 11 Cases and fund their operations.

(viii) *Good Faith of the DIP Lender Parties and Business Judgment.*

(a) *Willingness to Provide Financing.* The DIP Lender Parties have indicated a willingness to provide financing to the Non-HUD/Ancillary Debtors subject to: (a) entry of this Interim Order and the Final Order, acceptable to each DIP Lender Party; (b) approval of the terms and conditions of the DIP Facility and the DIP Loan Documents; (c) satisfaction of the closing conditions set forth in the DIP Loan Documents; and (d) findings by this Court that the DIP Facility is essential to the Non-HUD/Ancillary Debtors' estates, that the DIP Lender Parties are extending credit to the Non-HUD/Ancillary Debtors pursuant to the DIP Loan Documents in good faith, and that the DIP Lender Parties' claims, super-priority claims, security interests and liens and other protections granted pursuant to this Interim Order and the DIP Loan Documents as to the Non-HUD/Ancillary Debtors will have the protections provided by section 364(e) of the Bankruptcy Code. Based upon the record presented at the Interim Hearing, the DIP Facility has been negotiated in good faith and at arm's length between the Non-HUD/Ancillary Debtors, on the one hand, and the DIP Lender Parties, on the other, with the assistance and counsel of their

respective advisors. All of the DIP Obligations and all other liabilities and obligations of the Non-HUD/Ancillary Debtors under this Interim Order and the DIP Loan Documents shall be deemed to have been extended by the DIP Lender Parties in “good faith,” as such term is used in section 364(e) of the Bankruptcy Code, and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code. The DIP Lender Parties shall be entitled to the full protection of Section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed, or modified, on appeal or otherwise.

(b) *Business Judgment.* The terms and conditions of the DIP Facility and the DIP Loan Documents, and the interest and fees paid and to be paid thereunder, are fair, reasonable, and the best available to the Non-HUD/Ancillary Debtors under the circumstances, are ordinary and appropriate for secured financing to debtors in possession, reflect the Non-HUD/Ancillary Debtors’ exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and consideration.

I. *Need for Immediate Entry of this Interim Order.* The Owned Portfolio/Ancillary Debtors have requested immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2). The permission granted herein to use the proceeds of the DIP Facility is necessary, essential, and appropriate to avoid immediate and irreparable harm to the Non-HUD/Ancillary Debtors. The permission granted herein to use Cash Collateral (and provide adequate protection therefor) is necessary, essential, and appropriate to avoid immediate and irreparable harm to the Owned Portfolio/Ancillary Debtors. The Court concludes that entry of this Interim Order is in the best interests of the Owned Portfolio/Ancillary Debtors’ estates and creditors as its implementation will, among other things, allow the Owned Portfolio/Ancillary Debtors to preserve and maintain

the value of their assets and businesses and satisfy administrative obligations in these Chapter 11 Cases.

Based upon the foregoing findings and conclusions, and upon the record made before the Court at the Interim Hearing, and good and sufficient cause appearing therefor;

IT IS HEREBY ADJUDGED AND ORDERED that:

1. *Motion Granted.* The Motion is granted, the interim financing as set forth in this Interim Order is authorized and approved, and the Owned Portfolio/Ancillary Debtors' use of Cash Collateral on an interim basis is authorized, subject to the terms and conditions set forth in this Interim Order and the DIP Loan Documents.

2. *Authorization of the DIP Facility.* The DIP Facility is hereby approved as set forth herein. The Non-HUD/Ancillary Debtors are expressly and immediately authorized and empowered to execute and deliver the DIP Loan Documents, and to incur and to perform the obligations in accordance with, and subject to, the terms of this Interim Order and the DIP Loan Documents, and to deliver all instruments, certificates, agreements, and documents which may be required or necessary for the performance by the Non-HUD/Ancillary Debtors under the DIP Facility and the creation and perfection of the DIP Liens described in and provided for by this Interim Order and the DIP Loan Documents; for the avoidance of all doubt, the HUD Debtors shall not be considered a party to, or be bound by, the DIP Loan Documents absent the entry of a Final Order in form and substance acceptable to KeyBank and HUD or as otherwise ordered by the Court. The Non-HUD/Ancillary Debtors are hereby authorized and directed to pay, in accordance with this Interim Order, the principal, interest, fees, payments, expenses, and other amounts all to the extent provided in this Interim Order or the DIP Loan Documents, including the Transaction Expenses (as defined in the DIP Loan Agreement). All collections and proceeds, whether from

ordinary course collections, asset sales, debt or equity issuances, insurance recoveries, condemnations, or otherwise, will be deposited and applied as required by this Interim Order and the DIP Loan Documents. Upon execution and delivery, the DIP Loan Documents shall represent valid and binding obligations of the Non-HUD/Ancillary Debtors, enforceable against each of their respective estates in accordance with their terms. The DIP Loan Documents may from time to time be amended, modified, or supplemented by the parties thereto without further order of this Court if the amendment, modification, or supplement is (a) non-material to the Non-HUD/Ancillary Debtors, and (b) in accordance with the DIP Loan Documents. Any other amendment, modification, or supplement to the DIP Loan Documents shall require approval of this Court.

3. *Authorization to Borrow.* To prevent immediate and irreparable harm to the Non-HUD/Ancillary Debtors' estates, from the entry of this Interim Order through and including the earliest to occur of (i) entry of the Final Order or (ii) the DIP Termination Date (as defined below), and subject to the terms, conditions, limitations on availability and reserves (as applicable) set forth in the DIP Loan Documents and this Interim Order, the Non-HUD/Ancillary Debtors are hereby authorized to request, and the DIP Lender Parties are hereby authorized to make, a New Money DIP Loan in an amount not to exceed the Interim DIP Advance, the proceeds of which shall be used in accordance with the DIP Loan Agreement, the Budget, and the provisions of this Interim Order. Interim DIP Advances shall be made as needed in accordance with the Budget (i.e., not in a lump sum). "**DIP Termination Date**" shall mean the date on which an "Event of Default" (as defined in the DIP Loan Agreement or in this Interim Order) occurs.

4. *DIP Obligations.* The DIP Loan Documents and this Interim Order shall constitute and evidence the validity and binding effect of the DIP Obligations, which shall be enforceable

against the Non-HUD/Ancillary Debtors, their estates and any successors thereto, including any trustee appointed in the Chapter 11 Cases of the Non-HUD/Ancillary Debtors, or in any case under Chapter 7 of the Bankruptcy Code upon the conversion of any of the Chapter 11 Cases of the Non-HUD/Ancillary Debtors, or in any other proceedings superseding or related to any of the foregoing (collectively, the “**Successor Cases**”). Upon entry of this Interim Order, the DIP Obligations will include all loans, and any other indebtedness or obligations, contingent or absolute, which may now or from time to time be owing by any of the Non-HUD/Ancillary Debtors to the DIP Lender Parties, in each case, under, or secured by, the DIP Loan Documents or this Interim Order, including all principal, accrued interest, costs, fees, expenses and other amounts under the DIP Loan Documents. The Non-HUD/Ancillary Debtors shall be jointly and severally liable for the DIP Obligations. The DIP Obligations shall be due and payable, without notice or demand, and the use of Cash Collateral shall automatically cease on the DIP Termination Date except as provided in Paragraph 22 herein. Subject to entry of the Final Order, no obligation, payment, transfer, or grant of collateral security hereunder or under the DIP Loan Documents (including any DIP Obligations or DIP Liens (as defined below), and including in connection with any adequate protection provided to the DIP Lender Parties hereunder) shall be stayed, restrained, voidable, avoidable, or recoverable, under the Bankruptcy Code or under any applicable law (including under sections 502(d), 544, and 547 to 550 of the Bankruptcy Code or under any applicable state Uniform Voidable Transactions Act, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law), or subject to any avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), counterclaim, cross-claim, defense, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity.

5. *DIP Liens.* In order to secure the DIP Obligations, effective immediately upon entry of this Interim Order, pursuant to sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, the DIP Lender Parties are hereby granted, continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition security interests in and liens on (collectively, the “**DIP Liens**”) all real and personal property and other assets, whether now existing or hereafter arising and wherever located, tangible and intangible, of each of the Non-HUD/Ancillary Debtors and their bankruptcy estates (collectively, the “**DIP Collateral**”), including, without limitation: (a) all cash, cash equivalents, deposit accounts, securities accounts, accounts, other receivables (including credit card receivables), chattel paper, contract rights, inventory (wherever located), instruments, documents, securities (whether or not marketable) and investment property (including all of the issued and outstanding capital stock of each of its subsidiaries), hedge agreements, furniture, fixtures, equipment (including documents of title), goods, franchise rights, trade names, trademarks, servicemarks, copyrights, patents, license rights, intellectual property, general intangibles (including, for the avoidance of doubt, payment intangibles), rights to the payment of money (including tax refunds and any other extraordinary payments), supporting obligations, guarantees, letter of credit rights, commercial tort claims, causes of action, and all substitutions, indemnification rights, all present and future intercompany debt, fee interests in real property owned by the Non-HUD/Ancillary Debtors, books and records related to the foregoing, accessions and proceeds of the foregoing, wherever located, including insurance or other proceeds; (b) all owned real property interests, leased real property (including, for the avoidance of doubt, any ground leases), and all proceeds of all of such real property or other interests; (c) actions brought under section 549 of the Bankruptcy Code to recover any post-petition transfer of DIP Collateral and the proceeds thereof; (d) subject to entry of a Final

Order, the proceeds (the “**Avoidance Proceeds**”) of any claims or causes of action under chapter 5 of the Bankruptcy Code or any other avoidance actions under the Bankruptcy Code or state law of the Non-HUD/Ancillary Debtors and their estates (the “**Avoidance Actions**”) (other than actions brought pursuant to section 549 of the Bankruptcy Code), but not the Avoidance Actions themselves; (e) all Prepetition Collateral other than the KeyBank Prepetition Collateral; (f) all other DIP Collateral whether or not subject to valid, perfected, enforceable, and unavoidable liens on the Petition Date; and (g) to the extent not otherwise included, all proceeds, commercial tort claims, insurance claims and other rights to payments not otherwise included in the foregoing and proceeds and products of the foregoing and all accessions to, substitutions and replacements for, and rent and profits of, each of the foregoing. For the avoidance of all doubt, the DIP Collateral shall not include, and the DIP Liens shall not extend to encumber, any KeyBank Prepetition Collateral or any other property of the HUD Debtors for purposes of this Interim Order. Nothing in the Interim Order impairs the asserted validity, extent, or priority of any Public Credit Prepetition Liens granted by the HUD Debtors in the HUD Debtors’ Property or affecting KeyBank Prepetition Collateral.

6. *DIP Lien Priority.* The DIP Liens securing the DIP Obligations are valid, automatically perfected, non-avoidable, senior in priority, and superior to any security, mortgage, collateral interest, lien, or claim to any of the DIP Collateral, except that the DIP Liens shall be subject to the S&T Prepetition Liens and the Carve Out as set forth in this Interim Order. The DIP Liens shall consist of and be protected by the provisions of this Interim Order, including the following:

(i) *Priming DIP Liens on Prepetition Collateral.* Valid, binding, continuing, enforceable, and fully perfected, first priority (subject to Prepetition Permitted Liens, including the

KeyBank Prepetition Liens, but only to the extent such permitted prior liens are senior by operation of law to the S&T Prepetition Liens and/or the Public Credit Prepetition Liens) security interests and liens upon all DIP Collateral which is S&T Prepetition Collateral and/or Public Credit Prepetition Collateral, which security interests in and liens upon, pursuant to Section 364(d)(1) of the Bankruptcy Code, shall be prior and senior in all respects to (i) the security interests and liens in favor of DIP Lender Parties with respect to DIP Collateral, other than the S&T Prepetition Liens, (ii) the Adequate Protection Liens with respect to the DIP Collateral, and (iii) any security interest in, or other lien upon, any DIP Collateral that on the Petition Date was not a properly perfected, valid, enforceable and unavoidable security interest or lien. For avoidance of doubt, the DIP Liens granted under this Interim Order shall not prime any lien arising from or relating to the real estate taxes or any lien in favor of KeyBank or otherwise encumber any of the KeyBank Prepetition Collateral or any other property of the HUD Debtors. Nothing in the Interim Order impairs the asserted validity, extent, or priority of any Public Credit Prepetition Liens granted by the HUD Debtors in the HUD Debtors' property or affecting the KeyBank Prepetition Collateral.

(ii) *Liens Junior to Certain Other Liens.* Valid, binding, continuing, enforceable, and fully perfected security interests and liens upon all DIP Collateral that is not S&T Prepetition Collateral or Public Credit Prepetition Collateral (whether such DIP Collateral is in existence on, or created, acquired, arising after, the Petition Date), which security interests in and liens upon, pursuant to section 364(c)(3) of the Bankruptcy Code, shall be junior to (but only to) any properly perfected, valid, unavoidable, and enforceable Prepetition Permitted Liens.

(iii) *Unencumbered Property.* Pursuant to Section 364(c)(2) of the Bankruptcy Code, valid, binding, continuing, enforceable, and fully perfected, first priority security interests and liens upon all prepetition and post-petition unencumbered real, personal and other property of

the Non-HUD/Ancillary Debtors whether existing on the Petition Date or thereafter acquired (other than Avoidance Actions), that, on or as of the Petition Date or the date acquired (if acquired after the Petition Date) is not subject to a properly perfected, valid, enforceable and unavoidable lien.

(iv) *First Lien on Avoidance Proceeds.* Subject to the entry of the Final Order, the DIP Lender Parties are hereby granted valid, binding, enforceable, non-avoidable, and automatically and properly perfected post-petition security interests in and liens on Avoidance Proceeds.

(v) *DIP Liens Not Subordinate.* Other than as set forth herein, the DIP Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in the Chapter 11 Cases or any Successor Cases, and shall be valid and enforceable against any trustee or other estate representative appointed in the Chapter 11 Cases or any Successor Cases, upon the conversion of any of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code (or in any other Successor Case), and/or upon the dismissal of any of the Chapter 11 Cases or Successor Cases. The DIP Liens shall not be subject to Sections 506(c) (subject to entry of a Final Order), 510, 549 or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of the estate pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the DIP Liens. In no event shall any person who pays (or through the extension of credit to any Non-HUD/Ancillary Debtor, causes to be paid) any of the DIP Obligations be subrogated, in whole or in part, to any rights, remedies, claims, privileges, liens or priorities granted to or in favor of, or conferred upon, the DIP Lender Parties by the terms of any DIP Loan Documents or this Interim Order unless and until the DIP Obligations owed to the DIP Lender Parties have been indefeasibly paid in full in cash.

7. *DIP Superpriority Claims.* Upon entry of this Interim Order, and subject to the Carve Out, the DIP Lender Parties are hereby granted, pursuant to section 364(c)(1) of the Bankruptcy Code, an allowed superpriority administrative expense claim in each of the Chapter 11 Cases of the Non-HUD/Ancillary Debtors and any Successor Cases (collectively, the “**DIP Superpriority Claims**”) for all DIP Obligations: (a) having priority over any and all administrative expense claims and unsecured claims against the Non-HUD/Ancillary Debtors or their estates in any of the Chapter 11 Cases and any Successor Cases, at any time existing or arising, of any kind or nature whatsoever, including administrative expenses of the kinds specified in or ordered pursuant to Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 506(c) (subject to entry of a Final Order), 507, 546(c), 726, and 1114, and any other provision of the Bankruptcy Code, as provided under section 364(c)(1) of the Bankruptcy Code; and (b) which shall at all times be senior to the rights of the Non-HUD/Ancillary Debtors and their estates, and any successor trustee or other estate representative to the extent permitted by law. The DIP Superpriority Claims shall for purposes of Section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses on a joint and several basis allowed under Section 503(b) of the Bankruptcy Code and shall be payable from all prepetition and post-petition property of the Non-HUD/Ancillary Debtors and all proceeds thereof, including, without limitation, subject to entry of the Final Order, the Avoidance Proceeds.

8. *No Obligation to Extend Credit.* The DIP Lender Parties shall have no obligation to make any loan or advance, or to issue, amend, renew or extend any letters of credit or bankers’ acceptance under the DIP Loan Documents, unless all of the conditions precedent to the making of such extension of credit or the issuance, amendment, renewal, or extension of such letter of

credit or bankers' acceptance under the DIP Loan Documents and this Interim Order have been satisfied in full or waived by the DIP Lender Parties.

9. *Use of Proceeds of DIP Facility.* From and after the Petition Date, the Non-HUD/Ancillary Debtors shall use advances of credit under the DIP Facility, in accordance with the Budget (subject to such variances as are permitted under this Interim Order), only for the purposes specifically set forth in this Interim Order and the DIP Loan Documents, and in compliance with the terms and conditions in this Interim Order and the DIP Loan Documents.

10. *DIP Roll-Up Obligations.* Subject to entry of the Final Order in form and substance acceptable to KeyBank and HUD or as otherwise ordered by the Court, without any further action by the Owned Portfolio/Ancillary Debtors or any other party, and as a condition to the provision of liquidity under the DIP Facility, the DIP Roll-Up Obligations shall be deemed to have replaced and refinanced the Public Credit Prepetition Loan and shall automatically constitute DIP Obligations.

11. *Authorization to Use Cash Collateral.* The Owned Portfolio/Ancillary Debtors are authorized to use Cash Collateral as set forth in this Interim Order commencing from the Petition Date through and including any Termination Date (as defined below), subject to the terms and conditions of this Interim Order and solely in accordance with the 13-week cash flow forecasts of cash receipts and disbursements of (i) the Non-HUD/Ancillary Debtors on a consolidated basis, or (ii) the HUD Debtors on a consolidated basis, in each case, for the period commencing on the Petition Date, attached as **Exhibits 2(a) and 2(b)**, respectively, to this Interim Order (Exhibits 2(a) and 2(b) attached hereto, and any updated budget as required by Paragraph 16(a), as applicable, the "**Budget**"), which Budget shall be reasonably acceptable in form and substance to the Prepetition Secured Parties, the acceptance of which must be confirmed in writing.

12. *Adequate Protection for the Prepetition Secured Parties.* Pursuant to sections 361, 362, 363(c)(2), 363(e), 364(d) and 507 of the Bankruptcy Code, the Prepetition Secured Parties are entitled to adequate protection of their interests in the Prepetition Collateral, including the Cash Collateral, in an amount equal to the aggregate diminution in the value of the Prepetition Secured Parties' interest in the Prepetition Collateral from and after the Petition Date, if any, for any reason provided for under the Bankruptcy Code (such diminution in value, the "**Adequate Protection Amount**"). As adequate protection for the Adequate Protection Amount, and solely to the extent of same, the Prepetition Secured Parties are hereby granted the following (collectively, the "**Adequate Protection Obligations**"):

(i) *Adequate Protection Liens.* Subject only to the terms of this Interim Order, pursuant to sections 361 and 363(e) of the Bankruptcy Code and in consideration of the stipulations and consents set forth herein, the Owned Portfolio/Ancillary Debtors hereby grant to the Prepetition Secured Parties, solely to the extent of any diminution in value of the Prepetition Collateral, valid, binding, enforceable, non-avoidable, and automatically perfected, *nunc pro tunc* to the Petition Date, replacement liens on and security interests in (the "**Adequate Protection Liens**") the post-petition property of the Owned Portfolio/Ancillary Debtors of the same priority, extent and amount as the Prepetition Secured Parties' prepetition interest in the Prepetition Collateral, together with any proceeds, products or profits of the foregoing, whether arising under section 552(b) of the Bankruptcy Code (subject to entry of a Final Order) or otherwise (the "**Adequate Protection Collateral**"), *provided that* the Adequate Protection Collateral shall not include Avoidance Actions or Avoidance Proceeds. The Adequate Protection Liens are subject or subordinate only to the Carve-Out and Prepetition Permitted Liens, if any. Subject to Paragraph 14 hereof, the Adequate Protection Liens shall not be subject or subordinate to or made *pari passu*

with (a) any lien or security interest that is avoided and preserved for the benefit of the Owned Portfolio/Ancillary Debtors' estates under section 551 of the Bankruptcy Code, (b) any intercompany claim, whether secured or unsecured, of any Owned Portfolio/Ancillary Debtors or any domestic or foreign subsidiary or affiliate of any Owned Portfolio/Ancillary Debtors, or (c) any other lien or security interest under sections 361 or 363 of the Bankruptcy Code or otherwise, except as expressly provided in this Interim Order, including with respect to the DIP Liens.

(ii) *Adequate Protection Superpriority Claims.* The Prepetition Secured Parties are hereby granted, subject only to the Carve-Out and (solely with respect to the Owned Portfolio/Ancillary Debtors) junior only to the DIP Superpriority Claim, allowed superpriority administrative expense claims (the "**Adequate Protection Superpriority Claims**") as provided for in section 507(b) of the Bankruptcy Code, payable from and having recourse to all prepetition and post-petition property of the Owned Portfolio/Ancillary Debtors against whom they have valid Prepetition Liens and all proceeds thereof. Subject only to the Carve-Out and DIP Superpriority Claim, and except as provided below, the Adequate Protection Superpriority Claims shall have priority over any and all other administrative expenses pursuant to the Bankruptcy Code (including the kinds specified in or arising or ordered pursuant to sections 105(a), 326, 328, 330, 331, 503(b), 506(c) (subject to entry of a Final Order), 507, 546(c), 552(b) (subject to the entry of a Final Order), 726, and 1114 of the Bankruptcy Code or otherwise, whether or not such expenses or claims may become secured by a judgment lien or other nonconsensual lien, levy, or attachment) and all other claims against the Owned Portfolio/Ancillary Debtors or their estates in any Successor Cases, at any time existing or arising, of any kind or nature whatsoever. Other than the Carve-Out and the DIP Superpriority Claims, no cost or expense of administration of the Chapter 11 Cases shall be senior to, or *pari passu* with, the Adequate Protection Superpriority Claims.

(iii) *Adequate Protection Payments.* The Prepetition Secured Parties shall, as set forth below, receive from the Owned Portfolio/Ancillary Debtors against whom they have Prepetition Liens the following payments (collectively, “**Adequate Protection Payments**”): the Owned Portfolio/Ancillary Debtors shall pay in full, in cash and in immediately available funds, as and when such payments would have come due under the Prepetition Loans had the Chapter 11 Cases not been commenced, including but not limited to, all interest, fees, and other amounts, as applicable, which shall accrue and be payable at the applicable interest rate set forth, and at the times provided for, in the Prepetition Loan Documents.

(iv) *Payment of Fees and Expenses.* The Owned Portfolio/Ancillary Debtors shall pay the fees, costs and expenses of the Prepetition Secured Parties in the manner set forth in Paragraph 13 below.

(v) *Reporting.* The Owned Portfolio/Ancillary Debtors shall cooperate with, and to the extent appropriate, comply with all reporting requirements set forth in the Prepetition Loan Documents. In addition, the Owned Portfolio/Ancillary Debtors shall provide such additional reporting as the Prepetition Secured Parties shall reasonably require.

(vi) In addition to, and without limiting, whatever rights to access the Prepetition Secured Parties have under the Prepetition Loan Documents, respectively, the Owned Portfolio/Ancillary Debtors shall permit representatives, agents, and employees of the Prepetition Secured Parties to have reasonable access to: (a) inspect the Owned Portfolio/Ancillary Debtors’ assets and properties during normal business hours; (b) examine the Owned Portfolio/Ancillary Debtors’ books and records; and (c) discuss the Owned Portfolio/Ancillary Debtors’ affairs, finances, and condition with the Owned Portfolio/Ancillary Debtors’ officers, management, financial advisors, attorneys and consultants, provided, however, that the Owned

Portfolio/Ancillary Debtors shall not be required to disclose to the Prepetition Secured Parties information protected by the work product doctrine, the attorney-client privilege or any similar privileges.

(vii) Notwithstanding anything to the contrary contained in the Motion or this Interim Order, (i) KeyBank's Cash Collateral can only be used to fund the expenses in the Budget attributable to the HUD Debtors; and (ii) the Adequate Protection Liens and Adequate Protection Superpriority Claims granted to each of the Prepetition Secured Parties are specifically limited, in each case, to the specific Owned Portfolio/Ancillary Debtors who are borrowers or guarantors of such lender (for clarity, the DIP Liens and the DIP Superpriority Claims apply to all Owned Portfolio/Ancillary Debtors other than the HUD Debtors without limitation).

13. *Payment of Fees and Expenses.* The Owned Portfolio/Ancillary Debtors shall pay in cash, without the need for the filing of formal fee applications: (i) immediately upon entry of this Interim Order, the reasonable professional fees, expenses, and disbursements (including, but not limited to, the fees, expenses, and disbursements of counsel and third-party consultants, including financial advisors and auditors) incurred by the DIP Lender Parties under the DIP Loan Documents and the Prepetition Secured Parties under the Prepetition Loan Documents, as applicable, arising prior to the Petition Date in connection with the Chapter 11 Cases; (ii) the reasonable professional fees, expenses, and disbursements (including, but not limited to, the fees, expenses, and disbursements of counsel and third-party consultants, including financial advisors and auditors) incurred by the DIP Lender Parties under the DIP Loan Documents and the Prepetition Secured Parties under the Prepetition Loan Documents, as applicable, arising subsequent to the Petition Date in connection with the Chapter 11 Cases; and (iii) any other reasonable fees, costs, and expenses incurred by the DIP Lender Parties under the DIP Loan

Documents and the Prepetition Secured Parties under the Prepetition Loan Documents, as applicable, in connection with the Chapter 11 Cases. For the avoidance of doubt, and for purposes of this Interim Order, only, any professional fees or expenses arising out of or relating to the DIP Obligations and/or DIP Loan Documents are payable only from DIP Collateral and/or the assets of the Non-HUD/Ancillary Debtors. All payments of professional fees, expenses and disbursements authorized under this Paragraph 13 shall be made within ten (10) business days (which time period may be extended by the applicable professional) (the “**Review Period**”) after receipt by the Owned Portfolio/Ancillary Debtors, any Committee, and the U.S. Trustee of invoices therefor (the “**Invoiced Fees**”) and without the necessity of filing formal fee applications. The invoices for such Invoiced Fees shall include the total aggregate number of hours billed and a summary description of services provided, and the expenses incurred by the applicable professional; *provided, however*, that any such invoice may be redacted to protect privileged, confidential, or proprietary information. The Debtors, any Committee and the U.S. Trustee may object to any portion of the Invoiced Fees (the “**Disputed Invoiced Fees**”) within the Review Period setting forth the specific objections to the Disputed Invoiced Fees. The Owned Portfolio/Ancillary Debtors shall pay (i) any Invoiced Fees that are not Disputed Invoiced Fees immediately after expiration of the Review Period; and (ii) any Disputed Invoiced Fees within fifteen (15) days after approval by the Court by a final order requiring payment of any previously Disputed Invoiced Fees.

14. *Effect of Stipulations on Third Parties.*

(i) *Generally.* The Owned Portfolio/Ancillary Debtors’ Stipulations are set forth in Paragraph C above, which stipulations and admissions are and shall be binding upon the Owned Portfolio/Ancillary Debtors and any successors thereto in all circumstances. The

stipulations and admissions contained in this Interim Order, including without limitation, the Owned Portfolio/Ancillary Debtors' Stipulations, shall also be binding upon the Owned Portfolio/Ancillary Debtors' estates and all other parties in interest (except with respect to the Reservation), including the Committee (if any) or any chapter 7 or chapter 11 trustee appointed or elected for any of the Owned Portfolio/Ancillary Debtors (a "**Trustee**"), for all purposes unless (a) the Committee or any other party in interest, no later than the date that is sixty (60) days from entry of this Interim Order (the "**Challenge Period**"), has properly filed an adversary proceeding as required under the Bankruptcy Rules (y) challenging the amount, validity, enforceability, priority or extent of the Prepetition Secured Obligations or the Prepetition Liens on the Prepetition Collateral securing the Prepetition Secured Obligations, or (z) otherwise asserting any other claims, counterclaims, causes of action, objections, contests or defenses against the Prepetition Secured Parties on behalf of the Owned Portfolio/Ancillary Debtors' estates ((y) and (z), collectively, referred to herein as "**Challenges**"), and (b) the Court rules in favor of the plaintiff sustaining any such challenge or claim in any such duly filed adversary proceeding or contested matter; *provided*, that, as to the Owned Portfolio/Ancillary Debtors, all such Challenge(s) are hereby irrevocably waived and relinquished effective as of the Petition Date.

(ii) *Binding Effect.* If no such Challenge is timely filed prior to the expiration of the Challenge Period, without further order of the Court and except with respect to the Reservation: (a) the Owned Portfolio/Ancillary Debtors' Stipulations, admissions and releases contained in this Interim Order (including the stipulations contained herein and the releases set forth in Paragraph 15 below) shall be binding on all parties in interest, including the Owned Portfolio/Ancillary Debtors' estates, the Committee (if any), and any subsequently appointed Trustee, case fiduciary, or successors and assigns; (b) the Prepetition Secured Obligations shall

constitute allowed claims, not subject to counterclaim, setoff, subordination, recharacterization, defense or avoidance, for all purposes in these Chapter 11 Cases and any subsequent chapter 7 cases; (c) the Prepetition Liens shall be deemed to have been, as of the Petition Date, legal, valid, binding, perfected, and with the priority specified in the Owned Portfolio/Ancillary Debtors' Stipulations, and not subject to defense, counterclaim, recharacterization, subordination or avoidance; and (d) the Prepetition Secured Parties (and their respective agents, affiliates, subsidiaries, directors, officers, representatives, attorneys or advisors) shall not be subject to any other or further challenge by any Committee or any other party in interest, and any such Committee or party in interest shall be enjoined from seeking to exercise the rights of the Owned Portfolio/Ancillary Debtors' estates, including without limitation, any successor thereto (including, without limitation, any estate representative or a Trustee, whether such Trustee is appointed or elected prior to or following the expiration of the Challenge Period). If any Challenge is timely and properly filed prior to the expiration of the Challenge Period, the releases, stipulations and admissions contained in this Interim Order, including without limitation, in the Owned Portfolio/Ancillary Debtors' Stipulations, shall nonetheless remain binding and preclusive on any Committee and any other person, including any Trustee appointed in any Chapter 11 Case(s) or Successor Cases, as applicable, except as to any such findings and admissions that were expressly challenged in the original complaint initiating the adversary proceeding and excluding any amended or additional claims that may or could have been asserted thereafter through an amended complaint under FRCP 15 or otherwise. Subject to the Reservation, the Owned Portfolio/Ancillary Debtors' Stipulations shall be binding upon the Owned Portfolio/Ancillary Debtors, their estates, all parties in interest in the Chapter 11 Cases and their respective successors and assigns, including any Trustee or other fiduciary appointed in the Chapter 11 Cases or any Successor Cases and shall

inure to the benefit of the Prepetition Secured Parties and the Owned Portfolio/Ancillary Debtors and their respective successors and assigns.

(iii) *No Standing.* Nothing in this Interim Order vests or confers on any person (as defined in the Bankruptcy Code), including any Committee, standing or authority to pursue any claim or cause of action belonging to the Owned Portfolio/Ancillary Debtors and/or their bankruptcy estates, including, without limitation, any Challenge(s) with respect to the Prepetition Loan Documents or the Prepetition Secured Obligations. The filing of a motion seeking standing to file one or more Challenges, which attaches a proposed complaint detailing the Challenges, shall extend the Challenge Period with respect to that party until two (2) business days after the Court approves the standing motion, or such other time period ordered by the Court in approving the standing motion.

15. *Owned Portfolio/Ancillary Debtors' Waivers and Releases.*

(a) *Section 506(c) Claims and 552(b) Equities.* Subject to entry of the Final Order, no costs or expenses of administration which have been or may be incurred in the Chapter 11 Cases or any Successor Cases at any time shall be charged against the DIP Lender Parties, the Prepetition Secured Parties, their respective claims, the Prepetition Collateral, the DIP Collateral or the Adequate Protection Collateral, including Cash Collateral, pursuant to section 506(c) of the Bankruptcy Code without the prior written consent of the DIP Lender Parties and/or the Prepetition Secured Parties, respectively. Subject to entry of the Final Order, the DIP Lender Parties and the Prepetition Secured Parties shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the "equities of the case" exception under Bankruptcy Code section 552(b) shall not apply to the DIP Lender Parties and/or the Prepetition Secured Parties with respect

to proceeds, products, offspring, or profits of any of the Prepetition Collateral, the DIP Collateral and/or the Adequate Protection Collateral.

(b) *Release of Prepetition Secured Parties.* In consideration of and as a condition to the Prepetition Secured Parties' consent to the use of Cash Collateral and providing other financial accommodations to the Owned Portfolio/Ancillary Debtors pursuant to the provisions of this Interim Order, each of the Owned Portfolio/Ancillary Debtors, on behalf of themselves, and their respective successors and assigns and such Owned Portfolio/Ancillary Debtors' estate (collectively, "**Releasors**"), subject only to Paragraph 14 above, hereby absolutely releases and forever discharges and acquits (i) the Prepetition Secured Parties, (ii) the respective successors, participants, assigns, directors, officers, attorneys, employees, financial advisors, consultants and other representatives of the Prepetition Secured Parties, (iii) the present and former shareholders, affiliates, subsidiaries, divisions, and predecessors of the Prepetition Secured Parties (the parties identified in clauses (i) through (iii) being hereinafter referred to collectively as "**Releasees**") of and from any and all claims, demands, causes of action, suits, covenants, contracts, controversies, agreements, promises, sums of money, accounts, bills, reckonings, damages, and any and all other claims, counterclaims, cross claims, defenses, rights of set-off, demands, and liabilities whatsoever (individually, a "**Prepetition Released Claim**" and collectively, the "**Prepetition Released Claims**") of every kind, name, nature and description, known or unknown, foreseen or unforeseen, matured or contingent, liquidated or unliquidated, primary or secondary, suspected or unsuspected, both at law and in equity, which, include, without limitation, any so-called "lender liability" claims or defenses, that any Releasor may now or hereafter own, hold, have, or claim to have against the Releasees for, upon, or by reason of the Prepetition Secured Obligations, the Prepetition Liens, and the Prepetition Loan Documents,

which arose or may have arisen at any time on or prior to the date of this Interim Order; *provided*, that such release shall be effective with respect to the Owned Portfolio/Ancillary Debtors upon entry of the Final Order, and shall not be effective with respect to the Owned Portfolio/Ancillary Debtors' estates until the expiration of the Challenge Period.

(c) *Release of DIP Lender Parties.* Upon entry of the Final Order, in consideration of and as a condition to the DIP Lender Parties providing the DIP Facility and the DIP Lender Parties' consent to the use of Cash Collateral and providing other financial accommodations pursuant to the provisions of this Interim Order and the DIP Loan Documents, each of the Releasors hereby absolutely releases and forever discharges and acquits (i) the DIP Lender Parties, (ii) the respective successors, participants, assigns, directors, officers, attorneys, employees, financial advisors, consultants and other representatives of the DIP Lender Parties, (iii) the present and former shareholders, affiliates, subsidiaries, divisions, and predecessors of the DIP Lender Parties (the parties identified in clauses (i) through (iii) being hereinafter referred to collectively as "**DIP Lender Party Releasees**") of and from any and all Prepetition Released Claims of every kind, name, nature and description, known or unknown, foreseen or unforeseen, matured or contingent, liquidated or unliquidated, primary or secondary, suspected or unsuspected, both at law and in equity, which, include, without limitation, any so-called "lender liability" claims or defenses, that any Releasor may now or hereafter own, hold, have, or claim to have against the DIP Lender Party Releasees for, upon, or by reason of the Public Credit Prepetition Loan and the Public Credit Prepetition Loan Documents, which arose or may have arisen at any time on or prior to the date of this Interim Order. Notwithstanding the foregoing, the DIP Lender Party Releasees who are officers or directors of the Owned Portfolio/Ancillary Debtors shall not be released from

Prepetition Released Claims that arise from such officer or director acting in his/her capacity as an officer or director of the Owned Portfolio/Ancillary Debtors.

16. *Budget Reporting and Covenants.*

(a) No later than the Thursday of each calendar week commencing on the first Thursday following the second full week after the Petition Date, and every two weeks thereafter, the Owned Portfolio/Ancillary Debtors shall deliver to the DIP Lender Parties, the Prepetition Secured Parties and their counsel an updated Budget for the subsequent 13-week period. The initial Budget and each subsequent Budget shall be in form and substance acceptable to the DIP Lender Parties and the Prepetition Secured Parties; *provided, however*, that unless and until the DIP Lender Parties and the Prepetition Secured Parties have approved such updated budget in their discretion, the Owned Portfolio/Ancillary Debtors shall still be subject to and be governed by the terms of the initial Budget or subsequent, updated Budget, as applicable, then in effect in accordance with this Interim Order.

(b) Every two (2) weeks following entry of the Interim Order, commencing on the first Thursday following the first two full weeks after entry of the Interim Order, the Owned Portfolio/Ancillary Debtors shall deliver to the DIP Lender Parties and the Prepetition Secured Parties and their counsel a variance report comparing, on a line-item basis, actual results to the Budget for the previous individual week on a weekly, cumulative, and four-week trailing basis.

(c) The Owned Portfolio/Ancillary Debtors shall test the Budget with respect to the cumulative net cash flow on the Thursday following the first two (2) full weeks after entry of this Interim Order on a two-week trailing basis (the “**Budget Period**”) and every other Thursday thereafter. The Owned Portfolio/Ancillary Debtors shall ensure that at no time any of the following occur (together, the “**Budget Covenants**”): (i) a negative variance of 10% or more from the “Cash

Inflow” set forth in the Budget, to be tested on a cumulative basis over a rolling four (4) week period, *provided* that, in the event that any “Cash Inflow” budgeted to be received in any rolling four (4) week period is not actually received during such period, such “Cash Inflow” shall be deemed, for purposes of testing, to have been received during such period if it is received within one (1) calendar week after the end of such period; and (ii) a negative variance of 10% or more from the “Operating Cash Outflow,” tested every week on a cumulative rolling four (4) week basis; *provided, however*, that in any rolling four (4) week period that “Operating Cash Outflow” is less than the budgeted amount for such period, the amount by which “Operating Cash Outflow” is less may be carried forward and added to the subsequent period; *provided further, however*, that “Operating Cash Outflow” shall include disbursements made by the Owned Portfolio/Ancillary Debtors (including, but not limited to, any payments, expenditures or advances) other than disbursements for “Professional Services” as set forth in the Budget. For the avoidance of doubt, the Budget shall include a line item for “Professional Services” to be paid by the Owned Portfolio/Ancillary Debtors for informational purposes.

17. *Carve-Out.* The Prepetition Liens (other than the Prepetition Liens of KeyBank, except to the extent provided in a Final Order), the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens (other than the Adequate Protection Liens granted to KeyBank, except to the extent provided in a Final Order), and the Adequate Protection Superpriority Claims shall be subject only to the right of payment of the following expenses (collectively, “**Carve-Out**”), to the extent provided herein:

(i) upon entry of this Interim Order, statutory fees payable to the Clerk of the Court and the U.S. Trustee pursuant to 28 U.S.C. § 1930(a)(6) with respect to the Owned Portfolio/Ancillary Debtors;

(ii) the allowed fees and costs of the Owned Portfolio/Ancillary Debtors' claims and noticing agent, subject in all respects to the terms of the Interim Order;

(iii) all unpaid fees and expenses incurred (the "**Allowed Professional Fees**") by persons or firms retained by the Owned Portfolio/Ancillary Debtors or any Committee on or after the Petition Date pursuant to section 327, 328, 363, or 1103 of the Bankruptcy Code (each a "**Professional**" and collectively, the "**Professionals**") in a cumulative sum for the period prior to the occurrence of the delivery of a Carve-Out Trigger Notice (as defined below), an amount not to exceed the lesser of (A) the aggregate weekly amounts budgeted for each such Professionals for such week in accordance with the Budget (to the extent a Carve-Out Trigger Notice is delivered mid-week, pro-rated for such week) and (B) the actual amount of such Allowed Professional Fees for each Professional incurred on or after the Petition Date up through and including the date a Carve-Out Trigger Notice is delivered, subject in all respects to the terms of the Interim Order and the Budget; and

(iv) Allowed Professional Fees of Professionals in an aggregate amount not to exceed \$125,000 incurred after delivery by one of the DIP Lender Parties or the Prepetition Secured Parties of written notice (which for the avoidance of doubt may be by electronic mail) of the occurrence of an Event of Default to the Owned Portfolio/Ancillary Debtors, the Owned Portfolio/Ancillary Debtors' counsel, the U.S. Trustee, and counsel for any Committee (the "**Carve-Out Trigger Notice**"), to the extent allowed by this Court (the amounts set forth in this clause (iv) being the "**Post Carve-Out Trigger Notice Cap**," and the amounts set forth in clauses (i) through (iv) being the "**Carve-Out Cap**"). To the extent that proceeds of DIP Collateral or Adequate Protection Collateral are used to fund the Carve-Out, the DIP Lender Parties and/or the Prepetition Secured Parties shall be reimbursed from any unencumbered assets.

(v) For the avoidance of doubt, to the extent the budgeted amounts for a Professional for any Budget period exceed the actual fees and expenses incurred by such Professional for that period, the excess may be carried forward to later Budget periods or backward to prior Budget periods to be applied to any fees or expenses that exceeded the budgeted amounts for such prior or later periods.

18. *Excluded Professional Fees.* Notwithstanding anything to the contrary in this Interim Order, neither the Carve-Out, nor the proceeds of the DIP Collateral, the Adequate Protection Collateral or the DIP Facility shall be used to pay any Allowed Professional Fees or any other fees or expenses incurred by any Professional in connection with any of the following: (a) an assertion or joinder in any claim, counter-claim, action, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination, or similar relief: (i) challenging the legality, validity, priority, perfection, or enforceability of the Prepetition Secured Obligations or the Prepetition Liens, (ii) seeking to invalidate, set aside, avoid, or subordinate, in whole or in part, the Prepetition Secured Obligations or the Prepetition Liens, or (iii) preventing, hindering or delaying the Prepetition Secured Parties' assertion or enforcement of any lien, claim, right, or security interest or realization upon any Adequate Protection Collateral, in accordance with the terms and conditions of this Interim Order, (b) a request to use the Cash Collateral on and after the Termination Date, except to the extent expressly permitted herein, (c) a request for authorization to obtain debtor-in-possession financing or other financial accommodations pursuant to Bankruptcy Code section 364(c) or (d), other than from the Prepetition Secured Parties, without the prior written consent of the Prepetition Secured Parties and the DIP Lender Parties, (d) the commencement or prosecution of any action or proceeding of any claims, causes of action, or defenses against the Prepetition Secured Parties, or any of their

respective officers, directors, employees, agents, attorneys, financial advisors, consultants, affiliates, successors, or assigns, including, without limitation, any attempt to avoid any claim, lien, or interest of, or obtain any recovery from the Prepetition Secured Parties under Chapter 5 of the Bankruptcy Code, (e) seeking to amend or modify any of the rights granted to the DIP Lender Parties under this Interim Order, the DIP Loan Documents, or the Public Credit Prepetition Loan Documents, including seeking to use Cash Collateral and/or DIP Collateral on a contested basis, (f) upon entry of a Final Order, objecting to or challenging in any way the DIP Liens, the DIP Obligations, the Public Credit Prepetition Liens, the Public Credit Prepetition Loan, the DIP Collateral (including Cash Collateral) or, the Public Credit Prepetition Collateral, or any other claims or liens, held by the DIP Lender Parties, (g) asserting, commencing, or prosecuting any claims or causes of action whatsoever, including any actions under Chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions to recover or disgorge payments, against any of the DIP Lender Parties or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, managers, and employees, (h) litigating, objecting to, challenging, or contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the DIP Obligations, the DIP Liens, the Public Credit Prepetition Liens, the Public Credit Prepetition Loan, or any other rights or interests of any of the DIP Lender Parties, or (i) seeking to subordinate, recharacterize, disallow or avoid the DIP Obligations or the Public Credit Prepetition Loan; provided, however, that, subject to the Carve-Out Cap, an amount not to exceed \$7,500 in the aggregate of Cash Collateral may be used to pay the Allowed Professional Fees of any Committee to investigate (but not prosecute) claims against and/or possible objections with respect to the Prepetition Secured Obligations, and the prepetition liens and security interests of, the Prepetition Secured Parties (including, without limitation, issues

regarding validity, perfection, priority, or enforceability of the secured claims of the Prepetition Secured Parties). Nothing herein shall be construed as a consent to the allowance of the fees and expenses of any Professional or shall affect the right of the Prepetition Secured Parties to object to the allowance and payment of such fees and expenses. The Owned Portfolio/Ancillary Debtors shall be permitted to pay fees and expenses allowed and payable pursuant to an order of the Bankruptcy Court under sections 330 and 331 of the Bankruptcy Code, as the same may be due and payable, solely to the extent set forth in the Budget and not to exceed the amounts set forth in the Budget, provided that any such payment shall be subject to entry of a final order of the Bankruptcy Court of each Professional's final application for allowance of such fees and expenses.

19. *Payment of Carve-Out.*

(i) The Owned Portfolio/Ancillary Debtors shall maintain a segregated account with Saul Ewing LLP ("**Saul Ewing**") for the payment of Allowed Professional Fees (the "**Carve-Out Reserve Account**"), which account shall be funded from cash receipts or on behalf of the Owned Portfolio/Ancillary Debtors in accordance with the Budget on a weekly basis, in advance, until the occurrence of a Carve-Out Trigger Notice. After the Carve-Out Trigger Notice, the Carve-Out Reserve Account may continue to be funded, up to the Carve-Out Cap. From funds in the Carve-Out Reserve Account, Saul Ewing shall pay the Professionals the Allowed Professional Fees in compliance with an interim compensation procedures order and in the manner set forth in this Interim Order in accordance with the Budget; *provided, however*, that, prior to payment in full of the Prepetition Secured Obligations and termination of the Carve-Out, to the extent that Allowed Professional Fees that have accrued from the Petition Date through and including the Carve-Out Trigger Notice are less than the amounts funded into the Carve-Out Reserve Account, the excess amounts in the Carve-Out Reserve Account shall be (a) *first*, applied to fund the Post Carve-Out

Trigger Notice Cap; (b) *second*, remitted to the DIP Lender Parties to apply to reduce the DIP Obligations at the DIP Lender Parties' sole discretion; and (c) *third*, remitted to the Prepetition Secured Parties to apply to reduce the Prepetition Secured Obligations at the Prepetition Secured Parties' sole discretion. For the avoidance of doubt, (a) in making payments from the Carve-Out Reserve Account, Saul Ewing shall be entitled to conclusively rely upon written certifications of each Professional as to the amount due and owing to such Professional from the Carve-Out Reserve Account and in accordance with the Budget and shall have no liability to any party based upon its reliance on such certifications; and (b) in no circumstances shall Saul Ewing be obligated to pay any Professional other than from funds held, from time to time, in the Carve-Out Reserve Account. Provided that the amounts the Prepetition Secured Parties are obligated to allocate to Professionals has been funded from cash receipts, all obligations of the Prepetition Secured Parties with respect to the Carve-Out shall be terminated.

(ii) The Carve-Out Cap shall be reduced on a dollar-for-dollar basis by the amounts actually funded into the Carve-Out Reserve Account and/or the amounts actually paid on account of the Carve-Out. To the extent that, as of the Carve-Out Trigger Notice, the Carve-Out Reserve Account has not been funded in accordance with the Budget, the DIP Lender Parties and the Prepetition Secured Parties shall remit the difference to the Carve-Out Reserve Account solely from cash receipts. Payment of any amounts on account of the Carve-Out shall not be deemed to reduce the DIP Obligations or the Prepetition Secured Obligations, and shall not be deemed to subordinate the DIP Lender Parties' or the Prepetition Secured Parties' respective liens and security interests in the DIP Collateral, the DIP Superpriority Claims, the Adequate Protection Collateral or the Adequate Protection Superpriority Claims to any junior pre- or postpetition lien, interest, or claim in favor of any other party. The DIP Lender Parties and the Prepetition Secured

Parties shall not, under any circumstance, be responsible for the direct payment or reimbursement of any fees or disbursements of any Professionals incurred in connection with these Chapter 11 Cases or Successor Cases under any chapter of the Bankruptcy Code, and nothing in this Paragraph 19 shall be construed to obligate the DIP Lender Parties or the Prepetition Secured Parties, in any way, to pay compensation to or to reimburse expenses of any Professional, or to ensure that the Owned Portfolio/Ancillary Debtors have sufficient funds to pay such compensation or reimbursement.

20. *Lien Perfection.* This Interim Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the DIP Liens and the Adequate Protection Liens without the necessity of filing or recording any financing statement, deed of trust, mortgage, or other instrument or document which may otherwise be required under the law of any jurisdiction or the taking of any other action to validate or perfect the DIP Liens or the Adequate Protection Liens or to entitle the DIP Liens or the Adequate Protection Liens to the priorities granted herein. Notwithstanding the foregoing, the DIP Lender Parties and/or the Prepetition Secured Parties may, in their sole discretion, file such financing statements, mortgages, security agreements, notices of liens and other similar documents, and are hereby granted relief from the automatic stay of section 362 of the Bankruptcy Code in order to do so, and all such financing statements, mortgages, security agreements, notices and other agreements or documents shall be deemed to have been filed or recorded at the time and on the date of the commencement of the Chapter 11 Cases. The DIP Lender Parties and/or Prepetition Secured Parties may, in their sole discretion, file a photocopy of this Interim Order as a financing statement with any recording officer designated to file financing statements or with any registry of deeds or similar office in any

jurisdiction in which any Debtor has real or personal property and, in such event, the subject filing or recording officer shall be authorized to file or record such copy of this Interim Order.

21. *Termination.* The occurrence and continuance of any of the following events, unless such occurrence and continuance is waived by the DIP Lender Parties and the Prepetition Secured Parties in their respective sole discretion (as applicable), shall constitute a termination event (collectively, the “**Events of Default**”):

(i) The Final Order as it relates to the DIP Facility, which shall be in a form and substance (a) acceptable to the DIP Lender Parties in their respective sole and absolute discretion, and (b) acceptable to KeyBank and HUD or as otherwise ordered by the Court, is not entered within 35 days of the Petition Date;

(ii) The failure to have a Final Order as it relates to the use of Cash Collateral (whether it be consensual with the Prepetition Secured Parties pursuant to Bankruptcy Code section 363(c)(2)(A) or with Bankruptcy Court approval pursuant to Bankruptcy Code Section 363(c)(2)(B)), within 35 days of the Petition Date.

(iii) The failure by the Owned Portfolio/Ancillary Debtors to make, or cause to be made, any payment under this Interim Order to the DIP Lender Parties and/or Prepetition Secured Parties when due;

(iv) The failure by the Owned Portfolio/Ancillary Debtors to deliver to the DIP Lender Parties and/or the Prepetition Secured Parties any of the material documents or other material information required to be delivered pursuant to this Interim Order when due or any such documents or other information shall contain a material misrepresentation;

(v) The failure by the Owned Portfolio/Ancillary Debtors to comply with any Budget Covenants;

(vi) The Owned Portfolio/Ancillary Debtors shall grant, create, incur or suffer to exist any postpetition liens or security interests other than: (a) those granted pursuant to this Interim Order; (b) carriers', mechanics', operator's, warehousemen's, repairmen's or other similar liens arising in the ordinary course of business for amounts outstanding as of the Petition Date, even if recorded after the Petition Date; (c) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation; (d) deposits to secure the payment of any post-petition statutory obligations, performance bonds and other obligations of a like nature incurred in the ordinary course of business; and (e) any Prepetition Permitted Liens;

(vii) An order shall be entered reversing, adversely amending, adversely supplementing, staying, vacating, or otherwise adversely modifying any material provision of this Interim Order without the written consent of the DIP Lender Parties and the Prepetition Secured Parties;

(viii) There shall be a breach by any of the Owned Portfolio/Ancillary Debtors of any provisions of this Interim Order or, with respect to the Non-HUD/Ancillary Debtors, the DIP Loan Documents, the DIP Loan Documents shall cease to be in full force and effect or shall have been reversed, modified, amended, stayed, vacated or subject to stay pending appeal, in the case of any modification or amendment;

(ix) The Owned Portfolio/Ancillary Debtors file a motion seeking approval to create, incur, or suffer to exist any claim that is *pari passu* with or senior to the DIP Superpriority Claims and/or the Adequate Protection Superpriority Claims (other than the DIP Superpriority Claims);

(x) The Owned Portfolio/Ancillary Debtors shall create, incur, or suffer any other claim which is *pari passu* with or senior to the DIP Superpriority Claims;

(xi) Except for the DIP Super-priority Claims, the Owned Portfolio/Ancillary Debtors shall create, incur, or suffer any other claim which is *pari passu* with or senior to the Adequate Protection Superpriority Claims.

(xii) The Owned Portfolio/Ancillary Debtors shall fail to achieve any agreed milestone (as attached hereto as **Exhibit 3**) as and when agreed;

(xiii) The Court shall have entered an order dismissing any of the Chapter 11 Cases;

(xiv) The filing of a proposed plan of reorganization or liquidation that is not acceptable to the Prepetition Secured Parties and/or the DIP Lender Parties;

(xv) The Court shall have entered an order converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code or any other chapter of the Bankruptcy Code;

(xvi) The Court shall have entered an order authorizing the appointment or election of a trustee or examiner with expanded powers or any other representative with expanded powers relating to the operation of the businesses in the Chapter 11 Cases;

(xvii) The Court shall have entered an order granting relief from the automatic stay imposed by section 362 of the Bankruptcy Code to any entity other than the DIP Lender Parties and the Prepetition Secured Parties with respect to the DIP Collateral, the Adequate Protection Collateral or Cash Collateral without the written consent of the DIP Lender Parties and the Prepetition Secured Parties;

(xviii) A filing by any of the Owned Portfolio/Ancillary Debtors of any motion, pleading, application or adversary proceeding challenging the validity, enforceability, perfection or priority of the liens securing the DIP Obligations or the Prepetition Secured Obligations or

asserting any other cause of action against and/or with respect to the DIP Obligations, the Prepetition Secured Obligations, the DIP Collateral, the Adequate Protection Collateral, Cash Collateral, the DIP Lender Parties or the Prepetition Secured Parties (or if the Owned Portfolio/Ancillary Debtors support any such motion, pleading, application or adversary proceeding commenced by any third party);

(xix) The Owned Portfolio/Ancillary Debtors shall use Cash Collateral in any manner inconsistent with the Budget and the other terms of this Interim Order;

(xx) The HUD Debtors shall use Cash Collateral in any manner inconsistent with the applicable regulatory agreements between such HUD Debtor and the Secretary of HUD;

(xxi) The sale or transfer of any assets of any of the Owned Portfolio/Ancillary Debtors outside of the ordinary course of business without the prior consent and approval of the DIP Lender Parties and the Prepetition Secured Parties;

(xxii) Impairment or failure to preserve the DIP Obligations, Prepetition Secured Obligations, or Adequate Protection Obligations; and

(xxiii) Subject to the rights preserved under Paragraph 14, the Court shall have entered an order avoiding, disallowing, subordinating or recharacterizing any claim, lien, or interest held by the Prepetition Secured Parties arising under the Prepetition Loan Documents, unless (i) the Owned Portfolio/Ancillary Debtors have sought a stay of such order within five (5) business days after the date of such issuance, and such order is stayed, reversed or vacated within ten (10) business days after the date of such issuance or (ii) the Prepetition Secured Parties have consented to such order in writing.

22. *Rights and Remedies upon Event of Default.* Immediately upon the occurrence of an Event of Default, the DIP Lender Parties shall have no obligation to advance any further funds

under the DIP Facility and/or the DIP Loan Documents. Additionally, upon the occurrence of an Event of Default and upon the DIP Lender Parties or a Prepetition Secured Party providing five (5) calendar days written notice (the “**Remedies Notice Period**”) to the Owned Portfolio/Ancillary Debtors, their restructuring counsel, the U.S. Trustee, and counsel to the Committee, if any, the Owned Portfolio/Ancillary Debtors’ right to use Cash Collateral in accordance with the terms of this Interim Order shall be terminated (the date of any such termination, the “**Termination Date**”). During the Remedies Notice Period, the Owned Portfolio/Ancillary Debtors, the U.S. Trustee or any Committee may seek an emergency hearing before this Court for the purpose of obtaining an order authorizing the Owned Portfolio/Ancillary Debtors’ continued use of Cash Collateral or to contest whether an Event of Default has occurred. Upon the timely filing of such a motion seeking an emergency hearing, the Remedies Notice Period shall be extended until the Court issues an order with respect to any expedited motion as described in the preceding sentence, and the Owned Portfolio/Ancillary Debtors or any party in interest shall be permitted to use of Cash Collateral only for critical payroll (excluding amounts for key employee retention and incentive programs, if any and excluding any payments to ownership, equity or insiders other than CEO and CFO) and other critical expenses necessary to keep the Owned Portfolio/Ancillary Debtors’ businesses operating in accordance with the applicable Budget during the Remedies Notice Period. Nothing herein shall limit the ability of the Owned Portfolio/Ancillary Debtors to seek authority to use Cash Collateral without the consent of the Prepetition Secured Parties and the DIP Lender Parties at any time, and all rights of the Prepetition Secured Parties and the DIP Lender Parties to challenge such request are preserved.

23. *Preservation of Rights Granted Under this Interim Order.*

(i) Notwithstanding any order dismissing any of the Chapter 11 Cases under section 1112 of the Bankruptcy Code (x) the DIP Superpriority Claims, Adequate Protection Superpriority Claims, the other administrative claims granted pursuant to this Interim Order and the DIP Liens and the Adequate Protection Liens shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order until the respective DIP Obligations and the Adequate Protection Obligations have been paid and satisfied in full in cash (and such DIP Superpriority Claims and the Adequate Protection Superpriority Claims, the other administrative claims granted pursuant to this Interim Order and the DIP Liens and the Adequate Protection Liens shall, notwithstanding such dismissal, remain binding on all parties in interest); and (y) the Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in clause (x) above.

(ii) If any or all of the provisions of this Interim Order are hereafter reversed, modified or stayed, such reversal, stay, or modification shall not affect: (i) the validity, priority or enforceability of any DIP Obligations and Adequate Protection Obligations incurred prior to the actual receipt of written notice by the DIP Lender Parties or Prepetition Secured Parties, respectively, of the effective date of such reversal, stay or modification; or (ii) the validity, priority or enforceability of the DIP Liens or the Adequate Protection Liens. Notwithstanding any such reversal, stay or modification, any use of the Cash Collateral or any DIP Obligations or Adequate Protection Obligations incurred by the Owned Portfolio/Ancillary Debtors hereunder, as the case may be, prior to the actual receipt of written notice by the DIP Lender Parties or Prepetition Secured Parties, respectively, of the effective date of such reversal, stay or modification shall be governed in all respects by the original provisions of this Interim Order, and the DIP Loan

Documents and the Prepetition Secured Parties shall be entitled to all of the rights, remedies, privileges and benefits granted herein and to the protections afforded in section 364(e) of the Bankruptcy Code with respect to all uses of the Cash Collateral and all DIP Obligations and Adequate Protection Obligations.

(iii) Subject to Paragraph 14 of this Interim Order, the adequate protection payments made pursuant to this Interim Order shall not be subject to counterclaim, setoff, subordination, recharacterization, defense or avoidance in the Chapter 11 Cases or any subsequent chapter 7 cases (other than a defense that the payment has actually been made).

(iv) Except as expressly provided in this Interim Order, the DIP Obligations, the Adequate Protection Obligations, the DIP Superpriority Claims, the Adequate Protection Superpriority Claims, the DIP Liens, and the Adequate Protection Liens and all other rights and remedies of the DIP Lender Parties or the Prepetition Secured Parties granted by the provisions of this Interim Order shall survive, and shall not be modified, impaired or discharged by the entry of an order converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, dismissing any of the Chapter 11 Cases, or by any other act or omission. The terms and provisions of this Interim Order shall continue in the Chapter 11 Cases, in any Successor Cases if the Chapter 11 Cases cease to be jointly administered, or in any superseding chapter 7 cases under the Bankruptcy Code, and the DIP Liens, the Adequate Protection Liens, the DIP Superpriority Claims, the Adequate Protection Superpriority Claims, the other administrative claims granted pursuant to this Interim Order, and all other rights and remedies of the DIP Lender Parties and the Prepetition Secured Parties granted by the provisions of this Interim Order, respectively, shall continue in full force and effect until all DIP Obligations and the Adequate Protection Obligations, respectively, are indefeasibly paid in full in cash.

(v) The DIP Obligations shall not be discharged by the entry of an order confirming any plan of reorganization in any of the Chapter 11 Cases, notwithstanding the provisions of section 1141(d) of the Bankruptcy Code, unless such obligations have been indefeasibly paid in full in cash (other than contingent indemnification obligations for which no claim has been asserted), on or before the effective date of such confirmed plan of reorganization, unless the DIP Lender Parties have otherwise agreed in writing.

24. *No Marshalling.* Subject to entry of the Final Order, the DIP Lender Parties and the Prepetition Secured Parties shall not be subject to the equitable doctrine of “marshalling” or any other similar doctrine with respect to any of the DIP Collateral and/or the Adequate Protection Collateral (including Cash Collateral).

25. *Binding Effect.* The provisions of this Interim Order, including all findings herein, shall be binding upon all parties in interest in the Chapter 11 Cases, including, without limitation, the DIP Lender Parties, the Prepetition Secured Parties, the Owned Portfolio/Ancillary Debtors, and their respective successors and assigns (including any trustee hereinafter appointed or elected for the estate of any Debtor, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary appointed as a legal representative of the Owned Portfolio/Ancillary Debtors or with respect to the property of the estate of any of the Owned Portfolio/Ancillary Debtors) and shall inure to the benefit of the DIP Lender Parties, the Prepetition Secured Parties and the Owned Portfolio/Ancillary Debtors and their respective successors or assigns.

26. *Modification of Automatic Stay.* The Owned Portfolio/Ancillary Debtors are authorized and directed to perform all acts and to make, execute and deliver any and all instruments as may be reasonably necessary to implement the terms and conditions of this Interim Order and the transactions contemplated hereby. The automatic stay of section 362 of the Bankruptcy Code is

hereby modified to permit the Owned Portfolio/Ancillary Debtors, the DIP Lender Parties, and each of the Prepetition Secured Parties to accomplish the transactions contemplated by this Interim Order.

27. *Headings.* The headings in this Interim Order are for purposes of reference only and shall not limit or otherwise affect the meaning of this Interim Order.

28. *Effectiveness.* This Interim Order shall constitute findings of fact and conclusions of law and shall take effect immediately upon entry hereof, and there shall be no stay of execution of effectiveness of this Interim Order. To the extent that any finding of fact shall be determined to be a conclusion of law, it shall be so deemed and vice versa.

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

30. *Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Interim Order.* The DIP Lender Parties have acted in good faith in connection with this Interim Order and are entitled to rely upon the protections granted herein and by section 364(e) of the Bankruptcy Code. Based on the findings set forth in this Interim Order and the record made during the Interim Hearing, and in accordance with section 364(e) of the Bankruptcy Code, in the event any or all of the provisions of this Interim Order are hereafter reargued, reconsidered, reversed, modified, amended, or vacated by a subsequent order of this Court or any other court, the DIP Lender Parties are entitled to the protections provided in section 364(e) of the Bankruptcy Code to the maximum extent set forth therein. Any such modification, amendment or vacatur shall not affect the extent, validity, perfection, priority, allowability, enforceability or non-avoidability of any advances previously made or made hereunder, or lien, claim or priority granted, perfected, authorized or created hereby, unless modification, amendment or vacatur

pertains to an authorization to obtain credit or incur debt, or to the granting of a priority lien, that is stayed pending appeal. Any liens or claims granted to the DIP Lender Parties hereunder arising prior to the effective date of any such modification, amendment or vacatur of this Interim Order shall be governed in all respects by the original provisions of this Interim Order, including to all rights, remedies, privileges and benefits granted herein.

31. *Indemnification.* The Non-HUD/Ancillary Debtors shall indemnify and hold harmless the DIP Lender Parties and their respective shareholders, partners, directors, agents, officers, subsidiaries and affiliates, successors and assigns, attorneys and professional advisors, in their respective capacities as such, in accordance with and only if and to the extent provided pursuant to the terms and conditions of the DIP Loan Agreement.

32. *Proofs of Claim.* The DIP Lender Parties will not be required to file proofs of claim in any of the Chapter 11 Cases or Successor Cases for any claim allowed herein. Notwithstanding any order entered by the Court in relation to the establishment of a bar date in any of the Chapter 11 Cases or Successor Cases to the contrary, S&T and Public Credit are hereby authorized and entitled, in their respective sole discretion, but not required, to file (and amend and/or supplement, as it sees fit) a proof of claim and/or aggregate proofs of claim in each of the Chapter 11 Cases or Successor Cases with respect to the S&T Prepetition Loan and the Public Credit Prepetition Loan. Any proof of claim filed by S&T or Public Credit will also be deemed to constitute the filing of such proof of claim in the Chapter 11 Cases of all other Owned Portfolio/Ancillary Debtors against which a claim may be asserted under the S&T Prepetition Loan Documents or the Public Credit Prepetition Loan Documents, as applicable. Any order entered by the Court in relation to the establishment of a bar date in any of the Chapter 11 Cases or Successor Cases shall not apply to any claim of the DIP

Lender Parties arising under, or in connection with, the DIP Loan Documents, the S&T Prepetition Loan Documents, and/or the Public Credit Prepetition Loan Documents, as applicable.

33. *Survival of Interim Order.* The provisions of this Interim Order and any actions taken pursuant hereto shall survive entry of any order which may be entered (i) confirming any chapter 11 plan or plans of reorganization or liquidation in the Chapter 11 Cases, (ii) converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, (iii) to the extent authorized by applicable law, dismissing any of the Chapter 11 Cases, (iv) withdrawing of the reference of any of the Chapter 11 Cases from the Court, or (v) providing for abstention from handling or retaining of jurisdiction of any of the Chapter 11 Cases in the Court.

34. *Controlling Effect of Interim Order.* To the extent any provision of this Interim Order conflicts or is inconsistent with any provision of the Motion, the provisions of this Interim Order shall control to the extent of such conflict.

35. *Order Immediately Effective.* Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are effective immediately and enforceable upon its entry.

36. *Debtor Authorization to Effectuate Relief.* The Owned Portfolio/Ancillary Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

37. *Jurisdiction.* This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

38. *Final Hearing.* The final hearing on the Motion shall be held on _____, 2024, at ____:____.m. (prevailing Eastern Time) in Courtroom B, First Floor Penn Traffic Building, 319 Washington Street, Johnstown, Pennsylvania 15901. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m. (prevailing Eastern Time), on _____,

2024. Responses or objections to the Motion and entry of a final order with respect to the Motion must: (i) be made in writing; (ii) state with particularity the grounds for the response or objection; (iii) conform to the Bankruptcy Rules and the Local Rules; and (iv) be served upon (a) proposed counsel to the Owned Portfolio/Ancillary Debtors, Saul Ewing LLP, 1500 Market Street, 38th Floor, Philadelphia, Pennsylvania 19102, Attn: Jeffrey C. Hampton (jeffrey.hampton@saul.com) and Sabrina Espinal (sabrina.espinal@saul.com), and 1201 N. Market Street, Suite 2300, Wilmington, Delaware 19801, Attn: Mark Minuti (mark.minuti@saul.com), Monique B. DiSabatino (monique.disabatino@saul.com) and Paige N. Topper (paige.topper@saul.com); (b) counsel to S&T, Grenen & Birsic, PC, One Gateway Center, 9th Floor, Pittsburgh, Pennsylvania 15222, Attn: James F. Grenen (jgrenen@grenenbirsic.com) and Joseph S. Sisca (jsisca@grenenbirsic.com); (c) counsel to the KeyBank National Association, Vorys, Sater, Seymour and Pease LLP, 52 East Gay Street, Columbus, Ohio 43215, Attn: Melissa S. Giberson (msgiberson@vorys.com) and Kari B. Coniglio (kbconiglio@vorys.com); (d) counsel to Public Credit, Campbell & Levine, LLC, 310 Grant Street, Suite 1700, Pittsburgh, Pennsylvania 15219, Attn: Paul Cordaro (pcordaro@camlev.com) and Jeanne S. Lofgren (jlofgren@camlev.com); (e) the Office of the United States Trustee for the Western District of Pennsylvania, Attn: Timothy J. Fox (timothy.fox@usdoj.gov); and (f) any statutory committee appointed in these cases.

Dated: _____, 2024

Jeffery A. Deller
United States Bankruptcy Judge

EXHIBIT 1

DIP LOAN AGREEMENT

DEBTOR-IN-POSSESSION LOAN AND SECURITY AGREEMENT

THIS **DEBTOR-IN-POSSESSION LOAN AND SECURITY AGREEMENT** (this “Agreement”), is made and entered into as of _____ (the “Effective Date”), by and among the following parties (the “Parties”):

Guardian Elder Care at Beaver Falls, LLC (“Beaver Falls”), **Guardian Elder Care at Bethel Park, LLC** (“Bethel Park”), **Guardian Elder Care at Brockway, LLC** (“Brockway”), **Guardian Elder Care at Greensburg, LLC** (“Greensburg”), **Guardian Elder Care at Lower Burrell, LLC** (“Lower Burrell”), **Guardian Elder Care at Monongahela, LLC** (“Monongahela”), **Guardian Elder Care at Munhall, LLC** (“Munhall”), **Guardian Healthcare FOR Group, LLC** (“FOR Group”), **Guardian Healthcare FOR LLC 99% Holdco, LLC** (“Holdco, LLC”), **GEC Beaver Falls Real Estate, LLC** (“Beaver Falls RE”), **GEC Lower Burrell Real Estate, LLC** (“Lower Burrell RE”), **GEC Munhall Real Estate, LLC** (“Munhall RE”), **GEC Monongahela Real Estate, LLC** (“Monongahela RE”), **GEC Bethel Park Real Estate, LLC** (“Bethel Park RE”), **GEC Greensburg Real Estate, LLC** (“Greensburg RE”), and **Guardian Healthcare FOR HUD Master Tenant, LLC** (“Master Tenant”), each a Pennsylvania limited liability company, **Guardian Elder Care at Fairmont, LLC** (“Fairmont”) and **GEC Fairmont Real Estate, LLC** (“Fairmont RE”), each a West Virginia limited liability company, **Guardian Healthcare FOR LLC 1% Holdco, Inc.** (“Holdco, Inc.”), a Pennsylvania corporation, **GEC Highland View, LP** (“Highland View, LP”), a Pennsylvania limited partnership, **Guardian Healthcare Pharmacy, LLC**, **Guardian Healthcare Rehabilitation Services, LLC**, and **Guardian Healthcare Home & Community Services, LLC** (each of the foregoing entities a “Borrower” and collectively, the “Borrowers”).

And

PUBLIC CREDIT, LLC, a Pennsylvania limited liability company, its successors and assigns (“Public Credit”) and **S&T BANK**, in its capacity as lender (“S&T” and each a “Lender” and collectively, the “Lenders”).

And

PUBLIC CREDIT, LLC, as collateral agent for the Lenders (the “DIP Collateral Agent”) and **S&T BANK**, as collection agent for the Lender (“DIP Collection Agent”).

RECITALS

A. On July 29, 2024 (the “Petition Date”), each of the above-referenced Borrowers filed a voluntary petition for relief under chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Western District of Pennsylvania (the “Bankruptcy Court”) at bankruptcy cases numbers [_____] through [_____] (the “Bankruptcy Cases”), proposed to be jointly administered at Bankruptcy Case No. _____ (the “Bankruptcy Case”). Each of the Borrowers are operating their respective bankruptcy estates as a debtor in possession.

B. Prior to the Petition Date, Beaver Falls, Bethel Park, Fairmont, Lower Burrell, Monongahela, Munhall, Holdco, Inc., FOR Group, and Holdco, LLC (each a “Prepetition Borrower” and collectively, the “Prepetition Borrowers”) executed and delivered to Public Credit that certain Revolving Line of Credit Loan Agreement dated as of March 22, 2024 (the “Prepetition Credit Agreement”) pursuant to which the Prepetition Borrowers executed a Revolving Line of Credit Promissory Note dated as of March 22, 2024 (the “Prepetition Note”) in the amount of \$4,000,000 (the “Prepetition Loan”).

C. To secure repayment of the Prepetition Loan, the Prepetition Borrowers executed and delivered to Public Credit that certain Security Agreement dated as of March 22, 2024 (the “Prepetition Security Agreement”) granting Public Credit a security interest in and lien upon the collateral described therein (the “Prepetition Collateral”). Public Credit perfected its interest in the Prepetition Collateral by filing UCC-1 Financing Statements with the respective Secretary of States for the states in which a Borrower is organized.

D. Borrowers have requested, and the Lenders have agreed to provide, in exchange for Liens (as hereinafter defined) on all of the Borrowers’ assets, a secured debtor-in-possession credit facility in the aggregate unpaid amount of [Six Million Five Hundred Thousand and 00/100 Dollars (\$6,500,000.00)] (the “DIP Facility”) in commitments and loans from the Lenders, which shall consist of (a) a new money delayed draw term loan facility (“New Money DIP Loan”) in an aggregate principal amount of up to [Two Million Two Hundred Thousand and 00/100 Dollars \$2,500,000] (“New Money DIP Ceiling”), and (b) a [Four Million and 00/100 Dollars (\$4,000,000.00)] delayed draw term loan facility to roll up the existing outstanding obligations under the Prepetition Credit Agreement (the “Roll Up DIP Loan”, and collectively with the New Money Dip Loan, the “DIP Loan”).

E. To secure repayment of the DIP Loan, each Borrower will provide to the DIP Collateral Agent for the benefit of the Lenders, pursuant to section 364(c) of the Bankruptcy Code, valid, perfected and enforceable Liens on all Assets (collectively, the “Post-Petition Security Interest”) of the Borrowers, including Avoidance Proceeds (as defined herein), subject to the Carve-Out and with the following priorities: (1) the DIP Collateral Agent shall receive junior Liens on all of the Borrowers’ Assets which were encumbered by existing perfected Liens as of the Petition Date; and (2) the DIP Collateral Agent shall receive first priority Liens on all of the Borrowers’ post-petition Cash Collateral to the extent the value of the post-petition Cash Collateral exceeds the value of the Cash Collateral on the Petition Date. In addition to the Collateral, any amounts owed to the Lenders by the Borrowers in connection with the DIP Loan shall receive, subject to the Carve-Out, Superpriority administrative expense status.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises and of the mutual and independent covenants, promises and undertakings hereinafter set forth, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties hereto agree as follows:

ARTICLE I – RECITALS; DEFINITIONS AND CERTAIN USAGES

1.1 Recitals. The foregoing recitals are adopted by reference and made a part of this Agreement as though fully restated herein.

1.2 Definitions. The following words and phrases, when and where used in this Agreement, shall have the meanings ascribed to them as follows:

(a) Capitalized terms used in this Agreement but not otherwise defined herein shall have the meanings ascribed to them in the DIP Promissory Notes (as hereinafter defined), unless the context hereof clearly requires otherwise.

(b) The following words and terms defined in the Uniform Commercial Code (as hereinafter defined) shall, unless the context hereof clearly requires otherwise, have the same meaning herein as therein provided: Accounts, Chattel Paper, Commercial Tort Claims, Deposit Accounts, Documents, Electronic Chattel Paper, Equipment, Fixtures, General Intangibles, Intellectual Property, Goods, Fixtures, Instrument, Inventory, Investment Property, Letter-of-Credit Rights, Proceeds and Supporting Indebtedness.

(c) “Affiliate” means with respect to any Person, any other Person that directly or indirectly Controls, is Controlled by or is under common Control with such Person.

(d) “Agreement” has the meaning set forth in the preamble to this Agreement.

(e) “Assets” means all of the assets of the Bankruptcy Estate, of any type whatsoever, whether or not reflected in the financial records of the Borrowers.

(f) “Authorized Officer” shall mean Allen Wilen, Chief Restructuring Officer.

(g) “Avoidance Proceeds” the proceeds from any Avoidance Actions (as defined in the DIP Financing Orders).

(h) “Bankruptcy Case” has the meaning set forth in Recitals to this Agreement.

(i) “Bankruptcy Code” has the meaning set forth in Recitals to this Agreement.

(j) “Bankruptcy Court” has the meaning set forth in Recitals to this Agreement.

(k) “Bankruptcy Estate” means the estate of each Borrower created pursuant to section 541 of the Bankruptcy Code upon commencement of the Bankruptcy Case.

(l) “Borrower Agent” shall mean ____ [please add] ____.

(m) “Budget” means the budget prepared by the Borrowers in the form attached as Exhibit A to this Agreement and initially furnished to the Lenders on the Effective Date

and which is approved by, and in form and substance satisfactory to each Lender in its sole discretion and as the same may be updated, modified or supplemented from time to time with each Lender's consent.

(n) "Business Day" means any day other than a Saturday, Sunday, national holiday or other day on which the national or state banks located in the Commonwealth of Pennsylvania are authorized to be closed.

(o) "Cash Collateral" means cash, accounts receivable, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest and includes the proceeds, products, offspring, rents, or profits of property and the fees, charges, accounts or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties subject to a security interest as provided in section 552(b) of the Bankruptcy Code, whether existing before or after the commencement of a case under the Bankruptcy Code.

(p) "Carve-Out" has the meaning set forth in the DIP Financing Orders.

(q) "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601, *et seq.*), as amended, and all rules, regulations and standards issued thereunder.

(r) "Change in Control" means any of the following:

(i) any merger, consolidation, reorganization, recapitalization, or other business combination involving any Borrower, in which the equity owners of the Borrower immediately prior thereto do not own, directly or indirectly, outstanding voting securities representing more than 50% of the combined outstanding voting power of the surviving entity in such merger, consolidation, reorganization, recapitalization or other business combination, other than a transaction expressly contemplated and permitted under this Agreement;

(ii) the sale of all, or substantially all, of the assets of the Borrowers to a third party, other than a transaction expressly contemplated and permitted under this Agreement; or

(iii) the sale of voting securities of the Borrowers in a transaction or a series of related transactions to any Person (or group of Persons acting in concert), that results in such Person (or group of Persons) (together with their Affiliates) owning more than 50% of the outstanding voting securities of any Borrower.

(s) "Chapter 11 Plan" means any plan of reorganization or liquidation under chapter 11 of the Bankruptcy Code filed by one or more of the Borrowers in a form and substance acceptable to each Lender and is in accordance with the terms of the DIP Promissory Notes and this Agreement.

(t) “Claim” has the meaning set forth in Section 7.2(a).

(u) “Collateral” means, collectively, all assets of the Borrowers, including without limitation, all interests in real property, and Accounts, Chattel Paper, Commercial Tort Claims, Deposit Accounts, Documents, Electronic Chattel Paper, Equipment, Fixtures, General Intangibles, Goods, Instruments, Inventory, Intellectual Property, Investment Property, Letter-of-Credit Rights, Proceeds and Supporting Indebtedness of each Borrower, whether now owned or acquired in the future to the DIP Financing Orders as security for the Indebtedness. The Collateral shall include all “Collateral” referenced in the DIP Financing Orders, including a first lien and security interest on Avoidance Proceeds.

(v) “Committee” means any official committee of unsecured creditors appointed in the Bankruptcy Case pursuant to section 1102 of the Bankruptcy Code.

(w) “Commitment” means, as to any Lender, such Lenders’ commitment to make the New Money DIP Loan under this Agreement. The initial amount of each Lenders’ Commitment is set forth on Annex A

(x) “Condition” means any condition that results in or otherwise relates to an Environmental Liability.

(y) “Control”, “Controls” or “Controlled” means the possession by one Person of the power to direct or cause the direction of the management or policies of another Person through the direct or indirect ownership of equity interests therein or by any other arrangement.

(z) “DIP Agents” means collectively the DIP Collection Agent and the DIP Collateral Agent.

(aa) “DIP Collateral Agent” means Public Credit in its capacity as DIP Collateral Agent for the Lenders hereunder and any successor thereto in such capacity and in its capacity as a Lender.

(bb) “DIP Collection Agent” means, S&T at all times prior to payment in full of the DIP Promissory Note issued in favor of S&T, and Public Credit at all times after payment in full of the DIP Promissory Note issued in favor of S&T, in its capacity as DIP Collection Agent for Lenders hereunder and any successor thereto in such capacity and in its capacity as a Lender.

(cc) “DIP Financing Orders” means collectively the Interim Order and the Final Order.

(dd) “DIP Loan” has the meaning set forth in Recitals to this Agreement.

(ee) “DIP Motion” means *The Owned Portfolio/Ancillary Debtors’ Motion for Interim and Final Orders (I) Authorizing (A) Senior Secured, Superpriority Postpetition Financing and (B) The Use of Cash Collateral; (II) Granting Adequate Protection; (III) Modifying the Automatic Stay; and (IV) Granting Related Relief* filed by the Borrowers in the Bankruptcy Case.

(ff) “DIP Promissory Notes” has the meaning set forth in Section 2.1.

(gg) “District Court” means the United States District Court for the Western District of Pennsylvania.

(hh) “Draw Request” shall have the meaning given that term in Section 2.1(d) herein.

(ii) “Effective Date” means the date set forth in the preamble to this Agreement.

(jj) “Environmental Laws” means all current and future Laws which address, are related to, or are otherwise concerned with environmental, health or safety issues (including occupational safety and health).

(kk) “Environmental Liabilities” means any obligations or liabilities (whether asserted or unasserted, known or unknown, including any notices, claims, complaints, suits or other assertions of obligation or liability) that are (a) related to any environmental, health or safety issues, and (b) based upon or related to any provision of Environmental Law. The term “Environmental Liabilities” includes (without limitation) (i) fines, penalties, judgments, awards, settlements, Losses, damages (including foreseeable and unforeseeable consequential damages), costs, fees (including attorneys’ and consultants’ fees), expenses and disbursements; (ii) defense and other response to an administrative or judicial action (including notices, claims, complaints, Orders, suits and other assertions of liability); and (iii) financial responsibility for (x) cleanup costs and injunctive relief, including any Removal, Remedial or Response actions, and natural resource damages, and (y) any other compliance or Remedial measures.

(ll) “Environmental Permit” means any Permit that is authorized pursuant to an Environmental Law.

(mm) “Event of Default” has the meaning set forth in Section 6.1.

(nn) “Final Order” means a final and non-appealable order of the Bankruptcy Court, that must be in form and substance acceptable to both Lenders in their respective sole and absolute discretion, entered after proper notice, (a) authorizing the Borrowers to use Cash Collateral in accordance with the Budget, (b) granting each Lender adequate protection, (c) authorizing the Borrowers to borrow funds pursuant to the New Money DIP Loan up to the New Money DIP Ceiling and pursuant to this Agreement and the Post-Petition Loan Documents, (d) approving the Roll Up DIP Loan in its entirety and without being subject to any challenge, (e) providing for the waiver of any rights or remedies

pursuant to Section 506(c) and 552(b) of the Bankruptcy Code, (f) providing for the waiver and release of claims against the DIP Agent and each Lender, (g) providing for no rights to marshal the assets of the Borrowers, and (h) affording related relief.

(oo) “Floor” shall mean a per annum rate of interest equal to 0%.

(pp) “Governmental Entity” means any U.S. or non-U.S. federal, state, provincial, regional, local or municipal legislative, executive or judicial department, commission, board, bureau, agency, office, tribunal, court or other instrumentality, governmental or quasi-governmental, public international organization and any applicable stock exchange or securities regulatory authority, including without limitation, the United States Securities and Exchange Commission.

(qq) “HUD Borrowers” mean Beaver Falls, Beaver Falls RE, Fairmont, Fairmont RE, Monongahela, Monongahela RE, and the Master Tenant.

(rr) “Indebtedness” means all loans, advances, indebtedness, liabilities and obligations of every nature of the Borrowers to any Lender, however created, whether now existing or hereafter arising and whether direct or indirect, primary or as guarantor or surety, absolute or contingent, liquidated or unliquidated, matured or un-matured, participated in whole or in part, created by the extension of credit on account of the Borrowers under any letter of credit trust agreement, lease overdraft, agreement or otherwise, whether or not secured by additional collateral, whether originated with such Lender or owed to others and acquired by such Lender by purchase, assignment or otherwise, and including, without limitation, all loans, advances, indebtedness and each and every obligation or liability arising under or in connection with this Note, the DIP Financing Orders and/or the DIP Loan, all obligations to perform or forbear from performing acts, and agreements, documents and instruments evidencing, guarantying, securing or otherwise executed in connection with any of the forgoing, together with any and all renewals, modifications, amendments, restatements, rearrangements, consolidations, substitutions, replacements, enlargements and extensions thereof, whether for principal, interest (including interest accruing after the maturity of the DIP Loan and interest which, but for the filing of a petition in bankruptcy with respect to the Borrowers, would have accrued on any Indebtedness, whether or not a claim is allowed against the Borrowers for such interest in the related bankruptcy Proceeding), fees, expenses, indemnification or otherwise.

(ss) “Indemnified Party” and “Indemnified Parties” have the meanings set forth in Section 7.1.

(tt) “Indemnifying Party” has the meaning set forth in Section 7.2(a).

(uu) “Interim Order” means an interim order of the Bankruptcy Court, that must be in form and substance acceptable to both Lenders in their respective sole and absolute discretion, entered after proper notice (a) authorizing the Borrowers to use Cash Collateral in accordance with the Budget, (b) granting each Lender adequate protection,

(c) authorizing the Borrowers (other than the HUD Borrowers) to borrow funds under the DIP Loan and pursuant to this Agreement and the Post-Petition Loan Documents during the Interim Period in an amount not to exceed the Interim DIP Advance Cap and only to the extent authorized by the Interim Order, (d) granting to the DIP Collateral Agent for the benefit of the Lenders the Liens and priorities provided for herein to secure payment of the Indebtedness owed to the Lenders, and (e) affording related relief.

(vv) “Law” means all United States and non-U.S. federal, state and local laws, statutes, rules, regulations, standards, requirements, rules and principles of common law, ordinances and codes, now or hereafter in effect, including any judicial and administrative interpretations thereof, and all Orders.

(ww) “Lender” or “Lenders” has the meaning set forth in the preamble to this Agreement.

(xx) “Lien” means any mortgage, deed of trust, lien, pledge, charge, security interest, hypothecation, indenture, preferential right, assignment, option, production payment or other lien, encumbrance or collateral security instrument in, on or to, any Property or asset; or, the title of any vendor, lessor, lender or other secured party to, or interest or title of any Person under, any conditional sale or other title retention agreement, capital lease or other agreement with respect to any Property or asset; or, any adverse right or interest, defect in title, right of first option, right of first refusal, or similar restriction, including any restriction on use, voting, transfer, receipt of income, or exercise of any other attribute of ownership; or, the signing of any mortgage, deed of trust, pledge, charge, security agreement, hypothecation, indenture, assignment or similar instrument, or the signing or filing of a financing statement, personal property security act filing or other similar instrument, which names such Person as debtor, or the signing of any security agreement or other similar instrument authorizing any other party as the secured party thereunder to file any financing statement, personal property security act filing or other similar instrument. A Person shall be deemed to be the owner of any asset that it has placed in trust for the benefit of the holders of its indebtedness, which indebtedness is deemed to be extinguished under generally accepted accounting practices but for which such Person remains legally liable, and such trust shall be deemed to be a Lien.

(yy) “Loan Advances” mean individually or collectively any and all advances on account of the New Money DIP Loan made by Lenders from time to time pursuant to this Agreement.

(zz) “Losses” has the meaning set forth in Section 7.1.

(aaa) “Manage” and “Management” mean generation, production, handling, distribution, processing, use, storage, treatment, operation, transportation, recycling, reuse and/or disposal, as those terms are defined, construed or otherwise used in Environmental Laws.

(bbb) “Material Adverse Change” means any event, development or circumstance

that has had or could reasonably be expected to have a Material Adverse Effect on the operations, assets or properties, or financial condition of any of the Borrowers and/or the Bankruptcy Case, taken as a whole.

(ccc) “Material Adverse Effect” means an effect on the business, financial condition, results of operations, prospects, properties or other assets of the Borrowers or the ability of the Borrowers to perform their material obligations under this Agreement or any Post-Petition Loan Documents, which effect, either individually or in the aggregate with other such effects is adverse and material.

(ddd) “Maturity Date” means the earlier of: (i) [270 days after the Petition Date]; (ii) conversion or dismissal of the Bankruptcy Case, (iii) confirmation of a Chapter 11 Plan of Reorganization, or (iv) upon an earlier Material Adverse Change in the Bankruptcy Case, including, without limitation, the failure of the DIP Financing Orders to be approved by the Bankruptcy Court within thirty-five (35) days of the Effective Date, unless extended pursuant to a written instrument executed by the DIP Lenders and approved by the Bankruptcy Court.

(eee) “Non-HUD Borrowers” means any Bethel Park, Brockway, Greensburg, Lower Burrell, Munhall, Bethel Park RE, Highland View, LP, Greensburg RE, Lower Burrell RE and Munhall RE.

(fff) “Order” means any order, injunction, judgment, decree, ruling, writ, arbitration decision or award, Permit, license or assessment of a Governmental Entity, including any order of the Bankruptcy Court.

(ggg) “Party” and “Parties” have the meanings set forth in the preamble to this Agreement.

(hhh) “Periodic Term SOFR Determination Day” shall mean two (2) U.S. Government Securities Business Days prior to the first day of each SOFR Rate Interest Period; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Rate has not been published by the Term SOFR Administrator, then the Term SOFR Rate will be the Term SOFR Rate as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Rate was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day.

(iii) “Permit” means any permit, license, review, certification, approval, registration, consent or other authorization issued pursuant to any Law.

(jjj) “Person” means any individual, sole proprietorship, partnership, corporation, limited liability company, joint venture, unincorporated society or association, trust or other legal entity or any Governmental Entity.

(kkk) “Petition Date” has the meaning set forth in the Recitals to this Agreement.

(lll) “Pollutant” includes any substance, material, article or product that is defined or otherwise regulated under any Environmental Law as a “toxic” or “hazardous” substance, material or waste, a “pollutant,” or a “contaminant,” and including without limitation any petroleum product or byproduct, solvent, flammable or explosive material, radioactive material, asbestos, polychlorinated biphenyls (“PCBs”), dioxins, dibenzofurans, heavy metals, radon gas, mold, mold spores and mycotoxins.

(mmm) “Post-Petition Collateral” means the Collateral securing the Post-Petition Security Interest granted under this Agreement to secure the payment of all Indebtedness due and owing to the Lender. The Post-Petition Collateral shall include all “Collateral” as referenced in the Final Order, including, but not limited to, Avoidance Proceeds.

(nnn) “Post-Petition Debt” means all principal and interest, and all fees, costs and expenses and other amounts payable under the DIP Promissory Note under this Agreement, the Indebtedness and/or any other Post-Petition Loan Document.

(ooo) “Post-Petition Loan Documents” means this Agreement, the DIP Promissory Note and any other instrument or agreement at any time delivered in connection with the foregoing, in each case as the same may be amended or restated from time to time.

(ppp) “Post-Petition Security Interest” has the meaning set forth in the Recitals of this Agreement.

(qqq) “Proceeding” means any action, suit, proceeding, claim, arbitration, mediation or investigation before any Governmental Entity or before any arbitrator or mediator or similar party, or any investigation or review by any Governmental Entity or similar party.

(rrr) “Pro Rata Share” means, with respect to a Lenders’ obligation to make the New Money DIP Loan or any Loan Advances, 50%.

(sss) “Removal”, “Remedial” and Response” actions include the types of activities covered by CERCLA and other comparable Environmental Laws, and whether the activities are (a) those that might be taken by a Governmental Entity or (b) those that a Governmental Entity or any other Person might seek to be taken by a third party who is or has been engaged in the Management of Pollutants.

(ttt) “Representative” means the respective officers, directors, members, partners, employees and agents, including without limitation, attorneys, accountants, consultants and other representatives designated by the DIP Agent or any Lender.

(uuu) “Required Lender” means, S&T until such time as DIP Promissory Note

issued in favor of S&T is paid full, and, at all times thereafter, Public Credit.

(vvv) “S&T Prepetition Collateral” means any Cash Collateral from Guardian Healthcare Pharmacy, LLC, Guardian Healthcare Rehabilitation Services, LLC and Guardian Healthcare Home & Community Services, LLC and any mortgage from the Non-HUD Borrowers.

(www) “Superpriority” means priority in accordance with the provisions of section 364(c)(1) of the Bankruptcy Code over any and all administrative expenses of any kind whatsoever including, without limitation, the kind specified in sections 105, 326, 328, 330, 331, 503(b), 507(a), 507(b), 546(c) or 726 of the Bankruptcy Code.

(xxx) “Tax” and “Taxes” mean any federal, state, local or foreign income, alternative or add-on minimum tax, gross income, gross receipts, sales, use, *ad valorem*, value-added (or similar), transfer, franchise, profits, license, withholding, payroll, employment, unemployment, social security, disability, estimated, excise, severance, stamp, occupation, premium, property, environmental or windfall profit tax, custom, duty or other tax of any kind whatsoever (including any interest, penalty, or addition thereto).

(yyy) “Tax Return” means any return, declaration, report or information return or statement required to be filed with any Governmental Entity in connection with Taxes, including any schedule of attachment thereto and any amendment thereof.

(zzz) “Term SOFR Administrator” shall mean CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Rate selected by the Lender in its reasonable discretion).

(aaaa) “Term SOFR Rate” shall mean the one month forward-looking rate per annum based on SOFR as administered and published by the Term SOFR Administrator on each Periodic Term SOFR Determination Date; provided that, if the Term SOFR Rate determined as provided shall ever be less than the Floor, then the Term SOFR Rate shall be deemed to be the Floor. Borrowers understand that Lender may make loans based on other rates as well and that the Term SOFR Rate is not necessarily the lowest rate charged by Lender on its loans. Lender will tell Borrower the current Term SOFR Rate upon Borrower's request. The interest rate change will not occur more often than each month.

(bbbb) “Term SOFR Rate Interest Period” means (i) initially, the period beginning on the date of this Note and ending on but not including the first day of the immediately succeeding month (“SOFR Change Date”); and (ii) and thereafter, each one (1) month period ending on but not including the day of the SOFR Change Date. If an Interest Period is to end in a month for which there is no day which numerically corresponds to the SOFR Change Date, the SOFR Rate Interest Period will end on the last day for such month.

(cccc) “Termination Date” has the meaning set forth in Section 8.11.

(dddd) “Transaction Expenses” has the meaning set forth in Section 8.6.

(eeee) “Uniform Commercial Code” means the Uniform Commercial Code as in effect in the state in which the applicable Borrower was organized on the date of this Agreement and as amended from time to time.

(ffff) “U.S. Government Securities Business Day” shall mean any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

1.3 Certain Usages. As used in this Agreement:

(a) the meanings of words and phrases used herein are equally applicable to the singular and plural forms of those terms where appropriate; and references to the masculine, feminine or neuter gender includes each other gender where appropriate;

(b) the word “dollar” or the symbol “\$” refers to the legal tender of the United States of America;

(c) the words “herein,” “hereof,” “hereto,” “hereunder” and similar words refer to this Agreement; and

(d) the captions and headings contained in this Agreement are for convenience of reference only and shall not expand, limit or otherwise affect the provisions of this Agreement or the interpretation or applicability of such provisions.

ARTICLE II - AMOUNT AND TERMS OF CREDIT

2.1 DIP Loan.

(a) Commitments. On the terms and subject to the conditions and limitations hereof and in the DIP Financing Orders, and relying upon the representations and warranties in this Agreement and the other Post-Petition Loan Documents, during the period from the Effective Date to the Business Day immediately preceding the Maturity Date, each Lender agrees to make Loan Advances from time to time to the Borrowers, in an aggregate principal amount not to exceed such Lender’s Pro Rata Share of the New Money DIP Loan. Borrowers may not repay and reborrow under this Section 2.1(a). Under no circumstances shall the aggregate Loan Advances from the Lenders exceed the New Money DIP Ceiling. To the extent that at any time, for any reason, the outstanding, aggregate Loan Advances from Lenders exceeds the New Money DIP Ceiling, Borrowers shall be obligated, without further demand or notice, to promptly (but in no event more than one (1) Business Day thereafter) make full payment to each Lender an amount equal each Lender’s Pro Rata Share of such excess.

(b) Roll Up DIP Loan. Subject to the terms and conditions set forth herein,

upon entry of the Final Order (which, for purposes of certainty, must be in a form and substance acceptable to both Lenders in their respective sole and absolute discretion and shall include all Borrowers as obligors under the DIP Loan Documents and grant the Lenders security interests in all collateral and protections provided in this Agreement), (i) an aggregate principal amount of \$4,000,000 of the Prepetition Loan outstanding under the Prepetition Credit Agreement held by Public Credit shall be deemed to have automatically, without notice or any other action, rolled up into, be substituted and exchanged for and be deemed to be the Roll Up DIP Loan of Public Credit and (ii) the Roll Up DIP Loan shall be deemed made on the Effective Date and shall constitute a DIP Loan for all purposes hereunder and under the Post-Petition Loan Documents in the principal amount of \$4,000,000. Any Roll Up DIP Loans deemed made pursuant to this section and subsequently repaid or prepaid may not be reborrowed; provided that, for the avoidance of doubt, until any Prepetition Loans have been designated as a Roll Up DIP Loan hereunder and approved by the Final Order, the Roll Up DIP Loan shall continue to constitute a Prepetition Obligation secured by and entitled to the benefits of all Liens and security interests created and arising under the Prepetition Loan Documents, which Liens and security interests shall remain in full force and effect on a continuous basis, unimpaired, uninterrupted and undischarged, and having the same perfected status and priority (until such Prepetition Loans have been designated as a Roll Up DIP Loan hereunder and approved by the applicable DIP Orders). In connection with the foregoing, the parties hereto that are parties to the Prepetition Loan Documents hereby agree that, subject to the terms and conditions set forth in the DIP Financing Orders, the Prepetition Loan being substituted and exchanged for Roll Up DIP Loan shall automatically be deemed paid in full upon such Prepetition Loan becoming Roll Up DIP Loans hereunder, without any further action on the part of any party to such Prepetition Loan Documents.

(c) Availability Period. Subject to the terms and conditions set forth herein, during the period commencing with the entry of the Interim Order but prior to the entry of the Final DIP Order (the “Interim Period”), the maximum, aggregate amount of Loan Advances to be drawn by Borrowers under the DIP Facility shall be limited to [\$TBD] (the “Interim DIP Advance Cap”) in conformity with the Budget and as approved by the Bankruptcy Court in the Interim Order, subject to compliance with the terms, conditions and covenants of this Agreement and the other Post-Petition Loan Documents. All Loan Advances made available to the Borrowers during the Interim Period will be due and payable on the date that is thirty-five (35) days after the entry of the Interim Order unless either (i) the Final Order shall have been entered by the Bankruptcy Court on or before such date, or (ii) such payment date is extended by written agreement by and among the Borrowers and the Lenders. Subject to the terms and conditions set forth herein, upon the Bankruptcy Court’s entry of the Final Order until the Termination Date and satisfaction of any other conditions precedent, the full remaining amount of the New Money DIP Loan shall be available to the Borrowers in accordance with the terms of this Agreement.

(d) Requests for Loan Advances. Each request for a Loan Advance shall be made to Lenders jointly, in writing, by the Authorized Officer, specifying the date on which such Loan Advance is to be made and the amount of such Loan Advance (each a “Draw Request”). Subject to Borrowers’ compliance with the terms and conditions set forth

herein, each Lender shall make the proceeds of its Pro Rata Share of such Loan Advance available to Borrowers not later than 1:00 p.m. Indiana, Pennsylvania time on the date requested, by depositing such proceeds in the operating accounts of Borrower Agent maintained with Lender or by wire transfer in accordance with instructions from Borrower Agent or otherwise in accordance with this Agreement. Borrowers hereby authorize Lender to conclusively rely upon any request made by the Authorized Officer, whether that request is made in writing or orally.

(e) Evidence and Repayment.

(i) The DIP Loan shall be evidenced by the following: (A) a DIP Promissory Note executed and delivered by the Borrowers to S&T in the original principal amount of One Million Two Hundred Fifty Thousand and 00/100 Dollars (\$1,250,000.00), and (B) a DIP Promissory Note executed and delivered by the Borrowers to Public Credit in the original principal amount of Five Million Two Hundred Fifty Thousand and 00/100 Dollars (\$5,250,000.00), substantially in the form of Exhibit B (collectively, the “DIP Promissory Notes”). The DIP Loan shall bear interest in accordance with the appropriate provisions of this Agreement and/or the DIP Promissory Notes and be governed by the terms and conditions of this Agreement and the DIP Promissory Notes.

(ii) The DIP Promissory Notes and this Agreement shall be the legal, valid and binding obligation of the Borrowers, and shall be enforceable against each Borrower, jointly and severally, in accordance with their respective terms.

(iii) Each Borrower shall be liable for the repayment, in cash in immediately available funds, of the aggregate outstanding principal amount of the DIP Loan on the Maturity Date, together with interest as set forth in this Section 2.1, and all other Post-Petition Debt.

(f) Payments. Continuing monthly thereafter until the Maturity Date, the Borrowers shall make monthly payments of interest, only, to each Lender on or before the first (1st) day of each month commencing on August 1, 2024. Upon the Maturity Date, all outstanding amounts constituting the Post-Petition Debt shall become immediately due and payable by Borrowers to the Lenders without further application to or order of the Bankruptcy Court. The Borrowers shall make each payment required to be made under this Agreement prior to 5:00 pm (New York, New York time) to the account designated by the DIP Collection Agent. If any payment under this Agreement is due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments shall be made in the form of immediately available funds without setoff or counterclaim to the DIP Collection Agent.

(g) Interest.

(i) S&T Interest Rate. Unless and until there is an Event of Default,

interest shall accrue on all outstanding principal indebtedness under the DIP Promissory Note issued to S&T as follows: for each Term SOFR Rate Interest Period, at a fixed, per annum rate equal to the Term SOFR Rate, as determined for such Term SOFR Rate Interest Period, plus 5% (“S&T Applicable Interest Rate”).

- (ii) Public Credit Interest Rate. Unless and until there is an Event of Default, interest shall accrue on all outstanding principal indebtedness under the DIP Promissory Note issued to Public Credit shall be a variable rate which adjusts daily based on changes in an independent index which is the Prime Rate as published by The Wall Street Journal (or such other commercially available source providing quotations of Prime Rates as may be designated by Public Credit from time to time, the “Prime Rate”), *plus* 0.00% (the “Public Credit Applicable Interest Rate”), provided however, at no time shall the Public Credit Applicable Interest Rate be less than 3.75% per annum.

(h) Default Interest. Upon the occurrence of an Event of Default, (i) the interest shall accrue on all outstanding principal indebtedness under the DIP Promissory Note issued to S&T until paid in full (before or after the entry of any judgment) at a rate equal to 6% above the S&T Applicable Interest Rate, and (ii) the interest shall accrue on all outstanding principal indebtedness under the DIP Promissory Note issued to Public Credit until paid in full (before or after the entry of any judgment) at a rate equal to 6% above the Public Credit Applicable Interest Rate.

(i) Application of Payments. The DIP Collection Agent shall apply payments received hereunder, the DIP Promissory Notes, and/or the proceeds received on account any sale or liquidation of the Collateral (including any proceeds received by the DIP Collection Agent from insurance) as follows:

- a. first, to the payment of the Transaction Expenses,
- b. second, to accrued interest due and payable under the DIP Promissory Notes,
- c. third, to principal of the DIP Promissory Note issued to S&T until all Indebtedness under such DIP Promissory Note is paid in full, and
- d. fourth, to principal of the DIP Promissory Note issued to Public Credit until all Indebtedness under such DIP Promissory Note is paid in full.

- (j) Priority and Liens.

- (i) With the exception of the HUD Borrowers, the Lenders’ Liens on

the Post-Petition Collateral shall become effective immediately upon the Bankruptcy Court's entry of the Interim Order and the Lenders' funding of the initial advance of the DIP Loan pursuant to the terms of the Interim Order. The Lenders' Liens on the Post-Petition Collateral granted by the HUD Borrowers shall become effective immediately upon the Bankruptcy Court's entry of the Final Order. Subject to the Carve-Out, all Liens shall be junior Liens to the extent the Borrowers' assets were encumbered by existing perfected Liens as of the Petition Date. Subject to the Carve-Out and S&T Prepetition Collateral, the Lenders shall receive first priority Liens on all of the Borrowers' post-petition Cash Collateral to the extent the value of the post-petition Cash Collateral exceeds the value of the Cash Collateral on the Petition Date. The Lenders and each Borrower acknowledge and agree that the priority set forth in the preceding sentence shall be applicable irrespective of (A) anything to the contrary contained in any other document, filing or agreement related to the creation, attachment, perfection or existence of any security interest, (B) the time, place, order or method of attachment or perfection of any security interest, (C) the time or order of filing or recording of financing statements, deeds of trust or other documents, filed or recorded to perfect security interests or (D) any statutes, rules of law, or judicial interpretations to the contrary.

(ii) Upon entry of the Interim Order, all of the Indebtedness owed to the Lenders shall constitute an allowed administrative expense of the Borrowers in their Bankruptcy Cases, except for the HUD Borrowers. Upon entry of the Final Order, all of the Indebtedness owed to the Lenders shall constitute an allowed administrative expenses of all Borrowers, including the HUD Borrowers. Such administrative expense shall, subject to the Carve-Out, have Superpriority and shall at all times be senior to the rights of the Borrowers, the Bankruptcy Estates, and any successor trustee or estate representative in the Bankruptcy Cases or any subsequent Proceeding or case under the Bankruptcy Code.

(iii) Effective as of the entry of the Interim Order and subject to entry of a Final Order, the Borrowers irrevocably waive any right it may have to surcharge any of the Lenders' Collateral including Post-Petition Collateral, pursuant to sections 506(c), 552(b) of the Bankruptcy Code or otherwise. No other claim having a priority superior to or *pari passu* with that granted to the Lenders hereby and by the Interim Order and the Final Order shall be granted or approved or allowed while any obligations under this Agreement remain outstanding, subject to the Carve-Out.

(k) No Discharge except upon the Confirmation of a Chapter 11 Plan; Survival of Claims. Each Borrower agrees that (i) the Indebtedness to the Lenders shall not be released or extinguished by the entry of an order (A) converting the Bankruptcy Case to a chapter 7 case or (B) dismissing the Bankruptcy Case and (ii) the Superpriority of administrative claims granted to the Lenders pursuant to the Interim Order and the Final Order and described in Section 2.1 and the Liens granted to the Lender pursuant to the Interim Order and the Final Order and described in Section 2.1 shall not be affected in any manner by the entry of an order confirming a plan of reorganization in the Bankruptcy

Case. The terms and provisions of this Agreement and the other Post-Petition Loan Documents and the Liens in favor of the Lenders, granted pursuant to the Post-Petition Loan Documents, shall continue in full force and effect notwithstanding the entry of any such order, and such claims and liens shall maintain their priority as provided by the Post-Petition Loan Documents and to the maximum extent permitted by law until all of the Post-Petition Debt is indefeasibly paid in full and discharged.

(l) Waiver of any Priming Rights. Upon the entry of the Interim Order, and on behalf of itself and the Bankruptcy Estate, and for so long as any Post-Petition Debt shall be outstanding, each Borrower hereby irrevocably waives any right, pursuant to section 364(c) and 364(d) of the Bankruptcy Code or otherwise, to grant any Lien of equal or greater priority than the Lien securing the Post-Petition Debt to the Lenders, or to approve a claim of equal or greater priority than the Post-Petition Debt except as provided in Section 2.1.

2.2 Use of Proceeds. The proceeds of the New Money DIP Loan shall be used for Borrowers' expenses as set forth in the Budget in accordance with each line-item of the Budget, and only to the extent that Cash Collateral and any other funds of the Borrowers are insufficient to pay such expenses as they come due. The remaining proceeds of the DIP Loan shall be used to effect the Roll Up DIP Loan immediately upon entry of the Final Order. No proceeds of the DIP Loan may be used (a) to challenge the validity, priority, or extent of the Lender's interests and Liens in the Prepetition Collateral securing the Prepetition Loan; or (b) to fund any litigation seeking an order of court against any Lenders in which such Lender is named as a party to the Proceeding.

ARTICLE III — CONDITIONS TO EFFECTIVENESS

3.1 Conditions to Effectiveness. The effectiveness of this Agreement and obligation of the Lenders to advance any portion of the DIP Loan hereunder or under the DIP Promissory Notes is subject to the satisfaction (or waiver by each Lender) of each of the following conditions precedent:

(a) Interim Order. The Bankruptcy Court shall have entered the Interim Order within three (3) Business Days following the Petition Date, in form and substance acceptable to each Lender in its sole and absolute discretion, and such Interim Order shall be in full force and effect, shall not have been modified and shall not be subject to any appeal, and the consummation of the transactions contemplated under this Agreement and the other Post-Petition Loan Documents shall not be stayed by an order of any court.

(b) Budget. The Borrowers and each Lender shall have agreed upon the Budget in form and substance acceptable to each Lender in its sole and absolute discretion.

(c) Consents and Waivers. The Borrowers shall have received all material consents, approvals, authorizations, permits and waivers of, and delivered all notices to, third parties, including Governmental Entities and the Bankruptcy Court, necessary for the Borrowers to consummate the transactions provided for under this Agreement and the other

Post-Petition Loan Documents, and all such consents, approvals, authorizations, permits and waivers shall be in full force and effect.

3.2 Conditions to Lending. The obligation of each Lender to advance any portion of the DIP Loan to the Borrowers is subject to the satisfaction or written waiver by each Lender of each of the following conditions precedent:

(a) Each of the representations and warranties set forth in Article IV hereof shall be true and correct on and as of the date of the making of such advance (unless such representations and warranties are stated to relate to a specific earlier date, in which case such representations and warranties shall be true and correct as of such earlier date).

(b) Entry of the Final Order within thirty-five (35) days of the Petition Date.

(c) Borrower shall have paid all outstanding Transaction Expenses owed to each Lender.

(d) At the time of and immediately after giving effect to the making of any such advance, no Event of Default shall have occurred and be continuing.

(e) The Borrowers' compliance with the milestones set forth in this Agreement, including without limitation the timely filing of one or more motions to sell substantially all of the Borrowers' Assets or a Chapter 11 Plan that is acceptable to such Lender.

(f) The Borrowers must have received approval, on interim and final basis, by the Bankruptcy Court to immediately use and continue to use the Cash Collateral existing on or after the Petition Date within thirty-five (35) days from the Petition Date.

(g) Since the date of the filing of the Bankruptcy Case, no event or circumstance that would cause a Material Adverse Change shall have occurred.

(h) Each Lender shall have funded simultaneously with the other Lender, its Pro Rata Share of any Loan Advance requested by Borrower Agent pursuant to any Draw Request.

ARTICLE IV — REPRESENTATIONS AND WARRANTIES OF THE DEBTOR

Each Borrower represents and warrants to, and covenants with, the DIP Agent and each Lender as follows:

4.1 Organization. The Borrowers are duly formed under the laws of the states of their organization, are duly organized and validly existing under those laws and, subject to Bankruptcy Court approval, have full power to enter into and to pay and perform their respective obligations

under this DIP Promissory Notes, and are duly qualified or licensed in all other jurisdictions where the failure to so qualify would adversely affect the conduct of its respective business or its ability to perform any of its obligations under or the enforceability of this Agreement and the DIP Promissory Notes.

4.2 Authority. This Agreement has been duly authorized, executed and delivered by the Borrowers, and subject to Bankruptcy Court approval, is a valid, legal and binding obligation of each Borrower, is enforceable against each Borrower in accordance with its terms and does not and will not contravene any provisions of or constitute a default under any Borrowers' organization documents, any agreement to which any Borrower is a party or by which any Borrower or any of its property is bound, or any applicable law, regulation or order of any governmental authority.

4.3 No Conflict. The execution, delivery and performance by each Borrower of this Agreement, in accordance with the terms of the DIP Financing Orders, does not and will not (A) violate any provision of law, rule or regulation applicable to such Borrower or its charter or bylaws (or other similar governing documents), or (B) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any material contractual obligation to which such Borrower is a party.

4.4 No Consent or Approval. With the exception of Bankruptcy Court approval, the execution, delivery and performance by each Borrower of this Agreement does not and will not require any registration or filing with, consent or approval of, or notice to, or other action, with or by, any federal, state or governmental authority or regulatory body.

ARTICLE V — COVENANTS AND GRANT OF SECURITY INTEREST

5.1 Access. To the extent permitted by Law and not in contravention of the rights of third parties, each Borrower shall permit Representatives of each Lender reasonable access to examine the corporate books and make copies or extracts from such corporate books and to discuss the affairs, finances and accounts of the Borrowers with the principal officers and employees of the Borrowers upon request, all during regular business hours, as often as such Lender may reasonably request, *provided, however*, that the Borrowers shall not be required to provide the Lenders with access to any books, records or information protected from disclosure by the attorney-client privilege or similar privileges.

5.2 Intentionally Deleted.

5.3 Grant of Post-Petition Security Interests. To secure the prompt payment of Borrowers' Liabilities, the prompt, full and faithful performance by Borrowers of all of the provisions to be kept, observed or performed by Borrowers under this Agreement and/or the other Post-petition Loan Documents, Borrowers do hereby pledge, assign, transfer and deliver to the DIP Collateral Agent to and for the benefit of the Lenders, and grants to the DIP Collateral Agent to and for the benefit of the Lenders, a Lien and security interest in and to all of the Borrowers' Assets and properties (including all real property and personal property), whether now or hereafter existing, owned or acquired, all in accordance with the terms of this Agreement, the Interim Order, and the Final Order. Each Borrower shall assist the DIP Collateral Agent with any and all filings necessary

or appropriate and reasonably requested by the DIP Collateral Agent for the perfection of the Post-Petition Security Interest, granted under and in accordance with the terms of this Agreement; *provided however*, that it is understood, acknowledged, and agreed that (a) effective as of the date the Interim Order is entered, the security interests and Liens provided by the Borrowers (excluding the HUD Borrowers) to the DIP Collateral Agent to secure repayment of the DIP Loan shall be self-executing, effective, and immediately perfected upon entry of the Interim Order; and (b) effective as of the date the Final Order is entered, the security interests and Liens provided by the HUD Borrowers to the DIP Collateral Agent to secure repayment of the DIP Loan shall be self-executing, effective, and immediately perfected upon entry of the Final Order. No additional documentation, filings or security instruments of any kind are necessary in order to perfect the DIP Collateral Agent's security interests and Lien in the Post-Petition Collateral for the benefit of the Lenders. Each Borrower irrevocably hereby makes, constitutes and appoints the DIP Collateral Agent (and all Persons designated by DIP Collateral Agent for that purpose) as such Borrower's true and lawful attorney and agent-in-fact to file in any jurisdiction any initial financing statements and amendments thereto that (i) indicate the Collateral as all assets of Borrowers (or words of similar effect), regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed, or as being of an equal or lesser scope or within greater detail, and (ii) contain any other information required by section 5 of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed regarding the sufficiency or filing office acceptance of any financing statement or amendment, including whether any Borrower is an organization, the type of organization, and any organization identification number issued to each Borrower, and in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates. Borrowers agree that a carbon, photographic or photostatic copy or other reproduction of this Agreement or of any financing statement shall be sufficient as a financing statement.

5.4 Information.

(a) The Borrowers shall deliver to each Lender, (i) a weekly statement showing Borrowers' unrestricted cash for the previous week, in each case calculated in a manner consistent with past practice; (ii) a weekly report comparing, on a line-item basis, actual expenses against expenses as set forth in the Budget, and such other reports, information or documents reasonably requested by the DIP Agents or any Lender, including cash collections for each weekly reporting period and projections for the following week; and (iii) standard and regularly kept financial documents – *i.e.*, balance sheets, cash flow statements, and income statements – on no less than a bi-weekly basis.

(b) The Borrowers shall furnish to the DIP Agents and each Lender prompt written notice of the occurrence of any payment default or Event of Default. Each notice delivered under this Section 5.4 shall be accompanied by a statement of the Borrowers' president or other executive officer setting forth the detail of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

5.5 Insurance. The Borrowers shall maintain insurance and/or bonds (i) covering, without limitation, fire, theft, burglary, public liability, property damage, and workers' compensation and (ii) on all property and assets material to the operation of the business, all in amounts customary for such Borrowers' industry. The Borrowers shall pay all insurance premiums payable by them.

5.6 Properties. The Borrowers will keep its properties, if any, in good repair, working order and condition, reasonable wear and tear excepted, and from time to time, subject to the limitations imposed by the Budget, make all necessary repairs, renewals, replacements, additions and improvements thereto.

5.7 Fundamental Changes. Until the Post-Petition Debt has been paid in full, each Borrower covenants to the DIP Collateral Agent for the benefit of the Lenders that such Borrower shall not engage in any transactions that would result in: the existence of any Liens on the Post-Petition Collateral that are senior or *pari passu* with the Post-Petition Security Interest.

5.8 Preservation of Corporate Existence. Each Borrower shall preserve and maintain its corporate existence, rights, franchises and privileges in the jurisdiction of its incorporation, unless the failure to so preserve, maintain or qualify does not and will not have a Material Adverse Effect, and preserve and maintain all of its Assets that are material to it and its business.

5.9 Compliance with Law. Each Borrower shall comply with all Laws, including Environmental Laws, applicable to any of them, except non-compliance being contested in good faith through appropriate Proceedings.

5.10 Termination of Covenants. Other than as provided for by their terms, the covenants set forth in this Article V shall continue in effect until all Post-Petition Debt, including the full principal amount, all accrued but unpaid interest outstanding and any other amounts owed under the DIP Promissory Notes are repaid in full.

5.11 Sale of the Borrowers' Assets. Borrowers shall comply with all milestones set forth in Article VI hereof, including without limitation filing a motion pursuant to Section 363 of the Bankruptcy Code that provides for the sale of all or substantially all of the Borrowers' (other than Guardian Healthcare Pharmacy LLC, Guardian Healthcare Rehabilitation Services, LLC and Guardian Healthcare Home & Community Services, LLC) assets upon terms that are reasonably acceptable to each Lender.

ARTICLE VI — EVENTS OF DEFAULT

6.1 Events of Default. The occurrence of any of the following shall constitute an "Event of Default":

(a) Failure to Pay. The Borrowers fail to pay when due any principal payment on the DIP Promissory Notes, or any interest or other payment required under the terms of the DIP Loan and/or DIP Promissory Notes;

(b) Breaches of Representations and Warranties. Any representation or warranty made by any Borrower in this Agreement or in any of the other Post-Petition Loan Documents shall not have been true when made;

(c) Breaches of Other Covenants. Any Borrower fails to observe or to perform any other covenant, obligation, condition or agreement contained in this Agreement or the other Post-Petition Loan Documents;

(d) Compliance with Budget. The Borrowers' expenditure of Cash Collateral or proceeds from DIP Loan that exceed the amounts permitted by the Budget for such expenditure or are otherwise not in compliance with the Budget, without the prior written consent of each Lender, subject to a permitted variance as set forth in the Interim Order and the Final Order;

(e) Bankruptcy Case. If the Bankruptcy Case is (i) dismissed (or the Bankruptcy Court shall make a ruling requiring the dismissal of the Bankruptcy Case) pursuant to section 1112 of the Bankruptcy Code, (ii) converted to a case or cases under chapter 7 of the Bankruptcy Code; or (iii) a trustee or examiner shall be appointed in the Bankruptcy Case;

(f) Cash Collateral Approval. Failure of the Borrowers to obtain approval from the Bankruptcy Court to immediately use and continue to use the Cash Collateral existing on or after the Petition Date, (i) on an interim basis within three (3) Business Days following the Petition Date; and (ii) on a final basis, within thirty-five (35) days from the Petition Date;

(g) Sale Motion. Failure of the Borrowers to file a sale motion seeking to sell all or substantially all of the Non-HUD Borrowers' assets (other than Accounts) for a purchase price of not less than \$11,000,000.00 and all or substantially all of the HUD Borrowers' assets (other than Accounts) for a purchase price of not less than \$45,000,000.00 (which may include HUD debt assumption) upon terms that are reasonably acceptable to each Lender (the "Sale Motion") within five (5) business days from the Petition Date.

(h) Entry of Sale Order. Failure of the Borrowers to obtain an order of the Bankruptcy Court approving the Sale Motion in a form acceptable to each Lender (the "Sale Order") within sixty-five (65) days from the Petition Date.

(i) Closing on Sales Contemplated by Sale Order. Failure of the Borrowers to close on the sale of all or substantially all of: (i) the Non-HUD Borrowers' assets as approved by the Sale Order no later than October 31, 2024, or (ii) the HUD Borrowers' assets no later than December 20, 2024.

(j) Compliance with any Order of the Bankruptcy Court. Failure of the Borrowers timely to comply with any of its obligations under the DIP Financing Orders;

(k) Plan of Reorganization. The Borrowers or any other person proposes and files any plan of reorganization to which either Lender does not consent, or the Bankruptcy Court enters an order confirming any plan of reorganization (including any liquidating plan) or approving the sale of all or any material portion of the assets or business of the Borrowers without the Lenders' prior written consent;

(l) Third-Party Financing. The Borrowers file any motion seeking post-petition financing or an extension of post-petition credit other than this DIP Loan; and/or

(m) Borrowers' Exclusive Right. Entry of an order modifying or terminating the Borrowers' exclusive right to file and/or solicit acceptance of a plan of reorganization as applicable.

6.2 Remedies.

(a) Upon the occurrence or existence of any Event of Default and at any time thereafter during the continuance of such Event of Default, (i) the Required Lender may direct the DIP Collateral Agent to deliver a notice of default to the Borrowers with a copy to the attorneys for the Borrowers, the attorneys for the Committee, if any, and the Office of the United States Trustee, as applicable, and may declare the Indebtedness, together with all interest, fees and costs, including attorneys' fees, to be immediately due and payable without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained in this Agreement or in the other Post-Petition Loan Documents to the contrary notwithstanding; (ii) the Borrowers shall no longer be authorized to use Cash Collateral or to borrow funds under this Agreement without the consent of each Lender in its sole discretion, and (iii) each Lender may terminate its commitment to make, and shall have no further obligation to make, its Pro Rata Share of any additional Loan Advances to the Borrowers under this Agreement or any other Post-Petition Loan Document. In addition, each Lender and DIP Collateral Agent for the benefit of the Lenders shall be entitled to exercise any other rights and remedies of a secured creditor under applicable laws, this Agreement, the DIP Promissory Notes, the Interim Order or the Final Order.

(b) If any one or more of the Events of Default shall occur, the DIP Collateral Agent at the direction of the Required Lender and on behalf of each Lender may then, or at any time thereafter, so long as such default shall continue seek Bankruptcy Court approval to foreclose its Lien or security interest in the Collateral in any way permitted by Law or, upon ten (10) Business Days' prior written notice to the Borrowers, sell any or all Collateral at private sale at any time or place in one or more sales, at such price or prices and upon such terms, either for cash or on credit, as the Required Lender, in its sole discretion, may elect, or sell any or all Collateral at public auction, either for cash or on credit, as the Required Lender, in its sole discretion, may elect, and at any such sale, the DIP Collateral Agent may bid for and become the purchaser of any or all such Collateral.

(c) If any one or more of the Events of Default shall occur, the DIP Collateral Agent at the direction of Required Lender may then, or at any time thereafter, so long as such default shall continue, grant extensions to or adjust claims of, or make compromises or settlements with, debtors, any applicable Borrower or any other Persons with respect to the Collateral or any

securities, guarantees or insurance applying thereon, without notice to or the consent of such Borrower, without affecting such Borrower's liability under this Agreement or the DIP Promissory Notes. Each Borrower waives notice of acceptance, of nonpayment, protest or notice of protest of any Accounts or any of its contract rights and any other notices to which such Borrower may be entitled.

(d) If any one or more of the Events of Default shall occur, then in any such event, the DIP Collateral Agent at the direction of the Required Lender and for the benefit of the Lenders shall have the right to seek Bankruptcy Court approval to exercise such additional rights and remedies in respect of the Collateral or any portion thereof as are provided by the Uniform Commercial Code (whether or not the Uniform Commercial Code applies to the affected Collateral) and such other rights and remedies in respect thereof which it may have at Law or in equity or under the this Agreement or the DIP Promissory Notes, including, without limitation, the right to enter any premises where Inventory is located and take possession and control thereof without demand or notice and without prior judicial hearing or legal proceedings, which the Grantor expressly waives, and/or the right to seek appointment of a receiver, which Borrower expressly consents to if requested by the DIP Collateral Agent.

(e) Upon the occurrence and during the continuation of any Event of Default, the Borrowers shall promptly, following demand by the DIP Collateral Agent, assemble the Collateral and make it available to the DIP Collateral Agent at a place or places to be designated by the DIP Agent. The rights of the DIP Collateral Agent under this paragraph to have the Collateral assembled and made available to it are of the essence of this Agreement and, if so directed by both Lenders, the DIP Collateral Agent shall, enforce such right by an action in equity for injunctive relief or specific performance.

ARTICLE VII — INDEMNIFICATION

7.1 **Indemnity.** Each Borrower on behalf of themselves and their respective Bankruptcy Estates, agrees to indemnify and defend and hold harmless the DIP Agents, each Lender, and each of their respective Affiliates, successors and assigns and each of their Representatives (each, a **"Indemnified Party,"** and collectively, the **"Indemnified Parties"**) from and against, and agrees to pay or cause to be paid to the Indemnified Parties all amounts equal to the sum of, any and all claims, demands, costs, expenses, losses and other liabilities of any kind, including all legal costs and expenses associated with any action taken to enforce their rights under this Article VIII (**"Losses"**) that the Indemnified Parties may incur or suffer (including without limitation all reasonable legal fees and expenses) which arise or result from any breach of any of its representations or warranties, or failure by any Borrower to fully and timely perform any of its covenants or agreements, in this Agreement or in any other Post-Petition Loan Document or in any certificate or document delivered pursuant to this Agreement or any other Post-Petition Loan Document, including but not limited to any third party claims arising or resulting from such breach or failure, except to the extent such Losses arise out of the gross negligence or willful misconduct of the DIP Agents or any Lender, its Affiliates, successors and assigns and their respective officers, directors, members, partners, employees and agents. The rights of the DIP Agents and each Lender hereunder shall be in addition to, and not in lieu of, any other rights and remedies which may be available to it by Law or under the organizational documents of any Borrower or the Post-Petition

Loan Documents.

7.2 Procedures. If a third party shall notify an Indemnified Party with respect to any matter that may give rise to a claim for indemnification under the indemnity set forth above in Section 7.1, the procedures set forth below shall be followed:

(a) Notice. The respective Indemnified Party shall give to any applicable Borrower (collectively, the “**Indemnifying Party**”) written notice of any claim, suit, judgment or matter for which indemnity may be sought (a “**Claim**”) under Section 7.1 promptly but in any event within fifteen (15) days after the Indemnified Party receives notice thereof, provided, however, that failure by the Indemnified Party to give such notice shall not relieve the Indemnifying Party from any liability it shall otherwise have pursuant to this Agreement except to the extent that the Indemnifying Party is actually prejudiced by such failure. Such notice shall set forth in reasonable detail (x) the basis for such potential claim and (y) the dollar amount, or an estimated dollar amount, as applicable, of such claim. The Indemnifying Party shall have a period of fifteen (15) days within which to respond thereto. If the Indemnifying Party does not respond within such 15-day period, the Indemnifying Party shall be deemed to have accepted responsibility for such indemnity.

(b) Defense of Claim. With respect to a claim by a third party against an Indemnified Party for which indemnification may be sought under this Agreement, and subject to the Lender’s exclusive rights to select counsel to provide a defense in all instances, the Indemnifying Party shall have the right, at its option and subject to the remainder of this Section 7.2, to be represented by counsel of its choice and to assume the defense or otherwise control the handling of any Claim, which is set forth in the notice sent by the Indemnified Party, by notifying the Indemnified Party in writing to such effect within fifteen (15) days of receipt of such notice; provided, however, that the Indemnified Party shall have the right to employ counsel to represent it if, in the Indemnified Party’s reasonable judgment based upon the advice of counsel, it is advisable in light of the separate interests of the Indemnified Party, to be represented by separate counsel (including, as applicable, local counsel), and in that event the reasonable fees and expenses of one such separate counsel shall be paid by the Indemnifying Party plus appropriate local counsel, if applicable, for all Indemnified Parties; and, provided further, that the Indemnifying Party shall not have the right to assume the defense of such Claim unless (i) the Indemnifying Party acknowledges fully the rights of the Indemnified Party (and does not contest, as a whole or in part) the Indemnified Party’s indemnification rights for the Claim, (ii) the counsel selected by the Indemnifying Party is reasonably satisfactory to the Indemnified Party, (iii) the Indemnified Party is kept informed of all material developments and is furnished copies of all material papers filed or sent to or from the opposing party or parties and (iv) the Indemnifying Party prosecutes the defense of such Claim with commercially reasonable diligence in a manner which does not materially prejudice the defense of such Claim. If the Indemnifying Party does not give timely notice in accordance with the preceding sentence, the Indemnifying Party shall be deemed to have given notice that it does not wish to control the handling of such Claim. In the event the Indemnifying Party elects (by notice in writing within such 15-day period) to assume the defense of or otherwise control the handling of any such Claim for which indemnity is sought, the

Indemnifying Party shall indemnify and hold harmless the Indemnified Party from and against any and all reasonable professional fees (including attorneys' fees, accountants, consultants and engineering fees) and investigation expenses incurred by the Indemnified Party after it provides notice under clause (a) and prior to such election, notwithstanding the fact that the Indemnifying Party may not have been so liable to the Indemnified Party had the Indemnifying Party not elected to assume the defense of or to otherwise control the handling of such Claim. In the event that the Indemnifying Party does not assume the defense or otherwise control the handling of such matter, the Indemnified Party may retain counsel, as an indemnification expense, to defend such Claim.

(c) Final Authority. The Parties shall cooperate in the defense of any such Claim and each shall make available books and records, other than all books and records which are subject to attorney-client privilege, attorney-work product privilege and all similar such privileges, which are relevant in connection with such claim or litigation. In connection with any Claim with respect to which the Indemnifying Party has assumed the defense or control, the Indemnifying Party will not consent to the entry of any judgment or enter into any settlement with respect to any matter which does not include a provision whereby the plaintiff or claimant in the matter releases the Indemnified Party from all liability with respect thereto, without the written consent of the Indemnified Party, which shall not be unreasonably withheld. In connection with any Claim with respect to which the Indemnifying Party has not assumed the defense or control, the Indemnified Party may not compromise or settle such Claim without the consent of the Indemnifying Party, which shall not be unreasonably withheld or delayed.

(d) Claims between the Indemnifying Party and the Indemnified Party. Any Claim for indemnification under this Agreement which does not result from the assertion of a Claim by a third party shall be asserted by written notice given by the Indemnified Party to the Indemnifying Party. The Indemnifying Party shall have a period of fifteen (15) days within which to respond thereto.

ARTICLE VIII — MISCELLANEOUS

8.1 Waivers and Amendments. Unless otherwise provided, any provision of this Agreement may be amended, waived or modified upon the written consent of the Borrowers and the DIP Agent at the direction of both Lenders.

8.2 Governing Law. This Agreement and all actions arising out of or in connection with this Agreement shall be governed by and construed in accordance with the Laws of the United States of America, including but not limited to the Bankruptcy Code, and to the extent those Laws do not have an applicable rule, the Laws of the Commonwealth of Pennsylvania, without regard to the conflict of laws provisions thereof

8.3 Exclusive Jurisdiction. In the event of any action or Proceeding brought by a Party arising out of or in connection with this Agreement or any other Post-Petition Loan Document, the Parties consent to the exclusive jurisdiction of the Bankruptcy Court; provided that (i) the Parties

acknowledge that any appeals from the Bankruptcy Court may be heard by a court other than the Bankruptcy Court and (ii) if the Bankruptcy Court declines to exercise jurisdiction, then the Parties agree to the jurisdiction of the appropriate District Court; provided further, that nothing in this Agreement shall be deemed or operate to preclude the DIP Agent from bringing suit or taking other legal action in any other jurisdiction to realize on the Post-Petition Collateral or any other security for the Indebtedness, or to enforce a judgment or other court order in favor of the DIP Agent for the benefit of the Lenders. Each of the Parties hereby waives any objection that such Party may have to jurisdiction of the Bankruptcy Court or, if applicable, the District Court, based upon lack of personal jurisdiction, improper venue or *forum non conveniens*. Service of process on the Parties in any action arising out of or relating to this Agreement shall be effective if mailed to the Parties in accordance with Section 9.7 of this Agreement or otherwise served in accordance with the applicable Federal Rules of Bankruptcy Procedure or Federal Rules of Civil Procedure then in effect.

8.4 Jury Waiver. Each of the Parties hereby knowingly, voluntarily and intentionally waives the right it may have to a trial by jury in respect of any litigation based hereon, or arising out of, under or in connection with this Agreement or any other document or agreement contemplated to be executed in conjunction herewith, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any Party. This provision is a material inducement for the Lender accepting this Agreement and extending the DIP Loan to the Borrowers.

8.5 Entire Agreement. This Agreement and the other Post-Petition Loan Documents constitute the full and entire understanding and agreement among the Parties with regard to the subjects of this Agreement and the other Post-Petition Loan Documents.

8.6 Fees and Expenses. Each Borrower, jointly and severally, agrees to pay all reasonable and documented out-of-pocket expenses and fees and disbursements, including attorneys', accountants' and other professionals' fees, incurred by the DIP Agents and each Lender in connection with (a) the negotiation, documentation and consummation of the transactions contemplated in this Agreement, including any due diligence or other review conducted prior to the negotiation of this Agreement, (b) the formulation of the Interim Order and any Final Order and Proceedings seeking entry of such Orders, (c) the enforcement or protection of each Lender's rights under the Post-Petition Loan Documents and (d) the preservation of, or the sale of, collection from or other realization upon any of the Post-Petition Collateral, which amounts shall be (i) payable to the DIP Collateral Agent and/or each Lender as and when due under the Post-Petition Loan Documents (or if a time for payment is not specified in the Post-Petition Loan Documents, then upon demand made by the DIP Collateral Agent for the benefit of the Lenders), without offset or deduction, (ii) deemed to be a part of the Post-Petition Debt, and (iii) secured by the same Liens and entitled to the same Superpriority as the other Post-Petition Debt (collectively, the "Transaction Expenses").

8.7 Notices. Any notices, consents or other communications by or between the Parties required or permitted hereunder shall be in writing, and shall be sufficiently given if hand delivered or sent by registered mail or certified mail, postage prepaid, by facsimile transmission with confirmed receipt or by overnight courier or delivery service addressed or sent by facsimile

transmission as follows:

To the Borrowers:

Guardian Healthcare
8796 Route 219
Brockway, PA 15824-0240
Attn: Michael J. Herald, President and CEO
Email: Michael.Herald@guardianhc.com

With a copy to:

Saul Ewing LLP
1500 Market Street
Centre Square West, 38th Floor
Philadelphia, PA 19102
Attn: Jeffrey C. Hampton, Esq.
Email: Jeffrey.hampton@saul.com

To the DIP Agent:

S&T Bank.
309 Main Street
Irwin, PA 15642
Attn: Sean Hooker
Vice President
Email: Sean.Hooker@stbank.com>

With a copy to:

James F. Grenen, Esquire
Grenen & Birsic, PC
One Gateway Center, Ninth Floor
420 Fort Duquesne Boulevard
Pittsburgh, PA 15222
Email: jgrenen@grenenbirsic.com

To Public Credit, LLC:

Public Credit, LLC
Attn: Peter Varischetti
1308 Main Street
Brockway, PA 15824
Email: pvarischetti@varischettiholdings.com

With a copy to:

Paul J. Cordaro, Esquire
Jeanne S. Lofgren, Esquire
Campbell & Levine, LLC
310 Grant Street, Suite 1700
Pittsburgh, PA 15219
Email: pcordaro@camlev.com
jlofgren@camlev.com

Any Party may change such party's address and/or facsimile number by giving notice of such change to the other Parties in accordance with this Section 8.7.

8.8. Validity. If any provision of this Agreement or any of the Post-Petition Loan Documents shall be judicially determined to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

8.9. Counterparts. This Agreement may be executed in any number of counterparts. Signatures on this Agreement may be communicated by facsimile or electronic transmission and shall be binding upon the Parties so transmitting their signatures. Counterparts with original signatures shall be provided to the other Parties following the applicable facsimile or electronic transmission, provided that the failure to provide the original counterpart shall have no effect on the validity or the binding nature of this Agreement. No Party shall raise facsimile or electronic delivery of a signature or the fact that any signature or agreement or instrument was transmitted or communicated by a facsimile or e-mail as a defense to the formation or enforceability of a contract and each such Party forever waives any such defense.

8.10. Succession and Assignment. Except as otherwise expressly provided in this Agreement and subject to the other Post-Petition Loan Documents and applicable Law, the provisions of this Agreement shall inure to the benefit of, and be binding upon, the successors, assigns, permitted transferees, heirs, executors and administrators of the Parties. This Agreement may not be assigned by any Party without the prior written consent of the other Parties; provided, however, that either of the Lenders may assign its rights hereunder to an Affiliate of the Lenders without the prior written consent of the Borrowers, so long as the Lender provides prompt written notice to the Borrowers of such assignment. Such assignee shall have no additional rights of assignment except to other Affiliates of the Lenders.

8.11. Termination. The obligations of the Lenders to be performed under this Agreement shall terminate on the date on which (a) the Indebtedness has been indefeasibly repaid in full, (b) all other Post-Petition Debt under this Agreement and the other Post-Petition Loan Documents have been completely discharged and (c) no Borrower shall not have any further right to borrow any funds under this Agreement, including without limitation upon the occurrence of an Event of Default (the "Termination Date"); except for any obligations of the Borrowers and/or rights and remedies of the Lenders under this Agreement, the other Post-Petition Loan Documents, the

Interim Order, and/or the Final Order which expressly survive the termination of the Lenders' obligations to be performed under this Agreement.

8.12. Further Assurances. Each Borrower shall promptly do, make, execute, deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things as the DIP Agent may require, acting reasonably, from time to time, for the purpose of giving effect to this Agreement and shall take such steps as may be reasonably within its power to implement the full extent of this Agreement.

8.13. No Strict Construction. The Parties have participated jointly in the negotiation and drafting of this Agreement and each other Post-Petition Loan Document. In the event an ambiguity or question of intent or interpretation arises, this Agreement and each other Post-Petition Loan Document shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement or any other Post-Petition Loan Document.

8.14. Participations. Lenders may at any time sell one or more participations in all or a portion of its rights and obligations under this Agreement and the other Post-Petition Loan Documents (including, without limitation, all or a portion of the Loan and the Note). The Borrowers agree that any such participant shall be entitled to the benefits of the Loan Documents with respect to the participation in the Loan and any such participation creates a direct obligation of the Borrowers to the assignee and the assignee shall be a "Lender". The Borrowers also authorize the DIP Agent to disclose to any participant and any prospective transferee any and all financial and other information in the DIP Agent's possession concerning the Borrower, which has or may be delivered to the DIP Agent by or on behalf of the Borrowers in connection with this Agreement or any of the other Post-Petition Loan Documents, including any application for the Loan or any Lender's credit evaluation of such Borrower.

8.15. Delivery of Signature Pages and Enforceability of Post-Petition Loan Documents. The Post-Petition Loan Documents shall be enforceable against each Borrower as follows.

(a) With the exception of the HUD Borrowers, all Borrowers shall execute and deliver their respective signature pages on the Post-Petition Loan Documents to the DIP Collection Agent prior to filing the DIP Motion and the DIP Collection Agent shall hold such signature pages in escrow pending entry of the Interim Order. For certainty, no Post-Petition Loan Document (including this Agreement and the DIP Promissory Notes) shall be enforceable or binding on the Lenders unless and until (i) delivery of such executed signature pages and (ii) entry of the Interim Order. Upon entry of the Interim Order, the executed signature pages held in escrow by the DIP Collection Agent shall be deemed automatically and immediately released to the Lenders and the Post-Petition Loan Documents shall be enforceable against such Borrowers in accordance with their respective terms and the Interim Order. Upon entry of the Final Order, the Post-Petition Loan Documents shall continue to be in full force and effect against such Borrowers and modified solely as provided for in the Final Order.

(b) Upon entry of a Final Order directing the HUD Borrowers to execute and deliver the Post-Petition Loan Documents (including this Agreement and the DIP

Promissory Notes), the HUD Borrowers shall immediately execute and promptly deliver their respective signature pages on all Post-Petition Loan Documents to the DIP Collateral Agent and the Post-Petition Loan Documents shall immediately be enforceable and binding obligations of the HUD Borrowers in accordance with their respective terms and any Final Order.

8.16. DIP Agents.

(a) Appointment and Authorization. Each Lender hereby irrevocably appoints, designates and authorizes the DIP Agents to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. DIP Agents shall not have any duty or responsibility except those expressly set forth herein, nor shall DIP Agent have or be deemed to have any fiduciary relationship with any Lender or participant, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against DIP Agents.

(b) Delegation of Duties. DIP Agents may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel and other consultants or experts concerning all matters pertaining to such duties. DIP Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct.

(c) Reliance by DIP Agents. DIP Agents shall be entitled to rely, and shall be fully protected in relying, upon any writing, communication, signature, resolution, representation, notice, consent, certificate, electronic mail message, affidavit, letter, telegram, facsimile, telex or telephone message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants and other experts selected by DIP Agents.

(d) Successor DIP Collection Agent. The DIP Collection Agent may resign as DIP Collection Agent upon 30 days' notice to the Lenders. If DIP Collection Agent resigns under this Agreement, Public Credit shall serve as a successor agent for the Lenders, unless the Lenders with outstanding Indebtedness agree otherwise. Upon the acceptance of its appointment as successor agent hereunder, such successor agent shall succeed to all the rights, powers and duties of the retiring DIP Collection Agent and the term "DIP Collection Agent" shall mean such successor agent, and the retiring DIP Collection Agent's appointment, powers and duties as DIP Agent shall be terminated.

(e) Collateral Matters. Each Lender authorizes and directs DIP Agents to enter into the other Loan Documents for the benefit of Lenders. Each Lender hereby agrees that, except as otherwise set forth herein, any action taken by Lenders in accordance with the

provisions of this Agreement or the other Loan Documents, and the exercise by the Lenders of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all Lenders. Except as otherwise provided herein, DIP Agents are hereby authorized on behalf of all Lenders, without the necessity of any notice to or further consent from any Lender to take any action with respect to any Collateral or Loan Documents which may be necessary to perfect and maintain perfected the Liens upon the Collateral granted pursuant to this Agreement and the other Loan Documents. The Lenders irrevocably authorize DIP Collateral Agent, at its option and in its discretion, to release any Lien granted to or held by DIP Collateral Agent under any Collateral Document (i) upon termination of the Commitments and payment in full of all DIP Loan and all other obligations of Borrowers hereunder; or (ii) constituting property sold or to be sold or disposed of as part of or in connection with any disposition permitted hereunder (including the release of any guarantor). Upon request by DIP Collateral Agent at any time, the Required Lender will confirm in writing DIP Agent's authority to release, or subordinate its interest in, particular types or items of Collateral pursuant to this section.

(f) Required Lender. Upon the occurrence of an Event of Default, Lenders shall confer as to the action to take as a result of any Event of Default, however, in the absence of a mutual agreement, the action directed by the Required Lender shall control, including but not limited to the declaration of an Event of Default, the acceleration of any Indebtedness due under the DIP Loan and any all enforcement action against the Borrowers or any Collateral for the DIP Loan. All enforcement actions under this Agreement and against the Borrowers or any third party with respect to the Borrowers' Indebtedness under the DIP Loan or the Collateral may only be taken by DIP Collateral Agent or by its agents at the written direction and instructions of the Required Lender.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
[SIGNATURE PAGES FOLLOW]

[SIGNATURE PAGE FOR DEBTOR-IN-POSSESSION LOAN AGREEMENT]

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the day and year first written above.

BORROWER:

**Guardian Elder Care at Bethel Park, LLC,
Guardian Elder Care at Brockway, LLC,
Guardian Elder Care at Greensburg, LLC,
Guardian Elder Care at Lower Burrell, LLC,
Guardian Elder Care at Munhall, LLC,
Guardian Healthcare FOR Group, LLC,
Guardian Healthcare FOR LLC 99% Holdco, LLC,
GEC Lower Burrell Real Estate, LLC,
GEC Munhall Real Estate, LLC,
GEC Bethel Park Real Estate, LLC,
GEC Greensburg Real Estate, LLC,
Guardian Healthcare Pharmacy, LLC
Guardian Healthcare Rehabilitation Services, LLC,
and
Guardian Healthcare Home & Community
Services, LLC, each a Pennsylvania limited liability
company**

By: _____
Name:
Title:

**Guardian Healthcare FOR LLC 1% Holdco, Inc.,
a Pennsylvania corporation**

By: _____
Name:
Title:

**GEC Highland View, LP, a Pennsylvania limited
partnership,**

By: _____
Name:
Title:

[SIGNATURE PAGE FOR DEBTOR-IN-POSSESSION LOAN AGREEMENT]

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date of the Final Order.

BORROWER:

**Guardian Elder Care at Beaver Falls, LLC,
Guardian Elder Care at Monongahela, LLC,
GEC Monongahela Real Estate, LLC,
GEC Beaver Falls Real Estate, LLC, and
Guardian Healthcare FOR HUD Master Tenant,
LLC, each a Pennsylvania limited liability
company**

By: _____
Name:
Title:

**Guardian Elder Care at Fairmont, LLC, and GEC
Fairmont Real Estate, LLC, each a West Virginia
limited liability company**

By: _____
Name:
Title:

[SIGNATURE PAGE FOR DEBTOR-IN-POSSESSION LOAN AGREEMENT]

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the day and year first written above.

DIP COLLECTION AGENT AND LENDER:

S&T BANK, N.A.

a National Banking Association

By: _____

Name: _____

Title: _____

DIP COLLATERAL AGENT AND LENDER:

PUBLIC CREDIT, LLC,

a Pennsylvania limited liability company

By: Varischetti Holdings, L.P.

Its: Corporate General partner

By: _____

Name: Peter C. Varischetti

Title: President of General Partner

ANNEX A

LENDERS AND PRO RATA SHARES

<u>Lender</u>	<u>Loan Commitment for New Money DIP Loan</u>	<u>Pro Rata Share</u>
S&T Bank, N.A.	\$1,250,000.00	50%
Public Credit, LLC	\$1,250,000.00	50%
TOTALS	\$2,500,000.00	100.00%

EXHIBIT A

BUDGET

(Intentionally Omitted)

EXHIBIT B

DIP PROMISSORY NOTES

(Intentionally Omitted)

EXHIBIT 2

BUDGET

EXHIBIT 2(a) Guardian Healthcare

Owned Portfolio - Non-HUD Properties

Interim Cash Collateral Budget *

	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast
Week Number	1	2	3	4	5	6	7	8	9	10	11	12	13		
Week Beg.	07/29/2024	08/05/2024	08/12/2024	08/19/2024	08/26/2024	09/02/2024	09/09/2024	09/16/2024	09/23/2024	09/30/2024	10/07/2024	10/14/2024	10/21/2024		
Week Ending	08/04/2024	08/11/2024	08/18/2024	08/25/2024	09/01/2024	09/08/2024	09/15/2024	09/22/2024	09/29/2024	10/06/2024	10/13/2024	10/20/2024	10/27/2024		
RECEIPTS															
<i>Operating Receipts</i>															
SNF Room and Board	\$ 454,882	\$ 639,200	\$ 120,891	\$ 650,616	\$ 209,126	\$ 577,761	\$ 682,330	\$ 460,049	\$ 437,344	\$ 454,882	\$ 639,200	\$ 120,891	\$ 650,616	\$	6,097,788
Part B	22,078	22,078	22,078	22,078	22,078	22,078	22,078	22,078	22,078	22,078	22,078	22,078	22,078		287,020
Other Service Payments	70,969	106,454	11,828	47,313	23,656	94,626	23,656	47,313	47,313	70,969	106,454	11,828	47,313		709,693
Other Cash Inflows	37,948	37,948	37,948	37,948	37,948	37,948	37,948	37,948	37,948	37,948	37,948	37,948	37,948		493,328
Total Operating Receipts	\$ 585,878	\$ 805,681	\$ 192,746	\$ 757,956	\$ 292,809	\$ 732,413	\$ 766,013	\$ 567,388	\$ 544,684	\$ 585,878	\$ 805,681	\$ 192,746	\$ 757,956	\$	7,587,829
First Closing	-	-	-	-	-	-	-	-	-	-	-	-	10,150,000		10,150,000
Total Receipts	\$ 585,878	\$ 805,681	\$ 192,746	\$ 757,956	\$ 292,809	\$ 732,413	\$ 766,013	\$ 567,388	\$ 544,684	\$ 585,878	\$ 805,681	\$ 192,746	\$ 757,956	\$	17,737,829
DISBURSEMENTS															
<i>Operating Disbursements</i>															
Wages and Benefits	(347,531)	(521,297)	(347,531)	(521,297)	(347,531)	(521,297)	(347,531)	(521,297)	(347,531)	(521,297)	(347,531)	(521,297)	(347,531)		(5,560,502)
Rent	-	(218,817)	-	-	-	(218,817)	-	-	-	(218,817)	-	-	-		(656,450)
Rehabilitation Services	-	-	-	(80,855)	-	-	-	(161,710)	-	-	-	-	-		(242,565)
Management Fee	-	-	-	(53,656)	-	-	-	(107,313)	-	-	-	-	-		(160,969)
IBNR Insurance Reimbursement - Home Office	(62,502)	-	-	-	-	-	-	-	-	-	-	-	-		(62,502)
Pharmacy Services	-	-	-	(42,048)	-	-	-	(84,095)	-	-	-	-	-		(126,143)
Utilities	-	-	-	(35,364)	-	-	-	(35,364)	-	-	-	-	-		(106,093)
Food Services	(30,426)	-	(28,926)	-	(27,426)	-	(25,926)	-	(24,426)	-	(22,926)	-	(21,426)		(181,482)
Contract Services	(26,902)	-	(24,902)	-	(22,902)	-	(20,902)	-	(18,902)	-	(16,902)	-	(14,902)		(146,317)
Medical Supplies	(13,335)	(12,585)	(11,835)	(11,085)	(10,335)	(9,585)	(8,835)	(8,085)	(7,335)	(6,585)	(5,835)	(5,085)	(4,335)		(114,851)
Equipment and Transportation	(33,179)	-	-	-	(33,179)	-	-	-	(33,179)	-	-	-	(16,590)		(116,128)
Employee Recruitment, Development, and Training	(2,824)	(2,674)	(2,524)	(2,374)	(2,224)	(2,074)	(1,924)	(1,774)	(1,624)	(1,474)	(1,324)	(1,174)	(1,024)		(25,012)
Cable, Phone, and Internet	-	(11,040)	-	(11,040)	-	(11,040)	-	(11,040)	-	(11,040)	-	(11,040)	-		(66,240)
Repairs and Maintenance	(10,604)	(10,304)	(10,004)	(9,704)	(9,404)	(9,104)	(8,804)	(8,504)	(8,204)	(7,904)	(7,604)	(7,304)	(7,004)		(114,448)
Linen and Laundry Services	(3,326)	(3,326)	(3,326)	(3,326)	(3,326)	(3,326)	(3,326)	(3,326)	(3,326)	(3,326)	(3,326)	(3,326)	(3,326)		(43,234)
Medical and Lab Services	-	-	-	(6,750)	-	-	-	(6,750)	-	-	-	-	(6,750)		(20,249)
Office Supplies and Postage	(1,559)	(1,454)	(1,349)	(1,244)	(1,139)	(1,034)	(929)	(824)	(719)	(614)	(509)	(404)	(299)		(12,083)
Resident Health, Welfare, and Entertainment	(366)	(366)	(366)	(366)	(366)	(366)	(366)	(366)	(366)	(366)	(366)	(366)	(366)		(4,756)
Insurance	(6,051)	(6,051)	(6,051)	(6,051)	(6,051)	(6,051)	(6,051)	(6,051)	(6,051)	(6,051)	(6,051)	(6,051)	(6,051)		(78,658)
MPL Insurance	-	-	-	-	(14,000)	-	-	-	-	(14,000)	-	-	-		(28,000)
WC Insurance	-	(33,000)	-	-	(33,000)	-	-	-	-	-	(33,000)	-	-		(99,000)
Quarterly Assessment Payments (QAPs) - Current	-	-	-	-	-	-	-	-	-	-	-	-	(553,654)		(553,654)
Other Operating Expenses	(21,250)	(21,250)	(21,250)	(21,250)	(21,250)	(21,250)	(21,250)	(21,250)	(21,250)	(21,250)	(21,250)	(21,250)	(21,250)		(276,250)
Total Operating Disbursements	(559,855)	(842,162)	(458,064)	(799,659)	(505,883)	(836,942)	(445,844)	(970,998)	(479,663)	(812,722)	(466,624)	(577,296)	(1,039,871)		(8,795,583)
Cash Flow from Operations	\$ 26,024	\$ (36,482)	\$ (265,318)	\$ (41,704)	\$ (213,074)	\$ (104,529)	\$ 320,170	\$ (403,610)	\$ 65,021	\$ (226,844)	\$ 339,057	\$ (384,550)	\$ 9,868,084	\$	8,942,245
<i>Transaction-Related Disbursements</i>															
Closing Costs	-	-	-	-	-	-	-	-	-	-	-	-	(100,000)		(100,000)
Transfer Taxes	-	-	-	-	-	-	-	-	-	-	-	-	(110,000)		(110,000)
SLIB Commission	-	-	-	-	-	-	-	-	-	-	-	-	(154,000)		(154,000)
Tail Insurance	-	-	-	-	-	-	-	-	-	-	-	-	(100,000)		(100,000)
Employee EBT	-	-	-	-	-	-	-	-	-	-	-	-	(203,767)		(203,767)
S&T Mortgage Interest and Fees	-	-	-	-	-	-	-	-	-	-	-	-	(380,934)		(380,934)
S&T Mortgage Paydown	-	-	-	-	-	-	-	-	-	-	-	-	(10,022,775)		(10,022,775)
Total Transaction-Related Disbursements	-	-	-	-	-	-	-	-	-	-	-	-	(11,071,476)		(11,071,476)
<i>Non-Operating Disbursements</i>															
Professional Fees - Debtor	-	-	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)		(220,000)
Professional Fees - Lender	-	-	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)		(27,500)
Professional Fees - UCC	-	-	(1,250)	(1,250)	(1,250)	(1,250)	(1,250)	(1,250)	(1,250)	(1,250)	(1,250)	(1,250)	(1,250)		(13,750)
Professional Fees - Board Counsel	-	-	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)		(27,500)
Ordinary Course Professionals	-	-	(2,000)	(2,000)	(2,000)	(2,000)	(2,000)	(2,000)	(2,000)	(2,000)	(2,000)	(2,000)	(2,000)		(22,000)
Claims Agent	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)		(32,500)
US Trustee Fees	-	-	-	-	-	-	-	-	-	-	-	(57,200)	-		(57,200)
Patient Care Ombudsman	-	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)		(30,000)
Interest Expense	(14,167)	-	-	-	(14,167)	-	-	-	-	(14,167)	-	-	-		(42,500)
Utility Deposits	-	-	(85,840)	-	-	-	-	-	-	-	-	-	-		(85,840)
Total Non-Operating Disbursements	(16,667)	(5,000)	(119,090)	(33,250)	(47,417)	(33,250)	(33,250)	(33,250)	(33,250)	(47,417)	(33,250)	(90,450)	(33,250)		(558,790)
Net Weekly Cash Flow	\$ 9,357	\$ (41,482)	\$ (384,407)	\$ (74,954)	\$ (260,491)	\$ (137,779)	\$ 286,920	\$ (436,860)	\$ 31,771	\$ (274,261)	\$ 305,807	\$ (475,000)	\$ (1,236,642)	\$	(2,688,020)
Beginning Cash **															
Net Weekly Cash Flow	9,357	(41,482)	(384,407)	(74,954)	(260,491)	(137,779)	286,920	(436,860)	31,771	(274,261)	305,807	(475,000)	(1,236,642)		(2,688,020)
Additional Funding Need	-	-	225,038	74,954	260,491	137,779	-	149,940	-	242,490	-	169,193	1,236,642		2,496,527
Weekly Ending Cash	\$ 200,851	\$ 159,369	\$ -	\$ -	\$ -	\$ -	\$ 286,920	\$ -	\$ 31,771	\$ -	\$ 305,807	\$ -	\$ -	\$	-

* Financial information and assumptions provided by Guardian Management.

** Beginning cash less pre-petition professional fee retainers.

*** Assumes a transaction or closing on the Non-HUD properties occurs on or before October 27, 2024.

**** Assumes a transaction or closing on the HUD properties will occur after the 13-week period.

EXHIBIT 2(b) Guardian Healthcare

Owned Portfolio - HUD Properties

Interim Cash Collateral Budget *

	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast
Week Number	1	2	3	4	5	6	7	8	9	10	11	12	13	Forecast
Week Beg.	07/29/2024	08/05/2024	08/12/2024	08/19/2024	08/26/2024	09/02/2024	09/09/2024	09/16/2024	09/23/2024	09/30/2024	10/07/2024	10/14/2024	10/21/2024	Total
Week Ending	08/04/2024	08/11/2024	08/18/2024	08/25/2024	09/01/2024	09/08/2024	09/15/2024	09/22/2024	09/29/2024	10/06/2024	10/13/2024	10/20/2024	10/27/2024	
RECEIPTS														
<i>Operating Receipts</i>														
SNF Room and Board	\$ 668,294	\$ 944,226	\$ 178,023	\$ 809,862	\$ 300,383	\$ 852,249	\$ 270,001	\$ 611,654	\$ 588,144	\$ 668,294	\$ 944,226	\$ 178,023	\$ 809,862	\$ 7,823,244
PC/IL Room and Board	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Part B	18,415	18,415	18,415	18,415	18,415	18,415	18,415	18,415	18,415	18,415	18,415	18,415	18,415	239,399
Other Service Payments	43,923	65,894	7,320	29,282	14,641	58,563	14,641	29,282	29,282	43,923	65,894	7,320	29,282	439,226
Other Cash Inflows	26,539	26,539	26,539	26,539	26,539	26,539	26,539	26,539	26,539	26,539	26,539	26,539	26,539	345,002
Total Receipts	\$ 757,170	\$ 1,055,064	\$ 230,298	\$ 884,098	\$ 359,978	\$ 955,766	\$ 329,596	\$ 685,890	\$ 662,380	\$ 757,170	\$ 1,055,064	\$ 230,298	\$ 884,098	\$ 8,846,871
DISBURSEMENTS														
<i>Operating Disbursements</i>														
Wages and Benefits	(313,015)	(469,523)	(313,015)	(469,523)	(313,015)	(469,523)	(313,015)	(469,523)	(313,015)	(469,523)	(313,015)	(469,523)	(313,015)	(5,008,246)
Rent	(261,000)	-	-	-	(261,000)	-	-	-	-	(261,000)	-	-	-	(783,000)
Rehabilitation Services	-	-	(70,366)	-	-	-	(140,732)	-	-	-	-	(140,732)	-	(351,830)
Management Fee	-	-	(70,210)	-	-	-	(140,420)	-	-	-	-	(140,420)	-	(351,049)
IBNR Insurance Reimbursement - Home Office	(37,501)	-	-	-	-	-	-	-	-	-	-	-	-	(37,501)
Pharmacy Services	-	-	(40,828)	-	-	-	(81,657)	-	-	-	-	(81,657)	-	(204,142)
Utilities	-	-	-	(29,551)	-	-	-	(29,551)	-	-	-	-	(29,551)	(88,653)
Food Services	(38,564)	-	(38,564)	-	(38,564)	-	(38,564)	-	(38,564)	-	(38,564)	-	(38,564)	(269,948)
Contract Services	(34,483)	-	(34,483)	-	(34,483)	-	(34,483)	-	(34,483)	-	(34,483)	-	(34,483)	(241,379)
Medical Supplies	(11,650)	(11,650)	(11,650)	(11,650)	(11,650)	(11,650)	(11,650)	(11,650)	(11,650)	(11,650)	(11,650)	(11,650)	(11,650)	(151,449)
Equipment and Transportation	(38,015)	-	-	-	(38,015)	-	-	-	(38,015)	-	-	-	-	(114,045)
Employee Recruitment, Development, and Training	(2,744)	(2,744)	(2,744)	(2,744)	(2,744)	(2,744)	(2,744)	(2,744)	(2,744)	(2,744)	(2,744)	(2,744)	(2,744)	(35,674)
Cable, Phone, and Internet	-	(18,222)	-	(18,222)	-	(18,222)	-	(18,222)	-	(18,222)	-	(18,222)	-	(109,332)
Repairs and Maintenance	(6,898)	(6,898)	(6,898)	(6,898)	(6,898)	(6,898)	(6,898)	(6,898)	(6,898)	(6,898)	(6,898)	(6,898)	(6,898)	(89,680)
Linen and Laundry Services	(3,183)	(3,183)	(3,183)	(3,183)	(3,183)	(3,183)	(3,183)	(3,183)	(3,183)	(3,183)	(3,183)	(3,183)	(3,183)	(41,375)
Medical and Lab Services	-	-	-	-	(4,198)	-	-	-	(4,198)	-	-	-	-	(8,397)
Office Supplies and Postage	(764)	(764)	(764)	(764)	(764)	(764)	(764)	(764)	(764)	(764)	(764)	(764)	(764)	(9,931)
Resident Health, Welfare, and Entertainment	(685)	(685)	(685)	(685)	(685)	(685)	(685)	(685)	(685)	(685)	(685)	(685)	(685)	(8,906)
Insurance	(637)	(637)	(637)	(637)	(637)	(637)	(637)	(637)	(637)	(637)	(637)	(637)	(637)	(8,287)
MPL Insurance	-	-	-	-	(15,000)	-	-	-	-	(15,000)	-	-	-	(30,000)
WC Insurance	-	(33,000)	-	-	-	(33,000)	-	-	-	(33,000)	-	-	-	(99,000)
Other Operating Expenses	(30,397)	(30,397)	(30,397)	(30,397)	(30,397)	(30,397)	(30,397)	(30,397)	(30,397)	(30,397)	(30,397)	(30,397)	(30,397)	(395,163)
Total Operating Disbursements	(779,537)	(577,704)	(624,425)	(574,255)	(761,234)	(577,704)	(805,829)	(574,255)	(485,234)	(853,704)	(443,021)	(907,512)	(472,572)	(8,436,987)
Cash Flow from Operations	\$ (22,367)	\$ 477,360	\$ (394,127)	\$ 309,843	\$ (401,256)	\$ 378,062	\$ (476,234)	\$ 111,635	\$ 177,146	\$ (96,534)	\$ 612,043	\$ (677,215)	\$ 411,526	\$ 409,884
<i>Non-Operating Disbursements</i>														
Professional Fees - Debtor	-	-	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)	(220,000)
Professional Fees - Lender	-	-	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(27,500)
Professional Fees - UCC	-	-	(1,250)	(1,250)	(1,250)	(1,250)	(1,250)	(1,250)	(1,250)	(1,250)	(1,250)	(1,250)	(1,250)	(13,750)
Professional Fees - Board Counsel	-	-	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(27,500)
Ordinary Course Professionals	-	-	(2,000)	(2,000)	(2,000)	(2,000)	(2,000)	(2,000)	(2,000)	(2,000)	(2,000)	(2,000)	(2,000)	(22,000)
Claims Agent	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(32,500)
US Trustee Fees	-	-	-	-	-	-	-	-	-	-	-	(71,100)	-	(71,100)
Patient Care Ombudsman	-	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(30,000)
Interest Expense	(14,167)	-	-	-	(14,167)	-	-	-	-	(14,167)	-	-	-	(42,500)
Utility Deposits	-	-	(51,504)	-	-	-	-	-	-	-	-	-	-	(51,504)
Total Non-Operating Disbursements	(16,667)	(5,000)	(84,754)	(33,250)	(47,417)	(33,250)	(33,250)	(33,250)	(33,250)	(47,417)	(33,250)	(104,350)	(33,250)	(538,354)
Net Weekly Cash Flow	\$ (39,034)	\$ 472,360	\$ (478,881)	\$ 276,593	\$ (448,673)	\$ 344,812	\$ (509,484)	\$ 78,385	\$ 143,896	\$ (143,950)	\$ 578,793	\$ (781,565)	\$ 378,276	\$ (128,470)
Beginning Cash **														
Net Weekly Cash Flow	(39,034)	472,360	(478,881)	276,593	(448,673)	344,812	(509,484)	78,385	143,896	(143,950)	578,793	(781,565)	378,276	(128,470)
Weekly Ending Cash	\$ 1,314,555	\$ 1,786,916	\$ 1,308,034	\$ 1,584,628	\$ 1,135,955	\$ 1,480,767	\$ 971,283	\$ 1,049,668	\$ 1,193,564	\$ 1,049,614	\$ 1,628,407	\$ 846,843	\$ 1,225,119	\$ 1,225,119

* Financial information and assumptions provided by Guardian Management.

** Beginning cash less pre-petition professional fee retainers.

*** Assumes a transaction or closing on the Non-HUD properties occurs on or before October 27, 2024.

**** Assumes a transaction or closing on the HUD properties will occur after the 13-week period.

EXHIBIT 3

MILESTONES

- On the Petition Date, the Owned Portfolio/Ancillary Debtors will file various first day motions reasonably acceptable to the Prepetition Secured Parties, including the Motion, seeking approval of the relief requested on an interim and final basis.
- By 5 days after the Petition Date, the Debtors will file a proposed sale and bidding procedures motion (the “**Sale Motion**”) acceptable to the Prepetition Secured Parties, together with a motion to expedite the hearing on the foregoing.
- By 5 days after the Petition Date, the Debtors will obtain approval of the Interim Order in a form acceptable to the Prepetition Secured Parties on an interim basis.
- By 22 days after the Petition Date, the Debtors will obtain the entry of an order from the Bankruptcy Court (the “**Procedures Order**”) approving the Bidding Procedures (as defined in the Sale Motion).
- By 35 days after the Petition Date, the Debtors will obtain approval of the Final Order in a form acceptable to the Prepetition Secured Parties.
- By 55 days after the Petition Date, shall be the Bid Deadline (as defined in the Procedures Order).
- By 60 days after the Petition Date, to the extent that the Debtors receive more than one (1) Qualified Bid (as defined in the Procedures Order) by the Bid Deadline, the Debtors shall conduct a Bankruptcy sale pursuant to the Procedures Order.
- By 65 days after the Petition Date, the Debtors will obtain a final order (the “**Sale Order**”) granting the relief requested in the Sale Motion and approving a sale of the assets of the Owned Portfolio Debtors pursuant to one or more Successful Bidder(s) (as defined in the Procedures Order).
- By October 31, 2024, the Debtors shall have closed on the transactions authorized under the Sale Order for the Non-HUD Debtors.
- By December 20, 2024, the Debtors shall have closed on the transactions authorized under the Sale Order for the HUD Debtors.