

ENTERED

October 15, 2024

Nathan Ochsner, Clerk

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	§	Chapter 11
	§	
THE AZTEC FUND HOLDING, INC., <i>et</i>	§	Case No. 24-90436 (CML)
<i>al.</i> , ¹	§	
Debtors.	§	(Jointly Administered)
	§	

**AGREED FINAL ORDER (I) AUTHORIZING
POST-PETITION USE OF CASH COLLATERAL, (II) GRANTING
ADEQUATE PROTECTION, (III) MODIFYING THE AUTOMATIC STAY,
AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) pursuant to sections 105, 361, 362, 363, and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, and 9014, Bankruptcy Local Rule 4001-1(b), and the Complex Case Procedures for entry of a final order (this “Final Order”), among other things:

- (a) authorizing, pursuant to section 363(c) of the Bankruptcy Code, the use of Cash Collateral (defined below) of Bank of America, National Association (“BANA”) pursuant to the terms of this Final Order and the Budget;
- (b) subject to the Carve Out, granting adequate protection to BANA pursuant to sections 361 and 363(e) of the Bankruptcy Code on account of any diminution in value of the interest of BANA in the Pre-petition Collateral, resulting from the Debtors’ use thereof during the pendency of these chapter 11 cases;
- (c) modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to permit the Debtors and BANA to implement and effectuate the terms and provisions of this Final Order;

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, if any, are: The Aztec Fund Holding, Inc. (7839); Aztec OME Holdings, Inc. (1731); OME 2001 Mark Center, LLC (9459); OME Bowie Corporate Center, LLC (2184); OME Lake Vista III & IV, LLC (4040); OME Windward Oaks, LLC (5261); TAF 5775 DTC, LLC (2526); TAF Intellicenter, LLC (0832); TAF Lakeside II, LLC (0253); TAF Pinnacle Park, LLC (3055); TAF Pinnacle Park Land, LLC; and TAF Royal Tech, LLC (6049). The Debtors’ service address is: Paseo de los Tamarindos 90, Torre 2 - Piso 27, Bosque de las Lomas, CDMX 05120.

² Capitalized terms used herein, not otherwise defined, shall be given the meaning ascribed in the Motion.

- (d) except to the extent of the Carve Out, approving the waiver by the Debtors of any right to surcharge the Pre-petition Collateral pursuant to section 506(c) of the Bankruptcy Code or any other applicable principle of equity or law; and
- (e) granting related relief;

and due and sufficient notice of and opportunity for a hearing on the Motion having been given under the circumstances; and the Court having conducted a an interim hearing on the Motion on August 8, 2024 (the “Interim Hearing”); and the Court having conducted a final hearing, if necessary, on the Motion (together with the Interim Hearing, the “Hearing”); and the Court having reviewed the Motion, the Haddad Declaration, the evidence adduced by the parties, and the representations of counsel at the Hearing; and upon the entire record made at the Hearing; and the Court having considered the Budget, attached hereto and filed and served by the Debtors in accordance with the Complex Case Procedures; and it appearing to the Court that granting the relief sought in the Motion on the terms and conditions contained herein is necessary and essential to enable the Debtors to preserve the value of their business and assets and to prevent immediate and irreparable harm to the Debtors’ estates, is fair and reasonable, and is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and it appearing to the Court that the legal and factual bases set forth in the Motion, the Haddad Declaration and at the Hearing establish good and sufficient cause for the relief granted herein and that all objections to the entry of this Final Order have been withdrawn or are overruled; and after due deliberation and sufficient cause appearing therefor, it is HEREBY FOUND AND DETERMINED THAT:

A. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. The Motion constitutes a core proceeding under 28 U.S.C. § 157. Venue is proper under 28 U.S.C. §§ 1408 and 1409.

B. On the Petition Date, the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, which bankruptcy cases are being jointly administered.

C. Without prejudice to the rights of any other party-in-interest in these chapter 11 cases, the Debtors acknowledge, admit, agree, and stipulate that:

1. As of the Petition Date, certain of the Debtors, as borrowers (the “Borrowers”), and Bank of America, National Association (in its capacity as Administrative Agent and Lender, “BANA”) were parties to that certain Consolidated, Amended and Restated Loan Agreement dated as of November 14, 2019, as modified by a Loan Extension and Modification Agreement dated as of February 24, 2023 (the “Loan Agreement”).

2. BANA is the owner and holder of one or more Promissory Notes executed and delivered by the Borrower and payable to BANA and the aggregate, original principal amount of such promissory notes was \$202,250,000.00 (as renewed, extended, modified, amended or restated from time to time, the “Note”). The Note evidences the Borrower’s obligations to BANA in connection with a loan or loans in the aggregate original principal amount of \$202,250,000.00 (collectively, the “Loan”).

3. As of the Petition Date, obligations in an aggregate amount of \$115,713,429.25 were outstanding with respect to the Loan, including principal in the amount of \$109,959,999, interest accruing at the default rate in the amount of \$3,240,454.99, a deferred interest fee in the amount of \$1,308,830.53, and out-of-pocket expenses of the Administrative Agent including advisory and legal fees in the amount of \$1,204,144.73.

4. Borrowers’ obligations under the Loan are secured by (i) an Amended and Restated Deed to Secure Debt, Security Agreement, Financing Statement and Fixture Filing dated November 14, 2019, from OME Windward Oaks, LLC, a Georgia limited liability company, in favor of Administrative Agent, and recorded in the Official Records of Fulton County, Georgia on November 19, 2019 in Deed Book 60806, Page 247 as recording number 2019- 0380436; (ii) an Amended and Restated Deed of Trust, Assignment of Rents and Leases, Security Agreement, Fixture Filing and Financing Statement dated November 14, 2019, from TAF 5775 DTC, LLC, a Colorado limited liability company, in favor of Administrative Agent, and recorded in the Official Records of Arapahoe County, Colorado as Document No. D9125022; (iii) an Amended and Restated Credit Line Deed of Trust, Assignment of Rents and Leases, Security Agreement, Fixture Filing and Financing Statement dated January 20, 2021, from OME 2001 Mark Center, LLC, a Virginia limited liability company, in favor of Administrative Agent, and recorded in the Official Records of Alexandria, Virginia on January 26, 2021 as Document No. 210002225; and (iv) a Purchase Money Deed of Trust, Assignment of Rents and Leases, Security Agreement, Fixture Filing and Financing Statement dated January 28, 2021, from OME Bowie Corporate Center, LLC, a Maryland limited liability company, in favor of Administrative Agent, and recorded in the Official Records of Prince George County, Maryland on February 9, 2021 in Book 44854, page 381 (collectively, as amended, supplemented, modified, restated, renewed and extended to date, and as same may be further amended, supplemented, modified, renewed and/or extended from time to time, the “Deed of Trust”), collectively covering certain real property and improvements thereon,

assignment of rents, profits and revenues from the premises, and other collateral more particularly described therein (collectively, the “Properties”). In addition, Borrowers’ obligations under the Loan are secured by the requisite filings under the Uniform Commercial Code in the respective jurisdictions (the “UCC Fixture Filings”) and a first priority interest in two bank accounts ending 3184 and 3171 (the “Collateral Accounts”), and all other deposit accounts of the Debtors held at BANA and the amounts therein (the “Deposit Accounts” and, collectively with the Properties, the UCC Fixture Filings, and the Collateral Accounts, the “Pre-petition Collateral”). The Borrowers granted a first-priority lien on all right, title and interest in the Pre-petition Collateral to BANA (the “Pre-Petition Liens”).

5. Each of the Loan Documents is valid, binding, and, subject to bankruptcy laws, enforceable against the Borrowers in accordance with its terms. Pursuant to the terms of the Loan Documents, all amounts payable on account of the Loan are now fully due and payable by the Borrowers. The Borrowers are each jointly and severally indebted and liable to BANA for such amounts without defense, counterclaim, or offset of any kind.

6. The Pre-petition Liens are valid, binding, perfected, enforceable, non-avoidable, first-priority liens on, and security interests in, all right, title, and interest in the Borrowers’ Pre-petition Collateral, and are not subject to avoidance, disallowance, reduction, recharacterization, recovery, subordination, attachment, offset, counterclaim, defense, “claim” (as defined in the Bankruptcy Code), impairment, or any other challenge of any kind pursuant to the Bankruptcy Code or other applicable law.

7. The Debtors will not challenge or seek to avoid the validity, enforceability, priority, or perfection of the Pre-petition Liens.

8. Cash collateral (within the meaning of section 363(a) of the Bankruptcy Code) of BANA includes all of Cash Collateral held in the Borrowers’ Collateral Accounts on and after the Petition Date and all cash proceeds of the other Pre-petition Collateral.

D. Without prejudice to the rights of any other party-in-interest in these chapter 11 cases, BANA acknowledges, admits, agrees, and stipulates that the Pre-petition Liens do not extend to the Pinnacle Park Land (defined below), including the proceeds of any sale thereof, and that, the Pinnacle Park Land does not constitute Pre-petition Collateral.

E. Without prejudice to the rights of any other party, each Debtor and the Debtors’ estates, on its own behalf and on behalf of its past, present, and future predecessors, successors, heirs, and assigns, hereby forever, fully, and finally, waives and releases any and all claims (as defined in section 101(5) of the Bankruptcy Code), counterclaims, causes of action, defenses, or

setoff rights against BANA and their successors and assigns, whether arising at law or in equity, including any recharacterization, subordination, avoidance, or other claim arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code or under any other similar provisions of applicable state or federal law. The admissions, stipulations, agreements, and releases set forth in this Final Order are based upon and consistent with the results of the Debtors' investigation of BANA's liens and claims.

F. The preservation, maintenance, and enhancement of the value of the Borrowers' assets are of the utmost significance and importance. The Debtors lack sufficient available sources of working capital, however, to carry on the operation of their business without the use of Cash Collateral. Moreover, the Debtors' need to use Cash Collateral is immediate. Absent the ability to use Cash Collateral, the continued operation of the Debtors' businesses would not be possible, and immediate and irreparable harm to the Debtors and their estates would be inevitable.

G. The Debtors continue to collect cash, rents, income, offspring, products, proceeds, and profits generated from the Pre-petition Collateral and to use the same to pay operations costs and other expenses related to Borrowers' Properties, all of which constitute Pre-petition Collateral under the Loan Documents and, accordingly, are subject to the valid and perfected Pre-petition Liens.

H. The Debtors desire to use Cash Collateral under section 363(a) of the Bankruptcy Code. BANA has consented to the Debtors' use of the Cash Collateral in accordance with the Budget attached hereto as Exhibit 1, exclusively on, and subject to, the terms and conditions set forth herein through the Termination Date (as defined below).

I. Notice of the Hearing, the Motion, and the proposed final order has been provided by the Debtors to: (i) the Office of the United States Trustee for the Southern District of Texas;

(ii) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (iii) BANA and its counsel; (iv) all applicable government agencies to the extent required by the Bankruptcy Rules and the Local Rules; (v) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (vi) counsel for any of the foregoing, to the extent known. In light of the nature of the relief requested and under the circumstances, no other or further notice need be given.

J. The adequate protection provided to BANA for any diminution in the value of BANA's interest in the Pre-petition Collateral from and after the Petition Date is consistent with and authorized by the Bankruptcy Code and is offered by the Debtors to protect BANA's interests in the Pre-petition Collateral in accordance with sections 361, 362, and 363 of the Bankruptcy Code. The adequate protection provided herein and other benefits and privileges contained herein are necessary in order to (i) protect BANA from the diminution in the value of their interests in the Pre-petition Collateral and (ii) obtain the foregoing consents and agreements.

K. The Debtors stipulate that in permitting the Debtors to use Cash Collateral or in taking any other actions permitted by this Final Order, BANA shall not (i) have liability to any third party or be deemed to be in control of the operation of any of the Debtors or to be acting as a "controlling person," "responsible person," or "owner or operator" with respect to the operation or management of any of the Debtors (as such term, or any similar terms, are used in the Internal Revenue Code, or any applicable federal or state statute), (ii) owe any fiduciary duty to any of the Debtors, their creditors, or their estates, or (iii) constitute or be deemed to constitute a joint venture or partnership with any of the Debtors.

L. Based on the record before the Court, the terms of this Final Order, including, without limitation, of the Debtors' use of Cash Collateral and the provision of adequate protection

therefor, are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration. The terms of this Final Order were negotiated in good faith and at arm's length between the Debtors and BANA.

M. 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 Debtors and their estates. The Court concludes that entry of this Final Order is in the best interests of the Debtors' estates and creditors as its implementation will, among other things, allow the Debtors to preserve and maintain the value of their assets and business and enhance the Debtors' prospects for a successful reorganization.

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

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. Motion. The Motion is granted on a final basis to the extent of and subject to the terms and conditions set forth in this Final Order. The Debtors shall not use any Cash Collateral unless expressly authorized and permitted herein or by subsequent order of the Court. Any objections to the Motion with respect to the entry of this Final Order that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are hereby denied and overruled.

2. Use of Cash Collateral. Subject to the terms and conditions of this Final Order, including specifically the Carve Out, the Debtors are hereby authorized to use Cash Collateral in accordance with the Budget (as defined below), during the period from the date of this Final Order through and including the Termination Date (as defined below) for working capital, general corporate purposes, operating expenses, and administrative costs and expenses of the Debtors

incurred in these chapter 11 cases, subject to the terms hereof, as detailed in and limited by the Budget. For the avoidance of doubt, and subject to objection rights, administrative costs and expenses that may be paid pursuant to the Budget, shall include fees and expenses paid to Estate Professionals (defined below) and fees paid to CFG Administración GP, SA de CV (“CFG”) and OME GP, SA de CV (“OME GP”) for management of the Debtors and the Pre-petition Collateral (the “Management Fees”). The Debtors’ assets, including but not limited to, the Cash Collateral, shall be operated and maintained in the ordinary course of business and, without limiting the generality of the foregoing, the Debtors shall (subject to entry of applicable Court orders) timely pay all real estate taxes and maintain existing insurance coverage. The Debtors shall provide BANA with copies of insurance policies applicable to the Properties.

3. Budget; Use of Cash Collateral.

- (a) The Debtors’ use of Cash Collateral shall be in accordance with and pursuant to the 13-week budget attached hereto as **Exhibit 1** and incorporated herein by reference (the “Budget”).
- (b) The Budget shall be subject to the following permitted variances (collectively, the “Permitted Variances”): (i) an unfavorable variance of no more than 10% with respect to cumulative cash receipts on a monthly basis, tested against the active Budget, and (ii) an unfavorable variance of no more than 15% with respect to cumulative monthly operating cash disbursements (other than expenses pertaining to the Debtors’ management fee and professional fees, which shall not have any unfavorable variance), tested monthly based upon the active Budget. On a monthly basis, the Debtors shall deliver a budget reconciliation (a “Budget Reconciliation”) consisting of a comparison of budget to actual cash flow for the prior month and explaining, in reasonable detail, any variance of actual cash flow to Budget for the prior monthly period in excess of 15%.
- (c) On September 20, 2024 and the 20th of each month thereafter (or prior business day), the Debtors may, in their sole discretion, provide a proposed revised budget covering a period that begins the first of the month immediately following (the “Proposed Revised Budget”) to BANA, BANA’s counsel, and the U.S. Trustee’s counsel. On or before five days after the receipt of the Proposed Revised Budget, BANA will inform the Debtors whether it, in its sole discretion, approves that Proposed Revised Budget. If BANA does not approve the Debtors’ proffered Proposed Revised Budget, the Debtors may continue to operate under the existing

Budget or may request that the Court hold a hearing on the Debtors' request to continue to use Cash Collateral under a Proposed Revised Budget.

- (d) For the absence of doubt, BANA has absolutely no obligation to advance additional funds to the Debtors under this Final Order or otherwise. Nothing in this Final Order shall be construed to obligate BANA, in any way, to pay compensation to, or to reimburse expenses of, any Estate Professional or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.
- (e) Under no circumstance may the Debtors use Cash Collateral for any purpose other than those authorized by this Final Order and as set forth in the then active Budget without BANA's prior written consent. Cash Collateral shall not, directly or indirectly, be used to pay administrative expenses of the Debtors or the Estates except for those expenses (including the statutorily required fees payable to the Office of the U.S. Trustee pursuant to 28 U.S.C. § 1930 and any interest due thereon) that are set forth in the Budget, paid with the prior written consent of BANA, or paid pursuant to a separate order of the Court entered after reasonable notice to BANA and an opportunity for BANA to object thereto and to be heard on the matter.
- (f) The authorization granted herein is solely with respect to the use of Cash Collateral.

4. Entitlement to Adequate Protection. BANA shall be entitled, pursuant to sections 361, 363(c)(2), and 363(e) of the Bankruptcy Code, to adequate protection of its interests in the Pre-petition Collateral, including Cash Collateral, in an amount equal to the aggregate post-petition diminution or decrease in value of BANA's interest in the Pre-petition Collateral resulting from the sale, lease, or use by the Debtors of the Pre-petition Collateral and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code, from and after the Petition Date (such diminution in value, the "Adequate Protection Obligations").

5. Adequate Protection. As adequate protection, BANA is hereby granted the following claims, liens, rights, and benefits:

- (a) Section 507(b) Claim.
 - (i) The Adequate Protection Obligations due to BANA shall constitute allowed joint and several superpriority administrative claims against the Borrowers as provided in section 507(b) of the Bankruptcy Code, with priority in payment over any and all unsecured claims and administrative expense claims against the Borrowers, now existing or hereafter arising in these

chapter 11 cases (subject and subordinate only to the Carve Out solely to the extent set forth in this Final Order), including all claims of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including without limitation, sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, 1113, or 1114, and shall at all times be senior to the rights of the Borrowers and any successor trustee or any creditor in these chapter 11 cases or any subsequent proceedings, including without limitation any chapter 7 proceeding, under the Bankruptcy Code (the “507(b) Claim”), which administrative claim shall have recourse to and be payable from all pre-petition and post-petition property of the Borrowers;

(ii) The Debtors acknowledge that BANA has expressly reserved any and all claims and arguments regarding any subsequent adequate protection claim or 507(b) Claim they may assert, including against the proceeds realized from the sale of the Pinnacle Park Land, including, without limitation, the argument that, under controlling Fifth Circuit authority (as asserted by BANA), (a) they have a valid and enforceable adequate protection claim (and thus, a potential 507(b) Claim) that is secured in all respects by the Adequate Protection Lien granted hereunder in and to the Pinnacle Park Land, in an aggregate amount equal to each and every dollar of Cash Collateral expended on an administrative expense including, but not limited to Estate Professional fees and expenses, fees and expenses of the Clerk or the Office of the United States Trustee, and Management Fees (as asserted by BANA) that did not directly relate and provide a quantifiable benefit to the maintenance and preservation of their Pre-petition Collateral and (b) specifically, but without limiting the generality of the foregoing, administrative expenses consisting of the fees and disbursements of Estate Professionals incurred in the administration of these Chapter 11 cases, as well as any asset management fee owing to the Debtors or any of the Debtors’ affiliates, do not and will not directly relate or directly provide any quantifiable benefit to the maintenance and preservation of their Collateral.

(b) Adequate Protection Liens. Effective as of the date of this Final Order, solely to the extent of the Adequate Protection Obligations and pursuant to sections 361(2) and 363(c)(2) of the Bankruptcy Code, BANA is hereby granted a valid, binding, continuing, enforceable, fully-perfected, non-voidable first priority lien and, as applicable, replacement lien on and security interest in (the “Adequate Protection Liens”):

(i) that certain approximate 5.5 acre tract of land at 4252 Interstate Highway 30, Dallas, Texas 75211 and as more fully described on **Exhibit 2** attached hereto (“Pinnacle Park Land”) and the proceeds of any sale thereof; and

(ii) the Pre-Petition Collateral and all of the Borrowers now owned and hereafter acquired real property of the Borrowers’ bankruptcy estates, and all products, proceeds, rents, profits, replacements, and substitutions thereof, whether existing on or as of the Petition Date or thereafter acquired,

that is (x) not subject to valid, perfected, non-avoidable, and enforceable liens in existence on or as of the Petition Date and held by parties other than BANA or (y) subject to valid and unavoidable liens in existence for amounts outstanding as of the Petition Date that are perfected after the Petition Date as permitted by section 546(b) of the Bankruptcy Code (collectively, excluding only (x) and (y) the “Adequate Protection Lien Property”); and

- (c) Adequate Protection Payments. As additional adequate protection, the Borrowers will pay BANA, on or before the 10th day of every month beginning September 10, 2024, interest calculated on the agreed outstanding amount as of the Petition Date at the rate of Daily SOFR plus the SOFR Margin of 225 bps. Debtors reserve all rights to assert that Adequate Protection Payments should be applied to satisfy prepetition interest or prepetition principal, and BANA reserves all rights to assert otherwise. Moreover, Debtors will pay BANA \$35,000 a month in respect of its attorneys fees.

6. Perfection of Adequate Protection Liens. The Adequate Protection Liens are hereby deemed perfected without the necessity of the execution (or recordation or other filing) by the Debtors of security agreements, control agreements, pledge agreements, financing statements, mortgages, or other similar documents, or the possession or control by BANA of any Adequate Protection Collateral. BANA is hereby authorized, but not required, to file or record financing statements, intellectual property filings, mortgages, depository account control agreements, notices of lien, or similar instruments in any jurisdiction in order to validate and perfect the liens and security interests granted hereunder. Whether or not BANA, in its sole discretion, chooses to file such financing statements, intellectual property filings, mortgages, notices of lien, or similar instruments, such liens and security interests granted by this Final Order shall be deemed valid, perfected, allowed, enforceable, non-avoidable, and not subject to challenge, dispute, or subordination as of the date of entry of this Final Order. If BANA determines to file any financing statements, agreements, notice of liens or similar instruments, the Debtors shall cooperate and assist in any such filings as reasonably requested by BANA, and the automatic stay shall be deemed modified to allow such filings.

7. A certified copy of this Final Order may, in the discretion of BANA, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien, or similar instruments, and all filing offices are hereby authorized and directed to accept such certified copy of this Final Order for filing and recording; *provided* that, notwithstanding the date of any such filing, the date of such perfection shall be the date of entry of this Final Order.

8. Carve Out.

- (a) Carve Out. As used in this Final Order, the “Carve Out” means the sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to \$75,000 incurred by a trustee under sections 726(b) and 1183(a) of the Bankruptcy Code; (iii) to the extent specifically authorized by and stated in the Budget and allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses (the “Allowed Professional Fees”) actually incurred by persons or firms retained by the Debtors on or after the Petition Date pursuant to section 327, 328, or 363 of the Bankruptcy Code (the “Debtor Professionals”) and any official committee appointed in these chapter 11 cases (each, a “Committee”) pursuant to section 328 or 1103 of the Bankruptcy Code (the “Committee Professionals” and, together with the Debtor Professionals, the “Estate Professionals”) at any time before or on the first business day following delivery by BANA of a Carve Out Trigger Notice (as defined below), whether allowed by the Court prior to or after delivery of a Carve Out Trigger Notice; and (iv) Allowed Professional Fees of Estate Professionals in an aggregate amount not to exceed \$75,000 incurred after the first business day following delivery by BANA of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the “Post-Carve Out Trigger Notice Cap”). For purposes of the foregoing, “Carve Out Trigger Notice” shall mean a written notice delivered by e-mail (or other electronic means) by BANA to the Debtors to the attention of Charles Haddad, and to the Debtors’ counsel who have entered an appearance in these bankruptcy cases, the U.S. Trustee, and counsel to any Committee appointed in these chapter 11 cases, which notice may be delivered following the occurrence and during the continuation of a Termination Event (as defined below), stating that the Post-Carve Out Trigger Notice Cap has been invoked. The amounts allocated to each Estate Professional’s fees are wholly separate, with each such Estate Professional’s allocation reserved for that Estate Professional if approved by the Court (i.e., the total Budgeted amount for all Estate Professionals shall not be split *pro rata* among the Estate Professionals if any one

Estate Professional exceeds the amount Budgeted for that Estate Professional). Nothing herein allows the payment of any fees or expenses of Estate Professionals absent approval of the same by the Court pursuant to a fee application on notice, or such other procedures that may be approved by the Court.

- (b) Carve Out Reserves. On the day on which BANA gives a Carve Out Trigger Notice to the Debtors (the “Termination Declaration Date”), the Debtors shall utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund a segregated reserve in an amount equal to the then accrued but still unpaid amounts of the Allowed Professional Fees permitted under the Budget (the “Pre-Trigger Reserve”) prior to paying any other claims. The funds in the Pre-Trigger Reserve shall be held in trust to pay such then unpaid Allowed Professional Fees prior to paying any other claims.

On the Termination Declaration Date, after funding the Pre-Trigger Reserve, the Debtors shall utilize all remaining cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the Post-Carve Out Trigger Notice Cap (the “Post-Trigger Reserve” and, together with the Pre-Trigger Reserve, the “Carve Out Reserves”).

All funds in the Pre-Trigger Reserve shall be used first to pay the obligations set forth in clauses (i) through (iii) of the definition of Carve Out set forth above (the “Pre-Trigger Carve Out Amounts”). If funds remain in the Pre-Trigger Reserve after the Pre-Trigger Carve Out Amounts have been fully satisfied, then those remaining Pre-Trigger Reserve funds may be used to fund the Post-Trigger Reserve, and any funds remaining in the Pre-Trigger Reserve after the Post-Trigger Reserve has been funded shall be paid to BANA, unless the Loan has been indefeasibly paid in full, in cash, in which case any such excess shall be paid to the Debtors’ creditors in accordance with their rights and priorities as of the Petition Date, or as otherwise ordered by the Court.

All funds in the Post-Trigger Reserve shall be used first to pay the obligations set forth in clause (iii) of the definition of Carve Out set forth above (the “Post-Trigger Carve Out Amounts”), and then, to the extent the Post-Trigger Reserve has not been reduced to zero, to pay BANA, unless the Loan has been indefeasibly paid in full, in cash, in which case any such excess shall be paid to the Debtors’ creditors in accordance with their rights and priorities as of the Petition Date.

Notwithstanding anything to the contrary in the Loan Documents or this Final Order, following delivery of a Carve Out Trigger Notice, and unless and until the Carve Out Reserve has been fully established, BANA shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors; after the establishment of the Carve Out Reserves, BANA shall retain a perfected and first-priority security interest in any residual funds in the Carve Out Reserves, with any excess funds paid to BANA.

Further, notwithstanding anything to the contrary in this Final Order, (i) disbursements by the Debtors from the Carve Out Reserves shall not increase or reduce the Loan, (ii) the failure of the Carve Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve Out, and (iii) in no way shall the Budget, Carve Out, Post-Carve Out Trigger Notice Cap, or Carve Out Reserves be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors, except that the Debtors may only use Cash Collateral to pay Allowed Professional Fees to the extent that this Final Order permits or as BANA may otherwise agree in writing.

For the avoidance of doubt and notwithstanding anything to the contrary in the Loan Documents or this Final Order, the Carve Out shall be senior to all liens and claims securing the Pre-petition Collateral, the Adequate Protection Liens, and the 507(b) Claim, and any and all other forms of adequate protection, liens, or claims securing the Loan.

- (c) Payment of Allowed Professional Fees Prior to the Termination Declaration Date. Any payment or reimbursement made to an Estate Professional prior to the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall reduce the Carve Out and shall reduce amount of the Pre-Trigger Reserve to be funded by the Debtors on the Termination Declaration Date.
- (d) No Direct Obligation To Pay Allowed Professional Fees. BANA shall not be responsible for the payment or reimbursement of any fees or disbursements of any Estate Professional incurred in connection with these chapter 11 cases or any successor cases under any chapter of the Bankruptcy Code. Nothing in this Final Order or otherwise shall be construed to obligate BANA, in any way, to pay compensation to, or to reimburse expenses of, any Estate Professional or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.
- (e) Payment of Carve Out On or After the Termination Declaration Date. Any payment or reimbursement made to an Estate Professional in respect of any Allowed Professional Fees shall permanently reduce the Carve Out for the Estate Professional on a dollar-for-dollar basis.

9. Additional Adequate Protection. As additional adequate protection:

- (a) Other Covenants. The Debtors shall maintain their cash management arrangements in a manner consistent with the *Interim Order* and any subsequent final order granting the *Debtors' Emergency Motion for Interim and Final Orders (I) Authorizing Debtors to (A) Continue Using Existing Cash Management System, Bank Accounts, and Business Forms, (B) Implement Changes to Cash Management System in the Ordinary Course of Business, and (C) Continue to Perform Intercompany Transfers; and (II) Granting Related Relief* [Docket No. 8]. The Debtors shall not use, sell, or lease any material assets outside the ordinary course of business, or seek authority of the Court to do any of the foregoing, without first

providing written notice to BANA at least five (5) business days prior to the date on which the Debtors file a motion seeking the authority of the Court for such use, sale, or lease. The Debtors shall comply with the covenants contained in the Loan Documents regarding the maintenance and insurance of the Pre-petition Collateral and the Adequate Protection Collateral.

- (b) Limitation on Liens. The Debtors shall not create, incur, or suffer to exist any post-petition liens or security interests other than: (i) those granted pursuant to this Final Order; (ii) carriers', mechanics', operators', repairmen's, warehousemen's, or other similar liens arising in the ordinary course of business; (iii) pledges and deposits in connection with workers' compensation, unemployment insurance, and other social security legislation; and (iv) any other junior liens or security interests that the Debtors are permitted to incur under the Loan Documents.
- (c) Access. In addition to, and without limiting, whatever rights to access BANA has under the Loan Documents, upon reasonable prior written notice, at reasonable times during normal business hours, and otherwise not to be unreasonably withheld, the Debtors shall permit representatives, advisors, agents, and employees of BANA (i) to have access to and inspect the Debtors' properties, (ii) to examine the Debtors' books and records, and (iii) to discuss the Debtors' affairs, finances, and condition with the Debtors' officers, management, financial advisors, and counsel.
- (d) Meetings. The Debtors shall promptly schedule meetings with BANA and its advisors, agents and employees upon request and, in addition, shall conduct weekly meetings with BANA and/or BANA's legal and financial advisors to discuss the Debtors' affairs, finances and condition ("BANA Weekly Meeting").
- (e) Pinnacle Park Land Proceeds. Net proceeds from the sale, if any, of the Pinnacle Park Land ("Pinnacle Park Proceeds") shall be deposited in one of the Collateral Accounts where it shall remain segregated from other Debtor cash. Pinnacle Park Proceeds shall not be used, paid or otherwise distributed absent a further written agreement between the Debtors and BANA or further order of this Court entered after notice and opportunity for hearing.

10. Termination. The Debtors' right to use Cash Collateral pursuant to this Final Order shall terminate (the date of any such termination, the "Termination Date") (subject only to the Carve Out as limited herein) upon the earlier of (i) November 2, 2024, unless such date is extended with the consent of BANA or upon order of the Court, (ii) the effective date of any confirmed plan of reorganization of the Debtors and (iii) five (5) business days (any such five-business day period of time, the "Default Notice Period") immediately following the delivery of a written notice (a "Default Notice") by BANA to the Debtors, the U.S. Trustee, and any Committee appointed in

these bankruptcy cases, of the occurrence of any of the events set forth below unless such occurrence is cured by the Debtors prior to the expiration of the Default Notice Period or such occurrence is waived by BANA in writing in its sole discretion; *provided* that, during the Default Notice Period, the Debtors shall be entitled to continue to use Cash Collateral in accordance with the terms of this Final Order. The events set forth in clauses (a) through (p) below are collectively referred to as the “Termination Events”:

- (a) Failure of the Debtors to comply with any material provisions of this Final Order;
- (b) The use of Cash Collateral for any purpose not authorized by this Final Order or in noncompliance with the Budget;
- (c) The submission of a Budget Reconciliation that reflects cash receipts or cash disbursements in excess of Permitted Variances;
- (d) The Debtors fail to comply with any covenants in this Final Order, including but not limited to, those set out in paragraph 9 of this Final Order;
- (e) The Debtors grant, create, incur, or suffer to exist any post-petition liens or security interests other than: (i) those granted pursuant to this 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; and (iv) any other junior liens or security interests that the Debtors are permitted to incur under the Loan Documents;
- (f) An order is entered reversing, amending, supplementing, staying, vacating, or otherwise modifying this Final Order without the written consent of BANA, or this Final Order ceases to be in full force and effect for any reason;
- (g) The Court terminates or reduces the period pursuant to section 1121 of the Bankruptcy Code during which the Debtors have the exclusive right to file a plan of reorganization and solicit acceptances thereof;
- (h) The entry of an order granting relief from any stay of proceeding (including, without limitation, the automatic stay) so as to allow a third party to proceed against any Pre-petition Collateral with a value in excess of \$500,000;
- (i) The entry of any post-petition monetary judgment against any Debtor in excess of \$200,000;

- (j) The payment of any pre-petition claims that are junior in interest or right to the Pre-petition Liens, other than as permitted by the Budget or by an order entered in these chapter 11 cases;
- (k) The entry of any order of the Court authorizing any claims or charges, other than as permitted under this Final Order, entitled to superpriority under section 364(c)(1) of the Bankruptcy Code *pari passu* or senior to the Loan, or if there arises or is granted by the Court (i) any claim having priority over any or all administrative expenses of the kind specified in clause (b) of section 503 or clause (b) of section 507 of the Bankruptcy Code (other than the Carve Out), including the 507(b) Claim or (ii) any lien on the Pre-petition Collateral or Adequate Protection Collateral having a priority senior to or *pari passu* with the liens and security interests granted herein, except as expressly provided in the Loan Documents or in this Final Order;
- (l) The Court enters an order dismissing any of the chapter 11 cases;
- (m) The Court enters an order converting any of the chapter 11 cases to a case under chapter 7 of the Bankruptcy Code;
- (n) The Court enters an order appointing a chapter 11 trustee relating to the operation of the Debtors' businesses or these chapter 11 cases or appointing an examiner, unless consented to in writing by BANA;
- (o) Any Debtor files any motion, pleading, application, or adversary proceeding challenging the validity, enforceability, perfection, priority or amount of the obligations with respect to the Loan set forth herein or the Pre-petition Liens (or if any Debtor supports any such motion, pleading, application, or adversary proceeding commenced by any third party); or
- (p) Any Debtor obtains court authorization to commence, or commences, joins in, assists, or otherwise participates as an adverse party in any suit or other proceeding against BANA.

Notwithstanding anything herein to the contrary, the Debtors' authority to use Cash Collateral shall terminate immediately upon BANA's delivery of a Default Notice to the Debtors, the U.S. Trustee, and any Committee appointed in these bankruptcy cases concerning the occurrence of any events set forth in items (m), (n), (o) or (p) of this paragraph, and no Default Notice Period shall apply following BANA's delivery of such Default Notice regarding those events.

11. Remedies upon the Termination Date. Upon the occurrence of the Termination Date, subject to the requirements of this paragraph 11, BANA may (i) exercise all the rights and

remedies available under the Loan Documents, this Final Order, or applicable law (subject only to the Carve Out), including, without limitation, proceeding against, taking, taking possession of, foreclosing upon, selling all or a portion of, protecting, and realizing upon the Pre-petition Collateral, Adequate Protection Collateral, or any other property of any of the Debtors' Estates on which BANA has been granted liens or security interests (collectively, the "Collateral"), (ii) commence actions for either or both specific performance and the foreclosure upon any Collateral, (iii) sell any Collateral or any portion thereof, either in whole or in part, at private or public auction, (iv) receive proceeds from the sale of any Collateral, (v) assert and/or enforce the rights of the Debtors in any contracts which are Collateral and rights of setoff and recoupment as to any funds of the Estates held by BANA, and (vi) assign all or a portion of BANA's rights and obligations under the Loan Documents, including, but not limited to, the Credit Agreement and any or all other related documents to any third party, without any requirement to obtain the prior consent of any person or entity. If BANA elects to recover the Collateral as permitted in this paragraph, BANA shall first file a motion with the Court seeking emergency relief from the automatic stay to exercise such remedies on at least five (5) Business Days' written notice (the "Remedies Notice Period") to the Debtors, any Committee appointed in these chapter 11 cases, and the U.S. Trustee seeking an emergency hearing before the Court (a "Stay Relief Hearing"), and the Debtors agree not to object to the shortening of notice of such Stay Relief Hearing. At a Stay Relief Hearing, the Court may consider whether a Termination Event has occurred and any other appropriate relief and may fashion an appropriate remedy; *provided* that the Debtors may seek an emergency hearing before the Court, and must provide prompt notice of such hearing to counsel for BANA, to contest whether an Termination Event has occurred and to seek non-consensual use of Cash Collateral; *provided, further*, that the Debtors shall be entitled to continue to use Cash Collateral in accordance

with the terms of this Final Order during any Default Notice Period or Remedies Notice Period (except concerning a default under sections 11(m), (n), (o) or (p) above) only to fund critical expenses necessary to preserve the value of their business and assets, in each case in accordance with the terms of the Budget and this Final Order, but shall not be permitted to use Cash Collateral following any Default Notice Period or Remedies Notice Period absent further order of the Court. Notwithstanding the occurrence of a Termination Event, all of the rights, remedies, benefits, and protections provided to BANA under the Loan Documents and this Final Order shall survive. The Debtors shall cooperate in all respects with BANA's recovery efforts, including, but not limited to, providing BANA and its agents reasonable access to the Collateral. The rights of the Debtors to oppose any relief requested by BANA (and the rights of BANA to oppose any request for relief by the Debtors) upon and following the Termination Date are fully reserved. Any delay or failure of BANA to exercise rights under the Loan Documents or this Final Order shall not constitute a waiver of its respective rights hereunder, thereunder, or otherwise, unless any such waiver is pursuant to a written instrument executed in accordance with the terms of the applicable document. Without limiting the Debtors' rights under this Final Order, BANA shall be entitled to apply the payments or proceeds of the Pre-petition Collateral and the Adequate Protection Collateral in accordance with the provisions of the Loan Documents and in no event shall BANA be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the Pre-petition Collateral, the Adequate Protection Collateral, or otherwise. Notwithstanding the occurrence of the Termination Date or anything herein, all of the rights, remedies, benefits, and protections provided to BANA under this Final Order shall survive the Termination Date. Nothing herein shall be construed as limiting BANA's ability to assign all or a portion of its rights and obligations under the Loan Documents subject to any limitations therein.

12. Reservation of Rights of BANA. Notwithstanding any other provision hereof, the grant of adequate protection to BANA pursuant to this Final Order is without prejudice to its right to seek modification of the grant of adequate protection provided hereby so as to provide different or additional adequate protection; *provided* that the relative priority of all such additional adequate protections shall be the same as set forth in paragraph 5 of this Final Order and without prejudice to the right of the Debtors or any other party in interest to contest any such modification. Entry of this Final Order shall not be deemed to prejudice or limit any of BANA's rights under the Bankruptcy Code, under any agreement with or relating to any Debtor, against any third parties (including any other Debtor insider or affiliate), other creditors and/or other parties in interest, or under other applicable law. Without limiting the generality of the preceding sentence, (a) BANA, by not objecting to entry of this Final Order or otherwise, shall not be deemed to have, among other things, (i) waived its right to adequate protection under section 361 of the Bankruptcy Code, (ii) consented, expressly or implicitly, to any surcharge of its collateral under or pursuant to section 506(c) of the Bankruptcy Code, and BANA expressly reserves its right to oppose any relief that may be sought by any Debtor, any trustee, any other estate representative, or any creditor or other party in interest with respect to surcharge of collateral pursuant to section 506(c) of Bankruptcy Code, (iii) waived its right to assert any right or remedy available to it in connection with this Final Order or otherwise, (iv) waived its right to seek at any time (A) modification of the automatic stay on any ground, including as a result of the lack of adequate protection, for the purpose of pursuing any right or remedy under its loan documents or applicable law against any or all of the Collateral, (B) termination of any Debtor's exclusive right to propose and solicit acceptances of any plan of reorganization, (C) conversion to Chapter 7 or dismissal of any or all of the Chapter 11 cases, or (D) the appointment of an examiner or a Chapter 11 trustee for any or all of the Debtors, (v) waived

its right to object on any ground whatsoever to approval of a disclosure statement, to confirmation of a plan of reorganization, to the proposed sale of any Debtor asset, to entry of a final order approving the use of cash collateral, or to any other relief sought by any Debtor; (vi) waived its right to object to the allowance of any Professional Fees, or (vii) waived its right to object to the allowance of any other pre-petition or post-petition claims, including without limitation, as to the amounts and reasonableness of any Management Fees; and (b) the rights of BANA under section 507(b) or other priority provisions of the Bankruptcy Code are not waived, but instead are expressly reserved, including the right to assert any adequate protection claim or 507(b) Claim, including without limitation, as expressly reserved pursuant to paragraph 5(a)(ii) hereof.

13. Nothing herein shall be deemed to waive, modify, or otherwise impair the rights of BANA under the Loan Documents, under any applicable law, or in equity, and BANA expressly reserves all of its rights and remedies whether now existing or hereafter arising under the Loan Documents, under any applicable law, or in equity in connection with all Termination Events, Defaults, and Events of Default (as defined in the applicable Loan Documents and whether arising prior to or after the Petition Date).

14. Debtors' Reservation of Rights. Notwithstanding anything to the contrary in this Final Order, at any time before or after the occurrence of the Termination Date, including without limitation as a result of a Termination Event pursuant to paragraph 10 of this Final Order, the Debtors may seek authority to use Debtors' Cash Collateral without the consent of BANA, and BANA reserves all rights to contest such use.

15. Modification of Automatic Stay. The Debtors are authorized 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 Final Order and the transactions contemplated hereby.

The stay under section 362 of the Bankruptcy Code is hereby modified to permit the Debtors and BANA to accomplish the transactions contemplated by this Final Order.

16. Effect of Stipulations. As a result of the Debtors' review of the Loan Documents and the facts and circumstances relating thereto, the Debtors have agreed to the various stipulations and made the various admissions contained in this Final Order, including without limitation, the stipulations and admissions included in paragraph C, and the Debtors have given the various releases contained in this Final Order, including without limitation, the releases included in paragraph E, which stipulations, admissions, and releases shall be binding upon the Debtors and any successors thereto in all circumstances. The stipulations and admissions contained in this Final Order, including without limitation, in paragraph C of this Final Order, and the releases contained in this Final Order, including without limitation, in paragraph E of this Final Order, shall also be binding upon all other parties in interest, including without limitation, the estates, any Committee appointed in these bankruptcy cases, all creditors, and any chapter 7 or chapter 11 trustee appointed or elected for any of the Debtors (a "Trustee"), for all purposes unless (a) such party (subject in all respects to any agreement or applicable law which may limit or affect such entity's right or ability to do so), having obtained the requisite standing, has filed an adversary proceeding or contested matter, as required under the Bankruptcy Rules (subject in either case to the limitations contained herein, including, without limitation, in this paragraph 16 of this Final Order), by no later than the date that is the earlier of the effective date under a confirmed plan of reorganization and the date that is 45 days from the date of the entry of this Final Order (as such date may be extended by BANA in its sole discretion); *provided that*, as to the Creditors' Committee only, 60 calendar days after the appointment of the Creditors' Committee or, if longer, 45 days from entry of this Final Order; *provided further*, if the Chapter 11 Cases are converted to

chapter 7 and a chapter 7 trustee or a chapter 11 trustee is appointed or elected prior to the end of the Challenge Period, then the Challenge Period for any such chapter 7 trustee or chapter 11 trustee shall be extended (solely as to such chapter 7 trustee and chapter 11 trustee) to the date that is the later of (1) 45 calendar days after entry of this Final Order, or (2) the date that is 30 calendar days after its appointment (the “Challenge Period”), (i) challenging the amount, validity, enforceability, priority, or extent of the Loan or the Pre-petition Liens, or (ii) otherwise asserting any other claims, counterclaims, causes of action, objections, contests, or defenses against BANA individually or on behalf of the Debtors’ estates (collectively, the “Claims and Defenses”), 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 Debtors, all such Claims and Defenses are hereby irrevocably waived and relinquished effective as of the Petition Date. If no adversary proceeding or contested matter is timely filed prior to the expiration of the Challenge Period, without further order of the Court: (w) the Debtors’ stipulations and admissions contained in this Final Order shall be binding on all parties in interest, including, but not limited to, the estates, any Committee appointed in these bankruptcy cases, all creditors, and any Trustee; (x) the Loan shall constitute an allowed claim, not subject to counterclaim, setoff, subordination, recharacterization, defense, or avoidance, for all purposes in these chapter 11 cases and any subsequent chapter 7 cases; (y) the Pre-petition Liens shall be deemed to have been, as of the Petition Date, and continuing to be legal, valid, binding, perfected, and of the priority specified in paragraph C, and not subject to defense, counterclaim, recharacterization, subordination, or avoidance; and (z) the Pre-petition Liens shall not be subject to any other or further challenge by any Committee appointed in these bankruptcy cases, any creditor, any Trustee, or any other party in interest, and any such Committee, creditor, Trustee, or other party in interest shall be enjoined from seeking to

exercise the rights of the 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) with respect thereto; provided that if these chapter 11 cases are converted to chapter 7 or a Trustee is appointed in these chapter 11 cases prior to the expiration of the Challenge Period, any Trustee shall receive the full benefit of any remaining Challenge Period, subject to the limitations described herein. If any such adversary proceeding or contested matter is timely filed prior to the expiration of the Challenge Period, the stipulations and admissions contained in this Final Order, including without limitation, in paragraph C of this Final Order, shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph 16) on any Committee appointed in these bankruptcy cases, any creditor, and every other person, including, but not limited to, any Trustee, except to the extent of any findings and admissions that were expressly challenged in such adversary proceeding or contested matter. Nothing in this Final Order vests or confers on any person, including any Committee appointed in these bankruptcy cases, standing or authority to pursue any cause of action belonging to the Debtors or their estates. In the event that there is a timely successful challenge brought pursuant to this paragraph 16, the Court shall retain jurisdiction to fashion an appropriate remedy.

17. Limitation on Use of Collateral. The Debtors shall use the proceeds of the Pre-petition Collateral solely as provided in this Final Order. Notwithstanding anything herein or in any other order of the Court to the contrary and subject to the Carve-Out, Cash Collateral may not be used to: (a) object, contest, or raise any defense to the validity, perfection, priority, extent, or enforceability of the Loan, the Pre-petition Liens, or the liens or claims granted under this Final Order; (b) assert any Claims and Defenses against BANA or its agents, affiliates, representatives,

attorneys, or advisors; (c) seek to modify any of the rights granted to BANA hereunder; or (d) pay any amount on account of any claims arising prior to the Petition Date unless such payments are approved by an order of the Court.

18. Binding Effect; Successors and Assigns. The provisions of this Final Order, including all findings herein, shall be binding upon all parties in interest in these chapter 11 cases, including, without limitation, BANA, any Committee appointed in these bankruptcy cases, and the Debtors and their respective successors and assigns (including any Trustee, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors) and shall inure to the benefit of BANA and the Debtors and their respective successors and assigns; *provided* that, except to the extent expressly set forth in this Final Order, BANA shall have no obligation to permit the use of the Pre-petition Collateral (including Cash Collateral) by the Debtors or by any Trustee or similar responsible person appointed for the estate of any Debtor. For all adequate protection and stay relief purposes throughout these chapter 11 cases, BANA shall be deemed to have requested relief from the automatic stay and adequate protection as of the Petition Date. For the avoidance of doubt, such request will survive termination of this Final Order.

19. Limitation of Liability. In permitting the use of the Pre-petition Collateral or in exercising any rights or remedies as and when permitted pursuant to this Final Order, BANA shall not (a) have liability to any third party or be deemed to be in control of the operation of any of the Debtors or to be acting as a “controlling person,” “responsible person,” or “owner or operator” with respect to the operation or management of any of the Debtors (as such terms, or any similar terms, are used in the Internal Revenue Code, or any applicable federal or state statute) or (b) owe

any fiduciary duty to any of the Debtors, their creditors, or their estates, or shall constitute or be deemed to constitute a joint venture or partnership with any of the Debtors. Furthermore, nothing in this Final Order shall in any way be construed or interpreted to impose or allow the imposition upon BANA of any liability for any claims arising from the pre-petition or post-petition activities of any of the Debtors and their respective affiliates (as defined in section 101(2) of the Bankruptcy Code).

20. Effectiveness. Notwithstanding Bankruptcy Rules 6004(h), 6006(d), 7062, or 9014 or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Final Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Final Order. 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.

21. Proofs of Claim. BANA shall not be required to file any proofs of claim in any of these chapter 11 cases or successor cases, and the Debtors' stipulations in paragraph C herein shall be deemed to constitute a timely filed proof of claim against the Debtors. Any rule, notice or order entered by the Court in relation to the establishment of a bar date for any claim (including without limitation, administrative claims) in any of the chapter 11 cases or successor cases shall not apply to BANA with respect to the Loan. Nothing in this Final Order shall be deemed to preclude BANA from claiming amounts in addition to the amounts included in the Debtors' stipulations including, but not limited to, attorney's fees and post-petition interest on the Loan.

22. Section 506(c) Waiver. Subject to the extent of the Carve-Out, the Debtors and their estates waive any claim under 506(c) of the Bankruptcy Code for any costs and expenses incurred in connection with the preservation, protection or enhancement of, or realization by BANA upon the Collateral.

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

24. Jurisdiction. The Court shall retain jurisdiction to enforce the terms of this Final Order and to adjudicate any and all matters arising from or related to the interpretation or implementation of this Final Order.

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

26. A status hearing shall be held on October 28, 2024, at 1:00 p.m., prevailing Central Time, to discuss, among other things, continued Cash Collateral use under this Final Order. The Debtors and BANA (without limiting the scope of reservation of rights set forth in paragraph 12 hereof) each reserve their right to seek such continued Cash Collateral or object to same, as applicable.

Signed: October 15, 2024



Christopher Lopez
United States Bankruptcy Judge

Exhibit 1

Budget

	1 8/10/2024	2 8/17/2024	3 8/24/2024	4 8/31/2024	5 9/7/2024	6 9/14/2024	7 9/21/2024	8 9/28/2024	9 10/5/2024	10 10/12/2024	11 10/19/2024	12 10/26/2024	13 11/2/2024	TWCF Total
Cash Receipts														
Rents				1,510,479					1,523,185				1,499,802	4,533,466
Cash Receipts	-	-	-	1,510,479	-	-	-	-	1,523,185	-	-	-	1,499,802	4,533,466
Cash Disbursements														
Salaries (Hines)	-	(48,258)	-	(54,777)	-	-	(48,258)	-	(48,258)	-	(48,258)	-	(48,258)	(296,068)
Cleaning				(16,548)		(74,846)					(69,739)			(161,132)
Utilities				(16,407)		(136,531)					(129,243)			(282,181)
Repairs & Maintenance				(37,891)		(94,869)					(166,011)			(298,770)
Insurance	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Management Services (Hines)				(43,217)		(70,387)					(71,037)			(184,641)
OME/TAF Management Fee				(150,000)					(150,000)				(150,000)	(449,999)
Creditor Payout	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Other	(110,000)	(15,000)	(99,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(374,000)
Cash Disbursements	(110,000)	(63,258)	(99,000)	(333,840)	(15,000)	(391,632)	(63,258)	(15,000)	(213,258)	(15,000)	(499,288)	(15,000)	(213,258)	(2,046,792)
Net Operating Cash Flow	(110,000)	(63,258)	(99,000)	1,176,639	(15,000)	(391,632)	(63,258)	(15,000)	1,309,927	(15,000)	(499,288)	(15,000)	1,286,544	2,486,674
Non-Operating Expenses														
Principal BOA	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Interest BOA						(679,331)				(664,839)				(1,344,170)
BOA Attorney	-	-	-	-	-	(35,000)	-	-	-	(35,000)	-	-	-	(70,000)
Leasing Costs	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Ordinary Course Professionals	-	-	-	-	-	(36,967)	-	-	-	(36,967)	-	-	-	(73,933)
Federal, State and Local Taxes	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Non-Operating Expenses	-	-	-	-	-	(751,298)	-	-	-	(736,806)	-	-	-	(1,488,103)
Net Cash flow before Bankruptcy Exp	(110,000)	(63,258)	(99,000)	1,176,639	(15,000)	(1,142,930)	(63,258)	(15,000)	1,309,927	(751,806)	(499,288)	(15,000)	1,286,544	998,571
Bankruptcy Expenses														
Attorney	-	-	-	-	-	-	-	(307,200)	-	-	(240,000)	-	-	(547,200)
Financial Advisor	-	-	-	-	-	-	-	(143,000)	-	-	(132,150)	-	-	(275,150)
US Trustee Fees	-	-	-	-	-	-	-	-	(6,431)	-	-	-	-	(6,431)
Investment Bank	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Valuation Advisor	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Noticing Agent	-	-	-	(67,000)	-	-	-	-	(45,000)	-	-	-	(22,500)	(134,500)
Creditor Committee	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Other Professionals	-	-	-	(12,000)	-	-	-	-	(25,000)	-	-	-	(25,000)	(62,000)
Contingency @ 10.0%	-	-	-	-	-	-	-	(45,020)	-	-	(37,215)	-	-	(82,235)
Bankruptcy Expenses	-	-	-	(79,000)	-	-	-	(495,220)	(76,431)	-	(409,365)	-	(47,500)	(1,107,516)
Net Cash flow	(110,000)	(63,258)	(99,000)	1,097,639	(15,000)	(1,142,930)	(63,258)	(510,220)	1,233,496	(751,806)	(908,653)	(15,000)	1,239,044	(108,946)
Beginning Cash*	2,840,680	2,730,680	2,667,422	2,568,422	3,666,061	3,651,061	2,508,131	2,444,872	1,934,652	3,168,148	2,416,343	1,507,690	1,492,690	2,840,680
Net Cash flow	(110,000)	(63,258)	(99,000)	1,097,639	(15,000)	(1,142,930)	(63,258)	(510,220)	1,233,496	(751,806)	(908,653)	(15,000)	1,239,044	(108,946)
Ending Cash	2,730,680	2,667,422	2,568,422	3,666,061	3,651,061	2,508,131	2,444,872	1,934,652	3,168,148	2,416,343	1,507,690	1,492,690	2,731,734	2,731,734

	1	2	3	4	5	6	7	8	9	10	11	12	13	TWCF
	8/10/2024	8/17/2024	8/24/2024	8/31/2024	9/7/2024	9/14/2024	9/21/2024	9/28/2024	10/5/2024	10/12/2024	10/19/2024	10/26/2024	11/2/2024	Total
Reserve Memorandum														
Beginning Reserve Cash	3,050,822	3,050,822	3,050,822	3,050,822	3,050,822	3,050,822	3,050,822	2,811,782	2,444,432	2,444,432	2,444,432	2,444,432	2,255,432	3,050,822
Additions	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Uses														
Tenant Improvements/Leases	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Capital Expenditures	-	-	-	-	-	-	-	(367,350)	-	-	-	(189,000)	-	(556,350)
Real Estate Taxes	-	-	-	-	-	-	(239,040)	-	-	-	-	-	-	(239,040)
Insurance	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Ending Reserve Cash	3,050,822	3,050,822	3,050,822	3,050,822	3,050,822	3,050,822	2,811,782	2,444,432	2,444,432	2,444,432	2,444,432	2,255,432	2,255,432	2,255,432

Reserve cash includes utility deposits of \$44,235.75.

Exhibit 2

Pinnacle Park Land Description

EXHIBIT "A"

Legal Description of the Land

Being a parcel of land located in the City of Dallas, Dallas County, Texas, a part of the John E. Helms Survey, Abstract Number 605 and a part of the Philemon Lacy Survey, Abstract Number 776, and being a part of Lot 2, Block A/7211, SBC Pinnacle Park Addition, an addition to the City of Dallas as recorded in Volume 2002117, Page 21, Official Public Records of Dallas County, Texas, and also being all of that called 5.481 acre tract of land described in deed to Oak View Timberidge, LLC as recorded in Document Number 201700084541, Official Public Records of Dallas County, Texas, and being further described as follows:

BEGINNING at a one-half inch iron rod with yellow cap stamped "JBI" found at the southeast corner of said Lot 2, said point being the southeast corner of said 5.481 acre tract, said point being in the south line of Lot 1, Block I/7214, IH 30 Distribution Addition, an addition to the City of Dallas as recorded in Document Number 20080225388, Official Public Records of Dallas County, Texas, said point also being in the north right-of-way line of Adler Drive (a 64-foot-wide right-of-way);

THENCE South 58 degrees 55 minutes 23 seconds West, 476.74 feet along the south line of said Lot 2 and the north right-of-way line of Adler Drive to a 3 inch aluminum monument found at the most southerly southwest corner of said 5.481 acre tract, said point also being the southeast corner of Lot 2B, Block A/7211, Cockrell Hill Storage Addition, an addition to the City of Dallas as recorded in Document Number 201800010320, Official Public Records of Dallas County, Texas;

THENCE along the common lines of said 5.481 acre tract and said Lot 2B as follows:

North 31 degrees 04 minutes 37 seconds West, 203.50 feet to a one-half inch iron rod found for corner, said point being the northeast corner of said Lot 2B;

South 58 degrees 55 minutes 23 seconds West, 346.18 feet to a five-eighths inch iron rod found for corner, said point being in the west line of said Lot 2, said point being the northwest corner of said Lot 2B, said point also being in the east right-of-way line of Communications Drive (a 64 foot wide right-of-way);

THENCE North 31 degrees 04 minutes 37 seconds West, 30.00 feet along the west line of said Lot 2 and the east right-of-way line of Communications Drive to a one-half inch iron rod found for corner at the most northerly northeast corner of said 5.481 acre tract, said point also being the southwest corner of Lot 2A, Block A/7211, Holiday Inn at Pinnacle Park Addition, an

addition to the City of Dallas as recorded in Document Number 200900222605, Official Public Records of Dallas County, Texas;

THENCE along the common lines of said 5.481 acre tract and said Lot 2A as follows:

North 58 degrees 55 minutes 23 seconds East, 496.66 feet to a one-half inch iron rod found for corner, said point being the southeast corner of said Lot 2A;

North 31 degrees 04 minutes 37 seconds West, 220.00 feet to a one-half inch iron rod with cap stamped "A.L.S." found for corner, said point being in the north line of said Lot 2, said point being the most northerly northwest corner of said 5.481 acre tract, said point being the northeast corner of said Lot 2A, said point also being in the south line of Lot I, Block A/7211 of said SBC Pinnacle Park Addition;

THENCE along the north line of said Lot 2 and the north line of said 5.418 acre tract as follows:

North 58 degrees 55 minutes 23 seconds East, 494.72 feet to a disk monument found for corner, said point being the southeast corner of said Lot 1, Block A/7211 of said SBC Pinnacle Park Addition, said point also being in the south line of a called 2.6 acre tract of land described in deed to El Camposanto De Cemento Grande Inc. as recorded in Volume 87098, Page 2374, Official Public Records of Dallas County, Texas;

North 86 degrees 12 minutes 00 seconds East, 57.46 feet along the south line of said 2.6 acre tract to a one-half inch iron rod with yellow cap stamped "HALFF ASSOCIATES, INC" found for corner, said point being the northeast corner of said Lot 2, said point being the northeast corner of said 5.481 acre tract, said point also being in the west line of said of Lot 1, Block I/7214 of said IH 30 Distribution Addition;

THENCE along the east line of said Lot 2 and the east line of said 5.481 acre tract as follows:

South 00 degrees 32 minutes 03 seconds East, 479.58 feet to a 3 inch aluminum monument found for corner, said point being the southwest corner of said Lot 1, Block I/7214 of said IH 30 Distribution Addition;

North 89 degrees 12 minutes 43 seconds East, 28.01 feet along the south line of said Lot 1, Block I/7214 of said IH 30 Distribution Addition to the POINT OF BEGINNING and containing 238,762 square feet or 5.481 acres of land.

THE BASIS OF BEARING IS BASED ON THE NORTH CENTRAL ZONE 4202 STATE PLANE COORDINATES, NAD83.