

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

IN RE:

DYNACQ HEALTHCARE, INC., *et al.*

Debtors.¹

Chapter 11

Case No. 25-90798

(Joint Administration Requested)

**DEBTORS' EMERGENCY MOTION
FOR ENTRY OF AN ORDER (I) AUTHORIZING DEBTORS
TO (A) FILE A CONSOLIDATED CREDITOR MATRIX AND A
CONSOLIDATED LIST OF 30 LARGEST UNSECURED CREDITORS
AND (B) REDACT CERTAIN PERSONAL IDENTIFICATION INFORMATION
AND (II) APPROVING FORM AND MANNER OF NOTIFYING CREDITORS
OF COMMENCEMENT OF CHAPTER 11 CASES AND OTHER INFORMATION**

¹The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: Dynacq Healthcare, Inc. [5477]; Vista Community Medical Center, L.L.P. [0805]; Vista Land & Equipment, L.L.C.[2625]; Doctors Practice Management, Inc. [5545]; Surgery Specialty Clinicians, Inc. [9216]; Vista Hospital of Dallas, L.L.P. [3122]; and, Ambulatory Infusion Therapy Specialists, Inc. [7422].

EMERGENCY RELIEF HAS BEEN REQUESTED. RELIEF IS REQUESTED NOT LATER THAN 5:00 P.M. ON DECEMBER 15, 2025.

IF YOU OBJECT TO THE RELIEF REQUESTED OR YOU BELIEVE THAT EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU MUST APPEAR AT THE HEARING IF ONE IS SET, OR FILE A WRITTEN RESPONSE PRIOR TO THE DATE THAT RELIEF IS REQUESTED IN THE PRECEDING PARAGRAPH. OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

A HEARING WILL BE CONDUCTED ON THIS MATTER ON DECEMBER 15, 2025 AT 5:00 P.M. (PREVAILING CENTRAL TIME) IN COURTROOM 400, 4TH FLOOR, 515 RUSK AVENUE, HOUSTON, TX 77002. PARTICIPATION AT THE HEARING WILL ONLY BE PERMITTED BY AN AUDIO AND VIDEO CONNECTION.

AUDIO COMMUNICATION WILL BE BY USE OF THE COURT'S DIAL-IN FACILITY. YOU MAY ACCESS THE FACILITY AT 832-917-1510. ONCE CONNECTED, YOU WILL BE ASKED TO ENTER THE CONFERENCE ROOM NUMBER. JUDGE PÉREZ'S CONFERENCE ROOM NUMBER IS 282694. VIDEO COMMUNICATION WILL BE BY USE OF THE GOTOMEETING PLATFORM. CONNECT VIA THE FREE GOTOMEETING APPLICATION OR CLICK THE LINK ON JUDGE PÉREZ'S HOME PAGE. THE MEETING CODE IS "JUDGEPEREZ". CLICK THE SETTINGS ICON IN THE UPPER RIGHT CORNER AND ENTER YOUR NAME UNDER THE PERSONAL INFORMATION SETTING.

HEARING APPEARANCES MUST BE MADE ELECTRONICALLY IN ADVANCE OF BOTH ELECTRONIC AND IN-PERSON HEARINGS. TO MAKE YOUR APPEARANCE, CLICK THE "ELECTRONIC APPEARANCE" LINK ON JUDGE PÉREZ'S HOME PAGE. SELECT THE CASE NAME, COMPLETE THE REQUIRED FIELDS AND CLICK "SUBMIT" TO COMPLETE YOUR APPEARANCE.

Dynacq Healthcare, Inc. *et al.*, the above-captioned debtors and debtors in possession (collectively, the "Debtors"), hereby file this *Debtors' Emergency Motion For Entry of Interim and Final Orders (i) Authorizing the Debtor to (A) Obtain Post-Petition Financing and (B) Utilize Cash Collateral, (ii) Granting Liens and Superpriority Administrative Expense Claims, (iii) Granting Adequate Protection, (iv) Modifying The Automatic Stay, (v) Scheduling A Final Hearing, And (vi) Granting Related Relief* (the "Motion") and respectfully state the following:²

² Capitalized terms used but not yet defined herein shall have the meanings ascribed to them later in this Motion or in the First Day Declaration, or in the Interim DIP Order as applicable.

Relief Requested

1. The Debtors request authority to: (a) enter into a senior secured loan facility in an aggregate principal amount of up to \$5 million (the “DIP Facility”) with the DIP Lender (defined below), with up to \$2 million available on an interim basis; (b) to use cash collateral of the DIP Lender under the terms of the Interim DIP Order (defined below); and (c) grant adequate protection to the DIP Lender.

2. The DIP Facility will provide the Debtors with sufficient liquidity to fund its business operations and administrative expenses during the contemplated duration of the Chapter 11 Cases (defined below). If approved, the Debtors will use the proceeds of the DIP Facility to, among other things, honor employee wages and benefits, procure necessary supplies, fund general and corporate operating needs and the administration of the Chapter 11 Cases, all in accordance with a budget agreed to by the Debtors and the DIP Lender (the “Budget”) attached as **Exhibit 1** to the form of proposed interim order attached hereto as **Exhibit A** (the “Interim DIP Order”).

3. The Debtors and their respective estates would suffer immediate and irreparable harm if they were denied the financing needed to sustain on-going business operations during the critical first weeks of these cases. The DIP Facility ensures that the Debtors will have sufficient funding to continue to operate uninterrupted in the Chapter 11 Cases as it works towards a value-maximizing a sale of its assets. Further, as set forth in the Ahearn Declaration (as defined below), the terms of the DIP Facility are reasonable under the circumstances, and were the product of good faith, arm’s length negotiations.

4. The Debtors believe that approval of the DIP Facility will maximize the value of the Debtors’ estates for the benefit of all stakeholders and is an exercise of sound business

judgment. Accordingly, the Debtors respectfully request that the Court approve the relief requested herein and enter an interim order substantially in the form of the Interim DIP Order attached hereto and a final order (the “Final DIP Order,” and together with the Interim DIP Order, the “DIP Orders”).

Jurisdiction and Venue

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, and this is a core matter pursuant to 28 U.S.C. § 157(b).

6. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

7. The bases for the relief requested herein are sections 105, 361, 362, 363, 364, 503, and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Section C of the Procedures for Complex Cases in the Southern District of Texas (the “Complex Case Procedures”).

Background

9. On December 8, 2025 (the “Petition Date”) the Debtors filed voluntary petitions for relief (the “Chapter 11 Cases”) under chapter 11 of the Bankruptcy Court for the Southern District of Texas, Houston Division (the “Court”).

10. Pursuant to Bankruptcy Code 1107(a) and 1107, the Debtors are operating their businesses and managing their property as debtors in possession. No official committee has been appointed in these Chapter 11 Cases, and no request has been made for the appointment of a trustee or examiner.

11. The Debtors own and operate a general acute care hospital in Pasadena, Texas, that principally provides specialized surgeries. The Debtors’ hospital includes eight (8) operating

rooms, thirty-seven (37) hospital beds, pre- and post-operative space, intensive care units, nursing units, and diagnostic facilities, as well as adjacent medical office buildings.

12. A more detailed description of the Debtors and their businesses, capital structure, and the facts and circumstances giving rise to these Chapter 11 Cases, is set forth in the separately filed *Declaration of Dr. Eric Chan, Chief Executive Officer of Dynacq Healthcare, Inc., in Support of Chapter 11 Petitions and First Day Motions* (the “Chan Declaration”).

13. The *Declaration of Liam Ahearn in Support of the Debtors’ Emergency Motion For Entry of Interim and Final Orders (i) Authorizing the Debtor to (A) Obtain Post-Petition Financing and (B) Utilize Cash Collateral, (ii) Granting Liens and Superpriority Administrative Expense Claims, (iii) Granting Adequate Protection, (iv) Modifying The Automatic Stay, (v) Scheduling A Final Hearing, And (vi) Granting Related Relief* (the “Ahearn Declaration”), filed contemporaneously herewith and incorporated herein by reference.

Relief Requested

8. By this motion, the Debtors seeks entry of the Interim DIP Order, and subsequently, the Final DIP Order:

- a. Authorizing the Debtors to use the DIP Lender’s Cash Collateral (as defined below), in accordance with the terms and conditions set forth in the Interim DIP Order and in accordance with the Budget and authorize the priming of any pre-petition liens by the DIP Liens (as defined below);
- b. Authorizing the Debtors, as borrowers, to enter into the DIP Facility (the loans thereunder being “DIP Loans”) pursuant to the terms and conditions of pursuant to the terms and conditions of the Interim DIP Order, the Final DIP Order, and a *Superpriority Senior Secured Debtors in Possession Credit Agreement* (as the same may be amended, restated, supplemented, waived, or otherwise modified from time to time, consistent with the terms of this Interim Order and any Final Order, the “DIP Credit Agreement”), by and among the Debtors, as borrowers (in such capacity, each a “DIP Facility Borrower” and collectively, the “DIP Facility Borrowers”) who are the Debtors in these Chapter 11 Cases, Caliburn Capital LLC, as administrative agent (in such capacity, the “DIP Agent”), and the lender party thereto (the

“DIP Lender” and together with the DIP Agent, the “DIP Secured Parties”), as follows:

- i. **DIP Loans.*** A senior secured superpriority multi-draw term loan facility in the aggregate principal amount of \$5 million;
 - ii. **Interim Financing.*** From the date of the Interim DIP Order until the date a Final DIP Order is entered (the “Interim Period”), approval to draw up to \$2 million in DIP Loans, subject to compliance with the terms, conditions, and covenants described in the Interim DIP Order, and the Budget; and
 - iii. **Final Approval.*** Upon entry of the Final DIP Order, approval to draw up to an additional \$3 million in DIP Loans, subject to compliance with the terms, conditions and covenants described in the DIP Loan Documents (defined below), the Final DIP Order. and the Budget;
- c. Authorizing the Debtors to execute and enter into the DIP Credit Agreement and any other agreements, instruments, pledge agreements, guarantees, security agreements, intellectual property security agreements, control agreements, notes and other documents reasonably required by the DIP Lender (collectively, and together with the DIP Orders, the “DIP Loan Documents” and all obligations and indebtedness of the Debtor to the DIP Lender under the DIP Loan Documents (including, without limitation the DIP Loans), collectively, the “DIP Obligations”), and to perform its respective obligations thereunder and all such other and further acts as may be necessary, appropriate, or desirable in connection with the DIP Loan Documents, including, but not limited to, granting or perfecting liens or security interests by the Debtors in favor of and for the benefit of the DIP Lender on account of the DIP Facility;
- d. Authorizing the Debtors to use the proceeds of the DIP Facility as expressly provided in the DIP Loan Documents and in accordance with the Budget;
- e. Authorizing the Debtors to pay the principal, interest, fees, expenses and other amounts payable pursuant to the Interim DIP Order and the DIP Loan Documents as such become earned, due and payable, including, but not limited to, the fees and costs of the DIP Agent’s professionals, advisors, and consultants (collectively, the “DIP Lender Reimbursements”);
- f. Granting to the DIP Lender allowed superpriority claims, subject to the Carve Out (as defined below), pursuant to section 364(c)(1) of the Bankruptcy Code;
- g. Granting to the DIP Lender (i) senior liens on all unencumbered pre-petition and post-petition property of the Debtors and their respective estates and the proceeds thereof pursuant to section 364(c)(2) of the Bankruptcy Code

including—subject to and effective upon entry of the Final DIP Order, and as a “last look” in the event the DIP Lender is not otherwise repaid in full—any Avoidance Proceeds (as defined below), and (ii) priming liens pursuant to section 364(d) of the Bankruptcy Code on all pre-petition and post-petition property of the Debtors’ estates and all proceeds thereof, in each case of (i) and (ii) above, subject to the Carve Out and with the relative priorities set forth in the Interim DIP Order;

- h. Subject to entry of the Final DIP Order, waiving (a) any equitable doctrine of marshaling and (b) the Debtor’s right to surcharge the DIP Collateral (defined below) pursuant to section 506(c) of the Bankruptcy Code;
- i. Modifying the automatic stay of Bankruptcy Code section 362 (the “Automatic Stay”) to the extent necessary to implement and effectuate the terms and provisions of the DIP Loan Documents, including the Interim DIP Order;
- j. Approving a waiver of any applicable stay (including under Bankruptcy Rule 6004) with respect to the effectiveness of the Interim DIP Order;
- k. Scheduling an interim hearing (the “Interim Hearing”) on the Motion to be held before this Court to consider entry of the Interim DIP Order;
- l. Scheduling a final hearing (the “Final Hearing”) such that the Final Order is entered no later than 45 days after the Petition Date to consider final approval of the DIP Facility; and
- m. Granting such other and further relief as is just and proper.

**Concise Statement Pursuant to Bankruptcy Rule 4001(b)
and Section C of the Complex Case Procedures**

9. The below chart contains a summary of the material terms of the proposed DIP Facility, together with references to the applicable sections of the relevant source documents, as required by Bankruptcy Rules 4001(b)(1)(B) and 4001(c)(1)(B), and Section C.7 and C.8 of the Complex Case Procedures:³

³ Capitalized terms used in the following summary chart but not otherwise defined have the meanings ascribed to them elsewhere in this Motion or in the Interim DIP Order, as applicable. Further, the below summary chart is only a summary, and is qualified in its entirety by the terms of the Interim DIP Order, which shall control.

Bankruptcy Code	Summary of Material Terms
Borrowers Bankruptcy Rule 4001(c)(1)(B)	The Debtors
DIP Lender and Agent Bankruptcy Rule 4001(c)(1)(B)	Caliburn Capital, LLC as DIP Lender and Agent.
Term Bankruptcy Rule 4001(b)(1)(B)(iii), 4001(c)(1)(B)	All DIP Obligations will be due and payable in full in cash unless otherwise agreed to by the DIP Lender in writing on the earliest: (i) the date that a plan of reorganization becomes effective; (ii) consummation of the 363 Sale; (iii) the date of termination of the DIP Facility and the acceleration of any outstanding DIP Loans; and (iv) any Events of Default that has not been cured or waived within ten (10) business days. See Interim DIP Order ¶ 25.
Commitment Bankruptcy Rule 4001(c)(1)(B)	A \$5 million superpriority multi-draw term loan facility in accordance with the terms of the DIP Credit Agreement, with up to \$2 million available upon entry of the Interim DIP Order. See Interim DIP Order, introductory paragraphs.
Conditions of Borrowing Bankruptcy Rule 4001(c)(1)(B)	Usual and customary conditions precedent for transactions of this type and others that are satisfactory to the DIP Lender, and in any event including, without limitation, the following: <u>For Interim Draws:</u> (a) Approval of the Budget by the DIP Agent, together with all financial information and projections regarding the Debtors requested by the DIP Agent, all in form and substance satisfactory to the DIP Agent in its sole discretion, (b) entry of an Interim DIP Order approving the DIP Facility on the terms set forth therein, which Interim DIP Order shall not have been modified or amended without approval of the DIP Agent and shall not have been reversed, vacated or stayed pending appeal, in form and substance satisfactory to the DIP Agent, (c) the absence of a default or an event of default under the Interim DIP Order, (d) the satisfaction of the DIP Agent with all adequate protection payments or critical vendor payments and with all other material motions and orders filed in these Chapter 11 Cases, (e) the DIP Borrowers shall have given the DIP Lender two (2) business days' notice of its request for the initial draw under the DIP Facility, and (f) other than (and subject to the entry of) the Interim DIP Order, there shall not exist any law, regulation, ruling, judgment, order, injunction or other restraint that prohibits, restricts or imposes a materially adverse condition on the DIP Facility or the exercise by the

	DIP Agent of its rights as a secured party a material portion of the DIP Collateral. For Subsequent Draws: (a) Approval of the Budget by the DIP Agent, together with all financial information and projections regarding the Debtors requested by the DIP Agent, all in form and substance satisfactory to the DIP Agent in its sole discretion, (b) entry of a Final DIP Order approving the DIP Facility, which Final DIP Order shall not have been modified or amended without approval of the DIP Agent and shall not have been reversed, vacated or stayed pending appeal, in form and substance satisfactory to the DIP Agent, (c) the DIP Loan Documents shall be in agreed final form; (d) the absence of a default or an event of default under the DIP Loan Documents, (e) the satisfaction of the DIP Agent with all adequate protection payments or critical vendor payments and with all other material motions and orders filed in these Chapter 11 Cases, (f) the representations and warranties under the DIP Loan Documents shall be true and correct in all material respects (or in the case of representations and warranties with a “materiality” or similar qualifier, true and correct in all respects) immediately prior to, and after giving effect to, such funding; (g) the DIP Borrowers shall have given the DIP Lender two (2) business days’ notice of its request for any subsequent draw under the DIP Facility, and (h) other than (and subject to the entry of) the Final DIP Order, there shall not exist any law, regulation, ruling, judgment, order, injunction or other restraint that prohibits, restricts or imposes a materially adverse condition on the DIP Facility or the exercise by the DIP Agent of its rights as a secured party a material portion of the DIP Collateral. See Interim DIP Order ¶10.
Interest Rate Bankruptcy Rule 4001(c)(1)(B)	DIP Loans will bear interest at a fixed rate per annum equal to 15% (the “<u>Interest Rate</u>”), accruing monthly, payable in full on the Maturity Date. Interest shall be calculated on the basis of the actual number of days elapsed in a 360-day year. After the occurrence and during the continuation of an Event of Default interest on the DIP Loans shall accrue at the Default Interest Rate, which shall be the Interest Rate plus 3.00% per annum.

	See Interim DIP Order ¶7.
Use of DIP Financing Facility and Cash Collateral Bankruptcy Rule 4001(b)(1)(B)(ii)	Proceeds of the DIP Facility shall be used solely for the following purposes and solely to the extent identified in the Budget: (a) provide for certain working capital and for other general corporate purposes of the Debtors during the Chapter 11 Cases, including, for the avoidance of doubt, costs relating to the sale of the Debtors' assets and payments authorized under first-day orders approved by the Bankruptcy Court; (b) pay interest, fees, costs and expenses of the DIP Secured Parties related to the DIP Facility; (c) pay the Allowed Professional Fees (defined below) of estate Professionals (defined below), subject to certain limitations; (d) to make permitted payments of costs of administration of the Chapter 11 Cases; and (e) to pay such pre-petition expenses as are consented to by the DIP Agent or approve by order of the Bankruptcy Court. See Interim DIP Order ¶11.
Adequate Protection Bankruptcy Rules 4001(b)(1)(B)(iv), 4001(c)(1)(B)(ii)	This Interim Order shall be sufficient and conclusive evidence of the creation, validity, perfection, and priority of all liens granted herein, including the DIP Liens, without the necessity of possession of any collateral or the filing or recording of any financing statement, mortgage, notice, or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action to validate or perfect the DIP Liens or to entitle the DIP Agent or the other DIP Secured Parties to the priorities granted herein. See Interim DIP Order ¶16.
DIP Lender Liens and Superpriority Claims Bankruptcy Rule 4001(c)(1)(B)	All DIP Obligations shall constitute, in accordance with section 364(c)(1) of the Bankruptcy Code, a claim having priority over any or all administrative expenses of the kind specified in, among other sections, sections 105, 326, 327, 328, 330, 331, 361, 362, 363, 364, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726, 1113, or 1114 of the Bankruptcy Code. All DIP Obligations shall be secured by first priority senior and priming liens, subject and junior only to: (i) the Carve Out; and (ii) all of the Debtors' existing and future acquired property and interests of any nature whatsoever, real and personal, tangible and intangible, accounts receivable, general intangibles, payment intangibles, supporting obligations, investment property, commercial tort claims, inventory, rolling stock, machinery, equipment, subsidiary

	capital stock, chattel paper, documents, instruments, deposit accounts, contract rights, and tax refunds of the Debtor (collectively, the “<u>DIP Collateral</u>”); provided, however, the DIP Collateral shall only include the proceeds of Avoidance Actions upon entry of a Final DIP Order and recourse to such proceeds shall only be on a “last look” basis as described below under “<u>Liens on Avoidance Actions/Proceeds</u>”; provided, further, that the DIP Liens shall be subject and subordinate to the Carve Out in all respects. In addition, pursuant to section 364(c)(3) of the Bankruptcy Code, the DIP Liens shall be junior on assets of the Debtor subject to permitted liens on the Petition Date and pursuant to section 364(c)(2) of the Bankruptcy Code, the DIP Liens shall be first-priority liens on all assets of the Debtor not subject to a valid, perfected, and non-avoidable lien in existence as of the Petition Date (or as such lien may be perfected after the Petition Date to the extent permitted by section 546 of the Bankruptcy Code). See Interim DIP Order ¶¶5, 6.
Repayment Features Bankruptcy Rule 4001(c)(1)(B)	All or any portion of the DIP Loan may be voluntarily repaid at any time, without premium or penalty. Once repaid, proceeds from the DIP Facility cannot be reborrowed. Any replacement DIP financing shall immediately be applied pursuant to the terms of the Interim DIP Order. See Interim DIP Order ¶23.
Budget Bankruptcy Rule 4001 (c)(1)(B)	The Debtors shall use the proceeds of all borrowings under the DIP Facility and Cash Collateral in a manner consistent with the Budget and exclusions set forth in the DIP Orders. The Budget, annexed to the Interim DIP Order as Exhibit 1, shall constitute the initial Budget. By no later than 5:00 p.m. (prevailing Central Time) on each fourth (4th) Friday after the entry of the Interim Order, or at such other interval as the DIP Facility Borrowers and DIP Agent agree, the DIP Facility Borrowers shall deliver to the DIP Agent an updated Budget, in each case, in form and substance satisfactory to the DIP Agent and consistent with the form of the Budget attached hereto, and such updated Budget shall become the “Budget” for the purposes of the DIP Facility upon the DIP Agent’s acknowledgement that the proposed updated Budget is substantially in the required form of Budget and otherwise in form and substance satisfactory to the DIP Agent. During any period a proposed Budget has not been approved, the

	previously approved Budget shall be the Budget. Each Budget delivered to the DIP Agent shall be accompanied by such supporting documentation as reasonably requested by the DIP Agent and its advisors, and each Budget shall be prepared in good faith based upon assumptions the Debtors believe to be reasonable. See Interim DIP Order ¶15.
Variance Covenant and Budget Maintenance Bankruptcy Rule 4001(l)(B)	Actual cash receipt and cash disbursement activity (which shall not include any Professional Fees) shall be tested weekly on a cumulative basis, and each such line item may vary unfavorably from the applicable Budget more than ten percent (10%) for each Budget period (the “<u>Permitted Variances</u>”). For the avoidance of doubt, the Permitted Variances shall not include or otherwise require a test of payment on Professional Fees; provided, however, that payment on Professional Fees shall not vary unfavorably from the applicable Budget on a weekly basis per Professional Fee line item for that portion of the Budget period then ending (and each professional that may receive Professional Fees shall be reflected on its own Budget line item). On or before 5:00 p.m. (prevailing Central Time) on the fourth business day of each week, commencing with the first week following the Petition Date, the Debtors shall deliver to the DIP Agent a Budget variance report. See Interim DIP Order ¶15.
Events of Default Bankruptcy Rule 4001(c)(l)(B)	Usual and customary for financings of this type including, but not limited to the following, unless otherwise agreed in writing by the DIP Agent in its sole discretion: • The failure of the DIP Facility Borrowers’ representations as to title, failure to meet agreed upon production or lease preservation thresholds, or such other borrowing base metrics as may be agreed by the parties; • Existence of any (i) actual disputes or (ii) actual or threatened proceedings relating to title of the DIP Collateral (“Title Disputes”) other than those Title Disputes set forth on <u>Exhibit 2</u> to the DIP Orders (“<u>Known Title Disputes</u>”);

	• Entry of an adverse order or judgement in any Known Title Dispute that is final and enforceable against a Credit Party; • Failure to pay principal or interest on the DIP Facility when due; • Failure to pay any DIP Facility Fees, including interest, under the DIP Facility when due; • Failure of any representation or warranty of the DIP Facility Borrowers contained in any DIP Loan Document to be true and correct in all material respects when made; • Breach of any affirmative or negative covenant set forth herein, including, but not limited to, those in paragraphs 17 and 18; • Failure to comply with the Budget; • The DIP Secured Parties shall cease to have a valid and perfected DIP Lien on any DIP Collateral (other than upon a release by reason of a transaction that is permitted); • The Debtors (i) contest the validity or enforceability of any DIP Loan Document in writing or deny in writing that any Credit Party has any further liability thereunder or (ii) contest the validity or perfection of the DIP Liens securing the DIP Loans in writing; • Any attempt by the DIP Facility Borrowers to invalidate or otherwise impair the DIP Facility or the DIP Liens granted to the DIP Secured Parties with respect to the DIP Facility; • Failure by the DIP Facility Borrowers to comply in any material respect with the applicable DIP Orders; • The entry by a court of competent jurisdiction of an order materially amending, modifying, staying, revoking or reversing the Interim Order or the Final Order, as applicable, without the express written consent of the DIP Agent; • The entry of an order charging any of the DIP Collateral under Section 506(c) of the Bankruptcy Code against the DIP Facility or the commencement of other actions by the Debtors that: are: (i) materially adverse to the DIP Secured Parties or their rights and remedies under the DIP Facility in any of the Chapter 11 Cases, or (ii) inconsistent with any of the DIP Loan Documents; • Conversion of any of the Chapter 11 Cases to cases under Chapter 7 of the Bankruptcy Code; • Dismissal of any of the Chapter 11 Cases;
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	• Failure to meet any Milestone (subject to any applicable grace period); • The entry of an order granting relief from the automatic stay under section 362 of the Bankruptcy Code to a holder or holders of any security interest or lien on any material DIP Collateral securing the DIP Facility to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any such material DIP Collateral; • The grant of any super-priority claim that is <i>pari passu</i> with or senior to the DIP Superpriority Claims of the DIP Agent; • filing or support of a proposed plan of reorganization or liquidation by the Debtors that does not provide for the indefeasible payment in full and in cash of the Debtors' obligations outstanding under the DIP Facility on the effective date; • appointment of a trustee for the Debtors under section 1104 of the Bankruptcy Code, or the filing of any motion or other pleading requesting such relief that is not timely opposed by the Debtors; • appointment of an examiner with enlarged powers (powers beyond those set forth in section 1106(a)(3) and (4) of the Bankruptcy Code) under section 1106(b) of the Bankruptcy Code for the Debtors, or the filing of a motion or other pleading requesting such relief that is not timely opposed by the Debtors; • entry of an order by the Bankruptcy Court amending, supplementing, staying, vacating, or otherwise modifying the DIP Facility, the DIP Orders approving the DIP Facility, or the filing of a motion or other pleading requesting such relief that is not timely opposed by the Debtors; • any attempt by the Debtors to obtain, or if any other party in interest obtains, an order of the Bankruptcy Court or other judgment, and the effect of such order or judgment is to, invalidate, reduce, or otherwise impair the DIP Agent's claims or to subject the DIP Collateral to a surcharge pursuant to section 506(c) of the Bankruptcy Code; • request by the Debtors for approval of any post-petition financing other than the DIP Facility that would not immediately pay all obligations under the DIP Facility in full and in cash; • application by the Debtors for an order substituting any assets for all or any portion of the DIP Collateral;
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	• any payment of, or application for authority to pay, any pre-petition claim in whole or in part not included in an approved Budget; • failure to make all payments under the DIP Facility when due; • failure to pay any material post-petition indebtedness when due; • breach of any term or covenant of the DIP Facility or in DIP Orders or any DIP Loan Document; • exclusivity shall have ended or been terminated or the Debtors shall have agreed to any such termination; • after entry thereof, either of (i) an order in form and substance satisfactory to the DIP Agent in its sole discretion approving the bidding procedures to be applicable to the 363 Sale, including the approval of bid protections for any stalking horse bidder (the “<u>Sales Procedure Order</u>”), or (ii) an order entered by the Bankruptcy Court in form and substance satisfactory to the DIP Agent in its sole discretion that, among other things, approves the 363 Sale (the “<u>Sale Order</u>”); shall cease to be in full force and effect, shall have been reversed, stayed, vacated or subject to stay pending appeal or shall have been modified or amended; • action taken by the Debtors (or the Debtors’ support for any other person taking such action) to restrict or prohibit the DIP Agent from submitting a “credit bid” for any assets of the Debtors in accordance with Bankruptcy Code section 363(k); • failure by the Debtors to disburse the proceeds of the 363 Sale to the DIP Agent contemporaneously with the closing of the 363 Sale; and • commencement of any action or the filing of any motion by the Debtors that is inconsistent with the terms of the DIP Orders. See Interim DIP Order ¶ 19.
Indemnification Bankruptcy Rule 4001(c)(1)(B)(ix)	The Debtors shall indemnify and hold the DIP Agent, the DIP Lender, and their officers, directors, employees, representatives, and agents (including all of their professionals) (each an “<u>Indemnified Party</u>”) harmless from and against any and all claims, damages, losses, liabilities and expenses (including, without limitation, all fees and disbursements of attorneys and other professionals) to which any Indemnified Party may become liable or which may be incurred by or asserted against any Indemnified Party, in

	each case in connection with or arising out of or by reason of any investigation, litigation or proceeding arising out of or relating to or in connection with the DIP Facility, the DIP Loan Documents, any obligation, or any act, event or transaction related or attendant thereto or any use or intended use of the proceeds of the DIP Facility, except to the extent the same is found in a final, nonappealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's own gross negligence or willful misconduct <i>See Interim DIP Order ¶ 37.</i>
Carve Out Bankruptcy Rule 4001(c)(1)(B)	The Interim DIP Order provides a "Carve Out" of certain statutory fees, allowed professional fees of the Debtor and an official committee of unsecured creditors, and includes a Post-Carve Out Trigger Notice Cap, all as detailed in the Interim DIP Order. <i>See Interim DIP Order ¶28.</i>
Fees and Expenses Bankruptcy Rule 4001(c)(1)(B)	A 5% upfront commitment fee of the total amount of the DIP Facility. The Debtors shall pay all reasonable and documented pre-petition and post-petition fees and out-of-pocket expenses of the DIP Agent in connection with the DIP Facility, as provided in the DIP Loan Documents. The Interim DIP Order describes the nature of summary invoices to be provided, the notice parties and contains a dispute resolution mechanism. <i>See Interim DIP Order introductory paragraph (iii); ¶30.</i>
506(c) and 552(b) Waiver, etc. Bankruptcy Rule 4001(c)(1)(B)	Effective upon entry of the Final DIP Order, the DIP Lender shall not be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral and all proceeds shall be received and applied pursuant to the Final DIP Order and the DIP Loan Documents notwithstanding any other agreement or provision to the contrary. Effective upon entry of the Final DIP Order, the Debtors (on behalf of themselves and their estates) shall waive, and shall not assert in these Chapter 11 Cases or any successor cases, any surcharge claim under sections 105(a) and/or 506(c) of the Bankruptcy Code or otherwise for any costs and expenses incurred in connection with the preservation, protection or enhancement of, or realization by the DIP Lender, upon the DIP Collateral.

	See Interim DIP Order ¶¶33-35.
Liens on Avoidance Actions/Proceeds Bankruptcy Rule 4001(c)(1)(B)(xi)	Subject to entry of Final Order, the DIP Lender shall have a lien on the proceeds of avoidance actions under chapter 5 of the Bankruptcy Code. See Interim DIP Order ¶5.
Milestones Bankruptcy Rule 4001(c)(1)(B)	(a) on or before the date that is one (1) day after the Petition Date, the Debtors shall have filed an emergency motion seeking approval of the Debtors' entry into the DIP Facility (b) on or before the date that is seven (7) business days after the Petition Date, the entry of the Interim Order; (c) on or before the date that is ten (10) days after the Petition Date, the Debtors shall have filed a motion requesting entry of the Sales Procedure Order and the sale of substantially all of the Debtors' assets; (d) on or before the date that is forty-five (45) days after the Petition Date, the Bankruptcy Court shall have entered the Sales Procedure Order; (e) on or before the date that is forty-five (45) days after the Petition Date, the entry of the Final Order; (f) on or before the date that is ninety (90) days after the Petition Date, the bid deadline shall occur under the Sales Procedure Order; (g) on or before the date that is one hundred (100) after the Petition Date, the Bankruptcy Court shall have entered the Sale Order approving the 363 Sale; (h) on or before the date that is fourteen (14) days after entry of the Sale Order, provided that the Bankruptcy Court has waived the stay imposed by Bankruptcy Rule 6004(h), the 363 Sale shall have closed, with proceeds of the 363 Sale paid pursuant to this Interim Order; and (i) no later than the Maturity Date, the DIP Obligations shall have been paid in full. See Interim DIP Order ¶20.
Challenge Period Bankruptcy Rule 4001(c)(1)(B)	No proceeds of the DIP Facility, the Carve Out or any cash collateral may be used to litigate, object to, contest or challenge in any manner or raise any defenses to the debt or

	collateral position of the DIP Agent or the DIP Lender, whether by challenging the validity, extent, amount, perfection, priority or enforceability of the obligations under the DIP Facility, the validity, extent, perfection, priority or enforceability of any mortgage, security interest or lien with respect thereto, or any other rights or interests or replacement liens with respect thereto, or by seeking to subordinate or recharacterize the obligations under the DIP Facility, or to disallow or avoid any claim, mortgage, security interest, lien, or replacement lien or payment thereunder or by asserting any claims or causes of action, including, without limitation, any actions under chapter 5 of the Bankruptcy Code, against the DIP Agent or the DIP Lender, or any of their respective affiliates, officers, directors, employees, representatives, and agents (including all of their professionals);. See Interim DIP Order ¶¶4, 27.
Waiver/Modification of the Automatic Stay Bankruptcy Rule 4001(c)(1)(B)(iv)	The DIP Lender shall have customary remedies upon the occurrence and during the continuance of an Events of Default, including, without limitation, the following: Upon the occurrence of an Event of Default or the Maturity Date and the transmission of written notice thereof (the “<u>Enforcement Notice</u>”) to counsel for the Debtors, any Committee, and the U.S. Trustee, notwithstanding the automatic stay in section 362 of the Bankruptcy Code, the DIP Agent shall be fully authorized ten (10) business days of the transmission of written notice, in its sole discretion to: (i) cease making DIP Facility advances to the Debtors; (ii) terminate the Debtors’ use of the DIP Collateral (including, without limitation, cash collateral), and/or (iii) immediately terminate the DIP Facility and demand immediate repayment, in cash, of the DIP Facility obligations then outstanding. Additionally, upon the occurrence of an Event of Default or the Maturity Date, the DIP Agent also has other customary remedies, including, without limitation, the ability to foreclose upon and/or sell the DIP Collateral and the right to exercise any remedy available under applicable law, without the necessity of obtaining any further relief or order from the Bankruptcy Court. Section 362 relief from the stay in favor of the DIP Agent shall be embodied in the Interim DIP Order and the Final DIP Order. See Interim DIP Order ¶ 26.

Need for Financing and Access to Liquidity

A. The Debtors' Need for Access to Financing and Use of Case.

10. As described in the First Day Declaration, the Debtors require immediate access to cash and financing under the DIP Facility to ensure they can continue operating during these Chapter 11 Cases and preserve the value of their respective estates for the benefit of all parties in interest. Without immediate post-petition financing and access to cash, the Debtors will be unable to continue paying wages to its employees, paying vendors for equipment and services, meeting working capital and business operating needs, preserving and maximizing the value of its estate, and administering these Chapter 11 Cases, all of which will cause immediate and irreparable harm to the value of the Debtors' estates to the detriment of all stakeholders. Moreover, sufficient post-petition financing is necessary to send a strong market signal that these Chapter 11 Cases are well-funded and that the Debtors will continue to operate without disruption while it is reorganizing. Otherwise, the parties who drive the Debtors' revenue may seek alternative venues and services, and vendors and suppliers may refuse to do business with the Debtors, which is a value *destructive* proposition.

11. As set forth in the Budget, to ensure such liquidity, the Debtors seek authorization to utilize cash and draw \$2 million on an interim basis. On a final basis upon entry of the Final DIP Order, the Debtors seek authorization to borrow an aggregate of \$5 million. The Debtors believe the DIP Facility is essential to preserve and maximize the value of their estates, and responsibly administer these Chapter 11 Cases.

B. Alternative Source of Financing are not Available on Better Terms.

12. The Debtors engaged Gordian Group, LLC ("Gordian") as their financial advisor to provide restructuring and financial advisory services, which services include exploring financing options to address the Debtors' liquidity constraints. To that end, as described more fully

in the First Day Declaration and the Ahearn Declaration, during the pre-petition period, Gordian contacted sixty six (66) sources for a potential DIP loan. Thirteen (13) of those parties signed non-disclosure agreements and obtained additional information relating to a potential DIP loan to the Debtors. *See* Ahearn Declaration ¶11. Four (4) parties submitted indications of interest to Gordian. Following these discussions, it was clear that the terms of the proposed DIP Facility were the best financing option available to the Debtors under the circumstances when compared to the other formal indications of interest. Specifically, one of the competing proposals was for the same quantum of debt as the DIP Facility but included fees that were multiples of the DIP Facility. Another contained economic terms (interest, fees, etc.) similar to the proposed DIP Facility but did not match the \$5 million quantum of debt and therefore, was insufficient to fund the Companies and provide enough runway to execute on a sale transaction and confirmation of a Plan. The fourth proposal included meaningful contingencies. *See* Ahearn Declaration ¶12.

13. As a consequence, and given time and liquidity constraints, the Debtors determined that the DIP Facility was the best financing alternative available under the circumstances because, among other things, it: (i) provides sufficient financing to meet the Debtors' liquidity needs; and (ii) allows the Debtors to immediately work towards a value-maximizing sale transaction.

14. The Debtors would further demonstrate that the terms of the DIP Facility are fair, reasonable and appropriate under the circumstances and are in accordance with current market terms and further, that the DIP Facility is fair, reasonable, an exercise of sound business judgment, and necessary to avoid irreparable harm during the course of these Chapter 11 Cases.

Basis for Requested Relief

I. The Debtor Should Be Authorized to Obtain Post-petition Financing.

A. Entry into the DIP Loan Documents is an Exercise of the Debtors' Sound Business Judgment.

15. The Court should authorize the Debtors to enter into the DIP Loan Documents, consistent with the terms of this Motion and the form of Interim DIP Order, obtain access to the DIP Facility, and continue using cash.⁴ Courts grant a debtor in possession considerable deference in acting in accordance with its business judgment in obtaining post-petition secured credit, so long as the agreement to obtain such credit does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code. *See, e.g., In re N. Bay Gen. Hosp., Inc.*, No. 08-20368 (Bankr. S.D. Tex. July 11, 2008) (order approving post-petition financing on an interim basis as exercise of debtors' business judgment); *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 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 is to be utilized on grounds that permit 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.”).

16. Specifically, to determine whether the business judgment standard is met, a court need only “examine whether a reasonable businessperson would make a similar decision under similar circumstances.” *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006); *see also In re Curlew Valley Assocs.*, 14 B.R. 506, 513–14 (Bankr. D. Utah 1981) (noting that courts should

⁴ The form of DIP Credit Agreement will be filed of record in sufficiently in advance of the Final Hearing to ensure the Court and parties in interest have a chance to review and digest the same.

not second guess a debtor's business decision when that decision involves "a business judgment made in good faith, upon a reasonable basis, and within the scope of the debtor's authority under the [Bankruptcy] Code").

17. Furthermore, in considering whether the terms of post-petition 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) (while many of the terms favored the DIP lenders, "taken in context, and considering the relative circumstances of the parties," the court found them to be reasonable); *see also Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Trust Co. (In re Elingsen McLean Oil Co., Inc.)*, 65 B.R. 358, 365 n.7 (W.D. Mich. 1986) (recognizing a debtor may have to enter into "hard bargains" to acquire funds for its reorganization). The Court may also appropriately take into consideration non-economic benefits to the Debtor offered by a proposed post-petition facility. For example, in *In re ION Media Networks, Inc.*, the bankruptcy court for the Southern District of New York held that:

Although all parties, including the Debtors and the Committee, are naturally motivated to obtain financing on the best possible terms, a business decision to obtain credit from a particular lender is almost never based purely on economic terms. ***Relevant features of the financing must be evaluated, including non economic elements such as the timing and certainty of closing, the impact on creditor constituencies and the likelihood of a successful reorganization.*** This is particularly true in a bankruptcy setting where cooperation and establishing alliances with creditor groups can be a vital part of building support for a restructuring that ultimately may lead to a confirmable reorganization plan. That which helps foster consensus may be preferable to a notionally better transaction that carries the risk of promoting unwanted conflict.

In re ION Media Networks, Inc., 2009 WL 2902568, at *4 (Bankr. S.D.N.Y. July 6, 2009) (emphasis added).

18. The Debtors' determination to move forward with the DIP Facility is an exercise of their sound business judgment. The DIP Facility will allow the Debtors to: (a) fund capital

expenditures that are essential to the Debtors' continuation as a going concern; (b) provide the liquidity necessary to continue favorable trade terms with vendors and to reassure other stakeholders; (c) fund payroll obligations; (d) fund the administrative cost of these Chapter 11 Cases; and (e) provide a path towards a value-maximizing sale transaction. The Debtors negotiated the DIP Facility with the DIP Lender in good faith, at arm's length, and with the assistance of their respective advisors, and the Debtors believe that they have obtained the best financing available under the circumstances.

B. The Debtors Should Be Authorized to Grant Liens and Superpriority Claims.

19. The Debtors propose to obtain financing under the DIP Facility by providing security interests and liens as set forth herein and in the Interim DIP Order pursuant to sections 364(c) and (d) of the Bankruptcy Code. Specifically, the Debtors propose to provide to the DIP Lender post-petition security interest in and liens on the DIP Collateral that are valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or subordination immediately upon entry of the Interim DIP Order.

20. The above-described liens on encumbered and unencumbered assets are common features of post-petition financing facilities, and as set forth in greater detail in paragraph 15 of the Ahearn Declaration, were a necessary feature here to provide security for the proposed financing. The statutory requirement for obtaining post-petition credit under section 364(c) is a finding, made after notice and hearing, that a debtor is "unable to obtain unsecured credit allowable under Section 503(b)(1) of [the Bankruptcy Code]." 11 U.S.C. § 364(c). *See In re Crouse Grp., Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (secured credit under section 364(c) of the Bankruptcy Code is authorized, after notice and hearing, upon showing that unsecured credit cannot be obtained).

Courts have articulated a three-part test to determine whether a debtor is entitled to financing under section 364(c) of the Bankruptcy Code. Specifically, courts look to whether:

- a. the debtor is unable to obtain unsecured credit under section 364(b) of the Bankruptcy Code, *i.e.*, by allowing a lender only an administrative claim;
- b. the credit transaction is necessary to preserve the assets of the estate; and
- c. the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and proposed lenders.

See In re L.A. Dodgers LLC, 457 B.R. 308 (Bankr. D. Del. 2011); *In re Ames Dep't Stores*, 115 B.R. 34, 37–40 (Bankr. S.D.N.Y. 1990); *see also In re St. Mary Hosp.*, 86 B.R. 393, 401–02 (Bankr. E.D. Pa. 1988); *Crouse Grp.*, 71 B.R. at 549.

21. As described above and as set forth in the Ahearn Declaration, four (4) potential lenders entered into negotiations with the Debtors with respect to providing post-petition DIP financing. Two (2) lenders made considerable offers, but the proposal negotiated with the DIP Lender provided the best terms in order to facilitate a successful reorganization. *See Ahearn Decl.* ¶¶ 11-12.

22. Absent the DIP Facility, which will provide assurances that the Debtors will have sufficient liquidity to administer these Chapter 11 Cases, the value of the Debtors' estate would be significantly impaired to the detriment of all stakeholders. *See Ahearn Decl.* ¶ 16. Without post-petition financing, the Debtors lack sufficient funds to operate their enterprise for anything other than a short-term basis, continue paying their debts as they come due, and cover the projected costs of these Chapter 11 Cases. *See Ahearn Decl.* ¶ 16. Given the Debtors' circumstances, the Debtors believe that the terms of the DIP Facility, as set forth herein and in the form of Interim DIP Order, are reasonable as more fully set forth above and in the Ahearn Declaration. For all

these reasons, the Debtors submit that they have met the standard for obtaining post-petition financing.

23. In the event that a debtor is unable to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code, section 364(c) of the Bankruptcy Code provides that a court “may authorize the obtaining of credit or the incurring of debt (a) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of [the Bankruptcy Code]; (b) secured by a lien on property of the estate that is not otherwise subject to a lien; or (c) secured by a junior lien on property of the estate that is subject to a lien.” As described above, the Debtor is unable to obtain unsecured credit. Therefore, approving a superpriority claim in favor of the DIP Lender is reasonable and appropriate.

24. Further, section 364(d) of the Bankruptcy Code provides that a debtor may obtain credit secured by a senior or equal lien on property of the estate already subject to a lien, after notice and a hearing, where the debtor is “unable to obtain such credit otherwise” and “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.” 11 U.S.C. § 364(d)(1). The Debtor may incur “priming” liens under the DIP Facility if either (a) the pre-petition lender has consented or (b) the pre-petition lender’s interests in collateral are adequately protected. *See Anchor Savs. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 122 (N.D. Ga. 1989) (“[B]y tacitly consenting to the superpriority lien, those [undersecured] creditors relieved the debtor of having to demonstrate that they were adequately protected.”).

25. Here, there is no senior secured pre-petition lender and so consent is not an issue and there will be no need for a priming fight.

C. No Comparable Alternatives to the DIP Facility Are Reasonably Available on More Favorable Overall Terms.

26. 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) of the Bankruptcy Code. *In re Snowshoe Co., Inc.*, 789 F.2d 1085, 1088 (4th Cir. 1986); *see also In re Plabell Rubber Prods., Inc.*, 137 B.R. 897, 900 (Bankr. N.D. Ohio 1992). Moreover, in circumstances where only a few lenders likely can or will extend the necessary credit to a debtor, “it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing.” *In re 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 1085, 1088 (4th Cir. 1986) (demonstrating that credit was unavailable absent the senior lien by establishment of unsuccessful contact with other financial institutions in the geographic area); *In re Stanley Hotel, Inc.*, 15 B.R. 660, 663 (D. Colo. 1981) (bankruptcy court’s finding that two national banks refused to grant unsecured loans was sufficient to support conclusion that section 364 requirement was met); *In re Ames Dep’t Stores*, 115 B.R. at 37–39 (debtor must show that it made reasonable efforts to seek other sources of financing under sections 364(a) and (b)).

27. As noted above, the Debtors do not believe that a more favorable alternative DIP financing is reasonably available, making DIP Facility the most favorable to the Debtors under the circumstances. The DIP Facility provide the Debtors with the liquidity they need at the lowest cost available while simultaneously placing the Debtors on an optimal path for a successful restructuring. Therefore, the Debtors submit that the requirement of section 364 of the Bankruptcy Code that alternative credit on more favorable terms be unavailable to the Debtors is satisfied.

II. The Debtor Should Be Authorized to Use Cash.

28. Section 363 of the Bankruptcy Code generally governs the use of estate property. Section 363(c)(2)(A) of the Bankruptcy Code permits a debtor in possession to use Cash Collateral with the consent of the secured party. Here, the DIP Lender consents to the Debtors' use of Cash Collateral, subject to the terms and limitations set forth in the Interim Order.

29. Section 363(e) of the Bankruptcy Code provides for adequate protection of interests in property when a debtor uses cash collateral. Further, section 362(d)(1) of the Bankruptcy Code provides for adequate protection of interests in property due to the imposition of the automatic stay. *See In re Cont'l Airlines*, 91 F.3d 553, 556 (3d Cir. 1996) (en banc). While section 361 of the Bankruptcy Code provides examples of forms of adequate protection, such as granting replacement liens and administrative claims, courts decide what constitutes sufficient adequate protection on a case-by-case basis. *See, e.g., In re First South Sav. Ass'n*, 820 F.2d 700, 710 (5th Cir. 1987) (explaining that adequate protection depends on the facts and circumstances of the case); *In re Las Torres Dev., LLC*, 413 B.R. 687, 697 (Bankr. S.D. Tex. 2009) (“[I]n determining whether a secured creditor’s interest is adequately protected, most courts engage in an analysis of the property’s ‘equity cushion’—the value of the property after deducting the claim of the creditor seeking relief from the automatic stay and all senior claims.”) (internal quotes and citations omitted); *see also In re Dynaco Corp.*, 162 B.R. 389, 394 (Bankr. D.N.H. 1993) (citing 2 Collier on Bankruptcy ¶ 361.01[1] at 361–66 (15th ed. 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”)). The concept of adequate protection is designed to shield a secured creditor from diminution in the value of its interest in collateral during the period of a debtor’s use. *See In re Carbone Cos.*, 395 B.R. 631, 635 (Bankr. N.D. Ohio 2008) (“The test is whether the secured

party's interest is protected from diminution or decrease as a result of the proposed use of cash collateral."); *see also In re Cont'l Airlines, Inc.*, 154 B.R. 176, 180—81 (Bankr. D. Del. 1993) (holding that adequate protection for use of collateral under section 363 of the Bankruptcy Code is limited to use-based decline in value).

III. The Debtors Should Be Authorized to Pay the Fees Required by the DIP Lender Under the DIP Loan Documents.

30. Under the DIP Loan Documents, the Debtors have agreed, subject to Court approval, to pay certain the reasonable fees and expenses of the DIP Lender. Courts in this district and others have approved the payment of similar fees in large or complex Chapter 11 Cases. *See, e.g., In re In re Mosaic Sustainable Finance Corporation*, No. 25-90156 (CML) [Docket No. 39] (Bankr. S.D. Tex. June 9, 2025) (approving an exit fee of 5% and an OID fee of 5%, respectively); *In re In re Ascend Performance Materials Holdings Inc.*, No. 25-90127 (CML) [Docket No. 96] (Bankr. S.D. Tex. Apr. 23, 2025) (approving the backstop fee of 10% and the closing fee of 0.75%, respectively); *In re Vertex Energy, Inc.*, No. 24-90507 (CML) [Docket No 53] (Bankr. S.D. Tex. Sept. 25, 2024) (approving commitment and closing fees of 3% of committed amount, respectively, a DIP agent fee of \$35,000 and a maturity extension fee of 2%); *In re Studio Movie Grill Holdings, LLC*, No. 20-32633 (SGJ) [Docket No. 52] (Bankr. N.D. Tex. Oct. 27, 2020) (approving among other fees exit fees in the amount of 2.0 percent); *In re Tuesday Morning Corp.*, No. 20-31476 (HDH) [Docket No. 67] (Bankr. N.D. Tex. May 28, 2020) (approving an upfront fee of 2.0 percent to the DIP facility).

31. It is understood and agreed by all parties, that these fees are an integral component of the overall terms of the DIP Facility and were required by the DIP Lender as consideration for the extension of post-petition financing. Accordingly, the Court should authorize the Debtors to pay the fees provided under the DIP Loan Documents in connection with entering into those agreements.

IV. The DIP Lender Should Be Deemed a Good-Faith Lender Under Section 364(e).

32. Section 364(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. Section 364(e) of the Bankruptcy Code provides that:

The reversal or modification on appeal of an authorization under this section [364 of the Bankruptcy Code] 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.

33. As explained herein, in the Ahearn Declaration, and in the First Day Declaration, the DIP Loan Documents are the result of: (a) the Debtors' reasonable and informed determination that the DIP Lender provided the best post-petition financing alternative available under the circumstances and (b) extended arm's length, good-faith negotiations between the Debtors and the DIP Lender. The Debtors submit that the terms and conditions of the DIP Loan Documents are reasonable under the circumstances, and the proceeds of the DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code. Further, no consideration is being provided to any party to the DIP Loan Documents other than as described herein. Accordingly, the Court should find that the DIP Lender is a "good faith" lender within the meaning of section 364(e) of the Bankruptcy Code and are entitled to all of the protections afforded by that section.

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

34. The form of Interim DIP Order provides that the automatic stay provisions of section 362 of the Bankruptcy Code will be modified to allow the DIP Lender to file any financing statements, security agreements, notices of liens, and other similar instruments and documents in

order to validate and perfect the liens and security interests granted to them under the Interim DIP Order. The proposed Interim DIP Order further provides that the automatic stay is modified as necessary to permit the Debtors to grant liens to the DIP Lender and to incur all liabilities and obligations set forth in the Interim DIP Order. Finally, the form of Interim DIP Order provides that, following the occurrence of an Event of Default (as defined in Paragraph 19 of the Interim DIP Order) and an appropriate opportunity for the Debtors to obtain relief from the Court, the automatic stay shall be vacated and modified to the extent necessary to permit the DIP Lender to exercise all rights and remedies in accordance with the DIP Loan Documents, or applicable law.

35. Stay modifications of this kind are ordinary and standard features of debtor in possession financing arrangements and, in the Debtor's business judgment, are reasonable and fair under the circumstances of the Chapter 11 Cases. *See, e.g., In re Mosaic Sustainable Finance Corporation*, No. 25-90156 (CML) [Docket No. 39] (Bankr. S.D. Tex. June 9, 2025) (modifying automatic stay as necessary to effectuate the terms of the order); *In re Hornblower Holdings LLC*, No. 24-90061(MI) [Docket No. 72] (Bankr. S.D. Tex. Feb 22, 2024) (same). These provisions are also consistent with the Complex Case Procedures.

VI. Failure to Obtain Immediate Interim Access to the DIP Facility and Use of Cash Would Cause Immediate and Irreparable Harm.

36. Bankruptcy Rules 4001(b) and 4001(c) provide that a final hearing on a motion to obtain credit pursuant to section 364 of the Bankruptcy Code or to use cash collateral pursuant to section 363 of the Bankruptcy Code may not be commenced earlier than 14 days after the service of such motion. Upon request, however, the Court may conduct a preliminary, expedited hearing on the motion and authorize the obtaining of credit and use of cash collateral to the extent necessary to avoid immediate and irreparable harm to a debtor's estate.

37. For the reasons noted above, the Debtors have an immediate post-petition need to use cash on hand, and access the liquidity provided by the DIP Facility. The Debtors cannot maintain the value of their estates during the pendency of the Chapter 11 Cases without access to cash. The Debtors will use cash, among other things, to fund the operation of its business, maintain business relationships with its vendors and suppliers, make payroll, and satisfy other essential working capital and operational needs, all of which are required to preserve and maintain the Debtors' going concern value for the benefit of all parties in interest, and to fund the administration of the Chapter 11 Cases. In short, the Debtors' ability to administer the Chapter 11 Cases through the use of cash (to the extent it might be "cash collateral") is vital to preserve and maximize the value of the Debtors' estates.

38. The Debtors request that the Court hold and conduct a hearing to consider entry of the Interim DIP Order authorizing the Debtors, from and after entry of the Interim DIP Order until the Final Hearing, to receive initial funding under the DIP Facility. The Debtors require the initial funding under the DIP Facility prior to the Final Hearing and entry of the Final DIP Order to continue operating, in the normal course, pay its administrative expenses, and to otherwise implement the relief requested in the Debtors' First Day Motions. This relief will enable the Debtors to preserve and maximize value and, therefore, avoid immediate and irreparable harm and prejudice to their estates and all parties in interest, pending the Final Hearing.

Final Hearing

39. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtors request that the Court set a date for the Final Hearing that is as soon as practicable, and in no event later than 45 days after the Petition Date, and fix the time and date prior to the Final Hearing for parties to file objections to this Motion.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

40. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

Notice

41. The Debtors will provide notice of this motion to the following parties or their counsel: (a) the U.S. Trustee for the Southern District of Texas; (b) the holders of the 30 largest unsecured claims against the Debtor (on a consolidated basis); (c) the counsel to the DIP Lender; (d) the United States Attorney's Office for the Southern District of Texas; (e) the Internal Revenue Service; (f) the state attorneys general for states in which the Debtor conducts business; and (g) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtor submits that no other or further notice is needed.

No Prior Request

42. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully requests that the Court enter an interim order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Dated: December 9, 2025

Respectfully submitted,

DYKEMA GOSSETT PLLC

By: /s/ William Hotze

William Hotze

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**PROPOSED COUNSEL FOR
THE DEBTORS AND DEBTORS IN
POSSESSION**

Certificate of Accuracy

Certificate of Accuracy I certify that the foregoing statements are true and accurate to the best of my knowledge. This statement is being made pursuant to Bankruptcy Local Rule 9013-1(i).

/s/ William Hotze

William Hotze

Certificate of Service

I certify that on December 9, 2025, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Northern District of Texas and any party entitled to notice pursuant to Bankruptcy Rule 2002 and any other party entitled to notice pursuant to Bankruptcy Local Rule 9013-1(d).

/s/ William Hotze

William Hotze

Exhibit A

PROPOSED INTERIM ORDER

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

IN RE:

DYNACQ HEALTHCARE, INC., *et al.*

Debtors.¹

Chapter 11

Case No. 25-90798 (ARP)

(Joint Administration Requested)

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN
POST-PETITION FINANCING AND (B) UTILIZE CASH COLLATERAL,
(II) GRANTING LIENS AND SUPERPRIORITY ADMINISTRATIVE
EXPENSE CLAIMS, (III) GRANTING ADEQUATE PROTECTION,
(IV) MODIFYING THE AUTOMATIC STAY, (V) SCHEDULING
A FINAL HEARING, AND (VI) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an interim order (this “Interim Order”) and a final order (the “Final Order” and with the Interim Order, the “DIP Orders”) pursuant to sections 105, 361, 362, 363, 364(c), 364(d), 364(e), 503, and 507 of Title 11 of the United States Code (the “Bankruptcy Code”), rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Section C of the Procedures for Complex Cases in the Southern District of Texas (the “Complex Case Procedures”), among other things:

- (i) authorizing the Debtors to incur senior secured post-petition obligations on a superpriority basis in respect of a senior secured superpriority multi-draw term loan

¹The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: Dynacq Healthcare, Inc. [5477]; Vista Community Medical Center, L.L.P. [0805]; Vista Land & Equipment, L.L.C.[2625]; Doctors Practice Management, Inc. [5545]; Surgery Specialty Clinicians, Inc. [9216]; Vista Hospital of Dallas, L.L.P. [3122]; and, Ambulatory Infusion Therapy Specialists, Inc. [7422].

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

facility in the aggregate principal amount \$5 million, comprised of (the “DIP Facility” and, all amounts extended under the DIP Facility, the “DIP Loans”): (a) upon entry of this Interim Order, \$2 million of new money DIP Loans, and (b) upon entry of a Final Order, an additional \$3 million of new money DIP Loans (for a total of \$5 million of new money DIP Loans), pursuant to the terms and conditions of this Interim Order, the Final Order, and a *Superpriority Senior Secured Debtors in Possession Credit Agreement* (as the same may be amended, restated, supplemented, waived, or otherwise modified from time to time, consistent with the terms of this Interim Order and any Final Order, the “DIP Credit Agreement”), by and among the Debtors, as borrowers (in such capacity, each a “DIP Facility Borrower” and collectively, the “DIP Facility Borrowers”), Caliburn Capital, LLC, as administrative agent (in such capacity, the “DIP Agent”), and the lenders party thereto (the “DIP Lender” and together with the DIP Agent, the “DIP Secured Parties”);³

- (ii) authorizing the Debtors to execute and deliver a DIP Credit Agreement in form and substance consistent with the terms of this Interim Order, and any other agreements, instruments, pledge agreements, guarantees, fee letters, control agreements, and other ancillary documents related thereto (including any security agreements, intellectual property security agreements, or notes) (as amended, restated, supplemented, waived, and/or modified from time to time, collectively with the DIP

³ For the avoidance of doubt, the DIP Facility is exclusive of any borrowings related to the Commitment Fee (as defined below) or the DIP Lender Reimbursements (as defined below) (collectively, the “DIP Facility Fees”).

Credit Agreement, the “DIP Loan Documents”) and to perform such other acts as may be necessary or desirable in connection with the DIP Loan Documents;

- (iii) authorizing the Debtors to borrow up to \$2 million of new money DIP Loans (the “Interim Amount”) to be available and funded within two (2) business days following the entry of the Interim Order to avoid immediate and irreparable harm;
- (iv) subject to and subordinate in all respects to the Carve Out (as defined below), granting the DIP Facility and all obligations owing thereunder and under, or secured by, the DIP Loan Documents, to the DIP Secured Parties (collectively, and including all “Obligations” to be defined in the DIP Credit Agreement, the “DIP Obligations”) allowed superpriority administrative expense claim status in the Chapter 11 Cases and any Successor Cases (as defined below);
- (v) subject to the Carve Out, granting to the DIP Agent, for the benefit of itself and the other DIP Secured Parties, automatically and validly perfected first-priority security interests in and liens on all of the DIP Collateral (as defined below), including all property constituting Cash Collateral (as defined below);
- (vi) authorizing and directing the Debtors to pay the principal, interest, premiums, fees, expenses, and other amounts payable under the DIP Loan Documents as such become earned, due and payable, the reasonable and documented fees and disbursements of the DIP Agent’s attorneys (including Munsch Hardt Kopf & Harr P.C.), advisors, accountants, and other consultants, all to the extent provided in, and in accordance with, the DIP Loan Documents;
- (vii) subject to and effective upon entry of the Final Order, a waiver of (a) the Debtors’ right to surcharge any collateral pursuant to sections 105(a) and 506(c) of the

Bankruptcy Code or otherwise, (b) the equitable doctrine of marshaling and other similar doctrines, and (c) the “equities of the case” exception under section 552(b) of the Bankruptcy Code;

- (viii) modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Loan Documents and this Interim Order; and
- (ix) scheduling a final hearing (the “Final Hearing”) to consider the relief requested in the Motion and approving the form of notice with respect to the Final Hearing.

This Bankruptcy Court, having considered the Motion, the exhibits attached thereto, the *Declaration of Liam Ahearn in Support of Debtor’s Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtor to Obtain Post-petition Financing (II) Granting Liens and Providing Claims with Superpriority Administrative Expense Status, (III) Authorizing the Use of Cash Collateral, (IV) Modifying the Automatic Stay, and (V) Scheduling a Final Hearing*, and the evidence submitted and arguments made at the interim hearing held on December 15, 2025 (the “Interim Hearing”); and notice of the Interim Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and the Complex Case Procedures; and the Interim Hearing having been held and concluded; and all objections, if any, to the interim relief requested in the Motion having been withdrawn, resolved, or overruled by the Bankruptcy Court; and it appearing that approval of the interim relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtor and its estate pending the Final Hearing, and otherwise is fair and reasonable and in the best interests of the Debtor, its estate, and all parties in interest, and is essential for the continued operation of the Debtors’ business and the preservation of the value of the Debtors’ assets; and it appearing that the Debtors’ entry into the DIP Credit Agreement and the other DIP Loan Documents is a sound and

prudent exercise of the Debtors' business judgment; and after due deliberation and consideration, and good and sufficient cause appearing therefor;

BASED UPON THE RECORD ESTABLISHED AT THE INTERIM HEARING, THE BANKRUPTCY COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:⁴

A. Petition Date. On December 8, 2025 (the "Petition Date"), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the "Chapter 11 Cases") in this Bankruptcy Court (the "Court").

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

C. Jurisdiction and Venue. This Bankruptcy Court has jurisdiction over the Chapter 11 Cases, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. § 1334. Consideration of the Motion constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue for the Chapter 11 Cases and proceedings with respect to the Motion is proper before this Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory bases for the relief sought herein are Bankruptcy Code sections 105, 361, 362, 363, 364(c), 364(d), 364(e), 503, and 507, Bankruptcy Rules 2002, 4001, 6003, 6004, and 9014, and the Complex Case Procedures.

D. Committee Formation. As of the date hereof, the United States Trustee for the Southern District of Texas (the "U.S. Trustee") has not yet appointed an official committee of

⁴ The findings and conclusions set forth herein constitute the Bankruptcy Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

unsecured creditors in the Chapter 11 Cases (a “Committee”) pursuant to section 1102 of the Bankruptcy Code.

E. Notice. Notice of the Motion and the Interim Hearing has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Complex Case Procedures, and no other or further notice of the Motion with respect to the relief requested at the Interim Hearing or the entry of this Interim Order shall be required.

F. Cash Collateral. All of the Debtors’ present and future cash, including any cash in its deposit accounts, wherever located, will constitute cash collateral (“Cash Collateral”) of the DIP Secured Parties.

G. Findings Regarding Post-petition Financing and Use of Cash Collateral.

(i) *Request for Post-petition Financing and Use of Cash Collateral*. The Debtors seek authority to (a) enter into the DIP Facility and incur the DIP Obligations on the terms described herein and (b) use Cash Collateral on the terms described herein, in each case, to administer the Chapter 11 Cases and fund operations. At the Final Hearing, the Debtors will seek final approval of the DIP Facility and use of Cash Collateral pursuant to the Final Order and the DIP Loan Documents, which both shall be in form and substance acceptable to the DIP Agent and not inconsistent with the terms of this Interim Order. Notice of the Final Hearing, the DIP Loan Documents, and the proposed Final Order, will be provided in accordance with this Interim Order.

(ii) *Need for Post-petition Financing and Use of Cash Collateral*. The Debtors have a need to use Cash Collateral on an interim basis and obtain credit in an amount equal to the Interim Amount pursuant to the DIP Facility in order to, among other things, enable the orderly continuation of their operations and to administer and preserve the value of their

estate. The ability of the Debtors to maintain business relationships with their vendors, suppliers, and customers, to pay their employees, and otherwise finance their operations requires the availability of working capital from the DIP Facility and the use of Cash Collateral, the absence of either of which, on an interim basis as contemplated hereunder, would immediately and irreparably harm the Debtors, their estate, and parties in interest. The Debtors do not have sufficient available sources of working capital and financing to operate their business, maintain their facilities in the ordinary course of business, and fund the Chapter 11 Cases without the authorization to use Cash Collateral and to borrow the Interim Amount.

(iii) *No Credit Available on More Favorable Terms.* The DIP Facility is the best source of debtor in possession financing available to the Debtors. Given their current financial condition, financing arrangements, and capital structure, the Debtors have been and continue to be unable to obtain financing from sources other than the DIP Secured Parties on terms more favorable than the DIP Facility. The Debtors are unable to obtain unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors have also been unable to obtain (a) unsecured credit having priority over that of administrative expenses of the kind specified in sections 503(b), 507(a), and 507(b) of the Bankruptcy Code; (b) credit secured solely by a lien on property of the Debtors and their estates that is not otherwise subject to a lien; or (c) credit secured solely by a junior lien on property of the Debtors and their estate that is subject to a lien. Financing on a post-petition basis on better terms is not available without granting the DIP Agent, for the benefit of itself and the other DIP Secured Parties, (1) perfected security interests in and liens on (each as provided herein) the DIP Collateral, with the priorities set

forth herein; (2) superpriority administrative claims; and (3) the other protections set forth in this Interim Order.

(iv) *Use of Cash Collateral and Proceeds of the DIP Facility.* As a condition to entry into the DIP Credit Agreement and the extension of credit under the DIP Facility, the DIP Agent and the other DIP Secured Parties require, and the Debtors have agreed, that proceeds of the DIP Facility shall be used in a manner consistent with the terms and conditions of this Interim Order, and in a manner consistent with the budget (as the same may be modified from time to time with the written consent of the DIP Agent in its sole discretion and consistent with the terms of this Interim Order, the “Budget,” a copy of which is attached hereto as Exhibit 1), solely for the purposes set forth in this Interim Order, including (a) ongoing working capital and other general corporate purposes of the Debtors; (b) permitted payment of costs of administration of the Chapter 11 Cases, including restructuring charges arising on account of the Chapter 11 Cases, including statutory fees of the U.S. Trustee and allowed professional fees and expenses of the Professionals (as defined below); (c) payment of such pre-petition expenses as consented to by the DIP Agent or otherwise permitted under this Interim Order; (d) payment of interest, premiums, fees, expenses, and other amounts (including, without limitation, legal and other professionals’ fees and expenses of the DIP Secured Parties) owed under this Interim Order, including those incurred in connection with the preparation, negotiation, documentation, and Bankruptcy Court approval of the DIP Facility, whether incurred before, on, or after the Petition Date; and (g) payment of obligations arising from or related to the Carve Out.

(v) *Application of Proceeds of DIP Collateral.* As a condition to entry into a DIP Credit Agreement, the extension of credit under the DIP Facility and authorization to

use Cash Collateral, the Debtors, the DIP Agent, and the other DIP Secured Parties have agreed that, as of and commencing on the date of the Interim Hearing, the Debtors shall utilize the proceeds of the DIP Collateral in accordance with this Interim Order.

H. Sections 506(c), 552(b) and Marshaling. In light of (i) the DIP Agent's agreement that its DIP Liens (as defined below) and superpriority claims shall be subject and subordinate in all respects to the Carve Out; and (ii) the DIP Agent's agreement to the payment (in a manner consistent with the Budget, and subject to the terms and conditions of this Interim Order) of certain expenses of administration of the Chapter 11 Cases, upon entry of a Final Order, the Debtors shall waive any "equities of the case" exception under section 552(b) of the Bankruptcy Code and waive the provisions of section 506(c) of the Bankruptcy Code and the equitable doctrine of marshaling and other similar doctrines.

I. Good Faith of the DIP Agent and the DIP Secured Parties. Based upon the pleadings and proceedings of record in the Chapter 11 Cases, (a) the extensions of credit under the DIP Facility are fair and reasonable, are appropriate for secured financing to a debtor in possession, are the best available to the Debtors under the circumstances, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration; (b) the terms and conditions of the DIP Facility and the use of the Cash Collateral have been negotiated in good faith and at arm's-length among the Debtors and the DIP Secured Parties, with the assistance of counsel and of their respective advisors; (c) the use of Cash Collateral, including, without limitation, pursuant to this Interim Order, has been allowed in "good faith" within the meaning of section 364(e) of the Bankruptcy Code; (d) any credit to be extended, loans to be made, and other financial accommodations to be extended to the Debtors by the DIP Secured Parties, including, without limitation, pursuant to this Interim Order, have been

allowed, advanced, extended, issued, or made, as the case may be, in “good faith” within the meaning of section 364(e) of the Bankruptcy Code by the DIP Secured Parties in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code; and (e) the DIP Facility, the DIP Liens, the DIP Superpriority Claims (as defined below), and the 507(b) Claims 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.

J. Immediate Entry. Sufficient cause exists for immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(c)(2).

K. Interim Hearing. Notice of the Interim Hearing and the relief requested in the Motion has been provided by the Debtors, whether by electronic mail, overnight courier, or first class mail to certain parties in interest, including the Notice Parties (as defined in the Motion). The Debtors have made reasonable efforts to afford the best notice possible under the circumstances, and no other notice is required in connection with the relief set forth in this Interim Order.

Based upon the foregoing findings and conclusions, the Motion, and the record before the Court with respect to the Motion, and after due consideration and good and sufficient cause appearing therefor, it is hereby **ORDERED** that:

1. DIP Facility Approved on Interim Basis. The DIP Facility, in an amount equal to the Interim Amount of DIP Loans, is hereby authorized and approved to the extent set forth herein, and the use of Cash Collateral on an interim basis is authorized, in each case subject to the terms and conditions set forth in this Interim Order. All objections to entry of this Interim Order, to the extent not withdrawn, waived, settled, or resolved, are hereby denied and overruled. This Interim Order shall become effective immediately upon its entry.

2. Authorization of the DIP Facility. The DIP Facility is hereby approved as set forth herein. The Debtors are expressly and immediately authorized and empowered to execute and deliver the DIP Loan Documents and to incur and to perform the DIP 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 that may be required or necessary for the performance by the Debtors under the DIP Facility and the creation and perfection of the DIP Liens. The Debtors shall pay, in accordance with this Interim Order, the principal, interest, premiums, fees, payments, expenses, and other amounts described in the DIP Loan Documents as such amounts become due and payable, without the need to obtain further Bankruptcy Court approval, whether or not such fees arose before, on, or after the Petition Date, and whether or not the transactions contemplated hereby are consummated, and to take any other actions that may be necessary or appropriate, all as provided in this Interim Order or the DIP Loan Documents; *provided* that the payment of legal and other professionals' fees and expenses of the DIP Agent and the other DIP Secured Parties (other than legal and other professionals' fees and expenses incurred prior to the Petition Date) shall be subject to the requirements of paragraph 27 hereof. 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 Debtors, enforceable against the Debtors and their estate in accordance with their terms.

3. Authorization to Borrow and Use Cash Collateral. To prevent immediate and irreparable harm to the Debtors' estate, from the entry of this Interim Order through and including the entry of the Final Order and subject to the terms, conditions, and limitations on availability set

forth in this Interim Order, the Debtors are hereby authorized to (i) borrow under the DIP Facility in an aggregate outstanding principal amount equal to the Interim Amount, and (ii) use the Cash Collateral for the purposes described in this Interim Order and the Budget.

4. DIP Obligations. This Interim Order shall constitute and evidence the validity and binding effect of the DIP Obligations, which shall be enforceable against the Debtors, their estate, and any successors thereto, including, without limitation, any trustee appointed in the Chapter 11 Cases or in any case under Chapter 7 of the Bankruptcy Code upon the conversion of the Chapter 11 Cases, 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 the Debtors to the DIP Agent or any of the DIP Secured Parties, in each case, under this Interim Order or secured by the DIP Liens, including, without limitation, all principal, accrued and unpaid interest, costs, fees, expenses, and other amounts owing. The Debtors shall be jointly and severally liable for the DIP Obligations. No obligation, payment, transfer, or grant of collateral security hereunder (including any DIP Obligations or DIP Liens) shall be stayed, restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation, under Chapter 5 of the Bankruptcy Code, section 724(a) of the Bankruptcy Code, or any other provision with respect to avoidance actions under the Bankruptcy Code or applicable state or foreign law equivalents) or subject to any avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise, other than to the Carve Out), 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. As security for 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 Agent, for the benefit of itself and the other DIP Secured Parties, is hereby granted valid, binding, continuing, enforceable, non-avoidable, and automatically and properly perfected security interests and liens on all of the Debtors' assets, including all real and personal property, including, without limitation, all of DIP Facility Borrowers' existing and future acquired property and interests of any nature whatsoever, real and personal, tangible and intangible, including without limitation leasehold interests, equipment, accounts receivable, general intangibles, payment intangibles, supporting obligations, investment property, commercial tort claims, inventory, rolling stock, machinery, equipment, subsidiary capital stock, chattel paper, documents, instruments, deposit accounts, contract rights, and tax refunds of the DIP Facility Borrowers, and subject to the limitations below, proceeds ("Avoidance Action Proceeds") of any of the DIP Facility Borrowers' causes of action under Chapter 5 of the Bankruptcy Code ("Avoidance Actions"), whether now owned or hereafter acquired (collectively, the "DIP Collateral").

(a) DIP Lien Priority. The DIP Obligations under the DIP Facility will be secured by first-priority priming security interests in and liens (the "Priming Liens") on the DIP Collateral to the extent such DIP Collateral is not subject to a "Permitted Lien" (as described in Exhibit 3 attached hereto). The Priming Liens will be subject in priority only to the Carve Out (as defined below). The Priming Liens described herein shall be effected and perfected upon entry of the Interim Order and without the necessity of the execution of any mortgages, landlord agreements, security agreements, pledge agreements, control agreements, financing statements or other agreements. The DIP Obligations and the DIP Facility will be further secured by junior security interests in and liens (the "Non-Priming Liens," and with the Priming Liens, the "DIP

Liens”) on any DIP Collateral (as defined below) that is subject to any Permitted Lien (as defined below). The Non-Priming Liens will be subject only to the Permitted Liens and the Carve Out (each as defined below). The Non-Priming Liens described herein shall be effected and perfected upon entry of the Interim Order and without the necessity of the execution of any mortgages, landlord agreements, security agreements, pledge agreements, control agreements, financing statements or other agreements. Other than as set forth herein (including with respect to the Carve Out), the DIP Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereafter granted in the Chapter 11 Cases or any Successor Cases and shall be valid and enforceable against any trustee appointed in the Chapter 11 Cases or any Successor Cases, upon the conversion of the Chapter 11 Cases to any Successor Cases, and/or upon the dismissal or conversion of the Chapter 11 Cases or Successor Cases. The DIP Liens shall not be subject to any of sections 510, 549, or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of the estate pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the DIP Liens.

6. Superpriority Claims. Subject to and subordinate in all respects to the Carve Out, upon entry of this Interim Order, the DIP Agent, on its own behalf and on behalf of the other DIP Secured Parties, is hereby granted, pursuant to section 364(c)(1) of the Bankruptcy Code, allowed superpriority administrative expense claims against the Debtors in the Chapter 11 Cases and any Successor Cases (collectively, the “DIP Superpriority Claims”) for all DIP Obligations with priority over any and all administrative expense claims and unsecured claims against the Debtors or their estate in the Chapter 11 Cases or any Successor Cases, at any time existing or arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 327, 328, 330, 331, 361, 362, 363, 364, 503(a), 503(b),

507(a), 507(b), 546(c), 546(d), 726, 1113, or 1114 of the Bankruptcy Code or any other provision of the Bankruptcy Code.

7. Interest. Interest shall accrue on all outstanding advances under the DIP Facility at a per annum rate equal to fifteen (15) % per annum (the “Non-Default Interest Rate”) and shall be due and payable as set forth herein. Effective immediately upon the occurrence of an Event of Default (as defined below), unless waived in writing by the DIP Agent at its sole discretion, interest on the DIP Loans under the DIP Facility shall accrue at a rate that is three (3) % per annum in excess of the Non-Default Interest Rate .

8. No Obligation to Extend Credit. The DIP Agent shall have no obligation to make any loan under the DIP Orders unless all conditions set forth in paragraphs 9 and 10 of this Interim Order, as applicable, have been satisfied in full or waived by the DIP Agent in accordance with the terms of this Interim Order.

9. Conditions Precedent to Closing. The DIP Agent shall have no obligation to close the DIP Facility under this Interim Order unless the following have been satisfied:

- (a) Receipt by DIP Agent of documentation evidencing, the sufficiency of which shall be determined in the sole discretion of the DIP Agent, that, as to each Credit Party, the Debtors, or such other fiduciary as agreed to by the DIP Agent in its sole discretion, has been vested with sole corporate and operational control of such entity;
- (b) The execution and/or delivery (as applicable) of the DIP Loan Documents and other customary definitive documentation, opinions, closing certificates, lien and other searches, the Budget and other customary documents with respect to the DIP Facility, in each case, satisfactory to the DIP Agent;
- (c) The DIP Agent’s satisfaction with, and the approval by the Bankruptcy Court of, the DIP Facility and the transactions contemplated thereby;
- (d) The entry of the Interim Order;

- (e) The entry of an order by the Bankruptcy Court jointly administering the Chapter 11 Cases of the DIP Facility Borrowers to the extent they are Debtors;
- (f) The (i) accuracy of all representations and warranties in material respects (without duplication of any materiality qualifier) and (ii) the absence of (A) any information disclosed after the date of this Interim Order that is inconsistent in a material and adverse manner with any material information previously provided in writing to the DIP Agent or its affiliates, (B) an default or Event of Default under the DIP Facility, and (C) any binding applicable law, regulation, ruling, judgment, order, injunction or other restraint that restrains, prevents, prohibits, restricts or imposes materially adverse conditions upon (x) the DIP Facility Borrowers; and (y) the DIP Facility (and the funding thereof) or the transactions contemplated hereby other than as a result of actions taken by the DIP Secured Parties;
- (g) There shall have occurred no event, circumstance or condition, which has, or could reasonably be expected to have, a material adverse effect on (i) the business, operations, properties or condition (financial or otherwise) of the DIP Facility Borrowers and their respective subsidiaries as of the applicable Petition Date, collectively, (ii) the legality, validity or enforceability of any DIP Loan Documents or the DIP Orders, (iii) the ability of the DIP Facility Borrowers, taken as a whole, to perform their payment obligations under the DIP Loan Documents, (iv) the perfection or priority of the liens granted pursuant to the DIP Loan Documents or the DIP Orders, or (v) the rights and remedies of the DIP Secured Parties under the DIP Loan Documents taken as a whole (any of the foregoing being a “Material Adverse Effect”); *provided, however*, that Material Adverse Effect shall expressly exclude: (A) the effect of the filing of the Chapter 11 Cases; (B) the events and conditions resulting therefrom or leading up thereto; (C) any action required to be taken under the DIP Loan Documents or the DIP Orders; and (D) any existing event or condition expressly set forth therein;
- (h) Payment of, whether in available cash or in kind, (a) all DIP Lender Reimbursements outstanding on the Closing Date and (b) all other DIP Facility Fees provided for hereunder that are due and payable on the closing date; and
- (i) Such other conditions as are usual and customary for debtor-in-possession credit facilities of this type, but subject to the Documentation Principles (as defined below).

10. Conditions Precedent to Fundings. The DIP Agent shall have no obligation to make any loans or advances unless the following conditions have been satisfied or waived by the DIP Agent in writing:

- (a) Closing has occurred in accordance with the foregoing paragraph;
- (b) Receipt by the DIP Agent of a customary notice of borrowing at least two (2) business days prior to the anticipated borrowing date;
- (c) Absence of a default or Event of Default under the DIP Facility;
- (d) Accuracy of all representations and warranties under the DIP Facility in all material respects (or in the case of representations and warranties with a materiality qualifier, true and correct in all respects);
- (e) Such advance complies with the Budget (subject to Permitted Variances);
- (f) Availability under the loan commitment;
- (g) The effectiveness of the Interim Order, or the Final Order, as applicable;
- (h) The making of the DIP Loans shall not violate any requirement of law and shall not be enjoined temporarily, preliminarily or permanently;
- (i) The making of the DIP Loans shall be authorized pursuant to the Interim Order or the Final Order, as applicable;
- (j) Other than the Final Order, there shall not exist any law, regulation, ruling, judgment, order, injunction or other restraint that prohibits or restricts the exercise by the DIP Agent at the direction of the DIP Lender of its rights as a secured party with respect to the DIP Collateral;
- (k) With respect to any DIP Loans made on and after the date of the Final Order, the Bankruptcy Court shall have entered the Final Order within forty-five (45) calendar days following the Petition Date, and the Final Order shall be in full force and effect, shall not have been reversed, vacated or stayed and shall not have been amended, supplemented or otherwise modified without the prior written consent of the DIP Agent (at the direction of the DIP Lender);
- (l) Since the applicable Petition Date, there shall not have been a Material Adverse Effect;
- (m) Other than the Chapter 11 Cases, as stayed upon the commencement of the Chapter 11 Cases, there shall exist no action, suit, investigation, litigation or proceeding pending or threatened in writing in any court or before any arbitrator or governmental authority that (a) would reasonably be expected to have a Material Adverse Effect or (b) restrains, prevents or purports to affect materially adversely the legality, validity or enforceability of the DIP Facility or the consummation of the transactions contemplated thereby; and

- (n) The DIP Facility Borrowers shall be in compliance with (a) the Interim Order or the Final Order, as applicable, and (b) the Budget (subject to Permitted Variances).

11. Use of Proceeds of DIP Facilities. From and after the Petition Date, the Debtors shall use proceeds of borrowings under the DIP Facility only for the purposes specifically set forth in this Interim Order, and, in each case, in a manner consistent with the Budget and the terms and conditions in this Interim Order, including to:

- (a) Provide for certain working capital and for other general corporate purposes of the Debtors during the Chapter 11 Cases, including, for the avoidance of doubt, costs relating to the sale of the Debtors' assets and payments authorized under first-day orders approved by the Bankruptcy Court;
- (b) Pay interest, fees, costs and expenses of the DIP Secured Parties related to the DIP Facility;
- (c) Pay the Allowed Professional Fees (defined below) of estate Professionals (defined below), subject to certain limitations;
- (d) Make permitted payments of costs of administration of the Chapter 11 Cases; and
- (e) Pay such prepetition expenses as are consented to by the DIP Agent or approved by order of the Bankruptcy Court.

No proceeds of the DIP Facility shall be used, directly or indirectly, to challenge, object to, contest or raise any defense to, the validity, security, perfection, priority, extent or enforceability of any amount due under or the liens or claims granted under or in connection with any and all prepetition or post-petition loans made by the DIP Secured Parties.

12. Authorization to Use Cash Collateral. Subject to the terms and conditions of this Interim Order, and in a manner consistent with the Budget, the Debtors are authorized to use Cash Collateral. Nothing in this Interim Order shall authorize the disposition of any assets of the Debtors or their estates outside the ordinary course of business, or any Debtor's use of any Cash Collateral

or other proceeds resulting therefrom, except as permitted in this Interim Order (including with respect to the Carve Out).

13. Modification of Automatic Stay. The automatic stay imposed under section 362(a)(2) of the Bankruptcy Code is hereby modified as necessary to effectuate all of the terms and provisions of this Interim Order, including, without limitation, to: (a) permit the Debtors to grant the DIP Liens, other adequate protection liens, DIP Superpriority Claims, and 507(b) Claims; (b) permit the Debtors to perform such acts as the DIP Agent may reasonably request to assure the perfection and priority of the liens granted herein; (c) permit the Debtors to incur all liabilities and obligations to the DIP Agent; and (d) authorize the Debtor to pay, and the DIP Agent and the other DIP Secured Parties to retain and apply, payments made in accordance with the terms of this Interim Order.

14. Cash Management. The Debtors shall use a cash management system that is acceptable to the DIP Agent in its sole discretion and the motion and orders to approve the use of the Debtors' cash management system shall be acceptable to the DIP Agent in its sole discretion. Any material changes from such cash management system must be acceptable to the DIP Agent in its sole discretion. All customers shall be directed to make remittances to the deposit accounts (i) in which the DIP Agent has a first priority perfected security agreement and, if requested by the DIP Agent, is subject to a deposit account control agreement in favor of the DIP Agent or (ii) otherwise approved by the DIP Agent in its sole discretion. For the purpose of crediting the DIP Facility Borrowers' loan account and calculating interest, all items of payment shall be deemed applied by the DIP Agent one (1) business day following the business day of the DIP Agent's receipt thereof.

15. Budget Amendments and Variances. By no later than 5:00 p.m. (prevailing Central Time) on each fourth (4th) Friday after the entry of the Interim Order, or at such other interval as the DIP Facility Borrowers and DIP Agent agree, the DIP Facility Borrowers shall deliver to the DIP Agent an updated Budget, in each case, in form and substance satisfactory to the DIP Agent and consistent with the form of the Budget attached hereto, and such updated Budget shall become the Budget for the purposes of the DIP Facility upon the DIP Agent's acknowledgement that the proposed updated Budget is substantially in the required form of Budget and otherwise in form and substance satisfactory to the DIP Agent (provided that, until a new Budget has been approved⁵ by the DIP Agent, the most recently approved Budget shall continue to govern). The Debtors shall, on or before 5:00 p.m. (prevailing Central Time) on the fourth business day of each week, provide, a Budget variance report, in a form acceptable to the DIP Agent in its sole discretion, on a cumulative basis for the immediately prior week. The Budget will be tested weekly on a cumulative basis (the variances within the respective percentages specified below, the "Permitted Variances");

- (a) negative variances of more than ten percent (10.0%) with respect to disbursements on a cumulative basis to the Budget shall constitute non-compliance; and
- (b) negative variances of more than ten percent (10.0%) on net cash flow on a cumulative basis to the Budget shall constitute non-compliance.

16. Perfection of DIP Liens and Adequate Protection Liens. This Interim Order shall be sufficient and conclusive evidence of the creation, validity, perfection, and priority of all liens granted herein, including the DIP Liens, without the necessity of possession of any collateral or the filing or recording of any financing statement, mortgage, notice, or other instrument or document

⁵ A new Budget will be deemed "approved" by the DIP Agent on the fourth business day following transmission of the new Budget to the DIP Agent if the DIP agent does not provide written communications to the contrary to the DIP Facility Borrowers.

which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement) to validate or perfect (in accordance with applicable non-bankruptcy law) the DIP Liens or to entitle the DIP Agent or the other DIP Secured Parties to the priorities granted herein. Notwithstanding the foregoing, the DIP Agent is authorized to file or record, in its sole discretion, as applicable, as it may deem necessary or advisable, such financing statements, security agreements, mortgages, notices of liens, and other similar documents to perfect its liens in accordance with applicable non-bankruptcy law, and all such financing statements, mortgages, notices, and other documents shall be deemed to have been filed, sent, or recorded as of the Petition Date. The Debtors shall execute and deliver upon reasonable request to the DIP Agent, all such financing statements, mortgages, notices, and other documents as the DIP Agent may reasonably request. The DIP Agent may file a photocopy of this Interim Order as a financing statement with any filing or recording office or with any registry of deeds or similar office, in addition to or in lieu of such financing statements, notices of lien, or similar instrument, and all applicable officials shall accept a photocopy of this Interim Order for filing or recordation for such purpose.

17. Affirmative Covenants. The Debtors shall:

- (a) Meet customary reporting requirements, including those outlined in the DIP Orders;
- (b) Comply with applicable laws and contractual obligations;
- (c) Adhere to the Budget;
- (d) Maintain their corporate existence;
- (e) Maintain existing insurance or such insurance as is consistent with any interim or final order of the Bankruptcy Court authorizing: (a) the continuation of any prepetition insurance programs or policies of the Debtors or (b) the entry by the Debtors into any additional or supplemental insurance programs or policies;

- (f) Pay their respective post-petition taxes as they come due to the extent such amounts are certain and funds are available;
- (g) Permit site visits as may be reasonably requested by the DIP Agent during normal business hours;
- (h) Maintain and provide reasonable access to the DIP Collateral, including books and records;
- (i) Comply with covenants in the DIP Loan Documents and the DIP Orders related to future DIP Collateral;
- (j) Notify the DIP Agent of certain material events, including, but not limited to, notice of any threatened or actual disputes related to or affecting any interest in or to the DIP Collateral or any threatened or actual Title Disputes (defined below) or Lease Disputes (defined below);
- (k) Maintain compliance with applicable ERISA requirements;
- (l) Maintain compliance with other applicable environmental requirements;
- (m) Preserve and maintain their properties and assets;
- (n) Obtain and maintain applicable governmental authorizations; and
- (o) Preserve and maintain current financial records.

18. Negative Covenants. The Debtors shall not:

- (a) Create, incur or suffer to exist any post-petition lien, security interest or debt senior in priority to the DIP Liens (other than the Carve-Out);
- (b) Sell, lease, transfer or otherwise dispose of any property, including leasehold interests, outside the ordinary course of business without the prior written consent of DIP Agent, which consent will not be unreasonably withheld, or the approval of the Bankruptcy Court;
- (c) Pay or make any distribution on account of any class of the DIP Facility Borrowers' equity interests in cash or property, or redeem, purchase or otherwise acquire any of the equity interests of any such person or entity;
- (d) Make any loans (including to directors, officers and employees);
- (e) Make investments;
- (f) Sell, issue, transfer or otherwise dispose of any stock or other equity interest of the DIP Facility Borrowers;

- (g) (i) consolidate or merge with or into another person (whether or not the applicable Debtor is the surviving corporation) without the express written authorization of the DIP Agent or order of the Bankruptcy Court, or (ii) lease all or substantially all of the properties or assets of the DIP Facility Borrowers to any other person absent the express written authorization of the DIP Agent or an order of the Bankruptcy Court;
- (h) Create any additional subsidiary or invest in or acquire minority interests in any other entity without the prior written consent of the DIP Agent;
- (i) Change their fiscal year;
- (j) File a motion seeking an order of the Bankruptcy Court authorizing the incurrence of, incur or permit to exist, any financing under section 364 of the Bankruptcy Code or any other indebtedness or contingent obligations except as specifically permitted by the DIP Orders;
- (k) Make any amendment or change to the DIP Orders without the written consent of the DIP Agent;
- (l) Make any payment of any pre-petition obligation to any party, including Critical Vendors, except in accordance with the Budget; and
- (m) Make any payment that is not in accordance with the Budget without the prior written consent of the DIP Agent.

19. Events of Default. The following shall constitute an event of default:

- (a) The failure of the DIP Facility Borrowers' representations as to title, failure to meet agreed upon production or lease preservation thresholds, or such other borrowing base metrics as may be agreed by the parties;
- (b) Existence of any (i) actual disputes or (ii) actual or threatened proceedings relating to title of the DIP Collateral ("Title Disputes") other than those Title Disputes set forth on Exhibit 2 hereto ("Known Title Disputes");
- (c) Entry of an adverse order or judgement in any Known Title Dispute that is final and enforceable against a Credit Party;
- (d) Failure to pay principal or interest on the DIP Facility when due;
- (e) Failure to pay any DIP Facility Fees, including interest, under the DIP Facility when due;
- (f) Failure of any representation or warranty of the DIP Facility Borrowers contained in any DIP Loan Document to be true and correct in all material respects when made;

- (g) Breach of any affirmative or negative covenant set forth herein, including, but not limited to, those in paragraphs 17 and 18;
- (h) Failure to comply with the Budget;
- (i) The DIP Secured Parties shall cease to have a valid and perfected DIP Lien on any DIP Collateral (other than upon a release by reason of a transaction that is permitted);
- (j) The Debtors (i) contest the validity or enforceability of any DIP Loan Document in writing or deny in writing that any Credit Party has any further liability thereunder or (ii) contest the validity or perfection of the DIP Liens securing the DIP Loans in writing;
- (k) Any attempt by the DIP Facility Borrowers to invalidate or otherwise impair the DIP Facility or the DIP Liens granted to the DIP Secured Parties with respect to the DIP Facility;
- (l) Failure by the DIP Facility Borrowers to comply in any material respect with the applicable DIP Orders;
- (m) The entry by a court of competent jurisdiction of an order materially amending, modifying, staying, revoking or reversing the Interim Order or the Final Order, as applicable, without the express written consent of the DIP Agent;
- (n) The entry of an order charging any of the DIP Collateral under Section 506(c) of the Bankruptcy Code against the DIP Facility or the commencement of other actions by the Debtors that: are: (i) materially adverse to the DIP Secured Parties or their rights and remedies under the DIP Facility in any of the Chapter 11 Cases, or (ii) inconsistent with any of the DIP Loan Documents;
- (o) Conversion of any of the Chapter 11 Cases to cases under Chapter 7 of the Bankruptcy Code;
- (p) Dismissal of any of the Chapter 11 Cases;
- (q) Failure to meet any Milestone (subject to any applicable grace period);
- (r) The entry of an order granting relief from the automatic stay under section 362 of the Bankruptcy Code to a holder or holders of any security interest or lien on any material DIP Collateral securing the DIP Facility to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any such material DIP Collateral;
- (s) The grant of any super-priority claim that is *pari passu* with or senior to the DIP Superpriority Claims of the DIP Agent;

- (t) filing or support of a proposed plan of reorganization or liquidation by the Debtors that does not provide for the indefeasible payment in full and in cash of the Debtors' obligations outstanding under the DIP Facility on the effective date;
- (u) appointment of a trustee for the Debtors under section 1104 of the Bankruptcy Code, or the filing of any motion or other pleading requesting such relief that is not timely opposed by the Debtors;
- (v) appointment of an examiner with enlarged powers (powers beyond those set forth in section 1106(a)(3) and (4) of the Bankruptcy Code) under section 1106(b) of the Bankruptcy Code for the Debtors, or the filing of a motion or other pleading requesting such relief that is not timely opposed by the Debtors;
- (w) entry of an order by the Bankruptcy Court amending, supplementing, staying, vacating, or otherwise modifying the DIP Facility, the DIP Orders approving the DIP Facility, or the filing of a motion or other pleading requesting such relief that is not timely opposed by the Debtors;
- (x) any attempt by the Debtors to obtain, or if any other party in interest obtains, an order of the Bankruptcy Court or other judgment, and the effect of such order or judgment is to, invalidate, reduce, or otherwise impair the DIP Agent's claims or to subject the DIP Collateral to a surcharge pursuant to section 506(c) of the Bankruptcy Code;
- (y) request by the Debtors for approval of any post-petition financing other than the DIP Facility that would not immediately pay all obligations under the DIP Facility in full and in cash;
- (z) application by the Debtors for an order substituting any assets for all or any portion of the DIP Collateral;
- (aa) any payment of, or application for authority to pay, any pre-petition claim in whole or in part not included in an approved Budget;
- (bb) failure to make all payments under the DIP Facility when due;
- (cc) failure to pay any material post-petition indebtedness when due;
- (dd) breach of any term or covenant of the DIP Facility or in DIP Orders or any DIP Loan Document;
- (ee) exclusivity shall have ended or been terminated or the Debtors shall have agreed to any such termination;
- (ff) after entry thereof, either of (i) an order in form and substance satisfactory to the DIP Agent in its sole discretion approving the bidding procedures to

be applicable to the 363 Sale, including the approval of bid protections for any stalking horse bidder (the “Sales Procedure Order”), or (ii) an order entered by the Bankruptcy Court in form and substance satisfactory to the DIP Agent in its sole discretion that, among other things, approves the 363 Sale (the “Sale Order”); shall cease to be in full force and effect, shall have been reversed, stayed, vacated or subject to stay pending appeal or shall have been modified or amended;

- (gg) action taken by the Debtors (or the Debtors’ support for any other person taking such action) to restrict or prohibit the DIP Agent from submitting a “credit bid” for any assets of the Debtors in accordance with Bankruptcy Code section 363(k);
- (hh) failure by the Debtors to disburse the proceeds of the 363 Sale to the DIP Agent contemporaneously with the closing of the 363 Sale; and
- (ii) commencement of any action or the filing of any motion by the Debtors that is inconsistent with the terms of the DIP Orders.

(each, an “Events of Default”).

20. Milestones. The Debtors shall be required to comply with the following milestones (the “Milestones”), which may only be modified by the written consent of the DIP Agent in its sole discretion:

- (a) On or before the date that is one (1) day after the Petition Date, the Debtors shall have filed an emergency motion seeking approval of the Debtors’ entry into the DIP Facility
- (b) On or before the date that is seven (7) business days after the Petition Date, the entry of the Interim Order;
- (c) On or before the date that is ten (10) days after the Petition Date, the Debtors shall have filed a motion requesting entry of the Sales Procedure Order and the sale of substantially all of the Debtors’ assets;
- (d) On or before the date that is forty-five (45) days after the Petition Date, the Bankruptcy Court shall have entered the Sales Procedure Order;
- (e) On or before the date that is forty-five (45) days after the Petition Date, the entry of the Final Order;
- (f) On or before the date that is ninety (90) days after the Petition Date, the bid deadline shall occur under the Sales Procedure Order;
- (g) On or before the date that is one hundred (100) after the Petition Date, the Bankruptcy Court shall have entered the Sale Order approving the 363 Sale;

- (h) On or before the date that is fourteen (14) days after entry of the Sale Order, provided that the Bankruptcy Court has waived the stay imposed by Bankruptcy Rule 6004(h), the 363 Sale shall have closed, with proceeds of the 363 Sale paid pursuant to this Interim Order; and
- (i) No later than the Maturity Date, the DIP Obligations shall have been paid in full.

21. Credit Bidding. In connection with any sale process authorized by the Bankruptcy Court, whether effectuated through sections 363, 725, or 1123 of the Bankruptcy Code, the DIP Agent shall have the right to “credit bid” pursuant to section 363(k) of the Bankruptcy Code all or any portion of the post-petition secured obligations owed to it or any of its affiliated entities in the sale of the Debtors’ assets, and shall not be prohibited or limited from making such credit bid “for cause” under section 363(k) of the Bankruptcy Code. Without limiting the foregoing, the DIP Agent may assign all or any portion of the DIP Obligations owed to it to an acquisition vehicle, affiliate, or any other Person (any such Person, the “Agent Assignee”). The Agent Assignee shall have the right to “credit bid” post-petition secured obligations so assigned to it or assigned to or owned by any of its affiliated entities in any sale of the Debtors’ assets.

22. Application of 363 Sale Proceeds. Unless the DIP Agent or any Agent Assignee is the bidder selected by the Debtors as the highest and best bid for the assets included in the sale of all or substantially all of the assets of the Debtors under section 363 of the Bankruptcy Code (the “363 Sale”), subject and subordinate in all respects to the Carve Out, proceeds from the 363 Sale shall be paid pursuant to a Sale Order, through which the Debtors shall seek to be made directly to the DIP Agent upon the closing of the 363 Sale and shall be applied: (i) first, to reduce outstanding DIP Obligations (including all fees and professional fees payable pursuant to the DIP Loan Documents); and (ii) second, the surplus remaining (if any) to be disbursed in accordance with the Bankruptcy Code and any plan of liquidation.

23. Proceeds of Subsequent Financing. If the Debtors, any trustee, any examiner with expanded powers, or any responsible officer subsequently appointed in the Chapter 11 Cases or any Successor Cases shall obtain credit or incur debt pursuant to sections 364(b), 364(c), 364(d) of the Bankruptcy Code in violation of this Interim Order at any time prior to repayment in full of the DIP Facility (the “DIP Repayment”), including subsequent to the confirmation of any chapter 11 plan with respect to the Debtors (if applicable), then all the cash proceeds derived from such credit or debt shall immediately be applied in accordance with this Interim Order.

24. Disposition of DIP Collateral. Except as otherwise provided for in this Interim Order, the Debtors shall not sell, transfer, lease, encumber, or otherwise dispose of any portion of the DIP Collateral other than in the ordinary course of business without the prior written consent of the DIP Agent and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Agent or any other DIP Secured Parties.

25. Maturity Date. The maturity date is the earliest of (the):

- (a) The date a plan of reorganization becomes effective;
- (b) Consummation of the 363 Sale;
- (c) The date on which the DIP Loans become due and payable under the Interim Order, the Final Order, or the DIP Credit Agreement, whether by acceleration or otherwise; or
- (d) The date on which any Event of Default that has not been cured or waived within ten (10) business days of the transmission of written notice thereof (the “Default Notice Period”) to counsel for the Debtors, any Committee, and the U.S. Trustee.

(collectively, the “Maturity Date”).

26. Rights and Remedies Upon Event of Default. Without further order from the Bankruptcy Court, the automatic stay provisions of section 362 of the Bankruptcy Code shall be vacated and modified to the extent necessary to permit the DIP Secured Parties to exercise, upon

the occurrence and during the continuance of any Event of Default, all rights and remedies provided for in the DIP Loan Documents, and to take any or all of the following actions without further order of or application to the Bankruptcy Court (as applicable):

- (a) Immediately terminate the debtor DIP Facility Borrowers' limited use of any Cash Collateral of the DIP Secured Parties;
- (b) Cease making any DIP Loans under the DIP Facility to the DIP Facility Borrowers;
- (c) After the expiration of the Default Notice Period, declare all amounts owed under the DIP Facility to be immediately due and payable;
- (d) After the expiration of the Default Notice Period, freeze monies or balances in the DIP Facility Borrowers' accounts and sweep all funds contained in the DIP Facility Borrowers' deposit accounts; provided, however, that the DIP Secured Parties shall not sweep any funds held by a Credit Party in trust or escrow for a party other than any Credit Party and the Debtors shall retain funds equal to the Carve-Out and any amounts incurred but not yet paid pursuant to the Budget;
- (e) After the expiration of Default Notice Period, immediately set-off any and all amounts in accounts maintained by the DIP Facility Borrowers with the DIP Secured Parties against the DIP Facility, or otherwise enforce any and all rights against the DIP Collateral in the possession of the DIP Secured Parties, including, without limitation, disposition of the DIP Collateral solely for application towards the DIP Facility; provided, however, that the DIP Secured Parties shall not exercise such set-off rights against any funds held by a Credit Party, whether in trust, escrow, or similar manner, for the benefit of a party other than any Credit Party, or funds equal to the Carve-Out and any amounts incurred but not yet paid pursuant to the Budget; and
- (f) After the expiration Default Notice Period, take any other actions or exercise any other rights or remedies permitted under the DIP Orders, the DIP Loan Documents or applicable law to effect the repayment of the DIP Facility.

Subject to the DIP Orders, the Debtors waive any right to seek relief under the Bankruptcy Code, including under section 105 thereof, to the extent such relief would restrict or impair the rights and remedies of the DIP Secured Parties set forth in the DIP Orders and in the DIP Loan Documents; provided, however, that, prior to expiration of the Default Notice Period, the Debtors

may seek emergency relief from the Bankruptcy Court, which relief shall be limited to a determination as to the existence of an Event of Default. Absent any order of the Bankruptcy Court that is entered during the Default Notice Period, the automatic stay, as to the DIP Secured Parties, shall automatically terminate at the expiration of such Default Notice Period.

27. Carve Out.

(a) Subject to the terms and conditions contained in this paragraph and each subparagraph thereof, each of DIP Liens and the DIP Superpriority Claims shall be subject and subordinate in all respects to payment and full funding of the Carve Out. As used in this Interim Order, the “Carve Out” means the sum of:

(i) all fees required to be paid to the Clerk of the Court, or any claims and noticing agent acting in such capacity, 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 Termination Declaration Date);

(ii) all reasonable fees and expenses up to \$25,000 incurred by a trustee under section 726(b) of the Bankruptcy Code;

(iii) all accrued and unpaid fees, disbursements, costs, and expenses (the “Allowed Professional Fees”) incurred by professionals or professional firms retained by the Debtors or their estates pursuant to sections 327, 328 or 363 of the Bankruptcy Code (collectively, the “Professionals” or “Professional Persons”), which Allowed Professional Fees: (x) are allowed by the Bankruptcy Court, at any time, whether by interim order, procedural order, or otherwise; (y) were incurred (regardless of when invoiced or applied for) on or after the Petition Date(s), and prior to the Termination Declaration Date (defined below), and (z) are provided for in the approved Budget, and

(iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed \$150,000 for all such Professionals (for the avoidance of doubt, in the aggregate and, not on a professional-by-professional basis), incurred after the first business day following delivery by the DIP Agent of the Carve-Out Trigger Notice and absent cure, to the extent allowed at any time, whether by interim order, procedural order, or otherwise and to the extent such availability remains in the approved Budget for the payment of Allowed Professional Fees (the amounts set forth in this clause being the “Post-Trigger Notice Carve-Out Cap”).

(b) Additional definitions. “Carve-Out Trigger Notice” shall mean a written notice delivered by email (or other electronic means) by the DIP Agent to the DIP Facility Borrowers, through their proposed restructuring counsel, Dykema Gossett PLLC, and the U.S. Trustee, which notice may be delivered following the occurrence and during the continuation of an Event of Default and acceleration of the DIP Obligations under the DIP Facility, stating that the Post-Trigger Notice Carve-Out Cap has been invoked. “Termination Declaration Date” shall mean the day on which a Carve-Out Trigger Notice is given by the DIP Agent to the DIP Facility Borrowers.

(c) Prohibitions on Use. No proceeds of the DIP Facility, the Carve Out or any Cash Collateral may be used for any fees and expenses, if any, of Professionals incurred directly or indirectly, in respect of, arising from or relating to: (i) preventing, hindering or otherwise delaying, whether directly or indirectly, the exercise by the DIP Agent of any of its rights and remedies under the Interim Order, the Final Order; (ii) the commencement, support, or prosecution of any action or proceeding of any claims, causes of action or defenses against the DIP Secured Parties, or any of their respective affiliates, officers, directors, employees, representatives, and agents (including all

of their professionals); (iii) any request to borrow money other than pursuant to the terms of the Interim Order, the Final Order, or the documents comprising the DIP Facility; or (iv) with respect to the Debtors, any Professionals, or any of their successors or assigns (including, without limitation, any trustee, responsible officer, examiner, estate administrator or representative or similar person appointed in a case for the Debtors under any chapter of the Bankruptcy Code) performing or commencing any investigation or litigation (whether threatened or pending) by the Debtors or anyone else with respect to any matter released or to be released, waived, or to be waived, or specified as not subject to challenge by the Debtors pursuant to the Interim Order or Final Order.

(d) Carve Out Reserve. Prior to the delivery of the Carve Out Trigger Notice, on a weekly basis, the Debtors may, in their discretion, cause to be funded from the DIP Facility or Cash Collateral into a segregated account (the “Funded Reserve Account”) held for the benefit of Professionals an amount equal to the aggregate amount of the estimated accrued fees of Professionals, based on the amounts set forth in the Budget remaining unpaid as of the Friday of the preceding week (and not previously funded to the Funded Reserve Account). Promptly after the delivery of the Carve Out Trigger Notice, the Debtors shall fund from the DIP Facility or Cash Collateral into the Funded Reserve Account an amount equal to the Pre-Carve Out Trigger Notice Amounts and the Post-Carve Out Trigger Notice Cap (collectively, the “Carve Out Reserves”). After the delivery of a Carve Out Trigger Notice as required herein, any payment or reimbursement made on or in respect of any Post-Carve Out Trigger Notice Cap (excluding any incurred and unpaid professional fees and expenses of the DIP Agent payable pursuant to the Interim Order or the Final Order) in an aggregate amount not in excess of the amounts accrued or paid for each such Professional as set forth in the Budget, shall permanently reduce the Carve Out on a dollar-for-

dollar basis. Notwithstanding anything to the contrary in the DIP Loan Documents or the Final Order, following delivery of a Carve Out Trigger Notice, the DIP Agent shall not sweep or foreclose on cash of the Debtors until the Carve Out Reserves have been fully funded, but shall have a security interest in any residual interest in the Carve Out Reserves after payment and full funding of all Carve Out amounts, which shall revert to the Debtors subject to such security interest. Further, notwithstanding anything to the contrary in the Interim Order, (a) the failure of the Carve Out Reserves to satisfy in full the Professional Fees shall not affect the priority of the Carve Out, and (b) the Carve Out Reserves shall serve as a limitation only on the amount of Professional Fees that may be paid from such Carve Out Reserves, and in no way shall the approved Budget, the Carve Out, the Post-Carve Out Trigger Notice Cap, the Carve Out Reserves or any of the foregoing be construed as a cap or limitation on the amount of Professional Fees that Professionals may seek to be paid by the Debtors in these Chapter 11 Cases from funds other than the DIP Facility and Cash Collateral.

(e) No Direct Obligation To Pay Allowed Professional Fees. None of the DIP Secured Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional incurred in connection with the Chapter 11 Cases or any Successor Cases. Nothing in this Interim Order or otherwise shall be construed to obligate the DIP Secured Parties in any way, to pay compensation to, or to reimburse expenses of, any Professional or to guarantee that the Debtors has sufficient funds to pay such compensation or reimbursement.

(f) Notwithstanding anything herein to the contrary, the Carve Out shall only be available to pay fees and expenses of Professionals to the extent that unencumbered funds are not otherwise available.

28. Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Interim Order. 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 modified, amended, waived, or vacated by a subsequent order of this Bankruptcy Court or any other court of competent jurisdiction, each of the DIP Agent and the other DIP Secured Parties is entitled to the protections provided in section 364(e) of the Bankruptcy Code. Any such modification, amendment, waiver or vacatur shall not affect the validity and enforceability of any advances previously made, including advances made hereunder, or any lien, claim, or priority authorized or created hereby, unless such authorization and the incurring of such debt, or the granting of such priority or lien, is stayed pending appeal.

29. Payment of Fees and Expenses. The DIP Agent shall be entitled to payment of a commitment fee (the “Commitment Fee”) equal to 5% of the DIP Facility, which shall be due and earned upon entry of the Final Order. Additionally, the Debtors shall reimburse the DIP Agent for all past, present, and future costs and expenses, including, without limitation, all reasonable professional fees, consultant fees, appraisal fees, field examiner fees, and legal fees and expenses paid or incurred by the DIP Agent in connection with the DIP Facility as well as all reasonable expenses of the DIP Agent in connection with the administration, monitoring and enforcement of the DIP Loan Documents after an Event of Default and/or acceleration (collectively, the “DIP Lender Reimbursements”), including such reasonable fees and costs incurred prior to the entry of this Interim Order, on a monthly basis on demand as additional adequate protection (in addition to other forms of adequate protection provided for herein); *provided, however*, that neither the DIP Agent nor any professionals employed by the DIP Agent shall be required to file with the

Bankruptcy Court any application for compensation, fee statements, or other such pleading for approval of said fees.

Any time that professionals of the DIP Agent, including, without limitation, Munsch Hardt Kopf & Harr P.C., as counsel to the DIP Agent, seek payment of fees and expenses from the Debtors, such professional shall provide summary copies of its fee and expense statements or invoices (which shall not be required to contain time entries and which may be redacted or modified to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of such invoices shall not constitute any waiver of the attorney-client privilege or of any benefits of the attorney work product doctrine) with: (i) a summary of the work performed during the relevant compensation period; (ii) the name of, hourly rate (if applicable) of, and number of hours worked by each professional and paraprofessional who worked on the matter during the relevant compensation period; and (iii) the total fee amount being requested by electronic mail to the U.S. Trustee and counsel to the Committee (if appointed) contemporaneously with the delivery of such fee and expense statements to the Debtors. The Debtors, any Committee, or the U.S. Trustee may dispute the payment of any portion of such invoiced fees and expenses (the “Disputed Invoiced Fees”) if the Debtors, any Committee that may be appointed in the Chapter 11 Cases, or the U.S. Trustee notifies the submitting party in writing, within five (5) days of the receipt of such fee and expense statement or invoice, setting forth the specific objections to the Disputed Invoiced Fees (to be followed by the filing with the Bankruptcy Court, if necessary, of an objection, within at least ten (10) days’ prior written notice to the submitting party of any hearing on such objection). The Debtors shall promptly pay in full all such invoiced fees and expenses other than the Disputed Invoiced Fees.

Notwithstanding the foregoing, the Debtors shall pay on or about the date of entry of the Interim Order all reasonable and documented fees, costs, and out-of-pocket expenses of the DIP Agent incurred on or prior to such date without the need for any professional engaged by the DIP Agent to first deliver a copy of its invoice as provided for herein (other than to the Debtors). No attorney or advisor to the DIP Agent shall be required to file an application seeking compensation for services or reimbursement of expenses with the Bankruptcy Court. The DIP Agent shall have the right to charge the DIP Facility for any such fees and costs (whether such costs were incurred prior to the Petition Date or after the Petition Date). To the extent the DIP Agent charges the DIP Facility for such fees and costs, they will become part of the DIP Facility.

30. Proofs of Claim. The DIP Agent and the other DIP Secured Parties will not be required to file proofs of claim in the Chapter 11 Cases or Successor Cases for any claim allowed herein. The Debtors' Stipulations shall be deemed to constitute a timely filed proof of claim for the DIP Agent and the other DIP Secured Parties upon approval of this Interim Order, and the DIP Agent and the other DIP Secured Parties shall be treated under section 502(a) of the Bankruptcy Code as if they filed a proof of claim. Any order entered by the Bankruptcy Court in relation to the establishment of a bar date for any claim (including without limitation administrative claims) in the Chapter 11 Cases or any Successor Cases shall not apply to the DIP Agent or the other DIP Secured Parties.

31. Effect of Stipulations on Third Parties.

(a) *Generally.* The Debtors' stipulations, admissions, agreements, and releases contained in this Interim Order, including the Debtors' stipulations and the releases set forth in paragraph 36 (the "Releases"), shall be binding on the Debtors in all circumstances and for all purposes. The Debtors' stipulations, admissions, agreements, and releases contained in this Interim

Order, including the Releases, shall also be binding on all creditors and other parties in interest and all of their respective successors and assigns, including, without limitation, any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases, including the Committee (if appointed), and any other person or entity acting or seeking to act on behalf of the Debtors' estate in all circumstances and for all purposes.

(b) Any successor to the Debtors (including, without limitation, any Chapter 7 or Chapter 11 trustee appointed or elected for the Debtors or any other estate representative appointed in the Chapter 11 Cases or any Successor Cases) shall be bound by the terms of the DIP Orders to the same extent as the Debtors, including with respect to the Releases, to the extent (and on the terms) approved by the DIP Orders.

32. 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, or incidental beneficiary.

33. Section 506(c) Claims. Subject to and upon entry of the Final Order, except to the extent of the Carve Out, no costs or expenses of administration that have been or may be incurred in the Chapter 11 Cases at any time shall be charged against the DIP Agent, the other DIP Secured Parties, or the DIP Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code, or otherwise, without the prior written consent of the DIP Agent and no such consent shall be implied from any action, inaction, or acquiescence by any party.

34. No Marshaling/Applications of Proceeds. Subject to and upon entry of the Final Order, in no event shall the DIP Agent or the other DIP Secured Parties be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the DIP Collateral.

35. Section 552(b). Subject to and upon entry of the Final Order, the DIP 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 thereunder shall not apply to any of the DIP Secured Parties with respect to proceeds, product, offspring, or profits of any of the DIP Collateral.

36. Releases. In exchange for good and valuable consideration, the adequacy of which is hereby confirmed, the Debtors, (in its own right, on behalf of its estate and its current and former direct and indirect subsidiaries, and each such entity’s and its current and former direct and indirect subsidiaries’ current and former directors, officers, managers, predecessors, and successors and assigns, and each of such entity’s current and former officers, members, managers, directors, principals, members, employees, agents, independent contractors, representatives, managed accounts or funds, management companies, fund advisors, investment advisors, financial advisors, partners (including both general and limited partners), and representatives, in each case to the extent permitted by applicable law and solely in such parties capacity as such) (collectively, the “Releasing Parties”) hereby unconditionally and irrevocably releases, acquits, absolves, forever discharges and covenants not to sue the DIP Secured Parties and such entities’ current and former affiliates, and each such entity’s current and former directors, officers, managers and equity holders (regardless of whether such interests are held directly or indirectly), predecessors, successors and assigns, and direct and indirect subsidiaries, and each of such entity’s current and former officers, members, managers, directors, equity holders (regardless of whether such interests are held directly or indirectly), principals, members, employees, agents, independent contractors, representatives, managed accounts or funds, management companies, fund advisors, investment advisors, financial advisors, and partners (including both general and limited partners) (the “Released Parties”) and their respective property and assets from any and all acts and omissions of the Released Parties, and

from any and all claims, interests, causes of action, avoidance actions, counterclaims, defenses, setoffs, demands, controversies, suits, judgments, costs, debts, sums of money, accounts, reckonings, bonds, bills, damages, obligations, objections, legal proceedings, equitable proceedings, executions of any nature, type, or description and liabilities whatsoever (including any derivative claims asserted or assertable on behalf of the Debtors, their estates, or such entities' successors or assigns, whether individually or collectively), which the Releasing Parties now have, may claim to have or may come to have against the Released Parties through the date of the Final Order, at law or in equity, by statute or common law, in contract or in tort, including, without limitation, (a) any so-called "lender liability" or equitable subordination claims or defenses, (b) any and all "claims" (as defined in the Bankruptcy Code) and causes of action arising under the Bankruptcy Code and (c) any and all offsets, defenses, claims, counterclaims, set off rights, objections, challenges, causes of action, and/or choses in action of any kind or nature whatsoever, whether liquidated or unliquidated, fixed or contingent, known or unknown, suspected or unsuspected, disputed or undisputed, whether arising at law or in equity, including any recharacterization, recoupment, subordination, disallowance, avoidance, challenge, or other claim or cause of action arising under or pursuant to section 105, chapter 5, or section 724(a) of the Bankruptcy Code or under other similar provisions of applicable state, federal, or foreign laws, but excluding obligations of the DIP Secured Parties under the DIP Facility arising after the date of the Final Order. This paragraph is in addition to and shall not in any way limit any other release, covenant not to sue, or waiver by the Releasing Parties in favor of the Released Parties.

37. Indemnification. The Debtors shall indemnify and hold the DIP Secured Parties and each such entities' current and former affiliates, and each such entity's current and former directors, officers, managers and equity holders (regardless of whether such interests are held directly or

indirectly), predecessors, successors and assigns, and direct and indirect subsidiaries, and each of such entity's current and former officers, members, managers, directors, equity holders (regardless of whether such interests are held directly or indirectly), principals, members, employees, agents, independent contractors, representatives, managed accounts or funds, management companies, fund advisors, investment advisors, financial advisors, and partners (including both general and limited partners) (each an "Indemnified Party") harmless from and against any and all claims, damages, losses, liabilities and expenses (including, without limitation, all fees and disbursements of attorneys and other professionals) to which any Indemnified Party may become liable or which may be incurred by or asserted against any Indemnified Party, in each case in connection with or arising out of or by reason of any investigation, litigation or proceeding arising out of or relating to or in connection with the DIP Facility, any obligation, or any act, event or transaction related or attendant thereto or any use or intended use of the proceeds of the DIP Facility, except to the extent the same is found in a final, nonappealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's own gross negligence or willful misconduct.

38. Limits on Lender Liability. Nothing in this Interim Order, any of the DIP Loan Documents or any other documents related thereto, shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent or the other DIP Secured Parties of any liability for any claims arising from any activities by the Debtors in the operation of their businesses or in connection with the administration of the Chapter 11 Cases or any Successor Cases. The DIP Agent and the other DIP Secured Parties shall not, solely by reason of having made loans under the DIP Facility or authorizing the use of Cash Collateral or exercising their rights under the Interim Order, the Final Order, or the DIP Loan Documents, be deemed in control of the operations of the Debtors or to be acting as a "responsible person" or "owner or operator"

with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.*, as amended, or any similar federal or state statute). Nothing in this Interim Order shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent, or any of the DIP Secured Parties, of any liability for any claims arising from the pre-petition or post-petition activities of the Debtors.

39. Insurance Proceeds and Policies. Upon entry of this Interim Order and to the fullest extent provided by applicable law, the DIP Agent (on behalf of itself and the other DIP Secured Parties) shall be, and shall be deemed to be, without any further action or notice, named as additional insured and loss payee on each insurance policy maintained by the Debtors that in any way relates to the DIP Collateral.

40. Joint and Several Liability. Nothing in this Interim Order shall be construed to constitute a substantive consolidation of the Debtors' estate, it being understood, however, that the Debtors shall be jointly and severally liable for the obligations hereunder and all DIP Obligations in accordance with the terms hereof. All unpaid principal, interest, fees, costs, and expenses accruing under the DIP Facility shall be due and payable in full on the Maturity Date to the extent not due earlier, and if such amounts are not paid in full in cash, interest, fees, costs, and expenses in respect of the DIP Facility shall continue to accrue until paid in full.

41. Bankruptcy Court Filings. As soon as practicable in advance of filing with the Bankruptcy Court, the Debtors shall furnish to the DIP Agent (i) the proposed filing versions of the DIP Orders and the motion seeking their approval, (ii) the motions seeking approval of the bidding procedures and the 363 Sale and the proposed forms of the orders related thereto and any other motions, applications, or pleadings related to the 363 Sale or that could reasonably affect the 363 Sale,

(iii) all other proposed orders and pleadings related to the DIP Facility, (iv) any plan of reorganization or liquidation, and/or any disclosure statement related to such plan (which plan or disclosure statement shall comply with the requirements of this Interim Order), (v) any motion seeking approval of any sale of the Debtors' assets and any proposed form of a related bidding procedures order and sale order (other than those with respect to the bidding procedures and the 363 Sale), (vi) any "first day motions" and related orders, and (vii) any motion and proposed form of order filed with the Bankruptcy Court relating to the assumption, rejection, modification or amendment of any material contract. The form and substance of the foregoing items (i) through (vii) shall be acceptable to the DIP Agent, *provided, however*, that the Debtors may take any steps reasonably necessary to comply with other orders of this Bankruptcy Court.

42. Rights Preserved. Notwithstanding anything herein to the contrary, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly: (a) the DIP Agent's and the other DIP Secured Parties' rights to seek any other or supplemental relief; (b) any of the rights of any of the DIP Agent and/or the other DIP Secured Parties under the Bankruptcy Code or applicable non-bankruptcy law, including, without limitation, the right to request modification of the automatic stay imposed by section 362 of the Bankruptcy Code, request dismissal of the Chapter 11 Cases or Successor Cases, conversion of the Chapter 11 Cases to cases under Chapter 7, or appointment of a Chapter 11 trustee or examiner with expanded powers, to enforce any guarantee against a non-Debtor; or propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans; or (c) any other rights, claims, or privileges (whether legal, equitable, or otherwise) of any of the DIP Agent or the other DIP Secured Parties.

43. No Waiver by Failure to Seek Relief. The failure of the DIP Agent or the other DIP Secured Parties to seek relief or otherwise exercise their rights and remedies under this Interim Order or applicable law, as the case may be, shall not constitute a waiver of any of the rights hereunder, thereunder, or otherwise of the DIP Agent or the other DIP Secured Parties.

44. Binding Effect of Interim Order. The provisions of this Interim Order shall be binding upon and inure to the benefit of the Debtors, the DIP Agent, the other DIP Secured Parties, any Committee appointed in the Chapter 11 Cases, all other creditors of the Debtors and all other parties in interest and, in each case, their respective successors and assigns (including any Chapter 7 or Chapter 11 trustee hereinafter appointed or elected for the estates of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code or any other fiduciary appointed as a legal representative of the Debtors or with respect to the property of the estate of the Debtors). This Interim Order shall bind any trustee hereafter appointed for the estate of the Debtors, whether in the Chapter 11 Cases or in the event of the conversion of the Chapter 11 Cases, any Successor Cases, or upon dismissal of the Chapter 11 Cases or Successor Cases, to a liquidation under Chapter 7 of the Bankruptcy Code. Such binding effect is an integral part of this Interim Order.

45. No Modification of Interim Order. Until the DIP Repayment has occurred, the Debtors shall be prohibited from seeking or consenting to, directly or indirectly, any modification, stay, vacatur, waiver, or amendment to this Interim Order or any provision hereof without the prior written consent of the DIP Agent, and no such consent shall be implied by any action or inaction of the DIP Agent.

46. Modifications to DIP Loan Documents. Upon entry of the Final Order, the Debtors and the DIP Agent are authorized to implement, in accordance with the terms of the DIP Loan Documents, any non-material modifications or amendments of the DIP Loan Documents without

further order of this Bankruptcy Court; *provided, however*, that notice of any non-material modification or amendment to the DIP Loan Documents shall be provided to lead counsel to the Committee (if appointed) and the U.S. Trustee, each of whom shall have five (5) business days from the date of such notice within which to object in writing (email to suffice) to such modification or amendment. If any such party timely objects to any non-material modification or amendment to the DIP Loan Documents, such modification or amendment shall only be permitted pursuant to an order of this Bankruptcy Court. For the avoidance of doubt, the extension of a Milestone shall not constitute a material amendment, modification, waiver, or supplement to the DIP Loan Documents.

47. Interim Order Controls. In the event of any inconsistency between the terms and conditions of any (as yet finalized) DIP Loan Documents and this Interim Order, the provisions of this Interim Order shall control.

48. Discharge. Subject to the terms and conditions of this Interim Order, the DIP Obligations shall not be discharged by the entry of an order confirming any plan of reorganization in the Chapter 11 Cases, notwithstanding the provisions of section 1141(d) of the Bankruptcy Code, unless the DIP Repayment has occurred on or before the effective date of such plan of reorganization or the DIP Agent has otherwise agreed in writing.

49. Survival. The provisions of this Interim Order, any actions taken pursuant hereto or thereto, and all of the protections, rights, remedies, liens, priorities, privileges, and benefits granted to any or all of the DIP Secured Parties shall survive, and shall not be modified, impaired, or discharged by, the entry of any order confirming any plan of reorganization or liquidation in the Chapter 11 Cases, converting the Chapter 11 Cases to Chapter 7 cases, dismissing the Chapter 11 Cases or any Successor Cases, withdrawing of the reference of the Chapter 11 Cases, any Successor

Cases, or providing for abstention from handling or retaining of jurisdiction of the Chapter 11 Cases in this Bankruptcy Court, or terminating the joint administration 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, or following the dismissal of the Chapter 11 Cases or any Successor Cases, notwithstanding the entry of any such order, and such protections, rights, remedies, liens, priorities, privileges, and benefits shall continue in full force and effect in these proceedings and after dismissal of any thereof, and shall maintain their respective priorities as provided by this Interim Order, and to the maximum extent permitted by law, until all of the DIP Obligations are indefeasibly paid in full in cash and discharged.

50. Headings. Section headings used herein are for convenience only and are not to affect the construction of or to be taken into consideration in interpreting this Interim Order.

51. Retention of Jurisdiction. The Bankruptcy Court retains exclusive jurisdiction to resolve any dispute arising from or related to the interpretation or enforcement of the DIP Facility and/or this Interim Order.

52. Final Hearing. The Final Hearing is scheduled for ____, 2026 at ____ a.m./p.m. prevailing Central Time before this Bankruptcy Court. The Debtors shall promptly mail copies of this Interim Order, which shall constitute adequate notice of the Final Hearing, to the parties having been given notice of the Interim Hearing, to any other party that has filed a request for notices with this Bankruptcy Court, and to the Committee, if appointed. Any party in interest objecting to the

relief sought at the Final Hearing shall serve and file written objections, which objections shall be filed no later than ____, 2025 at 3:00 p.m. prevailing Central Time.

Dated: _____, 2025

THE HON. ALFREDO R. LOPEZ
UNITED STATES BANKRUPTCY COURT

EXHIBIT 1

Budget

Vista Community Medical Center LLP (SSHA)

DIP Cash Flow Forecast

(shown in USD)

	Petition									Sale				
Week Number -->	1	2	3	4	5	6	7	8	9	10	11	12	13	
Actual / Forecast -->	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Total
Week Start Date -->	12/6/2025	12/13/2025	12/20/2025	12/27/2025	1/3/2026	1/10/2026	1/17/2026	1/24/2026	1/31/2026	2/7/2026	2/14/2026	2/21/2026	2/28/2026	12/6/2025
Week Ending Date -->	12/12/2025	12/19/2025	12/26/2025	1/2/2026	1/9/2026	1/16/2026	1/23/2026	1/30/2026	2/6/2026	2/13/2026	2/20/2026	2/27/2026	3/6/2026	3/6/2026
Receipts														
Operating Receipts	4,600	4,600	4,600	4,600	4,600	4,600	4,600	4,600	4,600	4,600	-	-	-	46,000
Other Receipts	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Receipts	4,600	4,600	4,600	4,600	4,600	4,600	4,600	4,600	4,600	4,600	-	-	-	46,000
Operating Disbursements														
Supplies and Services	(6,000)	(12,000)	(12,000)	(12,000)	(12,000)	(12,000)	(12,000)	(12,000)	(12,000)	(12,000)	-	-	-	(114,000)
Insurance	-	(16,436)	-	-	-	(16,436)	-	-	-	(16,436)	-	-	-	(49,308)
Payroll & Benefits	-	(27,991)	(22,241)	(5,750)	(22,241)	(3,250)	(22,241)	-	(27,991)	-	(25,491)	-	-	(157,194)
Taxes	-	(384,645)	-	-	-	(285,000)	-	-	-	-	(33,668)	-	-	(703,312)
Repairs and Maintenance	-	(5,000)	(369,000)	(5,000)	(356,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	-	-	-	(760,000)
Utilities	-	(10,230)	-	-	-	(31,000)	-	-	-	(31,000)	-	-	-	(72,230)
Other Miscellaneous Expenses	(588)	(34,265)	(30,588)	(1,554)	(29,548)	(27,955)	(1,468)	(1,360)	(1,360)	(5,155)	-	-	-	(133,841)
Total Operating Disbursements	(6,588)	(490,566)	(433,829)	(24,304)	(419,789)	(380,641)	(40,709)	(18,360)	(46,351)	(69,591)	(59,158)	-	-	(1,989,885)
Net Cash Flow from Operations	(1,988)	(485,966)	(429,229)	(19,704)	(415,189)	(376,041)	(36,109)	(13,760)	(41,751)	(64,991)	(59,158)	-	-	(1,943,885)
Non-Operating Disbursements														
Ordinary Course Professionals	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Other Non-Operating Disbursements	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Debt Paydown	-	-	-	-	-	-	-	-	-	(904,384)	-	-	-	(904,384)
Total Non-Operating Disbursements	-	-	-	-	-	-	-	-	-	(904,384)	-	-	-	(904,384)
Net Cash Flow Before Restructuring	(1,988)	(485,966)	(429,229)	(19,704)	(415,189)	(376,041)	(36,109)	(13,760)	(41,751)	(969,375)	(59,158)	-	-	(2,848,270)
Restructuring Costs														
Ch. 11 Professional Fees	-	(225,000)	-	(100,000)	-	-	-	(330,000)	(100,000)	-	-	(350,000)	-	(1,105,000)
Ch. 11 Professional Fees - UCC	-	-	-	-	-	-	-	-	-	-	-	(20,000)	-	(20,000)
US Trustee Fees	-	-	-	-	-	-	(26,000)	-	-	-	-	-	-	(26,000)
DIP Interest & Fees	-	(250,000)	-	-	-	-	-	-	-	-	-	-	-	(250,000)
Utility Deposits	-	(31,000)	-	-	-	-	-	-	-	-	-	-	-	(31,000)
Total Restructuring Costs	-	(506,000)	-	(100,000)	-	-	(26,000)	(330,000)	(100,000)	-	-	(370,000)	-	(1,432,000)
Net Cash Flow	(1,988)	(991,966)	(429,229)	(119,704)	(415,189)	(376,041)	(62,109)	(343,760)	(141,751)	(969,375)	(59,158)	(370,000)	-	(4,280,270)
Liquidity Summary														
Beginning Cash Balance	21,844	19,856	764,556	153,661	36,956	1,024,768	551,727	392,618	1,281,858	1,136,357	563,232	400,324	296,574	21,844
Professional Fee Escrow - Net	-	(263,333)	(181,667)	3,000	(97,000)	(97,000)	(97,000)	233,000	(3,750)	(103,750)	(103,750)	266,250	(45,000)	(490,000)
Capital Infusion	-	-	-	-	-	-	-	-	-	-	-	-	-	-
DIP Advance/(Paydown)	-	2,000,000	-	-	1,500,000	-	-	1,000,000	-	500,000	-	-	-	5,000,000
Sale Proceeds	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Net Cash Flow	(1,988)	(991,966)	(429,229)	(119,704)	(415,189)	(376,041)	(62,109)	(343,760)	(141,751)	(969,375)	(59,158)	(370,000)	-	(4,280,270)
Ending Cash Balance - Book	19,856	764,556	153,661	36,956	1,024,768	551,727	392,618	1,281,858	1,136,357	563,232	400,324	296,574	251,574	251,574
DIP Loan Commitment	-	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	-	-	-	-	
DIP Loan Availability	-	3,000,000	3,000,000	3,000,000	1,500,000	1,500,000	1,500,000	500,000	500,000	-	-	-	-	
Total Liquidity (Cash + DIP)	19,856	3,764,556	3,153,661	3,036,956	2,524,768	2,051,727	1,892,618	1,781,858	1,636,357	563,232	400,324	296,574	251,574	

Vista Community Medical Center LLP (SSHA)

Cash Flow Details - Professional Fees

(shown in USD)

	Petition									Sale				
Week Number -->	1	2	3	4	5	6	7	8	9	10	11	12	13	
Actual / Forecast -->	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast
Week Start Date -->	12/6/2025	12/13/2025	12/20/2025	12/27/2025	1/3/2026	1/10/2026	1/17/2026	1/24/2026	1/31/2026	2/7/2026	2/14/2026	2/21/2026	2/28/2026	
Week Ending Date -->	12/12/2025	12/19/2025	12/26/2025	1/2/2026	1/9/2026	1/16/2026	1/23/2026	1/30/2026	2/6/2026	2/13/2026	2/20/2026	2/27/2026	3/6/2026	13-week Total
Estimated Accrual of Professional Fees														
Stout Risius Ross, LLC	50,000	50,000	50,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	18,750	438,750
Dykema Gossett PLLC	58,333	58,333	58,333	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	18,750	463,750
DIP Lender Legal	16,667	16,667	16,667	10,000	10,000	10,000	10,000	10,000	12,500	12,500	12,500	12,500	-	150,000
Claims & Noticing Agent	16,667	16,667	16,667	8,000	8,000	8,000	8,000	8,000	7,500	7,500	7,500	7,500	5,000	125,000
Investment Banker	33,333	33,333	33,333	10,000	10,000	10,000	10,000	10,000	12,500	12,500	12,500	12,500	-	200,000
UCC Counsel	-	-	-	5,000	5,000	5,000	5,000	5,000	6,250	6,250	6,250	6,250	-	50,000
Conflict Counsel	6,667	6,667	6,667	4,000	4,000	4,000	4,000	4,000	5,000	5,000	5,000	5,000	2,500	62,500
Total Estimated Accrual of Professional Fees	181,667	181,667	181,667	97,000	97,000	97,000	97,000	97,000	103,750	103,750	103,750	103,750	45,000	1,490,000
Professional Fees Reconciliation														
Beginning Balance	-	181,667	263,333	445,000	442,000	539,000	636,000	733,000	500,000	503,750	607,500	711,250	445,000	
Accrual of Professional Fees	181,667	181,667	181,667	97,000	97,000	97,000	97,000	97,000	103,750	103,750	103,750	103,750	45,000	
Disbursements	-	(100,000)	-	(100,000)	-	-	-	(330,000)	(100,000)	-	-	(370,000)	-	
Ending Balance	181,667	263,333	445,000	442,000	539,000	636,000	733,000	500,000	503,750	607,500	711,250	445,000	490,000	

EXHIBIT 2

Known Title Disputes

None

EXHIBIT 3

Permitted Liens

None