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UNITED STATES BANKRUPTCY COURT

DISTRICT OF ARIZONA

In Re: **LEGACY CARES, INC.,** **Debtor.**	**Case No. 2:23-bk-02832-DPC** **Chapter 11** **MOTION FOR ORDERS (I) AUTHORIZING DEBTOR TO OBTAIN POSTPETITION FINANCING ON PRIMING, SUPERPRIORITY AND SECURED BASIS; (II) PERMITTING USE OF CASH COLLATERAL; (III) GRANTING INTERIM AND ADDITIONAL RELIEF; AND (IV) SCHEDULING A FINAL HEARING UNDER BANKRUPTCY RULE 4001(c)**

Debtor in possession Legacy Cares, Inc. ("Debtor" or "Cares") moves this Court for entry of an emergency interim order (the "Emergency Interim Order") and a final order (the "Final Order"; together with the Emergency Interim Order, the "Orders") under Bankruptcy Code §§105(a), 363(a) and 364 of the Bankruptcy Code, Bankruptcy Rules 4001(b) and (c) and 9014, and Local Rules 4001-2 and 4001-4 authorizing Cares to incur postpetition financing as set forth herein and to use cash collateral, as that term is defined in 11 U.S.C. § 363(a) (the "Cash Collateral"), on the terms set forth below.

This Motion requests the following relief: (1) approval of the release and waiver of claims, setoff rights, surcharge rights, avoidance actions and subordination actions against a secured creditor; (2) approval of restrictions on the carve-out rights of estate professionals; and (3) priming of a secured creditor without that creditor's consent.

This Motion is made and based upon the following Memorandum of Points and Authorities, the *Omnibus Declaration of Douglas Moss in Support of First Day Motions* ("First Day Declaration") and *Declaration of Keith B. Bierman, CPA in Support of Debtor's Motion to Approve Debtor's Use of Cash Collateral and Borrowing Under Section 364* ("Bierman Declaration") filed concurrently herewith, the papers and pleadings on file herein, judicial notice of which is hereby respectfully requested, and the argument of counsel entertained by the Court at the time of the hearings on the Motion.

Introduction

Cares operates Legacy Park, a sports park, under a leasehold. All of Cares' property is collateral for its secured debt. By this motion, Cares and the secured creditor agree to provide operating funds for the continued operation of the Park.

STATEMENT OF RELIEF REQUESTED UNDER BANKRUPTCY RULE 4001(c) AND LOCAL RULE 4001-1(b)

1. Cares seeks authority to enter into debtor-in-possession financing (the "DIP Facility" or "DIP Financing") in the amount of up to $9,000,000 with UMB Bank, N.A., as trustee ("UMB"). This Motion requests (a) that the Court, at the initial hearing, enter findings, conclusions, holdings, or orders that affect the rights of Cares as to the amount of UMB's secured debt and the validity, perfection, and scope of the security interests securing UMB's debt, and, at a final hearing, and after notice to interested parties, enter findings, conclusions, holdings, or orders that would affect rights of Cares' estate as to the amount of UMB's secured debt and the validity, perfection, and scope of the security interests securing UMB's debt; (b) at the initial hearing, approve Cares' release, waiver, abandonment of claims, setoff rights, surcharge rights, avoidance actions,

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and subordination actions against UMB on behalf of Cares, and, at a final hearing, and after notice to interested parties, approve the release, waiver, and abandonment of claims, setoff rights, surcharge rights, avoidance actions, and subordination actions against UMB that would affect the rights of Cares' estate; (c) that the Court grant "carve-out" rights to certain of Cares' professionals that prevent Cares' counsel from investigating or pursuing causes of action against UMB or taking positions adverse to UMB; (d) that the proposed DIP Facility be secured by priming liens on collateral without the consent of creditors who may claim a lien on that collateral; and (e) that immediately upon a declaration of default by UMB, Cares' authorization to use cash collateral be immediately terminated, that UMB be permitted to cease funding, and that UMB may seek such other Court relief upon notice UMB believes is appropriate, including without limitation, termination of the automatic stay. In this regard, Cares agrees to cooperate with UMB in obtaining emergency hearings and resolution of such motions.

2. UMB has a first-priority lien on (a) Cares' leasehold estate, (b) the structures and improvements on the leasehold estate, (c) the rents generated from the operation of Cares' project on the leasehold estate, and (d) all of Cares' personal property. UMB is willing to advance funds to Cares on the terms and conditions set forth herein and in the Credit Agreement attached to this Motion as **Exhibit A** in order to provide funds to Cares to assist in its restructuring efforts, to maintain their relationships with customers, to pay creditors, professionals, and employees, and to sell its assets, all of which will prevent an immediate shutdown to the detriment of all stakeholders. The funds provided to Cares will preserve its value as a going concern. Cares is unable to obtain funds to allow it to accomplish these goals in any other fashion.

3. The terms of the DIP Facility are straightforward:[1]

[1] The following description of the terms of the DIP Financing is intended solely to provide the Court and interested parties with a brief overview of the significant terms thereof. For a complete description of the terms and conditions of the DIP Financing, reference should be made to the Credit Agreement. This summary is qualified in its entirety by reference to such documents. In the event of any

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a) "Borrower" means: Debtor Legacy Cares, Inc.

b) "Budget" means the budget attached hereto as **Exhibit B**.

c) "Credit Agreement" means the "Priming Superpriority Debtor-in-Possession Credit Agreement" governing the DIP Facility, attached hereto as Exhibit A.

d) "Pre-Petition Loans" means all liabilities owed to UMB by Cares as of the petition date.

e) The DIP Facility / Availability: principal amount of no more than $1,600,000 upon emergency financing approval ("Initial Borrowing Cap"), with a total loan commitment of not more than $9,000,000 ("Total Borrowing Cap") (subject to the conditions set forth in the Credit Agreement).

f) Purpose: Principally short-term working capital to permit Cares to operate the Park (as defined below), pay professionals, and consummate a sale of all or substantially all of its assets.

g) Financial Terms: Interest at 12% per annum; default interest at 14% per annum.

h) Fees: 2 percent of the Total Borrowing Cap.

i) Maturity: The DIP Facility shall have a maturity date (the "Maturity Date") of the earlier of (a) September 30, 2023, (b) the closing date of any restructuring or sale of substantially all of Cares' assets pursuant to an order entered by the Bankruptcy Court, and (c) the confirmation of a plan of reorganization or liquidation for Debtor in the Chapter 11 Case, (subject to acceleration for Events of Default.

j) Documentation: documentation consisting of (a) the Emergency Interim Order, (b) the attached Credit Agreement, (c) Final Order, and (d) documents contemplated by, or relating to, the Emergency Interim Order, Final Order and the Credit Agreement.

k) So long as Cares is not in default under the Emergency Interim Order, the Final Order, or the Credit Agreement, it may pay expenses, including professional and legal fees, as set forth in the Budget.

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conflict or inconsistency between the provisions of this Motion and the DIP Documents (defined in paragraph 48 below), the DIP Documents shall control in all respects.

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l) So long as UMB has not declared Cares in default of the Emergency Interim Order, the Final Order, or the Credit Agreement, the following amounts accrued before such default shall be deemed a Carve-Out (the "Carve-Out"):

U.S. Trustee's Fees:	Quarterly Chapter 11 fees as and when due.
Warner Angle Hallam Jackson & Formanek, PLC Fees:	Not to exceed a maximum of $500,000. Amounts shall be paid, subject to court order, retroactively, in the following month for all amounts accrued up to and through the end of the previous month or the date that UMB declared Cares in default, whichever is earlier.
Papetti Samuels Weiss & McKirgan, PLC fees:	Not to exceed a maximum of $300,000. Amounts shall be paid, subject to court order, retroactively, in the following month for all amounts accrued up to and through the end of the previous month or the date that UMB declared Cares in default, whichever is earlier.
Slania Law:	Not to exceed a maximum of $210,000. Amounts shall be paid, subject to Court order, retroactively, in the following month for all amounts accrued up to and through the end of the previous month or the date that UMB declared Cares in default, whichever is earlier.
MCA Financial Group, Ltd.:	Not to exceed a maximum of $750,000. Amounts shall be paid, subject to Court order, retroactively, in the following month for all amounts accrued up to and through the end of the previous month or the date that UMB declared Cares in default, whichever is earlier.
Miller Buckfire & Co.:	All amounts due under that certain engagement letter dated as of March 15, 2023 between Cares and Miller Buckfire & Co., including but not limited to the "Transaction Fee" as set forth therein.

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Counsel for Unsecured Creditors Committee:	Not to exceed a maximum of $350,000. Amounts shall be paid, subject to Court order, retroactively, in the following month for all amounts accrued up to and through the end of the previous month or the date that UMB declared Cares in default, whichever is earlier.
Chapter 7 Trustee:	All reasonable fees and expenses incurred by a trustee under 11 U.S.C. § 726(b) not to exceed a maximum of $50,000.

[CA at § 9.9][2]. Except as to professionals employed for the Unsecured Creditors Committee, none of UMB's cash collateral or their proceeds, and none of the DIP Financing proceeds may be used to investigate or pursue causes of action against UMB, or take positions adverse to UMB. Professionals employed for the Unsecured Creditors Committee may use UMB's cash collateral and DIP Financing proceeds to investigate causes of action against UMB, but not pursue such actions. The Carve-Out is limited to fees incurred prior to a declared default necessary to ensure Cares' appropriate resolution of this case, pursuant to the Budget provided by Debtor and approved by UMB. [CA at § 9.10].

m) Collateral: all assets in which UMB had a first-priority lien as of the Petition Date. [CA at § 2.11].

n) Priority and Liens: a first-priority lien in all of Cares' property that secured the Pre-Petition Loans. This lien will prime the liens securing the Pre-Petition Loans and liens claimed by others in such collateral junior thereto. All borrowing, reimbursement obligations, and all other obligations of Cares arising in connection with the DIP Facility shall at all times, pursuant to § 364(c)(1) of the Bankruptcy Code, be entitled to super-priority claim status, subject to the Carve-Out. [CA at § 2.11].

o) Perfection: The liens shall be automatically perfected pursuant to Court Order without the need for filings under the Uniform Commercial Code, state real property law, or otherwise, but UMB shall be permitted to comply with applicable recording statutes.

[2] Citations to "CA § --" refer to that section of the Credit Agreement. Citations to "Sched. –" refer to that schedule of the Credit Agreement.

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p) Covenants: Bi-weekly and monthly financial reporting, and other covenants as usual for transactions of this kind.

q) Funding Conditions: Usual for transactions of this kind, including, but not limited to: (a) approval of the Budget by UMB; (b) entry of an unstayed court order approving the DIP Facility at each stage, (c) in the case of any discretionary advances in excess of the Budget after entry of the Final Order, execution and delivery of documentation in respect of the DIP Facility reasonably satisfactory to UMB; (d) confirmation satisfactory to UMB that Cares is adhering to the. UMB will have no obligation to fund the DIP Facility beyond the amount of $9,000,000, and at such times and in such limited amount as contemplated by the Budget.

r) Events of Default: Usual for transactions of this kind, including but not limited to: (a) dismissal of any of Cares' case, conversion to Chapter 7, or appointment of a trustee, or examiner; (b) failure to timely file and confirm a plan of reorganization; (c) entry of an order granting any other super-priority claim or lien equal or superior to that granted to UMB prior to full and indefeasible payment of the DIP Facility, (d) entry of an order reserving, vacating, or otherwise modifying, or staying for more than three business days, the Interim or Final DIP Orders, or if either order ceases to be in full force and effect, (e) entry of an order granting relief from the automatic stay to allow a third party to proceed against any material assets or contracts of any of Cares, (f) consummation of the sale of Cares' material assets without UMB's consent; (g) entry of an order granting stay relief as to any material contract, lease or obligation; (h) failure of Cares to perform or comply with terms/covenants of the DIP Facility; (i) confirmation of a plan of reorganization by any party that does not indefeasibly pay obligations of the DIP Facility and UMB's Pre-Petition Loans in full and allow UMB to credit bid; (j) change in control of Cares; (k) failure to comply with the covenants related to the DIP Budget; (l) failure to perform or comply with documentation of UMB's Pre-Petition Loans, other than defaults existing prior to the filing of Cares' bankruptcy petition; (m) failure to pay post-petition obligations; (n) failure to perform or comply with terms or conditions of Emergency Interim or Final DIP Orders; (o) filing by Cares of any motion that would result in material impairment of UMB's rights under the DIP Facility; (p) any material impairment of UMB's Collateral.

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Events of Default also include failure to meet certain Plan-related deadlines and provisions in the affirmative and negative covenants of the Credit Agreement, such as:

i. Cares shall file a Plan of Reorganization ("Plan") and a disclosure statement with respect to such Plan (the "Disclosure Statement") no later than 90 days from the Petition Date;

ii. the Plan shall be confirmed no later than 180 days from the Petition Date.

s) Stay Relief: If UMB declares an Event of Default as described in paragraph (r) above, or more particularly in the Credit Agreement, Cares' authorization to use cash collateral shall be immediately terminated, UMB shall be permitted to cease funding immediately, and UMB may seek such other relief as UMB believes is appropriate, including, without limitation, termination of the automatic stay. In this regard, Cares shall cooperate with UMB in obtaining emergency hearings and resolution of such motions.

t) Stipulations and Waivers: Cares on behalf of itself agrees not contest the amount of UMB's pre-petition debt, nor the validity and extent of UMB"s pre-petition liens. Cares likewise waives claims against UMB and the bondholders. [CA at §§ 9.1(c) and 10.21].

t) Other Provisions: The Emergency Interim Order and the Credit Agreement provide for such other terms as are customary for transactions of this kind, all as more fully set forth therein.

u) Adequate Protection: UMB will receive the following as adequate protection for its interest in the pre-petition collateral, including Cash Collateral: replacement liens on all post-petition property of the same type or kind as are covered by its pre-petition liens. [CA at §§ 9.5 and 9.6].

JURISDICTION AND VENUE

4. On May 1, 2023 ("Petition Date"), Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

5. Debtor continues to operate its business and manage and preserve its property as debtor and debtor-in-possession pursuant to Sections 1107(a) and 1108.

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6. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

7. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

8. Venue of Cares' chapter 11 case and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

9. The statutory predicate for the relief requested herein is Bankruptcy Code §§ 105, 361, 362, 363(c), 364(c)(1) and (d), in addition to Bankruptcy Rules 2002, 4001 and 9014.

10. Pursuant to Local Rule 9014-2, Debtor consents to entry of a final order or judgment by the bankruptcy judge if it is determined that the bankruptcy judge, absent consent of the parties, cannot enter final orders for judgment consistent with Article III of the U.S. Constitution.

BACKGROUND

11. Debtor is an Arizona non-profit corporation that owns Legacy Park (f/k/a Bell Bank Park) (the "Park"), a 320-acre sports park facility and entertainment complex located at the intersection of State Route 24 and Ellsworth Road, in Mesa, Arizona. The Park features, among other things, 8 baseball and softball fields; 19 basketball courts; 35 soccer, football & lacrosse fields; 57 indoor volleyball courts; and 41 pickleball courts, in addition to 25 acres of festival space, a 2.7-acre Great Lawn, 3,000 seat outdoor stadium and 2,800 seat indoor arena. First Day Decl., ¶¶ 3 and 4.

12. The Park is operated on land owned by Pacific Proving, LLC and leased to Cares pursuant to a Ground Lease (as amended) dated May 20, 2020 for a term of 40 years. First Day Decl., ¶ 6.

13. On May 1, 2023, (the "Petition Date"), Debtor filed for relief under Chapter 11 of the Bankruptcy Code. Debtor intends to continue to operate its business and manage its property for purposes of reorganization as a debtor in possession, pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

14. As of the filing of this Motion, (a) no trustee or examiner has been appointed

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in this case; and (b) a creditor's committee has not been appointed under § 1102(a)(1) of the Bankruptcy Code.

Cares' Obligations to Bondholders.

15. Cares is obligated to UMB as trustee for certain holders of municipal bonds issued to fund the development of the Park. As described in greater detail below, as of the Petition Date, Debtor owes the bondholders the sum of $310,279,959.84. These obligations, in turn, are secured by a perfected, first-position lien on (a) Cares' leasehold interest under its Ground Lease with Pacific Proving; (b) the structures and other improvements at the Park; (c) the revenues generated by the Park; and (d) Cares' personal property.

2020 Bond Issue

16. *Original Indenture and Development Loan*. Pursuant to the *Indenture of Trust*, dated as of August 1, 2020 (the "Original Indenture"), by and between the Arizona Industrial Development Authority, a nonprofit corporation designated as a political subdivision of the State of Arizona in accordance with the provisions of the Constitution and laws of the State of Arizona and under Title 35, Chapter 5, Arizona Revised Statutes, as amended (the "IDA"), and UMB Bank, N.A., a national banking association organized and existing under the laws of the United States of America, as trustee ("UMB"), the IDA issued Economic Development Revenue Bonds Tax-Exempt Series 2020A (Legacy Cares, Inc. Project)(the "2020A Bonds"), Economic Development Revenue Bonds, Taxable Series 2020B (Legacy Cares, Inc. Project)(the "2020B Bonds"), and Economic Development Revenue Bonds, Tax-Exempt Turbo Redemption Series 2020C (Legacy Cares, Inc. Project)(the "2020C Bonds", and collectively with the 2020A Bonds and 2020B Bonds, the "Initial Bonds"), to make a loan (the "Development Loan") to Cares to finance the cost of the acquisition, construction, improvement and/or equipping of the Park. First Day Decl., ¶ 17.

17. *Development Loan*. The Development Loan was in the aggregate principal amount of $250,770,000, of which $212,960,000 was to accrue interest at the rate of

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interest due on the 2020A Bonds, $6,810,000 was to accrue interest at the rate of interest due on the 2020B Bonds, and $31,000,000 was to accrue interest at the rate of interest due on the 2020C Bonds. First Day Decl., ¶ 18.

18. *Additional Financing Documents*. In addition to the Original Indenture, the following financing documents were executed:

a. The IDA and Cares entered into a *Loan Agreement*, dated August 1, 2020 (the "Original Loan Agreement"), specifying the terms and conditions of the Development Loan.

b. Cares (as borrower) executed a *Series 2020A Promissory Note* dated as of August 20, 2020 in the principal amount of $212,960,000 (the "2020A Note") made payable to the IDA. The IDA subsequently negotiated the 2020A Note to UMB.

c. Cares (as borrower) executed a *Series 2020B Promissory Note* dated as of August 20, 2020 in the principal amount of $6,810,000 (the "2020B Note") made payable to the IDA. The IDA subsequently negotiated the 2020B Note to UMB.

d. Cares (as borrower) executed a *Series 2020C Promissory Note* dated as of August 20, 2020 in the principal amount of $31,000,000 (the "2020C Note") made payable to the IDA. The IDA subsequently negotiated the 2020C Note to UMB.

First Day Decl., ¶ 19.

19. True and correct copies of the Original Indenture, Original Loan Agreement, 2020A Note, 2020B Note and 2020C Note are attached as **Exhibits 1, 2, 3, 4 and 5**, respectively to the First Day Declaration.

20. *Prepetition Security Interests and Prepetition Collateral*. Cares executed the following security documents for the Development Loan:

a. *Leasehold Deed of Trust, Security Agreement, Assignment of Rents and Leases, and Fixture Filing (Series 2020)* dated as of August 1, 2020 (the

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"Original Leasehold DOT") to secure payment and performance of the Secured Obligations (as defined in the Original Leasehold DOT) in which Cares unconditionally granted to UMB for the benefit of UMB and the holders of the Initial Bonds a lien on Cares' leasehold interest under the Ground Lease and the improvements thereon, as well as a continuing security interest in Cares' equipment, rents, intangibles, and claims and awards (as set forth more fully in the Original Leasehold DOT). The Original Leasehold DOT was recorded with the Maricopa County Recorder on August 20, 2020 at Instrument No. 20200765331.

b. *UCC-1 Financing Statement* ("Financing Statement") recorded with the Maricopa County Recorder on August 20, 2020 at Instrument No. 20200765262.

c. *Deposit Account Control Agreement* dated as of August 1, 2020 ("Initial DACA") between Legacy Sports USA, LLC ("Legacy Sports") (as account holder), Zions Bancorporation, N.A. (as depository bank) and UMB (as secured party) whereby UMB was given control over the account into which all pledged revenues of the Park are deposited. The Initial DACA was subsequently replaced by a *Deposit Account Control Agreement (No Notice)* dated as of April 14, 2021 between Legacy Sports, UMB (as secured party) and UMB (as depository bank) (the "Replacement DACA"). Pursuant to the Replacement DACA, the controlled account into which the pledged revenues of the Park were to be deposited was moved to UMB.

d. *Collateral Assignment of Contracts, Permits, Licenses and Plans* dated as of August 1, 2020 between Cares and UMB ("Original Contract Assignment") whereby UMB was, among other things, given an assignment of all existing and future (i) contracts relating to the acquisition, development, construction, use or operation of the Park; (ii) transferable licenses and permits relating to the construction and operation of the Park;

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and (iii) plans, reports, designs, and specifications relating to the construction and operation of the Park.

First Day Decl., ¶ 21.

21. True and correct copies of the Original Leasehold DOT, Financing Statement, Initial DACA, Replacement DACA and Original Contract Assignment are attached as **Exhibits 6, 7, 8, 9 and 10**, respectively to the First Day Declaration.

2021 Bond Issue.

22. *Supplemental Indenture and Loan*. Pursuant to the *First Supplemental Indenture of Trust*, dated as of June 1, 2021 (the "First Supplemental Indenture"), by and between the IDA and UMB, the IDA issued Economic Development Revenue Bonds Tax-Exempt Series 2021A (Legacy Cares, Inc. Project)(the "2021A Bonds"), and Economic Development Revenue Bonds, Taxable Series 2021B (Legacy Cares, Inc. Project)(the "2021B Bonds", and together with the 2021A Bonds, the "Supplemental Bonds"), to make a loan (the "Supplemental Loan") to Cares to, among other things, finance the cost of installing over 2.1 million square feet of synthetic turf, expanding certain buildings, expanding on-site roadways and parking and increased lighting at the Park. First Day Decl., ¶ 23.

23. *Supplemental Loan*. The Supplemental Loan was in the aggregate principal amount of $33,000,000, of which $32,425,000 was to accrue interest at the rate of interest due on the 2021A Bonds, $575,000 was to accrue interest at the rate of interest due on the 2021B Bonds. First Day Decl., ¶ 24.

24. *Priority and Security*. The Supplemental Loan is of equal priority and secured by the same collateral as the Development Loan. First Day Decl., ¶ 25.

25. *Additional Financing Documents*. In addition to the Supplemental Indenture, the following financing documents were executed:

a. The IDA and Cares entered into a *First Amendment to Loan Agreemen*t, dated as of June 1, 2021 (the "LA Amendment", with the Original Loan Agreement, as amended by the LA Amendment, being the "Loan

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Agreement"), amending the Original Loan Agreement to account for the 2021 Bonds and the Supplemental Loan. UMB consented to the LA Amendment in its capacity as trustee.

b. Cares (as borrower) executed a *Series 2021A Promissory Note* dated June 16, 2021 in the principal amount of $32,425,000 (the "2021A Note") made payable to the IDA. The IDA subsequently negotiated the 2021A Note to UMB.

c. Cares (as borrower) executed a *Series 2021B Promissory Note* dated June 16, 2021 in the principal amount of $575,000 (the "2021B Note") made payable to the IDA. The IDA subsequently negotiated the 2020B Note to UMB.

First Day Decl., ¶ 26.

26. UMB and the IDA subsequently entered into a Second Supplemental Indenture of Trust dated as of December 1, 2022 ("Second Supplemental Indenture"), wherein the parties addressed, among other things, the use of certain reserve funds and remedies upon default. First Day Decl., ¶ 27.

27. True and correct copies of the First Supplemental Indenture, LA Amendment, 2021A Note, 2021B Note, and Second Supplemental Indenture are attached as **Exhibits 11, 12, 13, 14 and 15**, respectively to the First Day Declaration.

28. *Supplemental Security Documents*. Cares executed the following security documents in conjunction with the Supplemental Loan:

a. *First Amended Leasehold Deed of Trust, Security Agreement, Assignment of Rents and Leases, and Fixture Filing (Series 2021)* dated as of June 1, 2021 (the "Leasehold DOT Amendment"), amending the Original Leasehold DOT to reference the 2021 Bonds, 2021A Note and 2021B Note. The Original Leasehold DOT, as amended by the Leasehold DOT Amendment, is referred to as the "Leasehold DOT". The Leasehold DOT

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Amendment was recorded with the Maricopa County Recorder on June 16, 2021 at Instrument No. 20210661817.

b. *First Amendment to Collateral Assignment of Contracts, Permits, Licenses and Plans* dated as of June 1, 2021 between Cares and UMB ("CA Amendment"), amending the Original Contract Assignment to reference the 2021 Bonds, 2021A Note and 2021B Note. The Original Contract Assignment, as amended by the CA Amendment, is referred to as the "Contract Assignment".

First Day Decl., ¶ 29.

29. True and correct copies of the Leasehold DOT Amendment and the CA Amendment are attached as **Exhibits 16 and 17**, respectively to the First Day Declaration.

30. On or about March 9, 2023, UMB filed a UCC-1 with the Arizona Secretary of State, filing no. 2023-001-4568-8. A true and correct copy of this UCC-1 is attached as **Exhibit 18** to the First Day Declaration.

31. *Bondholders*. The Initial Bonds and Supplemental Bonds were offered only to qualified institutional investors and accredited investors and each purchaser was responsible for evaluating the merits and risks of such purchaser's investment in the Initial Bonds and Supplemental Bonds. The current holders of the Initial Bonds and Supplemental Bonds are referred to collectively as the **"**Bondholders**"**. There were multiple initial purchasers of the Initial Bonds and Supplemental Bonds, which remain tradable in bond markets. As of the Petition Date, no one purchaser owns a majority of the Initial Bonds and Supplemental Bonds. First Day Decl., ¶ 31.

32. Cares' obligations under the loan and security documents described above will be referred to collectively as the "Bond Obligations".

Post-Default Advances.

33. Cares defaulted on the Bond Obligations by failing to make its interest payments due on August 1, 2022 and thereafter. Following this default, UMB and

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the Bondholders advanced additional funds (the "Post-Default Advances") to Cares to provide funds to operate the Park and retain professionals to assist and advise Cares in restructuring its financial obligations. First Day Decl., ¶ 33.

34. In conjunction with these additional advances, Cares and UMB entered into *Security Agreement* dated as of April 14, 2023 (the "Security Agreement"). In the Security Agreement, Cares granted UMB a security interest in all of Cares' non-real estate assets. A true and correct copy of the Security Agreement is attached as **Exhibit 19** to the First Day Declaration. First Day Decl., ¶ 34.

35. On or about April 28, UMB filed a UCC-1 with the Arizona Secretary of State. A true and correct copy of this UCC-1 as filed is attached as **Exhibit 20** to the First Day Declaration. First Day Decl., ¶ 35.

36. In addition, UMB (as trustee and secured party), Cares and Elite entered into a *Deposit Accounts Security Agreement* dated as of April 14, 2023 ("DASA"). The DASA was necessitated by the termination of Legacy Sports as the Park's manager and the need to establish new operating accounts with Elite taking over the manager's duties. A true and correct copy of the DASA is attached as **Exhibit 21** to the First Day Declaration. First Day Decl., ¶ 36.

37. In addition, on April [--], 2023, UMB (as trustee and depository bank), Cares and Elite entered into two Deposit Account Control Agreements (the "2023 DACAs"). The 2023 DACAs were necessitated by the termination of Sports as the Park's manager and the need to establish new operating accounts with Elite taking over the manager's duties. True and correct copies of the 2023 DACAs are attached as **Exhibits 22 and 23** to the First Day Declaration. First Day Decl., ¶ 37.

38. Cares and UMB agree that the current total balance due on the Development Loan is $266,336,116. Cares and UMB agree that the current total balance due on the Supplemental Loan is $34,653,577. As of the Petition Date, UMB has made Post-Default Advances totaling $9,260,266.84. Accordingly, Cares and UMB agree that that the total aggregate amount due under the Development Loan, Supplemental Loan

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and Post-Default Advances (collectively, the "Pre-Petition Loans") is $310,279,959.84. First Day Decl., ¶ 38. UMB's claims under §§ 502 and 506 of the Bankruptcy Code arising from the Pre-Petition Loans will be referred to as the "Pre-Petition Claims." The property securing UMB's Pre-Petition Claims as described in the pre-petition security documents will be referred to as the "Collateral."

39. Cares acknowledges that under the loan and security agreements referenced above (collectively, the "UMB Loan and Security Agreements"), the Pre-Petition Loans are secured by perfected, first-position liens on (a) Cares' leasehold interest under its Ground Lease; (b) the structures and other improvements at the Park; (c) the revenues generated by the Park; and Cares' personal property.

Mechanic's Lien Creditors.

40. Following construction of Legacy Park, a number of contractors, suppliers and materialman recorded mechanic's liens against the Park (collectively, the "ML Claimants"). The former general contractor on the project, Okland Construction, has asserted the largest claim in the approximate amount of $24,000,000. All told, approximately 21 ML Claimants have asserted mechanic's liens aggregating approximately $37,000,000, although some liens appear to be duplicative. First Day Decl., ¶ 49.

41. In 2022, the ML Claimants filed multiple actions in Maricopa Superior Court seeking foreclosure of their liens against Cares' interest in Legacy Park. Those actions have been consolidated in the action captioned *Wholesale Floors, LLC v. Legacy Cares, Inc. et al*, Superior Court of Arizona, Maricopa County, Case No. CV 2022-013494. First Day Decl., ¶ 50.

42. As a result of their recorded mechanic's liens, the ML Claimants may claim liens on Debtor's leasehold interest under the Ground Lease and the improvements at the Park.

43. Any liens of the ML Claimants are junior to that of the Leasehold DOT securing the Post-Petition Loans owed to UMB and the Bondholders.

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Equipment Obligations.

44. Certain equipment and fixtures at the Park are leased. For example, Cares and Sports entered into a lease with Insight Investments, LLC to lease, among other things, scoreboards and video displays used at the Park. Similarly, various sports, office exercise and health equipment at the Park are leased from Macrolease Corporation. Likewise, various fixtures and golf carts at the park are leased from National Sports Opportunity Partners and Leftfield Development, LLC. The Park also leases a golf simulator from Full Swing Golf, Inc. First Day Decl., ¶ 39.

THE PROPOSED DIP FINANCING AND USE OF CASH COLLATERAL

45. Following extensive negotiations, UMB has agreed to the terms of a facility for Cares to obtain post-petition financing up to an aggregate principal amount not to exceed $9,000,000. Bierman Decl., ¶ 19.

46. Cares has an immediate need to use the DIP Financing and UMB's cash collateral to continue operating the Park and resolve this case. Debtor needs the DIP Financing to permit the orderly continued operation of the Park, to pay vendors and employees, and to market the Park and resolve this case. Because Cares' existing cash on hand and projected operating revenues will not be sufficient for Cares to accomplish these things, or to pay other operating expenses and administrative expenses pending the completion of the restructuring process, it is imperative that Cares obtains post-petition financing at the outset of this case. Having an assured cash flow will encourage employees, customers, and vendors to deal with Cares on an ongoing basis. If Cares is unable to secure post-petition financing, Cares will be forced to terminate Park operations immediately, to the substantial detriment of the estate and all creditors. Bierman Decl., ¶ 22.

47. The access to liquid assets through the DIP Financing and use of Cash Collateral is therefore vital to the preservation and maintenance of the going concern value of the Park and maximizing its value for the benefit of all creditors. Cares'

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proposed Budget identifies anticipated sources and uses of cash on a weekly basis. Bierman Decl., ¶ 23.

48. Cares' assets are severely underwater. As noted, Cares' primary assets—the leasehold under the Ground Lease and the structures and improvements at the Park—are subject to UMB's perfected lien. While Cares has not appraised these assets, both Cares and UMB agree that the debt owed on the Pre-Petition Loans is several multiples of the combined value of these assets. Moreover, the Park losses total approximately $1,000,000 a month in its operations; and this revenue burn will only increase as we approach the summer season, which is the slowest part of the year for the Park's business. Given the continued operating losses, and the immediate need to stabilize the Park's continued operation through a sale, Cares cannot realistically secure post-petition financing from a source other than UMB. Bierman Decl., ¶ 24.

49. Cares therefore determined, in the exercise of its sound business judgment, that the proposal for the DIP Financing provided by UMB is the most favorable under the circumstances and addresses Cares' needs. Cares does not believe it could obtain proposals for post-petition financing on terms and conditions more favorable to Cares's estate than those offered by UMB pursuant to the DIP Documents (as defined below). Bierman Decl., ¶ 25.

50. Before determining to enter into the DIP Financing upon the terms of the DIP Documents, Cares and UMB conducted arm's-length, good faith negotiations. Bierman Decl., ¶ 19.

51. UMB is willing to make the DIP Financing available to Cares upon the terms and conditions set forth in the Credit Agreement and related documents (collectively, the "DIP Documents").

52. Documentation of the interim portion of the DIP Facility consists of the proposed orders to be entered by the Court and the proposed Credit Agreement. By this Motion, Cares requests entry of an order granting the relief as prayed for herein.

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SIGNIFICANT PROVISIONS

53. Cares requests that the Court approve the following "significant provisions" with respect to the DIP Facility and use of Cash Collateral. Such DIP Facility will:

a. Bind Cares with respect to the validity, perfection, and amount of UMB's pre-petition liens and debt, and the waiver of claims against UMB;

b. Waive Cares' and Cares' estate's rights under 11 U.S.C. § 506(c);

c. Prime the liens of creditors other than UMB without their consent;

d. Impose deadlines for the filing of a plan of reorganization and disclosure statements;

e. Grant a super-priority claim to UMB that is superior to all administrative claims, except for the Carve-Out; and

f. Grant UMB certain remedies upon Cares' default, as set forth herein and in the Credit Agreement.

54. If the Court fails to approve anything requested by this Motion (whether set forth in this section of the Motion or elsewhere) in the Emergency Interim Order or the Final Order, UMB reserves the right to refuse to make any further advances to Cares.

55. Cares is seeking approval of its acknowledgment of the validity, perfection, and amount of UMB's pre-petition liens and debt and the waiver of any claims and defenses it may have against UMB. Cares has investigated and evaluated UMB's claims and liens and has concluded that Cares has no defenses, counterclaims, offsets, cross-complaints, claims, or demands of any kind or nature that would reduce or eliminate all or any part of their liability to pay the Pre-Petition Loans. Further, Cares waives and releases all possible claims, demands, actions, causes of action, damages, costs, expenses, and liabilities whatsoever with respect to the DIP Facility and the Pre-Petition Loans. Cares acknowledges and stipulates that UMB's liens and security interests are valid, perfected, enforceable, and unavoidable through the recording of a UCC financing statement and deed of trust in the appropriate jurisdiction, and by UMB's taking all other necessary actions.

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56. Cares is seeking to bind other parties in interest at the Final Hearing on approval of the DIP Facility, following notice and an opportunity to object. But Cares does propose that if any third parties seek (i) to disallow UMB's Pre-Petition Claims, (ii) to avoid any security interest in UMB's collateral, or (iii) to otherwise challenge the validity, priority or extent of UMB's liens or claims, they shall be required to do so by 60 days after the final hearing, and any such objection or action shall set forth the basis for such objection or action with reasonable particularity. If no such objection or action is filed by such deadline, UMB's Pre-Petition Claims: (a) to the extent of the value of UMB's pre-petition collateral, shall be allowed as secured claims within the meaning of Bankruptcy Code 506 for all purposes in connection with these cases; and (b) any unsecured portion of UMB's Pre-Petition Claims will be allowed as general unsecured claims under § 502 of the Bankruptcy Code. Thereafter, any and all objections or actions (including, but not limited to, those under Bankruptcy Code sections 544, 547 and 548) by any party, including any subsequently appointed trustee, with respect to the validity, sufficiency, extent, perfection, refinancing, or avoidance of UMB's Pre-Petition Claims or liens in the Collateral, shall be forever barred. In partial consideration of the Carve-Out, Cares, on behalf of itself and its bankruptcy estate, waives any right or claim to surcharge the Lender, the DIP Facility or Collateral pursuant to 11 U.S.C. § 506(c) or otherwise. This provision should be approved because the Carve-Out provides the same benefit to Cares' estate as a § 506(c) surcharge, and is even broader. Without this provision UMB would not be willing to provide a Carve-Out to protect Cares' professionals and the U.S. Trustee's fees upon any default under the DIP Loan.

57. The proposed DIP Facility is being offered on a priming lien basis. Under the Credit Agreement, UMB would receive a priming lien on all the collateral it held pre-petition to secure the Pre-Petition Loans. So the lien securing the DIP Facility would prime UMB's own lien. UMB and the Bondholders have consented to this priming.

58. The post-petition lien would also, in theory, prime any lien of the ML Claimants. But as noted above, any lien of the ML Claimants on Debtor's leasehold and

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Park improvements is junior to that of UMB and Bondholders. As the value of these assets is far less than what is owed to UMB and the Bondholders on the Pre-Petition Loans, the technical priming of the ML Claimants' lien has no economic effect on the ML Claimants' interest in these assets.

59. As stated above, following deadlines (the "Bankruptcy Milestones") for filing a Plan of Reorganization and Disclosure Statement shall apply:

i. Cares shall file a Plan and Disclosure Statement within 90 days from the Petition Date;

ii. the Plan shall be confirmed no later than 180 days from the Petition Date.

60. A rapid plan process is warranted here because Cares lacks the financial ability to operate in bankruptcy for months on end where its operations are cash flow negative. Cares' values do not support ongoing administrative expenses and a substantial amount of DIP financing. A plan to sell the Park must be implemented immediately to avoid wasteful expenditures. Without prompt but realistic plan deadlines, UMB is not willing to fund the DIP Facility; and without the DIP Facility, Cares would not be able to maximize its value. These deadlines may not be set in stone, as UMB has the ability to extend the deadlines at its discretion. Further, these deadlines will ensure that the process will proceed as quickly as possible, while also providing sufficient time for Cares to comply with all necessary rules and applicable law. Bierman Decl., ¶ 26.

61. Cares is seeking to grant UMB a super-priority administrative expense claim. The effect of granting UMB the super-priority status is mitigated by the Carve-Out. Further, without this contingency, UMB will not fund the DIP Facility.

62. Cares requests that UMB be given an emergency hearing with notice on a motion for stay relief upon any default under the DIP Credit Agreement. If Cares is unable to fulfill its obligations under the DIP Facility, UMB's interests will not be adequately protected, and a reorganization will be impossible.

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BASIS FOR RELIEF

A. Approval of Financing

63. As described above, it is essential to the continued operation of the Park and the success of this Chapter 11 case that Cares immediately obtain access to sufficient post-petition financing. The preservation of estate assets and maximization of their value, Cares' continuing viability as a going concern, and Cares' ability to resolve this case depend heavily upon the expeditious approval of the DIP Financing and the related actions requested herein.

64. If a debtor is unable to obtain unsecured credit allowable as an administrative expense under § 503(b)(1) of the Bankruptcy Code, then the Court, after notice and a hearing, may authorize a debtor to obtain credit or incur debt:

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

11 U.S.C. § 364(c)(1). The Bankruptcy Code further authorizes a debtor to obtain post-petition financing that is secured by a priming lien provided (a) the debtor cannot otherwise obtain credit and (b) any existing lien is adequately protected. 11 U.S.C. § 364(d).

65. Debtor has explored various potential avenues of post-petition financing, but have been unable to procure the required funds in the form of unsecured credit or unsecured debt with an administrative priority. Nor will UMB extend credit without the benefit of a priming lien. *See In re Snowshoe Co., Inc.*, 789 F.2d 1085, 1088 (4th Cir. 1986) (stating that Bankruptcy Code § 364 "imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable" — only a "good faith effort" is required). Cares negotiated the DIP Financing at arm's length and pursuant to Cares' business judgment. "Courts have generally deferred to a debtor's business judgment in granting section 364 financing." *In re DB Capital Holdings, LLC*, 454 B.R. 804 (Bankr. D. Colo. 2011). The terms and provisions of the DIP Financing are fair and

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reasonable under the circumstances and reflect the most favorable terms upon which Cares could obtain post-petition financing.

66. While the ML Claimants may claim a lien on Debtor's leasehold interest and the Park improvements, their interest in this property will be adequately protected by the Park remaining open and operating during the course of this Chapter 11 Case. It is indisputable that the Park has greater value in the market as a going concern rather than mothballed. Moreover, as noted above, it does not appear that the ML Claimants even have an economic interest requiring adequate protection given their liens are junior to the prepetition lien of UMB and thus are out of the money.

67. The terms and conditions of the DIP Credit Agreement were negotiated by the parties in good faith and at arm's length. Bankruptcy Code § 364(e) provides that "[t]he reversal or modification on appeal of an authorization under this section to obtain credit or incur debt, or of a grant under this section of a priority of a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extends such credit in good faith . . . ." Accordingly, UMB should be accorded the benefits of § 364(e) of the Bankruptcy Code with regard to the DIP Financing.

B. Use of Cash Collateral

68. Section 363(c)(2) of the Bankruptcy Code provides that a debtor "may not use, sell, or lease cash collateral…unless (A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section." 11 U.S.C. § 363(c).

69. UMB consents to the use of its cash collateral, so long as the terms of the DIP Financing agreement are approved by this Court. UMB does not consent to the use of its cash collateral if any of the terms of the DIP Financing agreement are not approved or any of the relief requested in this Motion is denied.

70. The proposed Interim Order, if approved, will provide Cares with the ability to use cash which consists of Cash Collateral while providing UMB with adequate protection. Under § 361 of the Bankruptcy Code, adequate protection may be provided

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by granting a lienholder an additional or replacement lien to the extent that the usage of the cash collateral results in a decrease in the value of such entity's interest in such property. As discussed above, the proposed Interim Order provides for replacement liens to protect UMB against any diminution in value of its interest in cash which may constitute Cash Collateral. Specifically, Cares will grant UMB replacement liens on similar collateral generated postpetition to the same extent, validity, and priority as UMB's prepetition liens. The replacement liens shall be subject and subordinate only to the security interests and liens granted to UMB and the Carve-Out.

71. Debtor is not aware of any other person or entity that may claim an interest in Cash Collateral.

C. Interim and Final Approval Should Be Granted

72. Rules 4001(b) and 4001(c) of the Federal Rules of Bankruptcy Procedure provide that a final hearing (the "Final Hearing") on a motion to use cash collateral pursuant to § 363 or to obtain credit pursuant to § 364 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 debtor to obtain credit and use cash collateral to the extent necessary to avoid immediate and irreparable harm to a debtor's estate.

73. Accordingly, Cares requests that the Court conduct an expedited preliminary hearing on the Motion in order to (a) assist in its restructuring efforts, pay for operating expenses, maintain relationships with customers, pay critical vendors and employees; and (b) avoid the immediate and irreparable harm and prejudice to Cares' estate and all parties in interest that would otherwise ensue.

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WHEREFORE, Cares respectfully requests that the Court grant interim and final approval, through entry of orders in the form of **Exhibit C** and **Exhibit D** respectively, of the DIP Loan and Debor's use of cash collateral on the terms and conditions set forth in this Motion and in the Credit Agreement and grant such further relief as this Court may deem just and proper.

RESPECTFULLY SUBMITTED this 1st day of May, 2023.

WARNER ANGLE HALLAM JACKSON & FORMANEK, P.L.C.

By *_/s/ Henk Taylor_*
Henk Taylor
Proposed Counsel for the Debtor

Warner Angle Hallam Jackson & Formanek PLC

EXHIBIT A

PRIMING SUPERPRIORITY

DEBTOR-IN-POSSESSION CREDIT AGREEMENT

BY AND BETWEEN

LEGACY CARES, INC.

AS DEBTOR,

AND

UMB BANK, N.A.,

IN ITS CAPACITY AS TRUSTEE,

AS DIP LENDER

DATED AS OF MAY [ ], 2023

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SCHEDULE 2.1 DIP Loan Commitment

SCHEDULE 4.1(d) Pending Litigation

EXHIBIT A Budget

EXHIBIT B Form of Borrowing Certificate

THIS PRIMING SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT is made as of May [ ], 2022 by and between Legacy Cares, Inc. ("Debtor" or "Borrower") and UMB Bank, N.A., in its capacity as Trustee ("DIP Lender").

RECITALS

A. On May 1, 2023 (the "Petition Date"), Debtor filed voluntary petition for relief (the "Chapter 11 Case") under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") with the United States Bankruptcy Court for the District of Arizona (the "Bankruptcy Court");

B. Debtor had requested the assistance of the Arizona Industrial Development Authority (the "Issuer") pursuant to which the Issuer agreed to issue tax- exempt and taxable revenue bonds for the purpose of financing and/or refinancing the costs of acquiring, constructing, renovating, improving, operating and equipping a state-of-the-art, premier family multi-sports park facility and entertainment complex located in Mesa, Arizona, including an outdoor and indoor team training facility, sports entertainment venue, special events venue, including all buildings and athletic fields and appurtenant improvements (the "Facility") and

C. The Issuer issued its $212,960,000 Arizona Industrial Development Authority, Economic Development Revenue Bonds, Tax-Exempt Series 2020A (Legacy Cares, Inc. Project); $6,810,000 Arizona Industrial Development Authority, Economic Development Revenue Bonds, Taxable Series 2020B (Legacy Cares, Inc. Project); $31,000,000 Arizona Industrial Development Authority, Economic Development Revenue Bonds, Tax-Exempt Turbo Redemption Series 2020C (Legacy Cares, Inc. Project); $32,425,000 Arizona Industrial Development Authority, Economic Development Revenue Bonds, Tax-Exempt Series 2021A (Legacy Cares, Inc. Project); $575,000 Arizona Industrial Development Authority, Economic Development Revenue Bonds, Taxable Series 2021B (Legacy Cares, Inc. Project) (collectively, the "Bonds") pursuant to an Indenture of Trust, dated as of August 1, 2020 (the "Original Indenture") as supplemented by a First Supplemental Indenture of Trust, dated as of June 1, 2021 and a Second Supplemental Indenture of Trust, dated December 1, 2022 and together with the Original Indenture (the "Bond Indenture"), all between the Issuer and UMB Bank, N.A. (the "Trustee"); and

D. The proceeds of the Bonds were loaned to Debtor by the Issuer pursuant to that certain Loan Agreement, dated as of August 1, 2020, by and between the Issuer and Debtor (the "Original Loan Agreement") and that certain First Amendment To Loan Agreement, dated as of June 1, 2021, by and between the Issuer and Debtor (the "First Amended Loan Agreement," together with the Original Loan Agreement, the "Loan Agreement").

E. The proceeds of the Bonds loaned to Debtor were used to, among other things, (i) finance or refinance the cost of the acquisition, construction, renovation and equipping of the

Facility, including capital expenditures; (ii) fund various accounts and funds held by the Trustee; and (iii) pay certain costs associated with the issuance of the Bonds;

F. The Issuer's rights under the Loan Agreement was assigned to the Trustee pursuant to the terms of the Bond Indenture;

G. The Bond Indenture, the Loan Agreement, and any other document or agreement delivered as security for, or in respect to, the Bonds or Debtor's obligations under any of such documents are collectively referred to herein as the "Prepetition Credit Agreements;"

H. Pursuant to the Prepetition Credit Agreements, Debtor granted to the Trustee first-priority security interests in the following assets of Debtor:

(a) all Accounts;

(b) all Chattel Paper;

(c) all Commercial Tort Claims;

(d) all Contracts, including the Qualified Management Agreement, made as of April 14, 2023, between Debtor and Elite Sports Group, LLC ("Manager");

(e) all cash, Securities Accounts, Commodities Accounts and Deposit Accounts, including those set forth on Schedule III;

(f) all Intellectual Property;

(g) all Documents;

(h) all Equipment;

(i) all Fixtures;

(j) all General Intangibles;

(k) all Instruments;

(l) all Inventory;

(m) all Investment Property;

(n) all Letter-of-Credit Rights;

(o) all Supporting Obligations;

(p) all Revenues;

(q) all letters of credit, money and oil, gas and other minerals;

(r) all property of Debtor held by DIP Lender, including all property of every description now or hereafter in the possession or custody of or in transit to DIP Lender, for any purpose, including safekeeping, collection or pledge, for the account of Debtor, or as to which Debtor may have any right or power;

(s) all other goods and personal property of Debtor whether tangible or intangible and whether now or hereafter owned or existing, leased, consigned by or to, or acquired by, Debtor and wherever located;

(t) to the extent not otherwise included, all Proceeds of each of the foregoing and all accessions to, substitutions and replacements for, and rents, profits and products of each of the foregoing; and

(u) all books and records pertaining to the Collateral.

The assets referred to in (a) through (u), plus any other assets of Debtor subject to the Trustee's security interests granted under the Prepetition Credit Agreements (the "Prepetition Liens"), are referred to herein as the "Prepetition Collateral";

I. Debtor is in default under the Prepetition Credit Agreements.

J. The Trustee's records document that the aggregate of Debtor's obligations under the Loan Agreement is approximately $301,000,000 ("Prepetition Indebtedness");

K. Prior to the Petition Date the Trustee has provided advances to or for the benefit of Debtor from funds held pursuant to the Indenture in the approximate amount of $9,260,266.84;

L. Debtor has requested, and DIP Lender has agreed, to provide a working capital facility to support Debtor's working capital needs during the Chapter 11 Case, pursuant to the terms and conditions hereof; and

M. The DIP Lender is only willing to provide the DIP Loans hereunder if Debtor grants to the DIP Lender a priming, first priority lien and superpriority administrative claim on the DIP Collateral, subject only to the Permitted Liens and the Financing Orders.

NOW THEREFORE, in consideration of the premises and the mutual covenants and the agreements herein set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE I
DEFINED TERMS

Section 1.1 Definitions.

(a) As used in this Agreement, including, without limitation, the preamble, recitals, exhibits and schedules hereto, the following terms have the meanings stated:

"Account" has the meaning set forth in the UCC.

"Action" against a Person means an action, suit, litigation, arbitration, investigation, complaint, contest, hearing, inquiry, inquest, audit, examination or other proceeding threatened or pending against or affecting such Person or its property, whether civil, criminal, administrative, investigative or appellate, in law or equity, before any arbitrator or Governmental Body, including but not limited to the Ground Lease Litigation.

"Affiliate" means, with respect to a Person, any other Person which directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with such Person, and without limiting the generality of the foregoing, includes (i) any Person which beneficially owns or holds 10% percent or more of any class of the Capital Stock of such Person or other equity interests in such Person, (ii) any Person of which such Person beneficially owns or holds 10% percent or more of any class of the Capital Stock or in which such Person beneficially owns or holds 10% percent or more of the equity interests, (iii) any member, trustee, director or officer of such Person. For the purposes of this definition, the term "control" (including with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether by agreement or otherwise.

This "Agreement" means this Priming Superpriority Debtor-in-Possession Credit Agreement, as it may be amended, restated, supplemented or otherwise modified from time to time.

"Asset Sale" means a sale, lease or sublease (as lessor or sublessor), sale and leaseback, assignment, conveyance, transfer or other disposition to, or any exchange of property with, any Person, in one or more transactions or a series of related transactions, of all or any part of the businesses of Debtor, and/or of all or any part of the assets or properties of any kind of Debtor, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired, other than (a) inventory (or other assets) sold or leased in the ordinary course of business, (b) sales or dispositions of obsolete, worn-out or excess furniture, fixtures, equipment or other property in the ordinary course of business and (c) the actual or constructive loss of any property or the use thereof.

"Assignee" means has the meaning set forth in Section 9.4(b).

"Assignment" has the meaning set forth in Section 9.4(b).

"Authorized Officer" means, as applied to any Person, any individual holding the position of chairman of the board, executive director (or the equivalent thereof), chief executive officer, chief financial officer, any vice president or treasurer or the Person or entity acting in that capacity.

"Bankruptcy Code" has the meaning set forth in the recitals to this Agreement.

"Bankruptcy Court" has the meaning set forth in the recitals to this Agreement.

"Bankruptcy Milestones" has the meaning set forth in the Financing Orders.

"Bi-Weekly Budget Report" means, a bi-weekly report (i.e., a report issued once in each two-week period) certified by an Authorized Officer for Debtor, substantially in the same form as the Budget, indicating (i) a comparative reconciliation, on a line-by-line and aggregate basis, of actual cash receipts and disbursements against the cash receipts and disbursements forecast in the Budget, and the percentage variance thereof, for (A) the bi-weekly period ended on (and including) the immediately preceding Sunday, (B) a rolling four-week period, and (C) the cumulative period to date; and (ii) a written explanation of such variances.

"Bond Indenture" has the meaning set forth in the recitals to this Agreement. "Bonds" has the meaning set forth in the recitals to this Agreement.

"Bondholders" means those persons or entities holding all or any portion of the Bonds.

"Borrowing" means an advance of a DIP Loan made hereunder on the Interim Order Entry Date or thereafter.

"Borrowing Certificate" has the meaning set forth in Section 2.2(b). "Borrowing Date" means the date of a Borrowing.

"Budget" means the budget attached as Exhibit A itemizing on a bi-weekly basis all uses, and anticipated uses, of the DIP Loans, revenues projected to be received and all expenditures proposed to be made during such period, which Budget may be amended with the written consent of the DIP Lender.

"Business Day" means a day other than Saturday or Sunday or other day on which commercial banks in Phoenix, Arizona are authorized or required by law or other governmental action to close.

"Capital Lease" means, as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person as lessee that, in conformity with GAAP, is or should be accounted for as a capital lease on the balance sheet of that Person.

"Capital Stock" means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation), including, without limitation, partnership interests and membership interests, and any and all warrants, rights or options to purchase or other arrangements or rights to acquire any of the foregoing.

"Cash" means a credit balance in any Deposit Account, money or currency.

"Carve Out" is defined in Section 9.9(b).

"Change of Control" means any one or more of the following events: (i) the transfer (in one transaction or a series of transactions) of all or substantially all of the assets of Debtor to any Person or group; (ii) the liquidation or dissolution of Debtor or the adoption of a plan by the Board of Directors of Debtor relating to the dissolution or liquidation of Debtor; (iii) the conversion of Debtor from a Arizona non-profit corporation to a "for profit" corporation or other entity; or (iv) any Person or two or more Persons acting in concert shall have acquired by contract or otherwise, the power to exercise, directly or indirectly, a controlling influence over the management or policies of Debtor or control the election of members of the board of directors or equivalent governing body of Debtor.

"Chapter 11 Case" has the meaning set forth in the recitals to this Agreement.

"Closing Date" means the date hereof.

"Club Deposits" means the funds deposited with DIP Lender under that certain Deposit Account Control Agreement entered into as of April __, 2023, by and among Debtor, Elite Sports Group, LLC, as manager, DIP Lender, as bank and secured party, pertaining exclusively to the Project's Club Event Management Services.

"Commitment Fee" has the meaning set forth in Section 2.5(c).

"Committee" means any committee of unsecured creditors appointed in the Chapter 11 Case.

"Controlled Account" has the meaning set forth in Section 5.1(f) and includes the Operating Account.

"Controlled Account Agreement" has the meaning set forth in Section 5.1(f).

"Consents" means any approval, consent, authorization or order of, notice to or registration or filing with, or any other action by, any Governmental Body or other Person.

"Credit Bid" means the submission by the DIP Lender of a bid at a public or private sale to purchase all or any portion of the DIP Collateral in which any of the DIP Obligations are used and applied as a credit against the purchase price.

"Debtor" has the meaning set forth in the Preamble to this Agreement; provided that "Debtor" shall include any of Debtor's successors and assigns (including, without limitation, any trustee or other fiduciary hereafter appointed as legal representative or with respect to the property of the estate of Debtor, whether under chapter 11 of the Bankruptcy Code or any subsequent chapter 7 case and Debtor's successors upon conclusion of the Chapter 11 Case).

"Debtor Relief Laws" shall mean the Bankruptcy Code and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, examinership, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

"Debtor's Stipulations" means Debtor's acknowledgements, waivers and releases in Sections 9.1(c) and 10.20.

"Default" means a condition or event that, after notice or lapse of time or both, would constitute an Event of Default.

"Deposit Account" means any deposit account (as such term is defined in the UCC), including, without limitation, a demand, time, savings, passbook or like account with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a negotiable certificate of deposit.

"Deposit Account Security Agreement" means that certain Deposit Accounts Security Agreement dated as of April __, 2023, made by and between Debtor, Elite Sports Group, LLC, as manager, and the Trustee.

"Deposit Account Control Agreement" means, collectively and individually, the Deposit Account Control Agreement, dated as of April __, 2023, pertaining to all cash and cash transfers excluding Club Deposits, and that certain Deposit Account Control Agreement, dated as of April __, 2023 pertaining exclusively to the Project's Club Event Management Services (M&O DACA), each entered into by and among Debtor, Elite Sports Group, LLC as manager, Trustee and DIP Lender.

"DIP Collateral" means all currently owned or hereafter acquired property and assets of Debtor of any kind or nature, whether real or personal, tangible or intangible, wherever located, now owned or hereafter acquired or arising and all proceeds, products, rents and profits thereof, including, without limitation, accounts, revenues, inventory, equipment, capital stock in subsidiaries, investment property, instruments, chattel paper, real estate, leasehold interests (including under the Ground Lease), contracts, general intangibles, patents, copyrights, trademarks, deposit accounts, intercompany claims, claims against affiliates, Actions, tax refund claims, commercial tort claims, insurance proceeds and insurance premium refunds; *excluding*, *however*, all rights and causes of action arising under Bankruptcy Code §§ 544, 545, 547, 548, 549 and 550.

"DIP Collateral Documents" means the Controlled Account Agreements, any amendment or modification to the Leasehold Mortgage, the Deposit Account Security Agreement, the Security Agreement and all other instruments, documents and agreements delivered by Debtor pursuant to this Agreement or any of the other DIP Loan Documents pursuant to which Debtor grant a DIP Lien, or any other Lien, mortgage, or encumbrance, to the DIP Lender, as any of the foregoing may be amended, restated, supplemented, modified, or replaced from time to time. For the avoidance of doubt, the DIP Collateral Documents do not include the Financing Orders.

"DIP Commitment Period" means (a) with respect to Initial DIP Loans, the period commencing on Interim Order Entry Date and ending on May 26, 2023 and (b) with respect to remaining DIP Loans (exclusive of the Initial DIP Loans), the period commencing on the Final Order Entry Date and ending on the Maturity Date.

"DIP Lender" means UMB Bank, N.A., in its capacity as Trustee.

"DIP Liens" means the Liens granted under or pursuant to any DIP Collateral Document or the Financing Orders.

"DIP Loan" has the meaning set forth in Section 2.1(a).

"DIP Loan Commitment" means the amount set forth in Schedule 2.1 or such lesser amount as determined in accordance with the Financing Orders and the Budget.

"DIP Loan Document" means any of this Agreement, the DIP Collateral Documents and all other documents, instruments or agreements executed and delivered by Debtor for the benefit of the DIP Lender in connection herewith.

"DIP Obligations" means all indebtedness, obligations, covenants, duties of payment or performance of every kind and all other liabilities of Debtor from time to time owed to DIP Lender, whether direct or indirect, joint or several, absolute or contingent, matured or unmatured, liquidated or unliquidated, secured or unsecured, arising by contract, operation of law or otherwise, owing, arising, due or incurred under this Agreement, the Financing Orders or any DIP Loan Document or in respect of any of the DIP Loans, or any other instruments at any time evidencing any of the foregoing or otherwise, including, without limitation, all obligations to repay principal of and interest on the DIP Loans, and to pay interest, costs, charges, expenses, professional fees, and all sums chargeable to Debtor under the DIP Loan Documents and the Financing Orders and Debtor's obligation to provide the DIP Lender with adequate protection of its interests in the DIP Collateral and other property to be used, sold, leased or otherwise disposed of by Debtor under the terms of the Financing Orders.

"Dollars" and the sign "$" mean the lawful money of the United States of America.

"Employee Benefit Plan" means any "employee benefit plan" as defined in Section 3(3) of ERISA that is sponsored, maintained or contributed to by, or required to be contributed to by, Debtor.

"Environmental Laws" means all federal, state, local and foreign laws (including without limitation common law), treaties, statutes, regulations and rules whether now or hereinafter in effect relating in any way to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any Hazardous Material or health and safety matters, including, without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the Federal Clean Water Act, the Federal Clean Air Act, the Toxic Substances Control Act, in each case as amended, and all rules, regulations, judgments, decrees, orders and licenses arising under all such laws.

"Environmental Liability" means any actual, alleged or contingent liability or obligations of Debtor directly or indirectly resulting from or based on (i) violations or alleged violations of any Environmental Law, (ii) the generation, use, handling, transportation, management, storage, treatment or disposal of any Hazardous Material, (iii) exposure to any Hazardous Material, (iv) the release or threatened release of any Hazardous Material into the environment or (v) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with any of the foregoing.

"Environmental Permits" means all permits, licenses, authorizations, registrations and other governmental consents required by applicable Environmental Laws for the use, storage, treatment, transportation, release, emission and disposal of raw materials, by-products, wastes and other substances used or produced by or otherwise relating to the operations of Debtor.

"Equipment" means, as to Debtor, all of Debtor's now owned and hereafter acquired equipment, wherever located, including machinery, data processing and computer equipment (whether owned or licensed and including embedded software), vehicles, tools, furniture, fixtures, all attachments, accessions and property now or hereafter affixed thereto or used in connection therewith, and substitutions and replacements thereof, wherever located.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and any successor thereto.

"ERISA Affiliate" means, as applied to any Person, (i) any corporation that is a member of a controlled group of corporations within the meaning of Section 414(b) of the Internal Revenue Code of which that Person is a member, (ii) any trade or business (whether or not incorporated) that is a member of a group of trades or businesses under common control within the meaning of Section 414(c) of the Internal Revenue Code of which that Person is a member, and (iii) any member of an affiliated service group within the meaning of Section 414(m) or (o) of the Internal Revenue Code of which that Person, any corporation described in clause (i) above or any trade or business described in clause (ii) above is a member. Any former ERISA Affiliate of Debtor shall continue to be considered an ERISA Affiliate of Debtor within the meaning of this definition with respect to the period such entity was an ERISA Affiliate of Debtor and with respect to

liabilities arising after such period for which Debtor could be liable under the Internal Revenue Code or ERISA.

"Event of Default" means each of the conditions or events set forth in Section 8.1.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to the DIP Lender or required to be withheld or deducted from a payment to the DIP Lender, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of the DIP Lender being organized under the laws of, or having its principal office or, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are imposed as a result of a present or former connection between the DIP Lender and the jurisdiction imposing such Tax (other than connections arising from the DIP Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced this Agreement, or sold or assigned an interest in any DIP Loan or any DIP Loan Document), (b) U.S. federal withholding Taxes imposed on amounts payable to or for the account of the DIP Lender with respect to an applicable interest in a DIP Loan pursuant to a law in effect on the date on which the DIP Lender acquires such interest in the DIP Loan, (c) Taxes attributable to the DIP Lender's failure to comply with Section 7.1(c) and (d) any U.S. federal withholding Taxes imposed under FATCA.

"Facility" has the meaning set forth in the recitals to this Agreement.

"FATCA" means Sections 1471 through 1474 of the Internal Revenue Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreement entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code.

"Final Order" means a final order (which must be acceptable in form and substance to the DIP Lender in its sole discretion) entered or to be entered by the Bankruptcy Court authorizing the secured financing under the DIP Loan Documents, as to which there is no stay in effect.

"Final Order Entry Date" means the date on which the Bankruptcy Court enters the Final Order.

"Financing Orders" means, collectively, the Interim Order, the Final Order and such other orders relating thereto or authorizing the granting of credit by DIP Lender to Debtor on an emergency, interim or permanent basis, pursuant to section 364 of the Bankruptcy Code as may be issued or entered by the Bankruptcy Court in the Chapter 11 Case.

"GAAP" means generally accepted accounting principles in the United States as in effect from time to time, consistently applied throughout the periods to which reference is made.

"Ground Lease" means that certain Ground Lease entered into between Pacific Proving, LLC, as landlord, and Debtor for approximately 320 acres in Mesa, Arizona on which the Facility is located, dated as of May 20, 2020, as amended that certain First Amendment to Ground Lease dated June 9, 2020, that certain Amendment No. 1 to Ground Lease dated July 27, 2020, that certain Third Amendment to Ground Lease dated December 14, 2022, and that certain Fourth Amendment to Ground Lease and Forbearance Agreement dated as of February 1, 2023.

"Ground Lease Litigation" means the action captioned *Wholesale Floors, LLC v. Legacy Cares, Inc. et al*, Superior Court of Arizona, Maricopa County, Case No. CV 2022-013494 and the cases consolidated therein.

"Governmental Body" means any agency, bureau, commission, court, department, official, political subdivision, tribunal or other instrumentality of any administrative, judicial, legislative, executive, regulatory, police or taxing authority of any government, whether supranational, national, federal, state, regional, provincial, local, domestic or foreign.

"Hazardous Materials" means any hazardous or toxic substance, waste, contaminant, pollutant, gas or material, including, without limitation, radioactive materials, oil, petroleum and petroleum products and constituents thereof, which are regulated under any Environmental Law, including, without limitation, any substance, waste or material which is (i) designated a "pollutant", "hazardous substance", "extremely hazardous substance" or "toxic chemical" under any Environmental Law, or (ii) regulated in any way under the Regulations of any state or other jurisdiction where Debtor conducts its business or owns any real property or has any leasehold or in which any Relevant Property is located.

"Indebtedness" means, with respect to any Person, without duplication, the following: (i) all indebtedness of such Person for borrowed money, (ii) all obligations of such Person for the deferred purchase price of property or services (other than accounts payable and accrued liabilities that would be classified as current liabilities under GAAP if and only for so long as such item of such accounts payable and accrued liabilities is no more than 90 days past due), (iii) all obligations of such Person evidenced by notes, bonds, debentures or similar borrowing or securities instruments, (iv) all obligations of such Person created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person, (v) all obligations of such Person as lessee under Capital Leases, (vi) all obligations of such Person in respect of banker's acceptances and letters of credit, (vii) all obligations of such Person secured by Liens on the assets and property of such Person, (viii) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Capital Stock or other ownership or profit interest in such Person or any other Person or any warrants,

rights or options to acquire such Capital Stock, (ix) net liabilities in respect of such Person's hedge agreements as determined in accordance with GAAP, (x) all obligations of such Person in respect of any guaranty by such Person of any obligation of another Person of the type described in clauses (i) through (ix) of this definition and (xi) all obligations of another Person of the type described in clauses (i) through (x) secured by a Lien on the property or assets of such Person (whether or not such Person is otherwise liable for such obligations of such other Person).

"Indemnified Taxes" means Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of Debtor under any DIP Loan Document.

"Initial DIP Loans" means the amount set forth on Schedule 2.1 or such lesser amount as set forth in the Interim Order and the Budget.

"Intellectual Property" means, collectively, all copyrights, all patents and all trademarks, together with: (i) all inventions, processes, production methods, proprietary information, know-how and trade secrets; (ii) all licenses or user or other agreements granted to Debtor with respect to any of the foregoing, in each case whether now or hereafter owned or used including the licenses or other agreements with respect to any DIP Collateral; (iii) all customer lists, identification of suppliers, data, plans, blueprints, specifications, designs, drawings, recorded knowledge, surveys, engineering reports, test reports, manuals, materials standards, processing standards, performance standards, catalogs, computer and automatic machinery software and programs; (iv) all sales data and other information relating to sales or service of products now or hereafter manufactured; (v) all accounting information and all media in which or on which any information or knowledge or data or records may be recorded or stored and all computer programs used for the compilation or printout of such information, knowledge, records or data; and (vi) all causes of action, claims and warranties, in each case, now or hereafter owned or acquired by Debtor in respect of any of the items listed above.

"Interim Order" means an interim order (which must be acceptable in form and substance to the DIP Lender in its sole discretion) entered or to be entered by the Bankruptcy Court authorizing the secured financing (including the Initial DIP Loans) under the DIP Loan Documents, which order is not subject to a stay.

"Interim Order Entry Date" means the date on which the Bankruptcy Court issues the Interim Order.

"Internal Revenue Code" means the Internal Revenue Code of 1986, as amended to the date hereof and from time to time hereafter, and any successor statute.

"Investment" means (i) any direct or indirect purchase or other acquisition by Debtor of, or of a beneficial interest in, any of any Capital Stock of any other Person, (ii) any direct or indirect redemption, retirement, purchase or other acquisition for value, by Debtor from any Person, of any Capital Stock of such Person, and (iii) any direct or indirect loan,

advance or capital contribution by Debtor to any other Person, including all indebtedness and accounts receivable from that other Person that are not current assets or did not arise from sales of inventory to that other Person in the ordinary course of business and/or constitute ordinary trade credit extended in the ordinary course of business. The amount of any Investment shall be the original cost of such Investment plus the cost of all additional Investments, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment.

"Issuer" means the Arizona Industrial Development Authority.

"Knowledge" means, with respect to Debtor, the actual knowledge of Debtor's Authorized Officers following reasonable due diligence.

"Landlord" means Pacific Proving, LLC, a Delaware limited liability company.

"Leasehold Mortgage" means that certain Leasehold Deed of Trust, Security Agreement, Assignment of Rents and Leases, and Fixture Filing dated August 1, 2020, as amended by that certain First Amended Leasehold Deed of Trust, Security Agreement, Assignment of Rents and Leases, and Fixture Filings dated June 1, 2021, each by and between Debtor, as trustor, and UMB Bank, N.A., as bond trustee and beneficiary.

"Leasehold Property" means any leasehold interest of Debtor as lessee under any lease of real or personal property, including the Ground Lease, other than any such leasehold interest designated from time to time by the DIP Lender in its sole discretion as not being required to be included in the DIP Collateral or with respect to which the applicable lease includes an enforceable prohibition on the grant of a security interest therein.

"Lien" means any mortgage, deed of trust, security interest, charge, pledge, hypothecation, assignment, attachment, deposit arrangement, encumbrance, lien (statutory, judgment or otherwise, but excluding any right of set off arising by operation of law or pursuant to agreements entered into in the ordinary course of business), or other security agreement or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any Capital Lease, any financing lease involving substantially the same economic effect as any of the foregoing and the filing of any financing statement under the UCC or comparable law of any jurisdiction in respect of the foregoing).

"Loan Agreement" has the meaning set forth in the recitals to this Agreement.

"Margin Stock" means "margin stock" as defined in Regulation U of the Board of Governors of the Federal Reserve System as in effect from time to time.

"Material Adverse Effect" means any material adverse effect on or change in (i) the ability of Debtor to perform their obligations hereunder or under of any of the DIP Loan Documents, (ii) the legality, validity or enforceability of any DIP Loan Document, or (iii) the DIP Collateral or the perfection or priority of any DIP Liens granted to the DIP Lender under any of the DIP Collateral Documents.

"Maturity Date" means the earliest to occur of the date that is (a) September 30, 2023, (b) the closing date of any Restructuring or sale of substantially all of Debtor's assets pursuant to an order entered by the Bankruptcy Court, (c) the confirmation of a plan of reorganization or liquidation for Debtor in the Chapter 11 Case, and (d) the date on which the DIP Lender accelerates the DIP Obligations (or the DIP Obligations automatically and immediately accelerate) or the DIP Obligations otherwise become immediately due and payable, in each case pursuant to the terms of the Financing Orders.

"Multiemployer Plan" means any Employee Benefit Plan that is a "multi-employer plan" as defined in Section 3(37) of ERISA.

"Net Asset Sale Proceeds" means, for Debtor, with respect to any Asset Sale, an amount equal to: (i) Cash payments (including any Cash received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) received by Debtor from such Asset Sale, minus (ii) the sum of (a) documented brokerage, consultant and other documented fees and expenses actually incurred in connection with such Asset Sale and (b) Taxes paid or reasonably estimated to be payable as a result of such Asset Sale.

"Net Indebtedness Proceeds" means the proceeds of any Indebtedness incurred by Debtor after the Petition Date (other than pursuant to this Agreement) minus if, at the time of payment thereof and after giving thereto, (i) Debtor is in pro forma compliance with the provisions of Section 6.2, (ii) any such payment is permitted to be made at such time in accordance with the Budget and (iii) no Default or Event of Default shall have occurred and be continuing or would result therefrom, and documented out-of- pocket attorneys' fees, accountants' fees, and other documented fees and expenses actually incurred in connection with the issuance of such Indebtedness.

"Net Insurance/Condemnation Proceeds" means, for Debtor, an amount equal to: (i) any Cash payments or proceeds received by or owed to Debtor (A) under any casualty insurance policy in respect of a covered loss thereunder or (B) as a result of the taking of any assets of Debtor by any Person pursuant to the power of eminent domain, condemnation or otherwise, or pursuant to a sale of any such assets to a purchaser with such power under threat of such a taking minus (ii) the sum of (A) any documented costs and expenses (including reasonable out-of-pocket attorney's fees) incurred by Debtor in connection with the adjustment or settlement of any claims of Debtor in respect thereof, and (B) any bona fide and documented costs actually incurred in connection with any sale of such assets as referred to in clause (i)(B) of this definition, including Taxes paid or reasonably estimated to be payable as a result of any gain recognized in connection therewith.

"Net Proceeds" means, as of any time, the aggregate of Net Asset Sale Proceeds, Net Insurance/Condemnation Proceeds and Net Indebtedness Proceeds.

"Notices" has the meaning set forth in Section 10.2.

"Operating Account" means, collectively, Debtor's deposit accounts at UMB Bank, N.A., subject to the Deposit Account Control Agreement, currently used as its operating accounts, which deposit accounts may only be changed with the written consent of the DIP Lender.

"PATRIOT Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56).

"PBGC" means the Pension Benefit Guaranty Corporation or any successor thereto.

"Pension Plan" means any Employee Benefit Plan, other than a Multiemployer Plan, that is subject to Section 412 of the Internal Revenue Code or Section 302 of ERISA.

"Permit" means any permit, license, approval, consent, permission, notice, franchise, confirmation, endorsement, waiver, certification, registration, qualification, clearance or other authorization issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any federal, state, local or foreign Regulation.

"Permitted Indebtedness" means the Indebtedness permitted pursuant to Section 6.1(a). "Permitted Investment" has the meaning set forth in Section 6.1(c).

"Permitted Liens" has the meaning set forth in Section 6.1(b).

"Permitted Prior Liens" means the Permitted Liens set forth in Section 6.1(b)(ii), (iii), (iv), (v), (vi), (vii), (xi).

"Permitted Variances" has the meaning set forth in Section 6.2.

"Person" means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, other legal entities and Governmental Bodies.

"Petition Date" means May 1, 2023.

"Post-Petition" means after the filing of the voluntary petition on the Petition Date.

"Prepetition Collateral" has the meaning set forth in the recitals to this Agreement.

"Prepetition Credit Agreements" has the meaning set forth in the recitals to this Agreement.

"Prepetition Bond Indebtedness" means the Indebtedness issued or loaned and outstanding under a Prepetition Credit Agreement.

"Prepetition Indebtedness" means all obligations of Debtor arising prior to the Petition Date.

"Prepetition Payment" means a payment (by way of adequate protection or otherwise) of principal or interest or otherwise on account of Prepetition Indebtedness or other prepetition claims against Debtor.

"Prepetition Prior Liens" are defined in Section 9.1(c).

"Prepetition Secured Parties" means the Trustee under the Prepetition Credit Agreements.

"Regulation" means each applicable law, rule, regulation, or order, by any Governmental Body, central bank or comparable agency and any request or directive (if having the force of law) of any of those Persons and each judgment, injunction, order, writ, decree or award of any Governmental Body, arbitrator or other Person.

"Released Parties" shall have the meaning given such term in Section 9.21.

"Relevant Property" means, for Debtor, all sites, facilities, locations, real property and leaseholds (i) presently or formerly owned, leased, used or operated by Debtor (whether or not such properties are currently owned, leased, used or operated by Debtor) or (ii) at which any Hazardous Material has been transported, disposed, treated, stored or released by Debtor.

"Restructuring" means a restructuring of Debtor's financial obligations with respect to the Bonds and the other outstanding obligations.

"Securities Act" means the Securities Act of 1933, as amended from time to time, and any successor statute.

"Security Agreement" means that certain Security Agreement dated as of April 14, 2023 (this "Security Agreement"), by and between the Trustee, Debtor, and Elite Sports Group, LLC, as manager.

"Subsidiary" means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof.

"Tax" means any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding of any nature and whatever called, by whomsoever, on whomsoever and wherever imposed, levied, collected, withheld or assessed.

"Trustee" means UMB Bank, N.A.

"UCC" means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect in the State of Arizona; provided that if by reason of mandatory provisions of law, the perfection, the effect of perfection or non-perfection or the priority of the DIP Liens is governed by the Uniform Commercial Code as in effect in a United States jurisdiction other than Arizona, "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

"United States Trustee" means the United States Trustee for the District of Arizona.

(b) Capitalized terms used but not defined above or elsewhere herein shall have the meanings given to such terms in the Financing Orders, as applicable.

ARTICLE II
LOANS

Section 2.1 DIP Loans.

(a) Subject to the terms and conditions set forth herein and in the Financing Orders, upon Debtor's request for a DIP Loan in accordance with Section 2.2(b), the DIP Lender agrees to make term loans pursuant to this Section 2.1(a) (collectively, the "DIP Loans") during the DIP Commitment Period in an amount equal to such requested DIP Loan. Each such DIP Loan shall be for purposes consistent with the Budget and otherwise consistent with this Agreement and the Financing Orders; *provided, that,* both before and after giving effect to any DIP Loan, the aggregate amount of all DIP Loans made shall not exceed the DIP Loan Commitment. Once repaid, DIP Loans borrowed hereunder may not be reborrowed.

(b) Any amount borrowed under this Section 2.1 shall, along with all other DIP Obligations (including accrued and unpaid costs, and expenses), be entitled to the DIP Liens on the DIP Collateral and the other rights and benefits provided pursuant to the Financing Orders, this Agreement and the other DIP Loan Documents.

Section 2.2 Borrowing Mechanics.

(a) The DIP Loans shall be funded by the DIP Lender into the Operating Account (which must be a Controlled Account), and anything herein to the contrary notwithstanding, shall be disbursed solely in accordance with the Budget and the Financing Orders (both as to timing and amount of any such requests), subject to Sections 3.1 and 3.2.

(b) Not less than four Business Days prior to any Borrowing Date, Debtor shall deliver to the DIP Lender a fully executed Borrowing Certificate no later than 10:00 a.m. (Arizona time) on such date. Such Borrowing Certificate, a form of which is attached hereto as Exhibit B (each a "Borrowing Certificate"), shall specify the amount of the proposed DIP Loan

and the Borrowing Date thereof, and shall certify that the amount of the proposed DIP Loan, after accounting for other available funds held by Debtor, is reasonably expected to be needed to pay amounts coming due in the 14 days immediately following such Borrowing Date, as set forth in the Budget. On the Borrowing Date specified in any Borrowing Certificate, the DIP Lender shall disburse such funds to the Operating Account and shall use reasonable efforts to make the funds available to Debtor no later than 2:00 p.m. (Arizona time) on the requested Borrowing Date.

Section 2.3 Use of Proceeds. The proceeds of the DIP Loans shall be used by Debtor, subject to and in accordance with the Budget and the Financing Orders, solely for (i) working capital and general corporate purposes of Debtor, (ii) bankruptcy-related costs and expenses, and (iii) the payment of administrative expenses approved by the Bankruptcy Court. None of the proceeds of the DIP Loans shall be used by Debtor in connection with the investigation (including discovery proceedings), initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation against the DIP Lender (whether in its capacity as DIP Lender, Prepetition Secured Party, Trustee or in any other capacity), the beneficial owners of the Bonds, or any of their respective advisors, agents and sub-agents, including in connection with the validity of the DIP Liens granted to the DIP Lender, or the Liens granted to the Prepetition Secured Parties in the Prepetition Collateral arising under the Prepetition Credit Agreements.

Section 2.4 Evidence of Debt. The DIP Lender shall maintain in its internal records an account or accounts evidencing the DIP Obligations owed to the DIP Lender, including the amounts of the DIP Loans owed to it and each repayment and prepayment in respect thereof. Any such recordation shall be conclusive and binding on Debtor, absent manifest error; provided, failure to make any such recordation, or any error in such recordation, shall not affect the DIP Loan Commitment, the DIP Loans or any of the DIP Obligations.

Section 2.5 Interest and Fees on Loans.

(a) Applicable Rate; Payment of Interest. Interest shall accrue on the full amount of the DIP Loan Commitment from the Interim Order Entry Date through the Maturity Date at a simple rate per annum equal to 12%. Accrued interest shall be due and payable on the Maturity Date.

(b) Calculation of Interest Rates. Interest payable pursuant to this Section 2.5 shall be computed on the basis of a 360-day year for the actual number of days elapsed in the period during which it accrues.

(c) Commitment Fee. The DIP Lender will be entitled to a fee equal to 2% of the DIP Loan Commitment, which shall be fully earned upon the Interim Order Entry Date and payable on the Maturity Date.

(d) Default Interest. Upon the occurrence and during the continuance of an Event of Default, the DIP Loan Commitment and any accrued interest, fees and other amounts owed hereunder (including the Commitment Fee), shall thereafter bear interest at a rate of 14% per annum.

Section 2.6 Repayment. Subject to Sections 2.8 and 2.9, the DIP Loans shall be due and payable, and Debtor shall be required to repay all of the DIP Obligations (including, without limitation, all accrued and unpaid principal, interest, fees, costs, and expenses on the DIP Loans, including the Commitment Fee) on the Maturity Date.

Section 2.7 Prepayments.

(a) Mandatory Prepayments; Net Proceeds. Subject to approval by the Bankruptcy Court in the Chapter 11 Case, no later than the first Business Day following the date of receipt by Debtor of any Net Proceeds, Debtor shall prepay the DIP Loans (including the applicable portion of the accrued costs and expenses) as set forth in Section 2.9 in an aggregate amount equal to such Net Proceeds.

(b) Prepayment Certificate. Concurrently with any prepayment of the DIP Loans pursuant to Section 2.7(a), Debtor shall deliver to the DIP Lender a certificate of an Authorized Officer demonstrating the calculation in reasonable detail of the amount of the applicable Net Proceeds. If Debtor shall subsequently determine that the actual amount received exceeded the amount set forth in such certificate, Debtor shall promptly make an additional prepayment of the DIP Loans in accordance with Section 2.9 in an amount equal to such excess, and Debtor shall concurrently therewith deliver to the DIP Lender a certificate of an Authorized Officer demonstrating the derivation of such excess.

(c) Voluntary Prepayment. Debtor may prepay the DIP Loans (including the applicable portion of the accrued costs and expenses) in whole or in part at any time upon three Business Days' prior notice to the DIP Lender, provided that any partial prepayment will be in a minimum amount of $100,000.

Section 2.8 Application of Payments and Proceeds. Any amount required to be paid pursuant to Section 2.7(a) or any other provision of this Agreement, and all proceeds of the DIP Collateral (whether before or after an Event of Default) shall be applied (a) first, to pay any amounts (including reasonable and documented attorneys' fees) payable to the DIP Lender under Section 9.3 hereof, (b) second, to pay accrued and unpaid interest, costs, expenses and other outstanding DIP Obligations, (c) third, to repay any principal amounts outstanding in respect of the DIP Loans, and (d) fourth, to Debtor.

Section 2.9 General Provisions Regarding Payments.

(a) Payments. All payments by Debtor of principal, interest and other DIP Obligations shall be made by Debtor to the DIP Lender in Dollars in same day funds, without

defense, setoff or counterclaim, free of any restriction or condition, and delivered to the DIP Lender not later than 4:00 p.m. (Arizona time) on the date due at the DIP Lender's office for receipt of notices hereunder (or as otherwise instructed by the DIP Lender to Debtor) without presentment, demand, protest or notice of any kind, all of which are expressly waived by Debtor.

(b) Late Payments. The DIP Lender shall be permitted to consider any payment made by or on behalf of Debtor that is not made in same day funds prior to 4:00 p.m. (Arizona time) as a late payment, and any such late payment shall be deemed received on the next Business Day. The DIP Lender shall give prompt telephonic notice to Debtor (confirmed in writing) if any payment is considered late hereunder. To the extent any late payment is received, the DIP Lender shall be permitted to declare by notice to Debtor (confirmed in writing) a Default or Event of Default to the extent so provided under the terms of Section 8.1. Interest shall continue to accrue on any late payment until the Business Day following receipt thereof.

(c) Payments to Include Accrued Interest. All payments in respect of the principal amount of any DIP Loan shall include payment of accrued interest on the principal amount being repaid or prepaid calculated in accordance with Section 2.5, and all such payments shall be applied to the payment of interest before application to principal.

(d) Business Days. Whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in the computation of the payment of interest hereunder.

Section 2.10 Termination of DIP Loan Commitments. Unless previously terminated, the DIP Loan Commitment shall automatically terminate at the end of the DIP Commitment Period. Upon the making of any DIP Loan, the DIP Loan Commitment shall be permanently reduced by an amount equal to the principal amount of such DIP Loan.

Section 2.11 Priority and Liens.

(a) Superpriority Claims and Liens. Subject to the Carve-Out, Debtor hereby covenants, represents and warrants that, upon entry of the Interim Order (or, where indicated below, the Final Order), the DIP Obligations are authorized by the Financing Orders and

(i) pursuant to Sections 364(c)(1) and 507(b) of the Bankruptcy Code, constitute joint and several allowed administrative expense claims in the Chapter 11 Case having superpriority over all administrative expenses of the kind specified in Sections 364(c)(1), 503(b), 507(a)(2), 507(b) or 507(d) of the Bankruptcy Code;

(ii) pursuant to Sections 361, 362, 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code and the DIP Loan Documents, shall be secured by, and Debtor shall have granted to the Trustee, a perfected first-priority Lien on all

presently owned and hereafter acquired unencumbered tangible and intangible property and assets of Debtor and its estate wherever located, and any proceeds and products thereof, including, without limitation, accounts, deposit accounts, cash, chattel paper, investment property, letter of-credit rights, securities accounts, software, supporting obligations, commercial tort claims, causes of action, investments, instruments, documents, inventory, contract rights, general intangibles, intellectual property, real property, fixtures, goods, equipment, vessels and other fixed assets, and accessions and proceeds and products of all of the foregoing (including earnings and insurance proceeds); *excluding*, *however*, all rights and causes of action arising under Bankruptcy Code §§ 544, 545, 547, 548, 549 and 550;

(iii) pursuant to Section 364(c)(3) of the Bankruptcy Code and the DIP Loan Documents, shall be secured by, and Debtor shall have granted to the Trustee, a perfected junior Lien on all property of Debtor and its estate wherever located, and any proceeds and products thereof, including, without limitation, accounts, deposit accounts, cash, chattel paper, investment property, letter-of-credit rights, securities accounts, software, supporting obligations, commercial tort claims, causes of action, investments, instruments, documents, inventory, contract rights, general intangibles, intellectual property, real property, fixtures, goods, equipment, vessels and other fixed assets, and accessions and proceeds and products of all of the foregoing (including earnings and insurance proceeds), that is subject to Permitted Prior Liens but with a priority immediately junior to such liens; and

(iv) pursuant to Section 364(d)(1) of the Bankruptcy Code and the DIP Loan Documents, shall be secured by, and Debtor shall have granted to the Trustee, a perfected first-priority, senior priming Lien (the "Priming Lien") on the Prepetition Collateral, which Priming Lien shall prime (A) all Liens securing the Prepetition Indebtedness and (B) any existing Liens that are junior thereto, and shall also be senior to any Liens arising after the Petition Date to provide adequate protection in respect of any Liens to which the Priming Lien is senior (collectively, the "Primed Liens"), *provided*, *that*, such Priming Liens in favor of the Trustee shall not prime Liens that are valid, properly perfected, non-avoidable and senior in priority as a matter of law to the Primed Liens as of the Petition Date.

(b) Security Perfection. Debtor agrees to take all action that the Trustee may reasonably request as a matter of nonbankruptcy law to perfect and protect the DIP Liens. Debtor hereby irrevocably authorizes the Trustee (or its designee) at any time and from time to time to file in any filing office in any UCC jurisdiction any initial financing statements and amendments thereto that (i) indicate the Collateral (A) as all assets of Debtor or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of

Article 9 of the UCC, or (B) as being of an equal or lesser scope or with greater detail, and (ii) provide any other information required by part 5 of Article 9 of the UCC for the sufficiency or filing office acceptance of any financing statement or amendment, including (A) whether Debtor is an organization, the type of organization and any organization identification number issued to Debtor and, (B) in the case of a financing statement filed as a fixture filing, a sufficient description of real property to which the Collateral relates. Debtor agrees to use commercially reasonable efforts to furnish any such information to the Trustee promptly upon request. Notwithstanding the provisions of this Section, (y) the Trustee shall have the benefits of the Financing Orders, and (z) Debtor does not assume responsibility for preparing, filing or recording any UCC-1 or other such document perfecting the DIP Liens.

(c) Real Property. Subject in all respects to the priorities set forth above and to the Carve-Out and subject to the entry of the Final Order, Debtor shall grant to the Trustee a security interest in, and Mortgage on, all of the right, title and interest of Debtor in all real property, if any, now or hereafter owned or leased by Debtor, together in each case with all of the right, title and interest of the Borrower in and to all buildings, improvements, and fixtures related thereto, any lease or sublease thereof, all general intangibles relating thereto and all proceeds thereof. Debtor shall acknowledge that, pursuant to the Final Order, the Liens in favor of the Trustee in all of such real property and leasehold interests shall be perfected without the recordation of any instruments of mortgage or assignment and the Trustee shall have the benefits of the Final Order. Notwithstanding the foregoing, at the reasonable request of the Trustee but subject to the entry of the Final Order, Debtor shall enter into deeds of trust in recordable form with respect to such properties on terms reasonably satisfactory to the Trustee, which the Trustee may, in its sole discretion, elect to record. In the event of a conflict between, or inconsistency among, the Interim Order or the Final Order, on the one hand, and any Loan Document, on the other hand, the Interim Order or the Final Order, as the case may be, shall control.

(d) No Modification. Except as otherwise agreed to by the Trustee, the DIP Liens, Lien priorities, Superpriority Claims and other rights and remedies granted to the DIP Lender pursuant to the Orders, this Agreement or the other Loan Documents (specifically including, but not limited to, the existence, perfection, enforceability and priority of the DIP Liens, and the Superpriority Claims) shall not be modified, altered or impaired in any manner by any other financing or extension of credit or incurrence of indebtedness by Debtor (pursuant to Section 364 of the Bankruptcy Code or otherwise), or by dismissal or conversion of any Chapter 11 Case, or by any other act or omission whatsoever.

ARTICLE III
CONDITIONS PRECEDENT; CONDITIONS SUBSEQUENT

Section 3.1 Conditions Precedent; Closing Date. The obligation of the DIP Lender to make any DIP Loan on any date on which Debtor request a Borrowing is subject to the satisfaction, or waiver in accordance with Section 10.1, of the following conditions on or before the Closing Date:

(a) Certificate. The DIP Lender shall have received a certificate (in a form provided by the DIP Lender and agreed to by Debtor) of an Authorized Officer of Debtor with respect to (i) the articles of incorporation of Debtor, (ii) the bylaws of Debtor, (iii) the resolutions of the board of directors of Debtor approving each DIP Loan Document and such other agreements, instruments, certificates or other documents required to be delivered by Debtor under the DIP Loan Documents and the performance of the obligations of Debtor thereunder, and (iv) the names and true signatures of any officers of Debtor who Debtor desire to sign DIP Loan Documents from time to time (all of whom shall be Authorized Officers).

(b) Good Standing Certificate. The DIP Lender shall have received a good standing certificate from the applicable Governmental Body of the jurisdiction of incorporation of Debtor and in each jurisdiction in which it is qualified as a foreign corporation or other entity to do business, each dated within thirty (30) days prior to the Closing Date.

(c) Financing Orders. The Financing Orders, and all motions relating thereto, approving and authorizing the DIP Loans, all provisions thereof and the priorities and DIP Liens granted under Bankruptcy Code section 364(c) and (d), as applicable, shall: (i) be in form and substance satisfactory to the DIP Lender and its counsel in their sole discretion, the Interim Order shall have been entered by the Bankruptcy Court on or before the date hereof and the hearing on approval of the Final Order shall be scheduled no later than May 26, 2023, and shall (ii) include, without limitation, provisions (a) modifying the automatic stay to permit the creation and perfection of the DIP Liens, (b) providing for the vacation of such stay to permit the enforcement of the DIP Lender's rights and remedies under the DIP Loan Documents, (c) upon entry of the Final Order, prohibiting the assertion of claims arising under sections 506(c) or 552(b) of the Bankruptcy Code against the DIP Lender or the Trustee or, except as expressly permitted therein, the commencement of other actions adverse to the DIP Lender or its respective rights and remedies under the DIP Loan Documents, the Financing Orders, or any other order, (d) prohibiting the incurrence of Indebtedness by Debtor, other than Permitted Indebtedness, with priority equal to or greater than the DIP Loans, (e) prohibiting any granting or imposition of Liens other than DIP Liens and Permitted Liens, and (f) authorizing and approving Debtor to execute and deliver the DIP Loan Documents to which each shall be a party and the transactions contemplated therein, including, without limitation, the granting of the super priority status, the first-priority and priming security interests and DIP Liens upon the DIP Collateral and the payment of all fees and expenses due to the DIP Lender. As of the Final Order Entry Date, the Final Order shall further state, among other things, that, upon entry of the Final Order, (a) the DIP Lender, the Prepetition Secured Parties, and all of their respective counsel, advisors and consultants, shall each be entitled to the benefit of a "good faith" finding pursuant to section 364(e) of the Bankruptcy Code, (b) the assertion of claims arising under sections 506(c) or 552(b) of the Bankruptcy Code against the DIP Lender or the Trustee is prohibited; and (c) the DIP Lender is permitted to Credit Bid (pursuant to section 363(k) of the Bankruptcy Code and/or applicable law) the DIP Loans, in whole or in part, in connection with any sale or disposition of assets in the Chapter 11 Case.

(d) Compliance with Financing Orders. No Financing Order shall have been reversed, modified, amended, stayed or vacated, in the case of any modification or amendment, in a manner, or relating to a matter, without the consent of the DIP Lender. Debtor shall be in compliance in all material respects with the Financing Orders and all other orders of the Bankruptcy Court binding on it.

(e) Debtor-in-Possession. No trustee or examiner shall have been appointed with respect to Debtor or their properties.

(f) First Day Motions. All "first day" motions and related orders entered by the Bankruptcy Court in the Chapter 11 Case shall be in form and substance reasonably satisfactory to the DIP Lender and its counsel.

(g) Ground Lease Litigation. Debtor (i) shall provide the DIP Lender and the Trustee regular updates on the status of the Ground Lease Litigation, including prompt notice of any developments associated therewith, and (ii) shall not settle or otherwise resolve the Ground Lease Litigation without the consent of the DIP Lender and the Trustee.

(h) Use of Proceeds and Information. The proceeds of the DIP Loans shall be used by Debtor solely in accordance with the Budget and the DIP Lender shall receive such information (financial or otherwise) as may be reasonably requested by the DIP Lender.

(i) Litigation, etc. There shall not exist any material action, suit, investigation, litigation or proceeding pending (other than the Chapter 11 Case and the Ground Lease Litigation) or threatened in any court or before any Governmental Body that, in the reasonable opinion of the DIP Lender, has or could be reasonably likely to have a Material Adverse Effect.

(j) Cash Management. Cash management arrangements satisfactory to the DIP Lender in form and substance shall be in place. The DIP Lender or its advisors shall have completed a review of Debtor's cash management systems and determined that all material amounts of cash and cash equivalents of Debtor is subject to a DIP Lien in favor of the DIP Lender pursuant to Controlled Account Agreements.

(k) Consents. Holders of a majority in principal amount of the Bonds outstanding shall have consented to the DIP Lender's entry into the DIP Loan Documents.

(l) No Default. No Default or Event of Default shall exist at the time of, or after giving effect to, the transactions contemplated on the Closing Date, including the advancing of any DIP Loans.

(m) Representations and Warranties. All representations and warranties in the DIP Loan Documents shall be true and correct as of the Closing Date.

(n) DIP Loan Documents. The DIP Lender shall have received duly executed copies of each DIP Loan Document (other than any DIP Loan Document which the DIP Lender has allowed to be executed at a later date), with originals to promptly follow. The financing statements and other DIP Loan Documents related to perfection of the security interest and Liens of the DIP Lender in the DIP Collateral shall, at the DIP Lender's option, have been filed in all appropriate jurisdictions (or arrangements for such filings acceptable to the DIP Lender shall have been made).

(o) Other Actions to Perfect Security Interests. The DIP Lender shall have received evidence that Debtor shall have taken or caused to be taken any other action, executed and delivered or caused to be executed and delivered any other agreement, document and instrument, reasonably required by the DIP Lender to perfect, and to ensure the perfection of, its security interests in the DIP Collateral with the priority required by the DIP Loan Documents.

(p) Other Information. The DIP Lender shall have received any other financial or non-financial information regarding Debtor that the DIP Lender reasonably requested at least five (5) Business Days prior to the Closing Date.

(q) DIP Lender's Professional Fees and Costs. The Financing Orders shall require Debtor pay, on the Maturity Date, all reasonable out-of-pocket fees and expenses of the DIP Lender incurred in connection with this Agreement and the other DIP Loan Documents, including the fees, costs and expenses of Lewis Roca Rothgerber Christie LLP, as counsel to the DIP Lender. The DIP Lender shall be satisfied, in its sole discretion, that all such fees and expenses constitute DIP Obligations under the Financing Orders and are secured by the DIP Liens on the DIP Collateral.

(r) No Material Adverse Change. Debtor, as debtor-in-possession, shall have continued to operate its business in the ordinary course through the Closing Date, and since the Petition Date there shall have been no Material Adverse Effect.

Section 3.2 Conditions to Each Borrowing. The obligations of the DIP Lender to make any DIP Loan on any Borrowing Date, including the Closing Date, is subject to the satisfaction, or waiver in accordance with Section 10.1, of the following conditions precedent:

(a) Borrowing Certificate. The DIP Lender shall have received a fully executed and delivered Borrowing Certificate, in accordance with Section 2.2. Each Borrowing Certificate shall be executed by an Authorized Officer of Debtor and delivered to the DIP Lender on a Business Day.

(b) Representations and Warranties. As of such Borrowing Date (both before and after giving effect to the advance of the DIP Loans and application of its proceeds), the representations and warranties of Debtor contained in the DIP Loan Documents shall be true and correct in all material respects on and as of that Borrowing Date, as if made on and as of that

Borrowing Date (except to the extent such representations and warranties specifically relate to an earlier date, such representations and warranties were true and correct on and as of such earlier date).

(c) No Event of Default. As of such Borrowing Date, no Default or Event of Default shall have occurred and be continuing or would result from the consummation of the applicable Borrowing (or the application of its proceeds).

(d) Available Commitments. After making the DIP Loans requested on such Borrowing Date, the aggregate outstanding principal amount of the DIP Loans shall not exceed the amount of the DIP Loan Commitment.

(e) No Material Adverse Effect. Since the Interim Order Entry Date, no Material Adverse Effect shall have occurred after giving effect to the making of the DIP Loans.

Section 3.3 Conditions Subsequent. Debtor shall timely perform all obligations and commitments in any post-closing written agreement between the DIP Lender and Debtor with respect to any requirement of Sections 3.1 or 3.2 hereof that the DIP Lender has, in the exercise of its sole and absolute discretion, agreed to be satisfied at a later date.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES

Section 4.1 Representations and Warranties. To induce the DIP Lender to enter into this Agreement and to make each DIP Loan to be made hereby, Debtor hereby represents and warrants to the DIP Lender, on the Closing Date and on each Borrowing Date as follows:

(a) Status; Authorization. Debtor is duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation and is duly qualified and in good standing in every other jurisdiction where it is doing business except where the failure to so qualify could not reasonably be expected to have a Material Adverse Effect, and, subject to the entry by the Bankruptcy Court of the Financing Orders, the execution, delivery and performance by Debtor of the DIP Loan Documents (i) are within its respective authority, (ii) have been duly authorized, and (iii) do not conflict with or contravene its constitutive documents. Subject to the entry by the Bankruptcy Court of the Financing Orders, the execution, delivery, performance of its obligations, and exercise of its rights under the DIP Loan Documents by Debtor, including, without limitation, the making of the DIP Loans under this Agreement, (y) do not require any Consents that have not been obtained or notices to third parties that have not been provided except to the extent such failure would not result in a Material Adverse Effect and (z) are not and will not be in conflict with or be prohibited or prevented by (A) any Regulation, (B) any corporate governance document, corporate minute or resolution of Debtor or (C) any instrument, agreement or provision thereof, in each case binding on it or affecting any of its property.

(b) Execution and Binding Effect. Subject to the entry by the Bankruptcy Court of the Financing Orders, upon execution and delivery thereof, each DIP Loan Document shall constitute the legal, valid and binding obligation of Debtor, enforceable in accordance with its terms.

(c) Properties.

(i) Debtor has good and marketable title to all real property owned or purported to be owned by it, in each case free of all Liens other than the Permitted Liens, and has the right to occupy the property subject to the Ground Lease.

(ii) Debtor enjoys, and will enjoy, peaceful and undisturbed possession of, or a lease or license to use, all property (subject only to the Permitted Liens) that is necessary for the conduct of its business.

(d) Litigation. Except for the Chapter 11 Case and the Ground Lease Litigation, and the judgments and claims listed in Schedule 4.1(d), there are no material legal or other proceedings or investigations pending or, to the Knowledge of Debtor, threatened against Debtor before any court, tribunal or regulatory authority which could, if adversely determined, alone or together, reasonably be expected to have a Material Adverse Effect.

(e) Governmental Approvals and Filings. Other than the Bankruptcy Court's entry of the Financing Orders and the filings and recordings contemplated by the DIP Collateral Documents, no approval, order, consent, authorization, certificate, license, permit or validation of, or exemption or other action by, or filing, recording or registration with, or notice to, any Governmental Body is or will be necessary in connection with the execution and delivery of this Agreement or any other DIP Loan Document, consummation by Debtor of the transactions herein or therein contemplated, or performance of or compliance with the terms and conditions hereof or thereof. Debtor is not an "investment company" or a company "controlled" by an "investment company," with the meaning of the Investment Company Act of 1940, as amended.

(f) Absence of Conflicts. Subject to the Bankruptcy Court's entry of the Financing Orders, the execution and delivery by Debtor of this Agreement and each other DIP Loan Document to which it is a party and performance by it hereunder and thereunder will not violate any law (including, without limitation, Regulations T, U and X of the Federal Reserve Board) and will not conflict with or result in a breach of any order, writ, injunction, resolution, decree or other similar document or instrument of any court or Governmental Body or its certificate of incorporation or by-laws or similar constituent documents or create (with or without the giving of notice or lapse of time, or both) a default under or breach of any material agreement, bond, note or indenture, in each case to which it is a party (by successor in interest or otherwise), or by which it is bound or any material portion of its properties or assets is affected, in each case, the effect of which could reasonably be expected to be, have or reflect in a Material Adverse Effect or, except under the DIP Collateral Documents, result in the imposition of any

Lien (other than Permitted Liens) of any nature whatsoever upon any of the properties or assets owned by or used in connection with the business of Debtor.

(g) DIP Collateral. From and after the Interim Order Entry Date, the DIP Lender shall have first-priority perfected security interests and DIP Liens in and to all of the DIP Collateral, free and clear of any Liens other than the Permitted Liens, and entitled to priority under applicable law, with no financing statements, hypothecations, chattel mortgages, real estate mortgages or similar filings on record with respect to Debtor or the DIP Collateral anywhere other than such filings in connection with this Agreement, the DIP Collateral Documents or the Permitted Liens. Each of the representations and warranties made by Debtor in each DIP Collateral Document to which it is a party is true and correct in all material respects as of each date made or deemed made.

(h) Subsidiaries. Debtor does not own any Subsidiaries.

(i) Material Misstatements and Omissions. Any projections and pro forma financial information contained in or delivered pursuant to any DIP Loan Document (including the Budget and each Bi-Weekly Budget Report) or any other document, certificate or written statement furnished to the DIP Lender pursuant to any DIP Loan Document are based upon good faith estimates and assumptions believed by Debtor to be reasonable at the time made.

(j) Budgets. All facts in the Budget and each Bi-Weekly Budget Report (when delivered) are accurate in all material respects and Debtor has disclosed to the DIP Lender all material assumptions in the Budget and each Bi-Weekly Budget Report. After giving effect to the DIP Loans projected to be made under the Budget, Debtor believes, in good faith and in the exercise of its commercially reasonable judgment, that it has or will have sufficient capital and funds to pay and satisfy the expenses, obligations and liabilities of Debtor as set forth, as and when provided to be paid or satisfied, in the Budget.

(k) Labor Practices. To the Knowledge of Debtor, Debtor is not engaged in any unfair labor practice that could reasonably be expected to have a Material Adverse Effect.

(l) Employee Benefits. Each of the Employee Benefit Plans intended to qualify under Section 401 of the Internal Revenue Code so qualifies, and nothing has occurred with respect to the operation of such plan which would cause the loss of such qualification or the imposition of any material liability, penalty or tax under ERISA or the Internal Revenue Code. All contributions and premiums required by law or by the terms of each Employee Benefit Plan have been timely made. Neither Debtor nor its ERISA Affiliates bear any liability for any Pension Plan or Multiemployer Plan and have not had any liability under any Pension Plan or Multiemployer Plan for the last 6 years

(m) Environmental Matters.

(i) There are no Environmental Liabilities at any Relevant Property, which individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(ii) Debtor: (A) has operated its business in compliance with all applicable Environmental Laws; (B) has obtained all Environmental Permits required by applicable Environmental Laws for the ownership and operation of its properties, and all such Environmental Permits are in full force and effect or such Person has made all appropriate filings for issuance or renewal of such Environmental Permits; (C) to its Knowledge, is not aware of any acts, omissions, events or circumstances that may interfere with or prevent continued compliance with the Environmental Laws and Environmental Permits referred to in the preceding clauses (A) and (B); (D) has not received written notice of any asserted or threatened claim, action, suit, proceeding, hearing, investigation or request for information relating to any environmental matter; and (E) has not received notice from any Governmental Body that Debtor is a potentially responsible party under any Environmental Law at any disposal site containing Hazardous Materials, nor has Debtor received any notice that any lien under any Environmental Law against any property of Debtor exists, except for matters in each case of (A) through (E) above, which individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(n) Insurance. The policies, binders or self-insurance programs for fire, liability, product liability, workmen's compensation, vehicular and other insurance currently held by or on behalf of Debtor insure its material properties and business activities against such losses and risks as are reasonably believed to be adequate to protect its properties in accordance with customary industry practice. As of the date hereof, all such policies, binders and self-insurance programs are in full force and effect. As of the date hereof, Debtor has not received notice from any insurer or agent of such insurer that substantial capital improvements or other expenditures are required. As of the date hereof, Debtor has not received notice of cancellation of any material insurance policy or binder.

(o) Absence of Events of Default. Since the Interim Order Entry Date, no Default or Event of Default has occurred.

(p) Compliance with Laws. Except as otherwise excused by the Bankruptcy Code, Debtor has complied, and is in compliance in all respects, with all laws, except for such instances of non-compliance that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(q) Margin Regulations. No part of the proceeds of the DIP Loans issued hereunder will be used for the purpose of buying or carrying any Margin Stock or to extend credit to others for the purpose of buying or carrying any Margin Stock, in either case in a manner which would violate or conflict with Regulations T, U or X of the Board Governors of the Federal Reserve System. Debtor is not engaged in the business of extending credit to others for the purpose of buying or carrying Margin Stock. Neither the making of the DIP Loans nor any use of proceeds of any such Loans will violate or conflict with the provisions of Regulations T, U or X of the Board of Governors of the Federal Reserve System, as amended from time to time.

(r) Taxes. Debtor has filed all federal and other material Post-Petition Tax returns required to be filed by it and has not failed to pay any material Post-Petition Taxes, or interest and penalties relating thereto, except for Post-Petition Taxes not yet due and except for those the amount or validity of which is currently being contested in good faith by appropriate proceedings diligently pursued and available to Debtor and with respect to which adequate reserves have been set aside on its books in accordance with GAAP.

ARTICLE V
AFFIRMATIVE COVENANTS

Section 5.1 Affirmative Covenants. Debtor covenants and agrees that until payment in full of all DIP Obligations (other than indemnification obligations for which no claim has been made as of the applicable date of determination, which indemnity obligations shall continue in full after payment of all DIP Obligations), Debtor shall perform all the covenants in this Article V applicable to it:

(a) Basic Reporting Requirements. Debtor shall furnish to the DIP Lender:

(i) no later than 5:00 p.m. (prevailing Eastern time) on Friday of every other week or if such Friday is not a Business Day, then the immediate succeeding Business Day, the Bi-Weekly Budget Report;

(ii) at any time Debtor receives any material written notice from any Governmental Body, Debtor shall provide a copy of such notice to the DIP Lender within one Business Day of receipt, and Debtor shall provide to the DIP Lender copies of all material reports, certificates and notices that Debtor may provide to any Governmental Body within one Business Day of transmission;

(iii) a monthly reporting package, no later than thirty (30) days after the end of each calendar month, including cash flow, income statement and balance sheet for such month, accounts payable and receivable reports with aging information; and

(iv) as promptly as reasonably practicable from time to time following the DIP Lender's reasonable request therefor, such other information (including historical information) regarding the operations, business affairs and financial condition of Debtor, the progress of the Chapter 11 Case or compliance with the terms of any DIP Loan Document.

(b) Verification. Debtor shall keep true and accurate (in all material respects) books of account in accordance with past practices and shall permit the DIP Lender, or any of its designated representatives, upon reasonable notice and at the expense of Debtor, during normal business hours to examine the books of account of Debtor (and to make copies and/or extracts therefrom) and to discuss the affairs, finances and accounts of Debtor with, and to be advised as to the same by, the managers, executives and officers of Debtor and to be advised as to such or other business records upon the reasonable request of the DIP Lender. Management, advisors, consultants and senior personnel of Debtor shall be available upon reasonable advance notice from the DIP Lender (or its agents or representatives) for meetings with the DIP Lender and its agents or representatives during normal business hours with reasonable prior notice and at such reasonable locations.

(c) Existence; Maintenance of Properties; Compliance with Regulations. Debtor shall maintain its corporate/legal existence and business, maintain its assets in good operating conditions and repair (subject to ordinary wear and tear and casualty damage and to all provisions of this Agreement permitting sales of certain of Debtor's assets), keep their businesses and assets insured in accordance herewith, maintain their chief executive office in the United States, continue to engage in the same or substantially similar lines of business as of the Petition Date, and comply in all respects with all Regulations, including without limitation, ERISA and Environmental Laws, except where a failure to do so could not individually or in the aggregate reasonably be expected to have a Material Adverse Effect.

(d) Notice of Material Events. Debtor shall notify the DIP Lender promptly in writing upon an Authorized Officer becoming aware of any of the following: (i) the occurrence of any Default or Event of Default, (ii) any noncompliance with any Regulations, Environmental Law or proceeding in respect thereof which could reasonably be expected to have a Material Adverse Effect, (iii) any change of chief executive office address of Debtor, (iv) any pending or, to the Knowledge of Debtor, threatened litigation or similar proceeding affecting Debtor involving claims in excess of $100,000 in the aggregate or any material change in any such litigation or proceeding previously reported, (v) Liens in excess of $100,000 in the aggregate against any assets or properties of Debtor encumbered in favor of the DIP Lender, and (vi) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

(e) Further Assurances.

(i) Debtor shall cooperate with the DIP Lender, take such action, execute such documents, and provide such information as the DIP Lender may from time to time reasonably request in order to effect the transactions contemplated by and the purposes and intent of the DIP Loan Documents.

(ii) Debtor shall promptly, upon request by the DIP Lender, correct, and cause each of the other parties to the DIP Loan Documents to promptly correct, any defect or error that may be discovered in any DIP Loan Document or in the execution, acknowledgment or recordation of the DIP Loan Document. Promptly upon request by the DIP Lender, Debtor shall execute, authorize, acknowledge, deliver, any and all such further acts, deeds, conveyances, documents, security agreements, pledge agreements, mortgages, deeds of trust, trust deeds, assignments, financing statements and continuations, notices of assignment, transfers, certificates, assurances and other instruments as the DIP Lender may reasonably require from time to time in order to carry out more effectively the purposes and intent of each DIP Loan Document. Without limiting the foregoing, Debtor shall (A) authorize the filing by the DIP Lender of UCC-1 financing statements for all jurisdictions deemed necessary or desirable by the DIP Lender, and (B) take such action from time to time (including, without limitation, authorizing, executing and/or delivering such assignments, security agreements and other instruments) as shall be reasonably requested by the DIP Lender to create, in favor of the DIP Lender, to the extent required under the respective DIP Collateral Documents and to the maximum extent permitted under applicable law, a first-priority perfected Lien in all of the DIP Collateral, subject only to Permitted Liens.

(f) Controlled Account Agreements.

(i) Debtor shall enter into an account control agreement in form and substance acceptable to the DIP Lender (each, a "Controlled Account Agreement") as necessary to provide the DIP Lender, to the extent not prohibited by applicable law, with "control" over, except as set forth below, each Deposit Account of Debtor (each, a "Controlled Account") as provided for under Section 9-104 of Article 9 of the UCC (or other applicable law) for the purpose of perfecting the security interest which the DIP Lender has in such Deposit Account pursuant to the DIP Collateral Documents. Debtor further agrees to promptly enter into Controlled Account Agreements for any new Deposit Accounts opened during the DIP Commitment Period, which new Deposit Accounts shall only be opened following notice to, and written consent from, the DIP Lender. No arrangement contemplated hereby or by any Controlled Account Agreement in

respect of any such Deposit Account of Debtor, shall be modified by Debtor without the prior written consent of the DIP Lender.

(ii) Subject to the Financing Orders, upon the occurrence and during the continuance of an Event of Default, any disbursements of proceeds in any Controlled Account will only be made at the direction of the DIP Lender; prior to the occurrence of an Event of Default, Debtor will have access to any funds on deposit in the Controlled Accounts for use solely in accordance with this Agreement and the other DIP Loan Documents. The DIP Lender assumes no responsibility for the Controlled Accounts, including, without limitation, any claim of accord and satisfaction or release with respect to deposits which any banks accept thereunder. Subject to the Financing Orders, upon the occurrence and during the continuance of an Event of Default, all remittances which Debtor receives in payment of any Accounts, and the proceeds of any other DIP Collateral, shall be (A) kept separate and apart from Debtor's own funds so that they are capable of identification as the DIP Lender's property; (B) held by Debtor as trustee of an express trust for the DIP Lender's benefit; and (C) immediately deposited in such accounts designated by the DIP Lender. Subject to the Financing Orders, upon the occurrence and during the continuance of an Event of Default, all proceeds received or collected by the DIP Lender with respect to the Controlled Accounts, and reserves and other property of Debtor in possession of the DIP Lender at any time or times hereafter, may be held by the DIP Lender, as the case may be, without interest to Debtor until all DIP Obligations are paid in full or applied by the DIP Lender on account of the DIP Obligations. The DIP Lender may release to Debtor such portions of such reserves and proceeds as the DIP Lender may determine. The DIP lender shall not have any duty to protect, insure, collect or realize upon the Controlled Accounts or to preserve rights in them.

(g) Insurance. Debtor shall maintain, at its expense, and keep in effect with responsible insurance companies, such liability insurance for bodily injury and third-party property damage as is customary in the case of companies engaged in the same or similar business or having similar properties, similarly situated. Debtor shall keep and maintain, at its expense, its material real and personal property insured against loss or damage by fire, theft, explosion, spoilage and all other risks ordinarily insured against by other owners or users of such properties in similar businesses in an amount equal to the full replacement or cash value thereof, subject to deductible amounts which Debtor, in its reasonable judgment, deems prudent. The DIP Lender shall be named as an additional insured and/or loss payee, as applicable, on each such insurance policy.

(h) Information Regarding DIP Collateral. Debtor will furnish to the DIP Lender prompt written notice of any change in (i) Debtor's corporate name or any trade name used to identify it in the conduct of its business or Debtor's chief executive office, its principal

place of business or its jurisdiction of organization or (ii) Debtor's federal Taxpayer Identification Number. Debtor will not affect or permit any change referred to in the preceding sentence unless arrangements satisfactory to the DIP Lender have been made to ensure that all filings will be (or have been) made under the UCC and all other actions have been taken that are required so that such change will not at any time adversely affect the validity, perfection or priority of any Lien established under any DIP Loan Document on the DIP Collateral.

(i) Existence; Conduct of Business. Debtor will do or cause to be done all things reasonably necessary to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits (including, without limitation, Environmental Permits) privileges, franchises, patents, copyrights, trademarks and trade names material to the conduct of its business, except to the extent that failure to so act, which either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. Debtor shall maintain its credit and risk policies substantially as in effect on the Petition Date.

(j) Payment of Obligations. Proceeds of the DIP Loans shall be used solely as provided in Section 2.3.

(k) Compliance with Laws. Except as otherwise excused by the Bankruptcy Code, Debtor will comply with all laws (including, without limitation, all Environmental Laws), rules, licenses, permits, Regulations and orders of any Governmental Body applicable to it or its property, except where failures to do so, in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(l) Subsidiaries. Without limitation of the prohibition against forming Subsidiaries under Section 6.1(f) or waiving any Event of Default arising therefrom, if any Subsidiary is nonetheless formed or acquired by Debtor after the Closing Date, Debtor will, prior to the date upon which such Subsidiary is formed or acquired, notify the DIP Lender thereof and promptly following such formation or acquisition, cause any equity interest in, assets owned or leased by, or Indebtedness owned by or on behalf, of such Subsidiary to be added to the DIP Collateral. The DIP Lender may require that any such Subsidiary be joined to this Agreement or the DIP Collateral Documents as a borrower or debtor hereunder or thereunder pursuant to joinder agreements in form and substance reasonably satisfactory to the DIP Lender.

(m) Restructuring. Debtor shall, in good faith, continue to pursue the Restructuring and take all commercially reasonable steps to obtain approvals for the Restructuring as expeditiously as is reasonably practicable under applicable law. Any agreements, arrangements, pleadings or other documents relating to a Restructuring which Debtor shall enter into must be acceptable to the DIP Lender.

(n) Bankruptcy Milestones. Debtor shall comply with the Bankruptcy Milestones.

ARTICLE VI
NEGATIVE COVENANTS/BUDGET COMPLIANCE

Section 6.1 Negative Covenants. Debtor covenants and agrees that until all of the DIP Obligations (other than indemnification obligations for which no claim has been made as of the applicable date of determination, which indemnity obligations shall continue in full after payment of all DIP Obligations) have been paid or satisfied in full, Debtor shall perform all applicable covenants in this Section 6.1:

(a) Indebtedness. Debtor shall not incur, create, assume, become or be liable in any manner with respect to, or permit to exist, any Indebtedness, or guarantee, assume, endorse, or otherwise become responsible for (directly or indirectly), any Indebtedness, performance, obligations or dividends of any other Person, except:

(i) the DIP Obligations;

(ii) the Prepetition Bond Indebtedness; and

(iii) Indebtedness, including post-petition administrative expenses, incurred in the ordinary course of Debtor's operations and in compliance with the Budget; provided that such Indebtedness remains at all times unsecured except as provided in Section 6.1(b).

(b) Liens. Debtor shall not create or incur any Liens on any of the property or assets of Debtor, except (the Liens described in the following clauses, the "Permitted Liens"):

(i) the Liens of the DIP Lender securing the DIP Obligations;

(ii) Liens of the Prepetition Secured Parties securing the Prepetition Bond Indebtedness, including the Liens granted pursuant to the Financing Orders and other Liens existing on the date hereof;

(iii) Liens asserted against the Leasehold Property and the improvements and structures thereon by contractors, suppliers and materialman existing as of the Petition Date pursuant to Arizona's mechanic's lien statute.

(iv) Liens securing the payment of taxes, assessments or other governmental charges or levies either not yet overdue or the validity of which are being contested in good faith by appropriate proceedings diligently pursued and available to Debtor and with respect to which adequate reserves have been set aside on its books;

(v) non-consensual statutory Liens (other than Liens securing the payment of taxes) arising in the ordinary course of Debtor's business to the

extent: (A) such Liens secure Indebtedness which is not overdue or (B) such Liens secure Indebtedness relating to claims or liabilities which are fully insured and being defended at the sole cost and expense and at the sole risk of the insurer or being contested in good faith by appropriate proceedings diligently pursued by Debtor, in each case prior to the commencement of foreclosure or other similar proceedings and with respect to which adequate reserves have been set aside on its books;

(vi) zoning and land use restrictions, easements, encumbrances, licenses, covenants and other restrictions affecting the use of real property which do not interfere in any material respect with the use of such real property or ordinary conduct of the business of Debtor as presently conducted thereon or materially impair the value of the real property which may be subject thereto;

(vii) purchase money security interests in Equipment (including Capital Leases) to secure Indebtedness;

(viii) pledges and deposits of cash by Debtor after the date hereof in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security benefits consistent with the current practices of Debtor as of the date hereof;

(ix) pledges and deposits of cash by Debtor as provided for in any order entered by the Bankruptcy Court in the Chapter 11 Case;

(x) pledges and deposits of cash by Debtor after the date hereof to secure the performance of tenders, bids, leases, trade contracts (other than for the repayment of Indebtedness), statutory obligations and other similar obligations in each case in the ordinary course of business consistent with the current practices of Debtor as of the date hereof; provided, that, in connection with any performance bonds issued by a surety or other person, the issuer of such bond shall have waived in writing any rights in or to, or other interest in, any of the DIP Collateral in an agreement, in form and substance satisfactory to the DIP Lender;

(xi) Liens arising from (A) operating leases and the precautionary UCC financing statement filings in respect thereof and (B) Equipment or other materials which are not owned by Debtor located on the premises of Debtor (but not in connection with, or as part of, the financing thereof) from time to time in the ordinary course of business and consistent with current practices of Debtor and the precautionary UCC financing statement filings in respect thereof; and

(xii) judgments and other similar Liens arising in connection with court proceedings that do not constitute an Event of Default; provided, that, (A) the

enforcement of such judgments and Liens remain at all times subject to the automatic stay provisions of the Bankruptcy Code, (B) except as otherwise consented to in writing by the DIP Lender, such Liens are being contested in good faith and by appropriate proceedings diligently pursued by Debtor, as the case may be, and (C) adequate reserves or other appropriate provision, if any, as are required by GAAP have been made therefor.

(c) Investments. Debtor shall not make any Investments other than Investments in: (i) marketable obligations of the United States maturing within one year; (ii) certificates of deposit, bankers' acceptances and time and demand deposits of United States banks having total assets in excess of $1,000,000,000 or other similar cash equivalents; and (iii) existing Investments on the Closing Date shown on the Budget or financial statements (each of (i) through (iii) above, a "Permitted Investment").

(d) Mergers; Asset Sales. Other than any disposals of obsolete, worn out or surplus property and the license or sublicense of intellectual property, Debtor shall not, without the written consent of the DIP Lender, (i) consummate a merger, amalgamation or consolidation, (ii) enter into any Asset Sale or otherwise effect the disposition of any assets, (iii) purchase, sell, lease or otherwise dispose of assets other than inventory in the ordinary course, (iv) make any changes in the corporate structure or identity of Debtor which could reasonably be expected to have a Material Adverse Effect or (v) enter into any binding agreement to do any of the foregoing.

(e) Restricted Payments. Debtor shall not directly or indirectly, declare, order, pay, make or set apart any sum for any Indebtedness other than the DIP Loans or the Prepetition Bond Indebtedness or any other payments permitted by the Bankruptcy Court subject to the Budget.

(f) Subsidiaries. Debtor shall not form, or cause to be formed, any Subsidiary without the written consent of the DIP Lender.

(g) Chapter 11 Claims. Except as provided in the Financing Orders, Debtor will not incur, create, assume, suffer to exist or permit any other superpriority expense claim under section 364 of the Bankruptcy Code or any or Lien which is senior to or *pari passu* with, the DIP Liens.

Section 6.2 Budget Compliance. Debtor shall comply with the Budget (subject to the permitted variances provided in the next immediate sentence), and shall not make any payments, or incur any obligations or liabilities, that are not projected and provided for in the Budget. On the last Business Day of every other week, payments for such cumulative period to date shall not exceed 10% of the respective amounts, measured as to each line item in the Budget, and 5% of the respective amounts, measured on an aggregate basis, set forth for such cumulative period to date in the Budget (provided expenditures for estate professional fees shall not exceed 100% of

the amount allocated for such expenditures in the Budget for such cumulative period, provided further that estate professionals may carry forward any unused expenditures for estate professionals to pay unpaid estate professional fees and expenses that have been allowed pursuant to any orders of the Bankruptcy Court and may carry backward any unused expenditures for estate professionals, up to an aggregate amount of $150,000 per month, to pay unpaid estate professional fees and expenses that have been allowed pursuant to any orders of the Bankruptcy Court); and receipts for such cumulative period to date shall not be less than 90% of the amounts, on an aggregate basis, set forth for such cumulative period to date in the Budget. This variance (the "Variance") shall be measured, on a rolling four week period (the "Measuring Period"); provided, however, that for purposes of calculating such Variances, (i) the first Measuring Period shall be the first two weeks after the Petition Date and the first two weeks of the Budget, and (ii) the second Measuring Period shall be the first through fourth weeks after the Petition Date and the first through fourth weeks of the Budget. Any budgeted expenditures not paid in a particular budget period may be paid during a subsequent period and, for the purpose of calculating rolling four week variances set forth above, the Budget will be revised to move such expenditures to the later period, it being understood that such later period can be outside the four week period. Expenditures (except for professional fees which are addressed as set forth above) may be paid in an earlier period in the reasonable discretion of Debtor, in which event the Budget shall be deemed amended to move the expenditure into the week of the actual expenditure for the purpose of calculating rolling four week variances set forth above. Debtor may, at any time, amend or reforecast the Budget, either for the period covered by the Budget or for any period thereafter, and the DIP Lender may approve or not approve such amendment in its sole and absolute discretion. Notwithstanding anything to the contrary in the foregoing, if Debtor exceeds, or on a commercially reasonable basis expect to exceed, any line item in the Budget by at least $200,000, it shall immediately notify the DIP Lender.

ARTICLE VII
INCREASED COSTS; TAXES; SET OFF; ETC.

Section 7.1 Taxes; Withholding, Etc.

(a) Payments to be Free and Clear. Except as otherwise required under this Section 7.1, all sums payable by Debtor hereunder and under the other DIP Loan Documents shall (except to the extent required by law) be paid free and clear of, and without any deduction or withholding on account of, any Tax (other than an Excluded Tax) imposed, levied, collected, withheld or assessed by or within the United States of America or any political subdivision in or of the United States of America or any other jurisdiction from or to which a payment is made by or on behalf of Debtor or by any federation or organization of which the United States of America or any such jurisdiction is a member at the time of payment.

(b) Withholding of Taxes. If Debtor is required by law to make any deduction or withholding on account of any such Tax from any sum paid or payable by Debtor to the DIP Lender in the ordinary or general conduct of business: (i) Debtor shall notify the DIP Lender of

any such requirement or any change in any such requirement as soon as Debtor become aware of it, (ii) Debtor shall pay any such Tax before the date on which penalties attach thereto, such payment to be made (if the liability to pay is imposed on Debtor) for its own account or (if that liability is imposed on the DIP Lender) on behalf of and in the name of the DIP Lender, (iii) if such Tax is an Indemnified Tax, the sum payable by Debtor in respect of which the relevant deduction, withholding or payment is required shall be increased to the extent necessary to ensure that, after the making of that deduction, withholding or payment, the DIP Lender, as the case may be, receives on the an amount equal to what it would have received had no such deduction, withholding or payment been required or made, and (iv) within 30 days after paying any sum from which it is required by law to make any deduction or withholding, and within 30 days after the due date of payment of any Tax which it is required by clause (ii) above to pay, Debtor shall deliver to the DIP Lender evidence satisfactory to the other affected parties of such deduction, withholding or payment and of the remittance thereof to the relevant taxing or other authority.

(c) Taxpayer Identification. Upon the reasonable request of Debtor, the DIP Lender shall deliver to Debtor two properly completed and duly executed copies of United States Internal Revenue Service Form W-9 (certifying that the DIP Lender is entitled to an exemption from U.S. backup withholding tax) or any successor form on or before the date the DIP Lender becomes a party hereto. Upon the reasonable request of Debtor, the DIP Lender also agrees to deliver to Debtor two further copies of said Form W-9, properly completed and duly executed, on or before the date that any such form expires or becomes obsolete or after the occurrence of any event requiring a change in the most recent form previously delivered by it to Debtor, and such extensions or renewals thereof as may reasonably be requested by Debtor, unless in any such case an event (including, without limitation, any change in treaty, law or regulation) has occurred prior to the date on which any such delivery would otherwise be required that renders all such forms inapplicable or that would prevent the DIP Lender from duly completing and delivering any such form with respect to it and the DIP Lender so advises Debtor.

Section 7.2 Right of Set Off. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence and during the continuance of any Event of Default, the DIP Lender is hereby authorized by Debtor at any time or from time to time, without notice to Debtor or to any other Person, any such notice being hereby expressly waived, to set off and to appropriate and to apply any and all deposits (general or special, including Indebtedness evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts) and any other Indebtedness at any time held or owing by the DIP Lender to or for the credit or the account of Debtor against and on account of the DIP Obligations of Debtor to the DIP Lender hereunder, irrespective of whether or not (a) the DIP Lender shall have made any demand hereunder or (b) the principal of or the interest on the DIP Loans or any other amounts due hereunder or the other DIP Loan Documents shall have become due and payable and although such obligations and liabilities, or any of them, may be contingent or unmatured; provided that the DIP Lender shall notify Debtor promptly upon the

exercise of any set-off and the appropriation and application made by the DIP Lender, but the failure to give such notice shall not affect the validity of such set-off and application.

ARTICLE VIII
EVENTS OF DEFAULT

Section 8.1 Events of Default. Any one or more of the following events which shall occur and be continuing shall constitute an "Event of Default":

(a) Failure to Make Payments When Due. Failure by Debtor to pay any of the DIP Obligations, including failure by Debtor to pay when due principal of, or interest on, the DIP Loans, whether at stated maturity, by acceleration, by mandatory prepayment or otherwise, or any other amount due hereunder and set forth in the Budget;

(b) Breach of Certain Covenants. Failure of Debtor to perform or comply with any material term or condition contained in Section 2.3, Article V or Article VI, including, without limitation, failure to meet or comply with the terms of the Budget (including permitted variances) or to timely achieve the Bankruptcy Milestones, and such default shall not have been remedied by Debtor (to the extent possible) or waived by the DIP Lender within 10 Business Days after the date upon which written notice thereof is given to Debtor by the DIP Lender;

(c) Breach of Representations, Etc. Any representation, warranty, certification or other written statement made or deemed made by Debtor in any DIP Loan Document or in any statement or certificate at any time given by Debtor in writing, pursuant hereto or thereto or in connection herewith or therewith shall be false in any material respect as of the date made or deemed made;

(d) Other Defaults Under DIP Loan Documents. Debtor shall default in the performance of or compliance with any term contained in any of the DIP Loan Documents, other than any such term referred to in any other section of this Section 8.1, and such default shall not have been remedied or waived within 15 Business Days after the date upon which written notice thereof is given to Debtor by the DIP Lender;

(e) Conversion or Dismissal of Case. (i) The entry of an order dismissing the Chapter 11 Case which does not contain a provision for termination of this Agreement, and payment in full in cash of all Obligations upon entry of such order dismissing the Chapter 11 Case (other than contingent indemnification obligations for which no claim has been made) or converting the Chapter 11 Case to Case under chapter 7 of the Bankruptcy Code, or Debtor files a motion or other pleading seeking entry of such an order or supports or fails to timely oppose such dismissal or conversion; or (ii) the entry of an order whereby a trustee, responsible officer or an examiner having expanded powers under Bankruptcy Code Section 1104 (other than (x) a fee examiner or (y) for purposes of an investigation pursuant to Sections 1106(a)(3) and (4) of the Bankruptcy Code) is appointed or elected in the Chapter 11 Case, or Debtor applies for,

consents to, supports, acquiesces in or fails to promptly oppose, any such appointment, or the Bankruptcy Court shall have entered an order providing for such appointment, in the case of each of clauses (i) and (ii), without the prior written consent of the DIP Lender in its sole discretion;

(f) Challenges. Debtor takes any action to, or fails to oppose any action by any other Person to (including, but not limited to, (a) challenging the standing of such party to bring any such action, (b) filing pleadings, providing evidentiary support, and appearing in court to support and present the same in opposition of such party's action, and (c) timely prosecuting all available appeals of any order or decision authorizing such party's actions or approving relief granted to such party or timely opposing all appeals (or attempts to appeal) decisions denying standing or relief to such party) (i) impair any of the material rights and remedies of the DIP Lender under the DIP Loan Documents, or (ii) avoid, subordinate, disallow, or require disgorgement by the DIP Lender of any amount received in respect of the DIP Obligations;

(g) DIP Loan Documents Impaired. At any time after the execution and delivery thereof, (i) this Agreement or any DIP Loan Document ceases to be in full force and effect (other than by reason of a release of DIP Collateral in accordance with the terms hereof or thereof or the satisfaction in full of the DIP Obligations in accordance with the terms hereof) or shall be declared null and void, or the DIP Lender shall not have or shall cease to have a valid and perfected first priority Lien, subject only to Permitted Liens, in any material portion of DIP Collateral purported to be covered by the DIP Collateral Documents or (ii) Debtor shall contest the validity or enforceability of any DIP Loan Document in writing or deny in writing that it has any further liability under any DIP Loan Document to which it is a party;

(h) Liens. At any time after the execution and delivery thereof, the Liens created by the DIP Collateral Documents shall not constitute a valid and perfected first priority Lien on the DIP Collateral intended to be covered thereby (to the extent perfection by filing, registration, recordation or possession is required herein or therein) in favor of the DIP Lender, free and clear of all other Liens (other than Permitted Liens), or, except for expiration in accordance with its terms, any of the DIP Collateral Documents shall for whatever reason be terminated or cease to be in full force and effect, or the enforceability thereof shall be contested by Debtor;

(i) Condemnation or Forfeiture of DIP Collateral. Any judicial process, condemnation or forfeiture proceedings is brought against any material item or material portion of the DIP Collateral or any rights therein shall be subject to such judicial process, condemnation or forfeiture proceedings, in each case which is not stayed in the Chapter 11 Case by the Bankruptcy Code;

(j) Government Restraint. Any Governmental Body, by a final, non-appealable order, ruling or other action, shall prevent Debtor from conducting any material part of Debtor's business, to the extent such prevention could reasonably be expected to result in a Material Adverse Effect;

(k) Operating Licenses. The loss, revocation, or termination of any license, permit, lease or agreement necessary or material to Debtor's business, or the cessation of any material part of Debtor's business, to the extent such loss, revocation, or termination could reasonably be expected to result in a Material Adverse Effect;

(l) Relief from Automatic Stay. The Bankruptcy Court shall enter an order granting relief from the automatic stay to any creditor or party in interest (i) to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any material assets of Debtor, or (ii) to permit other actions that the DIP Lender may, in its sole discretion, deem to have a Material Adverse Effect;

(m) Financing Orders. The Final Order is not entered by May 31, 2023, or there is otherwise any material breach or default of, the Financing Orders or any other order of the Bankruptcy Court or any order shall be entered reversing, amending, supplementing, staying, vacating or otherwise modifying in any material respect the Financing Orders without the prior written consent of the DIP Lender;

(n) Surcharge or Other Adverse Orders. Any order of the Bankruptcy Court is entered that surcharges the Collateral under §§ 552(b) or § 506(c), or imposes an additional Carve Out beyond that provided in this Agreement.

(o) Judgments. Any uninsured judgments as to any Post-Petition obligation shall be rendered against Debtor and the enforcement thereof shall not be stayed (by operation of law, the rules or orders of a court with jurisdiction over the matter or by consent of the party litigants), or there shall be rendered against Debtor a nonmonetary judgment with respect to a Post-Petition event, in each case which causes or would reasonably be expected to cause a Material Adverse Effect;

(p) Material Impairment. The filing of a motion, pleading or proceeding by Debtor which could reasonably be expected to result in a material impairment of the rights or interests of the DIP Lender under the DIP Loan Documents or the Financing Orders or a determination by a court with respect to a motion, pleading or proceeding brought by another party which results in such a material impairment; or

(q) Ground Lease Litigation. Debtor resolves the Ground Lease Dispute in a manner which is not consented to by the DIP Lender and the Trustee.

Section 8.2 Remedies. Subject to the Financing Orders, upon the occurrence of an Event of Default then: (i), the DIP Lender may, by written notice to Debtor, take any or all of the following actions, at the same or different times, in each case without further order of or application to the Bankruptcy Court (provided, that with respect to the enforcement of DIP Liens or other remedies with respect to the DIP Collateral under clause (iii) below, the DIP Lender shall provide Debtor with five Business Days' written notice prior to taking the action

contemplated thereby; in any hearing after the giving of the aforementioned notice, the only issue that may be raised by any party in opposition thereto being whether, in fact, an Event of Default has occurred and is continuing): (a) declare the DIP Loan Commitment terminated, whereupon the DIP Loan Commitments of the DIP Lender shall forthwith terminate immediately; (b) declare and otherwise accelerate the principal of and any accrued interest in respect of all DIP Loans and any promissory notes evidencing such DIP Loans and all other DIP Obligations owing with respect thereto hereunder and thereunder to be, whereupon the same shall become, forthwith immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by Debtor; and (c) enforce all of the DIP Liens and security interests created pursuant to the DIP Collateral Documents securing DIP Obligations owing to the DIP Lender in accordance with applicable Regulations and (ii) in addition to the foregoing, upon the occurrence of an Event of Default, the DIP Lender may, (x) exercise any right of counterclaim, setoff, banker's lien or otherwise which it may have with respect to money or property of Debtor, (y) bring any lawsuit, action or other proceeding permitted by law for the specific performance of, or injunction against any violation of, any DIP Loan Document and may exercise any power granted under or to recover judgment under any DIP Loan Document, and (iii) exercise any other right or remedy permitted by applicable Regulations or otherwise available to the DIP Lender at law, in equity or otherwise.

Section 8.3 Remedies Cumulative. No remedy herein conferred upon the DIP Lender is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or any other provision of law.

Section 8.4 Application of Proceeds. The DIP Lender shall apply any proceeds from pursuit of any remedy first to costs, fees (including the Commitment Fee) and expenses provided for herein, then to interest on the DIP Loans which is due and outstanding and then to principal on the DIP Loans which is due and outstanding.

ARTICLE IX
CASH COLLATERAL

Section 9.1 Acknowledgment.

(a) Cash Collateral. Debtor acknowledges that all cash and similar proceeds of Prepetition Collateral are "cash collateral" as that phrase is used in Bankruptcy Code § 361.

(b) 552(a). All property in which Debtor acquires any interest after the Petition Date that would have constituted Prepetition Collateral but for the bankruptcy filing shall be security for the Prepetition Indebtedness to the same extent and priority as existed before the Petition Date.

(c) Validity, Perfection and Priority of Prepetition Liens and Prepetition Indebtedness. Debtor acknowledges and agrees that as of the Petition Date: (a) the Prepetition

Liens on the Prepetition Collateral are valid, binding, enforceable, non-avoidable, and properly perfected and were granted to, or for the benefit of, the Trustee for fair consideration and reasonably equivalent value; (b) the Prepetition Liens are senior in priority over any and all other liens on the Prepetition Collateral, subject only to liens that are valid, properly perfected (before the Petition Date or in accordance with section 546 of the Bankruptcy Code), non-avoidable, and senior in priority as a matter of law to the Prepetition Liens (including without limitation the liens and rights of setoff of banks and other financial institutions (the "Cash Management Banks") providing treasury services comprising Debtor's cash management system) (collectively the "Prepetition Prior Liens"); (c) the Prepetition Indebtedness constitute legal, valid, binding, and non-avoidable obligations of Debtor enforceable in accordance with the terms of the applicable Prepetition Credit Agreements; (d) no offsets, challenges, objections, defenses, claims or counterclaims of any kind or nature to any of the Prepetition Liens or Prepetition Indebtedness exist, and no portion of the Prepetition Liens or Prepetition Indebtedness (or any payment made in respect of any thereof) is subject to any challenge or defense, including, without limitation, avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or other applicable law; (e) any payments made on account of the Prepetition Indebtedness before the Petition Date were (1) payments out of the Prepetition Collateral and/or (2) made in the ordinary course of business and in exchange for reasonably equivalent value and did not diminish any property otherwise available for distribution to unsecured creditors; and (f) Debtor waives any and all claims, objections, challenges, causes of action, and/or choses in action, including without limitation, avoidance claims under chapter 5 of the Bankruptcy Code or actions for recovery or disgorgement, against the Trustee, or any of its affiliates, or any of the respective agents, attorneys, advisors, professionals, officers, directors and employees of the foregoing, arising out of, based upon or related to their respective obligations under the Prepetition Credit Agreements. For the avoidance of doubt, Debtor acknowledges and agrees that as of the Petition Date, the Trustee has perfected, first-priority (subject only to Prepetition Prior Liens) liens on substantially all of the Prepetition Collateral.

Section 9.2 Sections 506(c) and 552(b). In light of (i) the Trustee's agreement to use of cash collateral and DIP financing: (a) subject to entry of a Final Order providing for such waiver, the Trustee is entitled to a waiver of any "equities of the case" exception under section 552(b) of the Bankruptcy Code; and (b) subject to entry of a Final Order providing for such waiver, the Trustee is entitled to a waiver of the provisions of section 506(c) of the Bankruptcy Code. The Trustee's consent to Debtor's use of Cash Collateral is conditioned upon such court orders.

Section 9.3 Consent. The Trustee consents to Debtor's use of Cash Collateral so long as:

(a) Debtor is not in default under this Agreement and the Financing Orders;

(b) Debtor uses Cash Collateral in accordance with the Budget;

(c) The bankruptcy court has not entered an order providing for a remedy or claim against the Trustee waived in this Agreement.

(d) The Trustee's consent to Debtor's use of Cash Collateral terminates upon an Event of Default under Section 8.1.

Section 9.4 Authorization to Use Cash Collateral. Debtor is authorized to use Cash Collateral subject to the terms and conditions of this Agreement and in accordance with the Approved Budget (subject to Permitted Variances) and under no circumstances will Debtor transfer any such Cash Collateral to any non-Debtor affiliates. Nothing in this Agreement shall authorize the disposition of Debtor assets outside the ordinary course of business, or Debtor's use of any Cash Collateral or other proceeds resulting therefrom, except as permitted in this Agreement, and in accordance with the Approved Budget.

Section 9.5 Prepetition Adequate Protection Liens. Pursuant to sections 361, 363(e) and 364(d) of the Bankruptcy Code, as adequate protection of: (a) the interests of the Trustee in the Prepetition Collateral against any diminution in value of its interest in the applicable Prepetition Collateral (including Cash Collateral), including resulting from the imposition of the automatic stay, the Debtor's use, sale, or lease of the Prepetition Collateral, including Cash Collateral ("Diminution in Value"), Debtor hereby grants to the Trustee, for the benefit of itself and the Bondholders, continuing valid, binding, enforceable and perfected postpetition security interests in and liens on all of Debtor's assets, including, without limitation, the DIP Collateral, but excluding all rights and causes of action arising under Bankruptcy Code §§ 544, 545, 547, 548, 549 and 550 (such liens, the "Prepetition Secured Parties Adequate Protection Liens"); and (b) the interests of the holders of mechanics' liens and/or materialmen's liens arising under applicable Arizona law (such holders, the "Arizona Mechanics' Lienholders") against any Diminution in Value of the Arizona Mechanics' Lienholders' interest, if any, Debtor shall grant to the Arizona Mechanics' Lienholders continuing valid, binding, enforceable and perfected postpetition security interests in and liens on the DIP Collateral (such liens, the "Arizona Mechanics' Lienholders Adequate Protection Liens" and together with the Prepetition Secured Parties Adequate Protection Liens, the "Adequate Protection Liens").

Section 9.6 Priority of Adequate Protection Liens.

(a) The Adequate Protection Liens shall be junior only to: (i) Prepetition Prior Liens; (ii) the DIP Liens; and (iii) the Prepetition Liens. The Adequate Protection Liens shall be senior to all other security interests in, liens on, or claims against any of Debtor's assets. The Adequate Protection Liens shall be *pari passu* as between themselves.

(b) Except as provided herein, the Adequate Protection Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted or otherwise created in or during the Case or any Successor Case and shall be valid and enforceable against any trustee appointed in the Case or any Successor Case, or upon the dismissal of the Case or Successor Case. The Adequate Protection Liens shall not be subject to (a) section 510(c) of the Bankruptcy Code with respect to the Prepetition Indebtedness, or (b) sections 549 or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the

benefit of the estate pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the Prepetition Liens or the Adequate Protection Liens.

Section 9.7 Adequate Protection Superpriority Claims. As further adequate protection of the interests of: (a) the Trustee in the Prepetition Collateral against any Diminution in Value of such interests in the Prepetition Collateral, the Trustee, on behalf of itself and the Bondholders, is hereby granted, as and to the extent provided by section 507(b) of the Bankruptcy Code, an allowed super-priority administrative expense claim in the Chapter 11 Case and any case filed by Debtor after the instant Chapter 11 Case ("Successor Case") (collectively, the "Prepetition Secured Parties Adequate Protection Superpriority Claim"): and (b) the Arizona Mechanics' Lienholders against any decrease in the value of the Arizona Mechanics' Lienholders' interest, if any, in property of Debtor's estate, the Arizona Mechanics' Lienholders are hereby granted, as and to the extent provided by section 507(b) of the Bankruptcy Code, an allowed super-priority administrative expense claim in the Case and any Successor Case (collectively, the "Arizona Mechanics' Lienholders Superpriority Claim" and together with the Prepetition Secured Parties Adequate Protection Superpriority Claim, the "Adequate Protection Superpriority Claims").

Section 9.8 Priority of the Adequate Protection Superpriority Claims. Except as set forth herein, the Adequate Protection Superpriority Claims shall have priority over all administrative expense claims and unsecured claims against Debtor or its estate, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 507(a), 507(b), 546(c) (subject to entry of a Final Order), 546(d), 726, 1113 and 1114 of the Bankruptcy Code; provided, however, that all Adequate Protection Liens granted by this Agreement are subject to being set aside and all Adequate Protection Superpriority Claims granted by this Agreement are subject to being disallowed, if and to the extent that the corresponding Prepetition Liens or underlying claim is successfully challenged (in a manner that undermines the granting of adequate protection to the recipient thereof).

Section 9.9 Carve Out.

(a) Agreement. Subject to the terms and conditions set forth herein, the DIP Liens, DIP Superpriority Claim, Prepetition Liens, Adequate Protection Liens, and Adequate Protection Superpriority Claims shall be subject to the payment of the Carve-Out.

(b) Defined. As used in this Agreement, the "Carve-Out" means the following expenses, subject, in each case, to application of any retainers that may be held by the applicable professionals as well as proceeds from unencumbered assets then currently available:

(i) except as to Miller Buckfire & Co., the payment of unpaid professional fees, costs and disbursements ("Professional Fees") incurred by Debtor and the Creditors' Committee appointed in the Case, in each case to the extent approved by the Court at any time, in an aggregate amount not to exceed the amount of such unpaid Professional Fees provided in the Budget incurred

prior to the delivery of a Carve-Out Termination Notice (the "Pre-Trigger Amount Professional Fees"), whether or not such fees are allowed prior to or after delivery of a Carve-Out Termination Notice;

(ii) all fees and costs due Miller Buckfire & Co. pursuant to that certain engagement letter dated as of March 15, 2023 between Debtor and Miller Buckfire & Co., including but not limited to any "transaction fee" due Miller Buckfire & Co. as defined in such letter;

(iii) up to a maximum amount of $150,000 of Professional Fees accrued or incurred following the delivery of a Carve-Out Termination Notice in each case to the extent allowed by the Court at any time (the "Wind-Down Carve-Out Amounts");

(iv) fees assessed pursuant to 28 U.S.C. Section 1930(a)(6);

(v) fees due the Clerk of Court; and

(vi) all reasonable fees and expenses incurred by a trustee under section 726(b) of the Bankruptcy Code in an amount not to exceed $50,000.

(vii) As used in this Agreement, the term "Carve-Out Termination Notice" means the Trustee's delivery of a written notice to Debtor, the U.S. Trustee and counsel to the Creditors' Committee (if appointed) following the occurrence and during the continuation of a Termination Event, expressly stating that the Wind-Down Carve-Out Amounts are invoked.

(c) No Direct Obligation to Pay Professional Fees. The Trustee, the DIP Lenders, and the Prepetition Secured Parties shall not be responsible for the direct payment or reimbursement of any fees or disbursements of any third-party professionals incurred in connection with the Chapter 11 Case or any Successor Case under any chapter of the Bankruptcy Code.

(d) Not a Direct Liability. Nothing in this Agreement or otherwise shall be construed to obligate the Trustee, the DIP Lender or the Trustee with respect to Prepetition Indebtedness in any way to pay compensation to or to reimburse expenses of any third-party professionals, or to guarantee that Debtor have sufficient funds to pay such compensation or reimbursement.

(e) Payment of Carve-Out After Carve-Out Termination Notice. Any payment or reimbursement made on or after the date of the delivery of the Carve-Out Termination Notice in respect of any Carve-Out Fees accrued or incurred after delivery of the Carve-Out Termination Notice shall permanently reduce the applicable component of the Carve-Out Fees on a dollar-for-dollar basis. For the avoidance of doubt, payment or reimbursement of Wind-

Down Carve-Out Amounts shall reduce the component of the Carve-Out relating to Wind-Down Carve-Out Amounts, and any payment or reimbursement of Pre-Trigger Amount Professional Fees shall reduce the component of the Carve-Out relating to Pre-Trigger Amount Professional Fees.

Section 9.10 Limitations on Use of DIP Proceeds, Cash Collateral and Carve-Out.

(a) No loans and/or proceeds from the DIP Facility, DIP Collateral, Cash Collateral (including any retainer held by any professionals for the below-referenced parties), Prepetition Collateral, or any portion of the Carve-Out may be used by Debtor, the Creditors' Committee (if appointed) or trustee or other estate representative appointed in the Chapter 11 Case or any Successor Case, or any other person, party, or entity (including any of Debtor's professionals, the Creditors' Committee's professionals or the individual members of the Creditors' Committee) to: (i) investigate (except as set forth below) or prosecute any challenge (including any litigation or other action) in connection with the value of the Prepetition Collateral or the DIP Collateral (or to pay any professional fees and disbursements incurred in connection therewith) at any time; (ii) (a) request or seek authorization to obtain postpetition loans or other financial accommodations pursuant to section 364(c) or (d) of the Bankruptcy Code, or otherwise, other than from the Trustee, (b) request or seek any modification to the Interim Order not approved by the Trustee and, to the extent such modification would affect the rights of the Trustee or (c) pay any professional fees and disbursements incurred in connection with any of the foregoing; or (iii) investigate (except as set forth below), assert, join, commence, support, or prosecute any action for any claim, counter-claim, action, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination, or similar relief against, or adverse to the interests of, in any capacity, the Trustee, the Bondholders, their respective affiliates, assigns or successors and the respective officers, directors, employees, agents, attorneys, representatives and other advisors of the foregoing, with respect to any transaction, occurrence, omission, action, or other matter (including formal or informal discovery proceedings in anticipation thereof), including, without limitation, (a) any challenges and any avoidance actions or other actions arising under chapter 5 of the Bankruptcy Code, (b) any action with respect to the validity, enforceability, priority, extent or amount of the DIP Obligations and/or the Prepetition Indebtedness, or the validity, extent, and/or priority of the DIP Liens, the Prepetition Liens, or the Prepetition Secured Parties Adequate Protection Liens, (c) any action seeking to invalidate, set aside, avoid, or subordinate, in whole or in part, (I) the DIP Liens, the Prepetition Liens, the Prepetition Secured Parties Adequate Protection Liens or any other adequate protection provided to the Prepetition Secured Parties pursuant to the terms of the Interim Order or the Final Order or (II) any of the DIP Obligations or the Prepetition Indebtedness, (d) subject to the right of Debtor to seek an emergency hearing, any action seeking, or having the effect of, preventing, hindering, or otherwise delaying (I) the Trustee's assertion, enforcement, or realization on the Cash Collateral or the DIP Collateral in accordance with the DIP Documents or this Agreement, as applicable, or (II) the Trustee's assertion, enforcement, or realization on the Cash Collateral, the Prepetition Secured Parties Adequate Protection Liens or the Prepetition Collateral in accordance with the Prepetition Credit

Agreements or the Interim Order, as applicable, (e) any action seeking to modify any of the rights, remedies, priorities, privileges, protections, and benefits granted to the Trustee under the DIP Documents or the Prepetition Credit Agreements, as applicable, or any payments made thereunder or in respect thereof, or (f) use or seek to use Cash Collateral or sell or otherwise dispose of DIP Collateral or Prepetition Collateral, unless otherwise permitted hereby or by the DIP Documents, without the prior written consent of the Trustee.

(b) Notwithstanding the foregoing, up to $50,000 in the aggregate of the Carve-Out, any DIP Collateral, any Prepetition Collateral, any Cash Collateral and proceeds of the DIP Facility may be used by the Creditors' Committee (if appointed) to investigate (but not to draft, file or prosecute claims or challenges relating to) the claims and/or liens of the Trustee under the Prepetition Credit Agreements (but not the claims and/or liens of the Trustee as DIP Lender) so long as such investigation occurs within the Challenge Period (as defined herein).

Section 9.11 Reservation of Certain Third-Party Rights and Bar of Challenges and Claims.

(a) This Agreement shall be binding upon Debtor in all circumstances upon entry of an interim order approving this Agreement.

(b) Nothing in such Interim Order or the DIP Documents shall prejudice the rights in the Chapter 11 Case of any of the Creditors' Committee (if appointed), a successor trustee and any other party-in-interest with requisite standing other than Debtor, to seek to object to or to challenge (collectively, a "Challenge") the findings set forth in the Interim Order or Debtor's Stipulations, including, but not limited to those in relation to: (i) the amount, validity, extent, priority, or perfection of the mortgage, security interests, and liens of the Trustee with respect to the Prepetition Collateral; (ii) the validity, allowability and priority of the Prepetition Indebtedness; and (iii) the releases set forth in Debtor's Stipulations. A party, including the Creditors' Committee (if appointed), must commence, as appropriate, a contested matter or adversary proceeding raising a Challenge, including, without limitation, any claim against the Prepetition Secured Parties in the nature of a setoff, counterclaim or defense to the Prepetition Indebtedness, respectively: (a) with respect to the Creditors' Committee (if appointed), the earlier of (i) 60 calendar days from the formation of the Creditors' Committee and (ii) seventy 75 calendar days from the entry of the Interim Order, and (b) with respect to any other party-in-interest (other than Debtor) ("Challenge Period"); *provided*, *that*, any trustee that is appointed in the Chapter 11 Case or in any Successor Case prior to the expiration of the Challenge Period shall have until the later of the expiration of the Challenge Period or 20 days after such trustee's appointment to assert a Challenge; and provided, further, that the Challenge Period may be extended with respect to a particular party with the written consent of the Trustee. Only the Challenges expressly raised in a motion and/or complaint filed within the Challenge Period shall be preserved, and the prosecution of such Challenges shall be limited to such person(s) having filed such motion or complaint. The applicable Challenge Period may only be extended: (I) with the written consent of Debtor and the Trustee; (II) by the Court after notice and hearing granting

a motion filed by a party with requisite standing prior to the expiration of the Challenge Period; and (III) by the Bankruptcy Court on its own initiative after notice and hearing prior to the expiration of the Challenge Period.

(c) Nothing in the Interim Order shall, or shall be construed to, grant standing on any party-in-interest, including the Creditors' Committee (if appointed), to bring any Challenge. The failure of any party in interest, including the Creditors' Committee (if appointed), to obtain an order of the Bankruptcy Court during the Challenge Period granting standing to bring any Challenge shall not be a defense to failing to commence a Challenge during the Challenge Period as required under this paragraph or to require or permit an extension of the Challenge Period. Upon the expiration of the applicable Challenge Period: (A) any and all Challenges by any party (including, without limitation, any Creditors' Committee (if appointed), any chapter 11 trustee, and/or any examiner appointed in these Cases, and any chapter 7 trustee and/or examiner appointed in any Successor Case) to any of the findings set forth in the Interim Order or Debtor's Stipulations shall be deemed to be forever waived and barred, other than those Challenges specifically and timely asserted during the Challenge Period (a "Timely Filed Challenge"); *provided*, *that*, the Challenges asserted in any such Timely Filed Challenge shall be preserved only with respect to the person who filed such Timely Filed Challenge; (B) all of the findings set forth in the Interim Order and Debtor's Stipulations shall be of full force and effect and forever binding upon all creditors, interest holders, and other parties-in-interest in the Chapter 11 Case and any Successor Case other than those persons who filed a Timely Filed Challenge; *provided*, *that*, all findings set forth in the Interim Order and all of Debtor's Stipulations other than those subject to a Timely Filed Challenge shall be binding on such persons; and (C) upon the entry of a final, non-appealable order dismissing, overruling or denying any Timely Filed Challenge, all of the findings in the Interim Order and all of Debtor's Stipulations shall be of full force and effect and forever binding upon the person bringing such overruled or denied Timely Filed Challenge. For the avoidance of doubt, any trustee appointed or elected in the Chapter 11 Case shall, until the expiration of the Challenge Period for asserting challenges, and thereafter for the duration of any adversary proceeding or contested matter commenced pursuant to this paragraph (whether commenced by such trustee or commenced by any other party in interest on behalf of Debtor's estate), be deemed to be a party other than Debtor and shall not, for purposes of such adversary proceeding or contested matter, be bound by the acknowledgements, admissions, confirmations and stipulations of Debtor in the Interim Order.

(d) In the event of a Challenge, the Trustee shall be entitled to payment of the reasonable and documented related costs and expenses, included but not limited to reasonable and documented attorneys' fees, incurred in connection with defending itself or themselves in any such proceeding as adequate protection unless such Challenge is successful. Upon a successful Challenge brought pursuant to this paragraph, the Bankruptcy Court may fashion any appropriate remedy related to any such previously paid costs and expenses.

ARTICLE X
MISCELLANEOUS

Section 10.1 Amendments and Waivers; Release of DIP Collateral.

(a) General Amendments and Waivers. No amendment, modification, termination (other than pursuant to the express terms of the DIP Loan Documents) or waiver of any provision of the DIP Loan Documents, or consent to any departure by Debtor therefrom, shall be effective without the written consent of the DIP Lender and Debtor.

(b) Effect of Notices, Waivers or Consents. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on Debtor in any case shall entitle Debtor to any other or further notice (except as otherwise specifically required hereunder or under any of the DIP Loan Documents) or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section 10.1 shall be binding upon the DIP Lender and Debtor, if signed by Debtor and DIP Lender.

Section 10.2 Notices. All notices, requests, demands and other communications to any party or given under any DIP Loan Document (collectively, the "Notices") will be in writing and delivered personally, by overnight courier or by registered mail to the parties at the following address or sent by electronic transmission (with confirmation of transmission), to the address specified below (or at such other address as will be specified by a party by like notice given at least five calendar days prior thereto):

(a) If to Debtor, at:

LEGACY CARES, INC.
6321 South Ellsworth Road
Mesa, Arizona 85212
Attn: Douglas Moss, Designated Officer
Email: douglasm@legacycaresinc.com

with a copy sent contemporaneously by email to (which shall not constitute notice):

SLANIA LAW, PLLC
2980 North Swan Road, Suite 222
Tucson, Arizona 85712
Attn: Michael A. Slania, Esq.
Email: MAS@slanialaw.com

(b) If to the DIP Lender, at:

UMB BANK, N.A.
Corporate Trust Services
120 South 6th Street, Suite 1400
Minneapolis, Minnesota 55402
Attn: Michael G. Slade, Senior Vice President
Email: michael.slade@umb.com

with a copy sent contemporaneously by email to (which shall not constitute notice):

LEWIS ROCA ROTHGERBER CHRISTIE LLP
Attn: Bryant Barber, Esq.
201 East Washington Street, Suite 1200
Phoenix, Arizona 85004-2595
Email: BBarber@lewisroca.com

All Notices will be deemed delivered when actually received. Each of the parties will hereafter notify the other in accordance with this Section of any change of address or email address to which notice is required to be mailed.

Section 10.3 Expenses. Whether or not the transactions contemplated hereby shall be consummated or any DIP Loans shall be made, Debtor agrees to pay promptly, subject to the Financing Orders (but no later than the Maturity Date), upon written demand from the DIP Lender (together with summary backup documentation supporting such reimbursement request) and without the requirement for Bankruptcy Court approval in the event the transactions contemplated hereby are consummated:

(i) all the reasonable, out-of-pocket costs and expenses of preparation of the DIP Loan Documents and any consents, amendments, waivers or other modifications thereto; the reasonable fees, expenses and disbursements of Lewis Roca Rothgerber Christie LLP, as counsel to the DIP Lender, in connection with the negotiation, preparation, execution and administration of the DIP Loan Documents and any consents, amendments, supplements, waivers or other modifications thereto;

(ii) all the reasonable, out of pocket costs and expenses of creating and perfecting Liens in favor of the DIP Lender pursuant hereto, including, without limitation, filing and recording fees, expenses, stamp or documentary taxes, search fees, title insurance premiums and reasonable fees, expenses and disbursements of Lewis Roca Rothgerber Christie LLP, as counsel to the DIP Lender, and any other counsel of the DIP Lender in any other jurisdiction;

(iii) upon the occurrence and during the continuance of an Event of Default or as otherwise incurred in connection with visits and inspections

permitted by Section 5.1(b) (the expenses for which are required to be paid by Debtor pursuant to such Section), all the actual costs and reasonable fees, expenses and disbursements of any auditors, accountants, consultants or appraisers incurred in connection with the preservation and protection of the DIP Lender's rights under this Agreement and the other DIP Loan Documents;

(iv) all the actual costs and reasonable expenses, including, without limitation, upon the occurrence and during the continuance of an Event of Default or as otherwise incurred in connection with visits and inspections permitted by Section 5.1(b), the expenses for which are required to be paid by Debtor pursuant to such Section, the reasonable fees, expenses and disbursements of any appraisers, consultants, advisors and agents employed or retained by the DIP Lender and its counsel in connection with the inspection, verification, custody or preservation of any of the DIP Collateral, to the extent required or permitted hereunder;

(v) after the occurrence and during the continuance of a Default or an Event of Default, all out-of-pocket costs and expenses, including, without limitation, reasonable attorneys' fees and out-of-pocket costs, incurred by the DIP Lender in enforcing any DIP Obligations of or in collecting any payments due from Debtor hereunder or under the other DIP Loan Documents by reason of such Default or Event of Default (including in connection with the sale of, collection from, or other realization upon any of the DIP Collateral) or in connection with any negotiations, reviews, refinancing or restructuring of the credit arrangements provided hereunder, including without limitation in the nature of a "workout" or pursuant to any insolvency or bankruptcy Case or proceedings; and

(vi) the foregoing shall not be construed to limit any other provisions of the DIP Loan Documents regarding costs and expenses to be paid by Debtor.

Section 10.4 Enforceability; Successors and Assigns.

(a) Enforceability; Successors and Assigns. This Agreement will be binding upon and inure to the benefit of and is enforceable by the respective successors and permitted assigns of the parties hereto. This Agreement may not be assigned by Debtor hereto without the prior written consent of the DIP Lender. Any assignment or attempted assignment in contravention of this Section 10.4(a) will be void *ab initio* and will not relieve the assigning party of any obligation under this Agreement.

(b) Assignments. The DIP Lender may assign (an "Assignment") all or a portion of its rights and obligations under the DIP Loan Documents (including all or a portion of the DIP Lender's DIP Loans and DIP Loan Commitment, as the case may be, in a minimum amount of $250,000) to any Assignee. Such Assignment may be made only with the consent of

Debtor, which consent shall not be unreasonably withheld; *provided*, *however*, that following an Event of Default, the Assignment may be made without the consent of Debtor (but notice of such assignment shall be provided to Debtor). From and after the date of the Assignment, the Assignee shall be a party hereto and, to the extent of the interest assigned pursuant to the Assignment, have the rights and obligations of the DIP Lender under this Agreement, and the assigning DIP Lender shall, to the extent of the interest assigned, be released from its obligations under this Agreement. No Assignment by the DIP Lender shall release the DIP Lender from its obligations hereunder arising prior to the date of such assignment. Debtor hereby consents to the disclosure of any information obtained by DIP Lender in connection with this Agreement to any Person to which DIP Lender sells, or proposes to sell, its DIP Loans or DIP Loan Commitment, *provided* any such Person shall agree to keep any such information confidential in a manner and on terms substantially consistent with the Trustee's confidentiality obligations.

Section 10.5 Integration. This Agreement and the other DIP Loan Documents contain and constitute the entire agreement of the parties with respect to the subject matter hereof and supersede all prior negotiations, agreements and understandings, whether written or oral, of the parties hereto.

Section 10.6 No Waiver; Remedies. No failure or delay by any party in exercising any right, power or privilege under this Agreement or any of the other DIP Loan Documents will operate as a waiver of such right, power or privilege. A single or partial exercise of any right, power or privilege will not preclude any other or further exercise of the right, power or privilege or the exercise of any other right, power or privilege. The rights and remedies provided in the DIP Loan Documents will be cumulative and not exclusive of any rights or remedies provided by law.

Section 10.7 Setoff. **Debtor hereby, subject to the Financing Orders, grants to the DIP Lender a continuing lien, security interest and right of setoff as security for all liabilities and obligations to the DIP Lender, whether now existing or hereafter arising, upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of the DIP Lender or any Affiliate and their successors and assigns or in transit to any of them. Regardless of the adequacy of any collateral, if any of the DIP Obligations are due and payable and have not been paid or any Event of Default shall have occurred, any deposits or other sums credited by or due from the DIP Lender to Debtor and any securities or other property of Debtor in the possession of the DIP Lender may be applied to or set off by the DIP Lender against the payment of DIP Obligations and any and all other liabilities, direct, or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, of Debtor to the DIP Lender. ANY AND ALL RIGHTS TO REQUIRE THE DIP LENDER TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER DIP COLLATERAL WHICH SECURES THE DIP OBLIGATIONS, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY**

OF DEBTORS ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

Section 10.8 Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Delivery of an executed counterpart of this Agreement by facsimile or other electronic transmission shall be equally as effective as delivery of an original executed counterpart of this Agreement.

Section 10.9 Governing Law; Submission To Jurisdiction; Venue.

(a) SUBJECT TO THE JURISDICTION OF THE BANKRUPTCY COURT, THIS AGREEMENT AND THE OTHER DIP LOAN DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL, EXCEPT AS OTHERWISE PROVIDED IN CERTAIN OF THE OTHER DIP LOAN DOCUMENTS, BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE INTERNAL LAW OF THE STATE OF NEW YORK (WITHOUT REGARD TO CONFLICTS OF LAWS RULES AND PRINCIPLES THEREUNDER) AND, TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE. ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER DIP LOAN DOCUMENT SHALL BE BROUGHT IN THE BANKRUPTCY COURT, OR IF THE BANKRUPTCY COURT DOES NOT HAVE OR DOES NOT EXERCISE JURISDICTION, THEN IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE OF ARIZONA, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT OR ANY OTHER DIP LOAN DOCUMENT, DEBTOR HEREBY IRREVOCABLY ACCEPTS FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS. DEBTOR HEREBY FURTHER IRREVOCABLY WAIVES ANY CLAIM THAT ANY SUCH COURTS LACKS PERSONAL JURISDICTION OVER DEBTOR, AND AGREE NOT TO PLEAD OR CLAIM, IN ANY LEGAL ACTION PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER DIP LOAN DOCUMENT BROUGHT IN THE AFOREMENTIONED COURTS, THAT SUCH COURTS LACK PERSONAL JURISDICTION OVER DEBTOR. DEBTOR FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF THE AFOREMENTIONED COURTS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO DEBTOR AT THE ADDRESS SET FORTH IN SECTION 10.2, SUCH SERVICE, NOTWITHSTANDING THE PERIODS OF TIME PROVIDED FOR IN SECTION 10.2, TO BECOME EFFECTIVE 30 DAYS AFTER SUCH MAILING. DEBTOR HEREBY IRREVOCABLY WAIVES ANY OBJECTION TO SUCH SERVICE OF PROCESS AND FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY ACTION OR PROCEEDING COMMENCED HEREUNDER OR UNDER ANY OTHER DIP LOAN DOCUMENT THAT SERVICE OF

PROCESS WAS IN ANY WAY INVALID OR INEFFECTIVE. NOTHING HEREIN SHALL AFFECT THE RIGHT OF THE DIP LENDER TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST DEBTOR IN ANY OTHER JURISDICTION.

(b) DEBTOR HEREBY IRREVOCABLY WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY OF THE AFORESAID ACTIONS OR PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER DIP LOAN DOCUMENT BROUGHT IN THE COURTS REFERRED TO IN CLAUSE (a) ABOVE AND HEREBY FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURTS HAVE BEEN BROUGHT IN AN INCONVENIENT FORUM.

Section 10.10 Waiver of Jury Trial**. THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THAT THEY MAY HAVE TO TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION, OR IN ANY LEGAL PROCEEDING, DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT (WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY). EACH PARTY (A) CERTIFIES THAT NO REPRESENTATIVE OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTIES WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.**

Section 10.11 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, or public policy, all other conditions and provisions of this Agreement will nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto will negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

Section 10.12 Survival. All representations, warranties, covenants, agreements, and conditions contained in or made pursuant to this Agreement or the other DIP Loan Documents shall survive (a) the making of the Loans and the payment of the DIP Obligations and (b) the performance, observance and compliance with the covenants, terms and conditions, express or

implied, of all DIP Loan Documents, until the due and punctual (i) indefeasible payment of the DIP Obligations and (ii) performance, observance and compliance with the covenants, terms and conditions, express or implied, of this Agreement and all of the other DIP Loan Documents; *provided*, *however*, that the provisions of Article VII and Section 10.3 (other than Section 10.3(a)(iii), except to the extent fees, costs and expenses have been incurred prior to termination hereof but not paid in accordance with such Sections, in which case such Sections shall survive only to require payment of such fees, costs and expenses) shall survive (x) indefeasible payment of the DIP Obligations and (y) performance, observance and compliance with the covenants, terms and conditions, express or implied, of this Agreement and all of the other DIP Loan Documents.

Section 10.13 Maximum Lawful Interest. Notwithstanding anything to the contrary contained herein, in no event shall the amount of interest and other charges for the use of money payable under this Agreement or any other DIP Loan Document exceed the maximum amounts permissible under any law that a court of competent jurisdiction shall, in a final determination, deem applicable. Debtor and the DIP Lender, in executing and delivering this Agreement, intend legally to agree upon the rate or rates of interest and other charges for the use of money and manner of payment stated within it; *provided*, *however*, that, anything contained herein to the contrary notwithstanding, if the amount of such interest and other charges for the use of money or manner of payment exceeds the maximum amount allowable under applicable law, then, *ipso facto* as of the Closing Date, Debtor is and shall be liable only for the payment of such maximum as allowed by law, and payment received from Debtor in excess of such legal maximum, whenever received, shall be applied to reduce the principal balance of the Loans to the extent of such excess.

Section 10.14 No Marshalling. The DIP Lender shall not be required to marshal any present or future DIP Collateral and Debtor hereby agrees that it will not invoke any law relating to the marshalling of collateral and irrevocably waives the benefits of any such laws.

Section 10.15 Interpretation. As used in this Agreement, references to the singular will include the plural and vice versa and references to the masculine gender will include the feminine and neuter genders and vice versa, as appropriate. Unless otherwise expressly provided in this Agreement (a) the words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement will refer to this Agreement as a whole and not to any particular provision of this Agreement and (b) article, section, subsection, and schedule references are references with respect to this Agreement unless otherwise specified. Unless the context otherwise requires, the term "including" will mean "including, without limitation." The headings in this Agreement and in the Schedules are included for convenience of reference only and will not affect in any way the meaning or interpretation of this Agreement.

Section 10.16 Ambiguities. This Agreement and the other DIP Loan Documents were negotiated between legal counsel for the parties and any ambiguity in this Agreement or the

other DIP Loan Documents shall not be construed against the party who drafted this Agreement or such other DIP Loan Documents.

Section 10.17 The PATRIOT Act. The DIP Lender hereby notifies Debtor, that pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies Debtor and other information that will allow the DIP Lender to identify Debtor in accordance with the PATRIOT Act.

Section 10.18 Conflicting Provisions in Security Documents. If any provisions of this Agreement conflict with any DIP Collateral Document, the provisions of this Agreement shall govern.

Section 10.19 Conflicting Provisions in the Financing Orders. If any provisions of this Agreement conflict with any provisions in the Financing Orders, the provisions of the Financing Orders shall control.

Section 10.20 Release. DEBTOR HEREBY ACKNOWLEDGES AND AGREES THAT AS OF THE DATE HEREOF IT HAS NO DEFENSE, COUNTERCLAIM, OFFSET, CROSS-COMPLAINT, CLAIM OR DEMAND OF ANY KIND OR NATURE WHATSOEVER THAT CAN BE ASSERTED TO REDUCE OR ELIMINATE ALL OR ANY PART OF ITS LIABILITY TO REPAY THE DIP OBLIGATIONS (OR THE PREPETITION INDEBTEDNESS OWED TO THE PREPETITION SECURED PARTIES) OR TO SEEK AFFIRMATIVE RELIEF OR DAMAGES OF ANY KIND OR NATURE FROM THE DIP LENDER (IN ITS CAPACITY AS DIP LENDER HEREUNDER AND IN ITS CAPACITY AS A PREPETITION SECURED PARTY) OR THE BONDHOLDERS. DEBTOR HEREBY VOLUNTARILY AND KNOWINGLY RELEASES AND FOREVER DISCHARGES THE DIP LENDER (IN ITS CAPACITY AS DIP LENDER HEREUNDER AND IN ITS CAPACITY AS A PREPETITION SECURED PARTY), THE BONDHOLDERS, THEIR RESPECTIVE AFFILIATES, AND EACH OF THEIR RESPECTIVE AGENTS, EMPLOYEES, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "RELEASED PARTIES") FROM ALL POSSIBLE CLAIMS, DEMANDS, ACTIONS, CAUSES OF ACTION, DAMAGES, COSTS, EXPENSES, OBLIGATIONS, DEBTS AND LIABILITIES WHATSOEVER, WHETHER KNOWN OR UNKNOWN, ANTICIPATED OR UNANTICIPATED, SUSPECTED OR UNSUSPECTED, FIXED, CONTINGENT OR CONDITIONAL, OR AT LAW OR IN EQUITY, IN ANY CASE ORIGINATING IN WHOLE OR IN PART ON OR BEFORE THE DATE THIS AGREEMENT IS EXECUTED THAT DEBTOR MAY NOW OR HEREAFTER HAVE AGAINST THE RELEASED PARTIES, IF ANY, IRRESPECTIVE OF WHETHER ANY SUCH CLAIMS ARISE OUT OF CONTRACT, TORT, VIOLATION OF LAW OR REGULATIONS, OR OTHERWISE, AND THAT ARISE FROM ANY DIP LOANS OR PREPETITION INDEBTEDNESS, THE EXERCISE OF ANY RIGHTS AND REMEDIES UNDER THE DIP LOAN DOCUMENTS OR THE PREPETITION CREDIT AGREEMENTS AND THEIR RELATED DOCUMENTS, AND/OR NEGOTIATION FOR AND EXECUTION OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION,

ANY CONTRACTING FOR, CHARGING, TAKING, RESERVING, COLLECTING OR RECEIVING INTEREST IN EXCESS OF THE HIGHEST LAWFUL RATE APPLICABLE. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN, THE FOREGOING RELEASE SHALL BE SUBJECT TO THE RIGHTS OF THE COMMITTEE OR ANY OTHER PARTY IN INTEREST UNDER THE FINANCING ORDERS.

Section 10.21 Electronic Transactions. The transaction described herein may be conducted, and related documents may be stored, by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents will be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

[Remainder of page intentionally left blank; signatures on following pages.]

In witness whereof, the parties hereto have caused this Agreement to be duly executed and delivered by their respective representatives thereunto duly authorized as of the date first written above.

DEBTOR:

LEGACY CARES, INC.

By:_____
Print Name:
Title:

120923376.2

DIP LENDER:

UMB BANK, N.A., in its capacity as Trustee

By:_____
Print Name:
Title:

SCHEDULE 2.1

DIP LOAN COMMITMENTS

DIP Loans	**Commitment Amount**
Initial DIP Loans	$1,600,000
DIP Loans (less Initial DIP Loans)	$7,400,000
DIP Loan Commitment (cumulative)	$9,000,000

SCHEDULE 4.1(d)

PENDING LITIGATION

Case Title	Case No	Status	Court
FieldTurf USA, Inc. v. Legacy Sports USA, LLC, et al.	No. 01-22-0003-8857	Pending	American Arbitration Association
Icing Investment Holdings, LLC v Legacy Cares, Inc.	CV2021-003291	Judgment confirming Arbitration Award granted March 2023.	Maricopa County Superior Court
Wholesale Floors, LLC v. Legacy Cares, Inc. et al.	CV2022-013494	Pending, mechanic's lien foreclosure	Maricopa County Superior Court
E&K of Phoenix, Inc. v. Legacy Cares, Inc., et al.	CV2022-015003	Pending, consolidated in CV2022-013494.	Maricopa County Superior Court
Johnson Statewide Caulking, LP v. Legacy Cares, Inc., et al.	CV2022-015957	Pending, consolidated in CV2022-013494.	Maricopa County Superior Court
RKS Plumbing v. Legacy Cares, Inc, et al.	CV2022-016395	Pending, consolidated in CV2022-013494.	Maricopa County Superior Court
Spectrum Mechanical & Service Contractors, LLC v. US Development and Construction, et al.	CV2023-001116	Pending, consolidated in CV2022-013494.	Maricopa County Superior Court
Insight Investments, LLC v Legacy Sports USA, LLC and Legacy Cares, Inc.	CV2023-004687	Case filed March 27, 2023.	Maricopa County Superior Court
ICON Architectural Group, LLC v. Legacy Cares, Inc., et al.	CV2023-006341	Case filed April 25, 2023.	Maricopa County Superior Court

EXHIBIT A

Budget

EXHIBIT B

Form of Borrowing Certificate

Borrowing Certificate

Reference is hereby made to that certain Priming Superpriority Debtor-In-Possession Credit Agreement (the "DIP Credit Agreement") dated as of April [ ], 2022, by and between Legacy Cares, Inc. ("Debtor") and UMB Bank, N.A., in its capacity as Trustee (the "DIP Lender"). Capitalized terms used but not defined herein shall have the meanings given to them in the DIP Credit Agreement. The undersigned, in their capacity as an Authorized Officer of Debtor and not individually, hereby certifies as follows as of [ ], 2023 (the "Borrowing Date"):

1. DIP Loans. Pursuant to the terms of the DIP Credit Agreement, Debtor is authorized to borrow DIP Loans in an amount equal to the DIP Loan Commitment during the DIP Commitment Period, solely in compliance with the DIP Credit Agreement. Debtor hereby requests an advance of DIP Loans in the aggregate amount of $_____ (the "Borrowing") to be transferred to Debtor within four (4) Business Days of the Borrowing Date.

2. Representations and Warranties. On and as of the Borrowing Date (both before and after giving effect to the Borrowing requested hereby and application of such proceeds), the representations and warranties of Debtor contained in the DIP Loan Documents are true and correct in all material respects (except to the extent such representations and warranties specifically relate to an earlier date, such representations and warranties are true and correct on and as of such earlier date).

3. No Default or Event of Default. As of the Borrowing Date, no event has occurred or is continuing or would result from the consummation of the Borrowing requested hereby, or the application of such proceeds, that would constitute a Default or an Event of Default.

4. Available Commitments. After making the DIP Loans requested by this Borrowing, the aggregate outstanding principal amount of the DIP Loans will not exceed the DIP Loan Commitment.

5. Use of Proceeds. The proceeds of the DIP Loans advanced under this Borrowing will be used by Debtor in accordance with the Budget and the DIP Credit Agreement.

[signature page follows]

IN WITNESS WHEREOF, the undersigned has executed this Borrowing Certificate as of the date first above written.

LEGACY CARES, INC.

By:_____
Print Name:
Title:

EXHIBIT B

Chapter 11 DIP Budget

Legacy Cares, Inc.

Week Ending:	1 5/7/2023	2 5/14/2023	3 5/21/2023	4 5/28/2023	5 6/4/2023	6 6/11/2023	7 6/18/2023	8 6/25/2023	9 7/2/2023	10 7/9/2023	11 7/16/2023	12 7/23/2023	13 7/30/2023
Total Operating Receipts	$ 528,084	$ 528,084	$ 528,084	$ 528,084	$ 405,389	$ 405,389	$ 405,389	$ 405,389	$ 405,389	$ 370,700	$ 370,700	$ 370,700	$ 370,700
Operating Disbursements													
Legacy Cares Operating Expenses	-	-	40,238	-	40,238	-	40,238	-	40,238	-	40,238	-	40,238
Direct Sports Expenses	79,004	79,004	79,004	198,146	53,041	53,041	53,041	53,041	159,183	48,222	48,222	48,222	156,514
Management Fee	-	-	157,295	-	-	-	121,140	-	-	-	118,317	-	-
Salaries & Wages	355,185	-	355,185	-	349,192	-	349,192	-	349,192	-	312,341	-	312,341
Employee Benefits & Taxes	68,013	-	66,513	-	67,017	-	65,517	-	67,017	-	59,395	-	59,395
G&A	40,545	40,545	40,545	60,095	34,612	34,612	89,112	34,612	54,162	38,481	92,981	38,481	58,031
Plant Expenses	155,150	137,487	270,150	123,150	133,720	111,057	138,720	205,720	101,720	155,150	137,487	285,150	123,150
Event Expenses	-	-	-	-	-	-	-	-	-	-	-	-	-
Food & Beverage Expenses	30,574	30,574	30,574	30,574	15,333	15,333	15,333	15,333	15,333	19,167	19,167	19,167	19,167
Ground Lease	319,685	-	-	-	319,685	-	-	-	-	319,685	-	-	-
Other Expense	1,411	1,411	1,411	1,411	1,129	1,129	1,129	1,129	1,129	1,411	1,411	1,411	1,411
Contingency	6,250	6,250	6,250	6,250	5,000	5,000	5,000	5,000	5,000	6,250	6,250	6,250	6,250
Total Operating Disbursements	1,055,818	295,271	1,047,166	419,626	1,018,968	220,172	878,422	314,835	792,974	588,366	835,808	398,680	776,496
Net Cash from Operations	(527,734)	232,813	(519,082)	108,458	(613,578)	185,217	(473,033)	90,554	(387,584)	(217,666)	(465,109)	(27,981)	(405,796)
Non-Operating Receipts/(Disbursements)													
Capital Expenditures	63,750	63,750	63,750	63,750	6,000	6,000	6,000	6,000	6,000	7,500	7,500	7,500	7,500
Company Restructuring Fees								360,000				385,000	
Investment Banker Fees		75,000				75,000					75,000		
UCC Professional Fees								50,000				75,000	
US Trustee Fees													55,106
Net Cash Flow	**(591,484)**	**94,063**	**(582,832)**	**44,708**	**(619,578)**	**104,217**	**(479,033)**	**(325,446)**	**(393,584)**	**(225,166)**	**(547,609)**	**(495,481)**	**(468,402)**
Beginning Cash	**-**	**408,516**	**502,579**	**519,748**	**564,456**	**544,878**	**649,095**	**570,062**	**544,616**	**551,032**	**525,866**	**578,257**	**582,776**
DIP Draws	**1,000,000**	**-**	**600,000**	**-**	**600,000**	**-**	**400,000**	**300,000**	**400,000**	**200,000**	**600,000**	**500,000**	**400,000**
Ending Cash	**$ 408,516**	**$ 502,579**	**$ 519,748**	**$ 564,456**	**$ 544,878**	**$ 649,095**	**$ 570,062**	**$ 544,616**	**$ 551,032**	**$ 525,866**	**$ 578,257**	**$ 582,776**	**$ 514,374**

Chapter 11 DIP Budget

Legacy Cares, Inc.

Week Ending:	14 8/6/2023	15 8/13/2023	16 8/20/2023	17 8/27/2023	18 9/3/2023	19 9/10/2023	20 9/17/2023	21 9/24/2023	22 10/1/2023	23 10/8/2023	24 10/15/2023	25 10/22/2023	26 10/29/2023	Total
Total Operating Receipts	$ 348,025	$ 348,025	$ 348,025	$ 348,025	$ 348,025	$ 560,046	$ 560,046	$ 560,046	$ 560,046	$ 711,725	$ 711,725	$ 711,725	$ 711,725	$ 12,449,294
Operating Disbursements														
Legacy Cares Operating Expenses	-	-	40,238	-	40,238	-	40,238	-	40,238	-	40,441	-	-	442,822
Direct Sports Expenses	55,431	55,431	55,431	55,431	163,723	92,927	92,927	92,927	324,544	87,079	87,079	87,079	265,645	2,623,341
Management Fee	-	-	85,668	-	-	-	101,608	-	-	-	124,686	-	-	708,714
Salaries & Wages	-	326,441	-	326,441	-	359,592	-	359,592	-	394,756	-	394,756	-	4,544,207
Employee Benefits & Taxes	1,500	61,737	-	61,737	1,500	67,245	-	67,245	-	74,588	-	73,088	-	861,507
G&A	31,460	31,460	93,460	51,010	31,460	43,964	98,464	43,964	63,514	42,954	97,454	42,954	62,504	1,391,437
Plant Expenses	133,720	116,057	230,720	149,720	85,720	155,150	137,487	275,150	123,150	155,150	132,487	260,150	123,150	4,155,613
Event Expenses	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Food & Beverage Expenses	13,052	13,052	13,052	13,052	13,052	22,018	22,018	22,018	22,018	96,168	96,168	96,168	96,168	813,633
Ground Lease	369,685	-	-	-	319,685	-	-	-	319,685	-	-	-	-	1,968,113
Other Expense	1,129	1,129	1,129	1,129	1,129	1,411	1,411	1,411	1,411	1,411	1,411	1,411	1,411	33,867
Contingency	5,000	5,000	5,000	5,000	5,000	6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250	150,000
Total Operating Disbursements	610,977	610,306	524,697	663,519	661,506	748,558	500,403	868,558	900,811	858,355	585,976	961,855	555,128	17,693,253
Net Cash from Operations	(262,952)	(262,281)	(176,672)	(315,494)	(313,481)	(188,512)	59,643	(308,512)	(340,765)	(146,630)	125,750	(250,130)	156,598	(5,243,959)
Non-Operating Receipts/(Disbursements)														
Capital Expenditures	6,000	6,000	6,000	6,000	6,000	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	405,000
Company Restructuring Fees				385,000				280,000				155,000		1,565,000
Investment Banker Fees		75,000					-				-			300,000
UCC Professional Fees				75,000				75,000				75,000		350,000
US Trustee Fees													82,070	137,176
Net Cash Flow	**(268,952)**	**(343,281)**	**(182,672)**	**(781,494)**	**(319,481)**	**(196,012)**	**52,143**	**(671,012)**	**(348,265)**	**(154,130)**	**118,250**	**(487,630)**	**67,027**	**(8,001,135)**
Beginning Cash	**514,374**	**545,422**	**502,141**	**519,469**	**537,974**	**518,493**	**522,481**	**574,624**	**603,612**	**555,348**	**501,218**	**619,467**	**531,837**	**-**
DIP Draws	**300,000**	**300,000**	**200,000**	**800,000**	**300,000**	**200,000**	**-**	**700,000**	**300,000**	**100,000**	**-**	**400,000**	**-**	**8,600,000**
Ending Cash	**$ 545,422**	**$ 502,141**	**$ 519,469**	**$ 537,974**	**$ 518,493**	**$ 522,481**	**$ 574,624**	**$ 603,612**	**$ 555,348**	**$ 501,218**	**$ 619,467**	**$ 531,837**	**$ 598,865**	**$ 598,865**
											DIP Credit Facility Commitment			**$ 9,000,000**

EXHIBIT C

UNITED STATES BANKRUPTCY COURT

DISTRICT OF ARIZONA

In Re: **LEGACY CARES, INC.,** **Debtor.**	**Case No.** **Chapter 11** **INTERIM ORDER RE: USE OF CASH COLLATERAL AND POSTPETITION FINANCING ON PRIMING, SUPERPRIORITY AND SECURED BASIS**

Legacy Cares, Inc., debtor and debtor-in-possession ("Debtor") filed its *Motion For Orders (1) Authorizing Debtor to Obtain Postpetition Financing on Priming, Superpriority and Secured Basis; (2) Permitting Use of Cash Collateral; (3) Granting Interim and Additional Relief; and (4) Scheduling a Final Hearing Under Bankruptcy Rule 4001(c)* [ECF No. ___] ("Motion")[1] which requested entry of interim and final orders pursuant to Bankruptcy Code §§105(a), 363(a) and 364 of the Bankruptcy Code,

[1] All undefined, capitalized terms shall have the meaning ascribed to them in the Motion.

Bankruptcy Rules 4001(b) and (c) and 9014, and Local Rules 4001-2 and 4001-4. Notice of the expedited hearing on the Motion was provided to the U.S. Trustee, the 20 largest unsecured creditors, UMB Bank, N.A., the ML Claimants and those parties having requested notice as evidenced by the Affidavit on Service on file (DE --).

At the expedited hearing held on May [--], 2023, Debtor was represented by its counsel, [----------] appeared for the U.S. Trustee, [INSERT NAMES OF OTHER COUNSEL APPEARING], and Susan Freeman and Rob Charles appeared for UMB Bank, N.A., as trustee ("UMB").

The Court having considered the Motion, the Declarations of Douglas Moss and Keith Bierman in support of the Motion, the arguments of counsel at the expedited hearing, and the full record before it, and good cause appearing,

THE COURT FINDS, CONCLUDES, AND HOLDS:

A. The amount of UMB's secured debt and the validity, perfection, and scope of the security interests securing UMB's debt, as set forth in the Motion, are binding upon Debtor, and Debtor has released and waived all claims, setoff rights, surcharge rights, avoidance action and subordination actions against UMB.

B. Debtor's actions in connection with the DIP Credit Facility are validly authorized.

C. Debtor provided adequate notice as required by Bankruptcy Rules 2002, 4001, 9013, and 9014 and this Court's local rules.

D. With respect to Debtor's use of cash collateral, Debtor lacks the ability to operate its business and preserve its going concern value without use of cash collateral on an emergency, interim basis.

E. With respect to Debtor's post-petition borrowing, Debtor lacks the ability to operate its business and preserve its going concern value without borrowing funds on an emergency, interim basis.

F. Debtor is unable to obtain post-petition financing on terms better for the estate than offered in the DIP Credit Facility from UMB.

G. The terms of the DIP Credit Facility properly provide adequate protection as and to the extent required by Bankruptcy Code §§ 361, 363 and 364.

H. The terms of the DIP Credit Facility are proposed by UMB in good faith and in order to preserve Debtor's essential business value. Debtor's determination to enter into the DIP Credit Facility is an appropriate exercise of Debtor's business judgment.

IT IS HEREBY ORDERED:

1. Approving the Motion on an interim basis, authorizing Debtor to enter into the DIP Credit Facility.

2. Debtor is allowed to use up to $[----------] of the DIP Credit Facility on an interim basis.

3. The terms of Debtor's use of cash collateral and post-petition borrowing shall be, on an interim basis, as provided in the DIP Credit Facility and this Interim Order.

4. To secure the obligations evidenced by the DIP Credit Facility on an interim basis, pursuant to Bankruptcy Code §§ 361, 363, 364, UMB is hereby granted continuing, valid, binding, enforceable, non-avoidable and automatically and properly perfected post-petition security interests and liens as provided in the DIP Credit Facility.

5. Notwithstanding Bankruptcy Code § 552, all liens of UMB shall attach to collateral acquired by Debtor after the bankruptcy filing.

6. This Interim Order shall be sufficient and conclusive evidence of the validity, perfection and priority of all liens granted in the DIP Credit Facility without the necessity of any additional filing, recording or other action by UMB.

7. UMB has acted in good faith in connection with the DIP Credit Facility and this Interim Order and is entitled to rely upon the protections of Bankruptcy Code § 364(e).

8. A final hearing on Debtor's Motion is scheduled for May [--], 2023, at [COURT LOCATION OR VIRTUAL LINK] and counsel for Debtor is hereby directed to provide notice of the final hearing to all persons and entities entitled to notice. Objections to entry of a final order approving Debtor's Motion shall be filed not later that May [--], 2023.

DATED AND SIGNED ABOVE.

EXHIBIT D

UNITED STATES BANKRUPTCY COURT

DISTRICT OF ARIZONA

In Re: **LEGACY CARES, INC.,** **Debtor.**	**Case No.** **Chapter 11** **FINAL ORDER RE: USE OF CASH COLLATERAL AND POSTPETITION FINANCING ON PRIMING, SUPERPRIORITY AND SECURED BASIS**

Legacy Cares, Inc., debtor and debtor-in-possession ("Debtor") filed its *Motion For Orders (1) Authorizing Debtor to Obtain Postpetition Financing on Priming, Superpriority and Secured Basis; (2) Permitting Use of Cash Collateral; (3) Granting Interim and Additional Relief; and (4) Scheduling a Final Hearing Under Bankruptcy Rule 4001(c)* [ECF No. ___] ("Motion")[1] which requested entry of interim and final orders pursuant to Bankruptcy Code §§105(a), 363(a) and 364 of the Bankruptcy Code,

[1] All undefined, capitalized terms shall have the meaning ascribed to them in the Motion.

Bankruptcy Rules 4001(b) and (c) and 9014, and Local Rules 4001-2 and 4001-4. In the Motion, Debtor seeks authority to use cash collateral and obtain post-petition financing from UMB Bank, N.A., as trustee ("UMB").

UMB as debtor-in-possession lender has agreed to extend a credit facility to Debtor for post-petition financing up to an aggregate principal amount not to exceed $[----------] in accordance with the terms of (i) the "Priming Superior Priority Debtor-in-Possession Credit Agreement" dated as of April [--], 2023 (the "Credit Agreement"), attached hereto as **Exhibit A**, (ii) the *Interim Order Re: Use of Cash Collateral and Postpetition Financing on Priming, Superpriority and Secured Basis* entered by the Court on May [--] (DE --) (the "Interim Order"), (iii) this Order and (iv) all additional documents contemplated in (i), (ii) and (iii) above (collectively, the "DIP Loan Documents"). The financing is vital to the preservation and maintenance of Debtor as a going concern and to its successful reorganization. Debtor's proposed Budget identifies anticipated sources and use of cash on a weekly and monthly basis.

In the Interim Order, the Court authorized financing of up to $9,000,000 for Debtor and set a final hearing on the proposed DIP Financing and use of cash collateral.

Notice of the final hearing on the Motion was given to all parties requesting notice, the U.S. Trustee, the [20 Largest or UCC], the ML Claimants and counsel for UMB.

At the final hearing held on May [--], 2023, Debtor was represented by its counsel, [----------] appeared for the U.S. Trustee, [INSERT NAMES OF OTHER COUNSEL APPEARING], and Robert M. Charles appeared for UMB.

The Court having considered the Motion, the Declarations of Douglas Moss and Keith Bierman in support of the Motion, the arguments of counsel at the final hearing, and the full record before it, and good cause appearing,

THE COURT FINDS AND CONCLUDES:

A. Debtor requires the DIP Financing and use of Cash Collateral to permit the orderly continuation of the operation of its business, to pay critical vendors and employees, and to market the Park and resolve this Case. Because Debtor's existing cash on hand and projected operating revenues will not be sufficient for Debtor to accomplish these things or pay other operating expenses and administrative expenses pending the completion of a sale, it is imperative that Debtor obtain post-petition financing at the outset of this Case. Having an assured cash flow will encourage employees, customers, and vendors to deal with Debtor on an ongoing basis. If Debtor is unable to secure post-petition financing, Debtor will likely be forced to terminate its business operations immediately, close the Park and liquidate assets to the substantial detriment of the estate and all stakeholders.

B. Good cause has been shown for the entry of this Order, and entry of this Order is in the best interest of Debtor, its creditors, and other parties in interest.

C. Sufficient and adequate notice under the circumstances of the Motion and the relief granted int his Order has been given pursuant to 11 U.S.C. § 102(1), 363(c) and 364 and Rules 2002 and 4001 of the Federal Rules of Bankruptcy Procedure.

D. Findings Regarding Postpetition Financing.

i. *Request for Postpetition Financing*. Debtor seeks authority on a final basis to continue (a) borrowing under the DIP Facility on the terms described herein and in the DIP Documents, and (b) using Cash Collateral on the terms described herein to administer the Cases and fund its operations.

ii. *Priming of the Prepetition Liens*. The priming of the Prepetition Liens of the Prepetition Secured Parties on the Prepetition Collateral under section 364(d) of the Bankruptcy Code, as contemplated by the Credit Agreement and as further described herein, will enable Debtor to obtain the DIP Facility and to continue to operate its businesses to the benefit of its estate and creditors. The Prepetition Secured Parties are entitled to receive adequate protection as set forth in this Final Order pursuant to sections

361, 363, and 364 of the Bankruptcy Code, solely to the extent that (a) the imposition of the stay under section 362 of the Bankruptcy Code, (b) the use, sale or lease of the Prepetition Collateral (including Cash Collateral) under section 363 of the Bankruptcy Code or (c) any grant of a lien under section 364 of the Bankruptcy Code (including, without limitation, the granting of the DIP Liens (as defined herein), subject to the Carve-Out) results in a decrease in the value of the Prepetition Secured Parties' interest in the Prepetition Collateral (including the Cash Collateral) (diminution in the value of any collateral of any party, including, without limitation, the Prepetition Collateral, resulting from any of the foregoing causes, "Diminution in Value").

iii. *Need for Postpetition Financing and Use of Cash Collateral*. Debtor has a critical need to use Cash Collateral and to obtain credit pursuant to the DIP Facility in order to, among other things, administer and preserve the value of its estate. The ability of Debtor to finance its operations, maintain business relationships with its vendors, suppliers and customers, pay its employees and otherwise finance its operations requires the continued availability of working capital from the DIP Facility and the continued use of Cash Collateral, the absence of either of which would harm Debtor, its estate, and parties-in-interest. Debtor does not have sufficient available sources of working capital and financing to operate its business or maintain its property in the ordinary course of business without the DIP Facility and authorized use of Cash Collateral.

iv. *No Credit Available on More Favorable Terms*. The DIP Facility is the best source of debtor-in-possession financing available to Debtor. Debtor is unable to obtain financing from sources other than UMB on terms more favorable than the DIP Facility and are unable to obtain unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. Debtor is unable to obtain credit that is: (a) unsecured 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) secured by a lien on

property of Debtor and its estate that is not otherwise subject to a lien; or (c) secured solely by a junior lien on property of Debtor and its estate that is subject to a lien. Financing on a postpetition basis is not otherwise available without granting UMB, for the benefit of itself and UMB: (1) perfected security interests in and liens on (each as provided herein) all of Debtor's existing and after-acquired assets with the priorities set forth herein; (2) super-priority claims and liens; and (3) the other protections set forth in this Final Order.

v. *Use of Proceeds of the DIP Facility*. Debtor is authorized to use Cash Collateral and use the DIP Facility consistent with the DIP Loan Documents and the Budget attached to the Credit Agreement. Further, in lieu of loan advances contemplated by the Loan DIP Documents, UMB in its discretion may make payments for the benefit of Debtor to third-parties.

E. Sections 506(c) and 552(b). In light of UMB's agreement to subordinate its liens and super-priority claims to the Carve-Out and to permit the use of Prepetition Collateral (including Cash Collateral): (a) UMB entitled to a waiver of any "equities of the case" exception under section 552(b) of the Bankruptcy Code; and (b) UMB is entitled to a waiver of the provisions of section 506(c) of the Bankruptcy Code.

F. Good Faith. UMB has extended credit to Debtor in "good faith" within the meaning of 11 U.S.C. § 364(e).

G. Immediate Entry. Sufficient cause exists for immediate entry of this Final Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2).

Good cause appearing from the record,

IT IS ORDERED:

1. Final Approval. Finally approving the Motion, and granting all relief set forth in the Motion and approving all provisions of the DIP Loan Documents.

2. Finally approving the Interim Order as a final order.

3. The amount of UMB's secured debt and the validity, perfection, and scope of the liens and security interests securing UMB's debt, as set forth in the Motion, are binding upon Debtor, and Debtor is deemed to have released and waived all claims, setoff rights, surcharge rights, avoidance actions and subordination actions against UMB.

4. Modification of Automatic Stay. The automatic stay imposed under section 362(a) of the Bankruptcy Code is hereby modified as necessary to effectuate all of the terms and provisions of this Final Order.

5. Perfection of DIP Liens and Adequate Protection Liens. This Final Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of all liens granted herein, including the DIP Liens and the Adequate Protection Liens, without the necessity of (i) filing or recording any financing statement, deed of trust, mortgage, or other instrument or document that may otherwise be required under the law of any jurisdiction, (ii) obtaining "control" (as defined in any applicable Uniform Commercial Code or other law) over any DIP Collateral (and UMB shall be deemed, without any further action, to have control over all Debtor's deposit accounts, securities accounts and commodities accounts within the meaning of such Uniform Commercial Code and other law) or (iii) taking any other action to validate or perfect the DIP Liens and Adequate Protection Liens or to entitle the DIP Liens and Adequate Protection Liens to the priorities granted herein. Notwithstanding the foregoing, UMB is authorized to file, in its sole discretion as it deems necessary or advisable, such financing statements, mortgages, notices of liens and other similar documents to perfect in accordance with applicable non-bankruptcy law or to otherwise evidence the DIP Liens and Adequate Protection Liens, and all such financing statements, mortgages, notices and other documents shall be deemed to have been filed or recorded as of the Petition Date; provided, however, that no such filing or recordation shall be necessary or required in order to create or perfect the DIP Liens or Adequate Protection Liens.

6. Proceeds of Subsequent Financing. If Debtor, any trustee, any examiner with enlarged powers, or any responsible officer subsequently appointed in this case or any successor case, shall obtain credit or incur debt pursuant to Bankruptcy Code sections 364(b), 364(c) or 364(d) in violation of the DIP Loan Documents or this Final Order at any time prior to the Facility Termination Date, including subsequent to the confirmation of any plan with respect to any or all of Debtor and Debtor's estate, and such facilities are secured by any DIP Collateral, then all the cash proceeds derived from such credit or debt shall immediately be turned over to UMB to be applied in accordance with this Final Order and the DIP Loan Documents.

7. Challenge. The Creditors' Committee, a successor trustee and any other party-in-interest with requisite standing other than Debtor, may seek to object to or to challenge (collectively, a "Challenge") the findings set forth in the Interim Order, this Order, or Debtor's Stipulations (as that term is defined in the Credit Agreement), including, but not limited to those in relation to: (i) the amount, validity, extent, priority, or perfection of the mortgage, security interests, and liens of UMB with respect to is prepetition collateral; (ii) the validity, allowability and priority of the Pre-Petition Loans; and (iii) the releases set forth in Debtor's Stipulations in the Credit Agreement. Any Challenge must be commenced, as appropriate, via a contested matter or adversary proceeding, including, without limitation, any claim against UMB as prepetition lender, in the nature of a setoff, counterclaim or defense to the Pre-Petition Loans, respectively, on the later of: (a) with respect to the Creditors' Committee (if appointed), the 60 calendar days from the formation of the Creditors' Committee; and (b) with respect to any other party-in-interest (other than Debtor) 75 calendar days from the entry of the Interim Order ((a) and (b) collectively, "Challenge Period"); *provided*, *that*, any trustee that is appointed in the Chapter 11 Case or in any successor case prior to the expiration of the Challenge Period shall have until the later of the expiration of the Challenge Period or 20 days after

such trustee's appointment to assert a Challenge. Only the Challenges expressly raised in a motion and/or complaint filed within the Challenge Period shall be preserved, and the prosecution of such Challenges shall be limited to such person(s) having filed such motion or complaint.

8. Upon the expiration of the applicable Challenge Period: (A) any and all Challenges by any party (including, without limitation, any Creditors' Committee, any chapter 11 trustee, and/or any examiner appointed in this Chapter 11 Case, and any chapter 7 trustee and/or examiner appointed in any successor case) to any of the findings set forth in the Interim Order, this Order or Debtor's Stipulations shall be deemed to be forever waived and barred, other than those Challenges specifically and timely asserted during the Challenge Period (a "Timely Filed Challenge"); *provided*, *that*, the Challenges asserted in any such Timely Filed Challenge shall be preserved only with respect to the person who filed such Timely Filed Challenge; (B) all of the findings set forth in the Interim Order, this Order and Debtor's Stipulations shall be of full force and effect and forever binding upon all creditors, interest holders, and other parties-in-interest in the Chapter 11 Case and any successor case other than those persons who filed a Timely Filed Challenge; *provided*, *that*, all findings set forth in the Interim Order, this Order and all of Debtor's Stipulations other than those subject to a Timely Filed Challenge shall be binding on such persons; and (C) upon the entry of a final, non-appealable order dismissing, overruling or denying any Timely Filed Challenge, all of the findings in the Interim Order, this Order and all of Debtor's Stipulations shall be of full force and effect and forever binding upon the person bringing such overruled or denied Timely Filed Challenge.

DATED AND SIGNED ABOVE.