

IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE NORTHERN DISTRICT OF GEORGIA
 ROME DIVISION

IN RE:)	CHAPTER 11
)	
REGIONAL HOUSING & COMMUNITY SERVICES CORP., et al.,)	PROPOSED
)	Jointly Administered Under
Debtors.)	CASE NO. 21-41034-pwb
)	

**DEBTORS’ MOTION FOR INTERIM AND FINAL ORDERS
 (I) AUTHORIZING (A) SECURED POSTPETITION FINANCING
 PURSUANT TO 11 U.S.C. §§ 105, 361, 362, AND 364(c) AND (d);
 AND (B) GRANTING SECURITY INTERESTS, SUPERPRIORITY CLAIMS,
 AND ADEQUATE PROTECTION, AND (II) SCHEDULING A FINAL HEARING;
AND MEMORANDUM OF POINTS AND AUTHORITIES**

COME NOW the above-captioned debtors and debtors and debtors-in-possession (collectively, the “**Debtors**”)¹ in the above-styled proposed jointly administered case (the “**Case**”)², and pursuant to Sections 105, 361, 362, 364 and 507 of Title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* as amended (the “**Bankruptcy Code**”), and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), hereby move the Court for entry of interim and final orders (A) authorizing the Debtors to obtain post-petition financing (the “**Post-Petition Financing**” or “**DIP Financing**”) from a Special Purpose Entity

¹ The Debtors in these Chapter 11 cases include: Regional Housing & Community Services Corporation, RHCSC Columbus AL Holdings LLC, RHCSC Columbus Health Holdings LLC, RHCSC Douglas AL Holdings LLC, RHCSC Douglas Health Holdings LLC, RHCSC Gainesville AL Holdings LLC, RHCSC Gainesville Health Holdings LLC, RHCSC Montgomery I AL Holdings LLC, RHCSC Montgomery I Health Holdings LLC, RHCSC Montgomery II AL Holdings LLC, RHCSC Montgomery II Health Holdings LLC, RHCSC Rome AL Holdings LLC, RHCSC Rome Health Holdings LLC, RHCSC Savannah AL Holdings LLC, RHCSC Savannah Health Holdings LLC, RHCSC Social Circle AL Holdings LLC, and RHCSC Social Circle Health Holdings LLC.

² The Debtors have requested joint administration of their cases. In contemplation of joint administration, the Debtors are filing all first day motions (other than the joint administration motion) solely in the main case styled above.



controlled by Saybrook Fund Advisors, LLC (the “**DIP Lender**”), (C) granting adequate protection to the Adequate Protection Parties, (D) modifying the automatic stay, and (E) scheduling a final hearing pursuant to Rules 4001(b) and 4001(c) of the Bankruptcy Rules. In support of this Motion (the “**DIP Motion**”), the Debtors respectfully represent as follows:

I. BANKRUPTCY RULE 4001 STATEMENT OF RELIEF REQUESTED

A. Summary of Material Terms of DIP Facility

1. General Overview

As of August 26, 2021, the date of the filing of the petitions in the above-captioned cases (the “**Petition Date**”), the Debtors (other than Regional Housing & Community Services Corporation) were indebted to UMB Bank, N.A., as trustee (the “**Bond Trustee**”) for certain bondholders (collectively, the “**Bondholders**”, and together with the Bond Trustee, the “**Bondholder Parties**”) in the approximate collective principal amount of \$46,791,827.83, plus \$8,686,267.40 for obligations for contract interest, default interest and charges, legal fees, and certain fees and charges (collectively, the “**Pre-Petition Obligations**”), under various Loan Agreements dated June 1, 2018 (the “**Pre-Petition Loan Agreements**”; together, with all related agreements, documents and instruments, the “**Pre-Petition Bond Documents**”). The Debtors are now seeking to obtain post-petition financing, consisting of a superpriority, secured term credit facility in the principal amount of up to \$5,000,000 (the “**DIP Facility**”) from the DIP Lender, pursuant to the terms of a Debtor-In-Possession Term Credit Facility (the “**DIP Loan Agreement**”), the proposed form of which is attached hereto as Exhibit A.

2. Material Terms

a. Summary of Rates, Fees and Charges for DIP Facility: The Debtors will pay interest on the amounts borrowed under the DIP Facility (the “**Indebtedness**”) at a fixed rate equal to 9.5% per annum (the “**Non-Default Rate**”), calculated on a 360-day per year basis, which shall be due and payable as set forth in the DIP Loan Agreement. (DIP Loan Agreement, § 2.3). Upon an event of default under the DIP Facility, the Debtor will pay interest on the Indebtedness at a rate equal to 14.5%, calculated on a 360 day per year basis. (DIP Loan Agreement, §§ 2.3 and 1.1). In addition, the following fees will be charged in connection with the DIP Facility: (i) a one-time commitment fee (the “**Commitment Fee**”) of \$50,000, which shall be fully earned and payable on the Initial Commitment Date;³ and (ii) an exit fee equal to an exit fee of in the amount of 1% of the Commitment amount or the outstanding balance at the time of exit, whichever is greater (the “**Exit Fee**” and together with the Commitment Fee the “**DIP Lender Fees**”), provided that the Exit Fee shall be waived if the DIP Facility is satisfied pursuant to a successful credit bid by which the DIP Lender or an affiliate acquires substantially all of the assets of the Debtors. (DIP

³ Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Term Sheet.

Loan Agreement, § 2.9). The Debtors shall also pay all of the DIP Lender's reasonable fees and expenses relating to the DIP Facility and the DIP Loan Agreement. (DIP Loan Agreement, § 2.10).

b. Maturity Date: Any and all then outstanding principal amount of the DIP Facility (the "**DIP Loan Principal**") plus any unpaid accrued Interest or Default Interest, fee, expanses and other amounts due under the DIP Facility (collectively, the "**DIP Loan Obligations**") shall become due and payable in full in cash upon the earlier of the following (the "**Due Date**"): (i) March 31, 2022; (ii) the earlier of the substantial consummation (as defined in Bankruptcy Code § 1101) or the effective date of a confirmed plan of reorganization; (iii) conversion of the bankruptcy case to a case under Chapter 7 of the Bankruptcy Code; (iv) appointment of a trustee for the Debtors; (v) dismissal of the bankruptcy case; (vi) forty-five (45) days after the entry of the Interim Order if the Final Order has not been entered prior to the expiration of such forty-five (45) day period; (vii) the date on which the Court enters a final order approving a post-petition financing between the Debtors and another lender(s) or investor(s) (as the case may be) (other than the DIP Lender); (viii) consummation of a sale of substantially all of the Debtors' assets under Bankruptcy Code § 363; and (ix) five (5) business days after the DIP Lender notifies the Debtors and their counsel in writing of an Event of Default which is not subsequently cured or waived by the end of such notice period. The DIP Lender may extend the Due Date in its sole discretion. (DIP Loan Agreement, § 2.1(e)).

c. Events of Default: The DIP Loan Agreement contains standard events of default for a loan of this nature. (DIP Loan Agreement, § 8.1).

d. Liens: Pursuant to Sections 364(c)(2) and (d) of the Bankruptcy Code, the DIP Lender will be granted first priority priming liens on and security interests (the "**DIP Liens**") in all present and after-acquired property of the Debtors, including property that is otherwise subject to a valid, perfected and unavoidable security interest or lien as of the Petition Date, and including any causes of action under the Bankruptcy Code or applicable non-bankruptcy law, including causes of action and recoveries for Avoidance Actions, subject only to the Carve-Out (as defined below). (DIP Loan Agreement, §§ 3.1 and 3.2).

e. Borrowing Limits: Subject to the limits in the DIP Loan Agreement, and the limits set forth in the budget attached to the Interim Order (as may be modified pursuant to the terms of the DIP Loan Agreement),⁴ the maximum loan limit under the DIP Facility will be \$5,000,000, once a final order is entered approving the DIP Facility (the "**Final Order**"). (DIP Loan Agreement, § 2.1).

f. Borrowing Conditions: Entry of Interim Order and Final Order acceptable to DIP Lender; execution of the DIP Loan Documents. (DIP Loan Agreement, §§ 4.1 and 4.2).

3. Summary and Identification of Additional Required Provisions

a. Liens under Section 364(c) and (d) of the Bankruptcy Code: As security for the Indebtedness, the DIP Lender is granted the following security and liens in the Collateral (as such term is defined in the DIP Loan Agreement), subject only to, in the event of the

⁴ A proposed budget (the "**DIP Budget**"), is attached hereto as Exhibit B.

termination of the DIP Facility, the payment of the Carve Out. (DIP Loan Agreement, §§ 3.1 and 3.2):

(1) Pursuant to Section 364(c)(2) of the Bankruptcy Code, the DIP Liens shall be a perfected first priority senior security interest in and lien upon the Collateral, whether existing on the Petition Date or thereafter acquired, that, as of the Petition Date, is not subject to valid, perfected and non-avoidable liens;

(2) In addition, the DIP Liens will prime, pursuant to Section 364(d) of the Bankruptcy Code, any liens on or security interests in the Collateral in favor of any other parties, including, but not limited to, the liens held by the Bond Trustee on the Collateral; and

(3) In addition, the DIP Liens granted to the DIP Lenders shall not be subject to subordination to any other liens, security interests or claims under Sections 510, 549 or 550 of the Bankruptcy Code, or, upon entry of a Final Order, Section 506(c) of the Bankruptcy Code, or otherwise.

b. Superpriority Claims: Subject to the Carve-Out, all of the Indebtedness shall have administrative priority under Sections 364(c)(1) and 503(b) of the Bankruptcy Code. (DIP Loan Agreement, §§ 3.9).

c. Modification of Automatic Stay:

(1) Except as otherwise provided in the Interim Order or the Final Order, the automatic stay pursuant to Section 362 of the Bankruptcy Code will be modified as to the DIP Lender to permit it to perform in accordance with, and exercise, enjoy and enforce its rights, benefits, privileges and remedies pursuant to the DIP Loan Documents without further application or motion to, or order from, the Bankruptcy Court. The automatic stay under Section 362(a) of the Bankruptcy Code is to be modified to the extent necessary to permit DIP Lender to retrieve, collect and apply payments and proceeds in respect of the Collateral in accordance with the terms and provisions of the Interim Order or the Final Order and, as applicable, the DIP Loan Documents.

(2) Upon the occurrence of an Event of Default (as defined in the DIP Loan Agreement) and five (5) business days after the DIP Lenders has served written notice on counsel to the Debtors and counsel to the Committee (if any) and the Office of the United States Trustee, identifying any act which gave rise to the occurrence of an Event of Default, the automatic stay under Section 362 of the Bankruptcy Code shall be deemed vacated and modified with respect to the DIP Lender for the purpose of exercising all of its rights and remedies, unless the Bankruptcy Court has determined, after notice and a hearing, that an Event of Default has not occurred or is not continuing. (DIP Loan Agreement, §§ 8.3)

d. Waivers of Plan and Other Financing Rights: It shall be an Event of Default under the Interim Order or the Final Order, as applicable, for the Debtors to seek further financing or file a plan without payment in full of the Indebtedness, unless the DIP Lender otherwise consents. (DIP Loan Agreement, § 8.1).

e. Waiver of State Law Perfection Requirements: The liens granted to the DIP Lender are deemed duly perfected and recorded under all applicable federal or state or other laws as of the date of the Interim Order. (DIP Loan Agreement, § 3.2).

f. Waiver of Certain Rights: It shall be an Event of Default under the Interim Order or the Final Order, as applicable, upon the occurrence of the one or more of the following: (i) a challenge is asserted by any Debtor or any Committee to the validity, extent, perfection, or priority of any DIP Liens or any Liens granted under or in connection with the DIP Loan Agreement; (ii) any Person holding a Lien upon Collateral is granted relief from the automatic stay if such relief from stay could reasonably be expected to have a material adverse effect on the ongoing business operations or financial performance of any Debtor; and (iii) any of the Debtors cease all or any material part of its business operations. (DIP Loan Agreement, § 8.1).

g. Indemnification: The DIP Lender and its Affiliates and they and their officers, directors, employees, agents and advisors, are indemnified by the Debtors for all liabilities relating to the DIP Facility, the Chapter 11 Cases and the Debtors' use of the DIP Loan Proceeds or the Commitments, other than resulting from the gross negligence or willful misconduct of the indemnified party. (DIP Loan Agreement, § 9.5).

h. Waiver of Surcharge Right: The Final Order will contain a provision proscribing any surcharge of any of the DIP Liens or Collateral pursuant to Section 506(c) of the Bankruptcy Code or otherwise. (DIP Loan Agreement, § 3.10).

i. Provisions Remaining Effective if Interim Relief Granted but Final Relief Denied: The provisions of the Interim Order are binding upon and inure to the benefit of the DIP Lender and the Debtors, and their respective successors and assigns (including any trustee or other estate representative appointed as a representative of the Debtors' estates or of any estates in any successor cases). If any of the provisions of the Interim Order are subsequently modified, vacated or stayed by subsequent order, such stay, modification or vacatur shall not affect the validity of any obligation outstanding immediately prior to the effective time of such stay, modification or vacation, or the validity and enforceability of any lien, priority, right, privilege or benefit authorized hereby with respect to any such obligations. Notwithstanding any such stay, modification or vacatur, any obligation outstanding immediately prior to the effective time of such modification, stay or vacatur shall be governed in all respects by the original provisions of the Interim Order, and DIP Lender shall be entitled to all the rights, privileges and benefits, including, without limitation, the security interests and priorities granted therein, with respect to all such obligations. (DIP Loan Agreement, §§ 3.1 and 3.2)

II. STATEMENT OF FACTS AND BACKGROUND

A. Bankruptcy Filings

As noted above, the Debtors commenced their bankruptcy cases by filing voluntary petitions under Chapter 11 of the Bankruptcy Code on August 26, 2021. The Debtors continue to manage their financial affairs as debtors in possession pursuant to Sections 1107 and 1108 of the

Bankruptcy Code. No trustee or examiner has been appointed in these cases, and no official creditors' committee has been formed as of the date hereof.

B. The Debtors' Business Structure and Background

Eight of the Debtors (each a "**Property Company**" and collectively, the "**Property Companies**") own a senior living facility (each a "**Facility**" collectively, the "**Facilities**"). Eight separate Debtor (each an "**Operating Company**" and collectively the "**Operating Companies**") lease a Facility from the Property Companies. Debtor Regional Housing & Community Services Corp. ("**Regional**") is the 100% owner and single member of each of the Property Companies and the Operating Companies. The Operating Companies have each entered into a Management Agreement (the "**Management Agreements**") with ALG Senior, LLC ("**ALG**") to manage the operations of the Facility that each Operating Company leases from a Property Company. Each Facility is a senior care facility located in a rural city or town in Georgia or Alabama. The Facilities, collectively, house approximately 218 senior residents. ALG and the Debtors take their obligations to care for the residents at the facilities seriously. More information regarding the Debtors and their operations can be found in the *Declaration of Katie S. Goodman in Support of First Day Applications and Motions* (the "**Goodman Declaration**"), filed of even date herewith.

C. Pre-Petition Financings

As noted above, as of the Petition Date, with respect to each Facility owned by a Property Company and leased and operated by an Operating Company, the Wisconsin Public Finance Authority (the "**Bond Authority**") issued Series 2018A, Series 2018B, Series 2018C and Series 2018D Revenue Refunding Bonds (the "**Bonds**"). The Operating Company and the Property Company for that Facility entered into a Pre-Petition Loan Agreement with the Bond Authority. The Bond Authority assigned its rights and interest in the Bonds and the related documents to

Huntington National Bank, as trustee, in contemporaneously executed Trust Indentures (the “**Indentures**”). UMB Bank, N.A. is the successor trustee (the “**Trustee**”) under the Indentures and Tortoise Credit Strategies, LLC (“**Tortoise**”) is the noteholder representative with respect to such Bonds. The Pre-Petition Obligations are secured by all of the Debtors’ assets, including, *inter alia*, the Debtors’ real property, accounts receivable and inventory.

D. Relief Requested

By this DIP Motion, the Debtors seek the authority to enter into the DIP Loan Agreement and obtain the DIP Facility under the terms set forth in the DIP Loan Agreement and the proposed Interim Order. The terms of the Interim Order shall control in the event of any inconsistency between the terms of the Interim Order and this DIP Motion. The key provisions of the DIP Loan Agreement and the Interim Order are summarized in Section I above. Concurrently herewith, the Debtors are filing a motion for authority to use cash which may constitute the cash collateral of the Trustee (as such term is defined in Section 363 of the Bankruptcy Code). The proceeds of the DIP Facility will be used in conjunction with, and as a supplement to, the use of the Trustee’s cash collateral.

The Debtors submit that the protections requested by the DIP Lender are reasonable in light of the risk that the DIP Lender is taking by agreeing to lend the Debtors significant sums post-petition. Indeed, as the Trustee is already secured by a first priority lien against the Debtors’ assets, in light of the Debtors’ financial condition, the DIP Lender is the only realistic source of post-petition financing and liquidity. The Debtors have been unable to procure financing in the form of unsecured credit allowable under Section 503(b)(1) of the Bankruptcy Code as an administrative expense under Section 364(a) or (b) of the Bankruptcy Code, or in exchange for the grant of an administrative expense priority pursuant to Section 364(c)(1) of the Bankruptcy Code without the

granting of priming liens on their assets. The Debtors have been unable to procure the necessary financing on terms more favorable than the Interim Order. No other lender was prepared to provide the immediate financing needed by the Debtors on more favorable terms.

The Debtors require an immediate order of this Court authorizing them to obtain post-petition financing to pay their normal and ordinary operating expenses (such as payroll, rent, utilities and payments to suppliers) as they come due in the ordinary course of the Debtors' business and to make those purchases necessary to preserve the going concern value of their businesses and assets pending any sale or reorganization efforts. An immediate court order is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

The Debtors therefore seek authority to obtain the post-petition financing on an interim basis pending a final hearing in accordance with the terms and conditions set forth in the Interim Order. Given the devastating impact that a closure of the Debtors' business would have on their going concern value, their creditors and their employees, not to mention the residents of the Facilities, the Debtors submit that the relief requested herein is clearly warranted and appropriate.

III. DISCUSSION

A. The Debtors Should Be Authorized To Obtain Debtor In Possession Financing To Operate, Maintain and Preserve their Businesses

Pursuant to Bankruptcy Code Sections 364(c) and (d), the Debtors request authority to incur the Post-Petition Financing allowable as an administrative expense, having priority over other administrative expenses and secured by first priority priming liens on and security interests in all present and after-acquired property of the Debtors, subject only to the Carve-Out (as defined below) and unpaid U.S. Trustee quarterly fees. Pursuant to Section 364(d) of the Bankruptcy Code, the DIP Liens will prime liens in favor of parties who currently have liens on the Collateral.

The Debtors need cash to meet ongoing obligations necessary to operate their businesses, administer their Chapter 11 estates and maintain the going concern value of their businesses as they conclude an asset sale or reorganize so as to achieve the highest values possible for their creditors. The Debtors need to use the proceeds of the Post-Petition Financing to pay insurance, payroll, payroll expenses, rent, utility charges, professionals and general overhead, to purchase necessary materials, and otherwise continue their businesses and operations. The Debtors believe that the Post-Petition Financing will provide funds sufficient to permit them to operate their businesses pending a sale or other reorganization effort. As noted above, the Post-Petition Financing will be used to supplement the cash collateral of the Trustee that the Debtors are also seeking to use by separate motion.

Pursuant to Bankruptcy Code Section 364(c), a debtor may, in the exercise of its business judgment, incur secured debt if it has been unable to obtain unsecured credit and the borrowing is in the best interest of the estate. *See, e.g., In re Simasko Production Co.*, 47 B.R. 444, 448-9 (Bankr. D. Colo. 1985) (authorizing interim financing where debtor’s business judgment was that financing was necessary and of benefit to the estate); *In re Ames Department Stores*, 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990) (with respect to post-petition credit, courts “permit debtors-in-possession to exercise their basic business judgment consistent with their fiduciary duties”); *see also 2 Collier on Bankruptcy* ¶ 364.04, at 364-9-1 (2007).

Section 364(d)(1) of the Bankruptcy Code governs the incurring of senior secured debt or “priming” loans. Pursuant to Section 364(d)(1), the Court may, after notice and a hearing, authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien only if

- (A) the trustee is unable to obtain such credit otherwise; and
- (B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

11 U.S.C. § 364(d)(1).

Section 364 of the Bankruptcy Code is structured with an escalating series of inducements which a debtor in possession may offer to attract credit during the post-petition period. *In re Photo Promotion Associates, Inc.*, 87 B.R. 835, 839 (Bankr. S.D.N.Y. 1988). If a trustee or debtor in possession cannot otherwise obtain unsecured post-petition credit, such credit may be obtained under certain carefully permitted conditions. *In re T.M. Sweeney & Sons LTL Services, Inc.*, 131 B.R. 984, 989 (Bankr. N.D. Ill. 1991). For example, if creditors are unwilling to extend unsecured credit to a debtor in possession, further inducements are offered, with court approval after notice and a hearing, including liens equal to or senior to existing liens on encumbered property in accordance with 11 U.S.C § 364(d). *In re Photo Promotion Associates, Inc.*, 87 B.R. at 839.

Section 364(c) of the Bankruptcy Code also contains incentives that a court may grant to post-petition lenders. These inducements are not exhaustive. Courts frequently have authorized the use of other protections not specified in the statute. *See, e.g., In re Ellinszen MacLean Oil Co.*, 834 F.2d 599 (6th Cir. 1987) (affirming financing order which prohibited any challenges to the validity of already existing liens); *In re Defender Drug Stores*, 126 B.R. 76 (Bankr. D. Ariz. 1991) *aff'd* 145 B.R. 312, 316 (BAP 9th Cir. 1992) (“[b]ankruptcy courts . . . have regularly authorized postpetition financial arrangements containing lender incentives beyond the explicit priorities and liens specified in section 364”); *In re Antico Mfg. Co.*, 31 B.R. 103 (Bankr. E.D.N.Y. 1983) (authorizing lien on pre-petition collateral to secure post-petition indebtedness). The Debtors have agreed to grant the DIP Lender such enhancements in the form of senior liens against all present and after-acquired property of the Debtors including property that is already subject to a valid, perfected and unavoidable security interest or lien as of the Petition Date. The Debtors believe

that such enhancements are plainly reasonable requests by DIP Lender in return for the Post-Petition Financing.

Two factors courts consider in determining whether to authorize post-petition financing which grants a security interest in favor of the lender are (1) whether the debtor is unable to obtain unsecured credit as an administrative claim under Section 364(b)(1)(A) of the Bankruptcy Code and (2) whether the terms of the transaction are fair, reasonable and adequate, given the circumstances of the debtor and lender. *In re Crouse Group, Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987); *see also In re Aqua Assoc.*, 123 B.R. 192, 195 (Bankr. E.D.Pa. 1991). The Debtors submit that all of these standards have clearly been satisfied in this case.

1. The Debtor Was Unable to Obtain Unsecured Credit

In satisfying the standards of Section 364, a debtor need not seek credit from every available source, but should make a reasonable effort to seek other sources of credit available under Sections 364(a) and (b). *See, e.g., In re Snowshoe Co.*, 789 F.2d 1085, 1088 (4th Cir. 1986) (trustee had demonstrated good faith effort that credit was not available without senior lien by contacting other financial institutions in immediate geographic area; the statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable); *In re Ames Department Stores, supra*, 115 B.R. at 40 (finding that debtors demonstrated the unavailability of unsecured financing where debtors approached four lending institutions).

As mentioned above and as will be demonstrated at the hearing, the Debtors have been unable to procure financing in the form of unsecured credit allowable under Section 503(b)(1) of the Bankruptcy Code, as an administrative expense under Section 364(a) or (b) of the Bankruptcy Code, or in exchange for the grant of an administrative expense priority pursuant to Section 364(c)(1) of the Bankruptcy Code without the grant of liens on assets. The Debtors have been unable to procure the necessary financing on terms more favorable than the Interim Order. No

other lender was prepared to provide the financing needed by the Debtors at anywhere near the favorable terms of the proposed Post-Petition Financing.

2. The Terms Of The Proposed Post-Petition Financing Are Fair, Reasonable and Adequate

The terms of the proposed Post-Petition Financing from the DIP Lender are fair, reasonable and adequate. The DIP Lender is taking an economic risk by lending the Debtors significant sums. Notwithstanding the economic risk that the DIP Lender is taking, the DIP Lender has agreed to provide such post-petition financing in order to enable the Debtors to preserve the going concern value of their businesses. The terms of the Interim Order were negotiated by and between the Debtors, the DIP Lender, and their respective counsel prior to the bankruptcy filing.

3. The Debtors, In The Exercise Of Their Business Judgment, Believe That The Financing From The DIP Lenders Is Necessary And Proper

In determining whether to approve a financing transaction, the Bankruptcy Court should use its informed discretion, but give deference to the business decision of a Chapter 11 debtor. *Richmond Leasing Co. v. Capital Bank N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985). The best available financing commitment for the Debtors comes from the DIP Lender.

4. The Debtors Have Satisfied The Procedural Requirements Regarding Authority To Obtain Credit

Bankruptcy Rule 4001(c) sets forth the procedural requirements for obtaining credit. Bankruptcy Rule 4001(c)(1) requires in relevant part that: “A motion for authority to obtain credit shall be made in accordance with Rule 9014 and shall be served on . . . the creditors included on the list filed pursuant to Rule 1007(d), and on such other entities as the court may direct. The motion shall be accompanied by the copy of the agreement.” Concurrently with the filing of this Motion with the Court, the Debtors are providing notice of the Motion to: (a) the Office of the United States Trustee; (b) the Internal Revenue Service; (c) the parties included on the Debtors’

consolidated list of their thirty (30) largest unsecured creditors; (d) counsel to the DIP Lender; (e) the Bond Trustee; (f) Tortoise and counsel for Tortoise; and (h) all other known parties with liens of record on assets of the Debtors as of the Petition Date. Accordingly, the Motion complies with the requirements of Bankruptcy Rule 4001(c)(1) and the Debtors request that the Court authorize them to enter into the Post-Petition Financing.

B. Priming Liens are Appropriate Under the Circumstances.

The Trustee’s interest in the Collateral is adequately protected – as it must be under Section 364(d)(1)(B) – by virtue of the fact that without the DIP Facility, the Debtors would undoubtedly need to close down the Facilities and relocate the residents thereof, which would destroy the value of the Debtors.

Although the Bankruptcy Code does not explicitly define “adequate protection,” examples of adequate protection are identified in Section 361 of the Bankruptcy Code and include, but are not limited to: (1) “periodic cash payments” to the extent that such use “results in a decrease in value of such entity’s interest in the property;” (2) “additional or replacement lien[s] to the extent that such . . . use [of cash collateral] . . . results in a decrease in the value of such entity’s interest in such property;” and (3) “granting such other relief . . . will result in the realization by the entity of the indubitable equivalent of such entity’s interest in such property.” 11 U.S.C. § 361.

The principal purpose of adequate protection is to safeguard the interest of the secured creditor in the particular collateral against diminution in the value of such interest. *See Resolution Trust Corp. v. Swedeland Dev. Group, Inc. (In re Swedeland Dev. Grp., Inc.)*, 16 F.3d 552, 564 (3d Cir. 1994) (“[T]he whole purpose of adequate protection for a creditor is to insure that the creditor receives the value for which he bargained prebankruptcy.”) (*quoting MBank Dallas, N.A. v. O’Connor (In re O’Connor)*, 808 F.2d 1393, 1396 (10th Cir. 1987)). Here, appropriate and

sufficient safeguards are in place to protect the Trustee from a diminution in the value of its interests in the Collateral.

1. The Prepetition Secured Parties Will Receive Replacement Liens

The proposed order on the cash collateral motion which is being filed concurrently herewith will provide adequate protection to the Trustee, on behalf of itself and the Bondholders, in the form of adequate protection liens upon all of the Collateral, junior to the DIP Liens. These forms of adequate protection are commonplace. *See, e.g., O'Connor*, 808 F.2d at 1396-98 (allowing the debtor to replace a lien on cash with a lien on property likely to be worth five times as much); *Owens-Corning Fiberglas Corp. v. Ctr. Wholesale, Inc. (In re Ctr. Wholesale, Inc.)*, 759 F.2d 1440, 1450 (9th Cir. 1985) (observing that a lien on additional property of the debtor would likely constitute adequate protection for the secured creditor); *In re Stein*, 19 B.R. 458, 459 (Bankr. E.D. Pa. 1982) (continued lien on debtors' crops, livestock and equipment resulted in an increase rather than a decrease in collateral, and debtors were granted authority to use cash collateral to meet operating expenses during chapter 11 proceedings).

Notably, the Trustee will receive adequate protection liens upon all of the Collateral solely to the extent of, and in an aggregate amount equal to, any diminution in value. The adequate protection liens shall be junior and subordinated to the DIP Liens. The adequate protection liens shall in all cases be subject to the Carve-Out.

b. Budgetary Constraints Adequately Protect the Interests of the Trustee

One of several forms of adequate protection afforded to the Trustee is that the DIP Facility will only be used in accordance with the provisions of the DIP Loan Documents, including the DIP Budget (subject to Permitted Variances) and the Debtors' right to carry forward any unutilized amounts, as set forth more fully in the DIP Loan Documents). As described in the Goodman Declaration, the Debtors believe, after diligent consideration of all known circumstances, and in

their reasonable business judgment, that the DIP Budget is achievable and will allow the Debtors to operate in Chapter 11 without the accrual of unpaid liabilities. The DIP Budget provides for expenditures to finance the Debtors' operations. Courts have routinely held that adequate protection may be demonstrated by a showing that the going concern value of a debtor, or the value of a lender's collateral, is preserved by the debtor's continuing operations and use of cash collateral. *See, e.g., In re JKJ Chevrolet, Inc.*, 117 F.3d 1413, 1413 (4th Cir. 1997) (allowing use of cash collateral to operate automobile dealership as long as continued operations maintained the value of the business); *Snowshoe*, 789 F.2d at 1087-89 (allowing use of cash collateral to operate ski resorts where trustee reported that ski resort would lose 50% to 90% of its fair market value if it ceased operations); *In re 499 W. Warren St. Assocs., Ltd. P'ship*, 142 B.R. 53, 56-57 (Bankr. N.D.N.Y. 1992) (finding secured creditor's interest in collateral adequately protected when cash collateral was applied to normal operating and maintenance expenditures on collateral property); *In re Constable Plaza Assocs., L.P.*, 125 B.R. 98, 105 (Bankr. S.D.N.Y. 1991) (debtor entitled to use cash collateral to operate and maintain office building, thereby protecting secured lender's collateral).

The Trustee and the Bondholders are the primary beneficiaries of the proposed cash expenditures, which are necessary to preserve and maintain the value of the purported Collateral. Moreover, the contemplated cash expenditures in the manner and for the purposes proposed will maintain the overall value of the Debtors' ongoing enterprise and enhance the chances of a successful outcome for these Cases. If the Debtors are precluded from making expenditures necessary to maintain and preserve their assets in the ordinary course, including in support of a potential sale process, or if the Debtors are forced to effect a "fire-sale" liquidation of their assets, the Trustee and the Bondholder, and indeed all creditors – secured and unsecured – will be harmed.

See, e.g., Aqua Assocs., 123 B.R. at 196 (“The important question, in determination of whether the protection to a creditor’s secured interest is adequate, is whether that interest, whatever it is, is being unjustifiably jeopardized.”) (citing *In re Grant Broad. of Philadelphia, Inc.*, 71 B.R. 376, 386-89 (Bankr. E.D. Pa. 1987), *aff’d*, 75 B.R. 819 (E.D. Pa. 1987), and *In re Alyucan Interstate Corp.*, 12 B.R. 803, 809-12 (Bankr. D. Utah 1981)). In sum, the Trustee and Bondholders are adequately protected by the proposed budgetary constraints on the use of cash.

IV. CONCLUSION

WHEREFORE, the Debtors respectfully request that this Court:

- (i) enter the Interim Order, a proposed form of which is attached hereto as Exhibit C;
- (ii) grant interim approval of the Post-Petition Financing pending a final hearing pursuant to the terms and conditions set forth in the DIP Motion;
- (iii) set a final hearing to consider approval of the DIP Motion; and
- (iv) grant such other and further relief as the Court deems just and proper.

This 27th day of August, 2021.

SCROGGINS & WILLIAMSON, P.C.

By: /s/ Matthew W. Levin

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Proposed Counsel for the Debtors

EXHIBIT A

DIP Loan Agreement

DEBTOR-IN-POSSESSION LOAN AND SECURITY AGREEMENT

Dated August __, 2021

by and between

Regional Housing & Community Services Corporation; RHCSC Rome AL Holdings LLC; RHCSC Rome Health Holdings LLC; RHCSC Savannah AL Holdings, LLC; RHCSC Savannah Health Holdings, LLC; RHCSC Social Circle AL Holdings, LLC; RHCSC Social Circle Health Holdings, LLC; RHCSC Montgomery I AL Holdings LLC; RHCSC Montgomery I Health Holdings, LLC; RHCSC Columbus AL Holdings, LLC; RHCSC Columbus Health Holdings, LLC; RHCSC Douglas AL Holdings, LLC; RHCSC Douglas Health Holdings, LLC; RHCSC Gainesville AL Holdings, LLC; RHCSC Gainesville Health Holdings, LLC; RHCSC Montgomery II AL Holdings, LLC; RHCSC Montgomery II Health Holdings, LLC,

Debtors and Debtors in Possession

as Borrowers,

and

[[A Special Purpose Entity controlled by Saybrook Fund Advisors, LLC and certain affiliates of Saybrook

Fund Advisors, LLC]

as DIP Lender

EXHIBIT LIST

Exhibit A	--	Initial Budget
Exhibit 2.1(d)	--	Form of Credit Note
Exhibit 2.2(b)	--	Form of Loan Request
Exhibit 6.4	--	Officer's Certificate
Schedule 1	--	Borrower's States of Qualifications
	--	Chief Executive Office
	--	Places of Business/Other Names
	--	Provider Identification Numbers
	--	Pending Litigation
	--	Permitted Liens
	--	Fiscal Year End
	--	Tax I.D. Numbers
	--	Existing Guaranties, Investments and Borrowings
	--	Other Associations
	--	Environmental Matters
	--	Capital Stock

POST-PETITION LOAN AND SECURITY AGREEMENT

This Debtor-in-Possession Loan and Security Agreement (“**Agreement**”) is dated as of August [], 2021, by and between Regional Housing & Community Services Corporation; RHCSC Rome AL Holdings LLC; RHCSC Rome Health Holdings LLC; RHCSC Savannah AL Holdings, LLC; RHCSC Savannah Health Holdings, LLC; RHCSC Social Circle AL Holdings, LLC; RHCSC Social Circle Health Holdings, LLC; RHCSC Montgomery I AL Holdings LLC; RHCSC Montgomery I Health Holdings, LLC; RHCSC Columbus AL Holdings, LLC; RHCSC Columbus Health Holdings, LLC; RHCSC Douglas AL Holdings, LLC; RHCSC Douglas Health Holdings, LLC; RHCSC Gainesville AL Holdings, LLC; RHCSC Gainesville Health Holdings, LLC; RHCSC Montgomery II AL Holdings, LLC; RHCSC Montgomery II Health Holdings, LLC, as debtors and debtors-in-possession and borrowers (collectively “**Borrowers**” or “**Debtors**” or individually a “**Borrower**” or a “**Debtor**”), and [a special purpose entity controlled by Saybrook Fund Advisors, LLC and one or more affiliates as lender] (“**Lender**”).

RECITALS

WHEREAS, Borrower Regional Housing & Community Services Corporation (“**RHCSC**”) is a not-for-profit corporation organized under the laws of the state of California.

WHEREAS, each Borrower other than RHCSC is a wholly owned subsidiary of RHCSC.

WHEREAS, Borrowers are in the business of operating eight assisted living, independent living, and/or memory care facilities located in Georgia and Alabama, seven of which are currently operational, and one of which is presently closed;

WHEREAS, Borrowers have commenced jointly administered bankruptcy cases (collectively, the “**Bankruptcy Case**”) under Chapter 11 of Title 11, United States Code (as amended, the “**Bankruptcy Code**”), which case is currently pending in the United States Bankruptcy Court for the Northern District of Georgia (the “**Bankruptcy Court**”), and Borrowers are continuing to operate their business and manage their properties as a debtors and debtors-in-possession under Sections 1107 and 1108 of the Bankruptcy Code;

WHEREAS, Borrowers intend to pursue a sale of all or substantially all of their assets in the Bankruptcy Case;

WHEREAS, Borrowers have requested that Lender make available to Borrowers a credit facility (the “**DIP Facility**”) in a maximum principal amount at any time outstanding of up to Five Million Dollars (\$5,000,000), the proceeds of which shall be used by Borrowers in accordance with the Budget (as defined below);

WHEREAS, the DIP Superpriority Claim and DIP Liens senior to all other security interests in the collateral, approved pursuant to Bankruptcy Code § 364(c)(1) and (d)(1), are material and necessary condition of Lender’s willingness to provide the credit contemplated herein.

WHEREAS, Lender is willing to make the DIP Facility available to Borrowers upon the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, Borrowers and Lender hereby agree as follows:

SECTION 1

DEFINITIONS AND INTERPRETATION

1.1. Terms Defined. As used in this Agreement, the following terms have the following respective meanings:

“**Account**” shall have the meaning ascribed to it in the UCC and shall include, without limitation, (a) all accounts, general intangibles, rights, remedies, guaranties, and security interests in respect of the goods or services provided by any Borrower, (b) all rights of enforcement and collection, all books and records evidencing or related to the foregoing, and all rights under this Agreement in respect of the foregoing, (c) all information and data compiled or derived by any Borrower in respect of the foregoing, and (d) all proceeds of any of the foregoing.

“**Affiliate**” means with respect to any Person (the “**Specified Person**”), (a) any Person which directly or indirectly controls, or is controlled by, or is under common control with, the Specified Person, and (b) any director or officer (or, in the case of a Person which is not a corporation, any individual having analogous powers) of the Specified Person or of a Person who is an Affiliate of the Specified Person within the meaning of the preceding clause (a). For purposes of the preceding sentence, “control” of a Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, or direct or indirect ownership (beneficially or of record) of, or direct or indirect power to vote, 5% or more of the outstanding shares of any class of capital stock of such Person (or in the case of a Person that is not a corporation, 5% or more of any class of equity interest).

“**Approval Order**” shall mean any of the Interim Order and the Final Order.

“**Authorized Officer**” means any officer or partner of a Borrower authorized by specific resolution of such Borrower to request Loans as set forth in the incumbency certificate referred to in Section 4.1(d) of this Agreement.

“**Avoidance Claim**” shall mean any claim that could be asserted by or on behalf of any Borrower or Estate against a Person under 11 U.S.C. §§ 544, 546, 547, 548, 549, 550 or 553, or an any alter ego claim to the extent such alter ego claim could be asserted by or on behalf of any Estate.

“**Bankruptcy Case**” shall have the meaning ascribed to such term in the recitals hereof.

“**Bankruptcy Code**” shall have the meaning ascribed to such term in the recitals hereof.

“**Bankruptcy Court**” shall have the meaning ascribed to such term in the recitals hereof.

“**Borrower**” and “**Borrowers**” shall have meaning ascribed to such terms in the recitals hereof.

“**Budget**” shall mean the initial Budget delivered to Lender at Closing, a copy of which is attached hereto as Exhibit A, and any subsequent Budget approved in writing by the Lender which may replace the initial Budget.

“**Business Day**” means any day other than a Saturday, Sunday or any day on which banking institutions in New York City, New York are permitted or required by law, executive order or governmental decree to remain closed or a day on which Lender is closed for business.

“**Carve-Out**” has the meaning set forth in Section 9.4(a) hereof.

“**Claim**” shall have the meaning ascribed to that term in Section 101(5) of the Bankruptcy Code.

“**Closing**” has the meaning set forth in Section 4.4 hereof.

“**Closing Date**” has the meaning set forth in Section 4.4 hereof.

“**Collateral**” has the meaning set forth in Section 3.1 hereof.

“**Commitment Fee**” has the meaning set forth in Section 2.9 hereof.

“**Committee**” shall mean any official committee of unsecured creditors or other committee appointed by the United States Trustee in the Bankruptcy Case pursuant to Section 1102 of the Bankruptcy Code.

“**Committee Professionals**” shall mean any Professional Person(s) employed by a Committee.

“**Credit Note**” has the meaning set forth in Section 2.1(d).

“**Debt**,” as applied to a Person, means, without duplication: (i) all items which in accordance with GAAP would be included in determining total liabilities as shown on the liability side of a balance sheet of such Person on the date as of which Debt is to be determined, including Capitalized Lease Obligations; (ii) all obligations of other Persons which such Person has guaranteed; (iii) all reimbursement obligations in connection with letters of credit or letter of credit guaranties issued for the account of such Person; and (iv) in the case of Borrowers the DIP Loan Obligations.

“**Debtor**” or “**Debtors**” shall have the meaning ascribed to such terms in the recitals hereof.

“**Debtor Professionals**” shall mean any Professional Person(s) employed by Borrowers.

“**Default Rate**” means the Loan Rate plus five percent (5.0%).

“**Designated Funding Date**” has the meaning set forth in Section 2.2(a) hereof.

“**DIP Facility**” has the meaning set forth in the recitals hereof.

“**DIP Loan Documents**” means this Agreement, the Credit Note, and all financing statements and any other agreements, instruments, documents and certificates delivered in connection with this Agreement.

“**DIP Loan Obligations**” means all now existing or hereafter arising Loans, debts, obligations, covenants, and duties of payment or performance of every kind, matured or unmatured, direct or contingent, owing, arising, due, or payable to Lender, by or from any Borrower, arising out of this Agreement or any other DIP Loan Document, including, without limitation, all obligations to repay principal of and interest on all the Loans, and to pay interest, fees, costs, charges, expenses, professional fees, and all sums chargeable to Borrowers under the DIP Loan Documents, whether or not evidenced by any note or other instrument.

“**DIP Liens**” has the meaning set forth in Section 3.2 hereof.

“**DIP Motion**” shall mean the motion of Borrowers filed in the Bankruptcy Case for approval of the financing under the DIP Facility pursuant to this Agreement.

“**DIP Superpriority Claims**” has the meaning set forth in Section 3.9 hereof.

“**Estate**” shall mean the estate created in the Bankruptcy Case pursuant to Section 541 of the Bankruptcy Code. “**Estates**” shall mean the collective Estates of all Borrowers.

“**Event of Default**” has the meaning set forth in Section 8.1 hereof.

“**Expenses**” has the meaning set forth in Section 2.9(a) hereof.

“**Final Commitment Date**” shall mean the date of entry of the Final Order, provided that Closing has occurred, and no Event of Default or Unmatured Event of Default has occurred.

“**Final Order**” means an order that is entered by the Bankruptcy Court pursuant to Sections 363 and 364 of the Bankruptcy Code and Bankruptcy Rule 4001(c), which authorizes the incurrence by Borrowers of post-petition secured indebtedness under the DIP Facility in accordance with the DIP Financing Documents, confers status as a Superpriority Claim upon all of the DIP Loan Obligations, approves and deems perfected the DIP Liens and is otherwise in form and substance satisfactory in all respects to Lender.

“**Full Payment**” shall mean with respect to any Debt or DIP Loan Obligations, full, final and indefeasible payment of such Debt or the DIP Loan Obligations in cash or immediately available funds.

“**GAAP**” means generally accepted accounting principles, consistently applied.

“**Governmental Authority**” means any federal, state, municipal, national, foreign or other governmental department, commission, board, bureau, court, agency or instrumentality or political subdivision thereof or any entity or officer exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with a state of the United States, the District of Columbia or a foreign entity or government.

“**Hazardous Substances**” means any substances defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic substance or similar term, by any environmental statute, rule or regulation of any governmental entity presently in effect and applicable to such real property.

“**Initial Cap**” has the meaning set forth in Section 2.2(e)

“**Interim Order**” means an order that is entered by the Bankruptcy Court on or after December [18], 2006 pursuant to Section 364 of the Bankruptcy Code and Bankruptcy Rule 4001(c), authorizes Borrowers to incur, during the prior to entry of the Final Order, post-petition secured indebtedness under the DIP Facility in accordance with the DIP Financing Documents, confers status as a Superpriority Claim upon all of the DIP Loan Obligations, approves and deems perfected the DIP Liens and is otherwise in form and substance satisfactory in all respects to Lender.

“**Lien**” shall mean any mortgage, pledge, security interest, encumbrance, restriction, lien or charge of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement or any lease in the nature thereof), or any other arrangement pursuant to which title to the property is retained by or vested in some other Person for security purposes.

“**Loan Commitment**” means an amount equal to \$5,000,000.

“**Loan Rate**” has the meaning set forth in Section 2.3(a) hereof.

“**Loan Request**” has the meaning set forth in Section 2.2(b) hereof.

“**Loans**” has the meaning set forth in Section 2.1(a) hereof.

“**Material Adverse Effect**” shall mean the effect of any event, condition, act, omission or circumstance, which, alone or when taken together with other events, conditions, acts, omissions or circumstances occurring or existing concurrently therewith, has a material adverse effect on (a) the condition (financial or otherwise), results of operations, assets, business or properties or prospects of the Borrowers taken as a whole, (b) Borrowers’ ability, taken as a whole, to duly and punctually pay or perform in its post-petition obligations, (c) the value of the Collateral, (d) Lender’s liens on the Collateral or the priority of any such Lien, or (e) the practical realization of the benefits of Lender’s rights and remedies under the DIP Loan Documents.

“**Maturity Date**” has the meaning set forth in Section 2.1(e) hereof.

“**Net Cash Proceeds**” means, with respect to any transaction or event, an amount equal to the cash proceeds received by any Borrower from or in respect of such transaction or event (including proceeds of any non-cash proceeds of such transaction), less (i) any out-of-pocket expenses reasonably incurred by such Person in connection therewith (including any attorneys’ fees reasonably allocated thereto) and (ii) in the case of an asset disposition, the amount of any debt secured by a Lien on the related asset and discharged from the proceeds of such asset disposition and any taxes paid or payable by such Person in respect of such asset disposition.

“**Ombudsman**” shall mean any healthcare ombudsman appointed by the Court pursuant to Section 333 of the Bankruptcy Code.

“**Participant**” has the meaning set forth in Section 9.10.

“**Pending Government Claims**” has the meaning set forth in Section 5.4 hereof.

“**Permitted Liens**” has the meaning set forth in Section 5.5.

“**Person**” means any individual, corporation, partnership, limited liability partnership, limited liability company, association, trust, unincorporated organization, joint venture, court or government or political subdivision or agency thereof, or other entity.

“**Petition Date**” shall mean the date on which the Borrowers filed their petitions for relief under the Bankruptcy Code.

“**Post-Default Fee Cap**” shall mean an amount not to exceed \$50,000.

“**Professional Person**” shall mean a Person who is an attorney, accountant, appraiser, auctioneer or other professional person and who is retained, with Bankruptcy Court approval, pursuant to Sections 327, 330, 331, or 1103 of the Bankruptcy Code.

“**Professionals**” shall mean, taken together, the Debtor Professionals, the Committee Professionals, and the Ombudsman.

“Properly Contested” means in the case of any indebtedness of a Borrower (including any taxes) that is not paid as and when due or payable by reason of such Borrower’s bona fide dispute concerning its liability to pay same or concerning the amount thereof, (i) such indebtedness is being properly contested in good faith by appropriate proceedings promptly instituted and diligently conducted; (ii) such Borrower has established appropriate reserves as shall be required in conformity with GAAP; (iii) the non-payment of such indebtedness will not have a Material Adverse Effect on Borrowers and will not result in a lien on any Assets unless such lien is at all times junior and subordinate in priority to the liens and security interests in favor of Lender (except only with respect to property taxes that have priority as a matter of applicable state law) and enforcement of such lien is stayed during the period prior to the final resolution or disposition of such dispute; (iv) if the indebtedness results from, or is determined by the entry, rendition or issuance against Borrowers or any of its assets of a judgment, writ, order or decree, execution on such judgment, writ, order or decree is stayed pending a timely appeal or other judicial review; and (v) if such contest is abandoned, settled or determined adversely (in whole or in part) to such Borrower, such Borrower forthwith pays such indebtedness and all penalties, interest and other amounts due in connection therewith.

“Property” means an interest of Borrowers in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

“Purchase Money Debt” means and includes (i) indebtedness (other than the DIP Loan Obligations) for the payment of all or any part of the purchase price of any equipment, (ii) any indebtedness (other than the DIP Loan Obligations) incurred at the time of or within 10 days prior to or after the acquisition of any equipment for the purpose of financing all or any part of the purchase price thereof, and (iii) any renewals, extensions, or refinancings (but not any increases in the principal amounts) thereof outstanding at the time.

“Purchase Money Lien” means a lien upon equipment which secures Purchase Money Debt, but only if such lien shall at all times be confined solely to the equipment acquired through the incurrence of the Purchase Money Debt secured by such lien and such lien constitutes a purchase money security interest under the UCC.

“Real Estate” means, collectively, all right, title and interest in and to any and all parcels of or interests in real property owned, leased or operated by any Person, whether by lease, license or other means, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures and equipment, all general intangibles and contract rights and other property and rights incidental to the ownership, lease or operation thereof.

“Reorganization Plan” shall mean a plan of reorganization proposed by Borrowers or any other Person (including Lender) in the Bankruptcy Case.

“Superpriority Claim” shall mean a claim against Borrowers in the Bankruptcy Case that is an administrative expense claim having priority over any and all administrative expenses of the kind specified in, or arising or ordered under, Sections 105, 326, 328, 503(b), 506(c), 507(a), 507(b), 546(c), 726 and 1114 of the Bankruptcy Code, including, without limitation, a claim pursuant to Section 364(c)(1) of the Bankruptcy Code.

“Term” has the meaning set forth in Section 2.1(c).

“Transfer” shall have the meaning set forth at 11 U.S.C. § 101(54)

“**Uniform Commercial Code**” or “**UCC**” means the Uniform Commercial Code as in effect from time to time in the State of California.

“**United States Trustee**” shall mean the United States Trustee for the judicial district in which the Bankruptcy Case is pending.

“**Unmatured Event of Default**” means an event which with the passage of time, giving of notice or both, would become an Event of Default.

1.2. Matters of Construction. The terms “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision. The term or terms “including” and “include” shall be understood to mean “including, without limitation” and “include, without limitation.” Any pronoun used shall be deemed to cover all genders. Wherever appropriate in the context, terms used herein in the singular also include the plural and vice versa. All references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations. Unless otherwise provided, all references to any instruments or agreements to which Lender is a party, including, without limitation, references to any of the DIP Loan Documents, shall include any and all modifications or amendments thereto and any and all extensions or renewals thereof. Any terms used herein which are defined in the UCC, unless otherwise defined, shall have the meanings ascribed to them in the UCC.

1.3. Accounting Principles. Where the character or amount of any asset or liability or item of income or expense is required to be determined or any consolidation or other accounting computation is required to be made for the purposes of this Agreement, this shall be done in accordance with GAAP, to the extent applicable, except as otherwise expressly provided in this Agreement.

SECTION 2

THE LOANS

2.1. DIP Facility – Description.

(a) Subject to the terms and conditions of this Agreement and the Approval Orders, Lender hereby establishes for the benefit of Borrowers the DIP Facility, which shall include term loans which may be extended by Lender to or for the benefit of Borrowers from time to time hereunder (“**Loans**”). The aggregate outstanding amount of all Loans, at any time, shall not exceed the Five Million Dollars (\$5,000,000) (the “**Loan Commitment**”). Lender has the right at any time, and from time to time, in its reasonable good faith discretion (but without any obligation) to set aside reasonable reserves against the Loan Commitment in such amounts as it may deem appropriate, including, without limitation, the Carve-Out and any fees or other costs to which Lender is entitled under this Agreement. All Obligations of Borrowers under the DIP Facility and this Agreement shall at all times be absolute and unconditional obligations of each Borrower.

(b) Upon entry of the Interim Order, six hundred thousand (\$600,000.00) (the “**Initial Commitment**”) of the Loan Commitment shall be made available by the Lender to the Borrowers pursuant to the Budget and the DIP Loan Documents. The remaining balance of the Loan Commitment shall be made available following the Final Commitment Date pursuant to the Budget and DIP Loan Documents.

(c) The Initial Commitment and Loan Commitment (as applicable) will be made available on an as need basis pursuant to the Budget for (i) expenses incurred by the Borrowers with respect to post-petition services provided or goods delivered in the ordinary course of business or necessary to ensure the

continued uninterrupted operations of the Borrowers, including but not limited to payroll and claims of vendors and third-party service providers on account of post-petition services rendered or goods provided to the Borrowers in the ordinary course of their operations; (ii) expenses incurred by the Borrowers with respect to pre-petition services rendered or goods provided to the Borrowers, but only if same are authorized to be paid by an order of the Bankruptcy Court, necessary to ensure the continued uninterrupted operations of the Borrowers, including but not limited to pre-petition payroll; (iii) any payments made by the Lender to vendors and third-party service providers of the Borrowers on account of services rendered or goods provided to the Borrowers pursuant to which the Lender is entitled to reimbursement from the Borrowers; and/or (iv) payments to Professionals for the Carve-Out amounts.

(d) At Closing, Borrowers shall execute and deliver a promissory note to Lender in the principal amount of the Loan Commitment (as may be amended, modified or replaced from time to time, the “**Credit Note**”). The Credit Note shall evidence Borrowers’ absolute and unconditional obligation to repay Lender for all Loans made by Lender under the DIP Facility, with interest as herein and therein provided. Each and every Loan under the DIP Facility shall be deemed evidenced by the Credit Note, which is deemed incorporated herein by reference and made a part hereof. The Credit Note shall be substantially in the form set forth in Exhibit 2.1(d) attached hereto and made a part hereof.

(e) The term (“**Term**”) of the DIP Facility shall commence on the Closing Date and shall end on the **Maturity Date**, which shall be the earlier of the following: (i) March 31, 2022; (ii) the earlier of the substantial consummation (as defined in Bankruptcy Code § 1101) or the effective date of a confirmed plan of reorganization for any Borrower; (iii) conversion of the Bankruptcy Case of any Borrower to a case under Chapter 7 of the Bankruptcy Code; (iv) appointment of a trustee for Borrowers or any Borrower; (v) dismissal of the Bankruptcy Case of any Borrower; (vi) forty-five (45) days after the entry of the Interim Order if the Final Order has not been entered prior to the expiration of such period; (vii) the date on which the Court enters an order approving a post-petition financing between Borrowers and another lender(s) or investor(s) (as the case may be) (other than the Lender); (viii) consummation of a sale of substantially all of the assets of any Borrower under Bankruptcy Code § 363, unless the Lender or an affiliate is the buyer; and (ix) on the occurrence of an Event of Default. The Lender may extend the Maturity Date in its sole discretion.

(f) Any and all then outstanding DIP Loan Obligations shall due and payable in full and be repaid on or before the Maturity Date. After the Maturity Date no further Loans shall be available from Lender.

2.2. Funding Procedures.

(a) Subject to the terms and conditions of this Agreement and so long as no Event of Default or Unmatured Event of Default has occurred hereunder, Lender will make Loans to Borrowers upon the request of Borrowers on such day as Borrowers may request in accordance with Sections 2.2(b) below (such day is referred to herein as the “**Designated Funding Date**”).

(b) If Borrowers requesting that a Loan be made on a Designated Funding Date, Borrowers shall deliver to Lender at least five (5) Business prior to such Designated Funding Date a written request for such Loan substantially in the form of Exhibit 2.2(b) (a “**Loan Request**”). The Loan Request may be delivered via email and Borrowers acknowledge that Lender may rely on Borrowers’ signature by facsimile or scanned image, which shall be legally binding upon Borrowers. Each Loan Request shall be consistent with the Budget, provided that the Lender may waive the foregoing in the Lender’s sole discretion.

(c) Unless payment is otherwise timely made by Borrowers, the becoming due of any amount required to be paid under this Agreement or any of the other DIP Loan Documents with respect to

the Obligations (whether as principal, accrued interest, fees or other charges) shall be deemed irrevocably to be a request (without any requirement for the submission of a Loan Request) for a Loan on the due date of, and in an aggregate amount required to pay, such Obligations, and the proceeds of such Loan may be disbursed by way of direct payment of the relevant Obligation and shall bear interest as provided herein. Lender shall have no obligation to Borrowers to honor any deemed request for a Loan after the Maturity Date, or when any condition precedent set forth in Section 4 hereof is not satisfied, but may do so in its discretion and without regard to the existence of, and without being deemed to have waived, any Unmatured Event of Default or Event of Default and regardless of whether such Loan is funded after the Maturity Date.

2.3. Interest.

(a) Each Loan shall bear interest on the outstanding principal amount thereof from the date made until such Loan is paid in full. Interest shall accrue on amounts outstanding under the DIP Facility at a per annum rate equal to the nine and one half percent (9.5%) per annum (the “**Loan Rate**”).

(b) If any Event of Default shall occur and be continuing, the rate of interest applicable to each Loan then outstanding shall be the Default Rate. The Default Rate shall apply to all amounts outstanding from the date of the Event of Default until the date such Event of Default is waived or cured, and interest accruing at the Default Rate shall be payable weekly upon demand.

2.4. Additional Interest Provisions.

(a) Calculation of Interest. Interest on the Loans shall be based on a year of three hundred sixty (360) days and charged for the actual number of days elapsed. For purposes of computing interest and other charges hereunder, all forms of payment received by Lender shall be deemed applied by Lender on account of the Obligations (subject to final payment of such items) the Business Day after Lender receives such items in immediately available funds.

(b) Continuation of Interest Charges. All contractual rates of interest chargeable on outstanding Loans shall continue to accrue and be paid even after default, maturity, acceleration, judgment, bankruptcy, insolvency proceedings of any kind or the happening of any event or occurrence similar or dissimilar.

(c) Applicable Interest Limitations. In no contingency or event whatsoever shall the aggregate of all amounts deemed interest hereunder and charged or collected pursuant to the terms of this Agreement exceed the highest rate permissible under any law which a court of competent jurisdiction shall, in a final determination, deem applicable hereto. In the event that such court determines Lender has charged or received interest hereunder in excess of the highest applicable rate, Lender shall, in its sole discretion, apply and set off such excess interest received by Lender against other Obligations due or to become due and such rate shall automatically be reduced to the maximum rate permitted by such law.

2.5. Payments.

(a) All DIP Loan Obligations shall be due and payable on the Maturity Date, unless any earlier date is set forth herein or in the DIP Loan Documents.

(b) All payments shall be applied in the order provided in Section 2.7(a) hereof, subject to the terms of the Approval Orders. Except as otherwise provided herein, all payments of principal, interest, fees, or other amounts payable by Borrowers hereunder shall be remitted to Lender in immediately

available funds not later than 11:00 a.m. (Eastern Time) on the day due. All payments of principal, interest, fees or other amounts payable by Borrowers hereunder that are received not later than 11:00 a.m. on a Business Day shall be deemed received by Lender on such Business Day, and all such payments received after 11:00 a.m. on a Business Day shall be deemed received by Lender on the next succeeding Business Day. Whenever any payment is stated as due on a day which is not a Business Day, the maturity of such payment shall be extended to the next succeeding Business Day and interest shall continue to accrue during such extension.

(c) If any of the Collateral consisting of Real Estate is lost or destroyed or taken by condemnation, then any proceeds (including insurance proceeds) therefrom and any condemnation awards that are paid to any Borrower in connection with a condemnation of any of the Collateral shall be paid to Lender and applied to any other Obligations outstanding under this Agreement or otherwise, provided that if requested by Borrowers in writing within five (5) days after Lender's receipt of such proceeds and if no Unmatured Event of Default or Event of Default exists and if no material adverse effect could reasonably be expected to result from any insured loss of Collateral, Borrowers may apply such proceeds to repair or replace the damaged or destroyed Real Estate so long as (1) such repair or replacement is promptly undertaken and concluded, (2) replacements of buildings are constructed on the sites of the original casualties and are of comparable size, and quality and utility to the destroyed buildings, (3) the repaired or replaced Property is at all times free and clear of liens other than Permitted Liens that are not Purchase Money Liens, (4) Borrowers comply with such disbursement procedures for such proceeds as Lender may reasonably impose for repair or replacement and (5) the amount of proceeds from any single casualty affecting Real Estate does not exceed \$250,000.

2.6. Use of Proceeds.

(a) Proceeds of the Loans shall be utilized as follows: (i) general working capital and operational expenses; (ii) administration of the bankruptcy case (in each case of (i) and (ii), in accordance with the Budget; and (iii) costs, expenses, closing payments, and all other payment amounts contemplated herein.

(b) Borrowers' use of proceeds of the Loans shall be subject to the Budget in all respects and shall be in the form of advances on an as needed basis for (i) expenses incurred by Borrowers with respect to post-petition services rendered or goods provided in the ordinary course of business or necessary to ensure the continued uninterrupted operations of Borrowers, including but not limited to payroll and claims of vendors and third-party service providers on account of post-petition services rendered or goods provided to Borrowers in the ordinary course of their operations; (ii) expenses incurred by the Borrowers with respect to pre-petition services rendered or goods provided to the Borrowers, but only if same are authorized to be paid by an order of the Bankruptcy Court, necessary to ensure the continued uninterrupted operations of the Borrowers, including but not limited to pre-petition payroll; (iii) any payments made by the Lender to vendors and third-party service providers of Borrowers on account of services rendered or goods provided to Borrowers pursuant to which the Lender is entitled to reimbursement from Borrowers; and/or (iii) loans to pay Bankruptcy Professionals (as defined below).

(c) Neither the proceeds of the Loans nor the Carve-Out (as defined below) shall be utilized (i) to attack the validity, priority or enforceability of any of the liens or security interests of the Lender, (ii) to research, review, analyze or investigate with respect to or in connection with any litigation, claim, objection or cause of action of any kind or nature whatsoever against the Lender (whether or not arising from or related to pre-petition or post-petition liens, security interests, acts, omissions or other conduct); provided, however, that any official committee of unsecured creditors may use up to \$15,000.00 in proceeds of the Loans or Carve-Out to investigate but not pursue any potential claim against the Lender, or (iii) to file, prosecute or otherwise pursue any litigation, claim, objection or cause of action of any kind or

nature whatsoever against the Lender (whether or not arising from or related to post-petition liens, security interests, acts, omissions or other conduct).

2.7. Allocation of DIP Loan Obligations. The DIP Loan Obligations shall be allocated among the Borrowers as follows: (i) Loans shall be disbursed and allocated to each individual Borrower pursuant to the terms set forth above in Sections 2.1 and 2.2, consistent with the Budget; (ii) Interest shall be allocated among the Borrowers pro rata based on the balance allocable to each Borrower; (iii) Expenses, fees, and any other DIP Loan Obligations other than for principal or interest shall be allocated to the Borrowers on an equal basis. The foregoing shall not modify the joint and several nature of the DIP Loan Obligations, the Lender's right to the DIP Superpriority Claim in the full amount of the DIP Loan Obligations against each Estate, or the DIP Liens securing the full amount of the DIP Loan Obligations as set forth below.

2.8. Application of Payments. Prior to the occurrence of an Event of Default, Lender shall cause amounts received hereunder to be applied in the following order of priority:

- (a) to any costs and Expenses of Lender required to be paid or reimbursed by Borrowers under this Agreement or under any of the other DIP Loan Documents;
- (b) to unpaid accrued interest on the aggregate outstanding principal amount of Loans;
- (c) to principal of the Loans; and
- (d) to any other DIP Loan Obligations outstanding.

Following the occurrence of an Event of Default, Lender may apply all amounts received hereunder to Borrowers' DIP Loan Obligations in such order as Lender may in its sole discretion determine.

2.9. Fees. As of the Closing, Lender shall be deemed to have fully earned a non-refundable commitment fee (the "**Commitment Fee**") equal to \$50,000 which shall be paid upon Closing and which shall be non-refundable when paid. As of the Maturity Date, or in connection with any payment of all remaining DIP Loan Obligations, Lender shall be deemed to have fully earned a non-refundable exit fee (the "**Exit Fee**") in the amount of the greater of \$50,000 or one percent (1%) of the outstanding balance at the time of exit, which shall be due and payable on the earlier of the Maturity Date or any payment of all other remaining balance of the DIP Loan Obligations prior to the Maturity Date. The Exit Fee shall be waived if the DIP Loan is satisfied pursuant to a successful credit bid by which the Lender or an affiliate of the Lender acquires substantially all of the assets of Borrowers.

2.10. Expenses of Lender.

(a) The Lender shall be entitled to add to the balance due under the DIP Facility all reasonable costs and expenses of the Lender related to this Agreement and the DIP Loan Documents, including, without limitation, reasonable legal fees, advisor fees, consultant fees, costs and expenses, collateral valuations, appraisals, surveys, field examinations, third party diligence, lien searches, filing fees, and all other out-of-pocket costs and expenses in any way related to the DIP Facility or the DIP Loan Obligations and the enforcement and collection thereof (collectively, the "**Expenses**"). In the event that the DIP Facility is not consummated, the Lender shall have the right to seek reimbursement of all reasonable Expenses incurred with respect thereto as an administrative expense of the Estates pursuant to Bankruptcy Code § 503(b), and Borrowers hereby acknowledge and agree that such amount shall constitute an administrative expense of the Estates.

(b) At any time the Lender may elect to provide the Borrowers with a written statement or statements of Expenses with supporting documentation (an “**Expense Statement**”). The Borrowers shall have fifteen (15) days to object in writing to any Expense Statement, and if no such objection is made, the Borrowers shall be deemed to agree to the reasonableness of the Expenses reflected thereon, and to waive absolutely any right to object to such Expense Statement and the Expenses reflected.

2.11. Taxes. Borrowers shall pay all taxes (other than taxes based upon or measured by Lender’s income or revenues), if any, in connection with the Loans and/or the recording of any financing statements or other DIP Loan Documents. The Obligations of Borrowers under this section shall survive the payment of Borrowers’ DIP Loan Obligations under this Agreement and the termination of this Agreement.

2.12. Termination of DIP Facility.

(a) Termination by Lender. Lender may terminate the DIP Facility (and the Loan Commitment thereunder) at any time, without prior notice to Borrowers, upon or after the occurrence of an Event of Default, provided that Lender shall provide prompt notice to Borrowers following termination.

(b) Termination by Borrowers. Borrowers may terminate the DIP Facility at any time upon twenty (20) days prior written notice to Lender; provided, however, no such termination by Borrowers shall be effective until Full Payment of the DIP Loan Obligations. Any notice of termination given by Borrowers shall be irrevocable unless Lender otherwise agrees in writing. Borrowers may elect to terminate the DIP Facility in its entirety only.

(c) Effect of Termination. On the Maturity Date, all of the DIP Loan Obligations (including any contingent DIP Loan Obligations owing to Lender) shall be immediately due and payable, and Lender shall have no further obligation to make any Loans. All undertakings, agreements, covenants, warranties and representations of Borrowers contained in the DIP Loan Documents shall survive any such termination and Lender shall retain its Liens in the Collateral and all of its rights and remedies under the DIP Loan Documents notwithstanding such termination until Full Payment of the DIP Loan Obligations. Notwithstanding the Full Payment of the DIP Loan Obligations, Lender shall not be required to terminate its security interests in any of the Collateral unless, with respect to any loss or damage Lender may incur as a result of the dishonor or return of any Payment Items applied to the DIP Loan Obligations, Lender shall have received either (i) a written agreement, executed by Borrowers and any Person whose loans or other advances to Borrowers are used in whole or in part to satisfy the DIP Loan Obligations, indemnifying Lender from any such loss or damage; or (ii) such monetary reserves and Liens on the Collateral for such period of time as Lender, in its reasonable discretion, may deem necessary to protect Lender from any such loss or damage. The provisions of Sections 2.10 and this Section 2.9 and all obligations of Borrowers to indemnify Lender pursuant to this Agreement shall in all events survive any termination of the Loan Commitment.

SECTION 3

COLLATERAL

3.1. Grant of Security Interest in Collateral. To secure the payment, promptly when due, and the punctual performance, of all of the DIP Loan Obligations, each Borrower, upon entry of the Interim Order and the Final Order, as applicable, by the Bankruptcy Court, hereby grants to Lender a continuing security interest in and Lien upon, and pledges to Lender, all of its right, title and interest in and to any and all current and future assets of each of the Borrowers of any nature or type whatsoever, including, without limitation, real estate, cash, Accounts, accounts receivable, goods, instruments, deposit accounts,

investment accounts, investment property (including, without limitation, ownership interests in corporations, partnerships and limited liability companies), inventory, general intangibles, payment intangibles, healthcare receivables, vehicles, customer lists, trademarks, copyrights, brands, know-how and other intellectual property, minerals, mineral rights, plant and equipment, patents, trade secrets, tax assets, real property and/or leasehold rights, personal property, any causes of action under the Bankruptcy Code or applicable non-bankruptcy law, including causes of action and recoveries for Avoidance Actions, all other tangible and intangible assets, and any and all proceeds of the foregoing (collectively, the “**Collateral**”).

3.2. Priority of and Perfection Security Interest in Collateral. The security interests and liens in the Collateral securing the DIP Loan Obligations shall be authorized and approved by the Court pursuant to Bankruptcy Code §§ 364(d)(1), to constitute a lien on and in the Collateral ranking senior to all other claims and liens of Borrowers, including without limitation any preexisting liens and security interests on the Collateral, subject only to the Carve-Out (the “**DIP Liens**”). The Interim Order and Final Order shall provide that the DIP Liens shall not be subject to challenge and shall attach and become valid, enforceable and perfected without the requirement of any further action by the Lender. For the avoidance of doubt, the Approval Orders so providing is an absolute condition of Lender’s obligations hereunder.

3.3. Lien Documents. At Closing and thereafter as Lender deems necessary, Borrowers shall execute and deliver to Lender, or shall have executed and delivered (all in form and substance reasonably satisfactory to Lender):

(a) Financing Statements. Financing statements pursuant to the UCC, which Lender may file in any jurisdiction where any Collateral is or may be located and in any other jurisdiction that Lender deems appropriate; and

(b) Other Agreements. Any other agreements, documents, instruments and writings, including security agreements and assignment agreements not in contravention of governmental anti-assignment restrictions, reasonably required by Lender to evidence, perfect or protect Lender’s liens and security interests in the Collateral or as Lender may reasonably request from time to time, all in form and substance reasonably satisfactory to Lender.

3.4. Other Actions. In addition to the foregoing, Borrowers shall do anything further that may be lawfully and reasonably required by Lender to perfect its liens and security interests and to effectuate the intentions and objectives of this Agreement, including, but not limited to, the execution and delivery of continuation statements, amendments to financing statements, security agreements, contracts and any other documents required hereunder. At Lender’s request, Borrowers shall also immediately deliver (with execution by Borrowers of all necessary documents or forms to reflect Lender’s security interest therein) to Lender, all items for which Lender must or may receive possession to obtain a perfected security interest. Unless prohibited by applicable law, Borrowers hereby irrevocably authorize Lender to execute and file in any jurisdiction any financing statement or amendment thereto on Borrowers’ behalf, including financing statements that indicate the Collateral (i) as all assets or all personal property of Borrowers or words of similar effect, or (ii) as being of an equal or lesser scope, or with greater or lesser detail, than as set forth in this Section 3.

3.5. Searches. Lender may, prior to or at Closing, and thereafter as Lender may reasonably request from time to time, at Borrowers’ expense, obtain the following searches (the results of which are to be consistent with the warranties made by Borrowers in this Agreement):

(a) UCC Searches. With respect to Borrowers, UCC searches with the Secretary of State and local filing office of each state where each Borrower maintains its chief executive office, a place of business, or assets;

(b) Judgments, Etc. Judgment, federal tax lien and corporate tax lien searches against Borrowers in all applicable filing offices of each state searched under Section 3.4(a) above.

(c) Title Reports. Title reports for all real property owned by Borrowers.

Borrowers shall, prior to or at Closing and at their expense, obtain and deliver to Lender good standing or equivalent certificates showing Borrowers to be in good standing in their state of incorporation or organization and authorized to transact business as a foreign corporation in each other state or foreign country in which it is doing and presently intends to do business for which Borrowers' failure to be so qualified might have a Material Adverse Effect.

3.6. Filing Security Agreement. A carbon, photographic or other reproduction or other copy of this Agreement, the Interim Order, the Final Order, or of a financing statement is sufficient as and may be filed in lieu of a financing statement.

3.7. Power of Attorney. Each of the officers of Lender is hereby irrevocably made, constituted and appointed the true and lawful attorney for Borrowers (without requiring any of them to act as such) with full power of substitution to do the following (such power to be deemed coupled with an interest): (a) endorse the name of any Borrower upon any and all checks, drafts, money orders and other instruments for the payment of monies that are payable to Borrowers and constitute collections on the Collateral, but only upon the occurrence of an Event of Default; (b) execute in the name of any Borrower any financing statements, schedules, assignments, instruments, documents and statements that such Borrower is obligated to give Lender hereunder or is necessary to perfect Lender's security interest or lien in the Collateral; (c) verify the validity, amount or any other matter relating to the Collateral by mail, telephone, telecopy or otherwise; and (d) do such other and further acts and deeds in the name of such Borrower that Lender may reasonably deem necessary or desirable to enforce its right with respect to any Collateral.

3.8. Marshaling; Payments Set Aside. Lender shall not be under any obligation to marshal any assets in favor of any Borrower or against or in payment of any or all of the DIP Loan Obligations. To the extent that Borrowers make a payment or payments to Lender or Lender receives payment from the proceeds of any Collateral or exercises its right of setoff, and such payment or payments or the proceeds of Collateral or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party, then, to the extent of such recovery, the Obligations or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefore, shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred. The provisions of the immediately preceding sentence of this Section 2.10 shall survive any termination of the DIP Facility and Full Payment of the DIP Loan Obligations.

3.9. Bankruptcy Superpriority Claim. The DIP Loan Obligations shall be incurred as, and shall constitute, claims with a priority over all administrative expenses of the kind specified in Bankruptcy Code §§ 503(b) or 507(b) (the "**DIP Superpriority Claims**"). Borrowers shall obtain Bankruptcy Court approval of the foregoing pursuant to Bankruptcy Code § 364(c)(1). For the avoidance of doubt, the Approval Orders expressly providing for the DIP Superpriority Claims are an absolute condition of Lender's obligations hereunder.

3.10. Exemption from Surcharge. Borrowers (and any successors thereto or any representatives thereof, including any trustees or professionals appointed in the bankruptcy case or any successor case) agree not to assert any rights, benefits or causes of action under Section 506(c) of the Bankruptcy Code as they may relate to or be asserted against the Lender, the DIP Liens, or the Collateral, subject only to and effective upon entry of the Final Order.

SECTION 4

CLOSING AND CONDITIONS PRECEDENT TO LOANS

Closing under this Agreement and the making of each Loan are subject to the following conditions precedent (all documents to be in form and substance satisfactory to Lender and Lender's counsel and duly executed and delivered to Lender), provided that Lender may in its sole and absolute discretion waive any of the conditions precedent set forth herein:

4.1. Resolutions, Opinions, and Other Documents. Prior to the Closing, Borrowers shall deliver or have delivered to Lender the following:

(a) this Agreement, the Credit Note and the other DIP Loan Documents, including each document and agreement required to be executed under any provision of this Agreement or any of the other DIP Loan Documents;

(b) certified copies of (i) resolutions of each Borrowers board of directors, general partners or managers, as applicable, authorizing the execution of this Agreement, the Credit Note and other DIP Loan Documents and each document required to be delivered by any Section hereof and (ii) each Borrower's Articles of Incorporation and By-laws, Certificate of Organization and Operating Agreement or partnership agreement, as applicable;

(c) If requested by Lender, Uniform Commercial Code, judgment, federal and state tax lien, and real property title reports pursuant to Section 3.4 above which reflect that, prior to the transactions contemplated by this Agreement and the other DIP Loan Documents, the only liens are the Permitted Liens;

(d) all financial reports and information for Borrowers as Lender may reasonably request;

(e) Loss Payable Endorsements naming Lender as loss payee with respect to each casualty insurance policy of Borrowers and naming Lender as an additional insured with respect to each liability insurance policy of Borrowers, together with evidence of casualty insurance, liability insurance and any other insurance required pursuant to the provisions of this Agreement in form and substance acceptable to Lender and Lender's counsel; and

(f) all other documents, information and reports required or requested to be executed and/or delivered by Borrowers under any provision of this Agreement or any of the DIP Loan Documents.

4.2. Additional Preconditions to Loans. Lender's obligation to make the initial Loan and each subsequent Loan shall be subject to the satisfaction of each of the following conditions:

(a) The Maturity Date has not occurred.

(b) After giving effect to such Loan, the aggregate amount of all Obligations shall not exceed the Loan Commitment, and prior to the Final Commitment Date, the principal amount of all Loans shall not exceed the Interim Commitment.

(c) All representations and warranties of Borrowers shall be true and correct in all material respects on and as of the date of such Loan, except to the extent that any such representation or warranty relates to a specific date, in which case such representation or warranty shall be true and correct as of such earlier date, and no Event of Default or Unmatured Event of Default shall have occurred and be

continuing, Borrowers shall be in compliance with this Agreement and the other DIP Loan Documents, and Borrowers shall have certified such matters to Lender.

(d) There is no pending motion which, if granted by the Bankruptcy Court, would result in an Event of Default.

(e) The Interim Order shall have been entered, shall be in full force and effect and shall not have been vacated, reversed, modified or stayed in any respect (and, if such Interim Order is the subject of a pending appeal, no performance of any obligation of any party shall have been stayed pending such appeal).

(f) As to any Loan for which the Designated Funding Date is after the Final Commitment Date, the Final Order shall have been entered, shall be in full force and effect and shall not have been vacated, reversed, modified or stayed in any respect (and, if such Final Order is the subject of a pending appeal, no performance of any obligation of any party shall have been stayed pending such appeal).

4.3. Compliance with This Agreement. Borrowers shall have performed and complied with all agreements, covenants and conditions contained herein in all material respects including the provisions of Sections 6 and 7 hereof, which are required to be performed or complied with by Borrowers before or at the Closing Date and as of the date of each Loan.

4.4. Closing. Subject to the conditions of this Section 4, the DIP Facility shall be made available (“**Closing**”) on the date this Agreement is executed and all of the conditions contained in Section 4.1 hereof are completed (“**Closing Date**”). Subject to the conditions of this Section 4, Closing with respect to the Initial Commitment shall occur as soon as practicable after entry of the Interim Order, but no later than two (2) business days after entry of such Interim Order.

4.5. Non-Waiver of Rights. By completing the Closing hereunder, or by making Loans hereunder, Lender does not thereby waive a breach of any warranty, representation or covenant made by Borrowers hereunder or under any agreement, document, or instrument delivered to Lender or otherwise referred to herein, and any claims and rights of Lender resulting from any breach or misrepresentation by Borrowers are specifically reserved by Lender.

SECTION 5

REPRESENTATIONS AND WARRANTIES

To induce Lender to complete the Closing and make the Loans under the DIP Facility to Borrowers, Borrowers warrants and represents to Lender that:

5.1. Organization and Validity.

(a) RHCS is duly formed as a not-for-profit corporation and the remaining Borrowers are duly formed as limited liability companies and validly existing under the laws of their states of formation, are validly existing and in good standing and, subject to entry of the Interim Order or Final Order, as applicable, have lawful power and authority to engage in the business they conduct in each state and other jurisdiction where they operate.

(b) The making and performance of this Agreement and related agreements, and each document required by any Section hereof, will not violate any law, government rule or regulation, or the charter, minutes, partnership agreement, operating agreement or bylaw provisions of any Borrower.

(c) Subject to entry of the Interim Order or Final Order, as applicable, Borrowers have all requisite power and authority to enter into and perform this Agreement and the other DIP Loan Documents and to incur the obligations herein provided for, and has taken all proper and necessary corporate action to authorize the execution, delivery and performance of this Agreement and the other DIP Loan Documents.

(d) This Agreement, the Credit Note and the other DIP Loan Documents, when delivered and authorized by the Interim Order and Final Order (as applicable) pursuant to Sections 363 and 364 of the Bankruptcy Code, will be valid and binding upon Borrowers as parties thereto and enforceable in accordance with their respective terms, subject to the Interim Order and Final Order.

5.2. Places of Business. Borrowers' chief executive office and the only other places of business of Borrowers are located at the corresponding addresses set forth on Schedule 1. Except as disclosed on Schedule 1: (a) Borrowers have not changed any such location in the last two years, (b) Borrowers have not changed its name in the last two years, and (c) during such period Borrowers have not used, nor do Borrowers now use, any fictitious or trade name except as set forth on Schedule 1.

5.3. Operation of Facilities. Borrowers own or lease and operate facilities that provide assisted living, independent living, memory care, skilled nursing or related services and have obtained all material licenses, accreditations and approvals of Governmental Authorities and all other Persons and certificates of need necessary for Borrowers to own their assets, to carry on their business and to execute, deliver and perform the DIP Loan Documents. Borrowers have not been notified by such Governmental Authority or other person during the immediately preceding 24-month period that such party has rescinded or not renewed, or intends to rescind or not renew, any such license or approval, except for any rescission or non-renewal that would not be likely to have a Material Adverse Effect.

5.4. Pending Litigation. As of the date of this Agreement, and other than the Bankruptcy Case, there are no judgments or judicial or administrative orders, proceedings or investigations (civil or criminal) (collectively, "**Pending Government Claims**") pending, or to the knowledge of Borrowers, threatened, against Borrowers in any court or before any Governmental Authority or arbitration board or tribunal, other than as set forth on Schedule 1 hereto. No Pending Government Claims are pending, or to the knowledge of Borrowers, threatened, against Borrowers which, if adversely determined, would have a Material Adverse Effect. Borrowers are not in default with respect to any order of any court, Governmental Authority, regulatory agency or arbitration board or tribunal, except where any such default would not be likely to have a Material Adverse Effect. To the Borrowers' knowledge, no equity holder or executive officer of any Borrower has been indicted or convicted in connection with, or is currently subject to any lawsuit or proceeding in connection with, any anti-racketeering or other criminal conduct or activity.

5.5. Title to Collateral. Borrowers have good and marketable title to all the Collateral it respectively purports to own, free from liens, claims and encumbrances, except those listed on Schedule 1 hereto ("**Permitted Liens**").

5.6. Taxes. All tax returns required to be filed by Borrowers in any jurisdiction have in fact been filed, and all taxes, assessments, fees and other governmental charges upon Borrowers or upon any of their Property, income or franchises, which are shown to be due and payable on such returns have been paid, except for those taxes being contested in good faith with due diligence by appropriate proceedings. Borrowers are not aware of any proposed additional tax assessment or tax to be assessed against or applicable to Borrowers that might have a Material Adverse Effect.

5.7. Financial Statements. The financial statements of Borrowers as of and for the fiscal year of Borrower ending December 31, 2020 have been prepared by Borrowers. To Borrowers' knowledge,

such financial statements have been prepared in accordance with GAAP and fairly present in all material respects the financial condition of the Borrowers and the results of operations and changes in financial condition of the business, as of the dates and for the periods referred to, and there are no material unrealized or anticipated liabilities, direct or indirect, fixed or contingent, of Borrowers as of the dates of such financial statements which are not reflected in such financial statements or in the notes to such financial statements. The fiscal year for each Borrower currently ends on the date set forth on Schedule 1 hereto. Borrowers federal tax identification numbers are as set forth on Schedule 1 hereto.

5.8. Full Disclosure. Neither the financial statements referred to in Section 5.7, nor this Agreement or related agreements and documents or any written statement furnished by Borrowers to Lender in connection with the negotiation of the DIP Facility and contained in any financial statements or documents relating to Borrowers, nor any information furnished by Borrowers to the Bankruptcy Court, contain any untrue statement of a material fact or omit a material fact necessary to make the statements contained therein or herein not misleading, except for any statements or omissions that, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

5.9. Guarantees, Contracts, etc.

(a) Borrowers do not own or hold equity or long term debt investments in, have any outstanding advances to, or serve as guarantor, surety or accommodation maker for the obligations of, or have any outstanding borrowings from, any Person except as described in Schedule 1 hereto.

(b) Borrowers are not party to any contract or agreement, or subject to any charter or other corporate restriction, which materially and adversely affects their business, financial condition, Property or prospects, other than as would not reasonably be expected to have a Material Adverse Effect.

(c) Except as otherwise specifically provided in this Agreement, Borrowers have not agreed or consented to cause or permit any of the Collateral whether now owned or hereafter acquired to be subject in the future (upon the happening of a contingency or otherwise) to a lien or encumbrance not permitted by this Agreement which would be reasonably likely to have a Material Adverse Effect.

(d) The making and performance of this Agreement and related agreements, and each document required by any Section hereof, will not violate or result in a default (immediately or with the passage of time) under any contract, agreement, or instrument to which a Borrower is a party, or by which a Borrower is bound, except for any such violations which would not reasonably be expected to have a Material Adverse Effect, except as described in Schedule 1 hereto.

(e) Borrowers have not defaulted under or otherwise materially violated the terms of any contract, agreement, or instrument entered into or assumed by a Borrower after the commencement of the Bankruptcy Case, except for any such violations which would not reasonably be expected to have a Material Adverse Effect.

5.10. Compliance with Laws.

(a) Borrowers are not in violation of, have not received written notice that it is in violation of, and have not knowingly caused any Person to violate, any applicable statute, regulation or ordinance of the United States of America, or of any state, city, town, municipality, county or of any other jurisdiction, or of any agency, or department thereof (including environmental laws and regulations), except where any such violation would not reasonably be expected to result in a Material Adverse Effect.

(b) Borrowers are current with all reports and documents required to be filed with any state or federal securities commission (if any) or similar agency and is in full compliance in all material respects with all applicable rules and regulations of such commissions, except where the failure to make such filings or where such noncompliance would not be likely to have a Material Adverse Effect.

5.11. Other Associations. Borrowers are not engaged in nor have an interest in any joint venture or partnership with any other Person or has any Subsidiaries or Affiliates, except as described on Schedule 1 hereto.

5.12. Environmental Matters. Except as disclosed on Schedule 1 hereto, Borrowers have no knowledge:

(a) of the presence of any Hazardous Substances on any of the real property where Borrowers conduct operations or has their personal property, or

(b) of any on-site spills, releases, discharges, disposal or storage of Hazardous Substances that have occurred or are presently occurring on any of such real property or where any Collateral is located, or

(c) of any spills, releases, discharges or disposal of Hazardous Substances that have occurred or are presently occurring on any other real property as a result of the conduct, action or activities of Borrowers,

in each case except those that would not be likely to have a Material Adverse Effect.

5.13. Brokers. There are no claims against Borrowers for brokerage commissions, finder's fees, investment banking fees or similar fees in connection with the transactions contemplated by this Agreement or any of the other DIP Loan Documents.

5.14. Budget. The Budget has been prepared by Borrowers in light of the past operations of their business, but including future payments of known contingent liabilities that are anticipated to be due and payable during the period covered by the Budget, and reflect projections for the 13-week period beginning on the Petition Date, on a week-by-week basis; and the Budget is based on estimates and assumptions stated therein, all of which Borrowers believe to be reasonable and fair as of the Closing Date in light of current conditions and current facts known to Borrowers at such time and, as of the Closing Date, reflect Borrowers' good faith and reasonable estimates of the future financial performance of Borrowers and of the other information projected therein for the period set forth therein. In the event amounts spent for certain items in the Budget are less than the amounts included in the Budget for such items, the unused amounts may be reallocated to other items in the Budget for which a deficiency may exist.

5.15. Survival. Borrowers make the representations and warranties contained herein with the knowledge and intention that Lender is relying and will rely thereon. All such representations and warranties will survive the execution and delivery of this Agreement and the making of the Loans under the DIP Facility.

SECTION 6

BORROWER'S AFFIRMATIVE COVENANTS

Borrowers covenant that until all of Borrowers' Obligations to Lender are paid and satisfied in full and the DIP Facility has been terminated:

6.1. Payment of Taxes and Claims. Borrowers shall pay, before they become delinquent, all taxes, assessments and governmental charges or levies imposed upon them or upon Borrowers' Property, except for those being contested in good faith with due diligence by appropriate proceedings and for which appropriate reserves have been maintained under GAAP.

6.2. Budget.

(a) Initial Budget. Borrowers shall provide Lender with an initial 13-week Budget on or before the Closing Date (the "**Initial Budget**").

(b) Subsequent Budgets. After the sixth (6th) week of the Initial Budget and each subsequent Budget, Borrowers will provide a new 13-week budget for approval by the Lender. On approval by the Lender, each such budget shall become the operative Budget (the current budget as approved by the Lender at any time, the "**Budget**").

6.3. Budget Variance and Financial Reports. Borrowers shall deliver to Lender the following (all to be in form and substance satisfactory to Lender):

(a) on or before Thursday of each week following the Closing Date, Borrowers shall deliver a weekly budget to actual variance report of the Borrowers' cash flow (receipts and disbursements) to the Budget, provided that commencing from and after the completion of the fifth week following the Closing Date, the variance report shall show the variance of actual expenditures to the Budget for the immediately preceding five (5) week period in addition to the prior week;

(b) on or before Thursday of each week following the Closing Date, Borrowers shall deliver census/admissions data for the prior week;

(c) deliver, as soon as available but not later than the last day of the following month, monthly financial statements of Borrowers which present fairly each Borrowers' financial condition including the balance sheet at the end of the month and a statement of cash flows and income statement for the month including a comparison to the prior year, all in reasonable detail, including all supporting schedules;

(d) as soon as available but in any event, within one hundred fifty (150) days after the end of each fiscal year of Borrowers, deliver financial statements of Borrowers for such year which present fairly Borrowers' financial condition including the balance sheet as at the end of such fiscal year and a statement of cash flows and income statement for such fiscal year setting forth in the statements in comparative form, the corresponding figures as at the end of and for the previous fiscal year, all in reasonable detail, including all supporting schedules, and prepared in accordance with GAAP; and

(e) promptly upon request, deliver such other information concerning Borrowers as Lender may from time to time reasonably request;

6.4. Officer's Certificates. Along with the set of financial statements delivered to Lender at the end of each month and fiscal year pursuant to Section 6.3 hereof, deliver to Lender a certificate (in the form of Exhibit 6.4 attached hereto and made a part hereof) from the chief financial officer of Borrowers setting forth that the signer in their capacity as an officer of Borrowers has reviewed the relevant terms of this Agreement, and has made (or caused to be made under their supervision) a review of the transactions and conditions of Borrowers from the beginning of the accounting period covered by the financial statements being delivered therewith to the date of the certificate, and that such review has not disclosed the

existence during such period of any condition or event which constitutes an Event of Default or Unmatured Event of Default or if any such condition or event existed or exists, specifying the nature and period of existence thereof and what action Borrowers have taken or propose to take with respect thereto.

6.5. Maintenance of Insurance, Financial Records and Corporate Existence.

(a) Property Insurance. Borrowers shall maintain or cause to be maintained insurance against fire, flood, casualty, and such other hazards in such amounts, with such deductibles and with such insurers as are customarily used by companies operating in the same industry as Borrowers. At or prior to Closing, Borrowers shall furnish Lender with insurance certificates certified as true and correct and being in full force and effect as of the Closing Date or such other evidence of insurance as Lender may require. In the event Borrowers fail to procure or cause to be procured any such insurance or to timely pay or cause to be paid the premium(s) on any such insurance, Lender may do so for Borrowers, but Borrowers shall continue to be liable for the same. Borrowers may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Borrowers have obtained insurance as required by this Agreement. Borrowers further covenant that all insurance premiums owing under its current casualty policy have been paid. The liability insurance shall contain standard additional insured clauses issued in favor of Lender. Such policies shall expressly provide that the requisite insurance cannot be altered or canceled without thirty (30) days prior written notice to Lender and shall insure Lender notwithstanding the act or neglect of the insured. Borrowers also agree to notify Lender, promptly, upon Borrowers' receipt of a notice of termination, cancellation, or non-renewal from its insurance company of any such policy.

(b) Liability Insurance. Borrowers shall maintain, and shall deliver to Lender upon Lender's request evidence of, liability insurance in such amounts as is customary for companies in the same or similar businesses located in the same or similar areas and shall cause Lender to be named as additional insureds under such insurance.

(c) Financial Records. Borrowers shall keep current and accurate books of records and accounts in which full and correct entries will be made of all of its business transactions, and will reflect in its financial statements adequate accruals and appropriations to reserves, all in accordance with GAAP. Borrowers shall not change their fiscal year end date without the prior written notice to Lender.

(d) Existence and Rights. Borrowers shall do (or cause to be done) all things necessary to preserve and keep in full force and effect their legal existence, good standing, rights and franchises.

(e) Compliance with Laws. Borrowers shall be in compliance with any and all laws, ordinances, governmental rules and regulations, and court or administrative orders or decrees to which it is subject, whether federal, state or local, (including without limitation environmental or environmental-related laws, statutes, ordinances, rules, regulations and notices), and shall obtain and maintain any and all licenses, permits, franchises, certificates of needs, or other governmental authorizations necessary to the ownership of their Property or to the conduct of its businesses, except as otherwise permitted by the Bankruptcy Court or where the noncompliance or failure to maintain would not reasonably be expected to have a Material Adverse Effect.

6.6. Business Conducted. Borrowers shall continue in the business presently operated by them. Borrowers shall not engage, directly or indirectly, in any material respect in any line of business substantially different from the businesses conducted immediately prior to the Closing Date.

6.7. Financial and Business Information. Borrowers shall deliver to Lender the following (all to be in form and substance satisfactory to Lender):

(a) Notice of Event of Default. Promptly upon becoming aware of the existence of any condition or event which constitutes a default or an Event of Default or Unmatured Event of Default under this Agreement or a post-petition default or event of default under any other contract or agreement involving an amount in excess of \$25,000, a written notice specifying the nature and period of existence thereof and what action Borrowers are taking (and propose to take) with respect thereto.

(b) Tax Returns and Reports. At Lender's request from time to time, Borrowers shall promptly furnish Lender with copies of the annual federal and state income tax returns of Borrowers.

(c) Litigation. Borrowers shall give prompt notice to Lender of any pending, known to be threatened or actual litigation claiming in excess of \$50,000 incurred post-petition from Borrowers or which may otherwise have a Material Adverse Effect on the business, financial condition, Property or prospects of Borrowers other than the Bankruptcy Case.

(d) Bankruptcy Case. Borrowers shall promptly provide the Lender with updates of any material developments in connection with Borrowers' reorganization efforts under the bankruptcy case, whether in connection with an asset sale, plan of reorganization or otherwise

6.8. Inspection. Borrowers will permit any of Lender's officers or other representatives to visit and inspect Borrowers' locations or where any Collateral is kept during regular business hours and upon reasonable prior notice to examine and audit all of Borrowers' books of account, records, reports and other papers, to make copies and extracts therefrom (except as may be prohibited by applicable privacy laws with respect to personnel and resident or medical files) and to discuss its affairs, finances and accounts with its officers, employees, and independent certified public accountants and attorneys, which inspections are to take place at least once during each year of the Term. Borrowers shall pay to Lender all reasonable fees based on standard rates for such inspections (plus reasonably documented out-of-pocket expenses). Notwithstanding the foregoing, Borrowers shall not be required to pay for more than two (2) audits by Lender during any year in which no Event of Default or Unmatured Event of Default has occurred and shall not be required to pay more than \$20,000, plus reasonable documented expenses for such audits. Notwithstanding the foregoing, Borrowers shall not be obligated to pay such expenses if such inspection is pursuant to the Lender's due diligence regarding a potential purchase of Borrowers' assets.

6.9. Material Adverse Developments. Borrowers agree that, immediately upon they or any of their officers becoming aware of any development or other information which would reasonably be expected to result in a Material Adverse Effect, they shall give to Lender telephonic or email notice specifying the nature of such development or information and such anticipated effect. In addition, such verbal communication shall be confirmed by written notice thereof to Lender on the next Business Day after such verbal notice is given.

6.10. Places of Business. Borrowers shall give thirty (30) days prior written notice to Lender of any changes in the location of any of its chief executive office or any other places of business, or the establishment of any new, or the discontinuance of any existing place of business.

6.11. Turnover of Collateral Proceeds. Borrowers shall promptly turn over to Lender all Net Cash Proceeds received from any sale or other disposition of any Collateral.

SECTION 7

BORROWERS' NEGATIVE COVENANTS

Borrowers covenant that until all of Borrowers' Obligations to Lender are paid and satisfied in full and the DIP Facility has been terminated, that:

7.1. Budget and Variance.

(a) The Borrowers shall not pay any expenses which are not contained in the Budget without the approval of the Lender. Borrowers shall operate their business in accordance with the Budget. Borrowers' compliance with this covenant shall be measured on aggregate disbursements on a rolling five (5) week cumulative basis.

(b) Borrowers' actual expenditures for each rolling five (5) week period shall not exceed the Budget plus a permitted variance of up to 10% in the aggregate for such period (the "**Permitted Variance**") (provided that the Permitted Variance shall not apply to amounts budgeted for fees of Professionals which shall not exceed the budgeted amounts).

(c) During the initial five (5) week period prior to commencement of compliance testing as set forth above, Borrowers shall not make any disbursements which exceed the amounts set forth in the expense line-items on the Budget (subject to a permitted variance up to 10% in the aggregate for each week).

(d) Expenses not paid in prior weeks may be carried over to subsequent weeks in the Budget.

7.2. Actions Prohibited Without Lender Consent. Without the prior written consent of the Lender, Borrowers shall not enact, seek, permit, or consent to any of the following:

(a) Any modification, stay, vacation or amendment to the Interim Order or the Final Order;

(b) Any priority claim or administrative expense or unsecured claim against Borrowers (now existing or hereafter arising of any kind or nature whatsoever, including without limitation, any administrative expense of the kind specified in Bankruptcy Code §§ 105, 326, 328, 330, 331, 364(c), 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726 or 1114) equal or superior to the DIP Superpriority Claim of the Lender in respect of the DIP Loan Obligations hereunder, except with respect to the Carve-Out;

(c) Any lien on any Collateral having a priority equal or superior to the DIP Liens securing the Obligations hereunder, other than with respect to the Carve-Out;

(d) Any order which authorizes the payment of any indebtedness incurred prior to the petition date other than first day orders acceptable to Lender;

(e) Any order seeking authority to take any action that is prohibited by the terms of the Credit Agreement, the Interim Order or the Final Order or to refrain from taking any action that is required to be taken by the terms of the Credit Agreement, the Interim Order or the Final Order; and,

(f) Any other action that would result in a Material Adverse Effect.

7.3. Merger, Consolidation, Dissolution or Liquidation.

(a) Without Lender's prior written consent, Borrowers shall not sell, lease, license, Transfer or otherwise dispose of their Property having a fair market value of more than \$25,000 in any given year, other than (i) with respect to Property sold in the ordinary course or ordinary operation of Borrowers' business and (ii) the disposition of obsolete, worn-out or unused equipment, or other dispositions of equipment for cash and fair value. Lender's consent shall not be unreasonably withheld in connection with any transfer of Borrowers' Property which will generate net proceeds which: (i) are sufficient to, and (ii) are earmarked by a Final Order of the Bankruptcy Court (in a form satisfactory to Lender) to, satisfy all DIP Loan Obligations.

(b) Borrowers shall not Transfer any of their assets out of the ordinary course of business without Lender's written consent.

7.4. Permitted Debt. Borrowers shall not, without the prior written consent of Lender, create, incur, assume, or suffer to exist any indebtedness, except: (a) the DIP Loan Obligations; (b) indebtedness of any subsidiary of a Borrower to a Borrower; (c) accounts payable to trade creditors and current operating expenses which are aged less than 120 days from billing date or less than 45 days from the due date, in each case incurred in the ordinary course of business and paid within such time period, unless the same are being Properly Contested; (d) contingent liabilities arising out of endorsements of checks and other negotiable instruments for deposit or collection in the ordinary course of business; (e) purchase money security financing and equipment leases not to exceed \$250,000 in the aggregate on a cumulative post-petition basis; (f) indebtedness disclosed on Schedule 1 hereto; (g) pre-petition claims that are junior in priority to the DIP Loan Obligations; and (h) indebtedness not included in paragraphs (a) through (f) above which is not secured by a security interest or lien and does not exceed at any time, in the aggregate, the sum of \$25,000 as to Borrowers.

SECTION 8

DEFAULT

8.1. Events of Default. Each of the following events shall constitute an event of default ("Event of Default") on the fifth (5th) Business Day following receipt by Borrowers of written notice from Lender of the occurrence of such event, if not cured or waived in writing by the Lender during prior to the expiration of such five (5) day period. Lender shall thereupon have the option to declare the DIP Loan Obligations immediately due and payable, all without demand, further notice, presentment or protest or further action of any kind. An Event of Default resulting from the occurrence of any of the events or conditions set forth in subparagraph (y) shall automatically cause an acceleration of the Obligations and shall constitute an Event of Default immediately on occurrence without prior notice by the Lender:

(a) Payments - if Borrowers fail to make any payment of principal or interest on the date when such payment is due and payable and such failure continues for a period of one (1) Business Day; provided, however, that the one (1) Business Day grace period shall not be applicable if such payments are due and payable due to maturity, acceleration or demand, whether following an Event of Default or otherwise; or

(b) Other Charges - if Borrowers fail to pay any other charges, fees, Expenses or other monetary obligations owing to Lender, arising out of or incurred in connection with the DIP Loan Documents on the date when such payment is due and payable, whether upon maturity, acceleration, demand or otherwise and such failure continues for a period of ten (10) Business Days after the earlier of Borrowers becoming aware of such failure or Borrowers receiving written notice of such failure; provided, however,

that the ten (10) Business Day grace period shall not be applicable if such payments are due and payable due to maturity, acceleration or demand, whether following an Event of Default, or otherwise; or

(c) Particular Covenant Defaults - if Borrowers fail to perform, comply with or observe any covenant or undertaking contained in the DIP Loan Documents not otherwise described in this Section 8.1, and such failure continues for a period of ten (10) Business Days after the earlier of Borrowers becoming aware of such failure or Borrowers receiving written notice from Lender of such failure; or

(d) Financial Information - if any report, certificate or other document delivered to the Lender pursuant to the DIP Loan Documents shall have been incorrect in any material respect when so made or deemed made; or

(e) Uninsured Loss - if there shall occur any uninsured damage to or loss, theft, or destruction in excess of \$100,000 with respect to any portion of Borrowers' Property; or

(f) Warranties or Representations - if any warranty, representation or other statement by or on behalf of Borrowers contained in or pursuant to this Agreement, or in any document, agreement or instrument furnished in compliance with, relating to, or in reference to this Agreement, is false, erroneous, or misleading in any material respect when made; or

(g) Injunction - if any Borrower is enjoined, restrained or in any way prevented by the order of any court or any governmental authority from conducting all or any material part of their business for more than three (3) consecutive days; or

(h) Licensing - if any Borrower fails to have all certificates, accreditations and licenses reasonably necessary to conduct its business; or

(i) Payor Contracts - if any Borrower fails to maintain all current material payor contracts and all agreements with health insurers, health maintenance organizations, preferred provider organizations, managed care organizations or other entity that is licensed by a state for the provision or arrangement of health insurance, health benefits or health care services; or

(j) Medicare and Medicaid - if any Borrower loses for any reason the right to receive Medicare or Medicaid reimbursement, or if there occurs any Material Adverse Effect upon such reimbursements or any material change in coverage for services or material change in payment rates; or

(k) Change in Medicare and Medicaid - if any investigation, survey, review, audit or change of law, rule or regulation could be reasonably expected to have a material adverse effect upon any Borrower's Medicare or Medicaid reimbursement; or

(l) Setoff or Recoupment - if any payor conducts a surcharge, recoupment, or setoff of accounts receivable of the Borrowers exceeding \$150,000.00 on a cumulative post-petition basis; or

(m) Interference with Operations - if any material damage to, or loss, theft or destruction of, any Collateral, whether or not insured, or any strike, lockout, labor dispute, embargo, condemnation, act of God or public enemy, or other casualty (whether or not insured) causes, for more than three (3) consecutive days, the cessation or substantial curtailment of revenue producing activities at any facility of the Borrowers, if any such event or circumstance could reasonably be expected to have a Material Adverse Effect; or

(n) Discontinuance of Operations – if without Lender’s consent Borrowers shall discontinue or suspend all or any material part of their business operations, commence an orderly wind-down or liquidation of any material part of the Collateral, or file a motion or other application seeking authority to do any of the foregoing; or

(o) Interim and Final Orders – if any order shall be entered by the Bankruptcy Court or any other court of competent jurisdiction reversing, amending, supplementing, staying, vacating or otherwise amending, supplementing or modifying the Interim Order or the Final Order, (ii) the Interim Order or Final Order, as applicable, shall cease to create valid and perfected liens on the Collateral in favor of the Lender, or (iii) any provision of the Interim Order or the Final Order shall cease to be valid and binding and in full force and effect, all without the express written consent of the Lender; or

(p) Priority of Claims – subject only to the allowance and payment of any amounts due under the Carve-Out, (i) the filing of any application by Borrowers without the express written consent of the Lender for the approval of a super-priority claim in the bankruptcy case which is *pari passu* with or senior to the priority of the claims of the Lender, or (ii) there shall arise or be granted and/or allowed any such *pari passu* or senior super-priority claim under the Bankruptcy Code; or

(q) Discharge of Debt – the discharge by Borrowers of any prepetition indebtedness without the written consent of the Lender except as authorized by the Bankruptcy Court in the first day orders provided that such first day orders are in form and substance acceptable to Lender; or

(r) Motions for Financing – the filing of any motion by Borrowers seeking the entry of any order permitting working capital or other financing (other than (i) purchase money security financing and equipment leases not to exceed \$250,000 in the aggregate on a cumulative post-petition basis, (ii) ordinary course trade debt, or (iii) unsecured debt) for Borrowers from any person other than the Lender (unless the proceeds of such financing are to be used to pay in full in cash all DIP Loan Obligations); or

(s) Motions Allowing Liens – the filing of any motion by Borrowers seeking the entry of any order granting a lien on, or security interest in, any of the Collateral (except as to the approval of the DIP Liens), other than (i) purchase money security interests or security interests pursuant to an equipment lease not to exceed \$250,000 in the aggregate on a cumulative post-petition basis (ii) liens that are granted in connection with a financing the proceeds of which are to be applied, pursuant to the court order authorizing such liens, to the payment in full in cash of all DIP Loan Obligations, or (iii) liens granted as adequate protection for preexisting liens and security interests on Borrowers’ assets, which adequate protection liens are junior in priority to the DIP Liens; or

(t) Motions for Sale – the filing of any motion by Borrowers seeking the entry of any order except as permitted by the DIP Loan Documents, permitting the use, sale or lease of any of the Collateral pursuant to Bankruptcy Code § 363(c) outside of the ordinary course of business without the prior written consent of the Lender that does not require payment in full in cash of all DIP Loan Obligations on the closing date of such sale; or

(u) Plan – the filing of a motion or other pleading by any Borrower seeking the entry of an order confirming a plan of reorganization (and/or approving a disclosure statement related thereto) that does not require payment in full in cash of all DIP Loan Obligations on the effective date of such plan of reorganization, and as to which Lender has not consented in writing; or

(v) Challenge to DIP Liens – either (i) the filing of any pleading by any Borrower challenging the validity, priority, perfection or enforceability of the DIP Loan Documents, the DIP Liens, or the DIP Loan Obligations, or (ii) any DIP Lien is determined to be null and void, invalid or unenforceable by

the Bankruptcy Court or another court of competent jurisdiction in any action commenced or asserted by any other party in interest in the bankruptcy case; or

(w) Motions for Surcharge – the filing of any motion by Borrowers seeking the entry of any order charging any of the Collateral under Section 506(c) of the Bankruptcy Code against the Lender; or

(x) Motions for Dismissal – the filing of any motion by Borrowers seeking the entry of any order dismissing the Bankruptcy Case or the bankruptcy case of any individual Borrower, unless the Lender has sought or consented in writing to such relief; or

(y) Certain Bankruptcy Events – if any order shall be entered by the Bankruptcy Court or any other court of competent jurisdiction (i) converting the Bankruptcy Case, or the bankruptcy case of any Borrower to a case under Chapter 7 of the Bankruptcy Code, (ii) appointing a trustee for any Borrower provided that the Lender has not consented in writing to such appointment, (iii) dismissing the Bankruptcy Case, or the bankruptcy case of any Borrower provided that the Lender has not consented in writing to such dismissal, (iv) which provides relief from the automatic stay otherwise imposed pursuant to Bankruptcy Code § 362 that permits any creditor to realize upon, or to exercise any right or remedy with respect to, any material portion of the Collateral where such action would be reasonably likely to have a Material Adverse Effect, (v) which provides relief from the automatic stay otherwise imposed pursuant to Bankruptcy Code § 362 that permits any Person to terminate any permit, license or similar agreement, where such termination would be reasonably likely to have a Material Adverse Effect, (vi) terminating the Borrowers' exclusive right to seek approval of Plan of Reorganization.

(z) Material Adverse Effect - Lender reasonably determines that an event has occurred which would reasonably be likely to have a Material Adverse Effect; or

8.2. Cure. Nothing contained in this Agreement or the DIP Loan Documents shall be deemed to compel Lender to accept a cure of any Event of Default hereunder.

8.3. Rights and Remedies on Default.

(a) In addition to all other rights, options and remedies granted or available to Lender under this Agreement or the DIP Loan Documents, or otherwise available at law or in equity, upon or at any time after the occurrence and during the continuance of an Event of Default or Unmatured Event of Default, Lender may, in its discretion, withhold or cease making Loans under the DIP Facility.

(b) In addition to all other rights, options and remedies granted or available to Lender under this Agreement or the DIP Loan Documents, or otherwise available at law or in equity, Lender may, in its discretion, upon or at any time after the occurrence of an Event of Default, terminate the DIP Facility.

(c) In addition to all other rights, options and remedies granted or available to Lender under this Agreement or the DIP Loan Documents or, otherwise available at law or in equity, and subject to the terms of the Approval Orders, Lender may, upon or at any time after the occurrence of an Event of Default, exercise all rights under the UCC, the Bankruptcy Code, the Approval Orders, and any other applicable law or in equity, and under all DIP Loan Documents permitted to be exercised after the occurrence of an Event of Default, including the following rights and remedies (which list is given by way of example and is not intended to be an exhaustive list of all such rights and remedies):

(1) The Lender shall have standing to move for an order to cause Borrowers to engage in a process to liquidate their assets pursuant to Bankruptcy Code § 363, and there shall be deemed to be good cause for such relief.

(2) The automatic stay shall terminate without further application or motion to, or order from, the Court, to allow the Lender to foreclose or otherwise enforce its security interests and liens on any or all of the Collateral or to exercise any other remedies available to the Lender under applicable law.

(3) Borrowers hereby agree that a notice received by the applicable Borrower at least ten (10) days before the time of any intended public sale or of the time after which any private sale or other disposition of the Collateral is to be made, shall be deemed to be reasonable notice of such sale or other disposition. If permitted by applicable law, any Collateral which threatens to speedily decline in value or which is sold on a recognized market may be sold immediately by Lender without prior notice to Borrowers. Borrowers covenant and agree not to interfere with or impose any obstacle to Lender's exercise of its rights and remedies with respect to the Collateral. Lender, in dealing with or disposing of the Collateral or any part thereof, shall not be required to give priority or preference to any item of Collateral or otherwise to marshal assets or to take possession or sell any Collateral with judicial process.

8.4. Nature of Remedies. All rights and remedies granted Lender hereunder and under the DIP Loan Documents, or otherwise available at law or in equity, shall be deemed concurrent and cumulative, and not alternative remedies, and Lender may proceed with any number of remedies at the same time until all Obligations are satisfied in full. The exercise of any one right or remedy shall not be deemed a waiver or release of any other right or remedy, and Lender, upon or at any time after the occurrence of an Event of Default, may proceed against Borrowers at any time, under any agreement, with any available remedy and in any order.

8.5. No Injunctions. Neither Section 105 or any other Section of the Bankruptcy Code shall be utilized to prohibit the Lender from exercising or enforcing its rights and remedies upon an Event of Default regardless of any change in circumstances (whether or not foreseeable).

8.6. Challenge to Event of Default. If Borrowers, Committee or any other Person challenges the occurrence of an Event of Default or the right to the Lender to exercise its remedies under the DIP Loan Documents, any such objector's remedies shall be limited to requesting a hearing before the Bankruptcy Court (i) solely for the purpose of obtaining a judicial determination that no Event of Default has occurred, and (ii) based on any such judicial determination, seeking to enjoin the Lender from exercising its rights and remedies. In any such hearing, the sole issue for determination shall be whether an Event of Default has occurred and Borrowers, any Committee, or any other party that is permitted to intervene or be heard at such hearing shall be precluded from raising or litigating any other issue, defense, claims or counterclaim (including, without limitation, any defense or claim based on adequate protection).

8.7. Set-Off. If any bank account or other Property held by or with Lender, or any Affiliate of Lender, or any Participant is attached or otherwise liened or levied upon by any third party, Lender (and such Participant) shall have and be deemed to have, without notice to Borrowers, the immediate right of set-off and may apply the funds or other amounts or property thus set off against any of Borrowers' Obligations hereunder.

8.8. Application of Proceeds. Any proceeds realized from the sale or other disposition of any Collateral, to the extent that same are not required to be applied to allowable secured claims senior in priority to Lender's claims under this agreement, may be applied to the Obligations, after allowing 2 Business Days for collection, to principal, interest, fees and expenses (including Expenses (as defined below in Section 9.5)) in such order and manner as Lender, in its sole discretion, may determine. Any balance remaining shall be delivered to whomever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct.

8.9. Waivers. The Lender shall have the right in the exercise of its sole discretion to waive any Event of Default, default or other violation by the Borrowers under the DIP Loan Documents. No waiver shall be effective absent a written agreement which has been executed by the Lender and Borrowers.

SECTION 9

MISCELLANEOUS

9.1. GOVERNING LAW. THIS AGREEMENT, AND ALL RELATED AGREEMENTS AND DOCUMENTS, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE SUBSTANTIVE LAWS OF THE STATE OF CALIFORNIA. THE PROVISIONS OF THIS AGREEMENT, THE OTHER DIP LOAN DOCUMENTS AND ALL OTHER AGREEMENTS AND DOCUMENTS REFERRED TO HEREIN ARE TO BE DEEMED SEVERABLE, AND THE INVALIDITY OR UNENFORCEABILITY OF ANY PROVISION SHALL NOT AFFECT OR IMPAIR THE REMAINING PROVISIONS WHICH SHALL CONTINUE IN FULL FORCE AND EFFECT.

9.2. Integrated Agreement. The Credit Note, the other DIP Loan Documents, all related agreements, and this Agreement shall be construed as integrated and complementary of each other, and as augmenting and not restricting Lender's rights and remedies. If, after applying the foregoing, an inconsistency still exists, the provisions of this Agreement shall constitute an amendment thereto and shall control.

9.3. Credit Bid. At any sale of the Collateral or any part thereof, the Lender shall be entitled to credit bid up to the full amount then due and owing to the Lender by Borrowers, including pursuant to Bankruptcy Code § 363(k), without limitation, set-off or other reduction.

9.4. Carve-Out. The DIP Superpriority Claim and the DIP Liens shall in all cases be subject and subordinate only to the Carve-Out.

(a) The "**Carve-Out**" shall mean:

(1) unpaid fees of the Clerk of the Court and the U.S. Trustee pursuant to 28 U.S.C. § 1930;

(2) unpaid fees and expenses of Debtor Professionals that are (i) incurred (x) prior to the occurrence of an Event of Default, in an amount not to exceed the amount set forth for such fees in the Budget, or (y) after the occurrence of an Event of Default in an amount not more than the Post-Default Fee Cap; (ii) allowed by the Court under Sections 328, 330, 331, or 363 of the Bankruptcy Code; and (iii) not otherwise payable from retainers or any professional expense escrow account established by Borrowers;

(3) unpaid fees and expenses of any Committee Professionals in an amount not to exceed the amount set forth for such fees in the Budget and allowed by the Court under Sections 328, 330, 331, or 363 of the Bankruptcy Code; and

(4) unpaid fees and expenses of any Ombudsman in in an amount not to exceed the amount set forth for such fees in the Budget and allowed by the Court under Sections 328, 330, 331, or 363 of the Bankruptcy Code;

(b) Any budgeted amounts not used in a prior week by a Professional may be applied to increase the budgeted fees for subsequent weeks and the actual fees incurred in a prior week by a Professional that exceed the budgeted amount for that week may be applied against the budgeted amounts in subsequent weeks.

(c) The Carve-Out for the Debtor Professionals will be reduced dollar for dollar (x) by all payments made on account of professional fees so that the amount paid to professionals on account of fees incurred through the date of an Event of Default will never exceed the Budget through the date of such Event of Default and (y) by all payments made after an Event of Default so that the amount paid to professionals after an Event of Default on account of fees incurred after an Event of Default will never exceed the Post-Default Fee Cap. The Carve-Out for all other Professionals will be reduced dollar for dollar by all the payments made on account of professional fees so that the amount paid to such other professionals on account of fees incurred through the date of an Event of Default will never exceed the Budget through the date of such Event of Default.

9.5. Waiver and Indemnity.

(a) No omission or delay by Lender in exercising any right or power under this Agreement or any related agreements and documents will impair such right or power or be construed to be a waiver of any default, or Event of Default or an acquiescence therein, and any single or partial exercise of any such right or power will not preclude other or further exercise thereof or the exercise of any other right, and as to Borrowers no waiver will be valid unless in writing and signed by Lender and then only to the extent specified.

(b) Borrowers release and shall indemnify, defend and hold harmless Lender, and its respective officers, employees and agents, of and from any claims, demands, liabilities, obligations, judgments, injuries, losses, damages and costs and expenses (including, without limitation, reasonable legal fees) resulting from (i) acts or conduct of Borrowers under, pursuant or related to this Agreement and the other DIP Loan Documents, (ii) Borrowers' breach, or alleged breach, or violation of any representation, warranty, covenant or undertaking contained in this Agreement or the other DIP Loan Documents, and (iii) Borrowers' failure, or alleged failure, to comply with any or all laws, statutes, ordinances, governmental rules, regulations or standards, whether federal, state or local, or court or administrative orders or decrees (including without limitation environmental laws, etc.), and all costs, expenses, fines, penalties or other damages resulting therefrom, unless resulting from acts or conduct of Lender constituting willful misconduct or gross negligence.

(c) Borrowers hereby agree that Lender's liability in the event of a breach by Lender of this Agreement shall be limited to Borrowers' direct damages suffered and shall not extend to, any consequential or incidental damages. In the event any Borrower brings suit against Lender in connection with the transactions contemplated hereunder, and Lender is found not to be liable, Borrowers shall indemnify and hold Lender harmless from all costs and expenses, including attorneys' fees, incurred by Lender in connection with such suit.

9.6. Time. Whenever Borrowers shall be required to make any payment, or perform any act, on a day which is not a Business Day, such payment may be made, or such act may be performed, on the next succeeding Business Day. Time is of the essence in Borrowers' performance under all provisions of this Agreement and all related agreements and documents.

9.7. Notices.

(a) Any notices or consents required or permitted by this Agreement shall be in writing and shall be deemed given if delivered in person or if sent by telecopy or by nationally recognized overnight courier, or via first class, Certified or Registered mail, postage prepaid, to the address of such party set forth on the signature pages hereof, unless such address is changed by written notice hereunder.

(b) Any notice sent by Lender or Borrower by any of the above methods shall be deemed to be given when so received.

(c) Lender shall be fully entitled to rely upon any facsimile transmission, email, or other writing purported to be sent by any Authorized Officer (whether requesting a Loan or otherwise) as being genuine and authorized.

9.8. Headings. The headings of any paragraph or Section of this Agreement are for convenience only and shall not be used to interpret any provision of this Agreement.

9.9. Survival. All warranties, representations, and covenants made by Borrowers herein, or in any agreement referred to herein or on any certificate, document or other instrument delivered by it or on its behalf under this Agreement, shall be considered to have been relied upon by Lender, and shall survive the delivery to Lender of the Credit Note, regardless of any investigation made by Lender or on its behalf. All statements in any such certificate or other instrument prepared and/or delivered for the benefit of Lender shall constitute warranties and representations by Borrowers hereunder. Except as otherwise expressly provided herein, all covenants made by Borrowers hereunder or under any other agreement or instrument shall be deemed continuing until all Obligations are satisfied in full.

9.10. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties. Borrowers may not transfer, assign or delegate any of their duties or obligations hereunder without the prior written consent of Lender. Lender may at any time sell to one or more Persons participating interests in its Loans hereunder (any such Person, a "**Participant**"). In the event of a sale by Lender of a participating interest to a Participant, (a) Lender's obligations hereunder shall remain unchanged for all purposes, (b) Borrowers shall continue to deal solely and directly with Lender in connection with Lender's rights and obligations hereunder and (c) all amounts payable by Borrowers shall be determined as if Lender had not sold such participation and shall be paid directly to Lender.

9.11. Duplicate Originals. Two or more duplicate originals of this Agreement may be signed by the parties, each of which shall be an original but all of which together shall constitute one and the same instrument. This Agreement may be executed in counterparts, all of which counterparts taken together shall constitute one completed fully executed document.

9.12. Modification. No modification hereof or any agreement referred to herein shall be binding or enforceable unless in writing and signed by Borrowers and Lender.

9.13. Signatories. Each individual signatory hereto represents and warrants that he is duly authorized to execute this Agreement on behalf of his principal and that he executes the Agreement in such capacity and not as a party.

9.14. Third Parties. No rights are intended to be created hereunder, or under any related agreements or documents for the benefit of any third party donee, creditor, or incidental beneficiary of Borrowers. Nothing contained in this Agreement shall be construed as a delegation to Lender of Borrowers' duty

of performance, including, without limitation, Borrowers' duties under any account or contract with any other Person.

9.15. Waivers.

(a) Borrowers waive any event or circumstances which might constitute a legal or equitable defense of, or discharge of, Borrower. Furthermore, Borrowers agree that if any payment on the DIP Loan Obligations is recovered from or repaid by Lender in whole or in part for any reason, Borrowers shall be obligated to the same extent as if the recovered or repaid payment had never been originally made on such Obligation.

(b) Each Borrower hereby consents and agrees that Lender, at any time or from time to time in its discretion may: (i) settle, compromise or grant releases for liabilities of any other Person or Persons liable for any DIP Loan Obligations, (ii) exchange, release, surrender, sell, subordinate or compromise any Collateral of any party now or hereafter securing any of the DIP Loan Obligations, and (iii) following an Event of Default, apply any and all payments received at any time against the DIP Loan Obligations in any order as Lender may determine; all of the foregoing in such manner and upon such terms as Lender may see fit, without notice to or further consent from Borrowers who hereby agree and shall remain bound upon this Agreement notwithstanding any such action on Lender's part.

(c) The liability of Borrowers hereunder is absolute and unconditional and shall not be reduced, impaired or affected in any way by reason of (i) any failure to obtain, retain or preserve, or the lack of prior enforcement of, any rights against any Person or Persons, or in any Property, (ii) the invalidity or unenforceability of any DIP Loan Obligations or rights in any Collateral, (iii) any delay in making demand upon Borrowers or any delay in enforcing, or any failure to enforce, any rights against Borrowers or in any Collateral even if such rights are thereby lost, (iv) any failure, neglect or omission to obtain, perfect or retain any lien upon, protect, exercise rights against, or realize on, any Property of Borrowers, or any other party securing the DIP Loan Obligations, (v) the existence or non-existence of any defenses which may be available to Borrowers with respect to the DIP Loan Obligations, or (vi) the commencement of any bankruptcy, reorganization, liquidation, dissolution or receivership proceeding or case filed by or against Borrower.

9.16. CONSENT TO JURISDICTION. BORROWERS AND LENDER EACH HEREBY IRREVOCABLY CONSENT TO THE JURISDICTION OF THE BANKRUPTCY COURT, OR IF THE BANKRUPTCY COURT ABSTAINS FROM HEARING OR REFUSES TO EXERCISE JURISDICTION OVER ANY AND ALL ACTIONS AND PROCEEDINGS WHETHER ARISING HEREUNDER OR UNDER ANY OTHER AGREEMENT OR UNDERTAKING, THEN BORROWER HEREBY CONSENTS TO THE NON-EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN CALIFORNIA. BORROWERS WAIVE ANY OBJECTION TO IMPROPER VENUE AND FORUM NON-CONVENIENS TO PROCEEDINGS IN ANY SUCH COURT AND ALL RIGHTS TO TRANSFER FOR ANY REASON. BORROWERS IRREVOCABLY AGREE TO SERVICE OF PROCESS BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED TO THE ADDRESS OF THE APPROPRIATE PARTY SET FORTH HEREIN.

9.17. WAIVER OF JURY TRIAL. BORROWERS AND LENDER EACH HEREBY WAIVE ANY AND ALL RIGHTS EACH MAY HAVE TO A JURY TRIAL IN CONNECTION WITH ANY LITIGATION COMMENCED BY OR AGAINST LENDER WITH RESPECT TO RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO OR UNDER THE DIP LOAN DOCUMENTS, WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE.

9.18. Discharge of Taxes, Borrower's Obligations, Etc. Lender, in its sole discretion, shall have the right at any time, and from time to time, with prior notice to Borrowers, if Borrowers fail to do so five (5) Business Days after requested in writing to do so by Lender, to: (a) pay for the performance of any of Borrowers' obligations hereunder, and (b) discharge taxes or liens, at any time levied or placed on any of Borrowers' Property in violation of this Agreement unless being Properly Contested. Expenses and advances shall be deemed Loans hereunder and shall bear interest at the same rate applied to the Loans until reimbursed to Lender. Such payments and Loans made by Lender shall not be construed as a waiver by Lender of an Event of Default under this Agreement.

9.19. Bankruptcy Court Orders Paramount. In the event of any direct conflict between the terms and conditions of this Agreement (and/or any DIP Loan Document) and the specific terms and conditions of the Approval Orders, the terms and conditions of the Approval Orders shall prevail. Nothing set forth in this Agreement shall require the Borrowers to act or fail to act in a manner that would violate the Bankruptcy Code or any order of the Bankruptcy Court, without prejudice to Lender's ability to declare the occurrence of an Event of Default based upon such action or failure to act.

[Signatures on following page]

IN WITNESS WHEREOF, this Agreement has been duly executed as of the day and year first above written.

BORROWERS:

- Regional Housing & Community Services Corporation**
- RHCSC Rome AL Holdings LLC**
- RHCSC Rome Health Holdings LLC**
- RHCSC Savannah AL Holdings, LLC**
- RHCSC Savannah Health Holdings, LLC**
- RHCSC Social Circle AL Holdings, LLC**
- RHCSC Social Circle Health Holdings, LLC**
- RHCSC Montgomery I AL Holdings LLC**
- RHCSC Montgomery I Health Holdings, LLC**
- RHCSC Columbus AL Holdings, LLC**
- RHCSC Columbus Health Holdings, LLC**
- RHCSC Douglas AL Holdings, LLC**
- RHCSC Douglas Health Holdings, LLC**
- RHCSC Gainesville AL Holdings, LLC**
- RHCSC Gainesville Health Holdings, LLC**
- RHCSC Montgomery II AL Holdings, LLC**
- RHCSC Montgomery II Health Holdings, LLC**

By: _____
Bryan W. Starnes

Its: Authorized Officer

Address for notices to Borrowers:

With a copy to:

[Signatures continued on next page]

DIP LENDER:

Saybrook Fund Advisors, LLC as agent for Lender

By: _____
Jon P. Schotz

Its: Co-Managing Partner

Address for notices to Borrowers:

Saybrook Fund Advisors
Attn: Jon P. Schotz
501 Santa Monica Blvd., Suite 607
Santa Monica, CA 90401

With a copy to:

Foley & Lardner LLP
Attn: Shane Moses and Ashley McDow
555 South Flower Street, Suite 3300
Los Angeles, CA 90071

**EXHIBIT A
INITIAL BUDGET**

EXHIBIT 2.1(d)
CREDIT NOTE

\$5,000,000

As of August [], 2021

FOR VALUE RECEIVED, the undersigned (the “Borrowers”) each hereby promise to pay to the order of [] (the “Lender”), the principal amount of Five Million Dollars (\$5,000,000), or so much thereof as shall have been advanced as Loans under the Loan Agreement referred to below and shall be outstanding, such payment to be made at such time or times and in the manner specified in the Loan Agreement; provided, however, that all Loans shall be repaid in full on or before the Maturity Date.

This Note is issued under and secured by the Debtor-in-Possession Loan and Security Agreement dated of even date herewith between Borrowers and Lender (as from time to time amended, restated, supplemented or otherwise modified, the “Loan Agreement”). Terms used herein and not defined herein are used with the respective meanings set forth in the Loan Agreement.

Interest on the outstanding principal amount of each Loan evidenced by this Note shall accrue at the rate or rates specified in, and be payable in accordance with the terms of, the Loan Agreement.

The Loan Agreement provides for the acceleration of the payment of principal of and interest on such Loan upon the happening of certain Events of Default as defined in the Loan Agreement.

Borrower waives presentment, demand for payment, notice of dishonor or acceleration, protest and notice of protest, and any and all other notices or demands in connection with this Note, except any notice expressly required by the Loan Agreement.

This Note shall be governed by and construed in accordance with California law.

All of the terms, conditions and covenants of the Loan Agreement are expressly made a part of this Note by reference in the same manner and with the same effect as if set forth herein at length and any holder of this note is entitled to the benefits of and remedies provided in the Loan Agreement and related agreements.

BORROWER:

Regional Housing & Community Services Corporation

RHCSC Rome AL Holdings LLC

RHCSC Rome Health Holdings LLC

RHCSC Savannah AL Holdings, LLC

RHCSC Savannah Health Holdings, LLC

RHCSC Social Circle AL Holdings, LLC

RHCSC Social Circle Health Holdings, LLC

RHCSC Montgomery I AL Holdings LLC

RHCSC Montgomery I Health Holdings, LLC

RHCSC Columbus AL Holdings, LLC

RHCSC Columbus Health Holdings, LLC

RHCSC Douglas AL Holdings, LLC

RHCSC Douglas Health Holdings, LLC

**RHCSC Gainesville AL Holdings, LLC
RHCSC Gainesville Health Holdings, LLC
RHCSC Montgomery II AL Holdings, LLC
RHCSC Montgomery II Health Holdings, LLC**

By: _____

Title: _____

EXHIBIT 2.2(b)
FORM OF LOAN REQUEST

_____, 202_

Saybrook Fund Advisors
501 Santa Monica Blvd., Suite 607
Santa Monica, CA 90401

Re: Loan and Security Agreement

Ladies and Gentlemen:

Pursuant to Section 2.2(b) of the Debtor-in-Possession Loan and Security Agreement dated as of August [], 2021 (as from time to time amended, restated, supplemented or otherwise modified, the “Loan Agreement”) between Regional Housing & Community Services Corporation; RHCSC Rome AL Holdings LLC; RHCSC Rome Health Holdings LLC; RHCSC Savannah AL Holdings, LLC; RHCSC Savannah Health Holdings, LLC; RHCSC Social Circle AL Holdings, LLC; RHCSC Social Circle Health Holdings, LLC; RHCSC Montgomery I AL Holdings LLC; RHCSC Montgomery I Health Holdings, LLC; RHCSC Co-lumbus AL Holdings, LLC; RHCSC Columbus Health Holdings, LLC; RHCSC Douglas AL Holdings, LLC; RHCSC Douglas Health Holdings, LLC; RHCSC Gainesville AL Holdings, LLC; RHCSC Gainesville Health Holdings, LLC; RHCSC Montgomery II AL Holdings, LLC; RHCSC Montgomery II Health Holdings, LLC (the “Borrowers”) and [] (the “Lender”), Borrower hereby requests the following Loan:

(1) The date of the proposed Loan is _____, 201_ (which day is a Designated Funding Date under the Loan Agreement); and

(2) The aggregate amount of the proposed Loan is \$_____.

Borrower hereby certifies that on and as of the date hereof, and on and as of the Designated Funding Date of the proposed Loan, before and after giving effect to such Loan:

(a) The representations and warranties of Borrower contained in the Loan Agreement and the other DIP Loan Documents are and will be true and correct in all material respects as of the date hereof, except to the extent that such representation or warranty relates to a specific date, in which case such representation and warranty shall be true and correct as of such earlier date;

(b) Borrower is and will be in compliance with all the terms, covenants and conditions of the Loan Agreement; and

(c) No Event of Default or Unmatured Event of Default exists or will result from the proposed Loan.

Capitalized terms used herein but not defined herein have the meanings assigned such terms in the Loan Agreement.

Very truly yours,

BORROWERS,
as Debtors and Debtors-In-Possession

By: _____

Title: _____

EXHIBIT 6.4

COMPLIANCE CERTIFICATE

_____, 202_

Saybrook Fund Advisors
501 Santa Monica Blvd., Suite 607
Santa Monica, CA 90401

The undersigned, an authorized Officer of Regional Housing & Community Services Corporation; RHCSC Rome AL Holdings LLC; RHCSC Rome Health Holdings LLC; RHCSC Savannah AL Holdings, LLC; RHCSC Savannah Health Holdings, LLC; RHCSC Social Circle AL Holdings, LLC; RHCSC Social Circle Health Holdings, LLC; RHCSC Montgomery I AL Holdings LLC; RHCSC Montgomery I Health Holdings, LLC; RHCSC Columbus AL Holdings, LLC; RHCSC Columbus Health Holdings, LLC; RHCSC Douglas AL Holdings, LLC; RHCSC Douglas Health Holdings, LLC; RHCSC Gainesville AL Holdings, LLC; RHCSC Gainesville Health Holdings, LLC; RHCSC Montgomery II AL Holdings, LLC; RHCSC Montgomery II Health Holdings, LLC (“Borrowers”), gives this certificate to [_____] (“Lender”) in accordance with the requirements of Section 6.4 of that certain Debtor-in-Possession Loan and Security Agreement dated as of August [], 2021, between Borrowers and Lender (as from time to time amended, restated, supplemented or otherwise modified, the “Loan Agreement”). Capitalized terms used in this Certificate, unless otherwise defined herein, shall have the meanings ascribed to them in the Loan Agreement.

I hereby certify that:

1. No Event of Default or Unmatured Event of Default has occurred.
2. There has been no material adverse change since _____ in the operations or condition of Borrowers (whether financial or otherwise).
3. All warranties and representations set forth in the Loan Agreement and all related agreements, instruments, and documents are true and correct as of the date hereof, except to the extent that such representation or warranty relates to a specific date, in which case such representation and warranty shall be true and correct as of such earlier date.
4. The Borrowers remain in compliance with all covenants set forth in the Loan Agreement.

Very truly yours,

SCHEDULE 1

Borrower's States of Qualifications
Chief Executive Office
Places of Business/Other Names
Provider Identification Numbers
Pending Litigation
Permitted Liens
Fiscal Year End
Tax I.D. Numbers
Existing Guaranties, Investments and Borrowings
Other Associations
Environmental Matters
Capital Stock

EXHIBIT B

Budget

Regional Housing & Community Services Corp.
 DIP Budget 8/26/21

	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Week 12	Week 13	Total
	8/28/2021	9/4/2021	9/11/2021	9/18/2021	9/25/2021	10/2/2021	10/9/2021	10/16/2021	10/23/2021	10/30/2021	11/6/2021	11/13/2021	11/20/2021	
Beginning Cash	\$ 150	\$ 20,150	\$ 200,778	\$ 5,913	\$ 72,088	\$ 20,802	\$ 27,847	\$ 20,729	\$ 105,470	\$ 54,185	\$ 40,812	\$ 152,534	\$ 145,035	
Cash Collections	\$ 20,000	\$ 34,039	\$ 226,529	\$ 198,751	\$ 30,285	\$ 34,039	\$ 226,529	\$ 198,751	\$ 30,285	\$ 7,693	\$ 34,039	\$ 226,529	\$ 198,751	\$ 1,466,219
Draw on DIP	\$ -	\$ 600,000	\$ -	\$ -	\$ 250,000	\$ -	\$ 300,000	\$ -	\$ 250,000	\$ -	\$ 100,000	\$ -	\$ -	\$ 1,500,000
Cash Available	\$ 20,150	\$ 654,189	\$ 427,307	\$ 204,663	\$ 352,372	\$ 54,841	\$ 554,377	\$ 219,479	\$ 385,755	\$ 61,878	\$ 174,851	\$ 379,064	\$ 343,785	
Cash Expenditures														
Payroll	\$ -	\$ -	\$ 159,789	\$ -	\$ 159,789	\$ -	\$ 159,789	\$ -	\$ 159,789	\$ -	\$ -	\$ 159,789	\$ -	\$ 798,946
Payroll Tax	\$ -	\$ -	\$ 12,052	\$ -	\$ 12,052	\$ -	\$ 12,052	\$ -	\$ 12,052	\$ -	\$ -	\$ 12,052	\$ -	\$ 60,258
Monthly Insurance GL PL Auto	\$ -	\$ -	\$ 336,300	\$ 190,527	\$ -	\$ -	\$ 190,527	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 717,354
Petty Cash	\$ -	\$ -	\$ 4,740	\$ 1,850	\$ -	\$ -	\$ 4,740	\$ 1,850	\$ -	\$ 4,200	\$ -	\$ -	\$ -	\$ 23,970
Bank Fees	\$ -	\$ 2,805	\$ -	\$ -	\$ 2,803	\$ 2	\$ -	\$ -	\$ 2,803	\$ -	\$ 2	\$ -	\$ 4,740	\$ 8,414
Management Fee	\$ -	\$ 3,216	\$ 11,326	\$ 9,938	\$ 1,514	\$ 1,702	\$ 11,326	\$ 9,938	\$ 1,514	\$ 385	\$ 1,702	\$ 11,326	\$ 9,938	\$ 73,825
Rent / Lease Equipment	\$ -	\$ 1,000	\$ 1,431	\$ 2,149	\$ 784	\$ 1,518	\$ -	\$ 3,582	\$ 784	\$ 1,100	\$ 419	\$ 3,583	\$ 370	\$ 16,720
Resident Refund	\$ -	\$ 7,000	\$ 7,000	\$ 7,000	\$ 7,000	\$ 7,000	\$ 7,000	\$ 7,000	\$ 7,000	\$ -	\$ 7,000	\$ 7,000	\$ 7,000	\$ 77,000
Food and other supplies	\$ -	\$ 8,294	\$ 16,520	\$ 6,293	\$ 12,472	\$ 16,421	\$ 17,530	\$ 6,293	\$ 12,472	\$ 14,607	\$ 7,284	\$ 17,530	\$ 6,293	\$ 142,011
Utilities	\$ -	\$ 34,796	\$ 4,900	\$ 66,419	\$ 35,192	\$ -	\$ 4,900	\$ 66,419	\$ 35,192	\$ -	\$ -	\$ 4,900	\$ 66,419	\$ 319,136
Other	\$ -	\$ 10,000	\$ 13,109	\$ 18,928	\$ 9,965	\$ 350	\$ 18,668	\$ 18,928	\$ 9,965	\$ 775	\$ 5,909	\$ 13,109	\$ 18,928	\$ 138,632
Total Business Expenditures	\$ -	\$ 403,411	\$ 421,394	\$ 112,576	\$ 241,570	\$ 26,994	\$ 426,532	\$ 114,009	\$ 241,570	\$ 21,065	\$ 22,316	\$ 234,029	\$ 110,797	\$ 2,376,265
Debtor Counsel	\$ -	\$ -	\$ -	\$ -	\$ 60,000	\$ -	\$ -	\$ -	\$ 60,000	\$ -	\$ -	\$ -	\$ -	\$ 180,000
Debtor CRO	\$ -	\$ 50,000	\$ -	\$ 20,000	\$ -	\$ -	\$ -	\$ -	\$ 30,000	\$ -	\$ -	\$ -	\$ -	\$ 90,000
DIP Lender (Fees / Expenses / Interest)	\$ -	\$ -	\$ 5,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 70,000
Claims Agent	\$ -	\$ -	\$ -	\$ -	\$ 10,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 45,000
US Trustee	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 107,116	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 107,116
Total Bankruptcy Related Costs	\$ -	\$ 50,000	\$ -	\$ 20,000	\$ 90,000	\$ -	\$ 107,116	\$ -	\$ 90,000	\$ -	\$ -	\$ -	\$ -	\$ 492,116
Ending Cash	\$ 20,150	\$ 200,778	\$ 5,913	\$ 72,088	\$ 20,802	\$ 27,847	\$ 20,729	\$ 105,470	\$ 54,185	\$ 40,812	\$ 152,534	\$ 145,035	\$ 142,988	

EXHIBIT C

Proposed Interim Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

IN RE:)	CHAPTER 11
)	
REGIONAL HOUSING & COMMUNITY)	PROPOSED
SERVICES CORP., et al.,)	Jointly Administered Under
)	CASE NO. 21-41034-pwb
Debtors.)	
_____)	

INTERIM ORDER ON DEBTORS’ MOTION FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING (A) SECURED POSTPETITION FINANCING PURSUANT TO 11 U.S.C. §§ 105, 361, 362, AND 364(c) AND (d); AND (B) GRANTING SECURITY INTERESTS, SUPERPRIORITY CLAIMS, AND ADEQUATE PROTECTION, AND (II) SCHEDULING A FINAL HEARING

This matter comes before the Court on the Motion (the “**Motion**”) of the above-captioned debtors-in-possession (the “**Debtors**”), in this jointly administered Chapter 11 case (the “**Bankruptcy Case**”), requesting entry of an interim order (this “**Interim Order**”) and a final order (the “**Final Order**”) pursuant to Sections 105, 362, and 364 of Title 11 of the United States Code (as amended, the “**Bankruptcy Code**”) and Rules 2002, 4001, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and the Local Rules of this Court (the “**Local Bankruptcy Rules**”) (i) authorizing the Debtors to obtain post-petition financing (the “**DIP Facility**”) from [_____], (the “**Lender**”), consisting of a credit facility in the principal amount of up to \$5,000,000; (ii) approving the terms of the DIP Facility, including superpriority claims and liens in favor of the Lender, on an interim basis; (iii) authorizing borrowing up to \$600,000 under the DIP Facility on an interim basis pending a final hearing; and (iv) setting a final hearing on the Motion.

The terms and conditions of the DIP Facility have been agreed to by and between the Debtors and the Lender pursuant to the terms of the Debtor-in-Possession Loan and Security

Agreement (the “**DIP Financing Agreement**”) attached to the Motion as Exhibit A, and any related agreements or documents that have been or may be entered into pursuant to the DIP Financing Agreement (the DIP Financing Agreement together with all such other documents, the “**DIP Loan Documents**”).

Based upon the Court’s review of the Motion, the DIP Financing Agreement, the declarations and other papers filed in support of the Motion, and all matters brought to the Court’s attention at the interim hearing pursuant to Bankruptcy Rules 4001(b)(2) and (c)(2) (the “**Interim Hearing**”),

The Court **HEREBY FINDS AS FOLLOWS:**

A. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(b) and 1334, and this matter constitutes a core proceeding as defined in 28 U.S.C. § 157(b)(2). Venue is proper before this Court under 28 U.S.C. §§ 1408 and 1409. The Debtors have operated their business and managed their property as debtor in possession pursuant to 11 U.S.C. §§ 1107 and 1108. No request has been made for the appointment of a trustee or examiner in this Bankruptcy Case. No official committee of unsecured creditors nor any other committee has been appointed pursuant to Section 1102(a) of the Bankruptcy Code.

B. Notice of the Motion and of the Interim Hearing as provided by the Debtors was appropriate and adequate in the particular circumstances, and is sufficient for all purposes under the Bankruptcy Code and the applicable Bankruptcy Rules and Local Rules in respect to the interim relief requested.

C. The Lender and the Debtors have negotiated at arms’ length and in good faith regarding the terms of the DIP Facility, which are fair and reasonable and the best available under the present circumstances, reflect the Debtors’ exercise of prudent business judgment consistent

with their fiduciary duty, and are supported by reasonably equivalent value and consideration. The terms of the post-petition financing under the DIP Financing Agreement have been entered into in good faith by and among the Debtors and the Lender, have been extended in good faith as that term is used in Section 364(e) of the Bankruptcy Code, and are in the best interests of the Debtors, their estates and creditors.

D. The Debtors have sought to obtain financing from other sources and have been unable to obtain credit allowable under Sections 503(b)(1), 364(a) and (b) of the Bankruptcy Code, and no source of credit on terms as favorable as those offered by the Lender are available to the Debtors at this time. The Debtors are also unable to obtain secured credit allowable under Sections 364(c) or (d) of the Bankruptcy Code without granting the Lender the DIP Liens (defined below) and the DIP Superpriority Claims (defined below) under the terms and conditions set forth in this Interim Order and in the DIP Loan Documents.

E. The Debtors do not have sufficient unencumbered cash or other assets to continue to operate their business during this Bankruptcy Case. The Budget (defined below) reflects that the Debtors' post-petition expenses are expected to exceed available cash and projected receipts. The Debtors have an immediate need for cash to fund essential expenses. The Debtors will be immediately and irreparably harmed if they are not granted the authority to obtain post-petition financing from the Lender in accordance with the terms of the DIP Loan Documents on an interim basis through the date of the final hearing on the Motion in order to maintain their assets, pay necessary expenses, including those of their employees, service providers and other vendors, and other expenses necessary to maximize the value of their estates, and would likely be required to cease operations immediately. The access of the Debtors to sufficient working capital and liquidity

made available through the DIP Facility is vital to the preservation and maintenance of the going concern value of the Debtors and to a successful conclusion to the Bankruptcy Case.

F. Good cause has been shown for entry of this Order, for the reasons set forth in the Motion and supporting papers, and as stated on the record at the hearing and herein.

IT IS HEREBY ORDERED that:

1. Disposition. The Motion is GRANTED on an interim basis on the terms set forth in this Interim Order. Any objections to the relief sought in the Motion that have not been previously resolved or withdrawn, and all reservations of rights contained therein, are overruled on the merits, without prejudice, however, to any such objection or reservation of rights being reasserted in connection with the hearing on entry of the Final Order.

2. Authorization to Incur Post-petition Indebtedness. The Debtors are authorized obtain post-petition financing from the Lender in accordance with the terms of this Interim Order, the DIP Loan Documents and the Budget up to the principal amount of 600,000 on an interim basis (the “**DIP Facility**”) pursuant to sections 364(c) and (d) of the Bankruptcy Code, pending the final hearing scheduled for the date and time set forth below (the “Final Hearing”).

3. DIP Loan Documents. Subject to the terms and conditions contained in this Interim Order, the Debtors are hereby expressly authorized to execute and deliver to the Lender the DIP Loan Documents, and such additional documents, instruments, and agreements as may be reasonably required by the Lender to implement the terms, and effectuate the purposes, of this Interim Order. The terms and conditions of the DIP Loan Documents are hereby approved and ratified, and the Debtors are authorized and directed to comply with and perform all of the terms and conditions contained therein. The failure to reference or discuss any particular provision of the DIP Loan Documents in this Interim Order shall not affect the validity or enforceability of any

such provision. In the event of a conflict between this Interim Order and the DIP Loan Documents, the terms and conditions of this Interim Order shall govern.

4. Conditions Precedent. The obligations of the Lender under the DIP Loan Documents, including but not limited to the obligation(s) of the Lender to provide any advance of funds, shall not become effective until the date on which each condition to effectiveness set forth in the DIP Loan Documents has been satisfied or waived by the Lender. The obligations of the Lender from and after the date of the Final Hearing are subject to entry of a final order on the Motion in a form acceptable to the Lender in its sole discretion.

5. DIP Superpriority Claims. In accordance with Sections 364(c)(1) and 507(b) of the Bankruptcy Code, all obligations of the Debtors under the DIP Loan Documents (the “**DIP Loan Obligations**”) shall constitute claims (without the need for the DIP Lender to file a proof of claim or take any further action) against each of the Debtors and their bankruptcy estates, as applicable (the “**DIP Superpriority Claims**”), with priority over any and all other obligations, liabilities, and indebtedness against the Debtors and their bankruptcy estates, as applicable, now existing or hereafter arising, of any kind whatsoever, including any and all administrative expenses or other claims of the kind specified in or arising under Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507, 546(c), 552(b), 726, 1113, or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy, or attachment, whether now in existence or hereafter incurred by the Debtors or the bankruptcy estates, as applicable, and shall at all times be senior to the rights of the Debtors, the Debtors estates’ and any successor trustee, estate representative, or any creditor, in the Bankruptcy Case or any subsequent cases or proceedings under the Bankruptcy Code, subject only to the Carve-Out (as defined in the DIP Loan Documents). The DIP Superpriority Claims shall have recourse to and be payable from

all prepetition and post-petition assets of each of the Debtors and/or the bankruptcy estates, including, but not limited to, the Collateral (as defined below and in the DIP Loan Documents).

6. DIP Liens. To secure the payment, promptly when due, and the punctual performance, of all of the DIP Loan Obligations, the Lender is hereby granted first priority liens and security interests pursuant to Section 346(d)(1) of the Bankruptcy Code (the “**DIP Liens**”) ranking senior to all other claims and liens, including without limitation any preexisting liens and security interests, subject only to the Carve-Out, on all collateral of each of the Debtors as set forth in the DIP Financing Agreement or otherwise provided in the DIP Loan Documents (the “**Collateral**”) which shall include but not be limited to:

- a. Cash, Accounts, accounts receivable, goods, instruments, deposit accounts, investment accounts, investment property (including, without limitation, ownership interests in corporations, partnerships and limited liability companies), inventory, minerals, mineral rights, plant and equipment, general intangibles, payment intangibles, healthcare receivables, vehicles, tax assets, and all personal property.
- b. Intellectual property, including customer lists, trademarks, copyrights, brands, licenses, patents, trade secrets, know-how, and other intellectual property
- c. Real estate, real property, leasehold rights, and interests of any kind in real property.
- d. Any causes of action under the Bankruptcy Code or applicable non-bankruptcy law, whether arising before or after the Bankruptcy Case, including contract claims and commercial tort claims and any and all avoidance, recovery, subordination, or other claims, actions, or remedies which the Debtor, the debtor-in-possession, the Bankruptcy Estate, or other appropriate parties-in-interest have asserted or may assert under Sections 502, 510, 542, 544, 545 or 547 through 553 of the Bankruptcy Code or under similar or related state or federal statute or common law.
- e. All policies of insurance and any and all proceeds thereof.
- f. To the extent not otherwise included, all proceeds and products of the foregoing and all accessions to, substitutions and replacements for, and rents and profits of, each of the foregoing.

7. No Further Action Required. **The approval of this Interim Order by the Court shall be sufficient and conclusive evidence of the validity, extent, enforceability, and**

perfection of the and the DIP Liens granted to the Lender, whether or not the Lender elects to file or record financing statements or any other documents that may otherwise be required under federal or state law in any jurisdiction, or to take such other steps as may otherwise be required to obtain, evidence, or perfect such liens under applicable law; provided, however, that on the request of the Lender, the Debtors shall execute such other documents as may be reasonably requested to evidence, perfect, and provide public notice of such liens; that the Lender may, in its sole discretion, but shall not be required to, file a certified copy of this Interim Order in any filing or recording office in any jurisdiction in which the Debtors have real or personal property; that the Debtors are authorized and directed to execute, or cause to be executed, all such financing statements or other documents upon the Lender's reasonable request; and that such filing or recording shall be accepted and shall constitute further evidence of perfection of the Lender's liens and security interests. No obligation, payment, transfer, or grant of security under this Interim Order shall be stayed (other than by court order in an appeal from this Interim Order), restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under any otherwise applicable state law, or subject to any defense, reduction, setoff, recoupment, or counterclaim.

8. Budget. Use of funds advanced under the DIP Facility shall be used solely for the purposes expressly provided in the DIP Loan Documents, and only as set forth in the Budget (as defined in the DIP Financing Agreement).¹ The Debtors shall provide the Lender with a new proposed Budget promptly following the sixth week of the Initial Budget or each subsequent operative Budget, as applicable. The Debtors shall further provide the Lender with Budget variance and financial reporting as provided in the DIP Financing Agreement. Each Budget and

¹ However, the Debtors shall be permitted to make deposits in connection with providing adequate assurance to utility companies pursuant to Section 366 of the Bankruptcy Code and as ordered by the Bankruptcy Court, without regard to, and in addition to, the Budget, but only with Lender approval.

all expenses proposed to be incurred and the payments proposed to be made by and through any such Budget shall be subject to the express written approval of the DIP Lender.

9. Events of Default. Notwithstanding the provisions of Section 362 of the Bankruptcy Code, and without application or motion to, or further order from, this Court, the occurrence of any Event of Default as provided in the DIP Loan Documents, including but not limited to Section 8.1 of the DIP Financing Agreement, or any failure of the Debtors to comply with any of the terms of this Order, shall be an Event of Default under this Order.

10. Remedies. Without limitation of any further or additional Remedies provided in the DIP Loan Documents, or otherwise available at law or in equity, the Lender shall be entitled to the following remedies.

- a. Upon or at any time after the occurrence and during the continuance of an Event of Default or Unmatured Event of Default (as defined in the DIP Financing Agreement), Lender may, in its discretion, withhold or cease making loans under the DIP Facility.
- b. Lender may, in its discretion, upon or at any time after the occurrence of an Event of Default, terminate the DIP Facility.
- c. Lender may, upon or at any time after the occurrence of an Event of Default, exercise all rights under the UCC, the Bankruptcy Code, this Order, and any other applicable law or in equity, and under all DIP Loan Documents permitted to be exercised after the occurrence of an Event of Default.
- d. Upon or at any time after the occurrence of an Event of Default, the Lender shall have standing to move for an order to cause Debtors to engage in a process to liquidate their assets pursuant to Section 363 of the Bankruptcy Code, and there shall be deemed to be good cause for such relief.
- e. Upon the occurrence of an Event of Default the automatic stay shall terminate as to the Lender and its agents without further application or motion to, or order from, the Court, to allow the Lender to foreclose or otherwise enforce its security interests and liens on any or all of the Collateral or to exercise any other remedies available to the Lender under applicable law.
- f. Upon or at any time after the occurrence of an Event of Default, a notice received by the applicable Debtor at least ten (10) days before the time of any intended public sale or of the time after which any private sale or other disposition of the Collateral

is to be made, shall be deemed to be reasonable notice of such sale or other disposition; if permitted by applicable law, any Collateral which threatens to speedily decline in value or which is sold on a recognized market may be sold immediately by Lender without prior notice to Debtors; and Lender, in dealing with or disposing of the Collateral or any part thereof, shall not be required to give priority or preference to any item of Collateral or otherwise to marshal assets or to take possession or sell any Collateral with judicial process.

All rights and remedies granted Lender hereunder and under the DIP Loan Documents, or otherwise available at law or in equity, shall be deemed concurrent and cumulative, and not alternative remedies, and Lender may proceed with any number of remedies at the same time until all DIP Loan Obligations are satisfied in full. The exercise of any one right or remedy shall not be deemed a waiver or release of any other right or remedy, and Lender, upon or at any time after the occurrence of an Event of Default, may proceed against Debtors at any time, under any agreement, with any available remedy and in any order.

11. Challenge to Event of Default. If Debtors, any Committee, or any other Person challenges the occurrence of an Event of Default or the right to the Lender to exercise its remedies under the DIP Loan Documents, any such objector's remedies shall be limited to requesting a hearing before the Bankruptcy Court (i) solely for the purpose of obtaining a judicial determination that no Event of Default has occurred, and (ii) based on any such judicial determination, seeking to enjoin the Lender from exercising its rights and remedies. In any such hearing, the sole issue for determination shall be whether an Event of Default has occurred and Debtors, any Committee, or any other party that is permitted to intervene or be heard at such hearing shall be precluded from raising or litigating any other issue, defense, claims or counterclaim (including, without limitation, any defense or claim based on adequate protection).

12. Limitation on Use of Proceeds. Neither the proceeds of the Loans nor the Carve-Out shall be utilized (i) to attack the validity, priority or enforceability of any of the liens or security interests of the Lender, (ii) to research, review, analyze or investigate with respect to or in

connection with any litigation, claim, objection or cause of action of any kind or nature whatsoever against the Lender (whether or not arising from or related to pre-petition or post-petition liens, security interests, acts, omissions or other conduct); provided, however, that any official committee of unsecured creditors may use up to \$15,000.00 in proceeds of the Loans or Carve-Out to investigate but not pursue any potential claim against the Lender, or (iii) to file, prosecute or otherwise pursue any litigation, claim, objection or cause of action of any kind or nature whatsoever against the Lender (whether or not arising from or related to post-petition liens, security interests, acts, omissions or other conduct).

13. Bankruptcy Code Sections 506(c) and 552(b). Subject to entry of and as provided in the Final Order, in light of the Lender's agreement to subordinate its DIP Superpriority Claims to the Carve-Out and to make post-petition loan advances under the DIP Loan Documents, the Lender is entitled to (a) a waiver of any "equities of the case" claims under Section 552(b) of the Bankruptcy Code and (b) a waiver of the provisions of Section 506(c) of the Bankruptcy Code and any other surcharge on the Collateral.

14. Modification of Stay. The automatic stay imposed by Section 362 of the Bankruptcy Code is hereby vacated and modified insofar as necessary to permit the Lender to take any action expressly authorized or contemplated by the DIP Loan Documents or this Interim Order.

15. Fees and Expenses. The Debtors and the bankruptcy estate, as appropriate, shall reimburse the Lender for all costs and expenses as set forth in Section 2.10 of the DIP Financing Agreement, pursuant to the terms of the DIP Financing Agreement, without the need for any further approval or order of the Bankruptcy Court.

16. Preservation of Rights. If any or all of the provisions of this Interim Order are, at any time, modified, vacated or stayed, such stay, modification, or vacation shall not affect the

validity, extent, priority, and enforceability of any lien, priority, or other benefit conferred under this Interim Order prior to such stay, modification, or vacation.

17. Binding Effect. This Interim Order shall be binding on all creditors and parties in interest in these Bankruptcy Cases, including, but not limited to, the Debtors and any successors thereto. This Order shall be binding upon, and inure to the benefit of, any and all successors, designees, transferees, endorsees and/or assignees of the Lender. Subject to entry of the Final Order, the security interests and liens provided for in this Order shall be and remain valid and perfected, and the claims of the Lender hereunder valid and enforceable in accordance with the terms hereof, notwithstanding any discharge that the Debtors may receive pursuant to Section 1141 of the Bankruptcy Code, the conversion of the Bankruptcy Case to a case under Chapter 7 of the Bankruptcy Code, the dismissal of the Bankruptcy Case or any subsequent Chapter 7 case or the release or transfer of any Collateral from the bankruptcy estate. No claim or cause of action of any kind or nature may be asserted against the Lender in its capacity as lender under the DIP Facility, or related to the liens and claims hereunder granted to the Lender under or in connection with to the DIP Facility. All waivers by the Debtors of any rights or notices that are expressly provided in the DIP Loan Documents are hereby approved and are effective without further order of this Court.

18. Section 364(e) Protections. Pursuant to Section 364(e) of the Bankruptcy Code, if any or all of the provisions of this Interim Order are hereafter modified, vacated or stayed, such stay, modification or vacation shall not affect the validity of any obligation, indebtedness, security interests or liens granted by the Debtors to the Lender prior to the effective date of any such stay, modification or vacation, or the validity and enforceability or priority of any lien or security interest authorized, granted or created pursuant to this Interim Order.

19. No Competing Liens. Except as set forth herein, the Debtors shall not grant liens on, or security interests in, the Collateral to any other party, pursuant to Section 364 of the Bankruptcy Code or otherwise, without the consent of the Lender (unless in accordance with the DIP Financing Agreement).

20. Right to Credit Bid. In connection with the sale or other disposition of all or any portion of the Debtors' assets, whether under Section 363 of the Bankruptcy Code, Section 1129 of the Bankruptcy Code or otherwise, the Lender the Lender shall be entitled to credit bid up to the full amount then due and owing to the Lender by Borrowers, including pursuant to Section 363(k) of the Bankruptcy Code, without limitation, set-off or other reduction.

21. Further Relief. Nothing in this Interim Order shall preclude the Lender from seeking any other relief that it may deem appropriate, including relief from the automatic stay.

22. No Control. Nothing in this Interim Order shall cause the Lender to be deemed to be in control of the operations of the Debtors or to be acting as a "responsible person," "managing agent," or "owner or operator" (as such terms or any similar terms are used in any Federal or state statute) with respect to the operation or management of the Debtors, notwithstanding its consent to this Interim Order, its approval of the Budget or involvement in the Budget process, or its extension of financial accommodations of any type, kind, or nature under this Interim Order and the DIP Loan Documents.

23. No Third-Party Beneficiaries. Unless expressly provided herein or in the DIP Loan Documents, no rights are created hereunder or by the DIP Loan Documents for the benefit of any third party, any creditor, or any direct, indirect or incidental beneficiary.

24. Effectiveness. The rights and obligations of the parties under this Interim Order shall be effective and enforceable as of the Petition Date. This Interim Order shall be deemed

effective immediately and, for the avoidance of doubt, Bankruptcy Rule 6004(h) shall not apply hereto. If any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated or stayed, such reversal, modification, vacatur, or stay shall not affect (i) the validity, extent, priority, or enforceability of any obligations incurred prior to the actual receipt of written notice by the Lender of the effective date of such reversal, modification, vacatur, or stay, or (ii) the validity, extent, or enforceability of the liens and claims granted hereunder.

25. Final Hearing; Objections. The Final Hearing on the Motion shall be held before the Bankruptcy Court on _____, 2021 at __:__.m. Any objections shall be filed and served on counsel for the Debtors and counsel for the Lender no later than _____, 2021, at 11:59 p.m.

26. Notice of Final Hearing. The Debtors shall, within two (2) business days after entry of this Interim Order, provide a notice of the entry of this Interim Order, together with a notice of the Final Hearing, by overnight courier, U.S. Mail, or NEF to (a) the Office of the United States Trustee; (b) the attorneys for the Lender; (c) all creditors known to Debtors who have or may assert liens against the Debtor's assets; (d) the United States Internal Revenue Service; (e) the twenty (20) largest unsecured creditors of the Debtors; and (f) all parties in interest who have filed a notice of appearance or upon whom service must be effected under the Federal Rules of Bankruptcy Procedure or the Local Rules of this Court. Such notice shall be sufficient notice of the Final Hearing.

27. Retention of Jurisdiction. This Court shall retain jurisdiction to decide all disputes arising under or related to this Order and the DIP Loan Documents.

END OF DOCUMENT

Prepared and presented by:

SCROGGINS & WILLIAMSON, P.C.

By: _____

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