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HEARING TIME: 10:00 A.M.
RESPONSE DUE: AT TIME OF HEARING
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10 *Proposed Attorneys for the Chapter 11 Debtors
and Debtors-in-Possession*

11 **UNITED STATES BANKRUPTCY COURT**
12 **EASTERN DISTRICT OF WASHINGTON**

13 IN RE:
14 ASTRIA HEALTH, *et al.*
15 Debtors and Debtors
in Possession,¹

Lead Case No. 19-01189-11
(Jointly Administered)
**EMERGENCY MOTION OF DEBTORS FOR
INTERIM AND FINAL ORDERS (I) AUTHORIZING
THE DEBTORS TO OBTAIN POSTPETITION
FINANCING; (II) GRANTING SECURITY
INTERESTS AND SUPERPRIORITY
ADMINISTRATIVE EXPENSE STATUS; (III)
GRANTING ADEQUATE PROTECTION TO
CERTAIN PREPETITION SECURED CREDIT
PARTIES; (IV) MODIFYING THE AUTOMATIC
STAY; (V) AUTHORIZING THE DEBTORS TO
ENTER INTO AGREEMENTS WITH JMB CAPITAL
PARTNERS LENDING, LLC; (VI) AUTHORIZING
USE OF CASH COLLATERAL; (VII) SCHEDULING
A FINAL HEARING AND (VIII) GRANTING
RELATED RELIEF; MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT THEREOF**

20 ¹ The Debtors, along with their case numbers, are as follows: Astria Health (19-01189-11), Glacier
Canyon, LLC (19-01193-11), Kitchen and Bath Furnishings, LLC (19-01194-11), Oxbow Summit, LLC
21 (19-01195-11), SHC Holdco, LLC (19-01196-11), SHC Medical Center-Toppenish (19-01190-11), SHC
Medical Center-Yakima (19-01192-11), Sunnyside Community Hospital Association (19-01191-11),
Sunnyside Community Hospital Home Medical Supply, LLC (19-01197-11), Sunnyside Home Health (19-
01198-11), Sunnyside Professional Services, LLC (19-01199-11), Yakima Home Care Holdings, LLC (19-
01201-11), and Yakima HMA Home Health, LLC (19-19-01200-11)



1 Astria Health, a Washington nonprofit public benefit corporation (“Astria”),
2 and the above-referenced affiliated debtors and debtors in possession (the
3 “Debtors” or “Borrowers”)² under chapter 11 of title 11 of the United States Code,
4 §§ 101 *et seq.* (the “Bankruptcy Code”),³ in these chapter 11 cases (the “Chapter 11
5 Cases”), by and through the undersigned counsel of record, hereby move (the
6 “Motion”), pursuant to §§ 105(a), 361, 362, 363, 364 and 507, Rules 2002 and
7 4001, and Rules 2002-1 and 4001-2 for entry of an interim order (substantially in
8 the form attached hereto as **Exhibit “A”**, the “Interim Order”) and a final order (the
9 “Final Order” and together with the Interim Order, the “DIP Orders”) (i)
10 authorizing the Debtors to enter into a senior secured, superpriority debtor in
11 possession financing facility with JMB Capital Partners Lending, LLC (“JMB” or
12 the “DIP Lender”), in an (a) interim amount not to exceed \$28 million, which the

14 ² Capitalized terms used but not otherwise defined herein shall have the meanings
15 ascribed to such terms further below in this Motion, the DIP Loan Documents, or
16 the Interim Order, as applicable (as such terms are defined herein).

17 ³ All references to § herein are to sections of the Bankruptcy Code. All references
18 to “Bankruptcy Rules” are to provisions of the Federal Rules of Bankruptcy
19 Procedure. All references to “LBR” are to provisions of the Local Bankruptcy
20 Rules of the United States Bankruptcy Court for the Eastern District of
21 Washington.

1 Debtors intend to use to fund the postpetition working capital needs of the Debtors
2 during the pendency of the Chapter 11 Cases, pay fees, costs and expenses of the
3 DIP Facility on the terms and conditions described in the DIP Loan Documents,
4 pay all Outstanding Prepetition Banner Bank Obligations and Outstanding
5 Prepetition MidCap Obligations (each as defined below) and pay the allowed
6 administrative costs and expenses of the Chapter 11 Cases, and, (b) after a final
7 hearing, an amount up to total lending of not more than \$36 million (as amended,
8 modified or otherwise in effect from time to time, the “DIP Facility”), substantially
9 on the terms set forth in the Declaration of Michael Lane (the “Lane Declaration”)
10 filed in support of this Motion and the *Senior Secured, Super-Priority Debtor-In-*
11 *Possession Loan and Security Agreement*, attached as Exhibit “1” to the Lane
12 Declaration (as amended, supplemented, or otherwise modified and in effect from
13 time to time, the “DIP Loan Agreement,” and together with all other agreements,
14 documents, notes, certificates, and instruments executed and/or delivered with, to or
15 in favor of the DIP Lender, the “DIP Loan Documents”), and (c) granting the DIP
16 Liens and the DIP Superpriority Claims (in each case, as defined below); (ii)
17 authorizing the interim use of Cash Collateral (as defined below) on the terms set
18 forth in the Interim Order; (iii) granting “adequate protection” to the Lapis Secured
19 Parties (defined herein) in the form of replacement liens, superpriority claims and
20 reporting information; (iv) modifying the automatic stay as imposed by § 362 to the
21 extent necessary to implement and effectuate the terms of the DIP Facility and the

1 DIP Orders; and (v) scheduling an interim hearing to approve the proposed Interim
2 Order and a final hearing with respect to the relief requested herein (the “Final
3 Hearing”).

4 Filed concurrently herewith is the Debtors’ *Ex Parte* Emergency Motion to
5 Schedule and Hear First Day Relief, which requests an order shortening time for
6 notice of hearing on the Motion, authorizing service of the notice of Motion by
7 facsimile or electronic delivery, approving the form of notice of hearing (the
8 “Notice of Hearing”) and requiring that objections to the Motion be filed and served
9 no later than the date set for the emergency hearing. In further support of the
10 Motion, the Debtors respectfully state as follows.

11 **PRELIMINARY STATEMENT**

12 The relief sought in this Motion is critical for the Debtors to continue to
13 provide essential medical treatments to their patients, pay their ordinary course
14 operating expenses, finance the Chapter 11 Cases and, ultimately, provide the
15 Debtors an opportunity to survive and reorganize. In support of this Motion, the
16 Debtors rely upon and refer this Court to the Declaration of John Gallagher
17 (“Gallagher Declaration” or “First Day Declaration”) in Support of the First Day
18 Motions as well as the Lane Declaration.

19 As discussed in the First Day Declaration, the Debtors have experienced
20 significant decreases in cash flow since they switched their electronic billing and
21

1 medical record system to a new Vendor⁴ after acquisition of the Yakima and
2 Toppenish Hospitals (defined herein) in 2017. In the aftermath of these events, the
3 Debtors experienced significant and unprecedented negative cash flow, including
4 multiple months of bills un-submitted for payment. The Debtors estimate these
5 losses to currently total \$75 million in lack of collected cash and an ongoing
6 shortfall of \$1.25 million per week. However, the Debtors believe that a successful
7 restructuring can occur under the protection of bankruptcy, which will give them
8 the opportunity to immediately refinance highly restrictive and costly capital under
9 immediate approval of DIP Financing and to address the systems, cash flow and
10 collections issues experienced in connection with its system conversion and
11 revenue cycle outsourcing. Towards that end, the Debtors seek critical DIP
12 financing and are finalizing a contract for engagement with HealthTech
13 Management Solutions (“HTMS”) to collect outstanding old accounts receivable in
14 tranches. The Debtors believe that within 90-120 days, they will have stabilized
15 collections. Through this process, the Debtors will be able to bring their collection
16 rate going forward back to the 95% level that existed pre-conversion of their
17 electronic billing and medical record system.

18 Without additional postpetition financing and access to cash proceeds of
19

20 _____
⁴ At this time, the Debtors have voluntarily chosen not to disclose the name of the
21 Vendor in this pleading or other first day papers.

1 accounts and receivables that comprise the collateral of the existing Prepetition
2 Secured Lenders (defined herein) within the meaning of § 363(a) (the “Cash
3 Collateral”),⁵ the Debtors will face a severe liquidity crisis. Access to the Debtors’
4 Cash Collateral and debtor in possession (“DIP”) financing is critical to
5 maintaining operations until the Debtors can stabilize collections and reorganize.
6 All of the Debtors’ income and accounts receivable are subject to prepetition
7 perfected liens held by the Prepetition Secured Parties (defined herein) on,
8 collectively, all assets of the Debtors. Without access to their Cash Collateral as
9 well as access to the DIP financing, the Debtors will be not be able to continue to
10 operate and will ultimately be forced to close their Hospitals and other medical
11 facilities, causing a healthcare crisis in the communities that the Debtors serve.

12 Access to DIP financing is also necessary for the Debtors to pay off the
13 Outstanding Prepetition MidCap Obligations and Outstanding Prepetition Banner
14 Bank Obligations. The failure to collect on accounts receivable has caused the
15

16 ⁵ Section 363(a) defines “cash collateral” as: “cash, negotiable instruments,
17 documents of title, securities, deposit accounts, or other cash equivalents whenever
18 acquired in which the estate and an entity other than the estate have an interest and
19 includes the proceeds, products, offspring, rents, or profits of property . . . subject
20 to a security interest as provided in section 552(b) of this title, whether existing
21 before or after the commencement of a case under this title.” 11 U.S.C. § 363(a).

1 Debtors to miss or otherwise default on various financial obligations, including
2 under their facility with MidCap. MidCap has not agreed to waive certain defaults.
3 MidCap has, instead, exercised its discretion to increase the borrowing base
4 reserves under the MidCap Credit Agreement (defined below), resulting in the
5 reduction of the borrowing base as well as the reduction of cash available to the
6 Debtors. This in turn, has created significant liquidity restrictions and has placed
7 the Debtors in further financial distress. Immediately paying off the Outstanding
8 Prepetition MidCap Obligations as well as the Outstanding Prepetition Banner
9 Bank Obligations (consisting of a first priority lien on the Debtors' most valuable
10 assets - all assets of Sunnyside (defined herein)) is necessary to greatly ease the
11 heavy burden on the Debtors' borrowing restrictions and provide the Debtors with
12 vital liquidity needed to continue operations postpetition.

13 The Debtors have sought alternative DIP financing from a number of
14 financial institutions, including prepetition secured lenders MidCap Financial Trust
15 and Lapis Advisers, LP. As described in the Lane Declaration, JMB provided an
16 offer for financing with the most reasonable terms and providing the greatest
17 liquidity to the Debtors, sufficient to pay all Outstanding Prepetition MidCap
18 Obligations as well as Outstanding Prepetition Banner Bank Obligations and
19 provide working capital to the Debtors. JMB is not affiliated with the Debtors, and
20 is not an existing Prepetition Secured Party.

21 The adequate protection offered to the Lapis Secured Parties, the remaining

1 prepetition secured lenders after payment of the Outstanding Prepetition Banner
2 Bank Obligations and Outstanding Prepetition MidCap Obligations, is also
3 sufficient for the Debtors' use of Cash Collateral and the DIP Facility. Prior to
4 these Chapter 11 Cases, the Lapis Secured Parties held liens on the MidCap A/R
5 Collateral and the Banner Bank Collateral (each defined herein) junior in priority to
6 those held by MidCap Financial Trust and Banner Bank on the same collateral and
7 first priority liens on substantially all of the remaining assets of the Yakima and
8 Toppenish. The Debtors propose to secure their obligations under the DIP Facility
9 by, among other things, granting to the DIP Lender first priority priming liens on,
10 and security interests in, the DIP Collateral, including, among other things, (A) all
11 the assets of Sunnyside and its debtor and non-debtor subsidiaries, including the
12 Banner Bank Collateral, (B) the MidCap A/R Collateral, (C) the Debtors'
13 prepetition and postpetition commercial tort claims, including but not limited all
14 claims and causes of action (i) against the Debtors' officers and directors, and (ii)
15 related to accounts receivable collections and the proceeds thereof (regardless of
16 whether such proceeds arise from damages to the prepetition collateral), and (D)
17 subject to the Final Order, the proceeds and recoveries of Avoidance Actions, and a
18 lien junior to the first priority lien held by the Lapis Secured Parties. In other
19 words, the grant of the liens to the DIP Lender will not change the priority of the
20 Lapis Secured Parties' liens held prepetition. Moreover, there is a sufficient equity
21 cushion in the Lapis Prepetition Collateral (defined herein) so that the Lapis

1 Secured Parties remain oversecured even after the DIP Facility is incurred. Thus,
2 the incurrence of the DIP Facility here should not cause any diminution in the value
3 of the Lapis Prepetition Collateral. However, to the extent there is a diminution in
4 the value of the Lapis Prepetition Collateral, the Lapis Secured Parties shall be
5 provided replacement liens and superpriority claims as adequate protection. Also,
6 more importantly, using the DIP Facility proceeds to free up liquidity by paying off
7 the Outstanding Prepetition Banner Bank Obligations and the Outstanding
8 Prepetition MidCap Obligations as well as replacing Vendor's electronic billing and
9 revenue collection system will allow the Debtors the ability to reorganize. This, in
10 turn, will enhance and preserve the value of the Lapis Prepetition Collateral.

11 For these reasons, and as more fully explained below, the Debtors request
12 that the Court grant the relief requested.

13 **I. STATEMENT OF FACTS**

14 **A. General Background**

15 1. On May 6, 2019 (the "Petition Date"), each of the Debtors filed a
16 voluntary petition for relief under chapter 11 of Bankruptcy Code. The Chapter 11
17 Cases are currently being jointly administered before this Court [Docket No. 10].
18 The Debtors are operating their businesses as debtors in possession pursuant to
19 §§1107 and 1108.

20 2. Debtor Astria, a Washington nonprofit corporation, is the direct or
21 indirect corporate member of entities that make it the largest non-profit healthcare

1 system based in Eastern Washington. The Astria Health system is headquartered in
2 the heart of Yakima Valley, Washington, with facilities in Yakima, Sunnyside, and
3 Toppenish, Washington.

4 3. The Astria system includes three hospitals: Astria Regional Medical
5 Center, a 214-bed hospital in Yakima, Washington (“Yakima”); Astria Sunnyside
6 Hospital, a 38-bed critical access hospital in Sunnyside, Washington (“Sunnyside”);
7 and Astria Toppenish Hospital, a 63-bed hospital in Toppenish, Washington
8 (“Toppenish,” and referred to collectively with Sunnyside and Yakima as the
9 “Hospitals”). In addition to collectively having 315 licensed beds, the Hospitals
10 have three active emergency rooms and a host of medical specialties. The Astria
11 system also has outpatient Astria Health Centers (14 medical clinics and 24
12 specialty clinics), the Ambulatory Surgical Center, Astria Hearing and Speech, and
13 Astria Home Health and Hospice.⁶

14
15 ⁶ Collectively, the system provides the following services: allergy testing and
16 treatment program, ambulatory surgery, audiology, behavioral health/psychiatry,
17 breast health center, cancer care, cardiac electrophysiology, cardiac rehabilitation,
18 cardiothoracic surgery, catheterization lab, colorectal surgery, critical care
19 medicine, diabetes education, diagnostic imaging and radiology, ear, nose and
20 throat, emergency services, endocrinology, family medicine, gastroenterology,
21 gynecological surgery, heart care, hand surgery, heart failure, home health, hospice,

1 4. The Astria system provides medical treatments to approximately
2 346,400 patients annually, including approximately 7,344 who spend at least one
3 night in its Hospitals during the year. Astria's necessity to the health and welfare of
4 the people of the Yakima Valley is evidenced by several facts, including having
5 the:

- 6 • *only* open-heart surgery program in Yakima County;
- 7 • *only* neurosurgery program in Yakima County;
- 8 • *only* elective cardiac catheterization program in Yakima County;
- 9 • *only* hospital in Sunnyside, Washington;
- 10 • *only* hospital in Toppenish, Washington; and

12 hospitalists, inpatient behavioral health, internal medicine, interventional
13 cardiology, laboratory, life transitions intensive out-patient program, maternity
14 services, medical withdrawal management, nephrology, neurosurgery, spine care,
15 nutritional services, obstetrics and gynecology, occupational medicine, orthopedics,
16 orthopedic surgery, outpatient palliative care, speech therapy, physical therapy,
17 pediatrics, pharmacy, plastic and reconstructive surgery, podiatry, rehabilitation,
18 inpatient rehabilitation, rheumatology, senior services, sleep medicine, sports
19 medicine, stroke care, surgical services, robotic surgery, general surgery, telehealth,
20 urology, urological surgery, walk-in care, women's health, vascular medicine, and
21 wound care center.

- 1
- *only* obstetric services in the Lower Valley (both at Sunnyside and Toppenish).
- 2

3 5. The system employs approximately 1,547 employees (making it one of
4 the largest employers in the Yakima Valley), plus an additional 172 contract
5 personnel, and approximately 600 doctors have privileges at the Hospitals.

6 6. To date, the Office of the United States Trustee (the “U.S. Trustee”)
7 has not appointed an Official Committee of Unsecured Creditors in these Chapter
8 11 Cases.

9 7. Additional information about the Debtors’ businesses and affairs,
10 capital structure, and prepetition indebtedness, and the events leading up to the
11 Petition Date, can be found in the First Day Declaration, which is incorporated
12 herein by reference.

13 **B. Debtors’ Prepetition Capital Structure**

14 8. As of the Petition Date, the Debtors collectively have a total of
15 approximately \$71.7 million of outstanding secured debt outstanding, held by
16 Banner Bank, MidCap Financial Trust as Agent for the MidCap Lenders, UMB
17 Bank, N.A. as the trustee for bondholders, certain entities affiliated with Lapis
18 Advisers, LP, Lapis Advisers, LP, as agent for certain lenders, and GE HFS LLC
19 (collectively, the Prepetition Secured Parties”), consisting of liens on the following
20 collateral in the approximate principal amounts:

21

Lien Priority	Sunnyside	Yakima and Toppenish A/R	Yakima and Toppenish Assets (other than A/R)	Certain Equipment Owned By Astria
Senior Liens	Banner Bank (\$10.6m)	MidCap (\$10.7m)	UMB Bank (\$35.4m)/ Lapis Advisers, LP (\$10m)	GE HFS, LLC (\$5m)
Junior Liens	UMB Bank (\$35.4m)/ Lapis Advisers, LP (\$10m)	UMB Bank (\$35.4m)/ Lapis Advisers, LP (\$10m)		

9. Prior to the Petition Date, the Debtors were party to the following agreements:

i. Banner Bank Prepetition Debt

10. Prior to the commencement of the Chapter 11 Cases, Sunnyside entered into various Business Loan Agreements, dated December 30, 2010, May 19, 2015, March 21, 2016, August 2, 2016, October 6, 2016, March 21, 2017, and May 4, 2018, each between Banner Bank and Sunnyside (as each such agreement has been amended, modified, or supplemented to date, the “Banner Bank Loan Documents”) providing Sunnyside with financing in the aggregate principal amount of \$27,006,225. The advances made pursuant to the Banner Bank Loan Documents are secured by a first priority lien (the “Banner Senior Sunnyside Liens”) on all personal property and certain real property of Sunnyside as set forth in the Banner Bank Loan Documents and associated documents (such assets the “Banner Bank

1 Collateral”). As of the Petition Date, Sunnyside is indebted to Banner Bank in the
2 approximate principal amount of \$10.6 million, the “Outstanding Prepetition
3 Banner Bank Obligations”).

4 ***ii. MidCap Financial Trust Prepetition Debt***

5 11. Prior to the commencement of the Chapter 11 Cases, SHC Holdco,
6 LLC, Yakima, Toppenish, Yakima Home Care Holdings, LLC, and Yakima HMA
7 Home Health, LLC, as co-borrowers (collectively, the “MidCap Borrowers”),
8 entered into that certain Credit and Security Agreement dated September 18, 2017
9 (as amended, modified, or supplemented to date, the “MidCap Credit Agreement”),
10 with the lenders party thereto (the “MidCap Lenders”) and MidCap Financial Trust,
11 as agent for the MidCap Lenders (the “MidCap Agent”), providing the MidCap
12 Borrowers with a revolving loan facility in the maximum principal amount of \$15
13 million. The advances made pursuant to the MidCap Credit Agreement are secured
14 by a first priority lien (the “MidCap Senior A/R Liens”) on accounts receivable of
15 Toppenish and Yakima as well as certain other assets of the MidCap Borrowers as
16 set forth in Schedule 9.1 to the MidCap Credit Agreement (such assets, the
17 “MidCap A/R Collateral”). As of the Petition Date, the MidCap Borrowers are
18 indebted to the MidCap Lenders in the approximate principal amount of \$10.7
19 million (the “Outstanding Prepetition MidCap Obligations”).

20 ***iii. Lapis Obligations***

21 12. Pursuant to that certain Bond Indenture, dated as of November 1,

1 2017, between Washington Health Care Facilities Authority (the “Authority”), as
2 issuer, and UMB Bank, N.A. as the trustee (the “Bond Trustee”) for the
3 bondholders, entities affiliated with Lapis Advisers, LP (collectively, the
4 “Bondholders”), the Authority issued \$27 million of tax-exempt Washington Health
5 Care Facilities Authority Revenue Bonds, Series 2017A (the “Series 2017A
6 Bonds”) and \$8.4 million of tax-exempt Washington Health Care Facilities
7 Authority Revenue Bonds, Series 2017B (the “Series 2017B Bonds” and, together
8 with the Series 2017A Bonds, collectively the “2017 Bonds”).

9 13. Also on November 1, 2017, Yakima, Toppenish, SHC Holdco, LLC,
10 and Astria as co-borrowers (the “Lapis 2017 Loan Borrowers”), entered into a Loan
11 and Security Agreement (the “Lapis 2017 Loan Agreement”) with the Authority,
12 wherein the Authority loaned the proceeds of the sale of the 2017 Bonds (\$35.4
13 million) (the “Lapis 2017 Loan”) to the Lapis 2017 Loan Borrowers. Sunnyside
14 and Kitchen and Bath Furnishings, LLC, as well as certain other non-filing
15 affiliates, as guarantors (the “Lapis 2017 Loan Guarantors”), entered into a
16 Continuing Guaranty (the “Lapis 2017 Loan Guaranty” and together with the Lapis
17 2017 Loan Agreement, the “Lapis 2017 Loan Documents”), dated November 1,
18 2019, wherein the Lapis 2017 Loan Guarantors agreed to guaranty the obligations
19 of the Lapis 2017 Loan Borrowers under the Lapis 2017 Loan. The advances made
20 pursuant to the Lapis 2017 Loan are secured by (i) a first priority lien (the “Lapis
21 2017 SHC Holdco Liens”) on the assets of the Lapis 2017 Loan Borrowers not

1 subject to the MidCap Senior A/R Liens, (ii) a junior lien (the “Lapis 2017 A/R
2 Liens”) on the assets of the Lapis 2017 Loan Borrowers subordinate and subject to
3 the MidCap Senior A/R Liens, and (iii) a junior lien (the “Lapis 2017 Sunnyside
4 Liens”) on the assets of the Lapis 2017 Loan Guarantors subordinate and subject to
5 the Banner Senior Sunnyside Liens (collectively, the “Lapis 2017 Loan
6 Collateral”). See Intercreditor and Lien Subordination Agreement, dated as of
7 November 1, 2017 (as amended, modified, or supplemented to date), by and among
8 the Bond Trustee, MidCap Funding IV Trust, as successor-by-assignment to the
9 MidCap Agent, Regional Health, the Lapis 2017 Loan Borrowers and Sunnyside.
10 The Authority assigned this security interest to the Bond Trustee, as trustee for the
11 Bondholders. As of the Petition Date, approximately \$35.4 million of principal is
12 outstanding under the Authority Loan.

13 14. Prior to the commencement of the Chapter 11 Cases, Astria and
14 Sunnyside, as co-borrowers (the “Lapis 2019 Loan Borrowers”), entered into a
15 Credit Agreement dated January 18, 2019 (the “Lapis 2019 Loan Agreement”) with
16 Lapis Advisers, LP (the “Lapis Agent”), as agent for lenders party thereto (the
17 “Lapis 2019 Loan Lenders”), whereby the Lapis 2019 Loan_Lenders agreed to
18 make advances to the Lapis 2019 Loan Borrowers in the principal amount of up to
19 \$10 million (the “Lapis 2019 Loan”). SHC Holdco, LLC, Glacier Canyon, LLC,
20 Yakima, Toppenish, Yakima Home Care Holdings, LLC, Yakima HMA Home
21 Health, LLC, as well as certain other non-filing affiliates, as guarantors (the “Lapis

1 2019 Loan Guarantors”), entered into a Continuing Guaranty (the “Lapis 2019
2 Loan Guaranty” and together with the Lapis Sunnyside Loan Agreement, the
3 “Lapis 2019 Loan Documents”), dated January 18, 2019, wherein the Lapis 2019
4 Loan Guarantors agreed to guaranty the obligations of the Lapis 2019 Loan
5 Borrowers under the Lapis 2019 Loan. The advances made pursuant to the Lapis
6 2019 Loan are secured by (i) a junior lien (the “Lapis 2019 Sunnyside Liens” and
7 together with the Lapis 2017 Sunnyside Liens, the “Lapis Subordinated Sunnyside
8 Liens”) on the assets of the Lapis 2019 Borrowers subordinate and subject to the
9 Banner Senior Sunnyside Liens, (ii) a junior lien (the “Lapis 2019 SHC Holdco
10 Liens” and together with the Lapis 2017 SHC Holdco Liens, the “Lapis Senior
11 Holdco Liens”) on the assets of the Lapis 2019 Loan Guarantors not subject to the
12 MidCap Senior A/R Liens as set forth in the Lapis 2019 Loan Documents, and (iii)
13 a junior lien (the “Lapis 2019 A/R Liens” and together with the Lapis 2017 A/R
14 Liens, the “Lapis Subordinated A/R Liens”) on the MidCap Priority Collateral
15 (such assets, the “Lapis 2019 Collateral” and together with the Lapis SHC Holdco
16 Collateral, the “Lapis Prepetition Collateral”). As of the Petition Date,
17 approximately \$10 million of principal is outstanding under the Lapis 2019 Loan.

18 *iv. Equipment Loan*

19 15. On June 12, 2018, GE HFS, LLC (“GE”) entered into a Master
20 Security Agreement with Astria, whereby GE agreed to provide Astria with a \$5
21 million term loan (the “GE Note”) to finance Astria’s purchase of certain

1 equipment which was previously leased by Astria from GE. As of the Petition
2 Date, a principal amount of approximately \$5 million is outstanding under the GE
3 Note. The GE Note is secured by approximately \$4.6 million in capital assets at
4 Yakima and Toppenish, with the \$400,000 balance held in escrow.

5 **C. The Debtors' Need for Postpetition Financing and Access to**
6 **Collateral**

7 16. The Debtors need access to postpetition financing and Cash Collateral
8 to continue to operate postpetition and avoid irreparable harm. As explained in the
9 First Day Declaration, the Debtors have experienced significant decreases in cash
10 flow since they switched their electronic billing and medical record system to one
11 operated by Vendor after acquiring the Yakima and Toppenish Hospitals (defined
12 herein) in 2017. These functions were provided by Community Health Systems
13 ("CHS") under a Transitions Services Agreement prior to the acquisition of Yakima
14 and Toppenish. The reduction in monthly cash collections during the prior ten
15 months has resulted in a deterioration of the Debtors' operating cash balances.
16 Without additional postpetition financing and access to Cash Collateral, the Debtors
17 will face a severe liquidity crisis which may force the Debtors to close its Hospitals
18 and medical centers, causing a healthcare crisis in the communities the Debtors
19 serve, including those communities where the Debtors are the only healthcare
20 provider.

21 17. The failure to collect on accounts receivable has caused the Debtors to

1 miss or otherwise default on various financial obligations, including under the
2 MidCap Credit Agreement. MidCap has not agreed to waive certain defaults.
3 MidCap has, instead, exercised its discretion to increase the borrowing base
4 reserves under the MidCap Credit Agreement, resulting in the reduction of the
5 borrowing base as well as the reduction of cash available to the Debtors. This, in
6 turn, has created significant liquidity restrictions and has placed the Debtors in
7 further financial distress.

8 18. More specifically, the borrowing base under the MidCap Credit
9 Agreement is calculated based upon aged accounts receivable that are further
10 reduced for certain aging categories and payor classes. As a result, the availability
11 to the Debtors under the MidCap Credit Agreement is significantly less than the net
12 accounts receivable for Yakima and Toppenish, which serve as collateral for the
13 MidCap Credit Agreement.

14 19. Also, the current monthly interest rate under the MidCap Credit
15 Agreement is higher than the proposed 12% interest rate of the proposed DIP
16 Lender. MidCap's cost of capital includes numerous related charges that increase
17 the overall cost of capital to over 12%, including, (i) base rate equal to 30 day
18 LIBOR plus 3.75%, approximately 6.35%, (ii) default interest rate of 3.0%, (iii)
19 collateral management fee of 1.2%, (iv) Business Day Clearance Period charge,
20 often called "float" approximating 2.0%, and (v) unused line fee equal to .5%
21 annually on the unborrowed portion of the line of credit and approximating .2%

1 annually. In addition to interest related charges, MidCap invoices the Debtors for
2 annual audit fees, monthly wire fees and legal counsel. Thus, the Debtors are
3 burdened by the highly restricted, high cost of capital with regard to the MidCap
4 Credit Agreement. These problems can and should can be alleviated as quickly as
5 possible by interim approval of the DIP Facility which will pay off the Outstanding
6 Prepetition MidCap Obligations.

7 20. Absent granting emergency access to the Debtors' Cash Collateral and
8 DIP financing, the Debtors will not be able to continue to provide patient care,
9 make payroll or meet other obligations critical to the maintenance of safe facilities
10 and the delivery of effective acute care services for its patients and staff during the
11 week ending May 10, 2019.

12 21. In addition, the Debtors have substantial trade payables consistent with
13 the operations of an organization that receives substantial trade support in the form
14 of traditional credit terms. While the length of terms have begun to shorten as the
15 trade balances grow, the Debtors believe that they will have access to normal or
16 near normal unsecured credit terms if the Debtors have access to substantial
17 liquidity postpetition.

18 22. As of the filing date, the Debtors expect to have less than \$1 million of
19 cash on hand, all of which is subject to liens held by the Prepetition Secured
20 Lenders. As a result, in order to survive the opening phases of the Chapter 11
21 Cases and beyond, the Debtors must obtain access to the proposed DIP Financing

1 and its prepetition Cash Collateral.

2 23. In short, absent entry of an interim order granting the requested relief,
3 the very existence of the Debtors' Hospitals will be threatened and the ability of the
4 facilities to survive as going concerns will be irreparably harmed.

5 24. As a result of the above circumstances, the Debtors seek authority
6 during the interim period, and pursuant to the terms of the Interim Order, to use
7 Cash Collateral. The Debtors further seek authority to borrow up to \$28 million
8 under the proposed term loan DIP Facility during the interim period, and up to an
9 additional \$8 million following entry of the Final Order.

10 25. The Debtors intend to use its Cash Collateral and the DIP Facility
11 proceeds to fund the postpetition working capital needs of the Debtors during the
12 pendency of the Chapter 11 Cases, pay fees, costs and expenses of the DIP Facility
13 on the terms and conditions described in the DIP Loan Documents, pay all
14 Outstanding Prepetition Banner Bank Obligations and Outstanding Prepetition
15 MidCap Obligations and pay the allowed administrative costs and expenses of the
16 Chapter 11 Cases.

17 **D. Efforts To Obtain DIP Financing**

18 26. The terms of the DIP Facility are the result of a wide ranging market
19 exploration by the Debtors and their professionals. Six financial institutions,
20 including Prepetition Secured Parties MidCap Financial Trust and Lapis Advisers,
21 LP, were contacted for possible DIP financing. The combined searches yielded one

1 significant offer by JMB for DIP financing - the DIP Lender proposed in this
2 Motion. A summary of principal terms expressly agreed by JMB as DIP Lender are
3 described below, and a copy of the currently proposed form of DIP Loan
4 Agreement is attached to the Lane Declaration as Exhibit "1".

5 27. The complex capital structure and cash needs of the Debtors required
6 significant capital to pay all Outstanding Prepetition Banner Bank Obligations and
7 Outstanding Prepetition MidCap Obligations and make collateral available for a
8 DIP lender. Typical bank or asset-based lender financing would not be sufficient to
9 pay-off the Outstanding Prepetition Banner Bank Obligations and Outstanding
10 Prepetition MidCap Obligations and provide sufficient additional capital to the
11 Debtors' for administration of the Chapter 11 Cases and ultimately to fund a plan of
12 reorganization or, alternatively, a sale of the Debtors' assets to a third party.

13 **II. BANKRUPTCY RULE 4001 STATEMENT**

14 28. Under the disclosure requirements of Bankruptcy Rule 4001(b), (c),
15 and (d), the following table concisely summarizes the significant terms of the DIP
16 Facilities and the Interim Order:⁷

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18 ⁷ This summary, including the defined terms it uses (whether or not defined within
19 the summary), is qualified in its entirety by the provisions of the DIP Loan
20 Documents and the Interim Order, as applicable. To the extent that there are any
21 conflicts between this summary, on the one hand, and any DIP Loan Documents or

<p><u>BORROWERS:</u> BR 4001(c)(1)(B)</p>	<p>Astria Health, Glacier Canyon, LLC, Kitchen and Bath Furnishings, LLC, Oxbow Summit, LLC, SHC Holdco, LLC, SHC Medical Center-Toppenish, SHC Medical Center-Yakima, Sunnyside Community Hospital Association, Sunnyside Community Hospital Home Medical Supply, LLC, Sunnyside Home Health, Sunnyside Professional Services, LLC, Yakima Home Care Holdings, LLC, and Yakima HMA Home Health, LLC.</p>
<p><u>GUARANTORS:</u> BR 4001(c)(1)(B)</p>	<p>Certain non-debtor subsidiaries and affiliates.</p>
<p><u>DIP LENDER:</u> BR 4001(c)(1)(B)</p>	<p>JMB Capital Partners Lending, LLC</p>
<p><u>DIP FACILITY:</u> BR 4001(c)(1)(B)</p>	<p>\$36.0 million non-revolving loan, \$28.0 million on an interim basis.</p>
<p><u>AVAILABILITY:</u> BR 4001(c)(1)(B)</p>	<p>DIP Lender agrees to make two (2) advances to Borrowers (each, an “Advance” and collectively, the “Advances”); provided that in no event shall the Advances made by DIP Lender exceed DIP Lender’s Commitment. The first Advance in the amount of the Interim Funding shall be made upon entry of the Interim Order and the second Advance in the amount of the remaining Commitment shall be made upon entry of the Final Order, subject to the satisfaction or waiver of the conditions precedent relating to such Advance. The minimum amount of either Advance shall be \$1,000,000. Any Advance, or portion thereof, that is repaid or prepaid (whether as an optional prepayment or a mandatory prepayment) cannot be reborrowed.</p>
<p><u>CLOSING DATE:</u> BR 4001(c)(1)(B)</p>	<p>“Closing Date” means the date upon which the first Advance is made.</p>
<p><u>MATURITY DATE:</u> BR 4001(c)(1)(B)</p>	<p>The earliest of (i) December 31, 2019; (ii) the effective date of a plan of reorganization; (iii) if the Final Order has not been entered by the Bankruptcy Court, the date that is one day after the Final Hearing (as defined in the Interim Order) and all continuations thereof; (iv) entry of an order converting the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code or dismissing the Chapter 11 Cases; (v) the</p>

the Interim Order, as applicable, on the other, the terms of such DIP Loan Documents or the Interim Order, as applicable, shall govern.

	closing of a Sale of all, or substantially all, the assets of all Borrowers; and (vi) the acceleration of the outstanding Obligations or termination of the Commitment as a result of the occurrence and continuation of an Event of Default.
<u>USE OF PROCEEDS:</u> BR 4001(b)(1)(B)(ii), -(b)(1)(B)(iii), - (b)(1)(B)(iv)	Proceeds of the Advances may not be used for any purpose other than to pay (i) the Fees and Lender's Expenses, (ii) to pay in full the Outstanding Prepetition Banner Bank Obligations and the Outstanding Prepetition MidCap Obligations, and (iii) such other costs, expenses and fees for Borrowers' conduct of their respective businesses and operations and other post-Petition Date expenses, including the fees and expenses of the administration of the Borrowers' Chapter 11 Cases in accordance with the Budget attached as Exhibit B to the DIP Loan Agreement..
<u>BUDGET:</u> BR 4001(b)(1)(B)(ii)	Borrowers shall comply with the Budget, attached to the DIP Loan Agreement as Exhibit B, and the Permitted Variance.
<u>INTEREST RATE:</u> BR 4001(c)(1)(B)	<p>All Advances shall bear interest on the Daily Balance thereof at a rate equal to 12.00% per annum, paid monthly.</p> <p>Upon the occurrence and during the continuation of an Event of Default, all Obligations shall bear interest on the Daily Balance thereof at a per annum rate equal to five percentage points (5%) above the per annum rate otherwise applicable hereunder without any notice from DIP Lender or any other Person.</p>
<u>FEES:</u> BR 4001(b)(1)(B)(ii), -(c)(1)(B)	<p>Commitment Fee equal to 1.5% of the DIP Facility amount, earned and payable in cash at time of commitment.</p> <p>Funding Fee equal to 1.5% of each Advance, payable in cash upon funding of such Advance by JMB.</p> <p>Exit Fee equal to 5.0% of the Facility amount, earned at time of commitment and payable upon any mandatory or voluntary prepayment, including payment at maturity.</p> <p>Work Fee of \$50,000 payable by Astria to JMB upon executory of indication of interest.</p> <p>Stated Maturity Date Fee of 10.0% of the Facility, due and payable in cash immediately upon the day following December 31, 2019 in the event that the Obligations are not indefeasibly paid in full on December 31, 2019.</p>

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<p><u>CARVE OUT:</u> BR 4001(c)(1)(B)</p>	<p>Collectively, the sum of: (i) all fees required to be paid to the Clerk of the Court and to the U.S. Trustee pursuant to 28 U.S.C. §1930(a) and section 3717 of title 31 of the United States Code; (ii) the reasonable fees and expenses up to \$15,000 incurred by a trustee under section 726(b) of the Bankruptcy Code; and (iii) the aggregate amount of unpaid fees and expenses of the Debtors' and the Committee (which order has not been reversed, vacated or stayed unless such stay is no longer effective) under sections 327(a), 328 or 1103(a) of the Bankruptcy Code (the "<u>Case Professionals</u>"), to the extent such fees and expenses are allowed and payable pursuant to an order of the Court (which order has not been reversed, vacated or stayed) ("<u>Allowed Professional Fees</u>"), and the reimbursement of out-of-pocket expenses allowed by the Court and incurred by the members of the Committee in the performance of their duties (but excluding fees and expenses of third party professionals employed by such members) ("<u>Committee Expenses</u>"), which amount under this clause (iii) shall not exceed the sum of: (x) an aggregate amount per week limited to the amount set forth in the Budget for Allowed Professional Fees and Committee Expenses incurred prior to the delivery of a Carve-Out Trigger Notice provided (i) the Maturity Date has not occurred or (ii) Event of Default has not occurred or continuing (the "<u>Pre Carve-Out Notice Trigger Cap</u>") plus (y) \$75,000 for Allowed Professional Fees and Committee Expenses incurred from and after the delivery of the Carve-Out Trigger Notice (defined below) (the "<u>Post Carve-Out Notice Cap</u>" together, with the Pre Carve-Out Notice Trigger Cap, the "<u>Carve-Out Cap</u>").</p>
<p><u>DIP LIENS:</u> BR 4001(c)(1)(B)(i), -(c)(1)(B)(vii), - (c)(1)(B)(x)</p>	<p>As security for the Debtors' obligations under the DIP Facility (the "<u>DIP Obligations</u>"), the DIP Lender is granted, continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected security interests in and liens (collectively, the "<u>DIP Liens</u>") on all DIP Collateral as collateral security for the prompt and complete performance and payment when due of the DIP Obligations. The term "<u>DIP Collateral</u>" means collectively all prepetition and postpetition real property and all prepetition and postpetition tangible and intangible personal property of each Borrower, including, avoidance actions under section 549 and related recoveries under section 550 of the Bankruptcy Code, together with all proceeds, and, subject to Final Order, including the proceeds and recoveries from Avoidance Actions (the "<u>Avoidance Action Proceeds</u>").</p>
<p><u>ADEQUATE PROTECTION:</u></p>	<p>The Bond Trustee, on behalf of itself and the Bondholders, and the Lapis Agent, on behalf of itself</p>

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1 BR 4001(b)(1)(B)(iv),
2 -(c)(1)(B)(i),
3 -(c)(1)(B)(ii),
4 -(d)(1)(A)(i)

and the Lapis Sunnyside Lenders (collectively, the “Lapis Secured Parties”) shall receive the following adequate protection in an amount equal to the aggregate diminution in value of the Lapis Secured Parties’ interests in the Lapis Prepetition Collateral (including Cash Collateral) from and after the Petition Date, if any, (the “Adequate Protection Obligations”):

5 (a) Lapis 2017 Loan Adequate Protection Liens: The Bond Trustee shall be granted, in the amount equal to the aggregate diminution in value of the interests in the Lapis 2017 Loan Collateral (including Cash Collateral) from and after the Petition Date, if any, (the “Lapis 2017 Loan Adequate Protection Claim”), a valid, perfected replacement security interest in and lien upon any and all assets subject (i) to the Lapis First Priority SHC Holdco Liens, subordinate to the Carve-Out, and (ii) to the Lapis 2017 Sunnyside Liens and Lapis 2017 A/R Liens, subordinate to (A) the DIP Liens and (B) the Carve-Out (the “Lapis 2017 Loan Replacement Liens”).

6 (b) Lapis 2019 Loan Adequate Protection Liens: The Lapis Agent shall be granted, in the amount equal to the aggregate diminution in value of the interests in the Lapis 2019 Loan Collateral (including Cash Collateral) from and after the Petition Date, if any, for any reasons provided under the Bankruptcy Code (the “Lapis 2019 Loan Adequate Protection Claim”), a valid, perfected replacement security interest in and lien upon any and all assets subject (i) to the Lapis 2019 SHC Holdco Liens, subordinate to the Carve-Out, and (ii) to the Lapis 2019 Sunnyside Liens and Lapis 2019 A/R Liens, subordinate to (A) the DIP Liens and (B) the Carve-Out (the “Lapis 2019 Loan Replacement Liens” and together with the Lapis 2017 Loan Replacement Liens, the “Adequate Protection Liens”).

7 (c) Lapis 2019 Loan 507(b) Claims: The Lapis Agent shall be granted an allowed superpriority administrative expense claim as provided in § 507(b) of the Bankruptcy Code in the amount of Lapis 2019 Loan Adequate Protection Claim with priority in payment over any and all administrative expenses (the “Lapis 2019 Loan 507(b) Claims”); which the Lapis 2019 Loan 507(b) Claims shall have recourse to and be payable from all of the DIP Collateral. The Lapis 2019 Loan 507(b) Claims shall be subject and subordinate only to the Carve-Out and the DIP Superpriority Claims and the Lapis 2017 Loan 507(b) Claims.

8 (d) Lapis 2017 Loan 507(b) Claims: The Bond Trustee shall be granted an allowed superpriority

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	<p>administrative expense claim as provided in section 507(b) of the Bankruptcy Code in the amount of Lapis 2017 Loan Adequate Protection Claim with priority in payment over any and all administrative expenses of the kind specified or ordered pursuant to any provision of the Bankruptcy Code (the “<u>Lapis 2017 Loan 507(b) Claims</u>”); which Lapis 2017 Loan 507(b) Claims shall have recourse to and be payable from all of the DIP Collateral. The Lapis 2017 Loan 507(b) Claims shall be subject and subordinate only to the Carve-Out and the DIP Superpriority Claims.</p> <p>(e) <u>Lapis Secured Parties Information</u>: As additional adequate protection of the Lapis Secured Parties’ security interests in the Lapis Prepetition Collateral, the Debtors shall contemporaneously provide the Lapis Secured Parties with any reporting provided to the DIP Lender under the DIP Loan Agreement.</p>
<p><u>PRIORITY</u>: BR 4001(c)(1)(B)(i), -(c)(1)(B)(ii)</p>	<p>In accordance with section 364(c)(1) of the Bankruptcy Code, the DIP Obligations shall constitute allowed senior administrative expense claims against each Debtor and their estates (the “<u>DIP Superpriority Claims</u>”) with priority in payment over any and all administrative expenses at any time existing or arising, of any kind or nature whatsoever; provided, however, that the DIP Superpriority Claims shall be subject to and subordinate to only the Carve-Out; provided, further that the DIP Superpriority Claims shall have recourse to and be payable from all prepetition and postpetition property and assets of the Debtors and the estates and all DIP Collateral and all proceeds thereof, and (a) any and all avoidance power claims or causes of action under sections 544, 545, 547, 548 through 551 and 553(b) of the Bankruptcy Code (the “<u>Avoidance Actions</u>”) and the proceeds thereof, (b) prepetition tort claims, including claims against the Debtors’ current and former directors and officers (if any) and the proceeds thereof; and (c) any deposit in connection with a proposed Sale (whether terminated or otherwise) that becomes property of the Debtors’ estates (a “<u>Sale Deposit</u>”) subject, however, only to the senior lien rights of a stalking horse purchaser and such stalking horse bid protections as may be approved by this Court.</p> <p>To secure the payment and performance of the DIP Obligations, each Borrower hereby grants, collaterally pledges and assigns to Lender the following DIP Liens on the DIP Collateral:</p> <p>(i) <u>Priming Liens</u>: Pursuant to 364(d)(1) of the Bankruptcy Code, valid, binding, continuing, enforceable, non-avoidable automatically and fully</p>

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	<p>perfected first priority senior priming liens and security interests in all DIP Collateral, regardless of where located, which senior priming liens and security interests in favor of the DIP Lender shall be senior to all Prepetition Credit Liens other than the Lapis Senior Holdco Liens. For the avoidance of doubt, DIP Lender shall have a first priority senior priming lien and security interest in, among other things, (A) all of the assets of Sunnyside and its debtor and non-debtor subsidiaries, including but not limited to, the Banner Bank Collateral, (B) the MidCap A/R Collateral, and (C) the Debtors' prepetition and postpetition commercial tort claims, including but not limited all claims and causes of action (i) against the Debtors' officers and directors, and (ii) related to accounts receivable collections and the proceeds thereof (regardless of whether such proceeds arise from damages to the prepetition collateral);</p> <p>(ii) <u>Liens on Unencumbered Property</u>: Pursuant to section 364(c)(2) of the Bankruptcy Code, valid, binding, continuing, enforceable, non-avoidable automatically and fully perfected first priority liens on and security interests in all DIP Collateral that is not otherwise subject to any Permitted Prior Lien. As used herein, the term "<u>Permitted Prior Lien</u>" shall mean any valid, enforceable, and non-avoidable liens on and security interests in the DIP Collateral that (A) were perfected prior to the Petition Date (or perfected on or after the Petition Date to the extent permitted by Section 546(b) of the Bankruptcy Code), (B) are not subject to avoidance, disallowance, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law, and (C) are senior in priority to the DIP Liens under applicable law and after giving effect to any lien release, subordination or inter-creditor agreements; provided, however, that the DIP Liens shall have priority over all Prepetition Credit Liens other than the Lapis Senior Holdco Liens; and</p> <p>(iii) <u>Junior Liens</u>: Pursuant to section 364(c)(3) of the Bankruptcy Code, valid, enforceable, non-avoidable automatically and fully perfected junior liens on and security interests in all DIP Collateral (other than as set forth in clauses (i) and (ii) above) subordinate only to the Lapis Senior Holdco Liens and the Permitted Prior Liens.</p>
<p><u>FINANCIAL REPORTING:</u> BR 4001(c)(1)(B)</p>	<p>Each Borrower, as applicable, will: (a) commencing on the first Friday to occur after the entry of the Interim Order and on the Friday of each week thereafter, prepare and deliver to Lender (x) a report showing actual cash receipts and disbursements of the</p>

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	entities covered by the Budget for the preceding Saturday through Friday certified in writing by an Authorized Person of Parent Borrower as being true and accurate, and (y) a written explanation of all material variances (the “ <u>Weekly Budget Variance Report</u> ”); (b) update and roll-forward the proposed Budget no less frequently than every four (4) weeks or at such other interval as agreed to by the Lender and the Borrowers, each such amended Budget to be delivered to Lender no later than the third Business Day of each week for the week immediately prior; and (c) participate in a weekly conference call, if required, commencing on the third Business Day of each week following the Petition Date regarding the Budget, management issues, sale process, and other matters.
<u>AFFIRMATIVE AND NEGATIVE COVENANTS:</u> BR 4001(c)(1)(B)	Customary for financings of this type, as may be set forth more fully in the DIP Facility. “ <u>Permitted Variance</u> ” from Budget: a variance of net cash flow on the Budget of no more than 10%, which variance shall be tested on a four week cumulative basis, as opposed to a line-by-line, basis; provided that, for the avoidance of doubt, the calculation of any aforementioned Permitted Variance includes any disbursements in connection with estate professional fees.
<u>REPRESENTATIONS AND WARRANTIES:</u> BR 4001(c)(1)(B)	Customary for financings of this type, as set forth more fully in the DIP Loan Agreement.
<u>EVENTS OF DEFAULT:</u> BR 4001(c)(1)(B)	Customary and appropriate for financings of this type (subject to customary and appropriate grace periods), including, without limitation, failure to make payments when due, failure to reach milestones, breaches of representations and warranties, defaults under other agreements or instruments of indebtedness, and noncompliance with covenants.
<u>CONDITIONS PRECEDENT:</u> BR 4001(c)(1)(B)	Lender shall not be required to make any Advances unless and until all of the conditions specified below shall have been satisfied or waived by Lender in its sole discretion: (a) Lender shall have received a copy of the Budget. (b) With respect to the extension of the Interim Funding, the Bankruptcy Court shall have entered the Interim Order, and with respect to the extension of any subsequent Advance, the Bankruptcy Court shall

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	<p>have entered the Final Order.</p> <p>(c) If requested by Lender, Lender shall have received evidence, in form and substance reasonably acceptable to Lender, that, Guarantors have made all necessary Uniform Commercial Code financing statements necessary to provide Lender with a valid, perfected security interest in the Collateral pledged by Guarantors in accordance with the Required Lien Priority, or (ii) to the extent such filings cannot be made until the effectiveness of this Agreement, final drafts of such Uniform Commercial Code financing statements, to be filed by Lender promptly upon the Effective Date.</p> <p>(d) Lender shall have received copies of UCC, tax, and judgment lien searches and title reports, in each case satisfactory to Lender in its sole discretion.</p> <p>(e) All fees required to be paid on the Closing Date under this Agreement shall have been paid.</p> <p>(f) All other documents in connection with the transactions contemplated by this Agreement shall have been delivered or executed and shall be in form and substance reasonably satisfactory to Lender.</p>
<p><u>CONDITIONS TO EACH EXTENSION OF CREDIT:</u> BR 4001(c)(1)(B)</p>	<p>Lender shall not be required to make any Advances unless and until all of the additional conditions specified below shall have been satisfied or waived by Lender in its sole discretion.</p> <p>(a) Borrowers shall be in compliance with the conditions precedent set forth in the DIP Loan Agreement.</p> <p>(b) The representations and warranties of Borrowers contained in the DIP Loan Agreement or in the other Loan Documents shall be true and correct in all material respects.</p> <p>(c) No Default or Event of Default shall have occurred and be continuing on the date of such extension of credit, nor shall either result from the making thereof.</p> <p>(d) No injunction, writ, restraining order, or other order of any nature restricting or prohibiting, directly or indirectly, the extending of such credit shall have been issued and remain in force by any Governmental Authority against any Borrower or Lender; and</p> <p>(e) No action, proceeding, investigation, regulation or legislation shall have been instituted or threatened before any Governmental Authority to enjoin, restrain</p>

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	<p>or prohibit, or to obtain damages in respect of, or which is related to or arises out of this Agreement or any of the other Loan Documents or the consummation of the transactions contemplated hereby and thereby and which, in Lender's sole judgment, would make it inadvisable to consummate the transactions contemplated by this Agreement or any of the other Loan Documents.</p>
<p><u>INDEMNIFICATION AND RELEASE:</u> BR 4001(c)(1)(B)(viii), -(c)(1)(B)(ix)</p>	<p>Each Borrower shall pay, indemnify, defend, and hold the Lender, together with Lender's Affiliates, officers, directors, employees, attorneys, and agents (each, an "Indemnified Person") harmless (to the fullest extent permitted by law) from and against any and all claims, demands, suits, actions, investigations, proceedings, liabilities, fines, costs, penalties, and actual damages, and all reasonable and documented out-of-pocket fees and disbursements of attorneys, experts, or consultants and all other costs and expenses actually incurred in connection therewith or in connection with the enforcement of this indemnification (as and when they are incurred and irrespective of whether suit is brought), at any time asserted against, imposed upon, or incurred by any of them (a) in connection with or as a result of or related to the execution and delivery, enforcement, performance, or administration (including any restructuring or workout with respect hereto) of this Agreement, any of the other Loan Documents, or the transactions contemplated hereby or thereby or the monitoring of the Borrowers' compliance with the terms of the Loan Documents, (b) with respect to any investigation, litigation, or proceeding related to this Agreement, any other Loan Document, or the use of the proceeds of the credit provided hereunder (irrespective of whether any Indemnified Person is a party thereto), or any act, omission, event, or circumstance in any manner related thereto, and (c) in connection with or arising out of any presence or release of Hazardous Materials at, on, under, to or from any Collateral or any Environmental Actions, Environmental Liabilities or Remedial Actions related in any way to any Collateral (each and all of the foregoing, the "Indemnified Liabilities"). The Borrowers shall have no obligation to any Indemnified Person with respect to any Indemnified Liability that a court of competent jurisdiction finally determines to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnified Person or its officers, directors, employees, attorneys, or agents. If any Indemnified Person makes any payment to any other Indemnified Person with respect to an Indemnified Liability as to which any Borrower was required to indemnify the Indemnified Person receiving such payment, the</p>

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	Indemnified Person making such payment is entitled to be indemnified and reimbursed by such Borrower with respect thereto. WITHOUT LIMITATION, THE FOREGOING INDEMNITY SHALL APPLY TO EACH INDEMNIFIED PERSON WITH RESPECT TO INDEMNIFIED LIABILITIES WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF ANY NEGLIGENT ACT OR OMISSION OF SUCH INDEMNIFIED PERSON OR OF ANY OTHER PERSON.
<u>LIFT OF AUTOMATIC STAY:</u> BR 4001 (c)(1)(B)(iv)	The automatic stay imposed under section 362(a) of the Bankruptcy Code is modified as necessary to effectuate all of the terms, rights, benefits, privileges, remedies and provisions of the Interim Order, and the DIP Loan Documents including without limitation, to permit the DIP Lender to exercise all rights and remedies provided for in the DIP Loan Documents and take any and all actions provided therein, in each case, without further notice, application to, order of or hearing before this Court.
<u>PLAN FILING DEADLINE:</u> BR 4001(c)(1)(B)(vi)	<p>Following one hundred and twenty (120) days from the Petition Date, the Borrowers must (i) file an Acceptable Plan or (ii) present an alternative going forward strategy for resolving the Chapter 11 Cases that is acceptable to the Lender, in its sole discretion.</p> <p>Following one hundred and eighty (180) days from the Petition Date, the Borrowers must (i) effectuate an Acceptable Plan or (ii) obtain final court approval of an alternative transaction acceptable to the Lender, in its sole discretion</p>

III. DISCLOSURE PURSUANT TO BANKRUPTCY RULE 4001

29. The provisions described in Bankruptcy Rule 4001(c)(1)(B)(i)-(xi), to the extent applicable, are set out in the following sections of the DIP Loan Agreement and or the Interim Order:

- Grant of a Priority Claim or Lien on Property of the Estate: Interim Order ¶¶ 10-11.
- Waiver or Modification of Bankruptcy Code Provisions or Applicable Rules Relating to Automatic Stay: Interim Order ¶ 24.

- 1 • Waiver or Modification of Applicability of Nonbankruptcy Law
2 Relating to Perfection of Lien on Property of Estate or on Foreclosure
3 or Other Enforcement of Lien: N/A.
- 4 • Indemnification or Release of any Entity: DIP Loan Agreement §
5 10.3; Interim Order ¶ 8.
- 6 • Release, Waiver, or Limitation of any Right under § 506(c). Interim
7 Order ¶ 15 (subject to final order).
- 8 • Granting of a Lien on any Claim or Cause of Action Arising under §§
9 544, 545, 547, 548, 549, 553(b), 723(a) or 724(a): Interim Order ¶ 11
10 (subject to final order).

11 30. As discussed more fully below, the provisions of the DIP Loan
12 Agreement are all justified under the circumstances of these Chapter 11 Cases.
13 Prepetition, the Debtors were unable to obtain financing on more favorable terms
14 from sources other than JMB. JMB has agreed to lend \$36 million, but would not
15 do so without the protections and priorities sought in this Motion. Without such
16 financing, the Debtors' ability to provide patient care and ultimately reorganize will
17 be severely jeopardized. The Debtors, thus, respectfully submit that the facts and
18 circumstances of these Chapter 11 Cases demonstrate that the above-described
19 provisions, are necessary and appropriate and should be authorized and approved
20 by this Court.

18 **IV. JURISDICTION AND VENUE**

19 The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and
20 1334. This matter is a core proceeding within the meaning of 28 U.S.C. §
21 157(b)(2). Venue of the Chapter 11 Cases and related proceedings is proper in this

1 district pursuant to 28 U.S.C. §§ 1408 and 1409.

2 **V. RELIEF REQUESTED**

3 By this Motion, the Debtors seek entry of the DIP Orders granting *inter alia*:

- 4 i. authority, pursuant to sections 105, 363, and 364(c) and 364(d),
5 for each of the Debtors, jointly and severally, to obtain senior
6 secured postpetition financing in an aggregate principal amount
7 of up to \$36 million (of which \$28 million shall be made
8 available to the Debtors upon entry of the Interim Order);
- 9 ii. authority for the Debtors to enter into the DIP Loan Agreement
10 with the DIP Lender;
- 11 iii. authority for the Debtors to use the DIP Facility and the
12 proceeds thereof in accordance with the DIP Loan Documents to
13 (a) fund the postpetition working capital needs of the Debtors
14 during the pendency of the Chapter 11 Cases, (b) pay fees, costs
15 and expenses of the DIP Facility on the terms and conditions
16 described in the DIP Loan Documents, (c) pay all Outstanding
17 Prepetition Banner Bank Obligations and Outstanding
18 Prepetition MidCap Obligations and (d) pay the allowed
19 administrative costs and expenses of the Chapter 11 Cases, in
20 each case, solely in accordance with the DIP Loan Documents,
21 and the DIP Orders;
- iv. authority for the Debtors to grant to the DIP Lender valid,
enforceable, non-avoidable, automatically and fully perfected
security interests, liens and superpriority claims, including
allowed superpriority administrative expense claims pursuant to
sections 364(c)(1) and 507(b), subject only to the Carve-Out and
liens pursuant to sections 364(c)(2), 364(c)(3) and 364(d)(1) in
the DIP Collateral (and all proceeds thereof), including, without
limitation, all property constituting Cash Collateral, to secure all
DIP Obligations, as more fully set forth in the Interim Order,
subject only to the Carve-Out;
- v. subject to and only effective upon entry of the Final Order,
waiver by the Debtors of all rights to surcharge against the
collateral of the DIP Lender pursuant to section 506(c);

- 1 vi. subject to and only effective upon entry of the Final Order,
2 waiver of the equitable doctrine of marshaling or any other
3 similar doctrine with respect to any collateral of the DIP Lender.
4 vii. providing adequate protection to the Lapis Secured Parties to the
5 extent set forth herein;
6 viii. modification of the automatic stay to the extent hereinafter set
7 forth and waiving the 14-day stay provisions of Bankruptcy
8 Rules 4001(a)(3) and 6004(h);
9 ix. the scheduling of the Final Hearing on the Motion on the earliest
10 date permitted under the Bankruptcy Rules and available in this
11 Court after entry of the Interim Order to consider entry of the
12 Final Order *inter alia*, authorizing borrowings under the DIP
13 Facility on a final basis and approving notice procedures with
14 respect thereto; and
15 x. related relief.

11 VI. BASIS FOR RELIEF

12 A. The Debtors' Need for Financing and Use of Cash Collateral

13 As indicated in the above summary of the DIP Facility, the financing
14 requested herein is being requested for up to 8 months. The Debtors' believe the
15 eight month time frame is the necessary period of time to reorganize. The Debtors
16 believe that the main obstacle to stabilized financial performance is improvement in
17 the underperforming revenue cycle services provided by Vendor. In the months
18 subsequent to the acquisition from CHS, all billing and collection services for
19 Yakima and Toppenish were performed by CHS under a Transition Services
20 Agreement that provided for Yakima and Toppenish to remain on the CHS system
21 with all revenue cycle services provided by CHS under that agreement. Prior to
outsourcing all revenue cycle services to Vendor, Sunnyside performed those

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1 functions internally with their own director and employees. On a monthly basis,
2 cash collections for all three facilities approximated net revenue recorded by
3 Sunnyside, Yakima and Toppenish. The Debtors believe that within 90-120 days,
4 they will be able to bring their collection rate going forward back to the 95% level
5 that existed pre-conversion. Towards that end, the Debtors are finalizing a contract
6 for engagement with HTMS collect outstanding old accounts receivable in tranches.
7 Improving the revenue cycle and collection of backlogged claims will give the
8 Debtors liquidity to execute a restructuring and turnaround plan and an opportunity
9 to emerge from Chapter 11. In the event that a turnaround of the revenue cycle
10 cannot be executed in a timely manner, the DIP Facility provides for certain
11 milestones that would (i) require the Debtors to file a plan of reorganization or
12 present an alternative going forward strategy for resolving the Chapter 11 Cases
13 that is acceptable to the DIP Lender within 120 days after the Petition Date, (ii)
14 effectuate a plan of reorganization within 180 days after the Petition Date, or, (iii)
15 within 180 after the Petition Date, obtain final court approval of an alternative
16 transaction acceptable to the DIP Lender, in its sole discretion.

17 The Debtors require the immediate use of cash on hand, the DIP Facility, and
18 other income generated from their commercial activities in order to maintain the
19 quality of patient care and the day-to-day business operations, and to pay
20 employees and vendors on a timely basis. Absent such relief from the Court, the
21 Debtors will not have sufficient liquidity to ensure uninterrupted business

1 operations -- which could affect patient care -- and will suffer a substantial loss of
2 asset value to the detriment of all parties in interest. It is therefore critical that the
3 Debtors have the initial \$28 million of the DIP Facility in place on an interim basis
4 in order to ensure that the Debtors have enough cash to maintain patient care
5 services and to assure adequate trade credit to prevent accelerating cash losses
6 during operation. It is also obviously critical that the Debtors be able to
7 demonstrate to their staff, vendors, and patients that the facilities will continue to
8 provide high quality patient care, and to function without interruption and that the
9 Debtors will continue to pay vendors in the ordinary course of business. Absent
10 such a showing—and in the event of any interruption or delay in the business—the
11 Debtors’ patients could suffer and staff will likely pursue opportunities with
12 competitors, which would cripple the Debtors’ business. The Debtors also need
13 additional cash to fund the formal reorganization process in a manner consistent
14 with the Debtors’ receivables and payables balances, all in accordance with the
15 Budget for the benefit of the estate and creditors, including the Lapis Secured
16 Parties.

17 The Debtors also require immediate use of the DIP Facility on an interim
18 basis so that all Outstanding Prepetition Banner Bank Obligations and Outstanding
19 Prepetition MidCap Obligations can be immediately paid in full. It is necessary
20 that the proceeds of the interim DIP Facility are used to immediately pay all
21 Outstanding Prepetition Banner Bank Obligations and Outstanding Prepetition

1 MidCap Obligations, which are perfected and secured by first priority liens on the
2 MidCap A/R Collateral and Banner Bank Collateral, because eliminating these
3 lenders will greatly simplify the Debtors' prepetition borrowing structure. Also, as
4 discussed, the Debtors are burdened by the highly restricted, high cost of capital
5 with regard to the MidCap Credit Agreement, and paying off those obligations will
6 greatly reduce heavy restrictions on the Debtors' borrowing capabilities and
7 provide the Debtors with the best chance to reorganize. Paying off the Outstanding
8 Prepetition Banner Bank Obligations and Outstanding Prepetition MidCap
9 Obligations also eliminates the need to determine and, if required, provide,
10 adequate protection and interest payments to prepetition secured lenders Banner
11 Bank and MidCap Financial Trust, thereby saving the estate necessary resources.
12 Interim DIP financing facilities have been used in other cases to immediately pay
13 off certain prepetition secured lenders in full. *See, e.g., In re VG Liquidation, Inc.*
14 *(fka Videology, Inc.)*, Case No. 18-11120 (BLS) [Docket No. 118] (Bankr. D. Del.
15 May 24, 2018) and *In re Aerogroup Int'l, Inc.*, Case No. 17-11962 (KJC) [Docket
16 No. 194] (Bankr. D. Del. Oct. 20, 2017).

17 The interests of the Lapis Secured Parties in the Lapis Prepetition Collateral
18 will be protected and enhanced by the Debtors' use of Cash Collateral and the DIP
19 Facility because such relief will ensure the uninterrupted operation of the Debtors'
20 Hospitals and operations, thus protecting the Debtors' revenue streams and
21 protecting the going concern value of the Debtors; furthermore, the incremental

1 liquidity provided by the DIP Facility will primarily be used to stabilize operations
2 at Yakima and Toppenish, collateral on which the Lapis Secured Parties will
3 maintain a first priority lien. Moreover, as explained below, there is an equity
4 cushion in the Lapis Prepetition Collateral, even after the incurrence of the DIP
5 Facility.

6 In the absence of approval of the DIP Facility, the Debtors' patients, for
7 whom time is of the essence, would likely discontinue seeking treatments with the
8 Debtors if the Debtors' business operations were halted, even briefly, and the
9 Debtors were unable to timely fulfill their medical obligations. The DIP Facility is
10 critical to the Debtors' ability to continue to provide patient care and maintain
11 supportive business functions during the chapter 11 process. Moreover, employees,
12 doctors and patients will expect the Debtors to have more than ample access to
13 liquidity in order to continue patient care services and other business operations.

14 The ability of the Debtors to finance their business operations and the
15 availability to the Debtors of sufficient working capital and liquidity is vital to their
16 ability to continue providing needed patient care services. If the Debtors are unable
17 to obtain such financing and to use Cash Collateral for such purposes, the
18 recoveries to all creditors, including the Lapis Secured Parties, would be greatly
19 reduced because the Debtors would not be able to continue to operate and the value
20 of the Debtors' estate would decline dramatically. Entry of the Interim Order is
21 therefore (i) critical to the Debtors' ability to succeed in their plan of

1 reorganization, (ii) in the best interests of the Debtors and their estates, and (iii)
2 necessary to avoid irreparable harm to the Debtors, their patients, their creditors,
3 and their assets, business, goodwill, reputation and employees.

4 **B. The Debtors' Entry into the DIP Facility Is Authorized Under**
5 **§ 364 of the Bankruptcy Code**

6 Section 364 gives bankruptcy courts the power to authorize postpetition
7 financing for Chapter 11 debtors in possession. *See In re Defender Drug Stores.*
8 *Inc.*, 126 B.R. 76, 81 (Bankr. D. Ariz. 1991), *aff'd.*, 145 B.R. 312 (B.A.P. 9th Cir.
9 1992).

10 Bankruptcy courts have the power to authorize secured postpetition financing
11 under § 364, which provides, in pertinent part, as follows:

12 (c) If the [debtor in possession] is unable to obtain unsecured
13 credit allowable under section 503(b)(1) of this title as an
14 administrative expense, the court, after notice and a
15 hearing, may authorize the obtaining of credit or the
16 incurring of debt -

17 (1) with priority over any or all administrative
18 expenses of the kind specified in section 503(b) or
19 507(b) of this title;

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

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

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

(A) the [debtor in possession] 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

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which such senior or equal lien is proposed to be granted.

11 U.S.C. § 364(c)-(d)(1).

“Section 364 provides certain incentives that a debtor may offer, with court approval, to induce a potential lender to extend credit post-petition.” *In re Sun Runner Marine, Inc.*, 945 F.2d 1089, 1092 (9th Cir. 1991). The incentives enumerated in § 364 are not intended to be an exhaustive list of the inducements that a court may grant. *Defender Drug Stores*, 126 B.R. at 81. In fact, it is not uncommon for a court to approve a lending arrangement containing terms that far exceed those authorized by § 364. *Id.*

Generally, courts apply a three-part test to determine whether a debtor in possession may obtain credit under § 364(c). Under such test, the Debtors may incur postpetition financing under the DIP Facility pursuant to § 364(c) if they demonstrate that (a) they cannot obtain credit unencumbered or without superpriority status, (b) the DIP Facility is necessary to preserve the assets of their estates, and (c) the terms of the DIP Facility are fair, reasonable and adequate given the circumstances of the Debtors, as borrowers, and the proposed DIP Lender. *See In re Crouse Group, Inc.*, 71 B.R. 544, 549-50 (Bankr. E.D. Pa. 1987); *In re Aqua Assocs.*, 123 B.R. 192, 195-96 (Bankr. E.D. Pa. 1991); *In re Los Angeles Dodgers LLC*, 457 B.R. 308, 313 (Bankr. D. Del. 2011).

In addition, § 364(d)(1) authorizes a debtor in possession to incur superpriority senior secured or “priming” liens if (a) the debtor is unable to obtain

1 financing from another source, and (b) the interests of the secured creditors whose
2 liens are being primed by the postpetition financing are adequately protected. 11
3 U.S.C. § 364(d)(1); *see also Aqua Assocs.*, 123 B.R. at 196. Additionally, consent
4 to priming by the prepetition secured creditors obviates the need to show adequate
5 protection. *See Anchor Sav. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 122 (N.D.
6 Ga. 1989) (“[B]y tacitly consenting to the superpriority lien, those [undersecured]
7 creditors relieved the Debtors of having to demonstrate that they were adequately
8 protected.”). Accordingly, the Debtors may incur “priming” liens under the DIP
9 Facility if they are unable to obtain unsecured or junior secured credit and either (i)
10 the Lapis Secured Parties have consented or (ii) their interests in the Lapis
11 Prepetition Collateral are adequately protected.

12 Against this statutory backdrop, courts will evaluate the facts and
13 circumstances of a debtor’s case and accord significant weight to the necessity for
14 obtaining the financing. *See, e.g., In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 40-41
15 (Bankr. S.D.N.Y. 1990). Debtors in possession are generally permitted to exercise
16 their business judgment consistent with their fiduciary duties when evaluating the
17 necessity of proposed protections for a party extending credit under § 364. *Id.* at
18 38.

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i. The Debtors are Unable to Obtain Unsecured or Junior Secured Credit

To show that the credit required is not obtainable on an unsecured basis, the Debtors need only demonstrate “by a good faith effort that credit was not available” without the protections afforded to potential lenders by § 364(c) or (d). *Bray v. Shenandoah Fed. Sav. & Loan Ass’n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986); *see also Anchor Sav. Bank*, 99 B.R. at 120 n.4 (noting that the debtors satisfied the requirement of § 364(d) by “approach[ing] all lenders reasonably likely to be willing to make a junior or unsecured loan”); *Ames*, 115 B.R. at 37-40 (Debtors in possession must show that it has made a reasonable effort to seek other sources of financing under §§ 364(a) and (b)). Thus, “[the] statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable.” *Snowshoe*, 789 F.2d at 1088; *see also In re Sky Valley, Inc.*, 100 B.R. 107,113 (Bankr. N.D. Ga. 1998) (finding that “it would be unrealistic and unnecessary to require [the Debtors] to conduct such an exhaustive search for financing” where the debtor “suffers some financial stress and has little or no unencumbered property”), *aff’d sub nom., Anchor Sav. Bank*, 99 B.R. at 117.

As discussed above and in the Lane Declaration filed in support of this Motion, the Debtors’ assets are subject to the prepetition liens asserted by the Prepetition Secured Parties. Because of the Debtors’ prepetition debt, obtaining the financing needed as unsecured debt on an administrative priority basis, or as debt

1 which would be secured solely by liens junior to the liens of the Prepetition Secured
2 Parties, was not a viable option, especially from a third party who did not already
3 have a financial interest in the Debtors to protect. The Debtors, thus, concluded
4 that adequate alternative financing terms more favorable than those to be provided
5 by the DIP Lender under the DIP Facility are currently unobtainable.

6 ***ii. Lapis Secured Parties' Interests Are Adequately Protected***

7 If a debtor is unable to obtain credit under the provisions of § 364(c), the
8 debtor may obtain credit secured by a senior or equal lien on property of the estate
9 that is already subject to a lien (*i.e.*, a priming lien). *See* 11 U.S.C. § 364(d). Such
10 relief may be granted so long as there is adequate protection of any pre-existing
11 secured creditor's interests in the property on which the senior lien is supposed to
12 be granted. *See id.*; *see also Aqua*, 123 B.R. at 196. Although the Bankruptcy
13 Code does not explicitly define "adequate protection," § 361 provides that it may
14 take the form of (1) a cash payment or periodic cash payments to the extent that
15 there is a decrease in the lien holder's property interest; (2) an additional or
16 replacement lien to the extent that there is a decrease in the lien holder's property
17 interest; or (3) other relief that will result in a secured party's realizing the
18 indubitable equivalent of its property interest. *See* 11 U.S.C. § 361.

19 Where a debtor's proposed use of funds from additional postpetition
20 financing augment the value of the secured creditor's collateral, adequate protection
21

1 exists. *Sky Valley*, 100 B.R. at 114 (noting the flexible nature of § 361(3) and
2 collecting cases).

3 As discussed, all Outstanding Prepetition Banner Bank Obligations and
4 Outstanding Prepetition MidCap Obligations are being paid in full from the
5 proceeds of the DIP Facility. Thus, the Lapis Secured Parties are the only
6 Prepetition Secured Parties entitled, pursuant to §§ 361, 362, 363(e), 364(d)(1) and
7 507, to adequate protection of their interests in all the Lapis Prepetition Collateral,
8 including Cash Collateral, in an amount equal to the aggregate diminution in value
9 of the Lapis Secured Parties' interests in the Lapis Prepetition Collateral (including
10 Cash Collateral) from and after the Petition Date.⁸ The Debtors believe that the
11 measures of protection set forth in the DIP Facility and the Interim Order constitute
12 adequate protection to the Lapis Secured Parties.

13 Prior to the Petition Date, the Lapis Secured Parties held liens on the MidCap
14 A/R Collateral and the Banner Bank Collateral which were junior to liens held by
15 MidCap Financial Trust and Banner Bank, respectively, on the same collateral. The
16 Lapis Secured Parties also held first priority liens on substantially all of the
17 remaining assets of Yakima and Toppenish (*i.e.*, the Lapis Senior Holdco Liens).
18 The priority of these liens held by the Lapis Secured Parties will not materially
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20 ⁸ The GE Note is not being primed by the DIP Facility and GE does not have a lien
21 on any cash collateral, so GE is not entitled to adequate protection.

1 change under the terms of the DIP Facility or the Interim Order. The DIP Lender
2 shall be granted first priority DIP Liens on the MidCap A/R Collateral and all assets
3 of Sunnyside and its debtor and non-debtor subsidiaries, including but not limited
4 to the Banner Bank Collateral, but will take DIP Liens junior in priority to the Lapis
5 Senior Holdco Liens.

6 Nevertheless, as adequate protection for any diminution in the value of the
7 interests in the Lapis 2017 Loan Collateral and the Lapis 2019 Loan Collateral, the
8 Lapis Secured Parties shall be granted replacement liens in the amount equal to the
9 aggregate diminution in value of the Lapis Secured Parties' interests in such
10 collateral (the Lapis 2017 Loan Replacement Liens and the Lapis 2019 Loan
11 Replacement Liens). The Lapis Secured Parties shall also be granted an allowed
12 superpriority administrative expense claim for the diminution in value of such
13 interests (the Lapis 2017 Loan 507(b) Claims and the Lapis 2019 Loan 507(b)
14 Claims).

15 As additional adequate protection of the Lapis Secured Parties' security
16 interests in the Lapis Prepetition Collateral, the Debtors shall contemporaneously
17 provide the Lapis Secured Parties with any reporting provided to the DIP Lender
18 under the DIP Loan Agreement.

19 Moreover, the use of any DIP Facility proceeds shall be solely in accordance
20 with the Budget and subject to borrowing base requirements. Accordingly, the DIP
21 Facility not only maintains the value of the Lapis Prepetition Collateral in which

1 the Lapis Secured Parties are receiving replacement liens, it increases the collateral
2 base and strengthens the value of the Debtors' business; furthermore, the
3 incremental liquidity provided by the DIP Facility will primarily be used to
4 stabilize operations at Yakima and Toppenish, collateral on which the Lapis
5 Secured Parties will maintain a first priority lien.

6 An "equity cushion" also provides the Lapis Secured Parties with adequate
7 protection. "Under the 'equity cushion' theory, if a debtor has equity in a property
8 sufficient to shield the creditor from either the declining value of the collateral or an
9 increase in the claim from accrual of interest or expenses, then the creditor is
10 adequately protected." *See Equitable Life Assurance Soc. v. James River Assocs.*
11 (*In re James River Assocs*), 148 B.R. 790, 796 (E.D. Va. 1992) (*citing In re Kost*,
12 102 B.R. 829, 831 (D. Wyo. 1989); *In re Lane*, 108 B.R. 6, 7 (Bankr. D. Mass.
13 1989)). "Case law has almost uniformly held that an equity cushion of 20% or
14 more constitutes adequate protection. Case law has almost as uniformly held that
15 an equity cushion under 11% is insufficient to constitute adequate protection. Case
16 law is divided on whether a cushion of 12% to 20% constitutes adequate
17 protection." *James River Assocs.*, 148 B.R. at 796 (*quoting Kost*, 102 B.R. at 831-
18 32 (internal citations omitted)); *see also In re Rogers Dev. Corp.*, 2 B.R. 679, 685
19 (Bankr. E.D. Va. 1980) (15% to 20% equity cushion held to be sufficient to provide
20 adequate protection to a creditor even though the Debtors had no equity in the
21 property); *but see In re Schaller*, 27 B.R. 959, 961-62 (W.D. Wis. 1983) (17% to

1 18% cushion held not to offer adequate protection where cushion was being rapidly
2 eroded by the daily accrual of interest on the debt); *In re Pitts*, 2 B.R. 476, 478
3 (Bankr. C.D. Cal. 1979) (holding a 15% cushion to be “minimal”).

4 The Lapis Prepetition Collateral has a total book value of \$200 million and a
5 total enterprise value of \$120 to \$150 million. Thus, the realizable value of such
6 assets exceeds the prepetition value of the Lapis Prepetition Secured Parties’
7 liabilities totaling approximately \$45.4 million. Based on the book value of the
8 Lapis Prepetition Collateral, the Lapis Prepetition Secured Parties have over a
9 100% equity cushion after taking into consideration the \$36 million DIP Facility,
10 which is obviously well above the 20% equity cushion regularly approved by courts
11 as sufficient adequate protection. Also, based on the enterprise value of the Lapis
12 Prepetition Collateral, the Lapis Prepetition Secured Parties have over a 80% equity
13 cushion.

14 Finally, as mentioned above, consent may take the place of adequate
15 protection under § 364(d)(1), and the Debtors hope to obtain consent of the Lapis
16 Secured Parties to use the Cash Collateral, at least on an interim basis, and enter
17 into the DIP Facility on the terms set forth in the DIP Orders.

18 ***iii. The DIP Facility Is Fair, Reasonable, and in the Best Interests***
19 ***of the Estate***

20 The Debtors believe that the terms and conditions of the DIP Facility are fair
21 and reasonable. The DIP Facility is necessary to support the Debtors’ ongoing

1 operations pending approval and confirmation of a plan and will signal the Debtors'
2 continued strength to compete in the marketplace for new patients. The DIP
3 Facility will also ensure the continued high quality care to the Debtors' patients and
4 payments to critical suppliers. Furthermore, as is more fully explained in the Lane
5 Declaration filed in support of this Motion, the Debtors undertook an effort to
6 obtain the best available terms for DIP financing. Based upon these efforts, the
7 interest rates and fees appear to be consistent with the existing market for DIP loans
8 of this nature. *See, e.g. In re VG Liquidation, Inc. (fka Videology, Inc.)*, Case No.
9 18-11120 (BLS) [Docket No. 118] (Bankr. D. Del. May 24, 2018) (an interest rate
10 of 10% per annum and a default rate of 15% per annum); *In re Aerogroup Int'l,*
11 *Inc.*, Case No. 17-11962 (KJC) [Docket No. 194] (Bankr. D. Del. Oct. 20, 2017)
12 (an interest rate of 11% per annum and a default rate of 16% per annum); *In re*
13 *Soup Liquidation LLC (fka The Original Soupman, Inc.)*, Case No. 17-11313 (LSS)
14 [Docket No. 48] (Bankr. D. Del. June 21, 2017) (an interest rate of 15% per annum
15 and a default rate of 17% per annum); *In re Gracious Home LLC*, Case No. 16-
16 13500 (MKV) [Docket No. 170] (Bankr. S.D.N.Y. Feb. 2, 2017) (an interest rate of
17 15% per annum and a default rate of 17% per annum). The Debtors believe that the
18 proposed DIP Facility is the best financing available and well within the exercise of
19 sound business judgment.

20 Bankruptcy courts consistently defer to a debtor's business judgment on most
21 business decisions, including the decision to borrow money, unless such decision is

1 arbitrary and capricious. *See Trans World Airlines, Inc. v. Travellers Int'l AG. (In*
2 *re Trans World Airlines, Inc.)*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (noting
3 that an interim loan, receivables facility and asset-based facility were approved
4 because they “reflect[cd] sound and prudent business judgment... [were] reasonable
5 under the circumstances and in the best interests [of the Debtors] and its creditors”);
6 *In re Simasko Prod. Co.*, 47 B.R. 444, 449 (Bankr. D. Colo. 1985) (“In exercising
7 [the Debtors’] business judgment of conducting its drilling operations, it has found
8 it necessary to obtain loans to make these endeavors possible.”). In fact, “[m]ore
9 exacting scrutiny [of the Debtors’ business decisions] would slow the
10 administration of the Debtors’ estate and increase its cost, interfere with the
11 Bankruptcy Code’s provision for private control of administration of the estate, and
12 threaten the court’s ability to control a case impartially.” *Richmond Leasing Co. v.*
13 *Capital Bank, N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985); *see also Simasko Prod.*,
14 47 B.R. at 449 (“Business judgments should be left to the board room and not to
15 this Court.” (quoting *In re Lifeguard Indus. Inc.*, 37 B.R. 3, 17 (Bankr. S.D. Ohio
16 1983)). Consistent with this authority, the Debtors respectfully submit that the
17 Court should approve the Debtors’ decision to accept and enter into the proposed
18 DIP Facility.

19 Moreover, the Debtors have made a concerted good faith effort to obtain
20 credit on the most favorable terms available. Specifically, prepetition, the Debtors
21 sought DIP financing from interested parties, none of whom would agree to provide

1 financing on a junior or *pari passu* basis. Given the dire circumstances facing the
2 Debtors, the DIP Facility described in this Motion was ultimately determined to
3 provide the requisite liquidity on the most advantageous terms given the
4 circumstances. Against this backdrop, the Debtors carefully evaluated the proposed
5 financing structure from the DIP Lender, engaged in negotiations with the DIP
6 Lender regarding the proposed terms, and eventually agreed to the DIP Lender's
7 proposal as the proposal best suited to the Debtors' needs. The terms and conditions
8 of the DIP Facility were negotiated by the parties (and their legal and financial
9 advisors) in good faith and at arms' length, and, as outlined above, were instituted
10 for the purpose of enabling the Debtors to meet ongoing operational expenses while
11 in chapter 11 and to preserve the going concern status of the Debtors as well as the
12 value of the Debtors' assets. Accordingly, the DIP Lender should be provided with
13 the benefit and protection of § 364(c), such that if any of the provisions of the DIP
14 Facility are later modified, vacated, stayed or terminated by subsequent order of
15 this or any other Court, the DIP Lender will be fully protected with respect to any
16 amounts previously disbursed.

17 **C. The Use of Cash Collateral Is Appropriate Under the Current**
18 **Circumstances and Should Be Authorized under §§ 363(c)(2) and**
19 **(e).**

20 Section 363(c)(2) sets forth the requirements for a debtor's proposed use of
21 cash collateral. Specifically, § 363(c)(2) provides, in pertinent part:

1 The trustee may not use, sell, or lease cash collateral
2 under paragraph (1) of this subsection unless - (A) each
3 entity that has an interest in such cash collateral consents;
4 or (B) the court, after notice and a hearing, authorizes
such use, sale, or lease in accordance with the provisions
of this section.

5 11 U.S.C. § 363(c)(2). Additionally, § 105(a) provides that “[t]he court may issue
6 any order, process, or judgment that is necessary or appropriate to carry out the
7 provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a).

8 Further, § 363(e) provides that “on request of an entity that has an interest in
9 property . . . proposed to be used, sold or leased, by the trustee, the court, with or
10 without a hearing, shall prohibit or condition such use, sale, or lease as is necessary
11 to provide adequate protection of such interest.” 11 U.S.C. § 363(e). As discussed,
12 the Debtors have proposed a reasonable package of adequate protection for the
13 Lapis Secured Parties’ interest in the Lapis Prepetition Collateral, including Cash
14 Collateral. Conditioning the Debtors use of Cash Collateral in the manner proposed
15 is an entirely equitable arrangement designed to protect patients and the Hospitals
16 as operating business units.

17 It is well settled that it is appropriate for a chapter 11 debtor to use cash
18 collateral for a reasonable period of time for the purpose of maintaining and
19 operating its property. *In re Oak Glen R-Vee*, 8 B.R. 213, 216 (Bankr. C.D. Cal
20 1981); *In re Tuscon Industrial Partners*, 129 B.R. 614 (B.A.P. 9th Cir. 1991).
21 Where, as here, the debtor is operating a business, it is extremely important that the

1 access to cash collateral be allowed to facilitate the survival of the debtors business
2 units as going concerns: “the purpose of Chapter 11 is to rehabilitate debtors and
3 generally access to cash collateral is necessary to operate a business.” *In re Dynaco*
4 *Corp.*, 162 B.R. 389 (Bankr. D.N.H. 1993), quoting *In re Stein*, 19 B.R. 458, 459
5 (Bankr. E.D. Pa. 1982).

6 The Court should authorize the Debtors to use Cash Collateral, whether
7 existing as of the Petition Date or arising thereafter based on the conversion of
8 existing non-cash collateral into cash. It is essential to the continued operation of
9 the Debtors that they obtain authority to use Cash Collateral to fund payroll and
10 other operating needs, including the costs of administration of these Chapter 11
11 Cases.

12 If the Debtors are permitted to use Cash Collateral to fund ongoing business
13 operations and administration of these Cases, the Debtors will preserve the value of
14 the Debtors’ assets as a going concern. Thus, the Debtors can continue to operate
15 and provide patient care, but only if they are allowed to use Cash Collateral in the
16 course of the day-to-day operations. Without such use, the detrimental result to the
17 value of the estate will be rapid and ultimately disastrous, given the nature of the
18 Debtors’ business. Access to Cash Collateral is crucial to the Debtors’ ability to
19 provide patient care, and to avoid immediate and irreparable harm to the value of
20 the estate and the creditors, and ongoing business operations both before and after
21 the Final Hearing.

1 The Debtors respectfully submit that the proposed use of Cash Collateral, in
2 conjunction with the DIP Facility, is necessary for the Debtors to have sufficient
3 liquidity during the chapter 11 process to preserve the value of their assets and
4 property. The Debtors' proposed use of Cash Collateral thus prejudices no one; it
5 affirmatively and directly benefits the Debtors' estates and creditors, including the
6 Lapis Secured Parties, and enhances the prospects of a successful outcome in this
7 case.

8
9 **D. The Proposed Adequate Protection for the Lapis Secured Parties**
10 **to Use Cash Collateral Is Appropriate under §§ 105, 361(d), and**
11 **363(e).**

12 In considering whether to authorize use of cash collateral, a court generally
13 must find that the interests of the holder of the secured claim are adequately
14 protected. *See* 11 U.S.C. § 363(e). Section 362(d)(1) provides for adequate
15 protection of interests in property due to the imposition of the automatic stay, *In re*
16 *Continental Airlines*, 91 F.3d 553, 556 (3d Cir. 1996) (*en banc*), and § 361 provides
17 examples of possible forms of adequate protection, such as granting replacement
18 liens and administrative claims. However, it is the courts that must decide what
19 constitutes sufficient adequate protection on a case-by-case basis. *In re Mellor*, 734
20 F.2d 1396, 1400 (9th Cir 1984); *In re Macombs Properties VI, Ltd.*, 88 B.R. 261,
21 265 (Bankr. C.D. Cal. 1988). *See also*, *In re Swedeland Dev. Grp., Inc.*, 16 F.3d
552, 564 (3d Cir. 1994); *In re Satcon Tech. Corp.*, No. 12-12869 (KG), 2012 WL
6091160, at *6 (Bankr. D. Del. Dec. 7, 2012); *In re N.J. Affordable Homes Corp.*,

1 the Lapis Secured Parties have an equity cushion in the Lapis Prepetition collation,
2 which serves as adequate protection.

3 The Debtors will be granting the Lapis Secured Parties replacement liens (the
4 Lapis 2017 Loan Replacement Liens and the Lapis 2019 Loan Replacement Liens)
5 in an amount equal to the aggregate diminution in value of the Lapis Secured
6 Parties' interests in the Lapis Prepetition Collateral (including Cash Collateral),
7 which is commonplace. *See, e.g., MBank Dallas N.A. v. O'Connor (In re*
8 *O'Connor)*, 808 F.2d 1393, 1396-98 (10th Cir. 1987) (allowing the debtors to
9 replace a lien on cash with a lien on property likely to be worth five times as much);
10 *Owens-Corning Fiberglas Corp. v. Ctr. Wholesale, Inc. (In re Ctr. Wholesale, Inc.)*,
11 759 F.2d 1440, 1450 (9th Cir. 1985) (observing that a lien on additional property of
12 the debtors would likely constitute adequate protection for the secured creditor);
13 *Wrecelesham Grange*, 221 B.R. at 981) (noting that a replacement lien of equal
14 value on postpetition rents is adequate protection); *In re Stein*, 19 B.R. 458. 459
15 (Bankr. E.D. Pa. 1982) (continued lien on debtors' crops, livestock and equipment
16 resulted in an increase rather than a decrease in collateral, and debtors were granted
17 authority to use cash collateral to meet operating expenses during chapter 11
18 proceedings).

19 Additionally, the Debtors will also use of the Cash Collateral along with use
20 of the DIP Facility proceeds in accordance with the Budget, which will preserve the
21 going concern value of the Debtors' assets. Courts routinely have held that adequate

1 protection may be demonstrated by a simple showing that the going concern value
2 of the Debtors is preserved by the Debtors' continuing operations and use of cash
3 collateral. *See, e.g., In re Snowshoe Co., Inc.*, 789 F.2d at 1087-89 (trustee
4 reported that ski resort would lose 50% to 90% of its fair market value if it ceased
5 operations).

6 Accordingly, for the foregoing reasons, the Debtors respectfully submit that
7 the adequate protection proposed by the Debtors and in the DIP Orders is
8 appropriate and should be approved.

9 **VII. REQUEST FOR INTERIM AND FINAL HEARING**

10 Pursuant to Bankruptcy Rule 4001(b)(2) and the Debtors' *Ex Parte*
11 Emergency Motion to Schedule and Hear First Day Relief, filed concurrently, the
12 Debtors respectfully request that the Court set a date for the Interim hearing at its
13 earliest convenience and schedule a Final Hearing on the Motion on the earliest
14 date permitted under the Bankruptcy Rules and available in this Court after entry of
15 the Interim Order to consider entry of the Final Order *inter alia*, authorizing
16 borrowings under the DIP Facility on a final basis and approving notice procedures
17 with respect thereto.

18 **VIII. THE NEED FOR IMMEDIATE RELIEF PENDING A FINAL**
19 **HEARING**

20 Bankruptcy Rules 4001(b) and (c) provide that a final hearing on a motion
21 for authorization to use cash collateral or to obtain DIP financing may not be

1 commenced earlier than fourteen (14) days after service of such motion. Fed. R.
2 Bankr. P. 4001(b)(2) and (c)(2). Upon request, however, a court may conduct a
3 preliminary expedited hearing on a motion and authorize the use of only that
4 amount of cash collateral or obtain only that amount of credit as is necessary to
5 avoid immediate and irreparable harm to the estate pending a final hearing, based
6 on the business exigencies of individual cases. *See id.* The Debtors submit that, for
7 the reasons set forth herein, authority to use Cash Collateral and to obtain DIP
8 financing on an interim basis as requested in the Motion is necessary to enable the
9 Debtors to maintain ongoing business operations pending a resolution in these
10 Chapter 11 Cases.

11 **IX. WAIVER OF BANKRUPTCY RULES 6004(A) AND (H)**

12 Should the Court grant the Motion and enter the DIP Orders, the Debtors
13 seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the
14 fourteen-day stay of an order authorizing the use, sale or lease of property under
15 Bankruptcy Rule 6004(h).

16 **X. NOTICE**

17 The Debtors will serve this Motion, the Lane Declaration, and the Notice of
18 Hearing on: (i) the Office of the United States Trustee for the Eastern District of
19 Washington, (ii) counsel for the Prepetition Secured Creditors, (iii) counsel for the
20 DIP Lender, (iv) all alleged secured creditors, (v) the thirty largest general
21 unsecured creditors appearing on the list filed in accordance with Rule 1007(d), and

1 (vi) any parties requesting special notice. To the extent necessary, the Debtors
2 request that the Court waive compliance with LBR 2002-1(a)(6) and approve
3 service (in addition to the means of service set forth in such LBR) by overnight
4 delivery. Among other things, the Notice of Hearing will provide that any
5 opposition or objection to the Motion may be presented at any time before or at the
6 hearing regarding the Motion, but that failure to timely object may be deemed by
7 the Court to constitute consent to the relief requested herein. The Debtors submit
8 that such notice is sufficient and that no other or further notice be given.

9 No previous motion for the relief sought herein has been made to this or any
10 other court.

11 **XI. CONCLUSION**

12 WHEREFORE, the Debtors respectfully request entry of an order (i) granting
13 the relief requested herein; and (ii) granting the Debtors such other and further
14 relief as the Court deems just and proper.

15
16 Dated: May 6, 2019

BUSH KORNFELD LLP
JAMES L. DAY

DENTONS US LLP
SAMUEL R. MAIZEL
SAM J. ALBERTS

17
18
19 By /s/ James L. Day
Sam J. Alberts

20 Proposed Attorneys for the Chapter 11
21 Debtors and Debtors In Possession

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EXHIBIT A
Proposed Interim DIP Order

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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON**

<p>IN RE: ASTRIA HEALTH, et al. Debtors.¹</p>	<p>Lead Case No. 19-01189-11 Jointly Administered [PROPOSED] INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING; (II) GRANTING SECURITY INTERESTS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS; (III) GRANTING ADEQUATE PROTECTION TO CERTAIN PREPETITION SECURED CREDIT PARTIES; (IV) MODIFYING THE AUTOMATIC STAY; (V) AUTHORIZING THE DEBTORS TO ENTER INTO AGREEMENTS WITH JMB CAPITAL PARTNERS LENDING, LLC; (VI) AUTHORIZING USE OF CASH COLLATERAL; (VII) SCHEDULING A FINAL HEARING AND (VIII) GRANTING RELATED RELIEF</p>
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¹ The Debtors, along with their case numbers, are as follows: Astria Health (19-01189-11), Glacier Canyon, LLC (19-01193-11), Kitchen and Bath Furnishings, LLC (19-01194-11), Oxbow Summit, LLC (19-01195-11), SHC Holdco, LLC (19-01196-11), SHC Medical Center-Toppenish (19-01190-11), SHC Medical Center-Yakima (19-01192-11), Sunnyside Community Hospital Association (19-01191-11), Sunnyside Community Hospital Home Medical Supply, LLC (19-01197-11), Sunnyside Home Health (19-01198-11), Sunnyside Professional Services, LLC (19-01199-11), Yakima Home Care Holdings, LLC (19-01201-11), and Yakima HMA Home Health, LLC (19-01200-11)..

1 THIS MATTER having come before the Court upon the motion (the
2 "Motion")² of the above-captioned debtors (the "Debtors" or the "Borrowers") in
3 the above-captioned chapter 11 cases (the "Chapter 11 Cases"), pursuant to sections
4 105, 361, 362, 363, 364 and 507 of title 11 of the United States Code, (11 U.S.C. §§
5 101 *et seq.*, as amended, the "Bankruptcy Code"), Rules 2002 and 4001 of the
6 Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Local Rules
7 2002-1 and 4001-3, seeking entry of an interim order (the "Interim Order") and a
8 final order (the "Final Order") granting *inter alia*:

9 i. authority, pursuant to sections 105, 363, and 364(c) and 364(d) of the
10 Bankruptcy Code, for each of the Debtors, jointly and severally, to obtain senior
11 secured postpetition financing ("DIP Facility") in an aggregate principal amount of
12 up to \$36 million (of which (x) \$28 million (the "Interim Advance") shall be made
13 available to the Debtors upon entry of this Interim Order upon satisfaction or waiver
14 of the borrowing conditions set forth in the DIP Loan Documents (as defined below)
15 and may be drawn in a single draw on the Closing Date and (y) subject to entry of
16 the Final Order, the balance shall be made available to the Debtors at intervals and in
17 amounts set forth in the DIP Loan Agreement (as defined below));

18 _____
19 ² Unless stated otherwise, capitalized terms used but not otherwise defined herein
20 shall have the meanings ascribed to them in the Motion or the DIP Loan Agreement
21 (as defined below), as applicable.

1 ii. authority (a) for the Debtors to enter into that certain Senior Secured,
2 Super-Priority Debtor-in-Possession Loan and Security Agreement, among the
3 Debtors as Borrowers, the non-filing affiliates of the Debtors party thereto as
4 guarantors, and JMB Capital Partners Lending, LLC, as Lender (the “**DIP Lender**”)
5 in substantially the same form as attached hereto as **Exhibit 1** (as amended, restated,
6 supplemented or otherwise modified from time to time in accordance with the terms
7 thereof, the “**DIP Loan Agreement**” and, together with any ancillary, collateral or
8 related documents and agreements, the “**DIP Loan Documents**”);

9 iii. authority for the Debtors to use the DIP Facility and the proceeds thereof
10 in accordance with the DIP Loan Documents to (a) fund the post-petition working
11 capital needs of the Debtors during the pendency of the Chapter 11 Cases, (b) pay
12 fees, costs and expenses of the DIP Facility on the terms and conditions described in
13 the DIP Loan Documents, (c) pay all Outstanding Prepetition Banner Bank
14 Obligations and Outstanding Prepetition MidCap Obligations (each as defined
15 below) and (d) pay the allowed administrative costs and expenses of the Chapter 11
16 Cases, in each case, solely in accordance with the DIP Loan Documents (including
17 the Budget), this Interim Order and the Final Order;

18 iv. authority for the Debtors to grant to the DIP Lender valid, enforceable,
19 non-avoidable, automatically and fully perfected security interests, liens and
20 superpriority claims, including allowed superpriority administrative expense claims
21 pursuant to sections 364(c)(1) and 507(b) of the Bankruptcy Code, subject only to

1 the Carve-Out and liens pursuant to sections 364(c)(2), 364(c)(3) and 364(d)(1) of
2 the Bankruptcy Code in the DIP Collateral (as defined below) (and all proceeds
3 thereof), including, without limitation, all property constituting “Cash Collateral,” as
4 defined in section 363(a) of the Bankruptcy Code, (“**Cash Collateral**”), to secure all
5 DIP Obligations (as defined below), as more fully set forth in this Interim Order,
6 subject only to the Carve-Out (as defined below);

7 v. subject to and only effective upon entry of the Final Order, waiver by
8 the Debtors of all rights to surcharge against the collateral of the DIP Lender pursuant
9 to section 506(c) of the Bankruptcy Code;

10 vi. subject to and only effective upon entry of the Final Order, waiver of
11 the equitable doctrine of marshaling or any other similar doctrine with respect to any
12 collateral of the DIP Lender;

13 vii. providing adequate protection to the Lapis Secured Parties to the extent
14 set forth herein;

15 viii. modification of the automatic stay to the extent hereinafter set forth and
16 waiving the 14-day stay provisions of Bankruptcy Rules 4001(a)(3) and 6004(h);

17 ix. the scheduling of a final hearing (the “**Final Hearing**”) on the Motion
18 for May [●], 2019 to consider entry of the Final Order *inter alia*, authorizing
19 borrowings under the DIP Facility on a final basis and approving notice procedures
20 with respect thereto; and

21 x. related relief.

1 The Court having considered the Motion and the exhibits attached thereto, the
2 evidence submitted or adduced and the arguments of counsel made at the interim
3 hearing held on May [●], 2019 (the “**Interim Hearing**”) and having found that due
4 and proper notice (the “**Notice**”) of the Motion and the Interim Hearing having been
5 served by the Debtors in accordance with Bankruptcy Rule 4001 and 9006 and Local
6 Rule 2002-1 on (i) the Office of the United States Trustee for the Eastern District of
7 Washington, (ii) counsel for the Prepetition Secured Creditors, (iii) counsel for the
8 DIP Lender, (iv) all alleged secured creditors, (v) the thirty largest general unsecured
9 creditors appearing on the list filed in accordance with Bankruptcy Rule 1007(d), and
10 (vi) any parties requesting special notice; and the Interim Hearing to consider the
11 interim relief requested in the Motion having been held and concluded; and all
12 objections, if any, to the interim relief requested in the Motion having been
13 withdrawn, resolved or overruled by the Court; and it appearing to the Court that
14 granting the interim relief requested is necessary to avoid potential immediate and
15 irreparable harm to the Debtors and their estates and otherwise is fair and reasonable
16 and in the best interests of the Debtors, their estates, and their creditors and equity
17 holders, and is essential for the continued operation of the Debtors’ businesses and
18 represents a sound exercise of the Debtors’ business judgment; and after due
19 deliberation and consideration, and for good and sufficient cause appearing therefor;

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1 **THIS COURT HEREBY MAKES THE FOLLOWING FINDINGS OF**
2 **FACT AND CONCLUSIONS OF LAW BASED UPON THE MOTION, THE**
3 **REPRESENTATIONS OF COUNSEL AND EVIDENCE SUBMITTED**
4 **DURING THE INTERIM HEARING:**³

5 A. Petition Date. On May 6, 2019 (the “**Petition Date**”), the Debtors filed
6 voluntary petitions under chapter 11 of the Bankruptcy Code in the United States
7 Bankruptcy Court for the Eastern District of Washington (the “**Court**”) commencing
8 these Chapter 11 Cases.

9 B. Debtors in Possession. The Debtors are continuing in the management
10 and operation of their businesses and properties as debtors in possession pursuant to
11 sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been
12 appointed in these Chapter 11 Cases.

13 C. Notice. Notice of the Interim Hearing and the relief requested in the
14 Motion has been provided by the Debtors to certain parties in interest, including on
15 (i) the Office of the United States Trustee for the Eastern District of Washington, (ii)
16 counsel for the Prepetition Secured Creditors, (iii) counsel for the DIP Lender, (iv)
17 all alleged secured creditors, (v) the thirty largest general unsecured creditors
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19 _____
20 ³ To the extent, any findings of fact constitute conclusions of law, they are adopted
21 as such, and vice versa, pursuant to Fed. R. Bankr. P. 7052.

1 appearing on the list filed in accordance with Rule 1007(d), and (vi) any parties
2 requesting special notice.

3 D. Jurisdiction and Venue. This Court has core jurisdiction over the
4 persons and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334.
5 Consideration of the Motion constitutes a core proceeding under 28 U.S.C.
6 § 157(b)(2). Venue for the Chapter 11 Cases and proceedings on the Motion is proper
7 in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

8 E. No Credit Available on More Favorable Terms. The Debtors are unable
9 to procure financing in the form of unsecured credit allowable as an administrative
10 expense under §§ 364(a), 364(b), or 503(b)(1) of the Bankruptcy Code and have been
11 unable to procure the necessary financing on terms more favorable, taken as a whole,
12 than the financing offered by DIP Lender pursuant to the DIP Loan Documents.

13 F. Best Interests of Estates. It is in the best interests of the Debtors' estates
14 and creditors that the Debtors be allowed to enter into the DIP Facility to obtain
15 postpetition secured financing from the DIP Lender under the terms and conditions
16 set forth herein and in the DIP Loan Documents, as such financing is necessary to
17 avoid immediate and irreparable harm to the Debtors' estates and for the continued
18 operation of the Debtors' businesses.

19 G. Good Faith. The extension of credit and financial accommodations
20 under the DIP Loan Documents are fair, reasonable, in good faith, negotiated at arm's
21 length, reflect the Debtors' exercise of prudent business judgment, and are supported

1 by reasonably equivalent value and fair consideration. Accordingly, the DIP Lender
2 is entitled to the protections of Bankruptcy Code section 364(e).

3 H. Good Cause. The relief requested in the Motion is necessary, essential
4 and appropriate, and is in the best interest of and will benefit the Debtors, their
5 creditors and their estates, as its implementation will, among other things, provide
6 the Debtors with the necessary liquidity to (1) minimize disruption to the Debtors'
7 businesses and ongoing operations, (2) preserve and maximize the value of the
8 Debtors' estates for the benefit of all the Debtors' creditors, and (3) avoid potential
9 immediate and irreparable harm to the Debtors, their creditors, their businesses, their
10 employees, and their assets.

11 I. Necessity of DIP Facility Terms. The terms of the DIP Loan Documents
12 and the Interim Order assuring that the liens and the various claims, superpriority
13 claims, and other protections granted in the Interim Order will not be affected by any
14 subsequent reversal or modification of the Interim Order or any other order, as
15 provided in section 364(e) of the Bankruptcy Code, which is applicable to the
16 postpetition financing arrangement contemplated in the DIP Loan Documents, are
17 necessary in order to induce the DIP Lender to provide postpetition financing to the
18 Debtors.

19 J. Need for Post-Petition Financing. The Debtors do not have sufficient
20 and reliable sources of working capital, including cash collateral, to continue to
21 operate their businesses in the ordinary course of business without the financing

1 requested in the Motion. The Debtors' ability to maintain business relationships with
2 their vendors, suppliers and customers, to pay their employees, and to otherwise fund
3 their operations is essential to the Debtors' continued viability as the Debtors seek to
4 maximize the value of the assets of their estates for the benefit of all creditors of the
5 Debtors. The ability of the Debtors to obtain sufficient and stable working capital
6 and liquidity through the proposed post-petition financing arrangements with the DIP
7 Lender as set forth in this Interim Order and the DIP Loan Documents is vital to the
8 preservation and maintenance of the going concern value of each Debtor.
9 Accordingly, the Debtors have an immediate need to obtain the postpetition financing
10 in order to, among other things, permit the orderly continuation of the operation of
11 their businesses, minimize the disruption of their business operations, and preserve
12 and maximize the value of the assets of the Debtors' bankruptcy estates in order to
13 maximize the recovery to all creditors of the estates.

14 K. Need to Use Cash Collateral. The Debtors need to use Cash Collateral,
15 in order to, among other things, preserve, maintain and maximize the value of their
16 assets and businesses. The ability of the Debtors to maintain liquidity through the
17 use of Cash Collateral is vital to the Debtors and their efforts to maximize the value
18 of their assets. Accordingly, the Debtors have demonstrated good and sufficient
19 cause for the relief granted herein.

20 L. Sections 506(c) and 552(b). As material inducement to the DIP Lender
21 to agree to provide the DIP Facility, and in exchange for the DIP Lender's agreement

1 to subordinate their superpriority claims to the Carve-Out, subject to entry of the
2 Final Order, this Court approves the waiver by Debtors of any equities of the case
3 exceptions under section 552(b) of the Bankruptcy Code and the waiver by Debtors
4 of the provisions of section 506(c) of the Bankruptcy Code.

5 M. Priming of Prepetition Liens. The priming of the Lapis Subordinated
6 Sunnyside Liens and Lapis Subordinated A/R Liens by the DIP Lender under section
7 364(d)(1) of the Bankruptcy Code, solely to the extent set forth in the DIP Loan
8 Documents and as further described below, will enable the Debtors to obtain the DIP
9 Facility and, among other benefits, continue to operate their businesses for the benefit
10 of their estates and stakeholders.

11 N. Pre-Petition Debt. The Debtors were, prior to the Petition Date, party
12 to the following agreements, with the following parties (collectively, the
13 **“Prepetition Secured Parties”**):

14 (a) Banner Bank Prepetition Debt.

15 a. Prior to the commencement of the Chapter 11 Cases, Sunnyside Community Hospital Association
16 (**“Sunnyside”**) entered into various Business Loan Agreements, dated December 30, 2010, May 19, 2015,
17 March 21, 2016, August 2, 2016, October 6, 2016, March 21, 2017, and May 4, 2018, each between Banner Bank and
18 Sunnyside (as each such agreement has been amended, modified, or supplemented to date, the **“Banner Bank
19 Loan Documents”**), providing Sunnyside with financing in the aggregate principal amount of \$27,006,225. The
20 advances made pursuant to the Banner Bank Loan Documents are secured by a first priority lien (the **“Banner
21 Senior Sunnyside Liens”**) on all personal property and

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certain real property of Sunnyside as set forth in the Banner Bank Loan Documents and associated documents (such assets the “**Banner Bank Collateral**”). As of the Petition Date, Sunnyside is indebted to Banner Bank in the approximate principal amount of \$10.6 million.

(b) *MidCap Financial Prepetition Debt.*

a. Prior to the commencement of the Chapter 11 Cases, SHC Holdco, LLC (“**Holdco**”), SHC Medical Center – Yakima (“**Yakima**”), SHC Medical Center – Toppenish (“**Toppenish**”), Yakima Home Care Holdings, LLC, and Yakima HMA Home Health, LLC, as co-borrowers (collectively, the “**MidCap Borrowers**”), entered into that certain Credit and Security Agreement dated September 18, 2017 (as amended, modified, or supplemented to date, the “**MidCap Credit Agreement**”), with the lenders party thereto (the “**MidCap Lenders**”) and MidCap Financial Trust as agent for the MidCap Lenders (the “**MidCap Agent**”), providing the MidCap Borrowers with a revolving loan facility in the maximum principal amount of \$15 million. The advances made pursuant to the MidCap Credit Agreement are secured by a first priority lien (the “**MidCap Senior A/R Liens**”) on the assets of the MidCap Borrowers set forth in Schedule 9.1 to the MidCap Credit Agreement (such assets, the “**MidCap A/R Collateral**”). As of the Petition Date, the MidCap Borrowers are indebted to the MidCap Lenders in the approximate principal amount of \$10.7 million.

(c) *Lapis Prepetition Debt.*

a. Pursuant to that certain Bond Indenture, dated as of November 1, 2017, between Washington Health Care Facilities Authority (the “**Authority**”), as issuer and UMB Bank, N.A. as the bond trustee (the “**Bond Trustee**”) for the bondholders, certain entities affiliated with Lapis Advisers, L.P., the Authority issued \$27 million of tax-exempt Washington Health Care Facilities Authority Revenue Bonds, Series 2017A (the “**Series 2017A Bonds**”) and \$8.4 million of tax-exempt Washington Health Care Facilities Authority Revenue Bonds, Series

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2017B (the “**Series 2017B Bonds**” and, together with the Series 2017A Bonds, collectively the “**2017 Bonds**”).

b. Also on November 1, 2017, Yakima, Toppenish, Holdco, Astria Health, as co-borrowers (the “**Lapis 2017 Loan Borrowers**”), entered into a Loan and Security Agreement (the “**Lapis 2017 Loan Agreement**”) with the Authority, wherein the Authority loaned the proceeds of the sale of the 2017 Bonds (\$35.4 million) (the “**Lapis 2017 Loan**”) to the Lapis 2017 Loan Borrowers. Sunnyside and Kitchen and Bath Furnishings, LLC, as well as certain other non-filing affiliates, as guarantors (the “**Lapis 2017 Loan Guarantors**”), entered into a Continuing Guaranty (the “**Lapis 2017 Loan Guaranty**” and together with the Lapis 2017 Loan Agreement, the “**Lapis 2017 Loan Documents**”), dated November 1, 2017, wherein the Lapis 2017 Loan Guarantors agreed to guaranty the obligations of the Lapis 2017 Loan Borrowers under the Lapis 2017 Loan. The advances made pursuant to the Lapis 2017 Loan are secured by (i) a first priority lien (the “**Lapis 2017 SHC Holdco Liens**”) on the assets of the Lapis 2017 Loan Borrowers not subject to the MidCap Senior A/R Liens, (ii) a junior lien (the “**Lapis 2017 A/R Liens**”) on the assets of the Lapis 2017 Loan Borrowers subordinate and subject to the MidCap Senior A/R Liens, and (iii) a junior lien (the “**Lapis 2017 Sunnyside Liens**”) on the assets of the Lapis 2017 Loan Guarantors subordinate and subject to the Banner Senior Sunnyside Liens (collectively, the “**Lapis 2017 Loan Collateral**”). *See* Intercreditor and Lien Subordination Agreement, dated as of November 1, 2017 (as amended, modified, or supplemented to date), by and among the Bond Trustee, MidCap Funding IV Trust, a Delaware statutory trust, as successor-by-assignment to MidCap Financial Trust, in its capacity as the MidCap Agent, Astria, the Lapis 2017 Loan Borrowers and Sunnyside. As of the Petition Date, the principal amount of approximately \$35.4 million of principal is outstanding under the Lapis 2017 Loan.

c. Prior to the commencement of the Chapter 11 Cases, Astria Health and Sunnyside, as co-borrowers (the “**Lapis 2019**”).

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Loan Borrowers”), entered into a Credit Agreement dated January 18, 2019 (the “**Lapis 2019 Loan Agreement**”) with Lapis Advisers LP (“**Lapis Agent**”), as agent for lenders party thereto (the “**Lapis 2019 Loan Lenders**”), whereby the Lapis 2019 Loan Lenders agreed to make advances to the Lapis 2019 Loan Borrowers in the principal amount of up to \$10 million (the “**Lapis 2019 Loan**”). Holdco, Yakima, Toppenish, Glacier Canyon, LLC, Yakima Home Care Holdings, LLC, Yakima HMA Home Health, LLC, as well as certain other non-filing affiliates, as guarantors (the “**Lapis 2019 Loan Guarantors**”), entered into a Continuing Guaranty (the “**Lapis 2019 Loan Guaranty**” and together with the Lapis 2019 Loan Agreement, the “**Lapis 2019 Loan Documents**”), dated January 18, 2019, wherein the Lapis 2019 Loan Guarantors agreed to guaranty the obligations of the Lapis 2019 Loan Borrowers under the Lapis 2019 Loan. The advances made pursuant to the Lapis 2019 Loan are secured by (i) a junior lien (the “**Lapis 2019 Sunnyside Liens**” and together with the Lapis 2017 Sunnyside Liens, the “**Lapis Subordinated Sunnyside Liens**”) on the assets of the Lapis 2019 Borrowers subordinate and subject to the Banner Senior Sunnyside Liens, (ii) a junior lien (the “**Lapis 2019 SHC Holdco Liens**” and together with the Lapis 2017 SHC Holdco Liens, the “**Lapis Senior Holdco Liens**”) on the assets of the Lapis 2019 Loan Guarantors not subject to the MidCap Senior A/R Liens as set forth in the Lapis 2019 Loan Documents, and (iii) a junior lien (the “**Lapis 2019 A/R Liens**” and together with the Lapis 2017 Priority A/R Liens, the “**Lapis Subordinated A/R Liens**”) on the MidCap Priority Collateral (such assets, the “**Lapis 2019 Collateral**” and together with the Lapis 2017 Loan Collateral, the “**Lapis Prepetition Collateral**”). As of the Petition Date, the principal amount of approximately \$10 million of principal is outstanding under the Lapis 2019 Loan.

d. As used herein “**Prepetition Credit Liens**” shall mean the Banner Senior Sunnyside Liens, MidCap Senior A/R Liens, Lapis Senior Holdco Liens, Lapis Subordinated A/R Liens, and Lapis Subordinated Sunnyside Liens. As used

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herein "**Prepetition Collateral**" shall mean the Banner Bank Collateral, MidCap A/R Collateral, and Lapis Prepetition Collateral.

O. Adequate Protection. The Bond Trustee, on behalf of itself and the holders of the 2017 Bonds (the "**Bondholders**") and the Lapis Agent, on behalf of itself and the Lapis 2019 Loan Lenders (collectively, the "**Lapis Secured Parties**") are entitled to receive adequate protection on account of their interests in the Lapis Prepetition Collateral pursuant to sections 361, 362, and 363 of the Bankruptcy Code solely to the extent of any diminution in the value of their interests in the Lapis Prepetition Collateral (including Cash Collateral). As part of the adequate protection provided by this Interim Order, the Lapis Secured Parties shall receive, among other things, replacement liens, superpriority claims and reporting information. The terms of the Adequate Protection Obligations (defined herein) are fair and reasonable, reflect the Debtors' prudent exercise of business judgment and are sufficient to allow the Debtors' use of the Lapis Prepetition Collateral (including the Cash Collateral) and to permit the relief granted in this Interim Order.

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

Based upon the foregoing findings and conclusions, the Motion and the record before the Court with respect to the Motion, and good and sufficient cause appearing therefor,

1 **IT IS HEREBY ORDERED** that:

2 1. DIP Facility Approval. The DIP Facility is hereby approved. Any
3 objections to the interim relief requested in the Motion that have not been withdrawn,
4 waived or settled, and all reservations of rights included therein, are hereby denied
5 and overruled. The Debtors are authorized, pursuant to section 364 of the Bankruptcy
6 Code, to enter into and be a party to the DIP Facility pursuant to the DIP Loan
7 Documents (with such changes, if any, as were authorized to be made as amendments
8 to the DIP Loan Documents in accordance with this Interim Order), to perform under
9 the DIP Loan Documents and such other and additional documents necessary or
10 desired to implement the DIP Facility or the DIP Loan Documents, and to obtain
11 postpetition secured financing from the DIP Lender, to avoid immediate and
12 irreparable harm to the Debtors' estates.

13 2. DIP Obligations. The DIP Loan Documents shall constitute and
14 evidence the valid and binding effect of the Debtors' obligations under the DIP
15 Facility, which DIP Obligations shall be legal, valid, and binding obligations of the
16 Debtors party thereto and enforceable against the Debtors, their estates, any
17 successors thereto, including, without limitation, any trustee appointed in any of the
18 Debtors' cases, or in any case under chapter 7 of the Bankruptcy Code upon the
19 conversion of any such cases, or in any other proceedings superseding or related to
20 any of the foregoing, any successors thereto, and any party determined to be the
21 beneficial owner of the DIP Collateral by this Court. The Debtors and their

1 successors shall be jointly and severally liable for repayment of any funds advanced
2 pursuant to the DIP Loan Documents, together with interest thereon, at the times and
3 in the amounts set forth in the DIP Loan Documents and all Obligations as defined
4 and provided for in the DIP Loan Agreement (collectively, the “**DIP Obligations**”).
5 No obligation, payment, transfer or grant of security under the DIP Loan Documents
6 or the Interim Order, with respect to the DIP Facility shall be stayed, restrained,
7 voided, voidable or recoverable under the Bankruptcy Code or under any applicable
8 non-bankruptcy law, or subject to any defense, reduction, setoff, recoupment or
9 counterclaim.

10 3. Authorization to Borrow. Upon entry of this Interim Order and during
11 the period prior to entry of the Final Order, the Debtors are immediately authorized
12 to borrow from the DIP Lender under the DIP Facility, the Interim Advance of up to
13 \$28 million, subject to the terms and conditions set forth in the DIP Loan Documents
14 and this Interim Order. Subject to the terms and conditions of this Interim Order and
15 the DIP Loan Documents, the Debtors are authorized to use Cash Collateral until the
16 earlier of (a) the Maturity Date and (b) the date upon which the Debtors’ right to use
17 Cash Collateral is terminated hereunder as a result of an Event of Default (as defined
18 in the DIP Loan Agreement) which remains continuing and has not been waived by
19 the DIP Lender. Once repaid, the DIP Facility Loans incurred may not be re-
20 borrowed.

1 4. Use of Proceeds. The Debtors shall use advances of credit under the
2 DIP Facility (the “**DIP Facility Loans**”) only for the express purposes specifically
3 set forth in this Interim Order and the DIP Loan Documents. The Debtors are
4 authorized to use the proceeds of the DIP Facility Loans to (a) fund the post-petition
5 working capital needs of the Debtors during the pendency of the Chapter 11 Cases,
6 (b) pay fees, costs and expenses of the DIP Facility on the terms and conditions
7 described in the DIP Loan Documents, (c) pay all Outstanding Prepetition Banner
8 Bank Obligations and Outstanding Prepetition MidCap Obligations; and (d) pay the
9 allowed administrative costs and expenses of the Chapter 11 Cases, in each case,
10 solely in accordance with the DIP Loan Documents (including, but not limited to, the
11 Budget) and this Interim Order. Notwithstanding anything herein, the extensions of
12 credit under the DIP Facility shall not constitute cash collateral of the Prepetition
13 Secured Parties.

14 5. Repayment of Certain Outstanding Prepetition Secured Loan
15 Obligations. Upon entry of this Interim Order, the Debtors shall use the proceeds of
16 the DIP Facility to pay (a) all outstanding obligations now due and payable to Banner
17 Bank under the Banner Bank Loan Documents in full (including obligations that
18 accrued postpetition) (the “**Outstanding Prepetition Banner Bank Obligations**”),
19 in accordance with the terms, conditions, and procedures set forth in the DIP Loan
20 Documents, and (b) all outstanding obligations now due and payable to the MidCap
21 Lenders under the MidCap Credit Agreement in full (including obligations that

1 accrued postpetition) (the “**Outstanding Prepetition MidCap Obligations**”), in
2 accordance with the terms, conditions, and procedures set forth in the DIP Loan
3 Documents. Nothing in this Interim Order or the payment of the Outstanding
4 Prepetition Banner Bank Obligations and Outstanding Prepetition MidCap
5 Obligations shall be construed as a waiver or release of any claims the estates may
6 hold against the Prepetition Secured Parties.

7 6. Budget and Reporting. Except as otherwise provided herein or
8 approved by the DIP Lender, the proceeds from the DIP Facility shall be used only
9 in compliance with the terms of the DIP Loan Documents, including the Budget. The
10 Debtor shall comply with the reporting requirements and obligations set forth in the
11 DIP Loan Agreement.

12 7. Payment of DIP Fees and Expenses. The (a) Commitment Fee; (b)
13 Funding Fee; (c) Work Fee, which shall serve as a retainer for the DIP Lender’s
14 counsel; (d) Exit Fee; and (e) Stated Maturity Fee are each hereby approved and the
15 Debtors are hereby authorized and directed to and shall pay such fees in accordance
16 with, and on the terms set forth in this Interim Order and the DIP Loan Documents.
17 The Debtors are also hereby authorized and directed to pay upon demand, all other
18 fees, costs, expenses and other amounts payable under the terms of this Interim Order
19 and the DIP Loan Documents and all other reasonable fees and out-of-pocket costs
20 and expenses of the DIP Lender in accordance with the terms of this Interim Order
21 and the DIP Loan Documents (including, without limitation, the reasonable and

1 documented fees and out-of-pocket costs and expenses of Arent Fox LLP as counsel
2 and Southwell & O'Rourke, P.S. as local counsel to the DIP Lender to the extent not
3 covered by the portion of the Work Fee paid prior to the Petition Date), subject to
4 receiving a written invoice therefor. None of such fees, costs, expenses or other
5 amounts shall be subject to Court approval except as otherwise provided herein or
6 required to be submitted in any particular format, and no recipient of any such
7 payment shall be required to file with respect thereto any interim or final fee
8 application with this Court; provided, however, that copies of any such invoices shall
9 be provided contemporaneously to the U.S. Trustee and any official committee of
10 unsecured creditors appointed in these Chapter 11 Cases (the "**Committee**");
11 provided further, however, that such invoices provided to the Committee may be
12 redacted to the extent necessary to delete any information subject to the attorney-
13 client privilege, any information constituting attorney work product, or any other
14 confidential information (the "**Redactions**"), and the provision of such invoices shall
15 not constitute a waiver of the attorney-client privilege or any benefits of the attorney
16 work product doctrine. If the U.S. Trustee or the Committee objects to the
17 reasonableness of the fees and expenses of the DIP Lender, and such objection cannot
18 be resolved within ten (10) days of receipt of such invoices, the U.S. Trustee or the
19 Committee may file with the Court and serve on the DIP Lender, an objection to the
20 reasonableness of such fees and expenses (each, a "**Reasonableness Fee**
21 **Objection**"). Without limiting the foregoing, if the Committee objects to the

1 Redactions and such objection cannot be resolved within ten (10) days of receipt of
2 such invoices, the DIP Lender shall file with the Court and serve on the Debtors, the
3 Committee and the U.S. Trustee a request for Court resolution of the disputes
4 concerning the propriety of the disputed Redactions (each, a “**Redaction Fee**
5 **Objection**,” and each Reasonableness Fee Objection and Redaction Fee Objection
6 may be referred to herein generally as a “**Fee Objection**”). The Debtors shall pay, in
7 accordance with the terms and conditions of this Interim Order and the Final Order,
8 within ten (10) days after receipt of the applicable invoice (a) the full amount
9 invoiced if no Fee Objection has been timely filed, and (b) the undisputed fees, costs,
10 and expenses reflected on any invoice to which a Fee Objection has been timely
11 filed. All such unpaid fees, costs, expenses and other amounts owed or payable to
12 the DIP Lender shall be secured by the DIP Collateral and afforded all of the priorities
13 and protections afforded to the DIP Obligations under this Interim Order, and the
14 DIP Loan Documents.

15 8. **Indemnification**. The Debtors are hereby authorized to and hereby agree
16 to indemnify and hold harmless the DIP Lender and its affiliates, directors, officers,
17 employees, agents, attorneys, or any other Person affiliated with or representing the
18 DIP Lender (collectively, an “**Indemnified Party**”) from and against: (a) all
19 obligations, demands, claims, damages, losses and liabilities (including, without
20 limitation, reasonable fees and disbursements of counsel) (collectively, “**Indemnity**
21 **Claims**”) as set forth in the DIP Loan Documents including those asserted by any

1 other party in connection with the transactions contemplated by the DIP Loan
2 Documents; and (b) all losses or expenses incurred, or paid by the DIP Lender from,
3 following, or arising from the transactions contemplated by the DIP Loan Documents
4 (including reasonable and documented attorneys' fees and expenses), except for
5 Indemnity Claims and/or losses directly caused by the DIP Lender's gross
6 negligence, or willful misconduct or bad faith of DIP Lender. In the case of an
7 investigation, litigation or other proceeding to which the indemnity in this paragraph
8 applies, such indemnity shall be effective whether or not such investigation, litigation
9 or proceeding is brought by any of the Debtors or any of their respective directors,
10 security holders or creditors, an Indemnified Party or any other Person or an
11 Indemnified Party is otherwise a party thereto and whether or not the transactions
12 contemplated hereby are consummated. No Indemnified Party shall have any
13 liability (whether direct or indirect, in contract, tort or otherwise) to any Debtor or
14 any of its subsidiaries or any shareholders or creditors of the foregoing for or in
15 connection with the transactions contemplated hereby, except to the extent such
16 liability is determined by a court of competent jurisdiction in a final non-appealable
17 judgment or order to have resulted solely from such Indemnified Party's gross
18 negligence or willful misconduct. All indemnities of the Indemnified Parties shall
19 constitute DIP Obligations secured by the DIP Collateral and afforded all of the
20 priorities and protections afforded to the DIP Obligations under this Interim Order,
21 the Final Order and the DIP Loan Documents.

1 9. Use of Cash Collateral. The Debtors are authorized to use Cash
2 Collateral in accordance with and pursuant to this Interim Order and the DIP Loan
3 Documents. Prior to the Maturity Date and until indefeasible payment in full of the
4 DIP Obligations, the Debtors agree that they will not use or seek to use Cash
5 Collateral other than pursuant to the terms of this Interim Order.

6 10. DIP Superpriority Claims. In accordance with section 364(c)(1) of the
7 Bankruptcy Code, the DIP Obligations shall constitute allowed senior administrative
8 expense claims against each Debtor and their estates (the “**DIP Superpriority**
9 **Claims**”) with priority in payment over any and all administrative expenses at any
10 time existing or arising, of any kind or nature whatsoever, including, without
11 limitation, the kinds specified or ordered pursuant to any provision of the Bankruptcy
12 Code, including, but not limited to, sections 105, 326, 328, 330, 331, 503(b), 506(c)
13 (subject to the entry of the Final Order with respect to section 506(c) only), 507(a),
14 507(b), 726, 1113 and 1114 of the Bankruptcy Code or otherwise, including those
15 resulting from the conversion of any of the Chapter 11 Cases pursuant to section 1112
16 of the Bankruptcy Code, whether or not such expenses or claims may become secured
17 by a judgment lien or other non-consensual lien, levy or attachment; provided,
18 however, that the DIP Superpriority Claims shall be subject to and subordinate to
19 only the Carve-Out; provided, further that the DIP Superpriority Claims shall have
20 recourse to and be payable from all prepetition and postpetition property and assets
21 of the Debtors and the estates and all DIP Collateral and all proceeds thereof, and (a)

1 any and all avoidance power claims or causes of action under sections 544, 545, 547,
2 548 through 551 and 553(b) of the Bankruptcy Code (the “**Avoidance Actions**”) and
3 the proceeds thereof, (b) prepetition tort claims, including claims against the Debtors’
4 current and former directors and officers (if any) and the proceeds thereof; and (c)
5 any deposit in connection with a proposed Sale (whether terminated or otherwise)
6 that becomes property of the Debtors’ estates (a “**Sale Deposit**”) subject, however,
7 only to the senior lien rights of a stalking horse purchaser and such stalking horse bid
8 protections as may be approved by this Court.

9 11. DIP Liens.

10 (a) Effective immediately as of the entry of this Interim Order, as
11 security for the DIP Obligations, the DIP Lender is granted, continuing, valid,
12 binding, enforceable, non-avoidable, and automatically and properly perfected
13 security interests in and liens (collectively, the “**DIP Liens**”) on all DIP Collateral as
14 collateral security for the prompt and complete performance and payment when due
15 (whether at the Stated Maturity Date (i.e. December 31, 2019), by acceleration, or
16 otherwise) of the DIP Obligations. The term “**DIP Collateral**” means collectively
17 all pre-petition and post-petition real property and all pre-petition and post-petition
18 tangible and intangible personal property of each Borrower, in each case wherever
19 located and whether now owned or hereafter acquired, including, but not limited to
20 all accounts, contracts rights, chattel paper, cash, general intangibles, investment
21 property, machinery, equipment, goods, inventory, furniture, fixtures, letter of credit

1 rights, books and records, deposit accounts, documents, instruments, commercial tort
2 claims, leases and leaseholds and rents, avoidance actions under section 549 and
3 related recoveries under section 550 of the Bankruptcy Code, together with all
4 proceeds of each of the forgoing, including insurance proceeds (as each such term
5 above is defined in the UCC, to the extent applicable), and, subject to Final Order,
6 including the proceeds and recoveries from Avoidance Actions (the “**Avoidance**
7 **Action Proceeds**”).

8 (b) Subject to the entry of the Final Order, to the fullest extent
9 permitted by the Bankruptcy Code or applicable law, and except as otherwise set
10 forth herein, any provision of any lease other than a real property lease, loan
11 document, easement, use agreement, proffer, covenant, license, contract,
12 organizational document, or other instrument or agreement that requires the consent
13 or the payment of any fees or obligations to any entity in order for any of the Debtors
14 to pledge, grant, mortgage, sell, assign, or otherwise transfer any fee or leasehold
15 interest or the proceeds thereof or other DIP Collateral, shall have no force or effect
16 with respect to the DIP Liens on such leasehold interests or other applicable DIP
17 Collateral or the proceeds of any assignment and/or sale thereof by any Debtor, in
18 favor of the DIP Lender in accordance with the terms of the DIP Loan Documents,
19 or this Interim Order.

1 12. Priority of DIP Liens.

2 (a) To secure the DIP Obligations, immediately upon and effective
3 as of entry of this Interim Order, the DIP Lender, is hereby granted on a final basis,
4 continuing, valid, binding, enforceable, non-avoidable, and automatically and
5 properly perfected DIP Liens in the DIP Collateral as follows, in each case subject to
6 the Carve-Out:

7 (i) *Liens Priming the Prepetition Credit Liens.* Pursuant to 364(d)(1)
8 of the Bankruptcy Code, valid, binding, continuing, enforceable, non-
9 avoidable automatically and fully perfected first priority senior priming
10 liens and security interests in all DIP Collateral, regardless of where
11 located, which senior priming liens and security interests in favor of the
12 DIP Lender shall be senior to all Prepetition Credit Liens other than the
13 Lapis Senior Holdco Liens. For the avoidance of doubt, as a result of
14 the priming of the Prepetition Credit Liens (other than the Lapis Senior
15 Holdco Liens) pursuant to this Interim Order, the DIP Lender shall have
16 a first priority senior priming lien and security interest in, among other
17 things, (A) all of the assets of Sunnyside and its debtor and non-debtor
18 subsidiaries, including but not limited to, the Banner Bank Collateral,
19 (B) the MidCap A/R Collateral, and (C) the Debtors' prepetition and
20 postpetition commercial tort claims, including but not limited all claims
21 and causes of action (i) against the Debtors' officers and directors, and
(ii) related to accounts receivable collections, and the proceeds thereof
(regardless of whether such proceeds arise from damages to the
Prepetition Collateral).

(ii) *Liens on Unencumbered Property.* Pursuant to section 364(c)(2)
of the Bankruptcy Code, valid, binding, continuing, enforceable, non-
avoidable automatically and fully perfected first priority liens on and
security interests in all DIP Collateral that is not otherwise subject to
any Permitted Prior Lien. As used herein, the term "**Permitted Prior
Lien**" shall mean any valid, enforceable, and non-avoidable liens on and
security interests in the DIP Collateral that (A) were perfected prior to
the Petition Date (or perfected on or after the Petition Date to the extent
permitted by Section 546(b) of the Bankruptcy Code), (B) are not
subject to avoidance, disallowance, or subordination pursuant to the

1 Bankruptcy Code or applicable non-bankruptcy law, and (C) are senior
2 in priority to the DIP Liens under applicable law and after giving effect
3 to any lien release, subordination or inter-creditor agreements; provided,
however, that the DIP Liens shall have priority over all Prepetition
Credit Liens other than the Lapis Senior Holdco Liens; and

4 (iii) *Liens Junior to Certain Other Liens.* Pursuant to section 364(c)(3)
5 of the Bankruptcy Code, valid, enforceable, non-avoidable
6 automatically and fully perfected junior liens on and security interests
7 in all DIP Collateral (other than as set forth in clauses (i) and (ii))
subordinate only to the Lapis Senior Holdco Liens and the Permitted
Prior Liens.

8 (b) Except as expressly set forth herein, the DIP Liens and the DIP
9 Superpriority Claims shall not be made junior to or *pari passu* with (1) any lien,
10 security interest or claim heretofore or hereinafter granted in any of the Chapter 11
11 Cases or any successor cases, and shall be valid and enforceable against the Debtors,
12 their estates, any trustee or any other estate representative appointed or elected in the
13 Chapter 11 Cases or any successor cases and/or upon the dismissal or conversion of
14 any of the Chapter 11 Cases or any successor cases, (2) any lien that is avoided and
15 preserved for the benefit of the Debtors and their estates under section 551 of the
16 Bankruptcy Code or otherwise, (3) any intercompany or affiliate lien or claim; and
17 (4) subject to entry of the Final Order, any liens arising after the Petition Date
18 excluding any liens or security interests granted in favor of any federal, state,
19 municipal or other governmental unit, commission, or board for any liability of the
20 Debtors.
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1 13. Adequate Protection of Lapis Secured Parties. The Lapis Secured
2 Parties are entitled, pursuant to sections 361, 362, 363(e), 364(d)(1) and 507 of the
3 Bankruptcy Code, to adequate protection of their interests in all the Lapis Prepetition
4 Collateral, including Cash Collateral, in an amount equal to the aggregate diminution
5 in value of the Lapis Secured Parties' interests in the Lapis Prepetition Collateral
6 (including Cash Collateral) from and after the Petition Date, if any, for any reasons
7 provided under the Bankruptcy Code. In consideration for the foregoing, the Lapis
8 Secured Parties, are hereby granted the following in the amount of such diminution
9 (collectively, the "**Adequate Protection Obligations**"):

10 (a) *Lapis 2017 Loan Adequate Protection Liens.* The Bond Trustee,
11 on behalf of itself and the Bondholders, is hereby granted (effective and perfected
12 upon the date of this Interim Order and without the necessity of any mortgages,
13 security agreements, pledge agreements, financing statement or other agreements) in
14 the amount equal to the aggregate diminution in value of the interests in the Lapis
15 2017 Loan Collateral (including Cash Collateral) from and after the Petition Date, if
16 any, for any reasons provided under the Bankruptcy Code (the "**Lapis 2017 Loan**
17 **Adequate Protection Claim**"), a valid, perfected replacement security interest in
18 and lien upon any and all assets subject (i) to the Lapis First Priority SHC Holdco
19 Liens, subordinate to the Carve-Out, and (ii) to the Lapis 2017 Sunnyside Liens and
20 Lapis 2017 A/R Liens, subordinate to (A) the DIP Liens and (B) the Carve-Out (the
21 "**Lapis 2017 Loan Replacement Liens**").

1 (b) *Lapis 2019 Loan Adequate Protection Liens.* The Lapis Agent,
2 on behalf of itself and the Lapis 2019 Loan Lenders, is hereby granted (effective and
3 perfected upon the date of this Interim Order and without the necessity of any
4 mortgages, security agreements, pledge agreements, financing statement or other
5 agreements), in the amount equal to the aggregate diminution in value of the interests
6 in the Lapis 2019 Loan Collateral (including Cash Collateral) from and after the
7 Petition Date, if any, for any reasons provided under the Bankruptcy Code (the
8 **“Lapis 2019 Loan Adequate Protection Claim”**), a valid, perfected replacement
9 security interest in and lien upon any and all assets subject (i) to the Lapis 2019 SHC
10 Holdco Liens, subordinate to the Carve-Out, and (ii) to the Lapis 2019 Sunnyside
11 Liens and Lapis 2019 A/R Liens, subordinate to (A) the DIP Liens and (B) the Carve-
12 Out (the **“Lapis 2019 Loan Replacement Liens”** and together with the Lapis 2017
13 Loan Replacement Liens, the **“Adequate Protection Liens”**).

14 (c) *Lapis 2019 Loan 507(b) Claims.* The Lapis Agent, on behalf of
15 itself and the Lapis 2019 Loan Lenders, is hereby granted, an allowed superpriority
16 administrative expense claim as provided in section 507(b) of the Bankruptcy Code
17 in the amount of Lapis 2019 Loan Adequate Protection Claim with, except as set
18 forth in this Interim Order, priority in payment over any and all administrative
19 expenses of the kind specified or ordered pursuant to any provision of the Bankruptcy
20 Code (the **“Lapis 2019 Loan 507(b) Claims”**); which the Lapis 2019 Loan 507(b)
21 Claims shall have recourse to and be payable from all of the DIP Collateral. The

1 Lapis 2019 Loan 507(b) Claims shall be subject and subordinate only to the Carve-
2 Out and the DIP Superpriority Claims and the Lapis 2017 Loan 507(b). The Lapis
3 Secured Parties shall not receive or retain any payments, property or other amounts
4 in respect of the Lapis 2019 Loan 507(b) Claims unless and until the DIP Obligations
5 (other than contingent indemnification obligations as to which no claim has been
6 asserted) have indefeasibly been paid in cash in full and all DIP Commitments
7 terminated.

8 (d) *Lapis 2017 Loan 507(b) Claims*. The Bond Trustee, on behalf of
9 itself and the Bondholders, is hereby granted, an allowed superpriority administrative
10 expense claim as provided in section 507(b) of the Bankruptcy Code in the amount
11 of Lapis 2017 Loan Adequate Protection Claim with, except as set forth in this
12 Interim Order, priority in payment over any and all administrative expenses of the
13 kind specified or ordered pursuant to any provision of the Bankruptcy Code (the
14 **“Lapis 2017 Loan 507(b) Claims”**); which Lapis 2017 Loan 507(b) Claims shall
15 have recourse to and be payable from all of the DIP Collateral. The Lapis 2017 Loan
16 507(b) Claims shall be subject and subordinate only to the Carve-Out and the DIP
17 Superpriority Claims. The Lapis Secured Parties shall not receive or retain any
18 payments, property or other amounts in respect of the Lapis 2017 Loan 507(b) Claims
19 unless and until the DIP Obligations (other than contingent indemnification
20 obligations as to which no claim has been asserted) have indefeasibly been paid in
21 cash in full and all DIP Commitments terminated.

1 (e) *Lapis Secured Parties Information*. As additional adequate
2 protection of the Lapis Secured Parties' security interests in the Lapis Prepetition
3 Collateral, the Debtors shall contemporaneously provide the Lapis Secured Parties
4 with any reporting provided to the DIP Lender under the DIP Loan Agreement.

5 14. Carve-Out.

6 (a) *Carve-Out*. As used in this Interim Order, the term "**Carve-Out**"
7 means, collectively, the sum of: (i) all fees required to be paid to the Clerk of the
8 Court and to the U.S. Trustee pursuant to 28 U.S.C. §1930(a) and section 3717 of
9 title 31 of the United States Code; (ii) the reasonable fees and expenses up to \$15,000
10 incurred by a trustee under section 726(b) of the Bankruptcy Code; and (iii) the
11 aggregate amount of unpaid fees and expenses of the Debtors' and the Committee
12 (which order has not been reversed, vacated or stayed unless such stay is no longer
13 effective) under sections 327(a), 328 or 1103(a) of the Bankruptcy Code (the "**Case**
14 **Professionals**"), to the extent such fees and expenses are allowed and payable
15 pursuant to an order of the Court (which order has not been reversed, vacated or
16 stayed) ("**Allowed Professional Fees**"), and the reimbursement of out-of-pocket
17 expenses allowed by the Court and incurred by the members of the Committee in the
18 performance of their duties (but excluding fees and expenses of third party
19 professionals employed by such members) ("**Committee Expenses**"), which amount
20 under this clause (iii) shall not exceed the sum of: (x) an aggregate amount per week
21 limited to the amount set forth in the Budget for Allowed Professional Fees and

1 Committee Expenses incurred prior to the delivery of a Carve-Out Trigger Notice
2 provided (i) the Maturity Date has not occurred or (ii) Event of Default has not
3 occurred or continuing (the “**Pre Carve-Out Notice Trigger Cap**”) plus (y) \$75,000
4 for Allowed Professional Fees and Committee Expenses incurred from and after the
5 delivery of the Carve-Out Trigger Notice (defined below) (the “**Post Carve-Out**
6 **Notice Cap**” together, with the Pre Carve-Out Notice Trigger Cap, the “**Carve-Out**
7 **Cap**”). No portion of the Carve-Out or any Cash Collateral may be used in violation
8 of this Interim Order. Nothing in this Interim Order or otherwise shall be construed
9 to increase the Carve-Out if actual (i) Allowed Professional Fees of any Case
10 Professional or (ii) Committee Expenses are higher in fact than Carve-Out Cap
11 amount.

12 (b) *Carve-Out Trigger Notice*. As used herein, the term “**Carve-Out**
13 **Trigger Notice**” means a written notice provided by the DIP Lender to the Debtors,
14 counsel to the Committee, and the U.S. Trustee that the Post Carve-Out Notice
15 Trigger Cap is invoked, which notice may be delivered following the occurrence and
16 during the continuance of an Event of Default and/or acceleration of the DIP
17 Obligations under the DIP Loan Documents. Upon delivery of the Carve-Out Trigger
18 Notice to the Debtors (the “**Termination Declaration Date**”), the Debtors shall
19 provide notice by email and facsimile to all Case Professionals, at the email addresses
20 and facsimile numbers set forth in each Professional’s notice of appearance filed with
21 the Bankruptcy Court (or, if there is no such notice of appearance, at such

1 Professional's last known email address and facsimile number) within one (1) day
2 after the Debtors' receipt of a Carve-Out Trigger Notice informing them that such
3 Carve-Out Trigger Notice has been received and further advising them that the
4 Debtors' ability to pay such Case Professionals is subject to and limited by the Post
5 Carve-Out Notice Trigger Cap.

6 (c) *Payment of Allowed Professional Fees Prior to Termination*
7 *Declaration Date.* Any payment or reimbursement made prior to the occurrence of
8 the Termination Declaration Date in respect of any Allowed Professional Fees shall
9 not reduce the Carve Out.

10 (d) *Payment of Carve-Out on or After the Termination Declaration*
11 *Date.* Any payment or reimbursement made on or after the occurrence of the
12 Termination Declaration Date in respect of any Allowed Professional Fees shall
13 permanently reduce the Carve-Out on a dollar-for-dollar basis. Any funding of the
14 Carve-Out shall be added to, and made a part of the DIP Obligations secured by the
15 DIP Collateral and shall be otherwise entitled to the protections granted under this
16 Interim Order, the DIP Loan Documents, the Bankruptcy Code and applicable law.

17 (e) *Objection Rights.* Nothing contained herein is intended to
18 constitute, nor shall be construed as consent to the allowed of any Case Professional's
19 fees, costs and expenses by any party and shall not affect the rights of the Debtors,
20 the DIP Lender or any other party in interest to object to the allowance and/or
21 payment of any such amounts incurred or requested.

1 15. Bankruptcy Code Sections 506(c) and 552(b) Waivers. Subject to entry
2 of a Final Order, without limiting the Carve-Out, the Debtors irrevocably waive and
3 shall be prohibited from asserting (i) any surcharge claim, under section 506(c) of
4 the Bankruptcy Code or otherwise, for any costs and expenses incurred in connection
5 with the preservation, protection or enhancement of, or realization by the DIP Lender
6 upon the DIP Collateral and no costs or expenses of administration that have been or
7 may be incurred in any of the Chapter 11 Cases at any time shall be charged against
8 the DIP Lender or its claims or liens (including any claims or liens granted pursuant
9 to this Interim Order), and (ii) the “equities of the case” exception under section
10 552(b) of the Bankruptcy Code in connection with the DIP Facility.

11 16. Application of Proceeds. Subject to the entry of the Final Order, in no
12 event shall the DIP Lender be subject to the equitable doctrine of “marshaling” or
13 any other similar doctrine with respect to the DIP Collateral, and all proceeds thereof
14 shall be received and used in accordance with this Interim Order.

15 17. Disposition of Collateral. The Debtors shall not sell, transfer, lease,
16 encumber or otherwise dispose of any portion of the DIP Collateral, other than in the
17 ordinary course of business or in connection with the payments contemplated under
18 this Interim Order, without the prior written consent of the DIP Lender (and no such
19 consent shall be implied from any other action, inaction or acquiescence by the DIP
20 Lender) or order of this Court; provided for the avoidance of doubt the Debtors shall
21 comply with Section 6.4 of the DIP Loan Agreement. Notwithstanding anything

1 otherwise provided herein, 100% of any net cash proceeds of any sale of DIP
2 Collateral outside of the ordinary course of business shall, subject to the satisfaction
3 of the Carve-Out and the lien priorities outlined in paragraph 12 herein, be used to
4 immediately satisfy the DIP Obligations.

5 18. Restrictions on Granting Postpetition Liens. Other than the Carve-Out
6 or as otherwise provided in this Interim Order, the Final Order or the DIP Loan
7 Documents, no claim or lien having a priority superior or *pari passu* with those
8 granted by this Interim Order and the DIP Loan Documents to the DIP Lender shall
9 be granted or permitted by any order of this Court heretofore or hereafter entered in
10 the Chapter 11 Cases, and the Debtors will not grant any such mortgages, security
11 interests or liens in the DIP Collateral (or any portion thereof) or to any other parties
12 pursuant to section 364(d) of the Bankruptcy Code or otherwise, while (i) any portion
13 of the DIP Facility, any DIP Facility Loans or any other DIP Obligations, are
14 outstanding or (ii) the DIP Lender has any Commitment under the DIP Loan
15 Documents. For avoidance of doubt, there shall be no restriction and this paragraph
16 shall not apply and excludes any liens or security interests granted in favor of any
17 federal, state, municipal or other governmental unit, commission, board or court for
18 any liability of the Debtors.

19 19. Automatic Effectiveness of Liens. The DIP Liens shall not be subject
20 to a challenge and shall attach and become valid, perfected, binding, enforceable,
21 non-avoidable and effective by operation of law as of the date of the entry of this

1 Interim Order on a final basis, without any further action by the Debtors and the DIP
2 Lender, respectively, and without the necessity of execution by the Debtors or the
3 filing or recordation, of any financing statements, security agreements, deposit
4 control agreements, vehicle lien applications, mortgages, filings with a governmental
5 unit (including, without limitation, the U.S. Patent and Trademark Office or the
6 Library of Congress), or other documents or the taking of any other actions. All DIP
7 Collateral shall be free and clear of other liens, claims and encumbrances, except as
8 provided in the DIP Loan Documents, and this Interim Order. If the DIP Lender
9 hereafter requests that the Debtors execute and/or deliver to the DIP Lender financing
10 statements, control agreements, mortgages, or other documents considered by the
11 DIP Lender to be reasonably necessary or desirable to further evidence the perfection
12 of the DIP Liens the Debtors are hereby authorized and directed to execute and/or
13 deliver such financing statements, control agreements, mortgages, and documents,
14 and the DIP Lender is hereby authorized to file or record such documents in its
15 discretion without seeking modification of the automatic stay under section 362 of
16 the Bankruptcy Code, in which event all such documents shall be deemed to have
17 been filed or recorded at the time and on the date of the entry of this Interim Order;
18 provided, however, no such filing or recordation shall be necessary or required in
19 order to create or perfect the DIP Liens. The DIP Lender, in its sole discretion, may
20 file a photocopy of this Interim Order as a financing statement with any filing or
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1 recording office or with any registry of deeds or similar office, in addition to, or in
2 lieu of, such financing statements, notices of liens or similar statements.⁴

3 20. Protection Under Section 364(e) of the Bankruptcy Code. The DIP
4 Lender has acted in good faith in connection with this Interim Order and its reliance
5 on this Interim Order is in good faith. The reversal or modification on appeal of the
6 authorizations under section 364 of the Bankruptcy Code contained in this Interim
7 Order does not affect the validity of any DIP Obligation or the DIP Liens, or the
8 Adequate Protection Liens whether or not the DIP Lender or Prepetition Secured
9 Parties (as applicable) knew of the pendency of the appeal, unless such authorization
10 and incurrence of DIP Obligations and DIP Lien and advance of the DIP Facility
11 Loan under 364 of the Bankruptcy Code in this Interim Order and the Final Order,
12 were stayed pending appeal.

13 21. Reservation of Rights of the DIP Lender. Notwithstanding any other
14 provision of this Interim Order to the contrary, the entry of this Interim Order is
15 without prejudice to, and does not constitute a waiver of, expressly or implicitly, or
16 otherwise impair: (i) any of the rights of the DIP Lender under the Bankruptcy Code
17 or under non-bankruptcy law, including, without limitation, the right of any of such
18 parties to (a) request modification of the automatic stay of section 362 of the
19 Bankruptcy Code, (b) request dismissal of any of these Chapter 11 Cases, conversion
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21 ⁴ The provisions of Bankruptcy Code § 1146(a) do not apply herein.

1 of any of these Chapter 11 Cases to cases under chapter 7, or appointment of a chapter
2 11 trustee or examiner with expanded powers in any of these Chapter 11 Cases, (c)
3 seek to propose, subject to the provisions of section 1121 of the Bankruptcy Code, a
4 chapter 11 plan or plans; or (ii) any other rights, claims, or privileges (whether legal
5 or equitable or otherwise) of the DIP Lender. The delay in or failure of the DIP
6 Lender to seek relief or otherwise exercise their respective rights and remedies shall
7 not constitute a waiver of any of the DIP Lender's rights and remedies.

8 22. Right to Credit Bid.

9 (a) *DIP Lender.* Pursuant to section 363(k) of the Bankruptcy Code,
10 unless the Court orders otherwise for cause as provided under section 363(k) of the
11 Bankruptcy Code, the DIP Lender shall have the right to credit bid the total of the
12 DIP Obligations for any or all of the DIP Collateral at a sale, lease or other disposition
13 of such DIP Collateral outside the ordinary course of business (including any auction
14 or similar sales), whether pursuant to a plan of reorganization or a motion pursuant
15 to section 363 of the Bankruptcy Code or otherwise (which credit bid rights under
16 section 363(k) or otherwise shall not be impaired in any manner).

17 (b) A credit bid may be applied only to reduce the cash consideration
18 with respect to those assets in which the party submitting such credit bid holds a
19 perfected security interest. The DIP Lender shall be considered a "Qualified Bidder"
20 with respect to their rights to acquire all or any of the assets by credit bid.
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1 23. Remedies and Notice Upon the Occurrence of Maturity Date or Event
2 of Default. Upon prior written notice by the DIP Lender to counsel for the Debtors,
3 counsel for the Committee, and the U.S. Trustee of the occurrence of an Event of
4 Default (each as defined in the DIP Loan Documents and incorporated herein by
5 reference) and without further order of the Court, the DIP Lender may (i) declare the
6 DIP Obligations to be immediately due and payable; (ii) terminate the DIP Lender's
7 commitment under the DIP Facility (other than the Carve-Out) or use of Cash
8 Collateral; (iii) charge default rate interest; and/or (iv) upon five (5) business days'
9 notice to counsel to the Debtors, counsel to the Committee and the U.S. Trustee,
10 exercise all default-related rights and remedies against the DIP Collateral, without
11 further order of or application or motion to the Bankruptcy Court, and without
12 restriction or restraint by any stay under sections 362 and 105 of the Bankruptcy Code
13 or otherwise, provided however, that during the five (5) business day notice period,
14 any party in interest shall have the right to file a pleading in opposition to the DIP
15 Lender's exercise of rights and remedies including the delivery of the Carve-Out
16 Trigger Notice; provided further that, unless otherwise ordered by the Court, the only
17 issue that may be raised by any party in such pleading shall be whether in fact, an
18 Event of Default has occurred and is continuing; but provided further that, if an Event
19 of Default occurs as a result of the Debtors' failure to indefeasibly satisfy the DIP
20 Obligations by the Stated Maturity Date (as defined in the DIP Loan Documents),
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1 the above referenced five (5) day notice period shall not apply and the Debtors and
2 all other interested parties shall not have any challenge rights.

3 24. Modification of Stay. Subject to the terms set forth herein, the automatic
4 stay imposed under section 362(a) of the Bankruptcy Code is hereby modified as
5 necessary to effectuate all of the terms, rights, benefits, privileges, remedies and
6 provisions of this Interim Order, and the DIP Loan Documents including without
7 limitation, to permit the DIP Lender to exercise all rights and remedies provided for
8 in the DIP Loan Documents and take any and all actions provided therein, in each
9 case, in accordance with paragraph 23 of this Interim Order.

10 25. Survival of DIP Liens, DIP Superpriority Claims, and Other Rights. If,
11 in accordance with section 364(e) of the Bankruptcy Code, this Interim Order does
12 not become a final non-appealable order, if a trustee terminates this Interim Order,
13 or if any of the provisions of this Interim Order are hereafter modified, amended,
14 vacated or stayed by subsequent order of this Court or any other court, such
15 termination or subsequent order shall not affect the priority, validity, enforceability
16 or effectiveness of (or subordination to the Carve-Out of) any lien, security interests
17 or any other benefit or claim authorized hereby with respect to any DIP Obligations
18 or Adequate Protection Obligations incurred prior to the effective date of such
19 termination or subsequent order. All such liens, security interests, claims and other
20 benefits shall be governed in all respects by the original provisions of this Interim
21 Order, and the DIP Lender and Lapis Secured Parties shall be entitled to all the rights,

1 remedies, privileges and benefits granted herein, including the liens and priorities
2 granted herein, with respect to any DIP Loan and Adequate Protection Obligations,
3 subject to the Carve-Out.

4 26. Survival of this Interim Order. The provisions of this Interim Order and
5 any actions taken pursuant hereto shall survive the entry of any order: (i) confirming
6 any plan of reorganization in any of the Chapter 11 Cases; (ii) converting any of the
7 Chapter 11 Cases to a chapter 7 case; or (iii) dismissing any of the Chapter 11 Cases,
8 and the terms and provisions of this Interim Order as well as the DIP Superpriority
9 Claims and the DIP Liens in the DIP Collateral granted pursuant to this Interim Order
10 and the DIP Loan Documents shall continue in full force and effect notwithstanding
11 the entry of any such order. Such claims and liens shall maintain their priority as
12 provided by this Interim Order and the DIP Loan Documents, and to the maximum
13 extent permitted by law, until all of the DIP Obligations are indefeasibly paid in full
14 in cash and discharged or otherwise treated under a plan of reorganization, which is
15 reasonably acceptable to the DIP Lender. In no event shall any plan of reorganization
16 be allowed to alter the terms of repayment of any of the DIP Obligations from those
17 set forth in the DIP Loan Documents unless agreed to by and among the Debtors and
18 the DIP Lender.

19 27. Modifications of DIP Loan Documents. The Debtors and the DIP
20 Lender are hereby authorized to implement, in accordance with the terms of the DIP
21 Loan Documents, any non-material modifications of the DIP Loan Documents

1 without further notice, motion or application to, order of or hearing before, this Court.
2 Any material modification or amendment to the DIP Loan Documents shall only be
3 permitted pursuant to an order of this Court, after being submitted to this Court upon
4 five (5) days' notice to the U.S. Trustee and counsel to the Committee; provided, that
5 any forbearance from, or waiver of, (i) a breach by the Debtors of a covenant
6 representation or any other agreement or (ii) a default or an Event of Default, in each
7 case under the DIP Loan Documents shall not require an order of this Court. In the
8 event of any inconsistency between this Interim Order and the DIP Loan Agreement,
9 this Interim Order shall control.

10 28. Insurance Policies. Upon entry of this Interim Order, on each insurance
11 policy maintained by the Debtors which in any way relates to the DIP Collateral: (i)
12 the DIP Lender shall be, and shall be deemed to be, without any further action by or
13 notice to any person, named as additional insureds; and (ii) the DIP Lender shall be
14 and shall be deemed to be, without any further action by or notice to any person,
15 named as loss payee for DIP Collateral on which the DIP Lien holds a first priority
16 lien. The Debtors are hereby authorized on a final basis, to and shall take any actions
17 necessary to have the DIP Lender be added as an additional insured and loss payee
18 on each insurance policy maintained by the Debtors consistent with this Interim
19 Order and the DIP Loan Agreement which in any way relates to the DIP Collateral.

20 29. Financial Information. The Debtors shall deliver to the DIP Lender such
21 financial and other information concerning the business and affairs of the Debtors

1 and any of the DIP Collateral as may be required pursuant to the DIP Loan
2 Documents and/or as the DIP Lender shall reasonably request from time to time. The
3 Debtors shall allow the DIP Lender access to the premises in accordance with the
4 terms of the DIP Loan Documents for the purpose of enabling the DIP Lender to
5 inspect and audit the DIP Collateral and the Debtors' books and records.

6 30. Proofs of Claim. Notwithstanding any order entered by the Bankruptcy
7 Court in relation to the establishment of a bar date in the Chapter 11 Cases to the
8 contrary, or otherwise, the DIP Lender shall not be required to file proofs of claim in
9 the Chapter 11 Cases for any claim allowed herein.

10 31. Immediate Effect of Order. The terms and conditions of this Interim
11 Order shall be effective and immediately enforceable upon its entry by the Clerk of
12 the Court notwithstanding any potential application of Bankruptcy Rule 6004(h) or
13 otherwise. Furthermore, to the extent applicable, the notice requirements and/or
14 stays imposed by Bankruptcy Rules 4001(a)(3), 6003(b), and 6004(a) are hereby
15 waived for good and sufficient cause. The requirements of Bankruptcy Rules 4001,
16 6003, and 6004, in each case to the extent applicable, are satisfied by the contents of
17 the Motion.

18 //End of Order//

1 PRESENTED BY:

2 /s/ James L. Day

JAMES L. DAY (WSBA #20474)

3 BUSH KORNFELD LLP

4 SAMUEL R. MAIZEL (*Pro Hac Vice* pending)

SAM J. ALBERTS (WSBA #22255)

5 DENTONS US LLP

6 *Proposed Attorneys for the Chapter 11*

Debtors and Debtors In Possession

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EXHIBIT 1
DIP LOAN AGREEMENT