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Committee of Unsecured Creditors*

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

IN RE:

ASTRIA HEALTH, et al.,  
Debtors.<sup>1</sup>

Lead Case No. 19-01189-11

Jointly Administered

**CORRECTED  
OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS'**

<sup>1</sup> 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,

DIP/Cash Collateral Objection



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**OBJECTION TO THE EMERGENCY MOTION OF DEBTORS FOR FINAL 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; AND (VII) GRANTING RELATED RELIEF**

The Official Committee of Unsecured Creditors (the “Committee”) in the chapter 11 cases of Astria Health (together with its affiliated debtors in possession, the “Debtors”), by and through its proposed undersigned counsel, hereby files this limited objection (the “Objection”) to the *Emergency Motion of Debtors for Final 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)*

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 *Scheduling a Final Hearing; and (VIII) Granting Related Relief* [Docket No. 15]  
2 (the “DIP Financing Motion”).<sup>2</sup> In support of the Objection, the Committee  
3 respectfully represents as follows:

4 **PRELIMINARY STATEMENT**

5 Based upon negotiations to date, the Committee does not object to the  
6 Debtors’ request for authorization to obtain post-petition financing to fund these  
7 chapter 11 cases. To that end, the Committee has worked productively with the  
8 Debtors and the DIP Lender to resolve many of the Committee’s concerns with the  
9 originally proposed post-petition financing order. As a result of those efforts during  
10 the negotiation process, the Committee is prepared to support the post-petition  
11 financing form of order attached hereto as Exhibit A (the “Proposed Final Order”),<sup>3</sup>  
12 which reflects the agreement among the Debtors, the Committee and the DIP  
13 Lender with respect to DIP financing.

14 However, the Committee understands that the Lapis Secured Parties are not  
15 prepared to support the Proposed Final Order, instead requesting an adequate  
16 protection package and additional forms of relief (the “Additional Protection  
17 Requests”) that are not appropriate in these chapter 11 cases. The Additional

18 \_\_\_\_\_  
19 <sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to  
20 them in the DIP Financing Motion, the DIP Loan Documents, or the Proposed Final  
21 Order attached hereto as Exhibit A, as applicable.

<sup>3</sup> A blackline of the Proposed Final Order as compared to the Interim Order is  
attached hereto as Exhibit B.

1 Protection Requests include, among other things (and in addition to the adequate  
2 protection already provided in the Proposed Final Order, described further below),  
3 (i) adequate protection interest payments, (ii) a waiver of the Debtors’ surcharge  
4 rights under section 506(c) of the Bankruptcy Code, (iii) a waiver of the “equities of  
5 the case” exception under section 552(b) of the Bankruptcy Code, (iv) an  
6 administrative expense superpriority claim on Commercial Tort Claims (defined  
7 below) and Excluded Avoidance Actions (defined below), (v) an unreasonable  
8 investigation and challenge period, (vi) case controls, including benchmarks,  
9 subject only to the Lapis Secured Parties’ approval, and (iv) a broad release of any  
10 and all claims against the Lapis Secured Parties.

11 The Committee objects to any Additional Protection Requests, as this Court  
12 has already found that the Lapis Secured Parties are already adequately protected to  
13 the extent of any diminution in value of their interests in the Lapis Prepetition  
14 Collateral in light of (i) their 100% equity cushion in the collateral, (ii) their  
15 replacement liens on all post-petition collateral of a similar type to the Lapis  
16 Prepetition Collateral on which they do not already have a lien (*i.e.*, post-petition  
17 accounts receivable and the proceeds thereof from the Debtors’ operating hospitals),  
18 and (iii) their 507(b) administrative expense superpriority claims secured by the  
19 DIP Collateral (but excluding Commercial Tort Claims and Excluded Avoidance  
20 Actions). No further adequate protection is necessary in these cases, especially  
21

1 since, among other things, making adequate protection payments to the Lapis  
2 Secured Parties (who are already adequately protected) may require the Debtors  
3 draw on the DIP Facility solely for the purpose of making such payments, causing  
4 the Debtors' estates to incur unnecessary fees and expenses. The Committee  
5 submits that the limited funding in these cases should be utilized for the provision  
6 of patient care for the benefit of patients and the community rather than to creditors  
7 whose interests are already adequately protected.

8 While the Committee's professionals are in the process of analyzing the  
9 Debtors' proposed budget and projections, the Committee notes a question exists as  
10 to the Debtors' current need to make an additional draw under the DIP Facility at  
11 this point in time based on the Debtors' apparent improvement in their financial  
12 performance. However, the Committee is supportive of the Debtors' request for  
13 authorization to obtain post-petition financing on the terms of the Proposed Final  
14 Order, including the authorization to draw the amounts remaining under the DIP  
15 Facility.

### 16 **BACKGROUND**

17 On May 6, 2019 (the "Petition Date"), the Debtors filed voluntary petitions  
18 for relief under chapter 11 of Bankruptcy Code with the United States Bankruptcy  
19 Court for the Eastern District of Washington (the "Court").

20 On May 24, 2019, the Office of the United States Trustee for the Eastern  
21

1 District of Washington appointed the Committee. The Committee has selected Sills  
2 Cummis & Gross P.C. and Polsinelli P.C. as its co-counsel.

3 As of the Petition Date, the Debtors purportedly had a total of approximately  
4 \$71.7 million of outstanding secured debt outstanding, held by Banner Bank,  
5 MidCap Financial Trust as Agent for the MidCap Lenders, UMB Bank, N.A. as the  
6 trustee for bondholders, certain entities affiliated with Lapis Advisers, LP, Lapis  
7 Advisers, LP, as agent for certain lenders, and GE HFS LLC.

8 On the Petition Date, the Debtors filed the DIP Financing Motion, requesting  
9 authority to obtain senior secured post-petition financing in an aggregate principal  
10 amount of up to \$36 million, of which \$28 million was made available upon entry  
11 of the Interim Order.

12 Also on the Petition Date, the Debtors filed the declaration of Michael Lane  
13 in support of the DIP Financing Motion [Docket No. 16] (the “Lane Declaration”).

14 On May 7, 2019, the Lapis Secured Parties filed their preliminary objection  
15 to the DIP Financing Motion [Docket No. 48] (the “Lapis DIP Objection”).

16 On May 8, 2019, after the court held an interim hearing on the DIP Financing  
17 Motion (the “Interim Hearing”), the Court entered the Interim Order, authorizing  
18 the Debtors to draw the interim advance of \$28 million, of which approximately  
19 \$21.3 million was used to pay all Outstanding Prepetition Banner Bank Obligations  
20 and Outstanding Prepetition MidCap Obligations.

1 **OBJECTION**

2 While the Committee supports the Debtors’ request for authorization to  
3 obtain post-petition financing on the terms of the Proposed Final Order, the  
4 Committee objects to any additional adequate protection or other requests by the  
5 Lapis Secured Parties beyond the adequate protection package provided in the  
6 Proposed Final Order. The provision of any additional protection to the Lapis  
7 Secured Parties is unnecessary in these chapter 11 cases and detrimental to the  
8 rights of the unsecured creditors, potentially exposing the Debtors’ estates to  
9 administrative insolvency and stripping unsecured creditors of statutory rights.

10 **I. The Lapis Secured Parties Are Adequately Protected Under the**  
11 **Proposed Final Order**

12 Under section 364(d) of the Bankruptcy Code, a debtor may obtain credit  
13 secured by a senior lien on property of the estate that is already subject to a lien. 11  
14 U.S.C. § 364(d). “To obtain DIP financing that involves a senior or ‘priming’ lien  
15 on encumbered property, the debtor-in-possession must show that . . . the value of  
16 the prepetition lender’s lien that will be primed by the DIP lender’s lien is  
17 adequately protected . . . . The purpose of the adequate protection requirement  
18 under § 364(d) is to protect an existing lienholder from any decrease in the value of  
19 its security interest resulting from the priming lien.” *Wells Fargo Bank, N.A. v.*  
20 *Sonora Desert Dairy, L.L.C. (In re Sonora Desert Dairy, L.L.C.)*, 2015 Bankr.  
21 LEXIS 18, at \*30-32 (B.A.P. 9th Cir. Jan. 5, 2015). Similarly, under section 363(e)

1 of the Bankruptcy Code, a debtor must adequately protect a secured creditor to the  
2 extent of any diminution in value of the secured creditor's collateral resulting from  
3 the debtor's use of such collateral during the pendency of the bankruptcy case. *See*  
4 11 U.S.C. § 363(e).

5 “Adequate protection may be provided by (1) periodic cash payments, (2)  
6 additional or replacement liens or (3) other relief resulting in the ‘indubitable  
7 equivalent’ of the secured creditor's interest. In addition, the requirement to provide  
8 adequate protection can be met by showing the existing lienholder is oversecured  
9 with a substantial equity cushion.” *In re Sonora Desert Dairy, L.L.C.*, 2015 Bankr.  
10 LEXIS 18, at \*30-32 (*citing Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396, 1400  
11 (9th Cir. 1984)); *see also* 11 U.S.C. § 361.

12 **A. *The Lapis Secured Parties Are Adequately Protected by the Equity***  
13 ***Cushion in The Lapis Prepetition Collateral***

14 “An ‘equity cushion’ had been defined as the value in the property, above the  
15 amount owed to the creditor with a secured claim, that will shield that interest from  
16 loss due to any decrease in the value of the property during time the automatic stay  
17 remains in effect. The claims of junior lienholders are not considered in  
18 determining whether the senior lienholder is adequately protected.” *In re Plaza*  
19 *Family P'ship*, 95 B.R. 166, 171 (E.D. Cal. 1989); *see also In re Mellor*, 734 F.2d at  
20 1400-01 (“Although the existence of a junior lien may be relevant in determining  
21



1 “equity” under § 362(d)(2), it cannot be considered in determining whether the  
2 interest of a senior lienholder is adequately protected.”).

3 With respect to whether an equity cushion constitutes adequate protection,  
4 the Ninth Circuit has held that a 20% cushion is adequate protection for a secured  
5 creditor and cited cases from other circuits noting that 10% provides a sufficient  
6 equity cushion:

7 A 20% cushion has been held to be an adequate protection for a  
8 secured creditor. *See In re McGowan*, 6 Bankr. 241, 243 (B.Ct. E.D.  
9 Pa. 1980) [holding a 10% cushion is sufficient to be adequate  
10 protection]; *In re Rogers Development Corp.*, 2 Bankr. 679, 685  
11 (B.Ct. E.D. Virg. 1980) [court decided that an equity cushion of  
approximately 15% to 20% was sufficient adequate protection to the  
creditor, even though the debtors had no equity in the property.]; *In re  
Breuer*, 4 Bankr. 499, 501 [creditor protected by equity cushion of  
\$21,000 despite fact that debtor lacked equity in the property.]

12 *In re Mellor*, 734 F.2d at 1401; *see also In re Plaza Family P'ship*, 95 B.R. at (“In  
13 *In re Mellor*, *supra*, 734 F.2d 1396, the court found that an equity cushion of  
14 approximately 20% adequately protects the creditor's security interest. *See also In*  
15 *re McGowan*, 6 B.R. 241, 243 (B. Ct. E.D.Pa.1980) [holding a 10% equity cushion  
16 is sufficient to be adequate protection.]”); *In re Helionetics, Inc.*, 70 B.R. 433, 440  
17 (Bankr. C.D. Cal. 1987) (“This is 20.4% of the debt which I believe adequately  
18 protects Downey.”).

19 Courts in the Ninth Circuit have held that a preponderance of the evidence is  
20 the necessary standard with respect to valuing property for purposes of determining  
21

1 whether an equity cushion exists. *See In re Thurston Highland Assocs., LLC*, 2010  
2 Bankr. LEXIS 119, at \*9 (Bankr. W.D. Wash. Jan. 13, 2010) (in the context of  
3 determining whether an equity cushion exists, the court “conclude[d] that a  
4 preponderance of the evidence indicates that the Property has a value of  
5 approximately \$ 30,000,000”). The Ninth Circuit does not use the “firm evidentiary  
6 basis” standard as urged by the Lapis Secured Parties in the Lapis DIP Objection.  
7 Lapis DIP Objection, page 25.

8 Here, as set forth in the Lane Declaration, the total book value of the Lapis  
9 Prepetition Collateral is approximately \$200 million and the enterprise or market  
10 value is approximately \$120 to 150 million, while the Lapis Secured Parties’  
11 liabilities total only approximately \$45.4 million. Lane Declaration, ¶ 55. Thus,  
12 the Lane Declaration states that “[b]ased on the book value of the Lapis Prepetition  
13 Collateral, the Lapis Prepetition Secured Parties have over a 100% equity cushion  
14 after taking into consideration the \$36 million DIP Facility. Based on the enterprise  
15 value of the Lapis Prepetition Collateral, the Lapis Prepetition Secured Parties have  
16 over a 80% equity cushion.” Lane Declaration, ¶ 55. As noted above, an 80%-  
17 100% equity cushion clearly provides adequate protection.

18 Here the equity cushion may be even greater than as stated in the Lane  
19 Declaration because the calculations in the Lane Declaration assume the Debtors  
20 draw the full \$36 million from the DIP Facility, which the Committee believes may  
21

1 not be necessary (at least at this point in time). As such, the DIP Facility should be  
2 reduced by any undrawn amounts in the equity cushion calculation. Further, the  
3 Lapis Senior Holdco Liens are not being primed and remain senior to the DIP  
4 Liens. Proposed Final Order, ¶ 12. Finally, the Committee understands the  
5 Debtors’ financial performance has been better than projected (*i.e.* collections have  
6 been higher than projected) – all further augmenting the adequate protection herein.

7 To the extent the Lapis Prepetition Parties disagree with the Debtors’  
8 evidence in support of its valuation of the Lapis Prepetition Collateral, the Lapis  
9 Prepetition Parties need to put forth their own valuation evidence—they cannot  
10 simply complain the Debtors’ did it wrong. *See In re Plaza Family P’ship*, 95 B.R.  
11 at 171 (“Travelers had an opportunity to present evidence and argue that the  
12 appraised value of the estate property was incorrect. However, no other value was  
13 presented to the bankruptcy court.”). The Lapis Prepetition Parties have had over a  
14 month to conduct discovery regarding valuation and/or put forth their own  
15 evidence, yet they failed to do either. Further, the Lapis Prepetition Parties could  
16 have cross-examined Michael Lane at the Interim Hearing, which they did not do.  
17 The preponderance of the evidence therefore supports the Debtors’ valuation  
18 analysis and establishes a large equity cushion in the Lapis Prepetition Collateral.

1           ***B. The Lapis Secured Parties Are Adequately Protected by the***  
2           ***Replacement Liens On Collateral On Which They Did Not Previously***  
3           ***Have a Lien***

4           Replacement liens are another source of adequate protection. 11 U.S.C. §  
5           361; *In re Sonora Desert Dairy, L.L.C.*, 2015 Bankr. LEXIS 18, at \*30-32. Here,  
6           The Proposed Final Order grants the Lapis Secured Parties the following  
7           replacement liens (up to the amount of the diminution in value of the Lapis  
8           Prepetition Collateral, if any):

9           (1) a valid, perfected replacement security interest in and lien upon  
10           any and all assets subject (i) to the Lapis First Priority SHC Holdco  
11           Liens, subordinate to the Carve-Out, and (ii) to the Lapis 2017  
12           Sunnyside Liens and Lapis 2017 A/R Liens, subordinate to (A) the  
13           DIP Liens and (B) the Carve-Out; and

14           (2) a valid, perfected replacement security interest in and lien upon  
15           any and all assets subject (i) to the Lapis 2019 SHC Holdco Liens,  
16           subordinate to the Carve-Out, and (ii) to the Lapis 2019 Sunnyside  
17           Liens and Lapis 2019 A/R Liens, subordinate to (A) the DIP Liens  
18           and (B) the Carve-Out.

19           The Lapis Secured Parties claim this is an “illusory” form of adequate  
20           protection because the “[r]eplacement liens [are] in postpetition assets that would  
21           otherwise constitute the Lenders’ collateral[.]” Lapis DIP Objection, pages 32-33.  
This, however, is inaccurate. While the replacement liens are on the same type of  
assets already subject to the Lapis Prepetition Liens, the replacement liens attach to  
the Debtors’ post-petition assets on which the Lapis Secured Parties did not  
previously have a lien.

1 Pursuant to section 552(a), “[e]xcept as provided in subsection (b) of this  
2 section, property acquired by the estate or by the debtor after the commencement of  
3 the case is not subject to any lien resulting from any security agreement entered into  
4 by the debtor before the commencement of the case.” 11 U.S.C.S. § 552(a).  
5 Section 552(b) provides, in relevant part, that “if the debtor and an entity entered  
6 into a security agreement before the commencement of the case and if the security  
7 interest created by such security agreement extends to property of the debtor  
8 acquired before the commencement of the case and to proceeds, products, offspring,  
9 or profits of such property, then such security interest extends to such proceeds,  
10 products, offspring, or profits acquired by the estate after the commencement of the  
11 case to the extent provided by such security agreement and by applicable  
12 nonbankruptcy law[.]” 11 U.S.C. § 552(b)(1).

13 Together, sections 552(a) and (b) provide that a security interest will attach to  
14 post-petition proceeds, products, offspring or profits of pre-petition collateral (if  
15 such proceeds, products, offspring or profits are included in the security  
16 agreement), but assets of the same type on which the lender had a pre-petition lien  
17 (which are not proceeds, products, offspring or profits of the collateral) will not be  
18 subject to the pre-petition security interest. For example, if a lender has a security  
19 interest in all accounts receivable and the proceeds thereof, the pre-petition lien will  
20 attach to the pre-petition accounts receivable and all post-petition proceeds thereof,  
21

1 but it will not attach to new accounts receivable generated on a post-petition basis  
2 and the proceeds thereof.

3 As the Ninth Circuit B.A.P. succinctly put it, “[p]roceeds of post-petition  
4 accounts receivable do not fall within the § 552(b) proceeds exception. Therefore, a  
5 creditor's security interest only encompasses the cash collected on existing pre-  
6 petition accounts.” *Arkison v. Frontier Asset Mgmt., LLC (In re Skagit Pac. Corp.)*,  
7 316 B.R. 330, 336 (B.A.P. 9th Cir. 2004) (internal citations omitted). Thus,  
8 granting the Lapis Secured Parties a replacement lien in, among other things, the  
9 post-petition accounts receivable and the proceeds thereof from the Debtors’  
10 operating hospitals that intend to continue admitting patients provides significant  
11 adequate protection.

12 ***C. The Lapis Secured Parties Are Adequately Protected by the***  
13 ***Administrative Expense Superpriority Claims***

14 As further adequate protection, in addition to the equity cushion and  
15 replacement liens, the Lapis Secured Parties are provided 507(b) administrative  
16 expense superpriority claims in an amount equal to the diminution in value of the  
17 Lapis Prepetition Collateral from and after the Petition Date, if any, for any reasons  
18 provided under the Bankruptcy Code, subject and subordinate only to the Carve-  
19 Out and DIP Superpriority Claims, with recourse from the DIP Collateral  
20 (excluding the Commercial Tort Claims and Excluded Avoidance Actions). In  
21 addition to pre-petition collateral, and excluding the Commercial Tort Claims and

1 Excluded Avoidance Actions, the DIP Collateral includes post-petition real and  
2 personal property of the Debtors. As such, this is another significant source of  
3 adequate protection and, together with the equity cushion and replacement liens, is  
4 more than sufficient to protect the interests of the Lapis Secured Parties with respect  
5 to the diminution in value, if any, of their interests in the Lapis Prepetition  
6 Collateral.

7 **II. The Additional Protection Requests Will Harm the Debtors' Estates at**  
8 **the Expense of the Unsecured Creditors**

9 The Committee understands that the Lapis Secured Parties have requested  
10 additional forms of adequate protection and relief, including, among other things,  
11 (i) adequate protection interest payments, (ii) a waiver of the Debtors' surcharge  
12 rights under section 506(c) of the Bankruptcy Code, (iii) a waiver of the "equities of  
13 the case" exception under section 552(b) of the Bankruptcy Code, (iv) an  
14 administrative expense superpriority claim on Commercial Tort Claims and  
15 Excluded Avoidance Actions, (v) an unreasonable investigation and challenge  
16 period, (vi) case controls, including benchmarks, subject only to the Lapis Secured  
17 Parties' approval, and (iv) a broad release of any and all claims against the Lapis  
18 Secured Parties. Such Additional Protection Requests are unnecessary and serve  
19 only to prejudice the rights of the unsecured creditors in these chapter 11 cases.  
20  
21

1           **A.   *Adequate Protection Interests Payments Are Costly and Unnecessary***

2           Requiring the Debtors to make adequate protection interest payments in these  
3 cases could be the sole reason the Debtors would need to draw additional funds  
4 from the DIP Facility or could impair the Debtors' ability to utilize such funds for  
5 the provision of patient care. A second draw on the DIP Financing will be  
6 extremely costly to the Debtors' estates, as such additional draw carries with it high  
7 fees and expenses, including, among others, (i) non-default interest at a rate of 12%  
8 per annum on the Daily Balance; (ii) default interest at a rate of 17% per annum on  
9 the Daily Balance; and (iii) a funding fee at a rate of 1.5% of each Advance payable  
10 upon funding such Advance. Thus, making adequate protection interest payments  
11 would be costly to the Debtors' estates without providing any necessary protection  
12 to the already adequately protected Lapis Secured Parties. Further, the Committee  
13 submits that the Debtors' capital in these cases should be used to provide patient  
14 care rather than diverting such funds to creditors asserting security interests in the  
15 Debtors' property.

16           **B.   *A Waiver of the Debtors' Right to Surcharge the Lapis Prepetition***  
17           ***Collateral is Unnecessary and Could Result in the Estates'***  
18           ***Administrative Insolvency***

19           Further, a waiver of the Debtors' rights to seek a surcharge against the Lapis  
20 Prepetition Collateral under section 506(c) of the Bankruptcy Code is improper and  
21 could be detrimental in these cases. Section 506(c) permits a debtor to recover the



1 “reasonable, necessary costs and expenses of preserving, or disposing of, [secured  
2 property] to the extent of any benefit to the holder of such claim[.]” 11 U.S.C.  
3 § 506(c). Section 506(c) was carefully designed to protect against the risk of a  
4 debtor’s administrative insolvency and to ensure secured creditors do not use the  
5 chapter 11 process to fund their own foreclosure proceedings. “When a  
6 reorganization is unsuccessful and the debtor’s estate is administratively insolvent,  
7 the Ninth Circuit has long recognized that the bankruptcy judge has the authority to  
8 decide the extent to which a secured lender’s collateral can be surcharged for  
9 administrative costs and expenses.” *Comerica Bank-California v. GTI Capital*  
10 *Holdings, L.L.C. (In re GTI Capital Holdings, L.L.C.)*, 2007 Bankr. LEXIS 4853, at  
11 \*43 (B.A.P. 9th Cir. Mar. 29, 2007) (citing *Silver State Sav. & Loan Ass’n v.*  
12 *Young*, 252 F.2d 236, 238-39 (9th Cir. 1958)). The concern of administrative  
13 insolvency is particularly acute in hospital bankruptcy cases, such as these, where  
14 patients’ lives are at stake. Thus, here, the Debtors should not be left without a  
15 vehicle to surcharge the Lapis Prepetition Collateral.

16 To the extent that the Lapis Secured Parties argue that they should receive a  
17 waiver of section 506(c) surcharge rights in exchange for the Carve-Out, this is not  
18 an appropriate comparison. The Carve-Out is for professional fees and expenses—  
19 not any trailing expenses in these chapter 11 cases. If the Lapis Secured Parties  
20 agree to fund all trailing expenses, the Committee will support a section 506(c)  
21

1 surcharge waiver as to the Lapis Secured Parties. However, in these cases whereby  
2 the Debtors' provide necessary health care services to certain communities, the  
3 delivery of such services should not be impacted by a waiver of the right granted by  
4 Congress to debtors to surcharge collateral and potentially put lives at risk because  
5 the Debtors may not have the funding to purchase essential supplies and provide  
6 critical services. A waiver of 506(c) rights in a healthcare case for the benefit of a  
7 junior secured creditor should be carefully scrutinized by this Court based on the  
8 broad ramification of such relief. The Committee submits that such a waiver is not  
9 appropriate in these cases.

10 **C. A Waiver of the "Equities of the Case" Exception Under Section**  
11 **552(b) is Not Appropriate**

12 Section 552(b) of the Bankruptcy Code permits a court to disregard a post-  
13 petition lien on "proceeds, products, offspring, or profits" of collateral based on the  
14 "equities of the case." 11 U.S.C. § 552(b). "As the BAP recognized, § 552(b)(1) is  
15 normally relevant in chapter 11 to prevent a secured creditor from reaping benefits  
16 from collateral that has appreciated in value as a result of the trustee's/debtor-in-  
17 possession's use of other assets of the estate." *In re Sine*, 2018 Bankr. LEXIS 2553,  
18 at \*25 (Bankr. W.D. Wash. Aug. 24, 2018) (*citing Stanziale v. Finova Capital*  
19 *Corp. (In re Tower Air, Inc.)*, 397 F.3d 191, 205 (3d Cir. 2005)). Here, the  
20 Committee is seeking only preservation of the "equities of the case" exception, as it  
21 is not appropriate at the outset of these cases "to waive prospectively an argument

1 that other parties in interest may make.” *In re Metaldyne Corp.*, 2009 Bankr.  
2 LEXIS 1533, at \*20 (Bankr. S.D.N.Y. June 23, 2009). “If, in the event, the  
3 Committee or any other party interest argues that the equities of the case exception  
4 should apply to curtail a particular lenders' rights, the [c]ourt [can later] consider  
5 it.” *Id.*

6 **D. *The Lapis Secured Parties Are Not Entitled to a Superpriority Claim***  
7 ***on Commercial Tort Claims or Excluded Avoidance Actions***

8 The 507(b) administrative expense superpriority claims provided as adequate  
9 protection to the Lapis Secured Parties should not be payable from or have recourse  
10 against the following: (1) any and all causes of action and the proceeds thereof  
11 arising under chapter 5 of the Bankruptcy Code or applicable state law equivalents  
12 (the “Excluded Avoidance Actions”) and/or (2) all pre-petition and post-petition  
13 commercial tort claims and the related proceeds, including but not limited to, 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 (the  
16 “Commercial Tort Claims”).

17 Avoidance actions and their proceeds are causes of action provided by the  
18 Bankruptcy Code designed to facilitate equality of distribution among a debtor’s  
19 general unsecured creditors. *See e.g., Buncher Co. v. Official Comm. of Unsecured*  
20 *Creditors of GenFarm Ltd. Pshp. IV*, 229 F.3d 245, 250 (3d Cir. 2000) (“The  
21 purpose of fraudulent conveyance law is to make available to creditors those assets

1 of the debtor that are rightfully a part of the bankruptcy estate, even if they have  
2 been transferred away. When recovery is sought under section 544(b) of the  
3 Bankruptcy Code, any recovery is for the benefit of all unsecured creditors[.]”); *In*  
4 *re Sweetwater*, 884 F.2d 1323, 1328 (10th Cir. 1989) (“[P]ost-petition avoidance  
5 actions should be pursued in a manner that will satisfy the basic bankruptcy purpose  
6 of treating all similarly situated creditors alike[.]”). As such, avoidance actions and  
7 their proceeds should be preserved for the benefit of unsecured creditors, especially  
8 where, as here, such avoidance actions and proceeds may provide a key source of  
9 recovery for the unsecured creditors.

10 Similarly, Commercial Tort Claims should be pursued for the benefit of the  
11 unsecured creditors and should not be used as security for the superpriority  
12 administrative expense claims of the Lapis Secured Parties. The pre-petition  
13 actions of the Debtors’ accounts receivable vendor were a significant contributing  
14 factor in the Debtors’ need to file for chapter 11 protection and the vendor’s actions  
15 directly harmed the Debtors’ unsecured creditors, who have recourse only against  
16 the Debtors’ unencumbered assets. As such, any tort claims, including those  
17 against the vendor as it relates to accounts receivable collection, and the proceeds of  
18 any tort claims, should go to satisfy claims of unsecured creditors before those of  
19 the Lapis Secured Parties.

1                   **E. *The Lapis Secured Parties Cannot Unreasonably Restrict the***  
2                   ***Investigation and Challenge Period***

3                   Pursuant to section 1103(2) of the Bankruptcy Code, the Committee is  
4 empowered to “investigate the acts, conduct, assets, liabilities, and financial  
5 condition of the debtor . . . and any other matter relevant to the formulation of the  
6 plan.” 11 U.S.C. § 1103(c)(2). The Committee therefore must be afforded an  
7 adequate time period and budget to investigate the validity, extent, perfection,  
8 priority and/or amount of the liens and claims of the Lapis Prepetition Parties under  
9 the Lapis 2017 Loan Documents and the Lapis 2019 Loan Documents to ensure the  
10 Committee can fulfill its investigatory duties in these complex cases for the benefit  
11 of the Debtors’ unsecured creditors. Any other claims or causes of action that the  
12 Debtors’ estates may have against the Lapis Secured Parties should not be subject to  
13 any challenge deadlines. All such claims and causes of action should be pursued  
14 consistent with the deadlines imposed by Congress or applicable state law rather  
15 than an arbitrary deadline imposed by an alleged junior secured creditor.

16                   **F. *All Other Additional Protection Requests Are Unnecessary and***  
17                   ***Detrimental to the Unsecured Creditors***

18                   The Committee understands the Lapis Secured Parties have asked for case  
19 controls, including benchmarks, subject only to their own approval. This is  
20 unreasonable—the Lapis Secured Parties alone should not, and cannot, dictate the  
21 entire trajectory of these chapter 11 cases. Rather, any case controls, including

1 benchmarks, should be subject to the Committee's consent so that the cases  
2 progress in a manner fair and equitable to all parties-in-interest. Similarly, a broad  
3 release of any and all claims against the Lapis Secured Parties is inappropriate. As  
4 noted above, any challenge and investigating period should relate only to the liens  
5 and claims of the Lapis Secured Parties under the 2017 Lapis Loan Documents and  
6 2019 Lapis Loan Documents. All other claims and causes of action against the  
7 Lapis Secured Parties should be preserved for the benefit of these chapter 11 estates  
8 and all creditors herein – such an approach is consistent with the Bankruptcy Code  
9 as drafted by Congress and those rights should not be abridged under the guise of  
10 adequate protection.

### 11 **RESERVATION OF RIGHTS**

12 The Committee expressly reserves and preserves all rights, claims, arguments,  
13 defenses and remedies with respect to the DIP Financing Motion, the Lapis DIP  
14 Objection, or any other issues in these chapter 11 cases, and to supplement, modify  
15 and amend this Objection, to seek discovery, and to raise additional objections in  
16 writing or orally at the final hearing on the DIP Financing Motion.

17 **WHEREFORE**, for the foregoing reasons, the Committee respectfully  
18 requests that this Court (a) enter the Proposed Final Order, as attached hereto as  
19 Exhibit A, (b) deny the Additional Protection Requests by the Lapis Secured  
20  
21

1 Parties, and (c) grant such other and further relief as this Court deems just and  
2 proper.

3 Dated: June 7<sup>th</sup>, 2019.

4 SILLS CUMMIS & GROSS P.C.

5  
6 /s/Andrew H. Sherman

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15 *Proposed Co-Counsel for the Official*  
16 *Committee of Unsecured Creditors*

# EXHIBIT A



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

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IN RE:

ASTRIA HEALTH, et al.,

Debtors.<sup>1</sup>

Lead Case No. 19-01189-11

Jointly Administered

**FINAL 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; AND (VII) GRANTING RELATED RELIEF**

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<sup>1</sup> 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 (19-19-01200-11)..

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

11 i. authority, pursuant to sections 105, 363, and 364(c) and 364(d) of the  
12 Bankruptcy Code, for each of the Debtors, jointly and severally, to obtain senior  
13 secured postpetition financing (“**DIP Facility**”) in an aggregate principal amount  
14 of up to \$36 million (of which (x) \$28 million (the “**Interim Advance**”) was made  
15 available to the Debtors upon entry of the Interim Order upon satisfaction or  
16 waiver of the borrowing conditions set forth in the DIP Loan Documents (as  
17 defined below) and (y) the balance shall be made available to the Debtors upon

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

1 entry of this Final Order at intervals and in amounts set forth in the DIP Loan  
2 Agreement (as defined below));

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

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

1           iv.        authority for the Debtors to grant to the DIP Lender valid, enforceable,  
2 non-avoidable, automatically and fully perfected security interests, liens and  
3 superpriority claims, including allowed superpriority administrative expense  
4 claims pursuant to sections 364(c)(1) and 507(b) of the Bankruptcy Code, subject  
5 only to the Carve-Out and liens pursuant to sections 364(c)(2), 364(c)(3) and  
6 364(d)(1) of the Bankruptcy Code in the DIP Collateral (as defined below) (and all  
7 proceeds thereof), including, without limitation, all property constituting “Cash  
8 Collateral,” as defined in section 363(a) of the Bankruptcy Code, (“**Cash**  
9 **Collateral**”), to secure all DIP Obligations (as defined below), as more fully set  
10 forth in the Interim Order and this Final Order, subject only to the Carve-Out (as  
11 defined below);

12           v.        waiver by the Debtors of all rights to surcharge against the collateral of  
13 the DIP Lender pursuant to section 506(c) of the Bankruptcy Code;

14           vi.       waiver of the equitable doctrine of marshaling or any other similar  
15 doctrine with respect to any collateral of the DIP Lender, except as set forth herein;

16           vii.       providing adequate protection to the Lapis Secured Parties to the extent  
17 set forth herein;

18           viii.      modification of the automatic stay to the extent hereinafter set forth  
19 and waiving the 14-day stay provisions of Bankruptcy Rules 4001(a)(3) and  
20 6004(h); and  
21

1 ix. related relief.

2 The Court having considered the Motion and the exhibits attached thereto,  
3 the evidence submitted or adduced and the arguments of counsel made at the  
4 interim hearing held on May 8, 2019 (the “**Interim Hearing**”) and the final  
5 hearing held on June 13, 2019 (the “**Final Hearing**”) and having found that due  
6 and proper notice (the “**Notice**”) of the Motion, the Interim Hearing and the Final  
7 Hearing having been served by the Debtors in accordance with Bankruptcy Rule  
8 4001 and 9006 and LBR 2002-1 on (i) the Office of the United States Trustee for  
9 the Eastern District of Washington, (ii) counsel to the Prepetition Secured  
10 Creditors, (iii) counsel to the DIP Lender, (iv) all alleged secured creditors, (v)  
11 counsel to the Committee (defined below), (vi) the thirty largest general unsecured  
12 creditors appearing on the list filed in accordance with Bankruptcy Rule 1007(d),  
13 and (vii) any parties requesting special notice; and the Interim Hearing to consider  
14 the interim relief requested in the Motion having been held and concluded; and this  
15 Court having entered on May 9, 2019, the Interim Order; and this Court having  
16 held and concluded the Final Hearing to consider the relief requested in the  
17 Motion; and all objections, if any, to the final relief requested in the Motion having  
18 been withdrawn, resolved or overruled by the Court; and it appearing to the Court  
19 that granting the final relief requested is necessary to avoid potential immediate  
20 and irreparable harm to the Debtors and their estates and otherwise is fair and  
21

1 reasonable and in the best interests of the Debtors, their estates, and their creditors  
2 and equity holders, and is essential for the continued operation of the Debtors'  
3 businesses and represents a sound exercise of the Debtors' business judgment; and  
4 after due deliberation and consideration, and for good and sufficient cause  
5 appearing therefor;

6 **THIS COURT HEREBY MAKES THE FOLLOWING FINDINGS OF**  
7 **FACT AND CONCLUSIONS OF LAW BASED UPON THE MOTION, THE**  
8 **REPRESENTATIONS OF COUNSEL AND EVIDENCE SUBMITTED**  
9 **PRIOR TO AND DURING THE INTERIM AND FINAL HEARINGS:**<sup>3</sup>

10 A. *Petition Date.* On May 6, 2019 (the "**Petition Date**"), the Debtors  
11 filed voluntary petitions under chapter 11 of the Bankruptcy Code in the United  
12 States Bankruptcy Court for the Eastern District of Washington (the "**Court**")  
13 commencing these Chapter 11 Cases.

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

18  
19 <sup>3</sup> To the extent, any findings of fact constitute conclusions of law, they are adopted  
20 as such, and vice versa, pursuant to Fed. R. Bankr. P. 7052.

1 C. Notice. Notice of the Final Hearing and the relief requested in the  
2 Motion has been provided by the Debtors to certain parties in interest, including on  
3 (i) the Office of the United States Trustee for the Eastern District of Washington,  
4 (ii) counsel for the Prepetition Secured Creditors, (iii) counsel for the DIP Lender,  
5 (iv) all alleged secured creditors, (v) counsel for the Committee, (vi) the thirty  
6 largest general unsecured creditors appearing on the list filed in accordance with  
7 Rule 1007(d), and (vii) any parties requesting special notice.

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

13 E. Committee Formation. On May 23, 2019, the United States Trustee  
14 for the Eastern District of Washington (the "U.S. Trustee") appointed an official  
15 committee of unsecured creditors in these Chapter 11 Cases pursuant to section  
16 1102 of the Bankruptcy Code (the "Committee").

17 F. No Credit Available on More Favorable Terms. The Debtors are  
18 unable to procure financing in the form of unsecured credit allowable as an  
19 administrative expense under sections 364(a), 364(b), or 503(b)(1) of the  
20 Bankruptcy Code and have been unable to procure the necessary financing on  
21

1 terms more favorable, taken as a whole, than the financing offered by DIP Lender  
2 pursuant to the DIP Loan Documents.

3 G. Best Interests of Estates. It is in the best interests of the Debtors'  
4 estates and creditors that the Debtors be allowed to enter into the DIP Facility to  
5 obtain postpetition secured financing from the DIP Lender under the terms and  
6 conditions set forth herein and in the DIP Loan Documents, as such financing is  
7 necessary to avoid immediate and irreparable harm to the Debtors' estates and for  
8 the continued operation of the Debtors' businesses.

9 H. Good Faith. The extension of credit and financial accommodations  
10 under the DIP Loan Documents are fair, reasonable, in good faith, negotiated at  
11 arm's length, reflect the Debtors' exercise of prudent business judgment, and are  
12 supported by reasonably equivalent value and fair consideration. Accordingly, the  
13 DIP Lender is entitled to the protections of Bankruptcy Code section 364(e).

14 I. Good Cause. The relief requested in the Motion is necessary, essential  
15 and appropriate, and is in the best interest of and will benefit the Debtors, their  
16 creditors and their estates, as its implementation will, among other things, provide  
17 the Debtors with the necessary liquidity to (1) minimize disruption to the Debtors'  
18 businesses and ongoing operations, (2) preserve and maximize the value of the  
19 Debtors' estates for the benefit of all the Debtors' creditors, and (3) avoid potential  
20  
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1 immediate and irreparable harm to the Debtors, their creditors, their businesses,  
2 their employees, and their assets.

3 J. Necessity of DIP Facility Terms. The terms of the DIP Loan  
4 Documents, the Interim Order and this Final Order assuring that the liens and the  
5 various claims, superpriority claims, and other protections granted in the Interim  
6 Order and this Final Order will not be affected by any subsequent reversal or  
7 modification of the Interim Order, this Final Order or any other order, as provided  
8 in section 364(e) of the Bankruptcy Code, which is applicable to the postpetition  
9 financing arrangement contemplated in the DIP Loan Documents, are necessary in  
10 order to induce the DIP Lender to provide postpetition financing to the Debtors.

11 K. Need for Post-Petition Financing. The Debtors do not have sufficient  
12 and reliable sources of working capital, including cash collateral, to continue to  
13 operate their businesses in the ordinary course of business without the financing  
14 requested in the Motion. The Debtors' ability to maintain business relationships  
15 with their vendors, suppliers and customers, to pay their employees, and to  
16 otherwise fund their operations is essential to the Debtors' continued viability as  
17 the Debtors seek to maximize the value of the assets of their estates for the benefit  
18 of all creditors of the Debtors. The ability of the Debtors to obtain sufficient and  
19 stable working capital and liquidity through the proposed post-petition financing  
20 arrangements with the DIP Lender as set forth in the Interim Order, this Final  
21

1 Order and the DIP Loan Documents is vital to the preservation and maintenance of  
2 the going concern value of each Debtor. Accordingly, the Debtors have an  
3 immediate need to obtain the postpetition financing in order to, among other  
4 things, permit the orderly continuation of the operation of their businesses,  
5 minimize the disruption of their business operations, and preserve and maximize  
6 the value of the assets of the Debtors' bankruptcy estates in order to maximize the  
7 recovery to all creditors of the estates.

8 L. Need to Use Cash Collateral. The Debtors need to use Cash  
9 Collateral, in order to, among other things, preserve, maintain and maximize the  
10 value of their assets and businesses. The ability of the Debtors to maintain  
11 liquidity through the use of Cash Collateral is vital to the Debtors and their efforts  
12 to maximize the value of their assets. Accordingly, the Debtors have demonstrated  
13 good and sufficient cause for the relief granted herein.

14 M. Sections 506(c) and 552(b). As material inducement to the DIP Lender  
15 to agree to provide the DIP Facility, and in exchange for the DIP Lender's  
16 agreement to subordinate their superpriority claims to the Carve-Out, this Court  
17 approves (i) the waiver by Debtors of any equities of the case exceptions under  
18 section 552(b) of the Bankruptcy Code and (ii) the waiver by Debtors of the  
19 provisions of section 506(c) of the Bankruptcy Code.

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

7 O. Pre-Petition Debt. The Debtors were, prior to the Petition Date, party  
8 to the following agreements, with the following parties (collectively, the  
9 “**Prepetition Secured Parties**”):

10 (a) *Banner Bank Prepetition Debt.*

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

1 (“**Yakima**”), SHC Medical Center – Toppenish “**Toppenish**”,  
2 Yakima Home Care Holdings, LLC, and Yakima HMA Home  
3 Health, LLC, as co-borrowers (collectively, the “**MidCap**  
4 **Borrowers**”), entered into that certain Credit and Security  
5 Agreement dated September 18, 2017 (the “**MidCap Credit**  
6 **Agreement**”) and those related loan documents (all as amended,  
7 modified, or supplemented to date, collectively with the MidCap  
8 Credit Agreement, the “**MidCap Loan Documents**”), with the  
9 lenders party thereto (the “**MidCap Lenders**”) and MidCap  
10 Financial Trust as agent for the MidCap Lenders (the “**MidCap**  
11 **Agent**”), providing the MidCap Borrowers with a revolving loan  
12 facility in the maximum principal amount of \$15 million. The  
13 advances made pursuant to the MidCap Credit Agreement are  
14 secured by a first priority lien and security interest (the  
15 “**MidCap Senior A/R Liens**”) on the assets of the MidCap  
16 Borrowers set forth in Schedule 9.1 to the MidCap Credit  
17 Agreement (such assets, the “**MidCap A/R Collateral**”). As of  
18 the Petition Date, the MidCap Borrowers are indebted to the  
19 MidCap Lenders in the approximate principal amount of \$10.7  
20 million.

21 (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 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

1 Borrowers. Sunnyside and Kitchen and Bath Furnishings, LLC,  
2 as well as certain other non-filing affiliates, as guarantors (the  
3 “**Lapis 2017 Loan Guarantors**”), entered into a Continuing  
4 Guaranty (the “**Lapis 2017 Loan Guaranty**” and together with  
5 the Lapis 2017 Loan Agreement, the “**Lapis 2017 Loan**  
6 **Documents**”), dated November 1, 2017, wherein the Lapis 2017  
7 Loan Guarantors agreed to guaranty the obligations of the Lapis  
8 2017 Loan Borrowers under the Lapis 2017 Loan. The advances  
9 made pursuant to the Lapis 2017 Loan are secured by (i) a first  
10 priority lien (the “**Lapis 2017 SHC Holdco Liens**”) on the  
11 assets of the Lapis 2017 Loan Borrowers not subject to the  
12 MidCap Senior A/R Liens, (ii) a junior lien (the “**Lapis 2017**  
13 **A/R Liens**”) on the assets of the Lapis 2017 Loan Borrowers  
14 subordinate and subject to the MidCap Senior A/R Liens, and  
15 (iii) a junior lien (the “**Lapis 2017 Sunnyside Liens**”) on the  
16 assets of the Lapis 2017 Loan Guarantors subordinate and  
17 subject to the Banner Senior Sunnyside Liens (collectively, the  
18 “**Lapis 2017 Loan Collateral**”). *See* Intercreditor and Lien  
19 Subordination Agreement, dated as of November 1, 2017 (as  
20 amended, modified, or supplemented to date), by and among the  
21 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 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**

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

P. 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

1 Bankruptcy Code solely to the extent of any diminution in the value of their  
2 interests in the Lapis Prepetition Collateral (including Cash Collateral). As part of  
3 the adequate protection provided by the Interim Order and this Final Order, the  
4 Lapis Secured Parties shall receive, among other things, replacement liens,  
5 superpriority claims (to the extent that the Lapis Secured Parties had valid and  
6 perfected liens on and security interests in the Lapis Prepetition Collateral) and  
7 reporting information, subject and subordinate to the Carve-Out. For the  
8 avoidance of doubt, the Lapis Secured Parties shall not receive replacement liens  
9 or superpriority claims on any of the Excluded Avoidance Actions (defined below)  
10 or the Commercial Tort Claims (defined below). The terms of the Adequate  
11 Protection Obligations (defined herein) are fair and reasonable, reflect the Debtors'  
12 prudent exercise of business judgment and are sufficient to allow the Debtors' use  
13 of the Lapis Prepetition Collateral (including the Cash Collateral) and to permit the  
14 relief granted in the Interim Order and this Final Order. For the avoidance of  
15 doubt, nothing contained herein, including the provision of adequate protection  
16 provided to the Lapis Secured Parties, shall prejudice the rights of the Committee  
17 or any third party to challenge or object to any and all of the prepetition liens or  
18 claims of the Lapis Secured Parties.

19 Q. Immediate Entry. Sufficient cause exists for immediate entry of this  
20 Final Order pursuant to Bankruptcy Rule 4001(c)(2).  
21

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

4           **IT IS HEREBY ORDERED** that:

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

18                   the Stated Maturity Fee of 8.0% of the DIP Facility, shall be  
19 due and payable in cash immediately upon the next business  
20 day following December 31, 2019 in the event that the DIP  
21 Obligations are not indefeasibly paid in full on December 31,  
2019, provided, however, that (i) if an Acceptable Plan has  
been confirmed prior to December 31, 2019, the Stated



1 Maturity Date Fee shall become payable in cash upon the next  
2 business day following March 30, 2020 in the event that the  
3 DIP Obligations are not indefeasibly paid in full on March 30,  
4 2020; or (ii) if the Debtors have obtained final court approval of  
5 an alternative transaction (acceptable to the DIP Lender)  
6 relating to all or substantially all of the Debtors' assets and the  
7 parties are in the process of obtaining the requisite regulatory  
8 approval from government authorities prior to closing such  
9 alternative transaction, the Stated Maturity Date Fee shall  
10 become payable in cash upon the next business day following  
11 March 30, 2020 in the event that the DIP Obligations are not  
12 indefeasibly paid in full on March 30, 2020, provided, however,  
13 that in the event the parties to the alternative transaction have  
14 not obtained the requisite regulatory approvals from  
15 government authorities by March 30, 2020 but have, in the DIP  
16 Lender's sole and absolute discretion, made reasonable progress  
17 in obtaining such regulatory approvals, the Stated Maturity  
18 Date Fee shall be payable in cash upon the next business day  
19 following May 29, 2020 in the event that the DIP Obligations  
20 are not indefeasibly paid in full on May 29, 2020, in which case  
21 the Stated Maturity Date Fee shall be increased to 10.0%.

2. DIP Obligations. The DIP Loan Documents shall constitute and  
evidence the valid and binding effect of the Debtors' obligations under the DIP  
Facility, which DIP Obligations shall be legal, valid, and binding obligations of the  
Debtors party thereto and enforceable against the Debtors, their estates, any  
successors thereto, including, without limitation, any trustee appointed in any of  
the Debtors' cases, or in any case under chapter 7 of the Bankruptcy Code upon the  
conversion of any such cases, or in any other proceedings superseding or related to  
any of the foregoing, any successors thereto, and any party determined to be the  
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  
2 advanced pursuant to the DIP Loan Documents, together with interest thereon, at  
3 the times and in the amounts set forth in the DIP Loan Documents and all  
4 Obligations as defined and provided for in the DIP Loan Agreement (collectively,  
5 the “**DIP Obligations**”). No obligation, payment, transfer or grant of security  
6 under the DIP Loan Documents, the Interim Order or this Final Order, with respect  
7 to the DIP Facility shall be stayed, restrained, voided, voidable or recoverable  
8 under the Bankruptcy Code or under any applicable non-bankruptcy law, or subject  
9 to any defense, reduction, setoff, recoupment or counterclaim.

10 3. Authorization to Borrow. The Debtors are immediately authorized to  
11 borrow from the DIP Lender under the DIP Facility the amounts set forth in the  
12 DIP Loan Agreement, subject to the terms and conditions set forth in the DIP Loan  
13 Documents, the Interim Order and this Final Order. Subject to the terms and  
14 conditions of the Interim Order, this Final Order and the DIP Loan Documents, the  
15 Debtors are authorized to use Cash Collateral until the earlier of (a) the Maturity  
16 Date and (b) the date upon which the Debtors’ right to use Cash Collateral is  
17 terminated hereunder as a result of an Event of Default (as defined in the DIP Loan  
18 Agreement) which remains continuing and has not been waived by the DIP Lender.  
19 Once repaid, the DIP Facility Loans incurred may not be re-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 the Interim Order, this Final Order and the DIP Loan Documents. The  
4 Debtors are authorized to use the proceeds of the DIP Facility Loans to (a) fund the  
5 post-petition working capital needs of the Debtors during the pendency of the  
6 Chapter 11 Cases, (b) pay fees, costs and expenses of the DIP Facility on the terms  
7 and conditions described in the DIP Loan Documents, (c) pay all Outstanding  
8 Prepetition Banner Bank Obligations and Outstanding Prepetition MidCap  
9 Obligations; and (d) pay the allowed administrative costs and expenses of the  
10 Chapter 11 Cases, in each case, solely in accordance with the DIP Loan  
11 Documents (including, but not limited to, the Budget) and this Final Order.  
12 Notwithstanding anything herein, the extensions of credit under the DIP Facility  
13 shall not constitute cash collateral of the Prepetition Secured Parties.

14           5.    Reservation of Rights and Committee Standing. Notwithstanding  
15 anything contained in the Interim Order, this Final Order or any of the DIP Loan  
16 Documents, the payment of any outstanding obligations to Banner Bank under the  
17 Banner Bank Loan Documents, the payment of any outstanding obligations to the  
18 MidCap Lenders under the MidCap Loan Documents, and the provision of  
19 adequate protection to the Lapis Secured Parties, nothing in the Interim Order, this  
20 Final Order or any of the DIP Loan Documents shall constitute an  
21

1 acknowledgement or admission by the Committee of the validity, extent and/or  
2 priority of any of the Prepetition Credit Liens and/or any other liens, claims,  
3 encumbrances, or obligations of any Prepetition Secured Parties. Except as  
4 otherwise expressly set forth in this Final Order, nothing in the Interim Order, this  
5 Final Order or any of the DIP Loan Documents shall limit the rights of the  
6 Committee to assert any challenges, rights, claims, defenses and/or objections the  
7 Debtors' estates or the Committee may hold against the Prepetition Secured Parties  
8 and all such challenges, rights, claims, defenses and/or objections against the  
9 Prepetition Secured Parties are, on the terms of this Final Order, expressly reserved  
10 and preserved. To the extent such challenges, rights, claims, defenses and/or  
11 objections belong to the Debtors' estates, the Committee is hereby granted  
12 standing to pursue such challenges, rights, claims, defenses and/or objections  
13 against the Prepetition Secured Parties. Nothing contained herein shall be  
14 construed or deemed a waiver of any claims or defenses that Banner Bank,  
15 MidCap or the Lapis Secured Parties may have in response to any claims asserted  
16 by the Committee, including, without limitation, any rights or obligation that  
17 survive the payoff of the Outstanding Petition Banner Bank Obligations and  
18 Outstanding Prepetition MidCap Obligations under the Banner Bank Loan  
19 Documents and the MidCap Loan Documents, respectively.

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

6           7. Payment of DIP Fees and Expenses. The (a) Commitment Fee; (b)  
7 Funding Fee; (c) Work Fee, which shall serve as a retainer for the DIP Lender's  
8 counsel; (d) Exit Fee; and (e) Stated Maturity Fee are each hereby approved, as  
9 modified herein, and the Debtors are hereby authorized and directed to and shall  
10 pay such fees in accordance with, and on the terms set forth in this Final Order and  
11 the DIP Loan Documents, as modified herein. The Debtors are also hereby  
12 authorized and directed to pay upon demand, all other reasonable fees, costs,  
13 expenses and other amounts payable under the terms of the Interim Order, this  
14 Final Order and the DIP Loan Documents and all other reasonable fees and out-of-  
15 pocket costs and expenses of the DIP Lender in accordance with the terms of the  
16 Interim Order, this Final Order and the DIP Loan Documents (including, without  
17 limitation, the reasonable and documented fees and out-of-pocket costs and  
18 expenses of Arent Fox LLP as counsel and Southwell & O'Rourke, P.S. as local  
19 counsel to the DIP Lender to the extent not covered by the portion of the Work Fee  
20 paid prior to the Petition Date), subject to receiving a written invoice therefor.  
21

1 None of such reasonable fees, costs, expenses or other amounts shall be subject to  
2 Court approval except as otherwise provided herein or required to be submitted in  
3 any particular format, and no recipient of any such payment shall be required to  
4 file with respect thereto any interim or final fee application with this Court;  
5 provided, however, that copies of any such invoices shall be provided  
6 contemporaneously to the U.S. Trustee and the Committee; provided further,  
7 however, that such invoices provided to the Committee may be redacted to the  
8 extent necessary to delete any information subject to the attorney-client privilege  
9 or any information constituting attorney work product (the “**Redactions**”), and the  
10 provision of such invoices shall not constitute a waiver of the attorney-client  
11 privilege or any benefits of the attorney work product doctrine. If the U.S. Trustee  
12 or the Committee objects to the reasonableness of the fees and expenses of the DIP  
13 Lender, and such objection cannot be resolved within ten (10) days of receipt of  
14 such invoices, the U.S. Trustee or the Committee may file with the Court and serve  
15 on the DIP Lender, an objection to the reasonableness of such fees and expenses  
16 (each, a “**Reasonableness Fee Objection**”). Without limiting the foregoing, if the  
17 Committee objects to the Redactions and such objection cannot be resolved within  
18 ten (10) days of receipt of such invoices, the DIP Lender shall file with the Court  
19 and serve on the Debtors, the Committee and the U.S. Trustee a request for Court  
20 resolution of the disputes concerning the propriety of the disputed Redactions  
21

1 (each, a “**Redaction Fee Objection**,” and each Reasonableness Fee Objection and  
2 Redaction Fee Objection may be referred to herein generally as a “**Fee**  
3 **Objection**”). The Debtors shall pay, in accordance with the terms and conditions  
4 of the Interim Order and this Final Order, within ten (10) days after receipt of the  
5 applicable invoice (a) the full amount invoiced if no Fee Objection has been timely  
6 filed, and (b) the undisputed fees, costs, and expenses reflected on any invoice to  
7 which a Fee Objection has been timely filed. All such unpaid reasonable fees,  
8 costs, expenses and other amounts owed or payable to the DIP Lender shall be  
9 secured by the DIP Collateral, subject and subordinate to the Carve-Out, and  
10 afforded all of the priorities and protections afforded to the DIP Obligations  
11 (subject to and subordinate to the Carve-Out) under the Interim Order, this Final  
12 Order and the DIP Loan Documents, until such time as the unpaid reasonable fees,  
13 costs, expenses and other amounts owed or payable to the DIP Lender have been  
14 paid or disallowed pursuant to an order of the Court resolving any such Fee  
15 Objection.

16 8. **Indemnification**. The Debtors are hereby authorized to and hereby  
17 agree to indemnify and hold harmless the DIP Lender and its affiliates, directors,  
18 officers, employees, agents, attorneys, or any other Person affiliated with or  
19 representing the DIP Lender (collectively, an “**Indemnified Party**”)<sup>4</sup> from and  
20

21 <sup>4</sup> None of the Prepetition Secured Parties are or shall be deemed an Indemnified Party.

1 against: (a) all obligations, demands, claims, damages, losses and liabilities  
2 (including, without limitation, reasonable fees and disbursements of counsel)  
3 (collectively, "Indemnity Claims") as set forth in the DIP Loan Documents  
4 including those asserted by any other party in connection with the transactions  
5 contemplated by the DIP Loan Documents; and (b) all losses or expenses incurred,  
6 or paid by the DIP Lender from, following, or arising from the transactions  
7 contemplated by the DIP Loan Documents (including reasonable and documented  
8 attorneys' fees and expenses), except, with respect to (a) and (b) above, for (i) any  
9 fees, costs, expenses and other amounts disallowed pursuant to an order of the  
10 Court resolving any Fee Objections, and (ii) Indemnity Claims and/or losses  
11 directly caused by the DIP Lender's gross negligence, or willful misconduct or bad  
12 faith of DIP Lender. In the case of an investigation, litigation or other proceeding  
13 to which the indemnity in this paragraph applies, such indemnity shall be effective  
14 whether or not such investigation, litigation or proceeding is brought by any of the  
15 Debtors or any of their respective directors, security holders or creditors, or any  
16 other Person or an Indemnified Party is otherwise a party thereto and whether or  
17 not the transactions contemplated hereby are consummated. No Indemnified Party  
18 shall have any liability (whether direct or indirect, in contract, tort or otherwise) to  
19 any Debtor or any of its subsidiaries or any shareholders or creditors of the  
20 foregoing for or in connection with the transactions contemplated hereby, except to  
21



1 the extent such liability is determined by a court of competent jurisdiction in a final  
2 non-appealable judgment or order to have resulted solely from such Indemnified  
3 Party's gross negligence, willful misconduct or bad faith. All indemnities of the  
4 Indemnified Parties shall constitute DIP Obligations secured by the DIP Collateral  
5 subject and subordinate to the Carve-Out and afforded all of the priorities and  
6 protections afforded to the DIP Obligations (subject to and subordinate to the  
7 Carve-Out) under the Interim Order, this Final Order and the DIP Loan  
8 Documents.

9       9. Use of Cash Collateral. The Debtors are authorized to use Cash  
10 Collateral in accordance with and pursuant to the Interim Order, this Final Order  
11 and the DIP Loan Documents. Prior to the Maturity Date and until indefeasible  
12 payment in full of the DIP Obligations, the Debtors agree that they will not use or  
13 seek to use Cash Collateral other than pursuant to the terms of the Interim Order  
14 and this Final Order.

15       10. DIP Superpriority Claims. In accordance with section 364(c)(1) of the  
16 Bankruptcy Code, the DIP Obligations shall constitute allowed senior  
17 administrative expense claims against each Debtor and their estates (the "**DIP**  
18 **Superpriority Claims**") with priority in payment over any and all administrative  
19 expenses at any time existing or arising, of any kind or nature whatsoever,  
20 including, without limitation, the kinds specified or ordered pursuant to any  
21

1 provision of the Bankruptcy Code, including, but not limited to, sections 105, 326,  
2 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, 1113 and 1114 of the  
3 Bankruptcy Code or otherwise, including those resulting from the conversion of  
4 any of the Chapter 11 Cases pursuant to section 1112 of the Bankruptcy Code,  
5 whether or not such expenses or claims may become secured by a judgment lien or  
6 other non-consensual lien, levy or attachment; provided, however, that the DIP  
7 Superpriority Claims shall be subject and subordinate to only the Carve-Out;  
8 provided, further that, subject and subordinate to the Carve-Out, the DIP  
9 Superpriority Claims shall have recourse to and be payable from all prepetition and  
10 postpetition property and assets of the Debtors and the estates (except Excluded  
11 Avoidance Actions (defined below)) and all DIP Collateral, and all proceeds  
12 thereof, including (a) all prepetition and postpetition commercial tort claims and  
13 the related proceeds, including but not limited to, all claims and causes of action (i)  
14 against the Debtors' officers and directors, and (ii) related to accounts receivable  
15 collections (the "**Commercial Tort Claims**"), and (b) any deposit in connection  
16 with a proposed Sale (whether terminated or otherwise) that becomes property of  
17 the Debtors' estates (a "**Sale Deposit**") subject, however, only to the senior lien  
18 rights of a purchaser, if any, and such stalking horse bid protections, if any, as  
19 may be approved by this Court; provided, however, that the DIP Lender shall use  
20 its best efforts to satisfy the DIP Superpriority Claims from the assets constituting  
21

1 DIP Collateral other than the Commercial Tort Claims before seeking payment of  
2 the DIP Superiority Claim from the Commercial Tort Claims.

3 11. DIP Liens.

4 (a) As security for the DIP Obligations, the DIP Lender is granted,  
5 continuing, valid, binding, enforceable, non-avoidable, and automatically and  
6 properly perfected security interests in and liens (collectively, the “**DIP Liens**”) on  
7 all DIP Collateral as collateral security for the prompt and complete performance  
8 and payment when due (whether at the Stated Maturity Date (i.e. December 31,  
9 2019), by acceleration, or otherwise) of the DIP Obligations, subject and  
10 subordinate to the Carve-Out. The term “**DIP Collateral**” means collectively all  
11 pre-petition and post-petition real property and all pre-petition and post-petition  
12 tangible and intangible personal property of each Borrower, in each case wherever  
13 located and whether now owned or hereafter acquired, including, but not limited to  
14 all accounts, contracts rights, chattel paper, cash, general intangibles, investment  
15 property, machinery, equipment, goods, inventory, furniture, fixtures, letter of  
16 credit rights, books and records, deposit accounts, documents, instruments,  
17 Commercial Tort Claims, leases and leaseholds and rents, together with all  
18 proceeds of each of the forgoing, including insurance proceeds (as each such term  
19 above is defined in the UCC, to the extent applicable); provided, however, that to  
20 the extent that assets constituting DIP Collateral other than the Commercial Tort  
21

1 Claims are available to satisfy the DIP Obligations in full, the DIP Lender shall use  
2 its best efforts to satisfy the DIP Obligations from the assets constituting DIP  
3 Collateral other than the Commercial Tort Claims before seeking payment of the  
4 DIP Obligations from the Commercial Tort Claims. Notwithstanding the  
5 foregoing, nothing herein shall prevent the DIP Lender from immediately and  
6 indefeasibly satisfying the DIP Obligations from the Commercial Tort Claims.  
7 The DIP Collateral shall not include any and all causes of action and the proceeds  
8 thereof arising under chapter 5 of the Bankruptcy Code or applicable state law  
9 equivalents (the “**Excluded Avoidance Actions**”). For the avoidance of doubt the  
10 Excluded Avoidance Actions shall not include any claims or causes of action and  
11 the proceeds thereof related to accounts receivable collections regardless of  
12 whether certain claims arise under chapter 5 of the Bankruptcy Code or applicable  
13 state law equivalents.

14 (b) To the fullest extent permitted by the Bankruptcy Code or  
15 applicable law, and except as otherwise set forth herein, any provision of any lease  
16 other than a real property lease, loan document, easement, use agreement, proffer,  
17 covenant, license, contract, organizational document, or other instrument or  
18 agreement that requires the consent or the payment of any fees or obligations to  
19 any entity in order for any of the Debtors to pledge, grant, mortgage, sell, assign,  
20 or otherwise transfer any fee or leasehold interest or the proceeds thereof or other  
21

1 DIP Collateral, shall have no force or effect with respect to the DIP Liens on such  
2 leasehold interests or other applicable DIP Collateral or the proceeds of any  
3 assignment and/or sale thereof by any Debtor, in favor of the DIP Lender in  
4 accordance with the terms of the DIP Loan Documents, the Interim Order or this  
5 Final Order, subject and subordinate to the Carve-Out.

6 12. Priority of DIP Liens.

7 (a) To secure the DIP Obligations, immediately upon and effective  
8 as of the entry of the Interim Order, the DIP Lender, is hereby granted on a final  
9 basis, continuing, valid, binding, enforceable, non-avoidable, and automatically  
10 and properly perfected DIP Liens in the DIP Collateral as follows, in each case  
11 subject and subordinate to the Carve-Out:

12 (i) *Liens Priming the Prepetition Credit Liens.* Pursuant to  
13 364(d)(1) of the Bankruptcy Code, valid, binding, continuing,  
14 enforceable, non-avoidable automatically and fully perfected first  
15 priority senior priming liens and security interests in all DIP  
16 Collateral, regardless of where located, which senior priming liens  
17 and security interests in favor of the DIP Lender shall be senior to all  
18 Prepetition Credit Liens other than the Lapis Senior Holdco Liens. For  
19 the avoidance of doubt, as a result of the priming of the Prepetition  
20 Credit Liens (other than the Lapis Senior Holdco Liens) pursuant to  
21 the Interim Order and this Final Order, the 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 to all  
claims and causes of action (i) against the Debtors' officers and  
directors, and (ii) related to accounts receivable collections, and the

1 proceeds thereof (regardless of whether such proceeds arise from  
2 damages to the Prepetition Collateral).

3 (ii) *Liens on Unencumbered Property.* Pursuant to section  
4 364(c)(2) of the Bankruptcy Code, valid, binding, continuing,  
5 enforceable, non-avoidable automatically and fully perfected first  
6 priority liens on and security interests in all DIP Collateral that is not  
7 otherwise subject to any Permitted Prior Lien. As used herein, the  
8 term “**Permitted Prior Lien**” shall mean any valid, enforceable, and  
9 non-avoidable liens on and security interests in the DIP Collateral that  
10 (A) were perfected prior to the Petition Date (or perfected on or after  
11 the Petition Date to the extent permitted by section 546(b) of the  
12 Bankruptcy Code), (B) are not subject to avoidance, disallowance, or  
13 subordination pursuant to the Bankruptcy Code or applicable non-  
14 bankruptcy law, and (C) are senior in priority to the DIP Liens under  
15 applicable law and after giving effect to any lien release,  
16 subordination or inter-creditor agreements; provided, however, that  
17 the DIP Liens shall have priority over all Prepetition Credit Liens  
18 other than the Lapis Senior Holdco Liens; provided further, that any  
19 properly perfected liens on the Debtors’ assets held by (i) TIAA  
20 Commercial Finance, Inc., (ii) Lower Valley Credit Union, and (iii)  
21 Med One Capital Funding, LLC are Permitted Prior Liens and shall  
not be primed by the DIP Liens; and

(iii) *Liens Junior to Certain Other Liens.* 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))  
subordinate only to the Lapis Senior Holdco Liens, the Permitted  
Prior Liens and the Carve-Out.

(b) Except as expressly set forth herein, and subject and subordinate  
to the Carve-Out, the DIP Liens and the DIP Superpriority Claims shall not be  
made junior to or *pari passu* with (1) any lien, security interest or claim heretofore  
or hereinafter granted in any of the Chapter 11 Cases or any successor cases, and  
shall be valid and enforceable against the Debtors, their estates, any trustee or any

1 other estate representative appointed or elected in the Chapter 11 Cases or any  
2 successor cases and/or upon the dismissal or conversion of any of the Chapter 11  
3 Cases or any successor cases, (2) any lien that is avoided and preserved for the  
4 benefit of the Debtors and their estates under section 551 of the Bankruptcy Code  
5 or otherwise; (3) any intercompany or affiliate lien or claim; and (4) any liens  
6 arising after the Petition Date excluding any liens or security interests granted in  
7 favor of any federal, state, municipal or other governmental unit, commission, or  
8 board for any liability of the Debtors.

9 (c) *Existing Liens.* TIAA Commercial Finance, Inc., Lower Valley  
10 Credit Union and Med One Capital Funding, LLC have asserted secured claims  
11 against property of the Debtors. Notwithstanding any statement herein that is  
12 contrary to the existence or priority of such secured claims, any grant of a security  
13 interest to the DIP Lender is junior and subordinate in priority to any properly  
14 perfected liens on the DIP Collateral assets held by TIAA Commercial Finance,  
15 Inc., Lower Valley Credit Union and Med One Capital Funding, LLC.  
16 Notwithstanding anything to the contrary contained herein, all rights, claims,  
17 defenses and/or objections of the Committee and any third party with respect to  
18 any asserted liens on and security interests in the Debtors' property, including  
19 without limitation those asserted by TIAA Commercial Finance, Inc., Lower  
20 Valley Credit Union, and Med One Capital Funding, LLC, are expressly reserved  
21

1 and preserved and all such asserted liens and security interests (except those  
2 asserted by TIAA Commercial Finance, Inc., Lower Valley Credit Union, and Med  
3 One Capital Funding, LLC) are subject and subordinate to the Carve-Out.

4  
5 13. Adequate Protection of Lapis Secured Parties. The Lapis Secured  
6 Parties are entitled, pursuant to sections 361, 362, 363(e), 364(d)(1) and 507 of the  
7 Bankruptcy Code, to adequate protection of their interests in all the Lapis  
8 Prepetition Collateral (to the extent that the Lapis Secured Parties had valid and  
9 perfected liens on and security interests in the Lapis Prepetition Collateral),  
10 including Cash Collateral, in an amount equal to the aggregate diminution in value  
11 of the Lapis Secured Parties' interests in the Lapis Prepetition Collateral (including  
12 Cash Collateral) from and after the Petition Date, if any, for the reasons provided  
13 under the Bankruptcy Code, subject and subordinate to the Carve-Out. In  
14 consideration for the foregoing, the Lapis Secured Parties, are hereby granted the  
15 following in the amount of such diminution (collectively, the "**Adequate**  
16 **Protection Obligations**"), subject to the Carve-Out:

17 (a) *Lapis 2017 Loan Adequate Protection Liens.* The Bond Trustee,  
18 on behalf of itself and the Bondholders, is hereby granted (effective and perfected  
19 upon the date of the Interim Order and without the necessity of any mortgages,  
20 security agreements, pledge agreements, financing statement or other agreements)  
21 in the amount equal to the aggregate diminution in value of the interests in the



1 Lapis 2017 Loan Collateral (including Cash Collateral) from and after the Petition  
2 Date, if any, for any reasons provided under the Bankruptcy Code (the “**Lapis**  
3 **2017 Loan Adequate Protection Claim**”), a valid, perfected replacement security  
4 interest in and lien upon any and all assets subject (i) to the Lapis 2017 SHC  
5 Holdco Liens, subordinate to the Carve-Out, and (ii) to the Lapis 2017 Sunnyside  
6 Liens and Lapis 2017 A/R Liens, subordinate to (A) the DIP Liens and (B) the  
7 Carve-Out (the “**Lapis 2017 Loan Replacement Liens**”). The 2017 Lapis Loan  
8 Replacement Liens granted pursuant to this paragraph shall be senior to the 2019  
9 Lapis Loan Replacement Liens, provided nothing herein shall affect the terms of  
10 any intercreditor arrangements between the Lapis Secured Parties.

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

4 (c) *Lapis 2017 Loan 507(b) Claims.* The Bond Trustee, on behalf of  
5 itself and the Bondholders, is hereby granted, an allowed superpriority  
6 administrative expense claim as provided in section 507(b) of the Bankruptcy Code  
7 in the amount of Lapis 2017 Loan Adequate Protection Claim with, except as set  
8 forth in the Interim Order and this Final Order, priority in payment over any and all  
9 administrative expenses of the kind specified or ordered pursuant to any provision  
10 of the Bankruptcy Code (the “**Lapis 2017 Loan 507(b) Claims**”); which Lapis  
11 2017 Loan 507(b) Claims shall have recourse to and be payable from all of the DIP  
12 Collateral (excluding the Commercial Tort Claims). The Lapis 2017 Loan 507(b)  
13 Claims shall be subject and subordinate only to the Carve-Out and the DIP  
14 Superpriority Claims. The Lapis Secured Parties shall not receive or retain any  
15 payments, property or other amounts in respect of the Lapis 2017 Loan 507(b)  
16 Claims unless and until the DIP Obligations (other than contingent indemnification  
17 obligations as to which no claim has been asserted) have indefeasibly been paid in  
18 cash in full and all DIP Commitments terminated. The 2017 Lapis Loan 507(b)  
19 Claims shall be senior to the Lapis 2019 Loan 507(b) Claims, provided nothing  
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1 herein shall affect the terms of any intercreditor arrangements between the Lapis  
2 Secured Parties.

3 (d) *Lapis 2019 Loan 507(b) Claims.* The Lapis Agent, on behalf of  
4 itself and the Lapis 2019 Loan Lenders, is hereby granted, an allowed superpriority  
5 administrative expense claim as provided in section 507(b) of the Bankruptcy Code  
6 in the amount of Lapis 2019 Loan Adequate Protection Claim with, except as set  
7 forth in the Interim Order and this Final Order, priority in payment over any and all  
8 administrative expenses of the kind specified or ordered pursuant to any provision  
9 of the Bankruptcy Code (the “**Lapis 2019 Loan 507(b) Claims**”); which the Lapis  
10 2019 Loan 507(b) Claims shall have recourse to and be payable from all of the DIP  
11 Collateral (excluding the Commercial Tort Claims). The Lapis 2019 Loan 507(b)  
12 Claims shall be subject and subordinate only to the Carve-Out and the DIP  
13 Superpriority Claims and the Lapis 2017 Loan 507(b). The Lapis Secured Parties  
14 shall not receive or retain any payments, property or other amounts in respect of  
15 the Lapis 2019 Loan 507(b) Claims unless and until the DIP Obligations (other  
16 than contingent indemnification obligations as to which no claim has been  
17 asserted) have indefeasibly been paid in cash in full and all DIP Commitments  
18 terminated.

19 (e) *Lapis Secured Parties Information.* As additional adequate  
20 protection of the Lapis Secured Parties’ security interests in the Lapis Prepetition  
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1 Collateral, the Debtors shall contemporaneously provide the Lapis Secured Parties  
2 with any reporting provided to the DIP Lender under the DIP Loan Agreement.  
3 The Lapis Secured Parties and the Committee shall each be deemed to be an  
4 additional notice party for purposes of the DIP Facility and all parties thereto shall  
5 provide the Lapis Secured Parties and the Committee contemporaneous copies of  
6 all notices pursuant thereto. The Debtors shall additionally provide the Lapis  
7 Secured Parties and the Committee any reports and information as the Lapis  
8 Secured Parties and the Committee may reasonably request from time to time.

9 (f) For the avoidance of doubt, the Excluded Avoidance Actions  
10 and the Commercial Tort Claims shall not be used as collateral for any Adequate  
11 Protection Obligations.

12 14. Lapis Prepetition Debt Reservation. Notwithstanding anything  
13 contained in the Interim Order, this Final Order or any of the DIP Loan  
14 Documents, including any provisions of adequate protection provided to the Lapis  
15 Secured Parties, any and all challenges, rights, claims, objections and/or defenses  
16 of the Committee and/or any third party with respect to the Lapis Prepetition Debt  
17 are expressly reserved and preserved.

18 15. Carve-Out.

19 (a) *Carve-Out*. As used in the Interim Order and this Final Order,  
20 the term “Carve-Out” means, collectively, the sum of: (i) all fees required to be  
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1 paid to the Clerk of the Court and to the U.S. Trustee pursuant to 28 U.S.C.  
2 §1930(a) and 31 U.S.C. § 3717; (ii) the reasonable fees and expenses up to  
3 \$15,000 incurred by a trustee under section 726(b) of the Bankruptcy Code; and  
4 (iii) the aggregate amount of unpaid fees and expenses of the Debtors' and the  
5 Committee under sections 327(a), 328 or 1103(a) of the Bankruptcy Code (the  
6 "**Case Professionals**"), to the extent such fees and expenses are allowed and  
7 payable pursuant to an order of the Court (which order has not been reversed,  
8 vacated or stayed) ("**Allowed Professional Fees**"), and the reimbursement of out-  
9 of-pocket expenses allowed by the Court and incurred by the members of the  
10 Committee in the performance of their duties (but excluding fees and expenses of  
11 third party professionals employed by such members) ("**Committee Expenses**"),  
12 which amount under this clause (iii) shall not exceed the sum of: (x) an aggregate  
13 amount per week limited to the amount set forth in the Budget for Allowed  
14 Professional Fees and Committee Expenses incurred prior to the delivery of a  
15 Carve-Out Trigger Notice (and if such amount exceeds the amount set forth in the  
16 Budget, each Case Professional and/or Committee member shall receive the  
17 portion of its Allowed Professional Fees and/or Committee Expenses, as  
18 appropriate, on a pro rata basis in an amount not to exceed the Budget for Case  
19 Professionals) provided (i) the Maturity Date has not occurred or (ii) Event of  
20 Default has not occurred or continuing (the "**Pre Carve-Out Notice Trigger**

1 **Cap**”) plus (y) \$100,000 for Allowed Professional Fees and Committee Expenses  
2 incurred from and after the delivery of the Carve-Out Trigger Notice (defined  
3 below) (the “**Post Carve-Out Notice Cap**” together, with the Pre Carve-Out  
4 Notice Trigger Cap, the “**Carve-Out Cap**”). No portion of the Carve-Out or any  
5 Cash Collateral may be used in violation of the Interim Order or this Final Order.  
6 Nothing in the Interim Order or this Final Order or otherwise shall be construed to  
7 increase the Carve-Out if actual (i) Allowed Professional Fees of any Case  
8 Professional or (ii) Committee Expenses are higher in fact than Carve-Out Cap  
9 amount. Any funds held by the Debtors upon the delivery of a Carve-Out Trigger  
10 Notice shall be applied dollar for dollar, against the Carve-Out.

11 (b) *Carve-Out Trigger Notice*. As used herein, the term “**Carve-**  
12 **Out Trigger Notice**” means a written notice provided by the DIP Lender to the  
13 Debtors, counsel to the Lapis Secured Parties, Committee, and the U.S. Trustee  
14 that the Post Carve-Out Notice Trigger Cap is invoked, which notice may be  
15 delivered following the occurrence and during the continuance of an Event of  
16 Default and/or acceleration of the DIP Obligations under the DIP Loan  
17 Documents. Upon delivery of the Carve-Out Trigger Notice to the Debtors (the  
18 “**Termination Declaration Date**”), the Debtors shall provide notice by email and  
19 facsimile to all Case Professionals, at the email addresses and facsimile numbers  
20 set forth in each Professional’s notice of appearance filed with the Bankruptcy  
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1 Court (or, if there is no such notice of appearance, at such Professional's last  
2 known email address and facsimile number) within one (1) day after the Debtors'  
3 receipt of a Carve-Out Trigger Notice informing them that such Carve-Out Trigger  
4 Notice has been received and further advising them that the Debtors' ability to pay  
5 such Case Professionals and Committee Expenses is subject to and limited by the  
6 Post Carve-Out Notice Trigger Cap.

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

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

19 (e) *Objection Rights.* Nothing contained herein or in the DIP Loan  
20 Documents, including the inclusion of line items in the Budget for Professional  
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1 Fees, is intended to constitute, nor shall be construed as consent to the allowance  
2 of any Case Professional's fees, costs and expenses by any party and shall not  
3 affect the rights of the Debtors, the DIP Lender, the Committee, the Lapis Secured  
4 Parties or any other party in interest to object to the allowance and/or payment of  
5 any such amounts incurred or requested.

6 (f) *Payment of Compensation.* Nothing contained herein or in the  
7 DIP Loan Documents shall affect the rights of the Case Professionals to seek  
8 allowance and payment of fees and expenses in excess of the amounts set forth in  
9 the Carve-Out and Budget. Upon the indefeasible payment in full in cash and  
10 discharge of the DIP Obligation, nothing contained herein shall affect the rights of  
11 the Debtors to pay such amounts as approved by the Court.

12 (g) *Carve-Out Priority.* The Carve-Out shall be senior in all respects  
13 to the DIP Liens, the DIP Superpriority Claims, the Prepetition Credit Liens, the  
14 liens and/or claims of any Lapis Secured Parties, and any and all other forms of  
15 adequate protection, liens or claims securing the DIP Obligations, the Adequate  
16 Protection Obligations and/or the obligations of any Prepetition Secured Parties or  
17 Lapis Secured Parties.

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

8       17. Application of Proceeds. In no event shall the DIP Lender be subject  
9 to the equitable doctrine of “marshaling” or any other similar doctrine with respect  
10 to the DIP Collateral, and all proceeds thereof shall be received and used in  
11 accordance with the Interim Order and this Final Order.

12       18. Disposition of Collateral. The Debtors shall not sell, transfer, lease,  
13 encumber or otherwise dispose of any portion of the DIP Collateral, other than in  
14 the ordinary course of business or in connection with the payments contemplated  
15 under the Interim Order and this Final Order, including the Carve-Out, without the  
16 prior written consent of the DIP Lender (and no such consent shall be implied from  
17 any other action, inaction or acquiescence by the DIP Lender) or order of this  
18 Court; provided for the avoidance of doubt the Debtors shall comply with section  
19 6.4 of the DIP Loan Agreement. Notwithstanding anything otherwise provided  
20 herein, 100% of any net cash proceeds of any sale of DIP Collateral outside of the  
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1 ordinary course of business shall, subject to the satisfaction of the Carve-Out and  
2 the lien priorities outlined in paragraph 13 herein, be used to immediately satisfy  
3 the DIP Obligations.

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

18 20. Automatic Effectiveness of Liens. The DIP Liens shall not be subject  
19 to a challenge and shall attach and become valid, perfected, binding, enforceable,  
20 non-avoidable and effective by operation of law as of the date of the entry of the  
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1 Interim Order on a final basis, without any further action by the Debtors and the  
2 DIP Lender, respectively, and without the necessity of execution by the Debtors or  
3 the filing or recordation, of any financing statements, security agreements, deposit  
4 control agreements, vehicle lien applications, mortgages, filings with a  
5 governmental unit (including, without limitation, the U.S. Patent and Trademark  
6 Office or the Library of Congress), or other documents or the taking of any other  
7 actions. All DIP Collateral shall be free and clear of other liens, claims and  
8 encumbrances, except as provided in the DIP Loan Documents, the Interim Order  
9 and this Final Order. If the DIP Lender hereafter requests that the Debtors execute  
10 and/or deliver to the DIP Lender financing statements, control agreements,  
11 mortgages, or other documents considered by the DIP Lender to be reasonably  
12 necessary or desirable to further evidence the perfection of the DIP Liens the  
13 Debtors are hereby authorized and directed to execute and/or deliver such  
14 financing statements, control agreements, mortgages, and documents, and the DIP  
15 Lender is hereby authorized to file or record such documents in its discretion  
16 without seeking modification of the automatic stay under section 362 of the  
17 Bankruptcy Code, in which event all such documents shall be deemed to have been  
18 filed or recorded at the time and on the date of the entry of the Interim Order;  
19 provided, however, no such filing or recordation shall be necessary or required in  
20 order to create or perfect the DIP Liens. The DIP Lender, in its sole discretion,  
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1 may file a photocopy of the Interim Order or this Final Order as a financing  
2 statement with any filing or recording office or with any registry of deeds or  
3 similar office, in addition to, or in lieu of, such financing statements, notices of  
4 liens or similar statements.<sup>5</sup>

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

15 22. Reservation of Rights of the DIP Lender. Notwithstanding any other  
16 provision of the Interim Order and this Final Order to the contrary, the entry of this  
17 Final Order is without prejudice to, and does not constitute a waiver of, expressly  
18 or implicitly, or otherwise impair: (i) any of the rights of the DIP Lender under the  
19 Bankruptcy Code or under non-bankruptcy law, including, without limitation, the  
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21 <sup>5</sup> The provisions of section 1146(a) of the Bankruptcy Code do not apply herein.

1 right of any of such parties to (a) request modification of the automatic stay of  
2 section 362 of the Bankruptcy Code, (b) request dismissal of any of these Chapter  
3 11 Cases, conversion of any of these Chapter 11 Cases to cases under chapter 7, or  
4 appointment of a chapter 11 trustee or examiner with expanded powers in any of  
5 these Chapter 11 Cases, (c) seek to propose, subject to the provisions of section  
6 1121 of the Bankruptcy Code, a chapter 11 plan or plans; or (ii) any other rights,  
7 claims, or privileges (whether legal or equitable or otherwise) of the DIP Lender.  
8 The delay in or failure of the DIP Lender to seek relief or otherwise exercise their  
9 respective rights and remedies shall not constitute a waiver of any of the DIP  
10 Lender's rights and remedies.

11 23. Right to Credit Bid.

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

1 (b) A credit bid may be applied only to reduce the cash  
2 consideration with respect to those assets in which the party submitting such credit  
3 bid holds a perfected security interest. The DIP Lender shall be considered a  
4 “Qualified Bidder” with respect to their rights to acquire all or any of the assets by  
5 credit bid.

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

10 25. Modification of Stay. Subject to the terms set forth herein, the  
11 automatic stay imposed under section 362(a) of the Bankruptcy Code is hereby  
12 modified as necessary to effectuate all of the terms, rights, benefits, privileges,  
13 remedies and provisions of this Final Order, and the DIP Loan Documents  
14 including without limitation, to permit the DIP Lender to exercise all rights and  
15 remedies provided for in the DIP Loan Documents and take any and all actions  
16 provided therein, in each case, in accordance with paragraph [25] of this Final  
17 Order.

18 26. Survival of DIP Liens, DIP Superpriority Claims, and Other Rights. If,  
19 in accordance with section 364(e) of the Bankruptcy Code, this Final Order does  
20 not become a final non-appealable order, if a trustee terminates this Final Order, or  
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1 if any of the provisions of the Interim Order or this Final Order are hereafter  
2 modified, amended, vacated or stayed by subsequent order of this Court or any  
3 other court, such termination or subsequent order shall not affect the priority,  
4 validity, enforceability or effectiveness of (or subordination to the Carve-Out of)  
5 any lien, security interests or any other benefit or claim authorized hereby with  
6 respect to any DIP Obligations or Adequate Protection Obligations incurred prior  
7 to the effective date of such termination or subsequent order. All such liens,  
8 security interests, claims and other benefits shall be governed in all respects by the  
9 original provisions of the Interim Order and this Final Order, and the DIP Lender  
10 and Lapis Secured Parties shall be entitled to all the rights, remedies, privileges  
11 and benefits granted herein, including the liens and priorities granted herein, with  
12 respect to any DIP Loan and Adequate Protection Obligations, subject to the  
13 Carve-Out and any and all challenges, rights, claims, defenses and/or objections of  
14 the Committee and any third parties as set forth herein.

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

12       28. Modifications of DIP Loan Documents. The Debtors and the DIP  
13 Lender are hereby authorized to implement, in accordance with the terms of the  
14 DIP Loan Documents, any non-material modifications of the DIP Loan Documents  
15 without further notice, motion or application to, order of or hearing before, this  
16 Court, upon notice to counsel for the Committee. Any material modification or  
17 amendment to the DIP Loan Documents shall only be permitted pursuant to an  
18 order of this Court, after being submitted to this Court upon five (5) days' notice to  
19 the U.S. Trustee, counsel to the Committee, and counsel to the Lapis Secured  
20 Parties, each of whom reserves all rights and objections with respect to any such  
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1 material modification or amendment; provided, that any forbearance from, or  
2 waiver of, (i) a breach by the Debtors of a covenant, representation or any other  
3 agreement or (ii) a default or an Event of Default, in each case under the DIP Loan  
4 Documents shall not require an order of this Court; provided, that the Debtor or the  
5 DIP Lender provide notice of such forbearance or waiver to counsel to the  
6 Committee. In the event of any inconsistency between this Final Order and the  
7 DIP Loan Agreement, this Final Order shall control.

8       29. Insurance Policies. Upon entry of the Interim Order, on each insurance  
9 policy maintained by the Debtors which in any way relates to the DIP Collateral:

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

19       30. Financial Information. The Debtors shall deliver to the DIP Lender  
20 and the Committee such financial and other information concerning the business  
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1 and affairs of the Debtors and any of the DIP Collateral as may be required  
2 pursuant to the DIP Loan Documents and/or as the DIP Lender or the Committee  
3 shall reasonably request from time to time. The Debtors shall allow the DIP  
4 Lender access to the premises in accordance with the terms of the DIP Loan  
5 Documents for the purpose of enabling the DIP Lender to inspect and audit the  
6 DIP Collateral and the Debtors' books and records.

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

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

19 //End of Order//

1 PRESENTED BY:

2 /s/ James L. Day

3 JAMES L. DAY (WSBA #20474)  
4 BUSH KORNFELD LLP

5 SAMUEL R. MAIZEL (*Pro Hac Vice* pending)  
6 SAM J. ALBERTS (WSBA #22255)  
7 DENTONS US LLP

8 *Proposed Attorneys for the Chapter 11*  
9 *Debtors and Debtors In Possession*

10 **EXHIBIT 1**

11 **DIP LOAN AGREEMENT**

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# EXHIBIT B

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

<p>IN RE:  ASTRIA HEALTH, et al.  Debtors.<sup>1</sup></p>	<p>Lead Case No. 19-01189-11  Jointly Administered  <del>INTERIM</del> <u>FINAL</u> 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; <u>AND</u> (VII) <del>SCHEDULING A FINAL HEARING</del> <u>AND (VIII)</u> GRANTING RELATED RELIEF</p>
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<sup>1</sup> 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 (19-19-01200-11)..

Interim DIP/Cash Collateral Order

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1 THIS MATTER having come before the Court upon the motion (the  
2 "Motion")<sup>2</sup> 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 Rules 2002-  
7 1 and 4001-3 of the Local Bankruptcy Rules of the United States Bankruptcy Court  
8 for the Eastern District of Washington ("LBR"), seeking entry of an interim order  
9 (the "Interim Order") and a final order (the "Final Order") granting *inter alia*:

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

18 \_\_\_\_\_  
19 <sup>2</sup> 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 to the Debtors upon entry of this Final Order at intervals and in amounts set forth in  
2 the DIP Loan Agreement (as defined below));

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

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

20 iv. authority for the Debtors to grant to the DIP Lender valid, enforceable,  
21 non-avoidable, automatically and fully perfected security interests, liens and



1 superpriority claims, including allowed superpriority administrative expense claims  
2 pursuant to sections 364(c)(1) and 507(b) of the Bankruptcy Code, subject only to  
3 the Carve-Out and liens pursuant to sections 364(c)(2), 364(c)(3) and 364(d)(1) of  
4 the Bankruptcy Code in the DIP Collateral (as defined below) (and all proceeds  
5 thereof), including, without limitation, all property constituting “Cash Collateral,” as  
6 defined in section 363(a) of the Bankruptcy Code, (“**Cash Collateral**”), to secure all  
7 DIP Obligations (as defined below), as more fully set forth in ~~this~~ [the Interim Order](#)  
8 [and this Final Order](#), subject only to the Carve-Out (as defined below);

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

12 vi. ~~subject to and only effective upon entry of the Final Order~~, waiver of  
13 the equitable doctrine of marshaling or any other similar doctrine with respect to any  
14 collateral of the DIP Lender, [except as set forth herein](#);

15 vii. providing adequate protection to the Lapis Secured Parties to the extent  
16 set forth herein;

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

19 ~~ix. the scheduling of a final hearing (the “Final Hearing”) on the Motion~~  
20 ~~for June 4, 2019, at 10:00 am (Pacific Time) to consider entry of the Final Order inter~~

1 ~~alia, authorizing borrowings under the DIP Facility on a final basis and approving~~  
2 ~~notice procedures with respect thereto; and~~

3 ix. ~~x.~~ related relief.

4 The Court having considered the Motion and the exhibits attached thereto, the  
5 evidence submitted or adduced and the arguments of counsel made at the interim  
6 hearing held on May 8, 2019 (the “**Interim Hearing**”) and the final hearing held on  
7 June 13, 2019 (the “Final Hearing”) and having found that due and proper notice  
8 (the “**Notice**”) of the Motion ~~and~~, the Interim Hearing and the Final Hearing having  
9 been served by the Debtors in accordance with Bankruptcy Rule 4001 and 9006 and  
10 LBR 2002-1 on (i) the Office of the United States Trustee for the Eastern District of  
11 Washington, (ii) counsel ~~for~~ to the Prepetition Secured Creditors, (iii) counsel ~~for~~ to  
12 the DIP Lender, (iv) all alleged secured creditors, (v) counsel to the Committee  
13 (defined below), (vi) the thirty largest general unsecured creditors appearing on the  
14 list filed in accordance with Bankruptcy Rule 1007(d), and ~~(vii)~~ any parties  
15 requesting special notice; and the Interim Hearing to consider the interim relief  
16 requested in the Motion having been held and concluded; and this Court having  
17 entered on May 9, 2019, the Interim Order; and this Court having held and concluded  
18 the Final Hearing to consider the relief requested in the Motion; and all objections, if  
19 any, to the ~~interim-final~~ relief requested in the Motion having been withdrawn,  
20 resolved or overruled by the Court; and it appearing to the Court that granting the  
21 ~~interim-final~~ relief requested is necessary to avoid potential immediate and

1 irreparable harm to the Debtors and their estates and otherwise is fair and reasonable  
2 and in the best interests of the Debtors, their estates, and their creditors and equity  
3 holders, and is essential for the continued operation of the Debtors' businesses and  
4 represents a sound exercise of the Debtors' business judgment; and after due  
5 deliberation and consideration, and for good and sufficient cause appearing therefor;

6 **THIS COURT HEREBY MAKES THE FOLLOWING FINDINGS OF**  
7 **FACT AND CONCLUSIONS OF LAW BASED UPON THE MOTION, THE**  
8 **REPRESENTATIONS OF COUNSEL AND EVIDENCE SUBMITTED**  
9 **PRIOR TO AND DURING THE INTERIM ~~HEARING~~ AND FINAL**  
10 **HEARINGS.**<sup>3</sup>

11 A. *Petition Date*. On May 6, 2019 (the "**Petition Date**"), the Debtors filed  
12 voluntary petitions under chapter 11 of the Bankruptcy Code in the United States  
13 Bankruptcy Court for the Eastern District of Washington (the "**Court**") commencing  
14 these Chapter 11 Cases.

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

19 \_\_\_\_\_  
20 <sup>3</sup> 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 C. Notice. Notice of the ~~Interim-Final~~ Hearing and the relief requested in  
2 the Motion has been provided by the Debtors to certain parties in interest, including  
3 on (i) the Office of the United States Trustee for the Eastern District of Washington,  
4 (ii) counsel for the Prepetition Secured Creditors, (iii) counsel for the DIP Lender,  
5 (iv) all alleged secured creditors, (v) counsel for the Committee, (vi) the thirty largest  
6 general unsecured creditors appearing on the list filed in accordance with Rule  
7 1007(d), and (vii) any parties requesting special notice.

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

13 E. Committee Formation. On May 23, 2019, the United States Trustee for  
14 the Eastern District of Washington (the “U.S. Trustee”) appointed an official  
15 committee of unsecured creditors in these Chapter 11 Cases pursuant to section 1102  
16 of the Bankruptcy Code (the “Committee”).

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

3 G. ~~F.~~ Best Interests of Estates. It is in the best interests of the Debtors'  
4 estates and creditors that the Debtors be allowed to enter into the DIP Facility to  
5 obtain postpetition secured financing from the DIP Lender under the terms and  
6 conditions set forth herein and in the DIP Loan Documents, as such financing is  
7 necessary to avoid immediate and irreparable harm to the Debtors' estates and for the  
8 continued operation of the Debtors' businesses.

9 H. ~~G.~~ Good Faith. The extension of credit and financial accommodations  
10 under the DIP Loan Documents are fair, reasonable, in good faith, negotiated at arm's  
11 length, reflect the Debtors' exercise of prudent business judgment, and are supported  
12 by reasonably equivalent value and fair consideration. Accordingly, the DIP Lender  
13 is entitled to the protections of Bankruptcy Code section 364(e).

14 I. ~~H.~~ Good Cause. The relief requested in the Motion is necessary, essential  
15 and appropriate, and is in the best interest of and will benefit the Debtors, their  
16 creditors and their estates, as its implementation will, among other things, provide  
17 the Debtors with the necessary liquidity to (1) minimize disruption to the Debtors'  
18 businesses and ongoing operations, (2) preserve and maximize the value of the  
19 Debtors' estates for the benefit of all the Debtors' creditors, and (3) avoid potential  
20 immediate and irreparable harm to the Debtors, their creditors, their businesses, their  
21 employees, and their assets.

1           J.     ~~J.~~ *Necessity of DIP Facility Terms.* The terms of the DIP Loan  
2 Documents ~~and~~, the Interim Order and this Final Order assuring that the liens and  
3 the various claims, superpriority claims, and other protections granted in the Interim  
4 Order and this Final Order will not be affected by any subsequent reversal or  
5 modification of the Interim Order, this Final Order or any other order, as provided in  
6 section 364(e) of the Bankruptcy Code, which is applicable to the postpetition  
7 financing arrangement contemplated in the DIP Loan Documents, are necessary in  
8 order to induce the DIP Lender to provide postpetition financing to the Debtors.

9           K.     ~~J.~~ *Need for Post-Petition Financing.* The Debtors do not have sufficient  
10 and reliable sources of working capital, including cash collateral, to continue to  
11 operate their businesses in the ordinary course of business without the financing  
12 requested in the Motion. The Debtors' ability to maintain business relationships with  
13 their vendors, suppliers and customers, to pay their employees, and to otherwise fund  
14 their operations is essential to the Debtors' continued viability as the Debtors seek to  
15 maximize the value of the assets of their estates for the benefit of all creditors of the  
16 Debtors. The ability of the Debtors to obtain sufficient and stable working capital  
17 and liquidity through the proposed post-petition financing arrangements with the DIP  
18 Lender as set forth in ~~this the~~ Interim Order, this Final Order and the DIP Loan  
19 Documents is vital to the preservation and maintenance of the going concern value  
20 of each Debtor. Accordingly, the Debtors have an immediate need to obtain the  
21 postpetition financing in order to, among other things, permit the orderly continuation

1 of the operation of their businesses, minimize the disruption of their business  
2 operations, and preserve and maximize the value of the assets of the Debtors'  
3 bankruptcy estates in order to maximize the recovery to all creditors of the estates.

4 L. ~~K.~~ Need to Use Cash Collateral. The Debtors need to use Cash  
5 Collateral, in order to, among other things, preserve, maintain and maximize the  
6 value of their assets and businesses. The ability of the Debtors to maintain liquidity  
7 through the use of Cash Collateral is vital to the Debtors and their efforts to maximize  
8 the value of their assets. Accordingly, the Debtors have demonstrated good and  
9 sufficient cause for the relief granted herein.

10 M. ~~L.~~ Sections 506(c) and 552(b). As material inducement to the DIP  
11 Lender to agree to provide the DIP Facility, and in exchange for the DIP Lender's  
12 agreement to subordinate their superpriority claims to the Carve-Out, ~~subject to entry~~  
13 ~~of the Final Order,~~ this Court approves (i) the waiver by Debtors of any equities of  
14 the case exceptions under section 552(b) of the Bankruptcy Code and (ii) the waiver  
15 by Debtors of the provisions of section 506(c) of the Bankruptcy Code.

16 N. ~~M.~~ Priming of Prepetition Liens. The priming of the Lapis Subordinated  
17 Sunnyside Liens and Lapis Subordinated A/R Liens by the DIP Lender under section  
18 364(d)(1) of the Bankruptcy Code, solely to the extent set forth in the DIP Loan  
19 Documents and as further described below, will enable the Debtors to obtain the DIP  
20 Facility and, among other benefits, continue to operate their businesses for the benefit  
21 of their estates and stakeholders.

1           O   ~~N~~Pre-Petition Debt. The Debtors were, prior to the Petition Date, party  
2 to the following agreements, with the following parties (collectively, the  
3 **“Prepetition Secured Parties”**):

4           (a)   *Banner Bank Prepetition Debt.*

5           a.   Prior to the commencement of the Chapter 11 Cases, Sunnyside Community Hospital Association  
6 (“**Sunnyside**”) entered into various Business Loan  
7 Agreements, dated December 30, 2010, May 19, 2015,  
8 March 21, 2016, August 2, 2016, October 6, 2016, March  
9 21, 2017, and May 4, 2018, each between Banner Bank and  
10 Sunnyside (as each such agreement has been amended,  
11 modified, or supplemented to date, the **“Banner Bank  
12 Loan Documents”**), providing Sunnyside with financing  
13 in the aggregate principal amount of \$27,006,225. The  
14 advances made pursuant to the Banner Bank Loan  
15 Documents are secured by a first priority lien (the **“Banner  
16 Senior Sunnyside Liens”**) on all personal property and  
17 certain real property of Sunnyside as set forth in the Banner  
18 Bank Loan Documents and associated documents (such  
19 assets the **“Banner Bank Collateral”**). As of the Petition  
20 Date, Sunnyside is indebted to Banner Bank in the  
21 approximate principal amount of \$10.6 million.

14           (b)   *MidCap Financial Prepetition Debt.*

15           a.   Prior to the commencement of the Chapter 11 Cases, SHC  
16 Holdco, LLC (“**Holdco**”), SHC Medical Center – Yakima  
17 (“**Yakima**”), SHC Medical Center – Toppenish  
18 (“**Toppenish**”), Yakima Home Care Holdings, LLC, and  
19 Yakima HMA Home Health, LLC, as co-borrowers  
20 (collectively, the **“MidCap Borrowers”**), entered into that  
21 certain Credit and Security Agreement dated September  
18, 2017 (the **“MidCap Credit Agreement”**) and those  
related loan documents (all as amended, modified, or  
supplemented to date, collectively with the MidCap Credit  
Agreement, the **“MidCap Loan Documents”**), with the  
lenders party thereto (the **“MidCap Lenders”**) and



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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 ~~properly perfected~~ first priority lien and security interest (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 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

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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 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

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

P. ~~Q.~~ 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

1 Prepetition Collateral (including Cash Collateral). As part of the adequate protection  
2 provided by ~~this the~~ Interim Order and this Final Order, the Lapis Secured Parties  
3 shall receive, among other things, replacement liens, superpriority claims (to the  
4 extent that the Lapis Secured Parties had valid and perfected liens on and security  
5 interests in the Lapis Prepetition Collateral) and reporting information, subject and  
6 subordinate to the Carve-Out. For the avoidance of doubt, the Lapis Secured Parties  
7 shall not receive replacement liens or superpriority claims on any of the Excluded  
8 Avoidance Actions (defined below) or the Commercial Tort Claims (defined below).  
9 The terms of the Adequate Protection Obligations (defined herein) are fair and  
10 reasonable, reflect the Debtors' prudent exercise of business judgment and are  
11 sufficient to allow the Debtors' use of the Lapis Prepetition Collateral (including the  
12 Cash Collateral) and to permit the relief granted in ~~this Interim Order~~ the Interim  
13 Order and this Final Order. For the avoidance of doubt, nothing contained herein,  
14 including the provision of adequate protection provided to the Lapis Secured Parties,  
15 shall prejudice the rights of the Committee or any third party to challenge or object  
16 to any and all of the prepetition liens or claims of the Lapis Secured Parties.

17 Q. ~~P.~~ Immediate Entry. Sufficient cause exists for immediate entry of this  
18 ~~Interim-Final~~ Order pursuant to Bankruptcy Rule 4001(c)(2).

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

1 **IT IS HEREBY ORDERED** that:

2 1. DIP Facility Approval. The Motion is granted on a final basis and the  
3 DIP Facility is hereby approved on a final basis. Any objections to the ~~interim-final~~  
4 relief requested in the Motion that have not been withdrawn, waived or settled, and  
5 all reservations of rights included therein, are hereby denied and overruled, ~~except as~~  
6 ~~reserved on the record at the hearing on May 8, 2019~~. The Debtors are authorized,  
7 pursuant to section 364 of the Bankruptcy Code, to enter into and be a party to the  
8 DIP Facility pursuant to the DIP Loan Documents (with such changes, if any, as were  
9 authorized to be made as amendments to the DIP Loan Documents in accordance  
10 with ~~this~~ the Interim Order and this Final Order), to perform under the DIP Loan  
11 Documents and such other and additional documents necessary or desired to  
12 implement the DIP Facility or the DIP Loan Documents, and to obtain postpetition  
13 secured financing from the DIP Lender, to avoid immediate and irreparable harm to  
14 the Debtors' estates. Notwithstanding anything to the contrary herein, in the Interim  
15 Order or the DIP Loan Documents:

16 the Stated Maturity Fee of 8.0% of the DIP Facility, shall be due and  
17 payable in cash immediately upon the next business day following  
18 December 31, 2019 in the event that the DIP Obligations are not  
19 indefeasibly paid in full on December 31, 2019, provided, however, that  
20 (i) if an Acceptable Plan has been confirmed prior to December 31,  
21 2019, the Stated Maturity Date Fee shall become payable in cash upon  
the next business day following March 30, 2020 in the event that the  
DIP Obligations are not indefeasibly paid in full on March 30, 2020; or  
(ii) if the Debtors have obtained final court approval of an alternative  
transaction (acceptable to the DIP Lender) relating to all or substantially  
all of the Debtors' assets and the parties are in the process of obtaining

1 the requisite regulatory approval from government authorities prior to  
2 closing such alternative transaction, the Stated Maturity Date Fee shall  
3 become payable in cash upon the next business day following March 30,  
4 2020 in the event that the DIP Obligations are not indefeasibly paid in  
5 full on March 30, 2020, provided, however, that in the event the parties  
6 to the alternative transaction have not obtained the requisite regulatory  
7 approvals from government authorities by March 30, 2020 but have, in  
8 the DIP Lender's sole and absolute discretion, made reasonable progress  
9 in obtaining such regulatory approvals, the Stated Maturity Date Fee  
10 shall be payable in cash upon the next business day following May 29,  
11 2020 in the event that the DIP Obligations are not indefeasibly paid in  
12 full on May 29, 2020, in which case the Stated Maturity Date Fee shall  
13 be increased to 10.0%.

14 2. DIP Obligations. The DIP Loan Documents shall constitute and  
15 evidence the valid and binding effect of the Debtors' obligations under the DIP  
16 Facility, which DIP Obligations shall be legal, valid, and binding obligations of the  
17 Debtors party thereto and enforceable against the Debtors, their estates, any  
18 successors thereto, including, without limitation, any trustee appointed in any of the  
19 Debtors' cases, or in any case under chapter 7 of the Bankruptcy Code upon the  
20 conversion of any such cases, or in any other proceedings superseding or related to  
21 any of the foregoing, any successors thereto, and any party determined to be the  
beneficial owner of the DIP Collateral by this Court. The Debtors and their  
successors shall be jointly and severally liable for repayment of any funds advanced  
pursuant to the DIP Loan Documents, together with interest thereon, at the times and  
in the amounts set forth in the DIP Loan Documents and all Obligations as defined  
and provided for in the DIP Loan Agreement (collectively, the "**DIP Obligations**").  
No obligation, payment, transfer or grant of security under the DIP Loan Documents

1 ~~or,~~ the Interim Order or this Final Order, with respect to the DIP Facility shall be  
2 stayed, restrained, voided, voidable or recoverable under the Bankruptcy Code or  
3 under any applicable non-bankruptcy law, or subject to any defense, reduction, setoff,  
4 recoupment or counterclaim.

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

17 4. Use of Proceeds. The Debtors shall use advances of credit under the  
18 DIP Facility (the "DIP Facility Loans") only for the express purposes specifically  
19 set forth in ~~this the~~ Interim Order, this Final Order and the DIP Loan Documents.  
20 The Debtors are authorized to use the proceeds of the DIP Facility Loans to (a) fund  
21 the post-petition working capital needs of the Debtors during the pendency of the

1 Chapter 11 Cases, (b) pay fees, costs and expenses of the DIP Facility on the terms  
2 and conditions described in the DIP Loan Documents, (c) pay all Outstanding  
3 Prepetition Banner Bank Obligations and Outstanding Prepetition MidCap  
4 Obligations; and (d) pay the allowed administrative costs and expenses of the Chapter  
5 11 Cases, in each case, solely in accordance with the DIP Loan Documents  
6 (including, but not limited to, the Budget) and this ~~Interim~~Final Order.  
7 Notwithstanding anything herein, the extensions of credit under the DIP Facility shall  
8 not constitute cash collateral of the Prepetition Secured Parties.

9 5. ~~Repayment of Certain Outstanding Prepetition Secured Loan~~  
10 ~~Obligations. Upon entry of this Interim Order, the Debtors shall use the proceeds of~~  
11 ~~the DIP Facility to pay (a) all outstanding obligations now due and payable~~  
12 ~~Reservation of Rights and Committee Standing. Notwithstanding anything contained~~  
13 ~~in the Interim Order, this Final Order or any of the DIP Loan Documents, the payment~~  
14 ~~of any outstanding obligations~~ to Banner Bank under the Banner Bank Loan  
15 Documents ~~in full (including obligations that accrued postpetition) (the~~  
16 ~~“Outstanding Prepetition Banner Bank Obligations”)~~, in accordance with the  
17 ~~terms, conditions, and procedures set forth in the DIP Loan Documents, and (b) all~~  
18 ~~the payment of any~~ outstanding obligations ~~now due and payable~~ to the MidCap  
19 Lenders under the MidCap Loan Documents ~~in full (including obligations that~~  
20 ~~accrued postpetition) (the “Outstanding Prepetition MidCap Obligations”)~~, in  
21 ~~accordance with the terms and conditions of the Banner Bank Loan Documents and~~



1 ~~MidCap Loan Documents and the terms, conditions, and procedures set forth in the~~  
2 ~~DIP Loan Documents. In connection with the payment of the Outstanding~~  
3 ~~Prepetition Banner Bank Obligations and the Outstanding Prepetition MidCap~~  
4 ~~Obligations, the parties shall be authorized and directed to execute the Banner Bank~~  
5 ~~Payoff Letter and the MidCap Payoff Letter, attached hereto as (collectively, the~~  
6 ~~“Payoff Letters”). For purposes of calculating and paying the Outstanding~~  
7 ~~Prepetition MidCap Obligations, MidCap shall be entitled to apply any collections it~~  
8 ~~received after the Petition Date, and the automatic stay is hereby modified to permit~~  
9 ~~MidCap to apply such payments. The terms and conditions contained in the Payoff~~  
10 ~~Letters shall be binding on the Debtors, their respective estates, and the Committee~~  
11 ~~(defined below) (individually or on behalf of the Debtors’ estates), except as provided~~  
12 ~~below, as well as all other parties in interest with respect to the Banner Bank Loan~~  
13 ~~Documents and the MidCap Loan Documents; provided, however, notwithstanding~~  
14 ~~the foregoing nothing in this Interim Order, including paragraphs N herein, or the~~  
15 ~~payment of the Outstanding Prepetition Banner Bank Obligations and Outstanding~~  
16 ~~Prepetition MidCap Obligations shall prejudice the rights of any official committee~~  
17 ~~of unsecured creditors appointed in these Chapter 11 Case (the “Committee”), if~~  
18 ~~subsequently formed, to assert any claims the Debtors’ estates, and the provision of~~  
19 ~~adequate protection to the Lapis Secured Parties, nothing in the Interim Order, this~~  
20 ~~Final Order or any of the DIP Loan Documents shall constitute an acknowledgement~~  
21 ~~or admission by the Committee of the validity, extent and/or priority of any of the~~

1 Prepetition Credit Liens and/or any other liens, claims, encumbrances, or obligations  
2 of any Prepetition Secured Parties. Except as otherwise expressly set forth in this  
3 Final Order, nothing in the Interim Order, this Final Order or any of the DIP Loan  
4 Documents shall limit the rights of the Committee to assert any challenges, rights,  
5 claims, defenses and/or objections the Debtors' estates or the Committee may hold  
6 against the Prepetition Secured Parties ~~to the extent the Committee has the standing~~  
7 ~~to assert such claims and provided such claims are asserted timely in accordance with~~  
8 ~~the requirements of the Bankruptcy Code or as otherwise hereafter ordered by this~~  
9 ~~Court; provided, further, that nothing in this Interim Order~~ and all such challenges,  
10 rights, claims, defenses and/or objections against the Prepetition Secured Parties are,  
11 on the terms of this Final Order, expressly reserved and preserved. To the extent  
12 such challenges, rights, claims, defenses and/or objections belong to the Debtors'  
13 estates, the Committee is hereby granted standing to pursue such challenges, rights,  
14 claims, defenses and/or objections against the Prepetition Secured Parties. Nothing  
15 contained herein shall be construed or deemed a waiver of any claims or defenses  
16 that Banner Bank ~~or~~, MidCap or the Lapis Secured Parties may have in response to  
17 any claims asserted by the Committee, including, without limitation, any rights or  
18 obligation that survive the payoff of the Outstanding Petition Banner Bank  
19 Obligations and Outstanding Prepetition MidCap Obligations under the Banner Bank  
20 Loan Documents and the MidCap Loan Documents, respectively. ~~In the event a~~  
21 ~~claim is asserted against MidCap or the MidCap Lenders, including, without~~

1 ~~limitation, (a) any challenge to the validity, enforceability, or priority of the MidCap~~  
2 ~~Loan Documents or the MidCap Senior A/R Liens, (b) a claim to recover any~~  
3 ~~payments made to MidCap Lenders under the MidCap Loan Documents, including,~~  
4 ~~without limitation, payment of the Outstanding Prepetition MidCap Obligations, or~~  
5 ~~(c) any other claim arising out of, or under the MidCap Loan Documents and the~~  
6 ~~MidCap Lenders' and Borrowers' relationship thereunder (collectively, a~~  
7 ~~"Challenge"), and MidCap and the MidCap Lenders successfully defend such~~  
8 ~~Challenge, Debtors shall promptly reimburse MidCap and MidCap Lenders all of~~  
9 ~~their reasonable fees and expenses, including their attorneys' fees and expenses,~~  
10 ~~incurred in connection with responding to and defending the Challenge (the~~  
11 ~~"Challenge Claim"). Without limiting the foregoing, the Challenge Claim shall be~~  
12 ~~an allowed secured claim secured by the same assets as secure the DIP Facility under~~  
13 ~~this Order and the DIP Loan Documents, subject only to the DIP Liens, and shall be~~  
14 ~~an allowed administrative expenses under sections 503(b) and 507(a)(2) of the~~  
15 ~~Bankruptcy Code.~~

16       6. Budget and Reporting. Except as otherwise provided herein or  
17 approved by the DIP Lender, the proceeds from the DIP Facility shall be used only  
18 in compliance with the terms of the DIP Loan Documents, including the Budget. The  
19 Debtor shall comply with the reporting requirements and obligations set forth in the  
20 DIP Loan Agreement.  
21

1           7.     Payment of DIP Fees and Expenses. The (a) Commitment Fee; (b)  
2 Funding Fee; (c) Work Fee, which shall serve as a retainer for the DIP Lender's  
3 counsel; (d) Exit Fee; and (e) Stated Maturity Fee are each hereby approved, as  
4 modified herein, and the Debtors are hereby authorized and directed to and shall pay  
5 such fees in accordance with, and on the terms set forth in this ~~Interim~~ Final Order  
6 and the DIP Loan Documents, as modified herein. The Debtors are also hereby  
7 authorized and directed to pay upon demand, all other reasonable fees, costs,  
8 expenses and other amounts payable under the terms of ~~this~~ the Interim Order, this  
9 Final Order and the DIP Loan Documents and all other reasonable fees and out-of-  
10 pocket costs and expenses of the DIP Lender in accordance with the terms of ~~this~~ the  
11 Interim Order, this Final Order and the DIP Loan Documents (including, without  
12 limitation, the reasonable and documented fees and out-of-pocket costs and expenses  
13 of Arent Fox LLP as counsel and Southwell & O'Rourke, P.S. as local counsel to the  
14 DIP Lender to the extent not covered by the portion of the Work Fee paid prior to the  
15 Petition Date), subject to receiving a written invoice therefor. None of such  
16 reasonable fees, costs, expenses or other amounts shall be subject to Court approval  
17 except as otherwise provided herein or required to be submitted in any particular  
18 format, and no recipient of any such payment shall be required to file with respect  
19 thereto any interim or final fee application with this Court; provided, however, that  
20 copies of any such invoices shall be provided contemporaneously to the U.S. Trustee  
21 and the Committee; provided further, however, that such invoices provided to the

1 Committee may be redacted to the extent necessary to delete any information subject  
2 to the attorney-client privilege, ~~or~~ or any information constituting attorney work  
3 product, ~~or any other confidential information~~ (the “**Redactions**”), and the provision  
4 of such invoices shall not constitute a waiver of the attorney-client privilege or any  
5 benefits of the attorney work product doctrine. If the U.S. Trustee or the Committee  
6 objects to the reasonableness of the fees and expenses of the DIP Lender, and such  
7 objection cannot be resolved within ten (10) days of receipt of such invoices, the U.S.  
8 Trustee or the Committee may file with the Court and serve on the DIP Lender, an  
9 objection to the reasonableness of such fees and expenses (each, a “**Reasonableness**  
10 **Fee Objection**”). Without limiting the foregoing, if the Committee objects to the  
11 Redactions and such objection cannot be resolved within ten (10) days of receipt of  
12 such invoices, the DIP Lender shall file with the Court and serve on the Debtors, the  
13 Committee and the U.S. Trustee a request for Court resolution of the disputes  
14 concerning the propriety of the disputed Redactions (each, a “**Redaction Fee**  
15 **Objection**,” and each Reasonableness Fee Objection and Redaction Fee Objection  
16 may be referred to herein generally as a “**Fee Objection**”). The Debtors shall pay, in  
17 accordance with the terms and conditions of ~~this~~ the Interim Order and ~~the~~ this Final  
18 Order, within ten (10) days after receipt of the applicable invoice (a) the full amount  
19 invoiced if no Fee Objection has been timely filed, and (b) the undisputed fees, costs,  
20 and expenses reflected on any invoice to which a Fee Objection has been timely  
21 filed. All such unpaid reasonable fees, costs, expenses and other amounts owed or

1 payable to the DIP Lender shall be secured by the DIP Collateral, subject and  
2 subordinate to the Carve-Out, and afforded all of the priorities and protections  
3 afforded to the DIP Obligations (subject to and subordinate to the Carve-Out) under  
4 ~~this the~~ Interim Order, this Final Order and the DIP Loan Documents, until such time  
5 as the unpaid reasonable fees, costs, expenses and other amounts owed or payable to  
6 the DIP Lender have been paid or disallowed pursuant to an order of the Court  
7 resolving any such Fee Objection.

8 8. Indemnification. The Debtors are hereby authorized to and hereby agree  
9 to indemnify and hold harmless the DIP Lender and its affiliates, directors, officers,  
10 employees, agents, attorneys, or any other Person affiliated with or representing the  
11 DIP Lender (collectively, an “**Indemnified Party**”)<sup>4</sup> from and against: (a) all  
12 obligations, demands, claims, damages, losses and liabilities (including, without  
13 limitation, reasonable fees and disbursements of counsel) (collectively, “**Indemnity**  
14 **Claims**”) as set forth in the DIP Loan Documents including those asserted by any  
15 other party in connection with the transactions contemplated by the DIP Loan  
16 Documents; and (b) all losses or expenses incurred, or paid by the DIP Lender from,  
17 following, or arising from the transactions contemplated by the DIP Loan Documents  
18 (including reasonable and documented attorneys’ fees and expenses), except ~~for~~,  
19 with respect to (a) and (b) above, for (i) any fees, costs, expenses and other amounts  
20

21 <sup>4</sup> None of the Prepetition Secured Parties are or shall be deemed an Indemnified Party.

1 disallowed pursuant to an order of the Court resolving any Fee Objections, and (ii)

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

20 9. Use of Cash Collateral. The Debtors are authorized to use Cash  
21 Collateral in accordance with and pursuant to ~~this the~~ Interim Order, this Final Order

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

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



1 proceeds thereof, ~~and including (a) any and all avoidance power claims or causes of~~  
2 ~~action under sections 544, 545, 547, 548 through 551 and 553(b) of the Bankruptcy~~  
3 ~~Code (the “Avoidance Actions”)~~ and the proceeds thereof, ~~(b) prepetition tort~~  
4 ~~claims, including claims against the Debtors’ current and former directors and~~  
5 ~~officers (if any) and the proceeds thereof; and (ca) all prepetition and postpetition~~  
6 commercial tort claims and the related proceeds, including but not limited to, all  
7 claims and causes of action (i) against the Debtors’ officers and directors, and (ii)  
8 related to accounts receivable collections (the “**Commercial Tort Claims**”), and (b)  
9 any deposit in connection with a proposed Sale (whether terminated or otherwise)  
10 that becomes property of the Debtors’ estates (a “**Sale Deposit**”) subject, however,  
11 only to the senior lien rights of a ~~stalking horse~~ purchaser, if any, and such stalking  
12 horse bid protections, if any, as may be approved by this Court; provided, however,  
13 that the DIP Lender shall use its best efforts to satisfy the DIP Superpriority Claims  
14 from the assets constituting DIP Collateral other than the Commercial Tort Claims  
15 before seeking payment of the DIP Superiority Claim from the Commercial Tort  
16 Claims.

17 11. DIP Liens.

18 (a) ~~Effective immediately as of the entry of this Interim Order, as As~~  
19 security for the DIP Obligations, the DIP Lender is granted, continuing, valid,  
20 binding, enforceable, non-avoidable, and automatically and properly perfected  
21 security interests in and liens (collectively, the “**DIP Liens**”) on all DIP Collateral as

1 collateral security for the prompt and complete performance and payment when due  
2 (whether at the Stated Maturity Date (i.e. December 31, 2019), by acceleration, or  
3 otherwise) of the DIP Obligations, subject and subordinate to the Carve-Out. The  
4 term “**DIP Collateral**” means collectively all pre-petition and post-petition real  
5 property and all pre-petition and post-petition tangible and intangible personal  
6 property of each Borrower, in each case wherever located and whether now owned  
7 or hereafter acquired, including, but not limited to all accounts, contracts rights,  
8 chattel paper, cash, general intangibles, investment property, machinery, equipment,  
9 goods, inventory, furniture, fixtures, letter of credit rights, books and records, deposit  
10 accounts, documents, instruments, ~~commercial tort claims~~ Commercial Tort Claims,  
11 leases and leaseholds and rents, ~~avoidance actions under section 549 and related~~  
12 ~~recoveries under section 550 of the Bankruptcy Code~~, together with all proceeds of  
13 each of the forgoing, including insurance proceeds (as each such term above is  
14 defined in the UCC, to the extent applicable), ~~and, subject to Final Order, including~~  
15 ~~the proceeds and recoveries from Avoidance Actions (the “**Avoidance Action**~~  
16 ~~**Proceeds**”).~~ ; provided, however, that to the extent that assets constituting DIP  
17 Collateral other than the Commercial Tort Claims are available to satisfy the DIP  
18 Obligations in full, the DIP Lender shall use its best efforts to satisfy the DIP  
19 Obligations from the assets constituting DIP Collateral other than the Commercial  
20 Tort Claims before seeking payment of the DIP Obligations from the Commercial  
21 Tort Claims. Notwithstanding the foregoing, nothing herein shall prevent the DIP

1 Lender from immediately and indefeasibly satisfying the DIP Obligations from the  
2 Commercial Tort Claims. The DIP Collateral shall not include any and all causes of  
3 action and the proceeds thereof arising under chapter 5 of the Bankruptcy Code or  
4 applicable state law equivalents (the “Excluded Avoidance Actions”). For the  
5 avoidance of doubt the Excluded Avoidance Actions shall not include any claims or  
6 causes of action and the proceeds thereof related to accounts receivable collections  
7 regardless of whether certain claims arise under chapter 5 of the Bankruptcy Code or  
8 applicable state law equivalents.

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

1           12.   Priority of DIP Liens.

2           (a)   To secure the DIP Obligations, immediately upon and effective  
3 as of the entry of ~~this~~ the Interim Order, the DIP Lender, is hereby granted on a final  
4 basis, continuing, valid, binding, enforceable, non-avoidable, and automatically and  
5 properly perfected DIP Liens in the DIP Collateral as follows, in each case subject  
6 and subordinate to 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~~ the Interim Order and this Final Order,  
16 the DIP Lender shall have a first priority senior priming lien and security  
17 interest in, among other things, (A) all of the assets of Sunnyside and its  
18 debtor and non-debtor subsidiaries, including but not limited to, the  
19 Banner Bank Collateral, (B) the MidCap A/R Collateral, and (C) the  
20 Debtors' prepetition and postpetition commercial tort claims, including  
21 but not limited to 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).

(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~~ 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,  
4 however, that the DIP Liens shall have priority over all Prepetition  
5 Credit Liens other than the Lapis Senior Holdco Liens; provided further,  
6 that any properly perfected liens on the Debtors' assets held by (i) TIAA  
7 Commercial Finance, Inc. ~~and~~ (ii) Lower Valley Credit Union, ~~and~~  
8 (iii) Med One Capital Funding, LLC are Permitted Prior Liens and shall  
9 not be primed by the DIP Liens; and

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

16 (b) Except as expressly set forth herein, and subject and subordinate to  
17 the Carve-Out, the DIP Liens and the DIP Superpriority Claims shall not be made  
18 junior to or *pari passu* with (1) any lien, security interest or claim heretofore or  
19 hereinafter granted in any of the Chapter 11 Cases or any successor cases, and shall  
20 be valid and enforceable against the Debtors, their estates, any trustee or any other  
21 estate representative appointed or elected in the Chapter 11 Cases or any successor  
cases and/or upon the dismissal or conversion of any of the Chapter 11 Cases or any  
successor cases, (2) any lien that is avoided and preserved for the benefit of the  
Debtors and their estates under section 551 of the Bankruptcy Code or otherwise, ~~;~~  
(3) any intercompany or affiliate lien or claim; and (4) ~~subject to entry of the Final~~  
~~Order,~~ any liens arising after the Petition Date excluding any liens or security

1 interests granted in favor of any federal, state, municipal or other governmental unit,  
2 commission, or board for any liability of the Debtors.

3 (c) *Existing Liens.* TIAA Commercial Finance, Inc. ~~and~~, Lower Valley Credit  
4 Union and Med One Capital Funding, LLC have asserted secured claims against  
5 property of the Debtors. Notwithstanding any statement herein that is contrary to the  
6 existence or priority of such secured claims, any grant of a security interest to the  
7 DIP Lender is junior and subordinate in priority to any properly perfected liens on  
8 the DIP Collateral assets held by TIAA Commercial Finance, Inc. ~~and~~, Lower Valley  
9 Credit Union and Med One Capital Funding, LLC. Notwithstanding anything to the  
10 contrary contained herein, all rights, claims, defenses and/or objections of the  
11 Committee and any third party with respect to any asserted liens on and security  
12 interests in the Debtors' property, including without limitation those asserted by  
13 TIAA Commercial Finance, Inc., Lower Valley Credit Union, and Med One Capital  
14 Funding, LLC, are expressly reserved and preserved and all such asserted liens and  
15 security interests (except those asserted by TIAA Commercial Finance, Inc., Lower  
16 Valley Credit Union, and Med One Capital Funding, LLC) are subject and  
17 subordinate to the Carve-Out.

18 13. Adequate Protection of Lapis Secured Parties. The Lapis Secured  
19 Parties are entitled, pursuant to sections 361, 362, 363(e), 364(d)(1) and 507 of the  
20 Bankruptcy Code, to adequate protection of their interests in all the Lapis Prepetition  
21

1 Collateral (to the extent that the Lapis Secured Parties had valid and perfected liens  
2 on and security interests in the Lapis Prepetition Collateral), including Cash  
3 Collateral, in an amount equal to the aggregate diminution in value of the Lapis  
4 Secured Parties' interests in the Lapis Prepetition Collateral (including Cash  
5 Collateral) from and after the Petition Date, if any, for ~~any~~ the reasons provided under  
6 the Bankruptcy Code, subject and subordinate to the Carve-Out. In consideration for  
7 the foregoing, the Lapis Secured Parties, are hereby granted the following in the  
8 amount of such diminution (collectively, the "**Adequate Protection Obligations**"),  
9 subject to the Carve-Out:

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~~ the 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~~ 2017 SHC  
19 Holdco Liens, subordinate to the Carve-Out, and (ii) to the Lapis 2017 Sunnyside  
20 Liens and Lapis 2017 A/R Liens, subordinate to (A) the DIP Liens and (B) the Carve-  
21 Out (the "**Lapis 2017 Loan Replacement Liens**"). The 2017 Lapis Loan

1 Replacement Liens granted pursuant to this paragraph shall be senior to the 2019  
2 Lapis Loan Replacement Liens, provided nothing herein shall affect the terms of any  
3 intercreditor arrangements between the Lapis Secured Parties.

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

17 ~~Lapis 2019 Loan 507(b) Claims. The Lapis Agent, on behalf of itself and the Lapis 2019~~  
18 ~~Loan Lenders, is hereby granted, an allowed superpriority administrative expense~~  
19 ~~claim as provided in section 507(b) of the Bankruptcy Code in the amount of Lapis~~  
20 ~~2019 Loan Adequate Protection Claim with, except as set forth in this Interim Order,~~  
21 ~~priority in payment over any and all administrative expenses of the kind specified or~~



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

10 (c) ~~(p)~~*Lapis 2017 Loan 507(b) Claims*. The Bond Trustee, on behalf  
11 of itself and the Bondholders, is hereby granted, an allowed superpriority  
12 administrative expense claim as provided in section 507(b) of the Bankruptcy Code  
13 in the amount of Lapis 2017 Loan Adequate Protection Claim with, except as set  
14 forth in ~~this~~ the Interim Order and this Final Order, priority in payment over any and  
15 all administrative expenses of the kind specified or ordered pursuant to any provision  
16 of the Bankruptcy Code (the “Lapis 2017 Loan 507(b) Claims”); which Lapis 2017  
17 Loan 507(b) Claims shall have recourse to and be payable from all of the DIP  
18 Collateral (excluding the Commercial Tort Claims). The Lapis 2017 Loan 507(b)  
19 Claims shall be subject and subordinate only to the Carve-Out and the DIP  
20 Superpriority Claims. The Lapis Secured Parties shall not receive or retain any  
21 payments, property or other amounts in respect of the Lapis 2017 Loan 507(b) Claims

1 unless and until the DIP Obligations (other than contingent indemnification  
2 obligations as to which no claim has been asserted) have indefeasibly been paid in  
3 cash in full and all DIP Commitments terminated. The 2017 Lapis Loan 507(b)  
4 Claims shall be senior to the Lapis 2019 Loan 507(b) Claims, provided nothing herein  
5 shall affect the terms of any intercreditor arrangements between the Lapis Secured  
6 Parties.

7 (d) Lapis 2019 Loan 507(b) Claims. The Lapis Agent, on behalf of  
8 itself and the Lapis 2019 Loan Lenders, is hereby granted, an allowed superpriority  
9 administrative expense claim as provided in section 507(b) of the Bankruptcy Code  
10 in the amount of Lapis 2019 Loan Adequate Protection Claim with, except as set  
11 forth in the Interim Order and this Final Order, priority in payment over any and all  
12 administrative expenses of the kind specified or ordered pursuant to any provision of  
13 the Bankruptcy Code (the “Lapis 2019 Loan 507(b) Claims”); which the Lapis 2019  
14 Loan 507(b) Claims shall have recourse to and be payable from all of the DIP  
15 Collateral (excluding the Commercial Tort Claims). The Lapis 2019 Loan 507(b)  
16 Claims shall be subject and subordinate only to the Carve-Out and the DIP  
17 Superpriority Claims and the Lapis 2017 Loan 507(b). The Lapis Secured Parties  
18 shall not receive or retain any payments, property or other amounts in respect of the  
19 Lapis 2019 Loan 507(b) Claims unless and until the DIP Obligations (other than  
20 contingent indemnification obligations as to which no claim has been asserted) have  
21 indefeasibly been paid in 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. The  
5 Lapis Secured Parties and the Committee shall each be deemed to be an additional  
6 notice party for purposes of the DIP Facility and all parties thereto shall provide the  
7 Lapis Secured Parties and the Committee contemporaneous copies of all notices  
8 pursuant thereto. The Debtors shall additionally provide the Lapis Secured Parties  
9 and the Committee any reports and information as the Lapis Secured Parties and the  
10 Committee may reasonably request from time to time.

11 (f) For the avoidance of doubt, the Excluded Avoidance Actions and  
12 the Commercial Tort Claims shall not be used as collateral for any Adequate  
13 Protection Obligations.

14 14. Lapis Prepetition Debt Reservation. Notwithstanding anything  
15 contained in the Interim Order, this Final Order or any of the DIP Loan Documents,  
16 including any provisions of adequate protection provided to the Lapis Secured  
17 Parties, any and all challenges, rights, claims, objections and/or defenses of the  
18 Committee and/or any third party with respect to the Lapis Prepetition Debt are  
19 expressly reserved and preserved.

1           15.   ~~(#)~~Carve-Out.

2           (a)   ~~(s)~~Carve-Out. As used in ~~this~~the Interim Order and this Final  
3 Order, the term “**Carve-Out**” means, collectively, the sum of: (i) all fees required to  
4 be paid to the Clerk of the Court and to the U.S. Trustee pursuant to 28 U.S.C.  
5 §1930(a) and 31 U.S.C. § 3717; (ii) the reasonable fees and expenses up to \$15,000  
6 incurred by a trustee under section 726(b) of the Bankruptcy Code; and (iii) the  
7 aggregate amount of unpaid fees and expenses of the Debtors’ and the Committee  
8 ~~(which order has not been reversed, vacated or stayed unless such stay is no longer~~  
9 ~~effective)~~ under sections 327(a), 328 or 1103(a) of the Bankruptcy Code (the “**Case**  
10 **Professionals**”), to the extent such fees and expenses are allowed and payable  
11 pursuant to an order of the Court (which order has not been reversed, vacated or  
12 stayed) (“**Allowed Professional Fees**”), and the reimbursement of out-of-pocket  
13 expenses allowed by the Court and incurred by the members of the Committee in the  
14 performance of their duties (but excluding fees and expenses of third party  
15 professionals employed by such members) (“**Committee Expenses**”), which amount  
16 under this clause (iii) shall not exceed the sum of: (x) an aggregate amount per week  
17 limited to the amount set forth in the Budget for Allowed Professional Fees and  
18 Committee Expenses incurred prior to the delivery of a Carve-Out Trigger Notice  
19 (and if such amount exceeds the amount set forth in the Budget, each Case  
20 Professional and/or Committee member shall receive the portion of its Allowed  
21 Professional Fees and/or Committee Expenses, as appropriate, on a pro rata basis in

1 [an amount not to exceed the Budget for Case Professionals](#)) provided (i) the Maturity  
2 Date has not occurred or (ii) Event of Default has not occurred or continuing (the  
3 **“Pre Carve-Out Notice Trigger Cap”**) plus (y) ~~\$75,000~~-[100,000](#) for Allowed  
4 Professional Fees and Committee Expenses incurred from and after the delivery of  
5 the Carve-Out Trigger Notice (defined below) (the **“Post Carve-Out Notice Cap”**  
6 together, with the Pre Carve-Out Notice Trigger Cap, the **“Carve-Out Cap”**). No  
7 portion of the Carve-Out or any Cash Collateral may be used in violation of ~~this~~-[the](#)  
8 Interim [Order or this Final](#) Order. Nothing in ~~this~~-[the](#) Interim [Order or this Final](#)  
9 Order or otherwise shall be construed to increase the Carve-Out if actual (i) Allowed  
10 Professional Fees of any Case Professional or (ii) Committee Expenses are higher in  
11 fact than Carve-Out Cap amount. [Any funds held by the Debtors upon the delivery](#)  
12 [of a Carve-Out Trigger Notice shall be applied dollar for dollar, against the Carve-](#)  
13 [Out.](#)

14 ~~(b)~~ **(b)** ~~(+)Carve-Out Trigger Notice~~. As used herein, the term **“Carve-**  
15 **Out Trigger Notice”** means a written notice provided by the DIP Lender to the  
16 Debtors, counsel to the [Lapis Secured Parties](#), Committee, and the U.S. Trustee that  
17 the Post Carve-Out Notice Trigger Cap is invoked, which notice may be delivered  
18 following the occurrence and during the continuance of an Event of Default and/or  
19 acceleration of the DIP Obligations under the DIP Loan Documents. Upon delivery  
20 of the Carve-Out Trigger Notice to the Debtors (the **“Termination Declaration**  
21 **Date”**), the Debtors shall provide notice by email and facsimile to all Case

1 Professionals, at the email addresses and facsimile numbers set forth in each  
2 Professional's notice of appearance filed with the Bankruptcy Court (or, if there is  
3 no such notice of appearance, at such Professional's last known email address and  
4 facsimile number) within one (1) day after the Debtors' receipt of a Carve-Out  
5 Trigger Notice informing them that such Carve-Out Trigger Notice has been received  
6 and further advising them that the Debtors' ability to pay such Case Professionals  
7 and Committee Expenses is subject to and limited by the Post Carve-Out Notice  
8 Trigger Cap.

9 (c) ~~(h)~~ *Payment of Allowed Professional Fees Prior to Termination*  
10 *Declaration Date.* Any payment or reimbursement made prior to the occurrence of  
11 the Termination Declaration Date in respect of any Allowed Professional Fees and  
12 Committee Expenses shall not reduce the Carve-Out.

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

1           (e) ~~(w)~~*Objection Rights.* Nothing contained herein or in the DIP  
2 Loan Documents, including the inclusion of line items in the Budget for Professional  
3 Fees, is intended to constitute, nor shall be construed as consent to the ~~allowed~~  
4 allowance of any Case Professional's fees, costs and expenses by any party and shall  
5 not affect the rights of the Debtors, the DIP Lender-, the Committee, the Lapis  
6 Secured Parties or any other party in interest to object to the allowance and/or  
7 payment of any such amounts incurred or requested.

8           (f) *Payment of Compensation.* Nothing contained herein or in the  
9 DIP Loan Documents shall affect the rights of the Case Professionals to seek  
10 allowance and payment of fees and expenses in excess of the amounts set forth in the  
11 Carve-Out and Budget. Upon the indefeasible payment in full in cash and discharge  
12 of the DIP Obligation, nothing contained herein shall affect the rights of the Debtors  
13 to pay such amounts as approved by the Court.

14           (g) *Carve-Out Priority.* The Carve-Out shall be senior in all respects  
15 to the DIP Liens, the DIP Superpriority Claims, the Prepetition Credit Liens, the liens  
16 and/or claims of any Lapis Secured Parties, and any and all other forms of adequate  
17 protection, liens or claims securing the DIP Obligations, the Adequate Protection  
18 Obligations and/or the obligations of any Prepetition Secured Parties or Lapis  
19 Secured Parties.

20           16. ~~(x)~~Bankruptcy Code Sections 506(c) and 552(b) Waivers. ~~Subject to~~  
21 ~~entry of a Final Order, without~~ Without limiting the Carve-Out, the Debtors

1 irrevocably waive and shall be prohibited from asserting (i) any surcharge claim,  
2 under section 506(c) of the Bankruptcy Code or otherwise, for any costs and expenses  
3 incurred in connection with the preservation, protection or enhancement of, or  
4 realization by the DIP Lender upon the DIP Collateral and no costs or expenses of  
5 administration that have been or may be incurred in any of the Chapter 11 Cases at  
6 any time shall be charged against the DIP Lender or its claims or liens (including any  
7 claims or liens granted pursuant to ~~this the~~ Interim Order and this Final Order), and  
8 (ii) the “equities of the case” exception under section 552(b) of the Bankruptcy Code  
9 in connection with the DIP Facility.

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

15 18. ~~(zz)~~ 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 the~~ Interim Order and this Final Order, including the Carve-Out, without the prior  
19 written consent of the DIP Lender (and no such consent shall be implied from any  
20 other action, inaction or acquiescence by the DIP Lender) or order of this Court;  
21 provided for the avoidance of doubt the Debtors shall comply with ~~Section~~ section



1 6.4 of the DIP Loan Agreement. Notwithstanding anything otherwise provided  
2 herein, 100% of any net cash proceeds of any sale of DIP Collateral outside of the  
3 ordinary course of business shall, subject to the satisfaction of the Carve-Out and the  
4 lien priorities outlined in paragraph ~~12~~13 herein, be used to immediately satisfy the  
5 DIP Obligations.

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

20 20. ~~(bb)~~ Automatic Effectiveness of Liens. The DIP Liens shall not be  
21 subject to a challenge and shall attach and become valid, perfected, binding,

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

1 the Interim Order or this Final Order as a financing statement with any filing or  
2 recording office or with any registry of deeds or similar office, in addition to, or in  
3 lieu of, such financing statements, notices of liens or similar statements.<sup>45</sup>

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

15 22. ~~(dd)~~ Reservation of Rights of the DIP Lender. Notwithstanding any  
16 other provision of ~~this~~ the Interim Order and this Final Order to the contrary, the  
17 entry of this ~~Interim-Final~~ Order is without prejudice to, and does not constitute a  
18 waiver of, expressly or implicitly, or otherwise impair: (i) any of the rights of the DIP  
19 Lender under the Bankruptcy Code or under non-bankruptcy law, including, without  
20

21 <sup>45</sup> The provisions of section 1146(a) of the Bankruptcy Code do not apply herein.

1 limitation, the right of any of such parties to (a) request modification of the automatic  
2 stay of section 362 of the Bankruptcy Code, (b) request dismissal of any of these  
3 Chapter 11 Cases, conversion of any of these Chapter 11 Cases to cases under chapter  
4 7, or appointment of a chapter 11 trustee or examiner with expanded powers in any  
5 of these Chapter 11 Cases, (c) seek to propose, subject to the provisions of section  
6 1121 of the Bankruptcy Code, a chapter 11 plan or plans; or (ii) any other rights,  
7 claims, or privileges (whether legal or equitable or otherwise) of the DIP Lender.  
8 The delay in or failure of the DIP Lender to seek relief or otherwise exercise their  
9 respective rights and remedies shall not constitute a waiver of any of the DIP  
10 Lender's rights and remedies.

11 23. ~~(ee)~~ Right to Credit Bid.

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

1           **(b)** ~~(gg)~~ A credit bid may be applied only to reduce the cash  
2 consideration with respect to those assets in which the party submitting such credit  
3 bid holds a perfected security interest. The DIP Lender shall be considered a  
4 “Qualified Bidder” with respect to their rights to acquire all or any of the assets by  
5 credit bid.

6           **24.** ~~(hh)~~ Remedies and Notice Upon the Occurrence of Maturity Date or  
7 Event of Default. ~~Subject to entry of a Final Order, upon~~ Upon prior written notice  
8 by the DIP Lender to counsel for the Debtors, counsel for the Committee, and the  
9 U.S. Trustee of the occurrence of an Event of Default (each as defined in the DIP  
10 Loan Documents and incorporated herein by reference) and without further order of  
11 the Court, the DIP Lender may (i) declare the DIP Obligations to be immediately due  
12 and payable; (ii) terminate the DIP Lender’s commitment under the DIP Facility  
13 (other than the Carve-Out) or use of Cash Collateral; (iii) charge default rate interest;  
14 and/or (iv) upon five (5) business days’ notice to counsel to the Debtors, counsel to  
15 the Committee and the U.S. Trustee, exercise all default-related rights and remedies  
16 against the DIP Collateral, without further order of or application or motion to the  
17 Bankruptcy Court, and without restriction or restraint by any stay under sections 362  
18 and 105 of the Bankruptcy Code or otherwise, provided however, that during the five  
19 (5) business day notice period, any party in interest shall have the right to file a  
20 pleading in opposition to the DIP Lender’s exercise of rights and remedies including  
21 the delivery of the Carve-Out Trigger Notice; provided further that, unless otherwise

1 ordered by the Court, the only issue that may be raised by any party in such pleading  
2 shall be whether in fact, an Event of Default has occurred and is continuing; but  
3 provided further that, if an Event of Default occurs as a result of the Debtors' failure  
4 to indefeasibly satisfy the DIP Obligations by the Stated Maturity Date (as defined  
5 in the DIP Loan Documents), the above referenced five (5) day notice period shall  
6 not apply and the Debtors and all other interested parties shall not have any challenge  
7 rights, except as may be otherwise ordered by the Court.

8 25. (ii) Modification of Stay. Subject to the terms set forth herein, the  
9 automatic stay imposed under section 362(a) of the Bankruptcy Code is hereby  
10 modified as necessary to effectuate all of the terms, rights, benefits, privileges,  
11 remedies and provisions of this ~~Interim~~-Final Order, and the DIP Loan Documents  
12 including without limitation, to permit the DIP Lender to exercise all rights and  
13 remedies provided for in the DIP Loan Documents and take any and all actions  
14 provided therein, in each case, in accordance with paragraph ~~23~~-25 of this ~~Interim~~  
15 Final Order.

16 26. (ii) Survival of DIP Liens, DIP Superpriority Claims, and Other Rights.  
17 If, in accordance with section 364(e) of the Bankruptcy Code, this ~~Interim~~-Final  
18 Order does not become a final non-appealable order, if a trustee terminates this  
19 ~~Interim~~-Final Order, or if any of the provisions of ~~this the~~ Interim Order or this Final  
20 Order are hereafter modified, amended, vacated or stayed by subsequent order of this  
21 Court or any other court, such termination or subsequent order shall not affect the

1 priority, validity, enforceability or effectiveness of (or subordination to the Carve-  
2 Out of) any lien, security interests or any other benefit or claim authorized hereby  
3 with respect to any DIP Obligations or Adequate Protection Obligations incurred  
4 prior to the effective date of such termination or subsequent order. All such liens,  
5 security interests, claims and other benefits shall be governed in all respects by the  
6 original provisions of ~~this~~the Interim Order and this Final Order, and the DIP Lender  
7 and Lapis Secured Parties shall be entitled to all the rights, remedies, privileges and  
8 benefits granted herein, including the liens and priorities granted herein, with respect  
9 to any DIP Loan and Adequate Protection Obligations, subject to the Carve-Out and  
10 any and all challenges, rights, claims, defenses and/or objections of the Committee  
11 and any third parties as set forth herein.

12 27. ~~(kk)~~ Survival of ~~this~~the Interim Order and this Final Order. The  
13 provisions of ~~this~~the Interim Order and this Final Order and any actions taken  
14 pursuant hereto shall survive the entry of any order: (i) confirming any plan of  
15 reorganization in any of the Chapter 11 Cases; (ii) converting any of the Chapter 11  
16 Cases to a chapter 7 case; or (iii) dismissing any of the Chapter 11 Cases, and the  
17 terms and provisions of ~~this~~the Interim Order and this Final Order as well as the DIP  
18 Superpriority Claims and the DIP Liens in the DIP Collateral granted pursuant to ~~this~~  
19 the Interim Order and this Final Order and the DIP Loan Documents shall continue  
20 in full force and effect notwithstanding the entry of any such order. Such claims and  
21 liens shall maintain their priority as provided by ~~this~~the Interim Order and this Final

1 Order and the DIP Loan Documents, and to the maximum extent permitted by law,  
2 until all of the DIP Obligations are indefeasibly paid in full in cash and discharged  
3 or otherwise treated under a plan of reorganization, which is reasonably acceptable  
4 to the DIP Lender. In no event shall any plan of reorganization be allowed to alter  
5 the terms of repayment of any of the DIP Obligations from those set forth in the DIP  
6 Loan Documents unless agreed to by and among the Debtors and the DIP Lender,  
7 upon consultation with the Committee.

8 28. (H) Modifications of DIP Loan Documents. The Debtors and the DIP  
9 Lender are hereby authorized to implement, in accordance with the terms of the DIP  
10 Loan Documents, any non-material modifications of the DIP Loan Documents  
11 without further notice, motion or application to, order of or hearing before, this Court,  
12 upon notice to counsel for the Committee. Any material modification or amendment  
13 to the DIP Loan Documents shall only be permitted pursuant to an order of this Court,  
14 after being submitted to this Court upon five (5) days' notice to the U.S. Trustee,  
15 counsel to the Committee, and counsel to the Lapis Secured Parties, each of whom  
16 reserves all rights and objections with respect to any such material modification or  
17 amendment; provided, that any forbearance from, or waiver of, (i) a breach by the  
18 Debtors of a covenant- representation or any other agreement or (ii) a default or an  
19 Event of Default, in each case under the DIP Loan Documents shall not require an  
20 order of this Court; provided, that the Debtor or the DIP Lender provide notice of  
21 such forbearance or waiver to counsel to the Committee. In the event of any



1 inconsistency between this ~~Interim-Final~~ Order and the DIP Loan Agreement, this  
2 ~~Interim-Final~~ Order shall control.

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

14 30. ~~(mm)~~ Financial Information. The Debtors shall deliver to the DIP Lender  
15 and the Committee such financial and other information concerning the business and  
16 affairs of the Debtors and any of the DIP Collateral as may be required pursuant to  
17 the DIP Loan Documents and/or as the DIP Lender or the Committee shall reasonably  
18 request from time to time. The Debtors shall allow the DIP Lender access to the  
19 premises in accordance with the terms of the DIP Loan Documents for the purpose  
20 of enabling the DIP Lender to inspect and audit the DIP Collateral and the Debtors'  
21 books and records.

1 31. ~~(oo)~~ Proofs of Claim. Notwithstanding any order entered by the  
2 Bankruptcy Court in relation to the establishment of a bar date in the Chapter 11  
3 Cases to the contrary, or otherwise, the DIP Lender shall not be required to file proofs  
4 of claim in the Chapter 11 Cases for any claim allowed herein.

5 32. ~~(pp)~~ Immediate Effect of Order. The terms and conditions of this  
6 ~~Interim-Final~~ Order shall be effective and immediately enforceable upon its entry by  
7 the Clerk of the Court notwithstanding any potential application of Bankruptcy Rule  
8 6004(h) or otherwise. Furthermore, to the extent applicable, the notice requirements  
9 and/or stays imposed by Bankruptcy Rules 4001(a)(3), 6003(b), and 6004(a) are  
10 hereby waived for good and sufficient cause. The requirements of Bankruptcy Rules  
11 4001, 6003, and 6004, in each case to the extent applicable, are satisfied by the  
12 contents of the Motion.

13 ~~3. Notwithstanding any other provision of this Interim Order, the findings~~  
14 ~~of fact and rulings of law herein are for purposes of this Interim Order only, and are~~  
15 ~~without prejudice to, and shall not constitute any waiver of, the rights, claims and~~  
16 ~~defenses of the Lapis Secured Parties or the Debtors in connection with any further~~  
17 ~~interim order or any Final Order on the Motion, all of which shall be and hereby are~~  
18 ~~reserved.—~~

19   
20   
21   
///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*

7

8

9

**EXHIBIT 1**

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**DIP LOAN AGREEMENT**

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