

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

In re:

MIDWEST CHRISTIAN VILLAGES, INC.  
*et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 24-42473-659  
(Joint Administration Requested)

Hearing Date: July 17, 2024  
Hearing Time: 2:00 p.m. (CT)  
Hearing Location: Courtroom 7 North

**DEBTORS' MOTION FOR INTERIM AND FINAL ORDERS (1) AUTHORIZING THE DEBTORS TO OBTAIN POST-PETITION FINANCING, (2) AUTHORIZING DEBTORS IN POSSESSION TO USE CASH COLLATERAL, (3) PROVIDING ADEQUATE PROTECTION, (4) GRANTING LIENS, SECURITY INTERESTS AND SUPERPRIORITY CLAIMS; AND (5) SCHEDULING A FINAL HEARING**

The above-captioned debtors and debtors-in-possession (the “**Debtors**”), by and through their proposed counsel, submit this motion (the “**DIP Financing Motion**”), and respectfully move the Court pursuant to §§ 105, 361, 362, 363 and 364 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 9013-1 of the Local Rules of Bankruptcy Procedure for the Eastern District of Missouri (the “**Local Rules**” or “**LBR**”), for the

<sup>1</sup> The address of the Debtors' headquarters is 2 Cityplace Dr, Suite 200, Saint Louis, MO 63141-7390. The last four digits of the Debtors' federal tax identification numbers are: (i) Midwest Christian Villages, Inc. [5009], (ii) Hickory Point Christian Village, Inc. [7659], (iii) Lewis Memorial Christian Village [3104], (iv) Senior Care Pharmacy Services, LLC [1176], (v) New Horizons PACE MO, LLC [4745], (vi) Risen Son Christian Village [9738], (vii) Spring River Christian Village, Inc. [1462], (viii) Christian Homes, Inc. [1562], (ix) Crown Point Christian Village, Inc. [4614], (x) Hoosier Christian Village, Inc. [3749], (xi) Johnson Christian Village Care Center, LLC [8262], (xii) River Birch Christian Village, LLC [7232], (xiii) Washington Village Estates, LLC [9088], (xiv) Christian Horizons Living LLC [4871], (xv) Wabash Christian Therapy and Medical Clinic, LLC [2894], (xvi) Wabash Christian Village Apartments, LLC [8352], (xvii) Wabash Estates, LLC [8743], (xviii) Safe Haven Hospice, LLC [6886], (xix) Heartland Christian Village, LLC [0196], (xx) Midwest Senior Ministries, Inc. [3401] and (xxi) Shawnee Christian Nursing Center, LLC [0068].



entry of an interim order, substantially in the form attached hereto as “**Exhibit A**” (the “**Interim Order**”) and a final order (the “**Final Order**”) (together with the Interim Order, the “**DIP Orders**”): (1) authorizing the Debtors to enter into a senior secured, superpriority debtor in possession financing facility with UMB Bank, N.A. (“**UMB**”) as lender (in such capacity, the “**DIP Lender**”) in an (a) interim amount not to exceed three million dollars (\$3,000,000) and only as needed to avoid immediate and irreparable harm, and (b) after a final hearing, an amount to be determined upon finalized of an extended budget (as amended, modified or otherwise in effect from time to time, the “**DIP Facility**”), substantially on the terms set forth in the *First Day Declaration of Kathleen (Kate) Bertram* (“**Bertram Declaration**”) filed in support of this DIP Financing Motion,<sup>2</sup> and (c) granting the DIP Liens and the DIP Superpriority Claims (in each case, as defined below); (2) authorizing the Debtors to use cash collateral; (3) authorizing the Debtors to grant adequate protection to UMB, in its capacities as pre-petition master trustee and bond trustee (in such capacity, the “**Trustee**”); (4) granting liens, security interests and superpriority claims in favor of the DIP Lender; (5) modifying the automatic stay as imposed by § 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms of the DIP Facility and the DIP Orders; and (6) scheduling an interim hearing to approve the proposed Interim Order and a final hearing with respect to Final Order (the “**Final Hearing**”). This DIP Financing Motion is based upon the files and records herein, the accompanying Bertram Declaration and the exhibits thereto, the *Declaration of Shawn O’Conner in Support of Motion to Approve DIP Financing and Cash Collateral Usage* (“**O’Conner Declaration**”) filed contemporaneously herewith, and the anticipated consent of the DIP Lender, described herein.

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<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the proposed Interim Order or the First Day Declaration, as applicable.

The relief sought in the DIP Financing Motion is essential in order for the Debtors to pay their ordinary course operating expenses while it coordinates and conducts an orderly going concern sale of its operations and a sale of substantially all of their assets pursuant to § 363 of the Bankruptcy Code. With the requested funding, the Debtors will be able to maintain their assets, maximizing the value available for creditors and other stakeholders. In support of the DIP Financing Motion, the Debtors respectfully represent as follows:

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 and Rule 81-9.01(B)(1) of the Local Rules of the United States District Court for the Eastern District of Missouri. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. The statutory and procedural predicates for the relief sought herein are §§ 105, 361, 362, 363, 364, and 507 of the Bankruptcy Code, Rules 2002, 4001, 6004 and 9014 of the Bankruptcy Rules, and Rule 9013-1 of the Local Rules.

### **BACKGROUND**

#### **Bankruptcy Cases**

3. On July 16, 2024 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief pursuant to chapter 11 of the Bankruptcy Code.

4. The Debtors continue in the operation and management of their business as debtors-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

5. No trustee, examiner or official committee has been appointed in these chapter 11 cases.

6. Simultaneously with the filing of this DIP Financing Motion, the Debtors filed the Bertram Declaration and the O’Conner Declaration. As described in more detail in the Bertram Declaration, the Debtors operate a mix of independent, assisted, and supportive living skilled nursing campuses in 11 locations across the Midwest, serving over 1,000 residents. The Debtors offer residential units for their residents (each a “**Resident**”) in independent living, assisted living, memory care, or skilled nursing units and provide those Residents with necessary healthcare services, multiple entertainment outlets and other social benefits. The Debtors employ approximately 960 employees and also have individuals from staffing agencies to run their operations. The Debtors filed chapter 11 cases to pursue one or more going concern sales and/or going concern affiliates for each of their facilities.

#### **The Secured Bond Obligations**

7. Certain of the Debtors<sup>3</sup> have entered into a Master Trust Indenture dated as of June 1, 2007 (as supplemented and amended from time to time, the “**Master Indenture**”) with UMB as the successor master trustee (the “**Master Trustee**”). The Master Indenture authorizes the Obligated Group Members to issue Direct Note Obligations or other evidences of indebtedness (collectively, the “**Obligations**”) in order to secure financing or refinancing of senior residential and health care facilities and for other lawful and proper corporate purposes. The Obligations are joint and several liabilities of the Members of the Obligated Group.

8. From time to time, Christian Homes, Inc., on behalf of itself and on behalf of the other Members of the Obligated Group, as Obligated Group Agent, has issued Obligations to

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<sup>3</sup> Christian Homes, Inc. (“**Christian Homes**”); Crown Point Christian Village, Inc. (f/k/a Chicagoland Christian Village, Inc.); Hickory Point Christian Village, Inc. (f/k/a Fair Havens Christian Homes, Inc.); Hoosier Christian Village, Inc.; Lewis Memorial Christian Village; Midwest Senior Ministries, Inc.; New Horizons PACE MO, LLC; Risen Son Christian Village; Senior Care Pharmacy Services, LLC; and Spring River Christian Village, Inc. (each, an “**Obligated Group Member**”)

evidence and secure the Members' obligations relating to a number of financings, including bank and bond financings. In order to secure the payment of the Obligations, the Members of the Obligated Group have granted a security interest in favor of the Master Trustee in substantially all of the real property and personal property of such Members, including all Gross Revenues (as defined in the Master Indenture) of the Obligated Group.

9. On or about June 10, 2024, the Trustee swept all reserves in its possession and applied them to outstanding loan obligations.

A. As of the petition date, approximately \$75,460,000 in principal amount of Obligations is outstanding. The outstanding Obligations were issued by the Obligated Group to secure the Obligated Group's obligations with respect to the following bonds:

- (i) Illinois Finance Authority Revenue Refunding Bonds, Series 2016 (Christian Homes, Inc. Obligated Group) (the "Series 2016 Bonds");
- (ii) Health and Educational Facilities Authority of the State of Missouri Senior Living Facilities Revenue Bonds (Christian Horizons Obligated Group), Series 2018 (the "Series 2018 Bonds");
- (iii) Illinois Finance Authority Revenue Bonds, Series 2021A (Christian Horizons Obligated Group) (the "Series 2021A Bonds"); and
- (iv) Illinois Finance Authority Taxable Revenue Bonds, Series 2021B (Christian Horizons Obligated Group) (the "Series 2021B Bonds," and collectively with the Series 2016 Bonds, the Series 2018 Bonds and the Series 2021A Bonds, the "Bonds").

10. Each of the series of Bonds has been issued under a separate bond indenture under which UMB Bank N.A. also serves as the successor bond trustee (in such capacity the "Bond Trustee" and sometimes referred to together with the Master Trustee as the "Trustee"). Specifically, (i) the Series 2016 Bonds were issued pursuant to that certain Bond Trust Indenture dated as of March 1, 2016 (the "2016 Bond Indenture") between the Illinois Finance Authority (the "Illinois Issuer") and Wells Fargo Bank, National Association ("Wells Fargo"), as original

bond trustee thereunder; (ii) the Series 2018 Bonds were issued pursuant to that certain Bond Trust Indenture dated as of December 1, 2018 (the “**2018 Bond Indenture**”) between the Health and Educational Facilities Authority of the State of Missouri (the “**Missouri Issuer**”) and Wells Fargo, as original bond trustee thereunder; and (iii) the Series 2021A Bonds and the Series 2021B Bonds were issued pursuant to two separate Bond Trust Indentures, each dated as of September 1, 2021 (together, the “**2021 Bond Indenture**”), each between the Illinois Issuer and Wells Fargo, as original bond trustee thereunder. The 2016 Bond Indenture, the 2018 Bond Indenture and the 2021 Bond Indentures are referred to collectively herein as the “**Bond Indentures**.”

11. The proceeds of the Series 2016 Bonds were loaned to Obligated Group Members pursuant to that certain Loan Agreement dated as of March 1, 2016 (the “**2016 Loan Agreement**”) between the Illinois Issuer and Christian Homes. The proceeds of the Series 2018 Bonds were loaned to Obligated Group Members pursuant to that certain Loan Agreement dated as of December 1, 2018 (the “**2018 Loan Agreement**”) between the Missouri Issuer and Christian Homes. The proceeds of the Series 2021A Bonds and the Series 2021B Bonds were loaned to Obligated Group Members pursuant to two separate Loan Agreements, each dated as of September 1, 2021 (together, the “**2021 Loan Agreements**”), each between the Illinois Issuer and Christian Homes. The 2016 Loan Agreement, the 2018 Loan Agreement and the 2021 Loan Agreements are referred to collectively herein as the “**Loan Agreements**.” The Illinois Issuer and the Missouri Issuer, as applicable, assigned their respective rights under the Loan Agreements to the Bond Trustee in accordance with the Bond Indentures.

12. The Obligated Group Members used the proceeds of the Bonds primarily to finance or refinance the acquisition, construction, equipping or improving, as applicable, of various communities owned and operated by Obligated Group Members. As indicated above, the

Obligated Group Members' payment obligations with respect to the Bonds are evidenced and secured by, *inter alia*, certain Direct Note Obligations (the "**Master Obligations**") issued under and pursuant to that certain Master Trust Indenture among the Obligated Group Members and Wells Fargo, as original master trustee thereunder.

### **The Bond Claim**

13. As of July 15, 2024, the amounts due and owing by the Obligated Group Members with respect to the Bonds and the obligations under the Bond Documents (as defined below) are as follows (collectively, the "**Bond Claim**"):

- i. Unpaid principal on the Bonds in the aggregate amount of \$75,570,000, consisting of \$27,795,000 in principal amount of Series 2016 Bonds, \$27,685,000 in principal amount of Series 2018 Bonds, \$12,860,000 in principal amount of Series 2021A Bonds, and \$7,230,000 in principal amount of Series 2021B Bonds;
- ii. Accrued but unpaid interest on the Bonds in the aggregate amount, as of July 1, 2024, of \$585,979.16, consisting of \$230,375.00 in accrued interest on the Series 2016 Bonds, \$230,708.33 in accrued interest on the Series 2018 Bonds, \$85,733.33 in accrued interest on the Series 2021A Bonds, and \$39,162.50 in accrued interest on the Series 2021B Bonds; and
- iii. Unliquidated, accrued and unpaid fees and expenses of the Trustee and its professionals incurred through the Petition Date. Such amounts, when liquidated, shall be added to the aggregate amount of the Bond Claim.

### **HUD Loans and Non-Obligated Group**

14. There are four facilities not owned by a Member of the Obligated Group. The Debtors own and operate two Facilities – Wabash Estates in Carmi, Illinois and Washington Village Estates in Washington, Illinois (together, the "**HUD-Financed Properties**") – subject to mortgages securing loans made by or through the United States Department of Housing and Urban Development ("**HUD**," and such loans, "**HUD Loans**"). The HUD-Financed Properties are not currently subject to mortgages in favor of the Trustee.

15. Wabash Estates is located in Carmi, Illinois (White County). It is financed by a HUD-insured loan (FHA Project No. 072-22118) from ORIX Real Estate Capital, LLC, a Delaware limited liability company as successor by conversion and merger to Lancaster Pollard Mortgage Company, in the amount of \$4,800,000. The loan originally closed on or about September 1, 2013 and will mature on October 1, 2048. On July 1, 2020, the loan documents were modified to reduce the interest rate (on a going forward basis) from 3.73% per annum to 2.95% per annum. Principal and interest payments in the amount of \$18,664.45 are due monthly. The property is encumbered by a mortgage securing the loan and related HUD regulatory agreement and extended use agreement. The property is encumbered by a mortgage securing the loan and related HUD regulatory agreement and extended use agreement. The IHDA Financed Property is not currently subject to mortgages in favor of the Trustee. Wabash Estates was initially a limited partnership but in 2024 was converted to an Illinois limited liability company following the exit of its limited partners.

16. Washington Village Estates is located in Washington, Illinois (Tazewell County). It is financed by a HUD-insured loan (FHA Project No. 071-22235) from ORIX Real Estate Capital, LLC, a Delaware limited liability company, as successor by conversion and merger to Lancaster Pollard Mortgage Company, in the original principal amount of \$5,840,000. The loan originally closed on or about September 1, 2013 and will mature on October 1, 2048. On July 1, 2020, the loan documents were modified to reduce the interest rate (on a going forward basis) from 3.73% per annum to 2.95% per annum. Principal and interest payments in the amount of \$24,920.82 are due monthly. The property is encumbered by a mortgage securing the loan and related HUD regulatory agreement and extended use agreement. Washington Village Estates was



initially a limited partnership but in 2024 was converted to an Illinois limited liability company following the exit of its limited partners.

17. For the Wabash Estates and Washington Village Estates facilities, there will be no lien on the applicable segregated resident security deposits. For these two facilities, the approximate security deposit amounts, currently held by the Debtors in separate bank accounts, are as follows: \$4,000.36 (Wabash Apartments) and \$6,216.83 (Washington Village Estates).

18. One of the other two remaining facilities outside the obligated group has mortgage debt. Wabash Christian Village Apartments is located on property adjacent to Wabash Estates. The Wabash Christian Village Apartments property is financed by a loan from the Illinois Housing Development Authority (“IHDA”) in the amount of \$425,000, which closed on or about December 20, 1995 and will mature on December 1, 2025. The loan accrues interest at a rate of 0% per annum. The entire amount of the loan is due at maturity. The property is encumbered by a mortgage securing the loan. Similar to the Wabash Estates HUD loan, originally the borrower was a limited partnership.

19. By this DIP Financing Motion, the Debtors are not seeking to prime the HUD or IHDA related loans at the interim stage. However, there will be a junior lien on the HUD and IHDA properties. The Debtors and DIP Lender reserve the right to seek priming of the HUD and IHDA related loans as part of the Final Hearing and Final Order.

**The Debtors’ Need for Use of Cash Collateral**

20. As the Debtors have entered into bankruptcy proceedings, the Debtors need the ability to obtain postpetition financing in the form of the DIP Facility. The Debtors require access to Cash Collateral of the Trustee and the cash collateral, if any, of HUD, and the DIP Facility to satisfy ongoing cash requirements, pay employees, pay utilities, to fund ordinary course day-to-

day expenditures, and to conduct an orderly sale while maintaining operations through the sale of assets.

21. Without immediate access to cash collateral and DIP Facility proceeds, the going-concern value of the Debtors' non-cash assets will be impaired and Debtors will be unable to satisfy its present obligations, resulting in immediate and irreparable harm to the Debtors' estates. The importance of the Debtors' immediate need for use of cash collateral and DIP Facility proceeds cannot be overstated, and is critical to the Debtors' efforts to maximize returns to creditors in these cases.

**The Debtors' Need for Debtor-in-Possession Financing**

22. A critical need exists for the Debtors to obtain funds to cover the operational, capital and administrative needs of the Facilities, solely to the extent set forth under the DIP Budget and under the DIP Facility (as each is defined below). The Debtors are unable to obtain postpetition financing on an unsecured basis under §§ 364(c)(1) or 503(b)(1) of the Bankruptcy Code. Further, the Debtors assert that they are also unable to obtain secured credit from sources other than the DIP Lender that would be allowable under §§ 364(c)(2), 364(c)(3), and 364(d)(1) of the Bankruptcy Code for the purposes set forth in the Interim Order. Further, the Trustee would not consent to any priming liens and would have argued that the Debtors could not have provided adequate protection for any such proposed financing.

23. In addition to the use of the Trustee's Cash Collateral, the DIP Lender has agreed to provide the requested Initial DIP Loans (as defined below) under the DIP Facility and use of Cash Collateral in accordance with the terms contained in the Interim Order, in the amounts, categories and times set forth in the DIP Budget (as defined below), which Initial DIP Loan shall be used for the necessary operational costs associated with the Facilities and other costs and

expenses of administration of the chapter 11 cases for the period commencing with entry of the Interim Order and continuing until entry of the Final Order, whereupon the DIP Budget will be extended, subject to the approval of the DIP Lender and the Trustee, in their sole discretion.

24. Without the Initial DIP Loans, the Debtors will be unable to pay necessary payroll, costs, and operating expenses and obtain goods and services in a manner that will avoid irreparable harm to the Debtors' estates and to the Residents. At this time, the Debtors' ability to finance the ongoing operation and availability of sufficient liquidity through the incurrence of new indebtedness for borrowed money and other financial accommodations as provided herein are vital to the preservation and maintenance of the going concern of the Debtors' estates and to otherwise provide the necessary services to the Residents.

25. The Debtors have requested that the DIP Lender provide the Initial DIP Loans up to an aggregate amount of \$3.0 million, which funds shall be used by the Debtors solely to the extent provided in the DIP Budget attached as **Exhibit B**. At the expiration of the Interim Order, the DIP Lender, subject to entry of the Final Order in a form acceptable to the DIP Lender, shall continue to advance funds through additional DIP loans (together with the Initial DIP Loans, the "**DIP Loans**"), up to an aggregate amount of to be determined upon finalization of an extended DIP Budget.

26. The Debtors understand that the DIP Lender is willing to provide the Initial DIP Loans, subject to the terms and conditions set forth herein and in the DIP Loan Documents, including the provisions of the Interim Order providing that the Post-Petition Liens (as defined in the Interim Order) and the various claims, superpriority claims and other protections granted pursuant to the Interim Order will not be affected by any subsequent reversal or modification of the Interim Order or any other order, as provided in § 364(e) of the Bankruptcy Code.

27. The DIP Lender's lending of the Initial DIP Loans is conditioned upon the grant of a lien that: (i) will prime and remain senior to the Trustee's Pre-Petition Liens; and (ii) will otherwise constitute a first priority lien in all Post-Petition Collateral (as defined in the Interim Order), subject only to the Carve-Out (as defined below). Post-Petition Collateral shall exclude (i) resident deposits held in one or more segregated accounts in the aggregate amount of \$10,000, (ii) the HUD-Financed Properties, (iii) the IHDA-Financed Property and (iv) actions for preferences, fraudulent conveyances or other avoidance power claims and any recoveries under sections 542, 544, 545, 547, 548 (exclusive of transferees under section 549), 550 and 553 and the Bankruptcy Code (collectively, the "**Avoidance Actions**") and the proceeds thereof; provided that the DIP Credit Agreement contemplates that the Post-Petition Collateral includes the HUD-Financed Properties, the IHDA-Financed Property, Avoidance Actions and proceeds thereof, and the upon entry of the Final Order; and, provided further that the DIP Lender reserves the right to request that the Post-Petition Collateral include the HUD-Financed Properties, Avoidance Actions and proceeds thereof in any Final Order on the Motion.

28. The terms of the Initial DIP Loans have been negotiated in good faith and at arm's length among the Debtors and the DIP Lender. The terms of the Initial DIP Loans are at least as favorable to the Debtors as those available from alternative sources, under all of the circumstances. Given the current market conditions and under the particular circumstances of these chapter 11 cases, no other sources of funding are available on better overall terms. Given the exigencies of the case, the Debtors believe the Initial DIP Loans are the best and only option.

29. As such, the funds advanced should be deemed to have been extended by the DIP Lender in "good faith" as that term is used in § 364(e) of the Bankruptcy Code and based upon the express reliance of the protections offered by § 364(e) of the Bankruptcy Code and the Post-

Petition Liens and the Superpriority Claim (defined below) should be entitled to the full protection of section 364(e) of the Bankruptcy Code, including in the event that the Interim Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

30. The DIP Loan Documents allow the Debtors to borrow additional funds from the DIP Lender postpetition. In exchange for the DIP Facility, the Debtors propose to grant the DIP Lender a postpetition lien with superpriority administrative expense claim status (the “**Postpetition Lien**”) for all monies borrowed pursuant to the DIP Facility and in accordance with the terms of the Loan Agreement. The DIP Loan Documents provide for the roll-up of the prepetition debt owed to the Lender, on a dollar-for-dollar basis, into postpetition debt. The key terms of the DIP Facility are summarized below.

**CONCISE STATEMENTS REGARDING DIP FINANCING PURSUANT TO  
BANKRUPTCY RULE 4001(B)**

<b>Borrowers</b> Bankr. R. 4001(c)(1)(B)	<p>The following borrowers, as debtors-in-possession in the Bankruptcy Cases:</p> <ul style="list-style-type: none"> <li>i. Christian Homes, Inc. (sometimes referred to herein as the “<b><u>Obligor</u></b>”)</li> <li>ii. Crown Point Christian Village, Inc. (f/k/a Chicagoland Christian Village, Inc.)</li> <li>iii. Hickory Point Christian Village, Inc. (f/k/a Fair Havens Christian Homes, Inc.)</li> <li>iv. Hoosier Christian Village, Inc.</li> <li>v. Lewis Memorial Christian Village</li> <li>vi. Midwest Senior Ministries, Inc.</li> <li>vii. New Horizons PACE MO, LLC</li> <li>viii. Risen Son Christian Village</li> <li>ix. Senior Care Pharmacy Services, LLC</li> <li>x. Spring River Christian Village, Inc <ul style="list-style-type: none"> <li>• (Each of the foregoing i. through x. are members (each, an “<b><u>Obligated Group Member</u></b>,” and collectively, the “<b><u>Obligated Group Members</u></b>” or the “<b><u>Obligated Group</u></b>”) of the Obligated Group formed under and pursuant to that certain Master Trust Indenture dated as of June 1, 2007 (as amended or supplemented from time to time, the “<b><u>Master Indenture</u></b>”) among the</li> </ul> </li> </ul>
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	<p>Obligated Group and UMB Bank, N.A., as successor master trustee (the “<b>Master Trustee</b>”).</p> <ul style="list-style-type: none"> <li>xi. Midwest Christian Villages, Inc.</li> <li>xii. Johnson Christian Village Care Center, LLC</li> <li>xiii. Wabash Christian Therapy and Medical Clinic, LLC</li> <li>xiv. River Birch Christian Village, LLC</li> <li>xv. CH Wabash Estates, LLC</li> <li>xvi. Wabash Estates, LP</li> <li>xvii. Washington Village Estates, LP</li> <li>xviii. Wabash Christian Village Apartments, LLC</li> </ul> <ul style="list-style-type: none"> <li>• (Each of the foregoing xi. through xxviii. are <i>not</i> members of the Obligated Group and are sometimes referred to herein as, each, a “<b>Non-Obligated Group Member</b>,” and collectively, as the “<b>Non-Obligated Group</b>.”)</li> </ul> <p>See Interim Order at ¶ F</p>
<b>DIP Lender</b> Bankr. R. 4001(c)(1)(B)	UMB Bank, N.A. (the “ <b>DIP Lender</b> ”), not individually but jointly in its capacities as (i) the Master Trustee and (ii) successor bond trustee.
<b>DIP Facility</b> Bankr. R. 4001(c)(1)(B)	<p>A senior, secured, priming debtor-in-possession credit facility (the “<b>DIP Facility</b>”) in an aggregate principal amount to be determined (the “<b>Loan Commitment</b>”), with up to \$3.0 million available upon entry of the Interim Order, comprised of term loans made by the DIP Lender (“<b>DIP Loans</b>,” and collectively with all other obligations owed by the Debtors to the DIP Lender pursuant to the DIP Loan Documents, the “<b>DIP Obligations</b>”). At the expiration of the Interim Order, the DIP Lender, subject to entry of the Final Order in a form acceptable to the DIP Lender, shall continue to advance funds through additional DIP Loans, up to an aggregate amount to be determined upon finalization of an extended DIP Budget.</p> <p>See Interim Order at ¶ Z</p>
<b>DIP Loan Documents:</b>	The terms and conditions governing the DIP Facility shall be set forth in one or more definitive documents, all of which shall be in form and substance satisfactory to the Creditor Parties in their sole discretion (the “ <b>DIP Loan Documents</b> ”).
<b>DIP Facility Maturity:</b>	The DIP Obligations shall be due and payable upon the earliest of: (i) December 31, 2024; (ii) the closing date of the sale of all or substantially all of the Debtors’ assets pursuant to an order entered by the Bankruptcy Court (or, if multiple closing, upon last of such closings); (iii) the acceleration of the DIP Loans and the termination of the DIP Facility by the DIP Lender following the occurrence or during the

	<p>continuation of an Event of Default (as defined below); and (iv) the confirmation of a Chapter 11 plan which becomes effective (such earliest date, the “<b><u>Maturity Date</u></b>”).</p> <p><i>See Interim Order at ¶ 9</i></p>
<b>DIP Facility Interest Rate:</b>	<p>Interest shall accrue on the full amount of the Loan Commitment at a fixed rate of 4.589% per annum (the “<b><u>Applicable Rate</u></b>”).</p> <p>Accrued interest shall accrue from the date of entry of the Interim Order and shall be due and payable on the Maturity Date. All interest will be calculated on a 30/360 basis.</p> <p><i>See Interim Order at ¶ 9</i></p>
<b>Mandatory Prepayments:</b>	<p>As will be set forth more fully in the DIP Loan Documents, the DIP Obligations shall be subject to mandatory prepayment under customary circumstances, including without limitation: (i) upon the sale or disposition of any Collateral, other than in the ordinary course of business; or (ii) upon any payment made to any of the Debtors on account of an insurance, casualty or condemnation claims. In each case, 100% of net cash proceeds of any such sale, disposition, insurance, casualty or condemnation payment, as applicable, shall be applied to the prepayment of the outstanding DIP Obligations.</p>
<b>Roll-Up Obligations:</b>	<p>A roll-up (the “<b><u>Roll-Up Obligations</u></b>”) of the Obligated Group’s prepetition obligations to the Trustee, on account of the Bonds, on a dollar-for-dollar basis (<i>i.e.</i>, as each DIP Loan is made to the Debtors, the aggregate amount of the Roll-Up Obligations shall increase to equal the aggregate amount of all DIP Loans made to the Trustee).</p> <p>The Roll-Up Obligations shall be deemed to be, and shall be treated for all purposes as, DIP Obligations. Without limiting the generality of the foregoing, the Roll-Up Obligations shall be secured, equally and ratably with all other DIP Obligations, by the Collateral and shall be repaid, on the Maturity Date or otherwise, on a ratable basis with all other DIP Obligations.</p> <p><i>See Interim Order at ¶ 9</i></p>
<b>DIP Facility Availability; Use of Cash Collateral:</b>	<p>Commencing on the date of the Bankruptcy Court’s entry of the Interim Order, the DIP Facility shall be made available to the Debtors in an aggregate amount up to the lesser of the Loan Commitment and the amount of borrowings authorized by the Interim Order or the Final Order, as applicable, and in any case in accordance with the DIP Budget (as defined below).</p>

	<p>As more fully set forth in the DIP Loan Documents, the Debtors may borrow, no more frequently than every two (2) weeks, sufficient funds to cover any projected shortfalls for such two-week period, as set forth in the DIP Budget and after taking into account any cash then on hand.</p> <p><i>See Interim Order at ¶ 11</i></p>
<p><b>Use of Cash Collateral; Adequate Protection:</b></p>	<p>UMB Bank, N.A., in its capacities as Master Trustee and Bond Trustee (referred to jointly herein as the “<b><u>Trustee</u></b>”), shall receive customary adequate protection in exchange for its consent to the Debtors’ use of cash collateral, subject to the DIP Budget, and for the priming of its liens by the liens securing the DIP Facility, including, but not limited to, replacement liens against the Collateral and superpriority claims, both to the extent of diminution, senior to all other liens and administrative expense claims, other than those held by the DIP Lender and subject to the Carve-Out (as defined below).</p> <p>In addition to the foregoing, the DIP Loan Documents shall provide for adequate protection payments to the Trustee in the amount of \$150,000 per month, commencing on the date of entry of the Interim Order and continuing through the Maturity Date.</p> <p><i>See Interim Order at ¶ 20</i></p>
<p><b>Purpose / Use of Proceeds:</b></p>	<p>The proceeds of the DIP Facility will be used, in accordance with the terms of the DIP Budget, to provide working capital and for other general corporate purposes of the Debtors during the administration of the Bankruptcy Cases, including the payment of administrative claims allowed in the Bankruptcy Cases.</p> <p>No portion of the DIP Facility, any cash collateral or the Carve-Out shall be used in connection with asserting any claims or causes of action against the DIP Lender, the Trustee, holders of the Bonds, or any of their respective advisors, agents and sub-agents, including for formal discovery proceedings in anticipation thereof, or challenging any lien thereof, other than up to \$25,000 for an official committee appointed by the Bankruptcy Court to evaluate the claims and liens of the Trustee.</p> <p><i>See Interim Order at ¶ 27</i></p>
<p><b>Budget and Variances:</b></p>	<p>“<b><u>DIP Budget</u></b>” shall mean the weekly cash flow and financial projections of the Debtors, on a consolidated basis, covering (i) initially, the period beginning on the Petition Date and ending four weeks thereafter and (ii) in connection with entry of the Final Order, the period beginning on the Petition Date and ending twenty-six (26) weeks thereafter, in each case,</p>



itemizing on a weekly basis all uses, and anticipated uses, of the DIP Facility, revenues projected to be received and all expenditures proposed to be made during such period. The Debtors may, at any time, amend or reforecast the DIP Budget, subject to the approval of such amendment by the DIP Lender and the Trustee, in their sole and absolute discretion. A copy of the initial DIP Budget is attached hereto as **Exhibit B**.

After entry of the Interim Order, the Debtors shall provide to the DIP Lender, as soon as available but no later than 5:00PM Eastern Time on each Friday, a Budget variance and reconciliation report setting forth: (i) a comparative reconciliation, on a line-by-line and aggregate basis, of actual cash receipts and disbursements against the cash receipts and disbursements forecasted in the DIP Budget, and the dollar and percentage variances thereof, for (A) the weekly period ended on (and including) the immediately preceding Sunday and (B) the cumulative period to date; and (ii) a written explanation of such variances.

Other than to the extent otherwise permitted in the DIP Loan Documents, the Debtors shall not make or commit to make any payments other than those identified in the DIP Budget. The Debtors (i) shall not permit expenditures for such Measuring Period to exceed (x) one hundred ten percent (110%) of the respective amounts, measured as to each line item in the Budget, or (y) one hundred five percent (105%) of the respective amounts, measured on an aggregate basis, as set forth in the Budget for such Measuring Period; provided that the Debtors shall not permit expenditures for estate professional fees to exceed one hundred percent (100%) of the amount allocated for such expenditures in the Budget for such Measuring Period; and (ii) shall not permit receipts for such Measuring Period to be less than ninety percent (90%) of the amounts, on an aggregate basis, set forth in the Budget for such Measuring Period. These variances (the “**Variances**”) shall be measured on a rolling four week period (the “**Measuring Period**”); provided, for the avoidance of doubt, that Measuring Periods for the first three weeks shall include pre-petition periods in the calculations of Variances for such Measuring Periods. Subject to paragraph 7(ii) of the Interim DIP Order, the Debtors may, at any time, amend or reforecast the Budget, either for the period covered by the Budget or for any period thereafter, and the DIP Lender and Trustee may approve or not approve such amendment in their sole and absolute discretion; provided that any amendment to the Budget, upon approval by the DIP Lender and Trustee, will be filed with the Court and shall be deemed effective if no objection is made to such amendment within three business days of such filing.

See Interim Order at ¶ 21

<b>Security:</b>	<p>All obligations of the Debtors to the DIP Lender, including, without limitation, all principal, accrued interest, costs, fees and expenses, shall:</p> <p>(a) pursuant to Bankruptcy Code § 364(c)(1), be claims with priority in payment over any and all administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including, without limitation, Bankruptcy Code §§ 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546, 726, 1113 and 1114; and</p> <p>(b) pursuant to Bankruptcy Code § 364(d)(1), be secured by a perfected first-priority, priming lien on all assets and property of the Debtors (including, for the avoidance of doubt, all assets and property of the Non-Obligated Group Members), whether now owned or hereafter acquired, and proceeds thereof (collectively, the “<b><u>Collateral</u></b>”); provided that the DIP Lender will not seek to prime existing liens on HUD-Financed Properties at entry of the Interim Order, but reserves the right to request such priming liens in connection with the Final Order.</p> <p>subject in each case only to a carve-out (the “<b><u>Carve-Out</u></b>”) comprising: (i) all fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930(a), and (ii) after the occurrence and during the continuance of an Event of Default (as defined below) (a) fees and expenses projected in the DIP Budget that have been incurred by the Debtors’ professionals or the professionals of any official committee of unsecured creditors appointed in the Bankruptcy Cases and remaining unpaid prior to delivery of notice of an Event of Default all as may be allowed by the Bankruptcy Court (the “<b><u>Carve-Out Notice</u></b>”), and (b) after delivery of a Carve-Out Notice, an amount not exceeding \$150,000 in the aggregate to pay any fees or expenses incurred by the Debtors’ professionals or the professionals of any official committee of unsecured creditors appointed in the Bankruptcy Cases, provided that nothing herein shall be construed to impair the ability of any party to object to the fees, expenses, reimbursement or compensation described above. No portion of the Carve-Out, any cash collateral or proceeds of the DIP Facility may be used for the payment of the fees and expenses of any person incurred challenging, or in relation to the challenge of, any of the DIP Lender’s, the Trustee’s or the holders of the Bonds’ liens or claims, or the initiation or prosecution of any claim or action against the DIP Lender, the Trustee or the holders of the Bonds, in any capacity.</p> <p>See Interim Order at ¶ 36</p>
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<p><b>Representations and Warranties:</b></p>	<p>The DIP Loan Documents will include such representations and warranties as are usual and customary for financings of this kind and that are reasonably acceptable to the DIP Lender, including without limitation: due organization; requisite power and authority; qualification; due authorization, execution, delivery and enforceability of the DIP Loan Documents; no conflicts with organizational documents or applicable law; no material adverse change (excluding any material adverse change resulting from or in connection with the commencement of the Bankruptcy Cases and the events leading up to the Bankruptcy Cases); restricted junior payments; absence of material litigation (excluding the Bankruptcy Cases); payment of material taxes; title to properties; ERISA and other employee matters; absence of brokers or finders fees; compliance with laws; continued effectiveness of orders of the Bankruptcy Court, including the Orders, as applicable; full disclosure and accuracy of the DIP Budget; and the Patriot Act and other related matters.</p>
<p><b>Covenants; Milestones; Marketing of Assets:</b></p>	<p>The DIP Loan Documents will include such affirmative and negative covenants as are usual and customary for financings of this kind and that are reasonably acceptable to the DIP Lender, including, without limitation: compliance with the DIP Budget, subject to the variances contemplated above; compliance with milestones related to the proposed sale of the Debtors' assets and the Bankruptcy Cases (the "<b><u>Bankruptcy Milestones</u></b>"); no sale of assets outside the ordinary course of business without the prior written consent of the DIP Lender; Debtors' bankruptcy pleadings in a form and substance satisfactory to Creditor Parties; and no additional indebtedness.</p> <p>The Bankruptcy Milestones shall include, but are not limited to, the following:</p> <ul style="list-style-type: none"> <li>(i) On Tuesday of each week (or such other day as may be agreed upon by the Parties), the Debtors shall make available representatives reasonably acceptable to the DIP Lender and the Trustee for a telephone conference call with the DIP Lender, the Trustee, holders of the Bonds who have agreed that they are restricted from trading their respective Bonds based upon the receipt of material nonpublic information, and their respective agents, advisors and/or representatives to discuss the cash flows and operations of the Facilities, including the Debtors' compliance with the Budget, the status of the sale process with respect to the sale of substantially all of the Debtors' assets, and such other matters as are relevant or are reasonably requested by the DIP Lender and the Trustee;</li> </ul>

	<p>(ii) On the Petition Date, the Debtors shall file a bid procedures and sale motion, in form and substance acceptable to the Trustee, with respect to a sale of substantially all of the Debtors' assets;</p> <p>(iii) On or before July 31, 2024, one or more orders (x) approving the bid procedures (the "<u>Bid Procedures Order</u>") and (y) granting the related relief requested in the sale motion, each in form and substance reasonably acceptable to the Trustee, shall be entered;</p> <p>(iv) Each milestone date set forth in any Bid Procedures Order shall constitute a Bankruptcy Milestone for purposes of the Interim Order; and</p> <p>(v) On or before August [•], 2024, the Final Order on the Motion shall be entered.</p> <p>The Debtors retained B.C. Ziegler &amp; Co. ("<u>Ziegler</u>") to market their assets prior to commencement of the Bankruptcy Cases and shall seek Bankruptcy Court approval to continue Ziegler's engagement during the pendency of the Bankruptcy Cases. The Debtors shall agree to cooperate with, and to instruct its advisors (including, without limitation, Ziegler) to cooperate with the Creditor Parties (including, without limitation, their financial advisors, Raymond James Financial, Inc.), in connection with the post-petition marketing process. Without limiting the generality of the foregoing, the Debtors shall cause Ziegler to (i) provide weekly written 'scorecard' updates on its marketing efforts, (ii) participate in calls with the Creditor Parties and/or their advisors on a weekly basis (or less frequently, if so agreed by the Creditor Parties, in their sole discretion), and (iii) participate in independent calls with Raymond James from time to time, as and when requested by Raymond James.</p> <p><i>See Interim Order at ¶ 22</i></p>
<b>Events of Default:</b>	<p>The DIP Loan Documents will include events of default that are usual and customary for financings of this kind and that are reasonably acceptable to the DIP Lender (each an "<u>Event of Default</u>"), including, without limitation, the following:</p> <p>(i) the failure to make payments on the DIP Loans (including interest payments) or amounts due under the DIP Credit Agreement or the Interim Order as and when due;</p> <p>(ii) the failure to make adequate protections payments to the Trustee as and when due in accordance with the Interim</p>

	<p>Order;</p> <ul style="list-style-type: none"> <li>(iii) the failure of the Debtors to pay all of their administrative expenses in full in accordance with and subject to the terms as provided for in the Budget within five (5) days of their due date (except for any amounts in bona fide dispute);</li> <li>(iv) the Final Order, in form and substance satisfactory to the DIP Lender and the Trustee, has not been entered on or before August 15, 2024;</li> <li>(v) the Interim Order becomes stayed, reversed, vacated, amended or otherwise modified in any respect without the prior written consent of the DIP Lender and the Trustee, except by the Final Order;</li> <li>(vi) failure to meet or comply with any of the Bankruptcy Milestones set forth in the Interim Order;</li> <li>(vii) the selection by the Debtors of a stalking horse bidder or winning bidder not acceptable to the DIP Lender and the Trustee</li> <li>(viii) the Bid Procedures Order becomes stayed, reversed, vacated, amended or otherwise modified in any respect without the prior written consent of the Trustee and the DIP Lender;</li> <li>(ix) the dismissal of the Chapter 11 Cases, conversion of the Chapter 11 Cases to chapter 7 cases, or suspension of the Chapter 11 Cases under section 305 of the Bankruptcy Code;</li> <li>(x) the appointment of a chapter 11 trustee, receiver or manager or an examiner with enlarged powers (beyond those set forth in section 1104(c) and 1106(a)(3) and (4) of the Bankruptcy Code);</li> <li>(xi) the filing by the Debtors of a chapter 11 plan not acceptable to the DIP Lender and the Trustee;</li> <li>(xii) the granting of relief from the automatic stay to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) with respect to a material asset of the Debtors, by any entity other than the DIP Lender or Trustee on any Post-Petition Collateral;</li> </ul>
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	<p>(xiii) any superpriority administrative expense claim or lien that is <i>pari passu</i> with or senior to the claims, charges or liens of the DIP Lender or the Trustee shall have arisen or be authorized or allowed;</p> <p>(xiv) the payment of or granting adequate protection with respect to prepetition indebtedness of the Debtors other than as set forth in the Budget or as provided for in the Interim Order;</p> <p>(xv) any of the DIP Loan Documents shall cease to be valid or effective or shall be contested by the Debtors;</p> <p>(xvi) the failure by the Debtors to comply with any of the affirmative covenants set forth in, or the taking of any action in violation of the negative covenants set forth in, the DIP Loan Documents;</p> <p>(xvii) the cessation of Post-Petition Liens, Replacement Liens, Supplemental Liens, Superpriority Claims, or Pre-Petition Superpriority Claim granted pursuant to the Interim Order to be valid, perfected and enforceable in all respects;</p> <p>(xviii) the filing of any Challenge (as defined below) to the Pre-Petition Liens, the Pre-Petition Collateral or the claims of the Trustee by (i) the Debtors or any party affiliated with any of the Debtors or (ii) any other party, and such party's Challenge is (x) supported or not timely objected to by the Debtors or (y) upheld by the Court;</p> <p>(xix) the payment of estate professional fees by the Debtors other than to the extent set forth in the Budget; or</p> <p>(xx) the occurrence of an Event of Default under the DIP Credit Agreement.</p> <p><i>See Interim Order at ¶ 28</i></p>
<b>Remedies:</b>	<p>The DIP Lender shall have customary remedies, including, without limitation, the right following the occurrence of an Event of Default or the Maturity Date to stop funding the DIP Loans and to realize on all Collateral without the necessity of obtaining any further relief or order from the Bankruptcy Court.</p> <p><i>See Interim Order at ¶ 32</i></p>

<b>Conditions Precedent to Commitment, Initial Borrowing:</b>	<p>The commitment of the DIP Lender to provide the DIP Facility and to enter into the DIP Loan Documents, on the terms and conditions set forth herein and in the DIP Loan Documents, expressly conditioned on the Debtors and the Creditor Parties reaching agreement on substantially final forms of (i) the DIP Loan Documents, (ii) proposed forms of the Orders, (iii) an order providing the sale of the Debtors' assets and (iv) agreed bidding procedures, in each case on or before July 31, 2024.</p> <p>The obligation of the DIP Lender to make any DIP Loans will be subject to customary closing conditions for this type of financing in form and substance satisfactory to the Creditor Parties, in their sole discretion, including: (i) the filing of "first day pleadings" acceptable to the Creditor Parties; (ii) the entry of an Interim Order and, upon expiration of the Interim Order, the entry of a Final Order; and (iii) the execution and delivery of the DIP Loan Documents.</p> <p>See Interim Order at ¶ 10</p>
<b>Ongoing Conditions to Borrowings:</b>	<p>The conditions to all borrowings will include requirements relating to prior written notice of borrowing, the accuracy of representations and warranties, and the absence of any default or Event of Default, and will otherwise be customary and appropriate for this type of financing.</p>
<b>Indemnity / Release / Validity:</b>	<p>The Debtors shall, jointly and severally, indemnify, pay and hold harmless the DIP Lender (and its directors, officers, employees, professionals and agents) against any loss, liability, cost or expense incurred in respect of the financing contemplated hereby or the use or the proposed use of proceeds thereof (except to the extent resulting from the gross negligence or willful misconduct of the indemnified party).</p> <p>The DIP Loan Documents and the Orders shall provide for a full, absolute, plenary and unconditional release of the DIP Lender, the Trustee and the holders of the Bonds (and their respective directors, officers, employees, professionals and agents) of liability for any and all claims, causes of action or other rights related to the Debtors.</p> <p>The Debtors shall acknowledge the extent, validity and priority of the Trustee's pre-petition claims and liens relating to the Bonds.</p>
<b>Governing Law; Jurisdiction:</b>	<p>The Debtors will submit to the non-exclusive jurisdiction and venue of the Bankruptcy Court, or in the event that the Bankruptcy Court does not have or does not exercise jurisdiction, then in any state or federal court of competent jurisdiction in the state of Missouri; and shall waive any right to trial by jury.</p> <p>The DIP Loan Documents shall be governed by New York law.</p>



**Need for Adequate Protection to Trustee, HUD and IHDA**

31. The applicable Debtors will provide adequate protection to (i) the Trustee on account of its security interests in and liens on the Pre-Petition Collateral, (ii) HUD of its lien on the HUD-Financed Properties, pursuant to the terms set forth in the Interim Order, and (iii) IHDA of its lien on the IDHA-Financed Properties, also pursuant to the terms set forth in the Interim Order. As adequate protection of the Trustee's interests in the Pre-Petition Collateral, including Cash Collateral, pursuant to §§ 361, 363 and 552(b) of the Bankruptcy Code, and the Trustee's consent to the priming of its liens and claims pursuant to the Post-Petition Liens and the Superpriority Claim provided to the DIP Lender, the Trustee, HUD and IDHA will be provided the following adequate protection:

- (i) Replacement Liens. As adequate protection solely for any diminution in the value of the Pre-Petition Collateral, including based upon the priming by the DIP Lender ("**Diminution**"), (i) the Trustee shall continue to have a valid, binding, enforceable and perfected additional and replacement mortgages, pledges, liens and security interests in all Post-Petition Collateral and the proceeds, rents, products and profits therefrom, (ii) HUD shall continue to have a valid, binding, enforceable and perfected lien on post-petition income related to the HUD-Financed Properties, in each case, and (iii) IHDA shall continue to have a valid, binding, enforceable and perfected lien on post-petition income related to the IHDA-Financed Properties, in each case, whether acquired or arising before or after the Petition Date, to the same extent, priority and validity that existed as of the Petition Date (such liens, the "**Replacement Liens**"); provided, however, the Replacement Liens shall be subject to (x) the Post-Petition Liens, (y) the Carve-Out and (z) valid and perfected liens existing on or arising after the Petition Date which, solely by operation of law, have priority over such Replacement Liens, if any;
- (ii) Supplemental Liens. As additional adequate protection solely for any Diminution, the Trustee shall have a valid, perfected and enforceable continuing supplemental lien on, and security interest in, all of the assets of the Debtors of any kind or nature whatsoever within the meaning of § 541 of the Bankruptcy Code, whether acquired or arising before or after the Petition Date, and the proceeds, rents, products and profits therefrom, exclusive of any Avoidance Actions and any proceeds therefrom (provided that the Trustee reserves the right to request that the Supplemental Liens include Avoidance Actions and proceeds thereof in any Final Order on the Motion) (collectively, the "**Supplemental Liens**"); provided, however, the Supplemental Liens shall be subject to (w) the Post-Petition Liens, (x) the Replacement Liens, (y) the Carve-Out and (z) valid and perfected liens existing on or arising after the



Petition Date which, solely by operation of law, have priority over such Supplemental Liens, if any;

- (iii) Pre-Petition Superpriority Claim. As additional adequate protection solely for any Diminution, the Trustee shall receive a superpriority expense claim allowed under section 507(b) of the Bankruptcy Code (the “**Pre-Petition Superpriority Claim**”) against all assets of the Debtors’ estates. The Pre-Petition Superpriority Claim shall have priority over any and all other unpaid administrative expenses now existing or hereafter arising, of any kind whatsoever, of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546, 726, 1113 or 1114 of the Bankruptcy Code, and shall at all times be senior to the rights of the Debtors, any successor trustee or any creditor in the Chapter 11 Cases or any subsequent proceedings under the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other nonconsensual lien, levy or attachment; provided, however, the Pre-Petition Superpriority Claim shall be subject to the (x) the Post-Petition Liens, (y) the Superpriority Claim and (z) the Carve-Out;
- (iv) Adequate Protection Payments. The Debtors shall make, and are hereby authorized to make, adequate protection payment to the Trustee in the amount of \$150,000 per month (the “**Adequate Protection Payments**”), commencing on the Interim Order Entry Date and continuing through the Maturity Date. The Adequate Protection Payments will be made by wire transfer to the Trustee on the first day of each month (other than the month in which the Interim Order is entered).
- (v) Financial Reports. The Debtors shall provide the Trustee, HUD and IHDA with all reports, documents and other materials, including financial reports, as may be required in the Interim Order and such other and further access to the Debtors’ books and records, advisors and professionals as may be reasonably requested by the Trustee, HUD, or IHDA from time to time.
- (vi) Right to Seek Additional Adequate Protection. The Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights of the Trustee, HUD or IHDA to request further or alternative forms of adequate protection at any time or the rights of the Debtors or any other party to contest such request.

### **BASIS FOR RELIEF**

#### **Adequate Protection**

32. The purpose of adequate protection under Bankruptcy Code § 363 is to compensate a secured lender solely for the diminution in value of its collateral. *Qmect, Inc. v. Burlingame Capital Partners II, L.P.*, 373 B.R. 682, 689-90 (N.D. Cal. 2007) (citing *In re Timbers of Inwood*

*Forest Assocs., Ltd.*, 484 U.S. 365, 377 (1988)). Adequate protection payments are not to be used to compensate the creditor for lost interest or to provide lost opportunity costs. *In re Weinstein*, 227 B.R. 284, 296 (9th Cir. BAP 1998) (citing *In re Timbers*). An equity cushion, standing alone, provides adequate protection justifying the restraint of lien enforcement by a bankruptcy court. *In re Mellor*, 734 F.2d 1400, 1401 (9th Cir. 1984). Adequate protection is not meant to be a guarantee that a creditor will be paid in full. Instead, the Court must determine whether the creditor's interests are protected as nearly as possible against the possible risks to that interest. *In re Ernst Home Ctr.*, 209 B.R. 955, 966 (Bankr. W.D. Wash. 1997); *In re McCombs Properties VI, Ltd.*, 88 B.R. 261, 267 (Bankr. C.D. Cal. 1988)).

33. As adequate protection, the Debtors will be (i) granting the Trustee replacement liens, supplemental liens, and superpriority claims and (ii) submitting monthly payments to the Trustee in the amount of \$150,000, which are commonplace methods of providing adequate protection. *See, e.g., MBank Dallas N.A. v. O'Connor (In re O'Connor)*, 808 F.2d 1393, 1396-98 (10th Cir. 1987) (allowing the debtors to replace a lien on cash with a lien on property likely to be worth five times as much); *Owens-Corning Fiberglas Corp. v. Ctr. Wholesale, Inc. (In re Ctr. Wholesale, Inc.)*, 759 F.2d 1440, 1450 (9th Cir. 1985) (observing that a lien on additional property of the debtors would likely constitute adequate protection for the secured creditor); *In re Wrecclesham Grange, Inc.*, 221 B.R. 978, 981 (Bankr. M.D. Fla. 1997) (noting that a replacement lien of equal value on postpetition rents is adequate protection); *In re Stein*, 19 B.R. 458, 459 (Bankr. E.D. Pa. 1982) (continued lien on debtors' crops, livestock and equipment resulted in an increase rather than a decrease in collateral, and debtors were granted authority to use cash collateral to meet operating expenses during chapter 11 proceedings).

34. Pursuant to § 364(d)(1), the Court may, after notice and a hearing, authorize postpetition financing on a priming basis if the debtors establish that no suitable alternative financing is available from other sources and that the interests of primed lienholders are adequately protected. *First Sec. Bank & Tr. Co. v. Vegt*, 511 B.R. 567, 578 (N.D. Iowa 2014); *In re Yellowstone Mountain Club, LLC*, No. 08-61570-11, 2008 WL 5875547, at \*7 (Bankr. D. Mont. Dec. 17, 2008).

35. The debtor must show that “less burdensome financing is unavailable” but “does not have to show that it sought credit from every possible lender.” *In re Vander Vegt*, 499 B.R. 631, 636 (Bankr. N.D. Iowa 2013), *aff’d sub nom. First Sec. Bank & Tr. Co. v. Vegt*, 511 B.R. 567 (N.D. Iowa 2014) (finding chapter 12 debtors satisfied their burdens under § 364(d)(1)) (citing *In re Reading Tube Indus.*, 72 B.R. 329, 332 (Bankr. E.D. Pa. 1987)). Whether adequate protection exists is a question of fact to be determined on a case-by-case basis, while permitting the debtors maximum flexibility in structuring a proposal for adequate protection. *In re Martin*, 761 F.2d 472, 474 (8th Cir. 1985). The Eighth Circuit explained that:

In order to encourage reorganization, the courts must be flexible in applying the adequate protection standard. This flexibility, however, must not operate to the detriment of the secured creditor's interest. In any given case, the bankruptcy court must necessarily (1) establish the value of the secured creditor's interest, (2) identify the risks to the secured creditor's value resulting from the debtor's request for use of cash collateral, and (3) determine whether the debtor's adequate protection proposal protects value as nearly as possible against risks to that value consistent with the concept of indubitable equivalence.

*Id.* at 476–77.

36. Consent to priming by the prepetition secured creditors obviates the need to show adequate protection. *See Anchor Sav. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 122 (N.D. Ga. 1989) (“[B]y tacitly consenting to the superpriority lien, those [undersecured] creditors relieved the Debtors of having to demonstrate that they were adequately protected.”). Here, the Trustee

has consent to the priming of its liens by the liens securing the DIP Facility, including replacement liens against the Collateral and superpriority claims, both to the extent of diminution, senior to all other liens and administrative expense claims, other than those held by the DIP Lender and subject to the Carve-Out.

37. The Debtors are unable to procure the required funds in the form of unsecured credit or unsecured debt with an administrative priority. The DIP Loan is in the best interest of the Debtors' estates and creditors because it is the only means at this critical juncture of continuing operations during the Debtors' efforts to restructure their business to maximize value for the estate, to the extent the use of Cash Collateral proves inadequate. The circumstances of this case thus require the Debtors to obtain financing under section 364(c).

#### **HUD Loans**

38. An equity cushion, standing alone, provides adequate protection justifying the restraint of lien enforcement by a bankruptcy court. *In re Mellor*, 734 F.2d 1400, 1401 (9th Cir. 1984). "Under the 'equity cushion' theory, if a debtor has equity in a property sufficient to shield the creditor from either the declining value of the collateral or an increase in the claim from accrual of interest or expenses, then the creditor is adequately protected." *See Equitable Life Assurance Soc. v. James River Assocs. (In re James River Assocs)*, 148 B.R. 790, 796 (E.D. Va. 1992) (citing *In re Kost*, 102 B.R. 829, 831 (D. Wyo. 1989); *In re Lane*, 108 B.R. 6, 7 (Bankr. D. Mass. 1989)).

39. "Case law has almost uniformly held that an equity cushion of 20% or more constitutes adequate protection. Case law has almost as uniformly held that an equity cushion under 11% is insufficient to constitute adequate protection. Case law is divided on whether a cushion of 12% to 20% constitutes adequate protection." *James River Assocs.*, 148 B.R. at 796 (quoting *Kost*, 102 B.R. at 831-32 (internal citations omitted)); *see also In re Rogers Dev. Corp.*,

2 B.R. 679, 685 (Bankr. E.D. Va. 1980) (15% to 20% equity cushion held to be sufficient to provide adequate protection to a creditor even though the Debtors had no equity in the property); *but see In re Schaller*, 27 B.R. 959, 961-62 (W.D. Wis. 1983) (17% to 18% cushion held not to offer adequate protection where cushion was being rapidly eroded by the daily accrual of interest on the debt); *In re Pitts*, 2 B.R. 476, 478 (Bankr. C.D. Cal. 1979) (holding a 15% cushion to be “minimal”).

40. For the foregoing reasons, the Debtors request that the Court approve the financing as requested with HUD and IHDA to receive junior liens on post-petition income generated by facilities on which they have liens as adequate protection.

### **Roll Up**

41. The DIP Credit Facility Terms also provide for a “roll up” of pre-petition indebtedness owed to the DIP Lender, on a dollar-for-dollar basis, into postpetition debt and allows the Debtor to borrow additional funds from the Lender postpetition. Roll ups, such as the one proposed here, have been approved by this and other courts in this circuit. *See e.g., In re Foresight Energy, LP*, Case No. 20-41308 (Bankr. E.D. Mo. April 9, 2020) [Dkt. No. 267] (authorizing \$75,000,000.00 in roll-up loans); *In re Payless Holdings LLC*, Case No. 17-42267 (Bankr. E.D. Mo. May 17, 2017) (authorizing \$385 million DIP facility and a roll-up of approximately \$187 million, pursuant to a final order); *In re Payless Cashways, Inc.*, No. 01-42643-ABF (Bankr. W.D. Mo.) (order dated July 19, 2001); *In re Arch Coal, Inc.*, No. 16-40120-705 (Bankr. E.D. Mo. Jan. 15, 2016); and *In re Bakers Footwear Group, Inc.*, No. 12-49658 (Bankr. E.D. Mo. Oct. 5, 2012).

42. Finally, as mentioned above, consent may take the place of adequate protection under § 364(d)(1) of the Bankruptcy Code, and the Debtors hope to obtain consent of HUD to use

the Cash Collateral, at least on an interim basis, and enter into the DIP Facility on the terms set forth in the DIP Orders.

**The DIP Facility is Fair, Reasonable, and in the Best Interests of the Estates**

43. The Debtors believe the terms and conditions of the DIP Facility are fair and reasonable. The DIP Facility is necessary to support the Debtors' ongoing operations pending approval and confirmation of a plan will signal the Debtors' continued strength. The DIP Facility will also ensure the continued high quality care of the facilities. Furthermore, as is more fully explained in the Bertram Declaration filed in support of this DIP Financing Motion, the Debtors and their professionals undertook an effort to obtain the best available terms for DIP financing. Based upon these efforts, the interest rates and fees appear to be consistent with the existing market for debtor in possession loans of this nature. The Debtors believe that the proposed DIP Facility is the best financing available and well within the exercise of sound business judgment.

44. Bankruptcy courts consistently defer to a debtor's business judgment business decisions, including the decision to borrow money, unless such decision is arbitrary and capricious. *See Trans World Airlines, Inc. v. Travellers Int'l AG. (In re Trans World Airlines, Inc.)*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (noting that an interim loan, receivables facility and asset-based facility were approved because they "reflect[cd] sound and prudent business judgment... [were] reasonable under the circumstances and in the best interests [of the Debtors] and its creditors"); *In re Simasko Prod. Co.*, 47 B.R. 444, 449 (Bankr. D. Colo. 1985) ("In exercising [the Debtors'] business judgment of conducting its drilling operations, it has found it necessary to obtain loans to make these endeavors possible."). In fact, "[m]ore exacting scrutiny [of the Debtors' business decisions] would slow the administration of the Debtors' estate and increase its cost, interfere with the Bankruptcy Code's provision for private control

of administration of the estate, and threaten the court's ability to control a case impartially." *Richmond Leasing Co. v. Capital Bank. N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985); *see also Simasko Prod.*, 47 B.R. at 449 ("Business judgments should be left to the board room and not to this Court.") (quoting *In re Lifeguard Indus. Inc.*, 37 B.R. 3, 17 (Bankr. S.D. Ohio 1983)). Consistent with this authority, the Debtors respectfully submit that the Court should approve the Debtors' decision to accept and enter into the proposed DIP Facility.

45. Moreover, the Debtors have made a concerted good faith effort to obtain credit on the most favorable terms available. Specifically, prepetition, in connection with the marketing of the Debtors' assets, the Debtors also sought debtor in possession financing from interested parties, none of whom would agree to provide financing on a junior or *pari passu* basis, under the same favorable terms as the DIP Lender. Given the dire circumstances facing the Debtors, the DIP Facility described in this DIP Financing Motion was ultimately determined to provide the requisite liquidity on the most advantageous terms given the circumstances. Absent consent, distracting and costly litigation over the propriety of any priming or *pari passu* third party debtor in possession financing would likely have ensued, with potentially severe consequences for the Debtors, their estates, and creditors. Against this backdrop, the Debtors carefully evaluated the proposed financing structure from the DIP Lender, engaged in negotiations with the DIP Lender regarding the proposed terms, and eventually agreed to the DIP Lender's proposal as the proposal best suited to the Debtors' needs. The terms and conditions of the DIP Facility were negotiated by the parties (and their legal and financial advisors) in good faith and at arms' length, and, as outlined above, were instituted for the purpose of enabling the Debtors to meet ongoing operational expenses while in chapter 11 and to preserve the going concern status of the Debtors and their estates.

46. Accordingly, the DIP Lender should be provided with the benefit and protection of § 364(c) of the Bankruptcy Code, such that if any of the provisions of the DIP Facility are later modified, vacated, stayed or terminated by subsequent order of this or any other Court, the DIP Lender will be fully protected with respect to any amounts previously disbursed.

**Good Faith**

47. The proposed terms and conditions of the DIP Loan are fair and reasonable and were negotiated by the parties in good faith and at arm's length. *See* Bertram Declaration. Accordingly, the DIP Lender should be accorded the benefits of § 364(e) of the Bankruptcy Code with respect to the DIP Loan.

**REQUEST FOR HEARING**

48. Pursuant to Bankruptcy Rule 4001(b)(2), the Debtors respectfully request that the Court set a date for the Interim Hearing and a Final Hearing after entry of the Interim Order and approve the provisions for notice of the Final Hearing and the objection procedures that are set forth in the Interim Order.

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

**NO PREVIOUS REQUEST**

50. No previous application for the relief sought herein has been made to this or any other Court.

**NOTICE**

51. This DIP Financing Motion and notice of this DIP Financing Motion will be served respectively on Master Service List No. 1 (dated July 16, 2024) and Master Notice List No. 1 (dated



July 16, 2024). Notice of this DIP Financing Motion and any order entered hereon will be served in accordance with Local Rule 9013-3(A)(1). The Debtors submit that, under the circumstances, no other or further notice is required.

**WHEREFORE**, the Debtors respectfully request entry of an order granting the relief requested herein, together with such other and further relief as the Court deems just and proper.

Dated: July 16, 2024  
St. Louis, Missouri

Respectfully submitted,

**DENTONS US LLP**

/s/ Stephen O'Brien

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*Proposed Co-Counsel to the Debtors  
and Debtors-in-Possession*

**EXHIBIT A**

**Proposed Interim Order**

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

In re: )  
 ) Chapter 11  
MIDWEST CHRISTIAN VILLAGES, )  
INC., *et al.*,<sup>1</sup> ) Case No. 24-42473-659  
 ) (Joint Administration Requested)  
Debtors. )  
 ) Related Docket No. [ ]

**INTERIM ORDER (1) AUTHORIZING DEBTORS IN POSSESSION  
TO OBTAIN POST-PETITION FINANCING; (2) AUTHORIZING DEBTORS IN  
POSSESSION TO USE CASH COLLATERAL; (3) PROVIDING ADEQUATE  
PROTECTION; (4) GRANTING LIENS, SECURITY INTERESTS AND  
SUPERPRIORITY CLAIMS; AND (5) SCHEDULING A FINAL HEARING**

This Interim Order (1) Authorizing Debtors in Possession to Obtain Post-Petition Financing; (2) Authorizing Debtors in Possession to Use Cash Collateral; (3) Providing Adequate Protection; (4) Granting Liens, Security Interests and Superpriority Claims; and (5) Scheduling a Final Hearing (this “Interim Order”) is entered by this Court after adequate notice and a hearing, held July 17, 2024, upon the Debtors’ *Motion for Interim Order and Final Order (1) Authorizing Debtors in Possession to Obtain Post-Petition Financing; (2) Authorizing Debtors in Possession to Use Cash Collateral; (3) Providing Adequate Protection; (4) Granting Liens, Security Interests*

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<sup>1</sup> The address of the Debtors is 2 Cityplace Dr, Suite 200, Saint Louis, MO 63141-7390. The last four digits of the Debtors’ federal tax identification numbers are: (i) Midwest Christian Villages, Inc. [5009], (ii) Hickory Point Christian Village, Inc. [7659], (iii) Lewis Memorial Christian Village [3104], (iv) Senior Care Pharmacy Services, LLC [1176], (v) New Horizons PACE MO, LLC [4745], (vi) Risen Son Christian Village [9738], (vii) Spring River Christian Village, Inc. [1462], (viii) Christian Homes, Inc. [1562], (ix) Crown Point Christian Village, Inc. [4614], (x) Hoosier Christian Village, Inc. [3749], (xi) Johnson Christian Village Care Center, LLC [8262], (xii) River Birch Christian Village, LLC [7232], (xiii) Washington Village Estates, LLC [9088], (xiv) Christian Horizons Living LLC [4871], (xv) Wabash Christian Therapy and Medical Clinic, LLC [2894], (xvi) Wabash Christian Village Apartments, LLC [8352], (xvii) Safe Haven Hospice, LLC [6886], (xviii) Heartland Christian Village, LLC [0196], and (xxiii) Shawnee Christian Nursing Center, LLC [0068].

*and Superpriority Claims and (5) Scheduling a Final Hearing* (the “Motion”),<sup>2</sup> and upon the terms agreed to by and among the above-captioned debtors and debtors-in-possession (the “Debtors”), UMB Bank, N.A., as successor bond trustee (in such capacity, the “Bond Trustee”) under the Bond Indentures (as defined below), UMB Bank, N.A., as successor master trustee (the “Master Trustee”) and together with the Bond Trustee, the “Trustee”) under the Master Indenture (as defined below), and UMB Bank, N.A., in its capacity as Trustee, as lender (the “DIP Lender”) with respect to the DIP Credit Agreement (as defined below). Upon the terms of the Motion, the stipulations, acknowledgements and agreements of the Debtors, the DIP Lender, and the Trustee (collectively, the “Parties”), the Declarations of Kathleen (Kate) Bertram and Shawn O’Conner submitted in support of the Motion, the statements of the Parties and their counsel at the hearing on the Motion, and the record of the proceedings, the Court makes the following findings of fact and rulings of law:

## **FINDINGS OF FACT**

### **The Debtors’ Chapter 11 Cases; Procedural Background; Jurisdiction and Notice**

A. On July 16, 2024 (the “Petition Date”), the Debtors each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) and thereby commenced their cases thereunder (the “Chapter 11 Cases”). Since the Petition Date, the Debtors have been operating their businesses and managing their property as debtors and debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. As of the date hereof, no committee of unsecured creditors (a “Committee”) has been appointed in the Chapter 11 Cases. No request has been made for the appointment of a trustee or examiner in the Chapter 11 Cases.

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<sup>2</sup> All defined terms used but not defined herein shall have the meanings ascribed to them in the Motion, the Bond Documents, or the DIP Credit Agreement, as applicable.

B. The Court has jurisdiction over the Chapter 11 Cases and the Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue of the Chapter 11 Cases and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. The Debtors have properly served notice of the Motion and the hearing thereon pursuant to sections 102, 105, 361, 362, 363 and 364 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6003 and 6004, and Local Bankruptcy Rules 2002-1, 9013-1 and 9013-2, which notice was sent to, among others (i) the Office of the United States Trustee; (ii) the Trustee; (iii) the Debtors' other prepetition secured lenders; (iv) the DIP Lender; (v) the Internal Revenue Service; (vi) the parties included on the Debtors' consolidated list of their 30 largest unsecured creditors; (vii) the United States Attorney for the Eastern District of Missouri; (viii) the state attorneys general in each state where the Debtors conduct their business; and (ix) all parties entitled to notice pursuant to Bankruptcy Rule 2002 (the "Notice Parties"). Such notice is sufficient under the Bankruptcy Code and the applicable Bankruptcy Rules and Local Rules with respect to the relief requested, and no further notice of the relief sought in the Motion is necessary.

#### **The Debtors and the Facilities**

D. The Debtors own and operate senior living facilities and related businesses in Illinois, Indiana, Iowa and Missouri (collectively, the "Facilities").

E. The Debtors offer residential units for their residents (each a "Resident") in independent living, assisted living, memory care, or skilled nursing units and provide those Residents with necessary healthcare services, multiple entertainment outlets and other social benefits. As of the Petition Date, the Debtors provide accommodations for more than 1,000

Residents. The Debtors employ approximately 960 employees and also have individuals from staffing agencies to run their operations.

**The Secured Bond Obligations**

F. The Debtors admit, stipulate, and agree that each of the following Debtors is a member of the Obligated Group (defined below): Christian Homes, Inc. (“Christian Homes”); Crown Point Christian Village, Inc. (f/k/a Chicagoland Christian Village, Inc.); Hickory Point Christian Village, Inc. (f/k/a Fair Havens Christian Homes, Inc.); Hoosier Christian Village, Inc.; Lewis Memorial Christian Village; Midwest Senior Ministries, Inc.; New Horizons PACE MO, LLC; Risen Son Christian Village; Senior Care Pharmacy Services, LLC; and Spring River Christian Village, Inc. (each, an “Obligated Group Member,” and collectively referred to herein as the “Obligated Group Members” or the “Obligated Group”).

G. The Debtors admit, stipulate, and agree that the Obligated Group Members are obligated to the Trustee for the benefit of the beneficial holders of the following series of bonds: (i) Illinois Finance Authority Revenue Refunding Bonds, Series 2016 (Christian Homes, Inc. Obligated Group) (the “Series 2016 Bonds”); (ii) Health and Educational Facilities Authority of the State of Missouri Senior Living Facilities Revenue Bonds (Christian Horizons Obligated Group), Series 2018 (the “Series 2018 Bonds”); (iii) Illinois Finance Authority Revenue Bonds, Series 2021A (Christian Horizons Obligated Group) (the “Series 2021A Bonds”); and (iv) Illinois Finance Authority Taxable Revenue Bonds, Series 2021B (Christian Horizons Obligated Group) (the “Series 2021B Bonds,” and collectively with the Series 2016 Bonds, the Series 2018 Bonds and the Series 2021A Bonds, the “Bonds”).

H. The Debtors admit, stipulate, and agree that (i) the Series 2016 Bonds were issued pursuant to that certain Bond Trust Indenture dated as of March 1, 2016 (the “2016 Bond

Indenture”) between the Illinois Finance Authority (the “Illinois Issuer”) and Wells Fargo Bank, National Association (“Wells Fargo”), as original bond trustee thereunder; (ii) the Series 2018 Bonds were issued pursuant to that certain Bond Trust Indenture dated as of December 1, 2018 (the “2018 Bond Indenture”) between the Health and Educational Facilities Authority of the State of Missouri (the “Missouri Issuer”) and Wells Fargo, as original bond trustee thereunder; and (iii) the Series 2021A Bonds and the Series 2021B Bonds were issued pursuant to two separate Bond Trust Indentures, each dated as of September 1, 2021 (together, the “2021 Bond Indenture”), each between the Illinois Issuer and Wells Fargo, as original bond trustee thereunder. The 2016 Bond Indenture, the 2018 Bond Indenture and the 2021 Bond Indentures are referred to collectively herein as the “Bond Indentures.”

I. The Debtors admit, stipulate, and agree that: (i) the proceeds of the Series 2016 Bonds were loaned to Obligated Group Members pursuant to that certain Loan Agreement dated as of March 1, 2016 (the “2016 Loan Agreement”) between the Illinois Issuer and Christian Homes; (ii) the proceeds of the Series 2018 Bonds were loaned to Obligated Group Members pursuant to that certain Loan Agreement dated as of December 1, 2018 (the “2018 Loan Agreement”) between the Missouri Issuer and Christian Homes; and (iii) the proceeds of the Series 2021A Bonds and the Series 2021B Bonds were loaned to Obligated Group Members pursuant to two separate Loan Agreements, each dated as of September 1, 2021 (together, the “2021 Loan Agreements”), each between the Illinois Issuer and Christian Homes. The 2016 Loan Agreement, the 2018 Loan Agreement and the 2021 Loan Agreements are referred to collectively herein as the “Loan Agreements.” The Debtors further admit, stipulate and agree that the Illinois Issuer and the Missouri Issuer, as applicable, assigned their respective rights under the Loan Agreements to the Bond Trustee in accordance with the Bond Indentures.



J. The Debtors admit, stipulate, and agree that the Obligated Group Members used the proceeds of the Bonds primarily to finance or refinance the acquisition, construction, equipping or improving, as applicable, of various communities owned and operated by Obligated Group Members.

K. The Debtors admit, stipulate, and agree that the Obligated Group Members' payment obligations with respect to the Bonds are evidenced and secured by, *inter alia*, certain Direct Note Obligations (the "Master Obligations") issued under and pursuant to that certain Master Trust Indenture dated as of June 1, 2007 (as amended or supplemented from time to time, the "Master Indenture") among the Obligated Group Members and Wells Fargo, as original master trustee thereunder.

### **The Bond Claim**

L. The Debtors admit, stipulate, and agree that as of July 15, 2024, the amounts due and owing by the Obligated Group Members with respect to the Bonds and the obligations under the Bond Documents (as defined below) are as follows (collectively, the "Bond Claim"):

- (i) Unpaid principal on the Bonds in the aggregate amount of \$75,570,000, consisting of \$27,795,000 in principal amount of Series 2016 Bonds, \$27,685,000 in principal amount of Series 2018 Bonds, \$12,860,000 in principal amount of Series 2021A Bonds, and \$7,230,000 in principal amount of Series 2021B Bonds;
- (ii) Accrued but unpaid interest on the Bonds in the aggregate amount, as of July 15, 2024, of \$585,979.16, consisting of \$230,375.00 in accrued interest on the Series 2016 Bonds, \$230,708.33 in accrued interest on the Series 2018 Bonds, \$85,733.33 in accrued interest on the Series 2021A Bonds, and \$39,162.50 in accrued interest on the Series 2021B Bonds; and
- (iii) unliquidated, accrued and unpaid fees and expenses of the Trustee and its professionals incurred through the Petition Date. Such amounts, when liquidated, shall be added to the aggregate amount of the Bond Claim.

**Security for the Bond Obligations**

M. The Debtors admit, stipulate, and agree that, as security for their obligations with respect to the Bonds and the other obligations owing under the Bond Documents (as defined below): (i) the Obligated Group Members entered into the Master Indenture, wherein the Obligated Group Members granted a first priority security interest in, among other assets, the Gross Revenues of the Obligated Group (as defined in the Master Indenture, and including, without limitation, “all receipts, revenues, rentals, income, insurance proceeds (including, without limitation, all Medicaid, Medicare and other third-party payments”), condemnation awards and other moneys received by or on behalf of any Obligated Group Member, including (without limitation) revenues derived from (a) the ownership, operation or leasing of any portion of the Facilities (including, without limitation, fees payable by or on behalf of residents of the Facilities) and all rights to receive the same ... whether in the form of accounts, general intangibles or other rights ... and (b) gifts, grants, bequests, donations and contributions ... that are legally available to meet any of the obligations of the Obligated Group Member[s]”); and (ii) each of the Obligated Group Members owning an interest in real property entered into a mortgage and security agreement (or deed of trust and security agreement, as applicable), each in favor of the Master Trustee (collectively, the “Mortgages”). Each of the Mortgages grants a first priority mortgage lien (or deed of trust lien) on the real estate described therein and all buildings, structures, improvements and appurtenances standing or thereafter placed upon such real estate, and grants a first priority security interest in all machinery, equipment, inventory, furniture, spare parts, general intangibles, intellectual property rights and other personal property on or related to such real estate, and in all judgments, awards of damages, settlements and other compensation resulting from condemnation proceeds or the taking of the subject real estate (all of the foregoing, collectively, the “Mortgaged Property”). The

Mortgaged Property includes all of the facilities in which the principal operations of Obligated Group Members are located and substantially all assets of each of the Obligated Group Members.

N. The Master Indenture, the Bond Indentures, the Loan Agreements, the Mortgages and the various other agreements, documents and instruments evidencing the obligations of the Obligated Group Members with respect to the Bonds or the Master Obligations, or providing security for such obligations, are referred to collectively herein as the “Bond Documents.”

O. Subject to the rights and claims set forth in paragraph 34 herein, the Debtors admit, stipulate, and agree that, pursuant to the Bond Documents, the Trustee holds a valid and enforceable first priority lien and security interest in substantially all of the Obligated Group Members’ real and personal property (other than Permitted Encumbrances, as defined in the Master Indenture), including all of the Obligated Group Members’ rights, titles, interest, and estates in the following assets, as security for the Bonds and the Master Obligations: (i) all Gross Revenues of the Obligated Group Members; (ii) the Mortgaged Property; and (iii) all funds held in the various accounts established under the Master Indenture and the Bond Indentures (all such collateral, the “Pre-Petition Bond Collateral”; and the liens on such Pre-Petition Bond Collateral, the “Pre-Petition Liens”).

P. Subject to the rights and claims set forth in paragraph 34 herein, the Debtors admit, acknowledge and agree that the Bond Claim (i) constitutes legal, valid, binding, enforceable, and non-avoidable obligations of the Obligated Group Members; (ii) is not subject to setoff, defense, claim, counterclaim, or subordination of any kind; and (iii) is secured by first-priority Pre-Petition Liens in the Pre-Petition Bond Collateral.

#### **HUD-Financed Properties**

Q. The Debtors own and operate two Facilities – Wabash Estates in Carmi, Illinois

and Washington Village Estates in Washington, Illinois (together, the “HUD-Financed Properties”) – subject to mortgages securing loans made by or through the United States Department of Housing and Urban Development (“HUD,” and such loans, “HUD Loans”).

R. As of the Petition Date, the HUD-Financed Properties were not subject to mortgages in favor of the Trustee.

**IDHA-Financed Property**

S. The Debtors also own and operate Wabash Christian Village Apartments, which facility is located on property adjacent to Wabash Estates and financed by a loan from the Illinois Housing Development Authority (“IHDA,” and such loan, the “IHDA Loan”). The property is encumbered by a mortgage in favor of IHDA securing IHDA loan.

T. As of the Petition Date, the IHDA-Financed Property was not subject to a mortgage in favor of the Trustee.

**The Debtors’ Need for Use of Cash Collateral**

U. The Debtors have requested the use of the Cash Collateral of the Trustee and the cash collateral, if any, of HUD and IHDA (as to the applicable facilities encumbered by their mortgages) in connection with the Chapter 11 Cases. The Trustee only consents to the use of its Cash Collateral upon the express terms of this Interim Order.

V. Without the use of cash collateral, the Debtors’ continued operation as a going concern would be disrupted, and the Debtors and their Residents, estates and creditors would be immediately and irreparably harmed. The Debtors would not have the funds necessary to maintain the Facilities, pay employee compensation, payroll taxes, overhead and other expenses. The Debtors require use of cash collateral as provided herein.

**The Debtors' Need for Debtor-in-Possession Financing**

W. A critical need exists for the Debtors to obtain funds to cover the operational, capital and administrative needs of the Facilities, solely to the extent set forth under the Budget and under the DIP Facility (as each is defined below). The Debtors are unable to obtain postpetition financing on an unsecured basis under sections 364(c)(1) or 503(b)(1) of the Bankruptcy Code. Further, the Debtors assert that they are also unable to obtain secured credit from sources other than the DIP Lender that would be allowable under sections 364(c)(2), 364(c)(3) and 364(d)(1) of the Bankruptcy Code for the purposes set forth in this Interim Order. Further, the Trustee would not consent to any priming liens and would have argued that the Debtors could not have provided adequate protection for any such proposed financing.

X. In addition to the use of the Trustee's Cash Collateral, the DIP Lender has agreed to provide the requested Initial DIP Loans (as defined below) under the DIP Facility and use of Cash Collateral in accordance with the terms contained in this Interim Order, in the amounts, categories and times set forth in the Budget (as defined below), which shall be used for the necessary operational costs associated with the Facilities and other costs and expenses of administration of the Chapter 11 Cases.

Y. Without the Initial DIP Loans, the Debtors will be unable to pay necessary payroll, costs, and operating expenses and obtain goods and services in a manner that will avoid irreparable harm to the Debtors' estates and to the Residents. At this time, the Debtors' ability to finance the ongoing operation and availability of sufficient liquidity through the incurrence of new indebtedness for borrowed money and other financial accommodations as provided herein are vital to the preservation and maintenance of the going concern of the Debtors' estates and to otherwise provide the necessary services to the Residents.

Z. The Debtors have requested that the DIP Lender provide the Initial DIP Loans up to an aggregate amount of \$3,000,000, which funds shall be used by the Debtors solely to the extent provided in the Budget attached as **Exhibit 1**. At the expiration of the Interim Order, the DIP Lender, subject to entry of the Final Order in a form acceptable to the DIP Lender, shall continue to advance funds through additional DIP loans (together with the Initial DIP Loans, the “DIP Loans”), up to an aggregate amount to be determined in connection with the finalization of an extended Budget (collectively, the “DIP Facility”).

AA. The DIP Lender is willing to provide the Initial DIP Loans, subject to the terms and conditions set forth herein, including the provisions of this Interim Order providing that the Post-Petition Liens (as defined below) and the various claims, superpriority claims and other protections granted pursuant to this Interim Order will not be affected by any subsequent reversal or modification of this Interim Order or any other order, as provided in section 364(e) of the Bankruptcy Code.

BB. The DIP Lender’s lending of the Initial DIP Loans is conditioned upon the grant of a lien that: (i) will prime and remain senior to the Trustee’s Pre-Petition Liens; and (ii) will otherwise constitute a first priority lien in all Post-Petition Collateral (as defined below), subject only to the Carve-Out (as defined below).

CC. The Debtors admit, stipulate, and agree that the terms of the Initial DIP Loans have been negotiated in good faith and at arm’s length among the Debtors and the DIP Lender; that the terms of the Initial DIP Loans are at least as favorable to the Debtors as those available from alternative sources, under all of the circumstances; that given the current market conditions and under the particular circumstances of the Chapter 11 Cases, no other sources of funding are

available on better overall terms; and that given the exigencies of the case, the Debtors believe the Initial DIP Loans are the best and only option.

DD. The Debtors and the DIP Lender have represented to the Bankruptcy Court that they have negotiated at arm's length and have acted in good faith in the negotiation and preparation of the DIP Credit Agreement and this Interim Order, have been represented by counsel, and intend to be and are bound by their respective terms. The Debtors admit, stipulate, and agree that the terms and conditions of this Interim Order, the DIP Documents and the Initial DIP Loans are fair and commercially reasonable under the circumstances, reflect the Debtors' exercise of their prudent business judgment consistent with their fiduciary duties, are supported by reasonably equivalent value and fair consideration, and are enforceable in accordance with applicable law. As such, the funds advanced should be deemed to have been extended by the DIP Lender in "good faith" as that term is used in section 364(e) of the Bankruptcy Code and based upon the express reliance of the protections offered by section 364(e) of the Bankruptcy Code and the Post-Petition Liens and the Superpriority Claim (defined below) should be entitled to the full protection of section 364(e) of the Bankruptcy Code, including in the event that this Interim Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

**Need for Adequate Protection**

EE. Pursuant to the Bankruptcy Code and in light of the foregoing, the Debtors are required to provide adequate protection to the Trustee in respect of the use of the Pre-Petition Collateral (including Cash Collateral) and granting of the priming Post-Petition Liens. The Debtors wish to provide adequate protection of the security interests in and liens on the Pre-Petition Collateral pursuant to the terms set forth in this Interim Order.

FF. The applicable Debtors also wish to provide adequate protection to HUD of its lien on the HUD-Financed Properties, also pursuant to the terms set forth in this Interim Order.

GG. The applicable Debtor also wishes to provide adequate protection to IHDA of its lien on the IHDA-Financed Properties, also pursuant to the terms set forth in this Interim Order.

HH. Good cause has been shown for the entry of this Interim Order. The terms of this Interim Order, inclusive of the adequate protection provided to the Trustee relating to the Pre-Petition Liens and the adequate protection provided to HUD and IHDA, are fair and commercially reasonable, reflect the Debtors' prudent business judgment consistent with their fiduciary duties and constitute reasonable equivalent value and fair consideration. Entry of this Interim Order is in the best interest of the Debtors, their creditors, including the holders of the Bonds, and their estates.

II. To the extent any portion of the foregoing constitute rulings of law, they shall constitute this Court's rulings with respect to the matters so stated.

**NOW THEREFORE, THE COURT ORDERS AS FOLLOWS:**

**Motion Granted**

1. The Motion is hereby **GRANTED** in accordance with the terms and conditions set forth in this Interim Order. Any objections to the Motion with respect to the entry of this Interim Order that have not been withdrawn, waived, or settled, and all reservation of rights included therein, are hereby denied and overruled with respect to this Interim Order.



**Approval of DIP Facility and DIP Loan Documents**

2. On an interim basis as set forth in this Interim Order, the terms of the DIP Facility, that certain Priming Superpriority Debtor-in-Possession Credit Agreement between the Debtors and the DIP Lender (the “DIP Credit Agreement”) and all documents executed in connection therewith (collectively with the DIP Credit Agreement, the “DIP Loan Documents”) are fair and reasonable, reflect the exercise of the Debtors’ prudent business judgment consistent with their fiduciary duties, and constitute reasonably equivalent value and fair consideration.

3. The Debtors shall be liable for the repayment in full of the Initial DIP Loans, upon entry of this Interim Order, and all DIP Obligations, upon the entry of the Final Order.

4. The DIP Facility and DIP Loan Documents have been negotiated in good faith and at arm’s length among the Debtors and the DIP Lender, and the Initial DIP Loans shall be deemed to have been extended by the DIP Lender in good faith (as that term is used in section 364(e) of the Bankruptcy Code) and in express reliance upon, and with the full benefit of the protections afforded by, section 364(e) of the Bankruptcy Code, whether or not this Interim Order or any provision hereof is vacated, reversed, or modified, on appeal or otherwise.

5. Absent the relief granted by this Interim Order, the Debtors’ estates, the Residents and creditors would suffer immediate and irreparable harm. Accordingly, the entry of this Interim Order and related authorization of borrowings of the Initial DIP Loans under the DIP Facility and DIP Loan Documents are in the best interests of the Debtors’ estates, the Residents, and creditors.

6. The DIP Facility and DIP Loan Documents are hereby approved on an interim basis, and the Debtors are hereby authorized to borrow the Initial DIP Loans pursuant to the DIP Loan Documents, to be used in accordance with the budget attached as **Exhibit 1**, itemizing on a weekly basis all uses, and anticipated uses, revenues projected to be received and all expenditures proposed to be made during such period, which Budget may be amended at the request of the

Debtors and with the written consent of the DIP Lender and the Trustee and incorporated herein by reference (as it may be amended, supplemented, replaced or otherwise modified from time to time solely with the consent of the DIP Lender and the Trustee, in their sole discretion, the “Budget”) and this Interim Order, the proceeds of which shall be used for such purposes as are expressly permitted under the DIP Loan Documents, this Interim Order and the Budget.

7. In furtherance of the foregoing and without further approval of this Court, the Debtors are authorized to perform all acts, to make, execute, and deliver all instruments and documents (including, without limitation, the execution or recordation of security agreements, mortgages, and financing statements), and to pay at the Maturity Date (defined below) of the DIP Facility all amounts due under the DIP Facility, including fees, in each case that may be reasonably required or necessary for the Debtors’ performance of the Initial DIP Loans, including, without limitation:

- (i) the execution, delivery, and performance of the DIP Loan Documents and any exhibits, schedules and other documents related thereto;
- (ii) the execution, delivery, and performance of one or more non-material amendments to the DIP Loan Documents, in each case in such form as the Debtors and the DIP Lender may agree (it being understood that no further approval of the Court, other than with respect to the Final Order, shall be required for amendments to the DIP Loan Documents that do not shorten the maturity of the extensions of credit thereunder, increase the commitments, or increase the rate of interest payable thereunder);
- (iii) the non-refundable payment to the DIP Lender of the reasonable costs and expenses as may be due from time to time in connection with the Initial DIP Loans in accordance with the terms of the DIP Loan Documents and the Budget; and
- (iv) the performance of all other acts required under the DIP Loan Documents in connection with the Initial DIP Loans.

#### **The Initial DIP Loans**

8. Initial DIP Loans. Pursuant to sections 361 and 364 of the Bankruptcy Code and the terms and conditions hereof, until the occurrence of an Event of Default (as defined below),

the Debtors are hereby authorized to borrow the Initial DIP Loans pursuant to the terms, conditions and provisions of this Interim Order and the DIP Credit Agreement in an aggregate amount up to \$3,000,000 pursuant to the terms set forth herein (the “Initial DIP Loans”); provided, however, that the Debtors shall use the proceeds of the Initial DIP Loans solely in compliance with the Budget and as expressly set forth herein.

9. DIP Credit Facility Terms

- (i) Interest shall accrue on the full amount committed under the DIP Facility from the date of entry of this Interim Order (the “Interim Order Entry Date”) through the Maturity Date at a simple rate per annum equal to 4.589%. Interest will be calculated on a 30/360 basis. Accrued interest shall be due and payable on the Maturity Date.
- (ii) For each dollar advanced under the DIP Facility, one dollar of the pre-petition indebtedness on account of the Bond Claim shall be ‘rolled up’ and shall constitute, for all purposes, an obligation of the Debtors under the DIP Credit Agreement (“Roll-Up Obligations”). For the avoidance of doubt, and without limiting the generality of the foregoing, the Roll-Up Obligations shall be secured, equally and ratably, with all other DIP Obligations, by the Collateral, and shall be repaid, on the Maturity Date or otherwise, on a ratable basis with all other DIP Obligations.
- (iii) The principal, interest and any other obligations owed with respect to the Initial DIP Loans and the Roll-Up Obligations (together, the “DIP Obligations”) shall be due and payable upon the earliest of (i) December 31, 2024; (ii) the closing date of the sale of all or substantially all of the Debtors’ assets pursuant to an order entered by the Court (or, in the event of more than one sale, the closing date of the last of such sales); (iii) the acceleration of the DIP Loans and the termination of the DIP Facility by the DIP Lender following the occurrence or during the continuation of an Event of Default (defined below); and (iv) the confirmation of a Chapter 11 plan which becomes effective (the earliest such date, the “Maturity Date”).

10. Conditions to the Initial DIP Loans. The funding of the Initial DIP Loans is conditioned on the satisfaction of the conditions precedent set forth in Article III of the DIP Credit Agreement.

11. Disbursements of Initial DIP Loans. The following conditions and processes shall govern the funding of the Initial DIP Loans:

- (i) not less than four (4) business days prior to any borrowing date (each a “Borrowing Date”) and no more frequently than every two (2) weeks, the Debtors shall deliver to the DIP Lender a fully executed Borrowing Certificate (as defined below) by no later than 10:00 a.m. (New York City time) on such date. Such Borrowing Certificate, a form of which is attached as Exhibit B to the DIP Credit Agreement (each a “Borrowing Certificate”), shall specify the amount of the proposed DIP Loan and the Borrowing Date thereof, and shall certify that the amount of the proposed DIP Loan, after accounting for all other available funds held by the Debtors, is reasonably expected to be needed to pay amounts coming due in the fourteen (14) days immediately following such Borrowing Date, as set forth in the Budget. On the Borrowing Date specified in any Borrowing Certificate, the DIP Lender shall disburse such funds to the Operating Account (as defined in the DIP Credit Agreement) and shall use reasonable efforts to make the funds available to the Debtors no later than 2:00 p.m. (New York City time) on the requested Borrowing Date;
- (ii) each request for an Initial DIP Loan must exceed a minimum amount of \$100,000;
- (iii) such expenditures have not been subject to any prior requisition or payment or reimbursement from any other source;
- (iv) after making the DIP Loan requested, the aggregate outstanding principal amount of the Initial DIP Loans will not exceed the amount authorized under this Interim Order and the DIP Credit Agreement;
- (v) the representations and warranties of the Debtors contained in the Interim Order and in the DIP Credit Agreement shall be true and correct in all material respects immediately prior to, and after giving effect to, the Initial DIP Loan;
- (vi) the Debtors are in compliance in all material respects with each of the covenants contained in the Interim Order and the DIP Loan Documents; and
- (vii) no Event of Default exists under the terms of this Interim Order or under the DIP Loan Documents.

12. Use of Initial DIP Loan Proceeds. The Initial DIP Loans shall be used solely as set forth in the Budget for: (a) the necessary operation and maintenance costs associated with the Facilities in the amounts and categories and time set forth in the Budget; and (b) other costs and expenses of administration of the Chapter 11 Cases in the amounts and categories and time set forth in the Budget.

13. Effectiveness of Initial DIP Loans. From and after the Interim Order Entry Date, the terms and conditions hereof shall constitute a valid and binding obligation of the Debtors, enforceable against the Debtors in accordance with the terms of this Interim Order for all purposes during the Chapter 11 Cases, any subsequently converted cases of any of the Debtors under chapter 7 of the Bankruptcy Code or after the dismissal of the Chapter 11 Cases. No obligation, payment, transfer or grant of security under this Interim Order shall be stayed, restrained, voidable, avoidable or recoverable under the Bankruptcy Code or under any applicable law (including without limitation, under sections 502(d), 548 or 549 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law), or subject to any defense, reduction, setoff, recoupment or counterclaim.

14. Payments to the DIP Lender and/or the Trustee. Any and all payments or proceeds remitted to the DIP Lender and/or the Trustee pursuant to the provisions of this Interim Order or otherwise shall be received by the DIP Lender and/or the Trustee, free and clear of any claim, charge, assessment or other liability, including, without limitation, upon entry of the Final Order, any such claim or charge arising out of or based on sections 506(c) and/or 552(b) of the Bankruptcy Code, whether directly or indirectly, all of which are hereby waived by the Debtors.

**Security for the DIP Loan**

15. Post-Petition Liens. Pursuant to section 364(c)(2), (c)(3) and (d) of the Bankruptcy Code and as security for the DIP Obligations and the obligations under the DIP Loan Documents, the DIP Lender is hereby granted valid, binding, enforceable and perfected first priority mortgages, pledges, liens and security interests (the “Post-Petition Liens”) in all currently owned or hereafter acquired property and assets of the Debtors of any kind or nature, whether real or personal, tangible or intangible, wherever located, now owned or hereafter acquired or arising and all proceeds,

products, rents and profits thereof, including, without limitation, accounts, revenues, inventory, equipment, capital stock in subsidiaries, investment property, instruments, chattel paper, real estate, leasehold interests, contracts, general intangibles, patents, copyrights, trademarks, deposit accounts, intercompany claims, claims against affiliates, causes of action, tax refund claims, commercial tort claims, insurance proceeds and insurance premium refunds (all of the foregoing, the “Post-Petition Collateral”); provided, however, that the Post-Petition Collateral under this Interim Order shall not include any and all cash or other property received by the Debtors in the form of resident funds, gifts, charitable donations, bequests or grants that are by their terms, restricted in the manner in which they may be utilized by the Debtors to the extent, and only to the extent, that such restrictions would prohibit the granting of any such gifts, donations, bequests or grants as collateral. In connection with this Interim Order, Post-Petition Collateral shall exclude (i) resident deposits held in one or more segregated accounts in the aggregate amount of approximately \$10,000, (ii) the HUD-Financed Properties, (iii) the IHDA-Financed Property and (iv) actions for preferences, fraudulent conveyances or other avoidance power claims and any recoveries under sections 542, 544, 545, 547, 548 (exclusive of transferees under section 549), 550 and 553 and the Bankruptcy Code (collectively, the “Avoidance Actions”) and the proceeds thereof; provided that the DIP Credit Agreement contemplates that the Post-Petition Collateral includes the HUD-Financed Properties, the IHDA-Financed Property, Avoidance Actions and proceeds thereof upon entry of the Final Order; and, provided further that the DIP Lender reserves the right to request that the Post-Petition Collateral include the HUD-Financed Properties, the

IHDA-Financed Property and Avoidance Actions and proceeds thereof in any Final Order on the Motion.

16. The Post-Petition Liens are in addition to the superpriority administrative expense claim set forth in Paragraph 17 hereof, and pursuant to sections 364(c) and 364(d), shall be valid, binding, continuing, enforceable, fully-perfected, senior and priming on all Post-Petition Collateral that (a) will be and remain senior to the Pre-Petition Liens, Replacement Liens and Supplemental Liens granted to the Trustee as adequate protection for its Pre-Petition Liens; and (b) will otherwise constitute a first priority lien on all other assets of the Debtors, subject only to the Carve-Out.

17. Superpriority Administrative Expense Claim. The Initial DIP Loans shall have the status of a superpriority administrative expense claim (the “Superpriority Claim”) pursuant to section 364(c)(1) of the Bankruptcy Code, including, without limitation, having priority over all other unpaid administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546, 726, 1113 or 1114 of the Bankruptcy Code (subject only to the Carve-Out), and shall at all times be senior to the rights of the Debtors, any successor trustee or any creditor in the Chapter 11 Cases or any subsequent proceedings under the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other nonconsensual lien, levy or attachment. The Superpriority Claim granted to the DIP Lender by this Paragraph 17 shall be payable from and have recourse to all pre-and postpetition property of the Debtors and all proceeds thereof.

**Debtors’ Use of Cash Collateral**

18. The Debtors are hereby authorized to use cash collateral (as defined in section 363(a) of the Bankruptcy Code) constituting proceeds of accounts and revenues from operations

of the Facilities and advances under the DIP Facility (collectively, the “Cash Collateral”), but not including any other funds received by the Debtors during these proceedings.

19. The Debtors’ use of Cash Collateral shall be solely as set forth in the Budget and as otherwise provided in this Interim Order for: (a) the necessary ordinary course operation and maintenance costs associated with the Facilities in the amounts and categories and time set forth in the Budget; and (b) other costs and expenses of administration of the Chapter 11 Cases in the amounts and categories and time set forth in the Budget. Except on the terms and conditions of this Interim Order and the DIP Credit Agreement, the Debtors are prohibited from using Cash Collateral at any time or for any other purpose absent consent of the DIP Lender and the Trustee, or further order of the Bankruptcy Court.

**Adequate Protection for the Pre-Petition Liens and Pre-Petition Collateral**

20. As adequate protection of the Trustee’s interests in the Pre-Petition Collateral, including Cash Collateral, pursuant to sections 361, 363 and 552(b) of the Bankruptcy Code, and the Trustee’s consent to the priming of its liens and claims pursuant to the Post-Petition Liens and the Superpriority Claim provided to the DIP Lender, the Trustee and HUD and IHDA are hereby provided the following adequate protection:

- (i) Replacement Liens. As adequate protection solely for any diminution in the value of the Pre-Petition Collateral, including based upon the priming by the DIP Lender (“Diminution”), (i) the Trustee shall continue to have a valid, binding, enforceable and perfected additional and replacement mortgages, pledges, liens and security interests in all Post-Petition Collateral and the proceeds, rents, products and profits therefrom (ii) HUD shall continue to have a valid, binding, enforceable and perfected lien on post-petition income related to the HUD-Financed Properties, and (iii) IHDA shall continue to have a valid, binding, enforceable and perfected lien on post-petition income related to the IHDA-Financed Property, in each case, whether acquired or arising before or after the Petition Date, to the same extent, priority and validity that existed as of the Petition Date (such liens, the “Replacement Liens”); provided, however, the Replacement Liens shall be subject to (x) the Post-Petition Liens, (y) the Carve-Out and (z) valid and perfected liens existing on or arising after the Petition Date which, solely by operation of law, have priority over such Replacement Liens, if any;



- (ii) Supplemental Liens. As additional adequate protection solely for any Diminution, the Trustee shall have a valid, perfected and enforceable continuing supplemental lien on, and security interest in, all of the assets of the Debtors of any kind or nature whatsoever within the meaning of section 541 of the Bankruptcy Code, whether acquired or arising before or after the Petition Date, and the proceeds, rents, products and profits therefrom, exclusive of any Avoidance Actions and any proceeds therefrom (provided that the Trustee reserves the right to request that the Supplemental Liens include Avoidance Actions and proceeds thereof in any Final Order on the Motion) (collectively, the “Supplemental Liens”); provided, however, the Supplemental Liens shall be subject to (w) the Post-Petition Liens, (x) the Replacement Liens, (y) the Carve-Out and (z) valid and perfected liens existing on or arising after the Petition Date which, solely by operation of law, have priority over such Supplemental Liens, if any;
- (iii) Pre-Petition Superpriority Claim. As additional adequate protection solely for any Diminution, the Trustee shall receive a superpriority expense claim allowed under section 507(b) of the Bankruptcy Code (the “Pre-Petition Superpriority Claim”) against all assets of the Debtors’ estates. The Pre-Petition Superpriority Claim shall have priority over any and all other unpaid administrative expenses now existing or hereafter arising, of any kind whatsoever, of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546, 726, 1113 or 1114 of the Bankruptcy Code, and shall at all times be senior to the rights of the Debtors, any successor trustee or any creditor in the Chapter 11 Cases or any subsequent proceedings under the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other nonconsensual lien, levy or attachment; provided, however, the Pre-Petition Superpriority Claim shall be subject to the (x) the Post-Petition Liens, (y) the Superpriority Claim and (z) the Carve-Out;
- (iv) Adequate Protection Payments. The Debtors shall make, and are hereby authorized to make, adequate protection payment to the Trustee in the amount of \$150,000 per month (the “Adequate Protection Payments”), commencing on the Interim Order Entry Date and continuing through the Maturity Date. The Adequate Protection Payments will be made by wire transfer to the Trustee on the first day of each month (other than the month in which the Interim Order is entered).
- (v) Financial Reports. The Debtors shall provide the Trustee and HUD and IHDA with all reports, documents and other materials, including financial reports, as may be required in this Interim Order and such other and further access to the Debtors’ books and records, advisors and professionals as may be reasonably requested by the Trustee or HUD and IHDA from time to time.
- (vi) Right to Seek Additional Adequate Protection. This Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights of the Trustee or HUD or IHDA to request further or alternative forms of adequate

protection at any time or the rights of the Debtors or any other party to contest such request.

## **PROVISIONS COMMON TO THE INITIAL DIP LOANS AND TRUSTEE AS HOLDER OF THE BOND CLAIM**

### **Covenants**

21. Covenants. The Debtors shall observe all covenants in this Interim Order and the DIP Credit Agreement at all times prior to and after the Termination Date (as defined below). The Debtors agree as follows (and the Parties acknowledge that failure to comply with such covenants shall constitute an Event of Default (as defined below) under this Interim Order):

- (i) The Debtors shall comply with the Budget (subject to the permitted variances provided in the next immediate sentence), and shall not make any payments, or incur any obligations or liabilities, that are not projected and provided for in the Budget. On the last business day of every other week, for any Measuring Period (as defined below), the Debtors (i) shall not permit expenditures for such Measuring Period to exceed (x) one hundred ten percent (110%) of the respective amounts, measured as to each line item in the Budget, or (y) one hundred five percent (105%) of the respective amounts, measured on an aggregate basis, as set forth in the Budget for such Measuring Period; provided that the Debtors shall not permit expenditures for estate professional fees to exceed one hundred percent (100%) of the amount allocated for such expenditures in the Budget for such Measuring Period; and (ii) shall not permit receipts for such Measuring Period to be less than ninety percent (90%) of the amounts, on an aggregate basis, set forth in the Budget for such Measuring Period. These variances (the “Variances”) shall be measured on a rolling four week period (the “Measuring Period”); provided, for the avoidance of doubt, that Measuring Periods for the first three weeks shall include pre-petition periods in the calculations of Variances for such Measuring Periods. Subject to paragraph 7(ii) above, the Debtors may, at any time, amend or reforecast the Budget, either for the period covered by the Budget or for any period thereafter, and the DIP Lender and Trustee may approve or not approve such amendment in their sole and absolute discretion; provided that any amendment to the Budget, upon approval by the DIP Lender and Trustee, will be filed with the Court and shall be deemed effective if no objection is made to such amendment within three business days of such filing.
- (ii) The Debtors shall provide the following reports and information to the DIP Lender, the Trustee, HUD, IHDA, the Committee (if any is appointed) and the United States Trustee:
  - a. no later than 5:00 p.m. (prevailing Eastern time) on Friday of every week or if such Friday is not a business day, then the immediate succeeding business day, the “Weekly Budget Report” which means, a weekly report certified by

an Authorized Officer for the Debtors, substantially in the same form as the Budget, indicating (i) a comparative reconciliation, on a line-by-line and aggregate basis, of actual cash receipts and disbursements against the cash receipts and disbursements forecasted in the Budget, and the dollar and percentage variance thereof, for (A) the weekly period ended on (and including) the immediately preceding Sunday, (B) a rolling four-week period, and (C) the cumulative period to date; and (ii) a written explanation of such variances;

- b. at any time and from time to time that the Debtors receive any material written notice from any Governmental Body (as defined in the DIP Credit Agreement), the Debtors shall provide a copy of such notice within one (1) business day of receipt, and the Debtors shall provide copies of all material reports, certificates and notices that the Debtors may provide to any Governmental Body within one (1) business day of transmission;
- c. a monthly reporting package, no later than twenty (20) days after the end of each calendar month, including cash flow, income statement, and balance sheet for such month, occupancy data as of the last day of such, accounts payable and receivable reports with aging information; and
- d. as promptly as reasonably practicable from time to time, following a reasonable request therefor from the DIP Lender, the Trustee, HUD or IHDA, such other information (including historical information) regarding the operations, business affairs and financial condition of the Debtors, the progress of the Chapter 11 Cases, and/or compliance with the terms of any DIP Loan Document.

### **Bankruptcy Milestones**

22. The Debtors agree that failure to comply with the following milestone covenants (the “Bankruptcy Milestones”) shall constitute an Event of Default, unless any such conditions have been waived or modified by the DIP Lender and/or the Trustee in their sole discretion:

- (i) On Tuesday of each week (or such other day as may be agreed upon by the Parties), the Debtors shall make available representatives reasonably acceptable to the DIP Lender and the Trustee for a telephone conference call with the DIP Lender, the Trustee, holders of the Bonds who have agreed that they are restricted from trading their respective Bonds based upon the receipt of material nonpublic information, and their respective agents, advisors and/or representatives to discuss the cash flows and operations of the Facilities, including the Debtors’ compliance with the Budget, the status of the sale process with respect to the sale of substantially all of the Debtors’ assets, and such other matters as are relevant or are reasonably requested by the DIP Lender and the Trustee;

- (ii) On the Petition Date, the Debtors shall file a bid procedures and sale motion, in form and substance acceptable to the Trustee, with respect to a sale of substantially all of the Debtors' assets;
- (iii) On or before July 31, 2024, one or more orders (x) approving the bid procedures (the "Bid Procedures Order") and (y) granting the related relief requested in the sale motion, each in form and substance reasonably acceptable to the Trustee, shall be entered;
- (iv) Each milestone date set forth in any Bid Procedures Order shall constitute a Bankruptcy Milestone for purposes of this Interim Order; and
- (v) On or before August [ ], 2024, the Final Order on the Motion shall be entered.

23. Each of the Bankruptcy Milestones may be extended or waived in writing by the DIP Lender and the Trustee, which writing may be an email. The Debtors shall promptly file with this Bankruptcy Court a notice of any such extension or waiver.

24. No Liens or Encumbrances. Prior to payment in full of the DIP Obligations, the Debtors shall not sell, pledge, hypothecate, or otherwise encumber any Pre-Petition Collateral or Post-Petition Collateral (any such sale, pledge, hypothecation, or other transfer shall be void ab initio other than the adequate protection granted to the Trustee pursuant to this Interim Order). Further, there shall be no other claim or expense having priority or being *pari passu* to the priority granted to the DIP Lender and the Trustee in this Interim Order while any portion of the DIP Obligations remain outstanding, except with respect to (i) the Carve-Out, (ii) the HUD Loans and (iii) the IHDA Loan; provided that the DIP Lender has reserved the right request that the Post-Petition Collateral include the HUD-Financed Properties and the IHDA-Financed Property and proceeds thereof in any Final Order on the Motion.

25. No Modification. Nothing contained herein shall alter or modify, or be deemed to alter or modify, the Bond Documents (or any other agreement to which the Trustee is party).

26. No Waiver. No consent by the DIP Lender or the Trustee to any administrative claims, including fees and expenses of professionals, sought to be assessed against or attributed to

the Trustee, as applicable, in the Pre-Petition Collateral, or the Post-Petition Collateral pursuant to the provisions of sections 506(c) and/or 552(b) of the Bankruptcy Code or otherwise by, through or on behalf of the Debtors, shall be implied from any action, inaction or acquiescence.

27. No Challenge. Notwithstanding anything else herein, subject to the proviso at the last sentence of this paragraph 27, no amounts under the Carve-Out, the proceeds of the DIP Loans and the proceeds of Pre-Petition Collateral (including Cash Collateral) and Post-Petition Collateral shall be used for the purpose of: (i) objecting to or contesting in any manner, or in raising any defenses to, the validity, extent, perfection, priority, or enforceability of: (a) the Bond Claim or the Pre-Petition Liens, (b) the DIP Loans or the Post-Petition Collateral with respect thereto, or (c) any other rights or interests of the DIP Lender or the Trustee; (ii) asserting any claims or causes of action, including, without limitation, any actions under chapter 5 of the Bankruptcy Code against the DIP Lender, the Trustee and/or the holders of the Bonds, or any of their respective advisors, agents or sub-agents or invoking the equitable doctrine of “marshalling” or any other similar doctrine with respect to any of the Pre-Petition Collateral, the Post-Petition Collateral or otherwise; (iii) preventing, hindering, or delaying the enforcement or realization by the DIP Lender or Trustee, as applicable, upon any of the Pre-Petition Collateral or Post-Petition Collateral; (iv) incurring indebtedness except as permitted by this Interim Order; (v) funding acquisitions, capital expenditures, capital leases or other transactions not in the ordinary course of the Debtors’ business other than as set forth in the Budget; (vi) modifying any adequate protection granted to the DIP Lender and/or the Trustee; or (vii) commencing or prosecuting any motion, proceeding or cause of action against the DIP Lender, the Trustee and/or the holders of the Bonds, or their respective agents, sub-agents, attorneys, advisors or representatives, including the commencement or prosecution of formal discovery proceedings in anticipation thereof, or challenging any lien thereof

Notwithstanding the foregoing, not more than \$25,000 of the Cash Collateral may be made available to reimburse the Committee, if appointed, upon appropriate application therefor, for the Committee's fees and expenses in investigating the validity, priority, perfection, and enforceability of the Bond Claim and/or the Trustee's liens in the Pre-Petition Collateral.

**Events of Default**

28. Each of the following shall be considered an Event of Default ("Event of Default") under the DIP Facility and this Interim Order:

- (i) the failure to make payments on the DIP Loans (including interest payments) or amounts due under the DIP Credit Agreement or this Interim Order as and when due;
- (ii) the failure to make adequate protections payments to the Trustee as and when due in accordance with this Interim Order;
- (iii) the failure of the Debtors to pay all of their administrative expenses in full in accordance with and subject to the terms as provided for in the Budget within five (5) days of their due date (except for any amounts in bona fide dispute);
- (iv) the Final Order, in form and substance satisfactory to the DIP Lender and the Trustee, has not been entered on or before August 15, 2024;
- (v) this Interim Order becomes stayed, reversed, vacated, amended or otherwise modified in any respect without the prior written consent of the DIP Lender and the Trustee, except by the Final Order;
- (vi) failure to meet or comply with any of the Bankruptcy Milestones set forth in this Interim Order;
- (vii) the selection by the Debtors of a stalking horse bidder or winning bidder not acceptable to the DIP Lender and the Trustee;
- (viii) the Bid Procedures Order becomes stayed, reversed, vacated, amended or otherwise modified in any respect without the prior written consent of the Trustee and the DIP Lender;
- (ix) the dismissal of the Chapter 11 Cases, conversion of the Chapter 11 Cases to chapter 7 cases, or suspension of the Chapter 11 Cases under section 305 of the Bankruptcy Code;
- (x) the appointment of a chapter 11 trustee, receiver or manager or an examiner with enlarged powers (beyond those set forth in section 1104(c) and 1106(a)(3) and (4))

of the Bankruptcy Code);

- (xi) the filing by the Debtors of a chapter 11 plan not acceptable to the DIP Lender and the Trustee;
- (xii) the granting of relief from the automatic stay to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) with respect to a material asset of the Debtors, by any entity other than the DIP Lender or Trustee on any Post-Petition Collateral;
- (xiii) any superpriority administrative expense claim or lien that is *pari passu* with or senior to the claims, charges or liens of the DIP Lender or the Trustee shall have arisen or be authorized or allowed;
- (xiv) the payment of or granting adequate protection with respect to prepetition indebtedness of the Debtors other than as set forth in the Budget or as provided for in this Interim Order;
- (xv) any of the DIP Loan Documents shall cease to be valid or effective or shall be contested by the Debtors;
- (xvi) the failure by the Debtors to comply with any of the affirmative covenants set forth in, or the taking of any action in violation of the negative covenants set forth in, the DIP Loan Documents;
- (xvii) the cessation of Post-Petition Liens, Replacement Liens, Supplemental Liens, Superpriority Claims, or Pre-Petition Superpriority Claim granted pursuant to this Interim Order to be valid, perfected and enforceable in all respects;
- (xviii) the filing of any Challenge (as defined below) to the Pre-Petition Liens, the Pre-Petition Collateral or the claims of the Trustee by (i) the Debtors or any party affiliated with any of the Debtors or (ii) any other party, and such party's Challenge is (x) supported or not timely objected to by the Debtors or (y) upheld by the Court;
- (xix) the payment of estate professional fees by the Debtors other than to the extent set forth in the Budget; or
- (xx) the occurrence of an Event of Default under the DIP Credit Agreement.

### **Termination and Maturity**

29. Notwithstanding anything herein, the Debtors shall no longer, pursuant to this Interim Order or otherwise, be authorized to borrow funds and/or use Cash Collateral for any purpose hereunder upon the earliest of (i) the occurrence of an Event of Default (that is not waived by the DIP Lender or the Trustee, as applicable) or (ii) the Maturity Date (such earlier date, the



“Termination Date”); provided, however, that the DIP Lender and/or Trustee shall provide five (5) business days (the “Default Notice Period”) written notice via email to counsel to the Debtors, HUD, the United States Trustee and counsel to any Committee of any Event of Default (the “Default Notice”) and the Debtors may continue to use Cash Collateral pursuant to the Budget for five (5) business days after receipt of such Default Notice while the Debtors or any Committee seeks an expedited hearing to contest whether an Event of Default has occurred, and the DIP Lender and the Trustee consent to the holding of such an expedited hearing within five (5) business days of such a filing (collectively, the “Debtor Default Period Rights”).

30. Notwithstanding the occurrence of an Event of Default, the DIP Lender and/or Trustee may elect in writing not to terminate the Debtors’ authority to borrow funds and/or use cash collateral hereunder, as applicable, to waive defaults hereunder, to forbear from the exercise of rights and remedies hereunder and, subject to Bankruptcy Court approval and the approval of the DIP Lender, to modify the Maturity Date and any Event of Default. Any such continued extension of financial accommodations shall be without prejudice to the DIP Lender’s ability to terminate funding.

31. Notwithstanding the occurrence of an Event of Default or anything herein to the contrary, all of the rights, remedies, benefits and protections provided to the DIP Lender and the Trustee shall survive the Termination Date. Upon the Termination Date, the principal of and accrued interest and all other amounts owed to the DIP Lender under the DIP Obligations shall be immediately due and payable.

### **Exercise of Rights**

32. (i) Subject to the Debtor Default Period Rights, without further order from the Bankruptcy Court, the automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to permit, upon the occurrence of any Event of



Default, (a) the DIP Lender to cease making any advances under the DIP Facility, including the Initial DIP Loans, and (b) upon entry of the Final Order, the DIP Lender, upon prior written notice to be filed with the Court, may exercise all of its rights and remedies under the DIP Credit Agreement or related documents.

(ii) The DIP Lender and Trustee shall be entitled to apply the payments or proceeds of the Post-Petition Collateral or the Pre-Petition Collateral as they deem appropriate, subject to the Carve-Out, and in no event shall the DIP Lender or the Trustee be subject to the equitable doctrine of “marshalling” or any other similar doctrine with respect to any of the Post-Petition Collateral or otherwise. In the event that it is determined by final order of the Court that the Trustee is not entitled under Bankruptcy Code section 506(b) to any postpetition adequate protection payment, interest, fees and expenses relating to the Bond Claim, then any payments or proceeds remitted to the Trustee shall reduce the Bond Claim held by the Trustee.

### **Release**

33. Subject to paragraph 34 herein, the Debtors hereby release the DIP Lender and the Trustee, all holders of the Bonds, and their respective affiliates, agents, attorneys, officers, directors and employees of all claims and/or causes of action by, and liabilities owing to, the Debtors arising out of or based upon or related to, in whole or in part, the Bonds, the DIP Facility and any aspect of the prepetition relationship between the Trustee, the DIP Lender or the holders of the Bonds and the Debtors and any other acts or omissions by the Trustee or the DIP Lender in connection with either the Bond Documents or its prepetition relationship with the Debtors. Further, subject to paragraph 34 herein, the Debtors and their estates waive any and all right to object to or contest the amount of the Bond Claim or the Trustee’s Pre-Petition Liens in the Pre-Petition Collateral and agree that all such claims and security interests have been duly perfected and are in all respects valid and enforceable first priority security interests and liens,

subject and subordinate only to (i) Post-Petition Liens to the extent set forth herein and (ii) the Carve-Out. For the avoidance of doubt, the waiver and stipulation set forth in this Paragraph 33 shall not affect any Committee's rights under Paragraph 34 herein.

34. Investigation Period. Any party in interest (including any Committee, but excluding the Debtors) as to claims against the Trustee, HUD or IHDA may file an adversary proceeding or contested matter (a "Challenge") (i) challenging the amount, validity, extent, enforceability, perfection or priority of the Bond Claim or the Pre-Petition Liens in respect thereof or of the HUD Loans or the IHDA Loan, as applicable, or (ii) otherwise asserting any claims or causes of action against the Trustee, the holders of the Bonds, HUD and/or IHDA on behalf of the Debtors' estates so long as any Challenge is made on or before the date that is sixty (60) days after the Interim Order Entry Date or, if later, the Committee, if any (but not any other party in interest), shall have until forty-five (45) days from the date of its formation to file a Challenge; provided, however, that in no event shall any Challenge be filed by any party in interest (including any Committee) on a date that is seventy-five (75) days after the Interim Order Entry Date (such period of time, the "Investigation Period"). Any such Challenge brought after the conclusion of the Investigation Period shall be barred. If no Challenge is commenced by a party during the Investigation Period against the Trustee, the holders of the Bonds and/or HUD, then as to such party, (a) the Bond Claim, the HUD Claim and the IHDA Claim, as applicable, shall constitute an allowed claim, not subject to subordination or recharacterization and otherwise unavoidable, for all purposes in the Chapter 11 Cases and any subsequent chapter 7 case or cases, (b) the Pre-Petition Liens on the Pre-Petition Collateral shall be deemed legal, valid, binding, perfected, not subject to defense, counterclaim, offset of any kind, subordination and otherwise unavoidable, (c) the Trustee, the Bond Claim, the HUD Claim, the IHDA Claim and the Pre-Petition Liens of the

Trustee, HUD or IHDA on the Pre-Petition Collateral shall not be subject to any other or further claims, causes of action or challenges by any party in interest including, without limitation, any successor thereto; and (d) the Trustee, all holders of the Bonds, HUD, IHDA and their respective affiliates, agents, attorneys, officers, directors and employees, shall be deemed released of all claims and/or causes of action by the Debtors, any Committee, the Debtors' estates, all parties in interest, and any subsequently appointed trustee arising out of or based on any facts or circumstances occurring prior to the date hereof; provided further that if one or more claims are timely under this Paragraph 34 and properly filed, then except for such claims, all other potential claims and causes of action are hereby deemed forever waived and barred. Notwithstanding the foregoing, no claims or cause of actions of any kind or nature may be asserted against the DIP Lender or the liens and claims granted to the DIP Lender under and/or related to the DIP Facility or the DIP Obligations. Nothing in this Interim Order shall be deemed to confer standing on any Committee or any other non-Debtor party-in-interest to commence a Challenge, and such Committee or other non-Debtor party in interest shall be required to move for standing and satisfy the applicable standard for obtaining standing to pursue estate causes of action; provided that a standing motion may be filed simultaneously with a Challenge.

35. Section 364(e); Section 506(c); Section 552(b). The DIP Lender shall be entitled to all of the benefits of section 364(e) of the Bankruptcy Code for all Initial DIP Loans. Except to the extent of the Carve-Out and, upon entry of the Final Order, no expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the Post-Petition Collateral, the Pre-Petition Collateral or collateral subject to Replacement Liens and Supplemental Liens, pursuant to section 506(c) or 552(b) of the Bankruptcy Code or

any similar principle of law, without the prior written consent of the DIP Lender and the Trustee and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Lender and/or the Trustee. **For the avoidance of doubt, and notwithstanding anything else in this Interim Order, nothing in this Interim Order shall be construed as a waiver of sections 506(c) or 552(b) of the Bankruptcy Code, with such waiver to be addressed at the time of the Final Hearing on the Motion.**

**Carve-Out**

36. In partial consideration of the Debtors' acknowledgement of the Bond Claim and the Debtors' waiver of any claims under sections 506(c) and 552(b) of the Bankruptcy Code (upon entry of the Final Order), the DIP Lender and Trustee, subject to the entry of the Final Order, consent to the payment of certain expenses and professional fees incurred during the pendency of these Chapter 11 Cases that shall be superior in all instances to the liens and claims of the DIP Lender and Trustee and all other parties (the "Carve Out"). For purposes hereof, the "Carve Out" means the sum of (i) an aggregate amount not to exceed the sum of: (a) the unpaid dollar amount of the fees and expenses of professionals retained by the Debtors or a Committee, if any, to the extent (1) incurred or accrued prior to the Termination Date and remaining unpaid and (2) provided for under the Budget, plus (b) the dollar amount of the fees and expenses of the professionals retained by the Debtors or a Committee, if any, to the extent incurred or accrued after the Termination Date in an aggregate amount not to exceed \$150,000, in each of (a) and (b) solely to the extent allowed by the Bankruptcy Court, plus (ii) the statutory fees of the United States Trustee pursuant to 28 U.S.C. § 1930 and the fees of the Clerk of this Court plus any interest at the statutory rate; *provided, however*, that the Carve Out shall be subject to entry of the Final Order. Prior to the payment of such fees and expenses from the amount available under the Carve Out, such professionals shall first apply any retainers held by such professional to their allowed fees and

expenses. Nothing herein shall constitute a waiver of any right of the DIP Lender or Trustee to object to fees and expenses of any professionals or to challenge any assertion that any amount of the fees and expenses remain unpaid (or the Debtors' right to respond thereto). Except to the extent of and in consideration of the Carve Out, subject to entry of the Final Order, (y) no expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the DIP Lender, the Trustee, the Pre-Petition Collateral, or the Post-Petition Collateral pursuant to section 506(c) of the Bankruptcy Code or a similar principal of law; and (z) the "equities of the case" exception under section 552(b) of the Bankruptcy Code is waived as to the DIP Lender, the Trustee, the Pre-Petition Collateral, and the Post-Petition Collateral. Any payment or reimbursement made in respect of any Carve-Out Expenses incurred on or after an Event of Default shall permanently reduce the Carve-Out on a dollar-for-dollar basis. Subject to the terms of this Interim Order, prior to the Termination Date, the Debtors shall be permitted to pay allowed professional fees and expenses as the same may be due and payable, subject to the Budget.

37. For the avoidance of doubt, no portion of the Carve-Out, any cash collateral or proceeds of the DIP Facility may be used for the payment of the fees and expenses of any person or firm incurred in connection with the challenging of any of the liens or claims of, or the initiation or prosecution of any claim or actions against, the DIP Lender, the Trustee and/or the holders of the Bonds, in any capacity.

**Credit Bid**

38. The Debtors admit, acknowledge, and agree that the DIP Lender and the Trustee have an absolute right to credit bid their respective obligations in connection with any sale or other disposition of their respective collateral under the Bankruptcy Code.

**Miscellaneous**

39. The Debtors shall execute and deliver to the DIP Lender, the Trustee and HUD, as applicable, any and all such agreements, financing statements, instruments and other documents as such parties may reasonably request to evidence, confirm, validate or perfect the liens granted pursuant hereto. The Debtors are authorized to do and perform all acts, to make, execute and deliver all instruments and documents, including the DIP Loan Documents; provided, however, that this Interim Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the Post-Petition Liens, Replacement Liens and Supplemental Liens to the DIP Lender, the Trustee and HUD, as applicable, without the necessity of filing or recording any financing statement, mortgage, notice, or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action to validate or perfect the Post-Petition Liens, Replacement Liens and Supplemental Liens to the DIP Lender, the Trustee and HUD, as applicable, or to entitle those liens to the priorities granted herein.

40. Based on the findings herein set forth, and in accordance with section 364(e) of the Bankruptcy Code, in the event any or all of the provisions of this Interim Order are hereafter modified, amended or vacated by a subsequent order of this or any other Court, no such modification, amendment or vacation shall affect the validity and enforceability of any lien or priority authorized or created hereby. Notwithstanding any such modification, amendment or vacation, any claim granted to the DIP Lender, the Trustee and HUD hereunder arising prior to the effective date of such modification, amendment or vacation shall be governed in all respects by the original provisions of this Interim Order and the DIP Lender, the Trustee, HUD and IHDA shall be entitled to all of the rights, remedies, privileges and benefits, including the liens and priorities granted herein, with respect to any such claim.

41. Payments to the DIP Lender. The DIP Lender will be paid its reasonable and documented fees, costs and expenses contemplated under the DIP Credit Agreement, including, without limitation, legal and other professional fees and expenses (the “DIP Lender Fees”). In the absence of a Termination Event, within ten (10) business days of the DIP Lender charging the DIP Loans for payment of DIP Lender Fees, the DIP Lender will submit a written statement to counsel to the Debtors, the Trustee, any Committee and the United States Trustee itemizing the DIP Lender Fees in reasonably sufficient detail that the DIP Lender charged against the DIP Loans, and such parties shall have fourteen (14) days from the date of such statement to object to any amount in such statement. If the parties are unable to resolve an objection to a statement within a reasonable amount of time, any party subject to the dispute may seek resolution by motion from this Court. DIP Lender Fees shall be deemed allowed unless otherwise (i) agreed by the parties in writing or (ii) ordered by the Court. The DIP Lender, the Trustee, and their respective professionals shall not be required to comply with the United States Trustee Fee Guidelines or any other fee application and approval process. Upon a Termination Event, all DIP Lender Fees will be due and payable immediately.

42. Deemed Request for Stay Relief. This Interim Order shall be deemed to constitute a request by the Trustee or HUD for relief from the automatic stay with respect to the Pre-Petition Collateral and for adequate protection as of the Petition Date and shall suffice for all purposes of section 507(b) of the Bankruptcy Code.

43. No Control. None of the DIP Lender, the Trustee, the holders of the Bonds, HUD or IHDA shall be deemed to be in control of the operations of the Debtors or to be acting as a “responsible person,” “managing agent” or “owner or operator” (as such terms or any similar terms are used in the United States Comprehensive Environmental Response, Compensation and

Liability Act, as amended, or any similar Federal or state statute) with respect to the operation or management of the Debtors, notwithstanding any consent to this Interim Order and extending financial accommodations of any type, kind or nature under this Interim Order.

44. To the extent obligations remain due and owing under the DIP Obligations , such obligations of the Debtors in respect of the DIP Obligations shall not be discharged by the entry of an order confirming a plan of reorganization or a plan of liquidation in the Chapter 11 Cases, but rather shall be required to be paid in full on the effective date of such plan.

45. No Third-Party Beneficiaries. The provisions of this Interim Order shall be binding upon and inure to the benefit of the DIP Lender, the holders of the Bonds, the Trustee, the Debtors and their respective successors and assigns (including any trustee or other fiduciary hereafter appointed as a legal representative of the Debtors or with respect to the property of the estates of the Debtors). No rights are created hereunder for the benefit of any third party, any creditor, or any direct, indirect or incidental beneficiary.

46. Modification of Stay. The automatic stay imposed by virtue of section 362 of the Bankruptcy Code is hereby vacated and modified insofar as necessary to permit (a) the Debtors to grant the Post-Petition Liens, the Replacement Liens and the Supplemental Liens to the DIP Lender, the Trustee and HUD, as applicable, (b) the Trustee to accept and receive disbursements and/or payments and to apply moneys pursuant to the Bond Documents, (c) the Parties to take any action specifically authorized or contemplated by this Interim Order and implement the DIP Facility, including the DIP Lender's ability to exercise all of its rights and remedies under the DIP Credit Agreement or related documents as provided herein, and (d) all acts, actions, and transfers contemplated herein, including without limitation, transfers or application of cash collateral and other funds to the DIP Lender as provided herein.



47. Effectiveness. The findings of fact and conclusions of law contained in this Interim Order shall take effect immediately upon the Interim Order Entry Date. The liens and claims granted to the DIP Lender, the Trustee and HUD under this Interim Order, and the priority thereof, and any payments made pursuant to this Interim Order, shall be binding (subject to the terms of this Interim Order) on the Debtors, any successor trustee or examiner, and all creditors of the Debtors, as provided in section 364(e) of the Bankruptcy Code.

48. Any notice required hereunder shall be served on:

(a) *counsel to the Debtors:*

Dentons US LLP  
Attn: Robert E. Richards, Esq.  
233 South Wacker Drive, Suite 5900  
Chicago, IL 60606  
robert.richards@dentons.com

(b) *counsel to the Trustee:*

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.  
Attn: Daniel S. Bleck, Esq.  
Aaron M. Williams, Esq.  
One Financial Center  
Boston, MA 02111  
DSBleck@mintz.com  
AWilliams@mintz.com

(c) *the Office of the United States Trustee for Region 13*

Office of The United States Trustee  
Attn: [\_\_\_\_\_]   
111 South 10<sup>th</sup> Street, Suite 6.353  
St. Louis, MO 63102  
[\_\_\_\_\_]

49. Final Hearing. A final hearing with respect to this Interim Order is hereby scheduled for \_\_\_\_\_, at which time any party in interest may present any timely filed objections to the entry of a final order (the “Final Order”). The Debtors shall, within

twenty-four (24) hours of the Interim Order Entry Date, promptly serve a copy of this Interim Order and a notice of the final hearing by regular mail upon the Notice Parties. Such notice shall state that objections to the entry of a Final Order shall be in writing and shall be filed with the United States Bankruptcy Clerk for the Eastern District of Missouri no later than \_\_\_\_\_. Any objections by creditors or other parties in interest to any of the provisions of a Final Order incorporating the terms of this Interim Order, or including any other or different provisions, may be deemed waived unless filed and served in accordance with this paragraph.

50. To the extent there exists any conflict between the Motion, any other motion, pleading, document, agreement or term sheet, any DIP Loan Document and the terms of this Interim Order, this Interim Order shall govern and control.

**Exhibit 1**

**Budget**  
(Forthcoming)

**EXHIBIT B**

**Budget**  
(Forthcoming)