

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re

SC HEALTHCARE HOLDING, LLC, *et al.*,

Debtors.¹

Chapter 11

Case No. 24-10443 (TMH)

(Joint Administration Requested)

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
(I) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING,
(II) GRANTING SECURITY INTERESTS AND SUPERPRIORITY ADMINISTRATIVE
EXPENSE STATUS, (III) GRANTING ADEQUATE PROTECTION TO CERTAIN
PREPETITION SECURED CREDIT PARTIES, (IV) MODIFYING THE AUTOMATIC
STAY, (V) AUTHORIZING THE DEBTORS TO ENTER INTO AGREEMENTS WITH
JMB CAPITAL PARTNERS LENDING, LLC, (VI) AUTHORIZING NON-
CONSENSUAL USE OF CASH COLLATERAL, (VII) SCHEDULING A FINAL
HEARING, AND (VIII) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (each a "Debtor" and collectively, the "Debtors") seek entry of an interim order, substantially in the form attached hereto as **Exhibit A** (the "Proposed Interim Order"), and a final order (the "Proposed Final Order" and together with the Proposed Interim Order, the "Proposed Orders"): (a) authorizing the Debtors to enter into that certain superpriority secured debtor-in-possession term loan in an aggregate principal amount of up to \$45 million (the "DIP Facility") provided by JMB Capital Partners Lending, LLC (the "DIP Lender"); (b) granting liens and superpriority administrative expense status to the DIP Lender as set forth herein; (c) authorizing the Debtors to use cash collateral as

¹ The last four digits of SC Healthcare Holding, LLC's tax identification number are 2584. The mailing address for SC Healthcare Holding, LLC is c/o Petersen Health Care Management, LLC 830 West Trailcreek Dr., Peoria, IL 61614. Due to the large number of debtors in these Chapter 11 Cases, for which the Debtors have requested joint administration, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information will be made available on a website of the Debtors' proposed claims and noticing agent at www.kccllc.net/Petersen.



defined in section 363(a) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”); (d) granting adequate protection to the Debtors’ prepetition lenders (collectively, the “Prepetition Secured Parties”); (e) scheduling a hearing (the “Final Hearing”) to consider approval of this motion (this “Motion”) on a final basis; and (f) granting related relief. In support of the relief requested herein, the Debtors rely on the *Declaration of David R. Campbell in Support of Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”),² the declaration of Luke Andrews in support of this Motion (the “DIP Marketing Declaration”) and the declaration of David R. Campbell in support of this Motion (the “Valuation Declaration”); collectively with the First Day Declaration and DIP Marketing Declaration, the “Declarations”), all of which have been filed contemporaneously with this Motion and are incorporated by reference herein. In further support of this Motion, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. The Debtors confirm their consent, pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

2. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The bases for the relief requested herein are sections 105, 361, 362, 363, 364, 507 and 552 of title 11 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6003, 6004, 9014 and Local Rules 2002-1, 4001-2, 9013-1(f), and 9013-1(m).

BACKGROUND

4. On the date hereof (the "Petition Date"), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors comprise one of the largest nursing home operators in the United States and work in partnership with physicians, skilled nurses, and other health care providers in order to provide various healthcare and rehabilitation services for elderly citizens in Illinois, Missouri, and Iowa. Among other services, the Debtors provide assisted and supportive living, skilled nursing care, respite care, memory care, hospice, local medical transportation, radiology, and pharmacy services. A detailed description of the Debtors and their businesses, including the facts and circumstances giving rise to these Chapter 11 Cases is set forth in the First Day Declaration.

5. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. To date, the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee") has not appointed an official committee in the Chapter 11 Cases and no request has been made for the appointment of a trustee or an examiner.

PRELIMINARY STATEMENT

6. The DIP Facility consists of a \$45 million superpriority senior secured loan facility provided by the DIP Lender. As is set forth in the Declarations, none of the Debtors' existing

lenders were willing to provide financing to the Debtors in any amount, much less in an amount which makes these Chapter 11 Cases feasible. After considering and exhausting all options, it is apparent that the DIP Facility is the best financing proposal available to the Debtors and should be approved as being in the best interest of the Debtors' estates.

7. The Debtors, in consultation with their advisors, determined that, under the circumstances, the DIP Facility represents the best postpetition financing alternative available to the Debtors. The DIP Facility is the product of extensive arm's-length, good-faith negotiations with the DIP Lender and other potential providers of similar facilities. Alternative sources of postpetition financing (whether unsecured or secured) were not readily available to the Debtors as of the Petition Date, let alone on terms better than or comparable to the DIP Facility. If approved, the DIP Facility will provide the Debtors with immediate and critical access to liquidity that is necessary to ensure that (a) the Debtors' business operations stabilize, which include providing elderly residents and patients with care that they desperately need, (b) the Debtors can pay administrative costs in full, (c) value is preserved during the course of the Chapter 11 Cases (as defined below), (d) the Debtors are able to conduct a postpetition sale process for their assets and attempt to identify a bid or bids that yields the highest and best value to the Debtors' estates, and (e) the Debtors can refinance certain revolving indebtedness of the Debtors, which will allow for the Debtors to enjoy greater liquidity during these Chapter 11 Cases.

8. Because the DIP Facility contemplates priming several Prepetition Secured Parties, the Debtors recognize that no single Prepetition Secured Party should bear the full burden of this priming. Accordingly, the Proposed Interim Order does not preclude parties from seeking relief under the equitable doctrine of marshalling, in the extremely unlikely event that that becomes relevant between entry of the Proposed Interim Order and the Proposed Final Order. In addition,

the Debtors have committed to work with the DIP Lender to document an arrangement whereby the degree of priming for certain of the Prepetition Secured Parties would be limited pursuant to the Proposed Final Order, when a larger draw on the DIP Facility is sought. Accordingly, there is no risk that the full amount of the Interim Advance (as defined in the Proposed Interim Order) would be recovered from a single Prepetition Secured Party without such party having recourse to appear before the Court to fight inequitable recovery, based on the terms of the Proposed Interim Order. The Debtors intend to propose a more concrete protection before the full DIP Commitment (as defined in the Proposed Interim Order) is incurred and will be discussing with all relevant parties in interest in the coming weeks regarding these protections.

THE DEBTORS' PREPETITION SECURED INDEBTEDNESS

9. As is set forth in the First Day Declaration, the Debtors' prepetition secured indebtedness structure is complex. As a result of the large scale of the Debtors' enterprise throughout rural Illinois, Missouri and Iowa, the Debtors have numerous secured lenders financing different portions of their geographic footprint. A summary of their credit facilities and related security packages is below (collectively, the "Prepetition Credit Facilities"). The Debtors' organizational chart attached as Exhibit C to the First Day Declaration shows generally which Debtors are obligated under each of the various credit facilities.

10. X-Caliber Facility.

a. Certain Debtor and non-Debtor entities, as borrowers,³ are party to that certain Amended and Restated Loan Agreement dated February 24, 2021 (the "X-Caliber

³ Debtors El Paso HCC, LLC, Flanagan HCC, LLC, Kewanee AL, LLC, Knoxville AL, LLC, Legacy Estates AL, LLC, Marigold HCC LLC, Monmouth AL LLC, Polo LLC, El Paso HCO, LLC, Flanagan HCO, LLC, CYE Kewanee HCO, LLC, CYE Knoxville HCO, LLC, Legacy HCO, LLC, Marigold HCO, LLC, CYE Monmouth HCO LLC and Polo HCO, LLC (collectively, the "X-Cal Debtors") together with non-Debtors Charleston HCC, LLC, Cumberland HCC, LLC, Charleston HCO, LLC and Cumberland HCO, LLC entered into the X-Caliber Loan Agreement (as defined herein). X-Caliber Capital LLC is also lender to non-Debtors

Loan Agreement”) with XCAL 2019-IL-1 Mortgage Trust, as successor lender to X-Caliber Funding, LLC (“X-Caliber”) (as amended, restated, supplemented, or modified and together with any security documents or agreements ancillary thereto, the “X-Caliber Facility”). Pursuant to the X-Caliber Term Loan Agreement and certain mortgages, assignments of leases and rents, and deposit account control agreements of the Debtors party thereto, the Debtors’ obligations under the X-Caliber Term Loan Facility are secured in certain collateral, including real property, rents and deposit accounts of certain of the Debtors’ Facilities. On December 29, 2023, X-Caliber sent a notice of default and acceleration, alleging that \$34,486,930.31, plus interest, fees, and costs was outstanding under the X-Caliber Facility.

b. As noted in the First Day Declaration, on December 29, 2023, X-Caliber notified the respective Debtors⁴ that an Event of Default had occurred under the X-Caliber Bridge Facility (as Event of Default is defined therein) and accelerated the underlying loans. At the time of the notice, X-Caliber indicated that \$34,486,093.91, plus fees, costs, and interest, was due and owing under the X-Caliber Bridge Facility. On January 23, 2024, X-Caliber commenced an action fashioned *X-Caliber Funding LLC v. El Paso HCC, LLC, et al.* (Case No. 3:24-cv-50034) (N.D. Ill. 2024) (the “El Paso et al. Receivership Case”) by filing a Verified Complaint in the United States District Court for the Northern District of Illinois, Rockford Division (the “El Paso et al. Court”) against the X-Cal Debtors,⁵

(A) Charleston HCC, LLC and Charleston HCO, LLC and (B) Cumberland HCC, LLC and Cumberland HCO, LLC, under respective HUD-insured loans. On February 1, 2024, X-Caliber sent notices of default to the aforementioned non-Debtors under their respective HUD-insured facility.

⁴ See, *infra*, n.5.

⁵ Debtor-defendants to the this action are El Paso HCC, LLC, Flanagan HCC, LLC, Kewanee AL, LLC, Knoxville AL, LLC, Legacy Estates AL, LLC, Marigold HCC LLC, Monmouth AL LLC, Polo LLC, El Paso

asserting claims for breach of contract, foreclosure of their respective mortgages, and UCC lien enforcement as to rents due thereunder. With the Verified Complaint, X-Caliber filed an emergency motion for the appointment of a receiver. *See* 3:24-cv-50034, Dkt. 5. On January 25, 2024, the *El Paso et al.* Court appointed Michael F. Flanagan as receiver (the “Receiver”) over the assets that comprise the *El Paso et al.* Facilities. *See* 3:24-cv-50034, Dkt. 8. While the X-Cal Debtors have commenced their Chapter 11 Cases, as discussed below, the X-Cal Debtors, in an abundance of caution, seek authority of this Court to allow them to enter into the DIP Facility.

11. Sector Facility.

a. Certain Debtors, as borrowers, are parties to that certain Amended and Restated Loan Agreement dated August 5, 2020 (as amended, restated, and otherwise modified from time to time, the “Sector Loan Agreement”) with Column Financial, Inc. (“Column”) as successor in interest to Sector Financial Inc., as administrative agent on behalf of certain lenders (the “Sector Lenders”), providing for a senior secured term loan facility in the original principal amount of \$88,757,000 (the “Sector Facility”).

b. Pursuant to the Sector Loan Agreement and certain security agreement, collateral pledge agreements, mortgages, assignments of leases and rents, and fixture filings of the respective Debtors, the respective Debtors’ obligations under the Sector Facility are secured in certain collateral, including real property, rents and deposit accounts of certain of the respective Debtors’ Facilities. As part of the Debtors’ quest for additional liquidity in the Fall of 2023, and execution of the eCapital Facility (defined below),

HCO, LLC, Flanagan HCO, LLC, CYE Kewanee HCO, LLC, CYE Knoxville HCO, LLC, Legacy HCO, LLC, Marigold HCO, LLC, CYE Monmouth HCO LLC, and Polo HCO, LLC.

Column, on behalf of the lenders party to the Sector Loan Agreement, entered into that certain Intercreditor Agreement, dated as of October 4, 2023 (the “eCapital Intercreditor Agreement”) with eCapital Healthcare Corp. (“eCapital”). The eCapital Intercreditor Agreement provides, among other things, that eCapital, as the AR Lender thereunder shall have a priority interest in the AR Lender Priority Collateral (as such terms are defined in the eCapital Intercreditor Agreement) ahead of Column.

c. On December 19, 2023, Column and the Sector Lenders sent a notice of default under the Sector Facility. On January 9, 2024, Column sent a further notice of default under the Sector Facility and reservation of rights. As of the Petition Date, approximately \$64,605,074 is outstanding under the Sector Facility.

12. GMF Facility. Certain of the Debtor entities, as borrowers,⁶ are party to that certain term loan agreement, dated Amended and Restated Loan Agreement dated August 5, 2020 (as amended, restated, and/or modified from time to time, the “GMF Loan Agreement”) with GMF Petersen Note LLC as administrative agent and collateral agent and the lender parties thereto (the “GMF Facility”). The Debtors’ obligations under the GMF Facility are guaranteed by Petersen Health Care, Inc., Mark Petersen, and certain other Debtor entities. Pursuant to the GMF Loan Agreement and certain security agreement, collateral pledge agreements, mortgages, deeds of trusts, registration statements, fixture filings, and intercreditor agreement, the Debtors’ obligations and the related guarantees under the GMF Facility are secured—and structurally subordinate to the Sector Facility as to all relevant Debtor-borrowers except for Betty’s Garden RE, LLC and Betty’s Garden HCO, LLC—by certain real and personal property of the subject Debtor-

⁶ A full list of the Debtor entities party to this agreement is attached to the First Day Declaration as Exhibit D.

borrowers. As of the Petition Date, approximately \$26,400,302.55 is outstanding under the GMF Facility.

13. eCapital Facility.

a. On October 4, 2023, certain of the Debtor entities, as borrowers,⁷ entered into that certain credit and security agreement with eCapital, as lender, providing for a revolving credit facility in the maximum principal amount of \$12 million (the “eCapital Facility”). As of the Petition Date, approximately \$3,833,089.27 is outstanding under the eCapital Facility. The eCapital Facility will mature on November 1, 2026. The eCapital Facility is secured by a first priority security interest on all accounts, revenues and “Related Properties” (as defined therein), deposit accounts (including “Governmental Deposit Accounts” as defined therein), all books and records, and all personal property of each grantor, subject to the eCapital Intercreditor Agreement.

b. The eCapital Facility will be refinanced and paid off in full out of the initial proceeds of the DIP Facility. In the event the Motion is denied, the Debtors intend to file a separate motion for the consensual use of Cash Collateral which is the collateral of eCapital. For the avoidance of doubt, eCapital has not consented to the use of its Cash Collateral in the event is this Motion is denied.

14. Local Bank Loans. Certain Debtor and non-debtor entities, as borrowers, are party to loan facilities with local banks as to their respective facility, as follows:

a. *Bank of Farmington* – Debtor Petersen Health Systems, Inc. is the borrower under a certain loan facility with Bank of Farmington, as lender (“Farmington Facility”) secured by a mortgage and assignment of rents pertaining to the Courtyard Estates of

⁷ A full list of the Debtor entities party to this agreement is attached to the First Day Declaration as Exhibit D.

Farmington healthcare Facility. Mark Petersen personally guarantees the obligations under the Farmington Facility. The Farmington Facility will mature on April 1, 2047. As of the Petition Date, approximately \$2,845,278 in principal amount is outstanding under the Farmington Facility.

b. *Bank of Rantoul* – Debtor Petersen Health Systems, Inc. is the borrower under a certain loan facility with Bank of Rantoul, as lender (“Rantoul Facility”) secured by a mortgage and assignment of rents pertaining to the Courtyard Estates of Herscher healthcare Facility. Mark Petersen personally guarantees the obligations under the Rantoul Facility. The Rantoul Facility will mature on June 1, 2027. As of the Petition Date, approximately \$2,352,907 in principal amount is outstanding under the Rantoul Facility.

c. *Community State Bank* – Debtor Petersen Health Systems, Inc. is the borrower under that certain loan facility with Community State Bank, as lender (“CSB Facility”) secured by a mortgage and assignment of rents pertaining to the Courtyard Estates of Galva and Courtyard Estates of Green Valley healthcare Facilities. Mark Petersen personally guarantees the obligations under the CSB Facility. The CSB Facility will mature on September 1, 2027. As of the Petition Date, approximately \$2,494,108 in principal amount is outstanding under the CSB Facility.

d. *Hickory Point Bank* – Debtor CYE Girard HCO, LLC is the borrower under that certain loan facility with Hickory Point Bank, as lender (“Hickory Facility”) secured by a mortgage and assignment of rents pertaining to the Courtyard Estates of Girard healthcare Facility. Mark Petersen personally guarantees the obligations under the Hickory Facility. The Hickory Facility will mature on August 2, 2026. As of the Petition Date, approximately \$1,839,599 in principal amount is outstanding under the Hickory Facility.

e. *Solutions Bank* – Debtor Petersen Health Care, Inc. is the borrower under a certain loan facility with Solutions Bank, as lender (“Solutions Facility”) secured by a mortgage and assignment of rents pertaining to the Courtyard Estates of Canton healthcare Facility. Mark Petersen personally guarantees the obligations under the Solutions Facility. The Solutions Facility will mature on September 8, 2037. As of the Petition Date, approximately \$3,408,171 in principal amount is outstanding under the Solutions Facility.

15. HUD Facilities. The Debtors estimate that they owe approximately \$45,732,300 under certain healthcare facility loans insured by the United States Department of Housing and Urban Development (“HUD”), between various Debtor entities and lender parties thereto.

a. *Berkadia* – Berkadia Commercial Mortgage LLC (“Berkadia”) is the lender to two Debtors under their respective HUD-insured loans: Petersen Health Care – Illini, LLC and Petersen Roseville, LLC. As of the Petition Date, approximately \$2,936,067 in principal amount is outstanding under the two loans from Berkadia.

b. *Grandbridge* – Grandbridge Real Estate Capital LLC, as successor in interest to Pillar Capital Finance LLC (“Grandbridge”), is the lender to three (3) Debtors under three (3) respective HUD-insured loans. On January 30, 2024, Grandbridge sent notices of default under the respective facility for the following non-debtors, in the principal amounts as shown:

Debtors	Original Principal Amount	Estimated Amount Outstanding
South Elgin, LLC Petersen Health Properties, LLC	\$5,440,000.00	\$4,617,117.00
Jonesboro, LLC Petersen Health Properties, LLC	\$2,880,000.00	\$2,456,269.00
Macomb, LLC Petersen Health Properties, LLC	\$2,160,000.00	\$1,833,267.00

c. *Lument* – Lument Real Estate Capital, LLC, as successor in interest to Lancaster Pollard Mortgage Company (“Lument”), is the lender to five (5) Debtors under five (5) respective HUD-insured loans. On February 5, 2024, Lument sent notices of default to the following Debtors as to their respective HUD loans:

Debtor	Original Principal Amount	Estimated Amount Outstanding
Petersen 23, LLC	\$4,673,000.00	\$3,378,956.24
Petersen 26, LLC	\$3,824,000.00	\$2,765,060.46
Petersen 27, LLC	\$5,727,000.00	\$3,812,081.97
Petersen 29, LLC	\$2,146,000.00	\$1,467,399.58
Petersen 30, LLC	\$2,497,000.00	\$1,805,532.27

d. *Wells Fargo* – Wells Fargo Bank, N.A. (“Wells Fargo”) services a loan to Debtor SJL Health Systems, Inc. related to the Prairie Rose Facility. As of the Petition Date, approximately \$1,455,631 in principal is outstanding on the Wells Fargo loan. On January 3, 2024, Wells Fargo sent a notice of default to Debtor SJL Health Systems Inc.

e. *X-Caliber* – X-Caliber Capital LLC (“X-Caliber Capital”) is the lender to two non-Debtors under two respective HUD-insured loans, Charleston HCC, LLC and Cumberland HCC, LLC. On February 1, 2024, X-Caliber Capital sent notices of default under the respective facility for the aforementioned two non-debtors (the “X-Caliber HUD Facilities”).

16. *Other Secured Debts* – As will be described in further detail in the Debtors’ schedules of assets and liabilities, the Debtors estimate that they owe \$981,232.00 of additional secured indebtedness, including or arising from, without limitation, automobile loans and equipment liens.

17. As is described in the DIP Marketing Declaration, prior to the onset of these Chapter 11 Cases, the Debtors attempted to obtain secured superpriority postpetition financing

from both their existing primary secured lenders and approximately 35 independent lender groups. No financing offers were provided by any of the Debtors' existing lenders, and the DIP Facility was deemed the best offer available by the Debtors, in consultation with their advisors.

**THE DEBTORS HAVE AN IMMEDIATE NEED FOR
USE OF CASH COLLATERAL AND DIP FINANCING**

18. The Debtors require immediate access to liquidity to ensure that they can continue operating their business during these Chapter 11 Cases, preserve the value of their estates for the benefit of all parties in interest, and pursue a value-maximizing restructuring transaction. Without prompt access to the DIP Facility and Cash Collateral (defined herein), the Debtors will be unable to continue operating their facilities, thereby placing the health and welfare of thousands of men and woman in jeopardy; satisfy employee compensation obligations; pay necessary expenses; preserve and maximize the value of their estates; fund the administration of these Chapter 11 Cases; and provide the critical and necessary care to their thousands of residents, which would damage the value of the Debtors' estates to the detriment of all stakeholders. Such an outcome would cause immediate and irreparable harm.

19. Absent the relief requested herein, the Debtors' ability to successfully reorganize would be jeopardized. The Debtors will be forced to cease operations immediately if they are unable to procure the funds necessary to pay postpetition wages, salaries, and payroll taxes, maintain insurance coverage, pay taxes, and make any other payments necessary for the continued management, operation, and preservation of the Debtors' business during the pendency of these Chapter 11 Cases. Such a result would be disastrous. The ability to satisfy these expenses as and when due is essential to the Debtors' continued operations. In particular, obtaining financing and the use of Cash Collateral is essential to the Debtors' ability to continue to serve their thousands

of residents, maintain their business relationships with their employees, vendors and suppliers, and meet their ongoing obligations while finalizing and implementing their restructuring.

20. As a result of the data breach; inflationary pressures from food, drugs and medical supplies; difficulty recruiting experienced staff; and lingering effects of COVID-19, the Debtors faced liquidity issues and subsequently fell into default with their various credit facilities; given the Debtors' need to continue providing care to their residents, the Debtors, in consultation with their advisors, deemed it necessary to forego principal and interest payments owed to their lenders and ensure continued critical resident care continue. As these defaults mounted, receivership cases were filed, and the Debtors' liquidity issues worsened. The filing of these Chapter 11 Cases became necessary after the Debtors' existing lenders declined to provide additional financing.

21. Any lapse in operation, no matter how transitory, would have a devastating impact on the Debtors' resident care and also on the going concern value of the Debtors' business. Since the Debtors have no available alternative sources of financing to fund these Chapter 11 Cases and their restructuring efforts, absent the use of Cash Collateral, the Debtors cannot pay expenses necessary in the ordinary course of their business. Without immediate access to Cash Collateral, the Debtors' ability to operate and preserve the value of their business will be immediately and irreparably jeopardized, resulting in significant harm to the Debtors' residents, the Debtors' estates, and creditors. The immediate use is necessary, and it will stabilize the Debtors' operations and revenue by paying ordinary, postpetition operating expenses, as well as any court-approved prepetition expenses that may be at issue.

22. The Debtors, with the assistance of their advisors, have developed a 13-week cash flow forecast and budget for obtaining DIP Financing and the use of Cash Collateral during the interim period (the "Budget"), a copy of which is attached hereto as **Exhibit B**. The Debtors

believe the Budget establishes that the Debtors will have adequate liquidity during the interim period. The Budget contains line items for cash flows anticipated to be received and disbursed during the time period for which the Budget is prepared. The Debtors believe that the Budget includes all reasonable, necessary, and foreseeable expenses to be incurred in connection the operation of their business for the period set forth in the Budget.

CONCISE STATEMENT OF MATERIAL TERMS OF THE PROPOSED INTERIM ORDER AND DIP FACILITY

23. The below chart contains a summary of the material terms and conditions governing the Debtors’ proposed DIP Facility and use of Cash Collateral pursuant to, and in accordance with, Bankruptcy Rule 4001(b) and Local Rule 4001-2:

Bankruptcy Rule	Summary of Material Terms/Significant Provisions
Parties to the DIP Credit Agreement Bankruptcy Rule 4001(c)(1)(B)	<p>Borrowers: Each of the Debtors; provided that the X-Cal Debtors shall be party to the DIP Facility subject to this Court granting relief from the X-Cal Receivership Order.</p> <p>DIP Lender: JMB Capital Partners Lending, LLC and/or its designees or its assignees</p> <p><i>See Proposed Interim Order, Preamble.</i></p>
Term and Purpose Bankruptcy Rule 4001(b)(1)(B)(iii), 4001(c)(1)(B); Local Rule 4001-2(a)(i)	<p>The Debtors have an immediate need to obtain postpetition financing pursuant to the DIP Facility and to obtain use of Cash Collateral (subject to the Budget) in order to, among other things, (a) stabilize the Debtors’ business operations, which include providing elderly residents and patients with care that they desperately need, (b) pay administrative costs in full, (c) preserve value during the course of the Chapter 11 Cases, (d) conduct a postpetition sale process for their assets and attempt to identify a bid or bids that yields the highest and best value to the Debtors’ estates, and (e) refinance certain revolving indebtedness of the Debtors, which will allow for the Debtors to enjoy greater liquidity during these Chapter 11 Cases.</p> <p>All DIP Obligations shall be due and payable in full and in cash (or such other form of consideration as the DIP Lender and the Borrowers may mutually agree) and the commitments shall terminate, on the earlier to occur (the “<u>Maturity Date</u>”) of: (i) December 31, 2024 (the “<u>Initial Maturity Date</u>”), (ii) the effective date of a Plan of Reorganization that has been confirmed by an order of the Bankruptcy Court (the “<u>Plan Effective Date</u>”); (iii) the closing of a sale of all or substantially all of the assets of the Debtors; (iv) the date of the acceleration of the DIP Loans and the termination of the DIP Commitments following the occurrence and during the continuance of an Event of Default⁸; (v) the dismissal of Chapter 11 Cases or conversion of the Chapter 11 Cases into cases under chapter 7 of the Bankruptcy Code; and (vi) 45 days after the Petition Date (or such later date as agreed to by the DIP Lender), unless the</p>

⁸ As defined in that certain summary of terms and conditions (the “DIP Term Sheet”), attached the Proposed Interim Order as **Exhibit 1**.

	<p>Proposed Final Order has been entered by the Bankruptcy Court on or prior to such date (such earliest date, the “<u>DIP Termination Date</u>”).</p> <p><i>See</i> DIP Term Sheet, page 3.</p>
<p>Borrowing Limits Bankruptcy Rule 4001(c)(1)(B); Local Rule 4001-2(a)(i)(A)</p>	<p>The DIP Facility consists of a \$45 million superiority senior secured term loan.</p> <p>Initial Draw: \$15,000,000, will be made available to be drawn in a single drawing upon entry of the Proposed Interim Order.</p> <p>Final Draw: \$30,000,000 will be funded and made available upon entry of the Proposed Final Order.</p> <p><i>See</i> Proposed Interim Order, Preamble; <i>see</i> DIP Term Sheet, page 1.</p>
<p>Conditions of Borrowing Bankruptcy Rule 4001(c)(1)(B); Local Rule 4001-2(a)(i)(E)</p>	<p>The Proposed Orders and DIP Documents include standard and customary conditions of borrowing, the satisfaction of which is a condition precedent to the obligations of the DIP Lender to provide the DIP Facility.</p> <p><i>See</i> DIP Term Sheet, pages 8-10.</p>
<p>Interest Rates Bankruptcy Rule 4001(c)(1)(B)</p>	<p>The DIP Loans will bear interest at a <i>per annum</i> rate equal to 12% payable in cash on the first day of each month in arrears. During the continuance of an Event of Default, all DIP Obligations will bear interest at an additional 2% <i>per annum</i> above the interest rate otherwise applicable.</p> <p><i>See</i> DIP Term Sheet, page 3.</p>
<p>Use of DIP Facility and Cash Collateral Bankruptcy Rule 4001(b)(1)(B)(ii)</p>	<p>The proceeds of the DIP Facility shall be used in accordance with and subject to the Proposed Interim Order, the DIP Documents, and the DIP Budget (subject to the Carve-Out).</p> <p><i>See</i> Proposed Interim Order, ¶¶ 4, 5, 16.</p>
<p>Adequate Protection/Entities with Interests in Cash Collateral Bankruptcy Rules 4001(b)(1)(B), 4001(c)(1)(B)(ii); Local Rule 4001-2(a)(i)(K) & (P)</p>	<p>The following secured parties have an interest in Cash Collateral:</p> <p>DIP Lender; and</p> <p>Prepetition Secured Parties.</p> <p>The adequate protection provided to the Prepetition Secured Parties shall be in accordance with the Proposed Interim Order, including the granting of replacement liens, superpriority claims, and payment of professional fees for certain of the Prepetition Secured Parties.</p> <p><i>See</i> Proposed Interim Order, ¶ Q.</p>
<p>Fees Bankruptcy Rule 4001(c)(1)(B); Local Rule 4001-2(a)(i)(K)</p>	<p>Upon entry of the Proposed Interim Order, the payment to the DIP Lender, of all fees, including any agency fee and any amounts due (or that may become due) in respect of the reimbursement and indemnification obligations, in each case referred to the DIP Term Sheet and the costs and expenses as may be due from time to time, including, without limitation, fees and expenses of Norton Rose Fulbright, LLP, counsel to the DIP Lender, as provided for in the DIP Documents.</p> <p><i>See</i> Proposed Interim Order, ¶ 6.</p>

<p>Budget Bankruptcy Rule 4001(c)(1)(B); Local Rule 4001-2(a)(iii)</p>	<p>The use of cash and proceeds from the DIP Facility is subject to the Initial DIP Budget, a copy of which is attached hereto as Exhibit B, or any subsequent Approved Budget.</p> <p><i>See Proposed Interim Order, ¶ 12.</i></p>
<p>Liens and Priorities Bankruptcy Rule 4001(c)(1)(B)(i)</p>	<p>The liens contemplated by the Proposed Interim Order and the DIP Term Sheet shall follow the priorities set forth in paragraph 11 to the Proposed Interim Order.</p> <p><i>See Proposed Interim Order, ¶ 11.</i></p>
<p>Carve-Out Bankruptcy Rule 4001(c)(1)(B); Local Rule 4001-2(a)(i)(F)</p>	<p>The Proposed Interim Order provides a carve-out of certain statutory fees and allowed professional fees of the Debtors (the “<u>Carve-Out</u>”).</p> <p><i>See Proposed Interim Order, ¶ 16.</i></p>
<p>Postpetition Liens on Unencumbered Assets Local Rule 4001-2(a)(i)(G)</p>	<p>The Proposed Interim Order provides for valid, binding, continuing, enforceable, non-avoidable automatically and fully perfected first priority liens on and security interests in all DIP Collateral that is not otherwise subject to any valid, enforceable, and non-avoidable liens on and security interests in the DIP Collateral that (A) were perfected prior to the Petition Date (or perfected on or after the Petition Date to the extent permitted by Section 546(b) of the Bankruptcy Code), (B) are not subject to avoidance, disallowance, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law, and (C) is a Permitted Prior Lien; provided, however, that the DIP Liens shall have priority over all Prepetition Liens.</p> <p><i>See Proposed Interim Order, ¶ 11.</i></p>
<p>Joint Liability Local Rule 4001-2(a)(i)(J)</p>	<p>The Proposed Interim Order provides that the Debtors and their successors shall be jointly and severally liable for repayment of any funds advanced pursuant to the DIP Term Sheet (and/or the DIP Loan Documents) and the DIP Obligations.</p> <p><i>See Proposed Interim Order, ¶ 2.</i></p>
<p>Limitations on Use of Funds to Investigate the Liens and Claims of the Prepetition Secured Parties Local Rule 4001-2(a)(L)</p>	<p>The Proposed Interim Order provides for an Investigation Budget Amount of \$25,000 in the aggregate, to be incurred solely by a Committee, in investigating (but not prosecuting or challenging) the validity, enforceability, perfection, priority or extent of the Prepetition Liens within thirty (30) calendar days following appointment of the Creditors Committee. Any fees, expenses or costs incurred by the Creditors Committee or its professionals in excess of the Investigation Budget Amount or in excess of the amount budgeted for Committee’s Case Professionals set forth in the DIP Budget shall not constitute an allowable administrative expense claim, including for purposes of section 1129(a)(9)(A) of the Bankruptcy Code</p> <p><i>See Proposed Interim Order, ¶ 17.</i></p>
<p>Challenge Period Bankruptcy Rule 4001(c)(1)(B); Local Rule 4001-2(a)(i)(Q)</p>	<p>The Proposed Interim Order provides for a standard and customary challenge by any party in interest with requisite standing within seventy-five (75) calendar days of entry of the Proposed Interim Order, as such applicable date may be extended in writing from time to time in the sole discretion of the Prepetition Secured Parties, or by the Court for good cause shown pursuant to an application filed by a party in interest prior to the expiration of the Challenge Deadline; provided however, that if, prior to the end of the challenge period, (a) the cases convert to a chapter 7, or (b) a chapter 11 trustee is appointed, then, in each such case, the challenge period shall be extended for a period of fourteen (14) days solely with respect to any such trustee.</p>

	<i>See Proposed Interim Order, ¶ 18.</i>
Non-Consensual Priming Local Rule 4001-2(a)(i)(P)	<p>The Proposed Interim Order provides for, contemporaneously with the payment in full in cash of the eCapital Obligations, valid, binding, continuing, enforceable, non-avoidable automatically and fully perfected priming first priority senior liens and security interests in all DIP Collateral, regardless of where located, which senior priming liens and security interests in favor of the DIP Lender shall be senior to all Prepetition Liens including, among other things, (A) all of the assets of Debtors (and any entities that become debtors in these Cases in the future), including, but not limited to, the “Collateral” as defined in any of the Prepetition Loan Documents, and (B) the Debtors’ prepetition and postpetition commercial tort claims, including but not limited to all claims and causes of action (i) against the Debtors’ officers and directors, and (ii) all other prepetition tort claims, and the proceeds thereof (regardless of whether such proceeds arise from damages to the Prepetition Collateral).</p> <p><i>See Proposed Interim Order, ¶ 11.</i></p>
Events of Default Bankruptcy Rule 4001(c)(1)(B); Local Rule 4001-2(a)(i)(M)	<p>The DIP Term Sheet contains events of default that are usual and customary for debtor-in-possession financing.</p> <p><i>See DIP Term Sheet, pages 13-16.</i></p>
Validity of Prepetition Liens Local Rule 4001-2(a)(i)(Q)	<p>The Proposed Interim Order provides that the Prepetition Secured Obligations constitute allowed, legal, valid, binding, enforceable and non-avoidable obligations of Debtors, and are not subject to any offset, defense, counterclaim, avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or any other applicable law, and Debtors do not possess, shall not assert, hereby forever release, and are forever barred from bringing any claim, counterclaim, setoff or defense of any kind, nature or description which would in any way affect the validity, enforceability and non-avoidability of any of the Prepetition Secured Obligations.</p> <p><i>See Proposed Interim Order, ¶ P.</i></p>
Liens on Avoidance Actions Bankruptcy Rule 4001(c)(1)(B)(xi); Local Rule 4001-2(a)(i)(U)	<p>DIP Superpriority Claims shall have recourse to and be payable from all prepetition and postpetition property and assets of the Debtors and the estates and all DIP Collateral and all proceeds thereof, and (a) any and all avoidance power claims or causes of action under sections 544, 545, 547, 548 through 551 and 553(b) of the Bankruptcy Code and the proceeds thereof.</p> <p><i>See Proposed Interim Order ¶ 9.</i></p>
Sections 506(c) and 552(b) Waivers Bankruptcy Rule 4001(c)(1)(B); Local Rule 4001-2(a)(i)(V), (W), (X)	<p>Subject to entry of the Proposed Final Order, the Debtors seek waiver of (a) their right to surcharge the DIP Collateral pursuant to section 506(c) of the Bankruptcy Code, (b) the “equities of the case” exception under section 552(b) of the Bankruptcy Code, and (c) the equitable doctrine of “marshalling” and other similar doctrines with respect to (i) the DIP Collateral and (ii) the Prepetition Collateral.</p> <p><i>See Proposed Interim Order, ¶¶ 6, 19.</i></p>
Waiver / Modification of the Automatic Stay Bankruptcy Rule 4001(c)(1)(B)(iv)	<p>Pursuant to the Proposed Interim Order, the automatic stay provisions of section 362 of the Bankruptcy Code are modified to the extent necessary to implement and effectuate the terms of the Proposed Interim Order.</p> <p><i>See Proposed Interim Order, ¶ 26.</i></p>

**STATEMENT REGARDING SIGNIFICANT PROVISIONS PURSUANT TO
BANKRUPTCY RULE 4001(B) AND LOCAL RULE 4001-2**

24. The explanation for the inclusion of the foregoing material terms is that such material terms were necessary to adequately protect the Prepetition Secured Parties' interest in the Cash Collateral. In light of the foregoing, the Debtors submit that the material terms are appropriate under the facts and circumstances of these Chapter 11 Cases.

BASIS FOR RELIEF

A. This Court should Authorize the Debtors to Obtain Postpetition Financing and Grant Priming Liens and other Rights and Privileges to the DIP Lender.

25. Bankruptcy courts have authority to permit debtors-in-possession to obtain postpetition financing pursuant to section 364 of the Bankruptcy Code. Specifically, section 364(c) of the Bankruptcy Code requires a finding, made after notice and a hearing, that a debtor seeking postpetition financing on a secured basis cannot "obtain unsecured credit allowable under section 503(b)(1) of [the Bankruptcy Code] as an administrative expense." 11 U.S.C. § 364(c). In evaluating proposed postpetition financing under section 364(c) of the Bankruptcy Code, courts perform a qualitative analysis and generally consider various factors, including whether:

- (a) unencumbered credit or alternative financing without superpriority status is available to the debtor;
- (b) the credit transactions are necessary to preserve assets of the estate;
- (c) the terms of the credit agreement are fair, reasonable, and adequate;
- (d) the proposed financing agreement was negotiated in good faith and at arm's-length and entry thereto is an exercise of sound and reasonable business judgment and in the best interest of the debtors' estate and their creditors; and
- (e) the proposed financing agreement adequately protects prepetition secured creditors.

See, e.g., In re Los Angeles Dodgers LLC, 457 B.R. 308, 312 (Bankr. D. Del. 2011); *In re Aqua Assoc.*, 123 B.R. 192 (Bankr. E.D. Pa. 1991).

26. The Debtors propose to obtain financing under the DIP Facility, in part, by providing superpriority claims and liens pursuant to section 364(c) of the Bankruptcy Code. Significantly, the Debtors propose to provide first priority liens on substantially all of the Debtors' assets, including "priming" liens on all of the Prepetition Secured Parties' prepetition collateral ("Prepetition Liens").

27. In the event that a debtor demonstrates that it is unable to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code, section 364(c) provides that a court:

[M]ay authorize the obtaining of credit or the incurring of debt (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of [the Bankruptcy Code]; (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or (3) secured by a junior lien on property of the estate that is subject to a lien.

See also In re Crouse Group, Inc., 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (secured credit under section 364(c) of the Bankruptcy Code is authorized, after notice and hearing, upon showing that unsecured credit cannot be obtained). Courts have articulated a three-part test to determine whether a debtor is entitled to financing pursuant to section 364(c) of the Bankruptcy Code. Specifically, courts look to whether:

- a. the debtor is unable to obtain unsecured credit under section 364(b) of the Bankruptcy Code, *i.e.*, by allowing a lender only an administrative claim;
- b. the credit transaction is necessary to preserve the assets of the estate; and

- c. the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and proposed lenders.

See In re Ames Dep't Stores, 115 B.R. 34, 37–40 (Bankr. S.D.N.Y. 1990); *see also In re St. Mary Hosp.*, 86 B.R. 393, 401–02 (Bankr. E.D. Pa. 1988).

28. No party contacted as part of the above-described process was willing to provide postpetition financing to the Debtors on an unsecured basis. Further, the Debtors do not have sufficient unencumbered assets to secure debtor-in-possession financing to fund a non-consensual chapter 11 case. Accordingly, the DIP Facility's structure is appropriate in light of the Debtors' financing needs and the lack of viable non-priming debtor-in-possession financing alternatives.

29. Further, section 364(d) of the Bankruptcy Code provides that a debtor may obtain credit secured by a senior or equal lien on property of the estate already subject to a lien where the debtor is "unable to obtain such credit otherwise" and "there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted." 11 U.S.C. § 364(d)(1). Accordingly, the Debtors may incur "priming" liens under the DIP Facility if they are unable to obtain unsecured or junior secured credit and either (a) the Prepetition Secured Parties have consented or (b) the Prepetition Secured Lenders' interests in collateral are adequately protected. Here, many of the Prepetition Secured Lenders with whom the Debtors are in direct contact have consented to the priming liens securing the DIP Facility. Further, as is set forth in the Valuation Declaration, each Prepetition Secured Lender enjoys a substantial equity cushion. In addition, all the Prepetition Secured Lenders will receive adequate protection of replacement liens on the prepetition collateral under the Proposed Orders in accordance with their prepetition security interests and related priorities and all Prepetition Secured Lenders who

have consented to priming liens as of the petition date will receive payment of their reasonable professional fees during the Chapter 11 Cases. Accordingly, the relief requested pursuant to section 364(d)(1) of the Bankruptcy Code is both warranted and appropriate under the circumstances.

30. For the reasons discussed herein, the Debtors submit that they satisfy the standards required to access postpetition financing on a superpriority claim and priming lien basis under section 364(c) of the Bankruptcy Code.

(a) *The Debtors Cannot Obtain Financing on More Favorable Terms*

31. In demonstrating that credit is not available without the protections afforded by section 364(c) of the Bankruptcy Code, a debtor need only make a good faith effort. *See, e.g., In re Snowshoe Co.*, 789 F.2d 1085, 1088 (4th Cir. 1986) (holding “[t]he statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable”). Moreover, where few lenders likely can or will extend the necessary credit to a debtor, “it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing.” *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff’d sub nom., Anchor Sav. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n.4 (N.D. Ga. 1989).

32. As set forth above and in the Declarations, given their current financial condition, financing arrangements, and debt and capital structure, the only source of financing reasonably available and actionable is that offered by the DIP Lender on the terms under the DIP Term Sheet, and the Debtors were not able to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code. Accordingly, the Debtors submit that, despite their good faith efforts, similar credit is not available to the Debtors without the priming sought through the Proposed Interim Order.

33. The releases to be provided to the DIP Lender (and its affiliates), pursuant to the Interim Order, were critical to the DIP Lender's willingness to provide the DIP Facility. The releases are reasonable and appropriate, and represent a sound exercise of the Debtors' business judgment given the unique circumstances of these chapter 11 cases. The Debtors have no business relationship with the DIP Lender prior to entry into the DIP Facility and do not believe that any viable claims exist against the DIP Lender and, as a result, believe that a release of the DIP Lender is appropriate. The Debtors submit that such evidence will demonstrate that such releases are a condition to a much needed DIP Facility and accordingly are reasonable and justified under the circumstances.

(b) *The DIP Facility and DIP Term Sheet are Necessary to Preserve the Value of the Debtors' Estates*

34. As debtors-in-possession, the Debtors have a fiduciary duty to protect and maximize the value of their estates. *See In re Mushroom Transp. Co.*, 382 F.3d 325, 339 (3d Cir. 2004). The DIP Facility and DIP Term Sheet, if approved, will provide working capital critical to fund the Debtors' day-to-day operations and the Chapter 11 Cases, which will provide a path for the Debtors to sell their assets as a going-concern pursuant to section 363 of the Bankruptcy Code by year end. Without access to the DIP Facility, the Debtors will likely be forced to cease operations after the Petition Date, which would result in immediate and irreparable harm to the Debtors' residents and the Debtors' businesses, deplete the going-concern value of such businesses, upend the going-concern sale process that the Debtors believe is the best way to maximize value for creditors and potentially result in thousands of residents needing new homes. The Debtors also would be unable to administer their Chapter 11 Cases without the liquidity provided by the DIP Facility. The Debtors' ability to continue to care for their residents; maintain business relationships with their vendors, suppliers, utilities, and customers; satisfy other working

capital and operational needs; and otherwise finance their operations during the Chapter 11 Cases is essential to the Debtors' continued viability and to ensure a value-maximizing sale process.

35. Because the Debtors' available and projected cash from operations alone is insufficient to fund their operations, *see* Budget, the funds to be provided under the DIP Facility are necessary to preserve the value of the Debtors' estates for the benefit of all stakeholders.

(c) ***The Terms of the DIP Term Sheet are Fair, Reasonable, and Adequate under the Circumstances***

36. In considering whether the terms of postpetition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the proposed lender. *See In re L.A. Dodgers*, 457 B.R. at 312 (approval of debtor-in-possession financing requires terms that are "fair, reasonable and adequate, given the circumstances of the debtor-borrower and the proposed lender"); *see also In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003) (although many of the terms favored the lenders, "taken in context, and considering the relative circumstances of the parties," the court found them to be reasonable); *Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Trust Co. (In re Elingsen McLean Oil Co., Inc.)*, 65 B.R. 358, 365 n.7 (W.D. Mich. 1986) (recognizing a debtor may have to enter into "hard bargains" to acquire funds for its reorganization).

37. As described in the Declarations and herein, given the urgent need of the Debtors to obtain financial stability for the benefit of all parties in interest and fund a sale process in these Chapter 11 Cases, the Debtors submit that the terms of the DIP Term Sheet are fair, appropriate, reasonable, and in the best interests of the Debtors, their estates, and their creditors. The DIP Term Sheet, moreover, was negotiated extensively by the Debtors and the DIP Lender, in good faith and at arm's length as required by section 364(e) of the Bankruptcy Code, with all parties represented by experienced counsel. The Debtors, therefore, believe that this requirement is satisfied.

(d) ***Entry into the DIP Term Sheet Reflects the Debtors' Reasonable Business Judgment***

38. A debtor's decision to enter into a postpetition lending facility under section 364 of the Bankruptcy Code is governed by the business judgment standard. *See In re Trans World Airlines, Inc.*, 163 B.R. 964, 974 (Bankr. D. Del 1994) (noting that the interim loan, receivable facility, and asset based facility were approved because they "reflect[ed] sound and prudent business judgment [were] reasonable under the circumstances and in the best interests of TWA and its creditors"); *Ames Dep't Stores, Inc.*, 115 B.R. at 40 ("cases consistently reflect that the court's discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit parties in interest"). Courts grant a debtor-in-possession considerable deference in acting in accordance with its business judgment in obtaining postpetition secured credit, so long as the agreement to obtain such credit does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code. *See, e.g., In re L.A. Dodgers*, 457 B.R. at 313 ("[C]ourts will almost always defer to the business judgment of a debtor in the selection of the lender.").

39. For the reasons set forth above and in the First Day Declaration and the DIP Marketing Declaration, the Debtors submit that entry into the DIP Term Sheet is consistent with the exercise of the Debtors' reasonable business judgment. The Debtors, therefore, request that this Court authorize the Debtors to enter into the DIP Term Sheet and access funds under the DIP Facility, subject to the terms of the Proposed Interim Order, and that this Court grant to the DIP Lender all of the rights, privileges, and protections, as set forth herein, in the DIP Term Sheet, and the Proposed Interim Order, that are necessary to protect the DIP Lender and secure the DIP Obligations.

- (e) ***The X-Cal Debtors should be expressly permitted to enter into the DIP Facility.***

40. For the Debtors, including the X-Cal Debtors, to maximize the value of their estates for the benefit of all creditors, the X-Cal Debtors must be expressly permitted by this Court to enter into the DIP Facility. The order appointing the receiver in the El Paso Receivership Case (the “Receiver Order”) includes the following language:

Neither Owner Defendants, Operator Defendants nor any of their partners, representatives, officers, managers, directors, members, shareholders, affiliates or agents ... shall enter into any lease, contract, or agreement of any kind or character relating to the Receivership Assets outside the ordinary course of their management duties approved by Receiver, and shall not grant any lien upon or security interest in the Receivership Assets.

Case No. 3:24-cv-50034 (N.D. Ill.), Docket No. 8 ¶ 6 (Jan. 25, 2024). Accordingly, the Receiver Order limits the X-Cal Debtors’ ability to obtain secured financing.

41. Notwithstanding the Receiver Order, this Court may authorize the X-Cal Debtors to enter into the DIP Facility. Section 364 of the Bankruptcy Code permits debtors in possession to incur debts secured by liens on property of the estate. The appointment of the Receiver did not divest the X-Cal Debtors of their interests in the assets that are subject to the receivership (the “Receivership Assets”). *See Walden Invs. Grp., LLC v. First Nations Bank (In re Anthony M.)*, 580 B.R. 490, 501 (Bankr. N.D. Ill. 2017) (“the mere appointment of a receiver is an interlocutory matter effecting no determination of the right or title of either party.”) (quoting *Firebaugh v. McGovern*, 404 Ill. 143, 88 N.E.2d 473, 475 (Ill. 1949)).

42. Consequently, absent a disposition of the Receivership Assets, the X-Cal Debtors retain their interests in the Receivership Assets. *See In re ABC Learning Ctrs. Ltd.*, 728 F.3d 301, 312-14 (3d Cir. 2013) (holding that absent disposition of undersecured property subject to receivership, debtor retained an interest in such property arising from, *inter alia*, its right to the

potential surplus proceeds of a sale) (citing *United States v. Whiting Pools*, 462 U.S. 198, 200, 210-11 (1983)). No foreclosure sale or other disposition of the Receivership Assets occurred in the El Paso Receivership Case before the commencement of these Chapter 11 Cases. Accordingly, upon the commencement of these Chapter 11 Case, the Receivership Assets became property of the X-Cal Debtors' estates and subject to the provisions governing the disposition of property of the estate in the Bankruptcy Code, including section 364.

43. Consistent with the foregoing, courts have authorized the nonconsensual use of cash collateral where such cash collateral consist of the rents or proceeds of property under a receivership when the debtor in possession has met its burden of demonstrating adequate protection. *See, e.g., In re S. Side House, LLC*, 474 B.R. 391, 411-12 (Bankr. E.D.N.Y. 2012) (permitting debtor nonconsensual use of cash collateral consisting of rents from property subject to receivership) (citing cases). The Debtors submit that the same rationale applies to permit this Court to authorize the X-Cal Debtors to enter into the DIP Facility pursuant to section 364(d). The Receivership Assets are property of the X-Cal Debtors' estates, and, like the Prepetition Liens of other Prepetition Secured Parties, X-Caliber's security interests will be adequately protected. Accordingly, X-Cal Debtors, and ought to be expressly permitted to enter into the DIP Facility.

B. The DIP Lender should be Deemed a Good-Faith Lender under Section 364(e) of the Bankruptcy Code

44. The Debtors submit that the DIP Lender should be deemed a good-faith lender under the Bankruptcy Code. Specifically, section 364(e) of the Bankruptcy Code provides that:

The reversal or modification on appeal of an authorization under this section [364 of the Bankruptcy Code] to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such

authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

11 U.S.C. § 364(e). Section 364(e) of the Bankruptcy Code protects a good-faith lender's right to collect on loans extended to a debtor, and its right in any lien securing those loans, even if the authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal.

45. As explained herein and in the First Day Declaration and the DIP Marketing Declaration, the DIP Term Sheet is the result of: (i) the Debtors' reasonable judgment that under the circumstances the DIP Lender provided a reasonable and actionable postpetition financing proposal; and (ii) extended arm's-length, good-faith negotiations between the Debtors and the DIP Lender. The Debtors submit that the terms and conditions of the DIP Term Sheet are reasonable under the circumstances, and the proceeds of the DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code, as more particularly set forth in the DIP Term Sheet and Budget. Accordingly, the Debtors request that this Court find that the DIP Lender is a "good faith" lender within the meaning of section 364(e) of the Bankruptcy Code and is entitled to all of the protections afforded by that section.

C. The Debtors' Request to Use Cash Collateral and Proposed Adequate Protection of the Prepetition Secured Parties are Appropriate

46. Section 363 of the Bankruptcy Code governs the Debtors' use of property of their estates, including Cash Collateral.⁹ Pursuant to section 363(c)(2) of the Bankruptcy Code, a debtor

⁹ The Bankruptcy Code defines "cash collateral" as "cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest and includes the proceeds, products, offspring, rents, or profits of property and the fees, charges, accounts or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties subject to a security interest as provided in section 552(b) of this title, whether existing before or after the commencement of a case under this title." 11 U.S.C. § 363(a).

may use cash collateral as long as “(A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.” 11 U.S.C. § 363(c)(2). If a holder of a secured claim does not consent to the use of its cash collateral, section 363(e) of the Bankruptcy Code provides, in relevant part:

Notwithstanding any other provision of this section, at any time, on request of an entity that has an interest in property used, sold, or leased, or proposed to be used, sold, or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest. . . .

11 U.S.C. § 363(e).

47. The Bankruptcy Code does not explicitly define “adequate protection,” but section 361 of the Bankruptcy Code does provide the following three (3) nonexclusive examples of what may constitute adequate protection: (i) cash payments; (ii) an “additional or replacement lien” to the extent use of Cash Collateral results in a decrease in the value of such entity’s interest in such property; and (iii) granting such “other relief” resulting in the “indubitable equivalent of such entity’s interest in such property.” 11 U.S.C. § 361. What constitutes adequate protection is a question of fact that must be evaluated on a case-by-case basis, in light of the particular facts and circumstances presented, the focus being that which is required to protect a secured creditor from diminution in the value of its interest in the particular collateral during the use period. *In re Swedeland Dev. Grp., Inc.*, 16 F.3d 552, 564 (3d Cir. 1994); *In re Satcon Tech. Corp.*, No. 12-12869 (KG), 2012 WL 6091160, at *6 (Bankr. D. Del. Dec. 7, 2012); *In re N.J. Affordable Homes Corp.*, No. 05-60442 (DHS), 2006 WL 2128624, at *14 (Bankr. D.N.J. June 29, 2006); *In re Columbia Gas Sys., Inc.*, Nos. 91-803, 91-804, 1992 WL 79323, at *2 (Bankr. D. Del. Feb. 18, 1992); *see also In re Dynaco Corp.*, 162 B.R. 389, 394 (Bankr. D.N.H. 1993) (citing 2 Collier on

Bankruptcy ¶ 361.01[1] at 361–66 (15th ed. 1993) (explaining that adequate protection can take many forms and “must be determined based upon equitable considerations arising from the particular facts of each proceeding”).

48. The purpose in providing “adequate protection” is to ensure the creditor receives the value for which the creditor bargained pre-bankruptcy. *In re O’Connor*, 808 F.2d at 1396. Adequate protection is intended to protect secured creditors from diminution in value from the debtor’s use of the collateral during administration of the case. *See* 11 U.S.C. § 363(e) (“[O]n request of an entity that has an interest in property used, sold, or leased, or proposed to be used, sold, or leased, by the [debtor in possession], the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest.”); *see also In re Carbone Cos.*, 395 B.R. 631, 635 (Bankr. N.D. Ohio 2008) (“The test is whether the secured party’s interest is protected from diminution or decrease as a result of the proposed use of cash collateral.”); *In re Kain*, 86 B.R. 506, 513 (W.D. Mich. 1988); *In re Becker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986).

49. Most notably, the Prepetition Secured Parties are adequately protected because the value of each Prepetition Secured Parties’ collateral greatly exceeds the amount of their debt as of the petition date, as is set forth in the Valuation Declaration. *In re JER/Jameson Mezz Borrower II, LLC*, 461 B.R. 293 (Bankr.D.Del.2011).

50. Moreover, the Prepetition Secured Parties are adequately protected as a result of the continuation of the Debtors’ business operations. Without the use of the Cash Collateral, the Debtors’ operations would be irreparably harmed. Indeed, absent use of the Cash Collateral, the Debtors likely will be unable to continue to care for their residents or pay their ordinary business

expenses, including rent and employee wages. Failure to make such payments would significantly jeopardize the Debtors' ability to maintain their business and continue their operations.

51. In addition to the adequate protection being provided, the Prepetition Secured Parties are also adequately protected by the restructuring process contemplated by the Chapter 11 Cases. Use of Cash Collateral will preserve and enhance the value of the Debtors' estates, all of which are the Prepetition Secured Parties' collateral, whereas if the Chapter 11 Cases were converted immediately to cases under chapter 7, that value would be lost. Entry of the Proposed Interim Order and Proposed Final Order approving use of Cash Collateral is thus not only necessary but will help maximize the value of the Debtors' estates and the ultimate recovery for the Debtors' creditors. Without authority to use Cash Collateral, the Debtors will not be able to function as a going concern, necessitating the cessation of the Debtors' operations. Accordingly, authority to use Cash Collateral is necessary to avoid the shutdown of the Debtors' businesses, which is unquestionably in the best interests of the Debtors, their estates, and their creditors, including residents, who would require being moved into new homes and accordingly be adversely affected by a potential cease in operations.

52. The Debtors believe that the going concern value of their business is significantly greater than their liquidation value. Courts routinely have held that adequate protection may be demonstrated by a simple showing that the going concern value of the debtors is preserved by the debtors' continuing operations and use of cash collateral. *See, e.g., Bray v. Shenandoah Fed. Sav. & Loan Ass'n (In re Snowshoe Co.)*, 789 F.2d 1085, 1087-89 (4th Cir. 1986) (trustee reported that ski resort would lose 50% to 90% of its fair market value if it ceased operations). The Debtors' continued operations likely present the best opportunity for the Prepetition Secured Parties to receive the greatest recovery on account of their claims. Accordingly, the Debtors submit that use

of the Cash Collateral will allow the Debtors to continue their operations and, thereby, protect the Prepetition Secured Parties' interests. *See, e.g., In re 499 W. Warren St. Assocs., Ltd. P'ship*, 142 B.R. 53, 56 (Bankr. N.D.N.Y. 1992) (where the court found a secured creditor's interest in collateral adequately protected when cash collateral was applied to normal operating and maintenance expenditures on the collateral property); *In re Willowood E. Apartments of Indianapolis II, Ltd.*, 114 B.R. 138, 143 (Bankr. S.D. Ohio 1990) (same); *In re Aqua Assocs.*, 123 B.R. 192, 196 (Bankr. E.D. Pa. 1991) ("The important question, in determining whether the protection to a creditor's secured interest is adequate, is whether that interest, whatever it is, is being unjustifiably jeopardized.") (citation omitted).

53. In addition, the value of the Debtors' assets is enhanced by the Debtors' continued operations while the Debtors formulate and implement a restructuring process, since the alternative will severely impair value for all of the Debtors' stakeholders, including the Prepetition Secured Parties. *See, e.g., In re 495 Cent. Park Ave. Corp.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992) (evaluating "whether the value of the debtor's property will increase as a result of the" use of collateral in determining sufficiency of adequate protection); *In re Salem Plaza Assocs.*, 135 B.R. 753, 758 (Bankr. S.D.N.Y. 1992) (holding that debtor's use of cash collateral to pay operating expenses, thereby "preserv[ing] the base that generates the income stream," provided adequate protection to the secured creditor). Despite the tenuous cash position caused by the impacts of COVID 19 and the cyber attack which crippled the Debtors' operations, the value of the Debtors' assets are increasing as the Debtors improve their financial footing and billing operations. This cannot be done without use of cash collateral. Accordingly, the use of Cash Collateral as contemplated herein is critical.

54. For the reasons set forth herein, as it relates to the Prepetition Secured Parties, the proposed adequate protections are reasonable, appropriate, and sufficient to satisfy the standard of “adequate protection.” The Prepetition Secured Parties will be properly and adequately protected, and the Debtors believe that no further adequate protection is required. The use of Cash Collateral not only maintains the value of the Prepetition Secured Parties’ remaining collateral, but also increases their collateral base, strengthens the value of the Debtors’ business and is fair and appropriate on an interim basis under the circumstances of these Chapter 11 Cases to ensure the Debtors are able to continue using the Cash Collateral in the near term for the benefit of all parties in interest and the Debtors’ estates.

D. Modification of the Automatic Stay is Warranted and Necessary to Facilitate the Debtors’ Postpetition Borrowing through the DIP Facility

55. The Debtors request that this Court modify the automatic stay provisions of section 362 of the Bankruptcy Code solely to the extent necessary to permit the DIP Lender to exercise, upon the occurrence and during the continuance of any Event of Default, all rights and remedies provided for in the DIP Term Sheet (all subject to the default and notice provisions set forth in the Proposed Interim Order), and to the extent necessary to grant the adequate protection to the Prepetition Secured Lenders as set forth herein and in the Proposed Interim Order. The Debtors believe that these modifications to the automatic stay are fair and reasonable and are necessary conditions to effectuate the relief sought in this Motion.

E. The Debtors Will Suffer Immediate and Irreparable Harm if They Cannot Use Cash Collateral on an Interim Basis

56. Bankruptcy Rule 4001(b) permits a court to approve a debtor’s request for use of cash collateral during the 14-day period following the filing of a motion requesting authorization to use cash collateral, “only . . . as is necessary to avoid immediate and irreparable harm to the

estate pending a final hearing.” Bankruptcy Rule 4001(b)(2). The Court may grant the relief requested in this Motion immediately if the “relief is necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003; *see also In re First NLC Fin. Servs., LLC*, 382 B.R. 547, 549 (Bankr. S.D. Fla. 2008). In explaining the standards governing preliminary injunctions, the Second Circuit instructed that irreparable harm “‘is a continuing harm which cannot be adequately redressed by final relief on the merits’ and for which ‘money damages cannot provide adequate compensation.’” *Kamerling v. Massanari*, 295 F.3d 206, 214 (2d Cir. 2002) (quoting *N.Y. Pathological & X-Ray Labs., Inc. v. INS*, 523 F.2d 79, 81 (2d Cir. 1975)). In examining requests for interim relief under this rule, courts apply the same business judgment standard applicable to other business decisions. *See, e.g., In re Simasko Production Co.*, 47 B.R. 444, 449 (D. Co. 1985); *see also In re Ames Dep’t Stores Inc.*, 115 B.R. 34, 38 (Bank S.D.N.Y. 1990). After the 14-day period, the request for use of cash collateral is not limited to those amounts necessary to prevent destruction of the debtor’s business. A debtor is entitled to use cash collateral that it believes prudent in the operation of its business. *See, e.g., Simasko*, 47 B.R. at 449; *Ames Dep’t Stores*, 115 B.R. at 36.

57. The Debtors respectfully request that the Court conduct an expedited preliminary hearing on this Motion and authorize the Debtors (from and after the entry of the Proposed Interim Order and pending the Final Hearing) to use Cash Collateral in accordance with the Budget for, among other things, working capital purposes, administrative expenses and the payment of certain obligations in accordance with the relief authorized by the Court.

58. Where, as here, the debtor is operating a business, it is extremely important that access to cash collateral be allowed to facilitate the survival of the Debtor’s business units as going concerns: “the purpose of Chapter 11 is to rehabilitate debtors and generally access to cash

collateral is necessary to operate a business.” *In re Dynaco Corp.*, 162 B.R. 389 (Bankr. D.N.H. 1993), quoting *In re Stein*, 19 B.R. 458, 459 (Bankr. E.D. Pa. 1982). The need for access to cash collateral is even more vital given the critical nature of the care the Debtors provide to their residents. The Court should authorize the Debtors to use Cash Collateral, whether existing as of the Petition Date or arising thereafter based on the conversion of existing non-cash collateral into cash. Currently, the Debtors’ available cash is insufficient to enable them to operate with the use of Cash Collateral.

59. Interim access to the Cash Collateral will ensure that the Debtors maintain ongoing operations and avoid immediate and irreparable harm and prejudice to their estates and all parties in interest pending the Final Hearing. The Debtors have an immediate need to use Cash Collateral for, among other things, (i) their operations in the ordinary course of business, (ii) funding payroll for their employees, (iii) purchasing supplies, (iv) maintaining utilities, (v) paying vendors critical to operations, and (vi) administering these Chapter 11 Cases, all in accordance with the Budget. The Debtors believe that substantially all of their available cash constitutes the Prepetition Secured Parties’ cash collateral, as that term is used by section 363(c) of the Bankruptcy Code. Accordingly, without immediate access to Cash Collateral, the Debtors’ ability to preserve the value of their business and assets will be immediately and irreparably jeopardized, resulting in significant harm to the Debtors’ estates and creditors. Based on the foregoing, the Debtors submit that the interim relief requested in this Motion, pending a final hearing, is necessary, appropriate, and fully warranted, and is essential to avoid immediate and irreparable harm to the Debtors and their estates and creditors. In short, the Debtors’ ability to administer these Chapter 11 Cases through the use of Cash Collateral is vital to preserve and maximize the value of the Debtors’ estates. Accordingly, to the extent that the Debtors require the use of Cash Collateral, the Debtors

respectfully submit that they have satisfied the requirements of Bankruptcy Rule 4001 to support an expedited preliminary hearing and immediate Cash Collateral availability on an interim basis.

F. The Scope of the Carve-Out Is Appropriate

60. The proposed Adequate Protection is subject to the Carve-Out. Without the Carve-Out, the Debtors and other parties in interest may be deprived of certain rights and powers because the services for which professionals may be paid in these Chapter 11 Cases would be restricted. *See In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (observing that courts insist on carve-outs for professionals representing the debtor and the creditors' committee because "[a]bsent such protection, the collective rights and expectations of all parties-in-interest are sorely prejudiced"). The Carve-Out does not directly or indirectly deprive the Debtors' estates or other parties in interest of possible rights and powers. Additionally, the Carve-Out protects against administrative insolvency during the course of these Chapter 11 Cases by ensuring that assets remain for the payment of the Clerk of the Court or U.S. Trustee fees and the Debtors' professional fees.

G. The Findings of Validity, Perfection, or Amount of Prepetition Liens and Challenge Period Are Appropriate

61. Local Rule 4001-2(a)(i)(Q) requires explicit disclosure of provisions or findings of fact that bind the estate or other parties in interest with respect to the validity, perfection or amount of the secured creditor's prepetition lien or the waiver of claims against the secured creditor without first giving parties in interest at least seventy-five (75) days from the entry of the initial interim order to investigate such matters.

62. As part of the Proposed Interim Order, the Debtors agree and stipulate that the Prepetition Liens are valid, binding, perfected, enforceable, first priority liens and security interests against the Prepetition Collateral, subject in each case to the Prepetition Secured Parties' rights in

such collateral. The Debtors' stipulations are binding on the Debtors (who have waived and relinquished their right to challenge these stipulations), any other estate representative (including any subsequently appointed trustee), and all other creditors and parties in interest and their successors and assigns, including, without limitation, any Committee appointed in these Chapter 11 Cases. The Proposed Interim Order provides for a standard and customary challenge by any party in interest (other than the Debtors) with requisite standing within seventy-five (75) calendar days of entry of the Proposed Interim Order (the "Challenge Deadline"), as such applicable date may be extended in writing from time to time in the sole discretion of the Prepetition Secured Parties, or by the Court for good cause shown pursuant to an application filed by a party in interest prior to the expiration of the Challenge Deadline. In addition, the Proposed Interim Order provides that If these Chapter 11 Cases convert to cases under chapter 7, or if a chapter 11 trustee is appointed prior to the Challenge Deadline, the Challenge Deadline shall be extended for any such chapter 7 or chapter 11 trustee to 14 days after their appointment.

63. The proposed stipulations and the limitation on the Challenge Period to the seventy-five (75) day challenge period recommended by Local Rule 4001-2(a)(i)(Q) is typical of other chapter 11 cases. The Debtors submit that, in light of the facts and circumstances of these Chapter 11 Cases, parties in interest will have sufficient time within which to investigate and/or challenge The Prepetition Senior Lenders' liens.

SATISFACTION OF BANKRUPTCY RULE 6003(b)

64. Pursuant to Bankruptcy Rule 6003(b), any motion seeking to use property of the estate pursuant to section 363 of the Bankruptcy Code or to satisfy prepetition claims within twenty-one (21) days of the Petition Date requires the Debtors to demonstrate that such relief "is necessary to avoid immediate and irreparable harm. For the reasons discussed above, authorizing

the Debtors to secure postpetition financing, be authorized to use Cash Collateral, and granting the other relief requested herein is integral to the Debtors' ability to transition their operations into these Chapter 11 Cases. Failure to receive such authorization and other relief during the first 21 days of these Chapter 11 Cases would severely disrupt the Debtors' ability to administer their estates at this critical juncture. For the reasons discussed herein, the relief requested is necessary in order for the Debtors to preserve and maximize the value of the Debtors' estates for the benefit of all stakeholders. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

WAIVER OF STAY UNDER BANKRUPTCY RULE 6004(h)

65. The Debtors seek a waiver of any stay of the effectiveness of an order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). As set forth above and in the First Day Declaration, the relief requested herein is essential to prevent immediate and irreparable damage to the Debtors' operations, going-concern value and their efforts to pursue a resolution to these Chapter 11 Cases. To implement the foregoing successfully, the Debtors request that the Proposed Orders each include a finding that the Debtors have established cause to exclude such relief from the fourteen day stay period under Bankruptcy Rule 6004(h).

66. For this reason and those set forth above, the Debtors submit that ample cause exists to justify a waiver of the fourteen day stay imposed by Bankruptcy Rule 6004(h).

RESERVATION OF RIGHTS

67. Nothing contained herein or any actions taken pursuant to such relief requested is intended or shall be construed as: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable non-bankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion or any order granting the relief requested by this Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in this Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' or any other party in interest's rights to subsequently dispute such claim.

NOTICE

68. Notice of this Motion has been given to the following parties or, in lieu thereof, to their counsel, if known: (a) the U.S. Trustee; (b) the holders of the forty (40) largest unsecured

claims against the Debtors (on a consolidated basis); (c) the office of the attorney general for each of the states in which the Debtors operate; (d) United States Attorney's Office for the District of Delaware; (e) the Internal Revenue Service; (f) the United States Department of Justice; (g) the Prepetition Lenders; (h) the DIP Lender; (i) the office of Housing and Urban Development; and (j) any party that has requested notice pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

[Remainder of page intentionally left blank]

CONCLUSION

WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that the Court enter the Proposed Interim Order substantially in the form attached hereto, granting the relief requested herein and such other and further relief as may be just and proper.

Date: March 21, 2024
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Andrew L. Magaziner

Andrew L. Magaziner (No. 5426)
Shella Borovinskaya (No. 6758)
Carol E. Cox (No. 6936)
Rodney Square
1000 North King Street
Wilmington, Delaware 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253
Email: amagaziner@ycst.com
sborovinskaya@ycst.com
ccox@ycst.com

and

WINSTON & STRAWN LLP

Daniel J. McGuire (admitted *pro hac vice*)
Gregory M. Gartland (admitted *pro hac vice*)
35 W. Wacker Drive
Chicago, IL 60601
Telephone: (713) 651-2600
Facsimile: (312) 558-5700
T: (312) 558-5600
Email: dmcguire@winston.com
Email: ggartland@winston.com

Carrie V. Hardman (admitted *pro hac vice*)
200 Park Avenue
New York, New York 10166
Telephone: (212) 294-6700
Facsimile: (212) 294-4700
Email: chardman@winston.com

Proposed Counsel for the Debtors and Debtors in Possession

Exhibit A

Proposed Interim Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re

SC HEALTHCARE HOLDING, LLC *et al.*,
Debtors.¹

Chapter 11

Case No. 24-10443 (TMH)

Jointly Administered

Ref. Docket No. ____

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO OBTAIN
POSTPETITION FINANCING, (II) GRANTING SECURITY INTERESTS AND
SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (III) GRANTING
ADEQUATE PROTECTION TO CERTAIN PREPETITION SECURED CREDIT
PARTIES, (IV) MODIFYING THE AUTOMATIC STAY; (V) AUTHORIZING
THE DEBTORS TO ENTER INTO AGREEMENTS WITH JMB CAPITAL
PARTNERS LENDING, LLC, (VI) AUTHORIZING NON-CONSENSUAL USE
OF CASH COLLATERAL, (VII) SCHEDULING A FINAL HEARING, AND
(VIII) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above captioned debtors (collectively, the “Debtors” or the “Borrowers”) in the above-captioned chapter 11 cases (collectively, the “Chapter 11 Cases”), pursuant to sections 105, 361, 362, 363, 364, 503 and 507 of title 11 of the United States Code, (11 U.S.C. §§ 101 *et seq.*, as amended, the “Bankruptcy Code”), Rules 2002, 4001, 6003, 6004 and 9006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 2002-1 and 4001-2 and 9006-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), seeking entry of an interim order (this “Interim Order”) granting *inter alia*:

¹ The last four digits of SC Healthcare Holding, LLC’s tax identification number are 2584. The mailing address for SC Healthcare Holding, LLC is c/o Petersen Health Care Management, LLC 830 West Trailcreek Dr., Peoria, IL 61614. Due to the large number of debtors in these Chapter 11 Cases, for which the Debtors have requested joint administration, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information will be made available on a website of the Debtors’ proposed claims and noticing agent at www.kccllc.net/Petersen.

² Unless stated otherwise, capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion or the DIP Term Sheet (as defined below), as applicable.

i. authority, pursuant to sections 105, 363, and 364(c) and 364(d) of the Bankruptcy Code, for each of the Debtors, jointly and severally, to obtain a non-amortizing priming super-priority senior secured postpetition financing (“DIP Facility”) in an aggregate principal amount of up to \$45,000,000 (the “DIP Commitment”) of which, upon entry of this Interim Order and satisfaction or waiver of the borrowing conditions set forth in the DIP Term Sheet (as defined below), \$15,000,000 (the “Interim Advance”) shall be made available to the Debtors and may be drawn in a single draw, and the remainder of the DIP Commitment will, subject to and upon the date of entry of the Final Order (as defined below), be available through additional draws, in each case subject to the terms and conditions set forth in the DIP Term Sheet and/or a Debtor-in-Possession Loan and Security Agreement (as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the “DIP Credit Agreement” and, together with any ancillary, collateral or related documents and agreements, the “DIP Loan Documents”), among the Debtors, as Borrowers, and JMB Capital Partners Lending, LLC, as Lender (the “DIP Lender”), which DIP Facility Agreement shall be consistent with the terms set forth in the attached Debtor-in-Possession Term Loan Facility Summary of Terms and Conditions attached hereto as Exhibit 1 (the “DIP Term Sheet”);

ii. authority for the Debtors, on an interim basis, to execute, deliver, and perform under the DIP Term Sheet, the DIP Loan Documents, and all other credit documentation relating to the DIP Facility, including, without limitation, as applicable, security agreements, pledge agreements, debentures, mortgages, control agreements, deeds, charges, guarantees, promissory notes, intercompany notes, certificates, instruments, intellectual property security agreements, notes, fee letters, and such other documents that are ancillary or incidental thereto or that may be reasonably requested by the DIP Lender in connection with the DIP Facility, in each case, as amended, restated, supplemented, waived or otherwise modified from time to time in accordance with the terms thereof and hereof;

iii. authority for the Debtors, on an interim basis, to issue, incur and guarantee all loans, notes, advances, extensions of credit, financial accommodations, reimbursement obligations, fees

and premiums (including, without limitation, the Commitment Fee, upfront fees, the Exit Fee, backstop fees or premiums, administrative agency fees, and any other fees payable pursuant to the DIP Term Sheet and/or DIP Loan Documents), costs, expenses and other liabilities and all other obligations (including indemnities and similar obligations, whether contingent or absolute) due or payable to or for the benefit of the DIP Lender under the DIP Term Sheet and/or the DIP Loan Documents (collectively, the “DIP Obligations”), and to perform such other and further acts as may be required, necessary, desirable, or appropriate in connection therewith;

iv. authority for the Debtors, on an interim basis, to use the DIP Facility and the proceeds thereof in accordance with the DIP Term Sheet and/or the DIP Loan Documents to (a) fund the postpetition working capital needs of the Debtors pending the Final Hearing, (b) pay fees, costs and expenses of the DIP Facility on the terms and conditions described in the DIP Term Sheet and/or the DIP Loan Documents, and (c) pay the allowed administrative costs and expenses of the Chapter 11 Cases, in each case, solely in accordance with the DIP Term Sheet, the DIP Budget (as defined below), and this Interim Order;

v. authority for the Debtors to grant to the DIP Lender valid, enforceable, non-avoidable, automatically and fully perfected priming security interests, liens and superpriority claims, including allowed superpriority administrative expense claims pursuant to sections 364(c)(1) and 507(b) of the Bankruptcy Code, subject only to the Carve Out and the Permitted Prior Liens (as defined in Schedule 2 to the DIP Term Sheet), and liens pursuant to sections 364(c)(2), 364(c)(3) and 364(d)(1) of the Bankruptcy Code in the Collateral (as defined below) (and all proceeds thereof), including, without limitation, all property constituting “Cash Collateral,” as defined in section 363(a) of the Bankruptcy Code, (“Cash Collateral”), to secure all DIP Obligations, subject only to the Carve Out and the Permitted Prior Liens;

vi. authority for the Debtors to grant the Prepetition Secured Parties (as defined below) valid, enforceable, non-avoidable, automatically and fully perfected security interests, liens and superpriority claims, including allowed superpriority administrative expense claims pursuant to section 507(b) of the Bankruptcy Code, subject only to the Carve Out, the Permitted Prior Liens

and the superpriority claims and liens of the DIP Lender, to secure any diminution in value of the Prepetition Collateral;

vii. authority for the DIP Lender to take all commercially reasonable actions to implement and effectuate the terms of this Interim Order and the DIP Term Sheet;

viii. subject to entry of the Final Order, waiver by the Debtors of all rights to surcharge against the collateral of the DIP Lender and the Prepetition Secured Parties pursuant to section 506(c) of the Bankruptcy Code;

ix. subject to entry of the Final Order, determination that the equitable doctrine of marshaling or any other similar doctrine shall not apply with respect to any collateral of the DIP Lender and the Prepetition Secured Parties for the benefit of any party other than the DIP Lender; and

x. modification of the automatic stay provided by section 362(a) of the Bankruptcy Code to the extent set forth herein and as necessary to permit the Debtors and the DIP Lender to implement and effectuate the terms and provisions of the DIP Term Sheet and/or the DIP Loan Documents, including, upon entry, the Interim Order, and, subject to the terms of the DIP Term Sheet and DIP Loan Documents (including this Interim Order), to deliver any Carve Out Notice (as defined herein) or other notices in relation thereto and the exercise of certain rights and remedies, as contemplated hereby and by the DIP Term Sheet and other DIP Loan Documents.

xi. waiver of any applicable stay (including under Bankruptcy Rule 6004) and providing for immediate effectiveness of this Interim Order;

xii. scheduling a final hearing (the "Final Hearing") to consider final approval of the DIP Facility pursuant to a proposed final order (the "Final Order"), as set forth in the Motion and the DIP Term Sheet.

This Court having considered the interim relief requested in the Motion (including the DIP Term Sheet and the other exhibits attached thereto), the evidence submitted or adduced, pursuant to the *Declaration of David R. Campbell in Support of Chapter 11 Petitions and First Day Motions* (the "First Day Declaration"), the declaration of Luke Andrews in support of the Motion (the "DIP

Marketing Declaration”) and the declaration of David R. Campbell in support of the Motion (the “Valuation Declaration”) and the arguments of counsel made at the hearing held on March __, 2024 (the “Interim Hearing”) and having found that due and proper notice of the Motion and the Interim Hearing having been given in accordance with Bankruptcy Rule 2002 and 4001(b), (c) and (d) and all applicable Local Rules; and the Interim Hearing to consider the relief requested in the Motion having been held and concluded; and all objections, if any, to the interim relief requested in the Motion having been withdrawn, resolved or overruled; and it appearing to this Court that granting the interim relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing, otherwise is fair and reasonable and in the best interests of the Debtors, their estates, creditors, and other parties in interest, and is essential for the continued operation of the Debtors’ businesses and the preservation of the value of the Debtors’ assets and represents a sound exercise of the Debtors’ business judgment; and after due deliberation and consideration, and for good and sufficient cause appearing therefor;

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

A. Petition Date. On March 20, 2024 (the “Petition Date”), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “Court”) commencing these Chapter 11 Cases.

B. Debtors in Possession. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. To date, the Office of the United States Trustee for the District of Delaware (the “U.S.

³ The findings and conclusions set forth herein constitute this Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014, and shall take effect and be fully enforceable effective as of the Petition Date immediately upon entry hereof. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

Trustee”) has not appointed an official committee in the Chapter 11 Cases and no request has been made for the appointment of a trustee or an examiner.

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

D. Notice. Under the circumstances, the notice given by the Debtors of, and as described in, the Motion, the relief requested therein, and the Interim Hearing constitutes proper notice thereof and complies with Bankruptcy Rules 2002, 4001(b), (c) and (d), and 9014 and the Local Rules, and no further notice of the relief sought at the Interim Hearing and the relief granted herein is necessary or required. The interim relief granted herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates, creditors, and other parties in interest, pending the Final Hearing.

E. Committee Formation. As of the date hereof, the U.S. Trustee has not appointed an official committee of unsecured creditors in these Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code (a “Creditors’ Committee”).

F. No Credit Available on More Favorable Terms. The Debtors are unable to procure financing in the form of unsecured credit allowable as an administrative expense under sections 364(a), 364(b), or 503(b)(1) of the Bankruptcy Code. The Debtors are also unable to obtain secured credit without (i) granting to the DIP Lender the DIP Liens and the DIP Superpriority Claims (each as defined herein) and (ii) incurring the Adequate Protection Obligations (as defined herein), to the extent set forth herein and under the terms and conditions set forth in the DIP Term Sheet and/or the DIP Loan Documents, in each case of (i) and (ii) subject and subordinate to the Carve Out and the Permitted Prior Liens, and have been unable to procure the necessary financing on terms more favorable, taken as a whole, than the financing offered by DIP Lender pursuant to the DIP Term Sheet and/or the DIP Loan Documents.

G. Best Interests of Estates. It is in the best interests of the Debtors' estates and creditors that the Debtors be allowed to obtain postpetition secured financing from the DIP Lender under the terms and conditions set forth herein and in the DIP Term Sheet and/or the DIP Loan Documents, as such financing is necessary to avoid immediate and irreparable harm to the Debtors' estates and for the continued operation of the Debtors' businesses.

H. Good Faith. The extension of credit and financial accommodations under the DIP Term Sheet and/or the DIP Loan Documents are fair, reasonable, in good faith, negotiated at arm's length, reflect the Debtors' exercise of prudent business judgment, and are supported by reasonably equivalent value and fair consideration. The liens, claims and other covenants and payments as set forth in this Interim Order and the DIP Term Sheet, as well as the protections afforded parties acting in "good faith" under section 364(e) of the Bankruptcy Code are integral, critical and essential components of the DIP Facility provided by the DIP Lender to the Debtors. Accordingly, the DIP Lender is entitled to the protections of Bankruptcy Code section 364(e).

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

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

K. Need for Postpetition Financing. The Debtors do not have sufficient and reliable sources of working capital to continue to operate their businesses in the ordinary course without the financing requested in the Motion. The Debtors' ability to care for their residents, maintain business relationships with their vendors, suppliers and customers, to pay their employees, and to otherwise fund their operations is essential to the Debtors' continued viability as the Debtors seek to maximize the value of the assets of their estates for the benefit of all creditors of the Debtors. The ability of the Debtors to obtain sufficient and stable working capital and liquidity through the proposed postpetition financing arrangements with the DIP Lender as set forth in this Interim Order and the DIP Term Sheet (and/or the DIP Loan Documents) is vital to the preservation and maintenance of the going concern value of each Debtor. Accordingly, the Debtors have an immediate need to obtain the postpetition financing in order to, among other things, permit the orderly continuation of the operation of their businesses, minimize the disruption of their business operations, and preserve and maximize the value of the assets of the Debtors' bankruptcy estates in order to maximize the recovery to all creditors of the estates.

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

M. Sections 506(c) and 552(b). As material inducement to the DIP Lender to agree to provide the DIP Facility and in exchange for agreement by the DIP Lender and the Prepetition Secured Parties to subordinate their superpriority claims to the Carve Out, upon the entry of the Final Order, the DIP Lender and the Prepetition Secured Parties are entitled to a waiver of any "equities of the case" exception under section 552(b) of the Bankruptcy Code, and (b) the DIP Lender and the Prepetition Secured Parties are entitled to a waiver of the provisions of section 506(c) of the Bankruptcy Code.

N. Priming of Prepetition Liens. The priming of the Prepetition Liens by the DIP Lender under section 364(d)(1) of the Bankruptcy Code, to the extent set forth in the DIP Term Sheet (and/or the DIP Loan Documents) and as further described below, will enable the Debtors to obtain the DIP Facility and, among other benefits, continue to operate their business for the benefit of their estates and stakeholders.

O. DIP Budget. The Debtors have prepared and delivered to the DIP Lender and its advisors an initial budget attached hereto as Schedule 1 (together with any additional line-item or other detail and supplements as may be provided pursuant to the terms of the DIP Term Sheet, the “Initial DIP Budget”). The Initial DIP Budget reflects, among other things, for the 13-week period commencing on or about the Petition Date, the Debtors’ projected operating receipts, operating disbursements, non-operating disbursements, net operating cash flow and liquidity for each one-week period covered thereby. The Initial DIP Budget may be modified, amended, extended, and updated from time to time in accordance with the DIP Term Sheet and/or DIP Loan Documents, and such modified, amended, extended and/or updated budget, once approved (or deemed approved) by the Debtors and the DIP Lender, shall modify, replace, supplement or supersede, as applicable, the Initial DIP Budget for the periods covered thereby (the Initial DIP Budget and each subsequent approved budget (including any additional line-item or other detail and supplements as may be provided pursuant to the terms of the DIP Term Sheet and/or DIP Loan Documents) shall constitute, without duplication, an “Approved Budget”). Each subsequent Approved Budget (as approved in accordance with the DIP Term Sheet and this Interim Order) shall be provided to the U.S. Trustee and counsel to the Creditors’ Committee in summary form. The Initial DIP Budget has been reviewed by the Debtors, their management and their advisors, and the Debtors believe that the Initial DIP Budget is reasonable under the circumstances. The DIP Lender is relying, in part, upon the Debtors’ agreement to comply with the Approved Budget (subject only to permitted variances) and the terms of the Term Sheet in determining to enter into the DIP Facility and to consent to the use of Cash Collateral provided for in this Interim Order.

P. Debtors' Acknowledgments and Agreements. Without prejudice to the rights of the Creditors' Committee or other parties-in-interest as and to the extent set forth in paragraph 18 of this Interim Order, the Debtors admit, stipulate, acknowledge and agree that:

(a) Prepetition Loan Documents. Prior to the Petition Date, the applicable Debtors entered into the following loan documents and credit facilities:

- Amended and Restated Loan Agreement dated February 24, 2021 with XCAL 2019-IL-1 Mortgage Trust, as lender, pursuant to which not less than \$33,038,340 is presently outstanding.
- Amended and Restated Loan Agreement dated August 5, 2020 with Column Financial, Inc. (as successor in interest to Sector Financial Inc.), as the administrative agent and collateral agent and the other lenders party thereto pursuant to which not less than \$ 64,605,074 is presently outstanding.
- Amended and Restated Loan Agreement dated August 5, 2020 with GMF Petersen Note LLC, as the lender pursuant to which not less than \$26,400,302.55 is presently outstanding.
- Credit and Security Agreement (the "eCapital Credit Agreement") dated October 4, 2023 with eCapital Healthcare Corp. ("eCapital" and such obligations of the Debtor under the eCapital Credit Agreement, the "eCapital Obligations") as the lender pursuant to which not less than \$3,833,089.27 is presently outstanding.
- HUD Facilities:
 - Multiple FHA insured loans with Berkadia Commercial Mortgage LLC as lender and the applicable Debtor party thereto with not less than \$2,936,067 in the aggregate (net of escrows) is presently outstanding.
 - Multiple FHA insured loans with Grandbridge Real Estate Capital, LLC as lender and the applicable Debtor party thereto with not less than \$7,369,000 in the aggregate (net of escrows) presently outstanding.
 - Multiple FHA insured loans with Lument Real Estate Capital, LLC as lender and the applicable Debtor party thereto with not less than \$8,267,261 in the aggregate (net of escrows) presently outstanding.

- Wells Fargo Mortgage. Debtor SJL Health Systems, Inc. is part to a loan agreement with Wells Fargo Bank, N.A. as servicer related to the Prairie Rose Health Care Facility (the “Wells Fargo Mortgage”). In the relevant default notice, it was alleged that approximately \$1,455,631 is outstanding under the Wells Fargo Mortgage.
- Solutions Bank Loan. Debtor Petersen Healthcare, Inc. is party to various loan documents in favor of Solutions Bank (the “Solutions Bank Facility”), pursuant to which Petersen Healthcare Inc. granted to Solution Bank a security interest in certain assets related to an assisted living facility located at 160 E. Walton Street, Canton, Illinois known as “Courtyard Estates of Canton.” In the relevant default notice, it was alleged that approximately \$3,408,171 is outstanding under the Solutions Bank Facility.
- Community State Bank. Debtor Petersen Health Systems, Inc. is party to various loan documents in favor of Community State Bank (the “CSB Facility”), pursuant to which Petersen Health Systems, Inc. granted to Community State Bank a security interest in certain assets related to real property located at 13516 Townline Road, Green Valley Illinois known as “Courtyard Estates of Green Valley.” As of the Petition Date, approximately \$2,494,108 is outstanding under the CSB Facility.
- Bank of Farmington. Debtor Petersen Health Systems, Inc. is party to various loan documents in favor of Bank of Farmington (the “Farmington Facility”), pursuant to which Petersen Health Systems, Inc. granted to Bank of Farmington a security interest in certain assets related to an assisted living located at 1000 E. Fort Street, Farmington, IL known as “Courtyard Estates of Farmington.” As of the Petition Date, approximately \$2,845,278 is outstanding under the Farmington Facility.
- Hickory State Bank. Debtor CYE Girard HCO, LLC is party to various loan documents in favor of Hickory Point Bank & Trust (the “Hickory Point Facility”), pursuant to which CYE Girard HCO, LLC granted to Hickory Point Bank & Trust a security interest in certain assets related to an assisted living facility located at 1016 W North St, Girard, IL known as “Courtyard Estates of Girard.” As of the Petition Date, approximately \$1,839,599 is outstanding under the Farmington Facility.
- Bank of Rantoul. Debtor Petersen Health Systems, Inc. is the borrower under a certain loan facility with Bank of Rantoul, as lender (“Rantoul Facility”) secured by a mortgage and assignment of rents pertaining to the Courtyard Estates of Herscher healthcare facility located at 100 Harvest View Lane, Herscher, IL. As of the

Petition Date, approximately \$2,352,907 in principal amount is outstanding under the Rantoul Facility.

(all of the foregoing, together with the Prepetition Credit Agreement, as all of the same have heretofore been amended, supplemented, modified, extended, renewed, restated and/or replaced at any time prior to the Petition Date, collectively, the “Prepetition Loan Documents”).

- (b) Prepetition Secured Obligations. As of the Petition Date, the Debtors were indebted to the Prepetition Secured Parties under the Prepetition Loan Documents in an aggregate outstanding principal amount of not less than \$179,103,915 plus interest accrued and accruing thereon, together with all costs, fees, expenses (including attorneys’ fees and legal expenses) and other charges accrued, accruing or chargeable with respect thereto (the “Prepetition Secured Obligations”). The Prepetition Secured Obligations constitute allowed, legal, valid, binding, enforceable and non-avoidable obligations of Debtors, and are not subject to any offset, defense, counterclaim, avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or any other applicable law, and Debtors do not possess, shall not assert, hereby forever release, and are forever barred from bringing any claim, counterclaim, setoff or defense of any kind, nature or description which would in any way affect the validity, enforceability and non-avoidability of any of the Prepetition Secured Obligations.
- (c) Prepetition Collateral. As of the Petition Date, the Prepetition Secured Obligations were secured pursuant to the applicable Prepetition Loan Documents by valid, perfected, enforceable and non-avoidable first-priority security interests and liens (the “Prepetition Liens”) granted by the Debtors party thereto to the applicable Prepetition Secured Parties under the applicable Prepetition Loan Documents, in certain real estate of the applicable Debtors as more fully set forth in the Prepetition Loan Documents as listed on Schedule 3 of the DIP Term Sheet and in accounts receivable of the applicable Debtors (the “Prepetition Collateral”), and such security interests are perfected and has priority over all other security interests. The Debtors do not possess and will not assert any claim, counterclaim, setoff or defense of any kind, nature or description which would in any way affect the validity, enforceability and non-avoidability of any of the Prepetition Lenders’ liens, claims or security in the Prepetition Collateral.
- (d) Proof of Claim. The acknowledgment by Debtors of the Prepetition Secured Obligations and the liens, rights, priorities and protections granted to or in favor of the Prepetition Secured Parties in respect of the Prepetition Collateral as set forth herein and in the Prepetition Loan Documents shall be deemed a timely filed proof of claim on behalf of the Prepetition Secured Parties in these Chapter 11 Cases.

- (e) No Control. Subject to Paragraph 18 of this Interim Order, the Debtors stipulate and this Court finds that in making decisions to advance loans to the Debtors, in administering any loans, in accepting the Initial DIP Budget or any future Approved Budget or in taking any other actions permitted by the Interim Order, or the DIP Loan Documents in their capacity as DIP Lender, the DIP Lender shall not be deemed to be in control of the operations of the Debtors or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Debtors.

Q. Adequate Protection. The Prepetition Secured Parties consent to the senior priming liens and security interests in favor of the DIP Lender or are otherwise entitled to receive adequate protection on account of their interests in the Prepetition Collateral pursuant to sections 361, 362, and 363 of the Bankruptcy Code solely to the extent of any diminution in the value of their interests in the Prepetition Collateral. As part of the adequate protection provided by this Interim Order, the Prepetition Secured Parties shall receive, among other things, replacement liens, superpriority claims and reporting information and (subject to any applicable intercreditor agreement) Prepetition Secured Parties who affirmatively consent to being primed prior to the first day hearing (all such parties, the “Consenting Secured Lenders”) shall receive reimbursement of their reasonable professional fees to the extent provided for in an Approved Budget; *provided* that any fees, costs and expenses paid as adequate protection for the Prepetition Secured Parties shall be recharacterized as payments of principal if the Prepetition Secured Parties are later determined to be undersecured. The terms of the Adequate Protection Obligations (as defined in paragraph 13 below) are fair and reasonable, reflect the Debtors’ prudent exercise of business judgment and are sufficient to allow the Debtors’ use of the Prepetition Collateral and to permit the relief granted in this Interim Order.

R. Requisite Authority. Each Debtor has all requisite corporate or entity power and authority to execute and deliver the DIP Loan Documents to which it is a party and to perform its obligations thereunder.

S. Immediate Entry. Sufficient cause exists for immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(c)(2). Absent granting the relief set forth in this Interim Order,

the Debtors' estates will be immediately and irreparably harmed. Consummation of the DIP Facility and the permitted use of Prepetition Collateral in accordance with this Interim Order and the DIP Term Sheet, are therefore in the best interests of the Debtors' estates and consistent with the Debtors' exercise of their fiduciary duties.

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

IT IS HEREBY ORDERED that:

1. DIP Facility Approval. The interim relief sought in the Motion is granted, the interim financing described herein is authorized and approved, and the Debtors' use of Cash Collateral on an interim basis is authorized, in each case subject to the terms and conditions set forth herein and in the DIP Term Sheet and/or the DIP Loan Documents. All objections to the Motion to the extent not withdrawn, waived, settled, or resolved are hereby denied and overruled on the merits. The Debtors are authorized, pursuant to section 364 of the Bankruptcy Code, to execute, deliver, enter into and, as applicable, comply with and perform all of their obligations under the DIP Term Sheet and/or the DIP Loan Documents and such other and additional documents necessary or desired to implement the DIP Facility, and to obtain postpetition secured financing from the DIP Lender, to avoid immediate and irreparable harm to the Debtors' estates. All provisions of the DIP Term Sheet are incorporated herein and approved in their entirety, whether explicitly referenced or not.

2. DIP Obligations. The DIP Term Sheet (and/or the DIP Loan Documents) shall constitute and evidence the valid and binding effect of the Debtors' obligations under the DIP Facility, which DIP Obligations shall be legal, valid, and binding obligations of the Debtors and enforceable against the Debtors, their estates, any successors thereto, including, without limitation, any trustee appointed in any of the Debtors' cases, or in any case under chapter 7 of the Bankruptcy Code upon the conversion of any such cases, or in any other proceedings superseding or related to any of the foregoing, any successors thereto, and any party determined to be the beneficial owner

of the DIP Collateral by this Court. The Debtors and their successors shall be jointly and severally liable for repayment of any funds advanced pursuant to the DIP Term Sheet (and/or the DIP Loan Documents) and the DIP Obligations. No obligation, payment, transfer or grant of security under the DIP Loan Documents or this Interim Order, with respect to the DIP Facility shall be stayed, restrained, voided, voidable or recoverable under the Bankruptcy Code or under any applicable non-bankruptcy law, or subject to any defense, reduction, setoff, recoupment or counterclaim.

3. Authorization to Borrow. The Debtors are hereby authorized to execute, deliver, enter into and, as applicable, comply with and perform all of their obligations, and to pay all fees, costs, expenses, indemnities, and other amounts contemplated, under the DIP Term Sheet (and/or the DIP Loan Documents) and to take such other and further acts as may be necessary, appropriate or desirable in connection therewith. Upon entry of this Interim Order, the Debtors are authorized to borrow up to aggregate amount of the Interim Advance, and the Debtors are hereby authorized to provide a guaranty of payment and performance in respect of the DIP Obligations, in each case, in accordance with the DIP Term Sheet (and/or the DIP Loan Documents), and the DIP Obligations are hereby approved (as and when such amounts become earned, due, and payable in accordance with the DIP Term Sheet (and/or the DIP Loan Documents)) without the need to seek further Court approval. Once repaid, the DIP Loans (as defined below) incurred may not be re-borrowed.

4. Use of DIP Facility Proceeds. The Debtors shall use advances of credit under the DIP Facility (the "DIP Loans") only for the express purposes specifically set forth in this the DIP Term Sheet (and/or the DIP Loan Documents) and this Interim Order. The Debtors are authorized to use the proceeds of the DIP Loans to (a) fund the postpetition working capital needs of the Debtors during the pendency of the Chapter 11 Cases, (b) pay fees, costs, and expenses of the DIP Facility on the terms and conditions described in the DIP Term Sheet (and/or the DIP Loan Documents), and (c) pay the allowed administrative costs and expenses of the Chapter 11 Cases, in each case, solely in accordance with the DIP Term Sheet (and/or the DIP Loan Documents) (including, but not limited to, the DIP Budget) and this Interim Order.

5. DIP Budget and DIP Facility Reporting. Except as otherwise provided herein or approved by the DIP Lender, the proceeds from the DIP Facility shall be used only in compliance with the terms of the DIP Term Sheet (and/or the DIP Loan Documents). The Debtors shall comply with the reporting requirements and obligations set forth in the DIP Term Sheet (and/or the DIP Loan Documents).

6. Payment of DIP Facility Fees and Expenses.

(a) The (i) Commitment Fee (as defined in the DIP Term Sheet) and (ii) Exit Fee (as defined in the DIP Term Sheet) are each hereby approved and the Debtors are hereby authorized and directed to and shall pay such fees in accordance with, and on the terms set forth in the DIP Term Sheet (and/or the DIP Loan Documents) and this Interim Order. The Debtors are also hereby authorized and directed to pay upon demand, all other fees, costs, expenses and other amounts payable under the terms of the DIP Term Sheet (and/or the DIP Loan Documents) and this Interim Order and all other fees and out-of-pocket costs and expenses of the DIP Lender in accordance with the terms of the DIP Term Sheet (and/or the DIP Loan Documents) and this Interim Order, including, without limitation, all documented fees and out-of-pocket costs and expenses of Norton Rose Fulbright US LLP and Morris James LLP as counsel to the DIP Lender (the “DIP Professional Fees and Expenses”), subject to receiving a written invoice therefor; . None of such fees, costs, expenses or other amounts shall be subject to further application to or approval of this Court, and shall not be subject to allowance or review by this Court or subject to the U.S. Trustee’s fee guidelines, and no attorney or advisor to the DIP Lender shall be required to file an application seeking compensation for services or reimbursement of expenses with this Court; provided, however, that copies of any such invoices shall be provided contemporaneously to the U.S. Trustee, counsel to the Consenting Secured Parties and counsel to any Creditors Committee; if any (together with the Debtors, the “Review Parties”), provided further, however, that such invoices may be redacted or modified to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of such invoices shall not constitute a waiver of the

attorney-client privilege or any benefits of the attorney work product doctrine. Any objections raised by any Review Party with respect to such invoices must be in writing and state with particularity the grounds therefor and must be submitted to the affected professional within ten (10) calendar days after delivery of such invoices to the Review Parties (such ten (10) day calendar period, the “Review Period”). If no written objection is received prior to the expiration of the Review Period from the Review Parties, the Debtors shall pay such invoices within five (5) business days following the expiration of the Review Period. If an objection is received within the Review Period, the Debtors shall promptly pay the undisputed amount of the invoice within five (5) business days, and the disputed portion of such invoice shall not be paid until such dispute is resolved by agreement between the affected professional and the objecting party or by order of this Court. Any hearing to consider such an objection to the payment of any fees, costs or expenses set forth in a professional fee invoice hereunder shall be limited to the reasonableness of the fees, costs and expenses that are the subject of such objection. All such unpaid fees, costs, expenses and other amounts owed or payable to the DIP Lender shall be secured by the DIP Collateral and afforded all of the priorities and protections afforded to the DIP Obligations under the DIP Term Sheet (and/or the DIP Loan Documents) and this Interim Order.

(b) Notwithstanding anything to the contrary, the Debtors are authorized and directed to pay the following: upon the Initial Draw, the Debtors shall pay in full in cash all unpaid DIP Professional Fees and Expenses arising through and including the Initial Draw, without the need for any professional engaged by or on behalf of the DIP Lender to first deliver a copy of its invoice to any of the Review Parties (other than Debtors).

(c) Notwithstanding anything contained in this Interim Order to the contrary, any and all payments, premiums, fees, costs, expenses, and other amounts paid at any time by any of the Debtors to the DIP Lender pursuant to the requirements of this Interim Order or the DIP Term Sheet (and/or the DIP Loan Documents) shall be non-refundable and irrevocable, are hereby approved, and shall not be subject to any challenge, objection, defense, claim or cause of action of any kind or nature whatsoever, including, without limitation, avoidance (whether under chapter 5

of the Bankruptcy Code or under applicable law (including any applicable state law Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law)), reduction, setoff, offset, recoupment, recharacterization, subordination (whether equitable, contractual, or otherwise), reclassification, disgorgement, disallowance, impairment, marshaling, surcharge, or recovery or any other cause of action, whether arising under the Bankruptcy Code, applicable non-bankruptcy law or otherwise, by any person or entity (subject, solely in the case of the DIP Professional Fees and Expenses, to paragraph 6(a) of this Interim Order).

7. Cash Management. Until such time as all DIP Obligations are Paid in Full, the Debtors shall maintain the cash management system in accordance with the applicable “first day” order and such deposit accounts shall, upon the request of the DIP Lender, be subject to a control agreement in favor of the DIP Lender as required by the DIP Term Sheet (excluding for the avoidance of doubt, the Carve Out Account, and subject to any mandatory prepayment obligations owed to the DIP Lender, any account into which proceeds of any asset sales are escrowed and any account into which a government payor deposits accounts receivable).

8. Indemnification. The Debtors are hereby authorized to and hereby agree to indemnify and hold harmless the DIP Lender and its affiliates, directors, officers, employees, agents, attorneys, or any other Person affiliated with or representing the DIP Lender (collectively, an “Indemnified Party”) from and against: (a) all obligations, demands, claims, damages, losses and liabilities (including, without limitation, reasonable fees and disbursements of counsel) (collectively, “Indemnity Claims”) as set forth in the DIP Term Sheet (and/or the DIP Loan Documents) including those asserted by any other party in connection with the transactions contemplated by the DIP Term Sheet (and/or the DIP Loan Documents); and (b) all losses or expenses incurred, or paid by the DIP Lender from, following, or arising from the transactions contemplated by the DIP Term Sheet (and/or the DIP Loan Documents), including reasonable and documented attorneys’ fees and expenses, except for Indemnity Claims and/or losses directly caused by the DIP Lender’s fraud, gross negligence or willful misconduct. In the case of an investigation, litigation or other proceeding to which the indemnity in this paragraph applies, such

indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any of the Debtors or any of their respective directors, security holders or creditors, an Indemnified Party, or if any other Person or Indemnified Party is otherwise a party thereto, and whether or not the transactions contemplated hereby are consummated. No Indemnified Party shall have any liability (whether direct or indirect, in contract, tort or otherwise) to any Debtor or any of its subsidiaries or any shareholders or creditors of the foregoing for or in connection with the transactions contemplated hereby, except to the extent such liability is determined by a court of competent jurisdiction in a final non-appealable judgment or order to have resulted solely from such Indemnified Party's gross negligence, willful misconduct or material breach of the DIP Term Sheet (and/or the DIP Loan Documents). All indemnities of the Indemnified Parties shall constitute DIP Obligations secured by the DIP Collateral and afforded all of the priorities and protections afforded to the DIP Obligations under the DIP Term Sheet (and/or the DIP Loan Documents) and this Interim Order.

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

and all avoidance power claims or causes of action under sections 544, 545, 547, 548 through 551 and 553(b) of the Bankruptcy Code (the “Avoidance Actions”), (b) the proceeds thereof (the “Avoidance Action Proceeds”), and (c) prepetition tort claims, including claims against the Debtors’ current and former directors and officers (if any) and the proceeds thereof. The DIP Superpriority Claims shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

10. DIP Liens.

(a) Effective immediately and automatically as of the entry of this Interim Order, as security for the DIP Obligations, the DIP Lender is granted continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected priming first lien security interests in and liens (collectively, the “DIP Liens”) on all DIP Collateral as collateral security for the prompt and complete performance and payment when due (whether at the Maturity Date (as defined in the DIP Term Sheet), by acceleration, or otherwise) of the DIP Obligations under the terms of the DIP Term Sheet (and/or the DIP Loan Documents). The term “DIP Collateral” means collectively all of the Debtors’ right, title and interest in, to and under all of the Debtors’ assets, including, but not limited to the following, in each case, whether now owned or existing or hereafter acquired, created or arising and wherever located: all assets and property of such Debtor and its estate, real or personal, tangible or intangible, now owned or hereafter acquired, whether arising before or after the Petition Date, including, without limitation, all fee-owned real properties listed on Schedule 3 of the DIP Term Sheet, contracts, contract rights, licenses, general intangibles, instruments, equipment, accounts, documents, goods, inventory, fixtures, documents, cash, cash equivalents, accounts receivables, chattel paper, letters of credit and letter of credit rights, investment property (including, without limitation, all equity interests owned by any Loan Party in its current and future subsidiaries), commercial tort claims, arbitration awards, money, insurance, receivables, receivables records, deposit accounts, collateral support, supporting obligations and instruments, fixtures, all interests in leaseholds and real properties, all patents,

copyrights, trademarks, all trade names and other intellectual property (whether such intellectual property is registered in the United States or in any foreign jurisdiction), together with all books and records relating to the foregoing, all proceeds, products, accessions, rents and profits of or in respect of any of the foregoing (as such terms are defined in the Uniform Commercial Code as in effect from time to time in the State of New York) and, subject to the entry of a Final Order, (i) proceeds of actions brought under section 549 of the Bankruptcy Code to recover any postpetition transfer of DIP Collateral and (ii) the Avoidance Action Proceeds.

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

11. Priority of DIP Liens.

(a) To secure the DIP Obligations, immediately and automatically upon and effective as of entry of this Interim Order, the DIP Lender, is hereby granted on an interim basis, continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected first priority priming DIP Liens in the DIP Collateral as follows, in each case subject to the Carve Out, the eCapital Obligations until such time as the eCapital Obligations are paid in full in cash, and the Permitted Prior Liens:

(i) *Liens Priming the Prepetition Liens.* Contemporaneously with the payment in full in cash of the eCapital Obligations, pursuant to section 364(d)(1) of the Bankruptcy Code, valid, binding, continuing, enforceable, non-avoidable automatically and fully perfected priming first priority senior liens and security

interests in all DIP Collateral, regardless of where located, which senior priming liens and security interests in favor of the DIP Lender shall be senior to all Prepetition Liens. For the avoidance of doubt, as a result of the priming of the Prepetition Liens pursuant to this Interim Order, the DIP Lender shall have a first priority senior priming lien and security interest in, among other things, (A) all of the assets of Debtors (and any entities that become debtors in these Chapter 11 Cases in the future), including, but not limited to, the “Collateral” as defined in any of the Prepetition Loan Documents, and (B) the Debtors’ prepetition and postpetition commercial tort claims, including but not limited to all claims and causes of action (i) against the Debtors’ officers and directors, and (ii) all other prepetition tort claims, and the proceeds thereof (regardless of whether such proceeds arise from damages to the Prepetition Collateral);

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

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

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

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

12. Use of Cash Collateral. The Debtors are authorized to use Cash Collateral to fund the postpetition working capital needs of the Debtors during the pendency of the Chapter 11 Cases that are not funded with the DIP Loans and to pay the allowed administrative costs and expenses of the Chapter 11 Cases not funded by the DIP Loans, each solely in accordance with the DIP Term Sheet, the Initial DIP Budget and this Interim DIP Order, provided that the Debtors' performance against the DIP Budget shall be subject to variance permitted in the DIP Term Sheet. The Initial DIP Budget is attached to this Interim Order. Each proposed DIP Budget shall only become an Approved DIP Budget for the use of Cash Collateral and DIP Obligations as set forth in this Interim Order and the Term Sheet when it is agreed upon by the Debtors and DIP Lender. The Debtors' use of Cash Collateral shall automatically terminate upon the occurrence of an Event of Default (as defined below).

13. Adequate Protection of Prepetition Secured Parties. The Prepetition Secured Parties are entitled, pursuant to sections 361, 362, 363(c)(2), 363(e) and 507 of the Bankruptcy Code, to adequate protection of their interests in all the Prepetition Collateral, in an amount equal to the aggregate diminution in value of the Prepetition Secured Parties' interests in the Prepetition Collateral from and after the Petition Date, if any, for any reasons provided under the Bankruptcy Code. In consideration for the foregoing, the Prepetition Secured Parties, are hereby granted the following in the amount of such diminution (collectively, the "Adequate Protection Obligations"):

(a) *Adequate Protection Liens.* The Prepetition Secured Parties are hereby granted (effective and perfected upon the date of this Interim Order and without the necessity of any mortgages, security agreements, pledge agreements, financing statement or other agreements), in the amount equal to the aggregate diminution in value of the interests in the Prepetition Collateral from and after the Petition Date, if any, for any reasons provided under the Bankruptcy Code (the "Adequate Protection Claim"), a valid, perfected replacement security interest in the Prepetition Collateral (the "Adequate Protection Collateral"), subordinate only to (i) the DIP Liens,

(ii) the Permitted Prior Liens, (iii) the eCapital Obligations until such time as the eCapital Obligations are paid in full in cash, and (iv) the Carve Out (the “Adequate Protection Liens”).

(a) *507(b) Claims.* The Prepetition Secured Parties are hereby granted, an allowed superpriority administrative expense claim as provided in section 507(b) of the Bankruptcy Code in the amount of the Adequate Protection Claim with, except as set forth in this Interim Order, priority in payment over any and all administrative expenses of the kind specified or ordered pursuant to any provision of the Bankruptcy Code (the “507(b) Claims”); which 507(b) Claims shall have recourse to and be payable from the Adequate Protection Collateral. The 507(b) Claims shall, in all instances, be subject and subordinate only to (i) the Carve Out, (ii) the eCapital Obligations, until such time as the eCapital Obligations are paid in full in cash, and (iii) the DIP Superpriority Claims. The Prepetition Secured Parties shall not receive or retain any payments, property or other amounts in respect of the 507(b) Claims unless and until the DIP Obligations (other than contingent indemnification obligations as to which no claim has been asserted) have indefeasibly been paid in cash in full and all DIP Commitments have been terminated; provided that for the avoidance of doubt, nothing in this paragraph 13(b) shall limit the ability of Consenting Secured Parties to receive payment of professional fees to the extent allowed under this Interim Order and an Approved Budget.

14. DIP Termination Event; Exercise of Remedies.

(a) DIP Termination Events. An “Event of Default” shall exist upon the occurrence of any of the events listed in Section 25 of the DIP Term Sheet that triggers the DIP Termination Date (as defined in the DIP Term Sheet).

(b) Exercise of Remedies. Upon the occurrence of a DIP Termination Event, without further notice to, hearing of, application to, or order from this Court, the automatic stay provisions of section 362 of the Bankruptcy Code shall be vacated and modified to the extent necessary to permit the DIP Lender to take any of the following actions, at the same or different time: (i) deliver a written notice (which may be via electronic mail) to counsel for the Debtors, the U.S. Trustee, and counsel for the Creditors Committee, if any, (the “Remedies Notice”) declaring

the occurrence of a DIP Termination Event (such date, the “DIP Termination Declaration Date”) and/or deliver a Carve Out Trigger Notice (as defined and in the manner described below), (ii) declare the termination, reduction or restriction of the commitments under the DIP Facility (to the extent any such commitment remains), (iii) declare all DIP Obligations to be immediately due and payable, without presentment, demand or protest or other notice of any kind, all of which are expressly waived by the Debtors, (iv) declare the termination, restriction or reduction of the DIP Facility and the Term Sheet (and/or the DIP Loan Documents) as to any further liability or obligation thereunder, but without affecting the DIP Liens, the DIP Superpriority Claims, or the DIP Obligations, (v) charge default interest at the default rate set forth in the DIP Term Sheet, and (vi) declare the termination, restriction, or revocation of the ability of the Debtors to use Cash Collateral.

(c) Waiting Period Procedures. The Debtors may seek an emergency hearing during the period beginning on the DIP Termination Date and prior to the expiration of the five (5) days following the DIP Termination Date (such period, the “Waiting Period”). During the Waiting Period, the Debtors shall continue to have the right to use DIP Collateral (including Cash Collateral) in accordance with the terms of this Interim Order, solely to pay any expenses which are necessary to (a) preserve the Debtors’ going-concern value or (b) contest in good faith the occurrence of the Maturity Date or Event of Default; provided, however, that the professional fees and expenses of the Professional Persons (as defined below) shall be governed by Paragraph 16 and subject to the Approved Budget. The DIP Lender shall not (x) object to any motion filed by the Debtors during the Waiting Period seeking an expedited hearing with respect to the Remedies Notice or (y) seek to reduce such Waiting Period.

(d) Rights and Remedies Following Termination Date. Following a DIP Termination Date and unless this Court has entered an order prior to the expiration of the Waiting Period finding that an Event of Default has not occurred, the DIP Lender shall be entitled to exercise all rights and remedies in accordance with the DIP Term Sheet (and/or the DIP Loan Documents), this Interim Order, and applicable law and the automatic stay of section 362 of the

Bankruptcy Code shall automatically, without further order, be lifted, to allow the DIP Lender to pursue all rights and remedies in accordance with the Term Sheet (and/or the DIP Loan Documents), this Interim Order, and applicable law.

(e) Leased Premises. Following a DIP Termination Event (subject to the terms of paragraph 14 herein), the DIP Lender shall be entitled to enter upon any leased premises in accordance with (i) a separate agreement with the landlord by and between the DIP Lender and the applicable landlord, (ii) consent of the landlord, (iii) upon entry of an order of this Court, upon notice to the landlord and a hearing, or (iv) in accordance with the rights of the DIP Lender under applicable non-bankruptcy law.

15. No Waiver by Failure to Seek Relief. The rights and remedies of the DIP Lender specified herein are cumulative and not exclusive of any rights or remedies that the DIP Lender may have under this Interim Order, the DIP Term Sheet (and/or the DIP Loan Documents), applicable law, or otherwise. The failure or delay on the part of the DIP Lender to seek relief or otherwise exercise its rights and remedies under this Interim Order, the DIP Term Sheet (and/or the DIP Loan Documents), or applicable law, as the case may be, shall not constitute a waiver of any of its respective rights hereunder, thereunder, or otherwise. Except as expressly set forth herein, none of the rights or remedies of the DIP Lender under this Interim Order or the DIP Term Sheet (and/or the DIP Loan Documents) shall be deemed to have been amended, modified, suspended, or waived unless such amendment, modification, suspension, or waiver is express, in writing and signed by the DIP Lender. No consents required hereunder by the DIP Lender shall be implied by any inaction or acquiescence by the DIP Lender.

16. Carve Out.

(a) Priority of Carve Out. The DIP Liens and the DIP Superpriority Claims shall be subject and subordinate to payment of the Carve Out. The Carve Out shall be senior to all claims and liens over all assets of the Debtors, including any DIP Collateral, as set forth in this Interim Order.

(b) *Carve Out*. The term “Carve Out” shall mean the sum of (i) all fees required to be paid to the Clerk of this Court and to the U.S. Trustee under 28 U.S.C. § 1930(a), together with any interest thereon pursuant to 31 U.S.C. § 3717 (“Statutory Fees”), which shall not be subject to the Approved Budget; (ii) Court-allowed fees and expenses of a trustee appointed under section 726(b) of the Bankruptcy Code in an amount not to exceed \$25,000, (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses (the “Allowed Professional Fees”) incurred by persons or firms retained by the Debtors pursuant to sections 327, 328, or 363 of the Bankruptcy Code (the “Debtor Professionals”), or any Committee(s), if any, pursuant to sections 328 or 1103 of the Bankruptcy Code (the “Committee Professionals,” together with the Debtor Professionals, the “Professional Persons”), at any time before or on the first business day following delivery by the DIP Lender of a Carve Out Trigger Notice (as defined below), whether allowed by this Court prior to or after delivery of a Carve Out Trigger Notice (the “Pre-Trigger Date Fees”), subject to and not to exceed the Approved Budget and any limits by this Interim Order, provided that Professional Persons may carry forward budgeted but unused disbursements set forth in the Approved Budget for any week for use in any subsequent week; and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed \$500,000 incurred after the first calendar day following delivery by the DIP Lender of the Carve Out Trigger Notice (the “Trigger Date”), to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the “Post-Carve Out Trigger Notice Cap” and together with the Pre-Trigger Date Fees, the “Carve Out Cap”); provided, however, that nothing herein shall be construed to impair the ability of the DIP Lender to object to the fees, expenses, reimbursement, or compensation described in clauses (iii) or (iv) above, on any grounds.

(c) For purposes of the foregoing, “Carve Out Trigger Notice” shall mean a written notice delivered by email (or other electronic means) by the DIP Lender or its counsel to the Debtors, their counsel, the U.S. Trustee, counsel to Consenting Secured Parties and counsel to any Committee, which notice may be delivered only following the occurrence and during the

continuation of an Event of Default and acceleration of the DIP Loans, stating that the Post-Carve Out Trigger Notice Cap has been invoked. On the day on which a Carve Out Trigger Notice is received by the Debtors, the Carve Out Trigger Notice shall constitute a demand to the Debtors to transfer cash to the Carve Out Account in an amount equal to the Carve Out Cap.

(d) Carve Out Account. Immediately upon the delivery of a Carve Out Trigger Notice, and prior to the payment of any DIP Obligations, the Debtors shall be required to deposit cash in the amount of the Carve Out Cap into a segregated account not subject to the control of the DIP Lender (the "Carve Out Account"). The amounts in the Carve Out Account shall be available only to satisfy amounts included in the Carve Out until such amounts are paid in full. The amount in the Carve Out Account shall be reduced on a dollar-for-dollar basis for amounts included in the Carve Out that are paid after the delivery of the Carve Out Trigger Notice, and the Carve Out Account shall not be replenished for such amounts so paid. The failure of the Carve Out Account to satisfy in full the amount set forth in the Carve Out shall not affect the priority of the Carve Out.

(e) Carve Out Draw. Subject to exhaustion of the DIP Commitments, the Debtors shall be permitted to draw on the DIP Facility in the amount of the Carve Out less the amounts contained in the Carve Out Account, notwithstanding any default, Event of Default, or the occurrence of a Trigger Date; provided, however, the DIP Lender shall not have any obligation to fund any Carve Out shortfall beyond what it is obligated to fund under the DIP Commitments. Any Carve Out Trigger Notice shall be deemed a consent by the DIP Lender to the Debtors depositing Cash Collateral or proceeds of the DIP Facility into the Carve Out Account in an amount equal to the sum of the Carve Out Cap.

(f) Payment of Allowed Professional Fees Prior to the Trigger Date. Any payment or reimbursement made prior to the occurrence of the Trigger Date in respect of any Allowed Professional Fees shall not reduce the Carve Out.

(g) No Direct Obligation to Pay Professional Fees; No Waiver of Right to Object to Fees. The DIP Lender shall not be responsible for the direct payment or reimbursement of any fees or disbursements of any of the Professional Persons incurred in connection with the

Chapter 11 Cases or any Successor Cases under any chapter of the Bankruptcy Code. Nothing in this Interim Order or otherwise shall be construed to obligate the DIP Lender in any way to pay compensation to, or to reimburse expenses of, any of the Professional Persons, or to guarantee that the Debtors or their estates has sufficient funds to pay such compensation or reimbursement. Notwithstanding any provision in this paragraph to the contrary, no portion of the Carve Out, any Cash Collateral, any DIP Collateral or any proceeds of the DIP Facility (including any disbursements set forth in the Approved Budget or obligations benefitting from the Carve Out) shall be utilized for the payment of professional fees and disbursements to the extent restricted under paragraph 16 herein. Nothing herein shall be construed as consent to the allowance of any fees and/or expenses of any Professional Persons in the Chapter 11 Cases or any Successor Cases, or of any other person or entity, or shall affect the right of the Debtors, the DIP Lender, the Prepetition Secured Parties or any other party in interest to object to the allowance and/or payment of any such fees and expenses or amounts incurred or requested.

17. Limitations on Use of DIP Proceeds, Cash Collateral and Carve Out. The DIP Facility, DIP Collateral, Prepetition Collateral, Adequate Protection Collateral, Cash Collateral and Carve Out may not be used in connection with: (a) preventing, hindering, or delaying any of the DIP Lender's enforcement or realization upon any of the DIP Collateral or Adequate Protection Collateral; (b) using or seeking to use Cash Collateral without the permission of the DIP Lender or selling or otherwise disposing of DIP Collateral without the consent of the DIP Lender or as permitted by the Term Sheet (and/or the DIP Loan Documents); (c) after payment in full of the DIP Obligations, selling or otherwise disposing of Adequate Protection Collateral without the consent of the Prepetition Secured Parties; (d) using or seeking to use any insurance proceeds constituting DIP Collateral without the consent of the DIP Lender; (e) seeking to amend or modify any of the rights granted to the DIP Lender or the Prepetition Secured Parties under this Interim Order, the Term Sheet (and/or the DIP Loan Documents), or the Prepetition Loan Documents, including seeking to use Cash Collateral, Adequate Protection Collateral and/or DIP Collateral on a contested basis; (f) litigating, objecting to, challenging or contesting in any manner in any way

the DIP Liens, DIP Obligations, DIP Superpriority Claims, DIP Collateral (including Cash Collateral) or, as the case may be, Prepetition Collateral, the Adequate Protection Obligations, the Adequate Protection Claims, the 507(b) Claims, the Adequate Protection Collateral, the Adequate Protection Liens or any other claims, held by or on behalf of any of the DIP Lender or the Prepetition Secured Parties, respectively; (g) asserting, commencing or prosecuting any claims or causes of action whatsoever, including, without limitation, Avoidance Actions or applicable state law equivalents or actions to recover or disgorge payments, against the DIP Lender or any of its respective affiliates, agents, attorneys, advisors, professionals, officers, directors and employees; (h) litigating, objecting to, challenging, or contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the DIP Obligations, the DIP Liens, the Prepetition Liens, the Adequate Protection Liens or any other liens or interests of any of the DIP Lender or the Prepetition Secured Parties; or (i) seeking to subordinate, recharacterize, disallow or avoid the DIP Obligations, or the Adequate Protection Obligations; provided, however, that the Carve Out and such collateral proceeds and loans under the DIP Loan Documents may be used for allowed fees and expenses, in an amount not to exceed \$25,000 in the aggregate (the “Investigation Budget Amount”), incurred solely by a Committee, in investigating (but not prosecuting or challenging) the validity, enforceability, perfection, priority or extent of the Prepetition Liens within thirty (30) calendar days following appointment of the Creditors Committee. Notwithstanding anything to the contrary, any fees, expenses or costs incurred by the Creditors Committee or its professionals in excess of the Investigation Budget Amount or in excess of the amount budgeted for Committee’s Case Professionals set forth in the DIP Budget shall not constitute an allowable administrative expense claim, including for purposes of section 1129(a)(9)(A) of the Bankruptcy Code.

18. Effect of Stipulation on Third Parties.

(a) *Generally.* The admissions, stipulations, agreements, releases, and waivers set forth in this Interim Order (collectively, the “Prepetition Lien and Claim Matters”) are and shall be binding on the Debtors, any subsequent trustee, responsible person, examiner with expanded

powers, any other estate representative, and all creditors and parties-in-interest and all of their successors in interest and assigns, including, without limitation, the Committee, unless, and solely to the extent that a party-in-interest that has sought and obtained standing and the requisite authority to commence a Challenge (as defined below) (other than the Debtors, as to which any Challenge is irrevocably waived and relinquished): (i) has timely filed the appropriate pleadings, and timely commenced the appropriate proceeding required under the Bankruptcy Code and Bankruptcy Rules, including, without limitation, as required pursuant to Part VII of the Bankruptcy Rules (in each case subject to the limitations set forth in this paragraph 15 of this Interim Order) challenging the Prepetition Lien and Claim Matters, but in no event the DIP Liens or the Adequate Protection Liens, as set forth in paragraph 23 of this Interim Order (each such proceeding or appropriate pleading commencing a proceeding or other contested matter, a “Challenge”), by no later than seventy-five (75) days following the entry of this Interim Order for any party-in-interest with requisite standing (each the “Challenge Deadline”), as such applicable date may be extended in writing from time to time in the sole discretion of the Prepetition Secured Parties, or by this Court for good cause shown pursuant to an application filed by a party in interest prior to the expiration of the Challenge Deadline, and (ii) this Court enters judgment in favor of the plaintiff or movant in any such timely and properly commenced Challenge proceeding and any such judgment has become a final judgment that is not subject to any further review or appeal. If these Chapter 11 Cases convert to cases under chapter 7, or if a chapter 11 trustee is appointed prior to the Challenge Deadline, the Challenge Deadline shall be extended for any such chapter 7 or chapter 11 trustee to 14 days after their appointment.

(b) *Binding Effect.* To the extent no Challenge is timely and properly commenced by the Challenge Deadline, or to the extent such proceeding does not result in a final and non-appealable judgment or order of this Court that is inconsistent with the Prepetition Lien and Claim Matters, then, without further notice, motion, or application to, order of, or hearing before, this Court and without the need or requirement to file any proof of claim, the Prepetition Lien and Claim Matters shall, pursuant to this Interim Order, become binding, conclusive, and

final on any person, entity, or party-in-interest in the Chapter 11 Cases, and their successors and assigns, and in any Successor Case for all purposes and shall not be subject to challenge or objection by any party-in-interest, including, without limitation, a trustee, responsible individual, examiner with expanded powers, or other representative of the Debtors' estates. Notwithstanding anything to the contrary herein, if any such proceeding is properly and timely commenced, the Prepetition Lien and Claim Matters shall nonetheless remain binding on all other parties-in-interest and preclusive as provided in subparagraph (a) above except to the extent that any of such Prepetition Lien and Claim Matters is expressly the subject of a timely and properly filed Challenge, which Challenge is successful as set forth in a final judgment as provided in subparagraph (a) above, and only as to plaintiffs or movants that have complied with the terms hereof. To the extent any such Challenge proceeding is timely and properly commenced, the Prepetition Secured Parties shall be entitled to payment of the reasonable related costs and expenses, including, but not limited to reasonable attorneys' fees, incurred under the Prepetition Loan Documents in defending themselves in any such proceeding as adequate protection. Upon a successful Challenge brought pursuant to this paragraph 18, this Court may fashion any appropriate remedy.

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

20. Application of Proceeds. Subject to entry of the Final Order, in no event shall the DIP Lender, with respect to the DIP Collateral, or the Prepetition Secured Parties, with respect to

the Adequate Protection Collateral, be subject to the equitable doctrine of “marshaling” or any other similar doctrine, and all proceeds of such DIP Collateral and Adequate Protection Collateral shall be received and used in accordance with this Interim Order.

21. Disposition of Collateral. The Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral, other than in the ordinary course of business or in connection with the payments contemplated under this Interim Order, without the prior written consent of the DIP Lender (and no such consent shall be implied from any other action, inaction or acquiescence by the DIP Lender or from any order of this Court). Notwithstanding anything otherwise provided herein, 100% of any net cash proceeds of any sale of DIP Collateral outside of the ordinary course of business shall, subject to the satisfaction of the Carve Out and the lien priorities outlined in paragraph 10 herein, be used to immediately satisfy the DIP Obligations. Following payment in full of the DIP Obligations, the Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the Adequate Protection Collateral, other than in the ordinary course of business or in connection with the payments contemplated under this Interim Order, without the prior written consent of the Prepetition Secured Parties (and no such consent shall be implied from any other action, inaction or acquiescence by the Prepetition Secured Parties or from any order of this Court). Notwithstanding anything otherwise provided herein, following payment in full of the DIP Obligations, 100% of any net cash proceeds of any sale of Adequate Protection Collateral outside of the ordinary course of business shall, subject to the satisfaction of the Carve Out and the lien priorities outlined in paragraph 11 herein, be used to immediately satisfy the Adequate Protection Obligations and next to satisfy the Prepetition Secured Obligations.

22. Restrictions on Granting Postpetition Liens. Other than the Carve Out or as otherwise provided in this Interim Order, the DIP Term Sheet, or the DIP Loan Documents, no claim or lien having a priority superior or *pari passu* with those granted by this Interim Order to the DIP Lender shall be granted or permitted by any order of this Court in the Chapter 11 Cases heretofore or hereafter, and the Debtors will not grant any such mortgages, security interests or

liens in the DIP Collateral (or any portion thereof) or the Adequate Protection Collateral (or any portion thereof) or to any other parties pursuant to section 364(d) of the Bankruptcy Code or otherwise, while (i) any portion of the DIP Facility, any DIP Loans or any other DIP Obligations, are outstanding, or (ii) the DIP Lender has any Commitment under the DIP Loan Documents. For avoidance of doubt, there shall be no restriction and this paragraph shall not apply to and excludes any liens or security interests granted in favor of any federal, state, municipal or other governmental unit, commission, board or court for any liability of the Debtors.

23. Automatic Effectiveness of Liens. The DIP Liens and the Adequate Protection Liens shall not be subject to a Challenge and shall attach and become valid, perfected, binding, enforceable, non-avoidable and effective by operation of law as of the date of the entry of this Interim Order, automatically, without any further action by the Debtors, the DIP Lender or the Prepetition Secured Parties, respectively, and without the necessity of execution by the Debtors or the filing or recordation, of any financing statements, security agreements, deposit control agreements, vehicle lien applications, mortgages, filings with a governmental unit, or other documents or the taking of any other actions. All DIP Collateral shall be free and clear of other liens, claims and encumbrances, except as provided in the Term Sheet (and/or the DIP Loan Documents), and this Interim Order. All Adequate Protection Collateral shall be free and clear of other liens, claims and encumbrances, except as provided in this Interim Order. If the DIP Lender hereafter requests that the Debtors execute and deliver to such party financing statements, security agreements, pledge agreements, control agreements, collateral assignments, mortgages, or other instruments and documents considered by the DIP Lender to be reasonably necessary or desirable to further evidence the perfection of the DIP Liens or the Adequate Protection Liens, as applicable, the Debtors are hereby authorized and directed to execute and deliver such financing statements, security agreements, pledge agreements, control agreements, mortgages, collateral assignments, instruments, and documents, and the DIP Lender is hereby authorized to file or record such documents in its discretion without seeking modification of the automatic stay under section 362 of the Bankruptcy Code, in which event all such documents shall be deemed to have been filed or

recorded at the time and on the date of the entry of this Interim Order; provided, however, no such filing or recordation shall be necessary or required in order to create or perfect the DIP Liens or the Adequate Protection Liens. The DIP Lender, in its sole discretion, may file a photocopy of this Interim Order as a financing statement with any filing or recording office or with any registry of deeds or similar office, in addition to, or in lieu of, such financing statements, notices of liens or similar statements.⁴

24. Protection Under Section 364(e) of the Bankruptcy Code. The DIP Lender has acted in good faith in connection with this Interim Order and its reliance on this Interim Order is in good faith. For the avoidance of doubt, the DIP Lender is entitled to all the protections of section 364(e) of the Bankruptcy Code.

25. Reservation of Rights of the DIP Lender and the Prepetition Secured Parties. Notwithstanding any other provision of this Interim Order to the contrary, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair: (i) any of the rights of the DIP Lender or the Prepetition Secured Parties under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right of any of such parties to (a) request modification of the automatic stay of section 362 of the Bankruptcy Code, (b) request dismissal of any of these Chapter 11 Cases, conversion of any of these Chapter 11 Cases to cases under chapter 7, or appointment of a chapter 11 trustee or examiner with expanded powers in any of these Chapter 11 Cases, (c) seek to propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans; or (ii) any other rights, claims, or privileges (whether legal or equitable or otherwise) of the DIP Lender or the Prepetition Secured Parties. The delay in or failure of the DIP Lender or the Prepetition Secured Parties to seek relief or otherwise exercise their respective rights and remedies shall not constitute a waiver of any of the DIP Lender's or the Prepetition Secured Parties' rights and remedies.

⁴ The provisions of section 1146(a) of the Bankruptcy Code do not apply herein.

26. Modification of Stay. Subject to the terms set forth herein, the automatic stay imposed under section 362(a) of the Bankruptcy Code is hereby modified as necessary to effectuate all of the terms, rights, benefits, privileges, remedies and provisions of this Interim Order and the DIP Term Sheet (and/or the DIP Loan Documents), including without limitation, to permit the DIP Lender to exercise all rights and remedies provided for in the DIP Term Sheet (and/or the DIP Loan Documents) and this Interim Order and to take any and all actions provided therein, in each case, without further notice, application to, order of or hearing before this Court, including those set forth in paragraph 24 of this Interim Order.

27. Survival of DIP Liens, DIP Superpriority Claims, Adequate Protection Liens, Adequate Protection Obligations and Other Rights. If, in accordance with section 364(e) of the Bankruptcy Code, this Interim Order does not become a final non-appealable order, or if any of the provisions of this Interim Order are hereafter modified, amended, vacated or stayed by subsequent order of this Court or any other court, such termination or subsequent order shall not affect the priority, validity, enforceability or effectiveness of (or subordination to the Carve Out of) any lien, security interests or any other benefit or claim authorized hereby with respect to any DIP Obligations or Adequate Protection Obligations incurred prior to the effective date of such termination or subsequent order. All such liens, security interests, claims and other benefits shall be governed in all respects by the original provisions of this Interim Order, and the DIP Lender and Prepetition Secured Parties shall be entitled to all the rights, remedies, privileges and benefits granted herein, including the liens and priorities granted herein, with respect to any DIP Loan and Adequate Protection Obligations, subject to the Carve Out and the Permitted Prior Liens.

28. Proof of Claim. The DIP Lender shall not be required to file proofs of claim with respect to any DIP Obligations or other obligations existing under DIP Term Sheet (and/or the DIP Loan Documents) or this Interim Order, and the evidence presented with the Motion and the record established at the Interim Hearing are deemed sufficient to, and do, constitute proofs of claim with respect to their obligations, secured status, and priority.

29. Survival of this Interim Order.

(a) The provisions of this Interim Order and any actions taken pursuant hereto shall survive the entry of any order: (i) confirming any plan of reorganization in any of the Chapter 11 Cases; (ii) converting any of the Chapter 11 Cases to a chapter 7 case; or (iii) dismissing any of the Chapter 11 Cases, and the terms and provisions of this Interim Order as well as the DIP Superpriority Claims, the DIP Liens in DIP Collateral granted pursuant to this Interim Order, the DIP Term Sheet, and/or the DIP Loan Documents, the Adequate Protection Liens, the 507(a) Claims, and the Adequate Protection Obligations shall continue in full force and effect notwithstanding the entry of any such order.

(b) The DIP Liens and the DIP Superpriority Claims shall maintain their priority as provided by this Interim Order, the DIP Term Sheet, and/or the DIP Loan Documents, and to the maximum extent permitted by law, until all of the DIP Obligations are indefeasibly paid in full in cash and discharged or otherwise treated under a plan of reorganization, which is reasonably acceptable to the DIP Lender. In no event shall any plan of reorganization be allowed to alter the terms of repayment of any of the DIP Obligations from those set forth in the DIP Term Sheet, and/or the DIP Loan Documents unless agreed to by and among the Debtors and the DIP Lender.

30. Modifications of DIP Term Sheet. The Debtors and the DIP Lender are hereby authorized to implement, in accordance with the terms of the DIP Term Sheet any non-material modifications of the DIP Term Sheet without further notice, motion or application to, order of or hearing before, this Court. Any material modification or amendment to the DIP Term Sheet shall only be permitted pursuant to an order of this Court, after being submitted to this Court upon five (5) days' notice to the U.S. Trustee, Prepetition Secured Parties, and counsel to the Committee; provided, that any forbearance from, or waiver of, (i) a breach by the Debtors of a covenant representation or any other agreement or (ii) a default or an Event of Default, in each case under the DIP Term Sheet shall not require an order of this Court. In the event of any inconsistency

between this Interim Order and the DIP Term Sheet, and/or the DIP Loan Documents, this Interim Order shall control.

31. Insurance Policies. On each insurance policy maintained by the Debtors which in any way relates to the DIP Collateral: (i) the DIP Lender shall be, and shall be deemed to be, without any further action by or notice to any person, named as additional insureds; and (ii) the DIP Lender shall be and shall be deemed to be, without any further action by or notice to any person, named as loss payee for DIP Collateral on which the DIP Lien holds a first priority lien. The Debtors are hereby authorized on an interim basis, to and shall take any actions necessary to have the DIP Lender be added as an additional insured and loss payee on each insurance policy maintained by the Debtors consistent with this Interim Order and the DIP Term Sheet (and/or the DIP Loan Documents), which in any way relates to the DIP Collateral.

32. Financial Information. The Debtors shall deliver to the DIP Lender and the Prepetition Secured Parties such financial and other information concerning the business and affairs of the Debtors and any of the DIP Collateral and the Adequate Protection Collateral as may be required pursuant to the DIP Term Sheet (and/or the DIP Loan Documents), the Prepetition Loan Documents and/or as the DIP Lender or the Prepetition Secured Parties shall reasonably request from time to time. The Debtors shall allow the DIP Lender and the Prepetition Secured Parties access to the premises in accordance with the terms of the DIP Term Sheet (and/or the DIP Loan Documents) or Prepetition Loan Documents for the purpose of enabling such parties to inspect and audit the DIP Collateral, the Adequate Protection Collateral and the Debtors' books and records.

33. Immediate Effect of Order. The terms and conditions of this Interim Order shall be effective and immediately enforceable upon its entry by the Clerk of the Court notwithstanding any potential application of Bankruptcy Rule 6004(h) or otherwise. Furthermore, to the extent applicable, the notice requirements and/or stays imposed by Bankruptcy Rules 4001(a)(3), 6003(b), and 6004(a) are hereby waived for good and sufficient cause. The requirements of

Bankruptcy Rules 4001 and 6004, in each case to the extent applicable, are satisfied by the contents of the Motion.

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

35. Refinancing of eCapital Obligations.

(a) *Paydown of eCapital Obligations.* As soon as practicable following entry of this Interim Order, the Debtors shall wire cash in the amount of the eCapital Obligations to eCapital at an account to be designated in writing by eCapital.

(b) *Allowance of eCapital Obligations.* The eCapital Obligations constitute allowed, legal, valid, binding, enforceable and non-avoidable obligations of Debtors, and are not subject to any offset, defense, counterclaim, avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or any other applicable law, and Debtors do not possess, shall not assert, hereby forever release, and are forever barred from bringing any claim, counterclaim, setoff or defense of any kind, nature or description which would in any way affect the validity, enforceability and non-avoidability of any of the eCapital Obligations.

(c) *eCapital Indemnification.* The Debtors are hereby authorized to and hereby agree to indemnify and hold harmless eCapital and its affiliates, directors, officers, employees, agents, attorneys, or any other Person affiliated with or representing eCapital (collectively, the “eCapital Indemnified Party”) from and against: (a) all obligations, demands, claims, damages, losses and liabilities (including, without limitation, reasonable fees and disbursements of counsel) (collectively, “eCapital Indemnity Claims”) including those asserted by any other party in connection with the paydown contemplated by this Interim DIP Order; and (b) all losses or

expenses incurred, or paid by the eCapital from, following, or arising from the paydown contemplated by this Interim DIP Order, including reasonable and documented attorneys' fees and expenses, except for eCapital Indemnity Claims and/or losses directly caused by the eCapital's fraud, gross negligence or willful misconduct. In the case of an investigation, litigation or other proceeding to which the indemnity in this paragraph applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any of the Debtors or any of their respective directors, security holders or creditors, an eCapital Indemnified Party, or if any other eCapital Indemnified Party is otherwise a party thereto, and whether or not the transactions contemplated hereby are consummated. No eCapital Indemnified Party shall have any liability (whether direct or indirect, in contract, tort or otherwise) to any Debtor or any of its subsidiaries or any shareholders or creditors of the foregoing for or in connection with the transactions contemplated hereby. All indemnities of the eCapital Indemnified Parties shall constitute eCapital Obligations.

(d) *Release of DACAs.* Following payment in full in cash of the eCapital Obligations, eCapital shall work in good faith with the Debtors and the DIP Lender to release any applicable deposit account control agreements or similar control agreements.

36. Retention of Jurisdiction. This Court shall retain jurisdiction to enforce the provisions of this Interim Order, and this retention of jurisdiction shall survive the confirmation and consummation of any chapter 11 plan for any one or more of the Debtors notwithstanding the terms or provisions of any such chapter 11 plan or any order confirming any such chapter 11 plan.

37. Final Hearing. The Final Hearing to consider the relief requested in the Motion shall be held on [____], 2024 at []:[] [a./p.].m. (prevailing Eastern Time) and any objections or responses to the DIP Motion shall be filed on or prior to [], 2024 at []:[] [a./p.].m. (prevailing Eastern Time).

38. Objections. Any party in interest objecting to the relief sought at the Final Hearing shall file with this Court and serve written objections, which objections shall be served upon (a) the Debtors, Winston & Strawn LLP, 35 West Wacker Drive, Chicago, IL 60601 (Attn.: Greg

Gartland, Dan McGuire and Joel Mudd) and 200 Park Avenue, New York, New York 10166 (Attn.: Carrie Hardman) and Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801 (Attn.: Andrew L. Magaziner, Shella Borovinskaya, and Carol E. Cox) ; (b) the Office of the United States Trustee for the District of Delaware (Attn: Linda Richenderfer and Jon Lipshie); (c) counsel to the Creditors Committee, if appointed; (d) counsel for the DIP Lender, Norton Rose Fulbright US LLP, 1301 Avenue of the Americas, New York, NY 10019 (Attn: Robert Hirsh and Francisco Vazquez) and Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, DE 19801 (Attn: Eric J. Monzo); and (f) counsel for the Prepetition Secured Parties.

39. For the avoidance of doubt, nothing in this Interim Order shall create new liens for the benefit of or improve the lien position of any of the Prepetition Secured Parties, nor shall it grant any lien for any party on any collateral that was not granted to that party prior to the Petition Date.

40. The Debtors shall promptly serve copies of this Interim Order (which shall constitute adequate notice of the Final Hearing) to the parties having been given notice of the Interim Hearing and to any party that has filed a request for notices with this Court in these Chapter 11 Cases.

41. Nothing in this Interim Order is intended to create an injunction, but injunctive relief may be sought.

EXHIBIT 1
DIP Term Sheet

March 18, 2024

SC Healthcare Holding, LLC
\$45,000,000
Debtor-in-Possession Term Loan Facility
Summary of Terms and Conditions

This term sheet (together with the exhibits and schedules hereto, the “Term Sheet”) sets forth a summary of the terms and conditions with respect to the DIP Facility (as defined below) from and after, and subject to, the entry of the Interim Order (as defined below). This Term Sheet shall be a binding agreement from and after, and subject to, the entry of the Interim Order with respect to the DIP Loans (as defined below) but does not purport to summarize all of the terms, conditions, representations and other provisions with respect to the DIP Facility, which will be set forth in the DIP Documents (as defined below). The obligation of the DIP Lender (as defined below) to provide financing pursuant to this Term Sheet is conditioned upon the execution and delivery of signature pages to this Term Sheet by each of the parties hereto and shall be subject to the conditions precedent and other terms and conditions set forth herein. In the event of any conflict between this Term Sheet and the terms of the Interim Order or the Final Order (as defined below), the terms of the Interim Order or the Final Order (as applicable) shall govern.

1.	<i>Borrowers:</i>	<ul style="list-style-type: none"> SC Healthcare Holding, LLC et. al.¹ (the “Borrower” and together with all of Borrower’s existing and future, direct or indirect domestic or foreign subsidiaries that become debtors and debtors-in-possession in the Chapter 11 Cases, the “Borrowers”, each a “Loan Party” and collectively, the “Loan Parties”). The Loan Parties are expected to be debtors and debtors-in-possession in the anticipated chapter 11 cases (the “Chapter 11 Cases” (Borrower and its subsidiaries shall be referred to herein under the Chapter 11 Cases, each as a “Debtor” and collectively, the “Debtors”)) under chapter 11 of title 11 of the United States Bankruptcy Code (the “Bankruptcy Code”) to be commenced in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) on or around March 20, 2024 (the “Petition Date”).
2.	<i>DIP Lender:</i>	<ul style="list-style-type: none"> JMB Capital Partners Lending, LLC and/or its designees or its assignees.
3.	<i>Type and Amount of the DIP Facility:</i>	<ul style="list-style-type: none"> A non-amortizing priming, super-priority senior secured term loan facility in an aggregate principal amount not to exceed \$45,000,000 consisting of up to \$45,000,000 in term loan commitments (the “DIP Facility”; the definitive documentation evidencing the DIP Facility, the “DIP Documents”; the DIP Lender’s commitments under the DIP Facility, the “DIP Commitments”; and the loans under the DIP Facility, the “DIP Loans”). The borrowing of DIP Loans shall permanently decrease the DIP Commitments, and DIP Loans repaid may not be reborrowed.

¹ Additional borrowers (“Debtors”) are listed on Schedule 1.

		<ul style="list-style-type: none"> Initial net proceeds of the DIP Loan shall be funded in accordance with a funds flow (which, for the avoidance of doubt, shall include the payoff amount for eCapital). Subsequent DIP Loan proceeds to be funded into Borrowers' DIP Bank Account maintained at U.S. Bank and Loan Parties shall obtain a satisfactory control agreement in favor of the DIP Lender to be entered into within 15 business days of the entry of the Final Order subject to a 15 day cure period if the Loan Parties are using commercially reasonable efforts to obtain a satisfactory control agreement; <u>provided</u> that the Carve-Out shall be funded as described in the Interim Order.
4.	<i>Initial Availability:</i>	<ul style="list-style-type: none"> Upon the Bankruptcy Court's entry of the Interim Order, and satisfaction of all applicable conditions precedent described in Section 16 herein, the DIP Lender shall make available an aggregate amount of \$15,000,000 of the DIP Loans and the Borrowers shall be entitled to make draws of the DIP Loans as described in Section 7 below immediately upon entry of the Interim Order (the "Initial Draws", the date of such first Initial Draw shall be referred to herein as the "Closing Date"). The closing of definitive DIP Documents shall occur as soon after the first Initial Draw as reasonably possible but in any event no later than two (2) business days prior to the hearing to consider entry of the Final Order.
5.	<i>Full Availability:</i>	<ul style="list-style-type: none"> Upon (i) the Bankruptcy Court's entry of the Final Order (as defined below) and (ii) the satisfaction of all applicable conditions precedent described in Section 17 herein, the remaining amount of the DIP Facility totaling an additional \$30,000,000 shall be available to the Debtors, subject to compliance with the terms, conditions, and covenants described in the DIP Documents, in additional draws in accordance with Section 7 below (each an "Other Draw" and collectively, the "Other Draws", and together with the Initial Draws, and each Other Draw, each a "Draw" and collectively, the "Draws").
6.	<i>Draws:</i>	<ul style="list-style-type: none"> Subject to satisfaction of the conditions precedent to the Initial Draws or Other Draws, as applicable and availability under the DIP Commitments, the Borrowers shall be entitled to make Draws of the DIP Loans in accordance with the Budget (as defined below). Each Draw shall be made (in an aggregate minimum amount of \$1,000,000 (and multiples thereof) upon three (3) business days' written notice, up to the aggregate amount of the undrawn DIP Commitments at any time prior to three (3) business days before the DIP Termination Date (as defined below); <u>provided</u> that the first Initial Draw shall be in the amount of \$15,000,000 and deemed requested in accordance with the terms of this Term Sheet, and funded within one (1) business day following the entry of the Interim Order and shall not require any further advance written notice but shall require a customary notice of borrowing.

7.	<i>Maturity and Termination:</i>	<ul style="list-style-type: none"> • All DIP Obligations shall be due and payable in full in cash (“Payment in Full”² or such other form of consideration as the DIP Lender and the Borrowers may mutually agree) on the earliest of: <ul style="list-style-type: none"> i. December 31, 2024; ii. the effective date of any chapter 11 plan of reorganization with respect to the Borrowers (a “Plan”); iii. the consummation of any sale or other disposition of all or substantially all of the assets of the Borrowers pursuant to section 363 of the Bankruptcy Code; iv. the date of the acceleration of the DIP Loans and the termination of the DIP Commitments following the occurrence and during the continuation of an Event of Default in accordance with the DIP Documents; v. dismissal of the Chapter 11 Cases or conversion of the Chapter 11 Cases into cases under chapter 7 of the Bankruptcy Code; and vi. 45 days after the Petition Date (or such later date as agreed to by the DIP Lender), unless the Final Order has been entered by the Bankruptcy Court on or prior to such date (such earliest date, the “DIP Termination Date”). • The occurrence of the DIP Termination Date shall terminate the ability of the Borrowers to borrow the Draws and shall terminate any further obligation the DIP Lender has to make any DIP Loans under the DIP Documents. • For the avoidance of doubt, any of the above conditions from (i) through (vi) automatically triggers the Maturity Date.
8.	<i>Interest Rate:</i>	<ul style="list-style-type: none"> • The DIP Loans shall bear interest at a per annum rate equal to 12% payable in cash on the first day of each month in arrears (the “Non-Default Interest”). • Notwithstanding the foregoing, after the occurrence and during the continuance of an Event of Default (as defined below), the DIP Loans shall bear interest at an additional per annum rate of 2%, in each case payable in cash, together with the Non-Default Interest, on the first day of each month in arrears.
9.	<i>Commitment Fee, Exit Fee and Other Fees:</i>	<ul style="list-style-type: none"> • The Borrowers shall pay to the DIP Lender a commitment fee equal to 2.0% of the total amount of the DIP Commitments (the “Commitment Fee”). The Commitment Fee shall be fully earned, non-refundable upon entry of the Interim Order, and shall be payable out of the proceeds of the Initial Draw.

² For purposes hereof, the term “**Payment in Full**” means, with respect to the DIP Obligations, the irrevocable and indefeasible payment in full in cash of all DIP Obligations, other than contingent indemnification and expense reimbursement obligations for which no claim or demand has been asserted, and all commitments thereunder shall have irrevocably, permanently and finally expired or shall have been terminated, cancelled and discharged.

		<ul style="list-style-type: none"> • The Borrowers shall pay to the DIP Lender an exit fee equal to the sum of 4.0% of the total amount of the DIP Commitments, which shall be fully earned and nonrefundable upon the Bankruptcy Court’s entry of the Interim Order (the “Exit Fee”). The Exit Fee shall be due and payable upon the earlier of (i) the DIP Termination Date, (ii) Payment in Full of the DIP Obligations or (iii) on a pro rata basis for any Voluntary Prepayment of the DIP Obligations, <u>provided, however</u>, if the DIP Termination Date has occurred solely as a result of the occurrence and continuation of an Event of Default under the DIP Documents, then the Exit Fee shall not be payable until the DIP Obligations have been accelerated by the DIP Lender. • The Commitment Fee and the Exit Fee shall be approved by the Bankruptcy Court as part of the Interim Order. If such fees are not approved by the Bankruptcy Court, this Term Sheet shall automatically terminate and be of no further force and effect. • On the date of execution of the indication of the interest (“IOI”), between the DIP Lender and the Borrowers, the Borrowers paid the DIP Lender a non-refundable work fee in the amount equal to \$75,000.
10.	<i>Use of Proceeds:</i>	<ul style="list-style-type: none"> • The proceeds of the DIP Facility shall be used only for the following purposes and, excluding payments pursuant to clauses (ii), (iii), and (iv) below, subject to the Budget and 20% permitted variances as set forth below: <ul style="list-style-type: none"> i. working capital and other general corporate purposes of the Borrowers, and any other subsidiaries, if applicable if such subsidiaries are Loan Parties under the DIP Documents; ii. professional fees and expenses of administering the Chapter 11 Cases (including fees incurred prior to the Closing Date) in accordance with the Bankruptcy Code and any orders of the Bankruptcy Court, as applicable; iii. fees and expenses payable under the DIP Facility, including, without limitation, the Commitment Fee, the Exit Fee and legal expenses of the DIP Lender (including fees incurred prior to the Closing Date); iv. interest and other amounts payable under the DIP Facility; and v. the first Initial Draw shall in part, be used to repay the eCapital facility in full. • Notwithstanding any other provision of this Term Sheet, from and after the Closing Date, no DIP Loans or DIP Collateral (as defined below), or any portion of the Carve-Out, may be used directly or indirectly by any Debtor, any official committee appointed in the Chapter 11 Cases, or any trustee appointed in the Chapter 11 Cases or any successor cases, including any chapter 7 cases, or any other person, party or entity:

		<ul style="list-style-type: none"> i. in connection with the investigation, initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation <ul style="list-style-type: none"> a. against the DIP Lender, or its respective predecessors-in-interest, agents, affiliates, representatives, attorneys, or advisors, or any action purporting to do the foregoing in respect of the DIP Obligations, DIP Liens (as defined below), or DIP Claims (as defined below), or b. challenging the amount, validity, perfection, priority or enforceability of or asserting any defense, counterclaim or offset to, the DIP Obligations and/or the liens, claims, rights, or security interests granted under the Orders (as defined below), the DIP Documents, including, in each case, without limitation, for lender liability or pursuant to section 105, 510, 544, 547, 548, 549, 550, or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise; ii. to prevent, hinder, or otherwise delay the DIP Lender's enforcement or realization on the DIP Obligations, DIP Collateral, and the liens, claims and rights granted to such parties under the Interim Order or the Final Order, as applicable, each in accordance with the DIP Documents and the Interim Order or the Final Order, as applicable; <u>provided, however</u>, this shall not apply to (x) objections to the Final Order and (y) any challenge to whether a DIP Termination Event has occurred and/or the propriety of the DIP Lender's termination and/or acceleration of the DIP Obligations or calculation of the amounts owed thereunder; iii. to seek to modify any of the rights and remedies granted to the DIP Lender under the Orders (other than with the consents contemplated thereunder), or the DIP Documents, as applicable; or iv. to apply to the Bankruptcy Court for authority to approve superpriority claims or grant liens (other than the Carve-Out and liens permitted pursuant to the DIP Documents) or security interests in the DIP Collateral or any portion thereof that are senior to, or on parity with, the DIP Liens, DIP Claims, unless permitted under the DIP Documents or unless all DIP Obligations, and claims granted to the DIP Lender under the Interim Order or the Final Order, as applicable, have been refinanced or Paid in Full in cash or otherwise agreed to in writing by the DIP Lender.
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11.	<i>Voluntary Prepayments:</i>	<ul style="list-style-type: none"> Voluntary prepayments of the DIP Loans shall be permitted at any time, subject to (i) payment of the ratable portion of the Exit Fee due thereon, which shall be due and payable on the date of such voluntary prepayment; (ii) accrued interest on the amount prepaid; and (iii) in minimum amounts of at least \$1,000,000 of principal.
12.	<i>Security:</i>	<ul style="list-style-type: none"> As security for the DIP Obligations, subject to the Carve Out, each Loan Party shall grant to the DIP Lender a priming first lien security interest (“Priming First Lien”) on all of such Loan Party’s right, title and interest in, to and under all the Loan Parties’ assets, including, but not limited to the following, in each case, whether now owned or existing or hereafter acquired, created or arising and wherever located: all assets and property of such Loan Party and its estate, real or personal, tangible or intangible, now owned or hereafter acquired, whether arising before or after the Petition Date, including, without limitation, all fee-owned real properties listed on Schedule 3 hereto, contracts, contract rights, licenses, general intangibles, instruments, equipment, accounts, documents, goods, inventory, fixtures, documents, cash, cash equivalents, accounts receivables, chattel paper, letters of credit and letter of credit rights, investment property (including, without limitation, all equity interests owned by any Loan Party in its current and future subsidiaries), commercial tort claims, arbitration awards, money, insurance, receivables, receivables records, deposit accounts, collateral support, supporting obligations and instruments, fixtures, all interests in leaseholds and real properties, all patents, copyrights, trademarks, all trade names and other intellectual property (whether such intellectual property is registered in the United States or in any foreign jurisdiction), together with all books and records relating to the foregoing, all proceeds, products, accessions, rents and profits of or in respect of any of the foregoing (as such terms are defined in the Uniform Commercial Code as in effect from time to time in the State of New York) and, subject to the entry of a Final Order, (i) proceeds of actions brought under section 549 of the Bankruptcy Code to recover any postpetition transfer of DIP Collateral and (ii) proceeds of actions under sections 544, 545, 547, 548 and 550 of the Bankruptcy Code (collectively, the “DIP Collateral”). Negative pledge on all assets of the Loan Parties subject to permitted liens to be agreed upon by the Final Order. In addition to appropriate orders of the Bankruptcy Court granting and perfecting such liens, the Loan Parties shall take all other commercially reasonable steps (including the execution and filing of UCC financing statements, intellectual property security agreements, and deeds of trust on any real property owned in fee by any Loan Party with a value equal to or in excess of \$[3,000,000] (“DOT”) requested by DIP Lender with respect to such security interests and liens, including without limitation, at the DIP Lender’s discretion, a DOT or comparable security document owned by a Loan Party sufficient under

		<p>applicable law to provide the DIP Lender with a security interest therein and otherwise in form and substance reasonably satisfactory to the DIP Lender.</p> <ul style="list-style-type: none"> • No later than 30 days following the entry of the Final Order, the DIP Lender shall receive DOTs in form and substance satisfactory to the DIP Lender executed by the appropriate Loan Party which holds title to the fee-owned real properties listed on Schedule 3. • The Loan Parties shall cooperate with the DIP Lender’s due diligence of the Debtors’ fee-owned real properties listed on Schedule 3 and shall, promptly following the Bankruptcy Court’s entry of the Interim Order, provide the DIP Lender with true, correct and complete copies of all existing leases or other occupancy agreements with respect to such fee-owned real properties, their current title policy and survey for such fee-owned real properties, all available plans and specifications for the such properties, and all other documents in their possession or control which describe or otherwise detail the physical, engineering or environmental condition of the owned real properties, including, without limitation, all environmental or engineering studies or reports. <p>The Loan Parties shall provide the DIP Lender and its consultants reasonable access to the fee-owned real properties listed on <u>Schedule 3</u> (subject to customary prior notice) for diligence purposes.</p>
13.	<i>Priority and Security:</i>	<ul style="list-style-type: none"> • Subject to the Carve-Out, all obligations of the Loan Parties under the DIP Documents, including, without limitation, all principal, accrued interest, costs, fees and premiums provided for therein, and all obligations of the Loan Parties under the DIP Facility (the “DIP Obligations”) shall be entitled to (a) senior secured priming lien and (b) superpriority claim status pursuant to section 364(c)(1) and section 364(d)(1) of the Bankruptcy Code, with priority over any and all secured liens, administrative expense claims and unsecured claims, of any kind or nature whatsoever, now existing or hereafter arising under the Bankruptcy Code (the “DIP Claims”). • Subject to the Carve-Out and the Permitted Prior Liens (as defined in Schedule 2), all DIP Obligations in respect of the DIP Facility shall be: <ul style="list-style-type: none"> i. pursuant to section 364(c)(1) of the Bankruptcy Code, entitled to superpriority claim status in the Chapter 11 Cases (which claims shall be payable from and have recourse to all DIP Collateral); and ii. secured, pursuant to (i) section 364(c)(2) of the Bankruptcy Code, by a valid, enforceable, fully perfected and automatic first-priority lien on the DIP Collateral; and iii. senior secured priming first lien, pursuant to section 364(d)(1) of the Bankruptcy Code. • The liens securing the DIP Facility, including but not limited to the DOTs (the “DIP Liens”) shall mean the liens described above and in the priority set forth in the Interim Order and Final Order. The DIP

		Liens described herein shall, to the fullest extent permitted by applicable law, be effected and perfected upon entry of the Interim Order and without the necessity of the execution of mortgages, landlord agreements, security agreements, pledge agreements, control agreements, financing statements or other agreements.
14.	<i>Remedies</i>	<ul style="list-style-type: none"> • Upon the occurrence and during the continuation of an Event of Default under the DIP Documents, all remedies customarily available in the Chapter 11 Cases including, without limitation, those remedies customarily available to a senior secured, administrative expense claim of a debtor-in-possession lender, including, without limitation: <ul style="list-style-type: none"> i. declare that the DIP Commitments are terminated, reduced or restricted, whereupon the DIP Commitments shall be terminated, reduced, or restricted on account of any further Draws; ii. declare the unpaid amount of the DIP Obligations to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Loan Parties; iii. charge interest at the default rate under the DIP Documents; iv. declare the termination, restriction, or revocation of the ability of the Debtors to use Cash Collateral (as defined in the Orders); or v. take any other action or exercise any other right or remedy (including, without limitation, with respect to the liens in favor of the DIP Lender) permitted under the DIP Documents, or by applicable law. <p>Any exercise of remedies by the DIP Lender shall be subject in all respects to the terms of the Orders.</p>
15.	<i>Conditions Precedent to Initial Draw</i>	<ul style="list-style-type: none"> • entry of the Interim Order within 5 business days of the Petition Date, which order shall not be stayed or subject to appeal; • delivery of the Initial Budget acceptable to the DIP Lender in its reasonable discretion; • all out-of-pocket costs, fees and expenses required to be paid to the DIP Lender pursuant to this Term Sheet, the DIP Documents or the Interim Order shall have been paid (provided that the Commitment Fee shall be paid out of the proceeds of the Initial Draw); • the representations and warranties of the Loan Parties under the DIP Documents shall be true and correct in all material respects (or in the case of representations and warranties with a “materiality” qualifier, true and correct in all respects); • no Material Adverse Effect (as defined below) shall have occurred and be continuing;

		<ul style="list-style-type: none"> • the Debtors shall be in compliance in all respects with the Interim Order; • no Event of Default shall have occurred and be continuing under this Term Sheet; • no order has been entered reversing, amending, staying, vacating, terminating or otherwise modifying in any manner adverse to the DIP Lender the Interim Order; and • the Borrowers shall have delivered to the DIP Lender a customary borrowing notice.
16.B	<p><i>Conditions Precedent to Availability of Other Draws</i></p>	<ul style="list-style-type: none"> • The Bankruptcy Court shall have entered a Final Order approving the DIP Facility not later than 45 days following the Petition Date, which Final Order shall be in the form of the Interim Order with such changes as are customary for a final order or otherwise are acceptable to the DIP Lender; and • In addition, the DIP Documents shall contain conditions precedent as are usual and customary in loan documents for similar debtor-in-possession financings and other conditions precedent deemed by the DIP Lender appropriate to the specific transaction, including, without limitation: <ul style="list-style-type: none"> i. execution and delivery of a credit agreement (the “DIP Credit Agreement”), the DOTs, and other DIP Documents evidencing and securing the DIP Facility, in each case, which shall be in form and substance substantially consistent with this Term Sheet and otherwise in form and substance acceptable to the DIP Lender and the Loan Parties; ii. delivery of any Budget subsequent to the Initial Budget, acceptable to the DIP Lender in its reasonable discretion; iii. no trustee, examiner, or receiver shall have been appointed or designated with respect to the Loan Parties’ business, properties or assets and no motion shall be pending seeking similar relief or any other relief, which, if granted, would result in a person other than the Loan Parties exercising control over their assets; iv. the representations and warranties of the Loan Parties under the DIP Documents shall be true and correct in all material respects (or in the case of representations and warranties with a “materiality” qualifier, true and correct in all respects); v. the Borrowers shall have delivered to the DIP Lender a customary borrowing notice;

		<ul style="list-style-type: none"> vi. the Debtors shall be in compliance in all respects with the Final Order and the Loan Parties shall be in compliance in all respects with the DIP Documents; vii. no default or event of default shall have occurred and be continuing under the DIP Documents; viii. no order has been entered reversing, amending, staying, vacating, terminating or otherwise modifying in any manner adverse to the DIP Lender the Interim Order or the Final Order, as applicable; ix. since the Petition Date, other than the Chapter 11 Cases, there shall not have occurred or there shall not exist any event, condition, circumstance or contingency that, individually, or in the aggregate, (a) has had or could reasonably be expected to have a material adverse effect on the business, operations, properties, assets, performance or financial condition of the Loan Parties taken as a whole, (b) has resulted in, or could reasonably be expected to result in, a material adverse effect on the validity or enforceability of, or the rights, remedies or benefits available to the DIP Lender, or (c) has had or could reasonably be expected to have, a material adverse effect on the ability of the Loan Parties to perform their obligations under any DIP Document (each of the foregoing being a “Material Adverse Effect”); x. the Debtors shall have all insurance policies maintained by Loan Parties name the DIP Lender as additional insured and lender/mortgagee loss payee, as applicable, and shall use commercially reasonable efforts to cause each of their tenants under leases of the fee-owned real properties listed on Schedule 3 to name the DIP Lender as additional insured and lender/mortgagee loss payee (for the avoidance of doubt, if the Debtors are unable to direct that the tenants name the DIP Lender on such policies as required hereunder, the Debtor shall cooperate with the DIP Lender in order to reach a workaround to ensure that the DIP Lender is adequately protected with respect to these properties); xi. all costs, fees, expenses (including, without limitation, legal fees and expenses) set forth in the DIP Documents or otherwise to be paid to the DIP Lender shall have been paid when due; and xii. a granting to the DIP Lender of a Priming First Lien for all DIP Obligations pursuant to section 364(d)(1) of the Bankruptcy Code.
17.	Documentation	<ul style="list-style-type: none"> • Definitive financing documentation (including the Orders) with respect to the DIP Loans shall be reasonably satisfactory to the DIP Lender and the Borrowers (the “DIP Documents”). For the

		avoidance of doubt, DIP Documents (other than this Term Sheet and the Interim Order) shall be documented prior to entry of the Final Order.
18.	<i>Representations and Warranties:</i>	<ul style="list-style-type: none"> • The DIP Documents shall contain representations and warranties with respect to the Loan Parties as are usual and customary in loan documents for similar debtor-in-possession financings and as acceptable to the DIP Lender and Borrowers, including without limitation, due organization and authorization, enforceability, financial condition, no material adverse changes, title to properties, liens, litigation, payment of taxes, compliance with laws and regulations, employee benefit liabilities, environmental liabilities, and perfection and priority of liens securing the DIP Facility. • Each Loan Party represents and warrants that none of its assets and properties are subject to any liens, security interests or encumbrances as of the Petition Date and no liens, security interests or encumbrances will be created on or after the Petition Date except, in each case, for liens set forth on <u>Schedule 2</u> hereto.
19.	<i>Affirmative Covenants:</i>	<ul style="list-style-type: none"> • The DIP Documents shall contain affirmative covenants as are usual and customary with respect to the Loan Parties in loan documents for similar debtor-in-possession financings and as are acceptable to the DIP Lender and the Borrowers.
20.	<i>Negative Covenants:</i>	<ul style="list-style-type: none"> • The DIP Documents shall contain negative covenants with respect to the Loan Parties as are usual and customary in loan documents for debtor-in-possession financings and as are acceptable to the DIP Lender and the Borrowers; <u>provided</u> that the DIP Documents will permit: (i) the Debtors to continue to pursue a sale process for all or substantially all of the Borrowers' assets and consummate any sale or sales related thereto subject to Bankruptcy Court approval and provided that such sale or sales and/or related transactions, when taken in the aggregate, provide for the Payment in Full of the DIP Obligations, (ii) the ability to reject or modify contracts, (iii) post-petition employment arrangements subject to maximum thresholds agreed upon by the DIP Lender and the Borrowers, (iv) post-petition capital expenditures subject to maximum thresholds agreed upon by the DIP Lender and the Borrowers, and (v) provide for adequate protection in accordance with the Budget and reasonably acceptable to the DIP Lender.
21.	<i>DIP Budget / Variance Reporting:</i>	<ul style="list-style-type: none"> • The DIP Lender shall receive an extended weekly budget commencing with the week during which the Interim Order is entered, containing line items of sufficient detail to reflect the consolidated operating cash flow of the Debtors for the period from the Petition Date through and including the end of the thirteenth (13th) calendar week thereafter (the "Initial Budget") (the Initial Budget, as modified from time to time in accordance herewith, shall be the "Budget"). [The Budget shall include a monthly reserve in connection with the cash management system maintained by Borrowers in amounts agreed to by the Loan Parties and the DIP Lender in the DIP Documents.]

		<ul style="list-style-type: none"> • The Budget shall be updated and provided to the DIP Lender on the fourth Wednesday following the prior Budget’s approval and every fourth Wednesday thereafter, or more frequently at the reasonable discretion of both the Borrowers and DIP Lender, with such updated Budget extending the term thereof and the DIP Lender, in its reasonable discretion, shall have the right to approve any such updates (or any amendments) by providing the Borrowers specific notice thereof within 5 business days after the delivery by the Borrowers of any such update or amendment (“Updated Budget”) and, (ii) to the extent the DIP Lender provides written notice rejecting the updates (or any amendments), the then existing Budget shall continue to constitute the applicable Budget until such time as an update or amendment is approved by the DIP Lender. In the event the DIP Lender does not provide written notice of its rejection of the proposed Updated Budget within such five business day period, such Updated Budget shall become effective as the Budget. • On a weekly basis after the delivery of the first Updated Budget, the Borrowers shall deliver to the DIP Lender a variance report for the four-week period ending the prior Friday comparing the difference/variance, expressed as a percentage (each, a “Budget Variance”), between actual net operating cash flow for such period to projected net operating cash flow for such period as set forth in the Budget on a cumulative 4 week rolling basis (each a “Measuring Period”) and explaining in reasonable detail all material variances, it being understood that any Net Operating Variance (as defined below) solely with respect to net operating cash flow that exceeds 20% shall be material and shall constitute an Event of Default under the DIP Documents (each such report, a “Variance Report,” which shall be in a form reasonably satisfactory to the DIP Lender). For the avoidance of doubt, net operating cash flow shall not include professional fees and restructuring charges (including trustee fees or other statutory fees) related to the Chapter 11 Cases. • For purposes of each Measuring Period, the Borrowers shall calculate: the numerical difference between “net operating cash flow” (such terms reflecting those line items illustrated in the Budget) for such period to “net operating cash flow” for such period as set forth in the Budget on a cumulative 4 week rolling basis, and to the extent the difference is a positive number, the percentage such difference is of the cumulative budgeted amount for such period (the “Net Operating Variance”). For purposes herein, a “Permitted Variance” shall be limited to not greater than 20% for budget variances with respect to the Net Operating Variance, each as set forth in the applicable Variance Report. For the avoidance of doubt, United States Trustee fees, professional fees of the DIP Lender, Prepetition Secured Parties (to the extent reimbursed) and the Loan Parties, and certain other administrative expenses to be agreed, shall not be included in the Net Operating Variance calculation.
22.	<i>Interim Order:</i>	<ul style="list-style-type: none"> • The interim order approving the DIP Facility, which shall be in form and substance acceptable to the DIP Lender and its counsel

		<p>(the “Interim Order”), shall, among other things, authorize and approve:</p> <ol style="list-style-type: none"> i. the Initial Draws; ii. the making of the DIP Loans; iii. the granting of the superpriority claims and liens against the Debtors and their assets in accordance with this Term Sheet and the DIP Documents with respect to the DIP Collateral; iv. the payment of all fees and expenses (including the fees and expenses of outside counsel and any financial advisors) required to be paid to the DIP Lender as described herein under the heading “<i>Indemnification and Reimbursement of Expenses</i>” by the Debtors; v. the payment of the Commitment Fee upon the Closing Date and the payment of the Exit Fee as set forth in Section 10 of this Term Sheet, which Commitment Fee payment shall not be subject to reduction, setoff or recoupment for any reason, and shall be fully earned upon entry of the Interim Order; and vi. upon entry of the Final Order, the Debtors’ waiver of (a) any right to surcharge the DIP Collateral pursuant to sections 105(a) and 506(c) of the Bankruptcy Code or otherwise, and (b) the equitable doctrine of marshaling and other similar doctrines, in each case, with respect to the DIP Collateral and the DIP Obligations.
23.	<i>Final Order:</i>	<ul style="list-style-type: none"> • The final order approving the DIP Facility, which shall be substantially in the same form as the Interim Order (with such modifications as are necessary to convert the Interim Order into a final order) and otherwise in form and substance reasonably acceptable to the DIP Lender (the “Final Order” and together with the Interim Order, the “Orders”), shall, among other things, authorize and approve the DIP Facility on a final basis, the total amount of the DIP Commitments, and the payment of the Exit Fee, which Exit Fee payment shall not be subject to reduction, setoff or recoupment for any reason, and shall be fully earned upon entry of the Final Order.
24.	<i>Carve Outs:</i>	<ul style="list-style-type: none"> • The liens and security interests in the DIP Collateral, and the superpriority administrative claims shall be subject in all respects to the Carve-Out, which shall be defined in the Orders.
25.	<i>Events of Default:</i>	<ul style="list-style-type: none"> • The DIP Documents shall contain events of default (collectively, “Events of Default”) consistent with this Term Sheet and customary for debtor-in-possession financing facilities of this type, including, without limitation: <ol style="list-style-type: none"> i. payment, non-compliance with covenants set forth in the DIP Documents, judgements in excess of specified amounts, impairment of security interest in the DIP Collateral and other customary defaults, subject to any

		<p>applicable grace and/or cure periods to be agreed for non-payment defaults only and as are customary for transactions of this nature;</p> <ul style="list-style-type: none"> ii. the entry of the Final Order shall have not occurred within 45 days after the Petition Date; iii. the dismissal of any of the Chapter 11 Cases or the conversion of any of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code; iv. non-compliance, subject to any applicable grace and/or cure periods, by any Loan Party with the terms of the Interim Order or the Final Order; v. the entry of an order staying, reversing, vacating or otherwise modifying the Interim Order or the Final Order, in each case without the prior written consent of the DIP Lender; vi. the entry of an order appointing a trustee, responsible officer, or an examiner having expanded powers (beyond those set forth under sections 1106(a)(3) and (4) of the Bankruptcy Code) under section 1104 of the Bankruptcy Code (other than a fee examiner) in the Chapter 11 Cases, or the Bankruptcy Court shall have entered an order providing for such appointment, in each case without the prior written consent of the DIP Lender in its sole discretion; vii. the entry of an order in any of the Chapter 11 Cases granting relief from any stay or proceeding (including, without limitation, the automatic stay) so as to allow a third party to proceed with foreclosure against any material assets of the Loan Parties to which the fair market value of which exceeds \$5,000,000; viii. the entry of an order (a) surcharging any of the DIP Collateral under sections 105, 506(c), or any other section of the Bankruptcy Code, (b) allowing any administrative expense claim having priority over or ranking in parity with the DIP Claims or the rights of the DIP Lender (subject to the Carve-Out), or (c) otherwise adversely impacting the DIP Lender's liens and priority in the DIP Collateral as set forth in this Term Sheet; ix. any action by any Debtor to (a) challenge the rights and remedies of the DIP Lender under the DIP Facility in any of the Chapter 11 Cases or acting in a manner inconsistent with the DIP Documents or (b) avoid or require disgorgement by the DIP Lender of any amounts received in respect of the obligations under the DIP Facility; x. entry of an order without the express written consent of the DIP Lender obtaining additional financing from a
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		<p>party other than the DIP Lender under section 364(d) of the Bankruptcy Code except if such financing contemplates Payment in Full of the DIP Obligations;</p> <ul style="list-style-type: none"> <li data-bbox="678 310 1435 611">xi. the making of any material payments in respect of prepetition obligations other than (a) as permitted by the Interim Order or the Final Order, (b) as permitted by any “first day” or “second day” orders reasonably satisfactory to the DIP Lender, (c) as permitted by any other order of the Bankruptcy Court reasonably satisfactory to the DIP Lender, (d) as permitted under the DIP Documents in accordance with the Budget, or (e) as otherwise agreed to by the DIP Lender; <li data-bbox="678 632 1435 793">xii. entry of an order by the Bankruptcy Court terminating or modifying the exclusive right of any Debtor to file a chapter 11 plan pursuant to section 1121 of the Bankruptcy Code, without the prior written consent of the DIP Lender; <li data-bbox="678 814 1435 976">xiii. the Debtors shall seek to, or support any other person’s motion to, (a) disallow in whole or in part the DIP Obligations, (b) challenge the validity and enforceability of the DIP Liens, or (c) contest any material provision of any DIP Document; <li data-bbox="678 997 1435 1262">xiv. the Debtors file a plan of reorganization that is not in form and substance satisfactory to the DIP Lender, it being understood that a plan will be satisfactory to the DIP Lender if it provides for the Payment in Full of the DIP Obligations pursuant to a signed commitment to lend from a recognized lender or another source of funding sufficient to allow for the indefeasible payment in cash of the full amount of the outstanding DIP Obligations; <li data-bbox="678 1283 1435 1381">xv. the Debtors file a motion seeking to settle a controversy or claim on account of the DIP Collateral without the prior written consent of the DIP Lender; <li data-bbox="678 1402 1435 1535">xvi. the Debtors file a motion for the Bankruptcy Court to approve a sale of the DIP Collateral pursuant to section 363 of the Bankruptcy Code which proposed sale is not reasonably acceptable to the DIP Lender; or <li data-bbox="678 1556 1435 1885">xvii. the Debtors shall fail to execute and deliver to the DIP Lender any agreement, financing statement, trademark filing, copyright filing, notices of lien or similar instruments or other documents that the DIP Lender may reasonably request from time to time to more fully evidence, confirm, validate, perfect, preserve and enforce the DIP Liens created in favor of the DIP Lender, subject to the time periods and terms set forth in this Term Sheet which includes a post-closing period for delivery of the mortgages as set forth herein.
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26.	<i>Indemnification and Reimbursement of Expenses:</i>	<ul style="list-style-type: none"> • The DIP Documents shall contain customary indemnification provisions for the benefit of the DIP Lender, and its related parties, including, without limitation, indemnification against losses, claims, damages, liabilities or expenses incurred in respect of the financing contemplated by the DIP Documents or the use or the proposed use of proceeds thereof. • Subject to the DIP Documents, all documented out-of-pocket accrued and unpaid fees, costs, disbursements, and expenses of the DIP Lender, including the fees and expenses of Norton Rose Fulbright US LLP, as counsel to the DIP Lender, and any other local Delaware counsel retained in their capacity as counsel to the DIP Lender for real estate and bankruptcy matters, incurred in connection with the DIP Facility and the Chapter 11 Cases shall be paid on a current basis.
27.	<i>Release:</i>	<ul style="list-style-type: none"> • The Orders shall include a customary release of the DIP Lender, with respect to any and all claims and causes of action arising from or related to the DIP Facility.
28.	<i>Waivers:</i>	<ul style="list-style-type: none"> • The Final Order shall include terms and conditions customary for final DIP financing orders and shall be reasonably acceptable to the DIP Lender, including, without limitation, waiver of the automatic stay, credit-bidding rights, “no marshaling” provisions and other similar doctrines, and waivers of the imposition of costs or right to surcharge the DIP Collateral pursuant to sections 105(a) and 506(c) of the Bankruptcy Code or otherwise, in each case, to the extent applicable.
29.	<i>Governing Law:</i>	<ul style="list-style-type: none"> • New York (and to the extent applicable, the Bankruptcy Code).

IN WITNESS WHEREOF, the parties hereto have caused this Term Sheet to be executed as of the date first set forth above.

SC HEALTHCARE HOLDING, LLC and all entities listed on Schedule I, as Borrowers

By: _____
Name: David Campbell
Title: Chief Restructuring Officer

JMB CAPITAL PARTNERS LENDING, LLC

By: _____

Name: [Vikas Tandon]

Title: Chief Investment Officer

Schedule 1
Additional Borrowers

1. Aledo HCO, LLC
2. Aledo RE, LLC
3. Arcola HCO, LLC
4. Arcola RE, LLC
5. Aspen HCO, LLC
6. Aspen RE, LLC
7. Bement HCO, LLC
8. Bement RE, LLC
9. Betty's Garden HCO, LLC
10. Betty's Garden RE, LLC
11. Bradford AL RE, LLC
12. Bushnell AL RE, LLC
13. Casey HCO, LLC
14. Collinsville HCO, LLC
15. Collinsville RE, LLC
16. CYE Bradford HCO, LLC
17. CYE Bushnell HCO, LLC
18. CYE Girard HCO, LLC
19. CYE Kewanee- PHC, Inc.
20. CYE Knoxville - PHC, Inc.
21. CYE Monmouth - PHC, Inc.
22. CYE Sullivan HCO, LLC
23. CYE Walcott HCO, LLC
24. CYV Kewanee AL RE, LLC
25. Decatur HCO, LLC
26. Decatur RE, LLC
27. Eastview HCO, LLC
28. Eastview RE, LLC
29. Effingham HCO, LLC
30. Effingham RE, LLC
31. El Paso - PHC, Inc
32. Flanagan - PHC, Inc.
33. Havana HCO, LLC
34. Havana RE, LLC
35. Jonesboro, LLC
36. Kewanee, LLC
37. Knoxville & Pennsylvania, LLC
38. Lebanon HCO, LLC
39. Lebanon RE, LLC
40. Legacy - PHC Inc.
41. Macomb, LLC
42. Marigold - PHC Inc
43. MBP Partner, LLC
44. McLeansboro HCO, LLC
45. McLeansboro RE, LLC
46. Midwest Health Operations, LLC
47. Midwest Health Properties, LLC

48. North Aurora HCO, LLC
49. North Aurora, LLC
50. Petersen 23, LLC
51. Petersen 25, LLC
52. Petersen 26, LLC
53. Petersen 27, LLC
54. Petersen 29, LLC
55. Petersen 30, LLC
56. Petersen Farmer City, LLC
57. Petersen Health & Wellness, LLC
58. Petersen Health Business, LLC
59. Petersen Health Care - Farmer City, LLC
60. Petersen Health Care - Illini, LLC
61. Petersen Health Care - Roseville, LLC
62. Petersen Health Care II, Inc.
63. Petersen Health Care III, LLC
64. Petersen Health Care Management, LLC
65. Petersen Health Care V, LLC
66. Petersen Health Care VII, LLC
67. Petersen Health Care VIII, LLC
68. Petersen Health Care X, LLC
69. Petersen Health Care XI, LLC
70. Petersen Health Care XIII, LLC
71. Petersen Health Care, Inc.
72. Petersen Health Enterprises, LLC
73. Petersen Health Group, LLC
74. Petersen Health Network, LLC
75. Petersen Health Properties, LLC
76. Petersen Health Quality, LLC
77. Petersen Health Systems, Inc.
78. Petersen Management Company, LLC
79. Petersen MT, LLC
80. Petersen MT3, LLC
81. Petersen MT4, LLC
82. Petersen Roseville, LLC
83. Piper HCO, LLC
84. Piper RE, LLC
85. Pleasant View HCO, LLC
86. Pleasant View RE, LLC
87. Polo - PHC, Inc.
88. Prairie City HCO, LLC
89. Prairie City RE, LLC
90. Robings HCO, LLC
91. Robings, LLC
92. Rosiclare HCO, LLC
93. Rosiclare RE, LLC
94. Royal HCO, LLC
95. Royal RE, LLC
96. SABL, LLC
97. SC Healthcare Holding, LLC
98. Shangri La HCO, LLC

99. Shangri La RE, LLC
100. Shelbyville HCO, LLC
101. Shelbyville RE, LLC
102. South Elgin, LLC
103. Sullivan AL RE, LLC
104. Sullivan HCO, LLC
105. Sullivan RE, LLC
106. Swansea HCO, LLC
107. Swansea RE, LLC
108. Tarkio HCO, LLC
109. Tarkio RE, LLC
110. Tuscola HCO, LLC
111. Tuscola RE, LLC
112. Twin HCO, LLC
113. Twin RE, LLC
114. Vandalia HCO, LLC
115. Vandalia RE, LLC
116. Village Kewanee HCO, LLC
117. Walcott AL RE, LLC
118. War Drive, LLC
119. Watseka HCO, LLC
120. Watseka RE, LLC
121. Westside HCO, LLC
122. Westside RE, LLC
123. XCH, LLC

Schedule 2
Permitted Prior Liens

I. Existing Liens

Tax Liens

Debtor	Lien Type	Amount Secured
Petersen Health Care II, Inc. an Illinois corporation	Federal Tax Lien	\$89,750.29
Petersen Health Care V, LLC, an Illinois limited liability company	Unemployment Insurance State Tax Lien	\$61,953.10

Equipment Liens

Debtor	Secured Party	Filing Date	File No.
CYE GIRARD HCO, LLC	C T CORPORATION SYSTEM, AS REPRESENTATIVE	12/6/2022	29129940
MIDWEST HEALTH OPERATIONS, LLC	C T CORPORATION SYSTEM, AS REPRESENTATIVE	7/1/2022	28648618
PETERSEN HEALTH CARE, INC.	TRANS LEASE, INC.; PLATTE VALLEY BANK	4/23/2019	24344835
PETERSEN HEALTH CARE, INC.	ILLINOIS BUSINESS FINANCIAL SERVICES	10/22/2019	24875504
PETERSEN HEALTH NETWORK, LLC	C T CORPORATION SYSTEM, AS REPRESENTATIVE	6/29/2022	28639361
PETERSEN HEALTH NETWORK, LLC	C T CORPORATION SYSTEM, AS REPRESENTATIVE	6/13/2022	28586620
PETERSEN HEALTH SYSTEMS, INC.	C T CORPORATION SYSTEM, AS REPRESENTATIVE	7/1/2022	28648626
PETERSEN HEALTH SYSTEMS, INC.	C T CORPORATION SYSTEM, AS REPRESENTATIVE	7/1/2022	28648715
ROYAL HCO, LLC	C T CORPORATION SYSTEM, AS REPRESENTATIVE	6/28/2022	28633491
PETERSEN HEALTH CARE MANAGEMENT, LLC	HITACHI CAPITAL AMERICA CORP.	3/9/2021	27034802

Debtor	Secured Party	Filing Date	File No.
EL PASO HCO, LLC	C T CORPORATION SYSTEM, AS REPRESENTATIVE	6/27/2022	28629923

II. Real Property Encumbrances

TBD

III. “Permitted Prior Liens” means:

- (a) all Liens created by the DIP Documents and the DIP Orders (including the Carve Out, Adequate Protection Liens and Adequate Protection Super-priority Claims, as defined therein);
- (b) liens for taxes that are not delinquent or thereafter payable and that are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with generally accepted accounting principles as in effect from time to time;
- (c) statutory or common law liens of landlords and liens of carriers, warehousemen, mechanics, materialmen, repairmen, construction contractors and suppliers and other liens imposed by law or pursuant to customary reservations or retentions of title arising in the ordinary course of business for amounts not overdue;
- (d) (i) pledges or deposits in connection with workers’ compensation, unemployment insurance and other social security legislation, other than any Lien imposed by the Employee Retirement Income Security Act of 1974, and (ii) pledges and deposits of cash securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to any Loan Party;
- (e) liens on equipment arising from precautionary UCC financing statements regarding operating leases of equipment;
- (f) non-exclusive licenses and sublicenses of intellectual property entered into in the ordinary course of business;
- (g) normal and customary rights of setoff upon deposits of cash in favor of banks or other depository institutions incurred in connection with the maintenance of such deposits in the ordinary course and not arising in connection with the issuance or repayment of indebtedness; and
- (h) any zoning or similar law or right reserved to or vested in any governmental authority to control or regulate the use of any real property that does not materially interfere with the ordinary conduct of the business of the Loan Parties, individually, or taken as a whole.

Schedule 3
Fee-Owned Real Property

Courtyard Estates of Farmington
Courtyard Estates of Herscher
Roseville Rehabilitation & Health Care Center
Courtyard Estates of Galva
Courtyard Estates of Green Valley
Countryview Care Center of Macomb
Jonesboro Rehabilitation & Health Care Center
South Elgin Rehabilitation & Health Care Center
Courtyard Estates of Girard
Flora Health Care Center
Mt. Vernon Health Care Center
Palm Terrace of Mattoon
Toulon Rehabilitation & Health Care Center
White Oak Rehabilitation & Health Care Center
Betty's Garden Memory Care of Kewanee
Countryview Terrace
Enfield Rehabilitation & Health Care Center
Arrow Wood Estates of Rock Falls
Rock Falls Rehabilitation & Health Care Center
Iron Wood Estates of Sandwich
Sandwich Rehabilitation & Health Care Center
Shawnee Rose Care Center
Simple Blessings
Flora Gardens Care Center
Nokomis Rehabilitation & Health Care Center
Rochelle Gardens Care Center
Rochelle Rehabilitation & Health Care Center
Whispering Oaks
Willow Rose Rehab & Health Care Center
Aledo Rehabilitation & Health Care Center
Arcola Health Care Center
Aspen Rehab & Health Care
Bement Health Care Center
Casey Health Care Center
Collinsville Rehabilitation & Health Care Center
Courtyard Estates of Bradford
Courtyard Estates of Bushnell
Courtyard Estates of Sullivan
Courtyard Estates of Walcott
Courtyard Village of Kewanee
Decatur Rehabilitation & Health Care Center
Eastview Terrace
Effingham Rehabilitation & Health Care Center

Farmer City Rehab & Health Care Center
Havana Health Care Center
Kewanee Care Home
Lebanon Care Center
McLeansboro Rehabilitation & Health Care Center
North Aurora Care Center
Piper City Rehab & Living Center
Piper City Rehab & Living Center
Pleasant View Rehabilitation & Health Care Center
Prairie City Rehab & Health Care Center
Robings Manor Rehabilitation & Health Care
Robings Manor Rehabilitation & Health Care
Rosiclare Rehabilitation & Health Care Center
Royal Oaks Care Center
Shangri La Rehab & Living Center
Shelbyville Rehabilitation & Health Care Center
Sullivan Rehabilitation & Health Care Center
Swansea Rehabilitation & Health Care Center
Tarkio Rehabilitation & Health Care
Tuscola Health Care Center
Twin Lakes Rehab & Health Care
Vandalia Rehabilitation & Health Care Center
Watseka Health Care Center
Westside Rehabilitation & Care Center
Canton Courtyard Estates
Cornerstone Rehabilitation & Health Care Center
Riverview Estates
Rock River Gardens
Prairie Rose Care Center

Exhibit B

Budget

PETERSEN HEALTHCARE																
Consolidated (w/o rec) Week Ended	ESTIMATE 3/23/2024	ESTIMATE 3/30/2024	ESTIMATE 4/6/2024	ESTIMATE 4/13/2024	ESTIMATE 4/20/2024	ESTIMATE 4/27/2024	ESTIMATE 5/4/2024	ESTIMATE 5/11/2024	ESTIMATE 5/18/2024	ESTIMATE 5/25/2024	ESTIMATE 6/1/2024	ESTIMATE 6/8/2024	ESTIMATE 6/15/2024	4-Week Total	13-Week Total	Case Total
CASH RECEIPTS																
Net Receipts	4,107,838	2,441,658	3,790,767	4,349,731	3,662,929	2,250,055	1,884,861	2,848,851	3,537,248	3,544,188	2,447,774	3,728,642	4,335,585	14,689,994	42,930,128	92,166,578
Management Fees	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
DIP Term Note Funding	15,000,000	-	-	-	-	-	-	-	-	5,000,000	-	-	-	15,000,000	20,000,000	45,000,000
Illinois State Funding	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TOTAL RECEIPTS	19,107,838	2,441,658	3,790,767	4,349,731	3,662,929	2,250,055	1,884,861	2,848,851	3,537,248	8,544,188	2,447,774	3,728,642	4,335,585	29,689,994	62,930,128	137,166,578
CASH DISBURSEMENTS																
Net Payroll	-	3,966,095	-	4,426,217	-	4,426,217	-	4,426,217	-	4,426,217	-	-	3,874,221	8,392,312	25,545,184	56,538,953
Payroll Tax (EE & ER)	-	1,401,757	-	1,560,575	-	1,560,575	-	1,560,575	-	1,560,575	-	-	1,378,213	2,962,332	9,022,270	20,047,977
401k (EE & ER)	-	12,626	-	13,858	-	13,858	-	13,858	-	13,858	-	-	13,389	26,484	81,448	188,560
Total Payroll Disbursements	-	5,380,478	-	6,000,650	-	6,000,650	-	6,000,650	-	6,000,650	-	-	5,265,824	11,381,128	34,648,902	76,775,490
Food / Dietary	201,701	201,701	201,701	201,701	201,701	201,701	201,701	201,701	201,701	201,701	201,701	201,701	188,069	806,805	2,608,486	5,993,735
Therapy	67,183	67,183	67,183	67,183	67,183	67,183	67,183	67,183	67,183	67,183	67,183	67,183	59,731	268,732	865,928	1,941,085
Nursing and Supplies	310,715	310,715	310,715	310,715	310,715	310,715	310,715	310,715	310,715	310,715	310,715	310,715	239,790	1,242,862	3,968,375	8,284,589
PHC Agency (net zero)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Resident Disbursements	579,600	579,600	579,600	579,600	579,600	579,600	579,600	579,600	579,600	579,600	579,600	579,600	487,590	2,318,399	7,442,788	# 16,219,409
Property-related	183,284	183,284	183,284	183,284	183,284	183,284	183,284	183,284	183,284	183,284	183,284	183,284	167,039	733,135	2,366,444	5,373,145
Administrative	307,162	307,162	367,162	307,162	693,346	307,162	367,162	307,162	693,346	307,162	307,162	367,162	300,279	1,288,647	4,938,588	12,514,523
Employee-related	20,735	20,735	20,735	20,735	20,735	20,735	20,735	20,735	20,735	20,735	20,735	20,735	18,027	82,941	266,850	591,329
Management Fees (net zero)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Other Disbursements	511,181	511,181	571,181	511,181	897,365	511,181	571,181	511,181	897,365	511,181	511,181	571,181	485,344	2,104,723	7,571,881	18,478,997
DIP Interest	-	-	86,301	-	-	-	138,082	-	-	-	155,342	-	-	86,301	379,726	1,501,644
Total Chapter 11 Fees (non operational)	4,818,499	323,542	112,429	-	-	1,403,600	800,000	-	-	1,403,600	800,000	-	-	5,254,470	9,661,670	23,066,470
Total Ch.11 Disbursements	4,818,499	323,542	198,730	-	-	1,403,600	938,082	-	-	1,403,600	955,342	-	-	5,340,771	10,041,396	24,568,114
TOTAL DISBURSEMENTS	5,909,280	6,794,801	1,349,511	7,091,431	1,476,965	8,495,031	2,088,863	7,091,431	1,476,965	8,495,031	2,046,123	1,150,781	6,238,758	21,145,022	59,704,967	136,042,010
Starting Cash	4,382,987	17,581,545	13,228,402	15,669,658	12,927,959	15,113,923	8,868,948	8,664,946	4,422,367	6,482,650	6,531,807	6,933,459	9,511,320	4,382,987	4,382,987	4,382,987
Change in Cash	13,198,558	(4,353,143)	2,441,257	(2,741,700)	2,185,964	(6,244,976)	(204,002)	(4,242,579)	2,060,283	49,158	401,651	2,577,861	(1,903,173)	8,544,972	3,225,161	1,124,568
ENDING CASH	17,581,545	13,228,402	15,669,658	12,927,959	15,113,923	8,868,948	8,664,946	4,422,367	6,482,650	6,531,807	6,933,459	9,511,320	7,608,147	12,927,959	7,608,147	5,507,555

PETERSEN HEALTHCARE																
DIP Budget																
	Filing Date	ESTIMATE	ESTIMATE	ESTIMATE	ESTIMATE	ESTIMATE	ESTIMATE	ESTIMATE	ESTIMATE	ESTIMATE	ESTIMATE	ESTIMATE	ESTIMATE	4-Week	13-Week	Case
	3/23/2024	3/30/2024	4/6/2024	4/13/2024	4/20/2024	4/27/2024	5/4/2024	5/11/2024	5/18/2024	5/25/2024	6/1/2024	6/8/2024	6/15/2024	Total	Total	Total
Total Critical Vendor Payments	353,499	-	-	-	-	-	800,000	-	-	-	800,000	-	-	353,499	1,953,499	5,153,499
Professional Fees																
Debtor Legal (Winston & Strawn)						413,333				413,333				-	826,667	3,100,000
Debtor Local Counsel (Young Conaway)						200,000				200,000				-	400,000	1,500,000
Debtor FA/CRO (Getzler Henrich)						266,667				266,667				-	533,333	2,000,000
Claims Agent						93,600				93,600				-	187,200	702,000
Patient Ombudsman						30,000				30,000				-	60,000	210,000
UCC Legal and Financial Advisor						100,000				100,000				-	200,000	750,000
Secured Creditor(s) Legal and Financial Advisor						200,000				200,000				-	400,000	1,500,000
Communications Firm	65,000													65,000	65,000	65,000
Litigation Counsel														-	-	-
Total Professional Fees	65,000	-	-	-	-	1,303,600	-	-	-	1,303,600	-	-	-	65,000	2,672,200	9,827,000
Other Chapter 11 Fees																
US Trustee Fees	-	-	112,429	-	-	-	-	-	-	-	-	-	-	112,429	112,429	612,429
Adequate Assurance Utilities		323,542												323,542	323,542	323,542
Other Deposits														-	-	-
D&O Tail Insurance														-	-	250,000
Total Chapter 11 Fees	-	323,542	112,429	-	-	-	-	-	-	-	-	-	-	435,971	435,971	1,185,971
DIP																
Lender DIP Fees	900,000													900,000	900,000	2,700,000
Lender Legal Fees						100,000				100,000				-	200,000	700,000
DIP Interest	-	-	86,301	-	-	-	138,082	-	-	-	155,342	-	-	86,301	379,726	1,501,644
DIP Fees														-	-	-
eCapital Loan	3,500,000													3,500,000	3,500,000	3,500,000
Total DIP Uses of Cash	4,400,000	-	86,301	-	-	100,000	138,082	-	-	100,000	155,342	-	-	4,486,301	4,979,726	8,401,644
Total Chapter 11 Fees (non operational)	4,818,499	323,542	198,730	-	-	1,403,600	938,082	-	-	1,403,600	955,342	-	-	5,340,771	10,041,396	24,568,114
Operational Cash Uses (Generated)	(3,017,058)	4,029,601	(2,639,987)	2,741,700	(2,185,964)	4,841,376	(734,080)	4,242,579	(2,060,283)	3,547,242	(1,356,994)	(2,577,861)	1,903,173	1,114,256	6,733,443	19,307,318
Total Cash Requirements	1,801,442	4,353,143	(2,441,257)	2,741,700	(2,185,964)	6,244,976	204,002	4,242,579	(2,060,283)	4,950,842	(401,651)	(2,577,861)	1,903,173	6,455,028	16,774,839	43,875,432