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Debtors-in-Possession

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH**

In re:

A. H. COOMBS, LLC,

Debtor.

and

CHC DEVELOPMENT CO, INC.

Debtor.¹

Case No. 16-25558

(also filed in Case No. 16-25559)

Chapter 11

Judge William T. Thurman

**DEBTORS' EMERGENCY MOTION FOR AN ORDER UNDER 11 U.S.C. §§ 105, 361,
363, 364, AND 507 (1) AUTHORIZING DEBTORS IN POSSESSION TO OBTAIN
UNSECURED POST-PETITION FINANCING AND (2) PROVIDING
SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS**

A.H. Coombs, LLC (“**AHC**”) and CHC Development Co., Inc. (“**CHC**” and, together with AHC, the “**Debtors**” or “**Borrowers**”), debtors and debtors in possession in the above-captioned chapter 11 cases, by and through their counsel, submit this motion (the “**Motion**”) for entry of an order (the “**DIP Order**”) pursuant to 11 U.S.C. §§ 105, 361, 363, 364 and 507,

¹ Motion for Substantive Consolidation pending.

(1) authorizing the Debtors to obtain unsecured post-petition financing; and (2) providing superpriority administrative expense status to Kirch & Todd Real Estate, LLC DBA Kirch & Todd Lending (the “**DIP Lender**”). The Motion is supported by the Motion, the following memorandum of points and authorities, the *Declaration of Alan H. Coombs in Support of the DIP Motion* and the record the Debtors will establish at the hearing on this Motion, and the entire record of these chapter 11 cases.

I. JURISDICTION

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The bases for the relief requested herein are 11 U.S.C. §§ 105, 361, 362, 363, and 364, and Federal Rules of Bankruptcy Procedure 2002, 4001, 6004, 9014, and 9019.

II. RELIEF REQUESTED

4. By this motion jointly request an order approving the Debtors’ incurring of post-petition debt with protections to the DIP Lender as specified herein. Specifically, the Debtors request entry of the DIP Order, substantially in the form attached hereto as Exhibit A hereto, (1) authorizing the Debtors to enter into the lending agreement attached as Exhibit 1 to the DIP Order (“**DIP Credit Agreement**”) with the DIP Lender and to take all actions necessary to effect the post-petition financing on the term set forth in the DIP Credit Agreement, (2) providing superpriority administrative expense status to the Debtors’ obligations to the DIP Lender under the DIP Credit Agreement; and (3) such further relief as is necessary to implement and enforce the terms and provisions of the DIP Credit Agreement.

III. BACKGROUND

5. The history of the Debtors and these chapter 11 cases are well known to the Court. The following facts are supported by the *Declaration of Alan H. Coombs in Support of the DIP Motion* and the record the Debtors will establish at the hearing on this Motion. The Debtors need immediately available funds (i) to pay post-petition operating expenses of the Debtors incurred in the ordinary course of business to the extent of any shortfall in the Debtors' operations; (ii) to pay costs and expenses of administration of the chapter 11 case, including payment of approved professional fees, including the Debtors' accounting professionals and attorneys; and (iii) to pay other amounts as specified and in categories consistent with the Budget. Specifically, the Debtor intends to use the funds to pay the following items:

- i. to make adequate protection payments to the Debtors' secured lender, GVS Holdings, LLC ("GVS");
- ii. to maintain the Debtors' property and assets in support of its business
- iii. to reestablish advertising and booking capability to increase occupancy and revenues;
- iv. to pay the Debtors' professionals to administer the chapter 11 cases, comply with the reporting requirements to the Court, the U.S. Trustee, and those imposed by GVS for use of cash collateral;
- v. to pay its professionals to prosecute the objections to GVS's claims and litigate affirmative claims that the Debtors have against GVS; and
- vi. for such other purposes as are consistent with the Budget.

6. The Debtors are unable to obtain the required funds to turn around their business through any other loan structure except as set forth in this Motion and the DIP Order. The terms

of the DIP Loan are the best the Debtors have been able to identify, are fair and reasonable under the circumstances, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration. It is highly unlikely that anyone aside from the DIP Lender could be willing to lend on an unsecured basis to the Debtors given that GVS asserts a large secured claim and that the Debtors' assets are worth considerably less. The DIP Loan has been negotiated in good faith and at arm's length among the Debtors and the DIP Lender. The Debtors investigated other options, but only the proposal from the DIP Lender was sufficient to satisfy the Debtors' needs and allow the Debtors to reorganize their business, employ their professionals in these chapter 11 cases, and propose a plan of reorganization that complies with the Bankruptcy Code.

7. If the Debtors are not authorized to obtain the DIP Loans and enter into the DIP Credit Agreement, the likely outcome is a shuttering of the Debtors' business, immediate termination of all of the Debtors' employees, and a dismissal or conversion of the cases. The result would be a catastrophic loss in going-concern value to the detriment of all stakeholders, including more than \$400,000 in unsecured creditors and the Debtors' equity holders.

8. The Debtors' projected needs are set forth in a detailed budget (the "**Budget**"), which is attached as Exhibit 1 to the DIP Credit Agreement and incorporated as if set forth fully herein by reference.

9. As set forth in more detail in the Budget, the Debtors will use the proceeds of the DIP Loans to, among other things, (1) fund operational shortfalls for the Debtors' business, (2) pay the administrative expenses of these chapter 11 cases, including the fees of counsel and the fees of the United States Trustee under 28 U.S.C. § 1930, (3) perform repairs to maintain the

value of the Collateral and the Debtors' business, (4) make adequate protection and interest payments to the Debtors' alleged secured creditor, GVS Holdings, Inc. ("GVS"), and (5) fund the formulation, solicitation, and confirmation of a chapter 11 plan to reorganize the Debtors' business.

A. Terms of Proposed DIP Financing

10. The following description is meant to summarize the terms of the DIP Credit Agreement. To the extent there is any inconsistency, the terms of the DIP Credit Agreement control. The following is a summary of the terms of the DIP Credit Agreement and the DIP Loans thereunder:

Provision	Description
Borrowers	A.H. Coombs, LLC ("AHC") and CHC Development Co., Inc. ("CHC" and, together with AHC, " Borrowers ") ²
DIP Lender	Kirch & Todd Real Estate, LLC, DBA Kirch & Todd Lending, as lender (" DIP Lender ")
DIP Loans	A post-petition term loan financing of up to \$458,192.00 the (" Maximum Amount "), which may be borrowed in one or more advances pursuant to the DIP Credit Agreement and in accordance with the Budget.
Maturity Date	The DIP Lender's commitment to fund DIP Loans continues throughout the Term. The Term means the period of time commencing on the Effective Date and ending on the Termination Date. The Termination Date means the earliest to occur of (a) May 1, 2017, (b) an Event of Default whereby the DIP Credit Agreement is terminated in accordance with Section 8.2(b)(i) thereof, (c) fifteen days after the occurrence of the effective date of any Plan, (d) the Final Order is not entered within thirty days after filing of the DIP Motion unless otherwise agreed by DIP Lender; or (e) ten days after the closing date of the sale of substantially all of the Borrowers' assets.
Interest Rate	The Interest Rate is a fixed rate of fifteen percent per annum; or, after the

² Capitalized terms not otherwise defined in this summary have the meanings ascribed to those terms in the DIP Credit Agreement.

Provision	Description
	occurrence of an Event of Default, a fixed rate of twenty percent per annum.
Fees	None.
Budget	The Debtors may only use the proceeds of each DIP Loan only in accordance with the Budget, attached as <u>Exhibit 1</u> to the DIP Credit Agreement, which shall be updated on a monthly basis.
Super-Priority	<u>Superpriority Claims</u> . Subject to the Carve Out, the Obligations will constitute allowed superpriority administrative claims under section 364(c)(1) of the Bankruptcy Code against the Debtors with priority over all administrative expenses, diminution claims, and all other claims against the Debtors, including all administrative expenses specified in §§ 503(b) and 507(b) and any claims arising under §§ 105, 326, 328, 330, 331, 503(b), 507(a), 507(b), 546(c), 726, 1113, or 1114 of the Bankruptcy Code, payable from all the Debtor's prepetition and post-petition property and all proceeds thereof, subject only to the Carve Out (defined below).
Carve Out	<p>In order to provide for administrative expenses, DIP Lender cedes priority and designates for the benefit of Borrowers' Professionals a first-priority claim from the DIP Lender's super-priority claims (the "Carve Out"). Accordingly, the super-priority claims granted to the DIP Lender are subject and subordinate to—</p> <ol style="list-style-type: none"> all fees payable to the Clerk of the Bankruptcy Court in the Bankruptcy Case; all fees payable to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930(a); and the allowed fees and expenses incurred by the Borrowers in the Bankruptcy Case for their respective attorneys, financial, and other professional advisors and service providers under sections 330 and 331 of the Bankruptcy Code in accordance with the Budget in an amount not to exceed \$100,000 in the aggregate.
Events of Default	<p>Events of Default (§ 8.1.). The occurrence or existence of any one or more of the following events or conditions, whether voluntary or involuntary, shall constitute an Event of Default:</p> <ol style="list-style-type: none"> Borrowers fail to pay when due (whether due at stated maturity, upon acceleration, or as otherwise provided herein) any installment of principal, over advance, or interest on any of the DIP Loans,

Provision	Description
	<p>or otherwise owing under the DIP Credit Agreement;</p> <p>b. Borrowers fail to pay any of the other Obligations on the due date thereof (whether due at stated maturity, upon acceleration, or as otherwise provided herein) and such failure shall continue for a period of ten days after DIP Lender's giving Borrowers written notice thereof;</p> <p>c. Borrowers fail to perform, keep, or observe any covenant contained in any DIP Loan and the breach is not cured within ten days after Borrowers' receipt of notice of such breach from DIP Lender;</p> <p>d. any representation or warranty made by or on behalf of Borrowers, or other information provided by or on behalf of Borrowers to DIP Lender, including with respect to any DIP Loan, was incorrect or misleading in any material respect at the time it was made or provided;</p> <p>e. any DIP Loan Document is terminated other than as provided for in this DIP Credit Agreement or becomes void or unenforceable;</p> <p>f. a trustee or examiner with expanded powers shall be appointed in either or both of the Bankruptcy Cases and the order appointing such trustee, responsible officer, or examiner shall not have been stayed, reversed, or vacated within thirty days after the entry thereof;</p> <p>g. the dismissal of either of the Bankruptcy Cases, or the conversion of either of the Bankruptcy Cases from one under chapter 11 to one under chapter 7 of the Bankruptcy Code;</p> <p>h. the entry of an Order by the Bankruptcy Court granting relief from or modifying the Automatic Stay of section 362(a) of the Bankruptcy Code with respect to any claim or property with a value exceeding \$10,000.00;</p> <p>i. an order is entered by the Bankruptcy Court approving a sale of Borrowers (other than the sale of Inventory in the ordinary course of business) on terms to which DIP Lender has not given its prior written consent, unless such motion provides for immediate repayment in cash of all Obligations under the DIP Credit Agreement;</p> <p>j. unless authorized in writing by DIP Lender, Borrowers' actual cumulative disbursements exceeds the projected monthly disbursements in the Budget by more than fifteen percent for any</p>

Provision	Description
	consecutive two-month period.

11. The Debtors' need to obtain credit pursuant to the DIP Credit Agreement is immediate and critical. The DIP Loans are necessary to enable the Debtors to continue operations and to administer and preserve the value of their estates as a going concern. The ability of the Debtors to finance their operations, maintain business relationships, to pay their employees, protect the value of their assets, and otherwise finance their operations requires the availability of working capital from the DIP Loan, the absence of which would immediately and irreparably harm the Debtors, their estates, their creditors, and equity holders, and would permanently end the possibility for a successful reorganization. The Debtors do not have sufficient available sources of working capital and financing to operate in the ordinary course of business without the DIP Loans. Thus, the Debtors are seeking approval and authorization to enter into the DIP Credit Agreement and to obtain DIP Loans so that sufficient funds are available to provide the Debtors with the working capital they need to operate.

12. In support of the relief requested herein, the Debtors rely on this Motion, the *Declaration of Alan H. Coombs in Support of the DIP Motion*, the entire record of these chapter 11 cases, and all supporting pleadings and evidence filed therewith and presented at the hearing on this Motion.

B. Necessity of Obtaining DIP Financing

13. The DIP Lender will not make the DIP Loans without the DIP Loan constituting allowed superpriority administrative expense claims. As of this filing, the Debtors have been

unable to identify any alternative lender or strategic investor other than the DIP Lender that will provide the Debtors the financing they need.

14. In general terms, the proceeds of the DIP Loan are to be used as follows: (i) to pay fees, costs and expenses of the DIP Lender, including payment of Lender's reasonable attorney's fees and other out of pocket expenses; (ii) to pay post-petition operating expenses of the Debtors incurred in the ordinary course of business; (iii) to pay costs and expenses of administration of the chapter 11 case, including payment of approved professional fees, including attorney fees; and (iv) to pay other amounts as specified in the Budget and allowed by the Bankruptcy Court, in each case, in amounts and categories consistent with the Budget.

15. The Debtors are unable to obtain the required funds through any other loan structure except as set forth in this Motion and the proposed DIP Order. The terms of the DIP Loan are the best the Debtors have been able to identify, are fair and reasonable under the circumstances, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration. The DIP Loan has been negotiated in good faith and at arm's length among the Debtors and the DIP Lender. The Debtors investigated other options, but only the proposal from the DIP Lender was sufficient to satisfy the Debtors' needs and allow the Debtors to reorganize their business, employ their professionals in these chapter 11 cases, and propose a plan of reorganization that complies with the Bankruptcy Code.

16. If the Debtors are not authorized to obtain the DIP Loans and enter into the DIP Credit Agreement, the likely outcome is a shuttering of the Debtors' business, immediate termination of all of the Debtors' employees, and a dismissal or conversion of the cases. The

result would be a catastrophic loss in going-concern value to the detriment of all stakeholders, including more than \$400,000 in unsecured creditors and the Debtors' equity holders.

IV. BASIS FOR RELIEF

A. The Bankruptcy Code Authorizes the Relief Requested

1. Bankruptcy Code Sections 364(c)

Section 364(c) of the Bankruptcy Code provides: "If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may 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 this title"

When a debtor's business judgment is consistent with the provisions of and policies underlying the Bankruptcy Code, courts routinely grant a debtor considerable deference in acting in accordance with its business judgment. *See, e.g., In re Ames Dept. Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (courts have discretion under Bankruptcy Code § 364 to permit debtor to exercise reasonable business judgment so long as (i) the terms of the financing agreement do not "leverage the bankruptcy process and powers" and (ii) the financing agreement's purpose is primarily to benefit the estate, and not a party in interest); *see also In re Defender Drug Stores*, 145 B.R. 312, 316-317 (9th Cir. B.A.P. 1992) ("Bankruptcy courts, however, have regularly authorized post-petition financing arrangements containing lender incentives beyond the explicit priorities and liens specified in section 364. While certain favorable terms may be permitted as a reasonable exercise of the debtor's business judgment, bankruptcy courts do not allow terms in financing arrangements that convert the bankruptcy

process from one designed to benefit all creditors to one designed for the unwarranted benefit of the post-petition lender. Thus, courts look to whether the proposed terms would prejudice the powers and rights that the Code confers for the benefit of all creditors and leverage the Chapter 11 process by granting the lender excessive control over the debtor or its assets as to unduly prejudice the rights of other parties in interest.” (citations omitted)); *see also In re Berry Good, LLC*, 400 B.R. 741, 747 (Bankr. D. Ariz. 2008).

2. Bankruptcy Code Section 105(a).

Section 105(a) of the Bankruptcy Code provides that bankruptcy courts “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions” of the Bankruptcy Code.

B. Authorizing the Debtors to Obtain the Proposed Post-Petition Financing and Granting Related Relief Is Proper.

As discussed above, the proposed DIP Loan will allow the Debtors to obtain the cash they needs to achieve an orderly reorganization of the Debtors’ business while preserving the value of the Debtors’ estate for the benefit of creditors.

Based upon all of the above, the Debtors believe that entering into the DIP Loan based on the terms of the DIP Loan Agreement reflects a sound and prudent exercise of its business judgment under the circumstances, and is in the best interests of the estate and its creditors. The Debtors therefore seek entry of the DIP Order approving these actions.

V. NEED FOR EXPEDITED RELIEF

The Debtors need access to the DIP Loans immediately to avoid immediate and irreparable harm to their estates, to prevent them from having to layoff their employees, and to prevent the loss of the Debtors’ business as a going concern. The current stipulation to use cash

collateral ends on November 3, 2016, and if the DIP Order is not granted by that time, the Debtors will have no cash to fund the adequate protection payments, pay administrative expenses, or fund any shortfalls in the operation of their business. Accordingly, the Debtors request that the Court consider and enter the DIP Order as soon as practicable and in no event later than November 3, 2016.

VI. NOTICE

Notice of this Motion has been given to (a) the Office of the United States Trustee for the District of Utah, (b) Counsel for GVS, Kenneth Cannon III, Durham Jones & Pinegar, 111 East Broadway, Ste. 900, PO Box 4050, Salt Lake City, UT 84110-4050 and S. James Park, Labrum Todd Park & Velez, PLLC, 1173 South 250 West, 311, St. George, UT 84770, and (c) the twenty largest unsecured creditors, all parties requesting notice via the Court's Electronic Court Filing system and all parties on the creditor matrix for both cases. In light of the nature of the relief requested in this Motion, the Debtors respectfully submit that no further notice is necessary.

VII. CONCLUSION

The relief requested in this Motion should be granted because it is necessary to ensure the orderly administration of the Debtors' estates, determine the amount of GVS's alleged interests and claims, allow the Debtors to reorganize their business, and allow the Debtors to propose, solicit, and confirm a plan of reorganization. The granting the relief requested herein will benefit their creditors in these cases.

WHEREFORE, the Debtors respectfully request that the Court enter the DIP Order substantially in the form attached hereto as Exhibit A hereto;

(1) authorizing the Debtors to enter into the DIP Credit Agreement attached as Exhibit 1 to the DIP Order with the DIP Lender and to take all actions necessary to effect the post-petition credit on the terms set forth in the DIP Credit Agreement,

(2) granting the DIP Lender's claims super-priority administrative expense status under section 364(c)(1); and

(3) granting the Debtors such further relief as is just and warranted.

Dated this 26th day of October, 2016

/s/ Geoffrey L. Chesnut

Geoffrey L. Chesnut

Attorneys for the Debtors

Exhibit A

DIP Order

Exhibit A

DIP Order

Order prepared by:
Andres Diaz (A4309)
Thomas D. Neeleman (A4639)
Geoffrey L. Chesnut (A12058)
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Proposed Attorneys for the
Debtors-in-Possession

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH**

In re: A. H. COOMBS, LLC, Debtor. And CHC DEVELOPMENT CO, INC. Debtor. ¹	Case No. 16-25559 (also filed in Case No. 16-25558) Chapter 11 Judge William T. Thurman
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**ORDER UNDER 11 U.S.C. §§ 105, 361, 363, 364, AND 507
(1) AUTHORIZING DEBTORS IN POSSESSION TO
OBTAIN UNSECURED POST-PETITION FINANCING AND
(2) PROVIDING SUPERPRIORITY ADMINISTRATIVE
EXPENSE STATUS**

Upon the motion (the “**Motion**”)² of A.H. Coombs, LLC and CHC Development Co., Inc., as debtors and debtors in possession (the “**Debtors**”), for entry of an order (this “**DIP Order**”) pursuant to 11 U.S.C. §§ 105, 361, 363, 364 and 507, (1) authorizing the Debtors to obtain unsecured post-petition financing under the terms of the lending agreement attached as Exhibit 1 hereto (the “**DIP Credit Agreement**”); and (2) providing superpriority administrative expense status to Kirch & Todd Real Estate, LLC DBA Kirch & Todd Lending (the “**DIP**

¹ Motion for Substantive Consolidation pending.

² Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the DIP Credit Agreement or the Motion, as applicable.

Lender”); and the Court having jurisdiction to consider this Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue being proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion being adequate and appropriate under the particular circumstances; and a hearing having been properly noticed and held to consider the relief requested in the Motion (the “**Hearing**”); and upon the memorandum of points and authorities filed in support of the Motion, the *Declaration of Alan H. Coombs in Support of the DIP Motion*, the record of the Hearing and all proceedings heard before the Court in these chapter 11 cases; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and any objections to the requested relief having been withdrawn or overruled or are hereby overruled on the merits; and after due deliberation and sufficient cause appearing therefor, **THE COURT FINDS AS FOLLOWS:**

A. Findings and Conclusions. The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052. To the extent any of the following findings of fact constitute conclusion 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.

B. Relief Authorized. The statutory predicates for the relief requested herein are sections 105, 362, 363, and 364 of the Bankruptcy Code and Bankruptcy Rules 4001(c) and 9014.

C. Factual Basis Warranting Relief. On the Petition Date, June 25, 2016, the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are managing their properties and operating their business as debtors in possession under sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these chapter 11 cases and a committee has not been appointed.

D. The Debtors have immediate and ongoing needs to obtain financing of the type requested in the Motion in order to, among other things, (1) fund operational shortfalls for the Debtors' business, (2) pay the administrative expenses of these chapter 11 cases, including the fees of counsel and the fees of the United States Trustee under 28 U.S.C. § 1930, (3) perform repairs to maintain the value of the Collateral and the Debtors' business, (4) make adequate protection and interest payments to the Debtors' alleged secured creditor, GVS Holdings, Inc. ("GVS"), and (5) fund the formulation, solicitation, and confirmation of a chapter 11 plan to reorganize the Debtors' business.

E. Authorization from the Court to obtain financing from the DIP Lender is necessary for the Debtors to continue the operation of their business as debtors in possession and to preserve the going-concern value of their assets. The Debtors will suffer immediate and irreparable harm unless it is immediately authorized to obtain financing in the amount and on the terms and conditions set forth in this DIP Order and in the DIP Credit Agreement. Despite diligent efforts, the Debtors have been unable to obtain financing except under the terms hereunder and in exchange for the grant of a superpriority administrative expense basis under section 364(c)(1) of the Bankruptcy Code.

F. Subject to the terms and conditions set forth in this the DIP Credit Agreement, the DIP Lender is willing to extend periodic DIP Loans on an as-needed basis to the Debtors up to the Maximum Amount of \$458,192.00 (each such advance, a "**DIP Loan**"), with all such proceeds to be used only in accordance with the Budget, attached as Exhibit 1 to the DIP Credit Agreement. The DIP Lender has expressed its desire to provide post-petition financing to the Debtors in order to provide working capital to the Debtors during the chapter 11 cases.

G. A condition to the willingness of the DIP Lender to fund the DIP Loans is that the Court grant DIP Lender the protections set forth in the DIP Credit Agreement, including, without limitation, an allowed superpriority administrative claim with respect to the DIP Loans over any and all administrative expenses except with respect to the Carve Out.

H. Notice Adequate. The Court finds that notice of the Motion, as it relates to the entry of this DIP Order, is sufficient for all purposes under the Bankruptcy Code, the Bankruptcy

Rules, and the Local Rules, including, without limitation, sections 102(1) and 364 of the Bankruptcy Code and Bankruptcy Rules 2002 and 4001, and Local Rules 2002-1 and 9013-1 and that no further notice is necessary.

I. Good Cause Shown. Good cause has been shown for the entry of this DIP Order and authorization for the Debtors to execute the DIP Credit Agreement and obtain the DIP Loans as requested in the Motion. The Debtors need for financing of the type afforded by this DIP Order and the DIP Credit Agreement is immediate and critical. Entry of this DIP Order will minimize disruption of the Debtors' business and operations as a going concern and is in the best interests of the Debtors, their creditors, and their bankruptcy estates. The terms of the financing authorized hereby are fair and reasonable, reflect the Debtors' reasonable exercise of prudent business judgment, and are supported by reasonably equivalent value and fair consideration.

J. Good Faith. The Court finds that the DIP Credit Agreement and the DIP Loans to be advanced thereby have been negotiated in good faith and at arm's length between the Debtors and the DIP Lender, and the DIP Loans will be and are hereby deemed to have been made in good faith within the meaning of section 364(e) of the Bankruptcy Code.

Accordingly, **IT IS HEREBY ORDERED AS FOLLOWS:**

1. The Motion is granted on a final basis to the extent provided herein. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this DIP Order.

2. The Debtors are authorized to enter into the DIP Credit Agreement, obtain DIP Loans under the terms thereunder, with the DIP Lender substantially in accordance with the terms in the DIP Credit Agreement, and to take all actions necessary to consummate the DIP Loan; to grant superpriority claims in connection with the proposed DIP Loan; and to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

3. Subject to the terms and conditions of this DIP Order, the Debtors shall be, and hereby are, authorized (a) to execute the DIP Credit Agreement, which is approved hereby in all respects in its entirety, in substantially similar form attached as Exhibit 1 hereto to give effect to

the terms thereof and hereof, (b) to receive in one or more advances from the DIP Lender up to the Maximum Amount of \$458,192.00 to be used in accordance with the Budget attached as Exhibit 1 to the DIP Credit Agreement (the “**Budget**”); (c) to pay all Obligations provided for under this DIP Order and the DIP Credit Agreement, and (d) to satisfy all conditions precedent and perform all obligations hereunder and thereunder in accordance with the terms hereof and thereof.

4. Notwithstanding anything to the contrary in this DIP Order, in no event shall the DIP Lender be obligated to make any advances comprising a DIP Loan if at the time of a requested advance an Event of Default (as such term is defined in the DIP Credit Agreement) or a default under this DIP Order exists. Proceeds of the DIP Loan may be used to pay items identified on the Budget as agreed between the Debtors and the DIP Lender. The DIP Lender shall not have any obligation or responsibility to monitor the Debtors’ use of proceeds of the DIP Loan and may, but is not required to, rely on the Debtors’ representations that the amount of any advances requested by the Debtors, and the use thereof, are in accordance with the requirements of this DIP Order, the DIP Credit Agreement and the Budget.

5. Priority. To ensure the prompt payment and performance of the Obligations, the DIP Lender shall have, and is hereby granted effective on and after the date hereof an allowed super-priority administrative claim with respect to the DIP Loans over any and all administrative expenses except in respect of the Carve Out.

6. Carve Out. The priority granted to DIP Lender hereunder shall be subject and subordinate only to all fees of the Court and all fees of the United States Trustee under 28 U.S.C. § 1930, and to allowed claims of professionals of the Debtors not to exceed \$100,000 (the “**Carve Out**”).

7. Effect of Appeal. The Court finds that the DIP Lender is extending credit on the terms set forth in the DIP Credit Agreement in good faith and after arms’ length negotiation. Therefore, under section 364(e) of the Bankruptcy Code, if any or all of the provisions of this DIP Order are hereafter modified, vacated, or stayed—

- i. such stay, modification, or vacation shall not affect the validity of any

obligation, indebtedness, or liability incurred by the Debtors to the DIP Lender prior to the effective date of such stay, modification, or vacation, or the validity, enforceability, or priority of any claim or right authorized or created under the provisions of this DIP Order or pursuant to the DIP Credit Agreement; and

ii. any indebtedness, obligation, or liability incurred by the Debtors to the DIP Lender under the DIP Credit Agreement prior to the effective date of such stay, modification, or vacation shall be governed in all respects by the original provisions of this DIP Order and the DIP Credit Agreement, and the DIP Lender shall be entitled to all the rights, remedies, privileges, and benefits, including the superpriority claims granted herein and pursuant to the DIP Credit Agreement, with respect to any such indebtedness, obligation, or liability. All DIP Loans under the DIP Credit Agreement are made in reliance upon this DIP Order, and, therefore, the indebtedness resulting from such DIP Loans prior to the effective date of any stay, modification, or vacation of this DIP Order cannot (a) be subordinated, or (b) lose the superpriority claims or as a result of any subsequent order in these chapter 11 cases or any subsequent cases of the Debtors.

8. Waiver of Bankruptcy Rule 6004(h). Notwithstanding the applicability or potential applicability of Bankruptcy Rule 6004(h), the Court finds that immediate and irreparable harm would result if this Order is not immediately effective. Therefore, the provisions of this DIP Order shall be effective immediately upon entry of this DIP Order by the Court notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, 9014 or otherwise.

9. Retention of Jurisdiction. The Court retains jurisdiction with respect to all matters arising from or related to the interpretation or implementation of this DIP Order.

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Exhibit 1

DIP Credit Agreement

DEBTOR-IN-POSSESSION SUPER-PRIORITY CREDIT AGREEMENT

This Debtor-in-Possession Credit Agreement (together with all schedules, exhibits, and other attachments hereto, as the same may be amended, supplemented, extended, or restated from time to time, this “**DIP Credit Agreement**”) dated October __, 2016, is entered into jointly and severally by and between A.H. Coombs, LLC (“**AHC**”) and CHC Development Co., Inc. (“**CHC**” and, together with AHC, “**Borrowers**”), each a debtor and debtor in possession under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”), and Kirch & Todd Real Estate, LLC, DBA Kirch & Todd Lending, as lender (“**DIP Lender**”).

I. **RECITALS**

1.1 On June 25, 2016 (the “**Petition Date**”), Borrowers filed a voluntary petitions for relief under chapter 11 of the Bankruptcy Code, thereby commencing chapter 11 bankruptcy cases Nos. 16-25558 and 16-25559 (the “**Bankruptcy Cases**”) with the United States Bankruptcy Court for the District of Utah (the “**Bankruptcy Court**”).

1.2 Borrowers continue to operate their business (the “**Business**”) as a debtors-in-possession under sections 1107 and 1108 of the Bankruptcy Code.

1.3 Borrowers have requested post-petition debtor-in-possession financing from DIP Lender under section 364(c)(1) of the Bankruptcy Code for such purposes as are hereinafter described in this DIP Credit Agreement.

1.4 In connection with the financing, Borrowers have agreed and will move the Bankruptcy Court (the “**DIP Motion**”) to grant DIP Lender and any of its successors and assigns super-priority administrative expense claims (as described herein), on the terms and conditions set forth herein and in accordance with section 364(c)(1) of the Bankruptcy Code, subject to approval by the Bankruptcy Court of the DIP Motion seeking approval of this DIP Credit Agreement and all corresponding terms and provisions (the “**DIP Order**”).

1.5 DIP Lender is willing to provide credit to Borrowers, subject to the terms and conditions of this DIP Credit Agreement.

NOW, THEREFORE, in consideration of the mutual conditions and agreements set forth herein, the parties hereto agree as follows.

II. **DEFINITIONS**

2.1 Definitions. Capitalized terms not defined in context in this Agreement have the following meanings in this DIP Credit Agreement:

“**Affiliate**” has the meaning in section 101(2) of the Bankruptcy Code.

“**Budget**” means that certain cash flow budget from November 15, 2016 through March 31, 2017, subject to extension by mutual agreement of the Parties, and updated on a monthly

basis, on a cash receipts and disbursements that is satisfactory in form and substance to DIP Lender, a copy of which is attached as Exhibit 1 hereto, together with any modifications, amendments, extensions, or supplements as approved by Borrowers and DIP Lender from time to time.

“Business Day” means any day other than a Saturday, Sunday, or other day on which banks in the State of Utah are authorized or required to close.

“Default” means an event or condition the occurrence of which would, with the lapse of time or the giving of notice, or both, become an Event of Default.

“DIP Loan Documents” means collectively this DIP Credit Agreement, the DIP Order, and each other instrument, agreement, or document executed by Borrowers related thereto, and any and all amendments, restatements, modifications, and/or supplements to all such documents.

“DIP Loans” means any one or more advances pursuant to this DIP Credit Agreement.

“DIP Order” shall mean the Final Order and all modifications, revisions, and amendments thereto, among other things, (a) authorizing Borrowers to incur post-petition unsecured indebtedness and to enter into this DIP Credit Agreement, (b) providing for the super-priority of the Obligations pursuant to sections 364(c)(1) of the Bankruptcy Code and in all respects in form satisfactory to DIP Lender.

“Dollar” and **“\$”** means freely transferable United States dollars.

“Effective Date” means the date on which this DIP Credit Agreement is approved by the Bankruptcy Court.

“Event of Default” means an event described in Article VIII of this DIP Credit Agreement provided that any requirement for notice or lapse of time or any other condition has been satisfied.

“Final Order” means the DIP Order entered by the Bankruptcy Court approving this DIP Credit Agreement and as to which no stay pending appeal has been entered, and no motion to reconsider filed, and which has not been vacated, modified, or reversed.

“Interest Rate” means a fixed rate of fifteen percent per annum; or, after the occurrence of an Event of Default, a fixed rate of twenty percent per annum.

“Maximum Amount” shall mean \$458,192.00 or such lesser or greater amount as shall be agreed upon from time to time in writing by DIP Lender and Borrowers.

“Maximum Lawful Rate of Interest” means a rate of interest equal to the highest rate of interest that may be charged under applicable laws or regulations in effect from time to time applicable to the transactions in this DIP Credit Agreement.

“Obligations” means the principal of, and interest and premium, if any, on, the DIP Loans and all other indebtedness, liabilities, obligations, covenants, and duties of Borrowers to

DIP Lender of every kind, nature, and description arising under this DIP Credit Agreement, or any of the other DIP Loan Documents, whether direct or indirect, absolute or contingent, due or not due, contractual or tortious, liquidated or unliquidated, and whether or not evidenced by any note, and whether or not for the payment of money, including without limitation, fees, costs, charges, indemnities, and expenses required to be paid or reimbursed pursuant to this DIP Credit Agreement or any of the DIP Loan Documents.

“**Party**” or “**Parties**” means, as applicable, AHC and CHC as Borrowers and DIP Lender.

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

“**Plan**” shall mean a plan proposed by Borrowers in the Bankruptcy Cases pursuant to Chapter 11 of the Bankruptcy Code and containing terms in form and substance satisfactory to DIP Lender.

“**Term**” means the period of time commencing on the Effective Date and ending on the Termination Date.

“**Termination Date**” means the earliest to occur of (a) May 1, 2017, (b) an Event of Default whereby this DIP Credit Agreement is terminated in accordance with Section 8.2(b)(i) hereof, (c) fifteen days after the occurrence of the effective date of any Plan, (d) the Final Order is not entered within thirty days after filing of the DIP Motion unless otherwise agreed by DIP Lender; or (e) ten days after the closing date of the sale of substantially all of the Borrowers’ assets.

2.2 General. Unless otherwise defined, all terms used in this DIP Credit Agreement that are defined in the UCC shall have the meaning given them in the UCC. All terms of an accounting nature not specifically defined in this DIP Credit Agreement shall have the meaning ascribed them by GAAP. References to any legislation or statute or code, or to any provision thereof, shall include any modification or reenactment of, or any legislative, statutory, or code provision substituted for, such legislation, statute, or code or provision thereof in effect on the Effective Date. References to any Person includes its successor or permitted substitutes and assigns.

III.

DIP LOANS, RENEWAL, AND TERMINATION

3.1 DIP Loans. DIP Lender agrees, during the Term and for so long as no Default or Event of Default exists and subject to the terms of this DIP Credit Agreement, to make DIP Loans to Borrowers in an aggregate amount not to exceed the Maximum Amount.

3.2 Use of Proceeds. Borrowers agree to use the proceeds of the DIP Loans only in accordance with the Budget and only to the extent there are operating shortfalls. Specifically, no funds shall be paid or made available, whether from the DIP Loans or the Carve Out, for any fees, disbursements or expenses of any Party or other person, including the Borrowers or any

official committee appointed under section 1102 of the Bankruptcy Code in the Bankruptcy Case, or any professional employed by any party, in connection with the investigation, initiation, or prosecution of any claims, causes of action, adversary proceedings, or other litigation against the DIP Lender or any Affiliate of the DIP Lender, including, without limitation, challenging the amount, validity, extent, priority, or enforceability of, or asserting any defense, counterclaim, or offset to the DIP Lender's claims or the DIP Loans (including any superpriority claim given in conjunction with the DIP Loans).

3.3 Borrowing Procedures.

(a) Provided that there does not then exist a Default or an Event of Default, Borrowers may, from time to time, request that Lender make DIP Loans to Borrowers in accordance with the terms of this DIP Credit Agreement. DIP Lender shall fund requests for DIP Loans that comply with the provisions of this Agreement by the close of business on the second Business Day after such request is received if the request is received prior to 4:00 p.m. (PT).

(b) A request for a DIP Loan shall be made by (i) communication in writing by the DIP Lender that it agrees to the amount of the DIP Loan and that the DIP Loan complies with or is a reasonable and justifiable deviation from the Budget; (ii) transmission (by any reasonable means) to DIP Lender of a fully executed Borrowing Certificate, executed by an authorized officer of Borrowers, substantially in the form attached as Exhibit 2 hereto (the "**Borrowing Certificate**"), which certificate shall specify the amount to be borrowed (which shall be equal to or less than the Maximum Amount in effect as of the date the DIP Lender advances funds on any such DIP Loan). Borrowers shall make no more than three requests for DIP Loans per calendar month. Borrowers agree that the transmission of any such Borrowing Certificate shall constitute a certification by Borrowers as set forth therein.

(c) The Maximum Amount is the maximum ceiling on the aggregate of all DIP Loans and other Obligations to Borrowers; provided, however, that should the aggregate of all Obligations ever exceed the Maximum Amount or any other limitation set forth in this DIP Credit Agreement, such amounts shall nevertheless constitute Obligations owed to DIP Lender and, as such, shall be entitled to all benefits thereof and priority therefor.

(d) Subject to the terms of this DIP Credit Agreement, all DIP Loans shall be deposited only into the U.S. Trustee-approved debtor-in-possession account and shall not, without DIP Lender's prior written consent, then be transferred into any other bank account for which any other creditor has custody, control, or a Lien.

3.4 Interest. Interest shall accrue on the outstanding principal balance of the DIP Loans at the Interest Rate. All interest accrued on the outstanding principal balance of the DIP Loans shall be calculated on the basis of a 360-day year and, if monthly, the actual number of days in each month. Interest will be added to the outstanding principal balance of the DIP Loans on the first Business Day of each calendar month following the month in which such interest accrues.

3.5 Allocation of Payments. Any amounts received by DIP Lender from Borrowers shall be applied to the Obligations as follows: (a) first, to pay any interest, fees costs, charges, indemnities, and expenses then due to DIP Lender under the DIP Loan Documents until paid in full and (b) second, to repay the principal amount of all outstanding Obligations until paid in full. Upon the occurrence and during the continuance of an Event of Default, DIP Lender may apply all amounts received from Borrowers to the Obligations in such manner as DIP Lender shall determine in its sole discretion.

3.6 Term.

(a) Upon the termination of this DIP Credit Agreement for any reason or upon the end of the Term, Borrowers shall pay, discharge, and satisfy, no later than the date of such termination, the DIP Loans, all accrued and unpaid interest and fees, and all other non-contingent Obligations then outstanding.

(b) All undertakings, agreements, covenants, warranties, and representations of Borrowers contained in this DIP Credit Agreement and the other DIP Loan Documents shall survive any termination, and DIP Lender retains all rights and remedies of DIP Lender under this DIP Credit Agreement and the other DIP Loan Documents, notwithstanding such termination, until Borrowers has paid the amounts described in this Section 3.6 in full.

3.7 Priority of Obligations. All Obligations, whether such Obligations are within or in excess of the Maximum Amount, owed hereunder to DIP Lender by Borrowers shall constitute and be deemed an allowed cost and expense of administration in the Bankruptcy Cases and shall be entitled to priority under sections 364(c)(1) as set forth herein, of the Bankruptcy Code ahead of all other costs and expenses of administration of any kind except—

(a) Claims arising under section 503(b)(1)(A)(i) of the Bankruptcy Code for payroll expenses incurred after the commencement of the Bankruptcy Cases through the Termination Date;

(b) Claims under section 503(b)(1)(B) of the Bankruptcy Code for sales and admission taxes incurred after the commencement of the Bankruptcy Cases through the Termination Date;

(c) Real property taxes (both pre-Petition Date and post-Petition Date); and

(d) All fees and expenses of professionals, U.S. Trustee Fees, and fees payable to the Clerk of the Bankruptcy Court that are the subject of the Carve Out in Section 4.1.

IV. **CARVE OUT**

4.1 Carve Out. DIP Lender and Borrowers hereby agree that employment of professionals by the Borrowers during or related to the Bankruptcy Cases (“**Borrowers’ Professionals**”) and payment of certain fees and expenses, including fees of the U.S. Trustee and

the Clerk of the Bankruptcy Court, by the Borrowers is necessary for the orderly administration of the Bankruptcy Case. In order to provide for such expenses, DIP Lender hereby cedes priority and designates for the benefit of Borrowers' Professionals a first-priority claim from the DIP Lender's super-priority claims granted hereunder (the "**Carve Out**"). Accordingly, the super-priority claims granted to the DIP Lender hereunder are subject and subordinate to—

(a) all fees payable to the Clerk of the Bankruptcy Court in the Bankruptcy Case;

(b) all fees payable to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930(a); and

(c) the allowed fees and expenses incurred by the Borrowers in the Bankruptcy Cases for their respective attorneys, financial, and other professional advisors and service providers under sections 330 and 331 of the Bankruptcy Code in accordance with the Budget in an amount not to exceed \$100,000 in the aggregate.

4.2 Limitation on Use of Carve Out. No portion of the Carve Out or proceeds of the DIP Loans may be used for the payment of fees and expenses of any person incurred to challenge the DIP Lender's claims, or for the initiation or prosecution of any claim or action against the DIP Lender or any Affiliate of the DIP Lender, including, without limitation, challenging the amount, validity, extent, priority, or enforceability of, or asserting any defense, counterclaim, or offset to the DIP Lender's claims or the DIP Loans (including any superpriority claims given pursuant to the DIP Loans), or bringing any cause of action against the DIP Lender or any Affiliate of the DIP Lender under Chapter 5 of the Bankruptcy Code or otherwise.

V. REPRESENTATIONS AND WARRANTIES

Borrowers represent and warrant to DIP Lender, as of the Petition Date, and at all times that DIP Lender makes DIP Loans to Borrowers, as follows:

5.1 Bank Accounts. Subject to the terms of this DIP Credit Agreement, DIP Lender, with the consent of the Borrowers and the Office of the United States Trustee, shall designate one or more bank accounts into which the DIP Loans shall be deposited, which may be bank accounts that were in existence prior to the Petition Date.

5.2 Organization and Authority. Borrowers (a) are duly organized and validly existing under the laws of the jurisdiction(s) of their incorporation or formation, as the case may be, and are in good standing in each jurisdiction in which the failure to so qualify could reasonably be expected to have a Material Adverse Effect, (b) subject to the entry of the DIP Order, has the requisite corporate power and authority to effect the transactions contemplated hereby and by the other DIP Loan Documents, and (c) subject to the entry of the DIP Order, has all requisite corporate power and authority and the legal right to own and operate their business as lessee or owner, and to conduct their Business as now or currently proposed to be conducted.

5.3 Due Execution; Binding Obligation. Upon entry by the Bankruptcy Court of the DIP Order, the execution, delivery, and performance by Borrowers of each of the DIP Loan

Documents will be within the power of Borrowers and have been duly authorized by all necessary corporate action. Upon entry by the Bankruptcy Court of the DIP Order, all DIP Loan Documents when delivered will be legal, valid, and binding obligations of Borrowers, enforceable against Borrowers in accordance with their terms, except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or other similar laws generally affecting creditors' rights and by equitable principles (regardless of whether enforcement is sought in equity or at law).

5.4 Financial Statements. Any financial statements delivered pursuant to this DIP Credit Agreement or the other DIP Loan Documents, taken as a whole and in light of the circumstance in which made, contain no untrue statement of a material fact and do not omit to state a material fact necessary to make such statements not misleading.

5.5 Insurance. All policies of insurance of any kind or nature owned by or issued to Borrowers, including, without limitation, policies of life, fire, theft, product liability, public liability, property damage, other casualty, employee fidelity, workers' compensation, employee health and welfare, title, property, and liability insurance, are in full force.

5.6 ERISA. Borrowers is in compliance in all material respects with all applicable provisions of the Employee Retirement Income Security Act of 1974, as amended from time to time, including (unless the context otherwise requires) any rules or regulations promulgated thereunder, and no such plans or events exist with regard to Borrowers.

5.7 Survival of Warranties; Cumulative. All representations and warranties contained in the DIP Loan Documents shall be deemed to have been made again to DIP Lender on the date of each additional DIP Loan or other accommodation under this DIP Credit Agreement, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall have been true and accurate on and as of such earlier date), and shall be conclusively presumed to have been relied on by DIP Lender regardless of any investigation made or information possessed by DIP Lender.

VI.

AFFIRMATIVE COVENANTS

Until this DIP Credit Agreement has been terminated and all Obligations have been paid in full, Borrowers covenant and agree with DIP Lender as follows:

6.1 Financial Reports. Borrowers shall deliver to DIP Lender, on or before the twentieth day of every month—

(a) a statement of all receipts and disbursements for the previous calendar month and a variance statement of actual receipts and disbursements as compared to the Budget.

(b) an operating forecast for the next full two calendar months in the same form as the Budget.

6.2 Additional Documentation. Borrowers shall cause to be created, execute, and/or deliver to DIP Lender all Additional Documents, reports, and other items that DIP Lender may, from time to time, reasonably determine are necessary or appropriate to evidence the DIP Loans or monitor the Bankruptcy Cases and the financial affairs of the Borrowers.

6.3 Books and Records. Borrowers shall keep accurate and complete records of its financial affairs and permit DIP Lender to (a) visit the Business's locations at intervals to be determined by DIP Lender and (b) inspect, audit, and make extracts from or copies of Borrowers' books, records, journals, receipts, computer tapes, and disks. All governmental authorities are authorized to furnish DIP Lender with copies of reports of examinations of Borrowers made by such parties. Banks and other third parties (without waiving any attorney-client privilege) with whom Borrowers have contractual relationships pertaining to the Debtors' business or the DIP Loan Documents, are authorized to furnish DIP Lender with copies of such contracts and related materials.

6.4 Over-Advance. If, at any time, the aggregate unpaid principal amount of any of the DIP Loans exceeds any applicable limit set forth in this DIP Credit Agreement, Borrowers shall immediately pay to DIP Lender the amount of any such excess and all accrued interest and other charges owing to DIP Lender with respect thereto.

6.5 Breach or Default. Borrowers shall notify DIP Lender immediately upon the occurrence of any circumstance that (a) makes any representation or warranty of Borrowers contained in any DIP Loan Document incorrect or misleading in any material respect or (b) constitutes an Event of Default.

6.6 Maintenance of Assets. Borrowers shall maintain all of their assets in good repair, working order, and condition, and shall make all necessary replacements to such property so that the value and the operating efficiency and value of such assets will be preserved.

6.7 Insurance. Borrowers shall continuously maintain all existing property insurance covering Borrowers' real and tangible personal property, business interruption insurance, and liability insurance. Each property and business interruption insurance policy shall contain a standard DIP Lender's loss payable endorsement in favor of DIP Lender, providing for, among other things, thirty (30) days prior written notice to DIP Lender of any cancellation, non-renewal, or modification of such coverage. Borrowers shall deliver to DIP Lender certified copies of such policies and all required endorsements, or other evidence of such insurance acceptable to DIP Lender. All amounts received by DIP Lender from any such insurance policies may be applied by DIP Lender to the Obligations. If Borrowers fail to procure required insurance or such insurance is canceled or otherwise lapses, DIP Lender may procure such insurance and add the cost of such insurance to the principal balance of the DIP Loans.

6.8 Use of Proceeds. Borrowers shall use the proceeds of all DIP Loans and all other accommodations made by DIP Lender for Borrowers only for those purposes described on the Budget, and not for any other purpose, including any purpose prohibited by law or by the terms and conditions of the DIP Loan Documents; and expressly excluding use of the proceeds (including the Carve Out) for the prosecution of any claim and/or cause of action against DIP Lender or any affiliate of the DIP Lender, including without limitation any claims and causes of

action arising (a) under chapter 5 of the Bankruptcy Code, (b) under a theory of subordination or recharacterization, or (c) that challenges the super-priority claim status granted hereunder, the Obligations or any other claim or cause of action against the DIP Lender or an Affiliate of the DIP Lender.

VII.

CONDITIONS PRECEDENT

7.1 DIP Loan. Notwithstanding any other provision of this DIP Credit Agreement or any of the other DIP Loan Documents and without affecting in any manner the rights of DIP Lender under other sections of this DIP Credit Agreement, it is understood and agreed that the making of any DIP Loan is subject to the satisfaction of the following conditions:

- (a) the DIP Order, in form and substance satisfactory to DIP Lender, shall have been entered by the Bankruptcy Court, and shall be in full force and effect, and all other DIP Loan Documents will be duly executed by all respective parties thereto and shall be in full force and effect and in form and substance satisfactory to DIP Lender;
- (b) no Default or Event of Default shall have occurred and be continuing on the date of such request or after giving effect to such DIP Loan on such date;
- (c) DIP Lender shall have received a request for DIP Loan pursuant to Section 3.1 hereof;
- (d) the amount of the Obligations after giving effect to the requested DIP Loan shall not exceed the Maximum Amount.

VIII.

EVENTS OF DEFAULT: REMEDIES

8.1 Events of Default. The occurrence or existence of any one or more of the following events or conditions, whether voluntary or involuntary, shall constitute an Event of Default:

- (a) Borrowers fail to pay when due (whether due at stated maturity, upon acceleration, or as otherwise provided herein) any installment of principal, over advance, or interest on any of the DIP Loans, or otherwise owing under this DIP Credit Agreement;
- (b) Borrowers fail to pay any of the other Obligations on the due date thereof (whether due at stated maturity, upon acceleration, or as otherwise provided herein) and such failure shall continue for a period of ten days after DIP Lender's giving Borrowers written notice thereof;
- (c) Borrowers fail to perform, keep, or observe any covenant contained in any DIP Loan and the breach is not cured within ten days after Borrowers' receipt of notice of such breach from DIP Lender;

(d) any representation or warranty made by or on behalf of Borrowers, or other information provided by or on behalf of Borrowers to DIP Lender, including with respect to any DIP Loan, was incorrect or misleading in any material respect at the time it was made or provided;

(e) any DIP Loan Document is terminated other than as provided for in this DIP Credit Agreement or becomes void or unenforceable;

(f) a trustee or examiner with expanded powers shall be appointed in either or both of the Bankruptcy Cases and the order appointing such trustee, responsible officer, or examiner shall not have been stayed, reversed, or vacated within thirty days after the entry thereof;

(g) the dismissal of either of the Bankruptcy Cases, or the conversion of either of the Bankruptcy Cases from one under chapter 11 to one under chapter 7 of the Bankruptcy Code;

(h) the entry of an Order by the Bankruptcy Court granting relief from or modifying the Automatic Stay of section 362(a) of the Bankruptcy Code with respect to any claim or property with a value exceeding \$10,000.00;

(i) an order is entered by the Bankruptcy Court approving a sale of Borrowers property (other than the sale of inventory in the ordinary course of business) on terms to which DIP Lender has not given its prior written consent, unless such motion provides for immediate repayment in cash of all Obligations under this DIP Credit Agreement;

(j) unless authorized in writing by DIP Lender, Borrowers' actual cumulative disbursements exceeds the projected monthly disbursements in the Budget by more than fifteen percent for any consecutive two-month period.

8.2 DIP Lender's Remedies. In addition to any other rights and remedies that DIP Lender may have, whether under state, federal, or local law or by virtue of any agreement between Borrowers and DIP Lender, upon the occurrence and during the continuance of an Event of Default, DIP Lender may, in its absolute and sole discretion:

(a) Without notice to, or demand upon, Borrowers, discontinue making any further DIP Loans or advances under this DIP Credit Agreement.

(b) Following ten days' written notice (the "**Remedies Notice Period**") by DIP Lender to Borrowers of the occurrence of an Event of Default (a "**Default Notice**"), DIP Lender may:

(i) terminate this DIP Credit Agreement; and/or

(ii) declare all Obligations to be immediately due and payable, whereupon the principal of the DIP Loans together with accrued interest thereon and all other Obligations of Borrowers accrued hereunder and under any other DIP Loan Document, shall become forthwith due and payable, without

presentment, demand, protest, or any other notice of any kind, all of which are hereby expressly waived by Borrowers, anything contained herein or in any other DIP Loan Document to the contrary notwithstanding.

After receipt of the Default Notice, DIP Lender hereby consents to Borrowers obtaining a hearing before the Bankruptcy Court upon shortened time within the Remedies Notice Period (or as soon as the matter can be heard by the Bankruptcy Court) to contest and dispute the occurrence and continuance of an Event of Default.

IX.
JURY TRIAL WAIVER; OTHER WAIVERS AND
CONSENTS; AND GOVERNING LAW

9.1 Governing Law; Choice of Forum; Service of Process; Jury Trial Waiver.

(a) The provisions of this DIP Credit Agreement shall be governed by and construed in accordance with the laws of the State of Utah, without reference to applicable conflict of law principals, and the parties consent to personal jurisdiction in the State of Utah.

(b) Borrowers and DIP Lender irrevocably consent and stipulate to the exclusive jurisdiction of the Bankruptcy Court with regard to all matters related to the DIP Loan Documents and to the nonexclusive jurisdiction of the state courts of Utah and to the nonexclusive jurisdiction of the United States District Court for the District of Utah if either of the Bankruptcy Cases are dismissed or relief from the automatic stay of section 362(a) of the Bankruptcy Code is obtained for the purpose of any suit, action, or other proceeding arising out of or based upon any of the DIP Loan Documents.

(c) Borrowers waive, to the extent not prohibited by applicable law that cannot be waived, any right Borrowers may have to claim or recover in any such proceeding any special, exemplary, punitive, or consequential damages, or damages for lost profits.

(d) Borrowers hereby release DIP Lender, its officers, managers, members, agents, attorneys, employees, and designees (collectively, with DIP Lender, the “**DIP Lender Released Parties**”) as follows: none of the DIP Lender Released Parties shall have any liability to Borrowers (whether in contract, tort, equity, or otherwise) for losses suffered by Borrowers in connection with, arising out of, or in any way related to the transactions or relationships contemplated by the DIP Financing Documents, or any act, omission, or event occurring in connection therewith, unless it is determined by a final and non-appealable judgment or court order binding on DIP Lender that the losses were the result of acts or omissions constituting gross negligence or willful misconduct.

X.
MISCELLANEOUS

10.1 Modifications and Course of Dealing. No modification of or supplement to this DIP Credit Agreement shall be binding unless in writing and signed by the Party sought to be

bound thereby. No course of dealing and no delay or failure of DIP Lender to exercise any right, power, or privilege under any of the DIP Loan Documents will affect any other or future exercise of such right, power, or privilege. The exercise of any one right, power, or privilege shall not preclude the exercise of any others, all of which shall be cumulative.

10.2 Notices. Except as otherwise provided herein, whenever any notice, demand, request, or other communication shall or may be given to or served upon any party by any other party, or whenever any party desires to give or serve upon any other party any communication with respect to this DIP Credit Agreement, each such communication shall be in writing and shall be deemed to have been validly served, given, or delivered (a) upon the earlier of actual receipt and five Business Days after deposit in the United States mail, registered or certified mail, return receipt requested, with proper postage prepaid, (b) upon transmission, when sent by telecopy, electronic, or other similar facsimile transmission (c) one Business Day after deposit with a reputable overnight courier with all charges prepaid, or (d) when hand-delivered, all of which shall be addressed to the party to be notified and sent to the address or facsimile number indicated in the signature page to this DIP Credit Agreement or to such other address, email address, or facsimile number as may be substituted by giving written notice of such substitution.

10.3 Binding Effect; Severability. This DIP Credit Agreement shall not be deemed to create any right in any third party except that it shall inure to the benefit of, and be binding upon, the successors and assigns of Borrowers and DIP Lender. The provisions of this DIP Credit Agreement are intended to be severable. If any provision of this DIP Credit Agreement is held invalid or unenforceable in whole or in part, such provision will be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability of the remaining provisions of this DIP Credit Agreement.

10.4 Final Agreement. This DIP Credit Agreement and the other DIP Loan Documents are intended by Borrowers and DIP Lender to be the final, complete, and exclusive expression of the agreement between them, except as may be provided in the other DIP Financing Documents. This DIP Credit Agreement supersedes any and all prior oral or written agreements relating to the subject matter hereof.

10.5 Counterparts. This DIP Credit Agreement may be executed in any number of counterparts, and by DIP Lender and Borrowers in separate counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same agreement. The parties hereby acknowledge and agree that facsimile or e-mail signatures of this DIP Credit Agreement shall have the same force and effect as original signatures.

10.6 Captions. The captions contained in this DIP Credit Agreement are for convenience of reference only, are without substantive meaning, and should not be construed to modify, enlarge, or restrict any provision.

10.7 Maximum Lawful Rate. Notwithstanding any provision of this DIP Credit Agreement or the other DIP Loan Documents to the contrary, it is the intent of DIP Lender and Borrowers, that neither DIP Lender nor any successor or assign shall be entitled to receive, collect, reserve, or apply, as interest, any amount in excess of the amount determined by application of the Maximum Lawful Rate of Interest. In the event this DIP Credit Agreement or

other DIP Loan Documents call for an interest payment that exceeds the amount determined by application of the Maximum Lawful Rate of Interest, such interest shall not be received, collected, charged, or reserved until such time as that interest, together with all other interest then payable, falls within the amount determined by application of the Maximum Lawful Rate of Interest. In the event DIP Lender receives any such interest in excess of the amount determined by the application of the Maximum Lawful Rate of Interest, such amount that would be excessive interest shall be deemed a partial prepayment of principal and treated hereunder as such, or, if the principal indebtedness is paid in full, any remaining excess funds shall immediately be paid to Borrowers. In determining whether or not the interest paid or payable, under any specific contingency, exceeds the amount determined by application of the Maximum Lawful Rate of Interest, Borrowers and DIP Lender shall, to the greatest extent permitted under applicable law, (a) exclude voluntary prepayments and the effects thereof and (b) amortize, prorate, allocate, and spread, in equal parts, the total amount of interest throughout the entire term of the indebtedness; provided, however, that if the indebtedness is paid in full then to the end of the full contemplated term hereof, and if the interest received for the actual period of existence hereof exceeds the amount determined by application of the applicable Maximum Lawful Rate of Interest, DIP Lender shall refund to Borrowers the amount of such excess or credit the amount of such excess against the principal portion of the indebtedness as of the date it was received, and, in such event, DIP Lender shall not be subject to any penalties provided by any laws for contracting for, charging, reserving, collecting, or receiving interest in excess of the amount determined by the application of the applicable Maximum Lawful Rate of Interest.

10.8 DIP Order Controls. This DIP Credit Agreement and the other DIP Loan Documents are each subject to the terms and provisions contained in the DIP Order to the same extent and effect as if the DIP Order were fully set forth herein and therein; and in the event that any term or provision of this DIP Credit Agreement or any other DIP Loan Document conflicts or is inconsistent with any term or provision of the DIP Order, the term and provision of the applicable DIP Order shall control and be given effect.

10.9 Bankruptcy Court Approval. This DIP Credit Agreement and Borrowers' and DIP Lender's obligations and duties hereunder are expressly conditioned upon approval by the Bankruptcy Court and entry of the DIP Order.

[Remainder of page intentionally left blank; signature page follows.]

SIGNATURE PAGE

The undersigned, pursuant to due authority, have caused this DIP Credit Agreement to be executed as of the date first set forth above.

BORROWERS:

A.H. COOMBS, LLC

By: _____

Name: _____

Title: _____

1871 West Canyon View
Saint George, UT 84770

--and--

CHC DEVELOPMENT CO., INC.

By: _____

Name: _____

Title: _____

1871 West Canyon View
Saint George, UT 84770

DIP LENDER:

KIRCH & TODD REAL ESTATE, LLC, DBA
KIRCH & TODD LENDING

By: _____

Name: _____

Title: _____

782 S. River Road #231

St. George, UT 84790

Email: james@kirchandtodd.com

Fax: (435) 817-4217

EXHIBIT 1

BUDGET

	Nov 16	Dec 16	Jan 17	Feb 17	Mar 17	Apr 17	Total
Ordinary Income/Expense							
Income							
410-000 - Accommodations/Property Mgmt	130,000	110,000	150,000	250,000	250,000	250,000	1,140,000
420-000 - Treatment Center	43,000	43,000	100,000	100,000	100,000	100,000	486,000
430-000 - Hiking and Fitness Classes	18,000	9,000	7,000	6,800	12,000	19,000	71,800
440-000 - Dining	34,969	33,000	33,000	33,000	33,000	33,000	199,969
450-000 - Medical	1,000	1,000	1,000	1,900	200	1,000	6,100
460-000 - Clubhouse Pools	15,000	15,000	15,000	32,000	28,000	13,000	118,000
470-000 - Spa Shop	7,000	10,000	9,000	5,000	7,000	9,000	47,000
490-000 - Miscellaneous Income (Events)	500	500	15,000	15,000	15,000	15,000	61,000
Total Income	249,469	221,500	330,000	443,700	445,200	440,000	2,129,869
Cost of Goods Sold (includes wages and product expenses)							
510-000 - COGS-Accommodation/Property Mgmt	74,882	67,710	66,330	78,629	102,648	94,029	484,228
520-000 - COGS-Treatment Center	32,129	29,044	29,848	26,511	33,260	27,664	178,456
530-000 - COGS-Hiking & Fitness Classes	10,711	9,481	10,521	8,404	12,787	14,385	66,289
540-000 - COGS-Dining	25,610	28,554	39,907	33,571	29,111	30,474	187,228
550-000 - COGS-Medical	2,664	3,047	1,870	415	149	520	8,664
560-000 - COGS-Clubhouse Pools	13,333	11,588	11,562	11,759	21,086	14,240	83,568
570-000 - COGS-Spa Shop	10,088	17,759	6,586	7,125	6,909	8,344	56,810
Total COGS	169,417	167,182	166,624	166,414	205,951	189,657	1,065,244
Gross Profit	80,052	54,318	163,376	277,286	239,249	250,343	1,064,626
Expense							
610-000 - Accounting	10,000	10,000	5,000	5,000	5,000	5,000	40,000
615-000 - Bank Charges	1,005	1,604	1,100	764	1,234	1,531	7,239
620-000 - Set-Up	278	0	151	219	122	90	860
623-000 - Online Travel Agent Commissions	(865)	(822)	6,259	1,910	3,400	5,323	15,205
625-000 - Credit Card Charges	9,049	7,839	5,311	5,008	5,999	6,747	39,952
631-000 - Dues-Subscriptions	477	1,527	4,946	1,915	1,155	94	10,114
634-000 - Garbage Removal	731	731	731	731	1,463	0	4,388
639-000 - Property Insurance	0	5,663	4,167	828	6,771	683	18,111
641-000 - Interest	3,462	2,798	4,056	2,872	3,936	3,665	20,790
643-000 - Legal	25,000	25,000	5,000	5,000	5,000	5,000	70,000
644-000 - Leases	1,940	2,099	1,845	1,866	2,295	1,710	11,756
651-000 - Miscellaneous Expense	1,750	316	664	266	196	421	3,613
654-000 - Penalties	319	1,132	11,024	2,749	223	0	15,445
657-000 - Outside Services-General	707	649	3,029	3,228	970	3,465	12,047
665-000 - Landscape Maintenance	677	677	677	1,250	2,529	130	5,941
667-000 - Repairs & Maintenance	882	549	279	699	2,672	5,098	10,177
671-000 - Salaries - Office	19,800	19,800	19,800	19,800	19,800	19,800	118,800
000-000 Sales Tax Expense	15,000	15,000	15,000	15,000	15,000	15,000	90,000
673-000 - Office Supplies	660	660	660	660	660	660	3,960
675-000 - Taxes and License	140	885	415	5,083	245	160	6,928
677-000 - Payroll Taxes	15,000	15,000	15,000	15,000	15,000	15,000	90,000
678-000 - Property Taxes (Annual amt 66K due 11/30)	5,500	5,500	5,500	5,500	5,500	5,500	33,000
681-000 - Internet/Cable	1,566	1,117	1,566	3,395	525	2,192	10,361
685-000 - Utilities	11,263	8,119	21,497	20,867	9,033	21,833	92,611
Total Expense	124,340	125,842	133,677	119,610	108,729	119,100	731,296
Net Ordinary Income	(44,288)	(71,524)	29,699	157,677	130,520	131,243	333,327
Other Income/Expense							
Other Expense							
829-000 - Depreciation (3k per mth - non cash exp not included)	0	0	0	0	0	0	0
Trust Fund / Catch Up Fed & State Payments	83,904						83,904
863-000 - Rent/Mortg Exp-"adequate protection payment"	25,000	25,000	25,000	25,000	25,000	25,000	150,000
Total Other Expense	108,904	25,000	25,000	25,000	25,000	25,000	233,904
Other Debt Obligations - Non Expense							
MACU Loan payment - 2013 Van	360	360	360	360	360	360	2,160
MACU Loan payment - 2011 Van	334	334	334	334	334	334	2,004
Ally Loan payment - 2015 Chevy Silverado	572	572	572	572	572	572	3,432
WFB Line of Credit	1,262	1,262	1,262	1,262	1,262	1,262	7,572
Total Other Debt Obligations Payments	2,528	2,528	2,528	2,528	2,528	2,528	15,168
Net Cash	(155,721)	(99,052)	2,171	130,149	102,992	103,715	84,255
"New" Standard Campaign Revenue	0	0	30,000	60,000	77,000	94,000	261,000
Less: Capital Improvement Expenditures	0	60,000	60,000	33,900	33,900	33,900	221,700
Property Management Short Term Condo Rental Expenditures							
booking.com	22,271						22,271
Expedia	2,502						2,502
Sabre Hospitality	2,835						2,835
Net "New" Standard Income (Loss)	(27,608)	(60,000)	(30,000)	26,100	43,100	60,100	11,692
** Kirch & Todd Lending, LLC	227,617	230,575	(1,870)	(313,926)	(276,612)	(295,059)	(429,274)
Balanced Budget Total	0	0	0	0	0	0	0

OTHER INFO:

- ** It is estimated that after the implementation of a new property management campaign it is expected that the company will break even by January 31, 2017. It is also estimated that the company will be able to repay Kirch & Todd Lending, LLC, by April 2017.
- 1 Motion for delinquency was filed by Ally Financial for \$2814, for Silverado Truck, which has not been paid since June.
- 2 AMEX financing loan being repaid by deductions from AMEX cc receipt processing - fixed amount plus 34%
- 3 Estimated Federal and State back taxes owing \$83,904.46 for period 6/26/16 through 10/31/16 - see Tab "Payroll and Sale Tax"

Post petition trust fund taxes owli

IRS AMOUNT DUE 941	72,291.20
IRS AMOUNT DUE 940	716.44
STATE WITHHOLDING	8,023.32
STATE UNEMPLOYMENT	2,483.16
TRANSIT ROOM TAX PENALTY	140.35
SALES TAX PENALTY	249.97
RESTAURANT TAX PENALTY	0.02
TOTAL	83,904.46

EXHIBIT 2

BORROWING CERTIFICATE

BORROWING CERTIFICATE

This Borrowing Certificate (the “**Borrowing Certificate**”) is executed as of _____, 2016, by the undersigned Borrowers in favor of DIP Lender, pursuant to that certain DIP Credit Agreement dated as of _____, 2016¹ previously entered into by and between Borrowers and DIP Lender. Borrowers hereby request that DIP Lender make a DIP Loan to Borrowers pursuant to the DIP Credit Agreement in the amount of \$458,192.00 (the “**Requested DIP Loan**”).

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrowers hereby warrant, represent, and agree that—

(a) the Requested DIP Loan and the intended use thereof are consistent with the terms of the DIP Credit Agreement and is necessary in order for Borrowers to satisfy their obligations as set forth in the most recent Budget provided by Borrowers to DIP Lender and approved by DIP Lender,

(b) the proceeds of all prior DIP Loans have been applied in conformity with the requirements of the DIP Credit Agreement,

(c) all of the representations contained in the DIP Credit Agreement are true and correct as of the date hereof,

(d) Borrowers has observed and performed in all material respects all applicable covenants and agreements contained in the DIP Loan Documents and satisfied each condition to the Requested DIP Loan contained in the DIP Loan Documents, to be observed, performed, or satisfied by Borrowers, and

(e) there is no outstanding Event of Default.

BORROWERS:

A.H. COOMBS, LLC

CHC DEVELOPMENT CO., INC.

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

¹ Capitalized terms not defined herein shall have the meaning given in the DIP Credit Agreement.