

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In Re:

**EVERGREEN HEALTH
SERVICES, INC.,**

Debtor.

Case No. 16--53329-mlo
Chapter 11
Hon. Maria L. Oxholm

**CORRECTED FIRST DAY MOTION OF THE DEBTOR FOR ENTRY
OF AN INTERIM ORDER ON AN EXPEDITED BASIS PURSUANT TO
SECTIONS 105(a), 361, 362, 363, 364, AND 552 OF THE BANKRUPTCY CODE
AND BANKRUPTCY RULE 4001(d) FOR ENTRY OF INTERIM AND FINAL
ORDERS (A) AUTHORIZING USE OF CASH COLLATERAL, (B) GRANTING
ADEQUATE PROTECTION, AND (C) SCHEDULING A
FINAL HEARING ON THE MOTION**

Evergreen Health Services, Inc. ("Evergreen"), as Debtor and Debtor-in-Possession, by its proposed counsel, Strobl & Sharp, P.C., file this motion ("Motion") for immediate entry of (i) an interim order (the "Interim Order") attached as **Exhibit A** (a) authorizing the Debtors, pursuant to sections 105(a), 361, 362, 363, 364 and 552 of Title 11 of the United States Code (the "Bankruptcy Code"), Rule 4001 (d) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Local Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Eastern District of Michigan (the "Local Rules"), to use cash collateral, (b) granting and affirming, to the extent necessary, the adequate protection given to the Debtors' Pre-petition secured claims, and (c) scheduling a final hearing on this motion (the "Final Hearing") and (ii) a final order (the "Final Order") on substantially the same terms as the Interim Order. The facts and circumstances supporting this Motion are set forth below and attested to by the Affidavit of Janis Kelterborn, President

of Evergreen Health Services, Inc., in Support of the Motion (the "Kelterborn Affidavit"), attached as **Exhibit B**. In further support of this motion (the "Motion"), the Debtor respectfully represents as follows:

STATUS OF THE CASE AND JURISDICTION

1. On September 28, 2016 (the "Petition Date") Evergreen filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

2. Also on September 28, 2016, Janis Meredith-Kelterborn, Evergreen's sole shareholder, officer and director, filed a joint voluntary petition with her husband, Richard Kelterborn, for relief under Chapter 11 of the Code, *In re: Richard Kelterborn and Janis Merideth-Kelterborn*, Case No 16-53330. The Kelterborns continue to manage their assets as Debtors-in-Possession.

3. Due to the close and intertwined relationship between Evergreen and the Kelterborns, Evergreen has a corrected motion for joint administration of this matter with the Kelterborns' Chapter 11 case. [Docket No. 18].

4. Evergreen has continued to operate its business and the Kelterborns have continued to conduct their affairs as Debtors-in-possession pursuant to §§ 1107 (a) and 1108 of the Bankruptcy Code.

5. No request has been made for the appointment of a trustee or examiner and no official committee has yet been established in this case and no request has been made for the appointment of a trustee or examiner and no official committee has yet been established in the Kelterborns' chapter 11 case.

6. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157 (b)(2). Venue is proper in

this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief sought herein are sections 105(a), 361, 362, 363, 364 and 552 of the Bankruptcy Code, Bankruptcy Rule 4001(d) and Local Rule 4001-2.

INTRODUCTION REQUIRED PURSUANT TO FED. R. BANKR. P. 4001(d)(1)(B)

7. By this Motion, the Debtor seeks an order pursuant to sections 105(a), 361, 362, 363, 364 and 552 of the Bankruptcy Code: (a) authorizing the use of Cash Collateral pursuant to the terms of the Interim Order; (b) granting and affirming to the extent necessary, the adequate protection given to the Pre-petition Secured Creditors, in respect of their interests in the Pre-petition Collateral, and (c) scheduling the Final Hearing on this Motion.

8. The Debtor has reached an agreement regarding the entry of the proposed order with the State of Michigan, Department of Treasury ("SOM") and Huntington Bank as the successor in interest to FirstMerit Bank ("Huntington"). The Debtor have provided the proposed order to counsel for the Internal Revenue Service ("IRS") (collectively IRS, SOM and Huntington may be referred to as the "Pre-petition Secured Creditors") and has not yet received an approval or objection to the proposed relief requested.

9. Bankruptcy Rule 4001(d) provides that the court may enter an interim order and may, in its discretion set a time within which objections are to be filed and to conduct a hearing relating to the use of cash collateral and adequate protection.

10. Evergreen and the Kelterborns shall will provide adequate protection payments to the Pre-petition Secured Creditors as follows the: (1) IRS shall receive adequate protection payments in the amount of \$1,500.00 per month beginning on the 25th day of October and continuing on the 25th day of each consecutive month through the effective

date as that date is defined in a confirmed plan of reorganization (the "Effective Date"); (2) the SOM shall receive adequate protection payments in the amount of \$500.00 per month beginning on the 20th day of October, 2016 and continuing on the 20th day of each consecutive month through the Effective Date; and (3) Huntington shall receive payments in the amount of \$1,100.00 as adequate protection beginning on the 28th day of October, 2016 and continuing on the 28th day of each consecutive month through the Effective Date. As additional adequate protection, Evergreen and the Kelterborns are willing to grant (1) replacement liens to the Pre-petition Secured Creditors in their post-petition assets, including Evergreen's accounts receivable and the Kelterborns' income, to the same extent, validity and in the same priority as such liens existed on the Petition Date, and (2) a claim under Bankruptcy Code § 507(b) for any unpaid adequate protection payment.

11. Based on the Pre-petition Secured Creditors' limited exposure, and the need to preserve Evergreen's ongoing operations for the benefit of the estates of both Evergreen and the Kelterborns, Evergreen and the Kelterborns believe that they should be permitted to use their post-petition operating cash to fund Evergreen's ongoing operations and the Kelterborns' necessary expenses.

BACKGROUND OF THE DEBTORS

A. Evergreen Health Services, Inc.

12. Evergreen is a Michigan corporation that provides home healthcare services to patients in the Southeast Michigan area. Evergreen was incorporated by Khalid Rana under the name Beach Home Health Care, Inc., in 2005. Effective January 18, 2008, Janis Kelterborn acquired 100% of the stock of Beach Home Health Care, Inc., and on

April 23, 2008, the name of the corporation was changed to Evergreen Health Services, Inc.

13. Evergreen operates its business office in Clarkston, Michigan, and two on site marketing offices in senior living housing in Flint, Michigan. Evergreen currently employs a labor force of approximately 32 employees inclusive of its office staff, medical employees and visiting medical personnel.

14. In 2008 and 2009, Evergreen began experiencing liquidity constraints as a result of the timeliness of Medicare reimbursements.

15. As a result, Evergreen fell behind in the payment of its employment related taxes owed to various taxing authorities.

16. In 2011, the IRS agreed to an installment payment arrangement with Evergreen for the past due employment taxes in the amount of \$10,000.00 per month. Despite the substantial monthly installment payment amount, Evergreen serviced the installments and its ongoing employment taxes through the fourth quarter of 2014. During the first, second and third quarters of 2015, Evergreen incurred additional federal employment tax liabilities.

17. The IRS filed Notices of Federal Tax Lien on January 27, 2012 in connection with past due employment taxes. The current unpaid balance on the 2011 federal employment taxes, including interest and penalties reflected on the 2012 lien is approximately \$96,951.32.

18. In 2012, the SOM filed a Notice of State Tax Lien in connection with Evergreen's past due use and withholding obligations owed to the Department of Treasury. The SOM agreed to an installment payment arrangement with Evergreen for

past due use and withholding taxes and Evergreen remained current on its obligations under the SOM installment payment through July 2016. The SOM is currently owed \$8,420.20 in connection with its secured claim.

19. In the first quarter of 2015, Evergreen again suffered cash flow constraints and was unable to continue its installment payment arrangement with the IRS and fell behind in current employment tax payments owed to the IRS.

20. In 2015 and 2016, the IRS filed Notices of Federal Tax liens against Evergreen for unpaid taxes with a combined unpaid balance in the approximate amount in excess of \$228,952.13.

21. Evergreen has also been unable to meet its SOM, Department of Treasury obligations for use and withholding taxes for 2015 and 2016.

B. Richard Kelterborn and Janis Kelterborn

22. Richard and Janis Kelterborn have been married since June 15, 1989. They live together in Clarkston, Michigan.

23. Janis is a registered nurse. She received her nursing certification from Henry Ford Junior College and her Bachelor of Science degree from Sienna Heights College. She has been a registered nurse since 1965.

24. In 1998, Janis formed Evergreen Personal Services, LLC, ("Personal Services") in order to provide direct care to residents in the Genesee County region. Although it continues in good standing with the Michigan Department of Licensing and Regulatory Affairs, Personal Services is no longer actively operating.

25. A year later, in December 1999, Janis formed Birchwood Meadows, LLC ("Birchwood"), as an adult foster care facility. Later that month, Janis and Richard

purchased the property located at 2304 W. Frances Road, Mt. Morris, Michigan which was converted into a foster care facility. In December, 2001, a second facility located at 7055 W. Stanley, Flushing, Michigan was purchased and converted into an adult foster care facility. Birchwood residents are frequently serviced by Evergreen.

26. Janis has broad experience in home health care administration and marketing.

27. From 1994 through 2000, Janis served as the Regional Director of Marketing for Prime Care Services, Inc. ("Primer Care"), a Michigan home health care provider with its principal location in Southfield, Michigan.

28. From 2001 through 2002, Janis served as a consultant and administrator for Home Care of America, Inc., a Michigan corporation that also provided home health services to patients in the southeastern Michigan region.

29. Richard has extensive experience in both financial analysis and planning as well as home healthcare. In 1997, he retired from Ford Motor Company where he had worked as a financial analyst for product planning in the plastics division.

30. After retiring from FMC, Richard ventured into home healthcare administration.

31. In 1998, Richard began working in the finance department at Prime Care where he learned the basics of healthcare finance and accounting.

32. In 2003, Richard left Prime Care and along with a partner formed Evergreen Home Health Care, LLC ("Home Health Care"), a Michigan limited liability company formed for the purposes of providing home healthcare services to residents in the broader southeastern Michigan region. Shortly after its formation, Janis became the administrator and director of marketing for Home Health Care. Richard served as the

administrator of finance for Home Health Care until its assets were sold in 2008. In 2009, Home Health Care was dissolved.

33. In January 2008, Janis purchased the stock of Beach Home Health Care, Inc. from Khalid Rana and changed the name to Evergreen Health Services, Inc.

34. In an effort to fully service her patients, in 2014, Janis formed Evergreen Hospice, LLC ("Hospice"), to provide the final care needed by many of Evergreen and Birchwood's clients. Hospice received its final credentialing and licensing in March 2016 and has only recently begun servicing patients.

35. Together Evergreen, Birchwood and Hospice form a well-integrated health care delivery system for the residents of southeastern Michigan.

36. The IRS has filed the following Notices of Federal Tax Lien against the Kelterborns:

- a. Oakland County: December 20, 2011 for the 2010 income taxes in the amount of \$127,470.98; March 27, 2012 for unpaid civil penalties in the amount of \$263,207.31; January 27, 2015 for the 2012 income taxes in the amount of \$134,848.75; and April 29, 2015 for the 2013 income taxes in the amount of \$11,668.49.
- b. Huron County: September 28, 2012 for the 2009 and 2010 income taxes in the amount of \$162,828.04.

37. The State of Michigan filed a Notice of State Tax Lien against the Kelterborns on October 13, 2015 in the amount of \$44,820.19 and on January 27, 2016 in the amount of \$11,013.12 with the Oakland County Register of Deeds. Both Notices of State Tax Lien are for unpaid individual income taxes.

38. Additionally, the Kelterborns personally guaranteed Evergreen's debt owed to Huntington as the successor in interest to FirstMerit Bank, the successor in interest to Citizens Bank. In connection with their personal guarantees, the Kelterborns granted a mortgage on the property located at 2304 W. Frances Road, Mt. Morris, Michigan (the "Mt. Morris Property"), along with an assignment of rents from that property. The mortgage and assignment of rents were recorded on June 8, 2009 with the Genesee County Register of Deeds.

39. Effective March 30, 2016, FirstMerit and the Kelterborns entered into a forbearance agreement extending the maturity date on the Huntington debt to March 30, 2017. The Debtors acknowledge that the current principal balance due on the Huntington debt is approximately \$75,000 and that the current applicable interest rate is 6% per annum.

40. In addition to providing housing, Birchwood provides many nursing and ancillary services to its residents such as dietary and nutritional services, behavioral services and the administration of medication. Based on the relative costs associated with the various expenses at the Birchwood homes, approximately 11% of the revenue is allocable to rent with the balance dedicated to nursing and associated ancillary services.

41. Prior to the Petition Date, Huntington issued a notice of default and requirement to make rent payments in connection with the Mt. Morris Property.

42. As a result of Evergreen's default on its installment agreement with the IRS along with the accrual of additional past due liabilities and the Kelterborns' substantial tax debt, Evergreen's management team and the Kelterborns, individually, determined it

was necessary to file for protection under Chapter 11 to restructure the business operations and to address the tax liabilities.

43. The Chapter 11 process will afford Evergreen and the Kelterborns the breathing space necessary to continue operations while extensively reviewing all aspects of its business for opportunities to improve its cash flow and to ensure that all obligations are brought and remain current.

THE PRE-PETITION ASSETS

44. As of the Petition Date, Evergreen estimates that it has approximately \$138,483.00 in collectable accounts receivable, its primary asset, and approximately \$5,000.00 in equipment and office furniture and supplies.

45. The Kelterborns receive monthly social security benefits in the combined amount of approximately \$4,000. The IRS is currently levying the Kelterborns' social security benefits. In addition, the Ketterborns receive wages from Evergreen and a small wage from Hospice when funds are available. The Kelterborns have received rental income in the past from the Birchwood homes. However, due to a reduction in the census at both of the Birchwood homes there has been a significant reduction in cash flow. Neither of the Birchwood homes is able to make rental payments at this time. It is anticipated that rental payments will resume in early 2017. The Kelterborns own their personal residence in Clarkston, Michigan, a second residence in Caseville, Michigan and the two properties maintained as adult foster care facilities by Birchwood.

46. It is necessary for Evergreen to use its operating cash in order to maintain its business and the going concern value for the benefit of creditors. Moreover, Evergreen provides services to patients who require immediate and ongoing services. A potential

disruption in operations could be devastating to its ability to reorganize as it may suffer a reduction in its patient base. In addition, a disruption in services is likely to create an undue stress for Evergreen's patient base, especially those that are unable to find an alternative service provider.

47. Furthermore, it is necessary for the Kelterborns to use their ordinary income and social security benefits to meet their necessary living expenses and to preserve their tangible assets for the benefit of their creditors.

48. Moreover, it is necessary for the Kelterborns to continue to operate the adult foster care from the homes utilized by Birchwood. The residents at Birchwood contribute to Evergreen's revenue stream. Additionally, it is believed that the real property has little or no value without the ongoing operations and if liquidated may not cover the secured claims.

49. Evergreen and the Kelterborns propose to use the Cash Collateral for the payment of amounts due to employees as well as other general operating and working capital purposes in the ordinary course of Evergreen's business, including amounts paid for such purposes, which may constitute administrative expense claims under the Bankruptcy Code directly attributable to the operation of Evergreen's business and expenditures authorized by final order of the Court.

50. Evergreen and the Kelterborns have prepared and delivered to the Pre-petition Secured Creditors an initial 13 week Projected Budget for Evergreen and a monthly budget for the Kelterborns (a copy of which both are attached as **Exhibit C**).

51. Counsel for Evergreen and the Kelterborns has engaged in negotiations with the Pre-petition Secured Creditors for the consensual use of the Cash Collateral and an

agreement has been reached with the SOM and Huntington for the use of Cash Collateral. The IRS has not yet agreed to the proposed adequate protection. Evergreen and the Kelterborns proposed to provide the IRS with adequate protection payments beginning on the 25th day of October, 2016 and continuing on the 25th day of each consecutive month through the effective date as that term is defined in a confirmed plan of reorganization (the "Effective Date") in the amount of \$1,500.00, they will provide the SOM with adequate protection payments beginning on the 20th day of October, 2016 and continuing on the 20th day of each consecutive month through the Effective Date in the amount of \$500.00; and the Debtors will provide Huntington with adequate protection payments beginning on the 28th day of October, 2016 and continuing on the 28th day of each consecutive month through the Effective Date in the amount of \$1,100.00. As additional adequate protection, Evergreen and the Kelterborns will grant to the IRS, the SOM and Huntington replacement liens in their post-petition assets, including its accounts receivable and income, to the same extent, validity and in the same priority as they existed on the Petition Date, and a claim under Bankruptcy Code § 507(b) for any unpaid adequate protection payment.

52. Based on the limited exposure to the Pre-petition Secured Creditors and the need to preserve the estates, Evergreen and the Kelterborns believe that they should be permitted to use operating cash and post-petition income to fund Evergreen's ongoing operations and to meet the Kelterborns' necessary living expenses.

RELIEF REQUESTED

53. By this Motion, the Evergreen seeks an order approving an agreement pursuant to sections 105(a), 361, 362, 363, 364 and 552 of the Bankruptcy Code: (a)

authorizing it to use the Cash Collateral pursuant to the terms of the Interim Order; (b) granting and affirming to the extent necessary, the adequate protection given to the Pre-petition Secured Creditors, in respect of their interest in the Pre-Petition Collateral, and (c) scheduling the Final Hearing on this Motion.

BASIS FOR RELIEF

54. Evergreen and the Kelterborns will continue to need the use of its Cash Collateral to pay immediate ordinary and necessary expenditures required to maintain Evergreen's ongoing operations and to meet the Kelterborns' necessary living expenses. The continued operation of Evergreen will benefit the creditors of both the Evergreen Estate as well as the Estate of the Kelterborns. The expenditures will enable Evergreen and the Kelterborns to continue operating the businesses in the ordinary course, immediately fund the Evergreen's payments to its employees so that it can continue to provide services to clients, and to preserve the pre-petition collateral. Without the authority to use its Cash Collateral, Evergreen will not have working capital adequate to operate its business, pay its contractors, or maintain operations necessary to maintain its client base and the Kelterborns will not be able to meet their necessary living expenses.

55. Pursuant to Sections 363(c)(2) and 363(e) of the Bankruptcy Code, Evergreen and the Kelterborns are permitted to use the Cash Collateral as they are providing their Pre-petition Secured Creditors with adequate protection. "Adequate protection" is not defined in the Bankruptcy Code, although 11 U.S.C. § 361 sets forth three (3) non-exclusive methods of how an interest in property may be adequately protected. *E.g., Shriver*, 33 B.R. at 181.

56. Adequate protection is aptly described as “a balancing of the debtor’s and a creditor’s respective harm.” *In re Carson*, 34 B.R. 502, 505 (Bankr. D. Kan. 1983) (citation omitted). The legislative history of section 361 of the Bankruptcy Code reflects Congress’ intent to give the Court flexibility to fashion adequate protection in light of the facts and equitable considerations in each case. *E.g.*, *O’Connor*, 808 F.2d at 1396-97 (10th Cir. 1987); *In re 5-Leaf Clover Corp.*, 6 B.R. 463, 466 (Bankr. S.D. W. Va. 1980); *see also In re Harrington & Richardson, Inc.*, 48 B.R. 431, 433 (Bankr. D. Mass. 1985) (noting that adequate protection is “a flexible concept which requires a Court to make decisions on a case-by-case basis.”). For example, in determining what constitutes “adequate protection,” courts must consider not only the interests of the secured creditor whose cash collateral is affected, but the interests of all other creditors in light of the debtor’s efforts to enhance the prospects of reorganization. *O’Connor*, 808 F.2d at 1397-98.

57. To say that a secured creditor is entitled to adequate protection means that the secured creditor is entitled to assurance that the value of its lien will not decrease as a result of the automatic stay and if it does, that it will receive something as compensation for the decrease. *In re Ramco Well Service, Inc.*, 32 B.R. 525, 531 (Bankr. W.D. Okla. 1983).

58. Bankruptcy Rule 4001 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). 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's Stores*, 115 B.R. at 36.

59. Section 363(c)(2) of the Bankruptcy Code provides that a debtor may not use, sell or lease cash collateral unless "(A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and hearing, authorizes such use, sale, or lease in accordance with the provisions of this section." 11 U.S.C. § 363(c)(2). To use cash collateral without the lienholder's consent and to use other property in which a creditor claims an interest, the debtor is required to provide the lienholder with adequate protection of its interest in the cash collateral and other property in which an interest is claimed. The term "adequate protection" is defined in section 361 of the Bankruptcy Code. Adequate protection may be provided by granting a lienholder an additional or replacement lien to the extent that the stay, use, sale, lease, or grant results in a decrease in the value of such entity's interest in such property. 11 U.S.C. § 361(2).

60. Adequate protection must be determined 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 Ledgmere Land Corp.*, 116 B.R. 338, 343 (Bankr. D. Mass. 1990); *Delbridge v. Production Credit Assoc. and Federal Land Bank*, 104

B.R. 824, 827 (E.D. Mich. 1989); *In re Kain*, 86 B.R. 506, 513 (Bankr. W.D. Mich. 1988); *In re Beker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986).

61. In recognition of the Pre-petition Secured Creditors' valid perfected liens, Evergreen and the Kelterbrons are willing to grant the Pre-petition Secured Creditors' replacement liens on their post-petition assets, in the same dollar amount as the value of their liens in the Cash Collateral. In addition, the Evergreen and the Kelterbrons are prepared to provide the IRS with payments of \$1,000.00 per month and the SOM with payments of \$500.00 per month. Such replacement liens and payments constitute adequate protection in accordance with section 361 of the Bankruptcy Code.

62. The entry of the Interim Order will enable the Debtors to use cash resources to fund their immediate needs (including the funding of the Evergreen's payments to employees), as well as the longer term needs of this case as the Debtors endeavor to achieve the benefits of a successful Chapter 11 reorganization.

63. Conversely, immediate irreparable harm will occur to Evergreen and the Kelterborns, their creditors and their estates if they are not permitted to use their Cash Collateral. In the absence of a court order authorizing the use of the Cash Collateral, Evergreen and the Kelterborns will be unable to meet Evergreen's operating expenses and Evergreen will be forced to cease operations immediately, rather than continuing efforts to maximize value for the estates and their creditors. Thus, an inability to use Cash Collateral would cause a substantial and immediate harm to the detriment of all of the creditors of both estates. *In re Marion Street Partnership*, 108 B.R. 218 (Bankr. D. Minn. 1989) (debtor was authorized to use cash collateral to pay operating expenses where the debtor could not operate for even one day without the use of cash collateral).

Accordingly, Evergreen and the Kelterborns respectfully submit that the use of the Cash Collateral on the terms set forth in the Interim Order is in the best interest of the Debtors, their estates, their creditors and all parties in interest.

REQUEST FOR FINAL HEARING

64. Pursuant to Bankruptcy Rule 4001(b)(2), Evergreen requests the Court to set a date for the Final Hearing.

NOTICE

65. Pursuant to Local Rule 4001-2(c)(4) the Debtors shall serve (i) the United States Trustee for the Eastern District of Michigan; (ii) Kevin Erskine, counsel for the Internal Revenue Service; (iii) Heather Donald, counsel for the State of Michigan, Department of Treasury; (iv) Michael Ryan, counsel Huntington Bank; (v) the parties included on the Debtors' lists of twenty (20) largest unsecured creditors; and (v) those parties that have requested notice pursuant to Bankruptcy Rule 2002 with notice of this motion.

WHEREFORE, the Debtors respectfully request the Court grant the relief requested in this Motion and such other and further relief as is just and proper.

Respectfully submitted,
STROBL & SHARP, P.C.

/s/ Lynn M. Brimer
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Proposed Attorneys for Debtors and
Debtors in Possession

Date: September 28, 2016

ECF Certificate of Service

The undersigned certifies that a copy of the foregoing pleading was served upon each attorney or party of record herein by electronic means and on all Parties on the list of Debtors' 20 largest creditors on September 28, 2016.

By: _____
Lynn M. Brimer (P 43291)

EXHIBIT A
IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In Re:

EVERGREEN HEALTH
SERVICES, INC.

Case No. 16-53329
Chapter 11
Hon. Maria L. Oxholm

Debtor.

INTERIM ORDER APPROVING AGREEMENT ON AN EXPEDITED BASIS (A)
AUTHORIZING USE OF OPERATING CASH; (B) GRANTING ADEQUATE
PROTECTION; AND (C) SCHEDULING A FINAL HEARING ON THE MOTION

Upon consideration of the Motion for Entry of an Interim Order (the "Interim Order") Approving Agreement on an Expedited Basis (a) Authorizing Evergreen and the Kelterborns, Pursuant to Sections 105(a), 361, 362, 363, 364 and 552 of Title 11 of the United States Code (the "Bankruptcy Code"), Rule 4001(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Local Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Eastern District of Michigan (the "Local Rules"), to use Cash Collateral, (b) Granting Adequate Protection, and (c) Scheduling a Final Hearing on this Motion (the "Final Hearing")(the "Motion"), filed by Evergreen Health Services, Inc. ("Evergreen") and Richard and Janis Kelterborn (the "Kelterborns") (Collectively Evergreen and the Kelterborns shall be referred to as the "Debtors") as more fully described in the Motion; and upon consideration of the Affidavit of Janis Kelterborn, President of Evergreen (the "Kelterborn Affidavit"), sworn to on September 22, 2016; and the Court having jurisdiction pursuant to sections 157 and 1334 of title 28 of the United States Code to consider the Motion and the relief requested therein; and venue being proper in this

Court pursuant to sections 1408 and 1409 of title 28 of the United States Code; and it appearing that no other or further notice need be provided; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtor, its creditors, and all parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion and attested to in the Kelterborn Affidavit establish just cause for the relief granted herein, it is therefore;

THE COURT HEREBY FINDS:

A. On September 28, 2016 (the "Petition Date"), the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtors have continued in possession of their property and Evergreen has continued to operate its business and the Kelterborns have continued to function as Debtors-in-Possession, pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. There has been no request for the appointment of a Chapter 11 trustee or examiner, and no Official Committee of Unsecured Creditors has been appointed.

B. Debtors require the use of its Cash Collateral for the maintenance and preservation of their assets, for the operation of its business in the ordinary course, and for payment of the expenses attendant thereto and for the Kelterborns to meet their necessary living expenses.

C. The relief requested in the Motion is necessary, essential and appropriate for the continued operation of Evergreen's business and the management and preservation of its assets, and is otherwise necessary to avoid immediate and irreparable harm to the Debtor's estate pending a final hearing on the Motion.

D. The Internal Revenue Service, the State of Michigan, Department of Treasury, and Huntington Bank have secured claims against the Debtors.

E. Huntington Bank has a secured first priority secured claim on the property located at 2304 W. Frances Road, Mt. Morris, Michigan 48458 in the amount of \$72,589.11 for principal and interest as of September 29, 2016. The Debtors have agreed to the priority, amount and validity of the Huntington Bank secured claim.

F. Pursuant to Local Rule 4001-2(c)(4) the Debtors have served (i) the United States Trustee for the Eastern District of Michigan; (ii) the Internal Revenue Service (the "IRS"); (iii) the State of Michigan (the "SOM"); (iv) Huntington Bank; (v) the parties included on the Debtors list of twenty (20) largest unsecured creditors; (vi) those parties that have requested notice' pursuant to Bankruptcy Rule 2002 with notice of this motion.

G. The SOM and Huntington have stipulated to the entry of this order.

H. On the basis of the above and foregoing, it is in the best interests of the Debtors' estates that the Debtors be authorized to use the Cash Collateral subject to and on the terms and conditions of this Interim Order.

I. The Court has jurisdiction over this Case and the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This Interim Order is entered in a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(M).

In light of the foregoing, IT IS HEREBY ORDERED BY THE COURT as follows:

1. The Motion is GRANTED.

2. Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to such terms in the Motion.

3. *Authorization to Use Cash Collateral.* The Debtors are hereby authorized to use Cash Collateral subject to the terms of this Interim Order. The Debtors may use

Cash Collateral for necessary operating expenses and the Kelterborns' necessary living expenses in the amounts described in the 13-week cash flow and Kelterborns' budget attached to the Motion as **Exhibit C**, as may be modified, supplemented, or extended from time to time upon the written agreement of the Debtor and the Prepetition Secured Creditors (as so modified, supplemented or extended, the "Budget"). Debtor's use of the Cash Collateral shall not exceed the following weekly amounts per **Exhibit C** only until the earlier date of the final hearing or the date that this Interim Order would become a final order. The Cash Collateral shall not be used for any other purpose or in any amounts in excess of the amounts described in the weekly cash flow and Kelterborns' budget without the written consent of the Prepetition Secured Creditors and without further approval of the Court. The Debtors are authorized to use Cash Collateral only to pay necessary operating expenses, which include, but are not limited to: payment of current taxes incurred after the Petition Date; personal property taxes incurred after the Petition Date; payroll after the Petition Date; fees of professionals, subject to appropriate Court approval; rent; supplies and materials; insurance premiums; necessary maintenance; utilities; and other ordinary course charges necessary for Evergreen's operations, including the fees required by 28 U.S.C. §1930, and to meet the necessary living expenses of the Kelterborns.

4. *Adequate Protection.* The IRS, the SOM and Huntington are granted replacement liens in the Post-Petition Date assets of the Debtors, including accounts receivable, in the same extent, validity and priority as they existed on the Petition Date to the extent of the diminution their collateral caused by Debtors' use of the Cash Collateral. No liens are granted in any Chapter 5 causes of action or their proceeds

hereby by the Debtors to the Prepetition Secured Creditors. *The IRS shall receive adequate protection payments in the amount of \$1,500.00 per month beginning on the 25th day of October 2016 and continuing on the 25th day of each consecutive month through the Effective Date; the SOM shall receive adequate protection payments on the amount of \$500.00 per month commencing on the 20th day of October 2016 and continuing on the 20th day of each consecutive month through the Effective Date; and Huntington shall receive \$1,100 as adequate protection payments beginning on the 28th day of October 2016 and continuing on the 28th day of each consecutive month through the Effective Date. In addition, to protect the IRS, the SOM and Huntington from any diminution in the value of their collateral, each Prepetition Secured Creditor shall have an administrative expense claim under Bankruptcy Code § 507(b) for any unpaid adequate protection payments. In the event the Debtors fails to make any of the adequate protection payments as set forth in this paragraph, the respective creditor whose payment has been defaulted shall provide notice thereof to counsel for the Debtors as set forth below. Upon the failure of the Debtors to cure such default within thirty (30) days of notice, Debtors' right to use cash collateral under this Order and the Final Order shall cease upon the filing of an Affidavit of Default by the respective creditor.*

5. *The Huntington Claim.* Huntington Bank shall have an allowed secured first priority claim on the property located at 2304 W. Frances Road, Mt. Morris, Michigan 48458 in the amount of \$72,589.11, for principal and interest, as of September 29, 2016. Any subsequently appointed Trustee or Committee of Unsecured Creditors shall have 21 days for the date of appointment to file an objection to the amount, priority or validity of the Huntington claim.

6. *Reservation of Rights.* Other than as set forth in paragraph 5 with respect to the Debtor's rights as to the Huntington claim, this Interim Order shall in no way limit the rights of the Debtors, any official unsecured creditors committee or any other party in interest to investigate and/or challenge the validity and/or priority of the liens in the Prepetition Collateral, or the rights of the Prepetition Secured Creditors to seek additional adequate protection or to assert its rights and claims against the Debtors and any third parties.

7. *Notice.* Within 24 hours of the entry of this Interim Order, the Debtors shall serve by first class U.S. mail, postage prepaid, a copy of the Motion and all attachments including this Interim Order upon the following: (i) the United States Trustee for the Eastern District of Michigan; (ii) the IRS, (iii) the SOM; (iv) Huntington; (v) the parties included on the Debtors' list of twenty (20) largest unsecured creditors; and (vi) those parties that have requested notice pursuant to Bankruptcy Rule 2002.

8. The deadline to file an objection to the proposed order is fourteen (14) days from the entry of the order, except that an official committee may file objections within fourteen (14) days after it is served with the entered order. If an objection is timely filed, the final hearing will be held. If no objection is timely filed, the interim or preliminary order may become a final order. Any objection to the continued effectiveness of this Interim Order or to a final order under similar terms to those terms set forth herein shall be in writing and shall be filed with the Court and served by overnight delivery on each of the follow persons or entities:

(a) Counsel for the Debtor: Strobl & Sharp, P.C., 300 E. Long Lake Rd., Ste. 200, Bloomfield Hills, MI 48304. Attention: Lynn Brimer;

(b) Counsel for the IRS: United States Department of Justice, 211 W Fort St., Ste. 2001, Detroit, MI 48226. Attention: Kevin Erskine, Assistant US Attorney;

(c) Counsel for the SOM: State of Michigan Department of Attorney General, 3030 W. Grand Blvd, #10-200, Detroit, MI 48202. Attention: Heather Donald, Assistant Attorney General.

(d) Counsel for Huntington Bank: Michael Ryan, Kus Ryan & Associates, 2851 High Meadow Cir., Ste. 120, Auburn Hills, MI 48326-2790.

(e) Office of the United States Trustee, 211 W. Fort Street, Suite 700, Detroit, Michigan 48226.

8. *Final Hearing.* No objection will be considered unless timely filed and served. A final hearing on the Motion will be held on the ___ day of _____, 2016 at _____, ___ .m., as the same may be continued or adjourned by the Bankruptcy Court. If no objection is timely filed, this Interim Order shall become a Final Order and no hearing shall be conducted

9. This Court shall retain jurisdiction over any and all matters arising from or related to the interpretation or implementation of this Interim Order.

EXHIBIT B

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In Re:

EVERGREEN HEALTH
SERVICES, INC.

Case No. 16-
Chapter 11
Hon.

Debtor.

In Re:

RICHARD KELTERBORN
and JANIS KELTERBORN

Case No. 16-
Chapter 11
Hon.

Debtors.

(Joint Administration Requested)

AFFIDAVIT OF JANIS KELTERBORN, PRESIDENT OF EVERGREEN HEALTH SERVICES, INC., IN SUPPORT OF MOTION OF THE DEBTOR FOR ENTRY OF ORDER APPROVING AGREEMENT ON AN EXPEDITED BASIS PURSUANT TO SECTIONS 105(a), 361, 362, 363, 364, AND 552 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 4001 FOR ENTRY OF INTERIM AND FINAL ORDERS (A) AUTHORIZING USE OF CASH COLLATERAL, (B) GRANTING ADEQUATE PROTECTION, AND (C) SCHEDULING A FINAL HEARING ON THE MOTION

STATE OF MICHIGAN)
) SS:
COUNTY OF OAKLAND)

Janis Kelterborn, being duly sworn, deposes and says:

1. I am the President of Evergreen Health Services, Inc. (“Evergreen”), a Michigan corporation. In my capacity as President, I am familiar with the day-to-day operations, business affairs, corporate structure and books and records of Evergreen. I am authorized to submit this affidavit (the “Affidavit”) on behalf of Evergreen.

2. I make this Affidavit to assist the Court and other parties in understanding the circumstances that compelled Evergreen to file its Motion For Entry of Order Approving

Agreement on an Expedited Basis Pursuant to Sections 105(a), 361, 362, 363, 364, and 552 of the Bankruptcy Code and Bankruptcy Rule 4001(b) for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral; (B) Granting Adequate Protection; and (C) scheduling a Final Hearing on the Motion (the “Motion”).

3. Evergreen is operating its business and managing the property as a Debtor-in-Possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for an appointment of a trustee and no official committee has yet been appointed by the Office of the United States Trustee.

4. Except as otherwise indicated, all facts set forth in this Affidavit as based on my personal knowledge, information supplied to me by other contracted workers hired by Evergreen and/or professionals retained by the Evergreen, information I learned through review of relevant documents, or in my opinion based upon my experience and knowledge of the Evergreen’s operations and financial conditions. If I were called upon to testify, I could and would testify competently to the facts set forth herein.

GENERAL BACKGROUND

5. On September 28, 2016 (the “Petition Date”), Evergreen commenced with this Court a voluntary case under Chapter 11 of the Bankruptcy Code. Evergreen is authorized to continue to operate its business and the Kelterborns are conducting their affairs as a Debtors-in-Possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. No request for appointment of a Chapter 11 trustee or examiner has been made and, as of the date hereof, no official committee has been appointed.

THE DEBTOR'S NEED FOR CASH COLLATERAL

7. Evergreen is a corporation that provides home healthcare services to patients in the Southeast Michigan area. Evergreen operates a business office in Clarkston, Michigan, and two on site marketing offices in senior living housing in Flint, Michigan. Evergreen currently employs a labor force of approximately 32 employees inclusive of its office staff, medical employees and visiting medical personnel.

8. In 2008 and 2009, Evergreen suffered liquidity constraints as a result of the timeliness of Medicaid reimbursements.

9. As a result, Evergreen became behind in payment of its employment related taxes owed to various taxing authorities.

10. In 2011, the IRS agreed to accept an installment payment arrangement with Evergreen for the past due employment taxes in the amount of \$10,000.00 per month. Evergreen serviced the installments and the ongoing employment taxes until 2015.

11. In 2012, the SOM filed a Notice of State Tax Lien. The SOM agreed to accept an installment payment arrangement with Evergreen for past due Use and Withholding taxes. To date, Evergreen is current on its installment payment arrangement with the SOM. The SOM is currently owed \$8,420.20.

12. In 2015, Evergreen's business slowed and it again suffered liquidity constraints. Evergreen was unable to continue its installment payment arrangement with the IRS and became behind in ongoing payments.

13. In 2015 and 2016, the IRS filed Notices of Federal Tax liens against Evergreen for unpaid taxes with a combined unpaid balance in the approximate amount in excess of \$228,952.13.

14. Consequently, the management team determined it was necessary to file for protection under Chapter 11 to restructure the business and obligations.

15. The Chapter 11 process affords Evergreen and the Kelterborns the breathing space necessary to continue operations while extensively reviewing all aspects of Evergreen's business for opportunities to improve its cash flow.

16. It is necessary for Evergreen to use its Operating Cash in order to maintain its business and the going concern value for the benefit of its creditors. Of immediate urgency is the need to fund Evergreen's payroll, which is due by Tuesday, October 4, 2016.

17. Evergreen proposes to use the Cash Collateral for the payment of employees and other general operating and working capital purposes in the ordinary course of Evergreen's business to ensure that client relationships are protected.

18. The Debtors have prepared an initial 13 Week Projected Budget and Monthly Budget for the Kelterborns and such budgets have been reviewed by the Debtors and its management. The amounts detailed in the 13 Week Projected Budget and Kelterborns' budget, attached to the Motion as **Exhibit C**, are necessary in order to avoid immediate and irreparable harm.

19. The Debtors, the IRS, the SOM and Huntington Bank have engaged in negotiations for the consensual use of the Cash Collateral and an agreement has been reached between the Debtors, the SOM and Huntington Bank for the use of Cash Collateral. The Debtors propose to provide the IRS with adequate protection payments in the amount of \$1,500.00 per month, the SOM with adequate protection payments in the amount of \$500.00, and Huntington Bank with adequate protection payments in the amount of \$1,100.00 per month

20. As additional adequate protection, the Debtors are willing to grant to the IRS, the SOM and Huntington Bank replacement liens in Debtors' post-petition assets, including its accounts receivable, to the same extent, validity and in the same priority as they existed on the Petition Date, and a claim under Bankruptcy Code § 507(b).

21. The Debtors have and will continue to need the use of the Cash Collateral to pay immediate necessary ordinary course of business expenditures. These expenditures will enable the Debtors to continue operating their business in the ordinary course, immediately fund its payroll so that it can continue paying its contractors, and maintain and safeguard the Pre-Petition Collateral. The Debtors' use of the Operating Cash is also necessary to maintain the value of the Pre-Petition collateral and to provide Evergreen with working capital necessary to maintain operation of the business. Absent the use of Cash Collateral, Evergreen does not have working capital adequate to operate its business, or for the Kelterborns to pay necessary living expenses.

22. Immediate irreparable harm will occur to Debtors, their creditors and their estates if Debtors are unable to use Cash Collateral. In the absence of a court order authorizing the use of the Cash Collateral, Evergreen will be unable to meet its payroll and other operating expenses and will be forced to cease operations immediately, rather than continuing efforts to maximize value for its estate and creditors.

23. Pursuant to 28 USC § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

FURTHER THE DEPONENT SAYETH NOT


Janis Kelterborn
President

EXHIBIT C

Evergreen Health Services Inc.

16-

13 Week Cash Flow

	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Week 12	Week 13	Total
Bank Deposits	\$ 24,858	\$ 29,377	\$ 33,897	\$ 33,897	\$ 24,858	\$ 31,637	\$ 33,897	\$ 31,637	\$ 33,897	\$ 33,897	\$ 33,897	\$ 33,897	\$ 33,897	\$ 413,543
Average Weekly Cash Required														
Payroll Including Taxes (Federal & State)	\$ 20,393	\$ 20,373	\$ 22,645	\$ 22,645	\$ 20,373	\$ 22,645	\$ 22,645	\$ 21,009	\$ 22,645	\$ 22,645	\$ 22,645	\$ 22,645	\$ 22,645	\$ 285,953
Medical Reimbursement	\$ 1,199	\$ 1,417	\$ 1,635	\$ 1,635	\$ 1,199	\$ 1,526	\$ 1,635	\$ 1,526	\$ 1,635	\$ 1,635	\$ 1,635	\$ 1,635	\$ 1,635	\$ 19,947
Systems Software	\$ 1,480				\$ 1,480				\$ 1,480					\$ 5,920
Patient Related	\$ 318	\$ 318	\$ 318	\$ 318	\$ 318	\$ 318	\$ 318	\$ 318	\$ 318	\$ 318	\$ 318	\$ 318	\$ 318	\$ 4,134
Insurance - Lia & W Comp	\$	\$ 1,548				\$ 1,520				\$ 1,520				\$ 6,136
Employee Related	\$ 128	\$ 128	\$ 128	\$ 128	\$ 128	\$ 128	\$ 128	\$ 128	\$ 128	\$ 128	\$ 128	\$ 128	\$ 128	\$ 1,664
Office Related	\$ 758	\$ 758	\$ 758	\$ 758	\$ 758	\$ 758	\$ 758	\$ 758	\$ 758	\$ 758	\$ 758	\$ 758	\$ 758	\$ 9,854
Rent	\$ 5,887.00				\$ 6,503.00				\$ 6,503.00					\$ 25,396
Utilities & Phone	\$ 1,216			\$ 1,216				\$ 1,216					\$ 1,216	\$ 4,864
Adequate Protection Payments	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 1,100	\$ 2,000	\$ 2,000	\$ 2,000	\$ 1,100	\$ 2,000	\$ 9,300
Professional Fees	\$ 4,000	\$ 4,000	\$ 4,000	\$ 4,000	\$ 4,000	\$ 4,000	\$ 4,000	\$ 4,000	\$ 4,000	\$ 4,000	\$ 4,000	\$ 4,000	\$ 4,000	\$ 12,000
Total Weekly Cash Used	\$ 25,492	\$ 30,429	\$ 31,484	\$ 27,800	\$ 30,759	\$ 26,895	\$ 31,484	\$ 26,055	\$ 33,467	\$ 27,004	\$ 31,484	\$ 26,584	\$ 36,231	\$ 385,168
Net Cash Available	\$ (634)	\$ (1,051)	\$ 2,413	\$ 6,097	\$ (5,901)	\$ 4,742	\$ 2,413	\$ 5,582	\$ 430	\$ 6,893	\$ 2,413	\$ 7,313	\$ (2,334)	\$ 28,376
Cash Available	659	(392)	2,021	8,118	2,216	6,959	9,372	14,954	15,384	22,277	24,690	32,003	29,669	

MONTHLY BUDGET
Richard R. and Janis E. Meredith-Kelterborn

INCOME

Gross Wages	\$ 19,527.80	
Social Security	\$ 4,680.48	
Less Deductions		<u>\$ 4,547.15</u>

TOTAL INCOME **\$ 19,661.13**

EXPENSES

Mortgage	\$ 3,945.00
Taxes/Insurance/Maintenance/Dues	\$ 2,730.00
Utilities	\$ 740.00
Food/Housekeeping	\$ 1,850.00
Clothing/Laundry/Dry Cleaning	\$ 475.00
Personal Care	\$ 275.00
Medical/Dental	\$ 250.00
Transportation	\$ 40.00
Entertainment	\$ 200.00
Life Insurance	\$ 118.00
Health Insurance	\$ 917.80
Vehicle Insurance	\$ 312.00
State Sales Tax	\$ 75.00
Installment Vehicle Payments	\$ 1,798.00
Alimony	\$ 1,072.00
Professional Fees	<u>\$ 1,000.00</u>

TOTAL EXPENSES **\$ 15,797.80**

TOTAL MONTHLY NET INCOME **\$ 3,863.33**

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