

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION - DETROIT**

IN THE MATTER OF:

PC Acquisition, LLC, *et al.*,¹

Bankruptcy Case No. 16-53191
Honorable Phillip J. Shefferly
Chapter 11

Debtors.

**ORDER (I) GRANTING DEBTORS' FIRST DAY MOTION FOR ENTRY
OF AN INTERIM ORDER AUTHORIZING THE DEBTORS TO USE
CASH COLLATERAL AND GRANTING ADEQUATE PROTECTION;
(II) SCHEDULING A FINAL HEARING; AND
(III) GRANTING RELATED RELIEF**

Upon the First Day Motions for Entry of an Order Authorizing the Debtors to Use Cash Collateral and Granting Adequate Protection (collectively, the “Cash Collateral Motions”), wherein Debtors PC Acquisition, LLC (“PC Acquisition”), Battle Creek Realty, LLC (“Battle Creek”), St. John/Battle Creek Owner, LLC (“St. John”) and Denmark Management Company (“Denmark Management,” and together with PC Acquisition, Battle Creek and St. John, the “Debtors”) each moved this Court for, among other things, the entry of an interim order authorizing their respective use of cash collateral on an interim basis (the “Interim Relief”),

¹ The Debtors in these jointly administered cases include PC Acquisition, LLC (Bankr. Case No. 16-53191), Battle Creek Realty, LLC (Bankr. Case No. 16-53192), St. John/Battle Creek Owner, LLC (Bankr. Case No. 16-53193), Denmark Management Company (Bankr. Case No. 16-53194), and Denmark Services, LLC (Bankr. Case No. 16-53195).

and after notice and an initial interim hearing on the Interim Relief on October 14, 2016, and a continued interim hearing on October 19, 2016, the entry by this Court of an order (the “Initial Interim Cash Collateral Order”) on October 19, 2016 granting the Interim Relief on an interim basis through and including October 31, 2016 and continuing the hearing on the Initial Interim Cash Collateral Order to October 31, 2016, and a further interim hearing on October 31, 2016 (collectively, the “Initial Hearings”), and after the Cash Collateral Hearings, the Court finds, subject to the terms and conditions hereof, that (i) the Interim Relief requested in the Cash Collateral Motions as provided herein is in the best interests of the Debtors, their estates and their creditors; (ii) the Interim Relief as provided herein is necessary to provide the Debtors with sufficient cash and liquidity to avoid immediate and irreparable harm during the term of this Order; (iii) in accordance with Rule 4001(a), (b) and (d) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), due and proper notice of the Cash Collateral Motions and the Initial Hearings has been given, and no other or further notice is necessary with respect to the Interim Relief; and (iv) upon the record herein, after due deliberation thereon, good and sufficient cause exists for the entry of this agreed interim order granting the Interim Relief as set forth herein (the “Agreed Interim Order”). Therefore,

THE COURT HEREBY FINDS AND CONCLUDES that:

Background

A. On September 25, 2016 (the “Petition Date”), each of the above-captioned Debtors commenced these Chapter 11 cases (the “Chapter 11 Cases”) by filing voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, as amended (the “Bankruptcy Code”), in the United States Bankruptcy Court for the Eastern District of Michigan, Southern Division (Detroit) (the “Court”).

B. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these Chapter 11 Cases.

C. No official committee of unsecured creditors has been appointed in the Chapter 11 Cases (“Official Committee”).

D. D. Mark Krueger is the “responsible person” for the Debtors.

E. The Court has jurisdiction, pursuant to 28 U.S.C. §§ 157(b) and 1334, over the Chapter 11 Cases, and over the persons and property affected hereby. Consideration of the Cash Collateral Motions constitutes a core proceeding as defined in 28 U.S.C. § 157(b)(2). The statutory predicates for the relief sought herein are Sections 105, 361, 363 and 507 of the Bankruptcy Code, and Bankruptcy Rules 4001(a), (b) and (d) and 6003.

Prepetition Secured Loans Provided by the Debtors' Lenders
PCI Macomb Loan to PC Acquisition

F. Without prejudice to the rights of any other party (but subject to the limitations thereon described below in Paragraph 18), each of the Debtors acknowledge and stipulate that:

(i) On or about December 26, 2012, Park Capital Investments, LLC ("PCI") and PC Acquisition, Denmark Services and certain non-debtor affiliates entered into a loan agreement (as amended, modified or supplemented, the "First PC Loan Agreement"), pursuant to which PCI made two loans to PC Acquisition:

- (1) loan in the original principal amount of \$500,000 (the "PC Acquisition Loan") to acquire the PC Acquisition Property (defined below), evidenced by a promissory note dated April 9, 2013 (the "PC Acquisition Note"); and
- (2) loan in the original principal amount of \$2,382,697.62 for a line of credit ("PC Acquisition Line of Credit", together with the PC Acquisition Loan are collectively referred to as the "First PC Acquisition Loans"), evidenced by a Promissory Note dated January 31, 2013 ("PC Acquisition Line of Credit Note", together with the PC Acquisition Note are collectively referred to as the "First PC Acquisition Notes").

(ii) The PC Acquisition Loan is secured by a mortgage made by PC Acquisition in favor of PCI dated March 28, 2013 and recorded on April 12, 2013 in Liber 22038, Page 453 in the Macomb County Register of Deeds ("PC Acquisition Mortgage"), wherein PC Acquisition granted PCI a

mortgage interest over real property situated in Clinton Township, Michigan, commonly known as 23540 Reynolds Court, Clinton Township, Michigan 48036 (“PC Acquisition Property”).

(iii) The First PC Acquisition Loans are secured by a security agreement made by PC Acquisition in favor of PCI dated January 31, 2013 (as amended, the “PC Acquisition Security Agreement”), wherein PC Acquisition granted PCI a security interest in all of the personal property owned by PC Acquisition and the proceeds thereof, including without limitation Cash Collateral (defined below) (collectively, the “PCI Macomb Collateral”). PCI’s security interest was perfected by the filing of a UCC Financing Statement dated January 31, 2013 as Document No. 2013016642-7 (the “PC Acquisition Financing Statement”). The First Loan Agreement, First PC Acquisition Notes, PC Acquisition Mortgage, PC Acquisition Security Agreement, PC Acquisition Financing Statement, and all other documents that evidence and secure the First PC Acquisition Loans, as assigned, are collectively referred to as the “First PC Acquisition Loan Documents.”

(iv) On or about October 8, 2014, pursuant to a loan agreement and existing loan amendments by and between PCI, PC Acquisition and non-debtor affiliate Bluffton Properties, LLC (the “Second Loan Agreement”),

PCI made another loan to PC Acquisition in the original principal amount of \$3,150,000.00 (the “Second PC Acquisition Loan”, together with the First PC Acquisition Loans are collectively referred to as the “PC Acquisition Loans”), evidenced by a promissory note dated October 8, 2014 (the “Second PC Acquisition Note”, together with the First PC Acquisition Notes are collectively referred to as the “PC Acquisition Notes”).

(v) The Second PC Acquisition Loan is secured by the PC Acquisition Security Agreement. PCI’s security interest was perfected by the filing of the PC Acquisition Financing Statement. The Second PC Acquisition Note, PC Acquisition Security Agreement, and all other documents that evidence and secure the Second PC Acquisition Loan, as assigned, are collectively referred as the “Second PC Acquisition Loan Documents.”

(vi) The First PC Acquisition Loan Documents and the Second PC Acquisition Loan Documents, as assigned, are collectively referred to as the “PC Acquisition Loan Documents.”

(vii) Pursuant to an Assignment of Mortgage dated April 29, 2016 and recorded on May 11, 2016 in the Macomb County Register of Deeds, Allonges dated April 29, 2016, and Omnibus Assignment of Loan

Documents dated April 29, 2016, the PC Acquisition Loan Documents were assigned to lender PCI Macomb, LLC (“PCI Macomb”).

(viii) On or about May 10, 2016, PCI Macomb notified PC Acquisition of its default under the PC Acquisition Loan Documents as a result of its failure to make timely payments of the PC Acquisition Loans.

(ix) As of the Petition Date, the total amount due and owing of the PC Acquisition Loans is no less than \$9,472,034.86, together with accrued interest, default interest, late charges, advances, attorneys’ fees and costs, and all other sums provided for under the PC Acquisition Loan Documents.

PCI CC Loan to St. John and Battle Creek

G. Without prejudice to the rights of any other party (but subject to the limitations thereon described below in Paragraph 18), each of the Debtors acknowledge and stipulate that:

(i) On or about July 12, 2012, PCI, St. John and Battle Creek entered into a Loan Agreement (as amended, modified or supplemented from time to time, the “St. John/Battle Creek Loan Agreement”), pursuant to which PCI made a loan to St. John and Battle Creek, jointly and severally, in the original principal amount of \$2,080,000.00 (“St. John/Battle Creek Original Loan”), evidenced by a promissory note dated July 12, 2012 (“St. John/Battle Creek Original Note”).

(ii) On July 19, 2012, PCI made an additional loan to St. John and Battle Creek, jointly and severely, in the original principal amount of \$570,000.00 (“St. John / Battle Creek Additional Loan”, together with the St. John / Battle Creek Original Loan are collectively referred to as the (“St. John / Battle Creek Loans”), evidenced by a promissory note dated July 19, 2012 (“St. John / Battle Creek Additional Note”, together with the St. John / Battle Creek Original Note are collectively referred to as the “St. John / Battle Creek Notes”).

(iii) The St. John / Battle Creek Loans are secured by a mortgage made by St. John in favor of PCI dated July 12, 2012 and recorded July 18, 2012 as Instrument No. 5186978 in the Clinton County Register of Deeds, as amended by an amended and restated mortgage dated July 19, 2012 and recorded August 20, 2012 as Instrument No. 5188370 in the Clinton County Register of Deeds (“St. John Mortgage”), wherein St. John granted PCI a mortgage interest over real property situated in St. John, Michigan, commonly known as 905 W. Gibbs St., St. John, Michigan 48879 (“St. John Property”).

(iv) The St. John / Battle Creek Loans are secured by a mortgage made by Battle Creek in favor of PCI dated July 12, 2012 and recorded July 26, 2012 in Liber 3720, Page 502 in the Calhoun County Register of Deeds,

as amended by an amended and restated mortgage dated July 19, 2012 and recorded August 17, 2012 in Liber 3726, Page 538 in the Calhoun County Register of Deeds (“Battle Creek Mortgage”), wherein Battle Creek granted PCI a mortgage interest over 3 parcels of real properties which include vacant land and mobile home parks situated in Battle Creek, Michigan (collectively, “Battle Creek Properties”), namely:

- 953 E. Michigan Avenue, Battle Creek, Michigan 49014
[Avonwood Mobile Home Park]
- 897 E. Michigan Avenue, Battle Creek, Michigan 49014
[Valley Garden]
- 1030 E. Columbia Avenue, Battle Creek, Michigan 49014
[Baker Mobile Home Park]
- E. Columbia Avenue, Battle Creek, Michigan 49014
[vacant]
- N. Raymond Road, Battle Creek, Michigan 49014
[vacant]

(v) The St. John / Battle Creek Loans are secured by a security agreement made by St. John and Battle Creek in favor of PCI dated July 12, 2012 (as amended, the “St. John / Battle Creek Security Agreement”), wherein St. John and Battle Creek granted PCI a security interest in all of the personal property owned by St. John and Battle Creek and the proceeds thereof, including without limitation Cash Collateral (defined below) (collectively, the “PCI CC Collateral”). PCI’s security interest was

perfected by the filing of a UCC Financing Statement dated July 13, 2012 as Document No. 2012100825-6 and UCC Financing Stated dated July 13, 2012 as Document No. 2012100824-4 (“St. John / Battle Creek Financing Statement”).

(vi) The St. John / Battle Creek Notes, St. John Mortgage, Battle Creek Mortgage, St. John / Battle Creek Security Agreement, St. John / Battle Creek Financing Statement, and all other documents that evidence and secure the St. John / Battle Creek Loans, as assigned, are collectively referred as the “St. John / Battle Creek Loan Documents.”

(vii) Pursuant an Assignment of Mortgage dated April 29, 2016 and recorded on May 11, 2016 in the Clinton County Register of Deeds, Assignment of Mortgage dated April 29, 2016 and recorded May 12, 2016 in the Calhoun County Register of Deeds, Allonges dated April 29, 2016, and Omnibus Assignment of Loan Documents dated April 29, 2016, the St. John / Battle Creek Loan Documents were assigned to lender PCI Calhoun/Clinton, LLC (“PCI CC”).²

(viii) On or about May 10, 2016, PCI CC notified St. John and Battle Creek of their default under the St. John / Battle Creek Loan Documents as a

² PCI, PCI Macomb and PCI CC are referred to collectively herein as the “PCI Lenders” and each as a “PCI Lender.”

result of their failure to make timely payments of the St. John / Battle Creek Loans.

(ix) As of the Petition Date, the total amount due and owing of the St. John / Battle Creek Loans was no less than \$3,904,532.68, together with accrued interest, default interest, late charges, advances, attorneys' fees and costs, and all other sums provided for under the St. John / Battle Creek Loan Documents.

PCI Loan to Denmark Management

H. Without prejudice to the rights of any other party (but subject to the limitations thereon described below in Paragraph 18), each of the Debtors acknowledge and stipulate that:

(i) On or about September 26, 2013, pursuant to the Second Amendment of Loan Agreement dated September 26, 2013, PCI made a loan to Denmark Management in the original principal amount of \$2,000,000.00 ("Denmark Management Loan"), evidenced by a Promissory Note dated September 27, 2013 ("Denmark Management Note").

(ii) The Denmark Management Loan is secured by a Security Agreement made by Denmark Management in favor of PCI dated September 26, 2013 ("Denmark Management Security Agreement"), wherein Denmark Management granted PCI a security interest in all of the personal property

owned by Denmark Management and the proceeds thereof, including without limitation Cash Collateral (defined below) (collectively, the “PCI Collateral,” and together with the PCI Macomb Collateral and the PCI CC Collateral, the “PCI Prepetition Collateral”). PCI’s security interest was perfected by the filing of a UCC Financing Statement dated September 27, 2013 as Document No. 2013140623-8 (“Denmark Management Financing Statement”).

(iii) The Denmark Management Note, Denmark Management Security Agreement, Denmark Management Financing Statement, and all other documents that evidence and secure the Denmark Management Loan, as assigned, are collectively referred as the “Denmark Management Loan Documents.”³

(iv) On or about May 10, 2016, PCI notified Denmark Management of its default under the Denmark Management Loan Documents as a result of its failure to make timely payments of the Denmark Management Loan.

(v) As of May 15, 2016, the total principal amount due and owing of the Denmark Management Loan is no less than \$2,587,304.09, together

with accrued interest, default interest, late charges, advances, attorneys' fees and costs, and all other sums provided for under the Denmark Management Loan Documents.

I. Without prejudice to the rights of any other party (but subject to the limitations thereon described below in Paragraph 18), each of the Debtors acknowledge and stipulate that, in accordance with the terms of their respective PCI Loan Documents, each of them are truly and justly indebted to their respective PCI Lender, without defense, counterclaim or offset of any kind, and that as of the Petition Date, (i) each of the Debtors are liable to their respective PCI Lender in respect of loans made, and certain accrued and unaccrued interest, costs and fees, pursuant to the PCI Loan Documents, in the amounts no less than the amounts set forth above in paragraphs F, G and H (exclusive of certain interest and fees accrued and unpaid thereon and other costs, expenses and indemnities), and (ii) pursuant to the PCI Prepetition Loan Documents, each of the Debtors are liable to their respective PCI Lender for accrued and unpaid interest, commitment fees, attorneys' and advisors' fees, expenses and other out-of-pocket expenses, costs and

(cont'd)

³ The PC Acquisition Loan Documents, the St. John / Battle Creek Loan Documents and the Denmark Management Loan Documents are referred to herein collectively as the "PCI Loan Documents."

indemnities (collectively, subsections (i) and (ii) of this section are the “Prepetition Obligations”).

J. Without prejudice to the rights of any other party (but subject to the limitations thereon described below in Paragraph 18), each of the Debtors acknowledges and stipulates that under the applicable PCI Loan Documents and as security for repayment of their respective Prepetition Obligations, each of the Debtors granted to their respective PCI Lender security interests in, and liens upon, the respective PCI Prepetition Collateral.

K. Without prejudice to the rights of any other party (but subject to the limitations thereon described below in Paragraph 18), each of the Debtors acknowledges and stipulates that the PCI Lenders’ security interests in, and liens on, the respective PCI Prepetition Collateral were properly perfected and are valid and enforceable liens on and security interests in the PCI Prepetition Collateral. Each of the Debtors further acknowledges that their respective cash on hand and cash equivalents as of the Petition Date that constitute proceeds of their respective PCI Lender’s Prepetition Collateral are cash collateral of such respective PCI Lender within the meaning of Bankruptcy Code § 363(a) (“Cash Collateral”). The PCI Lenders are each entitled, pursuant to Bankruptcy Code §§ 361 and 363(e), to adequate protection of their respective interests in the PCI Prepetition Collateral, including for the use of Cash Collateral, the use, sale or lease of the PCI

Prepetition Collateral other than Cash Collateral, and for the imposition of the automatic stay.

L. Without prejudice to the rights of any other party (but subject to the limitations thereon described below in Paragraph 18), in accordance with Section 552(b) of the Bankruptcy Code, the PCI Prepetition Collateral includes, without limitation, all proceeds, products and profits of the PCI Prepetition Collateral, whether existing before or after the commencement of the Chapter 11 Cases. “Available Cash” shall consist of each of the Debtors’ cash and cash equivalents that are subject to the existing liens of their respective PCI Lender. Without prejudice to the rights of any other party (but subject to the limitations thereon described below in Paragraph 18), each of the Debtors acknowledges and stipulates that, as of the Petition Date, all of their respective Available Cash is the proceeds, products and profits of the PCI Prepetition Collateral.

M. Without prejudice to the rights of any other party (but subject to the limitations thereon described below in Paragraph 18), each of the Debtors acknowledges and agrees that all of their Available Cash held on the Petition Date together with any cash or cash equivalent proceeds of the PCI Prepetition Collateral received on or after the Petition Date shall constitute Cash Collateral.

N. Without prejudice to the rights of any other party (but subject to the limitations thereon described below in Paragraph 18), each of the Debtors

acknowledges and agrees that (i) the Prepetition Obligations constitute legal, valid and binding obligations of the Debtors, enforceable in accordance with the terms of the PCI Prepetition Loan Documents (other than in respect of the stay of enforcement arising from Section 362 of the Bankruptcy Code), (ii) no offsets, defenses or counterclaims exist to the currently outstanding Prepetition Obligations, (iii) PCI Lenders' liens on and security interests in the PCI Prepetition Collateral are valid, enforceable, perfected and not subject to avoidance, subordination or challenge; (iv) no portion of the Prepetition Obligations is subject to avoidance, subordination or disallowance pursuant to the Bankruptcy Code or applicable non-bankruptcy law; and (v) PCI Lenders' security interests in, and liens on, the PCI Prepetition Collateral have priority with regard to all other liens and are subject to the liens granted herein.

O. Notwithstanding anything to the contrary herein, each of the Debtors reserve all rights, pursuant to Section 506(a) of the Bankruptcy Code to challenge the extent of the value of any of the PCI Lenders' interests in their respective PCI Prepetition Collateral.

The Debtors' Need for Use of Cash Collateral

P. An immediate need exists for each of the Debtors to have access to the PCI Lenders' respective Cash Collateral in order to continue their operations, meet their payroll and other necessary, ordinary course business expenditures,

administer and preserve the value of their estates, and maintain adequate access to cash in amounts customary and necessary for companies of this size in this industry to maintain customer and vendor confidence. The ability of each of the Debtors to finance their operations by way of working capital requires their access to cash resources, the absence of which would immediately and irreparably harm each of the Debtors, their estates, and their creditors. Each of the Debtors require these cash resources to operate their businesses, preserve the confidences of vendors, suppliers and homeowners, and to preserve the value of their businesses.

Q. Each of the Debtors has requested that, pursuant to Section 363(c) of the Bankruptcy Code, the PCI Lenders consent to each of the Debtors' use of their respective Cash Collateral and each of the Debtors' use, sale and lease of other PCI Prepetition Collateral pursuant to the terms and conditions of this Agreed Interim Order during the Interim Cash Collateral Period (as defined below). Each of the Debtors acknowledges and agrees that the PCI Lenders are entitled to adequate protection pursuant to Sections 361 and 363(e) of the Bankruptcy Code with respect to their respective Cash Collateral and other PCI Prepetition Collateral, including, without limitation, to compensate the PCI Lenders for any loss or diminution in the value of their respective Cash Collateral or other Prepetition Collateral resulting from each Debtors' use of their respective Cash Collateral, the

use, sale or lease of other PCI Prepetition Collateral and the imposition of the automatic stay during the Interim Cash Collateral Period.

R. Subject to the entry, and continued effectiveness, of this Agreed Interim Order, the PCI Lenders have consented to each of the Debtors' use of their respective Cash Collateral and use, sale or lease of other Prepetition Collateral during the Interim Cash Collateral Period. The foregoing notwithstanding, nothing in this Agreed Interim Order shall be construed as limiting or prohibiting the PCI Lenders from objecting to any relief sought by any of the Debtors in these Chapter 11 Cases, including, without limitation, any debtor-in-possession financing or any motion for the further use of their respective Cash Collateral, other than the entry of this Agreed Interim Order and any Final Order entered on the Cash Collateral Motion ("Final Order"), provided such final order is on terms acceptable to the PCI Lenders.

S. The Interim Relief requested herein is, subject to the terms and conditions hereof, necessary, essential and appropriate for the continued operations of each of the Debtors' businesses and the preservation of their estates and the value of each of the Debtors' businesses.

T. Good and sufficient cause has been shown for the entry of this Agreed Interim Order. Among other things, the entry of this Agreed Interim Order is in the best interests of the Debtors, their creditors and their estates because it will

enable the Debtors to (i) continue operating their businesses and avoid an immediate shutdown of operations, (ii) meet obligations for payroll, necessary expenditures, and other operating expenses, (iii) pay necessary fees and professional expenses under the Bankruptcy Code and make payments authorized under other orders entered by the Court, (iv) obtain needed goods and services, (v) retain vendor, homeowner and employee confidence, and (vi) maintain adequate cash resources customary and necessary for businesses of this size, thereby avoiding immediate and irreparable harm to the Debtors' estates.

U. Prior notice of the Interim Hearing for the entry of the Agreed Interim Order and the Interim Relief requested in the Cash Collateral Motions was given by the Debtors to (i) the office of the United States Trustee for the Eastern District of Michigan; (ii) all known parties asserting liens on the Debtors' assets; (iii) counsel to the PCI Lenders; and (iv) the parties listed on the Debtors' list of twenty (20) largest unsecured creditors (the "Initial Notice Parties"). Requisite, due and proper notice has been provided in accordance with Bankruptcy Rule 4001, which notice is sufficient for all purposes under the Bankruptcy Code and no other notice need be provided for entry of this Agreed Interim Order.

V. The Debtors have requested immediate entry of this Agreed Interim Order pursuant to Bankruptcy Rule 6004(g), and the PCI Lenders have consented

to the Interim Relief contained herein. Good and sufficient cause has been shown for the entry of this Agreed Interim Order.

NOW, based upon the Cash Collateral Motions of the Debtors and the record before the Court with respect to the Cash Collateral Motions made by the Debtors, the PCI Lenders and the Committee at the Interim Hearing, and good cause appearing therefor,

IT IS ORDERED, ADJUDGED AND DECREED effective immediately that:

1. The Cash Collateral Motions are GRANTED with respect to the Interim Relief on the terms and conditions set forth herein and the findings and conclusions above are true in all respects and incorporated by reference in this Agreed Interim Order.

2. So long as no breach of the termination provisions pursuant to Paragraph 14 hereof has occurred, this Agreed Interim Order shall remain in effect through the conclusion of the final hearing on the Cash Collateral Motion authorizing the Debtors' continued use of Cash Collateral (the "Final Hearing") (such period, the "Interim Cash Collateral Period"). The Debtors' ability and authorization to use the PCI Lenders' Cash Collateral during the Interim Cash Collateral Period shall at all times be subject to the termination provisions of Paragraph 14 of this Agreed Interim Order.

Good Faith, Reliance and Conduct

3. The Debtors, the PCI Lenders and their respective agents, advisors and employees have acted in good faith in negotiating, consenting and agreeing to the Debtors' use of the PCI Lenders' respective Cash Collateral and use, sale and lease of other Prepetition Collateral as contemplated and provided by this Agreed Interim Order. The negotiation of the terms and provisions of this Agreed Interim Order have been conducted at arm's length, and the Court finds that such terms and conditions are fair and reasonable, under the circumstances, and reflect the Debtors' exercise of reasonable business judgment consistent with the Debtors' fiduciary duties.

4. To the extent any PCI Lender is not secured in the Prepetition Collateral, it shall not have Replacement Liens (as defined below) with regard to any use of Cash Collateral which is not found to be Cash Collateral pursuant to Section 363 of the Bankruptcy Code.

5. Based on the findings set forth in this Agreed Interim Order, and the PCI Lenders' reliance in good faith on the terms thereof, if any of the provisions of this Agreed Interim Order are hereafter modified, vacated or stayed by an order of this Court or another court, such stay, modification or vacation shall not affect the validity and enforceability of any claim, lien, security interest or priority authorized for the PCI Lenders' benefit that is granted or attaches prior to the

effective date of such stay, modification or vacation, and any use of Cash Collateral or use, sale or lease of other Prepetition Collateral by the Debtors pursuant to this Agreed Interim Order prior to the effective date of such modification, stay or vacation shall be governed in all respects by the original provisions of this Agreed Interim Order.

Authorized Use of PCI Lenders' Cash Collateral

6. Cash Collateral. The Debtors are hereby authorized to use Cash Collateral during the Interim Cash Collateral Period, subject to the conditions and limitations set forth herein.

7. Authorized Uses of Cash Collateral. The Debtors may use Cash Collateral during the Interim Cash Collateral Period, as limited by the Budgets described in Paragraph 11 herein, to pay only the ordinary and reasonable expenses of operating its businesses which are necessary to avoid immediate and irreparable harm.

**Adequate Protection in Favor of PCI Lenders for the Debtors'
Use of Cash Collateral**

8. Adequate Protection. On account of the Debtors' use of Cash Collateral, their use, sale or lease of the other Prepetition Collateral and the imposition of the automatic stay pursuant to Section 362 of the Bankruptcy Code, in each case during the Interim Cash Collateral Period, the PCI Lenders are hereby granted the following adequate protection with respect to such PCI Lenders'

respective Prepetition Collateral, pursuant to Sections 361 and 363(e) of the Bankruptcy Code:

(a) Interest, Fees and Costs. [reserved]

(b) Replacement Collateral and Replacement Liens. The Debtors hereby grant, assign and pledge to the PCI Lenders valid, perfected and enforceable liens and security interests (the “Replacement Liens”) in all of the Debtors’ property created from and after the Petition Date (excluding subchapter 5 causes of action) and all of the Debtors’ right, title and interest in, to and under the Prepetition Collateral, to the extent same existed on the Petition Date and the proceeds, products, offspring, rents and profits of all of the foregoing, all as may otherwise be described in the PCI Loan Documents (collectively, the “Replacement Collateral”).

(c) Automatic Perfection of Replacement Liens. The Replacement Liens granted under this Agreed Interim Order shall be valid, perfected and enforceable against the Replacement Collateral as of the Petition Date without further filing or recording of any document or instrument or the taking of any further actions, and shall not be subject to dispute, avoidance or subordination. Notwithstanding the automatic perfection of the Replacement Liens granted pursuant to this Agreed Interim Order, the PCI Lenders are hereby authorized, but not required, to file financing statements and other similar instruments in any

jurisdiction, and to take any other action they deem necessary or appropriate in order to validate, evidence or perfect such Replacement Liens. A certified copy of this Agreed Interim Order may, in the PCI Lenders' discretion, be filed with any filing offices in addition to, or in lieu of, such financing statements or other similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Agreed Interim Order for filing. The Debtors are authorized and directed to execute and deliver all instruments and documents prepared by the PCI Lenders.

(d) Priority of Replacement Liens. The Replacement Liens granted hereunder shall be subject and subordinate in priority to (i) any liens, security interests and other encumbrances, existing as of the Petition Date, and (ii) any liens, security interests and other encumbrances that attach to the Replacement Collateral after the Petition Date, that are senior, valid, perfected, and enforceable, that are granted with the PCI Lenders' consent or that are otherwise senior to the pre-petition liens in favor of PCI Lenders. The Replacement Liens shall be valid and enforceable against any trustee appointed in the Debtors' Chapter 11 Cases, or in any subsequent proceeding affecting the Debtors, including any conversion of any of the Debtors' Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code. The Replacement Liens granted to any PCI Lender shall have the same

priority in each of their respective Debtor's property as any prepetition liens against their respective Debtor's property.

(e) Taxes and U.S. Trustee Fees. The Debtors shall and hereby agree to pay all post-petition federal, state and county taxes and quarterly fees required to be paid pursuant to 28 U.S.C. § 1930(a)(6), as and when due, regardless of whether such taxes or fees appear on the Budget.

The Budget

9. Interim Budget. Attached as **Exhibit A** to the Stipulation (ECF No.69) filed on October 31, 2016 by the Debtors, the PCI Lenders and the U.S. Trustee, providing for the entry of this Agreed Interim Order, are separate budgets for each of the Debtors (each "Budget" and collectively, the "Budgets") for the period from **October 1, 2016** through and including **December 31, 2016**, which have been prepared by the Debtors. The Budgets reflect, on a line-item basis, anticipated cash receipts and expenditures for each respective Debtor and includes all necessary and required expenses which each Debtor expects to incur during the term of its Budget. Each of the Debtors are authorized to use the Cash Collateral only for payment of such items as is set forth in the respective Budget, with allowance for a ten percent (10%) aggregate and line-item variance on a rolling forward, cumulative basis (such variance to be calculated on a two-week basis) and also subject to the terms and conditions set forth in this Agreed Interim Order.

Any disbursements by any Debtor other than for budgeted amounts that cause more than a 10% variance as set forth above shall constitute a termination event in accordance with the provisions of this Agreed Interim Order unless the PCI Lenders consent to those changes in writing, with such consent not being unreasonably withheld, or the Court enters an Order, after notice to the PCI Lenders and a hearing. The PCI Lenders are not required to advance to the Debtors any amounts that may be available for lending under the PCI Loan Documents.

10. For the avoidance of doubt, during the Interim Cash Collateral Period, and notwithstanding anything set forth in the Budgets, the Debtors shall not be authorized to use any Cash Collateral to make any payments, disbursements or distributions to D. Mark Krueger (“Mr. Krueger”), any of Mr. Krueger’s immediate or extended family members, Jim Snyder, Dale Campbell, Jeff Franowitz, Camco Management, Artisan Realty, K&S Holding, LLC, and Atlantis Capital, LLC.

Disclosure Required of the Debtors

11. Required Disclosure. As additional adequate protection for the benefit of the PCI Lenders, the Debtors shall provide the PCI Lenders the following information during the Interim Cash Collateral Period:

(a) Weekly Reports. On each Wednesday, no later than 10:00 p.m. (applicable Eastern Time), a variance report reflecting, on a line-item basis, the actual cash receipts and disbursements for the preceding week, the dollar variance and the percentage variance of such actual receipts and disbursements from those reflected in the Budget for that week for each Debtor, in form, detail and substance reasonably satisfactory to the PCI Lenders.

(b) Payroll Roster. Prior to each payroll to be made pursuant to the Budgets, the Debtors will provide an updated “payroll roster” to the PCI Lenders listing the payroll date, the names of the employees to be paid, the amounts to be paid to each employee, and the park/entity and Debtor for which they primarily work.

(c) Communications Regarding Any Asset Sale, Post-Petition Financing or Plan of Reorganization. Weekly oral status reports concerning any asset sale, post-petition financing, or Plan of Reorganization involving any of the Debtors.

(d) Requests for Additional Information. Within two (2) business days or such other time period agreed to at the time of the request by the PCI Lenders, the Debtors shall, to the extent possible, provide such requested non-privileged reports, analysis, documents and information as reasonably requested; and

12. If the Debtors fail to deliver the reports, documents, information and analysis to the PCI Lenders by the dates and times required under Paragraph 13, the PCI Lenders may request that the Court further restrict the Debtors' use of the Cash Collateral, and the Debtors agree that the PCI Lenders' request may be heard in an expedited manner by the Court with at least two (2) business days' written notice to the Debtors and pending order of the Court.

13. Access and Inspection. Upon written notice by any PCI Lender to Debtors and their counsel, the Debtors shall, within three (3) business days, permit any of the PCI Lenders agents, consultants, advisors, auditors and employees (collectively, "Consultants") full and reasonable access, during normal business hours, to inspect, review and photocopy or otherwise duplicate (as applicable) the Debtors' books, records and place of business to verify the existence, condition, value and location of property in which the PCI Lenders hold liens or security interests. The Debtors shall permit, without material disruption to the operation of the Debtors' business, Consultants full access to examine the respective corporate, financial and operating records, make copies thereof, inspect the assets, properties, operations and affairs of the Debtors, visit any or all of the offices of the Debtors to discuss such matters with their officers, independent auditors (and the Debtors hereby authorize such independent auditors to discuss such matters with the Consultants), and the Debtors shall cooperate with the Consultants in all respects.

The Debtors shall provide the PCI Lenders and the Consultants, with commercial reasonable promptness, such financial information concerning the Debtors' cash flow projections, business plan, and other aspects of operations as such parties may reasonably request from time to time except matters and documents that are privileged.

Termination of the Debtors' Ability to Use Cash Collateral

14. Termination Events. A PCI Lender(s) may seek an expedited hearing on no less than two (2) business days written notice seeking to terminate the Debtors' ability to use the respective PCI Lender's Cash Collateral during the Interim Cash Collateral Period: (i) immediately upon the occurrence of any event described in Subparagraphs (a), (c), (d), (e), (f), (g), (h), or (j) below, or (ii) if any event described in any other subparagraph below shall occur, two (2) business days after a PCI Lender delivers written notice to the Debtors that an event of default has occurred, unless such event of default has been fully cured within such two (2) business day period:

(a) the expiration of the Agreed Interim Order as provided in Paragraph 2 hereof, other than due to the entry of the Final Order or any other order of the Court approving the Debtors' use of Cash Collateral, without a particular PCI Lender's prior written consent to such extension of the Interim Cash Collateral Period;

(b) the Debtors' failure to comply with any of the material terms or conditions of this Agreed Interim Order;

(c) the modification or extension of this Agreed Interim Order, without providing the PCI Lenders a minimum of five (5) business days prior written notice of the hearing on such modification or extension;

(d) [Omitted]

(e) [Omitted]

(f) (i) the dismissal of any of the Debtors' Chapter 11 Cases or conversion of any of these cases to a case under Chapter 7 of the Bankruptcy Code; (ii) the Debtors file a motion, or other pleading, seeking dismissal of any of the Chapter 11 Cases under Section 1112 of the Bankruptcy Code, or otherwise; or (iii) a trustee under Chapter 11 of the Bankruptcy Code, a responsible officer or an examiner with enlarged powers relating to the operation of any of the Debtors' businesses (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106 of the Bankruptcy Code shall be appointed or elected in any of the Chapter 11 Cases;

(g) (i) any of the Debtors shall assert in any pleading filed in any court that any material provision of this Agreed Interim Order is not valid and binding for any reason, or (ii) any material provision of this Agreed Interim Order shall for any reason, other than the entry of the Final Order, or any other order of

this Court approving the Debtors' use of Cash Collateral, cease to be valid and binding without the prior written consent of a particular PCI Lender;

- (h) any lapse of insurance on any of the Debtors' properties;
- (i) [Omitted]
- (j) [Omitted]
- (k) [Omitted]

Upon the occurrence of a termination event with respect to any PCI Lender, as set forth above (and including any applicable cure period), such PCI Lender's consent to the Debtors' use of such PCI Lender's Cash Collateral shall automatically terminate and the Debtors may not use, sell or lease such Cash Collateral and shall segregate and account for any such Cash Collateral in their possession, custody or control, and shall hold such PCI Lender's Cash Collateral for the exclusive benefit of such PCI Lender, subject to further order of the Court.

15. Additional Relief. Notwithstanding any provision hereof, this Agreed Interim Order is without prejudice to each PCI Lender's rights to seek any other or additional relief in, or relating to, the Chapter 11 Cases, including, without limitation, relief from the automatic stay pursuant to Section 362 of the Bankruptcy Code, and the filing of objections and/or claims relating to motions for adequate protection, or the use, sale, lease or other disposition of their respective Prepetition Collateral, Replacement Collateral or Cash Collateral. Each PCI Lender expressly

reserves its rights to claim that the provisions of this Agreed Interim Order do not constitute “adequate protection” for the purposes of Sections 361 and 363(c) and (e) of the Bankruptcy Code, or otherwise, and to request additional protection over and above the provisions of this Agreed Interim Order.

16. No Waiver. Except as expressly set forth herein, no rights of any PCI Lender are waived pursuant to, or modified by, this Agreed Interim Order. Each PCI Lender’s rights and remedies pursuant to the PCI Loan Documents and this Agreed Interim Order shall be cumulative, and the exercise or waiver of any such right or remedy shall not preclude or inhibit the exercise of any additional rights or remedies. Any PCI Lender’s failure, at any time or times hereafter, to require strict performance by the Debtors of any provision of this Agreed Interim Order shall not waive, affect or diminish any right of that PCI Lender thereafter to demand strict compliance and performance herewith. Any failure or delay on any PCI Lender’s part in the exercise of any rights, remedies, claims, powers, benefits or privileges under the PCI Loan Documents or this Agreed Interim Order shall not constitute a waiver by that PCI Lender, subject the PCI Lender to any liability to any entity under this Agreed Interim Order or preclude any other or further exercise of any such right or remedy or the exercise of any other right or remedy. No PCI Lender’s rights or remedies under this Agreed Interim Order shall be deemed to have been suspended or waived by the PCI Lender unless such

suspension or waiver is in writing and directed to the Debtors or the Court specifying such suspension or waiver.

17. No Reliance. In the negotiation of this Agreed Interim Order, the PCI Lenders did not, and during the Interim Cash Collateral Period, the PCI Lenders do not, have any obligation or duty to any other entity to exercise any of their rights, remedies, claims, powers, benefit or privileges. No entity may rely upon any delay or failure or in any way seek to assert a defense to any obligation owing to the PCI Lenders based on the PCI Lenders' failure or delay to exercise their rights or remedies.

Additional Provisions Governing Rights of the Parties

18. Challenge Rights. The findings contained in recital paragraphs of this Agreed Interim Order shall be binding upon all parties in interest, including without limitation, the Debtors and any Official Committee, except if and to the extent (a) a party in interest (other than the Debtors but including any Official Committee) has filed an adversary proceeding challenging the amount, validity, enforceability, perfection, priority, or avoidability (under Chapter 5 of the Bankruptcy Code or otherwise) of the PCI Loan Obligations or PCI Lenders' liens on the Prepetition Collateral in respect thereof, or otherwise asserting any claims or causes of action against the PCI Lenders relating to the PCI Loan Obligations, on behalf of the Debtors' estate, no later than **December 31, 2016** unless such

deadline is extended by order of the Court by agreement of the parties or for good cause shown, and (b) the Court subsequently enters a final judgment in favor of the plaintiff in any such timely and properly filed adversary proceeding. For all purposes in the Chapter 11 Cases and any subsequent Chapter 7 case, the PCI Lenders' liens on the Prepetition Collateral shall be deemed legal, valid, binding, perfected, not subject to defense, counterclaim, offset of any kind, subordination and otherwise unavoidable, and the PCI Lenders, the PCI Loan Obligations and PCI Lenders' liens on the Prepetition Collateral shall not be subject to any other or further challenge by any party in interest seeking to exercise the rights of the Debtors' estates, including without limitation, any successor thereto (including, without limitation, any Chapter 7 Trustee). If any such adversary proceeding is properly commenced as of such date, the findings contained in the recital paragraphs of this Order shall nonetheless remain binding on all parties in interest except to the extent that such findings were expressly challenged and modified by final judgment in such adversary proceeding. The foregoing shall not prohibit any Chapter 7 Trustee from exercising any surcharge powers available under the Bankruptcy Code.

19. Marshalling. Notwithstanding any other term or condition hereof, or of the PCI Loan Documents, the PCI Lenders shall not be subject to the equitable

doctrine of “marshalling” or any similar doctrine with respect to any of the Prepetition Collateral or the Replacement Collateral.

Miscellaneous

20. Binding Effect. The provisions of this Agreed Interim Order shall amend and replace the Initial Interim Cash Collateral Order, nunc pro tunc to the Petition Date, and be binding upon and inure to the benefit of the Debtors, the PCI Lenders, any Official Committee, and any trustee subsequently appointed for the estate of the Debtors, whether in the Chapter 11 Cases or in the event of a conversion to a case under Chapter 7 of the Bankruptcy Code. Such binding effect is an integral part of this Agreed Interim Order.

21. Force and Effect, Jurisdiction. In the event that any order dismissing the Chapter 11 Cases is entered pursuant to Section 1112 of the Bankruptcy Code, or otherwise, (a) the PCI Loan Obligations, Replacement Liens and Superpriority Claim granted to or for the benefit of the PCI Lenders pursuant to this Agreed Interim Order shall continue in full force and effect and shall maintain their priorities as provided in this Agreed Interim Order until all of the PCI Loan Obligations shall have been indefeasibly paid in full, and (b) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing such claims and liens.

22. Titles and Headings. The titles and headings in this Agreed Interim Order are and shall be without substantive meaning or content of any kind whatsoever.

23. Time of the Essence. Time is of the essence as to all terms, conditions and provisions set forth in this Agreed Interim Order.

24. Amendment and Modification. The terms and conditions in this Agreed Interim Order may not be amended, altered, modified or affected without the prior written consent of the Debtors and PCI Lenders; provided, however, any PCI Lender and the Debtors may make non-material modifications or amendments to the Budget (including, without limitation, extending the Budgets) relating to that PCI Lender's Cash Collateral in a writing signed by both parties without further order of this Court, and all actions taken pursuant to such modified Budget shall be and hereby are expressly authorized hereunder.

25. Immediate Effect. This Agreed Interim Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable immediately upon execution thereof.

NOTICE OF FINAL HEARING

26. Final Hearing. Counsel for the Debtors shall provide a copy of this Agreed Interim Order to (i) the Initial Notice Parties, (ii) any counsel to the Committee, and (iii) any party that has filed a request for notice in the Chapter 11

Cases within 24 hours of the entry of this Order. Such notice shall constitute good and sufficient notice of the Final Hearing. Any party in interest who objects to the use of Cash Collateral or this Agreed Interim Order becoming a Final Order shall file written objections with the Clerk of the Bankruptcy Court no later than **November 14, 2016 by 5:00 p.m.** prevailing Eastern time, which objections shall be served so that the same are received on or before such date by: (a) counsel to the Debtors; (b) counsel to any Official Committee; (c) the U.S. Trustee; and (d) counsel to the PCI Lenders, Dykema Gossett PLLC, 10 South Wacker Drive, Suite 2300, Chicago, Illinois 60606, Attn: Jonathan E. Aberman. Any objections by creditors or other parties in interest to any of the provisions of this Agreed Interim Order shall be deemed waived unless filed and served in accordance with the notice on or before the close of business on such date. **A hearing to approve the Final Order shall take place on November 28, 2016, at 2:00 p.m. (Eastern Time).**

27. Conflict. To the extent of any conflict between the terms of this Agreed Interim Order and any other order, this Agreed Interim Order and any final cash collateral order shall control.

28. Retention of Jurisdiction. The Court has and will retain jurisdiction to enforce this Agreed Interim Order according to its terms.

Signed on October 31, 2016

/s/ Phillip J. Shefferly

Phillip J. Shefferly

United States Bankruptcy Judge