

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

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| In re:   | : |                                |
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| ROTECH HEALTHCARE INC., <u>et al.</u> , <sup>1</sup> | : | Chapter 11                     |
|  | : |                                |
|  | : | Case No. <u>13-10741 (PJW)</u> |
|  | : | Jointly Administered           |
| Debtors.   | : |                                |
|  | : | <i>Related Docket No. 14</i>   |
|  | : |                                |
|  | X |                                |

**INTERIM ORDER (I) AUTHORIZING DEBTORS TO (A) OBTAIN POST-PETITION FINANCING PURSUANT TO 11 U.S.C. §§ 105, 361, 362 AND 364 AND (B) UTILIZE CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363, (II) GRANTING ADEQUATE PROTECTION TO PRE-PETITION SECURED PARTIES PURSUANT TO 11 U.S.C. §§ 361, 362, 363, AND 364, (III) SCHEDULING FINAL HEARING PURSUANT TO BANKRUPTCY RULES 4001(B) AND (C); (IV) ESTABLISHING RELATED NOTICE REQUIREMENTS; AND (V) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “Motion”), dated April 8, 2013, of Rotech Healthcare Inc. (“Rotech”) and its affiliated debtors, as debtors and debtors in possession (collectively, with Rotech, the “Debtors”) in the above-captioned chapter 11 cases (the “Cases”), pursuant to sections 105, 361, 362, 363 and 364 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (as amended, the “Bankruptcy Code”), Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the “Bankruptcy Rules”) and Local Bankruptcy Rules 2002-1, 4001-2 and 9013-1(m), seeking, among other things:

- (I) authorization for Rotech (the “Borrower”) to obtain post-petition financing (the “Financing”) of up to \$30,000,000 (the “DIP Facility”) and the term loans made thereunder, the “DIP Loans”) on the terms and conditions set forth in this Interim Order and the Debtor-in-

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<sup>1</sup> The Debtors in these chapter 11 cases are listed in Schedule 1. The address of the corporate headquarters of the Debtors and the mailing address of each of the Debtors is 2600 Technology Drive, Suite 300, Orlando, FL 32804.

Possession Credit Agreement (substantially in the form attached to the Motion as Exhibit B, and as hereafter amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the “DIP Credit Agreement,”<sup>2</sup> together with all agreements, documents, certificates and instruments delivered or executed from time to time in connection therewith, each as hereafter amended, restated, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof and hereof, collectively, the “DIP Documents”),<sup>3</sup> among Rotech, Silver Point Finance, LLC (“Silver Point”), acting as the administrative and collateral agent (in such capacities, the “DIP Agent”), and the lenders party thereto from time to time (in such capacity, the “DIP Lenders”) including Silver Point and Capital Research and Management Company (acting individually or through one or more of its affiliates or funds) (collectively, in such capacity, the “Backstop DIP Lenders”), secured by the Collateral (as defined below), and authorization for each Debtor other than the Borrower to guarantee Borrower’s obligations under the DIP Facility and to grant security interests in the Collateral;

(II) authorization to use the proceeds of the DIP Facility extended to the Borrower as expressly provided in the DIP Documents and consistent with the Budget (as defined below) (A) to pay costs, fees and expenses of the DIP Agent and the Backstop DIP Lenders as provided for in this Interim Order and the DIP Documents, (B) to provide working capital and for other general corporate purposes of the Debtors and (C) to pay administration costs of these Cases and claims or amounts approved by the Bankruptcy Court;

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

<sup>3</sup> The DIP Documents include, without limitation, the Debtor-in-Possession Collateral Agreement between the Debtors and the DIP Agent, and the Debtor-in-Possession Guaranty Agreement between the Debtors and the DIP Agent.

(III) authorization for the Debtors to execute and deliver the DIP Credit Agreement and the other DIP Documents and to perform such other and further acts as may be necessary or appropriate in connection therewith, including the creation of the DIP Cash Collateral Account (as defined below);

(IV) that the Court grant to the DIP Lenders and the DIP Agent in respect of the DIP Loans, for the benefit of the DIP Agent, the DIP Lenders and any other parties referred to in the Security Documents with respect to the respective DIP Obligations, in accordance with the relative priorities as set forth more fully below, and subject and subordinate to the Carve-Out (as defined below), the following:

- (a) pursuant to Bankruptcy Code section 364(c)(1), joint and several superpriority allowed administrative expense claim status in the Cases;
- (b) pursuant to Bankruptcy Code section 364(c)(2), a first priority lien on all assets of the Debtors, including all property of their respective estates in the Cases, whether real or personal, tangible or intangible, now owned or hereafter acquired and all proceeds, profits, rents, accessions and substitutes thereof, that is not subject to (i) valid, perfected and non-avoidable liens in existence as of the Petition Date or (ii) valid liens in existence as of the Petition Date that are perfected thereafter to the extent permitted by section 546(b) of the Bankruptcy Code;
- (c) pursuant to Bankruptcy Code section 364(d), a first priority, senior priming lien on and security interest in all of the Debtors' assets (other than Excluded Assets and subject to Permitted Liens (other than the Pre-Petition Liens) (each as defined in the DIP Documents)), including all property of

their respective estates in the Cases, whether real or personal, tangible or intangible, now owned or hereafter acquired and all proceeds, profits, rents, accessions and substitutions thereof, that is subject to (i) valid, perfected and non-avoidable liens in existence as of the Petition Date or (ii) valid liens in existence as of the Petition Date that are perfected thereafter to the extent permitted by section 546(b) of the Bankruptcy Code;

(V) authorization for the DIP Agent to terminate the DIP Credit Agreement and to terminate the Debtors' use of Cash Collateral upon the occurrence and continuance of an Event of Default (as defined in the DIP Credit Agreement) on terms specified herein and in the DIP Credit Agreement;

(VI) subject to entry of the Final Order (as defined below), authorization to grant liens to the DIP Lenders on the proceeds of the Debtors' claims and causes of action arising under sections 544, 545, 547, 548, 549 and 550 of the Bankruptcy Code (collectively, the "Avoidance Actions");

(VII) authorization for the Debtors to use, among other things, in accordance with the Budget, any cash collateral (as that term is defined in Bankruptcy Code section 363(a) and described below) (the "Cash Collateral") in which the Pre-Petition Secured Parties (as defined below) may have an interest and the granting of adequate protection to the Pre-Petition Secured Parties with respect to any diminution in value of their interests in the Pre-Petition Collateral (as defined below) arising from, inter alia, the Debtors' use of the Pre-Petition Collateral (including Cash Collateral) and the priming of the liens of the Pre-Petition Secured Parties by the DIP Facility;

(VIII) subject to and only effective upon the entry of a Final Order granting such relief, the waiver by the Debtors of any right to surcharge against the Collateral pursuant to section 506(c) of the Bankruptcy Code or otherwise;

(IX) the Court's modification of the automatic stay imposed by Bankruptcy Code section 362 to the extent necessary to implement and effectuate the terms and provisions of the DIP Documents and this Interim Order;

(X) the Court's waiver of any applicable stay (including under Bankruptcy Rule 6004) and providing for immediate effectiveness of this Interim Order;

(XI) authorization that during the period (the "Interim Period") commencing on the date of this Court's entry of this Interim Order and ending on the earlier of (a) the date this Court enters the Final Order and (b) the occurrence of the Maturity Date, a portion of the Commitments shall be borrowed by Borrower, subject to compliance with the terms, conditions and covenants contained in the DIP Documents, in an amount equal to \$25,000,000;

(XII) the scheduling of a final hearing (the "Final Hearing") to consider entry of a final order (the "Final Order") granting the relief requested in the Motion on a final basis and authorizing the balance of the borrowings under the DIP Documents on a final basis, as set forth in the Motion and the DIP Documents filed with this Court and approving the Debtors' notice with respect to the Motion.

The hearing on the Motion (the "Interim Hearing") having been held by this Court on April [9], 2013, pursuant to Bankruptcy Rules 2002, 4001(b)(2) and 4001(c)(2); and based upon all of the pleadings filed with this Court, the evidence presented at the Interim Hearing and

the entire record herein; and this Court having heard and resolved or overruled any objections to the interim relief requested in the Motion; and the Court having noted the appearances of all parties in interest; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, and creditors; and the Debtors having provided notice of the Motion as set forth in the Motion, and it appearing that no other or further notice of the Motion need be given; and after due deliberation and consideration, and sufficient cause appearing therefor:

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, that:

1. Jurisdiction. This Court has jurisdiction over these Cases, this Motion, the parties, and the Debtors' property pursuant to 28 U.S.C. §1334. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(D). Venue of the Cases and the Motion is proper under 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are Bankruptcy Code sections 105, 361, 362, 363, 364 and 507 and Bankruptcy Rules 2002, 4001, 6004, and 9014 and the applicable Local Bankruptcy Rules.

2. Notice. The notice given by the Debtors of the Motion and the Interim Hearing was the best available under the circumstances. Such notice constitutes due and sufficient notice of the Debtors' request for the interim relief granted herein and of the Interim Hearing under the circumstances and complies with Bankruptcy Rules 4001(b) and (c), such that no other or further notice is necessary or required.

3. Debtors' Stipulations. Subject to the limitations thereon contained in paragraphs 18 and 19 below, the Debtors admit, stipulate and agree that:

(a) The Pre-Petition Term Loan Credit Agreement.

(i) The Borrower, the lenders party thereto, including Silver Point (or one or more of its affiliates) (the "Term Loan Lenders"), and Silver Point, as administrative agent (in such capacity, the "Pre-Petition Term Loan Agent"), are parties to that certain Term Loan Credit Agreement, dated as of December 21, 2012 (as amended, restated, supplemented or otherwise modified from time to time, the "Pre-Petition Term Loan Credit Agreement") pursuant to which the Term Loan Lenders made term loans (the "Pre-Petition Term Loans") available to the Borrower.

(ii) The Pre-Petition Term Loans were guaranteed by certain subsidiaries of the Borrower, as guarantors (collectively, with the Borrower, the "Credit Parties").

(iii) As of the Petition Date, the outstanding aggregate principal amount of the Pre-Petition Term Loans was approximately \$23,500,000 (together with all other outstanding Obligations, as defined in the Pre-Petition Term Loan Credit Agreement, including interest, fees and expenses, the "Pre-Petition Term Loan Indebtedness").

(b) The First Lien Indenture.

(i) The Credit Parties are parties to an indenture, dated as of October 6, 2010 (as amended, restated, supplemented or otherwise modified from time to time, the "First Lien Indenture") among the Credit Parties and The Bank of New York Mellon Trust Company, N.A., as trustee (in such capacity and together with its successors in such capacity, the "First Lien Trustee"), pursuant to which the Borrower issued to noteholders (the "First Lien

Noteholders” and together with the First Lien Trustee, the Pre-Petition Term Loan Agent, and the Term Loan Lenders, the “Senior Claim Holders”) 10.75% First Lien Notes due 2015 (the “First Lien Notes” and together with the Pre-Petition Term Loans, the “Senior Claims”).

(ii) As of the Petition Date, the aggregate principal amount of First Lien Notes outstanding was \$230,000,000 (together with all other outstanding Obligations, as defined in the First Lien Indenture, including interest, fees and expenses, the “First Lien Note Indebtedness”).

(c) The Second Lien Indenture.

(i) The Credit Parties are parties to an indenture, dated as of March 17, 2011 (as amended, restated, supplemented or otherwise modified from time to time, the “Second Lien Indenture”, and together with the Pre-Petition Term Loan Agreement and the First Lien Indenture, the “Existing Agreements”) among the Credit Parties and The Bank of New York Mellon Trust Company, N.A., as trustee (in such capacity and together with its successors in such capacity, the “Second Lien Trustee”), pursuant to which the Borrower issued to noteholders (the “Second Lien Noteholders” and, together with the Second Lien Trustee, the “Second Lien Claim Holders”) 10.50% Second Lien Notes due 2015 (the “Second Lien Notes”).

(ii) As of the Petition Date, the aggregate principal amount of Second Lien Notes outstanding was \$305,225,000 (together with all other outstanding Obligations, as defined in the Second Lien Indenture, including interest, fees and expenses, the “Second Lien Note Indebtedness”, and together with the First Lien Term Loan Indebtedness and the First Lien Note Indebtedness, the “Pre-Petition Indebtedness”).



(d) Pre-Petition Collateral.

(i) To secure the Pre-Petition Indebtedness, the Credit Parties and The Bank of New York Mellon Trust Company, N.A., as collateral agent (in such capacity, the “Pre-Petition Collateral Agent”) entered into that certain Collateral Agreement, dated as of October 6, 2010, as amended and restated as of March 17, 2011, and as further amended and restated as of December 21, 2012 (as amended, and together with any ancillary collateral documents, the “Pre-Petition Collateral Agreement”),<sup>4</sup> pursuant to which the Credit Parties granted to the Pre-Petition Collateral Agent, for the benefit of the Pre-Petition Collateral Agent, the Senior Claim Holders and the Second Lien Claim Holders (collectively, the “Pre-Petition Secured Parties”), valid, binding, perfected, security interests in and liens on substantially all of the Credit Parties’ property and assets, including, without limitation, (a) all accounts, chattel paper, deposit accounts, documents, equipment, general intangibles, intellectual property, instruments, inventory, investment property, letter-of-credit rights, money and any supporting obligations related thereto; (b) the commercial tort claims described on Schedule 3.1 to the Pre-Petition Collateral Agreement and on any supplement thereto; (c) all books and records pertaining to the Collateral; (d) all property of the Credit Parties held by any Secured Party, including all property of every description, in the custody of or in transit to such Secured Party for any purpose, including safekeeping, collection or pledge, for the account of such Credit Party or as to which such Credit Party may have any right or power, including, but not limited to cash; (e) all other goods (including, but not limited to fixtures) and personal property of the Credit Parties, whether tangible or intangible and wherever located; (f) all owned or leased real estate and real property leaseholds (to the extent mortgages thereon were required to be granted under

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<sup>4</sup> Unless otherwise defined herein, capitalized terms used in this paragraph 3(d) shall have the meanings ascribed to them in the Pre-Petition Collateral Agreement.

the Pre-Petition Collateral Agreement); and (g) all proceeds of the foregoing, in each case except for certain Excluded Assets (as defined in the Pre-Petition Collateral Agreement) (collectively, the “Pre-Petition Collateral”).

(e) The Pre-Petition Indebtedness constitutes the legal, valid and binding obligations of the Credit Parties, enforceable against them in accordance with their respective terms (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), and no portion of the Pre-Petition Indebtedness is subject to avoidance, recharacterization, reduction, set off, offset, counterclaim, cross-claim, recoupment, defenses, disallowance, impairment, recovery, subordination or any other challenges pursuant to the Bankruptcy Code or applicable nonbankruptcy law or regulation by any person or entity, subject in all respects to the Pari Passu Intercreditor Agreement (as defined below) and the Junior Lien Intercreditor Agreement (as defined below), including the lien subordination and priority provisions thereof. The Debtors are jointly and severally liable to the Senior Claim Holders on account of the Senior Claims and to the Second Lien Claim Holders on account of the Second Lien Notes.

(f) The Pre-Petition Liens (as defined below) constitute legal, valid, binding, enforceable (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code) and perfected security interests and liens on the Pre-Petition Collateral, were granted to, or for the benefit of, the Pre-Petition Secured Parties, as applicable, for fair consideration and reasonably equivalent value and are not subject to defense, counterclaim, recharacterization, subordination or avoidance pursuant to the Bankruptcy Code or applicable nonbankruptcy law or regulation by any person or entity, subject in all respects to the Pari Passu

Intercreditor Agreement (as defined below) and the Junior Lien Intercreditor Agreement (as defined below), including the lien subordination and priority provisions thereof.

(g) The Pre-Petition Indebtedness and the Pre-Petition Liens are subject in all respects to that certain Junior Lien Intercreditor Agreement dated as of March 17, 2011, as amended by that certain First Amendment (the "Junior ICA Amendment") to the Junior Lien Intercreditor Agreement dated as of December 21, 2012 (as may have been amended, restated, supplemented or otherwise modified from time to time, the "Junior Lien Intercreditor Agreement"), between the Credit Parties, First Lien Trustee, Second Lien Trustee and the Pre-Petition Term Loan Agent (who joined the Junior Lien Intercreditor Agreement pursuant to the Junior ICA Amendment), pursuant to which the First Lien Trustee, the Pre-Petition Term Loan Agent and the Second Lien Trustee agreed (on behalf of themselves, the Term Loan Lenders, the First Lien Noteholders and the Second Lien Noteholders), among other things, that the liens on the Pre-Petition Collateral securing the Pre-Petition Term Loan Indebtedness (the "Pre-Petition Term Loan Liens") and the liens on the Pre-Petition Collateral securing the First Lien Note Indebtedness (the "Pre-Petition Senior Noteholder Liens") have a first priority with respect to the Pre-Petition Collateral and (ii) the liens on the Pre-Petition Collateral securing the Second Lien Note Indebtedness (the "Pre-Petition Junior Noteholder Liens", and together with the Pre-Petition Term Loan Liens and the Pre-Petition Senior Noteholder Liens, the "Pre-Petition Liens") have a second priority with respect to the Pre-Petition Collateral, subject and subordinate to the Pre-Petition Term Loan Liens and Pre-Petition Senior Noteholder Liens.

Pursuant to the terms of the Junior Lien Intercreditor Agreement, the Second Lien ~~Claim~~ <sup>Claim</sup> Noteholders ~~Holder~~ are deemed to have consented to the DIP Facility and the relief provided in this Interim Order.

(h) The Pre-Petition Term Loan Indebtedness and the First Lien Note Indebtedness are subject in all respects to that certain Pari Passu Intercreditor Agreement, dated as of March 17, 2011 (as may have been amended, restated, supplemented or otherwise modified from time to time, the "Pari Passu Intercreditor Agreement"), between the Credit Parties, the Pre-Petition Collateral Agent, the Pre-Petition Term Loan Agent (who joined the Pari Passu Intercreditor Agreement pursuant to a joinder agreement dated as of December 21, 2012) and the First Lien Trustee, pursuant to which the Pre-Petition Term Loan Agent and the First Lien Trustee agreed, among other things, that the Pre-Petition Term Loan Liens and the Pre-Petition Senior Noteholder Liens will share equal priority. Pursuant to the terms of the Pari Passu Intercreditor Agreement, the ~~Senior Claim Holders~~ Term Loan Lenders and First Lien Noteholders are deemed to have consented to the DIP Facility and the relief provided in this Interim Order.

4. Findings Regarding the Financing and Use of Cash Collateral.

- (a) Good cause has been shown for the entry of this Interim Order.
- (b) The Debtors have an immediate and critical need to obtain the Financing and to use Cash Collateral as well as other Collateral to continue the operation of their businesses. Without such funds, the Debtors will not be able to meet their payroll obligations or to pay operating and other expenses during this critical period. The ability of the Debtors to finance their operations through the incurrence of new indebtedness is vital to the preservation and maintenance of the going concern value of the Debtors' estates and necessary to avoid immediate and irreparable harm to the estates.
- (c) The Debtors are unable to obtain sufficient financing on more favorable terms from sources other than the DIP Lenders under the DIP Documents and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as

an administrative expense. The Debtors are also unable to obtain secured credit allowable solely under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code.

(d) The DIP Agent and the DIP Lenders are willing to provide the Financing, and the Pre-Petition Secured Parties are willing to consent to the use of their Cash Collateral, subject to the terms and conditions set forth in the DIP Documents and the provisions of this Interim Order, as applicable, and provided that the DIP Liens (as defined below), the Superpriority Claims and other protections granted by this Interim Order and the DIP Documents will not be affected by any subsequent reversal or modification of this Interim Order or any other order, as provided in section 364(e) of the Bankruptcy Code, which is applicable to the Financing and the Cash Collateral use approved by this Interim Order. The DIP Agent and the DIP Lenders have acted in good faith in agreeing to provide the Financing approved by this Interim Order and to be further evidenced by the DIP Documents, and the Pre-Petition Secured Parties have acted in good faith in consenting to the Debtors' use of their Cash Collateral pursuant to the terms of this Interim Order, and their reliance on the assurances referred to above is in good faith.

(e) Among other things, entry of this Interim Order will minimize disruption of the Debtors' businesses and operations by enabling them to meet payroll and other critical expenses, including vendor and professional fees. The Financing and the use of Cash Collateral as set forth herein are vital to avoid immediate and irreparable loss or harm to the Debtors' estates, which will otherwise occur if immediate access to the Financing and to the use of Cash Collateral is not obtained. Consummation of the Financing and the use of Cash Collateral pursuant to the terms of this Interim Order therefore are in the best interests of the Debtors' estates.

(f) The DIP Documents and the Financing contemplated thereunder, and the use of Cash Collateral, each as authorized hereunder, have been negotiated in good faith and at arm's length among the Debtors, the DIP Agent and the DIP Lenders, and the Pre-Petition Secured Parties, respectively, among others, and the terms of the Financing and the use of Cash Collateral, respectively, are fair and reasonable under the circumstances, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and are supported by reasonably equivalent value and fair consideration. All of the Debtors' obligations and indebtedness arising under, in respect of or in connection with the Financing and the DIP Documents, including the Obligations (as defined in the DIP Credit Agreement, collectively, the "DIP Obligations"), shall be deemed to have been extended by the DIP Agent and the DIP Lenders and their affiliates in good faith, as that term is used in section 364(e) of the Bankruptcy Code, and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

(g) The Debtors have requested immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and (c)(2). The authorization granted herein on an interim basis to use Cash Collateral and to enter into the DIP Documents and to borrow up to an aggregate principal amount of \$25,000,000 in the Interim Period is necessary to avoid immediate and irreparable harm to the Debtors and their estates. This Court concludes that entry of this Interim Order is in the best interests of the Debtors and their estates and creditors as its implementation will, among other things, allow the Debtors to facilitate their chapter 11 goals and maximize the value of their assets.

Interim Order,  
First Lien Noteholders, and  
Second Lien Noteholders

(h) To the extent necessary, the ~~Pre-Petition Secured Parties~~ have consented to the Financing and the Debtors' use of the Pre-Petition Collateral, including Cash Collateral. This Court concludes that the adequate protection provided to the Pre-Petition Secured Parties hereunder for, among other things, the Debtors' incurrence of the DIP Obligations on a priming basis, as described herein, and the Debtors' use of Pre-Petition Collateral, including Cash Collateral, is consistent with and authorized by sections 361, 362, 363, and 364 of the Bankruptcy Code.

5. Authorization of the Financing and the DIP Documents.

(a) The Debtors are hereby authorized and directed to execute, issue, deliver, enter into and adopt, as the case may be, the DIP Credit Agreement and the other DIP Documents to be delivered pursuant hereto or thereto or in connection herewith or therewith.

(b) In furtherance of the foregoing and without further approval of this Court, each Debtor is authorized and directed to perform all acts, to make, execute and deliver all instruments and documents (including, without limitation, the execution or recordation of security agreements, control agreements and financing statements), and, without further application to the Court, to promptly pay all fees referred to in this Interim Order, the DIP Credit Agreement and DIP Documents, including, without limitation, all reasonable fees and expenses paid, payable or incurred prior to the date hereof and/or the Petition Date and the reasonable fees and expenses of the professionals of the DIP Agent and the DIP Lenders, Fried, Frank, Harris, Shriver & Jacobson LLP, Pachulski Stang Ziehl & Jones LLP and Fortgang Consulting LLC (the "DIP Lenders' Professional Fees and Expenses"). None of the DIP Lenders' Professional Fees and Expenses shall be subject to further Court approval and no

recipient of any such payment shall be required to file with respect thereto any interim or final fee application with the Court.

(c) Subject to the provisions contained in paragraph 23 hereof, the Debtors are further hereby authorized to execute, deliver and perform one or more amendments or modifications to the DIP Documents for, among other things, the purpose of adding additional financial institutions as DIP Lenders and reallocating the commitments for the Financing among the DIP Lenders (but without in any manner limiting or altering the obligations of the DIP Lenders to the Debtors under this Interim Order or the DIP Documents, or the rights of the Debtors hereunder or thereunder), in each case in such form as the Debtors, the DIP Agent and the DIP Lenders may agree (it being understood that no further approval of this Court shall be required for non-material amendments to the DIP Credit Agreement or modifications of the Budget pursuant to the terms of paragraph 9 hereof).

(d) Upon execution and delivery of the DIP Documents, the DIP Documents shall constitute valid and binding obligations of the Debtors, enforceable against each Debtor party thereto in accordance with their terms subject to the terms of this Interim Order. No obligation, payment, transfer or grant of a security or other interest to the DIP Agent or DIP Lenders under the DIP Documents or this Interim Order shall be stayed, restrained, voidable, or recoverable under the Bankruptcy Code or any applicable law (including, without limitation, under section 502(d) of the Bankruptcy Code), or subject to any defense, reduction, set-off, recoupment or counterclaim.



6. Superpriority Claims.

(a) Pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed claims against the Debtors with priority over any and all administrative expenses, diminution claims (including all Adequate Protection Provisions (defined below)) and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 503(b), 506(c) (subject to entry of the Final Order), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code (the “Superpriority Claims”), whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and their estates and all proceeds thereof, subject to only to the Carve-Out; provided, however, that the Superpriority Claim shall apply with respect to the proceeds of Avoidance Actions only upon entry of the Final Order.

(b) For the purposes of this Interim Order “Carve-Out” shall mean the sum of (i) any fees payable to the Clerk of the Bankruptcy Court and to the Office of the U. S. Trustee pursuant to 28 U.S.C. § 1930(a) and 31 U.S.C. 3717; (ii) up to \$1,500,000.00 (the “Carve-Out Cap”) of allowed and unpaid fees and expenses (regardless of when such fees and expenses become allowed by order of the Bankruptcy Court) of professionals retained by order of the Bankruptcy Court, incurred after the occurrence of a Carve-Out Event (as defined below); (iii) without reduction of the Carve-Out Cap, allowed, accrued and unpaid fees and out-of-pocket expenses (regardless of when such fees and expenses become allowed by order of the

Bankruptcy Court) of professionals retained by order of the Bankruptcy Court, incurred on or prior to the occurrence of a Carve-Out Event in accordance with the Budget (subject to the Budget Covenant) (the carve out described in this clause (iii), hereinafter, the “Pre-Trigger Carve-Out”); and (iv) any and all reasonable fees and expenses incurred by a trustee under section 726(b) of the Bankruptcy Code not to exceed \$200,000.00; provided, however, for the avoidance of doubt, no portion of the Carve-Out shall be available to pay any professional fees and expenses incurred in connection with anything restricted by paragraph 19 of this Interim Order. Nothing herein shall be construed to impair the ability of any party to object to any of the fees, expenses, reimbursement or compensation described in clauses (i), (ii), (iii), and/or (iv) above.

(c) Upon the occurrence and continuance (beyond any applicable grace period) of an Event of Default (as defined in the DIP Documents) and the DIP Agent’s written notice thereof to the Debtors, the right of the Debtors to pay fees and expenses of professionals retained by order of the Bankruptcy Court outside of the Carve-Out shall immediately terminate (a “Carve-Out Event”), and, upon such occurrence, the Debtors, after receipt of such notice from the DIP Agent, shall provide immediate notice by facsimile and email to all professionals informing them that a Carve-Out Event has occurred and further advising them that the Debtors’ ability to pay estate professionals is subject to the Carve-Out. A waiver of an event of default triggering a Carve-Out Event shall constitute the cancellation of such Carve-Out Event, allowing the Debtors to pay compensation and reimbursement of expenses authorized to be paid under Bankruptcy Code Sections 330 and 331 or otherwise pursuant to an order of the Bankruptcy Court, as the same may be due and payable, without reducing the Carve-Out.

(d) Notwithstanding anything herein to the contrary, prior to a Carve-Out Event, the Debtors shall, in accordance with the Budget and the terms of the DIP Credit Agreement and subject to the terms of this Interim Order and any other relevant orders of the Court, be permitted to pay compensation and reimbursement of expenses to professionals allowed and payable under sections 330 and 331 of the Bankruptcy Code and such orders of the Bankruptcy Court authorizing the payment of compensation and reimbursement of expenses that have been incurred prior to the occurrence of such Carve-Out Event, and such amounts paid (and any and all accrued and unpaid fees and expenses incurred prior to a Carve-Out Event but which are paid after a Carve-Out Event in accordance with the Pre-Trigger Carve-Out and the Budget Covenant) will not reduce the Carve-Out Cap.

(e) Nothing herein or in the DIP Documents shall constitute a cap on the amount of professional fees and expenses that may be incurred or allowed in the Cases; provided that no payments of such fees and expenses shall be made unless such payments comply and are made in accordance with the Budget.

7. DIP Liens.

(a) As security for the DIP Obligations, effective and perfected automatically upon the date of this Interim Order and without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, or the possession or control by the DIP Agent of any Collateral (as defined below), the following security interests and liens (all such liens and security interests granted to the DIP Agent, for its benefit and for the benefit of the DIP Lenders, pursuant to this Interim Order and the DIP Documents, the “DIP Liens”) are

hereby granted to the DIP Agent, for its own benefit and the benefit of the DIP Lenders (subject and subordinate to the Carve-Out): all tangible and intangible pre-petition and post-petition property and interests in property of the Debtors, whether existing on or as of the Petition Date or thereafter acquired (other than the Excluded Assets), including, without limitation, (i) all accounts, chattel paper, deposit accounts, documents, equipment, general intangibles, intellectual property, instruments, insurance, inventory, investment property, letter-of-credit rights, money and any supporting obligations related thereto; (ii) all commercial tort claims; (iii) all books and records pertaining to the Collateral; (iv) all property of any Credit Party held by the DIP Agent, the DIP Lenders, or any Pre-Petition Secured Party, including all property of every description, in the custody of or in transit to the DIP Agent, the DIP Lenders or any Pre-Petition Secured Party for any purpose, including safekeeping, collection or pledge, for the account of such Credit Party or as to which such Credit Party may have any right or power, including, but not limited to cash; (v) all other goods (including, but not limited to fixtures) and personal property of the Credit Parties, whether tangible or intangible and wherever located; (vi) all owned or leased real estate and real property leaseholds; and (vii) all proceeds of the foregoing (the "Post-Petition Collateral"), plus all Pre-Petition Collateral (collectively, the "Collateral"). Subject to and effective only upon entry of the Final Order, the Post-Petition Collateral shall include the proceeds or property recovered, unencumbered or otherwise the subject of successful Avoidance Actions, whether by judgment, settlement or otherwise. The DIP Cash Collateral Account and the contents thereof (excluding any Released Restricted Cash (as defined below) contained therein) shall be Collateral solely with respect to the DIP Liens, and no other liens (including the Adequate Protection Liens defined below) shall attach to the DIP Cash Collateral Account or the contents thereof (excluding any Released Restricted Cash

contained therein). For the avoidance of doubt, certain restricted cash consisting of cash or cash equivalents identified as Restricted Cash or insurance collateral pursuant to the Budget, including, without limitation cash and cash equivalents identified as Restricted Cash in the Initial Budget and held: (i) at Regions Bank as collateral for a letter of credit, surety bond or similar arrangement for the benefit of ACE American Insurance Company and its affiliate, Pacific Employers Insurance Company, (ii) by ACE American Insurance Company in a loss deposit fund or otherwise as security for the Debtors' obligations with regard to Workers' Compensation and Automobile insurance, (iii) by ESIS, a claim processor and an affiliate of ACE American Insurance Company, as a deposit, (iv) as collateral for surety bonds issued by any of: Insurance Company of North America, Pacific Employers Insurance Company, Westchester Fire Insurance Company, Indemnity Insurance Company of North America or ACE American Insurance Company and (v) in a money market account as collateral for the Debtors' obligations under the Debtors' Pcard Program (collectively, the "Restricted Cash"), shall not constitute Collateral to the extent that, and only for so long as, the documents relating to such Restricted Cash would not permit such Restricted Cash to be subject to the liens created under the DIP Documents; provided further, that to the extent (x) any Restricted Cash is released as collateral for the obligations identified in the definition of Restricted Cash, such amounts shall immediately cease to be Restricted Cash and shall thereupon be Collateral subject to the DIP Liens; or (y) the documents relating to any Restricted Cash permit the granting of the liens created under the DIP Documentation, such amounts covered by this clause (y) shall constitute Collateral subject to the DIP Liens (but shall continue to constitute Restricted Cash except as provided in clause (x) above), which DIP Liens on such Restricted Cash shall be junior in

priority to the liens (the “Senior Restricted Cash Liens”) securing the obligations identified in the definition of Restricted Cash.

(b) The DIP Liens shall be senior priming liens on the Pre-Petition Collateral senior to all Pre-Petition Liens thereon and any Adequate Protection Liens (as defined below) thereon, but subject to (i) the Carve-Out, (ii) Permitted Liens that are valid, binding, perfected and unavoidable as of the Petition Date (other than the Pre-Petition Liens) and which are entitled to priority over the Pre-Petition Term Loan Liens and Pre-Petition Senior Noteholder Liens, and (iii) the Senior Restricted Cash Liens (such liens in clauses (ii) and (iii), the “Senior Permitted Liens”).

8. Remedies.

(a) The automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to permit the DIP Agent and DIP Lenders to exercise, upon not less than three (3) Business Days’ prior written notice (which can be by electronic mail or fax) to the Debtors (and their counsel) following the occurrence and continuance of an Event of Default (as defined in the DIP Credit Agreement), all rights and remedies hereunder and under the DIP Documents against the Debtors and/or the Collateral (including, without limitation, the right to set off monies of the Debtors in accounts maintained or controlled by the DIP Agent or any DIP Lender).

(b) In the absence of a further order of this Court, and notwithstanding anything herein or in the DIP Documents to the contrary, the Debtors’ rights to use Cash Collateral pursuant to this Interim Order, including the Debtors’ ability to withdraw funds from the DIP Cash Collateral Account, shall terminate upon the earlier to occur of (i) three (3)

business days' written notice (that can be given by electronic mail or fax) provided by the DIP Agent to the Debtors (and their counsel) or provided by the Debtors to the DIP Agent of the occurrence and continuance of any Event of Default under the DIP Facility or (ii) repayment by the Debtors of all Obligations under the DIP Facility indefeasibly in full in cash (the "Cash Collateral Termination Date"). Notwithstanding the foregoing, the Debtors' rights to use Cash Collateral shall immediately terminate (without notice from the DIP Agent) at the time that any Debtor has actual knowledge of an Event of Default if the Debtors fail to promptly notify the DIP Agent of such Event of Default.

(c) In any hearing regarding the exercise of rights or remedies, the only issue that may be raised by any party in opposition thereto shall be whether, in fact, an Event of Default has occurred and is continuing. The Debtors or any party in interest may seek a determination from the Bankruptcy Court that no Event of Default has occurred and/or is continuing, and appropriate relief from the Bankruptcy Court in the event it should so determine that no Event of Default has occurred and/or is continuing; provided, that neither the Debtors nor any other party-in-interest shall be entitled to seek relief, including, without limitation, under section 105 of the Bankruptcy Code, to the extent such relief would in any way impair or restrict the rights and remedies of the DIP Agent or the DIP Lenders set forth in this Interim Order or the DIP Documents, as applicable.

9. Approved Budget.

(a) For purposes of this Interim Order, the term "Budget" means the budget, attached hereto as Exhibit A, the "Initial Budget," as such Initial Budget shall be amended, supplemented and/or extended in the manner set forth herein and in the DIP Documents.

and the First Lien  
Trustee and the  
Second Lien Trustee  
as set forth on  
the record,

(b) The Debtors shall provide to the DIP Agent, counsel to the Consenting Noteholders (as defined in first day affidavit submitted by Mr. Alsene) holding First Lien Notes and counsel to the Consenting Noteholders holding Second Lien Notes, on the Friday of each week (or if such day is not a business day, the next business day), a variance report setting forth, in reasonable detail, and as provided and required by the DIP Credit Agreement, any differences between any actual expenditures and proposed expenditures set forth in the Budget for the prior week.

(c) Notwithstanding anything to the contrary contained herein, any reference in this Interim Order to being “in compliance with the Budget”, “subject to the Budget”, “in accordance with the Budget” or other similar phrase or term, shall in all cases mean the Budget giving effect to the Budget Covenant.

10. Limitation on Charging Expenses Against Collateral. Subject to and effective only upon entry of the Final Order, except to the extent of the Carve-Out, no expenses of administration of the Cases or any future proceeding that may result therefrom, including a case under chapter 7 of the Bankruptcy Code, shall be charged against or recovered from the Collateral pursuant to section 506(c) of the Bankruptcy Code, the enhancement of collateral provisions of section 552 of the Bankruptcy Code, or any other legal or equitable doctrine (including, without limitation, unjust enrichment) or any similar principle of law, without the prior written consent of the DIP Agent, and no consent shall be implied from any action, inaction or acquiescence by the DIP Agent, the DIP Lenders or the Pre-Petition Secured Parties. In no event shall the DIP Agent, the DIP Lenders, or the Pre-Petition Secured Parties be subject to (i) the “equities of the case” exception contained in section 552(b) of the Bankruptcy Code or



(ii) the equitable doctrine of “marshaling” or any other similar doctrine with respect to the Collateral.

11. Cash Collateral. Subject to the terms of this Interim Order and the Budget, the Debtors are hereby authorized to use all “cash collateral” within the meaning of section 363(a) of the Bankruptcy Code in which the Pre-Petition Collateral Agent or any other Pre-Petition Secured Party has a perfected security interest as of the Petition Date or at any time thereafter, including any cash on deposit in any deposit account or other account over which the Pre-Petition Collateral Agent has control, and including any cash proceeds of Collateral other than Restricted Cash that has not been released and become part of the Collateral as provided in this Interim Order (collectively, but excluding such Restricted Cash that has not become part of the Collateral, the “Cash Collateral”).

12. The DIP Cash Collateral Account. The Debtors are authorized to create an account (the “DIP Cash Collateral Account”) to be held at Regions Bank or such other bank reasonably acceptable to the DIP Agent, which shall be used solely to hold (x) the proceeds of the DIP Loans, (y) the proceeds arising from any Prepayment Events specified in the DIP Credit Agreement, pending their application to the prepayment of the DIP Loans as provided in the DIP Credit Agreement, and (z) any Restricted Cash released as collateral for the obligations identified in the definition of the Restricted Cash that become Collateral pursuant to this Interim Order (cash referred to in this clause (z), “Released Restricted Cash”). The terms of the DIP Cash Collateral Account shall conform to the requirements of the Cash Management Order.<sup>5</sup>

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<sup>5</sup> “Cash Management Order” shall mean the order of this Court entered on the Commencement Date (as same may be amended, supplement or modified) titled “*Order (I) Authorizing Debtors to Continue Using their Cash Management System and Maintain Existing Bank Accounts and Business Forms, (II) Authorizing the Debtors to Pay Outstanding PCARD Program Balance, (III) Waiving Compliance with the Deposit and Investment Requirements of Section 345 of the Bankruptcy Code, and (IV) Prohibiting Banks from Offsetting any Funds of Debtors.*”

The DIP Cash Collateral Account shall be under the sole dominion and control of the DIP Agent. To the extent requested by the DIP Agent on not less than five (5) Business Days' prior written notice to the Debtors (and their counsel), the Debtors are hereby authorized to enter into and execute a deposit account control agreement reasonably acceptable to the DIP Agent concerning the DIP Cash Collateral Account, in accordance with the DIP Credit Agreement and the DIP Documents. All proceeds of the DIP Loans, any Released Restricted Cash and any amounts received by the Debtors arising from any Prepayment Events shall be promptly deposited directly into the DIP Cash Collateral Account. After entry of this Interim Order, the Debtors may make withdrawals from the DIP Cash Collateral Account for general corporate purposes and working capital (including, without limitation, the payment of administrative expenses including professional fees and expenses) during the Cases, provided, that, subject to paragraph 13, such withdrawals and uses of funds must be in accordance with the Budget (giving effect to the Budget Covenant) and, in all events, only as permitted under the terms of the DIP Credit Agreement and subject to satisfaction of the Withdrawal Conditions as specified in the DIP Credit Agreement.

13. Pre-Petition Secured Parties' Adequate Protection. As described in the Intercreditor Agreements, the Pre-Petition Secured Parties are entitled, pursuant to sections 361, 363(e) and 364(d)(1) of the Bankruptcy Code, to adequate protection of their respective interests in the Pre-Petition Collateral, including Cash Collateral, for any diminution in the value of their respective interests in the Pre-Petition Collateral, including, without limitation, any such diminution resulting from the sale, lease or use by the Debtors (or other actual consumption) of Cash Collateral and any other Pre-Petition Collateral, the priming liens on the Pre-Petition Collateral granted to the DIP Agent and the DIP Lenders pursuant to the DIP

Documents and this Interim Order, and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code, and in each case to the extent required by the Bankruptcy Code (each, a “Diminution Claim”). As adequate protection for such Diminution Claims, the Pre-Petition Term Loan Agent, First Lien Trustee, Second Lien Trustee and Pre-Petition Collateral Agent are granted, for the benefit of the respective Pre-Petition Secured Parties, nunc pro tunc to the Petition Date, the following adequate protection (collectively, the “Adequate Protection Provisions”):

(a) Retention of Liens. The Pre-Petition Secured Parties will, subject to the terms of this Interim Order and the Final Order, maintain the Pre-Petition Liens on the Collateral, which liens shall be junior and subordinate to the DIP Liens and the Carve-Out, (with the Pre-Petition Junior Noteholder Liens being junior and subordinate to the Pre-Petition Term Loan Liens and the Pre-Petition Senior Noteholder Liens);

(b) Adequate Protection Liens. The Pre-Petition Collateral Agent, for itself and for the benefit of the Pre-Petition Secured Parties, is hereby granted valid and perfected replacement security interests in and liens on the Post-Petition Collateral (other than the DIP Cash Collateral Account, excluding any Released Restricted Cash contained therein) (the “Adequate Protection Liens”). Subject to the Carve-Out, the DIP Liens, and any Senior Permitted Liens, and as set forth in the Intercreditor Agreements, (i) the Adequate Protection Liens granted in favor of the Term Loan Lenders (the “Term Loan Adequate Protection Liens”) shall be first priority, senior and perfected liens upon the Post-Petition Collateral (other than the DIP Cash Collateral Account, excluding any Released Restricted Cash contained therein), on a *pari passu* basis with the Senior Noteholder Adequate Protection Liens, (ii) the Adequate Protection Liens granted in favor of the First Lien Noteholders (the “Senior Noteholder

Adequate Protection Liens”, and together with the Term Loan Adequate Protection Liens, the “Senior Adequate Protection Liens”) shall be first priority, senior and perfected liens upon the Post-Petition Collateral (other than the DIP Cash Collateral Account, excluding any Released Restricted Cash contained therein), on a *pari passu* basis with the Term Loan Adequate Protection Liens, and (iii) the Adequate Protection Liens granted in favor of the Second Lien Claim Holders (the “Junior Noteholder Adequate Protection Liens”) shall be second priority, perfected liens upon the Post-Petition Collateral (other than the DIP Cash Collateral Account, excluding any Released Restricted Cash contained therein), subject and subordinate to the Senior Adequate Protection Liens. For the avoidance of doubt, the foregoing is subject to and intended to comply in all respects with the priority and payment provisions of the Intercreditor Agreements.

(c) Section 507(b) Claim. To the extent that the Adequate Protection Liens and other forms of adequate protection granted pursuant to this Interim Order are insufficient as adequate protection for a Pre-Petition Secured Party’s Diminution Claim, and pursuant to section 507(b) of the Bankruptcy Code, such Pre-Petition Secured Party is hereby granted, subject and subordinate to the payment of the Carve-Out and DIP Claims, a Superpriority Claim, subject in all respects to the terms and conditions of the Intercreditor Agreements.

(d) Interest. Without further application to this Court, the Debtors are authorized and directed to pay on an ongoing basis, from time to time after the Petition Date, and without duplication, (i) all accrued and unpaid interest (at the non-default contract rate) through the Petition Date owed under the Pre-Petition Term Loan Agreement and First Lien Indenture, provided, however, that (x) all claims for default interest shall be fully preserved, and (y) notwithstanding anything to the contrary contained in this Interim Order, all rights of the

Debtors and any other party-in-interest to contest any claim for default interest shall be fully preserved; and (ii) after the Petition Date, current payment of all accrued but unpaid interest on the Pre-Petition Term Loans and First Lien Notes as and when due pursuant to the applicable pre-petition agreements, in each case at the applicable non-default contract rates.

(e) Fees and Expenses. Without further application to this Court, the Debtors are authorized and directed to pay on an ongoing basis, from time to time after the Petition Date, and without duplication, (i) all reasonable fees and expenses of the Consenting Noteholders holding First Lien Notes incurred in connection with the Cases, including reasonable professional fees and expenses of Willkie Farr & Gallagher LLP and Fortgang Consulting LLC, including, without limitation, all reasonable fees and expenses incurred prior to the date hereof and/or the Petition Date; and (ii) pursuant to the procedures set forth in this paragraph 13(e), all reasonable professional fees and expenses (the “Pre-Petition Lenders’ Professional Fees and Expenses”), incurred by the Pre-Petition Term Loan Agent, the First Lien Trustee, the Second Lien Trustee and the Pre-Petition Collateral Agent (acting in such capacities) during and in connection with the Cases and required to be paid by the Debtors under the Existing Agreements, and the reasonable fees and expenses of Wachtell, Lipton, Rosen & Katz, LLP, as counsel, and Richards, Layton & Finger, as local counsel, in each case to the Consenting Noteholders holding Second Lien Notes, provided, that notwithstanding the foregoing, no payments of Pre-Petition Lenders’ Professional Fees and Expenses of the Second Lien Claim Holders and Consenting Noteholders shall be authorized unless the amount of such payments are in compliance with the Budget; provided further that the aggregate amount for Pre-Petition Lenders’ Professional Fees and Expenses paid to professionals retained by the First Lien Trustee, Second Lien Trustee and Pre-Petition Collateral Agent pursuant to this paragraph

(subject to the reservation of their rights as set forth on the record)

13(e) shall not exceed \$75,000. The Debtors shall pay the Pre-Petition Lenders' Professional Fees and Expenses within ten (10) Business Days (if no written objection is received within such ten (10) Business Days' period) after such professional has delivered an invoice substantially in the form provided to the Debtors to date describing such fees and expenses (but in any event providing reasonable detail with respect to the fees and expenses incurred); provided, however, that any such invoice may be redacted to protect privileged, confidential or proprietary information, with a copy of such invoices delivered simultaneously to the DIP Agent, the United States Trustee for the District of Delaware (the "U.S. Trustee"), and the official committee of unsecured creditors if appointed (the "Committee"). Written objections to payment of the Pre-Petition Lenders' Professional Fees and Expenses must contain a specific basis for the objection and quantification of the undisputed amount of the fees and expenses invoiced. None of the Pre-Petition Lenders' Professional Fees and Expenses shall be subject to Court approval or required to be maintained in accordance with the U.S. Trustee Guidelines and no recipient of any such payment shall be required to file with respect thereto any interim or final fee application with the Court; provided however, if an objection to a professional's invoice is timely received, the Debtors shall only be required to pay the undisputed amount of the invoice and the Court shall have jurisdiction to determine the disputed portion of such invoice if the parties are unable to resolve the dispute. All allowed claims payable in cash arising from the Adequate Protection Provisions must be indefeasibly paid in full in cash and satisfied on or before the effective date of any chapter 11 plan (except as may otherwise be provided in the Plan).

14. Credit Bid. In the event that the Debtors seek to sell any of the Collateral pursuant to section 363 of the Bankruptcy Code and/or pursuant to a chapter 11 plan, (a) the

DIP Agent, on behalf of the DIP Lenders, and (b) the Pre-Petition Secured Parties shall have the right to credit bid, subject to and in accordance with the provisions of the Intercreditor Agreements and section 363(k) of the Bankruptcy Code, up to the full amount of the DIP Facility, the Senior Claims and the Second Lien Note Claims, as applicable.

15. Reservation of Rights of Pre-Petition Secured Parties. Under the circumstances, the Court finds that the adequate protection provided herein protects the interests of the Pre-Petition Secured Parties. Notwithstanding any other provision hereof, but subject in all respects to the Intercreditor Agreements, the grant of adequate protection to the Pre-Petition Secured Parties in the form of the Adequate Protection Provisions pursuant hereto is without prejudice to the right of any of the Pre-Petition Secured Parties to seek modification of the grant of adequate protection provided hereby so as to provide different or additional adequate protection, and without prejudice to the right of the Debtors or any other party in interest to contest such modification.

16. Perfection of DIP Liens.

(a) The DIP Agent, on behalf of the DIP Lenders, is hereby authorized, but not required, to file or record financing statements, intellectual property filings, mortgages, notices of lien or similar instruments in any jurisdiction, take possession or control over, or take any other action in order to validate and perfect the liens and security interests granted to them hereunder. Whether or not the DIP Agent chooses to file such financing statements, intellectual property filings, mortgages, notices of lien or similar instruments, take possession of or control over, or otherwise confirm perfection of the liens and security interests granted to it hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-

avoidable and not subject to challenge, dispute or subordination immediately upon entry of this Interim Order, but subject in all respects to the provisions of paragraph 19 of this Interim Order.

(b) A certified copy of this Interim Order may, in the discretion of the DIP Agent, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Interim Order for filing and recording.

(c) The Debtors shall execute and deliver to the DIP Agent all such agreements, financing statements, instruments and other documents as the DIP Agent may reasonably request to evidence, confirm, validate or perfect the DIP Liens or the Adequate Protection Liens.

(d) Upon entry of the Final Order, any provision of any lease or other license, contract or other agreement that requires (i) the consent or approval of one or more landlords or other parties or (ii) the payment of any fees or obligations to any governmental entity, in order for any Debtor to pledge, grant, sell, assign, or otherwise transfer any such leasehold interest, or the proceeds thereof, or other Collateral related thereto, will be deemed to be inconsistent with the applicable provisions of the Bankruptcy Code. Upon entry of the Final Order, any such provision shall have no force and effect with respect to the granting of post-petition liens on (i) such leasehold interest or (ii) the proceeds of any assignment and/or sale thereof by any Debtor in favor of the DIP Agent, the DIP Lenders or the Pre-Petition Collateral Agent in accordance with the terms of the DIP Documents or this Interim Order. Notwithstanding the foregoing, upon entry of this Interim Order, the Collateral shall include the proceeds of any assignment and/or sale of any leasehold interest.



17. Preservation of Rights Granted Under the Order.

(a) Except as expressly provided herein or in the DIP Credit Agreement, no claim or lien having a priority senior to or pari passu with those granted by this Interim Order to the DIP Agent, the DIP Lenders shall be granted or allowed while any portion of the DIP Obligations remains outstanding, and the DIP Liens shall not be subject to or junior to any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code or subordinate to or made pari passu with any other lien or security interest, whether under section 364(d) of the Bankruptcy Code or otherwise.

(b) Unless all DIP Obligations shall have been indefeasibly paid in full in cash, the Debtors shall not seek, and it shall constitute an Event of Default under the DIP Credit Agreement if any of the Debtors seek, or if there is entered (i) any stay, vacatur, rescission, or modification of this Interim Order without the prior written consent of the DIP Agent, and no such consent shall be implied by any other action, inaction or acquiescence by the DIP Agent, (ii) an order converting the Cases to cases under chapter 7 of the Bankruptcy Code or dismissing any of the Cases or (iii) unless otherwise approved by the DIP Agent, an order granting a change of venue with respect to the Cases or any related adversary proceeding. If an order dismissing any of the Cases under section 1112 of the Bankruptcy Code or otherwise is at any time entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that (x) the Superpriority Claims and other administrative claims granted under this Interim Order, the DIP Liens and the Adequate Protection Liens shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order until all DIP Obligations and all Diminution Claims shall have been paid and satisfied in full (and that such Superpriority Claims, the other administrative claims granted under this Interim Order, the DIP

Liens and the Adequate Protection Liens shall, notwithstanding such dismissal, remain binding on all parties in interest) and (y) this Court shall retain jurisdiction notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in clause (x) above.

(c) If any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated or stayed, such reversal, stay, modification or vacatur shall not affect (i) the validity, priority or enforceability of any DIP Obligations or the Adequate Protection Provisions incurred prior to the actual receipt of written notice by the DIP Agent, the Pre-Petition Term Loan Agent, the First Lien Trustee, the Second Lien Trustee or the Pre-Petition Collateral Agent, as applicable, of the effective date of such reversal, stay, modification, or vacatur or (ii) the validity, priority or enforceability of the DIP Liens or the Adequate Protection Liens. Notwithstanding any such reversal, stay, modification or vacatur, any use of Cash Collateral, any DIP Obligations, or any Adequate Protection Provisions incurred by the Debtors to the DIP Agent, the DIP Lenders and/or the Pre-Petition Secured Parties, as the case may be, prior to the actual receipt of written notice by the DIP Agent, the Pre-Petition Term Loan Agent, the First Lien Trustee, the Second Lien Trustee and/or the Pre-Petition Collateral Agent, as the case may be, of such reversal, stay, modification or vacatur shall be governed in all respects by the original provisions of this Interim Order, and the DIP Agent, the DIP Lenders, and the Pre-Petition Secured Parties shall be entitled to all of the rights, remedies, privileges and benefits granted in section 364(e) of the Bankruptcy Code, this Interim Order and pursuant to the DIP Documents with respect to all such uses of Cash Collateral, all DIP Obligations and all Adequate Protection Provisions.

(d) Except as expressly provided in this Interim Order or in the DIP Documents, the DIP Liens, the Superpriority Claims, the Adequate Protection Provisions and all other rights and remedies of the DIP Agent, the DIP Lenders or the Pre-Petition Secured Parties granted by the provisions of this Interim Order and the DIP Documents shall survive, and shall not be modified, impaired or discharged by (i) the entry of an order converting any of the Cases to a case under chapter 7 of the Bankruptcy Code, dismissing any of the Cases or by any other act or omission, or (ii) except as may otherwise be provided in the Plan with respect to any allowed claims for diminution, the entry of an order confirming a plan of reorganization in any of the Cases. The terms and provisions of this Interim Order and the DIP Documents shall continue in the Cases, in any successor cases if the Cases cease to be jointly administered, or in any superseding chapter 7 cases under the Bankruptcy Code, and the DIP Liens, the Adequate Protection Liens, the DIP Obligations, the Superpriority Claims and all other administrative claims granted pursuant to this Interim Order and all other rights and remedies of the DIP Agent, the DIP Lenders and the Pre-Petition Secured Parties granted by the provisions of this Interim Order and the DIP Documents shall continue in full force and effect until all DIP Obligations, all Diminution Claims, and all allowed claims payable in cash arising from the Adequate Protection Provisions are indefeasibly paid in full in cash.

18. Effect of Stipulations On Third Parties. The stipulations and admissions contained in paragraph 3 of this Interim Order shall be binding on all parties-in-interest, including, without limitation, the Debtors and any committee (if appointed), unless, and solely to the extent that an adversary proceeding or other appropriate contested matter has been commenced by the Committee or any other party in interest with requisite standing other than the Debtors (or if the Cases are converted to cases under chapter 7 prior to the expiration of the

Challenge Period (as defined below), the chapter 7 trustee in such successor case) against the Pre-Petition Secured Parties in connection with any matter related to the Existing Agreements or the Pre-Petition Collateral, by the earlier of (i) in the case of any Committee, sixty (60) days from the date of formation of such Committee, and (ii) with respect to other parties in interest with requisite standing other than the Debtors or any Committee, seventy-five (75) days following the date of entry of this Interim Order (such time period established by the earlier of clauses (i) and (ii) above, the "Challenge Period"). If no such adversary proceeding or contested matter is timely filed, then (x) Pre-Petition Indebtedness shall constitute allowed claims, not subject to counterclaim, setoff, subordination, recharacterization, defense or avoidance (subject in all respects to the Intercreditor Agreements, including, without limitation, the subordination and priority provisions thereof), for all purposes in the Cases and any subsequent chapter 7 case, (y) the Pre-Petition Collateral Agent's liens on the Pre-Petition Collateral shall be deemed to have been, as of the Petition Date, and to be, legal, valid, binding, perfected and of the priority specified in paragraph 3 hereof, not subject to defense, counterclaim, recharacterization, subordination or avoidance (subject in all respects to the Intercreditor Agreements, including, without limitation, the lien subordination and priority provisions thereof), and (z) the Obligations under the Existing Agreements and the liens of the Collateral Agent on the Pre-Petition Collateral shall not be subject to any other or further challenge by the Debtors, any committee or any other party-in-interest, each of whom shall be enjoined from seeking to exercise the rights of the Debtors' estates, including, without limitation, any successor thereto (including, without limitation, any estate representative or a chapter 7 or chapter 11 trustee appointed or elected for any of the Debtors with respect thereto). If any such adversary proceeding or contested matter is timely filed, the stipulations and

admissions contained in paragraph 3 of this Interim Order shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) on the Debtors, any committee and any other person or entity, except as to any such findings and admissions that were expressly and successfully challenged in such timely filed adversary proceeding or contested matter. Nothing in this Interim Order vests or confers on any Person (as defined in the Bankruptcy Code), including any committee, standing or authority to pursue any cause of action belonging to the Debtors or their estates, including, without limitation, claims and defenses with respect to the Existing Agreements or the liens of the Pre-Petition Collateral Agent on the Pre-Petition Collateral.

19. Limitation on Use of Financing Proceeds and Collateral. Notwithstanding anything herein or in any other order by this Court to the contrary, without the prior written consent, as applicable, of the DIP Agent, the Pre-Petition Term Loan Agent, the First Lien Trustee and the Second Lien Trustee, none of the DIP Obligations, the Cash Collateral, Collateral or the Carve-Out may be used for the following purposes: (i) to challenge or investigate the validity, perfection, priority, extent or enforceability of the DIP Credit Agreement or the Existing Agreements or the liens or security interest securing the obligations under any of the foregoing or to pursue any causes of action of any kind against the Pre-Petition Secured Parties, the DIP Agent or the DIP Lenders (except that, if a Committee is appointed, up to \$25,000 of Cash Collateral may be used by such Committee for purposes of such investigation), (ii) to object to, contest, delay, prevent or interfere with in any way the exercise of rights and remedies by the DIP Agent, or (iii) to make any payment of professional fees for any other constituent group, including but not limited the Committee, other than in accordance with the Budget and as otherwise permitted herein and under the DIP Credit Agreement.

20. Priorities Among Pre-Petition Secured Lenders. Notwithstanding anything to the contrary herein or in any other order of this Court, in determining the relative priorities and rights of the Pre-Petition Secured Parties, such priorities and rights shall continue to be governed by the Intercreditor Agreements and the Existing Agreements.

21. DIP Facility Participation. The ability to participate as a DIP Lender under the DIP Facility is available to all Senior Claim Holders (other than Disqualified Entities (as defined in the DIP Credit Agreement)); provided that (i) such Senior Claim Holders inform the DIP Agent of their desire to participate as a DIP Lender by April [12], 2013 (3 days after entry of this Interim Order) (the “DIP Participation Deadline”) and (ii) such participation is documented and finalized shortly thereafter in accordance with the process established by the DIP Agent. Any interested Senior Claim Holder must contact the DIP Agent, Silver Point, by e-mail (Attn: Rotech DIP Agent, RotechDIPAgent@silverpointcapital.com), with a copy to Julia Smolyanskiy (Julia.Smolyanskiy@friedfrank.com), by the DIP Participation Deadline. Any Senior Claim Holder that becomes a Lender under and as defined in the DIP Credit Agreement will be a DIP Lender pursuant to and for purposes of this Interim Order. Senior Claim Holders may elect prior to the DIP Participation Deadline to become a DIP Lender under the DIP Facility and to fund a portion of the aggregate DIP Loans under the DIP Facility based on such Senior Claim Holder’s Pro Rata Share of the principal amount of the Senior Claims held by such Senior Claim Holder, such participation by any Senior Claim Holder to be effected by (x) as to one or more Senior Claim Holder that prior to entry of the Interim Order have elected to so participate, by such Senior Claim Holder entering into the DIP Credit Agreement as a DIP Lender; and (y) as to any Senior Claim Holder subsequently so electing prior to the DIP Participation Deadline, the assignment to such Senior Claim Holder by the Backstop DIP

Lenders of a Pro Rata Share of the unutilized commitments under the DIP Facility and, to the extent DIP Loans have been funded by the Backstop DIP Lenders prior to such election to participate by such Senior Claim Holder, assignment of the full amount of the applicable portion of such funded DIP Loans by the Backstop DIP Lenders to such Senior Claim Holder, at a purchase price of ninety-nine (99) percent of the principal amount of such DIP Loans (plus accrued interest). A Senior Claim Holder's "Pro Rata Share" shall equate to a fraction (a) the numerator of which is the principal amount of Senior Claims held by such Senior Claim Holder and (b) the denominator of which is the aggregate principal amount of the Senior Claims outstanding. Such manner and method of permitting participation in the DIP Facility are hereby approved as fair, reasonable, and reasonably calculated to ensure each Senior Claim Holder that is reasonably financially capable to provide DIP Loans in a reasonably timely manner receives an equal opportunity to participate in the DIP Facility as every other such Senior Claim Holder.

22. Access to the Debtors. In accordance with the terms of the DIP Documents, the DIP Agent and its respective professionals shall be afforded continued reporting as to Collateral amounts and reasonable access to the Collateral and the Debtors' business premises, during normal business hours and upon reasonable advance notice, for purposes of verifying the Debtors' compliance with the terms of this Interim Order.

23. Modifications of DIP Documents. The Debtors, the DIP Agent and the DIP Lenders are hereby authorized to implement, in accordance with the terms of the respective DIP Documents, any non-material modifications of the respective DIP Documents without further Order of this Court, or any other modifications to the respective DIP Documents; provided, however, that notice of any material modification or amendment to the respective DIP Documents shall be provided to counsel to the Committee (to the extent one has been

appointed), the Pre-Petition Term Loan Agent, the First Lien Trustee and the Second Lien Trustee, and to the U.S. Trustee, each of whom shall have five (5) Business Days from the date of such notice within which to object in writing to such modification or amendment. If the Committee (to the extent one has been appointed), the Pre-Petition Term Loan Agent, the First Lien Trustee, the Second Lien Trustee, or the U.S. Trustee timely objects to any material modification or amendment to the DIP Documents, such modification or amendment shall only be permitted pursuant to an order of this Court. If no such timely objection is asserted, the Debtors shall file a copy of the executed modification or amendment with the Court within two (2) business days following execution of such modification or amendment. The Debtors shall provide notice to the U.S. Trustee and any Committee (if appointed) within five (5) business days following the execution of any non-material modifications to the DIP Documents.

24. Interim Order Governs. In the event of any inconsistency between the provisions of this Interim Order and the DIP Documents, the provisions of this Interim Order shall govern.

25. Binding Effect; Successors and Assigns. The DIP Documents and the provisions of this Interim Order, including all findings herein, shall be binding upon all parties in interest in these Cases, including, without limitation, the DIP Agent, the DIP Lenders, the Pre-Petition Secured Parties, any Committee appointed in these Cases and the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors) and shall inure to the benefit of the DIP Agent, the DIP Lenders, the Pre-Petition Secured Parties and the Debtors and their respective successors and assigns; provided, however, that the DIP Agent and the DIP Lenders shall have no obligation to extend any financing to any chapter 7 trustee or similar responsible person appointed for the estates of the Debtors. Subject to entry of the Final Order, in determining to



make any loan under the DIP Credit Agreement or in exercising any rights or remedies as and when permitted pursuant to this Interim Order or the DIP Documents, the DIP Agent and the DIP Lenders shall not be deemed to be in control of the operations of the Debtors or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., as amended, or any similar federal or state statute).

26. Effectiveness. This Interim Order shall constitute findings of fact and conclusions of law and shall take effect immediately upon execution hereof, and there shall be no stay of execution of effectiveness of this Interim Order.

27. Final Hearing. The Final Hearing is scheduled for April 25, 2013 at 3:00<sup>P.M.</sup> (ET) before this Court. The Debtors shall promptly mail copies of this Interim Order (which shall constitute adequate notice of the Final Hearing) to the parties having been given notice of the Interim Hearing, and to any other party that has filed a request for notices with this Court and to any Committee after the same has been appointed, or Committee counsel, if the same shall have been appointed. Any party in interest objecting to the relief sought at the Final Hearing shall serve and file written objections; which objections shall be served (with a copy to the Court’s chambers) no later than April 19, 2013 at 4:00<sup>P.M.</sup> (ET) upon: (a) the U.S. Trustee, 844 King Street, Suite 2007, Lockbox 35, Wilmington, Delaware 19801 (Attn: Jane Leamy, Esq.); (b) the Debtors, c/o Rotech Healthcare, Inc. 2600 Technology Drive, Suite 300, Orlando, Florida 32804 (Attn: Steven P. Alsene); (c) counsel to the Debtors, Proskauer Rose LLP, Eleven Times Square, New York, New York 10036 (Attn: Martin J.

Bienenstock and Scott K. Rutsky, Esq.) and Young, Conaway, Stargatt & Taylor, LLP, 1000 North King Street, Wilmington, Delaware 19801 (Attn: Robert S. Brady, Esq. and Joseph M. Barry, Esq.); (d) counsel to the DIP Agent, Fried, Frank, Harris, Shriver & Jacobson LLP, One New York Plaza, New York, New York 10004 (Attn: Gary L. Kaplan, Esq. and Julia Smolyanskiy, Esq.) and Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17<sup>th</sup> Floor, Wilmington, Delaware 19801 (Attn: Laura Davis Jones, Esq.); (e) counsel to each Consenting Noteholder holding First Lien Notes, Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019 (Attn: Matt Feldman, Esq.); (f) counsel to each Consenting Noteholder holding Second Lien Notes, Wachtell, Lipton, Rosen & Katz LLP, 51 West 52<sup>nd</sup> Street, New York, New York 10019 (Attn: Scott K. Charles, Esq. and Michael S. Benn, Esq.) and (g) counsel to any official committee then appointed in these Cases.

Dated: April 9, 2013  
Wilmington, Delaware

  
UNITED STATES BANKRUPTCY JUDGE

28. Nothing herein shall impair the rights (if any) of any First Lien Noteholder or Second Lien Noteholder to object to the entry of the Final Order, or the rights of the Debtors, or any other party in interest with respect thereto.

**EJW H T D I F A**

**Rotech Healthcare Inc. - FINAL INTERIM DIP BUDGET**

*Cash Forecast*

|                                | <u>4 Week<br/>Total</u>          |
|--------------------------------|----------------------------------|
| <b>Receipts</b>                |                                  |
| Patient Related Receipts       | \$ 31,810                        |
| Rebates & Other Receipts       | 386                              |
| <b>Total Receipts</b>          | <u><b>32,196</b></u>             |
| <b>Disbursements</b>           |                                  |
| Trade Vendors                  | (23,272)                         |
| Payroll (incl. Commissions)    | (11,690)                         |
| Rent & Facilities              | (1,874)                          |
| Other Disbursements            | (5,518)                          |
| Debt Service (Interest, Fees)  | (13,383)                         |
| <b>Total Disbursements</b>     | <u><b>(56,947)</b></u>           |
| <b>Operating Cash Flow</b>     | <u><b>(24,751)</b></u>           |
| <b>Non-Operating Cashflows</b> | (840)                            |
| <b>Net Cash Flow</b>           | <u><u><b>\$ (25,591)</b></u></u> |
| <b>Cash Balance (Book)</b>     |                                  |
| Beginning Balance              | \$ 3,460                         |
| Net Cash Flow                  | (25,591)                         |
| Additions from DIP Account     | 25,000                           |
| <b>Ending Balance</b>          | <u><b>2,869</b></u>              |
| <b>DIP Account Balance</b>     |                                  |
| Beginning Balance              | \$ -                             |
| Court Approved Funding         | 25,000                           |
| Withdrawals                    | (25,000)                         |
| <b>Ending Balance</b>          | <u><b>-</b></u>                  |

**Primary Assumptions**

- 1) Chapter 11 filing on April 8, 2013.
- 2) \$30M Term Loan DIP with \$25M interim funding approved first week after filing and \$5M final funding approved at the end of April.
- 3) 1st Lien Note interest paid when due on April 15, 2013. 1st Lien Term Loan interest is assumed to be paid monthly.
- 4) Assumes bankruptcy court approval of all first day motions.
- 5) Non-Operating Cashflows include cash payments to professionals in accordance with Bankruptcy Court procedures. Such cash payments are based on estimated accruals not reflected above.