



9013 and 9014, as well as Appendix L-1020.1, of the Local Rules of the United States Bankruptcy Court for the Western District of Texas (the “Local Bankruptcy Rules”), seeking entry of this interim order (this “Interim Order”) and a final order (the “Final Order”): (a) authorizing the continued use of Cash Collateral (as defined herein) effective as of the Petition Date (as defined herein); (b) providing adequate protection to the Pre-Petition Secured Parties (as defined herein); (c) vacating or modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of this Interim Order and the Final Order; and (d) scheduling the final hearing (the “Final Hearing”) to consider entry of the Final Order; and upon the *Declaration of Paul Harris in Support of the Debtors’ Chapter 11 Petitions and First Day Motions*; and the Court having found that the relief requested in the Motion, as provided under the terms of this Interim Order, is in the best interests of the Debtors, their estates, their creditors, and other parties in interest and required in order to avoid immediate and irreparable harm to the estates; and the Court having found that the Debtors’ provision of notice of the Motion and the opportunity for a hearing on the Motion was appropriate under the circumstances and no other or further notice need be provided in relation to the relief provided under the terms of this Interim Order; and the Court having reviewed the Motion and having considered the evidence presented and the statements made in support of the relief requested in the Motion at a hearing before the Court on March 4, 2016 (the “Interim Hearing”); and the Court having determined that the legal and factual bases set forth in the Motion and at the Interim Hearing establish just cause for the relief granted herein; and upon the record before it and all of the proceedings had before the Court; and after due deliberation and consideration and good and sufficient cause appearing therefor;

**THE COURT HEREBY FINDS AND CONCLUDES AS FOLLOWS:<sup>3</sup>**

A. **Commencement of Cases.** On March 2, 2016 (the “Petition Date”), each of the Debtors filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code thereby initiating its respective chapter 11 case with this Court (collectively, the “Chapter 11 Cases”). The Debtors are continuing to operate their businesses and manage their properties as debtors and debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Cases.

B. **Jurisdiction and Venue.** This Court has jurisdiction over the Chapter 11 Cases and the Motion pursuant to 28 U.S.C. §§ 157(b) and 1334. Consideration of the Motion constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The Court may enter a final order consistent with Article III of the United States Constitution as this matter arises under the express provisions of the Bankruptcy Code. Venue of the Chapter 11 Cases and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The predicates for the relief granted herein are sections 361, 362, and 363 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, and 9014, and Local Bankruptcy Rules 4001, 9013 and 9014, as well as Appendix L-1020.1 thereof.

C. **Final Hearing.** The Debtors will seek final approval of the relief requested in the Motion pursuant to the Final Order at the Final Hearing, notice of which will be provided in accordance with paragraph 31 of this Interim Order.

D. **Adequate Notice.** In accordance with Bankruptcy Rules 2002, 4001(b), (c), and (d), and 9014, and the Local Bankruptcy Rules, notice of the Interim Hearing and the emergency relief requested in the Motion has been provided by the Debtors by facsimile, email, overnight

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<sup>3</sup> Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact, pursuant to Bankruptcy Rule 7052.

courier, and/or hand delivery to certain parties in interest (or their counsel, if known), including:

(a) the Office of the U.S. Trustee for the Western District of Texas (the “U.S. Trustee”); (b) the entities listed on the Consolidated List of Creditors Holding the 20 Largest Unsecured Claims; (c) BNP Paribas (as successor to Fortis Bank S.A./N.V., UK Branch), in its capacity as Administrative Agent (as defined herein) and Instructing Agent (as defined herein); (d) Munsch Hardt Kopf & Harr, P.C. (“Munsch Hardt”), as counsel to the Administrative Agent and the Instructing Agent; (e) Milbank, Tweed, Hadley & McCloy LLP (“Milbank Tweed”), as counsel to the Steering Committee of First Lien Lenders (the “Steering Committee”); (f) the United States Department of Transportation, acting by and through the Federal Highway Administration (“TIFIA”); (g) each of the Hedge Counterparties (as defined below); (h) Deutsche Bank Trust Company Americas (as successor to Wells Fargo Bank, National Association), in its capacity as Collateral Agent (as defined herein); (i) Drinker Biddle & Reath LLP (“Drinker Biddle”), as counsel to the Collateral Agent; (j) the Texas Department of Transportation (“TxDOT”); (k) the Office of the Attorney General of the State of Texas; (l) the Office of the United States Attorney for the Western District of Texas; (m) the Internal Revenue Service; and (n) any party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the “Notice Parties”). The Debtors have made reasonable efforts to afford the best notice possible under the circumstances to permit the relief set forth in this Interim Order.

**E. Prepetition Financing Agreements.**

(i) Senior Bank Facility Agreement. Pursuant to that certain Initial Senior Loan Agreement, dated as of March 7, 2008 (as amended, supplemented or otherwise modified from time to time, the “Senior Bank Facility Agreement”), among SH130, as borrower, the financial institutions party thereto as lenders (the “First Lien Lenders”), BNP Paribas (as

successor to Fortis Bank S.A./N.V., UK Branch), as Administrative Agent for the First Lien Lenders (in such capacity, the “Administrative Agent”), Banco Santander, S.A., New York Branch, as Fronting Bank (in such capacity, the “Fronting Bank”), and the mandated lead arrangers party thereto, the First Lien Lenders provided to the Debtors a first lien secured credit facility of up to \$721,750,000 in aggregate principal amount of term loan commitments (the “Senior Bank Facility”). All of SH130’s obligations under the Senior Bank Facility Agreement are secured as described below.

(ii) Swap Agreements. SH130 is also party to certain swap agreements (collectively, the “Swap Agreements,”) with (i) Caixa – Banco de Investimento, S.A., (ii) Espírito Santo, plc, as successor to Banco Espírito Santo, S.A., New York Branch, (iii) Bankia S.A., as successor to Caja de Ahorros y Monte de Piedad de Madrid Miami Agency, (iv) Fortis Bank S.A./N.V., and (v) Banco Santander, S.A. (the parties identified in (i) through (v) of this paragraph, collectively the “Hedge Counterparties” and, together with the First Lien Lenders, the “Senior Lenders”). All of SH130’s obligations under the Swap Agreements (the “Swap Agreement Obligations”) are secured as described below.

(iii) TIFIA Agreement. Pursuant to that certain TIFIA Loan Agreement, dated as of March 7, 2008 (the “TIFIA Agreement”), between SH130 and TIFIA (TIFIA and the Senior Lenders, the “Pre-Petition Lenders”), TIFIA provided a subordinated term loan credit facility of up to an original principal amount of \$430,000,000 (the “TIFIA Facility”). All of SH130’s obligations under the TIFIA Agreement are secured as described below.

(iv) Collateral Agency Agreement. Pursuant to that certain Collateral Agency and Account Agreement, dated as of March 7, 2008 (as amended, supplemented or otherwise modified from time to time, the “Collateral Agency Agreement”), among SH130, the

Administrative Agent, BNP Paribas (as successor to Fortis Bank S.A./N.V., UK Branch), as the Instructing Agent for the Senior Lenders (in such capacity, the “Instructing Agent”), the Hedge Counterparties, TIFIA, and Deutsche Bank Trust Company Americas (as successor to Wells Fargo Bank, National Association), as the Collateral Agent and Securities Intermediary (in such capacity, the “Collateral Agent” and together with the Administrative Agent and the Instructing Agent, the “Agents”), the Collateral Agent was appointed as collateral agent to act on behalf, and for the benefit, of the Pre-Petition Lenders in relation to the Collateral (as defined herein).

(v) Security Agreement, Mortgages, and Pledge Agreement. To secure the repayment of all obligations owed or that become owing by SH130 to the Pre-Petition Lenders and the Agents (collectively, the “Pre-Petition Secured Parties”), including, without limitation, the Pre-Petition Obligations (as defined herein): (a) SH130 entered into that certain Security Agreement, dated as of March 7, 2008 (as amended, supplemented or otherwise modified from time to time, the “Security Agreement”), with the Collateral Agent, pursuant to which SH130 granted liens and security interests (the “Pre-Petition Security Agreement Liens”) in the collateral identified in the Security Agreement (the “Security Agreement Collateral”) to the Collateral Agent; (b) SH130 executed that certain Leasehold Deed of Trust, Security Agreement, Assignment of Leases, Rents and Profits, and Financing Statement (Fixture Filing), dated November 9, 2012, and filed in the records of Travis County, Texas on January 10, 2014 (the “Travis County Mortgage”), pursuant to which, among other things, SH130 granted liens and security interests (the “Travis County Mortgage Liens”) to or for the benefit of the Collateral Agent, for the benefit of the Pre-Petition Secured Parties, in those certain properties and interests in property more particularly described therein (the “Travis County Collateral”); (c) SH130 executed that certain Leasehold Deed of Trust, Security Agreement, Assignment of Leases,

Rents and Profits, and Financing Statement (Fixture Filing), dated November 9, 2012, and filed in the records of Caldwell County, Texas on January 10, 2014 (the “Caldwell County Mortgage”), pursuant to which, among other things, SH130 granted liens and security interests (the “Caldwell County Mortgage Liens”) to or for the benefit of the Collateral Agent, for the benefit of the Pre-Petition Secured Parties, in those certain properties and interests in property more particularly described therein (the “Caldwell County Collateral”); (d) SH130 executed that certain Leasehold Deed of Trust, Security Agreement, Assignment of Leases, Rents and Profits, and Financing Statement (Fixture Filing), dated November 9, 2012, and filed in the records of Guadalupe County, Texas on January 10, 2014 (the “Guadalupe County Mortgage”), pursuant to which, among other things, SH130 granted liens and security interests (the “Guadalupe County Mortgage Liens”) to or for the benefit of the Collateral Agent, for the benefit of the Pre-Petition Secured Parties, in those certain properties and interests in property more particularly described therein (the “Guadalupe County Collateral”); and (e) the Debtors entered into that certain Members Pledge Agreement, dated as of March 7, 2008 (the “Pledge Agreement”), with the Collateral Agent, pursuant to which CINTRA TX 56 and Zachry granted liens and security interests (the “Pre-Petition Pledge Agreement Liens” and, together with the Pre-Petition Security Agreement Liens, the Travis County Mortgage Liens, the Caldwell County Mortgage Liens and the Guadalupe County Mortgage Liens, the “Pre-Petition Liens”) in all Member Collateral (as defined therein), including, without limitation, all of their membership interests in SH130 and all dividends, cash, instruments, chattel paper and any other rights, property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for such membership interests (the “Pledge Agreement Collateral” and, together with the Security

Agreement Collateral, the Travis County Collateral, the Caldwell County Collateral and the Guadalupe County Collateral, the “Collateral”) to the Collateral Agent.

(vi) ICA. The Instructing Agent, TIFIA, and the Collateral Agent are also party to that certain Subordination and Intercreditor Agreement, dated as of March 7, 2008 (the “ICA”), which sets forth, among other things, payment and lien priorities and enforcement rights among the Senior Lenders and TIFIA.

(vii) Waiver Agreements. Additionally, prior to the Petition Date: (a) that certain Waiver Agreement, dated as of June 30, 2014 (the “First Waiver Agreement”), was entered into among SH130, the Administrative Agent, the Fronting Bank, and the Senior Lenders; (b) that certain Modification and Waiver Agreement, dated as of December 15, 2014 (the “Second Waiver Agreement”), was entered into among SH130, the Administrative Agent, the Fronting Bank, and the Senior Lenders; and (c) that certain Second Modification Agreement, dated as of January 29, 2016 (the “January 2016 Waiver” and, together with the First Waiver Agreement and the Second Waiver Agreement, the “Waiver Agreements”), was entered into among SH130, the Administrative Agent, the Fronting Bank, and the Senior Lenders.

F. **Debtors’ Stipulations**. After consultation with their attorneys and financial advisors, and without prejudice to the rights of any other party (but subject to the limitations thereon contained in paragraph 13 of this Interim Order), the Debtors acknowledge, admit, represent, stipulate, and agree that:

(i) As of the Petition Date, the Debtors were indebted and liable to the First Lien Lenders in the principal amount of at least \$720,749,970, plus interest accrued, and costs and any fees and expenses due and owing under, and any additional amounts which may be owing pursuant to or in connection with letter of credit commitments made pursuant to, the



Senior Bank Facility Agreement (collectively, the “Pre-Petition Senior Bank Facility Obligations”).

(ii) The Hedge Counterparties have not exercised early termination rights under their respective Swap Agreements. But, as of the Petition Date, if such rights were so exercised, the Hedge Counterparties would have claims against the Debtors arising from the Swap Agreement Obligations in the amount of at least \$312 million.

(iii) As of the Petition Date, the Debtors were indebted and liable to TIFIA in the principal amount of at least \$550,875,000, plus interest accrued (but not yet capitalized into the aggregate outstanding principal amount), and costs and any fees and expenses due and owing under the TIFIA Agreement (collectively, the “Pre-Petition TIFIA Facility Obligations” and collectively with the Pre-Petition Senior Bank Facility Obligations and Swap Agreement Obligations, the “Pre-Petition Obligations”).

(iv) As of the Petition Date, the Senior Bank Facility Agreement, each of the Swap Agreements, the TIFIA Agreement, the Collateral Agency Agreement, the Security Agreement, the Travis County Mortgage, the Caldwell County Mortgage, the Guadalupe County Mortgage, the Pledge Agreement, the Waiver Agreements, each other “Financing Document” (as defined in the Senior Bank Facility Agreement), and all other documentation associated with the foregoing, including any exhibits, schedules and attachments thereto, amendments thereof, and any other related transactional documents (collectively the “Loan Documents”): (a) constitute the legal, valid, binding, and unavoidable obligations of the Debtors, secured by the Pre-Petition Liens; and (b) subject to the Reserved Rights (as defined below), are not, and shall not be, subject to any avoidance, disallowance, disgorgement, reduction, setoff, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), counterclaims,

cross-claims, defenses, or any other challenges of any kind or nature under the Bankruptcy Code or any other applicable law or regulation.

(v) As of the Petition Date, the Pre-Petition Liens: (a) constitute legal, valid, binding, properly perfected and unavoidable first priority liens and security interests in the Collateral, subject, however, to the terms of the ICA; and (b) are not, and shall not be, subject to any avoidance, recharacterization, subordination (whether equitable, contractual, or otherwise), or any other challenges of any kind or nature under the Bankruptcy Code or any other applicable law or regulation.

(vi) None of the Pre-Petition Secured Parties is or shall be deemed to be a control person or insider of any of the Debtors by virtue of any of the actions taken by such party in respect of or in connection with the Loan Documents prior to or during the Chapter 11 Cases.

(vii) Subject to the Reserved Rights, as of the Petition Date, the Debtors have not asserted, are not aware of, and, subject to the entry of the Final Order, have no, claims, objections, challenges, causes of action, including, without limitation, avoidance claims under chapter 5 of the Bankruptcy Code, against any of the Pre-Petition Secured Parties arising out of or related to the Loans Documents or otherwise.

(viii) As of the Petition Date, other than the Pre-Petition Liens and as otherwise permitted under the Loan Documents, there were no liens on or security interests in the Collateral.

G. **Cash Collateral.** For purposes of this Interim Order, (a) the term “Cash Collateral” shall mean and include all “cash collateral” as defined in section 363 of the Bankruptcy Code; and (b) all of the Debtors’ cash, cash equivalents, negotiable instruments, investment property, securities and deposit accounts, including, without limitation, cash, cash

equivalents, negotiable instruments, investment property, and securities in the accounts, any and all toll revenues and rents and proceeds received by the Debtors as of and, subject to the Reserved Rights, after the Petition Date, and all income, proceeds, products, rents or profits of the Collateral and of any Replacement Lien Collateral (as defined below) shall constitute Cash Collateral of the Pre-Petition Secured Parties.

H. **Use of Cash Collateral.** The Debtors have an immediate and critical need to use Cash Collateral to operate SH130's business during the interim period covered by this Interim Order. Subject to the Carve-Out (as defined below), Cash Collateral will be used only prior to the Termination Date (as defined below) and only in accordance with the terms of this Interim Order and the budget attached hereto as **Exhibit 1** (the "**Approved Budget**"), subject to the following limitations and permitted variances (collectively, the "**Budgetary Provisions**"): (i) except as otherwise provided in this Interim Order, Cash Collateral shall only be used for the payment of (a) post-petition expenses incurred by the Debtors in the ordinary course of business, (b) such other expenses for working capital and other general corporate purposes that are or may be outside of the ordinary course of business that are agreed to by the Instructing Agent and approved by the Court on notice and opportunity for a hearing, (c) costs of administration of the Chapter 11 Cases, including approved fees and expenses of persons or firms retained by the Debtors pursuant to sections 327, 330 or 363 of the Bankruptcy Code and of any official committee of unsecured creditors appointed in the Chapter 11 Cases (the "**Committee**") pursuant to section 1103 of the Bankruptcy Code (collectively, the "**Case Professionals**"), and (d) such prepetition claims and expenses as agreed to by the Instructing Agent and approved by this Court; and (ii) the Debtors shall be entitled to exceed the amounts set forth in each of the categories of expenses detailed in the Approved Budget (*i.e.*, Concession Payments, Right of

Way Payments, Operating Expenses, Sponsor Affiliate Payments, and Capital Expenditures) by up to 10% of the cumulative amount set forth in each such category. In addition to the amounts set forth in the Approved Budget, during the interim period the Debtors shall be entitled to make payments up to an aggregate amount of \$200,000 in connection with funding repairs and/or maintenance costs arising from emergency and/or catastrophic events as required under the Concession Agreement (as defined in the Senior Bank Facility Agreement); to the extent such payments exceed \$200,000, the Debtors may make such payments subject to the Prepetition Secured Parties' consent, which consent shall not unreasonably be withheld. For the avoidance of doubt, the Debtors shall use, and shall be deemed to have used, their unencumbered cash or any other unencumbered property, to the extent any such unencumbered cash or property exists, before any Cash Collateral or other Collateral of the Pre-Petition Secured Parties is used.

I. **Irreparable Harm.** Without the use of Cash Collateral during the period covered by this Interim Order, the Debtors will not have sufficient liquidity to continue to operate SH130's business. The adequate protection provided herein and other benefits and privileges contained herein are consistent with and authorized by the Bankruptcy Code and are necessary to obtain the consent (or non-opposition) of the Pre-Petition Secured Parties, and to adequately protect the Pre-Petition Secured Parties' interests in the Collateral and Cash Collateral. Absent authorization to immediately use Cash Collateral, the Debtors' estates and their creditors would suffer immediate and irreparable harm during the interim period covered by this Interim Order. Entry of this Interim Order is in the best interest of the Debtors, their estates, their creditors, and other parties in interest.

J. **Sections 506(c) and 552(b).** In light of the Pre-Petition Secured Parties' agreement to permit (or non-opposition to) the use of the Pre-Petition Secured Parties' Collateral

and Cash Collateral under the terms of this Interim Order for payments made in accordance with the Approved Budget, subject to the Budgetary Provisions, as well as the Pre-Petition Secured Parties' agreement to subordinate (or non-opposition to the subordination of) their liens and claims to the Carve-Out (as defined below), the Pre-Petition Secured Parties, subject to entry of the Final Order, shall be entitled to (i) a waiver of any "equities of the case" claims under section 552(b) of the Bankruptcy Code and (ii) a waiver of the provisions of section 506(c) of the Bankruptcy Code. Extraordinary circumstances exist for the granting of such relief in light of the public and regulatory interests involved in these Chapter 11 Cases, the immediate and irreparable harm to the estates that would result during the interim period covered by this Interim Order in the absence of the Debtors' ability to use Cash Collateral.

K. **Good Cause.** Good cause has been shown for entry of this Interim Order. The Debtors have an immediate and critical need for use of Cash Collateral to enable SH130 to continue to operate its business and preserve the value of same and the Debtors' estates during the interim period covered by this Interim Order. The Debtors' proposed use of Cash Collateral under the terms of this Interim Order and the Approved Budget, subject to the Budgetary Provisions, has been established as sufficient to enable SH130 to meet its immediate post-petition liquidity needs. Good, adequate, and sufficient cause has, therefore, been shown for the immediate grant of the relief sought in the Motion under the terms of this Interim Order.

L. **Consent/Non-Opposition to Use of Cash Collateral.** The Pre-Petition Secured Parties have consented to (or not opposed) the Debtors' use of Cash Collateral solely on the terms and conditions set forth in this Interim Order and in accordance with the Approved Budget, subject to the Budgetary Provisions.

M. **Good Faith.** Based on the record before the Court, the terms of the use of Cash Collateral as provided in this Interim Order are fair, reasonable, the best available under the circumstances, have been fully disclosed, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, have been negotiated at arms' length and in good faith and are in the best interests of the Debtors, their estates and their creditors.

N. **Immediate Entry of Interim Order.** The Debtors have requested immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2). The permission granted herein to use Cash Collateral is necessary to avoid immediate and irreparable harm to the Debtors, as required by Bankruptcy Rule 6003. The Court concludes that entry of this Interim Order is in the best interests of the Debtors' estates and creditors, as its implementation will, among other things, allow for access to the liquidity necessary for the continued flow of supplies and services to SH130 necessary to sustain the operation of its existing business.

Based upon the foregoing findings of fact, acknowledgements, and conclusions of law, the Motion and the record made before the Court at the Interim Hearing, and good and sufficient cause appearing therefor:

**IT IS HEREBY ORDERED THAT:**

1. **Motion Granted.** The Motion is granted, and the Debtors' use of Cash Collateral is authorized, on an interim basis, under the terms set forth herein.

2. **Responses to the Motion.** Any objections to the Motion that have not previously been withdrawn or resolved are hereby overruled on their merits. This Interim Order shall be valid, binding on all parties in interest, and fully effective immediately upon entry notwithstanding the possible application of Bankruptcy Rules 6004(h), 7062, and 9014.

3. **Authorization to Use Cash Collateral.** Upon entry of this Interim Order, the Debtors are authorized, effective as of the Petition Date, and through and including the Termination Date, to use Cash Collateral in accordance with the terms, conditions, and limitations set forth in this Interim Order and the Approved Budget and Budgetary Provisions. Any dispute in connection with the use of Cash Collateral under the terms, conditions, and limitations of this Interim Order and the Approved Budget and Budgetary Provisions shall be heard by this Court.

4. **Approved Budget.** Cash Collateral used under the terms of this Interim Order shall be used by the Debtors only in accordance with the Approved Budget, subject to the Budgetary Provisions, and this Interim Order. The Pre-Petition Secured Parties' consent (or non-opposition) to the Approved Budget shall not be construed as consent to the use of any Cash Collateral beyond the Termination Date, regardless of whether the aggregate funds shown on the Approved Budget have been expended, except with respect to the Carve-Out. Subject to the prior written consent of the Instructing Agent, the Debtors may amend the Approved Budget from time to time without the necessity of further order of the Court. The Debtors shall provide a copy of any such amended Approved Budget to the Notice Parties and counsel for the Committee (if a Committee is appointed). For the avoidance of doubt, the Debtors are hereby authorized, but not directed, to pay certain amounts due and payable to TxDOT, and any such payments shall be made in cash in accordance with the Approved Budget.

5. **Events of Default.** The occurrence of any of the following shall constitute an event of default (each, an "Event of Default"):

(a) the Debtors' failure to comply with any of the terms or conditions of this Interim Order, including, without limitation, the Approved Budget, subject to the Budgetary Provisions;

(b) the Debtors' filing of an application, motion, or other pleading seeking to amend, modify, supplement, or extend this Interim Order or the Approved Budget without the prior written consent of the Instructing Agent;

(c) the entry of any order reversing, amending, supplementing, staying, vacating, or otherwise modifying this Interim Order without the prior written consent of the Instructing Agent;

(d) the Debtors' assertion in any pleading filed in any court that any material provision of this Interim Order is not valid and binding (unless such pleading is filed in response to the Pre-Petition Secured Parties' failure to comply with the terms and conditions of this Interim Order);

(e) any material provision of this Interim Order shall for any reason cease to be valid and binding (for the avoidance of doubt, the occurrence of the Termination Date described in clause (i) of Paragraph 7 shall not cause this Interim Order to cease to be valid and binding);

(f) the Debtors' filing of an application for the approval of any superpriority claim or for the grant of any lien or security interest in the Collateral, the Cash Collateral, or the Replacement Lien Collateral (other than with respect to any lien or security interest permitted under the Loan Documents)) without the prior written consent of the Instructing Agent;

(g) the entry of an order approving a superpriority claim or granting a lien or security interest in the Collateral, the Cash Collateral, or the Replacement Lien Collateral (other



than with respect to any lien or security interest permitted under the Loan Documents)) without the prior written consent of the Instructing Agent;

(h) the Debtors' filing of a motion or other pleading seeking the dismissal or conversion of any or all of the Chapter 11 Cases pursuant to section 1112 of the Bankruptcy Code or otherwise, in each case, without the prior written consent of the Pre-Petition Secured Parties;

(i) the dismissal of any or all of the Chapter 11 Cases or the conversion of any or all of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code;

(j) the Debtors' application for, consent to, or acquiesce in, the appointment of a trustee or an examiner having powers beyond those set forth in sections 1106(a)(3) and (4) of the Bankruptcy Code in any or all of the Chapter 11 Cases, without the prior written consent of the Pre-Petition Secured Parties;

(k) the appointment or election of a trustee or an examiner having powers beyond those set forth in sections 1106(a)(3) and (4) of the Bankruptcy Code in any or all of the Chapter 11 Cases;

(l) the Debtors' filing of any motion, action, application, or adversary proceeding seeking relief against any of the Pre-Petition Secured Parties with respect to the validity, enforceability, perfection, or priority of the Pre-Petition Liens, the Pre-Petition Obligations, or otherwise, other than a Reserved Rights Action (as defined below);

(m) the Concession Agreement or the Facility Lease (as those terms are defined in the Senior Bank Facility Agreement) are terminated;

(n) the Debtors' failure to maintain all such insurance and comply with all such insurance requirements as provided for under the terms of section 6.1.7(a) and 6.1.7(b) of the Senior Bank Facility Agreement; or

(o) the entry of an order modifying the automatic stay of section 362(a) of the Bankruptcy Code for the benefit of any party other than the Instructing Agent or the Collateral Agent in relation to any Collateral, Cash Collateral, or Replacement Lien Collateral.

6. **Rights and Remedies Upon Default.** The following shall constitute a default under the terms of this Interim Order (a "Default"): (i) the occurrence of an Event of Default under paragraph 5(c), 5(e), 5(g), 5(i), 5(k), 5(m), or 5(o) of this Interim Order; or (ii) the failure of the Debtors to cure an Event of Default under paragraph 5(a), 5(b), 5(d), 5(f), 5(h), 5(j), 5(l), or 5(n) of this Interim Order within five (5) business days (the "Default Notice Period") after the delivery of written notice of such Event of Default (a "Default Notice") by the Instructing Agent to the Debtors (with a copy contemporaneously provided to the Administrative Agent, counsel for the Administrative Agent (Munsch Hardt), counsel for the Steering Committee (Milbank Tweed), TIFIA, counsel for the Collateral Agent (Drinker Biddle), the U.S. Trustee, and counsel for the Committee (if a Committee is appointed) and any other official committee appointed in the Chapter 11 Cases), unless such Event of Default is waived by the Instructing Agent prior to expiration of the Default Notice Period. Following a Default:

(a) the Instructing Agent and the Collateral Agent shall be entitled to exercise any and all remedies available to the Instructing Agent and the Collateral Agent for the benefit of the Pre-Petition Secured Parties under the terms of this Interim Order, including, without limitation, revoking the Pre-Petition Secured Parties' consent (or non-opposition) to the Debtors' use of Cash Collateral; and

(b) upon the delivery of written notice by the Instructing Agent of termination of the automatic stay on account of the Default (a “Stay Relief Notice”) to the Debtors, the Notice Parties, and any other parties in interest entitled to notice in the Chapter 11 Cases, the automatic stay of section 362 of the Bankruptcy Code shall automatically terminate, without the necessity of any further notice, application or order of the Court, so as to allow the Instructing Agent and/or the Collateral Agent to exercise any and all remedies available to the Instructing Agent and/or the Collateral Agent for the benefit of the Pre-Petition Secured Parties under the terms of the Collateral Agency Agreement, applicable nonbankruptcy law and otherwise, including, without limitation, collecting and applying any proceeds of the Collateral and Replacement Lien Collateral, including Cash Collateral, subject only to the Carve-Out, unless and only to the extent that within five (5) business days after delivery of such Stay Relief Notice, the Court, upon written application filed with the Court and establishing just cause, enters an order limiting the exercise of any such remedies.

(c) The delay or failure on the part of any of the Pre-Petition Secured Parties to exercise any rights or remedies under the terms of this Interim Order or the Loan Documents shall not constitute a waiver of any of the Pre-Petition Secured Parties’ rights or remedies hereunder, thereunder or otherwise. Notwithstanding anything herein to the contrary, the automatic stay pursuant to section 362 of the Bankruptcy Code shall be automatically terminated for the purposes of giving any notice contemplated hereunder.

7. **Termination of Cash Collateral Usage.** Subject only to the Carve-Out, the Debtors’ right to use Cash Collateral under the terms of this Interim Order shall terminate automatically upon the earlier of the following (such earlier date referred to herein as the “Termination Date”): (i) 45 days after the Petition Date (unless extended under the terms of an

entered Final Order approved in form and substance by the Instructing Agent); or (ii) a Default; *provided* that, during the Default Notice Period (if applicable), the Debtors shall be entitled to continue to use Cash Collateral in accordance with the terms of this Interim Order and the Approved Budget, subject to the Budgetary Provisions, and during the Default Notice Period, the Debtors may request that the Court order the continued use of Cash Collateral, including on shortened notice. Notwithstanding the foregoing, with the written consent of the Debtors and the Instructing Agent, the Termination Date may be extended (in which case the obligations and entitlements set forth in this Interim Order shall continue in full force and effect as provided in such written consent without the necessity of further order of the Court). Upon the occurrence of the Termination Date, the Superpriority Claim (as defined below) shall be immediately allowed and the Pre-Petition Secured Parties shall have all rights and remedies provided in this Interim Order, in the Loan Documents, and under applicable law. Notwithstanding anything herein or the occurrence of the Termination Date, all of the rights, remedies, benefits, and protections provided to the Pre-Petition Secured Parties under this Interim Order shall survive the Termination Date.

8. **Restriction on Use of Cash Collateral.**

(a) No Collateral or Replacement Lien Collateral or any of the proceeds thereof, including, without limitation, any of the Pre-Petition Secured Parties' existing or future Cash Collateral, shall directly or indirectly be used for any payments, expenses or disbursements of the Debtors except as provided for in the Approved Budget, subject to the Budgetary Provisions, and the Carve-Out. For the avoidance of doubt, the Debtors shall use, and shall be deemed to have used, their unencumbered cash or any other unencumbered property, to the

extent any such unencumbered cash or property exists, before any Cash Collateral or other Collateral of the Pre-Petition Secured Parties is used.

(b) Subject to the entry of a Final Order, no administrative expense claims, including fees and expenses of professionals, shall be charged or assessed against or recovered from the Collateral or Replacement Lien Collateral, or attributed to the Pre-Petition Secured Parties with respect to their interest in the Collateral or Replacement Lien Collateral, pursuant to the provisions of section 506(c) of the Bankruptcy Code without the prior written consent of the Instructing Agent, and no such consent shall be implied from any action, inaction, or acquiescence by, either with or without notice to, any of the Pre-Petition Secured Parties. Except as set forth herein, the Pre-Petition Secured Parties have not consented or agreed to the use of the Collateral, including Cash Collateral, and nothing contained herein shall be deemed a consent by the Pre-Petition Secured Parties to any charge, lien, assessment or claim against the Collateral or Replacement Lien Collateral or against the Pre-Petition Secured Parties. The Pre-Petition Secured Parties shall not be subject in any way whatsoever to the equitable doctrine of “marshaling” or any similar doctrine with respect to the Pre-Petition Secured Parties’ Collateral and Replacement Lien Collateral.

(c) No Pre-Petition Secured Parties’ Collateral or Replacement Lien Collateral or any proceeds thereof, including, without limitation, Cash Collateral, may be used directly or indirectly by the Debtors, any official committee appointed in these Chapter 11 Cases, including the Committee (if appointed), any trustee appointed in the Chapter 11 Cases or any successor cases, or any other person, party, or entity to: (i) object to, contest, or raise any defense to the validity, perfection, priority, extent, or enforceability of the Pre-Petition Obligations or the Pre-Petition Liens; (ii) assert or prosecute any Claims and Defenses (as defined below) against

any of the Pre-Petition Secured Parties or their respective predecessors-in-interest, agents, affiliates, representatives, attorneys, or advisors; *provided* that, subject to the provisions of paragraph 13 of this Interim Order, up to \$50,000 of Cash Collateral in the aggregate may be used to pay the allowed fees and expenses of counsel retained by the Committee (if any) incurred directly and solely in the investigation of any such Claims and Defenses; (iii) prevent, hinder, or otherwise delay any of the Pre-Petition Secured Parties' assertion, enforcement, or realization on the Pre-Petition Obligations, the Pre-Petition Liens, the Adequate Protection Obligations (as defined below) or the Adequate Protection Liens (as defined below) in accordance with this Interim Order; (iv) seek to modify any of the rights granted to the Pre-Petition Secured Parties hereunder; (v) apply to the Court for authority to grant any superpriority claims that are senior to, or on parity with, the Superpriority Claim; (vi) apply to the Court for authority to grant any liens or security interests in the Collateral or the Replacement Lien Collateral, or any portion thereof, that are senior to, or on parity with, the Pre-Petition Liens or Adequate Protection Liens; or (vii) seek to pay any amount on account of any claims arising prior to the Petition Date unless such payments have been agreed to in writing by the Instructing Agent, have been approved by order of the Court, and are provided for in the Approved Budget, subject to the Budgetary Provisions.

9. **Adequate Protection**. In the event this Interim Order ceases to be in effect, the Pre-Petition Secured Parties shall receive and retain all rights and entitlements that a secured creditor would otherwise receive and/or retain if it had not consented to the use of its cash collateral, or sought relief from the automatic stay and had such request overruled. Without in any way limiting the foregoing, in connection with the Final Hearing, all rights of the Pre-Petition Secured Parties to assert or dispute any issue therein, are fully reserved and preserved, including but not limited to the adequacy of the Adequate Protection granted herein. In addition,

the Collateral Agent, for the benefit of the Pre-Petition Secured Parties, is hereby granted the following adequate protection, in each case in an amount equal to the extent of any diminution in value of the Pre-Petition Secured Parties' Collateral from and after the Petition Date (which shall be determined in a manner no less favorable than as if the Pre-Petition Secured Parties had not consented to use of the Pre-Petition Secured Parties' Collateral, including Cash Collateral) for, among other things, any post-petition diminution in the value of the Pre-Petition Secured Parties' Collateral resulting from the use, sale, or lease of such Collateral and/or the imposition of the automatic stay under section 362 of the Bankruptcy Code or otherwise:

(a) Valid, enforceable, non-avoidable, and fully perfected, first-priority post-petition security interests in and liens on (effective and perfected upon the date of entry of this Interim Order and without the necessity of execution by the Debtors of mortgages, security agreements, pledge agreements, financing statements, and other agreements or instruments) each and every Estate Asset (as defined below) that is not subject to (i) valid, perfected, non-avoidable, and enforceable liens in existence on or as of the Petition Date or (ii) valid and unavoidable liens in existence immediately prior to the Petition Date that are perfected after the Petition Date as permitted by Section 546(b) of the Bankruptcy Code (collectively, the "Unencumbered Property"); *provided* that, for purposes of this provision, Unencumbered Property shall not include causes of action under sections 544, 545, 547, 548 or 550 of the Bankruptcy Code (collectively, the "Avoidance Actions"), but upon entry of a Final Order, the Unencumbered Property shall include proceeds of Avoidance Actions (the "Avoidance Action Proceeds"); *provided further*, however, that the security interests and liens granted in the Avoidance Action Proceeds shall be subject and subordinate to the payment of unsecured claims allowed in these Chapter 11 Cases held by creditors other than affiliates (as defined in

section 101(2) of the Bankruptcy Code) and insiders (as defined in section 101(31) of the Bankruptcy Code), unless and to the extent agreed otherwise in writing by the Instructing Agent;

(b) Valid, enforceable, non-avoidable, and fully perfected junior priority security interests in and post-petition liens on (effective and perfected upon the date of entry of this Interim Order and without the necessity of execution by the Debtors of mortgages, security agreements, pledge agreements, financing statements, and other agreements or instruments) each and every Estate Asset (other than the property described in the provisos of paragraph 9(a) of this Interim Order) that is subject to (i) valid, perfected, and unavoidable liens in existence immediately prior to the Petition Date or (ii) valid and unavoidable liens in existence immediately prior to the Petition Date that are perfected after the Petition Date as permitted by Section 546(b) of the Bankruptcy Code, which valid, perfected, and unavoidable liens are senior in priority to the Pre-Petition Liens of the Pre-Petition Secured Parties (collectively with the security interests and liens granted under the foregoing paragraph 9(a), the “Adequate Protection Liens” and the collateral in respect of such liens, the “Replacement Lien Collateral”); and

(c) An allowed, first-priority, superpriority administrative expense claim under section 507(b) of the Bankruptcy Code (the “Superpriority Claim,” and together with the Adequate Protection Liens, the “Adequate Protection Obligations”) with priority in payment over any and all administrative expenses of the kinds specified in or ordered pursuant to sections 326, 328, 330, 331, 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 552, 726, 1113, and 1114 of the Bankruptcy Code, whether or not such expenses or claims arise in the Chapter 11 Cases or in any subsequent cases or proceedings under the Bankruptcy Code that may result therefrom.



(d) For purposes of this Interim Order, the term “Estate Assets” shall mean and include, without limitation, any and all prepetition and post-petition legal and equitable interests of the Debtors (or of any successor trustee or other estate representative in the Chapter 11 Cases or successor cases) and the Debtors’ estates in property, including property of the estate (within the meaning of section 541 of the Bankruptcy Code), of any kind or nature whatsoever, real or personal, tangible or intangible or mixed, whether now existing or hereafter acquired or created, including, without limitation, accounts, inventory, contracts, investment property, instruments, documents, chattel paper, patents, trademarks, copyrights, licenses, general intangibles, payment intangibles, machinery and equipment, real property (including all facilities), rents, deposit accounts, and commercial tort claims and other causes of action, expressly including causes of action arising under any section of chapter 5 of the Bankruptcy Code, and all proceeds of the foregoing.

(e) The Adequate Protection Liens and Superpriority Claim shall be subject and subordinate only to payment of the Carve-Out in accordance with the terms and conditions of this Interim Order.

(f) Except as expressly provided otherwise herein, any other order of the Court, or any applicable provisions of the Bankruptcy Code, the Debtors shall continue to comply in all respects with the terms of the Loan Documents. Further, nothing in this Interim Order is intended to, nor shall be deemed to, vary any of the rights and obligations provided for under the ICA.

10. **Secured Party Professional Fees.** Additionally, subject to the provisions of this paragraph, as part of the adequate protection granted to the Pre-Petition Secured Parties, the Debtors shall pay in cash the following (collectively, the “Secured Party Professional Fees”): (i)

all reasonable and documented prepetition and post-petition fees and expenses of the Collateral Agent (including, but not limited to, attorneys' fees and expenses); (ii) all reasonable and documented prepetition and post-petition fees and expenses of the Administrative Agent and Instructing Agent (including, but not limited to, attorneys' fees and expenses of Munsch Hardt, financial advisory fees and expenses of RPA Advisors, LLC, and technical advisory fees and expenses of the Technical Advisor (as defined below)); (iii) all reasonable and documented prepetition and post-petition fees and expenses of the Steering Committee (including, but not limited to, attorneys' fees and expenses of Milbank Tweed); and (iv) all reasonable and documented prepetition and post-petition fees and expenses of TIFIA (including, but not limited to, attorneys' fees and expenses). The Collateral Agent, Administrative Agent/Instructing Agent, Steering Committee, and TIFIA, respectively, shall deliver a copy of all invoices issued for the Secured Party Professional Fees sought for payment (which may be redacted to protect privileged, confidential or proprietary information) or a summary of such invoices (in either case, a "Fee Notice") to (i) the Debtors and their counsel, (ii) each of the Agents, (iii) the Steering Committee, (iv) TIFIA, (v) the U.S. Trustee, and (vi) the Committee (if appointed) and any other officially appointed committee in these Chapter 11 Cases (in each case, through counsel, as applicable) (collectively, the "Fee Notice Parties"). Any copies of invoices and summaries of invoices provided pursuant to this provision shall include the names of the professionals rendering services, the number of hours expended by each such professional, a reasonably detailed description of the services provided, and the amount of fees charged and out-of-pocket expenses incurred. The Fee Notice Parties shall have five (5) business days after delivery of a Fee Notice (the "Fee Notice Objection Period") to deliver to the applicable party requesting payment of Secured Party Professional Fees and all other Fee Notice Parties a written

objection to the reasonableness of any such fees, costs or expenses sought for payment under the Fee Notice (a “Fee Notice Objection”). Any objections to the Secured Party Professionals Fees sought for payment under the Fee Notice which are not asserted within the Fee Notice Objection Period in accordance with the foregoing provision shall be forever waived and barred, and the Debtors shall promptly (and in no event any later than ten (10) days after delivery of the Fee Notice) make payment of the Secured Party Professional Fees reflected in the Fee Notice to the applicable professional. In the event of the delivery of a Fee Notice Objection within the Fee Notice Objection Period, the Debtors shall pay the undisputed portion of the Fee Notice within the timeframe noted above, and the objecting party and applicable requesting party shall attempt, in good faith, to resolve the Fee Notice Objection. If and to the extent such Fee Notice Objection is resolved, written notice thereof shall be provided to the Debtors, following which the Debtors shall pay the amount agreed upon within ten (10) days after the delivery of notice of such resolution to the Debtors. If and to the extent the Fee Notice Objection is not resolved by twenty (20) days after delivery of the Fee Notice Objection (or such longer period as may be agreed upon in writing by the objecting party and the requesting party), the dispute shall be resolved by the Court upon application of the party requesting payment. Notwithstanding any other provisions of this Interim Order, and irrespective of whether any amounts are budgeted for the payment of Secured Party Professional Fees in the Approved Budget, the Debtors are authorized to make payment of Secured Party Professional Fees under the terms and conditions of this paragraph.

11. **Carve-Out.** As used in this Interim Order, “Carve-Out” means the sum of (i) all fees required to be paid to the Clerk of the Court and to the U.S. Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice

set forth in (iii) below); (ii) fees and expenses of up to \$30,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed by the Court at any time, subject to the Approved Budget, all unpaid fees and expenses (the “Case Professional Fees”) incurred by Case Professionals at any time before the first business day following a Default and delivery of written notice by the Instructing Agent to the Debtors, their lead restructuring counsel, the U.S. Trustee, and the Committee (if any) and any other official committee appointed in the Chapter 11 Cases of the Instructing Agent’s termination of consent to the Debtors’ continued use of Cash Collateral (such notice, a “Carve-Out Trigger Notice”), whether allowed by the Court prior to or after delivery of a Carve-Out Trigger Notice; and (iv) to the extent allowed by the Court at any time, Case Professional Fees incurred by Case Professionals on or after the first business day following the delivery of a Carve-Out Trigger Notice in an aggregate amount not to exceed \$750,000 (the “Residual Carve-Out”). Any payments made to Case Professionals for services rendered prior to the delivery of the Carve-Out Trigger Notice, and any fees and expenses of Case Professionals accrued prior to the first business day following delivery of the Carve-Out Trigger Notice which are subsequently allowed at any time by the Court, shall not reduce the Residual Carve-Out. To the extent the Residual Carve-Out is reduced as a result of payment of fees and expenses during the continuation of an Event of Default, and such Event of Default is subsequently cured or waived, the Residual Carve-Out shall be increased by an amount equal to the amount by which it had been so reduced. Any Case Professional must first exhaust any retainers held by such Case Professional before seeking payment of any fees and expenses pursuant to the Residual Carve-Out. In all cases, and notwithstanding anything to the contrary herein, the Carve-Out shall be

senior and paid in full in cash prior to, and not subject to, the Adequate Protection Liens, Superpriority Claims, Pre-Petition Liens and Pre-Petition Obligations or any junior lien or claim.

12. **Reporting and Other Requirements.** In addition to the reports and information required to be provided by the Debtors under the Loan Documents (except to the extent such reports are modified by this Interim Order), the Debtors shall provide periodic reports to, be available to consult with, and/or seek the consent of, the Administrative Agent and Louis Berger Group (Domestic), Inc., in its capacity as technical advisor to the Administrative Agent and the Steering Committee (the “Technical Advisor”), as follows:

(a) On a weekly basis, within three (3) calendar days after the end of the preceding calendar week, the Debtors shall provide a report in a form reasonably satisfactory to the Administrative Agent and the Technical Advisor reflecting revenues obtained and operating expenses and other expenditures incurred during the preceding week;

(b) On a weekly basis, within three (3) calendar days after the end of the preceding calendar week, the Debtors shall provide a brief narrative explanation of the nature of the capital expenditures incurred during the preceding week, the nature of the capital improvements made (or in process of being made) associated with such expenditures, and the status of and progress made by the Debtors in completing such capital improvements (as applicable);

(c) On a monthly basis, on or before the third Wednesday of each subsequent month, the Debtors shall provide a report in a form reasonably satisfactory to the Administrative Agent and the Technical Advisor the variances for such period between the actual amounts obtained/incurred and the budgeted amounts (as shown in the Approved Budget) for each

category of expenditures described in paragraph H of this Interim Order, together with a brief narrative explanation of the reasons of any such variances;

(d) The consent of the Technical Advisor, which consent shall not be unreasonably withheld, shall be required in connection with the Debtors' selection of a geotechnical advisor to be retained for purposes of addressing pavement issues and the scope of services to be provided by such geotechnical advisor;

(e) Promptly upon request, the Debtors shall provide such additional reasonably available financial and other information with respect to the Debtors, the Debtors' operations, and the Debtors' development, maintenance and operation of the Project (as defined in the Senior Bank Facility Agreement), as the Administrative Agent or Technical Advisor may reasonably request, but only to the extent such information is not privileged;

(f) As any material developments occur, the Debtors shall promptly provide updates to, and make themselves reasonably available to consult with, the Administrative Agent and the Technical Advisor concerning such matters including, without limitation, but only to the extent such information is not privileged: (i) contractor disputes and any insurance claims submitted in connection therewith, (ii) any correspondence to or from TxDOT, any municipality or regulatory authority, or any vendor that may have a material impact on the Debtors' operations, and the development, maintenance and operation of the Project (and the Debtors shall promptly provide a copy of any such correspondence to the Administrative Agent and the Technical Advisor), (iii) material updates with respect to any material pending litigation, and (iv) the Debtors' intention to make any payments in connection with funding repairs and/or maintenance costs arising from emergency and/or catastrophic events, prior to the funding of any amounts in connection therewith;

(g) The Debtors shall promptly provide the Technical Advisor with any final reports, analyses, written materials, or other information prepared by the geotechnical advisor retained by or on behalf of the Debtors; *provided, however*, this subparagraph (g) does not include reports prepared in contemplation of litigation or reports that are otherwise privileged and confidential;

(h) The Technical Advisor shall promptly provide the Debtors with any final reports, analyses, written materials, or other information prepared by the Technical Advisor; *provided, however*, this subparagraph (h) does not include reports prepared in contemplation of litigation or reports that are otherwise privileged and confidential;

(i) The Debtors and the Technical Advisor shall hold regular, weekly calls, as reasonably requested by the Technical Advisor on a mutually convenient date and time, to discuss any material developments and other relevant matters; and

(j) During normal business hours and subject to reasonable prior notice, the Debtors and their personnel and professionals shall make themselves reasonably available to discuss with the Administrative Agent and Technical Advisor any reports provided pursuant to this Interim Order, the Debtors' operations, and the development, maintenance and operation of the Project, on such basis as may be reasonably requested by the Administrative Agent.

13. **Investigation Period.**

(a) The Adequate Protection Liens, the Superpriority Claim, and the Pre-Petition Liens shall be senior to, and no Collateral, Replacement Lien Collateral or Cash Collateral may be used to pay, any claims for services rendered by any Debtor Professionals (or any successor trustee or other estate representative in the Chapter 11 Cases or any successor cases), any creditor, or party in interest, any official committee, or any other party in connection

with the assertion of or joinder in any claim, counterclaim, action, proceeding, application, motion, investigation, objection, defense or other contested matter against the Pre-Petition Secured Parties in connection with (i) invalidating, setting aside, avoiding, subordinating, recharacterizing, or challenging, in whole or in part, any claims or liens arising under or with respect to the Loan Documents, the Pre-Petition Obligations, the Pre-Petition Liens, or the Pre-Petition Secured Parties' Collateral, or (ii) preventing, hindering, or delaying, whether directly or indirectly, the Pre-Petition Secured Parties' assertions or enforcement of their liens, security interests, or realization upon any of the Pre-Petition Secured Parties' Collateral; *provided* that nothing in this Interim Order shall limit the Debtors' right to request that this Court order the continued use of Cash Collateral, including on shortened notice. Notwithstanding anything herein to the contrary, the Committee shall have forty-five (45) days from the date of its appointment, or, if no Committee is appointed, all parties in interest shall have sixty (60) days from the date of entry of this Interim Order (the "Investigation Termination Date") to investigate the validity, perfection, enforceability, and extent of the Pre-Petition Obligations and Pre-Petition Liens and any potential claims of the Debtors or their estates against the Pre-Petition Secured Parties in respect of the Pre-Petition Obligations and Pre-Petition Liens, "lender liability" claims and causes of action, or any other claims or defenses to the Pre-Petition Obligations and Pre-Petition Liens, and/or causes of action against any of the Pre-Petition Secured Parties (all such claims, defenses, and other actions described in this paragraph collectively defined as the "Claims and Defenses").

(b) Claims and Defenses shall only be preserved if timely and properly asserted by a party in interest with standing through the actual commencement of an adversary proceeding on or before the Investigation Termination Date. If no such action is properly filed on



or before the Investigation Termination Date, all holders of claims and interests as well as other parties in interest shall be forever barred from bringing any such Claims and Defenses or taking any such action, and the Debtors' stipulations made in this Interim Order and the release set forth herein shall be binding on all parties in interest. If such an action is timely and properly brought, any Claims and Defenses that are not brought in such action on or before the Investigation Termination Date shall be forever barred.

(c) Nothing in this Interim Order vests or confers on any committee (including the Committee) or any other party standing or authority to bring, assert, commence, continue, prosecute, or litigate any cause of action belonging to the Debtors or their estates, including, without limitation, the Claims and Defenses.

14. **Debtors' Reservation of Rights.** Notwithstanding anything herein to the contrary, the Debtors reserve all rights to assert and seek declaratory relief with respect to the assertion that post-petition toll revenues (the "Post-Petition Toll Revenue") are not proceeds, products, offspring, profits or rents of any Collateral (the "Reserved Rights"). Any action by the Debtors to assert Reserved Rights and/or seek declaratory relief with respect thereto shall be referred to herein as a "Reserved Rights Action." The Debtors shall maintain an accurate and detailed accounting of the Post-Petition Toll Revenue and shall trace the flow of Post-Petition Toll Revenue through its cash management system and the Debtors' various accounts.

15. **Limitation of Liability.** Nothing in this Interim Order shall in any way be construed or interpreted to impose or allow the imposition upon any of the Pre-Petition Secured Parties any liability for any claims arising from the pre-petition or post-petition activities of any of the Debtors and their respective affiliates (as defined in section 101(2) of the Bankruptcy Code).

16. **Equities of the Case.** In light of the Pre-Petition Secured Parties' agreement to permit (or non-opposition to) the use of the Pre-Petition Secured Parties' Collateral and Cash Collateral for payments made in accordance with the Approved Budget, subject to the Budgetary Provisions and the Reserved Rights, and the terms of this Interim Order, the Pre-Petition Secured Parties (subject to entry of the Final Order) shall be entitled to all protections of section 552(b) of the Bankruptcy Code, and the "equities of the case" exception of section 552(b) of the Bankruptcy Code shall not apply to any of the Pre-Petition Secured Parties with respect to the proceeds, product, offspring, or profits of any of its Collateral.

17. **Additional Perfection Measures.**

(a) Pursuant to this Interim Order, the Adequate Protection Liens are, and are deemed to be, valid, enforceable, and perfected liens, effective as of the Petition Date, and (notwithstanding any provisions of any agreement, instrument, document, the Uniform Commercial Code, or any other relevant law or regulation of any jurisdiction) no further notice, filing, possession, control, or other act shall be required to effect such perfection, and all liens on any deposit accounts or securities shall, pursuant to this Interim Order be, and they hereby are deemed to confer "control" for purposes of sections 8-106, 9-104, and 9-106 of the New York Uniform Commercial Code as in effect as of the date hereof or similar applicable laws in favor of the Pre-Petition Secured Parties).

(b) None of the Debtors, the Instructing Agent, or the Collateral Agent shall be required to enter into or obtain landlord waivers, mortgagee waivers, bailee waivers, warehouseman waivers, or other waiver or consent to enter into control agreements, or to file or record financing statements, mortgages, deeds of trust, leasehold mortgages, notices of lien, or similar instruments in any jurisdiction (including trademark, copyright, trade name, or patent

assignment filings with the United States Patent and Trademark Office, Copyright Office, or any similar agency with respect to intellectual property, or filings with any other federal agencies/authorities), or obtain consents from any licensor or similarly situated party-in-interest, or take any other action in order to validate and to perfect the Adequate Protection Liens.

(c) The Instructing Agent or Collateral Agent may, but shall not be obligated to, obtain consents from any landlord, licensor, or other party in interest, file mortgages, financing statements, notices of lien or similar instruments, or otherwise record or perfect such security interests and liens, in which case: (i) all such documents shall be deemed to have been recorded and filed as of the time and on the date of entry of this Interim Order; and (ii) no defect in any such act shall affect or impair the validity, perfection, and enforceability of the liens granted hereunder.

(d) In lieu of obtaining such consents or filing any such mortgages, financing statements, notices of lien, or similar instruments, the Instructing Agent or the Collateral Agent may, but shall not be obligated to, file a true and complete copy of this Interim Order in any place at which any such instruments would or could be filed, together with a description of collateral, as applicable, and such filings by the Instructing Agent the Collateral Agent shall have the same effect as if such mortgages, deeds of trust, financing statements, notices of lien, or similar instruments had been filed or recorded at the time and on the date of entry of this Interim Order.

18. **Automatic Stay Modified**. The automatic stay of section 362 of the Bankruptcy Code is hereby vacated and modified to the extent necessary to permit the Pre-Petition Secured Parties' provision of any notice, and the taking of any action, authorized or contemplated under the terms of this Interim Order. Upon the occurrence and during the continuation of a Default,

and after the provision by the Pre-Petition Secured Parties to the Debtors and their counsel of five business days' prior notice of such Default, the Instructing Agent and the Collateral Agent may exercise all rights and remedies provided for in this Interim Order, and, subject to entry of the Final Order, take any or all of the following actions without further order or application to the Court: (a) declare all Adequate Protection Obligations owed to the Pre-Petition Secured Parties to be immediately due and payable; (b) subject to the Carve-Out and the terms of this Interim Order, set off and apply immediately any and all amounts in accounts maintained by the Debtors with the Collateral Agent or other Pre-Petition Secured Parties against the Adequate Protection Obligations and Pre-Petition Obligations owed to the Pre-Petition Secured Parties and otherwise enforce rights against the Collateral for application towards the Adequate Protection Obligations and the Pre-Petition Obligations; (c) take any and all actions necessary to take control of all Cash Collateral; and (d) take any other actions or exercise any other rights or remedies permitted under this Interim Order or applicable law to effect the repayment and satisfaction of the Adequate Protection Obligations and the Pre-Petition Obligations owed to the Pre-Petition Secured Parties. The rights and remedies of the Pre-Petition Secured Parties specified herein are cumulative and not exclusive of any rights or remedies that they may otherwise have.

19. **Agent Authorization.** The Agents are each hereby authorized to make any and all account transfers requested by the Debtors in accordance with this Interim Order and the Approved Budget and the Budgetary Provisions, and are each further authorized to take any other action reasonably necessary to implement the terms of this Interim Order (including, for the avoidance of doubt, requiring that the Debtors certify that any account transfer complies with the terms of this Interim Order and the Approved Budget and Budgetary Provisions).

20. **Actions by the Agents.** For the avoidance of doubt, (i) when the Collateral Agent is permitted, required or requested to act in any manner pursuant to the provisions of this Interim Order, the Collateral Agent shall do so solely at the direction of the Directing Creditor (as defined in the Collateral Agency Agreement) as and to the extent required under the Collateral Agency Agreement; (ii) when the Instructing Agent is permitted, required or requested to act in any manner pursuant to the provisions of this Interim Order, the Instructing Agent shall do so solely at the direction of the Required Senior Lenders (as defined in the Collateral Agency Agreement) as and to the extent required under the Collateral Agency Agreement; and (iii) when the Administrative Agent is permitted, required or requested to act in any manner pursuant to the provisions of this Interim Order, the Administrative Agent shall do so solely only in accordance with the terms of the Senior Bank Facility Agreement as and to the extent required under the Senior Bank Facility Agreement.

21. **Successors and Assigns.** The provisions of this Interim Order shall be binding upon the Debtors, the Agents, the other Pre-Petition Secured Parties, and each of their respective successors and assigns, and shall inure to the benefit of the Debtors, the Agents, the other Pre-Petition Secured Parties, and each of their respective successors and assigns, including, without limitation, any trustee, responsible officer, estate administrator or representative, or similar person appointed in a case for the Debtors under any chapter of the Bankruptcy Code. The provisions of this Interim Order shall also be binding on all of the Debtors' creditors, equity holders, and all other parties in interest, including any official committee appointed in the Chapter 11 Cases.

22. **No Modification of Interim Order.** The Debtors irrevocably waive any right to seek any amendment, modification, or extension of this Interim Order without the prior written

consent of the Instructing Agent and the Collateral Agent, and no such consent shall be implied by any action, inaction, or acquiescence of the Instructing Agent, the Collateral Agent, or any of the other Pre-Petition Secured Parties.

23. **Rights Preserved.** Except as expressly set forth herein, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly (a) the Debtors' or Pre-Petition Secured Parties' right to seek any other or supplemental relief in respect of the Chapter 11 Cases; or (b) any rights of the Debtors or Pre-Petition Secured Parties under the Bankruptcy Code or applicable nonbankruptcy law. Nothing contained herein shall be deemed an election of remedies on the part of the Pre-Petition Secured Parties, and nothing contained herein shall be deemed a finding by the Court or an acknowledgement by the Pre-Petition Secured Parties that the adequate protection granted herein does in fact adequately protect the Pre-Petition Secured Parties against any diminution in value of their interests in the Pre-Petition Collateral, including Cash Collateral; *provided* that, subject to the entry of the Final Order, the Debtors acknowledge and agree that any disbursements or payments by the Debtors on account of the Case Professional Fees shall constitute a diminution in value of the Pre-Petition Secured Parties' Collateral, entitling the Pre-Petition Secured Parties to Adequate Protection Obligations in an amount equal to such payments.

24. **No Waiver by Failure to Seek Relief.** The delay or failure of the Pre-Petition Secured Parties to seek relief or otherwise exercise their rights and remedies under this Interim Order, the Loan Documents, or applicable law, as the case may be, shall not constitute a waiver of any of the rights hereunder, thereunder, or otherwise of the Pre-Petition Secured Parties.

25. **No Impact to ICA.** For the avoidance of doubt, nothing in this Interim Order shall constitute, nor be deemed or construed as, any modification to any of the terms of the ICA.

26. **Priority of Terms.** To the extent of any conflict between or among the Motion, any other order of the Court, or any other agreements, on the one hand, and the terms and provisions of this Interim Order, on the other hand, the terms and provisions of this Interim Order shall govern.

27. **No Third Party Beneficiary.** Except as explicitly set forth herein, no rights are created hereunder for the benefit of any third party, any creditor, or any direct, indirect or incidental beneficiary.

28. **Survival.** Except as otherwise provided herein: (a) the protections afforded to the Pre-Petition Secured Parties under this Interim Order, and any actions taken pursuant thereto, shall survive the entry of an order (i) dismissing any or all of the Chapter 11 Cases, (ii) converting any or all of the Chapter 11 Cases into cases under chapter 7 of the Bankruptcy Code, and (iii) confirming any plan of reorganization in any of the Chapter 11 Cases; and (b) the Adequate Protection Obligations shall continue in the Chapter 11 Cases, in any such successor case, or after any such conversion or dismissal of the Chapter 11 Cases. Except as otherwise provided herein, the Adequate Protection Obligations shall maintain their priorities as provided in this Interim Order, and not be modified, altered or impaired in any way by any other financing, extension of credit, incurrence of indebtedness, or any conversion of any or all of the Chapter 11 Cases into cases pursuant to chapter 7 of the Bankruptcy Code or dismissal of any or all of the Chapter 11 Cases, or by any other act or omission until the Pre-Petition Obligations are indefeasibly paid in full (including pursuant to a chapter 11 plan) or receive treatment as otherwise agreed to in writing by the Pre-Petition Secured Parties.

29. **Final Hearing Date.** The Final Hearing with respect to the Motion shall be held on April 6, 2016 at 8:30 a.m. prevailing Central Time, at the United States Bankruptcy Court for

the Western District of Texas, Homer J. Thornberry Federal Building, 903 San Jacinto Blvd., Austin, Texas 78701. Any objections or responses to the Motion shall be filed on or before March 30, 2016, and served on the parties, as required by the Local Bankruptcy Rules for the United States Bankruptcy Court for the Western District of Texas.

30. **Requisite Notice.** For all purposes of this Interim Order, when notice may or is required to be given, notice shall be provided at the addresses set forth below, and shall be deemed delivered (i) upon receipt, if delivered by hand delivery or electronic email transmission; (ii) upon the first business day following deposit with the courier, if delivered by overnight courier; (iii) upon three (3) business days following deposit with the U.S. Postal Service, if delivered by U.S. Postal Service, postage prepaid:

If to the Debtors, to:

SH 130 Concession Company, LLC  
Attn: Steven J. Thoreson  
10800 N US 183 Highway NB, Buda, TX  
78610  
Email: sthoreson@sh130cc.com

If to Counsel to the Debtors, to:

Gibson, Dunn & Crutcher LLP  
Attn: David M. Feldman, Matthew K. Kelsey  
and Alan Moskowitz  
200 Park Avenue  
New York, NY 10166-0193  
Email: DFeldman@gibsondunn.com,  
MKelsey@gibsondunn.com, and  
AMoskowitz@gibsondunn.com

If to the Administrative Agent/Instructing Agent, to:

BNP Paribas  
Attn: Barbara Eppolito  
787 Seventh Avenue  
New York, NY 10019  
Email: Barbara.eppolito@us.bnpparibas.com

If to Counsel to the Administrative Agent/  
Instructing Agent, to:

Munsch Hardt Kopf & Harr, P.C.  
Attn: E. Lee Morris and Kevin M. Lippman  
500 N. Akard Street, Suite 3800  
Dallas, TX 75201-6659  
Email: lmorris@munsch.com, and  
klippman@munsch.com

If to Counsel to the Steering Committee, to:

Milbank, Tweed, Hadley & McCloy LLP  
Attn: Gerard Uzzi, Gregory Bray and  
Mary Doheny  
28 Liberty Street  
New York, NY 10005-1413  
Email: GUzzi@milbank.com,



GBray@milbank.com, and  
MDoheny@milbank.com

If to the Collateral Agent, to:  
Deutsche Bank Trust Company Americas  
c/o DB Services New Jersey, Inc.  
Issuer Services – Institutional Cash &  
Securities Services (ICSS)  
Attn: Ana Higuera  
100 Plaza One  
Jersey City, NJ 07311-3901  
Email: ana.higuera@db.com

If to Counsel to the Collateral Agent, to:  
Drinker Biddle & Reath LLP  
Attn: Kristin K. Going and Heath D. Rosenblat  
1500 K Street, NW, Suite 1100  
Washington, DC 20005-1209  
Email: Kristin.Going@db.com, and  
Heath.Rosenblat@db.com

31. **Service of Interim Order and of Objections to Final Order.** The Debtors shall promptly serve copies of this Interim Order, the proposed Final Order, and notice of the Final Hearing to the Notice Parties, any other known party affected by the terms of the Final Order, and any other party requesting notice after the entry of this Interim Order. Any objection to the relief sought at the Final Hearing shall be made in writing setting forth with particularity the grounds thereof, and filed with the Court and served so as to be actually received no later than five business (5) days prior to the Final Hearing by the following: (a) Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166-0193, Attn: David M. Feldman, Matthew K. Kelsey, and Alan Moskowitz, counsel to the Debtors; (b) Munsch Hardt, 500 N. Akard, Dallas, Texas 75201, Attn: E. Lee Morris and Kevin M. Lippman, counsel to the Administrative Agent/Instructing Agent; (c) RPA Advisors, LLC, 45 Eisenhower Drive, Paramus, New Jersey 07652, Attn: Ned Kleinschmidt, financial advisors to the Administrative Agent; (d) Drinker Biddle, 1500 K Street, NW, Suite 1100, Washington, DC 20005-1209, Attn: Kristin K. Going and Heath D. Rosenblat, counsel to the Collateral Agent; (e) Milbank Tweed, One Chase Manhattan Plaza, New York, New York 10005-1413, Attn: Gerard Uzzi, Gregory Bray, and Mary Doheny, counsel to the Steering Committee; (f) the U.S. Trustee, 903 San Jacinto, Room

230, Austin, TX 78701, Attn: Henry G. Hobbs; and (g) counsel to any Committee appointed in the Chapter 11 Cases.

32. **Proofs of Claim.** Notwithstanding any order entered by the Court in relation to the establishment of a bar date in any of the Chapter 11 Cases or any successor cases to the contrary, none of the Pre-Petition Secured Parties will be required to file proofs of claim in any of the Chapter 11 Cases or any successor cases for any claim described herein, and the Debtors' stipulations shall be deemed to constitute a timely filed proof of claim for the Pre-Petition Secured Parties to such extent. Notwithstanding the foregoing, the Agents, for the benefit of themselves and applicable Pre-Petition Secured Parties, are authorized and entitled, in their sole discretion, but are not required, to file (and amend and/or supplement, as each sees fit) a proof of claim and/or proofs of claim in each of the Chapter 11 Cases or any successor cases for any claim described herein.

33. **Entry of Interim Order; Effect.** This Interim Order shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry hereof, notwithstanding the possible application of Bankruptcy Rules 6004(h), 7062, 9014, or otherwise, and the Clerk of the Court is hereby directed to enter this Interim Order on the Court's docket in the Chapter 11 Cases.

34. **Retention of Jurisdiction.** The Court shall retain jurisdiction over all matters pertaining to the implementation, interpretation, and enforcement of this Interim Order.

35. **Binding Effect of Interim Order.** The terms of this Interim Order shall be binding on any trustee appointed under chapter 7 or chapter 11 of the Bankruptcy Code.

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David M. Feldman (*pro hac vice* pending)  
Matthew K. Kelsey (*pro hac vice* pending)  
Alan Moskowitz (*pro hac vice* pending)  
Matthew G. Bouslog (*pro hac vice* pending)  
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(512) 236-2002 – FAX  
Email address: [ptomasco@jw.com](mailto:ptomasco@jw.com)  
Email address: [jwertz@jw.com](mailto:jwertz@jw.com)

**PROPOSED COUNSEL FOR THE DEBTORS**

	Start End	Stub week 3-Mar 6-Mar	Week 1 7-Mar 13-Mar	Week 2 14-Mar 20-Mar	Week 3 21-Mar 27-Mar	Week 4 28-Mar 3-Apr	Week 5 4-Apr 10-Apr	Week 6 11-Apr 17-Apr	Week 7 18-Apr 24-Apr	Week 8 25-Apr 1-May
INITIAL CASH BALANCE:		11,687	11,999	12,364	12,650	11,284	10,589	9,510	10,051	10,483
TOLL RECEIPTS - GROSS:		329	519	554	546	558	556	671	629	775
Less - Basic Transaction Fees to TxDOT		(16)	(22)	(25)	(23)	(24)	(24)	(29)	(27)	(35)
NET RECEIPTS:		312	497	529	523	533	532	642	602	740
LESS DISBURSEMENTS:										
Concession Payment					1,000					
Right of Way Payments		-	-	-	-	3	1	33	3	3
Operating Expenses:										
Overhead:										
Personnel Expenses		-	7	-	103	20	7	-	7	109
External Services		-	11	36	50	15	3	30	5	52
Travel Expenses			7		2			1		2
General Services		-	10	20	7	10	16	5	7	5
Insurance							236			
IT Expenses		-	-	-	3	0	-	-	3	0
Office supplies			1					1		
Training			1	3				3		
Communications										
Direct costs:										
Materials			15	5	10	5	10	5	10	5
Personnel Expenses		-	39	-	49	21	39	-	39	31
External Services		-	20	58	15	175	177	5	40	256
Training				3						
Travel Expense				2						
Systems										
Supplies Expense			17	13			12	13		
General Expenses			2	1	1	1	1	1	1	1
Office supplies		0	0	0	0	0	0	0	0	0
Insurance Expense							401			
Other						220				
Total Operating Expenses		0	131	141	239	467	902	64	112	462
Sponsor Affiliate Payments		-	-	-	-	204	-	-	-	203
Restructuring Advisor/Committee fees:		-	-	-	-	-	-	-	-	-
US Trustee Fees										10
Total expenses		0	131	141	239	671	902	64	112	675
Capital Expenditures:										
Design & Build Contractor										
Infrastructure items		-	-	100	650	550	150	-	-	500
Tolling/ITS/Back office		-	-	-	-	-	484	-	-	-
Connectivity expenses		-	-	-	-	-	-	-	15	-
Roadway Gantry		-	-	-	-	-	-	-	10	-
Signage		-	-	3	-	-	-	-	-	-
Other Required Capital Expenditures		-	-	-	-	5	73	5	30	5
Total Capital Expenditures:		-	-	103	650	555	707	5	55	505
TOTAL DISBURSEMENTS:										
		0	131	244	1,889	1,229	1,610	102	170	1,184
Movement		312	366	286	(1,366)	(695)	(1,079)	541	432	(444)
FINAL CASH BALANCE:										
		11,999	12,364	12,650	11,284	10,589	9,510	10,051	10,483	10,039
Cumulative Infrastructure costs		-	-	100	750	1,300	1,450	1,450	1,450	1,950
Cash balance Excluding Infrastructure Costs:		11,999	12,364	12,750	12,034	11,889	10,960	11,501	11,933	11,989
Receivables:										
Opening Balance		3,513	3,700	3,697	3,659	3,629	3,638	3,670	3,586	3,544
Toll Billings		516	516	516	516	567	587	587	587	627
Toll Receipts		(329)	(519)	(554)	(546)	(558)	(556)	(671)	(629)	(775)
Ending Receivables:		3,700	3,697	3,659	3,629	3,638	3,670	3,586	3,544	3,397