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IN THE UNITED STATES BANKRUPTCY COURT
IN AND FOR THE DISTRICT OF ARIZONA

In re)	
)	No. 2:18-01882-DPC
CK ASSISTED LIVING OF ARIZONA,)	
LLC,)	CHAPTER 11
)	
Debtor.)	FIRST AMENDED PLAN OF
)	REORGANIZATION

COMES NOW the Debtor, by and through its attorneys undersigned, and herein proposes the following Plan of Reorganization.

I. Classification of Creditors.

The classes of creditors are divided as follows:

- | | |
|----------|---|
| Class 1 | Expenses of Administration. |
| Class 2 | CAPITAL FUND 1, LLC ("CAPITAL"). |
| Class 3 | MICHAEL and KIM KENYON ("KENYONS"). |
| Class 4. | PEACEFUL VALLEY ADULT CARE HOME, INC. ("PVACHI"). |
| Class 5 | INTERNAL REVENUE SERVICE ("IRS"). |
| Class 6 | Unsecured creditors. |
| Class 7. | Owner. |

II. Treatment Provisions for Claims of Creditors.

The claims of creditors will be satisfied and treated as below set forth:

1 Class 1. The Debtor has certain administrative claimants. The
2 Debtor will pay any approved sums to administrative claimants within 30 days of the
3 applicable Court Order, unless the applicable administrative claimant agrees to a later
4 date. Any sums due the United States Trustee are within this Class; it is believed the
5 Debtor is current with quarterly payments due the United States Trustee, and will so
6 remain current. This Class is not impaired by the Plan.

7 Class 2. CAPITAL possesses the first lien position Deed of Trust on
8 the real property owned by the Debtor at 6336 N. Pottery Place, Prescott, Arizona ("Real
9 Property"). The Debtor has entered into a Stipulated Order Providing for Use of Cash
10 Collateral and Adequate Protection of Secured Creditor's Liens and Stipulation Lifting
11 Automatic Stay ("Stipulated Order") with CAPITAL. A copy of the approved Stipulated
12 Order is attached as Exhibit A; all of the terms of the Stipulated Order are incorporated
13 into this Plan. Upon confirmation, the monthly payment of the Debtor to CAPITAL shall
14 be \$4,500.00. The Debtor will separately pay the real property taxes and insurance.
15 The remaining balance due CAPITAL shall be fully due and payable 5 years from the
16 date of confirmation. The lien of CAPITAL shall be retained until CAPITAL has been
17 paid pursuant to the terms of this Class. Interest shall be paid at the contract rate.
18 This Class is impaired by the Plan.

19 Class 3. KENYONS possess the second lien position Deed of Trust on
20 the Real Property. Beginning 30 days after the date of confirmation, and continuing on
21 the same day of each month thereafter, the Debtor shall pay KENYONS \$500.00 per
22 month on the second lien position Deed of Trust. The remaining balance due
23 KENYONS shall be fully due and payable 5 years from the date of confirmation. The lien
24 of KENYONS shall be retained until KENYONS have been paid pursuant to the terms of
25 this Class. Interest on the second position Deed of Trust shall be paid at the contract
26 rate.

27 Presently, an issue has arisen regarding restrictions on the use of the Real
28 Property which were unknown to the Debtor at the time of the closing of the applicable

1 Purchase Contract. If an impediment is ultimately determined to be applicable, litigation
2 will be filed concerning the failure to provide clear title to the Real Property, without
3 restrictions, to the Debtor. If it is determined that such litigation would involve
4 KENYONS as named Defendants, this Class, alternatively, will be amended to possibly
5 exclude any payments to KENYONS. This Class is impaired by the Plan.

6 Class 4. A Financing Statement is possessed by PVACHI. It is
7 alleged by PVACHI that the Financing Statement secures the business of the Debtor
8 and all applicable personal property. The Debtor alleges the Financing Statement only
9 secures the personal property. If the parties are unable to reach agreement as to what
10 assets are secured to PVACHI, appropriate litigation will be filed by the Debtor to resolve
11 the issue. Once a determination is made regarding the value of the collateral, the
12 Debtor shall pay PVACHI monthly installments of \$500.00 beginning 30 days after the
13 date of such determination and continuing on the same day of each month thereafter
14 until the secured value of the claim of PVACHI is paid; interest at the contract rate shall
15 also be paid. Any amount not paid as above stated shall be treated under Class 6.

16 Pursuant to the terms of Class 3, if it is determined that the litigation
17 referenced in Class 3 would involve PVACHI as a named Defendant, this Class,
18 alternatively, will be amended to possibly exclude any payments to PVACHI. This Class
19 is impaired by the Plan.

20 Class 5. IRS is due prepetition withholding taxes. Beginning 30 days
21 after the date of confirmation, and continuing on the same day of each month thereafter,
22 the Debtor shall pay IRS a monthly amount to allow the valid and proven claims of IRS to
23 be paid within 5 years of the date of the Petition filing. Interest will be paid as required
24 by law. This Class is impaired by the Plan.

25 Class 6. The Debtor will pay unsecured creditors with valid and proven
26 claims a total amount of \$20,000.00 on a prorata basis. Such amount will be paid
27 \$4,000.00 6 months from the date of confirmation and every 6 months thereafter until the
28 total of \$20,000.00, plus interest at 3% per annum, have been paid. Any secured

1 personal property claim of Knight Capital, LCF Group or Small Business Funding will be
2 treated as unsecured as there is no value to the collateral positions of the above-stated
3 creditors due to the lien of PVACHI on the personal property of the Debtor. It is the
4 opinion of the Debtor that unsecured creditors having valid and proven claims in this
5 Class will receive approximately 10% of said claim. This Class is impaired by the Plan.

6 Class 7. The Owner of the Debtor is STEVEN WALSKI. Under the
7 Plan, he will retain full ownership of the Debtor. From personal funds, STEVEN
8 WALSKI will contribute a total of \$7,500.00 to assist in consummation of the Plan. It is
9 the belief of STEVEN WALSKI that if a Chapter 7 liquidation occurs, there will be
10 absolutely no funds left for him. Due to the amounts of administrative claims, secured
11 creditors, tax claims, and unsecured claims, he believes no net value will be applicable
12 for the Debtor for an extensive period of time. STEVEN WALSKI is of the opinion that,
13 due to the fact there is no net value of the Debtor, such amount of \$7,500.00 is an
14 equivalent value of his interest in the Debtor. Such amount of \$7,500.00 shall be
15 contributed within 6 months of the date of confirmation. Any non-compliance with 11
16 U.S.C. § 1129(b)(2)(B)(I), which provides that each holder of an unsecured claim in a
17 Class receive or retain on account of such claim property of a value, as of the effective
18 date of the Plan, equal to the allowed amount of such claim, shall be resolved by the
19 new money which is being contributed to the Debtor, thereby satisfying the "new value
20 exception" to the absolute priority rule of the Bankruptcy Code. This Class is impaired
21 by the Plan.

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25 III. Execution and Implementation of the Plan.

26 STEVEN WALSKI shall continue to serve as the person to perform the
27 duties of the Debtor-In-Possession. The law firm of CARMICHAEL & POWELL, P.C.,
28 will represent the Debtor regarding consummation of the Plan of Reorganization. The

1 funds necessary to effectuate consummation of the Plan of Reorganization will derive
2 from business revenues received by the Debtor and the new money being contributed by
3 the owner.

4 IV. Contested Claims.

5 Contested claims by the Debtor shall be paid only upon their allowance by
6 the Court, and in such allowed amount according to the Class in which they belong.

7 V. Modification of the Plan.

8 The Debtor may propose amendments or modifications of this Plan at any
9 time prior to confirmation by compliance with 11 U.S.C. § 1127. After confirmation the
10 Debtor may, with approval of the Court, with notice and a hearing if the Court so orders,
11 and so long as it does not materially or adversely affect the interests of the creditors,
12 remedy any defect or omission or reconcile any inconsistencies in the Plan or in the
13 order of confirmation in such manner as may be necessary to carry out the purposes and
14 effect of the Plan.

15 VI. Jurisdiction of the Court.

16 The Court will retain jurisdiction, until the Plan has been fully
17 consummated, concerning, but not limited to, the following:

18 1. The classification of the claim of any creditor and the re-examination
19 of the claims which have been allowed for the purposes of voting and the determination
20 of such objections as may be filed to creditors' claims. The failure by the Debtor to
21 object to or examine any claim for purposes of voting shall not be deemed to be a waiver
22 of the Debtor's right to object to or re-examine the claim in whole or in part.

23 2. The determination of all questions and disputes regarding title to the
24 assets of the estate and determination of all causes of action, controversies, disputes or
25 conflicts whether or not subject to any action pending as of the date of confirmation
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1 between the Debtor and any other party including, but not limited to, any right of the
2 Debtor to recover assets pursuant to the provisions of Title 11 of the United States Code.

3 3. The modification of this Plan after confirmation pursuant to the
4 Bankruptcy Rules and Title 11 of the United States Code.

5
6 4. The enforcement and interpretation of the terms and conditions of
7 this Plan.

8 5. The entry of any order, including injunctions, necessary to enforce
9 the title, rights and powers of the Debtor and to impose such limitations, restrictions,
10 terms and conditions of such title, rights and powers.

11 6. The entry of any Order concluding in the termination of the case.

12 VII. Post Confirmation Activities.

13 The assets of the Debtor will not be dissipated after confirmation of the
14 Plan.

15 VIII. United States Trustee Post-Confirmation.

16 The Debtor will satisfy, by cash payment and on a timely basis, the
17 quarterly fees due the United States Trustee post-confirmation, such quarterly fees to be
18 paid until a Final Decree has been entered. Further, the Debtor will file on a timely
19 basis, post-confirmation, the required Financial Reports due the United States Trustee,
20 with copies of all such Reports being filed to be served on the United States Trustee.

21 IX. Plan Default.

22 The Debtor's failure to make any payment due under the Plan within thirty
23 (30) days after the payment is due shall constitute a default unless the Debtor and the
24 affected creditor agree to delayed payment. A default in payment as to one creditor
25 shall constitute a default in payment as to all creditors. A default shall also occur when
26 any default provisions of any creditor's contract with the Debtor assumed or continued by
27 the Plan has been breached except to the extent that the default provisions or
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1 applicability thereof are modified by the Plan. Upon default, creditors may immediately
2 move for conversion or dismissal of this case, pursuant to 11 U.S.C. § 1112.

3 X. Effect of Confirmation.

4 Except as otherwise provided in the Plan or the Order Confirming Plan,
5 confirmation acts as a discharge, effective the date of confirmation, of any and all
6 dischargeable debts of the Debtor that arose any time before the entry of the Order
7 Confirming Plan including, but not limited to, all principal and interest accrued thereon,
8 pursuant to §1141(d)(1) of the Bankruptcy Code. The discharge shall be effective as to
9 each dischargeable claim, regardless of whether a Proof of Claim thereon was filed,
10 whether the claim is an allowed claim or whether the holder thereof votes to accept the
11 Plan.

12 In addition, any pre-confirmation obligations of the Debtor dealt with in the
13 Plan shall be considered new obligations of the Debtor, and such new obligations shall
14 not be considered in default unless and until the Debtor defaults on the new obligations
15 pursuant to the terms of the Plan. The new obligations provided for in the Plan shall be
16 in the place of, and completely substitute for, any pre-confirmation obligations of the
17 Debtor and, once the Plan is confirmed, the only obligations of the Debtor shall be such
18 new obligations as provided for under the Plan.

19 XI. Unclaimed Funds and Interest.

20 Distribution to claimants shall be mailed by the Debtor to claimants at the
21 address appearing on the master mailing matrix unless the claimant provides the Debtor
22 with an alternative address. For a period of one year from the date a distribution was
23 made by the Debtor but has gone uncollected by the claimant, the Debtor shall retain
24 any distributions otherwise distributable hereunder which remain unclaimed. Thereafter,
25 the unclaimed funds shall revert in the Debtor.

26 XII. Revesting.

27 Except as provided for in the Plan or in the Order Confirming Plan, on the
28 date of confirmation the Debtor shall be vested with all the property of the estate, free

1 and clear of all claims, liens, charges, and other interests of creditors, arising prior to the
2 date of confirmation. Upon the date of confirmation, the Debtor shall operate the
3 business free of any restrictions.

4 DATED this 30th day of August, 2018.

6 CARMICHAEL & POWELL, P.C.

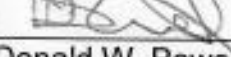
7 By 
8 Donald W. Powell,
9 6225 North 24th Street, Suite 125
10 Phoenix, Arizona 85016
11 Attorneys for Debtor
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EXHIBIT A

1 CYNTHIA L. JOHNSON, (Bar No. 014492)
2 Law Office of Cynthia L. Johnson
3 11640 East Caron Street
4 Scottsdale, AZ 85259
5 Phone: (480) 381-7929

6 Email: cynthia@jsk-law.com

7 Attorney for Movant

8 **IN THE UNITED STATES BANKRUPTCY COURT**
9 **FOR THE DISTRICT OF ARIZONA**

10 **In Re:**

11 **CK ASSISTED LIVING OF ARIZONA, LLC**

12 **Debtor.**

Chapter 11

Case No. 2:18-bk-01882-DPC

**STIPULATED ORDER PROVIDING
FOR USE OF CASH COLLATERAL
AND ADEQUATE PROTECTION OF
SECURED CREDITOR'S LIENS AND
STIPULATION LIFTING AUTOMATIC
STAY**

17 This matter comes before the Court as a result of the agreement set forth below
18 between and among Debtor, CK Assisted Living of Arizona, LLC ("Debtor") on the one
19 hand; and on the other Capital Fund I, LLC and Capital Fund II, LLC, both Arizona
20 Limited Liability Companies (collectively "Capital Fund"), secured creditor of Debtor,
21 in settlement of Capital Fund's Motion for Relief from the Automatic Stay (the
22 "Motion") and Capital Fund's Objection to Use of Cash Collateral, Notice of Non-
23 Consent, Assertion of Rights and Sequestration (the "Objection"). The parties having
24 evidenced, by their respective counsel's signatures below, their stipulation and
25 agreement to the terms and conditions of this Stipulated Order Providing for Use of
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1 Cash Collateral and Adequate Protection of Secured Creditor's Liens and Stipulation
2 Lifting the Automatic Stay (the "Stipulation"), and entry by this Court of this Order
3 containing such terms, the Court hereby finds, concludes and orders as follows:
4

5 **I. FINDINGS.**

6 A. On February 28, 2018 Debtor filed a petition for relief under Chapter 11
7 of the Bankruptcy Code. Debtor continues to operate this estate as the debtor-in-
8 possession, pursuant to 11 U.S.C. §§ 1107 and 1108.
9

10 B. Debtor owns a certain, for profit, investment property for residential
11 assisted living, located at 6336 N. Pottery Place, in Prescott, Arizona 85305 as legally
12 described in the Deed of Trust defined below. Pursuant to Section 541 of the
13 Bankruptcy Code, the Real Property used therein, and the moneys generated in rent is
14 property of the Debtor's estate.
15

16 C. Capital Fund holds a first-position lien against the investment property of
17 the Estate (the "Real Property") pursuant to a loan provided to Debtor from Capital
18 Fund. The Note, dated January 28, 2016, in the amount of \$335,000.00 is secured by a
19 Deed of Trust granted by Debtor to Capital Fund which was recorded with the Yavapai
20 County Recorder's Office on February 1, 2016 at Recorder No. 2016-0004792. On or
21 about March 9, 2016 the Note and Deed of Trust were endorsed and assigned to
22 Capital Fund II, LLC, respectively, which was recorded in the Official Records of
23 Yavapai County, Arizona at Recorder No. 2016-0011162.
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1 D. The Deed of Trust includes an Assignment of Rent clause granting and
2 perfecting secured interests in favor of Capital Fund which granted a security interest
3 in rents, revenues, profits, and income from the property.
4

5 E. Debtor agrees that the income from collection of prepetition rents is cash
6 collateral of Capital Fund within the meaning of 11 U.S.C. § 363(a) ("Cash Collateral")¹
7 and thus, is subject to the restrictions of 11 U.S.C. § 363(c).
8

9 F. Debtor and Capital Fund have entered into this Stipulated Order to (i)
10 preserve the value of the estate assets; (ii) avoid protracted and costly cash collateral
11 litigation; (iii) provide a means for accountability of cash collateral receipt and
12 expenditure; (iv) adequately protect Capital Fund from the diminution of its
13 respective interest in the Cash Collateral; (v) avoid costly litigation over whether the
14 automatic stay should be lifted; and (vi) provide a deadline for Debtor to file and seek
15 confirmation of a Chapter 11 Plan of Reorganization. Debtor and Capital Fund believe
16 the Stipulated Order to be in the best interests of the estate, Capital Fund and all
17 creditors of the estate.
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20 G. Capital Fund is willing to permit Debtor's limited use of Cash Collateral
21 pursuant to the "Approved Budget" for the current period (as hereinafter defined), for
22 the sole and limited purpose of operating the assisted living facility, preserving and
23 maintaining the Real Property (including payments to Capital Fund as provided in this
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26 ¹ Assuming the Court approves of and enters this Stipulated Order, Debtor concedes that income from post-
27 petition rents received is also the cash collateral of Capital Fund and included in the definition of "Cash
28 Collateral" used herein.

1 Order) and for no other purpose during the term of this Order, provided that Debtor
2 complies with each and every term and condition of this Order. Nothing in this
3 paragraph shall restrict Debtor from seeking permission from Capital Fund or the
4 Court to pay other expenses, which are reasonable and necessary for the benefit of the
5 Estate. Capital Fund is consenting to Debtor's use of Cash Collateral in good faith and
6 the parties hereto have negotiated and are agreeing to this Order in good faith,
7 represented by separate counsel of their choice and at arms-length as required by
8 Section 363 of the Bankruptcy Code.
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11 H. As of the Petition Date, Debtor's sources of revenue include rental income
12 from the Real Property secured by that certain recorded Deed of Trust on the Real
13 Property detailed above. In order to continue to operate the business, including the
14 Real Property, Debtor seeks Capital Fund's consent to use Cash Collateral for the
15 payment of ordinary and necessary monthly operating expenses for the Real Property.
16

17 I. Except as otherwise provided in this Order, entry of this Order shall in no
18 way impair or otherwise affect the respective rights and claims of Capital Fund to the
19 Collateral under its respective Note and Deed of Trust or under applicable law, as
20 those rights existed as of the Petition Date.
21

22 Pursuant to these Findings, the Court Orders as follows:
23

24 **II. ORDER AS TO USE OF CASH COLLATERAL/ADEQUATE PROTECTION**

25 A. Debtor shall have the right and authority to operate and manage its
26 business, including the Real Property, subject to the terms of this Stipulated Order.
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1 B. Pursuant to Capital Fund's consent to the use of Cash Collateral, it is
2 ordered that such use is conditioned as follows:

3 1. Debtor may use the Cash Collateral to pay the reasonable costs and
4 expenses of its residential assisted living business operations, until August 31, 2018
5 provided: (i) no expenditure of Cash Collateral during any monthly period exceeds the
6 respective amounts set forth in the Approved Budget, attached hereto as Exhibit 1
7 without order of the Court or the express prior written consent of Capital fund, (ii)
8 Debtor will earmark funds and set them aside for insurance premiums and property
9 taxes, (iii) beginning May 1, 2018 and throughout this case, Debtor shall segregate all
10 refundable deposits of any new residents into a separate segregated Debtor-In-
11 Possession Account (the "Reserve") consistent with the provisions of Paragraph 4, (iv)
12 Debtor shall further segregate its net available cash flow at the end of each month and
13 deposit these funds into the Reserve and shall continuously accrue these funds in the
14 Reserve, making no expenditure of these funds without order of the Court or the
15 written consent of Capital Fund, and (v) Debtor and Capital Fund specifically reserve
16 the right to agree to a modification of the Approved Budget without additional
17 Bankruptcy Court approval if such modification appears to Debtor and Capital Fund to
18 be justified by the costs and benefits associated with such modification to properly
19 administer the Estate. Subject to the provisions of this Order, the expenses in the
20 amounts set forth in the Approved Budget, or the expenses approved by the Court
21 after notice to Capital Fund and a hearing, are deemed to be ordinary, necessary and
22 reasonable;
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1 2. Any Cash Collateral collected by Debtor shall be held by Debtor in
2 the general interest bearing Debtor-in-Possession Account (the "DIP" or "Cash
3 Collateral Account"). It has been determined that the Cash Collateral Account will only
4 contain the Cash Collateral of Capital Fund, and no other estate assets. Therefore,
5 Debtor shall provide Capital Fund with monthly bank statements by the fifteenth
6 (15th) day of the following month;

8 3. Debtor's member, Steven Walski, manages the assisted living care
9 facility and personally performs maintenance and repairs on the Real Property as
10 required. Based upon his assurances, Capital Fund agrees that Debtor may pay Steven
11 Walski for the management and maintenance, not to exceed \$5,000.00 in any one (1)
12 month period, so long as he performs such management and maintenance work
13 himself;

16 4. The Reserve Account - Debtors Residency Agreement requires a
17 refundable deposit. The U.S. Trustee has determined that \$3,000.00 per tenant-
18 resident is necessary to reserve to protect the tenant-residents in the event of a
19 disruption in the operation of Debtor's business that will require their transfer to
20 another care facility. As such, the Debtor shall establish a segregated debtor-in-
21 possession account (the "Reserve") that shall be equal to \$3,000.00 per tenant-
22 resident. Beginning May 1, 2018 and throughout the pendency of this case, Debtor
23 shall collect refundable deposits in the amount of \$3,000.00 per tenant-resident and
24 deposit these sums into the Reserve. Currently, there are eight (8) tenant-residents
25 and no deposit funds have been segregated. Therefore, Debtor shall segregate its net
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1 available cash flow at the end of each month and deposit these funds into the Reserve
2 and shall continuously accrue these funds in the Reserve until such time as the
3 Reserve is equal to \$3,000.00 for each tenant-resident. Debtor shall make no
4 expenditure of these funds without order of the Court or the written consent of Capital
5 Fund. However, Debtor as manager of the facility may return a refundable deposit
6 taken after May 1, 2018 to a tenant-resident if required and adjust the amount of the
7 Reserve as necessary to maintain the required balance of \$3,000.00 per tenant-
8 resident.
9

10
11 For purposes of verification, the Debtor shall provided a copy of each of the
12 Residency Agreements to the U.S. Trustee and the State Long Term Care Ombudsman,
13 together with monthly bank statements verifying the balance of the Reserve to ensure
14 that it is adequately funded. In addition, the U.S. Trustee reserves the right to request
15 the Court to increase the required Reserve if it is determined that the amount to be
16 held in the Reserve is not sufficient to assist the tenant-residents in the event that they
17 are displaced due to the property being subject to an Order for Relief from Stay.
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20 5. In the event that any unforeseen, additional, or emergency costs or
21 expense shall arise with regard to the Real Property, Debtor may make payment
22 thereof from Cash Collateral only upon the express written consent of Capital Fund or
23 further order of this Court. If funds for such unforeseen, additional or emergency
24 expenses are advanced to Debtor by an insider of Debtor, reimbursement of sums so
25 advanced may be made by the Cash Collateral only with the prior written consent of
26 Capital Fund or an order of this Court;
27
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1 6. As partial adequate protection of Capital Fund interests in the
2 property that is collateral to its loan, commencing with the Cash Collateral collected
3 during the month of April and May 2018, Debtor shall make payment in the amount of
4 \$8,000.00 to Capital Fund ("Adequate Protection Payments") in two (2) payments of
5 \$5,000.00 on or before 5:00 p.m. on May 4, 2018, and \$3,000.00 on or before 5:00 p.m.
6 on May 15, 2018. Debtor shall make and Capital Fund shall accept a \$4,000.00
7 Adequate Protection Payment each month thereafter beginning on June 5, 2018. The
8 adequate protection payments shall be applied in accordance with the Loan
9 Documents associated with the Capital Fund Loan and applicable law;
10

11 7. Unless otherwise ordered by the Court or agreed to by Capital
12 Fund in writing, Debtor shall not use any Cash Collateral: (1) for the payment of any
13 prepetition debts or obligations of the Debtor other than adequate protection
14 payments to Capital Fund; (ii) for the payment of any debts or obligations of Debtor
15 not set forth on the Approved Budget and which are not directly related to the
16 maintenance of the Real Property and operation of the assisted living facility; (iii) any
17 loans or other amounts to any insiders of Debtor; (iv) to object or contest: (a) the
18 amounts of principal balance due and owing to Capital Fund on its Note or any other
19 amounts due or which may become due to Capital Fund; or (b) the validity, perfection,
20 priority or enforceability of the lien granted to Capital Fund under its respective Loan
21 Documents or any other interests granted by Debtor under any instrument to Capital
22 Fund; or (iv) to investigate, commence or continue any action, claim, or defense
23 against Capital Fund or any of its officers, members, directors, employees, or agents;
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1 8. Debtor shall timely file the required interim financial reports and
2 such other accountings as are required by the Local Bankruptcy Rules. Debtor shall
3 provide a copy of said reports to Capital Fund by mail or delivery to its counsel upon
4 filing with the Court;
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6 9. Debtor shall prepare and deliver (by hand delivery, email or
7 telecopy) to Capital Fund, on or before the fifteenth (15th) day of the following month,
8 monthly reports of the Real Property operations, including a cash flow statement that
9 includes all rents collected, all other monies collected, itemizations of all expenses and
10 receipts, and other disbursements made in a format to be reasonably designated from
11 Capital Fund, but which may include:
12

13 a. All rental information, on a Rent Roll which includes the
14 name of the tenant-resident, the amount due with date due, the amounts paid with
15 date of payment, any amounts delinquent, late charges, and the amounts on deposit.
16 Debtor shall also designate whether the tenant-resident is a veteran. Debtor shall take
17 special care not to include any personal information or medical information about any
18 tenant-resident;
19

20 b. The DIP Account bank statement;
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22 c. The Reserve Account bank statement with applicable
23 earmarks for each tenant-resident deposits;
24

25 d. If requested - A list of all expenses, containing the name and
26 address and information upon which the expense was expended, including all pay-roll
27 information, and the repair or maintenance performed for the Real Property;
28

1 e. If requested - A list of all deferred maintenance, containing
2 the information about the repair or maintenance required; and

3 f. Capital Fund reserves the right to require from Debtor
4 additional financial reports that are reasonably related to determining the Debtor's
5 financial condition during the term of this Stipulated Order;
6

7 10. Upon receipt of the accounting described in Paragraph 9, Capital
8 Fund shall have the right to inspect the books and records of Debtor from which such
9 accounting was made. Such inspection may be made upon a 24 hour request by
10 Capital Fund to Debtor and to Debtor's counsel. Such inspections shall be conducted
11 at Debtor's counsel's law office at a mutually agreed time as Debtor has no office in
12 which to meet.
13

14 11. As partial adequate protection for use of Cash Collateral, Debtor
15 hereby grants to Capital Fund (for the full amount of its claims), effective as of the
16 Petition Date, additional and replacement liens and security interests in and to any of
17 Debtor's cause of action or claims arising from the Real Property that would be
18 considered rent.
19

20 The Replacement Liens shall be effective as of the Petition Date, and shall
21 continue and be fully valid and perfected without the necessity of the execution, filing
22 and/or recordation of mortgages, Deeds of Trust, pledge agreements, financing
23 statements or any other documents, provided, however, that if Capital Fund in its sole
24 discretion, elects for any reason to file or record any such financing statements,
25 mortgages, deeds of trust, notices or other documents with respect to the
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1 Replacement Liens, Debtor will execute the same upon request and the filing or
2 recording thereof will be deemed to have been made as of the Petition Date and will
3 not constitute a violation of the automatic stay. The Replacement Liens will secure
4 repayment of Capital Fund's Note, and all amounts arising therefrom and shall be
5 evidenced and subject to the terms of the respective Loan Documents and this Order,
6 and such other documents as Capital Fund may reasonably request to address such
7 Replacement Liens. Without limiting the foregoing in any way, such Replacement
8 Liens are granted notwithstanding 11 U.S.C. §552(a), to the extent that any of the Cash
9 Collateral is not already subject to the liens of Capital Fund as proceeds of the
10 Collateral under 11 U.S.C. § 552(b). The automatic stay provided by 11 U.S.C. § 362(a)
11 is hereby lifted for the limited purpose to allow Debtor to make the payments
12 provided for herein and grant the security interests and liens contemplated herein and
13 to allow Capital Fund to perfect the security interests and liens granted herein. To the
14 extent such Replacement Liens become insufficient to provide adequate protection of
15 the Capital Fund's interests, Capital Fund is hereby allowed super-priority
16 administrative expense claims pursuant to Section 507(b) and 503(b)(1)(A) of the
17 Bankruptcy Code, with priority over other costs of administration allowable under
18 section 507(a)(1) of the Bankruptcy Code. Such Replacement Liens and super-priority
19 shall not apply to the Reserve Account, which shall be available to ensure the transfer
20 and relocation of the tenant-residents as necessary;

21
22
23
24
25
26 12. As partial adequate protection for use of Cash Collateral, Debtor
27 shall immediately obtain Property Insurance with standard extended coverage
28

1 endorsements on a fair value basis for the full insurable value covering all
2 Improvements on the Real Property in an amount sufficient to avoid application of any
3 coinsurance clause, and with a standard mortgage clause in favor of Lender, Capital
4 Fund. Debtor shall deliver the Declarations and Endorsements along with a copy of
5 the Insurance Policy to Capital Fund no later than May 15, 2018;
6

7 13. Debtor shall allow a member of Capital Fund or its representative
8 reasonable access to the Real Property, upon proper notification to the resident-
9 tenants by Debtor, if applicable, for inspection and/or appraisal of the collateral
10 securing the Loans;
11

12 14. Debtor shall allow the Patient Care Ombudsman, Lizabeth Woods
13 or representatives from her office, immediate access to the Real Property and patient
14 records on a 24/7, 365 day basis upon any request made pursuant to the Stipulated
15 and Agreed Order Approving Appointment of State Long Term Care Ombudsman as
16 Patient Care Ombudsman, entered on March 16, 2018 at Doc. No. 26.
17

18 **III. ORDERS REGARDING STAY RELIEF AND ADMINISTRATIVE MATTERS.**
19

20 A. This Stipulated Order shall remain in effect until the earlier of: (i) August
21 31, 2018; (ii) confirmation of a Plan of Reorganization in this case; (iii) a conversion of
22 this case under Chapter 7 of the Bankruptcy Code; (iv) appointment of a trustee in this
23 case; or (v) dismissal of this case;
24

25 B. Debtor shall comply with the Debtor-in-Possession bank account and
26 reporting requirements of the guidelines promulgated by the Office of the United
27 States Trustee;
28

1 C. Debtor will not file or propose any plan of reorganization (including, but
2 not limited to, any amendment or modification of a plan of reorganization, whether
3 before or after confirmation), which does not incorporate all of the terms of this
4 Stipulated Order. In the event of any inconsistency between the Stipulated Order and
5 any plan of reorganization filed or proposed by Debtor, the terms of the Stipulated
6 Order will control; and any such inconsistent provisions of any plan of reorganization
7 or any confirmation order thereon will be null and void;
8

9
10 D. Debtor currently has not filed its initial Disclosure Statement and Plan of
11 Reorganization;

12 E. If Debtor has not already done so, it shall immediately deliver to Capital
13 Fund certificates of insurance in accordance with the respective Loan Documents
14 naming Capital Fund as a named mortgagee payee, consistent with Section II(B),
15 Paragraph 12 herein.
16

17 F. An event of default under this Stipulated Order (an "Event of
18 Default" or "Default") shall include the following:
19

- 20 1. The Debtor's failure to perform or comply with any of the terms,
21 conditions, or covenants of this Stipulated Order, including
22 (a) failure to make any payment when due;
23 (b) failure to provide any report required herein within ten (10) days
24 of the date such report should have been provided;
25 (c) failure to meet any other obligation required herein;
26
27
28

1 (d) the use of Cash Collateral for any purpose other than operating the
2 assisted living facility, maintaining the Real Property and retaining funds consistent
3 with Section II(B), Paragraph 1 through 14 that is set forth in this Stipulated Order and
4 attached budget;

5
6 (e) failure to pay real property taxes for the 2nd half of 2017 on or
7 before May 15, 2018; and/or failure to pay real property taxes and insurance when
8 due thereafter; or

9
10 (f) failure to file a Disclosure Statement and Plan of Reorganization by
11 May 30, 2018;

12 2. The foreclosure, liquidation, levy, or similar act by any party (other
13 than Capital Fund) with respect to any Real Property of the Estate;

14
15 3. The dismissal of this bankruptcy case;

16 4. The granting of stay relief in favor of any other lender as to any
17 portion of the Real Property;

18
19 5. The stay, modification, amendment, vacating, or reversal of any
20 term of this Stipulated Order, or any of the rights and acknowledgments conferred
21 hereunder, without the express prior written consent of Capital Fund; or

22 6. An objection by the Debtor to the legitimate claims of Capital Fund;

23
24 G. Upon the occurrence of an Event of Default, Capital Fund shall provide
25 written notice to Debtor, the attorney for the Debtor, Donald Powell, and the attorney
26 for the U.S. Trustee, Larry Watson or his successor, in the manner set forth herein (the
27 "Notice"). In the event that any such Event of Default remains uncured or has not
28

1 otherwise been remedied on the date which is fourteen (14) calendar days after the
2 date of service of the Notice of that Event of Default:

3 1. The consent provided by the Lender, Capital Fund, regarding
4 Debtor's use of the Cash Collateral pursuant to this Stipulated Order shall be
5 terminated without further notice;
6

7 2. Debtor shall not use any Cash Collateral for any purpose without
8 further order of the Court;
9

10 3. Debtor shall hold and segregate all Cash Collateral in trust for
11 Capital Fund, except as otherwise ordered by the Court;

12 4. Capital Fund may lodge with the Court an order granting stay relief
13 in which Capital Fund shall be permitted to exercise any and all of its state law and
14 contractual rights and remedies with respect to the Real Property, including the right
15 to foreclose under the terms of the respective Loan Documents, against the Real
16 Property through a trustee's sale conducted pursuant to Arizona law;
17

18 H. The reversal or modification on appeal of any provision contained in this
19 Stipulated Order shall not affect any rights of Capital Fund or the Debtor which arise
20 prior to such reversal or modification;
21

22 I. All notices, reports or other correspondence to be transmitted to the
23 parties hereto, pursuant to the terms of this Order, shall be in writing and deemed
24 delivered when transmitted by deposit in the United States mail, certified mail,
25 return receipt requested, or by express mail delivery, or facsimile transmission, or
26 email at the addresses as follows:
27
28

1 Party Documents to be delivered to:

2 Debtor: CK Assisted Living of Arizona, LLC
3 4824 E. Hashknife Rd.
4 Phoenix, AZ 85054
5 swalski20@aol.com

6 Copies to: Mr. Donald W. Powell
7 CARMICHAEL & POWELL, P.C.
8 6225 North 24th Street. #125
9 PHOENIX, AZ 85016
10 d.powell@cplawfirm.com

11 Capital Fund: Capital Fund II, LLC
12 Attention: Noah Brocious
13 14555 N. Scottsdale Rd.
14 Suite 220
15 Scottsdale, AZ 85254
16 noah@capitalfund1.com

17 Copies to: Cynthia L. Johnson
18 Law Office of Cynthia L. Johnson
19 11640 E. Caron Street
20 Scottsdale, AZ 85259
21 cynthia@jsk-law.com

22 U.S. Trustee: Larry L. Watson
23 Trial Attorney
24 United States Trustee
25 230 N. First Avenue, Suite 204
26 Phoenix, AZ 85003
27 Larry.watson@usdoj.gov

28 or to such other addresses as the parties may specify by written notice delivered in
accordance with this paragraph;

J. Except as expressly set forth herein, this Stipulated Order shall not
operate as an adjudication of adequate protection or any other related rights asserted
by any party in interest under 11 U.S.C. §§ 361, 362, or 363. Further, this Order shall

1 not prevent Capital Fund from moving for or obtaining any appropriate relief in this
2 case, including the request of additional adequate protection of its interests;

3 K. In the event this case is converted to a case under Chapter 7 of the
4 Bankruptcy Code, the terms of this Order shall be binding upon any superseding
5 Chapter 7 trustee. Furthermore, the terms of this Order shall be binding upon any
6 successors or assigns of Debtor. In the event a trustee is appointed in Debtor's
7 Chapter 11 case, or if the Chapter 11 case is converted to a Chapter 7 case, Debtor's
8 authority to use the Cash Collateral as provided herein shall terminate automatically
9 and Capital Fund may file for emergency stay relief;

12 L. In taking actions related to or in connection with preparation of this
13 Order, Capital Fund shall not have any liability to Debtor or any third party, and shall
14 not be deemed to be in control of the operations of Debtor or to be acting as a
15 responsible person with respect to the operation and management of Debtor.

17 M. Except as expressly provided in this Order, the terms and conditions of
18 the Loan Documents of Capital Fund shall remain in full force and effect, and it shall
19 have all of its rights and remedies thereunder, subject to the provisions of the
20 Bankruptcy Code and any orders of this Court. Except as otherwise expressly
21 provided in this Order, the terms and conditions of the Loan Documents are
22 reaffirmed, ratified, and approved by the Debtor;

25 N. Capital Fund may continue the Trustee's Sale as it deems appropriate;

26 O. Except as otherwise provided herein, if any or all of the provisions of this
27 Order are hereafter modified, vacated or stayed by subsequent order of this or any
28

1 other Court, such stay, modification or vacation shall not affect the validity of the
2 claims or rights of Capital Fund pursuant to this Order and which are incurred prior to
3 the effective date of such stay, modification or vacation, or the validity or
4 enforceability of any lien, security interest, right or priority authorized pursuant to
5 this Order, and, notwithstanding such stay, modification or priority authorized
6 pursuant to this Order, and, notwithstanding such stay, modification or vacation, any
7 use of the Cash Collateral made pursuant to this Order prior to the effective date of
8 such modification, stay or vacation, by or for the benefit of Debtor, shall be governed
9 in all respects by the original provisions of this Order, and Capital Fund shall be
10 entitled to all of the rights, privileges and benefits of this Order, including the security
11 interests and priorities granted herein and all rights accorded by Section 507(b) of
12 the Bankruptcy Code, with respect to all such use;

16 P. Any failure of Capital Fund, at any time or times hereafter, to require
17 strict performance by the Debtor (or by any Chapter 7 or 11 trustee hereinafter
18 appointed or elected as a representative of Debtor's estate) of any provision of this
19 Order or to the Loan Documents shall not waive, affect or diminish any right of Capital
20 Fund thereafter to demand strict compliance and performance therewith. No delay on
21 the part of Capital Fund in exercising any right or remedy under this Order or the Loan
22 Documents shall preclude any other or further exercise of any such right or remedy.
23 None of the rights or remedies of Capital Fund under this Order or the Loan
24 Documents shall be deemed to have been suspended or waived unless a writing signed
25
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1 by a duly authorized officer or member of Capital Fund that is delivered to the Debtor
2 that specifies such suspension or waiver;

3 Q. The terms and provisions of this Stipulated Order and all stipulations and
4 agreements by the parties affected hereby may not be modified except in writing,
5 executed by each of the parties, and approved by the Court unless otherwise provided
6 herein;
7

8 R. The statements contained herein shall not constitute an admission that
9 Capital Fund is adequately protected;
10

11 S. Nothing contained herein shall constitute a waiver or modification of the
12 terms of the Loan Documents;
13

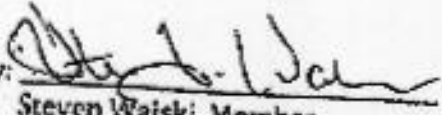
14 T. This Stipulated Order may be executed in counterparts, all of which
15 together shall constitute one complete agreement and order. Signatures sent by
16 facsimile or PDF transmission shall be effective in all respects as originals,
17

18 U. By virtue of this submitted Stipulation and Order agreed to by the parties,
19 the Continued Hearing set for June 14, 2018 at 11:00 a.m. is hereby vacated.
20

21 **DATED AND SIGNED ABOVE**
22
23
24
25
26
27
28

1 APPROVED AND AGREED this
2 this 29 day of May, 2018:

3 **DEBTOR**

4 By: 
5 Steven Waiski, Member
6 CK Assisted Living of Arizona, I.L.C.

7 **CARMICHAEL & POWELL, P.C.**

8
9 By: /s/ Donald W. Powell
10 Donald W. Powell
11 6225 North 24th Street #125
12 Phoenix, AZ 85016
13 d.powell@cpclawfirm.com
14 Attorney for Debtor

15 **LAW OFFICE OF CYNTHIA L. JOHNSON**

16 By: /s/ Cynthia Johnson
17 Cynthia L. Johnson
18 11640 E. Caron Street
19 Scottsdale, AZ 85259
20 cynthia@jck-law.com
21 Attorney for Capital Fund
22
23
24
25
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EXHIBIT 1

Budget 2018

CK Assisted Living of Arizona

	April	May	June	July	August	September
Rents	\$ 25,100	\$ 25,100	\$ 25,100	\$ 28,800	\$ 28,800	\$ 28,800
Operating Expenses						
Mortgage (Loan)	\$ 4,000	\$ 4,000	\$ 4,000	\$ 4,000	\$ 4,000	\$ 4,000
Payroll	\$ 8,000	\$ 8,000	\$ 9,000	\$ 9,000	\$ 9,000	\$ 9,000
Officers Salary	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000
Supplies/Groceries	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500
Repairs/ Maintenance	\$ 250	\$ 250	\$ 250	\$ 250	\$ 250	\$ 250
Advertising	\$ 150	\$ 150	\$ 150	\$ 150	\$ 150	\$ 150
Car, Delivery and Travel	\$ 200	\$ 200	\$ 200	\$ 200	\$ 200	\$ 200
Accounting and Legal	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000
Telephone	\$ 235	\$ 235	\$ 235	\$ 235	\$ 235	\$ 235
Utilities	\$ 300	\$ 350	\$ 475	\$ 475	\$ 475	\$ 475
Insurance	\$ 1,062	\$ 295	\$ 295	\$ 295	\$ 295	\$ 295
Payroll Taxes	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800
Misc	\$ 250	\$ 250	\$ 250	\$ 250	\$ 250	\$ 250
US Trustee	\$ 218	\$ 218	\$ 218	\$ 218	\$ 218	\$ 218
Total Expenses	\$ 22,747	\$ 22,030	\$ 23,155	\$ 23,155	\$ 23,155	\$ 23,155