

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT
HARTFORD DIVISION

)	Chapter 11
In re:)	
SPECTRUM HEALTHCARE LLC, ET AL ¹)	Case No. 16-21635 (JJT)
)	through 16-21639 (JJT)
Debtors.)	(Jointly Administered)

DEBTORS’ MOTION FOR A FINAL ORDER
(1) AUTHORIZING THE USE OF CASH COLLATERAL
(2) GRANTING ADEQUATE PROTECTION, AND (3) FOR RELATED RELIEF

Spectrum Healthcare, LLC (“Spectrum”), Spectrum Healthcare Torrington, LLC (“Spectrum Torrington”), Spectrum Healthcare Derby, LLC (“Spectrum Derby”), Spectrum Healthcare Hartford, LLC (“Spectrum Hartford”), and Spectrum Healthcare Manchester, LLC (“Spectrum Manchester”) (collectively, the “Affiliates”) and jointly with Spectrum, the debtors and debtors in possession (the “Debtors”), by their undersigned counsel, hereby move this Court for entry of an order, pursuant to Sections 105, 361, 362, 363, and 507 of Title 11 of the United States Code (the “Bankruptcy Code”) authorizing: (a) the use of cash collateral in which the following parties have or may claim an interest: (i) MidCap Funding IV Trust, a Delaware statutory trust (formerly known as MidCap Funding IV, LLC), as assignee of MidCap Financial, LLC (“Midcap Financial”) (collectively, “Midcap”); (ii) CCP Finance I, LLC (“CCP Finance”), as assignee of Nationwide Health Properties, LLC (“NHP”) as lender under the NHP Loan (as defined below); (iii) CCP Park Place 7541 LLC and CCP Torrington LLC (the “CCP Landlords”), as assignees of NHP with respect to the NHP Lease (as defined below); (iv)

¹ Spectrum Healthcare, LLC (Case No. 16-21635); Spectrum Healthcare Torrington, LLC (Case No. 16-21639); Spectrum Healthcare Derby, LLC (Case No. 16-21636), Spectrum Healthcare Manchester, LLC (Case No. 16-21638); and Spectrum Healthcare Hartford, LLC (Case No. 16-21637).

Midland States Bank (“Midland”), as assignee of Love Funding Corporation (“LFC”); (v) the Secretary of Housing and Urban Development (“HUD”) as additional secured party with LFC, now Midland; and (vi) the State of Connecticut, Department of Revenue Services (“DRS”) (collectively, the “Secured Parties”), (b) use of cash collateral to pay those items set forth in the budget submitted herewith and appended hereto as Exhibit “A” and on a final basis, (c) the adequate protection of the secured parties by granting to them replacement or substitute liens, and (d) the granting of related relief.

In support of this motion, the Debtors respectfully represent as follows:

JURISDICTION

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of these proceedings and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The relief sought in this Motion is based upon sections 105, 361, 362, 363, and 507 of Title 11 of the United States Code (the “Bankruptcy Code”).

BACKGROUND

A. Procedural Background

3. On October 6, 2016 (the “Petition Date”), each of the Debtors filed voluntary petitions in this Court for relief under Chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors’ Chapter 11 cases are being jointly administered by order entered on October 11, 2016.

4. On October 21, 2016, the Office of the United States trustee appointed an Official Committee of Unsecured Creditors in the Debtors' Chapter 11 cases (the "Committee").

5. On November 1, 2016, Midcap filed a motion for the appointment of a Chapter 11 trustee and for other relief (the "Trustee Motion"). The Trustee Motion was resolved on an interim basis by the Debtors' voluntary retention of a Chief Restructuring Officer pursuant to the Motion of Debtors to Retain a Chief Restructuring Officer, *Nunc Pro Tunc*, filed on November 10, 2016, and the Court's Order Authorizing the Debtors to Retain Timothy J. Coburn as Chief Restructuring Officer of the Debtors, entered on November 23, 2016.

6. Since the Petition Date, the Debtors have been operating their business pursuant to a series of cash collateral orders entered by the Court, the latest of which is an Eighth Order (1) Authorizing the Use of Cash Collateral, (2) Granting Adequate Protection, and (3) Granting Related Relief (the "Eighth Cash Collateral Order"), entered on March 31, 2017. Pursuant to the Eighth Cash Collateral Order, a hearing on the continued use of cash collateral has been scheduled for May 24, 2017 at 10:00 a.m.

7. Since the early stages of these chapter 11 cases, and at the behest of their major secured creditor and other creditor groups, the Debtors have been diligently pursuing a sale of their facilities and corresponding assets. Among other things, the Debtors have established a secure website with an abundance of due diligence material for interested parties to review, have been providing tours of their facilities to prospective purchasers and fielding requests for information from them, have placed sale advertisements in the *The Wall Street Journal*, and have been updating the various creditor constituencies on the status of the sale process on a regular basis.

8. Pursuant to ¶12 of the Eighth Cash Collateral Order, a series of sale milestones was set to establish a track to complete the sale process. Specifically, it was made an event of default under the Seventh Cash Collateral Order if any of the following deadlines were not met:

- (a) The Debtors' failure to identify a stalking horse bidder for their assets or facilities on or before April 17, 2017
- (b) The Debtors' failure to file a motion to establish sale procedures on or before the date that is 24 days after the Stalking Horse Identification Date;
- (c) The Debtors' failure to obtain court approval of sale procedures on or before the date that is 28 days after the Stalking Horse Identification Date;
- (d) The Debtors' failure to obtain court approval of a sale on or before May 31, 2017;
- (e) The Debtors' failure to close on any court-approved sale on or before June 2, 2017.

9. The sale milestones have been extended, *in seriatim*, over the course of the past several cash collateral orders to accommodate various issues that caused a delay in the sale process, such as the need to receive Change of Ownership Inspection ("CHOW") reports from the State of Connecticut. After receiving all of the CHOW reports, the Debtors established a bid deadline of March 27, 2017 and received a total of four separate bids for each of their four operating facilities.

10. The bids received for Spectrum Manchester and Spectrum Derby were considered wholly unacceptable and will not be pursued. Instead, the Debtors are discussing with parties in interest the possibility of a stand-alone reorganization plan for those two entities. As for Spectrum Torrington and Spectrum Hartford, the bids received, in their current form, are not acceptable, but the Debtors are seeking to develop them further, including by removing some unacceptable contingencies and resolving other issues.

11. As a result of the foregoing, the sale milestones need to be modified to take into account the circumstances that have developed since the date of entry of the last cash collateral order.

12. Thus, the Debtors propose the following modifications to the sale milestones: (i) the deadline for identifying a stalking horse bidder for Spectrum Torrington and Spectrum Hartford will be June 2, 2017, (ii) the deadline for filing a sales procedure motion will be June 7, 2017, (iii) the deadline for obtaining court approval of sale procedures will be June 16, 2017, (iv) the deadline for obtaining court approval of the sale(s) will be July 10, 2017; and the deadline for closing will be July 14, 2017. With these exceptions the Debtors propose that their use of cash collateral be authorized for the next approximate two-month period (to July 31, 2017) on the same terms and conditions that are set forth in the Eighth Cash Collateral Order.

B. Description of Debtors

13. Spectrum is a Connecticut limited liability company that is engaged in the business of managing nursing homes. It is located at 27 Naek Road, P.O. Box 2417, Vernon, Connecticut 06066-1817. It manages the Affiliates whom operate nursing homes.

14. Spectrum Torrington is a Connecticut limited liability company that is engaged in the business of operating a skilled 126 bed nursing home. The facility is located at 225 Wyoming Avenue, Torrington, Connecticut 06790.

15. Spectrum Derby is a Connecticut limited liability company that is engaged in the business of operating a skilled 120 bed nursing home. The facility is located at 210 Chatfield Street, Derby, Connecticut 06418.

16. Spectrum Hartford is a Connecticut limited liability company that is engaged in the business of operating a skilled 150 bed nursing home. The facility is located at 5 Greenwood Street, Hartford, Connecticut 06106.

17. Spectrum Manchester is a Connecticut limited liability company that is engaged in the engaged in the business of operating a skilled 155 bed nursing home. The facility is located at 565 Vernon Street, Manchester, Connecticut 06042.

18. Collectively, there are 551 beds in the Debtors' facilities. The Debtors have approximately 600 employees. Approximately 400 of the Debtors' employees belong to the New England Health Care Employees Union District 1199 . The Debtors' monthly payroll is approximately \$1,766,000 (\$1,727,000 for their employees and \$39,000 for their officers).

19. The Debtors' books and records indicate that as of the Petition Date, the Debtors had assets totaling approximately \$12,590,000 and liabilities totaling approximately \$19,320,000.

20. The Debtors previously filed for relief under Chapter 11 of the Bankruptcy Code on September 10, 2012, and after eight months of operating in Chapter 11, the Debtors confirmed a joint Chapter 11 plan of reorganization and emerged from bankruptcy on May 7, 2013.

21. Unfortunately, since emerging from its first Chapter 11 proceeding, the Debtors have continued to encounter financial obstacles and once again had no choice but to file Chapter 11 in order to stabilize operations. The Debtors commenced these Chapter 11 cases to restructure their operations and to insure their long-term viability through a plan of reorganization subject to Court approval, but after considering the desires of Midcap and the

other major constituents in the cases, have committed to a process of attempting to sell substantially all of their assets.²

22. The Debtors filed for chapter 11 because they were unable to pay their debts as they were coming due for a multiplicity of reasons. One of the reasons giving rise to the Debtors' cash flow problems is due to the fact that the current property values and income do not support the debt structure. Midcap currently holds a mortgage against real estate owned by Spectrum Manchester Realty, LLC and leased to Manchester. Midcap Financial began accelerating the debt in June 2013, which acceleration increased substantially in November 2014. As a result of the acceleration, the monthly rent Spectrum Manchester pays increased from \$92,000 per month to \$135,000 per month, which equates to an annual increase of \$516,000 in rental obligations.

23. The State of Connecticut has also reduced Medicaid rates such that the reimbursements that the Debtors receive through Medicaid services are no longer sufficient to cover the standard of care provided. In addition to the Medicaid shortfall, Spectrum Derby, Spectrum Hartford, Spectrum Manchester and Spectrum Torrington collectively owe the State of Connecticut in excess of \$2 million dollars for provider taxes. These factors, combined with an unstable economy, where elective surgeries are down, have combined to produce an environment where not only are the rates down, but occupancy is down, as well.

² In connection with a prospective sale procedures motion, the Debtors expect to seek a mechanism whereby the payment of administrative expenses is ensured and a fund for payment of a dividend to unsecured creditors is established. See *In re Encore Healthcare Associates*, 312 B.R. 52, 57 (Bankr. E.D. Pa. 2004) (citing approvingly the decision in *In re Medical Software Solutions*, 286 B.R. 431 (Bankr. D. Utah 2002), which approved a \$363 sale of substantially all assets where there was a commitment to pay all administrative expenses and establish a fund for unsecured creditors). See generally Andrew J. Turscak, Jr. and Alan R. Lepene, *Must a Secured Creditor Pay to Play in Chapter 11?*, 28 Am. Bankr. Inst. J. 36 (Mar. 2009).

SUMMARY OF RELIEF REQUESTED

24. The parties that have or may claim an interest in cash collateral have been identified in the opening paragraph of this Motion.

25. The purposes for which the use of cash collateral has been requested are, generally, to allow the Debtors to continue to operate their businesses and, more particularly, to pay for the ordinary and necessary expenses that the Debtors must pay to continue in operation, which will be itemized on a budget to be filed with the Court.

26. The material terms of the proposed use of cash collateral consist of the following: (i) granting of replacement liens to the Secured Parties in the assets of the Debtors that are generated post-petition to the same validity, priority and extent of the Secured Parties' respective liens and security interests in the accounts receivable, deposit accounts, cash and other assets of the Debtors giving rise to the creation of the cash collateral sought to be used hereby; and (ii) for Midcap, the payment of adequate protection payments of \$5,000 per week. The duration of cash collateral use is expected to be for an approximate two month period to July 31, 2017.

**ENTITIES WITH AN INTEREST IN CASH COLLATERAL
AND DESCRIPTION OF SECURED INDEBTEDNESS**

**A. Spectrum Borrowers' Obligations to Midcap Funding IV Trust,
As Successor-By-Assignment to Midcap Financial, LLC**

27. In connection with the confirmation and implementation of the Second Amended Plan of Reorganization for Spectrum Healthcare, LLC, Spectrum Healthcare Torrington, LLC, Spectrum Healthcare Derby, LLC Spectrum Healthcare Hartford, LLC and Spectrum Healthcare Manchester, LLC (the "Plan"), which was confirmed by Order entered on May 7, 2013, Midcap, for itself and as agent for other lenders, made available to the Debtors, except for Spectrum

Derby (the “Spectrum Borrowers”), a revolving credit facility in the aggregate principal amount of up to \$5,000,000 pursuant to a Credit and Security Agreement dated as of June 13, 2013 (the “June 13, 2013 Credit and Security Agreement”). In connection with the June 13, 2013 Credit and Security Agreement, the Spectrum Borrowers executed and delivered a Revolving Credit Note in favor of Midcap in the amount of \$5,000,000 and dated as June 13, 2013 (the “June 13, 2013 Note”).

28. The obligations under the June 13, 2013 Credit and Security Agreement and the June 13, 2013 Note were secured by duly perfected security interests in substantially all assets of the Spectrum Borrowers, including all accounts receivable, proceeds thereof and deposit accounts.

29. By an Amended and Restated Credit and Security Agreement dated as of August 27, 2014 (the “August 27, 2014 Credit and Security Agreement”), the June 13, 2013 Credit and Security Agreement was amended whereby, *inter alia*, MidCap Funding IV Trust was substituted for Midcap Financial, as its successor-by-assignment, and the terms and conditions of the June 13, 2013 Credit and Security Agreement were modified in certain respects.

30. The Spectrum Borrowers and Midcap thereafter entered into two amendments to the August 27, 2014 Amended Credit and Security Agreement: (i) Amendment No. 1 to Amended and Restated Credit and Security Agreement dated as of March 14, 2016, pursuant to which the Spectrum Borrowers executed and delivered to Midcap Funding an Amended and Restated Revolving Loan Note in the amount of \$6,250,000 and dated as March 14, 2016; and (ii) Amendment No. 2 to Amended and Restated Credit and Security Agreement dated as of September 30, 2016, pursuant to which the Spectrum Borrowers executed and delivered to

Midcap Funding an Amended and Restated Revolving Loan Note in the amount of \$7,500,000 and dated as of September 30, 2016.

31. The obligations under the August 27, 2014 Credit and Security Agreement, the amendments thereto and the Revolving Notes executed and delivered pursuant to such amendments are secured by duly perfected security interests in substantially all of the assets of the Spectrum Borrowers, including all accounts receivable, proceeds thereof and deposit accounts. The Debtors believe that, as of the Petition Date, the outstanding indebtedness under these secured obligations for Spectrum, Spectrum Hartford and Spectrum Torrington was in the amount of \$4,073,230 and for Spectrum Manchester in the amount of \$2,211,198.

32. As part of their lending relationship with Midcap, the Spectrum Borrowers, as well as Spectrum Derby, have a lockbox arrangement whereby the funds they receive for services provided to their patients, typically from Medicare, Medicaid and insurance companies (the "Collections"), are paid into accounts ("Collection Accounts") maintained at Wells Fargo Bank, N.A. (the "Bank"). The Collection Accounts are governed by a Deposit Account Control Agreement as to non-governmental receivables and a Collection Account Agreement as to governmental receivables. The Deposit Account Control Agreement, the Collection Account Agreement and other ancillary documents direct the funds in the Collection Accounts to be swept each business day, into one or more payment or destination accounts, whereupon the funds are then used by Midcap to reduce the amounts extended under the revolving lines of credit for the Spectrum Borrowers and Spectrum Derby.

33. The Spectrum Borrowers are also obligated to Midcap under certain guarantees of affiliate entities. Pursuant to a Cross-Collateralization, Cross Default and Cross-Guaranty

Agreement dated as of June 13, 2013, the Spectrum Borrowers guaranteed the obligations of Spectrum Manchester Realty, LLC under a Credit and Security Agreement dated as of February 22, 2011 (as amended, restated, or otherwise modified from time to time), in relation to a term loan to Spectrum Manchester Realty, LLC in the amount of \$10,500,000. Pursuant to a Payment Guaranty executed and delivered to Midcap Financial and dated as of June 13, 2013, the Spectrum Borrowers guaranteed the obligations of Spectrum Derby for a loan and other revolving credit accommodations to Spectrum in the amount of \$1,250,000 pursuant to a Credit and Security Agreement between Spectrum Derby and Midcap Financial, dated as of June 13, 2013.

B. Spectrum Derby Obligations to Midcap Funding, as Successor-By-Assignment to Midcap Financial

34. In connection with the confirmation and implementation of the Plan, Midcap Financial made available to Spectrum Derby a revolving credit facility in the aggregate principal amount of up to \$1,250,000 pursuant to a Credit and Security Agreement dated as of June 13, 2013, as amended, restated or otherwise modified from time to time (the "Spectrum Derby June 13, 2013 Credit and Security Agreement"). In connection with the Spectrum Derby June 13, 2013 Credit and Security Agreement, Spectrum Derby executed and delivered a Revolving Loan Note in favor of Midcap Financial in the amount of \$1,250,000 and dated as of June 13, 2013 (the "Spectrum Derby June 13, 2013 Note").

35. The obligations under the Derby June 13, 2013 Credit and Security Agreement and Derby June 13, 2013 Note are secured by duly perfected security interests in substantially all assets of Spectrum Derby, including all accounts receivable, proceeds thereof and deposit

accounts. The Debtors believe, as of the Petition Date, that the outstanding indebtedness under these obligations was \$1,244,879.

C. Spectrum Hartford and Spectrum Torrington Obligations To NHP and The CCP Landlords

36. Spectrum Hartford and Spectrum Torrington (collectively, the “Spectrum Tenants”) are parties to a certain Master Lease dated June 13, 2013 (the “NHP Lease”), pursuant to which the Spectrum Tenants leased from Nationwide Health Properties, LLC (“NHP”) two skilled nursing facilities from which they operate their businesses. The Lease has been assigned to the CCP Landlords.

37. Pursuant to the NHP Lease, the Spectrum Tenants granted NHP security interest in “Tenant Property” and the product and proceeds thereof, which grant continues the security interest previously granted to NHP under the previous Master Lease between the parties.

38. The Spectrum Tenants also have loan obligations to NHP pursuant to a Fifth Amendment to Amended and Restated Loan and Security Agreement, dated June 13, 2013, which, with intervening amendments, relates back to that certain Amended and Restated Loan and Security Agreement dated January 1, 2005 (the “NHP Loan”). As of the Petition Date, the amount outstanding with the NHP Loan was in the approximate amount of \$825,000. The NHP Loan is evidenced by that certain Amended and Restated Secured Promissory Note, dated March 28, 2006, as amended, in the original principal amount of \$900,000. To secure the obligations relating to the NHP Loan and accompanying note, as amended, the Spectrum Tenants granted NHP a security interest in substantially all of their assets and all products and proceeds thereof.

39. Pursuant to an Intercreditor Agreement dated June 13, 2013, between Midcap Financial, Midcap Funding II, LLC, NHP and the Spectrum Borrowers, NHP subordinated its

security interest in the assets of the Spectrum Tenants, except for certain deposits under the Lease and insurance policies, to the security interests of Midcap Financial, LLC and Midcap Funding II, LLC. NHP thereafter assigned its interest in the NHP Lease to the CCP Landlords. Thus, as to cash collateral assets such as accounts receivable, the proceeds thereof, deposit accounts and cash, Midcap Financial and its successor-by-assignment, Midcap Funding IV Trust and/or Midcap Funding IV, LLC, have a prior secured position, relative to NHP's secured position or the CCP Landlord's secured position.

D. Spectrum Derby Obligations to Midland States Bank, as Assignee of Love Funding Corporation

40. Love Funding Corporation ("LFC") made loans and/or extensions of credit to or for the benefit of Spectrum Derby Realty, LLC ("Spectrum Derby Realty"), which are secured by a mortgage against real estate which is leased by Spectrum Derby Realty to Spectrum Derby and used by Spectrum Derby to operate a skilled nursing facility.

41. To further secure the loans made by LFC to Spectrum Derby Realty, Spectrum Derby granted to LFC a security interest in certain collateral that includes collateral which is the subject of the security interest granted to Midcap Financial by Spectrum Derby. HUD, which guaranteed the mortgage against the property leased to Spectrum Derby, is identified as an additional secured party with LFC.

42. By Intercreditor Agreement dated June 13, 2013, LFC subordinated its security interest of Midcap Financial for all of what is defined as "AR Lender Priority Collateral," which includes all present and future accounts, government contracts, money, deposit accounts and the proceeds and product of the foregoing. Midland Loan Services, Inc. ("Midland") is the assignee of LFC. Thus, as to cash collateral assets such as accounts receivable, the proceeds thereof,

deposit accounts and cash, Midcap Financial and its successor-by-assignment, Midcap Funding IV Trust and/or Midcap Funding IV, LLC, have a prior secured position relative to Midland's secured position. As of the Petition Date, the amount outstanding on account of the HUD-guaranteed mortgage was \$8,492,738.

E. Debtors' Obligations to DRS for Provider Taxes

43. Each of the Debtors, with the exception of Spectrum, owes pre-petition provider taxes to DRS, for which DRS may claim a lien on certain assets of the Debtors that may constitute cash collateral.

RELIEF REQUESTED

44. Pursuant to Fed. R. Bankr. P. 4001(b)(2), the Debtors request authority to use cash collateral in the amounts and for the purposes set forth in a budget which the Debtors are in the process of finalizing and will shortly file with the Court (the "Budget"), after the final hearing that is to held on May 24, 2017.

45. The Debtors further request that if, during the cash collateral period, any category of expense to be paid is more than 5% over the budgeted amount, or if payment is needed for an expenditure not included in the budget, the following procedure shall be followed:

- (a) A fax or email shall simultaneously be sent to each of the Secured Parties and their respective counsel requesting authority to pay the item with an explanation.
- (b) If the Debtors do not receive an objection within one business day from receipt of notice, the item or items can be paid.
- (c) If an objection is received a conference shall be set up with the Court or or such other person as designated by the Court and its decision shall be final.

46. As ancillary relief pursuant to sections 105(a) and 363(c) of the Bankruptcy Code, the Debtors request an order directing Midcap to remit all funds the Debtors will deposit into the Collection Accounts to the Debtors' operating account(s) within two business days so the funds may be used by the Debtors as cash collateral consistent with the terms of this Order.

BASIS FOR RELIEF REQUESTED

47. The Debtors' only source of revenue to pay for their ordinary and necessary operating expenses, thereby enabling them to continue and maintain the operation of their businesses, is from existing cash and the proceeds of accounts receivable in which the Debtors and their Secured Parties have an interest as cash collateral. The nature and scope of the Debtors' businesses of providing skilled care for their patients, approximating 455 in number, mandate that their day-to-day operations continue. For that purpose, the Debtors must use cash collateral to: (1) provide their employees with their wages and benefits; and (2) pay for the goods and services to be received from numerous items such as food, medical supplies and drugs.

48. Section 363(c)(2)(A) and (B) of the Bankruptcy Code provides in summary that "cash collateral" cannot be used without either the consent of the secured party whose cash collateral is requested to be used or by order of the Court after notice and a hearing. Pursuant to section 363(e) of the Bankruptcy Code, the Court may authorize the use of cash collateral if adequate protection is provided to the entities with an interest in cash collateral.

49. The concept of adequate protection is to be decided flexibly on a case-by-case basis, *In re O'Connor*, 808 F.2d 1393, 1396-97 (10th Cir. 1987), with the interests of all other creditors to be taken into account. *Id.* at 1398. *See also In re Dynaco Corp.*, 162 B.R. 389, 394

(Bankr. D.N.H. 1993) (adequate protection “must be determined based upon equitable considerations arising from the particular facts of each proceeding”).

50. In general, courts have recognized that a secured creditor’s position will be adequately protected where cash collateral is used to continue the operation of a debtor’s business in order to preserve its going-concern value. *See In re JKJ Chevrolet, Inc.*, 190 B.R. 542, 548 (Bankr. E.D. Va. 1995), *aff’d*, 117 F.3d 1413 (4th Cir. 1997); *In re Stein*, 19 B.R. 458, 460 (Bankr. E.D. Pa. 1982) (cash collateral usage allowed where such use is essential “in order to meet operational costs” and where the “secured position can only be enhanced by the continued [business] operation...”). *Cf. In re Mt. Olive Hospitality*, 2014 WL 1309953, at * 4 (D.N.J. Mar. 31, 2014) (secured creditor adequately protected for expenditures that were necessary to maintain debtor’s name-brand franchise because it was critical to the retention and enhancement of value).

51. When the nature of the secured position to be protected is based on a floating lien on accounts receivables and cash proceeds, the case law has instructed that the pertinent inquiry is whether the level of the secured lender’s fluctuating collateral will be maintained during the long-term, *Dynaco Corp.*, 162 B.R. at 397, not based on a “snapshot” that might show a downward fluctuation. *Id.* at 394.³

52. In this regard, courts have held that where a business is operating at an approximate “break-even point, it follows that the stream of cash collateral will likely remain at an approximate even level over a sustained period, with new proceeds replacing old. The

³ The Debtors submit that the relevant date for measuring adequate protection for the continued use of cash collateral would be the end of the term of the Sixth Cash Collateral Order, not the Petition Date. *See Dynaco*, 162 B.R. at 395, n. 6.

constant nature of this stream gives the [secured lender] protection for its cash collateral.” *In re T.H.B. Corp.*, 85 B.R. 192, 195 (Bankr. D. Mass. 1988). *See also In re Carbone Companies, Inc.*, 395 B.R. 631, 636 (Bankr. N.D. Ohio 2008) (secured creditor adequately protected where cash flow projections showed positive cash flow over relevant period and where cash and accounts receivable were projected to increase); *In re Megan-Racine Associates, Inc.*, 202 B.R. 660, 663 (Bankr. N.D.N.Y. 1996) (Debtor’s generation of continuous income stream and lender’s lien on future income provided adequate protection as long as income did not decline); *In re Pursuit Athletic Footwear, Inc.*, 193 B.R. 713, 717-18 (Bankr. D. Del. 1996) (adequate protection established by projections demonstrating that debtors would operate profitably post-petition); *In re Mullins*, 172 B.R. 473, 477-78 (Bankr. D. Mass. 1994) (“[a]ssuming the debtor is operating at no less than a break even, the new collateral and proceeds will be of at least equivalent value of those they replace”).

53. Other courts have recognized, as did the Court in *T.H.B.*, that “[t]he use of the Bank’s cash collateral, moreover, is an element of the Bank’s adequate protection” *T.H.B.*, 85 B.R. at 195. *See also In re Cafeteria Operators, L.P.*, 299 B.R. 400, 410 (Bankr. N.D. Tex. 2003) (replacement lien on inventory that would be purchased with cash collateral, as well as other assets, considered adequate protection for use of cash collateral); *In re LTV Steel Company, Inc.*, 274 B.R. 278, 286 (Bankr. N.D. Ohio. 2001) (recognizing that use of proceeds of prepetition receivables to purchase more steel would inevitably lead to increase in value of postpetition receivables and inventory, the replacement lien on which would provide adequate protection).

54. As adequate protection, the Debtors propose the entry of the proposed order attached hereto, which, *inter alia*, grants Midcap, CCP Finance, the CCP Landlords, Midland, HUD and DRS replacement liens on all cash generated and new receivables created after the Petition Date, with the same priority, force and effect as their respective security interests or liens had as against deposit accounts, cash and accounts receivable of the Debtors prior to the Petition Date, subordinate to a carve-out for amounts necessary to pay U.S. Trustee fees, fees of the Debtors' professionals up to \$200,000 and of any Committee professionals of up to \$60,000.⁴ In addition, the Debtors propose to pay weekly adequate protection payments to Midcap in the amount of \$5,000 and note that, as previously promised, they have turned over to Midcap a workers compensation refund in the amount of \$747,906.00.⁵

55. As additional adequate protection, the Debtors propose to commit to a sale process for the sale of their assets with the modified sale milestones that are summarized in ¶10, *infra*. and set forth in ¶12 of attached proposed order. Although aggressive, the proposed milestones reflect the desire of the major constituents in these cases for a prompt sale, but are tempered by what the Debtors believe is reasonably achievable consistent with their fiduciary duty to maximize the value of estate assets.

⁴ It is appropriate to insist on a carve-out for professional fees for counsel for the Debtors and the Committee in order to preserve the adversary system. *See In re Ames Department Stores, Inc.*, 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990)

⁵ Pursuant to prior cash collateral orders, except the Seventh Cash Collateral Order, Midcap had been receiving \$10,000 per week in adequate protection payments, but for the immediately preceding and current cash collateral request, the Debtors have proposed to redistribute \$5,000 of that weekly payment to the payment of rent to the CCP Landlords. This was acceptable to all parties for the Seventh Cash Collateral Order and Eighth Cash Collateral Order, and that consensus is expected to remain. Even with such redistribution, the amount of monthly rent that would be paid to CCP (\$40,000) would be \$25,000 less than the payments prescribed by the lease. The Debtors believe, however, that Midcap has committed to making up any accrued but unpaid rent to CCP (from and after December 2016) from the workers' compensation refund.

56. The Debtors believe that Midcap, CCP Finance, the CCP Landlords, Midland, HUD, and DRS will be adequately protected by replacement liens alone, inasmuch as the Debtors expect to maintain at least the same level of cash and receivables as the level existing as of the Petition Date. This has been held to constitute sufficient adequate protection to authorize the use of cash collateral. *See In re Dynaco*, 162 B.R. 389, 394-95 (Bankr. D.N.H. 1993). The Debtors also expect to operate at least at a break-even level, so that using cash collateral to maintain the ongoing operations of their businesses is a component of adequate protection. *In re T.H.B. Corporation*, 85 B.R. 192, 195 (Bankr. D. Mass. 1988). The weekly adequate protection payments and the substantial payment of the Debtors' workers' compensation refund to Midcap provides an even greater level of adequate protection for Midcap in particular.

57. Unless the Debtors receive continued authorization to use cash collateral, they will be forced to close down their businesses, discharge their employees and impose a significant risk to the health and welfare of their patients, who require ongoing care and treatment. The result would be a loss of the going-concern value of the businesses and the elimination of any prospect of a reorganization. For these and the foregoing reasons, the Debtors request that the Court authorize the continued use of cash collateral on the terms set forth above and in the proposed order attached hereto.

WHEREFORE, the Debtors respectfully request authority to use cash collateral by entry of an order in substantially the form annexed hereto, and that the Court grant such other or further relief as it may deem just, equitable and appropriate.

Dated: Bridgeport, Connecticut
May 10, 2017

Respectfully submitted,
Pullman & Comley, LLC
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