

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re:)	Chapter 11
)	
MARQUIS DIAGNOSTIC IMAGING, LLC,)	Case No. 18-52365-pwb
et al.,)	
)	(Joint Administration Requested)
<u>Debtors.</u>)	

EMERGENCY MOTION FOR AUTHORITY TO USE CASH COLLATERAL AND TO PROVIDE FOR ADEQUATE PROTECTION THEREFOR

COME NOW the above captioned debtors and debtors-in-possession (collectively, the "**Debtors**") in the above styled proposed jointly administered cases (the "**Cases**"), by and through their undersigned counsel, and herewith file this *Emergency Motion for Authority to Use Cash Collateral and to Provide for Adequate Protection Therefor* (the "**Motion**"), respectfully showing the Court as follows:

RELIEF REQUESTED

1. By this Motion, the Debtors request the entry of an order authorizing the Debtors to use certain and alleged cash collateral in accordance with the proposed budget (the "**Budget**") attached as **Exhibit "1"** to the Venesky Declaration (as defined herein) and incorporated herein by reference and for the entry of an Interim Order Authorizing Use of Cash Collateral to avoid immediate and irreparable harm pending a final hearing on this Motion.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue before this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

3. Each of Marquis Diagnostic Imaging, LLC ("**MDI**"), Marquis Diagnostic Imaging of Arizona, LLC ("**MDIA**"), Marquis Diagnostic Imaging of North Carolina, LLC ("**MDINC**"), Radiant Medical Imaging, LLC, ("**Radiant**"), DVR Acquisition, LLC, ("**DVRA**") and Desert Valley Radiology, P.L.C., ("**DVRP**") filed a voluntary petition with the Court to commence the above captioned cases under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "**Bankruptcy Code**").¹

4. As of the date of this Motion, no request has been made for the appointment of a trustee or examiner and no official committee of unsecured creditors has been appointed in any of these Cases.

5. The Debtors have continued in possession of their properties and operate and manage their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. The Debtors are an affiliated family of out-patient diagnostic imaging providers directed, managed, controlled and coordinated by management located in Georgia. Further information about the business operations of the Debtors and the events relating to the commencement of these Cases is set forth in the *Declaration of Gene Venesky in Support of First Day Motions and Applications* (the "**Venesky Declaration**") filed contemporaneously herewith and incorporated herein by reference.

¹ The Petition Dates for each of the Debtors are: MDI on February 9, 2018; MDIA on February 10, 2018; MDINC on February 9, 2018; Radiant on February 12, 2018; DVRA and DVRP each filed on February 15, 2018.

7. Although not labeled as such, the Debtors essentially have two divisions. The first is the MDIA/Radiant division which operates two of the Debtors' six facilities. MDIA operates these two facilities pursuant to a Management Services Agreement with Radiant which was entered into at the time MDIA acquired the business and assets of Radiant. The second is the DVRA/DVRP part which operates the remaining four facilities. DVRA operates these four facilities pursuant to a Management Services Agreement with DVRP. Each "division" keeps separate books and records. A list of the facilities with a map showing their locations is attached as Exhibit "A".

8. The Debtors' business is essentially to provide radiology services on an outpatient basis to patients who are referred by physicians and to then bill such patients or their insurers or government providers for such services. Together, the six facilities cover most of the greater Phoenix area. Patients are assigned to either the MDIA/Radiant division or to the DVRA/DVRP division primarily by geography, i.e., whether the closest facility to such patient is an MDIA/Radiant facility or a DVRA/DVRP facility.

9. The Debtors have in place an integrated system of cash management and bank accounts, including, but not limited to, bank accounts that have long been linked to insurance companies, government agencies and other payors for direct payment for services provided. With respect to the MDIA/Radiant division, payments from insurers and government agencies are paid to Debtor Radiant and then swept into accounts held in the name of Debtor MDIA pursuant to the management agreement in place between them. With respect to the DVRA/DVRP division, payments are received by Debtor DVRP from insurers and government agencies and then swept into accounts in the name of Debtor DVRA also pursuant to a management agreement. This structure was established at the time MDIA acquired the business

of Radiant in 2009 and at the time that DVRA acquired the business of DVRP in 2015. The Debtors' management left this structure in place due to the difficulty and disruption which would have occurred in changing long-standing bank accounts held in the names of Radiant and DVRP, respectively, which were already linked to numerous insurance companies, government agencies and other payors.

10. Debtor MDI is the ultimate holding company for the Debtors and does not conduct any business. Debtor MDINC is an affiliated Debtor which at one time operated radiology centers in North Carolina but no longer conducts any business.

11. Certain parties (collectively, the "**Secured Creditors**") may assert liens and security interests in some or all of the personal property of certain of the Debtors that is used in the business operations of the Debtors (the "**Property**"), which consists of, *inter alia*, accounts, receivables, cash, inventory, furniture, fixtures, equipment, and general intangibles. The Secured Parties may also assert that certain proceeds arising from the Property may be "cash collateral" as defined in 11 U.S.C. § 363(a) and that purported liens and security interests attach to said cash collateral.

12. To the best of knowledge, information and belief of the Debtors and based on an investigation of public filings in the States of Arizona, Delaware and Georgia, the Debtors believe that Great Western Bank ("**Great Western**") is the only creditor holding or asserting a perfected lien against the accounts receivable and proceeds of accounts receivable of any of the Debtors. The Debtors believe and are informed that Great Western asserts a first position lien against the accounts receivable and proceeds thereof of Debtors MDIA and DVRA. Great Western has not filed or perfected any lien against either Radiant or DVRP and has further not filed or perfected any lien against MDI or MDINC.

13. In addition to the Great Western claims, several other parties assert liens to certain, specified equipment of certain the Debtors, although none of these liens extend to accounts or proceeds thereof of any of the Debtors. Toshiba Medical Systems, Inc. (“**Toshiba**”) asserts a claim that is purportedly secured by certain equipment and leasehold interests of Debtor MDIA. Toshiba also has an outstanding UCC on certain equipment formerly owned by DVRP, but the Debtors believe that this lien should have been terminated at the time of the DVRP acquisition. NFS Leasing asserts liens on certain specific IT of DVRA and MDI. Shared Imaging has filed a UCC against DVRA; however, the Debtors believe that this filing was in error and that Shared Imaging has a claim against MDIA which may render any claims Shared Imaging in these case as unsecured. Hewlett-Packard and McKesson also assert liens against certain assets of MDIA, but not accounts or proceeds thereof. Finally, Bank of America and Key Equipment assert liens on certain equipment of DVRP; however, the Debtors are informed and advised that these liens should have been released as part of the DVRP transaction in 2015.

14. Further, with respect to DVRP, DVRP maintains a separate bank account containing approximately \$50,000 which are the remaining proceeds of the collection of accounts receivable of DVRP which pre-date the DVRA’s acquisition of the business of DVRP (“**Unencumbered DVRP Cash**”). Pursuant to the terms of the agreements between DVRA and DVRP, the former owners of DVRP had the right to withdraw these funds from DVRP but, as of the DVRP Petition Date, had not done so and thus this account has become property of the DVRP Estate. These funds are unencumbered and are not required to be swept to DVRA accounts; however, DVRP reserves the right to use these funds to pay certain expenses of DVRP including two leases to which DVRP is a party.

15. The Debtors continue to investigate the claims asserted by the Secured Creditors. Notwithstanding any cash collateral order that may be entered in these Cases, the Debtors reserve all rights to object to and/or with regard to any claims asserted by the Secured Creditors.

16. The use of cash collateral by the Debtors is essential to: a) the continued operation of businesses of the Debtors; b) maintain the value of the Property; and c) an effective reorganization of the Debtors. Unless authorized to use cash collateral in the ordinary course of business, operations of the Debtors will be impaired and ability of the Debtors to reorganize will be jeopardized. The Debtors do not propose to use cash collateral to pay any amounts due and owing prior to the Petition Date without further order of the Court. Due to the nature of the operations of the Debtors; however, the Debtors must be able to use of cash collateral to satisfy ongoing obligations and to preserve the value of their assets. Under the circumstances, the use of cash collateral is in the best interest of the Debtors, their estates and their creditors.

17. As adequate protection for a valid and perfected security interest that the Secured Creditors may have in cash collateral, to the extent necessary, the Debtors propose to provide adequate protection for the use of cash collateral in the form of: a) a replacement lien in the Debtors' post-petition Property and the proceeds thereof to the same extent of any pre-petition liens that are valid, properly perfected, and enforceable and in the same relative priority and continuation of valid and properly perfected liens and security interests held by such party in its pre-petition collateral; b) allowing the Debtors to use cash collateral only in accordance with the budgets to be approved by the Court and provision of Debtors' monthly operating reports required by the United States Trustee and filed with this Court.

REQUEST FOR EMERGENCY PRELIMINARY RELIEF

18. Contemporaneously herewith, the Debtors have filed an *Emergency Motion of Debtors for an Order Shortening Notice and Scheduling Expedited Hearing on First Day Motions* (the “**Motion to Expedite**”) incident to which the Debtors seek shortened notice and an expedited hearing on the relief sought in this Motion and other pleadings. With regard to this Motion specifically, the Debtors have an immediate need for the use of cash collateral for critical operating expenses prior to the scheduling of a final hearing on this Motion.

19. Unless authorized to use cash collateral during the mandatory fourteen (14) day period prior to a final hearing on this Motion, the operations of the Debtors will be immediately harmed and the ability of the Debtors to reorganize significantly impaired.

11 To the extent the fourteen day stay of Bankruptcy Rule 6004(h) may be construed to apply to the subject matter of this Motion, the Debtors request that such stay be waived.

12 Given that the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors, the Debtors submit that Bankruptcy Rule 6003 has been satisfied.

20. Conducting an emergency preliminary hearing on this Motion pursuant to the Motion to Expedite and authorizing the Debtors to use cash collateral on an interim basis in accordance with the Budget are necessary to avoid immediate and irreparable harm to the estates of the Debtors pending a final hearing. A proposed interim Order authorizing use of cash collateral pending final approval is attached as **Exhibit B** hereto.

WHEREFORE, the Debtors request that this Court: a) enter of an Order authorizing the use of cash collateral by the Debtors; b) schedule an emergency preliminary hearing on this Motion to be heard on or before February 23, 2018; c) enter an order granting this Motion at the

conclusion of such hearing and authorize use of cash collateral by the Debtors on an interim basis; and d) grant such other and further relief as may be just and proper.

Dated: February 20, 2018.

Respectfully submitted,

LAW OFFICES OF HENRY F. SEWELL JR., LLC

/s/ Henry F. Sewell, Jr.

Henry F. Sewell, Jr.

Georgia Bar No. 636265

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Atlanta, GA 30305

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PROPOSED COUNSEL FOR THE DEBTORS-IN-
POSSESSION

EXHIBIT A

(LIST OF FACILITIES)

IMAGING CENTERS

CENTER	
Gilbert 1760 East Pecos Road, Ste. 101 Gilbert, AZ 85295	
Phoenix 2830 North 3 rd Street Phoenix, AZ 85004	
Mesa 5424 E. Southern Avenue Suite 104 Mesa, AZ 85206	
Tatum 11209 North Tatum, Ste. 180 Phoenix, AZ 85028	
Bell Desert Valley Medical Center 4045 East Bell, Ste. 143 Phoenix, AZ 85032	
Indian School 9150 W. Indian School Road Ste. 136 Phoenix, AZ 85037	
Tempe 8380 S. Kyrene Road Suite 105 Tempe, AZ 85284	

Marquis & Desert Valley Center Locations

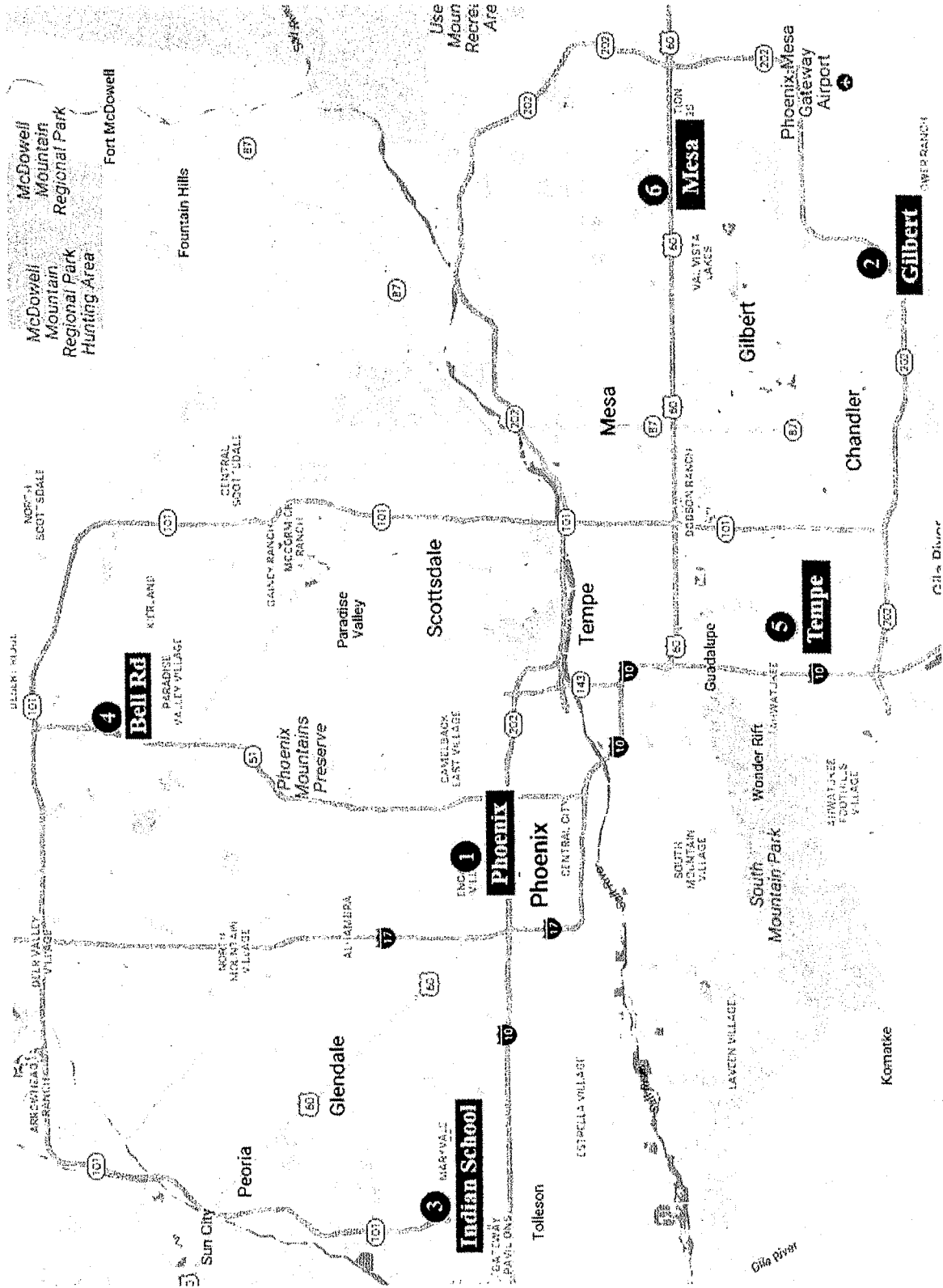


EXHIBIT B

(PROPOSED ORDER)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re:)	Chapter 11
)	
MARQUIS DIAGNOSTIC IMAGING, LLC,)	Case No. 18-52365-pwb
et al.,)	
)	(Joint Administration Requested)
<u>Debtors.</u>)	

INTERIM ORDER GRANTING EMERGENCY MOTION FOR
AUTHORITY TO USE CASH COLLATERAL AND TO PROVIDE FOR
ADEQUATE PROTECTION THEREFOR

IT APPEARING TO THIS COURT that the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), filed An *Emergency Motion for Authority to Use Cash Collateral and to Provide for Adequate Protection Therefor* (the “Motion”);² and

² Capitalized, but undefined terms used herein shall have the meaning ascribed to such terms in the Motion.

IT FURTHER APPEARING TO THIS COURT that the Motion first came before the Court for an interim hearing at _____

IT FURTHER APPEARING TO THIS COURT that it is in the best interests of all parties to conclude an interim cash collateral order that, among other things, governs the use of cash by the Debtors until such time as further hearing can be held and the Court can enter a further Order authorizing the use of cash collateral; and

IT FURTHER APPEARING TO THIS COURT that proper and adequate notice of this Order has been given and/or that the parties affected by such Order have consented to the entry of this Interim Order Granting Motion for Authority to Use Cash Collateral and to Provide Adequate Protection Therefor (the "**First Interim Order**"),

ACCORDINGLY, and for good cause shown, it appears to the Court as follows:

1. As of the the date of the Motion, the Debtors each filed a voluntary petition with the Court to commence the above captioned cases (the "**Cases**") and are continuing to manage their assets as debtor-in-possession, pursuant to 11 U.S.C. §§ 1107 and 1108.
2. The Debtors are an affiliated family of out-patient diagnostic imaging providers directed, managed, controlled and coordinated by management located in Georgia.
3. Prior to, on and after the commencement of these Cases, the Debtors are entitled to collect the cash proceeds from the use and sale of the pre-petition collateral (the "**Cash Collateral**"). The Debtors now seek to use the Cash Collateral to operate their business.
4. The Debtors assert that it is in the continued best interest of the estates and their creditors that the Debtors be permitted to use Cash Collateral in the manner provided for herein.
5. Notice of this Motion has been provided to necessary parties in compliance with Federal Rules of Bankruptcy Rule 4001(b)(2).

Based upon the foregoing, for good cause shown, it is hereby **ORDERED AND ADJUDGED** as follows:

1. **Usage Period.** Subject to the terms and conditions contained herein, the Debtors are authorized to use Cash Collateral through the date of the final hearing on the Motion (the **Usage Period**). The requirements set forth in Bankruptcy Rule 6003(b) are satisfied. Notwithstanding the possible applicability of Bankruptcy Rules 6004(a) and 6004(h) or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry and the requirements of Bankruptcy Rules 6004(a) and 6004(h) are hereby waived.

2. **Projected Use of Cash.** Unless one of the Secured Creditors holding a security interest in the Cash Collateral shall otherwise agree in writing, the amount of Cash Collateral that the Debtors may use during the Usage Period shall not exceed one hundred and ten percent (110%) of each line item set forth in the budget attached hereto as **Exhibit "1"** (the **Budget**). In the event that the Debtors develop a surplus in regard to any line item, the Debtors may apply said surplus to a separate line item where the Debtors anticipate exceeding the line item limitation. For purposes of this Order, Cash Collateral does not include the Unencumbered DVRP Cash, as defined in the Motion, and Debtor DVRP may use such cash in the normal course of business.

3. **Authorized Disbursements.** The Debtors shall only be authorized to use Cash Collateral for the actual and necessary expenses of operating the Debtors and conducting the business affairs of the Debtors pursuant to the Budget, as set forth herein. Unless otherwise authorized by order of the Court, the Debtors shall not use Cash Collateral for the payment of any pre-petition indebtedness or obligations of, or pre-petition claims against, the Debtors.

4. **Lien on Post-Petition Collateral.** Pursuant to 11 U.S.C. §§ 361 and 363, to the extent that the Debtors use Cash Collateral, each of the Secured Creditors with a valid and perfected security interest or lien is granted a continuing valid, attached, choate, enforceable, perfected and continuing security interest in, and lien upon, all post-petition assets of the Debtors of the same type and to the same extent as (i) the collateral securing the indebtedness of the Debtors to such creditor prior to the Petition Date (the “**Post-Petition Collateral**”). The priority of said security interests in, and liens upon, the Post-Petition Collateral shall be the same priority as existed in and upon the Pre-Petition Collateral. The liens and security interests granted by this Order shall, upon entry of this Order, continue to be perfected as of the Petition Date, without regard to applicable federal, state or local filing and recording statutes, and without further action of any party; provided, however, that the described replacement liens shall not attach to claims or causes of action of the Debtors that arise under Chapter 5 of the Bankruptcy Code.

5. **Validity of Collateral Claims.** Nothing herein shall be deemed an admission by the Debtors as to the extent, validity or perfection of any creditor’s security interests in the Pre-Petition Collateral, the Post-Petition Collateral or the Cash Collateral. In the event any creditor’s security interests in, or lien upon, the Pre-Petition Collateral is reduced or invalidated by order of this Court, then its security interests in, and liens upon, the Post-Petition Collateral granted by this Order shall be reduced or invalidated commensurately.

6. **Deposits of Cash Collateral.** All Cash Collateral shall be deposited in the debtor-in-possession operating account of the Debtors.

7. **Payment of Employee Taxes.** As a condition to issuing any payroll to employees during the pendency of this Case, the Debtors shall first either pay or deposit in the debtor-in-possession account of the Debtors all local, state and federal taxes, including withholding taxes,

Social Security taxes and Medicare taxes related to such payroll (the “**Related Taxes**”) and deliver to the United States Trustee a certification under penalty of perjury that the Debtors either (a) have paid all Related Taxes regarding such payroll or (b) have deposited in the Debtors’ DIP Tax Checking Account a sum sufficient to pay all Related Taxes regarding such payroll.

8. **Accounting.** The Debtors shall at all times (a) keep and provide on a periodic basis (no less than monthly) records reasonably sufficient to determine the status of Cash Collateral collections and expenditures, and (b) provide to senior secured lenders with copies of the monthly operating reports filed with this Court and with the Office of the United States Trustee.

9. **Insurance.** To the extent that it remains necessary and appropriate, the Debtors shall insure the Pre-Petition Collateral and the Post-Petition Collateral against all risks to which it may be exposed, including loss, damage, fire, theft and all other such risks, in an amount not less than the fair market value of such collateral, with such insurance providers, and under such policies, and in such form as is appropriate for a business of a type similar to the Debtors using sound business judgment. The Debtors may pay the premiums necessary to reinstate its prepetition insurance.

10. **Adequate Protection.** The terms and conditions of this Order are intended to provide each creditor with a perfected pre-petition security interests with adequate protection for its interests in the property of the Debtors.

11. **Events of Default.** Each of the following shall constitute an “**Event of Default**” under this Order:

- a. The occurrence of any material breach, default or non-compliance by the Debtors with the terms of this Order;
- b. Conversion of these Chapter 11 cases to cases under Chapter 7; or
- c. Appointment of a trustee in these Chapter 11 cases.

12. **Termination.** The authority of the Debtors to use cash collateral shall terminate, and shall no longer be subject to the terms of this Interim Order, upon:

- a. payment to such secured creditor of all sums due and owing from the Debtors to such secured creditor, including such attorneys fees, expenses and interest as the parties may agree upon or this Court shall order, pursuant to 11 U.S.C. §§ 503 or 506; or
- b. confirmation by the Debtors of a Plan of Reorganization in these Cases.

Notwithstanding the deadlines set out above, this Order, and all provisions of this Order other than those pertaining to (i) the amount and character of the expenditures of the Debtors; and (ii) the reporting requirements of the Debtors, shall remain in full force and effect.

13. **Effect of Modification, Vacation or Stay.** If any provision of this Order is hereafter modified, vacated or stayed, such modification, vacation or stay shall not (a) affect the validity or authority of the use of Cash Collateral by the Debtors under this Interim Order prior to such time, or (b) affect the validity, priority or enforceability of the security interests and liens granted the Secured Creditors for such use, prior to the effective date of such modification, vacation or stay.

14. **Notice of Hearing on Entry of Final Order Authorizing the Use of Cash Collateral.** Notice is herewith given to all parties that a hearing shall take place before this Court

in Courtroom _____ of the Richard Russell Federal Building, 75 Ted Turner Drive, SW, Atlanta, Georgia 30303 on _____ at _____, to consider the entry of a final order authorizing the Debtors to use cash collateral. Any person wishing to object to the entry of a final order authorizing the Debtors to use cash collateral should file a written objection with the Clerk of the United States Bankruptcy Court for the Northern District of Georgia at Room 1340, Richard Russell Federal Building, 75 Ted Turner Drive, Atlanta, Georgia 30303, or online through ECF on or before _____. Any party filing such an objection shall appear at the hearing on _____ to advocate said objection, or the objection may be denied without further hearing.

END OF DOCUMENT

Prepared and Presented By:

LAW OFFICES OF HENRY F. SEWELL JR., LLC

/s/ Henry F. Sewell, Jr.

Henry F. Sewell, Jr.

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PROPOSED COUNSEL FOR THE DEBTORS-IN-POSSESSION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the within and foregoing *EMERGENCY MOTION FOR AUTHORITY TO USE CASH COLLATERAL AND TO PROVIDE FOR ADEQUATE PROTECTION THEREFOR* was served via the Court's ECF system to all parties registered with the system who have filed appearances and requested notices as follows:

David Weidenbaum, Esq.
Office of the United States Trustee
362 Richard B. Russell Federal Building
75 Ted Turner Drive, SW
Atlanta, Georgia 30303
Via ECF

Dated: February 20, 2018.

Respectfully submitted,

LAW OFFICES OF HENRY F. SEWELL JR., LLC

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