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Electronically Filed May 17, 2017

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*[Proposed] Counsel for Bishop Gorman Development Corporation*

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF NEVADA**

In re

BISHOP GORMAN DEVELOPMENT  
CORPORATION, a Nevada nonprofit  
corporation,

Debtor.

Case No. BK-S-17-11942-ABL

Chapter 11

**MOTION FOR FINAL ORDER  
PURSUANT TO 11 U.S.C. §§ 105, 364,  
FED R. BANKR. P. RULE 4001(C)  
AND L.R. 4001(B) AND (C): (I)  
AUTHORIZING DEBTOR TO  
OBTAIN POST-PETITION  
FINANCING; (II) GRANTING  
RELATED RELIEF**

Hearing Date: June 14, 2017  
Hearing Time: 1:30 p.m. (PT)  
Estimated Time for Hearing: 15 minutes

Bishop Gorman Development Corporation (“BGDC” or the “Debtor”), debtor and debtor in possession in the above-captioned chapter 11 case (the “Chapter 11 Case”), by and through its *proposed* undersigned counsel, Fox Rothschild LLP, hereby submits this motion (the “Motion”) for entry of a final order (the “Final DIP Order”) pursuant to sections 105(a) and 364 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”), Rule 4001(c) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rules 4001(b) and (c) of the Local Rules for the U.S. Bankruptcy Court, District of Nevada (“Local Rules”): (i) authorizing

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1 and approving, among other things, Debtor's obtaining post-petition financing (the "Post-Petition  
 2 Financing") from Service Campaign Corporation, a Nevada nonprofit corporation ("SCC" or  
 3 "Lender"), under Section 364(b) of the Bankruptcy Code.

4 Debtor's ability to obtain the Post-Petition Financing is critical to Debtor's ability to  
 5 prosecute this chapter 11 bankruptcy case (the "Chapter 11 Case") through its conclusion as a  
 6 successful reorganization. The proceeds of the Post-Petition Financing will be used to fund  
 7 expenses of administration of Debtor's chapter 11 bankruptcy estate, including allowed fees and  
 8 expenses of professionals of the estate awarded by the Bankruptcy Court ("Professional Fees"), any  
 9 fees assessed by the Office of the United States Trustee (the "US Trustee Fees"), and the fees of the  
 10 Clerk of Court ("Court Fees").

11 Pursuant to Bankruptcy Rule 4001(c), the principal provisions of the Final DIP Order, a  
 12 proposed copy of which is attached as **Exhibit "A"** hereto, are as follows (capitalized terms used  
 13 but not immediately defined herein shall have the meanings ascribed to them later in this Motion or  
 14 in the Credit Agreement, as the case may be):

- 15 (a) **Loans.** Pursuant to a credit agreement, substantially in the form of **Exhibit B** attached  
 16 to this Motion (the "Credit Agreement" and, collectively with any other Bank Loan  
 17 Agreements executed by Borrower or any other persons in connection with the Credit  
 18 Agreement, the "Bank Loan Agreements"), SCC commits to loan to Debtor an aggregate  
 amount of \$500,000.00 (the "Maximum Commitment Amount") in the Chapter 11 Case,  
 subject to approval by the Bankruptcy Court. (Credit Agreement, pg. 1).

19 Subject to the terms and conditions of the Credit Agreement (including without  
 20 limitation the conditions precedent set forth in ARTICLE III of the Credit Agreement),  
 Lender agrees to make Loans (each, a "Loan" and collectively, the "Loans") to Borrower  
 21 from time to time until the Commitment Termination Date in an aggregate principal  
 amount at any one time outstanding not to exceed the Maximum Commitment Amount  
 22 (of \$500,000.00), in all instances subject to the Cash Budget or the Initial Cash Budget;  
 provided that:

23 (i) compliance with the Cash Budget shall be deemed satisfied if the actual  
 24 aggregate expenditures for every four-week period (i.e. post-petition weeks one through  
 25 four, five through eight, etc.) do not exceed by more than twenty-five percent (25%) the  
 aggregate budgeted amount for such four-week period as set forth in the Cash Budget;

26 (ii) to the extent that the full amount of any of the expenses budgeted for a  
 27 particular four-week period under the Cash Budget is not disbursed during such four-  
 week period, the unused balance shall be added to the amount of budgeted expenses for  
 28 ensuing four-week periods and the Cash Budget shall be deemed to be amended (and  
 approved) to reflect the same, such that Borrower may use such unused budgeted

amounts in subsequent four-week periods in addition to originally budgeted amounts for such four-week periods; and

(iii) Lender shall not be permitted or required to make any Loan if after giving effect thereto, the sum of the outstanding aggregate principal amount of Loans at any one time would exceed the Maximum Commitment Amount.

Until the Commitment Termination Date, Borrower may from time to time borrow, prepay the Loans in whole or in part, and re-borrow under Article I of the Credit Agreement, all in accordance with the terms and conditions of the Credit Agreement and in accordance with the applicable Cash Budget. Loans in an aggregate principal amount at any one time outstanding not to exceed the Maximum Commitment Amount may be borrowed, repaid and re-borrowed in accordance with Article 1 of the Credit Agreement, at all times subject to and in accordance with the Cash Budget, on and after the Commitment Effective Date until the Commitment Termination Date. Lender agrees that the Initial Cash Budget is in form and substance acceptable to Lender, and that it may be used, among other purposes, for purposes of the motion seeking entry of the Final Order.

Each Loan shall be denominated in Dollars (Credit Agreement § 1.1).

(b) **Notes.** Each Loan made by Lender shall be evidenced by a promissory note (each a “Note” and collectively, the “Notes”) of Borrower made to the order of Lender, with appropriate insertions as to date and principal amount, payable to the order of Lender. Each Note shall (i) be dated as of the date it is executed, (ii) be stated to mature on the Maturity Date or such earlier date the Loans shall be due and payable in full, whether by acceleration or otherwise, pursuant to the terms of the Credit Agreement, and (iii) provide for the payment of interest. (Credit Agreement § 1.2, **Exhibit B**)

(c) **Procedure for Loans and Payments.** Borrower shall give Lender not less than 3 Business Days’ notice of the Borrowing Date applicable to any Loan request, which request shall be transmitted by electronic mail to Lender at:

Service Campaign Corporation  
Attn: John Kilduff  
jkilduff@bishopgorman.org  
P.O. Box 18136  
Las Vegas, Nevada 89114

with a copy to Lender’s counsel at:

Robert M. Charles, Jr.  
Email: rcharles@lrrc.com  
Lewis Roca Rothgerber Christie LLP  
3993 Howard Hughes Parkway, Suite 600  
Las Vegas, Nevada 89169

(iv) Within 2 Business Days of receiving a Loan request from Borrower, Lender shall provide to Borrower via email (with a copy to Borrower’s counsel, Brett A. Axelrod, Esq.) written notice (“Loan Rejection Notice”) of any Event of Default or failure to satisfy a

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condition precedent set forth in Section 3.1 or 3.2 of the Credit Agreement that Lender contends is applicable to such Loan request.

(v) Unless Lender provides a timely Loan Rejection Notice as set forth in Section 1.3(a) of the Credit Agreement, then the Lender Designee shall wire Loan proceeds to the DIP Account in the amount requested by Borrower prior to Lender’s wire cutoff deadline on the Borrowing Date.

The Loans shall be paid in full on the Commitment Termination Date, pursuant and subject to the terms of the Credit Agreement.

(d) **Lender Expenses.** Borrower shall reimburse Lender for all reasonable out-of-pocket costs and expenses incurred in connection with the Credit Agreement and the Chapter 11 Case, including, without limitation, related due diligence and preparation, negotiation, execution, delivery, administration and enforcement of the Loan Documents and ongoing expenses related to the Loans, including attorney and advisor fees and expenses. (Credit Agreement § 1.4).

(e) **Interest Rates and Payment Dates.** (a) Each Loan shall bear interest at a rate *per annum* of the Bank of America Prime Rate determined as of the date of the Credit Agreement. (Credit Agreement § 1.5(a)).

Notwithstanding the foregoing, in the event an Event of Default has occurred and is continuing, the Loans shall bear interest at a rate *per annum* equal to the rate set forth above plus 5.0% from the date of occurrence of such Event of Default until the date such Event of Default is cured or waived. (Credit Agreement § 1.5(b)).

(f) **Computation of Interest.** Interest shall accrue and compound monthly. All computations of interest and fees payable under the Credit Agreement shall be made on the basis of a year of 365 days, in each case for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest or fees are payable. (Credit Agreement § 1.6(a)).

Any payment of interest under the Credit Agreement shall be subject to any applicable withholding taxes, and any amount withheld under Article I of the Credit Agreement shall be treated as having been paid by Borrower to Lender for all purposes. (Credit Agreement § 1.6(b)).

(g) **Prepayments.** (a) Borrower may, at any time and from time to time prepay the Loans, in whole or in part, without premium or penalty, upon irrevocable written notice to Lender by 11:00 a.m. prevailing Pacific Time on such date of prepayment, in each case specifying the date and amount of prepayment. If any such notice is given, the amount specified in such notice shall be due and payable on the date specified therein, together with any amounts payable, accrued interest to such date on the amount prepaid and any outstanding fees and expenses then due and owing. (Credit Agreement § 1.7(a)).

(b) Repayment of the Obligations, including any prepayment of Obligations, shall be applied in the following order of priority:

(i) first, to the payment of all costs and expenses that are due and payable to Lender on such date under and in respect of the Credit Agreement, including but

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1 not limited to reasonable attorneys' fees and costs incurred by counsel to Lender;  
2 and; and

3 (ii) second, to the payment of the outstanding principal amount of all of the  
4 Loans that are due and payable to Lender on such date, together with all accrued  
5 and unpaid interest thereon. (Credit Agreement § 1.7(b)).

6 (h) **Use of Proceeds.** (a) Borrower shall utilize the proceeds of the Loan in accordance with  
7 the Cash Budget solely for (i) paying expenses incurred for the administration of the  
8 Chapter 11 Case, including paying reasonable compensation of professional fees and  
9 expenses and (ii) repaying the Loans; provided that Borrower shall be permitted to pay  
10 compensation and reimbursement of expenses allowed, allowable or authorized by the  
11 Bankruptcy Court and payable under Bankruptcy Code sections 330 and 331, all in  
12 accordance with the Cash Budget. A carve-out of (i) all unpaid fees required to be paid  
13 in the Chapter 11 Case to the clerk of the Bankruptcy Court and to the Office of the  
14 United States Trustee under 28 U.S.C. § 1930(a)(6), in such amount agreed to by the  
15 Office of the United States Trustee or as determined by the Bankruptcy Court, whether  
16 arising prior to or an Event of Default; (ii) fees, disbursements, costs and expenses  
17 which are incurred after the Petition Date and before an Event of Default, less any  
18 amount actually paid to each such Professional, retained by the Debtor and any  
19 Committee pursuant to Bankruptcy Code sections 327, 330, 363 and 1103 (collectively,  
20 the "Professionals"), to the extent allowed at any time by the Bankruptcy Court and  
21 owed pursuant to such Professionals' respective engagement letters; (iii) the fees,  
22 disbursements, costs and expenses of Professionals in an aggregate amount not to exceed  
23 \$200,000 that are incurred after an Event of Default and which are ultimately allowed by  
24 the Bankruptcy Court (the "Carve-Out Cap") shall not be reduced by the amount of any  
25 compensation and reimbursement of expenses paid or incurred (to the extent ultimately  
26 allowed or allowable by the Bankruptcy Court) prior to the occurrence of an Event of  
27 Default in respect of which the Carve-Out is invoked, and Lender waives any right to  
28 seek disgorgement thereof; provided, however, that nothing herein shall be construed to  
impair the ability of Lender to object to the reasonableness of any of the fees, expenses,  
reimbursement or compensation sought by the professionals retained by Borrower or any  
Committee.

(b) Following an Event of Default, any payments actually made pursuant to Bankruptcy  
Code sections 327, 328, 330, 331, 363, 503 or 1103 or otherwise, to Professionals shall  
(i) not be paid from the proceeds of any Loan until such time as all retainers, if any, held  
by such Professionals have been reduced to zero, and (ii) in the case of any payments  
made on account of any fees and expenses described in clause (iii) of the definition of  
Carve-Out, reduce the Carve-Out Cap on a dollar-for dollar basis.

(c) Under no circumstances shall any proceeds of any Loan be used to pursue any action  
or joinder in any action, counter-claim, proceeding, application, motion, objection,  
defense or other contested matter, the purpose of which is to seek any order,  
determination or similar relief (i) challenging the legality, validity, priority, perfection or  
enforceability (as the case may be) of any of the Obligations or any other claim of  
Lender against Borrower or its estate, other than the calculation of the amount thereof;  
(ii) invalidating, setting aside, avoiding or subordinating, in whole or in part, any of the  
foregoing; and (iii) otherwise seeking monetary relief against Lender other than for a  
breach of the Credit Agreement. (Credit Agreement § 1.8).

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- (i) **Separate Loans Not to Exceed Commitment.** All Loans to Borrower and all of the other Obligations of Borrower arising under the Credit Agreement and the other Loan Documents shall constitute separate loans to Borrower, evidenced by a separate promissory note executed by Borrower; provided, however, that the total outstanding principal balance of all Loans by Borrower shall not exceed the Maximum Commitment Amount. (Credit Agreement § 1.9).
- (j) **Maturity Date.** Earlier of April 18, 2018, or the Effective Date of a confirmed Reorganization Plan (Credit Agreement § 1.1 and 2.2).
- (k) **Certain Events of Default.** Notwithstanding the provisions of Bankruptcy Code section 362 (but subject to Section 5.1 of the Credit Agreement) and without application or motion to the Bankruptcy Court or any notice to Borrower, the occurrence of any one or more of the following events (regardless of the reason therefor) shall constitute an “Event of Default” hereunder (for purpose of items (i) through (vi) by way of a final order, the effectiveness of which has not been stayed): (i) appointment of a chapter 11 trustee with respect to the Chapter 11 Case; (ii) appointment of an examiner with expanded powers with respect to the Chapter 11 Case; (iii) conversion of the Chapter 11 Case to one under chapter 7 of the Bankruptcy Code; (iv) dismissal of the Chapter 11 Case; (v) granting of relief from the automatic stay to permit the Pre-Petition Lenders to exercise rights or remedies regarding the Pre-Petition Lenders’ Collateral; (vi) use of Loan advances to make a payment that is not in compliance with the Cash Budget or this Agreement; (vii) failure of the Final Order to have been entered by the Bankruptcy Court by the date that is 45 days (or such longer period as Lender and Borrower agree) after the date on which the motion for entry of the Final Order is filed; (viii) Borrower’s breach of any other provision of the Final Order and such breach remains uncured for a period of 10 days after notice is provided to Borrower of such breach; (ix) Borrower’s failure to comply with section 4.2; and (x) the commencement of any lawsuit seeking monetary relief against Lender on behalf of Borrower or Borrower’s estate, other than for a breach of this Agreement. (Credit Agreement § 5.1).

In accordance with Fed. R. Bankr. P. 4001 and LR 4001, Debtor has identified below, by page and paragraph number, the location of each of the following provisions:

Provision	Contained in Credit Agreement or Proposed Order	Location in Credit Agreement or Proposed Order	Location in Motion
(1) A grant of priority or a lien on property of the estate under § 364(c) or (d).	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
(2) The providing of adequate protection or priority for a claim that arose before the commencement of the case, including the granting of a lien on property of the estate to secure the claim, or the use of property of the estate or credit obtained under § 364 to make cash payments on	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		

Provision	Contained in Credit Agreement or Proposed Order	Location in Credit Agreement or Proposed Order	Location in Motion
account of the claim.			
(3) A determination of the validity, enforceability, priority, or amount of a claim that arose before the commencement of the case, or of any lien securing the claim.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
(4) A waiver or modification of Code provisions or applicable rules relating to the automatic stay.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Credit Agreement § 5.1; Proposed Order, Article X	
(5) A waiver or modification of any entity's authority or right to file a plan, seek an extension of time in which the Debtor has the exclusive right to file a plan, request the use of cash collateral under § 363(c), or request authority to obtain credit under § 364.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
(6) The establishment of deadlines for filing a plan of reorganization, for approval of a disclosure statement, for a hearing on confirmation, or for entry of a confirmation order.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
(7) A waiver or modification of the applicability of non-bankruptcy law relating to the perfection of a lien on property of the estate, or on the foreclosure or other enforcement of the lien.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
(8) A release, waiver, or limitation on any claim or other cause of action belonging to the estate or the trustee, including any modification of the statute of limitations or other deadline to commence an action.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
(9) The indemnification of any entity.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
(10) A release, waiver, or limitation of any right under § 506(c).	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
(11) The granting of a lien on any claim or cause of action arising under §§ 544, 545, 547, 548, 549, 553(b), 723(a), or 724(a).	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		

In further support of this Motion, Debtor relies upon and incorporates by reference the Omnibus Declaration of Deacon Aruna Silva (the "Omnibus Declaration") filed in support of

1 Debtor's various First Day motions. (ECF No. 13). In further support of this Motion, Debtor  
2 submits the following Memorandum of Points and Authorities.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I.**

5 **JURISDICTION AND VENUE**

6 This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334.  
7 Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core  
8 proceeding pursuant to 28 U.S.C. § 157(b). The statutory predicates for the relief sought herein are  
9 Bankruptcy Code §§ 105(a) and 364, Bankruptcy Rule 4001 and Local Rule 4001.

10 **II.**

11 **BACKGROUND**

12 1. On April 17, 2017, Debtor commenced its bankruptcy case by filing a voluntary  
13 petition for relief under Chapter 11 of the Bankruptcy Code.

14 2. Debtor is operating its business and managing its affairs as debtor-in-possession  
15 pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been  
16 appointed in this case, and no statutory committee of creditors has been formed.

17 3. Debtor here seeks the Bankruptcy Court's authorization to obtain the Post-Petition  
18 Financing, pursuant to the terms of the Credit Agreement with SCC, to fund Debtor's chapter 11  
19 expenses of administration, including, without limitation, expenses for US Trustee Fees, Court Fees  
20 and Professional Fees of professionals whose services are required to prosecute this case towards  
21 confirmation of a plan of reorganization. These actions will maintain the value of Debtor's assets,  
22 and are in the best interests of Debtor and its creditors. See Omnibus Declaration ¶¶ 61 and 62.

23 4. If Debtor is unable to obtain Post-Petition Financing, it will be unable to fund the  
24 chapter 11 administration expenses and reorganize, and thus the value of its estate will be adversely  
25 affected. By obtaining the Post-Petition Financing, Debtor will be able to funds the necessary costs  
26 and expenses to reorganize which will increase the value of its estate and maximize any potential  
27 payments to creditors. See id.

28





1 Here, Debtor's status as a non-profit entity that relies heavily on donations from its generous  
 2 donors, in addition to the income stream generated by rent payments received in connection with  
 3 the operation of Debtor's real property, made it nearly impossible to begin conversations regarding  
 4 the provision of debtor in possession financing from other entities, let alone under 11 U.S.C. §  
 5 364(b). Debtor's request for approval of the Post-Petition Financing should be granted on this basis  
 6 alone.

7 **B. Debtor's Decision to Enter into the Post-Petition Financing Is Supported by Sound  
 8 Business Judgment.**

9 Courts generally give broad deference to the business decisions of a Debtor. See, e.g.,  
 10 Stephens Indus., Inc. v. McClung, 789 F.2d 386, 390 (6th Cir. 1986); In re Continental Air Lines,  
 11 Inc., 780 F.2d 1223, 1226 (5th Cir. 1986); In re Lionel Corporation, 722 F.2d 1063, 1070 (2d Cir.  
 12 1983); Walter v. Sunwest Bank (In re Walter), 83 B.R. 14, 19-20 (B.A.P. 9th Cir. 1987). In  
 13 particular, a bankruptcy court should defer to a Debtor's reasonable business judgment regarding  
 14 the need for funds, so long as the proposed financing agreement does not contain terms that either  
 15 leverage the bankruptcy process or that benefit a third party rather than the bankruptcy estate. See,  
 16 e.g., In re Trans World Airlines, Inc., 163 B.R. 964, 974 (Bankr. D. Del. 1994) (noting that an  
 17 interim loan, receivables facility and asset-based facility were approved because they "reflect[ed]  
 18 sound and prudent business judgment ..., [were] reasonable under the circumstances and in the best  
 19 interest of [the Debtor] and its creditors"). This was explained by the bankruptcy court in In re  
 20 Ames Department Stores, Inc., 115 B.R. 34 (Bankr. S.D.N.Y. 1990):

21 [A] court's discretion under section 364 is to be utilized on grounds that permit  
 22 reasonable business judgment to be exercised so long as the financing agreement  
 does not contain terms that leverage the bankruptcy process and powers or its  
 purpose is not so much to benefit the estate as it is to benefit a party-in-interest.

23 Id. at 40.

24 Here, Debtor's decision to enter into the Post-Petition Financing represents a reasonable  
 25 exercise of business judgment. There is an extensive amount of work to be performed by Debtor's  
 26 professionals which must commence immediately in order pursue confirmation of a plan of  
 27 reorganization and Debtor does not have sufficient cash to assure those professionals of payment  
 28 during the Chapter 11 Case. Thus, absent the financing to be provided as part of the Post-Petition

1 Financing, Debtor will not be able to meet its chapter 11 administrative obligations. Put another  
 2 way, Debtor’s opportunity and ability to reorganize and successfully emerge from Chapter 11 may  
 3 be significantly impaired unless it has the funds to pay Professional Fees and other costs that must  
 4 be incurred immediately. The success of this Chapter 11 Case therefore turns on Debtor’s ability  
 5 continue operations and implement its long-term strategy of restructuring. The Post-Petition  
 6 Financing will permit Debtor to accomplish these goals, and achieve its stated objective of  
 7 maximizing value for all constituencies.

8 **C. The Terms of the Post-Petition Financing Are Reasonable Under The Circumstances  
 And Should Be Approved.**

9 The terms of the Credit Agreement are reasonable under all of the circumstances. See, e.g.,  
 10 In re Ellingsen MacLean Oil Co., 65 B.R. 358, 365 (Bankr. W.D. Mich. 1986), aff’d, 834 F.2d 599  
 11 (6th Cir. 1987) (chapter 11 post-petition financing is “fraught with dangers for creditors . . .”).  
 12 Accordingly, courts recognize that a Debtor may need to “enter into a hard bargain with a creditor  
 13 in order to acquire the needed funds to complete reorganization.” Id. at 365. Here, however, no  
 14 extremely hard bargain is present undoubtedly because of the affiliation of the Lender and Debtor as  
 15 is evidenced by the Lender agreeing to priority for the Post-Petition Financing under 11 U.S.C. §  
 16 364(b).

17 **D. Only Final Hearing On This Motion Pursuant To Bankruptcy Rule 4001(c)(2) is  
 18 Requested.**

19 Bankruptcy Rule 4001(c)(2) provides that a final hearing on a motion to obtain credit  
 20 pursuant to Bankruptcy Code Section 364 may be commenced not earlier than fourteen (14) days  
 21 after service of the motion and Local Rule 4001(b)(2) requires that a final hearing may not take  
 22 place on less than twenty one days’ notice. Upon request, however, the Bankruptcy Court is  
 23 empowered to conduct an expedited hearing on the motion and authorize the obtaining of credit to  
 24 the extent necessary to avoid immediate and irreparable harm to a Debtor’s estate.

25 Pursuant to Bankruptcy Rule 4001(c)(2), Debtor does not request the Court conduct an  
 26 expedited interim hearing on the Motion since it is not likely that US Trustee Fees and Professional  
 27 Fees will need to be funded during the first sixty (60) days of this case. Therefore, Debtor seeks  
 28 only for the entry of the Final DIP Order, to allow Debtor to borrow under the Post-Petition

1 Financing on a final basis.

2 Debtor respectfully submits that, notice as contemplated by Bankruptcy Rule 4001 is  
3 sufficient to permit this Court to approve Debtor’s request for approval of Post-Petition Financing.  
4 Debtor will provide notice by electronic mail, U.S. mail or the Court’s ECF noticing of the Final  
5 Hearing to: the Office of the United States Trustee for the District of Nevada, counsel for any  
6 Committee, and if no such committee was appointed, then to the parties listed on the List of  
7 Creditors Holding the 20 Largest Unsecured Claims, all secured creditors, and all other parties  
8 requesting notice pursuant to Bankruptcy Rule 2002.

9 In light of the foregoing, the Motion has been noticed by Debtor solely for a final hearing.

10 **V.**

11 **CONCLUSION**

12 Based upon all the foregoing, as set forth in this Memorandum, the Motion, the Omnibus  
13 Declaration and all other papers, documents, or other evidence submitted in support of the Motion,  
14 Debtor respectfully request that the Court grant the Motion in its entirety and: (1) approve the Post-  
15 Petition Financing on a final basis; (2) enter the Final DIP Order, in substantially the form attached  
16 hereto as Exhibit A; (3) authorize Debtor to execute the Credit Agreement and other Loan  
17 Documents and, pursuant thereto, borrow on a final basis under the terms of the Loan Documents  
18 and the Final DIP Order, (4) grant Lender section 364(e) status as provided for under the Final DIP  
19 Order; and (5) grant to Debtor such other relief as the Court deems necessary and appropriate.

20 DATED this 17th day of May, 2017.

21 **FOX ROTHSCHILD LLP**

22 By  /s/Brett A. Axelrod

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26 *[Proposed] Counsel for Bishop Gorman*  
27 *Development Corporation*

**EXHIBIT "A"**  
**PROPOSED ORDER**

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**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA**

<p>In re</p> <p><b>BISHOP GORMAN DEVELOPMENT CORPORATION, a Nevada nonprofit corporation,</b></p> <p style="text-align: right;">Debtor.</p>	<p>Case No. BK-S-17-11942-ABL</p> <p>Chapter 11</p> <p><b>ORDER PURSUANT TO 11 U.S.C. §§ 105, 364, FED R. BANKR. P. RULE 4001(C) AND L.R. 4001(B) AND (C): (I) AUTHORIZING DEBTOR TO OBTAIN POST-PETITION FINANCING; (II) GRANTING RELATED RELIEF</b></p> <p>Hearing Date: June 14, 2017 Hearing Time: 1:30 p.m. (PT)</p>
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The Court, having reviewed and considered the Motion (the "Motion") filed by Bishop Gorman Development Corporation ("BGDC" or "Debtor") for entry of a final order pursuant to sections 105, 361, 362, 363(c), 364(b), and 364(e) of title 11 of the United States Code, 11 U.S.C. §

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1 101, et seq. (the “Bankruptcy Code”), and Rules 2002, 4001 and 9014 of the Federal Rules of  
2 Bankruptcy Procedure (the “Bankruptcy Rules”), seeking, among other things<sup>1</sup>:

3 (a) authorization for the Debtor to obtain unsecured post-petition financing in an aggregate  
4 principal amount of up to \$500,000.00 (the “Post-Petition Financing”), pursuant to section 364(b) of  
5 the Bankruptcy Code, from Service Campaign Corporation (“Lender”), pursuant to the terms of this  
6 Final DIP Order and that certain Debtor in Possession Revolving Credit Agreement by and among  
7 the Borrower, and the Lender, in substantially the form attached to the Motion as Exhibit B (as the  
8 same may be amended, restated, supplemented or otherwise modified from time to time,  
9 collectively, the “Credit Agreement”), and any related documents required to be delivered by or in  
10 connection with the Credit Agreement (together with the Credit Agreement, collectively, the “Loan  
11 Documents”);

12 (b) authorization for the Borrower to execute and enter into the Loan Documents and to  
13 perform such other and further acts as may be required in connection with the Loan Documents;

14 (c) the grant of section 364(e) status to the Lender;

15 (d) the modification of the automatic stay imposed under section 362 of the Bankruptcy  
16 Code to the extent necessary to permit the Borrower and the Lender to implement the terms of this  
17 Final DIP Order.

18 A final hearing on the Motion was held by this Court on June 14, 2017 (“Final Hearing”).  
19 The Court read and considered the Motion, and all pleadings related thereto including all objections  
20 to the Motion, as well as the record made by the Debtor and other parties at the Final Hearing, and  
21 after due deliberation and consideration, and good and sufficient cause appearing therefor:

22 **THE COURT HEREBY FINDS AND CONCLUDES AS FOLLOWS:**

23 **I. Background, Jurisdiction and Notice.**

24 A. On April 17, 2017 (the “Petition Date”), Debtor commenced its bankruptcy case by  
25 filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtor is

26 \_\_\_\_\_  
27 <sup>1</sup> Capitalized terms used, but not defined herein, shall have the meanings ascribed to such  
28 terms in the Credit Agreement and capitalized terms used but not immediately defined in Order shall have the meanings ascribed to them later in this Order.

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1 continuing to operate its business and manage its property as debtor-in-possession pursuant to  
2 sections 1107(a) and 1108 of the Bankruptcy Code. No statutory committee of unsecured creditors  
3 (“Committee”), trustee, or examiner has been appointed in this case.

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

7 C. The Debtor has complied with Bankruptcy Rule 4001(c) and (d), LR 4001(b) and LR  
8 9006 to hold the Final Hearing by serving the Motion and providing notice of the Final Hearing to  
9 the Office of the United States Trustee for the District of Nevada, counsel for any Committee, and if  
10 no such committee was appointed, then to the parties listed on the List of Creditors Holding the 20  
11 Largest Unsecured Claims, all secured creditors, and all other parties requesting notice pursuant to  
12 Bankruptcy Rule 2002. Given the nature of the relief sought in the Motion, the Court concludes that  
13 the foregoing notice was sufficient and adequate under the circumstances and complies with  
14 Bankruptcy Rule 4001 in all respects.

15 **II. Findings Regarding the Post-Petition Financing Based on the Record at the Final Hearing.**

16 D. The Debtor has critical need to obtain the Post-Petition Financing. Debtor’s ability to  
17 obtain the Post-Petition Financing is critical to Debtor’s ability to prosecute its Chapter 11 Case.  
18 The proceeds of the Post-Petition Financing will be used to fund the costs of administering Debtor’s  
19 estate, including, without limitation, fees (“US Trustee Fees”) assessed by the Office of the United  
20 States Trustee (“US Trustee”), fees of the Clerk of Court (“Court Fees”), and fees and expenses  
21 (“Professional Fees”) of (i) professionals employed pursuant to Bankruptcy court Order in  
22 accordance with Bankruptcy Code sections 327 or 1103 to be compensated for services rendered  
23 pursuant to Bankruptcy Code sections 327, 328, 329, 330 or 331. The Borrower’s access to  
24 sufficient liquidity through the incurrence of the Post-Petition Financing under the terms of this  
25 Final DIP Order are vital to the preservation and maintenance of the going concern value of the  
26 Borrower’s estate and to the Borrower’s successful reorganization. Consequently, without access to  
27 the Post-Petition Financing, to the extent authorized pursuant to this Final DIP Order, the Borrower  
28

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1 and its estate would be harmed, and Debtor's reorganization prospects would be significantly  
2 impaired.

3 E. The Borrower is unable to obtain adequate unsecured credit allowable under sections  
4 364(a) of the Bankruptcy Code in the ordinary course of its business. The only sufficient source of  
5 credit available to the Borrower is the Post-Petition Financing. The Borrower requires the Post-  
6 Petition Financing, to fund expenses of administration in the form of professional fees, United  
7 States Trustee fees, Clerk of the Court fees and costs, and similar expenses of administration.

8 F. The Lender has indicated a willingness to provide the Borrower with certain financing,  
9 but solely on the terms and conditions set forth in this Final DIP Order and in the Loan Documents.  
10 After considering all of its alternatives, the Borrower has concluded, in an exercise of its sound  
11 business judgment, that the financing to be provided by the Lender pursuant to the terms of this  
12 Final DIP Order and the Loan Documents represents the best financing presently available to the  
13 Borrower.

14 G. The Lender is related to the Debtor by common ownership.

15 H. Good cause has been shown for immediate entry of this Final DIP Order pursuant to  
16 Bankruptcy Rules 4001(c)(2). To the extent the Borrower has not complied with Rule 4001(c)(2),  
17 the Court finds good cause to waive that requirement. In particular, the authorization granted herein  
18 for the Borrower to execute the Loan Documents, to obtain financing on a final basis, is necessary  
19 to avoid immediate and irreparable harm to the Borrower and its Estate. Entry of this Order is in the  
20 best interest of the Borrower, its Estate and creditors. The terms of the Loan Documents are fair and  
21 reasonable under the circumstances, reflect the Borrower's exercise of prudent business judgment  
22 consistent with its fiduciary duties, and are supported by reasonably equivalent value and fair  
23 consideration.

24 I. Although the Borrower and Lender are related to each other (each having common  
25 ownership), the terms and conditions of the Loan Documents and this Final DIP Order, which are  
26 reflective of good faith arm's length negotiations between the Lender and Borrower, are in good  
27 faith, and any credit extended and loans made to the Borrower pursuant to this Final DIP Order  
28



1 shall be, and hereby are, deemed to have been extended, issued or made, as the case may be, in  
2 “good faith” within the meaning of section 364(e) of the Bankruptcy Code.

3 J. Based on the foregoing, and upon the record made before this Court at the Final  
4 Hearing and good and sufficient cause appearing therefor;

5 **III. Disposition**

6 1. The Motion is approved on a final basis on the terms and conditions set forth in this Final  
7 DIP Order. This Final DIP Order shall become effective immediately upon its entry. To the extent  
8 the terms of the Loan Documents differ in any material respect from the terms of this Final DIP  
9 Order, this Final DIP Order shall control.

10 **IV. Authorization of the Post-Petition Financing and Entry Into the Loan Documents**

11 2. The terms and conditions of the Credit Agreement are hereby approved. The Borrower is  
12 hereby authorized to enter into the Credit Agreement and other Loan Documents (as more  
13 particularly set forth and defined in the Credit Agreement). Upon entry of this Final DIP Order, the  
14 Borrower is hereby authorized to borrow in accordance with this Final DIP Order, the Credit  
15 Agreement, and the other Loan Documents. Notwithstanding anything to the contrary in the Credit  
16 Agreement, Lender’s claims with respect to the Post-Petition Financing are being incurred by  
17 Debtor under the Credit Agreement solely under 11 U.S.C. §§ 364(b) and 503(b)(1).

18 3. The Borrower is hereby authorized to incur the Obligations solely in accordance with the  
19 terms and conditions set forth in the Credit Agreement, other Loan Documents and this Final DIP  
20 Order.

21 **V. Loan Obligations**

22 4. Upon execution and delivery of the Loan Documents, the Loan Documents shall  
23 constitute valid, binding and continuing obligations of the Borrower, enforceable against Borrower  
24 in accordance with the terms thereof. No obligation, payment, transfer or grant of security under  
25 the Loan Documents or this Final DIP Order shall be stayed, restrained, voided, voidable, or  
26 recoverable under the Bankruptcy Code or under any applicable non-bankruptcy law, or subject to  
27 any defense, reduction, setoff, recoupment or counterclaim.

28

1 5. All Loans made to or for the benefit of the Borrower on or after the Petition Date under  
2 the Loan Documents (collectively, the “Loans”), all interest thereon, and all Other Loan Related  
3 Claims owing by the Borrower to the Lender under the Loan Documents and this Final DIP Order  
4 shall hereinafter be referred to as the “Obligations.” The Loans: (i) shall bear interest payable at the  
5 rates set forth in the Credit Agreement; (ii) shall be payable in accordance with the terms of the  
6 Loan Documents; and (iii) shall otherwise be governed by the terms set forth herein and in the Loan  
7 Documents.

### 8 **VI. Use of Loan Proceeds**

9 6. The Borrower shall utilize the proceeds of the Post-Petition Financing to pay  
10 administrative expenses, such as Professional Fees, U.S. Trustee fees, Clerk of the Court fees and  
11 costs, and similar expenses of administration incurred during the Chapter 11 Case. Borrower shall  
12 not be permitted to use the proceeds of the Loans: (i) to finance in any way any action, suit,  
13 arbitration, proceeding, application, motion or other litigation of any type adverse to the interests of  
14 Lender or its rights and remedies under this Agreement, the other Loan Documents, or the Final  
15 DIP Order, (ii) to finance the payment of, or application for authority to pay, any Prepetition Claim,  
16 without the Lender’s prior written consent, and (iii) to make any payment in settlement of any  
17 Claim, action or proceeding, before any court, arbitrator or other governmental body.

### 18 **VII. 11 U.S.C. § 364(e) Protections**

19 7. If any or all of the provisions of this Final DIP Order are hereafter reversed, modified,  
20 vacated or stayed, such reversal, modification, vacation or stay shall not affect (i) the validity of any  
21 Obligations incurred pursuant this Final DIP Order or the Loan Documents, or (ii) the validity or  
22 enforceability of any claim or priority authorized or created hereby or pursuant to the Loan  
23 Documents with respect to any Obligations. Notwithstanding any such reversal, modification,  
24 vacation or stay, any incurrence of Obligations by the Borrower shall be governed in all respects by  
25 the provisions of this Final DIP Order and the Loan Documents, and the Lender shall be entitled to  
26 all of the rights, remedies, protections and benefits granted under section 364(e) of the Bankruptcy  
27 Code, this Final DIP Order, and the Loan Documents with respect to all incurrences of the  
28 Obligations by the Borrower. Lender is entitled to the protections of 11 U.S.C. § 364(e).

**VIII. Vacation of the Automatic Stay**

8. Notwithstanding section 362 of the Bankruptcy Code, the automatic stay is hereby vacated and modified to the extent necessary to permit the Lender to exercise, upon the occurrence and during the continuation of any Event of Default, upon three (3) Business Days' written notice to Borrower's counsel, counsel for any Committee (or the Committee if the Committee does not have counsel) and the U.S. Trustee, all rights and remedies provided for in this Final DIP Order, the Loan Documents or applicable law, including, without limitation, taking one or more of the following actions, at the same or different times:

- (a) reduce the amount of any outstanding Post-Petition Financing or suspend or terminate any outstanding Post-Petition Financing;
  - (b) charge the Default Interest on the Post-Petition Financing;
  - (c) declare all or any portion of the Obligations, including all or any portion of any Loan, to be forthwith due and payable, all without presentment, demand, protest or further notice of any kind, all of which are expressly waived by Borrower;
  - (d) exercise any and all remedies under the Loan Documents, and applicable law,
- and
- (e) exercise any rights and remedies under the Loan Documents and applicable law, including all remedies provided under the Bankruptcy Code, available to the Lender. The rights and remedies of the Lender specified in this Final DIP Order are cumulative and not exclusive of any rights or remedies that the Lender may have under the Loan Documents or otherwise.

**IX. Miscellaneous Provisions**

9. The provisions of this Final DIP Order shall be binding upon and inure to the benefit of the Lender, the Borrower, and their respective successors and assigns. The provisions of this Final DIP Order and any actions taken pursuant thereto (a) shall survive the entry of any order: (i) confirming any plan of reorganization in any of the Chapter 11 Case that is not a Lender Approved Reorganization Plan; (ii) converting the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code; or (iii) dismissing the Chapter 11 Case; and (b) shall continue in full force and effect notwithstanding the entry of any such order, and the claims, liens, and security interests

1 granted pursuant to this Final DIP Order shall maintain their priority as provided by this Final DIP  
2 Order until all of the Obligations are indefeasibly paid in full and discharged in accordance with the  
3 terms of this Final DIP Order and the Credit Agreement.

4 10. The Borrower is hereby authorized, without further order of this Court, to enter into  
5 agreements with the Lender providing for (a) non-material modifications to the Credit Agreement  
6 and other Loan Documents, or (b) any other modifications to the Credit Agreement and other Loan  
7 Documents necessary to conform the Credit Agreement and other Loan Documents to this Final  
8 DIP Order.

9 11. Nothing in this DIP Order, nor its approval of the Motion, shall be construed as a cap or  
10 limit on Professional Fees awarded by the Court to any professionals pursuant to 11 U.S.C. §§ 327-  
11 331 and/or 363(b).

12 12. To the extent applicable, this Final DIP Order is not subject to the 14-day stay provision  
13 of Rule 4001(a)(3) of the Bankruptcy Rules.

14 **X. NOTICE OF FINAL ORDER**

15 13. Service of Notice. Debtor shall cause a copy of this Final DIP Order to be served  
16 within three (3) Business Days of its entry, by first class mail, on the (a) Office of the United States  
17 Trustee for the District of Nevada, counsel for any Committee, and if no such committee was  
18 appointed, then to the parties listed on the List of Creditors Holding the 20 Largest Unsecured  
19 Claims; (d) all other secured creditors, and (e) all other parties requesting notice pursuant to  
20 Bankruptcy Rule 2002.

21 Respectfully submitted by:

22 **FOX ROTHSCHILD LLP**

23 By: /s/Brett A. Axelrod  
24 BRETT A. AXELROD, ESQ.  
25 Nevada Bar No. 5859  
26 AMANDA A. HUNT, ESQ.  
27 Nevada Bar No. 12644  
1980 Festival Plaza Drive, Suite 700  
28 Las Vegas, Nevada 89135

*[Proposed] Counsel for Bishop Gorman Development Corporation*

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## **EXHIBIT B**

**THIS DEBTOR-IN-POSSESSION CREDIT AGREEMENT**

Dated as of June \_\_\_, 2017, is entered into by and between Bishop Gorman Development Corporation, a Nevada nonprofit corporation (“BGDC,” “Debtor” or “Borrower”)<sup>1</sup>; and Service Campaign Corporation, a Nevada nonprofit corporation (“SCC” or “Lender”).

RECITALS

Debtor is indebted to SCC for advances made pursuant to a temporary loan commitment. The total outstanding debt is approximately \$301,888.20.

On April 17, 2017, Borrower commenced a bankruptcy case under chapter 11 (the “Chapter 11 Case”) of the Bankruptcy Code in which Borrower remains in possession of its assets and continues to manage its business pursuant to Bankruptcy Code sections 1107 and 1108.

An on-going need exists for Borrower to obtain funding in order to continue the operation of its business as debtor-in-possession under chapter 11 of the Bankruptcy Code and, accordingly, Borrower has requested that Lender agree to extend post-petition financing to Borrower.

Lender is willing to make Loans to Borrower upon the terms and conditions set forth herein.

Debtor and SCC hereby enter into this Agreement pursuant to which SCC commits to loan to Debtor an aggregate amount of \$500,000.00 in the Chapter 11 Case, subject to approval by the Bankruptcy Court.

All exhibits hereto, or expressly identified in this Agreement, are incorporated herein by reference, and taken together, shall constitute but a single agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, and for other good and valuable consideration, Borrower and Lender agree as follows:

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<sup>1</sup> Capitalized terms not defined where they first appear are defined in Section 7.1 hereof.

**ARTICLE I  
AMOUNT AND TERMS OF LOANS**

1.1 Loans.

Subject to the terms and conditions hereof (including without limitation the conditions precedent set forth in ARTICLE III hereof), Lender agrees to make Loans (each, a “Loan” and collectively, the “Loans”) to Borrower from time to time until the Commitment Termination Date in an aggregate principal amount at any one time outstanding not to exceed the Maximum Commitment Amount, in all instances subject to the Cash Budget or the Initial Cash Budget; provided that:

(a) compliance with the Cash Budget shall be deemed satisfied if the actual aggregate expenditures for every four-week period (i.e. post-petition weeks one through four, five through eight, etc.) do not exceed by more than twenty-five percent (25%) the aggregate budgeted amount for such four-week period as set forth in the Cash Budget;

(b) to the extent that the full amount of any of the expenses budgeted for a particular four-week period under the Cash Budget is not disbursed during such four-week period, the unused balance shall be added to the amount of budgeted expenses for ensuing four-week periods and the Cash Budget shall be deemed to be amended (and approved) to reflect the same, such that Borrower may use such unused budgeted amounts in subsequent four-week periods in addition to originally budgeted amounts for such four-week periods; and

(c) Lender shall not be permitted or required to make any Loan if after giving effect thereto, the sum of the outstanding aggregate principal amount of Loans at any one time would exceed the Maximum Commitment Amount.

Until the Commitment Termination Date, Borrower may from time to time borrow, prepay the Loans in whole or in part, and re-borrow under this Section I, all in accordance with the terms and conditions hereof and in accordance with the applicable Cash Budget. Loans in an aggregate principal amount at any one time outstanding not to exceed the Maximum Commitment Amount may be borrowed, repaid and re-borrowed in accordance with this Section 1, at all times subject to and in accordance with the Cash Budget, on and after the Commitment Effective Date until the Commitment Termination Date. Lender agrees that the Initial Cash Budget is in form and substance acceptable to Lender, and that it may be used, among other purposes, for purposes of the motion seeking entry of the Final Order.

Each Loan shall be denominated in Dollars.

1.2 Notes.

Each Loan made by Lender shall be evidenced by a promissory note (each a “Note” and collectively, the “Notes”) of Borrower made to the order of Lender, with appropriate insertions as to date and principal amount, payable to the order of Lender. Each Note shall (i) be dated as of the date it is executed, (ii) be stated to mature on the Maturity Date or such earlier date the

Loans shall be due and payable in full, whether by acceleration or otherwise, pursuant to the terms of this Agreement, and (iii) provide for the payment of interest. A copy of the form of the Note is attached hereto as **Exhibit B**.

1.3 Procedure for Loans and Payments.

Borrower shall give Lender not less than 3 Business Days' notice of the Borrowing Date applicable to any Loan request, which request shall be transmitted by electronic mail to Lender at:

Service Campaign Corporation  
Attn: John Kilduff  
jkilduff@bishopgorman.org  
P.O. Box 18136  
Las Vegas, Nevada 89114

with a copy to Lender's counsel at:

Robert M. Charles, Jr.  
Email: rcharles@lrrc.com  
Lewis Roca Rothgerber Christie LLP  
3993 Howard Hughes Parkway, Suite 600  
Las Vegas, Nevada 89169

(a) Within 2 Business Days of receiving a Loan request from Borrower, Lender shall provide to Borrower via email (with a copy to Borrower's counsel, Brett A. Axelrod, Esq.) written notice ("Loan Rejection Notice") of any Event of Default or failure to satisfy a condition precedent set forth in Section 3.1 or 3.2 hereof that Lender contends is applicable to such Loan request.

(b) Unless Lender provides a timely Loan Rejection Notice as set forth in Section 1.3(a) hereof, then the Lender Designee shall wire Loan proceeds to the DIP Account in the amount requested by Borrower prior to Lender's wire cutoff deadline on the Borrowing Date.

(c) The Loans shall be paid in full on the Commitment Termination Date, pursuant and subject to the terms herein.

1.4 Lender Expenses.

Borrower shall reimburse Lender for all reasonable out-of-pocket costs and expenses incurred in connection with this Agreement and the Chapter 11 Case, including, without limitation, related due diligence and preparation, negotiation, execution, delivery, administration and enforcement of the Loan Documents and ongoing expenses related to the Loans, including attorney and advisor fees and expenses.

///



1.5 Interest Rates and Payment Dates.

(a) Each Loan shall bear interest at a rate *per annum* of the Bank of America Prime Rate determined as of the date of this Agreement.

(b) Notwithstanding the foregoing, in the event an Event of Default has occurred and is continuing, the Loans shall bear interest at a rate *per annum* equal to the rate set forth above plus 5.0% from the date of occurrence of such Event of Default until the date such Event of Default is cured or waived.

1.6 Computation of Interest.

(a) Interest shall accrue and compound monthly. All computations of interest and fees payable hereunder shall be made on the basis of a year of 365 days, in each case for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest or fees are payable.

(b) Any payment of interest hereunder shall be subject to any applicable withholding taxes, and any amount withheld under this Section shall be treated as having been paid by Borrower to Lender for all purposes.

1.7 Prepayments.

(a) Borrower may, at any time and from time to time prepay the Loans, in whole or in part, without premium or penalty, upon irrevocable written notice to Lender by 11:00 a.m. prevailing Pacific Time on such date of prepayment, in each case specifying the date and amount of prepayment. If any such notice is given, the amount specified in such notice shall be due and payable on the date specified therein, together with any amounts payable, accrued interest to such date on the amount prepaid and any outstanding fees and expenses then due and owing.

(b) Repayment of the Obligations, including any prepayment of Obligations, shall be applied in the following order of priority:

(i) first, to the payment of all costs and expenses that are due and payable to Lender on such date under and in respect of this Agreement, including but not limited to reasonable attorneys' fees and costs incurred by counsel to Lender; and

(ii) second, to the payment of the outstanding principal amount of all of the Loans that are due and payable to Lender on such date, together with all accrued and unpaid interest thereon.

1.8 Use of Proceeds.

(a) Borrower shall utilize the proceeds of the Loan in accordance with the Cash Budget solely for (i) paying expenses incurred for the administration of the Chapter 11 Case, including paying reasonable compensation of professional fees and expenses or (ii) repaying the Loans; provided that Borrower shall be permitted to pay compensation and reimbursement of

expenses allowed, allowable or authorized by the Bankruptcy Court and payable under Bankruptcy Code sections 330 and 331, all in accordance with the Cash Budget. A carve-out of (i) all unpaid fees required to be paid in the Chapter 11 Cases to the clerk of the Bankruptcy Court and to the Office of the United States Trustee under 28 U.S.C. § 1930(a)(6), in such amount agreed to by the Office of the United States Trustee or as determined by the Bankruptcy Court, whether arising prior to or an Event of Default; (ii) fees, disbursements, costs and expenses which are incurred after the Petition Date and before an Event of Default, by professionals retained by the Debtor and any Committee pursuant to Bankruptcy Code sections 327, 330, 363 and 1103 (collectively, the “Professionals”), to the extent allowed at any time by the Bankruptcy Court and owed pursuant to such Professionals’ respective engagement letters; (iii) the fees, disbursements, costs and expenses of Professionals in an aggregate amount not to exceed \$200,000 that are incurred after an Event of Default and which are ultimately allowed by the Bankruptcy Court (the “Carve-Out Cap” shall not be reduced by the amount of any compensation and reimbursement of expenses paid or incurred (to the extent ultimately allowed or allowable by the Bankruptcy Court) prior to the occurrence of an Event of Default in respect of which the Carve-Out is invoked, and Lender waives any right to seek disgorgement thereof; provided, however, that nothing herein shall be construed to impair the ability of Lender to object to the reasonableness of any of the fees, expenses, reimbursement or compensation sought by the professionals retained by Borrower or any Committee.

(b) Following an Event of Default, any payments actually made pursuant to Bankruptcy Code sections 327, 328, 330, 331, 363, 503 or 1103 or otherwise, to Professionals shall (i) not be paid from the proceeds of any Loan until such time as all retainers, if any, held by such Professionals have been reduced to zero, and (ii) in the case of any payments made on account of any fees and expenses described in clause (iii) of the definition of Carve-Out, reduce the Carve-Out Cap on a dollar-for dollar basis.

(c) Under no circumstances shall any proceeds of any Loan be used to pursue any action or joinder in any action, counter-claim, proceeding, application, motion, objection, defense or other contested matter, the purpose of which is to seek any order, determination or similar relief (i) challenging the legality, validity, priority, or enforceability (as the case may be) of any claim of Lender against Borrower or its estate, other than the calculation of the amount thereof; (ii) invalidating, setting aside, avoiding or subordinating, in whole or in part, any claim of Lender against Borrower or its estate; and (iii) otherwise seeking monetary relief against Lender other than for a breach of this Agreement.

#### 1.9 Separate Loans Not To Exceed Commitment.

All Loans to Borrower and all of the other Obligations of Borrower arising under this Agreement and the other Loan Documents shall constitute separate loans to Borrower, evidenced by a separate promissory note executed by Borrower; provided, however, that the total outstanding principal balance of all Loans by Borrower shall not exceed the Maximum Commitment Amount.

## **ARTICLE II REPRESENTATIONS AND WARRANTIES**

To induce Lender to make the Loans, Borrower makes the following representations and warranties to Lender, each and all of which shall survive the execution and delivery of this Agreement.

### 2.1 Corporate Existence; Compliance with Law.

Borrower (a) is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation; subject to the entry of the Final Order by the Bankruptcy Court with respect to any Loans, has and shall have the requisite corporate power and authority and the legal right to effect the transactions contemplated hereby and by the other Loan Documents to which it is a party; and (c) subject to the entry of the Final Order by the Bankruptcy Court with respect to any Loans, and in all instances subject to the requirements of the Bankruptcy Code, has and shall have the requisite corporate power and authority and the legal right to, without limitation, own, pledge, mortgage or otherwise encumber and operate its properties, lease the property it operates under lease, and conduct its business as now, heretofore and proposed to be conducted.

### 2.2 Effectiveness of Final Order.

Borrower shall not seek to borrow under this Agreement during any period in which the Final Order is not in full force and effect or has been reversed or stayed with respect to any Loans.

### 2.3 Purpose of Loans.

Borrower shall not use the proceeds of any Loan hereunder other than in accordance with this Agreement.

### 2.4 Insurance.

Borrower will maintain with financially sound and reputable insurers insurance with respect to its assets, properties and business against such casualties and contingencies as shall be in accordance with general practices of businesses engaged in similar activities in similar geographic areas. Such insurance shall be in such minimum amounts that Borrower will not be deemed a co-insurer under applicable insurance laws, regulations and policies and otherwise shall be in such amounts, contain such terms, be in such forms and be for such periods as were in place prior to the Petition Date or as otherwise may be reasonably satisfactory to Lender.

**ARTICLE III  
CONDITIONS PRECEDENT**

3.1 All Borrowings.

At any time, Lender's obligations to make the Loans in an amount not to exceed the applicable Maximum Commitment Amount, are conditioned on satisfaction (or written waiver) of the following in Lender's reasonable discretion:

(a) The Final Order shall be in full force and effect and shall not have been reversed, modified, amended or stayed (or application therefor made) with respect to any Loans, except for modifications and amendments that are reasonably acceptable to Lender.

3.2 All Borrowings.

At any time, Lender's obligations to make Loans in an amount not to exceed the applicable Maximum Commitment Amount, or to take, fulfill, or perform any other action hereunder, are conditioned on satisfaction (or written waiver) of the following in Lender's reasonable discretion:

(a) Representations and warranties in this Agreement shall be true and correct in all material respects as of the date each Loan is made as if made on such date (except if such representation or warranty specifically relates only to a prior date, in which case it shall be true and correct in all material respects as of such earlier date);

(b) Lender shall have received this Agreement, the Notes and all other Loan Documents, and each other agreement, document and instrument relating to the loan and other credit transactions contemplated by this Agreement, each duly executed where appropriate and in form and substance reasonably satisfactory to Lender.

**ARTICLE IV  
TERMINATION**

4.1 Termination.

Except as expressly set forth herein, the financing arrangements contemplated hereby shall be in effect until the Commitment Termination Date, and on the Commitment Termination Date, any obligation to provide Loans hereunder shall terminate and the aggregate principal amount of all outstanding Loans, together with all accrued and unpaid interest thereon, and all of the Obligations shall be due in full or upon such other terms to which Borrower and Lender may agree.

4.2 Survival of Obligations Upon Termination of Financing Arrangements.

Except as otherwise expressly provided for in the Loan Documents, no termination or cancellation (regardless of cause or procedure) of any financing arrangement under this Agreement shall in any way affect or impair the obligations, duties and liabilities of Borrower or

the rights of Lender relating to any unpaid portion of the Loans or any other Obligations, due or not due, liquidated, contingent or unliquidated or any transaction or event occurring prior to such termination, or any transaction or event, the performance of which is required after the Commitment Termination Date. Except as otherwise expressly provided herein or in any other Loan Document, all undertakings, agreements, covenants, warranties and representations of or binding upon Borrower, and all rights of Lender, all as contained in the Loan Documents, shall not terminate or expire, but rather shall survive any such termination or cancellation and shall continue in full force and effect until the Commitment Termination Date.

## **ARTICLE V EVENTS OF DEFAULT; RIGHTS AND REMEDIES**

### **5.1 Events of Default.**

Notwithstanding the provisions of Bankruptcy Code section 362 (but subject to Section 5.1 hereof) and without application or motion to the Bankruptcy Court or any notice to Borrower, the occurrence of any one or more of the following events (regardless of the reason therefor) shall constitute an “Event of Default” hereunder (for purpose of items (i) through (vi) by way of a final order, the effectiveness of which has not been stayed): (i) appointment of a chapter 11 trustee with respect to the Chapter 11 Case; (ii) appointment of an examiner with expanded powers with respect to the Chapter 11 Case; (iii) conversion of the Chapter 11 Case to one under chapter 7 of the Bankruptcy Code; (iv) dismissal of the Chapter 11 Case; (v) granting of relief from the automatic stay to permit the Pre-Petition Lenders to exercise rights or remedies regarding the Pre-Petition Lenders’ Collateral; (vi) use of Loan advances to make a payment that is not in compliance with the Cash Budget or this Agreement; (vii) failure of the Final Order to have been entered by the Bankruptcy Court by the date that is 45 days (or such longer period as Lender and Borrower agree) after the date on which the motion for entry of the Final Order is filed; (viii) Borrower’s breach of any other provision of the Final Order and such breach remains uncured for a period of 10 days after notice is provided to Borrower of such breach; (x) Borrower’s failure to comply with section 4.2; and (ix) the commencement of any lawsuit seeking monetary relief against Lender on behalf of Borrower or Borrower’s estate, other than for a breach of this Agreement.

### **5.2 Remedies.**

Upon the occurrence and during the continuance of an Event of Default and following 3 Business Days’ prior notice thereof to Borrower (with a copy to counsel for any Committee, and to the United States Trustee for the District of Nevada), and without further order of or application to the Bankruptcy Court: (i) Lender’s obligations to provide Loans shall cease immediately, (ii) the Obligations shall be immediately due and payable, (iii) Lender shall have the right to declare the Loans or any portion thereof then outstanding to be forthwith due and payable, whereupon the principal of such Loans together with accrued interest thereon and any unpaid accrued fees and all other liabilities of Borrower accrued hereunder and under any other Loan Document, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by Borrower, anything contained herein or in any other Loan Document to the contrary notwithstanding.

**ARTICLE VI  
MISCELLANEOUS**

6.1 Amendments and Waivers.

Neither this Agreement, any Note nor any other Loan Document, nor any terms hereof or thereof, may be amended, restated, supplemented or modified except in writing signed by Borrower and Lender.

6.2 No Waiver; Cumulative Remedies.

No failure to exercise and no delay in exercising, on the part of Lender, any right, remedy, power or privilege hereunder or under the other Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

6.3 Survival of Representations and Warranties.

All representations and warranties made hereunder, in the other Loan Documents and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and the Notes and the making of the Loans hereunder but shall expire on the Commitment Termination Date.

6.4 Successors and Assigns; Participations and Assignments.

(a) This Agreement shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns, including any trustee or examiner appointed in the Chapter 11 Case or in a converted Chapter 7 case.

(b) Lender may, in accordance with applicable law, sell, transfer or assign its rights under this Agreement and any Obligations of Borrower hereunder; provided that any assignment shall be subject to this Agreement.

6.5 Counterparts.

This Agreement may be executed by Borrower and Lender on any number of separate counterparts (including by telecopy), and all said counterparts taken together shall be deemed to constitute one and the same instrument. A set of the copies of this Agreement signed by all the parties shall be lodged with Borrower and Lender.

6.6 Severability.

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or

unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

6.7 Governing Law.

THIS AGREEMENT AND THE NOTES AND THE RIGHTS AND OBLIGATIONS OF BORROWER AND LENDER UNDER THIS AGREEMENT, THE NOTES AND THE LOAN DOCUMENTS SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEVADA APPLICABLE TO AGREEMENTS MADE AND PERFORMED IN SUCH STATE, EXCEPT AS GOVERNED BY THE BANKRUPTCY CODE.

Borrower and Lender hereby irrevocably and unconditionally: (a) submit for themselves and their property in any legal action or proceeding relating to this Agreement and the other Loan Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the jurisdiction of the Bankruptcy Court; (b) consent that any such action or proceeding may be brought in the Bankruptcy Court and waive any objection that they may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agree not to plead or claim the same; (c) agree that nothing contained herein shall affect the right to effect service of process in any other manner permitted by law or limit the right to sue in any other jurisdiction; and (d) waive, to the maximum extent not prohibited by law, any right they may have to claim or recover in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages.

6.8 Recitals/Further Assurances.

The Recitals hereto are incorporated into the body of this Agreement and made an integral part hereof, as if set forth herein. The parties agree to execute such other documents as may be necessary or appropriate to carry out the intent of this Agreement.

**ARTICLE VII  
DEFINITIONS**

7.1 Defined Terms.

Capitalized terms used in this Agreement shall have the following respective meanings, and all Section references in the following definitions shall refer to Sections of this Agreement:

“Agreement” shall mean this Debtor-in-Possession Credit Agreement, as the same may from time to time be amended, modified or supplemented.

“BGDC” shall mean Bishop Gorman Development Corporation, as set forth in the preamble.

“Bankruptcy Code” shall mean 11 U.S.C. §§ 101, *et seq.*, as the same may from time to time be amended and in effect and applicable to the Chapter 11 Case.

“Bankruptcy Court” shall mean the United States Bankruptcy Court for the District of Nevada.

“Bankruptcy Rules” shall mean the Federal Rules of Bankruptcy Procedure, as the same may from time to time be amended and in effect and applicable to the Chapter 11 Case.

“Borrower’s Reorganization Plan” shall mean a Reorganization Plan proposed by Borrower as contemplated by the Restructuring Agreement.

“Borrowing Date” shall mean the date set forth in a Loan request upon which Borrower seeks Lender to fund Loan proceeds into the DIP Account.

“Business Day” shall mean a day other than a Saturday, Sunday or other day on which commercial banks in Nevada are authorized or required by law to close.

“Cash Budget” shall mean collectively Borrower’s operating budget, which shall: (a) be in form and substance reasonably acceptable to Lender; (b) cover a rolling 13-week period; and (c) include, on a line item basis (i) budgeted cash receipts (including as a result of the receipt of proceeds from the Loans); (ii) anticipated disbursements (including payments required under the terms hereof); and (iii) projected weekly cash balance; and (d) be in form and substance identical to the Cash Budget to which Borrower has agreed with the Pre-Petition Lenders as part of the Cash Collateral Stipulation.

“Chapter 11 Case” shall mean the case to be commenced by Borrower upon filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

“Commitment Effective Date” shall mean the date that the Final Order is entered.

“Commitment Termination Date” shall mean the earliest of (a) the Maturity Date, (b) the date on which any Reorganization Plan confirmed in the Chapter 11 Case becomes effective, or (c) the date on which an existing Event of Default (defined below) is no longer subject to cure.

“Committee” shall mean the official committee of unsecured creditors or any other committee appointed in the Chapter 11 Case under Bankruptcy Code section 1102.

“DIP Account” shall mean an account at a financial institution mutually agreed by Borrower and Lender.

“Disclosure Statement” shall mean a disclosure statement filed in the Chapter 11 Case, as may be amended from time to time.

“Dollars” or “\$” shall mean lawful currency of the United States of America.

“Event of Default” shall have the meaning ascribed thereto in Section 5.1 hereof.

“Final Order” shall mean the order of the Bankruptcy Court entered in the Chapter 11 Case after a final hearing under Bankruptcy Rule 4001(c)(2), which order shall be in form and



substance reasonably satisfactory to Lender, and from which no appeal or motion to reconsider has been timely filed, or if timely filed, such appeal or motion to reconsider has been dismissed or denied (unless Lender waives such requirement), together with all extensions, modifications and amendments thereto, and which, among other matters but not by way of limitation, approves this Agreement, and authorizes Borrower to obtain credit pursuant to the terms hereof.

“Initial Cash Budget” shall mean the Cash Budget for the 13-week period commencing on the Petition Date, a copy of which is attached hereto as **Exhibit “A.”**

“Lender” shall mean Service Campaign Corporation, as set forth in the preamble, or its permitted assignee.

“Loan” and “Loans” shall have the meaning ascribed thereto in Section 1.1 hereof.

“Loan Documents” shall mean this Agreement, the Notes and all other agreements, instruments, documents and certificates executed and delivered to, or in favor of, Lender and including all other pledges, powers of attorney, consents, assignments, contracts, subordination agreements, notices, and all other written matter whether heretofore, now or hereafter executed by or on behalf of Borrower in connection with this Agreement or the transactions contemplated hereby. Any reference in this Agreement or any other Loan Document to a Loan Document shall include all exhibits thereto, and all amendments, restatements, supplements or other modifications thereto, and shall refer to such Agreement as the same may be in effect at any and all times such reference becomes operative.

“Loan Rejection Notice” shall have the meaning ascribed thereto in Section 1.3(e) hereof.

“Maturity Date” shall mean, absent an uncured Event of Default, 15 months from the Petition Date, unless otherwise agreed in writing by Borrower and Lender (for which no Bankruptcy Court approval, other than approval of this Agreement, will be required).

“Maximum Commitment Amount” shall mean \$500,000.00.

“Note” and “Notes” shall have the meaning ascribed thereto in Section 1.2 hereof.

“Obligations” shall mean the aggregate principal amount of all outstanding Loans, together with all accrued and unpaid interest thereon and all of the obligations of Borrower to Lender under the Loan Documents (including, without limitation, any extensions, modifications, substitutions, amendments or renewals of any or all of the foregoing obligations), whether direct or indirect, absolute or contingent, and whether for principal, interest, premium, fees, costs or expenses (including without limitation all fees and disbursements of counsel for Lender that are required to be paid by Borrower pursuant to the Loan Documents).

“Petition Date” shall mean April 17, 2017.

“Pre-Petition Credit Agreement” shall mean the Bank Loan Agreements executed in favor of the Pre-Petition Lenders.

“Pre-Petition Lenders” shall mean the Bank and the County.

“Pre-Petition Lenders’ Collateral” shall mean “Collateral” as defined in the Pre-Petition Credit Agreement to the extent such Collateral is owned by Borrower.

“Prior Liens” shall mean any and all valid and duly perfected Liens encumbering the Pre-Petition Lenders’ Collateral in existence and senior to the interests of the Pre-Petition Lenders as of the Petition Date.

“Reorganization Plan” shall mean a plan of reorganization or liquidation filed in the Chapter 11 Case, as may amended from time to time, consistent with the terms of the Restructuring Agreement.

“Stay Notice Period” shall have the meaning ascribed thereto in Section 5.2 hereof.

## 7.2 Other Definitional Provisions.

(a) Unless otherwise specified therein, all terms defined in this Agreement shall have their respective defined meanings when used in the Notes or other documents made or delivered pursuant hereto.

(b) As used herein, in the Notes or other documents made or delivered pursuant hereto, accounting terms relating to Borrower and accounting terms partly defined in Section 7.1 hereof, to the extent not defined herein, shall have the respective meanings given to them under normal and customary use.

(c) The words “hereof,” “herein” and “hereunder” and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole, including all Exhibits, as the same may from time to time be amended, restated, modified or supplemented, and not to any particular section, subsection or clause contained in this Agreement or any such Exhibit. The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

(d) Unless the context otherwise requires, each reference herein to any agreement, document or instrument (including the Loan Documents) shall be deemed a reference to such agreement, document or instrument as amended, restated, supplemented or otherwise modified from time to time.

(e) The term “includes” and “including” shall not be construed to imply any limitation.

(f) In this Agreement, in the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” each mean “to but excluding.” Periods of days referred to in this Agreement shall be counted in calendar days unless Business Days are expressly prescribed. Any period determined hereunder by reference to a month or months or a year or years shall end on the day in the relevant calendar month in the relevant year, if applicable, immediately preceding the date numerically

corresponding to the first day of such period, provided that if such period commences on the last day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month during which such period is to end), such period shall, unless otherwise expressly required by the other provisions of this Agreement, end on the last day of the calendar month.

7.3 Payment Terms; References to Money.

Except as expressly set forth herein to the contrary, (a) all payments made by Borrower shall be made in Dollars in respect of principal and interest on the Loans, and (b) to the extent not otherwise indicated, all amounts of money referenced herein shall mean and be references to amounts of money denominated in Dollars.

IN WITNESS WHEREOF, Borrower and Lender have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

Bishop Gorman Development Corp., Borrower      Service Campaign Corporation, Lender

By: \_\_\_\_\_

Name: Deacon Aruna Silva

Title: Executive Director

By: \_\_\_\_\_

Name: John Kilduff

Title: Director

# EXHIBIT A

Bishop Gorman Development Corporation

Weekly Cash Flow Projection

	1	2	3	4	5	6	7	8	9	10	11	12	13
	4/17/2017	4/24/2017	5/1/2017	5/8/2017	5/15/2017	5/22/2017	5/29/2017	6/5/2017	6/12/2017	6/19/2017	6/26/2017	7/3/2017	7/10/2017
Beginning Unrestricted Cash	2,459,714.00	2,850,464.00	2,790,876.00	2,336,645.33	2,330,645.33	2,427,545.33	2,367,957.33	2,046,577.33	2,035,827.33	2,147,727.33	2,146,727.33	2,031,639.33	1,920,900.33
<b>Cash Receipts</b>													
BGHS Lease Payments	408,750.00				226,900.00				226,900.00				
Cell Tower Lease Payments	2,000.00				1,000.00				1,000.00				
<b>Total Cash Receipts</b>	<b>410,750.00</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>227,900.00</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>227,900.00</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Cash Disbursements</b>													
Accounting/Audit Fees	2		12,000.00					4,750.00					8,650.00
Bookkeeper Fees			500.00				500.00					500.00	
Attorney Fees: <sup>5</sup>													
<i>Fox Rothschild</i>					75,000.00				75,000.00				75,000.00
<i>Greenberg Traurig</i>					20,000.00								
<i>G. Christopher Miller (B of A)</i>					35,000.00								35,000.00
<i>Indenture Trustee</i>	5,000.00			5,000.00				5,000.00	5,000.00				5,000.00
Bank of America misc. fees	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00
Appraisal/Consultants													
US Trustee Fees	3	6,500.00											
Swap Interest	4		58,588.00				58,588.00					58,588.00	
Bond Interest - BNY Mellon			15,806.67										
Bond Interest - Banf of America			10,924.00					112,880.00				109,239.00	
Bond Remarketing Fees	7,500.00												
B of A Construction Loan	5		414,000.00					207,000.00				55,500.00	
Capital Repairs/Replacements:													
<i>Chillers</i>													
<i>Therapy Pools</i>													
<i>Mesa Park Median Cut</i>													
<b>Total Cash Disbursements</b>	<b>20,000.00</b>	<b>59,588.00</b>	<b>454,230.67</b>	<b>6,000.00</b>	<b>131,000.00</b>	<b>59,588.00</b>	<b>321,380.00</b>	<b>10,750.00</b>	<b>116,000.00</b>	<b>1,000.00</b>	<b>115,088.00</b>	<b>110,739.00</b>	<b>124,650.00</b>
Net Surplus/(Deficit)	390,750.00	(59,588.00)	(454,230.67)	(6,000.00)	96,900.00	(59,588.00)	(321,380.00)	(10,750.00)	111,900.00	(1,000.00)	(115,088.00)	(110,739.00)	(124,650.00)
Ending Unrestricted Cash	2,850,464.00	2,790,876.00	2,336,645.33	2,330,645.33	2,427,545.33	2,367,957.33	2,046,577.33	2,035,827.33	2,147,727.33	2,146,727.33	2,031,639.33	1,920,900.33	1,796,250.33

1 Unrestricted cash balance as of February 13, 2017. Restricted cash is not property of the Estate, therefore it has not been reported here.

2 The figures included in Debtor's 13-week budget for professional fees are solely initial estimates and remain subject to the application to, award from, and allowance by the Bankruptcy Court.

3 Debtor is accruing U.S. Trustee fees payable under 28 U.S.C. § 1930(a)(6) for the calendar quarter ending June 30, 2017, although, by statute, those fees are not ultimately due to be paid until July 31, 2017.

4 The following payments were made to Bank of America prior to the filing of the Bankruptcy Petition by the Guarantor pursuant to the Continuing and Unconditional Guarantee dated December 1, 2001 - Fixed/Float Swap Interest for March & April (\$115,854.43), Bank of America Fees (\$590), Appraisal Fees incurred by Bank of America (\$7,875), Legal Fees incurred by Bank of America (\$16,063.85) and Letter of Credit Fees (\$61,514.94).

5 Adequate protection to Bank of America pursuant to the Cash Collateral Stipulation and Restructuring Agreement in the current aggregate amount of \$1,085,000 (subject to further review and adjustment to determine actual amount of outstanding indebtedness for Debtor's construction loan obligations on the Petition Date). Restricted funds of \$60,613 can be applied to satisfy Debtor's obligation in this regard, at least in part. Debtor currently has funds on deposit with Bank of America in the approximate amount of \$4,595,481 that Bank of America has identified as restricted funds, a portion of which may also be dedicated to satisfying this aspect of Debtor's adequate protection obligations to Bank of America.

6 Professional Fees to be paid in the first instance from proceeds of post-petition financing (DIP Financing). Nothing herein is intended, nor shall it be construed to be, a cap on professional fees.

## **EXHIBIT B**

## PROMISSORY NOTE

Principal Amount: \$ \_\_\_\_\_

June \_\_, 2017

1. **Promise to Pay. FOR VALUE RECEIVED, Bishop Gorman Development Corporation**, a Nevada nonprofit corporation (“**Maker**”), whose mailing address is P.O. Box 18316, Las Vegas, Nevada 89114, hereby promises to pay to the order of **Service Campaign Corporation**, a Nevada nonprofit corporation (“**Holder**”), at its mailing address at P.O. Box 18316, Las Vegas, Nevada 89114, or such other address as Holder may designate from time to time, the principal amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the “**Loan Amount**”), together with any interest thereon at the Interest Rate (as hereinafter defined), all in lawful money of the United States of America which constitutes legal tender for payment of debts, public and private, at the time of payment and in accordance with the terms and conditions set forth in this promissory note (the “**Note**”).

2. **Interest.** Commencing on \_\_\_\_\_, the Loan Amount shall accrue interest on the unpaid principal balance of this Note at a rate of Bank of America prime rate of interest as of \_\_\_\_\_, 2017, plus two percent (2%) per annum, non-compounded (the “**Interest Rate**”).

3. **Maturity Date.** Commencing on \_\_\_\_\_, 2017, the unpaid principal balance plus interest shall be paid in \_\_\_\_\_ (\_\_\_\_) equal monthly installments of \_\_\_\_\_ (\$\_\_\_\_\_) and shall continue until \_\_\_\_\_ (the “**Maturity Date**”). Maker shall have the right to prepay this Note in whole or in part at any time during the entire term hereto, without the prior consent of Holder, without penalty or premium.

4. **Place of Payment.** Payment shall be made by Maker to Holder at the address of Holder set forth in Section 1 above or at such other address as may be designated from time to time by Holder by written notice to Maker.

5. **Application of Payments.** All payments shall be applied first to the payment of any costs, fees, late charges or other charges due under this Note; second to accrued but unpaid interest at the rate then in effect under the terms hereof; and third to the principal balance. All payments hereunder which are due on a Saturday, Sunday or holiday shall be deemed to be payable on the next business day.

6. **Default.** In addition to any other events that constitute a default under the terms of the Credit Agreement, the failure by Maker to make any payment of principal, or any other sum or charge, when due in accordance with the terms and conditions of this Note shall constitute an “Event of Default” under this Note.

7. **Waivers and Consents.** Maker waives presentment, dishonor, protest, demand, diligence, notice of protest, notice of demand, notice of dishonor, notice of nonpayment, and any other notice of any kind otherwise required by law in connection with the delivery, acceptance, performance, default, enforcement or collection of this Note and expressly agrees that this Note,

or any payment hereunder, may be extended or subordinated (by forbearance or otherwise) at any time, without in any way affecting the liability of the Maker.

8. **Governing Law.** To the extent not preempted by federal law, this Note shall be governed by the laws of the State of Nevada, without reference to its conflict of laws provisions. The parties further agree that the venue for any action arising out of, related to, or in connection with this Note shall be state or federal courts in Clark County, Nevada, as applicable, and the parties hereto agree to the jurisdiction and venue of the courts of said state to the exclusion of any other courts which otherwise may have had jurisdiction. This Note may be introduced in any proceeding to establish the rights of any party under this Note.

9. **Time.** Time is of the essence of this Note and each of the provisions hereof.

10. **Interest Limitation.** All agreements between Maker and Holder are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration of maturity of the indebtedness evidenced hereby or otherwise, shall the amount paid or agreed to be paid to Holder for the use, forbearance, loaning or detention of the indebtedness evidenced hereby exceed the maximum permissible under applicable law. If, from any circumstance whatsoever, fulfillment of any provision hereof at any time given the amount paid or agreed to be paid shall exceed the maximum permissible under applicable law, then, the obligation to be fulfilled shall automatically be reduced to the limit permitted by applicable law, and if from any circumstance Holder should ever receive as interest an amount which would exceed the highest lawful rate of interest, such amount which would be in excess of such highest lawful rate of interest shall be applied to the reduction of the principal balance evidenced hereby and not to the payment of interest. This provision shall control every other provision of all agreements between Maker and Holder and shall be binding upon and available to any subsequent holder of this Note.

11. **Captions.** The captions to the sections of this Note are for convenience only and shall not be deemed part of the text of the respective sections and shall not vary, by implication or otherwise, any of the provisions of this Note.

12. **Notices.** All notices or communication required or committed to be given hereunder to Maker or Holder shall be in writing and personally delivered, sent by facsimile, sent by electronic mail, sent by overnight delivery, or sent by certified U.S. Mail, return receipt requested, to Maker or Holder at the addresses set forth in Section 1. Notices shall be effective as follows:

- a) If personally delivered, as soon as it is delivered;
- b) If by facsimile, on the date and time of transmission thereof as indicated on the facsimile confirmation sheet received after transmission;
- c) If by electronic mail, on the date and time as indicated on such electronic correspondence;
- d) If by overnight delivery, the day after delivery thereof to a reputable overnight courier service, delivery charges prepaid; or



e) If mailed by U.S. Mail, at midnight on the third (3rd) business day after deposit in the mail, postage prepaid.

13. **Assignment.** This Note inures to and binds the heirs, legal representatives, successors, and assigns of Maker and Holder.

14. **Modification.** Except as may be provided in the Credit Agreement, this Note may not be amended or modified, nor will any waiver of any provision hereof be effective, except by an instrument in writing signed by the party against whom enforcement of any amendment, modification, or waiver is sought.

15. **Cumulative Remedies.** All of Holder's remedies in connection with this Note or under applicable law shall be cumulative, and Holder's exercise of any one (1) or more of those remedies shall not constitute an election of remedies.

16. **Severability.** If any provision of this Note, or the application of it to any party or circumstance is held void, invalid, or unenforceable by a court of competent jurisdiction, the remainder of this Note, and the application of such provision to other parties or circumstances, shall not be affected thereby, the provisions of this Note being severable in any such instance.

Maker has executed this Note as of the date first above written.

**MAKER:**

**BISHOP GORMAN DEVELOPMENT  
CORPORATION,  
a Nevada non-profit corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_