



CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

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THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed November 15, 2017

United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re:	§	Chapter 11
	§	
PREFERRED CARE INC., et al.,	§	Case No.: <u>17-44642-mxm11</u>
	§	
Debtors.	§	(Joint Administration Requested)
	§	

**INTERIM ORDER GRANTING MOTION FOR INTERIM AND FINAL ORDERS
(I) AUTHORIZING DEBTORS TO OBTAIN POST-PETITION FINANCING; (II)
GRANTING LIENS, SECURITY INTERESTS AND SUPERPRIORITY
ADMINISTRATIVE EXPENSE STATUS; (III) SCHEDULING A FINAL HEARING;
AND (IV) MODIFYING AUTOMATIC STAY**

Preferred Care Inc. and its debtor affiliates, as debtors and debtors in possession (collectively, but for purposes of this Order excluding debtors Elsemere Health Facilities, L.P. and Henderson Health Facilities, L.P., the “Debtors”) filed their *Motion for Interim and Final Orders (I) Authorizing Debtors to Obtain Post-Petition Financing; (II) Granting Liens, Security Interests and Superpriority Administrative Expense Status; (III) Scheduling a Final Hearing;*

and (IV) Modifying Automatic Stay (the “**Motion**”) for interim and final orders, under sections 105, 361, 362, 363, 364, and 507 of chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2002, 4001, and 6004 of Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas (the “**Local Bankruptcy Rules**”) seeking, among other things:

(1) authority, pursuant to Bankruptcy Code sections 363 and 364(c) and (d), to obtain debtor-in-possession secured financing (the “**DIP Facility**”) from Wells Fargo Bank, National Association (in its capacity as Administrative Agent under the DIP Facility, the “**DIP Agent**,” in its capacity as Lender under DIP Facility, the “**DIP Lender**”) pursuant to the following agreements (collectively, the “**DIP Financing Documents**”): (a) this Order, and any final order entered by this Court approving the Motion and DIP Facility (the “**Final Order**”), (b) the Credit Agreement dated as of March 10, 2017 (as amended by that certain First Amendment to Credit Agreement dated as of May 16, 2017 and as otherwise amended, modified and restated from time to time, the “**Credit Agreement**,”¹ and it and all of its terms, provisions, conditions are fully incorporated into this Order to the extent not inconsistent with any provision of this Order) by and among Wells Fargo Bank, National Association as Administrative Agent (in its capacity other than as DIP Agent, the “**Pre-Petition Agent**”), Wells Fargo Bank, National Association and the other Lenders party thereto (in their capacity other than as DIP Lender, collectively, the “**Pre-Petition Lender**”) and the Borrowers party thereto (which include the Debtors and their non-Debtor affiliates (other than Elsemere Health Facilities, L.P. and Henderson Health Facilities, L.P.)) (with respect to the Debtors, the Credit Agreement as modified by this Order

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Credit Agreement.

and the Final Order, is referred to herein as the “**DIP Credit Agreement**”) and (c) all other agreements executed or contemplated to be executed in connection with the Credit Agreement or the DIP Credit Agreement, including, without limitation, any guarantees, guarantor security agreements, and all Loan Documents;

(2) the grant to the DIP Agent, for the benefit of itself and the DIP Lender, of superpriority administrative claim status pursuant to Bankruptcy Code sections 364(c)(1) and 507(b) in accordance with the terms of this Order;

(3) the grant of adequate protection to the Pre-Petition Agent and Pre-Petition Lender under and in connection with the Credit Agreement and Loan Documents in accordance with the terms set forth herein;

(4) modification of the automatic stay to the extent hereinafter set forth and waiving the 14-day stay provisions of Bankruptcy Rules 4001(a)(3) and 6004(h); and

(5) a Final Hearing on the Motion for entry of an order authorizing the DIP Facility on a final basis.

Notice of the Motion, the relief requested therein, and the Interim Hearing (as defined below) (the “**Notice**”) was served by the Debtors in accordance with Bankruptcy Rule 4001 on:

(i) the counsel for the DIP Agent, the DIP Lender; the Pre-Petition Agent, and the Pre-Petition Lender, (ii) the Office of the United States Trustee for the Northern District of Texas, (iii) the thirty (30) largest unsecured creditors of the Debtors’ bankruptcy estates on a consolidated basis; (iv) the Internal Revenue Service; and (v) all parties in interest who have formally appeared and requested notice.

Pursuant to Bankruptcy Rule 4001, this Court held an interim hearing with respect to the Motion on November 15, 2017 (the “**Interim Hearing**”).

Having considered the Motion and the proceedings before this Court at the Interim Hearing; and all objections, if any, to the interim relief requested in the Motion having been withdrawn, resolved, or overruled by this Court as reflected on the record established by the Debtors at the Interim Hearing;

THIS COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:²

A. Petition Date. On November 13, 2017 (the “**Petition Date**”), the Debtors each commenced a case by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code;³

B. Debtor in Possession. The Debtors continue to operate their businesses and manage their properties as debtors and debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108, and no trustee or examiner has been appointed;

C. Notice. The Debtors gave due and sufficient notice of the Motion pursuant to the Bankruptcy Rules and Local Bankruptcy Rules;

D. Jurisdiction and Venue. This Court has core jurisdiction over the Debtors’ bankruptcy cases, the Motion, and the parties and property affected by this Order pursuant to 28 U.S.C. §§ 157(b) and 1334, and venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409;

E. Statutory Committee Formation. As of the date hereof, no official committee has been appointed in these cases pursuant to Bankruptcy Code section 1102 (a “**Statutory Committee**”);

² To the extent, any findings of fact constitute conclusions of law, they are adopted as such, and vice versa, pursuant to Fed. R. Bankr. P. 7052.

³ Unless otherwise noted, all statutory references are to the Bankruptcy Code.

F. Debtors' Stipulations Subject to Challenge Action. Subject to the Challenge Action provision set forth below, the Debtors have admitted, represented and stipulated, to the following (collectively, the "**Stipulations**"):

(1) *Loan Documents and Obligations.* As of the Petition Date, the Debtors were parties to the Credit Agreement and the other applicable Loan Documents, pursuant to which Loan Documents (a) each of the Debtors was, jointly and severally, indebted to the Pre-Petition Agent and Pre-Petition Lender, without defense, counterclaim, recoupment, or offset of any kind, in the approximate non-contingent liquidated amount of no less than \$39,041,870.52 as of November 13, 2017, plus prepetition interest, fees, expenses, and the other Obligations (such obligations of the Debtors as of the Petition Date, collectively, the "**Pre-Petition Obligations**"), and (b) such Pre-Petition Obligations were secured by valid, enforceable, properly perfected, first priority, and unavoidable liens on and security interests (the "**Pre-Petition Liens**") encumbering those assets of the Debtors set forth in the Guaranty and Security Agreements (defined below) and any other Loan Document (the "**Pre-Petition Collateral**");

(2) *No Claims Against the Lender Group.* The Debtors possess no claims, offsets, or other rights, or causes of action against the Pre-Petition Agent, Pre-Petition Lender, or any of their respective predecessors, successors, assigns, affiliates, parents, subsidiaries, partners, controlling persons, agents, employees, representatives, attorneys, consultants, advisors, financial advisors, professionals, officers, directors, or employees of any kind, including, but not limited to, any claims, offsets, or other rights or causes of action that would in any manner impair, reduce, or otherwise modify the Pre-Petition Obligations or the validly perfected Pre-Petition Liens upon the Pre-Petition Collateral;

and

(3) *Validity and Non-Disturbance of Pre-Petition Obligations.* The Pre-Petition Obligations constitute valid, binding obligations of the Debtors, enforceable in accordance with their terms, and the Debtors will not assert any claims, counterclaims, setoffs, or defenses of any kind or nature, which in any way would affect the validity and enforceability of any of the Pre-Petition Obligations and/or the Pre-Petition Liens of the Pre-Petition Agent and Pre-Petition Lender upon the Pre-Petition Collateral, or which would in any way reduce the obligation of the Debtors to indefeasibly pay in full in cash all of the Pre-Petition Obligations;

G. Debtors' Additional Stipulations and Agreements. The Debtors have admitted, represented and stipulated as follows:

(1) *Costs of Estate Administration.* The Debtors reasonably and in good faith believe that the use of the loans, advances, and other financial accommodations to be obtained pursuant to the DIP Facility, together with the Scott Facility (defined below) are sufficient to fund all projected legitimate and allowable expenses of their above captioned chapter 11 cases (the "**Chapter 11 Cases**") from the Petition Date through the period to which the budget attached hereto as Exhibit A (the "**Approved Budget**") pertains; and

(2) *Authorization.* Each Debtor is a duly organized, validly existing corporation and/or limited partnership and has the requisite power and authority to own, lease, and operate its property, including, without limitation, the DIP Collateral (defined below). Each Debtor has the requisite power and authority to enter into, execute, deliver, and perform its DIP Facility Obligations (defined below), and other DIP Financing Documents, and to incur the obligations provided for therein. Except as may be

explicitly required in the DIP Financing Documents, no consent or waiver of, filing with, authorization, approval or other action by any shareholder, member, or partner, nor any federal, state, or other governmental authority or regulatory body or any other person (other than the DIP Agent), which has not already been obtained or done, is required in connection with the execution, delivery, and performance by the Debtors of any of the documents required as a condition to the validity or enforceability of the DIP Financing Documents, other than entry by this Court of this Order.

(3) *Additional Protections.*

(a) The Debtors agree, on a joint and several basis, to indemnify and hold harmless the DIP Agent, the DIP Lender, and their respective predecessors, successors, assigns, affiliates, parents, subsidiaries, partners, controlling persons, agents, employees, representatives, attorneys, consultants, advisors, financial advisors, professionals, officers, directors, and employees from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including, without limitation, attorney's fees) or disbursements of any nature whatsoever which may be imposed on, incurred by or asserted against any of them in any way relating to or arising out of any of the DIP Financing Documents or any other document contemplated hereby or thereby or the transactions contemplated thereby or by this Order (including, without limitation, the exercise by the DIP Agent and DIP Lender of discretionary rights granted under the DIP Financing Documents) or any action taken or omitted by the DIP Agent or the DIP Lender under any of the DIP Financing Documents or any document contemplated hereby or thereby; provided the Debtors will not indemnify the above parties for their gross negligence or willful misconduct (as may be

determined by a court of competent jurisdiction in a final judgment). The Debtors further agree that all rights of the indemnified parties listed above shall be secured by the DIP Collateral and afforded all of the priorities and protections afforded to the DIP Facility Obligations under this Order and the DIP Financing Documents; and

(b) In administering or determining to make any loan under the DIP Facility, the DIP Financing Documents, the Loan Documents, this Order or the Final Order, or in exercising any rights or remedies as and when permitted thereunder, the DIP Agent, DIP Lender, the Pre-Petition Agent, or the Pre-Petition Lender are not in control of the operations of the Debtors.

H. Inability to Obtain Unsecured Credit. The Debtors are unable to obtain sufficient levels of unsecured credit allowable under Bankruptcy Code section 503(b)(1) as an administrative expense necessary to maintain and conduct their businesses;

I. Inability to Obtain Alternate Secured Credit. The Debtors are unable to obtain secured credit on more favorable terms than under the terms and conditions provided in this Order and the other DIP Financing Documents;

J. Best Interests of Estates. It is in the best interests of Debtors' estates that the Debtors be allowed to enter into the DIP Facility to obtain postpetition secured financing from the DIP Agent and DIP Lender, and use the Pre-Petition Collateral subject to and in accordance with the terms of this Order and the other DIP Financing Documents, and to grant adequate protection to the Pre-Petition Agent and Pre-Petition Lender on account of the Pre-Petition Obligations, on an interim basis under the terms and conditions set forth herein and in the DIP Financing Documents, as such is necessary to avoid immediate and irreparable harm to the Debtors' estates pending the Final Hearing;

K. Good Faith. The extension of credit and financial accommodations under the DIP Financing Documents are fair, reasonable, in good faith, negotiated at arm's length, reflect the Debtors' exercise of prudent business judgment, and are supported by reasonably equivalent value and fair consideration and the DIP Agent and DIP Lender (and the Pre-Petition Agent and Pre-Petition Lender, to the extent applicable) are entitled to the protections of Bankruptcy Code section 364(e);

L. Immediate Need for DIP Facility. The Debtors require access to the funding available under the DIP Facility and the DIP Financing Documents to satisfy administrative expenses associated with the operation of their businesses as going concerns and other costs relating to the administration of the Chapter 11 Cases, and to avoid immediate and irreparable harm to the Debtors' estates pending the Final Hearing;

M. Necessity of DIP Facility Terms. The terms of the DIP Financing Documents and this Order assuring that the liens and the various claims, superpriority claims, and other protections granted in this Order will not be affected by any subsequent reversal or modification of this Order or any other order, as provided in Bankruptcy Code section 364(e), which is applicable to the postpetition financing arrangement contemplated in the DIP Financing Documents contemplated by this Order, are necessary in order to induce the DIP Agent and DIP Lender to provide postpetition financing to the Debtors and to induce the DIP Agent, DIP Lender, Pre-Petition Lender, and Pre-Petition Agent, to consent to the terms of the postpetition financing and use of the Pre-Petition Collateral;

N. Good Cause for Entry to Avoid Immediate and Irreparable Harm. Good and sufficient cause has been shown for immediate entry of this Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2). Absent granting the relief set forth in this Order, the Debtors and

their estates will be immediately and irreparably harmed. Entry of this Order, consummation of the financing under the DIP Facility and the use of the Pre-Petition Collateral in accordance with this Order and the DIP Financing Documents are in the best interests of the Debtors, their estates and their creditors; and

O. Consent of Non-Debtor Borrowers. Each non-Debtor Borrower to the Credit Agreement consents to the entry of this Order and the terms contained herein.

Based upon the foregoing, and after due consideration and good cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. DIP Facility Approval. The Motion is granted on an interim basis effective as of the Petition Date. The Debtors are authorized, pursuant to Bankruptcy Code sections 363 and 364, to enter into the DIP Facility pursuant to the DIP Credit Agreement and other DIP Financing Documents, to execute such other and additional documents necessary or desired to implement the DIP Facility or the DIP Financing Documents, to obtain postpetition secured financing from the DIP Lender, and to use the Pre-Petition Collateral, and the proceeds and products thereof pursuant to the terms and conditions of the DIP Financing Documents and this Order (with such changes, if any, as were authorized to be made as amendments to the DIP Financing Documents in accordance with this Order) to avoid immediate and irreparable harm to the Debtors' estates pending the Final Hearing. The Debtors shall use the Loans obtained under the DIP Facility and the DIP Collateral only for the purposes, and not exceeding the amounts, set forth in the Approved Budget, provided, however, that such amounts shall be judged on a monthly basis and expenditures for each monthly period shall not exceed the amounts specified for such period by more than 10% on a per item basis (the "**Allowed Variance**"); provided, however, that the fees and expenses of Professionals may be paid at times other than as set forth

on the Approved Budget so long as the amounts paid are at or below the amounts shown on the Approved Budget (plus the Allowed Variance) for the time periods incurred. The Debtors shall provide to DIP Agent not less frequently than weekly reports of their variance to the Approved Budget. The Approved Budget may be further modified, amended, and/or extended from time to time but only with the written consent of the DIP Agent, and any such modified, amended, and/or extended Approved Budget shall be filed with the Court. The DIP Agent and DIP Lender shall have no obligation to make DIP Facility Advances (defined below) in excess of the amounts and times set forth in the Approved Budget.

2. DIP Facility Obligations. The DIP Financing Documents shall constitute and evidence the validity and binding effect of the Debtors' and non-Debtor Borrowers' obligations under the DIP Facility (the "**DIP Facility Obligations**"), which DIP Facility Obligations shall be enforceable against the Debtors, the Debtors' estates, the non-Debtor Borrowers, and any successors thereto, including, without limitation, any trustee appointed in any of the Debtors' cases, or in any case under chapter 7 of the Bankruptcy Code upon the conversion of any such cases, or in any other proceedings superseding or related to any of the foregoing. The Borrowers shall be jointly and severally liable for all DIP Facility Obligations including, without limitation, the repayment of all DIP Facility funds advanced to the Debtors pursuant to the terms of any DIP Financing Document ("**DIP Facility Advances**"), together with interest thereon, at the times and in the amounts set forth in the DIP Financing Documents. In addition to their treatment under the DIP Financing Documents, each DIP Facility Advance shall also be a Loan under the Credit Agreement and the other Loan Documents, each DIP Facility Obligation shall also be an "Obligation" under the Credit Agreement and the other Loan Documents, and the non-Debtor Borrowers shall be liable for each DIP Facility Advance and each DIP Facility Obligation as

they are for each “Loan” and “Obligation” under the Credit Agreement and the other Loan Documents. The Debtors shall maintain records of (i) each Debtor that receives a DIP Facility Advance including, without limitation, the date and amount of such DIP Facility Advance, (ii) each non-Debtor Borrower who receives a Loan including, without limitation, the date and amount of such Loan, and (iii) Proceeds obtained by each Debtor and each non-Debtor in the ordinary course of its business including, without limitation, the date and amount of all such Proceeds received. Loans made to non-Debtor Borrowers on and after the Petition Date are not DIP Facility Advances; however, each Debtor shall be liable for each Loan made to a non-Debtor Borrower on and after the Petition Date, and all Obligations with respect to each non-Debtor Borrower on and after the Petition Date, as provided in the Credit Agreement, and each such Loan and other Obligation shall be secured as provided for in the Loan Documents.

3. Use of DIP Facility Advances.

DIP Facility Advances shall be made pursuant to the terms of the DIP Credit Agreement and other DIP Financing Documents and used solely for the following purposes (and, unless otherwise noted in this Section, only to the extent, for purposes, and not to exceed the amounts identified in the Approved Budget): (a) to fund post-petition operating expenses and working-capital needs of the Debtors, including, but not limited to, those activities required to remain in, or return to compliance with, laws in accordance with 28 U.S.C. § 1930 in accordance with the Approved Budget; (b) to pay interest, fees, expenses, and other Obligations (including reasonable attorneys’ fees and expenses) to the DIP Agent for its benefit and the benefit of the DIP Lender (whether or not such amounts are reflected in the Approved Budget); (c) to pay Professional fees and expenses as provided in the Approved Budget and approved by this Court on a final basis as set forth below; (d) to pay certain other costs and expenses of administration

of the Chapter 11 Cases in accordance with the Approved Budget and as provided for and/or approved by this Court; and (e) as otherwise provided in the Approved Budget. Further, none of the costs and expenses, including, without limitation, financial advisor or attorneys' fees, costs, and expenses, of the DIP Agent, the DIP Lender, Pre-Petition Agent, or Pre-Petition Lender (the "**DIP Facility Fees**"), shall be subject to Court approval or U.S. Trustee guidelines, and no recipient of any such payment shall be required to file with respect thereto any interim or final fee application with this Court; provided, however, that the Debtors shall provide notice to the United States Trustee and/or the Statutory Committee (if any) of the payment of any DIP Facility Fees. The DIP Facility Fees shall be payable upon demand and, along with any other unpaid fees, costs, and expenses and other amounts owed or payable to the DIP Agent, DIP Lender, Pre-Petition Agent and Pre-Petition Lender, shall be DIP Facility Obligations.

4. Limitation on Use of DIP Facility Proceeds. Notwithstanding anything herein to the contrary, no portion of the Carve-Out (defined below), the DIP Facility, the DIP Collateral, the Pre-Petition Collateral, DIP Facility Advance, other Loan, or proceeds thereof shall include, apply to, be used for, or be available for any fees, costs or expenses incurred by any party, including the Debtors, non-Debtor Borrowers, or any Statutory Committee, in connection with any of the following: (i) the investigation (including by way of examinations or discovery proceedings), initiation, assertion, joining, commencement, support or prosecution of any claims, causes of action, adversary proceedings, challenges, contests, or other litigation against any of the DIP Agent, DIP Lender, the Pre-Petition Agent, the Pre-Petition Lender, Bank Product Provider and each of their respective predecessors, successors, assigns, affiliates, parents, subsidiaries, partners, controlling persons, agents, employees, representatives, attorneys, consultants, advisors, financial advisors, professionals, officers, directors, and employees, with

respect to any transaction, occurrence, omission, action or other matter (including formal discovery proceedings in anticipation thereof) (each, a “**Loan Party Claim**”), including, without limitation, (a) investigating or challenging the amount, validity, extent, perfection, priority, allowance, or enforceability of, or asserting any defense, counterclaim, or offset to, the DIP Facility Obligations, the DIP Liens (defined below), the DIP Superpriority Claims (defined below) or other security interests, liens, or rights under the DIP Financing Documents of the DIP Agent, DIP Lender, the Pre-Petition Agent, the Pre-Petition Lender, or Bank Product Provider in respect thereof; (b) investigating or challenging the amount, validity, extent, perfection, priority, allowance, or enforceability of, or asserting any defense, counterclaim, or offset to the Pre-Petition Obligations, the Credit Agreement, any other Loan Document, or the Pre-Petition Liens of the DIP Agent, DIP Lender, the Pre-Petition Agent, the Pre-Petition Lender, or Bank Product Provider; (c) investigating or asserting any claims or causes of action arising under chapter 5 of the Bankruptcy Code against the DIP Agent, DIP Lender, the Pre-Petition Agent, the Pre-Petition Lender or Bank Product Provider or the collateral securing the obligations owing to each of the foregoing parties; (d) investigating or asserting any so-called “lender liability” claims and causes of action against the DIP Agent, the DIP Lender, the Pre-Petition Agent, the Pre-Petition Lender, or Bank Product Provider; and (e) any action seeking to invalidate, set aside, avoid or subordinate, in whole or in part, any of the Loan Documents or the DIP Financing Documents or the collateral securing the repayment of the obligations thereunder; (ii) asserting any claims or causes of action against the DIP Agent, the DIP Lender, the Pre-Petition Agent, the Pre-Petition Lender, or Bank Product Provider including, without limitation, claims or actions to hinder or delay the assertions, enforcement or realization on the DIP Collateral, the Pre-Petition Collateral, the DIP Liens, or the Pre-Petition Liens as applicable, in accordance with the DIP Financing

Documents; (iii) seeking to modify any of the rights, remedies, priorities, privileges, protections and benefits granted to the DIP Agent, the DIP Lender, the Pre-Petition Agent, the Pre-Petition Lender, or Bank Product Provider hereunder or under the DIP Financing Documents, in each of the foregoing cases without the prior written consent of the DIP Agent, the DIP Lender, the Pre-Petition Agent, the Pre-Petition Lender, or Bank Product Provider as applicable; (iv) to pay any amount on account of any claims arising prior to the Petition Date unless such payments are (x) approved by an order of the Bankruptcy Court and (y) in accordance with the DIP Financing Documents and the Approved Budget; or (v) any purpose that is prohibited under the Bankruptcy Code; provided, however, that no more than \$25,000 of DIP Facility Advances, in the aggregate, may be used by only one Statutory Committee (if any) to investigate any Loan Party Claim.

5. DIP Facility Advances. Pursuant to Bankruptcy Code sections 363 and 364(c)(1), the DIP Facility Advances shall be allowed senior administrative expenses of the Debtors' estates and have priority in payment over any other indebtedness and/or obligations now in existence or incurred hereafter by the Debtors and over all administrative expenses or charges against property arising in the Chapter 11 Cases and any superseding Chapter 7 cases including, without limitation, those specified in Bankruptcy Code sections 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, 1113, or 1114, (such claim, the "**DIP Superpriority Claim**"). Notwithstanding the foregoing, the DIP Superpriority Claim shall not be payable from the proceeds of or recoveries on Avoidance Actions (as such term is defined below). The time of payment of the DIP Facility Advances shall not be altered, extended, or impaired by any plan or plans of reorganization that may hereafter be accepted or confirmed or any further orders of this Court which hereafter may be entered.

6. Interest and Fees. Interest on the Pre-Petition Obligations and the DIP Facility Obligations shall accrue from and after the Petition Date at the rate set forth in the Credit Agreement and other Loan Documents as amended by this Order. For the avoidance of doubt, DIP Facility Advances are Loans under the Credit Agreement. The reasonable fees and expenses of the DIP Agent shall be payable as set forth in the DIP Financing Documents without further notice, motion, or application to, order of, or hearing before this Court.

7. DIP Liens. Pursuant to Bankruptcy Code sections 363, 364(c), and 364(d), as security for the DIP Facility Obligations including, without limitation, repayment of the DIP Facility Advances and other postpetition costs payable under the DIP Financing Documents, the Debtors are hereby authorized to and are hereby deemed to grant to the DIP Agent, for its benefit, the benefit of the DIP Lender, and the benefit of any Bank Product Provider, a valid, binding, and enforceable lien, mortgage and/or security interest (a “**Lien**,” and as so granted to the DIP Agent for the benefit of the DIP Lender, the “**DIP Lien**”) in all of the Debtors’ and the Debtors’ estates presently owned or hereafter acquired property and assets, whether such property and assets were owned or acquired before or after the Petition Date, of any kind or nature, whether real or personal, tangible or intangible, wherever located (including, without limitation, first priority liens on any cash held in the Debtors’ bank accounts), and the proceeds and products thereof (collectively, the “**DIP Collateral**”), but excluding the following (the “**Excluded Collateral**”): (i) any retainers held by professionals of the Debtors, provided that any amount of the retainers in excess of amounts necessary to satisfy allowed unpaid professional fees and expenses shall constitute DIP Collateral; and (ii) solely for purposes of this Order (with all parties reserving all rights regarding the DIP Liens encumbering Avoidance Actions pursuant to the Final Order), any causes of action that could be brought under §§ 510, 522, 544-553 of the

Bankruptcy Code or any applicable state fraudulent transfer statute or similar statute (the “**Avoidance Actions**”). Except as otherwise provided in this Order, so long as there exist DIP Facility Obligations or Pre-Petition Obligations that have not been indefeasibly paid in full and in cash, no party may take any action to exercise rights or remedies against any DIP Collateral or Pre-Petition Collateral. No claim or lien having a priority superior to or *pari passu* with those granted by this Order or any Loan Document to the DIP Agent for the benefit of the DIP Lender, or the Pre-Petition Agent for the benefit of the Pre-Petition Lender (or Bank Product Provider) shall be granted or allowed on the DIP Collateral or Pre-Petition Collateral while any portion of the DIP Facility Obligations or Pre-Petition Obligations remain outstanding, the Debtors will not grant any such liens in the DIP Collateral (or any portion thereof) to any other parties pursuant to sections 364(c) and 364(d) of the Bankruptcy Code or otherwise, while any portion of the DIP Facility, DIP Facility Obligations, or the Pre-Petition Obligations are outstanding, unless the Debtors obtain the prior written consent of the DIP Agent and the Pre-Petition Agent.

8. Priority of DIP Liens. The DIP Lien shall be a valid, binding, continuing, enforceable, fully-perfected (a) first priority priming lien that is senior to any and all security interests in and liens on the DIP Collateral (including the Pre-Petition Collateral) pursuant to Bankruptcy Code section 364(d) and (b) subject and junior, pursuant 364(c)(3) of the Bankruptcy Code, only to (i) the Carve-Out (defined below) in the Approved Budget and (ii) valid, perfected and non-avoidable liens approved by the DIP Agent in writing as of the Petition Date. Except for Liens on Excluded Collateral, the DIP Liens shall not be subject or subordinate to any Lien that is avoided and that would otherwise be preserved for the benefit of any of the Debtors’ estates under Bankruptcy Code section 551.

9. DIP Facility Obligations Constitute “Secured Obligations.” For the avoidance of doubt, in addition to the security provided by the DIP Liens, each DIP Facility Advance and each other DIP Facility Obligation constitutes a “Secured Obligation” under those certain Guaranty and Security Agreements dated as of March 10, 2017 (collectively, the “**Guaranty and Security Agreements**,” copies of which are attached to the Motion as Exhibit B), and the DIP Facility Advances and the other DIP Facility Obligations are secured by the Borrowers as provided for in the Guaranty and Security Agreements.

10. DIP Facility Obligations Constitute “Guarantor Obligations.” For the avoidance of doubt, each DIP Facility Advance and each other DIP Facility Obligation constitute a “Guarantor Obligation” under that certain Guaranty Agreement dated as of March 10, 2017 by Thomas D. Scott.

11. Additional Credit Agreement Modifications. Without prejudice to the parties agreeing to future modifications absent Court order of the following:

A. The defined term “Maximum Revolver Amount” contained in Schedule 1.1 of the Credit Agreement is amended and restated as follows: “Maximum Revolver Amount” means \$50,000,000.”

B. The defined term “Applicable Margin” contained in Schedule 1.1 of the Credit Agreement is amended and restated as follows: “Applicable Margin” means:

(i) until the occurrence of the earlier of a Termination Event or the DIP Maturity Date, as of any date of determination and with respect to Base Rate Loans or LIBOR Rate Loans, 3.75 percentage points; and

(ii) on and after the occurrence of the earlier of a Termination Event or the DIP Maturity Date, as of any date of determination and with respect to Base Rate Loans or LIBOR Rate Loans, as applicable, the applicable margin set forth in the following table that corresponds to the Average Revolver Usage of Borrowers for the most recently completed month; provided, that any time an Event of Default has occurred and is

continuing, the Applicable Margin shall be set at the margin in the row styled "Level III":

<u>Level</u>	<u>Average Revolver Usage</u>	<u>Applicable Margin Relative to Base Rate Loans (the "Base Rate Margin")</u>	<u>Applicable Margin Relative to LIBOR Rate Loans (the "LIBOR Rate Margin")</u>
I	< 33.3% of Maximum Revolver Amount	1.25 percentage points	2.25 percentage points
II	≥ 33.3% of Maximum Revolver Amount and < 66.7% of Maximum Revolver Amount	1.50 percentage points	2.50 percentage points
III	≥ 66.7% of Maximum Revolver Amount	1.75 percentage points	2.75 percentage points

The Applicable Margin shall be re-determined as of the first day of each calendar month of Borrowers.

12. Adequate Protection of Pre-Petition Obligations. Until the indefeasible payment in full and in cash of the Pre-Petition Obligations, the Pre-Petition Agent, the Pre-Petition Lender, and the Bank Product Provider are entitled to adequate protection of their interests in the Pre-Petition Collateral as a result of (a) the provisions of this Order granting first priority and/or priming liens on such Pre-Petition Collateral, (b) the Debtors' use of the Pre-Petition Collateral, (c) the imposition of the automatic stay pursuant to Bankruptcy Code section 362, or (d) otherwise, pursuant to Bankruptcy Code sections 361(a), 363(c), and 364(d)(1). The Pre-Petition Agent, on behalf of itself and for the benefit of the Pre-Petition Lender and Bank Product Providers, is hereby granted, solely to the extent of diminution in value of the Pre-Petition Liens in the Pre-Petition Collateral from and after the Petition Date, the following:

A. a valid, binding, first priority, enforceable and fully perfected Lien in all

DIP Collateral (the “**Adequate Protection Lien**”) junior only to the DIP Lien and the Carve-Out; and

B. a postpetition superpriority administrative expense claim (the “**Prepetition Adequate Protection Superpriority Claim**”) against each of the Debtors, with recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof, under Bankruptcy Code sections 503 and 507 against the Debtors’ estates on a joint and several basis, in each case to the extent the Adequate Protection Lien does not adequately protect against the diminution in value of the Pre-Petition Liens, which shall have priority in payment over any other indebtedness and/or obligations now in existence or incurred hereafter by the Debtors or any of their respective estates and over all other administrative expenses of any kind, including, without limitation, those specified in Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 506(c) (subject to entry of the Final Order), 507(a), 507(b), 726, or 1114, or otherwise and including those resulting from the conversion of any of the Chapter 11 Cases pursuant to Bankruptcy Code section 1112; subject and junior only to the Carve-Out, and DIP Superpriority Claim.

13. No Waiver of Future Adequate Protection Requests. Nothing herein or in the DIP Credit Agreement shall be deemed to be a waiver by the DIP Agent, the DIP Lender, the Pre-Petition Agent, or the Pre-Petition Lender of their right (or rights) to request additional or further protection of any of their interests in any property, including property of the Debtors, and/or to move for relief from the automatic stay (if such relief is required), or to seek the appointment of a trustee or examiner or the dismissal of any of the Debtors’ bankruptcy cases, or to request any other relief, jointly or severally.

14. Modification of Automatic Stay. The automatic stay provisions of Bankruptcy Code section 362 are hereby modified to permit (a) the Debtors, the DIP Agent, the DIP Lender, the Pre-Petition Agent, or the Pre-Petition Lender, to implement the DIP Facility and perform pursuant to the DIP Financing Documents including, without limitation, the provisions thereof with respect to the collection of Proceeds (as defined below), and the maintenance and implementation of the Collection Accounts and the Collection Procedures (as such terms are defined below), and (b) the creation and perfection of all liens granted or permitted by this Order. The Debtors and the holders of any DIP Lien or Adequate Protection Lien shall not be required to enter into any additional security agreements or take any further action to create, memorialize, and/or perfect any such Liens, or to file UCC financing statements, mortgages, or other instruments with any other filing authority or take any other action to perfect any such Liens, which shall be and are deemed valid, binding, enforceable, and automatically perfected by the docket entry of this Order by the Clerk of the Court. If, however, the holder of any DIP Lien or Adequate Protection Lien in its sole and absolute discretion shall elect for any reason to enter into, file, record, or serve any such financing statements or other documents with respect to any such Lien, then the Debtors shall execute same upon reasonable request and the filing, recording, or service thereof (as the case may be) shall be deemed to have been made at the time and on the date of the docket entry of this Order by the Clerk of the Court. A copy of this Order may, in the discretion of the DIP Agent, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such copy of this Order for filing and recording. The holders of any DIP Lien, Pre-Petition Lien, or Adequate Protection Lien are hereby relieved of any requirement to file proofs of claim in the Debtors' bankruptcy cases with respect to any

such Liens and the claims secured thereby, but any such holder may in its sole and absolute discretion file any such proof of claim.

15. Carve-Out. The DIP Liens, DIP Superpriority Claims, Adequate Protection Liens and Prepetition Adequate Protection Superpriority Claims shall be subject to the right of payment of the following expenses (the following subparagraphs, collectively, the “**Carve-Out**,” and all amounts payable in connection therewith, the “**Carve-Out Amounts**”):

A. unpaid postpetition fees and expenses of the Clerk of the Court and statutory fees payable to the U.S. Trustee pursuant to 28 U.S.C. § 1930;

B. both (i) unpaid postpetition fees and expenses of professionals of the Debtors and professionals of a Statutory Committee (if any), which are retained by an order of the Court pursuant to Bankruptcy Code sections 327, 328, 363, or 1103(a) (the “**Professionals**”); and (ii) any unpaid postpetition fees of any noticing agent retained by the Debtors; but in both cases (i) and (ii) above, only to the extent such fees and expenses are (a) incurred before the Termination Event (defined below), (b) at or below the amounts set forth in Approved Budget (measured prior to the application of any retainer), (c) subsequently allowed by the Bankruptcy Court on a final basis under sections 330, 331, or 363 of the Bankruptcy Code, and (d) not otherwise paid from retainers; and

C. postpetition fees and expenses of the Professionals consisting of the Court approved attorneys retained by the Debtors incurred after the occurrence of a Termination Event in an aggregate amount not to exceed \$25,000, to the extent that such fees and expenses are (i) subsequently allowed on a final basis by the Bankruptcy Court under sections 330, 331, or 363 of the Bankruptcy Code, and (ii) no retainers are otherwise available to pay such fees and expense provided, however, that (x) the Carve-Out shall

only be available to pay fees and expenses set forth herein to the extent that unencumbered funds are not otherwise available, and (y) in no event shall the aggregate amount of all items included in the Carve-Out for all Professionals exceed the amounts provided for such Professionals as set forth in the Approved Budget. Any amounts paid from the DIP Collateral or the proceeds thereof, or funded by the DIP Agent or the DIP Lender with respect to the Carve-Out shall be DIP Facility Advances and such obligations shall be secured by the DIP Lien. Further, the payment of the fees or costs of any Professional and/or Statutory Committee (if any) shall be subject to Court approval, and the DIP Agent and the DIP Lender reserve the right to object to any application for payment, and nothing herein shall prohibit any party in interest from objecting to any application for payment. As used in this Order, the term “**Termination Event**” shall mean the occurrence of the earliest of: (i) an Event of Default under any of the DIP Financing Documents (which, for the avoidance of doubt and without limitation, includes an Event of Default under the Credit Agreement by any of the Borrowers or the Debtors’ failure to comply with the Approved Budget), (ii) the failure of each Debtor to (x) identify a new operator with respect to its respective facility in New Mexico or Kentucky, as the case may be, within 75 days of the Petition Date, (y) file a CHOW for such new operator with respect to its respective facility in Kentucky within 150 days of the Petition Date and (z) file a CHOW for such operator with respect to its respective facility in New Mexico within 135 days of the Petition Date, (iii) the lack of entry of the Final Order, which Final Order shall be in form and substance satisfactory to DIP Agent and DIP Lender in their sole and absolute discretion, on or before December 21, 2017, (iv) the failure of this Court to approve a supplemental financing facility made by

Thomas D. Scott in support of the Debtors that shall be junior in all respects to the DIP Facility and the Pre-Prepetition Obligations, and shall otherwise be in an amount and in a form and substance satisfactory to DIP Agent and DIP Lender in their sole and absolute discretion, on or before the entry of the Final Order (the “**Scott Facility**”), or (v) the Debtors’ failure to comply with the terms of this Order or the Final Order. Nothing herein shall preclude the DIP Agent or DIP Lender from objecting to the fees and expenses of any Professional.

16. Carve-Out Limitations. Neither the payment of any Professional fees, nor the Carve-Out shall include payment for any fees and expenses, if any, of the Professionals incurred directly or indirectly, in respect of, arising from or relating to:

A. the initiation, joinder, support, or prosecution of any action contesting the indebtedness owed to the DIP Agent, the DIP Lender, the Pre-Petition Agent, the Pre-Petition Lender, or Bank Product Provider or the validity of any liens granted to any of the DIP Agent, the DIP Lender, the Pre-Petition Agent, the Pre-Petition Lender, or Bank Product Provider;

B. preventing, hindering, or otherwise delaying (or supporting any other person or entity in preventing, hindering, or otherwise delaying), whether directly or indirectly, the exercise by the DIP Agent, the DIP Lender, the Pre-Petition Agent, the Pre-Petition Lender, or Bank Product Provider of any of their rights and remedies under this Order, the Final Order, or any documents comprising the DIP Facility, the DIP Financing Documents, the Credit Agreement, or the Loan Documents;

C. the commencement, support, or prosecution of any action or proceeding of any claims, causes of action, or defenses against the DIP Agent, the DIP Lender, the Pre-

Petition Agent, the Pre-Petition Lender, or Bank Product Provider or any of their respective predecessors, successors, assigns, affiliates, parents, subsidiaries, partners, controlling persons, agents, employees, representatives, attorneys, consultants, advisors, financial advisors, professionals, officers, directors, or employees, including, without limitation, any attempt to recover or avoid any claim or interest from the DIP Agent, the DIP Lender, the Pre-Petition Agent, or the Pre-Petition Lender, or any of them, under Chapter 5 of the Bankruptcy Code;

D. any request to borrow money other than pursuant to the terms of the Order, the Final Order, or the DIP Financing Documents;

E. with respect to the Debtors, any of the Debtors' Professionals, or any of their successors or assigns (including, without limitation, any trustee, responsible officer, examiner, estate administrator, or representative, or similar person appointed in a case for any Debtor under any chapter of the Bankruptcy Code) performing or commencing any investigation or litigation (whether threatened or pending) by the Debtors with respect to any matter to be released or waived pursuant to this Order or the Final Order; or

F. for any other purpose for which DIP Facility Advances may not be used pursuant to the terms of any of the DIP Financing Documents.

Notwithstanding anything to the contrary in this Paragraph, for the avoidance of doubt, the Carve-Out may be used to compensate the Debtors' professionals for complying with any information requests made by a Committee or other party-in-interest during its respective investigation.

17. Collateral Matters. Effective as of the time of commencement of the Debtors' bankruptcy cases on the Petition Date:

A. each Debtor waives irrevocably all claims and rights, if any, it or its estate might otherwise assert against the Pre-Petition Collateral or the DIP Collateral pursuant to Bankruptcy Code sections 506(c), 105(a), or any other applicable law;

B. no entity in the course of the Debtors' bankruptcy cases shall be permitted to recover from the DIP Collateral or Pre-Petition Collateral (whether directly or through the grant of derivative or equitable standing in the name of the any Debtor or such Debtor's estate) any cost or expense of preservation or disposition of the Pre-Petition Collateral or the DIP Collateral, including, without limitation, expenses and charges as provided in Bankruptcy Code sections 506(c), 105(a), or any other applicable law;

C. no entity shall be permitted to recover from the DIP Collateral or the Pre-Petition Collateral, or assert against the DIP Agent, the DIP Lender, the Pre-Petition Agent, the Pre-Petition Lender, or Bank Product Provider, any claim with respect to any unpaid administrative expense of the Debtors' bankruptcy cases, whether or not the Debtors' payment of such administrative claim was contemplated by or included in the Approved Budget; and

D. Neither the DIP Agent, the DIP Lender, the Pre-Petition Agent, Pre-Petition Lender, nor Bank Product Provider shall be subject to the "equities of the case" exception of Bankruptcy Code section 552(b), or to the equitable doctrines of "marshaling" or any similar claim or doctrine, with respect to any DIP Collateral or the Pre-Petition Collateral.

18. No Additional Financing or Cash Collateral Usage. So long as the DIP Facility Obligations remain outstanding, unless consented to in writing by the DIP Agent, no Debtor shall seek entry of any further orders in its Chapter 11 Case that authorize (a) under Bankruptcy Code

section 363, the use of Cash Collateral; (b) the obtaining of credit or the incurring of indebtedness pursuant to Bankruptcy Code section 364 that does not repay the DIP Facility in full, in cash, (c) the return of goods pursuant to Bankruptcy Code section 546(h) to any creditor of the Debtors or any creditor taking any setoff against any of such creditor's prepetition indebtedness based on any such return pursuant to Bankruptcy Code section 553 or otherwise, or (d) any other grant of rights against the Debtors and/or their respective estates that is secured by a Lien in the DIP Collateral or is entitled to superpriority administrative status that does not repay the DIP Facility in full, in cash.

19. Default Rights. Upon the occurrence of a Termination Event and the giving of written notice thereof by the DIP Agent or Pre-Petition Agent to counsel to the Debtors, the Statutory Committee (if any) and the U.S. Trustee (which notice may be given by any manner of electronic transmission, the automatic stay being deemed lifted for such purpose) (the "**Default Notice**"), or on May 15, 2018 (the "**DIP Maturity Date**"), then the DIP Agent, Pre-Petition Agent, DIP Lender, and Pre-Petition Lender (as applicable) (1) shall be fully authorized, in its their discretion, to cease making DIP Facility Advances to the Debtors, (2) to exercise any of their rights or remedies under the DIP Credit Agreement and the other the Loan Documents to which they would be entitled following an "Event of Default" thereunder, (3) shall be fully authorized to revoke their consent to the Debtors' use of the DIP Collateral and Pre-Petition Collateral (including, without limitation, any cash collateral), and/or (4) shall be fully authorized to immediately terminate the DIP Facility and demand immediate repayment, in cash, of the DIP Facility Obligations then outstanding. Further, upon the occurrence of a Termination Event and transmission of a Default Notice, or upon the Maturity Date, DIP Agent, Pre-Petition Agent, DIP Lender, and Pre-Petition Lender shall have the right, free of the restrictions of Bankruptcy Code

section 362 or under any other section of the Bankruptcy Code or applicable law or rule (including, without limitation, Bankruptcy Rule 4001(a)), to take immediate reasonable action to protect the DIP Collateral and Pre-Petition Collateral from harm, theft, and/or dissipation. With respect to a Termination Event as to which a Default Notice has been given, the Debtors, the Statutory Committee (if any), and the U.S. Trustee shall have five (5) business days from the date of the Default Notice (the “**Remedy Notice Period**”) to obtain an order of this Court on notice to the DIP Agent and Pre-Petition Agent enjoining or restraining the DIP Agent, Pre-Petition Agent, DIP Lender, and Pre-Petition Lender from taking action or exercising rights and remedies (other than with respect to the collection and application of amounts to the Pre-Petition Obligations or DIP Facility Obligations pursuant to the Cash Management System as provided below and with respect to any rights and remedies against non-Debtor Borrowers, which rights and remedies require no Default Notice or Remedy Notice Period) based upon the Termination Event specified in the Default Notice (a “**Restraint on Remedies**”). Immediately upon expiration of the Remedy Notice Period, unless a Restraint on Remedies has timely been obtained from this Court, or immediately with respect to and upon the Maturity Date:

(1) DIP Agent, Pre-Petition Agent, DIP Lender, and Pre-Petition Lender shall have the right, free of the restrictions of Bankruptcy Code section 362 or under any other section of the Bankruptcy Code or Bankruptcy Rules (including, without limitation, Bankruptcy Rule 4001(a)), to exercise all contractual rights and remedies (including, without limitation, those under DIP Credit Agreement and the other the Loan Documents), legal rights and remedies, and equitable rights and remedies (including, without limitation, as to all or part of the DIP Collateral or Pre-Petition Collateral) as they shall elect, and to declare

all DIP Facility Obligations to be immediately due and owing, and collect, repossess, and dispose of the DIP Collateral and Pre-Petition Collateral, and apply the Proceeds (as such term is defined below) of the DIP Collateral and Pre-Petition Collateral to the repayment of the DIP Facility Obligations and Pre-Petition Obligations in accordance with this Order; and

(2) DIP Agent, Pre-Petition Agent, DIP Lender, and Pre-Petition Lender, should they so elect in their sole and absolute discretion as exercised by the filing of an appropriate statement with this Court, shall be deemed to have been granted “peaceful possession” of, and right of access to, all or any portion of the DIP Collateral and Pre-Petition Collateral by the Debtors.

Notwithstanding the terms of this Paragraph, no Default Notice shall be required for the DIP Agent to continue to collect and apply amounts to the Pre-Petition Obligations or DIP Facility Obligations pursuant to the Cash Management System as provided below.

20. Termination Event or the Maturity Date Constitutes an Event of Default Under the Loan Documents. The occurrence of a Termination Event or the Maturity Date constitutes an Event of Default under the Credit Agreement and the other Loan Documents.

21. DIP Facility Reporting. The Debtors shall provide the DIP Agent with (i) all financial statements, certificates, and reports required pursuant to the DIP Credit Agreement in accordance with the timeframes specified therein and (ii) such additional information as the DIP Agent shall request from the Debtors. The DIP Agent and its representatives shall have reasonable access to each Debtor’s business premises and to the DIP Collateral in order to review and evaluate the physical condition of any of the DIP Collateral and/or to inspect the financial records and other records of the Debtors concerning the operation of the Debtors’

businesses.

22. Continued Maintenance of Cash Management System And Application of Funds in Facility Support Funding LLC Concentration Account. The Debtors shall maintain their existing Cash Management System (as that term is defined in the Debtors' Motion For An Interim And Final Orders (A) Authorizing Continued Use Of Existing (I) Cash Management System, (II) Accounts And Business Forms, And (III) Deposit Practices; (B) Maintaining Resident Trust Fund Accounts; (C) For An Extension Of Time To Comply With Section 345 Of The Bankruptcy Code; And (D) Scheduling A Final Hearing), and funds in the Facility Support Funding LLC concentration account shall be applied first to the Pre-Petition Obligations until satisfied and then to the DIP Facility Obligations unless otherwise directed by the DIP Agent (and in such case, the funds shall be applied as directed by DIP Agent) in its sole and absolute discretion. The Debtors shall maintain in full force and effect the deposit, clearing, dominion, lockbox, and similar accounts maintained by or on behalf of the Debtors and non-Debtors pursuant to the Credit Agreement and/or Loan Documents for the collection of Proceeds obtained in the ordinary course of the Debtors' businesses (the "**Collection Accounts**"), and the cash management systems, treasury management systems, and payment procedures under which such accounts and systems are administered (the "**Collection Procedures**"), including, without limitation, all accounts, systems, and procedures referred to in the Credit Agreement. In furtherance of the foregoing, and subject to restrictions regarding Collection Accounts into which proceeds from government receivables are deposited, the DIP Agent shall be deemed to have control (only to the extent required by the Uniform Commercial Code for perfection) of all of the Debtors' bank accounts (including, without limitation, all deposit accounts and blocked accounts), and any financial institutions in which such accounts of the Debtors are located are

hereby ordered and directed to act in accordance with any request of the DIP Agent concerning such accounts, including, without limitation, requests to turnover funds therein without offset or deduction of any kind.

23. Application of Proceeds. For purposes of this Order, (a) “**Proceeds**” shall mean both (i) proceeds (as defined in the Uniform Commercial Code for the State of Texas) and (ii) any and all payments, proceeds, or other consideration realized upon the sale, liquidation, realization, collection, or other manner of disposition of DIP Collateral, whether in the ordinary course of any Debtors’ business (including without limitation accounts, receivables, and other proceeds arising from the Debtors’ sales of goods and/or performance of services) or other than in the ordinary course of any Debtors’ business, and (b) “**Disposition**” shall mean any sale, liquidation, realization, collection, or other manner of disposition of DIP Collateral other than in the ordinary course of any Debtors’ business, including without limitation any sale authorized pursuant to Bankruptcy Code section 363. Any and all Proceeds of any DIP Collateral shall be delivered to the DIP Agent. All Proceeds received by the DIP Agent shall be applied to repayment of the Pre-Petition Obligations and the DIP Facility Obligations in the following manner: Any Proceeds received by the DIP Agent shall be applied by the DIP Agent to reduce outstanding DIP Facility Obligations and the Pre-Petition Obligations in the manner set forth in the Credit Agreement and other Loan Documents.

24. Credit Bidding. The DIP Agent and the Pre-Petition Agent are hereby authorized to credit-bid all or any of the applicable DIP Facility Obligations, Pre-Petition Obligations, DIP Financing Documents, the Credit Agreement and other Loan Documents at any disposition of any Pre-Petition Collateral and/or DIP Collateral.

25. Binding Nature of Stipulations and Other Matters. Subject to the Challenge Action as set forth in below, upon entry of this Order:

A. the Debtors' Stipulations shall be binding upon the Debtors and all other persons, entities, and/or parties in all circumstances;

B. the validity, extent, priority, perfection, enforceability, and non-avoidability of the Pre-Petition Agent's on behalf of itself and the Pre-Petition Lender's respective first priority, validly perfected prepetition claims and liens against the Debtors and the Pre-Petition Collateral shall not be subject to challenge by the Debtors or any other person, entity, or party; and

C. neither the Debtors, nor any other person, entity, or party shall seek to avoid or challenge (whether pursuant to Chapter 5 of the Bankruptcy Code or otherwise) any transfer made by or on behalf of the Debtors to or for the benefit of the Pre-Petition Agent or Pre-Petition Lender prior to the Petition Date.

26. Debtor Release. In consideration of and as a condition to the DIP Agent and DIP Lender making the DIP Facility and providing credit and other financial accommodations to the Debtors pursuant to the terms of this Order, and the other DIP Financing Documents, each of the Debtors and their estates (each a "**Releasor**" and collectively, the "**Releasors**"), absolutely releases, forever discharges and acquits each of the DIP Agent, the DIP Lender, and their respective predecessors, successors, assigns, affiliates, parents, subsidiaries, partners, controlling persons, agents, employees, representatives, attorneys, consultants, advisors, financial advisors, professionals, officers, directors, and employees, and other representatives (the "**Releasees**") of and from any and all claims, demands, causes of action, damages, choses in action, and all other claims, counterclaims, defenses, setoff rights, and other liabilities whatsoever (the "**Prepetition**

Released Claims”) of every kind, name, nature, and description, whether known or unknown, both at law and equity (including, without limitation, any “lender liability” claims) that any Releasor may now or hereafter own, hold, have, or claim against each and every of the Releasees arising at any time prior to the entry of this Order (including, without limitation, claims relating to the Debtors, the Credit Agreement, the Loan Documents, and other documents executed in connection therewith, and the obligations thereunder). Further, following the expiration of the Investigation Termination Date (defined below), the release provisions herein shall also extend to the Pre-Petition Agent, the Pre-Petition Lender, and their respective predecessors, successors, assigns, affiliates, parents, subsidiaries, partners, controlling persons, agents, employees, representatives, attorneys, consultants, advisors, financial advisors, professionals, officers, directors, and employees, and other representatives. In addition, upon the indefeasible payment, in full, in cash, of all DIP Facility Obligations owed to the DIP Agent and DIP Lender arising under this Order, the DIP Credit Agreement, and the other DIP Financing Documents, the DIP Agent and DIP Lender and their affiliates (including Bank Product Providers) shall be released from any and all obligations, actions, duties, responsibilities, and causes of action arising or occurring in connection with or related to the DIP Credit Agreement or other DIP Financing Documents.

27. Releasor Covenants. Each Releasor hereby absolutely, unconditionally, and irrevocably covenants and agrees with each Releasee that it will not sue (at law, in equity, or in any other proceeding) any Releasee on the basis of any claims or causes of action released and discharged by such Releasor pursuant to this Order. If any Releasor violates this covenant, each Debtor agrees to pay, in addition to such other damages as any Releasee may sustain as a result of such violation, all reasonable attorneys’ fees and costs incurred by any Releasee as a result of

such violation.

28. Challenge Action and Investigation Termination Date. The Statutory Committee of general unsecured creditors appointed in this case (the “**Committee**”) (if any) shall have until sixty (60) days from the Petition Date (the “**Investigation Termination Date**”), to obtain standing to commence, and so commence, an appropriate contested matter or adversary proceeding (a “**Challenge Action**”) asserting any Loan Party Claim. If a Challenge Action is not filed on or before the Investigation Termination Date (or such other later date as extended by the written consent of the Pre-Petition Agent at the direction of the Pre-Petition Lender or the DIP Agent) then: (a) the agreements, acknowledgements and stipulations contained in the Debtors’ Stipulations of this Order shall be irrevocably binding on the Debtors, all Statutory Committees, and all parties-in-interest and any and all successors-in-interest as to any of the foregoing, without further action by any party or this Court, and any Statutory Committee and any other party-in-interest and any and all successors-in-interest as to any of the foregoing, shall thereafter be forever barred from bringing any Challenge Action with respect thereto; (b) the Pre-Petition Liens shall be deemed to constitute valid, binding, enforceable and perfected liens and security interests not subject to avoidance or disallowance pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (c) the Pre-Petition Obligations shall be deemed to be finally allowed claims for all purposes against each of the Debtors, including in any subsequent chapter 7 cases, and shall not be subject to challenge by any party-in-interest as to validity, priority or otherwise; and (d) the Debtors shall be deemed to have released, waived and discharged the Pre-Petition Agent and the Pre-Petition Lender (in each case, whether in their prepetition or postpetition capacity) and the DIP Agent and the DIP Lender, together with each of their respective predecessors, successors, assigns, affiliates, parents, subsidiaries, partners, controlling persons,

agents, employees, representatives, attorneys, consultants, advisors, financial advisors, professionals, officers, directors, and employees from any and all claims and causes of action arising out of, based upon or related to, in whole or in part, the Pre-petition Obligations or the DIP Facility, as applicable. Notwithstanding anything to the contrary herein: (x) if any such Challenge Action is timely commenced, the stipulations contained in the Debtors' Stipulations of this Order shall nonetheless remain binding and preclusive on all parties-in-interest (other than the party that has brought such Challenge Action in connection therewith) except to the extent that such stipulations are successfully challenged and invalidated in such Challenge Action in a final judgment from a court of competent jurisdiction (a "**Successful Challenge Action**"); (y) the DIP Agent, the DIP Lender, the Pre-Petition Agent and the Pre-Petition Lender reserve all of their rights to contest on any grounds any Challenge Action; and (z) the DIP Agent, the DIP Lender, the Pre-Petition Agent and the Pre-Petition Lender shall comply with any and all orders of the Bankruptcy Court in connection with a Successful Challenge Action; provided, however, that the DIP Agent, the DIP Lender, the Pre-Petition Agent and the Pre-Petition Lender reserve any and all of their rights to appeal and stay any orders of the Bankruptcy Court issued in connection with such Successful Challenge Action. For the avoidance of doubt, nothing in this Order vests or confers on any person (as defined in the Bankruptcy Code) standing or authority to pursue any cause of action belonging to the Debtors or their estates.

29. Retention of Challenge Action Defenses. The legal and equitable claims, counterclaims, defenses, and/or rights of offset and setoff of the Pre-Petition Agent or the Pre-Petition Lender in response to any such Challenge Action are reserved, and the ability of a party to commence a Challenge Action shall in no event revive, renew, or reinstate any applicable statute of limitations that may have expired prior to the date of commencement of such

Challenge Action. Despite the commencement of a Challenge Action, the prepetition claims and Liens of the Pre-Petition Agent or the Pre-Petition Lender shall be deemed valid, binding, properly perfected, enforceable, non-avoidable, not subject to disallowance under Bankruptcy Code section 502(d) and not subject to subordination under Bankruptcy Code section 510 until such time as a final and non-appealable judgment and order is entered sustaining such Challenge Action in favor of the plaintiffs therein. Notwithstanding anything to the contrary contained in this Order, the Court expressly reserves the right to order any and all appropriate relief against the Pre-Petition Agent or the Pre-Petition Lender if there is a timely and Successful Challenge Action consistent with this Order.

30. No Control by DIP Agent and Lender. In making decisions to advance any extensions of credit to the Debtors pursuant to the DIP Facility or in taking any other actions reasonably related to this Order or the DIP Financing Documents (including, without limitation, the exercise of its approval rights with respect to any Approved Budget), the DIP Agent, the DIP Lender, the Pre-Petition Agent, and the Pre-Petition Lender shall have no liability to any third party and shall not be deemed to be in control of the operations of the Debtors or to be acting as a “control person,” “responsible person,” or other “owner or operator” with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the Internal Revenue Code, the United States Comprehensive Environmental Response Compensation and Liability Act, as amended, or any similar Federal or state statute), and the DIP Agent’s and the DIP Lender’s relationship with the Debtors shall not constitute or be deemed to constitute a joint venture or partnership of any kind between the DIP Agent and/or DIP Lender and the Debtors.

31. No Waiver of Remedies. The delay in or the failure of the DIP Agent or the DIP

Lender (or the Pre-Petition Agent or the Pre-Petition Lender) to seek relief or otherwise exercise their rights and remedies shall not constitute a waiver of any of the DIP Agent's or the DIP Lender's (or the Pre-Petition Agent's or the Pre-Petition Lender's) rights and remedies. Notwithstanding anything herein, the entry of this Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair the rights and remedies of the DIP Agent or the DIP Lender (or the Pre-Petition Agent or the Pre-Petition Lender) under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the rights of the DIP Agent and/or the DIP Lender (or the Pre-Petition Agent or the Pre-Petition Lender) to (i) request conversion of any of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, dismissal of any of the Chapter 11 Cases, or the appointment of a trustee in the Chapter 11 Cases; (ii) propose, subject to the provisions of Bankruptcy Code section 1121, a chapter 11 plan of reorganization or liquidation; or (iii) exercise any of the rights, claims, or privileges (whether legal, equitable, or otherwise) the DIP Agent or the DIP Lender (or the Pre-Petition Agent or the Pre-Petition Lender) may have, including, but not limited to, credit bidding the DIP Facility Obligations (or the Pre-Petition Obligations) in connection with any sale of the Debtors' assets.

32. Successors and Assigns. This Order shall be binding on and inure to the benefit of the DIP Agent, the DIP Lender, the Pre-Petition Agent, the Pre-Petition Lender, the Bank Product Provider, the Debtors, and their respective predecessors, successors and assigns, including, without limitation, any trustee, responsible officer, examiner, estate administrator, or representative, or similar person appointed in a case for any Debtor under any chapter of the Bankruptcy Code. Except as set forth herein with respect to a Challenge Action, no rights are created under this Order for the benefit of any creditor of the Debtors, any other party in interest in the Debtors' bankruptcy cases, or any other persons or entities, or any direct, indirect or

incidental beneficiaries thereof.

33. Continuing Nature of DIP Liens and Claims. Any order dismissing any of the Chapter 11 Cases under Bankruptcy Code section 1112 or otherwise shall be deemed to provide (in accordance with Bankruptcy Code sections 105 and 349) that (a) the DIP Agent's liens, DIP Lender's liens, the Pre-Petition Agent's liens, the Pre-Petition Lender's liens, the Bank Product Provider's liens, and the Adequate Protection Liens and security interests in the DIP Collateral shall continue in full force and effect notwithstanding such dismissal until the DIP Facility Obligations are indefeasibly paid and satisfied in full, in cash; and (b) this Court shall retain jurisdiction, to the extent permissible under applicable law, notwithstanding such dismissal, for the purposes of enforcing the DIP Superpriority Claim, the DIP Liens, the Adequate Protection Liens, and the Prepetition Adequate Protection Superpriority Claims.

34. Order Controls. To the extent that any of the provisions of this Order shall conflict with any provisions of the other DIP Financing Documents, the Credit Agreement, any of the Loan Documents or with any order of this Court authorizing the Debtors to continue the use of prepetition bank accounts, cash management systems, treasury management systems, business forms, any similar orders, or other "first-day orders" this Order is deemed to control and supersede the conflicting provisions therein. Notwithstanding anything in any of the Loan Documents to the contrary: (i) the priority of the DIP Lien and DIP Facility Obligations shall be as set forth in this Order and the DIP Financing Documents; and (ii) the terms of this Order and the DIP Financing Documents shall govern the terms and manner of disbursement and application of Proceeds of DIP Collateral to the DIP Facility Obligations and other Pre-Petition Obligations.

35. Immediate Effect of Order. The terms and conditions of this Order shall be effective and immediately enforceable upon its entry by the Clerk of the Court notwithstanding any potential application of Bankruptcy Rule 6004(h) or otherwise. Furthermore, to the extent applicable, the notice requirements and/or stays imposed by Bankruptcy Rules 4001(a)(3), 6003(b), and 6004(a) are hereby waived for good and sufficient cause. The requirements of Bankruptcy Rules 4001, 6003, and 6004, in each case to the extent applicable, are satisfied by the contents of the Motion.

36. Continuing Nature of Adequate Protection and Other Benefits. The DIP Agent, the DIP Lender, the Pre-Petition Agent, the Pre-Petition Lender, and the Bank Product Provider shall be entitled to the benefits, liens, priorities, and protections of this Order, including (a) the adequate protection afforded to the DIP Agent, the DIP Lender, the Pre-Petition Agent, the Pre-Petition Lender, and the Bank Product Provider as set forth in this Order, and (b) the protections afforded pursuant to Bankruptcy Code section 364(e), with respect to all loans, advances, and other financial accommodations made by them pursuant to this Order. The DIP Lien, the priority afforded the DIP Facility Advances, and the adequate protection afforded to the DIP Agent, the DIP Lender, the Pre-Petition Agent, the Pre-Petition Lender, the Bank Product Provider, as set forth in this Order, shall be binding on the Debtors and any successor trustee or trustees even if this Order is reversed or modified on appeal with respect to all loans, advances, and other financial accommodations made by them pursuant to this Order. Except as provided herein, no Proceeds or Cash Collateral may be used by any party in interest seeking to modify any of the rights granted to the DIP Agent, the DIP Lender, the Pre-Petition Agent, the Pre-Petition Lender, the Bank Product Provider hereunder or under any other DIP Financing Documents.

37. DIP Facility Modifications. The Debtors and the DIP Agent may implement non-material modifications of the DIP Credit Agreement and other DIP Financing Documents (other than this Order or the Final Order) without the need for notice or further approval of this Court, provided, however, that copies of such amendments will be provided to the U.S. Trustee and the Statutory Committee (if any). The Debtors and the DIP Agent may implement material modifications of such DIP Financing Documents on at least seven (7) calendar days' prior notice to the Statutory Committee (if any) and the U.S. Trustee.

38. Further Assurances. The Debtors are authorized to do and perform all acts, to make, execute, and deliver all instruments and documents (including, without limitation, the execution or recordation of security agreements, mortgages, deeds of trust, and financing statements), and to pay all fees and expenses that may be required or necessary for the Debtors' performance under this Order or the DIP Financing Documents, including, without limitation, (a) the execution of the DIP Credit Agreement, (b) the payment of the fees and other expenses described herein or in the DIP Financing Documents as such become due, including, without limitation, agent fees, commitment fees, letter of credit fees, and facility fees.

39. Retention of Jurisdiction. This Court shall retain jurisdiction to enforce the provisions of this Order, the DIP Facility, the DIP Credit Agreement, and the other DIP Financing Documents, and this Court shall retain jurisdiction over all matters pertaining to the implementation, interpretation and enforcement of this Order, the DIP Facility and the DIP Financing Documents.

40. 364(e) Protections. This Court has considered and determined the matters addressed herein pursuant to its powers under the Bankruptcy Code, including the power to authorize the Debtors to obtain credit on terms and conditions to which the Debtors and DIP

Agent and DIP Lender have agreed. Thus, each of the terms and conditions constitutes a part of the authorization under Bankruptcy Code section 364, and is, therefore, subject to the protections contained in Bankruptcy Code section 364(e), regardless of (i) any stay, modification, amendment, vacation, or reversal of this Order or any of the DIP Financing Documents or any term hereunder or thereunder; (ii) the failure to obtain a final order pursuant to Bankruptcy Rule 4001(c)(2); or (iii) the dismissal or conversion of any of the Chapter 11 Cases.

41. Extension of Bankruptcy Rule 9023 and/or 9024 Deadline As to the priming liens granted herein to the DIP Agent and the DIP Lender, the time period provided under Bankruptcy Rule 9023 and/or 9024 shall be extended to the date of the Final Hearing for any creditor asserting a perfected lien on the Debtors' pre-petition assets.

42. Final Hearing. A final hearing with respect to the Motion is scheduled for December 11, 2017 at 2:00 p.m. (central) (the "**Final Hearing**") before the Honorable Mark X. Mullin, United States Bankruptcy Judge. The Debtors shall promptly mail copies of this Order (which shall constitute adequate notice of the Final Hearing) to the parties having been given notice of the Interim Hearing and to any other party that has filed a Bankruptcy Rule 2002 request for service. Any party in interest objecting to the relief sought at the Final Hearing shall file written objections with this Court, and serve them on (i) the Debtors' proposed counsel, Gardere Wynne Sewell LLP, attn: Mark C. Moore, 2021 McKinney Avenue, Suite 1600, Dallas, TX 75201; (ii) the DIP Agent, the DIP Lender, the Pre-Petition Agent, and the Pre-Petition Lender's lead counsel, John Robert Weiss and Matthew A. Olins, Duane Morris LLP, 190 South LaSalle Street, Suite 3700, Chicago, IL 60603-3433 and the DIP Agent, the DIP Lender, the Pre-Petition Agent, and the Pre-Petition Lender's local counsel, David Weitman, K&L Gates LLP, 1717 Main Street, Suite 2800, Dallas, Texas 75201; (iii) and the U.S. Trustee, 1100 Commerce

Street, Room 976, Dallas, TX 75242 on or before 5:00 p.m. (prevailing Central time) on December 6, 2017, setting forth in particularity the basis for the objections.

END OF ORDER

AGREED TO:

/s/ Stephen A. McCartin

Stephen A. McCartin (TX 13374700)

Mark C. Moore (TX 24074751)

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