IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In Re:	**Case No.: 24-70418-JAD**
POTTSVILLE OPERATIONS, LLC, *et al.*,[1]	**Chapter 11**
Debtors.	***Joint Administration Requested***
	Doc. No.:
POTTSVILLE OPERATIONS, LLC, *et al.*	**Related to Document No.:**
Movants,	**Hearing Date:**
-vs-	**Hearing Time:**
NO RESPONDENTS,	**Response Deadline:**
Respondents.	

DEBTORS' EMERGENCY MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO OBTAIN POST-PETITION FINANCING, (II) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL, (III) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (IV) APPROVING ADEQUATE PROTECTION, (V) MODIFYING THE AUTOMATIC STAY, (VI) SCHEDULING A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF

The above-captioned debtors and debtors in possession (the "Debtors") in the above-captioned chapter 11 cases (collectively, the "Chapter 11 Cases"), represent as follows in support of this motion (the "Motion"):

JURISDICTION AND VENUE

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number are: Pottsville Operations, LLC (9467); Pottsville Propco, LLC (8685); Hampton House Operations, LLC (8969); Hampton House Propco, LLC (7258); Kingston Operations, LLC (1787); Kingston Propco, LLC (8562); Williamsport North Operations, LLC (9927); Williamsport Propco, LLC (2039); Williamsport South Operations, LLC (0298); Yeadon Operations, LLC (9296); and Yeadon Propco, LLC (5785). The Debtors' address is 425 West New England Avenue, Suite 300, Winter Park, Florida 32789.

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

RELIEF REQUESTED

2. Pursuant to sections 105(a), 361, 362, 363, 364, 503, 506(c), 507 and 552 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq*. (the "Bankruptcy Code"), Rules 2002, 4001, 6004 and 9014 of the Federal Rule of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 4001-2 of the Bankruptcy Local Rules for the Western District of Pennsylvania (the "Local Rules"), the Debtors seek entry of an interim order, substantially in the form attached hereto as **Exhibit A** (the "Interim DIP Order"), and, subsequently, a final order to be proposed granting the relief requested herein on a final basis (the "Final DIP Order" and, together with the Interim DIP Order, the "DIP Orders"), providing as follows:

a. Accessing the DIP Facility – authorizing the Debtors, as borrowers, to obtain a post-petition loan facility in the aggregate principal amount of up to $7.782 million, $2.5 million of which will be a potential additional delayed draw tranche with availability determined solely in the DIP Lender's discretion (the "DIP Facility" and all extensions of credit and amounts made or deemed made under the DIP Facility, the "DIP Loans"), and to otherwise incur the DIP Obligations (defined below) on the terms and conditions set forth in the Interim DIP Order and the DIP credit agreement (the "DIP Credit Agreement" and together with all loan documents, the "DIP Loan Documents");

b. Entry into DIP Loan Documents – authorizing the Debtors to execute and deliver the DIP Loan Documents and to perform their obligations thereunder and such other and further acts as may be necessary or appropriate in connection therewith;

c. Borrowing of Interim Funding Amount – authorizing the Debtors to borrow up to $3 million of DIP Loans on an interim basis (the "Interim Funding Amount") and use proceeds of such borrowings in accordance with the DIP Loan Documents, the Interim DIP Order, and the Budget (defined below);

d. Roll-Up – authorizing the Debtors, subject to entry of the Interim DIP Order, to access the full remaining balance of the DIP Facility, of which $282,000 shall be borrowed to permanently convert prepetition amounts the DIP Lender loaned to the Debtors (the "Roll-Up") to cover bankruptcy-related costs and expenses pursuant to the Prepetition Bankruptcy-Related Loan (defined below);

e. DIP Liens – authorizing the Debtors to provide a senior secured lien on all of the Debtors' accounts receivable (the "Accounts Receivable") and the proceeds thereof, with dates of service arising both pre- and post-petition, to secure the DIP Obligations (defined below);

f. Use of Cash Collateral – authorizing the Debtors to use the cash collateral (as such term is defined in section 363(a) of the Bankruptcy Code, the "Cash Collateral") pursuant to section 363 of the Bankruptcy Code, subject to the Budget and the terms of the Interim DIP Order;

g. Adequate Protection – authorizing the Debtors to make certain payments to Oxford Finance LLC ("Oxford") in accordance with the Budget on account of the Prepetition Loan Obligations;

h. Exercise of Remedies; Modification of Stay – authorizing the DIP Lender to exercise remedies under, and in accordance with, the DIP Loan Documents and the Interim DIP Order upon the occurrence and during the continuance of an Event of Default (defined below) and modification of the automatic stay to the extent necessary to permit such exercise of remedies;

i. Performance of DIP Obligations – authorizing the Debtors to perform their obligations under, and pay the fees set forth in, the DIP Credit Agreement and the other DIP Loan Documents;

j. Section 506(c) Waiver – approving, subject to entry of the Final Interim Order, the waiver by the Debtors of any right to seek to surcharge against the DIP Collateral (as defined in the Interim Order) pursuant to section 506(c);

k. Scheduling an Interim Hearing – scheduling, pursuant to Bankruptcy Rule 4001, an interim hearing (the "Interim Hearing") on the Motion to be held before this Court to consider entry of the Interim DIP Order;

l. Scheduling a Final Hearing – scheduling, pursuant to Bankruptcy Rule 4001, a final hearing (the "Final Hearing") for this Court to consider entry of the Final DIP Order authorizing and approving on a final basis the relief requested herein; and

m. granting related relief.

SUMMARY OF DIP LOAN AND USE OF CASH COLLATERAL

3. In accordance with Bankruptcy Rules 4001(b), (c) and (d), the following is a concise statement and summary of the material terms of the proposed DIP Loan, as set forth in the DIP Documents and Interim DIP Order:[2]

Bankruptcy Rule	Summary of Material Terms
Parties *FED. R. BANKR. P. 4001(c)(1)(B)*	**Borrowers**. Each of the Debtors, as debtors in possession, including Hampton House Propco LLC; Kingston Propco LLC; Yeadon Propco LLC; Pottsville Propco LLC; and Williamsport Propco LLC (collectively, the "Propco Debtors"); and Hampton House Operations LLC; Kingston Operations LLC; Yeadon Operations LLC; Pottsville Operations LLC; Williamsport North Operations LLC; and Williamsport South Operations LLC (collectively, the "Opco Debtors"). **Guarantors.** None. **DIP Lender**. Eden Senior Care, LLC (the "DIP Lender"). *See* Interim DIP Order Preamble; DIP Credit Agreement, p. 1.
DIP Facility and Borrowing Limits *FED. R. BANKR. P. 4001(c)(1)(B)*	The DIP Facility shall consist of a new money term loan facility in the aggregate principal amount of up to $7.782 million, $2.5 million of which will be a potential additional delayed draw tranche with availability determined solely in DIP Lender's discretion (the "DIP Financing"). *See* Interim DIP Order Preamble; DIP Credit Agreement at Sections 3.1 and 3.2.
Roll-Up *FED. R. BANKR. P. 4001(c)(1)(B)*	$282,000 shall be borrowed to permanently convert prepetition amounts the DIP Lender loaned to the Debtors to cover bankruptcy-related necessary costs and expenses pursuant to the Prepetition Bankruptcy-Related Loan. *See* Interim DIP Order at Paragraph 10(a); DIP Credit Agreement at Recital Paragraph L.
Interest Rate *FED. R. BANKR. P. 4001(c)(1)(B)*	Interest on the DIP Facility shall accrue at a rate per annum equal to 12.5% per annum (the "Interest Rate"). All interest shall accrue daily on the principal amount outstanding and be computed on the basis of a 360-day year. After the occurrence and during the continuation of an Event of Default under the DIP Orders (as defined below), interest on the DIP Loans shall accrue at the Default Interest Rate, which shall be the Interest Rate plus 5.0% per annum. *See* DIP Credit Agreement at Sections 1.1, 3.6, and 3.7.

[2] The summary of the DIP Loan Documents and Interim DIP Order set forth herein is a summary of material terms; accordingly, certain terms of the DIP Loan Documents and Interim DIP Order may be omitted, in whole or in part. Interested parties should read the DIP Loan Documents and Interim DIP Order in their entirety. In the event of any inconsistencies between this summary and the DIP Loan Documents or Interim DIP Order, the DIP Loan Documents or Interim DIP Order, as applicable, shall control. If there are any inconsistencies between the DIP Loan Documents and DIP Orders, the terms of the Interim DIP Order shall control until entry of the Final DIP Order, at which time the terms of the Final DIP Order shall govern, including in the event of any inconsistency between the Interim DIP Order and the Final DIP Order. Unless otherwise states, capitalized terms used in this summary shall have the meanings ascribed to them in the Interim DIP Order, Final DIP Order, or DIP Loan Documents, as applicable.

Bankruptcy Rule	Summary of Material Terms
Term *FED. R. BANKR. P. 4001(c)(1)(B)*	The DIP Facility shall mature and be due and payable upon the earliest to occur of: (a) 160 days after the Petition Date, (b) the date of consummation of a sale of all or substantially all of the Debtors' assets under section 363 or a plan under section 1129 of the Bankruptcy Code, (c) the effective date of an approved plan, (d) the date on which the DIP loan obligations become due and payable pursuant to the DIP Credit Agreement, whether by acceleration or otherwise, and (e) the date of acceleration of the DIP Loans (the "Maturity Date"). *See* DIP Credit Agreement Sections 1.1 and 3.5
Adequate Protection *FED. R. BANKR. P. 4001(b)(1)(B)(iv); 4001(c)(1)(B)(ii)*	The Debtors shall make certain payments to Oxford in accordance with the Budget on account of the Prepetition Obligations. The Debtors also grant to Oxford continuing, valid, binding, enforceable, non-avoidable and automatically perfected post-petition security interests in and liens on all of the Prepetition Collateral (subject to any senior liens on Accounts of the DIP Lender). *See* Interim DIP Order at Paragraph 18.
DIP Facility Events of Default *FED. R. BANKR. P. 4001(c)(1)(B)*	The DIP Loan Documents and DIP Orders contain events of default that generally are usual and customary for debtor-in-possession financings of this type (collectively, the "Events of Default"). *See* Interim DIP Order at Paragraph 12; DIP Credit Agreement at Article XIV.
Liens and Priority Granted for New Credit *FED. R. BANKR. P. 4001(c)(1)(B)*	All obligations of the Debtors to the DIP Lender under the DIP Facility, including, without limitation, all principal and accrued interest, premiums, costs, fees, expenses and any other amounts due under the DIP Facility (collectively, the "DIP Obligations"), shall be secured by (a) a first position senior priming lien on the Accounts Receivable and the proceeds thereof, with dates of service arising both pre- and post-petition, up to the aggregate amount of the DIP Loans and the Prepetition Bankruptcy-Related Loan; and (b) a secured lien on all of the Debtors' other collateral that is junior to the liens of Oxford on such collateral (the "DIP Liens"), pursuant to Bankruptcy Code §§ 364(d)(1). The DIP Liens shall be effective and perfected with the foregoing specified priority as of the entry of the Interim DIP Order and without requiring the execution, filing, or recording of mortgages, security agreements, intercreditor agreements, subordination agreements, control agreements, acknowledgments, financing statements, fixture filings, or other agreements or instruments, or the taking of any action to obtain possession or control of any collateral. However, if the DIP Lender so requires, the Debtors shall use their commercially reasonable efforts to execute, file or record any or all of the documents described in the preceding sentence and/or take any action so that the DIP Lender obtains possession or control of any collateral. *See* Interim DIP Order at Paragraph 10; DIP Credit Agreement at Article VIII.
Superpriority Expense Claims for New Credit *FED. R. BANKR. P. 4001(c)(1)(B)(i)*	All of the claims of the DIP Lender on account of the DIP Obligations shall be entitled to the benefits of section 364(c)(1) and 364(e) of the Bankruptcy Code and shall have superpriority over any and all administrative expenses of the kind that are specified in sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1114 or any other provisions of the Bankruptcy Code, (the "Superpriority DIP Claims"), subject only to the Carve-Out (defined below). The Superpriority DIP Claims will, at all times during the period that the DIP Loans remain outstanding, remain in priority to all other claims or administrative expenses, subject only to the Carve-Out. *See* Interim DIP Order at Paragraph 8; DIP Credit Agreement at Section 11.37.

Bankruptcy Rule	Summary of Material Terms
Carve-Out *FED. R. BANKR. P. 4001(c)(1)(B)(i)*	The Interim DIP Order provides a "Carve Out" of certain statutory fees and allowed professional fees including (a) all unpaid fees required to be paid in the Chapter 11 Case to the Clerk of the Bankruptcy Court and to the office of the United States Trustee under 28 U.S.C. § 1930(a)(6); (b) the reasonable unpaid fees, costs, and disbursements of professionals retained by the Debtors and committee in the Chapter 11 Cases, including any third party CRO or similar officers working on behalf of the Debtors (the "Estate Professionals") that are provided for in the Budget and incurred prior to the delivery by the DIP Lender of a Carve-Out Trigger Notice (as defined below), and are allowed, if required, by the Bankruptcy Court (after notice and hearing) under sections 327, 330, or 363 of the Bankruptcy Code and remain unpaid after application of any retainers being held by such professionals; and (c) the reasonable unpaid fees, costs, and disbursements of the Estate Professionals that are incurred after the delivery of a Carve-Out Trigger Notice by the DIP Lender, that are allowed by the Bankruptcy Court (after notice and hearing) under sections 327, 330, or 363 of the Bankruptcy Code after application of any retainers being held by such professionals, in an aggregate amount not to exceed $150,000 (the "Post-Default Carve-Out Cap"). The term "Carve-Out Trigger Notice" shall mean a written notice delivered by the DIP Lender to the Debtors' counsel, committee counsel and the United States Trustee, which notice may be delivered at any time following the occurrence and during the continuation of an Event of Default, expressly stating that the Post-Default Carve-Out Cap is triggered. *See* Interim DIP Order at Paragraph 9.
Parties with an Interest in Cash Collateral *FED. R. BANKR. P. 4001(c)(1)(B)(i)*	The DIP Lender and Oxford. *See* Interim DIP Order at Paragraphs 4 & 5.
Duration/Use of Cash Collateral *FED. R. BANKR. P. 4001(b)(1)(B)(ii)*	Subject to the terms and conditions of the Interim DIP Order, and in accordance with the Budget (as defined below), the Debtors may use Cash Collateral. *See* Interim DIP Order at Paragraph 17.
Liens, Cash Payments, or Adequate Protection Provided for Use of Cash Collateral *FED. R. BANKR.P. 4001(b)(1)(B)(iv) 4001(c)(1)(B)(ii)*	With the exception of the DIP Lender's first priority priming lien on the Accounts Receivable and proceeds thereof up to the amount of the DIP Loans and the Prepetition Bankruptcy-Related Loan, the DIP Liens shall be junior to Oxford's existing first priority liens. The Debtors also grant to Oxford continuing, valid, binding, enforceable, non-avoidable and automatically perfected post-petition security interests in and liens on all of the Prepetition Collateral (subject to any senior liens on Accounts of the DIP Lender). *See* Interim DIP Order at Paragraph 10.
DIP Budget *FED. R. BANKR.P. 4001(c)(1)(B)*	The use of DIP Facility proceeds and Cash Collateral is subject to the Budget attached as **Exhibit A** to the DIP Credit Agreement, as amended from time to time, plus any uses agreed to in writing by the DIP Lender and Oxford. *See* Interim DIP Order at Paragraph 11.
Conditions to Borrowing *FED. R. BANKR. P. 4001(c)(1)(B)*	The DIP Loan Documents include standard and customary conditions to borrowing, the satisfaction of which is a condition precedent to the obligations of the DIP Lender to provide the DIP Facility. *See* DIP Credit Agreement at Article V.
Covenants *FED. R. BANKR. P.*	The DIP Credit Agreement contains usual and customary affirmative and negative

Bankruptcy Rule	Summary of Material Terms
4001(c)(1)(B)	covenants for financings of this type. *See* DIP Credit Agreement at Section 2.2.
Fees, Expenses, and Additional Payments *FED. R. BANKR. P. 4001(c)(1)(B)*	**Fees and Expenses of Professionals and U.S. Trustee:** The Debtors shall pay the undisputed reasonable and documented professional fees, expenses and disbursements of the DIP Lender and Oxford no later than ten (10) business days after the receipt by counsel for the Debtors, any committee, and the U.S. Trustee without the necessity of filing formal fee applications, including such amounts arising before the Petition Date. **Loan Fees:** The Debtors shall also pay the certain fees that are customary including, but not limited to, (i) interest due on the DIP Loans and any points, loan fees, service charges, commitment fees or other fees due to the DIP Lender in connection with the DIP Loans; (ii) all title examination, survey, escrow, filing, search, recording and registration fees and charges; (iii) all documentary stamp and other taxes and charges imposed by law on the issuance or recording of any of the DIP Loan Documents; (iv) all appraisal fees; (v) all title insurance premiums; (vi) all fees and disbursements of legal counsel engaged by the DIP Lender in connection with the DIP Loans, including, without limitation, counsel engaged in connection with the enforcement or administration of the DIP Credit Agreement or any of the DIP Loan Documents; and (vii) any amounts required to be paid by the Debtors under the DIP Credit Agreement or ancillary documents after the occurrence of an Event of Default. *See* Interim DIP Order at Paragraph 23; DIP Credit Agreement at Section 6.2.
Terms of Use and Purposes for Use of DIP Proceeds and Cash Collateral *FED. R. BANKR. P. 4001(c)(1)(B) 4001(b)(1)(B)(ii)*	The Debtors are authorized to use proceeds of the DIP Financing in accordance with the Interim DIP Order and the Budget, subject to an allowed budget variance. Proceeds shall be used solely in accordance with the Budget plus any other uses agreed to in writing by the DIP Lender. *See* Interim DIP Order at Paragraph 17; DIP Credit Agreement at Section 11.19.
Waiver or Modification of the Automatic Stay *FED. R. BANKR. P. 4001(c)(1)(B)(iv)*	Pursuant to the Interim DIP Order, the automatic stay provisions of section 362 of the Bankruptcy Code are modified to the extent necessary to implement and effectuate the terms of the Interim DIP Order. *See* Interim DIP Order at Paragraphs 13 & 19.
Stipulations of the Debtors *FED. R. BANKR. P. 4001(b)(1)(B)(iii)*	The Debtors have stipulated to, among other things, the validity, enforceability, perfection, priority, and amount, as applicable, of the claims, rights, and liens of Oxford with respect of the Prepetition Loan Obligations, the Prepetition Liens, and the outstanding amounts under the Prepetition Loans. *See* Interim DIP Order at Paragraph 4.
Milestones *FED. R. BANKR. P. 4001(c)(1)(B)*	The milestones required under the DIP Credit Agreement consist of the following: a) On or before October 15, 2024, the Debtors will file voluntary petitions for relief under chapter 11 of the Bankruptcy Code. b) On or before October 18, 2024, the Debtors will obtain approval of the Interim DIP Order acceptable to the DIP Lender. c) On or before November 1, 2024, the Debtors will file a sale and procedures motion acceptable to the DIP Lender. d) On or before November 15, 2024, the Debtors will obtain approval of a bidding procedures which shall require a sale closing no later than January

Bankruptcy Rule	Summary of Material Terms
	15, 2025. e) On or before November 15, 2024, the Debtors will obtain approval of the Final DIP Order acceptable to the DIP Lender. f) On or before December 15, 2024, the bid deadline shall occur. g) On or before December 18, 2024, the auction (if any) shall occur. h) On or before December 20, 2024, the Bankruptcy Court shall have entered an order approving the sale. i) On or before January 15, 2025, the Debtors shall have closed on the transactions authorized under the sale order. *See* DIP Credit Agreement at Section 11.18.
Challenge Period *FED. R. BANKR. P. 4001(c)(1)(B)*	The stipulations and admissions contained in the Interim Order shall be binding upon (1) each Debtor and its respective estate under all circumstances; and (2) all other parties in interest, unless: (a) a party-in-interest obtains standing and files an applicable adversary proceeding or contested matter (a "Challenge") within one hundred twenty (120) days after entry of the Interim Order (the "Challenge Period"); *provided* that any such period may be extended in certain circumstances (including consent in writing by Oxford); and (b) a final order is entered sustaining a valid Challenge. If no Challenge is timely filed in respect of the Prepetition Loan Obligations then, among other things: (x) the Prepetition Loan Obligations shall constitute allowed claims, (y) the liens on the Prepetition Collateral securing the Prepetition Loan Obligations shall be deemed to be valid and (z) the Prepetition Loan Obligations and the liens on the Prepetition Collateral granted to secure the Prepetition Loan Obligations shall not be subject to any other or further challenge by any party-in-interest (including the Committee). *See* Interim DIP Order at Paragraph 22.
Releases, Waivers, or Limitation on any Claim or Cause of Action *FED. R. BANKR. P. 4001(c)(1)(B)(viii)*	The Interim DIP Order contemplates, among other things, releasing the DIP Lender and Oxford of certain claims and causes of action in connection with the DIP Facility and Prepetition Loans, as applicable. *See* Interim DIP Order at Paragraph 4.
Effect of Stipulations and Releases; Challenge Period *FED. R. BANKR.P. 4001(b)(1)(B)(iii), 4001(c)(1)(B)(iii), (viii)*	Paragraphs 4 and 22 of the Interim DIP Order provides that the Stipulations and Releases contained in the Interim DIP Order are binding on the Debtors, any committee, or any chapter 7 or chapter 11 trustee appointed or elected for any of the Debtors and any other person acting on behalf of the Debtors' estates, under all circumstances and for all purposes, subject to certain modifications in paragraph 22, including but not limited to a one hundred twenty (120) day challenge period for any committee and parties in interest (other than the Debtors and the DIP Lender). *See* Interim DIP Order at Paragraphs 4 and 22.
Waiver or Modification of Applicability of Non-Bankruptcy Law Relating to the Perfection or Enforcement of a Lien	All DIP Liens shall be valid and automatically perfected upon the entry of the Interim DIP Order. *See* Interim DIP Order at Paragraph 10.

Bankruptcy Rule	Summary of Material Terms
FED. R. BANKR. P. 4001(c)(1)(B)(vii)	
Reporting Information *FED. R. BANKR.P. 4001(c)(1)(B)*	Under the DIP Credit Agreement, the DIP Lender shall receive customary financial reporting from the Debtors during the Chapter 11 Cases. *See* Interim DIP Order at Paragraph 11; DIP Credit Agreement at Section 11.19.
Indemnification *FED. R. BANKR. P. 4001(c)(1)(B)(ix)*	The Debtors shall indemnify the DIP Lender and its officers, directors, employees, and agents (including all of their professionals) from claims of the sort that are typical in DIP facility indemnity provisions, except for gross negligence or willful misconduct, as described in more detail in the Interim DIP Order. *See* DIP Credit Agreement at Section 16.5.
Section 506(c) and 552(b) Waivers *FED. R. BANKR. P. 4001(c)(1)(B)*	The Interim DIP Order contemplates that the Final DIP Order will contain a waiver of section 506(c) of the Bankruptcy Code in favor of the DIP Lender and Oxford with respect to the DIP Collateral and Prepetition Collateral, as applicable. The Interim DIP Order contemplates that the Final DIP Order will contain a waiver of the "equities of the case" exception under section 552(b) of the Bankruptcy Code in favor of Oxford with respect to the proceeds of the Prepetition Collateral or any of the DIP Collateral or the extension of any adequate protection payments to cover proceeds of the Prepetition Collateral. *See* Interim DIP Order at Paragraphs 10 & 26.
Liens on Avoidance Actions *FED. R. BANKR. P. 4001(c)(1)(B)(xi)*	The DIP Facility does not provide for liens on claims or causes of action arising under chapter 5 of the Bankruptcy Code (collectively, the "Avoidance Actions"). However, the DIP Liens do include the proceeds of Avoidance Actions. *See* Interim DIP Order at Paragraph 10.

BACKGROUND

I. Chapter 11 Cases

4. On the date hereof (the "Petition Date"), the Debtors filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code—thereby commencing these Chapter 11 Cases. The Debtors continue to operate their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. As of the date hereof, no request for the appointment of a trustee or examiner has been made and no statutory committee has been appointed in these Chapter 11 Cases.

5. Additional information regarding the Debtors and these Chapter 11 Cases and the facts and circumstances supporting the relief requested herein is set forth in the *Declaration of Neil Luria, Chief Restructuring Officer of the Debtors, in Support of Chapter 11 Petitions and*

Various First Day Applications and Motions (the "First Day Declaration")[3] filed contemporaneously herewith and incorporated herein by reference.

6. In support of this Motion, the Debtors rely on the *Declaration of Neil Luria, Chief Restructuring Officer of the Debtors, in Support of the Debtors' Emergency Motion for Interim and Final Orders (I) Authorizing the Debtors to Obtain Post-Petition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Approving Adequate Protection, (V) Modifying Automatic Stay, (VI) Scheduling a Final Hearing, and (VIII) Granting Related Relief* (the "DIP Financing Declaration"), attached as **Exhibit B**.

II. Summary of the Debtors' Prepetition Capital Structure

A. The Debtors' Cash Management System.

7. As set forth more fully in the Debtors' *Motion for Entry of Interim and Final Orders (A) Authorizing the Debtors to (I) Maintain their Cash Management System and Pay Bank Fees, (II) Waive Certain U.S. Trustee Requirements, and (III) Continue Using Existing Checks and Business Forms, and (B) Authorizing and Directing the Debtors' Banks to Honor All Employee Related Payment Requests* (the "Cash Management Motion") filed contemporaneously herewith, the Debtors manage their cash, receivables, and payables through a cash management system (the "Cash Management System"). Each of the Debtors uses the Cash Management System to efficiently collect, transfer, concentrate, and disburse funds generated from its operations. The Cash Management System enables each Debtor to monitor the collection and disbursement of funds and the administration of their own bank accounts. Each Debtor maintains accounting

[3] Capitalized terms used but not otherwise defined in this Motion shall have the meaning set forth in the First Day Declaration or the Proposed Interim Order, as applicable.

controls with respect to each of its bank accounts that hold the Debtor's funds and can accurately trace the funds through its Cash Management System to ensure that all transactions are adequately documented and readily ascertainable.

8. The Debtors have a combined total of fifty-five (55) bank accounts. Certain of these accounts hold deposited accounts receivables that are automatically swept into a concentration account that transfers funds to Oxford, who uses those funds to service the debts under the Prepetition Loans. Subsequently, Oxford transfers the remaining funds to a disbursement account, which transfers those funds to each Debtors' respective operational account for use in the ordinary course of business.

9. A more complete description of the Cash Management System is set forth in the Cash Management Motion.

B. Oxford's Prepetition Secured Indebtedness.

10. Prior to the Petition Date, Oxford and the Propco Debtors are parties to that certain Term Loan and Security Agreement dated as of May 28, 2021 (the as amended and restated from time to time, the "Prepetition Term Loan Agreement"), pursuant to which Oxford provided the Propco Debtors a secured term loan facility in the maximum principal amount of $66,000,000.00 (the "Prepetition Term Loan").

11. The Propco Debtors' obligations under the Prepetition Term Loan are secured by mortgages (collectively, the "Prepetition Term Loan Mortgages") on the following properties (collectively, the "Propco Real Property"):

a. a mortgage from Hampton House Propco, LLC securing its real property commonly known as 1548 Sans Souci Parkway, Wilkes-Barre, Pennsylvania 18706;

b. A mortgage from Kingston Propco LLC securing its real property commonly known as 200 2nd Ave., Kingston, Pennsylvania 18704;

c. A mortgage from Yeadon Propco LLC securing its real property commonly known as 14 Lincoln Ave., Yeadon, Pennsylvania 19050;

d. A mortgage from Pottsville Propco LLC securing its real property commonly known as 420 Pulaski Drive, Pottsville, Pennsylvania 17901; and

e. A mortgage from Williamsport Propco LLC securing its real property commonly known as 101 and 300 Leader Drive, Williamsport, Pennsylvania 17901.

12. In addition, the Propco Debtors' obligations under the Prepetition Term Loan are further secured by the Term Loan Agreement and a Security Agreement dated as of May 28, 2021 (the "Prepetition Propco Term Loan Security Agreement") granting Oxford a lien and security interest in all personal property of the Propco Debtors (the "Prepetition Term Loan Lien").

13. In conjunction with the Prepetition Term Loan, the Propco Debtors entered into a Depository Agreement dated as of May 28, 2021 which was subsequently replaced by a Deposit Account Control Agreement dated May 3, 2024 (the "Propco DACA") granting Oxford a perfected security interest in the Propco Debtors' deposit accounts (the "Propco Accounts").

14. The Opco Debtors guaranteed all the Propco Debtors' obligations under the Prepetition Term Loan pursuant to the Guaranty Agreement dated May 28, 2021 (the "Prepetition Term Guaranty") executed by the Opco Debtors in favor of Oxford. The Opco Debtors' obligations under the Prepetition Term Guaranty are secured by a Security Agreement dated as of May 28, 2021 (the "Prepetition Opco Term Loan Security Agreement") granting Oxford a lien and security interest in all personal property of the Opco Debtors (the "Prepetition Guarantor Term Loan Lien")

15. In conjunction with the Prepetition Term Loan, the Opco Debtors entered into certain Deposit Account Control Agreements and Deposit Account Service Agreements which were subsequently replaced with certain Deposit Account Control Agreements and Deposit

Account Service Agreements dated on or about May 3, 2024 (the "Opco DACAs") and Deposit Account Service Agreements (the "Opco DAISAs") with Oxford granting Oxford a perfected security interest in the Opco Debtors' deposit accounts (the "Opco Accounts").

16. Pursuant to that certain Credit and Security Agreement dated as of May 28, 2021 (as amended and restated from time to time, the "Prepetition Credit Agreement"), by and among the Opco Debtors, Oxford, and the additional lenders from time to time party thereto, Oxford provided the Opco Debtors with a secured revolving facility in the maximum principal amount of \$13,000,000.00 (the "Prepetition Revolver" and together with the Prepetition Term Loan, the "Prepetition Loans").

17. Pursuant to the Prepetition Credit Agreement and a Security Agreement dated May 28, 2021 (the "Prepetition Revolver Security Agreement") and other applicable loan documents, the Opco Debtors granted to Oxford a lien and security interest in all personal property of the Opco Debtors (the "Prepetition Revolver Lien").

18. In conjunction with the Prepetition Revolver, the Opco Debtors entered into the Opco DACAs and Opco DAISAs granting Oxford a perfected security interest in Opco Accounts.

19. The Propco Debtors guaranteed all the Opco Debtors' obligations under the Prepetition Revolver pursuant to the Guaranty Agreement dated May 28, 2021 (the "Prepetition Revolver Guaranty" and together with the Prepetition Term Guaranty, the "Prepetition Guaranties") executed by the Propco Debtors in favor of Oxford.

20. The Propco Debtors' obligations under the Prepetition Revolver Guaranty are secured by mortgages (collectively, the "Prepetition Revolver Mortgages" and together with the Prepetition Term Loan Mortgages, the "Prepetition Mortgages") on the Propco Real Property.

21. The Propco Debtors' obligations under the Prepetition Revolver Guaranty are secured by a Security Agreement dated as of May 28, 2021 (the "Prepetition Propco Revolver Security Agreement") granting Oxford a lien and security interest in all personal property of the Propco Debtors (the "Prepetition Guarantor Revolver Lien").

22. In conjunction with the Prepetition Revolver Guaranty, the Propco Debtors entered into the Propco DACA granting Oxford a perfected security interest in the Propco Accounts.

23. The loan documents entered into by the parties in conjunction with the Prepetition Term Loan, Prepetition Term Guaranty, Prepetition Revolver, and Prepetition Revolver Guaranty are collectively referred to herein as the "Prepetition Loan Documents."

24. All security interests granted to Oxford in conjunction with the Prepetition Loan Documents (including but not limited to the Prepetition Mortgages, Prepetition Term Loan Lien, Propco DACA, Prepetition Guarantor Term Loan Lien, Opco DACAs, Opco DAISAs, Prepetition Revolver Lien, and Prepetition Guarantor Revolver Lien are collectively referring to herein as the "Prepetition Liens."

25. All of the Debtors' property subject to the Prepetition Liens shall collectively be referred to herein as the "Prepetition Collateral."

26. As of the Petition Date, $49,118,523.64 remains outstanding on the Prepetition Term Loan and $0 remains outstanding on the Prepetition Revolver (collectively, the "Outstanding Prepetition Loan Amounts").

27. The Prepetition Liens are senior liens on the Prepetition Collateral. However, as set forth herein, Oxford has consented to the priming of the Accounts Receivable and the proceeds thereof up to the amount of the DIP Loans and the Prepetition Bankruptcy-Related Loan, such that

the DIP Lender will hold the senior secured interest in the Accounts Receivable and the proceeds thereof.

C. The Prepetition Bankruptcy-Related Loan.

28. Shortly before the Petition Date, on or around October 11, 2024, the DIP Lender provided a loan in the amount of $282,000 to the Debtors, the proceeds of which funded certain costs and expenses necessary for filing these Chapter 11 Cases (the "Prepetition Bankruptcy-Related Loan"). Specifically, the Prepetition Bankruptcy-Related Loan proceeds were solely used to fund the following (collectively, the "Prepetition Bankruptcy-Related Loan Expenses"): (a) the retainer and prepetition services of the Debtors' proposed co-counsel, Baker & Hostetler LLP, in the amount of $200,000; (b) the retainer of the Debtors' proposed local and co-counsel, Raines Feldman Littrell LLP, in the amount of $50,000; (c) the retainer and prepetition services of the Debtors' proposed financial advisors, SOLIC, in the amount of $256,192; (d) the retainer of the Debtors' proposed claims and noticing agent, Stretto, in the amount of $25,000; and (e) $46,988 to HUB International for necessary D&O and CRO insurance policies. All of the costs and expenses related to the Prepetition Bankruptcy-Related Loan Expenses were strictly limited to those fees and expenses that were absolutely necessary to commence these Chapter 11 Cases. In my opinion, without the Prepetition Bankruptcy-Related Loan, these Chapter 11 Cases could not have been filed, which would have devastated the Debtors and, more importantly, would have had significant negative effects on the residents of the Debtors' facilities that rely on the Debtors' continued operations.

29. The DIP Loan Documents provide that the Prepetition Bankruptcy-Related Loan will "roll-up" into the DIP Facility and become a DIP Obligation. As discussed above, the

Prepetition Bankruptcy-Related Loan was not incurred for any purpose other than to make the filing of these Chapter 11 Cases possible.

D. The Post-Petition Financing.

30. Based on the review and evaluation of the Debtors' financial forecasts and Budget by the Debtors' advisors, the Debtors require an immediate capital infusion in the form of the DIP Facility and access to Cash Collateral in order to continue to operate their businesses post-petition. *See* DIP Financing Decl. ¶ 8.

31. The DIP Facility and Cash Collateral are critically necessary to fund working capital needed to continue operations on a short-term basis until the Debtors' facilities can be transferred to a new owner, including to satisfy vendor obligations, pay suppliers, cover overhead costs, and pay expenses and billings related to the Debtors' operations. *See* DIP Financing Decl. ¶¶ 8 & 9.

32. Additionally, the immediate access to the DIP Facility and Cash Collateral will cover the projected costs of the Chapter 11 Cases and make any other payments that are essential for the continued management, operation, and preservation of the Debtors' businesses. The ability to satisfy these expenses when due is essential to the continued operation of the Debtors' businesses.

33. Accordingly, the Debtors have determined that, in the exercise of their sound business judgment, obtaining the DIP Facility under the terms of the DIP Credit Agreement in the form attached as **Exhibit A-1** to the Proposed Interim Order, the other DIP Loan Documents, and the DIP Orders, all in accordance with the Budget, is in the best interests of the Debtors, their estates, and their creditors.

34. To be clear, given the Debtors' current financial condition, financing arrangements, and capital structure, the Debtors are unable to obtain adequate financing from sources other than the DIP Lender on terms more favorable than the DIP Facility. Notwithstanding their efforts with the assistance of their advisors, the Debtors have been unable to obtain unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. If the Debtors are unable to access the DIP Facility, the Debtors believe the only viable alternative is an expedited shut down process, which could have negative effects on the Debtors' residents, employees, and other parties in interest. *See* DIP Financing Decl. ¶ 12.

35. The Debtors also have been unable to obtain credit: (a) having priority over that of administrative expenses of the kind specified in sections 503(b), 507(a) and 507(b) of the Bankruptcy Code; (b) secured by a lien on property of the Debtors and their estates that is not otherwise subject to a lien; or (c) secured solely by a junior lien on property of the Debtors and their estates that is subject to a lien.

36. Further, financing on a post-petition basis is not otherwise available without granting the DIP Lender: (i) perfected security interests in and liens on (each as provided herein) all of the Debtors' existing and after-acquired assets with the priorities set forth herein; (ii) superpriority claims; and (iii) the other protections set forth in the proposed Interim DIP Order. *See* DIP Financing Decl. ¶¶ 12 & 13.

37. In summary, the DIP Lender is willing to make loans and other financial accommodations to the Debtors, but only in accordance with, and on the terms and conditions set forth in, the DIP Credit Agreement, the other DIP Loan Documents, and the Proposed Interim Order.

E. <u>The Debtors' Marketing Efforts for Post-Petition Financing</u>.

38. Because Oxford would not consent to the priming of its senior secured liens (except with respect to the Accounts Receivable and the proceeds thereof up to the amount of the DIP Loans and the Prepetition Bankruptcy-Related Loan), the Debtors' ability to obtain DIP financing was substantially limited. However, the Debtors did explore the possibility of obtaining a DIP loan from Oxford, but after extensive negotiations the parties ultimately reached the conclusion that the DIP Lender would provide the DIP Loans with Oxford's consent to the priming of its liens with respect to the Debtors' Accounts Receivable and the proceeds thereof up to the amount of the DIP Loans and the Prepetition Bankruptcy-Related Loan. *See* DIP Financing Decl. ¶ 11. Thereafter, the operator of the Debtors' facilities, the DIP Lender, agreed to provide the DIP Facility subject to the terms of the DIP Credit Agreement, the other DIP Loan Documents, and the Interim DIP Order. *See* DIP Financing Decl. ¶ 13.

REQUIREMENTS UNDER LOCAL RULE 4001-2

39. Local Rule 4001-2(b)(1) requires that certain provisions contained in the DIP Credit Agreement be highlighted and that the Debtors provide justification for the inclusion of each such highlighted provision. Below, the Debtors identify and discuss the following provisions of the DIP Credit Agreement and the Interim Order in accordance with Local Rule 4001-2(b)(1) in the context and circumstances of these Chapter 11 Cases.

I. Local Rule 4001-2(b)(1)(A)

40. Cross-Collateralization. Local Rule 4001-2(b)(1)(A) requires disclosure of provisions that grant cross-collateralization protection (other than replacement liens or other adequate protection) to the prepetition secured creditors (*i.e.*, clauses that secure prepetition debt by post-petition assets in which the secured creditor would not otherwise have a security interest by virtue of its prepetition security agreement or applicable law). The DIP Loan Documents do

not grant cross-collateralization protection to prepetition secured creditors other than with respect to certain payments made to Oxford in accordance with the Budget on account of the Prepetition Loan Obligations.

II. Local Rule 4001-2(b)(1)(B)

41. Stipulation and Challenge Provisions. Local Rule 4001-2(b)(1)(B) requires disclosure of provisions or findings of fact that bind the estate or other parties in interest with respect to the validity, perfection, or amount of the secured creditor's prepetition lien or the waiver of claims against the secured creditor without first giving parties in interest at least one hundred twenty (120) days from the date of the order or (b) ninety (90) days from the date a committee is formed and retains counsel, to investigate such matters.

42. Pursuant to paragraph 4 of the Interim DIP Order, the Debtors make various stipulations, including, but not limited to, stipulations regarding: (a) the validity and amount of the obligations and liens under the Prepetition Loan Documents; (b) the fact that neither the DIP Lender nor Oxford are control persons or insiders of the Debtors; (c) the Debtors' release of certain claims and defenses that arose prior to entry of the Interim DIP Order against the DIP Lender or Oxford based on the DIP Documents or the Prepetition Loan Documents (as applicable); and (d) the effectiveness of certain provisions of the Intercreditor Agreement.

43. Under paragraph 22 of the Interim DIP Order, the Debtors and their estates are bound by these stipulations in all events with the exception of certain challenges To that end, parties-in- interest may challenge these stipulations by obtaining standing and filing an applicable adversary proceeding or contested matter within one hundred twenty (120) days after entry of the Interim DIP Order, with such periods being subject to extension in certain circumstances. These stipulations and the related challenge period were required as a condition of receiving Oxford's

consent to priming of its senior lien on the Accounts Receivable. The Debtors respectfully assert that these stipulations and the challenge period are necessary and appropriate under the circumstances of these Chapter 11 Cases.

III. Local Rule 4001-2(b)(1)(C)

44. Chapter 5 of the Bankruptcy Code Waiver. Local Rule 4001-2(b)(1)(C) requires disclosure of provisions that seek to waive or release, without notice and/or hearing, whatever rights the estates may have under applicable law, including without limitation, chapter 5 of the Bankruptcy Code. Other than the claims and causes of action waived by the Debtors pursuant to the stipulations discussed above (which stipulations are not binding on third parties until expiration of the challenge period), the DIP Loan Documents do not waive or release any rights of the estates under applicable law, including without limitation, chapter 5 of the Bankruptcy Code.

IV. Local Rule 4001-2(b)(1)(D)

45. Liens on Avoidance Actions. Local Rule 4001-2(b)(1)(D) requires disclosure of provisions that immediately grant to the prepetition secured creditor liens on the debtor's claims and causes of action arising under 11 U.S.C. §§ 544, 545, 547, 548, and 549. The DIP Liens will not include liens on avoidance actions but will include liens on the proceeds of avoidance actions. As explained herein, the Debtors were unable to obtain DIP financing on more favorable terms than the DIP Facility. Accordingly, the Debtors respectfully submit liens on avoidance actions proceeds is appropriate and necessary in these Chapter 11 Cases.

V. Local Rule 4001-2(b)(1)(E)

46. Roll-Up. Local Rule 4001-2(b)(1)(E) requires disclosure of provisions that deem prepetition secured debt to be post-petition debt or that use post-petition loans from a prepetition secured creditor to pay part or all of that secured creditor's prepetition debt, other than as provided

in section 552(b) of the Bankruptcy Code. As discussed above, (a) the DIP Loan Documents contemplate that the Prepetition Bankruptcy-Related Loan will roll-up and become a part of the DIP Facility; and (b) the Prepetition Bankruptcy-Related Loan was solely used for the Prepetition Bankruptcy-Related Loan Expenses, which were limited to the fees and expenses necessary for commencing these Chapter 11 Cases. *See* DIP Credit Agreement at Paragraph H.

47. The Debtors' post-petition financing options were limited. Oxford, who had a first priority senior lien on the Debtors' collateral, would not provide any DIP financing or consent to the priming of its liens (except with respect to the Accounts Receivable and the proceeds thereof up to the amount of the DIP Loans and the Prepetition Bankruptcy-Related Loan). The Debtors' only DIP financing option was from the DIP Lender, which required the roll-up provision in order to provide the DIP Facility. Moreover, the roll-up amount is nominal in comparison to the aggregate amount provided in the DIP Facility. Accordingly, the Debtors respectfully assert the roll-up provision is appropriate under the circumstances. *See, e.g., In re rue21, Inc.*, No. 17-22045 (Docket No. 141) (Bankr. W.D. Pa. May 18, 2017) (approving $150 million financing with $100 million roll-up or 2:1 ratio); *see also In re Cal Dive Intl, Inc.*, No. 15-10458(Docket No. 282) (Bankr. D. Del. Apr. 20, 2015) (approving $120 million financing with $99.8 million roll-up or 4.9:1 ratio); *In re RadioShack Corp.*, No. 15-10197 (Docket No. 947) (Bankr. D. Del. Mar. 12, 2015) (approving $285 million financing with $250 million roll-up or a 7.1:1 ratio); *In re NEC Holdings Corp.*, No. 10-11890 (Docket No. 223) (Bankr. D. Del. Jul. 16, 2010) (approving $139 million financing with $110 million roll-up or 3.79:1 ratio); *In re Real Mex Rests., Inc.*, No. 11-13122 (Docket No. 392) (Bankr. D. Del. Nov. 9, 2011) (approving $49 million financing with $37.5 million roll-up or 3.26:1 ratio); *In re Pacific Energy Res., Ltd.*, No. 09-10785 (Docket No. 415) (Bankr. D. Del. Jun. 4, 2009) (approving $183 million financing with $143 million roll-up or

3.58:1 ratio); *In re American Apparel, Inc.,* No. 15-12055 (Docket No. 80) (Bankr. D. Del. Oct. 6, 2015) (approving $90 million financing with $60 million roll-up or 2:1 ratio).

VI. Local Rule 4001-2(b)(1)(F)

48. Carve-Out. Local Rule 4001-2(b)(1)(F) requires disclosure of provisions that provide disparate treatment for the professionals retained by a creditors' committee from those professionals retained by the debtor with respect to a professional fee carve-out. Paragraph 9 of the Interim DIP Order provides for a professional fee Carve-Out for professionals of the Debtors and professionals hired by any official committee of unsecured creditors (such committee, a "Committee"). The treatment of the Debtors' and Committee's professionals under the Carve-Out is identical. Accordingly, the Debtors submit that the Carve-Out does not create disparate treatment between such professionals.

VII. Local Rule 4001-2(b)(1)(G)

49. Priming Liens. Local Rule 4001-2(b)(1)(G) requires disclosure of provisions that prime any secured lien without the consent of that lienor. The DIP Facility is a "priming" facility but only with respect to the Accounts Receivable and the proceeds thereof up to the amount of the DIP Loans and the Prepetition Bankruptcy-Related Loan. Oxford has consented to such priming. All other DIP Liens are junior to Oxford's Prepetition Liens.

BASIS FOR RELIEF REQUESTED

I. Basis for Emergency Relief

50. The Debtors bring this Motion on an emergency basis given the immediate and irreparable harm that they will potentially suffer if they are denied the ability to obtain post-petition credit and to use Cash Collateral, which is necessary to sustain the Debtors' ongoing business operations and to achieve their future business objectives. The DIP Facility and Cash Collateral

will permit the Debtors, on a short-term basis, to preserve the value of their bankruptcy estates, continue operating their business in an orderly fashion, maintain business relationships with vendors, suppliers, and employees, provide quality care for their residents, meet ongoing business disbursements, and satisfy other working capital and operational needs.

51. Without access to the DIP Facility and Cash Collateral, the Debtors will be unable to meet their ongoing financial obligations, thereby resulting in: (i) an inability keep their facilities in operation; (ii) the risk of an immediate loss of the workforce necessary to provide care for their residents; and (iii) the ultimate closure of their facilities, thereby displacing their residents and putting them in grave danger due to a disruption in the care provided by the Debtors.

II. Authority in Support of Post-Petition Financing

A. Entry into the DIP Facility is an Exercise of the Debtors' Sound Business Judgment.

52. The Debtors, along with their advisors, have determined that the most prudent course of action is to secure immediate access to post-petition financing and use of Cash Collateral to preserve the estates' ability to operate until an orderly transfer of their operations can be accomplished. For those reasons, the Debtors request that the Court enter the Proposed Interim Order and subsequently, the Proposed Final Order, authorizing the Debtors to, among other things, access the DIP Facility and to use Cash Collateral, subject to the terms of the Proposed Orders and the DIP Loan Documents.

53. Bankruptcy courts routinely defer to a debtor's business judgment on certain business decisions, including the decision to borrow money, unless such decision is arbitrary and capricious. *See In re YL West 87th Holdings I LLC*, 423 B.R. 421, 441 (Bankr. S.D.N.Y. 2010) ("Courts have generally deferred to a debtor's business judgment in granting section 364 financing."); *Trans World Airlines, Inc. v. Travellers Int'l AG (In re Trans World Airlines, Inc.)*,

163 B.R. 964, 974 (Bankr. D. Del. 1994) (noting that the interim loan, receivables facility and asset-based facility were approved because they "reflect[ed] sound and prudent business judgment on the part of TWA . . . [were] reasonable under the circumstances and in the best interests of TWA and its creditors"); *cf. In re Filene's Basement, LLC*, No. 11- 13511, 2014 WL 1713416, at *12 (Bankr. D. Del. Apr. 29, 2014) ("Transactions under § 363 must be based upon the sound business judgment of the debtor or trustee."). In fact, "[m]ore exacting scrutiny would slow the administration of the debtor's estate and increase its cost, interfere with the Bankruptcy Code's provision for private control of administration of the estate, and threaten the court's ability to control a case impartially." *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985).

54. The Debtors' determination to enter into the DIP Facility represents an appropriate exercise of their sound business judgment and should be approved. The critical funding to be provided under the DIP Facility will allow the Debtors to preserve their operations and consummate a value-maximizing transaction during these Chapter 11 Cases. Absent sufficient cash to meet their obligations during these Chapter 11 Cases pending consummation of a sale, the Debtors likely will be forced to liquidate their assets, to the detriment of their estates and creditors. *See* DIP Financing Decl. ¶ 12.

55. The Debtors worked closely with their advisors to determine their cash needs over the anticipated duration of these Chapter 11 Cases. *See* DIP Financing Decl. ¶ 8. The Debtors then negotiated the various components of the DIP Facility with the DIP Lender at arm's-length and in good faith. The Debtors determined that the terms of the resulting DIP Facility were reasonable and the only realistically available option under the circumstances. *See* DIP Financing Decl. ¶ 12. The Debtors believe that they have negotiated the best possible terms for the DIP

Facility, which will permit them to maintain their current operations while they pursue a value-maximizing transaction. As such, and as further described in the DIP Financing Declaration, the Debtors' decision to enter into the DIP Facility was a sound exercise of their business judgment. *See* DIP Financing Decl. ¶¶ 19 & 20.

B. <u>The Debtors Should Be Authorized to Obtain Post-Petition Financing under Section 364(c) of the Bankruptcy Code</u>.

56. As described above, it is essential that the Debtors obtain access to sufficient post-petition financing and are authorized to use Cash Collateral to avoid immediate and irreparable harm to their assets pending the consummation of a value-maximizing transaction in these Chapter 11 Cases. The preservation of estate assets, the Debtors' continuing viability and their ability to maximize value for stakeholders depend heavily upon the expeditious approval of the relief requested herein.

57. Section 364 of the Bankruptcy Code distinguishes among (a) obtaining unsecured credit in the ordinary course of business, (b) obtaining unsecured credit out of the ordinary course of business, and (c) obtaining credit with specialized priority or with security. *See* 11 U.S.C. § 364. If a debtor in possession cannot obtain post-petition credit on an unsecured basis, pursuant to section 364(b) of the Bankruptcy Code, a court may authorize a debtor to obtain credit or to incur debt, the repayment of which is entitled to superpriority administrative expense status or is secured by a senior lien on unencumbered property or a junior lien on encumbered property, or a combination of the foregoing. *See* 11 U.S.C. § 364(c).

58. The statutory requirement for obtaining post-petition credit under section 364(c) of the Bankruptcy Code is a finding, made after notice and hearing, that the debtor in possession is "unable to obtain unsecured credit allowable under [section 503(b)(1) of the Bankruptcy Code] as an administrative expense." 11 U.S.C. § 364(c); *see In re Ames Dep't Stores*, 115 B.R. 34, 40

(Bankr. S.D.N.Y. 1990) ("[A] debtor must show that it has made a reasonable effort to seek other sources of credit available under sections 364(a) and (b) [of the Bankruptcy Code]."); *In re Crouse Grp., Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (debtor seeking secured credit under section 364(c) of the Bankruptcy Code must establish that it was unable to obtain unsecured credit pursuant to section 364(b) of the Bankruptcy Code), *modified on other grounds*, 75 B.R. 553 (Bankr. E.D. Pa. 1987).

59. Courts have articulated a three-part test to determine whether a debtor may obtain financing under section 364(c) of the Bankruptcy Code:

a. the debtor is unable to obtain unsecured credit under section 364(b) (*i.e.*, by granting a lender administrative expense priority);

b. the credit transaction is necessary to preserve the assets of the estate; and

c. the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and the proposed lender.

See, e.g., *In re Los Angeles Dodgers LLC*, 457 B.R. 308, 312 (Bankr. D. Del. 2011) (applying these factors); *In re Aqua Assocs*., 123 B.R. 192, 195–96 (Bankr. E.D. Pa. 1991) (same); *Ames Dep't Stores*, 115 B.R. at 39.

i. <u>*The Necessary Post-Petition Financing is Not Available on an Unsecured Basis*</u>*.*

60. The Debtors could not obtain post-petition financing on an unsecured or junior basis. To show that the credit required is not obtainable on an unsecured basis, a debtor need only demonstrate "by a good faith effort that credit was not available without" the protections of sections 364(c) of the Bankruptcy Code. *Bray v. Shenandoah Fed. Sav. & Loan Ass'n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986). Thus, "[t]he statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable." *Id.* Where few lenders are likely to be able and willing to extend the necessary credit to the debtor, "it would be

unrealistic and unnecessary to require [the] Debtor to conduct such an exhaustive search for financing." *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff'd sub nom. Anchor Sav. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n.4 (N.D. Ga. 1989).

61. The Debtors reasonably concluded that post-petition financing was not available on an unsecured basis following their good faith efforts to obtain funding prior to the Petition Date. As set forth above and in the DIP Financing Declaration, the Debtors were unable to find a lender willing to provide an unsecured facility. The Debtors' efforts to seek the necessary post-petition financing from sources within the Debtors' existing capital structure under these circumstances were reasonable and sufficient and satisfy the statutory requirements of section 364(c) of the Bankruptcy Code. The Debtors therefore made appropriate and sufficient efforts to confirm that post-petition financing is not available on an unsecured basis. *See* DIP Financing Decl. ¶¶ 22 & 23.

ii. *<u>The DIP Facility is Necessary to Preserve and Protect the Assets of the Debtors' Estates</u>.*

62. It is essential that the Debtors immediately obtain the financing contemplated by the DIP Facility to preserve and protect the value of their estates. The funding contemplated by the DIP Facility will provide the Debtors with working capital to maintain their facilities and corporate functions and pay their employees, together with funding the costs of consummating a value-maximizing transaction in these Chapter 11 Cases. Without the infusion of cash provided by the DIP Facility, the Debtors anticipate that they would have no option but to cease operations completely and liquidate their assets, thus diminishing the value of their estates to the detriment of their creditors. *See* DIP Financing Decl. ¶ 12. Accordingly, the DIP Facility is necessary to ensure that the Debtors are able to maximize the value of their estates. *See Burtch v. Ganz (In re Mushroom Transp. Co.)*, 382 F.3d 325, 339 (3d Cir. 2004) (debtors-in-possession have a duty to

maximize their estates' assets).

iii. *The Terms of the DIP Facility are Fair, Reasonable, and Adequate under the Circumstances.*

63. In considering whether the terms of a post-petition financing are fair and reasonable, courts consider the terms in light of the relative circumstances and disparate bargaining power of both the debtor and potential lender. *See In re Farmland Indus., Inc.*, 294 B.R. 855, 885–86 (Bankr. W.D. Mo. 2003); *see also Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Trust Co. (In re Ellingsen MacLean Oil Co.)*, 65 B.R. 358, 365 n.7 (W.D. Mich. 1986) (a debtor may have to enter into hard bargains to acquire funds).

64. The terms of the DIP Facility and the proposed Interim Order were negotiated in good faith and at arm's-length between the Debtors and the DIP Lender, resulting in agreements designed to permit the Debtors to obtain needed liquidity and to maximize the value of their assets during these Chapter 11 Cases. As a result, the Debtors believe that the terms of the DIP Facility are within the range of reasonableness and consistent with market expectations for facilities of this type. *See* DIP Financing Decl. ¶¶ 25–27. Accordingly, the Debtors believe the terms of the DIP Facility are fair, reasonable, and adequate under the circumstances.

C. The Debtors Should be Authorized to Obtain Priming Liens under Section 364(d) of the Bankruptcy Code.

65. Section 364(d)(1) of the Bankruptcy Code provides that a debtor may incur debt "secured by a senior or equal lien on property of the estate that is subject to a lien only if" the court finds, after notice and hearing, that (a) the debtors in possession are "unable to obtain such credit otherwise" and (b) "there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted." *See Shaw Indus., Inc. v. First Nat'l Bank of PA (In re Shaw Indus., Inc.)*, 300 B.R. 861, 863 (Bankr. W.D.

Pa. 2003) (where debtor made efforts by "contact[ing] numerous lenders" and was unable to obtain credit without a priming lien, it had met its burden under section 364(d)); *In re 495 Cent. Park Ave. Corp.*, 136 B.R. 626, 630-31 (Bankr. S.D.N.Y. 1992) (holding that debtor must make an effort to obtain credit without the requirement of a priming lien but is not required to seek credit from every possible lender); *In re Dunes Casino Hotel*, 69 B.R. 784, 791 (Bankr. D.N.J. 1986) (holding that the debtor had made required efforts under section 364(d)(1) of the Bankruptcy Code based on evidence that the debtor had attempted unsuccessfully to borrow funds on an unsecured basis or secured by junior liens, but that at least three such lenders were willing to advance funds secured by a superpriority lien).

66. Here, the DIP Liens only prime Oxford's Prepetition Liens with respect to the Accounts Receivable and the proceeds thereof up to the amount of the DIP Loans and the Prepetition Bankruptcy-Related Loan. Oxford has consented to such priming. Although Oxford has provided such consent, the priming of the Prepetition Liens nevertheless satisfies the requirements of section 364(d)(1) of the Bankruptcy Code.

D. The Debtors Should be Authorized to Pay the Fees Required by the DIP Facility.

67. The Debtors believe that the fees contemplated by the DIP Facility are reasonable under the circumstances of these Chapter 11 Cases. The fees that the Debtors agreed to pay under the DIP Facility, which consist of, as applicable, (a) interest due on the DIP Loans and any points, loan fees, service charges, commitment fees or other fees due to the DIP Lender in connection with the DIP Loans; (b) all title examination, survey, escrow, filing, search, recording and registration fees and charges; (c) all documentary stamp and other taxes and charges imposed by law on the issuance or recording of any of the DIP Loan Documents; (d) all appraisal fees; (e) all title insurance premiums; (f) all fees and disbursements of legal counsel engaged by the DIP

Lender in connection with the DIP Loans, including, without limitation, counsel engaged in connection with the enforcement or administration of the DIP Credit Agreement or any of the DIP Loan Documents; and (g) any amounts required to be paid by the Debtors under the DIP Credit Agreement or ancillary documents after the occurrence of an Event of Default, together with certain reasonable and documented costs and expenses of the DIP Lender associated with the preparation, due diligence, administration and closing of all DIP Loan Documents, represent the most favorable terms to the Debtors on which the DIP Lender would agree to make the DIP Facility available. The Debtors considered these fees when determining, in their business judgment, that the DIP Facility constituted the best terms on which the Debtors could obtain post-petition financing. *See* DIP Financing Decl. ¶ 26.

68. Courts routinely authorize post-petition lenders to impose fees beyond the explicit liens and rights specified in section 364 of the Bankruptcy Code. Moreover, such charges often are permitted where the associated financing is, in the debtor's business judgment, beneficial to the debtor's estate. *See, e.g., In re Gibson Brands, Inc.*, No. 18-11025 (CSS) (Docket No. 71) (Bankr. D. Del. May 2, 2018) (approving interim post-petition financing fees including up-front premium of 3%); *In re Modular Space Holdings, Inc.*, No. 16-12825 (KJC) (Docket No. 165) (Bankr. D. Del. Jan. 18, 2017) (approving post-petition financing fees including letter of credit premium of 4.5%); *In re Basic Energy Services, Inc.*, No. 16-12320 (JKC) (Docket No. 171) (Bankr. D. Del. Nov. 17, 2016) (approving post-petition financing fees including unused line premium of 5%); *In re Horsehead Holding Corp.*, No. 16-10287 (CSS) (Docket No. 252) (Bankr. D. Del. March 3, 2016) (approving post-petition financing fees including up-front premium of 2% and unused line premium of 4%); *In re Taylor-Wharton Int'l. LLC*, No. 15-12075 (BLS) (Docket No. 168) (Bankr. D. Del. Nov. 5, 2015) (approving post-petition financing fees including letter of

credit premium of 10.5%); *In re Quiksilver, Inc.*, No. 15-11880 (BLS) (Docket No. 76) (Bankr. Del. Sept. 11, 2015) (approving post-petition financing fees including letter of credit fee of 3.5%). The Debtors also submit that the fees are in line with transactions of this type and should be approved on the facts and circumstances of these Chapter 11 Cases.

E. <u>The Scope of the Carve-Out is Appropriate</u>.

69. The proposed DIP Facility subjects the security interests and administrative expense claims of the DIP Lender to the Carve-Out. Similar carve-outs for professional fees have been found to be reasonable and necessary to ensure that a debtor's estate and any statutory Committee can retain assistance from counsel. *See Ames Dep't Stores*, 115 B.R. at 40. The DIP Facility does not directly or indirectly restrict the services for which professionals may be paid in these Chapter 11 Cases, and thus does not deprive the Debtors' estates or other parties in interest of possible rights and powers. *See id.* at 38 (observing that courts insist on carve-outs for professionals representing parties-in-interest because "[a]bsent such protection, the collective rights and expectations of all parties-in-interest are sorely prejudiced"). Additionally, the Carve-Out protects against administrative insolvency during the course of these Chapter 11 Cases by ensuring that assets remain for the payment of professional fees of the Debtors and any official Committee, notwithstanding the grant of superpriority and administrative liens and claims under the DIP Facility.

70. With respect to professional fees, the Carve-Out provides that, prior to delivery of a Carve-Out Trigger Notice, the Carve-Out will encompass all of the Debtors' and Committee's accrued and unpaid professional fees up until that point in time. For the period following the delivery of a Carve-Out Trigger Notice, the Carve-Out sets aside $150,000 for the Debtors' professionals thereafter, given the likelihood that the Debtors' professionals would be necessary

to effect any wind down following the delivery of such notice. Because the Carve-Out's treatment of professional fees is commensurate with each professional's anticipated efforts during these Cases, the Debtors submit that the Carve-Out's treatment of professional fees is appropriate.

71. In addition, the Carve-Out includes (a) all fees required to be paid and owing to (i) the Clerk of the Court and (ii) the United States Trustee incurred in connection with the Debtors' Chapter 11 Cases, as determined by agreement between the Debtors and the United States Trustee or by final order of the Court, and does not impair the ability of any party to object to such fees, expenses, reimbursement or compensation. The Debtors submit that these other features of the Carve-Out are also appropriate in these circumstances.

F. Request for Use of Cash Collateral.

72. By this Motion, the Debtors also request authority to use Cash Collateral on the terms set forth in the proposed DIP Orders. The Debtors submit that this use of Cash Collateral is authorized pursuant to section 363(c) of the Bankruptcy Code.

73. Section 363(c) of the Bankruptcy Code provides as follows:

> (1) If the business of the debtor is authorized to be operated under section 721, 1108, 1203, 1204, or 1304 of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.
>
> (2) The trustee may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless—
>
> > (a) each entity that has an interest in such cash collateral consents; or
> >
> > (b) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.

11 U.S.C. § 363(c). Section 363(e) of the Bankruptcy Code further provides, in pertinent part, that "on request of an entity that has an interest in property . . . proposed to be used, sold, or leased, by

the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest." 11 U.S.C. § 363(e).

74. The Debtors must maintain sufficient access to cash to satisfy their obligations and to maintain their assets pending consummation of a value-maximizing transaction in these Chapter 11 Cases. It is, therefore, essential to the success of these Chapter 11 Cases that the Debtors immediately obtain authority to use Cash Collateral. Although the Debtors hold some cash other than the contemplated DIP Facility proceeds, such cash alone is insufficient to satisfy the Debtors' liquidity needs in these Cases.[4] Moreover, Oxford has consented to the Debtors' use of Cash Collateral pursuant to the terms of the Interim DIP Order up to the amount of the Prepetition Bankruptcy-Related Loan. The Debtors, therefore, seek immediate authority to use Cash Collateral and access the proceeds of the DIP Facility on an interim basis as set forth in this Motion and in the Interim Order to prevent immediate and irreparable harm to their estates pending the Final Hearing pursuant to Bankruptcy Rule 4001(b).

REQUEST FOR MODIFICATION OF THE AUTOMATIC STAY

75. Bankruptcy Code section 362 provides for an automatic stay upon the filing of a bankruptcy petition. The proposed Interim Order contemplates the modification of the automatic stay to the extent necessary to implement the provisions of the Interim Order and the DIP Documents, thereby permitting the DIP Lender to, among other things, file or record any UCC-1 financing statements, mortgages, deeds of trust, assignments, pledges, security deeds and other instruments and documents evidencing or validating the perfection of any DIP Liens and to enforce any DIP Liens as and to the extent authorized by the Interim Order. Accordingly, the Debtors

[4] The Debtors reserve all of their rights with respect to any such cash that may constitute Cash Collateral, including the right to request authority to use such cash pursuant to section 363(c)(2) of the Bankruptcy Code.

respectfully request that this Court authorize the modification of the automatic stay in accordance with the terms set forth in the Interim Order.

REQUEST FOR A FINDING OF GOOD FAITH

76. The terms and conditions of the DIP Facility are fair and reasonable and were negotiated by the parties in good faith and at arm's-length. Therefore, the DIP Lender should be accorded the benefits of section 364(e) of the Bankruptcy Code to the extent any or all of the provisions of the DIP Facility, or any interim or final order of this Court pertaining thereto, are hereafter modified, vacated, stayed, or terminated by subsequent order of this or any other court.

REQUEST FOR INTERIM HEARING AND AUTHORITY TO MAKE INTERIM BORROWINGS UNDER THE DIP FACILITY

77. Pursuant to Bankruptcy Rule 4001(b), the Debtors request that this Court conduct a hearing on the Debtors' request for interim relief, including for access to the Interim Funding Amount and for the other relief contemplated by the Interim Order. Bankruptcy Rule 4001(c) provides that a final hearing on a motion to obtain credit pursuant to section 364 of the Bankruptcy Code may not be commenced earlier than 14 days after the service of such motion. Fed. R. Bankr. P. 4001(c). Upon request, however, the Court is empowered to conduct a preliminary expedited hearing on the motion and authorize the obtaining of credit to the extent necessary to avoid immediate and irreparable harm to a debtor's estate. In examining requests for interim relief under this rule, courts apply the same business judgment standard applicable to other business decisions. *See, e.g., In re Simasko Prod. Co.*, 47 B.R. 444, 449 (Bankr. D. Colo. 1985); *see also Ames Dep't Stores*, 115 B.R. at 38. After the 14-day period prescribed by Bankruptcy Rule 4001(c), the request for financing is not limited to those amounts necessary to prevent disruption of the debtor's business, and the debtor is entitled to borrow those amounts that it believes prudent in the operation of its business. *See, e.g.*, *Simasko Prod. Co.*, 47 B.R. at 449; *Ames Dep't Stores*, 115 B.R. at 36.

78. Pursuant to Bankruptcy Rule 4001(c), the Debtors respectfully request that this Court conduct a preliminary hearing on the Motion and authorize the Debtors from the entry of the Interim Order until the Final Hearing to obtain access to the Interim Funding Amount under the terms set forth in the DIP Loan Documents and the Interim Order and to utilize Cash Collateral to avoid immediate and irreparable harm to the Debtors' estates.

REQUEST TO ESTABLISH NOTICE
PROCEDURES AND SCHEDULE FINAL HEARING

79. The Debtors respectfully request that this Court schedule the Final Hearing and authorize them to serve the Motion and the signed Interim Order, which fixes the time, date and manner for the filing of objections, on the parties listed in the notice section that immediately follows.

NOTICE

80. Notice of this Motion has been provided by email, facsimile or overnight mail to: (a) the Office of the United States Trustee for the Western District of Pennsylvania; (b) the Debtors; (c) the DIP Lender; (d) all secured creditors; (e) the Office of the Attorney General of the State of Pennsylvania; (f) the thirty (30) largest unsecured creditors for the Debtors on a consolidated basis; (g) the Debtors' identified, interested taxing authorities, including the Internal Revenue Service; (h) the Debtors' identified, interested government and regulating entities; (i) other interested parties as identified by the Debtors; and (j) any known counsel for (a)-(i). The method of service for each party will be described more fully in the certificate of service prepared by the Debtor's proposed claims and noticing agent. The Debtors respectfully submit that, based on the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, no further notice is required.

NO PRIOR REQUEST

81. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter the Interim Order, substantially in the form attached hereto as **Exhibit A**, and the Final Order, granting: (i) the relief requested herein; and (ii) such other and further relief to the Debtors as the Court may deem proper.

Dated: October 15, 2024
Pittsburgh, PA

RAINES FELDMAN LITTRELL, LLP

By:/s/ Daniel R. Schimizzi
Mark A. Lindsay (PA ID No. 89487)
Daniel R. Schimizzi (PA ID No. 311869)
Harry A. Readshaw (PA ID No. 204287)
Jordan N. Kelly (PA ID No. 328896)
11 Stanwix Street, Suite 1100
Pittsburgh, PA 15222
Telephone: 412-899-6462
Email: mlindsay@raineslaw.com
dschimizzi@raineslaw.com
hreadshaw@raineslaw.com
jkelly@raineslaw.com

Proposed Local Counsel to the Debtors and Debtors in Possession

- and -

BAKER & HOSTETLER LLP

Elizabeth A. Green, Esq.
FL Bar No.: 0600547
Email: egreen@bakerlaw.com
Jimmy D. Parrish, Esq.
FL Bar No.: 0526401
E-mail: jparrish@bakerlaw.com
Andrew V. Layden, Esq.
FL Bar No.: 86070
E-mail: alayden@bakerlaw.com
SunTrust Center, Suite 2300
200 South Orange Avenue
Orlando, Florida 32801-3432
Telephone: (407) 540-7920
Facsimile: (407) 841-0168

Proposed Counsel for the Debtors and Debtors in Possession

EXHIBIT A

Proposed Interim Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

In Re:	**Case No.: 24-70418-JAD**
POTTSVILLE OPERATIONS, LLC, *et al.*,[1]	**Chapter 11**
Debtors.	***Joint Administration Requested***
	Doc. No.:
POTTSVILLE OPERATIONS, LLC, *et al.*	**Related to Document No.:**
Movants,	**Hearing Date:**
-vs-	**Hearing Time:**
NO RESPONDENTS,	**Response Deadline:**
Respondents.	

INTERIM ORDER GRANTING DEBTORS' EMERGENCY MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO OBTAIN POST-PETITION FINANCING, (II) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL, (III) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (IV) APPROVING ADEQUATE PROTECTION, (V) MODIFYING THE AUTOMATIC STAY, (VI) SCHEDULING A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF

Upon the motion (the "Motion")[2] of the above-captioned debtors and debtors in possession (collectively, the "Debtors") in the above-captioned chapter 11 cases (the "Chapter 11 Cases") commenced on October 15, 2024 (the "Petition Date") seeking entry of an interim order (this "Interim DIP Order") and final order pursuant to sections 105, 361, 362, 363(c)(2), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), 503 and 507 of title 11 of the United States Code, 11

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number are: Pottsville Operations, LLC (9467); Pottsville Propco, LLC (8685); Hampton House Operations, LLC (8969); Hampton House Propco, LLC (7258); Kingston Operations, LLC (1787); Kingston Propco, LLC (8562); Williamsport North Operations, LLC (9927); Williamsport Propco, LLC (2039); Williamsport South Operations, LLC (0298); Yeadon Operations, LLC (9296); and Yeadon Propco, LLC (5785). The Debtors' address is 425 West New England Avenue, Suite 300, Winter Park, Florida 32789.
[2] Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Motion.

U.S.C. §§ 101, *et seq*. (as amended, the "Bankruptcy Code"), Bankruptcy Rules 2002 and 4001 of the Federal Rules of Bankruptcy Procedure (as amended, the "Bankruptcy Rules") and Local Rule 4001-2 of the Local Bankruptcy Rules (the "Local Rules") for the United States Bankruptcy Court for the Western District of Pennsylvania (this "Court") providing as follows:

a. Accessing the DIP Facility – authorizing the Debtors, as borrowers, to obtain a post-petition loan facility in the aggregate principal amount of up to $7.782 million, $2.5 million of which will be a potential additional delayed draw tranche with availability determined solely in the DIP Lender's discretion (the "DIP Facility" and all extensions of credit and amounts made or deemed made under the DIP Facility, the "DIP Loans"), and to otherwise incur the DIP Obligations (defined below) on the terms and conditions set forth in the Interim DIP Order and the DIP credit agreement (the "DIP Credit Agreement" and together with all loan documents, the "DIP Loan Documents");

b. Entry into DIP Loan Documents – authorizing the Debtors to execute and deliver the DIP Loan Documents and to perform their obligations thereunder and such other and further acts as may be necessary or appropriate in connection therewith;

c. Borrowing of Interim Funding Amount – authorizing the Debtors to borrow up to $3 million of DIP Loans on an interim basis (the "Interim Funding Amount") and use proceeds of such borrowings in accordance with the DIP Loan Documents, the Interim DIP Order, and the Budget (defined below);

d. Roll-Up – authorizing the Debtors, subject to entry of the Interim DIP Order, to access the full remaining balance of the DIP Facility, of which $282,000 shall be borrowed to permanently convert prepetition amounts the DIP Lender loaned to the Debtors (the "Roll-Up") to cover bankruptcy-related costs and expenses pursuant to the Prepetition Bankruptcy-Related Loan (defined below);

e. DIP Liens – authorizing the Debtors to provide a senior secured lien on all of the Debtors' accounts receivable (the "Accounts Receivable"), with dates of service arising both pre- and post-petition, to secure the DIP Obligations (defined below);

f. Use of Cash Collateral – authorizing the Debtors to use the cash collateral (as such term is defined in section 363(a) of the Bankruptcy Code, the "Cash Collateral") pursuant to section 363 of the Bankruptcy Code, subject to the Budget and the terms of the Interim DIP Order;

g. Adequate Protection – authorizing the Debtors to make certain payments to Oxford Finance LLC ("Oxford") in accordance with the Budget on account of the Prepetition Loan Obligations;

h. Exercise of Remedies; Modification of Stay – authorizing the DIP Lender to exercise remedies under, and in accordance with, the DIP Loan Documents and the Interim DIP Order upon the occurrence and during the continuance of an Event of Default (defined below) and modification of the automatic stay to the extent necessary to permit such exercise of remedies;

i. Performance of DIP Obligations – authorizing the Debtors to perform their obligations under, and pay the fees set forth in, the DIP Credit Agreement and the other DIP Loan Documents;

j. Section 506(c) Waiver – approving, subject to entry of the Final DIP Order, the waiver by the Debtors of any right to seek to surcharge against the DIP Collateral (as defined herein) pursuant to section 506(c);

k. Scheduling an Interim Hearing – scheduling, pursuant to Bankruptcy Rule 4001, an interim hearing (the "Interim Hearing") on the Motion to be held before this Court to consider entry of the Interim DIP Order;

l. Scheduling a Final Hearing – scheduling, pursuant to Bankruptcy Rule 4001, a final hearing (the "Final Hearing") for this Court to consider entry of the Final DIP Order authorizing and approving on a final basis the relief requested herein; and

m. granting related relief.

The Interim Hearing having been held by this Court on October [__], 2024, and upon the record made by the Debtors at the Interim Hearing, including the admission into evidence of the *Declaration of Neil Luria, Chief Restructuring Officer of the Debtors, in Support of the Debtors' Emergency Motion for Interim and Final Orders (I) Authorizing the Debtors to Obtain Post-Petition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Approving Adequate Protection, (V) Modifying Automatic Stay, (VI) Scheduling a Final Hearing, and (VIII) Granting Related Relief* (the "DIP Financing Declaration") filed on the Petition Date, and the other evidence submitted or adduced and the arguments of counsel made at the Interim Hearing, and after due deliberation and consideration and sufficient cause appearing therefor;

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, that:

1. *Petition Date*. On the Petition Date, each of the Debtors filed with the Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors have continued in the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

2. *Jurisdiction*. This Court has core jurisdiction over the Chapter 11 Cases, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The Court may enter a final order consistent with Article III of the United States Constitution. The legal predicates for the relief sought herein are sections 105, 361, 362, 363, 364 and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004 and 9014 and all applicable Local Rules.

3. *Notice*. Notice of the Motion, the relief requested therein and the Interim Hearing was served by the Debtors on: (i) the United States Trustee for the Western District of Pennsylvania (the "U.S. Trustee"); (ii) the Debtors; (iii) the DIP Lender; (iv) all secured creditors; (v) the Office of the Attorney General of the State of Pennsylvania; (vi) the thirty (30) largest unsecured creditors for the Debtors on a consolidated basis; (vii) the Debtors' identified, interested taxing authorities, including the Internal Revenue Service; (viii) the Debtors' identified, interested government and regulating entities; (ix) other interested parties as identified by the Debtors; and (x) any known counsel for (i)-(ix) (collectively, the "Notice Parties"). Under the circumstances, the notice given by the Debtors of the Motion, the relief requested therein, and the Interim Hearing constitutes due and sufficient notice thereof and complies with Bankruptcy Rules 2002, 4001(b), (c), and (d) and all applicable Local Rules, and no further notice of the relief sought at the Interim Hearing is necessary or required.

4. *Debtors' Stipulations*. After consultation with their attorneys and financial

advisors, and without prejudice to the rights of a Committee or other parties-in-interest as set forth herein, including without limitation in paragraph 22 the Debtors, on their behalf and on behalf of their estates, admit, stipulate, acknowledge, and agree as follows (collectively, the "Stipulations"):

(a) as of the Petition Date, the Debtors were parties or otherwise obligated under the Prepetition Loan Documents and truly and justly indebted and liable to Oxford, without defense, objection, counterclaim, or offset of any kind, in the aggregate principal amount of not less than $49,118,523.64 with respect to the Prepetition Term Loan and $0 with respect to the Prepetition Revolver (collectively, the "Prepetition Loan Obligations");

(b) the Prepetition Loan Obligations constitute legal, valid, binding, and non-avoidable obligations against each of the Debtors and are not subject to any avoidance, recharacterization, effect, counterclaim, defense, offset, subordination, other claim, cause of action or other challenge of any kind or nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise. No payments or transfers made to or for the benefit of (or obligations incurred to or for the benefit of) Oxford by or on behalf of any of the Debtors prior to the Petition Date under or in connection with any of the Prepetition Loan Documents is subject to avoidance, recharacterization, effect, counterclaim, defense, offset, subordination, other claim, cause of action, or other challenge of any kind or nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise;

(c) the Prepetition Liens are: (i) legal, valid, binding, perfected, enforceable, first priority liens on and security interests in the Prepetition Collateral (except with respect to the DIP Lender's priming lien on the Accounts Receivable and the proceeds thereof up to the amount of the Prepetition Bankruptcy-Related Loan) to secure the Prepetition Loan Obligations, (ii) not subject to avoidance, recharacterization, offset or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law or other challenge, and (iii) after giving effect to this Interim DIP Order and subject to the Carve-Out, subject and subordinate only to other valid and unavoidable liens properly perfected prior to the Petition Date (or perfected after the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code) solely to the extent such liens are permitted under the Prepetition Loan Documents and Intercreditor Agreement to be senior to the liens securing the Prepetition Loan Obligations;

(d) neither the DIP Lender nor Oxford are control persons or insiders of the Debtors or any of their affiliates by virtue of any of the actions taken with respect to, in connection with, related to, or arising from the DIP Facility, the DIP Loan Documents or the Prepetition Loan Documents;

(e) the Debtors, on behalf of themselves and their respective estates, forever and irrevocably release, discharge, and acquit the DIP Lender and Oxford, and each of their respective former, current and future officers, employees, directors, agents, representatives, owners, members, partners, financial and other advisors and consultants, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, and predecessors and successors in interest of the DIP Lender and Oxford (collectively, the "Releasees") of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, reasonable attorneys' fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending or threatened, including all legal and equitable theories of recovery, arising under common law, statute or regulation or by contract, of every nature and description, solely arising out of, in connection with, or relating to the DIP Facility, the DIP Loan

Documents, the Prepetition Loan Documents, and/or the transactions contemplated hereunder or thereunder, including (x) any so-called "lender liability" or equitable subordination or disallowance claims or defenses, (y) any and all claims and causes of action arising under the Bankruptcy Code, and (z) any and all claims and causes of action with respect to the validity, priority, perfection or avoidability of the liens or claims of the DIP Lender or Oxford, *provided* that the releases set forth in this section shall be limited to such claims arising prior to or including the date of the entry of this Interim DIP Order. The Debtors further waive and release any defense, right of counterclaim, right of setoff or deduction of the payment of the Prepetition Loan Obligations and the DIP Obligations that the Debtors now have or may claim to have against the Releasees arising out of, connected with, or relating to any and all acts, omissions or events occurring prior to the entry of this Interim DIP Order; and

(f) no portion of any of the Prepetition Loan Obligations shall be subject to contest, attack, avoidance, impairment, disallowance, defense, counterclaim, recharacterization, reduction, recoupment, setoff, recovery, or subordination (except as provided in the Intercreditor Agreement) pursuant to the Bankruptcy Code or applicable non-bankruptcy law.

5. *Findings Regarding the DIP Loans.*

(a) The Debtors seek authority to (i) upon entry of a Final DIP Order, enter into the DIP Facility on the terms described herein and in the DIP Loan Documents, and (ii) use Cash Collateral on the terms described herein to administer their Chapter 11 Cases and fund their operations. Notice of the Final Hearing and Final DIP Order will be provided in accordance with this Order.

(b) The priming of the existing liens on and security interests in the Debtors' Accounts Receivable and the proceeds thereof up to the amount of the aggregate of the DIP Loans and the Prepetition Bankruptcy-Related Loan under section 364(d) of the Bankruptcy Code, as contemplated by the DIP Loan Documents and as further described below, will enable the Debtors to obtain the DIP Facility and to continue to operate their businesses for the benefit of their estates.

(c) The Debtors have an immediate need to obtain credit on an interim basis pursuant to the DIP Facility, and to use the Cash Collateral on an interim basis, in order to, among other things, permit the orderly continuation of their businesses, preserve the going concern value of the Debtors, make payroll and satisfy other working capital and general corporate purposes of the Debtors (including fees, costs, and expenses related to the Chapter 11 Cases and the DIP Loan Documents and capital expenditures, as and to the extent set forth in this Interim DIP Order and in accordance with the Budget and the DIP Loan Documents). The ability of the Debtors to maintain business relationships with their vendors, suppliers, and customers, to pay their employees, and otherwise finance their operations requires the availability of working capital from the DIP Facility and the use of Cash Collateral, the absence of either of which would immediately and irreparably harm the Debtors, their estates, and parties-in-interest. The Debtors do not have sufficient available sources of working capital and financing to operate their businesses or maintain their properties in the ordinary course of business between entry of this Interim DIP Order through and including the Final Hearing (the "<u>Interim Period</u>") without the DIP Facility and authorized use of Cash Collateral.

(d) The Debtors are unable to obtain financing on more favorable terms from sources other than the DIP Lender pursuant to, and for the purposes set forth in, the DIP Loan Documents and are unable to obtain adequate unsecured credit allowable under section 364(b) of the Bankruptcy Code as an administrative expense or having priority over that of administrative expenses of the kind specified in sections 503(b), 507(a) and 507(b) of the Bankruptcy Code. The

Debtors also are unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code without (x) granting priming liens under section 364(d)(1) of the Bankruptcy Code and the Superpriority Claims (as defined below) and (y) converting the Prepetition Bankruptcy-Related Loan amount into DIP Loans outstanding under the DIP Credit Agreement on and subject to the terms and conditions set forth in this Interim DIP Order and the DIP Loan Documents.

(e) The terms and conditions of the DIP Facility pursuant to the DIP Loan Documents (including the payment of fees contemplated thereunder), including the Cash Collateral, pursuant to this Interim DIP Order are fair, reasonable, and the best available to the Debtors under the circumstances, are ordinary and appropriate for secured financing to debtors in possession, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and constitute reasonably equivalent value and fair consideration.

(f) The DIP Loan Documents, the use of Cash Collateral, and the grant of adequate protection hereunder have been the subject of extensive negotiations conducted in good faith and at arm's length among the Debtors, the DIP Lender, and Oxford, and all of the Debtors' obligations and indebtedness arising under or in connection with the DIP Loan Documents (as approved solely on an interim basis), this Interim DIP Order, and the amount of the Interim Funding authorized hereunder (collectively, including any other secured obligations, the "DIP Obligations") shall be deemed to have been extended by the DIP Lender in "good faith" as such term is used in section 364(e) of the Bankruptcy Code, and in express reliance upon the protections set forth therein, and shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed or modified on appeal or otherwise. Any such reversal, modification, or vacatur shall not affect the validity and enforceability of any advances previously made or made hereunder or any lien, claim, or priority authorized or created hereby. Any liens or claims granted to the DIP Lender hereunder arising prior to the effective date of any such reversal, modification, or vacatur of this Interim DIP Order shall be governed in all respects by the original provisions of this Interim DIP Order, including entitlement to all rights, remedies, privileges, and benefits granted herein.

(g) The Debtors have requested immediate entry of this Interim DIP Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2). Absent granting the interim relief set forth in this Interim DIP Order, the Debtors' estates and their business operations will be immediately and irreparably harmed. The borrowing of the DIP Loans and the use of the Cash Collateral, in accordance with this Interim DIP Order and the DIP Loan Documents are, therefore, in the best interest of the Debtors' chapter 11 estates. Good cause has been shown for the immediate entry of this Interim DIP Order.

(h) Pursuant to the intercreditor agreement between the DIP Lender and Oxford (the "Intercreditor Agreement"), Oxford has consented to the terms of the DIP Facility and the entry of this Interim DIP Order, including the priming of its prepetition lien on the Accounts Receivable and the proceeds thereof up to the amount of the aggregate of the DIP Loans and the Prepetition Bankruptcy-Related Loan.

6. *Adequate Notice.* Notice of the Interim Hearing and the relief requested in the Motion has been provided by the Debtors, whether by facsimile, electronic mail, overnight courier or hand delivery, to the Notice Parties. The Debtors have made reasonable efforts to afford the best notice possible under the circumstances and no other notice is required in connection with the relief set forth in this Interim DIP Order.

7. *Authorization of the DIP Facility.*

(a) The DIP Facility, including the Roll-Up of the Prepetition Bankruptcy-Related Loan, is hereby approved on an interim basis as set forth herein. The Debtors are hereby authorized (i) to enter into and perform under the DIP Loan Documents on an interim basis, (ii) to borrow under the DIP Credit Agreement up to an aggregate principal amount of $3 million of the DIP Loans, the proceeds of which shall be used for, subject to the terms of this Interim DIP Order, the DIP Loan Documents and the Budget, working capital and other general corporate purposes of the Debtors, including fees, costs, and expenses related to the Chapter 11 Cases and the DIP Loan Documents, capital expenditures, and to pay interest, fees, and expenses in connection with the DIP Loans, including adequate protection payments as set forth herein, and (iii) to convert the Prepetition Bankruptcy-Related Loan amount into DIP Loans outstanding under the DIP Credit Agreement.

(b) In furtherance of the foregoing and without further approval of this Court, each Debtor is authorized and empowered to perform all acts and to execute and deliver all instruments and documents that the DIP Lender determines to be reasonably required or necessary (but solely with respect to such actions that are required or necessary during the Interim Period (defined below)) for such Debtor's performance of its obligations under the applicable DIP Loan Documents, including:

(i) the execution, delivery, and performance of the DIP Loan Documents;

(ii) the execution, delivery and performance of one or more amendments, waivers, consents or other modifications to and under the DIP Loan Documents (in accordance with the terms of the applicable DIP Loan Documents and in such form as the Debtors, the DIP Lender, and Oxford may agree) and no further approval of this Court shall be required for any amendment, waiver, consent or other modification to and under the DIP Loan Documents that does not materially and adversely affect the Debtors or Oxford or which does not (A) shorten the scheduled maturity of the DIP Loans, (B) increase the principal amount of the DIP Facility or the rate of interest payable on the DIP Loans, or (C) change any Event of Default, add any covenants or amend the covenants therein, in any such case to be materially more restrictive on the Debtors; *provided*, *however*, that a copy of any such amendment, waiver, consent or other modification shall be filed by the Debtors with this Court and delivered by the Debtors to counsel for the Prepetition Agents, the U.S. Trustee, and counsel to any statutory committee of unsecured creditors (the "Committee") appointed in the Chapter 11 Cases within three (3) Business Days of its effectiveness; and

(iii) the performance of all other acts required under or in connection with the DIP Loan Documents.

(c) Upon the execution thereof, the DIP Loan Documents shall constitute valid and binding obligations of the Debtors, enforceable against the Debtors in accordance with the terms of this Interim DIP Order and the DIP Loan Documents. To the fullest extent permissible under the Bankruptcy Code, no obligation, payment, transfer or grant of security by the Debtors under the DIP Loan Documents or this Interim DIP Order shall be voidable, avoidable, restrained, or recoverable under the Bankruptcy Code or under any applicable non-bankruptcy law (including under sections 502(d) or 548 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law), or subject to any defense, reduction, setoff, recoupment, or counterclaim.

(d) All borrowings under the DIP Facility and all use of Cash Collateral shall be in compliance with the Budget and this Interim DIP Order, and the Debtors shall not use any portion of the proceeds of the DIP Facility or any Cash Collateral, directly or indirectly, in excess of the amounts set forth in the Budget (subject to any permitted variance agreed upon by the Debtors and DIP Lender). The Budget may be updated and amended from time to time in accordance with the DIP Credit Agreement and subject to Oxford's consent, *provided* that the Debtors shall be required always to comply with the Budget as set forth in DIP Credit Agreement.

8. *Superpriority Claims.*

(a) Subject in all respects to the Carve-Out and further subject to the reservations set forth in paragraph 22 herein, pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed senior administrative expense claims (the "Superpriority Claims") against the Debtors on a joint and several basis (without the need to file a proof of claim or request for payment) with priority over any and all administrative expenses, adequate protection claims, and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 364, 503(a), 503(b), 506(c), 507(a), 507(b), 546, 726, 1113, or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims shall be payable from all pre- and post-petition property of each of the Debtors. Other than the Carve-Out, no priority claims are, or will be, senior to, prior to, or *pari passu* with the Superpriority Claims, or any of the DIP Obligations, or with any other claims of the DIP Lender arising hereunder or under the other DIP Loan Documents, or otherwise in connection with the

DIP Facility.

9. *Carve-Out.*

(a) For purposes hereof, the "Carve-Out" means the aggregate amount of (i) all unpaid fees required to be paid in the Chapter 11 Case to the Clerk of the Bankruptcy Court and to the office of the United States Trustee under 28 U.S.C. § 1930(a)(6); (ii) the reasonable unpaid fees, costs, and disbursements of professionals retained by the Debtors and Committee in the Chapter 11 Case, including any third party CRO or similar officers working on behalf of the Debtors (the "Estate Professionals") that are provided for in the Budget and incurred prior to the delivery by the DIP Lender of a Carve-Out Trigger Notice (as defined below), and are allowed, if required, by the Bankruptcy Court (after notice and hearing) under §§ 327, 330, or 363 of the Bankruptcy Code and remain unpaid after application of any retainers being held by such professionals; and (iii) the reasonable unpaid fees, costs, and disbursements of the Estate Professionals that are incurred after the delivery of a Carve-Out Trigger Notice by the DIP Lender, that are allowed by the Bankruptcy Court (after notice and hearing) under §§ 327, 330, or 363 of the Bankruptcy Code after application of any retainers being held by such professionals, in an aggregate amount not to exceed $150,000. For purposes hereof, "Carve-Out Trigger Notice" shall mean a written notice delivered by the DIP Lender to the Debtors' counsel, Committee counsel and the U.S. Trustee, which notice may be delivered at any time following the occurrence and during the continuation of an Event of Default (as defined in the DIP Credit Agreement), expressly stating that the Post-Default Carve-Out Cap is triggered. If the Debtor cures the Event of Default giving rise to a Carve-Out Trigger Notice, within five business (5) days of the receipt thereof, such Carve-Out Trigger Notice shall no longer be of force and effect.

(b) Immediately upon delivery by the DIP Lender of a Carve-Out Trigger

Notice in accordance with this Interim DIP Order, the Carve-Out Trigger Notice shall be deemed a draw request and notice of borrowing by the Debtors for DIP Loans under the DIP Credit Agreement in an amount equal to the sum of the amounts set forth in the clauses of subparagraph (a)(i), (ii), and (iii) of this paragraph.

10. *DIP Liens.* As security for the DIP Obligations, effective and perfected upon the date of this Interim DIP Order and without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, or the possession or control by the DIP Lender of any property, the following security interests in and liens and mortgages upon all property identified in clauses (a), (b), and (c) below (the "<u>DIP Collateral</u>") are hereby granted to the DIP Lender, subject only to the Carve-Out in all respects (all such liens and security interests granted to the DIP Lender, pursuant to this Interim DIP Order and the DIP Loan Documents, the "<u>DIP Liens</u>"):

(a) <u>Liens Priming the Liens of Oxford</u>. Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority, senior priming lien on, and security interest in, the Accounts Receivable and the proceeds thereof up to the amount of the aggregate of the DIP Loans and the Prepetition Bankruptcy-Related Loan.

(b) <u>Liens Junior to Certain Existing Liens</u>. Pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected junior lien on, and security interest in, all tangible and intangible prepetition and post-petition property in which the Debtors have an interest (other than the property described in subparagraph (a) of this paragraph), whether now existing or hereafter acquired and all proceeds thereof, that is subject to valid, perfected, and unavoidable liens in existence immediately prior to the Petition Date, which explicitly include the Prepetition Liens.

(c) Liens on Proceeds of Avoidance Actions. Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority lien on, and security interest in, the proceeds (the "Avoidance Proceeds") of any of the Debtors' claims and causes of action arising under chapter 5 of the Bankruptcy Code (collectively, the "Avoidance Actions"), but, subject to entry of the Final DIP Order.

(d) The DIP Liens shall be valid and enforceable against any trustee appointed in the Chapter 11 Cases, upon the conversion of any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code or in any other proceedings related to any of the foregoing (such Chapter 11 Cases, chapter 7 case, or other proceedings, "Successor Cases"), and/or upon the dismissal of any of the Chapter 11 Cases. Subject to the entry of the Final DIP Order, the DIP Liens shall not be subject to section 510 of the Bankruptcy Code (other than as set forth in the Intercreditor Agreement), to the "equities of the case" exception of section 552 of the Bankruptcy Code, or to section 506(c) of the Bankruptcy Code, or sections 549, 550 or 551 of the Bankruptcy Code. For the avoidance of doubt, the adequate protection liens and roll-up liens granted herein shall be subject to the Challenge Period (defined below) set forth in paragraph 22.

11. *Roll-Up*. Upon entry of this Interim DIP Order, without any further action by the Debtors or any other party, and as a condition to the provision of liquidity under the DIP Facility, the Prepetition Bankruptcy-Related Loan shall automatically convert into the DIP Loans. Notwithstanding anything in paragraph 22 to the contrary, the Roll-Up and the liens granted thereto shall not be subject to Challenge.

12. *Budget*. All borrowings under the DIP Facility and all use of Cash Collateral shall be in compliance with the budget attached to the DIP Credit Agreement, as the same may be

modified from time to time by the consent of Oxford, DIP Lender and the Debtors (the "Budget"), subject to the following (the "Permitted Variance") (a) the actual total cash receipts, determined on a cumulative rolling four-week basis, shall not be less than 90% of the projected total cumulative cash receipts as set forth in the approved Budget for the relevant period of determination, and (b) the actual total disbursements, determined on a cumulative basis on a weekly basis, shall not be greater than 110% of the projected disbursements as set forth in the approved Budget for the relevant period of determination. The Debtors shall provide a variance report to DIP Lender and Oxford by Friday of each week comparing the previous week's budget-to-actuals and shall provide backup information and documentation upon request. The Debtors shall not use any portion of the proceeds of the DIP Facility or any Cash Collateral, directly or indirectly, in excess of the Permitted Variance to the Budget. Any amendment to the Budget shall be filed promptly with the Court, and no such Budget shall authorize any payments on account of any prepetition claim except in accordance with the Budget or as otherwise permitted or required by an order of this Court.

13. *Event of Default*. The occurrence of any of the following events, unless waived by Oxford and DIP Lender in writing, shall constitute an event of default under this Order (an "Event of Default"): (a) any interim or final debtor order governing cash collateral is reversed, vacated, stayed, amended, supplemented, or otherwise modified in a manner which shall materially and adversely affect the rights of Oxford; (b) the Debtors' Chapter 11 cases are either dismissed or converted to cases under Chapter 7 pursuant to a final order of the Bankruptcy Court, the effect of which has not been stayed; (c) the Debtors fail to make any required adequate protection payment due to Oxford; (d) the Debtors fail to operate in accordance with the Budget (after taking into account Permitted Variances); (e) a default or event of default occurs under the DIP Loan Documents; (f) the Debtors fail to comply with the Budget within the Permitted Variance or (g)

the Debtors fail to otherwise materially comply with the terms of this Order.

14. *Remedies after Event of Default*. The automatic stay under section 362 of the Bankruptcy Code is vacated and modified to the extent necessary to permit the DIP Lender and/or Oxford to exercise the following rights:

(a) At the end of the Remedies Notice Period, unless and until the Bankruptcy Court has entered an order to the contrary (or has scheduled an expedited hearing as contemplated under subparagraph (d) below), or as otherwise agreed to between the Debtors, the DIP Lender, and Oxford, the Debtors' rights to use the DIP Facility or Cash Collateral shall immediately cease pending further order of the Bankruptcy Court, except as necessary to fund the Carve-Out;

(b) As to the DIP Lender, to immediately upon the occurrence and during the continuance of an Event of Default, exercise all rights and remedies against the Accounts Receivable and the proceeds thereof in accordance with the applicable DIP Loan Documents, other than those rights and remedies against the applicable Accounts Receivable and the proceeds thereof as provided in clause (d) below;

(c) As to Oxford, to immediately upon the occurrence and during the continuance of an Event of Default, exercise all rights and remedies against the Prepetition Collateral (other than against the Accounts Receivable and the proceeds thereof as provided in accordance with the applicable DIP Loan Documents or clause (d) below); and

(d) Upon the occurrence and during the continuance of an Event of Default, and the DIP Lender's or Oxford's giving of five (5) Business Days' (such five (5)-Business Day period, the "**Remedies Notice Period**") prior written notice of the occurrence and continuation of such Event of Default to the Debtors (with a copy to counsel to the Debtors, counsel to Oxford, counsel to DIP Lender, the U.S. Trustee, and counsel to the Committee (if any)), all rights and remedies against the above described collateral respectively provided for in the applicable DIP Loan Documents, Prepetition Loan Documents and this Interim DIP Order. During the Remedies Notice Period, the Debtors shall be permitted to (x) use the proceeds of the DIP Facility and/or the Cash Collateral first to fund the Carve-Out Account in full and, thereafter, for other expenditures in accordance with the Budget and this Order, (y) contest the occurrence and/or continuance of any Event of Default, and (z) to seek and obtain an emergency hearing before the Court. Neither the DIP Lender's or Oxford's delay or failure to exercise rights and remedies under the DIP Loan Documents or this Interim DIP Order shall constitute a waiver of the DIP Lender's rights hereunder, thereunder or otherwise, unless any such waiver is pursuant to a written instrument executed in accordance with the terms of the DIP Credit Agreement.

15. *Limitation on Charging Expense against Collateral.* Subject to and effective upon entry of the Final DIP Order, except to the extent of the Carve-Out, no expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the DIP Collateral, as the case may be, pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the DIP Lender and no such consent shall be implied from any other action or inaction by the DIP Lender.

16. *Payments Free and Clear*. Subject to the reservation of rights set forth in paragraph 22 herein, any and all payments or proceeds remitted to the DIP Lender or to Oxford pursuant to the provisions of this Interim DIP Order shall be received free and clear of any claim, charge, assessment, or other liability, other than the Carve-Out.

17. *Cash Collateral.* All of the Debtors' cash as of the Petition Date on deposit or maintained by the Debtors in any account or accounts and any cash proceeds of the disposition of

any Prepetition Collateral (as defined in the Motion) constitute proceeds of the Prepetition Collateral and, therefore, are Cash Collateral of Oxford (subject in all cases to the Intercreditor Agreement) within the meaning of section 363(a) of the Bankruptcy Code.

18. *Use of Cash Collateral.* The Debtors are hereby authorized to use the Cash Collateral during the Interim Period for working capital and general corporate purposes, including fees, costs and expenses related to the Chapter 11 Cases and the DIP Loan Documents, capital expenditures, and to pay interest, fees, and expenses in connection with the DIP Loans, including adequate protection payments as set forth herein, in accordance with the terms and conditions of this Interim DIP Order and subject to compliance with the Budget; *provided* that (a) Oxford is granted adequate protection as set forth herein, and (b) except on the terms of this Interim DIP Order, the Debtors are not authorized to use the Cash Collateral.

19. *Adequate Protection.* Pursuant to sections 361, 363(c)(2), and 363(e) of the Bankruptcy Code and to the extent of any diminution in the value of its interest in the Prepetition Collateral, Oxford shall be entitled to receive the payments contemplated in the Budget on account of the Prepetition Loan Obligations. In addition, the Debtors hereby grant to Oxford continuing, valid, binding, enforceable, non-avoidable and automatically perfected post-petition security interests in and liens on all of the Prepetition Collateral (subject to any senior liens on Accounts of the DIP Lender). The foregoing shall be subject in all respects to the Carve-Out and paragraph 22 herein.

20. *Perfection of DIP Liens.*

(a) The DIP Lender is hereby authorized, but not required, to file or record financing statements, mortgages, notices of lien, or similar instruments in any jurisdiction, take possession of or control over, or take any other action in order to validate and perfect the DIP Liens granted to it hereunder, in each case, subject to the terms of the DIP Loan Documents, and the automatic stay is hereby lifted solely to permit such authorized actions. Whether or not the DIP Lender chooses to file such financing statements, mortgages, notices of lien, or similar instruments, take possession of or control over, or otherwise confirm perfection of the DIP Liens, such DIP Liens shall be deemed valid, perfected, allowed, enforceable, non-avoidable, and not subject to challenge, dispute or, other than as set forth in the Intercreditor Agreements, subordination as of the date of entry of this Interim DIP Order.

(b) A certified copy of this Interim DIP Order may, in the discretion of the DIP Lender, 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 certified copy of this Interim DIP Order for filing and recording.

(c) The Debtors shall execute and deliver to the DIP Lender, all such agreements, financing statements, instruments and other documents as the DIP Lender may reasonably request to evidence, confirm, validate, or perfect the DIP Liens.

21. *Preservation of Rights Granted Under the Order.*

(a) Unless all DIP Obligations shall have been indefeasibly paid in full in cash, it shall constitute an Event of Default and a termination of the right to use the Cash Collateral if (i) any of the Debtors seeks, or if there is entered, any modification of this Interim DIP Order without the prior written consent of the DIP Lender and Oxford, and no such consent shall be implied by any other action, inaction or acquiescence by the DIP Lender or Oxford, or (ii) an order is entered converting or dismissing any of the Chapter 11 Cases.

(b) If any or all of the provisions of this Interim DIP Order are hereafter reversed, modified, vacated, or stayed, such reversal, stay, modification, or vacatur shall not affect

(i) the validity, priority or enforceability of any DIP Obligations incurred prior to the effective date of such reversal, stay, modification, or vacatur, or (ii) the validity, priority, or enforceability of the DIP Liens. Notwithstanding any such reversal, stay, modification, or vacatur, any use of the Cash Collateral, any DIP Obligations incurred by the Debtors to the DIP Lender prior to the effective date of such reversal, stay, modification, or vacatur shall be governed in all respects by the original provisions of this Interim DIP Order, and the DIP Lender shall be entitled to all of the rights, remedies, privileges, and benefits granted in section 364(e) of the Bankruptcy Code, this Interim DIP Order, the DIP Loan Documents (with respect to all DIP Obligations), and uses of the Cash Collateral.

(c) Except as expressly provided in this Interim DIP Order or in the DIP Loan Documents, the Carve-Out, the DIP Liens, the Superpriority Claims, and all other rights and remedies of the DIP Lender and Oxford granted by this Interim DIP Order and the DIP Loan Documents shall survive, and, subject to paragraph 22 herein, shall not be modified, impaired, or discharged by (i) the entry of an order converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code or dismissing any of the Chapter 11 Cases, or (ii) the entry of an order confirming a plan of reorganization in any of the Chapter 11 Cases and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtors have waived any discharge as to any remaining DIP Obligations. The terms and provisions of this Interim DIP Order and the DIP Loan Documents shall continue in the Chapter 11 Cases, in any Successor Cases, and the DIP Liens, the DIP Obligations, the Carve-Out, the Superpriority Claims, and the other administrative claims granted pursuant to this Interim DIP Order, and all other rights and remedies of the DIP Lender and Oxford granted by this Interim DIP Order and the DIP Loan Documents shall continue in full force and effect until all DIP Obligations are indefeasibly paid in full in cash.

22. *Effect of Stipulations on Third Parties.*

(a) The Stipulations contained in this Interim DIP Order shall be binding upon each Debtor and its respective estate under all circumstances. The stipulations and admissions contained in this Interim DIP Order shall be binding upon all other parties in interest unless (a) a party-in-interest (including the Committee, if any, or any chapter 7 or chapter 11 trustee appointed or elected for any of the Debtors) (each, a "Challenge Party") that successfully seeks and obtains standing (on a final basis) to do so has timely filed an adversary proceeding or contested matter (subject to the limitations contained herein, including in this paragraph) (a "Challenge") within one hundred twenty (120) days after entry of this Interim DIP Order (the "Challenge Period"); *provided* that any such period is subject to extension as may be specified by this Court for cause shown, or if Oxford agrees in writing to such an extension with respect to any Claims and Defenses (defined below) in respect of the Prepetition Loan Obligations and/or Prepetition Liens , (i) challenging the validity, enforceability, priority or extent of the Prepetition Loan Obligations or the Prepetition Liens on the Prepetition Collateral securing the Prepetition Loan Obligations, or (ii) otherwise asserting or prosecuting any avoidance actions or any other claims, counterclaims, or causes of action, objections, contests or defenses (collectively, the "Claims and Defenses") against Oxford or its respective agents, affiliates, subsidiaries, directors, officers, representatives, attorneys, or advisors, each in their capacity as such, in connection with any matter related to the Prepetition Loan Obligations or the Prepetition Collateral; (b) an order is entered and becomes final in favor of the Challenge Party sustaining any such Challenge duly made in accordance with the foregoing.

(b) If no Challenge is timely filed in respect of the Prepetition Loan Obligations, (x) the Prepetition Loan Obligations shall constitute allowed claims, not subject to counterclaim, setoff, subordination, defense, avoidance, impairment, disallowance, recharacterization, reduction, recoupment, recovery, for all purposes in the Chapter 11 Cases and any subsequent chapter 7 case, (y) the Prepetition Liens on the Prepetition Collateral securing the Prepetition Loan Obligations shall be deemed to have been, as of the Petition Date, and to be, legal, valid, binding, perfected and of the priority specified in herein (subject to the Intercreditor Agreement), not subject to setoff, subordination (subject to the Intercreditor Agreement), defense, avoidance, impairment, disallowance, recharacterization, reduction, recoupment, or recovery, and (z) the Prepetition Loan Obligations, Oxford, and the Prepetition Liens on the Prepetition Collateral granted to secure the Prepetition Loan Obligations shall not be subject to any other or further challenge by any party- in-interest (including the Committee), and every party-in-interest shall be enjoined from seeking to exercise the rights of the Debtors' estates, including any successor thereto (including any estate representative or a chapter 7 or 11 trustee appointed or elected for any of the Debtors). Nothing in this Interim DIP Order shall confer standing on any party in interest to assert any Claims or Defenses or otherwise bring any cause of action, and such standing shall remain solely with the Debtors unless otherwise ordered by the Court.

(c) If any Challenge is timely filed, the stipulations and admissions contained in paragraphs 4 (Debtors' Stipulations) and 14 (Cash Collateral) of this Interim DIP Order shall nonetheless remain binding and preclusive (as provided in the third sentence of this paragraph) on all parties-in-interest, including the Committee, except as to any such findings and admissions that were expressly and ultimately successfully challenged in such Challenge, if any, and solely to the extent expressly set forth in the final order sustaining such Challenge.

23. *Limitation on Use of DIP Loans and DIP Collateral.* The Debtors shall use the DIP Loans and the Cash Collateral solely as provided in this Interim DIP Order, the Budget, and

the DIP Loan Documents (including the Intercreditor Agreement). Notwithstanding anything herein or in any other order of this Court to the contrary, none of the DIP Loans, the DIP Collateral, the Cash Collateral, or the Carve-Out may be used to (a) object, contest or raise any defense to, the validity, perfection, priority, extent, or enforceability of any amount due under the DIP Loan Documents, or the liens or claims granted under this Interim DIP Order, or the DIP Loan Documents, (b) assert any claims and defenses or any other causes of action against the DIP Lender and its agents, affiliates, subsidiaries, directors, officers, representatives, attorneys, or advisors, (c) prevent, hinder, or otherwise delay the DIP Lender's assertion, enforcement or realization on the DIP Collateral in accordance with the DIP Loan Documents or this Interim DIP Order, (d) seek to modify any of the rights granted to the DIP Lender or Oxford hereunder or under the DIP Loan Documents or the Prepetition Loan Documents, in the case of each of the foregoing clauses (a) through (d), without such party's prior written consent, or (e) pay any amount on account of any claims arising prior to the Petition Date (except with respect to the roll-up of the Prepetition Bankruptcy-Related Loan) unless such payments are (i) approved by an order of this Court and (ii) permitted under the DIP Loan Documents; *provided* that notwithstanding anything to the contrary herein, no more than an aggregate of $25,000 of the Cash Collateral or proceeds of the DIP Loans may be used by the Committee to investigate the validity, enforceability, or priority of the Prepetition Loan Obligations or the liens on the Prepetition Collateral securing the Prepetition Loan Obligations or investigate any Claims and Defenses against Oxford.

24. *Professional Expenses*. The Debtors are directed to pay all reasonable and documented prepetition and post-petition fees and out-of-pocket expenses due and outstanding to the DIP Lender and Oxford related to the Bankruptcy Cases *provided* such fees and expenses are not subject to a bona fide dispute. Payment of such fees and expenses shall not be subject to

allowance by the Court. Professionals for Oxford and DIP Lender shall not be required to submit invoices in any particular format, however any time that professionals seek payment of fees and expenses from the Debtors, each professional shall provide copies of its invoices (which may be redacted or modified to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of such invoices shall not constitute any waiver of the attorney client privilege or of any benefits of the attorney work product doctrine) to the U.S. Trustee and counsel for a Committee (if appointed) contemporaneously with the delivery of such fee and expense statements to the Debtors. Any objections raised by the Debtors, the U.S. Trustee or a Committee (if appointed) with respect to such invoices must be in writing and state with particularity the grounds therefor and must be submitted to the applicable professional within ten (10) days of the receipt of such invoice; if after ten (10) days such objection remains unresolved, it will be subject to resolution by the Court. Pending such resolution, the undisputed portion of any such invoice will be paid promptly by the Debtors. No attorney or advisor to Oxford or DIP Lender shall be required to file an application seeking compensation for services or reimbursement of expenses with the Court.

25. *Insurance*. The Debtors shall maintain insurance post-petition consistent with its prepetition practices. The Debtors shall maintain all insurance on all Prepetition Collateral and DIP Collateral as required under the Prepetition Loan Documents and DIP Loan Documents. To the extent Oxford is listed as loss payee under the Debtors' insurance policies, the DIP Lender is also deemed to be the loss payee under the Debtors' insurance policies and shall act in that capacity and subject to the terms of the DIP Loan Documents, distribute any proceeds recovered or received in respect of any such insurance policies, first, to the payment of the Prepetition Loan Obligations

until paid in full, and <u>second</u>, to the payment of the DIP Obligations, subject to and in accordance with the Intercreditor Agreement.

26. *No Marshaling/Applications of Proceeds*. Subject to entry of a Final DIP Order, Oxford shall not be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the Prepetition Collateral.

27. *Section 552(b)*. Subject to entry of a Final Order, Oxford and DIP Lender shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to Oxford or DIP Lender with respect to proceeds, product, offspring or profits of any of the Prepetition Collateral.

28. *Order Governs.* In the event of any inconsistency between the provisions of this Interim DIP Order and the DIP Loan Documents, the provisions of this Interim DIP Order shall govern.

29. *Binding Effect; Successors and Assigns.* The terms and provisions of this Interim DIP Order shall be binding upon all parties-in-interest in the Chapter 11 Cases, including the DIP Lender, Oxford, and the Debtors and their respective successors and assigns, including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for any of the Debtors, an examiner with expanded powers appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors, and shall inure to the benefit of the DIP Lender, Oxford, and the Debtors and their respective successors and assigns.

30. *Limitation of Liability.* In determining to make any loan under the DIP Credit Agreement, permitting the use of Cash Collateral, or in exercising any rights or remedies as and

when permitted pursuant to this Interim DIP Order or the DIP Loan Documents, nothing in this Interim DIP Order shall be construed to impose on the DIP Lender or Oxford any liability thereon by reason of being deemed in control of the operations of the Debtors or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601 *et seq.* as amended, or any similar federal or state statute). Furthermore, nothing in this Interim DIP Order or in the DIP Loan Documents shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Lender or Oxford of any liability for any claims arising from the prepetition or post-petition activities of any of the Debtors.

31. *Intercreditor Agreement.* The rights of the DIP Lender and Oxford shall at all times remain subject to the Intercreditor Agreement.

32. *Proofs of Claim*. The DIP Lender shall not be required to file proofs of claim in any of the Chapter 11 Cases or any Successor Cases for any claim allowed herein, and Oxford shall not be required to file proofs of claim or request payment of an administrative expense in any of the Chapter 11 Cases or any Successor Cases for any claim in respect of the Prepetition Loan Obligations. Any order entered by the Court in relation to the establishment of a bar date for any claim (including administrative claims) in any of the Chapter 11 Cases or any Successor Cases shall not apply to the DIP Lender or Oxford.

33. *Credit Bid.* Subject to Section 363(k) of the Bankruptcy Code, in connection with any sale process authorized by the Court, Oxford (either directly or through an acquisition vehicle) may credit bid up to the full amount of the outstanding Prepetition Loan Obligations, in each case including any accrued and unpaid interest and expenses (a "Credit Bid") in any sale of any

Prepetition Collateral, whether such sale is effectuated through section 363 or section 1129 of the Bankruptcy Code, by a Chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise. Oxford shall be considered a "Qualified Bidder" with respect to its rights to acquire all or any of the Prepetition Collateral by Credit Bid. To the extent the Prepetition Collateral that is subject to sale includes Accounts subject to any senior liens held by DIP Lender, Oxford's Credit Bid will be subject to the provision of consideration sufficient to pay in full in cash any senior liens of DIP Lender.

34. *No Waiver*. The failure of the DIP Lender or Oxford to seek relief or otherwise exercise their rights and remedies under this Interim DIP Order, the DIP Loan Documents, or the Prepetition Loan Documents, or otherwise, as applicable, shall not constitute a waiver of any of the DIP Lenders' or Oxford's rights hereunder, thereunder, or otherwise. Except as expressly provided herein, the entry of this Interim DIP Order and the entry of the Final DIP Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair any of the rights, claims, privileges, objections, defenses or remedies of the DIP Lender or Oxford under the Bankruptcy Code or under non-bankruptcy law against any other person or entity in any court.

35. *No Third-Party Rights.* Except as explicitly provided for herein, this Interim DIP Order does not create any rights for the benefit of any third party, creditor, equity holder, or any direct, indirect, third party, or incidental beneficiary.

36. *Effectiveness*. This Interim DIP Order shall constitute findings of fact and conclusions of law and shall take effect immediately upon entry hereof, and there shall be no stay of effectiveness of this Interim DIP Order.

37. *Final Hearing*. The Final Hearing is scheduled for [____________], 2024, at

[●]:[●] [a.m./p.m.], prevailing Eastern Time, before this Court.

38. The Debtors shall promptly serve copies of this Interim DIP Order (which shall constitute adequate notice of the Final Hearing) on the parties having been given notice of the Interim Hearing, and to any other party that has filed a request for notices with this Court and to the Committee after the same has been appointed, or Committee counsel, if the same shall have been appointed. Any party-in-interest objecting to the relief sought at the Final Hearing shall serve and file written objections; which objections shall be served upon: (a) proposed counsel for the Debtors, Raines Feldman Littrell, LLP, 11 Stanwix Street, Suite 1100, Pittsburgh, Pennsylvania 15222, Attn: Mark A. Lindsay, Daniel R. Schimizzi, Harry A. Readshaw, and Jordan N. Kelly; and Baker & Hostetler LLP, 200 South Orange Avenue, Suite 2300, Orlando, Florida 32801, Attn: Elizabeth A. Green, Jimmy D. Parrish, and Andrew V. Layden; (b) counsel to the DIP Lender, Gutnicki LLP, 4711 Golf Road, Suite 200, Skokie, Illinois 60076, Attn: Liz Boydston, Stacy J. Flannigan, and Max Schlan; (c) Counsel to Oxford, Updike, Kelly & Spellacy, P.C., Goodwin Square, 225 Asylum Street, 20th Floor, Hartford, Connecticut 06103, Attn: Kevin J. McEleney; (d) counsel to the Committee (if any); and (e) the Office of the U.S. Trustee for the Western District of Pennsylvania, and shall be filed with the Clerk of Court to allow actual receipt by the foregoing no later than October [__], 2024, at [__]:[__] [a.m./p.m.], prevailing Eastern time.

Prepared by: */s/ Daniel R. Schimizzi*
Daniel R. Schimizzi, Proposed Local Counsel to the Debtors

Dated: ___________________, 2024
Pittsburgh, Pennsylvania

____
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A-1

DIP Credit Agreement

[To Be Filed]

<u>EXHIBIT B</u>

DIP Financing Declaration

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In Re:	**Case No.: 24-70418-JAD**
POTTSVILLE OPERATIONS, LLC, *et al.*,[1]	**Chapter 11**
Debtors.	***Joint Administration Requested***
	Doc. No.:
POTTSVILLE OPERATIONS, LLC, *et al.*	**Related to Document No.:**
Movants,	**Hearing Date:**
-vs-	**Hearing Time:**
NO RESPONDENTS,	**Response Deadline:**
Respondents.	

DECLARATION OF NEIL LURIA, CHIEF RESTRUCTURING OFFICER OF THE DEBTORS, IN SUPPORT OF THE DEBTORS' EMERGENCY MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO OBTAIN POST-PETITION FINANCING, (II) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL, (III) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (IV) APPROVING ADEQUATE PROTECTION, (V) MODIFYING THE AUTOMATIC STAY, (VI) SCHEDULING A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF

I, Neil Luria, hereby declare under penalty of perjury that the following statements are true to the best of my knowledge, information, and belief:

1. I am the Chief Restructuring Officer of each of the nineteen debtors ("Debtors"). served in this position since October 15, 2024. I am authorized to make this declaration (this

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number are: Pottsville Operations, LLC (9467); Pottsville Propco, LLC (8685); Hampton House Operations, LLC (8969); Hampton House Propco, LLC (7258); Kingston Operations, LLC (1787); Kingston Propco, LLC (8562); Williamsport North Operations, LLC (9927); Williamsport Propco, LLC (2039); Williamsport South Operations, LLC (0298); Yeadon Operations, LLC (9296); and Yeadon Propco, LLC (5785). The Debtors' address is 425 West New England Avenue, Suite 300, Winter Park, Florida 32789.

"Declaration") on behalf of the Debtors. Unless otherwise stated in this Declaration, I have personal knowledge of the facts set forth herein.[2]

2. I submit this Declaration in support of the *Debtors' Emergency Motion for Interim and Final Orders (I) Authorizing the Debtors to Obtain Post-Petition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Approving Adequate Protection, (V) Modifying Automatic Stay, (VI) Scheduling a Final Hearing, and (VIII) Granting Related Relief* (the "Motion").[3]

3. Except where specifically noted, all statements in this Declaration are based on: (a) my personal knowledge developed during the course of my engagement with the Debtors; (b) my discussions with the Debtors' senior management, the Debtors' other advisors and other members of my team at the Debtors; and (c) my review of relevant documents and/or my opinion based upon my experience. If called to testify, I could and would testify to each of the facts set forth herein based on such personal knowledge, discussions, review of documents, and/or opinion.

4. As more fully set forth below, the Debtors cannot transition into their Chapter 11 Cases absent immediate access to the DIP Facility, and in my opinion, the DIP Facility is essential to maximizing the value of the Debtors' estates and ensuring their ability to continue providing care to their residents pending the sale of the Debtors' operations.

Qualifications

[2] Certain disclosures herein relate to matters within the personal knowledge of other professionals at the Debtors and are based on information provided by them.

[3] Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Motion.

5. I am the President of SOLIC Capital Advisors LLC ("SOLIC") and the head of SOLIC's restructuring and distressed asset support services divisions. I have previously served as the Chief Restructuring Officer in chapter 11 healthcare bankruptcies including serving as (a) Chief Restructing Officer of Tamarac 10200 and Unipharma, LLC, Case No. 20- bk-23346-PDR (Bankr. S.D. FL 2020); (b) Chief Restructuring Officer of Louisiana Medical Center and Heart Hospital, Case No. 17-10353 (Bankr. E.D. La. 2017), and (c) Chief Restructuring Officer of PBI Regional Medical Center, Case No. 06-16186 (Bankr. D.N.J 2008)). In addition, I have served as chief restructuring officer outside of bankruptcy for various other healthcare and non-healthcare companies.

6. Before joining SOLIC (and its predecessor entities), I served as crisis manager and President of BMJ Medical Management, Inc., an operator of ambulatory surgery centers, imaging centers, and physician practices.

7. I received an undergraduate degree in Economics from the Wharton School of the University of Pennsylvania and a Juris Doctorate from the Boston University School of Law. I hold an AIRA certification as a Certified Insolvency & Restructuring Advisor.

I. The Debtors' Need for Post-Petition Financing.

8. As more fully described in the First Day Declaration and in the Motion, the Debtors are losing money and are in a dire financial condition. Given the financial and operation struggles of the Debtors, upon consultation with their advisors and their secured lender, the Debtors determined that it would be in the best interests of their estates and all stakeholders to pursue certain strategic transactions that would allow the Debtors to transfer their money-losing operations as a going concern to a new operator. I believe this strategy will maximize recoveries to stakeholders of the Debtors' bankruptcy estates, and most importantly, ensure the continued,

uninterrupted care for their facilities' residents. In order to achieve these goals and fund their Chapter 11 Cases, however, the Debtors need additional capital. Based on the Debtors' forecast, if they do not have access to the DIP Facility, then they will be unable to: (a) generate sufficient levels of operating cash flow in the ordinary course of business to cover both their operating costs going forward and the projected restructuring costs of their Chapter 11 Cases; (b) pursue a strategic transaction to transfer operations of the Debtors' facilities to a new owner; and (c) ensure the continued care of their residents.

9. Accordingly, the Debtors are seeking approval to access the DIP Facility. The liquidity the DIP Facility will provide will enable the Debtors to preserve and maximize the value of their estates for the benefit of all parties in interest.

II. The Debtors' Marketing Efforts for Post-Petition Financing.

10. Based on my experience with numerous companies across the spectrum of healthcare sectors that file for relief under chapter 11 of the Bankruptcy Code, one of the most challenging and expensive endeavors a debtor can undertake (especially as it attempts a seamless transition into chapter 11) is contested litigation over priming first priority, senior liens in connection with post-petition financing. If the senior secured lender has a perfected security interest in all of a debtor's assets and is also under secured, which the Debtors submit is the case here with respect to their obligations owed to Oxford, then a debtor's ability to obtain the senior lender's consent to a priming lien is, for all intents and purposes, impossible. In this matter, Oxford informed the Debtors that it would not consent to any form of third-party priming or *pari passu* liens except with respect to the Debtors' accounts receivable. Further, the uncertainty of success and the extensive distraction, time, and costs associated with contested priming litigation made such a path unavailable to the Debtors.

11. Prior to my appointment as CRO, the Debtors explored the possibility of obtaining a DIP loan from Oxford, but after extensive negotiations the parties ultimately reached the conclusion that the DIP Lender would provide the DIP Loans with Oxford's consent to the priming of its liens with respect to the Debtors' Accounts Receivable and the proceeds thereof up to the amount of the DIP Loans and the Prepetition Bankruptcy-Related Loan.

12. In my opinion, the DIP Facility is the only realistic alternative to a complete shutdown of the Debtors' facilities on an emergency basis. Such a shutdown, were it to occur, would be logistically difficult for the Debtors, and perilous for the residents and their families who will be forced to move their loved ones from their homes to unfamiliar surroundings on an expedited basis.

13. After good faith negotiations, the Debtors and DIP Lender ultimately reached an agreement on the terms and conditions upon which, with this Court's approval, the DIP Lender will provide the Debtors with access to the DIP Facility. Ultimately, the DIP Facility proposed under the DIP Credit Agreement is the best and only actionable financing proposal available to the Debtors, and that facility provides necessary liquidity for the administration of the Chapter 11 Cases. Accordingly, in consultation with the Debtors' advisors, I have concluded that, given the circumstances, the Debtors have exercised sound business judgment in pursuing the DIP Facility.

III. The Prepetition Bankruptcy-Related Loan.

14. Shortly before the Petition Date, on or around October 11, 2024, the DIP Lender provided a secured loan in the amount of $282,000 to the Debtors, the proceeds of which funded certain costs and expenses necessary for filing these Chapter 11 Cases (the "Prepetition Bankruptcy-Related Loan"). Specifically, the Prepetition Bankruptcy-Related Loan proceeds were solely used to fund the following (collectively, the "Prepetition Bankruptcy-Related Loan

Expenses"): (a) the retainer and prepetition services of the Debtors' proposed co-counsel, Baker & Hostetler LLP, in the amount of $200,000; (b) the retainer of the Debtors' proposed local and co-counsel, Raines Feldman Littrell LLP, in the amount of $50,000; (c) the retainer and prepetition services of the Debtors' proposed financial advisors, SOLIC, in the amount of $256,192; (d) the retainer of the Debtors' proposed claims and noticing agent, Stretto, in the amount of $25,000; and (e) $46,988 to HUB International for necessary D&O and CRO insurance policies. All of the costs and expenses related to the Prepetition Bankruptcy-Related Loan Expenses were strictly limited to those fees and expenses that were absolutely necessary to commence these Chapter 11 Cases. In my opinion, without the Prepetition Bankruptcy-Related Loan, these Chapter 11 Cases could not have been filed, which would have devastated the Debtors and, more importantly, would have had significant negative effects on the residents of the Debtors' facilities that rely on the Debtors' continued operations.

15. The DIP Loan Documents provide that the Prepetition Bankruptcy-Related Loan will "roll-up" into the DIP Facility and become a DIP Obligation. As discussed above, the Prepetition Bankruptcy-Related Loan was not incurred for any purpose other than to make the filing of these Chapter 11 Cases possible.

IV. The DIP Facility is in the Best Interests of the Debtors' Estates.

16. The DIP Facility proposed under the DIP Credit Agreement will provide the liquidity needed to stabilize and fund the Debtors' operations during these cases as the Debtors seek to preserve and maximize the value of their estates for the benefit of all parties in interest. Moreover, the liquidity provided thereunder is necessary to facilitate the administration of their Chapter 11 Cases, fund administrative expenses, including professional fees, and ensure the Debtors' pursuit and consummation of a sale.

17. In addition, if the Debtors do not obtain access to the proposed DIP Facility, the Debtors' estates may be required to cease operations. In that scenario, residents of the Debtors' facilities would be severely disrupted, and the value of the Debtors' estates would be irreparably harmed.

18. For these reasons and those set forth below, in the Motion and First Day Declaration, I believe that entering into the DIP Credit Agreement will maximize the value of the Debtors' estates and is a sound exercise of the Debtors' business judgment.

V. The Debtors Exercised Sound and Reasonable Business Judgment in Deciding to Enter into the DIP Credit Agreement.

19. It is my understanding that, in order to enter into debtor in possession financing, a debtor must demonstrate that its decision was the product of its sound business judgment and that a reasonable businessperson would make a similar decision under similar circumstances. Under the circumstances, the Debtors' determination, with the assistance of the Debtors' advisors, to move forward with the DIP Facility is a sound exercise of their business judgment. Most importantly, without access to the DIP Facility, the Debtors will not be able to pay expenses necessary to sustain their operations, which would irreparably impair the value of the Debtors' estates during these cases and risk the quality care afforded to their residents.

20. Further, the DIP Facility is currently the only available and viable source of liquidity to make such payments. In addition, the Debtors, through myself, negotiated the DIP Credit Agreement with the DIP Lender in good faith, at arm's-length, and with the assistance of the Debtors' advisors. Based on such negotiations, I believe the terms and conditions of the proposed DIP Facility under the DIP Credit Agreement are fair, reasonable, reflective of the market

for financings of this type, and offer a significant benefit to the Debtors' estates. I am confident that the DIP Facility is the best financing available to the Debtors under the circumstances.

VI. The Terms of the DIP Facility Proposed under the DIP Credit Agreement Should be Approved.

21. It is my understanding that, pursuant to section 364(d)(1) of the Bankruptcy Code, a debtor may only obtain credit secured by a senior or equal line on property of the estate that is subject to a lien only if (A) the debtor is unable to obtain such credit otherwise; and (B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted. Further, it is my understanding that, pursuant to section 364(c) of the Bankruptcy Code, a debtor may obtain debtor in possession financing that provides the lender with superpriority claims, liens on unencumbered assets, and liens on property of the estate junior in priority to existing prepetition liens if (a) unsecured, non-superpriority financing is not available to the debtor, (b) the financing is necessary to preserve assets of the estate, and (c) the terms of the agreement are fair, reasonable and adequate. In my opinion, the Debtors' circumstances justify their decision to seek the authority to enter into the DIP Credit Agreement to gain access to the DIP Facility.

A. The Debtors are Unable to Obtain Financing on More Favorable Terms than the DIP Facility.

22. Based on my experience in the industry, I believe that the Debtors reasonably concluded that post-petition financing was not available on an unsecured basis following their good faith efforts to obtain alternate funding prior to the Petition Date. The operational difficulties facing the Debtors severely limit any lender's willingness to provide post-petition financing to the Debtors.

23. As discussed above, Oxford would only consent to post-petition priming with respect to the Debtors' accounts receivable. In turn, the DIP Lender would not provide the DIP Facility if it was not granted post-petition superpriority priming on the Debtors' accounts receivable. Accordingly, the Debtors reasonably determined that post-petition credit on the same terms as the DIP Facility was the most favorable post-petition financing available to the Debtors.

B. The DIP Facility is Necessary to Preserve the Value of the Debtors' Estates.

24. I also believe that the DIP Financing is necessary to preserve the value of the Debtors' estates. I understand that the Debtors, as debtors in possession, have a fiduciary duty to protect and maximize their estates' assets. The Debtors' access to post-petition financing is essential to their ability to effectively carry out that duty. Without the proceeds of the DIP Facility, the Debtors will be unable to fund critical payments in the ordinary course of business that are essential to the Debtors' operational viability. Failure to make these payments would have irreparable consequences to the Debtors' stakeholders. The DIP Facility will provide the Debtors with sufficient liquidity to fund their operations and maximize the value of their assets as they work toward the transfer of operations through the sale.

C. The Terms of the DIP Facility are Fair, Reasonable, and Adequate under the Circumstances.

25. I believe the terms of the DIP Facility are fair, reasonable and adequate under the circumstances, and in the best interests of the Debtors, their estates, and their creditors. The covenants included in the DIP Credit Agreement are reasonable and are not designed to make the Debtors disproportionately susceptible to a breach of such terms. The terms of the DIP Credit Agreement are also fair and reasonable under these very challenging circumstances.

26. I also believe that the fees to be paid under the DIP Credit Agreement are consistent with the market for debtor in possession financings of this size and type and are appropriate, particularly in light of the circumstances of these Chapter 11 Cases. The terms of the DIP Credit Agreement were negotiated by the Debtors, in good faith and at arms'-length to ensure that the terms were as favorable to the Debtors as possible under the circumstances, and I believe that such terms represent fair consideration for the critical financing proposed to be provided by the DIP Lender. Accordingly, I believe the terms of the DIP Facility proposed under the DIP Credit Agreement are fair, appropriate, reasonable, and adequate under the circumstances, and in the best interests of the Debtors, their estates, and their creditors.

27. Finally, based on my experience and after consultation with the Debtors' other professionals, it is my opinion that the term of the DIP Facility providing for a dollar-for-dollar rollup of the Prepetition Bankruptcy-Related Loan is reasonable and appropriate in these Chapter 11 Cases.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: October 15, 2024

/s/ Neil Luria
Neil Luria