

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

American Eagle Delaware Holding Company
LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 22-____ (____)

(Joint Administration Pending)

**MOTION OF DEBTORS FOR ENTRY OF INTERIM AND FINAL
ORDERS (I) AUTHORIZING THE USE OF CASH AND OTHER
COLLATERAL, (II) GRANTING ADEQUATE PROTECTION,
(III) SCHEDULING A FINAL HEARING, AND
(IV) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (the “**Debtors**”) hereby move (the “**Motion**”) for entry of an interim order, substantially in the form attached hereto as Exhibit A (the “**Interim Order**”), pursuant to sections 105, 361, 362, 363, 506, 507, and 552(b) of title 11 of the United States Code (the “**Bankruptcy Code**”); Rules 2002, 4001, 6004(h), 7062 and 9014 of Federal Rules of Bankruptcy Procedure (“**Bankruptcy Rules**”); and Rules 2002-1(b), 4001-2, and 9013-1(m) of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), (i) authorizing the Debtors to use the “**Cash Collateral**,” as defined in Bankruptcy Code section 363(a), of the Trustee (as defined below); (ii) providing adequate

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: American Eagle Delaware Holding Company LLC (4248), American Eagle Palmer Park LLC (d/b/a Lark Springs) (5908), American Eagle Tuskawilla LLC (d/b/a Palmetto Landing) (9489), American Eagle Leesburg AL LLC (d/b/a Vista Lake) (6258), American Eagle Brandon LLC (d/b/a Aldea Green) (6168), American Eagle Leesburg MC LLC (d/b/a Vista Lake) (7577), American Eagle Venice Island LLC (d/b/a Maris Pointe) (1695), American Eagle Titusville LLC (d/b/a Crescent Wood) (7210), American Eagle Island Lake LLC (d/b/a Cascade Heights) (1975), American Eagle Eau Gallie LLC (d/b/a Greenwood Place) (1483), American Eagle Owatonna AL LLC (d/b/a Timberdale Trace) (0555), American Eagle Hanceville LLC (d/b/a Monarch Place) (8173), American Eagle Ravenna LLC (d/b/a Vista Veranda) (9216), American Eagle Newark LLC (d/b/a Hearth Brook) (7125), American Eagle Kingston LLC (d/b/a Sycamore Springs) (4882), American Eagle Hendersonville LLC (d/b/a Red Cedar Glen) (3669), and American Eagle Pleasant Prairie LLC (d/b/a Robin Way) (9483). The Debtors’ mailing address is American Eagle Delaware Holding Company LLC, c/o American Eagle Lifecare Corporation, 3819 Hawk Crest Rd., Ann Arbor, MI 48103.

protection to the Trustee on the terms set forth in the Interim Order; (iii) scheduling a final hearing on the Motion and approving the form and notice of notice thereof; and (iv) granting related relief. In support of the Motion, the Debtors rely upon the *Declaration of Todd Topliff, President of the Debtors, in Support of Chapter 11 Petitions and First Day Motions* (the “**First Day Declaration**”)² filed contemporaneously herewith. In further support of the Motion, the Debtors, by and through their undersigned counsel, respectfully represent:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b). In accordance with Local Rule 9013-1(f), the Debtors consent to entry of a final order if it is determined that the Court lacks Article III jurisdiction to enter such final order or judgment absent consent of the parties. Venue of these cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105, 361, 362, 363, 506, 507, and 552(b), Bankruptcy Rules 2002, 4001, 6004(h), 7062 and 9014, and Local Rules 2002-1(b), 4001-2, and 9013-1(m).

BACKGROUND

I. General Background

3. On the date hereof (the “**Petition Date**”), each of the Debtors filed a voluntary petition in this Court commencing a case for relief under chapter 11 of the Bankruptcy Code (the “**Chapter 11 Cases**”). The factual background regarding the Debtors, including their business

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

operations, their capital and debt structures, and the events leading to the filing of the Chapter 11 Cases, is set forth in detail in the First Day Declaration and fully incorporated herein by reference.

4. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108. No trustee or examiner has been requested in the Chapter 11 Cases and no committees have yet been appointed.

II. Prepetition Debt Structure

5. To finance a portion of the costs of the Debtors' acquisition of the Facilities, the Capital Trust Agency, a legal entity created and a public agency organized under the laws of the State of Florida (the "**Issuer**"), issued its Senior Living Revenue Bonds (American Eagle Portfolio Project) Series 2018 in the initial aggregate principal amount of \$219,415,000, pursuant to a Trust Indenture dated as of December 1, 2018 (together with all supplements, amendments and modifications thereto, the "**Trust Indenture**") by and between the Issuer and UMB Bank, N.A., as Bond Trustee (the "**Bond Trustee**"), and consisting of: (a) \$143,125,000 Series 2018A-1 Bonds (the "**Series 2018A-1 Bonds**"), (b) \$20,500,000 Taxable Series 2018A-2 Bonds (the "**Series 2018A-2 Bonds**", together with the Series 2018A-1 Bonds, the "**Series 2018A Bonds**"), (c) \$33,960,000 Second Tier Series 2018B Bonds (the "**Series 2018B Bonds**"), and (d) \$21,830,000 Third Tier Series 2018C Bonds (the "**Series 2018C Bonds**" and, together with the Series 2018A Bonds and the Series 2018B Bonds, the "**Series 2018 Bonds**").

6. The Issuer loaned the proceeds of the Series 2018 Bonds to the Debtors pursuant to a Loan Agreement dated as of December 1, 2018 among the Issuer, Debtor American Eagle Delaware Holding Company LLC, as Borrower and Obligated Group Representative, and the Bond Trustee (together with all supplements, amendments and modifications thereto, the "**Loan Agreement**").

7. To evidence the repayment obligations under the Loan Agreement, the Debtors made those certain promissory notes, executed and delivered under that certain Master Trust Indenture dated as of December 1, 2018 (together with all supplements, amendments and modifications thereto, the “**Master Indenture**”) between the Debtors and UMB Bank, N.A., as Master Trustee (the “**Master Trustee**” and, in combination with its role as Bond Trustee, the “**Trustee**”) in the form of: (i) the Senior Series 2018A-1 Note dated December 1, 2018; (ii) the Senior Series 2018A-2 Note dated December 1, 2018; (iii) the Second Tier Series 2018B Note dated December 1, 2018; (iv) the Third Tier Series 2018C Note dated December 1, 2018 (collectively, the “**Series 2018 Obligations**”).

8. As security for its obligations with respect to the Series 2018 Bonds, the Debtors entered into: (i) the Master Indenture, pursuant to which the Debtors granted the Trustee a first priority lien on and security interest in substantially all of the Debtors’ assets as described in the Master Indenture; and (ii) certain Mortgages (as defined in the Master Indenture), pursuant to which the Debtors granted the Trustee a first priority lien on and security interest in the Mortgaged Property (as defined in the Master Indenture). The Trust Indenture, the Loan Agreement, the Master Indenture, the Series 2018 Obligations, the Mortgages, and each other document or agreement evidencing or securing the Bonds and related obligations are herein collectively referred to as the “**Bond Financing Documents**”.

9. Pursuant to the Bond Financing Documents, the Trustee holds valid and perfected first priority liens on and security interests in (collectively, the “**Prepetition Liens**”) substantially all of each Debtor’s real and personal property, including, without limitation, all Cash Collateral, Project Revenues, accounts, deposit accounts, money and investment property of the Debtors and the proceeds thereof and all Mortgaged Property (collectively, the “**Prepetition Collateral**”).

10. As of the Petition Date, the Debtors were indebted and liable under the Bond Financing Documents (a) in the aggregate principal amount of \$215,525,000, plus (b) accrued and unpaid interest with respect thereto³ and any additional fees, costs, premiums, expenses (including any Trustee's fees and expenses, which includes expenses of the Trustee's attorneys, financial advisors, and other professionals), reimbursement obligations, indemnification obligations, other contingent obligations, and other charges of whatever nature, whether or not contingent, whenever arising, due, or owing, and all other Obligations owing under or in connection with the Bond Financing Documents (clauses (a) and (b) together, the "**Prepetition Secured Obligations**").

III. The Debtors' Need for the Use of Cash Collateral

11. As described in the First Day Declaration, based on the performance of the Debtors' businesses, among other things, the Debtors, in consultation with their professionals, determined that the Facilities could not support the Prepetition Secured Obligations. The Debtors, in consultation with their professionals, further determined that they would be unable to restructure the Prepetition Secured Obligations outside of these Chapter 11 Cases.

12. The Debtors have an immediate and critical need for the use of Cash Collateral. Access to the use of Cash Collateral will allow the Debtors to continue operating, retain employees, and provide quality care to their residents, which the Debtors believe will preserve and maximize the value of the estates for the benefit of all parties in interest. The Debtors have determined that absent the use of Cash Collateral, the Debtors will be unable to continue (i) the operations of their businesses, (ii) the reorganization of their assets, and (iii) the marketing and sales process of the facility known as "Vista Lake", which will irreparably harm the Debtors' estates, creditors, and

³ As of the Petition Date, the outstanding amount of accrued but unpaid interest with respect to the Series 2018 Bonds was: (i) \$12,543,701.90 with respect to the Series 2018A-1 Bonds, (ii) \$1,478,737.12 with respect to the Series 2018A-2 Bonds, (iii) \$2,304,198.06 with respect to the Series 2018B Bonds, and (iv) \$2,826,844.77 with respect to the Series 2018C Bonds.

residents. The Debtors' ongoing obligations include obligations to pay wages to employees and amounts due and owing to vendors. Prompt payment of these obligations is critical to the well-being of the residents of the Facilities.

13. In exchange for the consensual use of Cash Collateral, the Debtors have agreed, and the Interim Order provides, adequate protection in the form of, among other things, adequate protection liens, superpriority claims to protect the Trustee against any diminution in the value of its interests in the Prepetition Collateral, including Cash Collateral, resulting from the use, sale, or lease of the Prepetition Collateral, including Cash Collateral, and payment of the Trustee's fees and expenses. The Interim Order further provides for the subordination of the Trustee's Adequate Protection Liens (as defined below) to the Carve-Out (as defined in the Interim Order).

14. At this time, the Debtors do not contemplate the need for postpetition financing. Instead, the Debtors intend to operate their businesses solely with existing Cash Collateral. Access to existing Cash Collateral on an interim basis will provide the Debtors with the liquidity necessary to ensure that the Debtors have sufficient working capital and liquidity to continue operating and continue their reorganization and sales processes. Without access to Cash Collateral, the Debtors will face irreparable harm.

RELIEF REQUESTED

15. The Debtors respectfully request entry of the Interim and Final Orders, pursuant to Bankruptcy Code sections 105, 361, 362, 363, 506, 507, and 552(b) and Bankruptcy Rules 2002, 4001, 6004(h), 7062 and 9014, (i) authorizing the Debtors to use the Cash Collateral, (ii) granting the Trustee adequate protection upon the terms set forth in the Interim Order and in any final orders, (iii) scheduling a final hearing on the Motion; and (iv) granting related relief.

**CONCISE STATEMENT OF MATERIAL TERMS OF THE INTERIM ORDER
PURSUANT TO LOCAL RULE 4002-1**

16. By this Motion, the Debtors seek entry of the Interim Order. The provisions of the Interim Order were extensively negotiated with the Trustee and are the most favorable terms that the Debtors were able to obtain under the circumstances. Approval of this Motion will ensure that the Debtors are able to maintain their operations, pursue and achieve a successful restructuring by implementing the Plan, and maximize the value of their estates for the benefit of all stakeholders. Accordingly, the Debtors request that the Court enter the Interim Order approving the use of Cash Collateral.

17. The below chart contains a summary of the material terms of the Interim Order governing the proposed use of Cash Collateral⁴, together with references to the applicable sections of the relevant source documents, as required by Bankruptcy Rule 4001(b) and Local Rule 4001-2(a)(i).⁵

Required Disclosure	Summary of Material Term	Reference in Interim Order
Parties with an Interest in Cash Collateral Bankruptcy Rule 4001(b)(1)(B)(i)	The Trustee.	¶¶ F, G
Amount of Cash Collateral and Purposes for the Use of Cash Collateral Bankruptcy Rule 4001(b)(1)(B)(ii)	The Interim Order provides the Debtors with access to all Cash Collateral, subject to the terms set forth therein and the Approved Budget, in order to, among other things, (i) permit the orderly continuation of their businesses, (ii) make certain adequate protection payments to the Trustee; and (iii) pay the costs of administration of their estates and satisfy other working capital and general corporate purposes of the Debtors.	¶ H

⁴ This summary and any other description of the Interim Order provided for in this Motion is qualified in its entirety by the actual terms of the Interim Order. The actual terms of the Interim Order will control in the event of any inconsistency between this Motion and the Interim Order.

⁵ Capitalized terms used but not otherwise defined in this chart have the meanings ascribed to them in the Interim Order.

Required Disclosure	Summary of Material Term	Reference in Interim Order
Local Rule 4001-2(a)(i)(A)		
Provisions Limiting the Court's Power and/or Discretion Local Rule 4001-2(a)(i)(C)	The Interim Order shall be binding upon the Debtors, any Committee, all other creditors of the Debtors, and all other parties in interest, and their respective successors and assigns (including any trustee or other fiduciary hereinafter appointed as a legal representative of the Debtors or with respect to the property of the estates of the Debtors) whether in the Chapter 11 Cases or any subsequent Chapter 7 case, or upon dismissal of the Chapter 11 Cases or any Chapter 7 case, except as otherwise provided therein. To the extent any terms of the Interim Order are modified, amended, or vacated, any claim or right granted to the Trustee under the Interim Order arising prior to the effective date of such modification, amendment or vacation shall continue to be governed in all respects by the original provisions of the Interim Order.	¶ 12
Stipulations of the Debtors Local Rule 4001-2(a)(i)(B)	The Debtors admit, stipulate, acknowledge, and agree that they are obligated, indebted and liable to the Trustee under the Bond Financing Documents and the Debtors' related Prepetition Secured Obligations. The Debtors further stipulate and agree as follows: <ul style="list-style-type: none"> As of the Petition Date, the Bond Financing Documents are each valid and enforceable against the Debtors, and the Debtors do not possess and agree not to assert any claim (as such term is defined in section 101(5) of the Bankruptcy Code), counterclaim, setoff or defense of any kind, nature or description which would in any way affect the validity or enforceability of the Bond Financing Documents; As of the Petition Date, the Prepetition Secured Obligations constitute legal, valid and binding obligations of the Debtors, enforceable in accordance with the terms of the Bond Financing Documents (other than with respect to a stay of enforcement arising from section 362 of the Bankruptcy Code); no offsets, defenses or counterclaims to any of the Prepetition Secured Obligations exists; no portion of the Prepetition Secured Obligations is subject to recharacterization, disallowance, reduction or subordination pursuant to the Bankruptcy Code or non-bankruptcy law; the Prepetition Secured Obligations constitute allowable secured claims; and the Debtors have irrevocably waived, discharged and released any rights they may have to challenge or object to the Prepetition Secured Obligations; As of the Petition Date, the Debtors are indebted to the Trustee for the benefit of the holders of the Series 2018 Bonds for the Prepetition Secured Obligations in the aggregate principal amount of not less than \$215,525,000, consisting of: (i) \$140,760,000 Series 2018A-1 Bonds, (ii) \$19,160,000 Series 2018A-2 Bonds, (iii) \$33,815,000 Series 2018B Bonds, and (iv) \$21,790,000 Series 2018C Bonds, plus accrued and unpaid interest with respect thereto and any additional fees, costs, premiums, expenses (including any Trustee's fees and expenses, which includes expenses of the Trustee's attorneys, financial advisors, and other professionals), reimbursement obligations, indemnification obligations, other contingent obligations, and other charges of whatever nature, whether or not contingent, 	¶¶ F, G

Required Disclosure	Summary of Material Term	Reference in Interim Order
	<p>whenever arising, due, or owing, and all other Obligations owing under or in connection with the Bond Financing Documents;</p> <ul style="list-style-type: none"> • The Trustee's liens and security interests with respect to the Prepetition Collateral are valid, enforceable and perfected (to the extent the same can be perfected by filing and/or recording financing statements, recording the Mortgages and, establishing and maintaining with the Trustee certain accounts), and such liens and security interests are not subject to recharacterization, disallowance, reduction or subordination pursuant to the Bankruptcy Code or non-bankruptcy law. All of such financing statements, the Mortgages, and any other agreements or documents related to validity, enforcement, or perfection of the Trustee's liens and security interests in the Prepetition Collateral in property or assets of the Debtors were validly authorized by the Debtors or validly executed by authorized representatives of the Debtors. Pursuant to the Bond Financing Documents, the Trustee has first priority (other than Permitted Encumbrances as defined in the Master Indenture) security interests in and liens on all of the Prepetition Collateral, including the Cash Collateral and all proceeds of the Prepetition Collateral, to secure payment of the Prepetition Secured Obligations. The Prepetition Liens were granted to the Trustee for the benefit of the holders of the Series 2018 Bonds for fair consideration and reasonably equivalent value and were granted contemporaneously with, or covenanted to be provided as an inducement for, the making of the loans and/or commitments and other financial accommodations secured thereby; • Pursuant to the Bond Financing Documents and the Forbearance Agreement, certain accounts were established and are held by the Trustee for the benefit of the holders of the Series 2018 Bonds, including but not limited to the Trustee-Held Funds. The Debtors acknowledge and agree that (x) the Trustee-Held Funds are (i) held in trust for the benefit of the holders of the Series 2018 Bonds, and (ii) are not property of the Debtors' estates, (y) the Trustee holds a validly perfected possessory security interest in the Trustee-Held Funds, and (z) the Trustee is entitled to apply the Trustee-Held Funds in accordance with the terms of the Bond Financing Documents and the Forbearance Agreement, as applicable. To the extent that the automatic stay otherwise applies to the Trustee-Held Funds pursuant to section 362(a) of the Bankruptcy Code, as adequate protection for the use of the Trustee's Cash Collateral, the Debtors stipulate to relief from such stay for the limited purpose of allowing the Trustee to administer and apply the Trustee-Held Funds in accordance with the Bond Financing Documents and the Forbearance Agreement, as applicable. The Trustee-Held Funds shall be administered and applied as set forth in the Bond Financing Documents and the Forbearance Agreement, as applicable, and for the express purposes set forth therein, and shall not be used or made available to Debtors as Cash Collateral or otherwise pursuant to the Interim Order, the Final Order, or any other order entered in these Chapter 11 Cases; • The Trustee's security interests and liens have attached to and encumber all funds and property of the Debtors consisting of the Prepetition Collateral and the products and proceeds thereof, and the 	

Required Disclosure	Summary of Material Term	Reference in Interim Order
	<p>Trustee's security interests and liens will, notwithstanding the commencement of the Chapter 11 Cases, as of the Petition Date and thereafter, attach to the products and proceeds of the Prepetition Collateral. Without limiting the foregoing, the Trustee's security interests and liens attach to all cash (whether as original collateral or cash proceeds of the Prepetition Collateral), negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents now or hereafter in the possession, custody or control of the Debtors (as defined in section 363(a) of the Bankruptcy Code, the "<u>Cash Collateral</u>"). For the avoidance of doubt, the term "Cash Collateral" does not include Trustee-Held Funds for purposes of the Interim Order; and</p> <ul style="list-style-type: none"> • The Debtors and their estates have no claims, objections, challenges, causes of action, recoupments, counterclaims, cross-claims, setoff rights, and/or choses in action, including "lender liability" causes of action or avoidance claims under chapter 5 of the Bankruptcy Code, whether arising under applicable state law or federal law (including any recharacterization, subordination, avoidance, disgorgement, recovery, or other claims arising under or pursuant to sections 105, 510, or 542 through 553 of the Bankruptcy Code), against the Trustee or any of its affiliates, agents, representatives, attorneys, advisors, professionals, officers, directors, and employees arising out of, based upon, or related to the loans under the Bond Financing Documents, the Prepetition Secured Obligations, or the Prepetition Liens. 	
<p>Budget</p> <p>Bankruptcy Rule 4001(b)(1)(B)(ii)</p> <p>Local Rule 4001-2(a)(i)(E) and 4001-2(a)(iii)</p>	<p><i>Approved Budget.</i> The term "<u>Approved Budget</u>" means the budget approved in writing in advance by the Trustee, as amended and updated from time to time with the prior written approval of the Trustee, reflecting the Debtors' anticipated cash receipts and disbursements, including capital expenditures and professional fees on a weekly basis for a rolling 13-week period, subject to the Permitted Variances, an initial copy of which is attached to the Interim Order as Exhibit 1.</p> <p><i>Permitted Variance.</i> The term "<u>Permitted Variance</u>" shall mean, for any Testing Period (as defined below), (i) any favorable variance, (ii) an unfavorable variance of not more than ten percent (10%) with respect to any line item in the Approved Budget, [(iii) an unfavorable variance of not more than ten percent (10%) with respect to overall cash receipts and disbursements under the Approved Budget and (iv)] any unfavorable variance approved in advance in writing by the Trustee; <i>provided, however</i>, that the Debtors shall be permitted to pay the actual expenses incurred for utilities and the fees of the United States Trustee pursuant to 28 U.S.C. § 1930 together with any interest thereon pursuant to 31 U.S.C. § 3717.</p> <p><i>Budget Testing.</i> Compliance with the Approved Budget shall be tested weekly beginning two weeks from the entry of the Interim Order on a cumulative basis from the Petition Date; <i>provided, however</i> that starting in the fifth week from the entry of the Interim Order, compliance will be tested weekly on a rolling four (4) week basis (each, a "<u>Testing Period</u>"). The Permitted Variance with respect to each Testing Period shall be determined and certified to the Trustee by the Debtors not later than the 7th day immediately following each such Testing Period. Any budgeted</p>	<p>¶¶ 2(iii)-(v) and Exhibit 1</p>

Required Disclosure	Summary of Material Term	Reference in Interim Order
	<p>expenditures not paid for in a particular budget period may be paid during a subsequent period, and for the purpose of calculating compliance with the covenants in this section, the Approved Budget will be revised following written notice to the Trustee to move such expenditures to the later Approved Budget period. Budgeted expenses may be paid in an earlier period (i.e., paid in any week prior to the week for which such expenditure was budgeted) in the reasonable discretion of the Debtors, provided such payment does not otherwise violate the Permitted Variance for that prior week. In the event of any such prepayment of expenditures, the Approved Budget shall be deemed amended to move the expenditure into the week in which the actual expenditure was made for the purpose of calculating compliance with the covenants in this section. The Debtors will provide a written explanation in reasonable detail explaining the amount of and the reason for the prepayment or delay in payment of any expenditures in connection with their weekly reporting obligations hereunder.</p> <p><i>Amendments or Modifications Related to the Approved Budget.</i> Absent relief from the Court, any amendment or modification of the terms and conditions set forth in the Interim Order related to the Approved Budget, or any amendment or modification of the Approved Budget itself, shall be subject to prior written consent and approval of the Trustee. In the event of a dispute concerning the Approved Budget, all rights of the Debtors and Trustee shall be and are reserved.</p>	
<p>Carve-Out</p> <p>Bankruptcy Rule 4001(b)(1)(B)(iii)</p> <p>Local Rule 4001-2(a)(i)(F)</p>	<p>The relief described in the Interim Order is based in part on the Carve-Out from the Prepetition Collateral described in this paragraph. The term “Carve-Out” shall mean the sum of (i) all fees required to be paid to the Clerk of the Court and to the United States Trustee under 28 U.S.C. § 1930(a), together with any interest thereon pursuant to 31 U.S.C. § 3717; (ii) Court-allowed fees and expenses of a trustee appointed under section 726(b) of the Bankruptcy Code in an amount not to exceed \$30,000, (iii) all budgeted and accrued but unpaid professional fees and expenses (the “<u>Professional Fees and Expenses</u>”) of (A) any patient care ombudsman (“PCO”) appointed in these cases and (B) the attorneys and financial advisors employed by the Debtors, the Committee and the PCO, if any, pursuant to, <i>inter alia</i>, sections 327, 328 or 1103 of the Bankruptcy Code (collectively, the “<u>Case Professionals</u>”)) to the extent reflected in the Approved Budget and provided herein, allowed by the Court, and incurred prior to the delivery of a Termination Notice, and (iv) Professional Fees and Expenses of Case Professionals in an aggregate amount not to exceed \$50,000 incurred after the delivery of a Termination Notice to be shared by the Case Professionals, to the extent such Professional Fees and Expenses are deemed allowed by the Court. Prior to the payment of such fees and expenses from the amount available under the Carve-Out, such professionals shall first apply any retainers held by such professional to their allowed fees and expenses.</p>	<p>¶ 4</p>
<p>Provisions that Provide for Postpetition Liens on Unencumbered Assets</p>	<p>The Interim Order provides for Adequate Protection Liens on unencumbered assets to the extent of any diminution in value.</p>	<p>¶ 3(i)</p>

Required Disclosure	Summary of Material Term	Reference in Interim Order
Local Rule 4001-2(a)(i)(G)		
<p>Adequate Protection</p> <p>Bankruptcy Rule 4001(b)(1)(B)(iv)</p> <p>Local Rules 4001-2(a)(i)(G), (K)</p>	<p>As adequate protection of the Trustee's interests in the Prepetition Collateral, including Cash Collateral, pursuant to sections 361, 362, 363, and 552(b) of the Bankruptcy Code, the Trustee is granted the following:</p> <ul style="list-style-type: none"> • <i>Adequate Protection Liens.</i> As security for and solely to the extent of any diminution in the value of the Trustee's Prepetition Collateral from and after the Petition Date, calculated in accordance with section 506(a) of the Bankruptcy Code (a "<u>Diminution in Value</u>"), the Trustee is granted, effective and perfected as of the Petition Date, a valid, binding, continuing, enforceable, first-priority, fully perfected security interest and lien upon all assets and property of the Debtors and their respective estates of any kind or nature whatsoever, including, without limitation, the Prepetition Collateral, all postpetition property of the Debtors' estates, and the proceeds, rents, products, and profits from all of the foregoing, whether acquired or arising before or after the Petition Date (the "<u>Adequate Protection Liens</u>"); <i>provided, however</i>, the Adequate Protection Liens shall be subject and subordinate only to (a) the Prepetition Liens, (b) any validly perfected lien or security interest senior to the liens and security interests of the Trustee with respect to the Debtors' assets and properties as of the Petition Date (the "<u>Prior Senior Liens</u>"), and (c) the Carve-Out. Notwithstanding the foregoing, the Adequate Protection Liens shall not attach to avoidance actions of the Debtors' estates arising under chapter 5 of the Bankruptcy Code (the "<u>Avoidance Actions</u>") or proceeds thereof; <i>provided, however</i>, that, subject to the entry of a Final Order, the Adequate Protection Liens granted in the Interim Order shall attach to the proceeds of and other property that is recovered or becomes unencumbered as a result of (whether by judgment, settlement, or otherwise) any Avoidance Actions. For the avoidance of doubt, the Adequate Protection Liens (x) are and shall be in addition to the Prepetition Liens; (y) are and shall be deemed properly perfected, valid and enforceable liens without any further action by the Debtors or the Trustee and without the execution, filing or recordation of any financing statements, security agreements, mortgages or other documents and instruments; and (z) shall remain in full force and effect notwithstanding any subsequent conversion to Chapter 7 or dismissal of the Chapter 11 Cases. Although not required, upon request by the Trustee, the Debtors shall execute and deliver any and all UCC Financing Statements or other instruments or documents considered by the Trustee to be reasonably necessary in order to perfect the Adequate Protection Liens and proceeds granted by the Interim Order, and the Trustee is authorized to receive, file and record the foregoing, which actions shall not be deemed a violation of the automatic stay embodied in section 362 of the Bankruptcy Code. The Trustee, in its discretion, may file a photocopy of the Interim Order as a financing statement or other evidence of the perfection of its respective liens, with any recording officer designated to file financing statements or with any 	¶ 3

Required Disclosure	Summary of Material Term	Reference in Interim Order
	<p>registry of deeds, and in such event, the recording officer shall be authorized to file or record such copy of the Interim Order.</p> <ul style="list-style-type: none"> <p><i>Superpriority Claim.</i> As further adequate protection, and to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code, the Debtors grant effective as of the Petition Date to the Trustee an allowed superpriority administrative expense claim in each of the Chapter 11 Cases on a dollar-for-dollar basis for and solely to the extent of any Diminution in Value, which administrative claim shall, among other things, have priority over all administrative expense claims and other claims against each of the Debtors, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expense claims of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c) (subject to entry of the Final Order), 507(a), 507(b), 546(c), 726, 1113 and 1114 of the Bankruptcy Code (the “Superpriority Administrative Claim”); <i>provided, however</i>, the Superpriority Administrative Claim shall be subject only to (a) the Prepetition Liens, (b) the Prior Senior Liens, and (c) the Carve-Out.</p> <p><i>Financial Reporting.</i> As further adequate protection, the Debtors shall provide the Trustee with all reports, documents, and other materials, including financial reports, as may be required in the Interim Order and shall continue to provide all financial reporting required by the Bond Financing Documents. In addition, upon reasonable notice, the Debtors shall provide the Trustee and its representatives with access to the Debtors’ premises, personnel (including, but not limited to, senior management and any similar person or firm employed by the Debtors in the Chapter 11 Cases), advisors, books and records, and the Debtors shall cooperate fully in all reasonable requests for information and data made by the Trustee.</p> <p><i>Budget.</i> As further adequate protection, the Debtors shall comply with, and shall use cash, including Cash Collateral, solely in accordance with the Approved Budget (subject to the Permitted Variances).</p> <p><i>Payment of Trustee’s Fees and Expenses.</i> As further adequate protection, (a) the Debtors shall, and are directed to, pay in full in cash and in immediately available funds, the reasonable and documented professional fees, expenses and disbursements (including, but not limited to, the expenses and disbursements of counsel and other third-party consultants, including financial advisors) incurred by the Trustee (the “Trustee Fees”) in the amounts and at the times set forth in the Approved Budget and (b) the Trustee, to the extent necessary to satisfy the Trustee Fees in full, is authorized to withdraw monies from any expense retainers funded by the Debtors prior to the Petition Date and/or the Trustee-Held Funds in accordance with the Bond Financing Documents. None of the foregoing reasonable and documented fees, expenses and disbursements shall be subject to separate approval by this Court or require compliance with the United States Trustee Guidelines, and no recipient of any such payment shall be required to file any interim or final fee application with respect thereto or otherwise seek the Court’s approval of any such payments; <i>provided, that</i> copies of the invoices for such professional fees, expenses and</p> 	

Required Disclosure	Summary of Material Term	Reference in Interim Order
	<p>disbursements (the “<u>Invoiced Fees</u>”) shall be served by email on the Debtors, the United States Trustee, and counsel to any Committee (collectively, the “Fee Notice Parties”), who shall have ten (10) business days (the “Review Period”) to review and assert any objections thereto. Invoiced fees shall be in the form of an invoice summary for professional fees and categorized expenses incurred during the pendency of the Chapter 11 Cases, and such invoice summary shall not be required to contain time entries, but shall include a list of professionals providing services, with rates and hours worked, and a general, brief description of the nature of the matters for which services were performed, and which may be redacted or modified to the extent necessary to delete any information subject to the attorney-client privilege, any work product doctrine, privilege or protection, common interest doctrine privilege or protection, any other evidentiary privilege or protection recognized under applicable law, or any other confidential information (such information, collectively, “<u>Confidential Information</u>”), and the provision of such invoices shall not constitute any waiver of the attorney-client privilege, work product doctrine, privilege or protection, common interest doctrine privilege or protection, or any other evidentiary privilege or protection recognized under applicable law; <i>provided, however</i>, that the United States Trustee reserves the right to seek copies of invoices containing detailed time entries of any such professional (which detailed invoices may be redacted to the extent necessary to protect Confidential Information). The Debtors, any Committee, or the United States Trustee may dispute the payment of any portion of the Invoiced Fees (the “Disputed Invoiced Fees”) if, within the Review Period, a Debtor, any Committee, or the United States Trustee notifies the submitting party in writing setting forth the specific objections to the Disputed Invoiced Fees (the applicable parties shall work in good faith to promptly resolve any such objection or, if unable to do so, shall seek an order of the Court). For the avoidance of doubt, the Debtors shall promptly pay in full all Invoiced Fees other than the Disputed Invoiced Fees.</p> <ul style="list-style-type: none"> • <i>Right to Seek Additional Adequate Protection.</i> The Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights of the Trustee to request further or alternative forms of adequate protection at any time or the rights of the Debtors or any other party to contest such request. • <i>Miscellaneous.</i> Except for the Carve-Out, the Adequate Protection Liens and the Superpriority Administrative Claims granted in the Interim Order to the Trustee shall not be subject or junior to any lien or security interest that is avoided and preserved for the benefit of the Debtors’ estates under section 551 of the Bankruptcy Code and shall not be subordinated to or made <i>pari passu</i> with any lien, security interest or administrative claim under section 364 of the Bankruptcy Code or otherwise. 	
Provisions that Establish Sale or Plan Milestones	<p>The Debtors are required to comply with the following milestones:</p> <ul style="list-style-type: none"> • The entry of the Interim Order no later than 3 business days after the Petition Date; 	¶ 10(xv), Exhibit 2

Required Disclosure	Summary of Material Term	Reference in Interim Order
Local Rule 4001-2(a)(i)(H)	<ul style="list-style-type: none"> • The entry of (A) the Final Order on this Motion and (B) the order approving the Debtors' assumption of a Restructuring Support Agreement with the Trustee no later than 35 calendar days after the Petition Date; • The entry of the order approving the Disclosure Statement and solicitation procedures no later than 50 calendar days after the Petition Date; • The entry of the Confirmation Order on or before the date that is 120 days after the Petition Date; and • The Plan Effective Date shall occur and the Restructuring shall be implemented within 30 days after entry of the Confirmation Order, and in any event by not later than June 30, 2022. 	
Professional Fees and Expenses Local Rule 4001-2(a)(i)(K)	The Adequate Protection granted under the Interim Order includes the payment of the Trustee's Fees and is described above under the heading "Payment of Trustee's Fees and Expenses."	¶ 3(v)
Limitation on Estate Funds Related to the Challenge Period Local Rule 4001-2(a)(i)(L)	The limitation on estate funds related to the Challenge Period is \$30,000.	¶ 7
Termination Events Bankruptcy Rule 4001(b)(1)(B)(iii) Local Rule 4001-2(a)(i)(M)	<p>The occurrence of any one or more of the following events shall constitute a termination event (a "<u>Termination Event</u>") under the Interim Order, unless expressly waived in writing by the Trustee:</p> <ul style="list-style-type: none"> • The Debtors fail to obtain entry of a Final Order reasonably acceptable to the Trustee within thirty-five (35) days after the Petition Date; • The violation of any term of the Interim Order by the Debtors that is not cured within five (5) business days of receipt by the Debtors of notice of such default, violation or breach (which may be provided to the Debtors by email); <i>provided, however</i>, that if Debtors use or seek to use Cash Collateral or proceeds from other Prepetition Collateral for any purpose or in a manner other than as permitted in the Interim Order and in the Approved Budget, such violation shall constitute an immediate Termination Event; • The entry of an order amending, supplementing, or otherwise modifying the Interim Order without the prior consent of the Trustee; • The dismissal of the Chapter 11 Cases or conversion of the Chapter 11 Cases to cases under Chapter 7 of the Bankruptcy Code without the express written consent of the Trustee, or a trustee under chapter 11 of the Bankruptcy Code or an examiner with expanded powers is appointed in any of the Chapter 11 Cases; • An order is entered granting another claim or lien (except for the Prior Senior Liens) <i>pari passu</i> with or senior to the Prepetition Liens or the Adequate Protection Liens or Superpriority Administrative Claim granted under the Interim Order; 	¶ 10

Required Disclosure	Summary of Material Term	Reference in Interim Order
	<ul style="list-style-type: none"> Any motion, pleading, or proceeding is filed or is commenced by any Debtor seeking, or otherwise consenting to, (i) the invalidation, subordination, or other challenge to the Prepetition Secured Obligations, the Adequate Protection Liens, or the Superpriority Administrative Claim, or (ii) following the entry of the Final Order, any relief under section 506(c) of the Bankruptcy Code with respect to any Prepetition Collateral or any Collateral, including the Cash Collateral, or against the Trustee or any holder of the Series 2018 Bonds; Any Debtor files a motion, pleading, or proceeding that would, if the relief sought therein were granted, result in a Termination Event, and such motion, pleading, or proceeding is not dismissed or withdrawn (as applicable) within five (5) business days after receipt by the Debtors of notice (which may be by email) that the Trustee has determined that such motion, pleading, or proceeding, if the relief sought therein were granted, would give rise to such a Termination Event; The granting of relief from or modification of the automatic stay pursuant to section 362 of the Bankruptcy Code to any entity other than the Trustee with respect to the Prepetition Collateral or any collateral to which the Adequate Protection Liens have attached (except with respect to the Prior Senior Liens) without the written consent of the Trustee; The Debtors' failure to comply with an Approved Budget except with respect to Permitted Variances; The reversal, vacation, or stay of the effectiveness of the Interim Order; Any lien or security interest purported to be created by the Interim Order shall cease to be, or shall be asserted by the Debtors not to be, a valid, perfected, security interest in the assets or properties covered thereby; The Debtors seek to sell any of their assets outside the ordinary course of business, without advance consent of the Trustee, which consent will not be unreasonably withheld or delayed; The entry by the Court of an order terminating the Debtors' right to use Cash Collateral; The Debtors incur additional indebtedness on a priming basis without prior consent of the Trustee; or The failure of the Debtors to meet any of the deadlines set forth on Exhibit 2 to the Interim Order. 	
Rights Upon Termination Event Bankruptcy Rule 4001(b)(1)(B)(iii)	Immediately upon the occurrence or existence of a Termination Event, the Trustee shall be authorized to issue a notice (a " <u>Termination Notice</u> ") to counsel to the Debtors, counsel to any Committee, and the United States Trustee, which Termination Notice may be given by email or other electronic means. Unless, within five (5) business days after the issuance of such Termination Notice (such period of time, the " <u>Remedies Notice Period</u> "), the Court determines that the applicable Termination Event has not occurred or does not exist, the Debtors' authority to use Cash Collateral shall terminate without prejudice to the right of the Debtors to seek court	¶ 11

Required Disclosure	Summary of Material Term	Reference in Interim Order
Local Rule 4001-2(a)(i)(M), (S)	authority to use it or the right of the Trustee to oppose; <i>provided</i> that, until expiration of the Remedies Notice Period, the Debtors may continue to use Cash Collateral to make payments in respect of expenses critical to keep the business of the Debtors operating in accordance with the Approved Budget. Notwithstanding the foregoing, the Debtors' authority to use Cash Collateral hereunder shall automatically terminate (except for purposes of funding the Carve-Out), and there shall be no associated Remedies Notice Period, upon the occurrence of a Termination Event set forth in paragraphs 10(i), (iii), or (iv) of the Interim Order. Upon the occurrence of a Termination Event, all rights of the Debtors and Trustee with respect to the Debtors' continued use of Prepetition Collateral are reserved, and the automatic stay in the Chapter 11 Cases otherwise applicable to the Trustee is modified so that after expiration of the Remedies Notice Period, the Trustee shall be entitled to exercise its rights and remedies in accordance with the Bond Financing Documents and the Interim Order with respect to the Debtors' use of Cash Collateral.	
Validity, Perfection and Amount of Obligations Securing Prepetition Liens, Binding Effect of Stipulations on Third Parties, and Challenge Period Bankruptcy Rule 4001(b)(1)(B)(iii) Local Rule 4001-2(a)(i)(Q)	<p>Upon the entry of the Final Order, the stipulations, admissions, waivers and releases contained in the Interim Order, including the Debtors' Stipulations and the statements set forth in paragraphs F, G, and 6(i) of the Interim Order, shall be binding on the Debtors, their estates, and any of their respective successors, including, without limitation, any chapter 7 or chapter 11 trustee, responsible person, examiner with expanded powers, or other estate representative, in all circumstances and for all purposes, and the Debtors are deemed to have irrevocably waived and relinquished all Challenges as of the Petition Date.</p> <p>In compliance with Local Rule 4001-2(a)(i)(Q), parties in interest have until seventy-five (75) days after the entry of the Interim Order to commence a Challenge Proceeding.</p>	¶ 6(i)
Waiver/Modification of Automatic Stay Bankruptcy Rule 4001(b)(1)(B)(iii) Local Rule 4001-2(a)(i)(S), (T)	The Interim Order is deemed a request by the Trustee for relief from the automatic stay of section 362 of the Bankruptcy Code and for adequate protection as of the Petition Date for purposes of section 507(b) of the Bankruptcy Code. The Interim Order vacates the automatic stay of section 362 of the Bankruptcy Code and modifies it as necessary to permit (i) the Debtors to grant the Trustee the adequate protection as provided in the Interim Order, including the Adequate Protection Liens, (ii) the Trustee to accept and receive disbursements and/or payments and to apply such moneys pursuant to the Bond Financing Documents, and (iii) the Trustee to take any action specifically authorized or contemplated by the Interim Order and exercise possession, control, use and/or distribution of any funds now or hereafter held by it as permitted under the Bond Financing Documents.	¶ 22
Liens on Avoidance Actions Local Rule 4001-2(a)(i)(U)	Subject to the entry of a Final Order, the Adequate Protection Liens attach to the proceeds of and other property that is recovered or becomes unencumbered as a result of (whether by judgment, settlement, or otherwise) any Avoidance Actions.	¶ 3(i)

Required Disclosure	Summary of Material Term	Reference in Interim Order
<p>Section 506(c) and Section 552(b)(1) Rights, and Provisions on Marshalling</p> <p>Local Rule 4001-2(a)(i)(W), (X)</p>	<ul style="list-style-type: none"> • Subject to the entry of the Final Order, no costs or expenses of administration which have been or may be incurred in the Chapter 11 Cases at any time shall be charged against the Prepetition Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code, or any other legal or equitable doctrine (including, without limitation, unjust enrichment) or any similar principle of law, without the prior written consent of the Trustee, and no such consent shall be implied from any other action, inaction, or acquiescence by the Trustee or any holder of the Series 2018 Bonds. • Subject to the entry of the Final Order, the Debtors waive (i) any “equities of the case” claims under section 552(b) of the Bankruptcy Code, and (ii) the equitable doctrine of “marshaling” or any similar doctrine. 	¶¶ 9(i), (ii)

**EXPLANATION FOR INCLUSION OF SIGNIFICANT PROVISIONS
PURSUANT TO LOCAL RULE 4001-2(A)(I)**

18. Local Rule 4001-2(a)(i) requires that the Debtors explain the reason for including certain significant provisions described in Local Rules 4001-2(a)(i)(N)–(X) (collectively, the “**Significant Provisions**”). Local Rules 4001-2(a)(i)(N), (O), and (R) are not applicable to the Interim Order. Additionally, Local Rules 4001-2(a)(i)(S), and (T) do not apply and Local Rules 4001(a)(i)(U)–(X) are only applicable upon entry of the Final Order. Accordingly, the Debtors are not required to provide any additional explanation under the Local Rules.

BASIS FOR RELIEF

I. Cash Collateral and Adequate Protection

19. Bankruptcy Code section 363(c)(2) provides that a debtor may use cash collateral as long as (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)(2). Bankruptcy Code section 363(e) provides 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). *See also In re DeSardi*, 350 B.R. 790, 797 (Bankr. S.D. Tex. 2006) (“Adequate protection . . . is grounded in the belief that secured creditors should not be deprived of the benefit of their bargain”). The concept of adequate protection is designed to shield a secured creditor from diminution in the value of its interest in collateral during the period of a debtor’s use. *See In re Carbone Cos.*, 395 B.R. 631, 635 (Bankr. N.D. Ohio 2008) (“The test is whether the secured party’s interest is protected from diminution or decrease as a result of the proposed use of cash collateral); *see also In re Cont’l Airlines, Inc.*, 154 B.R. 176, 180-81 (Bankr. D. Del. 1993) (holding that adequate protection for use of collateral under section 363 is limited to use-based decline in value).

20. Bankruptcy Code section 362(d)(1) provides for adequate protection in property due to the imposition of the automatic stay. 11 U.S.C. § 362(d)(1). *See In re Cont’l Airlines*, 91 F.3d 553, 556 (3d Cir. 1996). Although Bankruptcy Code section 361 provides examples of forms of adequate protection, such as granting replacement liens and administrative claims, courts decide what constitutes sufficient adequate protection on a case-by-case basis. *Resolution Trust Corp. v. Swedeland Dev. Grp., Inc. (In re Swedeland Dev. Grp., Inc.)*, 16 F.3d 552, 564 (3d Cir. 1994) (“[A] determination of whether there is adequate protection is made on a case by case basis.”); *In re Columbia Gas Sys., Inc.*, 1992 WL 79323, at *2 (Bankr. D. Del. Feb. 18, 1992); *In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996) (“[T]he determination of adequate protection is a fact-specific inquiry . . . left to the vagaries of each case”) (citation and quotation omitted).

21. The concept of adequate protection is designed to shield a secured creditor from diminution in the value of its interest in collateral during the period of a debtor’s use. *See In re Carbone Cos.*, 395 B.R. 631, 635 (Bankr. N.D. Ohio 2008) (“The test is whether the secured party’s interest is protected from diminution or decrease as a result of the proposed use of cash

collateral); *see also In re Cont'l Airlines, Inc.*, 154 B.R. 176, 180-81 (Bankr. D. Del. 1993) (holding that adequate protection for use of collateral under section 363 is limited to use-based decline in value).

22. Here, the Trustee has consented to the Debtors' use of Cash Collateral on the terms set forth in the Interim Order. The proposed adequate protection included in the Interim Order provides adequate protection in the form of, among other things, the Adequate Protection Liens, the Superpriority Administrative Claim, reporting requirements, and payment of the Trustee's fees and expenses.

23. The Debtors submit that the proposed adequate protection is appropriate and sufficient to protect the Trustee from any diminution in value of the Prepetition Collateral (including Cash Collateral). The Cash Collateral will be used for funding business operations and allowing the Debtors to transition into the Chapter 11 Cases. Immediate access to this liquidity will permit the Debtors to fund payroll, pay vendors, and otherwise continue business in the ordinary course. As detailed in the First Day Declaration, the Debtors filed these Chapter 11 Cases to restructure the Prepetition Secured Obligations through a plan of reorganization and sell the Vista Lake Facility pursuant to Bankruptcy Code section 363. If Cash Collateral is not available, the Debtors will dissipate value to the detriment of all of its stakeholders. Thus, the use of Cash Collateral will protect the Trustee's security interests by preserving the value of the Prepetition Collateral. *See In re Salem Plaza Assocs.*, 135 B.R. 753, 758 (Bankr. S.D.N.Y. 1992) (holding that a debtor's use of cash collateral to pay operating expenses, thereby "preserv[ing] the base that generates the income stream," provided adequate protection to the secured creditor). *See also Save Power Ltd. v. Pursuit Athletic Footwear, Inc. (In re Pursuit Athletic Footwear, Inc.)*, 193 B.R.

713, 716 (Bankr. D. Del. 1996); *In re 499 W. Warren St. Assocs., Ltd. P'ship*, 142 B.R. 53, 56 (Bankr. N.D.N.Y. 1992).

24. In light of the foregoing, the Debtors submit that the proposed adequate protection to be provided is appropriate and necessary to protect the Trustee against any diminution in value and is also fair and appropriate on an interim basis under the circumstances of this case and to ensure that the Debtors are able to continue using Cash Collateral in the near term, for the benefit of all parties in interest and their estates.

25. Based on the foregoing, the Debtors respectfully submit that entry of the Interim Order authorizing the interim use of Cash Collateral and scheduling a Final Hearing to approve the use of Cash Collateral on a final basis is necessary and appropriate.

II. Modification of the Automatic Stay is Warranted

26. The relief requested by this Motion contemplates a modification of the automatic stay. 11 U.S.C. § 362. The automatic stay should be modified on a limited basis (to the extent applicable) as necessary to effectuate all terms and provisions of the Interim Order, including, without limitation to permit: (i) the Debtors to grant the Trustee the adequate protection as provided in the Interim Order, including the Adequate Protection Liens, (ii) the Trustee to accept and receive disbursements and/or payments and to apply such moneys pursuant to the Bond Financing Documents, and (iii) the Trustee to take any action specifically authorized or contemplated by the Interim Order and exercise possession, control, use and/or distribution of any funds now or hereafter held by it as permitted under the Bond Financing Documents.

27. In addition, upon expiration of the Remedies Notice Period (as defined in the Interim Order), the Interim Order provides for the termination of the automatic stay to permit the Trustee to exercise, upon the occurrence and during the continuation of a Termination Event, and to take other remedies relating to the Cash Collateral without further order or application to the

Court. The Trustee is required to issue a Termination Notice (as defined in the Interim Order) to the Debtors, counsel to any Committee, and the United States Trustee.

28. Stay modifications of this kind are ordinary and standard terms of postpetition use by debtors in possession of prepetition collateral, and, in the Debtors' business judgment, is reasonable under the present circumstances.

29. Accordingly, the Debtors respectfully request that the Court authorize the modification of the automatic stay in accordance with the terms set forth in the Interim Order.

III. Interim Approval and Scheduling of a Final Hearing

30. Interim relief may be granted on a motion to use cash collateral pursuant to Bankruptcy Code sections 363(c) or 364 where relief "is necessary to avoid immediate and irreparable harm to the estate pending a final hearing." FED. R. BANKR. P. 4001(b)(2), (c)(2).

31. The Debtors believe that all or substantially all of their available cash constitutes Cash Collateral and are therefore unable to proceed to continue their business operations without the ability to use Cash Collateral and will suffer immediate and irreparable harm to the detriment of all creditors and other parties in interest. The Debtors' ability to finance their operations is vital to the preservation and maintenance of the value of the Debtors' assets.

32. The Debtors will face immediate and irreparable harm without the entry of the Interim Order. Therefore, the Debtors respectfully request that the Court schedule a final hearing, no sooner than 14 days after the date of this Motion and no later than 25 days after the Petition Date, to consider entry of the Final Order.

33. Moreover, Bankruptcy Rule 6003 provides that the relief requested in this Motion may be granted if the "relief is necessary to avoid immediate and irreparable harm." FED. R. BANKR. P. 6003. The Debtors submit that for the reasons already set forth herein, the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors.

WAIVER OF BANKRUPTCY RULES

34. To the extent that any aspect of the relief sought herein constitutes a use of property under Bankruptcy Code section 363(b), the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay under Bankruptcy Rule 6004(h), to the extent applicable. *See* FED. R. BANKR. P. 6004(a), (h). As described above, the relief that the Debtors seek in this Motion is immediately necessary for the Debtors to be able to continue to operate their businesses and preserve the value of their estates. The Debtors respectfully request that the Court waive the notice requirements imposed by Bankruptcy Rule 6004(a) and the 14-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

NOTICE

35. Notice of this Motion has been or will be provided to: (a) the United States Trustee for the District of Delaware; (b) the holders of the thirty (30) largest unsecured claims on a consolidated basis against the Debtors; (c) counsel to the Bond Trustee and Master Trustee; (d) the Internal Revenue Service; (e) the United States Securities and Exchange Commission; (f) the Office of the United States Attorney for the District of Delaware; (g) any local, state or federal agencies that regulate the Debtors' business; (h) all known secured creditors; (i) any banking or financial institution that holds Debtors' accounts; (j) the United States Centers for Medicare & Medicaid Services; and (k) all parties entitled to notice pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

NO PRIOR REQUEST

36. No prior motion for the relief requested herein has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as Exhibit A, granting the relief requested in the Motion and such other and further relief as the Court deems appropriate.

Dated: January 14, 2022
Wilmington, Delaware

Respectfully submitted,

POLSINELLI PC

/s/ Shanti M. Katona

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*Proposed Counsel to the Debtors and
Debtors in Possession*

Exhibit A

Proposed Interim Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

American Eagle Delaware Holding Company
LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 22-____ (____)

(Jointly Administered)

**INTERIM ORDER (I) AUTHORIZING THE USE OF CASH AND OTHER
COLLATERAL, (II) GRANTING ADEQUATE PROTECTION,
(III) SCHEDULING A FINAL HEARING, AND
(IV) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”) of the debtors and debtors-in-possession (each, a “Debtor” and collectively, the “Debtors”) in the above-captioned bankruptcy cases (the “Chapter 11 Cases”), pursuant to sections 105, 361, 362, 363, 503 and 507 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 2002-1(b), 4001-2 and 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), seeking entry of an interim order (this “Interim Order”), *inter alia*:

(i) authorizing the Debtors to use cash and other collateral; (ii) granting adequate protection; (iii) scheduling a final hearing (the “Final Hearing”) to consider entry of a final order concerning

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: American Eagle Delaware Holding Company LLC (4248), American Eagle Palmer Park LLC (d/b/a Lark Springs) (5908), American Eagle Tuskawilla LLC (d/b/a Palmetto Landing) (9489), American Eagle Leesburg AL LLC (d/b/a Vista Lake) (6258), American Eagle Brandon LLC (d/b/a Aldea Green) (6168), American Eagle Leesburg MC LLC (d/b/a Vista Lake) (7577), American Eagle Venice Island LLC (d/b/a Maris Pointe) (1695), American Eagle Titusville LLC (d/b/a Crescent Wood) (7210), American Eagle Island Lake LLC (d/b/a Cascade Heights) (1975), American Eagle Eau Gallie LLC (d/b/a Greenwood Place) (1483), American Eagle Owatonna AL LLC (d/b/a Timberdale Trace) (0555), American Eagle Hanceville LLC (d/b/a Monarch Place) (8173), American Eagle Ravenna LLC (d/b/a Vista Veranda) (9216), American Eagle Newark LLC (d/b/a Hearth Brook) (7125), American Eagle Kingston LLC (d/b/a Sycamore Springs) (4882), American Eagle Hendersonville LLC (d/b/a Red Cedar Glen) (3669), American Eagle Castle Hills LLC (d/b/a Ventura Hills) (4688), and American Eagle Pleasant Prairie LLC (d/b/a Robin Way) (9483). The Debtors’ mailing address is American Eagle Delaware Holding Company LLC, c/o American Eagle Lifecare Corporation, 3819 Hawk Crest Rd., Ann Arbor, MI 48103.

the foregoing (the “Final Order” and together with this Interim Order, the “Orders”); and (iv) vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the Orders; and the Court having considered the Motion, and the evidence submitted at the initial hearing on the Motion (the “Interim Hearing”); and notice of the Interim Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b) and (d), and 9014; and the Interim Hearing having been held and concluded; and all objections, if any, to the interim relief requested in the Motion having been withdrawn, resolved or overruled by the Court on an interim basis; and it appearing to the Court that granting the interim relief requested is necessary to avoid immediate and irreparable harm to the Debtors, their estates, and their creditors, and is essential for the continued operation of the Debtors’ businesses; and after due deliberation and consideration, and for good and sufficient cause appearing therefor;

THE COURT HEREBY FINDS AND CONCLUDES THAT:²

A. Petition Date. On January 14, 2022 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (the “Court”).

B. Debtors-in-Possession. Each Debtor continues to operate and manage its respective businesses as a debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Cases.

C. Jurisdiction and Venue. The Court has jurisdiction over the Motion, these Chapter 11 Cases, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334 and

² The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated February 29, 2012. Venue for these Chapter 11 Cases is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This Court may enter a final order consistent with Article III of the United States Constitution.

D. Statutory Committee. As of the date hereof, the Office of the United States Trustee for the District of Delaware (the “United States Trustee”) has not appointed an official committee of unsecured creditors (any such committee, the “Committee”) pursuant to section 1102(a) of the Bankruptcy Code.

E. Notice. The Debtors have properly served notice of the Motion and the Interim Hearing pursuant to the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, including sections 102, 361, 362, 363, and 364 of the Bankruptcy Code, Bankruptcy Rules 2002 and 4001(b) and/or (d), and Local Rule 4001-2, which notice was sent to, among others, (a) the United States Trustee; (b) the Office of the United States Attorney General for the District of Delaware; (c) the creditors appearing on the Debtors’ consolidated list of the top [30] unsecured creditors; (d) the Internal Revenue Service; (e) any local, state or federal agencies that regulate the Debtors’ business; (f) the Trustee (as defined below) and counsel of record; (g) all parties requesting notices pursuant to Bankruptcy Rule 2002(f); and (h) all known secured creditors (collectively, the “Notice Parties”). Such notice complies with the Bankruptcy Code and the applicable Bankruptcy Rules and Local Rules in respect to the relief requested.

F. Prepetition Secured Obligations. As of the Petition Date, subject to the rights and limitations set forth in paragraph 6 of this Interim Order, the Debtors admit, stipulate, acknowledge, and agree that they are obligated, indebted and liable to UMB Bank, N.A., not individually but in its capacities as Master Trustee and Bond Trustee (each as defined below),

under the following undertakings (collectively, the “Bond Financing Documents” and the Debtors’ related obligations to the Trustee (as defined below), the “Prepetition Secured Obligations”):

i. a certain Trust Indenture dated as of December 1, 2018 (together with all supplements, amendments and modifications thereto, the “Trust Indenture”) between Capital Trust Agency, as Issuer (the “Issuer”), and UMB Bank, N.A., as Bond Trustee (the “Bond Trustee”);

ii. the Issuer’s Senior Living Revenue Bonds (American Eagle Portfolio Project) Series 2018 in the initial aggregate principal amount of \$219,415,000, issued pursuant to the Trust Indenture and consisting of: (a) \$143,125,000 Series 2018A-1 Bonds (the “Series 2018A-1 Bonds”), (b) \$20,500,000 Taxable Series 2018A-2 Bonds (the “Series 2018A-2 Bonds”, together with the Series 2018A-1 Bonds, the “Series 2018A Bonds”), (c) \$33,960,000 Second Tier Series 2018B Bonds (the “Series 2018B Bonds”), and (d) \$21,830,000 Third Tier Series 2018C Bonds (the “Series 2018C Bonds” and, together with the Series 2018A Bonds and the Series 2018B Bonds, the “Series 2018 Bonds”);

iii. a certain Master Trust Indenture dated as of December 1, 2018 (together with all supplements, amendments and modifications thereto, the “Master Indenture”) between the Debtors and UMB Bank, N.A., as Master Trustee (the “Master Trustee” and, in combination with its role as Bond Trustee, the “Trustee”);

iv. a certain Loan Agreement dated as of December 1, 2018 among American Eagle Delaware Holding Company LLC, as Borrower and Obligated Group Representative, the Bond Trustee, and the Issuer (together with all supplements, amendments and modifications thereto, the “Loan Agreement”), pursuant to which the proceeds of the Series 2018 Bonds were loaned by the Issuer to American Eagle Delaware Holding Company LLC, as Borrower and Obligated Group Representative;

v. certain “Obligations” (as defined in the Master Indenture) (the “Series 2018 Obligations”), in the form of promissory notes, executed and delivered under the Master Indenture to evidence the obligation to repay the loan made pursuant to the Loan Agreement; and

vi. certain Mortgages for the benefit of the Master Trustee, relating to the Mortgaged Property (each as defined in the Master Indenture).

G. Stipulations Regarding Prepetition Secured Obligations and Prepetition Collateral.

Subject to the rights and limitations set forth below in paragraph 6(ii) of this Interim Order, the Debtors stipulate and agree that, in order to secure the Prepetition Secured Obligations, the Debtors granted the Trustee security interests in and liens on (collectively, the “Prepetition Liens”) all of the collateral as fully described in the Bond Financing Documents consisting of substantially all

of each Debtor's assets and property including, without limitation, all Project Revenues, accounts, deposit accounts, money and investment property of the Debtors and the proceeds thereof and all Mortgaged Property (collectively, the "Prepetition Collateral"). With regard to the Prepetition Secured Obligations and the Prepetition Collateral, subject to the rights and limitations set forth below in paragraph 6(ii) of this Interim Order, the Debtors stipulate and agree as follows (collectively, the Debtors' Stipulations):

i. As of the Petition Date, the Bond Financing Documents are each valid and enforceable against the Debtors, and the Debtors do not possess and agree not to assert any claim (as such term is defined in section 101(5) of the Bankruptcy Code), counterclaim, setoff or defense of any kind, nature or description which would in any way affect the validity or enforceability of the Bond Financing Documents;

ii. As of the Petition Date, the Prepetition Secured Obligations constitute legal, valid and binding obligations of the Debtors, enforceable in accordance with the terms of the Bond Financing Documents (other than with respect to a stay of enforcement arising from section 362 of the Bankruptcy Code); no offsets, defenses or counterclaims to any of the Prepetition Secured Obligations exists; no portion of the Prepetition Secured Obligations is subject to recharacterization, disallowance, reduction or subordination pursuant to the Bankruptcy Code or non-bankruptcy law; the Prepetition Secured Obligations constitute allowable secured claims; and the Debtors have irrevocably waived, discharged and released any rights they may have to challenge or object to the Prepetition Secured Obligations;

iii. As of the Petition Date, the Debtors are indebted to the Trustee for the benefit of the holders of the Series 2018 Bonds for the Prepetition Secured Obligations in the aggregate principal amount of not less than \$215,525,000, consisting of: (i) \$140,760,000 Series 2018A-1 Bonds, (ii) \$19,160,000 Series 2018A-2 Bonds, (iii) \$33,815,000 Series 2018B Bonds, and (iv) \$21,790,000 Series 2018C Bonds, plus accrued and unpaid interest with respect thereto³ and any additional fees, costs, premiums, expenses (including any Trustee's fees and expenses, which includes expenses of the Trustee's attorneys, financial advisors, and other professionals), reimbursement obligations, indemnification obligations, other contingent obligations, and other charges of whatever nature, whether or not contingent, whenever arising, due, or owing, and all other Obligations owing under or in connection with the Bond Financing Documents;

iv. The Trustee's liens and security interests with respect to the Prepetition Collateral are valid, enforceable and perfected (to the extent the same can be perfected by filing and/or recording financing statements, recording the Mortgages, entering into account control

³ As of the Petition Date, the outstanding amount of accrued but unpaid interest with respect to the Series 2018 Bonds was: (i) \$12,543,701.90 with respect to the Series 2018A-1 Bonds, (ii) \$1,478,737.12 with respect to the Series 2018A-2 Bonds, (iii) \$2,304,198.06 with respect to the Series 2018B Bonds, and (iv) \$2,826,844.77 with respect to the Series 2018C Bonds.

agreements, and establishing and maintaining with the Trustee certain accounts), and such liens and security interests are not subject to recharacterization, disallowance, reduction or subordination pursuant to the Bankruptcy Code or non-bankruptcy law. All of such financing statements, the Mortgages, and any other agreements or documents related to validity, enforcement, or perfection of the Trustee's liens and security interests in the Prepetition Collateral in property or assets of the Debtors were validly authorized by the Debtors or validly executed by authorized representatives of the Debtors. Pursuant to the Bond Financing Documents, the Trustee has first priority (other than Permitted Encumbrances as defined in the Master Indenture) security interests in and liens on all of the Prepetition Collateral, including the Cash Collateral (defined herein) and all proceeds of the Prepetition Collateral, to secure payment of the Prepetition Secured Obligations. The Prepetition Liens were granted to the Trustee for the benefit of the holders of the Series 2018 Bonds for fair consideration and reasonably equivalent value and were granted contemporaneously with, or covenanted to be provided as an inducement for, the making of the loans and/or commitments and other financial accommodations secured thereby;

v. Pursuant to the Bond Financing Documents and that certain Forbearance Agreement dated as of July 1, 2020, by and among the Debtors and the Trustee (as amended, the "Forbearance Agreement"), certain accounts were established and are held by the Trustee for the benefit of the holders of the Series 2018 Bonds, including but not limited to the following accounts, each as defined in such documents: (a) the Revenue Fund, (b) the Senior Bonds Bond Fund, (c) the Second Tier Bonds Bond Fund, (d) the Second Tier Bonds Debt Service Reserve Fund, (e) the Third Tier Bonds Bond Fund, (f) the Third Tier Bonds Debt Service Reserve Fund, and (g) the Workout Administration Account (collectively, the funds in such accounts, the "Trustee-Held Funds"). The Debtors acknowledge and agree that (x) the Trustee-Held Funds are (i) held in trust for the benefit of the holders of the Series 2018 Bonds, and (ii) are not property of the Debtors' estates, (y) the Trustee holds a validly perfected possessory security interest in the Trustee-Held Funds, and (z) the Trustee is entitled to apply the Trustee-Held Funds in accordance with the terms of the Bond Financing Documents and the Forbearance Agreement, as applicable. To the extent that the automatic stay otherwise applies to the Trustee-Held Funds pursuant to section 362(a) of the Bankruptcy Code, as adequate protection for the use of the Trustee's Cash Collateral (as defined below), the Debtors stipulate to relief from such stay for the limited purpose of allowing the Trustee to administer and apply the Trustee-Held Funds in accordance with the Bond Financing Documents and the Forbearance Agreement, as applicable. The Trustee-Held Funds shall be administered and applied as set forth in the Bond Financing Documents and the Forbearance Agreement, as applicable, and for the express purposes set forth therein, and shall not be used or made available to Debtors as Cash Collateral or otherwise pursuant to this Interim Order, the Final Order, or any other order entered in these Chapter 11 Cases;

vi. The Trustee's security interests and liens have attached to and encumber all funds and property of the Debtors consisting of the Prepetition Collateral and the products and proceeds thereof, and the Trustee's security interests and liens will, notwithstanding the commencement of the Chapter 11 Cases, as of the Petition Date and thereafter, attach to the products and proceeds of the Prepetition Collateral. Without limiting the foregoing, the Trustee's security interests and liens attach to all cash (whether as original collateral or cash proceeds of the Prepetition Collateral), negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents now or hereafter in the possession, custody or control of the Debtors (as

defined in section 363(a) of the Bankruptcy Code, the “Cash Collateral”). For the avoidance of doubt, the term “Cash Collateral” does not include Trustee-Held Funds for purposes of this Interim Order; and

vii. The Debtors and their estates have no claims, objections, challenges, causes of action, recoupments, counterclaims, cross-claims, setoff rights, and/or choses in action, including “lender liability” causes of action or avoidance claims under chapter 5 of the Bankruptcy Code, whether arising under applicable state law or federal law (including any recharacterization, subordination, avoidance, disgorgement, recovery, or other claims arising under or pursuant to sections 105, 510, or 542 through 553 of the Bankruptcy Code), against the Trustee or any of its affiliates, agents, representatives, attorneys, advisors, professionals, officers, directors, and employees arising out of, based upon, or related to the loans under the Bond Financing Documents, the Prepetition Secured Obligations, or the Prepetition Liens.

The foregoing acknowledgments and stipulations shall be binding on the Debtors but not on any other party-in-interest in these Chapter 11 Cases, except as provided in Paragraph 6 hereof.

H. Need to Use Cash Collateral. The Debtors have requested entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2) and have an immediate and critical need to obtain use of the Prepetition Collateral, including the Cash Collateral (subject to and in compliance with the Approved Budget (as defined below)), in order to, among other things, (i) permit the orderly continuation of their businesses, (ii) make certain adequate protection payments to the Trustee; and (iii) pay the costs of administration of their estates and satisfy other working capital and general corporate purposes of the Debtors. The ability of the Debtors to obtain liquidity through the use of the Cash Collateral is vital to the Debtors and their efforts to maximize the value of their estates. Absent entry of this Interim Order, the Debtors’ estates and reorganization efforts will be immediately and irreparably harmed.

I. Adequate Protection. The Trustee is entitled, pursuant to sections 105, 361, 362 and 363(e) of the Bankruptcy Code, as a condition for the use of the Prepetition Collateral, including the Cash Collateral, to adequate protection, as set forth in this Interim Order, to the extent of any diminution in value of its interests in the Prepetition Collateral from and after the Petition Date

resulting from the Carve-Out (as defined below), the Debtors' use, sale, or lease of the Prepetition Collateral (including Cash Collateral), and/or the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code. The Trustee has negotiated in good faith regarding the Debtors' use of the Prepetition Collateral to help fund the administration of the Debtors' estates. Based on the Motion and the record presented to the Court at the Interim Hearing, the terms of the proposed adequate protection arrangements are fair and reasonable, reflect the Debtors' prudent exercise of business judgment and constitute reasonably equivalent value and fair consideration for the consent of the Trustee; *provided, however*, that nothing herein shall limit the Trustee's rights to hereafter seek new, additional, or different adequate protection.

I. Consent. Subject to the entry of this Interim Order on the terms set forth on the consensual form presented with the Motion, the Trustee consents to the relief requested herein on an interim basis, subject to further proceedings before this Court. The Trustee is relying on the terms, conditions and protections provided herein in so consenting. All rights of the Trustee and the Debtors with respect to relief on the Motion on a final basis, or any further interim basis beyond the period contemplated by this Interim Order, shall be and are reserved.

J. Relief Essential; Best Interest; Good Cause. The Debtors have requested entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2) and Local Rule 4001-2. The relief requested in the Motion (and as provided in this Interim Order) is necessary, essential, and appropriate for the continued operations, and for the management, maintenance, and preservation, of the Debtors' assets and the property of their estates. It is in the best interest of the Debtors' estates for the Debtors to be allowed to use Prepetition Collateral, including Cash Collateral, pursuant to this Interim Order. Good cause has been shown for the relief requested in the Motion and as granted in this Interim Order.

K. Entry of Interim Order. The Debtors have requested the immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(b). The entry of this Interim Order will minimize disruption of the Debtors' businesses and will preserve and maintain the assets of the Debtors' estates, will avoid immediate and irreparable harm to, and is in the best interest of, the Debtors, their creditors and their estates.

L. Arm's Length, Good Faith Negotiations. The terms of this Interim Order were negotiated in good faith and at arm's-length between the Debtors and the Trustee. The Trustee has acted without negligence or in violation of public policy or law in respect of all actions taken by it in connection with or related in any way to negotiating, implementing, documenting, or obtaining requisite approvals of the use of Prepetition Collateral, including Cash Collateral, including in respect of the granting of the Adequate Protection Liens (as defined below) and all documents related to and all transactions contemplated by the foregoing.

Now, therefore, upon the foregoing findings and conclusions, as well as the record of the proceedings heretofore held before this Court with respect to the Motion, the evidence adduced at the Interim Hearing, and the statements of counsel thereat, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. Motion Granted. The Motion is hereby granted in accordance with the terms and conditions set forth in this Interim Order on an interim basis and subject to further proceedings in connection with a Final Order. Any objections to the Motion with respect to the entry of this Interim Order that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are hereby denied and overruled with respect to this Interim Order.

2. Authorization for Use of Prepetition Collateral; Budget.

i. *Authorization.* The Debtors are hereby authorized, through and including the earlier of (a) the conclusion of the final hearing on the Debtors' use of Cash Collateral or (b) termination of this Interim Order following issuance of a Termination Notice as set forth in Paragraph 11 below, to use the Prepetition Collateral, including Cash Collateral, solely and exclusively in accordance with the terms of this Interim Order, to fund expenses in the amounts, times, and categories set forth in the Approved Budget (as defined herein).

ii. *Approved Budget.* As used in this Interim Order, the term "Approved Budget" shall mean the budget approved in writing in advance by the Trustee, as amended and updated from time to time with the prior written approval of the Trustee, reflecting the Debtors' anticipated cash receipts and disbursements, including capital expenditures and professional fees on a weekly basis for a rolling 13-week period, subject to the Permitted Variances (as defined below), an initial copy of which is attached thereto as **Exhibit 1**.

iii. *Permitted Variance.* As used in this Interim Order, the term "Permitted Variance" shall mean, for any Testing Period (as defined below), (i) any favorable variance, (ii) an unfavorable variance of not more than ten percent (10%) with respect to any line item in the Approved Budget, (iii) an unfavorable variance of not more than ten percent (10%) with respect to overall cash receipts and disbursements under the Approved Budget and (iv) any unfavorable variance approved in advance in writing by the Trustee; *provided, however*, that the Debtors shall be permitted to pay the actual expenses incurred for utilities and the fees of the United States Trustee pursuant to 28 U.S.C. § 1930 together with any interest thereon pursuant to 31 U.S.C. § 3717.

iv. *Budget Testing.* Compliance with the Approved Budget shall be tested

weekly beginning two weeks from the entry of this Interim Order on a cumulative basis from the Petition Date; *provided, however* that starting in the fifth week from the entry of this Interim Order, compliance will be tested weekly on a rolling four (4) week basis (each, a “Testing Period”). The Permitted Variance with respect to each Testing Period shall be determined and certified to the Trustee by the Debtors not later than the 7th day immediately following each such Testing Period. Any budgeted expenditures not paid for in a particular budget period may be paid during a subsequent period, and for the purpose of calculating compliance with the covenants in this section, the Approved Budget will be revised following written notice to the Trustee to move such expenditures to the later Approved Budget period. Budgeted expenses may be paid in an earlier period (i.e., paid in any week prior to the week for which such expenditure was budgeted) in the reasonable discretion of the Debtors, provided such payment does not otherwise violate the Permitted Variance for that prior week. In the event of any such prepayment of expenditures, the Approved Budget shall be deemed amended to move the expenditure into the week in which the actual expenditure was made for the purpose of calculating compliance with the covenants in this section. The Debtors will provide a written explanation in reasonable detail explaining the amount of and the reason for the prepayment or delay in payment of any expenditures in connection with their weekly reporting obligations hereunder.

v. *Amendments or Modifications Related to the Approved Budget.* Absent relief from the Court, any amendment or modification of the terms and conditions set forth in this Interim Order related to the Approved Budget, or any amendment or modification of the Approved Budget itself, shall be subject to prior written consent and approval of the Trustee. In the event of a dispute concerning the Approved Budget, all rights of the Debtors and Trustee shall be and are reserved.

vi. *Excluded from Cash Collateral.* Nothing in this Interim Order, or any subsequent order concerning the use of the Prepetition Collateral, including Cash Collateral, or any other order of this Court, shall entitle the Debtors to either access to or use of any Trustee-Held Funds and no lien or other interest may be granted in the Trustee-Held Funds to any third party.

vii. *Miscellaneous.* For the avoidance of doubt, except as otherwise set forth in the Approved Budget, Cash Collateral may not be used (i) by any non-Debtor entity, or (ii) to pay any expense of any non-Debtor entity.

3. Adequate Protection. In consideration of the stipulations and consents set forth herein, as adequate protection of the Trustee's interests in the Prepetition Collateral, including Cash Collateral, pursuant to sections 361, 362, 363, and 552(b) of the Bankruptcy Code, the Trustee is hereby granted the following:

i. *Adequate Protection Liens.* As security for and solely to the extent of any diminution in the value of the Trustee's Prepetition Collateral from and after the Petition Date, calculated in accordance with section 506(a) of the Bankruptcy Code (a "Diminution in Value"), the Trustee shall be and hereby is granted, effective and perfected as of the Petition Date, a valid, binding, continuing, enforceable, first-priority, fully perfected security interest and lien upon all assets and property of the Debtors and their respective estates of any kind or nature whatsoever, including, without limitation, the Prepetition Collateral, all postpetition property of the Debtors' estates, and the proceeds, rents, products, and profits from all of the foregoing, whether acquired or arising before or after the Petition Date (the "Adequate Protection Liens"); *provided, however*, the Adequate Protection Liens shall be subject and subordinate only to (a) the Prepetition Liens, (b) any validly perfected lien or security interest senior to the liens and security interests of the

Trustee with respect to the Debtors' assets and properties as of the Petition Date (the "Prior Senior Liens"), and (c) the Carve-Out. Notwithstanding the forgoing, the Adequate Protection Liens shall not attach to avoidance actions of the Debtors' estates arising under chapter 5 of the Bankruptcy Code (the "Avoidance Actions") or proceeds thereof; *provided, however*, that, to the extent the Final Order provides for such relief, the Adequate Protection Liens granted herein shall attach to the proceeds of and other property that is recovered or becomes unencumbered as a result of (whether by judgment, settlement, or otherwise) any Avoidance Actions. For the avoidance of doubt, the Adequate Protection Liens (x) are and shall be in addition to the Prepetition Liens; (y) are and shall be deemed properly perfected, valid and enforceable liens without any further action by the Debtors or the Trustee and without the execution, filing or recordation of any financing statements, security agreements, mortgages or other documents and instruments; and (z) shall remain in full force and effect notwithstanding any subsequent conversion to Chapter 7 or dismissal of the Chapter 11 Cases. Although not required, upon request by the Trustee, the Debtors shall execute and deliver any and all UCC Financing Statements or other instruments or documents considered by the Trustee to be reasonably necessary in order to perfect the Adequate Protection Liens and proceeds granted by this Interim Order, and the Trustee is authorized to receive, file and record the foregoing, which actions shall not be deemed a violation of the automatic stay embodied in section 362 of the Bankruptcy Code. The Trustee, in its discretion, may file a photocopy of this Interim Order as a financing statement or other evidence of the perfection of its respective liens, with any recording officer designated to file financing statements or with any registry of deeds, and in such event, the recording officer shall be authorized to file or record such copy of this Interim Order.

- ii. *Superpriority Claim.* As further adequate protection, and to the extent

provided by sections 503(b) and 507(b) of the Bankruptcy Code, the Debtors are authorized to grant, and hereby are deemed to have granted effective as of the Petition Date, to the Trustee, an allowed superpriority administrative expense claim in each of the Chapter 11 Cases on a dollar-for-dollar basis for and solely to the extent of any Diminution in Value, which administrative claim shall, among other things, have priority over all administrative expense claims and other claims against each of the Debtors, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expense claims of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c) (subject to entry of the Final Order), 507(a), 507(b), 546(c), 726, 1113 and 1114 of the Bankruptcy Code (the “Superpriority Administrative Claim”); *provided, however*, the Superpriority Administrative Claim shall be subject only to (a) the Prepetition Liens, (b) the Prior Senior Liens, and (c) the Carve-Out.

iii. *Financial Reporting.* As further adequate protection, the Debtors shall provide the Trustee with all reports, documents, and other materials, including financial reports, as may be required in this Interim Order and shall continue to provide all financial reporting required by the Bond Financing Documents. In addition, upon reasonable notice, the Debtors shall provide the Trustee and its representatives with access to the Debtors’ premises, personnel (including, but not limited to, senior management and any similar person or firm employed by the Debtors in the Chapter 11 Cases), advisors, books and records, and the Debtors shall cooperate fully in all reasonable requests for information and data made by the Trustee.

iv. *Budget.* As further adequate protection, the Debtors shall comply with, and shall use cash, including Cash Collateral, solely in accordance with the Approved Budget (subject to the Permitted Variances).

v. *Payment of Trustee's Fees and Expenses.* As further adequate protection, (a) the Debtors shall, and are directed to, pay in full in cash and in immediately available funds, the reasonable and documented professional fees, expenses and disbursements (including, but not limited to, the expenses and disbursements of counsel and other third-party consultants, including financial advisors) incurred by the Trustee (the "Trustee Fees") in the amounts and at the times set forth in the Approved Budget and (b) the Trustee, to the extent necessary to satisfy the Trustee Fees in full, is authorized to withdraw monies from any expense retainers funded by the Debtors prior to the Petition Date and/or the Trustee-Held Funds in accordance with the Bond Financing Documents. None of the foregoing reasonable and documented fees, expenses and disbursements shall be subject to separate approval by this Court or require compliance with the United States Trustee Guidelines, and no recipient of any such payment shall be required to file any interim or final fee application with respect thereto or otherwise seek the Court's approval of any such payments; *provided, that* copies of the invoices for such professional fees, expenses and disbursements (the "Invoiced Fees") shall be served by email on the Debtors, the United States Trustee, and counsel to any Committee (collectively, the "Fee Notice Parties"), who shall have ten (10) business days (the "Review Period") to review and assert any objections thereto. Invoiced fees shall be in the form of an invoice summary for professional fees and categorized expenses incurred during the pendency of the Chapter 11 Cases, together with time entries which may be modified to redact information subject to the attorney-client privilege, any work product doctrine, privilege or protection, common interest doctrine privilege or protection, any other evidentiary privilege or protection recognized under applicable law, or any other confidential information (such information, collectively, "Confidential Information"), and the provision of such invoices shall not constitute any waiver of the attorney-client privilege, work product doctrine, privilege or

protection, common interest doctrine privilege or protection, or any other evidentiary privilege or protection recognized under applicable law. The Fee Notice Parties reserve their respective right to request additional information to challenge an assertion of privilege with respect to such redactions. The Debtors, any Committee, or the United States Trustee may dispute the payment of any portion of the Invoiced Fees (the “Disputed Invoiced Fees”) if, within the Review Period, a Debtor, any Committee, or the United States Trustee notifies the submitting party in writing setting forth the specific objections to the Disputed Invoiced Fees (the applicable parties shall work in good faith to promptly resolve any such objection or, if unable to do so, shall seek an order of the Court). For the avoidance of doubt, the Debtors shall promptly pay in full all Invoiced Fees other than the Disputed Invoiced Fees.

vi. *Right to Seek Additional Adequate Protection.* This Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights of the Trustee to request further or alternative forms of adequate protection at any time or the rights of the Debtors or any other party to contest such request.

vii. *Miscellaneous.* Except as expressly provided for in this Order, the Adequate Protection Liens and the Superpriority Administrative Claims granted herein to the Trustee shall not be subject or junior to any lien or security interest that is avoided and preserved for the benefit of the Debtors’ estates under section 551 of the Bankruptcy Code and shall not be subordinated to or made *pari passu* with any lien, security interest or administrative claim under section 364 of the Bankruptcy Code or otherwise.

4. Carve-Out. The relief described in this Interim Order is based in part on the Carve-Out from the Prepetition Collateral described in this paragraph. The term “Carve-Out” shall mean the sum of (i) all fees required to be paid to the Clerk of the Court and to the United States Trustee

under 28 U.S.C § 1930(a), together with any interest thereon pursuant to 31 U.S.C. § 3717; (ii) Court-allowed fees and expenses of a trustee appointed under section 726(b) of the Bankruptcy Code in an amount not to exceed \$30,000, (iii) all budgeted and accrued but unpaid professional fees and expenses (the “Professional Fees and Expenses”) of (A) any patient care ombudsman (“PCO”) appointed in these cases and (B) the attorneys and financial advisors employed by the Debtors, the Committee and the PCO, if any, pursuant to, *inter alia*, sections 327, 328 or 1103 of the Bankruptcy Code (collectively, the “Case Professionals”)) to the extent reflected in the Approved Budget and provided herein, allowed by the Court, and incurred prior to the delivery of a Termination Notice, and (iv) Professional Fees and Expenses of Case Professionals in an aggregate amount not to exceed \$50,000 incurred after the delivery of a Termination Notice to be shared by the Case Professionals, to the extent such Professional Fees and Expenses are deemed allowed by the Court. Prior to the payment of such fees and expenses from the amount available under the Carve-Out, such professionals shall first apply any retainers held by such professional to their allowed fees and expenses. Nothing herein shall constitute a waiver of any right of the Trustee to object to fees and expenses of Case Professionals, whether or not such fees and expenses were incurred in accordance with the Approved Budget. Nothing in this Interim Order or otherwise shall be construed to obligate the Trustee, in any way, to pay compensation to, or to reimburse expenses of, any Case Professional or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement. For the avoidance of doubt, the funding or payment of the Carve-Out from cash on hand or other available cash shall not reduce the Prepetition Secured Obligations.

5. Access and Information. In addition to and without limiting any rights to access the Trustee has under the Bond Financing Documents, upon reasonable prior written notice during

normal business hours, the Debtors shall permit the Trustee and its professionals to have access to such information regarding the operations, business affairs and financial condition of the Debtors, or compliance with the terms of Bond Financing Documents, as the Trustee may reasonably request, and it being understood that nothing in this paragraph shall require the Debtors (or any of their advisors) to take any action that would conflict with any applicable requirements of law or any binding agreement, or that would waive any attorney-client or similar privilege.

6. Releases; Challenge Rights.

i. Binding Effect on Debtors and Release of Claims. Subject to the rights and limitations set forth below in paragraph 6(ii) of this Interim Order, and to the extent the Final Order provides for such relief, each of the Debtors and the Debtors' estates, on its own behalf and on behalf of each of their predecessors, their successors, and assigns, shall, to the maximum extent permitted by applicable law, unconditionally, irrevocably, and fully forever release, remise, acquit, relinquish, irrevocably waive, and discharge the Trustee, all holders of the Series 2018 Bonds, and their respective affiliates, former, current, or future officers, directors, employees, agents, representatives, owners, members, partners, financial and other advisors and consultants, legal advisors, shareholders, managers, attorneys, affiliates and assigns, and predecessors and successors in interest, each in their capacity as such, of and from all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened, including, without limitation, all legal and equitable theories of recovery, arising under common law, statute, or regulation or by contract, of every nature and description that exist on the date

hereof with respect to or relating to, in whole or in part, the Series 2018 Bonds, any of the Bond Financing Documents, the Prepetition Liens, the Prepetition Secured Obligations, this Interim Order, as applicable, and/or the transactions contemplated hereunder or thereunder, any aspect of the prepetition relationship between the Trustee, any holders of the Series 2018 Bonds, and the Debtors, and any other acts or omissions by the Trustee or any holder of the Series 2018 Bonds in connection with Bond Financing Documents or the prepetition relationship with the Debtors including, without limitation, (i) any so-called “lender liability” or equitable subordination claims or defenses, (ii) any and all claims and causes of action arising under the Bankruptcy Code, and (iii) any and all claims and causes of action regarding the validity, priority, extent, enforceability, perfection, or avoidability or the liens or claims of the Trustee or the holders of the Series 2018 Bonds. Subject to the provisions of paragraph 6 of this Interim Order, the stipulations, admissions, waivers and releases contained in this Interim Order, including the Debtors’ Stipulations and the statements set forth in paragraphs F, G, and 6(i) of this Interim Order, shall be binding on the Debtors, their estates, and any of their respective successors, including, without limitation, any chapter 7 or chapter 11 trustee, responsible person, examiner with expanded powers, or other estate representative, in all circumstances and for all purposes, and the Debtors are deemed to have irrevocably waived and relinquished all Challenges (as defined below) as of the Petition Date.

ii. Challenge Period.

(a) The stipulations, admissions, releases, and waivers in this Cash Collateral Order shall be binding on the Debtors and their successors; *provided, however*, that the stipulations, admissions, releases and waivers in this Interim Order shall not be binding on the Committee and/or any party acting derivatively on behalf of the Debtors’ estates, solely to the extent the Committee and/or any party acting derivatively on behalf of the Debtors’ estates obtains

authority to bring claims against the Trustee, but subject in all respects to the time limits, the Challenge Deadline (as defined below), and other terms and provisions of this paragraph. All parties-in-interest (other than the Debtors) that have or have been granted authority, derivatively or otherwise, shall have until March 4, 2022 (*i.e.*, 45 days after the first day hearing) to file a complaint pursuant to Bankruptcy Rule 7001 or other appropriate objection challenging the stipulations, admissions, releases, and waivers contained in this Interim Order, asserting a claim or cause of action arising out of the Bond Financing Documents, or otherwise challenging the extent, priority, validity, perfection, amount, or allowability of the Trustee's claims or security interests, arising out of or related to the Bond Financing Documents or the transactions related thereto; *provided, however*, that if the Committee or another party files a motion seeking authority, derivatively or otherwise, to commence a challenge specifically identified in such motion on or prior to the March 4, 2022, the Challenge Deadline for the Committee or such other party to commence an identified challenge shall be tolled through the earlier of (w) the date of the withdrawal of such motion or (x) the date that is fourteen (14) days after the entry of a dispositive ruling on such motion (such date, the "Challenge Deadline"); and *provided further* that if a chapter 7 trustee is appointed in one or more of these Chapter 11 Cases, the Challenge Deadline for the chapter 7 trustee to commence an identified challenge shall be tolled through the earlier of (y) the Challenge Deadline or (z) the date that is fourteen (14) days after his or her appointment. If no action is commenced or pursued in accordance with the deadlines in this paragraph, or such deadlines are not extended in writing as determined by the Trustee, all of the Debtors' stipulations, admissions, releases, waivers, and affirmations of the allowance, priority, extent, amount, and validity of the Trustee's claims, liens, and interests, of any nature set forth in this Interim Order and the Debtors' waivers and releases as contained in the Bond Financing Documents or otherwise

incorporated or set forth in this Interim Order shall be of full force and effect and forever binding upon the Debtors, their estates, and all creditors and parties-in-interest of these Chapter 11 Cases, including, without limitation, upon any creditors or parties-in-interest that did not have or were not granted standing prior to such deadlines. Notwithstanding the foregoing and regardless of the timely commencement of an action as contemplated in this paragraph, the Debtors' stipulations and affirmations of the allowance, priority, extent, and validity of the Trustee's claims, liens, and interests, of any nature set forth in this Interim Order and the Debtors' waivers and releases as contained in the Bond Financing Documents or otherwise incorporated or set forth in this Interim Order shall be in full force and effect with respect to any claims, objections or causes of action not timely raised within the deadlines set forth in this paragraph.

(b) To the extent the stipulations, admissions, waivers and releases contained in this Interim Order are (x) not subject to a Challenge timely and properly commenced prior to the expiration of the Challenge Period or (y) subject to a Challenge timely and properly commenced prior to the expiration of the Challenge Period, to the extent any such Challenge does not result in a final and nonappealable judgment or order of the Court that is inconsistent with the stipulations, admissions, waivers and releases contained in this Interim Order, then, without further notice, motion, or application to, or order of, or hearing before, this Court and without the need or requirement to file any proof of claim: (i) any and all such Challenges by any party (including the Committee, any chapter 11 trustee, and/or any examiner or other estate representative appointed or elected in these Chapter 11 Cases, and any chapter 7 trustee and/or examiner or other estate representative appointed or elected in any successor case) shall be deemed to be forever waived, released, and barred; (ii) the Prepetition Secured Obligations shall constitute allowed claims, not subject to counterclaim, setoff, recoupment, reduction, subordination, recharacterization, defense,

or avoidance for all purposes in these Chapter 11 Cases and any successor cases, (iii) the Prepetition Liens shall be deemed to have been, as of the Petition Date, legal, valid, binding, and perfected secured claims, not subject to recharacterization, subordination, or avoidance, and (iv) all of the Debtors' stipulations, admissions, waivers and releases contained in this Interim Order, including the Debtors' Stipulations and the statements set forth in paragraphs F, G, and 6(i) of this Interim Order shall be in full force and effect and forever binding upon the Debtors, the Debtors' estates, and all creditors, interest holders, and other parties in interest in these Chapter 11 Cases and any successor cases.

(c) If a Challenge Proceeding is timely commenced, the stipulations, admissions, waivers and releases contained in this Interim Order, including the Debtors' Stipulations and the statements set forth in paragraphs F, G, and 6(i) of this Interim Order, shall nonetheless remain binding and preclusive (as provided in this paragraph) on the Debtors, the Debtors' estates, any Committee, and any other person or entity, except as to any such stipulations, admissions, waivers or releases that were expressly and timely challenged prior to the expiration of the Challenge Period in a Challenge Proceeding and successfully challenged (pursuant to a final order) in such Challenge Proceeding. Nothing in this Interim Order vests or confers on any Person (as defined in the Bankruptcy Code), including any Committee, standing or authority to pursue any cause of action belonging to the Debtors or their respective estates, including, without limitation, claims and defenses with respect to the Series 2018 Bonds, the Bond Financing Documents, the Prepetition Liens or the Prepetition Collateral.

7. Restrictions on Funds. Notwithstanding anything herein to the contrary, no Prepetition Collateral, including Cash Collateral, or proceeds thereof in which the Trustee has a valid and perfected lien nor any portion of the Carve-Out may be used by the Debtors, their estates,

any official or unofficial committee, any trustee or examiner appointed in the Chapter 11 Cases or any Chapter 7 trustee, or any other person, party or entity to, directly or indirectly, to assert, join, commence, support, investigate, or prosecute any action for any claim, counter-claim, action, cause of action, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination, or similar relief against, or adverse to the interests of the Trustee, any holder of the Series 2018 Bonds, or any of their respective affiliates with respect to any transaction, occurrence, omission, or action, including, without limitation, (i) any action arising under the Bankruptcy Code; (ii) any so-called “lender liability” claims and causes of action; (iii) any action with respect to the validity and extent of the Prepetition Secured Obligations, the Bond Financing Documents, the Superpriority Administrative Claim or the validity, extent, perfection, and priority of the Prepetition Liens or the Adequate Protection Liens, (iv) any action seeking to invalidate, set aside, avoid, reduce, set off, offset, recharacterize, subordinate (whether equitable, contractual, or otherwise), recoup against, disallow, impair, raise any defenses, cross-claims, or counter claims or raise any other challenges under the Bankruptcy Code or any other applicable domestic or foreign law or regulation against or with respect to the Prepetition Secured Obligations, the Bond Financing Documents, the Prepetition Liens, the Superpriority Administrative Claim, or the Adequate Protection Liens, in whole or in part; or (v) appeal or otherwise challenge this Interim Order, the Bond Financing Documents, or any of the transactions contemplated herein or therein; *provided, however*, that notwithstanding the foregoing, up to \$30,000 of Cash Collateral may be used to pay allowed professional fees, disbursements, costs, or expenses of an official committee, if any, incurred in connection with investigating these matters.

8. Restriction on Disposition of Collateral. The Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the Prepetition Collateral without the prior written

consent of the Trustee (and no such consent shall be implied from any other action, inaction or acquiescence by the Trustee or an order of this Court), except as provided in this Interim Order or otherwise approved by the Bankruptcy Court to the extent required under applicable non-bankruptcy law. Nothing herein shall prevent the Debtors from operating in the ordinary course of their business to the extent consistent with the Approved Budget.

9. Waivers.

i. To the extent the Final Order provides for such relief, no costs or expenses of administration which have been or may be incurred in the Chapter 11 Cases at any time shall be charged against the Prepetition Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code, or any other legal or equitable doctrine (including, without limitation, unjust enrichment) or any similar principle of law, without the prior written consent of the Trustee, and no such consent shall be implied from any other action, inaction, or acquiescence by the Trustee or any holder of the Series 2018 Bonds.

ii. To the extent the Final Order provides for such relief, the Debtors waive (i) any “equities of the case” claims under section 552(b) of the Bankruptcy Code, and (ii) the equitable doctrine of “marshaling” or any similar doctrine.

iii. For so long as this Interim Order remains in force, the Debtors shall not grant, suffer, or permit any claim, expense or lien having priority or being *pari passu* to the priority of the Trustee’s rights, liens and security interests in Prepetition Collateral.

10. Termination Events. The occurrence of any one or more of the following events shall constitute a termination event (a “Termination Event”) under this Interim Order, unless expressly waived in writing by the Trustee:

i. The Debtors fail to obtain entry of a Final Order reasonably acceptable to

the Trustee within thirty-five (35) days after the Petition Date;

ii. The violation of any term of this Interim Order by the Debtors that is not cured within five (5) business days of receipt by the Debtors of notice of such default, violation or breach (which may be provided to the Debtors by email); *provided, however*, that if Debtors use or seek to use Cash Collateral or proceeds from other Prepetition Collateral for any purpose or in a manner other than as permitted in this Interim Order and in the Approved Budget, such violation shall constitute an immediate Termination Event;

iii. The entry of an order amending, supplementing, or otherwise modifying this Interim Order without the prior consent of the Trustee;

iv. The dismissal of the Chapter 11 Cases or conversion of the Chapter 11 Cases to cases under Chapter 7 of the Bankruptcy Code without the express written consent of the Trustee, or a trustee under chapter 11 of the Bankruptcy Code or an examiner with expanded powers is appointed in any of the Chapter 11 Cases;

v. An order is entered granting another claim or lien (except for the Prior Senior Liens) *pari passu* with or senior to the Prepetition Liens or the Adequate Protection Liens or Superpriority Administrative Claim granted under this Interim Order;

vi. Any motion, pleading, or proceeding is filed or is commenced by any Debtor seeking, or otherwise consenting to, (i) the invalidation, subordination, or other challenge to the Prepetition Secured Obligations, the Adequate Protection Liens, or the Superpriority Administrative Claim, or (ii) following the entry of the Final Order, any relief under section 506(c) of the Bankruptcy Code with respect to any Prepetition Collateral or any Collateral, including the Cash Collateral, or against the Trustee or any holder of the Series 2018 Bonds;

vii. Any Debtor files a motion, pleading, or proceeding that would, if the relief

sought therein were granted, result in a Termination Event, and such motion, pleading, or proceeding is not dismissed or withdrawn (as applicable) within five (5) business days after receipt by the Debtors of notice (which may be by email) that the Trustee has determined that such motion, pleading, or proceeding, if the relief sought therein were granted, would give rise to such a Termination Event;

viii. The granting of relief from or modification of the automatic stay pursuant to section 362 of the Bankruptcy Code to any entity other than the Trustee with respect to the Prepetition Collateral or any collateral to which the Adequate Protection Liens have attached (except with respect to the Prior Senior Liens) without the written consent of the Trustee;

ix. The Debtors' failure to comply with an Approved Budget except with respect to Permitted Variances;

x. The reversal, vacation, or stay of the effectiveness of this Interim Order;

xi. Any lien or security interest purported to be created by this Interim Order shall cease to be, or shall be asserted by the Debtors not to be, a valid, perfected, security interest in the assets or properties covered thereby;

xii. The Debtors seek to sell any of their assets outside the ordinary course of business, without advance consent of the Trustee, which consent will not be unreasonably withheld or delayed;

xiii. The entry by the Court of an order terminating the Debtors' right to use Cash Collateral;

xiv. The Debtors incur additional indebtedness on a priming basis without prior consent of the Trustee; or

xv. The failure of the Debtors to meet any of the deadlines set forth on **Exhibit**

2 (collectively, the “Milestones”); *provided* that any Milestones may be extended by written agreement (email between counsel shall suffice) between the Debtors and the Trustee without further entry of an order of the Court; *provided, further*, that the Debtors shall provide notice of any such Milestone extensions to the United States Trustee and counsel to any Committee.

11. Rights upon Termination Event. Immediately upon the occurrence or existence of a Termination Event, the Trustee shall be authorized to issue a notice (a “Termination Notice”) to counsel to the Debtors, counsel to any Committee, and the United States Trustee, which Termination Notice may be given by email or other electronic means. Unless, within five (5) business days after the issuance of such Termination Notice (such period of time, the “Remedies Notice Period”), the Court determines that the applicable Termination Event has not occurred or does not exist, the Debtors’ authority to use Cash Collateral shall terminate without prejudice to the right of the Debtors to seek court authority to use it or the right of the Trustee to oppose; *provided* that, until expiration of the Remedies Notice Period, the Debtors may continue to use Cash Collateral to make payments in respect of expenses critical to keep the business of the Debtors operating in accordance with the Approved Budget. Notwithstanding the foregoing, the Debtors’ authority to use Cash Collateral hereunder shall automatically terminate (except for purposes of funding the Carve-Out), and there shall be no associated Remedies Notice Period, upon the occurrence of a Termination Event set forth in paragraphs 10(i), (iii), or (iv) of this Interim Order. Upon the occurrence of a Termination Event, all rights of the Debtors and Trustee with respect to the Debtors’ continued use of Prepetition Collateral shall be and hereby are reserved, and the automatic stay in the Chapter 11 Cases otherwise applicable to the Trustee is hereby modified so that after expiration of the Remedies Notice Period, the Trustee shall be entitled to exercise its rights and remedies in accordance with the Bond Financing Documents and this

Interim Order with respect to the Debtors' use of Cash Collateral.

12. Binding Effect. All of the provisions of this Interim Order shall be binding upon the Debtors, any Committee, all other creditors of the Debtors, and all other parties in interest, and their respective successors and assigns (including any trustee or other fiduciary hereinafter appointed as a legal representative of the Debtors or with respect to the property of the estates of the Debtors) whether in the Chapter 11 Cases or any subsequent Chapter 7 case, or upon dismissal of the Chapter 11 Cases or any Chapter 7 case, except as otherwise provided herein. To the extent any terms of this Interim Order are modified, amended, or vacated, any claim or right granted to the Trustee hereunder arising prior to the effective date of such modification, amendment or vacation shall continue to be governed in all respects by the original provisions of this Interim Order unless the Interim Order was stayed.

13. No Modification of Bond Financing Documents. Nothing contained herein shall alter or modify, or be deemed to alter or modify, the Bond Financing Documents.

14. No Waiver. The failure of the Trustee to seek relief or otherwise exercise its rights and remedies, as applicable, under the Bond Financing Documents, this Interim Order or otherwise, shall not constitute a waiver of any of the Trustee's rights hereunder, thereunder, or otherwise. Notwithstanding anything herein, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair the rights of the Trustee under the Bankruptcy Code or under non-bankruptcy law, including without limitation, the rights of the Trustee to (i) request conversion of the Chapter 11 Cases to cases under Chapter 7 of the Bankruptcy Code, dismissal of the Chapter 11 Cases, or the appointment of a trustee in the Chapter 11 Cases, (ii) propose, subject to the provisions of section 1121 of the Bankruptcy Code and this Interim Order, a plan of reorganization, or (iii) exercise any of the rights, claims, or

privileges (whether legal, equitable or otherwise) the Trustee may have pursuant to this Interim Order, the Bond Financing Documents, or applicable law. Nothing herein shall (y) preclude the Trustee from seeking any other relief that it may deem appropriate, including relief from the automatic stay; or (z) prevent the Trustee from asserting at some later time that its liens and security interests in Prepetition Collateral are not being adequately protected.

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

16. No Control. In determining to enforce the rights and remedies afforded to the Trustee under this Interim Order and/or the Bond Financing Documents, the Trustee shall not be and is not deemed to be in control of the operations of the Debtors or to be acting as a “responsible person”, “managing agent” or “owner or operator” (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 statute) with respect to the operation or management of the Debtors, notwithstanding any consent to this Interim Order and extending financial accommodations of any type, kind, or nature under this Interim Order. For the avoidance of doubt, nothing in this Interim Order or in the Bond Financing Documents shall in any way be construed or interpreted to impose or allow the imposition upon the Trustee any liability for any claims arising from the prepetition or post-petition activities of the Debtors.

17. Survival of Interim Order. Except as otherwise provided herein, all of the provisions of this Interim Order and any actions taken pursuant hereto shall survive entry of any order which may be entered (i) confirming any Chapter 11 plan in the Chapter 11 Cases, (ii) converting the Chapter 11 Cases to cases under Chapter 7 of the Bankruptcy Code,

(iii) dismissing the Chapter 11 Cases, (iv) withdrawing of the reference of the Chapter 11 Cases from the Court, or (v) providing for abstention from handling or retaining of jurisdiction of the Chapter 11 Cases in the Court. The terms and provisions of this Interim Order, including the protections granted to the Trustee pursuant to this Interim Order and the Bond Financing Documents, shall continue in full force and effect notwithstanding the entry of such order.

18. Effectiveness. This Interim Order shall constitute findings of fact and conclusions of law pursuant to the Bankruptcy Rule 7052 and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry of this Interim Order. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, 9024 or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Interim Order.

19. No Waivers or Modification of Interim Order. Except as expressly provided in this Interim Order, the Debtors irrevocably waive any right to seek any modification or extension of this Interim Order without the prior written consent of the Trustee and no such consent shall be implied by any other action, inaction or acquiescence of the Trustee.

20. Headings. All paragraph headings used in this Interim Order are for ease of reference only and are not to affect the construction hereof or to be taken into consideration in the interpretation hereof.

21. Retention of Jurisdiction. The Court has and will retain jurisdiction to enforce this Interim Order.

22. Modification of Stay. This Interim Order shall be deemed a request by the Trustee for relief from the automatic stay of section 362 of the Bankruptcy Code and for adequate

protection as of the Petition Date for purposes of section 507(b) of the Bankruptcy Code. The automatic stay of section 362 of the Bankruptcy Code is hereby vacated and modified as necessary to permit (i) the Debtors to grant the Trustee the adequate protection as provided in this Interim Order, including the Adequate Protection Liens, (ii) the Trustee to accept and receive disbursements and/or payments and to apply such moneys pursuant to the Bond Financing Documents, and (iii) the Trustee to take any action specifically authorized or contemplated by this Interim Order and exercise possession, control, use and/or distribution of any funds now or hereafter held by it as permitted under the Bond Financing Documents.

23. Notice of Final Hearing. The Final Hearing is scheduled for _____, 2022 at _____ a.m. (Eastern Time) at _____, at which time any party in interest may present any timely filed objections to the entry of the Final Order. The Debtors shall promptly serve a copy of this Interim Order and a notice of the final hearing by regular mail upon the Notice Parties. Such notice shall state that objections to the entry of a Final Order shall be in writing and shall be filed with the Court no later than _____, 2022 at _____ a.m. (Eastern Time). Any objections by creditors or other parties in interest to any of the provisions of a Final Order incorporating the terms of this Interim Order, or including any other or different provisions, shall be deemed waived unless filed and served in accordance with this paragraph.

Exhibit 1

Approved Budget

Cash Collateral Budget
American Eagle Senior Living
Amounts in \$000s

Week Beginning (Mon)	01.17.22	01.24.22	01.31.22	02.07.22	02.14.22	02.21.22	02.28.22	03.07.22	03.14.22	03.21.22	03.28.22	04.04.22	04.11.22
Week Ending (Sun)	01.23.22	01.30.22	02.06.22	02.13.22	02.20.22	02.27.22	03.06.22	03.13.22	03.20.22	03.27.22	04.03.22	04.10.22	04.17.22
Week	1	2	3	4	5	6	7	8	9	10	11	12	13

OPERATING CASH FLOW

Receipts	\$ 450	\$ 377	\$ 653	\$ 2,175	\$ 791	\$ 396	\$ 660	\$ 2,201	\$ 800	\$ 400	\$ 666	\$ 2,223	\$ 808
Payroll	(670)	(300)	(649)	(235)	(886)	(235)	(714)	(235)	(736)	(235)	(714)	(235)	(714)
Workers Comp	(38)	-	-	-	(38)	-	-	-	(38)	-	-	-	(38)
Agency Staffing	(8)	(8)	(8)	(8)	(8)	(8)	(8)	(8)	(8)	(8)	(8)	(8)	(8)
Food	(50)	(50)	(51)	(51)	(51)	(51)	(51)	(51)	(51)	(51)	(51)	(51)	(51)
Marketing	(17)	(17)	(69)	(17)	(17)	(17)	(69)	(17)	(17)	(17)	(69)	(17)	(17)
Utilities	(58)	(58)	(58)	(58)	(58)	(58)	(58)	(58)	(58)	(58)	(58)	(58)	(58)
Property Taxes	-	-	-	-	-	(75)	-	-	-	-	-	-	-
Insurance	(155)	-	-	-	(155)	-	-	-	(155)	-	-	-	-
COVID-19 Costs	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)
Management Fees	-	-	-	-	(201)	-	-	-	(203)	-	-	-	(205)
Asset Management Fee	-	-	-	-	(40)	-	-	-	(41)	-	-	-	(41)
Other Operating Disbursements	(77)	(77)	(77)	(77)	(77)	(77)	(77)	(77)	(77)	(77)	(77)	(77)	(77)
Total Operating Disbursements	(1,080)	(516)	(917)	(451)	(1,536)	(526)	(983)	(451)	(1,390)	(451)	(984)	(452)	(1,216)
Operating Cash Flow	(630)	(139)	(264)	1,725	(745)	(131)	(323)	1,750	(590)	(51)	(317)	1,771	(407)
Capex	(71)	(71)	(71)	(71)	(71)	(71)	(71)	(71)	(71)	(71)	(71)	(71)	(71)
Restructuring Fees	-	-	-	-	-	(647)	-	-	-	(757)	-	-	-
US Trustee Fees	-	-	-	-	-	-	-	-	-	-	-	-	-
Other Receipts/(Disbursements)	-	-	-	-	-	-	-	-	-	-	-	-	-
Operating CF, Net of Capex & Fees	\$ (700)	\$ (209)	\$ (334)	\$ 1,654	\$ (816)	\$ (848)	\$ (393)	\$ 1,679	\$ (660)	\$ (878)	\$ (388)	\$ 1,700	\$ (478)

FUNDS AVAILABLE

Beginning Cash Balance	\$ 4,750	\$ 4,050	\$ 3,841	\$ 3,506	\$ 5,160	\$ 4,344	\$ 3,497	\$ 3,103	\$ 4,782	\$ 4,122	\$ 3,244	\$ 2,856	\$ 4,556
Operating CF, Net of Capex & Fees	(700)	(209)	(334)	1,654	(816)	(848)	(393)	1,679	(660)	(878)	(388)	1,700	(478)
Ending Cash Balance	\$ 4,050	\$ 3,841	\$ 3,506	\$ 5,160	\$ 4,344	\$ 3,497	\$ 3,103	\$ 4,782	\$ 4,122	\$ 3,244	\$ 2,856	\$ 4,556	\$ 4,078

Exhibit 2

Milestones

The Obligated Group Members shall comply with the following milestones:

- i) on the Petition Date, the Obligated Group Members shall have filed with the Court (i) the chapter 11 plan of reorganization (the “Plan”); (ii) the disclosure statement relating to the plan of reorganization (the “Disclosure Statement”); and (iii) a motion to assume the restructuring support agreement (the “RSA Motion”) between American Eagle Delaware Holding Company LLC and the other obligated group members, the Trustee, and certain holders constituting the holders of a majority in outstanding principal amount of Series 2018A Bonds that are signatory thereto (the “Consenting Holders”);
- ii) no later than 3 business days after the Petition Date, the Court shall have entered the interim order on the Motion, which order shall be in a form and substance acceptable to the Trustee and the Consenting Holders;
- iii) no later than 35 calendar days after the Petition Date, the Court shall have entered (A) the final order on the Motion and (B) the order approving the RSA Motion, which order in each case shall be in a form and substance reasonably acceptable to the Trustee and the Consenting Holders;
- iv) no later than 50 calendar days after the Petition Date, the Court shall have entered the order approving the Disclosure Statement and solicitation procedures, which order shall be in a form and substance reasonably acceptable to the Trustee and the Consenting Holders;
- v) The Court shall have entered an order confirming the Plan, which order shall be reasonably acceptable in form and substance to the Consenting Holders and the Trustee (the “Confirmation Order”) on or before the date that is 120 days after the Petition Date;
- vi) The Plan effective date shall occur and the restructuring shall be implemented within 30 days after entry of the Confirmation Order;
- vii) The Plan effective date shall have occurred by not later than June 30, 2022.