

Andrew Zollinger, State Bar No. 24063944
andrew.zollinger@dlapiper.com
DLA Piper LLP (US)
1717 Main Street, Suite 4600
Dallas, Texas 75201-4629
Telephone: (214) 743-4500
Facsimile: (214) 743-4545

Thomas R. Califano (*pro hac vice admission pending*)
Dienna Corrado (*pro hac vice admission pending*)
thomas.califano@dlapiper.com
dienna.corrado@dlapiper.com
DLA Piper LLP (US)
1251 Avenue of the Americas
New York, New York 10020-1104
Telephone: (212) 335-4500
Facsimile: (212) 335-4501

PROPOSED COUNSEL FOR THE DEBTORS

Daniel M. Simon (*pro hac vice admission pending*)
daniel.simon@dlapiper.com
DLA Piper LLP (US)
One Atlantic Center
1201 West Peachtree Street, Suite 2800
Atlanta, Georgia 30309
Telephone: (404) 736-7800
Facsimile: (404) 682-7800

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

In re: §
§
§ Chapter 11
§
4 West Holdings, Inc. *et al.*,¹ §
§ Case No. 18-30777
§
Debtors. § (Joint Administration Requested)
§
§

**MOTION OF THE DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS
AUTHORIZING THE DEBTORS TO PAY CERTAIN PREPETITION TAXES**

The above-captioned debtors (collectively the “Debtors”), by and through their proposed counsel, DLA Piper LLP (US), hereby submit this motion (the “Motion”) for entry of an interim order, substantially in the form attached hereto as **Exhibit B** (the “Proposed Interim Order”) and a final order, substantially in the form attached hereto as **Exhibit C** (the “Proposed Final Order”) and, together with the Proposed Interim Order, the “Proposed Orders”),

¹ A list of the Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, is attached hereto as **Exhibit A**.

pursuant to sections 105(a), 363(b), 507(a)(8), and 541 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (i) authorizing the Debtors to pay, in their sole discretion, certain prepetition taxes, assessments, fees and other charges subsequently determined, upon audit or otherwise, and/or related obligations, and (ii) authorizing and directing banks and other financial institutions to receive, process, honor, and pay all checks issued and electronic payment requests made related to the foregoing.² In support of the Motion, the Debtors rely upon, and incorporate by reference, the *Declaration of Louis E. Robichaux IV in Support of Chapter 11 Petitions and First Day Pleadings* (the “First Day Declaration”),³ filed with the Court contemporaneously herewith. In further support of the Motion, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over the Debtors, their estates, and this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b).
2. Venue of these cases and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

3. On the date hereof (the “Petition Date”), each Debtor filed a voluntary petition for relief under the Bankruptcy Code.
4. The Debtors continue to operate their businesses and manage their properties as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code. No trustee,

² The Debtors seek authorization to pay certain taxes related to prepetition employee wages and benefits in a separate motion.

³ Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the First Day Declaration.

examiner, or official committee of unsecured creditors has been appointed in the Debtors' chapter 11 cases (the "Chapter 11 Cases").

5. Additional information regarding the Debtors and these Chapter 11 Cases, including the Debtors' business operations, capital structure, financial condition, and the reasons for and objectives of these Chapter 11 Cases, is set forth in the First Day Declaration.

RELIEF REQUESTED

6. By this Motion, the Debtors request entry of interim and final orders pursuant to sections 105(a), 363, 507(a)(8), and 541 of the Bankruptcy Code authorizing the Debtors to pay, in their sole discretion, any use, property, provider, assessments, fees, similar taxes and other charges subsequently determined, upon audit or otherwise, to be owed, including any business license and permit fees and assessments (collectively, the "Taxes") that accrued or that arose before the Petition Date that will become due during the pendency of these Chapter 11 Cases to the applicable federal, state and local taxing, licensing, regulatory, and other governmental or quasi-governmental authorities (collectively, the "Taxing Authorities") in the ordinary course of business, without prejudice to the Debtors' rights to contest the amounts and/or priority of any Taxes on any grounds they deem appropriate.⁴

7. The Debtors seek the relief requested in the event and to the extent that: (a) the various Taxes and related obligations that accrued prior to the Petition Date: (i) were not paid prepetition, (ii) were not processed prepetition, or (iii) were paid in an amount that was less than is actually owed, including amounts subsequently determined upon any audit or otherwise to be owed for periods prior to the Petition Date; (b) any payments made prepetition were rejected, lost

⁴ By this Motion, the Debtors are not seeking authorization with respect to certain payroll taxes and withholdings related to the Debtors' employees. Rather, such authorization is sought pursuant to the *Motion of the Debtors for Entry of Interim and Final Orders Authorizing Debtors to (I) Pay Prepetition Wages, Compensation, and Employee Benefits, (II) Continue Certain Employee Benefit Programs in the Ordinary Course, and (III) Granting Related Relief* filed contemporaneously herewith.

or otherwise not received in full by any Taxing Authority, or (c) any Taxes and related obligations accrued or were incurred prepetition that will become due during the pendency of these cases in the ordinary course of business.⁵

8. Further, the Debtors request that this Court authorize the Debtors' banks to receive, process, honor and pay all checks, drafts, or other forms of payment ("Tax Payments") drawn or issued on the Debtors' bank accounts prior to the Petition Date in respect of such Taxes (or to re-issue checks and electronic transfers, as may be necessary), provided that sufficient funds are on deposit in the applicable accounts to cover such payments.

9. As set forth below, the Taxes at issue are appropriate for payment to the extent that they are priority or secured claims that are payable in full or, alternatively, under the "trust fund" theory or on the basis of administrative convenience.

THE DEBTORS' TAX OBLIGATIONS

10. The Debtors, in the ordinary course of their businesses, incur various tax liabilities. With the exception of real property taxes, the Debtors' books and records reflect that they have paid all Taxes that were due and payable prior to the Petition Date. The Taxing Authorities, however, will continue to invoice the Debtors for Taxes relating to periods prior to the Petition Date following the commencement of these Chapter 11 Cases. As of the Petition Date, the Debtors owe approximately \$5.35 million in prepetition Taxes. Of that amount, approximately \$750,000 in Taxes will become due and payable within the first twenty-one (21) days of these Chapter 11 Cases, which the Debtors seek to pay pursuant to the Proposed Interim Order. The Debtors seek authority to pay the remaining outstanding taxes of \$4.6 million, of which approximately \$3.8 million are real estate taxes, pursuant to the Proposed Final Order.

⁵ This Motion neither affects the Debtors' ability to contest the amount or basis of any taxes that may be due to the various Taxing Authorities nor requires the Debtors to pay any of the applicable taxes. Accordingly, the Debtors reserve all of their rights and defenses related thereto.

11. The Debtors are subject to the following Taxes:

- (1) **Use Taxes.** In the ordinary course of business, the Debtors incur use taxes (the “Use Taxes”) as the result of purchasing supplies from out of state vendors. Certain Taxing Authorities require the Debtors to pay Use Taxes that are based on a percentage of sales prices. In most cases, the Use Taxes are paid in arrears once collected. The Debtors estimate approximately \$5,000 to \$7,000 in prepetition Use Taxes will become due and payable following the Petition Date for prepetition amounts owed.
- (2) **Property Taxes.** The Debtors incur real property taxes (the “Property Taxes”) to certain of the Taxing Authorities. Property Taxes are assessed based on a statutorily mandated percentage of property value (for both real and personal property) and become payable in the ordinary course of business. Property Taxes are typically due annually, although the precise timing varies by jurisdiction. As of the Petition Date, the Debtors estimate that approximately \$3.8 million in Property Taxes accrued but remain unpaid. Certain additional Property Taxes may be the subject of a dispute by the Debtors, or may be late in being invoiced, and therefore remain unpaid. Further, additional Property Taxes may be billed during the pendency of these Chapter 11 Cases.
- (3) **Licensing Fees and Other Taxes.** Certain Taxing Authorities impose and collect franchise taxes, licensing, *de minimis* registration, and other filing fees (collectively, the “Franchise Taxes”) on the Debtors for the right to exist as a domestic corporation, for the privilege of doing business in the state as a foreign corporation, or for the actual conduct or carrying on of business in the state. Some states assess a flat Franchise Tax on all businesses and other states assess a Franchise Tax based upon some measure of income, gross receipts, net worth, or other measure of value. Additionally, the Debtors’ failure to pay the Franchise Taxes could cause some states to challenge the Debtors’ right to operate within their jurisdiction. Addressing any subsequent action taken by those states would be costly, place an administrative burden on management, and divert management’s attention from the reorganization process. As of the Petition Date, the Debtors owe approximately \$20,000 in Franchise Taxes and estimate that approximately another \$36,000 will become due and payable following the Petition Date for the first quarter of 2018.
- (4) **Annual Report Taxes.** Various Taxing Authorities require the Debtors to pay annual report or bi-annual report taxes (collectively, the “Annual Report Taxes”) in order to be in good standing for purposes of conducting business within the states in which they operate. Annual Report Taxes cost the Debtors approximately \$60,000 annually and become due at various times between the Petition Date and June 2018.
- (5) **State and Local Taxes.** The Debtors are subject to various fees and taxes

from states and counties (“State and Local Taxes”). In an average month, the Debtors remit approximately in State and Local Taxes to the Taxing Authorities. As of the Petition Date, the Debtors believe that they are substantially current on their payment of State and Local Taxes to all Taxing Authorities

- (6) **Provider Taxes**. Certain states in which the Debtors operate Facilities charge a tax based on the number of residents treated per day at the Facility (the “Provider Taxes”). In many instances, the Provider Taxes are due monthly and in at least one state, Georgia, Provider Taxes are due quarterly. As of the Petition Date, the Debtors estimate that they owe approximately \$800,000 in prepetition Provider Taxes, of which approximately \$522,000 will become due and payable in the twenty-one (21) days following the Petition Date.

12. The continued payment of the prepetition Taxes on their normal due dates will ultimately preserve the resources of the Debtors’ estates, thereby promoting their prospects for a successful reorganization. If such obligations are not timely paid, the Debtors will be required to expend time and money to resolve a multitude of issues related to such obligations, each turning on the particular terms of each Taxing Authority’s applicable laws, including (a) whether the obligations are priority, secured, or unsecured in nature, (b) whether they are proratable or fully prepetition or postpetition, and (c) whether penalties, interest, attorneys’ fees, and costs can continue to accrue on a postpetition basis, and if so, whether such penalties, interest, attorneys’ fees, and costs are priority, secured, or unsecured in nature. The Debtors’ desire to avoid unnecessary disputes with the Taxing Authorities — and expenditures of time and money resulting from such disputes — over a myriad of issues that are typically raised by such entities as they attempt to enforce their rights to collect taxes.

13. The Debtors may suffer immediate and irreparable harm if the prepetition Taxes are not paid when they become due and payable. Additionally, the Taxing Authorities may cause the Debtors to be audited if Taxes are not paid immediately. Such audits will unnecessarily divert the Debtors’ attention away from the reorganization process. If the Debtors

do not pay such amounts in a timely manner, the Taxing Authorities may attempt to revoke the Debtors' licenses, suspend the Debtors' operations, and pursue other remedies that will harm the estates. In all cases, the Debtors' failure to pay Taxes could have a material adverse impact on their ability to operate in the ordinary course of business. Any disputes that could impact their ability to conduct business in a particular jurisdiction could have a wide-ranging and adverse effect on the Debtors' operations as a whole.

14. Moreover, certain of the Taxes may not be property of the estate, as they are collected from third parties and held in trust for payment to various Taxing Authorities. The federal government and many states in which the Debtors operate have laws providing that the Debtors' officers, directors, or other responsible employees could, under certain circumstances, be held personally liable for the nonpayment of such Taxes. To the extent any accrued Taxes of the Debtors were unpaid as of the Petition Date in these jurisdictions, the Debtors' officers and directors could be subject to lawsuits during the pendency of these Chapter 11 Cases. In such events, collection efforts by the Taxing Authorities would be extremely distracting for the Debtors and their directors and officers in their efforts to bring these Chapter 11 Cases to an expeditious conclusion.

15. Based on the foregoing, the Debtors submit that the relief requested is necessary and appropriate, particularly under the circumstances of these Chapter 11 Cases, and is in the best interests of the Debtors, their estates, creditors, and other parties in interest and, therefore, should be granted.

APPLICABLE AUTHORITY

A. Payment of Prepetition Taxes is Appropriate and Warranted in These Chapter 11 Cases.

16. There are several well-grounded bases to grant the relief requested in this Motion.

First, a portion of the Taxes may be entitled to priority status under section 507(a)(8) of the Bankruptcy Code and therefore must be paid in full under any chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(C). Thus, payment of the Taxes at this time only affects the timing of the payment and does not prejudice the rights of other creditors.

17. Moreover, to the extent the Debtors pay the Taxes in the ordinary course of business on the grounds that the payments are necessary for a successful reorganization, the Debtors will avoid the cost of paying additional accrued amounts to which the Taxing Authorities may be entitled, such as related penalties. *See* 11 U.S.C. § 507(a)(8)(G) (granting priority status to a “penalty related to a claim of a kind specified in this paragraph and in compensation for actual pecuniary loss”).

18. *Second*, in some or all of the states in which the Debtors do business, liens can attach to property on which the Debtors have unpaid Taxes, thus potentially entitling the relevant Taxing Authorities to a secured claim against property of the Debtors’ estates and the payment of postpetition interest and penalties. Secured claims must be paid in full under any chapter 11 plan. *See* 11 U.S.C. § 1129(b)(2)(A). Payment of the Taxes will therefore affect only the timing of the payments, and not the amounts that would ultimately be payable to the applicable Taxing Authorities, and may, in some instances, allow the Debtors to avoid the payment of unnecessary interest and penalties.

19. *Third*, section 541(d) of the Bankruptcy Code provides, in relevant part, that “[p]roperty in which the debtors hold, as of the commencement of the case, only legal title and not an equitable interest . . . becomes property of the estates under subsection (a)(1) or (a)(2) of this section only to the extent of the debtors’ legal title to such property but not to the extent of any equitable interest in such property that the debtors do not hold.” 11 U.S.C. § 541(d). As

such, some of the Taxes may constitute “trust fund” taxes that the Debtors are required to collect from third parties and hold in trust for the benefit of such Taxing Authorities, and may not constitute property of the estates. *See Begier v. Internal Revenue Service*, 496 U.S. 53, 57-60 (1990) (holding that any prepetition payment of trust fund taxes is not an avoidable preference because such funds are not property of the debtors’ estate); *see also City of Farrell v. Sharon Steel Corp. (In re Sharon Steel Corp.)*, 41 F.3d 92 (3d Cir. 1994) (funds withheld from employees’ paychecks for the purpose of paying city income taxes may be subject to a trust and therefore may not be property of the estate); *Rosenow v. Illinois*, 715 F.2d 277, 282 (7th Cir. 1983) (noting that use tax is a trust fund tax); *In re Al Copeland Enterprises, Inc.*, 133 B.R. 837, 841 (Bankr. W.D. Tex. 1991), *subsequently aff’d sub nom. Matter of Al Copeland Enterprises, Inc.*, 991 F.2d 233 (5th Cir. 1993) (stating that sales and use taxes are treated as trust fund taxes); Accordingly, because the Debtors may have no equitable interest in any such trust fund Taxes, payment of such Taxes would not prejudice the rights of any of the Debtors’ other creditors, and the Debtors should be permitted to pay them to the relevant Taxing Authorities as they become due.

20. *Fourth*, certain states and countries may impose personal liability on the Debtors’ directors and officers to the extent the Debtors fail to meet their obligations to remit Taxes, even if the failure to pay such Taxes was not a result of any malfeasance on their part. In addition, the Debtors’ failure to pay certain Taxes could cause some states to challenge the Debtors’ right to operate within the states’ jurisdictions. Addressing any action taken by these states would be costly and burdensome, and would be an unnecessary distraction during these Chapter 11 Cases. Therefore, it is in the best interests of the Debtors’ estates to eliminate the possibility of the foregoing distractions.

21. *Fifth*, the use of estate assets to pay the Taxes should be authorized under section 363(b) of the Bankruptcy Code so long as a sound business purpose exists for doing so. *In re Kmart Corp.*, 359 F.3d 866, 872 (7th Cir. 2004); *see also In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (finding that a sound business justification existed to justify payment of prepetition wages); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (finding that a debtor is entitled to pay certain prepetition creditors upon a showing that the payment is “essential to the continued operation of the business”) (citations omitted); *In re CEI Roofing, Inc.*, 315 B.R. 50, 54-55 (Bankr. N.D. Tex. 2004) (citing *In re Kmart Corp.*, 359 F.3d at 872). Indeed, failure to pay such Taxes jeopardizes the Debtors’ ability to continue to operate in various jurisdictions and may subject the Debtors’ directors and officers to personal liability. Furthermore, Taxing Authorities may audit the Debtors if the Taxes are not timely paid and may also seek to impose liens on the Debtors’ assets on account of unpaid “trust fund” Taxes. Cooperating with such audits and challenging and removing such liens would needlessly divert the Debtors’ attention from their chapter 11 efforts. Prompt and regular payment of the Taxes would avoid any such unwarranted governmental action.

22. Finally, section 105(a) of the Bankruptcy Code provides that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Section 105(a) of the Bankruptcy Code essentially codifies the Bankruptcy Court’s inherent equitable powers and ensures that bankruptcy courts have the “power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction.” *See* 2 COLLIER ON BANKRUPTCY ¶ 105.01 (16th ed. rev. 2017). The relief requested in this Motion is critical to the Debtors’ operations and therefore is justified under section 105(a) of the Bankruptcy Code.

23. Under section 105(a) of the Bankruptcy Code, courts have used the “necessity of payment” rule to authorize debtors in possession to pay certain prepetition claims. Payment of the prepetition Taxes is justified under the “necessity of payment” rule, which “recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor.” *In re Ionosphere Clubs, Inc.*, 98 B.R. at 176 (“The ability of a Bankruptcy Court to authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.”); *see also In re Just for Feet, Inc.*, 242 B.R. 821, 826 (D. Del. 1999) (stating that where the debtor “cannot survive” absent payment of certain prepetition claims, the doctrine of necessity should be invoked to permit payment); *In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (necessity of payment doctrine “teaches no more than, if payment of a claim which arose prior to reorganization is essential to the continued operation of the [business] during reorganization, payment may be authorized even if it is made out of corpus”).

24. Such circumstances exists where, as here, the Debtors, are operating their businesses as debtors in possession under Bankruptcy Code sections 1107(a) and 1108 and thus are fiduciaries “holding the bankruptcy estate[s] and operating the business[es] for the benefit of [their] creditors and (if the value justifies) equity owners.” *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the duties of a chapter 11 debtor in possession is the duty “to protect and preserve the estate, including an operating business’s going-concern value.” *Id.* This Court, in *CoServ*, also noted that there are instances in which a debtor in possession can fulfill its fiduciary duty “only . . . by the preplan satisfaction of a prepetition claim.” *Id.*

25. As described above, the Taxing Authorities likely maintain secured or priority

claims against the Debtors for the Taxes., and thus failure to pay the Taxes would be detrimental to the Debtors' estates. Payment of the Taxes, in the Debtors' discretion, is therefore necessary so they can meet their fiduciary duties as debtors in possession under Bankruptcy Code sections 1107(a) and 1108. *See CoServ*, 273 B.R. at 497. Accordingly, such payment should be authorized under the doctrine of necessity and Bankruptcy Code sections 105(a), 1107 and 1108.

26. Bankruptcy courts in this District have relied on these authorities and precedent to authorize the payment of prepetition tax obligations. *See, e.g., In re Erikson, Inc.*, et al., Case No 16-34393 (Bankr. N.D. Tex Nov. 9, 2016) [Dkt. Nos. 55 and 126]; *In re TPP Acquisition, Inc., d/b/a The Picture People*, et al., Case No. 16-33437 (Bankr. N.D. Tex. Sept. 2, 2016) [Dkt. No. 82]; *In re CHC Group, Ltd.*, et al., Case No. 16-31854 (Bankr. N.D. Tex. May 7, 2016) [Dkt. Nos. 57 and 287]; *In re Energy & Exploration Partners, Inc.*, et al., Case No. 15-45931 (Bankr. N.D. Tex. Dec. 9, 2015) [Dkt. Nos. 49 and 151]; *In re Alco Stores, Inc.*, et al., Case No. 14-34941 (Bankr. N.D. Tex. Oct. 16, 2014) [Dkt. Nos. 69 and 322]. Accordingly, the Debtors respectfully submit that similar relief should be granted in these Chapter 11 Cases.

B. Cause Exists to Authorize the Debtors' Financial Institutions to Honor Checks and Electronic Fund Transfers.

27. The Debtors also request that all applicable banks and other financial institutions be authorized to receive, process, honor, and pay all checks presented for payment, and to honor all electronic payment requests made by the Debtors, related to the obligations described herein, whether such checks were presented or electronic requests were submitted prior to or after the Petition Date. The Debtors further request that all such banks and financial institutions be authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved pursuant to this Motion. The Debtors represent that they have sufficient availability of funds to pay any amounts described herein.

28. Also, the Debtors represent that checks or wire transfer requests will be readily identified as relating to an authorized payment made with respect to the Taxes. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently and that all applicable financial institutions should be authorized and directed, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests with respect to the Taxes.

RESERVATION OF RIGHTS

29. Nothing contained herein is intended or shall be construed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver of any of the Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (iii) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (iv) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between any Debtor and any third party under section 365 of the Bankruptcy Code. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of any of the Debtors' rights to dispute such claim.

THE DEBTORS SATISFY BANKRUPTCY RULE 6003(b)

30. Bankruptcy Rule 6003(b) provides that, if relief is necessary to avoid immediate and irreparable harm, a bankruptcy court may approve a motion to "pay all or part of a claim that arose before the filing of the petition" prior to twenty-one (21) days after the Petition Date. Fed. R. Bankr. P. 6003(b). Immediate and irreparable harm exists where the absence of relief would impair a debtor's ability to reorganize or threaten the debtor's future as a going concern.

Specifically, the Fifth Circuit has interpreted the language “immediate and irreparable harm” in the context of preliminary injunctions. In that context, courts in this Circuit have explained that irreparable harm requires proof that “(1) the harm to Plaintiffs is imminent (2) the injury would be irreparable and (3) that Plaintiffs have no other adequate legal remedy.” *See, e.g., GoNannies, Inc. v. GoAuPair.Com, Inc.*, 464 F. Supp. 2d 603, 608 (N.D. Tex. 2006) (citing *Chacon v. Granata*, 515 F.2d 922, 925 (5th Cir. 1975)).

31. The Debtors estimate that approximately \$750,000 in Taxes are currently outstanding and due, or will become due and payable within the next twenty-one (21) days, and will need to be paid to avoid the harmful consequences noted above to its business and restructuring efforts. Based on the foregoing, the Debtors submit that the relief requested herein is necessary to avoid immediate and irreparable harm, and therefore, Bankruptcy Rule 6003 is satisfied.

REQUEST FOR WAIVER OF BANKRUPTCY RULES 6004(a) AND (h)

32. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen (14) day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h). As explained above and in the First Day Declaration, the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors. Accordingly, ample cause exists to justify the waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day (14) stay imposed by Bankruptcy Rule 6004(h), to the extent such notice requirements and such stay apply.

NOTICE

33. Notice of this Motion shall be provided to: (a) U.S. Trustee; (b) the Office of the

Attorney General of the states in which the Debtors operate Facilities; (c) the Debtors' forty (40) largest unsecured creditors on a consolidated basis; (d) counsel for Sterling National Bank; (e) counsel for OHI Asset RO, LLC and the DIP Lender; (f) the Taxing Authorities; (g) the Internal Revenue Service; and (h) the Department of Medicaid, Department of Health, and Division of Health Services Regulation in each state in which the Debtors operate Facilities. The Debtors respectfully submit that such notice is sufficient and that no further notice of this Motion is required.

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CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Orders granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: March 6, 2018
Dallas, Texas

Respectfully submitted,

DLA PIPER LLP (US)

/s/ Andrew Zollinger
Andrew Zollinger, State Bar No. 24063944
DLA Piper LLP (US)
1717 Main Street, Suite 4600
Dallas, Texas 75201-4629
Telephone: (214) 743-4500
Facsimile: (214) 743-4545
Email: andrew.zollinger@dlapiper.com

-and-

Thomas R. Califano (*pro hac vice admission pending*)
Dienna Corrado (*pro hac vice admission pending*)
1251 Avenue of the Americas
New York, New York 10020
Telephone: (212) 335-4500
Facsimile: (212) 335-4501
Email: thomas.califano@dlapiper.com
dienna.corrado@dlapiper.com

-and-

Daniel M. Simon (*pro hac vice admission pending*)
One Atlantic Center
1201 West Peachtree Street, Suite 2800
Atlanta, Georgia 30309
Telephone: (404) 736-7800
Facsimile: (404) 682-7800
Email: daniel.simon@dlapiper.com

Proposed Counsel for the Debtors

EXHIBIT A**(Sorted Alphabetically)**

	Debtor Name	EIN
1.	4 West Holdings, Inc.	9732
2.	4 West Investors, LLC	6021
3.	Aiken RE, LLC	1814
4.	Ambassador Rehabilitation and Healthcare Center, LLC	1636
5.	Anchor Rehabilitation and Healthcare Center of Aiken, LLC	9448
6.	Anderson RE TX, LLC	3630
7.	Anderson RE, LLC	1806
8.	Ark II Real Estate, LLC	3628
9.	Ark III Real Estate, LLC	0121
10.	Ark Mississippi Holding Company, LLC	3765
11.	Ark Real Estate, LLC	6014
12.	Ark South Carolina Holding Company, LLC	0002
13.	Ark Texas Holding Company, LLC	3739
14.	Battle Ground RE, LLC	1818
15.	Brushy Creek Rehabilitation and Healthcare Center, LLC	3292
16.	Bryan RE, LLC	3633
17.	Burleson RE, LLC	1777
18.	Capstone Rehabilitation and Healthcare Center, LLC	7871
19.	Charlottesville Pointe Rehabilitation and Healthcare Center, LLC	4467
20.	Charlottesville RE, LLC	0836
21.	Cleveland RE, LLC	6013
22.	Clinton RE, LLC	8109
23.	Cobblestone Rehabilitation and Healthcare Center, LLC	1612
24.	Collierville RE, LLC	8845
25.	Columbia RE, LLC	8838
26.	Columbia Rehabilitation and Healthcare Center, LLC	6772
27.	Comfort RE, LLC	1902
28.	Connersville RE, LLC	9824
29.	Corinth RE, LLC	1777
30.	Cornerstone Rehabilitation and Healthcare Center, LLC	8841
31.	Crystal Rehabilitation and Healthcare Center, LLC	8842
32.	Delta Rehabilitation and Healthcare Center of Cleveland, LLC	7212
33.	Descending Dove, LLC	8081
34.	Diboll RE, LLC	1939
35.	Easley RE II, LLC	1819
36.	Easley RE, LLC	1817
37.	Edgefield RE, LLC	3574
38.	Farmville RE, LLC	3442
39.	Farmville Rehabilitation and Healthcare Center, LLC	4464
40.	Fleetwood Rehabilitation and Healthcare Center, LLC	9615
41.	Fortress Health & Rehab of Rock Prairie, LLC	1314
42.	Granbury RE, LLC	1999
43.	Great Oaks RE, LLC	1731

	Debtor Name	EIN
44.	Great Oaks Rehabilitation and Healthcare Center, LLC	4357
45.	Greenville RE II, LLC	1798
46.	Greenville RE, LLC	1797
47.	Greenville Rehabilitation and Healthcare Center, LLC	3920
48.	Greenwood RE, LLC	1654
49.	Greer RE, LLC	1795
50.	Greer Rehabilitation and Healthcare Center, LLC	9462
51.	Grenada RE, LLC	1623
52.	Grenada Rehabilitation and Healthcare Center, LLC	8843
53.	Heritage Park Rehabilitation and Healthcare Center, LLC	9055
54.	Hillsville RE, LLC	2195
55.	Hillsville Rehabilitation and Healthcare Center, LLC	4463
56.	Holly Lane Rehabilitation and Healthcare Center, LLC	9103
57.	Holly RE, LLC	1816
58.	Holly Springs RE, LLC	1559
59.	Holly Springs Rehabilitation and Healthcare Center, LLC	6524
60.	Indianola RE, LLC	6022
61.	Indianola Rehabilitation and Healthcare Center, LLC	7203
62.	Italy RE, LLC	2086
63.	Iva RE, LLC	1801
64.	Iva Rehabilitation and Healthcare Center, LLC	0384
65.	Johns Island Rehabilitation and Healthcare Center, LLC	4898
66.	Joy of Bryan, LLC	4072
67.	Lampstand Health & Rehab of Bryan, LLC	2002
68.	Linley Park Rehabilitation and Healthcare Center, LLC	0525
69.	Macon Rehabilitation and Healthcare Center, LLC	9644
70.	Magnified Health & Rehab of Anderson, LLC	9060
71.	Manna Rehabilitation and Healthcare Center, LLC	9441
72.	Marietta RE, LLC	1809
73.	McCormick RE, LLC	1808
74.	McCormick Rehabilitation and Healthcare Center, LLC	3193
75.	Memphis RE, LLC	8846
76.	Midland RE, LLC	5138
77.	Midland Rehabilitation and Healthcare Center, LLC	9679
78.	Moultrie RE, LLC	9943
79.	Mountain View Rehabilitation and Healthcare Center, LLC	9227
80.	Natchez RE, LLC	6019
81.	Natchez Rehabilitation and Healthcare Center, LLC	6773
82.	New Ark Master Tenant, LLC	7893
83.	New Ark Operator Holdings, LLC	7623
84.	New Redeemer Health & Rehab of Pickens, LLC	5321
85.	Olive Leaf Holding Company, LLC	0129
86.	Olive Leaf, LLC	0001
87.	Omega Health & Rehab of Greenville, LLC	9461
88.	Orianna Health Systems, LLC	5160
89.	Orianna Holding Company, LLC	1323
90.	Orianna Investment, Inc.	1141

	Debtor Name	EIN
91.	Orianna SC Operator Holdings, Inc.	0383
92.	Palladium Hospice and Palliative Care, LLC	1873
93.	Patewood Rehabilitation and Healthcare Center, LLC	9457
94.	Picayune RE, LLC	9749
95.	Picayune Rehabilitation and Healthcare Center, LLC	9183
96.	Pickens RE II, LLC	1823
97.	Pickens RE, LLC	1821
98.	Piedmont RE, LLC	1800
99.	Poinsett Rehabilitation and Healthcare Center, LLC	0713
100.	Poplar Oaks Rehabilitation and Healthcare Center, LLC	4771
101.	Portland RE, LLC	1822
102.	Provo RE, LLC	3568
103.	Rainbow Rehabilitation and Healthcare Center, LLC	4772
104.	River Falls Rehabilitation and Healthcare Center, LLC	9788
105.	Riverside Rehabilitation and Healthcare Center, LLC	3951
106.	Rock Prairie RE, LLC	3636
107.	Rocky Mount RE, LLC	5904
108.	Rocky Mount Rehabilitation and Healthcare Center, LLC	4466
109.	Roy RE, LLC	5142
110.	Scepter Rehabilitation and Healthcare Center, LLC	1630
111.	Scepter Senior Living Center, LLC	1621
112.	Simpsonville RE II, LLC	1804
113.	Simpsonville RE, LLC	1802
114.	Simpsonville Rehabilitation and Healthcare Center, LLC	3564
115.	Snellville RE, LLC	9933
116.	Southern Oaks Rehabilitation and Healthcare Center, LLC	1141
117.	The Bluffs Rehabilitation and Healthcare Center, LLC	9314
118.	The Ridge Rehabilitation and Healthcare Center, LLC	1456
119.	Trinity Mission Health & Rehab of Connersville, LLC	8787
120.	Trinity Mission of Burleson, LLC	2585
121.	Trinity Mission of Comfort, LLC	2573
122.	Trinity Mission of Diboll, LLC	2581
123.	Trinity Mission of Granbury, LLC	2582
124.	Trinity Mission of Italy, LLC	2576
125.	Trinity Mission of Winnsboro, LLC	2583
126.	Utah Valley Rehabilitation and Healthcare Center, LLC	9661
127.	Vicksburg RE, LLC	0150
128.	Victory Rehabilitation and Healthcare Center, LLC	9485
129.	Wadesboro RE, LLC	9929
130.	Wide Horizons RE, LLC	5144
131.	Wide Horizons Residential Care Facility, LLC	9387
132.	Winnsboro RE, LLC	2134
133.	Woodlands Rehabilitation and Healthcare Center, LLC	9127
134.	Yazoo City RE, LLC	8844
135.	Yazoo City Rehabilitation and Healthcare Center, LLC	7216

EXHIBIT B

Proposed Interim Order

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

In re:	§	
	§	
	§	Chapter 11
	§	
4 West Holdings, Inc. <i>et al.</i> , ¹	§	Case No. 18-30777
	§	
Debtors.	§	(Jointly Administered)
	§	
	§	

**INTERIM ORDER AUTHORIZING, BUT NOT DIRECTING, THE DEBTORS
TO PAY CERTAIN PREPETITION TAXES AND RELATED RELIEF**

Upon the motion (the “Motion”)² of the debtors the above-captioned cases (collectively, the “Debtors”) for entry of an order under Bankruptcy Code sections 105(a), 363(b), 507(a)(8), 541, 1107(a), 1108, and 1129 authorizing, but not directing, the Debtors to pay certain prepetition taxes and granting related relief, all as further described in the Motion; and upon consideration of the First Day Declaration; and this Court having jurisdiction to consider the Motion and the relief requested therein under 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding under 28 U.S.C. § 157(b)(2); and this Court having found

¹ A list of the Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, is attached to the Motion as **Exhibit A**.

² Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

that venue of this proceeding and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing were adequate and appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor

IT IS HEREBY ORDERED THAT:

1. The Motion is hereby granted, on an interim basis, as set forth herein.
2. With the exception of Property Taxes, the Debtors are authorized, but not directed, to pay all prepetition Taxes set forth in the Motion to the Taxing Authorities in the ordinary course of their businesses, up to an aggregate amount of \$750,000 during the interim period.
3. This Interim Order is without prejudice to the rights of the Debtors and their estates to contest the validity, priority or amounts of any Taxes or audit amounts on any grounds they deem appropriate, and any rights of the Debtors and their estates with respect to such matters shall be reserved.
4. All applicable banks and other financial institutions at which the Debtors maintain their accounts are authorized and directed to (a) receive, process, honor, and pay any and all checks presented for payment, and to honor all electronic payment requests made by the Debtors, related to the Tax Payments and any other prepetition obligations described in the Motion,

whether such claims were presented or electronic requests were submitted prior to or after the Petition Date, and (b) rely on the Debtors' designation of any particular check or electronic payment request as approved under this Interim Order.

5. Notwithstanding the relief granted herein or any actions taken hereunder, nothing contained in this Interim Order shall create any rights in favor of, or enhance the status of any claim held by, any Taxing Authority.

6. Nothing contained herein shall be construed to accelerate payments to any Taxing Authority that are not otherwise due and payable.

7. Notwithstanding the possible applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order shall be immediately effective and enforceable upon its entry.

8. Notwithstanding anything to the contrary contained herein, any payment made or to be made under this Interim Order, any authorization contained in this Interim Order, or any claim for which payment is authorized hereunder, shall be subject to the requirements imposed on the Debtors under any orders of this Court approving any debtor-in-possession financing for, or any use of cash collateral by, the Debtors and any budget in connection therewith.

9. The Court finds and determines that the requirements of Bankruptcy Rule 6003(b) are satisfied and the relief requested is necessary to avoid immediate and irreparable harm.

10. The requirements of Bankruptcy Rule 6004(a) are waived.

11. Notwithstanding anything to the contrary contained herein, any payment made or to be made under this Interim Order, any authorization contained in this Interim Order, or any claim for which payment is authorized hereunder, shall be subject to the requirements imposed

on the Debtors under any orders of this Court approving any debtor-in-possession financing for, or any use of cash collateral by, the Debtors and any budget in connection therewith.

12. The final hearing (the "Final Hearing") on the Motion shall be held on _____, **2018** at ____:____ **m. (prevailing Central Time)**. Any objections or responses to entry of a final order on the Motion (each, an "Objection") shall be filed on or before **4:00 p.m. (prevailing Central Time)** on _____, **2018**, and served on the following parties: (a) proposed counsel for the Debtors, DLA Piper LLP (US), 1251 Avenue of the Americas, New York, NY 10020 (Attn: Thomas R. Califano, Esq. and Dienna Corrado, Esq.), One Atlantic Center, 1201 West Peachtree Street, Suite 2800, Atlanta, GA 30309 (Attn: Daniel Simon, Esq.), 1717 Main Street, Suite 4600, Dallas, TX 75201 (Attn: Andrew Zollinger, Esq.), (b) the Office of the United States Trustee for the Northern District of Texas, Earle Cabell Federal Building, 1100 Commerce Street, Room 976, Dallas, TX 75242 (Attn: Lisa Lambert), (c) counsel to Sterling National Bank, King & Spalding LLP, 1185 Avenue of the Americas, New York, NY 10036 (Attn: Arthur Steinberg, Esq., and Terry Novetsky, Esq.), (d) counsel to OHI Asset RO, LLC and the DIP Lender, Bryan Cave, LLP, One Atlantic Center, 1201 West Peachtree Street, Suite 1400, Atlanta, GA 30309 (Attn: Mark Duedall, Esq.), JP Morgan Chase Tower, 2200 Ross Avenue, Suite 3300, Dallas, TX 75201 (Attn: Keith Aurzada, Esq.), and One Metropolitan Square, 211 North Broadway, Suite 3600, St. Louis, MO 63102 (Attn: David Unseth, Esq.), and (e) counsel to any official committee of unsecured creditors appointed in these Chapter 11 Cases. In the event no Objections to entry of a final order on the Motion are timely received, this Court may enter such final order without need for the Final Hearing.

13. The Debtors are hereby authorized to take all actions necessary to effectuate the relief granted pursuant to this Interim Order.

14. This Court shall retain jurisdiction over any and all matters arising from the interpretation, implementation, or enforcement of this Interim Order.

End of Order

Order submitted by:

DLA PIPER LLP (US)

/s/ Andrew Zollinger

Andrew Zollinger, State Bar No. 24063944

DLA Piper LLP (US)

1717 Main Street, Suite 4600

Dallas, Texas 75201-4629

Telephone: (214) 743-4500

Facsimile: (214) 743-4545

Email: andrew.zollinger@dlapiper.com

-and-

Thomas R. Califano (*pro hac vice admission pending*)

Dienna Corrado (*pro hac vice admission pending*)

1251 Avenue of the Americas

New York, New York 10020

Telephone: (212) 335-4500

Facsimile: (212) 335-4501

Email: thomas.califano@dlapiper.com

dienna.corrado@dlapiper.com

-and-

Daniel M. Simon (*pro hac vice admission pending*)
One Atlantic Center
1201 West Peachtree Street, Suite 2800
Atlanta, Georgia 30309
Telephone: (404) 736-7800
Facsimile: (404) 682-7800
Email: daniel.simon@dlapiper.com

Proposed Counsel for the Debtors

EXHIBIT B

Proposed Final Order

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

In re:	§	
	§	
	§	Chapter 11
4 West Holdings, Inc. <i>et al.</i> , ¹	§	
	§	Case No. 18-30777
Debtors.	§	
	§	(Jointly Administered)
	§	
	§	

**FINAL ORDER AUTHORIZING, BUT NOT DIRECTING, THE DEBTORS
TO PAY CERTAIN PREPETITION TAXES AND RELATED RELIEF**

Upon the motion (the “Motion”)² of the debtors the above-captioned cases (collectively, the “Debtors”) for entry of an order under Bankruptcy Code sections 105(a), 363(b), 507(a)(8), 541, 1107(a), 1108, and 1129 authorizing, but not directing, the Debtors to pay certain prepetition taxes and granting related relief, all as further described in the Motion; and upon consideration of the First Day Declaration; and this Court having jurisdiction to consider the Motion and the relief requested therein under 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding under 28 U.S.C. § 157(b)(2); and this Court having found

¹ A list of the Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, is attached to the Motion as **Exhibit A**.

² Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the motion.

that venue of this proceeding and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing were adequate and appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor

IT IS HEREBY ORDERED THAT:

1. The Motion is granted, on a final basis, as set forth herein.
2. The Debtors are authorized, but not directed, to pay all prepetition Taxes, including Property Taxes, to the Taxing Authorities in the ordinary course of their businesses, up to an aggregate amount of \$4.6 million.
3. This Final Order is without prejudice to the rights of the Debtors and their estates to contest the validity, priority or amounts of any Taxes or audit amounts on any grounds they deem appropriate, and any rights of the Debtors and their estates with respect to such matters shall be reserved.
4. All applicable banks and other financial institutions at which the Debtors maintain their accounts are authorized and directed to (a) receive, process, honor, and pay any and all checks presented for payment, and to honor all electronic payment requests made by the Debtors, related to the Tax Payments and any other prepetition obligations described in the Motion, whether such claims were presented or electronic requests were submitted prior to or

after the Petition Date, and (b) rely on the Debtors' designation of any particular check or electronic payment request as approved under this Final Order.

5. Notwithstanding the relief granted herein or any actions taken hereunder, nothing contained in this Final Order shall create any rights in favor of, or enhance the status of any claim held by, any Taxing Authority.

6. Nothing contained herein shall be construed to accelerate payments to any Taxing Authority that are not otherwise due and payable.

7. Notwithstanding the possible applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Final Order shall be immediately effective and enforceable upon its entry.

8. Notwithstanding anything to the contrary contained herein, any payment made or to be made under this Final Order, any authorization contained in this Final Order, or any claim for which payment is authorized hereunder, shall be subject to the requirements imposed on the Debtors under any orders of this Court approving any debtor-in-possession financing for, or any use of cash collateral by, the Debtors and any budget in connection therewith.

9. The Court finds and determines that the requirements of Bankruptcy Rule 6003(b) are satisfied and the relief requested is necessary to avoid immediate and irreparable harm.

10. The requirements of Bankruptcy Rule 6004(a) are waived.

11. Notwithstanding anything to the contrary contained herein, any payment made or to be made under this Final Order, any authorization contained in this Final Order, or any claim for which payment is authorized hereunder, shall be subject to the requirements imposed on the Debtors under any orders of this Court approving any debtor in possession financing for, or any use of cash collateral by, the Debtors and any budget in connection therewith

12. The Debtors are hereby authorized to take all actions necessary to effectuate the relief granted pursuant to this Final Order.

13. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Final Order.

End of Order

Order submitted by:

DLA PIPER LLP (US)

/s/ Andrew Zollinger
Andrew Zollinger, State Bar No. 24063944
DLA Piper LLP (US)
1717 Main Street, Suite 4600
Dallas, Texas 75201-4629
Telephone: (214) 743-4500
Facsimile: (214) 743-4545
Email: andrew.zollinger@dlapiper.com

-and-

Thomas R. Califano (*pro hac vice admission pending*)
Dienna Corrado (*pro hac vice admission pending*)
1251 Avenue of the Americas
New York, New York 10020
Telephone: (212) 335-4500
Facsimile: (212) 335-4501
Email: thomas.califano@dlapiper.com
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Proposed Counsel for the Debtors