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

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

**MOTION OF THE DEBTORS FOR ENTRY OF INTERIM AND  
FINAL ORDERS AUTHORIZING DEBTORS TO PAY OR  
HONOR PREPETITION OBLIGATIONS TO CRITICAL VENDORS**

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”)

<sup>1</sup> 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**.

and, together with the Proposed Interim Order, the “Proposed Orders”), pursuant to sections 105(a), 363(b), 503(b)(9), 1107(a), and 1108 of title 11 of the United States Code (the “Bankruptcy Code”), and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) (i) authorizing the Debtors to pay or honor, in the reasonable exercise of their business judgment, amounts owed to certain vendors that are critical to the Debtors’ operations (the “Critical Vendors”), and (ii) granting certain related relief.<sup>2</sup> 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”), filed with the Court contemporaneously herewith. In further support of the Motion, the Debtors respectfully represent as follows:

#### **JURISDICTION AND VENUE**

1. The 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).
2. Venue is proper before this Court under 28 U.S.C. §§ 1408 and 1409.

#### **BACKGROUND**

3. On the date hereof (the “Petition Date”), each Debtor filed with this Court 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 pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or official committee of unsecured creditors has been appointed in the Debtors’ chapter 11 cases (the “Chapter 11 Cases”).

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<sup>2</sup> Nothing in this Motion shall constitute an admission of liability, a concession as to applicable law, or a waiver of any rights or defenses to the claims or potential claims of any creditor or party in interest. The Debtors expressly reserve all rights in connection therewith.

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 respectfully request entry of the Proposed Orders, pursuant to sections 105(a), 363(b), 503(b)(9), 1107(a) and 1108 of the Bankruptcy Code, and Bankruptcy Rules 6003 and 6004, authorizing the Debtors to pay or honor, in the reasonable exercise of their business judgment, amounts owed to Critical Vendors, *provided, however*, that authorization for such payments be limited to \$3,000,000 (the "Interim Cap") for the period between the Petition Date and the date of the Final Hearing on this motion (the "Interim Period"), and to \$4,200,000 in the aggregate as of the Final Hearing (the "Final Cap," and together with the Interim Cap, the "Critical Vendor Cap"), and granting certain related relief.<sup>3</sup>

### **THE CRITICAL VENDORS**

#### **A. Selection of Critical Vendors**

7. The Debtors, in consultation with their professional advisors, spent a significant amount of time carefully reviewing its prepetition vendor list to identify those vendors who are most critical to the Debtors' operations. As part of this identification process, the Debtors considered a vendor to be critical only if, among other things, (i) the goods and services provided by such vendor cannot be easily and efficiently replaced, where alternatives are typically limited and even a short-term interruption of services or supplies would be materially disruptive; (ii) the importance of the vendor to the Debtors' business operations; (iii) the likelihood that the vendor would discontinue service if not timely paid; (iv) the ability of the vendor to assert liens; and

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<sup>3</sup> The Interim Cap represents approximately 4.5% and the Final Cap represents approximately 6.3% of the aggregate estimated prepetition accounts payable outstanding. The percentage of the Debtors' vendors sought to be covered by this Motion is less than 5%.

(v) whether the vendor is a party to a contract with the Debtors and any terms thereof (*i.e.*, short-term termination rights), and if so, whether enforcement thereof could be accomplished in a timely and cost-efficient manner without unduly disrupting the Debtors' business.

8. In doing so, the Debtors identified a small number of Critical Vendors that provide essential goods and services to the Debtors' businesses in the following categories, each of which is essential to continuing operation of the Debtors' facilities and maintenance of vital services to their residents: (i) life safety, (ii) x-ray lab, (iii) transportation vendors, (iv) HVAC maintenance, (v) laundry services, (vi) dietary, and (vii) housekeeping (collectively, the "Critical Goods and Services"). The Debtors have narrowly tailored the list of Critical Vendors to address the immediate need for the Debtors to continue operations without disruption to the ordinary course of their businesses or risk the safety of their residents. Upon request, the Debtors will provide a list of the Critical Vendors to the Office of the United States Trustee (the "U.S. Trustee"), OHI Asset RO, LLC, and any official committee appointed in these cases (the "Committee"). The Debtors expressly reserve the right to amend, modify, and/or supplement such list.

9. Of critical importance to the Debtors' business are those vendors that provide goods or services that contribute, maintain and enhance the daily lives of the Debtors' residents. Many of these services are essential to meet the ongoing needs of the Debtors' residents and, if the Debtors incur any disruption in these goods and services, such disruption (even of limited duration) could ultimately lead to potential lapses in the health and safety of these residents. Among these services, the Debtors contract with one particular Critical Vendor that supplies each of their facilities with dining services, laundry and housekeeping. The Debtors' ongoing relationship with this provider has undoubtedly been harmed by the Debtors' deteriorating cash

situation, and the Debtors believe that there is significant risk if the Critical Vendor does not receive partial payment on account of its claim, it may result in the termination of its relationship with the Debtors. In that case, approximately 4,000 residents would be without food, laundry services, or necessary housekeeping in the Debtors' facilities. If the Debtors were not able to continue to do business with this and other Critical Vendors providing vital services to the Debtors' residents, it would be very difficult and time consuming for the Debtors to find replacement goods and services for each of the Debtors' facilities to carry them through this period of transition until a suitable arrangement was obtained. Not only would this result in a material disruption in the Debtors' business, but more critically, it would adversely and severely impact the daily lives of those residents that rely upon, and indeed take for granted that, the Debtors are able to provide them with these daily necessities.

**B. Calculation of Critical Vendor Cap**

10. The Debtors estimate that as of the Petition Date, the Debtors owe approximately \$24.7 million to the Critical Vendors (the "Critical Vendor Claims"); however, the Debtors believe that in most, if not all instances, partial payment of the Critical Vendor Claims will allow the Debtors to maintain "business as usual" for the Debtors and their residents.

11. The Debtors carefully assessed the universe of vendors considered essential to the Debtors' operations under the foregoing criteria, and estimated the total amount of payments that might be necessary to ensure the continued supply of Critical Goods and Services to the Debtors following the Petition Date

**C. Payment of Critical Vendor Claims**

12. The Debtors seek authority to pay Critical Vendors Claims at their discretion, in the ordinary course of business, according to their established business practices.

13. The Debtors submit that each of the Critical Vendors is of great necessity on a go-forward basis and cannot be easily and efficiently replaced. Even if the Debtors were able to convince the Critical Vendors to continue to supply the Critical Goods and Services absent payment of their prepetition claims, which is improbable, the Critical Vendors would likely agree to do so only on trade terms much less favorable than the Debtors' customary terms, or otherwise those terms such Critical Vendors would be willing to provide upon receipt of the Critical Vendor payments.

14. Moreover, the failure to pay the Critical Vendors for the Critical Goods and Services likely would result in a severe disruption or, or in some cases, risk to the safety of the residents under the Debtors' care. Failure to pay Critical Vendors also could give rise to, among other things, reclamation demands, statutory liens, or administrative expense claims under section 503(b)(9) of the Bankruptcy Code, which amounts would likely be entitled to payment priority under a chapter 11 plan. *See* 11 U.S.C. §§ 503(b)(9) & 1129(a)(9)(A).

15. As the Debtors would benefit from maintaining lower costs for the Critical Goods and Services purchased or provided during the postpetition period and avoiding the severe disruption that might be caused by an interpretation or cessation of the Critical Goods and Services, the Debtors respectfully submit that they should have the authority to pay the Critical Vendors some or all of their prepetition claims.

16. The Debtors may, in their sole discretion, condition the payment of Critical Vendor Claims on (a) the agreement of the individual Critical Vendor to continue supplying goods to the Debtors on the most favorable terms in effect between such Critical Vendor and the Debtors in the 12 months before the Petition Date, or on terms more favorable to the Debtors to which the Debtors and the Critical Vendor may otherwise agree (the "Customary Trade Terms"),

and (b) written verification before issuing payment to a Critical Vendor that such Critical Vendor will continue to provide goods and services to the Debtors on Customary Trade Terms throughout the Debtors' Chapter 11 Cases. A sample agreement identifying the terms the Debtors may seek from a Critical Vendor is attached as **Exhibit D** to this Motion (the "Trade Agreement").

17. Furthermore, the Debtors will take all reasonable steps to limit the extent of payment to the Critical Vendors, which in many instances, would allow for such Critical Vendors to obtain payment that is less than (and in some instances, substantially less than) the total amount of their pre-petition claim. In doing so, the Debtors will manage these payments in a fashion narrowly tailored to ensuring that the Critical Vendors continue to maintain business with the Debtors while, at the same time, conserving estate resources.

18. If a Critical Vendor accepts a payment on account of a prepetition obligation of the Debtors (a "Vendor Payment") and thereafter, prior to the earliest of (a) expiration of any applicable contract on its own terms, (b) default by the applicable Debtor on account of its obligations to such Critical Vendor arising on or after the Petition Date, (c) conversion to chapter 7 or dismissal of any Debtor's case, (d) confirmation of a plan of reorganization or liquidation of any Debtor, or (e) transfer of any Debtor's operations, fails to provide the Debtors with the requisite Customary Trade Terms or such other terms as may be agreed upon between the parties (any such Critical Vendor, a "Defaulting Vendor"), the Debtors seek authority to (i) treat any Vendor Payment received by the Defaulting Vendor as an unauthorized postpetition transfer under section 549 of the Bankruptcy Code that the Debtors may (a) recover from the Defaulting Vendor in cash or goods, or (b) at the Debtors' option, apply as a credit against any outstanding postpetition claims held by such Defaulting Vendor; and (ii) upon recovery of any Vendor

Payment under clause (a) or (b), reinstate the prepetition claim of the Defaulting Vendor in the amount recovered by the Debtors, less the Debtors' reasonable costs incurred in recovering such amounts.

19. Furthermore, by virtue of having accepted a Vendor Payment, each Defaulting Vendor shall be deemed to have waived any and all defenses it might otherwise have against the Debtors with respect to any action commenced by the Debtors under section 549 of the Bankruptcy Code as described immediately above. In essence, the Debtors seek to return the parties to their respective positions immediately before entry of the Order if a Defaulting Vendor refuses to supply goods to the Debtors on Customary Trade Terms following payment of its Critical Vendor Claim.

**D. The Selection of These Critical Vendors is Justified**

20. The Debtors and, in turn, their residents, are highly dependent on the continuous delivery of the Critical Goods and Services from the Critical Vendors. Due to the highly regulated nature of the Debtors' operations, any failure to provide continuous delivery of the Critical Goods and Services may lead to investigations, deficiency citations, regulatory sanctions, and other remedial actions by the governmental agencies monitoring the Debtors, which would impair the Debtors' restructuring efforts, causing a catastrophic effect on the Debtors' business.

21. The Debtors believe that the payment of the Critical Vendor Claims is vital to the Debtors' effort to maximize the value of their assets because, in various instances, the Critical Vendors are the only source from which the Debtors can procure certain goods and services within a time frame and at a price that will permit the Debtors to continue operating their businesses. Failure to pay the Critical Vendor Claims would likely result in Critical Vendors

refusing to provide goods and services to the Debtors postpetition and may force the Debtors to obtain, if at all possible, such goods and services elsewhere at a higher price or in a quantity or quality that is insufficient to satisfy the Debtors' requirements. While such vendors' actions may well be violations of the automatic stay, there is no assurance that the Debtors can obtain remedies that are timely enough and sufficient to avert the potentially disastrous consequences of a supply or service disruption. In addition, certain Critical Vendors may be able to assert administrative claims, possessory liens, or mechanics' or materialmen's liens on goods that are critical to maintaining Debtors' operations.

22. Given the paramount importance of the goods and services provided by the Critical Vendors, the Debtors believe authority to pay Critical Vendor Claims is vital to preserve their trade credit on a post-petition basis and prevent vendors from ceasing to do business with the Debtors altogether.

### **BASIS FOR RELIEF**

#### **A. Payment of the Critical Vendor Claims Is Appropriate Under Sections 363(b) and 105(a) of the Bankruptcy Code.**

23. This Court may grant the relief requested herein pursuant to sections 363(b) and 105(a) of the Bankruptcy Code. Section 363(b)(1) authorizes the trustee to use property of the estate other than in the ordinary course of business after notice and a hearing. *See* 11 U.S.C. § 363(b)(1). Further, pursuant to section 105(a) of the Bankruptcy Code, "the court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [title 11 of the Bankruptcy Code]." 11 U.S.C. § 105(a).

24. Courts have authorized payment of prepetition obligations under section 363(b) of the Bankruptcy Code where a sound business purpose exists for doing so. *See, e.g., Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 985 (2017) (recognizing that courts routinely grant orders

allowing payment to essential suppliers in order to preserve and maximize the debtors' estates); *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 certain claims); *see also Armstrong World Indus., Inc. v. James A. Phillips, Inc., (In re James A. Phillips, Inc.)*, 29 B.R. 391, 397 (S.D.N.Y. 1983) (relying on section 363 to allow contractor to pay prepetition claims); *In re Tropical Sportswear Int'l Corp.*, 320 B.R. 15, 20 (Bankr. M.D. Fla. 2005) ("Bankruptcy courts recognize that section 363 is a source for authority to make critical vendor payments, and section 105 is used to fill in the blanks.").

25. The Debtors have a strong business purpose for paying the Critical Vendor Claims here. As discussed above, the Debtors' failure to pay the Critical Vendor Claims will severely disrupt the Debtors' operations, potentially impact the continued care of the Debtors' residents, and jeopardize the Debtors' restructuring efforts, all of which may result in devastating consequences for their business.

**B. This Court May Allow Payment of Critical Vendor Claims Under the Necessary of Payment Doctrine.**

26. Courts have authorized payment of prepetition obligations under the doctrine of necessity when payment of certain creditors' prepetition claims is necessary or appropriate to preserve or enhance the value of a debtor's estate for the benefit of all creditors. *See In re CoServ, LLC*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (noting that "it is only logical that the bankruptcy court be able to use section 105(a) of the Code to authorize satisfaction of the prepetition claim in aid of preservation or enhancement of the estate"); *Mich. Bureau of Workers' Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279 (S.D.N.Y. 1987) (approving lower court order authorizing debtor prior to plan stage of case to pay pre-petition wages, salaries, business expenses, and benefits). Although the "necessity of payment" doctrine

has not been codified in the Bankruptcy Code, “courts have used their equitable power under section 105(a) of the Code to authorize the payment of pre-petition claims when such payment is deemed necessary to the survival of a debtor in a chapter 11 reorganization.” *In re Just for Feet*, 242 B.R. 821, 824 (Bankr. D. Del. 1994); *See e.g. Czyewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 985 (2017) (noting that courts are authorized to approve orders allowing payment of prepetition claims, which is necessary for the debtors to have a successful reorganization).

27. Furthermore, courts have long recognized that paying some categories of prepetition obligations outside a plan of reorganization is often necessary to realize the paramount purpose of chapter 11, which is to prevent the forced liquidation of the debtor and preserve its potential for financial rehabilitation. *See In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (noting that the doctrine of necessity permits “immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims shall have been paid”); *In re Boston & Me. Corp.*, 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing the existence of a judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to the debtor’s continued operation); *In re CoServ*, 273 B.R. at 497 (applying a form of the doctrine of necessity in noting that payment of unsecured prepetition claims is appropriate where such payment is the “only means to effect a substantial enhancement of the estate”). As one court noted, “a *per se* rule proscribing the payment of pre-petition indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes of the Code.” *In re Structurlite Plastics Corp.*, 86 B.R. 922, 932 (Bankr. S.D. Ohio 1988).

28. Courts in the Fifth Circuit have set out a three-part test to determine whether a prepetition claim of a “critical vendor” may be paid outside of the plan process on a postpetition basis:

First, it must be critical that the debtor deal with the claimant. Second, unless it deals with the claimant, the debtor risks the probability of harm, or, alternatively, loss of economic advantage to the estate or the debtor’s going concern value, which is disproportionate to the amount of the claimant’s pre-petition claim. Third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim.

*In re CoServ, L.L.P.*, 273 B.R. at 498; *In re Mirant Corp.*, 296 B.R. 427, 429-30 (Bankr. N.D. Tex. 2003).

29. The Critical Vendors here are indeed “critical” and fall within the categories discussed in *CoServ* and *Mirant*. The ability of the Debtors to procure alternate vendors without causing harm to their estate would be close to impossible. Should any of the Critical Vendors delay or cease providing the Critical Goods and Services, even on a temporary basis, the Debtors’ operations would be significantly disrupted and impaired, violate applicable regulatory requirements and risk the health and safety of their residents. Aside from allowing payment to the Critical Vendors, no practical, cost efficient, and timely alternative exists by which the Debtors can protect the value of their estates. Therefore, the Debtors must immediately and proactively provide payment to their Critical Vendors on account of the Critical Vendor Claims to avoid economic harm and allow the Debtors to proceed efficiently in chapter 11 in a manner that maximizes value for all parties in interest.

30. This Court has authorized payment of critical vendors where necessary for a debtor’s reorganization or survival. *See, e.g., In re ADPT DFW Holdings LLC*, Case No. 17-

31432 (SGJ) (Bankr. N.D. Tex. May 19, 2017); *In re Energy & Exploration Partners, Inc.*, Case No. 15-44931 (RFN) (Bankr. N.D. Tex. Dec. 23, 2015).

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

31. 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.

32. 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 Critical Vendor Claims. 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 Critical Vendor Claims.

**RESERVATION OF RIGHTS**

33. 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)**

34. 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)).

35. 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)**

36. 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**

37. 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 Critical Vendors; (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.

*[remainder of page left intentionally blank]*

**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)**

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*Proposed Counsel for the Debtors*

**EXHIBIT A****(Sorted Alphabetically)**

	<b>Debtor Name</b>	<b>EIN</b>
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

	<b>Debtor Name</b>	<b>EIN</b>
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

	<b>Debtor Name</b>	<b>EIN</b>
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> , <sup>1</sup>	§	
	§	Case No. 18-30777
Debtors.	§	
	§	(Jointly Administered)
	§	
	§	

**INTERIM ORDER AUTHORIZING DEBTORS TO PAY OR  
HONOR PREPETITION OBLIGATIONS TO CRITICAL VENDORS**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors (the “Debtors”) for entry of an interim order (this “Interim Order”), pursuant to sections 105(a), 363(b), 503(b)(9), 1107(a) and 1108 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, (i) authorizing the Debtors to pay or honor, in the reasonable exercise of their business judgment, amounts owed to certain vendors that are critical to the Debtors’ operations (the “Critical Vendors”), and (ii) granting certain 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

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<sup>1</sup> 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.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Motion.

relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 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 an interim basis, as set forth herein.
2. The Debtors are authorized, but not directed, to pay the Critical Vendors on account of the Critical Vendor Claims, in the aggregate up to the amount of the Interim Cap of \$3,000,000; *provided*, that prior to payment of any Critical Vendor Claim in excess of \$50,000, the Debtors shall provide no less than five (5) days' notice to OHI Asset RO, LLC, a copy of the proposed terms of any agreement reached with a Critical Vendor, if any.
3. The Debtors may, in their sole discretion, condition payment of the Critical Vendor Claims upon such Critical Vendor providing services and supplies to the Debtors on the most favorable terms in effect between such Critical Vendor and the Debtors before the Petition Date, or on terms more favorable to the Debtors to which the Debtors and the Critical Vendor may otherwise agree (such terms, the "Customary Trade Terms").

4. The Debtors are hereby authorized, but not directed, to obtain written verification, substantially in the form attached as **Exhibit D** to the Motion, before issuing payment to a Critical Vendor that such Critical Vendor will continue to provide supplies to the Debtors on Customary Trade Terms for the remaining term of the Critical Vendor's agreement with the Debtors.

5. If any Critical Vendor accepts payment on account of a Critical Vendor Claim and thereafter, prior to the earliest of (a) expiration of any applicable contract on its own terms, (b) default by the applicable Debtor on account of its obligations to such Critical Vendor arising on or after the Petition Date, (c) conversion to chapter 7 or dismissal of any Debtor's case, (d) confirmation of a plan of reorganization or liquidation of any Debtor, or (e) transfer of any Debtor's operations fails to provide the Debtors with the requisite Customary Trade Terms, the Debtors may, in their sole discretion, declare such payments to have been unauthorized postpetition transfers under section 549 of the Bankruptcy Code, and may take any and all appropriate steps to cause such Defaulting Vendor to repay payments made to it on account of its Critical Vendor Claims, or, at the Debtors' option, apply such payments as credits against any outstanding postpetition claim held by such Defaulting Vendor. Upon recovery of a payment made in respect of a Critical Vendor Claim, such claim shall be reinstated as a prepetition claim in the amount so recovered, less the Debtors' reasonable costs of recovery. By virtue of having accepted a payment, each Defaulting Vendor shall be deemed to have waived any and all defenses it might otherwise have against the Debtors with respect to any action commenced by the Debtors under section 549 of the Bankruptcy Code as described immediately above.

6. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall constitute, nor is it intended to constitute (a) an admission to the

validity or priority of any claim against the Debtors; (b) a waiver of the Debtors rights to dispute any claim; or (c) an approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code.

7. In accordance with this Interim Order, each of the financial institutions at which the Debtors maintain their accounts relating to the payment of the obligations described in the Motion are authorized to (a) receive, process, honor, and pay all checks presented for payment and to honor all fund transfer requests made by the Debtors related thereto, to the extent that sufficient funds are on deposit in those accounts and (b) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires, or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of the Court, whether such checks, drafts, wires, or transfers are dated prior to, on, or subsequent to the Petition Date, without any duty to inquire otherwise.

8. The Debtors are authorized, but not directed, to issue new postpetition checks, or effect new electronic funds transfers, on account of prepetition obligations and claims as set forth herein, and to replace any prepetition checks or electronic fund transfer requests that may be lost or dishonored or rejected as a result of the commencement of the Debtors' Chapter 11 Cases.

9. Notwithstanding entry of this Interim Order, nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by, any party.

10. 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.

11. The Debtors are authorized to take all actions they deem necessary to effectuate the relief granted pursuant to this Interim Order in accordance with the Motion.

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 requirements of Bankruptcy Rule 6003(b) have been satisfied.

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

15. This Court shall retain jurisdiction over any and all matters arising from the interpretation or implementation 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)

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-and-

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Atlanta, Georgia 30309

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Email: daniel.simon@dlapiper.com

*Proposed Counsel for the Debtors*

**EXHIBIT C**

**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> , <sup>1</sup>	§	Case No. 18-30777
	§	
Debtors.	§	(Jointly Administered)
	§	
	§	

**FINAL ORDER AUTHORIZING DEBTORS TO PAY OR  
HONOR PREPETITION OBLIGATIONS TO CRITICAL VENDORS**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors (the “Debtors”) for entry of a final order (this “Final Order”), pursuant to sections 105(a), 363(b), 503(b)(9), 1107(a) and 1108 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, (i) authorizing the Debtors to pay or honor, in the reasonable exercise of their business judgment, amounts owed to certain vendors that are critical to the Debtors’ operations (the “Critical Vendors”), and (ii) granting certain 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

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<sup>1</sup> 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.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Motion.

relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 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 the Critical Vendors on account of the Critical Vendor Claims, in the aggregate up to the amount of the Final Cap of \$4,200,000; *provided*, that prior to payment of any Critical Vendor Claim in excess of \$50,000, the Debtors shall provide no less than five (5) days' notice to OHI Asset RO, LLC, a copy of the proposed terms of any agreement reached with a Critical Vendor, if any.
3. The Debtors may condition payment of the Critical Vendor Claims upon such Critical Vendor providing services and supplies to the Debtors on the most favorable terms in effect between such Critical Vendor and the Debtors before the Petition Date, or on terms more favorable to the Debtors to which the Debtors and the Critical Vendor may otherwise agree (such terms, the "Customary Trade Terms").

4. The Debtors are hereby authorized, but not directed, to obtain written verification, substantially in the form attached as **Exhibit D** to the Motion, before issuing payment to a Critical Vendor that such Critical Vendor will continue to provide supplies to the Debtors on Customary Trade Terms for the remaining term of the Critical Vendor's agreement with the Debtors.

5. If any Critical Vendor accepts payment on account of a Critical Vendor Claim and thereafter, prior to the earliest of (a) expiration of any applicable contract on its own terms, (b) default by the applicable Debtor on account of its obligations to such Critical Vendor arising on or after the Petition Date, (c) conversion to chapter 7 or dismissal of any Debtor's case, (d) confirmation of a plan of reorganization or liquidation of any Debtor, or (e) transfer of any Debtor's operations fails to provide the Debtors with the requisite Customary Trade Terms, the Debtors may, in their sole discretion, declare such payments to have been unauthorized postpetition transfers under section 549 of the Bankruptcy Code, and may take any and all appropriate steps to cause such Defaulting Vendor to repay payments made to it on account of its Critical Vendor Claims, or, at the Debtors' option, apply such payments as credits against any outstanding postpetition claim held by such Defaulting Vendor. Upon recovery of a payment made in respect of a Critical Vendor Claim, such claim shall be reinstated as a prepetition claim in the amount so recovered, less the Debtors' reasonable costs of recovery. By virtue of having accepted a payment, each Defaulting Vendor shall be deemed to have waived any and all defenses it might otherwise have against the Debtors with respect to any action commenced by the Debtors under section 549 of the Bankruptcy Code as described immediately above.

6. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall constitute, nor is it intended to constitute (a) an admission to the

validity or priority of any claim against the Debtors; (b) a waiver of the Debtors rights to dispute any claim; or (c) an approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code.

7. In accordance with this Final Order, each of the financial institutions at which the Debtors maintain their accounts relating to the payment of the obligations described in the Motion are authorized to (a) receive, process, honor, and pay all checks presented for payment and to honor all fund transfer requests made by the Debtors related thereto, to the extent that sufficient funds are on deposit in those accounts and (b) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires, or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of the Court, whether such checks, drafts, wires, or transfers are dated prior to, on, or subsequent to the Petition Date, without any duty to inquire otherwise.

8. The Debtors are authorized, but not directed, to issue new postpetition checks, or effect new electronic funds transfers, on account of prepetition obligations and claims as set forth herein, and to replace any prepetition checks or electronic fund transfer requests that may be lost or dishonored or rejected as a result of the commencement of the Debtors' Chapter 11 Cases.

9. Notwithstanding entry of this Final Order, nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by, any party.

10. 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.

11. The Debtors are authorized to take all actions they deem necessary to effectuate the relief granted pursuant to this Final Order in accordance with the Motion.

12. The requirements of Bankruptcy Rule 6003(b) have been satisfied.

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

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

**### End of Order ###**

Order submitted by:

**DLA PIPER LLP (US)**

/s/ Andrew Zollinger

Andrew Zollinger, State Bar No. 24063944

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Email: daniel.simon@dlapiper.com

*Proposed Counsel for the Debtors*

**EXHIBIT D**

**Sample Trade Agreement**

[Trade Vendor Agreement]  
\_\_\_\_\_, 2018

TO: [Vendor]  
[Name] [Address]

Dear Vendor:

As you may be aware, on March 6, 2018 (the "Petition Date"), 4 West Holdings, Inc. and certain of its affiliates and subsidiaries (collectively, "4 West" or the "Debtors"), each commenced a voluntary case under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court"). On the Petition Date, the Debtors requested authority from the Bankruptcy Court to, among other things, pay the prepetition claims of certain trade creditors in recognition of, among other things, the importance of the Debtors' relationship with their vendors and suppliers and the Debtors' desire that their restructuring efforts have as little effect as possible on its business. On [●], 2018, the Bankruptcy Court entered an order (the "Prepetition Trade Order") authorizing the Debtors to pay, in the ordinary course of business, according to established business practices, the prepetition claims of those trade creditors who agree to be bound by the terms set forth below and those found in the Prepetition Trade Order. A copy of the Prepetition Trade Order is enclosed.

Pursuant to the terms of the Prepetition Trade Order, to receive payment on prepetition claims in the ordinary course, among other things, a trade creditor must continue to supply goods and/or provide services to the Debtors based on trade terms that are at least as favorable as the most favorable terms existing at any time during the 12 months prior to the Commencement Date, or on other terms that are satisfactory to the Debtors in their business judgment. In this agreement (the "Agreement"), trade terms should be construed as the normal and customary trade terms, practices and programs (including, but not limited to, credit limits, pricing, cash discounts, timing of payments, allowance, rebates, coupon reconciliation, normal product mix and availability, and other applicable terms and programs) which were favorable to the Debtors and in effect between the Debtors and such trade creditor at any time during the 12 months prior to the Commencement Date (the "Prepetition Trade Terms").

For purposes of the administration of this trade program as authorized by the Bankruptcy Court, you<sup>1</sup> agree to the following terms and conditions:

1. Except as set forth herein, the estimated balance of the prepetition trade claim (net of any setoffs, credits or discounts) owed to you is \$\_\_\_\_\_ (the "Trade Claim"). This Agreement does not excuse you from any requirement to timely file a proof of claim in the appropriate bankruptcy case(s), for any portion of your Trade Claim that is not paid in accordance with this Agreement, if any.

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<sup>1</sup> For purposes of this Agreement, "you" shall refer to [Name of Trade Vendor], its parent companies, subsidiaries, affiliates, directors, officers, members, shareholders, partners, employees, agents, attorneys, advisors, consultants or any other party acting on behalf or at the direction of [Name of Trade Vendor].

2. You shall not file, or otherwise assert, against any or all of the Debtors, their estates or any other person or entity or any of their respective assets or property (real or personal), any lien (a "Lien") or reclamation request (a "Reclamation Claim"), regardless of any statute or other legal authority upon which such Lien or Reclamation Claim may be asserted, which is related in any way to any prepetition amounts allegedly owed to you by the Debtors prior to the Commencement Date and not paid hereunder, and, to the extent you have already obtained or otherwise asserted such a Lien or Reclamation Claim, you shall (at your expense) immediately take any and all actions necessary to remove such Lien or withdraw such Reclamation Claim.
3. You shall immediately hereafter extend to the Debtors all Prepetition Trade Terms, which are:
  - i. [DEBTORS TO ADD INDIVIDUALIZED SET OF CUSTOMARY TRADE TERMS SUBJECT TO AGREEMENT].
  - ii. The Prepetition Trade Terms shall apply throughout the Debtors' Chapter 11 Cases.
4. You shall honor the Prepetition Trade Terms and, subject to the reservations contained in the Prepetition Trade Order, shall not dispute the amount of the Trade Claim set forth above.
5. You shall continue to supply the Debtors with goods and/or provide services pursuant to the terms hereof.
6. You have reviewed the terms and provisions of the Prepetition Trade Order and are bound by such terms.
7. You shall not separately seek payment for reclamation or similar claims outside of the terms of the Prepetition Trade Order.
8. The Bankruptcy Court shall retain jurisdiction and resolve any disputes arising under, related to, or in connection with this Agreement and the payment of your Trade Claim, whether in whole or in part.
9. If, after execution of this Agreement, you refuse to supply goods and/or provide services in accordance with the Prepetition Trade Terms or this Agreement, (i) any payments received by you on account of your Trade Claim will be deemed to have been in payment of postpetition obligations owed to you, (ii) you will immediately repay to the Debtors any payments made to you on account of your Trade Claim to the extent that the aggregate amount of such payments exceeds the postpetition obligations, without the right of any setoffs, reclamation, or other defense, and (iii) your Trade Claim will become a general unsecured claim that may be impaired under the Debtors' bankruptcy plan.

If you have any questions about this Agreement or our financial restructuring, please do not hesitate to call [Name] at (\_\_\_\_\_)\_\_\_\_\_ or [Name] (\_\_\_\_\_)\_\_\_\_\_.

Sincerely,  
[Debtors]

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

Agreed and Accepted by:  
[Name of Trade Vendor]

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Dated: \_\_\_\_\_