

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 11 Bankruptcy

Intrepid U.S.A., Inc.
Intrepid of Golden Valley, Inc.
F.C. Acquisition Corporation

Case No. 04-40416-NCD
Case No. 04-40462-NCD
Case No. 04-40418-NCD
(Jointly Administered)

Debtors.

**NOTICE OF HEARING AND MOTION FOR
EXPEDITED HEARING AND FOR INTERIM AND FINAL ORDERS
AUTHORIZING DEBTORS TO OBTAIN CREDIT SECURED BY A SENIOR LIEN
AND TO MAKE PAYMENTS TO MAINTAIN INSURANCE**

TO: The entities specified in Local Rule 9013-3(a)(2).

1. Intrepid USA, Inc., Intrepid of Golden Valley, Inc., and F.C. Acquisition Corporation (“**Debtors**”), move the Court for the relief requested below and give notice of a hearing.

2. The Court will hold a hearing on this motion for expedited relief and for an order authorizing interim borrowing at 2:00 p.m. on February 17, 2004, in Courtroom No. 7 West of the United States Courthouse at 300 South Fourth Street, Minneapolis, Minnesota. A hearing on Debtor’s motion for a final hearing is scheduled for 1:00 p.m. on March 10, 2004 at the same location.

3. The Local Rules provide for responsive deadlines for the motion for expedited hearing on the interim motion but because of the expedited nature of the hearing, movants do not object to any responses being delivered not later than the time set for hearing.

4. Local Rule 9006-1(b) requires that any response to the motion for a final order be delivered and filed on March 3, 2004, or served and filed by mail not later than February 29, 2004.

5. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petitions commencing these Chapter 11 cases were filed on January 29, 2004 (“**Petition Date**”). These cases are now pending in this Court.

6. This motion arises under 11 U.S.C. § 364(d) and Fed. R. Bankr. P. 4001(c). This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9013-1 through 9013-3. The Debtors request an interim order authorizing them to obtain credit secured by a senior lien from the date of the interim hearing through the date of entry of a final order authorizing the secured credit. Debtors further request a final order authorizing the obtaining of credit. The credit would be secured by a senior lien on property of the estates, most of which is currently subject to the pre-petition liens and post-petition liens in favor of DVI, Inc., DVI Business Credit Corporation and DVI Financial Services, Inc. (collectively, “**DVI**”).¹ The grounds for this motion are set out below.

BACKGROUND AND REASONS FOR NEEDED FINANCING

7. The Debtors are parent companies who collectively with their direct and indirect subsidiaries operate as home healthcare providers and nurse and medical staffing providers. They serve primarily the elderly, homebound, disabled, and other disadvantaged individuals, providing in-home nurses, therapists, and administrators these patients require. The Debtors,

¹ DVI, Inc., DVI Business Credit Corporation (“DVI BC”), and DVI Financial Services, Inc. are currently Debtors in Chapter 11 cases pending in the United States Bankruptcy Court for the District of Delaware. DVI filed their cases on or about August 25, 2003.

primarily Intrepid U.S.A., provide administrative and oversight services to each of the subsidiary companies which are involved in the provision of medical services. The Debtors and their subsidiaries rely on episodic payments from Medicare (“CMS”) for the bulk of their revenues. Debtors and their subsidiaries employ approximately 13,000 employees, operate in 31 states with 197 offices and have annual revenue in excess of \$200 million. There are approximately 80 subsidiaries that conduct similar medical services detailed above.

MEDSHARES ACQUISITION

8. In 2002, the Debtors began work on the acquisition of the assets and subsidiaries of Medshares. The purchasers of the Medshare assets were F.C. Acquisition Corporation (one of the Debtors herein) and TBJG, LLC, an affiliate (“TBJG”). This acquisition culminated with a closing held on June 30, 2003 at which F.C. Acquisition and TBJG purchased the assets of the 102 Medshares home health care businesses out of the Medshares bankruptcy cases pending in Memphis, Tennessee.

9. Prior to the closing on the Medshares acquisition, the Memphis bankruptcy court with jurisdiction over Medshares’s case required evidence of Intrepid lender’s (DVI) commitment to fund the acquisition. In response, DVI provided a letter from Terry Cady, President and Chief Executive Officer of DVI BC whereby DVI committed to fund “around \$22.0MM to complete the acquisition of Medshares out of bankruptcy.” Attached hereto as Exhibit A is the commitment letter, which was presented to the court. Based on DVI BC’s written commitment, F.C. Acquisition and TBJG proceeded with the closing.

10. At and after the closing in June 2003, DVI failed to fully fund the acquisition and shorted Intrepid Companies approximately \$8.5 million. But for an agreement worked out with CMS (described below), DVI’s failure to completely fund the acquisition would have caused the

Debtors to lose the entire Medshares deal after already previously investing approximately \$17 million in the purchase.

11. Part of the cash consideration to be paid at closing included \$18.65 million due to CMS for overpayments made to the Medshares entities prior to the acquisition. Because Debtors and TBJG had insufficient funds to pay this amount in full in cash after DVI defaulted, they negotiated a cure agreement with CMS, referred to as the CMS Cure Agreement.² This agreement established a schedule for F.C. Acquisition and TGJB to pay the CMS overpayments by no later than March 31, 2004. The Cure Agreement with CMS requires escalating monthly payments commencing October 15, 2003, and culminating in one final payment of \$10 million due on March 31, 2004. To date, the Debtors have complied with the payment schedule. However, three payments remain: (1) one due February 17, 2004³ in the amount of \$400,000, (2) one due March 15, 2004 in the amount of \$450,000, and (3) one due March 31, 2004 in the amount of \$10 million. In the event that the Debtors fail to make timely payments, the entire outstanding amount becomes due and payable. Moreover, the agreement provided and recognized that CMS is entitled to withhold and recoup against any current payments due from CMS presently or in the future due under the provider numbers owned by Purchasers or their subsidiaries. At present there are approximately 25 subsidiaries whose rights to present payment from CMS would be subject to recoupment. The Medshares's assets collectively account for \$80 million out of Debtors' total revenue of in excess of \$200 million.

² The CMS Cure Agreement was filed under seal with the Memphis Bankruptcy Court. As a result, the terms of the Cure Agreement are described here but the agreement itself is not attached.

³ The payment would be due February 15, but for a provision in the agreement extending the deadline to February 17, 2004, due to the intervening weekend and President's Day Holiday.

12. If Debtors are not allowed to make such payments and CMS commences recoupment, the 25 subsidiaries will be forced out of business and the investment of \$17 million made by Debtors in the Medshares acquisition will be lost. Moreover, because of Debtors' and their subsidiaries' financial position, the loss of these subsidiaries' revenue and operations will seriously jeopardize Debtors' ability to reorganize and will likely lead to liquidation of all of the Intrepid Companies.

INSURANCE FUNDING NEEDS

13. Debtors are also in need of funding in order to maintain their workers' compensation, general liability, and stop gap insurance coverages. Debtors operate their businesses through self-insured worker compensation insurance. Under such an arrangement, Debtors are required to pay claims once presented by CNA. CNA is owed a fee monthly for administrative services and is entitled to establish reserves for payment of claims in the event Debtors fail to pay claims. These reserves are typically funded by posting letters of credit with CNA. The annual reserve for the current policy year was \$5.2 million, which Debtors had intended to meet pre-petition by posting letters of credit issued through DVI or its bank.

14. Because of DVI's financial difficulties, Debtors negotiated an agreement with CNA pre-petition to fund the CNA reserves out of periodic payments from their cash and from draws under previously posted letters of credit. As of the Filing Date, CNA held approximately \$2.6 million in cash towards the entire obligation of \$5.2 million.

15. Prior to the Filing Date, on or about January 5, 2004, CNA notified Debtors that the insurance coverage would be cancelled effective February 5, 2004.⁴ CNA moved to cancel

⁴ Because of the filing of the Petitions, Debtors assert they have an additional 60 days from the petition date to cure defaults giving rise to the cancellations under 11 U.S.C. § 108(b). CNA may assert that section 108(b) is inapplicable.

the worker compensation policy and other insurances when Debtors could not meet the insurer's demand for additional cash deposits in lieu of letters of credit, and could not pay administrative fees and claims, all of which totals about \$1,600,000. Debtors must pay these amounts now in order to retain the insurance. Additional amounts towards the \$5.2 million must be paid in March, and Debtors have an ongoing need to borrow to fund payments of claims and CNA's monthly administrative fee.

16. Absent worker compensation insurance, Debtors and their subsidiaries are unable to operate their businesses and would be forced to shut down, all to the damage of Debtors' creditors, (including DVI), employees, patients, and clients.

17. CNA may require that Debtors fully fund the \$5.2 million reserve now. If Debtors are permitted to fund the reserve with letters of credit, CNA will release approximately \$2.6 million, which Debtors had deposited pre-petition as cash or were drawn from letters of credit previously posted with CNA. Such cash would be used as working capital in Debtors' operations and is vitally needed to the continued operation of Debtors' businesses.

18. CNA may assert that the Debtors are not entitled to the benefits of 11 U.S.C. § 108(b)(2). As such, Debtors have an emergency need to borrow funds to reinstate the policies retroactive to February 5, 2004. Debtors therefore request authorization to make immediate payments as may be necessary to maintain the insurance.

PRE-PETITION SECURED DEBT STRUCTURE

19. As set forth in Debtors' motions for interim and final use of cash collateral, the Debtors are indebted to DVI under the terms of the various loan and security agreements described there and in the accompanying Affidavit of Todd Garamella. The DVI loan

documents were submitted by DVI in connection with its motion to dismiss, as Document No. 4394790 on the Court's website (collectively, '**Loan Documents**').

20. As security for performance of its obligations under the Loan Documents, the Debtors and certain of their direct and indirect subsidiaries each granted DVI a security interest in, and lien on, then owned or after-acquired assets, including accounts, inventory, equipment, general intangibles, real property, and proceeds thereof ("**Collateral**"). These liens extend to F.C. Acquisition and its Medshare company subsidiaries but not the assets of TBJG or its subsidiary AMS Group, LLC.

21. It appears that DVI perfected its lien on the Collateral by filing UCC 1 financing statements with the appropriate filing officer for each state where Debtors or their subsidiaries are located or where appropriate, the Collateral is located. However, Debtors are still researching DVI's perfection of liens. Moreover, DVI filed no UCC-1's on the assets of TBJG or its subsidiary AMS Group, LLC.

22. As of the Petition Date, the Debtors' books and records indicate that the total unpaid balance due by the Debtors to DVI under the Loan Documents was approximately \$46,761,740, which amount includes accumulated interest. As of the Filing Date, the value of the receivables of Debtors and their subsidiaries on Debtors' books is approximately \$54,700,000 based on a going concern basis.

CASH NEEDS

23. Debtors have an immediate need to obtain credit in order to fund the CMS payments and to make payments to their insurance carrier, CNA. Debtors propose to borrow up to \$5.2 million between the interim and final hearing on March 10, 2004 in order to avoid irreparable harm. Debtors will need to borrow at least \$10 million after the Final Hearing. If

Debtors fail to make such payments, CMS will recoup the balance of amounts owing against future payments to Debtors and their subsidiaries and Debtors' insurance coverage will be terminated. Thus, Debtors will be unable to continue operations, and the estate and interest of creditors and others in these cases will be immediately and irreparably harmed.

POST-PETITION LOAN

24. Prior to and since the filing date, Debtors have negotiated with Fleet Capital Corporation ("**Lender**") to make a post-petition loan (the "**Post-Petition Loan**") to Debtors for use in their operations. The Lender has proposed a Term Sheet describing the loan terms. The Term Sheet is attached to hereto as Exhibit B. The basic terms are as follows:

(a) Lender will provide a post-petition revolving credit facility in the amount of up to \$20 million with a \$10 million letter of credit subfacility. Interest will accrue at an annual rate equal to 1% plus Fleet National Bank's Base Rate or 3% plus LIBOR.

(b) The proceeds of this Post-Petition Loan will be used to make payments to CMS as required by the CMS Cure Agreement and to fund Debtors' and its subsidiaries' worker compensation and other insurances, in the amount of up to \$5.2 million through the issuance of letters of credit.

(c) Debtors propose to grant the Lender a first priority lien on all of the Debtors' assets (except for certain property of the estate such as avoiding causes of action) subject only to the carveout for professional fees payable in the cases.

(d) Available draws under the Facility will not exceed \$20 million or the borrowing base. The borrowing base means 80% of the net realizable value of

Debtors' and their subsidiaries' eligible accounts receivable. Debtors believe the total borrowing base will be approximately \$26 million.

(e) The Lender will be able to terminate the post-petition loan and liquidate the collateral upon various events of default.

Debtors are still negotiating the terms of the Post-Petition Loan and the terms may be changed prior to the hearing. Debtors expect to reach an agreement with the Lender at or prior to hearing and the Lender's agreement to make any loan will be subject to negotiation and signing of loan documents. Debtors have approached DVI about extending credit post-petition and may have further discussions with other lenders. **DEBTORS HEREBY GIVE NOTICE THAT THEY WILL SEEK COURT APPROVAL TO ENTER INTO ANY SUCH AGREEMENTS WITH ANY PROSPECTIVE LENDER AT THE HEARING.**

25. Debtors have approached several lenders and financial institutions pre-petition seeking unsecured financing or a secured loan that is junior to DVI's interests. Five senior lenders submitted proposals, which would result in Debtors' borrowing base being approximately \$26 to \$28 million. However, DVI, the existing senior lender, was owed approximately \$46 million. Because DVI's encumbrance exceeded the borrowing base, these senior lenders were unwilling to proceed without resolution with DVI so they could be granted a senior lien. For these same reasons, no proposals were received from junior lenders, subordinated debt lenders, or equity investors. Debtors also approached lenders and financial institutions post-petition seeking unsecured financing payable as an administrative expense, an unsecured loan that is unsecured but senior to all administrative expense claims, or a secured loan that is junior to DVI's interests. However, no creditors would extend sufficient credit to Debtors on an unsecured basis, as an expense senior to all administrative claims, or by a lien

junior to DVI. Thus, Debtors are unable to obtain financing except by a lien senior to all other interests pursuant to 11 U.S.C. § 364(d)(1)(A).

26. DVI's security interests in its Collateral is adequately protected within the meaning of 11 U.S.C. § 364(d)(1)(B) because the granting of a lien to the Lender with priority over DVI's lien does not change DVI's position relative to the Collateral during the Chapter 11 proceedings. DVI's rights and interests in the Collateral are already subject to CMS's rights of recoupment. If the CMS cure payments are not made, DVI's Collateral will be impaired by at least the amount due CMS. Therefore, the obtaining of the financing by a lien senior to DVI's interest will maintain or improve the Collateral subject to DVI's lien by allowing the Debtors to continue their ordinary business operations and promote greater generation of future Collateral.

27. Moreover, DVI's interest is not harmed here because its failure to fund the acquisition of Medshares is the cause of the impending financial crisis and need for the loan. Indeed, because DVI committed to make the loan to fund the Medshares acquisition and it breached the agreement, it should be estopped from objecting to the alternative financing herein.

28. With respect to the insurance issues, Debtors obviously cannot operate without insurance in place. Debtors cannot maintain such insurance without paying the amounts detailed above. If Debtors are unable to maintain worker compensation insurance, they may be subject to statutory or other fines imposed by state regulators in the 31 states in which they operate. Debtors would have no choice but to immediately terminate their employees, cease operations, and liquidate. DVI's collateral position will be severely impacted.

29. Moreover, DVI is well aware of the insurance funding needs and in fact had committed to fund such amounts prior to the Petition Date. In January 2004, DVI had agreed to

fund the payments. See Ex. C hereto. DVI inexplicably refused to proceed and instead wrongly sought to seize control of the Debtors.

30. Debtors believe that the terms of the Post-Petition Loan are fair and reasonable to the estates and the terms have been negotiated in good faith as that term is used in 11 U.S.C. § 364(e). The entry of the Proposed Orders and approval of the Post-Petition Loan are in the best interests of the estates and the Debtors' creditors.

31. Debtors seek the interim relief herein on an expedited basis. Cause exists to reduce notice of the motion to fund the CMS payment by February 17, 2004. Debtors have given 7 days' notice of the hearing. Debtors have been in discussions with DVI prior to the service of the motion on these same issues. The Court should conclude that notice of the hearing is adequate under the circumstances and that cause exists for expedited relief.

32. Pursuant to Local Rule 9013-2, this motion is verified and is accompanied by a Memorandum of Law, proposed Orders, and proof of service.

33. Pursuant to Local Rule 9013-2, the Debtors give notice that they may, if necessary, call Todd Garamella and Gregory Von Arx, the Chief Executive Officer and Chief Financial Officer, respectively, of the Debtors to testify at the hearing on the motion. Todd J. Garamella's and Gregory Von Arx's business addresses are 6600 France Avenue South, Suite 510, Edina, Minnesota. The Debtors may also subpoena Alan R. Thometz, a Principal of Manchester Companies, Inc., to testify at the hearing on the motion. His business address is 4700 IDS Center, 80 South 8th Street, Minneapolis, MN, 55402.

WHEREFORE, the Debtors request that the Court enter an order:

1. Reducing notice of hearing on its motion;
2. Authorizing the Debtors, on a interim basis and later at a final hearing, to obtain credit secured by a senior lien; and
3. For such other relief as the Court may deem just and equitable.

Respectfully submitted,

Dated: February 10, 2004

/s/ Clinton E. Cutler

James L. Baillie (#3980)
Faye Knowles (#56959)
Clinton E. Cutler (#158094)
Ryan T. Murphy (#311972)
FREDRIKSON & BYRON, P.A.
4000 Pillsbury Center
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(612) 492-7077 (Fax)

Attorneys for Debtors

VERIFICATION

I, Todd Garamella, am the President and Chief Executive Officer of each of the Debtors in the above-captioned cases. Based upon my personal information and belief, I declare under penalty of perjury that the facts set forth in the preceding motion are true and correct, according to the best of my knowledge, information and belief.

Dated: February 10, 2004

Signed:  _____
Garamella

#2925363\1

TERRY W. CADY
DVI BUSINESS CREDIT

10000
10000
215-488-5227
Terry.Cady@dvi-business.com

June 16, 2003

Todd Garamella
CEO
Intrepid USA, Inc.
6600 Francis Ave., South
Suite 510
Edina, Mn. 55435

Re: DVI BC Commitment to Fund Acquisition of Med Shares.

Dear Todd;

The herein letter is to confirm DVI Business Credit's (BC) commitment to provide the necessary funding to Intrepid USA or related entities to effect the acquisition of Med Shares. We understand the needed cash funding will be around \$22.0MM to complete the acquisition of Med Shares out of bankruptcy.

Please use this letter as confirmation of BC's commitment to support your Med Shares funding needs. Should you require further indication of BC's support, please call or direct other interested parties to me at 215-488-5227.

Sincerely,

Terry W. Cady
President and CEO

Intrepid USA, Inc.

Summary of Terms and Conditions

\$20,000,000 Senior Secured Debtor-In-Possession Credit Facilities

January 7, 2004

The proposed terms and conditions are provided for discussion purposes only and do not constitute an offer, agreement or commitment to lend. The actual terms and conditions upon which Fleet Capital Corporation ("Fleet") might extend credit to the Borrower are subject to satisfactory completion of due diligence, credit approval, satisfactory review and execution of documentation and such other terms and conditions as may be determined by Fleet and its counsel.

Borrower: Intrepid USA, Inc., and subsidiaries (collectively "Intrepid USA" or the "Borrower").

Agent: Fleet Capital Corporation ("Fleet" or the "Agent").

DIP Facilities: \$20 million Senior Secured Debtor-in-Possession Revolving Credit Facility (the "DIP Revolver") with a \$10 million letter of credit sub-facility.

The undrawn face amount of outstanding letters of credit issued for the account of the Borrower will be reserved from availability under the DIP Revolver.

Borrowing Base: The amount available for DIP Revolver at any time shall not exceed the lesser of (i) \$20 million and (ii) the Borrowing Base (defined below) at the time. As at the date of any determination thereof, the "Borrowing Base" shall mean an amount equal to the sum of:

- (a) 80% of the Estimated Net Realizable Value of accounts receivable. The Estimated Net Realizable Value of accounts receivable would include those third party payor receivables (and private pay receivables up to a TBD limit) less than 150 days from date of service. For your information, the Estimated Net Realizable Value of accounts receivable does not include, among other things, accounts subject to offset or dispute, accounts where the ineligible amount is greater than 25% of the account, accounts that include, among other things, accounts subject to offset or dispute, accounts that are owing from insolvent account obligors, self-pay accounts and other accounts which, in Agent's sole discretion, do not constitute eligible accounts. Agent will determine eligibility of accounts receivable and limits of exposure to different categories of accounts receivable during due diligence.

The Agent shall have the right to establish and modify collateral eligibility standards and establish borrowing base reserves in its reasonable discretion as is typical of credit facilities of this type.

Use of Proceeds: To provide debtor-in-possession financing or refinance the existing debtor-in-possession financing, for working capital requirements, and general corporate purposes, including fees and expenses related to this transaction.

Term: All DIP Revolver loans shall be repaid in full at the earliest to occur of (i) thirty (36) months after the Closing Date (“Maturity Date”), (ii) the conversion of the case to a chapter 7 case, (iii) acceleration of the DIP Revolver upon the occurrence of an Event of Default under the loan documents or (iv) substantial consummation of a plan of reorganization of the Borrower.

DIP Revolver Interest Rates: The interest rate with respect to each DIP Revolver shall be equal to, at the Borrower’s option, either (i) 1.00% plus the annual rate of interest announced from time to time by Fleet National Bank (or its successor) as its “Base Rate” (the “Base Rate”) or (ii) 3.00% plus LIBOR.

The default rate of interest with respect to each DIP Revolver after the occurrence and during the continuance of an Event of Default shall be the other wise applicable rate plus 2%.

Interest based on the Base Rate shall be payable in cash, monthly in arrears. Interest Periods for LIBOR borrowings shall be one, two, three or six months, as elected by the Borrower; provided, however, that no Interest Period may end after the Maturity Date. Interest based on LIBOR shall be payable in arrears on the earlier of the last day of the applicable interest period or monthly. The loan documents will contain minimum LIBOR borrowing amounts, prior notice requirements and limits on the number of LIBOR advances outstanding. No loan may be borrowed, converted or continued as a LIBOR loan at any time when an Event of Default under the loan documents is outstanding.

The loan documents shall include standard protective provisions for such matters as increased costs, funding losses, illegality, change of laws (including those related to capital adequacy of banks) and withholding taxes.

Letter of Credit Fees: 3.00% per annum on the face amount of letters of credit outstanding for the benefit of Agent, payable monthly in arrears. In addition, the Borrower will pay to Fleet standard opening, amendment, presentation, wire and other administrative charges applicable to each letter of credit. During the continuance of an Event of Default, the letter of credit fees will increase by an additional 2% per annum.

DIP Facility Closing Fee: \$300,000 (1.50% of the DIP Credit Facility)



Annual Agency Fee: \$50,000. In addition, Agent would charge the costs and expenses incurred by Agent's loan analysts for initial due diligence and recurring audits.

Unused Line Fee: 0.50% per annum of the unutilized amount of the DIP Revolver (the "Unused Line Fee"), payable monthly in arrears.

Collateral and Priority: Intrepid USA, as of entry of the Final Order, is assigning, pledging and granting to the Agent, a first priority, perfected security interest in and a lien upon substantially all tangible and intangible assets (including all intellectual property and rights of payment(s) and related intangibles) of the Borrowers and any domestic subsidiaries, whether now owned or hereafter acquired, (ii) all of the capital stock (whether such capital stock is voting or non-voting) in any of their direct domestic subsidiaries, all of the non-voting capital stock in any of their direct foreign subsidiaries, and (iii) and in all other joint venture, partnership or limited liability company interests or other similar interests that are not subsidiaries directly owned by them, money, investment property, deposit accounts, all commercial tort claims and all causes of action arising under the Bankruptcy Code or otherwise (including, without limitation, all avoidance actions and the proceeds thereof and all avoided payments), and all cash and non-cash proceeds, rents, products and profits of any of collateral described above.

Proceeds received by the Agent from the collateral subject to the liens granted by the loan documents and by the Bankruptcy Court Orders shall be subject to the prior payment of the UST/Clerk Fees and Priority Professional Expenses (the "Carve-Out Expenses").

All DIP Revolver Obligations shall constitute allowed administrative expenses in the Chapter 11 Cases, having priority over all administrative expenses of and unsecured claims against the Borrowers now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, all administrative expenses of the kind specified in, or arising or ordered under, sections 105, 326, 328, 503(b), 506(c), 507(a), 507(b), 546(c) and 1114 of the Bankruptcy Code, subject, as to priority, only to Carve-Out Expenses having priority of payment over the DIP Obligations to the extent set forth in the definition of the term "Agreed Administrative Expense Priorities".

Cash Management: Agent will have full cash dominion over the Borrowers' cash collateral and other cash (collectively, the "Cash Collateral"). The Borrowers shall pay all Cash Collateral (or cause all Cash Collateral to be paid) directly to the Agent.

Closing Date: A date to be mutually determined between Fleet and the Borrowers but in any event not later than March 31st 2004 (the "Closing" or "Closing Date").

Conditions to Initial Extensions of Credit: The loan documents shall contain conditions precedent to the occurrence of the Closing Date and the making of the initial extension of credit required by Agent, including, without limitation:

required by Agent, including, without limitation:

- (a) Satisfactory business, legal, financial, and collateral due diligence, including a collateral exam acceptable to Fleet.
- (b) Entry of a Final order of the Bankruptcy Court authorizing and approving the transactions contemplated in the DIP Revolver and finding that the Agent and the Lenders are extending credit to the Borrowers in good faith within the meaning of Bankruptcy Code § 364(e).
- (c) Payment of all costs, fees and expenses owing to the Agent and Lead Arranger as referenced herein or in the loan documents.
- (d) The Agent shall be satisfied that it has been granted, and still continues to hold, for the benefit of the Lenders, a perfected, super-priority lien on and security interest in all of the collateral, subject only to permitted priority liens.
- (e) Excess availability shall be at least (\$TBD) on the Closing Date, after giving effect to all DIP Revolver loans made and all letters of credit issued or outstanding on the Closing Date and after giving effect to cash balances on the Closing Date. The required excess availability will be determined after review of the DIP cash budget.
- (f) Receipt by the Agent of financial projections to include monthly projections for the first year and annual for the second year (including an income statement, balance sheet and cash flow statement) all in form and substance satisfactory to the Agent.
- (g) Satisfactory cash management and collections system with Fleet.
- (h) Satisfactory legal documentation, opinions, liens, insurance and representations and absence of default on the Closing Date.
- (i) No material adverse change, in the reasonable judgment of the Agent shall have occurred in the business, assets or financial condition of the Borrowers or its material subsidiaries.
- (j) The absence of any materially adverse change or material disruption in the financial banking or capital markets, which would have a material adverse effect on the syndication of the DIP Revolver.
- (k) Agent shall have received satisfactory background checks on certain members of management of the Borrower.

Representations and Warranties:

Those representations and warranties as are customary and appropriate in the context of the proposed DIP Revolver, as reasonably required by the Agent.



Financial Covenants: Those Affirmative, negative and financial covenants customarily found in credit agreements for similar secured financings and appropriate in the judgment of the Agent. Contemplated financial ratio covenants would be Minimum Interest Coverage (TBD) and Minimum Excess Availability. The Minimum Excess Availability Coverage would be tested at all times and would be at levels to be determined. The Minimum Interest Coverage Covenant will be calculated on a consolidated basis and for each consecutive four fiscal quarter period occurring prior to the Termination Date, except that for the first four fiscal quarters following the Closing Date, such measurements shall be made for the period of time since the Closing Date.

Negative Covenants: The DIP Loan Documents shall contain negative covenants customary and appropriate in the context of the proposed DIP Loan Facility, as reasonably required by the Agent and the Lenders, including, without limitation, on: (i) liens, (ii) debts, (iii) mergers, (iv) acquisitions and sales of assets, (v) dividends, (vi) leases, (vii) investments, (viii) guaranties, (ix) capital expenditures, (x) transactions with affiliates or subsidiaries, (xi) creation or acquisition of subsidiaries, (xii) commodities transactions, (xiii) payment of subordinated debt, (xiv) the existence of any claims entitled to a superpriority under § 364(c)(1) of the Bankruptcy Code other than those of Agent, (xv) change in business, (xvi) changes of key management of the Borrowers and (xvii) a prohibition on payment of reclamation claims other than as administrative expenses. Except as referenced herein, such negative covenants shall be consistent with those set forth in the Prepetition Credit Agreement.

Reporting Requirements: Customary monthly, quarterly and annual financial statement and borrowing base reporting. Monthly financial projections will be required for the first year and annual projections thereafter. The Agent shall have the right to make periodic field audits, inspections, and appraisals at its discretion and at the cost, including standard per diems and out-of-pocket expenses, of the Borrowers.

Other Terms and Conditions: Usual and customary for transactions of this nature and with exceptions to be mutually agreed, including, but not limited to: limitations on capital expenditures, capital leases, additional indebtedness, liens, investments, mergers, acquisitions and consolidations, asset sales, transactions with affiliates, negative pledges, restricted payments, distributions, dividends, payments on subordinated debt, mandatory repayment provisions and satisfactory interest rate hedging agreements.

Events of Default: Those customarily found in credit agreements for similar secured financings and others appropriate in the judgment of the Agent, including, without limitation, non-compliance with any financial or other covenants.

Fees and Expenses: The Borrowers shall pay all costs and expenses of the Agent (including fees and expenses of the Agent's legal, financial and other advisors) relating to the negotiation, documentation, syndication and administration of the DIP Revolver and the enforcement of the Agent's rights under and in

respect of the DIP Revolver.

Assignments and Participations:

The Agent and the Lenders will have the right at any time to sell, assign or transfer any portion of their loan or commitments, or sell participations therein, to one or more other lenders in a minimum principal amount of \$5,000,000 and \$1,000,000 increments thereafter. Any such assignment will be subject to the consent of the Agent and the Borrower, such consent not to be unreasonably withheld, and the payment of a processing and recordation fee of \$3,500 by the assigning Lender to the Agent. In connection therewith, the Agent and the Lenders will have the right to disclose to such prospective Lender any and all information regarding or relating to the Borrower or this Credit Facilities which has now or may hereafter be provided to or obtained by the Agent or the Lenders subject to the confidentiality provisions in the loan agreement.

Governing Law:

State of Illinois

Good Faith Deposit:

If you agree with the general terms and conditions outlined herein, return an accepted copy of this letter and a good faith deposit check for \$50,000 by January 16, 2004. The deposit would be subject to the following conditions:

1. If the Senior Credit Facility is funded, the entire deposit, less all Expenses, would be refunded. If, after examination and investigation, Agent declines the proposed Senior Credit Facility, Agent will return the Deposit, without interest, less any and all Expenses incurred.

2. If Agent approves the loan request and the Senior Credit Facility (or loans similar to the Senior Credit Facility) are not closed through no fault of Agent, or if Borrower, during Agent's review and consideration of the Senior Credit Facility, requests that Agent not proceed, the entire Deposit would be retained by Agent as liquidated damages to compensate for the time spent, labor and services performed, loss of interest and other losses incurred by Agent in connection with the transactions contemplated hereby.

Very Truly Yours,

Michael W. Scolaro
Senior Vice President

Accepted and Agreed this

_____ day of _____, 2004

("Borrower")

By:

("Title")



Fleet Capital

A FleetBoston Financial Company

Corporate Service Center
6600 France Avenue South; Suite 510
Edina, Minnesota 55435

VIA FACSIMILIE ONLY - 502-897-0589

Phone: (952) 285-7300
Facsimile: (952) 928-9795

DVI Business Credit Corporation
2500 York Road
Jamison, PA

January 16, 2004

Attention: Leo Whitt

**Re: Additional Advances On Existing Loans Between
Intrepid U.S.A., Inc. and its Affiliates ("Intrepid")
and DVI Business Credit Corporation ("DVIBC")**

Dear Leo:

This letter will confirm that DVIBC will consider certain additional advances on existing loans between DVIBC and Intrepid between now and February 29, 2004, totaling no more than \$2,144,000. Intrepid and I confirm and reaffirm that these advances are entirely discretionary and the decision to make additional advances will be made at the time a request is submitted by Intrepid for additional advances.

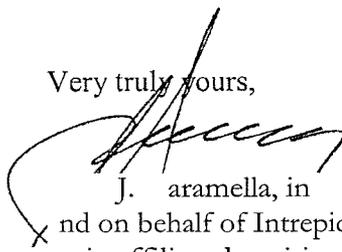
In consideration of the foregoing, Intrepid and I have agreed to the following:

1. I will defer one-half of my salary from Intrepid during the period of time that any of the additional advances, with interest, remain unpaid.
2. In the event a global settlement between Intrepid, DVIBC and DVI Financial Services Inc. is reached, the additional advances will be repaid from the first dollars generated in connection with the settlement, plus \$500,000.
3. I will promptly provide to DVIBC a certified financial statement in a form acceptable to DVIBC that is executed by me and my personal accountant.
4. I will provide DVIBC with copies of all state and personal tax returns filed by me or on my behalf for 2001 and 2002. In addition, I will provide DVIBC with all information that is available for preparation of my income tax return for 2003, once it becomes available.
5. Intrepid shall direct its counsel to dismiss the pending lawsuit in the United States District Court for the District of Minnesota against XL Capital Assurance Corp, Nomura Credit Capital Corporation and DVI Business Credit Receivables Corp. III with prejudice. Intrepid

shall deliver the stipulation for dismissal with prejudice of these entities to these entities on January 21, 2004. Intrepid's counsel shall certify today that the stipulation of dismissal has been signed and will be delivered at the mediation conference on January 21, 2004.

6. Intrepid and I shall continue to fully cooperate with DVIBC and its consultants for a full and complete financial review of Intrepid. DVIBC and its consultants shall have full and complete access to all of Intrepid's books and records.

Very truly yours,



J. Aramella, individually
and on behalf of Intrepid U.S.A., Inc.
a, is affiliated entities

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 11 Bankruptcy

Intrepid U.S.A., Inc.
Intrepid of Golden Valley, Inc.
F.C. Acquisition Corporation

Case No. 04-40416-NCD
Case No. 04-40462-NCD
Case No. 04-40418-NCD
(Jointly Administered)

Debtors.

**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR EXPEDITED HEARING
AND FOR INTERIM AND FINAL ORDERS AUTHORIZING DEBTORS TO
OBTAIN CREDIT SECURED BY A SENIOR LIEN
AND TO MAKE PAYMENTS TO MAINTAIN INSURANCE**

INTRODUCTION

Intrepid USA, Inc., Intrepid of Golden Valley, Inc., and F.C. Acquisition Corporation (“**Debtors**”) seek an expedited hearing and an interim and final order authorizing them to obtain financing secured by a lien senior to all other interests under 11 U.S.C. § 364(d). The Court should grant Debtors’ motion for expedited relief and grant the order authorizing Debtors to obtain secured credit from a post-petition lender.

BACKGROUND

The supporting facts are set forth in the verified motion.

ANALYSIS

I. CAUSE EXISTS TO REDUCE NOTICE OF HEARING ON THE INTERIM MOTION.

Bankruptcy Rule 4001(c) provides that a court may commence a final hearing for authority to obtain credit no earlier than 15 days after service of the motion. The rule further provides that a court may conduct a preliminary hearing before such 15-day period expires, but the court may authorize the obtaining of credit only to the extent necessary to avoid immediate

and irreparable harm to the estate pending a final hearing. Local Rule 9006-1(d) permits a party to serve moving papers on shorter than 10 days notice.

In this case, there are grounds to reduce notice of the interim hearing and authorize the obtaining of credit on a preliminary basis pending the final hearing. Debtors have an urgent need to obtain credit to continue their operations uninterrupted. Under the Cure Agreement entered into between the F.C. Acquisition and TBJG, LLC (an affiliate of the Debtors), and Medicare (“CMS”), F.C. Acquisition and TBJG owe CMS \$400,000 on February 17, 2004. In the event of a default, the entire balance – \$10.85 million – becomes due. Moreover, CMS has the right to make recoupment against payments due to these entities as well as certain subsidiaries. This would cause the Debtors to cease operations and preclude an effective reorganization. Similarly, if moneys are not obtained to fund workers compensation and other insurances, which were (absent bankruptcy) due on February 5, 2004, the Debtors will be forced to cease operations. Therefore, cause exists to reduce notice of the hearing on the interim motion to obtain credit.

II. THE COURT SHOULD AUTHORIZE THE DEBTORS TO OBTAIN CREDIT SECURED BY A SENIOR LIEN.

As debtors-in-possession, the Debtors are authorized to operate their business under the Bankruptcy Code. See 11 U.S.C. § 1108. As part of that operation, the Debtors may obtain financing secured by a lien senior to all other interests as set forth in 11 U.S.C. § 364(d):

- (1) The court, after notice in the hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if –
 - (A) The trustee is unable to obtain such credit otherwise; and
 - (B) There is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

A. DVI Is Estopped From Challenging This Motion.

A creditor can consent to a superpriority lien. See 11 U.S.C. §364(d). A creditor's "tacit" consent can estop the creditor from challenging a debtor's ability to obtain a superpriority lien. Anchor Savings Bank FSB v. Sky Valley, Inc., 99 B.R. 117, 122 (N.D. Ga. 1989).

DVI has expressly consented to provide the very funds that are the subject of this motion. In a commitment letter, which was provided to the Bankruptcy Court for the District of Tennessee, DVI unconditionally committed to provide "\$22.0MM to complete the acquisition of Medshares out of bankruptcy." Exhibit A. Moreover, DVI committed to provide the funding required to maintain workers compensation insurance. Exhibit C. As a result of these earlier commitments and their subsequent breach, DVI is estopped from challenging Debtors attempts to obtain the funds by means of a senior lien.

B. In Any Event, The Debtors Have Presented Substantial Evidence That Both Prongs Of This Section Have Been Satisfied.

1. The Debtors are unable to obtain credit otherwise.

The first prong of § 364(d) requires the Debtors to show that alternate financing is unavailable. A debtor does not have to seek credit from every possible lender, rather, the debtor need only show that it has been reasonably diligent in searching for alternative financing arrangements. See In re Snowshoe Co., 789 F.2d 1085, 1088 (4th Cir. 1986); In re 495 Cent. Park Ave. Corp., 136 B.R. 626, 630-31 (Bankr. S.D. N.Y. 1992). Here, despite diligent efforts both before and after the filing of the petitions, the Debtors have been unable to obtain credit on other terms.

Beginning in October 2003, the Debtors retained Manchester Companies, Inc., turnaround consultants, investment banking and commercial lending specialists, to attempt to procure financing from various banks and lending institutions to fund payments due to CMS and

CNA. Manchester marketed both regionally and nationally through private placement memorandums. Presentations and meetings were arranged with prospective financiers. In response to these efforts, five senior lenders submitted proposals, but no proposals were received from prospective junior lenders, subordinated debt lenders, and equity investors. The senior lenders set the Debtors' borrowing base at approximately \$26 to \$28 million. However, DVI, the existing senior lender, was owed approximately \$46 million. Because DVI's encumbrance exceeded the borrowing base, the lenders were unwilling to proceed.

After the filing of the petitions, Manchester has also attempted to procure DIP financing for the Debtors. Again, Manchester actively marketed to national and regional lenders and financial institutions. No lenders were willing to lend money to the Debtors as an administrative expense, an expense senior to all administrative claims, or by a lien junior to DVI's position. However, two lending institutions, including Fleet Capital Corporation ("**Lender**") are willing to lend money but only in return for a senior secured position.

2. DVI is adequately protected.

The second prong of the test requires that the secured creditor be adequately protected. 11 U.S.C. § 364(d)(1)(B). DVI's interest in the Collateral is subject to a superior right – CMS's right of recoupment. Thus, even if the Lender is granted a priority lien in the Collateral, DVI's interest is adequately protected because the financing will permit the Debtors to maintain or improve DVI's Collateral base. Similarly, DVI's Collateral base will be maintained or improved by the Debtors' ability to obtain financing to maintain its insurance. Without the moneys to fund these impending obligations, DVI's Collateral will be severely impacted.

- a. **In the event of a breach of the Cure Agreement, CMS may make recoupment adjustments against the Debtors' and their subsidiaries' present accounts.**

Recoupment is an equitable principle that allows a creditor in bankruptcy to show that because of matters arising out of the transaction sued on, the creditor is not liable in full for the debtor's claim. United States v. Dewey Freight System, Inc., 31 F.3d 620, 622-23 (8th Cir. 1994). Medicaid overpayments can be the object of recoupment against future payments due a debtor. In re TLC Hospitals, Inc., 224 F.3d 1008, 1011 (9th Cir. 2000); United States v. Consumer Health Services of Am., Inc., 108 F.3d 390, 396 (D.C. Cir. 1997); In re Holyoke Nursing Home, Inc., 273 B.R. 305, 311 (Bankr. D. Mass. 2002). CMA may assert that while a postpetition setoff constitutes a violation of the automatic stay, recoupment does not. See In re Holyoke Nursing Home, Inc., 273 B.R. at 310; see also United Structures of America, Inc. v. G.R.G. Engineering, S.E., 9 F.3d 996, 999 (1st Cir. 1993); In re TLC Hospitals, Inc., 224 F.3d at 1011; In re Holford, 896 F.2d 176, 179 (5th Cir. 1990).

F.C. Acquisition and an affiliate, TBJG, LLC, sought to acquire Medshares. As required by the bankruptcy court from which these entities were purchasing Medshares, DVI provided a letter whereby it committed to fund \$22 million to complete the acquisition. With these funds, the Buyers were going to pay outstanding overpayments. However, DVI breached the commitment by failing to fund the acquisition.

But for DVI's breach, the Buyers and CMS would not have needed to amend the purchase agreement by means of the Cure Agreement. Under this agreement, CMS and the Buyers agreed, in lieu of making present recoupment adjustments against future amounts to be paid to F.C. Acquisition and certain affiliates and subsidiaries, to accept payment as scheduled. To date, all the scheduled payments, which total approximately \$8 million, have been made. However, three payments remain: (1) one on February 17, 2004 in the amount of \$400,000, (2)

one on March 15, 2004 in the amount of \$450,000, and (3) one on March 31, 2004 in the amount of \$10 million.

In the event of a default, CMS is entitled to make recoupment against future amounts due and owing F.C. Acquisition and certain subsidiaries. In addition, while the issue of Medicare recoupment has not been specifically decided by the 8th Circuit Court of Appeal, the 8th Circuit caselaw cited above makes it likely that CMS would not be subject to the automatic stay but rather, may immediately recoup the entire balance. Moreover, the subsidiaries who are subject to a potential claim for recoupment are not presently in bankruptcy. Therefore, there really is no issue that the stay protects them from recoupment.

b. DVI is adequately protected because it is provided with at least the same level of protection had the new lender not been granted a priority lien.

The goal of adequate protection for purposes of § 346(d)(1) is to safeguard the secured creditor from diminution in the value of its interests during the Chapter 11 reorganization. In re Mosello, 195 B.R. 277, 288 (Bankr. S.D. N.Y. 1996); In re 495 Cent. Park Ave. Corp., 136 B.R. at 631. “In other words, the proposal should provide the pre-petition secured creditor with the same level of protection it would have had if there had not been post-petition superpriority financing.” In re Swedeland Development Group, Inc., 16 F.3d 552, 564 (3d Cir. 1994) (en banc); see also In re Plabell Rubber Products, Inc., 137 B.R. 897, 899 (Bankr. N.D. Ohio 1992) (The “important question” is whether the interest of the secured creditor whose lien is to be primed “is being unjustifiably jeopardized.”). The debtor’s ability to increase the value of the secured creditor’s collateral by activity only possible with additional funds constitutes adequate protection. In re 495 Cent. Park Ave. Corp., 136 B.R. at 632.

DVI appears to have a properly perfected security interest the Debtors’ and certain of their direct and indirect subsidiaries’ Collateral. The bulk of this Collateral consists of payments

to be made by CMS. In the event of a default under the Cure Agreement, however, the payments are subject to CMS's right of recoupment. See Minn. Stat. § 336.9-404(a)(1) (2003) (stating rights of an assignee of an account are subject to "any defense or claim in recoupment"). Therefore, upon the failure to meet the scheduled payments under the Cure Agreement and recoupment by CMS, DVI's interest in the Collateral will be immediately reduced by at least \$10.85 million.

In comparison, permitting the Debtors to obtain DIP financing does not reduce DVI's interest in the Collateral because CMS right of recoupment is already superior to DVI's security. Moreover, the financing ensures the continued flow of revenues to the Debtors and their direct and indirect subsidiaries, which will maintain or improve DVI's Collateral base.

The Debtors also need the financing in order to maintain critical workers compensation insurance. In January 2004, DVI agreed to fund these payments. DVI inexplicably refused to proceed and instead wrongly sought to seize control of the Debtors. If the insurance is not maintained, the Debtors cannot continue their business because operating without insurance subjects them to statutory or other fines imposed by state regulators in the 31 states in which they operate. Therefore, Debtors would have no choice but to immediately terminate their employees, cease operations, and liquidate. This would result in substantial damage to DVI's Collateral. However, if the Debtors can fund the payments to CNA, they can continue operations and maintain or improve DVI's Collateral base.

CONCLUSION

For all the foregoing reasons, Debtors respectfully request that the Court enter an order granting an expedited hearing, approving the terms of the post-petition loan on a preliminary basis, and authorizing the Debtors on a final basis to incur secured debt.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Intrepid U.S.A., Inc.
Intrepid of Golden Valley, Inc.
F.C. Acquisition Corporation
Debtor

Chapter 11 Bankruptcy

Case No. 04-40416-NCD
Case No. 04-40462-NCD
Case No. 04-40418-NCD

CERTIFICATE OF SERVICE

Clinton E. Cutler, under penalty of perjury, states that on February 10, 2004, he caused to be served the following:

1. Notice of Intent to Seek Expedited Hearing;
2. Notice Of Hearing And Motion For Expedited Hearing And For Interim And Final Orders Authorizing Debtors To Obtain Credit Secured by Senior Lien and to Make Payments to Maintain Insurance; supporting Memorandum; two proposed Orders;
3. Notice of Hearing and Motion For Order Granting Expedited Relief and Authorizing (i) Maintenance of Existing Bank Accounts and Check Stock and (ii) Continued use of Cash Management System, supporting Memorandum, proposed Order; and
4. Unsworn Declaration Of Service and Service List.

by sending a true and correct copies thereof by either facsimile or overnight mail as noted to all parties on the attached list.

Dated: February 2, 2004

/s/ Clinton E. Cutler
Clinton E. Cutler

#2923831\1

SERVICE LIST: INTREPID U.S.A., INC. ET AL.

(2)Intrepid U.S.A., Inc.
Intrepid of Golden Valley, Inc.
F.C. Acquisition Corporation
6600 France Avenue South
Suite 510
Edina MN 55425

(2)Michael P. Massad, Esq.
Steven Holmes, Esq.
Hunton & Williams
30th floor, Energy Plaza
1601 Bryan Street
Dallas, TX 75201

(1)Robert B. Raschke, Esq.
Michael Fadlovich, Esq.
U.S. Trustee's Office
1015 US Courthouse
300 South Fourth Street
Minneapolis, MN 55415

(1)Roylene Champeaux, Esq.
U.S. Attorney
600 U.S. Courthouse
300 South Fourth Street
Minneapolis MN 55415

(2)MN Department of Revenue
Collection Enforcement
551 Bankruptcy Section
P.O. Box 64447
St. Paul, MN 55164

(2)Internal Revenue Service
Special Procedures Branch
Stop 5700
316 North Robert Street
St. Paul, MN 55101

(2)IRS District Counsel
650 Galtier Plaza
175 East Fifth Street
St. Paul, MN 55101

(2)SEC
Bankruptcy Section
175 W Jackson Blvd.
Suite 900
Chicago, IL 60604

(1)DVI Financial Services, Inc.
c/o Clark T. Whitmore, Esq.
Amy Swedberg, Esq.
Maslon Edelman, et al.
3300 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402

(1)DVI Business Credit Corp.
Richard M. Beck, Esq.
Klehr, Harrison, Harvey, et al.
260 South Broad Street
Philadelphia, PA 19102-3163

(1)Intrepid Board of Directors
Joseph W. Anthony, Esq.
Anthony Ostlund & Baer, P.A.
3600 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402

(1)Intrepid Board of Directors
Michael L. Meyer, Esq.
Ravich Meyer Kirkman, et al.
4545 IDS Center
80 South Eighth Street
Minneapolis MN 55402

(1)Todd J. Garamella
c/o John McDonald, Esq.
Robins, Kaplan, et al.
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, MN 55402-2015

(3)ACS-Consultec, Inc.
P.O. Box 14422
Des Moines, IA 50306-3422

(3)Allina Health Systems
5640 Smetana Drive
Hopkins, MN 55343

(1)Businessware Solutions
500 West 79th
Suite 3
Chanhassen, MN 55317

(3)CNA
23520 Network Place
Chicago, IL 60673-1235

(1)Genesis Home Care, Inc.
3445 Washington Drive
Suite 104
St. Paul, MN 55122

(3)Gulf South Medical Supply
P.O. Box 841968
Dallas, TX 75284-1968

(3)Healthcare Industry Fund
2911 Turtle Creek Blvd.
Dallas, TX 75219

(1)IOS Capital 361550
1738 Bass Road
Macon GA 31210

(1)Ikon Office Solutions
1738 Bass Road
Macon, GA 31210

(1)IRS/Special Proc. Branch
c/o Barbara Zoccola
200 Jefferson Avenue
Suite 811
Memphis, TN 38103

(1) served via facsimile

(2) served via U.S. Mail

(3) served via overnight mail

#2923831\1

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 11 Bankruptcy

Intrepid U.S.A., Inc.
Intrepid of Golden Valley, Inc.
F.C. Acquisition Corporation

Case No. 04-40416-NCD
Case No. 04-40462-NCD
Case No. 04-40418-NCD
(Jointly Administered)

Debtors.

**ORDER GRANTING EXPEDITED HEARING AND
INTERIM ORDER AUTHORIZING DEBTORS TO OBTAIN
CREDIT SECURED BY A SENIOR LIEN**

At Minneapolis, Minnesota, February ____, 2004.

The motion of the Debtors for expedited hearing and for interim and final orders authorizing Debtors to obtain credit secured by a senior lien (“Motion”) came before the undersigned on February 17, 2004. Appearances were noted on the record.

Based on the arguments of counsel, all the files, records, and proceedings herein, the Court having been advised in the premises, and the Court’s findings of facts and conclusions of law, if any, having being stated orally and recorded in open court following the close of evidence,

IT IS HEREBY ORDERED:

1. The Debtors’ motion for expedited hearing for an interim order is granted.
2. The Debtors are authorized to obtain credit secured by a senior lien upon the terms and to the extent set forth in their Motion through and including March 10, 2004.

3. The final hearing on the Motion shall be heard before the undersigned on March 10, 2004 at 1:00 p.m.

Nancy C. Dreher
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 11 Bankruptcy

Intrepid U.S.A., Inc.
Intrepid of Golden Valley, Inc.
F.C. Acquisition Corporation

Case No. 04-40416-NCD
Case No. 04-40462-NCD
Case No. 04-40418-NCD
(Jointly Administered)

Debtors.

**ORDER AUTHORIZING DEBTORS TO OBTAIN
CREDIT SECURED BY A SENIOR LIEN**

At Minneapolis, Minnesota, March ___, 2004.

The motion of the Debtors for expedited hearing and interim and final orders authorizing Debtors to obtain credit secured by a senior lien ("Motion") initially came before the undersigned on February 17, 2004. The Court entered an interim order at that time and set the matter for further hearing on March 10, 2004. Appearances were noted on the record.

Based on the arguments of counsel, all the files, records, and proceedings herein, the Court having been advised in the premises, and the Court's findings of facts and conclusions of law, if any, having being stated orally and recorded in open court following the close of evidence,

IT IS HEREBY ORDERED:

1. The Debtors are authorized to obtain credit secured by a senior lien upon the terms and to the extent set forth in the Motion.

Nancy C. Dreher
United States Bankruptcy Judge