

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 11 Bankruptcy

Intrepid U.S.A., Inc.,
and Jointly Administered Cases,

Case No. 04-40416-NCD

Case No. 04-40462-NCD

Case No. 04-40418-NCD

Debtors

Case Nos. 04-41924 – 04-41988-NCD

**NOTICE OF HEARING AND MOTION AUTHORIZING F.C. OF
VIRGINIA, INC. TO ENTER INTO THE LEASE TERMINATION
AGREEMENT AND LEASE AGREEMENT**

TO: The parties in interest as identified in Local Rule 9013-3.

1. F.C. of Virginia, Inc. (“Debtor”), by its undersigned attorneys, moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion on September 22, 2004, at 10:30 a.m., or as soon thereafter as counsel can be heard, in Courtroom 7 West, U.S. Courthouse, 300 S. Fourth St., Minneapolis, Minnesota 55415.

3 Any response to this motion must be filed and delivered not later than September 17, 2004 which is three days before the time set for the hearing (excluding Saturdays, Sundays and Holidays), or served and filed by mail not later than September 13, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and Holidays).

**UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT
MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on April 12, 2004. The case is now pending in this Court.

5. This motion arises under Federal Rule of Bankruptcy Procedure 9019 and 11 U.S.C. § 363(b). Debtor requests that the Court enter an Order approving the Lease Termination Agreement between Debtor and James E. Lucas and Gale C. Lucas (“Lucas”). A copy of the Lease Termination Agreement is attached hereto as Exhibit A. The Debtor also requests that the Court enter an Order approving the Lease Agreement between Debtor and Barco Associates, Inc. (“Barco”). A copy of this Lease Agreement is attached hereto as Exhibit B. The parties continue to negotiate the terms of both agreements and changes may be made at or prior to the hearing. However, Debtor does not believe that the changes to these agreements will be substantial.

BACKGROUND

6. The Debtor continues to operate its business as a debtor-in-possession under sections 1107(a) and 1108 of the Bankruptcy Code. The Court has ordered, for procedural purposes only, joint administration of Intrepid U.S.A., Inc.’s and its affiliated debtors’ Chapter 11 cases.

7. The Intrepid home health care business began in July of 1994, and since that time, it has been based and headquartered in Edina, Minnesota. As of the filing date, the Intrepid umbrella of companies operated in 31 states, out of approximately 196 offices, with approximately 13,000 health care professionals which provided medically-necessary home health care services and therapies to approximately 125,000 patients annually, nearly all of whom are home-bound, incapacitated in some way, handicapped, elderly or otherwise physically disadvantaged to the extent that they have to rely on Intrepid for their health care in their homes. Intrepid also has a division of its business that provides staffing of nurses and health care practitioners in hospitals and extended care facilities. The majority of its revenues are derived from its home health care business operations.

8. On October 1, 2003, Debtor and Lucas entered into a lease agreement whereby Debtor leased from Lucas the premises commonly known as Colony Park, 1997 South Main Street, Unit 601, Blacksburg, Virginia 24060 (“Colony Park”).

9. The term of that lease is three years, commencing on October 1, 2003 and expiring on September 30, 2006.

10. Debtor’s current monthly rent is \$2,875.00 until October 1, 2004. Debtor’s monthly rent from October 1, 2004 to September 30, 2005 is \$2,947.00 and from October 1, 2005 to September 30, 2006 is \$3,020.00.

11. The Colony Park location no longer meets Debtor’s business needs. Specifically, Debtor’s visibility at this location is poor and Debtor no longer utilizes all of the square footage. As a result, Debtor entered into negotiations with Lucas to terminate the lease as evidenced by the Lease Termination Agreement. As set forth in the Lease Termination Agreement, Lucas has agreed to a termination of the lease in exchange for five monthly payments beginning September 1, 2004 and totaling \$10,000.00.

12. Debtor desires to relocate to a premises that better serves its business needs. As a result, Debtor entered into negotiations with Barco to lease the premises commonly known as Medical Arts Building, 3706 South Main Street, Suite C, Blacksburg, Virginia 24060 (“Medical Arts Building”). The Medical Arts Building is located within a hospital complex, which provides the Debtor greater visibility, easier access to patients, and better proximity to referral sources. Moreover, the monthly rental obligation is less than under the Colony Park lease.

13. The term of the proposed Lease Agreement with Barco is two years beginning September 1, 2004 and ending August 31, 2006. Debtor’s monthly rental obligation under the

proposed Lease Agreement is \$2,358.66 per month, which is over \$500 less than its monthly rental obligation with Lucas.

RELIEF REQUESTED

14. The Lease Termination Agreement is in the best interests of the Debtor's estate and its creditors. Colony Park no longer suits Debtor's business needs. Specifically, Debtor's visibility at this location is poor and Debtor no longer utilizes all of the square footage. As a result, Debtor entered into negotiations with Lucas to terminate the lease as evidenced by the Lease Termination Agreement. Under the Lease Termination Agreement, Lucas has agreed to terminate the lease in exchange for five monthly payments totaling \$10,000.00. Debtor is entitled to reject this lease and Lucas would be entitled to a pre-petition claim. While that claim amount cannot be determined, it is likely substantially greater than \$10,000 and the distribution on such a claim is likely to be greater than the \$10,000 reflected in the Lease Termination Agreement. Because the premises no longer meets Debtor's business needs and entering into the Lease Termination Agreement is likely a more efficient use of estate property, the Court should approve the Lease Termination Agreement.

15. The Debtor also seeks approval of the proposed Lease Agreement with Barco under 11 U.S.C. § 363(b).¹ Debtor has determined in its business judgment that the entering into the proposed Lease Agreement is in the best interests of its estate and its creditors. Specifically, the Medical Arts Building is located within a hospital complex, which provides the Debtor greater visibility, easier access to patients, and better proximity to referral sources. Moreover, the monthly rental obligation is over \$500 less than under the Colony Park lease.

¹ Debtor believes entering into the Lease Agreement is in the ordinary course of its business and, therefore, Court approval is not necessary. See 11 U.S.C. § 363(c)(1). However, out of an abundance of caution, Debtor moves the Court for approval of the Lease Agreement.

16. Pursuant to Local Rule 9013-2(d), the facts set forth in this Motion have been verified and the Motion is accompanied by a memorandum, proposed order, and proof of service.

17. Pursuant to Local Rule 9013-2(c), Debtor gives notice that it may, if necessary, call Lisa M. Montague, General Counsel, or Dennis Patrick, Executive Director of Market Development to testify. Their business addresses are Intrepid U.S.A., Inc., 6600 France Avenue South, Suite 510, Edina, Minnesota 55425.

WHEREFORE, F.C. of Virginia, Inc., by its undersigned attorneys, respectfully requests that the Court enter an order approving the Lease Termination Agreement and the Lease Agreement, and for such further relief as the Court deems just and equitable.

Dated: August 31, 2004

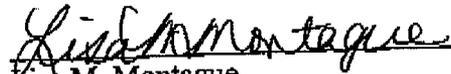
/s/ Ryan T. Murphy
James L. Baillie (#3980)
Ryan T. Murphy (#311972)
FREDRIKSON & BYRON, P.A.
4000 Pillsbury Center
200 South Sixth St.
Minneapolis, MN 55402
Telephone 612-492-7000

ATTORNEYS FOR DEBTORS

VERIFICATION

I, Lisa M. Montague, General Counsel for Debtors named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: August 27, 2004


Lisa M. Montague

#3007580\1

LEASE TERMINATION AGREEMENT

THIS LEASE TERMINATION AGREEMENT ("Agreement") is made as of the ___ day of August, 2004 by and between, James E. Lucas and Gail C. Lucas ("Lessor"), and F.C. of Virginia, Inc. d/b/a Intrepid USA Healthcare Services ("Lessee").

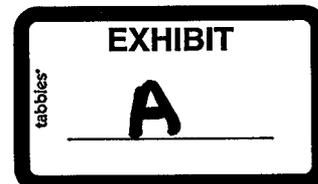
WITNESSETH

A. Lessor and Lessee entered into that certain lease dated October 1, 2003 (the "Lease") whereby Lessee leased from Lessor the premises commonly known Colony Park, 1997 South Main Street, Unit 601, Blacksburg, Virginia, 24060 (the "Premises").

B. Lessor and Lessee desire to terminate the Lease on the terms and conditions hereinafter set forth.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Lessor and Lessee hereto agree as follows:

1. **Defined Terms.** All terms used herein shall have the same meaning as in the Lease unless otherwise defined herein.
2. **Termination of Lease.** The Lease shall terminate on September 1, 2004 (the "Termination Date") as if said Termination Date were set forth in the Lease as the expiration date of the term of the Lease. Lessee shall vacate and deliver possession of the Premises to Lessor in the manner set forth in the Lease on or before 11:59 p.m. on the Termination Date.
3. **Consideration.** In consideration for the termination of this lease and the release of the claims set forth herein, Lessee shall pay to Lessor the sum of Ten Thousand Dollars (\$10,000) to be paid in five (5) monthly payments of Two Thousand Dollars (\$2,000) on the first day of each calendar month, beginning September 1, 2004 and ending on January 1, 2005.
4. **Rent and Other Charges.** Lessee shall pay to Lessor on or before the Termination Date, and shall be responsible for, all rent, utility charges and other charges relating to the Premises which have accrued between May 1, 2004 and the Termination Date. Lessor shall indemnify and hold Lessee harmless against any utility charges or other charges relating to the Premises, which are the obligation of Lessor under the Lease.
5. **Certification to Lessor.** Lessee hereby certifies, with respect to Lessee's rights in and occupancy of the Premises, that the following statements are true as of the date hereof and will be true on the Termination Date:
 - (a) Lessee owns and holds the entire interest of Lessee under the Lease;
 - (b) There exist no subleases affecting the Premises or any part thereof;



Blacksburg, VA

- (c) Lessee has not assigned or encumbered Lessee's interest under the Lease or any part thereof;
- (d) Lessee has full authority to execute and deliver this Lease Termination Agreement.

6. **Release of Lessor.** Lessee agrees that upon termination of the Lease as aforesaid, Lessor and its agents and employees shall be fully released and discharged from any and all obligations that may have theretofore arisen or may thereafter arise under or with respect to the Lease or the Premises.

7. **Release of Lessee.** Lessor agrees that upon termination of the Lease as aforesaid, Lessee and its agents and employees shall be fully released and discharged from any and all obligations that may have theretofore arisen or may thereafter arise under or with respect to the Lease or the Premises.

8. **Waiver.** The releases and waivers referenced herein are full final and complete in accordance with the agreement of both parties.

IN WITNESS WHEREOF, the parties have executed this Lease Termination Agreement as of the date first written above.

LESSOR:

James E. Lucas and Gail C. Lucas

By: _____ James
E. Lucas

By: _____
Gail C. Lucas

LESSEE:

**F.C. of Virginia, Inc. d/b/a Intrepid USA
Healthcare Services**

By: _____

Its: _____

LEASE AGREEMENT

THIS LEASE AGREEMENT made and entered into this ___ day of _____, 2004 by and between BARCO ASSOCIATES, INC., a corporation having its principal office in Blacksburg, Virginia, (hereinafter referred to as the "Lessor") and F.C. OF VIRGINIA, INC. d/b/a INTREPID USA HEALTHCARE SERVICES (hereinafter referred to as the "Lessee").

WITNESSETH:

In consideration of the rent to be paid to the Lessor by the Lessee as hereinafter provided, and the covenants and agreements of the Lessor and the Lessee to be kept and performed, the Lessor hereby demises and leases to the Lessee, and the Lessee leases and takes from the Lessor, the premises known as Medical Arts Building, 3706 S. Main Street Suite C, Blacksburg, Virginia 24060 (hereinafter called the "Leased Premises"), to be occupied and used as professional office space and services related thereto, and for no other purposes, upon the terms and conditions herein set forth in this Lease Agreement ("Lease").

1. **Term of Lease.** The term of this Lease shall be the two (2) years commencing on September 1, 2004 and ending at midnight on the August 31, 2006 ("Initial Term").
 - a. **Renewal.** At the end of the Initial Term of this Lease, Lessee shall have the option to renew this Lease for three (3) successive terms of two (2) years, by giving written notice of its intention so to do at least ninety (90) days prior to the expiration of any given lease term, whether the Initial Term, or a two (2) year renewal term. Any renewal shall be upon the same terms and conditions as those of the Initial Term.

2. **Rental.** The Lessee shall pay the Lessor the sum of \$84,912.00 (Dollars and 00/100) during the term of this Lease in monthly installments of \$2,358.66 (Dollars and 00/100) due on the 1st day of each month, in advance. This rental rate is based on a rate of \$14.50 per square foot per year for 1,952 square feet. Rental payments shall be made to Barco Associates, Inc. Attn: Billie Robertson, 3706 South Main, Suite B, Blacksburg, Virginia 24060.
 - a. **Rental Adjustments.** The rental rate may be adjusted two (2) years from the commencement date of this Lease, or at the end of each two (2) year period thereafter,



by multiplying the base square footage rent by a fraction. In no event shall the basic square footage rental be reduced as a result of any such adjustment.

- b. **Rent Collection.** Lessee shall pay to Lessor \$25.00 per day for each day following the 11th of the month that the monthly rental is not received by the Lessor for that month. If any amount owing under this Lease is collected by or through an Attorney at Law, Lessee agrees to pay Lessor reasonable attorneys' fees.
3. **Utilities.** Lessor shall supply water, sewer, gas, and trash-pickup and other utilities, except for phone services, for Leased Premises and the Lessee. Lessor shall supply electric current for the lighting fixtures as installed in the Leased Premises, corridors, and restrooms, and for electric typewriters, computers, small medical and dental laboratory equipment, and other similar electrically powered office, medical, and dental equipment requiring comparable amounts of electric power. Lessor shall not be responsible for any power failure caused by means beyond its control. Lessor shall furnish a reasonable amount of hot and cold running water for toilets and laboratory and medical installations in the Leased Premises.

It is specifically agreed that the Lessor undertakes to furnish the amount of electric current and hot and cold water to accommodate the reasonable needs of the business or profession of the Lessee, and the Lessor reserves the right to install meters and to make extra rental charges for any consumption of electric current or water which is greater than twenty-five percent (25%) of the normal consumption of such item by Lessees in the building engaged in similar occupation or profession.

4. **Repair and Maintenance of Common Areas.** Lessee shall pay for any service or repair to the plumbing or heating and air conditioning system caused by the negligence of Lessee, its agents, assigns or invitees. The Lessor will, at its own cost and expense, keep and maintain in good repair the common areas of the building in which the Leased Premises are located, including, but not limited to, parking lots, halls, corridors, entrances, and other unleased space in the building, and the Lessor shall keep such common areas lighted, cleaned, and free from obstructions, except temporarily, during normal business hours from 8:00 AM until 5:00 PM, Monday through Friday, and 8:00 AM until 5:00 PM on Saturday of each week.

5. **Alterations.** The Lessee agrees that it will make no alterations, additions, or improvements to the Leased Premises without the written consent of the Lessor, which written consent shall not be unreasonably withheld. Any alterations, additions, improvements, or partitions shall be made at the expense of the Lessee. All alterations, additions, or improvements made by and for the Lessee, including, but not limited to, any and all subdividing partitions, walls, railings of whatever type, material, or height, but excepting movable office furniture and medical and dental equipment, put in at the expense of the Lessee, shall, when made, be the property of the Lessor and shall remain upon and be surrendered with the Leased Premises as a part thereof at the expiration or earlier termination of this Lease.

6. **Right of Entry.** The Lessee agrees that the Lessor shall have the right to enter and grant licenses to enter the Leased Premises upon actual notice of the Lessee at least forty-eight (48) hours in advance of the intended entry, or in an emergency, with no notice to the Lessee, for the following purposes:
 - a. to examine the Leased Premises;
 - b. to make alterations and repairs to the Leased Premises or to the building (including the right, during the process of such alterations or repairs, to keep and store within the Leased Premises all necessary materials, tools, and equipment, provided that such storage shall not interrupt the regular business of the Lessee during the course of such repairs);
 - c. for any purpose which is necessary for the operation and maintenance of the building;
or
 - d. to exhibit the Leased Premises to prospective Lessees or purchasers

Such notice shall not be required for ordinary and necessary janitorial services to be rendered on the Leased Premises, and provided further that the Lessor and its licensees during such entry will take reasonable steps to prevent any interference with the ordinary course of the performance of the business and professional services by the Lessee.

No entry in compliance with this paragraph shall render the Lessor liable for any claim or cause of action for loss of or damage to the business of the Lessee, by reason thereof, nor in any manner affect the obligations and covenants of this Lease.

7. **Use and Occupancy.** Lessee agrees that the Leased Premises will be used only for the purposes hereinbefore set out in this Lease, that no unlawful use of the Leased Premises will be made. A sign, name, legend, notice, or advertisement can be fixed or displayed on the exterior of the building with the approval of Lessor. The name or business profession of the Lessee may be painted and appropriate lettering approved by the Lessor on the interior doors to the space leased by the Lessee. Upon the termination of this Lease, the Lessee will vacate and surrender possession of the Leased Premises to the Lessor in as good condition as the Leased Premises were at the commencement of the Lease, ordinary wear and tear excepted and a sign or name on exterior removed and building left as found.

8. **Taxes.** Except as hereinafter provided, Lessor shall pay when due all taxes and assessments of any kind or nature which may be imposed upon the Leased Premises; and the Lessee shall pay when due all taxes and assessments of any kind or nature imposed or assessed upon the fixtures, equipment, merchandise, or other property installed or brought on the Leased Premises by the Lessee.

Commencing with the calendar year subsequent to the year in which the Lease begins, the Lessee agrees to pay to the Lessor each year on demand, as additional rent, "Lessee's Share of Excess Real Estate Taxes", if any. "Lessee's Share of Excess Taxes" for any such calendar year shall be the amount equal to the product obtained by multiplying the number of square feet of gross floor area of the Leased Premises by the amount, if any, that the Current Tax per square foot for such calendar year exceeds the Base Tax per square foot. The Base Tax per square foot shall be computed by dividing the total amount real estate taxes levied on the building in which the Leased Premises are located and land for the year of the initial month of the Lease by the total number of rentable square feet in the building reflected in such assessment. The Current Tax per square foot for any calendar year shall be computed by dividing the amount of the total real estate taxes levied on the land and the improvements thereon for such calendar year by the total number of rentable square feet reflected in such assessment. It is understood and agreed, however, that the Current Tax per square foot is increased by reason of additions or improvements to the building or premises by the Lessor, the Lessee shall not be responsible for tax increases caused thereby

9. **Insurance Increases.** If, because of anything done, caused to be done, permitted or omitted by the Lessee, the premium rate for any kind of insurance affecting the building in which the

premium rate for any kind of insurance affecting the building in which the Leased Premises are located shall be raised, the Lessee agrees that the amount of the increase in premium which Lessor shall be thereby obligated to pay for such insurance shall be paid by the Lessee to the Lessor on demand, and if the Lessor shall demand that the Lessee remedy the condition which caused the increase in the insurance premium rate, the Lessee will remedy such conditions within fifteen (15) days after such demand.

10. **Liability Insurance.** The Lessee agrees to maintain in force during the term of this Lease a valid policy of liability insurance of at least \$300,000 in coverage against all claims by or on behalf of any persons, firm, or corporation arising by reason of injury to or in party by any act or omission on the part of the Lessee or any employee, licensee, or invitee of the Lessee.

The Lessor agrees to maintain in force during the term of this Lease a valid policy of liability insurance of at least \$300,000 in coverage against all claims by or on behalf of any persons, firm, or corporation arising by reason of injury to or in party by any act or omission on the part of the Lessor or any employee, licensee, or invitee of the Lessor.

11. **Fire or Other Casualty.**

- a. In the event the building in which the Leased Premises is located is destroyed by fire, unavoidable accident or casualty, this Lease shall thereupon terminate as of the date of casualty.
- b. In the event that the building in which the Leased Premises is located is damaged by fire, unavoidable accident or casualty to such an extent that a portion of said building in which the Leased Premises is specifically located cannot be feasibly repaired within ninety (90) days to its approximate condition existing preceding such fire, unavoidable accident, or casualty, this Lease shall thereupon terminate as of the date of casualty.
- c. In the event that the portion of the building in which the Leased Premises are specifically located is damaged by fire, unavoidable accident, or casualty and the same can be repaired within ninety (90) days from the date of such fire, unavoidable accident, or casualty, the parties hereto agree that said Leased Premises shall be

repaired and restored by Lessor to the approximate condition of said Leased Premises existing before said fire, unavoidable accident or casualty, and this Lease shall remain in full force and effect, provided, however, that the rent during the time or repair shall be reduced to an amount which bears the same ratio to the rent provided for herein as to the portion of the Leased Premises then available for use to the Lessee bears to the entire Leased Premises. If such repairs are not substantially completed within ninety (90) days of the date of casualty, Lessee may terminate this Lease by providing written notice to Lessor. Upon completion of such repairs, the rent shall thereafter be paid as provided in the Paragraph 2 above.

- d. The Lessor shall carry fire and extended coverage insurance insuring its interest in the building and the Leased Premises. Lessee shall carry fire and extended coverage insurance insuring its interest, if any, in any improvements to or in the Leased Premises and its interest in office furniture, equipment, supplies, and other personal property.

12. **Default.** In the event the Lessee shall fail to pay any rent when due in accordance with the terms of this Lease and such default shall continue for a period of fifteen (15) days after written notice delivered to Lessee at the Leased Premises of such default, the Lessor, without prejudice to any other rights or remedies it may have, shall have the right, immediately or at any time thereafter, to re-enter the Leased Premises or any part thereof and repossess the same and remove all persons and property from the Leased Premises. In the event the Lessee shall neglect to keep or perform any other covenant, agreement, or condition of this Lease, or shall fail to conform to any of the building rules and regulations now in force or hereafter adopted pursuant to the provisions of this Lease, the Lessor shall give written notice of such default to the Lessee. In the event that such default is not substantially cured within thirty (30) days from the date of such notice, then the Lessor shall have the right to enter the Leased Premises immediately, or at any time thereafter and remove the Lessee therefrom, without any prejudice to any other right or remedies of the Lessor..

Should the Lessor elect to re-enter the Leased Premises as herein provided, or should it take possession pursuant to legal proceedings, it may either terminate this Lease or it may, without terminating this Lease, relet the premises or any part thereof on Lessee's account for such times and at such rental rate to minimize damages which may have been caused by the Lessee,

and upon such other terms and conditions as the Lessor may deem advisable, with the right to make alterations and repairs to the Leased Premises, and the Lessee shall pay the amount of rent due under this Lease to the date of the beginning of payment of rent pursuant to any such reletting, together with the cost of such reletting including the cost of any reasonable repairs to the Leased Premises sustained by the Lessor, and the Lessee will thereafter pay monthly during the remainder of the term of this Lease the difference, if any, between the rent collected from such reletting and the rent reserved in this Lease. Lessor shall use due diligence in procuring a substitute Lessee for the Leased Premises. No such re-entry or taking possession of the Leased Premises by the Lessor shall be construed as an election on its part to terminate this Lease unless a written notice of such intention is given to the Lessee. Notwithstanding any such reletting without termination, the Lessor may, at any time after the occurrence of any default set out in this Paragraph 12 elect to terminate the Lease and may terminate it by giving thirty (30) days' written notice to that effect to the Lessee.

13. **Constructive Default.** Intentionally omitted.
14. **Condemnation.** If the whole of the Leased Premises or such portion thereof as will be the Leased Premises unsuitable for the purposes herein stated, is condemned for any public use or purpose by any legally constituted authority then either of such events, this Lease shall cease from the time when possession is taken by such public authority, and rental shall be accounted for between the Lessor and Lessee as of the date of the surrender of possession. Such termination shall be without prejudice to the right of either the Lessor or the Lessee to recover caused by such condemnation. Neither the Lessor nor the Lessee shall have the rights in or to any award made to the other by the condemning authority.
15. **Subordination.** Lessee agrees that this Lease is and shall remain subject to and subordinate to all mortgages or deeds of trust which, as of the date of this Lease, affect such Lease or the building or the real property upon which the building is located and to and for all renewals, modifications, consolidations, replacements, and extensions thereof. This clause shall be self-operative and no further instruments shall be necessary to affect such subordination.
16. **Notices.** Any notice or demand which by any provision of this Lease is required or allowed to be given to either party to the other shall be deemed to have been sufficiently given for all

purposes when made in writing and sent in the United States mail as certified or registered mail, postage prepaid, and addressed:

a. **If to Lessee, one copy to BOTH of the following addresses:**

- i. F.C. of Virginia, Inc. d/b/a Intrepid USA Healthcare Services
Attn: Branch Manager/Administrator
Medical Arts Building
3706 S. Main Street, Suite C
Blacksburg, VA 24060
- ii. F.C. of Virginia, Inc. d/b/a Intrepid USA Healthcare Services
Attn: Legal Department
6600 France Avenue South, Suite 510
Edina, MN 55435

b. **If to Lessor, one copy to:**

- i. Barco Associates, Inc.
Medical Arts Building
3706 South Main Street, Suite B
Blacksburg, VA 24060-7000

Notice addressed may be changed by either party by providing notice in writing to the other party.

17. **Building Rules and Regulations.** The Lessee represents that he has read the rules and regulations made part hereof and hereby agrees to abide and conform to the same and to such further rules and regulations as may be adopted according to the provisions of this paragraph. The Lessor shall have the right to make and adopt further rules and regulations for the care, protection and benefit of the building or the general comfort and welfare of its occupants only with the written consent of the duly authorized committee of Lessor or other committee of Lessees in the building, or, if no such association exists, upon the written consent of the holders of sixty percent (60%) of the leased space in the building. Lessor shall give all residents of the Building at least thirty (30) days notice prior to the date upon which the proposed rule change, modification, or addition is to go into effect. The Lessee shall not

unreasonably withhold permission for a reasonable change in the building rules and regulations. The Lessee further agrees that the Lessor shall have the right to waive any or all of such rules in the case of any one or more lessees without affecting the Lessee's obligations under this Lease and the rules and regulations and that the Lessor shall not be responsible for the non-conformance by any other lessee to any of said rules and regulations.

18. **Waiver.** The waiver by the Lessor or Lessee of any breach or covenant or agreement herein contained shall not be deemed to be a waiver of such covenant or agreement of any subsequent breach of the same or any other covenant or agreement herein contained. The subsequent acceptance of any rent by Lessor hereunder, or payment of rent by the Lessee, shall not be deemed to be a waiver of any preceding breach by the Lessee or Lessor of any covenants or agreements in this Lease other than the failure of the Lessee to pay the particular rent so accepted, regardless of Lessor's knowledge of such preceding breach at the time of the acceptance of such rent.
19. **Possession after Termination.** Intentionally omitted.
20. **Integration Clause.** Any stipulations, representations, promises, or agreements, oral or written made prior to or contemporaneously with this agreement shall have no legal or equitable consequences, and the only agreement made and binding on the parties is contained herein and it is the complete and total integration of the intent and understanding of the Lessor and Lessee.
21. **Severability.** If any paragraph or paragraphs of this Lease Agreement are modified or declared invalid by the parties or through legal proceedings, the remaining provisions of this Lease shall remain in full force and effect, and continue to be binding upon the Lessor and the Lessee.
22. **Renewal.** Intentionally omitted.
23. **Indemnification.**
 - a. Lessee will indemnify and hold Lessor harmless from and against any and all loss, cost, damage, liability and expense (including reasonable attorney's fees) of whatever

kind and nature resulting from any accident, occurrence or condition caused by the release by Lessee, its agents, employees, contractors, assignees, sublessees, licensees or invitees of any hazardous or toxic substance or waste in, on, under, about or affecting the Leased Premises or the Land which results in any injury or death to any person or damage to any property or which requires the removal or treatment of such hazardous or toxic substance or waste or other remedial action or fine under the terms of any properly constituted law, regulation, rule or directive of any federal, state or local governmental authority.

- b. Lessor will indemnify and hold Lessee harmless from and against any and all loss, cost, damage, liability and expense (including reasonable attorney's fees) of whatever kind and nature resulting from any breach of any representation or covenant under this Lease or from any accident, occurrence or condition caused by the release by Lessor, its agents, employees, contractors, assignees, licensees or invitees, of any hazardous or toxic substance or waste in, on, under, about or affecting the Leased Premises or the Land which results in any injury or death to any person or damage to any property or which requires the removal or treatment of such hazardous or toxic substance or waste or other remedial action or fine under the terms of any properly constituted law, regulation, rule or directive of any federal, state or local governmental authority.

24. **Relationship of Parties.** The Lessor and the Lessee are not, nor shall they become by virtue of this Lease or any actions taken pursuant thereto, anything other than the Lessor and the Lessee. The Lessor and the Lessee are not joint venturers, partners, employed by one and the others, or agents of one and the other.

The Lessor understands that any payments made by Lessee pursuant to this Lease are solely for the use of the Premises and that the Lessor, its owners, and or any of its affiliated and/or related entities and their owners, are not being and shall not be paid to refer patients, sign orders for any patients, whatsoever, which are admitted to the Lessee's health care agency for services, if applicable, counsel or promote a business or for any other activity that violates any federal and/or state law(s), regulations, rules and/or guidelines.

IN WITNESS WHEREOF, in duplicate originals, the Lessor has caused this instrument to be executed by its duly authorized officers and its seal be hereunto affixed, the Lessee, if an individual

Blacksburg, VA

or partnership, has hereunto set his or their respective hands and seals; or if a corporation or professional association, has caused this instrument to be executed by its duly authorized officers, the day and year first above written.

LESSOR: BARCO ASSOCIATES, INC.

By: _____

Name: _____

Title: _____

LESSEE: F.C. of VIRGINIA, INC.

d/b/a Intrepid USA Healthcare Services

By: _____

Name: _____

Title: _____

RULES AND REGULATIONS

1. The streets sidewalks, entrances, arcades, corridors, passages, elevators, and stairways shall not be obstructed by Lessee or used by him for any other purposes than necessary ingress and egress to and from his room. Lessee shall not keep any vehicle standing in front of any of the entrances to the Leasehold or in any way obstruct or delay traffic in the vicinity thereof, unless emergency vehicle such as ambulance transport. Lessor reserves the right to designate the time where, and the method whereby freight, furniture, goods, merchandise and other articles may be brought into and take from the Leasehold and rooms.
2. Professional identification signs shall be flush mounted against the wall and only those approved by Lessor shall be used in the corridor areas. Outside signs must be approved.
3. Lessee shall be responsible for and be charged with all damage to, or breakage of, lighting fixtures and lamps, caused by the fault of Lessee during the continuance of this Lease; it being agreed that the Lessor will replace such damages or broken lamps or fixtures, and that Lessee shall pay the Lessor a reasonable price for same on demand.
4. Lessee shall furnish maintenance supplies. Lessor has a maintenance person.
5. When the Lessor sets apart and designates a parking area for the specific use of occupants of the Building and their employees, Lessee and his employees shall use such parking area as specifically reserved and designated. The parking area specified for physicians and non-physician employees of Lessee will be in a different area. Non-physician employees of Lessee will be subject to the same parking rules and regulations as Lessor's employees.
6. The Lessor reserves that right to make such other and further reasonable Rules and Regulations as in the Lessor's judgment may be from time to time be needed for the safety, care, and cleanliness of the Building and for the preservation of good order therein.
7. Lessee furnishes their own cleaning personnel and supplies.
8. Due to the age of the sewage system, Lessee will be responsible for any repairs in their leased space.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 11 Bankruptcy

Intrepid U.S.A., Inc.,
and Jointly Administered Cases,

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

Debtors

Case Nos. 04-41924 – 04-41988-NCD

**MEMORANDUM IN SUPPORT OF MOTION FOR ORDER APPROVING
LEASE TERMINATION AGREEMENT AND LEASE AGREEMENT**

F.C. of Virginia, Inc. (“Debtor”) respectfully requests that the Court authorize the Debtor to enter into the Lease Termination Agreement because it is in the best interest of the estate and its creditors. The Court should also approve the Lease Agreement because the Debtor’s decision to relocate its agency is supported by articulated business justifications.

BACKGROUND

The supporting facts are set forth in the verified Motion. Capitalized terms used herein should have the meaning ascribed to them in the Motion.

ANALYSIS

I. THE COURT SHOULD APPROVE THE LEASE TERMINATION AGREEMENT BECAUSE IT IS IN THE BEST INTERESTS OF THE DEBTOR’S ESTATE AND ITS CREDITORS.

Rule 9019 of the Federal Rules of Bankruptcy Procedure provides that:

On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to the creditors, the United States trustee, the debtor and indenture trustees as provided in Rule 2002 and to such other entities as the court may designate.

Fed. R. Bankr. P. 9019(a).

“Rule 9019 of the Federal Rules of Bankruptcy Procedure vests the bankruptcy court with broad authority to approve or disapprove all compromises and settlements affecting the bankruptcy estate.” In re Bates, 211 B.R. 338, 343 (Bankr. D. Minn. 1997). In exercising this authority, the Court must determine whether the proposed settlement is in the best interest of the estate. In re Hanson Indus., Inc., 88 B.R. 942, 945 (Bankr. D. Minn. 1988). The factors that bear upon this determination are:

- The probability of success on the merits in the litigation;
- The complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it;
- The paramount interests of creditors and the proper deference to their reasonable views in the premises; and
- Whether the conclusion of the litigation promotes the integrity of the judicial system.

In re Bates, 211 B.R. at 343.

Here, the only relevant factor is the paramount interests of the estate and its creditors. Colony Park no longer suits Debtor’s business purposes. Specifically, Debtor’s visibility at this location is poor and Debtor no longer utilizes all of the square footage. As a result, Debtor entered into negotiations with Lucas to terminate the lease as evidenced by the Lease Termination Agreement. Under the Lease Termination Agreement, Lucas has agreed to terminate the lease in exchange for five monthly payments totaling \$10,000.00. Debtor is entitled to reject this lease and Lucas would be entitled to a pre-petition claim. While that claim amount cannot be determined, it is likely substantially greater than \$10,000 and the distribution

on such a claim is likely to be greater than the \$10,000 reflected in the Lease Termination Agreement.

Because the premises no longer meets Debtor's business needs and entering into the Lease Termination Agreement is likely a more efficient use of estate property, the Court should approve the Lease Termination Agreement.

II. THE COURT SHOULD APPROVE THE LEASE AGREEMENT BECAUSE THE DEBTOR'S DECISION IS SUPPORTED BY ARTICULATED BUSINESS JUSTIFICATIONS.

Bankruptcy Code section 363(b)(1) provides that the debtor-in-possession "after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). To approve of the use of property outside of the ordinary course of business, the court need only determine that the debtor's decision is supported by some articulated business justification. Four B v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.), 107 F.3d 558, 567 (8th Cir. 1997); Fulton State Bank v. Schipper (In re Schipper), 933 F.2d 513, 515 (7th Cir. 1991). When applying the business judgment rule, the courts give deference to the debtor's decision making. In re Schipper, 933 F.2d at 515.

Debtor has determined in its business judgment that the entering into the proposed Lease Agreement is in the best interests of its estate and its creditors. Specifically, the Medical Arts Building is located within a hospital complex, which provides the Debtor greater visibility, easier access to patients, and better proximity to referral sources. Moreover, the monthly rental obligation is over \$500 less than under Colon Park lease.

CONCLUSION

Debtor respectfully requests that the Court enter an order approving the Lease Termination Agreement and Lease Agreement.

Dated: August 31, 2004

/s/ Ryan T. Murphy _____
James L. Baillie (#3980)
Ryan T. Murphy (#311972)
FREDRIKSON & BYRON, P.A.
4000 Pillsbury Center
200 South Sixth St.
Minneapolis, MN 55402
Telephone 612-492-7000

ATTORNEYS FOR DEBTORS

#3007587\1

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Intrepid U.S.A., Inc.,
and Jointly Administered Cases,

Debtor

Chapter 11 Bankruptcy

Case No. 04-40416-NCD

Case No. 04-40462-NCD

Case No. 04-40418-NCD

Case Nos. 04-41924 - 04-41988

CERTIFICATE OF SERVICE

Ryan T. Murphy, under penalty of perjury, states that on August 31, 2004 he caused to be served the following:

1. Notice of Hearing and Motion Authorizing F.C. of Virginia, Inc. to Enter into the Lease Termination Agreement and Lease Agreement;
2. Memorandum of Law in Support of Motion for Order Approving Lease Termination Agreement and Lease Agreement;
3. Proposed Order Authorizing Debtor to Enter into a Lease Termination Agreement and Lease Agreement; and
4. Certificate of Service.

by sending true and correct copies via United States Mail to all parties on the attached service list.

Dated: August 31, 2004

/e/Ryan T. Murphy

Ryan T. Murphy

#3010293\1

Service List: Intrepid II (Doc. No. 2964710)

Dennis Simon
Intrepid U.S.A., Inc.
6600 France Avenue South
Suite 510
Edina MN 55425

Michael Massad/Steven Holmes
Hunton & Williams
30th floor, Energy Plaza
1601 Bryan St
Dallas TX 75201

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

Roylene A. Champeaux
D. Gerald Wilhelm
Assistant US Attorney
600 US Courthouse
300 South Fourth Street
Minneapolis MN 55415

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

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

Blaine Holliday
IRS Office of Chief Counsel
650 Galtier Plaza
380 Jackson Street
St Paul, MN 55101

Securities & Exchange Comm.
Bankruptcy Section
175 W Jackson Blvd.
Suite 900
Chicago IL 60604

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

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

Todd J. Garamella
c/o John McDonald
Robins, Kaplan
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, MN 55402-2015

Attorneys for Creditors Committee

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Irvine CA 92612

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80 South Eighth Street
Minneapolis, MN 55402-2205

Requests for Notice

IRS/Special Procedures Branch
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200 Jefferson Avenue
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Memphis TN 38103

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US Dpt. of Justice, Civil Dvn
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Washington, DC 20004-0875

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Greg Bongiovanni
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Dept. of Health & Human Svs
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Atlanta, GA 30303-8909

Bankruptcy Administration
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1738 Bass Road
PO Box 13708
Macon GA 31208-3708

U.S. Bank N.A.
c/o Michael R. Stewart
Faegre & Benson, LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901

Lang-Nelson Associates
c/o William I. Kampf
220 South Sixth Street, #1800
Minneapolis, MN 55402

Additional names for
Intrepid II list

Keybank N.A.
127 Public Square
Cleveland OH 44114

Garamella Family Ltd. Ptnsp
236 Oakwood Road
Interlachen Park
Hopkins MN 55343

David J. Fischer
Wildman, Harrold, Allen & Dixon
225 West Wacker Drive
Suite 3000
Chicago, IL 60606-1229

Bank One
c/o Sandra Lander
400 Murray Street
Alexandria LA 71301

Mpls Comm Dev Agency
105 - 5th Ave S
Minneapolis MN 55401

Affordable Housing Project
c/o Fed Home Loan Bank
907 Walnut St
Des Moines IA 50309

MHFA
ATTN: William Kuretsky
400 Sibley St, Suite 300
St Paul MN 55101

Neil Herskowitz
Riverside Contracting LLC
PO Box 626
Planetarium Station
New York, NY 10024-0540

CapitalSource Finance LLC
c/o Steven Kluz, Sr, Esq.
Rider Bennett, LLP
333 South Seventh Street,
Minneapolis, MN 55402

CapitalSource Finance LLC
c/o Kenneth J. Ottaviano, Esq.
Katten Muchin Zavis Rosenman
525 West Monroe Street, #1600
Chicago, IL 60661

Service List: Intrepid II (Doc. No. 2964710)

Healthcare Business Credit Corp.
c/o Steven Meyer, David Galle
Oppenheimer Wolff & Donnelly
3300 Plaza VII
45 South Seventh Street
Minneapolis, MN 55402

Healthcare Business Credit Corp.
c/o Michelle A. Mendez
Greenberg Traurig LLP
600 Three Galleria Tower
13155 Noel Road
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CenturyTel, Inc
c/o Rex D. Rainach
A Professional Law Corporation
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Baton Rouge, LA 70806-5720

Gary L. Hacker, Esq.
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Abilene, TX 79602

Neil Medical Group
c/o Nikole B. Mariencheck, Esq.
Smith, Anderson, et al.
P.O. Box 2611
2500 Wachovia Capitol Ctr (27601)
Raleigh, NC 27602-2611

State of Maryland, Dpt of Labor,
Licensing and Regulation
Off. Of Unemp. Ins. Contrib. Div
Litigation and Prosecution Unit
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Baltimore, MD 21201

New Options Founders
c/o Adam M. Spence
105 W. Chesapeake Ave, Suite 400
Towson, MD 21204

Oracle Corporation
c/o Alan Horowitz
Buchalter, Nemer, Fields & Younger
18400 Von Karman Ave, Suite 800
Irvine, CA 92612

Bizrocket.com, Inc.
c/o Jeremy D. Friedman
Downs & Associates
255 University Drive
Coral Gables, FL 33134

Healthcare Assoc. of Walterboro
c/o H. Flynn Griffin, III
Anderson & Associates, P A
PO Box 76
Columbia SC 29202

The Hays Group
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Scott Law Firm, PLC
Suite 400
3300 Edinborough Way
Edina, MN 55435

Nueces County
c/o Diane W. Sanders
Linebarger Goggan Blair & Sampson
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PO Box 17428
Austin, TX 78760-7428

Bexar County
c/o David G. Aelvoet
Linebarger Goggan Blair & Sampson
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San Antonio, TX 78205

G-Fore Associates LLC
c/o Bradford A. Steiner
Jason S. Kelley
Steiner Norris PLLC
2320 Second Ave., Suite 2000
Seattle, WA 98121

Les Nelson Investments
c/o Mark E. Fosse
Dunlap & Seeger, P.A.
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PO Box 549
Rochester, MN 55903

Aberfeldy II Limited Partnership
c/o J. David Leamon
Munsch Hardt Kopf & Harr
4000 Fountain Place
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Dallas, Texas 75202-2790

IBM Corporation
Attn: Beverly H. Shideler
Two Lincoln Centre
Oakbrook Terrace, IL 60181

Richard D. Anderson, Esq
Briggs and Morgan, P.A.
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Minneapolis, MN 55402

Woodmen Office Land Associates
Huntington C. Brown
US Bank Tower
950 Seventeenth Street, Suite 1700
Denver, CO 80202

TN Dept. Labor and Workforce
Development—Unemployment Ins.
c/o Marie Antoinette Joiner
TN Atty General's Office, Bky Div.
PO Box 20207
Nashville, TN 37202-0207

Atty for MO Dept of Revenue
MO Dept. of Revenue, Bky Unit
ATTN: Steven Ginther
PO Box 475
Jefferson City MO 65105-0475

Alberfeldy II Limited Partnership
c/o David E. Runck, Esq.
Oppenheimer Wolff & Donnelly
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45 South Seventh Street
Minneapolis, MN 55402

Maureen M. Cafferkey
Office of the Solicitor
US Dept of Labor
1240 East Ninth Street, Room 881
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Atty for Poturalski, Hawley et al
Larry Ricke, Esq.
Leonard Street & Deinard
150 S. 5th Street, Suite 2300
Minneapolis MN 55402

Atty for GA Dept of Comm Health
Oscar Fears, III
40 Capitol Square SW
Atlanta GA 30334

Intrepid Service List - Additional Parties

James E. Lucas and Gail C. Lucas
500 Colony Park
1999 South Main Street
Blacksburg, VA 24060

Barco Associates, Inc.
Medical Arts Building
3706 South Main Street, Suite B
Blacksburg, VA 24060-7000

#3010311\1

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 11 Bankruptcy

Intrepid U.S.A., Inc.,
and Jointly Administered Cases,

Case No. 04-40416-NCD

Case No. 04-40462-NCD

Case No. 04-40418-NCD

Debtors

Case Nos. 04-41924 – 04-41988-NCD

**ORDER AUTHORIZING DEBTOR TO ENTER INTO A LEASE TERMINATION
AGREEMENT AND LEASE AGREEMENT**

F.C. of Virginia, Inc.'s ("Debtor's) Motion for Order approving the Lease Termination Agreement and Lease Agreement came before the undersigned United States Bankruptcy Judge on _____, 2004. Appearances, if any, are noted on the record.

Based upon the arguments of counsel, all the files, records and proceedings herein, the Court being fully advised in the premises, and the Court's Findings of Facts and Conclusions of Law, if any, having been stated orally and recorded in an open court before the close of evidence:

IT IS HEREBY ORDERED:

1. The Debtor's Motion is granted.
2. Pursuant to Federal Rule of Bankruptcy Procedure 9019, Debtor is hereby authorized but not required to enter into the Lease Termination Agreement by and between Debtor and James E. Lucas and Gale C. Lucas on substantially the same terms as set forth in the Motion.
3. Pursuant to 11 U.S.C. § 363(b), Debtor is hereby authorized but not required to enter into the Lease Agreement by and between Debtor and Barco Associates, Inc. on substantially the same terms as set forth in the Motion.

Dated: _____, 2004

United States Bankruptcy Judge

#3007591\1