

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

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**NOTICE OF HEARING AND MOTION FOR EXPEDITED HEARING AND  
ORDER AUTHORIZING DEBTOR INTREPID USA TO  
ENTER INTO INSURANCE PREMIUM FINANCE AGREEMENT  
FOR WORKERS' COMPENSATION POLICY**

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

1. Intrepid U.S.A., Inc. and the affiliated Debtors in the cases referenced above (collectively, "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 hearing and order authorizing insurance premium financing at 10:30 a.m. on September 9, 2004, in Courtroom No. 7 West of the United States Courthouse at 300 South Fourth Street, Minneapolis, Minnesota.

3. Local Rule 9006-1(b) provides responsive deadlines to this motion. However, given the expedited relief sought, Debtors will not object to the timeliness of responses being delivered and filed by 5:00 p.m. c.d.t. on September 8, 2004. **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, 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 and April 12, 2004 (“Petition Dates”). These cases are now pending in this Court.

5. This motion arises under 11 U.S.C. §§ 362, 363, and 364(c)(2) 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. Debtors request an order of this Court authorizing it to enter into an insurance premium finance agreement to finance the payment of the annual premiums for its workers’ compensation coverage and for expedited hearing on the motion. The grounds for this motion are set out below.

### **BACKGROUND**

6. Intrepid USA, is the parent company who collectively with its direct and indirect subsidiaries or affiliates operate as home healthcare providers and nurse and medical staffing providers. The Intrepid operating companies serve primarily the elderly, homebound, disabled, and other disadvantaged individuals, providing in-home nurses, therapists, and administrators these patients require. Intrepid USA provides administrative and oversight services to each of the subsidiary companies that are involved in the provision of medical services. The Intrepid debtors have an annual payroll of approximately \$94 million and currently employ approximately 5,766 employees, consisting of 4,195 employees covered by the current workers compensation policy maintained by Debtors and have an annual payroll of approximately \$94 million. Debtors operate in 31 states, primarily in the Midwest, South and Southeastern parts of the United States.

### **FACTS IN SUPPORT OF MOTION**

7. Debtors annual workers’ compensation coverage expires effective September 14, 2004. Debtors, through their insurance agent, The Hays Group, have made arrangements to

place workers' compensation insurance with AIG Risk Management ("AIG") beginning on September 15, 2004 and continuing until September 14, 2005.<sup>1</sup> Debtors have two options for insurance coverage. One option is for a \$500,000 deductible policy (the "Large Deductible Policy") and the other is for a guaranteed cost policy ("Guaranteed Cost Policy"). Debtors have not determined which option they will select but will do so at or prior to the hearing on this motion. Debtors will need financing to pay the premium costs of either policy. As described below, Debtors have arranged for financing of the premium costs for either option.

8. Under the Large Deductible Policy, AIG has agreed to provide coverage for the policy year provided that the premium, in the amount of \$1,571,928 plus a surcharge of \$93,489, for a total of \$1,665,417, is paid in full on or before September 14, 2004.

9. Debtors have made arrangements to finance the payment of the premium for the Large Deductible Policy by obtaining a premium finance loan from First Insurance Funding Corporation ("FIFC"). A copy of FIFC's Commercial Premium Finance Agreement and Disclosure Statement is attached as Exhibit A (the "FIFC Agreement"). Under the terms of the FIFC Agreement, FIFC will advance the premium amount to AIG. Debtors will make a cash down payment of \$392,982. In addition, Debtors will pay FIFC eight monthly installments of \$150,145.00, commencing as of October 14, 2004. The total amount of the monthly payments is \$1,201,160, and the cost of the credit is \$22,214.00.

10. Under Minn. Stat. § 59A.11 and most other states' laws, Debtors will have the right to cure any payment defaults within 10 days after notice of default. In the event that a payment default occurs which is not timely cured, FIFC has the right to cancel the insurance coverage and be entitled to receive from AIG the return of unearned premium amounts to apply

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<sup>1</sup> Debtors have filed a motion seeking approval of insurance policy which will be heard concurrently with this motion.

to the loan. FIFC requires that it be permitted to serve notice of default, cancel the policies and permit AIG to take action to return the unearned premium to FIFC without the necessity of further Court order, such as an order for relief from stay. Debtors request that the order entered on this motion contain such provisions.

11. As mentioned above, Debtors have an alternative option for insurance, the Guaranteed Cost Option. Debtors have obtained a proposal from AICCO, Inc. to finance the premium under the Guaranteed Cost Option. AICCO's premium finance agreement is attached as Exhibit B. Under this proposal, AICCO will pay AIG total premium costs of \$4,821,124. Debtors will pay AICCO a cash down payment of \$1,687,249.01, and seven monthly installments each in the amount of \$454,163.79, commencing on October 14, 2004. The total cost of the financing is \$45,271.54.

12. To secure Debtors' obligations to AICCO, AICCO shall have the right to cancel the policy upon the occurrence of an uncured event of default, on the same terms described in paragraph 10 above. AICCO requires that it be permitted to exercise remedies after default without obtaining further relief from this Court, such as an order for relief from stay. Debtors request that the order approving transaction with AICCO incorporate terms to that effect.

13. Debtors seek expedited hearing on this motion for cause. Bankruptcy Rules 4001(c) provides for 15 days' notice of the hearing to obtain credit, but permit the Court to authorize the obtaining of credit on less than 15 days' notice to avoid immediate and irreparable harm. As described in the accompanying motion, Debtors' current insurance policy will expire on September 14, 2004. Debtors obviously cannot operate without workers' compensation insurance in place. If Debtors are unable to maintain workers' 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. Debtors must pay the full annual premium under either option on before September 14, 2004 in order to have insurance in place. Debtors will be left without insurance coverage if they fail to pay the premium. Debtors have insufficient cash or borrowings under their post-petition line of credit to pay the full premiums. Cause therefore exists to reduce notice of this hearing.

14. Debtors are unable to obtain unsecured credit with administrative expense status in the cases from any source to pay the premium costs. AIG is unwilling to accept less than payment in full of the premium at initiation of either policy and will not accept payments over time.

15. Debtors continue to negotiate the terms of the policy costs with AIG and other parties. Debtors may receive quotes for insurance from other parties. Debtors also are negotiating terms of the premium finance agreements with both FIFC and AICCO. Therefore, Debtors reserve the right to alter the relief requested herein and give notice that they may seek approval to enter into different terms for financing of the premium up until the point of the hearing. **DEBTORS GIVE NOTICE THAT THEY WILL SEEK AUTHORITY TO ENTER INTO AGREEMENTS ON SUCH TERMS AS MAY BE DESCRIBED AT THE HEARING.**

16. Pursuant to Local Rule 9013-2(a), this motion is verified, and is accompanied by a memorandum of law, proposed order and proof of service.

17. Pursuant to Local Rule 9013-2(c), Debtor gives notice that it may, if necessary, call Gregory Von Arx, Chief Financial Officer of each of the Debtors, whose business address is

6600 France Avenue South, Suite 510, Edina, MN 55435 to testify about the facts raised in this motion.

WHEREFORE, Debtor moves the Court for an order authorizing it to enter into the Insurance Premium Finance Agreement with FIFC and for such other relief as the Court deems just and equitable.

Respectfully submitted,

Dated: September 3, 2004

/s/ Clinton E. Cutler  
Clinton E. Cutler (#158094)  
FREDRIKSON & BYRON, P.A.  
200 South Sixth Street  
Minneapolis, MN 55402-1425  
(612) 492-7000  
(612) 492-7077 (Fax)

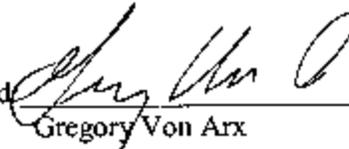
ATTORNEYS FOR DEBTORS

**VERIFICATION**

I, Gregory Von Arx, am the Chief Financial 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: September 3, 2004

Signed



\_\_\_\_\_  
Gregory Von Arx

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# FIRST INSURANCE FUNDING CORP.

## COMMERCIAL PREMIUM FINANCE AGREEMENT AND DISCLOSURE STATEMENT PAGE 1 OF 2

INSURED/BORROWER (Name and Address as Shown on Policy)  
 DIP - Intrepid USA, Inc  
 6600 France Ave  
 Suite 510  
 Edina, MN 55435  
 Telephone Number: (952) 920-1958

Direct Correspondence to: Greg Von Arx

AGENT or BROKER (Name and Business Address) INT  
 The Hays Group, Inc 00  
 80 South 8th Street  
 Suite 700  
 Minneapolis, MN 55402  
 082704 - 091404  
 Lim/APR/R6.50  
 0804 v3.03w

A	Total Premiums	\$1,571,928.00
B	Cash Down Payment Required	\$ 392,982.00
C	Unpaid Premium Balance	\$1,178,946.00
D	Documentary Stamp Tax (Only Applicable in Florida)	\$ N/A
E	Amount Financed (The amount of credit provided on your behalf)	\$1,178,946.00
F	<b>FINANCE CHARGE</b> (Dollar amount credit will cost you)	\$ 22,214.00
G	Total of Payments (Amount you will have paid after making all scheduled payments)	\$1,201,160.00
<b>ANNUAL PERCENTAGE RATE</b> (Cost of your credit figured as a yearly rate)		5.00%

**LENDER FIRST INSURANCE FUNDING CORP.**



450 Skokie Blvd, Suite 1000  
 P O Box 3306  
 Northbrook, IL 60065-3306  
 Telephone: (800) 837-3707  
 Fax: (800) 837-3709

PAYMENT SCHEDULE BELOW, or  See Schedule Attached

Number of Payments	Payments Are Due Monthly Beginning	Amount of Each Payment
8	10/14/04	\$ 150,145.00

**Prepayment** The insured may prepay the full amount due and receive a refund of the unearned interest as provided on page 2 of this agreement

**Late Payment** A late charge will be imposed on any payment which is not received by FIRST within five (5) days of its due date (unless a longer grace period is specified under applicable law, in which case a late charge will be imposed on any payment not received by FIRST within such grace period). This late charge will be 5% of the overdue amount or the maximum late charge permitted by applicable law, whichever is less. The maximum late charge is \$5.00 in DE, MT, and ND.

**Security** As security for the payments to be made, the insured assigns FIRST INSURANCE FUNDING CORP. (herein referred to as "FIRST") a security interest in return premiums, dividend payments, and certain loss payments with reference to the policies listed below. Under certain conditions, FIRST HAS THE RIGHT TO CANCEL FINANCED POLICIES, as provided on page 2 of this agreement.

**Contract Reference** Reference should be made to the terms of this agreement as stated below and on page 2 for information about nonpayment, default, cancellation, the right to demand immediate payment in full, and prepayment.

**SCHEDULE OF POLICIES**

Policy Number And Prefix	Full Name of Insurance Company and Name and Address of General Agent or Company Office to Which Premium is Paid	Type of Insurance	Policy Term in Mos.	Effective Date Mo Day Yr	Policy Premiums
TBD	American Home Assura	WC	12	9/14/04	1,571,928.00

**NOTICE: SEE PAGE 2 FOR IMPORTANT INFORMATION**

The provisions on page 2 are incorporated by reference and constitute a part of this agreement.

TOTAL PREMIUMS (Record in "A") 1,571,928.00

**AGENT OR BROKER REPRESENTATIONS AND WARRANTIES**

The undersigned agent or broker has read the Agent/ Broker Representations and Warranties on page 2, has completed page 2 of all copies where required, and makes all such Representations and Warranties recited therein. Further, the undersigned agent or broker agrees to: (i) pay all reasonable attorney fees, court costs, and other collection costs incurred by FIRST in recovering amounts due from the agent or broker in connection with any breach of the Agent/ Broker Representations and Warranties, and (ii) indemnify FIRST for any and all losses FIRST incurs as a result of any error committed by the Agent/Broker in completing or failing to complete any portion of this agreement.

Signature of Agent or Broker

Title

Date

**INSURED'S AGREEMENT:**

In consideration of the premium payments (the "Amount Financed" above) to be made to the above captioned AGENT or BROKER by FIRST, the named insured (herein referred to as "Insured") promises to pay, to the order of FIRST, the Total of Payments subject to all of the provisions set forth on both pages of this agreement.

**NOTICE TO INSURED:**

(1) Do not sign this agreement before you read both pages of it, or if it contains blank spaces. (2) You are entitled to a completely filled-in copy of this agreement. (3) Under the law, you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the service charge. (4) Keep your copy of this agreement to protect your legal rights.

DIP - Intrepid USA, Inc

Name of Insured (Print or Type)

By: Signature

Title

Date

Insured: DIP - Intrepid USA, Inc Effective: 09/14/04 Premiums: \$1,571,928.00

**WARRANTY OF ACCURACY.** The Insured represents and warrants to FIRST that the insurance policies listed in the Schedule of Policies are in full force and effect and that the Insured has not assigned any interest in the policies except for the interest of mortgagees and loss payees. The Insured further represents and warrants to FIRST that: (i) none of the insurance policies listed in the Schedule of Policies are for personal, family or household purposes, and (ii) the Insured has no indebtedness to the insurers issuing the listed policies, and none of those insurers have asserted any claims for payment against the Insured.

**REPRESENTATION OF SOLVENCY.** The Insured represents that the insured is not insolvent nor presently the subject of any insolvency proceeding.

**COLLATERAL.** To secure payment of all amounts due under this agreement, Insured grants FIRST a security interest in the policies, including all return premiums, dividend payments, and loss payments which reduce unearned premiums, subject to any mortgagee or loss payee interest.

**RIGHT TO CANCEL.** If Insured does not make a payment when it is due, or if Insured is otherwise in default under this agreement, FIRST may cancel the policies and act in Insured's place with regard to the policies, including endorsing any check or draft issued in the Insured's name for funds assigned to FIRST as security herein. This right given by Insured to FIRST constitutes a "Power of Attorney". Before FIRST cancels the policies, FIRST will provide notice to the Insured, as required by law. Insured agrees that this right to cancel which Insured has granted to FIRST cannot be revoked, and that FIRST's right to cancel will terminate only after all of Insured's indebtedness under this agreement is paid in full.

**DEFAULT.** Insured is in default under this agreement if, (a) a payment is not received by FIRST when it is due, (b) Insured or its insurance companies are insolvent or involved in a bankruptcy or similar proceeding as a debtor, (c) Insured fails to comply with any of the terms of this agreement, (d) insurance companies cancel coverages, (e) premiums increase under any policy listed in this agreement, and Insured fails to pay such increased premium within thirty (30) days of notification, or (f) Insured is in default under any other agreement with FIRST. Wherever the word "default" is used in this agreement, it means any one of the above. If the Insured is in default, FIRST has no further obligation under this agreement to pay premiums on the Insured's behalf, and FIRST may pursue any of the remedies provided in this agreement.

**LATE CHARGES.** A late charge will be imposed on any payment which is not received by FIRST within five (5) days of its due date (unless a longer grace period is specified under applicable law, in which case a late charge will be imposed on any payment not received by FIRST within such grace period). This late charge will be 5% of the overdue amount or the maximum late charge permitted by applicable law, whichever is less. The maximum late charge is \$5.00 in DE, MT, and ND.

**DISHONORED CHECK FEE.** If an Insured's check is dishonored for any reason and if permitted by law, the Insured will pay FIRST a dishonored check fee equal to the maximum fee permitted by law.

**PAYMENTS RECEIVED AFTER NOTICE OF CANCELLATION.** Once a Notice of Cancellation has been sent to any insurance company, FIRST has no duty to rescind it or to ask that the policy be reinstated, even if FIRST later receives Insured's payment. Payments which FIRST receives after sending a Notice of Cancellation may be applied to Insured's account without changing any of FIRST's rights under this agreement.

**FIRST'S RIGHTS AFTER THE POLICIES ARE CANCELLED.** After any policy is cancelled (whether by Insured or FIRST or anyone else) FIRST has the right to receive all unearned premiums and other funds assigned to FIRST as security herein and to apply them to Insured's unpaid balance under this agreement or any other agreement between the Insured and FIRST. If the amount received is more than the amount owed by Insured, any excess amount will be refunded to Insured. If the amount received is less than the amount owed by Insured, Insured will pay FIRST the balance due. FIRST may act in Insured's place to do whatever is necessary to collect such refunds. The insurance companies may rely on whatever FIRST tells them regarding the policies; it does not have to get any proof from the Insured or anyone else.

**INTEREST DUE AFTER CANCELLATION.** To the extent permitted by applicable law, if cancellation occurs, the Insured agrees to pay FIRST interest on the balance due at the contract rate or at the maximum rate allowed by applicable law, whichever is less, until the balance is paid in full or until such other date as provided by applicable law.

**RIGHT TO DEMAND IMMEDIATE PAYMENT IN FULL.** At any time after default, FIRST can demand and has the right to receive immediate payment of the total unpaid amount due under this agreement even if FIRST has not received any refund of unearned premium.

**CANCELLATION CHARGE.** If a default by the Insured results in cancellation of any insurance policy listed in the Schedule of Policies, the Insured will pay FIRST a cancellation charge equal to the maximum charge permitted by law.

**ASSIGNMENTS.** Insured may not assign any policy without FIRST's written consent. However, FIRST's consent is not needed to add mortgagees or other persons as loss payees. FIRST may transfer its rights under this agreement to anyone without the consent of Insured.

**COLLECTIONS AND ATTORNEY FEES.** FIRST may enforce its rights to collect amounts due to it without using the security interest granted in this agreement. If FIRST uses an attorney who is not a salaried employee of FIRST or incurs other collection costs to collect any money owed under this agreement, then to the extent permitted by applicable law, Insured agrees to pay reasonable attorney fees, court costs, and other collection costs incurred by FIRST.

**PREPAYMENT.** At any time, Insured may pay the entire amount still unpaid. If Insured pays the full unpaid amount before it is due, Insured will receive a refund of unearned Finance Charge computed by the actuarial method or the Rule of 78's, as permitted by applicable law. The refund will be subject to the maximum non-refundable service fee permitted by applicable law. There is no refund made if the amount to be refunded is less than \$1.00.

**AUDIT AND REPORTING FORM POLICIES.** With regard to any policy in the Schedule of Policies which is an auditable or reporting form type, Insured agrees to promptly pay to the insurance company the difference between the actual earned premium generated for the policy, and the premiums financed under this agreement.

**FINANCE CHARGE.** The finance charge begins on the earliest effective date of the policies listed in the Schedule of Policies section. The finance charge includes interest and may include a non-refundable service fee equal to the maximum fee permitted by applicable law. The finance charge is computed using 365 day year.

**AGENT OR BROKER.** The agent or broker handling this agreement is not the agent or broker of FIRST, and cannot legally bind FIRST in any way.

**CORRECTIONS.** FIRST may insert the names of the insurance companies and policy numbers, if these are not known at the time Insured signs this agreement. FIRST is authorized to correct patent errors or omissions in this agreement.

**EFFECTIVE DATE.** This agreement will not become effective until it is accepted in writing by FIRST.

**GOVERNING LAW.** This agreement is governed by and interpreted under the laws of the state where FIRST accepts this agreement. If any court finds any part of this agreement to be invalid, such finding shall not affect the remainder of this agreement. Singular words in this agreement shall mean plural and vice versa as may be required to give the agreement meaning. North Carolina Department of Insurance Permit # B-482.

**SIGNATURE AND ACKNOWLEDGEMENT.** Insured has signed this agreement and received a copy of it. If Insured is a corporation, the person signing is an officer of that corporation authorized to sign this agreement. If the Insured is not a corporation, all Insureds listed in any policy have signed.

**LIABILITY.** Insured understands and agrees that FIRST has no liability to Insured or any person or entity upon the exercise of FIRST's right of cancellation, except in the event of willful or intentional misconduct by FIRST.

**AGENT OR BROKER REPRESENTATIONS AND WARRANTIES**

**SIGNATURES GENUINE.** To the best of our knowledge, the Insured's signature is genuine.

**AUTHORIZATION/RECOGNITION.** The Insured has authorized this transaction. Both the Insured and the Agent/Broker recognize the security interest granted herein, pursuant to which the Insured assigns to FIRST all unearned premium, dividends and certain loss payments. Upon cancellation of any of the policies listed in the Schedule of Policies, the Agent/Broker agrees to immediately pay FIRST all unearned commissions and all unearned premiums, dividends and loss payments received. If such funds are not remitted to FIRST within 10 days of receipt by the Agent/Broker, the Agent/Broker agrees to pay FIRST interest on such funds at the maximum rate allowed by applicable law.

**POLICIES EFFECTIVE/PREMIUMS CORRECT.** The policies listed in the Schedule of Policies are in full force and effect, and the premiums are correct as listed.

**INSURED HAS THIS DOCUMENT.** The Insured has been given a copy of this agreement.

**NO INSOLVENCY.** To the best of our knowledge, neither the Insured nor the insurance companies are insolvent or involved in a bankruptcy or similar proceeding as debtor, except as clearly indicated on page 1 of this agreement.

**FOR THE SCHEDULED POLICIES, AGENT OR BROKER WARRANTS THAT:**

- (a) No policies are Auditable, Reporting Form policies or policies subject to Retrospective Rating, except policies listed at right. (a)
- (b) No policies are subject to Minimum Earned Premium except policies listed at right. The Minimum Earned Premium for listed policies is \$ \_\_\_\_\_. (b)
- (c) All policies provide that unearned premiums are computed by the standard short rate or pro rata table, except those policies listed at right. (c)
- (d) No policies contain provisions which prohibit cancellation either by the Insured or by the insurance company within ten (10) days, except those policies listed at right. (d)

**DEPOSIT/PROVISIONAL PREMIUMS.** Any Audit or Reporting Form policies or policies subject to retrospective rating included in this agreement are noted below in section (a). The deposit or provisional premiums for these policies are not less than the anticipated premiums to be earned for the full term of the policies.

**LOSS PAYEES NAMED.** Any policies which provide that the premium may be earned earlier in the event of loss are noted below in section (b) and/or (c). The Agent/Broker has notified the relevant insurance companies and the Insured that FIRST is to be named as a loss payee on any such policies.

**AUTHORIZED ISSUING AGENT.** For the scheduled policies, the Agent/Broker is either the insurance company's authorized policy issuing agent or the broker placing the coverage directly with the insurance company, except where the name and address of Issuing Agent or General Agent is listed in the Schedule of Policies.

**AMOUNTS DUE FROM INSURED.** The cash down payment and any installments due from the Insured have been collected from the Insured.

Policy Number of Exceptions	Comments
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**PREMIUM FINANCE AGREEMENT  
DISCLOSURE STATEMENT  
AND SECURITY AGREEMENT**

**AICCO, Inc.**

101 Hudson Street, Jersey City, NJ 07302 (201) 631-5400 or (877) 902-4242  
 160 Water Street, New York, NY 10038 (212) 428-5431 or (877) 902-4242  
 8144 Walnut Hill Ln., 13th Fl., Dallas, TX 75231 (214) 932-2013 or (877) 902-4242  
 675 Bering Drive, 5th Fl., Houston, TX 77057 (713) 268-8924 or (877) 902-4242  
 1200 Abernathy Road, NE, Suite 500, Bldg. 600, Atlanta, GA 30328 (770) 671-2219 or (877) 902-4242  
 99 High Street, 30th Fl., Boston, MA 02110 (617) 457-2841 or (877) 902-4242  
 300 South Riverside Plaza, Suite 2100, Chicago, IL 60606 (312) 559-1410 or (877) 902-4242

A	TOTAL PREMIUMS	\$	4,821,124.00	BORROWER / INSURED (The "Insured") (Name, Address and Telephone Number)	Acct. No.				
B	CASH DOWN PAYMENT REQUIRED	\$	1,687,249.01		Intrepid USA Inc 6600 France Ave S	952-920-1958			
C	AMOUNT FINANCED (The Amount of Credit Provided to Insured or on its behalf)	\$	3,133,874.99		Edina E-Mail Address (optional):	MN 55435			
D	FINANCE CHARGE (Dollar amount credit will cost)	\$	45,271.54	ANNUAL PERCENTAGE RATE <u>4.32</u> % (Cost of Credit figured as a yearly rate)					
E	TOTAL PAYMENTS (Amounts which will have been paid after making all scheduled payments)	\$	3,179,146.53	PAYMENT SCHEDULE					
				Amount of Each Payment	Number of Payments			1st Payment Due	Final Payment Due
					Annual	Qtrly	Mthly		
			454,163.79			7	10/14/2004	04/14/2005	

**SEE PAGE 3 FOR SCHEDULE OF FINANCED POLICIES**

**AGREEMENT OF INSURED (JOINT AND SEVERAL, IF MORE THAN ONE)**

AGENT OR BROKER Hays Companies  
 BUSINESS ADDRESS

THE UNDERSIGNED INSURED:

80 S. Eighth St. #700

1. In consideration of the premium payments being financed, and if applicable, down payment being advanced by LENDER to the Insurance companies listed on the SCHEDULE OF FINANCED POLICIES, or their representative, promises to pay to the order of LENDER the TOTAL OF PAYMENTS to be made in accordance with the PAYMENT SCHEDULE and if applicable, the amount of any down payment advanced by LENDER subject to the provisions set forth in this Agreement.

Minneapolis

MN 55402

TEL. NO./E-MAIL ADDRESS

612-333-3323

The Undersigned Agent or Broker:

2. Irrevocably appoints LENDER Attorney-in-Fact with full authority, in the event of default, to (i) cancel the said policies in accordance with the provisions herein, (ii) receive all sums assigned to LENDER and (iii) execute and deliver on behalf of the undersigned all documents, forms and notices relating to the insurance policies listed on the SCHEDULE OF FINANCED POLICIES in furtherance of this Agreement.

1. Represents and warrants as follows: (a) to the best of the undersigned's knowledge and belief, the insured's signature is genuine or, to the extent permitted by applicable Law, the undersigned Agent or Broker has been authorized by the insured to sign this Agreement on their behalf, (b) the insured has received a copy of this Agreement, (c) the scheduled Policies are in full force and effect and the premiums indicated therefore are correct, (d) the insured may cancel all scheduled policies immediately upon request, (e) none of the Policies scheduled in the agreement are non-cancelable, and (f) the down payment as indicated in Box "B" and installments totaling \$ 0.00 have been collected and are being retained by us.

**IMPORTANT NOTICE TO INSURED**

NOTICE: 1. Do not sign this Agreement before you read it or if it contains any blank spaces. 2. You are entitled to a complete filled-in-copy of this Agreement. 3. Keep your copy of this Agreement to protect your legal rights.

2. Upon cancellation of any of the scheduled Policies, the undersigned Agent or Broker agrees upon demand to pay to LENDER or its assigns their commission on any unearned premiums applicable to the cancelled Policies

NOTICE: See Pages 2 and 3 Additional Important Information.

THE INSURED AGREES TO THE PROVISIONS  
 ABOVE AND ON PAGES 2 AND 3

THE AGENT OR BROKER AGREES TO THE  
 PROVISIONS ABOVE AND ON PAGE 3

DATE SIGNATURE (AND TITLE) OF INSURED(S) OR AGENT OR  
 BROKER ON THEIR BEHALF (to extent permitted by Law)

DATE SIGNATURE AND TITLE OF AGENT OR BROKER

### ADDITIONAL AGREEMENTS OF INSURED (JOINT AND SEVERAL, IF MORE THAN ONE)

3. **Cancellation.** After the occurrence of a default in the payment of any money due the LENDER or a default consisting of a transfer to a third party of any of the scheduled policies, LENDER may request cancellation of the insurance policies listed in the schedule upon expiration of 10 days written notice of intent to cancel (13 days in Iowa), provided said default is not cured within such period, and LENDER may proceed to collect the entire unpaid balance due hereunder or any part thereof by appropriate legal proceedings. If any default results in the cancellation of the Policy, insured agrees to pay a cancellation charge in accordance with applicable law (Kentucky - None)
4. **Money Received After Cancellation.** Any payment received after policy cancellation may be credited to the indebtedness due hereunder without any liability or obligation on the part of LENDER to request reinstatement of such cancelled policy. Any sum received from an insurance company shall be credited to the balance due hereunder; any surplus shall be paid over to the insured; in case of deficiency, the insured shall pay the same.
5. **Application of Payments.** If applicable law permits, all payments received by LENDER will be applied to the oldest invoice first. Any remaining amounts will be applied to late fees and other charges (if applicable), the remainder (if any) would be applied to any other outstanding amounts.
6. **Returned Check Charge.** If any payment made by check is returned because the insured had no account or insufficient funds in the payor bank, insured will be charged the maximum fee, if any, permitted under applicable law (not applicable in Kentucky).
7. **Default.** If any of the following happens: (a) a payment is not made when it is due, (b) a proceeding in bankruptcy, receivership, insolvency or similar proceeding is instituted by or against insured, or (c) insured fails to keep any promise the insured makes in this Agreement. Insured will be in default; provided, however, that, to the extent required by applicable law, insured may be held to be in default only upon the occurrence of an event described in clause (a) above. Clauses (b) and (c) not applicable in Kentucky.
8. **Security.** To secure payment of all amounts due under this Agreement, insured assigns LENDER a security interest in all right, title and interest to the Policy, including (but only to the extent permitted by applicable law): (a) all money that is or may be due insured because of a loss under the Policy that reduces the unearned premiums (subject to the interest of any applicable mortgagee or loss payee), (b) any return of the premium for the Policy, and (c) dividends which may become due insured in connection with the Policy. Clause (c) not applicable in Kentucky.
9. **Right to Demand Immediate Payment in Full.** At any time after default, LENDER can demand and have the right to receive immediate payment (except to the extent otherwise provided by applicable law, in which case LENDER will have the right to receive such payment in accordance with such law) of the total unpaid balance due under this Agreement even if LENDER has not received any refund of unearned premium.
10. **Warranties.** Insured warrants to LENDER (a) to have received a copy of this Agreement and (b) if the insured is not an individual, that the signatory is authorized to sign this Agreement on behalf of the insured. The insured represents that it is not presently the subject of or in contemplation of a proceeding in bankruptcy, receivership, or insolvency, or if it is a debtor in bankruptcy, the Bankruptcy Court has authorized this transaction.
11. **Early Payment.** At any time, insured may pay the whole amount still unpaid. If insured pays the full amount before it is due, insured will be given a refund for the unearned Finance Charge computed by the method of refund as required by applicable law. (Rule of 78th method of refund in Texas after deducting fully earned charge of \$10 on finance amounts of \$1,000 or less, \$25 on finance amounts exceeding \$1,000.)
12. **Assignments.** Insured may not assign the Policy or this Agreement without LENDER's written consent. However, insured does not need LENDER's written consent to add mortgagees or other persons as loss payees. LENDER may transfer its rights under this Agreement to anyone without insured's consent. All of LENDER's rights shall inure to the benefit of LENDER's successors and assigns.
13. **Collection.** If money is due and insured fails to pay, LENDER may collect the unpaid balance from insured without recourse to the security interest granted under this Agreement.
14. **Late Charges.** Upon default in payment of any installments for not less than five days (or such greater number of days required by applicable law), insured agrees to pay a late charge in accordance with applicable law. In no event shall such late charge exceed a maximum of 5% of such installment (\$5 plus an amount not to exceed 2% in Kansas; and 5% of installment in Texas).
15. **Finance Charge.** The finance charge begins to accrue from the effective date of this Agreement or the earliest inception date of the Insurance Policy(ies) listed on the Schedule of Policies, whichever is earlier. If LENDER terminates this Agreement due to a default, insured will pay interest on the outstanding indebtedness at the maximum rate authorized by applicable state law in effect on the date of cancellation and from said date until insured pays the outstanding indebtedness in full to LENDER. To the extent permitted by applicable law, the Finance charge may include a nonrefundable Agreement charge not to exceed \$20 (\$10 in KS; \$15 in KY; \$18 in MI).
16. **Attorney's Fees.** If LENDER hires an attorney (which is not a salaried employee) to collect any money insured owes under this Agreement, insured will pay that attorney's fees and other collection costs (including collectors' fee) if and to the extent permitted by applicable law (not applicable in Kentucky).
17. **Agent or Broker.** The Agent or Broker named on the front of this Agreement is neither authorized by LENDER to receive installments payable under this Agreement nor is authorized to make any representations to insured on LENDER's behalf (except to the extent expressly required by applicable law).
18. **Amendments.** If the insurance contract has not been issued at the time of the signing of this Agreement, and if the policies being financed are assigned risk policies or policies listed in a state fund, the policy numbers, if omitted herein, may be inserted in this Agreement after it has been signed.
19. **Effective Date.** This Agreement will not go into effect until it is accepted by LENDER in writing, except in the State of Texas. In the State of Texas, any unacceptable premium finance agreement received by LENDER must be returned within three (3) working days of your receipt. LENDER's failure to return such Agreement will be deemed acceptance.
20. **Limitation of Liability.** Insured recognizes and agrees that LENDER is a lender and not an insurance company and that LENDER assumes no liability as an insurer hereunder. LENDER's liability for breach of any of the terms of this Agreement or the wrongful or improper exercise of any of its powers under this Agreement shall be limited to the amount of the principal balance outstanding, except in the event of LENDER's gross negligence or willful misconduct.
21. **Wisconsin Insureds.** For Wisconsin insureds, this contract is governed by the laws of the State of Wisconsin.
22. **Governing Law.** The law of the State of the insured's residence shall govern this Agreement, except, for AR, IN, IA, LA, MN, NE, OK, SD and WV insureds this contract is governed by the laws of the State of New York.
23. **Signature and Acknowledgement.** Insured has signed and received a copy of this Agreement. If the insured is not an individual, the undersigned is authorized to sign this Agreement on behalf of the insured. All the insureds listed in any Policy have signed. Insured acknowledges and understands that insurance premium financing law does not require a insured to enter into a premium financing agreement as a condition of the purchase of any insurance policy.
24. **Additional Insured.** There is nothing in any Policy that would require Lender to notify or get the consent of any third party to effect cancellation of such Policy.

Place (X) If Not Authorized (See #3 below)										
<b>SCHEDULE OF POLICIES (Continue Schedule on Attachment If Necessary)</b>										
Policy Number and Prefix (Itemized)	↓ X	Full Name of Insurance Company and Name and Address of Policy Issuing Agent or Company Office To Which Premium is Paid and Notices are Sent	Type of Policy Premium	Audit Info*	Earn % Minimum	Term in Mos Cov. By Prem.	Effective Date			Policy Premiums
							W/	D/	Y	
		American Home Assurance Co Chicago - IL (Riverside) Hays Companies	WMC State Tax	A	0.0	12	09/14/2004			4,673,820.00 147,304.00
							<b>TOTAL PREMIUMS (Record in "A")</b>			<b>4,821,124.00</b>

\*(AR=ASSIGNED RISK), (A=AUDITABLE), (LS=LOSS SENSITIVE)

#### ADDITIONAL REPRESENTATIONS & WARRANTIES OF BROKER OR AGENT

3. Warrants that this is the authorized Policy issuing agent of the insurance companies or the broker placing the coverage directly with the insurance company on all the Policies scheduled except those indicated with an "X" above.
4. Warrants that there are no policies included in this Agreement which are subject to audit, report of values, retrospective rating, or minimum earned premium, except as indicated below, and that, if there are any, the deposit or provisional premium thereon is not less than the anticipated premium to be earned for the full term of the policy.  
Policy No.(s): \_\_\_\_\_ Minimum earned premium, if any: \$ \_\_\_\_\_
5. Warrants that there are no assigned risk policies in the Schedule of Policies except as indicated in the Schedule of Policies.
6. The Agent or Broker will hold in trust for LENDER any payments made or credited to the Insured through the Agent or Broker directly, indirectly, actually or constructively, by any of the insurance companies listed in the Schedule of Policies and will pay the monies to LENDER upon demand to satisfy the then outstanding balance hereunder.
7. The Agent or Broker will promptly notify LENDER in writing if any information on this Agreement becomes inaccurate.
8. Warrants that all material information concerning the insured and the Policies necessary for Lender to cancel the policies and receive the unearned premium has been disclosed to Lender.
9. There is nothing in any Policy that would require Lender to notify or get the consent of any third party to effect cancellation of such Policy.

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

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**DEBTORS' MEMORANDUM IN SUPPORT OF MOTION FOR EXPEDITED  
HEARING AND ORDER AUTHORIZING DEBTOR INTREPID USA TO  
ENTER INTO INSURANCE PREMIUM FINANCE AGREEMENT**

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**INTRODUCTION**

Intrepid U.S.A., Inc. and the affiliated Debtors referenced above (collectively, "Debtors"), seek an order authorizing them to enter into and perform under the terms of an insurance premium financing agreement (the "Agreement") between Debtors and First Insurance Funding Corporation ("FIFC") or AICCO, Inc. The facts are drawn from and verified in the motion.

**ANALYSIS**

Bankruptcy Rule 9006(a) allows an expedited hearing upon a showing of cause to reduce notice of the hearing on this motion. There is cause here to reduce notice of hearing because the insurance must be in place by September 15, 2004, when Debtors' current insurance expires. As stated in the motion, Debtors have sought insurance for many weeks. It was not until recently that AIG Risk Management made the proposal outlined in the motion. Given the immediate need for insurance coverage, an expedited hearing is appropriate.

The Court should authorize debtors to enter into the insurance premium finance agreement. Bankruptcy Code Section 364(c)(2) provides as follows:

If the [debtor-in-possession] is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt—

\* \* \*

(2) secured by a lien on property of the estate that is not otherwise subject to a lien

As set forth in the verified motion concerning insurance, Debtors, through their insurance agent, contacted numerous insurance companies regarding coverage. AIG Risk Management has agreed to provide insurance, but only if Debtors pay the entire year's premium for the policy, a total of \$1,571,928 plus a surcharge of \$93,489, for a total of \$1,665,417 on or before September 14, 2004 ("Large Deductible Policy").

Debtors do not have such amounts available to them. Debtors, therefore, have turned to FIFC to finance the premium for the Large Deductible Option if they select that policy. Alternatively, Debtors may purchase a guaranteed cost policy from AIG. Such a policy requires a total upfront premium payment of \$4,784,274 ("Guaranteed Cost Policy"). Debtors have also received a proposal from AICCO to finance the premium under the Guaranteed Cost Policy. FIFC and AICCO will make the loans provided that they receive as collateral security an interest in any return or unearned premium.

The proposed terms of the premium financing are, Debtors believe, typical of such terms. Debtors propose financing the total premium costs of the Large Deductible Option by paying a cash down payment of \$392,982 and 8 monthly payments of \$150,145.00, commencing October 14, 2004. The total amount of the monthly payments is \$1,201,160 and the cost of the credit is \$22,214.00. In the alternative, Debtors propose financing the Guaranteed Cost Policy premium by paying a cash down payment of \$1,687,249.01, and seven monthly installments each in the amount of \$454,163.79, commencing on October 14, 2004. The cost of this credit is \$45,271.54.

To secure Debtors' obligations, Debtors will grant FIFC or AICCO the right to cancel the policy should Debtors default in the monthly payments. FIFC or AICCO would be entitled to receive any refund or return premium, which would be applied to Debtors' obligations to FIFC or AICCO. Debtors would be entitled to any remainder. As a condition of the Agreement, FIFC or AICCO would have the right to cancel the policy (based on an event of default such as a payment default under the policy) without seeking further relief from this court.

Debtors do not have sufficient cash on hand or availability under their post-petition line of credit to pay the entire premium costs. Debtors are unable to obtain credit from any other source with administrative expense status in the cases but otherwise unsecured. AIG will not agree to accept payment of the premium over time. Debtors assert that the Court should authorize the credit pursuant to Code § 364(c)(2).

### CONCLUSION

For all the foregoing reasons, Debtors respectfully request that the Court enter an order authorizing them to enter into and perform under the terms of the Insurance Premium Finance Agreements substantially on the terms set out in the motion.

Respectfully submitted,

Dated: September 9, 2004

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#2923850

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

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**ORDER FOR EXPEDITED HEARING AND AUTHORIZING DEBTORS  
TO ENTER INTO AN INSURANCE PREMIUM FINANCE AGREEMENT**

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The hearing on motion of Debtors Intrepid U.S.A., Inc. (the “Debtors”) for an order authorizing them to enter into an insurance premium finance agreement with First Insurance Funding Corporation (“FIFC”) came before the undersigned on September 9, 2004. Appearances, if any, are noted in the record.

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

**IT IS HEREBY ORDERED:**

1. Debtor’s Motion for expedited hearing is granted.
2. In order to avoid immediate and irreparable harm, Debtors are authorized to enter into that certain Insurance Premium Finance Agreement (the “Agreement”) with FIFC and borrow from FIFC the sum of \$1,201,160 substantially on the terms described in the motion.
3. Debtors are authorized to take all actions necessary and appropriate to execute and deliver the agreement, and to perform under the terms of the Agreement, including making all payments due under the Agreement. FIFC is authorized to receive and apply such payments to the indebtedness owed by Debtors to FIFC as provided in the Agreement.

4. If Debtors default in any payment when due and fail to cure such default within 10 days after notice of the default, the automatic stay shall automatically lift to enable FIFC and/or third parties, including insurance companies providing protection under the insurance policies, to take all steps necessary and appropriate to cancel the insurance policies, collect the collateral and apply such collateral to the indebtedness owed to FIFC by the Debtors.

5. FIFC, or any third party exercising such rights, shall comply with the notice provisions and other provisions of the Agreement and applicable law.

BY THE COURT:

Dated: September \_\_\_\_\_, 2004

\_\_\_\_\_  
The Honorable Nancy C. Dreher  
United States Bankruptcy Judge