



Order Filed on December 29, 2015
by Clerk
U.S. Bankruptcy Court
District of New Jersey

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
Caption in Compliance with D.N.J. LBR 9004-1

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Debtors-in-Possession*

In re:

East Orange General Hospital, Inc., *et al.*,¹

Debtors.

Chapter 11

Case No. 15-31232 (VFP)

(Jointly Administered)

**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO OBTAIN POST-PETITION
FINANCING PURSUANT TO 11 U.S.C. §§ 105(a), 362 AND 364(c), (II) GRANTING LIENS
AND SUPERPRIORITY CLAIMS TO THE DIP LENDER PURSUANT TO 11 U.S.C. § 364(c),
AND (III) MODIFYING THE AUTOMATIC STAY**

The relief set forth on the following pages, numbered two (2) through and

including twenty-four (24), is hereby **ORDERED**.

DATED: December 29, 2015

Honorable Vincent F. Papalia
United States Bankruptcy Judge

¹ The Debtors and the last four digits of their Employer Identification Numbers are East Orange General Hospital, Inc. (7166) and Essex Valley Healthcare, Inc. (7667). The Debtors' principal place of business is located at 300 Central Avenue, East Orange, NJ 07018.

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This matter is before the Court upon the motion (the "Motion") [Doc. No. 55] of East Orange General Hospital, Inc. ("EOGH") and Essex Valley Healthcare, Inc. ("EVHI," and together with EOGH, the "Hospital" or "Debtors"), the above-captioned debtors and debtors-in-possession in these chapter 11 cases (the "Chapter 11 Cases"), requesting entry of an interim order (the "Interim Order") and a final order (this "Final Order," and together with the Interim Order, the "DIP Orders") pursuant to sections 105(a), 361, 362, 363 and 364(c) of the title 11 of United States Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"), Rules 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 4001-3 of the Local Rules of the United States Bankruptcy Court for the District of New Jersey:

i. authorizing the Debtors to obtain secured post-petition financing from Indigo Capital Markets, LLC or its affiliates or assigns (the "DIP Lender" or "Lender"), consisting of a term loan credit facility in the aggregate principal amount of up to \$4,000,000 (the "DIP Financing") for the purpose of funding the Debtors' general operating and working capital needs and the administration of the Debtors' Chapter 11 Cases, in accordance with (a) that certain Term Sheet for Debtor-in-Possession Financing, dated November 18, 2015 (the "DIP Term Sheet"), attached to the Motion as **Exhibit B**, as superseded in its entirety by the DIP Financing Documents (as defined below), and (b) the budget attached to the Motion as **Exhibit C** (as amended and attached to the Interim Order and this Final Order as **Exhibit 1**, the "Budget"), of which amount \$750,000 (the "Interim Limit") was made available on an interim

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basis during the Interim Period (as defined in the Interim Order), on the terms and conditions set forth in the DIP Financing Documents (as defined below) and the Interim Order;

ii. authorizing and approving the Debtors' entry into the DIP Term Sheet, as superseded in its entirety by the documents, certificates and/or instruments entered into by the Debtors and the DIP Lender in connection with the DIP Financing, including but not limited to that certain (a) Note dated December 23, 2015 in the original principal amount of up to \$4,000,000 payable by Debtors to DIP Lender (the "Note"), (b) Mortgage and Security Agreement dated December 23, 2015 from EOGH to DIP Lender, (c) Security Agreement dated as of December 23, 2015 among Debtors and DIP Lender, and (d) Assignment of Leases and Rents dated December 23, 2015 from EOGH to DIP Lender (collectively, the "DIP Financing Documents,"² and together with the Debtors' obligations thereunder, the "DIP Financing Obligations"), and performance of such other acts as may be necessary or appropriate in connection with the DIP Financing Documents;

iii. authorizing the Debtors to use proceeds of the DIP Financing solely as permitted by the DIP Term Sheet, as superseded by the DIP Financing Documents, and in accordance with the DIP Orders;

² All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the DIP Financing Documents.

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iv. granting an allowed superpriority administrative expense claim to the DIP Lender with respect to the DIP Financing Obligations pursuant to section 364(c)(1) of the Bankruptcy Code;

v. authorizing the Debtors' continued use of cash collateral pursuant to section 363 of the Bankruptcy Code and granting adequate protection for such use of cash collateral pursuant to sections 361 and 363 of the Bankruptcy Code;

vi. granting to the DIP Lender valid, fully perfected, and enforceable security interests in and liens upon the DIP Collateral (as defined below) pursuant to sections 364(c)(2) and (3) of the Bankruptcy Code;

vii. vacating and modifying the automatic stay pursuant to section 362 of the Bankruptcy Code to the extent necessary to effectuate the terms and provisions of the DIP Financing Documents and the DIP Orders;

viii. subject to, and effective upon entry of, this Final Order, waiving the Debtors' ability to surcharge against the DIP Collateral pursuant to section 506(c) of the Bankruptcy Code; and

ix. granting the Debtors such other and further relief as is just and proper.

Based upon the Court's review of the Motion, the exhibits attached thereto, the *Declaration of Martin A. Bieber in Support of Debtors' Chapter 11 Petitions and First Day Pleadings* (the "First Day Declaration"), filed on November 11, 2015 [Docket No. 13], and upon the record made by the Debtors at the interim hearing (the "Interim Hearing") on the Motion held

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on December 7 and 8, 2015 pursuant to Bankruptcy Rule 4001(c)(2); and the Court having entered the Interim Order on December 11, 2015 [Doc. No. 151] granting the Motion on an interim basis; and the Court having held a final hearing on the Motion on December 29, 2015 (the "Final Hearing"); and after due deliberation and consideration, and the Court having overruled the objection filed by the Patient Care Ombudsman on December 21, 2015 [Doc. No. 205] for the reasons stated on the record at the Final Hearing, and good and sufficient cause appearing therefor,

IT IS HEREBY FOUND, DETERMINED, ORDERED, ADJUDGED AND DECREED, that:³

1. Disposition. The Motion is hereby GRANTED on a final basis, as and to the extent provided herein. Any and all objections to the relief requested in the Motion, to the extent not otherwise withdrawn, waived, or resolved by consent prior to entry of this Final Order or overruled by the Court at the Interim Hearing, are hereby overruled.

2. Jurisdiction. This Court has core jurisdiction over the Chapter 11 Cases, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. This is a "core" proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

³ The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact, as appropriate.

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3. Notice. Based upon the Affidavit(s) of Service filed with the Court, the Debtors have caused to be served copies of the Motion (together with copies of the proposed DIP Term Sheet and Budget annexed thereto), and notice of the Interim Hearing and the Final Hearing by mail to (i) the Office of the United States Trustee for the District of New Jersey (Attn: Mitchell B. Hausman, Esq.), One Newark Center, 1085 Raymond Boulevard, Suite 2100, Newark, NJ 07102; (ii) the New Jersey Health Care Facilities Financing Authority (Attn: Mr. Mark E. Hopkins, Executive Director), Station Plaza Building #4, 22 S. Clinton Ave., Trenton, NJ 08609-1212; (iii) counsel for PNC Bank, National Association, c/o Blank Rome LLP (Attn: Leon R. Barson, Esq.), One Logan Square, 130 North 18th Street, Philadelphia, PA 19103-6998; (iv) The Bank of New York Mellon, as indenture trustee, The Bank of New York Mellon - Public Finance, 385 Rifle Camp Road, Woodland Park, NJ 07424; (v) counsel for the proposed DIP Lender, Moritt Hock & Hamroff LLP (Attn: Marc L. Hamroff, Esq.), 400 Garden City Plaza, Garden City, NY 11530; (vi) counsel to Prospect, c/o Pachulski Stang Ziehl and Jones LLP (Attn: Bradford Sandler and Shirley Cho, Esq.), 10100 Santa Monica Blvd., 13th Floor, Los Angeles, CA 90067; (vii) the Internal Revenue Service, 2970 Market Street, Mail Stop 5-Q30.133, Philadelphia, PA 19104-5016; (viii) the New Jersey Division of Taxation Compliance and Enforcement - Bankruptcy Unit, 50 Barrack Street, 9th Floor, Trenton, NJ 08695; (ix) the New Jersey Department of Health (Attn: Mr. William Conroy, Deputy Commissioner, Health Systems), 369 S. Warren St., Trenton, NJ 08608; (x) the Office of the Attorney General of the State of New Jersey, Division of Law, Richard J. Hughes Justice Complex, 25 Market Street,

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Trenton, NJ 08625; (xi) the Office of the United States Attorney, Peter Rodino Federal Building, 970 Broad Street, Suite 700, Newark, NJ 07102; (xii) the Debtors' twenty largest unsecured creditors on a consolidated basis (with respect to the Interim Hearing only); (xiii) counsel to the Official Committee of Unsecured Creditors (the "Committee"), Trenk, DiPasquale, Della Fera & Sodono, P.C. (Attn: Joseph J. DiPasquale), 347 Mt. Pleasant Avenue, Suite 300, West Orange, New Jersey 07052; (xiv) those parties who have filed a notice of appearance and request for service of pleadings in these Chapter 11 Cases pursuant to Fed. R. Bankr. P. 2002; and (xv) all other entities known to have asserted any lien, claim, interest, or encumbrance in or against the Debtors' assets, and no other or further notice is required.

4. Debtors-in-Possession. As of the date of entry of this Final Order, the Debtors continue to operate their business and manage their properties as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these Chapter 11 Cases.

5. Need for Continued Use of Cash Collateral and DIP Financing.

a. Use of Cash Collateral. The Debtors require continued use of cash collateral in order to pay ordinary and necessary business expenses including, but not limited to, payroll and related obligations, taxes, utilities, amounts owed to vendors and other suppliers of goods and services, insurance, and other expenses that are crucial to patient care and the operational needs of the Hospital. The Debtors do not have sufficient available sources of working capital to operate in the ordinary course of business through consummation of the

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anticipated sale of substantially all of their assets pursuant to section 363 of the Bankruptcy Code, and to fund the payment of all administrative claims and post-closing costs necessary to wind down the Debtors' bankruptcy estates. On December 8, 2015, the Court entered an Order authorizing the Debtors' continued use of the cash collateral of PNC Bank, National Association ("PNC") on a final basis pursuant to the *Final Order (A) Authorizing Postpetition Use of Cash Collateral, (B) Granting Adequate Protection to PNC Bank, N.A., (C) Modifying the Automatic Stay, and (D) Granting Related Relief* [Doc. No. 110] (the "Final Cash Collateral Order").

b. DIP Financing. In addition to the use of PNC's cash collateral, the Debtors need to obtain post-petition financing on a final basis in order to instill confidence in the Debtors' employees, their trade vendors and service providers, their patients, and in the East Orange and surrounding communities, that the Hospital is on stable financial footing and will be able to move forward with the proposed going concern sale. The DIP Financing is a necessary bridge to a closing of a sale of the Hospital as a going concern and, thereafter, an orderly wind-down of the Debtors' affairs. Thus, the Debtors have an urgent need to obtain the DIP Financing pursuant to the terms of the DIP Financing Documents. In order to resolve the objection to the Motion filed by PNC [Doc. No. 93], PNC and the DIP Lender have entered into an intercreditor agreement (the "Intercreditor Agreement") setting forth the respective rights and priorities of PNC and the DIP Lender with respect to, *inter alia*, the Indigo Senior Collateral, Bank Senior Collateral and Common Collateral (all as defined in the Intercreditor Agreement). The form of

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the Intercreditor Agreement was agreed to by PNC and the DIP Lender and the parties thereto are authorized to execute the same on a final basis.

6. Findings Regarding the DIP Financing.

a. Good Cause. Good cause has been shown for the entry of this Final Order and authorization for the Debtors to borrow funds pursuant to the DIP Financing Documents. Entry of this Final Order will preserve the value of the Debtors' assets and is in the best interests of the Debtors, their creditors and their estates. The terms of the proposed financing are fair and reasonable, reflect the Debtors exercise of sound business judgment, and are supported by reasonably equivalent value and fair consideration. The Debtors have an immediate need to obtain the DIP Financing in order to meet their post-petition liquidity needs, including to fund a professional fee reserve held in an escrow account maintained by Debtors' counsel for the benefit of each of the Debtors' and the Committee's retained professionals (the "Professional Fee Reserve"), continue to meet payroll, pay direct operating expenses, obtain necessary goods and services, satisfy other working capital and operational needs, meet their chapter 11-related obligations, successfully sell their business as a going concern, and wind down their bankruptcy estates.

b. No Credit Available on More Favorable Terms. Despite diligent efforts, the Debtors have been unable to obtain financing on more favorable terms from sources other than the DIP Lender under the DIP Financing Documents and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an

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administrative expense. The Debtors are also unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code without granting the DIP Lender, subject to the Carve-Out (as defined below), the DIP Liens and the DIP Superpriority Claim under the terms and conditions set forth in this Final Order and in the DIP Financing Documents.

c. Budget. The Budget attached hereto as Exhibit 1 sets forth, among other things, the projected cash receipts and disbursements for the periods covered therein and which the Debtors believe in good faith to be realistic and achievable. The DIP Lender has relied upon the Budget in entering into the DIP Term Sheet, as superseded by the DIP Financing Documents. The Budget shall be updated and amended on a weekly basis. Any amendments to the Budget must be consistent with the terms of this Final Order and the DIP Financing Documents. The Budget *inter alia*, provides for the weekly funding of professional fees for the Debtors and the Committee into the Professional Fee Reserve. The funding of the Professional Fee Reserve shall be made on a weekly basis, on or prior to each Thursday, from either available cash or from the DIP Financing with evidence of such funding sent simultaneously to the DIP Lender, PNC and each of their respective counsel, and counsel for the Committee. The first \$1,050,000 of funding of the Professional Fee Reserve shall come exclusively from PNC's Cash Collateral (as that term is defined in the Cash Collateral Order) and not from the proceeds of the DIP Financing. All additional funding of the Professional Fee Reserve in excess of the first \$1,050,000 shall come exclusively from the proceeds of the DIP Financing subject to the terms

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and conditions of the DIP Financing Documents. The Debtors represent that as of December 23, 2015, \$1,050,000 (exclusive of interest) was on deposit in the Professional Fee Reserve and, with the exception of a true-up amount of \$40,385 to be deposited in the Professional Fee Reserve from the proceeds of the DIP Financing during the week of December 27, 2015, there exists no unfunded professional fees for the Debtor and the Committee that are provided for on the Budget as of such date. By the 15th day of every month (and more frequently if reasonably requested by the DIP Lender or PNC), the Debtors or their counsel shall provide to the DIP Lender, PNC and their respective counsel, and counsel for the Committee, copies of the escrow account bank statements maintained by Debtors' counsel for the Professional Fee Reserve; provided, however, the Debtors' failure to timely provide such statements in any month shall not constitute an event of default under this Final Order or the DIP Financing Documents unless, after the 15th day of the applicable month, DIP Lender has first provided a written request for such statements to Debtors' counsel and the Debtors have failed to comply with such request within 3 business days after receipt thereof.

d. Certain Conditions Precedent to Closing and Funding. The DIP Lender's willingness and obligation to fund advances to the Debtors under the DIP Financing Documents was conditioned upon, among other things, (i) the Debtors obtaining Court approval of the DIP Term Sheet and all rights and remedies of the DIP Lender thereunder, (ii) the DIP Lender receiving security interests in and liens upon the DIP Collateral as security for the prompt payment of all DIP Financing Obligations, (iii) such security interests and liens having the

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priorities set forth in the DIP Term Sheet, (iv) entry into the DIP Financing Documents including, without limitation, notes, mortgages, security agreements and assignment of leases and rents, the terms of which shall not be inconsistent with the DIP Term Sheet, and (v) entry of a bidding procedures order by the Court on or before December 15, 2015 establishing bidding procedures in connection with the proposed sale of substantially all of the assets of the Debtors. The DIP Financing Documents were executed effective as of December 23, 2015 and the DIP Financing closed on such date. Pursuant to the Interim Order, upon execution of the DIP Financing Documents, the DIP Term Sheet became of no further force and effect

e. Finding of Good Faith. Based upon the record presented at the Interim Hearing and/or the Final Hearing, the DIP Financing was negotiated in good faith and at arm's-length among the Debtors and the DIP Lender. The DIP Financing including, without limitation, all advances made under the DIP Financing Documents and all other liabilities and obligations of the Debtors under the Interim Order and this Final Order owing to the DIP Lender shall be deemed to have been extended by the DIP Lender in "good faith," under section 364(e) of the Bankruptcy Code, and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code. The DIP Lender shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Final Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

7. Authorization of Financing; Use of Proceeds. The Debtors' execution of the DIP Financing Documents is hereby authorized, approved and ratified on a final basis. The

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Debtors are authorized, on a final basis, to (a) execute and deliver the DIP Financing Documents, (b) incur indebtedness and borrow funds pursuant to the DIP Financing Documents to, *inter alia*, fund the Professional Fee Reserve, incur any and all liabilities and obligations thereunder, and pay all interest, fees, costs, expenses (including attorneys' fees) and other obligations provided for under the DIP Financing Documents, but subject to the Expense Cap (as defined in the Note), and (c) satisfy all conditions precedent and perform all obligations thereunder in accordance with the terms thereof. Upon entry of this Final Order, all advances of funds pursuant to the DIP Financing, including the amount and timing thereof, shall be subject to the terms of the DIP Financing Documents.

8. Limitation on Use of Proceeds. None of the proceeds of the DIP Financing shall be used to pay the expenses of the Debtors or any Creditors' Committee in any action against the DIP Lender or to otherwise assert any claims or causes of action against the DIP Lender in any capacity.

9. Execution, Delivery and Performance of DIP Financing Documents. Upon execution and delivery thereof, the DIP Financing Documents shall constitute valid and binding obligations of the Debtors, enforceable against each Debtor in accordance with their terms. Each Debtor is authorized and directed to do and perform all acts, to make, execute, and deliver all instruments and documents (including, without limitation, the execution of security agreements, pledge agreements, mortgages, deeds of trust, deeds to secure debt, financing statements, amendments, waivers, and consents), and to pay all filing and recording fees, in each

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case as may be necessary or desirable to give effect to any of the terms and conditions of the DIP Financing Documents, to validate the perfection of the DIP Liens, or as otherwise required or contemplated by the DIP Financing Documents.

10. DIP Liens. As security for Debtors' payment and performance of all DIP Financing Obligations, the DIP Lender shall have and is hereby granted valid, binding, enforceable, non-avoidable and automatically perfected security interests in and liens upon (collectively, the "DIP Liens") all of the DIP Collateral (as defined below) in the priorities set forth herein, but subject to the Carve-Out (as defined below), without the necessity of the execution (or recordation or other filing) by the Debtors of security agreements, control agreements, pledge agreements, financing statements, mortgages, or other similar documents, on the DIP Collateral (as defined below), whether now owned or hereafter acquired or existing and wherever located, of the Debtors and the Debtors' estates (as created pursuant to section 541(a) of the Bankruptcy Code), and all products, proceeds and supporting obligations of the foregoing, whether in existence on such date or thereafter created, acquired, or arising and wherever located. The DIP Liens shall not be subject to sections 510, 549, 550, or 551 of the Bankruptcy Code. Subject to the Carve-Out (as defined below), the DIP Liens shall consist of the following:

a. First Lien on the Medical Arts Building. Pursuant to section 364(c)(2) of the Bankruptcy Code, the DIP Lender is granted a valid, binding, enforceable, non-avoidable and automatically perfected first priority senior security interest in and lien upon EOGH's fee simple interest in the real property and improvements thereon generally described

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as The Medical Arts Building, 310 Central Avenue, East Orange, New Jersey (the “Property”). EOGH shall execute one or more promissory notes, loan agreements, mortgages, assignment of rents and leases, security agreement and fixture filing plus other documentation and financing statements deemed necessary to DIP Lender which shall evidence a first lien covering all leases, rents, security deposits and personal property owned by EOGH and from time to time installed and/or used in the maintenance and operation of the Property. EOGH shall also execute an Assignment of Rents and Leases covering all leases, present and future, and all rents, income and profits from the Property (including any ground lease). The Property and all of the foregoing arising out of the Property shall hereinafter be referred to as the “MAB Collateral”. Any cash collateral arising from the MAB Collateral (including without limitation, rents, fees, tax remittances, tenant pass-throughs, expense reimbursements, insurance policy proceeds, and condemnation awards) shall constitute part of the MAB Collateral and “Cash Collateral” as such term is defined in section 363(a) the Bankruptcy Code, but shall not be considered cash collateral under (i) that certain *Interim Order (a) Authorizing Postpetition Use of Cash Collateral, (b) Granting Adequate Protection to the Bank, (c) Modifying the Automatic Stay, (d) Scheduling a Final Hearing, and (E) Granting Related Relief*, dated November 13, 2015, or (ii) the Final Cash Collateral Order (collectively, the “Cash Collateral Order”). Notwithstanding anything to the contrary in the Cash Collateral Order, the MAB Collateral shall not be subject to any other mortgages, security interests or liens, and the entire balance of the DIP Financing shall be due and payable upon a sale of the Property. In order to effectuate the relief set forth in this

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paragraph 10.a., (i) the Debtors are hereby authorized to pay and satisfy any amounts that may be due and owing to the East Orange Water Commission with respect to water charges relating to the Property that constitute or, in the absence of payment, will constitute a lien against the Property under New Jersey law, that relate in whole or in part to the prepetition period, in an amount not to exceed \$53,762.69, or such higher amount as may be agreed to by the Debtors and the DIP Lender, if any, and (ii) counsel for the DIP Lender is authorized and directed to release the \$53,762.69 from the escrow established at the closing of the DIP Financing on December 23, 2015 directly to the East Orange Water Commission with instructions that such amounts be credited to the following accounts of the Debtors and in the following amounts:

- Acct. # 999898356 - \$1,270.91
- Acct. # 999899049 - \$51,860.05
- Acct. # 999898378 - \$631.73

b. Blanket Lien on All Other Assets. Pursuant to sections 364(c)(2) and (3) of the Bankruptcy Code, the DIP Lender is granted a valid, binding, enforceable, non-avoidable and automatically perfected security interest in and lien upon all assets of the Debtors, including real property, personal property, general intangibles, equipment, receivables, inventory, goodwill, intellectual property, licenses and the like (together with the MAB Collateral, the "DIP Collateral"); provided, however, that DIP Lender's security interest in and liens against any assets of the Debtors, other than the MAB Collateral, that constitute DIP Collateral shall be subordinate to any prior lien or security interest that PNC or any other entity

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has in such assets (including, but not limited to, the Adequate Protection Liens granted to PNC pursuant to the Cash Collateral Order), and DIP Lender shall not commence any action to foreclose against any real or personal property collateral (except as relates to the MAB Collateral) in which PNC has a senior lien or security interest until all claims of PNC have been paid in full.

11. DIP Superpriority Claim. Pursuant to section 364(c)(1) of the Bankruptcy Code, the DIP Financing Obligations shall constitute claims with a priority over all administrative expenses of the kind specified in sections 503(b) or 507(b) of Bankruptcy Code (the “DIP Superpriority Claim”), subject only to (i) the Carve-Out (as defined below), and (ii) any superpriority administrative expense claim under section 507(b) of the Bankruptcy granted to PNC under the Cash Collateral Order.

12. Expense Cap. The Expense Cap as defined in the Note shall be \$150,000.

13. Advances under DIP Financing. Notwithstanding anything to the contrary in the DIP Financing Documents, any request for an Advance (as defined in the Note) made by the Debtors for the purpose of funding the Professional Fee Reserve in accordance with the Budget and this Final Order shall not be counted solely for purposes of the cap on the number of Advances made under the Note; provided, however, that requests for Advances (as defined in the Note) for any purpose shall not be made more frequently than once a week or for an amount of less than \$50,000.

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14. Reporting to DIP Lender. The Debtors shall deliver to the DIP Lender and counsel for the Committee updates to the Budget on no less than a monthly basis and all reports and disclosures that are delivered to PNC.

15. Events of Default. The following shall constitute Events of Default under the DIP Financing:

- i. The failure by the Debtors to perform or comply with any term of the DIP Orders.
- ii. The cessation of the DIP Financing to be in full force and effect or the DIP Financing being declared by this Court to be null and void, or the validity or enforceability of the DIP Financing being contested by the Debtors or the Debtors denying in writing that they have any further liability or obligation under the DIP Financing prior to the full repayment thereof, or the DIP Lender ceasing to have the benefit of the liens granted by the DIP Orders.
- iii. Any application by the Debtors seeking an order of this Court granting to any party other than DIP Lender a lien or security interest in or against assets that constitute DIP Collateral that is senior or equal to the liens and security interests granted to DIP Lender pursuant to the DIP Financing Documents.
- iv. Until the DIP Financing Obligations are repaid in full, the Debtors shall not make any payment of principal or interest or otherwise on account of any indebtedness or payables other than with respect to (i) obligations under the DIP Financing, (ii) payments to PNC under the Cash Collateral Order or the DIP Orders, (iii) any payment authorized by an order of the Bankruptcy Court, or (iv) any payment made in accordance with the Budget approved by the Lender.
- v. The Debtors fail to make any interest payments due hereunder within three (3) business days of when due.

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- vi. Any Event of Default or occurrence of the Termination Date as defined in the Cash Collateral Order whether or not PNC calls such default or termination, other than an Event of Default or occurrence of the Termination Date that arises solely as a result of entry of the Interim Order or this Final Order.
- vii. The entry of an order in these Chapter 11 Cases granting relief from the automatic stay so as to allow a third party or third parties to proceed against any material (in the DIP Lender's reasonable discretion) property, including the DIP Collateral pledged pursuant to the DIP Financing, of the Debtors or to commence or continue any prepetition litigation against the Debtors involving potential liability not covered by insurance, in excess of \$50,000 in the aggregate.
- viii. Any non-monetary, judgment or order with respect to a postpetition event shall be rendered against a Debtor which does or would reasonably be expected to (i) cause a material adverse change in the financial condition, business, prospects, operations or assets of the Debtor or (ii) have a material adverse effect on the rights and remedies of the DIP Lender hereunder, and there shall be a period of ten (10) consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect.
- ix. The Interim Order or this Final Order being amended or modified without the consent of the DIP Lender.
- x. The occurrence of an event of default under the DIP Financing Documents.

16. Section 506(c) Waiver. No costs or expenses of administration of these Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in chapter 7 or other proceedings under the Bankruptcy Code, shall be charged against or recovered

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from the DIP Collateral or Cash Collateral pursuant to Bankruptcy Code sections 506(c), 552(b) or 105(a) or any similar principle of law without the prior written consent of the DIP Lender.

17. Carve-Out. Notwithstanding anything to the contrary contained in this Final Order or the DIP Financing Documents, the DIP Liens and the DIP Superpriority Claim of the DIP Lender shall be subject and subordinate to the prior payment of the following (collectively referred to herein as, the "Carve-Out"): (i) all unpaid fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code, (ii) after the occurrence and during the continuance of an Event of Default under this Final Order or the DIP Financing Documents and following delivery by the DIP Lender to the professionals retained by the Debtors and the Committee of a written notice (the "Carve-Out Trigger Notice") advising that such Event of Default has occurred, all allowed and unpaid professional fees and out-of-pocket disbursements incurred by the Debtors and the Committee on and after delivery of the Carve-Out Trigger Notice, that remain unpaid subsequent to the payment of such fees and expenses from available funds remaining in the Debtors' estates for such creditors, in an aggregate amount not exceeding \$250,000 (it being understood that such amount shall be made available without regard to the existence of any unused retainer held by any professional), and (iii) all allowed and unpaid professional fees and disbursements (regardless of when such fees and disbursements become allowed by order of the Court) incurred or accrued by the Debtors and the Committee at any time prior to the delivery of a Carve-Out Trigger Notice, in an aggregate amount not exceeding the

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budgeted amounts for such unpaid professional fees and disbursements as reflected in the Budget (it being understood that such amounts shall be made available without regard to the existence of any unused retainer held by any professional and that the Professional Fee Reserve is intended for the payment and reimbursement of such allowed professional fees and disbursements), in each of the foregoing clauses (ii) and (iii), to the extent allowed by the Court; provided, however, that nothing herein shall be construed to impair the ability of any party to object to any of the fees, expenses, reimbursement or compensation described in clauses (ii) and (iii), and provided further that the Carve-Out shall not reduce the amounts payable to the DIP Lender under the DIP Financing.

18. Amendments to DIP Financing Documents. The Debtors and the DIP Lender are hereby authorized to implement, in accordance with the terms of the DIP Financing Documents, any amendments to and modifications of any of the DIP Financing Documents without further order of the Court on the following conditions: (a) the amendment or modification must not constitute a material change to the terms of the DIP Financing Documents, (b) copies of the amendment or modification must be served upon counsel for any Committee, the United States Trustee, and other interested parties that have, prior to entry into such amendment by Debtors and the DIP Lender, specifically made a written request for such notice to counsel for the DIP Lender, and (c) notice of the amendment must be filed with the Court. Any amendment or modification that constitutes a material change, to be effective, must be approved by the Court. For purposes of this paragraph, a “material change” shall mean a change

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that operates to shorten the maturity of the DIP Financing, increase the aggregate amount of the commitments under the DIP Financing, increase the rate of interest other than as currently provided in or contemplated by the DIP Financing Documents, add specific Events of Default or enlarge the nature and extent of default remedies available to DIP Lender following an Event of Default.

19. Relief from Automatic Stay. Subject only to the terms of the Intercreditor Agreement, upon the occurrence of a Termination Event (as defined in the DIP Term Sheet) and the expiration of any applicable cure period, the automatic stay of section 362 of the Bankruptcy Code shall terminate automatically and DIP Lender shall be entitled to enforce its rights under the DIP Financing Documents, the Interim Order and this Final Order against the DIP Collateral, absent further order of the Court.

20. Modification of Automatic Stay. The automatic stay provisions of section 362 of the Bankruptcy Code are hereby modified and lifted to the extent necessary to implement the provisions of this Final Order and the DIP Financing Documents, to file or record any UCC-1 financing statements, mortgages, deeds of trust, security deeds and other instruments and documents evidencing or validating the perfection of the DIP Liens and to enforce the DIP Liens as and to the extent authorized by this Final Order.

21. Repayment of DIP Financing Obligations. Notwithstanding anything to the contrary in any bidding or sale procedures order entered in the Chapter 11 Cases, any order entered approving a sale of substantially all of the Debtors' assets that includes the DIP

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Collateral shall provide for the DIP Financing Obligations to be paid in full to DIP Lender at the closing of such sale.

22. Binding Effect; Successors and Assigns. The DIP Financing Documents and the provisions of this Final Order, including all findings herein, shall be binding upon all creditors and parties in interest in these Chapter 11 Cases including, without limitation, the DIP Lender, PNC, any Committee, any other party that may assert an interest in the DIP Collateral, and the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of either of the Debtors); provided, however, that the DIP Lender shall have no obligation to extend any financing to any chapter 7 trustee or similar responsible person appointed for the estates of the Debtors.

23. Effectiveness; Enforceability. This Final Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable immediately upon entry hereof, notwithstanding the potential applicability of Bankruptcy Rules 4001(a)(3), 6004(h), 7062, or 9014. There shall be no stay of execution or effectiveness of this Final Order; and any stay of the effectiveness of this Final Order that might otherwise apply is hereby waived for cause shown. In the event of any conflict between the terms of this Final Order and any of the DIP Financing Documents, the terms of this Final Order shall control.

24. Notice. To the extent applicable, the notice requirements of Bankruptcy Rule 6004(a) are hereby waived.

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25. Retention of Jurisdiction. This Court shall retain jurisdiction to enforce the provisions of this Final Order, and this retention of jurisdiction shall survive the confirmation and consummation of any chapter 11 plan for any Debtor notwithstanding the terms or provisions of any such chapter 11 plan or any order confirming such chapter 11 plan.

Exhibit 1

DIP Budget

