



**SO ORDERED.**

**SIGNED this 12 day of June, 2017.**

**Austin E. Carter  
United States Bankruptcy Judge**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION**

In re:	)	
	)	Chapter 11
OCONEE REGIONAL HEALTH SYSTEMS, INC., <i>et al.</i> <sup>1</sup> ,	)	Case No. 17-51005-AEC
	)	
Debtors.	)	(Jointly Administered)
	)	

**FINAL ORDER (I) AUTHORIZING DEBTOR IN POSSESSION FINANCING AND USE OF CASH COLLATERAL, (II) AUTHORIZING AND DIRECTING COMPLIANCE WITH DIP DOCUMENTS AND GRANTING LIENS AND ADEQUATE PROTECTION, AND (III) MODIFYING AND GRANTING RELIEF FROM THE AUTOMATIC STAY**

Oconee Regional Health Systems, Inc., Oconee Regional Medical Center, Inc., Oconee Regional Health Services, Inc., Oconee Regional Emergency Medical Services, Inc., Oconee

<sup>1</sup> The last four digits of the employer identification number for each of the Debtors follow in parenthesis: (i) Oconee Regional Health Systems, Inc. (9394), (ii) Oconee Regional Medical Center, Inc. (9398), (iii) Oconee Regional Health Services, Inc. (9397), (iv) Oconee Regional Emergency Medical Services, Inc. (3857), (v) Oconee Regional Health Ventures, Inc. (sometimes d/b/a Oconee Neurology Services) (8516), (vi) Oconee Internal Medicine, LLC (1712), (vii) Oconee Orthopedics, LLC (3694), (viii) ORHV Sandersville Family Practice, LLC (1236), and (ix) Oconee Regional Senior Living, Inc. (5613). The Debtors' corporate mailing address is 821 North Cobb Street, Milledgeville, Georgia, 31061.

Regional Health Ventures, Inc. (sometimes d/b/a Oconee Neurology Services), Oconee Internal Medicine, LLC, Oconee Orthopedics, LLC, ORHV Sandersville Family Practice, LLC, and Oconee Regional Senior Living, Inc. (collectively, the “*Debtors*”), filed a motion (the “*Financing Motion*,” Doc. No. 10) for entry of an order allowing the Debtors to, as set forth in more detail in this Order, (i) borrow funds on the terms of the DIP Documents<sup>2</sup>; (ii) use assets that are collateral for Bonds issued for the Debtors’ benefit; and (iii) provide adequate protection for those Bonds given the Debtors’ borrowing under the DIP Documents and use of the foregoing collateral. This Order constitutes the Court’s findings of fact, rulings of law, and order granting relief on the Financing Motion on a “final order” basis.

The Court previously entered an interim order allowing the Financing Motion on an interim basis (Doc. No. 32) (the “*Interim Order*”), and thereafter scheduled a hearing for June 5, 2017, later continued to June 12, 2017, on notice to parties in interest, to consider entry of a final order on the Financing Motion.

### **I. Findings And Rulings**

A. The Debtors commenced these proceedings (the “*Chapter 11 Cases*”) on May 10, 2017 (the “*Petition Date*”). An Official Committee of Unsecured Creditors (the “*Committee*”) was appointed on May 18, 2017.

B. The Debtors operate a Milledgeville, Georgia acute care hospital (the “*Hospital*”), a small foundation (through a non-Debtor subsidiary), and various related health-care businesses (collectively, the “*Hospital Facilities*”). The Debtors intend to use the Chapter 11 Cases to effect an orderly disposition of their assets, including a going concern sale of the Hospital Facilities.

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<sup>2</sup> Capitalized terms used in this Order but not specifically defined have the meanings set forth in the Financing Motion.

C. The Financing Motion, one of the Debtors' "*First Day Pleadings*", seeks relief to: (i) borrow funds on the terms of the DIP Documents; (ii) use assets that are collateral for Bonds issued for the Debtors' benefit; and (iii) provide adequate protection for those Bonds given the Debtors' borrowing under the DIP Documents and use of the foregoing collateral.

D. The Debtors have given notice of the Financing Motion to the parties through the means identified in the Financing Motion and the Interim Order. This notice is sufficient for the Court to grant the relief set forth in this Order.

E. On May 12, 2017, the Court held a hearing on the Debtors' request for approval of the Financing Motion on an interim basis and thereafter entered the Interim Order.

F. The Court has jurisdiction over the Chapter 11 Cases pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(D). Cause has been shown for the entry of this Order.

G. The Debtors require postpetition financing in the Chapter 11 Cases. The Financing Motion includes at Exhibit B a budget (the "*Budget*") reflecting that, pending the disposition of the Debtors' assets in the Chapter 11 Cases, the Debtors' postpetition expenses are expected to exceed available cash and projected receipts. The DIP Documents have been negotiated in good faith and at arm's-length.

H. The Debtors require continued use of assets that serve as collateral for the Bonds in the Chapter 11 Cases. That collateral includes: (i) the real property and improvements that comprise the Hospital; (ii) revenues and accounts receivable of Debtors Oconee Regional Health Systems, Inc., Oconee Regional Medical Center, Inc., Oconee Regional Health Services, Inc., and Oconee Regional Health Ventures, Inc.; (iii) general intangibles, contracts, and licenses of Debtors Oconee Regional Health Systems, Inc., Oconee Regional Medical Center, Inc., Oconee

Regional Health Services, Inc., and Oconee Regional Health Ventures, Inc.; (iv) equipment, inventory and other tangible personal property of Debtors Oconee Regional Health Systems, Inc., Oconee Regional Medical Center, Inc., Oconee Regional Health Services, Inc., and Oconee Regional Health Ventures, Inc.; and (v) all proceeds of the foregoing (collectively, the “*Existing Collateral*”).<sup>3</sup>

I. The Debtors are required to provide adequate protection to the Bond Trustee in respect of the Debtors’ use of Existing Collateral and in connection with the DIP Facility. The Financing Motion reflects that the Debtors’ obligations on the Bonds secured by the Existing Collateral include, as of the Petition Date: (i) unpaid principal on the Series 1998 Bonds in the amount of \$21,510,000; (ii) accrued but unpaid interest on the Series 1998 Bonds in the amount of \$506,290.30; (iii) unpaid principal on the Series 2016 Bonds in the amount of \$7,250,000; (iv) accrued but unpaid interest on the Series 2016 Bonds in the amount of \$52,361.15; and (v) accrued and unpaid fees and expenses of the Bond Trustee and its professionals (collectively, the “*Bond Claim*”). The Bond Trustee has informed the Debtors it does not consent to postpetition financing or to the use of Existing Collateral except on the terms reflected in the DIP Documents and this Order.

J. The requirements of Bankruptcy Rules 4001(b)(2) and 4001(c)(2) were satisfied with respect to the borrowing of funds under the DIP Documents and use of the Existing Collateral on an interim and preliminary basis pending a final hearing on the Financing Motion. Without postpetition financing through the DIP Documents or use of the Existing Collateral on

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<sup>3</sup> This summary does not modify the scope of the Existing Collateral described in the Bond Documents; the description therein controls to the extent of any conflict with this Order. Certain of the Debtors, including Oconee Regional Emergency Medical Services, Inc., Oconee Regional Senior Living, Inc., and ORHV Sandersville Family Practice, LLC have no known assets. The assets of Oconee Internal Medicine, LLC and Oconee Orthopedics, LLC are not Existing Collateral.

an interim basis, the Debtors would have suffered immediate and irreparable harm pending a final hearing on the Financing Motion.

K. The findings and rulings in the second sentence of Paragraph H and second sentence of Paragraph I of this Order are subject to Paragraph 17 below.

## **II. Order**

### **A. Disposition**

1. The Financing Motion is GRANTED on a final basis as set forth in this Order. Any objections and reservations of rights to the entry of this Order that have not been withdrawn or settled on the terms of this Order are denied and overruled.

### **B. DIP Loans**

2. The Debtors are authorized to: (i) execute and deliver the DIP Documents; (ii) borrow funds thereunder in an aggregate amount of up to \$5,000,000 (each individual advance defined as a “*DIP Loan*”; and collectively, the “*DIP Loans*”); and (iii) perform all acts contemplated by the DIP Documents, including the application of proceeds from any sale, lease, transfer, or other disposition of assets outside of the ordinary course. The DIP Documents are hereby modified with respect to the disposition of proceeds from any sale, lease, transfer, or other disposition of assets outside of the ordinary course: Such amounts shall be remitted to the Bond Trustee and applied by the Bond Trustee first to pay or reserve for payment of all and any obligations associated with the DIP Loan, and second, subject to (i) the expiration of the Investigation Period or (ii) if a Challenge is timely made, a hold-back in an amount agreed by the Bond Trustee and Committee or directed by the Court in an amount reasonably calculated to preserve for further proceedings the amount that would not constitute proceeds of Existing Collateral, the Bond Trustee’s Rollover Liens, or its Prepetition Superpriority Claim if the

Challenge were successful in all respects, to the Bond Trustee for application under the Bond Documents.

3. As security for the Debtors' obligations under the DIP Documents, except as set forth in this Order, the Bond Trustee is granted priming first priority mortgages, pledges, liens and security interests pursuant to Section 364(c)(2), (c)(3), and (d) of the Bankruptcy Code (the "***Postpetition Liens***") in all currently owned or hereafter acquired assets of the Debtors of any kind or nature, whether real or personal, tangible or intangible, wherever located, now owned or hereafter acquired or arising, and all proceeds, products, rents, and profits thereof (all of the foregoing, the "***Postpetition Collateral***"). Postpetition Collateral shall not include actions and recoveries under 11 U.S.C. §§ 542, 544, 545, 547, 548, 550, and 553 (collectively, the "***Avoidance Actions***") or the proceeds thereof. For clarity, (i) Postpetition Collateral shall not include any Trustee Held Funds, and (ii) the Postpetition Liens shall be junior to the liens of any party providing insurance premium financing, but only to the interests of such party providing insurance premium financing in unearned premiums on the subject policy being financed (each, a "***Financed Insurance Policy***"), payments in respect of any losses to the extent such payments reduce the unearned premiums on a Financed Insurance Policy, and dividends on the Financed Insurance Policy (collectively, the "***Liens under the Financed Insurance Policies***"). The Postpetition Liens will be subject only to the Carve-Out, Liens under the Financed Insurance Policies, and remain senior to the Bond Trustee's liens in Existing Collateral, and the Rollover Liens.

4. The DIP Loans shall have the status of a superpriority administrative expense claim pursuant to Section 364(c)(1) of the Bankruptcy Code (the "***Superpriority Claim***") in addition to the secured claims set forth in Paragraph 3 hereof, having priority over all other

unpaid administrative expenses or other claims arising under or specified in 11 U.S.C. §§ 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546, 726, 1113, or 1114 of the Bankruptcy Code (subject only to the Carve-Out), and at all times senior to the rights of the Debtors, any successor trustee or any creditor in the Chapter 11 Cases or any subsequent proceedings under the Bankruptcy Code, whether or not such expenses or claims may become secured by a lien, levy, or attachment. The Superpriority Claim shall be payable solely from the proceeds of the Postpetition Collateral; provided, that if the proceeds of the Postpetition Collateral fail to satisfy the Superpriority Claim in full, then the Superpriority Claim shall be paid from the remaining assets of the Debtors' estates subject only to the Carve-Out.

5. The Debtors' obligations under the DIP Documents constitute valid and binding obligations of the Debtors, enforceable in accordance with their terms and this Order. No obligation, payment, transfer, or grant of security under this Order shall be stayed, restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under any applicable law, or subject to any defense, reduction, setoff, recoupment, or counterclaim.

6. The Debtors, with the express written consent of the Bond Trustee (which consent may be exercised by the Bond Trustee in its sole discretion), may amend the Budget and/or enter into any non-material amendments, consents, waivers, or modifications to the DIP Documents without the need for further notice and hearing or any order of the Court. Notwithstanding the foregoing, either the consent of the Bond Trustee and Committee or approval of the Court shall be required for any amendment to the Budget, or series of amendments over any four (4) week period, that increases the overall aggregate expenditures set forth in the Budget by more than \$250,000.

**Use of Existing Collateral, Adequate Protection**

7. The Debtors are authorized to use Existing Collateral, including Existing Collateral that is cash collateral as defined in the Bankruptcy Code, in accordance with this Order, provided nothing in this Order shall entitle the Debtors to use any Trustee Held Funds.

8. As adequate protection of the Bond Trustee's interests in the Existing Collateral, the Bond Trustee is hereby provided the following adequate protection:

(a) Rollover Liens. For any diminution in the value of the Existing Collateral ("**Diminution**"), the Bond Trustee shall continue to have valid, binding, enforceable, and perfected additional and replacement mortgages, pledges, liens, and security interests in all assets of the Debtors existing on or after the Petition Date, of the same type as the Existing Collateral, to the same extent, priority, and validity that existed as of the Petition Date (the "**Rollover Liens**"); provided, the Rollover Liens shall be subject to the (i) Postpetition Liens, (ii) Carve-Out, and (iii) Liens under the Financed Insurance Policies. For clarity, Rollover Liens shall not include (i) liens on Avoidance Actions, (ii) assets of any Debtor existing immediately prior to the Petition Date that was not Existing Collateral, (iii) assets of any Debtor on or after the Petition Date that would not have been Existing Collateral if it existed immediately prior to the Petition Date, or (iv) the proceeds thereof;

(b) Prepetition Superpriority Claim. For any Diminution, the Bond Trustee shall receive a superpriority expense claim allowed under Section 507(b) of the Bankruptcy Code (the "**Prepetition Superpriority Claim**") against all assets of the Debtors' estates having priority over all other unpaid administrative expenses or other claims arising under or specified in Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546, 726, 1113, or 1114 of the Bankruptcy Code, and at all times senior to the rights of the Debtors, any successor trustee or any creditor in the Chapter 11 Cases or any subsequent proceedings under the Bankruptcy Code, whether or not such expenses or claims may become secured by a lien, levy, or attachment; provided, the Prepetition Superpriority Claim shall only be payable out of the proceeds of the Avoidance Actions or the Debtors' prepetition assets (other than the Existing Collateral) to the extent the proceeds of the Rollover Liens fail to satisfy the Prepetition Superpriority Claim in full. Further, the Prepetition Superpriority Claim shall be subject to the (i) Postpetition Liens, (ii) Carve-Out, and (iii) claims of any party providing financing under a Financed Insurance Policy, but only to the extent of any Liens under the Financed Insurance Policies; and

(c) Compliance with Bond Documents. The Debtors shall comply with those terms and provisions of the Bond Documents relating to the maintenance and insurance of their assets, financial reporting, and the tax exemption for the Bonds.

### **Provisions Common to the DIP Loans and Use of Existing Collateral**

9. In connection with the borrowing of funds pursuant to the DIP Documents and use of Existing Collateral, the Debtors shall:



(a) use proceeds from the DIP Loans, Existing Collateral that is cash collateral and proceeds of Existing Collateral solely for expenses of types reflected in the Budget;

(b) maintain Compliance with the Budget. Compliance with the Budget (“**Compliance**”) means, during the applicable measuring period compared to the Budget for such period (each, a “**Measuring Period**”): (i) aggregate expenditures during such Measuring Period not exceeding 110% of the total budgeted expenditures for such Measuring Period; (ii) total receipts not less than 90% of such budgeted receipts for such Measuring Period; and (iii) expenditures for the estate professional fees shall not exceed 100% of the amount allocated for such expenditures in the Budget for such Measuring Period (both in aggregate and with respect to each professional’s respective line on the Budget) (each a “**Variance**”). Each Variance shall be measured on a rolling four week basis, beginning the fourth week following the funding of the DIP Loan, as shown in the Weekly Budget Report described below; provided, however, the Variance for the Emergency Contingency line item in the Budget shall be measured on a cumulative basis from the funding of the DIP Loan beginning the fourth week following the funding of the DIP Loan. Any budgeted expenditures not paid in a particular budget period (including without limitation budgeted expenditures for professional fees) may be paid during a subsequent period (though not a prior period) and, for the purpose of calculating rolling four week variances set forth above, the Budget will be revised to move such expenditures to the later period, it being understood that such later period can be outside the four-week period;

(c) provide to the Bond Trustee (with copies to the Committee) no later than 5:00 p.m. (prevailing Eastern time) on the third Business Day of each week (and the first such report being due no earlier than the seventh day after the date of the entry of this Order) a weekly report certified by the Debtors and in the same form as the Budget indicating all receipts received and disbursements made by the Debtors, providing for a comparison of the items in the Budget for the preceding week to the Debtors’ actual performance that includes (1) a narrative summary of any Variances from the Budget for the preceding week and on a cumulative basis, and (2) a detailed bank account and loan balance reconciliation and report summarizing, for the previous week, actual cash activity, including expenditures (e.g., checks issued and wire transfers sent) by line item as set forth in the Budget (the “**Weekly Budget Report**”);

(d) reasonably cooperate with the Bond Trustee and its counsel, advisors, appraisers, and professionals with respect to the obligations owing under the Bond Documents, DIP Loans and the Chapter 11 Cases;

(e) provide the Bond Trustee and the Committee and their respective professionals independent access, upon reasonable notice, to the Debtors’ advisors, employees, managers, and professionals with respect to any matter relating to the Chapter 11 Cases, and any reports and information as the Bond Trustee or the Committee may reasonably request from time to time, including but not limited to marketing and sale/affiliation matters, balance sheets, payables, receivables, income statements, and cash flow statements, with all information provided being subject to the confidentiality protections agreed to between the Bond Trustee or

the Committee (as appropriate) and the Debtors;<sup>4</sup>

(f) pursue a sale of the Postpetition Collateral in compliance with the Bankruptcy Milestones;

(g) not grant, suffer, or permit any lien on Trustee Held Funds; and

(h) not grant, suffer, or permit any claim, expense, or lien having priority or being *pari passu* to the priority granted to the Bond Trustee in this Order, except with respect to claims that are included in the Carve-Out.

10. No consent by the Bond Trustee to any administrative claims, including fees and expenses of professionals, shall be implied from any action, inaction or acquiescence. Except as expressly set forth herein, this Order is without prejudice to, and does not constitute a waiver of, or otherwise impair, (a) any of the rights of the Bond Trustee under the Bankruptcy Code or under non-bankruptcy law; or (b) any other rights, claims, or privileges (whether legal, equitable or otherwise) of the Bond Trustee. Nothing contained herein shall alter or modify, or be deemed to alter or modify, the Bond Documents or any other agreement to which the Bond Trustee is party.

11. Subject to the proviso at the end of this Paragraph 11, no amounts under the Carve-Out, the DIP Loans, Existing Collateral, Postpetition Collateral, or proceeds thereof shall be used for the purpose of: (i) contesting or raising any defenses to, the validity, extent, perfection, priority, or enforceability of (a) the Bond Claim or the liens with respect thereto, (b) the DIP Loans or the Postpetition Collateral with respect thereto, or (c) any other rights or interests of the Bond Trustee; (ii) asserting any claims or causes of action, including, without limitation, Avoidance Actions against the Bond Trustee or the holders of the Bonds or invoking the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the

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<sup>4</sup> Nothing in this paragraph shall waive or allow legal counsel for the Bond Trustee or the Committee to communicate directly with personnel, employees, or officers of the Debtors, unless counsel for the Debtors is also included in such communications or upon appropriate waiver by counsel to the Debtors.

Existing Collateral, the Postpetition Collateral or otherwise; (iii) preventing, hindering, or delaying the enforcement or realization by the Bond Trustee, as applicable, upon any of the Existing Collateral or Postpetition Collateral; (iv) incurring indebtedness except as permitted by this Order; (v) funding acquisitions, capital expenditures, capital leases or other transactions not in the ordinary course of the Debtors' business other than as set forth in the Budget; (vi) modifying the rights of the holders of the Bonds; or (vii) pursuing any plan of reorganization that is not consented to by the Bond Trustee; *provided*, up to \$40,000 may be incurred by the Committee during the Investigation Period (as defined below) to investigate the validity, enforceability, perfection, priority, or extent of the Bond Claim, the Existing Collateral, or the Bond Trustee's liens.

**Events of Default, Termination Date**

12. The Debtors' rights to use Existing Collateral and borrow funds under the DIP Documents pursuant to this Order shall expire, and the loans made pursuant to the DIP Documents will mature and become due and payable, on the earlier of (a) the occurrence of any Event of Default; or (b) the Maturity Date (such earlier date, the "*Termination Date*").

13. Notwithstanding the occurrence of an Event of Default, the Bond Trustee may elect in writing not to terminate the Debtors' authority to borrow funds hereunder, to waive defaults hereunder, to forbear from the exercise of rights and remedies hereunder and, subject to five (5) business days' notice to the Committee, Court approval and the approval of the Bond Trustee, to modify the Maturity Date and any Event of Default. Any such continued extension of financial accommodations shall be without prejudice to the Bond Trustee's ability to terminate funding.

14. Notwithstanding the occurrence of an Event of Default or anything herein to the

contrary, all of the rights, remedies, benefits and protections provided to the Bond Trustee shall survive the Termination Date.

15. Without further order from the Court, the automatic stay of Section 362 of the Bankruptcy Code is modified to the extent necessary to permit, upon the occurrence of any Termination Date or if a Challenge is brought under Paragraph 17 of this Order, the Bond Trustee to cease making any advances under the DIP Documents. From and after the entry of this Order, without further order from the Court, the automatic stay of Section 362 of the Bankruptcy Code is modified to the extent necessary to permit, effective on the fifth (5<sup>th</sup>) day after the occurrence of any Termination Date, the Bond Trustee to exercise all rights and remedies against the Postpetition Collateral to satisfy the obligations under the DIP Documents. For clarity, nothing herein precludes the Debtors or Committee from seeking relief they deem appropriate during the aforementioned 5 day period. The Bond Trustee shall be entitled to apply the payments or proceeds of the Postpetition Collateral as it deems appropriate, subject to the Carve-Out, and in no event shall the Bond Trustee be subject to the equitable doctrine of “marshaling” or any other similar doctrine.

**Release, Investigation Period**

16. Subject to Paragraph 17 of this Order, the entry of this Order confirms and constitutes: (i) the release by the Debtors of the Bond Trustee, all holders of the Bonds and their respective attorneys, officers, directors, and employees (solely in their capacities as such) of all claims, causes of action by and liabilities owing to the Debtors arising out of or based upon or related to, in whole or in part, the Bonds, and any aspect of the prepetition relationship between the Bond Trustee and the Debtors and any other acts or omissions by the Bond Trustee in connection with either the Bond Documents or its prepetition relationship with the Debtors; and

(ii) the release by the Debtors and their estates of any and all right to object to or contest the liquidated amount of the Bond Claim or the Bond Trustee's security interests in the Existing Collateral and agreement that all such claims and security interests have been duly perfected and are in all respects valid and enforceable first priority security interests and liens, subject and subordinate only to (i) Postpetition Liens to the extent set forth herein, and (ii) the Carve-Out.

17. Notwithstanding the foregoing paragraph, with respect to claims against the Bond Trustee, an adversary proceeding or contested matter challenging the amount, validity, extent, enforceability, perfection, or priority of the Bond Claim or the Bond Trustee's liens in respect thereof, or otherwise asserting any claims or causes of action against the Bond Trustee and/or holders of the Bonds on behalf of the Debtors' estates (a "**Challenge**"), may be filed by the Committee not later than July 21, 2017 (such period of time, the "**Investigation Period**"). The Committee is hereby granted standing and authority to file a Challenge raising any and all claims and defenses relating thereto. If no Challenge is commenced during the Investigation Period against the Bond Trustee, and/or the holders of the Bonds, then (i) any repayment of the Bond Claim shall be deemed final and indefeasible, not subject to subordination or recharacterization, and otherwise unavoidable, (ii) the Bond Claim shall constitute an allowed claim<sup>5</sup>, not subject to subordination or recharacterization, and otherwise unavoidable, for all purposes in the Chapter 11 Cases and any subsequent Chapter 7 case or cases, (iii) the liens on the Existing Collateral

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<sup>5</sup> To the extent the Bond Trustee seeks payment of fees (including attorneys' fees), costs or charges pursuant to Section 506(b) of the Bankruptcy Code or otherwise seeks payment of fees, costs or charges as an addition to the principal and interest associated with the Bonds, the Bond Trustee shall provide the Debtors and the Committee summary invoices (redacted, as appropriate). The Debtors and the Committee shall have ten (10) business days after receipt of such invoices to review the provided invoices. Following such ten (10) day period, any fees and expenses that are not objected-to shall be allowed and the Debtors are authorized and directed to pay such fees and expenses without further action or authorization of any kind. If an objection is made to all or a portion of the fees and invoices set forth on a particular invoice (or invoices), such amounts will only be allowed and paid by the Debtors when the objection is resolved or as ordered by the Court. For the avoidance of doubt, the Bond Trustee shall be permitted to pay attorneys' fees without the need to submit an invoice to the Debtors or the Committee from funds that do not constitute property of the estate, including amounts paid by the Debtors to the Bond Trustee on accounts of principal or interest on the Bonds. The forgoing supersedes any conflicting terms of the DIP Documents.

shall be deemed legal, valid, binding, perfected, not subject to defense, counterclaim, offset of any kind, subordination and otherwise unavoidable, (iv) the Bond Trustee, the Bond Claim and the liens of the Bond Trustee on the Existing Collateral shall not be subject to any other or further claims, causes of action, or challenges by any party in interest including, without limitation, any successor thereto; and (v) the Bond Trustee, all holders of the Bonds and their respective attorneys, officers, directors, and employees, shall be deemed released of all claims and/or causes of action by, and liabilities owing to, the Debtors, the Committee (but not the individual members thereof in their individual capacities), the Debtors' estates, all parties in interest, and any subsequently appointed trustee arising out of or based on any facts or circumstances occurring prior to the date hereof; provided that if one or more claims are timely under this Paragraph 17 and properly filed, then except for such claims, all other potential claims and causes of action are hereby deemed forever waived and barred. Notwithstanding the foregoing, no claims, or cause of actions of any kind or nature may be asserted against the Bond Trustee in its capacity as lender of the DIP Loans, or the liens and claims granted to the Bond Trustee under and/or related to the DIP Documents, except in the case of gross negligence, willful misconduct or failure to comply with the terms of this Order by the Bond Trustee, as DIP lender.

**Carve-Out**

18. Notwithstanding anything to the contrary in this Order, the liens and claims granted to the Bond Trustee in this Order shall be subject to: (i) fees payable to the U.S. Trustee pursuant to 28 U.S.C. § 1930(a)(6) or to the Clerk of the Bankruptcy Court, plus (ii) unpaid professional fees and expenses payable to each legal or financial advisor retained by the Debtors and the Committee that are incurred or accrued prior to the date of the occurrence of the

Termination Date, but in all events in an amount not to exceed the aggregate amount(s) allocated to each such professional in the Budget and ultimately allowed by the Court pursuant to Sections 328, 330, 331, and 503 of the Bankruptcy Code or any order of the Court (whenever such fees may be actually incurred prior to the Termination Date), plus (iii) \$50,000 (earmarked for wind-down) ((i) through (iii), collectively, the “*Carve-Out*”). Nothing herein shall constitute a waiver of any right of the Bond Trustee to object to fees and expenses of professionals retained by the Debtors or the Committee. The Carve-Out contemplated hereby is intended to represent a single surcharge against the liens, security interests, and superpriority administrative expenses granted under this Order and in partial consideration of the Section 506(c) waiver and waiver of the “equities of the case” exception under Section 552(b) described elsewhere in this Order. For the avoidance of doubt, any funds held by the Debtors as of a Termination Date shall be applied, dollar for dollar, against the Carve-Out.

19. Except to the extent of the Carve-Out, subject to upon the entry of this Order, the “equities of the case” exception under Section 552(b) of the Bankruptcy Code and surcharge powers under Section 506(c) of the Bankruptcy Code are waived, and no expense of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the Postpetition Collateral, the Existing Collateral or collateral subject to Rollover Liens, pursuant to Section 506(c) or 552(b) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the Bond Trustee and no such consent shall be implied from any other action, inaction, or acquiescence by the Bond Trustee.

**Other Protections**

20. The Debtors shall execute and deliver to the Bond Trustee all agreements,

financing statements, instruments and other documents it may reasonably request to evidence, confirm, validate, or perfect the liens granted pursuant hereto; *provided* the liens and security interests in favor of the Bond Trustee provided herein are valid, binding, enforceable, and perfected with the priorities set forth herein without any further action of such parties, including filing any financing statements, mortgages, or other instruments.

21. In accordance with Section 364(e) of the Bankruptcy Code, in the event any provisions of this Order are modified, amended, or vacated, no such modification, amendment, or vacation shall affect the validity and enforceability of any lien or priority authorized or created hereby. Any claim granted to the Bond Trustee hereunder arising prior to the effective date of such modification, amendment, or vacation shall be governed in all respects by the original provisions of this Order and the Bond Trustee shall be entitled to all of the rights, remedies, privileges, and benefits, including the liens and priorities granted herein, with respect to any such claim.

22. To address certain concerns raised by the Committee with respect to the Financing Motion:

- (a) the Budget will be amended to provide Committee professionals a total budget line for the proceedings of \$185,000, reflected in the Budget as a series of equal bi-weekly amounts, through the period covered by the Budget, totaling \$185,000;
- (b) this Order is without prejudice to the rights of the Committee to renew the arguments the Committee set forth in Section VI of its objection concerning allowed claims under 11 U.S.C. § 503(b)(9);
- (c) notwithstanding any contrary provision of this Order or the DIP Documents, the indemnity terms of the DIP Documents shall only indemnify the Bond Trustee, holders of the Bonds and their respective attorneys, officers, directors, and employees in matters directly relating to the DIP Loans. For clarity, the indemnity terms shall not be construed as providing indemnity to the foregoing parties in their capacities as Bond Trustee for, or holders of the Series 1998 Bonds or Series 2016 Bonds or attorneys, officers, directors and employees of the Bond Trustee or holders in such capacities,



- (d) the Committee will receive (i) account balances for funds associated with the Series 1998 Bonds and Series 2016 Bonds held by the Bond Trustee as of the Petition Date; (ii) an accounting of those funds to the extent cumulative distributions in the Chapter 11 Cases make it reasonably likely to conclude that the Bond Claim has been satisfied; and (iii) all information regarding funds associated with the DIP Loans as and when provided to the Debtors;
- (e) any cash or proceeds of non-cash assets distributed to the Bond Trustee from non-debtor parties on account of the bonds will be applied in accordance with the Bond Documents; and
- (f) the Committee will receive all notices and have comparable consultation rights as the Bond Trustee is provided under the DIP Documents.

23. Neither the Bond Trustee nor the holders of the Bonds shall be deemed to be in control of the operations of the Debtors or to be acting as a “responsible person,” “managing agent,” or “owner or operator” (as such terms or any similar terms are used in the United States Comprehensive Environmental Response, Compensation, and Liability Act or any similar Federal or state statute or regulation) with respect to the operation or management of the Debtors.

24. This Order shall take effect immediately. The provisions of this Order shall be binding upon and inure to the benefit of the Bond Trustee, the Debtors and their respective successors and assigns, including any Chapter 7 or Chapter 11 trustee, examiner, or other fiduciary hereafter appointed or elected as a legal representative of the Debtors or with respect to the property of the estates of the Debtors, subject to the terms of this Order.

25. This Order shall be deemed a request by the Bond Trustee for relief from the automatic stay of Section 362 of the Bankruptcy Code and for adequate protection as of the Petition Date for purposes of Section 507(b) of the Bankruptcy Code. The automatic stay of Section 362 of the Bankruptcy Code is hereby modified to permit (i) the Debtors to grant the Postpetition Liens and Rollover Liens to the Bond Trustee, (ii) the Bond Trustee to exercise

possession, control, use, and/or distribution of any funds held by the Bond Trustee as permitted under the Bond Documents, and (iii) the Debtors and Bond Trustee to take any action specifically authorized or contemplated by this Order.

26. The Debtors shall, within three (3) business days after the entry of this Order on the docket in the Chapter 11 Cases, mail copies of this Order and the Financing Motion (unless already served upon such parties) to: counsel to the Bond Trustee; counsel to the Committee; the Debtors' twenty largest unsecured creditors as set forth in the list filed by the Debtors in the Chapter 11 Cases; all known holders of liens on, or equipment leasing interests in, the Debtors' assets; all applicable government agencies to the extent required by the Bankruptcy Rules or local rules of the Court; all parties that have filed a notice of appearance in the Chapter 11 Cases; and the Office of the United States Trustee.

**\*\*\* END OF DOCUMENT \*\*\***

***Prepared and presented by:***

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