SO ORDERED: March 8, 2019.

Jeffrey J. Graham
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:	)	
	)	Case No. 18-07762-JJG-11
FAYETTE MEMORIAL HOSPITAL	)	
ASSOCIATION, INC. d/b/a FAYETTE	)	
REGIONAL HEALTH SYSTEMS,	)	
Debtor.	)	
	)	

FINAL ORDER AUTHORIZING USE OF CASH COLLATERAL AND PROVISION OF ADEQUATE PROTECTION

This matter is before the Court on the *Debtor's First Day Motion Pursuant to 11 U.S.C. §§ 363, 361, and 105, for Authorization to Use Cash Collateral and Provide Adequate Protection* [DN 4] (the "**Motion**")[1] filed by Fayette Memorial Hospital Association, Inc. d/b/a Fayette Regional Health Systems ("**Fayette Regional**" or the "**Debtor**") seeking an order authorizing the estate's use of certain cash collateral and the provision of adequate protection; the *Interim Order Authorizing Use of Cash Collateral and Provision*

[1] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

of Adequate Protection (the "**First Interim Order**") [Docket #31]; the *Second Interim Order Authorizing Use of Cash Collateral and Provision of Adequate Protection* (the "**Second Interim Order**") [DN 63]; the *Third Interim Order Authorizing Use of Cash Collateral and Provision of Adequate Protection* (the "**Third Interim Order**") [DN 146]; the *Fourth Interim Order Authorizing Use of Cash Collateral and Provision of Adequate Protection* (the "**Fourth Interim Order**") [DN 203]; the *Fifth Interim Order Authorizing Use of Cash Collateral and Provision of Adequate Protection* (the "**Fifth Interim Order**") [DN 220], and the *Sixth Interim Order Authorizing Use of Cash Collateral and Provision of Adequate Protection* (the "**Sixth Interim Order**") [DN 255].

The Court having conducted a hearing on the Motion, having considered the relief requested in the Motion, and having considered the Declaration of Samantha Bell-Jent, in support thereof, having been advised that the form of Final Order has been approved by Counsel for the Bond Trustee, Comerica, the Committee, Terrex, and the Debtor (each as defined herein), and being otherwise duly advised in the premises, HEREBY FINDS AS FOLLOWS:

FINDINGS OF FACT

JURISDICTION AND VENUE

A. On October 10, 2018 (the "**Petition Date**"), the Debtor filed a voluntary petition in this Court for reorganization relief under Chapter 11 of Title 11 of the United States Code (the "**Bankruptcy Code**"). The Debtor seeks to operate its businesses and manage its property as debtor-in-possession under Sections 1107(a) and 1108 of the Bankruptcy Code.

B. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this case and this Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

D. An Official Committee of Creditors was appointed on December 5, 2018.

DEBTOR'S BUSINESS OPERATIONS

E. The Debtor is an Indiana not-for-profit corporation that does business as Fayette Regional Health Systems.

F. The Debtor operates a 112-bed acute care hospital, and provides both inpatient, outpatient, emergency, and other ancillary services from its locations in Connersville, Fayette County, Indiana. The hospital and the primary business operations of the Debtor are located at 1941 Virginia Avenue, Connersville, Indiana 47331.

G. The Debtor's operations include a 46-bed residential substance abuse detoxification treatment facility known as North Star Recovery ("**North Star**") that opened for operations within the last few months prior to the Petition Date.

H. The Debtor is also a 51% member in Fayette Regional Health System Pain Management, LLC, an Indiana limited liability company that operates a pain management clinic. The remaining 49% ownership in Fayette Regional Health System Pain Management, LLC, is held by Connersville Pain Management, LLC, an unrelated Ohio limited liability company.

I. At the time of filing, the Debtor had approximately 516 employees (389 full-time and 127 part-time). The Debtor also maintains independent contractor relationships with a variety of individuals and entities that provide healthcare services for the entity's patients.

J. The Debtor owns real property and improvements at 1941 Virginia Avenue, Connersville, Indiana 47331 (the "**Hospital Property**"), as well as real property and improvements at other locations in the area, and also leases certain properties for its operations.

THE CASH COLLATERAL

K. As of October 9, 2018, the Debtor believes its accounts receivable totaled approximately $18,734,410 of which, approximately $12,116,155 was under 90 days (the "**Accounts Receivable**").

L. The Debtor further represented that as of the Petition Date, the Debtor's bank accounts, collectively, other than Comerica Bank Account x0696 and the Comerica Sinking Fund Account x1466, contained cash in the total combined amount of approximately $130,000.00 (the "**Cash**" and together with the Accounts Receivable, the "**Cash Collateral**").

M. The Debtor further represented that it maintains the following bank accounts with Comerica, with the estimated Petition Date balances as set forth below:

Account Name	Account No.	Approx. Petition Date Balance
Operating Account (the "Comerica Operating Account"	x0570	$50,000
Disbursement Account (Payables Account)	x0539	$0
Sinking Fund Account	x1466	$204,500
Cash Collateral Account for Letter of Credit	x0696	$198,000
Inactive Account (Insurance Claims Acct)	x0513	$0
Inactive Account (FSA Account)	x0521	$0

(together, the "**Comerica Bank Accounts**")

FINANCIAL AND ORGANIZATIONAL STRUCTURE

N. By virtue of the loan documents and the transactions described in more detail in the Motion, including but not limited to, the Master Trust Indenture and the supplements thereto, The Bank of New York Mellon Trust Company, as successor trustee to Fifth Third Bank of Central Indiana ("**BNY**" or the "**Bond Trustee**") claims a security interest in, among other collateral, the Cash Collateral[2] and Comerica Bank ("**Comerica**") claims a security interest in all Comerica Bank Accounts.

[2] The Bond Trustee also claims that Wells Fargo Bank, N.A. is a *de minimis* holder and that its interests are *pari passu* with Comerica's interests granted to the Bond Trustee under the Master Trust Indenture (as amended). The Bond Trustee also claims a security interest by virtue of the secured notes (Series 2013A, 2013B, and 2013C) and all other related documents, including, without limitation, all security agreements, mortgages and other security documents executed by Debtor in favor of the Bond Trustee.

O. AmerisourceBergen Drug Corporation ("**ABDC**") claimed a first priority security interest in inventory sold to the Debtor by ABDC prior to the petition date and the proceeds thereof (the "**ABDC Collateral**") and the claim of ABDC was resolved pursuant to the terms of the Second Interim Order and determined in the amount of $14,818.51.

P. The Debtor has indicated it is unaware of any other creditors claiming a security interest in the Debtor's Cash Collateral.

Q. On November 30, 2018, Terrex Construction, LLC ("**Terrex**") and The State of Indiana (the "**State of Indiana**") each filed objections to the Second Interim Order [DNs 128 & 130].

R. Terrex represents that prior to the Petition Date, Terrex and Debtor were counter-parties to a certain ConsensusDocs 415 Standard Design-Build Agreement and General Conditions between Owner and Design-Builder (Lump Sum Price) (the "**Construction Contract**"), pursuant to which Terrex was hired to construct a residential substance abuse detoxification treatment facility (the "**Improvements**") on at the Hospital Property. Terrex represents that on October 16, 2018, Terrex filed a *Sworn Statement and Notice of Lien* with the Fayette County Recorder's Office (the "**Mechanics' Lien**"), as well as a *Notice in Lieu of Seizure of Property or Other Action Pursuant to 11 U.S.C §546(b)* ("**546(b) Notice**") due to Debtor's failure to pay $1,254,237.05 for work completed by Terrex. Terrex asserts that such filings were made in an effort to perfect Terrex's Mechanics' Lien against the Improvements and that such filings were taken in accordance with Indiana state law and the Bankruptcy Code.

S. Terrex asserts that its filing of the Mechanic's Lien and 546(b) Notice has preserved Terrex's right to assert a priority lien on the Improvements, to the extent that a later filed mechanics' lien has priority status, pursuant to Indiana state law. The Bond Trustee and Comerica each claim first priority security interests in various assets of the Debtor, including, but not limited to, the Hospital Property and the Improvements.

T. Terrex has reserved the right to challenge the asserted first priority status of Bond Trustee's and/or Comerica's security interest and/or mortgage only to the extent such liens encumber any of the Improvements, and the Debtor, Bond Trustee and Comerica each reserve all of their respective rights, including, but not limited to, the right to challenge Terrex's assertion of a first priority lien on the Improvements.

RELIEF REQUESTED BY THE DEBTOR

U. By the Motion, the Debtor sought entry of an order authorizing the Debtor to utilize Cash Collateral in accordance with the budget attached thereto and sought authority to provide adequate protection to the Bond Trustee, to Comerica and to ABDC.

V. By the First Interim Order, the Debtor's authority to use cash collateral and provide adequate protection was approved through October 31, 2018.

W. By the Second Interim Order, the Debtor's authority to use cash collateral and provide adequate protection was approved through December 7, 2018.

X. By the Third Interim Order the Debtor's authority to use Cash Collateral was extended through January 11, 2019, subject to the specific terms and conditions set forth therein.

Y. By the Fourth Interim Order, the Debtor's authority to use Cash Collateral was extended through January 25, 2019, subject to the specific terms and conditions set forth therein.

Z. By the Fifth Interim Order, the Debtor's authority to use Cash Collateral was extended through February 8, 2019, subject to the specific terms and conditions set forth therein.

AA. By the Sixth Interim order, the Debtor's authority to use Cash Collateral was extended through February 22, 2019, subject to the specific terms and conditions set forth therein.

BB. On January 18, 2019, the Debtor filed its *Motion for Authority to Enter into Debtor in Possession Financing Agreement with Comerica Bank* [DN 204] (the "**Postpetition Financing Motion**") pursuant to which the Debtor seeks authority to obtain post-petition financing from Comerica (the

"**Postpetition Financing**") on the terms set forth in the Postpetition Financing Motion. On February 4, 2019, the Court conducted hearing on the Postpetition Financing Motion and granted the relief requested therein subject to certain modifications negotiated by and between the Debtor, Comerica, the Bond Trustee, the Committee and Terrex. On February 12, 2019, the Court entered the *Order Authorizing Postpetition Financing* [DN 256] (the "**Final DIP Financing Order**"). The terms of the Final DIP Financing Order are incorporated herein by reference, and capitalized terms used herein and not otherwise defined, shall have the meanings ascribed to them in the Final DIP Financing Order.

CC. The Debtor contends that if it is not permitted to continue to use the Cash Collateral, together with the Postpetition Financing, it will be unable to pay necessary expenses for labor, material and services related to the operation of its business, and as such, entry of this Order will enhance the possibility of maintaining the value of estate assets for the benefit of all creditors and equity interests, including the Bond Trustee and Comerica.

DD. The Debtor asserts that the Cash Collateral will be used by the Debtor to pay actual expenses of the estate necessary for: (1) the maintenance and preservation of assets, including adequate protection payments as authorized or directed by the Court; (2) the continued costs of operating its business, including payment of payroll and employee-related expenses, equipment leases, cost of supplies, third party services, and insurance expenses; (3) professional fees incurred and authorized to be paid in this bankruptcy case, and (4) to pay the fees due the Office of the United States Trustee, if any, during the relevant time period, all as more fully described in the proposed budget attached as Exhibit A (the "**Budget**").

RESERVATION OF RIGHTS

EE. Notwithstanding any other provision herein, the Committee and the Debtor shall have the right to challenge the claims of BNY and/or Comerica to first priority perfected security interests and liens on the Comerica Collateral, the Hospital Property, the Cash Collateral, and all other Bond Trustee Collateral, and to the claims of Comerica to a first priority perfected security interest in Comerica Bank Account numbers x0696 and x1466 (for clarity, this shall not include the right to challenge security interests and liens granted to Comerica to secure the Postpetition Financing), on or before March 5, 2019 (the "**Challenge Period Expiration Date**"). Terrex has delivered to Debtor, Bond Trustee and Comerica a schedule identifying what it asserts are removable Improvements and the cost of those items, along with supporting detail. The Challenge Period Expiration Date for Terrex is therefore extended to a date that is 21 days after the date that counsel for Bond Trustee gives written notice to counsel for Debtor and Terrex, or counsel for Terrex gives written notice to counsel for Debtor and Bond Trustee, of an inability to reach consensual agreement regarding the priority of liens among Terrex, Bond Trustee and Comerica.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Authorization to Use Cash Collateral. Debtor may use Cash Collateral to fund payment of expenses as and when budgeted in the Budget, with a variance of up to 10% per line item allowed (except professional fee line items), provided the aggregate amount of expenditures does not exceed the aggregate Budget. Debtor's use of Cash Collateral for any particular line item in the Budget may not exceed the budgeted amount set forth in such line item plus the variance. Debtor shall not use Cash Collateral except as provided in this Order. Unless extended by the Court upon the written agreement of the Bond Trustee, Comerica the Debtor, and the Committee, this Order and the Debtor's authorization to use Cash Collateral pursuant to this Order will immediately terminate on the earlier to occur of (the "**Termination Date**"): (a) the date on which the Bond Trustee or Comerica provide, via facsimile or overnight mail, written notice to the Debtor and Debtor's counsel of the occurrence of an Event of Default (as defined below) and the expiration of a three (3) business day cure period; or (b) July 31, 2019.

2. Payment of Post-Petition Taxes. The Debtor shall pay when due, all taxes, insurance, assessments and governmental and other charges accrued post-petition, including any and all federal and state withholding taxes, and shall provide to the Bond Trustee and Comerica, on request, copies of depository receipts or other satisfactory evidence of the same.

3. Termination of the Right to Use Cash Collateral. An Event of Default for purposes of this Order shall include, but not be limited to:

a. Failure to comply with any of the adequate protection or reporting obligations set forth herein;

b. Failure to comply with any terms of this Order;

c. The Debtor making any payment not set forth in the Budget, or otherwise approved by Comerica in writing, except that, as necessary to maintain the business operations, the Debtor may exceed the budgeted expenditures in a particular line item (other than professional fees) by up to 10% only to the extent the Debtor limits or reduces its expenditures in other categories, so the resulting effect is that the total expenditures during the budget period do not exceed the total expenses outlined in the Budget;

d. Dismissal or conversion of this case or appointment of a Chapter 11 trustee or examiner; and/or

e. The occurrence of an Event of Default under the terms of the order authorizing the Postpetition Financing.

Upon the occurrence of an Event of Default (that is not cured within the 3 business day cure period), Debtor shall segregate and account for all Cash Collateral then in its possession or control and the Bond Trustee and Comerica shall be entitled to seek relief from the automatic stay under § 362 of the Bankruptcy Code. If the Order is terminated: (1) the obligations of the Debtor and the rights of the Bond Trustee and Comerica, with respect to all transactions which have occurred prior to the Termination Date, shall remain unimpaired and unaffected; (2) the Bond Trustee, Comerica, the Committee, and the Debtor shall retain all of their respective rights and remedies under the Bankruptcy Code, including, without limitation, the Debtor's right to request the continued use of Cash Collateral, and the rights of the Bond Trustee and/or Comerica to contest such continued use of Cash Collateral, and (3) Debtor shall continue to segregate and account for all Cash Collateral then in its possession or control, and Bond Trustee and Comerica shall continue to have the right to apply for relief from the stay under § 362 of the Bankruptcy Code. The Debtor waives the right to object to expedited hearing on any such motion for relief from the stay.

4. Replacement Liens for the Bond Trustee. To the extent the Bond Trustee has valid, enforceable, perfected, and unavoidable prepetition liens on or security interests in the Cash Collateral (the "**Bond Trustee Prepetition Liens**"), as adequate protection under § 363 of the Bankruptcy Code for Debtor's use of Cash Collateral and any diminution in value of the prepetition Cash Collateral and other collateral of the Bond Trustee, the Bond Trustee is hereby granted a continuing and replacement security interest and post-petition liens, which shall be priority liens in the following property of the Debtor as described in the 2013 BNY UCC-1:

> All of the Debtor's right title and interest in and to: (i) the Gross Revenues (subject in all cases to Permitted Encumbrances) as defined in the Master Trust Indenture between Fayette Memorial Hospital Association, Inc. and The Bank of New York Mellon Trust Company, N.A. (ultimate successor to Fifth Third Bank of Central Indiana), as Trustee (the "Trustee"), dated as of November 1, 1992 (as amended, the "Master Indenture"); and (ii) any and all moneys and securities held by the Trustee pursuant to the Master Indenture. Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Master Indenture.

and in the collateral described in the 2016 Mortgage and the 2016 BNY UCC-1, expressly excluding claims or causes of action arising under 11 U.S.C. §§ 544, 545, 547, 548, 549, 553(b), 723(a), or 724(b) (together, the "**Bond Trustee Collateral**").

Such replacement liens in the post-petition Bond Trustee Collateral shall be to the same extent and with the same validity and priority that the Bond Trustee held prepetition, subject only to the claim of the Office of the United States Trustee for the payment of fees under 28 U.S.C. § 1930(a) (the "**Bond Trustee Replacement Liens**"). The Bond Trustee Replacement Liens: (1) are and shall be in addition to the Bond Trustee Prepetition Liens; and (2) shall remain in full force and effect notwithstanding any subsequent conversion of the Bankruptcy Case. None of the Bond Trustee's prepetition interests, including any security interest in or any right of set off against the Comerica Bank Accounts, are impaired by this order, generally, or by Debtor's ability to use Cash Collateral.

5. Replacement Liens for Comerica. To the extent Comerica has valid, enforceable, perfected, and unavoidable prepetition liens on or security interests in the Cash Collateral (the "**Comerica Prepetition Liens**"), as adequate protection under § 363 of the Bankruptcy Code for Debtor's use of Cash Collateral and any diminution in value of the prepetition Cash Collateral, including the Comerica Bank Accounts, Comerica is hereby granted a continuing and replacement security interest and post-petition liens, which shall be priority liens, in the following property of the Debtor (as described in the Comerica UCC-1) and together with the Comerica Bank Accounts, but notwithstanding the language of the collateral description below, expressly excluding claims or causes of action arising under 11 U.S.C. §§ 544, 545, 547, 548, 549, 553(b), 723(a), or 724(b) (the "**Comerica Collateral**"):

a. all of Debtor's right, title and interest (including without limitation, security entitlement) in custodial securities account no. [x0696] maintained at [Comerica], all sub-accounts thereof (collectively, the "Accounts") and all cash, securities, investment property or financial assets now or hereafter deposited or maintained in, or credited to, the Account, and any and all securities accounts in substitution or replacement thereof;

b. all general intangibles (including without limit software) acquired or used in connection with the above; and

c. all additions, attachments, accessions, parts, replacements, substitutions, renewals, interest, dividends, distributions, rights of any kind (including but not limited to stock splits, stock rights, voting and preferential rights), products, and proceeds of or pertaining to the above including, without limit, cash or other property which were proceeds and are recovered by a bankruptcy trustee or otherwise as a preferential transfer by Debtor.

Such replacement liens in the Comerica Collateral shall be to the same extent and with the same validity and priority that Comerica held prepetition, subject only to the claim of the Office of the United States Trustee for the payment of fees under 28 U.S.C. § 1930(a) (the "**Comerica Replacement Liens**"). The Comerica Replacement Liens: (1) are and shall be in addition to the Comerica

Prepetition Liens; and (2) shall remain in full force and effect notwithstanding any subsequent conversion of the Bankruptcy Case. None of Comerica's prepetition interests, including any security interest in and any right of set off against the Comerica Bank Accounts, are impaired by this order, generally, or by Debtor's ability to use Cash Collateral.

6. Liens Generally. Nothing contained in this order is intended to affect or modify the priority of liens as among the Bond Trustee, Comerica, or Terrex, or the liens and protections granted to Comerica by the Final DIP Financing Order.

7. Super Priority Administrative Expense Claims. In the event that the adequate protection provided to Bond Trustee and/or Comerica is insufficient to protect the Bond Trustee or Comerica for the Debtor's use of Cash Collateral or for a diminution in value of Bond Trustee, or Comerica's other collateral, then to that extent, Bond Trustee and Comerica's claims shall have priority under § 507(b) of the Code over all administrative expenses incurred in this Chapter 11 proceeding of the kind specified in § 503(b) of the Code and no such cost or expenses of administration shall be imposed against Comerica or the Bond Trustee, or their respective claims, the Comerica Collateral, the Bond Trustee Collateral, or any other collateral of Comerica or the Bond Trustee under § 506(c) or § 552 of the Bankruptcy Code or otherwise (the "**Surcharge Waiver**"). Notwithstanding the foregoing, in the event of a liquidation of the Debtor, other than after a going concern sale of the Hospital Property, the Surcharge Waiver shall not be effective as against the Bond Trustee and the Bond Trustee Collateral only. The foregoing provisions, including the Surcharge Waiver are further subject to the Carve-Outs (as defined herein and in the Final DIP Financing Order), and subject to the super priority claim in favor of Comerica with respect to the Postpetition Financing, and shall not restrict the Debtor's payment of administrative expenses, including professional fees, provided, that such expenses are in the Budget and the Debtor is not then, and will not as a result of such payment be, in default under this Order or the Final DIP Financing Order.

8. Professional Fee Carve-Outs. Debtor, Bond Trustee, Comerica, and the Committee have agreed to the following carve-outs (the "**Professional Fee Carve-Outs**") from the Bond Trustee and Comerica's prepetition collateral: (a) all fees and expenses of the attorneys, accountants, or other professionals retained by the Debtor and the Committee (the "**Professional Fees and Expenses**") that are in the Budget, and accrue but are unpaid prior to the Termination Date; (b) Professional Fees and Expenses in the maximum amount of $50,000 incurred after the Termination Date (the "**Post-Termination Expenses**"); (c) additional professional fees and expenses in the amount of up to $25,000 incurred related to the dismissal or conversion of the case from Chapter 11 to Chapter 7 or to fund the fees of the Liquidating Trustee under any confirmed Plan (the "**Burial Expenses**"), and (d) the payment of U.S. Trustee fees pursuant to 28 U.S.C. § 1930, provided that all such fees and expenses (other than the fees referenced in (d) herein), shall be subject to approval by a final order of the Court pursuant to Bankruptcy Code sections 326, 328, 330, 331, or 363.

9. GUC Trust Carve-Out. Debtor, Bond Trustee, Comerica, and the Committee have agreed to the following carve-out from the Bond Trustee's and Comerica's prepetition collateral in favor of a General Unsecured Creditors Trust (the "**GUC Trust**"), to be established under the terms of the Debtor's proposed Plan. The Debtor's proposed Plan shall provide for the following distribution of sale proceeds, net only of the H2C transaction fee, the Professional Fee Carve-Outs and reserves (for UST statutory fee, cure costs, holdbacks, allocations, etc.) in a sale of substantially all of the assets of the Debtor (the "**Sale Assets**"):

a. First, to repayment of Comerica of the Post-Petition Indebtedness;

b. Second, $500,000 to the GUC Trust (the "**First GUC Trust Tranche**");

c. Third, $12,000,000 allocated to payment of the Bond Trustee (up the allowed amount of the Bond Trustee's secured claim), and if later applicable, Terrex's secured claim;

d. Fourth, $500,000 to the GUC Trust;

e. Fifth, $3,700,000 to the Bond Trustee (up the allowed amount of the Bond Trustee's secured claim), and if later applicable, Terrex's secured claim; and

f. Sixth, 80% to the Bond Trustee (until the Bond Trustee's allowed secured claim is paid in full) and 20% to the GUC Trust.

The above waterfall does not impair Terrex's rights with respect to the distribution of sale proceeds. The rights of all parties are reserved with respect to all claims by Terrex (and its sub-contractors). The payments allocated to the GUC Trust, are identified herein as the "**GUC Trust Carve-Out**" and together with the Professional Fee Carve-Outs, the "**Carve-Outs**". Provided that if the Committee does not assert a challenge with respect to the prepetition liens of the Bond Trustee and/Comerica, the Bond Trustee and Comerica shall waive any claim against the First GUC Trust Tranche. The Bond Trustee or Comerica, as applicable, shall have a priority security interest in the Postpetition Collateral as additional adequate protection, junior only to the DIP Financing Liens, to the extent that the Postpetition Indebtedness is paid from the proceeds of the Bond Trustee Prepetition Collateral or Comerica Collateral.

10. Banking Relationships and Reporting Requirements. As additional adequate protection for use of the Cash Collateral, and in addition to the replacement liens described above, upon entry of this Order, the Debtor shall, from and after the Petition Date until repayment of the indebtedness to the Bond Trustee and/or Comerica, as applicable:

a. Maintain all of its bank accounts at Comerica, other than U.S. Bank lockbox account (x5957);

b. On a daily basis, transfer all funds from the U.S. Bank lockbox account (x5957) to the Comerica Operating Account (x0570), and utilize the Comerica Operating Account for all disbursements during the term of this Order;

c. Maintain net accounts receivable of 90 days or less ("**90 day A/R**") in an amount not less than $5,000,000, measured weekly as of Friday of each prior week ("**A/R Covenant**"), however, a default of the AR Covenant shall not be an Event of Default under this Order if the advances under the Postpetition Financing for the week after the default (and the aggregate amount of Postpetition Financing) are reduced by the amount by which the 90 day A/R is less than the A/R Covenant amount ("**Covenant Shortfall**"), or, if the Postpetition Financing is fully drawn, the Debtor pays Comerica the amount of the Covenant Shortfall within 2 business days;

d. deliver to the Bond Trustee, Comerica and Committee Counsel: (1) copies of all financial or other information reasonably requested; (2) copies of all operating reports and other financial information filed with the Bankruptcy Court concurrently with the filing thereof; (3) a weekly cash flow statement, on Tuesday of each week, comparing actual receipts and disbursements to the projected receipts and disbursements as set forth in the Budget; (4) all reports or financial information as and when required under Debtor's agreements with Bond Trustee and/or Comerica, and (5) any other reports or information historically provided by the Debtor, with the same frequency and on the same timelines as it has historically been provided;

e. the obligation of the Debtor to make a payment in the amount of $100,000 to the Bond Trustee on or before January 2, 2019 is excused;

f. at all times comply with all laws, statutes, rules, regulations, order and directions of any governmental authority having jurisdiction over the property of the estate;

g. maintain all insurance coverage required to be maintained under the prepetition agreements with the Bond Trustee and Comerica, and the underlying loan documents and, on request, provide the Bond Trustee and/or Comerica, as applicable, with copies of the current certificates and policies of insurance, and promptly after renewal of coverage or after the effective date of coverage (in the event there is a change in insurance carriers);

h. (expressly excluding debt service coverage ratio and liquidity requirements), comply with all other non-monetary obligations under the terms of and, to the extent the Debtor is not already in violation of, the prepetition agreements and underlying loan documents between the Debtor and the Bond Trustee and Comerica;

i. keep current in deposit and payment of all current tax liabilities as they become due by properly making all federal income tax withholding and FICA tax deposits and all federal FUTA tax deposits; and

j. timely file any and all necessary Federal tax returns with the Internal Revenue Service.

11. <u>Sale Milestones</u>. The Debtor shall comply with each of the following milestones ("**Milestones**") related to both a sale and refinancing process:

a. By not later than March 1, 2019, the Debtor shall file a motion(s) necessary to establish bid procedures (which shall include a deadline of April 30, 2019 for final bids, May 2, 2019 as the auction date, and May 7, 2019 as the sale hearing date, subject to the Court's availability) and authorize a sale, all in form and substance satisfactory to Comerica;

b. Subject to the Court's availability, the sale hearing shall occur not later than May 7, 2019, and by not later than May 8, 2019 the Debtor shall obtain an order approving a sale, all in form and substance satisfactory to Comerica;

c. By not later than 21 days after completion of the regulatory approval process, the

Debtor shall close on a sale and/or refinancing transaction that is acceptable to Comerica; and

d. The Debtor shall file a Plan and Disclosure Statement on or before May 1, 2019.

If the Debtor fails to meet any one or more of the above Milestones, it shall constitute an Event of Default under this Order and, in that event, and also if the Debtor has not received a bid that is acceptable to the Debtor, the Committee, Comerica and Bond Trustee on or before April 30, 2019, upon Comerica's request, the Debtor shall send out a WARN Act notice and engage a third party acceptable to Comerica (in consultation with the Committee and the Debtor), to conduct an orderly wind down and liquidation of the Debtor's assets and business (the "**Liquidating Trustee**").

12. Inspection of Books and Records. Upon five (5) business days' notice by the Bond Trustee and/or Comerica, as applicable, the Debtor shall permit the Bond Trustee and/or Comerica and their respective agents full and free access to Debtor's books and records in the possession and control of the Debtor, and place of business to verify the existence, condition, and location of property in which the Bond Trustee and/or Comerica claim a security interest and for the purpose of appraisal, audit, examination and inspection. Failure to satisfy this provision of this Order shall not be deemed a technical Event of Default unless determined to be so by the Court. The Bond Trustee and Comerica shall coordinate so as to avoid duplication of efforts and expenses.

13. Rights to Seek Additional Adequate Protection. Notwithstanding any provision herein, the Bond Trustee and/or Comerica may later seek from the estate additional adequate protection other than that stated herein.

14. Force and Effect of Prepetition Documents; Conflicts. Except as modified herein and subject to the other provisions of this Order and the Bankruptcy Code, the underlying loan documents and prepetition agreements among Debtor, Bond Trustee and/or Comerica (collectively "**Prepetition Agreements**"), and the terms and provisions thereof are ratified and confirmed and shall remain in full force and effect. To the extent there exists any conflict among the Motion, the underlying loan

documents, the Interim Orders and the terms of this Order, this Order shall govern and control.

15. Incurrence of Additional Secured Debt Prohibited. No order shall be entered in this case authorizing the estate to incur debt secured by a lien equal to or superior to or subordinate to the Prepetition or Replacement Liens or the liens securing the Postpetition Financing (the "**Aggregate Liens**"), or given superpriority administrative expense status under 11 U.S.C. § 364(c)(1), unless such debt is sufficient to repay, in full, any debt to the Bond Trustee, and Comerica (including the Postpetition Financing), without the Debtor obtaining written consent to same from the Bond Trustee and Comerica.

16. No Waiver of Rights under the Prepetition Documents. This Order shall not constitute a waiver by the Bond Trustee or Comerica of any of their respective rights under any prepetition agreement with Debtor, the Bankruptcy Code or other applicable law, including, without limitation: (1) the right to assert that, notwithstanding the terms and provisions of this Order, any of their respective interests in the assets of the Debtor and/or Cash Collateral lack adequate protection within the meaning of 11 U.S.C. §§ 362(d) or 363(e); or (2) the right to assert a claim under 11 U.S.C. § 507.

17. Binding Effect of this Order. The terms of this Order constitute a "finding of fact" as to the "adequate protection" of the interests of the Bond Trustee and Comerica, for Debtor's use of both cash and non-cash prepetition collateral of Bond Trustee and Comerica under § 363 of the Code. If any or all of the provisions of this Order are hereafter modified, vacated or stayed by subsequent order of this court or any other court, such termination or subsequent order shall not affect the priority, validity, enforceability or effectiveness of any lien, security interest, priority, or other benefit authorized hereby with respect to any Cash Collateral used prior to the effective date of such subsequent order (and all such liens, security interests, priorities and other benefits shall be governed in all respects by the original provisions of this Order).

18. Continued Effect, and Successors and Assigns. This Order shall be and remain in full force and effect notwithstanding conversion of the Bankruptcy Case or entry of an order appointing a Trustee. Without limiting the generality of the foregoing, the Replacement Liens and security interests granted to the Bond Trustee and Comerica shall survive expiration of this Order. Furthermore, the terms and provisions of this Order shall be binding upon and inure to the benefit of the Bond Trustee and Comerica, the Debtor, the estate, and their respective successors and assigns, including, without limitation, any Debtor or other fiduciary who hereafter succeeds to Debtor's estate in the Bankruptcy Case or in any succeeding or superseding case or proceeding commenced by or against the Debtor or the estate under the Bankruptcy Code or any similar or subsequent law. Bond Trustee and Comerica, in their sole discretion, may in writing waive any covenant or term of this Order that is for the sole benefit of Bond Trustee and/or Comerica.

19. Termination of Authority to Use Cash Collateral. The authority to use Cash Collateral granted to the Debtor by this Order shall expire on the Termination Date unless extended by further order of this Court.

The Debtor shall serve a copy of this Order and notice by first class mail, facsimile or e-mail, within one (1) business day from the date hereof, on the Office of the United States Trustee, the Bond Trustee, Comerica, proposed counsel for the Committee, and all intervenors and counsel of record, to the extent such persons/entities do not already receive a copy through the Court's electronic filing system.

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Fayette Memorial Hospital Association, Inc.

All figures in thousands of U.S. dollars

Week number	1 (P)	2 (P)	3 (P)	4 (P)	5 (P)	6 (P)	7 (P)	8 (P)	9 (P)	10 (P)	11 (P)	12 (P)	13 (P)	14 (P)	15 (P)	16 (P)	17 (P)
Week-ending date	2/8	2/15	2/22	3/1	3/8	3/15	3/22	3/29	4/5	4/12	4/19	4/26	5/3	5/10	5/17	5/24	5/31
Beginning operating cash balance	**516**	**75**	**-**	**-**	**63**	**-**	**138**	**-**	**351**	**91**	**122**	**-**	**363**	**-**	**129**	**-**	**305**
Collections																	
Patient	651	650	650	721	723	725	723	721	718	715	716	717	718	719	719	719	719
340B	60	-	60	-	60	-	60	-	60	-	60	-	60	-	60	-	60
Total collections	**711**	**650**	**710**	**721**	**783**	**725**	**783**	**721**	**778**	**715**	**776**	**717**	**778**	**719**	**779**	**719**	**779**
Operating disbursements																	
Payroll, taxes, and other	745	38	700	38	700	38	700	38	700	38	700	38	700	38	700	38	700
Employee benefits	14	10	14	10	14	10	14	10	14	10	14	10	14	10	14	10	14
Workers compensation	-	-	-	22	-	-	-	-	22	-	-	-	22	-	-	-	-
Group insurance - SIHO (Premiums)	88	460	50	100	15	50	15	50	15	50	15	50	15	100	15	100	15
Billing services	-	-	-	50	-	-	-	-	50	-	-	-	50	-	-	-	-
Purchased services	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7
Contract labor (non-medical)	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15
ESS Group	-	-	-	-	105	-	-	-		105	-	-	105	-	-	-	-
Medical professionals	57	120	-	-	57	120	-	-	57	120	-	-	57	120	-	-	-
Utilities	17	73	18	-	17	73	18	-	17	73	18	-	17	73	18	-	17
Insurances	-	53	-	25	-	53	-	25	-	53	-	25	-	53	-	25	-
Supplies, pharmaceuticals, and dietary	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
Athena EMR system	-	-	103	-	-	-	103	-	-	-	103	-	-	-	103	-	-
Systems support	15	65	-	41	15	65	-	41	15	65	-	41	15	65	-	41	15
Office supplies, postage, and other	1	5	1	5	1	5	1	5	1	5	1	5	1	5	1	5	1
Audit and cost report	-	14	-	-	35	18	-	-	-	40	-	-	-	-	-	-	-
Administrative expense catch-up	88	88	20	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Hospital assessment fees	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total operating disbursements	**1,148**	**1,047**	**1,028**	**413**	**1,082**	**554**	**973**	**291**	**1,013**	**681**	**973**	**291**	**1,118**	**586**	**973**	**341**	**885**
Restructuring related disbursements																	
Claims and noticing agent (BMC)	-	-	-	8	-	-	-	-	8	-	-	-	8	-	-	-	-
Comerica/BNY/Wells Fargo (adequate protection)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Debtor's counsel (Fultz Maddox Dickens)	-	75	-	35	-	30	-	35	-	-	-	35	-	-	-	-	35
Debtor's FA & IB (H2C)	-	-	-	195	-	-	70	-	-	-	70	-	-	-	-	70	-
Committee counsel (Fox Rothschild)	-	-	75	-	-	-	-	40	-	-	-	25	-	-	-	-	25
Security deposits for continued services	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Temporary staff	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4
US Trustee fees (1% of quarterly disb)	-	-	-	-	-	-	-	-	-	-	-	-	83	-	-	-	-
Comerica (loan interest, P+2%)	-	-	-	5	-	-	-	-	13	-	-	-	12	-	-	-	13
Comerica (facility draw fee, 1%)	-	12	4	-	2	-	1	-	-	-	1	-	1	-	1	-	-
Total restructuring related disbursements	**4**	**91**	**82**	**246**	**6**	**34**	**75**	**79**	**24**	**4**	**75**	**64**	**107**	**4**	**4**	**74**	**76**
Total disbursements	**1,152**	**1,138**	**1,111**	**659**	**1,088**	**588**	**1,048**	**370**	**1,038**	**685**	**1,048**	**355**	**1,225**	**590**	**978**	**415**	**961**
NET CASH FLOW	(441)	(488)	(401)	63	(305)	138	(265)	351	(260)	31	(272)	363	(447)	129	(199)	305	(182)
ENDING CASH BALANCE BEFORE LOAN	75	(413)	(401)	63	(242)	138	(128)	351	91	122	(150)	363	(84)	129	(69)	305	123
Loan borrowings	**-**	**413**	**401**	**-**	**242**	**-**	**128**	**-**	**-**	**-**	**150**	**-**	**84**	**-**	**69**	**-**	**-**
LOAN BALANCE	800	1,213	1,614	1,614	1,856	1,856	1,983	1,983	1,983	1,983	2,133	2,133	2,217	2,217	2,286	2,286	2,286
DIP loan accrued interest																	
Accrued	-	1	2	2	2	3	3	3	3	3	3	3	3	3	3	3	3
Paid				(5)					(13)				(12)				(13)
Balance	**-**	**1**	**3**	**-**	**2**	**5**	**8**	**11**	**-**	**3**	**6**	**9**	**-**	**3**	**6**	**10**	**-**

Fayette Memorial Hospital Association, Inc.

All figures in thousands of U.S. dollars

Week number / *Week-ending date*	18 (P) 6/7	19 (P) 6/14	20 (P) 6/21	21 (P) 6/28	22 (P) 7/5	23 (P) 7/12	24 (P) 7/19	25 (P) 7/26	26 (P) 8/2	Post 7/31 Closing	26 weeks ended 8/2
Beginning operating cash balance	**123**	**181**	**-**	**305**	**136**	**345**	**-**	**284**	**-**	**193**	**516**
Collections											
Patient	719	719	719	720	719	719	719	720	719	-	18,499
340B	-	60	-	60	60	-	60	-	60	-	840
Total collections	**719**	**779**	**719**	**780**	**779**	**719**	**779**	**720**	**779**	**-**	**19,339**
Operating disbursements											
Payroll, taxes, and other	38	700	38	700	38	700	38	700	38	-	9,639
Employee benefits	10	14	10	14	10	14	10	14	10	-	316
Workers compensation	22	-	-	-	22	-	-	-	22	-	129
Group insurance - SIHO (Premiums)	50	15	100	15	50	15	100	15	50	-	1,613
Billing services	50	-	-	-	-	50	-	-	-	-	250
Purchased services	7	7	7	7	7	7	7	7	7	-	182
Contract labor (non-medical)	15	15	15	15	15	15	15	15	15	-	390
ESS Group	105	-	-	-	105	-	-	-	105	-	630
Medical professionals	57	120	-	-	-	57	120	-	-	-	1,064
Utilities	73	18	-	17	73	18	-	17	73	-	739
Insurances	53	-	25	-	53	-	25	-	53	-	521
Supplies, pharmaceuticals, and dietary	100	100	100	100	100	100	100	100	100	-	2,600
Athena EMR system	-	103	-	-	-	103	-	-	-	-	618
Systems support	65	-	41	15	65	-	41	15	65	-	806
Office supplies, postage, and other	5	1	5	1	5	1	5	1	5	-	80
Audit and cost report	-	-	-	-	-	-	-	-	-	-	107
Administrative expense catch-up	-	-	-	-	-	-	-	-	-	-	195
Hospital assessment fees	-	-	-	-	-	-	-	-	-	-	-
Total operating disbursements	**650**	**1,093**	**341**	**885**	**543**	**1,081**	**461**	**885**	**543**	**-**	**19,879**
Restructuring related disbursements											
Claims and noticing agent (BMC)	8	-	-	-	8	-	-	-	-	8	45
Comerica/BNY/Wells Fargo (adequate protection)	-	-	-	-	-	-	-	-	-	-	-
Debtor's counsel (Fultz Maddox Dickens)	-	-	-	35	-	-	30	-	-	30	340
Debtor's FA & IB (H2C)	-	-	70	-	-	-	-	70	-	70	615
Committee counsel (Fox Rothschild)	-	-	-	25	-	-	-	-	25	-	215
Security deposits for continued services	-	-	-	-	-	-	-	-	-	-	-
Temporary staff	4	4	4	4	4	4	4	4	4	4	95
US Trustee fees (1% of quarterly disb)	-	-	-	-	-	-	-	101	-	70	254
Comerica (loan interest, P+2%)	-	-	-	-	17	-	-	-	14	4	78
Comerica (facility draw fee, 1%)	-	1	-	-	-	0	-	1	-	-	25
Total restructuring related disbursements	**11**	**5**	**74**	**64**	**28**	**4**	**34**	**175**	**43**	**185**	**1,667**
Total disbursements	**661**	**1,098**	**415**	**948**	**571**	**1,084**	**495**	**1,060**	**585**	**185**	**21,546**
NET CASH FLOW	58	(319)	305	(169)	209	(365)	284	(340)	193	(185)	(2,207)
ENDING CASH BALANCE BEFORE LOAN	181	(138)	305	136	345	(20)	284	(56)	193	9	-
Loan borrowings	**-**	**138**	**-**	**-**	**-**	**20**	**-**	**56**	**-**	**-**	**1,700**
LOAN BALANCE	2,286	2,424	2,424	2,424	2,424	2,444	2,444	2,500	2,500	2,500	2,500
DIP loan accrued interest											
Accrued	3	3	3	3	3	3	4	4	4	4	78
Paid					(17)				(14)	(4)	(78)
Balance	**3**	**7**	**10**	**14**	**-**	**3**	**7**	**11**	**-**	**-**	**-**

EXHIBIT A