

**SO ORDERED**



  
THOMAS J. CATLIOTA  
U.S. BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND

In re:

Parkway Radiology LLC

Debtor

Case No. 18-10737  
Chapter 11

\* \* \* \* \*

INTERIM ORDER AUTHORIZING DEBTOR TO USE  
CASH COLLATERAL, AUTHORIZING DEBTOR TO PROVIDE ADEQUATE  
PROTECTION AND GRANTING CERTAIN RELATED RELIEF

Upon consideration of the Second Motion (the “Motion”) filed by the Debtor, Parkway Radiology LLC (“Debtor”), for entry of an Interim and Final Order Granting Motion to Use Cash Collateral; notice of the Motion together with notice of the hearing thereon having been sufficiently made under the circumstances; and in initial hearing on the Motion (the “Hearing”) having been held, and upon the entire record made at the Hearing, and it appearing the Order the best interests of the Debtor, its estate and creditors and other parties in interest; and after due deliberation and sufficient cause appearing therefore, it is hereby, by the United States Bankruptcy Court for the District of Maryland (this “Court”);

- A. This Court has jurisdiction over this matter pursuant to 28 U.S.C. Section 1334. This is a core proceeding pursuant to 28 U.S.C. Section 157 (b)(2).
- B. Venue of the Debtor's Chapter 11 case and the Motion in this District is proper pursuant to 28 U.S.C. Sections 1408 and 1409.
- C. The Debtor filed its petition under Chapter 11 of the Bankruptcy Code on January 18, 2018 (the "Petition Date") and is presently operating as debtor-in-possession in accordance with Section 1107 and 1108 of the Bankruptcy Code.
- D. The Debtor is a Maryland limited liability company. It owns a radiology lab in Hagerstown, Washington County, Maryland. The Debtor's account receivables are encumbered by a Term Loan, Note and financing statements held by Bank of Charles Town, and tax liens held by Washington County, Maryland and Comptroller of the State of Maryland.
- E. The Debtor requires the use of the accounts receivables in order to pay its trade vendors and other operating costs associated with the maintenance of its business as well as administrative expenses relating to this Chapter 11 case., including, but not limited to, doctors who read xrays and MRI's for Debtor's patients.
- F. The Bank of Charles Town (the "Bank") is a holder of a Revolving Credit Note dated June 10, 2014, a Loan and Security Agreement dated June 10, 2014, as modified, Term Loan Note dated August 20, 2015, a Loan and Security Agreement dated August 10, 2015, and financing statements filed with the Maryland State Department of Assessments and Taxation on June 12, 2014 and August 25, 2015. Without prejudice to the rights of any non-Debtor party in interest, the Debtor acknowledges that pursuant to the Loan Documents the Bank holds a validly perfected lien on the

- Collateral, which lien is not subject to avoidance, disallowance or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law. Without prejudice to the rights of any non-Debtor party in interest, the Debtor further acknowledges that the Washington County, Maryland has statutory tax lien for unpaid personal property taxes due for tax year 2016 in the amount of \$14,500. The County may assert that the County Tax Lien is superior to that lien of the Bank.
- G. Without prejudice to the rights any other non--Debtor party in interest, the Debtor further acknowledges that the State of Maryland has statutory tax lien for unpaid personal property tax due for tax year 2016 in the amount of \$14,424.48. The State may assert that the State Tax Lien is superior to that lien of the Bank.
- H. Without prejudice to the rights of any other non-Debtor party in interest, the Debtor further acknowledges that the revenues, income and profits arising from the use of the Collateral constitute “cash collateral” as that term is defined by 11 U.S.C. Section 363(a) (the “Cash Collateral”) and that the Bank has validly perfect lien on such Cash Collateral (collectively with its lien on the Collateral, the “Prepetition Bank Lien”). The Debtor waives the right to challenge or contest the Prepetition Bank Lien, the Bank’s Cash Collateral, or the validity of the Note.
- I. Without prejudice to the rights of any other non-Debtor party in interest, the Debtor further acknowledges that the revenues, income and profits arising from the use of the Collateral constitute “cash collateral” as that term is defined by 11 U.S.C. Section 363(a) (the “Cash Collateral”) and that Can Capital LLC, by virtue of a Business Loan Agreement dated May 4, 2016 has valid perfected junior lien to the Bank on such Cash Collateral (collectively with its lien on the Collateral, the “Can Capital

Lien”). The Debtor waives the right to challenge or contest the Can Capital Lien, Can Capital’s Cash Collateral, or the validity of the Note.

- J. The Debtor requires the use of the Cash Collateral to continue business operations without interruption and to meet the ordinary cash needs necessary to (a) maintain and preserve the Property, (b) continue the operation of its business, and (c) pay fees and expenses incurred in connection with this bankruptcy cases including, but not limited to, professional fees and quarterly fees due to the Office of the United States Trustee. In the absence of the use of cash collateral, the continued operation of the Debtor’s business would not be possible.
- K. The Bank is entitled, pursuant to Sections 361 and 363(d) of the Bankruptcy Code, to adequate protection of its interest in the Property and the Cash Collateral (collectively, the “Bank’s Collateral”) equal in amount to the degree of diminution in value of the Bank’s interest in the Bank’s Collateral, including, without limitation, any such diminution resulting from (i) the use by the Debtor or other decline in value of Cash Collateral any other Bank’s Collateral and (ii) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code, it is hereby
- ORDERED, as follows:

1. The Motion to Use Cash Collateral on an Interim be and hereby is GRANTED consistent with the terms appearing herein;
2. Subject to the terms of this Order, the Debtor is authorized, on an interim basis, to use the Cash Collateral during the period from the date of this Order through and including May 31, 2018 (the “Expiration Date”) subject to any earlier occurrence of the Termination Date (as defined herein). The Expiration Date of this Order

may be extended upon notice pursuant to Bankruptcy Rule 4001(b) and approval of such extension of the Expiration Date by further Order of this Court.

3. Until the earlier of either the Termination Date or the Expiration Date, the Debtor may use Cash Collateral, but only in the amounts and for the purposes set forth in the budget attached hereto as Exhibit A<sup>1</sup> (the "Budget"). The Debtor shall not, without the prior written consent of the Bank or further Order of this Court, use Cash Collateral to pay expenses under the Budget to the extent such payment would result in an adverse variance on a cumulative basis commencing on the Petition Date through the applicable date of payment of more than 10% with respect to the applicable category (i.e. individual row) of the Budget. To the extent the Debtor makes cash payments in any period of a lesser amount than the amount set forth in the Budget for the applicable expense category, such excess amount shall be carried forward to the next month and may be disbursed by the Debtor at a future date with respect to any expenses in the same expense category, except that payments to professionals permitted under the Budget may be made at a later date if thereafter approved by the Court. Payment by the Debtor of expenses other than the itemized amounts set forth in the Budget pursuant to this numbered paragraph 2 shall constitute a Termination Event (as hereafter defined) unless the Bank consents to such non-conforming payment in advance in writing. The Budget may not be modified or otherwise amended without the consent of the Bank in its sole and absolute discretion, or by Court Order after notice to the Bank. All receipts shall be deposited in the Debtor's debtor-in-possession account.

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<sup>1</sup> As amended to add a monthly fee to Alliant Merchant Services in the amount of \$25.00.

4. Within five (5) days after the entry of this Order, the Debtor shall provide to the Bank an aging of the Debtor's outstanding accounts receivable due from insurance carriers as of January 31, 2018. No later than the 5th day following each calendar month commencing March 2018, the Debtor shall prepare and deliver to the Bank a report for the period ending as of the preceding month, of actual receipts, expenditures, and ending cash compared to the Budget, which shall include a description of any expenditure in excess of the amount provided for in the Budget and the reason therefore. The Debtor will also provide accounts receivable aging as of the last day of the prior month and patient levels for the prior month in accordance with the Motion. The Debtor agrees to provide promptly to the Bank, through its counsel, such additional information and documents as the Bank may reasonably request including, but not limited to, financial statements, A/R reports, copies of contracts, bank statements for the Debtor's debtor-in-possession account, and any information that may be forthcoming in connection with the marketing and potential sale of the practice.
5. The Bank is entitled to adequate protection for any diminution in the value of its interest in the Bank's Collateral, including the Cash Collateral ("Collateral Diminution"). As adequate protection to the Bank of its interest in the Bank's Collateral, the Bank is hereby granted the following:
  - a. Adequate Protection Lien – The Bank shall be and is hereby granted a valid and perfected security interest and replacement lien pursuant to, inter alia, sections 361(2) and 552 (a) and (b) of the Bankruptcy Code in all currently owned or hereafter acquired property of the Debtor of any kind

or nature, whether real or person, tangible or intangible, wherever located, and all proceeds and profits thereof, including without limitation all personal property and fixtures (collectively the “Replacement Bank’s Collateral”) to secure any Collateral Diminution to the same extent, and in the same priority, as the Bank’s lien on the Bank’s Collateral (the “Bank Adequate Protection Lien”) which the County and/or the State may assert is junior to the County Tax Lien and/or the State Tax Lien and which the Bank may assert is senior to the County Tax Lien and/or the State Tax Lien.

- b. Adequate Protection Payments – The Bank shall receive from the Debtor on the first business day of each month adequate protection payments in the amount of 75% of the amount, if any, by which the Debtor’s receipts in the prior month exceeded its disbursements in that month for “Bank’s Adequate Protection Payments” , which payments are agreed are adequate protection payments to the Bank for the interim payments due under the Note.
- c. The Bank’s Adequate Protection Payments shall constitute allowed administrative expense claims under sections 503(b)(1), 507(a) and 507(b) of the Bankruptcy Code (the “507(b) Claims”) with priority in payment over any and all (i) administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, (ii) the claims of any other secured creditors, and (iii) unsecured claims. The 507(b) Claims shall at all times be senior to the rights of the Debtor and

any successor trustee or any creditor in this Chapter 11 or any subsequent cases under the Bankruptcy Code. No cost or expense of administration of the estate under Sections 105, 503(b) or 507(b) of the Bankruptcy Code or otherwise, including those resulting from or arising upon or after the conversion of this case pursuant to Section 1112 of the Bankruptcy Code, shall be senior to the Section 507(b) Claims of the Bank. Notwithstanding the forgoing, the Section 507(b) Claims of the Bank shall be subordinate to (i) quarterly fees required to be paid pursuant to 28 U.S.C. Section 1930(a)(6), (ii) any fees payable to the Clerk of the Bankruptcy Court, and (iii) the payment of allowed fees and expenses incurred by professionals retained pursuant to sections 327, 328 or 1103 of the Bankruptcy Code by the Debtor in the aggregate amount not to exceed \$40,000.00.

Unless the Bank has otherwise agreed in writing, the Debtor's authority to use Cash Collateral shall automatically terminate on the date (the "Termination Date") that is the earlier of: (i) the Expiration Date; and (ii) the date that is five business days after receipt by the Debtor's counsel of written notice from the bank that a Termination Event (as defined herein) has occurred and such Termination Event remains uncured after such five business day period. Upon the Termination Date, the Debtor's right to use Cash Collateral shall immediately terminate, and unless the Debtor within five business days thereafter (i) seeks an extension of, or otherwise contests, the Termination Date, and (ii) requests an expedited hearing before the Bankruptcy Court with respect thereto, the Debtor shall deliver all Cash Collateral to the Bank. The term "Termination Event" means the occurrence of any of the following : (i) the Debtor fails to comply in any material respect with the terms of or obligations under this Order, including by



making any payments not set forth in the Budget or in an amount not within the permitted variance of the Budget; (ii) the Debtor's Chapter 11 case is dismissed or converted to a case under Chapter 7 of the Bankruptcy Code; (iii) entry of an order appointing a chapter 11 trustee or an examiner with enlarged powers, other than an appointment of a trustee or examiner upon a motion of the bank seeking such appointment; (iv) the Debtor failing to have on the last day of any month aggregate accounts receivable due from insurance carriers 90 days old or less, equal to or greater than the aggregate amount of such accounts receivable as of the last day of the prior month; (v) failure of the Debtor to file an Application to Employ a Business Broker to sell the Business on or before February 26, 2018; or (vii) the Debtor's failure to achieve the following patient levels, at the end of each of the following months, in the following amounts:

a. February 2018	min. patient level	165
b. March 2018	min. patient level	175
c. April 2018	min. patient level	185
d. May 2018	min. patient level	200
e. June 2018	min. patient level	215
f. July 2018	min. patient level	235
g. August 2018	min. patient level	250
h. September 2018	min. patient level	265
i. October 2018	min. patient level	285
j. November 2018	min. patient level	315

6. Any termination of the Debtor's right to use Cash Collateral pursuant to the terms of this Order shall be without prejudice to the rights of the Debtor, or any

successor thereto, to request authority from this Court to Cash Collateral or the right of the Bank to contest such request.

7. Unless the Court determines that a party other than the Bank holds a validly perfected lien that is senior to the Bank Prepetition Lien, the Bank Adequate Protection Lien shall be prior and senior to any liens and encumbrances of any other secured creditors on the Replacement Bank Collateral granted or arising after the Petition Date. The Debtor shall not cause or permit, or consent to cause or permit, any liens, or security interests pursuant to Section 364 of the Bankruptcy Code having priority equal or senior to any of the security interest or liens of the Bank. Pursuant to this Order, no expenses of administration of this Chapter 11 case or any future proceedings, including liquidation in bankruptcy, shall be charged against or recovered from the Collateral or the Replacement Bank Collateral under Section 506 of the Bankruptcy Code or any other similar law, other than (i) the quarterly fees required to be paid pursuant to 28 USC Section 1930(a)(6), (ii) any fees payable to the Clerk of the Bankruptcy Court, and (iii) the payment of allowed fees and expenses incurred by professional retained pursuant to Sections 327, 328, or 1103 of the Bankruptcy Code by the Debtor in an aggregate amount not to exceed \$40,000.00.
8. Notwithstanding any other provision in this Order, any party in interest shall have the right to object to the validity, perfection or amount of the Bank Prepetition Lien or to the waiver of the Debtor's right to a Section 506(c) surcharge as provided in Paragraph 6 herein, provided such objection is filed within seventy five (75) days from the entry of this Order. In the event a creditors' committee is

formed in this case, such committee shall have sixty (60) days from the date of its formation within which to file any such objection.

9. The Bank Adequate Protection Lien granted pursuant to this Order shall be deemed created and perfected without the necessity of any execution, filing, or recording of any documents otherwise required under non-bankruptcy law for the creation or perfection of security interests and liens. The validity, enforceability, and priority of the Prepetition Bank Lien, the Bank Adequate Protection Lien, and the Bank Adequate Protection Payments shall not be affected by the occurrence of the Expiration Date or Termination Date, or the conversion, dismissal, or conclusion of the Debtor's bankruptcy case.
10. Nothing herein shall constitute a waiver by the Bank of any right, claim, or assertion that the Bank may subsequently make in these proceedings and nothing herein shall be deemed an admission or concession by the Bank that its regards itself as fully or adequately protected. In addition, nothing in this Order shall limit the Bank's right to: (i) file a motion to dismiss the Debtor's bankruptcy case; (ii) file a motion for relief from or modification of the automatic stay; or (iii) file a motion for appointment of a trustee or examiner.
11. The Debtor is authorized and directed to perform all acts, and to execute and deliver such other documents, instruments and agreements as may be necessary and reasonable to effectuate the terms and conditions of this Order.
12. Subject to entry of any subsequent interim or final Order, the provisions of this Order shall be binding upon and inure to the benefit of the Bank and the Debtor.

13. The Court shall retain exclusive jurisdiction to resolve any dispute arising from or relating to the interpretation or implementation of this Order.

Certification

The proposed Order comports with the Court's ruling, and all interested parties, as directed by the Court, have reviewed the proposed order and approved the order as to form only as evidenced by the electronic signature below.

/s/ Robert L Kline, III  
Robert L Kline, III, 4357  
Attorney for Debtor

Approved to as form only:

/s/ William L Hallam  
William L. Hallam, Esq.  
Joshua D. Bradley, Esq.  
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Attorneys for Bank of Charles Town

cc:  
Robert L Kline, III Esq.  
Kline Law Group LLC  
93 N Main Street  
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END OF ORDER