



Dated: 11/1/2017

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

In re:)
)
Vanguard Healthcare, LLC, *et al.*,¹) Chapter 11
) Case No. 16-03296
Six Cadillac Dr., Suite 310) Judge Mashburn
Brentwood, TN 37027)
Debtors.)

**SIXTH AGREED ORDER FURTHER EXTENDING STIPULATED FINAL ORDER
AUTHORIZING DEBTORS' LIMITED USE OF CASH COLLATERAL, GRANTING
ADEQUATE PROTECTION, AND GRANTING RELATED RELIEF**

This matter comes before the Court upon the joint request for entry of this agreed Order (the "Extension Order") by Vanguard Healthcare, LLC and its affiliated debtors and debtors in possession (collectively, the "Debtors"), secured creditor Healthcare Financial Solutions, LLC ("HFS"), and the Official Committee of Unsecured Creditors (the "Committee"). Currently, the Debtors have authority to use HFS's Cash Collateral under the terms and conditions of the *Stipulated Final Order Authorizing Debtors' Limited Use of Cash Collateral, Granting Adequate Protection, and Granting Related Relief* [Docket No. 168], as modified and extended by the *Agreed Order Extending Stipulated Final Order Authorizing Debtors' Limited Use of Cash Collateral, Granting Adequate Protection, and Granting Related Relief* [Docket No. 590], the *Agreed Order Modifying Extended Cash Collateral Order* [Docket

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Vanguard Healthcare, LLC (9650); Vanguard Healthcare Services, LLC (7563); Vanguard Financial Services, LLC (3403); Aurora Australis, LLC (7099); Boulevard Terrace, LLC (8709); Elderscript Services, LLC (4179); Eldercare of Jackson County, LLC (7855); Glen Oaks, LLC (8238); Palace RBS, LLC (9601); Shady Lawn, LLC (7397); Vanguard of Ashland, LLC (8367); Vanguard of Church Hill, LLC (1049); Vanguard of Crestview, LLC (1046); Vanguard of Manchester, LLC (6203); Vanguard of Memphis, LLC (4623); Vanguard of Ripley, LLC (1050); Vicksburg Convalescent, LLC (7298); and Whitehall OpCo, LLC (6186).

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No. 709], the *Agreed Order Further Extending Stipulated Final Order Authorizing Debtors' Limited Use Of Cash Collateral, Granting Adequate Protection, And Granting Related Relief* [Docket No. 1400], the *Second Agreed Order Further Extending Stipulated Final Order Authorizing Debtors' Limited Use Of Cash Collateral, Granting Adequate Protection, And Granting Related Relief* [Docket No. 1595], the *Agreed Order Further Extending Stipulated Final Order Authorizing Debtors' Limited Use Of Cash Collateral, Granting Adequate Protection, And Granting Related Relief* [Docket No. 1870], the *Fourth Agreed Order Further Extending Stipulated Final Order Authorizing Debtors' Limited Use Of Cash Collateral, Granting Adequate Protection, And Granting Related Relief* [Docket No. 1888], and the *Fifth Agreed Order Further Extending Stipulated Final Order Authorizing Debtors' Limited Use Of Cash Collateral, Granting Adequate Protection, And Granting Related Relief* [Docket No. 2007] (collectively, the "Cash Collateral Order").² The Debtors' authority to use Cash Collateral under the terms of the Cash Collateral Order is scheduled to terminate after October 31, 2017.

The Debtors, HFS and the Committee have agreed to a further extension of the Cash Collateral Order, subject to certain terms and conditions. This agreed Extension Order provides for an extension of the existing Cash Collateral Order through the earlier of January 15, 2018, or the Effective Date of the Plan (as defined in the *Debtors' Fourth Amended Joint Plan of Reorganization* dated October 23, 2017 (Docket No. 2090)), under the terms and conditions provided herein. Given the agreement and consent of the Debtors, HFS and the Committee, the proposed extension of the Cash Collateral Order provided herein is consistent with the terms of the Cash Collateral Order. *See* Cash Collateral Order, Paragraph 2(a).

² Unless otherwise defined herein, capitalized terms used in this Extension Order will have the same meanings provided in the Cash Collateral Order.

The Court having determined that additional notice of the proposed extension of the Cash Collateral Order is not necessary; and the Court having jurisdiction to consider the parties' joint request for relief as proposed in this agreed Extension Order in accordance with 28 U.S.C. §§ 157 and 1334; and the Court having determined that the relief granted pursuant to this Extension Order is in the best interests of the Debtors, their creditors, and all parties in interest; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefore, the Court finds and concludes as follows:

A. Findings in the Cash Collateral Order. The findings by the Court in the Cash Collateral Order remain true and applicable to this Extension Order.

B. Cash Collateral Need. The Debtors' need to use Cash Collateral is immediate and critical to enable the Debtors to administer their Chapter 11 Cases generally, continue to operate their businesses, and preserve the value of their estates for all stakeholders. The ability of the Debtors to pay payroll and other necessary operating expenses requires the availability of working capital from the use of Cash Collateral, the absence of which would immediately and irreparably harm the Debtors, their estates, and their stakeholders. The Debtors do not have sufficient available sources of working capital and financing to pay payroll and other necessary operating expenses without the authorized use of Cash Collateral as provided under this Order.

C. Consent to Debtors' Use of Cash Collateral. Agents are willing to consent to the Debtors' limited use of Cash Collateral during the term of this Extension Order, subject to the terms and conditions set forth in this Extension Order. Agents have not agreed to any other or further use of Cash Collateral by the Debtors for any purpose.

D. Good Cause for Approval. It appears that there is good cause for the Court to authorize the Debtors' continued use of Cash Collateral, subject to the terms and conditions stated in this Extension

Order. Accordingly, based on the foregoing findings and conclusions, and the entire record before the Court in these Chapter 11 Cases; and good and sufficient cause appearing therefor,

IT IS THEREFORE ORDERED:

1. Authority to Use Cash Collateral. Pursuant to Bankruptcy Code §§ 105(a) and 363(c), the Debtors are authorized to use Cash Collateral under (and only under) the terms and conditions set forth in this Extension Order. Except only as expressly modified under this Extension Order, the Cash Collateral Order, including, without limitation, all of its terms, conditions, and protections for Agents and Lenders, shall remain in full force and effect, and all such terms, conditions and protections are incorporated herein by this reference.

2. Termination of Authority. For the period from and after the date of this Extension Order, Paragraph 2 of the Cash Collateral Order is modified and replaced with the following:

a. Unless extended further with the prior written consent of Agents (and, if required by Agents, confirmed by the entry of a further order of the Court), the authorization granted to the Debtors to use Cash Collateral under this Extension Order will automatically terminate upon the earliest to occur of:

(i) The Effective Date of the Plan or January 15, 2018, whichever occurs first, unless (A) on at least five (5) business days' notice to the United States Trustee and the Committee, Agents agree in writing and in their sole discretion to a later date that is approved by the Committee, or (B) the Court approves an extension beyond January 15, 2018 that is acceptable to Agents, in their sole discretion, after notice and an opportunity for a hearing;

(ii) Upon three (3) business days' notice to the Debtors and the Committee by the Agents, any of the Debtors fails to comply fully with the material terms and conditions of this Order;

(iii) The entry of any order granting stay relief allowing any party to enforce any claimed lien or other interest in the Cash Collateral or other Lender Collateral;

(iv) The entry of an order in any of the Chapter 11 Cases (i) converting any of the Chapter 11 Cases to a case under Chapter 7, or (ii) appointing a Chapter 11

trustee or an examiner with enlarged powers relating to the operations of any of the Debtors' businesses;

(v) [intentionally omitted];

(vi) [intentionally omitted]; and

(vii) The filing by the Debtors or entry of an order granting any motion which seeks to grant to a party other than Agents a lien or security interest equal or senior to the liens and security interests held by Agents in any of the Cash Collateral or other Lender Collateral. (Any of the forgoing (i) - (vii) shall be referred to as a "**Termination Event**").

b. Notwithstanding the occurrence of any Termination Event: (i) the rights, claims, security interests, liens and priorities of Agents with respect to all transactions that occurred prior to the occurrence of such Termination Event, including, without limitation, all liens and priority claims confirmed and approved by the Cash Collateral Order and this Extension Order, will remain unimpaired and unaffected by any such Termination Event, and will survive any such Termination Event; and (ii) the Debtors may thereafter obtain an emergency hearing on further authority to use Cash Collateral at a hearing set on at least two (2) business days' notice to Agents, the Committee, and the United States Trustee. Nothing herein shall be deemed a waiver of the Debtors' right to seek authority to continue its use of the Cash Collateral beyond termination of authority under this Extension Order, in accordance with §§ 361 and 363 of the Bankruptcy Code, or the right of Agents or any other party to object thereto.

3. Restrictions on Cash Collateral Use. For the period from and after the date of this Extension Order, Paragraph 3(a) of the Cash Collateral Order is modified and replaced with the following:³

a. The Debtors' use of Cash Collateral shall be in accordance with the "Budget" prepared by the Debtors and approved by Agents (the "**Budget**"). The initial Budget for purposes of this Extension Order is a 13-week budget prepared by the Debtors beginning October 1, 2017. On or before the first Monday of each month, the Debtors shall deliver to Agents, the United States Trustee, and the Committee an updated 13-week budget in form similar to the initial Budget. If (and only after) an updated budget is approved in writing by Agents (in their sole discretion) and the Committee, it shall replace the prior Budget as the Budget for purposes of this Extension Order. The Budget may include a payment of no more than \$200,000 per calendar month during the period from the entry of this Extension Order until the occurrence of a Termination Event to be held on behalf of the Debtors and their estates in a segregated DIP account (the "**Fee Reserve**

³ The remainder of Paragraph 3 of the Cash Collateral Order is not modified, and remains in full force and effect and is included in this Extension Order.

Account") for the payment of the fees and costs of Committee professionals and Debtors' bankruptcy and special counsel; provided, however, that (i) the Debtors shall not make any payments to the Fee Reserve Account when any portion of the payments to Agents under the Cash Collateral Order or this Extension Order are past due, and (ii) in no event shall the Debtors pay into the Fee Reserve Account at any time payments totaling more than \$3,600,000 without Agents' prior written consent. (Funds in the Fee Reserve Account will be used to pay the professional fees and costs of estate professionals once approved, on an interim or final basis, by order of the Court.) To the extent that the Debtors' cash flow is sufficient and only if a Termination Event has not occurred, the Debtors may make the following payments into the Fee Reserve Account: (x) on the last business day of November, 2017, a payment \$200,000; and (y) on the last business day of December, 2017, a payment of \$200,000. Notwithstanding any defaults hereunder, or the occurrence of any Termination Event, neither Agents nor Lenders shall have any rights in the Fee Reserve Account except to the extent funds remain in the Fee Reserve Account after approval of all professionals' fees for whose benefit the Fee Reserve Account is established. Nothing herein shall preclude the Debtors from moving the Court to approve an updated Budget in the event that Agents or the Committee do not approve any proposed updated budget as provided for herein.

4. Monthly Payments to Lenders. On the first day of each month during the term of this Extension Order, the Debtors shall make a payment in the amount of \$560,000 to Agents for the benefit of Lenders as provided in Paragraph 5 of the Cash Collateral Order (which shall apply during the term of this Extension Order).

a. In accordance with the agreement of the Debtors, the Committee and HFS set forth in the *Agreed Order Further Extending Stipulated Final Order Authorizing Debtors' Limited Use Of Cash Collateral, Granting Adequate Protection, And Granting Related Relief* [Docket No. 1400], the monthly payments that Agents actually receive under Paragraph 5 of the Cash Collateral Order for the months of March, April, May, and June 2017 only (collectively, the "Subject Payments") are subject to disgorgement by HFS in certain limited circumstances. In particular, and without affecting any other payments received by Agents, the Subject Payments only (which total no more than \$2,240,000 (4 x \$560,000)) are subject to disgorgement by HFS if, and only if, and to the extent that both: (i) the Court enters a final, appealable adjudication recharacterizing the facility leases for the facilities operated by the Debtors such that the Subject Payments are not lease obligations that the Debtors are required to pay

under Bankruptcy Code §365(d)(3), and (ii) the Court enters a final, appealable adjudication determining that some or all of the Subject Payments to Agents under the Cash Collateral Order were not otherwise permissible on other grounds. The parties' agreement reflected in this Extension Order does not shift the applicable burdens of proof on all related issues. For the avoidance of doubt, the monthly payments that have been, or will be, received by Agents under Paragraph 5 of the Cash Collateral Order for all months prior to March, 2017 and for all months including and after July, 2017, are not Subject Payments, and are not subject to disgorgement by Agents.

b. If and to the extent the Court orders Agents to disgorge the Subject Payments, or any portion thereof, in accordance with Paragraph 4(a) of this Extension Order, the payments returned to the Debtors by Agents shall remain subject to all of Agents' and Lenders' security interests and liens in the funds used by the Debtors to make the Subject Payments. Without limiting the foregoing, to the extent the Subject Payments were made by the Debtors from Cash Collateral, any funds disgorged by Agents back to the Debtors shall constitute Cash Collateral and shall be subject to all of the terms, conditions and protections for Agents and Lenders provided in the Cash Collateral Order, as extended by this Extension Order (or otherwise).

c. Further, to the extent the Court determines that any disgorgement of Subject Payments is required in accordance with Paragraph 4(a) of this Extension Order, all parties fully reserve all of their respective rights and objections regarding the timing of any disgorgement and protections required with respect to the disgorged funds. The Committee also reserves its rights regarding post-judgment interest claims if funds are not disgorged pending an appeal.

5. Termination of Cash Collateral Usage. Upon the termination of the Debtors' authority to use Cash Collateral under this Extension Order, the Debtors shall be prohibited from using the Cash Collateral for any purpose, absent further order of this Court or the prior written consent of Agents.

6. Terms of Cash Collateral Order. Except as expressly stated in this Extension Order, all terms and conditions of the Cash Collateral Order remain in full force and effect with respect to the term of this Extension Order. Without limiting the foregoing in any way, the Lender Replacement Liens granted to Agents, on behalf of Lenders, and the Lender Super-Priority Claim are hereby reaffirmed in all respects and remain in full force and effect. Nothing in this Extension Order will cause or be deemed a waiver or modification of any claim, lien, right, power, or remedy of Agents or Lenders.

**This Order Was Signed And Entered Electronically As Indicated At The Top Of The First Page
APPROVED FOR ENTRY:**

/s/ William L. Norton III

William L. Norton III (TN 10075)

James B. Bailey (*pro hac vice*)

BRADLEY

1600 Division St., Suite 700

Nashville, TN 37203

615-252-2397

bnorton@bradley.com

jbailey@bradley.com

Attorneys for Debtors

/s/ Glenn B. Rose

Glenn B. Rose

Paul G. Jennings

BASS, BERRY & SIMS PLC

150 Third Avenue South, Suite 2800

Nashville, Tennessee 37201

(615) 742-6273

E-mail: pjennings@bassberry.com

grose@bassberry.com

Attorneys for the Official Committee

of Unsecured Creditors

/s/Robert P. Harris

John A. Harris (admitted *pro hac vice*)

Robert P. Harris (admitted *pro hac vice*)

QUARLES & BRADY LLP

Renaissance One
Two North Central Avenue
Phoenix, Arizona 85004-2391
602-229-5200
Email: john.harris@quarles.com
Email: robert.harris@quarles.com
-and-

ADAMS AND REES LLP
Charles W. Cook, III (No. 14274)
424 Church Street, Suite 2700
Nashville, Tennessee 37219
615-259-1450
Email: charles.cook@arlaw.com
Attorneys for Healthcare Financial Solutions, LLC