

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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 In re: : Chapter 11
 :
 LONG BEACH MEDICAL CENTER, *et al.*¹, : Case No. 14-70593 (AST)
 :
 : Jointly Administered
 Debtors. :
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**ORDER PURSUANT TO SECTIONS 105, 361, 362, 363, AND
 364 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 2002,
 4001, AND 9014 (I) AUTHORIZING INCURRENCE BY THE DEBTORS
 OF POSTPETITION SECURED INDEBTEDNESS WITH PRIORITY
 OVER ALL SECURED INDEBTEDNESS AND WITH ADMINISTRATIVE
 SUPERPRIORITY, (II) AUTHORIZING THE USE OF CASH COLLATERAL,
 (III) GRANTING LIENS, AND (IV) MODIFYING THE AUTOMATIC STAY**

Upon the motion, dated November 24, 2014 (the “DIP Motion”) by Long Beach Medical Center (“LBMC”) and Long Beach Memorial Nursing Home, Inc. d/b/a The Komanoff Center for Geriatric and Rehabilitative Medicine (“Komanoff” and, each of LBMC and Komanoff, a “Debtor” and, collectively, the “Debtors”) in the above-captioned Chapter 11 cases (collectively, the “Chapter 11 Cases”), seeking, among other things, entry of a Financing Order (this “Financing Order”):

(i) authorizing the Debtors, under the DIP Facility (as defined below), to obtain credit and incur senior secured debt, pursuant to Sections 363, 364(c), and 364(d) of the title 11 of the United States Code (the “Bankruptcy Code”), up to the aggregate amount of \$1,500,000, and subject to the terms and conditions contained herein,

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Long Beach Medical Center (5084) and Long Beach Memorial Nursing Home, Inc., d/b/a The Komanoff Center for Geriatric and Rehabilitative Medicine (3422).

- a. pursuant to Bankruptcy Code § 364(c)(2), subject to the Carve-Out, as defined herein, secured by a first-priority senior perfected lien on, and security interest in all present and after-acquired assets and property of the Komanoff Debtor not otherwise subject to a lien on the Petition Date, excluding (i) causes of action under Chapter 5 of the Bankruptcy Code (“Avoidance Actions”) and the proceeds of Avoidance Actions; (ii) any property or assets of LBMC and the proceeds thereof (the “LBMC Assets”) and (iii) any insurance proceeds and restricted funds maintained in any segregated account(s) which may only be used for a specific purpose as proscribed by FEMA or any other Governmental Entity, together with the rights to such funds and the segregated account(s) in which they are maintained (the “FEMA Restricted Funds”); and

- b. pursuant to Bankruptcy Code § 364(d)(1), subject to the Carve-Out, by a first-priority, senior priming perfected lien on, and security interest in, all personal and real property of Long Beach Memorial Nursing Home, Inc. d/b/a The Komanoff Center for Geriatric and Rehabilitative Medicine (the “Komanoff Collateral”) that is subject to the lien of the Pension Benefit Guaranty Corporation (the “PBGC”), South Nassau Communities Hospital (“SNCH”), and any other secured creditors holding a valid, prepetition security interest in the Komanoff Collateral (collectively, the “Komanoff Prepetition Secured Creditors”), excluding (i) Avoidance Actions and the proceeds of Avoidance Actions (ii) the LBMC Assets and (iii) any FEMA Restricted Funds; and

- c. pursuant to Bankruptcy Code § 364(c)(3), subject to the Carve-Out, by a lien on, and security interest in, all other property of the Komanoff Debtor that is subject to valid, perfected liens, excluding (i) Avoidance Actions and the proceeds of Avoidance Actions (ii) the LBMC Assets and (iii) any FEMA Restricted Funds; and

- d. by claims, entitled to the benefits of Bankruptcy Code § 364(c)(1), having a super-priority (“Super-Priority Claims”) over any and all administrative expenses of the kind specified in Bankruptcy Code 105, 326, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1113, 1114 or any other provision of the Bankruptcy Code, subject only to the Carve-Out, and excluding (i) Avoidance Actions and the proceeds of Avoidance Actions and (ii) any FEMA Restricted Funds;

(ii) (a) authorizing the Debtors to obtain such post-petition financing (the “DIP Facility”) pursuant to (I) that certain Debtor In Possession Loan and Security Agreement (the “DIP Credit Agreement”),² substantially in the form attached to the DIP Motion as Exhibit A, by and among the Long Beach Medical Center and Long Beach Memorial Nursing Home, Inc., d/b/a the Komanoff Center for Geriatric and Rehabilitative Medicine (collectively, the “Borrower”) and MLAP Acquisition I, LLC and MLAP Acquisition II, LLC (collectively, the “Lender”), and (II) all other agreements, documents, and instruments to be executed and/or delivered with, to, or in favor of the Lender (all documents comprising the DIP Facility, each as may be amended, modified, or supplemented and in effect from time to time, collectively, the “DIP Financing Documents”); (b) authorizing the Debtors to incur the “DIP Loan Obligations” under and as defined in the DIP Credit Agreement and this Financing Order; and (c) authorizing the Debtors to execute and deliver the DIP Financing Documents and to perform such other acts as may be necessary or desirable in connection therewith; all subject to this Financing Order;

(iii) authorizing the Debtors to continue to use any Komanoff cash collateral in which SNCH, the PBGC, and any of the Komanoff Prepetition Secured Creditors have a valid, perfected security interest that the Debtors are holding or may obtain (“Cash Collateral”), all in accordance with the terms of this Financing Order;

(iv) vacating and modifying the automatic stay imposed by Section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Financing Documents and this Financing Order;

² Capitalized terms used but not otherwise defined in this Financing Order shall have the meanings ascribed to such terms in the DIP Credit Agreement.

(v) authorizing the Debtors to grant the SNCH, the PBGC, and any of the Komanoff Prepetition Secured Creditors that have a valid, perfected security interest in the Komanoff Collateral, adequate protection, on account of the grant to the Lender of a priming lien on the Komanoff Collateral and/or the use of Cash Collateral, as applicable, in the form of replacement liens and claims, entitled to the benefits of Bankruptcy Code § 364(c)(1), having a super-priority, excluding (A) Avoidance Actions, (B) Insider Actions (as defined below), (C) the proceeds of Avoidance Actions and Insider Actions and (D) any FEMA Restricted Funds; and

(vi) waiving any applicable stay as provided in the provisions of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and providing for the immediate effectiveness of this Financing Order.

The Bankruptcy Court having considered the DIP Motion, the Declaration of Douglas Melzer, the President and CEO of the Debtors, in support of the Debtors’ first day motions and order, together with the exhibits attached thereto, The Declaration of Monica Terrano in support of the DIP Motion and the Amendment Motion, together with the exhibits attached thereto, the Objection of South Nassau Communities Hospital to the DIP Motion, the DIP Credit Agreement, this Financing Order, the statements made by counsel, and the evidence submitted and adduced at the hearing held before the Court on December 10, 2014 (the “Financing Hearing”); and, in accordance with Bankruptcy Rules 2002, 4001(b), (c), and (d), and 9014 and the Local Bankruptcy Rules for the Eastern District of New York (the “Local Rules”), due and proper notice of the DIP Motion and the Financing Hearing having been given; and the Financing Hearing having been held and concluded; and it appearing that approval of the relief requested in the DIP Motion is necessary to avoid immediate and irreparable harm to the Debtors, and otherwise is fair and reasonable and in the best interests of the Debtors, their

creditors, and their estates, and is essential to preserve and maximize the value of the Debtors' estates for the benefit of all stakeholders; and it further appearing that the Debtors are unable to secure unsecured credit for money borrowed allowable as an administrative expense under Section 503(b)(1) of the Bankruptcy Code; and it appearing that there is adequate protection of the interests of holders of liens on the property of the estates on which liens are to be granted; and all objections, if any, to the entry of this Financing Order having been withdrawn, resolved, or overruled by this Court; and after due deliberation and consideration, and for good and sufficient cause appearing therefor;

IT IS HEREBY FOUND AND DETERMINED THAT:

A. **Petition Date.** On February 19, 2014 (the "Petition Date"), the Debtors each filed a voluntary petition under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Eastern District of New York (the "Bankruptcy Court"). The Debtors are continuing in the management and operation of their businesses and/or property as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. Pursuant to an order of this Court, the Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered.

B. **Jurisdiction and Venue.** This Court has jurisdiction over these proceedings, pursuant to 28 U.S.C. § 1334, and over the persons and property affected hereby. Consideration of the DIP Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue for the Chapter 11 Cases and proceedings on the DIP Motion are proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

C. **Statutory Committee.** On February 28, 2014, the United States Trustee for the Eastern District of New York appointed a statutory committee of unsecured creditors (the “Committee”) in the Chapter 11 Cases.

D. **Notice.** Under the circumstances, Notice given by the Debtors of the Motion, the Financing Hearing and the relief granted under this Financing Order constitutes due and sufficient notice thereof and complies with Bankruptcy Rule 4001 and Local Rule 4001-1.

E. Findings Regarding the Postpetition Financing.

(a) **Need for Postpetition Financing and Use of Cash Collateral.**

An immediate need exists for the Debtors to obtain funds under the DIP Facility and to continue to use Cash Collateral in order to administer and preserve the value of the Debtors’ estates. The ability of the Debtors to preserve, maintain, and maximize the value of their assets for the benefit of their creditors requires the immediate availability of working capital provided pursuant to the DIP Facility. The inability to obtain funding under the DIP Facility and the use of Cash Collateral would immediately and irreparably harm the Debtors, their estates, and their creditors, and irreparably damage the Debtors’ prospects for confirmation of a Chapter 11 plan and/or an efficient and orderly sale or other disposition of their assets as a going concern or otherwise.

(b) **No Credit Available on More Favorable Terms.** The Debtors are unable to obtain unsecured credit allowable under Section 503(b)(1) of the Bankruptcy Code or as an administrative expense. Given their current financial condition, financing arrangements, and capital structure, the Debtors are unable to obtain secured credit pursuant to Sections 364(c)(2), 364(c)(3), and 364(d) on more favorable terms and conditions than those provided in the DIP Financing Documents and this Financing Order.

F. **Application of Proceeds of DIP Collateral.** Subject to the terms of this Financing Order, all proceeds of a sale or other disposition of the DIP Collateral (as defined below), shall be applied: (a) first, to reduce the DIP Loan Obligations pursuant and subject to the provisions of the DIP Credit Agreement; and (b) second, to reduce debt owed to the other Komanoff Prepetition Secured Creditors holding valid, perfected, and enforceable liens on the Komanoff Debtor's assets, in order of priority.

G. **Adequate Protection.** The priming of all valid, perfected, and enforceable liens in the Komanoff Collateral pursuant to Section 364(d) of the Bankruptcy Code, as further described below, and Debtors' use of Cash Collateral enable the Debtors to obtain the DIP Facility, to continue remaining operations, and to maximize the value of their assets for the benefit of their estates and creditors. The Komanoff Prepetition Secured Creditors are being provided adequate protection pursuant to Sections 361, 363, and 364 of the Bankruptcy Code, for any diminution in the value of their respective interests in the Komanoff Collateral resulting from the subordination to the Carve Out (as defined here) and the DIP Liens, the Debtors' use, sale or lease of such Komanoff Collateral and Cash Collateral, and the imposition of the automatic stay (collectively, and solely to the extent of any such actual diminution in value the "Diminution in Value"). Pursuant to Sections 361, 363, and 507(b) of the Bankruptcy Code, as adequate protection to the extent of any Diminution in Value of their respective interests in the Komanoff Collateral and Cash Collateral, the Lender, the PBGC and the other Komanoff Prepetition Secured Creditors, holding a valid, perfected security interest in the Komanoff Collateral, will receive the rights and protections set forth in this Financing Order, including pursuant to paragraph 3 of this Financing Order.

H. **Business Judgment and Good Faith Pursuant to Section 364(e).**

(i) The terms and conditions of the DIP Facility and the DIP Credit Agreement are fair, reasonable, and the best available under the circumstances, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and consideration; (ii) the DIP Facility was negotiated in good faith and at arms' length between the Debtors and the Lender; and (iii) use of the proceeds to be extended under the DIP Facility will be so extended in good faith, and for valid business purposes and uses, as a consequence of which the Lender are entitled to the protection and benefits of Section 364(e) of the Bankruptcy Code.

I. **Best Interest; Good Cause.** The relief requested in the DIP Motion is in the best interest of the Debtors' estates for the Debtors to be allowed to establish the DIP Facility contemplated by the DIP Credit Agreement. Good cause has been shown for the relief requested in the DIP Motion and as granted in this Financing Order.

Based upon the foregoing findings and conclusions, and the record before the Court with respect to the DIP Motion, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. **Motion Granted.** The DIP Motion is hereby granted in accordance with the terms and conditions set forth in this Financing Order and the DIP Financing Agreements, and all objections to the entry of the DIP Motion are overruled.

2. DIP Facility Authorization.

(a) **Approval of Entry Into DIP Financing Agreements.** The Debtors are expressly and immediately authorized, empowered, and directed to execute and deliver the DIP Financing Documents and to incur and to perform the DIP Loan Obligations in accordance with, and subject to, the terms of this Financing Order and the DIP Financing Documents, and to execute and deliver all instruments and documents which may be required or necessary for the performance by the Debtors under the DIP Facility and the creation and perfection of the DIP Liens described in and provided for by this Financing Order and the DIP Financing Documents. The Debtors are hereby authorized and directed to do and perform all acts, pay the principal, interest, fees, expenses, and other amounts described in the DIP Financing Documents and this Financing Order with respect to the borrowings authorized pursuant to paragraph 2(b) below, which amounts shall not be subject to or require further approval of this Court. The DIP Financing Documents shall represent valid and binding obligations of the Debtors enforceable against the Debtors in accordance with their terms and this Financing Order.

(b) **Authorization to Borrow.** Subject to the terms and conditions set forth in the DIP Financing Documents and this Financing Order, upon the execution of the DIP Credit Agreement and the other DIP Financing Documents, the Debtors are hereby authorized to borrow \$800,000 of the total amount of the \$1,500,000 availability provided for under the DIP Facility. At or prior to a hearing scheduled for March 16, 2015, the Debtors may request authorization to borrow the remaining \$700,000 available under the DIP Facility. Proceeds of the DIP Facility may be used for the costs associated with the administration of these estates

including, without limitation, payment for operating expenses, employee wages, and other permitted expenses of administration of the Chapter 11 Cases, including professional fees.

(c) **Authorization for Use of Cash Collateral.** The temporary limitation on the use of Cash Collateral set forth in that certain Order Adjourning Motion on Amendments and Limiting Continued Use of Cash Collateral [Docket No. 314] is hereby rescinded and the Debtors shall be authorized to use the Cash Collateral derived from any source, including, without limitation, the operations of the Debtors prior to the commencement of the MALP Receivership and their real and personal property, all in accordance with the terms of this Financing Order. For purposes of this Financing Order, Cash Collateral includes all cash proceeds of Komanoff Collateral in which the Komanoff Prepetition Secured Creditors hold an interest, whether such interest existed as of the Petition Date or arises thereafter pursuant to this Financing Order, any other order of this Court, applicable law or otherwise.

(d) **DIP Liens and DIP Collateral.** Effective immediately upon the execution of this Financing Order, pursuant to Sections 361, 362, 364(c)(2), 364(c)(3), and 364(d)(1) of the Bankruptcy Code, the Lender is hereby granted continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition liens on and security interests (collectively, the “DIP Liens”) in any and all presently owned and hereafter acquired property and assets of the Komanoff Debtor, whether real or personal, tangible or intangible, and wherever located, and all, cash and Cash Collateral, proceeds, products, offspring, rents, proceeds of interests in leaseholds and profits thereof, and including, without limitation, the following (all collateral described in this paragraph 2(d) collectively, the “DIP

Collateral)³ (i) all Komanoff Collateral, (ii) all collateral (as defined in the DIP Financing Agreements), and (iii) all claims and causes of action of the Komanoff Debtor and its estate, and all proceeds thereof, except for (A) Avoidance Actions and the proceeds of Avoidance Actions (B) the LBMC Assets and (C) any FEMA Restricted Funds.

(e) **DIP Lien Priority.** The DIP Liens securing the DIP Loan

Obligations shall be

- i. pursuant to Bankruptcy Code § 364(c)(2), subject to the Carve-Out, secured by a first-priority senior perfected lien on, and security interest in, all present and after-acquired assets and property of the Komanoff Debtor not otherwise subject to a lien on the Petition Date, including cash, but excluding (a) Avoidance Actions and the proceeds of Avoidance Actions (b) the LBMC Assets and (c) any FEMA Restricted Funds; and
- ii. pursuant to Bankruptcy Code § 364(d)(1), subject to the Carve-Out, secured by a first-priority, senior priming perfected lien on, and security interest in Komanoff Collateral, but excluding (a) Avoidance Actions and the proceeds of Avoidance Actions (b) the LBMC Assets and (c) FEMA Restricted Funds; and
- iii. pursuant to Bankruptcy Code § 364(c)(3), subject to the Carve-Out, by a lien on, and security interest in, all Komanoff Collateral that is subject to valid perfected liens as of the Petition Date, but excluding (a) Avoidance Actions and the proceeds of Avoidance Actions (b) the LBMC Assets and (c) FEMA Restricted Funds; and other than as set forth herein, the DIP Liens shall not be made subject to or *pari passu* with any lien or security interest by any order heretofore or hereafter entered in the Chapter 11 Cases and shall be valid and enforceable against any trustee appointed in the Chapter

³ All defined terms in the description of DIP Collateral shall have the meanings ascribed thereto in the DIP Financing Agreements. All terms not specifically defined in the DIP Financing Documents shall have the meanings ascribed to such terms in Article 8 or 9 of the Uniform Commercial Code.

11 Cases, upon the conversion of any of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code or in any other proceedings related to any of the foregoing (any “Successor Cases”), and/or upon the dismissal of any of the Chapter 11 Cases or any Successor Cases. The DIP Liens shall not be subject to Sections 506(c), 510, 549, or 550 of the Bankruptcy Code.

(f) **DIP Super-Priority Administrative Claim**. Subject only to the Carve-Out, all DIP Loan Obligations shall be an allowed super-priority administrative expense claim (the “DIP Super-Priority Claim” and, together with the DIP Liens, the “DIP Protections”) with priority in the Chapter 11 Cases and any Successor Cases, under Sections 364(c)(1), 503(b), and 507(b) of the Bankruptcy Code and otherwise, over any and all administrative expenses of the kind specified in, arising, or ordered pursuant to Bankruptcy Code Sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1113, or 1114, or any other provision of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy, or attachment. The DIP Super Priority Claim shall be payable from and have recourse to only the Komanoff Collateral and all proceeds thereof, including, without limitation, all cash and causes of action and proceeds of causes of action, except for Avoidance Actions and all proceeds thereof as well as any FEMA Restricted Funds.

(g) **Enforceable Obligations**. The DIP Financing Documents shall constitute and evidence the valid and binding obligations of the Debtors, which obligations shall be enforceable in accordance with their terms and this Financing Order against the Debtors, their creditors, their estates and any successors thereto (including without limitation, any trustee appointed in the Chapter 11 Cases or in any Successor Cases), as applicable.

3. **Adequate Protection.**

(a) **Adequate Protection Liens.** Pursuant to Sections 361 and 363(e) of the Bankruptcy Code, but subject to the Carve-Out, as adequate protection of the interests of the Komanoff Prepetition Secured Creditors holding a valid, prepetition security interest in the Komanoff Collateral, against any Diminution in Value, the Debtors hereby grant the Komanoff Prepetition Secured Creditors a continuing, valid, binding, enforceable, and automatically perfected postpetition security interest in and lien on the Komanoff Collateral, except for proceeds of claims and causes of action, if any, that may be asserted by the Debtors' estates against insiders of the Debtors', including current and former officers and directors (the "**Insider Actions**"), Avoidance Actions and all proceeds of Avoidance Actions, as well as any FEMA Restricted Funds, to the same extent, validity and priority as existed prior to the Petition Date (the foregoing lien, the "**Adequate Protection Lien**").

(b) **Priority of the Adequate Protection Lien.** In accordance with the terms of this Financing Order, the Adequate Protection Lien shall be junior only to: (i) the Carve-Out, and (ii) the DIP Liens and (iii) liens of the prepetition secured creditors holding valid, prepetition security interests in any of the Debtors' assets.

(c) **Adequate Protection Super-Priority Claims.** As further adequate protection against any Diminution in Value of the Komanoff Prepetition Secured Creditors' interest in the Komanoff Collateral, the Komanoff Prepetition Secured Creditors that may hold a valid, prepetition security interest in the Komanoff Collateral, are hereby granted, as and to the extent provided by Sections 503(b) and 507(b) of the Bankruptcy Code, a separate allowed super-priority administrative expense claim in each of the Chapter 11 Cases and any

Successor Cases (the foregoing super-priority claim, the “Adequate Protection Super-Priority Claim”). Except as provided herein, including with respect to the DIP Liens, the DIP Super-Priority Claim, and Adequate Protection Lien, and subject to the Carve Out, the Adequate Protection Super-Priority Claim (i) shall have priority in all of the Chapter 11 Cases under Sections 105, 364(c)(1), 503(b), and 507(b) of the Bankruptcy Code and otherwise over all administrative expense claims against the Debtors and their estates, now existing or hereafter arising, of any kind or nature of the kinds specified in or ordered pursuant to Sections 503(b) or 507(b) of the Bankruptcy Code, and, Section 506(c) of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy, or attachment, and (ii) no costs or expenses of administration, including, without limitation, professional fees allowed and payable under Sections 328, 330, and 331 of the Bankruptcy Code, or otherwise, that have been or may be incurred in the Chapter 11 cases or in any Successor Cases, and no priority claims therein are, or will be, senior to, prior to or on a parity with the Adequate Protection Super-Priority Claim. The Adequate Protection Super-Priority Claim shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof, excluding (i) Insider Actions, (ii) Avoidance Actions and all proceeds of Avoidance Actions, and (iii) FEMA Restricted Funds.

(d) **Priority of Adequate Protection Super-Priority Claim.** In accordance with the terms of this Financing Order, the Adequate Protection Super-Priority Claim shall be junior only to the Carve-Out and the DIP Super-Priority Claim.

4. **Perfection of DIP Liens and Adequate Protection Liens.** This Financing Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the DIP Liens without the necessity of filing or recording any financing statement,

deed of trust, mortgage, or other instrument or document which may otherwise be required under the law of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement or mortgage agreement) to validate or perfect the DIP Liens or to entitle the DIP Liens to the priorities granted in this Financing Order. Notwithstanding the foregoing, the Lender may, each in its sole discretion, file such financing statements, mortgages, notices of liens, and other similar documents to perfect in accordance with applicable non-bankruptcy law or to otherwise evidence the applicable DIP Liens, and are hereby granted relief from the automatic stay of Section 362 of the Bankruptcy Code solely in order to do so, and all such financing statements, mortgages, notices and other documents shall be deemed to have been filed or recorded as of the Petition Date but subject to the terms of this Financing Order. Lender, in its discretion, may file a photocopy of this Financing Order as a financing statement with any recording officer designated to file financing statements or with any registry of deeds or similar office in any jurisdiction in which any Debtor has real or personal property, and in such event, the recording officer shall be authorized to file or record such copy of this Financing Order.

5. **Carve Out.** All liens and claims granted by this Financing Order shall be subject to the Carve-Out. As used in this Financing Order and the DIP Financing Documents, the “Carve-Out” shall mean:

(i) quarterly fees required to be paid to the United States Trustee pursuant to 28 U.S.C. §1930(a)(6); any fees payable to the clerk of the Bankruptcy Court, and fees payable to a chapter 7 trustee in an aggregate amount not to exceed \$25,000; and

(ii) all Allowed Fees (as defined below) of Case Professionals (as defined below) incurred in the period prior to the occurrence of a Triggering Event (such period, the “Pipeline Period”), (less, as of any

date of determination, all post-petition amounts actually paid to such Case Professionals in respect of fees and expenses incurred during the Pipeline Period).

As used herein, the terms: (i) “Allowed Fees” shall mean fees and expense reimbursement of Case Professionals solely to the extent such fees and expenses have been approved by an order of the Bankruptcy Court that has not been vacated or stayed; (ii) “Case Professionals” shall mean attorneys, accountants, financial advisors, consultants and other professionals employed, pursuant to Sections 327, 328 or 1103 of the Bankruptcy Code, to the extent applicable, by the Debtors or the Statutory Committee; and (iii) “Triggering Event” shall mean the earlier of the date: (i) of the Closing of the Sale of the Acquired Assets to Lender, or (ii) that the Lender provides written notice to Debtors, of the occurrence of a Default or an Event of Default and Lender’s termination of the Pipeline Period for purposes of the Carve-Out.

6. **Section 506(c) Claims.** Except with respect to the Carve-Out, no costs or expenses of administration which may have been or may be incurred in the Chapter 11 Cases or any Successor Cases at any time shall be charged against the DIP Collateral pursuant to Sections 105 or 506(c) of the Bankruptcy Code, or otherwise, without the prior written consent of the Lender, and no such consent shall be implied from any other action, inaction or acquiescence by any such agents or lenders. Nothing herein shall constitute a waiver of the Debtors’ rights and claims under Section 506(c) as against any other persons or entities except as set forth in the preceding sentence.

7. **Events of Default.** The occurrence and continuance of an “Event of Default” under the DIP Financing Agreements shall constitute an event of default under this

Financing Order, unless waived by the Lender or otherwise cured (collectively, the “Events of Default”):

8. **Rights and Remedies Upon Event of Default.** If a Default shall have occurred, and Lender shall have provided a Notice of Default in accordance with the terms hereof, then, upon expiration of ten (10) Business Days after providing such Notice of Default, so long as any such Default shall be continuing, any of the actions set forth in the next sentence may be taken upon written notice by Lender to the Debtor, the U.S. Trustee representative and to the official committee of unsecured creditors of the Debtor. Lender may (A) without further order of the Court, declare the DIP Loan Commitment reduced to zero whereupon the DIP Loan Commitment and all obligations of Lender relating thereto shall be immediately terminated and declare all or a portion of the DIP Loan hereunder (with accrued interest thereon) and all other amounts owing under this Agreement to be due and payable forthwith, whereupon the same shall immediately become due and payable, without further notice, demand, presentment, notice of dishonor, notice of acceleration, notice of intent to accelerate, protest, or other formalities of any kind, all of which are hereby expressly waived by the Debtor, (B) foreclose or otherwise enforce any Lien granted to Lender for the benefit of itself to secure payment and performance of the DIP Obligations in accordance with the terms of the DIP Loan Documents, and (C) exercise all other rights and remedies available at law or in equity. Except as expressly provided above in this Section 6 hereof, presentment, notice, notice of dishonor, notice of acceleration, notice of intent to accelerate, demand, protest and all other notices of any kind are hereby expressly waived.

9. **Proofs of Claim.** The Lender will not be required to file proofs of claim in the Chapter 11 Cases.

10. **Other Rights and Obligations.**

(a) **Binding Effect.** All of the provisions of this Financing Order shall be binding upon and inure to the benefit of the Lender, the Lender, the Debtors, the Statutory Committee or any other committee, all other creditors of the Debtors, and all other parties in interest, and their respective successors and assigns (including any trustee or other fiduciary hereinafter appointed as a legal representative of the Debtors or with respect to the property of the estates of the Debtors) whether in the Chapter 11 Cases, in any Successor Cases, or upon dismissal of any such Chapter 11 or Chapter 7 Case.

(b) **No Third Party Rights.** Except as explicitly provided for herein, this Financing Order does not create any rights for the benefit of any third party, creditor, landlord, lessor, equity holder, or any direct, indirect, or incidental beneficiary.

(c) **Amendment of DIP Financing Documents.** The Debtors and the Lender may amend or waive any provision of the DIP Financing Documents on notice to the Office of the United States Trustee and the Statutory Committee, provided that such amendment or waiver, in the reasonable judgment of the Debtors and the Lender, is not material or otherwise inconsistent with the terms of this Financing Order. Except as otherwise provided herein, no waiver, modification, or amendment of any of the provisions of the DIP Financing Documents shall be effective unless set forth in writing, signed by on behalf of all the Debtors and the Lender.

11. **Inconsistency.** In the event of any inconsistency between the terms and conditions of the DIP Financing Documents and of this Financing Order, the provisions of this Financing Order shall govern and control.

12. **Enforceability.** This Financing Order shall constitute findings of fact and conclusions of law pursuant to the Bankruptcy Rule 7052 and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry of this Financing Order. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, or 9024 or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Financing Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Financing Order. The rights of all parties in interest to object to the terms of the Financing Order, the DIP Credit Agreement, and any other DIP Financing Agreement at the Financing Hearing are expressly reserved.


13. **Objections Overruled.** All objections to the DIP Motion to the extent not withdrawn or resolved are hereby overruled.

14. **Headings.** All paragraph headings used in this Financing Order are for ease of reference only and are not to affect the construction hereof or to be taken into consideration in the interpretation hereof.

15. **Retention of Jurisdiction.** The Bankruptcy Court has and will retain jurisdiction to enforce this Financing Order.

Dated: December 18, 2014
Central Islip, New York





Alan S. Trust
United States Bankruptcy Judge