

JUDGE: THE HONORABLE FRANK L. KURTZ  
 HEARING LOCATION: 402 E YAKIMA  
 AVENUE, SUITE 200 (SECOND FLOOR  
 COURTROOM), YAKIMA, WASHINGTON  
 HEARING DATE: MAY 8, 2019  
 HEARING TIME: 10:00 A.M.  
 RESPONSE DATE: AT THE TIME OF  
 HEARING

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IN THE UNITED STATES BANKRUPTCY COURT  
 EASTERN DISTRICT OF WASHINGTON  
 AT YAKIMA

In Re:

ASTRIA HEALTH, *et al.*

Debtors and Debtors in Possession.

BANKRUPTCY NO. 19-01189-11  
 (Jointly Administered)  
**TIAA COMMERCIAL FINANCE, INC.'S  
 OBJECTION TO EMERGENCY  
 MOTION OF DEBTORS FOR INTERIM  
 AND FINAL ORDERS (I)  
 AUTHORIZING THE DEBTORS TO  
 OBTAIN POSTPETITION FINANCING;  
 (II) GRANTING SECURITY  
 INTERESTS AND SUPERPRIORITY  
 ADMINISTRATIVE EXPENSE STATUS;  
 (III) GRANTING ADEQUATE  
 PROTECTION TO CERTAIN  
 PREPETITION SECURED CREDIT  
 PARTIES; (IV) MODIFYING THE  
 AUTOMATIC STAY; (V)  
 AUTHORIZING THE DEBTORS TO  
 ENTER INTO AGREEMENTS WITH  
 JMB CAPITAL PARTNERS LENDING,  
 LLC; (VI) AUTHORIZING USE OF  
 CASH COLLATERAL;  
 (VII) SCHEDULING A FINAL  
 HEARING; AND (VIII) GRANTING  
 RELATED RELIEF; MEMORANDUM  
 OF POINTS AND AUTHORITIES IN  
 SUPPORT THEREOF**

TIAA COMMERCIAL FINANCE, INC.'S OBJECTION TO  
 DEBTORS' EMERGENCY MOTION - 1



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1 **INTRODUCTION**

2 TIAA Commercial Finance, Inc. (“TIAA CF”) objects to the  
3 EMERGENCY MOTION OF DEBTORS FOR INTERIM AND FINAL  
4 ORDERS (I) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION  
5 FINANCING; (II) GRANTING SECURITY INTERESTS AND  
6 SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS;  
7 (III) GRANTING ADEQUATE PROTECTION TO CERTAIN PREPETITION  
8 SECURED CREDIT PARTIES; (IV) MODIFYING THE AUTOMATIC STAY;  
9 (V) AUTHORIZING THE DEBTORS TO ENTER INTO AGREEMENTS  
10 WITH JMB CAPITAL PARTNERS LENDING, LLC; (VI) AUTHORIZING  
11 USE OF CASH COLLATERAL; (VII) SCHEDULING A FINAL HEARING;  
12 AND (VIII) GRANTING RELATED RELIEF (the “Motion”) on the grounds that  
13 TIAA CF has a first position secured interest in collateral sought to be affected by  
14 the motion. TIAA CR requests that the request for emergency relief as to its  
15 secured lien interests be denied.

16 **STATEMENT OF FACTS**

17 TIAA CF has a secured interest in certain collateral of the Debtors as a  
18 result of acquiring all of the rights, title and position of a prior lender.

19 *Astria Health*

20 On June 12, 2018, Regional Health, n/k/a Astria Health, obtained a loan  
21 from GE HFS, LLC, evidenced by a Master Security Agreement (“MSA”) and  
22 Equipment Schedule (the “GE HFS Loan”). Pursuant to the GE HFS Loan,  
23 equipment was obtained and placed in the Yakima Regional Medical Center, n/k/a  
24 the Astria Regional Medical Center, and the Toppenish Community Hospital,  
25 n/k/a Astria Toppenish Hospital. A UCC Financing Statement covering all of the  
26 equipment was duly recorded. Debtor refers to this obligation as the “GE Note”



1 and acknowledges that the \$5 million term loan for the purchase of equipment is  
2 secured by capital assets located in Yakima and Toppenish and funds in escrow.  
3 (DKT 16 at p. 8-9 and DKT. 16-1, p. 84)

4 On November 15, 2018, GE HFS, LLC sold the GE HFS Loan to TIAA CF  
5 and assigned all of its interest in the equipment secured by the UCC Financing  
6 Statement.

7 *Sunnyside Community Hospital Association*

8 On or about March 5, 2015, Frontier Neurosurgery, PLLC, entered into a  
9 Master Security Agreement with General Electric Capital Corporation (“GECC”),  
10 including an Amended and Restated Equipment Schedule and Promissory Note,  
11 and six (6) equipment lease contracts evidenced by a Master Lease Agreement  
12 dated April 28, 2014 (collectively, the “GECC Loan”). On or about May 16,  
13 2016, Frontier Neurosurgery, PLLC was acquired by Sunnyside Community  
14 Hospital Association, d/b/a Sunnyside Community Hospital and Clinics.  
15 Sunnyside Community Hospital is now known as Astria Sunnyside Hospital.

16 Pursuant to the GECC Loan, certain equipment was obtained and placed in  
17 service. A UCC Financing Statement covering all of the equipment was duly  
18 recorded. Although not addressed substantively in the Motion, Debtors  
19 acknowledge the GECC liens as part of the Lien Summary Chart. (DKT. 16-1, p.  
20 75)

21 On November 15, 2018, GECC sold the GECC Loan to TIAA CF and  
22 assigned all of its interest in the equipment secured by the UCC Financing  
23 Statement.

24 **OBJECTION**

25 **ORDER ON DEBTORS’ EX PARTE MOTION MISSTATES HEARING**  
26 **DATE**

OBJECTION TO EMERGENCY MOTION OF DEBTORS  
FOR INTERIM AND FINAL ORDERS - 3



1 The order entered by the Court setting this hearing misstates the hearing  
2 date. It states that: “The Court shall hold a hearing at 10:00 a.m. on Wednesday,  
3 May 6, 2019, ...” (DKT. 24, p. 2) The Order on Debtors’ *Ex Part* Motion was  
4 not even entered until after 6:00 p.m. on May 6, 2019, hours after the scheduled  
5 hearing.  
6

7  
8 ORDER SHOULD STATE THAT LENDER IS NOT BEING  
9 GRANTED A PRIMING LIEN IN TIAA CF COLLATERAL  
10

11 The Debtors’ proposed order on the financing motion (“Order”) provides  
12 the DIP Lender with “fully perfected first priority senior priming liens and  
13 security interests in all DIP Collateral” ... senior to all Prepetition Credit Liens  
14 other than the Lapis Senior Holdco Liens ... and all assets of Sunnyside and its  
15 debtor and non-debtor subsidiaries ... .” (DKT. 24, p. 25) This language ignores  
16 TIAA CF’s lien and security interest rights.  
17

18 The Order further states that Banner Bank has a first priority position lien  
19 on all personal property of Sunnyside. (DKT. 15, p.10) TIAA CF does not  
20 believe that is a true statement. TIAA CF believes it has a first priority position  
21 lien on certain assets of Sunnyside described above. Therefore, the Court should  
22 not be granting the DIP Lender a first position security interest in TIAA CF’s  
23 collateral. No showing has been made to justify such extraordinary relief.  
24  
25  
26



1 While the Motion and supporting declaration recognize TIAA CF's  
2 security interests in the Debtors' assets, the proposed Order does not properly deal  
3 with those security interests in its proposed Order. The Order should state that  
4 either the DIP Lender is not being granted a lien or security interest in TIAA CF's  
5 collateral, or that any grant of a lien or security interest is junior and subordinate  
6 to the interests of TIAA CF.  
7

8  
9 DATED this 7<sup>th</sup> day of May, 2019.

10  
11 By /s/ Susan Rae Fox  
12 Susan Rae Fox, WSBA #15278

13 /s/ Richard J. Hyatt  
14 Richard J. Hyatt, WSBA #14048

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