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UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

In re VERITY HEALTH SYSTEM OF CALIFORNIA, INC., *et al.*, Debtors and Debtors In Possession.	Lead Case No. 18-20151 Jointly Administered With: CASE NO.: 2:18-bk-20162-ER CASE NO.: 2:18-bk-20163-ER CASE NO.: 2:18-bk-20164-ER CASE NO.: 2:18-bk-20165-ER CASE NO.: 2:18-bk-20167-ER CASE NO.: 2:18-bk-20168-ER CASE NO.: 2:18-bk-20169-ER CASE NO.: 2:18-bk-20171-ER CASE NO.: 2:18-bk-20172-ER CASE NO.: 2:18-bk-20173-ER CASE NO.: 2:18-bk-20175-ER CASE NO.: 2:18-bk-20176-ER CASE NO.: 2:18-bk-20178-ER CASE NO.: 2:18-bk-20179-ER CASE NO.: 2:18-bk-20180-ER CASE NO.: 2:18-bk-20171-ER Chapter 11 Cases Hon. Ernest M. Robles
☒ Affects All Debtors ☐ Affects Verity Health System of California, Inc. ☐ Affects O'Connor Hospital ☐ Affects Saint Louise Regional Hospital ☐ Affects St. Francis Medical Center ☐ Affects St. Vincent Medical Center ☐ Affects Seton Medical Center ☐ Affects O'Connor Hospital Foundation ☐ Affects Saint Louise Regional Hospital Foundation ☐ Affects St. Francis Medical Center of Lynwood Foundation ☐ Affects St. Vincent Foundation ☐ Affects St. Vincent Dialysis Center, Inc. ☐ Affects Seton Medical Center Foundation ☐ Affects Verity Business Services ☐ Affects Verity Medical Foundation ☐ Affects Verity Holdings, LLC ☐ Affects De Paul Ventures, LLC ☐ Affects De Paul Ventures - San Jose Dialysis, LLC Debtors and Debtors In Possession.	**OMNIBUS SUPPLEMENTAL REPLY OF DEBTORS' TO THE OBJECTIONS TO THE DEBTORS' MOTION FOR FINAL ORDER (A) AUTHORIZING THE DEBTORS TO OBTAIN POST PETITION FINANCING; (B) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL; AND (C) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED CREDITORS PURSUANT TO 11 U.S.C. §§105, 363, 364, 1107 AND 1108** FINAL HEARING: Date: October 3, 2018 Time: 10:00 a.m. Place: Courtroom 1568

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Verity Health System of California, Inc. ("**VHS**"), and the above-referenced affiliated debtors, the Debtors and Debtors in possession (the "**Debtors**") in the above-captioned chapter 11 cases (the "**Cases**"), submit this Omnibus Supplemental Reply (the "**Omnibus Supplemental Reply**") to the objections to the *Debtors' Motion for Final Order (A) Authorizing the Debtors to Obtain Post-Petition Financing, (B) Authorizing the Debtors to Use Cash Collateral and (C) Granting Adequate Protection to Prepetition Secured Creditors Pursuant to 11 U.S.C. §§105, 363, 364, 1107 and 1108* (the "**DIP Motion**")[1] [Docket No. 31], dated August 31, 2018 and hereby state and declare as follows:

I. PRELIMINARY STATEMENT

The DIP Motion requests authority for the Debtors to, among other things, (i) enter into a senior secured, superpriority debtor in possession financing facility with the DIP Lender in an amount up to total lending of not more than $185,000,000, (ii) authorize the interim use of Cash Collateral; (iii) grant "adequate protection" to the Prepetition Secured Creditors; and (iv) modify the automatic stay as imposed by § 362 of the Bankruptcy Code[2] to the extent necessary to implement and effectuate the terms of the DIP Facility. On September 5, 2018, the Court entered the Interim Order [Docket No. 86] granting the Debtors authority to enter into the DIP Facility, in an interim amount not to exceed $30,000,000 and only as needed to avoid immediate and irreparable harm, on an interim basis. The Debtors now seeks the entry of a revised proposed Final Order. Attached hereto as **Exhibit 1** is a blackline copy of the revised proposed Final Order, showing all changes, including errata, from the previous version filed with the Court at Docket No. 309-1. The revisions reflect the requests of the DIP Lender and certain modifications inserted at the request of the Official Committee of Unsecured Creditors of Verity Health System of California. Inc. (the "**Committee**")

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[1] Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to them in the DIP Motion.

[2] All references to "sections" or "§" herein are to sections of the Bankruptcy Code, 11 U.S.C. §§ 101, et seq. unless otherwise noted.

The Debtors entered into several stipulations allowing certain parties additional time to object to the Debtors' DIP Motion. The Debtors submit this Omnibus Supplemental Reply in response to those objections.

II. OMNIBUS SUPPLEMENTAL REPLY TO DIP OBJECTIONS

1. The facts, circumstances and arguments relevant to this Omnibus Supplemental Reply are fully set forth in the DIP Motion, the Debtors' Omnibus Reply in Support thereof (the "**Omnibus Reply**") [Docket No. 309] and all declarations and documents submitted in support thereof. By Stipulation and orders of this Court, the following additional objections have been filed in opposition to the DIP Motion after the initial time for filing objections:

(a) Swinerton Builders' ("**Swinerton**") Limited Objection to Motion of Debtors for Final Orders (A) Authorizing the Debtors to Obtain Post Petition Financing Etc. [Docket No. 269] (the "**Swinerton Objection**");

(b) UMB Bank N.A. (the "**Master Trustee**") and Wells Fargo National Association's (the "**2005 Bond Trustee**" and together with the Master Trustee, the "**2005 Bond Parties**") Objection to Motion of Debtors for Final Order (A) Authorizing the Debtors to Obtain Post Petition Financing (B) Authorizing the Debtors to Use Cash Collateral and (C) Granting Adequate Protection to Prepetition Secured Creditors Pursuant to 11 U.S.C. §§ 105, 363, 364, 1107 and 1108 [Docket No. 292] (the "**2005 Bond Parties' Objection**"); and

(c) The Committee's Opposition to Emergency Motion of Debtors for Interim and Final Orders (A) Authorizing The Debtors To Obtain Post Petition Financing (B) Authorizing The Debtors To Use Cash Collateral And (C) Granting Adequate Protection To Prepetition Secured Creditors [Docket No. 316] (the "**Committee Objection**").

A. Response to the Swinerton Objection

2. Swinerton purports to hold an inchoate mechanics lien on the Seton Medical Center ("**Seton**") real property as of the Petition Date, with asserted statutory rights to timely perfect its lien postpetition under both California law and the Bankruptcy Code. Swinerton asserts that it will record its lien, which ostensibly will relate back to October 16, 2017, the date it allegedly commenced work at Seton "in the coming days". Relying on its asserted rights to

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perfect its mechanic's lien postpetition, Swinerton objects to the DIP Motion to the extent it allows the Debtors to prime Swinerton's lien without also providing adequate protection. In order to resolve their objection, Swinerton requests that the Debtors modify the proposed Final Order to clarify that their mechanics' lien will not be subordinate to either the DIP Liens or the Prepetition Replacement Liens.

3. First, the Debtors acknowledge that under certain specific circumstances pursuant to California law and Bankruptcy Code § 546(b)(1), mechanics lien holders are able to record liens postpetition, notwithstanding the automatic stay, provided that no other steps are taken to enforce such liens. Therefore, if, as and when Swinerton has complied with all California law requirements for recording such a lien, then it may properly do so in the circumstances of this Case. The Debtors reserve all rights to challenge both the circumstances of the lien, the amount of the asserted debt and the timeliness of any efforts to record such lien.

4. However, as the purported holder of a prepetition perfected lien in property of the Debtors, Swinerton is no more or less exempt from having its lien primed by the Debtors postpetition borrowing and DIP Liens, than any other prepetition creditor in these Cases. As the Debtors have established in the DIP Motion, their Omnibus Reply and the supporting declarations submitted in support thereof, the Debtors were not able to find postpetition financing on terms better than those presented by the DIP Lenders. In particular, the DIP Lenders require that their liens prime all others pursuant to § 364(d)(1). Accordingly, the only way to preserve the value of these estates, for the benefit of all creditors, is to authorize the DIP Liens on a priming basis. As indicated in paragraphs 21-24 of the Chou Decl. [Docket 32] and in paragraphs 8-10 of Moloney Decl., there appears to be ample value in the Debtors' estates to ensure payment of any properly noticed, filed and recorded mechanics' liens, including, if applicable, one filed by Swinerton against Seton.

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5. Specifically, the Moloney Decl. provides that "based on the Debtors' consolidated balance sheet and my assessment of the realizable value of the Debtors' assets, I conclude that there is realizable value in excess of the prepetition secured liabilities of $150 - $225 million." *See* Moloney Decl. at ¶ 9. This represents an equity cushion of 26-40%. *Id.* Mr. Moloney further concludes that "the realizable value of the Debtors' assets will exceed the sum of the prepetition secured liabilities and outstanding borrowings under the DIP Facility at its termination date." *Id*. at ¶ 10.

6. To the extent proceeds of the DIP Loan and prepetition cash collateral are used by the Debtors to fund operating losses at Seton to preserve the value of the estates as a going concern and to fulfill the Debtors' mission to provide vital, lifesaving patient care for vulnerable populations, Swinerton's status as a voluntary creditor of the Debtors' is preserved. Should the Debtors determine to cease operating at Seton, or any other hospital facility, it would do so to avoid further losses and to preserve the value of the real estate on which Swinerton purports to have a lien thereby decreasing the risk of any diminution of value.

7. With respect to the Prepetition Replacement Liens relating to Seton, the Debtors can establish that the Obligated Bonds are the beneficiary of a 2001 deed of trust on the Seton property, recorded well before 2017. Specifically, the Deed of Trust by Seton Medical Center dated as of December 31, 2001 and recorded as Instrument No. 2002-000626 of Official Records in the County of San Mateo, State of California was recorded in favor of the Master Trustee, prior to October 16, 2017, the date on which Swinerton asserts it commenced work at the property. Attached hereto as **Exhibit 2** are true and correct copies of the California Lot Book, Inc. title report, and the San Mateo County Assessor-County Clerk-Recorder's Office's search results, each evidencing the filing of the above referenced Deed of Trust.[3] As such, Swinerton's

[3] The Debtors ask this Court to take judicial notice of these documents.

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mechanics lien would not have priority over Prepetition Liens in favor the Master Trustee on behalf of the 2005 Bonds or the Working Capital Notes. *See American Blg. Material Service Co. v. Wallin,* 116 Cal. App. 527, 530 (1931) (citing the general rule regarding priority of deeds of trust and mortgages over mechanics' liens is stated as follows: If recorded before any work is done or materials are commenced to be furnished, a deed of trust or mortgage is in the ordinary course of things prior to mechanics' liens). Correspondingly, Swinerton's mechanics lien should then not be superior to the Prepetition Replacement Liens or the liens of the Prepetition Secured Creditors either. Courts in this district routinely authorize replacement liens that preserve and mirror the order of priorities that existed prepetition. See *In re Gardens Regional Hospital*, 2017 WL 7101146 *4 (Bankr. C.D. Cal. 2017); *In re California Coastal Communities, Inc.*, Case No. 09-21712 (Bankr C.D. Cal. 2009) (Docket No. 559) (same). No additional adequate protection beyond the equity cushion is required to preserve the junior lien position of Swinerton vis-a-vis the unsecured creditors of Seton.

B. Response to the 2005 Bond Parties' Objection

(i) The Debtors are Not Required to Obtain Additional Evidence of the 2005 Bond Parties' Consent

8. Although the 2005 Bond Parties expressly consented to the Interim Order at the Interim Hearing, by means of oral representations by their counsel, the 2005 Bond Parties have now lodged an objection to the DIP Motion asserting that the Debtors have not obtained their consent to grant the DIP Liens as priming liens under § 364(d)(1). Presumptively, such objection extends to priming as to prepetition cash collateral, real estate and other prepetition acquired assets of the Debtors and not to postpetition accounts receivable and government receivables of the Debtors in which they have no security interest pursuant to § 552(a). However, as indicated in the Omnibus Reply, U.S. Bank as the Note Trustee for the senior Working Capital Notes has consented to the DIP Liens. To the extent needed with respect to the Debtors use of prepetition

cash collateral supporting the Working Capital Notes, the oral and written consent of the 2017 Note Trustee and the 2015 Note Trustee are all that is minimally required to demonstrate consent to both the DIP Lien priming and the Prepetition Replacement Liens structure pursuant to §363(c)(2) and §363(e).

9. This conclusion is derived from section 2.4 of the Intercreditor Agreement, as shown in the Omnibus Reply.[4] Section 2.4 is an "Unconditional Subordination" provision that, *inter alia*, provides "…the Master Trustee [UMB Bank] hereby expressly agrees that the Note Trustee [U.S. Bank] may… without notice to or consent of the Master Trustee …(iv) take, exchange, amend, eliminate, surrender, release, or subordinate any or all security for any or all of the obligations of the Obligors [the Debtors] under the Note Documents or the MTI Note Obligations, accept additional or substituted security therefore, or perfect or fail to perfect the Note Trustee's rights in any or all security;… ." Accordingly, the Intercreditor Agreement expressly permits U.S. Bank to consent to the DIP Liens, the proposed Final Order, the structure and terms of the adequate protection provided for therein and the Prepetition Replacement Liens. Such consent is enforceable in this Court pursuant to § 510(a). *See, In re Howland*, 545 B.R. 653 (Bankr. D. Or. 2015) (discussing enforcement of contractual subordination under 11 U.S.C. §510(a)).

10. As a result, of the Intercreditor Agreement, the 2017 Note Trustee and 2015 Note Trustee's consent to the DIP Liens and the Prepetition Replacement Liens also is binding with respect to the Debtors use of non-cash collateral listed on Schedule C of the Intercreditor Agreement, i.e., all of the other assets of the two Debtors, St Francis Hospital and Saint Louise Regional Hospital.

[4] U.S. Bank, as Note Trustee for the Working Capital Notes, and the 2005 Bond Parties, as successor trustees and the Debtors, are parties to the Intercreditor Agreement (as defined in the Interim Order). See Docket No. 219-1.

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11. Alternatively, regardless of whether the U.S. Bank's consent is binding on the Master Trustee with respect all of the remaining collateral supporting the Working Capital Notes, which constitute the balance of the Master Trustee's collateral consisting of all of the remaining assets of the Hospital Debtors and VMF, the Debtors' proposed package of payments, equity cushion and Prepetition Replacement Liens constitutes adequate protection for the 2005 Bond Parties.

12. The Debtors use of those prepetition assets, which do not constitute cash collateral, is not constrained under § 363(a) with the automatic need to provided adequate protection yet the Debtors have offered five forms of adequate protection on account of the combined imposition of the DIP Liens and use of cash collateral, including evidence of an equity cushion and payments of interest, trustee fees, and professional fees, replacement liens and superpriority expenses of administration claims for any diminution of value. As shown through the Chou Decl. and the Moloney Decl., the Debtors have met their burden with respect adequate protection of the interests of all of the Prepetition Secured Creditors.

13. As support for their argument, the 2005 Bond Parties cite to *Scottsdale Medical Pavilion v. Mutual Benefit Life Ins. Co. (In re Scottsdale Medical Pavilion)*, 159 B.R. 295, 302 (B.A.P. 9th Cir. 1993) suggesting that the Debtors may only incur the DIP Facility, and otherwise use their cash collateral, if they either obtain *all* Prepetition Secured Creditors' consent or provide a form of adequate protection to which all creditors consent. The 2005 Bond Parties' assertion is not correct.

14. In *Scottsdale Medical*, the Bankruptcy Appellate Panel stated that "[t]he trustee or debtor in possession may use cash collateral only upon the conditions set forth in § 363(c)(2). That subsection requires either consent by the creditor to the use of its cash collateral, ***or a court order authorizing its use***." 159 B.R. at 302 (emphasis added). Here, as noted above, the Debtors

have already obtained the consent necessary to bind all of the Prepetition Secured Creditors, including the 2005 Bond Parties, for use of their cash collateral. Therefore, in light of Debtors proposed package of adequate protection the Debtors believe it would be proper for this Court to approve the proposed Final Order authorizing such use to which the controlling parties have consented and which is otherwise appropriate under the circumstances.

(ii) The Prepetition Replacement Liens are Sufficient to Establish Adequate Protection

15. The 2005 Bond Parties further assert that the Debtors have not yet proven that their Prepetition Liens are being adequately protected as required under § 364. But based upon the First Day Declaration, the DIP Motion and the cases cited therein, the Chou Decl. in support of the DIP Motion, the Supplemental Chou Decl. and the Moloney Decl. in support of the Omnibus Reply, the Debtors have established that all Prepetition Secured Creditors are adequately protected, as required by the Bankruptcy Code.

16. As noted above, the Moloney Decl. provides that there is realizable value in excess of the prepetition secured liabilities in this case. *See* Moloney Decl. at ¶ 9. Mr. Moloney articulates an equity cushion of anywhere between 26-40%. *Id.* Since, the Debtors have provided ample support to establish the sufficiency of the adequate protection package proposed, the 2005 Bond Parties' Objection should be overruled.

17. Second, the proposed adequate protection payments being made to the 2005 Bond Parties, i.e., payments equal to the contract rate of interest, plus attorneys' and financial advisor fees are adequate to preserve the 2005 Bond Parties' interests in their collateral. The 2005 Bond Parties have not argued that they are undersecured, nor that the DIP Liens alone render them undersecured.

18. Lastly, as also noted above, the 2005 Bond Parties are subordinate to the Note Collateral and the Working Capital Notes. U.S. Bank, as Note Trustee for the Working Capital

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Notes has already consented to the proposed Final Order and the sufficiency of the adequate protection provided for therein. The Note Trustee's consent should constitute further evidence of the fact that the Prepetition Replacement Liens are sufficient to constitute adequate protection against diminution of value, as required by § 363(e) of the Bankruptcy Code.

(iii) The Proposed Final Order Mirrors and Preserves the Lien Priority of All Prepetition Secured Creditors

19. The 2005 Bond Parties lastly assert that the proposed Final Order improperly provides for adequate protection liens to certain stakeholders that prime certain of the Prepetition Secured Creditors' Prepetition Liens. Specifically, the 2005 Bond Parties take issue with the fact that the proposed Final Order provides that the Prepetition Replacement Liens are subject to not only the Carve Out and the DIP Liens, but also the VMF Liens in the VMF Collateral and to certain prepetition liens granted by Verity Holdings to U.S. Bank as security for the Series 2017 Working Capital Notes. The 2005 Bond Parties assert that this priming would upend the Debtors' prepetition capital structure. The Debtors disagree and note that it is the Debtors' obligation to provide all prepetition secured creditors with a form of adequate protection when their collateral is utilized postpetition. *See e.g. In re Gardens Regional Hospital*, 2017 WL 7101146 *4 (Bankr. C.D. Cal. 2017); *In re Beam*, 1998 WL 34065297 (Bankr. C.D. Ill. 1998) (finding "creditor holding a prepetition security interest in cash collateral can petition to prevent its use or a debtor can petition for its use. It cannot be used unless the creditor's interest is adequately protected. One form of adequate protection is to grant the creditor a postpetition security interest in the same type of collateral as it took prepetition, what is commonly referred to as a replacement lien.").

20. First, the Prepetition Replacement Liens, as defined, do not include the VMF Liens under the proposed Final Order, as submitted on September 26, 2018, and as submitted herewith. The term "Prepetition Secured Creditors" does not include McKesson, but only includes the "Master Trustee, Wells Fargo as bond indenture trustee for the 2005 Notes, U.S. Bank as Note

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Trustee for the Working Capital Notes, and the MOB Lenders". *See* proposed Final Order at Finding G. Second, Prepetition Collateral is distinguished from assets subject to the Prepetition Replacement Liens. *See* proposed Final Order at Finding I. Third, Prepetition Secured Creditors have "additional valid, perfected and enforceable replacement security inters and Liens in the DIP Collateral (the "Prepetition Replacement Liens") which shall be junior only to (1) the Carve Out, (2) the DIP Liens, (3) the VMF Liens in VMF Collateral …. ". Finally, McKesson only "shall be entitled to a replacement lien of the postpetition assets of VMF, excluding Avoidance Actions ("VMF Replacement Lien"), …" subject to the Carve Out and the DIP Liens. Thus VMF Replacement Liens do not affect Prepetition Collateral or the 2005 Bond Parties.

21. It is correct that the MOB Lenders are granted certain access Prepetition Collateral not previously securing their debt through the Prepetition Replacement Liens. The 2005 Bond Parties and the 2017 Note Trustee and 2015 Note Trustee also receive adequate protection Prepetition Replacement Liens in the DIP Collateral supporting the MOB Lenders and the MOB Financing. It is a balance that enhances the protections available to both sides of the collateral stack.

22. The proposed Final Order, as drafted, in fact mirrors and preserves the prepetition lien priorities already agreed to by the various Debtor entities and their secured creditors. It further preserves the lien priorities that U.S. Bank, as Note Trustee for the Working Capital Notes, and the 2005 Bond Parties agreed to in the Intercreditor Agreement. The 2005 Bond Parties' suggested revisions appear to bring their liens into parity with those of U.S. Bank, in their capacity as Note Trustee for the Working Capital Notes. Such a revision would be contrary to the terms of the Intercreditor Agreement. As noted above, the proposed Final Order simply preserves the Prepetition Secured Creditors' prepetition contractual arrangements, as authorized

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by Bankruptcy Code §510(a) and *In re Howard*. As such, the 2005 Bond Parties' Objection should be overruled.

C. Response to the Committee Objection

23. The Committee objects to several provisions of the proposed Final Order, many of which are customary in chapter 11 cases of this size and scope. The Debtors will address each objection below, but all of the Debtors' responses must be colored by the following facts. The Debtors and their advisors negotiated DIP financing terms that are reasonable under the circumstances. The Committee Objection, throughout, ignores the incontrovertible fact that while several parties offered DIP financing prior to the Petition Date, no other party came forward to offer DIP financing on terms that were more favorable than those offered by the DIP Lenders here. Indeed, all others had materially worse economic and borrowing availability terms. And in exchange for financing on those terms, the DIP Lenders insisted on priming liens, customary waivers, such as waivers of the Debtors' surcharge rights under § 506(c), waiver of the equities of the case exception under § 552(b) and waiver of any requirement that the DIP Lender marshal their assets. The DIP Lenders also conditioned the DIP Facility on, among other things, the requirement that they have the full consent of the Prepetition Secured Creditors, which was secured for the Interim Order. The Debtors determined that under the circumstances of these cases and in the sound exercise of their business judgment, DIP financing on the terms proposed by the DIP Lenders fundamentally was better than no DIP financing at all, i.e., attempting to survive these Cases on use of prepetition cash collateral alone. There can be no doubt that these Debtors need the DIP Facility to preserve their mission as well as the value of their estates, and fund the going concern sales of the Hospitals for the benefit of all creditors, especially the unsecured creditors represented by the Committee and its counsel. The Debtors' conclusions are

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based on their experience with the business enterprise, the advice of their advisors who have been involved for months, and their management of the day to day operations of the businesses.

24. The Debtors further note that in addition to filing their objection, the Committee has provided the Debtors with a full mark up of the proposed Final Order which if adopted, would presumably resolve its objection. In the hopes of resolving as many open points as possibly, the Debtors have adopted some of the proposed changes, to the extent they do not contravene any of the Debtors' basic understandings with either the DIP Lender or the Prepetition Secured Creditors and McKesson.

(i) The Adequate Protection Liens and Claims

25. The Committee objects to the scope and extent of both the Prepetition Replacement Liens and Prepetition Superpriority Claims. The Committee contends that it is not proper for the Debtors to provide replacement liens on previously unencumbered assets. The Committee further contends that the Prepetition Replacement Liens improperly provide the Prepetition Secured Creditors with protections that would greatly exceed the risk to their collateral positions. The Debtors disagree.

26. Neither the Committee nor its constituents of unsecured creditors are entitled to any adequate protection, and they are not entitled to restrict the Debtors' ability to grant unencumbered assets as collateral in exchange for the infusion of new capital or use of cash collateral. *See In re Dairy Mart Convenience Stores, Inc.*, 351 F.3d 86, 90 (2d Cir. 2003). Moreover, section 364(c)(2) of the Bankruptcy Code explicitly authorizes a debtor to obtain credit "secured by a lien on property of the estate that is not otherwise subject to a lien" when unsecured credit is unavailable to it.

27. As noted above, the DIP Facility represents the only financing available to the Debtors at this time. And the DIP Lenders insisted on receiving priming liens in exchange for

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their financing. In order to satisfy the requirements under § 364(d) of Bankruptcy Code, that allow courts to authorize priming liens, the Debtors are required to granting adequate protection to the Prepetition Secured Creditors. Therefore, under the circumstances, the Prepetition Replacement Liens on unencumbered assets are appropriate.

(ii) Objections to the § 506(c) Waiver Should Be Overruled

28. The Committee further objects to the Debtors' proposal to grant a section 506(c) waiver to the Prepetition Secured Creditors arguing that the Debtors are giving away a potential recovery for the unsecured creditors. The Committee Objection should be overruled.

29. The Committee cites to several cases justifying courts' denial of the 506(c) waiver with facts that are not relevant to the Debtors' case. One such case is *In re Hartford Fire Ins. Co. v. Norwest Bank Minn., N.A. (In re Lockwood Corp.)*, 223 B.R. 170, 176 (B.A.P. 8th Cir. 1998), wherein the 8th Circuit B.A.P. cites to *Hartford Underwriters Inc. Co v. Magna Bank, N.A. (In re Hen House Interstate, Inc.)*, 150 F. 3d 868 (8th Cir. 1998). In *Hen House*, the 8th Circuit issued a blanket ruling that immunizing agreement that prohibit surcharge payment obligations under § 506(c) are unenforceable, on the basis that such provisions operate as a windfall to the secured creditors at the expense of the administrative claimants. *Id.* 870-71. The *Lockwood* Court went on to add that they "are constrained to follow the Eighth Circuit's expansive holding on this issue as binding precedent" but noted that the factual basis for the *Hen House* holding differed markedly from the matter at bar. *Id.* at nt 7. The *Lockwood* Court noted, however, that *Hen House* concerned an immunizing agreement between a prepetition secured creditor and a debtor while in *Lockwood*, the immunizing provision was entered into postpetition by a potential secured creditor contracting to immunize its potential future collateral from surcharge under Section 506(c). The *Lockwood* Court cautioned that being required to void such a clause, as a result of

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the *Hen House* precedent, could result in "the wellspring of postpetition lending by new lenders, to be greatly diminished, or even to evaporate completely." *Id.*

30. This prohibition against waiver of the 506(c) surcharge articulated by the Eighth Circuit, however, does not exists in the Ninth Circuit or in the Central District of California. *See In re Cooper Commons LLC*, 512 F.3d 533 (9th Cir. 2008) (affirming Central District of California Bankruptcy Court's approval of § 506(c) waiver for the benefit of the prepetition lender); *In re Gardens Regional Hospital and Medical Center, Inc.*, Case No. 16-17463 (ER) (Bankr. C.D. Cal. July 28, 2016) (Docket No. 257) (authorizing § 506(c) waiver for the benefit of the prepetition secured creditors in connection with approval of debtor's motion for postpetition financing and use of cash collateral); *In re Flamingo Investments*, 2010 WL 5167375 (Bankr. C.D. Cal. 2010) (authorizing section 506(c) waiver in connection with confirmation of debtor's chapter 11 plan of reorganization); *In re TRG Wood Products Inc.*, 2010 WL 5167544 (Bankr. C.D. Cal. 2010) (authorizing section 506(c) waiver for prepetition secured lender in connection with approval of debtor's motion for use of cash collateral); *In re California Coastal Communities, Inc.*, Case No. 09-21712 (Bankr C.D. Cal. 2009) (Docket No. 559) (authorizing § 506(c) waiver for the benefit of the prepetition secured creditors in connection with approval of debtor's motion for postpetition financing and use of cash collateral).

31. The Committee also cites to *In re Colad Grp.*, 324 B.R. 208, 224 (W.D.N.Y. 2005) where in the court refused to allow the secured creditor the benefit of the § 506(c) waiver stating simply that " this court can discern no basis to allow a secured creditor to ignore [§ 506(c)'s application]. Here, however, there are discernable reasons to allow for such a waiver.

32. First, absent the section 506(c) waiver, the Prepetition Secured Creditors would effectively be double-charged for this restructuring—once through the funding of the case with the proceeds of their collateral, and again if their recovery were to be limited by the use of the

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very funds they've allowed the Debtors access to. In addition, the Prepetition Secured Creditors are consenting to the use of their cash collateral and are therefore partially funding the Debtors' chapter 11 cases. Second, the Prepetition Secured Creditors' Prepetition Liens are being primed by the DIP Lien, which represents a risk to their recovery as it puts their claims behind a new $185 million in secured debt. Thus, it is unsurprising that courts have routinely approved similar § 506(c) waivers, particularly in cases, such as this one, where the Prepetition Secured Creditors would not authorize the use of their cash collateral absent the waiver. *See In re Real Mex Restaurants, Inc.*, Case No. 11-13122 (BLS) (Bankr. D. Del. Nov. 4, 2011); *In re Metaldyne Corp*., 2009 WL 2883045 (Bankr. S.D.N.Y. 2009); *In re Antico Mfg. Co.*, 31 B.R. 103, 106 n.1 (Bankr. E.D.N.Y. 1983) (regarding an objection to a 506(c) waiver, the court noted that "[c]ertainly, the paragraph in question is not so detrimental or improper as to jeopardize the loss of the entire financing package").

33. Here, use of the Prepetition Secured Creditors cash collateral is critical to continued operation of the Debtors' estates and preservation of the estates' value for the benefit of all creditors. Accordingly, the Debtors believe, in their business judgment, that the waiver is appropriate given the benefits of continued use of the Prepetition Secured Creditors' cash collateral to the estates.

(iii) Objections to the § 552(b) Waiver Should Be Overruled

34. The Committee also objects to the proposed waiver of the Debtors' rights under §552(b) of the Bankruptcy Code, as they relate to the Prepetition Secured Creditors, arguing the Debtors are giving away an important right at the unsecured creditors' expense. For the same reasons noted above, this objection should be overruled.

35. Similar to § 506(c) waivers, waivers of the equities of the case exception contained in § 552 of the Bankruptcy Code are common in large chapter 11 cases and often granted when

courts feel that the prepetition secured creditor is entitled to such protection in exchange for use of their cash collateral. *See, e.g., In re California Coastal Communities, Inc.*, Case No. 09-21712 (Bankr C.D. Cal. 2009) (Docket No. 559) (authorizing waiver of § 552(b) "equities of the case" exception for the benefit of the prepetition secured creditors in connection with approval of debtor's motion for postpetition financing and use of cash collateral); *In re Golfsmith International Holdings, Inc.*, Case No. 16-12033 (LSS) (Bankr. D. Del. Sept. 16, 2016) (Docket No. 314); *In re Draw Another Circle, LLC*, Case No. 16-11452 (KJC) (Bankr. D. Del. June 14, 2016) (Docket No. 70); *In re Hancock Fabrics, Inc.*, Case No. 16-10296 (BLS) (Bankr. D. Del. Mar. 2, 2016) (Docket No. 273); *In re Residential Capital, LLC*, 501 B.R. 549, 572 (Bankr. S.D.N.Y. 2013). Such waiver is also justified here in exchange for the Prepetition Secured Creditors' authorization to use their cash collateral during the pendency of these Cases.

36. The Committee cites to *Sprint Nextel Corp. v. U.S. Bank Nat'l Ass'n (In re TerreStar Network, Inc.)*, 457 B.R. 254, 272-73 (Bankr. S.D.N.Y. 2001) to support its contention that the Debtors' request for a waiver of the equities of the case exception under § 552(b) should be denied as the factual record of this case has not yet been fully developed. But the facts in *TerreStar Network* are not analogous to facts at issue here, and the Committee's reliance on it is misplaced.

37. In *TerreStar Network,* an unsecured creditor brought an adversary proceeding challenging the validity and priority of the secured creditor's lien on the debtor's broadcast license. *Id.* at 257. Specifically, the unsecured creditor asserted that the lien should be invalidated or subordinated under § section 552(b)(1)'s equities of the case" doctrine. *Id.* at 270. While the parties cross moved for summary judgment on other issues, on this issue, the secured creditor conceded that the factual record was incomplete. *Id.* As a result, the Court concluded

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that the equitable claim, which is fact dependent, would not be ripe for summary judgment until after the completion of discovery. *Id.* at 258.

38. *TerreStar Network* did not address a debtor's request for a waiver of the § 552(b) exemption in the context of obtaining DIP financing or using cash collateral. So the only fact relevant to the § 552(b) analysis is whether the Debtors can use the Prepetition Secured Creditors cash collateral without, in exchange, granting the waiver. The Debtors have worked closely with the Prepetition Secured Creditors in order to obtain their consent to use their cash collateral in these Cases. Granting a waiver of the § 552(b) exception is a necessary component for receiving that consent.

39. In further response to the Committee's arguments regarding the §§ 506(c) and 552(b) waiver, the Debtors' note neither the DIP Lenders nor the Prepetition Secured Creditors have been granted liens on Avoidance Actions. So there are unencumbered assets in these estates available to the general unsecured creditors.

(iii) Objections to the Waiver of Marshaling Principles Should be Denied

40. The Committee objects to any waiver of marshaling rights against the DIP Lender in the proposed Final Order, absent an event of default under the DIP Credit Agreement, arguing that absent an event of default, such a waiver would allow the DIP Lender to be repaid with otherwise unencumbered assets thus leaving only encumbered assets in the Debtors' estates. However the Committee offers no reason why the Debtors, in their exercise of sound business judgment, cannot grant this waiver.[5]

41. As a threshold matter, the Debtors first contend that the Committee lacks standing to raise this argument. *See In re Advanced Mktg. Servs., Inc.*, 360 B.R. 421, 249 n.8 (Bankr. D.

[5] The Committee Objection further provides that nothing in the Final Order should eliminate or otherwise affect the Debtors' estates' rights to assert marshaling rights under §544(a) of the Bankruptcy Code against the Prepetition Secured Creditors. The Debtors' proposed Final Order does not seek to eliminate such rights against the Prepetition Secured Creditors.

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Del. 2007) (holding that unsecured creditor could not direct secured lenders to satisfy their claim using different collateral because marshalling is a protection for junior secured creditors). The marshaling doctrine allows a court to require a secured creditor to first satisfy its claim from property of the debtor in which a junior creditor lacks an interest—thus protecting the junior creditors' interest in property subject to both a senior and junior claim. *See In re Tampa Chain Co.*, 53 B.R. 772, 777 (Bankr. S.D.N.Y. 1985). Thus, only a secured creditor can invoke the doctrine of marshaling. *Galey & Lord, Inc. v. Arley Corp. (In re Arlco, Inc.)*, 239 B.R. 261, 274 (Bankr. S.D.N.Y. 1999) (holding that unsecured creditors have no right to invoke the doctrine of marshaling) (citing *Herkimer Cnty. Tr. Co. v. Swimelar (In re Prichard)*, 170 B.R. 41, 45 (Bankr. N.D.N.Y. 1994)).

42. The Committee, citing to *Official Comm. of Unsecured Creditors v. Hudson United Bank (In re America's Hobby Ctr.)*, 223 B.R. 275, 287 (Bankr. S.D.N.Y. 1998) for support, writes "the case law is clear that an official committee can stand in the shoes of the debtor in possession to pursue marshaling rights on behalf of the bankruptcy estate and all unsecured creditors." This statement omits a significant portion of the standing analysis, which is that the bankruptcy court must first approve the action.

43. The *America's Hobby Center* case relies heavily on *Unsecured Creditors' Committee v. Noyes (In re STN Enterprises)*, the controlling case in the Second Circuit addressing a committee's standing to initiate an adversary proceeding. 779 F. 2d 901 (2d Cir. 1985). In *STN*, the Second Circuit found that a bankruptcy court has the authority to deputize a committee to prosecute litigation on behalf of the estate. *Id.* at 904. Approval would be appropriate where the committee presented a colorable claim or claims for relief that on appropriate proof would support a recovery, and where the trustee or debtor in possession unjustifiably failed to bring suit or abused its discretion in not suing. *Id.* at 904. In considering the failure to bring suit, the lower

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courts were directed by the Circuit to consider whether an action asserting the proposed claims would be likely to benefit the reorganization estate, and as part of any such analysis, each lower court was directed to "assure itself that there is a sufficient likelihood of success to justify the anticipated delay and expense to the bankruptcy estate that the initiation and continuation of litigation will likely produce." *Id.*

44. The Ninth Circuit has identified a similar set of factors and considerations for implementation of its doctrine authorizing the deputation of committees to act on behalf of an estate. *See Liberty Mutual Ins. Co. v. Official Unsecured Creditors' Comm. of Spaulding Composites Co. (In re Spaulding Composites Co., Inc.),* 207 B.R. 899 (9th Cir. B.A.P. 1997). The Ninth Circuit also considers whether the debtor consents or stipulations to representation by an unsecured creditors committee, whether the committee's interests conflict with those of the estate and whether the deputation of the committee would permit the debtor to concentrate its resources on rehabilitating its business. *Id.*

45. In *America's Hobby Center*, the Court followed the Second Circuit precedent in *STN* saying "there is good and sufficient reason to hold that a creditors' committee does not have unfettered discretion to sue simply on its own say-so." 223 B.R. at 280. Prior approval of committee commenced adversary proceedings is required because it "promotes the fair and orderly administration of the bankruptcy estate by providing judicial supervision over the litigation to be taken." *Id.* (Citing *Catwil Corp. v. Derf II (In re Catwil Corp.),* 175 B.R. 362, 364 (Bankr. E.D. Cal.1994) (quoting *In re Curry and Sorensen, Inc.*, 57 B.R. 824, 828 (9th Cir. B.A.P. 1994)).

46. In *America's Hobby Center*, the committee argued it received prior authorization to bring the suit from the debtor, via a stipulation the debtor and the prepetition lender entered into authorizing the debtors to use the prepetition lender's cash collateral. The court disagreed

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finding that the stipulation did not relieve the committee of its need to first obtain bankruptcy court approval as a prerequisite to commencing an adversary proceeding on behalf of the chapter 11 estate. *Id*. at 278. The court then denied the committee authorization to pursue the marshaling claim on the grounds that "the claim, as pleaded is not sustainable." *Id*. at 287.

47. Here, the Committee has neither sought nor obtained bankruptcy court authority to commence an action to pursue marshalling rights, and the Debtors have not and likely will not consent to the commencement of such an action. Instead, the Debtors have specifically granted to the DIP Lenders and the Prepetition Secured Creditors a waiver of this requirement in exchange for the new financing and use of cash collateral that those parties are providing for the benefit of the estates. As such, the Committee's interests conflict with those of the estate. Further, the Committee is unlikely to establish that such a claim would be sustainable because, as noted above, and as acknowledged in *America's Hobby Center*, "an unsecured creditor may not utilize the doctrine of marshaling." *Id.* at 287.

48. Should the Court find that the Committee does have standing, however, then the Debtors contend that the limitation on marshalling is reasonable in these Cases. DIP lenders almost always insist on a waiver of marshaling principles and in turn, courts have routinely approved such limitations. Notably, this Court authorized a waiver of marshaling principles for both DIP lenders and prepetition secured creditors in *In re Gardens Regional Hospital and Medical Center, Inc.*, Case No. 16-17463 (ER) (Bankr. C.D. Cal. July 28, 2016) (Docket No. 257); s*ee also, e.g., In re California Coastal Communities, Inc.*, Case No. 09-21712 (Bankr C.D. Cal. 2009) (Docket No. 559) (providing that neither the DIP lender nor the prepetition lenders would be subject to the equitable doctrine of marshaling in connection with approval of debtor's motion for postpetition financing and use of cash collateral); *In re Thornwood Furniture Mfg., Inc.*, 2010 WL 6982070 (Bankr. D. Az. 2010)*; In re Filip Techs.*, Inc., No. 16-12192 (KG)

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(Bankr. D. Del. Oct. 27, 2016); *In re Golfsmith International Holdings, Inc.*, Case No. 16-12033 (LSS) (Bankr. D. Del. Sept. 16, 2016); *In re Xerium Techs.*, Inc., Case No. 10-11031 (KJC) (Bankr. D. Del. Apr. 28, 2010); *In re Visteon Corp.*, Case No. 09-11786 (CSS) (Bankr. D. Del. Nov. 12, 2009); *In re Linens Holding Co.*, Case No. 08-10832 (CSS) (Bankr. D. Del. May 28, 2008).

49. In addition, the DIP Lenders would not provide the DIP Facility without this negotiated for protection. Accordingly, the Debtors conclude, in the exercise of their business judgment, that providing this waiver to the DIP Lenders is appropriate in exchange for the multitude of benefits provided by the DIP Facility. Therefore, the limitation on marshaling in these Cases is appropriate and the Committee Objection should be overruled.

(iv) The Secured Creditor Fees and Expenses are Reasonable

50. The Committee alleges, without evidentiary support, that the fees and expenses provided to the Prepetition Secured Creditors in the proposed DIP Order are excessive. Specifically, the Committee objects to the provisions that authorize the Debtors to pay the Prepetition Secured Creditors' professionals from the Debtors' estates and further objects to the lack of a review process and lack of a disgorgement provision relating to the Prepetition Secured Creditors fees and expenses. But the terms of the proposed Final Order reflect the most favorable terms on which the Prepetition Secured Creditors would consent to the use of their cash collateral. The fact that the Committee does not like these terms does not mandate their rejection.

(v) Asset Sales Process Milestones and Events of Default

51. The Committee also alleges that the DIP Credit Agreement "improperly dictates the parameters of the Debtors' asset sale process." Committee Objection at ¶36. The Committee contends, again without evidentiary support, that there is no need for the Court's rush to approve

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these critical sales [in the timeline required by the DIP Credit Agreement]. On this point, the Committee is flat out wrong.

52. The Debtors have been experiencing a significant cash burn over this past year, with the burn at certain Hospitals being far more significant than others. The Debtors and the DIP Lenders heavily negotiated and carefully constructed the DIP milestones and events of default and DIP Budget to take this burn into account. The DIP Lenders do not want to and in fact will not indefinitely finance the Debtors' losses. The DIP Credit Agreement, which has a twelve month maturity date, articulates reasonably tailored and achievable benchmarks necessary to maximize value of the Debtors' estates and avoid any erosion in value. As such, the milestones articulated in the DIP Credit Agreement are necessary and reasonable in light of the facts and circumstances of this Case.

53. Lastly, the Committee's objection here ignores the fact that the Debtors and their professionals have been aggressively marketing these assets and hope to have several buyers engaged as stalking horses for specific facilities, and look for various other expressions of interest. Indeed, the Debtors expect to file a motion for approval of bid procedures for O'Connor Hospital and Saint Louise Regional Hospital on the same calendar day as this Omnibus Supplemental Reply. So again, the timeline contemplated by the milestones articulated in the DIP Credit Agreement are consistent with what the Debtors believe they can achieve in good faith in order to maximize the value of their assets.

(vi) Committee Fees and Expenses

54. The Committee contends the current budgeted amount of $100,000 per month for Milbank and $50,000 per month for FTI is insufficient. While such number can and will likely be adjusted in the next update of the 13 week Budget due under the DIP Credit Agreement, the Committee's real challenge is that Committee professional fees are in any way constrained. The

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Committee questions the need for any budget as to the their fees and suggests that such costs will be dictated by the events of the Cases. While the responsibilities of Committee counsel are not the subject to the Budget, whether such fees are paid on an interim basis or as part of a plan of reorganization is very much a concern of the DIP Lender and, by extension, the Debtors and the Prepetition Secured Creditors. The DIP Debtors will make changes to the Budget to account for professional fees, but they will inevitably affect variances.

(vi) Investigation Period and Budget Are Sufficient and Should Be Approved

55. The Committee has indicated that it will accept a 90 day investigation Period if the Debtors agree that such period can be extended by stipulation among the Debtors, the Committee and the Prepetition Secured Creditors. The attached proposed Final Order reflects such a change.

56. The Initial Agreed Budget originally provided an Investigation Budget of $50,000. As a result of earlier conversations between the Committee, the Debtors and the DIP Lenders, the Debtors agreed to increase the Investigation Budget to $100,000. The Committee, nonetheless requests that the Investigation Budget be increased to $250,000. This principally is a concern of the Prepetition Secured Creditors, but there is little justification to raise this amount as there is little factual dispute relating to the facts and circumstances regarding the grand and perfection of the Prepetition Secured Creditors' claims and liens. If the Committee decides to incur investigation fees in excess of the $100,000 allocated by the Carve-Out, such fees will be administrative claims, which, to the extent allowed, would be paid as an administrative expense as a condition to the confirmation of any plan. *See* 11 U.S.C. § 1129(a); *In re General Maritime Corp.*, 2001 WL 6841191 (Bankr. S.D.N.Y. 2001) (authorizing an investigation budget for the committee up to $125,000); *In re Limited Stores Co.*, LLC, Case No. 17-10124 (KJC) (Bankr. D. Del. Feb. 16 2017) [Docket No. 233 § 2.3(d)] ($75,000 carveout).

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(vii) The Carve Out is Sufficient and Should be Approved

57. The Committee requests that the Carve-Out only apply to fees and expenses accrued and to be paid after the Carve-Out Trigger Date. The Committee wants accrued fees and costs not paid before the Carve-Out Trigger Date to be paid in addition to the Carve-Out.

58. The Debtors believe that the $150,000 allocated to the Committee under the Carve-Out is sufficient. The Debtors further believe that the terms outlined in the DIP Credit Agreement and proposed DIP Order are the best that could be negotiated under the circumstances, and are reasonable. All offers accompanying the rollover of accrued but unpaid fees in the carve out were accompanied by less favorable economic terms.

59. Lastly, the Debtors note that any increase in the Carve-Out reduces the Debtors' Borrowing Base availability on a dollar for dollar. This concept is defined and referred to in the DIP Credit Agreement as the "Carve Out Reserve". The Debtors do not want their Borrowing Base availability diminished in such a way that may ultimately cause an event of default under the DIP Credit Agreement.

(viii) Exercise of Remedies

60. The Committee contends that the DIP Lenders right to relief from the automatic stay immediately upon entry of a default under the DIP Credit Agreement is unfair and inconsistent with the rights of this nature generally granted in the DIP order context. The Committee requests that the proposed DIP Order be revised to allow for a five business day notice period and opportunity for a party in interest to be heard before the DIP Lender may exercise of any remedy authorized by the DIP Credit Agreement. The DIP Lender has not agreed to this request.

(ix) Reports and Budget

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61. The Committee wants the same reports and updated budgets at the same time they are provided to the DIP Lender and Prepetition Secured Creditors. They also want consultation rights on the budget. The revised proposed Final Order now provides the Committee with the same information that will be provided to the DIP Lenders and the Prepetition Secured Creditors concerning (i) the Debtors' efforts to obtain debtor in possession financing proposals, including any proposals the Debtors received, and (ii) the Debtors' ongoing efforts to market their assets, including all marketing materials used by the Debtors in this process, information identifying the parties the Debtors have contacted and copies of any proposals or expressions of interest. *See* revised proposed Final Order at ¶ 7. This paragraph 7 also affords the Committee access to all reports and other information as required in the DIP Credit Agreement, including the DIP Budget.

(x) Credit Bidding

62. The Committee wants all credit bidding undertaken by either by the DIP Lender or the Prepetition Secured Creditors to fully comply with all of the requirements of §363(k). There is ample time for the Committee to raise this issue in connection with any objection it may raise to the bid procedures motion.

(xi) Asset Sale Proceeds

63. The Committee insists that the Final Order require that a "further order of this Court" be required to permit the application of Sale Proceeds to satisfy (in full or in part) the DIP Facility. This is simply inconsistent with the DIP Credit Agreement terms.

III. CONCLUSION

64. The DIP Facility represents the best financing package available to the Debtors, and entry into the DIP Facility easily passes muster as an appropriate exercise of the Debtors' business judgment. As the DIP Motion, the Omnibus Reply, this Omnibus Supplemental Reply and all declarations and documents submitted in support thereof make clear, the Debtors continue

to support the DIP Facility because of the significant financial benefits it provides to both the estates and their creditors.

WHEREFORE, for the reasons set forth in the DIP Motion, the Omnibus Reply and above, the Debtors respectfully request entry of an order (i) granting the relief requested herein and (ii) granting the Debtors such other and further relief as the Court deems just and proper.

Dated: October 1, 2018

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By */s/ Samuel R. Maizel*
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EXHIBIT 1

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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

In re VERITY HEALTH SYSTEM OF CALIFORNIA, INC., *et al.*, Debtors and Debtors In Possession.	Lead Case No. 18-20151 Jointly Administered With: CASE NO.: 2:18-bk-20162-ER CASE NO.: 2:18-bk-20163-ER CASE NO.: 2:18-bk-20164-ER CASE NO.: 2:18-bk-20165-ER CASE NO.: 2:18-bk-20167-ER CASE NO.: 2:18-bk-20168-ER CASE NO.: 2:18-bk-20169-ER CASE NO.: 2:18-bk-20171-ER CASE NO.: 2:18-bk-20172-ER CASE NO.: 2:18-bk-20173-ER CASE NO.: 2:18-bk-20175-ER CASE NO.: 2:18-bk-20176-ER CASE NO.: 2:18-bk-20178-ER CASE NO.: 2:18-bk-20179-ER CASE NO.: 2:18-bk-20180-ER CASE NO.: 2:18-bk-20171-ER Chapter 11 Cases Hon. Ernest M. Robles
☒ Affects All Debtors ☐ Affects O'Connor Hospital ☐ Affects Saint Louise Regional Hospital ☐ Affects St. Francis Medical Center ☐ Affects St. Vincent Medical Center ☐ Affects Seton Medical Center ☐ Affects O'Connor Hospital Foundation ☐ Affects Saint Louise Regional Hospital Foundation ☐ Affects St. Francis Medical Center of Lynwood Foundation ☐ Affects St. Vincent Foundation ☐ Affects St. Vincent Dialysis Center, Inc. ☐ Affects Seton Medical Center Foundation ☐ Affects Verity Business Services ☐ Affects Verity Medical Foundation ☐ Affects Verity Holdings, LLC ☐ Affects De Paul Ventures, LLC ☐ Affects De Paul Ventures - San Jose Dialysis, LLC Debtors and Debtors In Possession.	**FINAL ORDER (I) AUTHORIZING POSTPETITION FINANCING, (II) AUTHORIZING USE OF CASH COLLATERAL, (III) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (IV) GRANTING ADEQUATE PROTECTION, (V) MODIFYING AUTOMATIC STAY, AND (VI) GRANTING RELATED RELIEF**

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Upon the emergency motion (the "***DIP Motion***")[1], dated August 31, 2018, filed by Verity Health System of California, Inc., O'Connor Hospital, Saint Louise Regional Hospital, St. Francis Medical Center, St. Vincent Medical Center, Seton Medical Center, Verity Holdings, LLC, Verity Medical Foundation, O'Connor Hospital Foundation, Saint Louise Regional Hospital Foundation, St. Francis Medical Center of Lynwood Medical Foundation, St. Vincent Foundation, St. Vincent Dialysis Center, Inc., Seton Medical Center Foundation, Verity Business Services, DePaul Ventures, LLC, and DePaul Ventures - San Jose Dialysis, LLC (collectively, the "***Debtors***"), as debtors and debtors in possession in the above captioned chapter 11 cases (collectively, the "***Chapter 11 Cases***"), pursuant to sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e) and 507 of title 11 of the United States Code (the "***Bankruptcy Code***"), Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the "***Bankruptcy Rules***") and Rule 4001-2 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Central District of California (the "***Local Rules***" or "***LBR***"), for entry of an emergency order (the "***Interim Order***") following conclusion of the interim hearing (the "Interim Hearing") authorizing the Debtors, on an interim basis, and following the conclusion of a final hearing (the "Final Hearing") on the DIP Motion, for entry of a final order (the "Final Order") authorizing the Debtors, on a final basis authorizing the Debtors to, among other things: *inter alia*:

(i) Obtain senior secured post-petition financing (the "***DIP Financing***" or "***DIP Facility***") pursuant to the terms and conditions of the DIP Financing Agreements (as defined below), the Interim Order, and this Final Order~~, and the Final Order (as defined below)~~, pursuant to sections 364(c)(1), 364(d), and 364(e) of the Bankruptcy Code and Rule 4001(c) of the Bankruptcy Rules;

(ii) Enter into a Debtor-in-Possession Credit Agreement (the "***DIP Credit Agreement***"), substantially in the form attached as Exhibit 2 to the Supplemental Chou Declaration ("**Supp. Chou Decl.**")[Docket --], and other related financing documents (together with the DIP Credit Agreement and DIP Security Agreement, the "***DIP Financing Agreements***"),

[1] Capitalized terms used herein and not otherwise defined shall have the meaning ascribed in the DIP Motion.

by and among each of the Debtors and Ally Bank ("***Ally***"), in its capacity as agent ("***DIP Agent***") and in its capacity as lender ("***DIP Lender***,") under the DIP Credit Agreement;

(iii) Borrow, on an interim basis, pursuant to the DIP Financing Agreements, postpetition financing of up to $30,000,000 on a revolving basis (the "***Interim DIP Loan***") and seek other financial accommodations from the DIP Agent and DIP Lender pursuant to the DIP Credit Agreement, the other DIP Financing Agreements, ~~and this Final~~the Interim Order;

(iv) Borrow, on a final basis, pursuant to the DIP Financing Agreements, post-petition financing of up to an additional $155,000,000, for a total of up to $185,000,000, on a revolving basis, which includes the Interim DIP Loan (the "***Final DIP Loan***," and together with the Interim DIP Loan, the "***DIP Loan***") and seek other financial accommodations from the DIP Agent and DIP Lender pursuant to the DIP Credit Agreement, the other DIP Financing Agreements, and ~~the~~this Final Order ~~(as defined below)~~;

(v) Execute and deliver the DIP Credit Agreement and the other DIP Financing Agreements;

(vi) Grant the DIP Agent and DIP Lender allowed super-priority administrative expense claims, pursuant to section 364(c)(1) of the Bankruptcy Code, in each of the Chapter 11 Cases and any Successor Cases (as defined below) for the DIP Financing and all obligations of the Debtors owing under the DIP Financing Agreements (collectively, and including all "***Obligations***" of the Debtors as defined and described in the DIP Credit Agreement, the "***DIP Obligations***") subject only to the Carve Out (defined below) as set forth below;

(vii) Grant the DIP Agent and DIP Lender automatically perfected first priority senior security interests in and liens on all of the DIP Collateral (as defined below) pursuant to section 364(d)(1) of the Bankruptcy Code, which liens shall not be subordinate to any other liens, charges, security interests or surcharges under section 506(c) or any other section of the Bankruptcy Code, with the exception of the Carve Out (defined below) as set forth below;

(viii) Obtain authorization to use the proceeds of the DIP Financing in all cases in accordance with the ~~proposed initial agreed budget covering the initial 13 week period (the "***Initial Agreed Budget***") a copy of which is attached to the Chou Decl. [Docket No. 32] as~~

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~~**Exhibit 2,**~~ 13 week budget , as updated from time to time attached as Exhibit 1, Supp. Chou Decl. (the "***DIP Budget***") and as otherwise provided in the DIP Financing Agreements, the Interim Order and this Final Order;

(ix) Provide adequate protection to certain of the Prepetition Secured Creditors (defined herein) and McKesson (defined herein) pursuant to the terms of this Final Order for any diminution in value of their respective interests in the Prepetition Collateral or VMF Collateral (each as defined herein) resulting from the DIP Liens (as defined herein) on the Prepetition Collateral or VMF Collateral, subordination to the Carve Out (as defined herein), or Debtors' use, sale, or lease of Prepetition Collateral or VMF Collateral, including cash collateral within the meaning of 11 U.S.C. §363(a) (such cash collateral that is Prepetition Collateral or VMF Collateral hereafter defined as "***Cash Collateral***");

(x) Grant authorization based upon the consent of the Prepetition Secured Creditors and McKesson to use of Cash Collateral in accordance with the DIP Budget upon the terms and conditions set forth herein;

(xi) Vacate and modify the automatic stay imposed by section 362 of the Bankruptcy Code solely to the extent necessary to implement and effectuate the terms of the DIP Financing Agreements, the Interim Order, and this Final Order;

(xii) Following the conclusion of a final hearing (the "***Final Hearing***") to consider entry of an order (the "***Final Order***") ~~granting the~~Granting all other relief requested in the DIP Motion on ~~a~~an interim and final basis; and

(xiii) Waive any applicable stay as provided in the Bankruptcy Rules (expressly including Rule 6004) and provide for immediate effectiveness of this Final Order.

The Court, having considered the DIP Motion, the Declarations of Anita M. Chou, Chief Financial Officer filed in support of the DIP Motion and Rich Adcock, ~~CEO~~Chief Executive Office filed in support of the First Day Motions each as Officers of the Debtors, in Support of Chapter 11 Petitions and First Day Pleadings, the DIP Motion, the ~~proposed DIP Credit Agreement, and any~~DIP Financing Documents, and the Supplemental Declaration of Anita Chou in Support of Debtors' Reply in Support of the DIP Motion, and the exhibits attached thereto, and

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the evidence submitted or adduced and the arguments of counsel made at the ~~hearing on the Interim Order (the "~~Interim Hearing~~") and on the request for entry of the Final Order (the "~~ and the *Final Hearing*~~")~~; and due and proper notice of the DIP Motion, ~~an~~the Interim Hearing, entry of the Interim Order, and Final Hearing having been provided in accordance with Bankruptcy Rules 2002, 4001(b) and (d), and 9014 and LBR 4001-2 and no other or further notice being required under the circumstances; and the Interim Hearing and Final Hearing having been held and concluded; and it appearing that approval of the and final relief requested in the DIP Motion is necessary to avoid immediate and irreparable harm to the Debtors and is otherwise fair and reasonable and in the best interests of the Debtors, their estates and their creditors, and is essential for the preservation of the value of the Debtors' assets; and all objections, if any, to the entry of this Final Order having been withdrawn, resolved or overruled by the Court; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

BASED UPON THE RECORD ESTABLISHED AT THE INTERIM AND FINAL HEARINGS, THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:[2]

A. **Petition Date**. On August 31, 2018 (the "***Petition Date***"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Central District of California (the "***Court***"). The Debtors have continued in the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

B. **Jurisdiction and Venue**. This Court has jurisdiction over the Cases, the DIP Motion and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334(b), and over the persons and property affected hereby. Consideration of the DIP Motion constitutes a core proceeding as defined in 28 U.S.C. § 157(b)(2). Venue for these Chapter 11 Cases and

[2] The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

proceedings on the DIP Motion is proper before this district pursuant to 28 U.S.C. §§ 1408 and 1409.

C. **Committee Formation.** The Office of the United States Trustee (the "***U.S. Trustee***") ~~has noticed~~provided notice of the appointment of an official committee of unsecured creditors in these Cases pursuant to section 1102 of the Bankruptcy Code, the members of which are identified by the Office of the United States Trustee in that Notice of Appointment and Appointment of Committee of Creditors Holding Unsecured Claims dated September 17, 2018 [Docket No 197] (the "***Committee***").

D. **Notice**. ~~Notice of the~~The Court~~'s entry of~~ entered the Interim Order on September 6, 2018 [Docket 86]. Notice of entry of the Interim Order and Notice of the Final Hearing and on the DIP Motion [Docket 201] has been provided by the Debtors to: (i) the Office of the United States Trustee for the Central District of California (the "***U.S. Trustee***"); (ii) the United States Securities and Exchange Commission; (iii) the Office of the United States Attorney for the Central District of California; (iv) the Internal Revenue Service; (v) the Debtors' fifty (50) largest unsecured creditors on a consolidated basis; (vi) counsel to each of the Prepetition Secured Creditors (as defined below); (vii) counsel to the DIP Agent and the DIP Lender; (viii) the Office of the Attorney General for the State of California, Charities Division; (ix) proposed counsel to the Committee; and (~~ix~~x) all other parties known to assert a lien on any of the Debtors' assets. Under the circumstances, such notice of the Final Hearing and the DIP Motion constitute due, sufficient and appropriate notice and complies with sections 102(1) and 363 of the Bankruptcy Code, Bankruptcy Rules 2002 and 4001(b), and the Local Rules, and no other or further notice is required under the circumstances.

E. **Findings Regarding Corporate Authority**. As set forth in the resolutions accompanying the Petitions and the Adcock Declaration, each Debtor has all requisite corporate power and authority to execute and deliver the DIP Financing Agreements to which it is a party, to grant the DIP Liens (as defined herein) and to perform its obligations thereunder.

F. **Intercreditor Agreement**. Pursuant to section 510(a) of the Bankruptcy Code, the Second Amended and Restated Intercreditor Agreement dated December 1, 2017 (the

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"***Intercreditor Agreement***") and any other applicable intercreditor or subordination provisions contained in any of the Prepetition Secured Documents (i) shall remain in full force and effect, with respect to prepetition and post-petition assets of the Debtors as provided thereunder, (ii) shall continue to govern the relative priorities, rights and remedies of the Prepetition Secured Creditors (including the relative priorities, rights and remedies of such parties with respect to the Prepetition Replacement Liens and Adequate Protection Superpriority Claims granted, or amounts payable, by the Debtors under the Interim Order, this Final Order or otherwise and the modification of the automatic stay), and (iii) shall not be deemed to be amended, altered or modified by the terms of this Final Order or the DIP Financing Agreements, unless expressly set forth herein.

G. **Prepetition Secured Credit Facilities**. As of the Petition Date, the Debtors were indebted and liable to the Prepetition Secured Creditors as follows:

(i) UMB Bank, N.A., ("***UMB Bank***") as successor Master Trustee (in such capacity, the "***Master Trustee***") under the Master Trust of Trust dated as of December 1, 2001, as amended and supplemented (the "***Master Indenture***") with respect to the MTI Obligations (defined below) securing the repayment by the Obligated Group (defined below) of its loan obligations with respect to (1) the California Statewide Communities Development Authority Revenue Bonds (Daughters of Charity Health System) Series 2005 A, G and H (the "***2005 Bonds***"), (2) the California Public Finance Authority Revenue Notes (Verity Health System) Series 2015 A, B, C and D (the "***2015 Working Capital Notes***"), and (3) the California Public Finance Authority Revenue Notes (Verity Health System) Series 2017 A and B (the "***2017 Working Capital Notes***" and, collectively with the 2015 Working Capital Notes, the "***Working Capital Notes***"). The joint and several obligations issued under the Master Indenture by Verity Health System of California, Inc., O'Connor Hospital, Saint Louise Regional Hospital, St. Francis Medical Center, St. Vincent Medical Center and Seton Medical Center (collectively, the "***Obligated Group***") in respect of the 2005 Bonds and the Working Capital Notes are collectively referred to as the "***MTI Obligations***". Wells Fargo Bank National Association ("***Wells Fargo***") serves as bond indenture trustee under the bond indentures relating to the 2005 Bonds. U.S. Bank National Association ("***U.S. Bank***") serves as the note indenture trustee and as the collateral agent

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under each of the note indentures relating to the 2015 Working Capital Notes and the 2017 Working Capital Notes, respectively. The MTI Obligations are secured by, inter alia, security interests granted to the Master Trustee in the prepetition accounts of, and mortgages on the principal real estate assets of, the members of the Obligated Group.

In addition to the security provided to the Master Trustee to secure the MTI Obligations, U.S. Bank, as Note Trustee for the 2015 Working Capital Notes and the 2017 Working Capital Notes is secured by prepetition first priority liens upon and security interests in the Obligated Group's accounts and deeds of trust on the principal real estate assets of Saint Louise Regional Hospital and St. Francis Medical Center (collectively, the "***Priority Collateral***"). U.S. Bank as Notes Trustee for the 2017 Working Capital Notes has also been granted a deed of trust, dated as of December 1, 2017, by Verity Holdings in certain real property located in San Mateo California (the "***Moss Deed of Trust***") to further secure the 2017 Working Capital Notes.

(ii) Verity MOB Financing, LLC and Verity MOB Financing II, LLC (together, the "***MOB Lenders***") hold security interests in Verity Holdings' accounts, including rents arising from the prepetition MOB Financing, and mortgages on medical office buildings owned by Verity Holdings (the "***MOB Financing***").

The Master Trustee, Wells Fargo as bond indenture trustee for the 2005 Notes, U.S. Bank as Note Trustee for the Working Capital Notes, and the MOB Lenders are collectively hereafter referred to as the "***Prepetition Secured Creditors***;" the MTI Obligations, the Obligated Group's loan obligations with respect to the Working Capital Notes and the MOB Financing are hereinafter referred to as the "***Prepetition Secured Obligations***;" the prepetition interests (including the liens and security interests) of each Prepetition Secured Creditor in the property and assets of the Debtors are hereinafter referred to as the "***Prepetition Liens***;" and the documents, writings and agreements evidencing the Prepetition Secured Obligations are hereinafter referred to as the "***Prepetition Secured Documents***".

H. **Prepetition Secured Trade Vendor Arrangement**. Prior to the Petition Date, ~~VMF~~Debtor Verity Medical Foundation ("VMF") entered into agreements for the sole source purchasing of certain critical chemotherapy and other pharmaceutical products and

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medical-surgical products with McKesson Corporation and certain affiliates ("***McKesson***"), and on or about March 27, 2018 granted to McKesson a prepetition perfected security interest ("***VMF Liens***") in VMF tangible and intangible personal property, including accounts (the "***VMF Collateral***"), but such perfected security interest excluded VMF cash (to the extent such cash does not represent proceeds of the VMF Collateral), personal property requiring possession for perfection and real property interests. As of the Petition Date, McKesson was owed approximately $3,055,000.00 (the "***McKesson Prepetition Debt***"). Postpetition, and subject to McKesson's internal credit review and approval process, McKesson has agreed to resume providing certain secured trade credit to VMF and the physician practices ordering through VMF for the purchase of pharmaceutical and medical-surgical products on 30 days from invoice payment terms (the "***McKesson Post-Petition Trade Credit***"). The McKesson Post-Petition Trade Credit will ~~continued~~continue to be secured by the VMF Liens.

I. **Prepetition Collateral**. In order to secure the Prepetition Secured Obligations and the Prepetition Secured Trade Vendor Arrangement (as described in paragraph H above), the Debtors, excluding the Philanthropic Foundations, granted the Prepetition Liens and the VMF Liens to the Prepetition Secured Creditors and McKesson, respectively as provided and described in the Prepetition Secured Documents and the documents pertaining to the VMF Collateral. The assets subject to the Prepetition Liens (the "***Prepetition Collateral***") and the VMF Collateral constitute substantially all of the assets of the Debtors, excluding cash and assets of the Philanthropic Foundations.

J. **Prepetition Agreements to Pay Special Assessments.** Seton Medical Center, a Debtor, ("***SMC***") and California Statewide Communities Development Authority ("***CSCDA***") entered into an (i) Agreement to Pay Assessment and Finance Improvements dated May 11, 2017 under the CSCDA CaliforniaFirst Program ("***Clean Fund Agreement to Pay Assessment***"), and (ii) Agreement to Pay Assessment and Finance Improvements dated May 18, 2017 under the CSCDA CaliforniaFirst Program ("***Petros Agreement to Pay Assessment***", collectively, with Clean Fund Agreement to Pay Assessment, the "***Assessment Agreements*** "), each for the limited purpose of providing financing for certain renewable energy, energy efficiency, water efficiency

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and seismic improvements permanently affixed to real property owned by SMC located in Daly City, California under the CSCDA CaliforniaFirst Program in the aggregate amount of $40,000,000. As of the Petition Date, after payment of tax exempt bond issuance fees for the Clean Fund Bonds and the NR2 Petros Bonds (each as defined in the DIP Motion) and retention of capitalized interest reserves approximately $34,379,450 is being held for authorized improvements (the "***Program Funds***") by Wilmington Trust N.A. ("***WTNA***") as indenture trustee, pursuant to, *inter alia*, the terms of two Indentures between CSCDA and WTNA dated as of May 11, 2017 and May 18, 2017 and the Assessment Agreements. Notwithstanding SMC's status as a tax exempt California not for profit corporation, SMC agreed and consented to the CSCDA special tax assessments imposed pursuant to and under the Assessment Agreements (the "***CSCDA Special Assessments***"). The Debtors acknowledge that the CSCDA Special Assessments have the same lien priority and methods of collection as general municipal taxes on real property. Notices of Assessment and Payment of the Special Assessments were recorded in the official records of the County of San Mateo against the real property owned by SMC and consented to by the Prepetition Secured ~~Lenders~~Creditors. The Debtors acknowledge that the Program Funds and other proceeds of the issuance of the Clean Fund Bonds or NR2 Petros Bond which are being held by WTNA are not property of the Debtors' estates, and are not subject to the Prepetition Liens, the DIP Liens, or the Prepetition Replacement Liens.

K. **Findings Regarding the Postpetition Financing**.

(i) **Consensual Priming of the Prepetition Liens**. The priming of the Prepetition Liens of the Prepetition Secured Creditors on the Prepetition Collateral, and the VMF Liens on the VMF Collateral under section 364(d) of the Bankruptcy Code, as contemplated by the DIP Financing Agreements, as authorized by the Interim Order and this Final Order, and as further described below, is consented to by the Prepetition Secured Creditors and McKesson, and will enable the Debtors to continue borrowing under the DIP Facility and to continue operating their businesses for the benefit of their estates and creditors. The Prepetition Secured Creditors and McKesson are each entitled to receive adequate protection as set forth in this Final Order pursuant to sections 361, 363, and 364 of the Bankruptcy Code, for any Diminution in Value (as

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defined herein) of each of their respective interests in the Prepetition Collateral (including Cash Collateral) or VMF Collateral.

(ii) **Good Cause; Need for Postpetition Financing**. Good cause has been shown for the entry of this Final Order. An immediate and continuing need exists for the Debtors to obtain funds from the DIP Loan in order to continue operations, continue to serve the Debtors mission to provide vital, lifesaving patient care for vulnerable populations and to administer and preserve the value of their estates. The ability of the Debtors to finance their operations, to preserve and maintain the value of the Debtors' assets and to maximize a return for all creditors requires the availability of working capital from the DIP Loan, the absence of which would immediately and irreparably harm the Debtors, their estates and their creditors and the possibility for a successful reorganization or sale of the Debtors' assets as a going concern or otherwise. The proposed DIP Loan is in the best interests of the Debtors, their estates, and their creditors.

(iii) **No Credit Available on More Favorable Terms**. The Debtors have been unable to obtain (a) unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense, (b) credit for money borrowed secured solely by a lien on property of the estate that it not otherwise subject to a lien, (c) credit for money borrowed secured by a junior lien on property of the estate which is subject to a lien, (d) or credit otherwise on more favorable terms and conditions than those provided in the DIP Credit Agreement and this Final Order. The Debtors are unable to obtain credit for borrowed money without granting to the DIP Agent and DIP Lender the DIP Protections (as defined below).

L. **Use of Proceeds of the DIP Facility.** Proceeds of the DIP Facility (net of any amounts used to pay fees, costs and expenses under the DIP Financing Agreements) are to be utilized by the Debtors until the DIP Facility Termination Date in accordance with the DIP Budget and in a manner consistent with the terms and conditions of the DIP Credit Agreement, ~~this Final Order,~~ and ~~the~~this Final Order.

M. **Application of Sale Proceeds of DIP Collateral.** ~~The Debtors have agree with the DIP Lender that, subject to the terms of~~As Provided by the Interim Order, this Final Order and the DIP Credit Agreement, the DIP Liens shall attach as first priority liens and security interests,

pursuant to section 364(d) of the Bankruptcy Code and the DIP Financing Agreements, to all proceeds of any sale or other disposition of the Debtors' property, including, without limitation, the Healthcare Facilities (as defined in the DIP Credit Agreement) and any other DIP Collateral (as defined below) (the "***Sale Proceeds***"). The Sale Proceeds ~~for each Debtor~~ shall be held in escrow in one or more deposit accounts subject to a deposit account control agreement in favor of the DIP ~~Lender~~Agent (the "***Escrow Deposit Account***"). Any funds held in the Escrow Deposit Account shall not be commingled with any other funds of the selling Debtor, the Sale Proceeds of any other Debtor or otherwise. The DIP ~~Lender~~Agent is granted a first priority lien on the Escrow Deposit Account and all Sale Proceeds, including any deposit provided by any buyer in connection with any asset sale, and such proceeds, deposits, and the Escrow Deposit Account shall constitute Collateral under the DIP Credit Agreement and DIP Collateral under this Final Order. On the Revolving Loan Termination Date (as defined in the DIP Credit Agreement), the DIP Lender shall apply any and all amounts remaining on deposit in the Escrow Deposit Account to the outstanding principal amount of the DIP Loan, together with accrued and unpaid DIP Obligations, with any remaining balance to be delivered to the Debtors subject to any Prepetition Liens, VMF Liens, Prepetition Replacement Liens and VMF Replacement Liens; provided, however, that upon any Debtor's request and with the consent of the DIP Agent and DIP Lender (which consent may, for the avoidance of doubt, be withheld in its sole discretion), any Sale Proceeds and deposits provided in connection with any asset sale may be disbursed to the Prepetition Secured Creditors or McKesson on terms and conditions that are acceptable to the DIP Agent and DIP Lender in its sole discretion and upon further order of this Court.

N. **Adequate Protection for Prepetition Secured Creditors and McKesson.** The priming of the Prepetition Secured Creditors' Prepetition Liens and the VMF Liens to the extent set forth ~~below~~in the Interim Order and This Final Order, pursuant to section 364(d) of the Bankruptcy Code is necessary to obtain the DIP Financing. In exchange for the priming of the Prepetition Liens and the VMF Liens set forth below, the Prepetition Secured Creditors and McKesson shall be entitled to receive adequate protection, as set forth in this Final Order, pursuant to sections 361, 363 and 364 of the Bankruptcy Code, for any diminution in the value of

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their respective interests in the Prepetition Collateral or VMF Collateral resulting from, among other things, the subordination to the Carve Out (as defined herein) and to the DIP Liens (as defined herein), the Debtors' use, sale or lease of such Prepetition Collateral or VMF Collateral, including Cash Collateral, and the imposition of the automatic stay from and after the Petition Date (collectively, and solely to the extent of such diminution in value, the "***Diminution in Value***"). As to the VMF Collateral, any adequate protection, as set forth in this Final Order, pursuant to sections 361, 363 and 364 of the Bankruptcy Code, for any Diminution in Value of Prepetition Secured Creditors' interests in the Prepetition Collateral are subordinated to any similar adequate protection provided to McKesson. VMF shall also pay McKesson (A) $3,055,000.00 in satisfaction of the balance of McKesson's Prepetition Secured Debt on the following schedule: (1) October 5, 2018 - $1,700,000.00; (2) October 26, 2018 - $700,000.00; and (3) November 2, 2018 - $655,000.00 (plus McKesson's attorneys' fees and costs incurred through October 31, 2018) (the "***McKesson Secured Payments***"). The McKesson Secured Payments will be included within the DIP Budget line item for Debtors' critical vendor program. Payment of McKesson's attorneys' fees will be included in the DIP Budget line item for Prepetition Secured Creditor Adequate Protection Payments. The Prepetition Secured Creditors have negotiated in good faith regarding the Debtors' use of the Prepetition Collateral to help fund the administration of the Debtors' estates along with the proceeds of the DIP Financing. Based on the DIP Motion and the record presented to the Court at the Interim Hearing and the Final Hearing, the terms of the proposed adequate protection arrangements are fair and reasonable, reflect the Debtors' prudent exercise of business judgment and constitute reasonably equivalent value and fair consideration for the consent of the Prepetition Secured Creditors and McKesson; provided, however, that nothing herein shall limit the rights of any of the Prepetition Secured Creditors or McKesson to hereafter seek new, additional, or different adequate protection~~.~~; provided further, that nothing herein shall limit the rights of all parties in interest to assert or challenge any determination or assertion with respect to the existence or quantification of any Diminution of Value.

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O. **Extension of Financing**. The DIP Agent and DIP Lender ~~has~~have indicated a willingness to provide financing to the Debtors in accordance with the DIP Credit Agreement. ~~The DIP Lender is acting in good faith with respect to the DIP Facility and the terms and conditions of the DIP Credit Agreement and the other DIP Financing Agreements. The DIP Lender's claims, superpriority claims, security interests and liens and other protections granted pursuant to this Final Order and the DIP Financing Agreements will not be affected by any subsequent reversal or modification of this Final Order or the Final Order, as provided in section 364(e) of the Bankruptcy Code.~~

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

(i) ~~The DIP Lender has indicated a willingness to provide DIP Financing to the Debtors in accordance with the DIP Financing Agreements~~. The terms and conditions of the DIP Facility and the DIP Financing Agreements, and the fees paid and to be paid thereunder 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 Financing Agreements were negotiated in good faith and at arms' length between the Debtors, the DIP Agent and the DIP Lender;

(iii) The proceeds to be extended under the DIP Facility will be so extended in good faith, and for valid business purposes and uses; and

(iv) ~~The~~Each of the DIP Agent and DIP Lender has acted to date and is acting in good faith with respect to the DIP Facility and the terms and conditions of the DIP Credit Agreement and the other DIP Financing Agreements~~.~~, The DIP Agent's and ~~the~~ DIP Lender's claims, superpriority claims, security interests and liens and other protections granted pursuant to the Interim Order, this Final Order and the DIP Financing Agreements will not be affected or avoided by any subsequent reversal or modification of this ~~Final Order or the~~ Final Order, as provided in section 364(e) of the Bankruptcy Code.

Q. **Relief Essential; Best Interest; Good Cause**. The relief requested in the DIP Motion (and as provided in this Final Order) is necessary, essential, and appropriate for the

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preservation of the Debtors' assets, business and property. It is in the best interest of the Debtors' estates 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 provided in this Final Order) ~~solely on an interim basis~~.

R. **Consent to Use of Cash Collateral**. Each of the ~~Prepetiton~~Prepetition Secured Creditors and McKesson have consented to the use of their respective interests in Cash Collateral, subject to the terms and conditions set forth in this Order.

NOW, THEREFORE, on the DIP Motion and the record before this Court with respect to the DIP Motion, including the record created during the Interim Hearing and the Final Hearing, and with the consent of the Debtors, the Prepetition Secured Creditors and the DIP Agent and DIP Lender to the form and entry of this Final Order, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. **Motion Granted**. The DIP Motion is granted on an interim basis in accordance with the terms and conditions set forth in this Final Order and the DIP Credit Agreement. Any objections to the DIP Motion with respect to entry of this Final Order to the extent not withdrawn, waived or otherwise resolved, and all reservations of rights included therein, are hereby denied and overruled.

2. **DIP Financing Agreements.**

(a) **Approval of Entry ~~Into~~into DIP Financing Agreements**. The Debtors are authorized, empowered and directed to execute and deliver the DIP Financing Agreements and to incur and to perform the DIP Obligations in accordance with, and subject to, the terms of this Final Order and the DIP Financing Agreements, and to execute and deliver all instruments and documents which may be required or necessary for the performance by the Debtors under the DIP Financing Agreements and the creation and perfection of the DIP Liens described in and provided for by this Final Order and the DIP Financing Agreements. The Debtors are hereby authorized and directed to do and perform all acts, pay the principal, interest, fees, expenses, indemnities and other amounts described in the DIP ~~Credit Agreement~~Financing Agreements as

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such amounts become due and payable without need to obtain further Court approval, including closing fees, unused line fees, administrative agent's fees, collateral agent's fees, and the reasonable fees and disbursements of the DIP Agent's and the DIP Lenders' respective attorneys, advisors, accountants, and other consultants, whether or not such fees arose before or after the Petition Date, and whether or not the transactions contemplated hereby are consummated, to implement all applicable reserves and to take any other actions that may be necessary or appropriate, all to the extent provided in this Final Order or the DIP Financing Agreements. All collections and proceeds, whether from ordinary course collections, asset sales, debt or equity issuances, insurance recoveries, condemnations or otherwise, will be deposited and applied as required by this Final Order and the DIP Financing Agreements. The DIP Financing Agreements represent valid and binding obligations of the Debtors, enforceable against each of the Debtors and their estates in accordance with their terms, including, without limitation, commitment fees and reasonable attorneys' fees and disbursements as provided for in the DIP Credit Agreement, which amounts shall not otherwise be subject to approval of this Court, ~~*provided however, that notwithstanding section 2.9(a) of the DIP Credit Agreement, following entry of this Final Order, the Debtors shall pay only $1,600,000 on account of the commitment fee*~~. The Debtors shall pay the deferred balance of the commitment fee required by section 2.9(a) of the DIP Credit Agreement ~~only~~ upon entry ~~of a~~this Final Order ~~approving the DIP Credit Agreement~~.

(b) **Authorization to Borrow and/or Guarantee**. To enable them to continue to preserve the value of their estates and dispose of their assets in an orderly fashion, during the period prior to termination of the DIP Credit Agreement and subject to the terms and conditions of this Final Order, upon the execution of the DIP Credit Agreement and the other Financing ~~Documents~~Agreements the Debtors are hereby authorized to borrow the DIP Loan up to a total committed amount of $185,000,000 under the DIP Financing Agreements.

(c) **Conditions Precedent.** ~~The~~Neither the DIP Agent nor the DIP Lender ~~shall~~ have ~~no~~any obligation to make the DIP Loan or any loan or advance under the DIP Credit Agreement unless the conditions precedent to making such loan under the DIP Credit Agreement have been satisfied in full or waived by the DIP Agent and DIP Lender in ~~its~~their sole discretion.

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(d) **DIP Collateral; DIP Liens**. Effective immediately upon the entry of this Final Order, on account of the DIP Loan, the DIP ~~Lender~~Agent shall be and is hereby granted first-priority security interests and liens (which shall immediately be valid, binding, permanent, continuing, enforceable, perfected and non-avoidable) on all of the Debtors' property, including, without limitation, the Sale Proceeds and the Escrow Deposit Account, whether arising before or after the Petition Date (collectively, the "***DIP Collateral***," and all such liens and security interests granted on or in the DIP Collateral pursuant to this Final Order and the DIP Financing Agreements, the "***DIP Liens***"), but shall exclude the Program Funds, and proceeds of the Clean Fund Bonds and NR2 Petros Bonds held by WTNA, donor restricted funds held at Philanthropic Foundations, Avoidance Actions (defined below) and any proceeds thereof and any funds held by the Prepetition Secured Creditors (~~including amounts~~ set forth on **Exhibit 1** to the Chou Decl.), provided, however, for the avoidance of doubt, any amounts held in accounts owned by the Debtors, whether or not such accounts are subject to control agreements in favor of the Prepetition Secured Creditors, shall constitute DIP Collateral. The DIP Collateral shall not be subject to any surcharge under section 506(c) or any other provision of the Bankruptcy Code or other applicable law, nor by order of this Court.

(e) **DIP Lien Priority**. Subject only to the Carve Out (as defined below) and the prepetition tax lien arising in connection with the CSCDA Special Assessments, the DIP Liens shall, pursuant to section 364(d)(1) of the Bankruptcy Code, be perfected, continuing, enforceable, non-avoidable first priority senior priming liens and security interests on the DIP Collateral, and shall prime all other liens and security interests on the DIP Collateral, including any liens and security interests in existence on the Petition Date against the Prepetition Collateral and VMF Collateral, and any other current or future liens granted on the DIP Collateral, including any adequate protection or replacement liens granted on the DIP Collateral (collectively, the "***Primed Liens***") (other than the Debtors' claims and causes of action under sections 502(d), 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy Code, and any other avoidance or similar actions under the Bankruptcy Code or similar state law (the "***Avoidance Actions***"), whether received by judgment, settlement or otherwise. Without limiting the foregoing, the DIP Liens

shall not be made subject to, subordinate to, or *pari passu* with any lien or security interest by any court order heretofore or hereafter granted in the Chapter 11 Cases. The DIP Liens shall be valid and enforceable against any trustee appointed in the Chapter 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 Successor Cases. Other than the Carve Out, no costs, expenses, claims, or liabilities that have been or may be incurred by Debtors during these Chapter 11 Case, or in any Successor Cases, will be senior to, prior to, or on parity with the DIP Liens.

(f) **Enforceable Obligations**. The DIP Financing Agreements shall constitute and evidence the valid and binding obligations of the Debtors, which obligations shall be enforceable against the Debtors, their estates and any successors thereto and their creditors or representatives thereof, in accordance with their terms.

(g) **Protection of DIP Lender and Other Rights**. From and after the Petition Date, the Debtors shall use the proceeds of the extensions of credit under the DIP Facility only for the purposes specifically set forth in the DIP Credit Agreement and this Final Order and in strict compliance with the DIP Budget (subject to any variances thereto permitted by the DIP Credit Agreement).

(h) **Additional Protections of DIP Lender: Superpriority Administrative Claim Status**. Subject to the Carve Out (as defined below), all DIP Obligations shall constitute an allowed superpriority administrative expense claim (the "***DIP Superpriority Claim***" and, together with the DIP Liens, the "***DIP Protections***") with priority in all of the Chapter 11 Cases and Successor Cases over all other administrative expense claims under sections 364(c)(1), 503(b) and 507(b) of the Bankruptcy Code and otherwise over all administrative expense claims and unsecured claims against the Debtors or their estates, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 1113 and 1114 and any other provision of the Bankruptcy Code except as otherwise set forth herein, whether or not such expenses or claims may become secured

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by a judgment lien or other non-consensual lien, levy or attachment. The DIP Superpriority Claim shall be payable from and have recourse to all prepetition and post-petition property of the Debtors and all proceeds thereof. Without limiting the foregoing, the Superpriority Claim shall not be made subject to, subordinate to, or *pari passu* with any other administrative claim in the Chapter 11 Cases or Successor Cases, except for the Carve Out (as defined below). Other than the Carve Out, no costs, expenses, claims, or liabilities that have been or may be incurred by Debtors during these Chapter 11 Case, or in any Successor Cases, will be senior to, prior to, or on parity with the DIP Superpriority Claim.

3. **Authorization to Use Proceeds of DIP Facility**. Pursuant to the terms and conditions of this Final Order, the DIP Credit Agreement and the other DIP Financing Agreements, and in accordance with the DIP Budget and the variances thereto set forth in the DIP Credit Agreement, the Debtors are authorized to use the advances under the DIP Credit Agreement during the period commencing immediately after the entry of this Final Order and terminating upon ~~the occurrence of an Event of Default (as defined below) and~~ the termination of the DIP Credit Agreement in accordance with its terms and subject to the provisions hereof.

4. **Application of Sale Proceeds of DIP and Prepetition Secured Creditor Collateral.** The DIP Liens shall attach as first priority liens and security interests, pursuant to section 364(d) of the Bankruptcy Code, the Interim Order, this Final Order and the DIP Financing Agreements, to the Sale Proceeds. The Sale Proceeds shall be allocated by ~~Debtor~~Debtors and held in escrow in the Escrow Deposit Accounts. Funds held in any Escrow Deposit Account shall not be commingled with any other funds of the applicable Debtor or any of the other Debtors and, without limitation of the rights of the DIP ~~Lender upon~~Agent and DIP Lender under the DIP Financing Agreements and this Final Order with respect to the Sale Proceeds and Escrow Deposit Account, including, without limitation, following the occurrence of an Event of Default ~~under the DIP Financing Documents or pursuant to this Final Order~~or the Revolving Loan Termination Date (as defined in the DIP Credit Agreement), the Debtors shall not be permitted to use Cash Collateral of any of the Prepetition Secured Creditors held in any Escrow Deposit Account for any purpose without first obtaining the consent of the applicable Prepetition Secured Creditor or

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obtaining an order of the Court pursuant to Section 363 of the Bankruptcy Code after notice and a hearing. The DIP ~~Lender~~Agent is granted a first priority lien on the Escrow Deposit Accounts and all Sale Proceeds, including any deposit provided by any buyer in connection with any asset sale, and such proceeds, deposits, and the Escrow Deposit Account shall constitute Collateral under the DIP Credit Agreement and DIP Collateral under this Final Order. On the Revolving Loan Termination Date (as defined in the DIP Credit Agreement), the DIP ~~Lender~~Agent may apply amounts held in Escrow Deposit Accounts to the outstanding ~~obligations~~DIP Obligations due under the DIP ~~Loan~~ Credit Agreement. Without limiting the foregoing, and subject and subordinate in all respects to the ~~DIP Lender's~~ first priority priming ~~lien~~DIP Lien and Prepetition Replacement Liens to the extent set forth in this Final Order, the Prepetition Secured Creditors' Prepetition Liens shall be deemed to attach to the Escrow Deposit Accounts and the Sale Proceeds with the same relative priority, validity, force, extent and effect as the Prepetition Liens attached to the Prepetition Collateral giving rise to such Sale Proceeds. Each of the Prepetition Secured Creditors shall have the right to seek a declaration of their respective rights in and to any of the Sale Proceeds and funds held in a Deposit Escrow Account, consistent with and subject to the terms and conditions of this Final Order and the DIP Financing Agreements, and the Court shall determine all such disputes in accordance with this Final Order, the DIP Financing Agreements, the Prepetition Secured Documents, and applicable law.

5. **Adequate Protection for Prepetition Secured Creditors**. As adequate protection for the interests of the Prepetition Secured Creditors in the Prepetition Collateral and McKesson in the VMF Collateral, ~~but subject to the rights of the Prepetition Secured Creditors in the Sale Proceeds and Deposit Escrow Accounts set forth above,~~ on account of the granting of the DIP Liens, subordination to the Carve Out (as defined below), any Diminution in Value arising out of the Debtors' use, sale, or disposition or other depreciation of the Prepetition Collateral, including Cash Collateral or the VMF Collateral, resulting from the automatic stay, the Prepetition Secured Creditors and McKesson shall receive adequate protection as follows:

(a) **Adequate Protection Replacement Liens**. To the extent of the Diminution in Value of the interest of the respective Prepetition Secured Creditors in Prepetition

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Collateral that secures their respective claims, each of the affected Prepetition Secured Creditors shall be granted, subject to the terms and conditions set forth below, pursuant to sections 361, 363(e), and 364(d) of the Bankruptcy Code additional valid, perfected and enforceable replacement security interests and Liens in the DIP Collateral, (the "***Prepetition Replacement Liens***"), which Prepetition Replacement Liens shall be junior only to (1) the Carve Out, (2) to the DIP Liens securing the DIP Obligations, (3) the VMF Liens in VMF Collateral and (4) any perfected, unavoidable, prepetition liens granted by Holdings pursuant to those certain deeds of trust issued in connection with the MOB Financing and that certain Deed of Trust with Fixture Filing and Security Agreement and Assignment of Leases and Rents by Holdings in favor of U.S. Bank as 2017 Note Trustee and Deed of Trust Beneficiary, dated as of September 15, 2017, as further amended or modified (the "***Moss Deed of Trust***") to secure the Series 2017 Working Capital Notes; *provided, however*, that any Prepetition Replacement Liens granted to the 2015 Note Trustee and/or 2017 Note Trustee on account of the Diminution in Value of the Priority Assets as defined in the Intercreditor Agreement shall be senior to the Prepetition Replacement Liens granted to any other Prepetition Secured Creditors and junior to (i) the Carve Out, (ii) the DIP Liens securing the DIP Obligations, and (iii) perfected, unavoidable, prepetition liens granted by Holdings pursuant to those certain deeds of trust issued in connection with the MOB Financing and the Moss Deed of Trust, and *further provided* that any Prepetition Replacement Liens granted to the holders of deeds of trust issued in connection with the MOB Financing and the Moss Deed of Trust, on account of the Diminution in Value of such Prepetition Collateral shall be senior to the Prepetition Replacement Liens granted to any other Prepetition Secured Creditors and junior to (x) the Carve Out, (y) the DIP Liens securing the DIP Obligations, and (z) perfected, unavoidable, prepetition liens of the Master Trustee, the 2015 Note Trustee and/or the 2017 Note Trustee on property other than the property subject to the Moss Deed of Trust. With respect to the Prepetition Collateral that is subject to the Intercreditor Agreement, any proceeds of such Prepetition Collateral or Prepetition Replacement Liens related thereto shall be allocated among the Prepetition Secured Creditors in accordance with the terms of the Second Amended and Restated Intercreditor Agreement. With respect to the VMF Collateral, McKesson shall be

entitled to a replacement lien on the postpetition assets of VMF, excluding Avoidance Actions ("***VMF Replacement Lien***"), to the extent of (1) any Diminution in Value in such VMF Collateral, and (2) any McKesson Post-Petition Trade Credit, which amounts shall be senior to the Prepetition Replacement Liens, but junior to the (m) Carve Out, and (n) the DIP Liens.

(b) **Adequate Protection Payments and Protections**. So long as there is no Default or Event of Default under the Interim Order, this Final Order, or the DIP Financing Agreements, the Debtors are also authorized and directed to provide (I) to the Prepetition Secured Creditors monthly adequate protection payments equal to (A) the amount of postpetition, non-default contractual interest on the outstanding balances of the Prepetition Secured Obligations, provided that reference to the non-default contractual rate of interest shall not include any Penalty Rate, Default Rate or the Tax Rate as defined in the Prepetition Secured Documents, plus (B) monthly payment of reasonable trustee fees for each of (1) Wells Fargo, (2) UMB Bank as Master Trustee, (3) U.S. Bank as 2015 Note Trustee, and (4) U.S. Bank as 2017 Note Trustee, respectively, and (C) reimbursement of reasonable attorney's fees for one set of attorneys for (1) Wells Fargo as the successor indenture trustee for the 2005 Bonds, (2) UMB Bank as Master Trustee, (3) U.S. Bank as 2015 Note Trustee, (4) U.S. Bank as 2017 Note Trustee, and (5) MOB Financing and reimbursement of reasonable financial advisor fees for one set of financial advisors for (1) Wells Fargo as the successor indenture trustee for the 2005 Bonds and UMB Bank as Master Trustee, (2) U.S. Bank as 2015 Note Trustee and 2017 Note Trustee and (3) MOB Financing; and (II) payments by the Debtors to McKesson consistent with certain terms of the interim and final orders authorizing the Critical Vendor Program (as defined in the Debtors First Day Motions) in an amount of $3,055,000.00 (collectively I and II are the "***Prepetition Adequate Protection Payments***"). Notwithstanding the foregoing, to the extent the Court enters a final and non-appealable order that determines, pursuant to sections 506(a) or (b) of the Bankruptcy Code, that the Prepetition Adequate Protection Payments under (I) and (II) above are not properly ~~allocable~~entitled to payment of interest and fees on one or more of the respective Prepetition Secured Obligations to which they were made, the Prepetition Adequate Protection Payments may

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be re-characterized as payment(s) applied to the principal amount of the respective Prepetition Secured Obligations.

(c) **McKesson Secured Payments.** As set forth herein, so long as no Termination Event has occurred under the DIP Credit Agreement, the Debtors are hereby authorized and directed to make all McKesson Secured Payments on or before their respective due dates and are authorized to make payments on McKesson's Post-Petition Trade Credit, on the terms agreed to between McKesson and the Debtors provided herein.

(d) **Prepetition Superpriority Claim**. To the extent of the Diminution in Value of the interest of the respective Prepetition Secured Creditors in Prepetition Collateral, each of the affected Prepetition Secured Creditors shall be granted, subject to the terms and conditions set forth below, an allowed superpriority administrative expense claim (the "***Prepetition Superpriority Claims***"), which shall have priority (except with respect to (i) the DIP Liens, (ii) the DIP Superpriority Claim, (iii) the Carve Out, and (iv) any claims granted by Holdings pursuant to those certain deeds of trust issued in connection with the MOB Financing and the Moss Deed of Trust) in the Chapter 11 Cases under sections 363(c)(1), 503(b) and 507(b) of the Bankruptcy Code and otherwise over all administrative expense claims and unsecured claims against the Debtors and their estates, now existing or hereafter arising of any kind or nature whatsoever including, without limitation, administrative expenses of the kind specified or ordered pursuant to sections 105, 326, 328, 330, 331, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d) 552, 726, 1113 and 1114 of the Bankruptcy Code, and upon entry of ~~the~~this Final Order, 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; *provided, however*, that any Prepetition Superpriority Claim granted to the 2015 Note Trustee and/or 2017 Note Trustee on account of the Diminution in Value of the Priority Assets as defined in the Intercreditor Agreement shall have priority over the Prepetition Superpriority Claims granted to any other Prepetition Secured Creditors (except with respect to (i) the DIP Liens, (ii) the DIP Superpriority Claim, (iii) the Carve Out, and (iv) claims associated with the MOB Financing and the Moss Deed of Trust) and *further provided* that any Prepetition Superpriority Claim granted to the

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holders of those certain deeds of trust issued in connection with the MOB Financing and the Moss Deed of Trust, on account of the Diminution in Value of such Prepetition Collateral shall be senior to the Prepetition Superpriority Claims granted to any other Prepetition Secured Creditors (except with respect to (i) the DIP Liens, (ii) the DIP Superpriority Claim, (iii) the Carve Out, and (iv) the claims of the Master Trustee, the 2015 Note Trustee and/or the 2017 Note Trustee on property other than the property subject to the Moss Deed of Trust). With respect to the Prepetition Collateral that is subject to the Second Amended and Restated Intercreditor Agreement, any proceeds of such Prepetition Collateral or Prepetition Superpriority Claim related thereto shall be allocated among the Prepetition Secured Creditors in accordance with the terms of the Second Amended and Restated Intercreditor Agreement.

(e) **Validity, Perfection and Amount of Prepetition Liens**. The Debtors further acknowledge and agree that, as of the Petition Date, (a) the Prepetition Liens securing the Prepetition Secured Obligations on the Prepetition Collateral and the VMF Liens on the VMF Collateral were valid, binding, enforceable, non-avoidable, and properly perfected and were granted to, or for the benefit of, the Prepetition Secured Creditors and McKesson, (b) the Prepetition Liens were senior in priority over any and all other Liens on the Prepetition Collateral except the prepetition tax lien arising in connection with the CSCDA Special Assessments, and (c) the VMF Liens were senior in priority over any and all other Liens on VMF Collateral. The findings and stipulations set forth in this Final Order with respect to the validity, enforceability and amount of the Prepetition Secured Obligation and the Prepetition Liens shall be binding on any subsequent trustee, responsible person, examiner with expanded powers, any other estate representative, and all creditors and parties in interest and all of their successors in interest and assigns, including the Committee, unless, and solely to the extent that, a party in interest with requisite standing and authority (other than the Debtors, as to which any Challenge (as defined below) is irrevocably waived and relinquished) has timely filed the appropriate pleadings, and timely commenced the appropriate proceeding required under the Bankruptcy Code and Bankruptcy Rules, including as required pursuant to Part VII of the Bankruptcy Rules (in each case subject to the limitations set forth in this paragraph 4(d)) challenging the Prepetition Liens

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(each such proceeding or appropriate pleading commencing a proceeding or other contested matter, a "***Challenge***") within ninety (90) days from the formation of the Committee (the "***Challenge Deadline***"); *provided ~~however~~* that ~~the~~for purposes of filing ~~by the Committee of a motion for standing to prosecute a Challenge shall automatically toll the Challenge Deadline~~a Challenge, the Committee shall be deemed to have standing to file the requisite pleading without further a order of the Court; and *provided further*, that the "Challenge Deadline" for matters solely relating to the value of the Prepetition Collateral may be further extended to such time as may be agreed by ~~the parties or~~stipulation among the Debtors, the Committee and the Prepetition Secured Creditors or as further ordered by the Court. The foregoing limitation on use of Prepetition Collateral or its proceeds shall only be amended upon further order of this Court and the consent of both the Prepetition Secured Creditors, the DIP Agent and the DIP Lender. The Debtors shall not use the Prepetition Collateral, VMF Collateral or their proceeds to investigate or prosecute claims against the Prepetition Secured Creditors or McKesson, including Avoidance Actions, *provided however* that the Committee may investigate the existence of such claims and have allowed fees paid from the Prepetition Collateral or VMF Collateral and the proceeds of the DIP Facility up to the amount of $100,000, *provided further however* that no Prepetition Collateral or VMF Collateral, the proceeds thereof or the proceeds of the DIP Facility may be used to prosecute claims against Prepetition Secured Creditors or McKesson. For the avoidance of doubt, the Debtors, on behalf of their estates, do not release or indemnify the Prepetition Secured Creditors or McKesson from any Challenge raised by third parties, including the Committee, to the validity, amount or enforceability of the Prepetition Secured Obligations and the Prepetition Liens or the VMF Liens.

(f) **Sections 506(c) and 552(b)**. In light of the Prepetition Secured Creditors' and McKesson's' agreements that their Prepetition Liens and VMF Liens, respectively, shall be subject to the Carve Out and subordinate to the DIP Liens, the Prepetition Secured Creditors and McKesson are each entitled to a waiver of any "equities of the case" exception under section 552(b) of the Bankruptcy Code, and a waiver of the provisions of section 506(c) of the Bankruptcy Code.

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(g) Nothing contained in this Final Order shall prevent the Prepetition Secured Creditors from application or use of the funds held thereby that are not DIP Collateral in accordance with the Prepetition Secured Documents. Each of the Prepetition Secured Creditors reserves the right to seek additional or further adequate protection from the Court. The Debtors and the Committee each reserves the right to object to any such request for additional or further adequate protection.

6. **Budget Maintenance**. The proceeds of the DIP Loan under the DIP Facility and the use of Cash Collateral shall be subject to, and in accordance with, the terms and conditions of the DIP Financing Agreements and the DIP Budget. The ~~Initial Agreed~~DIP Budget shall be delivered to the DIP Agent ~~shall be accompanied by~~with such supporting documentation as reasonably requested by the DIP Agent. The DIP Budget shall be prepared in good faith based upon assumptions that the Debtors believe to be reasonable. A copy of any DIP Budget shall be delivered to counsel for the Committee and the U.S. Trustee and counsel for the Prepetition Secured Creditors after it has been approved in accordance with the DIP Financing Agreements. The Debtors shall provide at least two (2) business days' notice to counsel for the Committee and the Prepetition Secured Creditors prior to the effective date of any change in the DIP Budget.

7. **Budget Compliance and Reporting**. The proceeds of the DIP Facility and the use of Cash Collateral shall be subject to, and used in accordance with, the terms and conditions of the DIP Financing Agreement and the DIP Budget (subject to the variances set forth therein). Debtors acknowledge and confirm that the DIP Budget includes the payment of CSCDA Special Assessments. The Debtors shall provide all reports and other information as required in the DIP Credit Agreement (subject to the grace periods provided therein), with copies delivered substantially contemporaneously to counsel for the Prepetition Secured Creditors and counsel to the Committee, such information to include reasonably complete details on the payments contemplated by the Critical Vendors Motion and the Utilities Motion, as defined in the Adcock Declaration, and such information to be timely provided, sufficient for the Prepetition Secured Creditors to file an objection with this Court on two business days' notice. The Debtors' failure to comply with the DIP Budget (including the variances set forth in the DIP Credit Agreement) or

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to provide the reports and other information required in the DIP Credit Agreement shall constitute an Event of Default (as defined herein), following the expiration of any applicable grace period set forth in the DIP Credit Agreement. Subject to the execution and continuation of valid and binding confidentiality agreements, ~~prior to any hearing to consider entry of a Final Order related to this DIP Motion,~~ the Debtors shall provide to the DIP Agent, the DIP Lender, the Prepetition Secured Creditors and the Committee information concerning (i) the Debtors' efforts to obtain debtor in possession financing proposals, including any proposals the Debtors received, and (ii) the Debtors' ongoing efforts to market their assets, including all marketing materials used by the Debtors in this process, information identifying the parties the Debtors have contacted, copies of any proposals or expressions of interest, and other information concerning these matters the Prepetition Secured Creditors may reasonably request.

8. **Postpetition Lien Perfection.** This Final Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the DIP Liens, the Prepetition Replacement Liens and the VMF Replacement Lien, and all rights granted in and to the Escrow Deposit Accounts and the Sale Proceeds, without the necessity of filing or recording any financing statement, deeds of trust, mortgages, or other instruments or documents 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 obtaining possession of any possessory collateral) to validate or perfect the DIP Liens, Prepetition Replacement Liens or VMF Replacement Lien, or to entitle the DIP Liens, Prepetition Replacement Liens and VMF Replacement Lien the respective priorities granted herein. Notwithstanding and without limiting the foregoing, the DIP ~~Lender~~Agent may file such financing statements, mortgages, deeds of trust, notices of liens and other similar documents as it deems appropriate, and it is hereby granted relief from the automatic stay of section 362 of the Bankruptcy Code in order to do so, and all such financing statements, mortgages, deeds of trust, notices and other documents shall be deemed to have been filed or recorded at the time and on the date of the commencement of the Chapter 11 Cases. Notwithstanding and without limiting the foregoing provisions regarding the validity, perfection, and priority of the DIP Liens, the Debtors shall execute and deliver to the DIP

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Agent and DIP Lender all such financing statements, mortgages, deeds of trust, deposit account control agreements, notices and other documents as the DIP Agent and DIP Lender may reasonably request to evidence, confirm, validate or perfect, or to insure the contemplated priority of, the DIP Liens granted pursuant hereto and the DIP Financing Agreements. Any such financing statements, mortgages, deeds of trust, deposit account control agreements, notices and other documents shall be considered DIP Financing Agreements for all intents and purposes. The DIP ~~Lender~~Agent, in its discretion, may file a certified copy of this Final 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 Final Order. To the extent that any Prepetition Secured Creditor is the secured party under any security agreement, mortgage, leasehold mortgage, landlord waiver, credit card processor notices or agreements, bailee letters, custom broker agreements, financing statement, account control agreements, or any other Prepetition Secured Documents or is listed as loss payee or additional insured under any of the Debtors' insurance policies, the DIP Agent shall also be deemed to be the secured party under such documents or to be the loss payee or additional insured, as applicable.

9. **Application of Proceeds of Collateral**. As a condition to the continued extension of credit under the DIP Facility and the continued authorization to use Cash Collateral, the Debtors have agreed that as of and commencing on the Closing Date the Debtors shall apply all advances under the DIP Facility, as follows: (i) *first*, to fund the day to day operations and general corporate purposes of the Debtors' estates; (ii) *second*, to pay the administrative expenses of the Chapter 11 Cases; and (iii) *third*, to make the Prepetition Adequate Protection Payments all in accordance with the DIP Budget.

10. **Proceeds of Subsequent Financing**. If the Debtors, any trustee, any examiner with expanded powers, or any responsible officer subsequently appointed in these Chapter 11 Cases or any Successor Cases, shall obtain credit or incur debt pursuant to Bankruptcy Code sections 364(b), 364(c), or 364(d) or in violation of the DIP Financing Agreements at any time prior to the

indefeasible repayment in full of all DIP Obligations and Prepetition Secured Obligations (to the extent such remain outstanding), and the termination of the DIP Agent's and the DIP Lenders' obligation to extend credit under the DIP Facility, including subsequent to the confirmation of any chapter 11 plan of reorganization with respect to any or all of the Debtors and the Debtors' estates, and such facility is secured by any DIP Collateral, then all the cash proceeds derived from such credit or debit shall immediately be turned over to the DIP Agent to be applied in accordance with this Final Order and the DIP Financing Agreements.

11. **Cash Collection**.

(a) From and after the date of the entry of this Final Order, all collections and proceeds of any DIP Collateral or Prepetition Collateral and all Cash Collateral that shall at any time come into the possession, custody, or control of any Debtor, or to which any Debtor is now or shall become entitled at any time, shall be promptly deposited in accounts as specified in the DIP Credit Agreement (or in such other accounts as are designated by the DIP Agent from time to time) (collectively, the "***Cash Collection Accounts***"), which accounts shall be subject to the sole dominion and control of the DIP Agent. It is understood and agreed by the Debtors and the DIP Agent that, unless a "Default" or an "Event of Default" under the DIP Credit Agreement has occurred and is continuing, for so long as there are no amounts outstanding under the DIP Facility, proceeds in the Cash Collection Accounts shall be returned to the Debtors and the Debtors shall be authorized to use such Cash Collateral in accordance with this Final Order. All proceeds and other amounts in the Cash Collection Accounts shall be remitted to the DIP Agent for application in accordance with the DIP Financing Agreements. Unless otherwise agreed to in writing by the DIP Agent and the Prepetition Secured Creditors or as set forth in this Final Order, the Debtors shall maintain no accounts except those identified in the interim cash management order entered by the Court with respect thereto (the "***Cash Management Order***"), whether now existing or hereafter established. The Debtors and the financial institutions where the Debtors' Cash Collection Accounts are maintained (including those accounts identified in the Cash Management Order), are authorized and directed to remit, without offset or deduction, funds in such Cash Collection Accounts upon receipt of any direction to that effect from the DIP Agent.

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To the extent that a Prepetition Secured Creditor's perfection in or control over bank accounts or investment accounts, including any funds or investments therein, may be affected by reason of the transfer of control to the DIP Agent or any agent of the DIP ~~Agent~~Lenders in accordance with this Final Order, the perfection and control rights of such Prepetition Secured Creditor therein shall be deemed to continue, subject to the senior, priming rights of the DIP Lender and the DIP Lien in such bank accounts or investment accounts, for so long as the DIP Obligations remain outstanding, and thereafter shall revert back to such Prepetition Secured Creditor.

(b) Notwithstanding anything in this Final Order or any of the DIP Financing Agreements, from and after the date of the entry of this Final Order, all collections and proceeds of any DIP Collateral or Prepetition Collateral that shall at any time come into the possession, custody, or control of any Debtor, or to which any Debtor is now or shall become entitled at any time, shall promptly be deposited into a depository account furnished by a depository bank acceptable to the DIP Agent and such account shall be in the name of the DIP Agent and subject to the sole dominion and control of the DIP Agent (such account, the "***DIP Collateral Account***"). The Debtors' use of the proceeds in the DIP Collateral Account shall be subject to this Final Order and the DIP Financing Agreements.

12. **Maintenance of DIP Collateral**. Until the indefeasible payment in full of all DIP Obligations, all Prepetition Secured Obligations, and the termination of the DIP Agent's and the DIP Lenders' obligation to extend credit under the DIP Facility, the Debtors shall: (a) insure the DIP Collateral as required under the DIP Facility or the Prepetition Secured Documents, as applicable; and (b) maintain the cash management system in effect as of the Petition Date, as modified by the Cash Management Order and this Final Order, and maintain books and records sufficient to account for postpetition intercompany transfers in a manner required by the Cash Management Order ~~at paragraph 6~~ and the DIP Credit Agreement at section 5.6 or as otherwise agreed to by the DIP Agent or otherwise required or permitted by the DIP Financing Agreements or this Final Order.

13. **DIP and Other Expenses**. The Debtors are authorized and directed to pay all reasonable and documented prepetition and postpetition fees and expenses of the (1) DIP Agent,

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(including the fees, expenses, and disbursements of Waller, Lansden, Dortch & Davis, LLP, as counsel to the DIP Agent), (2) the DIP Lenders in connection with the DIP Facility, as provided herein and in the DIP Financing Agreements, or, if requested by the Debtors, incurred with a proposed conversion of the DIP Facility into exit financing (including the preparation and negotiation of the documentation relating to the exit facility), and (3) the Prepetition Secured Creditors and McKesson, whether or not the transactions contemplated hereby are consummated, including attorneys' fees, monitoring and appraisal fees, financial advisory fees, fees and expenses of other consultants, and indemnification and reimbursement of fees and expenses. Payment of all such fees and expenses shall not be subject to allowance by the Court. Professionals for the DIP Agent, the DIP Lenders and the Prepetition Secured Creditors and McKesson shall not be required to comply with the U.S. Trustee fee guidelines; however, any time that such professionals seek payment of fees and expenses from the Debtors, each professional shall provide summary copies of its invoices to the U.S. Trustee contemporaneously with the delivery of such invoices to the Debtors. Any objections raised by the Debtors, the U.S. Trustee or the Committee, with respect to such invoices must be in writing and state with particularity the grounds therefor and must be submitted to the applicable professional within ten (10) days of the receipt of such invoice; if after ten (10) days such objection remains unresolved, it will be subject to resolution by the Court. Pending such resolution, the undisputed portion of any such invoice will be paid promptly by the Debtors. Notwithstanding the foregoing, the Debtors are authorized and directed to pay on the Closing Date all reasonable and documented fees, costs, and out-of-pocket expenses of the DIP Agent, the DIP Lenders and the Prepetition Secured Creditors incurred on or prior to such date without the need for any professional engaged by such parties to first deliver a copy of its invoice or other supporting documentation. No attorney or advisor to the DIP Agent, the DIP Lenders any Prepetition Secured Creditor or McKesson shall be required to file an application seeking compensation for services or reimbursement of expenses with the Court. Upon entry of this Final Order, any and all fees, costs, and expenses paid prior to the Petition Date by any of the Debtors to the (i) DIP Agent or the DIP Lenders in connection with or with respect to the DIP Facility, and (ii) Prepetition Secured

Creditors and McKesson in connection with or with respect to these matters, were approved in full and shall not be subject to avoidance, disgorgement or any similar form of recovery by the Debtors or any other person.

14. **Indemnification**. The Debtors shall indemnify and hold harmless the DIP Agent and the DIP Lenders in accordance with the terms and conditions of the DIP Credit Agreement.

15. **Right to Credit Bid**. The DIP Lender shall have the right, but not the obligation, to "credit bid" the DIP Obligations during any sale of the DIP Collateral, including without limitation, sales occurring pursuant to section 363 of the Bankruptcy Code or included as part of any reorganization plan subject to confirmation under section 1129(b)(2)(A)(iii) of the Bankruptcy Code. Subject to the indefeasible payment in full of the DIP Obligations, the Prepetition Secured Creditors shall have the right but not the obligation to credit bid the Prepetition Secured Obligations during any sale of the Prepetition Collateral, including without limitation, sales occurring pursuant to section 363 of the Bankruptcy Code.

16. **Carve Out**. The DIP Liens, DIP Superpriority Claim, and Prepetition Replacement Liens are subordinate only to the following: (i) all fees required to be paid to the clerk of the Court and to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6) (the "***U.S. Trustee Fees***"), together with interest, if any, at the statutory rate; and (ii) all allowed claims for unpaid fees, costs and expenses incurred by persons or firms retained by the Debtors or the Committee, if any, whose retention is approved by the Court pursuant to any one or more of sections 327, 328, 363, and 1103 of the Bankruptcy Code, to the extent such claims for fees, costs and expenses are both (a) allowed by the Court pursuant to ~~the Final Order~~a final order, and (b) in accordance with, and solely up to the total respective amounts set forth in the DIP Budget for the applicable time frame (the "***Carve Out Expenses***"); provided that the aggregate amount of such Carve Out Expenses shall not exceed (a) $2,000,000 with respect to persons or firms retained by the Debtors, and (b) $150,000 with respect to persons or firms retained by the Committee (collectively, the "***Carve Out Amount***"). Any payment or reimbursement made after the Carve Out Trigger Date in respect of any Carve Out expenses shall permanently reduce the Carve Out Amount on a dollar-for-dollar basis.

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17. **Limitation of Use of Proceeds**. Notwithstanding anything set forth herein and except as provided in the following paragraph, the Carve Out shall exclude any fees and expenses incurred in connection with initiating or prosecuting any claims, causes of action, adversary proceedings, or other litigation against the DIP Agent, the DIP Lender or any of the Prepetition Secured Creditors, including, without limitation, the assertion or joinder in any claim, counterclaim, action, proceeding, application, motion, objection, defenses or other contested matter, the purpose of which is to seek any order, judgment, determination or similar relief (i) invalidating, setting aside, disallowing, avoiding, challenging or subordinating, in whole or in part, (a) the DIP Obligations, (b) the Prepetition Secured Obligations, (c) the Prepetition Liens, (d) the VMF Liens or (e) the DIP Liens, or (ii) preventing, hindering or delaying, whether directly or indirectly, the DIP Agent's the DIP Lender's or Prepetition Secured Creditors' or McKesson's assertion or enforcement of their liens or security interests or realization upon any DIP Collateral ~~or~~, Prepetition Collateral, or ~~the~~ VMF Collateral, or (iii) prosecuting any Avoidance Actions against the DIP Agent, the DIP Lender ~~or~~, any Prepetition Secured Creditor or McKesson, or (iv) challenging the amount, validity, extent, perfection, priority, or enforceability of, or asserting any defense, counterclaim, or offset to, the Prepetition Secured Obligations, or the McKesson Prepetition Debt, or the adequate protection granted herein, *provided however*, that nothing in this Final Order shall limit the right of the Debtors to challenge the reasonableness of attorney and financial advisory fees paid or proposed to be paid to Prepetition Secured Creditors or McKesson as adequate protection payments.

18. **Payment of Compensation.** Nothing herein shall be construed as consent to the allowance of any professional fees or expenses of any of the Debtors or the Committee or shall affect the right of the DIP Agent, the DIP Lender ~~or~~, the Prepetition Secured Creditors or McKesson to object to the allowance and payment of such fees and expenses or to permit the Debtors to pay any such amounts not set forth in the DIP Budget.

19. **Section 506(c) Claims; Equities of the Case**. Nothing contained in this Final Order shall be deemed a consent by the DIP Agent, the DIP Lender or any Prepetition Secured Creditor to any charge, lien, assessment or claim against the DIP Collateral under Section 506(c) of the

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Bankruptcy Code or otherwise. The "equities of the case" exception under Section 552(b) of the Bankruptcy Code and surcharge powers under section 506(c) of the Bankruptcy Code are waived as to the Prepetition Creditors and all pre and postpetition collateral securing their claims.

20. **Collateral Rights.** Unless the DIP Agent and DIP Lender ~~has~~have provided ~~its~~their prior written consent or all DIP Obligations have been paid in full in cash (or will be paid in full in cash upon entry of an order approving indebtedness described in subparagraph (a) below), and all commitments by the DIP Agent and the DIP Lender to lend have terminated:

(a) The Debtors shall not seek entry, in these proceedings, or in any Successor Case, of any order which authorizes the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage, or collateral interest or other lien on all or any portion of the DIP Collateral and/or entitled to priority administrative status which is senior or *pari passu* to the DIP Liens granted to the DIP Lender pursuant to this Final Order, the DIP Financing Agreements or otherwise;

(b) The Debtors shall not consent to relief from the automatic stay by any person other than the DIP ~~Lender~~Agent with respect to all or any portion of the DIP Collateral without the express written consent of the DIP Agent and the DIP Lender; and

(c) In the event that the Debtors seek entry of an order in violation of subsection (a) hereof, the DIP Agent and DIP Lender shall be granted relief from the automatic stay with respect to the DIP Collateral pursuant to the notice procedures set forth in this Order.

(d) The Parties to the DIP Credit Agreement agree that the Final Order does not impair the claims, rights, or ability, if any, to recoup, setoff or otherwise recover Medicare overpayments related to prepetition services by a Debtor ("***Prepetition Medicare Overpayments***") of the United States, its agencies, departments, agents or entities (collectively, "***United States***") from the payments made to such Debtor for services rendered after the Petition Date ("***Postpetition Medicare Payments***"), in accordance with the Medicare statutes, regulations, policies and procedures. The Parties to the DIP Credit Agreement further agree that the Final Order does not impair the United States' claims, rights or ability, if any, to recoup, setoff or otherwise recover any

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other prepetition debt a Debtor may owe to the United States from the Postpetition Medicare Payments due such Debtor in accordance with applicable law.

21. **Commitment Termination Date.** All DIP Obligations of the Debtors to the DIP Lender shall be immediately due and payable, and the Debtors' authority to use the proceeds of the DIP Facility shall cease, on the date that is the earliest to occur of: (i) September 5, 2019 (the "***Scheduled Termination Date***"); (ii~~) the earlier of: (a) the date that is thirty (30) days from entry of this Final Order unless a final, non-appealable order of the Court authorizing the DIP Facility in form and substance satisfactory to the DIP Lender in its sole and absolute discretion has been entered and has become effective prior to the expiration of such period (or such later date as the DIP Lender may approve in writing in its sole and absolute discretion), (b) the date the Court denies entry of the Final Order, or (c~~) the date of revocation of this Final Order, as applicable; (iii) the substantial consummation (as defined in Section 1101 of the Bankruptcy Code and which for purposes hereof shall be no later than the "*effective date*") of a plan of reorganization filed in the Chapter 11 Cases that is confirmed pursuant to an order entered by the Court; (iv) the consummation of a sale of all or substantially all of the DIP Collateral; (v) the date the Court orders the conversion of the Chapter 11 Cases to a Chapter 7 liquidation or the dismissal of the Chapter 11 Cases or the appointment of a trustee or examiner with expanded power in the Chapter 11 Cases; and (vi) the acceleration of the DIP Loan and the termination of the commitments with respect to the DIP Facility in accordance with the DIP Financing Agreements (the earliest of such dates, the "***Commitment Termination Date***"). The occurrence of the Commitment Termination Date, shall also constitute, subject to further Court order, termination of the Prepetition Secured Creditors' and McKesson consent to the Debtors' use of their prepetition ~~cash collateral~~Cash Collateral (the "**Carve Out Trigger Date**").

22. **Disposition of Collateral**. The Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral, without the prior written consent of the DIP Agent and the DIP Lender (and no such consent shall be implied, from any other action, inaction or acquiescence by the DIP Agent or the DIP Lender or an order of this Court), except as provided in the DIP Financing Agreements and this Final Order and approved by the Court to the

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extent required under applicable bankruptcy law. Nothing herein shall prevent the Debtors from making sales in the ordinary course of business to the extent consistent with the DIP Budget and as permitted in the DIP Financing Agreements.

23. **Events of Default.** The occurrence of a "Default" or an "Event of Default" pursuant to Section 9.1 the DIP Credit Agreement, including, without limitation, the "Bankruptcy Defaults" enumerated in Section 9.1(q) of the DIP Credit Agreement, shall constitute an event of default under this Final Order, unless expressly waived in writing in accordance with the consents required in the DIP Financing Agreements.

24. **Rights and Remedies Upon Event of Default.**

(a) Any otherwise applicable automatic stay is hereby modified so that after the occurrence of any Event of Default and at any time thereafter during the continuance of such Event of Default, the DIP Agent and the DIP Lender shall be entitled to exercise its rights and remedies with respect to the Debtors and the DIP Collateral provided in the DIP Financing Agreements and by applicable law, including, without limitation, foreclosing on and selling the DIP Collateral, without the need for further court approval or the consent of any other party.

(b) Notwithstanding the preceding paragraph, immediately following the giving of notice by the DIP ~~Lender~~Agent of the occurrence and continuance of an Event of Default, the DIP ~~Lender~~Agent shall have the right in its sole discretion to take any or all of the following actions: (i) declare the commitment of the DIP Lender to make the DIP Loan to be terminated; (ii) declare the unpaid principal amount of all outstanding DIP Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other DIP Financing ~~Document~~Agreements to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by any Debtor; (iii) reduce the advance rates in respect of Eligible Accounts (as defined in the DIP Credit Agreement) or take additional reserves against or otherwise modify the Borrowing Base; and (iv) exercise all rights and remedies available to the DIP Agent and the DIP Lenders under the DIP Financing ~~Documents~~Agreements, including any right of set-off under Section 11.21 of the DIP Credit Agreement, or under the UCC or any other applicable law; *provided, however*, that upon

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the occurrence of an Event of Default under the DIP Credit Agreement, the obligation of the DIP Lenders to make the DIP Loan shall automatically terminate, the unpaid principal amount of all outstanding DIP Loans and other DIP Obligations and all interest and other amounts as aforesaid shall automatically become due and payable without further act of the DIP Agent or any DIP Lender.

(c) Nothing included herein shall prejudice, impair, or otherwise affect the DIP Agent's or the DIP Lender's rights to seek any other or supplemental relief in respect of the DIP Agent's and the DIP Lender's rights, as provided in the DIP Credit Agreement.

25. **Limitation on Lender Liability**. Nothing in this Final Order, any of the DIP Financing Agreements, or any other documents related thereto shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent, the DIP Lenders or the Prepetition Secured Parties Creditors of any liability for any claims arising from any activities by the Debtors in the operation of their businesses or in connection with the administration of these Cases. The DIP Agent, the DIP Lenders and the Prepetition Secured Creditors shall not, solely by reason of having made loans under the DIP Facility, be deemed in control of the operations of the Debtors or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., as amended, or any similar federal or state statute). Nothing in this Final Order or the DIP Financing Agreements shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent, the DIP Lenders, or any of the Prepetition Secured Creditors of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors.

26. **Insurance Proceeds and Policies**. As of the entry of this Final Order and to the fullest extent provided by applicable law, the DIP Agent (on behalf of the DIP Lenders) and the Prepetition Secured Creditors, shall be, and shall be deemed to be, without any further action or notice, named as additional insured and as lender's loss payee with the priority as to all rights and remedies as set forth herein and in the DIP Credit Agreement.

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27. **Proofs of Claim**. ~~The~~Neither the DIP Agent nor the DIP Lender will ~~not~~ be required to file proofs of claim in the Chapter 11 Cases. Any proof of claim so filed shall be deemed to be in addition and not in lieu of any other proof of claim that may be filed by any of the Prepetition Secured Creditors.

28. **Other Rights and Obligations**.

(a) **Good Faith Under Section 364(e) of the Bankruptcy Code**. **No Modification or Stay of this Final Order.** The ~~Debtor~~Debtors, the DIP Agent, the DIP Lender, the Prepetition Secured Creditors and McKesson have acted in good faith in connection with negotiating the DIP Financing Agreements, extending credit under the DIP Facility, and authorizing use of Cash Collateral and rely on this Final Order in good faith. Based on the findings set forth in this Final Order and the record made during the Interim Hearing and the Final Hearing, and in accordance with section 364(e) of the Bankruptcy Code, in the event any or all of the provisions of this Final Order are hereafter reversed, modified amended or vacated by a subsequent order of this or any other Court, the DIP Agent, DIP Lender, Prepetition Secured Creditors and McKesson are entitled to the protections provided in section 364(e) of the Bankruptcy Code. Any such reversal, modification, amendment or *vacatur* shall not affect the validity and enforceability of any advances made pursuant to ~~,~~this Final Order or the DIP Financing Agreements, nor shall it affect the validity, priority, enforceability, or perfection of the DIP Liens, the Prepetition Replacement Liens or the VMF Replacement Lien. Any claims or DIP Protections granted to the DIP Agent and the DIP Lender hereunder, or adequate protection granted to the Prepetition Secured Creditors and McKesson hereunder, arising prior to the effective date of such reversal, modification, amendment or *vacatur*, shall be governed in all respects by the original provisions of this Final Order, and the DIP Agent, the DIP Lender, Prepetition Secured Creditors ~~or~~and McKesson shall be entitled to all of the rights, remedies, privileges and benefits, including the DIP Protections and adequate protection granted herein, with respect to any such claims. Since the loans made pursuant to the DIP Credit Agreement are made in reliance on this Final Order, the obligations owed to the DIP Agent, the DIP Lender, the Prepetition Secured Creditors or McKesson prior to the effective date of any reversal or

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modification of this Final Order cannot, as a result of any subsequent order in the Chapter 11 Cases or in any Successor Cases, be subordinated, lose their lien priority or superpriority administrative expense claim status, or be deprived of the benefit of the status of the liens and claims granted to the DIP Agent, the DIP Lender, the Prepetition Secured Creditors or McKesson under this Final Order and/or the DIP Financing Agreements.

(b) **Binding Effect**. The provisions of this Final Order shall be binding upon and inure to the benefit of the DIP Agent, DIP Lender, the Debtors, the Prepetition Secured ~~Lenders~~Creditors, McKesson, the Committee, all other Parties in Interest, and all creditors, and each of 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.

(c) **No Waiver**. The failure of the DIP Agent or the DIP Lender to seek relief or otherwise exercise its rights and remedies under the DIP Financing Agreements, the DIP Facility, this Final Order or otherwise, as applicable, shall not constitute a waiver of the DIP Agent's or the DIP Lender's rights hereunder, thereunder, or otherwise. Notwithstanding anything herein, the entry of this Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair the DIP Agent or the DIP Lender under the Bankruptcy Code or under non-bankruptcy law, including without limitation, the rights of the DIP Agent and DIP Lender to (i) request conversion of the Chapter 11 Cases to cases under Chapter 7, dismissal of the Chapter 11 Cases, or the appointment of a trustee in the Chapter 11 Cases, (ii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a plan of reorganization, or (iii) exercise any of the rights, claims or privileges (whether legal, equitable or otherwise) the DIP Agent or DIP Lender may have pursuant to this Final Order, the DIP Financing Agreements, or applicable law. Nothing in this Final Order shall interfere with the rights of any party with respect to any non-Debtors.

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

(e) **No Marshaling**. The DIP Lender shall not be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the DIP Collateral.

(f) **Amendment.** The Debtors, the DIP Agent and the DIP Lender may amend or waive any provision of the DIP Financing Agreements, on notice to the Office of the U.S. Trustee, the Committee, the Prepetition Secured Creditors and McKesson. The Debtors shall give each Prepetition Secured Creditor and McKesson notice concurrent with giving such notice or request to the DIP Agent for any amendment or waiver of the DIP Financing Agreements and, without prejudice to the effectiveness of any such amendment or waiver, each Prepetition Secured Creditor shall have the right to file a motion objecting to such amendment. Nothing in this ~~DIP~~Final Order shall authorize the DIP Agent or DIP Lenders to increase the commitments in excess of the commitments set forth in this Final Order, increase the contract interest rate, defined in the DIP Credit Agreement as the Applicable LIBOR Margin, ~~or~~increase the Default Rate or extend the maturity date, defined in the DIP Credit Agreement as the "Scheduled Termination Date". Except as otherwise provided herein, no waiver, modification, or amendment of any of the provisions of the DIP Financing Agreements shall be effective unless set forth in writing, signed on behalf of all the Debtors, the DIP Agent and the DIP Lender, and, if material, approved by the Court. Nothing herein shall preclude the Debtors, the DIP Agent and the DIP Lender from implementing any amendment or waiver of any provision of the DIP Financing Agreements.

(g) **Estate Subrogation**. Debtor Verity Holdings shall have an allowed unsecured superpriority administrative expense claim granted to it pursuant to section 364(c)(1), against each of the other Debtors that is a "Net Borrower" (as defined below) based on the consolidated cash management process and DIP Loan, which claim shall be subordinate to the DIP Obligations, including the DIP Superpriority Claim, and to the Adequate Protection Claims of the Prepetition Secured Creditors and McKesson, but shall have priority over all other administrative claims, in an amount equal to the sum of (a) the amount, if any, by which Debtor

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Verity Holdings' assets that are used to satisfy the DIP Loan, the Prepetition Replacement Liens or VMF Liens, exceeds the amount, if any, of any draws on the DIP Loan used by Verity Holdings plus interest, and (b) any postpetition net intercompany advances by Verity Holdings to any other Debtor. "Net Borrower" shall mean any Debtor for which the sum of all cash received from the concentration account or draws on the DIP Loan and its allocation of interest paid or payable under the DIP Loan based on amounts received by it and amounts received by other Debtors, exceeds any cash it has transferred to the concentration account during the Chapter 11 Cases.

29. **Survival of ~~Interim~~Final Order and Other Matters.** The provisions of this Final Order and any actions taken pursuant hereto shall survive entry of any order which may be entered in these Bankruptcy Cases, including without limitation, an order (i) confirming any Plan in the Chapter 11 Cases, (ii) converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code or any Successor Cases, (iii) to the extent authorized by applicable law, dismissing any of the Chapter 11 Cases, (iv) withdrawing of the reference of any of the Chapter 11 Cases from this Court, or (v) providing for abstention from handling or retaining of jurisdiction of any of the Chapter 11 Cases in this Court. The terms and provisions of this Final Order including the DIP Protections granted pursuant to this Final Order and the DIP Financing Agreements, shall continue in full force and effect notwithstanding the entry of such order, and such DIP Protections shall maintain their priority as provided by this Final Order until all the ~~obligations~~Obligations of the Debtors to the DIP Agent and the DIP Lender pursuant to the DIP Financing Agreements have been indefeasibly paid in full and in cash and discharged (such payment being without prejudice to any terms or provisions contained in the DIP Financing Agreements which survive such discharge by their terms). The terms and provisions of this Final Order including any protections granted to the Prepetition Secured Creditors and McKesson, shall continue in full force and effect notwithstanding the entry of such order, and such protections for the Prepetition Secured Creditors and McKesson shall maintain their priority as provided by this Final Order until all the obligations of the Debtors to the Prepetition Secured Creditors and McKesson pursuant to applicable documentation have been discharged. The DIP Obligations

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shall not be discharged by the entry of an order confirming a plan of reorganization, the Debtors having waived such discharge pursuant to section 1141(d)(4) of the Bankruptcy Code.

(a) **Inconsistency**. In the event of any inconsistency between the terms and conditions of the DIP Financing Agreements and of this Final Order, the provisions of this Final Order shall govern and control.

(b) **Enforceability**. This Final 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 Final Order. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, 9024, or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Final Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Final Order.

(c) **Objections Overruled**. All objections to the DIP Motion to the extent not withdrawn or resolved, are hereby overruled on an interim basis.

(d) **No Waivers or Modification of Interim Order**. The Debtors irrevocably waive any right to seek any modification or extension of this Final Order without the prior written consent of the DIP Agent and the DIP Lender and no such consent shall be implied by any other action, inaction or acquiescence of the DIP Lender. No Effect on Non-Debtor Collateral. Notwithstanding anything set forth herein, neither the liens nor claims granted in respect of the Carve Out shall be senior to any liens or claims of the DIP Agent or the DIP Lender with respect to any other non-Debtor or any of their assets.

~~Dated: _____~~
~~Los Angeles, California~~

* * * *

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

~~/s/~~

~~HONORABLE JUDGE ROBLES~~
~~UNITED STATES BANKRUPTCY JUDGE~~

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

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(213) 623-9300

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Input:	
Document 1 ID	interwovenSite://USDMS/US_Active/109064508/8
Description	#109064508v8<US_Active> - Final DIP Financing Order [Debtors' Proposed]
Document 2 ID	interwovenSite://USDMS/US_Active/109064508/12
Description	#109064508v12<US_Active> - Final DIP Financing Order [Debtors' Proposed]
Rendering set	Underline Strikethrough

Legend:	
Insertion	
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Moved to	
Style change	
Format change	
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Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	164
Deletions	107
Moved from	1
Moved to	1
Style change	0
Format changed	0
Total changes	273

EXHIBIT 2

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Recording Date: 1/2/2002
Number of Pages: 30
Grantor: SETON MEDICAL CENTER
Grantee: US BANK TRUST NATIONAL ASSN

Document Number: 2002-000626

Document Type: ASSIGNMENT
Recording Date: 1/2/2002
Number of Pages: 30
Grantor: SETON MEDICAL CENTER
Grantee: CHICAGO TITLE COMPANY

Document Number: 2002-000626

Document Type: FINANCING STATEMENT -- U.C.C.1
Recording Date: 1/2/2002
Number of Pages: 30
Grantor: SETON MEDICAL CENTER
Grantee: US BANK TRUST NATIONAL ASSN

California Lot Book, Inc.

dba California Title Search Co.

P.O. Box 9004
Rancho Santa Fe, CA 92067
(858) 278-8797 Fax (858) 278-8393
info@lotbook.com
WWW.LOTBOOK.COM

Lot Book Report

CleanFund Commercial PACE Capital, Inc.
2330 Marinship Way, Ste. 100
Sausalito, CA 94965
Attn: Chris McKay

CTS Reference No.: 0317225-1
Update

Title Search Through: April 10, 2017

Property Address: 1900 Sullivan Ave.
Daly City, CA 94015

Assessor's Parcel No.: 008-084-370

Assessed Value: $130,956,264

Exemption: None

Property Characteristics

Use: Hospital

Improvements:

Short Legal Description

PORTION OF LOT 25, AS DESIGNATED ON THE MAP ENTITLED, "MAP OF THE PIERCE, VAN WINKLE & PATTEN TRACTS", WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA, ON DECEMBER 19, 1883, IN BOOK "B" OF MAPS, AT PAGE 3, AND A COPY ENTERED IN BOOK 1 OF MAPS, AT PAGE 20, AS FURTHER DESCRIBED.

Last Title Transfer

Recorded: January 2, 2002
Recorders File No. 02-0627

Transfer Stamps:
Grantor: Catholic Healthcare West-Bay Area
Grantee: Seton Medical Center

California Lot Book, Inc., dba California Title Search Co.
CTS Reference No. 0317225-1
Title Search Through April 10, 2017

The Title To Said Estate Of Interest At The Date Hereof Is Vested In:

Seton Medical Center, a California nonprofit religious corporation

1. Tax Status: Current

The following tax installments are for the current fiscal year only and do not include prior year delinquencies or supplemental assessments. Exact amounts owed should be verified with the County Tax Collector.

For Fiscal Year:	2016-2017	
First Installment:	$72,690.43	Due December 10, 2016 (Paid)
Second Installment:	$72,690.43	Due April 10, 2017 (Paid)

2. A Deed of Trust in the Amount of: (Per Agreement)
Trustor: Seton Medical Center
Trustee: Chicago Title Company
Beneficiary: U.S. Bank Trust National Association
c/o Orrick Herrington & Sutcliffe
400 Capitol Mall, Ste. 300
Sacramento, CA 95814
Recorded: January 2, 2002, Recorders File No. 02-0626

3. A Deed of Trust in the Amount of: (Per Agreement)
Trustor: Seton Medical Center
Trustee: Chicago Title Company
Beneficiary: U.S. Bank Trust National Association
c/o Orrick Herrington & Sutcliffe
400 Capitol Mall, Ste. 300
Sacramento, CA 95814
Recorded: January 2, 2002, Recorders File No. 02-0628

– End of Report –

****

Please be advised that this is not Title Insurance. The information provided herein reflects matters of public record which impart constructive notice in accordance with California Insurance Code 12340.10. Note that we are not a Title Insurance Company, and that no express or implied warranty as to the accuracy or completeness of the information provided herein is granted. Our work has been performed under short time constraints with a quick turn around, and is based in part on the use of databases outside of our control. The recipient hereby acknowledges that California Lot Book, Inc. assumes no liability with respect to any errors or omissions related to the information provided herein. Also note that this search has been performed without the benefit of a Statement of Identification from the property owners, and if a search was performed for liens recorded against owner names, we cannot be sure that the information provided relates to the actual property owners, or is complete with respect to the property owners. In any event, our liability is limited to the amount of fees collected for the information provided herein.

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