

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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In re:	:	Chapter 11
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Wordsworth Academy, <i>et al.</i> , <sup>1</sup>	:	Case No. 17- 14463 (AMC)
	:	
Debtors.	:	Jointly Administered
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**FINAL ORDER PURSUANT TO 11 U.S.C. SECTIONS 105, 361, 362, 363 AND 364 AND RULES 2002, 4001 AND 9014 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE (I) AUTHORIZING DEBTORS TO OBTAIN POST-PETITION FINANCING, (II) AUTHORIZING THEM TO ENTER INTO THE DIP CREDIT AGREEMENT, (III) GRANTING LIENS AND ADMINISTRATIVE PRIORITY CLAIMS TO DIP LENDER, AND (IV) MODIFYING THE AUTOMATIC STAY**

Upon the motion (the “*Motion*”)<sup>2</sup> of the above-captioned debtors and debtors-in-possession (the “*Debtors*” or the “*Borrower*”) (a) for the entry of an Interim Order (the “*Interim Order*”) and this Final Order (the “*Final Order*”) authorizing the Debtors to (i) obtain loans and advances and other financial accommodations in an aggregate principal amount not to exceed \$1,500,000 (the “*DIP Facility*” or “*DIP Loans*”) pursuant to sections 363 and 364 of title 11 of the United States Code (the “*Bankruptcy Code*”) by entering into a debtor in possession credit agreement (the “*DIP Credit Agreement*”), substantially in the form annexed to the Motion as **Exhibit B**, among the Debtors and Learn and Play, Inc. t/a Play and Learn (the “*DIP Lender*”), and Public Health Fund as guarantor of the timely repayment of the DIP Loans, (ii) execute and enter into the DIP Credit Agreement and the agreements and instruments contemplated thereby and to perform such other and further acts as may be required in connection with the DIP Credit

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<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, are: Wordsworth Academy (9031); Wordsworth CUA 5, LLC (0983); and Wordsworth CUA 10, LLC (5980). Wordsworth Academy has an address at 3300 Henry Ave., Philadelphia, PA 19129.

<sup>2</sup> Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.

Agreement, (iii) grant administrative priority claims to the DIP Lender in accordance with the DIP Credit Agreement, the Interim Order, and this Final Order to secure any and all of the DIP Obligations (as defined herein), and (iv) pending a final hearing on the Motion (the “*Final Hearing*”), obtain emergency funding under the DIP Credit Agreement to and including the date on which the Interim Order is entered (the “*Interim Facility*”), (b) requesting modification of the automatic stay imposed under section 362 of the Bankruptcy Code to the extent necessary to permit the Debtors and the DIP Lender to implement the terms of the Interim Order and this Final Order, (c) in accordance with Rule 4001(c) of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”), requesting that this Court (the “*Bankruptcy Court*”) schedule the final hearing (the “*Final Hearing*”) for the entry of a Final Order on the Motion to be held within twenty-eight (28) days after the entry of the Interim Order, and (d) requesting, pursuant to Rule 4001 of the Bankruptcy Rules, that an emergency interim hearing on the Motion (the “*Interim Hearing*”) be held for the Court to consider entry of the Interim Order, which authorized the Debtors to borrow funds under the DIP Credit Agreement, on an interim basis, up to an aggregate principal amount not to exceed \$1,000,000 (the “*Interim Amount*”); and the Court having considered the Motion and the exhibits attached thereto, including, without limitation, the DIP Credit Agreement; and both the Interim Hearing and a Final Hearing having been held and concluded; and upon all of the pleadings filed with the Court, all evidence presented in support of this Final Order, and all of the proceedings held before the Court; and after due deliberation and consideration and good and sufficient cause appearing therefor,

**THE COURT HEREBY FINDS:**

1. On June 30, 2017 (the “*Petition Date*”), the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

2. The Debtors are continuing in the management and possession of their business and properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On July 13, 2017, the Office of the United States Trustee appointed an unsecured creditors’ committee in the Debtors’ cases (the “*Creditors’ Committee*”).

3. This Court entered the Interim Order on July 6, 2017 [Docket Number 60].

4. This Court has jurisdiction over this proceeding and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

5. Notice of the relief sought by the Motion and the Final Hearing was delivered via facsimile, electronic mail, and/or overnight delivery to the following: (a) the Office of the United States Trustee for the Eastern District of Pennsylvania; (b) the Commonwealth of Pennsylvania, Department of Labor and Industry; (c) the Commonwealth of Pennsylvania, Department of Revenue; (d) the Office of the Attorney General of Pennsylvania; (e) the entities listed on the Consolidated List of Creditors Holding the 30 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); (f) the Internal Revenue Service; (g) the City of Philadelphia; (h) M&T Bank; (i) Play and Learn; and (j) all parties who have requested notice pursuant to Bankruptcy Rule 2002. Given the nature of the relief sought in the Motion, the Court concludes that the foregoing notice was sufficient and adequate under the circumstances and complies with Bankruptcy Rules 2002 and 4001 in all respects for purposes of entering this Final Order.

6. The Debtors acknowledge, admit, and confirm the following as of the Petition Date:

7. An immediate and critical need exists for the Debtors to obtain funds and use cash collateral to continue the operation of its business. However, the use of “cash collateral,” as defined by section 363(a) of the Bankruptcy Code and including any and all prepetition and, subject to section 552 of the Bankruptcy Code, postpetition proceeds of the Prepetition Collateral (“*Cash Collateral*”), alone would be insufficient to meet the Debtors’ immediate post-petition liquidity needs.<sup>3</sup>

8. The Debtors are unable to obtain the required funds on terms more favorable than those offered by the DIP Lender under the DIP Credit Agreement, the Interim Order, this Final Order and all other agreements, documents, notes and instruments executed and delivered pursuant hereto or thereto or in connection herewith or therewith (collectively with the DIP Credit Agreement, the Interim Order and this Final Order, the “*Post-petition Financing Documents*”).

9. The Debtors have requested that, pursuant to the terms of the Post-petition Financing Documents, the DIP Lender make loans and advances and provide other financial accommodations to the Debtors to be used by the Debtors solely in accordance with the terms of the Post-petition Financing Documents. The ability of the Debtors to continue their business and reorganize under chapter 11 of the Bankruptcy Code depends upon the Debtors obtaining such financing. The Debtors will suffer immediate and irreparable harm if the requested post-petition financing is not available on an interim and/or final basis.

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<sup>3</sup> The Debtors separately filed a motion for authority to use cash collateral with respect to M&T Bank.

10. The DIP Lender is unwilling to extend the DIP Facility on an administrative priority claim basis, as more particularly described herein, pursuant to the terms and conditions of the Post-petition Financing Documents. The Debtors' entry into the Post-petition Financing Documents is fair and reasonable and is a sound exercise of their business judgment consistent with their respective fiduciary duties. The Post-petition Financing Documents were negotiated at arm's length and in good faith between the Debtors and the DIP Lender, and the loans and extensions of credit provided for in the Post-petition Financing Documents constitute reasonably equivalent value and fair consideration. Accordingly, the relief requested in the Motion is necessary, essential, and appropriate for the continued operation of the Debtors' business, the management and preservation of their assets and property, and to avoid irreparable harm to the Debtors, their business, their estates, and parties in interest, including children within their care, and is therefore in the best interests of the Debtors and their estates, creditors, and parties in interest.

11. The DIP Credit Agreement provides for various customary Events of Default (as defined therein), including, failure to make payments when due; breach of certain covenants; breach of warranty; other defaults under Loan Documents; dissolution or cessation of business; dismissal of the bankruptcy case or conversion to a chapter 7 case; appointment of a chapter 11 trustee; appointment of an examiner with enlarged powers relating to the operation of the business of the Debtors; Financing Order reversed, stayed or rescinded or amended or supplemented by the Court without written consent of the DIP Lender; attempts by the Debtors to obtain an order of the Bankruptcy Court or other judgment, which would invalidate, reduce or

otherwise impair DIP Lender's claims or claim priority status; filing of pleadings by the Debtors affecting the priority claim status of DIP Lender's claims, invalidation or subordination of the priority claim status, the confirmation of a plan which does not contain a provision for payment in full in cash of all obligations of the Debtors to DIP Lender; filing of a motion by the Debtors requesting, or entry of an order granting, any super-priority claim which is senior to the DIP Lender's claims, *except that* the Debtors may borrow against accounts receivable as expressly set forth in the DIP Credit Agreement. Each of the Event of Default provisions in the DIP Credit Agreement are expressly approved upon entry of this Final Order, except as expressly provided for in Paragraph 19 of this Final Order.

12. The DIP Credit Agreement provides that the final maturity date (the "***Termination Date***") shall be the earliest of the following: (a) December 31, 2017; (b) the effective date of a confirmed plan of reorganization; (c) acceleration by Lender of the Obligations due to the occurrence of an Event of Default; (d) the indefeasible payment in full of all Obligations owing under the DIP Facility; or (e) upon conversion or dismissal of the bankruptcy case.

13. The Debtors' pre-petition secured lender, M&T Bank, has consented to allow a subordinated second-lien in favor of the DIP Lender to be placed on the Debtors' real property at 2101 Pennsylvania Avenue, Fort Washington, PA (as more particularly described in Exhibit 2 to the Interim Order, the "***Fort Washington Campus***") to secure the DIP Facility and as otherwise set forth in the terms and conditions in the DIP Credit Agreement and this Final Order. The terms of such second lien position are further set forth in that certain Subordination Agreement, in substantially the form attached to the Interim Order as Exhibit 3 (the "Subordination

Agreement”), which was entered into by and between M&T Bank, the Debtors and the DIP Lender, contemporaneously with the DIP Credit Agreement.

14. Based on the record before the Court for this Final Hearing and the Interim Hearing, the terms of the Post-petition Financing Documents, pursuant to which the DIP Loan, advances and other credit and financial accommodations will be made or provided to the Debtors by the DIP Lender, in each case have been negotiated at arm’s length and in “good faith,” as that term is used in section 364(e) of the Bankruptcy Code, and are in the best interests of the Debtors and their estates, creditors, and parties in interest. The DIP Lender has acted in good faith in connection with the Interim Order and this Final Order and its reliance on this Final Order is in good faith. The DIP Lender is extending the DIP Facility to the Debtors in good faith. The DIP Lender is entitled to the benefits of the provisions of section 364(e) of the Bankruptcy Code.

15. It is in the best interests of the Debtors’ estates that they be allowed to finance their operations under the terms and conditions set forth herein and in the Post-petition Financing Documents. The relief requested by the Motion is necessary to avoid immediate and irreparable harm to the Debtors’ estate, and good, adequate and sufficient cause has been shown to justify the granting of the relief requested herein, and the entry of this Final Order pursuant to Bankruptcy Rule 4001(c).

**NOW, THEREFORE, IT IS HEREBY ORDERED:**

16. **Motion Granted.** The Motion is granted on the terms and conditions set forth herein. Any objections to the relief sought in the Motion that have not been previously resolved or withdrawn are hereby overruled on their merits. This Final Order shall become effective immediately upon its entry. In the event of inconsistencies between the terms of the other Post-

petition Financing Documents, the DIP Credit Agreement and this Final Order, this Final Order shall control.

17. **DIP Credit Agreement.** The Debtors are, on a final basis, hereby (i) authorized to enter into the DIP Credit Agreement, substantially in the form filed with the Court as Exhibit B to the Motion as modified by this Final Order, and the other Post-petition Financing Documents, and (ii) authorized to borrow up to the aggregate principal amount of \$1,500,000 subject to Section 2.1 of the DIP Credit Agreement and otherwise in accordance with the terms and conditions of the Post-petition Financing Documents. All obligations owed to the DIP Lender under, or in connection with, the Post-petition Financing Documents, including, without limitation, all loans, advances, letters of credit and other indebtedness, obligations, and amounts (contingent or otherwise) owing from time to time under or in connection with the Post-petition Financing Documents, and any and all other obligations at any time incurred by any of the Debtors to the DIP Lender, are defined and referred to herein as the “*DIP Obligations.*”

18. **Conditions Precedent.** The DIP Lender shall have no obligation to lend under the DIP Credit Agreement unless and until the conditions set forth in the DIP Credit Agreement have been satisfied or waived in accordance with the DIP Credit Agreement, including, without limitation: (i) assumption of the DIP Lender’s lease, (ii) approval by the Board of Directors of DIP lender, and (iii) completion of due diligence.

19. **Conditions Subsequent.** Delivery of an acceptable appraisal concluding that the value of the Fort Washington Campus is not less than \$9,350,000; *provided, however,* that notwithstanding anything herein or in the DIP Credit Agreement, it shall not constitute an event of default under the DIP Credit Agreement if the value of the Fort Washington Campus is



appraised at no less than one hundred twenty five (125%) percent of the amount of all debt secured by the Fort Washington campus.

20. **Final Borrowing.** The Debtors are authorized to borrow up to a cumulative total of \$1,500,000 (the “*Final Amount*”) in accordance with the Budget attached hereto as Exhibit 1 as may be updated and revised by the Debtors in accordance with the Post-petition Financing Documents, on a final basis.

21. **Binding Effect.** Upon execution and delivery of the Post-petition Financing Documents, the Post-petition Financing Documents shall constitute valid and binding obligations of the Debtors, enforceable against the Debtors in accordance with their terms; *provided, however,* that notwithstanding any other provision of this Final Order or of the other Post-petition Financing Documents, the Debtors shall not incur DIP Obligations in the principal amount of more than the Final Amount. No obligation, payment, or transfer under this Final Order or the other Post-petition Financing Documents shall be stayed, restrained, voided or recovered under the Bankruptcy Code or any applicable non-bankruptcy law, or subjected to any defense, reduction, setoff, recoupment or counterclaim.

22. **Use of Lender Funds.** The Debtors may use the loans or advances made under, or in connection with, the Post-petition Financing Documents solely as provided in this Final Order and in the Post-petition Financing Documents. From and after the Petition Date, amounts loaned and advanced under, or in connection with, the Post-petition Financing Documents shall not, directly or indirectly, be used to pay expenses of the Debtors or otherwise disbursed except (a) as provided in this Final Order and in the Post-petition Financing Documents; (b) to fund working capital requirements and capital expenditures of the Debtors in the ordinary course and

other items in accordance with the terms of the Budget, including fees and expenses of attorneys and financial advisors or other professional of the Debtors and any committee duly retained pursuant to sections 327 and 1103 of the Bankruptcy Code (including, without limitation, a claims and noticing agent), which have been allowed by the Court (the “*Professional Fees*”); (c) to fund the payment of interest accrued on the M&T Bank pre-petition credit facilities; and (d) to fund the payment of interest accrued on the DIP Loans; *provided, however*, that the foregoing shall not be construed as consent to the allowance of any of the Professional Fees referred to above and shall not affect the right of any party in interest to object to the allowance and payment of any such fees and expenses of professionals. The Creditors’ Committee shall have the right to object to items in the Budget (and any amended Budget) for a period of thirty five (35) days from entry of this Final Order (or from presentation of an amended Budget); provided that the Debtors shall provide the Creditors’ Committee with such information as is reasonably requested in connection with the Budget (or amended Budget) within ten (10) days of the entry of this Final Order (or from an information request in connection with any amended Budget). The Debtors, DIP Lender and the Committee shall confer in good faith to resolve any objections raised by the Committee. In the event such objections are not resolved, the Committee may file a formal objection with the Court, which shall specify the bases for objecting to the Budget or any item therein. Neither the Debtors nor the DIP Lender shall oppose a reasonable request for an expedited hearing.

23. **Interest.** Interest on the DIP Obligations shall accrue at the rates and be paid in accordance with the terms and provisions of the Post-petition Financing Documents.

24. **Grant of Security Interest and Waiver of Recordation.** The DIP Lender is granted a second priority, fully subordinated mortgage lien on the Fort Washington Campus. The second priority subordinated lien shall constitute a valid and duly perfected security interest and mortgage lien on the Fort Washington Campus as of the Petition Date, subordinated to the mortgage lien in favor of M&T Bank, the terms of which are more fully set forth in the Subordination Agreement. The DIP Lender shall not be required to file or serve financing statements, notices of lien or similar interests which otherwise may be required under federal or state law in any jurisdiction, or take any action, including taking possession, to validate and perfect such lien.

25. **Acknowledgement of Lease Rights.** The Debtors acknowledge the extent, validity and priority of the DIP Lender's prepetition Lease with respect to the Fort Washington Campus and filed a motion to assume such Lease on the Petition Date. Any order approving the motion to assume the Lease (the "Order to Assume") shall not be effective until the day that is thirty (30) days after the Order to Assume was entered on the Docket (the "Effective Date of Assumption").

26. **Sale or Lease of Certain Property.** Following the Effective Date of the Debtors' Chapter 11 Plan (the "*Plan*"), PHMC and Public Health Fund agree to negotiate in good faith with the DIP Lender for the sale or lease at fair market value of the premises leased by the DIP Lender and certain adjacent lands owned by the Debtors ("*Disposition of Certain Property*"). Nothing in this Order shall adversely impact and is without prejudice to M&T's right at any time in any forum to, inter alia: (i) contest any attempt by the DIP Lender to credit bid with respect to Disposition of Certain Property; (ii) contest any attempt by the Debtors to

accept any credit bid by DIP Lender for the rent or purchase price regarding such Disposition of Certain Property and (iii) require that any proceeds of such Disposition of Certain Property be first applied to satisfy the amounts due and owing to M&T Bank under the Debtors prepetition credit facilities with M&T Bank (including any and all interest, fees and costs accruing prior to or after the Petition Date). The Creditors' Committee reserves all of its rights with respect to the value of the Fort Washington Campus, the Debtors' satisfaction of the requirements of section 1129 of the Bankruptcy Code with respect to its Plan, the disposition of all property and assets under the Plan including the sale or lease of the Fort Washington Campus as otherwise contemplated by this paragraph.

27. **Indemnification.** The Debtors will indemnify the DIP Lender, its officers, directors and employees with respect to the DIP Loan, *provided, however*, that the Debtors shall not be liable to indemnify any such indemnified party for any act or omission that has been determined by a Final Order as constituting gross negligence, willful or intentional misconduct, or criminal acts.

28. **506(c) Waiver.** Subject to the provisions of paragraph 42 of this Final Order, the Debtors waive any right to surcharge the DIP Lender's collateral pursuant to 11 U.S.C. § 506(c).

29. **Avoidance Actions.** The Debtors shall not grant a lien on avoidance actions, if any, or the proceeds of any such actions.

30. **Priority of DIP Obligations.** All DIP Obligations hereby constitute, under sections 364(b) and 503(b)(1) of the Bankruptcy Code, allowed administrative expense claims (the "*Priority Claims*") against the Debtors.

31. **Survival.** The provisions of this Final Order and any actions taken pursuant hereto shall survive entry of any order which may be entered: (a) confirming any plan of reorganization in any of the Chapter 11 Case (and pursuant to section 1141(d) of the Bankruptcy Code, the Debtors hereby waive such discharge); (b) converting any of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code; (c) dismissing any of the Chapter 11 Case or any successor case; or (d) pursuant to which this Court abstains from hearing any of the Chapter 11 Case or any successor case, provided however that priority claims or other administrative expenses shall survive only to the extent permitted by applicable law. The terms and provisions of this Final Order, including the claims and other protections granted to the DIP Lender pursuant to this Final Order and/or the Post-petition Financing Documents, notwithstanding the entry of any such order, shall continue in the Chapter 11 Case, in any successor case, or following dismissal of the Chapter 11 Case or any successor case, and shall maintain their priority as provided by this Final Order until all DIP Obligations have been indefeasibly paid in full in cash and all commitments to extend credit under the DIP Facility are terminated.

32. **DIP Lender Rights.** Except as otherwise provided for herein, the entry of this Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair (a) any of the rights of the DIP Lender under the Bankruptcy Code or under any non-bankruptcy law to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of the Chapter 11 Case, conversion of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code, or appointment of a chapter 11 trustee or examiner (including with expanded powers), or (iii) propose, subject to the provisions of section

1121 of the Bankruptcy Code, a chapter 11 plan or plans, or (b) any other rights, claims or privileges (whether legal, equitable or otherwise) of the DIP Lender.

33. **Releases.** In consideration of DIP Lender providing credit and financial accommodations to the Debtors pursuant to the provisions of the DIP Credit Agreement, the Interim Order, and this Final Order, the Debtors on behalf of themselves, successors, and assigns (collectively, the “Releasors”) shall forever release, discharge, and acquit DIP Lender and its directors, officers, employees, counsel, successors, and assigns (collectively, the “Pre-Petition Releasees”) of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations of every kind, nature and description, including without limitation, any so-called “lender liability” claims or defenses, that Releasors had, have or hereafter can or may have against Pre-Petition Releasees as of the date hereof, in respect to events that occurred on or prior to the date hereof with respect to the DIP Loan and/or Lease, *provided, however*, that the Pre-Petition Releasees shall not be released from any act or omission that has been determined by a Final Order as constituting gross negligence, willful or intentional misconduct, or criminal acts.

34. **Termination.** Notwithstanding any provision of this Order or in any of the Post-petition Financing Documents, on the Termination Date (as defined in the DIP Credit Agreement), (i) the Debtors shall no longer be authorized to borrow funds or incur indebtedness under the Post-petition Financing Documents or this Final Order or to use any of the DIP Loans already received, and (ii) any obligations of the DIP Lender to make loans or advances or issue letters of credit hereunder or under the other Post-petition Financing Documents automatically shall be terminated.

35. **Survival After Termination.** Notwithstanding anything herein or the occurrence of the Termination Date, all of the rights, remedies, benefits and protections provided to the DIP Lender under this Final Order and the Post-petition Financing Documents shall survive such Termination Date. Upon such Termination Date, the principal of and all accrued interest and fees and all other DIP Obligations shall be immediately due and payable and the DIP Lenders shall have all other rights and remedies provided in this Final Order, the other Post-petition Financing Documents, and applicable law.

36. **Automatic Stay Modification.** The automatic stay provisions of section 362 of the Bankruptcy Code are hereby vacated and modified to the extent necessary to permit the DIP Lender (i) to file any documents appropriate in its discretion, (ii) assess, charge, collect, advance, deduct and receive payments, including all interest, fees, costs, and expenses permitted under the Post-Petition Financing Documents, and (iii) upon the Termination Date, with notice as provided for herein, without further order of or application to this Court, to exercise all rights and remedies provided for in the Post-petition Financing Documents or under applicable law.

37. **No Waiver of Remedies.** The failure or delay by the DIP Lender to seek relief or otherwise exercise its rights and remedies under this Final Order or any other Post-petition Financing Documents shall not constitute a waiver of any of its rights.

38. **Successor and Assigns.** The provisions of this Final Order shall be binding upon and inure to the benefit of each of the DIP Lender and the Debtors and their respective successors and assigns (including any trustee or fiduciary hereafter appointed or elected as a legal representative of any of the Debtors, its estate, or with respect to the property of any of its

estate) whether in the Chapter 11 Case, in any successor case, or upon dismissal of any such chapter 11 or chapter 7 case.

39. **Additional Assurances.** The Debtors are authorized and directed to do and perform all acts to make, execute and deliver all instruments and documents, and shall pay fees and expenses that may be required or necessary for the Debtors' performance under the Post-petition Financing Documents, including, without limitation, (i) the execution of the Post-petition Financing Documents and (ii) the payment of any fees or other expenses described or provided in the Post-petition Financing Documents as such become due.

40. **Limits on Lender Liability.** Subject to the provisions of paragraph 42 of this Final Order, nothing in this Final Order or in any of the Post-petition Financing Documents, or any other documents related to this transaction shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Lender any liability for any claims arising from any and all activities by the Debtors in the operation of its business in connection with the Debtors' post-petition restructuring efforts prior to the date of entry of this Final Order.

41. **Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification of Stay of this Final Order.** The DIP Lender has acted in good faith in connection with the Interim Order and this Final Order and its reliance on the Interim Order and this Final Order is 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, 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 modified, amended or vacated by a subsequent order of this Court or any other court, the DIP Lender is entitled to the protections provided in section 364(e) of the Bankruptcy Code. Any such



modification, amendment or vacatur shall not affect the validity and enforceability of any advances previously made or made hereunder, or any claim or priority authorized or created hereby. Any claims or priorities granted to the DIP Lender hereunder arising prior to the effective date of any such modification, amendment or vacatur of this Final Order shall be governed in all respects by the original provisions of this Final Order, including entitlement to all rights, remedies, privileges and benefits granted herein.

42. **Investigation Period.** The provisions of paragraphs 28, 40, and 44 of this Final Order are binding upon the Debtors, their estates, and the Creditors' Committee unless, on or before the sixtieth (60th) day following the entry of this Final Order, the Creditors' Committee obtains the necessary standing and commences an adversary proceeding (or other appropriate proceeding) challenging such findings or provisions or asserting claims against the Lender (the "Challenge Proceeding"). If no Challenge Proceeding is properly commenced as of such date, the foregoing provisions shall be deemed binding for all purposes. To the extent a Challenge Proceeding is commenced, any final order resolving the Challenge Proceeding shall control the extent and binding effect of the matters challenged therein.

43. **Other Changes to DIP Credit Agreement.** In addition to any modifications to the DIP Credit Agreement contained in this Final Order, the following provisions shall also be deemed modified: (a) any notices required to be sent to the Debtors under the DIP Credit Agreement shall simultaneously be sent to counsel to the Creditors' Committee; (b) the Debtors shall consult with the Creditors' Committee prior to approving any assignment of the DIP Lender's rights or obligations under section 7.1(b) of the DIP Credit Agreement; and (c) any fees and expenses to be paid to counsel to the DIP Lender under the DIP Credit Agreement shall be

subject to a reasonableness standard, and counsel to the Creditors' Committee shall be provided with copies of any invoices from the DIP Lender's counsel, subject to confidentiality.

44. **Debtors' Waivers.** Subject to the provisions of paragraph 42 of this Final Order, at all times during this Case, and whether or not an Event of Default has occurred, absent consent of the DIP Lender, the Debtors waive any right that they may have to seek further authority to challenge the application of any payments authorized by the Interim Order or the Final Order pursuant to section 506(b) of the Bankruptcy Code, to propose, support or have a plan of reorganization or liquidation that does not provide for the indefeasible payment in cash in full and satisfaction of all Post-Petition Obligations on the effective date of such plan in accordance with the terms and conditions set forth in the DIP Agreement, provided however, that the DIP Lender may otherwise consent in writing, but no such consent shall be implied from any other action, inaction, or acquiescence by DIP Lender.

45. **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 other direct, indirect or incidental beneficiary.

46. **No Waiver of Third Party Rights.** Nothing in this Final Order shall be deemed to waive or impair any the rights of any third party. All such third party rights are reserved except to the extent expressly provided herein.

47. **Reporting.** The Debtors shall keep books and records of original entry current and updated, so that all business activity is posted to them in the ordinary course of the Debtors' business. The Debtors shall provide to the DIP Lender the reports of operations required to be

provided by the DIP Credit Agreement, if any, at the same time and in the same manner as set forth therein.

48. Copies of this Final Order shall be served upon all persons requesting service of papers pursuant to Bankruptcy Rule 2002 by United States mail, first class postage prepaid.

49. **Waiver of Any Applicable Stay.** Any applicable stay is hereby waived and shall not apply to this Final Order.

50. **Finding of Fact and Conclusion of Law.** This Final Order shall constitute findings of fact and conclusions of law pursuant to Rule 7052 of the Bankruptcy Rules and shall take effect and be fully enforceable immediately upon execution hereof.

51. **Jurisdiction.** The Court has and will retain jurisdiction to enforce this Final Order according to its terms.

SO ORDERED by this Court this 26 day of July, 2017.

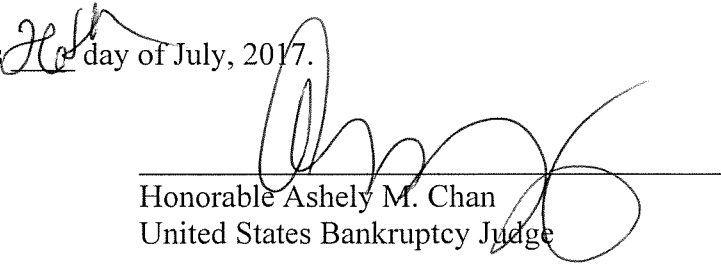
  
\_\_\_\_\_  
Honorable Ashely M. Chan  
United States Bankruptcy Judge

EXHIBIT 1  
(Budget)