

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 11

HHH Choices Health Plan, LLC, et al.,<sup>1</sup>

CASE NO. 15-11158-MEW

CASE NO. 15-13264-MEW

Debtors.

CASE NO. 16-10028-MEW

Jointly Administered

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**ORDER PURSUANT TO SECTIONS 105(A), 363, 365, 503 AND 507  
OF THE BANKRUPTCY CODE (A) APPROVING SALE  
OF THE DEBTOR'S ASSETS FREE AND CLEAR OF LIENS, CLAIMS,  
INTERESTS AND ENCUMBRANCES AND (B) GRANTING RELATED RELIEF**

Upon the motion (the "Sale Motion") [Docket No. 264] of Hebrew Hospital Senior Housing, Inc., as debtor and debtor-in-possession (the "Debtor") in its above-captioned chapter 11 case (the "Bankruptcy Case"), pursuant to Sections 105(a), 363, 365, 503 and 507 of Title 11 of the United States Code (the "Bankruptcy Code") and FED. R. BANKR. P. 2002, 6004, 6006 and 9014 (the "Bankruptcy Rules"), for entry of an order (the "Sale Order") authorizing and approving, *inter alia*, the sale of substantially all of the Debtor's assets and other related relief, all as further set forth and defined in the Sale Motion; and the Court having entered an order approving the bidding procedures for the Purchased Assets<sup>2</sup> and granting certain related relief on June 23, 2016 [ECF No. 276] (the "Bidding Procedures Order"); and the Auction having been canceled; and the Debtor having filed the Letter re Status Update for Bid Procedures and Sale

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<sup>1</sup> On January 15, 2016, the Bankruptcy Court ordered the joint administration of the Debtor's Bankruptcy Case with the cases of related entities: (i) HHH Choices Health Plan, LLP (Case No. 15-11158-mew) ("HHH Choices"); and (ii) Hebrew Hospital Home of Westchester, Inc. (Case No. 16-10028-mew) ("HHHW") [ECF No. 61].

<sup>2</sup> Capitalized terms used in this Order but not defined herein shall have the meanings ascribed to such terms in the Sale Motion.

Process on August 5, 2016 [ECF No. 310]; and the Debtor having selected The Bethel Methodist Home, Inc. or its designee (the “Buyer” or “Bethel”) as the proposed buyer in a sale (the “Sale”) of substantially all of the Debtor’s assets (the “Purchased Assets”) to Buyer and Buyer’s assumption of certain liabilities (the “Assumed Liabilities”), subject to and as provided in the Asset Purchase Agreement dated as of August 11, 2016, attached hereto as Exhibit A (collectively with all related agreements, documents or instruments and all exhibits, schedules and addenda to any of the foregoing, the “Purchase Agreement”); and the Official Committee of Unsecured Creditors of Hebrew Hospital Senior Housing, Inc. (the “Committee”) having opposed the Debtor’s request and having proposed that the Court instead approve a sale of substantially all of the Debtor’s assets to GF Westchester Holdings, LLC or its assigns (“Focus”); and due notice of the Sale Motion, the Bidding Procedures Order and the Sale Hearing having been given to all parties entitled thereto; and the Court having conducted a hearing on the Sale Motion on August 10, 2016, August 12, 2016 and August 16, 2016 (the “Sale Hearing”), at which time all interested parties were offered an opportunity to be heard; and the Court on August 17, 2016 having dictated into the record its bench decision with respect to the Sale Motion and the competing proposals (with the intention of issuing a final version of that decision after corrections of citations formats and other errors); and the Court having determined for the reasons stated in the bench decision that the proposed Sale to Bethel should be approved,

**IT IS HEREBY FOUND AND DETERMINED THAT:**

A. Jurisdiction and Venue. This Court has jurisdiction to consider the Sale Motion and the Sale, including the transactions contemplated by the Purchase Agreement, pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(a). This is a core proceeding pursuant to 28 U.S.C.

§ 157(b)(2)(A), (N) and (O). Venue of these cases and the Sale Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

B. Statutory Predicates. The statutory and other legal predicates for the relief sought in the Sale Motion are Bankruptcy Code sections 105, 363, 365, 503, 507 and 541, Bankruptcy Rules 2002, 6004, 6006, 7052, 9007, 9008 and 9014, and Local Rules 2002-1, 6004-1, 6006-1 and 9006-1(b).

C. Final Order. This Sale Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), the Court expressly finds that there is no just reason for delay in the implementation of this Sale Order, and expressly directs entry of judgment as set forth herein.

D. Notice. As evidenced by the affidavits and/or certificates of service previously filed with the Court, the evidence of publication of the sale notice and the representations of counsel at the Sale Hearing: (1) proper, timely, adequate and sufficient notice of the Sale Motion, the Sale Hearing, the Auction, the Bidding Procedures and all related transactions collectively described in the Purchase Agreement (the Sale and all such transactions being collectively referred to as the "Sale Transaction"), has been provided by the Debtor to all parties entitled to notice in accordance with Bankruptcy Code sections 102(a), 363 and 365 and Bankruptcy Rules 2002, 6004, 6006 and 9007 and in compliance with the Bidding Procedures Order; (2) such notice, and the form and manner thereof, was good, sufficient and appropriate under the circumstances; and (3) no other or further notice of the Sale Motion, the Purchase Agreement, the Sale Transaction, the Bidding Procedures, the Auction, or the Sale Hearing shall be required.

E. Opportunity to Object. A reasonable opportunity to object or be heard with respect to the Sale Motion and the relief requested therein has been afforded to all interested persons and entities.

F. Sale is Appropriate. The Sale Transaction pursuant to the Purchase Agreement is authorized pursuant to Bankruptcy Code section 363(b)(1) and Bankruptcy Rule 6005(f) and is appropriate and in compliance with applicable statutory requirements for the reasons stated in the Court's bench decision.

G. Corporate Authority. The Debtor has full corporate power and authority to execute the Purchase Agreement and all other documents contemplated thereby, and to consummate the transactions contemplated in connection therewith.

H. Arm's Length Transaction and Buyer's Good Faith. The Purchase Agreement was negotiated, proposed and entered into by the Debtor and Buyer from arm's-length bargaining positions, without collusion, in good faith within the meaning of Bankruptcy Code section 363(m). Buyer is not an "insider" of the Debtor, as that term is defined in Bankruptcy Code section 101(31). The Purchase Agreement was not entered into, and neither the Debtor nor Buyer has entered into the Purchase Agreement, or proposes to consummate the Sale Transaction, for the purpose of hindering, delaying or defrauding creditors of the Debtor under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof, or the District of Columbia. Neither the Debtor nor Buyer has entered into the Purchase Agreement or is consummating the Sale Transaction with any fraudulent or improper purpose.

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

1. Objections. All objections and responses, if any, to the Sale Motion or the relief requested therein, that have not been withdrawn, waived or settled as announced to the Court at

the Sale Hearing or by stipulation filed with the Court or pursuant to the terms of this Sale Order, and all reservations of rights included therein, are hereby overruled on the merits, with prejudice.

2. Approval of the Purchase Agreement. The Sale and all of the terms and conditions and transactions contemplated in connection with Purchase Agreement are hereby authorized and approved pursuant to, inter alia, Bankruptcy Code sections 105(a), 363(b) and 365(a). Pursuant to Bankruptcy Code section 363(b), the Debtor is authorized to consummate the Sale Transaction pursuant to and in accordance with the terms and conditions in the Purchase Agreement and this Sale Order. The Debtor and its officers, employees and agents are authorized and directed to execute and deliver, and authorized to perform under, consummate and implement, the Purchase Agreement together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement, and to take all further actions as may be (a) reasonably requested by Buyer for the purpose of assigning, transferring, granting, conveying and conferring to Buyer, or reducing to possession, the Purchased Assets; or (b) necessary or appropriate to the performance of the obligations contemplated by the Purchase Agreement, all without further order of the Court. Buyer shall have no obligation to proceed with the closing of the Sale (the "Closing") until all conditions precedent to its obligations to do so have been met, satisfied or waived (in a writing signed by Buyer).

3. Good Faith. The Sale Transaction has been undertaken by Buyer in good faith. Buyer satisfies the good faith requirement of Bankruptcy Code section 363(m) and, accordingly, Buyer and the Sale Transaction are entitled to all of the protections afforded by Bankruptcy Code section 363(m). Pursuant to Bankruptcy Code section 363(m), if any or all of the provisions of this Sale Order are hereafter reversed, modified, or vacated by a subsequent order of this Court or any other court, such reversal, modification, or vacatur shall not affect the validity and

enforceability of any sale, transfer or assignment under the Purchase Agreement or obligation or right granted pursuant to the terms of this Sale Order, and notwithstanding any reversal, modification or vacatur shall be governed in all respects by the original provisions of this Sale Order or the Purchase Agreement, as the case may be.

4. Transfer of Assets Free and Clear.

A. Pursuant to Bankruptcy Code sections 105(a), 363(b), 363(f) and 365, the Debtor is authorized and directed to transfer the Purchased Assets in accordance with the terms of the Purchase Agreement. As of the Closing, the transfer of the Purchased Assets to Buyer will be a legal, valid and effective transfer of the Purchased Assets, and will vest Buyer with all right, title and interest of the Debtor in and to the Purchased Assets, free and clear of all Claims (as defined below).

B. Except as provided in the Purchase Agreement, and with the exception of Permitted Encumbrances, the transfer of the Purchased Assets will be a legal, valid, and effective transfer of the Purchased Assets, and will vest Buyer with all right, title, and interest of the Debtor in and to the Purchased Assets, pursuant to Bankruptcy Code sections 105(a) and 363(f), free and clear, to the fullest extent available under the Bankruptcy Code or any other applicable law, of all liens (statutory, contractual, or otherwise), claims (including those that constitute a “claim” as defined in Bankruptcy Code 101(5)), rights, liabilities, encumbrances and other interests of any kind or nature whatsoever (including any Lien, Claim, Encumbrance, Interest or Liability, as such terms are defined in the Purchase Agreement), including, without limitation and to the fullest extent permitted under section 363(f), any debts arising under or out of, in connection with, or in any way relating to, any acts or omissions, obligations, demands, guaranties, rights, contractual commitments, restrictions, Medicaid historic recoupment liabilities, PILOT agreement liabilities

or related liabilities to the Westchester Industrial Development Agency, environmental liabilities, employment-related claims, employee pension or benefit plan claims, multiemployer benefit plan claims (including withdrawal liability claims), retiree healthcare or life insurance claims, tax claims (including but not limited to those of the Internal Revenue Service and the New York State Department of Finance), in each case of or against the Debtor, and any transferee or successor liability claims, rights or causes of action (whether at law or in equity, under any law, statute, rule or regulation of the United States, any state, territory, or possession thereof or the District of Columbia), whether arising prior to or subsequent to the commencement of these cases, whether known or unknown, and whether imposed by agreement, understanding, law, equity or otherwise, and all Excluded Liabilities (all of the foregoing (excluding the Assumed Liabilities and Permitted Encumbrances) are hereinafter collectively referred to as “Claims”).

C. Buyer is not taking an assignment of any contracts other than the Amended Resident Agreements, as defined in the Purchase Agreement. Therefore, except as specifically provided in the Purchase Agreement, and the fullest extent allowed by Bankruptcy Code section 363(f), Buyer shall have no liability for any Claims arising out of or related to the Sale or transfer of the Purchased Assets or arising from Claims against the Debtor or its estate or any liabilities or obligations of the Debtor and/or its estate, under the laws of the United States, any state, territory, or possession thereof, based, in whole or in part, directly or indirectly, in any theory of law or equity including, without limitation, any laws affecting antitrust, successor, transferee or vicarious liability.

D. Except as specifically provided in the Purchase Agreement, all persons and entities asserting or holding any Claims in or with respect to the Purchased Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or

subordinated), howsoever arising, shall be forever barred, estopped, and permanently enjoined from asserting, prosecuting or otherwise pursuing such Claims against Buyer.

E. Notwithstanding anything to the contrary contained herein, nothing in this Order shall be interpreted to deem Buyer as the successor to the Debtor under any state law or federal law successor liability doctrine with respect to any liabilities under environmental laws or regulations for penalties for days of violation prior to Closing or liable for liability or obligation of the Debtor. Nothing in this paragraph should be construed to create for any governmental unit any substantive right that does not already exist under law.

F. This Sale Order shall be effective as a determination that, as of the Closing, except as otherwise provided in this Sale Order and the Purchase Agreement, the conveyances and transfers described herein have been effected and shall be binding upon and govern the acts of all persons and entities, including all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal and local officials and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease; and each of the foregoing persons and entities is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

G. Nothing in this Sale Order or the Purchase Agreement shall require Buyer to (1) continue or maintain in effect, or assume any liability in respect of any employee, collective bargaining agreement, pension, welfare, fringe benefit or any other benefit plan, trust

arrangement or other agreements to which the Debtor is a party or have any responsibility therefor, including, without limitation, medical, welfare and pension benefits payable after retirement or other termination of employment; or (2) assume any responsibility as a fiduciary, plan sponsor or otherwise, for making any contribution to, or in respect of the funding, investment or administration of any employee benefit plan, arrangement or agreement (including but not limited to pension plans) or the termination of any such plan, arrangement or agreement (including but not limited to any withdrawal liability).

5. Assumption and Assignment of Amended Resident Contracts. The Debtor is authorized to execute, assume, and assign the Amended Resident Contracts designated for assignment to Buyer pursuant to the Purchase Agreement; provided, however, that there shall be no execution or assumption of any such contract absent simultaneous assignment thereof to Buyer. Upon execution, assumption and assignment of the Amended Resident Contracts, Buyer shall be deemed to be substituted for the Debtor as a party to each of the Amended Resident Contracts and, pursuant to Bankruptcy Code section 365(k), the Debtor and its estate shall be relieved from any liability for any post-Closing breach of any such Amended Resident Contract after assignment of such Amended Resident Contract to Buyer. In accordance with Bankruptcy Code section 365(b)(2) and (f), upon transfer of the Amended Resident Contracts to Buyer, (i) Buyer shall have all of the rights of the Debtor thereunder, free and clear of all Claims, except as otherwise provided in the Purchase Agreement and in the Amended Resident Contracts, and each provision of such Amended Resident Contracts shall remain in full force and effect for the benefit of Buyer, notwithstanding any provision in such contract, lease or in applicable law that prohibits, restricts or limits in any way such assignment or transfer; and (ii) none of the Amended Resident Contracts may be terminated, or the rights of any party modified in any

respect by any other party thereto as a result of the consummation of the transactions contemplated by the Purchase Agreement.

6. Adequate Assurance. To the extent the Amended Resident Contracts are successfully executed, assumed and assigned, the requirements of Bankruptcy Code sections 365(b)(1) and 365(f)(2) are satisfied with respect to the Amended Resident Contracts based on Buyer's evidence of its financial condition and wherewithal presented at the Sale Hearing and without any other or further action by Buyer, including, but not limited to, any other or further deposit.

7. Cash Consideration. The Purchase Price shall be (a) the assumption by Buyer of the Assumed Liabilities, plus (b) the payment at Closing of sixteen million one hundred fourteen thousand dollars (\$16,114,000) in cash.

8. October Operations of Debtor. To the extent that the Closing does not occur on or before September 30, 2016, Buyer is hereby authorized to fund, and the Debtor is hereby authorized to accept Buyer's funding of, all reasonable expenses, each as incurred in the ordinary course of business consistent with past practices, associated with the operation of the Facility for the month of October 2016 (the "October Operating Expenses"), provided, however, in no event shall Buyer's obligation to fund October Operating Expenses exceed \$200,000.

9. Operation by Buyer. To the maximum extent available under applicable law: (a) Buyer shall be authorized, as of the Closing, to operate under any license, permit, registration, and any other governmental authorization or approval of the Debtor with respect to the Purchased Assets and the Amended Resident Contracts; (b) all such licenses, permits, registrations, and governmental authorizations and approvals are deemed to have been, and hereby are, directed to be transferred to Buyer as of the Closing; and (c) to the extent provided

by Bankruptcy Code section 525, no governmental unit may revoke or suspend any permit or license relating to the operation of the Purchased Assets sold, transferred or conveyed to Buyer on account of the filing or pendency of this Bankruptcy Case or the consummation of the Sale Transaction contemplated by the Purchase Agreement.

10. Enforcement. The terms and provisions of the Purchase Agreement and this Sale Order, and the transactions contemplated thereby and hereby, shall, as applicable, be specifically enforceable against and be binding in all respects upon, or shall inure to the benefit of, the Debtor, its estate, and its creditors, Buyer, and their respective Affiliates, successors and assigns, and any affected third parties, including all entities asserting Claims, notwithstanding any subsequent appointment of any trustee, examiner or receiver of the Debtor under any chapter of the Bankruptcy Code or any other law, and all such terms and provisions likewise shall be binding on and specifically enforceable against such trustee, examiner or receiver, and shall not be subject to rejection or avoidance by the Debtor, its estate, its creditors, any other representatives of its estate, or any trustee, examiner or receiver.

11. No Bulk Sales. No bulk sales law, or similar law of any state or other jurisdiction shall apply in any way to the transactions contemplated by the Purchase Agreement, the Sale Motion and this Sale Order.

12. Compliance with HIPAA. Nothing provided for in this Order shall alter the Debtor's or Buyer's obligations to protect the confidentiality of patient records, including but not limited to confidential records as required under applicable non-bankruptcy law and regulations including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the federal HIPAA privacy regulations at 45 Code of Federal Regulations.

13. Retention of Jurisdiction. This Court shall retain exclusive jurisdiction to, among other things, (a) interpret, enforce and implement the terms and provisions of this Sale Order and the Purchase Agreement, all amendments thereto, any waivers and consents thereunder and of each of the agreements executed in connection therewith in all respects; (b) to adjudicate disputes related to this Sale Order or the Purchase Agreement or the rights and duties provided hereunder or thereunder or any issues relating to the Purchase Agreement and this Sale Order including, but not limited to, the interpretation of the terms, conditions and provisions hereof and thereof, the status, nature and extent of the Purchased Assets and any Assigned Contracts and all issues and disputes arising in connection with the relief authorized herein, inclusive of those concerning the transfer of the Purchased Assets and Assigned Contracts free and clear of all Claims; and (c) to enforce the injunctions set forth herein.

14. Modification. The Purchase Agreement may be modified, amended or supplemented by Buyer and the Debtor in a writing signed by both parties without further order of the Court, provided that any such modification, amendment or supplement does not materially change the terms of the Purchase Agreement or modify the express terms of this Sale Order.

15. Survival. Nothing contained in any subsequent order of this Court or any court of competent jurisdiction in this Bankruptcy Case (or any order entered after any conversion of a chapter 11 case of the Debtor to a case under chapter 7 of the Bankruptcy Code) or any chapter 11 plan confirmed in the Debtor's Bankruptcy Case or any order confirming any such plan shall nullify, alter, conflict with, or in any manner derogate from the provisions of this Sale Order, and the provisions of this Sale Order shall survive and remain in full force and effect. For the avoidance of doubt, if the Debtor's Bankruptcy Case is converted to a case under chapter 7 of the Bankruptcy Code, the Sale Order shall be binding on the chapter 7 trustee in such chapter 7 case.

16. Failure to Specify. The failure specifically to include any particular provision of the Purchase Agreement in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court, the Debtor and Buyer that the Purchase Agreement be authorized and approved in its entirety with such amendments thereto as may be made by the parties in accordance with this Sale Order and the terms of the Purchase Agreement.

17. Automatic Stay. The automatic stay pursuant to Bankruptcy Code section 362 is hereby lifted with respect to the Debtor to the extent necessary, without further order of this Court, to allow: (a) Buyer to give the Debtor any notice provided for in the Purchase Agreement, and (b) Buyer to take any and all actions provided under or contemplated by the Purchase Agreement in accordance with the terms and conditions thereof.

18. Order Immediately Enforceable. Notwithstanding the provisions of Bankruptcy Rules 6004 and 6006 or any applicable provisions of the Local Rules, this Sale Order shall not be stayed for 14 days after the entry hereof, but shall be effective and enforceable immediately upon entry.

19. No Broker's Fee. Buyer is not and will not be liable to any agent, broker, person or firm acting or purporting to act on behalf of either the Debtor or Buyer for any commission, broker's fee or finder's fee respecting the Sale Transaction.

20. Conflicts. In the event of a direct conflict between the terms of this Sale Order and the terms of (a) the Purchase Agreement, or (b) any other order of this Court, the terms of this Sale Order shall govern and control.

21. No Waiver. Nothing in this Sale Order shall modify or waive any closing conditions or termination rights in Articles IX and X of the Purchase Agreement, and all such conditions and rights shall remain in full force and effect in accordance with their terms.

22. Back-Up Bidder. The extent to which Focus Healthcare Partners LLC is to be designated as the Back-Up Bidder will be determined by a future order of this Court if necessary.

23. Resolution of the M&T Objection. On August 8, 2016, Manufacturers and Traders Trust Company (“M&T”) filed that certain Limited Objection to Motion of Hebrew Hospital Senior Housing, Inc. for an Order Approving the Sale of Substantially all its Property [ECF No. 312] (the “M&T Objection”). Subject to paragraph 23(D) herein, the M&T Objection is resolved as follows (all capitalized terms in this paragraph 23 not defined in the Sale Order shall have the meanings ascribed to them in the M&T Objection):

A. The Pre-Petition First Priority Liens including without limitation the Mortgage Lien shall attach to and encumber the proceeds of sale of Debtor’s property in the same priority and to the same extent as to which they attached to and encumbered the Pre-Petition First Lien Collateral itself including without limitation the Subject Real Property.

B. At the Closing of the Sale Transaction, a payment for the M&T Non-contingent Claim shall be wired to M&T, and a payment for the M&T Contingent Claim and the amount of the claim of U.S. Bank National Association, as Indenture Trustee (the “Trustee”), with respect to the amount of the outstanding principal and interest due on the County of Westchester Industrial Development Agency Continuing Care Retirement Community Revenue Refunding Bonds, Series 2008, plus the fees and Expenses of the Trustee shall be wired to the Trustee, each in such amounts as the Debtor, the Committee, M&T and the Trustee stipulate and/or as ordered by this Court.

C. The termination of the Pre-Petition Lease Agreement shall occur and become immediately effective upon the conclusion of the Closing of the Sale Transaction.

D. Notwithstanding the foregoing, the Committee reserves all rights to object to the claims now or hereafter asserted by M&T and/or the Trustee against the Debtor's estate, including, but not limited to, the M&T Contingent Claim and the M&T Non-contingent Claim. In the event the Committee objects to the claims of M&T and/or the Trustee, M&T and/or the Trustee shall only be entitled to payment of those amounts allowed by final order of the Court.

24. Other Secured Creditors. At the Closing of the Sale Transaction, payments shall be made to the other secured creditors of the Debtor as follows:

A. HHHW shall be paid the following amounts at Closing: (i) the principal amount of \$3,500,000; (ii) accrued interest from November 9, 2015 through August 18, 2016 in the amount of \$150,791.67; and (iii) interest at the per diem rate of \$534.72 from August 18, 2016 through the Closing. ¶

B. Gordon Brothers Commercial & Industrial LLC shall be paid (i) the principal amount of \$1,000,000; and (ii) interest at the per diem rate of \$305.56, subject to reconciliation of amounts advanced by the Debtor for expenses.

Dated: August 19, 2016  
New York, NY

s/Michael E. Wiles  
UNITED STATES BANKRUPTCY JUDGE