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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY**

In re:

PASCAK VALLEY HOSPITAL  
ASSOCIATION, INC.

Debtor.

Hon. Rosemary Gambardella

Case No. 07-23686

Chapter 11

**DEBTOR'S MOTION TO (I) MAINTAIN ITS EXISTING PAYROLL ACCOUNT,  
(II) CONTINUE TO USE ITS EXISTING CASH MANAGEMENT SYSTEM  
AND BUSINESS FORMS, AND (III) APPROVE INVESTMENT PRACTICES**

Pascack Valley Hospital Association, Inc., the debtor and debtor-in-possession (“PVH” or the “Debtor”), by and through its proposed counsel, Sills Cummis Epstein & Gross, P.C., hereby moves the Court (the “Motion”) for entry of an order, pursuant to sections 105(a), 363(b), and 345(b) of title 11 of the United States Code (the “Bankruptcy Code”), authorizing the (i) continued use of existing business forms and records, and (ii) continued maintenance of existing payroll account, cash management systems and investment practices, and respectfully represents the following:

**BACKGROUND**

1. On September 24, 2007 (the “Filing Date”), the Debtor filed a voluntary petition for relief pursuant to Chapter 11 of Title 11, United States Code (the “Bankruptcy Code”). Since the Filing Date, the Debtor has remained in possession of its assets and continued

management of its business as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

2. The Debtor consists of a licensed 280-bed acute care hospital located in Bergen County, New Jersey that provides in patient, out patient, and related health care services to the general population. A detailed description of the Debtor's business and the facts precipitating the filing of the Debtor's Chapter 11 proceeding is set forth in the Affidavit of Leonard Weil submitted in support of the Debtor's various "first day" motions. Those facts are incorporated herein by reference.

### **JURISDICTION AND VENUE**

3. This court has jurisdiction to consider the Motion pursuant to 28 U.S.C. § 1334.

4. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

5. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

### **BANK ACCOUNTS, CASH MANAGEMENT SYSTEM AND BUSINESS FORMS**

6. Prior to the Filing Date, the Debtor maintained eight (8) bank accounts with Commerce Bank, N.A. (collectively, the "Commerce Accounts") for use in its operations.

7. In accordance with the guidelines issued by the Office of the United States Trustee, the Debtor closed all of the Commerce Accounts, with the sole exception of the Debtor's payroll account. The Debtor continues to maintain a payroll account at Commerce Bank (Account No. 3451445328) (the "Payroll Account"). Immediately prior to the Filing Date, the Debtor opened new bank accounts at Valley National Bank (the "VNB Accounts," together with the Payroll Account, the "Bank Accounts").

8. The Debtor currently utilizes a cash management system (the “Cash Management System”) that is maintained, monitored and reviewed by, among others, the Debtor’s bookkeeping staff and accountants.

9. Additionally, the Debtor maintains a variety of business forms, including letterhead and checks that are all customized according to the Debtor’s ordinary business needs.

### **RELIEF REQUESTED AND REASONS THEREFOR**

#### **A. The Debtor’s Use of Existing Payroll Account Should be Continued**

10. In furtherance of its supervision of the administration of chapter 11 cases, the Office of the United States Trustee for Region III (the “U.S. Trustee”) has established certain guidelines for debtors in possession that operate their businesses (the “Guidelines”).

11. The Guidelines require debtors in possession, among other things, to close all existing bank accounts and immediately open new bank accounts bearing the designation “debtor in possession” consisting of (i) an operating account to process all post-petition receipts and disbursements from the operation of the debtor’s business, and (ii) a tax account into which all funds (including, but not limited to, funds held in trust for employee taxes) as may be collected and or payable during the pendency of the case shall be deposited. This requirement is designed to (a) provide a clear line of demarcation between pre-petition and post-petition transactions and operations, and (b) block the inadvertent payment of pre-petition claims through the payment of checks drawn prior to the commencement of a debtor’s case.

12. As set forth above, in accordance with the Guidelines, the Debtor has closed, or will soon close, the Commerce Accounts, with the exception of the Payroll Account, and has opened new “debtor in possession” accounts at VNB.

13. Among the “first day” motions filed by the Debtor is a motion to authorize, but not direct, the Debtor to pay pre-petition wages and other payroll obligations to its

Employees, together with associated payroll taxes to the appropriate taxing authorities. Among the relief sought in the motion is a directive that Commerce Bank honor and pay all of the payroll checks drawn on the Payroll Account, regardless of whether presented before or after the Filing Date.

14. Requiring the Debtor to close the Payroll Account and open a new account would not be in the best interests of the Estate. The exercise would (1) disrupt the Debtor's ability to satisfy its Employee Obligations in a timely manner; (2) interfere with the efficient management of the Debtor's payroll system; and (3) distract Debtor's managers with ministerial tasks at a time when hospital operations, the preparation of a closure plan, and the safe and efficient transfer of patients require their full attention.

15. In other cases, courts have recognized that the strict enforcement of the bank account closing requirement is not in the best interests of the Estate. Accordingly, courts in this district have regularly entered orders authorizing debtors to maintain their pre-petition bank accounts. *See, e.g., In re Bayonne Medical Center*, Case No. 07-15195 (MS) (Bankr. D.N.J. Apr. 17, 2007); *In re Furniture King, Inc.*, Case No. 06-17282 (MS) Bankr. D.N.J. Aug. 9, 2006); *In re Beth Israel Hospital Association of Passaic*, Case No. 06-16186 (NLW) (Bankr. D.N.J. July 10, 2006); *In re Treasure Island, Inc.*, Case No. 06-10416 (NLW) (Bankr. D.N.J. Jan. 20, 2006); *In re Supply King, Inc.*, Case No. 05-23177 (RTL) (Bankr. D.N.J. Apr. 26, 2005); *In re Valairco, Inc.*, Case No. 05-22042 (RTL) (Bankr. D.N.J. Apr. 22, 2005); *In re D&K Stores, Inc.*, Case No 05-21445 (KCF) (Bankr. D.N.J. Apr. 19, 2005); *In re Congoleum Corp.*, Case No. 03-51524 (KCF) (Bankr. D.N.J. Jan. 7, 2004); *In re Grand Union*, Case No. 00-39613 (NLW) (Bankr. D.N.J. Oct. 4, 2000). Additionally, other courts within this circuit have granted similar relief. *See, e.g., In re American Bus. Fin. Servs.*, Case No. 05-10203 (MFW) (Bankr. D. Del.

Feb. 3, 2005); *In re American Banknote Corp.*, Case No. 05-10174 (PJW) (Bankr. D. Del. Jan. 21, 2005); *In re IWO Holdings, Inc.*, Case No. 05-10009 (PJW) (Bankr. D. Del. Jan. 4, 2005); *In re Women First Healthcare, Inc.*, Case No. 04-11278 (MFW) (Bankr. D. Del. May 3, 2004); *In re Winn-Dixie Stores, Inc.*, Case No. 05-11063 (Bankr. S.D.N.Y. Mar. 15, 2005); *In re Tower Automotive, Inc.*, Case No. 05-10578 (Bankr. S.D.N.Y. Feb. 3 2005).

16. In those cases, the debtor in possession was permitted to maintain *all* of its pre-petition bank accounts. Here, the Debtor has closed, or will soon close, all pre-petition bank accounts and opened “debtor in possession” accounts, with the sole exception of the Payroll Account, which it continues to maintain at Commerce Bank.

17. The Debtor submits that a limited waiver of the requirement that a debtor close its existing payroll account is necessary in the Debtor’s case. Specifically, the Debtor requests a waiver of the Guidelines solely with respect to its Payroll Account, such that the Payroll Account will be deemed to be a debtor in possession account and its maintenance and continued use, in the same manner and with the same account number, style and document form (including checks) as during the pre-petition period, will be authorized, subject only to (a) designation of such account in the books and records of the Debtor and by Commerce Bank as a debtor in possession account, and (b) a prohibition against honoring pre-petition checks without specific authorization from this Court.<sup>1</sup> The Debtor will advise Commerce Bank not to honor checks issued prior to the commencement of this case, except as authorized by this Court.<sup>2</sup> By so advising Commerce Bank, the Debtor will achieve the goals of the bank account closing

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<sup>1</sup> The Debtor reserves the right to close the existing Payroll Account at some point post-petition and open a new one elsewhere. However, for the reasons set forth herein, it cannot do so at the outset of this case.

<sup>2</sup> The Debtor has filed a motion requesting entry of an Order permitting the Debtor to pay its Employees their pre-petition payroll and benefits obligations and directing Commerce Bank to honor and pay payroll checks and electronic payment requests to the Debtor’s Employees.

requirement – (a) establishing a clear demarcation between pre-petition and post-petition checks, and (b) blocking the inadvertent payment of pre-petition checks – without disrupting the Debtor’s business operations.

**B. The Debtor’s Use of Existing Cash Management System Should Be Continued**

18. Presently, PVH maintains one or more depository accounts with Commerce Bank (the "Depository Accounts"), into which various payors have been directed to deposit funds representing Receivables owing to PVH. The Depository Accounts are referenced on Schedule "1" attached to the proposed order relating hereto. Under the terms of the DIP Financing Order contemplated to be entered in this proceeding, a first lien and security interest (priming on a consensual basis certain existing pre-petition liens) will be granted to the DIP lender under a revolving credit facility secured by such Receivables. The mechanism provided for under the DIP Financing Order requires that on a daily basis, all proceeds deposited into the Depository Accounts at Commerce be swept to a collection account to be maintained by the DIP Lender. The DIP Lender will thereafter advance to the Debtor's operating account under the terms of the DIP Financing Order for funding of operational expenses in accordance with the Budget (as defined in the DIP Financing Order). In furtherance thereof, the Debtor seeks authorization and direction to Commerce Bank to provide such a sweep of the Depository Accounts on a daily basis.

**C. The Debtor’s Use of Existing Business Forms Should be Continued**

19. In the ordinary course of its business, the Debtor uses a variety of checks and other business forms, including purchase orders, checks, letterhead, and invoices (collectively, the “Business Forms”). By virtue of the nature and scope of the Debtor’s business and the numerous suppliers of goods and services and numerous other parties with whom the

Debtor deals, it is imperative that the Debtor be permitted to continue to use the Business Forms without alteration or change. The Debtor further requests that this Court enter an order stating that the Debtor's Business Forms do not require such legends.

20. Parties doing business with the Debtor undoubtedly will be aware of the Debtor's status as a chapter 11 debtor in possession. Changing correspondence and business forms will be unnecessary and burdensome to the estate, as well as expensive and disruptive. Courts in this district have consistently allowed debtors to use their pre-petition checks and other forms without the "debtors in possession" label. *See, e.g., In re Bayonne Medical Center*, Case No. 07-15195 (MS) (Bankr. D.N.J. Apr. 17, 2007); *Beth Israel Hospital Association of Passaic*, Case No. 06-16186 (NLW) (Bankr. D.N.J. July 12, 2006); *In re Valairco, Inc.*, Case No. 05-22042 (RTL) (Bankr. D.N.J. Apr. 22, 2005); *In re D&K Stores, Inc.*, Case No. 05-21445 (KCF) (Bankr. D.N.J. Apr. 19, 2005); *In re Congoleum Corp.*, Case No. 03-51524 (KCF) (Bankr. D.N.J. Jan. 7, 2004); *In re General Chemical Industrial Products, Inc.*, Case No. 03-48772 (DHS) (Bankr. D.N.J. Dec. 3, 2003); *In re Grand Union*, Case No. 00-39613 (NLW) (Bankr. D.N.J. Oct. 4, 2000). Additionally, other courts in this circuit have done the same. *See, e.g., In re American Bus. Fin. Servs.*, Case No. 05-10203 (MFW) (Bankr. D. De. Feb. 3, 2005); *In re American Banknote Corp.*, Case No. 05-10174 (PJW) (Bankr. D. Del. Jan. 21, 2005); *In re IWO Holdings, Inc.*, Case No. 05-10009 (PJW) (Bankr. D. Del. Jan. 4, 2005); *In re Women First Healthcare, Inc.*, Case No. 04-11278 (MFW) (Bankr. D. Del. May 3, 2004).

**C. The Debtor's Use of Existing Investment Guidelines Should Be Continued**

21. The Debtor seeks a waiver of the deposit guidelines set forth in section 345(b) of the Bankruptcy Code to permit the Debtor to maintain each of its deposit accounts that may, from time to time, exceed the amount insured by the Federal Deposit Insurance Corporation

(the “FDIC”). Section 345 of the Bankruptcy Code authorized deposits or investments of bankruptcy estate money in a manner that will “yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment,” and requires a bond in favor of the United States from any entity with which a debtor deposits money if said entity is not “insured or guaranteed by the United States or by a department, agent or instrumentality of the United States or backed by the full faith and credit of the United States. See 11 U.S.C. §§ 345(a)-(b).

22. The Debtor’s account balances in excess of FDIC insurance limits are maintained at Commerce Bank, N.A. and Valley National Bank, which are financially stable banking institutions. Consequently, a waiver of the section 345 deposit guidelines would not pose an undue risk to the Debtor’s estate or its creditors. Furthermore, the Debtor maintains that a waiver of these deposit guidelines is necessary to ensure the Debtor’s smooth transition into chapter 11. Requiring the Debtor to change its deposits and other procedures for a second time could result in harm to the Debtor, its estate and its creditors because it would disrupt its Cash Management System. In addition, requiring the Debtor to open multiple accounts at different banks so that the deposits in each such account would be insured by the FDIC would be unnecessarily burdensome and would prevent the Debtor’s financial staff from focusing their undivided attention on the Chapter 11 case, the safe and efficient transfer of patients and the preparation and filing of a closure plan.

#### **WAIVER OF MEMORANDUM OF LAW**

23. The applicable law is fully set forth herein and this Motion does not raise any novel issues of law. Accordingly, the Debtor respectfully requests that the Court waive the requirement contained in D.N.J. LBR 9013-2 that a separate memorandum of law be submitted.

**NOTICE**

24. Notice of the Motion and proposed form of order has been served on (i) the United States Trustee for Region 3, Newark, New Jersey; (ii) counsel for HFG Healthco-IV, LLC; (iii) counsel for Bank of New York, as Master Trustee; (iv) each of the Debtors' twenty (20) largest unsecured creditors; (v) the New Jersey Department of Human Services; (vi) the New Jersey Department of Health and Senior Services; (vii) the New Jersey Health Care Facilities Financing Authority; (viii) the Attorney General for the State of New Jersey; (ix) the State of New Jersey, Division of Taxation; (x) the Internal Revenue Service; (xi) the U.S. Department of Health and Human Services, Center for Medicare and Medicaid Services, located in Baltimore, MD and New York, NY; (xii) the U.S. Attorney for the District of New Jersey; (xiii) Health Professionals and Allied Employees, ATL/AFL-CIO Local 5029; (xiv) Pension Benefit Guaranty Corporation; (xv) Commerce Bank, N.A.; (xvi) the Affiliates; (xvii) the Utility Companies; and (xviii) all parties requesting notice pursuant to Fed. R. Bankr. P. 2002. The Debtor respectfully submits that such service constitutes good and sufficient notice.

**NO PRIOR REQUEST**

25. No prior motion for the relief requested herein has been made to this or any other court.

WHEREFORE, the Debtor respectfully request that the Court enter an order, substantially in the form filed concurrently herewith, authorizing the (i) continued use of existing business forms and records, (ii) continued maintenance of the Payroll Account, cash

management systems and investment practices, and (iii) granting such other and further relief as may be just and proper.

**SILLS CUMMIS EPSTEIN & GROSS, P.C.**  
Counsel for Pascack Valley Hospital Association, Inc.  
Debtor and Debtor-in-Possession

By: \_\_\_\_\_  
Jack M. Zackin  
Simon Kimmelman  
Valerie Hamilton

Dated: September 24, 2007

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-2(c)

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In re:

PASCACK VALLEY HOSPITAL  
ASSOCIATION, INC.

Debtor.

Hon. Rosemary Gambardella

Case No. 07-23686

Chapter 11

**ORDER GRANTING DEBTOR'S MOTION TO (I) MAINTAIN ITS  
EXISTING PAYROLL ACCOUNT, (II) CONTINUE TO USE ITS  
EXISTING CASH MANAGEMENT SYSTEM AND BUSINESS  
FORMS, AND (III) APPROVE INVESTMENT PRACTICES**

The relief set forth on the following pages, numbered two (2) through four (4), is  
hereby **ORDERED**.

Debtor: Pascack Valley Hospital Association, Inc.  
Case No.: 07- 23686 (RG)  
Caption of Order: Order Granting Debtor's Motion To (I) Maintain Its Existing Payroll Account, II) Continue To Use Its Existing Cash Management System And Business Forms And (III) Approve Investment Practices

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Upon consideration of the Motion of Pascack Valley Hospital Association, Inc., Debtor and Debtor-in-Possession (the "Debtor"), for entry of an order, pursuant to sections 105(a), 363(b), and 345(b) of Title 11 of the United States Code (the "Bankruptcy Code"), (i) authorizing the continued use of existing business forms and records and maintenance of existing payroll account and cash management systems, and (ii) approving current investment practices (the "Motion"), and the Court having considered the Motion, the Affidavit of Leonard Weil, Interim Chief Financial Officer in support of "first day" motions, and opposition to the Motion, if any; and having further considered the arguments of counsel, if any; and the Court having found that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b), and (c) notice of the Motion was sufficient and adequate under the circumstances and no other or further notice need be provided; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and for other and good cause shown;

IT IS HEREBY ORDRED THAT:

1. The Motion is granted in its entirety.
2. The Debtor is authorized to maintain and continue using its existing pre-petition Cash Management System,<sup>1</sup> as described in the Motion.

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<sup>1</sup> Capitalized terms not defined herein shall have the meanings assigned thereto in the Motion.

Debtor: Pascack Valley Hospital Association, Inc.  
Case No.: 07- 23686 (RG)  
Caption of Order: Order Granting Debtor's Motion To (I) Maintain Its Existing Payroll Account, II) Continue To Use Its Existing Cash Management System And Business Forms And (III) Approve Investment Practices

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3. The requirement that the Debtor establish a new bank account for payroll purposes as of the Filing Date is dispensed with and waived.

4. The Debtor shall be, and hereby is, authorized, but not required, to maintain and continue to use its existing Payroll Account.

5. Commerce Bank, N.A. is authorized and directed to continue to service and administer the Payroll Account without interruption and in the ordinary course, and to receive, honor and pay any and all checks and drafts drawn on the Payroll Account; provided, however, that no checks or drafts issued on the Payroll Account prior to the Filing Date shall be honored, except as otherwise ordered by the Court.

6. Commerce Bank is authorized and directed, on a daily basis, to wire to a collection account to be maintained by HFG Healthco-4, LLC, as DIP Lender, under the terms of the DIP Financing Order, all amounts received into the Depository Accounts (as set forth on Schedule "1" hereto).

7. The Debtor is hereby authorized to continue to use its existing Business Forms without alteration or change; provided, however, that any new Business Forms obtained by the Debtor will contain the notation that the Debtor is a "debtor in possession."

8. The Debtor is hereby authorized to open any additional post-petition accounts with a bank or financial institution, and to close any existing accounts, as the Debtor may deem necessary and appropriate, and the banks and financial institutions are

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authorized and directed to honor the Debtor's request to open or close, as the case may be, such accounts or additional accounts.

9. The deposit and investment guidelines set forth in section 345 of the Bankruptcy Code is hereby waived to permit the Debtor to continue to maintain its deposits and its investments in the same or similar manner it did, prior to the Filing Date.

10. The Debtor is authorized and empowered to take such actions as may be necessary and appropriate to implement the terms of this Order.

11. Within five (5) days hereof, the Debtor's counsel shall serve a copy of this Order upon all parties who received notice of the Motion.

SCHEDULE 1

PASCACK VALLEY HOSPITAL  
COMMERCE BANK  
SUMMARY OF BANK ACCOUNTS

<u>Account #</u>	<u>Account Name</u>
37133772	Commerce Checking - Operating (A/P) account
37133810	Commerce Checking - Treasurer account
37405039	Commerce Checking - should be closed - inactive
37640895	Commerce Checking - Auxillary Act II
3450804243	Commerce Checking - Special Purpose Fund
3451567814	Commerce Checking - Credit Card Deposits
3450314505	Commerce Checking - General Active Staff
3451445328	Commerce Checking - Payroll account