

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

<b>In re:</b>  <b>THOMAS HEALTH SYSTEM, INC.,</b>  <b>Debtor.</b>	Chapter 11  Case No. 20-20007 (FWV) (Joint Administration Requested)
<b>In re:</b>  <b>HERBERT J. THOMAS MEMORIAL HOSPITAL ASSOCIATION,</b>  <b>Debtor.</b>	Chapter 11  Case No. 20-20008 (FWV) (Joint Administration Requested)
<b>In re:</b>  <b>CHARLESTON HOSPITAL, INC.,</b>  <b>Debtor.</b>	Chapter 11  Case No. 20-20009 (FWV) (Joint Administration Requested)
<b>In re:</b>  <b>THS PHYSICIAN PARTNERS, INC.,</b>  <b>Debtor.</b>	Chapter 11  Case No. 20-20010 (FWV) (Joint Administration Requested)

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS  
AUTHORIZING (I) DEBTORS TO PAY CERTAIN PREPETITION TAXES AND  
FEES AND (II) FINANCIAL INSTITUTIONS TO HONOR AND PROCESS  
RELATED CHECKS AND TRANSFERS  
*(Expedited Consideration Requested<sup>1</sup>)***

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), by their undersigned proposed counsel, file this motion (the “Motion”) pursuant to sections 105(a), 363(b), 507(a)(8) and 541 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, as amended (the “Bankruptcy Code”) for the entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (the “Interim Order” and the “Final Order,”

<sup>1</sup> The Debtors will file a motion seeking to shorten the notice for certain “first-day” motions, including this pleading, and have requested an expedited hearing on such motions at the Court’s earliest convenience.

respectively, and collectively the “Orders”): (i) authorizing, but not directing, the Debtors to pay certain taxes and fees, and (ii) authorizing and directing the Debtors’ financial institutions (the “Banks”) to receive, process, honor and pay checks or wire transfers related to the foregoing. In support of this Motion, the Debtors rely on the *Declaration of Daniel Lauffer in Support of the Debtors’ Chapter 11 Petitions and First Day Pleadings* (the “Lauffer Declaration”), which was filed contemporaneously herewith and incorporated herein by reference. In further support of this Motion, the Debtors submit as follows:

### **JURISDICTION AND VENUE**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157 (b)(2).

2. The predicates for the relief requested herein are sections 105(a), 363(b), 507(a)(8) and 541 of the Bankruptcy Code.

### **BACKGROUND**

3. On the date hereof (hereinafter the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 the Bankruptcy Code. The Debtors are operating their businesses and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in the Chapter 11 Cases (the “Chapter 11 Cases”), and as of the date of the filing of this Motion, no official committees have been appointed or designated.

4. Contemporaneously herewith, the Debtors have filed a motion requesting joint administration of their Chapter 11 Cases.

5. A full description of the Debtors' business operations, corporate structures, capital structures, and reasons for commencing these cases is set forth in full in the Lauffer Declaration. Additional facts in support of the specific relief sought herein are set forth below.

### **THE DEBTORS' TAXES**

6. In the ordinary course of business, the Debtors collect, withhold and incur health care, sales and use, property taxes, and other taxes and fees as described in this Motion (collectively, the "Taxes").<sup>2</sup> The Debtors remit Taxes to various federal, state and local government entities, including taxing and licensing authorities (collectively, the "Governmental Authorities"). A schedule identifying the Governmental Authorities is attached hereto as **Exhibit C**.<sup>3</sup> The Debtors remit the Taxes through checks and electronic transfers that the Debtors' banks process. As of the Petition Date, the Debtors estimate that, in the aggregate, they owe approximately \$990,000 of prepetition Taxes that have accrued and not been paid.

#### **A. Health Care Taxes**

7. The Debtors incur certain taxes by providing health care related services within the State of West Virginia. Specifically, the Debtors incur health care broad based tax and acute care hospital tax (collectively, the "Health Care Taxes"). Generally, the Health Care Taxes are calculated on gross receipts (accounts received or receivable) from the provision of various health care services and sales of related items within the State of West Virginia. The Debtors pay the health care broad based tax on a monthly basis and pay the acute care hospital tax on a

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<sup>2</sup> Pursuant to this Motion, the Debtors do not seek authority to collect and remit state and federal employee-related withholding taxes. The Debtor is seeking such authority pursuant to the *Debtors' Motion for Entry of Interim and Final Orders: (A) Authorizing the Debtors to Pay Certain Prepetition (I) Wages, Salaries and Other Compensation, (II) Reimbursable Employee Expenses, and (III) Employee Medical and Similar Benefits; (B) Confirming that the Debtors May Continue Prepetition Employee Programs and Pay Employees in the Ordinary Course of Business; and (C) Directing Banks and Other Financial Institutions to Honor All Related Checks and Electronic Payment Requests.*

<sup>3</sup> For the avoidance of doubt, the inclusion of any entity on, or the omission of any entity from **Exhibit C** is not an admission by the Debtors that such entity is, or is not, a Governmental Authority, and the Debtors reserve all rights with respect to any such determination.

quarterly basis. As of the Petition Date, the Debtors estimate approximately \$670,000 is due and owing to the relevant Governmental Authorities on account of prepetition Health Care Taxes.

**B. Sales and Use Tax**

8. The Debtors collect sales tax on the retail sale of goods at their various facilities (i.e., cafeteria sales, vending machines, gift shop). The Debtors remit use tax on items that are taxable in the State of West Virginia on which applicable sales tax has not been paid by the vendor. The Debtors are required to remit the sales and use tax to the State of West Virginia on a monthly basis. As of the Petition Date, the Debtors estimate approximately \$180,000 in sales and use tax are owed to the relevant Governmental Authorities.

**C. Property Taxes**

9. The Debtors have property tax obligations to certain Governmental Authorities for their real and personal property holdings. It is critical that the Debtors be able to pay any real and personal property taxes where under applicable law the failure to pay gives rise to a secured state law lien. As of the Petition Date, the Debtors believe all but approximately \$115,000 of the real property and personal property taxes have been paid. The Debtors' current practice is to pay such amounts to the appropriate Governmental Authorities on various dates throughout the year, and no later when they become due. Interest and penalties apply if such taxes are not timely paid. Paying these taxes, therefore, will reduce costs by minimizing interest and penalty charges.

**D. Other Fees and Taxes**

10. State and local Governmental Authorities impose various other Taxes and fees against the Debtors' operations (collectively, the "Other Taxes and Fees"), including without limitation, business license fees, excise taxes and other miscellaneous fees and taxes. As of the

Petition Date, the Debtors estimate approximately \$25,000 is due and owing to the relevant Governmental Authorities on account of prepetition Other Taxes and Fees.

### **RELIEF REQUESTED**

11. By this motion, the Debtors seek entry of the Interim Order and the Final Order, substantially in the forms attached hereto as Exhibit A and Exhibit B, respectively: (a) authorizing, but not requiring, the Debtors, in their sole discretion, to pay the Taxes and (b) authorizing the Banks to receive, process, honor and pay checks or wire transfers used by the Debtors to pay such Taxes.

### **BASIS FOR RELIEF REQUESTED**

#### **A. Certain of the Taxes May Not Be Property of the Debtors' Estates**

12. Some of the Taxes constitute “trust fund” Taxes, which the Debtors are required to collect or hold in trust for payment to the Governmental Authorities. Section 541(d) of the Bankruptcy Code provides, in relevant part, that “[p]roperty in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest . . . becomes property of the estate under subsection (a)(1) or (2) of this section only to the extent of the debtor’s legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.” 11 U.S.C. § 541(d).

13. Courts have held that trust fund taxes and fees are not part of a debtor’s estate. *See, e.g., Begier v. Internal Revenue Serv.*, 496 U.S. 53, 57–60 (1990) (holding that any prepetition payment of trust fund taxes is not a transfer subject to avoidance because such funds are not the debtor’s property); *DuCharmes & Co. v. Mich. (In re DuCharmes & Co.)*, 852 F.2d 194 (6th Cir. 1988) (per curiam) (same); *In re Shank*, 792 F.2d 829, 833 (9th Cir. 1986) (sales tax required by state law to be collected by sellers from their customers is a “trust fund” tax

and not released by bankruptcy discharge); *DeChiaro v. N.Y. State Tax Comm'n*, 760 F.2d 432, 435– 36 (2d Cir. 1985) (same); *Rosenow v. Ill. Dept. of Revenue (In re Rosenow)*, 715 F.2d 277, 279– 82 (7th Cir. 1983); *W. Surety Co. v. Waite (In re Waite)*, 698 F.2d 1177, 1179 (11th Cir. 1983) (same). The Debtors, therefore, generally do not have an equitable interest in such funds, and they should be permitted to pay those funds to the Governmental Authorities as they become due.

**B. Payment of the Taxes Will Avoid Unnecessary Distractions**

14. Any regulatory dispute or delinquency that affects the Debtors' ability to conduct business in a particular jurisdiction could have a wide-ranging and adverse effect on the Debtors' operations as a whole. Specifically, the Debtors' failure to pay Taxes could adversely affect their business operations because, among other things: (a) the Governmental Authorities could audit the Debtors or prevent the Debtors from continuing their businesses, which, even if unsuccessful, would unnecessarily divert the Debtors' attention away from the restructuring process; (b) the Governmental Authorities could attempt to suspend the Debtors' operations, file liens, seek to lift the automatic stay and pursue other remedies that will harm the estates; and (c) certain directors and officers might be subject to personal liability - even if such a failure to pay such Taxes was not a result of malfeasance on their parts - which would undoubtedly distract those key employees from their duties related to the Debtors' restructuring. *See* W. Va. Code § 11-9-4. Further, the Debtors must pay certain of the Taxes in order to continue operating. Accordingly, the Debtors must continue to pay Taxes as they become due to ensure that their officers and directors remain focused during the Chapter 11 Cases on operating the businesses and implementing a successful restructuring.

**C. Certain of the Taxes May Constitute Secured or Priority Claims Entitled to Special Treatment Under the Bankruptcy Code**

15. Payment of certain Taxes likely will give the Governmental Authorities no more than that to which they otherwise would be entitled under a chapter 11 plan and will save the Debtors the potential interest expense, legal expense and penalties that otherwise might accrue on Taxes during the Chapter 11 Cases.

16. Claims for some Taxes may be priority claims entitled to payment ahead of general unsecured claims. *See* 11 U.S.C. § 507(a)(8). Moreover, to the extent that certain Taxes are entitled to priority treatment under section 507(a)(8)(b) of the Bankruptcy Code, the governmental units also may attempt to assess interest and penalties. *See* 11 U.S.C. § 507(a)(8)(G) (granting eighth priority status to “a penalty related to a claim of a kind specified in this paragraph and in compensation for actual pecuniary loss”). Thus, payment of Taxes at this time only affects the timing of the payment for the vast majority of the amounts at issue and should not unduly prejudice the rights of other creditors.

**D. Payment of the Taxes Is Warranted under the Doctrine of Necessity and the Sound Exercise of the Debtors’ Business Judgment**

17. Section 105(a) authorizes a court to “permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor.” *In re NVR L.P.*, 147 B.R. 126–27 (Bankr. E.D. Va. 1992). Courts have generally recognized that a debtor may pay prepetition claims that are essential to the continued operation of the debtor’s business. *See, e.g., In re Meridian Auto. Sys.-Composite Operations, Inc.*, 372 B.R. 710, 714 (Bankr. D. Del. 2007) (granting the debtor authority to pay prepetition obligations owed to certain critical vendors); *In re Primary Health Sys., Inc.*, 275 B.R. 709, 710 (Bankr. D. Del. 2002) (allowing payment of prepetition wages upon a finding that such relief was “essential

to the continued operation of the Debtors' businesses"); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174–75 (Bankr. S.D.N.Y. 1989) (finding that a sound business justification existed to justify payment of prepetition wages).

18. Courts generally recognize that debtors may pay prepetition claims under section 363(b) of the Bankruptcy Code where there is a sound business purpose for the payment of prepetition obligations, and where the debtor is able to articulate some business justification, other than the mere appeasement of major creditors. *See, e.g., Ionosphere Clubs*, 98 B.R. at 174–75 (granting debtor authority to pay prepetition wages); *Armstrong World Indus. Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 398 (Bankr. S.D.N.Y. 1983) (granting the debtor the authority to pay prepetition claims of suppliers who were potential lien claimants).

19. Here, the Debtors' payment of Taxes is an exercise of sound business judgment and is necessary to permit a value-maximizing outcome in the Chapter 11 Cases. As discussed above, the Debtors must continue to pay Taxes to continue operating and to avoid costly distractions during the Chapter 11 Cases. Indeed, it is possible that the Governmental Authorities would seek to interfere with the Debtors' businesses if the Debtors do not pay certain Taxes on a timely basis. Additionally, the relief requested in this motion merely expedites the treatment and distribution to the Governmental Authorities that the Debtors' chapter 11 estates may otherwise make at a later date under a plan.

20. Courts in the Fourth Circuit have approved relief similar to the relief requested in this motion. *See, e.g., James River Coal, Co.*, No. 14-31848 (KRH) (Bankr. E.D. Va. April 9, 2014); *AMF Bowling Worldwide, Inc.*, Case No. 12-36495 (Bankr. E.D. Va. Nov. 14, 2012); *In re Bear Island Paper Co., L.L.C.*, No. 10-31202 (DOT) (Bankr. E.D. Va. March 25, 2010); *In re*

*Movie Gallery, Inc.*, No. 10-30696 (DOT) (Bankr. E.D. Va. Feb. 3, 2010); *In re Roper Bros. Lumber Co.*, No. 09-38215 (KRH) (Bankr. E.D. Va. Dec. 23, 2009).

**E. Applicable Financial Institutions Should Be Authorized to Honor and Process Related Checks and Transfers**

21. The Debtors also request that all applicable banks and other financial institutions be authorized to (i) receive, process, honor and pay all checks presented for payment of, and to honor all fund transfer requests made by the Debtors related to, the claims that the Debtors request authority to pay in this Motion, regardless of whether the checks were presented or fund transfer requests were submitted before or after the Petition Date and (ii) rely on the Debtors' designation of any particular check as approved by the Interim or Final Order; *provided* that funds are available in the Debtors' accounts to cover the checks and fund transfers.

22. Nothing in this Motion should be construed as impairing the Debtors' rights to contest the validity or amount of the Taxes assessed by the Governmental Authorities, and the Debtors expressly reserve all of their rights with respect thereto.

23. For the avoidance of doubt, the Debtors are not seeking to prepay the Taxes.

24. Based upon the foregoing, the Debtors submit that the relief requested herein is essential, appropriate and in the best interest of the Debtors' estates and creditors. Absent this relief, the value of the Debtors' estates will suffer, possibly precipitously. Consequently, all of the Debtors' creditors will benefit if the requested relief is granted.

**NECESSITY FOR IMMEDIATE RELIEF**

25. Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable harm." The Debtors are seeking relief to pay certain Taxes during the first 21 days of their chapter 11 cases. For the reasons discussed above, authorizing the Debtors to pay the Taxes and

granting the other relief requested herein is integral to the Debtors' ability to transition their operations into the Chapter 11 Cases. Failure to receive such authorization and other relief during the first 21 days of the Chapter 11 Cases would severely disrupt the Debtors' operations at this critical juncture. For the reasons discussed herein, the interim relief requested is necessary in order for the Debtors to operate their businesses in the ordinary course and preserve the ongoing value of the Debtors' operations and maximize the value of their estates for the benefit of all stakeholders. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

### **NOTICE**

26. The Debtors, with the assistance of their proposed claims and noticing agent, will use their reasonable best efforts under the exigent circumstances of the Chapter 11 Cases to provide notice of this Motion by overnight mail, email and/or fax to: (a) the Office of the United States Trustee for the Southern District of West Virginia; (b) the Office of the United States Attorney for the District of West Virginia; (c) the creditors appearing on the Debtors' consolidated list of top 30 unsecured creditors; (d) the Internal Revenue Service; (e) any local, state, or federal agencies that regulate the Debtors' businesses; (f) the Bond Trustee and counsel of record; (g) Huntington Bank; (h) United Bank; (i) Bank of America; (j) Fifth Third Bank; (k) all parties requesting notices pursuant to Bankruptcy Rule 2002(f); and (l) all known secured creditors. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

**REQUEST FOR WAIVER OF STAY**

27. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale or lease of property under Bankruptcy Rule 6004(h).

**NO PREVIOUS REQUEST**

28. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

**RESERVATION OF RIGHTS**

29. Nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtors, a waiver of the Debtors' rights to dispute any claim, or an approval or assumption of any agreement, contract or lease under section 365 of the Bankruptcy Code. The Debtors expressly reserve their right to contest any claim related to the relief sought herein. Likewise, if the Court grants the relief sought herein, any payment made pursuant to an order of the Court is not intended to be nor should it be construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

WHEREFORE, the Debtors respectfully request entry of (a) the Interim Order, substantially in the form attached hereto as **Exhibit A**, and (b) the Final Order, substantially in the form attached hereto as **Exhibit B**, granting the relief requested herein and such other and further relief as is just.

DATED: January 10, 2020

Respectfully Submitted

**WHITEFORD TAYLOR & PRESTON LLP**

/s/ Brandy M. Rapp

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**EXHIBIT A**

**Proposed Interim Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

<b>In re:</b>  <b>THOMAS HEALTH SYSTEM, INC.,</b>  <b>Debtor.</b>	Chapter 11  Case No. 20-20007 (FWV) (Joint Administration Requested)
<b>In re:</b>  <b>HERBERT J. THOMAS MEMORIAL HOSPITAL ASSOCIATION,</b>  <b>Debtor.</b>	Chapter 11  Case No. 20-20008 (FWV) (Joint Administration Requested)
<b>In re:</b>  <b>CHARLESTON HOSPITAL, INC.,</b>  <b>Debtor.</b>	Chapter 11  Case No. 20-20009 (FWV) (Joint Administration Requested)
<b>In re:</b>  <b>THS PHYSICIAN PARTNERS, INC.,</b>  <b>Debtor.</b>	Chapter 11  Case No. 20-20010 (FWV) (Joint Administration Requested)  Related to Docket No.

**INTERIM ORDER AUTHORIZING (I) DEBTORS TO PAY CERTAIN  
PREPETITION TAXES AND FEES AND (II) FINANCIAL INSTITUTIONS  
TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS**

Upon the motion (the “Motion”)<sup>1</sup> of the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) for entry of interim and final orders: (i) authorizing, but not requiring, the Debtors, in their sole discretion, to pay the Taxes, and (ii) authorizing the

<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

Debtors' financial institutions to receive, process, honor and pay checks or wire transfers used by the Debtors to pay such Taxes, the Court finds that: (a) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334(b); (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (c) the relief requested in the Motion is in the best interest of the Debtors, their estates and creditors, and is necessary to avoid immediate and irreparable harm to the Debtors; (d) proper and adequate notice of the Motion and the hearing thereon has been given and no other or further notice is necessary; and (e) upon the record herein after due deliberation thereon, good and sufficient cause exists for the granting of the relief set forth herein. Therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on an interim basis as set forth herein.
2. The Debtors are authorized, but not required, in their sole discretion to pay any Taxes in the ordinary course of business that were due and payable or related to the period prior to the Petition Date or that become due and payable and relate to the period after the Petition Date.
3. All applicable banks and other financial institutions are hereby authorized to receive, process, honor and pay any and all checks, drafts, wires, check transfer requests or automated clearing house transfers evidencing amounts paid by the Debtors under this Interim Order whether presented prior to or after the Petition Date to the extent the Debtors have good funds standing to their credit with such bank or other financial institution. Such banks and financial institutions are authorized to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Interim Order without any duty of further inquiry and without liability for following the Debtors' instructions.

4. Notwithstanding the relief granted in this Interim Order, any payment made by the Debtors pursuant to the authority granted herein shall be subject to and limited by any orders in the Chapter 11 Cases authorizing the use of cash collateral and the budget described therein.

5. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Interim Order in accordance with the Motion. Authorizations given in this Interim Order empower but do not direct the Debtors to effectuate any of the payments specified herein.

6. The Final Hearing shall be held on \_\_\_\_\_, 2020 at \_\_\_\_m. (prevailing Eastern Time). Any objections or responses to entry of the proposed Final Order shall be filed with the Clerk of this Court on or before 4:00 p.m. (prevailing Eastern Time) on \_\_\_\_\_ 2020, and served on the following parties: (a) the Office of the United States Trustee, 300 Virginia Street East, Room 2025, Charleston, West Virginia 25301; (b) proposed counsel to the Debtors, Whiteford Taylor & Preston, LLP, 200 First Avenue, Third Floor, Pittsburgh, PA 15222, Attn: Michael J. Roeschenthaler, Esq. ([mroeschenthaler@wtplaw.com](mailto:mroeschenthaler@wtplaw.com)); (c) proposed co-counsel for the Debtors, Frost Brown Todd, LLC, 500 Virginia Street East, Suite 1100, Charleston, WV 25301, Attn: Jared M. Tully, Esq. ([jtully@fbtlaw.com](mailto:jtully@fbtlaw.com)); and (d) counsel to any official committee appointed in these cases.

7. In the event no objections to entry of the proposed Final Order are timely received, the Court may enter the proposed Final Order without need for the final hearing.

8. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed: (a) an admission regarding the validity or amount of any claim against the Debtors; (b) a waiver of the Debtors' rights to subsequently dispute any claim on any grounds; (c) a promise or requirement to pay

any claim; (d) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (e) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law.

9. The Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied and that the relief requested is necessary to avoid immediate and irreparable harm.

10. The notice of the relief requested in the Motion satisfies Bankruptcy Rule 6004(a) and, pursuant to Bankruptcy Rule 6004(h), the terms and provisions of this Order shall be immediately effective and enforceable upon its entry.

11. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Presented By:

/s/ Brandy M. Rapp

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10034743

**EXHIBIT B**

**Proposed Final Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

<b>In re:</b>  <b>THOMAS HEALTH SYSTEM, INC.,</b>  <b>Debtor.</b>	Chapter 11  Case No. 20-20007 (FWV) (Joint Administration Requested)
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<b>In re:</b>  <b>THS PHYSICIAN PARTNERS, INC.,</b>  <b>Debtor.</b>	Chapter 11  Case No. 20-20010 (FWV) (Joint Administration Requested)  Related to Docket No.

**FINAL ORDER AUTHORIZING (I) DEBTORS TO PAY CERTAIN  
PREPETITION TAXES AND FEES AND (II) FINANCIAL INSTITUTIONS  
TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS**

Upon the motion (the “Motion”)<sup>1</sup> of the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) for entry of interim and final orders: (i) authorizing, but not requiring, the Debtors, in their sole discretion, to pay the Taxes, and (ii) authorizing the

<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

Debtors' financial institutions to receive, process, honor and pay checks or wire transfers used by the Debtors to pay such Taxes, the Court finds that: (a) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334(b); (b) and this Court having entered the Interim Order on \_\_\_\_\_, 2020 granting the Motion on an interim basis (Docket No. \_\_\_\_\_); (c) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (d) the relief requested in the Motion is in the best interest of the Debtors, their estates and creditors, and is necessary to avoid immediate and irreparable harm to the Debtors (e) proper and adequate notice of the Motion and the hearing thereon has been given and no other or further notice is necessary; and (f) upon the record herein after due deliberation thereon, good and sufficient cause exists for the granting of the relief set forth herein. Therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on a final basis as set forth herein.
2. The Debtors are authorized, but not required, in their sole discretion to pay any Taxes in the ordinary course of business that were due and payable or related to the period prior to the Petition Date or that become due and payable and relate to the period after the Petition Date.
3. All applicable banks and other financial institutions are hereby authorized to receive, process, honor and pay any and all checks, drafts, wires, check transfer requests or automated clearing house transfers evidencing amounts paid by the Debtors under this Final Order whether presented prior to or after the Petition Date to the extent the Debtors have good funds standing to their credit with such bank or other financial institution. Such banks and financial institutions are authorized to rely on the representations of the Debtors as to which

checks are issued or authorized to be paid pursuant to this Final Order without any duty of further inquiry and without liability for following the Debtors' instructions.

4. Notwithstanding the relief granted in this Final Order, any payment made by the Debtors pursuant to the authority granted herein shall be subject to and limited by any orders in the Chapter 11 Cases authorizing the use of cash collateral and the budget described therein.

5. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Final Order in accordance with the Motion. Authorizations given in this Final Order empower but do not direct the Debtors to effectuate any of the payments specified herein.

6. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission regarding the validity or amount of any claim against the Debtors; (b) a waiver of the Debtors' rights to subsequently dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (e) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law.

7. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

8. The notice of the relief requested in the Motion satisfies Bankruptcy Rule 6004(a) and, pursuant to Bankruptcy Rule 6004(h), the terms and provisions of this Order shall be immediately effective and enforceable upon its entry.

9. The Debtors are authorized to take all steps necessary or appropriate to carry out the terms of this Final Order.

Presented By:

/s/ Brandy M. Rapp

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*Proposed Local Counsel to the Debtors and  
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**EXHIBIT C**

**Governmental Authorities**

**Governmental Authorities**

West Virginia State Tax Department  
Legal Division – Bankruptcy Unit  
P.O. Box 766  
Charleston, WV 25323-0766

West Virginia State Tax Department  
P.O. Box 773  
Charleston, WV 25323-0773

West Virginia State Tax Department  
P.O. Box 1826  
Charleston, WV 25327-1826

Kanawha County Sheriff's Tax Office  
409 Virginia Street East, Room 120  
Charleston, WV 25301

Vic Grigoraci, City Treasurer  
City of Charleston  
501 Virginia Street East, Room 203  
Charleston, WV 25301

Hannah Parsons, City Treasurer  
City of South Charleston  
P.O. Box 8597  
South Charleston, WV 25303