



operating cash of approximately \$5.3 million as of February 28, 2011 (including a \$3.4 million appropriation in income from the Othmer Funds); and,

WHEREAS, in order to fund the Excluded Liabilities, Petitioner also seeks to borrow \$26.8 million from the unencumbered principal of the Othmer Funds and \$63 million from the Othmer Funds currently pledged as partial security for a HUD mortgage and \$22 million in grant funds pursuant to the Health Care Efficiency and Affordability Law for New Yorkers ("HEAL") intended to repay the Othmer Funds for prior borrowings; and,

WHEREAS, the completion of the Transaction is the sole method available to Petitioner to continue operations as a hospital; and,

WHEREAS, the release of the restrictions on the Othmer Funds is essential to the execution of the Transaction; and,

WHEREAS, the continued strict compliance with the terms of the bequests to Petitioner made by the gift instruments of the Othmer Funds would frustrate the decedents' general charitable intentions to benefit Petitioner and would render impossible the decedents' support for the continued operation of a hospital by Petitioner.

WHEREAS, notice to the Attorney General of the State of New York as representative of the ultimate charitable beneficiaries of the Othmer Funds has been given pursuant to N-PCL § 555(b); and,

WHEREAS, the Court finds that the Petitioner has shown:

- (1) that on April 22, 2011 this Court entered an Order To Show Cause, subsequently modified by Order dated April 27, 2011, as to why this relief requested herein should not be granted;
- (2) that a hearing was conducted on May 12, 2011, at which no opposition was raised to the granting of this Petition, and The Attorney General appeared in support of the Petition;

NOW THEREFORE, it is hereby

ORDERED, that the Court finds, in accordance with Section 555(b) of the Not-for-Profit Law that because of these circumstances, not anticipated by the donors, Mildred and Donald Othmer, the continued application of the restrictions placed upon the Othmer Funds is impracticable and impossible and would actually frustrate the purposes of the fund as Petitioner would be forced into bankruptcy and cease to operate as a hospital were such restrictions not lifted temporarily, and a modification and temporary release of the restrictions is justified and will further the purposes of the Othmer Funds to provide the Brooklyn community with necessary medical services; and it is further

ORDERED, that the modification and release of the restrictions placed upon the Othmer Funds to permit the relief requested by the Petition as described below for purposes of effectuating the Transaction, conditioned on the closing of the Transaction, is approved as follows:

(1) the Court approves Petitioner's request to borrow the remaining unencumbered balance of the Othmer Funds, in the amount of \$26.8 million as of February 28, 2011; and

(2) Upon consent of the mortgagee HUD, the Court approves Petitioner's request to borrow that portion of the Othmer Funds currently used as security for a mortgage loan from the Department of Housing and Urban Development, approximately \$63 million as of February 28, 2011; and

(3) the Court approves Petitioner's request to borrow \$22 million of the Othmer Funds, which were used to pay Petitioner's Commercial Paper Debt; and which will be repaid through a HEAL grant issued for this purpose; and it is further

ORDERED, that the Court approves Petitioner's request, following Petitioner's payment of the Excluded Liabilities, to transfer control of the Othmer Funds to SUNY-Downstate for future use upon effectuation of the Transaction and conditioned on the closing of the Transaction. Petitioner shall make an accounting to this Court of the application of the Funds and the remaining balance thereof to be transferred prior to transfer; and it is further

ORDERED that the approval herein is conditioned upon the assumption by SUNY-Downstate, following the closing of the Transaction, of the liability for repayment of the Othmer Funds for the borrowing as requested by this Petition and all prior borrowings; and it is further,

ORDERED, that the Court will retain jurisdiction of this matter for purposes of enforcing this Order.

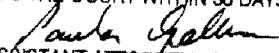
ENTER

Dated:

  
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J.S.C.

HON. CAROLYN E. DEMAREST

THE ATTORNEY GENERAL HEREBY APPEARS HEREIN,  
HAS NO OBJECTION TO THE GRANTING OF  
JUDICIAL APPROVAL HEREON, ACKNOWLEDGES  
RECEIPT OF STATUTORY NOTICE, AND DEMANDS  
SERVICE OF ALL PAPERS SUBMITTED HEREIN  
INCLUDING ALL ORDER, JUDGMENTS AND  
ENDORSEMENTS OF THE COURT. SAID NO OBJECTION  
IS CONDITIONED ON SUBMISSION OF THE MATTER  
TO THE COURT WITHIN 30 DAYS HEREAFTER.

 5-12-11  
ASSISTANT ATTORNEY GENERAL DATE  
Paula Gallan

Pursuant to A-266 § 555 only.

FOR CAROLYN E DEWABENT



2011 MAY 19 AM 8:46

KINGS COUNTY CLERK  
FILED