

LOWENSTEIN SANDLER PC

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

Daytop Village Foundation Incorporated, *et al.*,¹

Debtors.

Chapter 11

Case No. 12-11436 (SCC)

(Joint Administration Requested)

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
(I) APPROVING POST-PETITION SECURED SUPERPRIORITY
FINANCING, (II) AUTHORIZING THE USE OF CASH COLLATERAL,
(III) GRANTING ADEQUATE PROTECTION, (IV) MODIFYING THE
AUTOMATIC STAY, AND (V) SCHEDULING A FINAL HEARING**

Daytop Village Foundation Incorporated and Daytop Village, Inc., as debtors and debtors-in-possession in the above-captioned chapter 11 cases, submit this motion (the "**Motion**") for entry of an interim order substantially in the form attached hereto as Exhibit A (the "**Interim Order**") and a final order (a) approving post-petition secured superpriority financing pursuant to sections 105, 361, 362, 363(c), 363(e), 364(c)(1), 364(c)(2), 364(c)(3), 364(d) and 364(e) of the Bankruptcy Code, (b) authorizing the Debtors to use cash collateral ("**Cash Collateral**"), (c) authorizing the Debtors to provide adequate protection pursuant to

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: (1) Daytop Village Foundation Incorporated (6772) ("**DVF**") and (2) Daytop Village, Inc. (1438) ("**Daytop Village**") (collectively, the "**Company**" or the "**Debtors**"). The location of the Debtors' headquarters is 104 West 40th Street, 4th Floor, New York, New York 10018.

sections 361, 363 and 364 of the Bankruptcy Code, (d) modifying the automatic stay, and (e) scheduling a final hearing pursuant to Rule 4001 of the Federal Rules of Bankruptcy Procedure (the “**Final Hearing**”) for the entry of a Final Order providing for the relief requested herein on a final basis. In support of this Motion, the Debtors submit the Declaration of Michael Dailey Chief Executive Officer of Daytop Village Foundation Incorporated in Support of Chapter 11 Petitions and First Day Pleadings (the “**Dailey Declaration**”). In further support of the Motion, the Debtors respectfully state as follows:

JURISDICTION

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding under 28 U.S.C. § 157(b)(2).
2. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory bases for the relief sought herein are Bankruptcy Code sections 105, 361, 362, 363, 503(b) and 507 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2002, 4001, 6003 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Local Rule 4001-2 of the Local Bankruptcy Rules for the Southern District of New York (the “**Local Rules**”).

BACKGROUND

4. On the date hereof (the “**Petition Date**”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (collectively, the “**Chapter 11 Cases**”).
5. The Debtors are operating their businesses and managing their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. As of the filing of this Motion, no trustee, examiner or committee has been requested or appointed.

6. Additional background facts surrounding the commencement of these Chapter 11 Cases are more fully described in the Dailey Declaration, which was filed on the Petition Date.

PREPETITION SECURED INDEBTEDNESS

7. The Debtors have a complex prepetition debt structure consisting of various layers of secured debt (the “**Secured Debt Obligations**”).² As of the Petition Date, the Debtors have approximately (i) \$33,048,578³ of outstanding secured indebtedness owing to the Prepetition Agent (defined below) and/or the Prepetition Lenders (defined below) under certain prepetition credit facilities; and (ii) \$3,628,735 of outstanding secured indebtedness owing to the Dormitory Authority of the State of New York (“**DASNY**”) in respect of certain loans provided from DASNY⁴ to the Debtors related to DASNY bond offerings.

The Prepetition Secured Credit Facilities

8. The Debtors are parties to certain prepetition credit facilities (the “**Prepetition Facilities**”, and the documents with respect to such facilities, including but not limited to all amendments, notes, security agreements, mortgages, and forbearances thereto, are collectively the “**Prepetition Credit Documents**”) with Signature Bank (“**Signature**”) and/or Hudson Valley Bank (“**HVB**”, together with Signature, the “**Prepetition Lenders**”).⁵ The total

² Nothing contained herein constitutes an acknowledgment or admission as to the extent or validity of the Debtors’ Secured Debt Obligations and the liens, mortgages or other security interests granted to the Prepetition Agent (defined below), the Prepetition Lenders (defined below), DASNY/OASAS (defined below) and/or any other secured party. The Debtors reserve any and all rights, claims, and defenses with respect thereto.

³ This amount does not include \$326,882 in outstanding automobile loan debt owed by DVF to HVB (defined below).

⁴ The New York State Office of Alcoholism and Substance Abuse Services (“**OASAS**”) acts on behalf of DASNY, as agent, under these loan agreements.

⁵ Signature serves as agent on behalf of the Prepetition Lenders (the “**Prepetition Agent**”) with respect to the various Prepetition Facilities entered into between the Debtors and the Prepetition Lenders in January 2007, July 2008, February 2011, and October 2011, respectively (as discussed further below).

outstanding debt owed to the Prepetition Lenders (as of Petition Date) is approximately \$33,048,578 (the “**Prepetition Obligations**”) and relates to the following Prepetition Facilities, each as summarized and described below:

	<u>DATE</u>	<u>BANK</u>	<u>Balance</u> (as of the Petition Date)
1.	June 9, 2005	Hudson Valley Bank	\$1,625,281
2.	March 2, 2006	Signature Bank	\$2,999,334
3.	July 12, 2006	Hudson Valley Bank	\$1,332,559
4.	January 24, 2007	Prepetition Lenders	\$19,920,381
5.	July 31, 2008	Prepetition Lenders	\$2,548,127
6.	February 23, 2011	Prepetition Lenders	\$1,797,929
7.	October 31, 2011	Prepetition Lenders	\$2,824,967

June 2005 HVB Loans

9. Pursuant to certain mortgage loans entered into between HVB and DVF, dated as of June 9, 2005, as amended, DVF is currently indebted to HVB in the approximate amount of \$1,625,281. This amount is secured by (i) a first-priority mortgage on DVF’s outpatient facility located at 2614-18 Halperin Avenue, Bronx, New York 10461 (the “**Bronx Facility**”); a (ii) second-priority mortgages on DVF’s outpatient facilities located at 620 Route 303, Blauvelt, New York 10913 (the “**Rockland Facility**”) and 2075 New York Avenue, Huntington Station, New York 11746 (the “**Suffolk Facility**”);⁶ and (iii) a third-priority mortgage on DVF’s residential facility located at 4504/4505 Route 55, Swan Lake, New York 12783 (the “**Swan Lake Facility**”).

⁶ A mechanic’s lien in the amount of \$570 was filed by Northgate Electric Corp. against the Suffolk Facility in February 2012.

March 2006 Signature Facility

10. Pursuant to a certain credit facility entered into between Signature and DVF, dated as of March 2, 2006, as amended (the “**March 2006 Financing**”), DVF is currently indebted to Signature in the approximate amount of \$2,999,334. This amount is secured by a first-priority mortgage on DVF’s residential facility located at 316 Beach 65th Street, Far Rockaway, New York 11692 (the “**Far Rockaway Facility**”).⁷ As additional security, Signature reserved the right to apply amounts in any DVF accounts held by Signature against outstanding liabilities of DVF to Signature under the March 2006 Financing and any future facility held by Signature, whether individually or as part of a syndicate. Further, the March 2006 Financing is guaranteed by Daytop Village. As security for Daytop Village’s guaranty, Signature was granted a security interest in any Daytop Village accounts held by Signature against outstanding liabilities of Daytop Village to Signature under the March 2006 Financing guaranty and any obligations of Daytop Village owed to Signature.

July 2006 HVB Facility

11. Pursuant to a certain credit facility entered into between HVB and DVF, dated as of July 12, 2006, as amended (the “**July 2006 Financing**”), DVF is currently indebted to HVB in the approximate amount of \$1,332,559. This amount is secured by a (i) first-priority mortgage on DVF’s outpatient facility located at 246 North Central Park Avenue, Hartsdale, New York 10530 (the “**Westchester Facility**”); (ii) third-priority mortgages on the Rockland and Suffolk Facilities; and (iii) a fourth-priority mortgage on the Swan Lake Facility. DVF’s obligations under the July 2006 Financing are also secured, in part, by a security agreement pursuant to which DVF pledged to HVB a security interest in all of DVF’s accounts, inventory,

⁷ A mechanic’s lien in the amount of \$8,075 was filed by Northgate Electric Corp. against the Far Rockaway Facility in February 2012.

equipment, general intangibles, deposit accounts, claims and other personal property and proceeds.

January 2007 Credit Facility

12. Pursuant to a certain credit facility entered into between, *inter alia*, the Prepetition Agent, DVF and Daytop Village, dated as of January 24, 2007, as amended (the “**January 2007 Financing**”), the Debtors are currently indebted to the Prepetition Lenders in the approximate amount of \$19,920,381 comprised of: (i) a term loan provided to DVF (the “**2007 Term Loan**”) with an outstanding balance of approximately \$13,771,048; (ii) two revolving lines of credit provided to Daytop Village (the “**2007 Revolving Loans**”) with an outstanding balance of approximately \$5,999,333; and (iii) an additional term loan provided to DVF under a December 13, 2007 amendment to the January 2007 Financing with an outstanding balance of approximately \$150,000 (the “**Additional 2007 Term Loan**”).⁸ Daytop Village provided guaranties of the 2007 Term Loan and the Additional 2007 Term Loan, and DVF provided a guaranty of the 2007 Revolving Loans.⁹

13. DVF’s obligations under the 2007 Term Loan are secured by first-priority mortgages granted to the Prepetition Agent on DVF’s (a) headquarter office building located at 54-56 West 40th Street, New York, New York 10018 (the “**Headquarters**”); (b) outpatient facility located at 1915 Forest Avenue, Staten Island, New York 10303 (the “**Staten Island Facility**”); (c) outpatient facility located at 401 State Street, Brooklyn, New York 11217 (the “**Brooklyn Facility**”); and (d) residential facility located at 437 Parksville Road, Parksville, New York 12768 (the “**Parksville Facility**”). DVF’s obligations under the Additional 2007 Term

⁸ This Additional 2007 Term Loan was apparently funded on March 21, 2008.

⁹ Three non-debtor affiliates, Daytop Village, Inc. (California), The Daytop Preparatory School and Daytop International, Inc. also guaranteed the January 2007 Financing. During fiscal year 2008, Daytop Village Inc. (California)’s ceased operating and this entity no longer exists.

Loan are secured by a fourth-priority mortgage granted to the Prepetition Agent on DVF's Headquarters.

14. To secure Daytop Village's (i) obligations under the 2007 Revolving Loans and (ii) guaranties of the 2007 Term Loan and the Additional 2007 Term Loan, Daytop Village granted to the Prepetition Agent a security interest in all of Daytop Village's accounts, inventory, equipment, general intangibles, deposit accounts, claims and other personal property and proceeds. DVF's obligations under its guaranty of the 2007 Revolving Loans are secured by second- and third-priority mortgages granted to the Prepetition Agent on the Headquarters and the Staten Island, Brooklyn and Parksville Facilities.

July 2008 Line of Credit Financing

15. Pursuant to a certain credit facility entered into between, *inter alia*, the Prepetition Agent and DVF dated as of July 31, 2008, as amended (the "**July 2008 Financing**"), the Debtors are currently indebted to the Prepetition Lenders in the approximate amount of \$2,548,127. This amount is (i) secured by first-priority mortgages granted to the Prepetition Lenders on the Rockland and Suffolk Facilities; (ii) secured by a second-priority mortgage granted to the Prepetition Lenders on the Swan Lake Facility; and (iii) guaranteed by Daytop Village.¹⁰

16. To secure Daytop Village's guaranty obligations under the July 2008 Financing, Daytop Village granted to the Prepetition Agent a security interest in all of Daytop Village's accounts, inventory, equipment, general intangibles, deposit accounts, claims and other personal property and proceeds otherwise subject to a security interest of the Prepetition Lenders.

¹⁰ Two non-debtor affiliates, The Daytop Preparatory School and Daytop International, Inc. also guaranteed the July 2008 Financing.

February 2011 Bridge Loan Facility

17. Pursuant to a certain credit facility entered into between, *inter alia*, the Prepetition Agent and DVF dated as of February 23, 2011, as amended (the “**February 2011 Financing**”), the Debtors are currently indebted to the Prepetition Lenders in the approximate amount of \$1,797,929. This amount is (i) secured by a first-priority mortgage granted to the Prepetition Agent on DVF’s residential facility located at 44 Springwood Drive, Rhinebeck, New York 12572 (the “**Springwood Facility**”) and (ii) guaranteed by Daytop Village.¹¹ To secure DVF’s and Daytop Village’s obligations under the February 2011 Financing, DVF and Daytop Village granted to the Prepetition Agent a security interest in all of DVF’s and Daytop Village’s respective accounts, inventory, equipment, general intangibles, deposit accounts, claims and other personal property and proceeds.

October 2011 Bridge Loan Facility

18. Pursuant to a certain credit facility entered into between, *inter alia*, the Prepetition Agent and DVF dated as of October 31, 2011, as amended (the “**October 2011 Financing**”), the Debtors are currently indebted to the Prepetition Lenders in the approximate amount of \$2,824,967. This amount is (i) secured by a second-priority mortgage granted to the Prepetition Agent on the Springwood Facility, fourth-priority mortgages granted to the Prepetition Agent on the Parkville, Brooklyn and Staten Island Facilities and a fifth-priority mortgage granted to the Prepetition Agent on the Headquarters and (ii) guaranteed by Daytop Village.¹² To secure DVF’s and Daytop Village’s obligations under the October 2011 Financing, DVF and Daytop Village granted to the Prepetition Agent a security interest in all of DVF’s and

¹¹ Two non-debtor affiliates, The Daytop Preparatory School and Daytop International, Inc. also guaranteed the February 2011 Financing.

¹² Two non-debtor affiliates, The Daytop Preparatory School and Daytop International, Inc. also guaranteed the October 2011 Financing.

Daytop Village's respective accounts, inventory, equipment, general intangibles, deposit accounts, claims and other personal property and proceeds.

19. The maturity date of the March 2006, January 2007, July 2008 and October 2011 Financings was March 28, 2012 and the maturity date of the February 2011 Financing was March 26, 2012. The Debtors and the Prepetition Lenders were negotiating for an extension to these dates, but failed to reach any agreement as of the Petition Date.

The DASNY Obligations

20. DASNY, through its predecessor, the New York State Medical Care Facilities Finance Agency, issued various series of public bonds (the "**Bonds**"). Pursuant to five loan agreements (collectively, the "**DASNY Bond Obligations**") dated as of (i) April 29, 1996; (ii) June 18, 1999; (iii) December 18, 2008; (iv) June 24, 2009; and (v) July 16, 2010, entered into between DASNY (acting by its agent, OASAS) and the Debtors, a portion of the proceeds of the Bonds were loaned to the Debtors for purposes of financing building construction and/or improvements of certain of the Debtors' facilities. The Debtors are currently indebted to DASNY under the DASNY Bond Obligations in the approximate amount of \$3,628,735.

21. This amount is secured by (i) mortgages granted to OASAS/DASNY on (a) DVF's residential facilities located at 15, 88, 214/216, and 248 Fox Hollow Road, Rhinebeck, New York 12572 (the "**Rhinebeck West Property**"); (b) DVF's residential facility located at 55 Ramble Hill Lane Millbrook, New York 12545 (the "**Millbrook Facility**") and (c) the Swan Lake Facility; and (ii) fixture filings with respect to any and all collateral currently or subsequently in existence or used in connection with the Rhinebeck West Property, the Millbrook Facility and/or the Swan Lake Facility.

B. The Encumbered Properties and Prepetition Collateral

22. Below is a chart listing the real property facilities (the “**Facilities**”) owned by DVF, the appraised value¹³ of such facilities (the “**Value**”, as further discussed below) or, in the case of the Headquarters, the purchase price under an existing contract of sale, and the known mortgages encumbering these Facilities (the Facilities with existing mortgages held by Signature, HVB and/or the Prepetition Agent are the “**Encumbered Properties**”):¹⁴

	<u>FACILITY NAME</u>	<u>VALUE</u>	<u>MORTGAGES</u>
1.	Headquarters ¹⁵	\$26,500,000	<ul style="list-style-type: none"> • Prepetition Agent - \$16M First-Priority Mortgage (2007) • Prepetition Agent - \$2,999,999 Second-Priority Mortgage (2007) • Prepetition Agent - \$3,000,001 Third-Priority Mortgage (2007) • Prepetition Agent - \$750,000 Fourth-Priority Mortgage (2008) • Prepetition Agent - \$2,999,999 Fifth-Priority Mortgage (2012)
2.	Parksville	\$2,100,000	<ul style="list-style-type: none"> • Prepetition Agent - \$16M First-Priority Mortgage (2007) • Prepetition Agent - \$2,999,999 Second-Priority Mortgage (2007) • Prepetition Agent - \$3,000,001 Third-Priority

¹³ Except for the Springwood property, the basis for the appraised values are appraisals prepared by Cushman & Wakefield, Inc. in February and March 2011 prepared for the Prepetition Lenders. Given what the Debtors believe to be the appreciation of real estate values in the past year, the Debtors believe that the current actual values of the properties is greater than those reflected in the appraisals.

¹⁴ For purposes of clarity, the Encumbered Properties include the Headquarters; Parksville Facility; Swan Lake Facility; Springwood Facility; Far Rockaway Facility; Bronx Facility; Brooklyn Facility; Rockland Facility; Staten Island Facility; Suffolk Facility; and Westchester Facility. The parties with respective interests in each of the Encumbered Properties are set forth in the chart included as part of this paragraph.

¹⁵ Upon information and belief, there are over \$3,000 worth of judgment liens held by the New York City Parking Violations Bureau with respect to the Headquarters related to outstanding unpaid parking tickets. Also, there are close to \$30,000 in liens held by the New York City Department of Environmental Protection with respect to unpaid sewer and water fees with regard to the Headquarters.

			Mortgage (2007) <ul style="list-style-type: none"> • Prepetition Agent - \$2,999,999 Fourth-Priority Mortgage (10/2011; 2012)
3.	Swan Lake ¹⁶	\$5,300,000	<ul style="list-style-type: none"> • DASNY/OASAS - \$1,001,609.76 First-Priority Mortgage (2010)¹⁷ • Prepetition Agent - \$2,999,999 Second-Priority Mortgage (2008) • HVB - \$2.3M Third-Priority Mortgage (2008) • HVB - \$1,426,004 Fourth-Priority Mortgage (2008)
4.	Millbrook (Schreyer Youth Center Adolescent Facility)	\$3,150,000	<ul style="list-style-type: none"> • DASNY/OASAS - \$914,815.08 First-Priority Mortgage (2008) • DASNY/OASAS - \$1,316,334.52 Second-Priority Mortgage (2009)
5.	Rhinebeck West Property	\$6,200,000	<ul style="list-style-type: none"> • DASNY/OASAS - \$2,175,000 First-Priority Mortgage (1999)
6.	Springwood (Rhinebeck East Property)	\$3,200,000	<ul style="list-style-type: none"> • Prepetition Agent - \$1.8M First-Priority Mortgage (02/2011) • Prepetition Agent - \$2,999,999 Second-Priority Mortgage (10/2011; 2012)
7.	Far Rockaway	\$3,500,000	<ul style="list-style-type: none"> • Signature - \$2,999,999 Mortgage (2006)
8.	Bronx	\$1,000,000	<ul style="list-style-type: none"> • HVB – \$2.3M Mortgage (2005)
9.	Brooklyn	\$2,000,000	<ul style="list-style-type: none"> • Prepetition Agent - \$16M First-Priority Mortgage (2007) • Prepetition Agent - \$2,999,999 Second-Priority Mortgage (2007) • Prepetition Agent - \$3,000,001 Third-Priority Mortgage (2007) • Prepetition Agent - \$2,999,999 Fourth-Priority Mortgage (2012)

¹⁶ On February 25, 1998, First National Bank of Jeffersonville (“**FNB**”) apparently made a loan to DVF. In that regard, a mortgage was apparently granted to FNB on the Swan Lake Facility. However, upon information and belief, that mortgage was not properly recorded. As of the Petition Date, the outstanding principal balance owed to FNB was approximately \$64,500, and the loan matures on December 25, 2012.

¹⁷ Upon information and belief, HVB and the Prepetition Agent subordinated their mortgage on the Swan Lake facility to DASNY’s mortgage.

10.	Rockland	\$925,000	<ul style="list-style-type: none"> • Prepetition Agent - \$2,999,999 First-Priority Mortgage (2008) • HVB - \$2.3M Second-Priority Mortgage (2008) • HVB - \$1,426,004 Third-Priority Mortgage (2008)
11.	Staten Island	\$1,350,000	<ul style="list-style-type: none"> • Prepetition Agent - \$16M First-Priority Mortgage (2007) • Prepetition Agent - \$2,999,999 Second-Priority Mortgage (2007) • Prepetition Agent - \$3,000,001 Third-Priority Mortgage (2007) • Prepetition Agent - \$2,999,999 Fourth-Priority Mortgage (2012)
12.	Suffolk	\$930,000	<ul style="list-style-type: none"> • Prepetition Agent - \$2,999,999 First-Priority Mortgage (2008) • HVB - \$2.3M Second-Priority Mortgage (2008) • HVB - \$1,426,004 Third-Priority Mortgage (2008)
13.	Westchester	\$1,600,000	<ul style="list-style-type: none"> • HVB - \$1,426,004 Mortgage (2006)

23. As more fully set forth in certain of the Prepetition Credit Documents, prior to the Petition Date, the Debtors granted security interests in and liens to the Prepetition Lenders (the “**Prepetition Liens**”) on (i) substantially all of the personal property assets of the Debtors, including without limitation, all of the Debtors’ respective accounts, inventory, equipment, general intangibles, deposit accounts, claims and other personal property and proceeds (the “**Personal Property Collateral**”) and (ii) the Encumbered Properties (the “**Real Property Collateral**”, together with the Personal Property Collateral, are collectively the “**Prepetition Collateral**”).

C. A Substantial Equity Cushion Exists in Light of the Value of the Prepetition Collateral

24. As noted above, the total outstanding Prepetition Obligations owed to the Prepetition Lenders is approximately \$33,048,578. As of the Petition Date, the Prepetition Lenders held liens in Real Property Collateral with an approximate Value of no less than \$48,405,000, including the Headquarters, which is under an existing contract of sale for a \$26.5 million purchase price. Thus, the Prepetition Lenders enjoy the benefit of a substantial equity cushion of approximately 46%.

25. Additionally, the Facilities upon which the Prepetition Lenders do not have a lien interest, i.e. the Rhinebeck West Property and the Millbrook Facility, have an approximate aggregate Value of \$9,350,000. While DASNY holds liens on these two properties for outstanding debt in the amount of \$3,628,735, substantial equity exists in these properties for purposes of providing the Prepetition Lenders with replacements liens in these properties to the extent of diminution in value, if any, of Cash Collateral to be used by the Debtors.

26. In addition, as of the Petition Date, the Debtors have approximately \$5 million in cash and receivables which is also collateral for the Prepetition Obligations.

D. Need for Financial Restructuring and Use of Cash Collateral and Debtor-in-Possession Financing

27. As more fully set forth in the Dailey Declaration, the Debtors are in need of financial restructuring due to (i) the maturity of the March 2006, January 2007, July 2008 and October 2011 Financings on March 28, 2012 and the maturity date of the February 2011 Financing on March 26, 2012, and (ii) the Prepetition Lenders refusal to restructure the Prepetition Obligations on terms that would allow the Debtors to continue to operate as a viable entity.

28. The Debtors filed the Chapter 11 Cases to give them time and flexibility to restructure their obligations to their creditors in a fair and equitable manner and to allow them to continue to perform the critical services they offer to the public. During the Chapter 11 Cases, the Debtors expect to continue to provide the high level of community service that they have provided throughout their history.

29. The Debtors have not reached agreement with the Prepetition Lenders with respect to the use of Cash Collateral. However, the Debtors have reached agreement with Island Funding II (the “**DIP Lender**”) on the terms of a \$5 million post-petition first-priority debtor-in-possession financing facility (the “**DIP Financing**”) that will, together with use of Cash Collateral, provide the Debtors the funds needed to sustain their operations during the pendency of these Chapter 11 Cases.¹⁸

Concise Statement Pursuant to Bankruptcy Rule 4001(b) and Local Rule 4001-2

30. Pursuant to Bankruptcy Rule 4001(b) and Local Rule 4001-2, the following is a concise statement and summary of the proposed material terms of the Interim Order:

<u>DIP FINANCING</u>	
Lender	Island Funding II, a New Jersey Limited Liability Company
Borrower	Daytop Village Foundation, Inc.
Principal Amount	\$5 million. Initial funding of \$2 million upon interim court approval, with the remaining \$3 million funded upon entry of a final DIP order.
Interest Rate	16% per annum calculated from date of each advance, payable quarterly in arrears for the first quarter and then monthly in arrears thereafter.
Collateral	First priority mortgage and security interest (the “ <u>DIP Liens</u> ”) on real property and improvements owned by DVF, senior to all existing liens other than real estate taxes. Mortgage to be filed only on property located on West 40th Street, New York, New York.
Fees	4% of principal amount for commitment, collateral monitoring, and termination fees. Payable upon interim court approval and paid from first advance.

¹⁸ The Debtors and the DIP Lender are in the process of finalizing the documentation of the DIP Financing and expect to enter into a Loan and Security Agreement in substantially the form annexed hereto as Exhibit “C”.

Lender Expenses	All out of pocket fees and costs incurred by lender, including counsel fees, mortgage recording taxes, title insurance, appraisals, etc. to be paid by Borrower.
Term	One year from entry of interim DIP Order, with option for Borrower to extend for an additional one year, if no default and upon payment of extension fee of 4% of principal amount
Prepayment	Mandatory prepayment from net proceeds of sale of any of the collateral. Optional prepayment any time in integral multiples of \$100,000 after 6 month anniversary. No re-borrowings after prepayment.
Conditions	Entry of Interim and Final Orders of Bankruptcy Court in form and substance satisfactory to Lender authorizing DIP Financing and priming existing liens. Execution and delivery of definitive loan documents. Lender approval of budget.
<u>CASH COLLATERAL USAGE</u>	
Parties with Interest in Cash Collateral	Prepetition Facilities with the Prepetition Lenders. Interim Order, ¶ E.
Use of Cash Collateral	Subject to the terms and conditions of the Interim Order and in accordance with the Budget attached hereto as Exhibit B to the Interim Order (the “ Budget ”), the Debtors are authorized to use Cash Collateral, up to an aggregate amount of \$500,000, through the Final Hearing, or such other date as the Court may direct pursuant to a further order of the Court. Cash Collateral may be used (a) in the ordinary course of business for general working capital and general corporate purposes, including, but not limited to, payroll and payroll taxes, insurance, food and other supplies necessary to operate the Debtors’ business and utilities, and (b) for restructuring and other related expenses, all in accordance with the Budget. Following the date of entry of the Final Order, the Debtors’ authority to use Cash Collateral shall be governed by the terms of the Final Order. Interim Order. ¶3.
Adequate Protection Liens	As adequate protection against any diminution in value (“ Diminution in Value ”), pursuant to sections 361 and 363(e) of the Bankruptcy Code, the Prepetition Lenders are hereby granted valid, binding, enforceable, non-avoidable, and automatically perfected postpetition security interests in and liens (the “ Adequate Protection Liens ”) on any and all presently owned and hereafter acquired personal property, real property and all other assets of the Debtors, together with any proceeds thereof (collectively, the “ Collateral ”), but excluding, any of the Debtors’ claims or causes of action arising under sections 502(d), 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy Code and any other avoidance or similar action under the Bankruptcy Code. The Adequate Protection Liens shall be junior only to: (A) the Carve Out (defined below), (B) the DIP Liens, and (C) all prepetition liens and security interests of other parties (the “ Prior Liens ”) to the extent any such liens and security interests

	were valid, properly perfected, non-avoidable and senior in priority to the Prepetition Liens as of the Petition Date. ¹⁹ The Adequate Protection Liens shall otherwise be senior to all other security interests in, liens on, or claims against any of the Collateral. Interim Order, ¶ 4(a)-(b).
Adequate Protection Superpriority Claims	To the extent the Adequate Protection Liens prove insufficient to protect the Prepetition Lenders against Diminution of Value, each shall be granted as and to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code, an allowed superpriority administrative expense claim in each of the Chapter 11 Cases (the “ Adequate Protection Superpriority Claim ”) and in any successor chapter 7 case (the “ Successor Cases ”). The Adequate Protection Superpriority Claim be junior only to the Carve Out (defined below). Except for the Carve Out, the Adequate Protection Superpriority Claim shall have priority over all administrative expense claims and unsecured claims against the Debtors or their estates, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726 (to the extent permitted by law), 1113 and 1114 of the Bankruptcy Code. Interim Order, ¶ 5(a)-(b).
Carve-Out	As used in this Interim Order, “Carve Out” means the (i) unpaid fees and interest of the Clerk of the Bankruptcy Court and the U.S. Trustee pursuant to 28 U.S.C. § 1930(a) and 31 U.S.C. § 3717; (ii) reasonable and documented unpaid fees and expenses of professional persons retained by any Debtor or any Committee pursuant to an order of the Court and allowed by an order of the Court in an aggregate amount not to exceed \$125,000; (iii) reasonable and documented unpaid fees and expenses of any patient care ombudsman appointed by the U.S. Trustee pursuant to 11 U.S.C. § 333(a)(2)(A); and (iv) in the event of a conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, the payment of fees and expenses incurred by a trustee and any professional retained by such trustee, in an aggregate amount not to exceed \$50,000 under section 726(b) of the Bankruptcy Code. Interim Order, ¶ 12.
Termination of Use of Cash Collateral	The occurrence of any of the following events, unless waived in writing by the Prepetition Lenders shall constitute an event of default (collectively, the “ Events of Default ”): (a) the failure by the Debtors to perform, in any material respect, any of the terms, provisions, conditions, covenants, or obligations under this Interim Order; (b) reversal, vacatur, or modification of this Interim Order; or (c) dismissal of the Chapter 11 Cases or conversion of the Chapter 11 Cases to chapter 7 cases, or appointment of a chapter 11 trustee. Interim Order, ¶ 9(a)-(c). For purpose of the determination whether an Event of Default has occurred, a variance from the Budget shall not be deemed “material” unless the Debtors (x) achieve less than 80% of their projected aggregate receipts during

¹⁹ Nothing herein shall constitute a finding or ruling by this Court that any such Prior Liens are valid, senior, enforceable, prior, perfected or non-avoidable. Moreover, nothing shall prejudice the rights of any party in interest including, but not limited, to the Debtors, the Prepetition Lenders, and any Committee to challenge the validity, priority, enforceability, seniority, avoidability, perfection or extent of any such Prior Lien and/or security interest.

	any two-week period or (y) spend more than 120% of their projected aggregate disbursements during any two-week period. Interim Order, ¶ 9(a).
Rights and Remedies Upon Events	In the event of a default under the terms of this Interim Order, the Prepetition Lenders may declare a termination, reduction or restriction of the ability of the Debtors to use any Cash Collateral (any such declaration shall be referred to herein as a “ <u>Termination Declaration</u> ”). The Termination Declaration shall be given by facsimile (or other electronic means) to counsel to the Debtors, counsel to any Committee appointed in these Chapter 11 Cases and the U.S. Trustee (the earliest date any such Termination Declaration is made shall be referred to herein as the “ <u>Termination Declaration Date</u> ”). Upon the Termination Declaration Date, the Prepetition Lenders may request a hearing (the “ <u>Termination Hearing</u> ”) on an expedited basis seeking to terminate, modify or restrict the Debtors’ use of Cash Collateral under the terms of this Interim Order. In no event shall the Termination Hearing be held on less than seven (7) days notice to counsel to the Debtors, counsel to any Committee appointed in these Chapter 11 Cases and the U.S. Trustee. Interim Order, ¶ 10.
Reservation of Certain Third Party Rights and Bar of Challenges and Claims	Nothing in this Interim Order shall prejudice the rights of the Debtors, the Committee, a successor trustee and any other party in interest granted standing by the Court, to seek to object to or to challenge, including, but not limited to: (a) the validity, extent, priority, or perfection of the security interests, and liens of any of the Prepetition Lenders; or (b) the validity, allowability, priority, secured status or amount of the Prepetition Obligations. Interim Order, ¶ 11.
Bankruptcy Code section 506(c) Claims	The Debtors are not waiving any rights under section 506(c) of the Bankruptcy Code.

31. The provisions outlined above are fair and necessary for the Debtors to be able to (a) access the DIP Financing and (b) use the Cash Collateral to continue their business operations in an orderly manner.

E. The Proposed Use of Cash Collateral

32. The Debtors use the cash generated from their business operations to fund their day-to-day operations and to service other business obligations.

33. The proposed immediate use of the Cash Collateral is intended to provide working capital while the Debtors operate in chapter 11. The Debtors require the emergent and immediate postpetition use of Cash Collateral in order to continue operating their businesses in an orderly manner during the pendency of these Chapter 11 Cases.

34. The Debtors' ability to use Cash Collateral will provide cash to allow the Debtors to, among other things, ensure the continued health and safety of the Debtors' patients, maintain and maximize vendor confidence, pay the wages of their employees and satisfy other ordinary operational costs, including rent, taxes and insurance. If the Debtors were not authorized to immediately use Cash Collateral on an interim basis, the Debtors would be forced to cease business operations, thereby causing serious, irreparable harm to the Debtors, their estates, the public, and all their stakeholders.²⁰

35. Indeed, the Debtors use of the Cash Collateral, together with the DIP Financing, will assure that the Debtors remain a going concern, which will preserve and maximize the value of the Prepetition Lenders' Collateral, ensuring adequate protection for the Prepetition Lenders' interest.

36. The Debtors' maintenance of sufficient liquidity to support the continued ordinary course operation of their businesses is absolutely essential to the Debtors' successful reorganization. If the Debtors are granted immediate access to Cash Collateral, the Debtors will be able to demonstrate to their vendors, suppliers, patients and employees that they have access to their receipts so as to be able to continue operating. In the absence of the authorization to use Cash Collateral, the Debtors would not be able to sustain their businesses, thereby materially decreasing the value of their estates to the significant detriment of all creditors and stakeholders.

F. The Proposed DIP Financing

37. While the Cash Collateral is an essential component of the Debtors' Budget, the Debtors have an immediate and critical need for access to additional financing beyond the Cash Collateral. To address that need, the Debtors have agreed, subject to approval

²⁰ Indeed, the Debtors were left with no choice but to commence their cases on the Petition Date after the Pre-Petition Lenders precipitously swept the entirety of the Debtors' operating account with no prior notice to the Debtors. The Debtors reserve all rights, claims and causes of against the Pre-Petition Lenders in this regard.

by this Court, to the terms of the DIP Financing. Pursuant to the DIP Financing, the DIP Lender has agreed to provide \$5 million to be used towards the Debtors' working capital needs pursuant to the Budget.

38. Without access to the DIP Financing, the Debtors expect to be unable to fund critical expenses, potentially including (a) critical medication needed by their patients, (b) food and fuel necessary to feed their patients and keep their facilities open, and (c) their payroll, which must be funded on or about April 11, 2011. The Debtors propose to draw \$2 million under the DIP Financing upon entry of the Interim Order. Those funds will ensure that the Debtors can meet these critical expenses and provide the Debtors an opportunity to reorganize their affairs with the protections afforded to them under Chapter 11.

39. The Debtors believe that the DIP Financing represents the best, and likely only, financing available to them to fund these Chapter 11 Cases. The Debtors solicited approximately 18 potential lenders to determine their willingness to provide debtor-in-possession financing on an emergent basis. Only the DIP Lender expressed a willingness to provide such financing, and conditioned the DIP Financing on the terms described above, including the cost of the DIP Financing and the first-lien priming nature of the DIP Financing.

40. The Debtors believe that the DIP Financing provides them their best opportunity for reorganization without impairing the claims of the Prepetition Lenders.

G. Proposed Adequate Protection

41. In order to protect the Prepetition Lenders from any diminution in value of the Prepetition Collateral, including Cash Collateral, the Debtors have proposed to grant adequate protection in the form of replacement liens and superpriority administrative claims. Specifically, the Prepetition Lenders will be granted (i) the Adequate Protection Liens and (ii) the Adequate Protection Superpriority Claim.

42. Moreover, and significantly, as described earlier, the Debtors' real estate holdings that collateralize the Prepetition Obligations are valued at no less than approximately \$48,405,000. In addition, the Debtors have approximately \$5 million in cash and receivables as of the Petition Date. Accordingly, the value of the Prepetition Collateral exceeds the amount of the obligations (approximately \$33,048,578) owed to the Prepetition Lenders by more than \$20 million, or 46%. This substantial equity cushion provides more than adequate protection for any diminution in value of the Prepetition Collateral (albeit that the Debtors believe that the Prepetition Collateral's current Value is more than \$48,405,000 and is *appreciating in value*). Furthermore, as noted earlier, the Debtors own additional real estate that is not encumbered by the Prepetition Lenders. Adequate Protection Liens on this property would provide even further protection to the Prepetition Lenders.

RELIEF REQUESTED

43. By this Motion, the Debtors seek entry of the Interim Order (a) approving the DIP Financing, (b) authorizing the Debtors to use the Cash Collateral, (c) authorizing the Debtors to provide adequate protection for the use of the Cash Collateral (d) modifying the automatic stay, and (e) scheduling a hearing for entry of an order providing for the relief granted herein on a final basis.

BASIS FOR RELIEF

44. The Debtors satisfy the requirements for the use of Cash Collateral. Pursuant to Bankruptcy Code section 363(c)(2), a debtor may not use cash collateral unless "(A) each entity that has an interest in such collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section." 11 U.S.C. § 363(c)(2).

45. As set forth above, the Debtors' immediate use of Cash Collateral is absolutely necessary in order to enable the Debtors to meet the obligations of their ordinary operating costs and expenses during the pendency of the Chapter 11 Cases. Among other things, the use of Cash Collateral will enable the Debtors to maintain business relationships with their vendors, suppliers and patients and pay their employees and satisfy other ordinary operational costs that are essential to the continued operation of their businesses.

46. In the absence of the immediate authorization to use Cash Collateral, the Debtors' ability to continue operating in the ordinary course of business will be jeopardized and the failure to do so would no doubt result in immediate and irreparable harm to the Debtors' estates, employees, patients, the public and all stakeholders by virtue of the loss of significant going concern value. Thus, the use of Cash Collateral is absolutely critical to the Debtors' continued viability and the preservation and maximization of the value of the Debtors' estates. Furthermore, for the reasons discussed below, the Debtors have proposed adequate protection for the usage of the Cash Collateral.

47. The DIP Financing is also appropriate and is in the best interests of the Debtors and their estates. Section 364(d) of the Bankruptcy Code states as follows:

(d)(1) The court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if--

(A) the trustee is unable to obtain such credit otherwise; and

(B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

(2) In any hearing under this subsection, the trustee has the burden of proof on the issue of adequate protection.

11 U.S.C. 364(d).

48. A debtor may borrow money under section 364(d) of the Bankruptcy Code if the debtor meets its burden of establishing that it was unable to obtain alternative financing and that the holder of the lien to be subordinated is adequately protected. *In re Futures Equity L.L.C.*, 2001 Bankr. LEXIS 2229 *14 (Bankr. N.D. Tex. April 11, 2001). The transaction “should provide the prepetition secured creditor with the same level of protection it would have had if there had not been postpetition superpriority financing.” *Id.* at *15 (internal citations omitted).

49.

50. The Debtors have determined that financing is available only under sections 364(c) and (d) of the Bankruptcy Code. Substantially all of the Debtors’ assets are encumbered and, despite the diligent efforts of the Debtors and their advisors, they have been unable to procure the necessary funding absent the proposed superpriority claims and priming liens. Furthermore, the Debtors have negotiated the best terms available to obtain the funding they need to maintain sufficient liquidity to preserve their assets over the course of their Chapter 11 Cases. The Debtors submit that the circumstances of these cases require the Debtors to obtain financing from the DIP Lender under section 364(d) of the Bankruptcy Code. Without access to the proposed DIP Financing, the Debtors’ liquidity will evaporate and Debtors will be forced to cease operations, leaving no safety net for their patients or ability to pay their employees.

51. In contrast, the value of the Prepetition Lenders’ interest in their collateral is preserved by the DIP Financing because it ensures the uninterrupted continuance of Debtors’ operations. Moreover, the Debtors’ equity in the Prepetition Collateral is very significant. Accordingly, the Debtors submit that the Prepetition Lenders’ interests are sufficiently protected

by the equity in the Debtors' assets coupled with the Adequate Protection Liens and Adequate Protection Superpriority Claims. Accordingly, the adequate protection proposed by the Debtors is fair and reasonable and sufficient to satisfy the requirements of Bankruptcy Code sections 364(d).

A. The Debtors are Unable to Obtain Alternative Financing

52. Pursuant to Section 364(d) of the Bankruptcy Code, a court may authorize a debtor to obtain post-petition financing if the debtor demonstrates its inability to obtain alternative financing. 11 U.S.C. 364(d)(1)(A). However, section 364(d) does not require that a debtor seek alternative financing from every possible lender; rather, the debtor must demonstrate that sufficient efforts were made to obtain financing on other terms. *Bray v. Shenandoah Fed. Savs. & Loan Assoc. (In re Snowshoe Co., Inc.)*, 789 F.2d 1085, 1088 (4th Cir. 1986) (finding that the trustee's unsuccessful efforts in seeking financing from lenders in the immediate geographical area sufficiently demonstrated that trustee was unable to obtain alternative financing); *In re 495 Central Park Ave. Corp.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992) (holding that the debtor's testimony that its numerous failed attempts to procure financing from various sources sufficiently demonstrated its unsuccessful efforts to obtain financing on other terms).

53. The Debtors will present testimony at the Interim Hearing that despite their efforts, the Debtors have been unable to (a) procure sufficient financing (i) in the form of unsecured credit allowable under section 503(b)(1), (ii) as an administrative expense under section 364(a) or, (iii) in exchange for the grant of a super-priority administrative expense claim pursuant to section 364(c)(1), without granting priming liens pursuant to section 364(d); or (b) obtain post-petition financing or other financial accommodations from any alternative prospective lender or group of lenders on more favorable terms and conditions than those for

which approval is sought. The Debtors, therefore, submit that they have met their burden of proof on this issue.

B. The Prepetition Lenders' Interests are Adequately Protected

54. Section 364(d)(1) further requires that a debtor show that the interests of the prepetition secured lenders are adequately protected. 11 U.S.C. 364(d)(1)(B). Additionally, Section 363(e) of the Bankruptcy Code provides that, “on request of an entity that has an interest in property used . . . or proposed to be used by a debtor in possession, the court . . . shall prohibit or condition such use . . . as is necessary to provide adequate protection of such interest.” 11 U.S.C. § 363(e). Section 361 of the Bankruptcy Code delineates the forms of adequate protection, which include periodic cash payments, additional liens, replacement liens and other forms of relief. 11 U.S.C. § 361. What constitutes adequate protection must be decided on a case-by-case basis. *See MNBank Dallas, NA v. O'Connor (In re O'Connor)*, 808 F.2d 1393, 1396 (10th Cir. 1987). The focus of the requirement is to protect a secured creditor from diminution in the value of its interest in the particular collateral during the period of use. *See In re 495 Central Park Avenue Corp.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992) (“The goal of adequate protection is to safeguard the secured creditor from diminution in the value of its interest during the Chapter 11 reorganization.”) (internal citations omitted); *In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996); *In re Realty Sw. Assocs.*, 140 B.R. 360, 366 (Bankr. S.D.N.Y. 1992); *Beker Indus.*, 58 B.R. at 736.

55. Furthermore, under section 361 of the Bankruptcy Code an equity cushion “is the classic form of protection for secured debt...” *In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984). The Debtors submit that the Prepetition Lenders' interests are sufficiently protected by a significant equity cushion in the Prepetition Collateral. As support, the Debtors will submit

evidence of the value of the Prepetition Collateral and demonstrate that the equity cushion in the Debtors' assets more than adequately protects the interests of the Prepetition Lenders.

56. The focus of the adequate protection requirement is to preserve the secured creditor's position at the time of the bankruptcy filing and protect the secured creditor from diminution in the value of its collateral during the reorganization process. *Mosello*, 195 B.R. at 288 (citation omitted); *Beker Indus.*, 58 B.R. at 736; *In re WorldCom, Inc.*, 304 B.R. 611, 618-19 (Bankr. S.D.N.Y. 2004) ("The legislative history of section 361 of the Bankruptcy Code, which sets forth how adequate protection may be provided under section 363, makes clear that the purpose of providing adequate protection is to insure that the secured creditor receives the value for which the creditor bargained for prior to the debtor's bankruptcy."). "However, neither the legislative history nor the Bankruptcy Code require the Court to protect a creditor beyond what was bargained for by the parties." *Worldcom*, 304 B.R. at 619; *see Beker Indus.*, 58 B.R. at 741 ("Adequate protection, not absolute protection, is the statutory standard.").

57. Here, as discussed further below, the Prepetition Lenders' secured interests in the Prepetition Collateral are adequately protected in light of (a) the substantial equity cushion; (b) the Debtors' use of Cash Collateral to preserve value; and (c) the other protections to be provided to the Prepetition Lenders.

C. The Substantial Equity Cushion Adequately Protects the Prepetition Lenders

58. The existence of an "equity cushion," where the value of the collateral exceeds the amount of the claims secured by that collateral, "is the classic form of protection for a secured debt," and it is well-settled that "the existence of an equity cushion, standing alone, can provide adequate protection." *In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984); *In re Lafayette Hotel Partnership*, 227 B.R. 445, 453 (S.D.N.Y. 1998) (finding debtor's use of cash collateral to pay attorneys fees and administrative costs acceptable where secured creditor retained its

primary lien on the office building and thereby retained a sufficient equity cushion); *In re Oligbo*, 328 B.R. 619, 651 (Bankr. E.D.N.Y. 2005); *In re Fortune Smooth (US) Ltd.*, No. 93-40907 (JLG), 1993 WL 261478, at *6 (Bankr. S.D.N.Y. July 6, 1993) (holding that oversecured creditor is not entitled to adequate protection unless the value of the collateral declines to the point of extinguishing the equity cushion).

59. Courts determine whether an equity cushion adequately protects a creditor on a case-by-case basis. *See, e.g., In re Inwood Heights Housing Dev. Corp.*, No. 11-1322(MG), 2011 WL 3793324, at *9 (Bankr. S.D.N.Y. Aug. 25, 2011); *In re WorldCom, Inc.*, No. 02-13533 (AJG), 2003 WL 22025051, at *7 (Bankr. S.D.N.Y. Jan. 30, 2003) (same). Nevertheless, courts consistently hold that a 20% equity cushion, without anything more, constitutes adequate protection of a secured creditor's interest. *See, e.g., Fortune Smooth*, 1993 WL 261478, at * 6; *Bank R.I. v. Pawtuxet Valley Prescription & Surgical Ctr., Inc.*, 386 B.R. 1, 5 (D.R.I. 2008) (noting that courts almost uniformly hold that a 20% equity cushion itself constitutes adequate protection); *see also In re Mendoza*, 111 F.3d 1264, 1272 (5th Cir. 1997) (stating that courts generally hold that an equity cushion of 20% constitutes adequate protection); *In re Snead*, No. 08-00070, 2008 WL 934389, at *1 (Bankr. E.D.N.C. Apr. 1, 2008) (same); *In re Helionetics*, 70B.R. 433, 440 (Bankr. C.D. Cal. 1987) (stating that a 20.4% equity cushion constitutes adequate protection). Indeed, in *In re Fortune Smooth*, the Bankruptcy Court for the Southern District of New York stated that “[i]t is generally agreed that an equity cushion of twenty percent (20%) or more constitutes adequate protection, and an equity cushion of less than eleven percent (11%) is not sufficient with courts splitting as to whether an equity cushion between those two figures constitutes adequate protection.” 1993 WL 261478, at * 6.

60. Here, as noted above, the Prepetition Lenders hold a very substantial equity cushion. In accordance with applicable case law, the Prepetition Lenders' interest in the Prepetition Collateral is already adequately protected and this factor alone should be dispositive of this Motion.

D. The Prepetition Lenders are Further Protected By the Debtors' Use of Cash Collateral, Which Preserves the Value of Their Collateral

61. In addition to the equity cushion, the Debtors' secured creditors also are adequately protected because the Debtors propose to use the Cash Collateral to preserve the value of the Prepetition Collateral, including the Encumbered Properties. As further set forth below, the Debtors have proposed providing the Prepetition Lenders with replacement liens on certain post-petition collateral to the extent of any depreciation in value of the prepetition collateral.

62. Courts generally have found that secured creditors are adequately protected and have authorized the use of cash collateral where the proposed continued use of the cash collateral will preserve the value of the secured creditors' other collateral, providing further adequate protection. *See, e.g., In re Salem Plaza Assocs.*, 135 B.R. 753, 758 (Bankr. S.D.N.Y. 1992) (holding that debtor's use of cash collateral from shopping center to pay operating expenses, thereby "preserv[ing] the base that generates the income stream," provided adequate protection to the secured creditor); *In re Constable Plaza Assocs., L.P.*, 125 B.R. 98, 104-05 (Bankr. S.D.N.Y. 1991) (finding equity cushion alone was adequate protection when cash collateral was used to preserve value of a building pledged as collateral and noting such use would "preserve or enhance the value of the building which, in turn, will protect the collateral covered by [the] mortgage"). Indeed, courts have considered the preservation and enhancement of collateral to be a critical component of adequate protection. For example, in determining the

sufficiency of adequate protection, courts have considered “whether the value of the debtor’s property will increase as a result of the” use of the collateral. *In re 495 Cent. Park Ave. Corp.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992).

E. The Proposed Adequate Protection Liens Provide the
Prepetition Lenders with Further Adequate Protection

63. To the extent that the equity cushion described above is insufficient to provide adequate protection, the Debtors propose to provide the Prepetition Lenders further protection against depreciation in the value of the Prepetition Collateral. As set forth in section 361 of the Bankruptcy Code, additional liens and “replacement liens to the extent” of diminution in value of prepetition collateral are an accepted form of adequate protection.

64. The Prepetition Lenders are being granted the Adequate Protection Liens on all of the Debtors’ property, including the owned real estate upon which the Prepetition Lenders did not have a lien pre-petition to protect against the diminution in value of the Prepetition Collateral. The Adequate Protection Superpriority Claim provides further protection to the extent that the equity cushion in the Prepetition Collateral and the Adequate Protection Liens prove insufficient, which the Debtors submit is extremely unlikely.

65. The foregoing forms of adequate protection will sufficiently protect the interests of the Prepetition Lenders in the Cash Collateral. Thus, the adequate protection proposed by the Debtors is fair and reasonable and sufficient to satisfy the requirements of Bankruptcy Code section 363(c).

INTERIM APPROVAL SHOULD BE GRANTED

66. Bankruptcy Rule 4001 provides that final hearings on motions to use cash collateral or obtain post-petition financing may not be commenced earlier than 14 days after the service of such motion. Upon request, however, the Court is empowered to conduct a

preliminary expedited hearing on such motions and authorize the use of cash collateral and the obtaining of credit to the extent necessary to avoid immediate and irreparable harm to a debtor's estate pending a final hearing.

67. Pursuant to Bankruptcy Rule 4001, the Debtors request that the Court conduct an expedited preliminary hearing on the Motion and on an interim basis (i) authorize the Debtors to use the Cash Collateral of the Prepetition Lenders and (ii) approve the DIP Financing, in order to (a) maintain and finance the ongoing operations of the Debtors in the ordinary course of business during the pendency of the Chapter 11 Cases and (b) avoid immediate and irreparable harm and prejudice to the Debtors' estates, all parties in interest, and the public. Furthermore, the Debtors request that the Court schedule the Final Hearing on the relief requested herein.

68. Absent authorization from the Court to use Cash Collateral and access the DIP Financing on an interim basis pending a Final Hearing, the Debtors will be immediately and irreparably be harmed as a result of an inability to operate their business in the ordinary course. Without the liquidity provided by the use of Cash Collateral and the DIP Financing, the Debtors' businesses will be brought to an immediate halt leading to the loss of significant value and the Debtors' ability to maintain business relationships with their vendors, suppliers, and patients and to meet payroll and other operating expenses will be compromised. In short, serious, immediate and irreparable harm to the Debtors and their estates would occur, with disastrous consequences for the Debtors, their estates, and creditors, if the Debtors do not obtain the immediate relief requested herein.

REQUEST FOR FINAL HEARING

69. Pursuant to Bankruptcy Rule 4001(b)(2), the Debtors request that the Court set a date for the Final Hearing that is as soon as practicable but within approximately

thirty (30) days of the Petition Date, and fix the time and date prior to the Final Hearing for parties to file objections to the Motion.

WAIVER OF BANKRUPTCY RULES 6004(a) AND 6004(h)

70. 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). Pursuant to Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” As set forth above, the proposed granting of Adequate Protection Liens and the Adequate Protection Superpriority Claim is essential to prevent potentially irreparable damage to the Debtors’ operations, value, and ability to reorganize. Accordingly, the Debtors submit that ample cause exists to justify a waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h), to the extent it applies.

NOTICE

71. Notice of this Motion has been given to (i) the Office of the United States Trustee for the Southern District of New York; (ii) the Internal Revenue Service; (iii) New York State Attorney General; (iv) the Debtors’ consolidated thirty largest unsecured creditors; (v) counsel to the Debtors’ secured creditors, Signature Bank, c/o Herrick Feinstein LLP, Attn: Stephen D. Brodie, Esq., 2 Park Avenue, New York, New York 10016 and Hahn & Hessen LLP, Attn: Joshua I. Divack, 488 Madison Avenue, New York, New York 10022, and Hudson Valley Bank, c/o Griffin, Coogan, Blose & Sulzer, P.C., Attn: James P. Blose, 51 Pondfield Road, Bronxville, New York 10708; (vi) Dormitory Authority of the State of New York, 515 Broadway, Albany, NY 12207-2964; (vii) New York State Office of Alcoholism and Substance Abuse Services, Attn: Sara Osborne, Esq. and Mark S. Boss, Esq., 1450 Western Avenue,

Albany, New York 12203-3526; (viii) First National Bank of Jeffersonville, 4866 State Route 52, P.O. Box 398, Jeffersonville, NY 12748; and (ix) those parties who have filed a notice of appearance and request for service of pleadings in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is required.

NO PRIOR REQUEST

72. No previous motion for the relief sought herein has been made to this or to any other court.

WHEREFORE, the Debtors respectfully request that this Court: (a) enter an order in the form submitted herewith granting the relief requested herein; and (b) grant to the Debtors such other and further relief as the Court may deem proper.

Dated: April 6, 2012
New York, New York

Respectfully submitted,

LOWENSTEIN SANDLER PC

/s/ Norman N. Kinel

Norman N. Kinel

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Proposed Counsel to the Debtors and
Debtors-in-Possession

EXHIBIT A

TO BE FILED

EXHIBIT B

Week	Apr 9-13	Apr 16-20	Apr 23-27	Apr 30 - May 4	May 7-11	May 14-18	May 21-25	May 28-Jun 1	Jun 4-8	Jun 11-15	Jun 18-22	Jun 25-29	Jul 2-6	13 Week Total
Cash Balance - Beginning	15,000	1,148,808	716,816	2,166,732	2,384,468	2,298,605	2,176,459	1,343,825	1,095,184	1,290,529	927,279	147,754	256,604	373,637
OASAS					525,439				449,835				1,979,172	2,954,446
Medicaid			-	156,232	121,836	107,296	107,296	107,296	107,296	107,296	134,120	134,120	134,120	1,216,908
Rockland/West/Suffolk County					69,122					92,162			-	161,284
AIDS Institute				37,750				37,750					37,750	113,250
Federal Probation/Pub Goods Pool				25,000	25,000	20,000	20,000	20,000	20,000	15,000	20,000	25,000	25,000	215,000
NIDA and MHRA				-	7,500				-	7,500			-	15,000
Welfare - NYC			-	376,859	-	-	-	-	383,063	-	-	-	383,063	1,142,985
Welfare - Other			40,000	35,000	24,822	35,000	30,000	30,000	25,000	24,816	40,000	35,000	35,000	394,638
Food Stamps - NYC				60,982					69,796				69,786	200,564
Food Stamps - Other			6,000	6,000	5,338	5,000	5,000	5,000	5,000	4,143	6,000	6,000	6,000	65,481
Other - Self/Priv Pay, SSI, etc.			30,000	30,000	30,000	30,000	30,000	25,000	25,000		30,000	30,000	30,000	320,000
Cash Inflows from Operations	-	-	76,000	727,823	809,057	197,296	192,296	225,046	1,084,990	250,917	230,120	230,120	2,699,891	6,799,556
Salaries/Taxes - Employees	(748,317)	-	(748,317)	-	(745,000)	-	(745,000)	-	(745,000)	-	(745,000)	-	(745,000)	(5,221,634)
Salaries - Consultants	(60,000)	-	(60,000)	-	(60,000)	-	(60,000)	-	(60,000)	-	(60,000)	-	(60,000)	(420,000)
Temporary Help	(7,500)	-	(7,500)	-	(7,500)	(7,500)	(7,500)	(7,500)	(7,500)	(7,500)	(7,500)	(7,500)	(7,500)	(82,500)
Employee Contributions	31,625	-	31,625	-	31,625	-	31,625	-	31,625	-	31,625	-	31,625	221,375
Fringe benefits/Insurance	-	-	(487,832)	(243,483)	-	(60,022)	-	(243,483)	-	(60,022)	(120,000)	-	(243,483)	(1,458,325)
Total Payroll and Related Outflows	(784,192)	-	(1,272,024)	(243,483)	(780,875)	(67,522)	(780,875)	(250,983)	(780,875)	(67,522)	(900,875)	(7,500)	(1,024,358)	(6,961,084)
DVF - Rent		(83,659)		(83,659)				(83,659)					(83,659)	(334,636)
DIP Fee	(50,000)	-	(200,000)	-	-	-	-	-	-	-	-	-	-	(250,000)
Third Party Biller - Millen	-	-	(47,060)	(11,395)	(11,395)	(24,270)	(11,395)	(11,395)	(11,395)	(24,270)	(11,395)	(11,395)	(11,395)	(198,155)
Professional Fees		(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(60,000)
US Trustee Fees	-	-	-	-	-	-	-	-	-	-	-	-	-	(10,000)
Restructuring Professionals	-	-	-	(75,000)	-	(125,000)	-	(25,000)	-	(425,000)	-	-	-	(750,000)
Maintenance and repairs			(10,000)		(6,100)	(6,100)	(6,100)	(6,100)	(7,625)	(7,625)	(7,625)	(7,625)	(7,625)	(72,525)
Supplies	-	(5,000)	(5,000)	(9,000)	(9,000)	(9,000)	(9,000)	(9,000)	(9,000)	(9,000)	(9,000)	(9,000)	(9,000)	(105,000)
Equipment/Leases	-	-	(15,000)	(3,750)	(3,750)	(3,750)	(3,750)	(3,750)	(3,750)	(3,750)	(3,750)	(3,750)	(3,750)	(52,500)
Transportation	(4,000)	(4,000)	(4,000)	(4,000)	(4,000)	(4,000)	(4,000)	(4,000)	(4,000)	(4,000)	(4,000)	(4,000)	(4,000)	(56,000)
Utilities/Telephone	-	(156,323)	-	(26,800)	(26,800)	(26,800)	(26,800)	(26,800)	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)	(390,323)
Food	(28,000)	(28,000)	(28,000)	(28,000)	(28,000)	(28,000)	(28,000)	(28,000)	(28,000)	(28,000)	(28,000)	(28,000)	(28,000)	(392,000)
Business Insurance Financing		(130,010)	-	-	-	-	(130,010)	-	-	-	-	(5,000)	(5,000)	(275,020)
Other	-	(20,000)	(40,000)	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)	(280,000)
Total Other Operating Cash Flows	(82,000)	(431,992)	(354,060)	(266,604)	(114,045)	(251,920)	(244,055)	(222,704)	(108,770)	(546,645)	(108,770)	(113,770)	(197,429)	(3,226,159)
Total Cash Outflows from Operations	(866,192)	(431,992)	(1,626,084)	(510,087)	(894,920)	(319,442)	(1,024,930)	(473,687)	(889,645)	(614,167)	(1,009,645)	(121,270)	(1,221,787)	(10,187,243)
DIP Financing Draws	2,000,000		3,000,000											5,000,000
Cash Balance - Ending	\$ 1,148,808	\$ 716,816	\$ 2,166,732	\$ 2,384,468	\$ 2,298,605	\$ 2,176,459	\$ 1,343,825	\$ 1,095,184	\$ 1,290,529	\$ 927,279	\$ 147,754	\$ 256,604	\$ 1,734,708	\$ 1,985,949

EXHIBIT C

LOAN AND SECURITY AGREEMENT

THIS **LOAN AND SECURITY AGREEMENT** (as it may be amended, restated, supplemented, extended or renewed from time to time, this “**Agreement**”) is made as of April __, 2012, by and among Island Funding II, a New Jersey limited liability company (“**Lender**”), and Daytop Village Foundation, Inc., Debtor in Possession (the “**Borrower**”).

FOR VALUABLE CONSIDERATION, the parties agree as follows:

ARTICLE 1 DEFINITIONS

1.1 **Definitions.** In addition to terms otherwise defined in this Agreement, the following terms have the following meanings:

“**Advance**” means each disbursement of Loan proceeds.

“**Affiliate**” means, with respect to any Person, each officer, director, general partner or joint-venturer of such Person and any other Person that directly or indirectly Controls, is Controlled by, or is under common Control with, such Person.

“**Applicable Law**” means, with respect to any Person, collectively, the common law and all federal, state, local, foreign, multinational or international laws, statutes, codes, treaties, standards, rules and regulations, guidelines, ordinances, orders, judgments, writs, injunctions, decrees (including administrative or judicial precedents or authorities) and the interpretation or administration thereof by, and other determinations, directives, requirements or requests of, any Governmental Authority, in each case whether or not having the force of law and that are applicable to or binding upon such Person or any of its property, to which such Person or any of its property is subject, or that are otherwise applicable in the circumstances.

“**Bankruptcy Code**” means title 11 U.S.C. §101, *et seq.*, as now in effect or hereafter amended.

“**Bankruptcy Court**” means the United States Bankruptcy Court having jurisdiction over the Case, or if the Bankruptcy Court ceases to exercise jurisdiction over the Case, such other court that exercises jurisdiction over the Case.

“**Books and Records**” means all books, records, board minutes, contracts, licenses, insurance policies, environmental audits, business plans, files, computer files, computer discs and other data and software storage and media devices, accounting books and records, Financial Statements (actual and pro forma), filings with Governmental Authorities and any and all records and instruments relating to the Collateral or Borrower’s business.

“**Borrower Authorization**” means a written authorization and direction duly signed by Borrower, pursuant to which, in addition to such other things as Lender may require, (a) Borrower identifies and authorizes the individual or individuals who may, acting alone, may execute and deliver Disbursement Requests and otherwise act on the behalf of Borrower pursuant to the Loan Documents; and (b) Borrower identifies the deposit account of Borrower

into which advances and other loan proceeds are to be deposited and provides the wire transfer instructions and other information for such deposits as Lender may require. Each Borrower Authorization shall remain in full force and effect unless and until Lender has received and acknowledged in writing an amendment or replacement of such authorization.

“Budget” means the budget annexed hereto as Exhibit A prepared by the Borrower and approved by the Lender (as amended, restated, supplemented, extended or revised from time to time, provided, however, that Lender has approved such modifications in advance), .

“Business Day” means any day of the year that is not a Saturday, Sunday or a day on which banks are required or authorized to close in New York, New York.

“Capital Lease” means, with respect to any Person, any lease of, or other arrangement conveying the right to use, any property (whether real, personal or mixed) by such Person as lessee that has been or should be accounted for as a capital lease on a balance sheet of such Person prepared in accordance with GAAP.

“Carve Out” means an amount of Liabilities incurred by the Borrower in the Case, as more particularly described in the Interim and Final Orders, including fees due to the United States Trustee.

“Case” means those proceedings before the Bankruptcy Court designated as Case No. [_____].

“Change of Control” means a change in Control of the Borrower, voluntary or involuntary, including a change in Control resulting from (a) direct or indirect transfers of beneficial ownership of, or the right and power to vote, stock or partnership, membership or other ownership interests, whether in one or a series of transactions; (b) the creation or issuance of new or additional equity interests.

“Closing Month” means the calendar month in which the Closing occurs.

“Collateral” means all real property and improvements owned by Borrower as set forth in Annex A hereto.

“Commitment Fee” means the payment of \$200,000 to Lender from the first Advance under this Agreement.

“Contractual Obligation” means as to any Person, any provision of any security issued by such Person or of any agreement, instrument, or other undertaking (other than a Loan Document) to which such Person is a party or by which it or any of its property is bound or to which any of its property is subject.

“Control” and **“Controlled”** as used in the definition of **“Affiliate”** and in the definition of **“Change of Control”**, means and refers to the possession of either (a) the power to vote, or the beneficial ownership of, 10% or more of any class of voting securities (or other ownership

interests) of such Person; or (b) the power to direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.

“Default” means any Event of Default or any event that, with the passage of time or the giving of notice or both, would become an Event of Default.

“Default Rate” means a rate per annum five (5%) in excess of the Interest Rate.

“Disbursement Request” any written request for disbursement of Loan proceeds in the form prescribed by Lender from time to time. Each Request for Advance constitutes a Disbursement Request.

“DIP Order” means the Interim and/or Final Orders.

“Electronic Transmission” means each document, instruction, authorization, file, information and any other communication transmitted, posted or otherwise made or communicated by e-mail or any system used to receive or transmit faxes electronically.

“Event of Default” means each or any of the events, circumstances, and occurrences described in **Section 7.1** as Events of Default.

“Final Order” means an order in form and substance satisfactory to Lender, approving the post-petition financing contemplated hereunder, granting Lender superpriority claim status and the first priority Liens contemplated hereby, and authorizing extensions of credit under the Loan in an amount not greater than \$5,000,000, which shall have been entered by the Bankruptcy Court (upon the motion of Borrower satisfactory in form and substance to Lender on such notice to such parties in interest in the chapter 11 case as may be satisfactory to Lender) by _____, 2012 and shall be in full force and effect, and shall not have been stayed, reversed, modified or amended in any respect without the prior written consent of Lender; and if the Final Order is the subject of a pending appeal in any respect, neither the making of the Loan nor the performance by Borrower of any of their respective obligations under any of the Loan Documents shall be the subject of a presently effective stay pending appeal.

“Financial Statements” means, for the Borrower, a balance sheet as at the end of the relevant fiscal period and the related statements of income, retained earnings, profit and loss, cash flows, and all related schedules for the fiscal period then ended.

“GAAP” means generally accepted accounting principles in the United States, as in effect from time to time, set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants, in the statements and pronouncements of the Financial Accounting Standards Board and in such other statements by such other entity as may be in general use by significant segments of the accounting profession that are applicable to the circumstances as of the date of determination.

“Governmental Authority” means any nation, sovereign or government; any state or other political subdivision thereof; any agency, authority or instrumentality thereof or of any such state or political subdivision; and any entity or authority exercising executive, legislative, taxing, judicial, regulatory or administrative functions of or pertaining to government, including

any central bank, stock exchange, regulatory body, arbitrator, public sector entity, supra-national entity and any self-regulatory organization (including the National Association of Insurance Commissioners).

“Indebtedness” means, without duplication, all of the following, whether or not matured: (a) indebtedness for borrowed money; (b) obligations evidenced by bonds, debentures, notes, or similar instruments; (c) reimbursement and other obligations with respect to letters of credit and acceptances; (d) obligations representing the deferred purchase price of property or services; (e) obligations created or arising under any conditional sale or other title retention agreement; (f) obligations with respect to Capital Leases; and (g) any other obligation for borrowed money or other financial accommodation (direct or contingent), whether evidenced by a note, instrument, guaranty or other writing and whether contingent, unliquidated or disputed. Notwithstanding the foregoing, the following shall not be deemed “Indebtedness” for purposes of this definition: trade indebtedness incurred and paid in the ordinary course of business.

“Interest Rate” means the interest rate per annum payable on the Loan prior to an Event of Default.

“Interim Order” means an order in form and substance satisfactory to Lender, approving the post-petition financing contemplated hereunder granting Lender superpriority claim status and the first priority Liens contemplated hereby, and authorizing extensions of credit under the Loan on an interim basis, which shall have been entered by the Bankruptcy Court (upon the motion of Borrower satisfactory in form and substance to Lender on such notice to such parties in interest in the chapter 11 case as may be satisfactory to Lender) by _____, 2012 and shall be in full force and effect, and shall not have been stayed, reversed, modified or amended in any respect without the prior written consent of Lender; and if the Interim Order is the subject of a pending appeal in any respect, neither the making of the Loan nor the performance by Borrower of any of their respective obligations under any of the Loan Documents shall be the subject of a presently effective stay pending appeal..

“Liabilities” means all claims, actions, suits, judgments, damages, losses, liabilities, obligations, responsibilities, fines, penalties, sanctions, costs, fees, Taxes, commissions, charges, disbursements and expenses, in each case of any kind or nature (including interest accrued thereon or as a result thereof and fees, charges and disbursements of financial, legal and other advisors and consultants), whether joint or several, and whether or not indirect, contingent, consequential, actual, punitive, treble or otherwise.

“Lien” means any mortgage, deed of trust, pledge, hypothecation, assignment, charge, deposit arrangement, encumbrance, lien (statutory or other), security interest or other security arrangement and any other preference, priority or preferential arrangement of any kind or nature whatsoever, including any conditional sale contract or other title retention agreement, the interest of a lessor under a Capital Lease and any synthetic or other financing lease having substantially the same economic effect as any of the foregoing.

“Loan” means the financing provided by Lender to Borrower in accordance with this Agreement.

“Loan Amount” means the aggregate total of all Advances to or on behalf of Borrower (not to exceed the Maximum Loan Amount).

“Loan Documents” means, collectively, this Agreement, the Note, the Mortgage, the Interim Order, the Final Order and all other documents, instruments, certificates and notices at any time delivered in connection with the Loan, all as they may be amended, restated, supplemented, extended or renewed from time to time.

“Material Adverse Effect” means any fact, event or circumstance, that, alone or when taken with other events or conditions occurring or existing concurrently with such event or condition (a) has or is reasonably expected to have a material adverse effect on the business, assets, operations, condition (financial or otherwise), or prospects of Borrower; (b) materially impairs or is reasonably expected to materially impair the ability of Borrower to pay and perform their obligations under the Loan Documents to which they are a party; (c) materially impairs or is reasonably expected to materially impair the ability of Lender to enforce its rights and remedies under any Loan Document; or (d) has or is reasonably expected to have any material adverse effect on the Collateral, the Liens of Lender in such Collateral or the priority of such Liens.

“Maturity Date” means the twelve month anniversary of the date of this Agreement, provided, however, that Borrower shall have the one time right, exercisable on not less than thirty days notice to Lender (the **“Extension Notice”**), to extend the Maturity Date for an additional twelve month period by payment to Lender of an extension fee of \$200,000 (the **“Extension Fee”**).

“Maximum Loan Amount” means \$5,000,000.

“Mortgage” means that certain Mortgage, Assignment of Leases and Rents and Security Agreement by Borrower and dated as of the date hereof.

“Note” means Borrower’s mortgage note to Lender dated the date hereof evidencing the Loan, as amended, restated, extended, supplemented, substituted, or renewed from time to time.

“Obligations” means, with respect to Borrower, all amounts, obligations, liabilities, covenants and duties of every type and description (including for the payment of money), owing by Borrower to Lender arising out of, under, or in connection with any Loan Document (as the same may be amended, restated, supplemented, extended or renewed from time to time) or the Note, whether direct or indirect, absolute or contingent, due or to become due, liquidated or not, now existing or hereafter arising, however acquired, and whether or not evidenced by any instrument.

“Permit” means, with respect to any Person, any permit, approval, consent, authorization, license, registration, certificate, concession, grant, franchise, variance or permission from, any other Contractual Obligation or filing with, or other action or grant by, any Governmental Authority or other Person, in each case applicable to or binding on such Person, its property, or to which such Person or any of its property is subject, whether or not having the force of law, including the Permits identified on [Schedule 3](#) and any replacements, additions or substitutions thereof.

“**Person**” means any individual, partnership, corporation (including a business trust and a public benefit corporation), joint stock company, estate, association, firm, enterprise, trust, limited liability company, unincorporated association, joint venture and any other entity or Governmental Authority.

“**Site**” means 54-56 West 40th Street, New York, NY 10018.

“**Subsidiary**” means, with respect to any Person, any corporation, partnership, joint venture, limited liability company, association or other entity, the management of which is, directly or indirectly, controlled by, or of which an aggregate of more than 10% of the outstanding voting stock or other equity interests is, at the time, owned or controlled directly or indirectly by, such Person or one or more Subsidiaries of such Person.

“**Tax Returns**” has the meaning set forth in Section 3.15.

“**Taxes**” means all taxes (including income, excess profits, sales, gross receipts and other taxes, duties or imposts), levies, assessments, deductions, withholdings, and charges imposed by any Governmental Authority, and all liabilities with respect thereto, excluding taxes imposed on or measured by the net income of Lender.

“**UCC**” means the Uniform Commercial Code of any applicable jurisdiction and, if the applicable jurisdiction shall not have any Uniform Commercial Code, the Uniform Commercial Code as in effect in the State of New York.

1.2 UCC Terms. The following terms have the meanings given to them in the applicable UCC: “**account**”, “**account debtor**”, “**chattel paper**”, “**commercial tort claim**”, “**deposit account**”, “**document**”, “**equipment**”, “**fixtures**”, “**general intangible**”, “**goods**”, “**instrument**”, “**inventory**”, “**investment property**”, “**letter-of-credit rights**”, “**payment intangible**”, “**proceeds**”, “**software**” and “**supporting obligation**”. To the extent that the UCC is used to define any term in any Loan Document and such term is defined differently in different Articles or Divisions of the UCC, the definition of such term contained in Article or Division 9 of the UCC shall govern.

1.3 Accounting Terms and Principles. All accounting determinations required to be made pursuant to any of the Loan Documents shall, unless expressly otherwise provided in the Loan Documents, be made in accordance with GAAP. If there is a change in GAAP following the date of this Agreement and that change is implemented by Borrower, such change shall not be given effect if such change would affect a calculation that measures compliance with, or entitles Borrower to any rights under, any provision of the Loan Documents unless Borrower and Lender agree in advance and in writing to modify such provisions to reflect such changes, and, unless such provisions are modified, all Financial Statements, compliance certificates and similar documents provided under or pursuant to the Loan Documents shall be provided together with a reconciliation between the calculations and amounts set forth therein before and after giving effect to such change. Notwithstanding any other provision contained in this Agreement or any of the other Loan Documents, all terms of an accounting or financial nature used in this Agreement or any of the other Loan Documents shall be construed, and all computations of amounts and ratios provided for in this Agreement or any of the other Loan Documents shall be made, without giving effect to any election under Statement of Financial Accounting Standards

159 (or any other Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of any Borrower Party at “fair value,” as defined therein.

ARTICLE 2 THE TRANSACTION

2.1 The Loan. Subject to the terms and conditions of this Agreement, Lender agrees to make the Loan to Borrower and Borrower agrees to borrow the Loan from Lender.

2.2 The Note. The Loan will be evidenced by the Note and secured by the Collateral, as provided in the Loan Documents. Borrower agrees to repay the outstanding principal amount of the Loan together with interest thereon in accordance with the terms and conditions of this Agreement, the Note, the Mortgage and the other Loan Documents.

2.3 [Intentionally Omitted].

2.4 Fees, Costs, and Expenses. Borrower agrees to pay to Lender, at or prior to Closing, the Commitment Fee, all reasonable out-of pocket costs and expenses incurred by or on behalf of Lender in connection with the negotiation, documentation, and closing of the Loan (collectively, “**Transaction Costs**”), including (i) the reasonable fees and actual costs, and expenses of Lender’s in house and outside legal counsel; (ii) costs and expenses of UCC search reports, the mortgage recording taxes, title insurance, and appraisals, if required by Lender; (iii) recording and filing costs and expenses; (iv) transfer fees and taxes; and (v) costs and expenses of any other due diligence investigations, including the fees of auditors, inspectors, or other consultants and advisers retained by Lender.

2.5 Purpose of the Loan. The proceeds of the Loan shall be used by Borrower for the payment of items set forth in the Budget.

2.6 Closing.

(a) The Closing. Lender’s obligation to make Advances will be effective as of the date (the “**Closing Date**”) when each of the conditions precedent set forth in **Section 2.7** has been satisfied and Borrower is entitled to the first Advance, and the “**Closing**” shall be deemed to have occurred at that time.

(b) Advances.

(i) At and following the Closing and until the Maximum Loan Amount has been advanced, Borrower is entitled to Advances.

(ii) Borrower shall request Advances no more frequently than once in any calendar [month].

(iii) The amount of each Advance shall be at least [\$1,000,000].

(iv) Any other provision of this Agreement to the contrary notwithstanding, Borrower shall not be entitled to any Advance to the extent that

the Advance, when added to all other prior Advances, would exceed the Maximum Loan Amount.

(c) No Further Advances. Borrower will not be entitled to receive, and Lender will not be obligated to make, any further Advances following that day which is [90] days following the Closing Date.

2.7 Conditions to Closing and Initial Advance. The obligation of Lender to consummate the transactions contemplated by this Agreement and, if an Advance will be made at Closing, to make such initial Advance, and to make any additional Advances, is subject to the satisfaction of each of the following conditions, in Lender's sole and absolute discretion, unless Lender, in its sole and absolute discretion, waives satisfaction of such condition in writing:

(a) No Material Adverse Effect. Lender shall have determined, in its sole discretion, that (i) no Material Adverse Effect has occurred and (ii) there are no facts or circumstances existing and not previously disclosed in writing to Lender with respect to Borrower, the Collateral, any other Person representing or otherwise acting on behalf of Borrower, or the transaction that, in Lender's sole judgment, are inconsistent in a material and adverse manner with any such information disclosed to Lender prior to the date hereof.

(b) Loan Closing Documentation. Lender shall have received (i) each of the following Loan Documents, duly executed and, where appropriate, acknowledged, by each Person to be bound by such Loan Document, each in form satisfactory to Lender: this Agreement, the Note, the Borrower Authorization, the Mortgage, and (ii) such other documents and information as Lender may reasonably request.

(c) Mortgage Filings. Lender shall have received evidence that the Mortgage has been duly and properly recorded against the Site and holds the priority position required by this Agreement.

(d) Commitment Fee. Lender shall have received payment of the Commitment Fee.

(e) Payment of Costs, Expenses and Fees. All costs, expenses and fees to be paid by Borrower under the Loan Documents on or before the Closing will have been paid in full.

(f) Insurance. Lender shall have received evidence that all required insurance coverages have been obtained and are in full force and effect and in compliance with the requirements of this Agreement and the other Loan Documents.

(g) No Default; Representations. No Default has occurred and is continuing or would occur as a result of the Loan being made on the Closing Date. All representations and warranties of Borrower in Loan Documents are true, correct, and complete.

(h) Request for Disbursement. If any Loan proceeds are to be disbursed to Borrower at Closing, Borrower shall have provided to Lender a duly executed request for disbursement of such Loan proceeds on Lender's form, designating the Persons to whom the Loan proceeds are to be disbursed and providing the wire transfer instructions for such disbursements.

(i) Entry of Interim Order. The Interim Order of the Bankruptcy Court authorizing the financing and priming the existing liens shall be approved in form and substance satisfactory to Lender.

(j) Budget. Lender shall have approved the Budget.

2.8 Conditions Precedent to Further Advances. The obligation of Lender to make each Advance (other than the initial Advance at Closing, if any) is subject to the satisfaction of each of the following conditions, in Lender's sole and absolute discretion, unless Lender, in its sole and absolute discretion, waives satisfaction of such condition in writing:

(a) Closing Conditions. All of the conditions referred to in **Section 2.7** shall have been satisfied.

(b) No Default; Representations. At the time of the request for the Advance and at the time the Advance is to be made (i) no Default shall have occurred and be continuing or would occur as a result of the making of such Advance; and (ii) all representations and warranties of the Borrower in the Loan Documents are true, correct and complete.

(c) [Intentionally Omitted].

(d) Payment of Costs, Expenses and Fees. All costs, expenses and fees to be paid by Borrower under the Loan Documents on or before the date of the Advance will have been paid in full.

(e) No Material Adverse Effect. Lender shall have determined, in its sole judgment, that no Material Adverse Effect has occurred since the date of the prior Advance.

(f) Entry of Final Order. The Final Order of the Bankruptcy Court authorizing the financing and priming the existing liens in form and substance satisfactory to Lender shall have been entered.

(g) Other Requirements. Borrower shall otherwise be in compliance with the requirements of this Agreement.

2.9 Interest Rate and Payment Terms.

(a) Interest Rate. Interest shall accrue on the outstanding Advances at the rate of sixteen (16%) percent per annum (the "Interest Rate"). Interest shall be computed on the basis of a 360-day year and actual days elapsed. Borrower agrees to pay an effective

rate of interest that is the sum of (i) the interest rate provided in this Agreement; and (ii) any additional rate of interest resulting from any other charges or fees paid or to be paid by Borrower pursuant to any of the Loan Documents that are required, pursuant to Applicable Law, to be taken into account as interest or in the nature of interest.

(b) Payment. Interest is payable in arrears. Accrued and unpaid interest arising during the first ninety days of the term of this Agreement shall be due and payable on the first day after the end of such 90 day period. Thereafter, accrued interest shall be due and payable monthly.

(c) The entire unpaid principal balance of the Loan, together with any accrued and unpaid interest and all other sums due Lender under this Agreement, shall be due and payable in full on the Maturity Date, unless payment is due on another date in accordance with this Agreement.

2.10 Prepayments.

(a) Optional Prepayment. The Loan may be prepaid at the option of the Borrower, at any time and from time to time after the six month anniversary of the date hereof, without premium or penalty, on at least five days written notice to the Lender (a "Prepayment Notice"). Any Prepayment Notice under this section 2.9(a) shall specify the date of prepayment (the "Prepayment Date") and the amount to be prepaid (the "Prepayment Amount", which shall be in integral multiples of \$100,000). On each Prepayment Date the Prepayment Amount shall be due and payable in full and shall be paid to the Lender in accordance with the terms of this Note.

(b) Mandatory Prepayment. Borrower shall use the net proceeds, after payment of ordinary and customary closing costs and expenses, of the sale of any of the Collateral set forth on [Exhibit A](#) to prepay the Loan.

(c) No Reborrowing. Any payments or prepayments on the Loan may not be reborrowed by the Borrower, and it is not the intent of the parties that Lender shall be required to provide Advances which in the aggregate exceed the Maximum Loan Amount.

2.11 Requesting Disbursements. Any other provisions of this Agreement to the contrary notwithstanding, Lender will not disburse any Loan proceeds to or on behalf of Borrower unless and until Borrower has first submitted to Lender a Disbursement Request duly executed by Borrower. Lender shall have absolutely no duty or obligation to take any action with respect to any request for a disbursement of Loan proceeds to or on behalf of Borrower not made in accordance with and subject to the provisions of this Section. Lender shall be entitled to fully rely and act on a Disbursement Request provided by Borrower to Lender and shall have no duty to verify the content of or accuracy of information contained in any such Disbursement Request, the authority of the person executing such Disbursement Request or the identity of the sender thereof. Lender does not have and is not undertaking any obligation whatsoever to Borrower to verify the source of a Disbursement Request provided to Lender or to detect errors in transmission or content, including discrepancies between account names and numbers.

2.12 Making Payments.

(a) No Deductions. All payments of principal and interest shall be made without deduction of any present and future Taxes, which amounts shall be paid by Borrower, and without any other right of abatement, reduction, setoff, defense, counterclaim, interruption, deferment or recoupment. Borrower will pay the amounts necessary such that the gross amount of the principal and interest received by Lender is not less than that required by the terms of this Agreement, the Note, and the other Loan Documents.

(b) Manner and Place of Payment. Principal, interest, and all other amounts due to Lender on the Maturity Date under the Note, this Agreement, and the other Loan Documents, including any prepayments (collectively, "**Payments**") shall be payable at Lender's address, or such other place as Lender may direct. All Payments shall be in U.S. dollars.

(c) Non-Conforming Payments. Credit to Borrower's account may be delayed if the Payment is not made as provided above or if not accompanied by the correct invoice number. Lender may, at its sole option, refuse any amount tendered by Borrower that is not in the required form or in the exact amount of the required Payment. Delayed credit may cause you to incur a late payment fee. Credit for Payments is subject to final payment by the institution on which the item of Payment was drawn. UNAUTHORIZED FORMS OF PAYMENT, SUCH AS CASH, AND MONEY ORDERS, ARE **NOT** ACCEPTABLE FORMS OF PAYMENT AND MAY BE RETURNED TO BORROWER AT BORROWER'S RISK OF LOSS.

2.13 Application of Proceeds. All Payments, including prepayments, shall be applied first to the payment of costs and expenses of Lender, then to accrued and unpaid interest, and the balance to reduction of principal.

2.14 Lender Computations. Lender's computations, in accordance with the terms of this Agreement, of interest rates, payment amounts, fees, and other amounts due and owing from Borrower to Lender shall be final and conclusive, absent manifest error.

2.15 Maximum Rate of Interest. The parties intend to comply with any applicable usury laws; accordingly, it is agreed that, any provisions in this Agreement, the Note, or any of the other Loan Documents to the contrary notwithstanding, in no event shall this Agreement, the Note, or any other Loan Document require the payment or permit the collection of interest or any amount in the nature of interest or fees in excess of the maximum amount permitted by Applicable Law as now or hereafter construed by a court of competent jurisdiction. If any such excess interest is contracted for, charged or received pursuant to this Agreement, the Note, or any other Loan Document, or in the event that all of the principal balance under this Agreement and the Note shall be prepaid, so that under any of such circumstances the amount of interest contracted for, charged or received shall exceed the maximum amount of interest permitted by Applicable Law as so construed, then in such event any such excess which may have been collected shall, at Lender's option, either be credited to the unpaid principal balance of the Loan as a prepayment of principal, or refunded to Borrower, and the effective rate of interest shall

automatically be reduced to the maximum lawful rate allowed under Applicable Law as now or hereafter construed by a court of competent jurisdiction.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES

Borrower acknowledges and agrees that (a) the representations and warranties in this Article are a material part of the consideration to Lender; (b) Lender is relying on the correctness and completeness of all of these representations and warranties in entering into this transaction and making the Loan; and (c) these representations and warranties are true and accurate as of the date of this Agreement, will be true and accurate as of the Closing, as if made on the Closing Date, and will survive the Closing, regardless of any investigation or inspection by Lender. Accordingly, Borrower represents, warrants, and certifies to and covenants with Lender that:

3.1 Borrower. Borrower's exact legal entity name is as set forth on the signature page of this Agreement. Borrower is validly existing and in good standing under the laws of the state of its formation, is duly qualified and licensed to do business in each state where it is required to be so qualified or licensed, and has full power and authority to enter into and perform its obligations under the Loan Documents to which it is a party. Borrower has its chief executive office and principal place of business at the location set forth below its signature on the signature page of this Agreement. The entry into and performance by such Borrower of the Loan Documents to which it is a party does not and will not conflict with or violate any provision of such Borrower's organizational documents. The Loan Documents have been duly authorized and validly executed and delivered by Borrower. The persons executing the Loan Documents on behalf of Borrower have been duly authorized to do so in accordance with resolutions duly adopted by Borrower's board of directors (or similar governing body).

3.2 Performance; No Defaults. No Permits other than the Interim and Final Orders are required in connection with the authorization, execution, delivery, consummation, or performance by Borrower of the Loan Documents to which Borrower is a party. The authorization, execution, delivery, consummation, and performance by Borrower of such Loan Documents will not conflict with or violate any Applicable Law or result in any default (or any event, that with the giving of notice or the passage of time, or both, would constitute a default) under any Contractual Obligation of Borrower. Borrower is not in default under and, to the best of Borrower's knowledge, no event has occurred that, with the giving of notice or the passage of time, or both, would constitute a default under any Contractual Obligations of Borrower.

3.3 Binding Obligations. Subject to entry of the Interim and Final Orders, This Agreement and the other Loan Documents to which Borrower is a party constitute the legal, valid and binding obligations of Borrower, enforceable against Borrower in accordance with their terms, except as enforceability may be limited by applicable bankruptcy, insolvency, liquidation, reorganization and other laws affecting the rights of creditors generally, and general principles of equity.

3.4 Non-Foreign Status. Borrower is not a "foreign corporation", "foreign partnership", "foreign trust", "foreign estate" or "foreign person," as those terms are defined by the Internal Revenue Code of 1986, as amended.

3.5 Litigation and Condemnation. There is no action, suit, investigation, proceeding or arbitration at law or in equity, including condemnation proceedings or proceedings in lieu of condemnation, pending or, to the best of Borrower's knowledge, threatened against or affecting (a) Borrower or any of its assets or revenues; or (b) any of the Loan Documents or any of the transactions contemplated thereby.

3.6 Indebtedness. As of the Closing Date there will be no Indebtedness or Liabilities of the Borrower which has priority over the Loan with respect to the Collateral, or is senior to the Loan in priority of payment from the Borrower's estate. After the Closing, Borrower shall not create or incur any additional Indebtedness or Liabilities which have priority over, or is *pari passu* with, the Loan, other than the Carve Out.

3.7 Administrative, Criminal and Governmental Matters and Investigations. There are no administrative or criminal matters or investigations, government investigations or audits, or other similar matters currently pending or, to the best of Borrower's knowledge, threatened that involve the Borrower nor has the Borrower been involved in any such matters within the past five years.

3.8 Bankruptcy and Similar Matters. Borrower has filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code, the Case is pending, and has not been dismissed, converted to a Case under a chapter of the Bankruptcy Code other than Chapter 11, the Bankruptcy Court has not determined to abstain from hearing the Case, no trustee for the Borrower has been ordered to be appointed, and no examiner with expanded powers has been ordered to be appointed.

3.9 [Intentionally Omitted].

3.10 Anti-Terrorism and Anti-Money Laundering. Borrower is not a Person (a) listed on the Specially Designated Nationals and Blocked Person List maintained by the Office of Foreign Assets Control ("**OFAC**"), Department of the Treasury, or any other similar lists maintained by OFAC or any other Governmental Authority pursuant to any authorizing statute, Executive Order or regulation; (b) designated under Section 1(b), (c) or (d) of Executive Order No. 13224 (September 23, 2001), any related enabling legislation, or any other similar Executive Orders; or (c) subject to any trade restrictions under any Applicable Law, including those referenced in *clauses (a) and (b)* of this Section. Borrower is in full compliance with all applicable provisions of the Bank Secrecy Act ("**BSA**") and of all other laws, regulations, and government guidance relating to the prevention and detection of money laundering violations or terrorist activities or threats.

3.11 Title to Assets; Liens. Borrower has good, sufficient and legal title to all properties and assets reflected in its most recent balance sheet delivered to Lender, except for assets disposed of in the ordinary course of business since the date of such balance sheet. Borrower is the owner of all of the Collateral.

3.12 Compliance with Applicable Law. The operations of Borrower are in compliance with all Applicable Law, except for such noncompliance which has not had, and could not reasonably be expected to have, a Material Adverse Effect.

3.13 Hazardous Waste. Borrower is compliance with the provisions of all applicable environmental, health and safety laws, rules, regulations and ordinances. There are no hazardous waste materials, toxic materials, hazardous waste dump sites or toxic or chemical waste clean up requirements currently on or currently being conducted on any property owned or leased by Borrower. Borrower does not have any knowledge that any such property has ever been the subject of an environmental protection agency (state or federal) inquiry, investigation or inspection or any other state or federal Agency having jurisdiction over such matters in connection with clean up or other efforts.

3.14 Permits. All Permits required for the operation of the Borrower's business in the manner in which it has been conducted and is proposed to be conducted during the Term of the Loan have been obtained and are in full force and effect, except for Permits the failure of which to obtain or maintain in full force and effect has not had, and could not reasonably be expected to have, a Material Adverse Effect.

3.15 Payment of Taxes. All federal, state, local and foreign income and franchise and other material tax returns, reports and statements (collectively, the "***Tax Returns***") required to be filed by Borrower have been filed with the appropriate Governmental Authorities in all jurisdictions in which such Tax Returns are required to be filed, all such Tax Returns are true and correct in all material respects, and all Taxes, charges and other impositions reflected therein or otherwise due and payable have been paid prior to the date on which any Liability may be added thereto for non-payment thereof except for those contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves are maintained on the books of the appropriate Borrower in accordance with GAAP. No Tax Return is under audit or examination by any Governmental Authority and no notice of such an audit or examination or any assertion of any claim for Taxes has been given or made by any Governmental Authority. Proper and accurate amounts have been withheld by Borrower from its employees for all periods in full and complete compliance with the tax, social security and unemployment withholding provisions of Applicable Law and such withholdings have been timely paid to the respective Governmental Authorities. Borrower has not participated in a "reportable transaction" within the meaning of Treasury Regulation Section 1.6011-4(b) or has been a member of an affiliated, combined or unitary group other than the group of which a Borrower is the common parent.

3.16 Information. All information provided to Lender by Borrower in furtherance of the transactions contemplated by this Agreement or in or accompanying any loan application, Financial Statement (other than financial projections), certificate, or other document, and all other information delivered by or on behalf of Borrower to Lender in obtaining the Loan (collectively, the "***Information***") is correct and complete in all material respects as of the date of such Information, and there are no omissions in any of the Information that result in any of the Information being materially incomplete, incorrect, or misleading as of the date of such Information. Borrower acknowledges that Lender is relying on the Information in entering into this Agreement and making the Loan. Borrower does not have any knowledge of any material change in any of the Information that has not been disclosed to Lender in writing on or before the Closing. All Financial Statements (other than financial projections) included in the Information were prepared in accordance with GAAP and accurately present the financial condition of Borrower and each other Credit Party, respectively.

3.17 Full Disclosure. There is no fact known to Borrower that materially and adversely affects the business, operations, assets or condition (financial or otherwise) of Borrower that has not been disclosed in this Agreement, the Information, or in other documents, certificates and written statements furnished to Lender prior to the date of this Agreement.

3.18 Commercial Purpose of Loan. The purpose of the Loan is a business purpose and not a personal, family, or household purpose. Borrower is borrowing the Loan and the Obligations, as they relate to the Loan Documents, are being incurred exclusively for business purposes and not for any personal, family or household purpose. No portion of the Collateral is being used by Borrower or any other Person for any personal, family or household purposes.

3.19 No Plan Assets. Borrower is not an "employee benefit plan," as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974 ("**ERISA**"), subject to Title I of ERISA, and none of the assets of Borrower constitutes or shall constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101. In addition, (a) Borrower is not a "governmental plan" within the meaning of Section 3(32) of ERISA and (b) transactions by or with Borrower are not subject to state statutes regulating investment of, and fiduciary obligations with respect to, governmental plans similar to the provisions of Section 406 of ERISA or Section 4975 of the Internal Revenue Code, as amended, and the regulations promulgated thereunder from time to time, which prohibit or otherwise restrict the transactions contemplated by this Agreement.

ARTICLE 4 AFFIRMATIVE COVENANTS

From and after the Closing and until all Obligations are fully paid and performed, Borrower agrees that:

4.1 Organization and Status of Entity Borrower; Preservation of Name and Existence. Borrower will continue to be validly existing and in good standing under the laws of its state of incorporation or formation and will continue to be qualified to do business as a foreign corporation in each state where such qualification is required.

4.2 Use; Ownership. Borrower will keep all of the Collateral free and clear of any and all Liens, claims and encumbrances, including purchase money security interests, with priority over, or which are pari passu with, the Liens granted to Lender and (b) except as otherwise provided in this Agreement, remain the sole owner of the Collateral.

4.3 Insurance.

(a) Required Coverage. Borrower will obtain and maintain, at its sole expense, the following insurance:

(i) Property insurance, insuring against loss, damage or destruction by fire and other casualty, including theft, vandalism and malicious mischief, equipment breakdown (if there are any boiler or pressure vessels upon the Collateral), sprinkler damage (if the Collateral has a sprinkler system), and such other risks as Lender may reasonably require, insuring the Collateral for not less

than 100% of its full insurable replacement cost, with coverage to be sufficient to rebuild or replace the building, equipment, and other improvements and with Lender, its successors, assigns, and affiliates as loss payee, with respect to the Collateral.

(ii) Commercial general liability insurance against claims for personal injury, bodily injury or death, and property damage or destruction in amounts not less than \$1,000,000 per occurrence, with an aggregate not less than \$2,000,000 per location. If general liability coverage is not per location or if the named insured operates five or more locations, an excess liability or umbrella liability policy in an amount not less than \$5,000,000 is required. Lender, its successors, assigns, and affiliates shall be named as an additional insured on each such policy. Such insurance shall include broad form contractual liability coverage, products liability coverage, and all risks coverage of not less than \$3,000,000 per occurrence.

(iii) Worker's compensation insurance in the statutorily mandated limits and employer's liability insurance with limits not less than \$500,000 or such greater amount as Lender may from time to time require.

(iv) Such other insurance and coverages as may be necessary to comply with any Applicable Law or as Lender may otherwise require in the exercise of its reasonable discretion.

(b) Policy Requirements. All insurance policies shall: (i) provide that such insurance cannot be unreasonably cancelled, invalidated or suspended on account of the conduct of Borrower, its officers, directors, employees or agents; (ii) be written on an "occurrence" basis and provide that all insurance required to be carried by Borrower is primary, with deductibles not to exceed \$10,000, that any "no other insurance" clause in any insurance policy required to be carried by Borrower excludes any policies of insurance maintained by Lender, and that all such insurance policies will not be brought into contribution with insurance maintained by Lender; (iii) contain a standard without contribution endorsement in favor of Lender, its successors, assigns, and affiliates as their interests may appear; (iv) include an agreement by the insurer that any loss will be payable in accordance with the terms of the policy notwithstanding any act or neglect of Borrower, anyone acting for Borrower or any tenant or other occupant of the Site; (v) provide that the policy of insurance shall not be terminated, cancelled or substantially modified without at least 30 days' prior written notice to Lender, unless such termination or cancellation is for non-payment, in which case, the policy of insurance shall not be terminated or cancelled without at least 10 days' prior written notice to Lender; (vi) be issued by insurance companies licensed to do business in the state in which the Collateral is located and which are rated A:VIII or better by Best's Key Rating Guide or otherwise approved by Lender; (vii) be written for a period of at least one year; and (viii) name Lender, its successors, assigns, and affiliates, and holders of Existing Indebtedness, as certificate holders.

(c) Evidence of Insurance. Prior to the Closing, Borrower shall have delivered to Lender all required policies of insurance, certificates of insurance, or other evidence of coverage satisfactory to Lender, evidencing that such insurance is in full force and effect and satisfies the requirements set forth in this Agreement. At least 30 days prior to the expiration of each such policy, Borrower shall furnish Lender written evidence that such policy has been renewed or replaced by delivering to Lender a copy of the replacement policy or an insurance company certificate reciting that there is in full force and effect insurance of the types and in the amounts required by this Agreement.

(d) No Release. The foregoing insurance requirements, including minimum limits of insurance coverage, shall not limit the liability of Borrower for its acts or omissions as provided in this Agreement or in any of the other Loan Documents.

(e) Exercise of Remedies. If there is a sale of the Collateral or any other transfer of title or assignment of the Collateral in extinguishment, in whole or in part, of the Obligations, all right, title and interest of Borrower in and to all required policies of insurance relating to the Collateral so transferred shall inure to the benefit of and pass to the successor in interest to Borrower or the purchaser or grantee of the Collateral, to the extent such policies are assignable pursuant to the terms thereof.

4.4 Casualty.

(a) Casualty; Continuation of Obligations. Borrower shall at all times bear the entire risk of any loss, theft, damage to, or destruction of, any of the Collateral from any cause whatsoever (a "**Casualty**"). If a Casualty occurs, whether or not covered by insurance, Borrower will promptly give Lender written notice of the Casualty, generally describing the nature and extent of the Casualty. No Casualty shall relieve Borrower of any of its Obligations, including its obligations to make the regularly scheduled payments of principal and interest under this Agreement.

(b) Application of Insurance Proceeds. All proceeds of insurance with respect to any Casualty (the "**Insurance Proceeds**") shall be payable to Lender, and Borrower authorizes and directs any affected insurance company to make payment of the Insurance Proceeds directly to Lender. If Borrower receives any Insurance Proceeds relating to such Casualty, Borrower shall promptly pay over such proceeds to Lender. All Insurance Proceeds will be applied by Lender to payment of the Obligations in such order as Lender shall determine; **provided, however**, that if no Default has occurred and is continuing, the Insurance Proceeds, less the costs, fees and expenses incurred by Lender and Borrower in the collection thereof, including adjuster's fees and expenses and reasonable attorneys' fees and expenses (the "**Net Insurance Proceeds**"), shall be made available to Borrower as follows:

(i) If the Net Insurance Proceeds are less than \$25,000, the Net Insurance Proceeds shall be paid to Borrower and applied by Borrower toward the cost of restoration of the Collateral; and

(ii) If Net Insurance Proceeds are \$25,000 or greater, then the Net Insurance Proceeds shall be held and disbursed by Lender, or as Lender may from time to time direct, as the restoration of the Collateral progresses, to pay or reimburse Borrower for the cost of the restoration, upon written request of Borrower accompanied by evidence, reasonably satisfactory to Lender, that: (A) the restoration is in compliance with all Applicable Law and all private restrictions and requirements; (B) the amount requested has been paid or is then due and payable and is properly a part of such cost; (C) if the estimated cost of the restoration exceeds the Net Insurance Proceeds (exclusive of proceeds received from Borrower's business income insurance), Borrower has deposited into an escrow satisfactory to Lender such excess amount, which sum will be disbursed pursuant to escrow instructions satisfactory to Lender; and (D) the balance of such Net Insurance Proceeds, together with the funds deposited into escrow, if any, pursuant to the preceding subsection, after making the payment requested, will be sufficient to pay the balance of the cost of the restoration. Upon receipt by Lender of evidence reasonably satisfactory to it that the restoration has been completed and the cost thereof paid in full, the balance, if any, of such Net Insurance Proceeds shall be paid to Borrower.

4.5 Representations and Warranties. Borrower will do all things necessary or appropriate such that the representations and warranties of Borrower contained in any of the Loan Documents remain true, complete, and correct.

4.6 Operations. Borrower may cease business operations at the Collateral. If Borrower discontinues operations as permitted by this Section, Borrower shall: (a) give written notice to Lender at least 10 days prior to the date Borrower ceases operation; (b) provide adequate protection and maintenance of the Collateral during any period of vacancy; and (c) pay all costs necessary to restore the Collateral to its condition on the day operations ceased, such that Borrower can resume operations. Borrower shall not, and shall not permit any tenant to, by itself or through any sale, lease or other type of transfer, convert the Collateral to an alternative use while this Agreement is in effect without Lender's consent, which consent shall not be unreasonably withheld or conditioned. Lender may consider any or all of the following in determining whether to grant its consent, without being deemed to be unreasonable: whether the converted use will be consistent with the highest and best use of the Collateral and whether the converted use will increase Lender's risks or decrease the value of the Collateral.

4.7 Compliance; Licenses and Permits. Borrower will comply with all Applicable Law, except for such non-compliance, from time to time, as could not reasonably be expected to have a Material Adverse Effect. Borrower will obtain and maintain in full force and effect at all times all Permits that are required to conduct its business as it is now conducted.

4.8 Taxes and Other Indebtedness. Except for amounts being contested as permitted in this Agreement, Borrower will pay and discharge the following: (a) before delinquency all Taxes imposed upon it, its income or profits, or any property belonging to it, including the Collateral; (b) when due all lawful claims (including claims for labor, materials, and supplies) which, if unpaid, might become a Lien upon any of its assets; and (c) when due all its other Indebtedness, including, within 60 days of incurrence, all trade debt.

4.9 Books and Records. Borrower will keep proper Books and Records, in which full, true and correct entries shall be made in accordance with GAAP with respect to any financial reports that may be reported to Lender and all Applicable Law of all financial transactions and the assets and business of Borrower.

4.10 Inspections. Borrower shall, during normal business hours and upon reasonable advance notice (unless a Default shall have occurred and be continuing, in which event no notice shall be required and Lender shall have access at any and all times), (a) provide access to each property owned, leased, or controlled by Borrower to Lender, as frequently as Lender determines to be appropriate; (b) permit Lender to inspect, audit and make extracts and copies (or take originals if reasonably necessary) from all of Borrower's Books and Records; and (c) permit Lender to inspect, review, evaluate and make physical verifications and appraisals of the Collateral in any manner and through any medium that Lender considers advisable, and, in each such case, Borrower agrees to render to Lender, at Borrower's cost and expense, such clerical and other assistance as may be reasonably requested with regard thereto.

4.11 Financial Reporting.

(a) Borrower Financial Statements.

(i) Providing Financial Statements and Other Information. Within 90 days after the end of each fiscal year of Borrower and within 45 days after the end of each fiscal quarter of Borrower (other than the last fiscal quarter in each fiscal year of Borrower), Borrower will deliver the following to Lender: (a) complete Financial Statements for Borrower; and (b) such other information (financial or otherwise) as Lender may reasonably request. Lender may also request Financial Statements of Borrower from time to time to verify compliance with the terms and conditions of this Agreement and the other Loan Documents.

(ii) Financial Statement Requirements. All such annual Financial Statements shall be prepared in accordance with GAAP from period to period and shall have been audited by a certified public accounting firm reasonably acceptable to Lender.

(iii) Certifications. All Financial Statements delivered pursuant to this Section shall be certified by the treasurer, chief financial officer, or other appropriate officer of Borrower, to be accurate and complete and fairly presenting, in all material respects, in accordance with GAAP, the financial position and the results of operations of Borrower.

4.12 Maintenance of Existence. Borrower shall at all times preserve, renew and keep in full, force and effect its company existence and rights and franchises with respect thereto and maintain in full force and effect all permits, licenses, Patents, trademarks, copyrights, tradenames, approvals, authorizations, leases, and contracts necessary to carry on the business as presently or proposed to be conducted.

4.13 Notices of Litigation. Borrower will give prompt written notice to Lender of any of the following of which Borrower has knowledge: (a) any action or proceeding instituted by or

against it in any court or before any commission or other regulatory body (federal, state, local, or foreign) or any such proceeding which is threatened against it; (b) any other action, event or condition of any nature which could reasonably be expected to have a Material Adverse Effect, or which, with notice or lapse of time or both, would constitute an event of default or a default under any other instrument or agreement to which it is a party or by or to which it or any of its assets may be bound or subject; and (c) the occurrence of any Default (and the action Borrower proposes to take with respect thereto).

4.14 Anti-Terrorism and Anti-Money Laundering Provisions. Borrower shall not take any action or engage in any activity of any nature whatsoever, that would or could result in Borrower being (a) listed on the Specially Designated Nationals and Blocked Person List maintained by OFAC or any other similar lists maintained by OFAC or any other Governmental Authority pursuant to any authorizing statute, Executive Order or regulation; (b) designated under Section 1(b), (c) or (d) of Executive Order No. 13224 (September 23, 2001), any related enabling legislation, or any other similar Executive Orders; or (c) subject to any trade restrictions under any Applicable Law, including those referenced in *clauses (a) and (b)* of this Section. Neither Borrower shall fund any Obligation with funds derived from any Person referred to in *clauses (a) and (b)* of this Section. Borrower shall comply with the applicable provisions of all other laws, regulations, and government guidance relating to the prevention and detection of money laundering violations or terrorist activities or threats.

4.15 Compliance with Orders. Borrower shall comply with each of the provisions of the Interim and Final Orders and all other orders entered by the Bankruptcy Court in the Chapter 11 case.

ARTICLE 5 NEGATIVE COVENANTS

From and after the Closing and until all of the Obligations are fully paid and performed, Borrower shall NOT, directly or indirectly, by operation of law, or otherwise:

5.1 Modification of Organizational Documents: Changes Affecting Entities. (a) amend, restate, supplement, or terminate its organizational documents in any manner that could reasonably be expected to have a Material Adverse Effect; or (b) change any of the following from what it is as of the Closing Date: (i) its name; (ii) its place of business or, if there is more than one principal place of business, its chief executive office; (iii) its mailing address; (iv) the location of the Collateral or its records concerning the Collateral; (v) the type of legal entity that it is; (vi) the organization identification number issued by its state of incorporation or organization, if it has one, or, if Borrower does not have an organizational identification number and later obtains one, Borrower will immediately notify Lender of such organizational identification number; or (vii) its state of incorporation or organization, without such Person, in each instance, giving at least 45 days' prior written notice thereof to Lender and taking all actions deemed necessary or appropriate by Lender to continuously protect and perfect Lender's Liens upon the Collateral.

5.2 Accounting Changes. Change its accounting treatment or reporting practices, except as required by GAAP or any Applicable Law, or change its fiscal year from that currently in effect.

5.3 Fundamental Changes. Dissolve or liquidate, or become a party to any merger or consolidation, or acquire by purchase, lease or otherwise, all or substantially all of the assets or capital stock of any Person; ***provided, however,*** that the foregoing shall not operate to prevent a transaction otherwise prohibited pursuant to this Section but that results in the Obligations being paid and performed in full; nor will Borrower make any changes in any of its business objectives, purposes, or operations that could reasonably be expected to adversely affect repayment of the Obligations or could reasonably be expected to have a Material Adverse Effect, or engage in any business other than that presently engaged in on the Closing Date.

5.4 Liens; Liabilities. Incur, maintain or otherwise suffer to exist (a) any Lien upon or with respect to any of the Collateral with priority over, or that are equal in rank or parri passu with Lender's Liens, or (b) any Indebtedness or Liabilities which have priority in payment over the Loan from Borrower's estate, other than the Carve Out.

5.5 Collateral Transfers; Assignments by Borrower; Prohibited Transactions; Fees. Without first obtaining the written consent of Lender, in Lender's sole and absolute discretion, do any of the following: (a) sell, lease, mortgage, hypothecate, license, grant a security interest in or otherwise transfer or encumber any of the Collateral to any Person, voluntarily or involuntarily, by operation of law, or otherwise, unless the proceeds received are used to prepay the Loan; (b) engage in or allow a Change of Control to occur; or (c) enter into any agreement to do, or which would or could result in, any of the foregoing.

5.6 Affiliate Transactions. Enter into any transactions between or among Borrower and any of its Affiliates unless the same are on terms substantially as advantageous to Borrower as those which could be obtained by Borrower in a comparable arm's length transaction with an independent third party.

5.7 Payments. Make any payment other than in accordance with the Budget.

5.8 Restrictions on Use of Loan Proceeds. Use any of the Loan proceeds or the Collateral for any purpose other than as set forth in the Budget.

5.9 ERISA. Engage in any transaction which would cause any obligation or action taken or to be taken hereunder or the exercise by Lender of any of Lender's rights under this Agreement or the other Loan Documents, to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA. Borrower further agrees to deliver to Lender such certifications or other evidence from time to time throughout the Loan Term, as requested by Lender, in Lender's sole discretion, that (a) Borrower is not and does not maintain an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a "governmental plan" within the meaning of Section 3(3) of ERISA; (b) Borrower is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (c) one or more of the following circumstances is true: (i) Equity interests in Borrower are publicly offered securities, within the meaning of 29 C.F.R. §2510.3-

101(b)(2); (ii) less than 25% of each outstanding class of equity interests in Borrower are held by “benefit plan investors” within the meaning of 29 C.F.R. §2510.3-101(f)(2); or (iii) Borrower qualifies as an “operating company” or a “real estate operating company” within the meaning of 29 C.F.R. §2510.3-101(c) or (e).

5.10 Covenant Against Indebtedness. Create, permit to be created or incur any Indebtedness, other than (a) the Obligations, (b) the Existing Indebtedness, and (c) the Permitted Indebtedness.

ARTICLE 6 SECURITY AGREEMENT

6.1 Grant of Security Interest. Borrower grants to Lender a senior first priority security interest and Lien in all and to of the Collateral.

6.2 Obligations Secured. This security interest and Lien is given to secure the payment and performance of the Obligations, including all indebtedness under this Agreement and the other Loan Documents.

6.3 Further Assurances. Borrower agrees, on request of Lender, to furnish to Lender such further information, to execute and deliver to Lender such documents and instruments (including the Mortgage and the Interim and Final Order) and to do such other acts and things as Lender may at any time reasonably request relating to the perfection or protection of the security interest in the Collateral created by this Agreement or for the purpose of carrying out the intent of this Agreement. Without limiting the foregoing, Borrower shall cooperate and do all acts deemed necessary or advisable by Lender to continue in Lender a first priority perfected security interest in the Collateral with the priority required by this Agreement. Borrower will warrant and defend the Collateral and Lender against all claims by all persons in connection with the Obligations.

6.4 Proceeds of Dispositions; Expenses. Borrower shall pay to Lender on demand any and all expenses, including reasonable attorneys’ fees and disbursements, incurred or paid by Lender in protecting, preserving or enforcing Lender’s rights and remedies under or in respect of any of the Obligations or any of the Collateral. After deducting all of the foregoing expenses, the residue of any proceeds of collection or sale or other disposition of the Collateral shall, to the extent actually received in cash, be applied to the payment of the Obligations in such order or preference as Lender may determine.

ARTICLE 7 DEFAULT AND REMEDIES

7.1 Defaults. The following constitute events of default (each, an “*Event of Default*”):

(a) Monetary Events of Default. If any Obligation for the payment of money is not paid within 5 business days of the due date therefor, or if no specific due date is specified, then within 10 business days of written demand from Lender.

(b) Misrepresentations. If any representation or warranty of Borrower contained in any of the Loan Documents was untrue or incorrect in any material respect when made or deemed made, or if Borrower renders any statement or account which is untrue, incorrect, or incomplete in any material respect.

(c) Non-Monetary Events of Default. If Borrower fails to observe or perform any of the covenants, conditions, or obligations of this Agreement or any of the other Loan Documents other than those referred to in the other subsections of this **Section 7.1** and such failure continues without being fully cured for more than 10 days following written notice to Borrower of such failure.

(d) Material Adverse Effect. The occurrence of any event that has had or could reasonably be expected to have a Material Adverse Effect.

(e) Any default under the Interim Order or the Final Order.

(f) Litigation. A final judgment or judgments for the postpetition payment of more than Twenty-Five Thousand Dollars (\$25,000) shall be rendered against Borrower, unless (i) the same shall be (A) fully covered by insurance and the issuer(s) of the applicable policies shall have acknowledged full coverage in writing within 30 days of judgment or (B) vacated, stayed, bonded, paid or discharged within a period of 45 days from the date of such judgment; or (ii) payment of such money judgment would not have a Material Adverse Effect.

(g) The filing of a chapter 11 plan or a motion to approve the sale of all or substantially all of the Borrower's assets or business that does not include as a condition thereof the repayment in full of all Obligations; or

(h) any material provision of any Loan Document or either of the Orders shall, for any reason, cease to be valid and binding on Borrower, or Borrower shall so assert in any pleading filed in any court; or

(i) an order of the Bankruptcy Court shall be entered appointing a trustee or an examiner with enlarged powers under Section 1104 of the Bankruptcy Code; or

(j) an order of the Bankruptcy Court shall be entered reversing, amending, supplementing, staying or otherwise modifying either of the Interim or Final Orders (without the prior written consent of Lender); or

(k) an order of the Bankruptcy Court shall be entered dismissing the Chapter 11 Case or converting the Chapter 11 Case to one under chapter 7 of the Bankruptcy Code; or

(l) the Bankruptcy Court shall authorize any Person (or Borrower shall seek authority) to (a) impose against Lender, or its claims any costs or expenses, whether of the type described in Section 506(c) of the Bankruptcy Code or otherwise, except for the Carve Out, or (b) to lend money to Borrower post-petition and such financing to be senior to or pari passu with the liens or claims of Lender hereunder; or

(m) the Bankruptcy Court shall enter an order or orders granting relief from the automatic stay applicable under Section 362 of the Bankruptcy Code to (x) the holder or holders of any security interest to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any assets of Borrower with a value greater than \$100,000 in the aggregate or (y) to the holders of any judgments in excess of \$100,000 in the aggregate against Borrower to permit enforcement thereof (including by way of injunction); or

(n) the Bankruptcy Court fails to enter the Final Order, in form and substance satisfactory to Lender by May 1, 2012; or

(o) the filing of any challenge by Borrower, the Creditors' Committee, or any party in interest to the validity, priority, or extent of any liens in favor of Lender or the validity and enforceability of the claims of Lender; or

(p) Other Defaults. (i) If there is a default under any of the other Loan Documents that is not cured within any applicable notice or cure period; (ii) if a default occurs in the payment or performance when due (after giving effect to any applicable notice and grace periods), whether by acceleration or otherwise, of: (A) any Indebtedness of Borrower or any other Borrower Party; or (B) any other material Contractual Obligation of Borrower or any other Borrower Party; (iii) there is a default which remains uncured after expiration of any applicable cure period.

(q) Other Events of Default. Any other event or circumstance designated elsewhere in this Agreement or any of the other Loan Documents as an Event of Default.

7.2 Remedies.

(a) Generally. Upon the occurrence and during the continuance of an Event of Default, the Obligations shall become due and payable without presentment, demand, protest or further notice of any kind. Borrower waives notice of intent to accelerate the Obligations and notice of acceleration. In addition, Lender may exercise, at its option, concurrently, successively or in any combination, all rights and remedies now or in the future available under any of the Loan Documents or at law or in equity, and none of such rights or remedies are exclusive. Neither the acceptance of this Agreement nor its enforcement shall prejudice or in any manner affect Lender's rights to realize upon or enforce its rights with respect to any security now or in the future held by Lender, and Lender is entitled to enforce this Agreement and its rights and remedies with respect to any such security in such order and manner as it may in its absolute discretion determine. No delay or omission on the part of Lender in exercising any remedy, right or option shall operate as a waiver of such remedy, right or option. In any event, a waiver on any one occasion shall not be construed as a waiver or bar to any such remedy, right or option on a future occasion.

(b) Collection. In addition to other customary remedies, upon the occurrence and during the continuance of an Event of Default and following the giving of five (5) Business Days' notice to Borrower, the Creditors' Committee, if any, and the United

States Trustee, Lender shall have relief from the automatic stay, without further order of or application to the Bankruptcy Court, and may foreclose on all or any portion of the Collateral, or otherwise exercise remedies against the Collateral permitted by applicable nonbankruptcy law. During such five (5) Business Day notice period, Borrower shall be entitled to an emergency hearing with the Bankruptcy Court for the sole purpose of contesting whether an Event of Default has occurred and is continuing. Unless during such period the Bankruptcy Court determines that an Event of Default has not occurred and is continuing, the automatic stay, as to Lender, shall be automatically terminated at the end of such notice period and without further notice or order.

7.3 Full Payment Required. The acceptance by Lender of any sum after the same is due shall not constitute a waiver of the right either to require prompt payment, when due, of all other sums hereby secured or to declare a subsequent Event of Default as herein provided. The acceptance by Lender of any sum in an amount less than the sum then due shall be deemed an acceptance on account only and upon condition that it shall not constitute a waiver of the obligation of Borrower to pay the entire sum then due, and failure of Borrower to pay such entire sum then due shall, at the election of Lender, constitute an immediate Event of Default without the necessity for any further notice, notwithstanding such acceptance of such amount on account. Consent by Lender to any action or inaction of Borrower which is subject to consent or approval of Lender under this Agreement or any of the other Loan Documents shall not be deemed a waiver of the right to require such consent or approval to future or successive actions or inactions.

7.4 Lender's Right to Cure. Lender may, at its option and without any obligation to do so, pay, perform, and discharge any and all amounts, costs, expenses and liabilities that are Borrower's responsibility under any of the Loan Documents if Borrower fails to timely pay, perform or discharge the same after 10 days prior written notice to Borrower of Lender's intent to take any such action, and all amounts reasonably expended by Lender in so doing shall become part of the Obligations, shall bear interest at the Default Rate until paid, shall be secured by the Liens in favor of Lender created in accordance with this Agreement, and shall be immediately due and payable by Borrower to Lender on demand.

7.5 Default Interest and Late Charges.

(a) Interest Rate after Event of Default. Effective immediately upon the occurrence of any Event of Default and, in each case, for as long as such Event of Default shall be continuing, the principal balance of the Loan shall bear interest at the Default Rate, commencing from the Closing Date and continuing until full payment of the Obligations. The imposition of the Default Rate shall not be deemed to be a penalty and constitutes bargained for compensation to Lender for the increased risks of a default and the additional costs and expenses of administering the Loan after default.

(b) Late Fees. If Lender does not receive from Borrower payment in full of any scheduled or other payment on or before the 5th day after the due date, then Borrower shall pay to Lender a late fee (the "**Late Fee**") equal to 5% of such past-due payment or installment. Such late fee will be immediately due and payable and is in

addition to any other costs, fees, and expenses that Borrower may owe as a result of the late payment.

(c) Interpretation. Neither the application of the Default Rate in the circumstances described in this Section nor the imposition of Late Fees shall be interpreted to extend any cure period set forth in this Agreement or any other Loan Document; to cure any default; or to otherwise limit or waive any of Lender's rights or remedies under this Agreement or any other Loan Documents.

7.6 Additional Remedies. In addition to all other rights and remedies, upon the occurrence and during the continuance of an Event of Default, Lender may, at its option, apply any of Borrower's funds in its possession to the outstanding Obligations, whether or not then due.

ARTICLE 8 GENERAL PROVISIONS

8.1 Modification of Agreement; Waivers. None of the terms and provisions of this Agreement or the other Loan Documents may be amended, extended, renewed, terminated, or supplemented nor shall Lender have waived any of its rights under any of the Loan Documents, unless Borrower obtains the prior written consent of Lender with respect to any such matter, which consent may be withheld or conditioned in the sole and absolute discretion of Lender, unless otherwise expressly provided in the Loan Documents. Waiver of any matter shall not be deemed a waiver of the same or any other matter on any future occasion.

8.2 Binding Effect. This Agreement and the other Loan Documents shall become effective when executed by Borrower and Lender.

8.3 Costs and Expenses: Additional Fees.

(a) Costs and Expenses. Any action taken by Borrower with respect to any Loan Document, even if required under any Loan Document or at Lender's request, shall be at Borrower's expense, and Lender shall not be required to reimburse Borrower therefor. In addition, Borrower agrees to pay Lender, or reimburse Lender within 30 days of written demand for, all actual out-of-pocket costs and expenses, including reasonable costs and expenses for legal counsel, incurred by Lender in connection with any of the following: (i) the investigation, interpretation or administration of any of the Loan Documents; (ii) the investigation, development, preparation, negotiation, execution, interpretation or administration of (A) any amendment, extension, renewal, termination, supplement, or waiver of any provision of any Loan Document; (B) any commitment or proposal letter for any such modification or termination; (C) any other document prepared in connection with any such modification or termination; (D) any release or substitution of Collateral; (E) any request for Lender consent or approval to any matter; or (F) the consummation and administration of any transaction contemplated in such modification or termination (including periodic audits in connection therewith and environmental audits and assessments); (iii) internal audit reviews, field examinations, and Collateral examinations; (iv) any refinancing or restructuring of the credit

arrangements provided pursuant to the Loan Documents in the nature of a “work-out”; (v) the enforcement or preservation of any right or remedy under any Loan Document, any other Obligation, with respect to the Collateral, or with respect to any other related right or remedy; (vi) the commencement, defense, conduct of, intervention in, or the taking of any other action with respect to, any proceeding (including any bankruptcy or insolvency proceeding) related to Borrower, any Loan Document, or any Obligation (or the response to and preparation for any subpoena or request for document production relating thereto); and (vii) any other matter stated in this Agreement or the other Loan Documents to be at the expense of, or to be reimbursed by, Borrower.

(b) Other Payment Obligations. The obligations of Borrower in this Section are in addition to the obligations to pay the amounts described elsewhere in the Loan Documents, including *Article 2*.

8.4 Brokers. Borrower represents and warrants to and covenants with Lender that Borrower has not dealt with any broker, agent, finder or other intermediary in connection with the transactions contemplated by this Agreement and the other Loan Documents.

8.5 Indemnities. Borrower agrees to indemnify, hold harmless and defend Lender and the other Lender Parties for, from and against all Liabilities that may be imposed on, incurred by or asserted against any such Lender Party in any matter relating to or arising out of, in connection with, or as a result of any of the following: (a) any Loan Document, any Obligation (or the repayment thereof), the use or intended use of the proceeds of any Loan or any securities filing of, or with respect to, Borrower; (b) the Collateral, whether relating to its original design or construction, latent defects, operation, alteration, maintenance, or use by Borrower, its employees, agents, contractors, invitees, or licensees; (c) any disclosures of any of the Borrower Information; (d) any misrepresentation or inaccuracy in any representation or warranty in any of the Loan Documents; (e) any breach or failure by Borrower to perform its respective obligations under the Loan Documents; (f) any actual or prospective investigation, litigation or other proceeding, whether or not brought by any Lender (and including attorneys’ fees in any case), whether or not any Lender is a party thereto, and whether or not based on any securities or commercial law or regulation or any other Applicable Law or theory thereof, including common law, equity, contract, tort or otherwise; (g) any action taken by Lender pursuant to a Disbursement Request; or (i) any other act, event or transaction related, contemplated in or attendant to any of the foregoing (collectively, the “**Indemnified Matters**”); **provided, however**, that Borrower shall not have any liability under this Section to any Lender Party with respect to any Indemnified Matter to the extent such liability has resulted primarily from the fraud or willful misconduct of such Lender Party, as determined by a court of competent jurisdiction in a final non-appealable judgment or order, nor shall any Lender Party have any liability with respect to any Indemnified Matter as to which such Lender Party would otherwise be liable, except to the extent such liability has resulted primarily from the gross negligence or willful misconduct of such Lender Party, as determined by a court of competent jurisdiction in a final non-appealable judgment or order. Furthermore, Borrower waives and agrees not to assert against any Lender Party, any right of contribution with respect to any Liabilities that may be imposed on, incurred by or asserted against any Lender Party.

8.6 Survival. Any indemnification or other protection provided to any Lender Party pursuant to any Loan Document and all representations and warranties made in any Loan Document shall survive the repayment in full in cash and performance of the Obligations and inure to the benefit of any Person that at any time held a right thereunder (as a Lender Party or otherwise) and, thereafter, its successors and permitted assigns.

8.7 Limitation of Liability for Certain Damages. In no event shall any Lender Party be liable to Borrower on any theory of liability for any special, indirect, consequential or punitive damages (including any loss of profits, business or anticipated savings). **BORROWER HEREBY WAIVES, RELEASES AND AGREES NOT TO SUE UPON ANY SUCH CLAIM FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN ITS FAVOR.**

8.8 Lender-Creditor Relationship. The relationship between Lender, on the one hand, and the Borrower, on the other hand, is solely that of lender and creditor. Lender has no fiduciary relationship or duty to Borrower arising out of or in connection with, and there is no agency, tenancy or joint venture relationship between Lender and any of the Borrower Parties by virtue of, any Loan Document or any transaction contemplated therein. None of the Loan Document provisions is intended, nor shall be deemed or construed, to make Lender in any way responsible for the debts, obligations or losses of Borrower. **BORROWER ACKNOWLEDGES, CONFIRMS AND AGREES THAT LENDER HAS NOT ACTED AS AN INVESTMENT, TAX OR FINANCIAL ADVISER TO BORROWER OR ANY OTHER BORROWER PARTY IN ANY RESPECT AND HAS NOT OTHERWISE PROVIDED BORROWER WITH ANY INVESTMENT, TAX, OR FINANCIAL ADVICE OF ANY NATURE WHATSOEVER.**

8.9 Marshalling; Payments Set Aside. Lender shall have no obligation to marshal any property in favor of Borrower or any other Person or against or in payment of any Obligation. To the extent that Lender receives a payment from Borrower pursuant to any Loan Document, from the proceeds of the Collateral, from the exercise of any enforcement action, or otherwise, and such payment is subsequently, in whole or in part, invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not occurred.

8.10 Notices.

(a) Addresses. All notices, demands, requests, directions and other communications (collectively, "**Notices**") required or expressly authorized to be made by the Loan Documents will be written and addressed (a) if to Borrower to the address set forth for Borrower on the Agreement signature page or such other address as shall be notified in writing to Lender after the date hereof; and (b) if to Lender, at the address set forth for Lender on the Agreement signature page or such other address as shall be notified in writing to Borrower after the date hereof. Notices may be given by hand delivery; or by overnight delivery service, freight prepaid.

(b) Effectiveness. Notices given as described above shall be effective upon the earlier of delivery, or one business day after depositing such notice with an overnight delivery service for guaranteed delivery the following day together with email notification at the time of depositing such notice in the overnight delivery service..

8.11 Governing Law. **THE LAWS OF THE STATE OF NEW YORK (WITHOUT GIVING EFFECT TO ITS CONFLICTS OF LAWS PRINCIPLES) SHALL GOVERN ALL MATTERS ARISING OUT OF, IN CONNECTION WITH OR RELATING TO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, INCLUDING ITS VALIDITY, INTERPRETATION, CONSTRUCTION, PERFORMANCE AND ENFORCEMENT.**

8.12 Jurisdiction and Service of Process.

(a) Submission to Jurisdiction. Any legal action or proceeding with respect to any Loan Document may be brought in the Bankruptcy Court and Borrower accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid courts; ***provided, however,*** that nothing in this Agreement shall limit or restrict the right of Lender to commence any proceeding in the federal or state courts located in the state in which the Collateral is located to the extent Lender deems such proceeding necessary or advisable to exercise remedies available under any Loan Document. Borrower hereby irrevocably waives any objection, including any objection to the laying of venue or based on the grounds of forum non conveniens, that any of them may now or hereafter have to the bringing of any such action or proceeding in such jurisdictions.

(b) Service of Process. Borrower hereby irrevocably waives personal service of any and all legal process, summons, notices and other documents and other service of process of any kind and consents to such service in any suit, action or proceeding brought in the United States with respect to or otherwise arising out of or in connection with any Loan Document by any means permitted by Applicable Law, including by the mailing thereof (by registered or certified mail, postage prepaid) to the address of Borrower specified on the signature page hereto (and shall be effective when such mailing shall be effective, as provided therein). Borrower agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this subsection shall affect the right of Lender to serve process in any other manner permitted by Applicable Law.

(c) Non-Exclusive Jurisdiction. Nothing contained in this ***Section 8.12*** shall affect the right of Lender to serve process in any other manner permitted by Applicable Law or commence legal proceedings or otherwise proceed against any Borrower Party in any other jurisdiction.

8.13 **WAIVER OF JURY TRIAL.** **LENDER AND BORROWER WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING ARISING OUT OF, IN CONNECTION WITH OR RELATING TO, THIS AGREEMENT, THE OTHER LOAN DOCUMENTS AND ANY OTHER TRANSACTION CONTEMPLATED**

HEREBY AND THEREBY. THIS WAIVER APPLIES TO ANY ACTION, SUIT OR PROCEEDING WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE.

8.14 Severability. Any provision of any Loan Document being held illegal, invalid or unenforceable in any jurisdiction shall not affect any part of such provision not held illegal, invalid or unenforceable, any other provision of any Loan Document or any part of such provision in any other jurisdiction.

8.15 Execution in Counterparts. This Agreement and the other Loan Documents may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart. Delivery of an executed signature page of this Agreement or such other Loan Document by facsimile transmission or electronically in pdf format shall be as effective as delivery of a manually executed counterpart thereof.

8.16 Entire Agreement. The Loan Documents embody the entire agreement of the parties and supersede all prior agreements and understandings relating to the subject matter thereof. The parties acknowledge and affirm that they did not rely on any statement, oral or written, not contained in the Loan Documents in making their respective decisions to enter into the agreements expressed in the Loan Documents.

8.17 Use of Name. Borrower agree not to issue any press release or other public disclosure using the name, logo or otherwise referring to Lender, any of Lender's Affiliates, the Loan Documents, or any transaction contemplated thereby, without the prior consent of Lender, in Lender's sole discretion, except to the extent required to do so under Applicable Law and then only after consulting with Lender prior thereto.

8.18 Time of the Essence; Time Periods. Time is of the essence for performance of the Obligations under each of the Loan Documents. Unless otherwise expressly provided for in such Loan Document, the time for performance of any obligation or taking any action under such Loan Document shall be deemed to expire at 5:00 o'clock p.m. on the last day of the applicable time period provided for in such Loan Document. If the time for the performance of any obligation or taking any action under this Agreement or such other Loan Document expires on a day other than a Business Day, the time for performance or taking such action shall be extended to the next succeeding Business Day. Unless otherwise expressly stated, references in any of the Loan Documents to a particular time of day shall be to the local time in New York, New York, and references to "month" shall be a reference to calendar months.

8.19 Authorization. Borrower authorizes its banks, creditors (including trade creditors), vendors, suppliers, and customers to disclose and release to the Lender any and all information they may request from time to time regarding (a) any depository, loan or other credit account of Borrower; and (b) the affairs and financial condition of Borrower. Borrower also expressly authorizes the Lender, from time to time while any of the Obligations are outstanding, including during any period when a Default exists, to perform background, credit, judgment, lien and other checks, searches, inspections and investigations and to obtain credit reports and asset

reports with respect to Borrower and to answer questions about its credit experience with Borrower.

8.20 Corrections and Insertions. Lender may correct patent errors in the Loan Documents and fill in all blanks in this Agreement and the other Loan Documents consistent with the agreement of the parties.

8.21 Third-Party Consultants. Upon the occurrence of a Default, Lender may hire such third-party consultants as it deems necessary, the costs of which shall be paid by Borrower, to provide services to Lender in connection with its efforts to collect the Obligations and sell or otherwise dispose of the Collateral. Borrower acknowledges that (i) each third party consultant has been retained by Lender to act as a consultant only to Lender, (ii) each third party consultant shall in no event or under any circumstances have any power or authority to make any decision or give any approval or consent or to do any other thing which is binding upon Lender and any such purported decision, approval, consent, act or thing by such third party consultants on behalf of Lender shall be void and of no force or effect, (iii) that notwithstanding the recommendations of any consultant, Lender reserves the right to make any and all decisions required to be made by Lender under this Agreement and to give or refrain from giving any and all consents or approvals required to be given by Lender under this Agreement and to accept or not accept any matter or thing bound or limited in any manner or under any circumstance whatsoever by any opinion expressed or not expressed, or a device given or not given, or information, certificate or report provided or not provided by such third party consultants to Lender with respect thereto, (iv) Lender reserves the right in Lender's sole and absolute discretion to disregard or disagree, in whole or in part, with any opinion expressed, advice given or information, certificate or report furnished or provided by each third party consultant to Lender or any other Person, and (v) Lender reserves the right in Lender's sole and absolute discretion to replace each third party consultant with another consultant at any time and without prior notice to or approval by Borrower.

8.22 Transaction Characterization. The Loan Documents are a contract to extend a financial accommodation (as such term is used in the Bankruptcy Code) for the benefit of Borrower. The Loan Documents evidence one unitary, non-severable transaction pertaining to the Collateral.

8.23 Interpretation.

(a) Certain Terms. Except as expressly set forth in any Loan Document, all accounting terms not specifically defined in the Loan Documents shall be construed in accordance with GAAP (except for the term "*property*", which shall be interpreted as broadly as possible, including, in any case, cash, securities, other assets, rights under Contractual Obligations and Permits and any right or interest in any real or personal property). The terms "*herein*", "*hereof*" and similar terms refer to the Loan Document in which they appear as a whole. In the computation of periods of time from a specified date to a later specified date in any Loan Document, the term "*from*" means "*from and including*" and the words "*to*" and "*until*" each mean "*to but excluding*" and the word "*through*" means "*to and including*." The term "*including*" means "*including without limitation*." The term "*documents*" means all writings, however evidenced and whether

in physical or electronic form, including all documents, instruments, agreements, notices, demands, certificates, forms, Financial Statements, opinions and reports. The term “*incur*” means incur, create, make, issue, assume or otherwise become directly or indirectly liable in respect of or responsible for, in each case whether directly or indirectly, and the terms “*incurrence*” and “*incurred*” and similar derivatives shall have correlative meanings. The term “*sole*” means “*sole and absolute*.”

(b) Certain References. Unless otherwise expressly indicated, (i) references in this Agreement and any of the other Loan Documents to an “Exhibit,” “Article,” “Section,” “Paragraph,” “Schedule,” “subsection,” or “clause” refer to the appropriate Exhibit or Schedule to, or Article, Section, Paragraph, subsection or clause in, such Loan Document; and (ii) references in any Loan Document, to (A) any agreement or instrument include all exhibits, schedules, appendixes and annexes to such agreement or instrument and, unless the consent of Lender is required therefor but was not obtained, any amendment, restatement, or supplement to any term of such agreement or instrument from time to time; and (B) any statute, law, or ordinance or any Governmental Authority regulation or rule shall be to such statute, law, ordinance, regulation or rule, as modified from time to time and to any successor to any such statute, law, ordinance, regulation or rule, in each case as in effect at the time any such reference is operative. Titles of Articles, Sections, Paragraphs, Schedules, Exhibits and other divisions contained in any Loan Document are without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto. Unless otherwise expressly indicated, the meaning of any term defined (including by reference) in any Loan Document shall be equally applicable to both the singular and plural forms of such term.

8.24 Construction. This Agreement and the other Loan Documents have been entered into by parties who are experienced in sophisticated and complex matters similar to the transactions contemplated by this Agreement and they are being entered into by the parties in reliance upon the economic and legal bargains contained in this Agreement and the other Loan Documents and shall be interpreted and construed in a fair and impartial manner without regard to such factors as the party that prepared the instrument, the relative bargaining powers of the parties or the domicile of any party, but shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties to this Agreement.

8.25 Further Assurances. At any time and from time to time, upon the written request of Lender and at the sole expense of Borrower, Borrower shall promptly and duly execute and deliver any and all such further instruments and documents and take such further action as Lender may reasonably deem necessary or advisable (a) to obtain the full benefits of this Agreement and the other Loan Documents; (b) to protect, preserve, maintain and enforce Lender’s rights in (and the priority of Lender’s Lien on) any Collateral; or (c) to enable Lender to exercise all or any of the rights, remedies and powers granted in this Agreement or in any other Loan Document.

[SIGNATURE PAGE FOLLOWS]

EXECUTED effective as of the date first set forth above.

BORROWER:

DAYTOP VILLAGE FOUNDATION, INC.

By: _____
Name: _____
Title: _____

Principal Place of Business and Address for Notices:

[_____]

LENDER:

ISLAND FUNDING II

By: _____
Name: _____
Title: _____

Principal Place of Business and Address for Notices:

[_____]

EXHIBIT A

Collateral

OWNED PREMISES

#	Debtor	Address	County	Owned or Leased	Expiration Date	Monthly Base Rent	Remaining Lease Term
1.	DAYTOP VILLAGE FOUNDATION, INC.	401 STATE STREET, BROOKLYN, NY 11217	Kings	Owned			
2.	omitted						
3.	DAYTOP VILLAGE FOUNDATION, INC.	316 BEACH 65 TH STREET, FAR ROCKAWAY, NY 11692	Queens	Owned			
4.	DAYTOP VILLAGE FOUNDATION, INC.	54-56 WEST 40 TH STREET, NEW YORK, NY 10018	New York	Owned			
5.	omitted						
6.	omitted						
7.	omitted						

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8.	DAYTOP VILLAGE FOUNDATION, INC.	2614-16 HALPERIN AVENUE, BRONX, NY 10461	Bronx	Owned			
9.	DAYTOP VILLAGE FOUNDATION, INC.	2618 HALPERIN AVENUE, BRONX, NY 10461	Bronx	Owned			
10.	DAYTOP VILLAGE FOUNDATION, INC.	1915 FOREST AVENUE, STATEN ISLAND, NY 10303	Richmond	Owned			
11.	DAYTOP VILLAGE FOUNDATION, INC.	246 N. CENTRAL PARK AVENUE, HARTSDALE, NY 10530	Westchester	Owned			
12.	DAYTOP VILLAGE FOUNDATION, INC.	620 ROUTE 303, BLAUVELT, NY 10913	Rockland	Owned			
13.	DAYTOP VILLAGE FOUNDATION, INC.	2075 NEW YORK AVENUE, HUNTINGTON STATION, NY 11746	Suffolk	Owned			
14.	DAYTOP VILLAGE FOUNDATION, INC.	214/216 FOX HOLLOW ROAD, RHINEBACK, NY 12572 (BROOKSIDE BUILDING)	Dutchess	Owned			
15.	DAYTOP VILLAGE FOUNDATION, INC.	214/216 FOX HOLLOW ROAD, RHINEBACK, NY 12572 (BROOKSIDE GARAGE BUILDING)	Dutchess	Owned			
16.	DAYTOP VILLAGE FOUNDATION, INC.	214/216 FOX HOLLOW ROAD, RHINEBACK, NY 12572 (STONE COTTAGE BUILDING)	Dutchess	Owned			
17.	DAYTOP VILLAGE FOUNDATION, INC.	214/216 FOX HOLLOW ROAD, RHINEBACK, NY 12572 (CANTEEN BUILDING)	Dutchess	Owned			
18.	DAYTOP VILLAGE FOUNDATION, INC.	214/216 FOX HOLLOW ROAD, RHINEBACK, NY 12572 (COMMUNITY HOUSE BUILDING)	Dutchess	Owned			

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19.	DAYTOP VILLAGE FOUNDATION, INC	214/216 FOX HOLLOW ROAD, RHINEBACK, NY 12572 (ELMWOOD BUILDING)	Dutchess	Owned			
20.	DAYTOP VILLAGE FOUNDATION, INC	214/216 FOX HOLLOW ROAD, RHINEBACK, NY 12572 (CRYSTALS HOUSE)	Dutchess	Owned			
21.	DAYTOP VILLAGE FOUNDATION, INC	214/216 FOX HOLLOW ROAD, RHINEBACK, NY 12572 (FIRE PUMP HOUSE BLDG)	Dutchess	Owned			
22.	DAYTOP VILLAGE FOUNDATION, INC	214/216 FOX HOLLOW ROAD, RHINEBACK, NY 12572 (VOC ED)	Dutchess	Owned			
23.	DAYTOP VILLAGE FOUNDATION, INC	214/216 FOX HOLLOW ROAD, RHINEBACK, NY 12572 (QUANSET HUT BUILDING)	Dutchess	Owned			
24.	DAYTOP VILLAGE FOUNDATION, INC	214/216 FOX HOLLOW ROAD, RHINEBACK, NY 12572 (POOL HOUSE BUILDING)	Dutchess	Owned			
25.	DAYTOP VILLAGE FOUNDATION, INC	214/216 FOX HOLLOW ROAD, RHINEBACK, NY 12572 (WWTP BUILDING)	Dutchess	Owned			
26.	DAYTOP VILLAGE FOUNDATION, INC	248 FOX HOLLOW ROAD, RHINEBACK, NY 12572 (MANOR HOUSE BUILDING)	Dutchess	Owned			
27.	DAYTOP VILLAGE FOUNDATION, INC	248 FOX HOLLOW ROAD, RHINEBACK, NY 12572 (CARRIAGE HOUSE BUILDING)	Dutchess	Owned			
28.	DAYTOP VILLAGE FOUNDATION, INC	248 FOX HOLLOW ROAD, RHINEBACK, NY 12572 (GARAGE BUILDING)	Dutchess	Owned			
29.	DAYTOP VILLAGE FOUNDATION, INC	248 FOX HOLLOW ROAD, RHINEBACK, NY 12572 (GATE HOUSE BUILDING)	Dutchess	Owned			

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30.	DAYTOP VILLAGE FOUNDATION, INC	248 FOX HOLLOW ROAD, RHINEBACK, NY 12572 (GATE HOUSE GARAGE BLDG)	Dutchess	Owned			
31.	DAYTOP VILLAGE FOUNDATION, INC	88 FOX HOLLOW ROAD, RHINEBACK, NY 12572 (PROGRAM BUILDING)	Dutchess	Owned			
32.	DAYTOP VILLAGE FOUNDATION, INC	88 FOX HOLLOW ROAD, RHINEBACK, NY 12572 (PROGRAM ANNEX BUILDING)	Dutchess	Owned			
33.	DAYTOP VILLAGE FOUNDATION, INC	88 FOX HOLLOW ROAD, RHINEBACK, NY 12572 (NORTHWOOD DORM BUILDING)	Dutchess	Owned			
34.	DAYTOP VILLAGE FOUNDATION, INC	88 FOX HOLLOW ROAD, RHINEBACK, NY 12572 (KITCHEN/DINING BUILDING)	Dutchess	Owned			
35.	DAYTOP VILLAGE FOUNDATION, INC	88 FOX HOLLOW ROAD, RHINEBACK, NY 12572 (LIGHTHOUSE BUILDING)	Dutchess	Owned			
36.	DAYTOP VILLAGE FOUNDATION, INC	88 FOX HOLLOW ROAD, RHINEBACK, NY 12572 (ART FEELINGS BUILDING)	Dutchess	Owned			
37.	DAYTOP VILLAGE FOUNDATION, INC	88 FOX HOLLOW ROAD, RHINEBACK, NY 12572 (OASAS BUILDING)	Dutchess	Owned			
38.	DAYTOP VILLAGE FOUNDATION, INC.	44 SPRINGWOOD DRIVE RHINEBACK, NY 12572 (OCTAGON DORM BUILDING)	Dutchess	Owned			
39.	DAYTOP VILLAGE FOUNDATION, INC.	44 SPRINGWOOD DRIVE, RHINEBACK, NY 12572 (GATE HOUSE BUILDING)	Dutchess	Owned			
40.	DAYTOP VILLAGE FOUNDATION, INC.	44 SPRINGWOOD DRIVE, RHINEBACK, NY 12572 (MILLER HALL BUILDING)	Dutchess	Owned			

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41.	DAYTOP VILLAGE FOUNDATION, INC.	44 SPRINGWOOD DRIVE, RHINEBACK, NY 12572 (MEDICAL/DENTAL BUILDING)	Dutchess	Owned			
42.	DAYTOP VILLAGE FOUNDATION, INC.	44 SPRINGWOOD DRIVE, RHINEBACK, NY 12572 (COLLINWOOD BUILDING)	Dutchess	Owned			
43.	DAYTOP VILLAGE FOUNDATION, INC.	44 SPRINGWOOD DRIVE, RHINEBACK, NY 12572 (METRODOME BUILDING)	Dutchess	Owned			
44.	DAYTOP VILLAGE FOUNDATION, INC.	44 SPRINGWOOD DRIVE, RHINEBACK, NY 12572 (WOOD SHOP BUILDING)	Dutchess	Owned			
45.	DAYTOP VILLAGE FOUNDATION, INC	44 SPRINGWOOD DRIVE, RHINEBACK, NY 12572 (WWTP BUILDING)	Dutchess	Owned			
46.	DAYTOP VILLAGE FOUNDATION, INC	55 RAMBLE HILL ROAD, MILLBROOK, NY 12545 (MAIN HOUSE)	Dutchess	Owned			
47.	DAYTOP VILLAGE FOUNDATION, INC	55 RAMBLE HILL ROAD, MILLBROOK, NY 12545 (MALE DORMS)	Dutchess	Owned			
48.	DAYTOP VILLAGE FOUNDATION, INC	55 RAMBLE HILL ROAD, MILLBROOK, NY 12545 (SCHOOL HOUSE)	Dutchess	Owned			
49.	DAYTOP VILLAGE FOUNDATION, INC	55 RAMBLE HILL ROAD, MILLBROOK, NY 12545 (WAREHOUSE)	Dutchess	Owned			
50.	DAYTOP VILLAGE FOUNDATION, INC	55 RAMBLE HILL ROAD, MILLBROOK, NY 12545 (WWTP)	Dutchess	Owned			
51.	DAYTOP VILLAGE FOUNDATION, INC	55 RAMBLE HILL ROAD, MILLBROOK, NY 12545 (RESEVOIR)	Dutchess	Owned			

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52.	DAYTOP VILLAGE FOUNDATION, INC.	4504 ROUTE 55, SWAN LAKE, NY 12783 (DORM BUILDING 1)	Sullivan	Owned			
53.	DAYTOP VILLAGE FOUNDATION, INC.	4504 ROUTE 55, SWAN LAKE, NY 12783 (SPIRITUAL CENTER)	Sullivan	Owned			
54.	DAYTOP VILLAGE FOUNDATION, INC.	4504 ROUTE 55, SWAN LAKE, NY 12783 (DORM BUILDING 2)	Sullivan	Owned			
55.	DAYTOP VILLAGE FOUNDATION, INC.	4504 ROUTE 55, SWAN LAKE, NY 12783 (GYMNASIUM)	Sullivan	Owned			
56.	DAYTOP VILLAGE FOUNDATION, INC.	4504 ROUTE 55, SWAN LAKE, NY 12783 (DORM BUILDING 3)	Sullivan	Owned			
57.	DAYTOP VILLAGE FOUNDATION, INC.	4504 ROUTE 55, SWAN LAKE, NY 12783 (BOCES BUILDING)	Sullivan	Owned			
58.	DAYTOP VILLAGE FOUNDATION, INC.	4504 ROUTE 55, SWAN LAKE, NY 12783 (STORAGE/INT'L BUILDING)	Sullivan	Owned			
59.	DAYTOP VILLAGE FOUNDATION, INC.	4504 ROUTE 55, SWAN LAKE, NY 12783 (MCCOYD HOUSE)	Sullivan	Owned			
60.	DAYTOP VILLAGE FOUNDATION, INC	4504 ROUTE 55, SWAN LAKE, NY 12783 (WAREHOUSE/MAINTENANCE)	Sullivan	Owned			
61.	DAYTOP VILLAGE FOUNDATION, INC	4504 ROUTE 55, SWAN LAKE, NY 12783 (WOOD SHOP)	Sullivan	Owned			
62.	DAYTOP VILLAGE FOUNDATION, INC	4504 ROUTE 55, SWAN LAKE, NY 12783 (GREENHOUSE)	Sullivan	Owned			

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63.	DAYTOP VILLAGE FOUNDATION, INC	4504 ROUTE 55, SWAN LAKE, NY 12783 (WAREHOUSE ANNEX)	Sullivan	Owned			
64.	DAYTOP VILLAGE FOUNDATION, INC	4504 ROUTE 55, SWAN LAKE, NY 12783 (MAIN BUILDING)	Sullivan	Owned			
65.	DAYTOP VILLAGE FOUNDATION, INC	4504 ROUTE 55, SWAN LAKE, NY 12783 (COUNSELING BUILDING)	Sullivan	Owned			
66.	DAYTOP VILLAGE FOUNDATION, INC	4504 ROUTE 55, SWAN LAKE, NY 12783 (LEE HOUSE)	Sullivan	Owned			
67.	DAYTOP VILLAGE FOUNDATION, INC	4504 ROUTE 55, SWAN LAKE, NY 12783 (WWTP BUILDING)	Sullivan	Owned			
68.	DAYTOP VILLAGE FOUNDATION, INC	437 PARKSVILLE ROAD, PARKSVILLE, NY 12768 (AMBIANCE DORM BUILDING)	Sullivan	Owned			
69.	DAYTOP VILLAGE FOUNDATION, INC	437 PARKSVILLE ROAD, PARKSVILLE, NY 12768 (MAIN BUILDING)	Sullivan	Owned			
70.	DAYTOP VILLAGE FOUNDATION, INC	437 PARKSVILLE ROAD, PARKSVILLE, NY 12768 (SCHOOLHOUSE BUILDING)	Sullivan	Owned			
71.	DAYTOP VILLAGE FOUNDATION, INC	437 PARKSVILLE ROAD, PARKSVILLE, NY 12768 (TRAILER 1)	Sullivan	Owned			
72.	DAYTOP VILLAGE FOUNDATION, INC	437 PARKSVILLE ROAD, PARKSVILLE, NY 12768 (TRAILER 2)	Sullivan	Owned			
73.	DAYTOP VILLAGE FOUNDATION, INC	437 PARKSVILLE ROAD, PARKSVILLE, NY 12768 (GYMNASIUM)	Sullivan	Owned			