

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:

WALKER COUNTY HOSPITAL CORPORATION,
d/b/a HUNTSVILLE MEMORIAL HOSPITAL,

Debtor and Debtor in Possession.¹

Chapter 11

Case No. 19-36300

(Emergency Hearing Requested)

**DEBTOR'S EMERGENCY MOTION FOR ENTRY OF
INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTOR TO (A) OBTAIN
POSTPETITION SECURED FINANCING AND (B) UTILIZE CASH COLLATERAL,
(II) GRANTING LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS,
(III) GRANTING ADEQUATE PROTECTION, (IV) MODIFYING THE AUTOMATIC STAY,
AND (V) SCHEDULING A FINAL HEARING**

EMERGENCY RELIEF HAS BEEN REQUESTED. A HEARING WILL BE CONDUCTED ON THIS MATTER ON NOVEMBER 12, 2019 AT 2:00 PM IN COURTROOM 400, 4th FLOOR, UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF TEXAS, 515 RUSK STREET, HOUSTON, TEXAS 77002. IF YOU OBJECT TO THE RELIEF REQUESTED OR YOU BELIEVE THAT EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU MUST EITHER APPEAR AT THE HEARING OR FILE A WRITTEN RESPONSE PRIOR TO THE HEARING. OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED. RELIEF IS REQUESTED NOT LATER THAN NOVEMBER 12, 2019.

Walker County Hospital Corporation, d/b/a Huntsville Memorial Hospital (the "**Debtor**"), by and through its undersigned proposed counsel, files this motion (this "**Motion**"), pursuant to sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), and 507 of title 11 of the United States Code (the "**Bankruptcy Code**"), Rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Rule 4001-1(b) of the Bankruptcy Local Rules for the Southern District of Texas (the "**Local Rules**"), seeking entry of interim and final orders (i) authorizing the Debtor to obtain access to the DIP Facility,² enter into

¹ The last four digits of the Debtor's federal tax identification number are: 0960. The location of the Debtor's service address is: P.O. Box 4001, Huntsville, TX 77342-4001, Attn: Steven Smith.

² Capitalized terms used but not defined herein have the meanings given to such terms in the DIP Credit Agreement (as defined herein).

that certain Debtor-in-Possession Revolving Credit and Security Agreement, attached to the Interim Order as **Exhibit 1** (the “*DIP Credit Agreement*”), (ii) grant the DIP Liens and provide the DIP Superpriority Claims on account of the obligations incurred by the Debtor under the DIP Facility, (iii) authorizing the Debtor to continue to use Cash Collateral, including the Prepetition Lender’s Cash Collateral, in accordance with the Budget, (iv) granting adequate protection to the Prepetition Lender, (v) modifying the automatic stay to the extent necessary to effectuate the terms and conditions of the Interim Order, the Final Order (as defined herein), and the DIP Financing Documents, (vi) scheduling a final hearing, and (vii) granting related relief. In support of this motion, the Debtor relies upon the *Declaration of Steven L. Smith in Support of First Day Motions* (the “*First Day Declaration*”) and respectfully states as follows:

PRELIMINARY STATEMENT

1. The DIP Facility is critical to allow the Debtor to continue its operations, pay ordinary course expenses, care for its patients, and successfully run a sale process in this Chapter 11 Case (as defined herein). Without the DIP Facility, the Debtor’s liquidity constraints would force it to close its doors, to the detriment of both creditors in this Chapter 11 Case as well as patients and the larger Huntsville community, which relies upon the Debtor for medical care.

2. In anticipation of this Chapter 11 Case, the Debtor commenced discussions with both the Prepetition Lender and other potential third-party financing sources regarding the terms of a potential debtor-in-possession financing facility. The Debtor received proposals from four potential financing sources, including the Prepetition Lender. After examining all proposals, the Debtor and its advisors determined that the most prudent course of action was to obtain the DIP Facility from the Prepetition Lender, which will give the Debtor sufficient liquidity to bridge to a sale of its assets. In addition, the Debtor determined that the DIP Facility had the least documentation and execution risk of any proposal that it received and allows the Debtor to use the

Prepetition Lender's cash collateral on a consensual basis. Importantly, the DIP Lender has agreed through the DIP Facility to remove certain reserves on the Debtor's borrowing base that will result in \$1.5 million of previously unavailable revolving loan availability under the Prepetition Credit Facility. Accordingly, the Debtor submits that the DIP Facility should be approved, allowing the Debtor to access sufficient liquidity to finance this Chapter 11 Case and consummate a successful sale process.

JURISDICTION AND VENUE

3. The United States Bankruptcy Court for the Southern District of Texas (the "***Court***") has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of Texas*, dated May 24, 2012 (the "***Amended Standing Order***"). This is a core proceeding under 28 U.S.C. § 157(b)(2). The Debtor confirms its consent, pursuant to Bankruptcy Rule 7008 and Local Rule 7008-1 of the of the Bankruptcy Local Rules for the United States Bankruptcy Court for the Southern District of Texas (the "***Local Rules***"), to the entry of a final order by the Court in connection with this Application to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

4. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

5. On the date hereof (the "***Petition Date***"), the Debtor filed a voluntary petition for relief in this Court, pursuant to chapter 11 of the Bankruptcy Code, commencing this case (the "***Chapter 11 Case***").

6. The Debtor continues to operate its business as a debtor in possession, pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

7. No request for the appointment of a trustee or examiner has been made in this Chapter 11 Case, nor have any committees been appointed or designated.

8. A description of the Debtor's business, the reasons for commencing this Chapter 11 Case, the relief sought from this Court, and the facts and circumstances supporting this motion are set forth in the First Day Declaration.

REQUEST FOR EMERGENCY CONSIDERATION

9. Pursuant to Bankruptcy Local Rule 9013-1(i) and Bankruptcy Rule 6003, the Debtor requests emergency consideration of this Motion. Bankruptcy Rule 6003 provides that the relief requested in this Motion may be granted if the "relief is necessary to avoid immediate and irreparable harm." Fed. R. Bankr. P. 6003. As discussed in detail below and in the First Day Declaration, any delay in granting the relief requested could hinder the Debtor's operations and cause immediate and irreparable harm. As such, the Debtor believes that emergency consideration is necessary and requests that this Motion be heard at the Debtor's first day hearings.

RELIEF REQUESTED

10. By this Motion, the Debtor seeks entry of an interim order, substantially in the form attached to this motion as **Exhibit A** (the "***Interim Order***") and a final order (the "***Final Order***")³ and, with the Interim Order, collectively, the "***DIP Orders***"):

(i) authorizing the Debtor to obtain access to the DIP Facility and enter into the DIP Credit Agreement;

³ The Debtor will file a form of Final Order prior to the Final Hearing.
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- (ii) granting the DIP Liens and provide the DIP Superpriority Claims on account of the obligations incurred by the Debtor under the DIP Facility;
- (iii) authorizing the Debtor to continue to use Cash Collateral, including the Prepetition Lender’s Cash Collateral, in accordance with the Budget;
- (iv) granting adequate protection to the Prepetition Lender;
- (v) modifying the automatic stay to the extent necessary to effectuate the terms and conditions of the Interim Order, the Final Order, and the DIP Financing Documents;
- (v) scheduling a final hearing; and
- (vi) granting related relief.

**CONCISE STATEMENT PURSUANT TO RULE 4001 OF THE BANKRUPTCY RULES
AND THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF TEXAS
PROCEDURES FOR COMPLEX CHAPTER 11 CASES**

11. In accordance with Bankruptcy Rule 4001, as incorporated by Local Rule 1075, the chart below summarizes material terms of the Interim Order and DIP Credit Agreement:

Summary of Material Terms	
<p>DIP Credit Agreement Parties</p> <p>DIP Credit Agreement, Preamble</p>	<p>Borrowers: Walker County Hospital Corporation and any additional borrower that may hereafter be added to the DIP Credit Agreement with the approval of this Court</p> <p>Agent: MidCap Financial Trust</p> <p>Lenders: MidCap Financial Trust and the financial institutions or other entities from time to time parties to the DIP Credit Agreement</p>
<p>DIP Facility</p> <p>DIP Credit Agreement, Recitals and Annex A</p> <p>Interim Order, Preamble, ¶ 2(b)</p>	<p>A \$5,000,000 revolving credit facility on an interim and final basis.</p>
<p>Interest Rate</p> <p>DIP Credit Agreement, § 2.2(a)</p>	<p>From and following the Closing Date, except as expressly set forth in the DIP Credit Agreement, Loans and the other Obligations shall bear interest at the sum of the LIBOR Rate <i>plus</i> the Applicable Margin (5.0%). Interest on the Loans shall be paid in arrears on the first (1st) day of each month and on the maturity of such Loans, whether by acceleration or otherwise. The LIBOR Rate is calculated by reference to the published 30-day LIBOR Rate, subject to a 1.0% floor. Interest on all other Obligations shall be payable upon demand. For purposes of calculating interest, all funds transferred to the Payment Account for application</p>

	<p>to any Revolving Loans shall be subject to a three Business Day clearance period and all interest accruing on such funds during such clearance period shall accrue for the benefit of Agent, and not for the benefit of the Lenders. Subject to the terms of the DIP Orders, at the election of Agent or Required Lenders, after the occurrence of an Event of Default and for so long as it continues, the Loans and other Obligations shall bear interest at rates that are five percent (5.0%) per annum in excess of the rates otherwise payable under the DIP Credit Agreement; <i>provided</i>, however, that in the case of any of the Events of Default specified in subsections (t) through (nn) of Section 10.1, such default rates shall apply immediately and automatically without the need for any election or action of any kind on the part of Agent or any Lender.</p>
<p>Fees</p> <p>DIP Credit Agreement, § 2.2(b-i)</p>	<p>Unused Line Fee: an amount equal to (i) (A) the Revolving Loan Commitment <i>minus</i> (B) the average daily balance of the sum of the Revolving Loan Outstandings during the preceding month, <i>multiplied by</i> (ii) 0.50% per annum</p> <p>Collateral Fee: equal to the product of (a) the average end-of-day principal balance of Revolving Loans outstanding during the immediately preceding month, multiplied by (b) 0.50% per annum</p> <p>Origination Fee: an amount equal to (i) the Revolving Loan Commitment, multiplied by (ii) 1.5%</p> <p>Deferred Revolving Loan Origination Fee: If Lenders’ funding obligations in respect of the Revolving Loan Commitment under the DIP Credit Agreement terminate for any reason (whether by voluntary termination by Borrowers, by reason of the occurrence of an Event of Default or otherwise) prior to the Commitment Expiry Date, Borrowers shall pay to Agent, for the benefit of all Lenders committed to make Revolving Loans on the Closing Date, a fee as compensation for the costs of such Lenders being prepared to make funds available to Borrowers under the DIP Credit Agreement, equal to an amount determined by multiplying the Revolving Loan Commitment by 1.5%.</p> <p>The Debtor also generally agrees to pay certain documentation, approval, audit, and wire fees and expenses as well as late charges equal to 5.0% of each payment delinquent by more than five (5) days.</p>
<p>Use of Proceeds</p> <p>DIP Credit Agreement, § 4.7</p> <p>Interim Order, ¶ G</p>	<p>Borrowers shall use the proceeds of Revolving Loans solely in accordance with the DIP Budget: (i) to fund Postpetition operating expenses of the Borrowers, (ii) to pay professional fees and expenses as authorized by order of the Bankruptcy Court; (iii) to pay certain other costs and expenses of administration of the Bankruptcy Case, (iv) for working capital and other general corporate purposes of Borrowers not in contravention of any requirement of Law, the Financing Documents or the DIP Budget, (v) to pay interest, expenses, fees and other amounts hereunder and under the other Financing Documents and (vi) to provide certain adequate protection payments to the Prepetition Secured Parties, which may include the payment, when due or as soon as practicable thereafter, of all reasonable and documented costs, fees and expenses, incurred either prior to or after the Closing Date, of the Prepetition Agent and its counsel or with respect to the Prepetition Credit Agreement other professionals, and the payment of non-default interest as and when due.</p>
<p>Security and DIP Collateral</p> <p>DIP Credit Agreement, §§ 4.16(a)(ii-iii), 9.1, Sched. 9.1</p> <p>Interim Order, ¶2(d-e)</p>	<p>A first priority priming perfected security interest in the DIP Collateral and all unencumbered tangible and intangible property of such Borrower of the type that is Collateral, including any such property that is subject to valid and perfected Liens in existence on the Petition Date, which Liens are thereafter released or otherwise extinguished in connection with the satisfaction of the obligations secured by such Liens, in each case subject to the Carve-Out. The DIP Collateral consists of all of each Borrower’s right, title and interest in and to the following, whether now owned or hereafter created, acquired or arising, and all proceeds and products of the following: (a) all Accounts; (b) to the maximum extent permitted by law, all deposit accounts of such Borrower, including, without limitation, each Lockbox and each Lockbox Account, and amounts held therein; (c) all money and cash; (d) all books and records, in whatever form, relating to items (a) through (c) above; (e) all general intangibles</p>

	(as defined in the UCC), but only to the extent necessary to collect Accounts; (f) all proceeds of each Borrower's claims and causes of action under sections 502(d), 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy Code, and any other avoidance or similar actions under the Bankruptcy Code or similar state law, whether received by judgment, settlement or otherwise; and (g) all proceeds of any kind or nature of the foregoing.
<p>Surcharge</p> <p>DIP Credit Agreement, § 4.16(c)</p> <p>Interim Order, ¶¶2(d), 14</p>	No cost or surcharge shall be imposed against the Collateral under section 506(c) of the Bankruptcy Code.
<p>Superpriority Claims</p> <p>DIP Credit Agreement, § 4.16(a)(i)</p> <p>Interim Order, ¶2(h)</p>	Subject to the Carve-Out, all DIP Obligations shall constitute an allowed superpriority administrative expense claim (the " DIP Superpriority Claim " and, together with the DIP Liens, the " DIP Protections ") with priority in the Chapter 11 Case and Successor Case over all other administrative expense claims under sections 364(c)(1), 503(b) and 507(b) of the Bankruptcy Code and otherwise over all administrative expense claims and unsecured claims against the Debtor or its estate, now existing or hereafter arising, of any kind or nature whatsoever (other than the Carve-Out), 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), 1113 and 1114 and any other provision of the Bankruptcy Code except as otherwise set forth in the DIP Credit Agreement or the Interim Order, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment. The DIP Superpriority Claim shall be payable from and have recourse to all prepetition and post-petition property of the Debtor and all proceeds thereof. Without limiting the foregoing, the DIP Superpriority Claim shall not be made subject to, subordinate to, or <i>pari passu</i> with any other administrative claim in the Chapter 11 Case or Successor Case, except for the Carve-Out.
<p>Termination Date</p> <p>DIP Credit Agreement, § 1.1</p>	The earlier to occur of (a) the Commitment Expiry Date, (b) any date on which Agent accelerates the maturity of the Loans pursuant to Section 10.2, or (c) the termination date stated in any notice of termination of the DIP Credit Agreement provided by Borrowers in accordance with Section 2.12.
<p>Mandatory Repayments and Prepayments</p> <p>DIP Credit Agreement, § 2.1(b)(ii)</p>	<p>The Revolving Loan Commitment shall terminate on the Termination Date. On such Termination Date, there shall become due, and Borrowers shall pay, the entire outstanding principal amount of each Revolving Loan, together with accrued and unpaid Obligations pertaining thereto incurred to, but excluding the Termination Date; provided, however, that such payment is made not later than 12:00 Noon (Eastern time) on the Termination Date.</p> <p>If at any time the Revolving Loan Outstandings exceed the Revolving Loan Limit, then, on the next succeeding Business Day, Borrowers shall repay the Revolving Loans in an aggregate amount equal to such excess.</p> <p>Principal payable on account of Revolving Loans shall be payable by Borrowers to Agent (I) immediately upon the receipt by any Borrower or Agent of any payments on or proceeds from any of the Accounts, to the extent of such payments or proceeds, as further described in Section 2.11 below, and (II) in full on the Termination Date.</p>
<p>Conditions Precedent to Each Loan</p>	(a) in the case of a borrowing of a Revolving Loan, receipt by Agent of a Notice of Borrowing (or telephonic notice if permitted by the DIP Credit Agreement) and updated Borrowing Base Certificate;

<p>DIP Credit Agreement, § 7.2</p>	<p>(b) the fact that, immediately after such borrowing and after application of the proceeds thereof or after such issuance, the Revolving Loan Outstandings will not exceed the Revolving Loan Limit;</p> <p>(c) (i) either (x) the Interim Order shall be in full force and effect, or (y) for any advance in respect of any Loan occurring on or after the earlier of (A) 40 days after the Closing Date and (B) the entry of the Final Order, the Final Order shall be in full force and effect, and the Interim Order or Final Order, as applicable, shall not have been vacated or reversed, shall not be subject to a stay, and shall not have been modified or amended without the written consent of the Agent and the Required Lenders at the time of such proposed borrowing; (ii) prior to entry of the Final Order, the proposed Revolving Loan borrowing, when added to Revolving Loan Outstandings, does not exceed the amount authorized by the Interim Order; and (iii) all First Day Orders, including the cash management order, (including as entered on a final basis) shall be in form and substance reasonably satisfactory to Agent.</p> <p>(d) the fact that, immediately before and after such advance or issuance, no Default or Event of Default shall have occurred and be continuing;</p> <p>(e) the fact that the representations and warranties of each Credit Party contained in the Financing Documents shall be true, correct and complete on and as of the date of such borrowing or issuance, except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct as of such earlier date;</p> <p>(f) the fact that no material adverse change in the condition (financial or otherwise), properties, business, prospects, or operations of Borrowers or any other Credit Party shall have occurred and be continuing with respect to Borrowers or any Credit Party since the date of the DIP Credit Agreement; and</p> <p>(g) the continued compliance by Borrowers with all of the terms, covenants and conditions of Article 8 and, unless Agent shall elect otherwise from time to time, the absence of any fact, event or circumstance for which Borrower is required to give Agent notice under Article 8.</p>
<p>Milestones</p> <p>DIP Credit Agreement, § 1.1</p> <p>Interim Order, ¶ 18</p>	<p>(a) filing by the Borrowers of the Asset Sale Motion with respect to the Asset Sale on or before the date that is ten (10) days after the Petition Date;</p> <p>(b) entry of an Asset Sale Bid Procedures Order satisfactory to Agent approving the procedures for the Asset Sale set forth in the Asset Sale Motion on or before the date that is forty-five (45) days after the Petition Date;</p> <p>(c) conducting an auction for the Asset Sale in accordance with the DIP Orders on or before the date that is ninety (90) days after the Petition Date;</p> <p>(d) entry of the Asset Sale Order with respect to the Asset Sale on or before the date that is ten (10) days after the date of the auction referred to in clause (c); and</p> <p>(e) closing of the Asset Sale on or before the date that is seventy-five (75) days after the date on which the Asset Sale Order is entered.</p>
<p>Budget and Reporting</p> <p>DIP Credit Agreement, §§ 1.1, 4.1</p>	<p><u>Budget</u></p> <p>“DIP Budget” shall mean a statement of the Borrowers’ operating cash flow on a weekly basis for the period of thirteen weeks commencing with the calendar week during which the Closing Date occurs containing line items of sufficient detail and in substantially the form attached as Exhibit E to the DIP Credit Agreement. As used in the DIP Credit Agreement,</p>

“DIP Budget” shall initially refer to the budget attached as Exhibit E to the DIP Credit Agreement and, thereafter, the most recent DIP Budget delivered by the Borrower in accordance with Section 4.1(h).

“DIP Budget Variance Report” shall mean a report certified by a Responsible Officer, delivered in accordance with Section 4.1(h)(i) showing (a) a weekly and rolling four-week reconciliation of budgeted and actual amounts and (b) a written narrative explanation if (i) the actual disbursements on any line item in the DIP Budget exceed the budgeted disbursements for either such period in such line item by more than ten percent (10%), (ii) aggregate actual disbursements under the DIP Budget for any week or four-week period exceed the aggregate budgeted disbursements for either such period by more than five percent (5%) or (iii) aggregate cash receipts during any week or four-week period are less than ninety percent (90%) of aggregate projected cash receipts set forth in the DIP Budget for either such period (any such difference, a **“Variance”**).

Reporting

Each Borrower will deliver to Agent: (a) as soon as available, but no later than thirty (30) days after the last day of each month, a company prepared consolidated balance sheet, cash flow and income statement covering Borrowers’ and its Consolidated Subsidiaries’ consolidated operations during the period, prepared under GAAP, consistently applied, certified by a Responsible Officer and in a form acceptable to Agent; (b) together with the financial reporting package described in (a) above, evidence of payment and satisfaction of all Payroll Taxes due and owing by all Borrowers with respect to the payroll period(s) occurring during such month; (c) as soon as available, but no later than one hundred fifty (150) days after the last day of Borrower’s fiscal year, audited consolidated financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from an independent certified public accounting firm acceptable to Agent in its reasonable discretion; (d) as soon as available, (A) copies of each financial statement, report, notice or proxy statement sent by any Credit Party to its stockholders generally, (B) copies of each press release or other statement made available by any Credit Party to the public concerning developments in the business of such Credit Party and (C) copies of any statement or report furnished by any Credit Party to any other party pursuant to the terms of any indenture, loan, or credit or similar agreement and not otherwise required to be furnished to the Agent pursuant to the DIP Credit Agreement; (e) a prompt written report of any legal actions pending or threatened against any Borrower or any of its Subsidiaries that could reasonably be expected to result in damages or costs to any Borrower or any of its Subsidiaries of Two Hundred Fifty Thousand Dollars (\$250,000) or more; (f) prompt written notice of an event that materially and adversely affects the value of any Intellectual Property; (g) budgets, sales projections, operating plans and other financial information and information, reports or statements regarding the Borrowers, their business and the Collateral as Agent may from time to time reasonably request; and (h) prior to the Closing Date, the DIP Budget, and on the first Business Day of each week thereafter, an updated “rolling” 13-week budget that includes a DIP Budget Variance Report, which DIP Budget, once approved in writing by Agent, in its sole discretion, shall supplement and replace the prior DIP Budget without further notice, motion, application to, order of, or hearing before the Bankruptcy Court. Each Borrower will, within thirty (30) days after the last day of each month and simultaneously with the delivery of each DIP Budget pursuant to clause (h) above, deliver to Agent with the monthly financial statements described in clause (a) above, a duly completed Compliance Certificate signed by a Responsible Officer setting forth calculations showing compliance with the financial covenants set forth in the DIP Credit Agreement. Promptly upon their becoming available, Borrowers shall deliver to Agent copies of all Material Contracts. Each Borrower will, within ten (10) days after the last day of each month, deliver to Agent a duly completed Borrowing Base Certificate signed by a Responsible Officer, with aged listings of accounts receivable and accounts payable (by invoice date). Borrowers shall, every ninety (90) days on a schedule to be designated by Agent, and at such other times as

	Agent shall request, deliver to Agent a schedule of Eligible Accounts denoting, for the thirty (30) largest Account Debtors during such quarter, such Account Debtor's credit rating(s), if any, as rated by A.M. Best Company, Standard & Poor's Corporation, Moody's Investors Service, Inc., FITCH, Inc. or other applicable rating agent.
<p>Events of Default</p> <p>DIP Credit Agreement, § 10.1</p> <p>Interim Order, ¶ 18</p>	<p>(a) (i) any Borrower shall fail to pay when due any principal, interest, premium or fee under any Financing Document or any other amount payable under any Financing Document, (ii) there shall occur any default in the performance of or compliance with any of the following sections of the DIP Credit Agreement: Section 2.11, Section 4.2(b), Section 4.4(c), Section 4.6, Section 4.15, Section 4.16, Section 4.17 and Article 5, or (iii) there shall occur any default in the performance of or compliance with Section 4.1, and/or Article 6 of the DIP Credit Agreement and Borrower Representative has received written notice from Agent or Required Lenders of such Default;</p> <p>(b) any Credit Party defaults in the performance of or compliance with any term contained in the DIP Credit Agreement or in any other Financing Document (other than occurrences described in other provisions of Section 10.1 for which a different grace or cure period is specified or for which no grace or cure period is specified and thereby constitute immediate Events of Default) and such default is not remedied by the Credit Party or waived by Agent within fifteen (15) days after the earlier of (i) receipt by Borrower Representative of notice from Agent or Required Lenders of such default, or (ii) actual knowledge of any Borrower or any other Credit Party of such default;</p> <p>(c) any representation, warranty, certification or statement made by any Credit Party or any other Person in any Financing Document or in any certificate, financial statement or other document delivered pursuant to any Financing Document is incorrect in any respect (or in any material respect if such representation, warranty, certification or statement is not by its terms already qualified as to materiality) when made (or deemed made);</p> <p>(d) (i) except as prohibited or limited as a result of the Bankruptcy Code, failure of any Credit Party to pay when due or within any applicable grace period any principal, interest or other amount on Debt (other than the Loans), or the occurrence of any breach, default, condition or event with respect to any Debt (other than the Loans) if the effect of such failure or occurrence is to cause or to permit the holder or holders of any such Debt, or to cause, Debt or other liabilities having an individual principal amount in excess of \$250,000 or having an aggregate principal amount in excess of \$250,000 to become or be declared due prior to its stated maturity, or (ii) the occurrence of any breach or default under any terms or provisions of any Subordinated Debt Document or under any agreement subordinating the Subordinated Debt to all or any portion of the Obligations or the occurrence of any event requiring the prepayment of any Subordinated Debt;</p> <p>(e) Reserved;</p> <p>(f) Reserved;</p> <p>(g) (i) institution of any steps by any Person to terminate a Pension Plan if as a result of such termination any Credit Party or any member of the Controlled Group could be required to make a contribution to such Pension Plan, or could incur a liability or obligation to such Pension Plan, in excess of \$150,000, (ii) a contribution failure occurs with respect to any Pension Plan sufficient to give rise to a Lien under Section 303(k) of ERISA or Section 430(k) of the Code or an event occurs that could reasonably be expected to give rise to a Lien under Section 4068 of ERISA, or (iii) there shall occur any withdrawal or partial withdrawal from a Multiemployer Plan and the withdrawal liability (without unaccrued interest) to Multiemployer Plans as a result of such withdrawal (including any outstanding withdrawal</p>

	<p>liability that any Credit Party or any member of the Controlled Group have incurred on the date of such withdrawal) exceeds \$150,000;</p> <p>(h) one or more judgments or orders for the payment of money (not paid or fully covered by insurance maintained in accordance with the requirements of the DIP Credit Agreement and as to which the relevant insurance company has acknowledged coverage) aggregating in excess of \$250,000 shall be rendered against any or all Credit Parties and either (i) enforcement proceedings shall have been commenced by any creditor upon any such judgments or orders, or (ii) there shall be any period of twenty (20) consecutive days during which a stay of enforcement of any such judgments or orders, by reason of a pending appeal, bond or otherwise, shall not be in effect;</p> <p>(i) any Lien created by any of the Security Documents shall at any time fail to constitute a valid and perfected Lien on all of the Collateral purported to be encumbered thereby, subject to no prior or equal Lien except Permitted Liens, or any Credit Party shall so assert;</p> <p>(j) the institution by any Governmental Authority of criminal proceedings against any Credit Party;</p> <p>(k) a default or event of default occurs under any Guarantee of any portion of the Obligations, which is not cured within any applicable cure periods;</p> <p>(l) any Borrower makes any payment on account of any Debt that has been subordinated to any of the Obligations, other than payments specifically permitted by the terms of such subordination;</p> <p>(m) if any Borrower is or becomes an entity whose equity is registered with the SEC, and/or is publicly traded on and/or registered with a public securities exchange, such Borrower's equity fails to remain registered with the SEC in good standing, and/or such equity fails to remain publicly traded on and registered with a public securities exchange;</p> <p>(n) the occurrence of any fact, event or circumstance (other than the filing of the Bankruptcy Case) that could reasonably be expected to result in a Material Adverse Effect, if such default shall have continued unremedied for a period of ten (10) days after written notice from Agent;</p> <p>(o) Agent determines, based on information available to it and in its reasonable judgment, that there is a reasonable likelihood that Borrowers shall fail to comply with one or more financial covenants in Article 6 during the next succeeding financial reporting period;</p> <p>(p) there shall occur any default or event of default under Prepetition Financing Document or any other Operative Document (other than prepetition defaults under the Operating Lease with the Walker County Hospital District), including, without limitation, any Asset Sale Document and the Parallon Services Agreement, which is not cured within any applicable cure periods;</p> <p>(q) there shall occur any default or event of default under, or any termination or expiration of, any Operating Lease or any Management Agreement (other than prepetition defaults under the Operating Lease with the Walker County Hospital District), which is not cured within any applicable cure periods;</p> <p>(r) there shall occur a material adverse change in the financial condition or business prospects of any Borrower or any Project, which default shall have continued unremedied for a period of ten (10) days after written notice from Agent;</p>
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	<p>(s) any Borrower (or any of its successors or assigns) files a motion or application or adversary proceeding challenging the validity, enforceability, perfection or priority of any claim or Lien securing or pertaining to the DIP Credit Agreement, the other Financing Documents and the credit facility evidenced hereby and thereby or the Obligations;</p> <p>(t) if (i) the Bankruptcy Case is converted to a case under Chapter 7 of the Bankruptcy Code, (ii) the Bankruptcy Case is dismissed, or (iii) any Borrower shall file any pleading requesting any such relief;</p> <p>(u) if a Chapter 11 trustee or an examiner with enlarged powers relating to the operations of the Borrowers' business (beyond those set forth under section 1106(a)(3) and (4) of the Bankruptcy Code) is appointed pursuant to section 1104 of the Bankruptcy Code in the Bankruptcy Case;</p> <p>(v) if any Person other than Agent is granted relief from the automatic stay provided for in the Bankruptcy Case, or such automatic stay is otherwise modified, to permit enforcement of rights by such Person with respect any asset of any Borrower or Guarantor (other than insurance proceeds) (i) that is adverse to the Agent, the Lenders or the Collateral, and (ii) having a fair market value in excess of \$50,000 unless otherwise consented to in writing by Agent;</p> <p>(w) Except (1) as agreed in writing by the Agent and the Lenders and (2) for motions or orders or arrangements approved by the Court or effected and disclosed to the Agent and the Lenders prior to the date hereof, (i) any Borrower shall make, or file a motion seeking, or the Bankruptcy Court shall enter, an order approving, any Prepetition Payment that is not set forth in the DIP Budget, (ii) any Borrower shall file a motion seeking, or the Bankruptcy Court shall enter, an order granting relief from the automatic stay applicable under section 362 of the Bankruptcy Code to any holder of any Lien to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any assets (other than insurance proceeds) having a book value in excess of \$50,000 in the aggregate, excluding relief from stay to set off prepetition deposits or to pursue insured claims against insurance companies to the extent such deposits or claims do not constitute Collateral, or (iii) any Borrower shall enter into or file a motion seeking approval of, or the Bankruptcy Court shall enter an order approving, any other settlement or other stipulation with any creditor of any Borrower, other than the Agent and the Lenders, or otherwise providing for payments as adequate protection (other than lease, rental or financing payments related to equipment that are made in the Ordinary Course of Business as set forth in the DIP Budget) or otherwise to such creditor;</p> <p>(x) if any Borrower's or Guarantor's Board of Directors (or other governing body) shall authorize the liquidation of such Borrower's or Guarantor's business pursuant to one or more section 363 sales or otherwise or shall file any motion under section 363 of the Bankruptcy Code, other than pursuant to the Asset Sale Documents or as otherwise consented to in writing by Agent and the Required Lenders;</p> <p>(y) if any Borrower shall fail to comply with or perform any of the terms, conditions, covenants or other obligations under the DIP Orders;</p> <p>(z) the failure of the Closing Date to occur within two (2) Business Days after entry of the Interim Order without the prior written consent of the Agent;</p> <p>(aa) the failure of the Final Order Entry Date to occur on or prior to the date that is forty (40) days after the Petition Date without the prior written consent of the Agent;</p> <p>(bb) any party in interest or other Person files a motion for reconsideration of, or appeals, the Final Order or seeks to modify the Final Order or if the Final Order is modified in any way</p>
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	<p>not acceptable to Agent or the Final Order is vacated or if any party in interest or other Person takes action in contravention of or that is inconsistent with the Final Order;</p> <p>(cc) if the Borrowers fail to achieve any Milestones as and when required, except as otherwise consented to in writing by Agent;</p> <p>(dd) except in connection with the Asset Sale, any (i) assumption of any executory contract without first including the associated cure costs in a DIP Budget or (ii) rejection of any provider agreement issued by Medicare or Medicaid, or any Operating Lease, in each case without the prior written consent of Agent;</p> <p>(ee) the Borrowers or any Credit Party or any of their subsidiaries, shall seek, obtain court authorization to commence, or shall commence, join in, assist or otherwise participate as an adverse party in any suit or other proceeding against the Agent or any of the Lenders relating to the credit facilities provided hereunder or against the Prepetition Agent or Prepetition Lenders, unless such suit or other proceeding is in connection with the enforcement of the Financing Documents against Agent or Lenders;</p> <p>(ff) (i) the amendment, modification, reversal, revocation, issuance of a stay or order to vacate or supplement the (A) Interim Order, the Final Order, any Asset Sale Order or any other order of the Bankruptcy Court affecting the DIP Credit Agreement, any other Financing Document, the Asset Sale or the transactions contemplated hereby or thereby, in each case, in any manner not acceptable to Agent and the Required Lenders or (B) the Plan of Reorganization to the extent such amendment, modification, reversal, revocation, issuance or supplement results in the Prepetition Obligations and the Obligations not being paid in full in cash on or before the Reorganization Effective Date or reflects that the Prepetition Obligations or the Obligations will not be paid in full in cash on or before the Reorganization Effective Date or (ii) the termination of any Asset Purchase Agreement by Buyer;</p> <p>(gg) the filing of a motion, pleading, or proceeding by Borrowers, or any of its Affiliates, that could reasonably be expected to result in a material impairment of the rights or interests of the Agent or any Lender or a determination by the Bankruptcy Court or any other Governmental Authority with respect to a motion, pleading or proceeding brought by another party that results in a material impairment of the rights, claims and Liens relating to the DIP Credit Agreement, the other Financing Documents and the DIP Facility or the Obligations;</p> <p>(hh) if the Borrowers fail to pay in full in cash, on the Closing Date, the Prepetition Obligations, or if the Confirmation Order shall fail to provide for the payment in full, in cash of all Obligations and Prepetition Obligations on or before the Reorganization Effective Date;</p> <p>(ii) the circulation or distribution by or on behalf of the Borrowers of any plan of liquidation, plan of reorganization, disclosure statement and/or motion for entry of a Structured Dismissal Order, or draft thereof (or term sheet or similar indicative statements of terms thereof) that does not provide for repayment in full in cash of all Prepetition Obligations (to the extent not already paid in full in cash with the proceeds of the Obligations) and all Obligations before or at the Reorganization Effective Date;</p> <p>(jj) if any Plan Documentation or motion for entry of a Structured Dismissal Order is executed, filed or delivered or any confirmation order is entered that does not provide for repayment in full in cash of all Prepetition Obligations (to the extent not already paid in full in cash with the proceeds of the Obligations) and all Obligations before or at the Reorganization Effective Date;</p> <p>(kk) the existence of any claims or charges, or the entry of any order of the Bankruptcy Court authorizing any claims or charges, other than in respect of the DIP Facility or the Carve-Out,</p>
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	<p>entitled to superpriority under section 364(c)(1) of the Bankruptcy Code pari passu or senior to the Obligations, or there shall arise or be granted by the Bankruptcy Court (i) any claim having priority over any or all administrative expenses of the kind specified in clause (b) of section 503 or clause (b) of Section 507 of the Bankruptcy Code (other than the Carve-Out) or (ii) any Lien on the Collateral having a priority senior to or pari passu with the Liens and security interests granted in the DIP Credit Agreement, in the Security Documents or the DIP Orders, except as expressly consented to by Agent;</p> <p>(ll) if there is a stay or injunction of the Confirmation Order or Structured Dismissal Order in effect precluding the consummation of the transactions contemplated thereby;</p> <p>(mm) any lien securing or superpriority claim in respect of the Obligations shall cease to be valid, perfected (if applicable) and enforceable in all respects or to have the priority granted under the Security Documents, the Interim Order (prior to entry of the Final Order) and the Final Order; or</p> <p>(nn) if a Variance occurs (provided that, notwithstanding the percentages set forth in the definition of "Variance", any Variance with respect to the payment of professional fees set forth in the DIP Budget shall be an Event of Default without regard to the percentage of such Variance).</p> <p>Notwithstanding the foregoing, if a Credit Party fails to comply with any same provision of the DIP Credit Agreement two (2) times in any twelve (12) month period and Agent has given to Borrower Representative in connection with each such failure any notice to which Borrowers would be entitled under Section 10.1 before such failure could become an Event of Default, then all subsequent failures by a Credit Party to comply with such provision of the DIP Credit Agreement shall effect an immediate Event of Default (without the expiration of any applicable cure period) with respect to all subsequent failures by a Credit Party to comply with such provision of the DIP Credit Agreement, and Agent thereupon may exercise any remedy set forth in this Article 10 without affording Borrowers any opportunity to cure such Event of Default.</p> <p>All cure periods provided for in Section 10.1 shall run concurrently with any cure period provided for in any applicable Financing Documents under which the default occurred.</p>
<p>Rights and Remedies</p> <p>DIP Credit Agreement, §§ 10.2 and 10.3</p>	<p>Subject to the terms of the DIP Orders, upon the occurrence and during the continuance of an Event of Default, Agent may, and shall if requested by Required Lenders, (a) by notice to Borrower Representative suspend or terminate the Revolving Loan Commitment and the obligations of Agent and the Lenders with respect thereto, in whole or in part (and, if in part, each Lender's Revolving Loan Commitment shall be reduced in accordance with its Pro Rata Share), and/or (b) by notice to Borrower Representative declare all or any portion of the Obligations to be, and the Obligations shall thereupon become, immediately due and payable, with accrued interest thereon, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Borrower and Borrowers will pay the same; <i>provided, however</i>, that in the case of any of the Events of Default specified in subsections (t) through (nn) of Section 10.1, without any notice to any Credit Party or any other act by Agent or the Lenders, the Revolving Loan Commitment and the obligations of Agent and the Lenders with respect thereto shall thereupon immediately and automatically terminate and all of the Obligations shall become immediately and automatically due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Borrower and Borrowers will pay the same.</p> <p>Notwithstanding the provisions of section 362 of the Bankruptcy Code and subject to the terms of the DIP Orders, upon the occurrence of and during the continuance of an Event of</p>

	<p>Default, Agent, in addition to all other rights, options, and remedies granted to Agent under the DIP Credit Agreement or at law or in equity, may exercise, either directly or through one or more assignees or designees, all rights and remedies granted to it under all Financing Documents and under the UCC in effect in the applicable jurisdiction(s) and under any other applicable law</p>
<p>Adequate Protection</p> <p>Interim Order, ¶ 4</p>	<p>See Budget and Reporting above</p> <p>As adequate protection for the interests of the Prepetition Lender in the Prepetition Collateral (including Cash Collateral) on account of the granting of the DIP Liens, subordination to the Carve-Out, the Debtor’s use of Cash Collateral and any other Diminution in Value arising out of the automatic stay or the Debtor’s use, sale, or disposition or other depreciation of the Prepetition Collateral, the Prepetition Lender shall receive adequate protection as follows:</p> <p><u>Adequate Protection Replacement Liens.</u> To the extent of the Diminution in Value of the interests of the Prepetition Lender in the Prepetition Collateral of the Debtor, the Prepetition Lender shall be and is hereby granted continuing valid, binding, enforceable, non-avoidable and automatically perfected post-petition security interests in and liens on the DIP Collateral (the “<i>Replacement Liens</i>”).</p> <p><u>Priority of the Replacement Liens:</u> The Replacement Liens shall be junior only to (i) the Carve-Out, (ii) the DIP Liens, and (ii) the Permitted Liens. The Replacement Liens shall otherwise be senior to all other security interests in, liens on, or claims against any of the DIP Collateral. Except as provided in the DIP Credit Agreement, the Replacement Liens shall not be made subject to or <i>pari passu</i> with any lien or security interest by any court order heretofore or hereafter entered in the Chapter 11 Case or any Successor Case, and shall be valid and enforceable against any trustee appointed in any of the Chapter 11 Case or any Successor Case, or upon the dismissal of the Chapter 11 Case or Successor Case. The Replacement Liens shall not be subject to sections 506(c), 510, 549, or 550 of the Bankruptcy Code.</p> <p><u>Adequate Protection Superpriority Claims.</u> To the extent of the Diminution in Value of the interests of the Prepetition Lender in the Prepetition Collateral of the Debtor, the Prepetition Lender is hereby granted allowed superpriority administrative expense claims, to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code, in the Chapter 11 Case and any Successor Case (the “<i>Adequate Protection Superpriority Claims</i>”).</p> <p><u>Adequate Protection Superpriority Claims.</u> The Adequate Protection Superpriority Claims shall be junior only to the Carve-Out and the DIP Superpriority Claim. Except as otherwise provided in this Interim Order, the Adequate Protection Superpriority Claims shall have priority over all administrative expense claims and unsecured claims against the Debtor or its estate, 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), 1113 and 1114 of the Bankruptcy Code.</p> <p><u>Adequate Protection Payments and Protections.</u> To the extent any Prepetition Credit Obligations remain outstanding, the Debtor is authorized and directed to provide adequate protection payments to the Prepetition Lender in the form of (i) weekly payments of the fees and expenses of the Prepetition Lender, whether such fees and expenses are incurred prior to or after the Petition Date and (ii) weekly payments of interest under the Prepetition Credit Documents. The obligation to make the foregoing payments shall continue regardless of whether such amounts appear in the Budget.</p>
<p>Carve-Out</p> <p>Interim Order, ¶¶ 9-11</p>	<p>The “<i>Carve-Out</i>” shall mean (i) all fees required to be paid to the Clerk of the Bankruptcy Court or to the Office of the U.S. Trustee pursuant to 28 U.S.C. § 1930(a)(6) (the “<i>U.S. Trustee Fees</i>”), together with interest payable thereon pursuant to applicable law and any fees payable to the Clerk of the Bankruptcy Court; and (ii) up to \$250,000 of allowed and</p>

	<p>unpaid fees, expenses and disbursements of professionals retained pursuant to sections 327 or 1103(a) of the Bankruptcy Code by, collectively, the Debtor, the Committee, any statutory committees, patient care ombudsman, trustee, examiner or other representative or professional appointed in the Chapter 11 Case, incurred after issuance of a notice from the DIP Lender that an Event of Default has occurred (the “<i>Carve-Out Notice</i>”) (which the DIP Lender may issue upon an Event of Default), plus all professional fees, expenses and disbursements allowed by this Court that were incurred but remain unpaid prior to the issuance of a Carve-Out Notice (regardless of when such fees, expenses and disbursements become allowed by order of this Court). The Carve-Out shall not be reduced or increased by any amount of any fees, expenses and disbursements paid prior to issuance of a Carve-Out Notice to professionals retained by order of this Court, including amounts paid pursuant to the Budget. Upon the issuance of a Carve-Out Notice, the right of the Debtor to pay professional fees incurred other than the Carve-Out shall terminate.</p> <p>Upon the issuance of a Carve-Out Notice, the Debtor shall provide immediate notice by facsimile and email to all retained professionals informing them of the Carve-Out Notice and that the Debtor’s ability to pay professionals is subject to the Carve-Out; provided, and notwithstanding anything set forth in the DIP Credit Agreement, the Carve-Out shall not be available to pay and shall exclude any fees and expenses incurred in connection with investigating, initiating or prosecuting any claims, causes of action, adversary proceedings, or other litigation against any of the DIP Lender or the Prepetition Lender, including, without limitation, the assertion or joinder in any claim, counterclaim, action, proceeding, application, motion, objection, defenses or other contested matter, the purpose of which is to seek any order, judgment, determination or similar relief (i) invalidating, setting aside, disallowing, avoiding, challenging or subordinating, in whole or in part, the DIP Obligations, the Prepetition Credit Obligations, the Prepetition Liens, or the DIP Liens, or (ii) preventing, hindering or delaying, whether directly or indirectly, the DIP Lender’s or Prepetition Lender’s assertion or enforcement of their liens or security interests or realization upon any DIP Collateral or Prepetition Collateral, or (iii) prosecuting any adversary or actions under sections 502(d), 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy Code or any other avoidance or similar actions under the Bankruptcy Code or similar state law against either the DIP Lender or the Prepetition Lender, or (iv) challenging the amount, validity, extent, perfection, priority, or enforceability of, or asserting any defense, counterclaim, or offset to, the Prepetition Credit Obligations, or the adequate protection granted in the DIP Credit Agreement; provided further, however, that the Carve-Out shall be available to pay fees and expenses incurred in connection with a dispute over whether an Event of Default has occurred or is continuing. Nothing in this Interim Order shall impair the right of any party to object to the reasonableness of any such professional fees or expenses to be paid by the Debtor’s estate. The DIP Lender shall not be responsible for the payment or reimbursement of any fees or disbursements of any professional person retained in the Chapter 11 Case incurred in connection with the Chapter 11 Case or any Successor Case, and nothing in this Interim Order or otherwise shall be construed to obligate the DIP Lender, in any way, to pay compensation to, or to reimburse expenses of, any professional person retained in the Chapter 11 Case.</p> <p>Any Committee appointed in this Chapter 11 Case shall meet and confer in good faith with the Debtor and the DIP Lender to discuss an appropriate budget for the Committee, including limitations upon the proceeds of the DIP Facility, DIP Collateral, or Cash Collateral, in the aggregate, that may be used by any Committee appointed in this Chapter 11 Case to investigate the Prepetition Liens and/or claims of the Prepetition Lender. Nothing in the DIP Credit Agreement shall be construed to obligate the Prepetition Lender or the DIP Lender, in any way, to pay any professional fees, or to assure that the Debtor has sufficient funds on hand to pay any professional fees.</p>
<p>Stipulations Interim Order, ¶ E</p>	<p>The Debtor generally stipulates to the validity, enforceability, allowance, priority, and binding and non-avoidable nature of the Prepetition Credit Documents, the Prepetition Credit Obligations, and the Prepetition Liens on the Prepetition Collateral (including perfection of such Prepetition Liens).</p>

<p style="text-align: center;">Challenge</p> <p>Interim Order, ¶ 7</p>	<p>Nothing in the Interim Order or the DIP Credit Agreement shall prejudice the rights of the Committee, if formed, or any other party in interest to the extent it has requisite standing (other than the Debtor, the Prepetition Borrowers, and their non-Debtor affiliates and subsidiaries) (each, a “Party in Interest”) may have to object to or challenge the findings in the Interim Order and the Debtor’s Stipulations regarding (i) the validity, extent, perfection or priority of the Prepetition Liens in and on the Prepetition Collateral, or (ii) the validity, allowability, priority, status or amount of the Prepetition Credit Obligations (a “Challenge”); provided, however, (x) if a Committee is formed, an adversary proceeding must be commenced by the Committee asserting the Challenge, including without limitation, asserting any claim against the Prepetition Lender in the nature of a setoff, counterclaim or defense to the Prepetition Credit Obligations (including but not limited to, those under sections 506, 544, 547, 548, 549 and 550 of the Bankruptcy Code or by way of suit against the Prepetition Lender) (also, a “Challenge”) within sixty (60) days from the date of the entry of an order appointing counsel to the Committee; or, (y) if no Committee is formed, any Party in Interest must commence an adversary proceeding asserting a Challenge within forty-five (45) days from the date the U.S. Trustee or the Debtor provides notice that no Committee will be formed ((x) or (y), the “Challenge Period”). Debtor must provide notice to all parties on the Debtor’s mailing matrix that no Committee will be formed within five (5) days of Debtor’s receipt of the U.S. Trustee’s announcement of same. The date that is the next calendar day after the termination of the Challenge Period, in the event that no Challenge is raised during the Challenge Period, shall be referred to as the “Challenge Period Termination Date”. From and after the Challenge Period Termination Date, any and all challenges, claims, causes of action and objections by any party (including, without limitation, the U.S. Trustee, any Committee, any Chapter 11 or Chapter 7 trustee appointed or in any Successor Case, and any other Party in Interest) shall be deemed to be forever waived and barred, and the Prepetition Credit Obligations shall be deemed to be allowed in full and shall be deemed to be allowed as secured claims within the meaning of section 506 of the Bankruptcy Code for all purposes in connection with the Chapter 11 Case or any Successor Case, and the Debtor’s Stipulations shall be binding on all creditors, interest holders and parties in interest. Notwithstanding anything in the Interim Order to the contrary, if a Committee has been appointed, only the Committee shall be entitled to bring a Challenge on behalf of the Debtor’s estate against the Prepetition Lender.</p>
<p style="text-align: center;">Modification of the Automatic Stay</p> <p>Interim Order, ¶¶ 6 and 19(a-b)</p>	<p>The automatic stay is vacated and modified to the extent necessary to permit all actions necessary to implement the DIP Facility and the Interim Order and to permit the DIP Lender to pursue its rights and remedies in accordance with the Interim Order, DIP Credit Agreement, and applicable law.</p>
<p style="text-align: center;">Release and Indemnification</p> <p>DIP Credit Agreement, § 11.6</p> <p>Interim Order, ¶ E(vi)</p>	<p>The Debtor generally releases the Prepetition Lender and its officers, directors, agents, employees, attorneys, successors and assigns and indemnifies the DIP Lender.</p>

STATEMENT REGARDING SIGNIFICANT PROVISIONS

12. The Interim Order contains the following provisions (the “**Significant Provisions**”) identified in paragraph 21 of the Complex Case Procedures:

DIP Facility Term	Relief Requested
Sale or Plan Confirmation Milestones	<p>Section 1.1 of the DIP Credit Agreement and paragraph 18 of the Interim Order provide for the following milestones: (a) filing by the Borrowers of the Asset Sale Motion with respect to the Asset Sale on or before the date that is ten (10) days after the Petition Date;</p> <p>(b) entry of an Asset Sale Bid Procedures Order satisfactory to Agent approving the procedures for the Asset Sale set forth in the Asset Sale Motion on or before the date that is forty-five (45) days after the Petition Date;</p> <p>(c) conducting an auction for the Asset Sale in accordance with the DIP Orders on or before the date that is ninety (90) days after the Petition Date;</p> <p>(d) entry of the Asset Sale Order with respect to the Asset Sale on or before the date that is ten (10) days after the date of the auction referred to in clause (c); and</p> <p>(e) closing of the Asset Sale on or before the date that is seventy-five (75) days after the date on which the Asset Sale Order is entered;</p>
Roll Ups	Section 2.11(d) of the DIP Credit Agreement and paragraph 20(a) of the Interim Order provide that the Prepetition Credit Obligations shall be rolled up on a creeping basis during the Interim Period and fully rolled-up upon entry of the Final Order.
Default Provisions and Remedies	Section 10.1 of the DIP Credit Agreement provides for Events of Default under the DIP Credit Agreement and Paragraphs 18 and 19 of the Interim Order provide Events of Default and Remedies under the Interim Order. Sections 10.2 and 10.3 of the DIP Credit Agreement provide for automatic modification to the automatic stay to, upon notice to the Debtor, immediately (i) terminate the commitments to extend credit under the DIP Facility, (ii) terminate the DIP Facility, and (iii) declare all DIP Obligations due and owing. Additionally, after providing three Business Days' notice to the Debtor, any Committee, and the U.S. Trustee, the DIP Lender may exercise all remedies in accordance with the Financing Documents and applicable law.
Release of Claim Against Lender or Others	Paragraph E(vi) of the Interim Order provides that the Debtor generally releases the Prepetition Lender and its officers, directors, agents, employees, attorneys, successors and assigns.
Priming Liens	Paragraph 2(e) of the Interim Order and Section 4.16(a)(iii) of the DIP Credit Agreement provide that the DIP Liens prime all other Liens on the DIP Collateral (subject to the Carve-Out).
Lien on Avoidance Actions	Sections 4.16(a)(ii-111) and 9.1 of the DIP Credit Agreement, Schedule 9.1 to the DIP Credit Agreement, and Paragraphs 2(d-e) of the Interim Order provide for the DIP Collateral to include all proceeds of the Debtor's claims and causes of action under sections 502(d), 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy Code and any other avoidance or similar actions under the Bankruptcy Code or similar state law.

13. The DIP Facility is critical to the Debtor's continuing operations and essential to facilitating a successful sale process. Notably, the DIP Lender has agreed through the DIP Facility to remove certain reserves on the Debtor's borrowing base that will result in \$1.5 million of

previously unavailable revolving loan availability under the Prepetition Credit Facility. Because the Debtor has virtually no otherwise unencumbered collateral to secure this additional \$1.5 million in availability, the Debtor submits that the additional protections afforded to the DIP Lender identified in the Significant Provisions are justified and necessary in order to avoid irreparable harm to the Debtor. In light of the foregoing, the Debtor submits that the Significant Provisions are appropriate under the facts and circumstances of the Chapter 11 Case. Accordingly, the Significant Provisions in the Interim Order should be approved.

THE DEBTOR'S PREPETITION SECURED INDEBTEDNESS

14. Aside from amounts that may be due and owing to the Walker County Hospital District as the Debtor's landlord, the Debtor's only long-term debt obligation outstanding as of the Petition Date is a credit facility with MidCap Funding IV Trust, as successor-by-assignment to MidCap Financial Trust, as Agent and Lender (as successor-by-assignment to Healthcare Finance Group, LLC) (collectively, the "*Prepetition Lender*").⁴ The Debtor and non-Debtor HMH Physician Organization ("*HMH PO*") are borrowers under that certain Revolving Loan and Security Agreement dated as of May 16, 2014 (as amended, restated, supplemented, or otherwise modified from time to time, the "*Prepetition Credit Agreement*" and together with all other loan and security documents executed in connection therewith, the "*Prepetition Credit Documents*"), by and among the Debtor and HMH PO, as borrowers, and the Prepetition Lender. The Prepetition Credit Agreement provides for a revolving loan facility (the "*Prepetition Credit Facility*") with a commitment of up to \$10 million. As of the Petition Date, the principal amount outstanding under the Prepetition Credit Facility is not less than \$2,043,447.84.

⁴ Unless otherwise indicated, all references herein to Prepetition Lender shall include MidCap Funding IV Trust, as successor-by-assignment to MidCap Financial Trust, in its capacity as Agent and Lender under the Prepetition Credit Documents (as defined herein).

15. The Prepetition Credit Facility is secured by perfected, first-priority liens and security interests in favor of the Prepetition Lender in: (a) all Receivables (as defined in the Prepetition Credit Agreement); (b) to the maximum extent permitted by law, all deposit accounts of the Debtor, including, without limitation, each Lockbox and each Lockbox Account (each as defined in the Prepetition Credit Agreement), and amounts held therein (but excluding those deposit accounts specified on Schedule 3.1(2) to the Prepetition Credit Agreement (the “*Excluded Accounts*”)); (c) all money and cash (except money and cash held in the Excluded Accounts), including all Cash Collateral (as defined in the Prepetition Credit Agreement); (d) all Records relating to (a) through (c); (e) all general intangibles (as defined in the UCC), but only to the extent necessary to collect Receivables (as defined in the Prepetition Credit Agreement); and (f) all proceeds of any kind or nature of the foregoing ((a) through (f) collectively, the “*Prepetition Collateral*”).

THE DIP FACILITY

16. The Prepetition Lender, as the proposed DIP Lender, agreed to provide the DIP Facility on the terms provided in the DIP Financing Documents, which are summarized above and which the Debtor estimates will be sufficient to finance this Chapter 11 Case. Based on the good faith, arm’s-length negotiations that took place prior to the Petition Date, the Debtor believes that these are the only terms on which the DIP Lender will provide the financing. As the DIP Facility proceeds are necessary and the best financing available at this time, the Debtor believes that sufficient justification exists for agreeing to these provisions. Moreover, the Debtor understands that the DIP Lender would not have been amenable to providing financing without these heavily bargained-for protections.

BASIS FOR RELIEF

I. The Debtor Should be Authorized to Obtain Postpetition Financing

A. Entering into the DIP Financing Documents is an Exercise of the Debtor's Sound Business Judgment

17. The Court should authorize the Debtor to enter into the DIP Financing Documents and obtain access to the DIP Facility as an exercise of the Debtor's sound business judgment.

18. If an agreement to obtain secured credit does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code, courts give debtors considerable deference in acting in accordance with their sound business judgment in obtaining such credit. *See, e.g., In re N. Bay Gen. Hosp., Inc.*, No. 08-20368 (Bankr. S.D. Tex. July 11, 2008) (order approving postpetition financing on an interim basis as exercise of debtors' business judgment); *In re Los Angeles Dodgers LLC*, 457 B.R. 308, 313 (Bankr. D. Del. 2011) (“[C]ourts will almost always defer to the business judgment of a debtor in the selection of the lender.”); *In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (“[C]ases consistently reflect that the court’s discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest.”).

19. Bankruptcy courts generally will not second-guess a debtor's business decisions when those decisions involve a minimum level of care in arriving at the decision on an informed basis, in good faith, and in the honest belief that the action was taken in the best interest of the debtor. *See In re Los Angeles Dodgers LLC*, 457 B.R. at 313. To determine whether the business judgment test is met, “the court ‘is required to examine whether a reasonable business person would make a similar decision under similar circumstances.’” *In re Dura Auto. Sys. Inc.*, No. 06-11202 (KJC), 2007 WL 7728109, at *97 (Bankr. D. Del. Aug. 15, 2007) (citation omitted). Further, in considering whether the terms of postpetition financings are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. *In re*

Farmland Indus., Inc., 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003); *see also Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Trust Co. (In re Elingsen McLean Oil Co., Inc.)*, 65 B.R. 358, 365 n.7 (W.D. Mich. 1986) (recognizing a debtor may have to enter into "hard bargains" to acquire funds for its reorganization).

20. Moreover, the Court may appropriately take into consideration non-economic benefits to the Debtor offered by a proposed postpetition facility. For example, in *In re ION Media Networks, Inc.*, the Bankruptcy Court for the Southern District of New York held that:

Although all parties, including the Debtors and the Committee, are naturally motivated to obtain financing on the best possible terms, a business decision to obtain credit from a particular lender is almost never based purely on economic terms. Relevant features of the financing must be evaluated, including noneconomic elements such as the timing and certainty of closing, the impact on creditor constituencies and the likelihood of a successful reorganization. This is particularly true in a bankruptcy setting where cooperation and established allegiances with creditor groups can be a vital part of building support for a restructuring that ultimately may lead to a confirmable reorganization plan. That which helps foster consensus may be preferable to a notionally better transaction that carries the risk of promoting unwanted conflict.

Case No. 09-13125, 2009 WL 2902568, at *4 (Bankr. S.D.N.Y. July 6, 2009).

21. The Debtor's execution of the DIP Financing Documents is an exercise of its sound business judgment that warrants approval by the Court. Prior to the Petition Date, the Debtor and its advisors undertook a detailed investigation as to the Debtor's projected financing needs during the pendency of the Chapter 11 Case, and determined that the Debtor would require postpetition financing to support its operational activities and sale process. Importantly, the DIP Lender has agreed through the DIP Facility to remove certain reserves on the Debtor's borrowing base that will result in \$1.5 million of previously unavailable revolving loan availability under the Prepetition Credit Facility. Accordingly, the Debtor negotiated the DIP Facility with the DIP Lender in good faith, at arm's-length, and with the assistance of outside counsel, to obtain the required postpetition financing on terms favorable to the Debtor.

22. The Debtor believes that the Court's consideration of non-economic factors, as permitted by *ION Media*, is especially appropriate here. Absent the DIP Lender's willingness and ability to fund the DIP Facility, the Debtor would likely run out of cash and would be forced to shut down its operations. Moreover, no third party lenders were in a position to provide as certain a financing arrangement on the terms currently available under the DIP Facility. The Debtor submits that the certainty afforded by the DIP Facility — with respect to both its consensual nature as well as the likelihood of closing and the DIP Lender's support of the Debtor's sale efforts — provides additional and ample reason to authorize it.

23. Accordingly, the Debtor and its advisors determined in their sound business judgment that the DIP Facility provides necessary financing on more favorable terms and with less execution risk than any other reasonably available alternative. As noted above, the DIP Facility will provide the Debtor with access to the necessary liquidity (including \$1.5 million in "new money"), which the Debtor and its advisors have independently determined should be sufficient to support the Debtor's ongoing operations and sale process through the pendency of this Chapter 11 Case. Additionally, the DIP Facility provides the Debtor with access to existing Cash Collateral, which preserves the status quo and relieves the Debtor of the cost of borrowing additional amounts to replace that cash. Thus, the Debtor submits that entering into the DIP Financing Documents constitutes an exercise of the Debtor's sound business judgment that should be approved by the Court.

II. The Debtor Should be Authorized to Obtain Postpetition Financing on a Secured, Priming and Superpriority Basis

24. Section 364 of the Bankruptcy Code authorizes a debtor to obtain, in certain circumstances, postpetition financing on a secured or superpriority basis, or both. Specifically, section 364(c) of the Bankruptcy Code provides, in pertinent part, that the Court, after notice and

a hearing, may authorize a debtor that is unable to obtain credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code to obtain credit or incur debt:

- (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of the Bankruptcy Code;
- (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or
- (3) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 364(c).

25. To satisfy the requirements of section 364(c) of the Bankruptcy Code, Courts will consider whether (a) the debtor made reasonable effort, but failed, to obtain unsecured credit under sections 364(a) and 364(b) of the Bankruptcy Code, (b) the credit transaction benefits the debtor as necessary to preserve estate assets, and (c) the terms of the credit transaction are fair, reasonable, and adequate, given the circumstances of the debtor and proposed lender. *In re Republic Airways Holdings Inc.*, No. 16-10429(SHL), 2016 WL 2616717, at *11 (Bankr. S.D.N.Y. May 4, 2016); *In re Los Angeles Dodgers LLC*, 457 B.R. at 312–13; *In re Ames Dep’t Stores, Inc.*, 115 B.R. at 40. However, section 364 “imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable.” *Bray v. Shenandoah Fed. Savs. & Loan Ass’n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986).

26. As described above and in the First Day Declaration, the Debtor pursued offers from other potential postpetition lenders other than the Prepetition Lender prior to the Petition Date. Notwithstanding the Debtor’s efforts, the Debtor was simply unable to obtain sufficient, or any, postpetition financing in the form of unsecured credit, solely as an administrative expense, or secured by a junior lien. While the Debtor did receive offers to take out the Prepetition Obligations, such offers were either more costly to the Debtor or had unacceptable execution risk.

27. In addition to authorizing financing under section 364(c) of the Bankruptcy Code, courts also may authorize a debtor to obtain postpetition credit secured by a lien that is senior or equal in priority to existing liens on the encumbered property if the debtor cannot otherwise obtain such credit and the interests of existing lienholders are adequately protected. *See* 11 U.S.C. § 364(d)(1). When determining whether to authorize a debtor to obtain credit secured by a “priming” lien as authorized by section 364(d) of the Bankruptcy Code, courts focus on whether the transaction will enhance the value of the debtors’ assets. Courts consider a number of factors, including, without limitation:

- whether alternative financing is available on any other basis (*i.e.*, whether any better offers, bids or timely proposals are before the court);
- whether the proposed financing is necessary to preserve estate assets and is necessary, essential and appropriate for continued operation of the debtors’ business;
- whether the terms of the proposed financing are reasonable and adequate given the circumstances of both the debtors and proposed lender(s);
- whether the proposed financing agreement was negotiated in good faith
- and at arm’s length and entry therein is an exercise of sound and reasonable business judgment and in the best interest of the debtor’s estate and its creditors; and
- whether the proposed financing agreement adequately protects prepetition secured creditors.

See, e.g., Ames Dep’t Stores, 115 B.R. at 37–39; *Bland v. Farmworker Creditors*, 308 B.R. 109, 113-14 (S.D. Ga. 2003); *see also* 3 Collier on Bankruptcy ¶ 364.04[1] (15th ed. rev. 2008).

28. Here, the Debtor seeks authority to enter into the DIP Financing Documents, which will provide the DIP Lender (a) priming liens on the DIP Collateral already encumbered by the Prepetition Lender and (b) first priority senior secured liens on and security interests in the Debtor’s claims and causes of action under sections 502(d), 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy Code and any other avoidance or similar actions under the Bankruptcy Code or similar law (the “*Avoidance Actions*”) and all other unencumbered tangible and intangible property of the Debtor of the type that is DIP Collateral.

29. With respect to the priming liens on DIP Collateral already encumbered by the Prepetition Lender, the DIP Financing Documents satisfy each of these factors. First, as described above and in the First Day Declaration, the Debtor explored other possible financing sources, and ultimately determined that the Debtor requires the DIP Facility. The Debtor conducted arm's-length negotiations with the DIP Lender regarding the terms of the DIP Facility, and those agreements reflect the most favorable terms on which the DIP Lender was willing to offer financing. No alternative financing at the favorable terms offered in the DIP Facility without significant execution risk was available to the Debtor, and the Debtor is not able to obtain financing from the DIP Lender other than financing secured by first priority priming liens. In light of the unavailability of other financing with which to fund the Debtor's ongoing operations and preserve the value of the Debtor's assets, the Debtor determined that accessing the DIP Facility from the DIP Lender would best maximize estate value.

30. Second, the Debtor needs the funds to be provided under the DIP Facility to preserve the value of its estate for the benefit of all creditors and other parties in interest. Absent the DIP Facility and use of the Cash Collateral, the Debtor will be unable to operate its business or prosecute the Chapter 11 Case, which will threaten the Debtor's going concern value. Providing the Debtor with the liquidity necessary to preserve its going concern value through the pendency of the Chapter 11 Case is in the best interest of all stakeholders.

31. Third, the terms of the DIP Financing Documents are reasonable and adequate to ensure the Debtor's ongoing ability to operate in Chapter 11. Indeed, the DIP Facility will provide the Debtor with sufficient and necessary liquidity to allow the Debtor to maintain its operations and relationships with key constituents during the Chapter 11 Case. Accordingly, the terms of the

DIP Facility are reasonable, and the DIP Facility and the Cash Collateral are sufficient to support the Debtor's operations and sale process through the pendency of this Chapter 11 Case.

32. Fourth, the Debtor and the DIP Lender negotiated the DIP Facility in good faith and at arm's-length, and the Debtor's entry into the DIP Financing Documents is an exercise of the Debtor's sound business judgment and is in the best interests of its estate, creditors and other parties in interest.

33. Finally, the Debtor will provide adequate protection for the Prepetition Lender's liens on and security interests in the DIP Collateral as well as any decline in, or diminution of, the value of the Prepetition Lender's liens or security interests under the Prepetition Credit Documents. Furthermore, the Debtor does not believe that any other entity has a valid lien on or security interest in the DIP Collateral.⁵ To the extent any entity has such a valid lien or security interest, such entity will be adequately protected by regular post-petition payments in the amounts and at the times set forth in the applicable contract with such entity in compliance with the Budget.

34. Similarly, the Debtor satisfies the requirements to grant first priority senior liens on and security interests in the Avoidance Actions and all other unencumbered tangible and intangible property of the Debtor of the type that is DIP Collateral under section 364(c)(2) of the Bankruptcy Code, because the Avoidance Actions and such other property are currently unencumbered, and Debtor is unable to obtain postpetition credit without granting such first priority senior liens on and security interests.

⁵ Most liens on or security interests in the Debtor's assets are limited to a particular piece or pieces of equipment. The Debtor has granted a lien on all personal property other than the DIP Collateral to the Walker County Hospital District, which will not be primed by the DIP Liens. Furthermore, Cardinal Health 110, Inc. ("**Cardinal**") has filed a financing statement asserting a lien on all of the Debtor's assets, but the Debtor believes that such subordinate lien is limited to deposits with and prepayments to Cardinal, which do not constitute DIP Collateral and will not be primed by the DIP Liens.

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35. The Court should therefore (a) authorize the Debtor to provide the DIP Lender senior liens on the DIP Collateral as provided in sections 364(c)(2) and 364(d)(1) of the Bankruptcy Code; and (b) grant the DIP Obligations superpriority administrative expense status as provided for in section 364(c)(1) of the Bankruptcy Code.

III. The Interests of the Prepetition Lender Are Adequately Protected

36. A debtor may obtain postpetition credit “secured by a senior or equal lien on property of the estate that is subject to a lien only if” the debtor, among other things, provides “adequate protection” to those parties whose liens are primed. *See* 11 U.S.C. § 364(d)(1)(B). By requiring debtors to provide adequate protection to those creditors whose liens are being primed, the Bankruptcy Code seeks to protect a secured creditor from diminution in the value of its interest in the particular collateral. *See In re Cont’l Airlines, Inc.*, 146 B.R. 536, 539–40 (Bankr. Del. 1992) (secured creditor only entitled to adequate protection to the extent the collateral declined in value); *In re Pursuit Athletic Footwear, Inc.*, 193 B.R. 713, 716 (Bankr. D. Del. 1996) (if there is no diminution in the value of the secured creditor’s collateral and the debtor can operate profitably postpetition, the secured creditor is adequately protected against the use of cash collateral); *see also In re 495 Cent. Park Ave. 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.”).

37. What constitutes sufficient adequate protection is decided on a case-by-case basis. *See In re Columbia Gas Sys., Inc.*, Nos. 91-803, 91-804, 1992 WL 79323, at *2 (Bankr. D. Del. Feb. 18, 1992); *In re Monroe Park*, 17 B.R. 934 (D. Del. 1982) (concept of adequate protection requires a debtor to propose some form of relief that will preserve the secured creditor’s interest in collateral pending the outcome of the bankruptcy proceedings); *see also Resolution Trust Corp. v. Swedeland Dev. Group, Inc. (In re Swedeland Dev. Group, Inc.)*, 16 F.3d 552, 564 (3d Cir. 4850-1769-4873.6

1994); *In re Martin*, 761 F.2d 472 (8th Cir. 1985); *In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996); *In re Realty Southwest Assocs.*, 140 B.R. 360 (Bankr. S.D.N.Y. 1992).

38. Here, the Prepetition Lender is adequately protected. The adequate protection provided, as further detailed herein, is fair and reasonable and is sufficient to satisfy the requirements of section 364(d)(1)(B) of the Bankruptcy Code. The Prepetition Lender has also consented to the terms of the DIP Facility, including the adequate protection provided. Furthermore, the Debtor does not believe that any other entity has a valid lien on or security interest in the DIP Collateral. To the extent any entity has such a valid lien or security interest, such entity will be adequately protected by regular post-petition payments in the amounts and at the times set forth in the applicable contract with such entity in compliance with the Budget. Accordingly, the Court should approve the proposed adequate protection.

IV. The Debtor Should be Authorized to Use the Cash Collateral

39. The Debtor submits that the request to use Cash Collateral complies with applicable Bankruptcy Code requirements. The Debtor's use of property of its estate is governed by section 363 of the Bankruptcy Code, which provides in pertinent part, as follows:

If the business of the debtor is authorized to be operated under section . . . 1108 . . . of this title and unless the court orders otherwise, the [debtor] may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

11 U.S.C. § 363(c)(1).

40. Section 363(c)(2)(A) of the Bankruptcy Code permits a debtor-in-possession to use cash collateral with the consent of the secured party. Alternatively, section 363(c)(2)(B) of the Bankruptcy Code permits the Court, after notice and a hearing, to authorize a debtor in

possession's use of cash collateral without the consent of the secured party so long as the use is consistent with the provisions of section 363 of the Bankruptcy Code.

41. The Prepetition Lender has consented to the Debtor's use of Cash Collateral under the terms of the DIP Financing Documents. Alternatively, the Debtor's proposed adequate protection is consistent with the requirements of section 363 of the Bankruptcy Code and, therefore, the Debtor's use of Cash Collateral — in addition to the Prepetition Lender having consented to it — meets the standard for approval under section 363(c)(2)(B) of the Bankruptcy Code. As described above, the Debtor is providing the Prepetition Lender with adequate protection in the form of replacement liens, superpriority claims, weekly payments of the fees and expenses of the Prepetition Lender, and weekly payments of interest under the Prepetition Credit Documents, which is fair and reasonable, and adequately protects the Prepetition Lender's interest in the collateral securing the Prepetition Obligations from diminution during the Chapter 11 Case, including by the Debtor's use of the Cash Collateral pursuant to the terms hereof.

42. In addition to the adequate protection package itself, the Debtor's preservation of estate assets through the use of Cash Collateral serves as its own form of "adequate protection." Indeed, the Debtor's secured creditors will inherently benefit from the Debtor's proposed use of the Cash Collateral which, as set forth in the First Day Declaration, will prevent avoidable diminution of the value of the Collateral and enhance the likelihood of increasing or preserving the Debtor's overall going concern value. This in and of itself serves to provide such parties adequate protection. *Cf. 495 Cent. Park*, 136 B.R. at 631 (noting that, in determining whether protection is "adequate," courts consider "whether the value of the debtor's property will increase as a result of the" use of collateral or provision of financing); *Sky Valley*, 100 B.R. at 114 ("an increase in the value of the collateral . . . resulting from superpriority financing could result in

adequate protection.” (citation omitted)), *aff’d*, 99 B.R. 117 (N.D. Ga. 1989); *In re Salem Plaza Ass’n*, 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). Accordingly, the Court should authorize the Debtor to use the Cash Collateral under Section 363(c)(2) of the Bankruptcy Code.

V. The Carve-Out Is Appropriate

43. The DIP Facility subjects the DIP Lender’s and Prepetition Lender’s security interests, superpriority claims, and the adequate protection claims and liens to the Carve-Out, the scope and extent of which was negotiated in good faith and at arm’s length by the Debtor, DIP Lender and Prepetition Lender. Without the Carve-Out, the Debtor’s estate or other parties in interest could be deprived of possible rights and powers because the services professionals might otherwise provide in the Chapter 11 Case could be restricted. *See In re Ames Dep’t Stores*, 115 B.R. at 38 (observing that courts insist on carve-outs for professionals representing parties in interest because “[a]bsent such protection, the collective rights and expectations of all parties in interest are sorely prejudiced”). Additionally, the Carve-Out protects against administrative insolvency during the pendency of the Chapter 11 Case by ensuring that assets are available to pay U.S. Trustee’s fees and professional fees, notwithstanding the grant of superpriority and liens and claims under the DIP Facility and the DIP Orders. Accordingly, the Debtor in its reasonable business judgment believes the Carve-Out is reasonable in scope and amount and is both necessary and appropriate.

VI. The Debtor Should be Authorized to Pay the Fees Associated with the DIP Facility

44. As described above, the Debtor has agreed, subject to Court approval, to pay certain fees to the DIP Lender in exchange for providing the DIP Facility. Specifically, the Debtor will pay an unused line fee of 0.50% of the unused Revolving Loan Commitment, a collateral management fee of 0.50% of the average end-of-day principal balance of the Revolving Loans outstanding during the immediately preceding month, an origination fee of 1.5% of the Revolving Loan Commitment, and a deferred revolving loan origination fee of 1.5% of the Revolving Loan Commitment (payable upon termination of the DIP Facility). The Debtor has also agreed to pay audit fees, wire fees, and the fees and expenses of counsel to the DIP Lender.

45. The fees, taken together with the other provisions of the DIP Financing Documents, represent the most favorable terms to the Debtor on which the DIP Lender would agree to make the DIP Facility available. The Debtor considered the fees described above when determining in its sound business judgment that the DIP Facility constituted the best terms on which the Debtor could obtain the postpetition financing necessary to continue its operations and prosecute the Chapter 11 Case. The Debtor believes the fees are reasonable and are at or just below market rates and that paying these fees to obtain the DIP Facility is in the best interests of the Debtor's estate, creditors, and other parties in interest. Accordingly, the Court should authorize the Debtor to pay the fees provided under the DIP Financing Documents.

VII. The DIP Lender Should be Deemed a Good Faith Lender under Section 364(e) of the Bankruptcy Code.

46. Section 364(e) of the Bankruptcy Code protects a good faith lender's right to collect on loans extended to a debtor, and its right in any lien securing those loans, even if the authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal. Specifically, section 364(e) provides that:

The reversal or modification on appeal of an authorization under this section [364 of the Bankruptcy Code] to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

11 U.S.C. § 364(e).

47. The DIP Facility is the result of the Debtor's reasonable and informed determination that the DIP Lender offered the most favorable terms upon which to obtain needed postpetition financing and of arm's-length, good faith negotiations between the Debtor and the DIP Lender. The terms and conditions of the DIP Facility are fair and reasonable, and the proceeds of the DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code. Further, no consideration is being provided to any party to the DIP Facility other than as described herein. Accordingly, the Court should find that the DIP Lender is a "good faith" lender within the meaning of section 364(e) of the Bankruptcy Code and is entitled to all of the protections afforded by that section.

VIII. Modification of the Automatic Stay is Warranted

48. The relief requested herein contemplates a modification of the automatic stay to (a) permit the Debtor to grant the security interests, liens, and superpriority claims described above and to perform such acts as may be requested to assure the perfection and priority of such security interests and liens, (b) permit the DIP Lender to exercise rights and remedies under certain circumstances, and (c) as otherwise, and to the extent, necessary to effectuate the terms of the Interim Order and DIP Financing Documents. These provisions were part of the quid pro quo for the Debtor's ability to obtain the DIP Facility and use Cash Collateral as provided in the DIP Financing Documents and in the Interim Order. Notably, the exercise of remedies will be subject to three Business Days' notice to allow the Debtor to cure or seek other relief. Under these

circumstances, the Debtor believes that the extent of the modifications to the automatic stay under the Interim Order is reasonable and should be approved.

IX. The Debtor Requires Immediate Access to the Cash Collateral and DIP Facility

49. The Court may grant interim relief in respect of a motion filed pursuant to section 363(c) or 364 of the Bankruptcy Code where, as here, interim relief is “necessary to avoid immediate and irreparable harm to the estate pending a final hearing.” FED. R. BANKR. P. 4001(b)(2) and (c)(2).

50. The Debtor and its estate will suffer immediate and irreparable harm if the interim relief requested herein is not granted promptly. The Debtor believes that the commencement of these Chapter 11 Case will increase its expenses as a result of, among other things, the costs of administering the Chapter 11 Case and addressing key constituents’ concerns regarding the Debtor’s financial health and ability to continue operations in light of the Chapter 11 Case. Indeed, unless the Court approves the Debtor’s interim access to the DIP Facility funds, it is likely that the Debtor will run out of cash in the near term. Accordingly, the Debtor has an immediate need for access to liquidity to, among other things, permit the orderly continuation of the operation of its business, to make payroll, and to satisfy other working capital and operation needs, all of which are required to preserve and maintain the Debtor’s going concern value for the benefit of all parties in interest.

51. Accordingly, for all of the reasons set forth above, prompt entry of the Interim Order is necessary to avert immediate and irreparable harm to the Debtor’s estate and is consistent with, and warranted under, Bankruptcy Rules 4001(b)(2) and (c)(2). In addition, to implement the terms of the DIP Facility, the Debtor requests a waiver of the notice requirements under

Bankruptcy Rule 6004(a) and any stay of an order granting the relief requested herein pursuant to Bankruptcy Rule 6004(h), or otherwise.

REQUEST FOR FINAL HEARING

52. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtor requests that the Court set a date for consideration of entry of the Final Order. The Debtor requests that they be authorized to serve a copy of the signed Interim Order, which fixes the time and date for the filing of any objections by first class mail upon the notice parties listed below. The Debtor further requests that the Court consider such notice of the Final Hearing to be sufficient notice under Bankruptcy Rule 4001(c)(2).

BANKRUPTCY RULE 6003 HAS BEEN SATISFIED

53. Pursuant to Local Rule 9013-1, the Debtor respectfully requests emergency consideration of this Motion under Bankruptcy Rule 6003, which provides that the Court may grant relief within the first 21 days after the Petition Date to the extent such relief is necessary to avoid immediate and irreparable harm. As described herein and in the First Day Declaration, the relief requested is essential to avoid the immediate and irreparable harm that would be caused by the Debtor's inability to transition smoothly into Chapter 11. Accordingly, the Debtor submits that the requirements of Bankruptcy Rule 6003 are satisfied.

RESERVATION OF RIGHTS

54. Other than as stipulated in the Interim Order, nothing contained in this motion is intended or should be construed as an admission as to the validity of any claim against the Debtor, a waiver of the Debtor's rights to dispute any claim, or an approval or assumption of any agreement, contract, or lease under section 365 of the Bankruptcy Code.

55. Similarly, other than as stipulated in the Interim Order, if this Court grants the relief sought in this motion, any payment made pursuant to the Court's order is not intended and should

not be construed as an admission as to the validity of any claim or a waiver of the Debtor's rights to dispute such claim subsequently.

NOTICE

56. The Debtor has provided notice of this motion by electronic mail, facsimile, or overnight mail to: (a) the Office of the United States Trustee for the Southern District of Texas (the "*U.S. Trustee*"); (b) counsel to Walker County Hospital District; (c) Cardinal Health 110, Inc.; (d) counsel to the Prepetition Lender and the DIP Lender; (e) the Office of the United States Attorney for the Southern District of Texas; (f) the United States Department of Health and Human Services; (g) the Texas Department of State Health Services; (h) the Attorney General of the State of Texas; (i) the Texas Department of Revenue; (j) the Internal Revenue Service; (k) the parties included on the list of the Debtor's list of twenty largest unsecured creditors; (l) any party who has requested notice pursuant to Bankruptcy Rule 2002; (m) all parties entitled to notice under Bankruptcy Rule 2002(j); and (n) all other known parties asserting a lien on the Debtor's assets.

57. Given the nature of the relief requested in this motion, the Debtor submits that no other or further notice is necessary or required.

NO PRIOR REQUEST

58. The Debtor has not made a prior request to this Court or any other court for the relief sought in this motion.

[Remainder of Page Intentionally Left Blank]

WHEREFORE, the Debtor respectfully requests that the Court grant the relief requested herein and such other and further relief as the Court may deem just and proper.

DATED: November 11, 2019
Nashville, Tennessee

Respectfully submitted,
WALLER LANSDEN DORTCH & DAVIS, LLP

/s/ /s/ Blake Roth
Ryan K. Cochran (Federal ID No. 3438844)
Blake D. Roth (Federal ID No. 2666808)
Tyler N. Layne (Federal ID No. 2639086)
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-and-

Andrea R. Cunha (*pro hac vice* admission pending)
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100 Congress Avenue, Suite 1800
Austin, TX 78701
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Evan.Atkinson@wallerlaw.com

Proposed Counsel for the Debtor and Debtor in Possession

EXHIBIT A
PROPOSED ORDER

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

WALKER COUNTY HOSPITAL CORPORATION,
d/b/a HUNTSVILLE MEMORIAL HOSPITAL,

Debtor and Debtor in Possession.¹

Chapter 11

Case No. 19-36300

**INTERIM ORDER (I) AUTHORIZING THE DEBTOR TO (A) OBTAIN
POSTPETITION SECURED FINANCING AND (B) UTILIZE CASH COLLATERAL,
(II) GRANTING LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE
STATUS, (III) GRANTING ADEQUATE PROTECTION, (IV) MODIFYING THE
AUTOMATIC STAY, AND (V) SCHEDULING A FINAL HEARING**

Upon consideration of the motion (the “*DIP Motion*”),² dated November 11, 2019, filed by Walker County Hospital Corporation (the “*Debtor*”), as debtor and debtor in possession in the above-captioned chapter 11 case (the “*Chapter 11 Case*”), pursuant to sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e) and 507 of title 11 of the United States Code (the “*Bankruptcy Code*”), Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”) and Rule 4001-1(b) of the Bankruptcy Local Rules for the Southern District of Texas (the “*Local Rules*”), for entry of an order (the “*Interim Order*”) authorizing the Debtor to, among other things:

(i) Obtain senior secured post-petition financing (the “*DIP Financing*” or “*DIP Facility*”) pursuant to the terms and conditions of the DIP Financing Documents (as defined

¹ The last four digits of the Debtor’s federal tax identification number are: 0960. The location of the Debtor’s service address is: P.O. Box 4001, Huntsville, TX 77342-4001, Attn: Steven Smith.

² Capitalized terms not defined herein shall have the meanings ascribed to such terms in the DIP Credit Agreement.

herein), this Interim Order, and the Final Order (as defined herein), pursuant to sections 364(c)(1), 364(d), and 364(e) of the Bankruptcy Code and Rule 4001(c) of the Bankruptcy Rules;

(ii) Enter into a Debtor-in-Possession Revolving Credit and Security Agreement (the “**DIP Credit Agreement**”), substantially in the form attached hereto as Exhibit 1, by and among the Debtor and MidCap Financial Trust (“**MidCap**”), or one of its affiliates, in its capacity as agent (“**DIP Agent**”) and in its capacity as lender (“**DIP Lender**”)³ under the DIP Credit Agreement and other related financing documents (the “**DIP Financing Documents**”);

(iii) Borrow, on an interim basis, pursuant to the DIP Financing Documents, postpetition financing of up to \$5,000,000.00 on a revolving basis (the “**Interim DIP Loan**”) and seek other financial accommodations from the DIP Lender pursuant to the DIP Credit Agreement, the other DIP Financing Documents, and this Interim Order;

(iv) Borrow, on a final basis, pursuant to the DIP Financing Documents, postpetition financing of up to \$5,000,000.00 on a revolving basis, which includes the Interim DIP Loan (the “**Final DIP Loan**,” and together with the Interim DIP Loan, the “**DIP Loan**”) and seek other financial accommodations from the DIP Lender pursuant to the DIP Credit Agreement, the other DIP Financing Documents, and the Final Order (as defined herein);

(v) Execute and deliver the DIP Credit Agreement and the other DIP Financing Documents;

(vi) Grant the DIP Lender allowed super-priority administrative expense claims, pursuant to section 364(c)(1) of the Bankruptcy Code, in the Chapter 11 Case and any Successor Case (as defined herein) for the DIP Financing and all obligations of the Debtor owing under the

³ Unless otherwise indicated, all references herein to DIP Lender shall include MidCap in its capacity as DIP Agent and DIP Lender.

DIP Financing Documents (collectively, and including all “Obligations” of the Debtors (as defined and described in the DIP Credit Agreement), the “*DIP Obligations*”), subject only to the Carve-Out (as defined herein);

(vii) Grant the DIP Lender automatically perfected first priority senior security interests in and liens on all of the DIP Collateral (as defined herein), including, without limitation, all property constituting “cash collateral,” (as defined in section 363(a) of the Bankruptcy Code, “*Cash Collateral*”), pursuant to section 364(d)(1) of the Bankruptcy Code, which liens shall not be subject to any other liens, charges or security interests, with the exception of the Carve-Out as set forth below, nor to surcharge under section 506(c) or any other section of the Bankruptcy Code;

(viii) Obtain authorization to use the proceeds of the DIP Financing in accordance with the Budget (as defined in the DIP Credit Agreement), a copy of which is attached hereto as **Exhibit 2**, and as otherwise provided for in the DIP Financing Documents, this Interim Order and the Final Order;

(ix) Obtain authorization to use Cash Collateral, including the Prepetition Lender’s (as defined herein) Cash Collateral in accordance with the Budget;

(x) Provide adequate protection to the Prepetition Lender pursuant to the terms of this Interim Order and the Final Order for any Diminution in Value (as defined herein) of its interests in the Prepetition Collateral (as defined herein) of the Debtor, including any Cash Collateral;

(xi) Vacate and modify the automatic stay imposed by section 362 of the Bankruptcy Code solely to the extent necessary to implement and effectuate the terms of the DIP Financing Documents, this Interim Order, and the Final Order;

(xii) Schedule a final hearing (the “*Final Hearing*”) to consider entry of an order (the “*Final Order*”) granting the relief requested in the DIP Motion on a final basis and approving the form of notice with respect to the Final Hearing; and

(xiii) Waive any applicable stay as provided in the Bankruptcy Rules and provide for immediate effectiveness of this Interim Order.

The Court, having considered the DIP Motion, the *Declaration of Steven L. Smith in Support of First Day Motions*, the DIP Credit Agreement, and the evidence submitted or adduced and the arguments of counsel made at the hearing on this Interim Order (the “*Interim Hearing*”); and due and proper notice of the DIP Motion and Interim Hearing having been provided in accordance with Bankruptcy Rules 2002, 4001(b) and (d), and 9014 and Local Rule 4001-1(b), and no other or further notice being required under the circumstances; and the Interim Hearing having been held and concluded; and it appearing that approval of the interim relief requested in the DIP Motion is necessary to avoid immediate and irreparable harm to the Debtor pending the Final Hearing and is otherwise fair and reasonable and in the best interests of the Debtor, its estate and its creditors, and is essential for the preservation of the value of the Debtor’s assets; and all objections, if any, to the entry of this Interim Order having been withdrawn, resolved or overruled by the Court; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

IT IS HEREBY FOUND, DETERMINED, ORDERED AND ADJUDGED, that:

A. **Petition Date**. On November 11, 2019 (the “**Petition Date**”), the Debtor filed with this Court its voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor is continuing to operate its business and manage its assets as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

B. **Jurisdiction and Venue.** This Court has jurisdiction over these proceedings pursuant to 28 U.S.C. §§ 157(b) and 1334, and over the persons and property affected hereby. Consideration of the DIP Motion constitutes a core proceeding as defined in 28 U.S.C. § 157(b)(2). Venue for this Chapter 11 Case and proceedings on the DIP Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

C. **Committee Formation.** A statutory committee of unsecured creditors (the “Committee”) has not yet been appointed in this Chapter 11 Case.

D. **Notice.** Notice of the Interim Hearing and notice of the DIP Motion has been provided by the Debtor to: (a) the Office of the United States Trustee for the Southern District of Texas (the “*U.S. Trustee*”); (b) counsel to Walker County Hospital District (the “*Landlord*”); (c) Cardinal Health (as defined herein); (d) counsel to the Prepetition Lender and the DIP Lender; (e) the Office of the United States Attorney for the Southern District of Texas; (f) the United States Department of Health and Human Services; (g) the Texas Department of State Health Services; (h) the Attorney General of the State of Texas; (i) the Texas Department of Revenue; (j) the Internal Revenue Service; (k) the parties included on the list of the Debtor’s list of twenty largest unsecured creditors; (l) any party who has requested notice pursuant to Bankruptcy Rule 2002; (m) all parties entitled to notice under Bankruptcy Rule 2002(j); and (n) all other known parties asserting a lien on the Debtor’s assets. Under the circumstances, such notice of the Interim Hearing and the DIP Motion constitutes due, sufficient and appropriate notice and complies with sections 102(1) and 363 of the Bankruptcy Code, Bankruptcy Rules 2002 and 4001(b), and the Local Rules, and no other or further notice is required under the circumstances.

E. **Stipulations as to the Prepetition Secured Credit Facilities.** Without prejudice to the rights of Parties in Interest (as defined herein) as set forth below, the Debtor admits,

stipulates, acknowledges and agrees that (collectively, paragraphs E(i) through E(vi) hereof shall be referred to herein as the “*Debtor’s Stipulations*”):

(i) **Prepetition Credit Facility.** Pursuant to that certain Revolving Loan and Security Agreement dated as of May 16, 2014, as amended, restated, supplemented, or otherwise modified from time to time (collectively, the “*Prepetition Credit Agreement*” and together with all other loan and security documents executed in connection therewith, the “*Prepetition Credit Documents*”), among Debtor, non-Debtor borrower HMH Physician Organization (“*HMH PO*,” and together with the Debtor, the “*Prepetition Borrowers*”), and MidCap Funding IV Trust, as successor-by-assignment to MidCap, as Agent and Lender (as successor-by-assignment to Healthcare Finance Group, LLC) (collectively, the “*Prepetition Lender*”),⁴ the Prepetition Lender provided the Prepetition Borrowers with a first lien secured revolving credit facility in the maximum principal amount of \$10,000,000 (the “*Prepetition Credit Facility*”).

(ii) **Prepetition Credit Obligations.** As of the Petition Date, the Prepetition Borrowers are jointly and severally indebted and liable to the Prepetition Lender, without objection, defense, counterclaim or offset of any kind, under the Prepetition Credit Documents in the principal amount of no less than \$2,043,447.84 in revolving loan principal obligations, plus interest accrued and accruing, fees, costs and expenses due and owing thereunder, whether charged to the Prepetition Credit Facility prior to or after the Petition Date (collectively, the “*Prepetition Credit Obligations*”).

(iii) **Prepetition Credit Facility Lien Collateral.** Pursuant to the Prepetition Credit Documents, in order to secure the Debtor’s Prepetition Obligations, Prepetition Borrowers

⁴ Unless otherwise indicated, all references herein to Prepetition Lender shall include MidCap Funding IV Trust, as successor-by-assignment to MidCap, in its capacity as Agent and Lender under the Prepetition Credit Documents.

granted Prepetition Lender a first lien and security interest in and on the Collateral (as defined in the Prepetition Credit Agreement) (the “*Prepetition Liens*”), including, without limitation, all of the Prepetition Borrowers’ right, title, and interest in and to all accounts, cash, money, deposit accounts, lockbox accounts (and the amounts held therein), all books and records, in whatever form, relating to the foregoing, all general intangibles (as defined in the UCC), but only to the extent necessary to collect such accounts, and all proceeds of any kind or nature of the foregoing (collectively, the “*Prepetition Collateral*”).

(iv) **Priority of Prepetition Liens.** Subject to the DIP Liens (as defined herein) which prime the Prepetition Liens as set forth in paragraphs H and 2(e) hereof, the Prepetition Liens are first priority security interests and liens with respect to the Prepetition Collateral.

(v) **Enforceability of Prepetition Credit Obligations.** The Prepetition Credit Obligations are (i) legal, valid, binding and enforceable against the Debtor and (ii) not subject to any contest, attack, objection, recoupment, defense, counterclaim, offset, subordination, re-characterization, avoidance or other claim, cause of action or other challenge of any nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise. The Debtor does not have, hereby forever releases, and is forever barred from bringing or asserting any claims, counterclaims, causes of action, defense or setoff rights relating to the Prepetition Credit Obligations, whether arising under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise against the Prepetition Lender and its officers, directors, agents, employees, attorneys, successors and assigns.

(vi) **Enforceability of Prepetition Liens.** The Prepetition Liens on the Prepetition Collateral were legal, valid, enforceable, non-avoidable, and duly perfected as of the Petition Date, and remain so and are not subject to avoidance, attack, offset, re-characterization or

subordination under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise and, as of the Petition Date, and without giving effect to this Interim Order, the Debtor is not aware of any liens or security interests having priority over the Prepetition Liens on the Prepetition Collateral. The Prepetition Liens on the Prepetition Collateral were granted for fair consideration and reasonably equivalent value.

F. **Findings Regarding the Postpetition Financing.**

(i) **Good Cause; Need for Postpetition Financing.** Good cause has been shown for the entry of this Interim Order. An immediate need exists for the Debtor to obtain funds from the Interim DIP Loan in order to continue operations, serve patients and to administer and preserve the value of their estates. The ability of the Debtor to finance its operations, to preserve and maintain the value of its assets and to maximize a return for all creditors requires the availability of working capital from the Interim DIP Loan, the absence of which would immediately and irreparably harm the Debtor, its estate, its patients and its creditors and the possibility for a successful sale of the Debtor's assets as a going concern or otherwise. The proposed Interim DIP Loan is in the best interests of the Debtor, its estate, its patients and its creditors.

(ii) **No Credit Available on More Favorable Terms.** The Debtor has been unable to obtain (a) unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense, (b) credit for money borrowed secured solely by a lien on property of the estate that it not otherwise subject to a lien, (c) credit for money borrowed secured by a junior lien on property of the estate which is subject to a lien, (d) or credit otherwise on more favorable terms and conditions than those provided in the DIP Credit Agreement and this Interim Order. The

Debtor is unable to obtain credit for borrowed money without granting to the DIP Lender the DIP Protections (as defined herein).

(iii) **Consent and Adequate Protection of Existing Lien Holders.** The holder of prepetition liens on the DIP Collateral, the Prepetition Lender, has consented to the DIP Financing as set forth in the DIP Financing Documents and its interests in the DIP Collateral are adequately protected as set forth herein.

G. **Use of Proceeds of the DIP Facility.** Proceeds of the DIP Facility (net of any amounts used to pay fees, costs and expenses under the DIP Financing Documents) shall be used in accordance with the Budget and in a manner consistent with the terms and conditions of the DIP Credit Agreement, this Interim Order, and the Final Order, subject to payment in full of the Prepetition Credit Obligations under the Prepetition Credit Documents as set forth in the Final Order.

H. **Adequate Protection for Prepetition Secured Lenders.** The priming of the Prepetition Lender's Prepetition Liens to the extent set forth below pursuant to section 364(d) of the Bankruptcy Code is necessary to obtain the DIP Financing, and is done with the consent of the Prepetition Lender. In exchange for the priming of the Prepetition Liens set forth below, the Prepetition Lender shall be entitled to receive adequate protection, as set forth in this Interim Order, pursuant to sections 361, 363 and 364 of the Bankruptcy Code, for any diminution in the value of its interests in the Prepetition Collateral resulting from, among other things, the subordination to the Carve-Out and to the DIP Liens (as defined herein), the Debtor's use, sale or lease of such Prepetition Collateral, and the imposition of the automatic stay from and after the Petition Date (collectively, and solely to the extent of such diminution in value, the "***Diminution in Value***"). The Prepetition Lender has negotiated in good faith regarding the Debtor's use of the

Prepetition Collateral, including Cash Collateral, to help fund the administration of the Debtor's estate along with the proceeds of the DIP Financing. Based on the DIP Motion and the record presented to the Court at the Interim Hearing, the terms of the proposed adequate protection arrangements and the use of Cash Collateral are fair and reasonable, reflect the Debtor's prudent exercise of business judgment and constitute reasonably equivalent value and fair consideration for the consent of the Prepetition Lender; provided, however, nothing herein shall limit the rights of the Prepetition Lender to hereafter seek new or different adequate protection.

I. **Extension of Financing; Business Judgment and Good Faith Pursuant to Section 364(e).**

(i) The DIP Lender is willing to provide financing to the Debtor in accordance with the DIP Financing Documents. The terms and conditions of the DIP Facility and the DIP Financing Documents, and the fees paid and to be paid thereunder are fair, reasonable, and the best available under the circumstances, reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties, and are supported by reasonably equivalent value and consideration;

(ii) The DIP Financing Documents were negotiated in good faith and at arms' length between the Debtor and the DIP Lender;

(iii) The proceeds to be extended under the DIP Facility will be so extended in good faith, and for valid business purposes and uses; and

(iv) The DIP Lender is acting in good faith with respect to the DIP Facility and the terms and conditions of the DIP Financing Documents, and the DIP Lender's claims, superpriority claims, security interests and liens and other protections granted pursuant to this Interim Order and the DIP Financing Documents will not be affected or avoided by any subsequent

reversal or modification of this Interim Order or the Final Order, as provided in section 364(e) of the Bankruptcy Code.

J. **Relief Essential; Best Interest; Good Cause.** The relief requested in the DIP Motion (and as provided in this Interim Order) is necessary, essential, and appropriate for the preservation of the Debtor's assets and business. It is in the best interest of the Debtor's estate to be allowed to establish the DIP Facility contemplated by the DIP Credit Agreement and other DIP Financing Documents. Good cause has been shown for the relief requested in the DIP Motion (and as provided in this Interim Order).

NOW, THEREFORE, on the DIP Motion and the record before this Court with respect to the DIP Motion, including the record created during the Interim Hearing, and with the consent of the Debtor, the Prepetition Lender and the DIP Lender to the form and entry of this Interim Order, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. **Motion Granted.** The DIP Motion is granted in accordance with the terms and conditions set forth in this Interim Order, the DIP Credit Agreement and the other DIP Financing Documents. Any objections to the DIP Motion with respect to entry of this Interim Order to the extent not withdrawn, waived or otherwise resolved, and all reservations of rights included therein, are hereby denied and overruled.

2. **DIP Financing Documents.**

(a) **Approval of Entry Into DIP Financing Documents.** The Debtor is authorized, empowered and directed to execute and deliver the DIP Financing Documents and to incur and to perform the DIP Obligations in accordance with, and subject to, the terms of this Interim Order and the DIP Financing Documents, and to execute and deliver all instruments and

documents which may be required or necessary for the performance by the Debtor under the DIP Financing Documents and the creation and perfection of the DIP Liens described in and provided for by this Interim Order and the DIP Financing Documents. The Debtor is hereby authorized and directed to do and perform all acts, pay the principal, interest, fees, expenses, indemnities and other amounts described in the DIP Credit Agreement as such become due, including, without limitation, commitment fees and reasonable attorneys' fees and disbursements as provided for in the DIP Credit Agreement, which amounts shall not otherwise be subject to approval of this Court.

(b) **Authorization to Borrow.** To enable the Debtor to continue to preserve the value of its estate and dispose of its assets in an orderly fashion, during the period prior to entry of the Final Order (the "*Interim Period*") and subject to the terms and conditions of this Interim Order, upon the execution of the DIP Credit Agreement, the Debtor is hereby authorized to borrow the Interim DIP Loan up to a total committed amount of \$5,000,000.00 under the DIP Financing Documents.

(c) **Conditions Precedent.** The DIP Lender shall have no obligation to make the Interim DIP Loan or any loan or advance under the DIP Credit Agreement during the Interim Period unless the conditions precedent to making such loan under the DIP Credit Agreement have been satisfied in full or waived by the DIP Lender in its sole discretion.

(d) **DIP Collateral; DIP Liens.** Effective immediately upon the entry of this Interim Order, on account of the Interim DIP Loan, the DIP Lender shall be and is hereby granted first-priority security interests and liens (which shall immediately be valid, binding, permanent, continuing, enforceable, perfected and non-avoidable) on all of the Prepetition Collateral, including Cash Collateral, the property defined in Schedule 9.1 to the DIP Credit Agreement and the proceeds thereof, including, without limitation, the proceeds from the sale of the DIP Collateral

(as defined herein) or the Prepetition Collateral, accounts receivable, all other unencumbered tangible and intangible property of the Debtor of the type that is DIP Collateral, and all other rights to payment, whether arising before or after the Petition Date (collectively, the “**DIP Collateral**,” and all such liens and security interests granted on or in the DIP Collateral pursuant to this Interim Order and the DIP Financing Documents, the “**DIP Liens**”). The DIP Collateral shall not be subject to any surcharge under section 506(c) or any other provision of the Bankruptcy Code or other applicable law, nor by order of this Court.

(e) **DIP Lien Priority**. Subject only to the Carve-Out, the DIP Liens shall, pursuant to section 364(c)(2) of the Bankruptcy Code, be perfected, first priority liens on all DIP Collateral (including all proceeds of the Debtor’s claims and causes of action under sections 502(d), 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy Code and any other avoidance or similar actions under the Bankruptcy Code or similar state law (the “**Avoidance Actions**”), whether received by judgment, settlement or otherwise). Subject only to the Carve-Out, the DIP Liens shall, pursuant to section 364(d)(1) of the Bankruptcy Code, be perfected first priority senior liens on all DIP Collateral that is (i) subject to the Prepetition Liens, which DIP Liens shall also prime any liens granted after the Petition Date to provide adequate protection in respect of the primed Prepetition Liens and (ii) acquired after the Petition Date, which DIP Liens shall also prime any liens granted after the Petition Date to any other party, including any liens granted to provide adequate protection in respect of the primed Prepetition Liens. Without limiting the foregoing, the DIP Liens shall not be made subject to, subordinate to, or *pari passu* with any lien or security interest by any court order heretofore or hereafter granted in the Chapter 11 Case on the DIP Collateral or any portion thereof. The DIP Liens shall be valid and enforceable against any trustee appointed in the Chapter 11 Case, upon the conversion of any of the Chapter 11 Case to a case

under Chapter 7 of the Bankruptcy Code, or in any other proceeding related to any of the foregoing (any “*Successor Case*”), and/or upon the dismissal of the Chapter 11 Case or Successor Case.

(f) **Enforceable Obligations.** The DIP Financing Documents shall constitute and evidence the valid and binding obligations of the Debtor, which obligations shall be enforceable against the Debtor, its estate and any successors thereto and its creditors or representatives thereof, in accordance with their terms.

(g) **Protection of DIP Lender and Other Rights.** From and after the Petition Date, the Debtor shall use the proceeds of the extensions of credit under the DIP Facility only for the purposes specifically set forth in the DIP Credit Agreement and this Interim Order and in strict compliance with the Budget (subject to any variances thereto permitted by the DIP Credit Agreement).

(h) **Additional Protections of DIP Lender; Superpriority Administrative Claim Status.** Subject to the Carve-Out, all DIP Obligations shall constitute an allowed superpriority administrative expense claim (the “*DIP Superpriority Claim*” and, together with the DIP Liens, the “*DIP Protections*”) with priority in the Chapter 11 Case and Successor Case over all other administrative expense claims under sections 364(c)(1), 503(b) and 507(b) of the Bankruptcy Code and otherwise over all administrative expense claims and unsecured claims against the Debtor or its estate, 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), 1113 and 1114 and any other provision of the Bankruptcy Code except as otherwise set forth herein, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment. The DIP Superpriority Claim shall be payable from and

have recourse to all prepetition and post-petition property of the Debtor and all proceeds thereof. Without limiting the foregoing, the DIP Superpriority Claim shall not be made subject to, subordinate to, or *pari passu* with any other administrative claim in the Chapter 11 Case or Successor Case, except for the Carve-Out.

3. **Authorization to Use Cash Collateral and Proceeds of DIP Facility.** Pursuant to the terms and conditions of this Interim Order, the DIP Credit Agreement and the other DIP Financing Documents, and in accordance with the Budget and the permitted variances thereto set forth in the DIP Credit Agreement, (a) the Debtor is authorized to use the advances under the DIP Credit Agreement during the period commencing immediately after the entry of this Interim Order and terminating upon the occurrence of an Event of Default (as defined herein) and the termination of the DIP Credit Agreement in accordance with its terms and subject to the provisions hereof, and (b) the Debtor is authorized to use all Cash Collateral of the Prepetition Lender, provided that the Prepetition Lender is granted adequate protection as hereinafter set forth.

4. **Adequate Protection for Prepetition Lender.** As adequate protection for the interests of the Prepetition Lender in the Prepetition Collateral (including Cash Collateral) on account of the granting of the DIP Liens, subordination to the Carve-Out, the Debtor's use of Cash Collateral and any other Diminution in Value arising out of the automatic stay or the Debtor's use, sale, or disposition or other depreciation of the Prepetition Collateral, the Prepetition Lender shall receive adequate protection as follows:

(a) **Adequate Protection Replacement Liens.** To the extent of the Diminution in Value of the interests of the Prepetition Lender in the Prepetition Collateral of the Debtor, the Prepetition Lender shall be and is hereby granted continuing valid, binding,

enforceable, non-avoidable and automatically perfected post-petition security interests in and liens on the DIP Collateral (the “*Replacement Liens*”).

(i) **Priority of the Replacement Liens:**

(A) The Replacement Liens shall be junior only to (i) the Carve-Out, (ii) the DIP Liens and (iii) the Permitted Liens. The Replacement Liens shall otherwise be senior to all other security interests in, liens on, or claims against any of the DIP Collateral.

(B) Except as provided herein, the Replacement Liens shall not be made subject to or *pari passu* with any lien or security interest by any court order heretofore or hereafter entered in the Chapter 11 Case or any Successor Case, and shall be valid and enforceable against any trustee appointed in any of the Chapter 11 Case or any Successor Case, or upon the dismissal of the Chapter 11 Case or Successor Case. The Replacement Liens shall not be subject to sections 506(c), 510, 549, or 550 of the Bankruptcy Code.

(ii) **Adequate Protection Superpriority Claims.** To the extent of the Diminution in Value of the interests of the Prepetition Lender in the Prepetition Collateral of the Debtor, the Prepetition Lender is hereby granted allowed superpriority administrative expense claims, to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code, in the Chapter 11 Case and any Successor Case (the “*Adequate Protection Superpriority Claims*”).

(iii) **Adequate Protection Superpriority Claims.** The Adequate Protection Superpriority Claims shall be junior only to the Carve-Out and the DIP

Superpriority Claim. Except as otherwise provided in this Interim Order, the Adequate Protection Superpriority Claims shall have priority over all administrative expense claims and unsecured claims against the Debtor or its estate, 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), 1113 and 1114 of the Bankruptcy Code.

(iv) **Adequate Protection Payments and Protections.** To the extent any Prepetition Credit Obligations remain outstanding, the Debtor is authorized and directed to provide adequate protection payments to the Prepetition Lender in the form of (i) weekly payments of the reasonable, documented fees and expenses of the Prepetition Lender, whether such fees and expenses are incurred prior to or after the Petition Date and (ii) weekly payments of interest under the Prepetition Credit Documents. The obligation to make the foregoing payments shall continue regardless of whether such amounts appear in the Budget.

5. **Right to Credit Bid.** The DIP Lender and the Prepetition Lender shall each have the right, but not the obligation, to “*credit bid*” separately or in combination the allowed amounts of the DIP Obligations and the Prepetition Credit Obligations during any sale of the DIP Collateral, including without limitation, sales occurring pursuant to section 363 of the Bankruptcy Code or included as part of any reorganization plan subject to confirmation under section 1129(b)(2)(A)(iii) of the Bankruptcy Code.

6. **Postpetition Lien Perfection.** This Interim Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the DIP Liens and the Replacement Liens without the necessity of filing or recording any financing statement, deeds of trust,

mortgages, or other instruments or documents which may otherwise be required under the law of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement or obtaining possession of any possessory collateral) to validate or perfect the DIP Liens and the Replacement Liens or to entitle the DIP Liens and the Replacement Liens to the priorities granted herein. Notwithstanding and without limiting the foregoing, the DIP Lender and the Prepetition Lender may each file such financing statements, mortgages, notices of liens and other similar documents as they deem appropriate, and they are hereby granted relief from the automatic stay of section 362 of the Bankruptcy Code in order to do so, and all such financing statements, mortgages, notices and other documents shall be deemed to have been filed or recorded as of the Petition Date. Notwithstanding and without limiting the foregoing provisions regarding the validity, perfection, and priority of the DIP Liens and the Replacement Liens, the Debtor shall execute and deliver to the DIP Lender and the Prepetition Lender all such financing statements, mortgages, notices and other documents as the DIP Lender and the Prepetition Lender may reasonably request to evidence, confirm, validate or perfect, or to insure the contemplated priority of, the DIP Liens and the Replacement Liens granted pursuant hereto. The DIP Lender, in its discretion, may file a photocopy of this Interim Order as a financing statement with any recording officer designated to file financing statements, and in such event, the recording officer shall be authorized to file or record such copy of this Interim Order.

7. **Reservation of Certain Third Party Rights and Bar of Challenges and Claims.**

Nothing in this Interim Order or the DIP Credit Agreement shall prejudice the rights of the Committee, if formed, or any other party in interest to the extent it has requisite standing (other than the Debtor, the Prepetition Borrowers, and their non-Debtor affiliates and subsidiaries) (each, a “*Party in Interest*”) may have to object to or challenge the findings herein and the Debtor’s

Stipulations regarding (i) the validity, extent, perfection or priority of the Prepetition Liens in and on the Prepetition Collateral, or (ii) the validity, allowability, priority, status or amount of the Prepetition Credit Obligations (a “**Challenge**”); *provided, however*, (x) if a Committee is formed, an adversary proceeding must be commenced by the Committee asserting the Challenge, including without limitation, asserting any claim against the Prepetition Lender in the nature of a setoff, counterclaim or defense to the Prepetition Credit Obligations (including but not limited to, those under sections 506, 544, 547, 548, 549 and 550 of the Bankruptcy Code or by way of suit against the Prepetition Lender) (also, a “**Challenge**”) within sixty (60) days from the date of the entry of an order appointing counsel to the Committee; or, (y) if no Committee is formed, any Party in Interest must commence an adversary proceeding asserting a Challenge within forty-five (45) days from the date the U.S. Trustee or the Debtor provides notice that no Committee will be formed ((x) or (y), the “**Challenge Period**”). Debtor must provide notice to all parties on the Debtor’s mailing matrix that no Committee will be formed within five (5) days of Debtor’s receipt of the U.S. Trustee’s announcement of same. The date that is the next calendar day after the termination of the Challenge Period, in the event that no Challenge is raised during the Challenge Period, shall be referred to as the “**Challenge Period Termination Date**”. From and after the Challenge Period Termination Date, any and all challenges, claims, causes of action and objections by any party (including, without limitation, the U.S. Trustee, any Committee, any Chapter 11 or Chapter 7 trustee appointed herein or in any Successor Case, and any other Party in Interest) shall be deemed to be forever waived and barred, and the Prepetition Credit Obligations shall be deemed to be allowed in full and shall be deemed to be allowed as secured claims within the meaning of section 506 of the Bankruptcy Code for all purposes in connection with the Chapter 11 Case or any Successor Case, and the Debtor’s Stipulations shall be binding on all creditors, interest holders

and parties in interest. Notwithstanding anything herein to the contrary, if a Committee has been appointed, only the Committee shall be entitled to bring a Challenge on behalf of the Debtor's estate against the Prepetition Lender.

8. **Fees and Expenses.** To the extent any Challenge is filed, the Prepetition Lender will be entitled to include such costs and expenses, including, but not limited to, reasonable attorneys' fees, incurred in defending the objection or complaint as part of its prepetition claims to the extent allowable under section 506(b) of the Bankruptcy Code.

9. **Carve-Out.** For purposes hereof, the "***Carve-Out***" shall mean (i) all fees required to be paid to the Clerk of the Bankruptcy Court or to the Office of the U.S. Trustee pursuant to 28 U.S.C. § 1930(a)(6) (the "***U.S. Trustee Fees***"), together with interest payable thereon pursuant to applicable law and any fees payable to the Clerk of the Bankruptcy Court; and (ii) up to \$250,000 of allowed and unpaid fees, expenses and disbursements of professionals retained pursuant to sections 327 or 1103(a) of the Bankruptcy Code by, collectively, the Debtor, the Committee, any statutory committees, patient care ombudsman, trustee, examiner or other representative or professional appointed in the Chapter 11 Case, incurred after issuance of a notice from the DIP Lender that an Event of Default has occurred (the "***Carve-Out Notice***") (which the DIP Lender may issue upon an Event of Default), plus all professional fees, expenses and disbursements allowed by this Court that were incurred but remain unpaid prior to the issuance of a Carve-Out Notice (regardless of when such fees, expenses and disbursements become allowed by order of this Court). The Carve-Out shall not be reduced or increased by any amount of any fees, expenses and disbursements paid prior to issuance of a Carve-Out Notice to professionals retained by order of this Court, including amounts paid pursuant to the Budget. Upon the issuance of a Carve-Out

Notice, the right of the Debtor to pay any professional fees other than the Carve-Out shall terminate.

10. Upon the issuance of a Carve-Out Notice, the Debtor shall provide immediate notice by facsimile and email to all retained professionals informing them of the Carve-Out Notice and that the Debtor's ability to pay professionals is subject to the Carve-Out; provided, and notwithstanding anything set forth herein, the Carve-Out shall not be available to pay and shall exclude any fees and expenses incurred in connection with investigating, initiating or prosecuting any claims, causes of action, adversary proceedings, or other litigation against any of the DIP Lender or the Prepetition Lender, including, without limitation, the assertion or joinder in any claim, counterclaim, action, proceeding, application, motion, objection, defenses or other contested matter, the purpose of which is to seek any order, judgment, determination or similar relief (i) invalidating, setting aside, disallowing, avoiding, challenging or subordinating, in whole or in part, the DIP Obligations, the Prepetition Credit Obligations, the Prepetition Liens, or the DIP Liens, or (ii) preventing, hindering or delaying, whether directly or indirectly, the DIP Lender's or Prepetition Lender's assertion or enforcement of their liens or security interests or realization upon any DIP Collateral or Prepetition Collateral, or (iii) prosecuting any adversary or Avoidance Actions against either the DIP Lender or the Prepetition Lender, or (iv) challenging the amount, validity, extent, perfection, priority, or enforceability of, or asserting any defense, counterclaim, or offset to, the Prepetition Credit Obligations, or the adequate protection granted herein; provided further, however, that the Carve-Out shall be available to pay fees and expenses incurred in connection with a dispute over whether an Event of Default has occurred or is continuing. Nothing in this Interim Order shall impair the right of any party to object to the reasonableness of any such professional fees or expenses to be paid by the Debtor's estate. The

DIP Lender shall not be responsible for the payment or reimbursement of any fees or disbursements of any professional person retained in the Chapter 11 Case incurred in connection with the Chapter 11 Case or any Successor Case, and nothing in this Interim Order or otherwise shall be construed to obligate the DIP Lender, in any way, to pay compensation to, or to reimburse expenses of, any professional person retained in the Chapter 11 Case.

11. Any Committee appointed in this Chapter 11 Case shall meet and confer in good faith with the Debtor and the DIP Lender to discuss an appropriate budget for the Committee, including limitations upon the proceeds of the DIP Facility, DIP Collateral, or Cash Collateral, in the aggregate, that may be used by any Committee appointed in this Chapter 11 Case to investigate the Prepetition Liens and/or claims of the Prepetition Lender. Nothing herein shall be construed to obligate the Prepetition Lender or the DIP Lender, in any way, to pay any professional fees, or to assure that the Debtor has sufficient funds on hand to pay any professional fees.

12. **Payment of Compensation.** Nothing herein shall be construed as consent to the allowance of any professional fees or expenses of the Debtor or the Committee or shall affect the right of the DIP Lender or the Prepetition Lender to object to the allowance and payment of such fees and expenses or to permit the Debtor to pay any such amounts not set forth in the Budget.

13. **Fees and Expenses of the DIP Lender.** Without further order of this Court, and in consideration of the accommodations provided by the DIP Lender, the Debtor shall reimburse DIP Lender, on a current basis, all reasonable, documented costs and expenses (including the reasonable fees and expenses of external and internal legal, financial advisor, appraisal and valuation-related professionals and services) incurred by DIP Lender in the Chapter 11 Case and any Successor Case, including, without limitation, in connection with (i) the analysis, negotiation, preparation, documentation, execution, Court approval, administration, delivery and termination

of the DIP Credit Agreement, the other DIP Financing Documents, this Interim Order and the Final Order and the documents and instruments referred to herein and therein, and any amendment, restatement, supplement, waiver or consent relating hereto or thereto, whether or not any such amendment, amendment and restatement, supplement, waiver or consent is executed or becomes effective, (ii) the analysis, negotiation, and preparation of any document relating to the sale of the Huntsville Hospital Assets (as defined herein), any orders to be entered in connection therewith and any other documents filed in or prepared in connection with the Chapter 11 Case or in any Successor Case, and the preparation for, travel to and participation in any hearings or proceedings in connection with any of the foregoing, (iii) the enforcement of DIP Lender's rights hereunder, or the collection of any payments owing from the Debtor or the protection, preservation or defense of the rights of the DIP Lender hereunder and under the DIP Financing Documents, (iv) any lien, litigation and other search costs, and charges of any expert, appraiser, auditor or other consultant to DIP Lender, and (vi) from and after the occurrence and during the continuation of any Event of Default, any reasonable, documented fees and costs due to the DIP Lender, including the reasonable charges of internal legal counsel, in accordance with the DIP Financing Documents. Payment of such amounts shall be due and payable by the Debtor (i) after five (5) business days' notice of the requested fees and expenses to the Debtor (with a copy to the Committee (if formed) and the U.S. Trustee) and (ii) regardless of whether such amounts appear in the Budget.

14. **Section 506(c) Claims.** Nothing contained in this Interim Order shall be deemed a consent by the Prepetition Lender or the DIP Lender to any charge, lien, assessment or claim against the DIP Collateral or the Prepetition Collateral under section 506(c) of the Bankruptcy Code or otherwise. The Debtor (and any trustee appointed in the Chapter 11 Case or any Successor Case) shall be deemed to have waived any such charge, lien, assessment or claim under section

506(c) of the Bankruptcy Code, and shall not take any action that could reasonably be expected to be adverse to the DIP Lender or the Prepetition Lender or their rights and remedies under the DIP Financing Documents or Prepetition Credit Document.

15. **Collateral Rights.** Unless the DIP Lender has provided its prior written consent or all DIP Obligations and all Prepetition Credit Obligations have been paid in full in cash (or will be paid in full in cash upon entry of an order approving indebtedness described in subparagraph (a) below), and all commitments by Prepetition Lender and DIP Lender to lend have terminated:

(a) The Debtor shall not seek nor support the entry, in this Chapter 11 Case, or in any Successor Case, of any order which authorizes the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage, or collateral interest or other lien on all or any portion of the DIP Collateral or the Prepetition Collateral and/or entitled to priority administrative status which is senior or *pari passu* to the liens granted to the DIP Lender pursuant to this Interim Order, or is senior or *pari passu* to the Replacement Liens granted to the Prepetition Lender pursuant to this Interim Order or otherwise;

(b) The Debtor shall not consent to relief from the automatic stay by any person other than the DIP Lender with respect to all or any portion of the DIP Collateral without the express written consent of the DIP Lender; and

(c) In the event the Debtor seeks or supports the entry of an order in violation of subsections (a) or (b) hereof, the DIP Lender and the Prepetition Lender shall be granted relief from the automatic stay with respect to the DIP Collateral and the Prepetition Collateral pursuant to the notice procedures set forth in Section 26(b) of this Interim Order.

16. **Commitment Termination Date.** All DIP Obligations of the Debtor to the DIP Lender shall be immediately due and payable, and the Debtor's authority to use the proceeds of

the DIP Facility and to use Cash Collateral shall cease, both on the date that is the earliest to occur of: (i) the date that is one hundred eighty (180) days after the Closing Date (as defined in the Credit Agreement) (unless extended in the sole discretion of the DIP Lender, pursuant to the DIP Credit Agreement), (ii) the date on which the maturity of the DIP Obligations is accelerated and the commitments under the DIP Facility are irrevocably terminated in accordance with the DIP Credit Agreement, (iii) the date that is forty (40) days after the Petition Date if the Debtors have not obtained entry of a Final Order on or before such date (the “*Commitment Termination Date*”).

17. **Disposition of Collateral.** The Debtor shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral outside of the Ordinary Course of Business, without the prior written consent of the DIP Lender (and no such consent shall be implied, from any other action, inaction or acquiescence by the DIP Lender or an order of this Court), except as provided in the DIP Credit Agreement and this Interim Order and approved by the Bankruptcy Court to the extent required under applicable bankruptcy law. Nothing herein shall prevent the Debtor from operating in the Ordinary Course of Business to the extent consistent with the Budget.

18. **Events of Default.** The occurrence of an “Event of Default” pursuant to Section 10.1 the DIP Credit Agreement shall constitute an event of default under this Interim Order, unless expressly waived in writing in accordance with the consents required in the DIP Financing Documents (collectively, the “*Events of Default*”). Further, as set forth and/or enumerated in Section 10.1 the DIP Credit Agreement, the following events, among other things (the “*Bankruptcy Milestones*”), shall each constitute an Event of Default thereunder and under this Interim Order and shall be enforceable against the Debtor by the DIP Lender and/or the Prepetition Lender:

(a) Failure of the Debtor to file and properly serve a motion (the “**Sale Motion**”) within ten (10) days of the Petition Date, in form and substance reasonably acceptable to the DIP Lender and Debtor, in each case in their respective sole discretion, seeking Court approval of: (i) the sale of all or substantially all of the Debtor’s assets (including, without limitation the DIP Collateral) (the “**Huntsville Hospital Assets**”), subject to higher or otherwise better offers under the Bidding Procedures (as defined herein); (ii) bidding procedures in connection with the sale of the Huntsville Hospital Assets (the “**Bidding Procedures**”) in form and substance acceptable to the DIP Lender and the Debtor, in each case in their respective sole discretion; and (iii) the scheduling of an auction for the sale of the Huntsville Hospital Assets in accordance with the Bidding Procedures and a sale hearing with respect thereto (the “**Auction**” and “**Sale Hearing**”, respectively), which Sale Motion shall (A) include copies of the Bidding Procedures and the Bidding Procedures Order (as defined herein), and (B) by no later than the date prescribed in the Bidding Procedures Order (as defined herein), properly serve each counterparty to a proposed assumed and assigned executory contract a notice setting forth the amount necessary to satisfy any cure costs. The Sale Motion shall be served on all parties that are required to receive notice in the Chapter 11 Case;

(b) Failure of the Debtor to have the Court enter an order within forty-five (45) days of the Petition Date which provides for a reserve price attributable to the DIP Collateral subject to the sale that is sufficient to pay in full the DIP Obligations and is otherwise in form and substance acceptable to the Prepetition Lender and the DIP Lender, in each case in their respective reasonable discretion, (i) approving the Bidding Procedures; and (ii) scheduling the Auction and Sale Hearing (together, the “**Bidding Procedures Order**”);

(c) Failure of the Debtor to conduct the Auction for the Huntsville Hospital Assets within ninety (90) days after the Petition Date;

(d) Failure of the Debtor to have the Court enter an order (the “*Sale Order*”) not later than ten (10) days after the Auction in form and substance reasonably acceptable to the DIP Lender (i) approving the sale of the Huntsville Hospital Assets to the party otherwise submitting the highest or otherwise best bid(s) for the Huntsville Hospital Assets at the Auction free and clear of all liens, claims and encumbrances; (ii) providing for payment of the DIP Obligations in full, in cash, (iii) approving the assumption and assignment of certain contracts designated by the highest or otherwise best bidder (the “*Assigned Contracts*”), without adequate assurance of future performance liability pursuant to section 365(f)(2) of the Bankruptcy Code; (iv) transferring and assigning the Assigned Contracts such that the Assigned Contracts will be in full force and effect from and after the closing of the sale of the Huntsville Hospital Assets with non-debtor parties having an interest in such Assigned Contracts being barred and enjoined from asserting against the highest or otherwise best bidder, among other things, defaults, breaches or claims of pecuniary losses existing as of the closing or by reason of the closing; (v) providing that the provisions of Bankruptcy Rules 6004(g) and 6006(d) are waived, and there will be no stay of execution of the Sale Order; (vi) retaining jurisdiction of the Court to interpret and enforce the terms and provisions of the Sale Order and agreements approved thereby; and (vii) authorizing and approving the results of the Auction;

(e) Failure of the Debtor to complete all transactions related to and effectuating the sale and assignment of the Huntsville Hospital Assets on or before the date that is seventy-five (75) days after the date the Sale Order is entered; and

(f) Failure of the Debtor to obtain (i) entry of this Interim Order by the Bankruptcy Court in form and substance acceptable to the DIP Lender and the Debtor, in each case in their respective sole discretion, within two (2) Business Days of the Petition Date, and (ii) entry of the Final Order within forty (40) days of the Petition Date.

19. **Rights and Remedies Upon Event of Default.**

(a) Any otherwise applicable automatic stay is hereby modified so that after the occurrence of any Event of Default and at any time thereafter during the continuance of such Event of Default, upon three (3) Business Days' prior written notice of such occurrence (the "*Remedies Notice Period*"), in each case given to the Debtor, counsel for the Committee, if any, and the U.S. Trustee, the DIP Lender shall be entitled to exercise its rights and remedies with respect to the Debtor and the DIP Collateral in accordance with the DIP Financing Documents.

(b) Notwithstanding the preceding paragraph, immediately following the giving of notice by the DIP Lender of the occurrence of an Event of Default: (i) the Debtor shall continue to deliver and cause the delivery of the proceeds of DIP Collateral to the DIP Lender as provided in the DIP Credit Agreement and this Interim Order; (ii) the DIP Lender shall continue to apply such proceeds in accordance with the provisions of this Interim Order and of the DIP Credit Agreement; (iii) the Debtor shall have no right to use any of such proceeds, nor any other Cash Collateral other than towards the satisfaction of the DIP Obligations and the Carve-Out, as provided in the DIP Financing Documents and this Interim Order; and (iv) any obligation otherwise imposed on the DIP Lender to provide any loan or advance to the Debtor pursuant to the DIP Financing Documents shall immediately be suspended. Following the giving of notice by the DIP Lender of the occurrence of an Event of Default, the Debtor shall be entitled to request an emergency hearing before this Court for the sole purpose of contesting whether an Event of Default

has occurred and/or is continuing. If the Debtor does not, within the Remedies Notice Period, contest the right of the DIP Lender to exercise its remedies based upon whether an Event of Default has occurred, the automatic stay, as to the DIP Lender, shall automatically terminate at the end of the Remedies Notice Period without further order of the Bankruptcy Court.

(c) Nothing included herein shall prejudice, impair, or otherwise affect the DIP Lender's rights to seek any other or supplemental relief in respect of the DIP Lender's rights, as provided in the DIP Credit Agreement.

20. **Application of Proceeds.** Except as provided in a Final Order, and without prejudice to the rights of any other party (but subject to the Challenge described in Paragraph 7), payments received by the DIP Lender with respect to the DIP Collateral or Prepetition Collateral, shall be applied as follows:

(a) On or prior the date the Final Order is entered (at which time, for the avoidance of doubt, all of the Prepetition Obligations shall have been "rolled-up" and converted into DIP Obligations), and so long as it no Event of Default has occurred and is continuing, the DIP Lender shall apply any and all payments received by the DIP Lender with respect to the DIP Collateral or Prepetition Collateral in the following order: *first*, to the outstanding Prepetition Obligations; *second*, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to the DIP Lender with respect to the DIP Credit Agreement, the other DIP Financing Documents or the DIP Collateral; *third*, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to any lender with respect to the DIP Credit Agreement, the other DIP Financing Documents or the DIP Collateral; *fourth*, to accrued and unpaid interest on the DIP Obligations (including any interest which, but for the provisions of the Bankruptcy Code, would have accrued on such amounts); *fifth* to the principal amount of the DIP Obligations outstanding;

and *sixth* to any other indebtedness or obligations of the Debtor owing to the DIP Lender, the Prepetition Lender or any lender under the DIP Financing Documents or Prepetition Credit Documents. In carrying out the foregoing, (y) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (z) each of the parties entitled to receive a payment in any particular category shall receive an amount equal to its pro rata share of amounts available to be applied pursuant thereto for such category.

(b) Upon and after the occurrence of an Event of Default, and for so long as it continues, the DIP Lender shall apply any and all payments received by the DIP Lender with respect to the DIP Collateral or Prepetition Collateral in the following order: *first*, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to the DIP Lender with respect to the DIP Credit Agreement, the other DIP Financing Documents or the DIP Collateral; *second*, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to any lender with respect to the DIP Credit Agreement, the other DIP Financing Documents or the DIP Collateral; *third*, to accrued and unpaid interest on the DIP Obligations (including any interest which, but for the provisions of the Bankruptcy Code, would have accrued on such amounts); *fourth*, to the principal amount of the DIP Obligations outstanding; *fifth* to any other indebtedness or obligations of the Debtor owing to the DIP Lender, the Prepetition Lender, or any lender under the DIP Financing Documents or Prepetition Credit Documents; and *sixth*, to any and all of the other Prepetition Obligations that may be outstanding in the order and manner determined by the DIP Lender. In carrying out the foregoing, (y) amounts received shall be applied in the numerical order provided until exhausted prior to the application of the next succeeding category, and (z) each of the parties entitled to receive a payment in any particular category shall receive an amount equal to its pro rata share of amounts available to be applied pursuant thereto for such category.

(c) Notwithstanding (a) and (b) above, the Court reserves the right to reallocate such payments in the event and to the extent it is determined by a final order of the Court that Prepetition Lender did not maintain valid, perfected and enforceable liens on any of the Prepetition Collateral. If, in the course of this Chapter 11 Case, the Court grants liens or security interests to others pursuant to section 364(d) of the Bankruptcy Code or any other provision of the Bankruptcy Code, which liens or security interests are senior or equal to the liens or security interests of the Prepetition Lender in the Prepetition Collateral, then any proceeds of loans or extensions of credit secured by such liens shall be applied first to payment of the Prepetition Credit Obligations, including all attorneys' fees, costs and expenses, and the Prepetition Lender shall retain all liens and security interests held by it on the Prepetition Collateral until all of the Prepetition Credit Obligations are paid in full, and then to the DIP Obligations.

21. **Limitation on Lender Liability.** Nothing in this Interim Order or any of the DIP Financing Documents shall in any way be construed or interpreted to impose or allow the imposition of any liability on the DIP Lender or the Prepetition Lender for any claims arising from any prepetition or postpetition activities of the Debtor in the operation of its business or the administration of this Chapter 11 Case. Neither DIP Lender nor Prepetition Lender shall be deemed to be in control of Debtor's operations or acting as a "responsible person," "owner," or "operator" of Debtor, as such terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, *et seq.*, as amended or modified, solely because they extended loans to the Debtor.

22. **Proofs of Claim.** The Prepetition Lender and the DIP Lender shall not be required to file proofs of claim in this Chapter 11 Case. Any proof of claim so filed shall be deemed to be in addition and not in lieu of the Debtor's Stipulations.

23. **Other Rights and Obligations.**

(a) Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Interim Order. The DIP Lender has acted in good faith in connection with negotiating the DIP Financing Documents, extending credit under the DIP Facility and allowing the use of Cash Collateral, and its reliance on this Interim Order is in good faith. Based on the findings set forth in this Interim Order and the record made during the Interim Hearing, and in accordance with section 364(e) of the Bankruptcy Code, in the event any or all of the provisions of this Interim Order are hereafter reversed, modified, amended or vacated by a subsequent order of this or any other Court, the DIP Lender is entitled to the protections provided in section 364(e) of the Bankruptcy Code. Any such reversal, modification, amendment or vacatur shall not affect the validity and enforceability of any advances made pursuant to this Interim Order or the DIP Financing Documents, nor shall it affect the validity, priority, enforceability, or perfection of the DIP Liens. Any claims and DIP Protections granted to the DIP Lender hereunder arising prior to the effective date of such reversal, modification, amendment or vacatur shall be governed in all respects by the original provisions of this Interim Order, and the DIP Lender shall be entitled to all of the rights, remedies, privileges and benefits, including the DIP Protections granted herein, with respect to any such claim. Since the loans made pursuant to the DIP Credit Agreement are made in reliance on this Interim Order, the obligations owed to the DIP Lender prior to the effective date of any reversal or modification of this Interim Order cannot, as a result of any subsequent order in the Chapter 11 Case or in any Successor Case, be subordinated, lose their lien priority or superpriority administrative expense claim status, or be deprived of the benefit of the status of the liens and claims granted to the DIP Lender under this Interim Order and/or the DIP Financing Documents.

(b) Binding Effect. The provisions of this Interim Order shall be binding upon and inure to the benefit of the DIP Lender, the Prepetition Lender, the Debtor, the Committee, if appointed, all Parties in Interest, and all creditors, and each of their respective successors and assigns (including any trustee or other fiduciary hereinafter appointed as a legal representative of the Debtor or with respect to the property of the estate of the Debtor) whether in the Chapter 11 Case, in any Successor Case, or upon dismissal of any such chapter 11 or chapter 7 case.

(c) No Waiver. The failure of the DIP Lender to seek relief or otherwise exercise its rights and remedies under the DIP Financing Documents, the DIP Facility, this Interim Order or otherwise, as applicable, shall not constitute a waiver of any of the Prepetition Lender's or the DIP Lender's rights hereunder, thereunder, or otherwise. Notwithstanding anything herein, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair the Prepetition Lender or the DIP Lender under the Bankruptcy Code or under non-bankruptcy law, including without limitation, the rights of the Prepetition Lender and the DIP Lender to (i) request conversion of the Chapter 11 Case to a case under Chapter 7, dismissal of the Chapter 11 Case, or the appointment of a trustee in the Chapter 11 Case, (ii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a plan of reorganization, or (iii) exercise any of the rights, claims or privileges (whether legal, equitable or otherwise) the DIP Lender or the Prepetition Lender may have pursuant to this Interim Order, the DIP Financing Documents, the Prepetition Credit Documents, or applicable law. Nothing in this Interim Order shall interfere with the rights of any party with respect to any non-Debtor.

(d) No Third Party Rights. Except as explicitly provided for herein, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect, or incidental beneficiary.

(e) No Marshaling. Neither the DIP Lender nor the Prepetition Lender shall be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the DIP Collateral or Prepetition Collateral, as applicable.

(f) Amendment. The Debtor and the DIP Lender may amend or waive any provision of the DIP Financing Documents, provided that, to the extent such amendment or waiver impairs the Debtor or DIP Collateral of the Debtor, such amendment must be on notice to the Office of the U.S. Trustee and any Committee (if appointed), and further provided that such amendment or waiver, in the reasonable judgment of the Debtor and the DIP Lender, is both non-prejudicial to the rights of third parties or is not material. Except as otherwise provided herein, no waiver, modification, or amendment of any of the provisions of the DIP Financing Documents shall be effective unless set forth in writing, signed on behalf of all the Debtor and the DIP Lender, and, if material, approved by the Bankruptcy Court.

24. Survival of Interim Order and Other Matters. The provisions of this Interim Order and any actions taken pursuant hereto shall survive entry of any order which may be entered (i) confirming any a plan of reorganization or a plan of liquidation in the Chapter 11 Case, (ii) converting the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code or any Successor Case, (iii) to the extent authorized by applicable law, dismissing the Chapter 11 Case, (iv) withdrawing of the reference of the Chapter 11 Case from this Court, or (v) providing for abstention from handling or retaining of jurisdiction of the Chapter 11 Case in this Court. The terms and provisions of this Interim Order including the DIP Protections granted pursuant to this Interim Order and the DIP Financing Documents and any protections granted to the Prepetition Lender, shall continue in full force and effect notwithstanding the entry of such order, and such DIP Protections and protections for the Prepetition Lender shall maintain their priority as provided

by this Interim Order until all the obligations of the Debtor to the DIP Lender pursuant to the DIP Financing Documents and to the Prepetition Lender have been indefeasibly paid in full and in cash and discharged (such payment being without prejudice to any terms or provisions contained in the DIP Financing Documents which survive such discharge by their terms). The DIP Obligations shall not be discharged by the entry of any order confirming a plan of reorganization, the Debtor having waived such discharge pursuant to section 1141(d)(4) of the Bankruptcy Code.

(a) Inconsistency. In the event of any inconsistency between the terms and conditions of the DIP Financing Documents and this Interim Order, the provisions of this Interim Order shall govern and control.

(b) Enforceability. This Interim Order shall constitute findings of fact and conclusions of law pursuant to the Bankruptcy Rule 7052 and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry of this Interim Order. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, 9024, or any other Bankruptcy Rule, this Interim Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Interim Order. The rights of all Parties in Interest to object to the terms of the Final Order, the DIP Credit Agreement and any other DIP Financing Documents at the Final Hearing are expressly reserved.

(c) Objections Overruled. All objections to the DIP Motion to the extent not withdrawn or resolved, are hereby overruled on an interim basis.

(d) No Waivers or Modification of Interim Order. The Debtor irrevocably waives any right to seek any modification or extension of this Interim Order without the prior written consent of the DIP Lender and no such consent shall be implied by any other action, inaction or acquiescence of the DIP Lender.

25. **No Effect on Non-Debtor Collateral.** Notwithstanding anything set forth herein, neither the liens nor claims granted in respect of the Carve-Out shall be senior to any liens or claims of the DIP Lender or Prepetition Lender with respect to any non-Debtor or any of their assets.

26. **Final Hearing.**

(a) The Final Hearing to consider entry of the Final Order and final approval of the DIP Facility is scheduled for December [___], 2019 at [___:00] a.m. Central time at the United States Bankruptcy Court for the Southern District of Texas. If no objections to the relief sought in the Final Hearing are filed and served in accordance with this Interim Order, no Final Hearing may be held, and a separate Final Order may be presented by the Debtor and entered by this Court.

(b) On or before November [___], 2019, the Debtor shall serve, by United States mail, first-class postage prepaid, notice of the entry of this Interim Order and of the Final Hearing (the "***Final Hearing Notice***"), together with copies of this Interim Order, the proposed Final Order and the DIP Motion, on: (a) the U.S. Trustee; (b) counsel to the Landlord; (c) Cardinal Health; (d) counsel to the Prepetition Lender and the DIP Lender; (e) the Office of the United States Attorney for the Southern District of Texas; (f) the United States Department of Health and Human Services; (g) the Texas State Department of State Health Services; (h) the Attorney General of the State of Texas; (i) the Texas Department of Revenue; (j) the Internal Revenue Service; (k) the parties included on the list of the Debtor's list of twenty largest unsecured creditors; (l) any party who has requested notice pursuant to Bankruptcy Rule 2002; (m) all parties entitled to notice under Bankruptcy Rule 2002(j); and (n) all other known parties asserting a lien on the Debtor's assets. The Final Hearing Notice shall state that any party objecting to the entry of the proposed Final Order shall file written objections with the Clerk of the Bankruptcy Court no later than

December [], 2019 at 4:00 p.m. Central time which objections shall be served so that the same are received on or before such date by: (a) bankruptcy counsel for the Debtor, Waller Lansden Dortch & Davis, LLP, 511 Union Street, Suite 2700, Nashville, TN 37219, Attn.: Blake D. Roth and Tyler N. Layne; (b) counsel for the DIP Lender, Vedder Price P.C., 222 North LaSalle Street, Chicago, IL 60601, Attn: Michael M. Eidelman and David L. Kane; (c) counsel to the Committee, if any; and (d) the Office of the United States Trustee for the Southern District of Texas (Houston Division), 515 Rusk Street, Suite 3516, Houston, TX 77002, Attn: [], and shall be filed with the Clerk of the United States Bankruptcy Court for the Southern District of Texas. Notwithstanding the terms of this Interim Order, this Court is not precluded from entering a Final Order containing provisions that are inconsistent with, or contrary to any of the terms in this Interim Order, subject to the protections under section 364(e) of the Bankruptcy Code and the rights of the DIP Lender to terminate the DIP Credit Agreement if such Final Order is not acceptable to it. In the event this Court modifies any of the provisions of this Interim Order or the DIP Financing Documents following such further hearing, such modifications shall not affect the rights and priorities of DIP Lender pursuant to this Interim Order with respect to the DIP Collateral, and any portion of the DIP Obligations which arises or is incurred, advanced or paid prior to such modifications (or otherwise arising prior to such modifications), and this Interim Order shall remain in full force and effect except as specifically amended or modified at such Final Hearing.

APPROVED FOR ENTRY:

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Attorneys for the DIP Lender

EXHIBIT 1
DIP CREDIT AGREEMENT

DEBTOR-IN-POSSESSION REVOLVING CREDIT AND SECURITY AGREEMENT

dated as of November __, 2019

by and among

**WALKER COUNTY HOSPITAL CORPORATION,
a Texas nonprofit corporation, as debtor-in-possession,**

**as Borrower, and together with any Person hereafter joined as a party hereto, collectively as
Borrowers,**

and

MIDCAP FINANCIAL TRUST,

as Administrative Agent and as a Lender,

and

THE ADDITIONAL LENDERS

FROM TIME TO TIME PARTY HERETO



DEBTOR-IN-POSSESSION REVOLVING CREDIT AND SECURITY AGREEMENT

THIS DEBTOR-IN-POSSESSION REVOLVING CREDIT AND SECURITY AGREEMENT (as the same may be amended, supplemented, restated or otherwise modified from time to time, the “**Agreement**”) is dated as of November _____, 2019 by and among **WALKER COUNTY HOSPITAL CORPORATION**, a Texas nonprofit corporation (“**Huntsville**”) and any additional borrower that may hereafter be added to this Agreement with the approval of the Bankruptcy Court (as defined below) (each individually as a “**Borrower**”, and collectively as “**Borrowers**”), **MIDCAP FINANCIAL TRUST**, a Delaware statutory trust, individually as a Lender, and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender.

RECITALS

WHEREAS, on November ____, 2019 (the “**Petition Date**”), Huntsville filed a voluntary petition in the United States Bankruptcy Court for the Southern District of Texas (the “**Bankruptcy Court**”) for relief, and commenced a case (the “**Bankruptcy Case**”) under the Bankruptcy Code and has continued in the possession of its assets and in the management of its business pursuant to sections 1107 and 1108 of the Bankruptcy Code; and

WHEREAS, pursuant to that certain Revolving Loan and Security Agreement dated as of May 16, 2014 (as amended from time to time, the “**Prepetition Credit Agreement**”) among the Borrowers, the Prepetition Lenders and Prepetition Agent (each as defined below), the Prepetition Lenders made available to Huntsville and HMH Physician Organization, a Texas nonprofit corporation a \$10,000,000 senior secured asset-based credit facility; and

WHEREAS, as of the Petition Date, the Prepetition Lenders are owed \$2,043,447.84 in revolving loan principal obligations, plus interest, fees, costs and expenses and all other “**Obligations**” under and as defined in the Prepetition Credit Agreement (the “**Prepetition Obligations**”); and

WHEREAS, as a result of the filing of the Bankruptcy Case, the Revolving Loan Commitment under the Prepetition Credit Agreement was terminated and all Prepetition Obligations immediately and automatically became due and payable; and

WHEREAS, in connection with the Bankruptcy Case, Huntsville has requested that the Lenders provide it with a senior secured debtor-in-possession asset-based credit facility, consisting of a \$5,000,000 revolving loan commitment, on the terms and conditions set forth herein and pursuant to sections 364(c)(1), (2) and (3) and section 364(d) of the Bankruptcy Code, the proceeds of which shall be used as set forth herein and in the DIP Orders.

NOW, THEREFORE, each Lender is willing to extend credit to the Borrowers on the terms and subject to the conditions herein set forth.

AGREEMENT

Accordingly, the parties hereto agree as follows:

ARTICLE 1 - DEFINITIONS

Section 1.1 Certain Defined Terms. The following terms have the following meanings:

“Acceleration Event” means the occurrence of an Event of Default (a) in respect of which Agent has declared all or any portion of the Obligations to be immediately due and payable pursuant to Section 10.2, (b) pursuant to Section 10.1(a), and in respect of which Agent has suspended or terminated the Revolving Loan Commitment pursuant to Section 10.2, and/or (c) pursuant to Sections 10.1(t) through (nn).

“Account Debtor” means “account debtor”, as defined in Article 9 of the UCC, and any other obligor in respect of an Account.

“Accounts” means, collectively, (a) any right to payment of a monetary obligation, whether or not earned by performance, (b) without duplication, any “account” (as defined in the UCC), any accounts receivable (whether in the form of payments for services rendered or goods sold, rents, license fees or otherwise), any “health-care-insurance receivables” (as defined in the UCC), any “payment intangibles” (as defined in the UCC) and all other rights to payment and/or reimbursement of every kind and description, whether or not earned by performance, (c) all accounts, “general intangibles” (as defined in the UCC), Intellectual Property, rights, remedies, Guarantees, “supporting obligations” (as defined in the UCC), “letter-of-credit rights” (as defined in the UCC) and security interests in respect of the foregoing, all rights of enforcement and collection, all books and records evidencing or related to the foregoing, and all rights under the Financing Documents in respect of the foregoing, (d) all information and data compiled or derived by any Borrower or to which any Borrower is entitled in respect of or related to the foregoing, and (e) all proceeds of any of the foregoing.

“Adequate Protection Payments” shall have the meaning assigned to such term in Section 4.7.

“Affiliate” means, with respect to any Person, (a) any Person that directly or indirectly controls such Person and (b) any Person which is controlled by or is under common control with such controlling Person. As used in this definition, the term “control” of a Person means the possession, directly or indirectly, of the power to vote five percent (5%) or more of any class of voting securities of such Person or to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“Agent” means MCF, in its capacity as administrative agent for itself and for Lenders hereunder, as such capacity is established in, and subject to the provisions of, Article 11, and the successors and assigns of MCF in such capacity.

“Allowed Fees” means, in each case with respect to the Bankruptcy Case, fees and reimbursement for expenses of professionals retained by the Borrowers and/or a statutory committee of unsecured creditors allowed or payable pursuant to an order of the Bankruptcy Court, including, without limitation, pursuant to monthly fee statements, that has not been vacated, stayed or appealed, under sections 327, 328 or 1103 of the Bankruptcy Code.

“Anti-Terrorism Laws” means any Laws relating to terrorism or money laundering, including, without limitation, Executive Order No. 13224 (effective September 24, 2001), the USA PATRIOT Act, the Laws comprising or implementing the Bank Secrecy Act, and the Laws administered by OFAC.

“Applicable Margin” means with respect to Revolving Loans and all other Obligations, five percent (5.0%).

“**Asset Disposition**” means any sale, lease, license, transfer, assignment or other consensual disposition by any Credit Party of any asset.

“**Asset Purchase Agreement**” means an asset purchase agreement with respect to the Asset Sale effecting any higher and better bid approved by the Bankruptcy Court pursuant to section 363 of the Bankruptcy Code.

“**Asset Sale**” means the sale of substantially all of the assets of Huntsville (including outstanding Accounts) pursuant to an Asset Purchase Agreement approved by the Bankruptcy Court in an Asset Sale Order, in form and substance reasonably satisfactory to Agent, pursuant to section 363 of the Bankruptcy Code; provided that a portion of the consideration for such purchased assets shall be allocated solely to the outstanding Accounts in an amount equal to or in excess of the Obligations on the closing date of the Asset Sale.

“**Asset Sale Bid Procedures Order**” means each order of the Bankruptcy Court, in form and substance satisfactory to Agent, approving applicable sale and bid procedures for the Asset Sale.

“**Asset Sale Documents**” means, collectively, the Asset Purchase Agreements, Asset Sale Motions, Asset Sale Orders, Asset Sale Bid Procedures Orders and any and all other agreements, documents and certificates executed and delivered in connection therewith.

“**Asset Sale Effective Date**” means the date on which the Asset Sale is consummated after all conditions to closing of the Asset Sale have been satisfied.

“**Asset Sale Motions**” means each motion, in form and substance satisfactory to Agent, filed in the Bankruptcy Case seeking entry of an order by the Bankruptcy Court approving the Asset Sale, procedures for the Asset Sale, and the form of the Asset Purchase Agreement.

“**Asset Sale Order**” means the order of the Bankruptcy Court, in form and substance satisfactory to Agent, approving the Asset Sale and distribution of proceeds to Agent.

“**Bankruptcy Case**” has the meaning set forth in the recitals hereto, and includes all successor or converted cases under the Bankruptcy Code in respect thereof.

“**Bankruptcy Code**” means Title 11 of the United States Code entitled “Bankruptcy”, as the same may be amended, modified or supplemented from time to time, and any successor statute thereto.

“**Bankruptcy Court**” has the meaning set forth in the recitals hereto.

“**Base LIBOR Rate**” means, for each Interest Period, the rate per annum, determined by Agent in accordance with its customary procedures, and utilizing such electronic or other quotation sources as it considers appropriate (rounded upwards, if necessary, to the next 1/100%), to be the rate at which Dollar deposits (for delivery on the first day of such Interest Period or, if such day is not a Business Day on the preceding Business Day) in the amount of \$1,000,000 are offered to major banks in the London interbank market on or about 11:00 a.m. (Eastern time) two (2) Business Days prior to the commencement of such Interest Period, for a term comparable to such Interest Period, which determination shall be conclusive in the absence of manifest error.

“**Base Rate**” means the per annum rate of interest announced, from time to time, within Wells Fargo at its principal office in San Francisco as its “prime rate,” with the understanding that the “prime rate” is one of Wells Fargo’s base rates (not necessarily the lowest of such rates) and serves as the basis

upon which effective rates of interest are calculated for those loans making reference thereto and is evidenced by the recording thereof after its announcement in such internal publications as Wells Fargo may designate; *provided, however*, that Agent may, upon prior written notice to Borrower Representative, choose a reasonably comparable index or source to use as the basis for the Base Rate.

“**Blocked Person**” means any Person: (a) listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (b) owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (c) with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, (d) that commits, threatens or conspires to commit or supports “terrorism” as defined in Executive Order No. 13224, or (e) that is named a “specially designated national” or “blocked person” on the most current list published by OFAC or other similar list or is named as a “listed person” or “listed entity” on other lists made under any Anti-Terrorism Law.

“**Borrower**” and “**Borrowers**” mean the entity(ies) described in the first paragraph of this Agreement and each of their successors and permitted assigns. For purposes of clarity, on the Closing Date, Huntsville is the sole Borrower and references to “Borrowers” shall mean only Huntsville.

“**Borrower Representative**” means Huntsville, in its capacity as Borrower Representative pursuant to the provisions of Section 2.9, or any successor Borrower Representative selected by Borrowers and approved by Agent.

“**Borrowing Base**” means:

- (a) the product of (i) eighty-five percent (85%) *multiplied by* (ii) the aggregate net amount at such time of the Eligible Accounts; *minus*;
- (b) the Carve-Out Reserve Amount; *minus*;
- (c) the Minimum Liquidity Reserve; *minus*
- (d) until the Final Order Entry Date and the repayment in full of the Prepetition Obligations, the Prepetition Obligation Reserve; *minus*;
- (e) the amount of any reserves and/or adjustments provided for in this Agreement.

“**Borrowing Base Certificate**” means a certificate, duly executed by a Responsible Officer of Borrower Representative, appropriately completed and substantially in the form of Exhibit C hereto.

“**Business Day**” means any day except a Saturday, Sunday or other day on which either the New York Stock Exchange is closed, or on which commercial banks in Washington, DC and New York City are authorized by law to close.

“**Buyer**” means the purchaser of Huntsville’s assets pursuant to the Asset Purchase Agreement and the Asset Sale Order.

“**Carve-Out**” has the meaning set forth in the DIP Orders.

“**Carve-Out Reserve Amount**” means a reserve against the Borrowing Base in an amount equal to the amount of the Carve-Out, which may be increased or decreased from time to time in Agent’s sole discretion.

“**CCP**” has the meaning set forth in Section 8.4(d).

“**CERCLA**” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.A. § 9601 *et seq.*, as the same may be amended from time to time.

“**Change in Control**” means any of the following: (a) any change in the legal or beneficial ownership of the capital stock, partnership interests or membership interests, or in the capital structure, organizational documents or governing documents, of the applicable Person; (b) any pledge, assignment or hypothecation of or Lien or encumbrance on any of the legal or beneficial equity interests in the applicable Person; (c) any change in the legal or beneficial ownership or control of the outstanding voting equity interests of the applicable Person necessary at all times to elect a majority of the board of directors (or similar governing body) of each such Person and to direct the management policies and decisions of such Person; (d) the applicable Person shall cease to, directly or indirectly, own and control one hundred percent (100%) of each class of the outstanding equity interests of each Subsidiary of such Person; and (e) the occurrence of any “Change of Control”, “Change in Control” or terms of similar import under any document or instrument governing or relating to Debt of or equity in such Person or under any Prepetition Financing Document.

“**Closing Date**” means the date on which all of the conditions set forth in Section 7.1 have been satisfied or waived by Agent and the Lenders.

“**CMS**” means the federal Centers for Medicare and Medicaid Services (formerly the federal Health Care Financing Administration), and any successor Governmental Authority.

“**Code**” means the Internal Revenue Code of 1986, as amended from time to time.

“**Collateral**” means all property, now existing or hereafter acquired, mortgaged or pledged to, or purported to be subjected to a Lien in favor of, Agent, for the benefit of Agent and Lenders, pursuant to this Agreement and the Security Documents, including, without limitation, all of the property described in Schedule 9.1 hereto.

“**Commitment Annex**” means Annex A to this Agreement.

“**Commitment Expiry Date**” means the earlier to occur of (i) May [____]¹, 2020, (ii) the Asset Sale Effective Date and (iii) the date on which Agent terminates the Revolving Loan Commitment in accordance with Section 10.2.

“**Compliance Certificate**” means a certificate, duly executed by a Responsible Officer of Borrower Representative, appropriately completed and substantially in the form of Exhibit B hereto.

“**Confirmation Order**” means an order of the Bankruptcy Court, in form and substance reasonably satisfactory to the Agent, confirming the Plan of Reorganization.

“**Consolidated Subsidiary**” means, at any date, any Subsidiary the accounts of which would be consolidated with those of “parent” Borrower (or any other Person, as the context may require hereunder) in its consolidated financial statements if such statements were prepared as of such date.

“**Contingent Obligation**” means, with respect to any Person, any direct or indirect liability of such Person: (a) with respect to any Debt of another Person (a “**Third Party Obligation**”) if the purpose or

¹ Note: will be 180 days from Closing Date.

intent of such Person incurring such liability, or the effect thereof, is to provide assurance to the obligee of such Third Party Obligation that such Third Party Obligation will be paid or discharged, or that any agreement relating thereto will be complied with, or that any holder of such Third Party Obligation will be protected, in whole or in part, against loss with respect thereto; (b) with respect to any undrawn portion of any letter of credit issued for the account of such Person or as to which such Person is otherwise liable for the reimbursement of any drawing; (c) to make take-or-pay or similar payments if required regardless of nonperformance by any other party or parties to an agreement; or (d) for any obligations of another Person pursuant to any Guarantee or pursuant to any agreement to purchase, repurchase or otherwise acquire any obligation or any property constituting security therefor, to provide funds for the payment or discharge of such obligation or to preserve the solvency, financial condition or level of income of another Person. The amount of any Contingent Obligation shall be equal to the amount of the obligation so Guaranteed or otherwise supported or, if not a fixed and determinable amount, the maximum amount so Guaranteed or otherwise supported.

“Controlled Group” means all members of any group of corporations and all members of a group of trades or businesses (whether or not incorporated) under common control which, together with any Borrower, are treated as a single employer under Section 414(b), (c), (m) or (o) of the Code or Section 4001(b) of ERISA.

“Credit Exposure” means, at any time, any portion of the Revolving Loan Commitment, and of any other Obligations that remains outstanding; *provided, however*, that no Credit Exposure shall be deemed to exist solely due to the existence of contingent indemnification liability, absent the assertion of a claim, or the known existence of a claim reasonably likely to be asserted, with respect thereto.

“Credit Party” means any Guarantor under a Guarantee of the Obligations or any part thereof, any Borrower and any other Person (other than Agent, a Lender or a participant of a Lender), whether now existing or hereafter acquired or formed, that becomes obligated as a borrower, guarantor, surety, indemnitor, pledgor, assignor or other obligor under any Financing Document; and **“Credit Parties”** means all such Persons, collectively. For purposes of clarity, the Credit Parties on the Closing Date include only Huntsville.

“Debt” of a Person means at any date, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising and paid on a timely basis and in the Ordinary Course of Business, (d) all capital leases of such Person, (e) all non-contingent obligations of such Person to reimburse any bank or other Person in respect of amounts paid under a letter of credit, banker’s acceptance or similar instrument, (f) all equity securities of such Person subject to repurchase or redemption other than at the sole option of such Person, (g) all obligations secured by a Lien on any asset of such Person, whether or not such obligation is otherwise an obligation of such Person, (h) “earnouts”, purchase price adjustments, profit sharing arrangements, deferred purchase money amounts and similar payment obligations or continuing obligations of any nature of such Person arising out of purchase and sale contracts, (i) all Debt of others Guaranteed by such Person, (j) off-balance sheet liabilities and/or Pension Plan or Multiemployer Plan liabilities of such Person, (k) obligations arising under non-compete agreements, and (l) obligations arising under bonus, deferred compensation, incentive compensation or similar arrangements, other than those arising in the Ordinary Course of Business. Without duplication of any of the foregoing, Debt of Borrowers shall include any and all Loans.

“Default” means any condition or event which with the giving of notice or lapse of time or both would, unless cured or waived, become an Event of Default.

“**Deficiency Amount**” has the meaning set forth in Section 2.10(e).

“**Deposit Account**” means a “deposit account” (as defined in Article 9 of the UCC), an investment account, or other account in which funds are held or invested for credit to or for the benefit of any Borrower.

“**Deposit Account Control Agreement**” means an agreement, in form and substance satisfactory to Agent, among Agent, any Borrower and each financial institution in which such Borrower maintains a Deposit Account, which agreement provides that (a) such financial institution shall comply with instructions originated by Agent directing disposition of the funds in such Deposit Account without further consent by the applicable Borrower, and (b) such financial institution shall agree that it shall have no Lien on, or right of setoff or recoupment against, such Deposit Account or the contents thereof, other than in respect of usual and customary service fees and returned items for which Agent has been given value, in each such case expressly consented to by Agent, and containing such other terms and conditions as Agent may require, including as to any such agreement pertaining to any Lockbox Account, providing that such financial institution shall wire, or otherwise transfer, in immediately available funds, on a daily basis to the Payment Account all funds received or deposited into such Lockbox or Lockbox Account.

“**Deposit Account Restriction Agreement**” means an agreement, in form and substance satisfactory to Agent, among Agent, a Borrower and each bank in which such Borrower maintains a Deposit Account and into which Deposit Account proceeds of Accounts from Governmental Account Debtors are paid directly by the Governmental Account Debtor, and which agreement provides that (a) such bank shall not enter into an agreement with respect to such Deposit Account pursuant to which the bank agrees to comply with instructions originated by any Person, other than the Borrower that owns the Deposit Account, directing disposition of the funds in such Deposit Account, and (b) such bank shall agree that it shall have no Lien on, or right of setoff or recoupment against, such Deposit Account or the contents thereof, other than in respect of usual and customary service fees and returned items for which Agent has been given value, in each such case expressly consented to by Agent, and containing such other terms and conditions as Agent may require, including as to any such agreement pertaining to any Lockbox Account, providing that such bank shall wire, or otherwise transfer, in immediately available funds, on a daily basis to the Payment Account and/or a Lockbox Account subject to a Deposit Account Control Agreement (as Agent shall elect and direct at the time such agreement is signed) all funds received or deposited into such Lockbox Account and associated Lockbox unless the applicable Borrower shall otherwise instruct the bank in writing, subject to the limitations set forth in the Deposit Account Restriction Agreement and the other Financing Documents.

“**DIP Budget**” shall mean a statement of the Borrowers’ operating cash flow on a weekly basis for the period of thirteen weeks commencing with the calendar week during which the Closing Date occurs containing line items of sufficient detail and in substantially the form attached as Exhibit E to this Agreement. As used herein, “**DIP Budget**” shall initially refer to the budget attached as Exhibit E to this Agreement and, thereafter, the most recent DIP Budget delivered by the Borrower in accordance with Section 4.1(h).

“**DIP Budget Variance Report**” shall mean a report certified by a Responsible Officer, delivered in accordance with Section 4.1(h)(i) showing (a) a weekly and rolling four-week reconciliation of budgeted and actual amounts and (b) a written narrative explanation if (i) the actual disbursements on any line item in the DIP Budget exceed the budgeted disbursements for either such period in such line item by more than ten percent (10%), (ii) aggregate actual disbursements under the DIP Budget for any week or four-week period exceed the aggregate budgeted disbursements for either such period by more than five percent (5%) or (iii) aggregate cash receipts during any week or four-week period are less than ninety percent (90%) of aggregate projected cash receipts set forth in the DIP Budget for either such period (any such difference, a “**Variance**”).

“**DIP Facility**” shall mean the revolving credit facility provided by the Lenders pursuant to this Agreement on or after the Closing Date.

“**DIP Orders**” means the Interim Order or, when applicable, the Final Order.

“**Dismissal Order**” means an order of the Bankruptcy Court dismissing the Bankruptcy Case on terms and conditions acceptable to Agent in its sole discretion.

“**Distribution**” means as to any Person (a) any dividend or other distribution (whether in cash, securities or other property) on any equity interest in such Person (except those payable solely in its equity interests of the same class), (b) any payment by such Person on account of (i) the purchase, redemption, retirement, defeasance, surrender, cancellation, termination or acquisition of any equity interests in such Person or any claim respecting the purchase or sale of any equity interest in such Person, or (ii) any option, warrant or other right to acquire any equity interests in such Person, (c) any management fees, salaries or other fees or compensation to any Person holding an equity interest in a Borrower or a Subsidiary of a Borrower (other than reasonable and customary (i) payments of salaries to individuals, (ii) directors fees, and (iii) advances and reimbursements to employees or directors, all in the Ordinary Course of Business), an Affiliate of a Borrower or an Affiliate of any Subsidiary of a Borrower, (d) any lease or rental payments to an Affiliate or Subsidiary of a Borrower, or (e) repayments of or debt service on loans or other indebtedness held by any Person holding an equity interest in a Borrower or a Subsidiary of a Borrower, an Affiliate of a Borrower or an Affiliate of any Subsidiary of a Borrower unless permitted under and made in accordance with the DIP Orders and any other applicable order of the Bankruptcy Court.

“**Dollars**” or “**\$**” means the lawful currency of the United States of America.

“**Eligible Account**” means, subject to the criteria below, an account receivable of a Borrower, whether arising Prepetition or Postpetition, which was generated in the Ordinary Course of Business, which was generated originally in the name of a Borrower and not acquired via assignment or otherwise, and which Agent, in its good faith credit judgment and discretion, deems to be an Eligible Account. The net amount of an Eligible Account at any time shall be (a) the face amount of such Eligible Account as originally billed *minus* all cash collections and other proceeds of such Account received from or on behalf of the Account Debtor thereunder as of such date and any and all returns, rebates, discounts (which may, at Agent’s option, be calculated on shortest terms), credits, allowances or excise taxes of any nature at any time issued, owing, claimed by Account Debtors, granted, outstanding or payable in connection with such Accounts at such time, and (b) adjusted by applying percentages (known as “**liquidity factors**”) by payor and/or payor class based upon the applicable Borrower’s actual recent collection history for each such payor and/or payor class in a manner consistent with Agent’s underwriting practices and procedures. Such liquidity factors may be adjusted by Agent from time to time as warranted by Agent’s underwriting practices and procedures and using Agent’s good faith credit judgment. Without limiting the generality of the foregoing, no Account shall be an Eligible Account if:

(a) the Account remains unpaid more than one hundred and twenty (120) days past the claim or invoice date (but in no event more than one hundred and fifty (150) days after the applicable goods or services have been rendered or delivered);

(b) the Account is subject to any defense, set-off, recoupment, counterclaim, deduction, discount, credit, chargeback, freight claim, allowance, or adjustment of any kind (but only to the extent of such defense, set-off, recoupment, counterclaim, deduction, discount, credit, chargeback, freight claim, allowance, or adjustment), or the applicable Borrower is not able to bring suit or otherwise enforce its remedies against the Account Debtor through judicial process;

(c) if the Account arises from the sale of goods, any part of any goods the sale of which has given rise to the Account has been returned, rejected, lost, or damaged (but only to the extent that such goods have been so returned, rejected, lost or damaged);

(d) if the Account arises from the sale of goods, the sale was not an absolute, bona fide sale, or the sale was made on consignment or on approval or on a sale-or-return or bill-and-hold or progress billing basis, or the sale was made subject to any other repurchase or return agreement, or the goods have not been shipped to the Account Debtor or its designee or the sale was not made in compliance with applicable Laws;

(e) if the Account arises from the performance of services, the services have not actually been performed or the services were undertaken in violation of any Law or the Account represents a progress billing for which services have not been fully and completely rendered;

(f) the Account is subject to a Lien other than a Permitted Lien, or Agent does not have a first priority, perfected Lien on such Account;

(g) the Account is evidenced by Chattel Paper or an Instrument of any kind, or has been reduced to judgment, unless such Chattel Paper or Instrument has been delivered to Agent;

(h) the Account Debtor is an Affiliate or Subsidiary of a Credit Party, or if the Account Debtor holds any Debt of a Credit Party;

(i) except for Accounts owed by Medicare or Medicaid programs, more than fifty percent (50%) of the aggregate balance of all Accounts owing from the Account Debtor obligated on the Account are ineligible under subclause (a) above (in which case all Accounts from such Account Debtor shall be ineligible);

(j) without limiting the provisions of clause (i) above, fifty percent (50%) or more of the aggregate unpaid Accounts from the Account Debtor obligated on the Account are not deemed Eligible Accounts under this Agreement for any reason;

(k) except for Accounts owed by Medicare or Medicaid programs, the total unpaid Accounts of the Account Debtor obligated on the Account exceed twenty percent (20%) of the net amount of all Eligible Accounts owing from all Account Debtors (but only the amount of the Accounts of such Account Debtor exceeding such twenty percent (20%) limitation shall be considered ineligible);

(l) any covenant, representation or warranty contained in the Financing Documents with respect to such Account has been breached in any respect;

(m) the Account has not been billed or invoiced to the applicable Account Debtor for more than thirty (30) days after the date that the recipient of such services has been discharged of from a Project; provided, however, that Accounts that are unbilled or not invoiced during such thirty (30) day period shall be properly recorded on Borrowers' accounting systems at all times;

(n) except for Accounts owed by Medicare or Medicaid programs, the Account is an obligation of a Governmental Account Debtor, unless Agent has agreed to the contrary in writing and Agent has received from the Account Debtor the acknowledgement of Agent's notice of assignment of such obligation pursuant to this Agreement;

(o) the Account is an obligation of an Account Debtor that has suspended business, made a general assignment for the benefit of creditors, is unable to pay its debts as they become due or as to which a petition has been filed (voluntary or involuntary) under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or the Account is an Account as to which any facts, events or occurrences exist which could reasonably be expected to impair the validity, enforceability or collectability of such Account or reduce the amount payable or delay payment thereunder;

(p) the Account Debtor has its principal place of business or executive office outside the United States;

(q) the Account is payable in a currency other than United States dollars;

(r) the Account Debtor is an individual;

(s) the Borrower owning such Account has not signed and delivered to Agent notices, in the form requested by Agent, directing the Account Debtors to make payment to the applicable Lockbox Account;

(t) the Account includes late charges or finance charges (but only such portion of the Account shall be ineligible);

(u) the Account arises out of the sale of any Inventory upon which any other Person holds, claims or asserts a Lien; or

(v) the Account or Account Debtor fails to meet such other specifications and requirements which may from time to time be established by Agent in its good faith credit judgment and discretion.

“Environmental Laws” means any present and future federal, state and local laws, statutes, ordinances, rules, regulations, standards, policies and other governmental directives or requirements, as well as common law, pertaining to the environment, natural resources, pollution, health (including any environmental clean up statutes and all regulations adopted by any local, state, federal or other Governmental Authority, and any statute, ordinance, code, order, decree, law rule or regulation all of which pertain to or impose liability or standards of conduct concerning medical waste or medical products, equipment or supplies), safety or clean-up that apply to any Borrower or any Project and relate to Hazardous Materials, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 *et seq.*), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. § 5101 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 *et seq.*), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 *et seq.*), the Occupational Safety and Health Act (29 U.S.C. § 651 *et seq.*), the Residential Lead-Based Paint Hazard Reduction Act (42 U.S.C. § 4851 *et seq.*), any analogous state or local laws, any amendments thereto, and the regulations promulgated pursuant to said laws, together with all amendments from time to time to any of the foregoing and judicial interpretations thereof.

“ERISA” means the Employee Retirement Income Security Act of 1974, as the same may be amended, modified or supplemented from time to time, and any successor statute thereto, and any and all rules or regulations promulgated from time to time thereunder.

“**ERISA Plan**” means any “employee benefit plan”, as such term is defined in Section 3(3) of ERISA (other than a Multiemployer Plan), which any Borrower maintains, sponsors or contributes to, or, in the case of an employee benefit plan which is subject to Section 412 of the Code or Title IV of ERISA, to which any Borrower or any member of the Controlled Group may have any liability, including any liability by reason of having been a substantial employer within the meaning of Section 4063 of ERISA at any time during the preceding five (5) years, or by reason of being deemed to be a contributing sponsor under Section 4069 of ERISA.

“**Event of Default**” has the meaning set forth in Section 10.1.

“**Fee Letter**” means that certain letter agreement between Agent and Borrower relating to fees payable to Agent, for its own account, in connection with the execution of this Agreement.

“**Final Order**” means an order of the Bankruptcy Court in the Bankruptcy Case which approves the transactions contemplated by this Agreement, including, without limitation, the full roll-up of any and all remaining Prepetition Obligations, and the other Financing Documents on a final basis and is in form and substance acceptable to Agent and the Lenders, as the same may be amended, modified or otherwise supplemented from time to time in compliance with this Agreement.

“**Final Order Entry Date**” means the date on which the Bankruptcy Court enters the Final Order.

“**Financing Documents**” means this Agreement, any Notes, the Security Documents, the DIP Orders, the Fee Letter, any subordination or intercreditor agreement pursuant to which any Debt and/or any Liens securing such Debt is subordinated to all or any portion of the Obligations and all other documents, instruments and agreements related to the Obligations and heretofore executed, executed concurrently herewith or executed at any time and from time to time hereafter, as any or all of the same may be amended, supplemented, restated or otherwise modified from time to time.

“**First Day Orders**” means all orders entered by the Bankruptcy Court on or about the Petition Date or based on motions filed by the Borrowers on or about the Petition Date.

“**GAAP**” means generally accepted accounting principles set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the United States accounting profession), which are applicable to the circumstances as of the date of determination.

“**General Intangible**” means any “general intangible” as defined in Article 9 of the UCC, and any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas or other minerals before extraction, but including payment intangibles and software.

“**Governmental Account Debtor**” means any Account Debtor that is a Governmental Authority, including, without limitation, Medicare and Medicaid.

“**Governmental Authority**” means any nation or government, any state, local or other political subdivision thereof, and any agency, department or Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any corporation or other Person owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing, whether domestic or foreign.

“Guarantee” by any Person means any obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing any Debt or other obligation of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of such Person (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation (whether arising by virtue of partnership arrangements, by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise), or (b) entered into for the purpose of assuring in any other manner the obligee of such Debt or other obligation of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part), *provided, however*, that the term Guarantee shall not include endorsements for collection or deposit in the Ordinary Course of Business. The term **“Guarantee”** used as a verb has a corresponding meaning.

“Guarantor” means any Credit Party that has executed or delivered, or shall in the future execute or deliver, any Guarantee of any portion of the Obligations.

“Hazardous Materials” means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives, flammable materials; radioactive materials; polychlorinated biphenyls and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which on the Project is prohibited by any Environmental Laws; toxic mold, any substance that requires special handling; and any other material or substance now or in the future defined as a “hazardous substance,” “hazardous material,” “hazardous waste,” “toxic substance,” “toxic pollutant,” “contaminant,” “pollutant” or other words of similar import within the meaning of any Environmental Law, including: (a) any “hazardous substance” defined as such in (or for purposes of) CERCLA, or any so-called “superfund” or “superlien” Law, including the judicial interpretation thereof; (b) any “pollutant or contaminant” as defined in 42 U.S.C.A. § 9601(33); (c) any material now defined as “hazardous waste” pursuant to 40 C.F.R. Part 260; (d) any petroleum or petroleum by-products, including crude oil or any fraction thereof; (e) natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel; (f) any “hazardous chemical” as defined pursuant to 29 C.F.R. Part 1910; (g) any toxic or harmful substances, wastes, materials, pollutants or contaminants (including, without limitation, asbestos, polychlorinated biphenyls (“PCB’s”), flammable explosives, radioactive materials, infectious substances, materials containing lead-based paint or raw materials which include hazardous constituents); and (h) any other toxic substance or contaminant that is subject to any Environmental Laws or other past or present requirement of any Governmental Authority.

“Hazardous Materials Contamination” means contamination (whether now existing or hereafter occurring) of the improvements, buildings, facilities, personalty, soil, groundwater, air or other elements on or of the relevant property by Hazardous Materials, or any derivatives thereof, or on or of any other property as a result of Hazardous Materials, or any derivatives thereof, generated on, emanating from or disposed of in connection with the relevant property.

“Healthcare Laws” means all applicable Laws relating to the possession, control, warehousing, marketing, sale and distribution of pharmaceuticals, the operation of medical or senior housing facilities (such as, but not limited to, nursing homes, skilled nursing facilities, rehabilitation hospitals, intermediate care facilities and adult care facilities), patient healthcare, patient healthcare information, patient abuse, the quality and adequacy of medical care, rate setting, equipment, personnel, operating policies, fee splitting, including, without limitation, (a) all federal and state fraud and abuse laws, including, without limitation, the federal Anti-Kickback Statute (42 U.S.C. §1320a-7b(6)), the Stark Law (42 U.S.C. §1395nn), the civil False Claims Act (31 U.S.C. §3729 et seq.), (b) TRICARE, (c) HIPAA, (d) Medicare, (e) Medicaid, (f) the Patient Protection and Affordable Care Act (P.L. 111-1468), (g) The Health Care and Education Reconciliation Act of 2010 (P.L. 111-152), (h) quality, safety and accreditation standards and requirements of all applicable state laws or regulatory bodies, (i) all laws, policies, procedures, requirements and

regulations pursuant to which Healthcare Permits are issued, and (j) any and all other applicable health care laws, regulations, manual provisions, policies and administrative guidance, each of (a) through (j) as may be amended from time to time.

“Healthcare Permit” means a Permit (a) issued or required under Healthcare Laws applicable to the business of any Borrower or any of its Subsidiaries or necessary in the possession, ownership, warehousing, marketing, promoting, sale, labeling, furnishing, distribution or delivery of goods or services under Healthcare Laws applicable to the business of any Borrower or any of its Subsidiaries, (b) issued by any Person from which any Borrower has, as of the Closing Date, received an accreditation, and/or (c) issued or required under Healthcare Laws applicable to the ownership or operation of any business location of a Borrower.

“Instrument” means “instrument”, as defined in Article 9 of the UCC.

“Intellectual Property” means, with respect to any Person, all patents, patent applications and like protections, including improvements divisions, continuation, renewals, reissues, extensions and continuations in part of the same, trademarks, trade names, trade styles, trade dress, service marks, logos and other business identifiers and, to the extent permitted under applicable law, any applications therefor, whether registered or not, and the goodwill of the business of such Person connected with and symbolized thereby, copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative works, whether published or unpublished, technology, know-how and processes, operating manuals, trade secrets, computer hardware and software, rights to unpatented inventions and all applications and licenses therefor, used in or necessary for the conduct of business by such Person and all claims for damages by way of any past, present or future infringement of any of the foregoing.

“Interest Period” means any period commencing on the first day of a calendar month and ending on the last day of such calendar month.

“Interim Hearing” shall have the meaning set forth in Section 3.25(b) hereof.

“Interim Order” means the order of the Bankruptcy Court entered in the Bankruptcy Case, in form and substance reasonably satisfactory to Agent, approving this Agreement (including, without limitation, the “creeping” roll-up of the Prepetition Obligations) and the other Financing Documents and the Liens and any Guarantee granted thereunder and the other transactions contemplated thereby on an interim basis, which shall be in full force and effect until the entry of the Final Order approving this Agreement and other Financing Documents and the Liens and any Guarantee granted hereunder and thereunder and the other transactions contemplated hereby and thereby, and which shall not have been stayed, reversed, vacated or otherwise modified (other than with the consent of the Required Lenders in their sole discretion).

“Inventory” means “inventory” as defined in Article 9 of the UCC.

“Investment” means any investment in any Person, whether by means of acquiring (whether for cash, property, services, securities or otherwise), making or holding Debt, securities, capital contributions, loans, time deposits, advances, Guarantees or otherwise. The amount of any Investment shall be the original cost of such Investment *plus* the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect thereto.

“Landlord Entity” means each lessor, sublessor (if any) and prime lessor (if any) of a Project .

“**Landlord Intercreditor Agreement**” means any agreement between Agent and a Landlord Entity, as the same may be amended, supplemented, restated or otherwise modified from time to time in accordance with the terms thereof, pursuant to which the Landlord Liens are subordinated in any way to the Liens created under the Security Documents, in form and substance acceptable to Agent.

“**Landlord Liens**” means any consensual Lien granted by a Borrower to a Landlord Entity to secure the obligations of such Borrower under an Operating Lease, but, if such security interest covers the Collateral, then only if such security interest in the Collateral (other than the Permits) is subordinated to the Liens of Agent and Lenders hereunder pursuant to a Landlord Intercreditor Agreement.

“**Laws**” means any and all federal, state, provincial, territorial, local and foreign statutes, laws, judicial decisions, regulations, ordinances, rules, judgments, orders, decrees, codes, injunctions, permits, governmental agreements and governmental restrictions, whether now or hereafter in effect, which are applicable to any Credit Party in any particular circumstance. “**Laws**” includes, without limitation, Healthcare Laws and Environmental Laws.

“**Lender**” means each of (a) MCF, in its capacity as a lender hereunder, (b) each other Person party hereto in its capacity as a lender hereunder, (c) each other Person that becomes a party hereto as Lender pursuant to Section 11.17, and (d) the respective successors of all of the foregoing, and “**Lenders**” means all of the foregoing.

“**LIBOR Rate**” means, for each Loan, a per annum rate of interest equal to the greater of (a) 1.0% and (b) the rate determined by Agent (rounded upwards, if necessary, to the next 1/100th%) by *dividing* (i) the Base LIBOR Rate for the Interest Period, *by* (ii) the sum of one *minus* the daily average during such Interest Period of the aggregate maximum reserve requirement (expressed as a decimal) then imposed under Regulation D of the Board of Governors of the Federal Reserve System (or any successor thereto) for “Eurocurrency Liabilities” (as defined therein).

“**Lien**” means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind, in respect of such asset. For the purposes of this Agreement and the other Financing Documents, any Borrower or any Subsidiary shall be deemed to own subject to a Lien any asset which it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

“**Litigation**” means any action, suit or proceeding before any court, mediator, arbitrator or Governmental Authority.

“**Loan Account**” has the meaning set forth in Section 2.6(b).

“**Loan(s)**” means the Revolving Loans.

“**Lockbox**” has the meaning set forth in Section 2.11.

“**Lockbox Account**” means an account or accounts maintained at the Lockbox Bank into which collections of Accounts are paid, which account or accounts shall be, if requested by Agent, opened in the name of Agent (or a nominee of Agent).

“**Lockbox Bank**” has the meaning set forth in Section 2.11.

“**Management Agreement**” has the meaning set forth in Section 8.3(b).

“**Manager**” has the meaning set forth in Section 8.3(b).

“**Material Adverse Effect**” means with respect to any event, act, condition or occurrence of whatever nature (including any adverse determination in any litigation, arbitration, or governmental investigation or proceeding), whether singly or in conjunction with any other event or events, act or acts, condition or conditions, occurrence or occurrences, whether or not related, (a) a material adverse change in, or a material adverse effect upon, any of (i) the condition (financial or otherwise), operations, business, properties or prospects of any of the Credit Parties, (ii) the rights and remedies of Agent or Lenders under any Financing Document, or the ability of any Credit Party to perform any of its obligations under any Financing Document to which it is a party, (iii) the legality, validity or enforceability of any Financing Document, (iv) the existence, perfection or priority of any security interest granted in any Financing Document, (v) the value of any material Collateral, (vi) any Borrower’s ability to accept, admit and/or retain patients, (vii) the rate at which any Third Party Payor reimburses a Credit Party for goods or services provided by such Credit Party, (viii) the use or scope of any material Healthcare Permits, (ix) the continued participation by any Credit Party in the Medicaid or Medicare programs or any other Third Party Payor Program at then current rate certifications or levels; (b) an impairment to the likelihood that Eligible Accounts in general will be collected and paid in the Ordinary Course of Business of any Borrower and upon the same schedule and with the same frequency as such Borrowers’ recent collections history; or (c) the imposition of a fine against or the creation of any liability of any Borrower to any Governmental Authority under any Healthcare Law in excess of \$250,000. Notwithstanding the foregoing, it is understood that the commencement of the Bankruptcy Case, the consummation of the Asset Sale, the events that customarily occur following the commencement of a proceeding under the Bankruptcy Code, any defaults under agreements that have no material effect on the Credit Parties under the terms of the Bankruptcy Code as a result of the commencement of the Bankruptcy Case, and reduction in payment terms by suppliers, individually or collectively, shall not be deemed to be, or give rise to, a Material Adverse Effect.

“**Material Contracts**” has the meaning set forth in Section 3.17.

“**Maximum Lawful Rate**” has the meaning set forth in Section 2.7.

“**MCF**” means MidCap Financial Trust, a Delaware statutory trust, and its successors and assigns.

“**Medicaid**” means the medical assistance programs administered by state agencies and approved by CMS pursuant to the terms of Title XIX of the Social Security Act, codified at 42 U.S.C. 1396 et seq. and the rules and regulations issued thereunder.

“**Medicare**” means the program of health benefits for the aged and disabled administered by CMS pursuant to the terms of Title XVIII of the Social Security Act, codified at 42 U.S.C. 1395 et seq. and the rules and regulations issued thereunder.

“**Milestones**” means (a) filing by the Borrowers of the Asset Sale Motion with respect to the Asset Sale on or before the date that is ten (10) days after the Petition Date, (b) entry of an Asset Sale Bid Procedures Order, which shall provide for a reserve price attributable to the Collateral subject to the sale that is sufficient to pay in full the Obligations and is otherwise reasonably satisfactory to Agent approving the procedures for the Asset Sale set forth in the Asset Sale Motion on or before the date that is forty-five (45) days after the Petition Date, (c) conducting an auction for the Asset Sale in accordance with the DIP Orders on or before the date that is ninety (90) days after the Petition Date, (d) entry of the Asset Sale Order with respect to the Asset Sale on or before the date that is ten (10) days after the date of the auction referred to in clause (c) and (e) closing of the Asset Sale on or before the date that is seventy-five (75) days after the date on which the Asset Sale Order is entered.

“**Minimum Liquidity**” means the sum of Revolving Loan Availability *plus* cash and cash equivalents that are (a) owned by any Borrower, (b) not subject to any Lien other than a Lien in favor of Agent, and (c) not pledged to or held by Agent to secure a specified Obligation.

“**Minimum Liquidity Reserve**” means a reserve against the Borrowing Base in the amount equal to the Minimum Liquidity covenant set forth in Section 6.1.

“**Multiemployer Plan**” means a multiemployer plan within the meaning of Section 4001(a)(3) of ERISA to which any Borrower or any other member of the Controlled Group (or any Person who in the last five years was a member of the Controlled Group) is making or accruing an obligation to make contributions or has within the preceding five plan years (as determined on the applicable date of determination) made contributions.

“**Notes**” has the meaning set forth in Section 2.3.

“**Notice of Borrowing**” means a notice of a Responsible Officer of Borrower Representative, appropriately completed and substantially in the form of Exhibit D hereto.

“**Obligations**” means all obligations, liabilities and indebtedness (monetary (including, without limitation, the payment of interest and other amounts arising after the commencement of any case with respect to any Credit Party under the Bankruptcy Code or any similar statute which would accrue and become due but for the commencement of such case, whether or not such amounts are allowed or allowable in whole or in part in such case) or otherwise) of each Credit Party under this Agreement or any other Financing Document, in each case howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due, including, without limitation, fees, expenses and indemnification obligations.

“**OFAC**” means the U.S. Department of Treasury Office of Foreign Assets Control.

“**OFAC Lists**” means, collectively, the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) and/or any other list of terrorists or other restricted Persons maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Executive Orders.

“**Operating Lease**” means any lease of any Project to Borrower, and all amendments thereto and extensions thereof.

“**Operative Documents**” means the Financing Documents, DIP Orders, Prepetition Financing Documents, Parallon Services Agreement, Management Agreements, Operating Leases, Subordinated Debt Documents, Asset Sale Documents, and each other agreement, document, and certificate executed or delivered in connection therewith.

“**Ordinary Course of Business**” means, in respect of any transaction involving any Credit Party, the ordinary course of business of such Credit Party, as conducted by such Credit Party in accordance with past practices.

“**Organizational Documents**” means, with respect to any Person other than a natural person, the documents by which such Person was organized (such as a certificate of incorporation, certificate of limited partnership or articles of organization, and including, without limitation, any certificates of designation for preferred stock or other forms of preferred equity) and which relate to the internal governance of such Person (such as by-laws, a partnership agreement or an operating, limited liability company or members

agreement), including any and all shareholder agreements or voting agreements relating to the capital stock or other equity interests of such Person.

“**Parallon Services Agreement**” means that certain Revenue Services Agreement, dated January 7, 2013, among HSS SYSTEMS, LLC (“**Parallon**”), Huntsville and HMH Physician Organization.

“**Payment Account**” means the account specified on the signature pages hereof into which all payments by or on behalf of each Borrower to Agent under the Financing Documents shall be made, or such other account as Agent shall from time to time specify by notice to Borrower Representative.

“**Payroll Taxes**” means, collectively, any and all withholdings, payroll or similar taxes due from Borrowers to the applicable Governmental Authorities, together with any and all interest, fees, penalties and similar amounts owing in respect of or relating to such taxes.

“**PBGC**” means the Pension Benefit Guaranty Corporation and any Person succeeding to any or all of its functions under ERISA.

“**Pension Plan**” means any ERISA Plan that is subject to Section 412 of the Code or Title IV of ERISA.

“**Permits**” means all governmental licenses, authorizations, provider numbers, supplier numbers, registrations, permits, drug or device authorizations and approvals, certificates, franchises, qualifications, accreditations, consents and approvals of a Credit Party required under all applicable Laws and required for such Credit Party in order to carry on its business as now conducted, including, without limitation, Healthcare Permits.

“**Permitted Asset Dispositions**” means the following Asset Dispositions, *provided, however*, that at the time of such Asset Disposition, no Default or Event of Default exists or would result from such Asset Disposition: (a) dispositions of Inventory in the Ordinary Course of Business and not pursuant to any bulk sale, (b) dispositions of furniture, fixtures and equipment in the Ordinary Course of Business that the applicable Borrower or Subsidiary determines in good faith is no longer used or useful in the business of such Borrower and its Subsidiaries, (c) the Asset Sale pursuant to Asset Sale Documents in form and substance satisfactory to Agent in its reasonable discretion and (d) other dispositions approved by Agent.

“**Permitted Contest**” means, with respect to any tax obligation or other obligation allegedly or potentially owing from any Borrower or its Subsidiary to any governmental tax authority or other third party, a contest maintained in good faith by appropriate proceedings promptly instituted and diligently conducted and with respect to which such reserve or other appropriate provision, if any, as shall be required in conformity with GAAP shall have been made on the books and records and financial statements of the applicable Credit Party(ies); *provided, however*, that (a) compliance with the obligation that is the subject of such contest is effectively stayed during such challenge; (b) Borrowers’ and its Subsidiaries’ title to, and its right to use, the Collateral is not adversely affected thereby and Agent’s Lien and priority on the Collateral are not adversely affected, altered or impaired thereby; (c) Borrowers have given prior written notice to Agent of a Borrower’s or its Subsidiary’s intent to so contest the obligation; (d) the Collateral or any part thereof or any interest therein shall not be in any danger of being sold, forfeited or lost by reason of such contest by Borrowers or its Subsidiaries; (e) Borrowers have given Agent notice of the commencement of such contest and upon request by Agent, from time to time, notice of the status of such contest by Borrowers and/or confirmation of the continuing satisfaction of this definition; and (f) upon a final determination of such contest, Borrowers and its Subsidiaries shall promptly comply with the requirements thereof.

“Permitted Contingent Obligations” means (a) Contingent Obligations arising in respect of the Debt under the Financing Documents; (b) Contingent Obligations resulting from endorsements for collection or deposit in the Ordinary Course of Business; (c) Contingent Obligations outstanding on the date of this Agreement and set forth on Schedule 5.1 (but not including any refinancings, extensions, increases or amendments to the indebtedness underlying such Contingent Obligations other than extensions of the maturity thereof without any other change in terms); (d) Contingent Obligations incurred in the Ordinary Course of Business with respect to surety and appeal bonds, performance bonds and other similar obligations not to exceed \$250,000 in the aggregate at any time outstanding; (e) Contingent Obligations arising under indemnity agreements with title insurers to cause such title insurers to issue to Agent mortgagee title insurance policies; (f) Contingent Obligations arising with respect to customary indemnification obligations in favor of purchasers in connection with dispositions of personal property assets permitted under Section 5.6; and (g) other Contingent Obligations not permitted by clauses (a) through (f) above, not to exceed \$250,000 in the aggregate at any time outstanding.

“Permitted Debt” means: (a) Borrowers’ and its Subsidiaries’ Debt to Agent and each Lender under this Agreement and the other Financing Documents; (b) Debt incurred as a result of endorsing negotiable instruments received in the Ordinary Course of Business; (c) purchase money Debt to the extent incurred prior to the Closing Date or otherwise approved by Agent and Required Lenders as part of the DIP Budget; (d) Debt existing on the date of this Agreement and described on Schedule 5.1 (but not including any refinancings, extensions, increases or amendments to such Debt other than extensions of the maturity thereof without any other change in terms); (e) Debt in the form of insurance premiums financed through the applicable insurance company; (f) trade accounts payable arising and paid on a timely basis and in the Ordinary Course of Business; (g) Subordinated Debt, to the extent approved by Agent and Required Lenders as part of the DIP Budget; (h) accrued and unpaid professional fees and administrative expenses of the Bankruptcy Case payable in the Bankruptcy Case and (i) unsecured Debt in an aggregate amount not to exceed \$500,000 outstanding at any one time.

“Permitted Investments” means: (a) Investments shown on Schedule 5.7 and existing on the Closing Date; (b) cash and cash equivalents; (c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the Ordinary Course of Business; (d) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the Ordinary Course of Business; (e) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the Ordinary Course of Business, *provided, however*, that this subpart (e) shall not apply to Investments of Borrowers in any Subsidiary; (f) Investments consisting of deposit accounts in which Agent has received a Deposit Account Control Agreement; and (g) Investments by any Borrower in any other Borrower made in compliance with Section 4.11(c) and in effect on the Closing Date.

“Permitted Liens” means: (a) deposits or pledges of cash to secure obligations under workmen’s compensation, social security or similar laws, or under unemployment insurance (but excluding Liens arising under ERISA or, with respect to any Pension Plan or Multiemployer Plan, the Code) pertaining to a Borrower’s or its Subsidiary’s employees, if any; (b) deposits or pledges of cash to secure bids, tenders, contracts (other than contracts for the payment of money or the deferred purchase price of property or services), leases, statutory obligations, surety and appeal bonds and other obligations of like nature arising in the Ordinary Course of Business; (c) carrier’s, warehousemen’s, mechanic’s, workmen’s, materialmen’s or other like Liens on Collateral, other than any Collateral which is part of the Borrowing Base, arising in the Ordinary Course of Business with respect to obligations which are not due, or which are being contested pursuant to a Permitted Contest; (d) Liens on Collateral, other than Accounts, for taxes or other governmental charges not at the time delinquent or thereafter payable without penalty or the subject of a Permitted Contest; (e) attachments, appeal bonds, judgments and other similar Liens on Collateral other

than Accounts, for sums not exceeding \$250,000 in the aggregate arising in connection with court proceedings; *provided, however*, that the execution or other enforcement of such Liens is effectively stayed and the claims secured thereby are the subject of a Permitted Contest; (f) with respect to real estate, easements, rights of way, restrictions, minor defects or irregularities of title, none of which, individually or in the aggregate, materially interfere with the benefits of the security intended to be provided by the Security Documents, materially affect the value or marketability of the Collateral, impair the use or operation of the Collateral for the use currently being made thereof or impair Borrowers' ability to pay the Obligations in a timely manner or impair the use of the Collateral or the ordinary conduct of the business of any Borrower or any Subsidiary and which, in the case of any real estate which is part of the Collateral, are set forth as exceptions to or subordinate matters in the title insurance policy accepted by Agent insuring the lien of the Security Documents; (g) Liens and encumbrances in favor of Agent under the Financing Documents; (h) consensual Liens on Collateral, other than Collateral which is part of the Borrowing Base, existing on the Closing Date and set forth on Schedule 5.2; (i) any Lien on any equipment securing Debt permitted under subpart (c) of the definition of Permitted Debt, *provided, however*, that such Lien attaches concurrently with or within twenty (20) days after the acquisition thereof; (j) Landlord Liens; (k) Liens and encumbrances in favor of the holders of the Prepetition Financing Documents; and (l) such other Liens as are expressly permitted in the DIP Orders.

"Permitted Modifications" means (a) such amendments or other modifications to a Borrower's or Subsidiary's Organizational Documents as are required under this Agreement or by applicable Law and fully disclosed to Agent within thirty (30) days after such amendments or modifications have become effective, and (b) such amendments or modifications to a Borrower's or Subsidiary's Organizational Documents (other than those involving a change in the name of a Borrower or Subsidiary or involving a reorganization of a Borrower or Subsidiary under the laws of a different jurisdiction) that would not adversely affect the rights and interests of the Agent or Lenders and are fully disclosed to Agent within thirty (30) days after such amendments or modifications have become effective.

"Person" means any natural person, corporation, limited liability company, professional association, limited partnership, general partnership, joint stock company, joint venture, association, company, trust, bank, trust company, land trust, business trust or other organization, whether or not a legal entity, and any Governmental Authority.

"Petition Date" has the meaning set forth in the recitals to this Agreement.

"Plan Documentation" means the Plan of Reorganization and all documentation related thereto or referenced therein, including without limitation any amendments, modifications or supplements to any of the foregoing, including any subsequent plans of liquidation, any motions related thereto and the Confirmation Order.

"Plan of Reorganization" means, as the same may be amended, modified or otherwise supplemented in compliance with this Agreement, a plan of liquidation of the Borrowers in the Bankruptcy Case which either (a) provides for indefeasible payment in full in cash and in accordance with the terms of this Agreement of all Obligations, including any Prepetition Obligations, or (b) is otherwise in form and content acceptable to the Agent and the Lenders.

"Postpetition" or **"postpetition"** means the time period commencing on the Petition Date and ending on the Reorganization Effective Date.

"Prepetition" or **"prepetition"** means the time period prior to the Petition Date.

“**Prepetition Agent**” means Agent, in its capacity as the administrative agent under the Prepetition Credit Agreement.

“**Prepetition Credit Agreement**” has the meaning specified therefor in the recitals to this Agreement.

“**Prepetition Financing Documents**” means the “Loan Documents”, as defined in the Prepetition Revolving Credit Agreement and the agreements, documents and certificates executed or delivered in connection with each of the foregoing.

“**Prepetition Lenders**” means the lenders party to Prepetition Credit Agreement on the Petition Date, which, for the avoidance of doubt, is MidCap Funding IV Trust.

“**Prepetition Obligation Reserve**” means a reserve equal to the then-current amount of the Prepetition Obligations.

“**Prepetition Obligations**” has the meaning specified therefor in the recitals to this Agreement.

“**Prepetition Payment**” means, a payment (by way of adequate protection or otherwise) of principal or interest or otherwise on account of any trade payables or other Prepetition claims against the Borrowers.

“**Prepetition Secured Parties**” means, collectively, Prepetition Agent and Prepetition Lenders.

“**Pro Rata Share**” means (a) with respect to a Lender’s obligation to make Revolving Loans, and such Lender’s right to receive the unused line fee described in Section 2.2(b), the Revolving Loan Commitment Percentage of such Lender, (b) with respect to a Lender’s right to receive payments of principal and interest with respect to Revolving Loans, such Lender’s Revolving Loan Exposure with respect thereto; and (c) for all other purposes (including, without limitation, the indemnification obligations arising under Section 11.6) with respect to any Lender, the percentage obtained by *dividing* (i) the sum of the Revolving Loan Commitment Amount of such Lender (or, in the event the Revolving Loan Commitment shall have been terminated, such Lender’s then existing Revolving Loan Outstandings), *by* (ii) the sum of the Revolving Loan Commitment (or, in the event the Revolving Loan Commitment shall have been terminated, the then existing Revolving Loan Outstandings) of all Lenders.

“**Project**” means any facility from which a Borrower provides or furnishes goods or services, including, without limitation, any hospital, medical office building or similar facility, and includes, without limitation, any business location of a Borrower which is subject to any Healthcare Permit. The Projects are described more fully on Schedule 3.1.

“**Recovery Amount**” has the meaning set forth in Section 2.10(e).

“**Reorganization Effective Date**” means the effective date of the Plan of Reorganization confirmed by a final order in the Bankruptcy Case.

“**Required Lenders**” means at any time Lenders holding (a) sixty-six and two thirds percent (66 2/3%) or more of the Revolving Loan Commitment, or (b) if the Revolving Loan Commitment has been terminated, sixty-six and two thirds percent (66 2/3%) or more of the then aggregate outstanding principal balance of the Loans.

“**Responsible Officer**” means any of the Chief Executive Officer, Chief Financial Officer or any other officer of the applicable Borrower acceptable to Agent.

“**Revolving Lender**” means each Lender having a Revolving Loan Commitment Amount in excess of \$0 (or, in the event the Revolving Loan Commitment shall have been terminated at any time, each Lender at such time having Revolving Loan Outstandings in excess of \$0).

“**Revolving Loan Availability**” means, at any time, the Revolving Loan Limit *minus* the Revolving Loan Outstandings.

“**Revolving Loan Commitment**” means, as of any date of determination, the aggregate Revolving Loan Commitment Amounts of all Lenders as of such date.

“**Revolving Loan Commitment Amount**” means, as to any Lender, the dollar amount set forth opposite such Lender’s name on the Commitment Annex under the column “Revolving Loan Commitment Amount” (if such Lender’s name is not so set forth thereon, then the dollar amount on the Commitment Annex for the Revolving Loan Commitment Amount for such Lender shall be deemed to be \$0), as such amount may be adjusted from time to time by any amounts assigned (with respect to such Lender’s portion of Revolving Loans outstanding and its commitment to make Revolving Loans) pursuant to the terms of any and all effective assignment agreements to which such Lender is a party.

“**Revolving Loan Commitment Percentage**” means, as to any Lender, (a) on the Closing Date, the percentage set forth opposite such Lender’s name on the Commitment Annex under the column “Revolving Loan Commitment Percentage” (if such Lender’s name is not so set forth thereon, then, on the Closing Date, such percentage for such Lender shall be deemed to be zero), and (b) on any date following the Closing Date, the percentage equal to the Revolving Loan Commitment Amount of such Lender on such date *divided by* the Revolving Loan Commitment on such date.

“**Revolving Loan Exposure**” means, with respect to any Lender on any date of determination, the percentage equal to the amount of such Lender’s Revolving Loan Outstandings on such date *divided by* the aggregate Revolving Loan Outstandings of all Lenders on such date.

“**Revolving Loan Limit**” means, at any time, the lesser of (a) the Revolving Loan Commitment and (b) the Borrowing Base.

“**Revolving Loan Outstandings**” means, at any time of calculation, (a) the then existing aggregate outstanding principal amount of Revolving Loans, and (b) when used with reference to any single Lender, the then existing outstanding principal amount of Revolving Loans advanced by such Lender.

“**Revolving Loans**” has the meaning set forth in Section 2.1(b).

“**SEC**” means the United States Securities and Exchange Commission.

“**Securities Account**” means a “securities account” (as defined in Article 9 of the UCC), an investment account, or other account in which investment property or securities are held or invested for credit to or for the benefit of any Borrower.

“**Securities Account Control Agreement**” means an agreement, in form and substance satisfactory to Agent, among Agent, any applicable Borrower and each securities intermediary in which such Borrower maintains a Securities Account pursuant to which Agent shall obtain “control” (as defined in Article 9 of the UCC) over such Securities Account.

“**Security Document**” means this Agreement and any other agreement, document or instrument executed concurrently herewith or at any time hereafter pursuant to which one or more Credit Parties or any other Person either (a) Guarantees payment or performance of all or any portion of the Obligations, and/or (b) provides, as security for all or any portion of the Obligations, a Lien on any of its assets in favor of Agent for its own benefit and the benefit of the Lenders, as any or all of the same may be amended, supplemented, restated or otherwise modified from time to time.

“**Subordinated Debt**” means any Debt of Borrowers incurred pursuant to the terms of the Subordinated Debt Documents and with the prior written consent of Agent, all of which documents must be in form and substance acceptable to Agent in its sole discretion. As of the Closing Date, there is no Subordinated Debt.

“**Subordinated Debt Documents**” means any documents evidencing and/or securing Debt governed by a Subordination Agreement, all of which documents must be in form and substance acceptable to Agent in its sole discretion. As of the Closing Date, there are no Subordinated Debt Documents.

“**Subordination Agreement**” means any agreement between Agent and another creditor of Borrowers, as the same may be amended, supplemented, restated or otherwise modified from time to time in accordance with the terms thereof, pursuant to which the Debt owing from any Borrower(s) and/or the Liens securing such Debt granted by any Borrower(s) to such creditor are subordinated in any way to the Obligations and the Liens created under the Security Documents, the terms and provisions of such Subordination Agreements to have been agreed to by and be acceptable to Agent in the exercise of its sole discretion.

“**Subsidiary**” means, with respect to any Person, (a) any corporation of which an aggregate of more than fifty percent (50%) of the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, capital stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, owned legally or beneficially by such Person or one or more Subsidiaries of such Person, or with respect to which any such Person has the right to vote or designate the vote of more than fifty percent (50%) of such capital stock whether by proxy, agreement, operation of law or otherwise, and (b) any partnership or limited liability company in which such Person and/or one or more Subsidiaries of such Person shall have an interest (whether in the form of voting or participation in profits or capital contribution) of more than fifty percent (50%) or of which any such Person is a general partner or may exercise the powers of a general partner. Unless the context otherwise requires, each reference to a Subsidiary shall be a reference to a Subsidiary of a Borrower.

“**Superpriority Claim**” shall mean a claim against Borrowers in the Bankruptcy Case that is a superpriority administrative expense claim having priority over any or all administrative expenses and other claims of the kind specified in, or otherwise arising or ordered under, any sections of the Bankruptcy Code (including, without limitation, sections 105, 326, 328, 330, 331, 503(b), 507(a), 507(b), 546(c) and/or 726 thereof), whether or not such claim or expenses may become secured by a judgment Lien or other non-consensual Lien, levy or attachment.

“**Taxes**” has the meaning set forth in Section 2.8.

“**Termination Date**” means the earlier to occur of (a) the Commitment Expiry Date, (b) any date on which Agent accelerates the maturity of the Loans pursuant to Section 10.2, or (c) the termination date stated in any notice of termination of this Agreement provided by Borrowers in accordance with Section 2.12.

“**Third Party Payor**” means Medicare, Medicaid, TRICARE, and other state or federal health care program, Blue Cross and/or Blue Shield, private insurers, managed care plans and any other Person or entity which presently or in the future maintains Third Party Payor Programs.

“**Third Party Payor Programs**” means all payment and reimbursement programs, sponsored by a Third Party Payor, in which a Borrower participates.

“**TRICARE**” means the program administered pursuant to 10 U.S.C. Section 1071 et. seq, Sections 1320a-7 and 1320a-7a of Title 42 of the United States Code and the regulations promulgated pursuant to such statutes.

“**UCC**” means the Uniform Commercial Code of the State of Maryland or of any other state the laws of which are required to be applied in connection with the perfection of security interests in any Collateral.

“**United States**” means the United States of America.

“**Variance**” has the meaning set forth in the definition of “DIP Budget Variance Report”.

Section 1.2 Accounting Terms and Determinations. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder (including, without limitation, determinations made pursuant to the exhibits hereto) shall be made, and all financial statements required to be delivered hereunder shall be prepared on a consolidated basis in accordance with GAAP applied on a basis consistent with the most recent audited consolidated financial statements of each Borrower and its Consolidated Subsidiaries delivered to Agent and each of the Lenders on or prior to the Closing Date. If at any time any change in GAAP would affect the computation of any financial ratio or financial requirement set forth in any Financing Document, and either Borrowers or the Required Lenders shall so request, the Agent, the Lenders and Borrowers shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); *provided, however*, that until so amended, (a) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (b) Borrowers shall provide to the Agent and the Lenders financial statements and other documents required under this Agreement which include a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein 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 Debt or other liabilities of any Credit Party or any Subsidiary of any Credit Party at “fair value”, as defined therein.

Section 1.3 Other Definitional and Interpretive Provisions. References in this Agreement to “Articles”, “Sections”, “Annexes”, “Exhibits”, or “Schedules” shall be to Articles, Sections, Annexes, Exhibits or Schedules of or to this Agreement unless otherwise specifically provided. Any term defined herein may be used in the singular or plural. “Include”, “includes” and “including” shall be deemed to be followed by “without limitation”. Except as otherwise specified or limited herein, references to any Person include the successors and assigns of such Person. References “from” or “through” any date mean, unless otherwise specified, “from and including” or “through and including”, respectively. Unless otherwise specified herein, the settlement of all payments and fundings hereunder between or among the parties hereto shall be made in lawful money of the United States and in immediately available funds. References to any statute or act shall include all related current regulations and all amendments and any successor statutes, acts and regulations. All amounts used for purposes of financial calculations required

to be made herein shall be without duplication. References to any statute or act, without additional reference, shall be deemed to refer to federal statutes and acts of the United States. References to any agreement, instrument or document shall include all schedules, exhibits, annexes and other attachments thereto. As used in this Agreement, the meaning of the term “material” or the phrase “in all material respects” is intended to refer to an act, omission, violation or condition which reflects or could reasonably be expected to result in a Material Adverse Effect. References to capitalized terms that are not defined herein, but are defined in the UCC, shall have the meanings given them in the UCC. All references herein to times of day shall be references to daylight or standard time, as applicable.

Section 1.4 Time is of the Essence. Time is of the essence in Borrower’s and each other Credit Party’s performance under this Agreement and all other Financing Documents.

ARTICLE 2 - LOANS

Section 2.1 Loans.

(a) Reserved.

(b) Revolving Loans.

(i) Revolving Loans and Borrowings. On the terms and subject to the conditions set forth herein and in the DIP Orders, each Lender severally agrees to make loans to Borrowers from time to time as set forth herein (each a “**Revolving Loan**”, and collectively, “**Revolving Loans**”) equal to such Lender’s Revolving Loan Commitment Percentage of Revolving Loans requested by Borrowers hereunder, *provided, however*, that after giving effect thereto, the Revolving Loan Outstandings shall not exceed the Revolving Loan Limit. Borrowers shall deliver to Agent a Notice of Borrowing with respect to each proposed borrowing of a Revolving Loan, such Notice of Borrowing to be delivered before 1:00 p.m. (Eastern time) two (2) Business Days prior to the date of such proposed borrowing. Each Borrower and each Revolving Lender hereby authorizes Agent to make Revolving Loans on behalf of Revolving Lenders, at any time in its sole discretion, to pay principal owing in respect of the Loans and interest, fees, expenses and other charges payable by any Credit Party from time to time arising under this Agreement or any other Financing Document. The Borrowing Base shall be determined by Agent based on the most recent Borrowing Base Certificate delivered to Agent in accordance with this Agreement and such other information as may be available to Agent. For the avoidance of doubt, the approval of any DIP Budget by Agent in accordance with Section 4.1(h) shall not be construed to replace or restrict Agent’s right to determine the Borrowing Base as set forth herein. Without limiting any other rights and remedies of Agent hereunder or under the other Financing Documents or the DIP Orders, the Revolving Loans shall be subject to Agent’s continuing right to withhold from the Borrowing Base reserves, and to increase and decrease such reserves from time to time, if and to the extent that in Agent’s good faith credit judgment and discretion, such reserves are necessary. For purposes of clarity, the Prepetition Obligation Reserve shall be reduced automatically in connection with each reduction in the outstanding amount of the Prepetition Obligations resulting from a sweep of collections into the Payment Account.

(ii) Mandatory Revolving Loan Repayments and Prepayments.

(A) The Revolving Loan Commitment shall terminate on the Termination Date. On such Termination Date, there shall become due, and Borrowers shall pay, the entire outstanding principal amount of each Revolving Loan, together with accrued and unpaid Obligations pertaining thereto incurred to, but excluding the Termination Date;

provided, however, that such payment is made not later than 12:00 Noon (Eastern time) on the Termination Date.

(B) If at any time the Revolving Loan Outstandings exceed the Revolving Loan Limit, then, on the next succeeding Business Day, Borrowers shall repay the Revolving Loans in an aggregate amount equal to such excess.

(C) Principal payable on account of Revolving Loans shall be payable by Borrowers to Agent (I) immediately upon the receipt by any Borrower or Agent of any payments on or proceeds from any of the Accounts, to the extent of such payments or proceeds, as further described in Section 2.11 below, and (II) in full on the Termination Date.

(iii) Optional Prepayments. Borrowers may from time to time prepay the Revolving Loans in whole or in part; *provided, however*, that any such partial prepayment shall be in an amount equal to \$100,000 or a higher integral multiple of \$25,000.

(iv) LIBOR Rate.

(A) Except as provided in subsection (C) below, Revolving Loans shall accrue interest at the LIBOR Rate *plus* the Applicable Margin.

(B) The LIBOR Rate may be adjusted by Agent with respect to any Lender on a prospective basis to take into account any additional or increased costs to such Lender of maintaining or obtaining any eurodollar deposits or increased costs, in each case, due to changes in applicable Law occurring subsequent to the commencement of the then applicable Interest Period, including changes in tax laws (except changes of general applicability in corporate income tax laws) and changes in the reserve requirements imposed by the Board of Governors of the Federal Reserve System (or any successor), which additional or increased costs would increase the cost of funding loans bearing interest based upon the LIBOR Rate; *provided, however*, that notwithstanding anything in this Agreement to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “change in applicable Law”, regardless of the date enacted, adopted or issued. In any such event, the affected Lender shall give Borrowers and Agent notice of such a determination and adjustment and Agent promptly shall transmit the notice to each other Lender and, upon its receipt of the notice from the affected Lender, Borrowers may, by notice to such affected Lender (I) require such Lender to furnish to Borrowers a statement setting forth the basis for adjusting such LIBOR Rate and the method for determining the amount of such adjustment, or (II) repay the Loans bearing interest based upon the LIBOR Rate with respect to which such adjustment is made.

(C) In the event that any change in market conditions or any law, regulation, treaty, or directive, or any change therein or in the interpretation of application thereof, shall at any time after the Closing Date, in the reasonable opinion of any Lender, make it unlawful or impractical for such Lender to fund or maintain Loans bearing interest based upon the LIBOR Rate or to continue such funding or maintaining, or to determine

or charge interest rates at the LIBOR Rate, such Lender shall give notice of such changed circumstances to Agent and Borrowers and Agent promptly shall transmit the notice to each other Lender and (I) in the case of any outstanding Loans of such Lender bearing interest based upon the LIBOR Rate, the date specified in such Lender's notice shall be deemed to be the last day of the Interest Period of such Loans, and interest upon such Lender's Loans thereafter shall accrue interest at Base Rate *plus* the Applicable Margin, and (II) such Loans shall continue to accrue interest at Base Rate *plus* the Applicable Margin until such Lender determines that it would no longer be unlawful or impractical to maintain such Loans at the LIBOR Rate.

(D) Anything to the contrary contained herein notwithstanding, neither Agent nor any Lender is required actually to acquire eurodollar deposits to fund or otherwise match fund any Obligation as to which interest accrues based on the LIBOR Rate.

(v) Restriction on Termination. Notwithstanding any prepayment of the Revolving Loan Outstandings or any other termination of Lenders' Credit Exposure under this Agreement, Agent and Lenders shall have no obligation to release any of the Collateral securing the Obligations under this Agreement while any portion of the Prepetition Obligations shall remain outstanding.

Section 2.2 Interest, Interest Calculations and Certain Fees.

(a) Interest. From and following the Closing Date, except as expressly set forth in this Agreement, Loans and the other Obligations shall bear interest at the sum of the LIBOR Rate *plus* the Applicable Margin. Interest on the Loans shall be paid in arrears on the first (1st) day of each month and on the maturity of such Loans, whether by acceleration or otherwise. Interest on all other Obligations shall be payable upon demand. For purposes of calculating interest, all funds transferred to the Payment Account for application to any Revolving Loans shall be subject to a three Business Day clearance period and all interest accruing on such funds during such clearance period shall accrue for the benefit of Agent, and not for the benefit of the Lenders.

(b) Unused Line Fee. From and following the Closing Date, Borrowers shall pay Agent, for the benefit of all Lenders committed to make Revolving Loans, in accordance with their respective Pro Rata Shares, a fee in an amount equal to (i) (A) the Revolving Loan Commitment *minus* (B) the average daily balance of the sum of the Revolving Loan Outstandings during the preceding month, *multiplied by* (ii) 0.50% per annum. Such fee is to be paid monthly in arrears on the first day of each month.

(c) Documentation and Approval Fees and Expenses. Borrowers shall reimburse, on a current basis, all costs and expenses (including legal, financial advisor, appraisal and valuation-related fees and expenses) incurred by Agent and any Lender in connection with the preparation, negotiation, documentation and court approval of this Agreement, the other Financing Documents and the Financing Orders, including, without limitation, in connection with (i) the analysis, negotiation, preparation, execution, administration, delivery and termination of this Agreement, the other Financing Documents and the documents and instruments referred to herein and therein, and any amendment, amendment and restatement, supplement, waiver or consent relating hereto or thereto, whether or not any such amendment, amendment and restatement, supplement, waiver or consent is executed or becomes effective, (ii) the analysis, negotiation, and preparation of the DIP Orders, the Asset Sale Documents, the Asset Sale Motion, the Asset Sale Order and any other documents filed in or prepared in connection with the Bankruptcy Case, and the preparation for, travel to and participation in any hearings or proceedings in connection with any of the foregoing, (iii) the enforcement of Agent's and Lenders' rights hereunder, or the collection of any

payments owing from, Borrowers under this Agreement and/or the other Financing Documents or the protection, preservation or defense of the rights of Agent and Lenders hereunder and under the other Financing Documents, and (iv) any lien, litigation and other search costs, the reasonable fees, expenses and disbursements of legal counsel for Agent (and, after the occurrence and during the continuation of any Event of Default, any Lender), including the reasonable charges of internal legal counsel, and reasonable charges of any expert, appraiser, auditor or other consultant to Lender.

(d) Collateral Fee. Commencing on the date hereof, and continuing on the first day of each month thereafter, a collateral management fee equal to the product of (a) the average end-of-day principal balance of Revolving Loans outstanding during the immediately preceding month, multiplied by (b) 0.50% per annum. For purposes of calculating the average end-of-day principal balance of Revolving Loans, all funds paid into the Payment Account (or which were required to be paid into the Payment Account under this Agreement) or otherwise received by Agent for the account of Borrowers shall be subject to a three Business Day clearance period. The collateral management fee described in this clause (d) shall be deemed fully earned when due and payable and, once paid, shall be non-refundable.

(e) Origination Fee. Contemporaneously with Borrowers' execution of this Agreement, Borrowers shall pay Agent, for the benefit of all Lenders committed to make Revolving Loans on the Closing Date, in accordance with their respective Pro Rata Share, a fee in an amount equal to (i) the Revolving Loan Commitment, multiplied by (ii) 1.5%. All fees payable pursuant to this clause (e) shall be non-refundable as of the Closing Date.

(f) Deferred Revolving Loan Origination Fee. If Lenders' funding obligations in respect of the Revolving Loan Commitment under this Agreement terminate for any reason (whether by voluntary termination by Borrowers, by reason of the occurrence of an Event of Default or otherwise) prior to the Commitment Expiry Date, Borrowers shall pay to Agent, for the benefit of all Lenders committed to make Revolving Loans on the Closing Date, a fee as compensation for the costs of such Lenders being prepared to make funds available to Borrowers under this Agreement, equal to an amount determined by multiplying the Revolving Loan Commitment by 1.5%. All fees payable pursuant to this paragraph shall be deemed fully earned and non-refundable as of the Closing Date.

(g) Audit Fees. Borrowers shall pay to Agent, for its own account and not for the benefit of any other Lenders, all reasonable fees and expenses in connection with audits and inspections of Borrowers' books and records, audits, valuations or appraisals of the Collateral, audits of Borrowers' compliance with applicable Laws and such other matters as Agent shall deem appropriate, which shall be due and payable on the first Business Day of the month following the date of issuance by Agent of a written request for payment thereof to Borrowers.

(h) Wire Fees. Borrowers shall pay to Agent, for its own account and not for the account of any other Lenders, on written demand, fees for incoming and outgoing wires made for the account of Borrowers, such fees to be based on Agent's then current wire fee schedule (available upon written request of the Borrowers).

(i) Late Charges. If payments of principal (other than a final installment of principal upon the Termination Date), interest due on the Obligations, or any other amounts due hereunder or under the other Financing Documents are not timely made and remain overdue for a period of five (5) days, Borrowers, without notice or demand by Agent, promptly shall pay to Agent, for its own account and not for the benefit of any other Lenders, as additional compensation to Agent in administering the Obligations, an amount equal to five percent (5.0%) of each delinquent payment.

(j) Computation of Interest and Related Fees. All interest and fees under each Financing Document shall be calculated on the basis of a 360-day year for the actual number of days elapsed. The date of funding of a Loan shall be included in the calculation of interest. The date of payment of a Loan shall be excluded from the calculation of interest. If a Loan is repaid on the same day that it is made, one (1) day's interest shall be charged.

Section 2.3 Notes. The portion of the Loans made by each Lender shall be evidenced, if so requested by such Lender, by one or more promissory notes executed by Borrowers on a joint and several basis (each, a "Note") in an original principal amount equal to such Lender's Revolving Loan Commitment Amount.

Section 2.4 Reserved.

Section 2.5 Reserved.

Section 2.6 General Provisions Regarding Payment; Loan Account.

(a) All payments to be made by each Borrower under any Financing Document, including payments of principal and interest made hereunder and pursuant to any other Financing Document, and all fees, expenses, indemnities and reimbursements, shall be made without set-off, recoupment or counterclaim. If any payment hereunder becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension (it being understood and agreed that, solely for purposes of calculating financial covenants and computations contained herein and determining compliance therewith, if payment is made, in full, on any such extended due date, such payment shall be deemed to have been paid on the original due date without giving effect to any extension thereto). Any payments received in the Payment Account before 12:00 Noon (Eastern time) on any date shall be deemed received by Agent on such date, and any payments received in the Payment Account at or after 12:00 Noon (Eastern time) on any date shall be deemed received by Agent on the next succeeding Business Day.

(b) Agent shall maintain a loan account (the "**Loan Account**") on its books to record Loans and other extensions of credit made by the Lenders hereunder or under any other Financing Document, and all payments thereon made by each Borrower. All entries in the Loan Account shall be made in accordance with Agent's customary accounting practices as in effect from time to time. The balance in the Loan Account, as recorded in Agent's books and records at any time shall be conclusive and binding evidence of the amounts due and owing to Agent by each Borrower absent manifest error; *provided, however*, that any failure to so record or any error in so recording shall not limit or otherwise affect any Borrower's duty to pay all amounts owing hereunder or under any other Financing Document. Agent shall endeavor to provide Borrowers with a monthly statement regarding the Loan Account (but neither Agent nor any Lender shall have any liability if Agent shall fail to provide any such statement). Unless any Borrower notifies Agent of any objection to any such statement (specifically describing the basis for such objection) within ninety (90) days after the date of receipt thereof, it shall be deemed final, binding and conclusive upon Borrowers in all respects as to all matters reflected therein.

Section 2.7 Maximum Interest. In no event shall the interest charged with respect to the Loans or any other Obligations of any Borrower under any Financing Document exceed the maximum amount permitted under the laws of the State of Maryland or of any other applicable jurisdiction. Notwithstanding anything to the contrary herein or elsewhere, if at any time the rate of interest payable hereunder or under any Note or other Financing Document (the "**Stated Rate**") would exceed the highest rate of interest permitted under any applicable law to be charged (the "**Maximum Lawful Rate**"), then for so long as the

Maximum Lawful Rate would be so exceeded, the rate of interest payable shall be equal to the Maximum Lawful Rate; *provided, however*, that if at any time thereafter the Stated Rate is less than the Maximum Lawful Rate, each Borrower shall, to the extent permitted by law, continue to pay interest at the Maximum Lawful Rate until such time as the total interest received is equal to the total interest which would have been received had the Stated Rate been (but for the operation of this provision) the interest rate payable. Thereafter, the interest rate payable shall be the Stated Rate unless and until the Stated Rate again would exceed the Maximum Lawful Rate, in which event this provision shall again apply. In no event shall the total interest received by any Lender exceed the amount which it could lawfully have received had the interest been calculated for the full term hereof at the Maximum Lawful Rate. If, notwithstanding the prior sentence, any Lender has received interest hereunder in excess of the Maximum Lawful Rate, such excess amount shall be applied to the reduction of the principal balance of the Loans or to other amounts (other than interest) payable hereunder, and if no such principal or other amounts are then outstanding, such excess or part thereof remaining shall be paid to Borrowers. In computing interest payable with reference to the Maximum Lawful Rate applicable to any Lender, such interest shall be calculated at a daily rate equal to the Maximum Lawful Rate *divided by* the number of days in the year in which such calculation is made.

Section 2.8 Taxes; Capital Adequacy.

(a) All payments of principal and interest on the Loans and all other amounts payable hereunder shall be made free and clear of and without deduction for any present or future income, excise, stamp, documentary, payroll, employment, property or franchise taxes and other taxes, fees, duties, levies, assessments, withholdings or other charges of any nature whatsoever (including interest and penalties thereon) imposed by any taxing authority, excluding taxes imposed on or measured by Agent's or any Lender's net income by the jurisdictions under which Agent or such Lender is organized or conducts business (other than solely as the result of entering into any of the Financing Documents or taking any action thereunder) (all non-excluded items being called "**Taxes**"). If any withholding or deduction from any payment to be made by any Borrower hereunder is required in respect of any Taxes pursuant to any applicable Law, then Borrowers will: (i) pay directly to the relevant authority the full amount required to be so withheld or deducted; (ii) promptly forward to Agent an official receipt or other documentation satisfactory to Agent evidencing such payment to such authority; and (iii) pay to Agent for the account of Agent and Lenders such additional amount or amounts as is necessary to ensure that the net amount actually received by Agent and each Lender will equal the full amount Agent and such Lender would have received had no such withholding or deduction been required. If any Taxes are directly asserted against Agent or any Lender with respect to any payment received by Agent or such Lender hereunder, Agent or such Lender may pay such Taxes and Borrowers will promptly pay such additional amounts (including any penalty, interest or expense) as is necessary in order that the net amount received by such Person after the payment of such Taxes (including any Taxes on such additional amount) shall equal the amount such Person would have received had such Taxes not been asserted so long as such amounts have accrued on or after the day which is two hundred seventy (270) days prior to the date on which Agent or such Lender first made written demand therefor.

(b) If any Borrower fails to pay any Taxes when due to the appropriate taxing authority or fails to remit to Agent, for the account of Agent and the respective Lenders, the required receipts or other required documentary evidence, Borrowers shall indemnify Agent and Lenders for any incremental Taxes, interest or penalties that may become payable by Agent or any Lender as a result of any such failure.

(c) Each Lender that (i) is organized under the laws of a jurisdiction other than the United States, and (ii)(A) is a party hereto on the Closing Date or (B) purports to become an assignee of an interest as a Lender under this Agreement after the Closing Date (unless such Lender was already a Lender hereunder immediately prior to such assignment) (each such Lender a "**Foreign Lender**") shall execute and deliver to each of Borrowers and Agent one or more (as Borrowers or Agent may reasonably request)

United States Internal Revenue Service Forms W-8ECI, W-8BEN, W-8IMY (as applicable) and other applicable forms, certificates or documents prescribed by the United States Internal Revenue Service or reasonably requested by Agent certifying as to such Lender's entitlement to a complete exemption from withholding or deduction of Taxes. Borrowers shall not be required to pay additional amounts to any Lender pursuant to this Section 2.8 with respect to United States withholding and income Taxes to the extent that the obligation to pay such additional amounts would not have arisen but for the failure of such Lender to comply with this paragraph other than as a result of a change in Law.

(d) If any Lender shall determine in its commercially reasonable judgment that the adoption or taking effect of, or any change in, any applicable Law regarding capital adequacy, in each instance, after the Closing Date, or any change after the Closing Date in the interpretation, administration or application thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation, administration or application thereof, or the compliance by any Lender or any Person controlling such Lender with any request, guideline or directive regarding capital adequacy (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency adopted or otherwise taking effect after the Closing Date, has or would have the effect of reducing the rate of return on such Lender's or such controlling Person's capital as a consequence of such Lender's obligations hereunder to a level below that which such Lender or such controlling Person could have achieved but for such adoption, taking effect, change, interpretation, administration, application or compliance (taking into consideration such Lender's or such controlling Person's policies with respect to capital adequacy) then from time to time, upon written demand by such Lender (which demand shall be accompanied by a statement setting forth the basis for such demand and a calculation of the amount thereof in reasonable detail, a copy of which shall be furnished to Agent), Borrowers shall promptly pay to such Lender such additional amount as will compensate such Lender or such controlling Person for such reduction, so long as such amounts have accrued on or after the day which is two hundred seventy (270) days prior to the date on which such Lender first made demand therefor; provided, however, that notwithstanding anything in this Agreement to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "change in applicable Law", regardless of the date enacted, adopted or issued.

(e) If any Lender requires compensation under Section 2.8(d), or requires any Borrower to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.8(a), then, upon the written request of Borrower Representative, such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder (subject to the terms of this Agreement) to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or materially reduce amounts payable pursuant to any such subsection, as the case may be, in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender (as determined in its sole discretion). Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

Section 2.9 Appointment of Borrower Representative. Each Borrower hereby designates Borrower Representative as its representative and agent on its behalf for the purposes of issuing Notices of Borrowing and Borrowing Base Certificates, and giving instructions with respect to the disbursement of the proceeds of the Loans, giving and receiving all other notices and consents hereunder or under any of the other Financing Documents and taking all other actions (including in respect of compliance with covenants) on behalf of any Borrower or Borrowers under the Financing Documents. Borrower

Representative hereby accepts such appointment. Notwithstanding anything to the contrary contained in this Agreement, no Borrower other than Borrower Representative shall be entitled to take any of the foregoing actions. The proceeds of each Loan made hereunder shall be advanced to or at the direction of Borrower Representative and if not used by Borrower Representative in its business (for the purposes provided in this Agreement) shall be deemed to be immediately advanced by Borrower Representative to the appropriate other Borrower hereunder as an intercompany loan (collectively, “**Intercompany Loans**”). All collections of each Borrower in respect of Accounts and other proceeds of Collateral of such Borrower received by Agent and applied to the Obligations shall also be deemed to be repayments of the Intercompany Loans owing by such Borrower to Borrower Representative. Borrowers shall maintain accurate books and records with respect to all Intercompany Loans and all repayments thereof. Agent and each Lender may regard any notice or other communication pursuant to any Financing Document from Borrower Representative as a notice or communication from all Borrowers, and may give any notice or communication required or permitted to be given to any Borrower or all Borrowers hereunder to Borrower Representative on behalf of such Borrower or all Borrowers. Each Borrower agrees that each notice, election, representation and warranty, covenant, agreement and undertaking made on its behalf by Borrower Representative shall be deemed for all purposes to have been made by such Borrower and shall be binding upon and enforceable against such Borrower to the same extent as if the same had been made directly by such Borrower.

Section 2.10 Joint and Several Liability; Rights of Contribution; Subordination and Subrogation.

(a) Borrowers are defined collectively to include all Persons named as one of the Borrowers herein; *provided, however*, that any references herein to “any Borrower”, “each Borrower” or similar references, shall be construed as a reference to each individual Person named as one of the Borrowers herein. Each Person so named shall be jointly and severally liable for all of the obligations of Borrowers under this Agreement. Each Borrower, individually, expressly understands, agrees and acknowledges, that the credit facilities would not be made available on the terms herein in the absence of the collective credit of all of the Persons named as the Borrowers herein, the joint and several liability of all such Persons, and the cross-collateralization of the collateral of all such Persons. Accordingly, each Borrower individually acknowledges that the benefit to each of the Persons named as one of the Borrowers as a whole constitutes reasonably equivalent value, regardless of the amount of the credit facilities actually borrowed by, advanced to, or the amount of collateral provided by, any individual Borrower. In addition, each entity named as one of the Borrowers herein hereby acknowledges and agrees that all of the representations, warranties, covenants, obligations, conditions, agreements and other terms contained in this Agreement shall be applicable to and shall be binding upon and measured and enforceable individually against each Person named as one of the Borrowers herein as well as all such Persons when taken together. By way of illustration, but without limiting the generality of the foregoing, the terms of Section 10.1 of this Agreement are to be applied to each individual Person named as one of the Borrowers herein (as well as to all such Persons taken as a whole), such that the occurrence of any of the events described in Section 10.1 of this Agreement as to any Person named as one of the Borrowers herein shall constitute an Event of Default even if such event has not occurred as to any other Persons named as the Borrowers or as to all such Persons taken as a whole.

(b) Notwithstanding any provisions of this Agreement to the contrary, it is intended that the joint and several nature of the liability of each Borrower for the Obligations and the Liens granted by Borrowers to secure the Obligations, not constitute a Fraudulent Conveyance (as defined below). Consequently, Agent, Lenders and each Borrower agree that if the liability of a Borrower for the Obligations, or any Liens granted by such Borrower securing the Obligations would, but for the application of this sentence, constitute a Fraudulent Conveyance, the liability of such Borrower and the Liens securing such liability shall be valid and enforceable only to the maximum extent that would not cause such liability

or such Lien to constitute a Fraudulent Conveyance, and the liability of such Borrower and this Agreement shall automatically be deemed to have been amended accordingly. For purposes hereof, the term “**Fraudulent Conveyance**” means a fraudulent conveyance under section 548 of the Bankruptcy Code or a fraudulent conveyance or fraudulent transfer under the applicable provisions of any fraudulent conveyance or fraudulent transfer law or similar law of any state, nation or other governmental unit, as in effect from time to time.

(c) Agent is hereby authorized, without notice or demand (except as otherwise specifically required under this Agreement) and without affecting the liability of any Borrower hereunder, at any time and from time to time, to (i) renew, extend or otherwise increase the time for payment of the Obligations; (ii) with the written agreement of any Borrower, change the terms relating to the Obligations or otherwise modify, amend or change the terms of any Note or other agreement, document or instrument now or hereafter executed by any Borrower and delivered to Agent for any Lender; (iii) accept partial payments of the Obligations; (iv) take and hold any Collateral for the payment of the Obligations or for the payment of any guaranties of the Obligations and exchange, enforce, waive and release any such Collateral; (v) apply any such Collateral and direct the order or manner of sale thereof as Agent, in its sole discretion, may determine; and (vi) settle, release, compromise, collect or otherwise liquidate the Obligations and any Collateral therefor in any manner, all guarantor and surety defenses being hereby waived by each Borrower. Without limitations of the foregoing, with respect to the Obligations, each Borrower hereby makes and adopts each of the agreements and waivers set forth in each Guarantee, the same being incorporated hereby by reference. Except as specifically provided in this Agreement or any of the other Financing Documents, Agent shall have the exclusive right to determine the time and manner of application of any payments or credits, whether received from any Borrower or any other source, and such determination shall be binding on all Borrowers. All such payments and credits may be applied, reversed and reapplied, in whole or in part, to any of the Obligations that Agent shall determine, in its sole discretion, without affecting the validity or enforceability of the Obligations of the other Borrower.

(d) Each Borrower hereby agrees that, except as hereinafter provided, its obligations hereunder shall be unconditional, irrespective of (i) the absence of any attempt to collect the Obligations from any obligor or other action to enforce the same; (ii) the waiver or consent by Agent with respect to any provision of any instrument evidencing the Obligations, or any part thereof, or any other agreement heretofore, now or hereafter executed by a Borrower and delivered to Agent; (iii) failure by Agent to take any steps to perfect and maintain its security interest in, or to preserve its rights to, any security or collateral for the Obligations; (iv) the Bankruptcy Case or Agent’s election in any such proceeding of the application of section 1111(b)(2) of the Bankruptcy Code; (v) any other borrowing or grant of a security interest by a Borrower to a third party in the Bankruptcy Case; (vi) the disallowance, under section 502 of the Bankruptcy Code, of all or any portion of Agent’s claim(s) for repayment of any of the Obligations; or (vii) any other circumstance other than payment in full of the Obligations which might otherwise constitute a legal or equitable discharge or defense of a guarantor or surety.

(e) The Borrowers hereby agree, as between themselves, that to the extent that Agent, on behalf of Lenders, shall have received from any Borrower any Recovery Amount, then the paying Borrower shall have a right of contribution against each other Borrower in an amount equal to such other Borrower’s contributive share of such Recovery Amount; provided, however, that in the event any Borrower suffers a Deficiency Amount, then the Borrower suffering the Deficiency Amount shall be entitled to seek and receive contribution from and against the other Borrowers in an amount equal to the Deficiency Amount; and provided, further, that in no event shall the aggregate amounts so reimbursed by reason of the contribution of any Borrower equal or exceed an amount that would, if paid, constitute or result in Fraudulent Conveyance. Until all Obligations have been paid and satisfied in full and all commitments to lend hereunder have been terminated, no payment made by or for the account of a Borrower including, without limitation, (i) a payment made by such Borrower on behalf of the liabilities of any other

Borrower, or (ii) a payment made by any other Guarantor under any Guarantee, shall entitle such Borrower, by subrogation or otherwise, to any payment from such other Borrower or from or out of such other Borrower's property. The right of each Borrower to receive any contribution under this Section 2.10(e) or by subrogation or otherwise from any other Borrower shall be subordinate in right of payment to the Obligations and such Borrower shall not exercise any right or remedy against such other Borrower or any property of such other Borrower by reason of any performance of such Borrower of its joint and several obligations hereunder, until the Obligations have been indefeasibly paid and satisfied in full and all commitments to lend hereunder have been terminated, and no Borrower shall exercise any right or remedy with respect to this Section 2.10(e) until the Obligations have been indefeasibly paid and satisfied in full and all commitments to lend hereunder have been terminated. As used in this Section 2.10(e), the term "**Recovery Amount**" means the amount of proceeds received by or credited to Agent from the exercise of any remedy of the Lenders under this Agreement or the other Financing Documents, including, without limitation, the sale of any Collateral. As used in this Section 2.10(e), the term "**Deficiency Amount**" means any amount that is less than the entire amount a Borrower is entitled to receive by way of contribution or subrogation from, but that has not been paid by, the other Borrowers in respect of any Recovery Amount attributable to the Borrower entitled to contribution, until the Deficiency Amount has been reduced to \$0 through contributions and reimbursements made under the terms of this Section 2.10(e) or otherwise.

For the avoidance of doubt, the terms of this Section 2.10 shall apply only if there is more than one Borrower party to this Agreement.

Section 2.11 Collections and Lockbox Account.

(a) Borrowers shall maintain a lockbox (the "**Lockbox**") with a United States depository institution designated from time to time by Agent (the "**Lockbox Bank**"), subject to the provisions of this Agreement, and shall execute with the Lockbox Bank a Deposit Account Control Agreement and such other agreements related to such Lockbox as Agent may require. Borrowers shall ensure that all collections of Accounts (other than Accounts for which the Account Debtor is a Governmental Account Debtor) are paid directly from Account Debtors (i) into the Lockbox for deposit into the Lockbox Account and/or (ii) directly into the Lockbox Account; *provided, however*, unless Agent shall otherwise direct by written notice to Borrowers, Borrowers shall be permitted to cause Account Debtors who are individuals to pay Accounts directly to Borrowers, which Borrowers shall then administer and apply in the manner required below. All funds deposited into a Lockbox Account shall be transferred into the Payment Account by the close of each Business Day.

(b) If any of the Account Debtors are Governmental Account Debtors, Borrowers shall establish and maintain additional lockboxes (also herein referred to collectively in the singular as the "**Lockbox**") and related Lockbox Accounts with the Lockbox Bank, subject to the provisions of this Agreement, and shall execute with the Lockbox Bank a Deposit Account Restriction Agreement and such other agreements related to such Lockbox as Agent may require. A separate Lockbox shall be established for each Borrower that is a licensed provider under the Medicaid or Medicare programs, if applicable. Borrowers shall ensure that all collections of Accounts due from Governmental Account Debtors are paid directly from such Account Debtors into the applicable Lockbox and/or Lockbox Account established pursuant to this subsection for deposit into the Lockbox Account established pursuant to this subsection. All funds deposited into a Lockbox Account that is subject (or required to be subject) to a Deposit Account Restriction Agreement shall be transferred into either (at Agent's option) (i) the Payment Account by the close of each Business Day, or (ii) the Lockbox Account established pursuant to Section 2.11(a), which such transfer shall be made via an automatic immediate intrabank transfer, and then transferred to the Payment Account by the close of each Business Day.

(c) Notwithstanding anything in any lockbox agreement, Deposit Account Control Agreement or Deposit Account Restriction Agreement to the contrary, Borrowers agree that they shall be liable for any fees and charges in effect from time to time and charged by the Lockbox Bank in connection with the Lockbox, the Lockbox Account, and that Agent shall have no liability therefor. Borrowers hereby indemnify and agree to hold Agent harmless from any and all liabilities, claims, losses and demands whatsoever, including reasonable attorneys' fees and expenses, arising from or relating to actions of Agent or the Lockbox Bank pursuant to this Section or any lockbox agreement or Deposit Account Control Agreement, Deposit Account Restriction Agreement or similar agreement, except to the extent of such losses arising solely from Agent's gross negligence or willful misconduct.

(d) Agent shall apply, on a daily basis, all funds transferred into the Payment Account pursuant to this Section:

(i) from the Closing Date until the earlier to occur of (A) the Final Order Entry Date (at which time, for the avoidance of doubt, all of the Prepetition Obligations shall have been "rolled-up" and converted into the Obligations hereunder) and (B) satisfaction in full of the Prepetition Obligations, to reduce the Prepetition Obligations in accordance with the terms of the Prepetition Credit Agreement; and

(ii) thereafter, to reduce the outstanding Loans in such order of application as Agent shall elect.

If as the result of collections of Accounts pursuant to the terms and conditions of this Section 2.11, a credit balance exists with respect to the Loan Account, Agent shall, so long as (i) Revolving Loan Outstandings, after giving effect to the first sentence of this Section 2.11(d), are zero, (ii) all other Obligations then due and owing have been paid in full and (iii) no Default or Event of Default exists, transfer such funds representing a credit balance that have been received by Agent by 12:00 p.m. (Eastern time) on any Business Day into an account designated by Borrower Representative on the next Business Day thereafter; *provided* that in no event shall any such credit balance accrue interest in favor of Borrowers.

(e) To the extent that any collections of Accounts or proceeds of other Collateral are not sent directly to the Lockbox or Lockbox Account but are received by any Borrower, such collections shall be held in trust for the benefit of Agent pursuant to an express trust created hereby and immediately remitted, in the form received, to the applicable Lockbox or Lockbox Account. No such funds received by any Borrower shall be commingled with other funds of the Borrowers. If any funds received by any Borrower are commingled with other funds of the Borrowers, or are required to be deposited to a Lockbox or Lockbox Account and are not so deposited within two (2) Business Days, then Borrowers shall pay to Agent, for its own account and not for the account of any other Lenders, a compliance fee equal to \$500 for each day that any such conditions exist.

(f) Borrowers acknowledge and agree that compliance with the terms of this Section is essential, and that Agent and Lenders will suffer immediate and irreparable injury and have no adequate remedy at law, if any Borrower, through acts or omissions, causes or permits Account Debtors to send payments other than to the Lockbox or Lockbox Accounts or if any Borrower fails to promptly deposit collections of Accounts or proceeds of other Collateral in the Lockbox Account as herein required. Accordingly, in addition to all other rights and remedies of Agent and Lenders hereunder, Agent shall have the right to seek specific performance of the Borrowers' obligations under this Section, and any other equitable relief as Agent may deem necessary or appropriate, and Borrowers waive any requirement for the posting of a bond in connection with such equitable relief.

(g) Borrowers shall not, and Borrowers shall not suffer or permit any Credit Party to, (i) withdraw any amounts from any Lockbox Account, (ii) change the procedures or sweep instructions under the agreements governing any Lockbox Accounts, or (iii) send to or deposit in any Lockbox Account any funds other than payments made with respect to and proceeds of Accounts or other Collateral. Borrowers shall, and shall cause each Credit Party to, cooperate with Agent in the identification and reconciliation on a daily basis of all amounts received in or required to be deposited into the Lockbox Accounts. If more than five percent (5%) of the collections of Accounts received by Borrowers during any given fifteen (15) day period is not identified or reconciled to the reasonable satisfaction of Agent within ten (10) Business Days of receipt, Agent shall not be obligated to make further advances under this Agreement until such amount is identified or is reconciled to the reasonable satisfaction of Agent, as the case may be. In addition, if any such amount cannot be identified or reconciled to the reasonable satisfaction of Agent, Agent may utilize its own staff or, if it deems necessary, engage an outside auditor, in either case at Borrowers' expense (which in the case of Agent's own staff shall be in accordance with Agent's then prevailing customary charges (*plus* expenses)), to make such examination and report as may be necessary to identify and reconcile such amount.

(h) If any Borrower breaches its obligation to direct payments of the proceeds of the Collateral to the Lockbox Account, Agent, as the irrevocably made, constituted and appointed true and lawful attorney for Borrowers, may, by the signature or other act of any of Agent's authorized representatives (without requiring any of them to do so), direct any Account Debtor to pay proceeds of the Collateral to Borrowers by directing payment to the Lockbox Account.

Section 2.12 Termination; Restriction on Termination.

(a) Termination by Lenders. In addition to the rights set forth in Section 10.2 and in the DIP Orders, Agent may, and at the direction of Required Lenders shall, terminate this Agreement without notice upon or after the occurrence and during the continuance of an Event of Default and without further application to or order of the Bankruptcy Court.

(b) Termination by Borrowers. Upon at least thirty (30) days' prior written notice to Agent and Lenders, Borrowers may, at their option, terminate this Agreement; *provided, however*, that no such termination shall be effective until Borrowers have (i) paid or collateralized to Agent's satisfaction all of the Obligations in immediately available funds, (ii) complied with Section 2.2 and (iii) paid in full all of the Prepetition Obligations in immediately available funds and terminated the Prepetition Financing Documents. Any notice of termination given by Borrowers shall be irrevocable unless all Lenders otherwise agree in writing and no Lender shall have any obligation to make any Loans on or after the termination date stated in such notice. Borrowers may elect to terminate this Agreement in its entirety only. No section of this Agreement or type of Loan available hereunder may be terminated singly.

(c) Effectiveness of Termination. Notwithstanding the provisions of section 362 of the Bankruptcy Code, and without further application to or order of the Bankruptcy Court, all of the Obligations shall be immediately due and payable upon the Termination Date. All undertakings, agreements, covenants, warranties and representations of Borrowers and other Credit Parties contained in the Financing Documents shall survive any such termination and Agent shall retain its Liens in the Collateral and Agent and each Lender shall retain all of its rights and remedies under the Financing Documents notwithstanding such termination until all Obligations and Prepetition Obligations have been discharged or paid, in full, in immediately available funds, including, without limitation, all Obligations under Section 2.2 resulting from such termination. Notwithstanding the foregoing or the payment in full of the Obligations, Agent shall not be required to terminate its Liens in the Collateral unless, with respect to any loss or damage Agent may incur as a result of dishonored checks or other items of payment received by Agent from Borrower or any Account Debtor and applied to the Obligations, Agent shall, at its option,

(i) have received a written agreement satisfactory to Agent, executed by Borrowers and by any Person whose loans or other advances to Borrowers are used in whole or in part to satisfy the Obligations, indemnifying Agent and each Lender from any such loss or damage or (ii) have retained cash Collateral or other Collateral for such period of time as Agent, in its discretion, may deem necessary to protect Agent and each Lender from any such loss or damage.

ARTICLE 3 - REPRESENTATIONS AND WARRANTIES

To induce Agent and Lenders to enter into this Agreement and to make the Loans and other credit accommodations contemplated hereby, each Borrower hereby represents and warrants to Agent and each Lender that:

Section 3.1 Existence and Power. Each Credit Party is an entity as specified on Schedule 3.1, is duly organized, validly existing and in good standing under the laws of the jurisdiction specified on Schedule 3.1 and no other jurisdiction, has the same legal name as it appears in such Credit Party's Organizational Documents and an organizational identification number (if any), in each case as specified on Schedule 3.1, and has all powers and all Permits necessary or desirable in the operation of its business as presently conducted or as proposed to be conducted, except where the failure to have such Permits could not reasonably be expected to have a Material Adverse Effect. Each Credit Party is qualified to do business as a foreign entity in each jurisdiction in which it is required to be so qualified, which jurisdictions as of the Closing Date are specified on Schedule 3.1, except where the failure to be so qualified could not reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 3.1, no Credit Party (a) has had, over the five (5) year period preceding the Closing Date, any name other than its current name, or (b) was incorporated or organized under the laws of any jurisdiction other than its current jurisdiction of incorporation or organization.

Section 3.2 Organization and Governmental Authorization; No Contravention. Other than and conditioned upon entry of the DIP Orders and such other necessary orders of the Bankruptcy Court, the execution, delivery and performance by each Credit Party of the Operative Documents to which it is a party are within its powers, have been duly authorized by all necessary action pursuant to its Organizational Documents, require no further action by or in respect of, or filing with, any Governmental Authority and do not violate, conflict with or cause a breach or a default under (a) any Law applicable to any Credit Party or any of the Organizational Documents of any Credit Party, or (b) any agreement or instrument binding upon it, except for such violations, conflicts, breaches or defaults as could not, with respect to this clause (b), reasonably be expected to have a Material Adverse Effect.

Section 3.3 Binding Effect. Each of the Operative Documents to which any Credit Party is a party constitutes a valid and binding agreement or instrument of such Credit Party, enforceable against such Credit Party in accordance with its respective terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles.

Section 3.4 Capitalization. The authorized equity securities of each of the Credit Parties as of the Closing Date are as set forth on Schedule 3.4. All issued and outstanding equity securities of each of the Credit Parties are duly authorized and validly issued, fully paid, nonassessable, free and clear of all Liens other than those in favor of Agent for the benefit of Agent and Lenders, and such equity securities were issued in compliance with all applicable Laws. The identity of the holders of the equity securities of each of the Credit Parties and the percentage of their fully-diluted ownership of the equity securities of each of the Credit Parties as of the Closing Date is set forth on Schedule 3.4. No shares of the capital stock or other equity securities of any Credit Party, other than those described above, are issued and outstanding as of the Closing Date. Except as set forth on Schedule 3.4, as of the Closing Date there are no preemptive or

other outstanding rights, options, warrants, conversion rights or similar agreements or understandings for the purchase or acquisition from any Credit Party of any equity securities of any such entity.

Section 3.5 Financial Information. All information delivered to Agent and pertaining to the financial condition of any Credit Party fairly presents the financial position of such Credit Party as of such date in conformity with GAAP (and as to unaudited financial statements, subject to normal year-end adjustments and the absence of footnote disclosures). Since December 31, 2018, except for the filing of the Bankruptcy Case, there has been no material adverse change in the business, operations, properties, prospects or condition (financial or otherwise) of any Credit Party or Project.

Section 3.6 Litigation. Except as set forth on Schedule 3.6 as of the Closing Date, and except as hereafter disclosed to Agent in writing, there is no Litigation pending against, or to such Borrower's knowledge threatened against or affecting, any Credit Party or, to such Borrower's knowledge, any party to any Operative Document other than a Credit Party. There is no Litigation pending in which an adverse decision could reasonably be expected to have a Material Adverse Effect or which in any manner draws into question the validity of any of the Operative Documents.

Section 3.7 Ownership of Property. Each Borrower and each of its Subsidiaries is the lawful owner of, has good and marketable title to and is in lawful possession of, or has valid leasehold interests in, all properties and other assets (real or personal, tangible, intangible or mixed) purported or reported to be owned or leased (as the case may be) by such Person.

Section 3.8 No Default. Other than as previously disclosed to the Prepetition Agent under the Prepetition Financing Documents, no Event of Default, or to such Borrower's knowledge, Default, has occurred and is continuing. Except solely as a result of the filing of the Bankruptcy Case, no Credit Party is in breach or default under or with respect to any contract, agreement, lease or other instrument to which it is a party or by which its property is bound or affected, which breach or default could reasonably be expected to have a Material Adverse Effect.

Section 3.9 Labor Matters. As of the Closing Date, there are no strikes or other labor disputes pending or, to any Borrower's knowledge, threatened against any Credit Party. Hours worked and payments made to the employees of the Credit Parties have not been in violation of the Fair Labor Standards Act or any other applicable Law dealing with such matters. All payments due from the Credit Parties, or for which any claim may be made against any of them, on account of wages and employee and retiree health and welfare insurance and other benefits have been paid or accrued as a liability on their books, as the case may be. The consummation of the transactions contemplated by the Financing Documents will not give rise to a right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which it is a party or by which it is bound.

Section 3.10 Regulated Entities. No Credit Party is an "investment company" or a company "controlled" by an "investment company" or a "subsidiary" of an "investment company," all within the meaning of the Investment Company Act of 1940.

Section 3.11 Margin Regulations. None of the proceeds from the Loans have been or will be used, directly or indirectly, for the purpose of purchasing or carrying any "margin stock" (as defined in Regulation U of the Federal Reserve Board), for the purpose of reducing or retiring any indebtedness which was originally incurred to purchase or carry any "margin stock" or for any other purpose which might cause any of the Loans to be considered a "purpose credit" within the meaning of Regulation T, U or X of the Federal Reserve Board.

Section 3.12 Compliance With Laws; Anti-Terrorism Laws.

(a) Each Credit Party is in compliance with the requirements of all applicable Laws, except for such Laws the noncompliance with which could not reasonably be expected to have a Material Adverse Effect.

(b) None of the Credit Parties and, to the knowledge of the Credit Parties, none of their Affiliates (i) is in violation of any Anti-Terrorism Law, (ii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law, (iii) is a Blocked Person, or is controlled by a Blocked Person, (iv) is acting or will act for or on behalf of a Blocked Person, (v) is associated with, or will become associated with, a Blocked Person or (vi) is providing, or will provide, material, financial or technical support or other services to or in support of acts of terrorism of a Blocked Person. No Credit Party nor, to the knowledge of any Credit Party, any of its Affiliates or agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement, (A) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (B) deals in, or otherwise engages in any transaction relating to, any property or interest in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law.

Section 3.13 Taxes. All federal, state and local tax returns, reports and statements required to be filed by or on behalf of each Credit Party have been filed with the appropriate Governmental Authorities in all jurisdictions in which such returns, reports and statements are required to be filed and, except to the extent subject to a Permitted Contest, all Taxes (including real property Taxes) and other charges shown to be due and payable in respect thereof have been timely paid prior to the date on which any fine, penalty, interest, late charge or loss may be added thereto for nonpayment thereof. Except to the extent subject to a Permitted Contest, all state and local sales and use Taxes required to be paid by each Credit Party have been paid. All federal and state returns have been filed by each Credit Party for all periods for which returns were due with respect to employee income tax withholding, social security and unemployment taxes, and, except to the extent subject to a Permitted Contest, the amounts shown thereon to be due and payable have been paid in full or adequate provisions therefor have been made.

Section 3.14 Compliance with ERISA.

(a) Each ERISA Plan (and the related trusts and funding agreements) complies in form and in operation with, has been administered in compliance with, and the terms of each ERISA Plan satisfy, the applicable requirements of ERISA and the Code in all material respects. Each ERISA Plan which is intended to be qualified under Section 401(a) of the Code is so qualified, and the United States Internal Revenue Service has issued a favorable determination letter with respect to each such ERISA Plan which may be relied on currently. No Credit Party has incurred liability for any material excise tax under any of Sections 4971 through 5000 of the Code.

(b) Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, each Borrower and each Subsidiary is in compliance with the applicable provisions of ERISA and the provision of the Code relating to ERISA Plans and the regulations and published interpretations therein. During the thirty-six (36) month period prior to the Closing Date or the making of any Loan (i) no steps have been taken to terminate any Pension Plan, and (ii) no contribution failure has occurred with respect to any Pension Plan sufficient to give rise to a Lien under Section 303(k) of ERISA or Section 430(k) of the Code and no event has occurred that would give rise to a Lien under Section 4068 of ERISA. No condition exists or event or transaction has occurred with respect to any Pension Plan which could result in the incurrence by any Credit Party of any material liability, fine or penalty. No Credit Party has incurred liability to the PBGC (other than for current premiums) with respect

to any employee Pension Plan. All contributions (if any) have been made on a timely basis to any Multiemployer Plan that are required to be made by any Credit Party or any other member of the Controlled Group under the terms of the plan or of any collective bargaining agreement or by applicable Law; no Credit Party nor any member of the Controlled Group has withdrawn or partially withdrawn from any Multiemployer Plan, incurred any withdrawal liability with respect to any such plan or received notice of any claim or demand for withdrawal liability or partial withdrawal liability from any such plan, and no condition has occurred which, if continued, could result in a withdrawal or partial withdrawal from any such plan, and no Credit Party nor any member of the Controlled Group has received any notice that any Multiemployer Plan is in reorganization, that increased contributions may be required to avoid a reduction in plan benefits or the imposition of any excise tax, that any such plan is or has been funded at a rate less than that required under Section 412 of the Code, that any such plan is or may be terminated, or that any such plan is or may become insolvent.

Section 3.15 Consummation of Operative Documents; Brokers. Except for fees payable to Agent and/or Lenders, no broker, finder or other intermediary has brought about the obtaining, making or closing of the transactions contemplated by the Operative Documents, and no Credit Party has or will have any obligation to any Person in respect of any finder's or brokerage fees, commissions or other expenses in connection herewith or therewith.

Section 3.16 Related Transactions. All transactions contemplated by the Operative Documents to be consummated on or prior to the date hereof have been so consummated (including, without limitation, the disbursement and transfer of all funds in connection therewith) in all material respects pursuant to the provisions of the applicable Operative Documents, true and complete copies of which have been delivered to Agent, and in compliance with all applicable Laws and approved by the Bankruptcy Court.

Section 3.17 Material Contracts. Except for the Operative Documents and the other agreements set forth on Schedule 3.17 (collectively with the Operative Documents, the "**Material Contracts**"), as of the Closing Date there are no (a) employment agreements covering the management of any Credit Party, (b) collective bargaining agreements or other similar labor agreements covering any employees of any Credit Party, (c) agreements for managerial, consulting or similar services to which any Credit Party is a party or by which it is bound, (d) agreements regarding any Credit Party, its assets or operations or any investment therein to which any of its equity holders is a party or by which it is bound, (e) real estate leases, Intellectual Property licenses or other lease or license agreements to which any Credit Party is a party, either as lessor or lessee, or as licensor or licensee (other than licenses arising from the purchase of "off the shelf" products), (f) customer, distribution, marketing or supply agreements to which any Credit Party is a party, in each case with respect to the preceding clauses (a) through (e) requiring payment of more than \$250,000 in any year, (g) partnership agreements to which any Credit Party is a general partner or joint venture agreements to which any Credit Party is a party, (h) third party billing arrangements to which any Credit Party is a party, or (i) any other agreements or instruments to which any Credit Party is a party, and the breach, nonperformance or cancellation of which, or the failure of which to renew, could reasonably be expected to have a Material Adverse Effect. Schedule 3.17 sets forth, with respect to each real estate lease agreement to which any Borrower is a party (as a lessee) as of the Closing Date, the address of the subject property and the annual rental (or, where applicable, a general description of the method of computing the annual rental). The consummation of the transactions contemplated by the Financing Documents will not give rise to a right of termination in favor of any party to any Material Contract (other than any Credit Party), except for such Material Contracts the noncompliance with which would not reasonably be expected to have a Material Adverse Effect.

Section 3.18 Compliance with Environmental Requirements; No Hazardous Materials. Except in each case as set forth on Schedule 3.18:

(a) no notice, notification, demand, request for information, citation, summons, complaint or order has been issued, no complaint has been filed, no penalty has been assessed and no investigation or review is pending, or to such Borrower's knowledge, threatened by any Governmental Authority or other Person with respect to any (i) alleged violation by any Credit Party of any Environmental Law, (ii) alleged failure by any Credit Party to have any Permits required in connection with the conduct of its business or to comply with the terms and conditions thereof, (iii) any generation, treatment, storage, recycling, transportation or disposal of any Hazardous Materials, or (iv) release of Hazardous Materials; and

(b) no property now owned or leased by any Credit Party and, to the knowledge of each Borrower, no such property previously owned or leased by any Credit Party, to which any Credit Party has, directly or indirectly, transported or arranged for the transportation of any Hazardous Materials, is listed or, to such Borrower's knowledge, proposed for listing, on the National Priorities List promulgated pursuant to CERCLA, or CERCLIS (as defined in CERCLA) or any similar state list or is the subject of federal, state or local enforcement actions or, to the knowledge of such Borrower, other investigations which may lead to claims against any Credit Party for clean-up costs, remedial work, damage to natural resources or personal injury claims, including, without limitation, claims under CERCLA.

For purposes of this Section 3.18, each Credit Party shall be deemed to include any business or business entity (including a corporation) that is, in whole or in part, a predecessor of such Credit Party.

Section 3.19 Intellectual Property. Each Credit Party owns, is licensed to use or otherwise has the right to use, all Intellectual Property that is material to the condition (financial or other), business or operations of such Credit Party. All Intellectual Property existing as of the Closing Date which is issued, registered or pending with any United States or foreign Governmental Authority (including, without limitation, any and all applications for the registration of any Intellectual Property with any such United States or foreign Governmental Authority) and all licenses under which any Borrower is the licensee of any such registered Intellectual Property (or any such application for the registration of Intellectual Property) owned by another Person are set forth on Schedule 3.19. Such Schedule 3.19 indicates in each case whether such registered Intellectual Property (or application therefor) is owned or licensed by such Credit Party, and in the case of any such licensed registered Intellectual Property (or application therefor), lists the name and address of the licensor and the name and date of the agreement pursuant to which such item of Intellectual Property is licensed and whether or not such license is an exclusive license and indicates whether there are any purported restrictions in such license on the ability to such Credit Party to grant a security interest in and/or to transfer any of its rights as a licensee under such license. Except as indicated on Schedule 3.19, the applicable Credit Party is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each such registered Intellectual Property (or application therefor) purported to be owned by such Credit Party, free and clear of any Liens (other than Permitted Liens) and/or licenses in favor of third parties or agreements or covenants not to sue such third parties for infringement. All registered Intellectual Property of each Credit Party is duly and properly registered, filed or issued in the appropriate office and jurisdictions for such registrations, filings or issuances, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect. No Credit Party is party to, nor bound by, any material license or other agreement with respect to which any Credit Party is the licensee that prohibits or otherwise restricts such Credit Party from granting a security interest in such Borrower's interest in such license or agreement or other property. To such Borrower's knowledge, each Credit Party conducts its business without infringement or claim of infringement of any Intellectual Property rights of others and there is no infringement or claim of infringement by others of any Intellectual Property rights of any Credit Party, which infringement or claim of infringement could reasonably be expected to have a Material Adverse Effect.

Section 3.20 Super-Priority Nature of Obligations and Agent's and Lenders' Liens. The priority of Agent's and Lender's Liens on the Collateral owned by Borrowers is as set forth in the Interim Order and the Final Order entered with respect to the Bankruptcy Case.

Section 3.21 Full Disclosure. None of the written information (financial or otherwise) furnished by or on behalf of any Credit Party to Agent or any Lender in connection with the consummation of the transactions contemplated by the Operative Documents, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading in light of the circumstances under which such statements were made. All financial projections delivered to Agent and the Lenders by Borrowers (or their agents) have been prepared on the basis of the assumptions stated therein. Such projections represent each Borrower's best estimate of such Borrower's future financial performance and such assumptions are believed by such Borrower to be fair and reasonable in light of current business conditions; *provided, however*, that Borrowers can give no assurance that such projections will be attained.

Section 3.22 Interest Rate. The rate of interest paid under this Agreement and any other Financing Documents (including, without limitation, any Notes) and the method and manner of the calculation thereof do not violate any usury or other law or applicable Laws, any of the Organizational Documents, or any of the Operative Documents.

Section 3.23 Subsidiaries. Borrowers do not own any stock, partnership interests, limited liability company interests or other equity securities or Subsidiaries except for Permitted Investments.

Section 3.24 Appointment of a Trustee or Examiner; Liquidation. No order has been entered in any Bankruptcy Case (a) for the appointment of a chapter 11 trustee, (b) for the appointment of an examiner with expanded powers (beyond those set forth in section 1106(a)(3) and (4) of the Bankruptcy Code) under section 1104 of the Bankruptcy Code, (c) to convert any Bankruptcy Case to a case under chapter 7 of the Bankruptcy Code or (d) to dismiss any Bankruptcy Case.

Section 3.25 Reorganization Matters.

(a) The Bankruptcy Case was commenced on the Petition Date in accordance with applicable Law and proper notice thereof.

(b) Proper notice for (i) the motion seeking approval of this Agreement, the other Financing Documents, the Interim Order and Final Order, (ii) the hearing for the approval of the Interim Order (the "**Interim Hearing**") and (iii) the hearing for approval of the Final Order has been given. The Borrowers have given, on a timely basis as specified in the Interim Order or the Final Order, as applicable, all notices required to be given to all parties specified in the Interim Order or Final Order, as applicable.

(c) From and after the entry of the Interim Order, and pursuant to and to the extent provided in the Interim Order, the Liens securing the Obligations are valid and enforceable, perfected Liens on all of the Collateral of the Agent and Lenders with the priority required by the Financing Orders with respect to all Collateral.

(d) After entry of the Interim Order, and pursuant to the Interim Order and Final Order, the Obligations will constitute allowed administrative expense claims in the Bankruptcy Case, having priority over all administrative expense claims and unsecured claims against the Borrowers and Guarantors now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expense claims of the kind specified in sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c) 726 (to the extent permitted by Law), 1113, 1114, or any other provision of the Bankruptcy

Code or otherwise, as provided under section 364(c)(1) of the Bankruptcy Code, subject only to the Carve-Out.

(e) The Interim Order (with respect to the period prior to the Final Order Entry Date) or the Final Order (with respect to the period on and after the Final Order Entry Date), as the case may be, is in full force and effect and has not been reversed, stayed, modified, or amended.

(f) Notwithstanding the provisions of section 362 of the Bankruptcy Code, and subject to the applicable provisions of the Financing Orders and Section 10.2, as the case may be, on the Termination Date, the Agent and Lenders shall be entitled to payment of such Obligations and to enforce the remedies provided for hereunder or under applicable Law, without further application to or order by the Bankruptcy Court.

(g) Proper notice for (i) the Asset Sale Motion, the Asset Sale Bid Procedure Order, and the Asset Sale Order, and (ii) the hearing for the approval of any Asset Sale Order has been given. Borrowers and Guarantors have given on a timely basis all notices required to be given to all parties specified in the Asset Sale Motion, Asset Sale Bid Procedure Order, and Asset Sale Order (as applicable).

ARTICLE 4 - AFFIRMATIVE COVENANTS

Each Borrower agrees that, so long as any Credit Exposure exists:

Section 4.1 Financial Statements and Other Reports. Each Borrower will deliver to Agent: (a) as soon as available, but no later than thirty (30) days after the last day of each month, a company prepared consolidated balance sheet, cash flow and income statement covering Borrowers' and its Consolidated Subsidiaries' consolidated operations during the period, prepared under GAAP, consistently applied, certified by a Responsible Officer and in a form acceptable to Agent; (b) together with the financial reporting package described in (a) above, evidence of payment and satisfaction of all Payroll Taxes due and owing by all Borrowers with respect to the payroll period(s) occurring during such month; (c) as soon as available, but no later than one hundred fifty (150) days after the last day of Borrower's fiscal year, audited consolidated financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from an independent certified public accounting firm acceptable to Agent in its reasonable discretion; (d) as soon as available, (A) copies of each financial statement, report, notice or proxy statement sent by any Credit Party to its stockholders generally, (B) copies of each press release or other statement made available by any Credit Party to the public concerning developments in the business of such Credit Party and (C) copies of any statement or report furnished by any Credit Party to any other party pursuant to the terms of any indenture, loan, or credit or similar agreement and not otherwise required to be furnished to the Agent pursuant to this Agreement; (e) a prompt written report of any legal actions pending or threatened against any Borrower or any of its Subsidiaries that could reasonably be expected to result in damages or costs to any Borrower or any of its Subsidiaries of \$250,000 or more; (f) prompt written notice of an event that materially and adversely affects the value of any Intellectual Property; (g) budgets, sales projections, operating plans and other financial information and information, reports or statements regarding the Borrowers, their business and the Collateral as Agent may from time to time reasonably request; and (h) prior to the Closing Date, the DIP Budget, and on the first Business Day of each week thereafter, an updated "rolling" 13-week budget that includes a DIP Budget Variance Report, which DIP Budget, once approved in writing by Agent, in its sole discretion, shall supplement and replace the prior DIP Budget without further notice, motion, application to, order of, or hearing before the Bankruptcy Court. Each Borrower will, within thirty (30) days after the last day of each month and simultaneously with the delivery of each DIP Budget pursuant to clause (h) above, deliver to Agent with the monthly financial statements described in clause (a) above, a duly completed Compliance Certificate signed by a Responsible Officer setting forth calculations showing compliance with the financial covenants

set forth in this Agreement. Promptly upon their becoming available, Borrowers shall deliver to Agent copies of all Material Contracts. Each Borrower will, within ten (10) days after the last day of each month, deliver to Agent a duly completed Borrowing Base Certificate signed by a Responsible Officer, with aged listings of accounts receivable and accounts payable (by invoice date). Borrowers shall, every ninety (90) days on a schedule to be designated by Agent, and at such other times as Agent shall request, deliver to Agent a schedule of Eligible Accounts denoting, for the thirty (30) largest Account Debtors during such quarter, such Account Debtor's credit rating(s), if any, as rated by A.M. Best Company, Standard & Poor's Corporation, Moody's Investors Service, Inc., FITCH, Inc. or other applicable rating agent.

Section 4.2 Payment and Performance of Obligations. Subject to the entry of appropriate orders of the Bankruptcy Court (if any), each Borrower (a) will pay and discharge, and cause each Subsidiary to pay and discharge, on a timely basis as and when due, all of their respective obligations and liabilities, except for such obligations and/or liabilities (i) that may be the subject of a Permitted Contest, and (ii) the nonpayment or nondischarge of which could not reasonably be expected to have a Material Adverse Effect or result in a Lien against any Collateral, except for Permitted Liens, (b) without limiting anything contained in the foregoing clause (a), pay all amounts due and owing in respect of Taxes (including without limitation, Payroll Taxes) on a timely basis as and when due, and in any case prior to the date on which any fine, penalty, interest, late charge or loss may be added thereto for nonpayment thereof, (c) will maintain, and cause each Subsidiary to maintain, in accordance with GAAP, appropriate reserves for the accrual of all of their respective obligations and liabilities, and (d) will not breach or permit any Subsidiary to breach, or permit to exist any default under, the terms of any lease, commitment, contract, instrument or obligation to which it is a party, or by which its properties or assets are bound, except for such breaches or defaults which could not reasonably be expected to have a Material Adverse Effect.

Section 4.3 Maintenance of Existence. Each Borrower will preserve, renew and keep in full force and effect and in good standing, and will cause each Subsidiary to preserve, renew and keep in full force and effect and in good standing, their respective existence and their respective rights, privileges and franchises necessary or desirable in the normal conduct of business.

Section 4.4 Maintenance of Property; Insurance.

(a) Each Borrower will keep, and will cause each Subsidiary to keep, all property useful and necessary in its business in good working order and condition, ordinary wear and tear excepted. If all or any part of the assets useful or necessary in its business, or upon which any Borrowing Base is calculated, becomes damaged or destroyed, each Borrower will, and will cause each Subsidiary to, promptly and completely repair and/or restore the affected assets in a good and workmanlike manner, regardless of whether Agent agrees to disburse insurance proceeds or other sums to pay costs of the work of repair or reconstruction.

(b) Subject to the entry of appropriate orders of the Bankruptcy Court (if any), upon completion of any Permitted Contest, Borrowers shall, and will cause each Subsidiary to, promptly pay the amount due, if any, and deliver to Agent proof of the completion of the contest and payment of the amount due, if any, following which Agent shall return the security, if any, deposited with Agent pursuant to the definition of Permitted Contest.

(c) Subject to the entry of appropriate orders of the Bankruptcy Court (if any), each Borrower will maintain (i) casualty insurance on all real and personal property on an all risks basis (including the perils of flood, windstorm and quake), covering the repair and replacement cost of all such property and coverage, business interruption and rent loss coverages with extended period of indemnity (for the period required by Agent from time to time) and indemnity for extra expense, in each case without application of coinsurance and with agreed amount endorsements, (ii) general and professional liability

insurance (including products/completed operations liability coverage), and (iii) such other insurance coverage in such amounts and with respect to such risks as Agent may request from time to time, pursuant to the Insurance Requirements attached hereto as Schedule 4.4; *provided, however*, that, in no event shall such insurance be in amounts or with coverage less than, or with carriers with qualifications inferior to, any of the insurance or carriers in existence as of the Closing Date (or required to be in existence after the Closing Date under a Financing Document). All such insurance shall be provided by insurers having an A.M. Best policyholders rating reasonably acceptable to Agent.

(d) On or prior to the Closing Date, and at all times thereafter, each Borrower will cause Agent to be named as an additional insured, assignee and lender loss payee, as applicable, on each insurance policy required to be maintained pursuant to this Section 4.4 pursuant to endorsements in form and substance acceptable to Agent. Borrowers shall deliver to Agent and the Lenders (i) on the Closing Date, a certificate from Borrowers' insurance broker dated such date showing the amount of coverage as of such date, and that such policies will include effective waivers (whether under the terms of any such policy or otherwise) by the insurer of all claims for insurance premiums against all loss payees and additional insureds and all rights of subrogation against all loss payees and additional insureds, and that if all or any part of such policy is canceled, terminated or expires, the insurer will forthwith give notice thereof to each additional insured, assignee and loss payee and that no cancellation, reduction in amount or material change in coverage thereof shall be effective until at least thirty (30) days after receipt by each additional insured, assignee and loss payee of written notice thereof, (ii) on an annual basis, and upon the request of any Lender through Agent from time to time full information as to the insurance carried, (iii) within five (5) days of receipt of notice from any insurer, a copy of any notice of cancellation, nonrenewal or material change in coverage from that existing on the date of this Agreement, (iv) forthwith, notice of any cancellation or nonrenewal of coverage by any Borrower, and (v) at least 60 days prior to expiration of any policy of insurance, evidence of renewal of such insurance upon the terms and conditions herein required.

(e) In the event any Borrower fails to provide Agent with evidence of the insurance coverage required by this Agreement, Agent may purchase insurance at Borrowers' expense to protect Agent's interests in the Collateral. This insurance may, but need not, protect such Borrower's interests. The coverage purchased by Agent may not pay any claim made by such Borrower or any claim that is made against such Borrower in connection with the Collateral. Such Borrower may later cancel any insurance purchased by Agent, but only after providing Agent with evidence that such Borrower has obtained insurance as required by this Agreement. If Agent purchases insurance for the Collateral, Borrowers will be responsible for the costs of that insurance to the fullest extent provided by law, including interest and other charges imposed by Agent in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Obligations. The costs of the insurance may be more than the cost of insurance such Borrower is able to obtain on its own.

Section 4.5 Compliance with Laws and Material Contracts. Each Borrower will comply, and cause each Subsidiary to comply, with the requirements of all applicable Laws and Material Contracts, except to the extent that failure to so comply could not reasonably be expected to (a) have a Material Adverse Effect, or (b) result in any Lien upon either (i) a material portion of the assets of any such Person in favor of any Governmental Authority, or (ii) any Collateral which is part of the Borrowing Base.

Section 4.6 Inspection of Property, Books and Records. Each Borrower will keep, and will cause each Subsidiary to keep, proper books of record substantially in accordance with GAAP in which full, true and correct entries shall be made of all dealings and transactions in relation to its business and activities; and will permit, and will cause each Subsidiary to permit, at the sole cost of the applicable Borrower or any applicable Subsidiary, representatives of Agent and of any Lender to visit and inspect any of their respective properties, to examine and make abstracts or copies from any of their respective books

and records, to conduct a collateral audit and analysis of their respective operations and the Collateral, to verify the amount and age of the Accounts, the identity and credit of the respective Account Debtors, to review the billing practices of Borrowers and to discuss their respective affairs, finances and accounts with their respective officers, employees and independent public accountants as often as may reasonably be desired. In the absence of a Default or an Event of Default, Agent or any Lender exercising any rights pursuant to this Section 4.6 shall give the applicable Borrower or any applicable Subsidiary commercially reasonable (but in no event less than two (2) Business Days', absent exigent circumstances) prior notice of such exercise. No notice shall be required during the existence and continuance of any Default or any time during which Agent reasonably believes a Default exists.

Section 4.7 Use of Proceeds. Borrowers shall use the proceeds of Revolving Loans solely in accordance with the DIP Budget: (i) to fund Postpetition operating expenses of the Borrowers, (ii) to pay professional fees and expenses as authorized by order of the Bankruptcy Court; (iii) to pay certain other costs and expenses of administration of the Bankruptcy Case, (iv) for working capital and other general corporate purposes of Borrowers not in contravention of any requirement of Law, the Financing Documents or the DIP Budget, (v) to pay interest, expenses, fees and other amounts hereunder and under the other Financing Documents and (vi) to provide certain adequate protection payments to the Prepetition Secured Parties, which may include the payment, when due or as soon as practicable thereafter, of all reasonable and documented costs, fees and expenses, incurred either prior to or after the Closing Date, of the Prepetition Agent and its counsel or with respect to the Prepetition Credit Agreement other professionals, and the payment of non-default interest as and when due (collectively, the “**Adequate Protection Payments**”); provided that, without limiting the generality of the foregoing, until the Final Order Entry Date, proceeds of Revolving Loans shall be used only for making payments necessary to preserve the *status quo* and avoid immediate and irreparable harm to Borrowers. Upon issuance of the Final Order, in addition to the above, the proceeds of Revolving Loans shall be used for the repayment of all Prepetition Obligations remaining outstanding. Borrowers shall use the entire amount of the proceeds of each Revolving Loan in accordance with this Section 4.7; provided, however, that nothing herein shall in any way prejudice or prevent the Agent or the Lenders from objecting, for any reason, to any requests, motions or applications made in the Bankruptcy Court, including any applications for interim or final allowances of compensation for services rendered or reimbursement of expenses incurred under Sections 105(a), 330 or 331 of the Bankruptcy Code, by any party in interest, and provided, further, that Borrowers shall not use the proceeds from any Loan for any purpose that is prohibited under the Bankruptcy Code. No portion of the proceeds of the Loans will be used for family, personal, agricultural or household use.

Section 4.8 Estoppel Certificates. After written request by Agent, Borrowers, within fifteen (15) days and at their expense, will furnish Agent with a statement, duly acknowledged and certified, setting forth (a) the amount of the original principal amount of the Loans, and the unpaid principal amount of the Loans, (b) the rate of interest of the Loans, (c) the date payments of interest and/or principal were last paid, (d) any offsets or defenses to the payment of the Obligations, and if any are alleged, the nature thereof, (e) that the Loans and this Agreement have not been modified or if modified, giving particulars of such modification, and (f) that there has occurred and is then continuing no Default or if such Default exists, the nature thereof, the period of time it has existed, and the action being taken to remedy such Default. After written request by Agent, Borrowers, within fifteen (15) days and at their expense, will furnish Agent with a certificate, signed by a Responsible Officer of Borrowers, updating all of the representations and warranties contained in this Agreement and the other Financing Documents and certifying that all of the representations and warranties contained in this Agreement and the other Financing Documents, as updated pursuant to such certificate, are true, accurate and complete as of the date of such certificate.

Section 4.9 Notices of Litigation and Defaults. Borrowers will give prompt written notice to Agent (a) of any litigation or governmental proceedings pending or threatened (in writing) against Borrowers or other Credit Party which could reasonably be expected to have a Material Adverse Effect

with respect to Borrowers or any other Credit Party or which in any manner calls into question the validity or enforceability of any Financing Document, (b) upon any Borrower becoming aware of the existence of any Default or Event of Default, (c) if any Credit Party is in breach or default under or with respect to any Material Contract, or if any Credit Party is in breach or default under or with respect to any other contract, agreement, lease or other instrument to which it is a party or by which its property is bound or affected, which breach or default could reasonably be expected to have a Material Adverse Effect, (d) of any strikes or other labor disputes pending or, to any Borrower's knowledge, threatened against any Credit Party, (e) if there is any infringement or claim of infringement by any other Person with respect to any Intellectual Property rights of any Credit Party that could reasonably be expected to have a Material Adverse Effect, or if there is any claim by any other Person that any Credit Party in the conduct of its business is infringing on the Intellectual Property Rights of others, and (f) of all returns, recoveries, disputes and claims that involve more than \$100,000. Borrowers represent and warrant that Schedule 4.9 sets forth a complete list of all matters existing as of the Closing Date for which notice could be required under this Section and all litigation or governmental proceedings pending or threatened (in writing) against Borrowers or any other Credit Party as of the Closing Date.

Section 4.10 Hazardous Materials; Remediation.

(a) If any release or disposal of Hazardous Materials shall occur or shall have occurred on any real property or any other assets of any Borrower or any other Credit Party, such Borrower will cause, or direct the applicable Credit Party to cause, the prompt containment and removal of such Hazardous Materials and the remediation of such real property or other assets as is necessary to comply with all Environmental Laws and Healthcare Laws and to preserve the value of such real property or other assets. Without limiting the generality of the foregoing, each Borrower shall, and shall cause each other Credit Party to, comply with each Environmental Law and Healthcare Law requiring the performance at any real property by any Borrower or any other Credit Party of activities in response to the release or threatened release of a Hazardous Material.

(b) Borrowers will provide Agent within thirty (30) days after written demand therefor with a bond, letter of credit or similar financial assurance evidencing to the reasonable satisfaction of Agent that sufficient funds are available to pay the cost of removing, treating and disposing of any Hazardous Materials or Hazardous Materials Contamination and discharging any assessment which may be established on any property as a result thereof, such demand to be made, if at all, upon Agent's reasonable business determination that the failure to remove, treat or dispose of any Hazardous Materials or Hazardous Materials Contamination, or the failure to discharge any such assessment could reasonably be expected to have a Material Adverse Effect.

Section 4.11 Further Assurances.

(a) Each Borrower will, and will cause each Subsidiary to, at its own cost and expense, promptly and duly take, execute, acknowledge and deliver all such further acts, documents and assurances as may from time to time be necessary or as Agent or the Required Lenders may from time to time reasonably request in order to carry out the intent and purposes of the Financing Documents and the transactions contemplated thereby, including all such actions to (i) establish, create, preserve, protect and perfect a first priority Lien (subject only to Permitted Liens) in favor of Agent for itself and for the benefit of the Lenders on the Collateral (including Collateral acquired after the date hereof), and (ii) unless Agent shall agree otherwise in writing, cause all Subsidiaries of Borrowers to be jointly and severally obligated with the other Borrowers under all covenants and obligations under this Agreement, including the obligation to repay the Obligations.

(b) Upon receipt of an affidavit of an authorized representative of Agent or a Lender as to the loss, theft, destruction or mutilation of any Note or any other Financing Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other applicable Financing Document, Borrowers will issue, in lieu thereof, a replacement Note or other applicable Financing Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Financing Document in the same principal amount thereof and otherwise of like tenor.

(c) Upon the formation or acquisition of a new Subsidiary, Borrowers shall (i) unless Agent shall agree otherwise in writing, cause the new Subsidiary to take such other actions (including entering into or joining any Security Documents) as are necessary or advisable in the reasonable opinion of the Agent in order to grant the Agent, acting on behalf of the Lenders, a first priority Lien on all real and personal property of such Subsidiary in existence as of such date and in all after acquired property (in each case only to the extent constituting part of the Collateral), which first priority Liens are required to be granted pursuant to this Agreement; (ii) unless Agent shall agree otherwise in writing, cause such new Subsidiary to either (at the election of Agent) become a Borrower hereunder with joint and several liability for all obligations of Borrowers hereunder and under the other Financing Documents pursuant to a joinder agreement or other similar agreement in form and substance satisfactory to Agent or to become a Guarantor of the obligations of Borrowers hereunder and under the other Financing Documents pursuant to a guaranty and suretyship agreement in form and substance satisfactory to Agent; and (iii) cause the new Subsidiary to deliver certified copies of such Subsidiary's certificate or articles of incorporation, together with good standing certificates, by-laws (or other operating agreement or governing documents), resolutions of the Board of Directors or other governing body, approving and authorize the execution and delivery of the Security Documents, incumbency certificates and to execute and/or deliver such other documents and legal opinions or to take such other actions as may be requested by the Agent, in each case, in form and substance satisfactory to the Agent.

(d) Upon the request of Agent, Borrowers shall obtain a landlord's agreement or mortgagee agreement, as applicable, from the lessor of each leased property or mortgagee of owned property with respect to any business location where any portion of the Collateral included in or proposed to be included in the Borrowing Base, or the records relating to such Collateral and/or software and equipment relating to such records or Collateral, is stored or located, which agreement or letter shall be reasonably satisfactory in form and substance to Agent. Borrowers shall timely and fully pay and perform its obligations under all leases and other agreements with respect to each leased location where any Collateral, or any records related thereto, is or may be located.

Section 4.12 Payroll Taxes; Third Party Payroll Administrator. The Borrowers shall at all times engage a third-party payroll administrator to manage, administer and ensure the timely payment of any and all Payroll Taxes due and owing by the Borrowers from time to time to any applicable Governmental Authorities.

Section 4.13 Power of Attorney. Each of the authorized representatives of Agent is hereby irrevocably made, constituted and appointed the true and lawful attorney for Borrowers (without requiring any of them to act as such) with full power of substitution to do the following: (a) endorse the name of Borrowers upon any and all checks, drafts, money orders, and other instruments for the payment of money that are payable to Borrowers and constitute collections on Borrowers' Accounts; (b) so long as Agent has provided not less than three (3) Business Days' prior written notice to Borrower to perform the same and Borrower has failed to take such action, execute in the name of Borrowers any schedules, assignments, instruments, documents, and statements that Borrowers are obligated to give Agent under this Agreement; (c) after the occurrence and during the continuance of a Default or Event of Default, take any action Borrowers are required to take under this Agreement; (d) so long as Agent has provided not less than three (3) Business Days' prior written notice to Borrower to perform the same and Borrower has failed to take

such action, do such other and further acts and deeds in the name of Borrowers that Agent may deem necessary or desirable to enforce any Account or other Collateral or perfect Agent's security interest or Lien in any Collateral; and (e) after the occurrence and during the continuance of a Default or Event of Default, do such other and further acts and deeds in the name of Borrowers that Agent may deem necessary or desirable to enforce its rights with regard to any Account or other Collateral. This power of attorney shall be irrevocable and coupled with an interest.

Section 4.14 Borrowing Base Collateral Administration.

(a) All data and other information relating to Accounts or other intangible Collateral shall at all times be kept by Borrowers, at their respective principal offices and shall not be moved from such locations without (i) providing prior written notice to Agent, and (ii) obtaining the prior written consent of Agent, which consent shall not be unreasonably withheld.

(b) Borrowers shall provide prompt written notice to each Person who either is currently an Account Debtor or becomes an Account Debtor at any time following the date of this Agreement that directs each Account Debtor to make payments into the Lockbox, and hereby authorizes Agent, upon Borrowers' failure to send such notices within ten (10) days after the date of this Agreement (or ten (10) days after the Person becomes an Account Debtor), to send any and all similar notices to such Person. Agent reserves the right to notify Account Debtors that Agent has been granted a Lien upon all Accounts.

Section 4.15 Borrowers' Agreement to Seek to Restrict Any Alleged Rights for Setoff or Recoupment. Unless agreed in writing by the Agent or approved by the Bankruptcy Court (upon notice to the Agent), Borrowers shall exercise good faith and reasonable business judgment in respect of pursuing efforts to restrict, limit and/or narrow, to the maximum extent permitted under applicable law, the application and/or allowance of any alleged rights of setoff and/or recoupment by any of its creditors (including, with respect to any application for relief from the automatic stay); provided, however, that Borrowers agree not to settle any disputed recoupment or setoff rights without either obtaining the written consent of the Agent or approval of the Bankruptcy Court (in the case of a settlement involving a Borrower), provided further that nothing herein shall constrain Borrowers with respect to permitting undisputed recoupment or setoff rights (as determined in the exercise of Borrowers' reasonable business judgment) (provided that Prepetition setoff claims must also comply with the requirements of section 553 of the Bankruptcy Code). Upon the occurrence of the Termination Date (other than upon payment in full of the Obligations and termination of the Financing Documents), then Agent, on behalf of Borrowers (including with respect to any successor or assign of Borrowers, such as a chapter 7 trustee, if any) and in any Borrower's (and/or such Borrower's successor's and/or assign's) name may pursue any and all of Borrower's rights, powers and interests to seek to restrict, limit and/or narrow, to the maximum extent permitted under applicable law, the application and allowance of any such alleged rights of setoff and/or recoupment involving any Borrower or any Borrower's assets or contract rights. In respect of the rights granted to the Agent under the prior sentence, and without limiting Section 4.13 in any way, Borrowers hereby appoint Agent as its agent and attorney in fact to take all actions as Agent deems reasonable to object to, restrict, limit or narrow the application or allowance of, to the maximum extent permitted under applicable law, any such alleged rights of setoff and/or recoupment by any of Borrowers' creditors.

Section 4.16 Priority and Liens.

(a) Each Borrower hereby covenants, represents and warrants that upon the entry of each DIP Order, the Obligations of such Borrower hereunder and under the Financing Documents:

(i) pursuant to section 364(c)(1) of the Bankruptcy Code and subject and subordinate only to the Carve-Out, shall at all times constitute allowed Superpriority Claims, pursuant to the DIP Orders;

(ii) pursuant to section 364(c)(2) of the Bankruptcy Code and subject and subordinate only to the Carve-Out, shall at all times be secured by first priority valid, binding, enforceable and perfected security interests in, and Liens upon, all unencumbered tangible and intangible property of such Borrower of the type that is Collateral, including any such property that is subject to valid and perfected Liens in existence on the Petition Date, which Liens are thereafter released or otherwise extinguished in connection with the satisfaction of the obligations secured by such Liens; and

(iii) pursuant to section 364(d)(1) of the Bankruptcy Code and subject only to the Carve-Out, shall at all times be secured by first priority priming, valid, binding, enforceable and perfected security interests in, and Liens upon, all the Prepetition Collateral.

(b) The Agent's and Lenders' Liens and Superpriority Claims shall have priority over any claims, charges or liens arising under section 105, 326, 328, 330, 331, 365, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726, 1113 or 1114 of the Bankruptcy Code, and shall be subject and subordinate only to the Carve-Out. Except as set forth herein or in the DIP Orders, no other claim having a priority superior to that granted to the Agent and Lenders by the Interim Order and Final Order, whichever is then in effect, shall be granted or approved while any Obligations under this Agreement remain outstanding.

(c) Except for the Carve-Out, no costs or expenses of administration shall be imposed against Agent or the Lenders, or any of the Collateral under sections 105 or 506(c) of the Bankruptcy Code, or otherwise, and, each of the Borrowers hereby waives for itself and on behalf of its estate in bankruptcy, any and all rights under sections 105 or 506(c) of the Bankruptcy Code, or otherwise, to assert or impose or seek to assert or impose, any such costs or expenses of administration against Agent or the Lenders.

(d) Except for the Carve-Out, the Superpriority Claims shall at all times be senior to the rights of Borrowers, any chapter 11 trustee and, subject to section 726 of the Bankruptcy Code, any chapter 7 trustee, or any other creditor (including, without limitation, post-petition counterparties and other post-petition creditors) in the Bankruptcy Case or any subsequent proceedings under the Bankruptcy Code, including, without limitation, any chapter 7 cases (if the Bankruptcy Case is converted to a case under chapter 7 of the Bankruptcy Code).

Section 4.17 Milestones. Borrowers shall timely comply with the Milestones, it being expressly understood that time is of the essence. Subject in all respects to the DIP Orders, a portion of the sale proceeds of the Assets Sale in an amount equal to the outstanding Obligations and Prepetition Obligations shall be paid to Agent to be applied to the Obligations and Prepetition Obligations before any other distribution of sale proceeds are made.

Section 4.18 Bankruptcy Reporting. Promptly after the sending, receiving or filing thereof, copies of all reports, motions, affidavits, statements and other documents that any Borrower sends, receives or files in connection with the Bankruptcy Case, including all correspondence with the Bankruptcy Court, shall be delivered to Agent and Lenders; *provided, however*, that the foregoing obligation may be satisfied by service of the Agent's counsel through the Bankruptcy Court's electronic case filing system.

ARTICLE 5 - NEGATIVE COVENANTS

Each Borrower agrees that, so long as any Credit Exposure exists:

Section 5.1 Debt; Contingent Obligations. No Borrower will, or will permit any Subsidiary to, directly or indirectly, create, incur, assume, guarantee or otherwise become or remain directly or indirectly liable with respect to, any Debt, except for Permitted Debt. No Borrower will, or will permit any Subsidiary to, directly or indirectly, create, assume, incur or suffer to exist any Contingent Obligations, except for Permitted Contingent Obligations.

Section 5.2 Liens. No Borrower will, or will permit any Subsidiary to, directly or indirectly, create, assume or suffer to exist any Lien on any asset now owned or hereafter acquired by it, except for Permitted Liens.

Section 5.3 Distributions. No Borrower will, or will permit any Subsidiary to, directly or indirectly, declare, order, pay, make or set apart any sum for any Distribution, except for Distributions expressly permitted by the DIP Orders or otherwise approved in advance by Agent and Required Lenders as part of the DIP Budget.

Section 5.4 Restrictive Agreements. No Borrower will, or will permit any Subsidiary to, directly or indirectly (a) enter into or assume any agreement (other than the Financing Documents, the Subordinated Debt Documents (if any), and any agreements for purchase money debt permitted under clause (c) of the definition of Permitted Debt) prohibiting the creation or assumption of any Lien upon its properties or assets, whether now owned or hereafter acquired, or (b) create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind (except as provided by the Financing Documents) on the ability of any Subsidiary to: (i) pay or make Distributions to any Borrower or any Subsidiary; (ii) pay any Debt owed to any Borrower or any Subsidiary; (iii) make loans or advances to any Borrower or any Subsidiary; or (iv) transfer any of its property or assets to any Borrower or any Subsidiary.

Section 5.5 Payments and Modifications of Subordinated Debt. No Borrower will, or will permit any Subsidiary to, directly or indirectly (a) declare, pay, make or set aside any amount for payment in respect of Subordinated Debt, except for payments made in full compliance with and expressly permitted under the Subordination Agreement, (b) amend or otherwise modify the terms of any Subordinated Debt, except for amendments or modifications made in full compliance with the Subordination Agreement, (c) declare, pay, make or set aside any amount for payment in respect of any Debt hereinafter incurred that, by its terms, or by separate agreement, is subordinated to the Obligations, except for payments made in full compliance with and expressly permitted under the subordination provisions applicable thereto, or (d) amend or otherwise modify the terms of any such Debt if the effect of such amendment or modification is to (i) increase the interest rate or fees on, or change the manner or timing of payment of, such Debt, (ii) accelerate or shorten the dates upon which payments of principal or interest are due on, or the principal amount of, such Debt, (iii) change in a manner adverse to any Credit Party or Agent any event of default or add or make more restrictive any covenant with respect to such Debt, (iv) change the prepayment provisions of such Debt or any of the defined terms related thereto, (v) change the subordination provisions thereof (or the subordination terms of any guaranty thereof), or (vi) change or amend any other term if such change or amendment would materially increase the obligations of the obligor or confer additional material rights on the holder of such Debt in a manner adverse to Borrowers, any Subsidiaries, Agents or Lenders. Borrowers shall, prior to entering into any such amendment or modification, deliver to Agent reasonably in advance of the execution thereof, any final or execution form copy thereof.

Section 5.6 Consolidations, Mergers and Sales of Assets; Change in Control. No Credit Party will, or will permit any Subsidiary to, directly or indirectly (a) consolidate or merge or amalgamate with or into any other Person, or (b) consummate any Asset Dispositions other than Permitted Asset Dispositions. No Credit Party will suffer or permit to occur any Change in Control with respect to itself, any Subsidiary or any Guarantor.

Section 5.7 Purchase of Assets, Investments. No Borrower will, or will permit any Subsidiary to, directly or indirectly (a) acquire or enter into any agreement to acquire any assets other than in the Ordinary Course of Business or as permitted under clause (h) of the definition of Permitted Investments; (b) engage or enter into any agreement to engage in any joint venture or partnership with any other Person; or (c) acquire or own or enter into any agreement to acquire or own any Investment in any Person.

Section 5.8 Transactions with Affiliates. Except as otherwise disclosed on Schedule 5.8, and except for transactions that are disclosed to Agent in advance of being entered into and which contain terms that are no less favorable to the applicable Borrower or any Subsidiary, as the case may be, than those which might be obtained from a third party not an Affiliate of any Credit Party, no Borrower will, or will permit any Subsidiary to, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of any Borrower.

Section 5.9 Modification of Organizational Documents. No Borrower will, or will permit any Subsidiary to, directly or indirectly, amend or otherwise modify any Organizational Documents of such Person, except for Permitted Modifications.

Section 5.10 Modification of Certain Agreements. No Borrower will, or will permit any Subsidiary to, directly or indirectly, amend or otherwise modify any Asset Sale Document, Parallon Services Agreement or any other Material Contract, which amendment or modification in any case: (a) is contrary to the terms of this Agreement or any other Financing Document; (b) could reasonably be expected to be adverse to the rights, interests or privileges of the Agent or the Lenders or their ability to enforce the same; (c) results in the imposition or expansion in any material respect of any obligation of or restriction or burden on any Borrower or any Subsidiary; or (d) reduces in any material respect any rights or benefits of any Borrower or any Subsidiaries (it being understood and agreed that any such determination shall be in the discretion of the Agent). Each Borrower shall, prior to entering into any amendment or other modification of any of the foregoing documents, deliver to Agent reasonably in advance of the execution thereof, any final or execution form copy of amendments or other modifications to such documents, and such Borrower agrees not to take, nor permit any of its Subsidiaries to take, any such action with respect to any such documents without obtaining such approval from Agent.

Section 5.11 Conduct of Business. No Borrower will, or will permit any Subsidiary to, directly or indirectly, engage in any line of business other than those businesses engaged in on the Closing Date and described on Schedule 5.11 and businesses reasonably related thereto. No Borrower will, or will permit any Subsidiary to, other than in the Ordinary Course of Business, change its normal billing payment and reimbursement policies and procedures with respect to its Accounts (including, without limitation, the amount and timing of finance charges, fees and write-offs).

Section 5.12 Lease Payments. No Borrower will, or will permit any Subsidiary to, directly or indirectly, incur or assume (whether pursuant to a Guarantee or otherwise) any liability for rental payments except in the Ordinary Course of Business.

Section 5.13 Limitation on Sale and Leaseback Transactions. No Borrower will, or will permit any Subsidiary to, directly or indirectly, enter into any arrangement with any Person whereby, in a substantially contemporaneous transaction, any Borrower or any Subsidiaries sells or transfers all or

substantially all of its right, title and interest in an asset and, in connection therewith, acquires or leases back the right to use such asset.

Section 5.14 Deposit Accounts and Securities Accounts; Payroll and Benefits Accounts. No Borrower will, or will permit any Subsidiary to, directly or indirectly, establish any new Deposit Account or Securities Account without prior written notice to Agent, and unless Agent, such Borrower or such Subsidiary and the bank, financial institution or securities intermediary at which the account is to be opened enter into a Deposit Account Control Agreement, Deposit Account Restriction Agreement, or Securities Account Control Agreement prior to or concurrently with the establishment of such Deposit Account or Securities Account. Borrowers represent and warrant that Schedule 5.14 lists all of the Deposit Accounts and Securities Accounts of each Borrower. The provisions of this Section requiring Deposit Account Control Agreements shall not apply to Deposit Accounts exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Borrowers' employees and identified to Agent by Borrowers as such; *provided, however*, that at all times that any Obligations or Prepetition Obligations remain outstanding, Borrower shall maintain one or more separate Deposit Accounts to hold any and all amounts to be used for payroll, payroll taxes and other employee wage and benefit payments, and shall not commingle any monies allocated for such purposes with funds in any other Deposit Account.

Section 5.15 Compliance with Anti-Terrorism Laws. Agent hereby notifies Borrowers that pursuant to the requirements of Anti-Terrorism Laws, and Agent's policies and practices, Agent is required to obtain, verify and record certain information and documentation that identifies Borrowers and its principals, which information includes the name and address of each Borrower and its principals and such other information that will allow Agent to identify such party in accordance with Anti-Terrorism Laws. No Borrower will, or will permit any Subsidiary to, directly or indirectly, knowingly enter into any Material Contracts with any Blocked Person or any Person listed on the OFAC Lists. Each Borrower shall immediately notify Agent if such Borrower has knowledge that any Borrower, any additional Credit Party or any of their respective Affiliates or agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement is or becomes a Blocked Person or (a) is convicted on, (b) pleads nolo contendere to, (c) is indicted on, or (d) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering. No Borrower will, or will permit any Subsidiary to, directly or indirectly, (i) conduct any business or engage in any transaction or dealing with any Blocked Person, including, without limitation, the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law, or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224 or other Anti-Terrorism Law.

Section 5.16 Interim Order; Final Order, Asset Sale Order, Administrative Expense Priority; Payments.

(a) No Borrower will seek, consent to or suffer to exist at any time any modification, stay, vacation or amendment of the Interim Order, the Final Order or the Asset Sale Order, as the case may be, except for modifications and amendments joined in or agreed to in writing by Agent.

(b) No Borrower will suffer to exist at any time a priority for any administrative expense or unsecured claim against any Borrower (now existing or hereafter arising of any kind or nature whatsoever, including, without limitation, any administrative expense of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code) equal or superior to the priority of Agent and the Lenders in respect of the Obligations, except for the Carve-Out.

(c) Prior to the date on which the Obligations have been indefeasibly paid in full, all in accordance with the terms of this Agreement, and this Agreement has been terminated, no Borrower will (i) pay any administrative expenses pursuant to section 503(b) of the Bankruptcy Code, except (A) administrative expenses incurred in the Ordinary Course of Business of the Borrowers as set forth in the DIP Budget in an aggregate amount in any week not to exceed 10% of the aggregate budgeted amounts for such expenses for such week, or as otherwise approved by an order of the Bankruptcy Court and (B) Allowed Fees payable under sections 330 and 331 of the Bankruptcy Code up to the weekly amounts set forth in the DIP Budget (with a carryover of any unused weekly amount to the subsequent weeks as provided in the DIP Orders), or (ii) permit or seek to permit the granting of adequate protection in favor any Person other than (A) lease, rental or financing payments related to equipment that are made in the Ordinary Course of Business as set forth in the DIP Budget and (B) as otherwise provided in the DIP Orders.

(d) Except as provided in the DIP Orders, no Borrower will take any action adverse to Agent or the Lenders or their rights and remedies under the Financing Documents.

(e) Except as set forth in the DIP Orders, no Borrower shall apply for, agree to, incur, create, assume, suffer to exist or permit except to the extent set forth in the DIP Budget, any administrative expense, unsecured claim, or other super-priority claim or Lien that is pari passu with or senior to the claims of the Agent and the Lenders against the Borrowers or the Collateral hereunder, or apply to the Bankruptcy Court for authority to do so, except for the Carve-Out.

Section 5.17 Bankruptcy Actions.

(a) No Borrower shall enter into any agreement to return any Collateral outside the Ordinary Course of Business to any of its creditors for application against any Prepetition Debt, Prepetition trade payables or other Prepetition claims under section 546(h) of the Bankruptcy Code.

(b) No Borrower shall make (i) any payments on account of any creditor's claims against any Borrower, (ii) payments on account of claims or expenses arising under section 503(b)(9) of the Bankruptcy Code, (iii) payments in respect of a reclamation program or (iv) payments under any management incentive plan or on account of claims or expenses arising under section 503(c) of the Bankruptcy Code, except in each case, in amounts and on terms and conditions that (A) are approved by order of the Bankruptcy Court and (B) are expressly permitted by the DIP Budget, or otherwise approved by the Agent in writing.

(c) No Borrower shall obtain, or seek to obtain, any stay on the exercise of the remedies of the Agent or any Lender hereunder, under any Financing Document, Prepetition Financing Document or the DIP Orders.

(d) No Borrower shall file any motion or application with the Bankruptcy Court seeking to extend the exclusivity periods set forth in section 1121 of the Bankruptcy Code for any reason without providing at least three (3) Business Days advance notice to Agent that it will seek such approval (in reasonable detail) and affording Agent a reasonable opportunity to consult on the determination.

Section 5.18 Superpriority Claims. No Borrower will incur, create, assume, suffer to exist or permit any other Superpriority Claim that is pari passu with or senior to the claims of the Agent and the Lenders against the Borrowers except with respect to the Carve-Out.

Section 5.19 Restrictions on Use of Proceeds. Notwithstanding anything to the contrary set forth herein or in any other Financing Document, no portion of the Revolving Loans, the Collateral, the Carve-Out funds or cash collateral of the Prepetition Agent and/or Prepetition Lenders may be used to fund

any activities: (a) preventing, hindering, or delaying any of the Agent's, the Lenders', the Prepetition Agent's or the Prepetition Lenders' enforcement or realization upon any of the Collateral once an Event of Default has occurred; (b) using or seeking to use cash collateral or selling or otherwise disposing of any of the Collateral without the consent of the Agent and the Required Lenders, except as authorized by this Agreement or the DIP Orders; (c) using or seeking to use any insurance proceeds constituting Collateral without the consent of the Agent and the Required Lenders; (d) incurring Debt without the prior consent of the Agent and the Required Lenders; (e) objecting or challenging in any way any claims, Liens, Collateral (including cash collateral) or, as the case may be, "Collateral" (as defined in the Prepetition Credit Agreement), held by or on behalf of any of the Agent, the Lenders, the Prepetition Agent, and the Prepetition Lenders, respectively; (f) asserting any claims or causes of action, including, without limitation, any action under chapter 5 of the Bankruptcy Code, against any of the Agent, the Lenders, or the administrative agent or collateral agent or any Prepetition Lender under the Prepetition Credit Agreement or any of their respective affiliates, agents, attorneys, investment advisors, collateral managers, servicers, professionals, officers, directors and employees; (g) prosecuting an objection to, or contesting in any manner, or raising defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the Obligations, the Liens of the Agent securing the Obligations, the Prepetition Obligations, the Liens securing the Prepetition Obligations or any other rights or interests of any of the Agent, the Lenders, the Prepetition Agent or the Prepetition Lenders; (h) taking any action which (i) has or could have the effect of materially and adversely modifying or compromising the rights and remedies of the Agent, the Lenders, or the administrative agent or collateral agent or any Prepetition Lender under the Prepetition Credit Agreement, (ii) is contrary, in a manner that is material and adverse to the Agent, the Lenders, the Prepetition Agent or the Prepetition Lenders, to any term or condition set forth in any of the Financing Documents or the DIP Orders, or (iii) results in the occurrence of an Event of Default.

ARTICLE 6 - FINANCIAL COVENANTS

Section 6.1 Minimum Liquidity. Borrowers will not permit the Minimum Liquidity at any time during the term of this Agreement to be less than \$1,000,000.

Section 6.2 Evidence of Compliance. Borrowers shall furnish to Agent, together with the financial reporting required of Borrowers in Section 4.1 hereof, a Compliance Certificate as evidence of Borrowers' compliance with the covenants in this Article and evidence that no Event of Default specified in this Article has occurred. The Compliance Certificate shall include, without limitation, (a) a statement and report, on a form approved by Agent, detailing Borrowers' calculations, and (b) if requested by Agent, back-up documentation (including, without limitation, invoices, receipts and other evidence of costs incurred during such quarter as Agent shall reasonably require) evidencing the propriety of the calculations.

ARTICLE 7 - CONDITIONS

Section 7.1 Conditions to Closing. The obligation of each Lender to make the initial Loans on the Closing Date shall be subject to the receipt by Agent of each agreement, document and instrument set forth on the closing checklist prepared by Agent or its counsel, each in form and substance satisfactory to Agent, and such other closing deliverables reasonably requested by Agent and Lenders, and to the satisfaction of the following conditions precedent, each to the satisfaction of Agent and Lenders and their respective counsel in their sole discretion:

(a) Each of the Financing Documents and other documentation relating to the Loans provided hereunder shall be in form and substance reasonably satisfactory to the Agent and duly executed and delivered by each of the Credit Parties and each Lender and other parties thereto;

(b) Agent shall have received, in respect of each Credit Party,

(i) copies of each organizational or constitutive document (along with any amendments thereto) certified as of a recent date prior to the Closing Date by the appropriate Governmental Authority;

(ii) certificate of the secretary or an assistant secretary or such other authorized officer of each Credit Party certifying the names and true signatures of the officers of such Credit Party authorized to sign each Financing Document to which it is or is to be a party and the other documents to be delivered hereunder and thereunder;

(iii) resolutions of the board of directors (or similar governing body) of such Credit Party approving and authorizing the execution, delivery and performance of this Agreement and the other Financing Documents to which it is a party or by which it or its assets may be bound as of the Closing Date, as well as the transactions contemplated hereunder and the commencement of the Bankruptcy Case, certified as of the Closing Date by its secretary or an assistant secretary or such other authorized officer as being in full force and effect without modification or amendment; and

(iv) good standing certificate, where applicable, from the applicable Governmental Authority of such Credit Party's jurisdiction of incorporation, organization or formation dated as of a recent date prior to the Closing Date.

(c) The Interim Order (i) shall be in full force and effect; and (ii) shall not have been vacated, reversed, stayed, modified or amended and no motion seeking a reversal, modification, amendment or stay shall have been filed by any person.

(d) Agent shall have received a Borrowing Base Certificate, prepared as of the Closing Date, and demonstrating that Revolving Loan Availability is greater than the Prepetition Obligations.

(e) Agent shall have received a DIP Budget, dated no more than seven (7) days prior to the Interim Hearing.

(f) The payment of all fees, expenses and other amounts due and payable under each Financing Document and the Interim Order.

(g) Other than the Bankruptcy Case, there shall not exist any action, suit, investigation, litigation or proceeding pending or (to the knowledge of the Credit Parties) threatened in any court or before any arbitrator or governmental instrumentality that could reasonably be expected to result in a Material Adverse Effect.

(h) Other than the filing of the Bankruptcy Case, since December 31, 2018, the absence of any material adverse change in any aspect of the business, operations, properties, prospects or condition (financial or otherwise) of any Credit Party or any event or condition that could reasonably be expected to result in such a material adverse change;

(i) All necessary governmental and third party consents and approvals necessary in connection with the transactions contemplated hereunder shall have been obtained (without the imposition of any adverse conditions that are not reasonably acceptable to Agent) and shall remain in effect; and no law or regulation (other than the Bankruptcy Code) shall be applicable to Agent that prevents the consummation of the transactions contemplated hereunder.

(j) Evidence that, such other documents, instruments or actions deemed necessary or advisable by Agent to perfect and protect the Liens and security interests created or purported to be created with respect to the Borrowers (Agent acknowledges the appropriate filed financing statements), pursuant to the Interim Order and the other Security Documents, as applicable, and perfected pursuant to applicable requirements of Law, in each case, shall have been duly delivered or completed, including, without limitation, the delivery of UCC financing statements in proper form for filing for all applicable jurisdictions of the Credit Parties and provision having been made for the payment of any fees or taxes required in connection with the filing of such documents, instruments or financing statements.

Each Lender, by delivering its signature page to this Agreement, shall be deemed to have acknowledged receipt of, and consented to and approved, each Financing Document, each additional Operative Document and each other document, agreement and/or instrument required to be approved by Agent, Required Lenders or Lenders, as applicable, on the Closing Date.

Section 7.2 Conditions to Each Loan. The obligation of the Lenders to make a Loan or an advance in respect of any Loan is subject to the satisfaction of the following additional conditions:

(a) in the case of a borrowing of a Revolving Loan, receipt by Agent of a Notice of Borrowing (or telephonic notice if permitted by this Agreement) and updated Borrowing Base Certificate;

(b) the fact that, immediately after such borrowing and after application of the proceeds thereof or after such issuance, the Revolving Loan Outstandings will not exceed the Revolving Loan Limit;

(c) (i) either (x) the Interim Order shall be in full force and effect, or (y) for any advance in respect of any Loan occurring on or after the earlier of (A) 40 days after the Closing Date and (B) the Final Order Entry Date, the Final Order shall be in full force and effect, and the Interim Order or Final Order, as applicable, shall not have been vacated or reversed, shall not be subject to a stay, and shall not have been modified or amended without the written consent of the Agent and the Required Lenders at the time of such proposed borrowing; (ii) prior to the Final Order Entry Date, the proposed Revolving Loan borrowing, when added to Revolving Loan Outstandings, does not exceed the amount authorized by the Interim Order; and (iii) all First Day Orders, including the cash management order, (including as entered on a final basis) shall be in form and substance reasonably satisfactory to Agent.

(d) the fact that, immediately before and after such advance or issuance, no Default or Event of Default shall have occurred and be continuing;

(e) the fact that the representations and warranties of each Credit Party contained in the Financing Documents shall be true, correct and complete on and as of the date of such borrowing or issuance, except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct as of such earlier date;

(f) the fact that no material adverse change in the condition (financial or otherwise), properties, business, prospects, or operations of Borrowers or any other Credit Party shall have occurred and be continuing with respect to Borrowers or any Credit Party since the date of this Agreement; and

(g) the continued compliance by Borrowers with all of the terms, covenants and conditions of Article 8 and, unless Agent shall elect otherwise from time to time, the absence of any fact, event or circumstance for which Borrower is required to give Agent notice under Article 8.

Each giving of a Notice of Borrowing hereunder and each acceptance by any Borrower of the proceeds of any Loan made hereunder shall be deemed to be (y) a representation and warranty by each Borrower on the date of such notice or acceptance as to the facts specified in this Section, and (z) a restatement by each Borrower that each and every one of the representations made by it in any of the Financing Documents is true and correct as of such date (except to the extent that such representations and warranties expressly relate solely to an earlier date).

Section 7.3 Searches. Before the Closing Date, and thereafter (as and when determined by Agent in its discretion), Agent shall have the right to perform, all at Borrowers' expense, the searches described in clauses (a), (b), and (c) below against Borrowers and any other Credit Party, the results of which are to be consistent with Borrowers' representations and warranties under this Agreement and the satisfactory results of which shall be a condition precedent to all advances of Loan proceeds: (a) UCC searches with the Secretary of State of the jurisdiction in which the applicable Person is organized; (b) judgment, pending litigation, federal tax lien, personal property tax lien, and corporate and partnership tax lien searches, in each jurisdiction searched under clause (a) above; and (c) searches of applicable corporate, limited liability company, partnership and related records to confirm the continued existence, organization and good standing of the applicable Person and the exact legal name under which such Person is organized.

Section 7.4 Post Closing Requirements. Borrowers shall complete each of the post closing obligations and/or provide to Agent each of the documents, instruments, agreements and information listed on Schedule 7.4 attached hereto on or before the date set forth for each such item thereon, each of which shall be completed or provided in form and substance satisfactory to Agent.

ARTICLE 8 - REGULATORY MATTERS

Section 8.1 Additional Defined Terms. The following additional definitions are hereby appended to Section 1.1 of this Agreement:

“**Accrediting Organization**” means any Person from which any Borrower has received an accreditation as of the Closing Date or thereafter.

“**CON**” means any certificate of need or similar license which determines that there is a need for a healthcare facility at a particular location or within a certain geographic region.

“**HIPAA**” means the Health Insurance Portability and Accountability Act of 1996, as the same may be amended, modified or supplemented from time to time, and any successor statute thereto, and any and all rules or regulations promulgated from time to time thereunder.

“**HIPAA Compliant**” shall mean that the applicable Person is in compliance with each of the applicable requirements of the so-called “Administrative Simplification” provisions of HIPAA, and is not and could not reasonably be expected to become the subject of any civil or criminal penalty, process, claim, action or proceeding, or any administrative or other regulatory review, survey, process or proceeding (other than routine surveys or reviews conducted by any government health plan or other accreditation entity) that could result in any of the foregoing or that could reasonably be expected to adversely affect such Person's business, operations, assets, properties or condition (financial or otherwise), in connection with any actual or potential violation by such Person of the provisions of HIPAA.

Section 8.2 Representations and Warranties. To induce Agent and Lenders to enter into this Agreement and to make credit accommodations contemplated hereby, Borrowers hereby represent and warrant that all of the information regarding the Borrowers and Projects set forth in Schedule 8.2(a) is true,

complete and correct, and that, except as disclosed in Schedule 8.2(b), the following statements are true, complete and correct as of the date hereof, and Borrowers hereby covenant and agree to notify Agent within three (3) Business Days (but in any event prior to Borrowers submitting any requests for advances of reserves or escrows or fundings of credit facility proceeds under this Agreement) following the occurrence of any facts, events or circumstances known to a Borrower, whether threatened, existing or pending, that would make any of the following representations and warranties untrue, incomplete or incorrect (together with such supporting data and information as shall be necessary to fully explain to Agent the scope and nature of the fact, event or circumstance), and shall provide to Agent within two (2) Business Days of Agent's request, such additional information as Agent shall request regarding such disclosure:

(a) Healthcare Permits. Borrowers have (i) each Healthcare Permit and other rights from, and have made all declarations and filings with, all applicable Governmental Authorities, all self regulatory authorities and all courts and other tribunals necessary to engage in the ownership, management and operation of the Projects or the assets of any Borrower, and (ii) no knowledge that any Governmental Authority is considering limiting, suspending or revoking any such Healthcare Permit. All such Healthcare Permits are valid and in full force and effect and Borrowers are in material compliance with the terms and conditions of all such Healthcare Permits, except where failure to be in such compliance or for a Healthcare Permit to be valid and in full force and effect would not have a Material Adverse Effect.

(b) Specific Licensing. Each Project is duly licensed as a hospital under the applicable laws of the state where the Project is located. The licensed bed or unit capacity of each Project is shown on Schedule 8.1. Borrowers have not granted to any third party the right to reduce the number of licensed beds, persons served or units in the Projects or the right to apply for approval to move any and all of the licensed beds, persons served or units in the Projects to any other location and there are no proceedings or contemplated to reduce the number of licensed beds, persons served or units in the Projects.

(c) Manager. No Borrower has engaged a Manager.

(d) Accreditation. Borrowers have received and maintain accreditation in good standing and without impairment by all applicable Accrediting Organizations, to the extent required by law (including any equivalent regulation) or the terms of any Operating Lease pertaining to the Project. No Borrower has received any notice or communication from any Accrediting Organization that a Project is (i) subject to or is required to file a plan of correction with respect to any accreditation survey, or (ii) in danger of losing its accreditation due to a failure to comply with a plan of correction.

(e) Participation Agreements/Provider Status/Cost Reports.

(i) There is no investigation, audit, claim review, or other action pending or, to the knowledge of any Borrower, threatened which could result in a revocation, suspension, termination, probation, restriction, limitation, or non-renewal of any Third Party Payor participation agreement or provider number or other Healthcare Permit or result in a Borrower's exclusion from any Third Party Payor Program, nor has any Third Party Payor Program made any decision not to renew any participation agreement or provider agreement or other Healthcare Permit related to any Project, nor have the Borrowers made any decision not to renew any participation agreement or provider agreement or other Healthcare Permit, nor is there any action pending or threatened to impose material intermediate or alternative sanctions with respect to any Project.

(ii) The Borrowers, and, to the knowledge of the Borrowers, their contractors, have properly and legally billed all intermediaries and Third Party Payors for services rendered with respect to the Projects and have maintained their records to reflect such billing practices. No

funds relating to Borrowers are now, or, to the knowledge of Borrowers will be, withheld by any Third Party Payor.

(iii) Borrowers have the requisite participation agreement or provider number or other Healthcare Permit to bill the Medicare program and the respective Medicaid programs in the state or states in which such Borrowers operate (to the extent such Borrower participates in the Medicare or Medicaid program in such state or states) and all other Third Party Payor Programs (including, without limitation, Medicare) which have historically accounted for any portion of the revenues of such Project.

(iv) All Medicare, Medicaid, and private insurance cost reports and financial reports submitted by the Borrowers are and will be materially accurate and complete and have not been and will not be misleading in any material respects. No cost reports for the Projects remain “open” or unsettled and there are no current, pending or outstanding Medicare, Medicaid or other Third Party Payor Program reimbursement audits or appeals pending with respect to the Projects or the Borrowers.

(f) No Violation of Healthcare Laws.

(i) None of the Projects or the Borrowers are in violation of any Healthcare Laws, except where any such violation would not have a Material Adverse Effect.

(ii) Borrowers are HIPAA Compliant.

(g) Proceedings. No Borrower nor any Project is subject to any proceeding, suit or, to Borrowers’ knowledge, investigation by any federal, state or local government or quasi-governmental body, agency, board or authority or any other administrative or investigative body (including the Office of the Inspector General of the United States Department of Health and Human Services): (i) which may result in the imposition of a fine, alternative, interim or final sanction, a lower reimbursement rate for services rendered to eligible patients which has not been provided for on their respective financial statements, or which would have a Material Adverse Effect on any Borrower or the operation of any individual Project; (ii) which could result in the revocation, transfer, surrender, suspension or other impairment of the operating certificate, provider agreement or Healthcare Permits of any Project; (iii) which pertains to or requests any voluntary disclosure pertaining to a potential overpayment matter involving the submission of claims to such payor by a Borrower; or (iv) which pertains to any state or federal Medicare or Medicaid cost reports or claims filed by any Borrower (including, without limitation, any reimbursement audits), or any disallowance by any commission, board or agency in connection with any audit of such cost reports;

(h) Ancillary Laws. Borrowers have received no notice, and are not aware, of any violation of applicable antitrust laws, employment or landlord-tenant laws of any federal, state or local government or quasi-governmental body, agency, board or other authority with respect to the Projects or the Borrowers.

(i) Hill-Burton. No Borrower is or will be a participant in any federal program whereby any federal, state or local government or quasi-governmental body, agency, board or other authority may have the right to recover funds by reason of the advance of federal funds, including, without limitation, those authorized under the Hill-Burton Act (42 U.S.C. 291, et seq.).

(j) Fraud and Abuse.

(i) No Borrower has, or to its knowledge has been threatened to have, and no owner, officer, manager, employee or Person with a “direct or indirect ownership interest” (as that phrase is defined in 42 C.F.R. §420.201) in any Borrower has, engaged in any of the following: (A) knowingly and willfully making or causing to be made a false statement or representation of a material fact in any application for any benefit or payment under any Healthcare Laws; (B) knowingly and willfully making or causing to be made any false statement or representation of a material fact for use in determining rights to any benefit or payment under any Healthcare Laws; (C) failing to disclose knowledge by a claimant of the occurrence of any event affecting the initial or continued right to any benefit or payment under any Healthcare Laws on its own behalf or on behalf of another, with intent to secure such benefit or payment fraudulently; (D) knowingly and willfully soliciting or receiving any remuneration (including any kickback, bribe or rebate), directly or indirectly, overtly or covertly, in cash or in kind or offering to pay such remuneration (I) in return for referring an individual to a Person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part by any Healthcare Laws, or (II) in return for purchasing, leasing or ordering or arranging for or recommending the purchasing, leasing or ordering of any good, facility, service, or item for which payment may be made in whole or in part by any Healthcare Laws; (E) presenting or causing to be presented a claim for reimbursement for services that is for an item or services that was known or should have been known to be (I) not provided as claimed, or (II) false or fraudulent; or (F) knowingly and willfully making or causing to be made or inducing or seeking to induce the making of any false statement or representation (or omitting to state a fact required to be stated therein or necessary to make the statements contained therein not misleading) of a material fact with respect to (I) a Project in order that the Project may qualify for Governmental Authority certification, or (II) information required to be provided under 42 U.S.C. § 1320a-3. All contractual arrangements to which Borrower is a party are in compliance with all Healthcare Laws.

(ii) No Borrower has been, or to its knowledge has been threatened to be, and no owner, officer, manager, employee or Person with a “direct or indirect ownership interest” (as that phrase is defined in 42 C.F.R. §420.201) in any Borrower: (A) has had a civil monetary penalty assessed against him or her pursuant to 42 U.S.C. §1320a-7a or is the subject of a proceeding seeking to assess such penalty; (B) has been excluded from participation in a Federal Health Care Program (as that term is defined in 42 U.S.C. §1320a-7b) or is the subject of a proceeding seeking to assess such penalty, or has been “suspended” or “debarred” from selling products to the U.S. government or its agencies pursuant to the Federal Acquisition Regulation, relating to debarment and suspension applicable to federal government agencies generally (48 C.F.R. Subpart 9.4), or other applicable laws or regulations; (C) has been convicted (as that term is defined in 42 C.F.R. §1001.2) of any of those offenses described in 42 U.S.C. §1320a-7b or 18 U.S.C. §§669, 1035, 1347, 1518 or is the subject of a proceeding seeking to assess such penalty; (D) has been involved or named in a U.S. Attorney complaint made or any other action taken pursuant to the False Claims Act under 31 U.S.C. §§3729-3731 or qui tam action brought pursuant to 31 U.S.C. §3729 et seq.; (E) has been made a party to any other action by any governmental authority that may prohibit it from selling products to any governmental or other purchaser pursuant to any law; or (F) was or has become subject to any federal, state, local governmental or private payor civil or criminal investigations or inquiries, proceedings, validation review, program integrity review or statement of charges involving and/or related to its compliance with Healthcare Laws or involving or threatening its participation in Medicare, Medicaid or other Third Party Payor Programs or its billing practices with respect thereto.

Section 8.3 Licensed Facilities.

(a) Certificates of Need.

(i) If required under applicable Healthcare Laws, Borrower has and shall maintain in full force and effect a valid CON for no less than the number of beds and units in the applicable Project as of the date of this Agreement. Borrower shall maintain any applicable CON free from restrictions or known conflicts which would materially impair the use or operation of the applicable Project for its current use, and shall not permit any CON to become provisional, probationary or restricted in any way. Each Borrower that is the owner of the fee simple real estate for the Project shall be the owner of the CON, if any, relating to each Project.

(ii) No Borrower shall do (or suffer to be done by any Borrower or any Affiliate of any Borrower) any of the following without Agent's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed:

(A) Replace or transfer all or any part of any Project's units or beds to another site or location;

(B) Transfer or demise any CON or other Healthcare Permit or rights thereunder to any Person (other than Agent) or to any location other than the Project to which such CON or Healthcare Permit pertains; or

(C) Pledge or hypothecate any CON or other Healthcare Permit as collateral security for any indebtedness other than indebtedness to Agent.

(b) Manager. No Borrower shall engage a third-party manager (collectively in the singular, the "**Manager**") without the prior written consent of Agent and, in such case, any engagement shall be pursuant to management/operating agreements approved by Agent in writing and that comply with all applicable Healthcare Laws (the "**Management Agreements**"). Any Manager shall be required to enter into an assignment and subordination of management or operating agreement in form and substance reasonably satisfactory to Agent. Such restrictions and approval rights are solely for the purposes of assuring that the Projects are managed and operated in a first-class manner consistent with Healthcare Laws and the preservation and protection of the Projects as security for the Obligations and shall not place responsibility for the control, care, management or repair of the Projects upon Agent, or make Agent responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Projects.

Section 8.4 Healthcare Operations.

(a) Each Borrower will:

(i) timely file or caused to be timely filed (after giving effect to any extension duly obtained), all notifications, reports, submissions, Permit renewals and reports (other than cost reports as provided in Section 8.4(a)(ii) below) of every kind whatsoever required by Healthcare Laws (which reports will be materially accurate and complete in all respects and not misleading in any respect and shall not remain open or unsettled); and

(ii) timely file or caused to be timely filed (after giving effect to any extension duly obtained), all cost reports required by Healthcare Laws, which reports shall be materially accurate and complete in all respects and not misleading in any material respect and which shall

not remain open or unsettled, except in accordance with applicable settlement appeals procedures that are timely and diligently pursued and except for any processing delays of any Governmental Authority.

(b) Each Borrower will maintain in full force and effect, and free from restrictions, probations, conditions or known conflicts which would materially impair the use or operation of any Project for its current use, all Healthcare Permits necessary under Healthcare Laws to carry on the business of Borrowers as it is conducted on the Closing Date.

(c) Each Borrower will not suffer or permit to occur any of the following:

(i) any transfer of a Healthcare Permit or rights thereunder to any Person (other than Borrowers or Agent) or to any location other than a Project approved by Agent in advance in writing;

(ii) any pledge or hypothecation of any Healthcare Permit as collateral security for any indebtedness or obligations other than (A) Debt to Agent and each Lender under this Agreement and the other Financing Documents and (B) the Landlord Lien;

(iii) any rescission, withdrawal, revocation, amendment or modification of or other alteration to the nature, tenor or scope of any Healthcare Permit without Agent's prior written consent, including, without limitation, (A) any change to the authorized units/beds and persons served capacity of any Project and/or the number of units/beds and persons served approved by the applicable Governmental Authority, and (B) any transfer all or any part of any Project's authorized units or beds to another site or location;

(iv) any voluntary transfer of any resident of any Project to any other facility, unless such transfer is at the request of the resident (without economic incentives being given to the resident by an Affiliate of any Borrower) or its payor or is for reasons relating to non-payment or the health, required level of medical care or safety of the resident to be transferred;

(v) without Agent's prior written consent, the provision by any Borrower of additional regulated services at any Project, including, without limitation, medical services; or

(vi) any fact, event or circumstance for which notice to Agent is required under Section 8.2.

(d) Borrowers will maintain a corporate health care regulatory compliance program ("CCP") which includes at least the following components and allows Agent and/or any outside consultants from time to time to review such CCP: (i) standards of conduct and procedures that describe compliance policies regarding laws with an emphasis on prevention of fraud and abuse; (ii) specific officer within high-level personnel identified as having overall responsibility for compliance with such standards and procedures; (iii) training and education programs which effectively communicate the compliance standards and procedures to employees and agents, including, without limitation, fraud and abuse laws and illegal billing practices; (iv) auditing and monitoring systems and reasonable steps for achieving compliance with such standards and procedures including, without limitation, publicizing a report system to allow employees and other agents to anonymously report criminal or suspect conduct and potential compliance problems; (v) disciplinary guidelines and consistent enforcement of compliance policies including, without limitation, discipline of individuals responsible for the failure to detect violations of the CCP; and (vi) mechanisms to immediately respond to detected violations of the CCP.

(e) Borrowers will at all times be HIPAA Compliant.

(f) If any Project is currently accredited by an Accrediting Organization, Borrower will (i) maintain such accreditation in good standing and without limitation or impairment, (ii) promptly submit to the Accrediting Organization a plan of correction for any deficiencies listed on any accreditation survey report, and (iii) cure all such deficiencies within such time frame as is necessary to preserve and maintain in good standing and without limitation or impairment such accreditation.

Section 8.5 Third Party Payor Programs. Neither the Projects, nor any Borrower, shall, other than in the Ordinary Course of Business, change the terms of any Third Party Payor Programs or its normal billing payment and reimbursement policies and procedures with respect thereto (including, without limitation, the amount and timing of finance charges, fees and write-offs). Borrowers will (a) maintain in full force and effect, and free from restrictions, probations, conditions or known conflicts which would materially impair the use or operation of any Project for its current use, all Healthcare Permits necessary under Healthcare Laws to continue to receive reimbursement under all Third Party Payor Programs in which any Borrower or any Project participates as of the date of this Agreement, and (b) provide to Agent upon request, an accurate, complete and current list of all participation agreements with Third Party Payors with respect to the business of Borrowers. Borrowers shall at all times comply with all requirements, contracts, conditions and stipulations applicable to Borrowers in order to maintain in good standing and without default or limitation all such participation agreements.

Section 8.6 Cures. If there shall occur any fact, event or circumstance for which Borrowers are required to give Agent notice under Section 8.2 above after the Closing Date, Borrowers shall take such action as is necessary to validly challenge or otherwise appropriately respond to such fact, event or circumstance within any timeframe required by applicable Healthcare Laws, and shall thereafter diligently pursue the same to a favorable conclusion, all to the effect that the fact, event or circumstance giving rise to Borrowers' notice obligation under Section 8.2 shall be dismissed, rescinded, eliminated and otherwise cease to exist on that date which is the earlier to occur of (a) sixty (60) days after the date any Borrower or any of its Affiliates became aware of such fact, event or circumstance, or (b) the expiration of any cure period given under applicable Healthcare Laws; provided, however, that Borrowers will not permit to exist or occur any fact, event or circumstance which could cause any representation or warranty in the following subsections of Section 8.2 to be untrue, incomplete or incorrect or which could trigger an disclosure obligation under such subsections of Section 8.2: (a), (b), (f)(i) and (k).

ARTICLE 9 - SECURITY AGREEMENT

Section 9.1 Generally. As security for the payment and performance of the Obligations, without limiting any other grant of a Lien and security interest in any Security Document, Borrowers hereby assign and grant to Agent, for the benefit of itself and Lenders, a continuing first priority Lien (subject only to the Carve-Out) on and security interest in, upon, and to the personal property set forth on Schedule 9.1 attached hereto and made a part hereof.

Section 9.2 Representations and Warranties and Covenants Relating to Collateral.

(a) Schedule 9.2 sets forth (i) each chief executive office and principal place of business of each Borrower and each of their respective Subsidiaries, and (ii) all of the addresses (including all warehouses) at which any of the Collateral is located and/or books and records of Borrowers regarding any of the Collateral are kept, which such Schedule 9.2 indicates in each case which Borrower(s) have Collateral and/or books and records located at such address, and, in the case of any such address not owned by one or more of the Borrowers(s), indicates the nature of such location (e.g., leased business location

operated by Borrower(s), third party warehouse, consignment location, processor location, etc.) and the name and address of the third party owning and/or operating such location.

(b) Without limiting the generality of Section 3.2, except for the entry of the DIP Orders by the Bankruptcy Court, and as otherwise indicated on Schedule 3.19 with respect to any rights of any Borrower as a licensee under any license of Intellectual Property owned by another Person, and except for the entry of the DIP Orders, no authorization, approval or other action by, and no notice to or filing with, any Governmental Authority or consent of any other Person is required for (i) the grant by each Borrower to Agent of the security interests and Liens in the Collateral provided for under this Agreement and the other Security Documents (if any), or (ii) the exercise by Agent of its rights and remedies with respect to the Collateral provided for under this Agreement and the other Security Documents or under any applicable Law, including the UCC and neither any such grant of Liens in favor of Agent or exercise of rights by Agent shall violate or cause a default under any agreement between any Borrower and any other Person relating to any such collateral, including, to the extent constituting part of the Collateral, any license to which a Borrower is a party, whether as licensor or licensee, with respect to any Intellectual Property, whether owned by such Borrower or any other Person.

(c) As of the Closing Date, no Borrower has any ownership interest in any Chattel Paper (as defined in Article 9 of the UCC), letter of credit rights, commercial tort claims, Instruments, documents or investment property (other than equity interests in any Subsidiaries of such Borrower disclosed on Schedule 3.4) and Borrowers shall give notice to Agent promptly (but in any event not later than the delivery by Borrowers of the next Compliance Certificate required pursuant to Section 4.1 above) upon the acquisition by any Borrower of any such Chattel Paper, letter of credit rights, commercial tort claims, Instruments, documents, or investment property, to the extent such constitute Collateral. No Person other than Agent or (if applicable) any Lender has “control” (as defined in Article 9 of the UCC) over any Deposit Account, investment property (including Securities Accounts and commodities account), letter of credit rights or electronic chattel paper, in each case, that constitutes Collateral and in which any Borrower has any interest (except for such control arising by operation of law in favor of any bank or securities intermediary or commodities intermediary with whom any Deposit Account, Securities Account or commodities account of Borrowers is maintained).

(d) Borrowers shall not, and shall not permit any Credit Party to, take any of the following actions or make any of the following changes unless Borrowers have given at least thirty (30) days prior written notice to Agent of Borrowers’ intention to take any such action (which such written notice shall include an updated version of any Schedule impacted by such change) and have executed any and all documents, instruments and agreements and taken any other actions which Agent may request after receiving such written notice in order to protect and preserve the Liens, rights and remedies of Agent with respect to the Collateral: (i) change the legal name or organizational identification number of any Borrower as it appears in official filings in the jurisdiction of its organization, (ii) change the jurisdiction of incorporation or formation of any Borrower or Credit Party or allow any Borrower or Credit Party to designate any jurisdiction as an additional jurisdiction of incorporation for such Borrower or Credit Party, or change the type of entity that it is, or (iii) change its chief executive office, principal place of business, or the location of its records concerning the Collateral or move any Collateral to or place any Collateral on any location that is not then listed on the Schedules and/or establish any business location at any location that is not then listed on the Schedules.

(e) Borrowers shall not adjust, settle or compromise the amount or payment of any Account, or release wholly or partly any Account Debtor, or allow any credit or discount thereon (other than adjustments, settlements, compromises, credits and discounts in the Ordinary Course of Business, made while no Default exists and in amounts which are not material with respect to the Account and which, after giving effect thereto, do not cause the Borrowing Base to be less than the Revolving Loan

Outstandings) without the prior written consent of Agent. Without limiting the generality of this Agreement or any other provisions of any of the Financing Documents relating to the rights of Agent after the occurrence and during the continuance of an Event of Default, Agent shall have the right at any time after the occurrence and during the continuance of an Event of Default to: (i) exercise the rights of Borrowers with respect to the obligation of any Account Debtor to make payment or otherwise render performance to Borrowers and with respect to any property that secures the obligations of any Account Debtor or any other Person obligated on the Collateral, and (ii) adjust, settle or compromise the amount or payment of such Accounts.

(f) Without limiting the generality of Sections 9.2(c) and 9.2(e):

(i) Borrowers shall deliver to Agent all tangible Chattel Paper and all Instruments and documents owned by any Borrower and constituting part of the Collateral duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to Agent. Borrowers shall provide Agent with “control” (as defined in Article 9 of the UCC) of all electronic Chattel Paper owned by any Borrower and constituting part of the Collateral by having Agent identified as the assignee on the records pertaining to the single authoritative copy thereof and otherwise complying with the applicable elements of control set forth in the UCC. Borrowers also shall deliver to Agent all security agreements securing any such Chattel Paper and securing any such Instruments to the extent such constitute Collateral hereunder. Borrowers will mark conspicuously all such Chattel Paper and all such Instruments (in each case to the extent constituting part of the Collateral) and documents with a legend, in form and substance satisfactory to Agent, indicating that such Chattel Paper and such instruments and documents are subject to the security interests and Liens in favor of Agent created pursuant to this Agreement and the Security Documents. Borrowers shall comply with all the provisions of Section 5.14 with respect to the Deposit Accounts and Securities Accounts of Borrowers.

(ii) Borrowers shall deliver to Agent all letters of credit on which any Borrower is the beneficiary and which give rise to letter of credit rights owned by such Borrower which constitute part of the Collateral in each case duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to Agent. Borrowers shall take any and all actions as may be necessary or desirable, or that Agent may request, from time to time, to cause Agent to obtain exclusive “control” (as defined in Article 9 of the UCC) of any such letter of credit rights in a manner acceptable to Agent.

(iii) Borrowers shall promptly advise Agent upon any Borrower becoming aware that it has any interests in any commercial tort claim exceeding, individually or in the aggregate \$250,000 and that constitutes part of the Collateral, which such notice shall include descriptions of the events and circumstances giving rise to such commercial tort claim and the dates such events and circumstances occurred, the potential defendants with respect such commercial tort claim and any court proceedings that have been instituted with respect to such commercial tort claims, and Borrowers shall, with respect to any such commercial tort claim, execute and deliver to Agent such documents as Agent shall request to perfect, preserve or protect the Liens, rights and remedies of Agent with respect to any such commercial tort claim.

(iv) Except for Accounts and Inventory in an aggregate amount of \$25,000, no Accounts or Inventory or other Collateral shall at any time be in the possession or control of any warehouse, consignee, bailee or any of Borrowers’ agents or processors without prior written notice to Agent and the receipt by Agent, if Agent has so requested, of warehouse receipts, consignment agreements or bailee lien waivers (as applicable) satisfactory to Agent prior to the commencement of such possession or control. Borrower has notified Agent that Inventory is currently located at

the locations set forth on Schedule 9.2. Borrowers shall, upon the request of Agent, notify any such warehouse, consignee, bailee, agent or processor of the security interests and Liens in favor of Agent created pursuant to this Agreement and the Security Documents, instruct such Person to hold all such Collateral for Agent's account subject to Agent's instructions and shall obtain an acknowledgement from such Person that such Person holds the Collateral for Agent's benefit.

(v) Borrowers shall, subject to the DIP Budget, cause all equipment and other tangible personal property other than Inventory to be maintained and preserved in the same condition, repair and in working order as when new, ordinary wear and tear excepted, and shall promptly make or cause to be made all repairs, replacements and other improvements in connection therewith that are necessary or desirable to such end. Borrowers shall not permit any such tangible personal property to become fixtures to real estate unless such real estate is subject to a Lien in favor of Agent.

(vi) Each Borrower hereby authorizes Agent to file without the signature of such Borrower one or more UCC financing statements relating to liens on personal property relating to all or any part of the Collateral, which financing statements may list Agent as the "secured party" and such Borrower as the "debtor" and which describe and indicate the collateral covered thereby as all or any part of the Collateral under the Financing Documents in such jurisdictions as Agent from time to time determines are appropriate, and to file without the signature of such Borrower any continuations of or corrective amendments to any such financing statements, in any such case in order for Agent to perfect, preserve or protect the Liens, rights and remedies of Agent with respect to the Collateral. Each Borrower also ratifies its authorization for Agent to have filed in any jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof.

(vii) As of the Closing Date, no Borrower holds, and after the Closing Date Borrowers shall promptly notify Agent in writing upon creation or acquisition by any Borrower of, any Collateral which constitutes a claim against any Governmental Authority, including, without limitation, the federal government of the United States or any instrumentality or agency thereof, the assignment of which claim is restricted by any applicable Law, including, without limitation, the federal Assignment of Claims Act and any other comparable Law. Upon the request of Agent, Borrowers shall take such steps as may be necessary or desirable, or that Agent may request, to comply with any such applicable Law.

(viii) Borrowers shall furnish to Agent from time to time any statements and schedules further identifying or describing the Collateral and any other information, reports or evidence concerning the Collateral as Agent may reasonably request from time to time.

ARTICLE 10 - EVENTS OF DEFAULT

Section 10.1 Events of Default. For purposes of the Financing Documents, the occurrence of any of the following conditions and/or events, whether voluntary or involuntary, by operation of law or otherwise, shall constitute an "**Event of Default**":

(a) (i) any Borrower shall fail to pay when due any principal, interest, premium or fee under any Financing Document or any other amount payable under any Financing Document, (ii) there shall occur any default in the performance of or compliance with any of the following sections of this Agreement: Section 2.11, Section 4.2(b), Section 4.4(c), Section 4.6, Section 4.15, Section 4.16, Section 4.17 and Article 5, or (iii) there shall occur any default in the performance of or compliance with

Section 4.1, and/or Article 6 of this Agreement and Borrower Representative has received written notice from Agent or Required Lenders of such Default;

(b) any Credit Party defaults in the performance of or compliance with any term contained in this Agreement or in any other Financing Document (other than occurrences described in other provisions of this Section 10.1 for which a different grace or cure period is specified or for which no grace or cure period is specified and thereby constitute immediate Events of Default) and such default is not remedied by the Credit Party or waived by Agent within fifteen (15) days after the earlier of (i) receipt by Borrower Representative of notice from Agent or Required Lenders of such default, or (ii) actual knowledge of any Borrower or any other Credit Party of such default;

(c) any representation, warranty, certification or statement made by any Credit Party or any other Person in any Financing Document or in any certificate, financial statement or other document delivered pursuant to any Financing Document is incorrect in any respect (or in any material respect if such representation, warranty, certification or statement is not by its terms already qualified as to materiality) when made (or deemed made);

(d) (i) except as prohibited or limited as a result of the Bankruptcy Code, failure of any Credit Party to pay when due or within any applicable grace period any principal, interest or other amount on Debt (other than the Loans), or the occurrence of any breach, default, condition or event with respect to any Debt (other than the Loans) if the effect of such failure or occurrence is to cause or to permit the holder or holders of any such Debt, or to cause, Debt or other liabilities having an individual principal amount in excess of \$250,000 or having an aggregate principal amount in excess of \$250,000 to become or be declared due prior to its stated maturity, or (ii) the occurrence of any breach or default under any terms or provisions of any Subordinated Debt Document or under any agreement subordinating the Subordinated Debt to all or any portion of the Obligations or the occurrence of any event requiring the prepayment of any Subordinated Debt;

(e) Reserved;

(f) Reserved;

(g) (i) institution of any steps by any Person to terminate a Pension Plan if as a result of such termination any Credit Party or any member of the Controlled Group could be required to make a contribution to such Pension Plan, or could incur a liability or obligation to such Pension Plan, in excess of \$150,000, (ii) a contribution failure occurs with respect to any Pension Plan sufficient to give rise to a Lien under Section 303(k) of ERISA or Section 430(k) of the Code or an event occurs that could reasonably be expected to give rise to a Lien under Section 4068 of ERISA, or (iii) there shall occur any withdrawal or partial withdrawal from a Multiemployer Plan and the withdrawal liability (without unaccrued interest) to Multiemployer Plans as a result of such withdrawal (including any outstanding withdrawal liability that any Credit Party or any member of the Controlled Group have incurred on the date of such withdrawal) exceeds \$150,000;

(h) one or more judgments or orders for the payment of money (not paid or fully covered by insurance maintained in accordance with the requirements of this Agreement and as to which the relevant insurance company has acknowledged coverage) aggregating in excess of \$250,000 shall be rendered against any or all Credit Parties and either (i) enforcement proceedings shall have been commenced by any creditor upon any such judgments or orders, or (ii) there shall be any period of twenty (20) consecutive days during which a stay of enforcement of any such judgments or orders, by reason of a pending appeal, bond or otherwise, shall not be in effect;

(i) any Lien created by any of the Security Documents shall at any time fail to constitute a valid and perfected Lien on all of the Collateral purported to be encumbered thereby, subject to no prior or equal Lien except Permitted Liens, or any Credit Party shall so assert;

(j) the institution by any Governmental Authority of criminal proceedings against any Credit Party;

(k) a default or event of default occurs under any Guarantee of any portion of the Obligations, which is not cured within any applicable cure periods;

(l) any Borrower makes any payment on account of any Debt that has been subordinated to any of the Obligations, other than payments specifically permitted by the terms of such subordination;

(m) if any Borrower is or becomes an entity whose equity is registered with the SEC, and/or is publicly traded on and/or registered with a public securities exchange, such Borrower's equity fails to remain registered with the SEC in good standing, and/or such equity fails to remain publicly traded on and registered with a public securities exchange;

(n) the occurrence of any fact, event or circumstance (other than the filing of the Bankruptcy Case) that could reasonably be expected to result in a Material Adverse Effect, if such default shall have continued unremedied for a period of ten (10) days after written notice from Agent;

(o) Agent determines, based on information available to it and in its reasonable judgment, that there is a reasonable likelihood that Borrowers shall fail to comply with one or more financial covenants in Article 6 during the next succeeding financial reporting period;

(p) there shall occur any default or event of default under Prepetition Financing Document or any other Operative Document (other than prepetition defaults under the Operating Lease with the Walker County Hospital District), including, without limitation, any Asset Sale Document and the Parallon Services Agreement, which is not cured within any applicable cure periods;

(q) there shall occur any default or event of default under, or any termination or expiration of, any Operating Lease or any Management Agreement (other than prepetition defaults under the Operating Lease with the Walker County Hospital District), which is not cured within any applicable cure periods;

(r) there shall occur a material adverse change in the financial condition or business prospects of any Borrower or any Project, which default shall have continued unremedied for a period of ten (10) days after written notice from Agent;

(s) any Borrower (or any of its successors or assigns) files a motion or application or adversary proceeding challenging the validity, enforceability, perfection or priority of any claim or Lien securing or pertaining to this Agreement, the other Financing Documents and the credit facility evidenced hereby and thereby or the Obligations;

(t) if (i) the Bankruptcy Case is converted to a case under Chapter 7 of the Bankruptcy Code, (ii) the Bankruptcy Case is dismissed, or (iii) any Borrower shall file any pleading requesting any such relief;

(u) if a Chapter 11 trustee or an examiner with enlarged powers relating to the operations of the Borrowers' business (beyond those set forth under section 1106(a)(3) and (4) of the Bankruptcy Code) is appointed pursuant to section 1104 of the Bankruptcy Code in the Bankruptcy Case;

(v) if any Person other than Agent is granted relief from the automatic stay provided for in the Bankruptcy Case, or such automatic stay is otherwise modified, to permit enforcement of rights by such Person with respect any asset of any Borrower or Guarantor (other than insurance proceeds) (i) that is adverse to the Agent, the Lenders or the Collateral and (ii) having a fair market value in excess of \$50,000 unless otherwise consented to in writing by Agent;

(w) Except (1) as agreed in writing by the Agent and the Lenders and (2) for motions or orders or arrangements approved by the Court or effected and disclosed to the Agent and the Lenders prior to the date hereof, (i) any Borrower shall make, or file a motion seeking, or the Bankruptcy Court shall enter, an order approving, any Prepetition Payment that is not set forth in the DIP Budget, (ii) any Borrower shall file a motion seeking, or the Bankruptcy Court shall enter, an order granting relief from the automatic stay applicable under section 362 of the Bankruptcy Code to any holder of any Lien to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any assets (other than insurance proceeds) having a book value in excess of \$50,000 in the aggregate, excluding relief from stay to set off prepetition deposits or to pursue insured claims against insurance companies to the extent such deposits or claims do not constitute Collateral, or (iii) any Borrower shall enter into or file a motion seeking approval of, or the Bankruptcy Court shall enter an order approving, any other settlement or other stipulation with any creditor of any Borrower, other than the Agent and the Lenders, or otherwise providing for payments as adequate protection (other than lease, rental or financing payments related to equipment that are made in the Ordinary Course of Business as set forth in the DIP Budget) or otherwise to such creditor;

(x) if any Borrower's or Guarantor's Board of Directors (or other governing body) shall authorize the liquidation of such Borrower's or Guarantor's business pursuant to one or more section 363 sales or otherwise or shall file any motion under section 363 of the Bankruptcy Code, other than pursuant to the Asset Sale Documents or as otherwise consented to in writing by Agent and the Required Lenders;

(y) if any Borrower shall fail to comply with or perform any of the terms, conditions, covenants or other obligations under the DIP Orders;

(z) the failure of the Closing Date to occur within two (2) Business Days after entry of the Interim Order without the prior written consent of the Agent;

(aa) the failure of the Final Order Entry Date to occur on or prior to the date that is forty (40) days after the Petition Date without the prior written consent of the Agent;

(bb) any party in interest or other Person files a motion for reconsideration of, or appeals, the Final Order or seeks to modify the Final Order or if the Final Order is modified in any way not acceptable to Agent or the Final Order is vacated or if any party in interest or other Person takes action in contravention of or that is inconsistent with the Final Order;

(cc) if the Borrowers fail to achieve any Milestones as and when required, except as otherwise consented to in writing by Agent;

(dd) except in connection with the Asset Sale, any (i) assumption of any executory contract without first including the associated cure costs in a DIP Budget or (ii) rejection of any provider

agreement issued by Medicare or Medicaid, or any Operating Lease, in each case without the prior written consent of Agent;

(ee) the Borrowers or any Credit Party or any of their subsidiaries, shall seek, obtain court authorization to commence, or shall commence, join in, assist or otherwise participate as an adverse party in any suit or other proceeding against the Agent or any of the Lenders relating to the credit facilities provided hereunder or against the Prepetition Agent or Prepetition Lenders, unless such suit or other proceeding is in connection with the enforcement of the Financing Documents against Agent or Lenders;

(ff) (i) the amendment, modification, reversal, revocation, issuance of a stay or order to vacate or supplement the (A) Interim Order, the Final Order, any Asset Sale Order or any other order of the Bankruptcy Court affecting this Agreement, any other Financing Document, the Asset Sale or the transactions contemplated hereby or thereby, in each case, in any manner not acceptable to Agent and the Required Lenders or (B) the Plan of Reorganization to the extent such amendment, modification, reversal, revocation, issuance or supplement results in the Prepetition Obligations and the Obligations not being paid in full in cash on or before the Reorganization Effective Date or reflects that the Prepetition Obligations or the Obligations will not be paid in full in cash on or before the Reorganization Effective Date or (ii) the termination of any Asset Purchase Agreement by Buyer;

(gg) the filing of a motion, pleading, or proceeding by Borrowers, or any of its Affiliates, that could reasonably be expected to result in a material impairment of the rights or interests of the Agent or any Lender or a determination by the Bankruptcy Court or any other Governmental Authority with respect to a motion, pleading or proceeding brought by another party that results in a material impairment of the rights, claims and Liens relating to this Agreement, the other Financing Documents and the DIP Facility or the Obligations;

(hh) if the Borrowers fail to pay in full in cash, on the Closing Date, the Prepetition Obligations, or if the Confirmation Order shall fail to provide for the payment in full, in cash of all Obligations and Prepetition Obligations on or before the Reorganization Effective Date;

(ii) the circulation or distribution by or on behalf of the Borrowers of any plan of liquidation, plan of reorganization, disclosure statement and/or motion for entry of a Dismissal Order, or draft thereof (or term sheet or similar indicative statements of terms thereof) that does not provide for repayment in full in cash of all Prepetition Obligations (to the extent not already paid in full in cash with the proceeds of the Obligations) and all Obligations before or at the Reorganization Effective Date;

(jj) if any Plan Documentation or motion for entry of a Dismissal Order is executed, filed or delivered or any confirmation order is entered that does not provide for repayment in full in cash of all Prepetition Obligations (to the extent not already paid in full in cash with the proceeds of the Obligations) and all Obligations before or at the Reorganization Effective Date;

(kk) the existence of any claims or charges, or the entry of any order of the Bankruptcy Court authorizing any claims or charges, other than in respect of the DIP Facility or the Carve-Out, entitled to superpriority under section 364(c)(1) of the Bankruptcy Code *pari passu* or senior to the Obligations, or there shall arise or be granted by the Bankruptcy Court (i) any claim having priority over any or all administrative expenses of the kind specified in clause (b) of section 503 of the Bankruptcy Code or clause (b) of Section 507 of the Bankruptcy Code (other than the Carve-Out) or (ii) any Lien on the Collateral having a priority senior to or *pari passu* with the Liens and security interests granted herein, in the Security Documents or the DIP Orders, except as expressly consented to by Agent;

(ll) if there is a stay or injunction of the Confirmation Order or Dismissal Order in effect precluding the consummation of the transactions contemplated thereby;

(mm) any lien securing or superpriority claim in respect of the Obligations shall cease to be valid, perfected (if applicable) and enforceable in all respects or to have the priority granted under the Security Documents, the Interim Order (prior to the Final Order Entry Date) and the Final Order; or

(nn) if a Variance occurs (provided that, notwithstanding the percentages set forth in the definition of "Variance", any Variance with respect to the payment of professional fees set forth in the DIP Budget shall be an Event of Default without regard to the percentage of such Variance).

Notwithstanding the foregoing, if a Credit Party fails to comply with any same provision of this Agreement two (2) times in any twelve (12) month period and Agent has given to Borrower Representative in connection with each such failure any notice to which Borrowers would be entitled under this Section before such failure could become an Event of Default, then all subsequent failures by a Credit Party to comply with such provision of this Agreement shall effect an immediate Event of Default (without the expiration of any applicable cure period) with respect to all subsequent failures by a Credit Party to comply with such provision of this Agreement, and Agent thereupon may exercise any remedy set forth in this Article 10 without affording Borrowers any opportunity to cure such Event of Default.

All cure periods provided for in this Section 10.1 shall run concurrently with any cure period provided for in any applicable Financing Documents under which the default occurred.

Section 10.2 Acceleration and Suspension or Termination of Revolving Loan Commitment. Subject to the terms of the DIP Orders, upon the occurrence and during the continuance of an Event of Default, Agent may, and shall if requested by Required Lenders, (a) by notice to Borrower Representative suspend or terminate the Revolving Loan Commitment and the obligations of Agent and the Lenders with respect thereto, in whole or in part (and, if in part, each Lender's Revolving Loan Commitment shall be reduced in accordance with its Pro Rata Share), and/or (b) by notice to Borrower Representative declare all or any portion of the Obligations to be, and the Obligations shall thereupon become, immediately due and payable, with accrued interest thereon, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Borrower and Borrowers will pay the same; *provided, however*, that in the case of any of the Events of Default specified in subsections (t) through (nn) of Section 10.1, without any notice to any Credit Party or any other act by Agent or the Lenders, the Revolving Loan Commitment and the obligations of Agent and the Lenders with respect thereto shall thereupon immediately and automatically terminate and all of the Obligations shall become immediately and automatically due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Borrower and Borrowers will pay the same.

Section 10.3 UCC Remedies.

(a) Notwithstanding the provisions of section 362 of the Bankruptcy Code and subject to the terms of the DIP Orders, upon the occurrence of and during the continuance of an Event of Default, Agent, in addition to all other rights, options, and remedies granted to Agent under this Agreement or at law or in equity, may exercise, either directly or through one or more assignees or designees, all rights and remedies granted to it under all Financing Documents and under the UCC in effect in the applicable jurisdiction(s) and under any other applicable law; including, without limitation:

(i) the right to take possession of, send notices regarding, and collect directly the Collateral, with or without judicial process;

(ii) the right to (by its own means or with judicial assistance) enter any of Borrowers' premises and take possession of the Collateral, or render it unusable, or to render it usable or saleable, or dispose of the Collateral on such premises in compliance with subsection (iii) below and to take possession of Borrowers' original books and records, to obtain access to Borrowers' data processing equipment, computer hardware and software relating to the Collateral and to use all of the foregoing and the information contained therein in any manner Agent deems appropriate, without any liability for rent, storage, utilities, or other sums, and Borrowers shall not resist or interfere with such action (if Borrowers' books and records are prepared or maintained by an accounting service, contractor or other third party agent, Borrowers hereby irrevocably authorize such service, contractor or other agent, upon notice by Agent to such Person that an Event of Default has occurred and is continuing, to deliver to Agent or its designees such books and records, and to follow Agent's instructions with respect to further services to be rendered);

(iii) the right to require Borrowers at Borrowers' expense to assemble all or any part of the Collateral and make it available to Agent at any place designated by Lender;

(iv) the right to notify postal authorities to change the address for delivery of Borrowers' mail to an address designated by Agent and to receive, open and dispose of all mail addressed to any Borrower; and/or

(v) the right to enforce Borrowers' rights against Account Debtors and other obligors, including, without limitation, (i) the right to collect Accounts directly in Agent's own name (as agent for Lenders) and to charge the collection costs and expenses, including attorneys' fees, to Borrowers, and (ii) the right, in the name of Agent or any designee of Agent or Borrowers, to verify the validity, amount or any other matter relating to any Accounts by mail, telephone, telegraph or otherwise, including, without limitation, verification of Borrowers' compliance with applicable Laws. Borrowers shall cooperate fully with Agent in an effort to facilitate and promptly conclude such verification process. Such verification may include contacts between Agent and applicable federal, state and local regulatory authorities having jurisdiction over the Borrowers' affairs, all of which contacts Borrowers hereby irrevocably authorize.

(b) Notwithstanding the provisions of section 362 of the Bankruptcy Code and subject to the terms of the DIP Orders, each Borrower agrees that a notice received by it at least ten (10) days before the time of any intended public sale, or the time after which any private sale or other disposition of the Collateral is to be made, shall be deemed to be reasonable notice of such sale or other disposition. If permitted by applicable law, any perishable Collateral which threatens to speedily decline in value or which is sold on a recognized market may be sold immediately by Agent without prior notice to Borrowers. At any sale or disposition of Collateral, Agent may (to the extent permitted by applicable law) purchase all or any part of the Collateral, free from any right of redemption by Borrowers, which right is hereby waived and released. Each Borrower covenants and agrees not to interfere with or impose any obstacle to Agent's exercise of its rights and remedies with respect to the Collateral. Agent shall have no obligation to clean-up or otherwise prepare the Collateral for sale. Agent may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral and compliance will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. Agent may sell the Collateral without giving any warranties as to the Collateral. Agent may specifically disclaim any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. If Agent sells any of the Collateral upon credit, Borrowers will be credited only with payments actually made by the purchaser, received by Agent and applied to the indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, Agent may resell the Collateral and

Borrowers shall be credited with the proceeds of the sale. Borrowers shall remain liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all Obligations.

(c) Without restricting the generality of the foregoing and for the purposes aforesaid, each Borrower hereby appoints and constitutes Agent its lawful attorney-in-fact with full power of substitution in the Collateral, upon the occurrence and during the continuance of an Event of Default, to (i) use unadvanced funds remaining under this Agreement or which may be reserved, escrowed or set aside for any purposes hereunder at any time, or to advance funds in excess of the principal amount of the Loans (and, if applicable, the face amount of any Notes), (ii) pay, settle or compromise all existing bills and claims, which may be Liens or security interests, or to avoid such bills and claims becoming Liens against the Collateral, (iii) execute all applications and certificates in the name of such Borrower and to prosecute and defend all actions or proceedings in connection with the Collateral, and (iv) do any and every act which such Borrower might do in its own behalf; it being understood and agreed that this power of attorney in this subsection (c) shall be a power coupled with an interest and cannot be revoked.

(d) Agent and each Lender is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrowers' labels, mask works, rights of use of any name, any other Intellectual Property and advertising matter, and any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Agent's exercise of its rights under this Article, Borrowers' rights under all licenses (whether as licensor or licensee) and all franchise agreements inure to Agent's and each Lender's benefit.

Section 10.4 Terminated Use of Cash Collateral. Without limitation of any of the remedies set forth in this Agreement and the other Financing Documents, upon the occurrence and during the continuance of an Event of Default, or upon the occurrence of the Termination Date, no Borrower or Guarantor shall have any right to use or seek to use any cash collateral (as defined in section 363(a) of the Bankruptcy Code) in which Agent or the Lenders has an interest.

Section 10.5 Default Rate of Interest. Subject to the terms of the DIP Orders, at the election of Agent or Required Lenders, after the occurrence of an Event of Default and for so long as it continues, the Loans and other Obligations shall bear interest at rates that are five percent (5.0%) per annum in excess of the rates otherwise payable under this Agreement; *provided*, however, that in the case of any of the Events of Default specified in subsections (t) through (nn) of Section 10.1, such default rates shall apply immediately and automatically without the need for any election or action of any kind on the part of Agent or any Lender.

Section 10.6 Setoff Rights. Notwithstanding the provisions of section 362 of the Bankruptcy Code and subject to the terms of the DIP Orders, during the continuance of any Event of Default, each Lender is hereby authorized to set off and to appropriate and to apply any and all (a) balances held by such Lender or any of such Lender's Affiliates at any of its offices for the account of such Borrower or any of its Subsidiaries (regardless of whether such balances are then due to such Borrower or its Subsidiaries), and (b) other property at any time held or owing by such Lender to or for the credit or for the account of such Borrower or any of its Subsidiaries, against and on account of any of the Obligations; except that no Lender shall exercise any such right without the prior written consent of Agent. Any Lender exercising a right to set off shall purchase for cash (and the other Lenders shall sell) interests in each of such other Lender's Pro Rata Share of the Obligations as would be necessary to cause all Lenders to share the amount so set off with each other Lender in accordance with their respective Pro Rata Share of the Obligations. Each Borrower agrees, to the fullest extent permitted by law, that any Lender and any of such Lender's Affiliates may exercise its right to set off with respect to the Obligations as provided in this Section 10.6.

Section 10.7 Application of Proceeds.

(a) Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuance of an Event of Default, each Borrower irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by Agent from or on behalf of such Borrower or any Guarantor of all or any part of the Obligations, and, as between Borrowers on the one hand and Agent and Lenders on the other, Agent shall have the continuing and exclusive right to apply and to reapply any and all payments received against the Obligations in such manner as Agent may deem advisable notwithstanding any previous application by Agent.

(b) Notwithstanding anything to the contrary contained in this Agreement,

(i) Prior the Final Order Entry Date, and so long as no Event of Default has occurred and is continuing, Agent shall apply any and all payments received by Agent in respect to the Obligations, and any and all proceeds of Collateral received by Agent, in the following order: first, to the outstanding Prepetition Obligations, second, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to Agent with respect to this Agreement, the other Financing Documents or the Collateral; third, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to any Lender with respect to this Agreement, the other Financing Documents or the Collateral; fourth, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the Bankruptcy Code, would have accrued on such amounts); fifth to the principal amount of the Obligations outstanding; and sixth to any other indebtedness or obligations of Borrowers owing to Agent or any Lender under the Financing Documents. Any balance remaining shall be delivered to Borrowers or to whomever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct. In carrying out the foregoing, (y) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (z) each of the Persons entitled to receive a payment in any particular category shall receive an amount equal to its Pro Rata Share of amounts available to be applied pursuant thereto for such category.

(ii) Upon and after the Final Order Entry Date or following any occurrence and during the continuance of an Event of Default (including prior to the Final Order Entry Date), but absent the occurrence and continuance of an Acceleration Event, Agent shall apply any and all payments received by Agent in respect of the Obligations, and any and all proceeds of Collateral received by Agent, in such order as Agent may from time to time elect.

(iii) Upon and after the occurrence of an Acceleration Event, and for so long as it continues, Agent shall apply any and all payments received by Agent in respect of the Obligations, and any and all proceeds of Collateral received by Agent, in the following order: first, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to Agent with respect to this Agreement, the other Financing Documents or the Collateral; second, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to any Lender with respect to this Agreement, the other Financing Documents or the Collateral; third, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the Bankruptcy Code, would have accrued on such amounts); fourth, to the principal amount of the Obligations outstanding; fifth to any other indebtedness or obligations of Borrowers owing to Agent or any Lender under the Financing Documents; and sixth, to any and all of the other Prepetition Obligations that may be outstanding in the order and manner determined by Agent. Any balance remaining shall be delivered to Borrowers or to whomever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct. In carrying out the foregoing, (y) amounts received shall be applied in the numerical order provided until exhausted

prior to the application to the next succeeding category, and (z) each of the Persons entitled to receive a payment in any particular category shall receive an amount equal to its Pro Rata Share of amounts available to be applied pursuant thereto for such category.

Section 10.8 Waivers.

(a) Except as otherwise provided for in this Agreement and to the fullest extent permitted by applicable law, each Borrower waives: (i) presentment, demand and protest, and notice of presentment, dishonor, intent to accelerate, acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all Financing Documents, the Notes or any other notes, commercial paper, accounts, contracts, documents, Instruments, Chattel Paper and Guarantees at any time held by Lenders on which any Borrower may in any way be liable, and hereby ratifies and confirms whatever Lenders may do in this regard; (ii) all rights to notice and a hearing prior to Agent's or any Lender's taking possession or control of, or to Agent's or any Lender's replevy, attachment or levy upon, any Collateral or any bond or security which might be required by any court prior to allowing Agent or any Lender to exercise any of its remedies; and (iii) the benefit of all valuation, appraisal and exemption Laws. Each Borrower acknowledges that it has been advised by counsel of its choices and decisions with respect to this Agreement, the other Financing Documents and the transactions evidenced hereby and thereby.

(b) Each Borrower for itself and all its successors and assigns, (i) agrees that its liability shall not be in any manner affected by any indulgence, extension of time, renewal, waiver, or modification granted or consented to by Lender; (ii) consents to any indulgences and all extensions of time, renewals, waivers, or modifications that may be granted by Agent or any Lender with respect to the payment or other provisions of the Financing Documents, and to any substitution, exchange or release of the Collateral, or any part thereof, with or without substitution, and agrees to the addition or release of any Borrower, endorsers, guarantors, or sureties, or whether primarily or secondarily liable, without notice to any other Borrower and without affecting its liability hereunder; (iii) agrees that its liability shall be unconditional and without regard to the liability of any other Borrower, Agent or any Lender for any tax on the indebtedness; and (iv) to the fullest extent permitted by law, expressly waives the benefit of any statute or rule of law or equity now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the foregoing.

(c) To the extent that Agent or any Lender may have acquiesced in any noncompliance with any requirements or conditions precedent to the closing of the Loans or to any subsequent disbursement of Loan proceeds, such acquiescence shall not be deemed to constitute a waiver by Agent or any Lender of such requirements with respect to any future disbursements of Loan proceeds and Agent may at any time after such acquiescence require Borrowers to comply with all such requirements. Any forbearance by Agent or Lender in exercising any right or remedy under any of the Financing Documents, or otherwise afforded by applicable law, including any failure to accelerate the maturity date of the Loans, shall not be a waiver of or preclude the exercise of any right or remedy nor shall it serve as a novation of this Agreement or any other Financing Document or as a reinstatement of the Loans or a waiver of such right of acceleration or the right to insist upon strict compliance of the terms of the Financing Documents. Agent's or any Lender's acceptance of payment of any sum secured by any of the Financing Documents after the due date of such payment shall not be a waiver of Agent's and such Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other Liens or charges by Agent as the result of an Event of Default shall not be a waiver of Agent's right to accelerate the maturity of the Loans, nor shall Agent's receipt of any condemnation awards, insurance proceeds, or damages under this Agreement operate to cure or waive any Credit Party's default in payment of sums secured by any of the Financing Documents.

(d) Without limiting the generality of anything contained in this Agreement or the other Financing Documents, each Borrower agrees that if an Event of Default is continuing (i) Agent and Lenders shall not be subject to any “one action” or “election of remedies” law or rule, and (ii) all Liens and other rights, remedies or privileges provided to Agent or Lenders shall remain in full force and effect until Agent or Lenders have exhausted all remedies against the Collateral and any other properties owned by Borrowers and the Financing Documents and other security instruments or agreements securing the Loans have been foreclosed, sold and/or otherwise realized upon in satisfaction of Borrowers’ obligations under the Financing Documents.

(e) Nothing contained herein or in any other Financing Document shall be construed as requiring Agent or any Lender to resort to any part of the Collateral for the satisfaction of any of Borrowers’ obligations under the Financing Documents in preference or priority to any other Collateral, and Agent may seek satisfaction out of all of the Collateral or any part thereof, in its absolute discretion in respect of Borrowers’ obligations under the Financing Documents. In addition, Agent shall have the right from time to time to partially foreclose upon any Collateral in any manner and for any amounts secured by the Financing Documents then due and payable as determined by Agent in its sole discretion, including, without limitation, the following circumstances: (i) in the event any Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and/or interest, Agent may foreclose upon all or any part of the Collateral to recover such delinquent payments, or (ii) in the event Agent elects to accelerate less than the entire outstanding principal balance of the Loans, Agent may foreclose all or any part of the Collateral to recover so much of the principal balance of the Loans as Lender may accelerate and such other sums secured by one or more of the Financing Documents as Agent may elect. Notwithstanding one or more partial foreclosures, any unforeclosed Collateral shall remain subject to the Financing Documents to secure payment of sums secured by the Financing Documents and not previously recovered.

(f) To the fullest extent permitted by law, each Borrower, for itself and its successors and assigns, waives in the event of foreclosure of any or all of the Collateral any equitable right otherwise available to any Credit Party which would require the separate sale of any of the Collateral or require Agent or Lenders to exhaust their remedies against any part of the Collateral before proceeding against any other part of the Collateral; and further in the event of such foreclosure each Borrower does hereby expressly consent to and authorize, at the option of Agent, the foreclosure and sale either separately or together of each part of the Collateral.

Section 10.9 Injunctive Relief. The parties acknowledge and agree that, in the event of a breach or threatened breach of any Credit Party’s obligations under any Financing Documents, Agent and Lenders may have no adequate remedy in money damages and, accordingly, shall be entitled to an injunction (including, without limitation, a temporary restraining order, preliminary injunction, writ of attachment, or order compelling an audit) against such breach or threatened breach, including, without limitation, maintaining any cash management and collection procedure described herein. However, no specification in this Agreement of a specific legal or equitable remedy shall be construed as a waiver or prohibition against any other legal or equitable remedies in the event of a breach or threatened breach of any provision of this Agreement. Each Credit Party waives, to the fullest extent permitted by law, the requirement of the posting of any bond in connection with such injunctive relief. By joining in the Financing Documents as a Credit Party, each Credit Party specifically joins in this Section as if this Section were a part of each Financing Document executed by such Credit Party.

Section 10.10 Marshalling; Payments Set Aside. Neither Agent nor any Lender shall be under any obligation to marshal any assets in payment of any or all of the Obligations. To the extent that Borrower makes any payment or Agent enforces its Liens or Agent or any Lender exercises its right of set-off, and such payment or the proceeds of such enforcement or set-off is subsequently invalidated, declared to be

fraudulent or preferential, set aside, or required to be repaid by anyone, then to the extent of such recovery, the Obligations 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 been made or such enforcement or set-off had not occurred.

ARTICLE 11 - AGENT

Section 11.1 Appointment and Authorization. Each Lender hereby irrevocably appoints and authorizes Agent to enter into each of the Financing Documents to which it is a party (other than this Agreement) on its behalf and to take such actions as Agent on its behalf and to exercise such powers under the Financing Documents as are delegated to Agent by the terms thereof, together with all such powers as are reasonably incidental thereto. Subject to the terms of Section 11.16 and to the terms of the other Financing Documents, Agent is authorized and empowered to amend, modify, or waive any provisions of this Agreement or the other Financing Documents on behalf of Lenders. The provisions of this Article 11 are solely for the benefit of Agent and Lenders and neither any Borrower nor any other Credit Party shall have any rights as a third party beneficiary of any of the provisions hereof. In performing its functions and duties under this Agreement, Agent shall act solely as agent of Lenders and does not assume and shall not be deemed to have assumed any obligation toward or relationship of agency or trust with or for any Borrower or any other Credit Party. Agent may perform any of its duties hereunder, or under the Financing Documents, by or through its agents, servicers, trustees, investment managers or employees.

Section 11.2 Agent and Affiliates. Agent shall have the same rights and powers under the Financing Documents as any other Lender and may exercise or refrain from exercising the same as though it were not Agent, and Agent and its Affiliates may lend money to, invest in and generally engage in any kind of business with each Credit Party or Affiliate of any Credit Party as if it were not Agent hereunder.

Section 11.3 Action by Agent. The duties of Agent shall be mechanical and administrative in nature. Agent shall not have by reason of this Agreement a fiduciary relationship in respect of any Lender. Nothing in this Agreement or any of the Financing Documents is intended to or shall be construed to impose upon Agent any obligations in respect of this Agreement or any of the Financing Documents except as expressly set forth herein or therein.

Section 11.4 Consultation with Experts. Agent may consult with legal counsel, independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the advice of such counsel, accountants or experts.

Section 11.5 Liability of Agent. Neither Agent nor any of its directors, officers, agents, trustees, investment managers, servicers or employees shall be liable to any Lender for any action taken or not taken by it in connection with the Financing Documents, except that Agent shall be liable with respect to its specific duties set forth hereunder but only to the extent of its own gross negligence or willful misconduct in the discharge thereof as determined by a final non-appealable judgment of a court of competent jurisdiction. Neither Agent nor any of its directors, officers, agents, trustees, investment managers, servicers or employees shall be responsible for or have any duty to ascertain, inquire into or verify (a) any statement, warranty or representation made in connection with any Financing Document or any borrowing hereunder; (b) the performance or observance of any of the covenants or agreements specified in any Financing Document; (c) the satisfaction of any condition specified in any Financing Document; (d) the validity, effectiveness, sufficiency or genuineness of any Financing Document, any Lien purported to be created or perfected thereby or any other instrument or writing furnished in connection therewith; (e) the existence or non-existence of any Default or Event of Default; or (f) the financial condition of any Credit Party. Agent shall not incur any liability by acting in reliance upon any notice, consent, certificate, statement, or other writing (which may be a bank wire, facsimile or electronic transmission or similar

writing) believed by it to be genuine or to be signed by the proper party or parties. Agent shall not be liable for any apportionment or distribution of payments made by it in good faith and if any such apportionment or distribution is subsequently determined to have been made in error the sole recourse of any Lender to whom payment was due but not made, shall be to recover from other Lenders any payment in excess of the amount to which they are determined to be entitled (and such other Lenders hereby agree to return to such Lender any such erroneous payments received by them).

Section 11.6 Indemnification. Each Lender shall, in accordance with its Pro Rata Share, indemnify Agent (to the extent not reimbursed by Borrowers) upon demand against any cost, expense (including counsel fees and disbursements), claim, demand, action, loss or liability (except such as result from Agent's gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction) that Agent may suffer or incur in connection with the Financing Documents or any action taken or omitted by Agent hereunder or thereunder. If any indemnity furnished to Agent for any purpose shall, in the opinion of Agent, be insufficient or become impaired, Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against even if so directed by Required Lenders until such additional indemnity is furnished.

Section 11.7 Right to Request and Act on Instructions. Agent may at any time request instructions from Lenders with respect to any actions or approvals which by the terms of this Agreement or of any of the Financing Documents Agent is permitted or desires to take or to grant, and if such instructions are promptly requested, Agent shall be absolutely entitled to refrain from taking any action or to withhold any approval and shall not be under any liability whatsoever to any Person for refraining from any action or withholding any approval under any of the Financing Documents until it shall have received such instructions from Required Lenders or all or such other portion of the Lenders as shall be prescribed by this Agreement. Without limiting the foregoing, no Lender shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting under this Agreement or any of the other Financing Documents in accordance with the instructions of Required Lenders (or all or such other portion of the Lenders as shall be prescribed by this Agreement) and, notwithstanding the instructions of Required Lenders (or such other applicable portion of the Lenders), Agent shall have no obligation to take any action if it believes, in good faith, that such action would violate applicable Law or exposes Agent to any liability for which it has not received satisfactory indemnification in accordance with the provisions of Section 11.6.

Section 11.8 Credit Decision. Each Lender acknowledges that it has, independently and without reliance upon Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking any action under the Financing Documents.

Section 11.9 Collateral Matters. Lenders irrevocably authorize Agent, at its option and in its discretion, to (a) release any Lien granted to or held by Agent under any Security Document (i) upon termination of the Revolving Loan Commitment and payment in full of all Obligations; or (ii) constituting property sold or disposed of as part of or in connection with any disposition permitted under any Financing Document (it being understood and agreed that Agent may conclusively rely without further inquiry on a certificate of a Responsible Officer as to the sale or other disposition of property being made in full compliance with the provisions of the Financing Documents); and (b) subordinate any Lien granted to or held by Agent under any Security Document to a Permitted Lien that is allowed to have priority over the Liens granted to or held by Agent pursuant to the definition of "Permitted Liens". Upon request by Agent at any time, Lenders will confirm Agent's authority to release and/or subordinate particular types or items of Collateral pursuant to this Section 11.9.

Section 11.10 Agency for Perfection. Agent and each Lender hereby appoint each other Lender as agent for the purpose of perfecting Agent's security interest in assets which, in accordance with the Uniform Commercial Code in any applicable jurisdiction, can be perfected by possession or control. Should any Lender (other than Agent) obtain possession or control of any such assets, such Lender shall notify Agent thereof, and, promptly upon Agent's request therefor, shall deliver such assets to Agent or in accordance with Agent's instructions or transfer control to Agent in accordance with Agent's instructions. Each Lender agrees that it will not have any right individually to enforce or seek to enforce any Security Document or to realize upon any Collateral for the Loan unless instructed to do so by Agent (or consented to by Agent), it being understood and agreed that such rights and remedies may be exercised only by Agent.

Section 11.11 Notice of Default. Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default except with respect to defaults in the payment of principal, interest and fees required to be paid to Agent for the account of Lenders, unless Agent shall have received written notice from a Lender or a Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". Agent will notify each Lender of its receipt of any such notice. Agent shall take such action with respect to such Default or Event of Default as may be requested by Required Lenders (or all or such other portion of the Lenders as shall be prescribed by this Agreement) in accordance with the terms hereof. Unless and until Agent has received any such request, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable or in the best interests of Lenders.

Section 11.12 Assignment by Agent; Resignation of Agent; Successor Agent.

(a) Agent may at any time assign its rights, powers, privileges and duties hereunder to (i) another Lender, or (ii) any Person to whom Agent, in its capacity as a Lender, has assigned (or will assign, in conjunction with such assignment of agency rights hereunder) 50% or more of its Loan, in each case without the consent of the Lenders or Borrowers. Following any such assignment, Agent shall give notice to the Lenders and Borrowers. An assignment by Agent pursuant to this subsection (a) shall not be deemed a resignation by Agent for purposes of subsection (b) below.

(b) Without limiting the rights of Agent to designate an assignee pursuant to subsection (a) above, Agent may at any time give notice of its resignation to the Lenders and Borrowers. Upon receipt of any such notice of resignation, Required Lenders shall have the right to appoint a successor Agent. If no such successor shall have been so appointed by Required Lenders and shall have accepted such appointment within ten (10) Business Days after the retiring Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders, appoint a successor Agent; *provided, however*, that if Agent shall notify Borrowers and the Lenders that no Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice from Agent that no Person has accepted such appointment and, from and following delivery of such notice, (i) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Financing Documents, and (ii) all payments, communications and determinations provided to be made by, to or through Agent shall instead be made by or to each Lender directly, until such time as Required Lenders appoint a successor Agent as provided for above in this paragraph.

(c) Upon (i) an assignment permitted by subsection (a) above, or (ii) the acceptance of a successor's appointment as Agent pursuant to subsection (b) above, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder and under the other Financing Documents (if not already discharged therefrom as provided above in this paragraph). The fees payable by Borrowers to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrowers and such successor. After the retiring Agent's resignation hereunder

and under the other Financing Documents, the provisions of this Article and Section 11.12 shall continue in effect for the benefit of such retiring Agent and its sub-agents in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting or was continuing to act as Agent.

Section 11.13 Payment and Sharing of Payment.

(a) Revolving Loan Advances, Payments and Settlements; Interest and Fee Payments.

(i) Agent shall have the right, on behalf of Revolving Lenders to disburse funds to Borrowers for all Revolving Loans requested or deemed requested by Borrowers pursuant to the terms of this Agreement. Agent shall be conclusively entitled to assume, for purposes of the preceding sentence, that each Revolving Lender, other than any Non-Funding Lenders, will fund its Pro Rata Share of all Revolving Loans requested by Borrowers. Each Revolving Lender shall reimburse Agent on demand, in accordance with the provisions of the immediately following paragraph, for all funds disbursed on its behalf by Agent pursuant to the first sentence of this clause (i), or if Agent so requests, each Revolving Lender will remit to Agent its Pro Rata Share of any Revolving Loan before Agent disburses the same to a Borrower. If Agent elects to require that each Revolving Lender make funds available to Agent, prior to a disbursement by Agent to a Borrower, Agent shall advise each Revolving Lender by telephone, facsimile or e-mail of the amount of such Revolving Lender's Pro Rata Share of the Revolving Loan requested by such Borrower no later than noon (Eastern time) on the date of funding of such Revolving Loan, and each such Revolving Lender shall pay Agent on such date such Revolving Lender's Pro Rata Share of such requested Revolving Loan, in same day funds, by wire transfer to the Payment Account, or such other account as may be identified by Agent to Revolving Lenders from time to time. If any Lender fails to pay the amount of its Pro Rata Share of any funds advanced by Agent pursuant to the first sentence of this clause (i) within one (1) Business Day after Agent's demand, Agent shall promptly notify Borrower Representative, and Borrowers shall immediately repay such amount to Agent. Any repayment required by Borrowers pursuant to this Section 11.13 shall be accompanied by accrued interest thereon from and including the date such amount is made available to a Borrower to but excluding the date of payment at the rate of interest then applicable to Revolving Loans. Nothing in this Section 11.13 or elsewhere in this Agreement or the other Financing Documents shall be deemed to require Agent to advance funds on behalf of any Lender or to relieve any Lender from its obligation to fulfill its commitments hereunder or to prejudice any rights that Agent or any Borrower may have against any Lender as a result of any default by such Lender hereunder.

(ii) On a Business Day of each week as selected from time to time by Agent, or more frequently (including daily), if Agent so elects (each such day being a "**Settlement Date**"), Agent will advise each Revolving Lender by telephone, facsimile or e-mail of the amount of each such Revolving Lender's percentage interest of the Revolving Loan balance as of the close of business of the Business Day immediately preceding the Settlement Date. In the event that payments are necessary to adjust the amount of such Revolving Lender's actual percentage interest of the Revolving Loans to such Lender's required percentage interest of the Revolving Loan balance as of any Settlement Date, the Revolving Lender from which such payment is due shall pay Agent, without setoff or discount, to the Payment Account before 1:00 p.m. (Eastern time) on the Business Day following the Settlement Date the full amount necessary to make such adjustment. Any obligation arising pursuant to the immediately preceding sentence shall be absolute and unconditional and shall not be affected by any circumstance whatsoever. In the event settlement shall not have occurred by the date and time specified in the second preceding sentence, interest shall accrue on the unsettled amount at the rate of interest then applicable to Revolving Loans.

(iii) On each Settlement Date, Agent shall advise each Revolving Lender by telephone, facsimile or e-mail of the amount of such Revolving Lender's percentage interest of principal, interest and fees paid for the benefit of Revolving Lenders with respect to each applicable Revolving Loan, to the extent of such Revolving Lender's Revolving Loan Exposure with respect thereto, and shall make payment to such Revolving Lender before 1:00 p.m. (Eastern time) on the Business Day following the Settlement Date of such amounts in accordance with wire instructions delivered by such Revolving Lender to Agent, as the same may be modified from time to time by written notice to Agent; *provided, however*, that, in the case such Revolving Lender is a Defaulted Lender, Agent shall be entitled to set off the funding short-fall against that Defaulted Lender's respective share of all payments received from any Borrower.

(iv) On the Closing Date, Agent, on behalf of Lenders, may elect to advance to Borrowers the full amount of the initial Loans to be made on the Closing Date prior to receiving funds from Lenders, in reliance upon each Lender's commitment to make its Pro Rata Share of such Loans to Borrowers in a timely manner on such date. If Agent elects to advance the initial Loans to Borrower in such manner, Agent shall be entitled to receive all interest that accrues on the Closing Date on each Lender's Pro Rata Share of such Loans unless Agent receives such Lender's Pro Rata Share of such Loans before 3:00 p.m. (Eastern time) on the Closing Date.

(v) It is understood that for purposes of advances to Borrowers made pursuant to this Section 11.13, Agent will be using the funds of Agent, and pending settlement, (A) all funds transferred from the Payment Account to the outstanding Revolving Loans shall be applied first to advances made by Agent to Borrowers pursuant to this Section 11.13, and (B) all interest accruing on such advances shall be payable to Agent.

(vi) The provisions of this Section 11.13(a) shall be deemed to be binding upon Agent and Lenders notwithstanding the occurrence of any Default or Event of Default, or any insolvency or bankruptcy proceeding pertaining to any Borrower or any other Credit Party.

(b) Reserved.

(c) Return of Payments.

(i) If Agent pays an amount to a Lender under this Agreement in the belief or expectation that a related payment has been or will be received by Agent from a Borrower and such related payment is not received by Agent, then Agent will be entitled to recover such amount from such Lender on demand without setoff, counterclaim or deduction of any kind, together with interest accruing on a daily basis at the Federal Funds Rate.

(ii) If Agent determines at any time that any amount received by Agent under this Agreement must be returned to any Borrower or paid to any other Person pursuant to any insolvency law or otherwise, then, notwithstanding any other term or condition of this Agreement or any other Financing Document, Agent will not be required to distribute any portion thereof to any Lender. In addition, each Lender will repay to Agent on demand any portion of such amount that Agent has distributed to such Lender, together with interest at such rate, if any, as Agent is required to pay to any Borrower or such other Person, without setoff, counterclaim or deduction of any kind.

(d) Defaulted Lenders. The failure of any Defaulted Lender to make any payment required by it hereunder shall not relieve any other Lender of its obligations to make payment, but neither any other Lender nor Agent shall be responsible for the failure of any Defaulted Lender to make any

payment required hereunder. Notwithstanding anything set forth herein to the contrary, a Defaulted Lender shall not have any voting or consent rights under or with respect to any Financing Document or constitute a “Lender” (or be included in the calculation of “Required Lenders” hereunder) for any voting or consent rights under or with respect to any Financing Document.

(e) Sharing of Payments. If any Lender shall obtain any payment or other recovery (whether voluntary, involuntary, by application of setoff or otherwise) on account of any Loan (other than pursuant to the terms of Section 2.8(d)) in excess of its Pro Rata Share of payments entitled pursuant to the other provisions of this Section 11.13, such Lender shall purchase from the other Lenders such participations in extensions of credit made by such other Lenders (without recourse, representation or warranty) as shall be necessary to cause such purchasing Lender to share the excess payment or other recovery ratably with each of them; *provided, however*, that if all or any portion of the excess payment or other recovery is thereafter required to be returned or otherwise recovered from such purchasing Lender, such portion of such purchase shall be rescinded and each Lender which has sold a participation to the purchasing Lender shall repay to the purchasing Lender the purchase price to the ratable extent of such return or recovery, without interest. Each Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this clause (e) may, to the fullest extent permitted by law, exercise all its rights of payment (including pursuant to Section 10.6) with respect to such participation as fully as if such Lender were the direct creditor of Borrowers in the amount of such participation. If under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a setoff to which this clause (e) applies, such Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of the Lenders entitled under this clause (e) to share in the benefits of any recovery on such secured claim.

Section 11.14 Right to Perform, Preserve and Protect. If any Credit Party fails to perform any obligation hereunder or under any other Financing Document, Agent itself may, but shall not be obligated to, cause such obligation to be performed at Borrowers’ expense. Agent is further authorized by Borrowers and the Lenders to make expenditures from time to time which Agent, in its reasonable business judgment, deems necessary or desirable to (a) preserve or protect the business conducted by Borrowers, the Collateral, or any portion thereof, and/or (b) enhance the likelihood of, or maximize the amount of, repayment of the Loan and other Obligations. Each Borrower hereby agrees to reimburse Agent on demand for any and all costs, liabilities and obligations incurred by Agent pursuant to this Section 11.14. Each Lender hereby agrees to indemnify Agent upon demand for any and all costs, liabilities and obligations incurred by Agent pursuant to this Section 11.14, in accordance with the provisions of Section 11.6.

Section 11.15 Additional Titled Agents. Except for rights and powers, if any, expressly reserved under this Agreement to any bookrunner, arranger or to any titled agent named on the cover page of this Agreement, other than Agent (collectively, the “**Additional Titled Agents**”), and except for obligations, liabilities, duties and responsibilities, if any, expressly assumed under this Agreement by any Additional Titled Agent, no Additional Titled Agent, in such capacity, has any rights, powers, liabilities, duties or responsibilities hereunder or under any of the other Financing Documents. Without limiting the foregoing, no Additional Titled Agent shall have nor be deemed to have a fiduciary relationship with any Lender. At any time that any Lender serving as an Additional Titled Agent shall have transferred to any other Person (other than any Affiliates) all of its interests in the Loan, such Lender shall be deemed to have concurrently resigned as such Additional Titled Agent.

Section 11.16 Amendments and Waivers.

(a) No provision of this Agreement or any other Financing Document may be materially amended, waived or otherwise modified unless such amendment, waiver or other modification

is in writing and is signed or otherwise approved by Borrowers, the Required Lenders and any other Lender to the extent required under Section 11.16(b).

(b) In addition to the required signatures under Section 11.16(a), no provision of this Agreement or any other Financing Document may be amended, waived or otherwise modified unless such amendment, waiver or other modification is in writing and is signed or otherwise approved by the following Persons:

(i) if any amendment, waiver or other modification would increase a Lender's funding obligations in respect of any Loan, by such Lender; and/or

(ii) if the rights or duties of Agent are affected thereby, by Agent;

provided, however, that, in each of (i) and (ii) above, no such amendment, waiver or other modification shall, unless signed or otherwise approved in writing by all the Lenders directly affected thereby, (A) reduce the principal of, rate of interest on or any fees with respect to any Loan or forgive any principal, interest (other than default interest) or fees (other than late charges) with respect to any Loan; (B) postpone the date fixed for, or waive, any payment (other than any mandatory prepayment pursuant to Section 2.1(b)(ii)) of principal of any Loan, or of interest on any Loan (other than default interest) or any fees provided for hereunder (other than late charges) or postpone the date of termination of any commitment of any Lender hereunder; (C) change the definition of the term Required Lenders or the percentage of Lenders which shall be required for Lenders to take any action hereunder; (D) release all or substantially all of the Collateral, authorize any Borrower to sell or otherwise dispose of all or substantially all of the Collateral or release any Guarantor of all or any portion of the Obligations or its Guarantee obligations with respect thereto, except, in each case with respect to this clause (D), as otherwise may be provided in this Agreement or the other Financing Documents (including in connection with any disposition permitted hereunder); (E) amend, waive or otherwise modify this Section 11.16(b) or the definitions of the terms used in this Section 11.16(b) insofar as the definitions affect the substance of this Section 11.16(b); (F) consent to the assignment, delegation or other transfer by any Credit Party of any of its rights and obligations under any Financing Document or release any Borrower of its payment obligations under any Financing Document, except, in each case with respect to this clause (F), pursuant to a merger or consolidation permitted pursuant to this Agreement; or (G) amend any of the provisions of Section 10.7 or amend any of the definitions Pro Rata Share, Revolving Loan Commitment, Revolving Loan Commitment Amount, Revolving Loan Commitment Percentage, or that provide for the Lenders to receive their Pro Rata Shares of any fees, payments, setoffs or proceeds of Collateral hereunder. It is hereby understood and agreed that all Lenders shall be deemed directly affected by an amendment, waiver or other modification of the type described in the preceding clauses (C), (D), (E), (F) and (G) of the preceding sentence.

Section 11.17 Assignments and Participations.

(a) Assignments.

(i) Any Lender may at any time assign to one or more Eligible Assignees all or any portion of such Lender's Loan together with all related obligations of such Lender hereunder. Except as Agent may otherwise agree, the amount of any such assignment (determined as of the date of the applicable Assignment Agreement or, if a "Trade Date" is specified in such Assignment Agreement, as of such Trade Date) shall be in a minimum aggregate amount equal to \$1,000,000 or, if less, the assignor's entire interests in the outstanding Loan; *provided, however*, that, in connection with simultaneous assignments to two or more related Approved Funds, such Approved Funds shall be treated as one assignee for purposes of determining compliance with the minimum assignment size referred to above. Borrowers and Agent shall be entitled to continue to deal solely

and directly with such Lender in connection with the interests so assigned to an Eligible Assignee until Agent shall have received and accepted an effective Assignment Agreement executed, delivered and fully completed by the applicable parties thereto and a processing fee of \$3,500 to be paid by the assigning Lender; *provided, however*, that only one processing fee shall be payable in connection with simultaneous assignments to two or more related Approved Funds.

(ii) From and after the date on which the conditions described above have been met, (A) such Eligible Assignee shall be deemed automatically to have become a party hereto and, to the extent of the interests assigned to such Eligible Assignee pursuant to such Assignment Agreement, shall have the rights and obligations of a Lender hereunder, and (B) the assigning Lender, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment Agreement, shall be released from its rights and obligations hereunder (other than those that survive termination pursuant to Section 12.1). Upon the request of the Eligible Assignee (and, as applicable, the assigning Lender) pursuant to an effective Assignment Agreement, each Borrower shall execute and deliver to Agent for delivery to the Eligible Assignee (and, as applicable, the assigning Lender) Notes in the aggregate principal amount of the Eligible Assignee's Loan (and, as applicable, Notes in the principal amount of that portion of the principal amount of the Loan retained by the assigning Lender). Upon receipt by the assigning Lender of such Note, the assigning Lender shall return to Borrower Representative any prior Note held by it.

(iii) Agent, acting solely for this purpose as an agent of Borrowers, shall maintain at the office of its servicer located in Bethesda, Maryland a copy of each Assignment Agreement delivered to it and a register for the recordation of the names and addresses of each Lender, and the commitments of, and principal amount of the Loan owing to, such Lender pursuant to the terms hereof. The entries in such register shall be conclusive, and Borrowers, Agent and Lenders may treat each Person whose name is recorded therein pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. Such register shall be available for inspection by Borrowers and any Lender, at any reasonable time upon reasonable prior notice to Agent.

(iv) Notwithstanding the foregoing provisions of this Section 11.17(a) or any other provision of this Agreement, any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided, however*, that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(v) Notwithstanding the foregoing provisions of this Section 11.17(a) or any other provision of this Agreement, Agent has the right, but not the obligation, to effectuate assignments of Loan via an electronic settlement system acceptable to Agent as designated in writing from time to time to the Lenders by Agent (the "**Settlement Service**"). At any time when the Agent elects, in its sole discretion, to implement such Settlement Service, each such assignment shall be effected by the assigning Lender and proposed assignee pursuant to the procedures then in effect under the Settlement Service, which procedures shall be consistent with the other provisions of this Section 11.17(a). Each assigning Lender and proposed Eligible Assignee shall comply with the requirements of the Settlement Service in connection with effecting any assignment of Loan pursuant to the Settlement Service. With the prior written approval of Agent, Agent's approval of such Eligible Assignee shall be deemed to have been automatically granted with respect to any transfer effected through the Settlement Service. Assignments and assumptions of the Loan shall be effected by the provisions otherwise set forth herein until Agent notifies Lenders of the Settlement Service as set forth herein.

(b) Participations. Any Lender may at any time, without the consent of, or notice to, any Borrower or Agent, sell to one or more Persons (other than any Borrower or any Borrower's Affiliates) participating interests in its Loan, commitments or other interests hereunder (any such Person, a "**Participant**"). In the event of a sale by a Lender of a participating interest to a Participant, (i) such Lender's obligations hereunder shall remain unchanged for all purposes, (ii) Borrowers and Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations hereunder, and (iii) all amounts payable by each Borrower shall be determined as if such Lender had not sold such participation and shall be paid directly to such Lender. Each Borrower agrees that if amounts outstanding under this Agreement are due and payable (as a result of acceleration or otherwise), each Participant shall be deemed to have the right of set-off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement; *provided, however*, that such right of set-off shall be subject to the obligation of each Participant to share with Lenders, and Lenders agree to share with each Participant, as provided in Section 11.5.

(c) Replacement of Lenders. Within thirty (30) days after: (i) receipt by Agent of notice and demand from any Lender for payment of additional costs as provided in Section 2.8(d), which demand shall not have been revoked, (ii) any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.8(a), (iii) any Lender is a Defaulted Lender, and the circumstances causing such status shall not have been cured or waived; or (iv) any failure by any Lender to consent to a requested amendment, waiver or modification to any Financing Document in which Required Lenders have already consented to such amendment, waiver or modification but the consent of each Lender, or each Lender affected thereby, is required with respect thereto (each relevant Lender in the foregoing clauses (i) through (iv) being an "**Affected Lender**") each of Borrower Representative and Agent may, at its option, notify such Affected Lender and, in the case of Borrowers' election, the Agent, of such Person's intention to obtain, at Borrowers' expense, a replacement Lender ("**Replacement Lender**") for such Lender, which Replacement Lender shall be an Eligible Assignee and, in the event the Replacement Lender is to replace an Affected Lender described in the preceding clause (iv), such Replacement Lender consents to the requested amendment, waiver or modification making the replaced Lender an Affected Lender. In the event Borrowers or Agent, as applicable, obtains a Replacement Lender within ninety (90) days following notice of its intention to do so, the Affected Lender shall sell, at par, and assign all of its Loan and funding commitments hereunder to such Replacement Lender in accordance with the procedures set forth in Section 11.17(a); *provided, however*, that (A) Borrowers shall have reimbursed such Lender for its increased costs and additional payments for which it is entitled to reimbursement under Section 2.8(a) or Section 2.8(d), as applicable, of this Agreement through the date of such sale and assignment, and (B) Borrowers shall pay to Agent the \$3,500 processing fee in respect of such assignment. In the event that a replaced Lender does not execute an Assignment Agreement pursuant to Section 11.17(a) within five (5) Business Days after receipt by such replaced Lender of notice of replacement pursuant to this Section 11.17(c) and presentation to such replaced Lender of an Assignment Agreement evidencing an assignment pursuant to this Section 11.17(c), such replaced Lender shall be deemed to have consented to the terms of such Assignment Agreement, and any such Assignment Agreement executed by Agent, the Replacement Lender and, to the extent required pursuant to Section 11.17(a), Borrowers, shall be effective for purposes of this Section 11.17(c) and Section 11.17(a). Upon any such assignment and payment, such replaced Lender shall no longer constitute a "**Lender**" for purposes hereof, other than with respect to such rights and obligations that survive termination as set forth in Section 12.1.

(d) Credit Party Assignments. No Credit Party may assign, delegate or otherwise transfer any of its rights or other obligations hereunder or under any other Financing Document without the prior written consent of Agent and each Lender.

Section 11.18 Funding and Settlement Provisions Applicable When Non-Funding Lenders Exist.

So long as Agent has not waived the conditions to the funding of Revolving Loans set forth in Section 7.2, any Lender may deliver a notice to Agent stating that such Lender shall cease making Revolving Loans due to the non-satisfaction of one or more conditions to funding Loans set forth in Section 7.2, and specifying any such non-satisfied conditions. Any Lender delivering any such notice shall become a non-funding Lender (a “**Non-Funding Lender**”) for purposes of this Agreement commencing on the Business Day following receipt by Agent of such notice, and shall cease to be a Non-Funding Lender on the date on which such Lender has either revoked the effectiveness of such notice or acknowledged in writing to each of Agent the satisfaction of the condition(s) specified in such notice, or Required Lenders waive the conditions to the funding of such Loans giving rise to such notice by Non-Funding Lender. Each Non-Funding Lender shall remain a Lender for purposes of this Agreement to the extent that such Non-Funding Lender has Revolving Loan Outstandings in excess of \$0; *provided, however*, that during any period of time that any Non-Funding Lender exists, and notwithstanding any provision to the contrary set forth herein, the following provisions shall apply:

(a) For purposes of determining the Pro Rata Share of each Revolving Lender under clause (c) of the definition of such term, each Non-Funding Lender shall be deemed to have a Revolving Loan Commitment Amount as in effect immediately before such Lender became a Non-Funding Lender.

(b) Except as provided in clause (a) above, the Revolving Loan Commitment Amount of each Non-Funding Lender shall be deemed to be \$0.

(c) The Revolving Loan Commitment at any date of determination during such period shall be deemed to be equal to the sum of (i) the aggregate Revolving Loan Commitment Amounts of all Lenders, other than the Non-Funding Lenders as of such date plus (ii) the aggregate Revolving Loan Outstandings of all Non-Funding Lenders as of such date.

(d) Reserved.

(e) Agent shall have no right to make or disburse Revolving Loans for the account of any Non-Funding Lender pursuant to Section 2.1(b)(i) to pay interest, fees, expenses and other charges of any Credit Party.

(f) To the extent that Agent applies proceeds of Collateral or other payments received by Agent to repayment of Revolving Loans pursuant to Section 10.7, such payments and proceeds shall be applied first in respect of Revolving Loans made at the time any Non-Funding Lenders exist, and second in respect of all other outstanding Revolving Loans.

Section 11.19 Buy-Out Upon Refinancing. MCF shall have the right to purchase from the other Lenders all of their respective interests in the Loan at par in connection with any refinancing of the Loan upon one or more new economic terms, but which refinancing is structured as an amendment and restatement of the Loan rather than a payoff of the Loan.

Section 11.20 Definitions. As used in this Article 11, the following terms have the following meanings:

“**Approved Fund**” means any (a) investment company, fund, trust, securitization vehicle or conduit that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the Ordinary Course of Business, or (b) any Person (other than a natural person) which temporarily warehouses loans for any Lender or any entity described in the preceding

clause (a) and that, with respect to each of the preceding clauses (a) and (b), is administered or managed by (i) a Lender, (ii) an Affiliate of a Lender, or (iii) a Person (other than a natural person) or an Affiliate of a Person (other than a natural person) that administers or manages a Lender.

“**Assignment Agreement**” means an assignment agreement in form and substance acceptable to Agent.

“**Defaulted Lender**” means, so long as such failure shall remain in existence and uncured, any Lender which shall have failed to make any Loan or other credit accommodation, disbursement, settlement or reimbursement required pursuant to the terms of any Financing Document.

“**Eligible Assignee**” means (a) a Lender, (b) an Affiliate of a Lender, (c) an Approved Fund, and (d) any other Person (other than a natural person) approved by Agent; *provided, however*, that notwithstanding the foregoing, (x) “**Eligible Assignee**” shall not include any Borrower or any of a Borrower’s Affiliates, and (y) no proposed assignee intending to assume all or any portion of the Revolving Loan Commitment shall be an Eligible Assignee unless such proposed assignee either already holds a portion of such Revolving Loan Commitment, or has been approved as an Eligible Assignee by Agent.

“**Federal Funds Rate**” means, for any day, the rate of interest per annum (rounded upwards, if necessary, to the nearest whole multiple of 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day, *provided, however*, that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day, and (b) if no such rate is so published on such next preceding Business Day, the Federal Funds Rate for such day shall be the average rate quoted to Agent on such day on such transactions as determined by Agent.

ARTICLE 12 - MISCELLANEOUS

Section 12.1 Survival. All agreements, representations and warranties made herein and in every other Financing Document shall survive the execution and delivery of this Agreement and the other Financing Documents and the other Operative Documents. The provisions of Section 2.10 and Articles 11 and 12 shall survive the payment of the Obligations (both with respect to any Lender and all Lenders collectively) and any termination of this Agreement and any judgment with respect to any Obligations, including any final foreclosure judgment with respect to any Security Document, and no unpaid or unperformed, current or future, Obligations will merge into any such judgment.

Section 12.2 No Waivers. No failure or delay by Agent or any Lender in exercising any right, power or privilege under any Financing Document shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein and therein provided shall be cumulative and not exclusive of any rights or remedies provided by law. Any reference in any Financing Document to the “continuing” nature of any Event of Default shall not be construed as establishing or otherwise indicating that any Borrower or any other Credit Party has the independent right to cure any such Event of Default, but is rather presented merely for convenience should such Event of Default be waived in accordance with the terms of the applicable Financing Documents.

Section 12.3 Notices.

(a) All notices, requests and other communications to any party hereunder shall be in writing (including prepaid overnight courier, facsimile transmission or similar writing) and shall be given

to such party at its address, facsimile number or e-mail address set forth on the signature pages hereof (or, in the case of any such Lender who becomes a Lender after the Closing Date, in an assignment agreement or in a notice delivered to Borrower Representative and Agent by the assignee Lender forthwith upon such assignment) or at such other address, facsimile number or e-mail address as such party may hereafter specify for the purpose by notice to Agent and Borrower Representative; provided, however, that notices, requests or other communications shall be permitted by electronic means only in accordance with the provisions of Section 12.3(b) and (c). Each such notice, request or other communication shall be effective (i) if given by facsimile, when such notice is transmitted to the facsimile number specified by this Section and the sender receives a confirmation of transmission from the sending facsimile machine, or (ii) if given by mail, prepaid overnight courier or any other means, when received or when receipt is refused at the applicable address specified by this Section 12.3(a).

(b) Notices and other communications to the parties hereto may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved from time to time by Agent, provided, however, that the foregoing shall not apply to notices sent directly to any Lender if such Lender has notified the Agent that it is incapable of receiving notices by electronic communication. The Agent or Borrower Representative may, in their discretion, agree to accept notices and other communications to them hereunder by electronic communications pursuant to procedures approved by it, *provided, however*, that approval of such procedures may be limited to particular notices or communications.

(c) Unless the Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgment), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor, provided, however, that if any such notice or other communication is not sent or posted during normal business hours, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day.

Section 12.4 Severability. In case any provision of or obligation under this Agreement or any other Financing Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 12.5 Headings. Headings and captions used in the Financing Documents (including the Exhibits, Schedules and Annexes hereto and thereto) are included for convenience of reference only and shall not be given any substantive effect.

Section 12.6 Confidentiality.

(a) Each Credit Party agrees (i) not to transmit or disclose provisions of any Financing Document to any Person (other than to Borrowers' advisors and officers on a need-to-know basis or as otherwise may be required by Law) without Agent's prior written consent, (ii) to inform all Persons of the confidential nature of the Financing Documents and to direct them not to disclose the same to any other Person and to require each of them to be bound by these provisions.

(b) Agent and each Lender shall hold all non-public information regarding the Credit Parties and their respective businesses identified as such by Borrowers and obtained by Agent or any Lender pursuant to the requirements hereof in accordance with such Person's customary procedures for handling

information of such nature, except that disclosure of such information may be made (i) to their respective agents, employees, Subsidiaries, Affiliates, attorneys, auditors, professional consultants, rating agencies, insurance industry associations and portfolio management services, (ii) to prospective transferees or purchasers of any interest in the Loans, the Agent or a Lender, *provided, however*, that any such Persons are bound by obligations of confidentiality, (iii) as required by Law, subpoena, judicial order or similar order and in connection with any litigation, (iv) as may be required in connection with the examination, audit or similar investigation of such Person, and (v) to a Person that is a trustee, investment advisor or investment manager, collateral manager, servicer, noteholder or secured party in a Securitization (as hereinafter defined) in connection with the administration, servicing and reporting on the assets serving as collateral for such Securitization. For the purposes of this Section, “**Securitization**” shall mean (A) the pledge of the Loans as collateral security for loans to a Lender, or (B) a public or private offering by a Lender or any of its Affiliates or their respective successors and assigns, of securities which represent an interest in, or which are collateralized, in whole or in part, by the Loans. Confidential information shall include only such information identified as such at the time provided to Agent and shall not include information that either: (y) is in the public domain, or becomes part of the public domain after disclosure to such Person through no fault of such Person, or (z) is disclosed to such Person by a Person other than a Credit Party, *provided, however*, Agent does not have actual knowledge that such Person is prohibited from disclosing such information. The obligations of Agent and Lenders under this Section 12.6 shall supersede and replace the obligations of Agent and Lenders under any confidentiality agreement in respect of this financing executed and delivered by Agent or any Lender prior to the Closing Date.

Section 12.7 Waiver of Consequential and Other Damages. To the fullest extent permitted by applicable law, no Borrower shall assert, and each Borrower hereby waives, any claim against any Indemnitee (as defined below), on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of this Agreement, any other Financing Document or any agreement or instrument contemplated hereby or thereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Financing Documents or the transactions contemplated hereby or thereby.

Section 12.8 GOVERNING LAW; SUBMISSION TO JURISDICTION.

(a) THIS AGREEMENT, EACH NOTE AND EACH OTHER FINANCING DOCUMENT, AND ALL DISPUTES AND OTHER MATTERS RELATING HERETO OR THERETO OR ARISING THEREFROM (WHETHER SOUNDING IN CONTRACT LAW, TORT LAW OR OTHERWISE), SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF MARYLAND, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES.

(b) EACH BORROWER HEREBY CONSENTS TO AND AGREES THAT THE BANKRUPTCY COURT SHALL HAVE EXCLUSIVE JURISDICTION (OR, IF THE BANKRUPTCY COURT DOES NOT HAVE SUCH JURISDICTION, SUCH COURTS AS SET FORTH IN CLAUSE (C) OF THIS SECTION 12.8) TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN THE PARTIES HERETO, ON THE ONE HAND, AND AGENT OR ANY LENDER, ON THE OTHER HAND, PERTAINING TO THIS AGREEMENT OR ANY OF THE OTHER FINANCING DOCUMENTS OR TO ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE OTHER FINANCING DOCUMENTS; PROVIDED THAT EACH PARTY HERETO ACKNOWLEDGES THAT ANY APPEALS FROM THE BANKRUPTCY COURT MAY HAVE TO BE HEARD BY A COURT OTHER THAN THE BANKRUPTCY COURT; PROVIDED, FURTHER, THAT

NOTHING IN THIS AGREEMENT SHALL BE DEEMED TO, OR OPERATE TO, PRECLUDE AGENT OR ANY LENDER FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION TO REALIZE ON THE COLLATERAL OR ANY OTHER SECURITY FOR THE OBLIGATIONS, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOR OF AGENT OR ANY LENDER. EACH PARTY HERETO EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH COURT, AND EACH PARTY HEREBY WAIVES ANY OBJECTION THAT SUCH PARTY MAY HAVE BASED UPON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS, AND HEREBY CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT.

(c) EACH BORROWER HEREBY AGREES THAT ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF MONTGOMERY, STATE OF MARYLAND SHALL HAVE SUCH JURISDICTION AND IRREVOCABLY AGREES THAT, SUBJECT TO AGENT'S ELECTION AND CLAUSE (B) OF THIS SECTION 12.8, ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER FINANCING DOCUMENTS SHALL BE LITIGATED IN SUCH COURTS. EACH BORROWER EXPRESSLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. EACH BORROWER HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON SUCH BORROWER BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO SUCH BORROWER AT THE ADDRESS SET FORTH IN THIS AGREEMENT AND SERVICE SO MADE SHALL BE COMPLETE TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED.

(d) Each Borrower, Agent and each Lender agree that each Loan (including those made on the Closing Date) shall be deemed to be made in, and the transactions contemplated hereunder and in any other Financing Document shall be deemed to have been performed in, the State of Maryland.

Section 12.9 WAIVER OF JURY TRIAL. (a) EACH BORROWER, AGENT AND THE LENDERS HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE FINANCING DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH BORROWER, AGENT AND EACH LENDER ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THE OTHER FINANCING DOCUMENTS, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH BORROWER, AGENT AND EACH LENDER WARRANTS AND REPRESENTS THAT IT HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

Section 12.10 Publication; Advertisement.

(a) Publication. Except as required in connection with the Bankruptcy Case, no Credit Party will directly or indirectly publish, disclose or otherwise use in any public disclosure, advertising material, promotional material, press release or interview, any reference to the name, logo or any trademark of MCF or any of its Affiliates or any reference to this Agreement or the financing evidenced hereby, in any case except (i) as required by Law, subpoena or judicial or similar order, in which case the applicable

Credit Party shall give Agent prior written notice of such publication or other disclosure, or (ii) with MCF's prior written consent.

(b) Advertisement. Each Lender and each Credit Party hereby authorizes MCF to publish the name of such Lender and Credit Party, the existence of the financing arrangements referenced under this Agreement, the primary purpose and/or structure of those arrangements, the amount of credit extended under each facility, the title and role of each party to this Agreement, and the total amount of the financing evidenced hereby in any "tombstone", comparable advertisement or press release which MCF elects to submit for publication. In addition, each Lender and each Credit Party agrees that MCF may provide lending industry trade organizations with information necessary and customary for inclusion in league table measurements after the Closing Date. With respect to any of the foregoing, MCF shall provide Borrowers with an opportunity to review and confer with MCF regarding the contents of any such tombstone, advertisement or information, as applicable, prior to its submission for publication and, following such review period, MCF may, from time to time, publish such information in any media form desired by MCF, until such time that Borrowers shall have requested MCF cease any such further publication.

Section 12.11 Counterparts; Integration. This Agreement and the other Financing Documents may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Signatures by facsimile or by electronic mail delivery of an electronic version of any executed signature page shall bind the parties hereto. This Agreement and the other Financing Documents constitute the entire agreement and understanding among the parties hereto and supersede any and all prior agreements and understandings, oral or written, relating to the subject matter hereof.

Section 12.12 No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

Section 12.13 Lender Approvals. Unless expressly provided herein to the contrary, any approval, consent, waiver or satisfaction of Agent or Lenders with respect to any matter that is the subject of this Agreement, the other Financing Documents may be granted or withheld by Agent and Lenders in their sole and absolute discretion and credit judgment.

Section 12.14 Expenses; Indemnity

(a) Borrowers hereby agree to promptly pay (i) all costs and expenses of Agent (including, without limitation, the fees, costs and expenses of counsel to, and independent appraisers and consultants retained by Agent) in connection with the examination, review, due diligence investigation, documentation, negotiation, closing and syndication of the transactions contemplated by the Financing Documents, in connection with the performance by Agent of its rights and remedies under the Financing Documents and in connection with the continued administration of the Financing Documents including (A) any amendments, modifications, consents and waivers to and/or under any and all Financing Documents, and (B) any periodic public record searches conducted by or at the request of Agent (including, without limitation, title investigations, UCC searches, fixture filing searches, judgment, pending litigation and tax lien searches and searches of applicable corporate, limited liability, partnership and related records concerning the continued existence, organization and good standing of certain Persons); (ii) without limitation of the preceding clause (i), all costs and expenses of Agent in connection with the creation, perfection and maintenance of Liens pursuant to the Financing Documents; (iii) without limitation of the

preceding clause (i), all costs and expenses of Agent in connection with (A) protecting, storing, insuring, handling, maintaining or selling any Collateral, (B) any litigation, dispute, suit or proceeding relating to any Financing Document, and (C) any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all of the Financing Documents; (iv) without limitation of the preceding clause (i), all costs and expenses of Agent in connection with Agent's reservation of funds in anticipation of the funding of the initial Loans to be made hereunder; and (v) all costs and expenses incurred by Lenders in connection with any litigation, dispute, suit or proceeding relating to any Financing Document and in connection with any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all Financing Documents, whether or not Agent or Lenders are a party thereto. If Agent or any Lender uses in-house counsel for any of these purposes, Borrowers further agree that the Obligations include reasonable charges for such work commensurate with the fees that would otherwise be charged by outside legal counsel selected by Agent or such Lender for the work performed.

(b) Each Borrower hereby agrees to indemnify, pay and hold harmless Agent and Lenders and the officers, directors, employees, trustees, agents, investment advisors and investment managers, collateral managers, servicers, and counsel of Agent and Lenders (collectively called the "**Indemnitees**") from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the fees and disbursements of counsel for such Indemnatee) in connection with any investigative, response, remedial, administrative or judicial matter or proceeding, whether or not such Indemnatee shall be designated a party thereto and including any such proceeding initiated by or on behalf of a Credit Party, and the reasonable expenses of investigation by engineers, environmental consultants and similar technical personnel and any commission, fee or compensation claimed by any broker (other than any broker retained by Agent or Lenders) asserting any right to payment for the transactions contemplated hereby, which may be imposed on, incurred by or asserted against such Indemnatee as a result of or in connection with the transactions contemplated hereby or by the other Operative Documents (including (i)(A) as a direct or indirect result of the presence on or under, or escape, seepage, leakage, spillage, discharge, emission or release from, any property now or previously owned, leased or operated by Borrower, any Subsidiary or any other Person of any Hazardous Materials, (B) arising out of or relating to the offsite disposal of any materials generated or present on any such property, or (C) arising out of or resulting from the environmental condition of any such property or the applicability of any governmental requirements relating to Hazardous Materials, whether or not occasioned wholly or in part by any condition, accident or event caused by any act or omission of Borrower or any Subsidiary, and (ii) proposed and actual extensions of credit under this Agreement) and the use or intended use of the proceeds of the Loans, except that Borrower shall have no obligation hereunder to an Indemnatee with respect to any liability resulting from the gross negligence or willful misconduct of such Indemnatee, as determined by a final non-appealable judgment of a court of competent jurisdiction. To the extent that the undertaking set forth in the immediately preceding sentence may be unenforceable, Borrower shall contribute the maximum portion which it is permitted to pay and satisfy under applicable Law to the payment and satisfaction of all such indemnified liabilities incurred by the Indemnitees or any of them.

(c) Notwithstanding any contrary provision in this Agreement, the obligations of Borrowers under this Section 12.14 shall survive the payment in full of the Obligations and the termination of this Agreement. NO INDEMNITEE SHALL BE RESPONSIBLE OR LIABLE TO THE BORROWERS OR TO ANY OTHER PARTY TO ANY FINANCING DOCUMENT, ANY SUCCESSOR, ASSIGNEE OR THIRD PARTY BENEFICIARY OR ANY OTHER PERSON ASSERTING CLAIMS DERIVATIVELY THROUGH SUCH PARTY, FOR INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHICH MAY BE ALLEGED AS A RESULT OF CREDIT HAVING BEEN EXTENDED, SUSPENDED OR TERMINATED UNDER THIS AGREEMENT OR ANY OTHER FINANCING DOCUMENT OR AS A RESULT OF ANY OTHER TRANSACTION CONTEMPLATED HEREUNDER OR THEREUNDER.

Section 12.15 Reinstatement. This Agreement shall remain in full force and effect or be reinstated, as the case may be, if at any time payment and performance of the Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Obligations, whether as a fraudulent preference reviewable transaction or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

Section 12.16 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Borrowers and Agent and each Lender and their respective successors and permitted assigns.

Section 12.17 USA PATRIOT Act Notification. Agent (for itself and not on behalf of any Lender) and each Lender hereby notifies Borrowers that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record certain information and documentation that identifies Borrowers, which information includes the name and address of Borrower and such other information that will allow Agent or such Lender, as applicable, to identify Borrowers in accordance with the USA PATRIOT Act.

Section 12.18 DIP Orders. In the event of any inconsistency between the terms and conditions of any of the Financing Documents and the DIP Orders, the provisions of the DIP Orders shall govern and control.

[SIGNATURES APPEAR ON FOLLOWING PAGE(S)]

(Signature Page to Debtor-in-Possession Revolving Credit and Security Agreement)

IN WITNESS WHEREOF, intending to be legally bound, and intending that this Agreement constitute an agreement executed under seal, each of the parties have caused this Agreement to be executed under seal the day and year first above mentioned.

BORROWERS:

WALKER COUNTY HOSPITAL CORPORATION, a
Texas nonprofit corporation, as debtor-in-possession

By: _____

Name: _____

Title: _____

Notice Address:

(Signature Page to Debtor-in-Possession Revolving Credit and Security Agreement)

AGENT:

MIDCAP FINANCIAL TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: _____
Name: _____
Title: Authorized Signatory

Address:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: Account Manager for Huntsville DIP transaction
Facsimile: 301-941-1450
E-mail: notices@midcapfinancial.com

with a copy to:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: General Counsel
Facsimile: 301-941-1450
E-mail: legalnotices@midcapfinancial.com

Payment Account Designation:

Wells Fargo Bank, N.A. (McLean, VA)
ABA #: 121-000-248
Account Name: MidCap Funding IV Trust - Collections
Account #: 2000036282803
Attention: Huntsville DIP

(Signature Page to Debtor-in-Possession Revolving Credit and Security Agreement)

LENDER:

MIDCAP FINANCIAL TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: _____
Name: _____
Title: Authorized Signatory

Address:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: Account Manager for Huntsville DIP transaction
Facsimile: 301-941-1450
E-mail: notices@midcapfinancial.com

with a copy to:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: General Counsel
Facsimile: 301-941-1450
E-mail: legalnotices@midcapfinancial.com

ANNEXES, EXHIBITS AND SCHEDULES

ANNEXES

Annex A Commitment Annex

EXHIBITS

Exhibit A [Reserved]
Exhibit B Form of Compliance Certificate
Exhibit C Borrowing Base Certificate
Exhibit D Form of Notice of Borrowing
Exhibit E Form of DIP Budget

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Schedule 3.6 Litigation
Schedule 3.17 Material Contracts
Schedule 3.18 Environmental Compliance
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Schedule 8.2(b) Exceptions to Healthcare Representations and Warranties
Schedule 9.1 Collateral
Schedule 9.2 Location of Collateral

ANNEX A TO CREDIT AGREEMENT (COMMITMENT ANNEX)

Lender	Revolving Loan Commitment Amount	Revolving Loan Commitment Percentage
MidCap Financial Trust	\$5,000,000	100%
TOTALS	\$5,000,000	100%

EXHIBIT A TO CREDIT AGREEMENT (RESERVED)

EXHIBIT B TO CREDIT AGREEMENT (FORM OF COMPLIANCE CERTIFICATE)

COMPLIANCE CERTIFICATE

This Compliance Certificate is given by _____, a Responsible Officer of Walker County Hospital Corporation, a Texas nonprofit corporation, as debtor-in-possession (the “**Borrower Representative**”), pursuant to that certain Debtor-in-Possession Revolving Credit and Security Agreement dated as of November __, 2019 among the Borrower Representative and any additional Borrower that may hereafter be added thereto (collectively, “**Borrowers**”), MidCap Funding IV Trust (as successor by assignment from MidCap Financial Trust), individually as a Lender and as Agent, and the financial institutions or other entities from time to time parties thereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

The undersigned Responsible Officer hereby certifies to Agent and Lenders that:

(a) the financial statements delivered with this certificate in accordance with Section 4.1 of the Credit Agreement fairly present in all material respects the results of operations and financial condition of Borrowers and their Consolidated Subsidiaries as of the dates and the accounting period covered by such financial statements;

(b) I have reviewed the terms of the Credit Agreement and have made, or caused to be made under my supervision, a review in reasonable detail of the transactions and conditions of Borrowers and their Consolidated Subsidiaries during the accounting period covered by such financial statements and such review has not disclosed the existence during or at the end of such accounting period, and I have no knowledge of the existence as of the date hereof, of any condition or event that constitutes a Default or an Event of Default, except as set forth in Schedule 1 hereto, which includes a description of the nature and period of existence of such Default or an Event of Default and what action Borrowers have taken, are undertaking and propose to take with respect thereto;

(c) except as noted on Schedule 2 attached hereto, the Credit Agreement contains a complete and accurate list of all business locations of Borrowers and Guarantors and all names under which Borrowers and Guarantors currently conduct business; Schedule 2 specifically notes any changes in the names under which any Borrower or Guarantor conduct business;

(d) except as noted on Schedule 3 attached hereto, the undersigned has no knowledge of (i) any federal or state tax liens having been filed against any Borrower, Guarantor or any Collateral or (ii) any failure of any Borrower or Guarantors to make required payments of withholding or other tax obligations of any Borrower or Guarantors during the accounting period to which the attached statements pertain or any subsequent period.

(e) Schedule 5.14 to the Credit Agreement contains a complete and accurate statement of all deposit accounts and investment accounts maintained by Borrowers and Guarantors;

(f) except as noted on Schedule 4 attached hereto and Schedule 3.6 to the Credit Agreement, the undersigned has no knowledge of any current, pending or threatened: (i) litigation against any Borrower or Guarantor; (ii) inquiries, investigations or proceedings concerning the business affairs, practices, licensing or reimbursement entitlements of any Borrower or Guarantor; or (iii) any default by any Borrower or Guarantor under any Material Contract to which it is a party.

(g) except as noted on Schedule 5 attached hereto, no Borrower or Guarantor has acquired, by purchase, by the approval or granting of any application for registration (whether or not such application was previously disclosed to Agent by Borrowers) or otherwise, any Intellectual Property that is registered with any United States or foreign Governmental Authority, or has filed with any such United States or foreign Governmental Authority, any new application for the registration of any Intellectual Property, or acquired rights under a license as a licensee with respect to any such registered Intellectual Property (or any such application for the registration of Intellectual Property) owned by another Person, that has not previously been reported to Agent on Schedule 3.19 to the Credit Agreement or any Schedule 5 to any previous Compliance Certificate delivered by the Borrowers to Agent.

(j) except as noted on Schedule 6 attached hereto, no Borrower or Guarantor has acquired, by purchase or otherwise, any Chattel Paper, Letter of Credit Rights, Instruments, Documents or Investment Property that has not previously been reported to Agent on any Schedule 6 to any previous Compliance Certificate delivered by Borrower Representative to Agent.

(k) except as noted on Schedule 7 attached hereto, no Borrower or Guarantor is aware of any commercial tort claim exceeding \$250,000 individually or in the aggregate that has not previously been reported to Agent on any Schedule 7 to any previous Compliance Certificate delivered by Borrower Representative to Agent.

(l) Borrowers and Guarantors (if any) are in compliance with the covenants contained in Article 6 of the Credit Agreement, and in any Guarantee constituting a part of the Financing Documents.

The foregoing certifications and computations are made as of _____, 201__ (end of month) and as of _____, 201__.

Sincerely,

WALKER COUNTY HOSPITAL
CORPORATION, a Texas nonprofit
corporation, as debtor-in-possession

By: _____
Name: _____
Title: _____

EXHIBIT C TO CREDIT AGREEMENT (BORROWING BASE CERTIFICATE)

EXHIBIT D TO CREDIT AGREEMENT (FORM OF NOTICE OF BORROWING)

NOTICE OF BORROWING

This Notice of Borrowing is given by _____, a Responsible Officer of Walker County Hospital Corporation, a Texas nonprofit corporation, as debtor-in-possession (the “**Borrower Representative**”), pursuant to that certain Debtor-in-Possession Revolving Credit and Security Agreement dated as of _____, 201__ among the Borrower Representative, and any additional Borrower that may hereafter be added thereto (collectively, “**Borrowers**”), MidCap Funding IV Trust (as successor by assignment from MidCap Financial Trust), individually as a Lender and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

The undersigned Responsible Officer hereby gives notice to Agent of Borrower Representative’s request to borrow \$ _____ of Revolving Loans on _____, 201__ . Attached is a Borrowing Base Certificate complying in all respects with the Credit Agreement and confirming that, after giving effect to the requested advance, the Revolving Loan Outstandings will not exceed the Revolving Loan Limit.

The undersigned officer hereby certifies that, both before and after giving effect to the request above (a) each of the conditions precedent set forth in Section 7.2 have been satisfied, (b) all of the representations and warranties contained in the Credit Agreement and the other Financing Documents are true, correct and complete as of the date hereof, except to the extent such representation or warranty relates to a specific date, in which case such representation or warranty is true, correct and complete as of such earlier date, and (c) no Default or Event of Default has occurred and is continuing on the date hereof.

IN WITNESS WHEREOF, the undersigned officer has executed and delivered this Notice of Borrowing this ____ day of _____, 201__.

Sincerely,

WALKER COUNTY HOSPITAL
CORPORATION, a Texas nonprofit
corporation, as debtor-in-possession

By: _____
Name: _____
Title: _____

Schedule 3.1 – Existence, Organizational ID Numbers, Foreign Qualification, Prior Names; Project Name

Borrower	DBA Name of Project	Prior Names	Type of Entity / State of Formation	States Qualified	State Org. ID Number	Federal Tax ID Number	Place of Business / Address of Project
Walker County Hospital Corporation	Huntsville Memorial Hospital		Nonprofit Corporation/Texas				110 Memorial Hospital Drive, Huntsville, Texas

Schedule 7.4 – Post Closing Requirements

Borrowers shall satisfy and complete each of the following obligations, or provide Agent each of the items listed below, as applicable, on or before the date indicated below, all to the satisfaction of Agent in its sole and absolute discretion:

1. On or before the fifth (5th) day after the Closing Date, Borrower shall deliver to Agent a complete set of schedules to this Agreement, in form and substance acceptable to Agent.

Borrower's failure to complete and satisfy any of the above obligations on or before the date indicated above, or Borrower's failure to deliver any of the above listed items on or before the date indicated above, shall constitute an immediate an automatic Event of Default.

Schedule 9.1 – Collateral

The Collateral consists of all of each Borrower's right, title and interest in and to the following, whether now owned or hereafter created, acquired or arising, and all proceeds and products of the following:

- (a) all Accounts;
- (b) to the maximum extent permitted by law, all deposit accounts of such Borrower, including, without limitation, each Lockbox and each Lockbox Account, and amounts held therein;
- (c) all money and cash;
- (d) all books and records, in whatever form, relating to items (a) through (c) above;
- (e) all general intangibles (as defined in the UCC), but only to the extent necessary to collect Accounts;
- (f) all proceeds of each Borrower's claims and causes of action under sections 502(d), 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy Code, and any other avoidance or similar actions under the Bankruptcy Code or similar state law, whether received by judgment, settlement or otherwise; and
- (g) all proceeds of any kind or nature of the foregoing.

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EXHIBIT 2
BUDGET

