

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE**

In re:	)	
	)	Chapter 11
LRGHEALTHCARE,	)	
	)	Bk. No. 20-10892-MAF
Debtor. <sup>1</sup>	)	
	)	Related to ECF No. 535 ____

**FINAL ORDER (A) (I) AUTHORIZING THE DEBTOR TO OBTAIN POSTPETITION  
FINANCING, (II) GRANTING LIENS ON PROPERTY OF THE DEBTOR'S ESTATE  
AND SUPERPRIORITY CLAIMS TO THE POSTPETITION LENDER, AND  
(III) GRANTING RELATED RELIEF**

On the motion [ECF No. 535] (the “**Motion**”) of LRGHealthcare (the “**Debtor**”) in the above-captioned case (the “**Case**”), pursuant to Sections 105, 362, 364, 503 and 507 of Title 11 of the United States Code, 11 U.S.C. §§ 101 – 1532 (the “**Bankruptcy Code**”), Rules 2002, 4001, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), seeking, among other things:

(I) entry of an interim order (the “**Interim DIP Order**”) and a final order (the “**Final DIP Order**”) authorizing the Debtor to obtain postpetition financing (the “**DIP Loans**”) consisting of a term loan, multi-draw financing facility in an aggregate principal amount not to exceed six million dollars (\$6,000,000.00) (the “**DIP Facility**”) from Concord Hospital, Inc. or its designee (the “**DIP Lender**”) pursuant to that certain Post-Petition Loan and Security Agreement, dated as of March 22, 2021, which is attached to this Order as **Exhibit 1** (as amended, modified, restated, or supplemented in accordance with the terms thereof or hereof, the “**Loan Agreement**”),<sup>2</sup> and all instruments, financing statements and documents as may be executed and delivered in connection with or relating to the DIP Facility, this Interim DIP Order and the Final DIP Order (subject to entry) and any certificate or other document made or delivered pursuant hereto or thereto (collectively with the Loan Agreement, the “**Loan Documents**”), and perform all such other and further acts as may be required in connection with the Loan Documents,

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<sup>1</sup> The last four digits of the Debtor’s federal taxpayer identification number are 2150. The address of the Debtor’s headquarters is 80 Highland Street, Laconia, New Hampshire 03246.

<sup>2</sup> All capitalized terms used but not defined herein shall have the meanings stated in the Loan Agreement.

(II) scheduling a final hearing (the “**Final Hearing**”) to consider entry of the Final DIP Order, and in connection therewith, approving the manner of notice of the Final Hearing, and

(III) granting the Debtor such other and further relief as is just and proper;

And the Court having considered the Motion, the exhibits attached thereto, the *Declaration of Todd M. Patnode In Support Of Debtor’s Emergency Motion For Entry of Interim And Final Orders Pursuant To 11 U.S.C. §§ 105, 362, 364, 503 And 507 and Fed. R. Bankr. P. 4001 And 9014 (I) Authorizing Debtor To Obtain Postpetition Financing And (II) Granting Liens And Super-Priority Claims To Postpetition Lender* and the *Declaration of Kevin W. Donovan In Support Of Debtor’s Emergency Motion For Entry of Interim And Final Orders Pursuant To 11 U.S.C. §§ 105, 362, 364, 503 And 507 and Fed. R. Bankr. P. 4001 And 9014 (I) Authorizing Debtor To Obtain Postpetition Financing And (II) Granting Liens And Super-Priority Claims To Postpetition Lender* (the “**Declarations**”); and a hearing to consider entry of the Interim DIP Order having been held before the Court on March 26, 2021 (the “**Interim Hearing**”); and the Court having entered the Interim DIP Order [ECF No. \_\_\_\_] on \_\_\_\_\_, 2021; and a hearing to consider entry of the Final DIP Order having been held on \_\_\_\_\_, 2021 (the “**Final Hearing**”); and on all of the pleadings filed with the Court, all evidence presented in support of the Motion, the arguments of counsel stated on the record of the Interim Hearing and the Final Hearing, and all of the proceedings held before the Court; and after due deliberation and consideration, and good and sufficient cause appearing therefor;

**IT IS HEREBY FOUND AND DETERMINED THAT:**

A. The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Rule 52(a) of the Federal Rules of Civil Procedure, made applicable to this proceeding pursuant to Bankruptcy Rules 7052 and 9014. To the extent any

findings of fact herein constitute conclusions of law, they are adopted as such. To the extent any conclusions of law herein constitute findings of fact, they are adopted as such.

B. The Court has jurisdiction over the Motion and the transactions contemplated by the Loan Documents pursuant to 28 U.S.C. §§ 157 and 1334 and Local Rule 77.4(a) of the Local Rules of the United States District Court for the District of New Hampshire, and this matter is a core proceeding pursuant to 28 U.S.C. § 157. Venue of this case and this matter in this district is proper under 28 U.S.C. §§ 1408 and 1409. The Court may enter a final order consistent with or without violating Article III of the U.S. Constitution.

C. The statutory bases for the relief requested in the Motion are Sections 105, 364, 503, and 507 of the Bankruptcy Code.

D. Good and sufficient notice of the Interim Hearing, the Final Hearing, the Motion and the relief sought therein has been given under the circumstances, and no other or further notice is required. A reasonable opportunity to object or be heard regarding the relief provided herein has been afforded to parties in interest.

E. The Debtor remains in possession of its property and is authorized to operate its business pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

F. The use of cash that is property of the Debtor would be insufficient, alone, to meet the Debtor's immediate postpetition liquidity needs. As a result, an immediate and critical need exists for the Debtor to obtain postpetition financing to continue the operation of its business.

G. The Debtor is unable to obtain sufficient postpetition financing to continue operation of its business

(1) in the forms of

- (a) unsecured debt incurred in the ordinary course of business allowable as an administrative expense under Section 503(b)(1) of the Bankruptcy Code or
  - (b) unsecured debt incurred outside the ordinary course of business allowable as an administrative expense under Section 503(b)(1) of the Bankruptcy Code or
- (2) on terms more favorable than those embodied in the Loan Agreement and the other Loan Documents.

The DIP Lender is prepared to enter into the DIP Loans solely on the terms set forth in the Loan Agreement and the other Loan Documents.

H. The terms of the DIP Loans are fair, just, and reasonable under the circumstances, reflect the Debtor's exercise of its prudent business judgment consistent with its fiduciary duties, and are supported by reasonably equivalent value and fair consideration.

I. The terms of the DIP Loans have been negotiated in good faith and at arm's length by and between the Debtor and the DIP Lender.

J. Any credit extended or other indebtedness or liabilities arising under, in respect of, or in connection with the Interim DIP Order, this Final DIP Order or any Loan Document shall be deemed to have been extended in "good faith" by the DIP Lender as that term is used in Section 364(e) of the Bankruptcy Code, and in express reliance upon the protections afforded by Section 364(e) of the Bankruptcy Code.

K. The relief requested in the Motion is necessary and appropriate for the management and preservation of the Debtor's property and the operation of the Debtor's business and is in the best interests of the Debtor, its estate and creditors.

L. Absent the relief granted herein, the Debtor's estate will be immediately and irreparably harmed.

M. Good, adequate, and sufficient cause has been shown to justify the relief granted herein and the immediate entry and effectiveness of this Final DIP Order.

**IT IS HEREBY ORDERED THAT:**

1. The Motion is **GRANTED**.
2. All objections to the Motion or the relief provided herein that have not been withdrawn, waived or settled, and all reservations of rights included therein, hereby are overruled and denied on the merits with prejudice
3. The Loan Documents, including the Loan Agreement, are approved, and the Debtor is hereby authorized to execute and enter into, deliver, and perform all obligations thereunder.
4. The Debtor is hereby authorized to borrow the full amount available under the DIP Facility, to be used solely as expressly provided in the Loan Documents, including the Loan Agreement.
5. In furtherance of the foregoing and without further approval of this Court, the Debtor is hereby authorized to perform all acts, to make, execute, and deliver all instruments and documents, and to pay all related fees, that may be required or necessary for the Debtor's performance of its obligations under the DIP Loans.
6. All of the DIP Liens (defined below) shall be effective and perfected as of the date of entry of the Interim DIP Order without the necessity of the execution, recording, or filing of security agreements, pledge agreements, financing statements, or other agreements or instruments.
7. The Loan Agreement and the "**Obligations**" (as defined in the Loan Agreement) constitute valid, binding, and non-avoidable obligations of the Debtor enforceable against the

Debtor, its estate and its successors and assigns in accordance with the terms of the Interim DIP Order, this Final DIP Order and the Loan Documents, and shall survive the dismissal of this Case or the conversion of this Case to a case under another Chapter of the Bankruptcy Code.

8. No obligation, payment, transfer, or grant of security under the Interim DIP Order, this Final DIP Order, or the Loan Documents shall be stayed, restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under any applicable law, or subject to any avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), counterclaims, cross-claims, defenses, disallowance, impairment, or any other challenges under the Bankruptcy Code or any other applicable foreign or domestic law or regulation by any person or entity. Nothing herein is intended to alter or interfere with the rights of any third party payor to exercise their right of setoff or recoupment with regard to the Debtor's accounts receivable owed by such payors under applicable law or as allowed by order of this Court. For the avoidance of doubt, the preceding sentence shall not modify any restrictions on the recoupment, setoff or other rights of payors under, (a) the Order Setting the Cure Amounts for the Debtor's Contracts with UnitedHealthcare Insurance Company and its Affiliates [ECF No. 476], (b) the Order Setting the Cure Amounts for the Debtor's Contracts with Anthem Health Plans of New Hampshire, Inc. D/B/A Anthem Blue Cross and Blue Shield and Matthew Thornton Health Plan, Inc. [ECF No. 504], or (c) the Order Setting the Cure Amounts for the Debtor's Contracts with Humana Insurance Company and Humana Health Plan, Inc. [ECF No. 509].

9. The DIP Loans shall

- (a) be evidenced by the books and records of the DIP Lender and, although not required, upon the request of the DIP Lender, a note executed and delivered to the DIP Lender by the Debtor in accordance with the terms of the Loan Documents,

- (b) bear interest and incur fees at the rates set forth in the Loan Agreement,
- (c) be secured in the manner specified below and under the applicable Loan Documents,
- (d) be payable in accordance with the applicable Loan Documents, and
- (e) otherwise be governed by the terms set forth in this Final DIP Order and the Loan Documents.

10. The automatic stay provisions of Section 362 of the Bankruptcy Code and any other restriction imposed by an order of the Court or applicable law are hereby modified and vacated without further notice, application, or order of the Court to the extent necessary to permit the DIP Lender to perform any act authorized or permitted under or by virtue of the Interim DIP Order, this Final DIP Order, or any of the Loan Documents, including, without limitation,

- (a) to implement the DIP Facility authorized by the Interim DIP Order, this Final DIP Order and pursuant to the terms of the Loan Documents,
- (b) to take any act to create, validate, evidence, attach, or perfect any lien, security interest, right, or claim in the “**Collateral**” (as defined in the Loan Agreement”), and
- (c) to assess, charge, collect, advance, deduct, and receive payments with respect to the Obligations, including, without limitation, all principal, interest, fees, costs, and expenses permitted under the Loan Documents, and to apply such payments to the Obligations pursuant to the Loan Documents.

11. The DIP Lender shall have no obligation to make any DIP Loans or any other financial accommodation under the respective Loan Documents unless the conditions precedent to make such extensions of credit under the respective Loan Documents have been satisfied in full or waived in accordance with such Loan Documents.

12. Pursuant to Section 364(c)(1) of the Bankruptcy Code, the Obligations constitute (without the need to file a proof of claim) superpriority claims (the “**DIP Superpriority Claims**”) against the Debtor, with priority over any and all administrative expenses of the

Debtor, whether now existing or hereafter arising or incurred, of the kind specified in Sections 503(b) and 507(b) of the Bankruptcy Code.

13. As security for the full and timely payment of the Obligations, the DIP Lender is hereby granted, pursuant to Sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code, valid, enforceable, non-avoidable, and fully perfected security interests in and liens on all Collateral (as defined in the Loan Agreement) (collectively, the “**DIP Liens**”), which shall have the priorities stated in the Loan Agreement.

14. For the avoidance of doubt, “**Collateral**” shall not include (i) any causes of action arising under chapter 5 of the Bankruptcy Code or applicable state law equivalents and the proceeds thereof and (ii) any pre-petition and post-petition commercial tort claims (as such term is defined in the Uniform Commercial Code as in effect in the State of New Hampshire) and the proceeds thereof, including, without limitation, any and all causes of action (and the proceeds thereof) against current and former directors and officers of the Debtor and/or any of its affiliates. The foregoing shall not apply to First Priority Collateral, all of which shall be Collateral.

15. The DIP Liens became effective immediately upon entry of the Interim DIP Order. The Interim DIP Order and this Final DIP Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the DIP Liens without the necessity of executing, filing, or recording any mortgage, security agreement, pledge agreement, financing statement, or other instrument or document, or the taking of any other act that otherwise may be required under state or federal law, rule, or regulation of any jurisdiction to validate or perfect the DIP Liens or to entitle the DIP Lender to the priorities granted herein; however, the Debtor may execute, and the DIP Lender is hereby authorized to execute, file, and/or record mortgages,



security agreements, pledge agreements, financing statements, and/or other instruments or documents to evidence the DIP Liens and the Debtor is hereby authorized, promptly on a demand by the DIP Lender made in accordance with the terms of the Loan Documents to execute, file, and/or record any such mortgages, security agreements, pledge agreements, financing statements, or other instruments or documents as the DIP Lender may request; however, no such execution, filing, or recordation shall be necessary or required in order to create or perfect the DIP Liens. A copy of the Interim DIP Order or this Final DIP Order may, in the discretion of the DIP Lender, be filed with or recorded in any filing or recording office in addition to or in lieu of such mortgages, security agreements, pledge agreements, financing statements, or other instruments or documents, and each and every federal, state, and local governmental agency, department, or office is hereby directed to accept a copy of the Interim DIP Order or this Final DIP Order and any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Interim DIP Order, the Final DIP Order, and the Loan Documents, for filing and recording, and to deem the Interim DIP Order and the Final DIP Order to be in proper form for filing and recording.

16. The DIP Liens shall not be

- (a) subject to any lien that is avoided and preserved for the benefit of the Debtor's estate under Section 551 of the Bankruptcy Code or
- (b) except as provided in the Loan Agreement, subordinated to or made *pari passu* with any other lien under Section 364(d) of the Bankruptcy Code or otherwise.

17. Absent payment in full in cash of all Obligations of the Debtor and termination of the Loan Agreement, the Debtor shall not

- (a) grant or impose any liens on the Collateral or
- (b) prime or seek to prime the DIP Liens.

18. In no event shall any person or entity who pays (or through the extension of credit to the Debtor, causes to be paid) any of the Obligations, be subrogated, in whole or in part, to any rights, remedies, claims, privileges, liens, or security interests granted in favor of, or conferred on the DIP Lender by the terms of the Interim DIP Order, the Final DIP Order, or any of the Loan Documents, until all of the Obligations are paid in full in cash and termination of the Loan Agreement.

19. The DIP Liens and the DIP Superpriority Claims shall continue after conversion of the Case to a case under Chapter 7 of the Bankruptcy Code and in any successor Case for the Debtor under any Chapter of the Bankruptcy Code, and all liens, security interests, and claims shall maintain their priority as provided in this Final DIP Order.

20. Notwithstanding anything in this Final DIP Order, any Loan Documents, or any other order of this Court to the contrary, the DIP Superpriority Claims and the DIP Liens shall not be subject nor subordinate to the Carve-Out (as defined in the Fifth Order Authorizing Interim Use of Cash Collateral and Granting Adequate Protection and Related Relief [Docket No. 506]) or any similar right granted in any other order.

21. Notwithstanding anything in the Interim DIP Order, this Final DIP Order, any Loan Document, or any other order by this Court to the contrary, no proceeds of the DIP Loans or Collateral may be used, directly or indirectly by the Debtor, or any other person or entity, to fund

- (a) any investigation of or challenge to
  - (i) the enforceability of any amounts due under the DIP Loans or the Loan Documents or on account of the DIP Superpriority Claims or
  - (ii) the validity, perfection, priority or extent of the DIP Liens,

- (b) any investigation or prosecution of any claims, defenses, or causes of action (including, without limitation, any claims or causes of action under chapter 5 of the Bankruptcy Code) against the DIP Lender or its agents, affiliates, representatives, attorneys, or advisors,
- (c) any effort to prevent, hinder or otherwise delay the DIP Lender's assertion, enforcement, or realization against or upon the Collateral, in accordance with the Interim DIP Order, this Final DIP Order and the Loan Document,
- (d) any effort to seek to modify any of the rights granted to the DIP Lender hereunder or under the Loan Documents, or
- (e) any effort to take any other action prohibited by the Loan Agreement.

22. The Debtor's authorization to use the DIP Facility shall immediately terminate on the Line of Credit Termination Date, as defined in the Loan Agreement.

23. No costs or expenses of administration which have been or may be incurred in the Case shall be recovered from the DIP Lender or be charged against the Collateral pursuant to Sections 105 or 506(c) of the Bankruptcy Code or otherwise. The DIP Lender shall not be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the Collateral. The DIP Liens shall not be subject to Sections 510, 549, 550, or 551 of the Bankruptcy Code.

24. Professionals for the DIP Lender shall not be required to file fee applications, provided that invoices (subject in all respects to applicable privilege and work product doctrines) shall be provided to counsel for the Debtor, the Committee, Key, HUD and the United States Trustee, which parties shall have fourteen (14) days to object to such invoices in the absence of which such invoices shall be paid by the Debtor and, if not paid by the Debtor, may be paid by the DIP Lender as an advance under the DIP Facility regardless whether

- (a) the DIP Facility has terminated,

- (b) an Event of Default has occurred under the Loan Agreement or would be caused by such payment, or
- (c) such payment would cause the principal balance of the DIP Facility to exceed the maximum permissible principal amount under the Loan Agreement.

25. In determining to extend credit under the DIP Facility, or in exercising any rights or remedies pursuant to the Interim DIP Order, this Final DIP Order, and the Loan Documents, the DIP Lender shall not be deemed to be in control of the Debtor's operations or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtor (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601, *et seq.*, as amended, or any similar federal or state statute).

26. The Debtor may not obtain postpetition loans or other financial accommodations pursuant to Section 364(c) or 364(d) of the Bankruptcy Code, other than from the DIP Lender, or as may be otherwise expressly permitted under the Loan Documents, unless the Debtor uses the proceeds of such postpetition loans or other financial accommodations to pay in full in cash all Obligations.

27. In any hearing regarding any exercise of rights or remedies by the DIP Lender following an alleged Event of Default, the only issue that may be raised by any party in opposition thereto shall be whether, in fact, an Event of Default has occurred and is continuing and/or whether any required notice has been provided, and the Debtor hereby waives its right to seek relief, including without limitation, under Section 105 of the Bankruptcy Code, to the extent such relief would in any way impair or restrict the rights and remedies of the DIP Lender, as set forth in the Interim DIP Order, this Final DIP Order or the Loan Documents, other than to

contest whether an Event of Default has occurred or is continuing and/or whether any required notice has been provided.

28. In the absence of express prior written consent, no consent to a sale, transfer, lease, encumbrance, or other disposition of any portion of the Collateral shall be implied from any action, inaction, or acquiescence by the DIP Lender.

29. On the occurrence of an Event of Default under the Loan Agreement and following five (5) business days written notice thereof (the “**Stay Termination Notice**”) to counsel to the Debtor, counsel to the Committee, counsel to Key, counsel to HUD, and the United States Trustee (collectively, the “**Notice Parties**”), and unless an Order extending the automatic stay (based upon a finding that an Event of Default has not occurred and is not continuing and/or that any required notice has not been provided) is entered prior to the date which is five (5) business days after the date of service of the Stay Termination Notice as set forth below, the automatic stay of Section 362 of the Bankruptcy Code shall be deemed automatically vacated and the DIP Lender shall be immediately permitted to, among other things, pursue any and all of its remedies against the Debtor and the Collateral; however, the automatic stay shall be deemed vacated immediately to the extent necessary to allow the DIP Lender to enforce its entitlement to payment in full of all Obligations from the proceeds of sale of any Acquired Assets. Following the service of a Stay Termination Notice by the DIP Lender to the Notice Parties, the Notice Parties shall be entitled to an emergency hearing before this Court; however, if the Court does not, prior to the date which is five (5) business days after the date of service of the Stay Termination Notice, enter an Order extending the automatic stay (based on a finding that an Event of Default has not occurred and is not continuing and/or that

any required notice has not been provided), the automatic stay shall terminate as provided above notwithstanding the filing or pendency of any request for such emergency hearing.

30. The provisions of the Interim DIP Order and this Final DIP Order and any actions taken pursuant hereto or thereto shall survive the entry of any order:

- (a) confirming a chapter 11 plan in the Case,
- (b) converting the Case to case under chapter 7 of the Bankruptcy Code, or
- (c) dismissing the Case, and the Obligations and DIP Liens shall maintain their enforceability and priority as provided by the Interim DIP Order and this Final DIP Order until all of the Obligations are paid in full in cash in accordance with the Loan Documents.

31. This Final DIP Order shall not be construed in any way as a waiver or relinquishment of any rights that the DIP Lender may have to bring or be heard on any matter brought before this Court.

32. The terms, conditions, and provisions of this Final DIP Order are in addition to and without prejudice to the rights of the DIP Lender to pursue any and all rights and remedies under the Bankruptcy Code, the Loan Documents, or any other applicable agreement or law, including, without limitation, rights

- (a) to seek relief from the automatic stay,
- (b) to seek an injunction,
- (c) to oppose any request for use of cash collateral or for the granting of any interest in the Collateral, or of priority in favor of any other party,
- (d) to object to any sale of assets, or
- (e) to object to applications for allowance or payment of compensation of professionals or other parties seeking compensation or reimbursement from the Debtor's estate.

33. Notwithstanding anything to the contrary contained in any prior or subsequent order of this Court, the DIP Lender shall not be required to file proofs of claim in order to maintain its claims with respect to the Obligations, all of which shall be due and payable in accordance with the Interim DIP Order, this Final DIP Order, and the Loan Documents without the necessity of filing any such proof of claim.

34. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), and 7062, any other Bankruptcy Rule, and any other rule governing procedure in this Court, this Final DIP Order shall be immediately effective and enforceable on its entry, and there shall be no stay of execution or effectiveness of this Final DIP Order.

35. In the event of any inconsistency or conflict between any of the terms and provisions of the Interim DIP Order, this Final DIP Order, and the Loan Documents, the terms and provisions of this Final DIP Order shall govern.

36. The Debtor's cash management system shall at all times be maintained in accordance with any order of this Court approving the maintenance of the Debtor's cash management system. The DIP Lender shall be deemed to have "control" over all such accounts for all purposes of perfection under the Uniform Commercial Code.

37. The DIP Lender shall have the unqualified right to credit bid up to the full amount of the applicable outstanding Obligations, including any accrued interest, in the sale of substantially all property of the Debtor's estate under the "**APA**" (as defined in the Loan Agreement) or any sale of the Collateral (or any part thereof), without the need for further Court order authorizing the same, and whether such sale is effectuated through Section 363 or 1129 of the Bankruptcy Code, by a Chapter 7 trustee under Section 725 of the Bankruptcy Code, or otherwise.

38. This Court shall retain jurisdiction to interpret, implement, and enforce the provisions of this Final DIP Order and the Loan Documents, including the Loan Agreement.

39. The DIP Lender is hereby granted all protections afforded by Section 364(e) of the Bankruptcy Code.

40. The failure to reference any provision of the Loan Documents in the Interim DIP Order or this Final DIP Order shall not affect the enforceability of such provision.

Dated: \_\_\_\_\_, 2021

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The Honorable Michael A. Fagone  
United States Bankruptcy Judge



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**POST-PETITION LOAN AND SECURITY AGREEMENT**

DATED AS OF

MARCH 22 2021

BY AND BETWEEN

LRGH HEALTHCARE

AS BORROWER,

AND

CONCORD HOSPITAL, INC.

AS LENDER

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## **POST-PETITION LOAN AND SECURITY AGREEMENT**

This POST-PETITION LOAN AND SECURITY AGREEMENT (this “**Agreement**”) is made and entered into March 22, 2021, between LRGH Healthcare (“**Borrower**”), and Concord Hospital, Inc. (“**Lender**”).

### **RECITALS**

WHEREAS, Borrower is a debtor-in-possession under Chapter 11 of the Bankruptcy Code in a case (the “**Reorganization Case**”) pending in the United States Bankruptcy Court for the District of New Hampshire (together with any other court having jurisdiction over the Reorganization Case or any proceedings therein from time to time, the “**Bankruptcy Court**”), as Case No. 20-10892. Borrower has requested that Lender extend financing to Borrower in connection with the Reorganization Case in accordance with the provisions of this Agreement.

WHEREAS, Lender is willing to make the Post-Petition Loan to Borrower, subject to the terms and conditions of this Agreement and subject to the terms and conditions set forth in the orders of the Bankruptcy Court approving the proposed financing.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

#### **SECTION 1. DEFINITIONS.**

1.1 **General Provisions.** Unless expressly provided otherwise in this Agreement or in the Loan Documents, or unless the context requires otherwise:

(a) all accounting terms used in this Agreement and in the Loan Documents shall have the meanings given to them in accordance with GAAP;

(b) all terms used herein and in the Loan Documents that are defined in the UCC, shall have the meanings set forth therein;

(c) all capitalized terms defined in this Agreement shall have the defined meanings when used in the Loan Documents and in any other documents made or delivered pursuant to this Agreement;

(d) the singular shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders;

(e) all references to any particular party defined herein shall be deemed to refer to each and every person defined herein as such party individually, and to all of them, collectively, jointly and severally, as though each were named wherever the applicable defined term is used;

(f) all references to “Sections” and “Subsections”, unless the context to such reference clearly indicates otherwise, shall refer to provisions of this Agreement;

(g) all references to time herein shall mean Eastern Standard Time or Eastern Daylight Time, as then in effect; and

(h) all references to sections, subsections, paragraphs or other provisions of statutes or regulations shall be deemed to include successor, amended, renumbered and replacement provisions.

1.2 Defined Terms. As used herein, the following terms shall have the meanings indicated, unless the context otherwise requires:

“**Account**” has the meaning stated in in the UCC, including all rights to payment for goods sold or leased, or for services rendered.

“**Account Receivable**” has the meaning stated in Section 2.11 hereof.

“**Acquired Assets**” means the assets to be sold by the Borrower to the Purchaser pursuant to the APA.

“**Affiliate**” means, with respect to a specified Person, any other Person which directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the specified Person; provided that such Person shall be deemed an Affiliate for only so long as such control exists. For purposes of this definition and the definition of Related Person, the term “control” includes, without limitation, the possession, directly or indirectly, of the power to direct the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**Agreement**” shall mean this Agreement and any future amendments, restatements, modifications or supplements hereof or hereto.

“**APA**” means the Asset Purchase Agreement between Borrower, on the one hand, and the Purchaser, on the other hand, dated October 19, 2020, together with the Schedules and Exhibits thereto, and any amendments, restatements, modifications or supplements thereof or thereto.

“**APA Closing Date**” shall mean the “Closing Date”, as defined in the APA.

“**APA Governmental Approvals**” has the meaning stated in Section 4.1(k). hereof.

“**Authorized Officer**” means, collectively, the President, Chief Financial Officer, or any other officer of the Borrower designated as an Authorized Officer in writing to the Lender by the President of the Borrower.

“**Bankruptcy Code**” means the United States Bankruptcy Code, Title 11 of the United States Code, as amended, or any successor law thereto, and any rules promulgated in connection therewith.

“**Bankruptcy Court**” has the meaning stated in the Recitals hereof.

“**Borrower**” has the meaning stated in the preamble hereof.

“**Budget**” means the budget approved pursuant to the Cash Collateral Order as in effect on the DIP Closing Date and such additional budgets as may be approved by the Lender, in the exercise of its sole discretion.

“**Business Day**” means any day other than a Saturday, Sunday or legal holiday under the laws of the State of New Hampshire.

“**Cares Act**” means the Coronavirus Aid, Relief and Economic Security Act.

“**Cash Collateral Order**” has the meaning stated in Section 4.1(m) hereof.

“**Code**” means the Internal Revenue Code of 1986, as amended, or any successor law thereto, and any regulations promulgated thereunder.

“**Collateral**” has the meaning stated in Section 2.11 hereof.

“**Committee**” has the meaning stated in Section 7.2(b) hereof.

“**Contract Rate**” means (a) from the DIP Closing Date until May 1, 2021, the fixed annual rate of five percent (5%) per annum, and (b) from and after May 2, 2021, the fixed annual rate of seven and one-half percent (7.5%) per annum.

“**Default**” means any event specified in Section 7.1, whether or not any requirement for notice or lapse of time or any other condition has been satisfied.

“**Default Rate**” means ten percent (10%) per annum.

“**DIP Closing Date**” means the date the Interim DIP Order is entered.

“**DIP Order**” means the Interim DIP Order or the Final DIP Order, as applicable, based on which such order is then in effect.

“**Event of Default**” means any event specified in Section 7.1, provided that any requirement for notice or lapse of time or any other condition has been satisfied.

“**Final DIP Order**” means the order of the Bankruptcy Court entered in the Reorganization Case granting approval of this Agreement and the other Loan Documents on a final basis, substantially in the form of Exhibit A or otherwise in form and substance satisfactory to the Borrower and Lender.

**“Final Order”** means an order, judgment or other decree of any Governmental Body as to which (a) the operation or effect has not been reversed, stayed, modified or amended, (b) no appeals, motions for reconsideration, petitions seeking the grant of certiorari or, if certiorari has been granted, grants of certiorari are pending, and (c) any and all appeal periods and periods to seek the grant of certiorari have expired

**“First Priority Collateral”** has the meaning stated in Section 2.11 hereof.

**“Funded Debt Permitted Encumbrances”** has the meaning stated in Section 6.2(a)(i) hereof.

**“GAAP”** means, at any particular time, generally accepted accounting principles as in effect at such time, provided, however, that, if employment of more than one principle shall be permissible at such time in respect of a particular accounting matter, GAAP shall refer to the principle which is then employed by the Borrower with the agreement of its independent certified public accountants.

**“Governmental Body”** means any federal, state, local, municipal, foreign or other governmental or quasi-governmental entity or authority of any nature, including courts and administrative agencies (including the FDA and its equivalent authority or body in any foreign jurisdiction).

**“Hillside Real Estate”** has the meaning stated in Section 2.11 hereof.

**“HUD”** has the meaning stated in Section 7.2(b) hereof.

**“Intellectual Property Collateral”** means, collectively, (i) Copyrights, (ii) Patents, (iii) Proprietary Works, (iv) Trademarks, (v) Software, and (vi) Licenses.

**“Interim DIP Order”** means that certain order of the Bankruptcy Court authorizing the Borrower to enter into this Agreement subject to certain limitations applicable until entry of the Final DIP Order, substantially in the form of Exhibit B or otherwise in form and substance satisfactory to the Borrower and Lender.

**“Key”** has the meaning stated in Section 7.2(b) hereof.

**“Law(s)”** shall mean any federal, state, local and other law(s) (including common law), constitution, statute, treaty, regulation, rule, ordinance, opinion, issued guidance, release, ruling, order, executive order, injunction, writ, decree, bond judgment authorization or approval, lien or award of or any settlement arrangement, by agreement, consent or otherwise, with any Governmental Body, foreign or domestic.

**“Lender”** has the meaning stated in the preamble hereof.

**“Licenses”** means, collectively, all of the Borrower’s right, title and interest in and to all license agreements with any other Person in connection with any of the Patents, Proprietary Works, Copyrights, and/or Trademarks, whether the Borrower is a licensor or a licensee under any



such license agreement, and any right to prepare for sale, sell and advertise for sale all Inventory now or hereafter owned by the Borrower and now or hereafter covered by such licenses, including, but not limited to, (i) the right to sue or otherwise recover for any and all past, present and future breaches and other violations thereof, (ii) all income, royalties, damages, settlements and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, damages, settlements and payments for past or future breaches and infringements thereof) and (iii) all rights of the Borrower corresponding thereto throughout the world and all other rights of the Borrower of any kind whatsoever accruing thereunder or pertaining thereto

**“Lien”** means, collectively, any mortgage, pledge, hypothecation, assignment, deposit arrangement, security interest, encumbrance, lien (statutory or otherwise), preference, priority or charge of any kind, including, without limitation, any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease in the nature thereof.

**“Line of Credit”** means the non-revolving line of credit facility described in Section 2.1.

**“Line of Credit Commitment”** means, as at any applicable time, the Borrower’s maximum credit availability under the Line of Credit, as established in Section 2.1(a) whether or not then fully extended.

**“Line of Credit Note”** means the promissory note described in Section 2.2 and any future amendments, restatements, modifications or supplements thereof or thereto.

**“Line of Credit Termination Date”** means the earliest of (i) the later of (a) the Scheduled Maturity Date, and (b) the date of termination of the APA, (ii) the APA Closing Date, and, (iii) acceleration of the Obligations as a result of the occurrence of an Event of Default.

**“Loan”** means the non-revolving line of credit facility made available to the Borrower pursuant to this Agreement.

**“Loan Account”** means, collectively, the account or accounts of the Borrower on the books of Lender in which are recorded the Loan and the payments of principal interest and other charges made by the Borrower to Lender thereon.

**“Loan Documents”** means this Agreement, the Line of Credit Note and all other documents executed and delivered to the Lender by or on behalf of the Borrower in connection therewith and any modifications, amendments, restatements, substitutions and replacements of or for any of the foregoing.

**“Obligations”** means, collectively, all liabilities, duties and obligations of the Borrower to the Lender with respect to any covenants, representations or warranties herein or in the Loan Documents, with respect to the principal of and interest on the Loan and all other present and future fixed and/or contingent obligations of the Borrower to the Lender hereunder and under the Loan Documents.

**“Other Party Permitted Encumbrances”** means Permitted Encumbrances in favor of Persons other than the Lender.

**“Patents”** means, collectively, all of the Borrower’s right, title and interest in and to all patents, patent applications and patentable inventions including, but not limited to, (i) all inventions and improvements described and claimed therein, (ii) the right to sue or otherwise recover for any infringements and other violations thereof, (iii) all income, royalties, damages, settlements and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages, settlements and payments for past and future infringements thereof) and (iv) all rights corresponding thereto throughout the world and all reissues, divisions, continuations, continuations-in-part, provisional applications, substitutes, renewals and extensions thereof, all improvements thereon and all other rights of the Borrower of any kind whatsoever accruing thereunder or pertaining thereto.

**“Permitted Debt”** means any and all Debt permitted under Section 6.1 hereof.

**“Permitted Encumbrances”** has the meaning stated in Section 6.2(a) hereof.

**“Permitted Expense”** has the meaning stated in Section 3.6 hereof.

**“Petition Date”** means October 19, 2020 the date of filing of the Petition for Relief commencing the Reorganization Case.

**“Person”** means an individual, a corporation, a partnership, a joint venture, a trust or unincorporated organization, a joint stock company or other similar organization, a government or any political subdivision thereof, or any other legal entity.

**“Post-Petition Obligation”** means an obligation of the Borrower which is not a Pre-Petition Obligation.

**“Pre-Petition Obligation”** means any obligation of the Borrower arising, or deemed to have arisen pursuant to the Bankruptcy Code, before the Petition Date.

**“Proceeds”** means, collectively, whatever is received when any of the Collateral is sold, exchanged, leased, collected, or otherwise disposed of, including cash, insurance proceeds, negotiable instruments and other instruments for the payment of money, chattel paper, security agreements, other documents, and other noncash proceeds.

**“Purchaser”** means the Lender and/or one or more of its Affiliates in such Person’s capacity under the APA.

**“Reorganization Case”** has the meaning stated in the Recitals hereof.

**“Sale Order”** means that certain order of the Bankruptcy Court approving the APA [ECF No. 405].

“**Scheduled Maturity Date**” means May 1, 2021.

“**Security Documents**” means, individually and collectively, any instruments now or hereafter executed and delivered to the Lender to secure, or to assure, payment or performance, of the Obligations, and any future amendments, restatements, modifications or supplements thereof or thereto.

“**Subordinate Priority Collateral**” has the meaning stated in Section 2.11 hereof.

“**Trademarks**” means, collectively, all of the Borrower’s right, title and interest in and to (i) all trademarks, service marks, trade names, corporate names, Borrower names, business names, fictitious names, trade dress, service marks, trade styles, logos and other designs or sources of business identifiers or other indicia of trade origin, (ii) all trademark and service mark registrations and applications for trademark or service mark registrations, and (iii) any and all extensions and renewals of or with respect to any of the foregoing, including, but not limited to, (A) the right to sue or otherwise recover for any and all past, present and future infringements, misappropriations and other violations thereof, (B) all income, royalties, damages, settlements and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages, settlements and payments for past or future infringements thereof) and (C) all rights of the Borrower corresponding thereto throughout the world and all other rights of the Borrower of any kind whatsoever accruing thereunder or pertaining thereto, together in each case with the goodwill of the business connected with the use of, and symbolized by, any or all of the foregoing throughout the world, but excluding any United States intent-to-use trademark application prior to the filing of a Statement of Use or an amendment to allege use in connection therewith to the extent that a valid lien and security interest may not be taken in such an intent-to-use application under applicable law.

“**UCC**” means the Uniform Commercial Code as in effect in the State of New Hampshire or, when the laws of any other jurisdiction govern the perfection or enforcement of any Lien, the Uniform Commercial Code of such jurisdiction.

## SECTION 2. AMOUNT AND TERMS OF LOAN.

### 2.1 Line of Credit.

(a) Subject to, and in accordance with, the terms and conditions of this Agreement and the DIP Order, the Lender agrees to extend credit to the Borrower by making loans to it, from time to time during the period commencing on the DIP Closing Date and ending on the Line of Credit Termination Date, in an aggregate outstanding amount that shall not exceed, at any one time, the lesser of:

(i) Six Million Dollars (\$6,000,000.00) in principal; or

(ii) Prior to entry of the Final DIP Order, the amount authorized by the Interim DIP Order, it being understood that the Borrower will request that such amount be Three Million Dollars (\$3,000,000.00).

(b) Subject to, and in accordance with, the terms and conditions of this Agreement and the DIP Order, Lender shall make advances under the Line of Credit as follows:

(i) On the first Business Day following the later of entry of the Interim DIP Order, Lender and satisfaction of all conditions stated in Section 4.1(a), hereof, Lender shall advance to Borrower the amount (not to exceed Three Million Dollars (\$3,000,000.00).authorized by the Interim DIP Order, (the “**Initial Advance**”); and

(ii) On the first Business Day following the later of entry of the Final DIP Order (without regard to whether the Final DIP Order is a Final Order)and satisfaction of all conditions stated in Section 4.1(b) hereof, Lender shall advance an amount equal to the amount authorized by the Final DIP Order minus the Initial Advance (the “**Subsequent Advance**”).

(c) The Line of Credit Termination Date may be extended or renewed by the Lender, in its sole discretion, on a day-to-day basis or otherwise, based on a letter to such effect from the Lender to the Borrower or by a written agreement between the parties hereto; provided, however, the Lender shall have no duty or obligation, express or implied, to extend the Line of Credit Termination Date or consider any request for such an extension and further provided that an extension of the Line of Credit Termination Date after the occurrence of a Default or an Event of Default shall not constitute a waiver of such Default or Event of Default.

(d) Notwithstanding anything contained herein to the contrary, the Line of Credit shall be a non-revolving loan facility and, therefore, each advance under the Line of Credit shall permanently reduce, dollar for dollar, the Borrower’s credit availability under the Line of Credit and the Borrower will not have the ability to re-borrow hereunder.

2.2 Line of Credit Note. On the DIP Closing Date, the Borrower shall execute and deliver to the Lender its promissory note, which shall evidence the Borrower’s obligation to repay the principal of, interest on, and other amounts due in connection with the Line of Credit and the Obligations, and which shall:

(a) be dated the DIP Closing Date and be payable to the Lender’s order in the principal amount of Six Million Dollars (\$6,000,000.00).

(b) require the payment of interest on the unpaid principal amount of any funds advanced and outstanding under the Line of Credit from the dates of such advances and, prior to the occurrence of an Event of Default, at an annual rate equal to the Contract Rate and, on and after (i) Line of Credit Termination Date, or (ii) the date of occurrence of an Event of Default, at an annual rate equal to the Default Rate, in each case whether prior to or after judgment against the Borrower;

(c) not require any payment of principal or interest prior to the Line of Credit Termination Date and be payable in full as to the entire unpaid principal balance, all accrued interest and other sums due thereunder on the Line of Credit Termination Date; and

(d) be secured by the Security Documents and the Collateral.

2.3 Loan Account. The Lender shall record in one or more Loan Accounts, the Loans, all advances to and all payments made by Borrower on account of the Loans, and all other appropriate debits and credits.

2.4 Computation of Interest. Interest shall be calculated on the basis of a 365-day year for actual days elapsed. Any change in the interest rate on the Note resulting from a change from the Contract Rate to the Default Rate shall become effective as of the opening of business on the day on which such change shall occur.

2.5 Maximum Legal Rate. Borrower shall not be obligated to pay and Lender shall not collect interest on any Obligation at a rate in excess of the maximum permitted by law or the maximum that will not subject Lender to any civil or criminal penalties. If, because of the acceleration of maturity, the payment of interest in advance or any other reason, the Borrower is required, under the provisions of any Loan Document or otherwise, to pay interest at a rate in excess of such maximum rate, the rate of interest under such provisions shall immediately and automatically be reduced to such maximum rate, and any payment made in excess of such maximum rate, together with interest thereon at the rate provided herein from the date of such payment, shall be immediately and automatically applied to the reduction of the unpaid principal balance of the Obligations as of the date on which such excess payment was made. If the amount to be so applied to reduction of the unpaid principal balance exceeds the unpaid principal balance, the amount of such excess shall be refunded by Lender to Borrower.

2.6 Payments. All payments by the Borrower hereunder shall be made at the Lender's address set forth in Section 8.2, or such other place or places as the Lender may direct, prior to 5:00 P.M. on the date of payment, in lawful money of the United States of America, and in immediately available funds.

2.7 Application of Payments. All payments shall be applied first to the payment in full of any expenses incurred by the Lender and permitted to be charged to the Borrower, including (without limitation) reasonable attorneys' fees, then to the payment in full of accrued, unpaid interest and finally to the reduction of the unpaid principal balance. The portion of any payment applied to the reduction of the unpaid principal balance shall permanently reduce the Line of Credit Commitment by the amount of such payment and may not be re-borrowed.

2.8 Voluntary and Mandatory Payments. The Obligations may pre-paid, in whole or in part and without penalty, at any time prior to the Line of Credit Termination Date. If the unpaid principal balance of the Line of Credit Note thereon exceeds the Line of Credit Commitment at any time, the Borrower shall immediately pay to the Lender for application to the Line of Credit Note an amount equal to such excess. All Obligations shall be due and payable in full on the Line of Credit Termination Date. In addition, in the event that, prior to the Line of Credit Termination Date, the Borrower receives any amounts pursuant to the CARES Act or any other governmental stimulus program (including the American Rescue Plan Act of 2021), to the extent such amounts were not included in the Budget and are available for payment of expenses stated in the Budget, the Borrower shall, within two (2) Business Days of receipt of such amounts, pre-pay any then outstanding Obligations and, to the extent such amounts exceed the then outstanding Obligations,

such excess shall reduce the remaining Line of Credit Commitment on a dollar for dollar and permanent basis.

2.9 Additional Security. In addition to the security provided herein and in the Security Documents, Borrower also grants Lender, as further security for payment of the Obligations, a lien upon and security interest in any and all debts or other obligations Lender or any Affiliate of Lender may owe to Borrower from time to time.

2.10 Administrative Status of Obligations. In addition to being secured by the Collateral, the Obligations shall, pursuant to Section 364(c)(1) of the Bankruptcy Code, constitute allowed administrative expenses in the Reorganization Case, with priority over all other administrative expenses of the kind specified in Section 503(b) or 507(b) of the Bankruptcy Code.

2.11 Grant of Security Interest. To secure the payment to the Lender and the prompt performance of the Obligations, the Borrower hereby grants to Lender a security interest in (i) the Borrower's real property located at 14 Maple St Gilford, NH 03249 (together with Products and Proceeds thereof, and all books and records related thereto, the "**Hillside Real Estate**"), (ii) all of the Borrower's presently owned or hereafter acquired Accounts Receivable (as defined in the APA) (together with Products and Proceeds thereof and all books and records related thereto, the "**Accounts Receivable**" and, together with the Hillside Real Estate, the "**First Priority Collateral**"), and (iii) all Chattel Paper, Commercial Tort Claims, Deposit Accounts, Documents, Equipment, Fixtures, General Intangibles, all Intellectual Property Collateral, Goods, Inventory, Instruments, Investment Property, Letter of Credit Rights, Payment Intangible, Supporting Obligations, insurance policies (together with Products and Proceeds thereof, and all books and records related thereto, the "**Subordinate Priority Collateral**" and, together with the First Priority Collateral, the "**Collateral**").

For purposes hereof, books and records shall be deemed to include customer lists, files, correspondence, tapes, computer programs, print-outs and computer records. For purposes hereof, Products and Proceeds shall be deemed to include cash collateral, as defined in Section 363 of the Bankruptcy Code, and all accessions to, substitutions for, and all replacements, products, and cash and non-cash proceeds of the applicable Collateral, including proceeds of and unearned premiums with respect to insurance policies, and claims against any Person for loss, damage or destruction of such Collateral), provided, however, as to Subordinate Priority Collateral, Products and Proceeds shall exclude (x) any causes of action arising under chapter 5 of the Bankruptcy Code or applicable state law equivalents and the proceeds thereof and (y) any pre-petition and post-petition Commercial Tort Claims and the proceeds thereof, including, without limitation, any and all causes of action (and the proceeds thereof) against current and former directors and officers of the Debtor and/or any of its affiliates.

The security interest granted to the Lender hereunder shall at all times be (a) as to the Accounts Receivable, senior to all other liens on and security interests including all Other Party Permitted Encumbrances, (b) as to the Hillside Real Estate, (i) senior to the Funded Debt Permitted Encumbrances and all other liens and security interests that are not Other Party Permitted Encumbrances, and (ii) junior to the Other Party Permitted Encumbrances that are not Funded Debt Permitted Encumbrances, and (c) as to all the Subordinate Priority Collateral, (i) senior to



all liens and security interests that are not Other Party Permitted Encumbrances, and (ii) junior to all Other Party Permitted Encumbrances..

2.12 Perfection of Security Interests. The Interim DIP Order and the Final DIP Order shall, without the necessity of any further action or filings by the Lender, the Debtor or any other Person, perfect the Lender's security interests in the Collateral. Notwithstanding the foregoing, the Borrower shall, at its cost and expense, execute and deliver to Lender, concurrently with the execution of this Agreement, and at any time or times hereafter at the request of the Lender, all financing statements and all other agreements, instruments and documents that the Lender may reasonably request (including a mortgage on the Hillside Real Estate), in form and substance satisfactory to the Lender, and shall take any and all other steps reasonably requested by the Lender, in order to perfect and maintain the security interest and liens granted herein by the Borrower to the Lender and in order to fully consummate all of the transactions contemplated herein and under any other Loan Documents, with all filing and related expenses to be borne by the Borrower.

2.13 Additional Collateral; Right of Set Off. Any property in which the Borrower has an interest, which now or hereafter is in the possession or control of the Lender, shall at all times constitute additional security and Collateral for the Obligations and, only after the automatic stay has been terminated in accordance with Section 7.2(b) hereof, may be set off against the Obligations upon the occurrence of an Event of Default. Right to Credit Bid. In connection with any sale of Collateral, the Lender shall have the right to credit bid the Obligations.

**SECTION 3. BORROWER REPRESENTATIONS AND WARRANTIES.** To induce the Lender to enter into this Agreement and to make the Loans, the Borrower represents and warrants to the Lender, on the DIP Closing Date and upon the date of each Advance, that:

3.1 Organization and Qualification. The Borrower is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and is duly qualified as a foreign corporation and in good standing under the laws of each jurisdiction in which the conduct of its business or the ownership of its assets requires such qualification.

3.2 Power and Authority. Subject to entry and terms of the DIP Order, the Borrower has the corporate power to execute, deliver and perform under, the Loan Documents, to borrow under this Agreement and to create the collateral security interests for which the Security Documents provide, and has taken all necessary corporate action to authorize the borrowings hereunder on the terms and conditions of this Agreement and the execution and delivery of, and performance under, the Loan Documents. Other than the entry of the DIP Order, no consent of any other party (including members of the Borrower) and no consent, license, approval or authorization of, or registration or declaration with, any governmental authority, bureau or agency is required in connection with the execution, delivery, performance, validity or enforceability of the Loan Documents.

3.3 Enforceability. Subject to the entry of the DIP Order, the Loan Documents, when executed and delivered to Lender pursuant to the provisions of this Agreement, will constitute valid obligations of the Borrower legally binding upon it and enforceable in accordance with their respective terms, except as enforceability of the foregoing may be limited by bankruptcy,

insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights.

3.4 Conflict with Other Instruments. Subject to the entry of the DIP Order, the execution and delivery of, and performance under, the Loan Documents will not violate or contravene any provision of any existing law or regulation or decree of any court, governmental authority, bureau or agency having jurisdiction in the premises or of the Articles or Certificate of Incorporation, Charter or By-Laws of the Borrower.

3.5 Title to Collateral. The Borrower has good and marketable title in fee to the Collateral, free of any mortgages, pledges, charges, liens, security interests or other encumbrances except Permitted Encumbrances.

3.6 Use of Proceeds. From and after the DIP Closing Date, the Borrower agrees that amounts drawn on the Line of Credit may be used only to pay expenses provided for in the Budget with a cumulative variance equal to that permitted under the Cash Collateral Order in effect on the DIP Closing Date (a "***Permitted Variance***"). In no circumstance shall amounts drawn on the Line of Credit or any cash Collateral for the Obligations be used for expenses incurred to investigate or to contest in any adversary proceeding or any other action (a) the validity, extent, attachment, perfection or priority of the Liens created by this Agreement or the Loan Documents, (b) the validity, binding effect or enforceability of this Agreement or the Loan Documents or the Line of Credit Note, or (c) any other rights or interests of the Lender under the Loan Documents (those expenses set forth in the first sentence of this Section and not excluded pursuant to the foregoing portion of this sentence are hereinafter collectively referred to as the "***Permitted Expenses***"). Nothing herein shall in any way prejudice or prevent the Lender from objecting, for any reason, to any applications made for interim or final allowances of compensation for services rendered or reimbursement of expenses incurred under section 330 or 331 of the Bankruptcy Code.

3.7 No Notices; No Violations. Neither the Borrower nor any Subsidiary has received any notice from any Governmental Body or any insurance or inspection body to the effect that any of its properties, facilities, equipment or business procedures or practices fail to comply with any applicable Law, including any ordinance, regulation, building or zoning Law, judicial or administrative determination, or any other requirements of any such Governmental Body, and the Borrower, and all such properties, facilities, equipment, procedures and practices, comply in all material respects with all such Laws, including ERISA and any Environmental Laws.

3.8 Margin Regulation; Investment Company Act.

(a) The Borrower is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying "margin stock" within the meaning of Regulation U. No part of the proceeds of the Loan will be used, directly, or indirectly, for the purpose of purchasing or carrying any "margin stock" within the meaning of Regulation U. None of the transactions contemplated by this Agreement (including the direct or indirect use of the proceeds of the Loan) will violate or result in a violation of Regulation T, U or X.



(b) The Borrower is not an “investment company” registered or required to be registered under the Investment Company Act of 1940, as amended or (ii) controlled by such a company.

3.9 RESERVED.

3.10 Broker’s Commissions. No brokerage commission or similar compensation is due or will become due to any Person by reason of the making of the Loan.

3.11 APA Representations. All of the representations made by the Borrower to the Purchaser in the APA that are qualified by materiality are true and correct and such representations that are not so qualified are true and correct in all material respects.

SECTION 4. CONDITIONS OF BORROWING.

4.1 Initial Advance. As a condition precedent to the Lender’s obligation to make the Initial Advance under the Line of Credit, the following conditions shall all be satisfied:

(a) Loan Documents. The Borrower shall have delivered or caused to be delivered to the Lender duly executed copies of each of the Loan Documents.

(b) Financing Statements. A financing statement describing the Collateral shall have been filed in each such jurisdiction and in each such office as shall have been required by the Lender.

(c) Representations. The representations and warranties contained in Section 3 hereof that are qualified by materiality shall be true and correct, and such representations and warranties that are not so qualified shall be true and correct in all material respects, on and as of the date of the making of the Loans and the date of any advance under the Line of Credit with the same effect as if made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties that are qualified by materiality shall be true and correct, and such representations and warranties that are not so qualified shall be true and correct in all material respects, as of such earlier date, and no Event of Default or Default shall be in existence on the date of the making of Loans or such advance or shall occur as a result thereof.

(d) No Litigation. No suit, action, investigation, inquiry or other proceeding by or before any arbitrator or any governmental authority shall be pending and no preliminary or permanent injunction or order by a state or federal court shall have been entered (i) in connection with this Agreement, the other Loan Documents, the APA or any of the transactions contemplated hereby or thereby, or (ii) which, in the reasonable judgment of the Lender, could reasonably be expected to have a material adverse effect upon the Borrower.

(e) Lien Searches. The Lender shall have received such secured transaction, judgment and docket searches as it deems appropriate.

(f) Insurance. The Lender shall have received certificates or policies evidencing the insurance required under Section 5.6

(g) No Violation. Subject to Bankruptcy Court approval of this Agreement, the completion of the transactions contemplated hereby and by the Loan Documents shall not contravene, violate or conflict with, nor involve the Lender in violation of, any law, rule, or regulation applicable to any of them.

(h) Legal Matters. All legal matters incident to the transactions contemplated by this Agreement shall be satisfactory to counsel for the Lender.

(i) Interim DIP Order. The Bankruptcy Court shall have entered the Interim DIP Order in form and substance satisfactory to the Lender and its counsel and such shall be in full force and effect and shall not have been vacated, reversed, modified, amended or stayed.

(j) APA. The Bankruptcy Court shall have entered an order, in form and substance satisfactory to the Lender and its counsel, approving the Second Amendment to Asset Purchase Agreement dated March 22, 2021 and the APA, as so amended, shall not have been terminated.

(k) APA Governmental Approvals. The Lender shall be satisfied that, on or before May 1, 2021, all Governmental Authorities (as defined in the APA) will have issued all approvals necessary in order to close under the APA including approvals referenced in Sections 5.15 and 5.16 of the APA of the Attorney General of the State of New Hampshire, the Director of Charitable Trusts of the State of New Hampshire and the New Hampshire Department of Justice's Consumer Protection and Antitrust Bureau. (collectively, the "**APA Governmental Approvals**"),

(l) No Default. No Default or Event of Default shall exist as on the date of such initial advance or shall occur as a result of making such initial advance.

(m) Cash Collateral. The Bankruptcy Court shall have entered an order (the "**Cash Collateral Order**") satisfactory, in form and substance, to the Lender authorizing the Borrower to use cash collateral, which order may be an interim order.

(n) Sale Order. The Sale Order shall be in full force and effect and shall not have been vacated, reversed, modified, amended or stayed and the Borrower shall not have violated any of the terms of the Sale Order

4.2 Subsequent Advances. As a condition precedent to the Lenders' obligation to make the Subsequent Advance, the following conditions shall all be satisfied on the date of such Advance:

(a) No Default. No Default or Event of Default shall exist on the date of such advance or shall occur as the result of making such advance.

(b) Representations. Without limiting the generality of Section 4.2(a), the representations and warranties contained in Section 3 hereof that are qualified by materiality shall

be true and correct, and such representations and warranties that are not so qualified shall be true and correct in all material respects, on and as of the date of the making of the Loans and the date of any advance under the Line of Credit with the same effect as if made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties that are qualified by materiality shall be true and correct, and such representations and warranties that are not so qualified shall be true and correct in all material respects, as of such earlier date.

(c) No Litigation. No litigation, investigation, or proceeding before or by any arbitrator or governmental authority shall be pending and no preliminary or permanent injunction or order by a state or federal court shall have been entered (i) in connection with this Agreement, the other Loan Documents, the APA or any of the transactions contemplated hereby or thereby, or (ii) which, in the reasonable judgment of the Lender, could reasonably be expected to have a material adverse effect on the Borrower.

(d) Final DIP Order. The Bankruptcy Court shall have entered the Final DIP Order in form and substance satisfactory to the Lender and its counsel and such shall be in full force and effect and shall not have been vacated, reversed, modified, amended or stayed and the Borrower shall not have violated any of the terms of the DIP Order.

(e) APA Governmental Approvals. The Lender shall be satisfied that, on or before May 1, 2021, all APA Governmental Approvals will have been issued.

(f) APA. The Bankruptcy Court shall have entered an order, in form and substance satisfactory to the Lender and its counsel, approving the Second Amendment to Asset Purchase Agreement dated March 22, 2021 and the APA, as so amended, shall not have been terminated.

(g) Cash Collateral Order. The Cash Collateral Order shall be in full force and effect and shall not have been vacated, reversed, modified, amended or stayed and the Borrower shall not have violated any of the terms of the Cash Collateral Order.

(h) Sale Order. The Sale Order shall be in full force and effect and shall not have been vacated, reversed, modified, amended or stayed and the Borrower shall not have violated any of the terms of the Sale Order

(i) Additional Matters. All corporate and other proceedings, and all documents, instruments and other legal matters in connection with the transactions contemplated by this Agreement and the other Loan Documents shall be reasonably satisfactory, in form and substance, to the Lender.

4.3 Waiver of Conditions. The Lender may waive any condition in whole or in part.

SECTION 5. AFFIRMATIVE COVENANTS. The Borrower covenants and agrees that from and after the DIP Closing Date and so long as any of the Obligations remain outstanding and

unpaid, in whole or in part, the Borrower will observe the following covenants, unless the Lender shall otherwise consent in writing:

5.1 Financial Statements; Reports. The Borrower will furnish to Lender:

(a) All reports required to be filed or delivered to any other party pursuant to the Cash Collateral Order; and

(b) from time to time, such financial and other information as Lender may reasonably request.

5.2 Liabilities. The Borrower will pay and discharge, at or before their maturity, all of its respective Post-Petition Obligations (including, without limitation, tax liabilities and all employee wages as provided in the Fair Labor Standards Act, 29 U.S.C. §§206-207 and any successor statute), except those which may be contested in good faith.

5.3 Notices. The Borrower will promptly give notice in writing to Lender of the occurrence of any of the following:

(a) any Event of Default or Default under this Agreement, or any event of default or similar occurrence under any instrument or other agreement of the Borrower entitling any Person to accelerate the maturity of any obligation of the Borrower or to exercise any other remedy against the Borrower;

(b) any strike, lock-out, boycott or any other labor trouble;

(c) the commencement of any material litigation, proceeding or dispute affecting the Borrower or any material dispute between the Borrower and any Person;

(d) any material and adverse change in the financial position, operations or business of the Borrower; and

(e) any changes in the personnel holding the following positions with the Borrower as of the DIP Closing Date: President, Chief Financial Officer and Chairman of the Board of Directors.

5.4 Compliance with Laws.

(a) Borrower shall comply, and cause all properties, assets, and operations owned or used by such Borrower to comply, with (i) all Laws, including, without limitation, all environmental laws and all other applicable zoning, occupational safety, health, employment, discrimination, labor and other Laws and regulations, (ii) the provisions and requirements of all franchises, licenses, permits and certificates of compliance and approvals issued by Governmental Bodies and with other like grants of authority held by the Borrower in connection with its business, and (iii) all applicable material decrees, orders and judgments.

(b) Borrower shall promptly notify the Lenders in reasonable detail once it is aware of any failure by the Borrower to comply with or perform or any breach or violation by the Borrower in respect of any of the matters compliance with which is required under Section 5.4(a).

(c) If the Lender acquires equitable or legal title to any of the Borrower's property as a result of enforcement of remedies hereunder or under any other Loan Document, the Lender does not accept and shall not bear (nor shall any assignee or transferee of the Lender accept or bear) any responsibility for any hazardous substances in or about such property or for the actual or threatened release thereof from such property. No provisions of the Loan Documents shall be interpreted to absolve or release the Borrower from any liability or responsibility which it may have to any Person, under any local, state or federal statute or regulation, for remedial actions with respect to any such hazardous substances or for the actual or threatened release of any such hazardous substances.

(d) The Borrower shall defend, indemnify the Lender and hold the Lender harmless from and against all loss, liability, damage, cost, and expense, including without limitation, reasonable attorneys fees, fines, or other civil and criminal penalties or payments, for failure of the Collateral or any other operations, assets or property owned or used by the Borrower to comply in all respects with all environmental and other laws, caused, in whole or in part, regardless of fault, by the Borrower or by any past or present owner, occupier, tenant, subtenant, licensee, guest or other person provided, the Borrower shall not be liable for any loss, liability, damage, cost or expense under this Section 5.4(d) caused by the gross negligence or willful misconduct of the Lender. The provisions of this Section 5.4(d) shall survive payoff, release, foreclosure, or other disposition of this Agreement, the Collateral, or such other properties hereunder or otherwise. The Borrower shall remain liable hereunder regardless of any other provisions hereof which may limit the Borrower's liability provided, however, after the APA Closing Date, any amounts due to the Lender under this indemnification shall be Damages, as that term is defined in Section 9.1 of the APA, and shall be subject to all applicable provisions in the APA relating to enforcement of indemnification claims by Buyer Indemnified Parties, as that term is defined in Section 9.1 of the APA.

(e) All sums advanced or paid by the Lender under this Section 5.4, including sums so advanced or paid in connection with any judicial or administrative investigation or proceeding relating thereto, and including, without limitation, reasonable attorneys' fees, fines, or other penalties or payments, and all of the Borrower's obligations to defend, indemnify and hold harmless the Lender, shall be deemed to be advances under the Line of Credit and shall be at once repayable. The Borrower's obligations with respect thereto shall be evidenced by, and shall bear interest at the highest rate provided in the Line of Credit Note and shall be secured and guaranteed, as the case may be, by the Security Documents.

5.5 Corporate Existence; Properties. The Borrower will not change its name and the Borrower will maintain:

(a) its corporate existence and its qualification to do business and good standing in each jurisdiction in which qualification is necessary for the proper conduct of its businesses;

(b) all licenses, permits and other authorizations necessary for the ownership and operation of its properties and businesses; and

(c) its assets and properties (including all of the Collateral) in substantially the state of repair, order and condition as on the date hereof, reasonable wear and tear or loss by casualty excepted.

#### 5.6 Insurance.

(a) The Borrower shall carry at all times insurance covering risks, in amounts at least equal to and subject to terms no less favorable than the insurance maintained by the Borrower as of the Petition Date, and pay all premiums on the policies for such insurance when and as they become due and do all other things necessary to maintain such policies in full force and effect. The Borrower shall from time to time, upon request by the Lender, promptly furnish or cause to be furnished to the Lender evidence, in form and substance satisfactory to the Lender, of the maintenance of all insurance required to be maintained by this Section 5.6 including, but not limited to, such originals or copies, as the Lender may request, of policies, certificates of insurance, riders and endorsements relating to such insurance and proof of premium payments.

(b) Upon Lender's request, the Borrower shall cause all hazard insurance policies to provide, and the insurers issuing such policies to certify to the Lender that:

(i) the interest of the Lender shall be insured regardless of any breach or violation by Borrower or the holder or owner of the policies of any warranties, declarations or conditions contained in such policies and the Lender shall have the right, in its own name or the name of the Borrower, to file claims, receive and give acquittance for any payments and execute any and all endorsements or other documents necessary to effect the collection, compromise or settlement of any claims;

(ii) if such insurance be proposed to be canceled or materially changed for any reason whatsoever, such insurer will promptly notify the Lender and such cancellation or change shall not be effective, as to the Lender, for thirty (30) days after receipt by Lender of such notice, unless the effect of such change is to extend or increase coverage under the policy;

(iii) the Lender will have the right, at its election, to remedy any default in the payment of premiums within thirty (30) days of notice from the insurer of such default; and

(iv) loss payments in each instance will be payable to the Lender as lender loss payee, or otherwise.

(c) If the Borrower shall fail at any time or times hereafter to obtain and maintain any of the policies of insurance required hereby, or fail to pay any premium in whole or in part relating to any such policies, then Lender may, but it shall have no obligation to do so, obtain and cause to be maintained any or all of such policies, and pay any part or all of the premiums due thereunder, without thereby waiving any default by Borrower, and any sums so disbursed by Lender shall become a part of the Obligations secured by the Collateral, payable on demand and, until paid, shall bear interest at the Default Rate.

5.7 Books and Records. The Borrower will maintain accurate and complete records and books of account with respect to all its operations in accordance with past practice, and will permit officers or representatives of the Lender to examine and make excerpts from such books and records and to visit and inspect its properties, both real and personal, at all reasonable times provided such examination will not interfere with Borrower's operations.

5.8 Location of Business. The Borrower will not change the location of any place of business of Borrower, whether the establishment of a new place of business or the discontinuance of a present place of business.

5.9 Group Health Plans. The Borrower will comply in all material respects with the group health plan COBRA Continuation Coverage requirements of Code §4980B(f), with all provisions of §1862(b)(1) of the Social Security Act and the provisions of the Health Insurance Portability and Accountability Act of 1996. The Borrower will furnish to Lender, as soon as possible and in any event within thirty (30) days after the Borrower knows or has reason to know, notice that the Borrower is not in compliance with any provision of Code §4980B(f) or §1862(b)(1) of the Social Security Act.

5.10 Location of Collateral. All Collateral and all of the Borrower's business records will be located at the same location where they were situated on the DIP Closing Date and the Borrower will provide the Lender with at least thirty (30) days' advance written notice of any change in such locations.

5.11 APA Covenants. The Borrower will comply with all covenants in the APA applicable to the Borrower.

## SECTION 6. NEGATIVE COVENANTS.

The Borrower covenants and agrees that, from and after the DIP Closing Date and so long as any of the Obligations remain outstanding and unpaid, in whole or in part, the Borrower will observe the following covenants unless the Lender shall otherwise consent in writing:

6.1 Debt. The Borrower will not create, incur, assume or suffer or permit to exist any Debt, including indebtedness for borrowed money or any indebtedness constituting the deferred portion of the purchase price of any property, except (collectively, the "***Permitted Debt***"):

- (a) any Obligations, whether evidenced by the Line of Credit Note or any other instruments;
- (b) Debt related to Permitted Expenses;
- (c) Pre-Petition Obligations; and
- (d) any other Debt permitted under the Loan Documents.



## 6.2 Liens.

(a) The Borrower will not create, assume, or suffer to exist, any Lien of any kind upon the Collateral or any of its other assets, whether now owned or hereafter except the following (collectively, the “***Permitted Encumbrances***”);

(i) Liens identified on Schedule 6.2 (the “***Funded Debt Permitted Encumbrances***”) but only to the extent such Liens were valid, enforceable and non-avoidable on the Petition Date and were either properly perfected on the Petition Date or subsequently perfected pursuant to Section 546(b) of the Bankruptcy Code;

(ii) Liens for taxes not yet payable;

(iii) mechanics’, materialmen’s, warehousemen’s, carriers’ or other like Liens arising in the ordinary course of business arising with respect to obligations which are not overdue for a period longer than thirty (30) days;

(iv) other encumbrances consisting of zoning restrictions, easements, restrictions on the use of real property or minor irregularities in the title thereto, which do not arise in connection with the borrowing of, or any obligation for the payment of, money and which, in the aggregate, do not materially detract from the value of the business, properties or assets of the Borrower; and

(v) the Liens granted to the Lender.

## 6.3 RESERVED.

## 6.4 RESERVED.

6.5 Disposition of Assets. The Borrower will not convey, sell, lease, or otherwise transfer or dispose of all or any part of its properties, assets or business except that (a) the Borrower may sell used equipment no longer used or useful in connection with their respective businesses, (b) the Borrower may sell inventory in the ordinary course of its business, and (c) the Borrower may sell the Acquired Assets pursuant to the APA and the Sale Order provided all Obligations hereunder are paid in full or otherwise satisfied fully on the APA Closing Date.

6.6 Continuance of Business. The Borrower will not engage in any line of business other than those in which the Borrower was substantially engaged on the DIP Closing Date.

6.7 Removal and Protection of Property Other than in the ordinary course of business, the Borrower will not (a) remove any equipment, inventory, or general intangibles from the place of business where presently located, (b) permit the value of any property to be impaired, or (c) permit any equipment to become a fixture or an accession to other goods.

6.8 Cash Collateral. The Borrower shall not request the entry of an order of the Bankruptcy Court authorizing the use of cash collateral pursuant to Section 363 of the Bankruptcy



Code while any Obligations are outstanding unless the terms of such order are reasonably acceptable to the Lender.

6.9 RESERVED.

6.10 RESERVED.

6.11 APA Negative Covenants. The Borrower will comply with all covenants in the APA applicable to the Borrower.

## SECTION 7. EVENTS OF DEFAULT, REMEDIES.

7.1 Events of Default. The following shall constitute Events of Default:

(a) Non-Payment. (i) Failure by the Borrower to pay the principal of or accrued interest on the Line of Credit Note or any other instrument evidencing any Obligation when due, or (ii) five (5) days following written notice of the failure of the Borrower to pay any other amount payable to Lender, whether under this Agreement or otherwise, when due;

(b) Falsity of Representations and Warranties. Any representation or warranty made by the Borrower in this Agreement or in any other Loan Document or in any certificate, financial or other statement furnished at any time under or in connection with this Agreement or any other Loan Document shall be false or misleading in any material respect as of the date made or deemed to have been made;

(c) Failure to Perform Certain Covenants. Ten (10) days following written notice of failure by the Borrower to observe or perform any other covenants, conditions or provisions contained in this Agreement or in any other Loan Document unless, within such ten (10) day period, such failure is cured; ***provided, however***, that, the ten (10) day notice provision shall not apply to any Event of Default described in Sections 7.1(a)(i) or 7.1(b) hereof or any other covenant, condition or provision which is not curable;

(d) Material Adverse Effect. The occurrence of a Material Adverse Effect, as defined in the APA;

(e) Event of Default Under Other Loan Documents or the APA. An Event of Default by the Borrower or similar event shall have occurred and be continuing under any Loan Document or under the APA;

(f) Unenforceability. (i) Any material provision of any of the Loan Documents shall at any time for any reason cease to be a valid and binding obligation of the Borrower, or shall be declared to be null and void or (ii) the validity or enforceability thereof shall be contested by the Borrower or any other Person, or the Borrower shall deny that it has any further liability or obligation under any Loan Document;

(g) Lender's Liens. The Liens granted by the Borrower to the Lender shall at any time fail to have the priority stated in Section 2.11 hereof, or the Borrower shall so allege in any writing;

(h) Judgments. One or more judgments are entered against the Borrower which, individually or collectively, have a material adverse effect upon the Collateral;

(i) Appointment of Trustee. The Bankruptcy Court shall enter an order appointing a trustee under Section 1104(a) of the Bankruptcy Code in the Reorganization Case of the Borrower;

(j) Final DIP Order. The Bankruptcy Court shall not have entered the Final DIP Order on or before April 13, 2021 or the Final DIP Order shall not have become a Final Order on or before April 28, 2021;

(k) Appointment of Examiner. The Bankruptcy Court shall enter an order appointing an examiner for the Borrower with powers beyond those stated in Sections 1106(a)(3) and (4) of the Bankruptcy Code;

(l) Modification of Orders. The Interim DIP Order or the Final DIP Order, as applicable, shall be amended, supplemented, vacated, stayed or otherwise modified without the written consent of the Lender;

(m) Dismissal, Conversion, Priority Administrative Expenses. The Reorganization Case of the Borrower shall be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code; or an application shall be filed by the Borrower for the approval of, or there shall arise, any claim which is, an administrative expense claim having priority over the administrative expense claim granted to the Lender;

(n) Relief from Automatic Stay. The Bankruptcy Court shall enter an order granting relief from the automatic stay applicable under Section 362 of the Bankruptcy Code to the holder of any security interest in any material Acquired Asset except to the extent provided for in the Cash Collateral Order;

(o) Noncompliance with Interim DIP Order or Final DIP Order. The Borrower shall fail to comply with the terms of the Interim DIP Order or, upon its entry, the Final DIP Order;

(p) Noncompliance with Cash Collateral Order. The Borrower shall fail to comply with the terms of the Cash Collateral Order.

(q) Payment of Pre-Petition Obligations. The Borrower shall make any payment on account of a Pre-Petition Obligation, other than as approved by the Bankruptcy Court provided the Lender shall not be deemed to have waived its rights to object to any motion to approve such payments;

(r) Claims Against Lender. Commencement by the Borrower, or its estate or any other Person of any litigation, arbitration or other proceeding relating to any claim or action against the Lender arising or alleged to arise out of any conduct in connection with Loan Documents or the APA; or

(s) Section 506(c) Surcharge. The Bankruptcy Court shall enter an order imposing, surcharging or assessing against the Lender's security interest in the Collateral any costs or expenses pursuant to Section 506(c) of the Bankruptcy Code or the Borrower shall file a motion or other pleading or support a motion or other pleading filed by any other Person requesting the foregoing.

## 7.2 Remedies.

(a) At any time after the occurrence of an Event of Default, the Lender may, by written notice to Borrower, terminate immediately and irrevocably the Line of Credit, the Line of Credit Commitment, and any other obligation of the Lender to make any advances to or for the account of the Borrower, and declare the Line of Credit Termination Date to have occurred and the Line of Credit Note, and all other instruments evidencing the Obligations to be due and payable, whereupon the principal amount of the Line of Credit Note and all outstanding Obligations, together with accrued interest thereon and all other amounts payable thereunder, shall become immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the documents evidencing the same to the contrary notwithstanding;

(b) (b) On the occurrence of an Event of Default under the Loan Agreement and following five (5) business days written notice thereof (the "Stay Termination Notice") to counsel to the Debtor, counsel to the official committee of unsecured creditors (the "Committee"), counsel to Key Bank, N.A. ("Key"), counsel to the United States of America Department of Housing and Urban Development ("HUD"), and the United States Trustee (collectively, the "Notice Parties"), and unless an order extending the automatic stay (based upon a finding that an Event of Default has not occurred and is not continuing and/or that any required notice has not been provided) is entered prior to the date which is five (5) business days after the date of service of the Stay Termination Notice as set forth below, the automatic stay of Section 362 of the Bankruptcy Code shall be deemed automatically vacated and the Lender shall be immediately permitted to, among other things, pursue any and all of its remedies against the Debtor and the Collateral; however, the automatic stay shall be deemed vacated immediately to the extent necessary to allow the Lender to enforce its entitlement to payment in full of all Obligations from the proceeds of sale of any Acquired Assets. Following the service of a Stay Termination Notice by the DIP Lender to the Notice Parties, the Notice Parties shall be entitled to an emergency hearing before the Court; however, if the Court does not, prior to the date which is five (5) business days after the date of service of the Stay Termination Notice, enter an order extending the automatic stay (based on a finding that an Event of Default has not occurred and is not continuing and/or that any required notice has not been provided), the automatic stay shall terminate as provided above notwithstanding the filing or pendency of any request for such emergency hearing..

(c) At any time after the occurrence of an Event of Default and the vacation of the automatic stay, the Lender shall have all remedies contained in this Agreement or in any other Loan Document, and all the remedies of a secured party under the UCC. In addition to all such rights and remedies, upon the vacation of the automatic stay, the Lender may sell, lease or otherwise dispose of the Collateral, or any part thereof, at public or private sale, for cash, credit or any combination thereof. The Lender shall have the right to bid and purchase at such sale or sales. The Proceeds of any sale or other disposition of all or any part of the Collateral upon which Lender has a security interest, after payment of all costs and expenses of sale, including retaking, holding, preparing for sale, selling and the like and also including reasonable attorneys' fees and legal expenses incurred by the Lender, shall be applied by the Lender to the then outstanding balance of the Obligations and any surplus shall be paid by the Lender to the Borrower. The Borrower shall be liable to the Lender for any deficiency;

(d) At any time after the occurrence of an Event of Default and vacation of the automatic stay, the Lender shall have the right to enter and remain upon the various premises of the Borrower without cost or charge to Lender, and to use the same, together with materials, supplies, books and records of the Borrower, for the purpose of preparing for and conducting the sale of Collateral, whether by foreclosure, auction or otherwise. In addition, the Lender may remove from such premises the Collateral and copies of any records with respect thereto, to the premises of the Lender or any designated agent of the Lender for such time as the Lender may desire, in order to effectively collect or liquidate the Collateral;

(e) At any time after the occurrence of an Event of Default, the Borrower irrevocably waives the right to direct the application of any and all payments (including Proceeds of Collateral) at any time or times thereafter which may be received by the Lender by or for the benefit of the Borrower.

7.3 Right of Setoff. Only after the automatic stay has been terminated in accordance with Section 7.2(b) hereof, the Lender shall have the right, in addition to all other rights and remedies available to it, to set off against the unpaid balance of the Obligations, any debt owing to the Borrower by the Lender.

7.4 No Marshalling, Etc., Required. The Lender shall not be required to marshal any present or future security for, or guarantees of, the Obligations or to resort to any such security or guarantee in any particular order and the Borrower waives, to the fullest extent that it lawfully can, (a) any right it might have to require the Lender to pursue any particular remedy before proceeding against it, and (b) any right to the benefit of, or to direct the application of the proceeds of any Collateral until the Obligations have been paid in full.

## SECTION 8. MISCELLANEOUS.

8.1 No Waiver; Cumulative Remedies. No failure or delay on the part of the Lender in exercising any right, power or privilege hereunder or under the other Loan Documents shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude or require any other or further exercise thereof or the exercise of any other right, power or privilege. The Lender shall not be deemed, by any act of omission or commission, to have waived any of its rights or remedies hereunder unless such waiver is in writing

and signed by the Lender, and then only to the extent specifically set forth in writing. A waiver with respect to one event shall not be construed as continuing or as a bar to or a waiver of any right or remedy with respect to a subsequent event. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.

8.2 Notices. All notices and other communications shall have been duly given and shall be effective (i) when delivered, (ii) when transmitted via telecopy (or other facsimile device) to the numbers set forth below, (iii) the Business Day following the day on which the same has been delivered prepaid to a reputable national overnight air courier service, or (iv) the third Business Day following the day on which the same is sent by certified or registered mail, post prepaid, in each case to the respective parties at the address or telecopy number set forth below, or at such other address or telecopy number as such party may hereafter specify by written notice to the other party hereof:

Borrower:	LRGH Healthcare 80 Highland St. Laconia, NH 03246 Attn: Kevin Donovan Email: kdonovan@lrgh.org Facsimile: 603-527-2887
with a copy to:	Nixon Peabody LLP Exchange Place Boston, MA 02109-2835 Attention: Victor G. Millione, Esq. Email: vmilione@nixonpeabody.com Facsimile: 866-947-1974
Lender:	Concord Hospital, Inc. 250 Pleasant St. Concord, NH 03301 Attn: Robert Steigmeyer Chief Executive Officer Email: rsteigmeyer@crhc.org Facsimile: 603-228-7123
with a copy to:	Stevens & Lee, P.C. 620 Freedom Business Center Suite 200 King of Prussia, PA., 19406 Attention: Robert Lapowsky, Esq. Email: rl@stevenslee.com Facsimile: (610) 371-7958

8.3 Reimbursement of Lender. The Borrower hereby agrees to reimburse the Lender for out-of-pocket expenses, including reasonable counsel fees, incurred by the Lender in

connection with (a) the development, preparation, execution and approval of this Agreement and all the Loan Documents, and (b) until all Obligations are paid in full, enforcement by the Lender and its rights and remedies hereunder and participation by the Lender in, and monitoring of, the Reorganization Case, but solely in its capacity as Lender and not in its capacity as the Purchaser. Expenses described in this Section 8.3 shall be paid in accordance with the procedures set forth in the Interim DIP Order and the Final DIP Order.

8.4 Payment of Expenses and Taxes. In addition to payment of the expenses provided for in Section 8.3, the Borrower agrees to pay, and to save the Lender harmless from any delay in paying, stamp and other similar taxes, if any, including, without limitation, all levies, impositions, duties, charges or withholdings, together with any penalties, fines or interest thereon or other additions thereto, which may be payable or determined to be payable in connection with the execution and delivery of this Agreement and the Loan Documents or any modification of any thereof or any waiver or consent under or in respect of any thereof.

8.5 Survival of Representations and Warranties. All representations, warranties, covenants and agreements made in this Agreement and all other Loan Documents shall survive the execution and delivery of the Loan Documents and the making of the Loans hereunder. All such representations and warranties shall be deemed to be made again at the date of each request for a borrowing under the Line of Credit. The provisions of Sections 5.4, 8.3, 8.4, 8.9, 8.10 and 8.11 hereof shall survive payment of the Obligations.

8.6 Successors. This Agreement shall be binding upon and inure to the benefit of the Borrower and the Lender and their respective successors and assigns, except that the Borrower may not assign or transfer its rights hereunder without the prior written consent of the Lender.

8.7 Construction. This Agreement, all Loan Documents, and the rights and obligations of the parties hereunder and thereunder, shall be governed by and construed and interpreted in accordance with, the domestic internal laws of State of New Hampshire without regard to its rules pertaining to conflict of laws. The Section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. At all times prior to termination of the APA, to the extent of any direct conflict between the representations and covenants of the Borrower hereunder and the representations and covenants of the Seller under the APA, the representations and covenants of the Seller under the APA shall control. At all times after termination of the APA, the representations and covenants of the Borrower hereunder shall be fully enforceable notwithstanding any direct conflict with the representations and covenants of the Seller under the APA.

8.8 Severability. Any provision contained in this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

8.9 Indemnity. The Borrower hereby agrees to pay, assume liability for, and indemnify, protect, defend, save and keep harmless the Lender from and against, any and all liabilities, obligations, losses, damages, settlements, claims, actions, suits, penalties, costs and



expenses (including, but not limited to, legal and investigative fees and expenses) of whatsoever kind and nature, including, but not limited to claims based upon negligence, strict or absolute liability, liability in tort, latent and other defects (whether or not discoverable), and any claim for patent, trademark or copyright infringement which may from time to time be imposed on, incurred by or asserted against the Lender (whether or not any such claim is also indemnified or insured against by any other person) relating to or resulting from this Agreement, any Loan Document, or any of the transactions contemplated herein or therein (but excluding the APA or any of the transactions contemplated therein) except to the extent arising out of Lender's gross negligence or willful misconduct. The provisions of this Section 8.9 shall survive the payoff, release, foreclosure or other disposition, as applicable, of this Agreement, the Obligations or the Collateral. On and after the APA Closing Date, any amounts due to the Lender under this indemnification shall be Damages, as that term is defined in Section 9.1 of the APA, and shall be subject to all applicable provisions in the APA relating to enforcement of indemnification claims by Buyer Indemnified Parties, as that term is defined in Section 9.1 of the APA.

8.10 Waiver of Trial by Jury; Jurisdiction.

(a) To the extent permitted by law, each party to this Agreement agrees that any suit, action, or proceeding, whether claim or counterclaim, brought or instituted by either party hereto or any successor or assign of any party on or with respect to this Agreement or any other Loan Document or which in any way relates, directly or indirectly, to the Loans or any event, transaction, or occurrence arising out of or in any way connection with the Loans, or the dealings of the parties with respect thereto, shall be tried only by a court and not by a jury. EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION, OR PROCEEDING. THE BORROWER ACKNOWLEDGES AND AGREES THAT THIS SECTION 8.10 IS A SPECIFIC AND MATERIAL ASPECT OF THIS AGREEMENT BETWEEN THE PARTIES AND THAT THE LENDER WOULD NOT EXTEND THE LOANS TO THE BORROWER IF THIS WAIVER OF JURY TRIAL SECTION WERE NOT A PART OF THIS AGREEMENT.

(b) To the extent permitted by law, for the purpose of any suit, action or proceeding arising out of or relating to this Agreement, the Line of Credit Note or the Loan, the Borrower hereby irrevocably consents and submits to the jurisdiction and venue of the Courts of the State of New Hampshire, the Federal District Court for the District of New Hampshire and the United States Bankruptcy Court for the District of New Hampshire, and agrees to accept and acknowledge all service of process in connection with any such matter by certified or registered mail or by any other legally permissible means. The Borrower irrevocably waives any objection which it may now or hereinafter have to the laying of the venue of any suit, action or proceeding brought in such court and any claim that such suit, action or proceeding brought in such a court has been brought in an inconvenient forum and agrees that service of process in accordance with the foregoing sentence shall be deemed in every respect effective and valid personal service of process upon the Borrower. The provisions of this Section 8.10(b) shall not limit or otherwise affect the right of the Lender to institute and conduct action in any other appropriate manner, jurisdiction or court.

8.11 Actions Against Lender; Release.

(a) Any action brought by the Borrower against the Lender which is based, directly or indirectly, or on this Agreement or any other Loan Document or any matter in or related to this Agreement or any other Loan Document, including but not limited to the making of the Loans or the administration or collection thereof, shall be brought only in the Courts of the State of New Hampshire or the Federal District Court or Bankruptcy Court for the District of New Hampshire.

(b) Upon full payment and satisfaction of the Loans and the interest thereon, as provided in Section 2 hereof, the parties shall thereupon automatically each be fully, finally, and forever released and discharged from any further claim, liability or obligation in connection with the Loans except as expressly set forth herein, except to the extent an payment received by the Lender is determined to be a preference or similar voidable transfer, in which case the claims of the Lender shall not be released.

8.12 Performance by Lender. If the Borrower shall fail to observe or perform any of the terms, agreements or covenants contained in this Agreement, or in any other Loan Document, the Lender may, in its discretion, but without any obligation or duty to do so, and without waiving any Default, or Event of Default, perform any of such terms, agreements or covenants, in part or in whole, and any money advanced or expended by the Lender in or toward the fulfillment of such terms, agreements or covenants, shall be due on demand and become a part of and be added to the indebtedness due under the Line of Credit Note and secured as herein provided with interest thereon at the rate specified in such Note from the date of the respective advance or expenditure. Lender's rights contained in this Section 8.12 shall be in addition to all of Lender's rights under Section 5.5(b) and otherwise, and Lender may, at its sole election, exercise any one or more, or all, of such rights alternatively or concurrently.

8.13 Counterparts. This Agreement may be executed by facsimile or electronic PDF signature and in any number of counterparts with then same effect as if the signatures thereto and hereto were upon the same instrument, but all of such counterparts taken together shall be deemed to constitute one and the same instrument.

8.14 Further Actions. The Borrower shall execute and deliver such documents and instruments, and take such other actions, as the Lender deems necessary to consummate the transactions described in this Agreement.

8.15 Section 506(c) Waiver. In consideration of the agreements of the Lender stated in the Loan Documents, each Borrower hereby agrees not to assert and affirmatively waives any claim it otherwise might have under Section 506(c) of the Bankruptcy Code and agrees that the Collateral securing the Obligations may not be charged with costs or expenses or administration including Permitted Expenses and other expenses which are permitted uses of the proceeds of the Line of Credit.

8.16 Section 510, 544, 547, 548 and 549 Waiver, Etc. In consideration of the agreements of the Lender stated in the Loan Documents, the Borrower hereby agrees not to assert and hereby affirmatively waives any claim it may have under Sections 510, 544, 547, 548, or 549



of the Bankruptcy Code against the Lender, in any form or manner whatsoever, any right it may have to challenge the extent and validity of the Liens granted to the Lender as security under the Loan Documents.

8.17 Entire Agreement. This Agreement and the Loan Documents represent the entire agreement between the Lender and the Borrower with respect to the financing transactions to which they relate, and cannot be changed or amended except by an agreement in writing signed by the party against whom enforcement of the change or amendment is sought.

8.18 Bankruptcy Court Approval. Neither this Agreement, nor the Loan Documents, shall be binding upon any party prior to entry of the Interim DIP Order.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed  
and delivered by their proper and duly authorized officers as of the day and year first above written.

**BORROWER:**

LRGH HEALTHCARE  
*As Debtor-In-Possession*

By: \_\_\_\_\_  
Name:  
Title:

**LENDER:**

CONCORD HOSPITAL, INC., or its designee

By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE 6.2**

Funded Debt Permitted Encumbrances

The liens of Key Bank, N.A. and the United States of America Department of Housing and Urban Development, as set forth in the Cash Collateral Order.

**Exhibit A**

Final DIP Order

*(See attached.)*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE**

	)	
In re:	)	Chapter 11
	)	
LRGHEALTHCARE,	)	Bk. No. 20-10892-MAF
	)	
Debtor. <sup>1</sup>	)	<b>Related to ECF No. <span style="background-color: yellow;">      </span></b>
	)	

**FINAL ORDER (A) (I) AUTHORIZING THE DEBTOR TO OBTAIN POSTPETITION FINANCING, (II) GRANTING LIENS ON PROPERTY OF THE DEBTOR'S ESTATE AND SUPERPRIORITY CLAIMS TO THE POSTPETITION LENDER, AND (III) GRANTING RELATED RELIEF**

On the motion [ECF No. [REDACTED]] (the “**Motion**”) of LRGHealthcare (the “**Debtor**”) in the above-captioned case (the “**Case**”), pursuant to Sections 105, 362, 364, 503 and 507 of Title 11 of the United States Code, 11 U.S.C. §§ 101 – 1532 (the “**Bankruptcy Code**”), Rules 2002, 4001, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), seeking, among other things:

(I) entry of an interim order (the “**Interim DIP Order**”) and a final order (the “**Final DIP Order**”) authorizing the Debtor to obtain postpetition financing (the “**DIP Loans**”) consisting of a term loan, multi-draw financing facility in an aggregate principal amount not to exceed six million dollars (\$6,000,000.00) (the “**DIP Facility**”) from Concord Hospital, Inc. or its designee (the “**DIP Lender**”) pursuant to that certain Post-Petition Loan and Security Agreement, dated as of March 22, 2021, which is attached to this Order as **Exhibit 1** (as amended, modified, restated, or supplemented in accordance with the terms thereof or hereof, the “**Loan Agreement**”),<sup>2</sup> and all instruments, financing statements and documents as may be executed and delivered in connection with or relating to the DIP Facility, this Interim DIP Order and the Final DIP Order (subject to entry) and

The last four digits of the Debtor's federal taxpayer identification number are 2150. The address of the Debtor's headquarters is 80 Highland Street, Laconia, New Hampshire 03246.

<sup>2</sup> All capitalized terms used but not defined herein shall have the meanings stated in the Loan Agreement.

any certificate or other document made or delivered pursuant hereto or thereto (collectively with the Loan Agreement, the “**Loan Documents**”), and perform all such other and further acts as may be required in connection with the Loan Documents,

(II) scheduling a final hearing (the “**Final Hearing**”) to consider entry of the Final DIP Order, and in connection therewith, approving the manner of notice of the Final Hearing, and

(III) granting the Debtor such other and further relief as is just and proper;

And the Court having considered the Motion, the exhibits attached thereto, the *Declaration of Todd M. Patnode In Support Of Debtor’s Emergency Motion For Entry of Interim And Final Orders Pursuant To 11 U.S.C. §§ 105, 362, 364, 503 And 507 and Fed. R. Bankr. P. 4001 And 9014 (I) Authorizing Debtor To Obtain Postpetition Financing And (II) Granting Liens And Super-Priority Claims To Postpetition Lender* and the *Declaration of Kevin W. Donovan In Support Of Debtor’s Emergency Motion For Entry of Interim And Final Orders Pursuant To 11 U.S.C. §§ 105, 362, 364, 503 And 507 and Fed. R. Bankr. P. 4001 And 9014 (I) Authorizing Debtor To Obtain Postpetition Financing And (II) Granting Liens And Super-Priority Claims To Postpetition Lender* (the “**Declarations**”); and a hearing to consider entry of the Interim DIP Order having been held before the Court on [REDACTED], 2021 (the “**Interim Hearing**”); and the Court having entered the Interim DIP Order [ECF No. [REDACTED]] on [REDACTED], 2021; and a hearing to consider entry of the Final DIP Order having been held on [REDACTED], 2021 (the “**Final Hearing**”); and on all of the pleadings filed with the Court, all evidence presented in support of the Motion, the arguments of counsel stated on the record of the Interim Hearing and the Final Hearing, and all of the proceedings held before the Court; and after due deliberation and consideration, and good and sufficient cause appearing therefor;

**IT IS HEREBY FOUND AND DETERMINED THAT:**

A. The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Rule 52(a) of the Federal Rules of Civil Procedure, made

applicable to this proceeding pursuant to Bankruptcy Rules 7052 and 9014. To the extent any findings of fact herein constitute conclusions of law, they are adopted as such. To the extent any conclusions of law herein constitute findings of fact, they are adopted as such.

B. The Court has jurisdiction over the Motion and the transactions contemplated by the Loan Documents pursuant to 28 U.S.C. §§ 157 and 1334 and Local Rule 77.4(a) of the Local Rules of the United States District Court for the District of New Hampshire, and this matter is a core proceeding pursuant to 28 U.S.C. § 157. Venue of this case and this matter in this district is proper under 28 U.S.C. §§ 1408 and 1409. The Court may enter a final order consistent with or without violating Article III of the U.S. Constitution.

C. The statutory bases for the relief requested in the Motion are Sections 105, 364, 503, and 507 of the Bankruptcy Code.

D. Good and sufficient notice of the Interim Hearing, the Final Hearing, the Motion and the relief sought therein has been given under the circumstances, and no other or further notice is required. A reasonable opportunity to object or be heard regarding the relief provided herein has been afforded to parties in interest.

E. The Debtor remains in possession of its property and is authorized to operate its business pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

F. The use of cash that is property of the Debtor would be insufficient, alone, to meet the Debtor's immediate postpetition liquidity needs. As a result, an immediate and critical need exists for the Debtor to obtain postpetition financing to continue the operation of its business.

G. The Debtor is unable to obtain sufficient postpetition financing to continue operation of its business

- (1) in the forms of
  - (a) unsecured debt incurred in the ordinary course of business allowable as an administrative expense under Section 503(b)(1) of the Bankruptcy Code or
  - (b) unsecured debt incurred outside the ordinary course of business allowable as an administrative expense under Section 503(b)(1) of the Bankruptcy Code or
- (2) on terms more favorable than those embodied in the Loan Agreement and the other Loan Documents.

The DIP Lender is prepared to enter into the DIP Loans solely on the terms set forth in the Loan Agreement and the other Loan Documents.

H. The terms of the DIP Loans are fair, just, and reasonable under the circumstances, reflect the Debtor's exercise of its prudent business judgment consistent with its fiduciary duties, and are supported by reasonably equivalent value and fair consideration.

I. The terms of the DIP Loans have been negotiated in good faith and at arm's length by and between the Debtor and the DIP Lender.

J. Any credit extended or other indebtedness or liabilities arising under, in respect of, or in connection with the Interim DIP Order, this Final DIP Order or any Loan Document shall be deemed to have been extended in "good faith" by the DIP Lender as that term is used in Section 364(e) of the Bankruptcy Code, and in express reliance upon the protections afforded by Section 364(e) of the Bankruptcy Code.

K. The relief requested in the Motion is necessary and appropriate for the management and preservation of the Debtor's property and the operation of the Debtor's business and is in the best interests of the Debtor, its estate and creditors.

L. Absent the relief granted herein, the Debtor's estate will be immediately and irreparably harmed.



M. Good, adequate, and sufficient cause has been shown to justify the relief granted herein and the immediate entry and effectiveness of this Final DIP Order.

**IT IS HEREBY ORDERED THAT:**

1. The Motion is **GRANTED**.
2. All objections to the Motion or the relief provided herein that have not been withdrawn, waived or settled, and all reservations of rights included therein, hereby are overruled and denied on the merits with prejudice
3. The Loan Documents, including the Loan Agreement, are approved, and the Debtor is hereby authorized to execute and enter into, deliver, and perform all obligations thereunder.
4. The Debtor is hereby authorized to borrow the full amount available under the DIP Facility, to be used solely as expressly provided in the Loan Documents, including the Loan Agreement.
5. In furtherance of the foregoing and without further approval of this Court, the Debtor is hereby authorized to perform all acts, to make, execute, and deliver all instruments and documents, and to pay all related fees, that may be required or necessary for the Debtor's performance of its obligations under the DIP Loans.
6. All of the DIP Liens (defined below) shall be effective and perfected as of the date of entry of the Interim DIP Order without the necessity of the execution, recording, or filing of security agreements, pledge agreements, financing statements, or other agreements or instruments.
7. The Loan Agreement and the "**Obligations**" (as defined in the Loan Agreement) constitute valid, binding, and non-avoidable obligations of the Debtor enforceable against the Debtor, its estate and its successors and assigns in accordance with the terms of the Interim DIP

Order, this Final DIP Order and the Loan Documents, and shall survive the dismissal of this Case or the conversion of this Case to a case under another Chapter of the Bankruptcy Code.

8. No obligation, payment, transfer, or grant of security under the Interim DIP Order, this Final DIP Order, or the Loan Documents shall be stayed, restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under any applicable law, or subject to any avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), counterclaims, cross-claims, defenses, disallowance, impairment, or any other challenges under the Bankruptcy Code or any other applicable foreign or domestic law or regulation by any person or entity. Nothing herein is intended to alter or interfere with the rights of any third party payor to exercise their right of setoff or recoupment with regard to the Debtor's accounts receivable owed by such payors under applicable law or as allowed by order of this Court. For the avoidance of doubt, the preceding sentence shall not modify any restrictions on the recoupment, setoff or other rights of payors under, (a) the Order Setting the Cure Amounts for the Debtor's Contracts with UnitedHealthcare Insurance Company and its Affiliates [ECF No. 476], (b) the Order Setting the Cure Amounts for the Debtor's Contracts with Anthem Health Plans of New Hampshire, Inc. D/B/A Anthem Blue Cross and Blue Shield and Matthew Thornton Health Plan, Inc. [ECF No. 504], or (c) the Order Setting the Cure Amounts for the Debtor's Contracts with Humana Insurance Company and Humana Health Plan, Inc. [ECF No. 509].

9. The DIP Loans shall

- (a) be evidenced by the books and records of the DIP Lender and, although not required, upon the request of the DIP Lender, a note executed and delivered to the DIP Lender by the Debtor in accordance with the terms of the Loan Documents,
- (b) bear interest and incur fees at the rates set forth in the Loan Agreement,

- (c) be secured in the manner specified below and under the applicable Loan Documents,
- (d) be payable in accordance with the applicable Loan Documents, and
- (e) otherwise be governed by the terms set forth in this Final DIP Order and the Loan Documents.

10. The automatic stay provisions of Section 362 of the Bankruptcy Code and any other restriction imposed by an order of the Court or applicable law are hereby modified and vacated without further notice, application, or order of the Court to the extent necessary to permit the DIP Lender to perform any act authorized or permitted under or by virtue of the Interim DIP Order, this Final DIP Order, or any of the Loan Documents, including, without limitation,

- (a) to implement the DIP Facility authorized by the Interim DIP Order, this Final DIP Order and pursuant to the terms of the Loan Documents,
- (b) to take any act to create, validate, evidence, attach, or perfect any lien, security interest, right, or claim in the “**Collateral**” (as defined in the Loan Agreement”), and
- (c) to assess, charge, collect, advance, deduct, and receive payments with respect to the Obligations, including, without limitation, all principal, interest, fees, costs, and expenses permitted under the Loan Documents, and to apply such payments to the Obligations pursuant to the Loan Documents.

11. The DIP Lender shall have no obligation to make any DIP Loans or any other financial accommodation under the respective Loan Documents unless the conditions precedent to make such extensions of credit under the respective Loan Documents have been satisfied in full or waived in accordance with such Loan Documents.

12. Pursuant to Section 364(c)(1) of the Bankruptcy Code, the Obligations constitute (without the need to file a proof of claim) superpriority claims (the “**DIP Superpriority Claims**”) against the Debtor, with priority over any and all administrative expenses of the

Debtor, whether now existing or hereafter arising or incurred, of the kind specified in Sections 503(b) and 507(b) of the Bankruptcy Code.

13. As security for the full and timely payment of the Obligations, the DIP Lender is hereby granted, pursuant to Sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code, valid, enforceable, non-avoidable, and fully perfected security interests in and liens on all Collateral (as defined in the Loan Agreement) (collectively, the “**DIP Liens**”), which shall have the priorities stated in the Loan Agreement.

14. For the avoidance of doubt, “**Collateral**” shall not include (i) any causes of action arising under chapter 5 of the Bankruptcy Code or applicable state law equivalents and the proceeds thereof and (ii) any pre-petition and post-petition commercial tort claims (as such term is defined in the Uniform Commercial Code as in effect in the State of New Hampshire) and the proceeds thereof, including, without limitation, any and all causes of action (and the proceeds thereof) against current and former directors and officers of the Debtor and/or any of its affiliates. The foregoing shall not apply to First Priority Collateral, all of which shall be Collateral.

15. The DIP Liens became effective immediately upon entry of the Interim DIP Order. The Interim DIP Order and this Final DIP Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the DIP Liens without the necessity of executing, filing, or recording any mortgage, security agreement, pledge agreement, financing statement, or other instrument or document, or the taking of any other act that otherwise may be required under state or federal law, rule, or regulation of any jurisdiction to validate or perfect the DIP Liens or to entitle the DIP Lender to the priorities granted herein; however, the Debtor may execute, and the DIP Lender is hereby authorized to execute, file, and/or record mortgages,

security agreements, pledge agreements, financing statements, and/or other instruments or documents to evidence the DIP Liens and the Debtor is hereby authorized, promptly on a demand by the DIP Lender made in accordance with the terms of the Loan Documents to execute, file, and/or record any such mortgages, security agreements, pledge agreements, financing statements, or other instruments or documents as the DIP Lender may request; however, no such execution, filing, or recordation shall be necessary or required in order to create or perfect the DIP Liens. A copy of the Interim DIP Order or this Final DIP Order may, in the discretion of the DIP Lender, be filed with or recorded in any filing or recording office in addition to or in lieu of such mortgages, security agreements, pledge agreements, financing statements, or other instruments or documents, and each and every federal, state, and local governmental agency, department, or office is hereby directed to accept a copy of the Interim DIP Order or this Final DIP Order and any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Interim DIP Order, the Final DIP Order, and the Loan Documents, for filing and recording, and to deem the Interim DIP Order and the Final DIP Order to be in proper form for filing and recording.

16. The DIP Liens shall not be

- (a) subject to any lien that is avoided and preserved for the benefit of the Debtor's estate under Section 551 of the Bankruptcy Code or
- (b) except as provided in the Loan Agreement, subordinated to or made *pari passu* with any other lien under Section 364(d) of the Bankruptcy Code or otherwise.

17. Absent payment in full in cash of all Obligations of the Debtor and termination of the Loan Agreement, the Debtor shall not

- (a) grant or impose any liens on the Collateral or
- (b) prime or seek to prime the DIP Liens.

18. In no event shall any person or entity who pays (or through the extension of credit to the Debtor, causes to be paid) any of the Obligations, be subrogated, in whole or in part, to any rights, remedies, claims, privileges, liens, or security interests granted in favor of, or conferred on the DIP Lender by the terms of the Interim DIP Order, the Final DIP Order, or any of the Loan Documents, until all of the Obligations are paid in full in cash and termination of the Loan Agreement.

19. The DIP Liens and the DIP Superpriority Claims shall continue after conversion of the Case to a case under Chapter 7 of the Bankruptcy Code and in any successor Case for the Debtor under any Chapter of the Bankruptcy Code, and all liens, security interests, and claims shall maintain their priority as provided in this Final DIP Order.

20. Notwithstanding anything in this Final DIP Order, any Loan Documents, or any other order of this Court to the contrary, the DIP Superpriority Claims and the DIP Liens shall not be subject nor subordinate to the Carve-Out (as defined in the Fifth Order Authorizing Interim Use of Cash Collateral and Granting Adequate Protection and Related Relief [Docket No. 506]) or any similar right granted in any other order.

21. Notwithstanding anything in the Interim DIP Order, this Final DIP Order, any Loan Document, or any other order by this Court to the contrary, no proceeds of the DIP Loans or Collateral may be used, directly or indirectly by the Debtor, or any other person or entity, to fund

- (a) any investigation of or challenge to
  - (i) the enforceability of any amounts due under the DIP Loans or the Loan Documents or on account of the DIP Superpriority Claims or
  - (ii) the validity, perfection, priority or extent of the DIP Liens,

- (b) any investigation or prosecution of any claims, defenses, or causes of action (including, without limitation, any claims or causes of action under chapter 5 of the Bankruptcy Code) against the DIP Lender or its agents, affiliates, representatives, attorneys, or advisors,
- (c) any effort to prevent, hinder or otherwise delay the DIP Lender's assertion, enforcement, or realization against or upon the Collateral, in accordance with the Interim DIP Order, this Final DIP Order and the Loan Document,
- (d) any effort to seek to modify any of the rights granted to the DIP Lender hereunder or under the Loan Documents, or
- (e) any effort to take any other action prohibited by the Loan Agreement.

22. The Debtor's authorization to use the DIP Facility shall immediately terminate on the Line of Credit Termination Date, as defined in the Loan Agreement.

23. No costs or expenses of administration which have been or may be incurred in the Case shall be recovered from the DIP Lender or be charged against the Collateral pursuant to Sections 105 or 506(c) of the Bankruptcy Code or otherwise. The DIP Lender shall not be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the Collateral. The DIP Liens shall not be subject to Sections 510, 549, 550, or 551 of the Bankruptcy Code.

24. Professionals for the DIP Lender shall not be required to file fee applications, provided that invoices (subject in all respects to applicable privilege and work product doctrines) shall be provided to counsel for the Debtor, the Committee, Key, HUD and the United States Trustee, which parties shall have fourteen (14) days to object to such invoices in the absence of which such invoices shall be paid by the Debtor and, if not paid by the Debtor, may be paid by the DIP Lender as an advance under the DIP Facility regardless whether

- (a) the DIP Facility has terminated,

- (b) an Event of Default has occurred under the Loan Agreement or would be caused by such payment, or
- (c) such payment would cause the principal balance of the DIP Facility to exceed the maximum permissible principal amount under the Loan Agreement.

25. In determining to extend credit under the DIP Facility, or in exercising any rights or remedies pursuant to the Interim DIP Order, this Final DIP Order, and the Loan Documents, the DIP Lender shall not be deemed to be in control of the Debtor's operations or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtor (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601, *et seq.*, as amended, or any similar federal or state statute).

26. The Debtor may not obtain postpetition loans or other financial accommodations pursuant to Section 364(c) or 364(d) of the Bankruptcy Code, other than from the DIP Lender, or as may be otherwise expressly permitted under the Loan Documents, unless the Debtor uses the proceeds of such postpetition loans or other financial accommodations to pay in full in cash all Obligations.

27. In any hearing regarding any exercise of rights or remedies by the DIP Lender following an alleged Event of Default, the only issue that may be raised by any party in opposition thereto shall be whether, in fact, an Event of Default has occurred and is continuing and/or whether any required notice has been provided, and the Debtor hereby waives its right to seek relief, including without limitation, under Section 105 of the Bankruptcy Code, to the extent such relief would in any way impair or restrict the rights and remedies of the DIP Lender, as set forth in the Interim DIP Order, this Final DIP Order or the Loan Documents, other than to



contest whether an Event of Default has occurred or is continuing and/or whether any required notice has been provided.

28. In the absence of express prior written consent, no consent to a sale, transfer, lease, encumbrance, or other disposition of any portion of the Collateral shall be implied from any action, inaction, or acquiescence by the DIP Lender.

29. On the occurrence of an Event of Default under the Loan Agreement and following five (5) business days written notice thereof (the “**Stay Termination Notice**”) to counsel to the Debtor, counsel to the Committee, counsel to Key, counsel to HUD, and the United States Trustee (collectively, the “**Notice Parties**”), and unless an Order extending the automatic stay (based upon a finding that an Event of Default has not occurred and is not continuing and/or that any required notice has not been provided) is entered prior to the date which is five (5) business days after the date of service of the Stay Termination Notice as set forth below, the automatic stay of Section 362 of the Bankruptcy Code shall be deemed automatically vacated and the DIP Lender shall be immediately permitted to, among other things, pursue any and all of its remedies against the Debtor and the Collateral; however, the automatic stay shall be deemed vacated immediately to the extent necessary to allow the DIP Lender to enforce its entitlement to payment in full of all Obligations from the proceeds of sale of any Acquired Assets. Following the service of a Stay Termination Notice by the DIP Lender to the Notice Parties, the Notice Parties shall be entitled to an emergency hearing before this Court; however, if the Court does not, prior to the date which is five (5) business days after the date of service of the Stay Termination Notice, enter an Order extending the automatic stay (based on a finding that an Event of Default has not occurred and is not continuing and/or that

any required notice has not been provided), the automatic stay shall terminate as provided above notwithstanding the filing or pendency of any request for such emergency hearing.

30. The provisions of the Interim DIP Order and this Final DIP Order and any actions taken pursuant hereto or thereto shall survive the entry of any order:

- (a) confirming a chapter 11 plan in the Case,
- (b) converting the Case to case under chapter 7 of the Bankruptcy Code, or
- (c) dismissing the Case, and the Obligations and DIP Liens shall maintain their enforceability and priority as provided by the Interim DIP Order and this Final DIP Order until all of the Obligations are paid in full in cash in accordance with the Loan Documents.

31. This Final DIP Order shall not be construed in any way as a waiver or relinquishment of any rights that the DIP Lender may have to bring or be heard on any matter brought before this Court.

32. The terms, conditions, and provisions of this Final DIP Order are in addition to and without prejudice to the rights of the DIP Lender to pursue any and all rights and remedies under the Bankruptcy Code, the Loan Documents, or any other applicable agreement or law, including, without limitation, rights

- (a) to seek relief from the automatic stay,
- (b) to seek an injunction,
- (c) to oppose any request for use of cash collateral or for the granting of any interest in the Collateral, or of priority in favor of any other party,
- (d) to object to any sale of assets, or
- (e) to object to applications for allowance or payment of compensation of professionals or other parties seeking compensation or reimbursement from the Debtor's estate.

33. Notwithstanding anything to the contrary contained in any prior or subsequent order of this Court, the DIP Lender shall not be required to file proofs of claim in order to maintain its claims with respect to the Obligations, all of which shall be due and payable in accordance with the Interim DIP Order, this Final DIP Order, and the Loan Documents without the necessity of filing any such proof of claim.

34. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), and 7062, any other Bankruptcy Rule, and any other rule governing procedure in this Court, this Final DIP Order shall be immediately effective and enforceable on its entry, and there shall be no stay of execution or effectiveness of this Final DIP Order.

35. In the event of any inconsistency or conflict between any of the terms and provisions of the Interim DIP Order, this Final DIP Order, and the Loan Documents, the terms and provisions of this Final DIP Order shall govern.

36. The Debtor's cash management system shall at all times be maintained in accordance with any order of this Court approving the maintenance of the Debtor's cash management system. The DIP Lender shall be deemed to have "control" over all such accounts for all purposes of perfection under the Uniform Commercial Code.

37. The DIP Lender shall have the unqualified right to credit bid up to the full amount of the applicable outstanding Obligations, including any accrued interest, in the sale of substantially all property of the Debtor's estate under the "**APA**" (as defined in the Loan Agreement) or any sale of the Collateral (or any part thereof), without the need for further Court order authorizing the same, and whether such sale is effectuated through Section 363 or 1129 of the Bankruptcy Code, by a Chapter 7 trustee under Section 725 of the Bankruptcy Code, or otherwise.

38. This Court shall retain jurisdiction to interpret, implement, and enforce the provisions of this Final DIP Order and the Loan Documents, including the Loan Agreement.

39. The DIP Lender is hereby granted all protections afforded by Section 364(e) of the Bankruptcy Code.

40. The failure to reference any provision of the Loan Documents in the Interim DIP Order or this Final DIP Order shall not affect the enforceability of such provision.

Dated: \_\_\_\_\_, 2021

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The Honorable Michael A. Fagone  
United States Bankruptcy Judge

**EXHIBIT B**

Interim DIP Order

*(See attached.)*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE**

In re:	)	
	)	Chapter 11
LRGHEALTHCARE,	)	
	)	Bk. No. 20-10892-MAF
Debtor. <sup>1</sup>	)	
	)	Related to ECF No. <span style="background-color: yellow;">          </span>

**INTERIM ORDER (A) (I) AUTHORIZING THE DEBTOR TO OBTAIN  
POSTPETITION FINANCING, (II) GRANTING LIENS ON PROPERTY OF THE  
DEBTOR’S ESTATE AND SUPERPRIORITY CLAIMS TO THE POSTPETITION  
LENDER, AND (III) GRANTING RELATED RELIEF**

On the motion [ECF No.       ] (the “**Motion**”) of LRGHealthcare (the “**Debtor**”) in the above-captioned case (the “**Case**”), pursuant to Sections 105, 362, 364, 503 and 507 of Title 11 of the United States Code, 11 U.S.C. §§ 101 – 1532 (the “**Bankruptcy Code**”), Rules 2002, 4001, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), seeking, among other things:

(I) entry of an interim order (the “**Interim DIP Order**”) and a final order (the “**Final DIP Order**”) authorizing the Debtor to obtain postpetition financing (the “**DIP Loans**”) consisting of a term loan, multi-draw financing facility in an aggregate principal amount not to exceed six million dollars (\$6,000,000.00) (the “**DIP Facility**”) from Concord Hospital, Inc. or its designee (the “**DIP Lender**”) pursuant to that certain Post-Petition Loan and Security Agreement, dated as of March 22, 2021, which is attached to this Order as **Exhibit 1** (as amended, modified, restated, or supplemented in accordance with the

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<sup>1</sup> The last four digits of the Debtor’s federal taxpayer identification number are 2150. The address of the Debtor’s headquarters is 80 Highland Street, Laconia, New Hampshire 03246.

terms thereof or hereof, the “**Loan Agreement**”),<sup>2</sup> and all instruments, financing statements and documents as may be executed and delivered in connection with or relating to the DIP Facility, this Interim DIP Order and the Final DIP Order (subject to entry) and any certificate or other document made or delivered pursuant hereto or thereto (collectively with the Loan Agreement, the “**Loan Documents**”), and perform all such other and further acts as may be required in connection with the Loan Documents,

(II) scheduling a final hearing (the “**Final Hearing**”) to consider entry of the Final DIP Order, and in connection therewith, approving the manner of notice of the Final Hearing, and

(III) granting the Debtor such other and further relief as is just and proper;

And the Court having considered the Motion, the exhibits attached thereto, the *Declaration of Todd M. Patnode In Support Of Debtor’s Emergency Motion For Entry of Interim And Final Orders Pursuant To 11 U.S.C. §§ 105, 362, 364, 503 And 507 and Fed. R. Bankr. P. 4001 And 9014 (I) Authorizing Debtor To Obtain Postpetition Financing And (II) Granting Liens And Super-Priority Claims To Postpetition Lender* and the *Declaration of Kevin W. Donovan In Support Of Debtor’s Emergency Motion For Entry of Interim And Final Orders Pursuant To 11 U.S.C. §§ 105, 362, 364, 503 And 507 and Fed. R. Bankr. P. 4001 And 9014 (I) Authorizing Debtor To Obtain Postpetition Financing And (II) Granting Liens And Super-Priority Claims To Postpetition Lender* (the “**Declarations**”); and a hearing to consider entry of this Interim DIP Order having been held before the Court on [REDACTED], 2021 (the “**Interim Hearing**”); and on all of the pleadings filed with the Court, all evidence presented in support of this Interim DIP Order, the arguments of counsel stated on the record of the Interim Hearing, and all of the proceedings held before the Court; and after due deliberation and consideration, and good and sufficient cause appearing therefor;

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<sup>2</sup> All capitalized terms used but not defined herein shall have the meanings stated in the Loan Agreement.

**IT IS HEREBY FOUND AND DETERMINED THAT:**

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Rule 52(a) of the Federal Rules of Civil Procedure, made applicable to this proceeding pursuant to Bankruptcy Rules 7052 and 9014. To the extent any findings of fact herein constitute conclusions of law, they are adopted as such. To the extent any conclusions of law herein constitute findings of fact, they are adopted as such.

B. The Court has jurisdiction over the Motion and the transactions contemplated by the Loan Documents pursuant to 28 U.S.C. §§ 157 and 1334 and Local Rule 77.4(a) of the Local Rules of the United States District Court for the District of New Hampshire, and this matter is a core proceeding pursuant to 28 U.S.C. § 157. Venue of this case and this matter in this district is proper under 28 U.S.C. §§ 1408 and 1409. The Court may enter a final order consistent with or without violating Article III of the U.S. Constitution.

C. The statutory bases for the relief requested in the Motion are Sections 105, 364, 503, and 507 of the Bankruptcy Code.

D. Good and sufficient notice of the Interim Hearing, the Motion, and the relief sought therein has been given under the circumstances, and no other or further notice is required except as set forth herein with respect to the hearing to be conducted to approve the DIP Facility on a final basis (the "**Final Hearing**"). A reasonable opportunity to object or be heard regarding the relief provided herein has been afforded to parties in interest.

E. The Debtor remains in possession of its property and is authorized to operate its business pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

F. The use of cash that is property of the Debtor would be insufficient, alone, to meet the Debtor's immediate postpetition liquidity needs. As a result, an immediate and critical



need exists for the Debtor to obtain postpetition financing to continue the operation of its business.

G. The Debtor is unable to obtain sufficient postpetition financing to continue operation of its business

- (1) in the forms of
  - (a) unsecured debt incurred in the ordinary course of business allowable as an administrative expense under Section 503(b)(1) of the Bankruptcy Code, or
  - (b) unsecured debt incurred outside the ordinary course of business allowable as an administrative expense under Section 503(b)(1) of the Bankruptcy Code or
- (2) on terms more favorable than those embodied in the Loan Agreement and the other Loan Documents.

The DIP Lender is prepared to enter into the DIP Loans solely on the terms set forth in the Loan Agreement and the other Loan Documents.

H. The terms of the DIP Loans are fair, just, and reasonable under the circumstances, reflect the Debtor's exercise of its prudent business judgment consistent with its fiduciary duties, and are supported by reasonably equivalent value and fair consideration.

I. The terms of the DIP Loans have been negotiated in good faith and at arm's length by and between the Debtor and the DIP Lender.

J. Any credit extended or other indebtedness or liabilities arising under, in respect of, or in connection with this Interim DIP Order, or any Loan Document, shall be deemed to have been extended in "good faith" by the DIP Lender as that term is used in Section 364(e) of the Bankruptcy Code, and in express reliance upon the protections afforded by Section 364(e) of the Bankruptcy Code.

K. The relief requested in the Motion is necessary and appropriate for the management and preservation of the Debtor's property and the operation of the Debtor's business and is in the best interests of the Debtor, its estate and creditors.

L. Absent the relief granted herein, the Debtor's estate will be immediately and irreparably harmed.

M. Good, adequate, and sufficient cause has been shown to justify the relief granted herein and the immediate entry and effectiveness of this Interim DIP Order.

**IT IS HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** to the extent set forth in this Order.
2. All objections to the Motion as it relates to the relief provided herein that have not been withdrawn, waived or settled, and all reservations of rights included therein, hereby are overruled and denied on the merits with prejudice.
3. The Loan Documents, including the Loan Agreement, are approved, and the Debtor is hereby authorized to execute and enter into, deliver, and perform all obligations thereunder.
4. The Debtor is hereby authorized to borrow up to three million dollars (\$3,000,000.00) of the total available under the DIP Facility, to be used solely as expressly provided in the Loan Documents.
5. In furtherance of the foregoing and without further approval of this Court, the Debtor is hereby authorized to perform all acts, to make, execute, and deliver all instruments and documents, and to pay all related fees, that may be required or necessary for the Debtor's performance of its obligations under the DIP Loans.

6. All of the DIP Liens (defined below) shall be effective and perfected as of the date of entry of this Interim DIP Order without the necessity of the execution, recording, or filing of security agreements, pledge agreements, financing statements, or other agreements or instruments.

7. The Loan Agreement and the “**Obligations**” (as defined in the Loan Agreement) constitute valid, binding, and non-avoidable obligations of the Debtor enforceable against the Debtor, its estate, and its successors and assigns in accordance with the terms of this Interim DIP Order and the Loan Documents, and shall survive the dismissal of this Case or the conversion of this Case to a case under another Chapter of the Bankruptcy Code.

8. No obligation, payment, transfer, or grant of security under this Interim DIP Order or the Loan Documents shall be stayed, restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under any applicable law, or subject to any avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), counterclaims, cross-claims, defenses, disallowance, impairment, or any other challenges under the Bankruptcy Code or any other applicable foreign or domestic law or regulation by any person or entity. Nothing herein is intended to alter or interfere with the rights of any third party payor to exercise their right of setoff or recoupment with regard to the Debtor’s accounts receivable owed by such payors under applicable law or as allowed by order of this Court. For the avoidance of doubt, the preceding sentence shall not modify any restrictions on the recoupment, setoff or other rights of payors under, (a) the Order Setting the Cure Amounts for the Debtor’s Contracts with UnitedHealthcare Insurance Company and its Affiliates [ECF No. 476], (b) the Order Setting the Cure Amounts for the Debtor’s Contracts with Anthem Health Plans of New Hampshire, Inc. D/B/A Anthem Blue Cross and Blue Shield

and Matthew Thornton Health Plan, Inc. [ECF No. 504], or (c) the Order Setting the Cure Amounts for the Debtor's Contracts with Humana Insurance Company and Humana Health Plan, Inc. [ECF No. 509].

9. The DIP Loans shall
  - (a) be evidenced by the books and records of the DIP Lender and, although not required, upon the request of the DIP Lender, a note executed and delivered to the DIP Lender by the Debtor in accordance with the terms of the Loan Documents,
  - (b) bear interest and incur fees at the rates set forth in the Loan Agreement,
  - (c) be secured in the manner specified below and under the applicable Loan Documents,
  - (d) be payable in accordance with the applicable Loan Documents, and
  - (e) otherwise be governed by the terms set forth in this Interim DIP Order and the Loan Documents.

10. The automatic stay provisions of Section 362 of the Bankruptcy Code and any other restriction imposed by an order of the Court or applicable law are hereby modified and vacated without further notice, application, or order of the Court to the extent necessary to permit the DIP Lender to perform any act authorized or permitted under or by virtue of this Interim DIP Order or any of the other Loan Documents, including, without limitation,

- (a) to implement the DIP Facility to the extent authorized by this Interim DIP Order and pursuant to the terms of the Loan Documents,
- (b) to take any act to create, validate, evidence, attach, or perfect any lien, security interest, right, or claim in the “**Collateral**” (as defined in the Loan Agreement”), and
- (c) to assess, charge, collect, advance, deduct, and receive payments with respect to the Obligations, including, without limitation, all principal, interest, fees, costs, and expenses permitted under the Loan Documents, and to apply such payments to the Obligations pursuant to the Loan Documents.

11. The DIP Lender shall have no obligation to make any DIP Loans or any other financial accommodation under the respective Loan Documents unless the conditions precedent to make such extensions of credit under the respective Loan Documents have been satisfied in full or waived in accordance with such Loan Documents.

12. Pursuant to Section 364(c)(1) of the Bankruptcy Code, the Obligations constitute (without the need to file a proof of claim) superpriority claims (the “**DIP Superpriority Claims**”) against the Debtor, with priority over any and all administrative expenses of the Debtor, whether now existing or hereafter arising or incurred, of the kind specified in Sections 503(b) and 507(b) of the Bankruptcy Code.

13. As security for the full and timely payment of the Obligations, the DIP Lender is hereby granted, pursuant to Sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code, valid, enforceable, non-avoidable, and fully perfected security interests in and liens on all Collateral (as defined in the Loan Agreement) (collectively, the “**DIP Liens**”), which shall have the priorities stated in the Loan Agreement.

14. For the avoidance of doubt, “**Collateral**” shall not include (i) any causes of action arising under chapter 5 of the Bankruptcy Code or applicable state law equivalents and the proceeds thereof and (ii) any pre-petition and post-petition commercial tort claims (as such term is defined in the Uniform Commercial Code as in effect in the State of New Hampshire) and the proceeds thereof, including, without limitation, any and all causes of action (and the proceeds thereof) against current and former directors and officers of the Debtor and/or any of its affiliates. The foregoing shall not apply to First Priority Collateral, of which shall be Collateral.

15. The DIP Liens shall be effective immediately on entry of this Interim DIP Order. This Interim DIP Order shall be sufficient and conclusive evidence of the validity, perfection,

and priority of the DIP Liens without the necessity of executing, filing, or recording any mortgage, security agreement, pledge agreement, financing statement, or other instrument or document, or the taking of any other act that otherwise may be required under state or federal law, rule, or regulation of any jurisdiction to validate or perfect the DIP Liens or to entitle the DIP Lender to the priorities granted herein; however, the Debtor may execute, and the DIP Lender is hereby authorized to execute, file, and/or record mortgages, security agreements, pledge agreements, financing statements, and/or other instruments or documents to evidence the DIP Liens, and the Debtor is hereby authorized, promptly on a demand by the DIP Lender made in accordance with the terms of the Loan Documents to execute, file, and/or record any such mortgages, security agreements, pledge agreements, financing statements, or other instruments or documents as the DIP Lender may request; however no such execution, filing, or recordation shall be necessary or required in order to create or perfect the DIP Liens. A copy of this Interim DIP Order may, in the discretion of the DIP Lender, be filed with or recorded in any filing or recording office in addition to or in lieu of such mortgages, security agreements, pledge agreements, financing statements, or other instruments or documents, and each and every federal, state, and local governmental agency, department, or office is hereby directed to accept a copy of this Interim DIP Order and any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by this Interim DIP Order and the Loan Documents, for filing and recording, and to deem this Interim DIP Order to be in proper form for filing and recording.

16. The DIP Liens shall not be

- (a) subject to any lien that is avoided and preserved for the benefit of the Debtor's estate under Section 551 of the Bankruptcy Code or

- (b) except as provided in the Loan Agreement, subordinated to or made *pari passu* with any other lien under Section 364(d) of the Bankruptcy Code or otherwise.

17. Absent payment in full in cash of all Obligations of the Debtor and termination of the Loan Agreement, the Debtor shall not

- (a) grant or impose any liens on the Collateral or
- (b) prime or seek to prime the DIP Liens.

18. In no event shall any person or entity who pays (or through the extension of credit to the Debtor, causes to be paid) any of the Obligations, be subrogated, in whole or in part, to any rights, remedies, claims, privileges, liens or security interests granted in favor of, or conferred on the DIP Lender by the terms of this Interim DIP Order or any of the Loan Documents, until all of the Obligations are paid in full in cash and termination of the Loan Agreement.

19. The DIP Liens and the DIP Superpriority Claims shall continue after conversion of the Case to a case under Chapter 7 of the Bankruptcy Code and in any successor Case for the Debtor under any Chapter of the Bankruptcy Code, and all liens, security interests, and claims shall maintain their priority as provided in this Interim DIP Order.

20. Notwithstanding anything in this Interim DIP Order, any Loan Documents, or any other order of this Court to the contrary, the DIP Superpriority Claims and the DIP Liens shall not be subject nor subordinate to the Carve-Out (as defined in the *Fifth Order Authorizing Interim Use of Cash Collateral and Granting Adequate Protection and Related Relief* [Docket No. 506]) or any similar right granted in any other order.

21. Notwithstanding anything in this Interim DIP Order, any Loan Document, or any other order by this Court to the contrary, no proceeds of the DIP Loans or Collateral may be used, directly or indirectly, by the Debtor, or any other person or entity, to fund

- (a) any investigation of or challenge to
  - (i) the enforceability of any amounts due under the DIP Loans or the Loan Documents or on account of the DIP Superpriority Claims or
  - (ii) the validity, perfection, priority or extent of the DIP Liens,
- (b) any investigation or prosecution of any claims, defenses, or causes of action (including, without limitation, any claims or causes of action under chapter 5 of the Bankruptcy Code) against the DIP Lender or its agents, affiliates, representatives, attorneys, or advisors,
- (c) any effort to prevent, hinder or otherwise delay the DIP Lender's assertion, enforcement, or realization against or upon the Collateral, in accordance with this Interim DIP Order and the Loan Document,
- (d) any effort to seek to modify any of the rights granted to the DIP Lender hereunder or under the Loan Documents, or
- (e) any effort to take any other action prohibited by the Loan Agreement.

22. The Debtor's authorization to use the DIP Facility shall immediately terminate on the earlier of

- (a) the Line of Credit Termination Date and
- (b) April 13, 2021 unless the "**Final DIP Order**" (as defined in the Loan Agreement) has been entered as of such date.

23. No costs or expenses of administration which have been or may be incurred in the Case shall be recovered from the DIP Lender or be charged against the Collateral pursuant to Sections 105 or 506(c) of the Bankruptcy Code or otherwise. The DIP Lender shall not be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the



Collateral. The DIP Liens shall not be subject to Sections 510, 549, 550, or 551 of the Bankruptcy Code.

24. Professionals for the DIP Lender shall not be required to file fee applications, provided that invoices (subject in all respects to applicable privilege and work product doctrines) shall be provided to counsel for the Debtor, the Committee, Key, HUD and the United States Trustee, which parties shall have fourteen (14) days to object to such invoices in the absence of which such invoices shall be paid by the Debtor and, if not paid by the Debtor, may be paid by the DIP Lender as an advance under the DIP Facility regardless whether

- (a) the DIP Facility has terminated,
- (b) an Event of Default has occurred under the Loan Agreement or would be caused by such payment, or
- (c) such payment would cause the principal balance of the DIP Facility to exceed the maximum permissible principal amount under the Loan Agreement.

25. In determining to extend credit under the DIP Facility, or in exercising any rights or remedies pursuant to this Interim DIP Order and the Loan Documents, the DIP Lender shall not be deemed to be in control of the Debtor's operations or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtor (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601, *et seq.*, as amended, or any similar federal or state statute).

26. The Debtor may not obtain postpetition loans or other financial accommodations pursuant to Section 364(c) or 364(d) of the Bankruptcy Code, other than from the DIP Lender, or as may be otherwise expressly permitted under the Loan Documents, unless the Debtor uses the

proceeds of such postpetition loans or other financial accommodations to pay in full in cash all Obligations.

27. In any hearing regarding any exercise of rights or remedies by the DIP Lender following an alleged Event of Default, the only issue that may be raised by any party in opposition thereto shall be whether, in fact, an Event of Default has occurred and is continuing and/or whether any required notice has been provided, and the Debtor hereby waives its right to seek relief, including without limitation, under Section 105 of the Bankruptcy Code, to the extent such relief would in any way impair or restrict the rights and remedies of the DIP Lender, as set forth in this Interim DIP Order or the Loan Documents, other than to contest whether an Event of Default has occurred or is continuing and/or whether any required notice has been provided.

28. In the absence of express prior written consent, no consent to a sale, transfer, lease, encumbrance, or other disposition of any portion of the Collateral shall be implied from any action, inaction, or acquiescence by the DIP Lender.

29. On the occurrence of an Event of Default under the Loan Agreement and following five (5) business days written notice thereof (the “**Stay Termination Notice**”) to counsel to the Debtor, counsel to the Committee, counsel to Key, counsel to HUD, and the United States Trustee (collectively, the “**Notice Parties**”), and unless an Order extending the automatic stay (based upon a finding that an Event of Default has not occurred and is not continuing and/or that any required notice has not been provided) is entered prior to the date which is five (5) business days after the date of service of the Stay Termination Notice as set forth below, the automatic stay of Section 362 of the Bankruptcy Code shall be deemed automatically vacated and the DIP Lender shall be immediately permitted to, among other things, pursue any and all of its remedies against the Debtor and the Collateral; however, the

automatic stay shall be deemed vacated immediately on entry of this Interim DIP Order solely to the extent necessary to allow the DIP Lender to enforce its entitlement to payment in full of all Obligations from the proceeds of sale of any Acquired Assets. Following the service of a Stay Termination Notice by the DIP Lender to the Notice Parties, the Notice Parties shall be entitled to an emergency hearing before this Court; however, if the Court does not, prior to the date which is five (5) business days after the date of service of the Stay Termination Notice, enter an Order extending the automatic stay (based upon a finding that an Event of Default has not occurred and is not continuing and/or that any required notice has not been provided), the automatic stay shall terminate as provided above notwithstanding the filing or pendency of any request for such emergency hearing.

30. The provisions of this Interim DIP Order and any actions taken pursuant hereto or thereto shall survive the entry of any order:

- (a) confirming a chapter 11 plan in the Case,
- (b) converting the Case to case under chapter 7 of the Bankruptcy Code, or
- (c) dismissing the Case, and the Obligations and DIP Liens shall maintain their enforceability and priority as provided by this Interim DIP Order until all of the Obligations are paid in full in cash in accordance with the Loan Documents.

31. This Interim DIP Order shall not be construed in any way as a waiver or relinquishment of any rights that the DIP Lender may have to bring or be heard on any matter brought before this Court.

32. The terms, conditions, and provisions of this Interim DIP Order are in addition to and without prejudice to the rights of the DIP Lender to pursue any and all rights and remedies under the Bankruptcy Code, the Loan Documents, or any other applicable agreement or law, including, without limitation, rights

- (a) to seek relief from the automatic stay,
- (b) to seek an injunction,
- (c) to oppose any request for use of cash collateral or for the granting of any interest in the Collateral, or of priority in favor of any other party,
- (d) to object to any sale of assets, or
- (e) to object to applications for allowance or payment of compensation of professionals or other parties seeking compensation or reimbursement from the Debtor's estate.

33. Notwithstanding anything to the contrary contained in any prior or subsequent order of this Court, the DIP Lender shall not be required to file proofs of claim in order to maintain its claims with respect to the Obligations, all of which shall be due and payable in accordance with this Interim DIP Order and the Loan Documents without the necessity of filing any such proof of claim.

34. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), and 7062, any other Bankruptcy Rule, and any other rule governing procedure in this Court, this Interim DIP Order shall be immediately effective and enforceable on its entry, and there shall be no stay of execution or effectiveness of this Interim DIP Order.

35. In the event of any inconsistency or conflict between any of the terms and provisions of this Interim DIP Order and the Loan Documents, the terms and provisions of this Interim DIP Order shall govern.

36. The Debtor's cash management system shall at all times be maintained in accordance with any order of this Court approving the maintenance of the Debtor's cash management system. The DIP Lender shall be deemed to have "control" over all such accounts for all purposes of perfection under the Uniform Commercial Code.

37. The DIP Lender shall have the unqualified right to credit bid up to the full amount of the applicable outstanding Obligations, including any accrued interest, in the sale of substantially all property of the Debtor's estate under the "APA" (as defined in the Loan Agreement) or any sale of the Collateral (or any part thereof), without the need for further Court order authorizing the same, and whether such sale is effectuated through Section 363 or 1129 of the Bankruptcy Code, by a Chapter 7 trustee under Section 725 of the Bankruptcy Code, or otherwise.

38. This Court shall retain jurisdiction to interpret, implement, and enforce the provisions of this Interim DIP Order and the Loan Documents, including the Loan Agreement.

39. The DIP Lender is hereby granted all protections afforded by Section 364(e) of the Bankruptcy Code.

40. The failure to reference any provision of the Loan Documents in this Interim DIP Order shall not affect the enforceability of such provision.

41. The Debtor shall promptly serve by United States mail, first class postage prepaid, copies of this Interim DIP Order and a notice of the Final Hearing (the "**Final Hearing Notice**") to be held on [REDACTED], 2021, at [REDACTED]:[REDACTED]M. (EDT), to consider entry of the Final DIP Order on the following:

- (a) the Office of the United States Trustee,
- (b) the United States Securities and Exchange Commission,
- (c) the Internal Revenue Service,
- (d) the Office of the United States Attorney for the District of New Hampshire,
- (e) those entities or individuals listed on the Debtor's list of 20 largest unsecured creditors,

- (f) counsel to Key, counsel to HUD and all other known parties asserting a lien against the Debtor's assets, and
- (g) counsel to the Committee.

Copies of the Motion, this Interim DIP Order, and the Final Hearing Notice also shall be served upon all persons requesting service of papers pursuant to Bankruptcy Rule 2002 by United States mail, first class postage prepaid, promptly following the receipt of such request.

42. The Final Hearing Notice shall state that any party in interest objecting to the entry of the Final DIP Order shall file written objections with the Court no later than [REDACTED], 2021, at [REDACTED]: [REDACTED] M. (EDT), which objections shall be served so that the same are received on or before such date and time by

- (a) LRGHealthcare, 80 Highland Street, Laconia, NH 03246, Attn: Kevin Donovan, Email: kdonovan@lrgh.org;
- (b) Nixon Peabody, LLP, Exchange Place, Boston, MA 02109-2835, Attn: Victor G. Milione, Esq. Email vmilione@nixonpeabody.com;
- (c) Stevens & Lee, P.C. 620 Freedom Business Center, Suite 200, King of Prussia, PA., 19406, Attn: Robert Lapowsky, Esq., Email: rl@stevenslee.com;
- (d) Morris, Manning & Martin, LLP, 1600 Atlanta Financial Center, 3343 Peachtree Road, NE, Atlanta, GA 30326, Attn: Lisa Wolgast, Esq., Email: lwolgast@mmmlaw.com;
- (e) United States Department of Justice, Civil Division, P.O. Box 875, Ben Franklin Station, Washington DC 20044-0875, Attn: Rodney Morris, Esq. and I-Heng Hsu, Email: rodney.morris2@usdoj.gov; i-heng.hsu@usdoj.gov;
- (f) Preti, Flaherty, Beliveau & Pachios, Chartered, LLP, P.O. Box 1318, Concord, NH 03302-1318, Attn: Rue Toland, Esq., Email: rtoland@preti.com;
- (g) Sills Cummis & Gross P.C., One Riverfront Plaza, Newark, NJ 07102, Attn: Andrew H. Sherman, Esq., Email: asherman@sillscummis.com;

- (h) Drummond Woodsum, 84 Marginal Way, Suite 600, Portland, ME 04101,  
Attn: Jeremy R. Fischer, Email: jfischer@dwmlaw.com; and
- (i) The Office of the United States Trustee, 53 Pleasant Street, Suite 2300,  
Concord, NH 03301, Attn. Ann Marie Dirsa.

Dated: \_\_\_\_\_, \_\_\_\_ 2021

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The Honorable Michael A. Fagone  
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

_____	)	
In re:	)	Chapter 11
	)	
LRGHEALTHCARE,	)	Bk. No. 20-10892-MAF
	)	
Debtor. <sup>1</sup>	)	Related to ECF No. <u>535</u>
_____	)	

**FINAL ORDER (A) (I) AUTHORIZING THE DEBTOR TO OBTAIN POSTPETITION FINANCING, (II) GRANTING LIENS ON PROPERTY OF THE DEBTOR'S ESTATE AND SUPERPRIORITY CLAIMS TO THE POSTPETITION LENDER, AND (III) GRANTING RELATED RELIEF**

On the motion [ECF No. 535] (the “**Motion**”) of LRGHealthcare (the “**Debtor**”) in the above-captioned case (the “**Case**”), pursuant to Sections 105, 362, 364, 503 and 507 of Title 11 of the United States Code, 11 U.S.C. §§ 101 – 1532 (the “**Bankruptcy Code**”), Rules 2002, 4001, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), seeking, among other things:

(I) entry of an interim order (the “**Interim DIP Order**”) and a final order (the “**Final DIP Order**”) authorizing the Debtor to obtain postpetition financing (the “**DIP Loans**”) consisting of a term loan, multi-draw financing facility in an aggregate principal amount not to exceed six million dollars (\$6,000,000.00) (the “**DIP Facility**”) from Concord Hospital, Inc. or its designee (the “**DIP Lender**”) pursuant to that certain Post-Petition Loan and Security Agreement, dated as of March 22, 2021, which is attached to this Order as **Exhibit 1** (as amended, modified, restated, or supplemented in accordance with the terms thereof or hereof, the “**Loan Agreement**”),<sup>2</sup> and all instruments, financing statements and documents as may be executed and delivered in connection with or relating to the DIP Facility, this Interim DIP Order and the Final DIP Order (subject to entry) and any certificate or other document made or delivered pursuant hereto or thereto (collectively with the Loan Agreement, the “**Loan Documents**”), and perform all such other and further acts as may be required in connection with the Loan Documents,

<sup>1</sup> The last four digits of the Debtor's federal taxpayer identification number are 2150. The address of the Debtor's headquarters is 80 Highland Street, Laconia, New Hampshire 03246.

<sup>2</sup> All capitalized terms used but not defined herein shall have the meanings stated in the Loan Agreement.



(II) scheduling a final hearing (the “**Final Hearing**”) to consider entry of the Final DIP Order, and in connection therewith, approving the manner of notice of the Final Hearing, and

(III) granting the Debtor such other and further relief as is just and proper;

And the Court having considered the Motion, the exhibits attached thereto, the *Declaration of Todd M. Patnode In Support Of Debtor’s Emergency Motion For Entry of Interim And Final Orders Pursuant To 11 U.S.C. §§ 105, 362, 364, 503 And 507 and Fed. R. Bankr. P. 4001 And 9014 (I) Authorizing Debtor To Obtain Postpetition Financing And (II) Granting Liens And Super-Priority Claims To Postpetition Lender* and the *Declaration of Kevin W. Donovan In Support Of Debtor’s Emergency Motion For Entry of Interim And Final Orders Pursuant To 11 U.S.C. §§ 105, 362, 364, 503 And 507 and Fed. R. Bankr. P. 4001 And 9014 (I) Authorizing Debtor To Obtain Postpetition Financing And (II) Granting Liens And Super-Priority Claims To Postpetition Lender* (the “**Declarations**”); and a hearing to consider entry of the Interim DIP Order having been held before the Court on March 26, 2021 (the “**Interim Hearing**”); and the Court having entered the Interim DIP Order [ECF No. \_\_] on \_\_\_\_\_, 2021; and a hearing to consider entry of the Final DIP Order having been held on \_\_\_\_\_, 2021 (the “**Final Hearing**”); and on all of the pleadings filed with the Court, all evidence presented in support of the Motion, the arguments of counsel stated on the record of the Interim Hearing and the Final Hearing, and all of the proceedings held before the Court; and after due deliberation and consideration, and good and sufficient cause appearing therefor;

**IT IS HEREBY FOUND AND DETERMINED THAT:**

A. The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Rule 52(a) of the Federal Rules of Civil Procedure, made applicable to this proceeding pursuant to Bankruptcy Rules 7052 and 9014. To the extent any

findings of fact herein constitute conclusions of law, they are adopted as such. To the extent any conclusions of law herein constitute findings of fact, they are adopted as such.

B. The Court has jurisdiction over the Motion and the transactions contemplated by the Loan Documents pursuant to 28 U.S.C. §§ 157 and 1334 and Local Rule 77.4(a) of the Local Rules of the United States District Court for the District of New Hampshire, and this matter is a core proceeding pursuant to 28 U.S.C. § 157. Venue of this case and this matter in this district is proper under 28 U.S.C. §§ 1408 and 1409. The Court may enter a final order consistent with or without violating Article III of the U.S. Constitution.

C. The statutory bases for the relief requested in the Motion are Sections 105, 364, 503, and 507 of the Bankruptcy Code.

D. Good and sufficient notice of the Interim Hearing, the Final Hearing, the Motion and the relief sought therein has been given under the circumstances, and no other or further notice is required. A reasonable opportunity to object or be heard regarding the relief provided herein has been afforded to parties in interest.

E. The Debtor remains in possession of its property and is authorized to operate its business pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

F. The use of cash that is property of the Debtor would be insufficient, alone, to meet the Debtor's immediate postpetition liquidity needs. As a result, an immediate and critical need exists for the Debtor to obtain postpetition financing to continue the operation of its business.

G. The Debtor is unable to obtain sufficient postpetition financing to continue operation of its business

(1) in the forms of

- (a) unsecured debt incurred in the ordinary course of business allowable as an administrative expense under Section 503(b)(1) of the Bankruptcy Code or
- (b) unsecured debt incurred outside the ordinary course of business allowable as an administrative expense under Section 503(b)(1) of the Bankruptcy Code or
- (2) on terms more favorable than those embodied in the Loan Agreement and the other Loan Documents.

The DIP Lender is prepared to enter into the DIP Loans solely on the terms set forth in the Loan Agreement and the other Loan Documents.

H. The terms of the DIP Loans are fair, just, and reasonable under the circumstances, reflect the Debtor's exercise of its prudent business judgment consistent with its fiduciary duties, and are supported by reasonably equivalent value and fair consideration.

I. The terms of the DIP Loans have been negotiated in good faith and at arm's length by and between the Debtor and the DIP Lender.

J. Any credit extended or other indebtedness or liabilities arising under, in respect of, or in connection with the Interim DIP Order, this Final DIP Order or any Loan Document shall be deemed to have been extended in "good faith" by the DIP Lender as that term is used in Section 364(e) of the Bankruptcy Code, and in express reliance upon the protections afforded by Section 364(e) of the Bankruptcy Code.

K. The relief requested in the Motion is necessary and appropriate for the management and preservation of the Debtor's property and the operation of the Debtor's business and is in the best interests of the Debtor, its estate and creditors.

L. Absent the relief granted herein, the Debtor's estate will be immediately and irreparably harmed.

M. Good, adequate, and sufficient cause has been shown to justify the relief granted herein and the immediate entry and effectiveness of this Final DIP Order.

**IT IS HEREBY ORDERED THAT:**

1. The Motion is **GRANTED**.
2. All objections to the Motion or the relief provided herein that have not been withdrawn, waived or settled, and all reservations of rights included therein, hereby are overruled and denied on the merits with prejudice
3. The Loan Documents, including the Loan Agreement, are approved, and the Debtor is hereby authorized to execute and enter into, deliver, and perform all obligations thereunder.
4. The Debtor is hereby authorized to borrow the full amount available under the DIP Facility, to be used solely as expressly provided in the Loan Documents, including the Loan Agreement.
5. In furtherance of the foregoing and without further approval of this Court, the Debtor is hereby authorized to perform all acts, to make, execute, and deliver all instruments and documents, and to pay all related fees, that may be required or necessary for the Debtor's performance of its obligations under the DIP Loans.
6. All of the DIP Liens (defined below) shall be effective and perfected as of the date of entry of the Interim DIP Order without the necessity of the execution, recording, or filing of security agreements, pledge agreements, financing statements, or other agreements or instruments.
7. The Loan Agreement and the "**Obligations**" (as defined in the Loan Agreement) constitute valid, binding, and non-avoidable obligations of the Debtor enforceable against the

Debtor, its estate and its successors and assigns in accordance with the terms of the Interim DIP Order, this Final DIP Order and the Loan Documents, and shall survive the dismissal of this Case or the conversion of this Case to a case under another Chapter of the Bankruptcy Code.

8. No obligation, payment, transfer, or grant of security under the Interim DIP Order, this Final DIP Order, or the Loan Documents shall be stayed, restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under any applicable law, or subject to any avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), counterclaims, cross-claims, defenses, disallowance, impairment, or any other challenges under the Bankruptcy Code or any other applicable foreign or domestic law or regulation by any person or entity. Nothing herein is intended to alter or interfere with the rights of any third party payor to exercise their right of setoff or recoupment with regard to the Debtor's accounts receivable owed by such payors under applicable law or as allowed by order of this Court. For the avoidance of doubt, the preceding sentence shall not modify any restrictions on the recoupment, setoff or other rights of payors under, (a) the Order Setting the Cure Amounts for the Debtor's Contracts with UnitedHealthcare Insurance Company and its Affiliates [ECF No. 476], (b) the Order Setting the Cure Amounts for the Debtor's Contracts with Anthem Health Plans of New Hampshire, Inc. D/B/A Anthem Blue Cross and Blue Shield and Matthew Thornton Health Plan, Inc. [ECF No. 504], or (c) the Order Setting the Cure Amounts for the Debtor's Contracts with Humana Insurance Company and Humana Health Plan, Inc. [ECF No. 509].

9. The DIP Loans shall

- (a) be evidenced by the books and records of the DIP Lender and, although not required, upon the request of the DIP Lender, a note executed and delivered to the DIP Lender by the Debtor in accordance with the terms of the Loan Documents,

- (b) bear interest and incur fees at the rates set forth in the Loan Agreement,
- (c) be secured in the manner specified below and under the applicable Loan Documents,
- (d) be payable in accordance with the applicable Loan Documents, and
- (e) otherwise be governed by the terms set forth in this Final DIP Order and the Loan Documents.

10. The automatic stay provisions of Section 362 of the Bankruptcy Code and any other restriction imposed by an order of the Court or applicable law are hereby modified and vacated without further notice, application, or order of the Court to the extent necessary to permit the DIP Lender to perform any act authorized or permitted under or by virtue of the Interim DIP Order, this Final DIP Order, or any of the Loan Documents, including, without limitation,

- (a) to implement the DIP Facility authorized by the Interim DIP Order, this Final DIP Order and pursuant to the terms of the Loan Documents,
- (b) to take any act to create, validate, evidence, attach, or perfect any lien, security interest, right, or claim in the “**Collateral**” (as defined in the Loan Agreement”), and
- (c) to assess, charge, collect, advance, deduct, and receive payments with respect to the Obligations, including, without limitation, all principal, interest, fees, costs, and expenses permitted under the Loan Documents, and to apply such payments to the Obligations pursuant to the Loan Documents.

11. The DIP Lender shall have no obligation to make any DIP Loans or any other financial accommodation under the respective Loan Documents unless the conditions precedent to make such extensions of credit under the respective Loan Documents have been satisfied in full or waived in accordance with such Loan Documents.

12. Pursuant to Section 364(c)(1) of the Bankruptcy Code, the Obligations constitute (without the need to file a proof of claim) superpriority claims (the “**DIP Superpriority Claims**”) against the Debtor, with priority over any and all administrative expenses of the

Debtor, whether now existing or hereafter arising or incurred, of the kind specified in Sections 503(b) and 507(b) of the Bankruptcy Code.

13. As security for the full and timely payment of the Obligations, the DIP Lender is hereby granted, pursuant to Sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code, valid, enforceable, non-avoidable, and fully perfected security interests in and liens on all Collateral (as defined in the Loan Agreement) (collectively, the “**DIP Liens**”), which shall have the priorities stated in the Loan Agreement.

14. For the avoidance of doubt, “**Collateral**” shall not include (i) any causes of action arising under chapter 5 of the Bankruptcy Code or applicable state law equivalents and the proceeds thereof and (ii) any pre-petition and post-petition commercial tort claims (as such term is defined in the Uniform Commercial Code as in effect in the State of New Hampshire) and the proceeds thereof, including, without limitation, any and all causes of action (and the proceeds thereof) against current and former directors and officers of the Debtor and/or any of its affiliates. The foregoing shall not apply to First Priority Collateral, all of which shall be Collateral.

15. The DIP Liens became effective immediately upon entry of the Interim DIP Order. The Interim DIP Order and this Final DIP Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the DIP Liens without the necessity of executing, filing, or recording any mortgage, security agreement, pledge agreement, financing statement, or other instrument or document, or the taking of any other act that otherwise may be required under state or federal law, rule, or regulation of any jurisdiction to validate or perfect the DIP Liens or to entitle the DIP Lender to the priorities granted herein; however, the Debtor may execute, and the DIP Lender is hereby authorized to execute, file, and/or record mortgages, security agreements, pledge agreements, financing statements, and/or other instruments or documents to evidence the

DIP Liens and the Debtor is hereby authorized, promptly on a demand by the DIP Lender made in accordance with the terms of the Loan Documents to execute, file, and/or record any such mortgages, security agreements, pledge agreements, financing statements, or other instruments or documents as the DIP Lender may request; however, no such execution, filing, or recordation shall be necessary or required in order to create or perfect the DIP Liens. A copy of the Interim DIP Order or this Final DIP Order may, in the discretion of the DIP Lender, be filed with or recorded in any filing or recording office in addition to or in lieu of such mortgages, security agreements, pledge agreements, financing statements, or other instruments or documents, and each and every federal, state, and local governmental agency, department, or office is hereby directed to accept a copy of the Interim DIP Order or this Final DIP Order and any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Interim DIP Order, the Final DIP Order, and the Loan Documents, for filing and recording, and to deem the Interim DIP Order and the Final DIP Order to be in proper form for filing and recording.

16. The DIP Liens shall not be

- (a) subject to any lien that is avoided and preserved for the benefit of the Debtor's estate under Section 551 of the Bankruptcy Code or
- (b) except as provided in the Loan Agreement, subordinated to or made *pari passu* with any other lien under Section 364(d) of the Bankruptcy Code or otherwise.

17. Absent payment in full in cash of all Obligations of the Debtor and termination of the Loan Agreement, the Debtor shall not

- (a) grant or impose any liens on the Collateral or
- (b) prime or seek to prime the DIP Liens.



18. In no event shall any person or entity who pays (or through the extension of credit to the Debtor, causes to be paid) any of the Obligations, be subrogated, in whole or in part, to any rights, remedies, claims, privileges, liens, or security interests granted in favor of, or conferred on the DIP Lender by the terms of the Interim DIP Order, the Final DIP Order, or any of the Loan Documents, until all of the Obligations are paid in full in cash and termination of the Loan Agreement.

19. The DIP Liens and the DIP Superpriority Claims shall continue after conversion of the Case to a case under Chapter 7 of the Bankruptcy Code and in any successor Case for the Debtor under any Chapter of the Bankruptcy Code, and all liens, security interests, and claims shall maintain their priority as provided in this Final DIP Order.

20. Notwithstanding anything in this Final DIP Order, any Loan Documents, or any other order of this Court to the contrary, the DIP Superpriority Claims and the DIP Liens shall not be subject nor subordinate to the Carve-Out (as defined in the Fifth Order Authorizing Interim Use of Cash Collateral and Granting Adequate Protection and Related Relief [Docket No. 506]) or any similar right granted in any other order.

21. Notwithstanding anything in the Interim DIP Order, this Final DIP Order, any Loan Document, or any other order by this Court to the contrary, no proceeds of the DIP Loans or Collateral may be used, directly or indirectly by the Debtor, or any other person or entity, to fund

- (a) any investigation of or challenge to
  - (i) the enforceability of any amounts due under the DIP Loans or the Loan Documents or on account of the DIP Superpriority Claims or
  - (ii) the validity, perfection, priority or extent of the DIP Liens,
- (b) any investigation or prosecution of any claims, defenses, or causes of action (including, without limitation, any claims or causes of action under

chapter 5 of the Bankruptcy Code) against the DIP Lender or its agents, affiliates, representatives, attorneys, or advisors,

- (c) any effort to prevent, hinder or otherwise delay the DIP Lender's assertion, enforcement, or realization against or upon the Collateral, in accordance with the Interim DIP Order, this Final DIP Order and the Loan Document,
- (d) any effort to seek to modify any of the rights granted to the DIP Lender hereunder or under the Loan Documents, or
- (e) any effort to take any other action prohibited by the Loan Agreement.

22. The Debtor's authorization to use the DIP Facility shall immediately terminate on the Line of Credit Termination Date, as defined in the Loan Agreement.

23. No costs or expenses of administration which have been or may be incurred in the Case shall be recovered from the DIP Lender or be charged against the Collateral pursuant to Sections 105 or 506(c) of the Bankruptcy Code or otherwise. The DIP Lender shall not be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the Collateral. The DIP Liens shall not be subject to Sections 510, 549, 550, or 551 of the Bankruptcy Code.

24. Professionals for the DIP Lender shall not be required to file fee applications, provided that invoices (subject in all respects to applicable privilege and work product doctrines) shall be provided to counsel for the Debtor, the Committee, ~~if one is appointed~~ Key, HUD and the United States Trustee, which parties shall have fourteen (14) days to object to such invoices in the absence of which such invoices shall be paid by the Debtor and, if not paid by the Debtor, may be paid by the DIP Lender as an advance under the DIP Facility regardless whether

- (a) the DIP Facility has terminated,
- (b) an Event of Default has occurred under the Loan Agreement or would be caused by such payment, or
- (c) such payment would cause the principal balance of the DIP Facility to exceed the maximum permissible principal amount under the Loan Agreement.

25. In determining to extend credit under the DIP Facility, or in exercising any rights or remedies pursuant to the Interim DIP Order, this Final DIP Order, and the Loan Documents, the DIP Lender shall not be deemed to be in control of the Debtor's operations or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtor (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601, *et seq.*, as amended, or any similar federal or state statute).

26. The Debtor may not obtain postpetition loans or other financial accommodations pursuant to Section 364(c) or 364(d) of the Bankruptcy Code, other than from the DIP Lender, or as may be otherwise expressly permitted under the Loan Documents, unless the Debtor uses the proceeds of such postpetition loans or other financial accommodations to pay in full in cash all Obligations.

27. In any hearing regarding any exercise of rights or remedies by the DIP Lender following an alleged Event of Default, the only issue that may be raised by any party in opposition thereto shall be whether, in fact, an Event of Default has occurred and is continuing and/or whether any required notice has been provided, and the Debtor hereby waives its right to seek relief, including without limitation, under Section 105 of the Bankruptcy Code, to the extent such relief would in any way impair or restrict the rights and remedies of the DIP Lender, as set forth in the Interim DIP Order, this Final DIP Order or the Loan Documents, other than to contest whether an Event of Default has occurred or is continuing and/or whether any required notice has been provided.

28. In the absence of express prior written consent, no consent to a sale, transfer, lease, encumbrance, or other disposition of any portion of the Collateral shall be implied from any action, inaction, or acquiescence by the DIP Lender.

29. On the occurrence of an Event of Default under the Loan Agreement and following five (5) business days written notice thereof (the “**Stay Termination Notice**”) to counsel to the Debtor, counsel to the Committee, counsel to Key, counsel to HUD, and the United States Trustee (collectively, the “**Notice Parties**”), and unless an Order extending the automatic stay (based upon a finding that an Event of Default has not occurred and is not continuing and/or that any required notice has not been provided) is entered prior to the date which is five (5) business days after the date of service of the Stay Termination Notice as set forth below, the automatic stay of Section 362 of the Bankruptcy Code shall be deemed automatically vacated and the DIP Lender shall be immediately permitted to, among other things, pursue any and all of its remedies against the Debtor and the Collateral; however, the automatic stay shall be deemed vacated immediately to the extent necessary to allow the DIP Lender to enforce its entitlement to payment in full of all Obligations from the proceeds of sale of any Acquired Assets. Following the service of a Stay Termination Notice by the DIP Lender to the Notice Parties, the Notice Parties shall be entitled to an emergency hearing before this Court; however, if the Court does not, prior to the date which is five (5) business days after the date of service of the Stay Termination Notice, enter an Order extending the automatic stay (based on a finding that an Event of Default has not occurred and is not continuing and/or that any required notice has not been provided), the automatic stay shall terminate as provided above notwithstanding the filing or pendency of any request for such emergency hearing.

30. The provisions of the Interim DIP Order and this Final DIP Order and any actions taken pursuant hereto or thereto shall survive the entry of any order:

- (a) confirming a chapter 11 plan in the Case,
- (b) converting the Case to case under chapter 7 of the Bankruptcy Code, or
- (c) dismissing the Case, and the Obligations and DIP Liens shall maintain their enforceability and priority as provided by the Interim DIP Order and this Final DIP Order until all of the Obligations are paid in full in cash in accordance with the Loan Documents.

31. This Final DIP Order shall not be construed in any way as a waiver or relinquishment of any rights that the DIP Lender may have to bring or be heard on any matter brought before this Court.

32. The terms, conditions, and provisions of this Final DIP Order are in addition to and without prejudice to the rights of the DIP Lender to pursue any and all rights and remedies under the Bankruptcy Code, the Loan Documents, or any other applicable agreement or law, including, without limitation, rights

- (a) to seek relief from the automatic stay,
- (b) to seek an injunction,
- (c) to oppose any request for use of cash collateral or for the granting of any interest in the Collateral, or of priority in favor of any other party,
- (d) to object to any sale of assets, or
- (e) to object to applications for allowance or payment of compensation of professionals or other parties seeking compensation or reimbursement from the Debtor's estate.

33. Notwithstanding anything to the contrary contained in any prior or subsequent order of this Court, the DIP Lender shall not be required to file proofs of claim in order to maintain its claims with respect to the Obligations, all of which shall be due and payable in

accordance with the Interim DIP Order, this Final DIP Order, and the Loan Documents without the necessity of filing any such proof of claim.

34. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), and 7062, any other Bankruptcy Rule, and any other rule governing procedure in this Court, this Final DIP Order shall be immediately effective and enforceable on its entry, and there shall be no stay of execution or effectiveness of this Final DIP Order.

35. In the event of any inconsistency or conflict between any of the terms and provisions of the Interim DIP Order, this Final DIP Order, and the Loan Documents, the terms and provisions of this Final DIP Order shall govern.

36. The Debtor's cash management system shall at all times be maintained in accordance with any order of this Court approving the maintenance of the Debtor's cash management system. The DIP Lender shall be deemed to have "control" over all such accounts for all purposes of perfection under the Uniform Commercial Code.

37. The DIP Lender shall have the unqualified right to credit bid up to the full amount of the applicable outstanding Obligations, including any accrued interest, in the sale of substantially all property of the Debtor's estate under the "APA" (as defined in the Loan Agreement) or any sale of the Collateral (or any part thereof), without the need for further Court order authorizing the same, and whether such sale is effectuated through Section 363 or 1129 of the Bankruptcy Code, by a Chapter 7 trustee under Section 725 of the Bankruptcy Code, or otherwise.

38. This Court shall retain jurisdiction to interpret, implement, and enforce the provisions of this Final DIP Order and the Loan Documents, including the Loan Agreement.

39. The DIP Lender is hereby granted all protections afforded by Section 364(e) of the Bankruptcy Code.

40. The failure to reference any provision of the Loan Documents in the Interim DIP Order or this Final DIP Order shall not affect the enforceability of such provision.

Dated: \_\_\_\_\_, 2021

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The Honorable Michael A. Fagone  
United States Bankruptcy Judge

Document comparison by Workshare 10.0 on Thursday, March 25, 2021 7:06:08 PM

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Document 2 ID	netdocuments://4810-6009-8273/5
Description	LRGHealthcare - DIP Financing Final Order [NP Cmts 3-21]
Rendering set	Standard

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**POST-PETITION LOAN AND SECURITY AGREEMENT**

DATED AS OF

MARCH 22 2021

BY AND BETWEEN

LRGH HEALTHCARE

AS BORROWER,

AND

CONCORD HOSPITAL, INC.

AS LENDER

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## **POST-PETITION LOAN AND SECURITY AGREEMENT**

This POST-PETITION LOAN AND SECURITY AGREEMENT (this “**Agreement**”) is made and entered into March 22, 2021, between LRGH Healthcare (“**Borrower**”), and Concord Hospital, Inc. (“**Lender**”).

### **RECITALS**

WHEREAS, Borrower is a debtor-in-possession under Chapter 11 of the Bankruptcy Code in a case (the “**Reorganization Case**”) pending in the United States Bankruptcy Court for the District of New Hampshire (together with any other court having jurisdiction over the Reorganization Case or any proceedings therein from time to time, the “**Bankruptcy Court**”), as Case No. 20-10892. Borrower has requested that Lender extend financing to Borrower in connection with the Reorganization Case in accordance with the provisions of this Agreement.

WHEREAS, Lender is willing to make the Post-Petition Loan to Borrower, subject to the terms and conditions of this Agreement and subject to the terms and conditions set forth in the orders of the Bankruptcy Court approving the proposed financing.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

#### **SECTION 1. DEFINITIONS.**

1.1 **General Provisions.** Unless expressly provided otherwise in this Agreement or in the Loan Documents, or unless the context requires otherwise:

(a) all accounting terms used in this Agreement and in the Loan Documents shall have the meanings given to them in accordance with GAAP;

(b) all terms used herein and in the Loan Documents that are defined in the UCC, shall have the meanings set forth therein;

(c) all capitalized terms defined in this Agreement shall have the defined meanings when used in the Loan Documents and in any other documents made or delivered pursuant to this Agreement;

(d) the singular shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders;

(e) all references to any particular party defined herein shall be deemed to refer to each and every person defined herein as such party individually, and to all of them, collectively, jointly and severally, as though each were named wherever the applicable defined term is used;

(f) all references to “Sections” and “Subsections”, unless the context to such reference clearly indicates otherwise, shall refer to provisions of this Agreement;

(g) all references to time herein shall mean Eastern Standard Time or Eastern Daylight Time, as then in effect; and

(h) all references to sections, subsections, paragraphs or other provisions of statutes or regulations shall be deemed to include successor, amended, renumbered and replacement provisions.

1.2 Defined Terms. As used herein, the following terms shall have the meanings indicated, unless the context otherwise requires:

“**Account**” has the meaning stated in in the UCC, including all rights to payment for goods sold or leased, or for services rendered.

“**Account Receivable**” has the meaning stated in Section ~~2.11~~ 2.11 hereof.

“**Acquired Assets**” means the assets to be sold by the Borrower to the Purchaser pursuant to the APA.

“**Affiliate**” means, with respect to a specified Person, any other Person which directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the specified Person; provided that such Person shall be deemed an Affiliate for only so long as such control exists. For purposes of this definition and the definition of Related Person, the term “control” includes, without limitation, the possession, directly or indirectly, of the power to direct the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**Agreement**” shall mean this Agreement and any future amendments, restatements, modifications or supplements hereof or hereto.

“**APA**” means the Asset Purchase Agreement between Borrower, on the one hand, and the Purchaser, on the other hand, dated October 19, 2020, together with the Schedules and Exhibits thereto, and any amendments, restatements, modifications or supplements thereof or thereto.

“**APA Closing Date**” shall mean the “Closing Date”, as defined in the APA.

“**APA Governmental Approvals**” has the meaning stated in Section 4.1(k). hereof.

“**Authorized Officer**” means, collectively, the President, Chief Financial Officer, or any other officer of the Borrower designated as an Authorized Officer in writing to the Lender by the President of the Borrower.

“**Bankruptcy Code**” means the United States Bankruptcy Code, Title 11 of the United States Code, as amended, or any successor law thereto, and any rules promulgated in connection therewith.

“**Bankruptcy Court**” has the meaning stated in the Recitals hereof.

“**Borrower**” has the meaning stated in the preamble hereof.

“**Budget**” means the budget approved pursuant to the Cash Collateral Order as in effect on the DIP Closing Date and such additional budgets as may be approved by the Lender, in the exercise of its sole discretion.

“**Business Day**” means any day other than a Saturday, Sunday or legal holiday under the laws of the State of New Hampshire.

“**Cares Act**” means the Coronavirus Aid, Relief and Economic Security Act.

“**Cash Collateral Order**” has the meaning stated in Section 4.1(m) hereof.

“**Code**” means the Internal Revenue Code of 1986, as amended, or any successor law thereto, and any regulations promulgated thereunder.

“**Collateral**” has the meaning stated in Section 2.11 hereof.

“**Committee**” has the meaning stated in Section 7.2(b) hereof.

“**Contract Rate**” means (a) from the DIP Closing Date until May 1, 2021, the fixed annual rate of five percent (5%) per annum, and (b) from and after May 2, 2021, the fixed annual rate of seven and one-half percent (7.5%) per annum.

“**Default**” means any event specified in Section 7.1, whether or not any requirement for notice or lapse of time or any other condition has been satisfied.

“**Default Rate**” means ten percent (10%) per annum.

“**DIP Closing Date**” means the date the Interim DIP Order is entered.

“**DIP Order**” means the Interim DIP Order or the Final DIP Order, as applicable, based on which such order is then in effect.

“**Event of Default**” means any event specified in Section 7.1, provided that any requirement for notice or lapse of time or any other condition has been satisfied.

“**Final DIP Order**” means the order of the Bankruptcy Court entered in the Reorganization Case granting approval of this Agreement and the other Loan Documents on a final basis, substantially in the form of Exhibit A or otherwise in form and substance satisfactory to the Borrower and Lender.

“**Final Order**” means an order, judgment or other decree of any Governmental Body as to which (a) the operation or effect has not been reversed, stayed, modified or amended, (b) no appeals, motions for reconsideration, petitions seeking the grant of certiorari or, if certiorari has been granted, grants of certiorari are pending, and (c) any and all appeal periods and periods to seek the grant of certiorari have expired

“**First Priority Collateral**” has the meaning stated in Section 2.11 hereof.

“**Funded Debt Permitted Encumbrances**” has the meaning stated in Section 6.2(a)(i) hereof.

“**GAAP**” means, at any particular time, generally accepted accounting principles as in effect at such time, provided, however, that, if employment of more than one principle shall be permissible at such time in respect of a particular accounting matter, GAAP shall refer to the principle which is then employed by the Borrower with the agreement of its independent certified public accountants.

“**Governmental Body**” means any federal, state, local, municipal, foreign or other governmental or quasi-governmental entity or authority of any nature, including courts and administrative agencies (including the FDA and its equivalent authority or body in any foreign jurisdiction).

“**Hillside Real Estate**” has the meaning stated in Section 2.11 hereof.

“**HUD**” has the meaning stated in Section 7.2(b) hereof.

“**Intellectual Property Collateral**” means, collectively, (i) Copyrights, (ii) Patents, (iii) Proprietary Works, (iv) Trademarks, (v) Software, and (vi) Licenses.

“**Interim DIP Order**” means that certain order of the Bankruptcy Court authorizing the Borrower to enter into this Agreement subject to certain limitations applicable until entry of the Final DIP Order, substantially in the form of Exhibit B or otherwise in form and substance satisfactory to the Borrower and Lender.

“**Key**” has the meaning stated in Section 7.2(b) hereof.

“**Law(s)**” shall mean any federal, state, local and other law(s) (including common law), constitution, statute, treaty, regulation, rule, ordinance, opinion, issued guidance, release, ruling, order, executive order, injunction, writ, decree, bond judgment authorization or approval, lien or award of or any settlement arrangement, by agreement, consent or otherwise, with any Governmental Body, foreign or domestic.

“**Lender**” has the meaning stated in the preamble hereof.

“**Licenses**” means, collectively, all of the Borrower’s right, title and interest in and to all license agreements with any other Person in connection with any of the Patents, Proprietary Works, Copyrights, and/or Trademarks, whether the Borrower is a licensor or a licensee under



any such license agreement, and any right to prepare for sale, sell and advertise for sale all Inventory now or hereafter owned by the Borrower and now or hereafter covered by such licenses, including, but not limited to, (i) the right to sue or otherwise recover for any and all past, present and future breaches and other violations thereof, (ii) all income, royalties, damages, settlements and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, damages, settlements and payments for past or future breaches and infringements thereof) and (iii) all rights of the Borrower corresponding thereto throughout the world and all other rights of the Borrower of any kind whatsoever accruing thereunder or pertaining thereto

**“Lien”** means, collectively, any mortgage, pledge, hypothecation, assignment, deposit arrangement, security interest, encumbrance, lien (statutory or otherwise), preference, priority or charge of any kind, including, without limitation, any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease in the nature thereof.

**“Line of Credit”** means the non-revolving line of credit facility described in Section 2.1.

**“Line of Credit Commitment”** means, as at any applicable time, the Borrower’s maximum credit availability under the Line of Credit, as established in Section 2.1(a) whether or not then fully extended.

**“Line of Credit Note”** means the promissory note described in Section 2.2 and any future amendments, restatements, modifications or supplements thereof or thereto.

**“Line of Credit Termination Date”** means the earliest of (i) the later of (a) the Scheduled Maturity Date, and (b) the date of termination of the APA, (ii) the APA Closing Date, and, (iii) acceleration of the Obligations as a result of the occurrence of an Event of Default.

**“Loan”** means the non-revolving line of credit facility made available to the Borrower pursuant to this Agreement.

**“Loan Account”** means, collectively, the account or accounts of the Borrower on the books of Lender in which are recorded the Loan and the payments of principal interest and other charges made by the Borrower to Lender thereon.

**“Loan Documents”** means this Agreement, the Line of Credit Note and all other documents executed and delivered to the Lender by or on behalf of the Borrower in connection therewith and any modifications, amendments, restatements, substitutions and replacements of or for any of the foregoing.

**“Obligations”** means, collectively, all liabilities, duties and obligations of the Borrower to the Lender with respect to any covenants, representations or warranties herein or in the Loan Documents, with respect to the principal of and interest on the Loan and all other present and future fixed and/or contingent obligations of the Borrower to the Lender hereunder and under the Loan Documents.

**“Other Party Permitted Encumbrances”** means Permitted Encumbrances in favor of Persons other than the Lender.

**“Patents”** means, collectively, all of the Borrower’s right, title and interest in and to all patents, patent applications and patentable inventions including, but not limited to, (i) all inventions and improvements described and claimed therein, (ii) the right to sue or otherwise recover for any infringements and other violations thereof, (iii) all income, royalties, damages, settlements and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages, settlements and payments for past and future infringements thereof) and (iv) all rights corresponding thereto throughout the world and all reissues, divisions, continuations, continuations-in-part, provisional applications, substitutes, renewals and extensions thereof, all improvements thereon and all other rights of the Borrower of any kind whatsoever accruing thereunder or pertaining thereto.

**“Permitted Debt”** means any and all Debt permitted under Section 6.1 hereof.

**“Permitted Encumbrances”** has the meaning stated in Section 6.2(a) hereof.

**“Permitted Expense”** has the meaning stated in Section 3.6 hereof.

**“Petition Date”** means October 19, 2020 the date of filing of the Petition for Relief commencing the Reorganization Case.

**“Person”** means an individual, a corporation, a partnership, a joint venture, a trust or unincorporated organization, a joint stock company or other similar organization, a government or any political subdivision thereof, or any other legal entity.

**“Post-Petition Obligation”** means an obligation of the Borrower which is not a Pre-Petition Obligation.

**“Pre-Petition Obligation”** means any obligation of the Borrower arising, or deemed to have arisen pursuant to the Bankruptcy Code, before the Petition Date.

**“Proceeds”** means, collectively, whatever is received when any of the Collateral is sold, exchanged, leased, collected, or otherwise disposed of, including cash, insurance proceeds, negotiable instruments and other instruments for the payment of money, chattel paper, security agreements, other documents, and other noncash proceeds.

**“Purchaser”** means the Lender and/or one or more of its Affiliates in such Person’s capacity under the APA.

**“Reorganization Case”** has the meaning stated in the Recitals hereof.

**“Sale Order”** means that certain order of the Bankruptcy Court approving the APA [ECF No. 405].

“*Scheduled Maturity Date*” means May 1, 2021.

“*Security Documents*” means, individually and collectively, any instruments now or hereafter executed and delivered to the Lender to secure, or to assure, payment or performance, of the Obligations, and any future amendments, restatements, modifications or supplements thereof or thereto.

“*Subordinate Priority Collateral*” has the meaning stated in Section 2.11 hereof.

“*Trademarks*” means, collectively, all of the Borrower’s right, title and interest in and to (i) all trademarks, service marks, trade names, corporate names, Borrower names, business names, fictitious names, trade dress, service marks, trade styles, logos and other designs or sources of business identifiers or other indicia of trade origin, (ii) all trademark and service mark registrations and applications for trademark or service mark registrations, and (iii) any and all extensions and renewals of or with respect to any of the foregoing, including, but not limited to, (A) the right to sue or otherwise recover for any and all past, present and future infringements, misappropriations and other violations thereof, (B) all income, royalties, damages, settlements and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages, settlements and payments for past or future infringements thereof) and (C) all rights of the Borrower corresponding thereto throughout the world and all other rights of the Borrower of any kind whatsoever accruing thereunder or pertaining thereto, together in each case with the goodwill of the business connected with the use of, and symbolized by, any or all of the foregoing throughout the world, but excluding any United States intent-to-use trademark application prior to the filing of a Statement of Use or an amendment to allege use in connection therewith to the extent that a valid lien and security interest may not be taken in such an intent-to-use application under applicable law.

“*UCC*” means the Uniform Commercial Code as in effect in the State of New Hampshire or, when the laws of any other jurisdiction govern the perfection or enforcement of any Lien, the Uniform Commercial Code of such jurisdiction.

## SECTION 2. AMOUNT AND TERMS OF LOAN.

### 2.1 Line of Credit.

(a) Subject to, and in accordance with, the terms and conditions of this Agreement and the DIP Order, the Lender agrees to extend credit to the Borrower by making loans to it, from time to time during the period commencing on the DIP Closing Date and ending on the Line of Credit Termination Date, in an aggregate outstanding amount that shall not exceed, at any one time, the lesser of:

- (i) Six Million Dollars (\$6,000,000.00) in principal; or

(ii) Prior to entry of the Final DIP Order, the amount authorized by the Interim DIP Order, it being understood that the Borrower will request that such amount be Three Million Dollars (\$3,000,000.00).

(b) Subject to, and in accordance with, the terms and conditions of this Agreement and the DIP Order, Lender shall make advances under the Line of Credit as follows:

(i) On the first Business Day following the later of entry of the Interim DIP Order, Lender and satisfaction of all conditions stated in Section 4.1(a), hereof, Lender shall advance to Borrower the amount (not to exceed Three Million Dollars (\$3,000,000.00).authorized by the Interim DIP Order, (the “**Initial Advance**”); and

(ii) On the first Business Day following the later of entry of the Final DIP Order (without regard to whether the Final DIP Order is a Final Order)and satisfaction of all conditions stated in Section 4.1(b) hereof, Lender shall advance an amount equal to the amount authorized by the Final DIP Order minus the Initial Advance (the “**Subsequent Advance**”).

(c) The Line of Credit Termination Date may be extended or renewed by the Lender, in its sole discretion, on a day-to-day basis or otherwise, based on a letter to such effect from the Lender to the Borrower or by a written agreement between the parties hereto; provided, however, the Lender shall have no duty or obligation, express or implied, to extend the Line of Credit Termination Date or consider any request for such an extension and further provided that an extension of the Line of Credit Termination Date after the occurrence of a Default or an Event of Default shall not constitute a waiver of such Default or Event of Default.

(d) Notwithstanding anything contained herein to the contrary, the Line of Credit shall be a non-revolving loan facility and, therefore, each advance under the Line of Credit shall permanently reduce, dollar for dollar, the Borrower’s credit availability under the Line of Credit and the Borrower will not have the ability to re-borrow hereunder.

2.2 Line of Credit Note. On the DIP Closing Date, the Borrower shall execute and deliver to the Lender its promissory note, which shall evidence the Borrower’s obligation to repay the principal of, interest on, and other amounts due in connection with the Line of Credit and the Obligations, and which shall:

(a) be dated the DIP Closing Date and be payable to the Lender’s order in the principal amount of Six Million Dollars (\$6,000,000.00).

(b) require the payment of interest on the unpaid principal amount of any funds advanced and outstanding under the Line of Credit from the dates of such advances and, prior to the occurrence of an Event of Default, at an annual rate equal to the Contract Rate and, on and after (i) Line of Credit Termination Date, or (ii) the date of occurrence of an Event of Default, at an annual rate equal to the Default Rate, in each case whether prior to or after judgment against the Borrower;

(c) not require any payment of principal or interest prior to the Line of Credit Termination Date and be payable in full as to the entire unpaid principal balance, all accrued interest and other sums due thereunder on the Line of Credit Termination Date; and

(d) be secured by the Security Documents and the Collateral.

2.3 Loan Account. The Lender shall record in one or more Loan Accounts, the Loans, all advances to and all payments made by Borrower on account of the Loans, and all other appropriate debits and credits.

2.4 Computation of Interest. Interest shall be calculated on the basis of a 365-day year for actual days elapsed. Any change in the interest rate on the Note resulting from a change from the Contract Rate to the Default Rate shall become effective as of the opening of business on the day on which such change shall occur.

2.5 Maximum Legal Rate. Borrower shall not be obligated to pay and Lender shall not collect interest on any Obligation at a rate in excess of the maximum permitted by law or the maximum that will not subject Lender to any civil or criminal penalties. If, because of the acceleration of maturity, the payment of interest in advance or any other reason, the Borrower is required, under the provisions of any Loan Document or otherwise, to pay interest at a rate in excess of such maximum rate, the rate of interest under such provisions shall immediately and automatically be reduced to such maximum rate, and any payment made in excess of such maximum rate, together with interest thereon at the rate provided herein from the date of such payment, shall be immediately and automatically applied to the reduction of the unpaid principal balance of the Obligations as of the date on which such excess payment was made. If the amount to be so applied to reduction of the unpaid principal balance exceeds the unpaid principal balance, the amount of such excess shall be refunded by Lender to Borrower.

2.6 Payments. All payments by the Borrower hereunder shall be made at the Lender's address set forth in Section 8.2, or such other place or places as the Lender may direct, prior to 5:00 P.M. on the date of payment, in lawful money of the United States of America, and in immediately available funds.

2.7 Application of Payments. All payments shall be applied first to the payment in full of any expenses incurred by the Lender and permitted to be charged to the Borrower, including (without limitation) reasonable attorneys' fees, then to the payment in full of accrued, unpaid interest and finally to the reduction of the unpaid principal balance. The portion of any payment applied to the reduction of the unpaid principal balance shall permanently reduce the Line of Credit Commitment by the amount of such payment and may not be re-borrowed.

2.8 Voluntary and Mandatory Payments. The Obligations may pre-paid, in whole or in part and without penalty, at any time prior to the Line of Credit Termination Date. If the unpaid principal balance of the Line of Credit Note thereon exceeds the Line of Credit Commitment at any time, the Borrower shall immediately pay to the Lender for application to the Line of Credit Note an amount equal to such excess. All Obligations shall be due and payable in full on the Line of Credit Termination Date. In addition, in the event that, prior to the Line of Credit Termination Date, the Borrower receives any amounts pursuant to the CARES Act or any

other governmental stimulus program (including the American Rescue Plan Act of 2021), to the extent such amounts were not included in the Budget and are available for payment of expenses stated in the Budget, the Borrower shall, within two (2) Business Days of receipt of such amounts, pre-pay any then outstanding Obligations and, to the extent such amounts exceed the then outstanding Obligations, such excess shall reduce the remaining Line of Credit Commitment on a dollar for dollar and permanent basis.

2.9 Additional Security. In addition to the security provided herein and in the Security Documents, Borrower also grants Lender, as further security for payment of the Obligations, a lien upon and security interest in any and all debts or other obligations Lender or any Affiliate of Lender may owe to Borrower from time to time.

2.10 Administrative Status of Obligations. In addition to being secured by the Collateral, the Obligations shall, pursuant to Section 364(c)(1) of the Bankruptcy Code, constitute allowed administrative expenses in the Reorganization Case, with priority over all other administrative expenses of the kind specified in Section 503(b) or 507(b) of the Bankruptcy Code.

2.11 Grant of Security Interest. To secure the payment to the Lender and the prompt performance of the Obligations, the Borrower hereby grants to Lender a security interest in (i) the Borrower's real property located at 14 Maple St Gilford, NH 03249 (~~the together with Products and Proceeds thereof, and all books and records related thereto, the~~ "**Hillside Real Estate**"), (ii) all of the Borrower's presently owned or hereafter acquired Accounts Receivable (as defined in the APA) (~~together with Products and Proceeds thereof and all books and records related thereto, the~~ "**Accounts Receivable**" and, together with the Hillside Real Estate, the "**First Priority Collateral**") , and (iii) all Chattel Paper, Commercial Tort Claims, Deposit Accounts, Documents, Equipment, Fixtures, General Intangibles, all Intellectual Property Collateral, Goods, Inventory, Instruments, Investment Property, Letter of Credit Rights, Payment Intangible, Supporting Obligations, insurance policies, ~~all books and records (including (together with Products and Proceeds thereof, and all books and records related thereto, the~~ "**Subordinate Priority Collateral**" and, together with the **First Priority Collateral**, the "**Collateral**").

For purposes hereof, books and records shall be deemed to include customer lists, files, correspondence, tapes, computer programs, print-outs and computer records) ~~pertaining to the foregoing, and, (iv) all~~ For purposes hereof, Products and Proceeds (including ~~shall be deemed to include~~ cash collateral, as defined in Section 363 of the Bankruptcy Code, and all accessions to, substitutions for, and all replacements, products, and cash and non-cash proceeds of the ~~foregoing~~ applicable Collateral, including proceeds of and unearned premiums with respect to insurance policies, and claims against any Person for loss, damage or destruction of ~~any Collateral) but excluding (such Collateral), provided, however, as to Subordinate Priority Collateral, Products and Proceeds shall exclude (x)~~ any causes of action arising under chapter 5 of the Bankruptcy Code or applicable state law equivalents and the proceeds thereof and ~~(iiy)~~ any pre-petition and post-petition ~~commercial tort claims (as such term is defined in the Uniform Commercial Code as in effect in the State of New Hampshire)~~ Commercial Tort Claims and the proceeds thereof, including, without limitation, any and all causes of action (and the proceeds thereof) against current and former directors and officers of the Debtor and/or any of its affiliates;



~~(collectively, the “Collateral”). For the avoidance of doubt, the exclusions stated in subparagraphs (i) and (ii) of this Section 2.11 shall not apply to First Priority Collateral or the proceeds thereof.~~

The security interest granted to the Lender hereunder shall at all times be (a) as to the Accounts Receivable, senior to all other liens on and security interests including all Other Party Permitted Encumbrances, (b) as to the Hillside Real Estate, (i) senior to the Funded Debt Permitted Encumbrances and all other liens and security interests that are not Other Party Permitted Encumbrances, and (ii) junior to the Other Party Permitted Encumbrances that are not Funded Debt Permitted Encumbrances, and (c) as to all ~~other~~ the Subordinate Priority Collateral, (i) senior to all liens and security interests that are not Other Party Permitted Encumbrances, and (ii) junior to all Other Party Permitted Encumbrances.

2.12 Perfection of Security Interests. The Interim DIP Order and the Final DIP Order shall, without the necessity of any further action or filings by the Lender, the Debtor or any other Person, perfect the Lender’s security interests in the Collateral. Notwithstanding the foregoing, the Borrower shall, at its cost and expense, execute and deliver to Lender, concurrently with the execution of this Agreement, and at any time or times hereafter at the request of the Lender, all financing statements and all other agreements, instruments and documents that the Lender may reasonably request (including a mortgage on the Hillside Real Estate), in form and substance satisfactory to the Lender, and shall take any and all other steps reasonably requested by the Lender, in order to perfect and maintain the security interest and liens granted herein by the Borrower to the Lender and in order to fully consummate all of the transactions contemplated herein and under any other Loan Documents, with all filing and related expenses to be borne by the Borrower.

2.13 Additional Collateral; Right of Set Off. Any property in which the Borrower has an interest, which now or hereafter is in the possession or control of the Lender, shall at all times constitute additional security and Collateral for the Obligations and, only after the automatic stay has been terminated in accordance with Section 7.2(b) hereof, may be set off against the Obligations upon the occurrence of an Event of Default.

2.15 Right to Credit Bid. In connection with any sale of Collateral, the Lender shall have the right to credit bid the Obligations.

SECTION 3. BORROWER REPRESENTATIONS AND WARRANTIES. To induce the Lender to enter into this Agreement and to make the Loans, the Borrower represents and warrants to the Lender, on the DIP Closing Date and upon the date of each Advance, that:

3.1 Organization and Qualification. The Borrower is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and is duly qualified as a foreign corporation and in good standing under the laws of each jurisdiction in which the conduct of its business or the ownership of its assets requires such qualification.

3.2 Power and Authority. Subject to entry and terms of the DIP Order, the Borrower has the corporate power to execute, deliver and perform under, the Loan Documents, to borrow under this Agreement and to create the collateral security interests for which the Security Documents provide, and has taken all necessary corporate action to authorize the borrowings hereunder on the terms and conditions of this Agreement and the execution and delivery of, and performance under, the Loan Documents. Other than the entry of the DIP Order, no consent of any other party (including members of the Borrower) and no consent, license, approval or authorization of, or registration or declaration with, any governmental authority, bureau or agency is required in connection with the execution, delivery, performance, validity or enforceability of the Loan Documents.

3.3 Enforceability. Subject to the entry of the DIP Order, the Loan Documents, when executed and delivered to Lender pursuant to the provisions of this Agreement, will constitute valid obligations of the Borrower legally binding upon it and enforceable in accordance with their respective terms, except as enforceability of the foregoing may be limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights.

3.4 Conflict with Other Instruments. Subject to the entry of the DIP Order, the execution and delivery of, and performance under, the Loan Documents will not violate or contravene any provision of any existing law or regulation or decree of any court, governmental authority, bureau or agency having jurisdiction in the premises or of the Articles or Certificate of Incorporation, Charter or By-Laws of the Borrower.

3.5 Title to Collateral. The Borrower has good and marketable title in fee to the Collateral, free of any mortgages, pledges, charges, liens, security interests or other encumbrances except Permitted Encumbrances.

3.6 Use of Proceeds. From and after the DIP Closing Date, the Borrower agrees that amounts drawn on the Line of Credit may be used only to pay expenses provided for in the Budget with a cumulative variance equal to that permitted under the Cash Collateral Order in effect on the DIP Closing Date (a "***Permitted Variance***"). In no circumstance shall amounts drawn on the Line of Credit or any cash Collateral for the Obligations be used for expenses incurred to investigate or to contest in any adversary proceeding or any other action (a) the validity, extent, attachment, perfection or priority of the Liens created by this Agreement or the Loan Documents, (b) the validity, binding effect or enforceability of this Agreement or the Loan Documents or the Line of Credit Note, or (c) any other rights or interests of the Lender under the Loan Documents (those expenses set forth in the first sentence of this Section and not excluded pursuant to the foregoing portion of this sentence are hereinafter collectively referred to as the "***Permitted Expenses***"). Nothing herein shall in any way prejudice or prevent the Lender from objecting, for any reason, to any applications made for interim or final allowances of compensation for services rendered or reimbursement of expenses incurred under section 330 or 331 of the Bankruptcy Code.

3.7 No Notices; No Violations. Neither the Borrower nor any Subsidiary has received any notice from any Governmental Body or any insurance or inspection body to the



effect that any of its properties, facilities, equipment or business procedures or practices fail to comply with any applicable Law, including any ordinance, regulation, building or zoning Law, judicial or administrative determination, or any other requirements of any such Governmental Body, and the Borrower, and all such properties, facilities, equipment, procedures and practices, comply in all material respects with all such Laws, including ERISA and any Environmental Laws.

3.8 Margin Regulation; Investment Company Act.

(a) The Borrower is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying “margin stock” within the meaning of Regulation U. No part of the proceeds of the Loan will be used, directly, or indirectly, for the purpose of purchasing or carrying any “margin stock” within the meaning of Regulation U. None of the transactions contemplated by this Agreement (including the direct or indirect use of the proceeds of the Loan) will violate or result in a violation of Regulation T, U or X.

(b) The Borrower is not an “investment company” registered or required to be registered under the Investment Company Act of 1940, as amended or (ii) controlled by such a company.

3.9 RESERVED.

3.10 Broker’s Commissions. No brokerage commission or similar compensation is due or will become due to any Person by reason of the making of the Loan.

3.11 APA Representations. All of the representations made by the Borrower to the Purchaser in the APA that are qualified by materiality are true and correct and such representations that are not so qualified are true and correct in all material respects.

SECTION 4. CONDITIONS OF BORROWING.

4.1 Initial Advance. As a condition precedent to the Lender’s obligation to make the Initial Advance under the Line of Credit, the following conditions shall all be satisfied:

(a) Loan Documents. The Borrower shall have delivered or caused to be delivered to the Lender duly executed copies of each of the Loan Documents.

(b) Financing Statements. A financing statement describing the Collateral shall have been filed in each such jurisdiction and in each such office as shall have been required by the Lender.

(c) Representations. The representations and warranties contained in Section 3 hereof that are qualified by materiality shall be true and correct, and such representations and warranties that are not so qualified shall be true and correct in all material respects, on and as of the date of the making of the Loans and the date of any advance under the Line of Credit with the same effect as if made on and as of such date, except to the extent such representations and

warranties expressly relate to an earlier date (in which case such representations and warranties that are qualified by materiality shall be true and correct, and such representations and warranties that are not so qualified shall be true and correct in all material respects, as of such earlier date, and no Event of Default or Default shall be in existence on the date of the making of Loans or such advance or shall occur as a result thereof.

(d) No Litigation. No suit, action, investigation, inquiry or other proceeding by or before any arbitrator or any governmental authority shall be pending and no preliminary or permanent injunction or order by a state or federal court shall have been entered (i) in connection with this Agreement, the other Loan Documents, the APA or any of the transactions contemplated hereby or thereby, or (ii) which, in the reasonable judgment of the Lender, could reasonably be expected to have a material adverse effect upon the Borrower.

(e) Lien Searches. The Lender shall have received such secured transaction, judgment and docket searches as it deems appropriate.

(f) Insurance. The Lender shall have received certificates or policies evidencing the insurance required under Section 5.6

(g) No Violation. Subject to Bankruptcy Court approval of this Agreement, the completion of the transactions contemplated hereby and by the Loan Documents shall not contravene, violate or conflict with, nor involve the Lender in violation of, any law, rule, or regulation applicable to any of them.

(h) Legal Matters. All legal matters incident to the transactions contemplated by this Agreement shall be satisfactory to counsel for the Lender.

(i) Interim DIP Order. The Bankruptcy Court shall have entered the Interim DIP Order in form and substance satisfactory to the Lender and its counsel and such shall be in full force and effect and shall not have been vacated, reversed, modified, amended or stayed.

(j) APA. The Bankruptcy Court shall have entered an order, in form and substance satisfactory to the Lender and its counsel, approving the Second Amendment to Asset Purchase Agreement dated March 22, 2021 and the APA, as so amended, shall not have been terminated.

(k) APA Governmental Approvals. The Lender shall be satisfied that, on or before May 1, 2021, all Governmental Authorities (as defined in the APA) will have issued all approvals necessary in order to close under the APA including approvals referenced in Sections 5.15 and 5.16 of the APA of the Attorney General of the State of New Hampshire, the Director of Charitable Trusts of the State of New Hampshire and the New Hampshire Department of Justice's Consumer Protection and Antitrust Bureau. (collectively, the "***APA Governmental Approvals***"),

(l) No Default. No Default or Event of Default shall exist as on the date of such initial advance or shall occur as a result of making such initial advance.

(m) Cash Collateral. The Bankruptcy Court shall have entered an order (the “**Cash Collateral Order**”) satisfactory, in form and substance, to the Lender authorizing the Borrower to use cash collateral, which order may be an interim order.

(n) Sale Order. The Sale Order shall be in full force and effect and shall not have been vacated, reversed, modified, amended or stayed and the Borrower shall not have violated any of the terms of the Sale Order

4.2 Subsequent Advances. As a condition precedent to the Lenders’ obligation to make the Subsequent Advance, the following conditions shall all be satisfied on the date of such Advance:

(a) No Default. No Default or Event of Default shall exist on the date of such advance or shall occur as the result of making such advance.

(b) Representations. Without limiting the generality of Section 4.2(a), the representations and warranties contained in Section 3 hereof that are qualified by materiality shall be true and correct, and such representations and warranties that are not so qualified shall be true and correct in all material respects, on and as of the date of the making of the Loans and the date of any advance under the Line of Credit with the same effect as if made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties that are qualified by materiality shall be true and correct, and such representations and warranties that are not so qualified shall be true and correct in all material respects, as of such earlier date.

(c) No Litigation. No litigation, investigation, or proceeding before or by any arbitrator or governmental authority shall be pending and no preliminary or permanent injunction or order by a state or federal court shall have been entered (i) in connection with this Agreement, the other Loan Documents, the APA or any of the transactions contemplated hereby or thereby, or (ii) which, in the reasonable judgment of the Lender, could reasonably be expected to have a material adverse effect on the Borrower.

(d) Final DIP Order. The Bankruptcy Court shall have entered the Final DIP Order in form and substance satisfactory to the Lender and its counsel and such shall be in full force and effect and shall not have been vacated, reversed, modified, amended or stayed and the Borrower shall not have violated any of the terms of the DIP Order.

(e) APA Governmental Approvals. The Lender shall be satisfied that, on or before May 1, 2021, all APA Governmental Approvals will have been issued.

(f) APA. The Bankruptcy Court shall have entered an order, in form and substance satisfactory to the Lender and its counsel, approving the Second Amendment to Asset Purchase Agreement dated March 22, 2021 and the APA, as so amended, shall not have been terminated.

(g) Cash Collateral Order. The Cash Collateral Order shall be in full force and effect and shall not have been vacated, reversed, modified, amended or stayed and the Borrower shall not have violated any of the terms of the Cash Collateral Order.

(h) Sale Order. The Sale Order shall be in full force and effect and shall not have been vacated, reversed, modified, amended or stayed and the Borrower shall not have violated any of the terms of the Sale Order

(i) Additional Matters. All corporate and other proceedings, and all documents, instruments and other legal matters in connection with the transactions contemplated by this Agreement and the other Loan Documents shall be reasonably satisfactory, in form and substance, to the Lender.

4.3 Waiver of Conditions. The Lender may waive any condition in whole or in part.

SECTION 5. AFFIRMATIVE COVENANTS. The Borrower covenants and agrees that from and after the DIP Closing Date and so long as any of the Obligations remain outstanding and unpaid, in whole or in part, the Borrower will observe the following covenants, unless the Lender shall otherwise consent in writing:

5.1 Financial Statements; Reports. The Borrower will furnish to Lender:

(a) All reports required to be filed or delivered to any other party pursuant to the Cash Collateral Order; and

(b) from time to time, such financial and other information as Lender may reasonably request.

5.2 Liabilities. The Borrower will pay and discharge, at or before their maturity, all of its respective Post-Petition Obligations (including, without limitation, tax liabilities and all employee wages as provided in the Fair Labor Standards Act, 29 U.S.C. §§206-207 and any successor statute), except those which may be contested in good faith.

5.3 Notices. The Borrower will promptly give notice in writing to Lender of the occurrence of any of the following:

(a) any Event of Default or Default under this Agreement, or any event of default or similar occurrence under any instrument or other agreement of the Borrower entitling any Person to accelerate the maturity of any obligation of the Borrower or to exercise any other remedy against the Borrower;

(b) any strike, lock-out, boycott or any other labor trouble;

(c) the commencement of any material litigation, proceeding or dispute affecting the Borrower or any material dispute between the Borrower and any Person;

(d) any material and adverse change in the financial position, operations or business of the Borrower; and

(e) any changes in the personnel holding the following positions with the Borrower as of the DIP Closing Date: President, Chief Financial Officer and Chairman of the Board of Directors.

#### 5.4 Compliance with Laws.

(a) Borrower shall comply, and cause all properties, assets, and operations owned or used by such Borrower to comply, with (i) all Laws, including, without limitation, all environmental laws and all other applicable zoning, occupational safety, health, employment, discrimination, labor and other Laws and regulations, (ii) the provisions and requirements of all franchises, licenses, permits and certificates of compliance and approvals issued by Governmental Bodies and with other like grants of authority held by the Borrower in connection with its business, and (iii) all applicable material decrees, orders and judgments.

(b) Borrower shall promptly notify the Lenders in reasonable detail once it is aware of any failure by the Borrower to comply with or perform or any breach or violation by the Borrower in respect of any of the matters compliance with which is required under Section 5.4(a).

(c) If the Lender acquires equitable or legal title to any of the Borrower's property as a result of enforcement of remedies hereunder or under any other Loan Document, the Lender does not accept and shall not bear (nor shall any assignee or transferee of the Lender accept or bear) any responsibility for any hazardous substances in or about such property or for the actual or threatened release thereof from such property. No provisions of the Loan Documents shall be interpreted to absolve or release the Borrower from any liability or responsibility which it may have to any Person, under any local, state or federal statute or regulation, for remedial actions with respect to any such hazardous substances or for the actual or threatened release of any such hazardous substances.

(d) The Borrower shall defend, indemnify the Lender and hold the Lender harmless from and against all loss, liability, damage, cost, and expense, including without limitation, reasonable attorneys fees, fines, or other civil and criminal penalties or payments, for failure of the Collateral or any other operations, assets or property owned or used by the Borrower to comply in all respects with all environmental and other laws, caused, in whole or in part, regardless of fault, by the Borrower or by any past or present owner, occupier, tenant, subtenant, licensee, guest or other person provided, the Borrower shall not be liable for any loss, liability, damage, cost or expense under this Section 5.4(d) caused by the gross negligence or willful misconduct of the Lender. The provisions of this Section 5.4(d) shall survive payoff, release, foreclosure, or other disposition of this Agreement, the Collateral, or such other properties hereunder or otherwise. The Borrower shall remain liable hereunder regardless of any other provisions hereof which may limit the Borrower's liability provided, however, after the APA Closing Date, any amounts due to the Lender under this indemnification shall be Damages, as that term is defined in Section 9.1 of the APA, and shall be subject to all applicable

provisions in the APA relating to enforcement of indemnification claims by Buyer Indemnified Parties, as that term is defined in Section 9.1 of the APA.

(e) All sums advanced or paid by the Lender under this Section 5.4, including sums so advanced or paid in connection with any judicial or administrative investigation or proceeding relating thereto, and including, without limitation, reasonable attorneys' fees, fines, or other penalties or payments, and all of the Borrower's obligations to defend, indemnify and hold harmless the Lender, shall be deemed to be advances under the Line of Credit and shall be at once repayable. The Borrower's obligations with respect thereto shall be evidenced by, and shall bear interest at the highest rate provided in the Line of Credit Note and shall be secured and guaranteed, as the case may be, by the Security Documents.

5.5 Corporate Existence; Properties. The Borrower will not change its name and the Borrower will maintain:

(a) its corporate existence and its qualification to do business and good standing in each jurisdiction in which qualification is necessary for the proper conduct of its businesses;

(b) all licenses, permits and other authorizations necessary for the ownership and operation of its properties and businesses; and

(c) its assets and properties (including all of the Collateral) in substantially the state of repair, order and condition as on the date hereof, reasonable wear and tear or loss by casualty excepted.

5.6 Insurance.

(a) The Borrower shall carry at all times insurance covering risks, in amounts at least equal to and subject to terms no less favorable than the insurance maintained by the Borrower as of the Petition Date, and pay all premiums on the policies for such insurance when and as they become due and do all other things necessary to maintain such policies in full force and effect. The Borrower shall from time to time, upon request by the Lender, promptly furnish or cause to be furnished to the Lender evidence, in form and substance satisfactory to the Lender, of the maintenance of all insurance required to be maintained by this Section 5.6 including, but not limited to, such originals or copies, as the Lender may request, of policies, certificates of insurance, riders and endorsements relating to such insurance and proof of premium payments.

(b) Upon Lender's request, the Borrower shall cause all hazard insurance policies to provide, and the insurers issuing such policies to certify to the Lender that:

(i) the interest of the Lender shall be insured regardless of any breach or violation by Borrower or the holder or owner of the policies of any warranties, declarations or conditions contained in such policies and the Lender shall have the right, in its own name or the name of the Borrower, to file claims, receive and give acquittance for any payments and execute any and all endorsements or other documents necessary to effect the collection, compromise or settlement of any claims;

(ii) if such insurance be proposed to be canceled or materially changed for any reason whatsoever, such insurer will promptly notify the Lender and such cancellation or change shall not be effective, as to the Lender, for thirty (30) days after receipt by Lender of such notice, unless the effect of such change is to extend or increase coverage under the policy;

(iii) the Lender will have the right, at its election, to remedy any default in the payment of premiums within thirty (30) days of notice from the insurer of such default; and

(iv) loss payments in each instance will be payable to the Lender as lender loss payee, or otherwise.

(c) If the Borrower shall fail at any time or times hereafter to obtain and maintain any of the policies of insurance required hereby, or fail to pay any premium in whole or in part relating to any such policies, then Lender may, but it shall have no obligation to do so, obtain and cause to be maintained any or all of such policies, and pay any part or all of the premiums due thereunder, without thereby waiving any default by Borrower, and any sums so disbursed by Lender shall become a part of the Obligations secured by the Collateral, payable on demand and, until paid, shall bear interest at the Default Rate.

5.7 Books and Records. The Borrower will maintain accurate and complete records and books of account with respect to all its operations in accordance with past practice, and will permit officers or representatives of the Lender to examine and make excerpts from such books and records and to visit and inspect its properties, both real and personal, at all reasonable times provided such examination will not interfere with Borrower's operations.

5.8 Location of Business. The Borrower will not change the location of any place of business of Borrower, whether the establishment of a new place of business or the discontinuance of a present place of business.

5.9 Group Health Plans. The Borrower will comply in all material respects with the group health plan COBRA Continuation Coverage requirements of Code §4980B(f), with all provisions of §1862(b)(1) of the Social Security Act and the provisions of the Health Insurance Portability and Accountability Act of 1996. The Borrower will furnish to Lender, as soon as possible and in any event within thirty (30) days after the Borrower knows or has reason to know, notice that the Borrower is not in compliance with any provision of Code §4980B(f) or §1862(b)(1) of the Social Security Act.

5.10 Location of Collateral. All Collateral and all of the Borrower's business records will be located at the same location where they were situated on the DIP Closing Date and the Borrower will provide the Lender with at least thirty (30) days' advance written notice of any change in such locations.

5.11 APA Covenants. The Borrower will comply with all covenants in the APA applicable to the Borrower.



## SECTION 6. NEGATIVE COVENANTS.

The Borrower covenants and agrees that, from and after the DIP Closing Date and so long as any of the Obligations remain outstanding and unpaid, in whole or in part, the Borrower will observe the following covenants unless the Lender shall otherwise consent in writing:

6.1 Debt. The Borrower will not create, incur, assume or suffer or permit to exist any Debt, including indebtedness for borrowed money or any indebtedness constituting the deferred portion of the purchase price of any property, except (collectively, the “***Permitted Debt***”):

(a) any Obligations, whether evidenced by the Line of Credit Note or any other instruments;

(b) Debt related to Permitted Expenses;

(c) Pre-Petition Obligations; and

(d) any other Debt permitted under the Loan Documents.

### 6.2 Liens.

(a) The Borrower will not create, assume, or suffer to exist, any Lien of any kind upon the Collateral or any of its other assets, whether now owned or hereafter except the following (collectively, the “***Permitted Encumbrances***”):

(i) Liens identified on Schedule 6.2 (the “***Funded Debt Permitted Encumbrances***”) but only to the extent such Liens were valid, enforceable and non-avoidable on the Petition Date and were either properly perfected on the Petition Date or subsequently perfected pursuant to Section 546(b) of the Bankruptcy Code;

(ii) Liens for taxes not yet payable;

(iii) mechanics’, materialmen’s, warehousemen’s, carriers’ or other like Liens arising in the ordinary course of business arising with respect to obligations which are not overdue for a period longer than thirty (30) days;

(iv) other encumbrances consisting of zoning restrictions, easements, restrictions on the use of real property or minor irregularities in the title thereto, which do not arise in connection with the borrowing of, or any obligation for the payment of, money and which, in the aggregate, do not materially detract from the value of the business, properties or assets of the Borrower; and

(v) the Liens granted to the Lender.

### 6.3 RESERVED.

### 6.4 RESERVED.



6.5 Disposition of Assets. The Borrower will not convey, sell, lease, or otherwise transfer or dispose of all or any part of its properties, assets or business except that (a) the Borrower may sell used equipment no longer used or useful in connection with their respective businesses, (b) the Borrower may sell inventory in the ordinary course of its business, and (c) the Borrower may sell the Acquired Assets pursuant to the APA and the Sale Order provided all Obligations hereunder are paid in full or otherwise satisfied fully on the APA Closing Date.

6.6 Continuance of Business. The Borrower will not engage in any line of business other than those in which the Borrower was substantially engaged on the DIP Closing Date.

6.7 Removal and Protection of Property Other than in the ordinary course of business, the Borrower will not (a) remove any equipment, inventory, or general intangibles from the place of business where presently located, (b) permit the value of any property to be impaired, or (c) permit any equipment to become a fixture or an accession to other goods.

6.8 Cash Collateral. The Borrower shall not request the entry of an order of the Bankruptcy Court authorizing the use of cash collateral pursuant to Section 363 of the Bankruptcy Code while any Obligations are outstanding unless the terms of such order are reasonably acceptable to the Lender.

6.9 RESERVED.

6.10 RESERVED.

6.11 APA Negative Covenants. The Borrower will comply with all covenants in the APA applicable to the Borrower.

## SECTION 7. EVENTS OF DEFAULT, REMEDIES.

7.1 Events of Default. The following shall constitute Events of Default:

(a) Non-Payment. (i) Failure by the Borrower to pay the principal of or accrued interest on the Line of Credit Note or any other instrument evidencing any Obligation when due, or (ii) five (5) days following written notice of the failure of the Borrower to pay any other amount payable to Lender, whether under this Agreement or otherwise, when due;

(b) Falsity of Representations and Warranties. Any representation or warranty made by the Borrower in this Agreement or in any other Loan Document or in any certificate, financial or other statement furnished at any time under or in connection with this Agreement or any other Loan Document shall be false or misleading in any material respect as of the date made or deemed to have been made;

(c) Failure to Perform Certain Covenants. Ten (10) days following written notice of failure by the Borrower to observe or perform any other covenants, conditions or provisions contained in this Agreement or in any other Loan Document unless, within such ten (10) day period, such failure is cured; ***provided, however***, that, the ten (10) day notice provision

shall not apply to any Event of Default described in Sections 7.1(a)(i) or 7.1(b) hereof or any other covenant, condition or provision which is not curable;

(d) Material Adverse Effect. The occurrence of a Material Adverse Effect, as defined in the APA;

(e) Event of Default Under Other Loan Documents or the APA. An Event of Default by the Borrower or similar event shall have occurred and be continuing under any Loan Document or under the APA;

(f) Unenforceability. (i) Any material provision of any of the Loan Documents shall at any time for any reason cease to be a valid and binding obligation of the Borrower, or shall be declared to be null and void or (ii) the validity or enforceability thereof shall be contested by the Borrower or any other Person, or the Borrower shall deny that it has any further liability or obligation under any Loan Document;

(g) Lender's Liens. The Liens granted by the Borrower to the Lender shall at any time fail to have the priority stated in Section 2.11 hereof, or the Borrower shall so allege in any writing;

(h) Judgments. One or more judgments are entered against the Borrower which, individually or collectively, have a material adverse effect upon the Collateral;

(i) Appointment of Trustee. The Bankruptcy Court shall enter an order appointing a trustee under Section 1104(a) of the Bankruptcy Code in the Reorganization Case of the Borrower;

(j) Final DIP Order. The Bankruptcy Court shall not have entered the Final DIP Order on or before April 13, 2021 or the Final DIP Order shall not have become a Final Order on or before April 28, 2021;

(k) Appointment of Examiner. The Bankruptcy Court shall enter an order appointing an examiner for the Borrower with powers beyond those stated in Sections 1106(a)(3) and (4) of the Bankruptcy Code;

(l) Modification of Orders. The Interim DIP Order or the Final DIP Order, as applicable, shall be amended, supplemented, vacated, stayed or otherwise modified without the written consent of the Lender;

(m) Dismissal, Conversion, Priority Administrative Expenses. The Reorganization Case of the Borrower shall be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code; or an application shall be filed by the Borrower for the approval of, or there shall arise, any claim which is, an administrative expense claim having priority over the administrative expense claim granted to the Lender;

(n) Relief from Automatic Stay. The Bankruptcy Court shall enter an order granting relief from the automatic stay applicable under Section 362 of the Bankruptcy Code to

the holder of any security interest in any material Acquired Asset except to the extent provided for in the Cash Collateral Order;

(o) Noncompliance with Interim DIP Order or Final DIP Order. The Borrower shall fail to comply with the terms of the Interim DIP Order or, upon its entry, the Final DIP Order;

(p) Noncompliance with Cash Collateral Order. The Borrower shall fail to comply with the terms of the Cash Collateral Order.

(q) Payment of Pre-Petition Obligations. The Borrower shall make any payment on account of a Pre-Petition Obligation, other than as approved by the Bankruptcy Court provided the Lender shall not be deemed to have waived its rights to object to any motion to approve such payments;

(r) Claims Against Lender. Commencement by the Borrower, or its estate or any other Person of any litigation, arbitration or other proceeding relating to any claim or action against the Lender arising or alleged to arise out of any conduct in connection with Loan Documents or the APA; or

(s) Section 506(c) Surcharge. The Bankruptcy Court shall enter an order imposing, surcharging or assessing against the Lender's security interest in the Collateral any costs or expenses pursuant to Section 506(c) of the Bankruptcy Code or the Borrower shall file a motion or other pleading or support a motion or other pleading filed by any other Person requesting the foregoing.

## 7.2 Remedies.

(a) At any time after the occurrence of an Event of Default, the Lender may, by written notice to Borrower, terminate immediately and irrevocably the Line of Credit, the Line of Credit Commitment, and any other obligation of the Lender to make any advances to or for the account of the Borrower, and declare the Line of Credit Termination Date to have occurred and the Line of Credit Note, and all other instruments evidencing the Obligations to be due and payable, whereupon the principal amount of the Line of Credit Note and all outstanding Obligations, together with accrued interest thereon and all other amounts payable thereunder, shall become immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the documents evidencing the same to the contrary notwithstanding;

(b) (b) On the occurrence of an Event of Default under the Loan Agreement and following five (5) business days written notice thereof (the "Stay Termination Notice") to counsel to the Debtor, counsel to the official committee of unsecured creditors (the "Committee"), counsel to Key Bank, N.A. ("Key"), counsel to the United States of America Department of Housing and Urban Development ("HUD"), and the United States Trustee (collectively, the "Notice Parties"), and unless an order extending the automatic stay (based upon a finding that an Event of Default has not occurred and is not continuing and/or that any required notice has not been provided) is entered prior to the date which is five (5) business days

after the date of service of the Stay Termination Notice as set forth below, the automatic stay of Section 362 of the Bankruptcy Code shall be deemed automatically vacated and the Lender shall be immediately permitted to, among other things, pursue any and all of its remedies against the Debtor and the Collateral; however, the automatic stay shall be deemed vacated immediately to the extent necessary to allow the Lender to enforce its entitlement to payment in full of all Obligations from the proceeds of sale of any Acquired Assets. Following the service of a Stay Termination Notice by the DIP Lender to the Notice Parties, the Notice Parties shall be entitled to an emergency hearing before the Court; however, if the Court does not, prior to the date which is five (5) business days after the date of service of the Stay Termination Notice, enter an order extending the automatic stay (based on a finding that an Event of Default has not occurred and is not continuing and/or that any required notice has not been provided), the automatic stay shall terminate as provided above notwithstanding the filing or pendency of any request for such emergency hearing..

(c) At any time after the occurrence of an Event of Default and the vacation of the automatic stay, the Lender shall have all remedies contained in this Agreement or in any other Loan Document, and all the remedies of a secured party under the UCC. In addition to all such rights and remedies, upon the vacation of the automatic stay, the Lender may sell, lease or otherwise dispose of the Collateral, or any part thereof, at public or private sale, for cash, credit or any combination thereof. The Lender shall have the right to bid and purchase at such sale or sales. The Proceeds of any sale or other disposition of all or any part of the Collateral upon which Lender has a security interest, after payment of all costs and expenses of sale, including retaking, holding, preparing for sale, selling and the like and also including reasonable attorneys' fees and legal expenses incurred by the Lender, shall be applied by the Lender to the then outstanding balance of the Obligations and any surplus shall be paid by the Lender to the Borrower. The Borrower shall be liable to the Lender for any deficiency;

(d) At any time after the occurrence of an Event of Default and vacation of the automatic stay, the Lender shall have the right to enter and remain upon the various premises of the Borrower without cost or charge to Lender, and to use the same, together with materials, supplies, books and records of the Borrower, for the purpose of preparing for and conducting the sale of Collateral, whether by foreclosure, auction or otherwise. In addition, the Lender may remove from such premises the Collateral and copies of any records with respect thereto, to the premises of the Lender or any designated agent of the Lender for such time as the Lender may desire, in order to effectively collect or liquidate the Collateral;

(e) At any time after the occurrence of an Event of Default, the Borrower irrevocably waives the right to direct the application of any and all payments (including Proceeds of Collateral) at any time or times thereafter which may be received by the Lender by or for the benefit of the Borrower.

7.3 Right of Setoff. Only after the automatic stay has been terminated in accordance with Section 7.2(b) hereof, the Lender shall have the right, in addition to all other rights and remedies available to it, to set off against the unpaid balance of the Obligations, any debt owing to the Borrower by the Lender.

7.4 No Marshalling, Etc., Required. The Lender shall not be required to marshal any present or future security for, or guarantees of, the Obligations or to resort to any such security or guarantee in any particular order and the Borrower waives, to the fullest extent that it lawfully can, (a) any right it might have to require the Lender to pursue any particular remedy before proceeding against it, and (b) any right to the benefit of, or to direct the application of the proceeds of any Collateral until the Obligations have been paid in full.

## SECTION 8. MISCELLANEOUS.

8.1 No Waiver; Cumulative Remedies. No failure or delay on the part of the Lender in exercising any right, power or privilege hereunder or under the other Loan Documents shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude or require any other or further exercise thereof or the exercise of any other right, power or privilege. The Lender shall not be deemed, by any act of omission or commission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by the Lender, and then only to the extent specifically set forth in writing. A waiver with respect to one event shall not be construed as continuing or as a bar to or a waiver of any right or remedy with respect to a subsequent event. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.

8.2 Notices. All notices and other communications shall have been duly given and shall be effective (i) when delivered, (ii) when transmitted via telecopy (or other facsimile device) to the numbers set forth below, (iii) the Business Day following the day on which the same has been delivered prepaid to a reputable national overnight air courier service, or (iv) the third Business Day following the day on which the same is sent by certified or registered mail, post prepaid, in each case to the respective parties at the address or telecopy number set forth below, or at such other address or telecopy number as such party may hereafter specify by written notice to the other party hereof:

Borrower: LRGH Healthcare  
80 Highland St.  
Laconia, NH 03246  
Attn: Kevin Donovan  
Email: [kdonovan@lrgh.org](mailto:kdonovan@lrgh.org)  
Facsimile: 603-527-2887

with a copy to: Nixon Peabody LLP  
Exchange Place  
Boston, MA 02109-2835  
Attention: Victor G. Millione, Esq.  
Email: [vmilione@nixonpeabody.com](mailto:vmilione@nixonpeabody.com)  
Facsimile: 866-947-1974

Lender: Concord Hospital, Inc.  
250 Pleasant St.  
Concord, NH 03301  
Attn: Robert Steigmeyer Chief Executive Officer  
Email: [rsteigmeyer@crhc.org](mailto:rsteigmeyer@crhc.org)  
Facsimile: 603-228-7123

with a copy to: Stevens & Lee, P.C.  
620 Freedom Business Center  
Suite 200  
King of Prussia, PA., 19406  
Attention: Robert Lapowsky, Esq.  
Email: [rl@stevenslee.com](mailto:rl@stevenslee.com)  
Facsimile: (610) 371-7958

8.3 Reimbursement of Lender. The Borrower hereby agrees to reimburse the Lender for out-of-pocket expenses, including reasonable counsel fees, incurred by the Lender in connection with (a) the development, preparation, execution and approval of this Agreement and all the Loan Documents, and (b) until all Obligations are paid in full, enforcement by the Lender and its rights and remedies hereunder and participation by the Lender in, and monitoring of, the Reorganization Case, but solely in its capacity as Lender and not in its capacity as the Purchaser. Expenses described in this Section 8.3 shall be paid in accordance with the procedures set forth in the Interim DIP Order and the Final DIP Order.

8.4 Payment of Expenses and Taxes. In addition to payment of the expenses provided for in Section 8.3, the Borrower agrees to pay, and to save the Lender harmless from any delay in paying, stamp and other similar taxes, if any, including, without limitation, all levies, impositions, duties, charges or withholdings, together with any penalties, fines or interest thereon or other additions thereto, which may be payable or determined to be payable in connection with the execution and delivery of this Agreement and the Loan Documents or any modification of any thereof or any waiver or consent under or in respect of any thereof.

8.5 Survival of Representations and Warranties. All representations, warranties, covenants and agreements made in this Agreement and all other Loan Documents shall survive the execution and delivery of the Loan Documents and the making of the Loans hereunder. All such representations and warranties shall be deemed to be made again at the date of each request for a borrowing under the Line of Credit. The provisions of Sections 5.4, 8.3, 8.4, 8.9, 8.10 and 8.11 hereof shall survive payment of the Obligations.

8.6 Successors. This Agreement shall be binding upon and inure to the benefit of the Borrower and the Lender and their respective successors and assigns, except that the Borrower may not assign or transfer its rights hereunder without the prior written consent of the Lender.

8.7 Construction. This Agreement, all Loan Documents, and the rights and obligations of the parties hereunder and thereunder, shall be governed by and construed and



interpreted in accordance with, the domestic internal laws of State of New Hampshire without regard to its rules pertaining to conflict of laws. The Section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. At all times prior to termination of the APA, to the extent of any direct conflict between the representations and covenants of the Borrower hereunder and the representations and covenants of the Seller under the APA, the representations and covenants of the Seller under the APA shall control. At all times after termination of the APA, the representations and covenants of the Borrower hereunder shall be fully enforceable notwithstanding any direct conflict with the representations and covenants of the Seller under the APA.

8.8 Severability. Any provision contained in this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

8.9 Indemnity. The Borrower hereby agrees to pay, assume liability for, and indemnify, protect, defend, save and keep harmless the Lender from and against, any and all liabilities, obligations, losses, damages, settlements, claims, actions, suits, penalties, costs and expenses (including, but not limited to, legal and investigative fees and expenses) of whatsoever kind and nature, including, but not limited to claims based upon negligence, strict or absolute liability, liability in tort, latent and other defects (whether or not discoverable), and any claim for patent, trademark or copyright infringement which may from time to time be imposed on, incurred by or asserted against the Lender (whether or not any such claim is also indemnified or insured against by any other person) relating to or resulting from this Agreement, any Loan Document, or any of the transactions contemplated herein or therein (but excluding the APA or any of the transactions contemplated therein) except to the extent arising out of Lender's gross negligence or willful misconduct. The provisions of this Section 8.9 shall survive the payoff, release, foreclosure or other disposition, as applicable, of this Agreement, the Obligations or the Collateral. On and after the APA Closing Date, any amounts due to the Lender under this indemnification shall be Damages, as that term is defined in Section 9.1 of the APA, and shall be subject to all applicable provisions in the APA relating to enforcement of indemnification claims by Buyer Indemnified Parties, as that term is defined in Section 9.1 of the APA.

8.10 Waiver of Trial by Jury; Jurisdiction.

(a) To the extent permitted by law, each party to this Agreement agrees that any suit, action, or proceeding, whether claim or counterclaim, brought or instituted by either party hereto or any successor or assign of any party on or with respect to this Agreement or any other Loan Document or which in any way relates, directly or indirectly, to the Loans or any event, transaction, or occurrence arising out of or in any way connection with the Loans, or the dealings of the parties with respect thereto, shall be tried only by a court and not by a jury. EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION, OR PROCEEDING. THE BORROWER ACKNOWLEDGES AND AGREES THAT THIS SECTION 8.10 IS A SPECIFIC AND MATERIAL ASPECT OF

THIS AGREEMENT BETWEEN THE PARTIES AND THAT THE LENDER WOULD NOT EXTEND THE LOANS TO THE BORROWER IF THIS WAIVER OF JURY TRIAL SECTION WERE NOT A PART OF THIS AGREEMENT.

(b) To the extent permitted by law, for the purpose of any suit, action or proceeding arising out of or relating to this Agreement, the Line of Credit Note or the Loan, the Borrower hereby irrevocably consents and submits to the jurisdiction and venue of the Courts of the State of New Hampshire, the Federal District Court for the District of New Hampshire and the United States Bankruptcy Court for the District of New Hampshire, and agrees to accept and acknowledge all service of process in connection with any such matter by certified or registered mail or by any other legally permissible means. The Borrower irrevocably waives any objection which it may now or hereinafter have to the laying of the venue of any suit, action or proceeding brought in such court and any claim that such suit, action or proceeding brought in such a court has been brought in an inconvenient forum and agrees that service of process in accordance with the foregoing sentence shall be deemed in every respect effective and valid personal service of process upon the Borrower. The provisions of this Section 8.10(b) shall not limit or otherwise affect the right of the Lender to institute and conduct action in any other appropriate manner, jurisdiction or court.

#### 8.11 Actions Against Lender; Release.

(a) Any action brought by the Borrower against the Lender which is based, directly or indirectly, or on this Agreement or any other Loan Document or any matter in or related to this Agreement or any other Loan Document, including but not limited to the making of the Loans or the administration or collection thereof, shall be brought only in the Courts of the State of New Hampshire or the Federal District Court or Bankruptcy Court for the District of New Hampshire.

(b) Upon full payment and satisfaction of the Loans and the interest thereon, as provided in Section 2 hereof, the parties shall thereupon automatically each be fully, finally, and forever released and discharged from any further claim, liability or obligation in connection with the Loans except as expressly set forth herein, except to the extent an payment received by the Lender is determined to be a preference or similar voidable transfer, in which case the claims of the Lender shall not be released.

8.12 Performance by Lender. If the Borrower shall fail to observe or perform any of the terms, agreements or covenants contained in this Agreement, or in any other Loan Document, the Lender may, in its discretion, but without any obligation or duty to do so, and without waiving any Default, or Event of Default, perform any of such terms, agreements or covenants, in part or in whole, and any money advanced or expended by the Lender in or toward the fulfillment of such terms, agreements or covenants, shall be due on demand and become a part of and be added to the indebtedness due under the Line of Credit Note and secured as herein provided with interest thereon at the rate specified in such Note from the date of the respective advance or expenditure. Lender's rights contained in this Section 8.12 shall be in addition to all of Lender's rights under Section 5.5(b) and otherwise, and Lender may, at its sole election, exercise any one or more, or all, of such rights alternatively or concurrently.



8.13 Counterparts. This Agreement may be executed by facsimile or electronic PDF signature and in any number of counterparts with then same effect as if the signatures thereto and hereto were upon the same instrument, but all of such counterparts taken together shall be deemed to constitute one and the same instrument.

8.14 Further Actions. The Borrower shall execute and deliver such documents and instruments, and take such other actions, as the Lender deems necessary to consummate the transactions described in this Agreement.

8.15 Section 506(c) Waiver. In consideration of the agreements of the Lender stated in the Loan Documents, each Borrower hereby agrees not to assert and affirmatively waives any claim it otherwise might have under Section 506(c) of the Bankruptcy Code and agrees that the Collateral securing the Obligations may not be charged with costs or expenses or administration including Permitted Expenses and other expenses which are permitted uses of the proceeds of the Line of Credit.

8.16 Section 510, 544, 547, 548 and 549 Waiver, Etc. In consideration of the agreements of the Lender stated in the Loan Documents, the Borrower hereby agrees not to assert and hereby affirmatively waives any claim it may have under Sections 510, 544, 547, 548, or 549 of the Bankruptcy Code against the Lender, in any form or manner whatsoever, any right it may have to challenge the extent and validity of the Liens granted to the Lender as security under the Loan Documents.

8.17 Entire Agreement. This Agreement and the Loan Documents represent the entire agreement between the Lender and the Borrower with respect to the financing transactions to which they relate, and cannot be changed or amended except by an agreement in writing signed by the party against whom enforcement of the change or amendment is sought.

8.18 Bankruptcy Court Approval. Neither this Agreement, nor the Loan Documents, shall be binding upon any party prior to entry of the Interim DIP Order.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

**BORROWER:**

LRGH HEALTHCARE  
*As Debtor-In-Possession*

By: \_\_\_\_\_  
Name:  
Title:

**LENDER:**

CONCORD HOSPITAL, INC., or its designee

By: \_\_\_\_\_  
Name:  
Title:

SCHEDULE 6.2

Funded Debt Permitted Encumbrances

The liens of Key Bank, N.A. and the United States of America Department of Housing and Urban Development, as set forth in the Cash Collateral Order.

**Exhibit A**

Final DIP Order

*(See attached.)*

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

_____	)	
In re:	)	Chapter 11
	)	
LRGHEALTHCARE,	)	Bk. No. 20-10892-MAF
	)	
Debtor. <sup>1</sup>	)	Related to ECF No. _____
_____	)	

**FINAL ORDER (A) (I) AUTHORIZING THE DEBTOR TO OBTAIN POSTPETITION FINANCING, (II) GRANTING LIENS ON PROPERTY OF THE DEBTOR'S ESTATE AND SUPERPRIORITY CLAIMS TO THE POSTPETITION LENDER, AND (III) GRANTING RELATED RELIEF**

On the motion [ECF No. \_\_\_\_\_] (the "**Motion**") of LRGHealthcare (the "**Debtor**") in the above-captioned case (the "**Case**"), pursuant to Sections 105, 362, 364, 503 and 507 of Title 11 of the United States Code, 11 U.S.C. §§ 101 – 1532 (the "**Bankruptcy Code**"), Rules 2002, 4001, and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), seeking, among other things:

(I) entry of an interim order (the "**Interim DIP Order**") and a final order (the "**Final DIP Order**") authorizing the Debtor to obtain postpetition financing (the "**DIP Loans**") consisting of a term loan, multi-draw financing facility in an aggregate principal amount not to exceed six million dollars (\$6,000,000.00) (the "**DIP Facility**") from Concord Hospital, Inc. or its designee (the "**DIP Lender**") pursuant to that certain Post-Petition Loan and Security Agreement, dated as of March 22, 2021, which is attached to this Order as **Exhibit 1** (as amended, modified, restated, or supplemented in accordance with the terms thereof or hereof, the "**Loan Agreement**"),<sup>2</sup> and all instruments, financing statements and documents as may be executed and delivered in connection with or relating to the DIP Facility, this Interim DIP Order and the Final DIP Order (subject to entry) and any certificate or other document made or delivered pursuant hereto or thereto (collectively with the Loan Agreement, the "**Loan Documents**"), and perform all such other and further acts as may be required in connection with the Loan Documents,

<sup>1</sup> The last four digits of the Debtor's federal taxpayer identification number are 2150. The address of the Debtor's headquarters is 80 Highland Street, Laconia, New Hampshire 03246.

<sup>2</sup> All capitalized terms used but not defined herein shall have the meanings stated in the Loan Agreement.

(II) scheduling a final hearing (the “**Final Hearing**”) to consider entry of the Final DIP Order, and in connection therewith, approving the manner of notice of the Final Hearing, and

(III) granting the Debtor such other and further relief as is just and proper;

And the Court having considered the Motion, the exhibits attached thereto, the *Declaration of Todd M. Patnode In Support Of Debtor’s Emergency Motion For Entry of Interim And Final Orders Pursuant To 11 U.S.C. §§ 105, 362, 364, 503 And 507 and Fed. R. Bankr. P. 4001 And 9014 (I) Authorizing Debtor To Obtain Postpetition Financing And (II) Granting Liens And Super-Priority Claims To Postpetition Lender* and the *Declaration of Kevin W. Donovan In Support Of Debtor’s Emergency Motion For Entry of Interim And Final Orders Pursuant To 11 U.S.C. §§ 105, 362, 364, 503 And 507 and Fed. R. Bankr. P. 4001 And 9014 (I) Authorizing Debtor To Obtain Postpetition Financing And (II) Granting Liens And Super-Priority Claims To Postpetition Lender* (the “**Declarations**”); and a hearing to consider entry of the Interim DIP Order having been held before the Court on [REDACTED], 2021 (the “**Interim Hearing**”); and the Court having entered the Interim DIP Order [ECF No. [REDACTED]] on [REDACTED], 2021; and a hearing to consider entry of the Final DIP Order having been held on [REDACTED], 2021 (the “**Final Hearing**”); and on all of the pleadings filed with the Court, all evidence presented in support of the Motion, the arguments of counsel stated on the record of the Interim Hearing and the Final Hearing, and all of the proceedings held before the Court; and after due deliberation and consideration, and good and sufficient cause appearing therefor;

**IT IS HEREBY FOUND AND DETERMINED THAT:**

A. The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Rule 52(a) of the Federal Rules of Civil Procedure, made applicable to this proceeding pursuant to Bankruptcy Rules 7052 and 9014. To the extent any

findings of fact herein constitute conclusions of law, they are adopted as such. To the extent any conclusions of law herein constitute findings of fact, they are adopted as such.

B. The Court has jurisdiction over the Motion and the transactions contemplated by the Loan Documents pursuant to 28 U.S.C. §§ 157 and 1334 and Local Rule 77.4(a) of the Local Rules of the United States District Court for the District of New Hampshire, and this matter is a core proceeding pursuant to 28 U.S.C. § 157. Venue of this case and this matter in this district is proper under 28 U.S.C. §§ 1408 and 1409. The Court may enter a final order consistent with or without violating Article III of the U.S. Constitution.

C. The statutory bases for the relief requested in the Motion are Sections 105, 364, 503, and 507 of the Bankruptcy Code.

D. Good and sufficient notice of the Interim Hearing, the Final Hearing, the Motion and the relief sought therein has been given under the circumstances, and no other or further notice is required. A reasonable opportunity to object or be heard regarding the relief provided herein has been afforded to parties in interest.

E. The Debtor remains in possession of its property and is authorized to operate its business pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

F. The use of cash that is property of the Debtor would be insufficient, alone, to meet the Debtor's immediate postpetition liquidity needs. As a result, an immediate and critical need exists for the Debtor to obtain postpetition financing to continue the operation of its business.

G. The Debtor is unable to obtain sufficient postpetition financing to continue operation of its business

(1) in the forms of

- (a) unsecured debt incurred in the ordinary course of business allowable as an administrative expense under Section 503(b)(1) of the Bankruptcy Code or
  - (b) unsecured debt incurred outside the ordinary course of business allowable as an administrative expense under Section 503(b)(1) of the Bankruptcy Code or
- (2) on terms more favorable than those embodied in the Loan Agreement and the other Loan Documents.

The DIP Lender is prepared to enter into the DIP Loans solely on the terms set forth in the Loan Agreement and the other Loan Documents.

H. The terms of the DIP Loans are fair, just, and reasonable under the circumstances, reflect the Debtor's exercise of its prudent business judgment consistent with its fiduciary duties, and are supported by reasonably equivalent value and fair consideration.

I. The terms of the DIP Loans have been negotiated in good faith and at arm's length by and between the Debtor and the DIP Lender.

J. Any credit extended or other indebtedness or liabilities arising under, in respect of, or in connection with the Interim DIP Order, this Final DIP Order or any Loan Document shall be deemed to have been extended in "good faith" by the DIP Lender as that term is used in Section 364(e) of the Bankruptcy Code, and in express reliance upon the protections afforded by Section 364(e) of the Bankruptcy Code.

K. The relief requested in the Motion is necessary and appropriate for the management and preservation of the Debtor's property and the operation of the Debtor's business and is in the best interests of the Debtor, its estate and creditors.

L. Absent the relief granted herein, the Debtor's estate will be immediately and irreparably harmed.



M. Good, adequate, and sufficient cause has been shown to justify the relief granted herein and the immediate entry and effectiveness of this Final DIP Order.

**IT IS HEREBY ORDERED THAT:**

1. The Motion is **GRANTED**.
2. All objections to the Motion or the relief provided herein that have not been withdrawn, waived or settled, and all reservations of rights included therein, hereby are overruled and denied on the merits with prejudice
3. The Loan Documents, including the Loan Agreement, are approved, and the Debtor is hereby authorized to execute and enter into, deliver, and perform all obligations thereunder.
4. The Debtor is hereby authorized to borrow the full amount available under the DIP Facility, to be used solely as expressly provided in the Loan Documents, including the Loan Agreement.
5. In furtherance of the foregoing and without further approval of this Court, the Debtor is hereby authorized to perform all acts, to make, execute, and deliver all instruments and documents, and to pay all related fees, that may be required or necessary for the Debtor's performance of its obligations under the DIP Loans.
6. All of the DIP Liens (defined below) shall be effective and perfected as of the date of entry of the Interim DIP Order without the necessity of the execution, recording, or filing of security agreements, pledge agreements, financing statements, or other agreements or instruments.
7. The Loan Agreement and the "**Obligations**" (as defined in the Loan Agreement) constitute valid, binding, and non-avoidable obligations of the Debtor enforceable against the Debtor, its estate and its successors and assigns in accordance with the terms of the Interim DIP

Order, this Final DIP Order and the Loan Documents, and shall survive the dismissal of this Case or the conversion of this Case to a case under another Chapter of the Bankruptcy Code.

8. No obligation, payment, transfer, or grant of security under the Interim DIP Order, this Final DIP Order, or the Loan Documents shall be stayed, restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under any applicable law, or subject to any avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), counterclaims, cross-claims, defenses, disallowance, impairment, or any other challenges under the Bankruptcy Code or any other applicable foreign or domestic law or regulation by any person or entity. Nothing herein is intended to alter or interfere with the rights of any third party payor to exercise their right of setoff or recoupment with regard to the Debtor's accounts receivable owed by such payors under applicable law or as allowed by order of this Court. For the avoidance of doubt, the preceding sentence shall not modify any restrictions on the recoupment, setoff or other rights of payors under, (a) the Order Setting the Cure Amounts for the Debtor's Contracts with UnitedHealthcare Insurance Company and its Affiliates [ECF No. 476], (b) the Order Setting the Cure Amounts for the Debtor's Contracts with Anthem Health Plans of New Hampshire, Inc. D/B/A Anthem Blue Cross and Blue Shield and Matthew Thornton Health Plan, Inc. [ECF No. 504], or (c) the Order Setting the Cure Amounts for the Debtor's Contracts with Humana Insurance Company and Humana Health Plan, Inc. [ECF No. 509].

9. The DIP Loans shall
- (a) be evidenced by the books and records of the DIP Lender and, although not required, upon the request of the DIP Lender, a note executed and delivered to the DIP Lender by the Debtor in accordance with the terms of the Loan Documents,
  - (b) bear interest and incur fees at the rates set forth in the Loan Agreement,

- (c) be secured in the manner specified below and under the applicable Loan Documents,
- (d) be payable in accordance with the applicable Loan Documents, and
- (e) otherwise be governed by the terms set forth in this Final DIP Order and the Loan Documents.

10. The automatic stay provisions of Section 362 of the Bankruptcy Code and any other restriction imposed by an order of the Court or applicable law are hereby modified and vacated without further notice, application, or order of the Court to the extent necessary to permit the DIP Lender to perform any act authorized or permitted under or by virtue of the Interim DIP Order, this Final DIP Order, or any of the Loan Documents, including, without limitation,

- (a) to implement the DIP Facility authorized by the Interim DIP Order, this Final DIP Order and pursuant to the terms of the Loan Documents,
- (b) to take any act to create, validate, evidence, attach, or perfect any lien, security interest, right, or claim in the “**Collateral**” (as defined in the Loan Agreement”), and
- (c) to assess, charge, collect, advance, deduct, and receive payments with respect to the Obligations, including, without limitation, all principal, interest, fees, costs, and expenses permitted under the Loan Documents, and to apply such payments to the Obligations pursuant to the Loan Documents.

11. The DIP Lender shall have no obligation to make any DIP Loans or any other financial accommodation under the respective Loan Documents unless the conditions precedent to make such extensions of credit under the respective Loan Documents have been satisfied in full or waived in accordance with such Loan Documents.

12. Pursuant to Section 364(c)(1) of the Bankruptcy Code, the Obligations constitute (without the need to file a proof of claim) superpriority claims (the “**DIP Superpriority Claims**”) against the Debtor, with priority over any and all administrative expenses of the

Debtor, whether now existing or hereafter arising or incurred, of the kind specified in Sections 503(b) and 507(b) of the Bankruptcy Code.

13. As security for the full and timely payment of the Obligations, the DIP Lender is hereby granted, pursuant to Sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code, valid, enforceable, non-avoidable, and fully perfected security interests in and liens on all Collateral (as defined in the Loan Agreement) (collectively, the “**DIP Liens**”), which shall have the priorities stated in the Loan Agreement.

14. For the avoidance of doubt, “**Collateral**” shall not include (i) any causes of action arising under chapter 5 of the Bankruptcy Code or applicable state law equivalents and the proceeds thereof and (ii) any pre-petition and post-petition commercial tort claims (as such term is defined in the Uniform Commercial Code as in effect in the State of New Hampshire) and the proceeds thereof, including, without limitation, any and all causes of action (and the proceeds thereof) against current and former directors and officers of the Debtor and/or any of its affiliates. The foregoing shall not apply to First Priority Collateral, all of which shall be Collateral.

15. The DIP Liens became effective immediately upon entry of the Interim DIP Order. The Interim DIP Order and this Final DIP Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the DIP Liens without the necessity of executing, filing, or recording any mortgage, security agreement, pledge agreement, financing statement, or other instrument or document, or the taking of any other act that otherwise may be required under state or federal law, rule, or regulation of any jurisdiction to validate or perfect the DIP Liens or to entitle the DIP Lender to the priorities granted herein; however, the Debtor may execute, and the DIP Lender is hereby authorized to execute, file, and/or record mortgages, security agreements, pledge agreements, financing statements, and/or other instruments or documents to evidence the

DIP Liens and the Debtor is hereby authorized, promptly on a demand by the DIP Lender made in accordance with the terms of the Loan Documents to execute, file, and/or record any such mortgages, security agreements, pledge agreements, financing statements, or other instruments or documents as the DIP Lender may request; however, no such execution, filing, or recordation shall be necessary or required in order to create or perfect the DIP Liens. A copy of the Interim DIP Order or this Final DIP Order may, in the discretion of the DIP Lender, be filed with or recorded in any filing or recording office in addition to or in lieu of such mortgages, security agreements, pledge agreements, financing statements, or other instruments or documents, and each and every federal, state, and local governmental agency, department, or office is hereby directed to accept a copy of the Interim DIP Order or this Final DIP Order and any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Interim DIP Order, the Final DIP Order, and the Loan Documents, for filing and recording, and to deem the Interim DIP Order and the Final DIP Order to be in proper form for filing and recording.

16. The DIP Liens shall not be

- (a) subject to any lien that is avoided and preserved for the benefit of the Debtor's estate under Section 551 of the Bankruptcy Code or
- (b) except as provided in the Loan Agreement, subordinated to or made *pari passu* with any other lien under Section 364(d) of the Bankruptcy Code or otherwise.

17. Absent payment in full in cash of all Obligations of the Debtor and termination of the Loan Agreement, the Debtor shall not

- (a) grant or impose any liens on the Collateral or
- (b) prime or seek to prime the DIP Liens.

18. In no event shall any person or entity who pays (or through the extension of credit to the Debtor, causes to be paid) any of the Obligations, be subrogated, in whole or in part, to any rights, remedies, claims, privileges, liens, or security interests granted in favor of, or conferred on the DIP Lender by the terms of the Interim DIP Order, the Final DIP Order, or any of the Loan Documents, until all of the Obligations are paid in full in cash and termination of the Loan Agreement.

19. The DIP Liens and the DIP Superpriority Claims shall continue after conversion of the Case to a case under Chapter 7 of the Bankruptcy Code and in any successor Case for the Debtor under any Chapter of the Bankruptcy Code, and all liens, security interests, and claims shall maintain their priority as provided in this Final DIP Order.

20. Notwithstanding anything in this Final DIP Order, any Loan Documents, or any other order of this Court to the contrary, the DIP Superpriority Claims and the DIP Liens shall not be subject nor subordinate to the Carve-Out (as defined in the Fifth Order Authorizing Interim Use of Cash Collateral and Granting Adequate Protection and Related Relief [Docket No. 506]) or any similar right granted in any other order.

21. Notwithstanding anything in the Interim DIP Order, this Final DIP Order, any Loan Document, or any other order by this Court to the contrary, no proceeds of the DIP Loans or Collateral may be used, directly or indirectly by the Debtor, or any other person or entity, to fund

- (a) any investigation of or challenge to
  - (i) the enforceability of any amounts due under the DIP Loans or the Loan Documents or on account of the DIP Superpriority Claims or
  - (ii) the validity, perfection, priority or extent of the DIP Liens,
- (b) any investigation or prosecution of any claims, defenses, or causes of action (including, without limitation, any claims or causes of action under

chapter 5 of the Bankruptcy Code) against the DIP Lender or its agents, affiliates, representatives, attorneys, or advisors,

- (c) any effort to prevent, hinder or otherwise delay the DIP Lender's assertion, enforcement, or realization against or upon the Collateral, in accordance with the Interim DIP Order, this Final DIP Order and the Loan Document,
- (d) any effort to seek to modify any of the rights granted to the DIP Lender hereunder or under the Loan Documents, or
- (e) any effort to take any other action prohibited by the Loan Agreement.

22. The Debtor's authorization to use the DIP Facility shall immediately terminate on the Line of Credit Termination Date, as defined in the Loan Agreement.

23. No costs or expenses of administration which have been or may be incurred in the Case shall be recovered from the DIP Lender or be charged against the Collateral pursuant to Sections 105 or 506(c) of the Bankruptcy Code or otherwise. The DIP Lender shall not be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the Collateral. The DIP Liens shall not be subject to Sections 510, 549, 550, or 551 of the Bankruptcy Code.

24. Professionals for the DIP Lender shall not be required to file fee applications, provided that invoices (subject in all respects to applicable privilege and work product doctrines) shall be provided to counsel for the Debtor, the Committee, ~~if one is appointed~~ Key, HUD and the United States Trustee, which parties shall have fourteen (14) days to object to such invoices in the absence of which such invoices shall be paid by the Debtor and, if not paid by the Debtor, may be paid by the DIP Lender as an advance under the DIP Facility regardless whether

- (a) the DIP Facility has terminated,
- (b) an Event of Default has occurred under the Loan Agreement or would be caused by such payment, or
- (c) such payment would cause the principal balance of the DIP Facility to exceed the maximum permissible principal amount under the Loan Agreement.

25. In determining to extend credit under the DIP Facility, or in exercising any rights or remedies pursuant to the Interim DIP Order, this Final DIP Order, and the Loan Documents, the DIP Lender shall not be deemed to be in control of the Debtor's operations or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtor (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601, *et seq.*, as amended, or any similar federal or state statute).

26. The Debtor may not obtain postpetition loans or other financial accommodations pursuant to Section 364(c) or 364(d) of the Bankruptcy Code, other than from the DIP Lender, or as may be otherwise expressly permitted under the Loan Documents, unless the Debtor uses the proceeds of such postpetition loans or other financial accommodations to pay in full in cash all Obligations.

27. In any hearing regarding any exercise of rights or remedies by the DIP Lender following an alleged Event of Default, the only issue that may be raised by any party in opposition thereto shall be whether, in fact, an Event of Default has occurred and is continuing and/or whether any required notice has been provided, and the Debtor hereby waives its right to seek relief, including without limitation, under Section 105 of the Bankruptcy Code, to the extent such relief would in any way impair or restrict the rights and remedies of the DIP Lender, as set forth in the Interim DIP Order, this Final DIP Order or the Loan Documents, other than to contest whether an Event of Default has occurred or is continuing and/or whether any required notice has been provided.



28. In the absence of express prior written consent, no consent to a sale, transfer, lease, encumbrance, or other disposition of any portion of the Collateral shall be implied from any action, inaction, or acquiescence by the DIP Lender.

29. On the occurrence of an Event of Default under the Loan Agreement and following five (5) business days written notice thereof (the “**Stay Termination Notice**”) to counsel to the Debtor, counsel to the Committee, counsel to Key, counsel to HUD, and the United States Trustee (collectively, the “**Notice Parties**”), and unless an Order extending the automatic stay (based upon a finding that an Event of Default has not occurred and is not continuing and/or that any required notice has not been provided) is entered prior to the date which is five (5) business days after the date of service of the Stay Termination Notice as set forth below, the automatic stay of Section 362 of the Bankruptcy Code shall be deemed automatically vacated and the DIP Lender shall be immediately permitted to, among other things, pursue any and all of its remedies against the Debtor and the Collateral; however, the automatic stay shall be deemed vacated immediately to the extent necessary to allow the DIP Lender to enforce its entitlement to payment in full of all Obligations from the proceeds of sale of any Acquired Assets. Following the service of a Stay Termination Notice by the DIP Lender to the Notice Parties, the Notice Parties shall be entitled to an emergency hearing before this Court; however, if the Court does not, prior to the date which is five (5) business days after the date of service of the Stay Termination Notice, enter an Order extending the automatic stay (based on a finding that an Event of Default has not occurred and is not continuing and/or that any required notice has not been provided), the automatic stay shall terminate as provided above notwithstanding the filing or pendency of any request for such emergency hearing.

30. The provisions of the Interim DIP Order and this Final DIP Order and any actions taken pursuant hereto or thereto shall survive the entry of any order:

- (a) confirming a chapter 11 plan in the Case,
- (b) converting the Case to case under chapter 7 of the Bankruptcy Code, or
- (c) dismissing the Case, and the Obligations and DIP Liens shall maintain their enforceability and priority as provided by the Interim DIP Order and this Final DIP Order until all of the Obligations are paid in full in cash in accordance with the Loan Documents.

31. This Final DIP Order shall not be construed in any way as a waiver or relinquishment of any rights that the DIP Lender may have to bring or be heard on any matter brought before this Court.

32. The terms, conditions, and provisions of this Final DIP Order are in addition to and without prejudice to the rights of the DIP Lender to pursue any and all rights and remedies under the Bankruptcy Code, the Loan Documents, or any other applicable agreement or law, including, without limitation, rights

- (a) to seek relief from the automatic stay,
- (b) to seek an injunction,
- (c) to oppose any request for use of cash collateral or for the granting of any interest in the Collateral, or of priority in favor of any other party,
- (d) to object to any sale of assets, or
- (e) to object to applications for allowance or payment of compensation of professionals or other parties seeking compensation or reimbursement from the Debtor's estate.

33. Notwithstanding anything to the contrary contained in any prior or subsequent order of this Court, the DIP Lender shall not be required to file proofs of claim in order to maintain its claims with respect to the Obligations, all of which shall be due and payable in

accordance with the Interim DIP Order, this Final DIP Order, and the Loan Documents without the necessity of filing any such proof of claim.

34. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), and 7062, any other Bankruptcy Rule, and any other rule governing procedure in this Court, this Final DIP Order shall be immediately effective and enforceable on its entry, and there shall be no stay of execution or effectiveness of this Final DIP Order.

35. In the event of any inconsistency or conflict between any of the terms and provisions of the Interim DIP Order, this Final DIP Order, and the Loan Documents, the terms and provisions of this Final DIP Order shall govern.

36. The Debtor's cash management system shall at all times be maintained in accordance with any order of this Court approving the maintenance of the Debtor's cash management system. The DIP Lender shall be deemed to have "control" over all such accounts for all purposes of perfection under the Uniform Commercial Code.

37. The DIP Lender shall have the unqualified right to credit bid up to the full amount of the applicable outstanding Obligations, including any accrued interest, in the sale of substantially all property of the Debtor's estate under the "APA" (as defined in the Loan Agreement) or any sale of the Collateral (or any part thereof), without the need for further Court order authorizing the same, and whether such sale is effectuated through Section 363 or 1129 of the Bankruptcy Code, by a Chapter 7 trustee under Section 725 of the Bankruptcy Code, or otherwise.

38. This Court shall retain jurisdiction to interpret, implement, and enforce the provisions of this Final DIP Order and the Loan Documents, including the Loan Agreement.

39. The DIP Lender is hereby granted all protections afforded by Section 364(e) of the Bankruptcy Code.

40. The failure to reference any provision of the Loan Documents in the Interim DIP Order or this Final DIP Order shall not affect the enforceability of such provision.

Dated: \_\_\_\_\_, 2021

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The Honorable Michael A. Fagone

United States Bankruptcy Judge

EXHIBIT B

Interim DIP Order

*(See attached.)*



statements and documents as may be executed and delivered in connection with or relating to the DIP Facility, this Interim DIP Order and the Final DIP Order (subject to entry) and any certificate or other document made or delivered pursuant hereto or thereto (collectively with the Loan Agreement, the “**Loan Documents**”), and perform all such other and further acts as may be required in connection with the Loan Documents,

- (II) scheduling a final hearing (the “**Final Hearing**”) to consider entry of the Final DIP Order, and in connection therewith, approving the manner of notice of the Final Hearing, and
- (III) granting the Debtor such other and further relief as is just and proper;

And the Court having considered the Motion, the exhibits attached thereto, the *Declaration of Todd M. Patnode In Support Of Debtor’s Emergency Motion For Entry of Interim And Final Orders Pursuant To 11 U.S.C. §§ 105, 362, 364, 503 And 507 and Fed. R. Bankr. P. 4001 And 9014 (I) Authorizing Debtor To Obtain Postpetition Financing And (II) Granting Liens And Super-Priority Claims To Postpetition Lender* and the *Declaration of Kevin W. Donovan In Support Of Debtor’s Emergency Motion For Entry of Interim And Final Orders Pursuant To 11 U.S.C. §§ 105, 362, 364, 503 And 507 and Fed. R. Bankr. P. 4001 And 9014 (I) Authorizing Debtor To Obtain Postpetition Financing And (II) Granting Liens And Super-Priority Claims To Postpetition Lender* (the “**Declarations**”); and a hearing to consider entry of this Interim DIP Order having been held before the Court on [REDACTED], 2021 (the “**Interim Hearing**”); and on all of the pleadings filed with the Court, all evidence presented in support of this Interim DIP Order, the arguments of counsel stated on the record of the Interim Hearing, and all of the proceedings held before the Court; and after due deliberation and consideration, and good and sufficient cause appearing therefor;

**IT IS HEREBY FOUND AND DETERMINED THAT:**

A. The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Rule 52(a) of the Federal Rules of Civil Procedure, made

applicable to this proceeding pursuant to Bankruptcy Rules 7052 and 9014. To the extent any findings of fact herein constitute conclusions of law, they are adopted as such. To the extent any conclusions of law herein constitute findings of fact, they are adopted as such.

B. The Court has jurisdiction over the Motion and the transactions contemplated by the Loan Documents pursuant to 28 U.S.C. §§ 157 and 1334 and Local Rule 77.4(a) of the Local Rules of the United States District Court for the District of New Hampshire, and this matter is a core proceeding pursuant to 28 U.S.C. § 157. Venue of this case and this matter in this district is proper under 28 U.S.C. §§ 1408 and 1409. The Court may enter a final order consistent with or without violating Article III of the U.S. Constitution.

C. The statutory bases for the relief requested in the Motion are Sections 105, 364, 503, and 507 of the Bankruptcy Code.

D. Good and sufficient notice of the Interim Hearing, the Motion, and the relief sought therein has been given under the circumstances, and no other or further notice is required except as set forth herein with respect to the hearing to be conducted to approve the DIP Facility on a final basis (the “**Final Hearing**”). A reasonable opportunity to object or be heard regarding the relief provided herein has been afforded to parties in interest.

E. The Debtor remains in possession of its property and is authorized to operate its business pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

F. The use of cash that is property of the Debtor would be insufficient, alone, to meet the Debtor’s immediate postpetition liquidity needs. As a result, an immediate and critical need exists for the Debtor to obtain postpetition financing to continue the operation of its business.

G. The Debtor is unable to obtain sufficient postpetition financing to continue operation of its business



- (1) in the forms of
  - (a) unsecured debt incurred in the ordinary course of business allowable as an administrative expense under Section 503(b)(1) of the Bankruptcy Code, or
  - (b) unsecured debt incurred outside the ordinary course of business allowable as an administrative expense under Section 503(b)(1) of the Bankruptcy Code or
- (2) on terms more favorable than those embodied in the Loan Agreement and the other Loan Documents.

The DIP Lender is prepared to enter into the DIP Loans solely on the terms set forth in the Loan Agreement and the other Loan Documents.

H. The terms of the DIP Loans are fair, just, and reasonable under the circumstances, reflect the Debtor's exercise of its prudent business judgment consistent with its fiduciary duties, and are supported by reasonably equivalent value and fair consideration.

I. The terms of the DIP Loans have been negotiated in good faith and at arm's length by and between the Debtor and the DIP Lender.

J. Any credit extended or other indebtedness or liabilities arising under, in respect of, or in connection with this Interim DIP Order, or any Loan Document, shall be deemed to have been extended in "good faith" by the DIP Lender as that term is used in Section 364(e) of the Bankruptcy Code, and in express reliance upon the protections afforded by Section 364(e) of the Bankruptcy Code.

K. The relief requested in the Motion is necessary and appropriate for the management and preservation of the Debtor's property and the operation of the Debtor's business and is in the best interests of the Debtor, its estate and creditors.

L. Absent the relief granted herein, the Debtor's estate will be immediately and irreparably harmed.

M. Good, adequate, and sufficient cause has been shown to justify the relief granted herein and the immediate entry and effectiveness of this Interim DIP Order.

**IT IS HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** to the extent set forth in this Order.
2. All objections to the Motion as it relates to the relief provided herein that have not been withdrawn, waived or settled, and all reservations of rights included therein, hereby are overruled and denied on the merits with prejudice.
3. The Loan Documents, including the Loan Agreement, are approved, and the Debtor is hereby authorized to execute and enter into, deliver, and perform all obligations thereunder.
4. The Debtor is hereby authorized to borrow up to three million dollars (\$3,000,000.00) of the total available under the DIP Facility, to be used solely as expressly provided in the Loan Documents.
5. In furtherance of the foregoing and without further approval of this Court, the Debtor is hereby authorized to perform all acts, to make, execute, and deliver all instruments and documents, and to pay all related fees, that may be required or necessary for the Debtor's performance of its obligations under the DIP Loans.
6. All of the DIP Liens (defined below) shall be effective and perfected as of the date of entry of this Interim DIP Order without the necessity of the execution, recording, or filing of security agreements, pledge agreements, financing statements, or other agreements or instruments.
7. The Loan Agreement and the "**Obligations**" (as defined in the Loan Agreement) constitute valid, binding, and non-avoidable obligations of the Debtor enforceable against the

Debtor, its estate, and its successors and assigns in accordance with the terms of this Interim DIP Order and the Loan Documents, and shall survive the dismissal of this Case or the conversion of this Case to a case under another Chapter of the Bankruptcy Code.

8. No obligation, payment, transfer, or grant of security under this Interim DIP Order or the Loan Documents shall be stayed, restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under any applicable law, or subject to any avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), counterclaims, cross-claims, defenses, disallowance, impairment, or any other challenges under the Bankruptcy Code or any other applicable foreign or domestic law or regulation by any person or entity. Nothing herein is intended to alter or interfere with the rights of any third party payor to exercise their right of setoff or recoupment with regard to the Debtor's accounts receivable owed by such payors under applicable law or as allowed by order of this Court. For the avoidance of doubt, the preceding sentence shall not modify any restrictions on the recoupment, setoff or other rights of payors under, (a) the Order Setting the Cure Amounts for the Debtor's Contracts with UnitedHealthcare Insurance Company and its Affiliates [ECF No. 476], (b) the Order Setting the Cure Amounts for the Debtor's Contracts with Anthem Health Plans of New Hampshire, Inc. D/B/A Anthem Blue Cross and Blue Shield and Matthew Thornton Health Plan, Inc. [ECF No. 504], or (c) the Order Setting the Cure Amounts for the Debtor's Contracts with Humana Insurance Company and Humana Health Plan, Inc. [ECF No. 509].

9. The DIP Loans shall

- (a) be evidenced by the books and records of the DIP Lender and, although not required, upon the request of the DIP Lender, a note executed and delivered to the DIP Lender by the Debtor in accordance with the terms of the Loan Documents,

- (b) bear interest and incur fees at the rates set forth in the Loan Agreement,
- (c) be secured in the manner specified below and under the applicable Loan Documents,
- (d) be payable in accordance with the applicable Loan Documents, and
- (e) otherwise be governed by the terms set forth in this Interim DIP Order and the Loan Documents.

10. The automatic stay provisions of Section 362 of the Bankruptcy Code and any other restriction imposed by an order of the Court or applicable law are hereby modified and vacated without further notice, application, or order of the Court to the extent necessary to permit the DIP Lender to perform any act authorized or permitted under or by virtue of this Interim DIP Order or any of the other Loan Documents, including, without limitation,

- (a) to implement the DIP Facility to the extent authorized by this Interim DIP Order and pursuant to the terms of the Loan Documents,
- (b) to take any act to create, validate, evidence, attach, or perfect any lien, security interest, right, or claim in the “**Collateral**” (as defined in the Loan Agreement”), and
- (c) to assess, charge, collect, advance, deduct, and receive payments with respect to the Obligations, including, without limitation, all principal, interest, fees, costs, and expenses permitted under the Loan Documents, and to apply such payments to the Obligations pursuant to the Loan Documents.

11. The DIP Lender shall have no obligation to make any DIP Loans or any other financial accommodation under the respective Loan Documents unless the conditions precedent to make such extensions of credit under the respective Loan Documents have been satisfied in full or waived in accordance with such Loan Documents.

12. Pursuant to Section 364(c)(1) of the Bankruptcy Code, the Obligations constitute (without the need to file a proof of claim) superpriority claims (the “**DIP Superpriority Claims**”) against the Debtor, with priority over any and all administrative expenses of the

Debtor, whether now existing or hereafter arising or incurred, of the kind specified in Sections 503(b) and 507(b) of the Bankruptcy Code.

13. As security for the full and timely payment of the Obligations, the DIP Lender is hereby granted, pursuant to Sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code, valid, enforceable, non-avoidable, and fully perfected security interests in and liens on all Collateral (as defined in the Loan Agreement) (collectively, the “**DIP Liens**”), which shall have the priorities stated in the Loan Agreement.

14. For the avoidance of doubt, “**Collateral**” shall not include (i) any causes of action arising under chapter 5 of the Bankruptcy Code or applicable state law equivalents and the proceeds thereof and (ii) any pre-petition and post-petition commercial tort claims (as such term is defined in the Uniform Commercial Code as in effect in the State of New Hampshire) and the proceeds thereof, including, without limitation, any and all causes of action (and the proceeds thereof) against current and former directors and officers of the Debtor and/or any of its affiliates. The foregoing shall not apply to First Priority Collateral, of which shall be Collateral.

15. The DIP Liens shall be effective immediately on entry of this Interim DIP Order. This Interim DIP Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the DIP Liens without the necessity of executing, filing, or recording any mortgage, security agreement, pledge agreement, financing statement, or other instrument or document, or the taking of any other act that otherwise may be required under state or federal law, rule, or regulation of any jurisdiction to validate or perfect the DIP Liens or to entitle the DIP Lender to the priorities granted herein; however, the Debtor may execute, and the DIP Lender is hereby authorized to execute, file, and/or record mortgages, security agreements, pledge agreements, financing statements, and/or other instruments or documents to evidence the

DIP Liens, and the Debtor is hereby authorized, promptly on a demand by the DIP Lender made in accordance with the terms of the Loan Documents to execute, file, and/or record any such mortgages, security agreements, pledge agreements, financing statements, or other instruments or documents as the DIP Lender may request; however no such execution, filing, or recordation shall be necessary or required in order to create or perfect the DIP Liens. A copy of this Interim DIP Order may, in the discretion of the DIP Lender, be filed with or recorded in any filing or recording office in addition to or in lieu of such mortgages, security agreements, pledge agreements, financing statements, or other instruments or documents, and each and every federal, state, and local governmental agency, department, or office is hereby directed to accept a copy of this Interim DIP Order and any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by this Interim DIP Order and the Loan Documents, for filing and recording, and to deem this Interim DIP Order to be in proper form for filing and recording.

16. The DIP Liens shall not be

- (a) subject to any lien that is avoided and preserved for the benefit of the Debtor's estate under Section 551 of the Bankruptcy Code or
- (b) except as provided in the Loan Agreement, subordinated to or made *pari passu* with any other lien under Section 364(d) of the Bankruptcy Code or otherwise.

17. Absent payment in full in cash of all Obligations of the Debtor and termination of the Loan Agreement, the Debtor shall not

- (a) grant or impose any liens on the Collateral or
- (b) prime or seek to prime the DIP Liens.

18. In no event shall any person or entity who pays (or through the extension of credit to the Debtor, causes to be paid) any of the Obligations, be subrogated, in whole or in part, to any

rights, remedies, claims, privileges, liens or security interests granted in favor of, or conferred on the DIP Lender by the terms of this Interim DIP Order or any of the Loan Documents, until all of the Obligations are paid in full in cash and termination of the Loan Agreement.

19. The DIP Liens and the DIP Superpriority Claims shall continue after conversion of the Case to a case under Chapter 7 of the Bankruptcy Code and in any successor Case for the Debtor under any Chapter of the Bankruptcy Code, and all liens, security interests, and claims shall maintain their priority as provided in this Interim DIP Order.

20. Notwithstanding anything in this Interim DIP Order, any Loan Documents, or any other order of this Court to the contrary, the DIP Superpriority Claims and the DIP Liens shall not be subject nor subordinate to the Carve-Out (as defined in the *Fifth Order Authorizing Interim Use of Cash Collateral and Granting Adequate Protection and Related Relief* [Docket No. 506]) or any similar right granted in any other order.

21. Notwithstanding anything in this Interim DIP Order, any Loan Document, or any other order by this Court to the contrary, no proceeds of the DIP Loans or Collateral may be used, directly or indirectly, by the Debtor, or any other person or entity, to fund

- (a) any investigation of or challenge to
  - (i) the enforceability of any amounts due under the DIP Loans or the Loan Documents or on account of the DIP Superpriority Claims or
  - (ii) the validity, perfection, priority or extent of the DIP Liens,
- (b) any investigation or prosecution of any claims, defenses, or causes of action (including, without limitation, any claims or causes of action under chapter 5 of the Bankruptcy Code) against the DIP Lender or its agents, affiliates, representatives, attorneys, or advisors,
- (c) any effort to prevent, hinder or otherwise delay the DIP Lender's assertion, enforcement, or realization against or upon the Collateral, in accordance with this Interim DIP Order and the Loan Document,

- (d) any effort to seek to modify any of the rights granted to the DIP Lender hereunder or under the Loan Documents, or
- (e) any effort to take any other action prohibited by the Loan Agreement.

22. The Debtor's authorization to use the DIP Facility shall immediately terminate on the earlier of

- (a) the Line of Credit Termination Date and
- (b) April 13, 2021 unless the "**Final DIP Order**" (as defined in the Loan Agreement) has been entered as of such date.

23. No costs or expenses of administration which have been or may be incurred in the Case shall be recovered from the DIP Lender or be charged against the Collateral pursuant to Sections 105 or 506(c) of the Bankruptcy Code or otherwise. The DIP Lender shall not be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the Collateral. The DIP Liens shall not be subject to Sections 510, 549, 550, or 551 of the Bankruptcy Code.

24. Professionals for the DIP Lender shall not be required to file fee applications, provided that invoices (subject in all respects to applicable privilege and work product doctrines) shall be provided to counsel for the Debtor, the Committee, ~~if one is appointed~~ Key, HUD and the United States Trustee, which parties shall have fourteen (14) days to object to such invoices in the absence of which such invoices shall be paid by the Debtor and, if not paid by the Debtor, may be paid by the DIP Lender as an advance under the DIP Facility regardless whether

- (a) the DIP Facility has terminated,
- (b) an Event of Default has occurred under the Loan Agreement or would be caused by such payment, or
- (c) such payment would cause the principal balance of the DIP Facility to exceed the maximum permissible principal amount under the Loan Agreement.



25. In determining to extend credit under the DIP Facility, or in exercising any rights or remedies pursuant to this Interim DIP Order and the Loan Documents, the DIP Lender shall not be deemed to be in control of the Debtor's operations or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtor (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601, *et seq.*, as amended, or any similar federal or state statute).

26. The Debtor may not obtain postpetition loans or other financial accommodations pursuant to Section 364(c) or 364(d) of the Bankruptcy Code, other than from the DIP Lender, or as may be otherwise expressly permitted under the Loan Documents, unless the Debtor uses the proceeds of such postpetition loans or other financial accommodations to pay in full in cash all Obligations.

27. In any hearing regarding any exercise of rights or remedies by the DIP Lender following an alleged Event of Default, the only issue that may be raised by any party in opposition thereto shall be whether, in fact, an Event of Default has occurred and is continuing and/or whether any required notice has been provided, and the Debtor hereby waives its right to seek relief, including without limitation, under Section 105 of the Bankruptcy Code, to the extent such relief would in any way impair or restrict the rights and remedies of the DIP Lender, as set forth in this Interim DIP Order or the Loan Documents, other than to contest whether an Event of Default has occurred or is continuing and/or whether any required notice has been provided.

28. In the absence of express prior written consent, no consent to a sale, transfer, lease, encumbrance, or other disposition of any portion of the Collateral shall be implied from any action, inaction, or acquiescence by the DIP Lender.

29. On the occurrence of an Event of Default under the Loan Agreement and following five (5) business days written notice thereof (the “**Stay Termination Notice**”) to counsel to the Debtor, counsel to the Committee, counsel to Key, counsel to HUD, and the United States Trustee (collectively, the “**Notice Parties**”), and unless an Order extending the automatic stay (based upon a finding that an Event of Default has not occurred and is not continuing and/or that any required notice has not been provided) is entered prior to the date which is five (5) business days after the date of service of the Stay Termination Notice as set forth below, the automatic stay of Section 362 of the Bankruptcy Code shall be deemed automatically vacated and the DIP Lender shall be immediately permitted to, among other things, pursue any and all of its remedies against the Debtor and the Collateral; however, the automatic stay shall be deemed vacated immediately on entry of this Interim DIP Order solely to the extent necessary to allow the DIP Lender to enforce its entitlement to payment in full of all Obligations from the proceeds of sale of any Acquired Assets. Following the service of a Stay Termination Notice by the DIP Lender to the Notice Parties, the Notice Parties shall be entitled to an emergency hearing before this Court; however, if the Court does not, prior to the date which is five (5) business days after the date of service of the Stay Termination Notice, enter an Order extending the automatic stay (based upon a finding that an Event of Default has not occurred and is not continuing and/or that any required notice has not been provided), the automatic stay shall terminate as provided above notwithstanding the filing or pendency of any request for such emergency hearing.

30. The provisions of this Interim DIP Order and any actions taken pursuant hereto or thereto shall survive the entry of any order:

(a) confirming a chapter 11 plan in the Case,

- (b) converting the Case to case under chapter 7 of the Bankruptcy Code, or
- (c) dismissing the Case, and the Obligations and DIP Liens shall maintain their enforceability and priority as provided by this Interim DIP Order until all of the Obligations are paid in full in cash in accordance with the Loan Documents.

31. This Interim DIP Order shall not be construed in any way as a waiver or relinquishment of any rights that the DIP Lender may have to bring or be heard on any matter brought before this Court.

32. The terms, conditions, and provisions of this Interim DIP Order are in addition to and without prejudice to the rights of the DIP Lender to pursue any and all rights and remedies under the Bankruptcy Code, the Loan Documents, or any other applicable agreement or law, including, without limitation, rights

- (a) to seek relief from the automatic stay,
- (b) to seek an injunction,
- (c) to oppose any request for use of cash collateral or for the granting of any interest in the Collateral, or of priority in favor of any other party,
- (d) to object to any sale of assets, or
- (e) to object to applications for allowance or payment of compensation of professionals or other parties seeking compensation or reimbursement from the Debtor's estate.

33. Notwithstanding anything to the contrary contained in any prior or subsequent order of this Court, the DIP Lender shall not be required to file proofs of claim in order to maintain its claims with respect to the Obligations, all of which shall be due and payable in accordance with this Interim DIP Order and the Loan Documents without the necessity of filing any such proof of claim.

34. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), and 7062, any other Bankruptcy Rule, and any other rule governing procedure in this Court, this Interim DIP Order shall be immediately effective and enforceable on its entry, and there shall be no stay of execution or effectiveness of this Interim DIP Order.

35. In the event of any inconsistency or conflict between any of the terms and provisions of this Interim DIP Order and the Loan Documents, the terms and provisions of this Interim DIP Order shall govern.

36. The Debtor's cash management system shall at all times be maintained in accordance with any order of this Court approving the maintenance of the Debtor's cash management system. The DIP Lender shall be deemed to have "control" over all such accounts for all purposes of perfection under the Uniform Commercial Code.

37. The DIP Lender shall have the unqualified right to credit bid up to the full amount of the applicable outstanding Obligations, including any accrued interest, in the sale of substantially all property of the Debtor's estate under the "APA" (as defined in the Loan Agreement) or any sale of the Collateral (or any part thereof), without the need for further Court order authorizing the same, and whether such sale is effectuated through Section 363 or 1129 of the Bankruptcy Code, by a Chapter 7 trustee under Section 725 of the Bankruptcy Code, or otherwise.

38. This Court shall retain jurisdiction to interpret, implement, and enforce the provisions of this Interim DIP Order and the Loan Documents, including the Loan Agreement.

39. The DIP Lender is hereby granted all protections afforded by Section 364(e) of the Bankruptcy Code.

40. The failure to reference any provision of the Loan Documents in this Interim DIP Order shall not affect the enforceability of such provision.

41. The Debtor shall promptly serve by United States mail, first class postage prepaid, copies of this Interim DIP Order and a notice of the Final Hearing (the “**Final Hearing Notice**”) to be held on [REDACTED], 2021, at [REDACTED]: [REDACTED] M. (EDT), to consider entry of the Final DIP Order on the following:

- (a) the Office of the United States Trustee,
- (b) the United States Securities and Exchange Commission,
- (c) the Internal Revenue Service,
- (d) the Office of the United States Attorney for the District of New Hampshire,
- (e) those entities or individuals listed on the Debtor’s list of 20 largest unsecured creditors,
- (f) counsel to Key, counsel to HUD and all other known parties asserting a lien against the Debtor’s assets, and
- (g) counsel to the Committee.

Copies of the Motion, this Interim DIP Order, and the Final Hearing Notice also shall be served upon all persons requesting service of papers pursuant to Bankruptcy Rule 2002 by United States mail, first class postage prepaid, promptly following the receipt of such request.

42. The Final Hearing Notice shall state that any party in interest objecting to the entry of the Final DIP Order shall file written objections with the Court no later than [REDACTED], 2021, at [REDACTED]: [REDACTED] M. (EDT), which objections shall be served so that the same are received on or before such date and time by

- (a) LRGHealthcare, 80 Highland Street, Laconia, NH 03246, Attn: Kevin Donovan, Email: [kdonovan@lrgh.org](mailto:kdonovan@lrgh.org);

- (b) Nixon Peabody, LLP, Exchange Place, Boston, MA 02109-2835, Attn: Victor G. Milione, Esq. Email [vmilione@nixonpeabody.com](mailto:vmilione@nixonpeabody.com);
- (c) Stevens & Lee, P.C. 620 Freedom Business Center, Suite 200, King of Prussia, PA., 19406, Attn: Robert Lapowsky, Esq., Email: [rl@stevenslee.com](mailto:rl@stevenslee.com);
- (d) Morris, Manning & Martin, LLP, 1600 Atlanta Financial Center, 3343 Peachtree Road, NE, Atlanta, GA 30326, Attn: Lisa Wolgast, Esq., Email: [lwolgast@mmmlaw.com](mailto:lwolgast@mmmlaw.com);
- (e) United States Department of Justice, Civil Division, P.O. Box 875, Ben Franklin Station, Washington DC 20044-0875, Attn: Rodney Morris, Esq. and I-Heng Hsu, Email: [rodney.morris2@usdoj.gov](mailto:rodney.morris2@usdoj.gov); [i-heng.hsu@usdoj.gov](mailto:i-heng.hsu@usdoj.gov);
- (f) Preti, Flaherty, Beliveau & Pachios, Chartered, LLP, P.O. Box 1318, Concord, NH 03302-1318, Attn: Rue Toland, Esq., Email: [rtoland@preti.com](mailto:rtoland@preti.com);
- (g) Sills Cummis & Gross P.C., One Riverfront Plaza, Newark, NJ 07102, Attn: Andrew H. Sherman, Esq., Email: [asherman@sillscummis.com](mailto:asherman@sillscummis.com);
- (h) Drummond Woodsum, 84 Marginal Way, Suite 600, Portland, ME 04101, Attn: Jeremy R. Fischer, Email: [jfischer@dwmlaw.com](mailto:jfischer@dwmlaw.com); and
- (i) The Office of the United States Trustee, 53 Pleasant Street, Suite 2300, Concord, NH 03301, Attn. Ann Marie Dirsä.

Dated: \_\_\_\_\_, \_\_\_\_ 2021

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The Honorable Michael A. Fagone

United States Bankruptcy Judge

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