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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

SOUND SHORE MEDICAL CENTER OF
WESTCHESTER, et al.

Chapter 11
Case No. 13-_____ (RDD)

Debtors.

(Joint Administration Pending)

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**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
(I) AUTHORIZING DEBTORS (A) TO OBTAIN POST-PETITION SECURED,
SUPERPRIORITY FINANCING PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, AND
364 AND (B) TO UTILIZE CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363; (II)
GRANTING ADEQUATE PROTECTION TO PRE-PETITION SECURED CREDITORS
PURSUANT TO 11 U.S.C. §§ 361, 362, 363 AND 364; AND (III) SCHEDULING A FINAL
HEARING PURSUANT TO BANKRUPTCY RULES 4001(B) AND 4001(C)**

The Motion of Sound Shore Medical Center of Westchester ("SSMC"), The Mount Vernon Hospital, Inc. ("MVH"), and Howe Avenue Nursing Home d/b/a Schaffer Extended Care Center ("SECC"), each one of the above-captioned debtors and debtors-in-possession herein (each a "Debtor" and collectively, the "Debtors")¹, for the entry of an interim order (the "Interim Order") and a final order (the "Final Order") and other related relief, (the "Motion").

In support of the Motion, the Debtors shall rely on the Affidavit of John Spicer, the President and Chief Executive Officer of SSMC Pursuant to Local Rule 1007-2 and in Support

¹ Certain additional affiliates also filed voluntary Chapter 11 petitions, but each of these have limited operations and assets. They include: Sound Shore Health System, Inc., NRHMC Services Corporation, The M.V.H. Corporation, and New Rochelle Sound Shore Housing, LLC. There are certain additional affiliates of the Debtors who are not debtors in these Chapter 11 Cases and have not sought relief under Chapter 11.

of the First Day Motions (the "**Spicer Affidavit**"), which the Debtors filed concurrently with this Motion. In further support of this Motion, the Debtors respectfully represent as follows:

I. RELIEF REQUESTED

1. By this Motion, the Debtors seek entry of the Interim Order and the Final Order (together the "**Financing Orders**"), pursuant to Sections 105(a), 361, 362, 363, 364(c) and 364(d) of Title 11, United States Code (the "**Bankruptcy Code**"), Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") and Rule 4001-2 of the Local Rules for the United States Bankruptcy Court for the Southern District of New York (the "**Local Rules**"), granting:

(a) authorization under sections 364(c) and 364(d) of the Bankruptcy Code and Rule 4001(c) of the Bankruptcy Rules for SSMC, MVH, and SECC to obtain secured, superpriority postpetition financing consisting of the following:

(i) a revolving facility with a principal amount of up to **Twenty-Three Million Dollars (\$23,000,000)** (the "**DIP Revolving Facility**")² as set forth in that certain Debtor in Possession Revolving Credit and Security Agreement, dated as of May __, 2013 (the "**DIP Revolving Loan Agreement**"), a copy of which is attached to this Motion as Exhibit A, by and between the Debtors and MidCap Financial, LLC ("**MidCap**") or one of its affiliates (as lender, the "**DIP Revolving Lender**" and as agent, the "**DIP Revolving Agent**"); and

(ii) a term loan facility in the principal amount of **Ten Million Dollars (\$10,000,000)** (the "**DIP Term Loan**", and together with the DIP Revolving Facility, the "**DIP Financing**") as set forth in that certain term sheet (the "**DIP Term Loan Term Sheet**"), a copy of which is attached hereto as **Exhibit B**, and which shall be governed by terms substantially similar to those contained in the DIP Revolving Loan Agreement with such revisions as are customary for a term loan facility. The DIP Term Loan is to be memorialized in a Debtor In Possession Term Loan Agreement (the "**DIP Term Loan Agreement**" and, together with the DIP Revolving Loan Agreement, the "**DIP Credit Agreement**")³ entered into

² The actual available principal amount at any time under the DIP Revolving Facility shall be the Revolving Loan Availability (as defined in the DIP Revolving Loan Agreement. As further described in the DIP Revolving Loan Agreement, until payment in full of the outstanding Prepetition Revolving Loan Obligations (as defined herein), the Borrowing Base will be solely comprised of (a) the postpetition Eligible Accounts generated by SSMC and SECC and (b) the prepetition and postpetition Eligible Accounts generated by MVH.

³ Capitalized terms used in this Motion, unless herein defined, are used with the meanings ascribed to such terms in the DIP Credit Agreement.

by and between the Debtors and MidCap or one of its affiliates (as lender, the **"DIP Term Loan Lender"** and as agent, the **"DIP Term Loan Agent"**)⁴;

(b) authorization under section 363 of the Bankruptcy Code and Rules 4001(b) and 6004 of the Bankruptcy Rules for the Debtors to use any cash collateral the Debtors are holding or may obtain, and to use the proceeds from the DIP Financing for the payment of: (i) the Prepetition Revolving Loan Obligations (as defined below) owing to MidCap Funding IV, LLC (**"MidCap Funding"**); (ii) pay the fees and expenses due DIP Agent under the DIP Credit Agreement; (iii) pay all Prepetition Term Loan Obligations as they become due under the Prepetition Term Credit Agreement; (iii) for general working capital purposes and general corporate purposes relating to the postpetition operations; and (iv) the costs and expenses associated with these Chapter 11 cases (the "Chapter 11 Cases"), all in accordance with the terms of the Debtors' proposed budget (the "Budget"), a copy of which is annexed hereto as Exhibit C;

(c) authorization for the Debtors to grant security interests, liens, superpriority claims (including a superpriority administrative claim pursuant to section 364(c)(1) of the Bankruptcy Code and liens pursuant to sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code), and related protections to the DIP Agent and DIP Lender to secure all DIP Obligations, in accordance with the provisions of the Financing Orders and as set forth in DIP Revolving Agreement and DIP Term Loan Agreement;

(d) authorization for the Debtors to execute and deliver the DIP Revolving Loan Agreement, the DIP Term Loan Term Sheet, the DIP Term Loan Agreement, a postpetition amendment to the Prepetition Revolving Credit Agreement, the Prepetition Term Loan Amendment (as defined below) and all other loan documents related thereto (collectively, the **"DIP Documents"**) and to perform such other acts as may be necessary or desirable in connection with the DIP Documents and pursuant to the provisions of the Financing Orders;

(e) the approval of certain stipulations by the Debtors with respect to the Original Loan, Prepetition Revolving Loan, Prepetition Term Loan, and Prepetition Debt (each as defined herein), and the liens and security interests arising with respect thereto;

(f) subject only to and effective upon entry of a Final Order, the limitation of the Debtors' right to surcharge against collateral pursuant to section 506(c) of the Bankruptcy Code;

(g) authorization for the Debtors to continue to use the "cash collateral" (as defined in section 363(a) of the Bankruptcy Code, "Cash Collateral") of the Secured Creditors (as defined herein);

⁴ The DIP Term Loan Lender, together with the DIP Revolving Loan Lender, shall be referred to as the **"DIP Lender"**. The DIP Term Loan Agent, together with the DIP Revolving Loan Agent, shall be referred to as the **"DIP Agent"**.

(h) authorization for the Debtors to grant the DIP Agent allowed, superpriority administrative expense claims in each of the Chapter 11 Cases and any Successor Cases (as defined herein) for the DIP Financing and all obligations owing thereunder and under the DIP Documents (collectively, the “**DIP Obligations**”);

(i) authorization for the Debtors to pay the principal, interest, fees, expenses and other amounts payable under each of the DIP Documents to the extent, and as they become due;

(j) authorization for the Debtors to use the proceeds of the DIP Financing in all cases in accordance with the Budget, and as otherwise provided in the DIP Documents;

(k) authorization for the Debtors to provide adequate protection to the Secured Creditors (as defined herein) pursuant to the terms of the Financing Orders for any diminution in value of their respective interests in the Prepetition Collateral (as defined below);

(l) to vacate and modify the automatic stay imposed by section 362 of the Bankruptcy Code solely to the extent necessary to implement and effectuate the terms of the DIP Documents and the Financing Orders; and

(m) to waive any applicable stay as provided in the Bankruptcy Rules and provide for the immediate effectiveness of the Financing Orders.

2. Access to the DIP Financing and the use of Cash Collateral is essential to ensure that the Debtors can fund their postpetition operating requirements and preserve and maintain their properties and the infrastructure of their businesses pending a sale of a substantial portion of their assets to Montefiore Medical Center (“**MMC**”)⁵. As fully operational acute care facilities, it is essential that continued operations be maintained in order to ensure patient safety, maintain the employee workforce and provide an essential community service to an underserved population. Having adequate financing in place also will provide the Debtors’ vendors and suppliers with the comfort of knowing that the Debtors will have the financial ability to fund the ongoing purchase of goods and services and otherwise pay their postpetition obligations as they

⁵ Simultaneous with the filing of the petitions initiating these Chapter 11 Cases and the instant motion, the Debtors have filed a motion, *inter alia*, seeking the approval of proposed bid procedures and the sale of a substantial portion of the Debtors’ assets to MMC.

become due. Of no less import is the fact that absent adequate funding, the Debtors would not have the ability to satisfy the conditions of their sale agreement with MMC, effectuate an orderly sale of their assets and preserve value for the benefit of their creditors.

3. The DIP Revolving Loan Agreement, DIP Term Loan Agreement, and all other DIP Documents have been negotiated at arms' length with all parties represented by experienced counsel. Further, as set forth below, the proposed financing is on terms better than the Debtors could obtain from other lenders. If anything, the historical business relationship between the Debtors and the DIP Lender and DIP Agent affords a level of comfort and familiarity that will facilitate postpetition access to funding.

II. JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding under 28 U.S.C. §157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The predicates for relief requested herein are sections 105, 361, 362, 363 and 364 of the Bankruptcy Code and Rules 2002, 4001 and 9014 of the Bankruptcy Rules.

III. BACKGROUND

5. On May __, 2013 (the "**Petition Date**"), each of the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. The Debtors remain in possession of their assets and continue to manage their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee, examiner or official committee of unsecured creditors has been appointed in these cases.

6. **SSMC**: SSMC is a not-for-profit 252-bed, community-based teaching hospital offering primary, acute, emergency and long-term health care to the working class residents of

southern Westchester. Founded in 1892 and located at 16 Guion Place, New Rochelle, New York 10802, SSMC is a major teaching affiliate of New York Medical College. SSMC is home to a comprehensive orthopedic program, stroke and bariatric centers of recognized excellence, the only trauma center in southern Westchester and a reputable level 3 perinatal hospital.

7. SMMC employs approximately 1,236 people of which 550 belong to the local chapter of the Service Employees International Union (the "Local 1199"), and 250 belong to the New York State Nurses Association ("NYSNA"). SSMC's monthly payroll is approximately \$6.5 million inclusive of wage related benefits. As of December 31, 2012, SSMC's total unrestricted assets as reported on its balance sheet were just under \$100 million and its liabilities totaled just under \$140 million. SSMC's revenues for the year 2012 totaled just under \$152 million and expenses aggregated over \$170 million.

8. MVH: MVH is a voluntary, not-for-profit, 196-bed hospital located at 12 North Seventh Avenue, Mount Vernon, New York, serving the City of Mount Vernon, the Pelhams, East Yonkers, New Rochelle and North Bronx. MVH also operates the Dorothea Hopfer School of Nursing, chartered by New York State since 1901. Since its founding in 1891, MVH and its affiliated physicians have been providing a full range of diagnostic and therapeutic medical and surgical services and a wide range of specialty programs. The MVH facilities include twenty-five ambulatory clinics and also offer comprehensive inpatient and outpatient behavioral health programs consisting of psychiatric services designed specifically for individuals whose needs have not been met through traditional approaches.

9. MVH employs approximately 590 people of which 291 belong to Local 1199, and 104 belong to NYSNA. As of December 31, 2011, MVH's total unrestricted assets as reported on its balance sheet were just under \$19.9 million and its liabilities totaled just under \$46.7

million. For the year ending December 31, 2012, MVH's revenues totaled more than \$70.4 million and expenses aggregated over \$77.5 million.

10. **SECC**: Established in 1971, SECC is a 150-bed, comprehensive facility offering short-term rehabilitation/sub-acute care, as well as skilled long-term care. SECC dedicates 100-beds for long-term skilled medical management for individuals with chronic conditions or disabilities who are no longer capable to live independently. The remaining 50-beds are utilized for short-term stays and rehabilitation to accommodate patients recovering from heart surgery, heart attacks, strokes, and orthopedic surgery.

11. SECC employs approximately 160 people of which 108 belong to the Local 1199, and 24 belong to NYSNA. SECC's monthly payroll is approximately \$800,000 inclusive of wage related benefits. As of December 31, 2011, SECC's total unrestricted assets as reported on its balance sheet were just under \$8.2 million and its liabilities totaled just under \$10.9 million. SECC's revenues for 2012 totaled just under \$20.2 million and expenses aggregated over \$20 million. For the year ending December 31, 2011, SECC had over \$17.4 million in total revenue and expenses aggregated just over \$19.2 million.⁶

12. **Charitable Mission**: In furtherance of their charitable mission, the Debtors provide critical healthcare services to uninsured and indigent populations. As a designated safety net provider, SSHS has been recognized by the State of New York as a leading provider of charitable care to the residents of southern Westchester County. The Debtors provide discounted or free care on a sliding scale basis to patients who are financially unable to pay for services

⁶ The Other Debtors have limited or no operations. NRHMC is a for-profit corporation whose business activities consists primarily of locating, negotiating and providing physicians and other healthcare entities with real estate rentals. MVH, also a not-for-profit corporation, holds the membership interest in the parking garage located adjacent to the MVH property. Its average revenues for the last three years have been less than \$25,000 per year. It does not have any current operations, existing debt or other liabilities. NRSSH owns the Goldstein Pavilion which is leased to SSMC and used as part of the hospital space. Finally, SSHS was a system formed in 1997 when four affiliated healthcare institutions joined together to create one of the largest regional healthcare systems between New York City and Albany. SSHS holds the membership interests in SSMC, MVH and SECC.

rendered. The Debtors do not pursue amounts due for charity care through collection. Accordingly, any such amounts due to the Debtors are not reported as revenue. However, the Debtors are entitled to distributions from the New York State Charity Care pools due to the provision of such charitable care. In 2011, the Debtors provided over \$22.3 million in charitable care.

13. **Events Leading to Filings:** As is true with many community hospitals serving a working class constituency, the Medical Centers have been beset by the financial pressures caused by cuts in Medicare and Medicaid funding, declining indigent pool payments, and changing demographics in the communities served by the Debtors. Commencing in 2006 and increasingly each year thereafter, the Debtors experienced a progressive decline in patient volume and discharges and reduction in acuity of the case mix. Operating revenues decreased, leading to significant losses in the years preceding these filings. Cash book balances were frequently negative, and vendor payables increased to over 225 days past due. With a substantial portion of their assets encumbered, the Debtors had limited ability to obtain sufficient working capital financing. Simultaneously, the Debtors are faced with increased competition from other regional healthcare providers.

14. The Debtors sought to address one component of this liquidity crisis, vendor payables, through a voluntary restructuring and reduction of unsecured indebtedness and in 2008 effectuated a creditor compromise. More than \$20 million of unsecured indebtedness obligations were settled at significant discounts. Coupled with cost cutting measures, the Debtors were repositioned to improve financially.

15. Additionally, in order to increase overall efficiency in their operations, in October 2011, MVH and SSMC executed a conversion to a new electronic medical record and billing

system. Multiple problems were encountered during the conversion process which still have not been fully remedied. Major delays in billing and cash collections resulting from the conversion led to increased patient account denials and bad-debt write offs. To avoid continued delays and losses, it became necessary (at significant cost) to dedicate additional resources to resolve the conversion issues, resulting in a further drain on available cash and resources. As a consequence, liquidity again became a pressing issue, this time preventing the Debtors from implementing critical system updates vital to improving its infrastructure and physical plant.

16. Liquidity delays have also extended vendor disbursements. The mounting trade payable liabilities led, in some cases, to the immediate termination of necessary service relationships. In other cases, the Debtors were forced to renegotiate existing terms and payment of outstanding liabilities. Simultaneously, the Debtors were facing a decrease in volume and a shift over the course of the last two years from the provision of inpatient care to increased ambulatory care at lower reimbursement rates. During this same period of time, provider costs continued to increase.

17. **Marketing Process:** As the Debtors' financial condition continued to deteriorate, the Debtors began to actively search for a viable healthcare partner or other affiliation for the Debtors' medical centers (the "**Medical Centers**"). The Debtors recognized that a merger or affiliation with a strong healthcare partner was critical to their ability to maintain operations and their charitable mission, achieve administrative efficiencies and reduce overhead costs, attract and retain quality physicians, gain increased access to much needed capital, make necessary capital improvements and implement long overdue technological upgrades.

18. Thus, commencing in or about, August 2012, the Debtors set out to explore a potential strategic transaction with another hospital or healthcare institution. Working with their

financial advisor, Alvarez & Marsal ("A&M"), the Debtors looked at the downstate market and attempted to identify those hospitals or healthcare systems that might have an interest and the financial wherewithal to partner with the Debtors. The Debtors also consulted with NYS Department of Health ("DOH"), which would have to approve any transaction. DOH advised that it would only accept an active parent arrangement, i.e. where the acquirer would commit meaningful financial support to the transaction and the ongoing system. Given the not-for-profit hospital structure in New York, the list of potential acquirers was limited and excluded almost all out of state prospects as the substantially majority of those are for profit institutions. The active parent requirement further limited the pool of likely partners.

19. The Debtors and A&M concluded that Westchester County Health Care Corporation ("WCHCC"), the owner of Westchester Medical Center, was the only likely candidate in the Westchester area; that no other hospital or system in the region would have the financial ability, experience and strategic design to absorb the Medical Centers. Potential active parents in the New York Metropolitan region included: Montefiore Medical Center ("MMC"), North Shore-LIJ Health System, ("NS/LIJ") and NYU Medical Center ("NYU"). The lone out of state prospect, given its size and not-for profit ownership was Yale-New Haven Health System ("Yale").

20. Each of those potential candidates were approached and provided a sizeable and comprehensive package of information regarding the Debtors, a detailed description of the proposed strategic arrangement and the financial requirements. Furthermore, the process was not run in secret. DOH and DASNY (as defined herein) were kept advised of the Debtors efforts, and the search for a strategic partner was known generally to the healthcare community at large. Thus, any other party certainly could have expressed interest, but did not. NS/LIJ advised the

Debtors early in the review process that the Westchester market was not a priority in their long range strategic plan. Each of NYU and Yale discussed possibilities with the Debtors on a number of occasions but each ultimately opted out as well. The only two seriously interested parties were MMC and WCHCC. The Debtors' board met and determined to first pursue the WCHCC proposal given WCHCC's expressed desire to pursue the transaction without a bankruptcy.

21. In November 2012, SSHS and WCHCC entered into a memorandum of understanding which contemplated a full asset merger between the parties and several months of extensive negotiations followed. However, the parties were unable to finalize a transaction with sufficient purchase consideration.

22. As a result, the Debtors re-commenced discussions with MMC regarding a potential transaction. Following intensive, arms length, good faith negotiations among the Debtors and MMC, the parties entered into an asset purchase agreement (the "**Purchase Agreement**"). As part of their restructuring strategy, the Debtors intend to sell all of their Owned Real Property, Furniture, Fixtures, Inventory, Assigned Contracts and related operating assets, which collectively comprise the Acquired Assets (all as defined in the Purchase Agreement), to MMC. The aggregate Purchase Price for the Acquired Assets totals \$54 million, plus the appraised value of the Furniture, Fixtures and Inventory, payable in cash at the closing subject to adjustments. These adjustments include, *inter alia*, any repayment of the DIP Term Loan or DIP Revolving Facility made by MMC pursuant to its guaranty, any Assumed Liabilities, any Cure Amounts (not to exceed \$3 million) and any assumed Employee Liabilities.

23. It is a condition of the Purchase Agreement that the sale of the Debtors' assets be consummated pursuant to the provisions of section 363 of the Bankruptcy Code, and subject to

higher and better offers. In furtherance of that effort, the Debtors' respective boards voted to approve the filing of voluntary petitions pursuant to Chapter 11 of the Bankruptcy Code for each of the Debtors.

IV. PREPETITION SECURED DEBT

A. MidCap Prepetition Revolving Credit and Term Loan Facilities

24. Pursuant to that certain Credit and Security Agreement dated April 8, 2011 and related financing documents (the "Original Credit Agreement") by and between SSMC and MidCap, as agent and lender (the "Prepetition Revolving Loan Agent"), the Prepetition Revolving Loan Agent made available to SSMC a revolving credit facility in an amount up to Fifteen Million Dollars (\$15,000,000) (the "Original Loan"), which Original Loan was secured by SSMC's accounts receivable arising out of the performance or delivery of any medical, surgical, diagnostic, dental or other professional services and/or the supply of goods related to such services (the "Prepetition Accounts"). The Prepetition Revolving Loan Agent immediately assigned its rights and obligations as agent under the Original Credit Agreement to MidCap Funding.

25. Subsequently, pursuant to a certain Amended and Restated Credit and Security Agreement dated June 8, 2011, and related financing documents (the "Prepetition Revolving Credit Agreement"), the Original Credit Agreement was modified to add SECC as a borrower and increase the amount of the Original Loan to a revolving loan in an amount up to Eighteen Million Dollars (\$18,000,000) (the "Prepetition Revolving Loan"). In addition, in connection with the Prepetition Revolving Credit Agreement and Prepetition Revolving Loan, each of SSMC and SECC granted a lien in their respective Prepetition Accounts to secure the Prepetition Revolving Loan and a certain Prepetition Term Loan (as defined below). The outstanding

principal balance of the obligations owing under the Prepetition Revolving Loan is approximately \$16.2 million (the “**Prepetition Revolving Loan Obligations**”).

26. On the same date, SECC and MidCap, as lender and agent, entered into a Credit and Security Agreement and related Mortgage, Assignment of Leases and Rents and Security Agreement (collectively, the “**Prepetition Term Loan Agreement**”), pursuant to which MidCap extended SECC a \$7 million term loan (the “**Prepetition Term Loan**”) secured by a first priority mortgage lien (the “**Prepetition Mortgage**”) on SECC’s real property at 75 Glover Johnson Place, New Rochelle, NY (the “**SECC Property**” and, together with the Prepetition Accounts, the “**MidCap Prepetition Collateral**”). The Prepetition Term Loan Agent immediately assigned its rights and obligations as agent under the Prepetition Term Loan Agreement to MidCap Funding. The outstanding principal balance of obligations under the Prepetition Term Loan is approximately \$5.8 million (the “**Prepetition Term Loan Obligations**”).

27. On or prior to the closing of the DIP Revolving Loan Agreement, SECC and MidCap Funding shall amend the Prepetition Term Loan Agreement (the “**Prepetition Term Loan Amendment**”) to, *inter alia*, add the DIP Revolving Loan Agreement to the defined term “**Affiliated Financing Documents**” and the DIP Revolving Facility to the defined term “**Affiliated Obligations**”.

B. Sun Life Assurance Company of Canada (US) (“Sun Life”).

28. On April 4, 2006, SSMC executed a Promissory Note (the “**Sun Life Note**”) and Mortgage and Security Agreement (the “**Sun Life Mortgage**”) in favor of Sun Life in the original principal amount of \$12 million, secured by a first mortgage on the SSMC real property which constitutes the main hospital campus and SSMC’s ambulatory care facility and clinics (the

“SSMC Property”). There is currently due to Sun Life approximately \$8.98 million under the Sun Life Note and Mortgage

C. **Pension Benefit Guaranty Corporation (“PBGC”).**

29. SSMC sponsored the Cash Balance Retirement Plan for the benefit of its employees (the **“SSMC Pension Plan”**) which is a defined benefit pension plan insured by the Pension Benefit Guaranty Corporation (the **“PBGC”**) under Title IV of the Employee Retirement Income Security Act of 1974 (**“ERISA”**), 29 U.S.C. §§ 1301-1461, et seq. The Pension Plan is subject to the minimum funding requirements of ERISA and § 412 of the Internal Revenue Code.

30. SSMC failed to meet the terms of its minimum funding waiver under the SSMC Pension Plan for the 1995 and 1997 years, and to secure its obligations to the PBGC for those amounts (the **“SSMC Pension Plan Claim”**) granted the PBGC mortgage liens in the original principal amount of \$2.582 million in April 1997 and \$3.488 million in November 1998 encumbering certain parking lots (the **“SSMC Lots”**) situated on the SSMC hospital campus (the **“PBGC Lot Mortgages”**). As of the Petition Date, the outstanding amount of the SSMC Pension Plan Claim is approximately \$5.763 million

31. In 2003, SSMC was again unable to meet its minimum funding requirements under the SSMC Pension Plan and a voluntary distress termination of the plan ensued. On October 31, 2003, as amended on December 31, 2008, SSMC and the PBGC entered into a Settlement Agreement pursuant to which SSMC remains obligated under a note to PBGC for termination payments aggregating approximately \$15.820 million (the **“Settlement Amount”**). In addition to the lien on the SSMC Lots under the PBGC Lot Mortgages, the Settlement Amount was further to be secured by a subordinated security interest in the amount of \$9.620 million on the SSMC hospital campus (the **“PBGC Subordinated Lien”**). It does not appear,

however, that the PBGC Subordinated Lien was ever perfected by the filing of a mortgage or other recording instrument.

32. On July 31, 2010, MVH terminated the Mount Vernon Hospital Employees' Retirement Plan (the "**MVH Pension Plan**"). PBGC asserted a claim for unfunded benefit liabilities as of the Plan termination date, *i.e.* the shortfall in plan assets necessary to pay all benefits promised under the MVH Pension Plan in the alleged amount of \$4.032 million (the "**MVH Pension Plan Claim**"). On July 15, 2010, PBGC filed a Notice of Federal Lien under IRC Section 412(n) against MVH's real and personal property (the "**PBGC MVH Lien**").

D. Dormitory Authority of the State of New York ("DASNY").

33. Pursuant to a First Amended Reimbursement Agreement, dated as of February 13, 2008, DASNY loaned \$2 million to SSMC (the "**First Amended Reimbursement Agreement**") to fund working capital requirements. The First Amended Reimbursement Agreement consolidated SSMC's obligations to DASNY under a prior reimbursement agreement, dated January 29, 2002, pursuant to which SSMC had received the first installment of a restructuring pool loan in the amount of \$1 million (the "**Original Reimbursement Agreement**"). The loans were based on SSMC's participation and qualification for the Health Facility Restructuring Program established by DASNY and the New York State Housing Finance Agency. Neither the Original Reimbursement Agreement nor the First Amended Reimbursement Agreement provided for the grant of a security interest in favor of DASNY.

34. On April 14, 2008, DASNY and SSMC executed a Second Amended Reimbursement Agreement (the "**Second Amended Reimbursement Agreement**"), pursuant to which DASNY agreed to advance an additional \$2 million to SSMC. At the time the Second Amended Reimbursement Agreement was executed, there was a remaining balance of \$2,146,606.91 under the Original Reimbursement Agreement and the First Amended

Reimbursement Agreement. Thus, following the execution of the Second Amended Reimbursement Agreement, the aggregate principal loan amount due to DASNY was \$4,146,606.91. The additional funds loaned by DASNY under the Second Amended Reimbursement Agreement were also issued on an unsecured basis.

35. Subsequently, on August 11, 2009, the parties agreed to enter into a second Reimbursement Agreement (the “**2009 Reimbursement Agreement**”) which provided for advances by DASNY in the amount of \$5 million to SSMC (the “**DASNY 2009 SSMC Loan**”) for the purpose of providing working capital to SSMC and facilitating refinancing of SSMC’s existing credit facility with CIT with a facility from MidCap. As security for the DASNY 2009 SSMC Loan, DASNY was granted a lien in SECC’s real property. To later facilitate the refinancing of SSMC’s credit facility under the Prepetition Revolving Credit Agreement, DASNY agreed to subordinate its mortgage lien on SECC’s real property to MidCap Funding. As of the Petition Date, the outstanding amount of the DASNY 2009 SSMC Loan was approximately \$5.187 million.

36. On October 1, 2010, DASNY entered into a First Amended Reimbursement Agreement with MVH (the “**MVH Amended Reimbursement Agreement**”), providing for a \$2 million pool loan to MVH. This advance was in addition to a \$500,000 loan previously issued to MVH under the first MVH Reimbursement Agreement, dated as of August 31, 2010. Following the execution of the MVH Amended Reimbursement Agreement, the aggregate principal amount of the MVH debt to DASNY was increased to \$2.5 million. The funds loaned by DASNY under the MVH Amended Reimbursement Agreement were originally secured by a HEAL grant which was received and utilized by MVH. Thus, this obligation remains unsecured.

37. Finally, on August 14, 2012, DASNY and SSMC executed an additional reimbursement agreement (the “**2012 SSMC Agreement**”), pursuant to which DASNY loaned the amount of \$2.9 million to SSMC for working capital purposes (“**DASNY 2012 SSMC Loan**”). As security for the DASNY 2012 SSMC Loan, DASNY was granted a second lien and security interest on the MVH real property and a lien on the proceeds of any HEAL NY Grants awarded to SSMC. As of the Petition Date, the outstanding balance of the DASNY 2012 SSMC Loan is approximately \$2.92 million..

E. Hudson Valley Bank (“HVB”).

38. On April 6, 2004 and October 28, 2005, MVH procured two revolving lines of credit from HVB in the amounts of \$2 million and \$3 million respectively, which were ultimately consolidated into a single revolving line of credit (the “**HVB Revolving Loan**”) in the aggregate amount of \$5 million pursuant to a mortgage modification and extension agreement, dated as of October 28, 2005. As security for the HVB Revolving Loan, MVH was granted a first lien in the MVH real property (the “**MVH Real Property**”). In addition, HVB was granted a first lien on all of MVH’s revenues, receipts, income, accounts, accounts receivables, inventory, personal property and general intangibles (the “**MVH Personal Property**”, and together with the MVH Real Property, the “**MVH Property**”). As part of the arrangement, MVH also executed an Assignment of Leases and Rents, assigning all of MVH’s rights as lessor under any leases affecting the MVH Property. As of the Petition Date, HVB was owed approximately \$702,790.

F. Internal Revenue Service (“IRS”)

39. On April 16, 2013, the IRS filed a Notice of Federal Tax Lien against the property of MVH in the amount of \$736,805.90 (“**MVH Tax Lien**”). The lien covered unpaid penalties relating to the late payment of §941 withholding taxes for the periods ending March 31, June 30

and September 30, 2012. Any underlying tax and interest has been paid. Since the filing of the MVH Tax Lien, the IRS has issued a waiver of penalties. Thus, although there has been no formal release of lien as of the Petition Date, the underlying liability has been satisfied and the lien is of no force and effect.

40. On March 28, 2013, the IRS filed a Notice of Federal Tax Lien against the property of SSMC in the amount of \$1,461,400 ("**SSMC Tax Lien**" and, together with the MVH Tax Lien, the "**Tax Liens**"). The lien covered unpaid penalties relating to the late payment of §941 withholding taxes for the periods ending March 31, June 30 and September 30, 2012. The underlying taxes and interest have been paid. There is pending a request for the waiver of penalties. If granted, the lien will be of no force and effect. If not, the Debtors believe the SSMC Tax Lien is otherwise voidable on multiple grounds.

G. Other Judgments and Liens (the "Other Judgment and Lien Creditors").

41. 1199 SEIU Healthcare Workers, one of the Debtors' principal unions, has obtained multiple judgments against each of SSMC and MVH for unpaid contributions and benefit payments due the 1199 Funds and has recorded the judgments against SSMC and MVH real property. 1199 currently asserts judgments liens on the SSMC and MVH real property in the amount of \$6,083,497.19 and \$4,156,460.01 respectively. The New York State Department of Labor, in turn, has recorded judgments against SSMC in the aggregate amount of \$21,800 and against MVH in the aggregate amount of \$117,670.

42. Various mechanics lien have also been asserted of record as follows: (a) with respect to SSMC: (i) Graybar Electric Company, Inc, recorded a lien as of May 29, 2012 in the amount of \$17,458; (ii) D&D Elevator Maintenance, Inc. recorded a lien as of August 22, 2012 in the amount of \$525,880; and (iii) Omega Environmental Services, Inc. recorded a lien on

February 13, 2013 in the amount of \$138,742; and (b) with respect to MVH: StonCor Group, Inc. recorded a lien on May 25, 2012 in the amount of \$4,995.40.

43. Sun Life, PBGC, DASNY, HVB, IRS and the Other Judgment and Lien Creditors are collectively referred to herein as the “**Secured Creditors**”. The prepetition liens and claims of the Secured Creditors and MidCap Funding are collectively referred to the “**Prepetition Liens**”), and the real and personal property in which the Secured Creditors and MidCap Funding hold Prepetition Liens is collectively referred to herein at the “**Prepetition Collateral**”). The prepetition claims and obligations of the Secured Creditors secured by their respective Prepetition Liens in Prepetition Collateral are collectively referred to as the “**Prepetition Obligations**”.

IV. PROPOSED DIP LOAN FACILITY AND USE OF CASH COLLATERAL

A. The Need for Postpetition DIP Financing.

44. As noted above, in order to maximize the value of their existing asset base, the Debtors intend to sell a substantial portion of their real property assets and related personalty to MMC which will thereafter continue operations at the Debtors’ former facilities under their own auspices. Such a sale will not only permit the continuation of the Debtors’ charitable not-for-profit mission, it will provide an important source of health care to an underserved population in the Southern Westchester community. It is a condition of the sale to MMC that, *inter alia*, there be no material adverse change in the business or assets of the Debtors and operations pending the closing continue in the ordinary course.

45. Absent the DIP Financing the Debtors will not have sufficient sources of working capital to continue as a community based acute care provider of essential medical services and maintain the value of their assets. The ability of the Debtors to pay their medical staff and other employees, provide critical patient care, maintain business relationships with vendors and

suppliers, purchase new inventory, and otherwise finance their operations is essential to the Debtors' continued viability and the ultimate sale process. Without the DIP Financing, serious and irreparable harm could result, not only to the operations but to the very persons who depend on the Debtors and are unable to protect their interests, including, but not limited to, the Debtors' underserved patient population. The purpose of the DIP Financing thus will be to preserve and maintain the going concern value of the Debtors and to protect patients and other persons dependent on the Debtors' services while the sale process unfolds.

46. Given the Debtors' financial condition, current financing arrangements, and capital structure, the Debtors do not have significant unencumbered funds and are otherwise unable to obtain unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. As detailed more fully below, financing on a postpetition unsecured or solely on a superpriority basis is not available. The DIP Lender is willing to provide the DIP Financing pursuant to section 364(c)(1) of the Bankruptcy Code, provided that the DIP Lender has priority over any and all administrative expenses of the kinds specified in sections 503(b) and 507(b) of the Bankruptcy Code other than as described below, and such indebtedness and obligations are secured by the interests in and the liens (including priming liens) upon the property described below pursuant to sections 364(c) and 364 (d) of the Bankruptcy Code. The Debtors have made inquiry of other lenders and are unable to obtain from another lender the necessary postpetition financing that they need on terms more favorable in the aggregate than those provided in the DIP Credit Agreement (as discussed below). Four other potential lenders were contacted. Two passed on the opportunity after initial due diligence. The other two presented proposals containing collateral and guaranty terms which were less advantageous or

otherwise could simply not be satisfied by the Debtors. Thus, MidCap presented the only viable program for postpetition financing.

**B. The Economic Terms of the Postpetition Financing;
DIP Liens and Superpriority Claim**

47. Under the proposed DIP Credit Agreement, the DIP Lender will make cash advances and other extensions of credit in a maximum principal amount not to exceed \$33.0 million on a revolving credit (\$23 million) and term basis (\$10 million) under and subject to the terms and conditions of DIP Documents.

48. The proceeds of the DIP Revolving Facility and DIP Term Loan under the DIP Documents will be used by the Debtors to: (i) repay the Prepetition Revolving Loan Obligations owing to MidCap Funding; (ii) pay the fees and expenses due DIP Agent under the DIP Credit Agreement; (iii) pay all Prepetition Term Loan Obligations as they become due under the Prepetition Term Credit Agreement; (iii) for general working capital purposes and general corporate purposes relating to the postpetition operations; and (iv) the costs and expenses associated with these Chapter 11 Cases, including the fees, costs, expenses and disbursements of professionals retained by the Debtors and any statutory committee appointed in these Chapter 11 Cases (the “Committee”), and other bankruptcy related costs as allowed by the Court, including amounts payable pursuant to 28 U.S.C. § 1930(a)(6) and any fees payable to the Clerk of the Bankruptcy Court, all in accordance with the terms of the Budget.

49. The proposed DIP Revolving Facility will operate in two stages. First, under the proposed Interim Order, the initial loans and advances, as limited by the terms of the DIP Revolving Loan Agreement, will be used to pay for the Debtors’ working capital needs and operating requirements prior to the entry of the Final Order, pursuant to the Budget. Upon approval at the final hearing (the “Final Hearing”) and subject to and upon entry of the Final

Order, the Debtors seek on a final basis to use proceeds of the DIP Revolving Facility to refinance the Prepetition Revolving Loan Obligations. However, until entry of the Final Order, the Debtors shall pay to MidCap Funding, as adequate protection payments, all of the proceeds of any Prepetition Accounts collected, and MidCap Funding shall apply such proceeds to the reduction of the Prepetition Revolving Loan Obligations. Upon entry of the Final Order, any remaining availability under the DIP Revolving Facility, together with the proceeds of the DIP Term Loan, will become available for the Debtors' use subject to the DIP Documents.

50. The other significant terms of the DIP Financing and DIP Documents include the following⁷:

(a) DIP Revolving Facility: The DIP Revolving Facility shall be in the maximum amount of \$23 million. Funding is based on the Borrowing Base. Subject to certain limitations in the DIP Revolving Credit Agreement, the Borrowing Base shall be: (i) the product of (A) eighty-five percent (85%) multiplied by (B) the aggregate net amount at such time of the Eligible Accounts; minus (ii) the amount of any reserves and/or adjustments provided for in the DIP Revolving Loan Agreement (including, without limitation, the Carve-Out Reserve⁸ and the Term Loan Reserve); provided, that (X) at no time shall the Borrowing Base for SSMC exceed \$16,000,000, (Y) at no time shall the Borrowing Base for SECC exceed \$2,000,000, and (Z) at no time shall the Borrowing Base for MVH exceed \$5,000,000. DIP Revolving Loans shall be subject to Agent's continuing right to withhold from the Borrowing Base reserves,

⁷ The terms and conditions set forth herein are qualified in their entirety by reference to the provisions of the DIP Documents, copies of which are available upon request to Counsel for the Debtors. The description of the terms of the DIP Documents set forth in this Motion is provided for the convenience of the Court and the parties-in-interest. In the event of any inconsistency between the description of the terms of the DIP Documents contained in this Motion and the actual DIP Documents, the terms of the DIP Documents shall govern.

⁸ The "Carve Out" shall encompass the following expenses: (a) following the occurrence of an Event of Default: (i) allowed fees, and reimbursement for disbursements of professionals retained by the Debtors (the "**Debtors' Professional Fee Payments**") in an aggregate amount for all the Debtors' Professional Fee Payments not to exceed [\$250,000] incurred after the Triggering Event; (ii) allowed fees and reimbursements for disbursements of professionals retained by any Committee appointed by this Court (the "**Committee's Professional Fee Payments**") in an aggregate amount for all of the Committee's Professional Fee Payments not to exceed [\$150,000] incurred after an Event of Default (collectively, (i) and (ii), the "**Carve Out Amount**"); (iii) quarterly fees pursuant to 28 U.S.C. § 1930(a)(6) and any fees payable to the clerk of the Bankruptcy Court; and (iv) fees payable to a chapter 7 trustee in an aggregate amount not to exceed [\$15,000]; and (b) without reducing the Carve Out Amount, all Debtors' Professional Fee Payments and Committee's Professional Fee Payments allowed, or subsequently allowed, and payable under sections 330 and 331 of the Bankruptcy Code, to the extent incurred prior to such Event of Default (the "Pipeline Period"). Nothing herein shall be construed as a waiver of the right of the Lender to object to the allowance of any Professional Fees and Disbursements. The Carve Out shall be senior to the DIP Liens and the Replacement Liens.

and to increase and decrease such reserves from time to time if and to the extent that in Agent's good faith credit judgment and discretion such reserves are necessary. Debtors shall maintain an average Minimum Balance of 85% of the average Borrowing Base for the preceding month.

(b) Term Loan Facility. The DIP Term Loan shall be in principal amount of \$10 million.

(c) Interest, Fees and Expenses: Interest on the outstanding balance of the DIP Revolving Loans shall be payable monthly in arrears at an annual rate of 30-day, reserve adjusted, LIBOR (subject to a 2.50% floor) plus 7.50%, reset monthly. Interest on the outstanding balance of the DIP Term Loan shall be payable monthly in arrears at an annual rate of 30-day, reserve adjusted, LIBOR (subject to a 2.50% floor) plus 6.50%, reset monthly. Interest shall be calculated on the basis of the actual number of days elapsed in a 360 day year. Funds transferred from the Payment Account for application to any DIP Revolving Loans shall be subject to a six business day clearance period and Interest shall accrue on the Revolving Loans during such period. Debtors shall also pay the following fees monthly in arrears: (i) a collateral management fee of 1.20% per annum on the average outstanding balance of the Revolving Loans (which shall not be less than the Minimum Balance; (ii) an unused line fee equal to 0.50% per annum of the average unused portion of the Revolving Loan Commitment; (iii) a non-refundable origination fee equal to 1.0% of the Revolving Loan Commitment; (iv) a fully earned exit fee due upon the indefeasible payment in full of all Obligations equal to 2.0% of the Revolving Loan Commitment; (v) the costs and expenses (including the fees of counsel and other professionals) in connection with the negotiation, preparation, approval and closing of the DIP Documents and the enforcement of any rights thereunder; and (vi) the fees and expenses of Agent's audits, wire fees and late charges

(d) Collateral for the DIP Revolving Facility: As security for the full and timely payment of DIP Revolving Facility, MidCap, as the DIP Revolving Loan Agent, shall be granted, pursuant to sections 364(c) and (d): (i) first priority security interests in and liens on, and pledges of, such now existing and hereafter acquired assets of SSMC and SECC to the same extent as described in the Prepetition Revolving Credit Agreement; (ii) first priority security interests in and liens on the "Collateral" (as defined in Schedule 9.1 of the DIP Revolving Loan Agreement); (iii) subject and subordinate to any pre-existing liens (collectively, the "Permitted Liens"), including the first mortgage lien presently existing in favor of Sun Life, any judgment liens in favor of the 1199 Funds and any other pre-existing liens of any Other Judgment and Lien Creditor, security interests in and liens on all of the real and personal property comprising the Sound Shore Medical Center located at 16 Guion Place, New Rochelle, NY; (iv) subject and subordinate to any pre-existing liens, including the first mortgage lien presently existing in favor of HVB, any liens in favor of DASNY and PBGC, any judgment liens in favor of the 1199 Funds, and any other pre-existing lines of any Other Judgment and Lien Creditor, security interests in and liens on all of the real and

personal property comprising the Mount Vernon Hospital located at 12 N 7th Ave, Mt. Vernon, NY 10550; (v) subject and subordinate to any pre-existing liens, including the first mortgage lien presently existing in favor of MidCap Funding as per that certain Subordination Agreement, as may have been amended from time to time, made as of June 8, 2011 by and among DASNY and MidCap Funding, as successor to the Prepetition Term Loan Agent, any liens in favor of DASNY and PBGC, and any other pre-existing lines of any other Judgment and Lien Creditor, security interests in and liens on all of the real and personal property comprising Howe Avenue Nursing Home, d/b/a Schaffer Extended Care Center located at 16 Guion Place, New Rochelle, NY 10801; and (vi) all proceeds and products of the foregoing.⁹ (collectively, "**DIP Revolving Loan Facility Collateral**") The DIP Revolving Loan Facility Collateral excludes any and all causes of action and proceeds therefrom of the Debtor or any of their estates under sections 544, 545, 547, 548, 550 and 724 of the Bankruptcy Code (the "**Avoidance Actions**").

(e) Collateral for the Term Facility. The DIP Term Loan Agent, as security and collateral for the DIP Term Loan, shall receive: an irrevocable, unconditional, transferable standby letter of credit, with an initial expiration date of not less than one (1) year and with an evergreen provision, provided by MMC in favor of DIP Term Loan Agent; (the "**DIP Term Loan Collateral**") and together with the DIP Revolving Facility Collateral, the "**DIP Collateral**").

(f) Superpriority Administrative Expense Claim; Carve-Out; Waiver under Section 506(c). Pursuant to section 364(c)(1) of the Bankruptcy Code, the DIP Obligations shall have the status of an allowed superpriority administrative expense claim in each of the Chapter 11 Cases and any Successor Cases (collectively, the "**DIP Superpriority Claims**"). The DIP Superpriority Claims shall be subordinate in payment and priority only to the Carve Out, and shall otherwise have priority over any and all administrative expenses and unsecured claims against the Debtors or their estates in any of the Chapter 11 Cases and any Successor Cases, at any time existing or arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to Bankruptcy Code §§ 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c), 507(a), 507(b) (except as set forth herein), 546(c), 546(d), 726 (to the extent permitted by law), 1113 and 1114, and any other provision of the Bankruptcy Code. The DIP Superpriority Claims shall not extend to (i)

⁹ As set forth more fully in the Revolving Loan Agreement, in connection with the proposed sale of the Debtors' assets, MidCap required, and MMC as purchaser agreed, to guarantee any shortfall in the collection of outstanding obligations under the DIP Revolving Loan Agreement after seventy-five (75) days after closing of such sale up to a maximum amount \$5,000,000, plus any costs of enforcement, and secure all such guaranteed obligations with a first priority security interest on all "Collateral" (as defined in Schedule 9.1 of the DIP Revolving Loan Agreement) generated by or in connection with the operation of the Debtors' assets acquired in such sale pursuant to a guaranty in a form mutually agreeable to DIP Agent and MMC. In addition, as the stalking horse bidder, MidCap required, and MMC agreed to provide, inter alia, an additional guaranty in an amount of \$7 million to \$10 million to collateralize Postpetition Term Loan Obligations. Absent the Guaranty, MidCap would not have provided the DIP Financing.

commercial tort claims or (ii) any Avoidance Actions under chapter 5 of the Bankruptcy Code except claims arising under section 549 of the Bankruptcy Code.

(g) Use of Proceeds: The proceeds of the DIP Financing will be used to: (i) pay in full the Prepetition Revolving Loan Obligations owing to MidCap; (ii) pay the fees and expenses due DIP Agent under the DIP Credit Agreement; (iii) pay all Prepetition Term Loan Obligations as they become due under the Prepetition Term Credit Agreement; (iv) for general working capital purposes and general corporate purposes relating to the postpetition operations; and (v) the costs and expenses associated with these Chapter 11 Cases, including the fees and expenses of counsel and other retained professionals, all in accordance with the terms of the Budget.

(h) Limitation on Use of Proceeds. The DIP Credit Agreement provides that no portion of the Revolving Loans, the Collateral, the Carve-Out funds or cash collateral of Agent or Lenders may be used, among other things, to fund any activities: (i) preventing, hindering, or delaying any of the Agent's or the Lenders' enforcement or realization upon any of the Collateral; (ii) using or seeking to use Agent's or any Lenders' cash collateral or selling or otherwise disposing of any of the Collateral without the consent of the Agent and the Required Lenders; (iii) objecting or challenging in any way any claims, Liens, or Collateral; (iv) asserting any claims or causes of action including, without limitation, any action under Chapter 5 of the Bankruptcy Code, against any of Agent, the Lenders, or any of their respective agents, attorneys, advisors, professionals, officers, directors, and employees; (v) prosecuting an objection to, or contesting in any manner, or raising defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the Obligations, the Liens of the Agent or Prepetition Agent securing the Obligations or the Prepetition Obligations, or (vi) taking any action which (A) has or could have the effect of adversely modifying or compromising the rights and remedies of the Agent, the Lenders, Prepetition Agent, or Prepetition Lenders, (B) is contrary, in a manner that adverse to the Agent, the Lenders, Prepetition Agent or the Prepetition Lenders, to any term or condition set forth in any of the Financing Documents or the Financing Orders or (C) results in the occurrence of an Event of Default.

(i) Joint and Several Liability. Each Borrower shall be jointly and severally liable for all of the obligations of all Borrowers under this Agreement. Each Borrower acknowledges, that the credit facilities would not be made available on the terms herein in the absence of the collective credit of all of the Debtors named as the Borrowers herein, the joint and several liability of all such Debtors, and the cross-collateralization of the collateral of all such Debtors.

(j) Lockboxes and Cash Management. Debtors shall maintain their cash management procedures reasonably satisfactory to MidCap, including blocked account and lockbox agreements that will provide for full dominion and automatic daily sweeps into a collection account controlled by the Agent.

(k) Term: All obligations and commitments of DIP Lender under the Interim Order and Final Order, and the Debtor's authorization to borrow funds pursuant to the DIP Documents shall terminate on the earlier of (i) twelve (12) months from the date of closing or if, earlier, the Asset Sale Effective Date, or (b) the occurrence of an Event of Default (as defined below) (in either case, the "**Termination Date**").

(l) Termination and Default: Each of the following, among other items set forth in the DIP Credit Agreement, shall constitute a Default (an "**Event of Default**") under the DIP Documents: (a) a failure to pay when due any principal, interest, premium or fee or other amount due under any of the DIP Loan Documents, (ii) there shall occur any default in the performance of or compliance of any of the terms, covenants and conditions of the DIP Documents which are not cured within the applicable grace period; (iii) material breach of any representation, warranty, certification or statement made in any of the DIP Documents; (iv) any Lien created by any of the DIP Documents shall at any time fail to constitute a valid and perfected Lien on the Collateral purported to be encumbered thereby; (v) the institution of criminal proceedings against any Borrower or Guarantor; (vi) a default or event of default occurs under any Guarantee of any portion of the Obligations; (vii) the occurrence and continuance unremedied for more than ten (10) days of any fact, event or circumstance (other than the filing of the Bankruptcy Cases) that could reasonably be expected to result in a Material Adverse Effect; (viii) if any of the Chapter 11 Cases is converted to a case under Chapter 7 of the Bankruptcy Code, or any of the Chapter 11 Cases is dismissed; (ix) if a Chapter 11 trustee or an examiner with enlarged powers relating to the operations of the Borrowers' business is appointed in any of the Chapter 11 Cases; (x) except with respect to the Carve-Out, the grant to any other person of any super-priority administrative expense claim or any Lien that is pari passu with or senior to those of the Agent and the Lenders; (xi) if any Borrower or Guarantor shall fail to comply with or perform any of the terms, conditions, covenants or other obligations under the Interim Order and the Final Order; (xii) the amendment, modification, reversal, revocation, issuance of a stay or order to vacate or supplement the Interim Order, the Final Order, the Asset Sale Order or any other order of the Bankruptcy Court affecting DIP Loan Document or the Asset Sale, in any manner not acceptable to Agent and the Required Lenders; (xiii) Debtors' failure to satisfy certain Reorganization Milestones; and (xiv) Debtors' breach of the Budget Compliance Covenant.

(m) Rights and Remedies on Default. Upon an Event of Default, the DIP Agent, may declare: (a) all DIP Obligations to be immediately due and payable; (b) the termination, reduction or restriction of any further lending commitment; and/or (c) the termination of the DIP Credit Agreement and any other DIP Document (a "**Termination Declaration**"). The DIP Obligations become due and payable, without notice or demand, on the Termination Declaration Date. Notwithstanding, only beginning on the seventh (7th) day after the Termination Declaration Date (such seven day period being the "**Remedies Notice Period**"), the DIP Agent shall be entitled to exercise all rights and remedies against the DIP

Collateral in accordance with the DIP Documents During the first five (5) days of the Remedies Notice Period, the Debtors or any Committee appointed by this Court shall be entitled to: (i) continue to use cash on hand, including any Cash Collateral, in accordance with the Budget; and (ii) seek an emergency hearing with the Court for the sole purpose of contesting whether an Event of Default has occurred and/or is continuing. Unless the Court determines during the Remedies Notice Period that an Event of Default has not occurred and/or is not continuing, the automatic stay shall automatically be terminated at the end of the Remedies Notice Period without further notice or order, and the DIP Agent shall be permitted to exercise all remedies set forth in the DIP Documents.

(n) Adequate Protection Obligations: The DIP Documents also provide for the adequate protection for the Secured Parties (as described more fully below), including the granting of replacement liens on the Postpetition Collateral.

(o) Bankruptcy Court Approval: The Lender's commitment to fund is subject to entry of a Final DIP Order that is satisfactory to the Lender in its sole discretion.

C. Use of Cash Collateral

51. In the ordinary course of business, the proceeds of substantially all of the Debtors receivables, including the Prepetition Accounts and any payments from the rental from the hospital offices and Parking Lots, are deposited in the lockbox accounts and MidCap Funding, as prepetition lender, applies the Prepetition Accounts against its loans and passes through and reimburses the Debtors' operating accounts with the non-collateral proceeds such as lease payments and parking fees. These funds had been used by the Debtors to fund ongoing operations. By this Motion, the Debtors propose to use the proceeds of the Secured Creditors' and MidCap Funding's Cash Collateral in accordance with the Budget, and to provide the Secured Creditors and MidCap Funding with Adequate Protection Liens (as defined below).

52. Cash Collateral shall include: (a) all cash proceeds of Prepetition Collateral in which the Secured Creditors and MidCap Funding have an interest, whether such interest existed as of the Petition Date or arises thereafter, and (b) proceeds of the MidCap Prepetition Debt or the Prepetition Obligations. With respect to collections of Cash Collateral after the Petition Date

that are proceeds of the MidCap Prepetition Collateral, the Debtors propose that such proceeds be applied against the Prepetition Revolving Loan Obligations and, after payment, in full of the Prepetition Revolving Loan Obligations, such amount shall be remitted to the DIP Revolving Agent for application against the DIP Revolving Facility Obligations.

D. Granting of Additional and Adequate Protection Liens

53. As noted above, the Debtor's obligations under the DIP Documents will be secured by (a) first priority liens on, and security interests in, all of the Collateral, pursuant to sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code subject and junior only to (i) the Carve Out, (ii) the senior Permitted Liens.

54. Pursuant to sections 361, 364 and 507(b) of the Bankruptcy Code, as adequate protection to the Secured Creditors and MidCap Funding against any diminution of their respective interests in the Prepetition Collateral (to the extent they hold valid and perfected Prepetition Liens therein) resulting from, among other things, their subordination to the Carve Out and the DIP Liens and the Debtors' use, sale or lease of such Prepetition Collateral (the "**Diminution in Value**"), the Debtors propose to grant the Secured Creditors and MidCap Funding automatically perfected, replacement liens on the DIP Collateral (an "**Adequate Protection Lien**") to the same extent and priority of their respective Prepetition Liens and against each Debtor in which such Secured Creditor and MidCap Funding holds an Adequate Protection Lien (an "**Applicable Debtor**"). The Adequate Protection Liens shall be deemed a Permitted Lien within the meaning of the DIP Revolving Loan Agreement. The Adequate Protection Liens shall be valid and enforceable against any trustee or other estate representative appointed in the Chapter 11 Cases or any Successor Cases.

55. The Adequate Protection Liens proposed to be granted to the Secured Creditors and MidCap Funding shall not be (i) subject to any lien that is avoided and preserved for the

benefit of the Debtors' estates under section 551 of the Bankruptcy Code or (ii) subordinated to or made *pari passu* with any other lien under section 363 and 364 of the Bankruptcy Code.

E. Granting of Super-Priority Administrative Expense Claims

56. Only to the extent Adequate Protection Liens fail to protect the Secured Creditors and MidCap Funding against any Diminution in Value, the Secured Creditors and MidCap Funding shall be entitled, pursuant to sections 503(b) and 507(b) of the Bankruptcy Code, to an allowed superpriority administrative expense claim in each of the Chapter 11 Cases or any Successor Cases of the Applicable Debtors (collectively, the "**Prepetition Secured Creditor Superpriority Claims**"). The Prepetition Lender Superpriority Claims, if permitted, shall be subordinate in payment and priority only to the DIP Superpriority Claims and the Carve Out, and shall (a) otherwise have priority over any and all administrative expenses and unsecured claims against the Debtors or their estates in any of the Chapter 11 Cases and any Successor Cases, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to Bankruptcy Code §§ 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c), 507(a), 507(b) (except as set forth herein), 546(c), 546(d), 726 (to the extent permitted by law), 1113 and 1114, and any other provision of the Bankruptcy Code. Notwithstanding, the Prepetition Secured Creditor Superpriority Claims shall not extend to (i) commercial tort claims or (ii) any Avoidance Actions (except claims under section 549 of the Bankruptcy Code).

F. Carve Out

57. Notwithstanding the granting of the DIP Liens, the Adequate Protection Lien, the DIP Superpriority Claims, and the Prepetition Secured Creditor Superpriority Claim, the Carve Out shall have priority in payment over the claims of the DIP Agent, the DIP Lender and the Secured Creditors, such that all proceeds received by such parties shall be subject to the prior payment of the Carve Out.

G. Extraordinary Provisions of the Proposed DIP Loan Facility

58. Pursuant to this Court's Guidelines for Financial Requests, adopted by General Order No. M-274, the Debtors are required to highlight any "Extraordinary Provisions" contained in the proposed DIP Documents. The Extraordinary Provisions are as follows:

(i) "Roll Up": As discussed above, in order to increase the Borrowing Base and to eliminate the delay in providing funds, the Debtors and MidCap have agreed that on entry of the [Final] Order, the DIP Revolver Agent shall advance sufficient DIP Revolving Loans to repay all Prepetition Revolving Loan Obligations.¹⁰ The Debtors acknowledge that the Prepetition Liens granted to MidCap Funding pursuant to and in connection with the Prepetition Revolving Credit Agreement are: (i) valid, binding, perfected, enforceable, first-priority liens and security interest (the "MidCap Prepetition Liens") in the MidCap Prepetition Collateral; and (ii) not subject to avoidance, recharacterization, or subordination pursuant to the Bankruptcy Code or applicable nonbankruptcy law. Further, it appears the value of the MidCap Prepetition Collateral far exceeds the aggregate amount of the indebtedness, such that MidCap does not have any material collection risk with respect thereto. The Financing Orders shall expressly provide that the Court shall have the right to unwind the repayment of the Prepetition Revolving Loan Obligations should there be a timely and successful challenge to the validity, enforceability, extent, perfection or priority of the MidCap's liens in the MidCap Prepetition Collateral, or a determination that MidCap was undersecured as of the Petition Date.

(ii) "Section 506(c) Waivers": The DIP Credit Agreement is conditioned upon the Financing Orders providing that the surcharge provisions of section 506(c) of the Bankruptcy Code shall not be imposed upon DIP Agent and the DIP Lender or any of their property or Collateral. The Carve Out includes, however, unpaid Court allowed fees and expenses of a trustee under section 726(b) of the Bankruptcy Code, in an amount not to exceed \$15,000.

(iii) "Lien Challenges": In addition to the limitation on use of the proceeds of the DIP Financing as set forth in Paragraph 50(h) above, the Debtors waive the right to challenge the validity, enforceability, perfection and priority of the MidCap Prepetition Revolving Loans and MidCap Prepetition Liens. Notwithstanding, the Committee and any other party in interest may file a complaint seeking to invalidate, subordinate, or otherwise challenge (collectively, the "Challenges") the MidCap Prepetition Liens; provided, however, that any such Challenges must be filed in this Court within the later of sixty (60) days after the entry of a Final Order or any subsequent date ordered by the Bankruptcy Court, or that may be agreed to in writing by MidCap Funding with respect to the time to file any such Challenges. If no such Challenges are filed within such time

¹⁰ The MidCap Prepetition Term Loan will not be repaid with the proceeds of the DIP Financing.

period, then any and all Challenges shall be, without further notice to or order of the Court, deemed to have been forever released and waived as to such Committee and other parties in interest.

(iv) The Lenders would not have agreed to provide financing to the Debtor absent such extraordinary provisions.

V. EFFORTS TO OBTAIN FINANCING

59. Prior to the Petition Date, the Debtors explored other potential DIP financing arrangements but no other parties proposed more favorable terms than those provided in the DIP Documents with MidCap. Four other potential lenders were contacted. Two passed on the opportunity after initial due diligence. The other two presented proposals containing collateral and guaranty terms which were less advantageous or otherwise could simply not be satisfied by the Debtors.

60. Thus, MidCap presented the only viable program for postpetition financing to meet the Debtors working capital needs within the Debtors' time constraints and without some of the contingencies which were tied to the other proposals. As negotiated, the DIP Financing will enable the Debtors to maintain their infrastructure, pay their post-petition operating expenses and costs of case administration and maximize the value of their assets and properties. The Debtors' ability to effectuate a sale(s) or other transaction(s) and realize the maximum value for the Debtors' assets is dependent upon its ability to obtain the postpetition credit sought herein so that the assets and properties can be effectively marketed. The DIP Financing is the best alternative available to the Debtors.

61. The Debtors are otherwise unable to obtain an adequate unsecured revolving credit facility allowable under section 503(b)(1) of the Bankruptcy Code. The DIP Agent and DIP Lender also conditioned all advances to be made under the DIP Documents upon the grant to it of (a) the DIP Superpriority Claim allowable under section 503(b) of the Bankruptcy Code

with priority over any and all expenses and claims of any kind or nature whatsoever specified in any other section of the Bankruptcy Code, including, without limitation, sections 503(b) and 507(b) of the Bankruptcy Code, subject only to the Carve Out, (b) first priority and senior liens on and security interests in the Postpetition Collateral (subject only to Permitted Liens and the Carve Out), all in accordance with sections 364(c)(1), 364(2) and 364(3) of the Bankruptcy Code, and (c) the granting of the Priming Lien in a portion of the Postpetition Collateral, senior in right to the Secured Parties in accordance with section 364(d) of the Bankruptcy Code.

62. Given the nature of the Debtors' financial condition, the Debtors submit that the financing proposed to be provided under the DIP Credit Agreement is fair and reasonable and represents the best financing available to the Debtors under all of the circumstances herein. Certainly, without the DIP Financing, it is likely that the Debtors would have to close the Medical Centers, which would have a tragic effect on an underserved population that relies heavily upon the facilities.

VI. BASIS FOR RELIEF REQUESTED

63. Section 364 of the Bankruptcy Code distinguishes among (a) obtaining unsecured credit in the ordinary course of business, (b) obtaining unsecured credit out of the ordinary course of business, and (c) obtaining credit with specialized priority or security. If a debtor in possession cannot obtain postpetition credit on an unsecured basis, the court may authorize the debtor to obtain credit or incur debt, repayment of which is entitled to superpriority administrative expense status or is secured by a lien on unencumbered property, a junior lien on encumbered property, or a combination of these protections. 11 U.S.C. § 364(c). A debtor in possession may also obtain postpetition credit secured by liens senior to prior existing liens pursuant to Section 364(d) of the Bankruptcy Code. Section 363(c)(2) of the Bankruptcy Code

also contemplates that the Bankruptcy Court may authorize the use of cash collateral without the consent of secured parties. Courts may authorize such use if adequate protection is provided pursuant to section 363(e).

A. The DIP Financing Should be Approved Under Section 364 of the Bankruptcy Code

64. The statutory requirement for obtaining postpetition credit under section 364(c) is a finding, made after notice and a hearing, that the debtor in possession is “unable to obtain unsecured credit allowable under Section 503(b)(1) of the Bankruptcy Code as an administrative expense.” 11 U.S.C. § 364(c). See e.g., In re Photo Promotion Assocs., 89 B.R. 328, 333 (Bankr. S.D.N.Y. 1988) (Section 364(c) financing is appropriate when the debtor in possession is unable to obtain unsecured credit allowable as an ordinary administrative claim.)

65. In these circumstances, “[t]he statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable.” Bray v. Shenandoah Fed. Sav. & Loan Assn. (In re Snowshoe Co.), 789 F.2d 1085, 1088 (4th Cir. 1986); see also In re 495 Cent. Park Ave. Corp., 136 B.R. 626, 630 (Bankr. S.D.N.Y. 1992). A debtor need only demonstrate “a good faith effort that credit was not available without” the protections of section 364(c) and 364(d). See e.g. In re Snowshoe, 789 F.2d. at 1088. When there are few lenders likely, able, or willing to extend the necessary credit to the debtor, “it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing.” In re Sky Valley, Inc., 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), aff’d sub nom, Anchor Sav. Bank FSB v. Sky Valley, Inc., 99 B.R. 117,120 n.4 (N.D. Ga. 1989).

66. As described in this Motion and the Spicer Affidavit, the Debtors’ management has concluded after appropriate investigation and analysis that DIP Agent’s and DIP Lender’s proposal was the best -and only viable alternative available to them for postpetition financing. Postpetition financing cannot realistically be procured on an unsecured basis. Negotiations with

the DIP Agent and DIP Lender have been arms' length and conducted on a good faith basis. The DIP Agent and the DIP Lender are only willing to extend Postpetition Financing on the terms outlined above, including the additional protections of Liens on the Collateral subject only to Permitted Liens and the Carve Out.

67. Given the immediacy of the Debtors' financing needs, and the pressing need to move the sale process quickly to stem consistent and mounting losses, the Debtors were required to move quickly and in a targeted manner to ensure that the Debtors would be able to negotiate a new financing facility to preserve ongoing operations. There is no reason to believe that a different postpetition lender offering terms more favorable than DIP Agent and DIP Lender could have been located, and certainly not before all of the Debtors' limited cash resources were depleted. The Debtors' decision to proceed with the proposed DIP Financing with DIP Agent and DIP Lender was a reasonable exercise of business judgment.

B. The Priming Lien Under the Postpetition Financing Should be Approved Under Section 364(d) of the Bankruptcy Code

68. The Debtors also seek approval of the DIP Financing under section 364(d)(1) of the Bankruptcy Code to permit the Debtors to grant priming liens on a portion of the Prepetition Collateral, specifically, the Postpetition Accounts (collectively, the "Primed Accounts"). The statutory requirement for obtaining postpetition credit under section 364(d)(1) of the Bankruptcy Code is a finding, made after notice and hearing, that the debtors in possession are "unable to obtain such credit otherwise." In addition, the secured creditors whose liens are being "primed" by a new postpetition lender under section 364(d) of the Bankruptcy Code must be provided with adequate protection of their interests in collateral. See In re Swedeland Dev. Group, Inc., 16 F. 3d 552, 564 (3d Cir. 1994) (en banc) (noting that adequate protection is required under section 364(d)(1)(B) of the Bankruptcy Code to ensure that the creditor receives the value for which it

bargained pre-bankruptcy); In re Dunes Casino, 69 B.R. 784, 793 (Bankr. D.N.J. 1986) (noting that “[a]dequate protection is designed to preserve the secured creditor’s position at the time of the bankruptcy”). The proposed DIP Liens would “prime” the alleged lien of the IRS.

69. As set forth above, to obtain postpetition financing, the Debtors and their advisors approached several commercial lenders which provide financing to distressed entities and chapter 11 debtors. After such inquiry, the Debtors determined that no other financing is available on terms better than proposed under the DIP Credit Agreement based on responses that the Debtors received.

70. In addition, under section 364(d)(1) of the Bankruptcy Code, if interests in collateral are to be “primed,” then such “primed” parties must be adequately protected. 11 U.S.C. §364(d)(1). The principal purpose of adequate protection is to safeguard the interests of the secured creditor in the collateral against diminution in the value of that interest postpetition. See In re 495 Central Park Avenue Corp., 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992) (stating that the goal of adequate protection is to safeguard the secured creditor from diminution in value of its interest during the chapter 11 case); In re Continental Airlines, Inc., 154 B.R. 176, 180 (Bankr. D. Del. 1993) (same); In re Beker Indus Corp., 58 B.R. 725, 738 (Bankr. S.D.N.Y. 1986) (same).

71. Courts determine the means for providing adequate protection on a case by-case basis. See In re Mosello, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996); In re Realty Southwest Assocs., 140 B.R. 360 (Bankr. S.D.N.Y. 1992); In re Beker Indus. Corp., 58 B.R. 725 (Bankr. S.D.N.Y. 1986); see also In re O’Connor, 808 F.2d 1393, 1396 (10th Cir. 1987); In re Martin, 761 F.2d 472 (8th Cir. 1985).

72. The means by which adequate protection can be provided are addressed in section 361 of the Bankruptcy Code. Section 361 sets forth three non-exclusive forms of adequate protection: (a) lump sum cash payments to the extent the use of property results in a diminution in value of an entity's interest in property; (b) provision of additional or replacement liens to the extent the use of property results in a diminution in value of an entity's interest in property; and (c) such other relief as will result in a entity realizing the indubitable equivalent of its interest in property. 11 U.S.C. § 361. As the foregoing is neither exclusive nor exhaustive, there is a great deal of flexibility in terms of what may constitute adequate protection. In re O'Connor, 808 F.2d 1393, 1396-97 (10th Cir. 1987). Ultimately, adequate protection is determined on a case-by-case basis in light of the particular facts and circumstances presented. Id. (stating that "the courts have considered 'adequate protection' a concept which is to be decided flexibly on the proverbial 'case-by-case' basis"); In re 495 Central Park, 136 B.R. at 631 (stating that, although section 361 presents some specific illustrations of adequate protection, the statute is not exclusive and suggests a broad and flexible definition); In re Constable Plaza Assocs., L.P. 125 B.R. 98, 105-06 (Bankr. S.D.N.Y. 1991) (authorizing debtor to use cash collateral to operate and maintain office building, thereby protecting secured lender's collateral and existing equity cushion); Pagano v. Cooper (In re Cooper), 22 B.R. 718, 720 n. 3 (Bankr. E.D. Pa. 1982) ("While "adequate protection" is not defined in the Bankruptcy Code, the legislative history of section 361 reflects the intent of Congress to give the courts the flexibility to fashion the relief in light of the facts of each case and general equitable principles." (citing H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 339 (1977))).

73. In this case, the Debtors do not believe the IRS holds valid Tax Liens against the Postpetition Accounts of SSMC or MVH. There has been a waiver of penalties by the IRS

against MVH and SSMC, and, upon information and belief, the alleged liens were intended to only cover such now discharged penalty obligations. Further, the Debtors contend such liens are voidable as preferences having attached within 90 days of the filing. Finally, even if the Tax Liens are valid, the IRS would remain adequately protected with a junior continuing lien on the SSMC and MVH Prepetition Accounts and a junior Adequate Protection Lien in the SSMC and MVH Postpetition Accounts. SSMC's and MVH's combined average net collectable accounts receivable base is in excess of \$26 million, far in excess of the \$21 million MidCap Postpetition Revolving Loan Commitment relating to these two entities. The Tax Liens at a maximum do not exceed \$1.5 million. The Debtors submit that their equity in the Accounts constitutes sufficient adequate protection for the IRS to the extent its Tax Liens are valid.

74. Moreover, as set forth above, the holders of Prepetition Liens, including the IRS, will be granted Adequate Protection Liens to the extent of any Diminution in Value of their interests in their Prepetition Collateral as well as a Prepetition Secured Creditor Superpriority Claim. The Debtors submit that the foregoing suffices as adequate protection in a case that is anticipated to be expeditiously conducted.

**C. The Postpetition Financing is Necessary to Preserve the
Assets of the Debtors' Estates**

75. The Debtors' need for immediate access to a new working capital facility is apparent. As described above and in the Spicer Affidavit, the immediate access to credit is necessary to meet the substantial day-to-day operating needs associated with the operation of the Hospital while the sale process proceeds. Continuation of operations with no deterioration in performance or census is a precondition to the closing. Thus, access to sufficient cash is therefore critical to the continuation of patient care. In the absence of immediate access to cash and credit, the Debtor's suppliers and third party vendors will likely refuse to sell critical

supplies to the Debtor on reasonable trade terms on which the Debtor's business depend, and absent which the Debtor will be unable to meet its current obligations.

D. The Terms of the DIP Financing are Fair, Reasonable and Appropriate and Represent the Sound Exercise of Business Judgment

76. As outlined in detail, to the extent possible the Debtor has canvassed the available credit markets and has been unable to obtain financing on an unsecured basis or on terms that were more advantageous. In the Debtor's business judgment, the DIP Financing was the best financing option available under the circumstances of these cases.

77. The proposed terms of the DIP Financing were negotiated in good faith and at arms' length among the parties. They are fair, reasonable, and adequate in that the terms do not prejudice the powers and rights that the Bankruptcy Code confers for the benefit of all creditors, and they do not abridge the rights of other parties in interest. As contemplated by the policies underlying the Bankruptcy Code, the purpose of the DIP Financing is to enable the Debtors to maintain the value of their estates while formulating a confirmable plan of reorganization. See generally, In re First S. Sav. Assn., 820 F.2d 700, 710-15 (5th Cir. 1987).

78. Bankruptcy courts routinely defer to the debtor's business judgment on most business decisions, including the decision to borrow money. In re Lifeguard Indus., Inc., 37 B.R. 3, 17 (Bankr. S.D. Ohio 1983) (Business judgments should be left to the board room and not to this Court.). See also, In re Curlew Valley Assocs., 14 B.R. 506, 511-14 (Bankr. D. Utah 1981) (In general, a bankruptcy court should defer to a debtor-in-possession's business judgment regarding the need for and proposed use of funds, unless such decision is arbitrary and capricious). Courts generally will not second-guess a debtor in possession's business decisions when those decisions involve "a business judgment made in good faith, upon a reasonable basis,

and within the scope of his authority under the Code.” Curlew Valley, 14 B.R. at 513-14 (footnotes omitted).

79. The Debtors submit that they have exercised their sound business judgment in determining the merits and necessity of the DIP Financing and have aptly demonstrated that its terms are fair and reasonable and are in the best interests of the Debtors’ estates. Accordingly, the Debtors should be granted the requested relief to borrow funds from the DIP Agent and DIP Lender on a secured and superpriority basis, pursuant to sections 364(c) and 364(d) of the Bankruptcy Code.

E. The Other Secured Creditors are Adequately Protected

80. The focus of the adequate protection requirement is to protect a secured creditor from diminution in the value of its interest in collateral during the reorganization process, not to compensate the creditor for the delay imposed by the bankruptcy on its ability to pursue non-bankruptcy remedies against the property. See In re Beker Indus. Corp., 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986); In re Saypol, 31 B.R. 796, 799-802 (Bankr. S.D.N.Y. 1983).

81. To the extent that the value of a debtor’s collateral as of the filing of the bankruptcy case exceeds the value of the claimed lien, such equity cushion can itself constitute adequate protection. See, e.g., In re Triplett, 87 B.R. 25, 26 (Bankr. W.D. Tex. 1988) (holding that an equity cushion is generally considered to be sufficient, although not necessary, to a finding of adequate protection);

82. Furthermore, where a debtor’s proposed use of cash collateral augments the value of the secured creditor’s collateral, adequate protection exists. See In re Pine Lake Village Apartment, 19 B.R. 819, 826 (Bankr. S.D.N.Y. 1982) (creditor had adequate protection where the debtor used cash collateral to maintain and preserve the value of the collateral). In fact, such use would generally give rise to a claim under section 506(c) of the Bankruptcy Code, which

provides that a debtor may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving such property, to the extent of any benefit to the holder of such claim. 11 U.S.C. § 506(c); see also, In re Trim-X, Inc., 695 F.2d 296 (7th Cir. 1982).

83. Adequate protection also exists for the Secured Creditors who are receiving Adequate Protection Liens in the DIP Collateral. Fundamentally, their positions will not change. The Debtor thus submits that the proposed adequate protection is fair and reasonable beyond any question.

F. Modification of the Automatic Stay is Warranted

84. As set forth more specifically in the Interim and Final Orders, the proposed DIP Financing contemplates a modification of the automatic stay pursuant to section 362 of the Bankruptcy Code to permit the DIP Agent and DIP Lender, in their sole discretion, (a) to file financing statements, deeds of trust, mortgages or other similar documents to evidence their respective security interests under the DIP Financing, the Interim Order, and the Final Order, (b) subject to certain notice requirements, to execute upon such security interests or exercise other remedies under the DIP Documents following an Event of Default under, or other termination of, the DIP Financing, and (c) to take other actions required or permitted by the DIP Documents. In addition, the proposed DIP Financing contemplates the further modification of the automatic stay in order to enable MidCap Funding to apply the proceeds of the MidCap Prepetition Collateral to the Prepetition Revolving Loan Obligations. Stay modification provisions of this sort are ordinary and usual features of a postpetition financing and, in the Debtors' business judgment, are reasonable under the circumstances of this Chapter 11 case. The Bankruptcy Court accordingly should modify the automatic stay to the extent contemplated by the Loan Documents, and the Emergency, Interim and Final Orders.

G. The Debtor's Request for Interim Relief is Appropriate

85. Pending the Final Hearing, the Debtors require immediate financing for, among other things, the purchase of new supplies, the funding of payroll obligations, the operation of their healthcare facilities and other working capital needs required for the provision of critical patient care. The Debtors' interim request represents the minimum amount of cash necessary to operate during the period prior to the Final Hearing. It is essential that the Debtors immediately stabilize their operations and resume paying ordinary operating expenses postpetition in order to minimize the damage occasioned by its current cash flow problems, facilitate the sale process, and maximize the value of its assets.

86. Absent immediate financing for their continuing business operations, the Debtors will not have any funding to pay operating expenses and, therefore, will be unable to continue to conduct their business pending the Final Hearing. Consequently, if the emergency relief sought herein is not obtained, the Debtor's attempt to continue operations without compromising patient care and ultimately realize the maximum values of their assets will likely be immediately, if not irreparably, jeopardized, to the detriment of their estates, their creditors and other parties in interest.

87. Accordingly, the Debtors request that, pending the Final Hearing, the Court conduct an interim hearing (the "**Interim Hearing**") as soon as practicable to consider the Debtor's request for authorization to use Cash Collateral and to obtain the DIP Financing in accordance with and pursuant to the terms and conditions contained in the DIP Documents and the Interim Order.

88. Bankruptcy Rule 4001 (b) and (c) permits a court to approve a debtor's request for use of cash collateral or to incur postpetition financing during the 15-day period following the filing of a motion requesting such authorization the extent "necessary to avoid immediate and

irreparable harm to the estate pending a final hearing.” Fed. R. Bankr. P. 4001(b)(2) and (c)(2). In examining requests for interim relief under this rule, courts apply the same business judgment standard applicable to other business decisions. See, e.g., Simasko, 47 B.R. at 449. After the 15-day period, a debtor is entitled to borrow those amounts that it believes prudent in the operation of its business. See, e.g., Simasko, 47 B.R. at 449. Under this standard, as described herein and in the Spicer Affidavit, the Debtors’ request for entry of the Interim and Final Orders, in the time periods and for the financing amounts requested herein, is appropriate.

VIII. NOTICE

89. Notice of this Motion where possible will be provided by facsimile, electronic transmission, overnight mail or hand delivery (except as noted otherwise) to (a) United States Trustee; (b) the Debtors’ material prepetition and postpetition secured lenders or any agent therefore; (c) the holders of the 30 largest unsecured claims on a consolidated basis; (d) the following state and local taxing and regulatory authorities: (i) the Centers for Medicare and Medicaid Services, (ii) the New York State Department of Health (“DOH”), (iii) the United States Attorney for the Southern District of New York, (iv) the Attorney General of the State of New York; (v) the Westchester County Attorney; (vi) the New Rochelle City Attorney, (vii) the Mount Vernon City Attorney; (viii) the Internal Revenue Service; (ix) the New York State Department of Taxation and Finance; (e) counsel to MMC; (f) the United States Department of Justice, Commercial Litigation; (g) the United States Department of Health and Human Services; (h) all parties known by the Debtors claiming to have Liens on or security interests in any of the Collateral; and (i) all parties in interest who have requested notice pursuant to Bankruptcy Rule 2002 (“**Notice Parties**”). The Debtors submit that no other notice need be given..

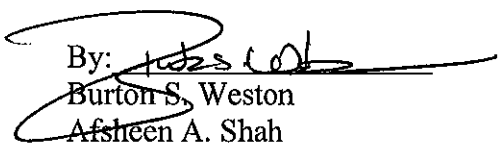
90. No prior request for the relief sought in this Motion has been made to this or any other court in connection with these Chapter 11 Cases.

IX. CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court (a) enter an Interim Order substantially in the form annexed hereto as Exhibit D and a Final Order after an Interim Hearing and Final Hearing, respectively, (i) authorizing the Debtors to use Cash Collateral and granting Adequate Protection therefor, (ii) authorizing the Debtors to incur Postpetition Financing on a secured basis and with administrative superpriority pursuant to the terms and conditions of the DIP Documents; (iii) authorizing the Debtors to satisfy the MidCap Prepetition Revolving Loans by paying in full all amounts due with respect thereto on the Initial Funding Date; (iv) granting Liens (including Replacement Liens), and a Superpriority Claims, (iv) modifying the automatic stay to allow certain actions with respect to the Debtors' postpetition indebtedness, and (b) grant such other and further relief as the Court may deem just and proper.

Dated: Great Neck, New York
May 29, 2013

GARFUNKEL WILD, P.C.

By: 
Burton S. Weston
Afsheen A. Shah
111 Great Neck Road
Great Neck, NY 11021
Telephone: (516) 393-2200

*Proposed Attorneys for the Debtors and
Debtors in Possession*

Exhibit A

DIP Revolving Loan Agreement

**DEBTOR IN POSSESSION REVOLVING CREDIT AND SECURITY
AGREEMENT**

dated as of _____, 2013

by and among

SOUND SHORE MEDICAL CENTER OF WESTCHESTER,

HOWE AVENUE NURSING HOME, INC., and

THE MOUNT VERNON HOSPITAL,

collectively, as Borrowers,

and

MIDCAP FINANCIAL, LLC,

as Administrative Agent and as a Lender,

and

THE ADDITIONAL LENDERS

FROM TIME TO TIME PARTY HERETO



DEBTOR IN POSSESSION REVOLVING CREDIT AND SECURITY AGREEMENT

THIS DEBTOR IN POSSESSION REVOLVING CREDIT AND SECURITY AGREEMENT (as the same may be amended, supplemented, restated or otherwise modified from time to time, the "**Agreement**") is dated as of _____, 2013, by and among **SOUND SHORE MEDICAL CENTER OF WESTCHESTER**, a New York not-for-profit corporation ("**Medical Center**"), **HOWE AVENUE NURSING HOME, INC.**, a New York not-for-profit corporation ("**Nursing Home**"), **THE MOUNT VERNON HOSPITAL**, a New York not-for-profit corporation ("**Mt. Vernon**"), and any additional borrower that may hereafter be added to this Agreement (each individually as a "**Borrower**", and collectively as "**Borrowers**"), **MIDCAP FINANCIAL, LLC**, a Delaware limited liability company, individually as a Lender and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender.

RECITALS

A. On June 8, 2011, MidCap Funding IV, LLC ("**Prepetition Agent**"), a subsidiary of Agent, acting in its capacity as agent, the financial institutions party as "Lenders" thereto (the "**Prepetition Lenders**"), Medical Center and Nursing Home entered into that certain Amended and Restated Credit and Security Agreement (as may have been amended or modified from time to time, the "**Prepetition Revolving Credit Agreement**") and certain other Financing Documents (as defined in the Prepetition Revolving Credit Agreement), pursuant to which, among other things, the Prepetition Lenders agreed to make revolving loans in the maximum aggregate principal amount of \$18,000,000 to Medical Center and Nursing Home.

B. On May __, 2013 (the "**Petition Date**"), Medical Center, Nursing Home and Mt. Vernon each filed a separate voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**") and are continuing to operate their respective businesses and manage their properties as debtors and debtors in possession under sections 1107 and 1109 of the Bankruptcy Code.

C. On May __, 2013, Borrowers and certain of their Affiliates entered into an Asset Purchase Agreement (the "**Stalking Horse Asset Purchase Agreement**") with Montefiore SS Operations, Inc., Montefiore MV Operations, Inc., Montefiore HA Operations, Inc., Montefiore SS Holdings, LLC, Montefiore MV Holdings, LLC, and Montefiore HA Holdings, LLC (collectively, "**Montefiore**"), in which Montefiore has agreed to purchase substantially all of the assets of Borrowers in a "363 sale" pursuant to Section 363 of the Bankruptcy Code.

D. Borrowers have requested that Lenders provide a revolving credit facility to Borrowers in the maximum aggregate amount of \$23,000,000 subject to the terms set forth herein, in the Financing Orders and pursuant to sections 364(c)(1), 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, the proceeds of which will be used solely for (i) the Prepetition Repayment Advance, (ii) payment of all Prepetition Term Loan Obligations as they come due pursuant to the Prepetition Term Credit Agreement, (iii) payment of all fees and expenses due to Agent and Lenders pursuant to Section 2.2, (iv) financing ongoing debtor in possession working capital needs, general corporate purposes relating to postpetition operations and related costs,

fees and expenses of the Bankruptcy Cases, and (v) payment of the costs of administration of the Bankruptcy Cases as approved by the Bankruptcy Court. After the Asset Sale Effective Date, the repayment of such revolving credit facility will be guaranteed by Buyer up to an amount equal to \$5,000,000 of principal and interest, plus Agent's enforcement costs, and secured by a continuing first-priority security interest in the Accounts and Accounts-related assets generated by the Borrowers' facilities sold pursuant to the Asset Sale.

E. Borrowers have also requested that Agent (or one or more affiliates of Agent) provide a term loan credit facility to Borrower in an original principal amount of \$10,000,000 subject to the terms set forth in the Financing Orders and in a Debtor in Possession Term Loan Credit and Security Agreement (the "***DIP Term Credit Agreement***") by and among Borrowers, MCF or an Affiliate of MCF, and the lenders party thereto, the proceeds of which will be used for Borrowers' general working capital prior to the consummation of the Asset Sale.

F. Lender has agreed to provide a revolving credit facility to Borrowers pursuant to sections 364(c)(1), 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code on the terms and conditions of this Agreement and in the Financing Orders so long as such postpetition credit obligations are secured by Liens granted, or purported to be granted, by Borrowers pursuant to this Agreement and the other Financing Documents and given super-priority status as provided in the Financing Orders.

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, Borrowers, Lenders and Agent agree as follows:

ARTICLE 1 - DEFINITIONS

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

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

"***Acceptance Notice***" shall have the meaning set forth in Section 4.12.

"***Accounts***" means a right to payment of a monetary obligation, whether or not earned by performance for services rendered or to be rendered or for a secondary obligation incurred or to be incurred, including but not limited to (a) the third party reimbursable portion of accounts receivable owing to any Borrower (whether billed or unbilled) arising out of the delivery by any Borrower of medical, surgical, diagnostic or other professional, medical or dental services and/or the supply of goods related to any of such services (whether such services are supplied by a Borrower or a third party), including all rights to reimbursement under any agreements with an Account Debtor and any amounts received in settlement of a dispute, appeal or other arrangement with Medicare or Medicaid, (b) all accounts, general intangibles, rights, remedies, guarantees, and security interests in respect of the foregoing, all rights of enforcement and collection, all books and records evidencing or related to the foregoing, and all rights under this Agreement in respect of the foregoing, (c) all information and data compiled or derived by a

Borrower in respect of such accounts receivable, subject to the confidentiality rights under applicable law, and (d) all proceeds of any of the foregoing. The term "**Accounts**" includes health-care insurance receivables. Notwithstanding anything else herein to the contrary, the term "**Accounts**" or "accounts" shall be not be deemed to include payments received from a Governmental Authority in respect of grants or gifts issued to Borrower pursuant to the following state and federal programs: the Women, Infant and Children program (WIC grants), the Healthcare Workforce Retraining Initiative program (HWRI grants), the Health Care Efficiency and Affordability Law program (HEAL grants), the Health Resources and Services Administration program (HRSA grants), the National Bioterrorism Hospital Preparedness Program (Bioterrorism grants), and the Women's Health program, and the foregoing grants shall not be deemed to part of Agent's Collateral.

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

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

"Affiliate" means, with respect to any Person, (a) any Person that directly or indirectly controls such Person, (b) any Person which is controlled by or is under common control with such controlling Person, and (c) each of such Person's (other than, with respect to any Lender, any Lender's) officers or directors (or Persons functioning in substantially similar roles) and the spouses, parents, descendants and siblings of such officers, directors or other Persons. As used in this definition, the term "control" of a Person means the possession, directly or indirectly, of the power to vote five percent (5%) or more of any class of voting securities of such Person or to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise. In addition, for purposes of this Agreement, (i) the following entities shall be deemed to be Affiliates of Medical Center: Sound Shore Health System, Inc., Nursing Home, Mt. Vernon, New Rochelle Sound Shore Housing, LLC, NRHMC, Inc., Guion Place Housing Company, Inc., Lockwood Avenue Housing Company, Inc., Sound Shore Medical Center of Westchester Foundation, Inc., Sound Shore Pharmacy, Inc., and NRHMC Services Corporation; (ii) the following entities shall be deemed to be Affiliates of Nursing Home: Medical Center, Mt. Vernon, New Rochelle Sound Shore Housing, LLC, NRHMC, Inc., Guion Place Housing Company, Inc., Lockwood Avenue Housing Company, Inc., Sound Shore Medical Center of Westchester Foundation, Inc., Sound Shore Pharmacy, Inc., and NRHMC Services Corporation, and (iii) the following entities shall be deemed to be Affiliates of Mt. Vernon: Medical Center, Nursing Home, New Rochelle Sound Shore Housing, LLC, NRHMC, Inc., Guion Place Housing Company, Inc., Lockwood Avenue Housing Company, Inc., Sound Shore Medical Center of Westchester Foundation, Inc., Sound Shore Pharmacy, Inc., and NRHMC Services Corporation.

"Affiliated Financing Documents" means any credit, loan, letter of credit or related documents which are, by their terms or by the terms of this Agreement, cross-defaulted with the Financing Documents, and for which a Credit Party hereunder is liable or contingently liable for payment or as security for which a Credit Party hereunder has pledged, assigned or subjected any assets. Affiliated Financing Documents shall include, without limitation, (i) the DIP Term Credit

Documents, (ii) the Prepetition Revolving Credit Agreement, (iii) the Prepetition Term Credit Agreement, and (iv) the agreements, documents and certificates executed or delivered in connection with each of the foregoing.

"Affiliated Obligations" means all "Obligations", as such term is defined in the Affiliated Financing Documents.

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

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

"Applicable Margin" means, with respect to all Revolving Loans and all other Obligations, seven and one half percent (7.50%), provided, that with respect to Revolving Loans that bear interest at the Base Rate pursuant to Section 2.1(b)(v)(C), the Applicable Margin shall be four percent (4.00%).

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

"Asset Purchase Agreement" means the Stalking Horse Asset Purchase Agreement or such other Asset Purchase Agreement effecting any higher and better bid approved by the Bankruptcy Court pursuant to Section 363 of the Bankruptcy Code.

"Asset Sale" the sale of substantially all of the Borrowers' assets pursuant to the Asset Purchase Agreement approved by the Bankruptcy Court in the Asset Sale Order, in form and substance satisfactory to Agent, pursuant to Section 363 of the Bankruptcy Code.

"Asset Sale Documents" means, collectively, the Asset Purchase Agreement and any and all other agreements, documents and certificates executed and delivered in connection therewith.

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

"Asset Sale Motion" means a motion, in form and substance satisfactory to Agent, filed in the Bankruptcy Cases seeking entry of an order by the Bankruptcy Court approving the Asset Sale, procedures for the Asset Sale, and the form of the Asset Purchase Agreement.

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

"Bankruptcy Cases" means the following cases pending before the Bankruptcy Court:
[].

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

"Bankruptcy Court" has the meaning specified therefor in the recitals to this Agreement.

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

"Base Rate" means a per annum rate of interest equal to the greater of (a) six percent (6.00%) per annum, and (b) the rate of interest announced, from time to time, within Wells Fargo at its principal office in San Francisco as its "prime rate," with the understanding that the "prime rate" is one of Wells Fargo's base rates (not necessarily the lowest of such rates) and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto and is evidenced by the recording thereof after its announcement in such internal publications as Wells Fargo may designate; provided, however, that Agent may, upon prior written notice to Borrower, choose a reasonably comparable index or source to use as the basis for the Base Rate.

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

"Borrower" and **"Borrowers"** mean the entity(ies) described in the first paragraph of this Agreement and each of their successors and permitted assigns.

"Borrower Representative" means Medical Center, in its capacity as Borrower Representative pursuant to the provisions of Section 2.9, or any successor Borrower Representative selected by Borrowers and approved by Agent.

"Borrowing Base" means, with respect to each Borrower:

(a) the product of (i) eighty-five percent (85%) *multiplied by* (ii) the aggregate net amount at such time of the Eligible Accounts; *minus*

(b) the amount of any reserves and/or adjustments provided for in this Agreement (including, without limitation, the Carve-Out Reserve, the Term Loan Reserve and other reserves customarily imposed by Agent and consistent with past practices with Borrower);

provided, however, that at no time shall Accounts that have not been billed or invoiced to the appropriate Account Debtor exceed thirty percent (30%) of the aggregate net amount at such time of the Eligible Accounts as described in clause (a)(ii) above for any Borrower's Borrowing Base; and provided, further, that (x) at no time shall the Borrowing Base for Medical Center exceed \$16,000,000, (y) at no time shall the Borrowing Base for Nursing Home exceed \$2,000,000, and (z) at no time shall the Borrowing Base for Mt. Vernon exceed \$5,000,000.

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

"Budget" means the budget attached hereto as Exhibit E, depicting on a weekly basis cash revenue, receipts, expenses, disbursements, outstanding advances under the Revolving Loans and other information for the 13 fiscal week period following the Closing Date, together with the updates thereto in form and substance satisfactory to Agent in its sole discretion, delivered to Agent and the Lenders pursuant to Section 4.1(a).

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

"Buyer" means Montefiore or such other purchaser of the Borrowers' assets pursuant to the Asset Purchase Agreement and the Asset Sale Order.

"Buyer Guaranteed Obligations" has the meaning set forth in Section 10.1(cc).

"Carve-Out" has the meaning set forth in the Financing Orders.

"Carve-Out Amount" has the meaning set forth in the Financing Orders.

"Carve-Out Reserve" means a reserve against the Borrowing Base in an amount equal to the Carve-Out Amount effective as of the Closing Date, which may be increased or decreased from time to time in Agent's sole discretion.

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

"Change in Control" means any of the following: (a) any change in the legal or beneficial ownership of the capital stock, partnership interests or membership interests, in the capital structure, or in the organizational documents or governing documents (excluding

Permitted Modifications), of the applicable Person; (b) any pledge, assignment or hypothecation of or Lien or encumbrance on any of the legal or beneficial equity interests in the applicable Person; (c) any change in the legal or beneficial ownership or control of the outstanding voting equity interests of the applicable Person necessary at all times to elect a majority of the board of directors (or similar governing body) of each such Person and to direct the management policies and decisions of such Person; (d) the applicable Person shall cease to, directly or indirectly, own and control one hundred percent (100%) of each class of the outstanding equity interests of each Subsidiary of such Person; and (e) any "Change of Control", "Change in Control" or terms of similar import under any document or instrument governing or relating to Debt of or equity in such Person or under any Affiliated Financing Document. Notwithstanding the foregoing, the replacement of Pinnacle Healthcare, in its capacity as the sole corporate member of Sound Shore Health System, Inc. by a not-for-profit health system shall not be considered a "***Change in Control.***"

"Closing Date" means the date of this Agreement.

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

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

"Commitment Annex" means Annex A to this Agreement.

"Commitment Expiry Date" means the earlier of (i) twelve (12) months from the Closing Date, and (ii) the Asset Sale Effective Date.

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

"Confirmation Date" means the date on which the Confirmation Order is entered in the docket on the Bankruptcy Court.

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

"Consolidated Subsidiary" means, at any date, any Subsidiary the accounts of which would be consolidated with those of Sound Shore Health System, Inc. (or any other Person, as the context may require hereunder) in its consolidated financial statements if such statements were prepared as of such date.

"Contingent Obligation" means, with respect to any Person, any direct or indirect liability of such Person: (a) with respect to any Debt of another Person (a "***Third Party Obligation***") if the purpose or intent of such Person incurring such liability, or the effect thereof, is to provide assurance to the obligee of such Third Party Obligation that such Third Party Obligation will be paid or discharged, or that any agreement relating thereto will be complied

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

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

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

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

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

of Business. Without duplication of any of the foregoing, Debt of Borrowers shall include any and all Loans and Letter of Credit Liabilities.

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

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

"Deposit Account Control Agreement" means an agreement, in form and substance satisfactory to Agent, among Agent, Borrower and the applicable financial institution, which agreement satisfies the definition of "control agreement", as defined in the UCC, thereby providing Agent with a perfected Lien on the applicable Deposit Account and the monies deposited therein, and includes such other provisions that are customarily agreed upon among such parties to a "control agreement."

"DIP Term Credit Agreement" has the meaning set forth in the recitals.

"DIP Term Credit Documents" means, collectively, the DIP Term Credit Agreement and the "Financing Documents" referred to therein.

"DIP Term Loan" means a term loan by MCF or an Affiliate of MCF to the Borrowers on the terms and conditions set forth in the DIP Term Credit Documents.

"DIP Term Loan Effective Date" means the date upon which the Agent (as defined in the DIP Term Credit Agreement) determines in its sole discretion that all conditions to closing and the making of loans set forth in the DIP Term Credit Documents have been satisfied.

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

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

(a) the Account remains unpaid more than one hundred and one hundred fifty (150) days past the claim or invoice date (but in no event more than one hundred eighty (180) days after the applicable goods or services have been rendered or delivered);

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

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

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

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

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

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

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

(i) more than fifty percent (50%) of the aggregate balance of all Accounts owing from the Account Debtor obligated on the Account are ineligible under subclause (a) above (in which case all Accounts from such Account Debtor shall be ineligible);

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

(k) the total unpaid Accounts of the Account Debtor obligated on the Account exceed twenty percent (20%) of the net amount of all Eligible Accounts owing from all Account Debtors (but only the amount of the Accounts of such Account Debtor exceeding such twenty percent (20%) limitation shall be considered ineligible);

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

(m) the Account is unbilled for more than thirty (30) days after the date of discharge of the recipient of the services or has not been invoiced to the Account Debtor within thirty (30) days after the date of discharge of the recipient of the services in accordance with the procedures and requirements of the applicable Account Debtor; provided, however, that, Accounts that are unbilled or not invoiced shall be properly recorded on Borrowers' accounting systems at all times;

(n) the Account is an obligation of an Account Debtor that is the federal (or local) government or a political subdivision thereof, unless Agent has agreed to the contrary in writing and Agent has received from the Account Debtor the acknowledgement of Agent's notice of assignment of such obligation pursuant to this Agreement; provided, however, that in no case shall Accounts owing from Medicare in respect of outpatient services be Eligible Accounts;

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

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

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

(r) the Account Debtor is an individual;

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

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

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

(v) prior to entry of the Final Order, with respect to any Account of Medical Center or Nursing Home, such Account arises from or relates to goods sold or services provided, or was otherwise generated, by Medical Center or Nursing Home prior to the Petition Date; or

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

judgment and discretion, such discretion to be applied in a manner that is consistent with Agent's then current credit standards and not inconsistent with other similar credit parties in Agent's portfolio of asset-based revolving loans.

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

"Environmental Liens" means all Liens and other encumbrances imposed pursuant to any Environmental Law, whether due to any act or omission of any Borrower or any other Person.

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

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

"Event of Default" has the meaning set forth in Section 10.1.

"Final Order" means an order of the Bankruptcy Court in the Bankruptcy Cases which approves the transactions contemplated by this Agreement, including, without limitation, the Prepetition Repayment Advance, and the other Financing Documents on a final basis and is in form and substance acceptable to Agent and the Lenders, as the same may be amended, modified or otherwise supplemented from time to time in compliance with this Agreement.

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

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

“Financing Transaction” shall have the meaning set forth in Section 4.12.

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

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

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

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

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

“Hazardous Materials” means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives, flammable materials;

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

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

"Indemnitees" has the meaning set forth in Section 12.14.

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

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

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

"Interim Order" means the order of the Bankruptcy Court entered in the Bankruptcy Cases, in form and substance satisfactory to Agent, approving this Agreement, the other Financing Documents, the DIP Term Loan and the Liens and Guaranties granted hereunder and thereunder and the other transactions contemplated thereby on an interim basis, which shall be in full force and effect until the entry of the Final Order approving this Agreement, the DIP Term Credit Documents and other Financing Documents and the Liens and Guaranties granted hereunder and thereunder and the other transactions contemplated hereby and thereby, and which shall not have been stayed, reversed, vacated or otherwise modified (other than with the consent of the Required Lenders in their sole discretion).

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

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

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

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

"LIBOR Rate" means, for each Loan, a per annum rate of interest equal to the greater of (a) two and one half percent (2.50%) and (b) the rate determined by Agent (rounded upwards, if necessary, to the next 1/100th%) by *dividing* (i) the Base LIBOR Rate for the Interest Period, *by* (ii) the sum of one *minus* the daily average during such Interest Period of the aggregate maximum reserve requirement (expressed as a decimal) then imposed under Regulation D of the Board of Governors of the Federal Reserve System (or any successor thereto) for "Eurocurrency Liabilities" (as defined therein).

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

"Litigation" means any action, suit or proceeding before any court, mediator, arbitrator or Governmental Authority.

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

“Loan(s)” means the Revolving Loans, or any combination of the foregoing, as the context may require.

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

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

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

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

“Material Adverse Effect” means, with respect to any event, act, condition or occurrence of whatever nature (including any adverse determination in any litigation, arbitration, or governmental investigation or proceeding), whether singly or in conjunction with any other event or events, act or acts, condition or conditions, occurrence or occurrences, whether or not related, (a) a material adverse change in, or a material adverse effect upon, any of (i) the condition (financial or otherwise), operations, business, properties or prospects of any of the Credit Parties, (ii) the rights and remedies of Agent or Lenders under any Financing Document, or the ability of any Credit Party to perform any of its obligations under any Financing Document to which it is a party, (iii) the legality, validity or enforceability of any Financing Document, (iv) the existence, perfection or priority of any security interest granted in any Financing Document, (v) the value of any material Collateral, (vi) any Credit Party’s or Operator’s ability to accept, admit and/or retain patients or residents, (vii) the rate at which any Third Party Payor reimburses a Credit Party for goods or services provided by such Credit Party, (viii) the use or scope of any Healthcare Permits, (ix) the continued participation by any Credit Party in the Medicaid or Medicare programs or any other Third Party Payor Program at then current rate certifications or levels; (b) an impairment to the likelihood that Eligible Accounts in general will be collected and paid in the Ordinary Course of Business of any Borrower and upon the same schedule and with the same frequency as such Borrowers’ recent collections history; or (c) the imposition of a fine against or the creation of any liability of any Credit Party or Operator to any Governmental Authority under any Healthcare Law in excess of \$50,000.00. Notwithstanding the foregoing, the filing of the Bankruptcy Cases and the consummation of the Asset Sale shall not constitute Material Adverse Effects.

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

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

“MCF” means MidCap Financial, LLC, and its successors and assigns.

“Minimum Balance” shall mean, at any time, an amount that equals the product of: (i) the average Borrowing Base (or, if less on any given day, the Revolving Loan Commitment) during the immediately preceding month multiplied by (ii) the Minimum Balance Percentage for such month.

“Minimum Balance Percentage” means eighty-five percent (85%).

“Montefiore” has the meaning set forth in the recitals.

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

“Non-Funding Lender” has the meaning set forth in Section 11.18.

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

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

“Obligations” means all obligations, liabilities and indebtedness (monetary (including post-petition interest, whether or not allowed) or otherwise) of each Credit Party under this Agreement or any other Financing Document, in each case howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due.

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

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

“Offer” shall have the meaning set forth in Section 4.12.

“Operating Lease” means any lease of any Project to an Operator entity, and all amendments thereto and extensions thereof, as has been previously approved by Agent as required hereunder.

“Operative Documents” means the Financing Documents, Affiliated Financing Documents, Management Agreements, Subordinated Debt Documents, the Asset Sale Documents and each other agreement, documents and certificate executed or delivered in connection therewith.

“Option Period” shall have the meaning set forth in Section 4.12.

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

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

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

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

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

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

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

“Permitted Affiliate” means with respect to any Person (a) any Person that directly or indirectly controls such Person, and (b) any Person which is controlled by or is under common control with such controlling Person. As used in this definition, the term “control” of a Person means the possession, directly or indirectly, of the power to vote eighty percent (80%) or more of any class of voting securities of such Person or to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

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

“Permitted Contest” means, with respect to any tax obligation or other obligation allegedly or potentially owing from any Borrower or its Subsidiary to any governmental tax authority, a contest maintained in good faith by appropriate proceedings promptly instituted and

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

"Permitted Contingent Obligations" means (a) Contingent Obligations arising in respect of the Debt under the Financing Documents; (b) Contingent Obligations resulting from endorsements for collection or deposit in the Ordinary Course of Business; (c) Contingent Obligations outstanding on the date of this Agreement and set forth on Schedule 5.1 (but not including any refinancings, extensions, increases or amendments to the indebtedness underlying such Contingent Obligations other than extensions of the maturity thereof without any other change in terms); (d) Contingent Obligations incurred in the Ordinary Course of Business with respect to surety and appeal bonds, performance bonds and other similar obligations not to exceed \$25,000 in the aggregate at any time outstanding; (f) Contingent Obligations arising under indemnity agreements with title insurers to cause such title insurers to issue to Agent mortgagee title insurance policies; (g) Contingent Obligations arising with respect to customary indemnification obligations in favor of purchasers in connection with dispositions of personal property assets permitted by Agent hereunder; and (h) other Contingent Obligations not permitted by clauses (a) through (g) above, not to exceed \$25,000 in the aggregate at any time outstanding.

"Permitted Debt" means: (a) Borrowers' and its Subsidiaries' Debt to Agent, Agent's Affiliates and each Lender under this Agreement, the other Financing Documents and, prior to the Asset Sale, the DIP Term Credit Documents; (b) Debt incurred as a result of endorsing negotiable instruments received in the Ordinary Course of Business; (c) purchase money Debt not to exceed \$2,000,000 at any time (whether in the form of a loan or a lease) used solely to acquire equipment used in the Ordinary Course of Business and secured only by such equipment; (d) Debt existing on the date of this Agreement and described on Schedule 5.1 (but not including any refinancings, extensions, increases or amendments to such Debt other than extensions of the maturity thereof without any other change in terms), all of which accrues interest at the rate described on Schedule 5.1; (e) Debt in the form of insurance premiums financed through the applicable insurance company; (f) trade accounts payable arising and paid on a timely basis and in the Ordinary Course of Business; (g) Subordinated Debt (if any); and (h) Permitted Refinancing Indebtedness.

"Permitted Investments" means: (a) Investments shown on Schedule 5.7 and existing on the Closing Date; (b) (i) cash equivalents, and (ii) any similar short term Investments permitted

by Borrowers' and its Subsidiaries' investment policies, as amended from time to time, provided, however, that such investment policy (and any such amendment thereto) has been approved by Agent; (c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the Ordinary Course of Business; (d) Investments consisting of travel advances and employee relocation loans and other employee loans and advances in the Ordinary Course of Business; (e) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the Ordinary Course of Business; and (f) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the Ordinary Course of Business, provided, that this subpart (f) shall not apply to Investments of Borrowers in any Subsidiary.

"Permitted Liens" means: (a) deposits or pledges of cash to secure obligations under workmen's compensation, social security or similar laws, or under unemployment insurance (but excluding Liens arising under ERISA) pertaining to a Borrower's or its Subsidiary's employees, if any; (b) deposits or pledges of cash to secure bids, tenders, contracts (other than contracts for the payment of money or the deferred purchase price of property or services), leases, statutory obligations, surety and appeal bonds and other obligations of like nature arising in the Ordinary Course of Business; (c) carrier's, warehousemen's, mechanic's, workmen's, materialmen's or other like Liens on Collateral, other than any Collateral which is part of the Borrowing Base, arising in the Ordinary Course of Business with respect to obligations which are not due, or which are being contested in good faith; (d) Liens on Collateral, other than Accounts, for taxes or other governmental charges not at the time delinquent or thereafter payable without penalty or the subject of a Permitted Contest; (e) attachments, appeal bonds, judgments and other similar Liens on Collateral other than Accounts, for sums not exceeding \$1,000,000 in the aggregate arising in connection with court proceedings; provided, however, that the execution or other enforcement of such Liens is effectively stayed and the claims secured thereby are being contested in good faith; (f) with respect to real estate, easements, rights of way, restrictions, minor defects or irregularities of title, none of which, individually or in the aggregate, materially interfere with the benefits of the security intended to be provided by the Security Documents, materially affect the value or marketability of the Collateral, impair the use or operation of the Collateral for the use currently being made thereof or impair Borrowers' ability to pay the Obligations in a timely manner or impair the use of the Collateral or the ordinary conduct of the business of any Borrower or any Subsidiary and which, in the case of any real estate which is part of the Collateral, are set forth as exceptions to or subordinate matters in the title insurance policy accepted by Agent insuring the lien of the Security Documents; (g) Liens and encumbrances in favor of Agent under the Financing Documents; (h) Liens on Collateral, other than Collateral which is part of the Borrowing Base, existing on the date hereof and set forth on Schedule 5.2; (i) any Lien on any equipment securing Debt permitted under subpart (c) of the definition of Permitted Debt, provided, however, that such Lien attaches concurrently with or within twenty (20) days after the acquisition thereof; (j) Liens and encumbrances in favor of the holders of the Affiliated Financing Documents; and (k) Liens in favor of the United States Internal Revenue Service existing on the Closing Date and set forth on Schedule 5.2 that are subordinated in right of payment to the Obligations pursuant to the terms of the Financing Orders.

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

"Permitted Refinancing Indebtedness" means, with respect to the loan from Sun Life Assurance Company of Canada listed on Schedule 5.1 hereto, any Debt that renews, refinances or replaces the same; provided that (a) if the Debt being renewed, refinanced or replaced is subordinated in right of payment to the Obligations, such renewal, refinancing or replacement Debt shall be subordinated in right of payment to the Obligations on terms at least as favorable to the Lenders as those contained in the documentation governing the Debt being renewed, refinanced or replaced, and (b) such renewal refinancing or replacement Debt has a final stated maturity date that is after the Termination Date.

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

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

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

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

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

"Prepetition Agent" has the meaning set forth in the recitals.

"Prepetition Lender" has the meaning set forth in the recitals.

"Prepetition Obligations" means, collectively, the Prepetition Revolving Loan Obligations and the Prepetition Term Loan Obligations.

"Prepetition Repayment Advance" means a Revolving Loan made by Agent, in Agent's sole discretion, on or after the Prepetition Revolving Loan Termination Date in the amount of the outstanding Prepetition Revolving Loan Obligations, including, without limitation, all accrued and unpaid interest, fees, costs, expenses, indemnities and premiums thereon or with respect thereto and all other amounts due and payable thereon, the proceeds of which shall be transferred directly to the Prepetition Agent for payment of the Prepetition Revolving Loan Obligations.

"Prepetition Revolving Credit Agreement" has the meaning set forth in the recitals.

"Prepetition Revolving Loan Obligations" means any and all "Obligations," as defined in the Prepetition Revolving Credit Agreement.

"Prepetition Revolving Loan Termination Date" means the date the Final Order approving the Prepetition Repayment Advance is entered.

"Prepetition Term Credit Agreement" means that certain Credit and Security Agreement dated as of June 8, 2011 by and among MidCap Funding IV, LLC, as administrative agent and as a lender (as assigned to it by MCF), and Howe Avenue Nursing Home, Inc., as borrower.

"Prepetition Term Loan Obligations" means any and all "Obligations," as defined in the Prepetition Term Credit Agreement.

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

"Protected Health Information" means "protected health information" as defined in 45 C.F.R. § 160.103.

"Release" has the meaning set forth in 42 U.S.C. §9601 (22).

"Reorganization Effective Date" means the effective date the Plan of Reorganization.

"Reorganization Milestones" means (a) filing by the Borrowers of the Asset Sale Motion on or before the date that is ten (10) days after the Petition Date, (b) entry of an order by the Bankruptcy Court satisfactory to Agent approving the procedures for the Asset Sale set forth in the Asset Sale Motion on or before the date that is 35 days after the Petition Date, (c) entry of the Asset Sale Order on or before the date that is 100 days after the Petition Date, and (d) closing of the Asset Sale on or before December 6, 2013.

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

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

“Restricted Distribution” means as to any Person (a) any dividend or other distribution (whether in cash, securities or other property) on any equity interest in such Person (except those payable solely in its equity interests of the same class); (b) any payment by such Person on account of (i) the purchase, redemption, retirement, defeasance, surrender, cancellation, termination or acquisition of any equity interests in such Person or any claim respecting the purchase or sale of any equity interest in such Person, or (ii) any option, warrant or other right to acquire any equity interests in such Person; (c) any management fees, salaries or other fees or compensation to any Affiliate or any Person holding an equity interest in a Borrower or a Subsidiary of a Borrower, an Affiliate of a Borrower or an Affiliate of any Subsidiary of a Borrower; (d) any lease or rental payments to an Affiliate or Subsidiary of a Borrower, except for those listed on Schedule 5.8 hereto; or (e) repayments of or debt service on loans or other indebtedness held by any Affiliate or any Person holding an equity interest in a Borrower or a Subsidiary of a Borrower, an Affiliate of a Borrower or an Affiliate of any Subsidiary of a Borrower, unless permitted under and made pursuant to a Subordination Agreement applicable to such loans or other indebtedness.

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

“Revolving Loan” has the meaning set forth in Section 2.1(b)(i).

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

“Revolving Loan Borrowing” means a borrowing of a Revolving Loan.

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

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

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

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

“Revolving Loan Limit” means, at any time, the lesser of (a) the Revolving Loan Commitment, and (b) the *sum of* (i) the Borrowing Base for Medical Center (which shall not exceed \$16,000,000), *plus* (ii) the Borrowing Base for Nursing Home (which shall not exceed \$2,000,000), *plus* (iii) the Borrowing Base for Mt. Vernon (which shall not exceed \$5,000,000).

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

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

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

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

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

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

“Stalking Horse Asset Purchase Agreement” has the meaning set forth in the recitals.

"Subordinated Debt" means any Debt of Borrowers incurred pursuant to the terms of the Subordinated Debt Documents and with the prior written consent of Agent, all of which documents must be in form and substance acceptable to Agent in its sole discretion.

"Subordinated Debt Documents" means any documents evidencing and/or securing Debt governed by a Subordination Agreement, all of which documents must be in form and substance acceptable to Agent in its sole discretion.

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

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

"Taxes" has the meaning set forth in Section 2.8.

"Term Loan Reserve" means a reserve against the Borrowing Base in an amount up to \$10,000,000 effective as of the DIP Term Loan Effective Date, which, so long as no Default or Event of Default shall have occurred and be continuing, shall be decreased on a weekly basis by an amount equal to the projected negative Net Cash Flow from Operations set forth in the Budget for such week as approved by Agent pursuant to Section 4.1.

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

"UCC" means the Uniform Commercial Code of the State of New York or of any other state the laws of which are required to be applied in connection with the perfection of security interests in any Collateral.

“United States” means the United States of America.

Section 1.2 Accounting Terms and Determinations. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder (including, without limitation, determinations made pursuant to the exhibits hereto) shall be made, and all financial statements required to be delivered hereunder shall be prepared on a consolidated basis in accordance with GAAP applied on a basis consistent with the most recent audited consolidated financial statements of each Borrower and its Consolidated Subsidiaries delivered to Agent and each of the Lenders on or prior to the Closing Date. If at any time any change in GAAP would affect the computation of any financial ratio or financial requirement set forth in any Financing Document, and either Borrowers or the Required Lenders shall so request, the Agent, the Lenders and Borrowers shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided, however, that until so amended, (a) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (b) Borrowers shall provide to the Agent and the Lenders financial statements and other documents required under this Agreement which include a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Statement of Financial Accounting Standards 159 (or any other Financial Accounting Standard having a similar result or effect) to value any Debt or other liabilities of any Credit Party or any Subsidiary of any Credit Party at “fair value”, as defined therein

Section 1.3 Other Definitional and Interpretive Provisions. References in this Agreement to “Articles”, “Sections”, “Annexes”, “Exhibits” or “Schedules” shall be to Articles, Sections, Annexes, Exhibits or Schedules of or to this Agreement unless otherwise specifically provided. Any term defined herein may be used in the singular or plural. “Include”, “includes” and “including” shall be deemed to be followed by “without limitation”. Except as otherwise specified or limited herein, references to any Person include the successors and assigns of such Person. References “from” or “through” any date mean, unless otherwise specified, “from and including” or “through and including”, respectively. Unless otherwise specified herein, the settlement of all payments and fundings hereunder between or among the parties hereto shall be made in lawful money of the United States and in immediately available funds. References to any statute or act shall include all related current regulations and all amendments and any successor statutes, acts and regulations. All amounts used for purposes of financial calculations required to be made herein shall be without duplication. References to any statute or act, without additional reference, shall be deemed to refer to federal statutes and acts of the United States. References to any agreement, instrument or document shall include all schedules, exhibits, annexes and other attachments thereto. As used in this Agreement, the meaning of the term “material” or the phrase “in all material respects” is intended to refer to an act, omission, violation or condition which reflects or could reasonably be expected to result in a Material Adverse Effect. References to capitalized terms that are not defined herein, but are defined in the UCC, shall have the meanings given them in the UCC. All references herein to times of day shall be references to daylight or standard time, as applicable.

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

ARTICLE 2 - LOANS

Section 2.1 Loans.

(a) [Reserved]

(b) Revolving Loans.

(i) Revolving Loans and Borrowings. On the terms and subject to the conditions set forth herein and in the Financing Orders, each Lender severally agrees to make loans to Borrowers from time to time as set forth herein (each a "***Revolving Loan***", and collectively, "***Revolving Loans***") equal to such Lender's Revolving Loan Commitment Percentage of Revolving Loans requested by Borrowers hereunder, provided, however, that after giving effect thereto, the Revolving Loan Outstandings shall not exceed the Revolving Loan Limit. Each Borrower and each Revolving Lender hereby authorizes Agent to make Revolving Loans on behalf of Revolving Lenders, at any time in its sole discretion to pay (1) principal owing in respect of the Loans, (2) any interest, fees, expenses and other charges payable by any Credit Party from time to time arising under this Agreement or any other Financing Document, including, without limitation, the Prepetition Repayment Advance; (3) any and all amounts due and payable for Prepetition Term Loan Obligations; and (4) upon the occurrence and during the continuation of an Event of Default, any and all Affiliated Obligations as such Affiliated Obligations become due and payable. Without limiting any other rights and remedies of Agent hereunder or under the other Financing Documents or the Financing Orders, the Revolving Loans shall be subject to Agent's continuing right to withhold from the Borrowing Base reserves, and to increase and decrease such reserves from time to time if and to the extent that in Agent's good faith credit judgment and discretion such reserves are necessary.

(ii) Funding Procedures.

(A) Borrower Representative shall deliver to Agent a Notice of Borrowing, together with a Borrowing Base Certificate attached, with respect to each proposed Revolving Loan Borrowing, and Borrower Representative shall submit separate Borrowing Base Certificates for each Borrower. Each Notice of Borrowing shall be delivered no later than 1:00 P.M. (New York Time) two (2) Business Days prior to the date of such proposed borrowing. The Borrowing Base shall be determined by Agent based on the Borrowing Base Certificate for the applicable Borrower delivered to Agent in accordance with this Agreement, and such other information as may be available to Agent.

(B) Subject to the terms and conditions of this Agreement and the Financing Orders, if the Notice of Borrowing, with the Borrowing Base Certificate attached, is delivered to Agent before 1:00 P.M. (New York Time) two (2) Business Days prior to the date of such proposed Revolving Loan Borrowing,

Agent will advance, on behalf of Lenders, on the date of such proposed Revolving Loan Borrowing (or the next Business Day if the Notice of Borrowing is delivered to Agent after 1:00 P.M. (New York Time)) to Borrower Representative a Revolving Loan in an amount equal to the lesser of (i) the amount of the Revolving Loan requested by Borrower Representative in the Notice of Borrowing, and (ii) the Revolving Loan Availability as of such date. Any Revolving Loans made by Agent hereunder shall be treated for all purposes as, and shall accrue interest at the same rate applicable to, Revolving Loans.

(iii) Mandatory Revolving Loan Repayments and Prepayments.

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

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

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

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

(v) LIBOR Rate.

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

(B) The LIBOR Rate may be adjusted by Agent with respect to any Lender on a prospective basis to take into account any additional or increased costs to such Lender of maintaining or obtaining any eurodollar deposits or increased costs, in each case, due to changes in applicable Law occurring subsequent to the commencement of the then applicable Interest Period, including changes in tax laws (except changes of general applicability in corporate income tax laws) and changes in the reserve requirements imposed by the Board of Governors of the Federal Reserve System (or any successor), which additional or increased costs would increase the cost of funding loans bearing interest based upon the LIBOR Rate; provided, however, that notwithstanding anything in this Agreement to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued

in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "change in applicable Law", regardless of the date enacted, adopted or issued. In any such event, the affected Lender shall give Borrowers and Agent notice of such a determination and adjustment and Agent promptly shall transmit the notice to each other Lender and, upon its receipt of the notice from the affected Lender, Borrowers may, by notice to such affected Lender (I) require such Lender to furnish to Borrowers a statement setting forth the basis for adjusting such LIBOR Rate and the method for determining the amount of such adjustment, or (II) repay the Loans bearing interest based upon the LIBOR Rate with respect to which such adjustment is made.

(C) In the event that any change in any law, regulation, treaty, or directive, or any change therein or in the interpretation or application thereof, shall at any time after the date hereof, in the reasonable opinion of any Lender, make it unlawful or impractical for such Lender to fund or maintain Loans bearing interest based upon the LIBOR Rate or to continue such funding or maintaining, or to determine or charge interest rates at the LIBOR Rate, such Lender shall give notice of such changed circumstances to Agent and Borrowers and Agent promptly shall transmit the notice to each other Lender and (I) in the case of any outstanding Loans of such Lender bearing interest based upon the LIBOR Rate, the date specified in such Lender's notice shall be deemed to be the last day of the Interest Period of such Loans, and interest upon such Lender's Loans thereafter shall accrue interest at Base Rate *plus* the Applicable Margin, and (II) such Loans shall continue to accrue interest at Base Rate *plus* the Applicable Margin until such Lender determines that it would no longer be unlawful or impractical to maintain such Loans at the LIBOR Rate.

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

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

Section 2.2 Interest, Interest Calculations and Certain Fees.

(a) Interest. From and following the Closing Date, except as expressly set forth in this Agreement, Loans and the other Obligations shall bear interest at the sum of the LIBOR Rate *plus* the Applicable Margin. Interest on the Loans shall be paid in arrears on the first (1st) day of each month and on the maturity of such Loans, whether by acceleration or

otherwise. Interest on all other Obligations shall be payable upon demand. For purposes of calculating interest, all funds transferred from the Payment Account for application to any Revolving Loans shall be subject to a six Business Day clearance period and all interest accruing on such funds during such clearance period shall accrue for the benefit of Agent, and not for the benefit of the Lenders.

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

(c) Documentation and Approval Fees and Expenses. Borrowers shall reimburse, on a current basis, all costs and expenses (including legal, financial advisor, appraisal and valuation-related fees and expenses) incurred by Agent (and, after the occurrence and during the continuation of any Event of Default, any Lender) in connection with the preparation, negotiation, documentation and court approval of this Agreement, the other Financing Documents and the Financing Orders, including, without limitation, in connection with (i) the analysis, negotiation, preparation, execution, administration, delivery and termination of this Agreement, the other Financing Documents and the documents and instruments referred to herein and therein, and any amendment, amendment and restatement, supplement, waiver or consent relating hereto or thereto, whether or not any such amendment, amendment and restatement, supplement, waiver or consent is executed or becomes effective, (ii) the analysis, negotiation, and preparation of the Financing Orders, the Asset Sale Documents, the Asset Sale Motion, the Asset Sale Order and any other documents filed in or prepared in connection with the Bankruptcy Cases, and the preparation for, travel to and participation in any hearings or proceedings in connection with any of the foregoing, (iii) the enforcement of Agent's and Lenders' rights hereunder, or the collection of any payments owing from, Borrowers under this Agreement and/or the other Financing Documents or the protection, preservation or defense of the rights of Agent and Lenders hereunder and under the other Financing Documents, and (iv) any lien, litigation and other search costs, the reasonable fees, expenses and disbursements of legal counsel for Agent (and, after the occurrence and during the continuation of any Event of Default, any Lender), including the reasonable charges of internal legal counsel, and reasonable charges of any expert, appraiser, auditor or other consultant to Lender.

(d) Exit Fee. Upon repayment of the Revolving Loans, Borrowers shall pay to Agent, for the benefit of all Lenders, a fee equal to an amount determined by *multiplying* the Revolving Loan Commitment *by* two percent (2.00%). All fees payable pursuant to this paragraph shall be deemed fully earned and non-refundable as of the Closing Date.

(e) Collateral Fee. Commencing on the date hereof, and continuing on the first day of each month thereafter, a collateral management fee equal to the product of (a) the greater of (i) the average end-of-day principal balance of Revolving Loans outstanding during the immediately preceding month, and (ii) the Minimum Balance, *multiplied by* (b) one and two tenths percent (1.20%) per annum. For purposes of calculating the average end-of-day principal balance of Revolving Loans, all funds paid into the Payment Account (or which were required to

be paid into the Payment Account under this Agreement) or otherwise received by Agent for the account of Borrowers shall be subject to a six Business Day clearance period. The collateral management fee described in this paragraph shall be deemed fully earned when due and payable and, once paid, shall be non-refundable.

(f) Origination Fee. Contemporaneously with Borrowers' execution of this Agreement, Borrowers shall pay Agent, for the benefit of all Lenders committed to make Revolving Loans on the Closing Date, in accordance with their respective Pro Rata Share, a fee in an amount equal to (i) the Revolving Loan Commitment, *multiplied by* (ii) one percent (1.0%). All fees payable pursuant to this paragraph shall be non-refundable as of the Closing Date.

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

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

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

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

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

Section 2.4 [Reserved]

Section 2.5 [Reserved]

Section 2.6 General Provisions Regarding Payment; Loan Account.

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

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

Section 2.7 Maximum Interest. In no event shall the interest charged with respect to the Loans or any other Obligations of any Borrower under any Financing Document exceed the maximum amount permitted under the laws of the State of Maryland or of any other applicable jurisdiction. Notwithstanding anything to the contrary herein or elsewhere, if at any time the rate of interest payable hereunder or under any Note or other Financing Document (the "***Stated Rate***") would exceed the highest rate of interest permitted under any applicable law to be charged (the "***Maximum Lawful Rate***"), then for so long as the Maximum Lawful Rate would be so exceeded, the rate of interest payable shall be equal to the Maximum Lawful Rate; provided, however, that if at any time thereafter the Stated Rate is less than the Maximum Lawful Rate, each Borrower shall, to the extent permitted by law, continue to pay interest at the Maximum Lawful Rate until such time as the total interest received is equal to the total interest which

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

Section 2.8 Taxes; Capital Adequacy.

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

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

(c) Each Lender that (i) is organized under the laws of a jurisdiction other than the United States, and (ii)(A) is a party hereto on the Closing Date or (B) purports to become an assignee of an interest as a Lender under this Agreement after the Closing Date (unless such Lender was already a Lender hereunder immediately prior to such assignment) (each such Lender a "**Foreign Lender**") shall execute and deliver to each of Borrowers and Agent one or more (as Borrowers or Agent may reasonably request) United States Internal Revenue Service Forms W-8ECI, W-8BEN, W-8IMY (as applicable) and other applicable forms, certificates or documents prescribed by the United States Internal Revenue Service or reasonably requested by Agent certifying as to such Lender's entitlement to a complete exemption from withholding or deduction of Taxes. Borrowers shall not be required to pay additional amounts to any Lender pursuant to this Section 2.8 with respect to United States withholding and income Taxes to the extent that the obligation to pay such additional amounts would not have arisen but for the failure of such Lender to comply with this paragraph other than as a result of a change in law.

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

(e) If any Lender requires compensation under Section 2.8(d), or requires any Borrower to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.8(a), then, upon the written request of Borrower Representative, such Lender shall use reasonable efforts to designate a different lending office

for funding or booking its Loans hereunder or to assign its rights and obligations hereunder (subject to the terms of this Agreement) to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or materially reduce amounts payable pursuant to any such subsection, as the case may be, in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender (as determined in its sole discretion). Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

Section 2.9 Appointment of Borrower Representative. Each Borrower hereby designates Borrower Representative as its representative and agent on its behalf for the purposes of issuing Notices of Borrowing and Borrowing Base Certificates, and giving instructions with respect to the disbursement of the proceeds of the Loans, giving and receiving all other notices and consents hereunder or under any of the other Financing Documents and taking all other actions (including in respect of compliance with covenants) on behalf of any Borrower or Borrowers under the Financing Documents. Borrower Representative hereby accepts such appointment. Notwithstanding anything to the contrary contained in this Agreement, no Borrower other than Borrower Representative shall be entitled to take any of the foregoing actions. The proceeds of each Loan made hereunder shall be advanced to or at the direction of Borrower Representative and if not used by Borrower Representative in its business (for the purposes provided in this Agreement) shall be deemed to be immediately advanced by Borrower Representative to the appropriate other Borrowers hereunder as an intercompany loan (collectively, "*Intercompany Loans*"). All collections of each Borrower in respect of Accounts and other proceeds of Collateral of such Borrower received by Agent and applied to the Obligations shall also be deemed to be repayments of the Intercompany Loans owing by such Borrower to Borrower Representative. Borrowers shall maintain accurate books and records with respect to all Intercompany Loans and all repayments thereof. Agent and each Lender may regard any notice or other communication pursuant to any Financing Document from Borrower Representative as a notice or communication from all Borrowers, and may give any notice or communication required or permitted to be given to any Borrower or all Borrowers hereunder to Borrower Representative on behalf of such Borrower or all Borrowers. Each Borrower agrees that each notice, election, representation and warranty, covenant, agreement and undertaking made on its behalf by Borrower Representative shall be deemed for all purposes to have been made by such Borrower and shall be binding upon and enforceable against such Borrower to the same extent as if the same had been made directly by such Borrower.

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

(a) Borrowers are defined collectively to include all Persons named as one of the Borrowers herein; provided, however, that any references herein to "any Borrower", "each Borrower" or similar references, shall be construed as a reference to each individual Person named as one of the Borrowers herein. Each Person so named shall be jointly and severally liable for all of the obligations of Borrowers under this Agreement. Each Borrower, individually, expressly understands, agrees and acknowledges, that the credit facilities would not be made available on the terms herein in the absence of the collective credit of all of the Persons named as the Borrowers herein, the joint and several liability of all such Persons, and the cross-

collateralization of the collateral of all such Persons. Accordingly, each Borrower individually acknowledges that the benefit to each of the Persons named as one of the Borrowers as a whole constitutes reasonably equivalent value, regardless of the amount of the credit facilities actually borrowed by, advanced to, or the amount of collateral provided by, any individual Borrower. In addition, each entity named as one of the Borrowers herein hereby acknowledges and agrees that all of the representations, warranties, covenants, obligations, conditions, agreements and other terms contained in this Agreement shall be applicable to and shall be binding upon and measured and enforceable individually against each Person named as one of the Borrowers herein as well as all such Persons when taken together. By way of illustration, but without limiting the generality of the foregoing, the terms of Section 10.1 are to be applied to each individual Person named as one of the Borrowers herein (as well as to all such Persons taken as a whole), such that the occurrence of any of the events described in Section 10.1 as to any Person named as one of the Borrowers herein shall constitute an Event of Default even if such event has not occurred as to any other Persons named as the Borrowers or as to all such Persons taken as a whole.

(b) Notwithstanding any provisions of this Agreement to the contrary, it is intended that the joint and several nature of the liability of each Borrower for the Obligations and the Liens granted by Borrowers to secure the Obligations, not constitute a Fraudulent Conveyance (as defined below). Consequently, Agent, Lenders and each Borrower agree that if the liability of a Borrower for the Obligations, or any Liens granted by such Borrower securing the Obligations would, but for the application of this sentence, constitute a Fraudulent Conveyance, the liability of such Borrower and the Liens securing such liability shall be valid and enforceable only to the maximum extent that would not cause such liability or such Lien to constitute a Fraudulent Conveyance, and the liability of such Borrower and this Agreement shall automatically be deemed to have been amended accordingly. For purposes hereof, the term "**Fraudulent Conveyance**" means a fraudulent conveyance under Section 548 of Chapter 11 of Title 11 of the Bankruptcy Code or a fraudulent conveyance or fraudulent transfer under the applicable provisions of any fraudulent conveyance or fraudulent transfer law or similar law of any state, nation or other governmental unit, as in effect from time to time.

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

in its sole discretion, without affecting the validity or enforceability of the Obligations of the other Borrower.

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

(e) The Borrowers hereby agree, as between themselves, that to the extent that Agent, on behalf of Lenders, shall have received from any Borrower any Recovery Amount (as defined below), then the paying Borrower shall have a right of contribution against each other Borrower in an amount equal to such other Borrower's contributive share of such Recovery Amount; provided, however, that in the event any Borrower suffers a Deficiency Amount (as defined below), then the Borrower suffering the Deficiency Amount shall be entitled to seek and receive contribution from and against the other Borrowers in an amount equal to the Deficiency Amount; and provided, further, that in no event shall the aggregate amounts so reimbursed by reason of the contribution of any Borrower equal or exceed an amount that would, if paid, constitute or result in Fraudulent Conveyance. Until all Obligations have been paid and satisfied in full, no payment made by or for the account of a Borrower including, without limitation, (i) a payment made by such Borrower on behalf of the liabilities of any other Borrower, or (ii) a payment made by any other Guarantor under any Guarantee, shall entitle such Borrower, by subrogation or otherwise, to any payment from such other Borrower or from or out of such other Borrower's property. The right of each Borrower to receive any contribution under this Section 2.10(e) or by subrogation or otherwise from any other Borrower shall be subordinate in right of payment to the Obligations and such Borrower shall not exercise any right or remedy against such other Borrower or any property of such other Borrower by reason of any performance of such Borrower of its joint and several obligations hereunder, until the Obligations have been indefeasibly paid and satisfied in full, and no Borrower shall exercise any right or remedy with respect to this Section 2.10(e) until the Obligations have been indefeasibly paid and satisfied in full. As used in this Section 2.10(e), the term "**Recovery Amount**" means the amount of proceeds received by or credited to Agent from the exercise of any remedy of the Lenders under this Agreement or the other Financing Documents, including, without limitation, the sale of any Collateral. As used in this Section 2.10(e), the term "**Deficiency Amount**" means any amount that is less than the entire amount a Borrower is entitled to receive by way of contribution or subrogation from, but that has not been paid by, the other Borrowers in respect of any Recovery Amount attributable to the Borrower entitled to contribution, until the Deficiency Amount has been reduced to zero through contributions and reimbursements made under the terms of this Section 2.10(e) or otherwise.

Section 2.11 Collections and Lockbox Account.

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

(b) All funds deposited into a Lockbox Account shall be transferred into the Payment Account by the close of each Business Day.

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

(d) Agent shall apply, on a daily basis, all funds transferred into the Payment Account pursuant to this Section to reduce the outstanding Revolving Loans, the Obligations, and the Prepetition Obligations in such order of application as Agent shall elect. If as the result of collections of Accounts pursuant to the terms and conditions of this Section, a credit balance exists with respect to the Loan Account, such credit balance shall not accrue interest in favor of Borrowers, but Agent shall transfer such funds into an account designated by Borrower Representative for so long as no Event of Default exists.

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

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

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

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

Section 2.12 Termination; Restriction on Termination.

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

(b) Termination by Borrowers. Upon at least thirty (30) days' prior written notice to Agent and Lenders, Borrowers may, at their option, terminate this Agreement; provided, however, that no such termination shall be effective until Borrowers have (i) paid or collateralized to Agent's satisfaction all of the Obligations in immediately available funds, (ii) complied with Section 2.2, and (iii) paid in full all of the Affiliated Obligations in immediately

available funds and terminated the Affiliated Financing Documents. Any notice of termination given by Borrowers shall be irrevocable unless all Lenders otherwise agree in writing and no Lender shall have any obligation to make any Loans on or after the termination date stated in such notice. Borrowers may elect to terminate this Agreement in its entirety only. No section of this Agreement or type of Loan available hereunder may be terminated singly.

(c) Effectiveness of Termination. Notwithstanding the provisions of Section 362 of the Bankruptcy Code, and without further application to or order of the Bankruptcy Court, all of the Obligations shall be immediately due and payable upon the Termination Date. All undertakings, agreements, covenants, warranties and representations of Borrowers contained in the Financing Documents shall survive any such termination and Agent shall retain its Liens in the Collateral and Agent and each Lender shall retain all of its rights and remedies under the Financing Documents notwithstanding such termination until all Obligations and Affiliated Obligations have been discharged or paid, in full, in immediately available funds, including, without limitation, all Obligations under Section 2.2 resulting from such termination. Notwithstanding the foregoing or the payment in full of the Obligations, Agent shall not be required to terminate its Liens in the Collateral unless, with respect to any loss or damage Agent may incur as a result of dishonored checks or other items of payment received by Agent from Borrower or any Account Debtor and applied to the Obligations, Agent shall, at its option, (i) have received a written agreement satisfactory to Agent, executed by Borrowers and by any Person whose loans or other advances to Borrowers are used in whole or in part to satisfy the Obligations, indemnifying Agent and each Lender from any such loss or damage or (ii) have retained cash Collateral or other Collateral for such period of time as Agent, in its discretion, may deem necessary to protect Agent and each Lender from any such loss or damage.

ARTICLE 3 - REPRESENTATIONS AND WARRANTIES

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

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

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

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

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

Section 3.5 Financial Information. All information delivered to Agent and pertaining to the financial condition of any Credit Party fairly presents the financial position of such Credit Party as of such date in conformity with GAAP (and as to unaudited financial statements, subject to normal year end adjustments and the absence of footnote disclosures). Since December 31, 2012, except for the filing of the Bankruptcy Cases and the Asset Sale, there has been no material adverse change in the business, operations, properties, prospects or condition (financial or otherwise) of any Credit Party.

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

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

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

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

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

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

Section 3.12 Compliance with Laws; Anti-Terrorism Laws.

(a) Each Credit Party is in compliance with the requirements of all applicable Laws, except for such Laws the noncompliance with which could not reasonably be expected to have a Material Adverse Effect, provided, that Borrowers' failure to be HIPAA Compliant solely as a result of Agent's and any Lender's access, if any, to Protected Health Information shall not be a breach of the representation and warranty set forth in this Section 3.12.

(b) None of the Credit Parties and, to the knowledge of the Credit Parties, none of their Affiliates (i) is in violation of any Anti-Terrorism Law, (ii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law, (iii) is a Blocked Person, or is controlled by a Blocked Person, (iv) is acting or will act for or on behalf of a Blocked Person, (v) is associated with, or will become associated with, a Blocked Person or (vi)

is providing, or will provide, material, financial or technical support or other services to or in support of acts of terrorism of a Blocked Person. No Credit Party nor, to the knowledge of any Credit Party, any of its Affiliates or agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement, (A) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (B) deals in, or otherwise engages in any transaction relating to, any property or interest in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law.

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

Section 3.14 Compliance with ERISA.

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

(b) Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, each Borrower and each Subsidiary is in compliance with the applicable provisions of ERISA and the provision of the Code relating to Plans and the regulations and published interpretations therein. During the thirty-six (36) month period prior to the Closing Date or the making of any Loan, (i) no steps have been taken to terminate any Pension Plan, and (ii) no contribution failure has occurred with respect to any Pension Plan sufficient to give rise to a Lien under Section 302(f) of ERISA. No condition exists or event or transaction has occurred with respect to any Pension Plan which could result in the incurrence by any Credit Party of any material liability, fine or penalty. Except as set forth on Schedule 3.14 hereto, no Credit Party has incurred liability to the PBGC (other than for current premiums) with respect to any employee Pension Plan. All contributions (if any) have been made on a timely basis to any Multiemployer Plan that are required to be made by any Credit Party or any other member of the Controlled Group under the terms of the plan or, except as set

forth on Schedule 3.14 hereto, of any collective bargaining agreement, or by applicable Law; no Credit Party nor any member of the Controlled Group has withdrawn or partially withdrawn from any Multiemployer Plan, incurred any withdrawal liability with respect to any such plan or received notice of any claim or demand for withdrawal liability or partial withdrawal liability from any such plan, and no condition has occurred which, if continued, could result in a withdrawal or partial withdrawal from any such plan, and no Credit Party nor any member of the Controlled Group has received any notice that any Multiemployer Plan is in reorganization, that increased contributions may be required to avoid a reduction in plan benefits or the imposition of any excise tax, that any such plan is or has been funded at a rate less than that required under Section 412 of the Code, that any such plan is or may be terminated, or that any such plan is or may become insolvent.

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

Section 3.16 Related Transactions. All transactions contemplated by the Operative Documents to be consummated on or prior to the date hereof have been so consummated (including, without limitation, the disbursement and transfer of all funds in connection therewith) in all material respects pursuant to the provisions of the applicable Operative Documents, true and complete copies of which have been delivered to Agent, and in compliance with all applicable Law, except for such Laws the noncompliance with which would not reasonably be expected to have a Material Adverse Effect, and approved by the Bankruptcy Court.

Section 3.17 Material Contracts. Except for the Operative Documents and the other agreements set forth on Schedule 3.17 (collectively with the Operative Documents, the "**Material Contracts**"), as of the Closing Date there are no (a) employment agreements covering the management of any Credit Party, (b) collective bargaining agreements or other similar labor agreements covering any employees of any Credit Party, (c) agreements for managerial, consulting or similar services to which any Credit Party is a party or by which it is bound, (d) agreements regarding any Credit Party, its assets or operations or any investment therein to which any of its equity holders is a party or by which it is bound, (e) real estate leases, Intellectual Property licenses or other lease or license agreements to which any Credit Party is a party, either as lessor or lessee, or as licensor or licensee (other than licenses arising from the purchase of "off the shelf" products), (f) customer, distribution, marketing or supply agreements to which any Credit Party is a party, in each case with respect to the preceding clauses (a) through (f) requiring payment of more than \$250,000 in any year, except with that with respect to supply agreements, such agreements if requiring payment of more than \$1,000,000 in any year, (g) partnership agreements to which any Credit Party is a general partner or joint venture agreements to which any Credit Party is a party, (h) third party billing arrangements to which any Credit Party is a party, or (i) any other agreements or instruments to which any Credit Party is a party, and the breach, nonperformance or cancellation of which, or the failure of which to renew, could reasonably be expected to have a Material Adverse Effect. Schedule 3.17 sets forth, with respect to each real estate lease agreement to which any Borrower is a party (as a lessee) as of the Closing Date, the address of the subject property and the annual rental (or,

where applicable, a general description of the method of computing the annual rental). The consummation of the transactions contemplated by the Financing Documents will not give rise to a right of termination in favor of any party to any Material Contract (other than any Credit Party), except for such Material Contracts the noncompliance with which would not reasonably be expected to have a Material Adverse Effect.

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

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

(b) no property now owned or leased by any Credit Party and, to the knowledge of each Borrower, no such property previously owned or leased by any Credit Party, to which any Credit Party has, directly or indirectly, transported or arranged for the transportation of any Hazardous Materials, is listed or, to such Borrower's knowledge, proposed for listing, on the National Priorities List promulgated pursuant to CERCLA, or CERCLIS (as defined in CERCLA) or any similar state list or is the subject of federal, state or local enforcement actions or, to the knowledge of such Borrower, other investigations which may lead to claims against any Credit Party for clean-up costs, remedial work, damage to natural resources or personal injury claims, including, without limitation, claims under CERCLA. For purposes of this Section 3.18, each Credit Party shall be deemed to include any business or business entity (including a corporation) that is, in whole or in part, a predecessor of such Credit Party.

Section 3.19 Intellectual Property. Each Credit Party owns, is licensed to use or otherwise has the right to use, all Intellectual Property that is material to the condition (financial or other), business or operations of such Credit Party. All Intellectual Property existing as of the Closing Date which is issued, registered or pending with any United States or foreign Governmental Authority (including, without limitation, any and all applications for the registration of any Intellectual Property with any such United States or foreign Governmental Authority) and all licenses under which any Borrower is the licensee of any such registered Intellectual Property (or any such application for the registration of Intellectual Property) owned by another Person are set forth on Schedule 3.19. Such Schedule 3.19 indicates in each case whether such registered Intellectual Property (or application therefore) is owned or licensed by such Credit Party, and in the case of any such licensed registered Intellectual Property (or application therefore), lists the name and address of the licensor and the name and date of the agreement pursuant to which such item of Intellectual Property is licensed and whether or not such license is an exclusive license and indicates whether there are any purported restrictions in such license on the ability to such Credit Party to grant a security interest in and/or to transfer any of its rights as a licensee under such license. Except as indicated on Schedule 3.19, the applicable Credit Party is the sole and exclusive owner of the entire and unencumbered right,

title and interest in and to each such registered Intellectual Property (or application therefore) purported to be owned by such Credit Party, free and clear of any Liens and/or licenses in favor of third parties or agreements or covenants not such sue third parties for infringement. All registered Intellectual Property of each Credit Party is duly and properly registered, filed or issued in the appropriate office and jurisdictions for such registrations, filings or issuances, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect. No Credit Party is party to, nor bound by, any material license or other agreement with respect to which any Credit Party is the licensee that prohibits or otherwise restricts such Credit Party from granting a security interest in such Borrower's interest in such license or agreement or other property. To such Borrower's knowledge, each Credit Party conducts its business without infringement or claim of infringement of any Intellectual Property rights of others and there is no infringement or claim of infringement by others of any Intellectual Property rights of any Credit Party, which infringement or claim of infringement could reasonably be expected to have a Material Adverse Effect.

Section 3.20 [Reserved].

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

Section 3.22 Interest Rate. The rate of interest paid under the Notes and the method and manner of the calculation thereof do not violate any usury or other law or applicable Laws, any of the Organizational Documents, or any of the Operative Documents.

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

Section 3.24 Representations and Warranties Incorporated from Operative Documents. As of the Closing Date, each of the representations and warranties made in the Operative Documents by each of the parties thereto is true and correct in all material respects, and such representations and warranties are hereby incorporated herein by reference with the same effect as though set forth in their entirety herein, as qualified therein, except to the extent that such representation or warranty relates to a specific date, in which case such representation and warranty shall be true as of such earlier date.

Section 3.25 Appointment of a trustee or Examiner; Liquidation. No order has been entered in any Bankruptcy Case (a) for the appointment of a Chapter 11 trustee, (b) for the appointment of an examiner with expanded powers (beyond those set forth in Sections 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1104 of the Bankruptcy Code, (c) to convert any Bankruptcy Case to a case under Chapter 7 of the Bankruptcy Code, or (d) to dismiss any Bankruptcy Case.

Section 3.26 Reorganization Matters.

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

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

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

(d) After entry of the Interim Order, and pursuant to and to the extent permitted in the Interim Order and Final Order, the Obligations will constitute allowed administrative expense claims in the Bankruptcy Case, having priority over all administrative expense claims and unsecured claims against the Borrowers and Guarantors now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expense claims of the kind specified in Sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c) 726 (to the extent permitted by Law), 1113, 1114, or any other provision of the Bankruptcy Code or otherwise, as provided under Section 364(c)(1) of the Bankruptcy Code, subject only to the Carve-Out.

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

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

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

ARTICLE 4 - AFFIRMATIVE COVENANTS

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

Section 4.1 Financial Statements and Other Reports. Each Borrower will deliver to Agent: (a) prior to the Closing Date, the Budget, and on the first Business Day of each week thereafter, an updated "rolling" 13-week budget in a form similar to the initial Budget, which, once approved in writing by the Agent in its sole discretion, shall supplement and replace the prior Budget without further notice, motion, application to, order of, or hearing before the Bankruptcy Court; (b) as soon as available, but no later than forty-five (45) days after the last day of each month, a company prepared consolidated balance sheet, cash flow and income statement covering Borrowers' and its Consolidated Subsidiaries' consolidated operations during the period, prepared under GAAP, consistently applied, certified by a Responsible Officer and in a form acceptable to Agent; (c) as soon as available, but no later than one hundred fifty (150) days after the last day of each Borrower's fiscal year, audited consolidated financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from an independent certified public accounting firm acceptable to Agent in its reasonable discretion; (d) within five (5) days of delivery or filing thereof, copies of all statements, reports and notices made available to each Borrower's security holders or to any holders of Subordinated Debt and copies of all reports and other filings made by Borrower with any stock exchange on which any securities of any Borrower are traded and/or the SEC; (e) a report, as part of the Compliance Certificate to be delivered pursuant to this section, of any legal actions pending or threatened against any Borrower or any of its Affiliates that could reasonably be expected to result in uninsured losses to any Borrower or any of its Subsidiaries of Two Hundred Fifty Thousand Dollars (\$250,000) or more; (f) prompt written notice of an event that materially and adversely affects the value of any Intellectual Property; (g) budgets, sales projections, operating plans and other financial information and information, reports or statements regarding the Borrowers, their business and the Collateral as Agent may from time to time reasonably request; and (h) within one (1) Business Day following the close of each payroll period, evidence that all Payroll Taxes have been timely and fully paid to the applicable Governmental Authorities (including, without limitation, copies of any documentation, calculations, cancelled checks, wire or ACH confirmations pertaining to Borrowers' Payroll Taxes). Each Borrower will, within forty-five (45) days after the last day of each month, deliver to Agent with the monthly financial statements, a duly completed Compliance Certificate signed by a Responsible Officer setting forth calculations showing compliance with the financial covenants set forth in this Agreement. Promptly upon their becoming available, Borrowers shall deliver to Agent copies of all Material Contracts. Each Borrower will, within ten (10) days after the last day of each month, deliver to Agent a duly completed Borrowing Base Certificate signed by a Responsible Officer, with aged listings of accounts receivable and accounts payable (by invoice date). Simultaneously with the Borrowers' delivery of each Budget pursuant to clause (a) above, Borrowers shall provide (i) a weekly and rolling four-week reconciliation of budgeted and actual amounts, and (ii) a written narrative explanation if (1) actual disbursements under any line item on the Budget for any week or any four-week period exceed the budgeted disbursements for either such period in such line item by more than ten percent (10%), (2) aggregate actual disbursements under the Budget for any week or four-week period exceed the aggregate budgeted disbursements for either such period by more than five percent (5%), or (iii) aggregate

actual cash receipts during any week or four-week period are less than ninety percent (90%) of aggregate projected cash receipts set forth in the Budget for either such period.

Section 4.2 Payment and Performance of Obligations. Subject to the entry of appropriate orders of the Bankruptcy Court, each Borrower (a) will pay and discharge, and cause each Subsidiary to pay and discharge, at or prior to maturity, all of their respective obligations and liabilities, including all Payroll Taxes and other tax liabilities, except for such obligations and/or liabilities (i) that may be the subject of a Permitted Contest, and (ii) the nonpayment or nondischarge of which could not reasonably be expected to have a Material Adverse Effect or result in a Lien against any Collateral, except for Permitted Liens, (b) will maintain, and cause each Subsidiary to maintain, to the extent required in accordance with GAAP, appropriate reserves for the accrual of all of their respective obligations and liabilities, and (c) will not breach or permit any Subsidiary to breach, or permit to exist any default under, the terms of any lease, commitment, contract, instrument or obligation to which it is a party, or by which its properties or assets are bound, except for such breaches or defaults which could not reasonably be expected to have a Material Adverse Effect.

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

Section 4.4 Maintenance of Property; Insurance.

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

(b) Subject to entry of an appropriate order or orders of the Bankruptcy Court, Borrowers will pay or cause to be paid all Taxes on or prior to the date due, and in any event, prior to the date upon which any fine, penalty, interest or cost for nonpayment could be imposed, and furnish to Agent, upon request, receipted bills of the appropriate taxing authority or other documentation reasonably satisfactory to Agent evidencing the payment thereof. If Borrowers shall fail to pay any Taxes in accordance with this section and is not contesting or causing a contesting of such Taxes pursuant to a Permitted Contest, or if there are insufficient funds in the applicable reserves or escrows under Article 2 to pay an such Taxes, Agent shall have the right, but shall not be obligated, to (for the account of all Lenders) pay such Taxes, and Borrowers shall repay to Agent, on written demand, any amount paid by Agent, with interest thereon from the date of the advance thereof to the date of repayment, at the rate applicable during periods of Default hereunder, and such amount shall constitute a portion of the Obligations. Borrowers shall not pay any Taxes or other obligations in installments unless permitted by applicable Laws,

and shall, upon the request of Agent, deliver copies of all notices and bills relating to any Taxes or other charge covered by this section to Agent.

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

(d) Subject to entry of an appropriate order or orders of the Bankruptcy Court, each Borrower will maintain (i) casualty insurance on all real and personal property on an all risks basis (including the perils of flood, windstorm and quake), covering the repair and replacement cost of all such property and coverage, business interruption and rent loss coverages with extended period of indemnity (for the period required by Agent from time to time) and indemnity for extra expense, in each case without application of coinsurance and with agreed amount endorsements, (ii) general and professional liability insurance (including products/completed operations liability coverage), and (iii) such other insurance coverage in such amounts and with respect to such risks as Agent may reasonably request from time to time in connection with the growth and/or expansion of Borrowers' business; provided, however, that in no event shall such insurance be in amounts or with coverage less than, or with carriers with qualifications inferior to, any of the insurance or carriers in existence as of the Closing Date (or required to be in existence after the Closing Date under a Financing Document) and described in the Insurance Certificates attached hereto as Schedule 4.4. All such insurance shall be provided by insurers having an A.M. Best policyholders rating reasonably acceptable to Agent.

(e) On or prior to the Closing Date, and at all times thereafter, each Borrower will cause Agent to be named as an additional insured on each insurance policy required to be maintained pursuant to this Section 4.4 pursuant to endorsements in form and substance acceptable to Agent. Borrowers shall deliver to Agent (i) on the Closing Date, a certificate from Borrowers' insurance broker dated such date showing the amount of coverage as of such date, and that if all or any part of such policy is canceled, terminated or expires, the insurer will forthwith endeavor to give notice thereof to each additional insured that no cancellation, reduction in amount or material change in coverage thereof shall be effective until at least thirty (30) days after receipt by each additional insured of written notice thereof, (ii) upon the request of Agent from time to time full information as to the insurance carried, (iii) within five (5) days of receipt of notice from any insurer, a copy of any notice of cancellation, nonrenewal or material change in coverage from that existing on the date of this Agreement, and (iv) forthwith, notice of any cancellation or nonrenewal of coverage by any Borrower, and (v) at least 5 Business Days prior to expiration of any policy of insurance, evidence of renewal of such insurance upon the terms and conditions herein required.

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

result of Agent's and any Lender's access, if any, to Protected Health Information shall not constitute a breach of the covenant to comply with the requirements of all applicable Laws set forth in this Section 4.5.

Section 4.6 Inspection of Property, Books and Records.

(a) Each Borrower will keep, and will cause each Subsidiary to keep, proper books of record substantially in accordance with GAAP in which full, true and correct entries shall be made of all dealings and transactions in relation to its business and activities.

(b) The Borrowers will cause the Bankruptcy Court to provide access, pursuant to court order, to and will permit, and will cause each Subsidiary to permit, at the sole cost of the applicable Borrower or any applicable Subsidiary, representatives of Agent and of any Lender, and each of their duly authorized representatives, to visit and inspect any of their respective properties, to examine and make abstracts or copies from any of their respective books and records, to conduct a collateral audit and analysis of their respective operations and the Collateral, to verify the amount and age of the Accounts, the identity and credit of the respective Account Debtors, to review the billing practices of Borrowers and to discuss their respective affairs, finances and accounts with their respective officers, employees and independent public accountants as often as may reasonably be desired. Agent or any Lender exercising any rights pursuant to this Section 4.6 shall give the applicable Borrower two (2) Business Days' prior notice of such exercise, provided, however, that no notice shall be required during the existence and continuance of any Default or any time during which Agent believes a Default exists.

Section 4.7 Use of Proceeds.

(a) Borrowers shall use the proceeds of Revolving Loans solely for (i) the Prepetition Repayment Advance, (ii) payment of all Prepetition Term Loan Obligations as they come due pursuant to the Prepetition Term Credit Agreement, (iii) payment of all fees and expenses due to Agent and Lenders pursuant to Section 2.2, (iv) financing ongoing debtor in possession working capital needs, general corporate purposes relating to postpetition operations and related costs, fees and expenses of the Bankruptcy Cases, and (v) payment of the costs of administration of the Bankruptcy Cases as approved by the Bankruptcy Court.

(b) No portion of the proceeds of the Loans will be used for family, personal, agricultural or household use.

(c) Notwithstanding anything to the contrary set forth herein or in any other Financing Document, no portion of the Revolving Loans, the Collateral, the Carve-Out funds or cash collateral of Agent, Lenders, Prepetition Agent and/or Prepetition Lenders may be used to fund any activities: (i) preventing, hindering, or delaying any of the Agent's, the Lenders', Prepetition Agent's or the Prepetition Lenders' enforcement or realization upon any of the Collateral; (ii) using or seeking to use Agent's or any Lenders' cash collateral or selling or otherwise disposing of any of the Collateral without the consent of the Agent and the Required Lenders; (iii) using or seeking to use any insurance proceeds constituting Collateral without the consent of the Agent and the Required Lenders; (iv) except as permitted under Section 5.1, incurring Debt without the prior consent of the Agent and the Required Lenders; (v) objecting or

challenging in any way any claims, Liens, Collateral (including cash collateral) or any collateral securing any obligations pursuant to any Affiliated Financing Document, held by or on behalf of any of Agent, the Lenders, Prepetition Agent, or the Prepetition Lenders; (vi) asserting any claims or causes of action including, without limitation, any action under Chapter 5 of the Bankruptcy Code, against any of Agent, the Lenders, Prepetition Agent, the Prepetition Lenders, or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees; (vii) prosecuting an objection to, or contesting in any manner, or raising defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the Obligations, the Liens of the Agent or Prepetition Agent securing the Obligations, the Prepetition Obligations, the Liens securing the Prepetition Obligations or any other rights or interests of any of the Agent, the Lenders, Prepetition Agent, or the Prepetition Lenders; or (viii) taking any action which (A) has or could have the effect of adversely modifying or compromising the rights and remedies of the Agent, the Lenders, Prepetition Agent, or Prepetition Lenders, (B) is contrary, in a manner that adverse to the Agent, the Lenders, Prepetition Agent or the Prepetition Lenders, to any term or condition set forth in any of the Financing Documents, the Financing Orders or the Affiliated Financing Documents, or (C) results in the occurrence of an Event of Default.

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

Section 4.9 Notices of Litigation and Defaults. Borrowers will give prompt written notice to Agent (a) of any litigation or governmental proceedings pending or threatened (in writing) against Borrowers or other Credit Party which would reasonably be expected to have a Material Adverse Effect with respect to Borrowers or any other Credit Party or which in any manner calls into question the validity or enforceability of any Financing Document, (b) upon any Borrower becoming aware of the existence of any Default or Event of Default, (c) if any Credit Party is in breach or default under or with respect to any Material Contract, or if any Credit Party is in breach or default under or with respect to any other contract, agreement, lease or other instrument to which it is a party or by which its property is bound or affected, which breach or default could reasonably be expected to have a Material Adverse Effect, (d) of any strikes or other labor disputes pending or, to any Borrower's knowledge, threatened against any Credit Party, (e) if there is any infringement or claim of infringement by any other Person with respect to any Intellectual Property rights of any Credit Party that could reasonably be expected to have a Material Adverse Effect, or if there is any claim by any other Person that any Credit

Party in the conduct of its business is infringing on the Intellectual Property Rights of others, and (f) of all returns, recoveries, disputes and claims that could reasonably be expected to result in uninsured losses of more than \$100,000. Borrowers represent and warrant that Schedule 4.9 sets forth a complete list of all matters existing as of the Closing Date for which notice could be required under this Section and all litigation or governmental proceedings pending or threatened (in writing) against Borrowers or other Credit Party as of the Closing Date.

Section 4.10 Hazardous Materials; Remediation.

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

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

Section 4.11 Further Assurances.

(a) Each Borrower will, at its own cost and expense, to promptly and duly take, execute, acknowledge and deliver all such further acts, documents and assurances as may from time to time be necessary or as Agent or the Required Lenders may from time to time reasonably request in order to carry out the intent and purposes of the Financing Documents and the transactions contemplated thereby, including all such actions to (i) establish, create, preserve, protect and perfect a first priority Lien (subject only to Permitted Liens) in favor of Agent for itself and for the benefit of the Lenders on the Collateral (including Collateral acquired after the date hereof), and (ii) unless Agent shall agree otherwise in writing, cause all Borrowers to be jointly and severally obligated with the other Borrowers under all covenants and obligations under this Agreement, including the obligation to repay the Obligations. Without limiting the generality of the foregoing, (x) Borrowers shall, at the time of the delivery of any Compliance Certificate disclosing the acquisition by an Credit Party of any registered Intellectual Property or application for the registration of Intellectual Property, deliver to Agent a duly completed and executed Supplement to the applicable Credit Party's Patent Security Agreement or Trademark Security Agreement in the form of the respective Exhibit thereto, and (y) at the request of Agent, following the disclosure by Borrowers on any Compliance Certificate of the acquisition by any

Credit Party of any rights under a license as a licensee with respect to any registered Intellectual Property or application for the registration of any Intellectual Property owned by another Person, Borrowers shall execute any documents requested by Agent to establish, create, preserve, protect and perfect a first priority lien in favor of Agent, to the extent legally possible, in such Borrower's rights under such license and shall use their commercially reasonable best efforts to obtain the written consent of the licensor which such license to the granting in favor of Agent of a Lien on such Borrower's rights as licensee under such license.

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

(c) [Reserved]

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

Section 4.12 Right of First Refusal. Borrowers hereby agree that if, at any time during the term hereof, any Borrower receives from a third party an offer, term sheet or commitment, or any Borrower makes a proposal substantially acceptable to or accepted by any person or entity (all of the foregoing being referred to as an "**Offer**"), which Offer provides for working capital financing, accounts receivable financing, or inventory financing (but excluding financings completed through the public or private placement of bonds or with the Dormitory Authority of the State of New York), the applicable Borrower shall first forward the Offer to MCF, which shall have five (5) Business Days after receipt thereof (the "**Option Period**") to agree to provide similar financing in the place of such person or entity upon the terms and conditions set forth in the Offer and to notify the applicable Borrower in writing of MCF's acceptance of the Offer (the "**Acceptance Notice**"). If the Borrower has not received an Acceptance Notice within the Option Period, the Borrower shall be free, subject to approval of the Bankruptcy Court, to consummate the transaction described in the Offer with the third party providing the Offer (the "**Financing Transaction**"); provided, however, that the foregoing, and MCF's failure to respond to issue an Acceptance Notice, shall not be construed as a waiver of any of the terms, covenants or conditions of the Financing Documents. In the event that the Financing Transaction is not consummated under similar terms with such person or entity during the one hundred twenty (120) day period following the expiration of the Option Period, or any material term is changed, the applicable Borrower shall not be permitted to consummate the Financing Transaction without

again complying with this Section. The right of first refusal granted to MCF hereunder shall survive until the Termination Date. For purposes of this Section, "**MCF**" shall mean and include either of MCF or any other parent company, subsidiary or Affiliate of MCF, and the Acceptance Notice and consummation of such financing transaction may be executed by MCF or any other parent company, subsidiary or Affiliate of MCF. Nothing in this Section is intended, or shall be construed, to constitute Agent's, MCF's or any other Lender's consent to the consummation of any transaction described in any Offer.

Section 4.13 Power of Attorney. Each of the officers of Agent is hereby irrevocably made, constituted and appointed the true and lawful attorney for Borrowers (without requiring any of them to act as such) with full power of substitution to do the following: (a) endorse the name of Borrowers upon any and all checks, drafts, money orders, and other instruments for the payment of money that are payable to Borrowers and constitute collections on Borrowers' Accounts; (b) so long as Agent has provided not less than three (3) Business Days' prior written notice to Borrower to perform the same and Borrower has failed to take such action, execute in the name of Borrowers any schedules, assignments, instruments, documents, and statements that Borrowers are obligated to give Agent under this Agreement; (c) after the occurrence and during the continuance of an Event of Default, take any action Borrowers are required to take under this Agreement; (d) so long as Agent has provided not less than three (3) Business Days' prior written notice to Borrower to perform the same and Borrower has failed to take such action, do such other and further acts and deeds in the name of Borrowers that Agent may deem necessary or desirable to enforce any Account or other Collateral or perfect Agent's security interest or Lien in any Collateral; and (e) after the occurrence and during the continuance of an Event of Default, do such other and further acts and deeds in the name of Borrowers that Agent may deem necessary or desirable to enforce its rights with regard to any Account or other Collateral. This power of attorney shall be irrevocable and coupled with an interest.

Section 4.14 Borrowing Base Collateral Administration.

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

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

Section 4.15 Payroll Taxes; Third Party Payroll Administrator. The Borrowers shall at all times engage a third-party payroll administrator to manage, administer and ensure the timely payment of any and all Payroll Taxes due and owing by the Borrowers from time to time to any applicable Governmental Authorities.

Section 4.16 Reorganization Milestones. The Borrowers shall timely comply with the Reorganization Milestones, it being expressly understood that time is of the essence.

Section 4.17 Bankruptcy Reports. Promptly after the sending, receiving or filing thereof, copies of all reports, motions, affidavits, statements and other documents that any Borrower sends, receives or files in connection with the Bankruptcy Cases, including all correspondence with the Bankruptcy Court, shall be delivered to Agent and Lenders.

ARTICLE 5 - NEGATIVE COVENANTS

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

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

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

Section 5.3 Restricted Distributions. No Borrower will, or will permit any Subsidiary to, directly or indirectly, declare, order, pay, make or set apart any sum for any Restricted Distribution.

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

Section 5.5 Payments and Modifications of Subordinated Debt. Borrower will not, and will not permit any Subsidiary to, directly or indirectly (a) declare, pay, make or set aside any amount for payment in respect of Subordinated Debt, except for payments made in full compliance with and expressly permitted under the Subordination Agreement, (b) amend or otherwise modify the terms of any Subordinated Debt, except for amendments or modifications made in full compliance with the Subordination Agreement, (c) declare, pay, make or set aside

any amount for payment in respect of any Debt hereinafter incurred that, by its terms, or by separate agreement, is subordinated to the Obligations, except for payments made in full compliance with and expressly permitted under the subordination provisions applicable thereto, or (d) amend or otherwise modify the terms of any such Debt if the effect of such amendment or modification is to (i) increase the interest rate or fees on, or change the manner or timing of payment of, such Debt, (ii) accelerate or shorten the dates upon which payments of principal or interest are due on, or the principal amount of, such Debt, (iii) change in a manner adverse to any Credit Party or Agent any event of default or add or make more restrictive any covenant with respect to such Debt, (iv) change the prepayment provisions of such Debt or any of the defined terms related thereto, (v) change the subordination provisions thereof (or the subordination terms of any guaranty thereof), or (vi) change or amend any other term if such change or amendment would materially increase the obligations of the obligor or confer additional material rights on the holder of such Debt in a manner adverse to Borrower, any Subsidiaries, Agents or Lenders. Borrower shall, prior to entering into any such amendment or modification, deliver to Agent reasonably in advance of the execution thereof, any final or execution form copy thereof.

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

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

Section 5.8 Transactions with Affiliates. Except as otherwise disclosed on Schedule 5.8, no Borrower will, or will permit any Subsidiary to, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service or extension of any credit) with any Affiliate of any Borrower. For the avoidance of doubt, at no time shall Borrower extend any credit to, be owed any trade payable from or be owed any other amount pursuant to any other financing or lending arrangement from, any Affiliate other than as set forth on Schedule 5.8.

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

Section 5.10 Modification of Certain Agreements. No Borrower will, or will permit any Subsidiary to, directly or indirectly, amend or otherwise modify any Asset Sale Document or other any Material Contract, which amendment or modification in any case: (a) is contrary to the terms of this Agreement or any other Financing Document; (b) could reasonably be expected to be adverse to the rights, interests or privileges of the Agent or the Lenders or their ability to

enforce the same; (c) results in the imposition or expansion in any material respect of any obligation of or restriction or burden on any Borrower or any Subsidiary; or (d) reduces in any material respect any rights or benefits of any Borrower or any Subsidiary (it being understood and agreed that any such determination shall be in the discretion of the Agent). Each Borrower shall, prior to entering into any amendment or other modification of any of the foregoing documents, deliver to Agent reasonably in advance of the execution thereof, any final or execution form copy of amendments or other modifications to such documents, and such Borrower agrees not to take, nor permit any of its Subsidiaries to take, any such action with respect to any such documents without obtaining such approval from Agent.

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

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

Section 5.13 Limitation on Sale and Leaseback Transactions. No Borrower will, or will permit any Subsidiary to, directly or indirectly, enter into any arrangement with any Person whereby, in a substantially contemporaneous transaction, any Borrower or any Subsidiary sells or transfers all or substantially all of its right, title and interest in an asset and, in connection therewith, acquires or leases back the right to use such asset.

Section 5.14 Deposit Accounts and Securities Accounts; Payroll and Benefits Accounts. No Borrower will, or will permit any Subsidiary to, directly or indirectly, establish any new Deposit Account or Securities Account in to which the Accounts and/or proceeds of Accounts are, or are to be, deposited, without prior written notice to Agent, and unless Agent, such Borrower or such Subsidiary and the bank, financial institution or securities intermediary at which the account is to be opened enter into a Deposit Account Control Agreement, Deposit Account Restriction Agreement or Securities Account Control Agreement prior to or concurrently with the establishment of such Deposit Account or Securities Account. Borrowers represent and warrant that Schedule 5.14 lists all of the Deposit Accounts and Securities Accounts of each Borrower as of the Closing Date.

Section 5.15 Compliance with Anti-Terrorism Laws. Agent hereby notifies Borrowers that pursuant to the requirements of Anti-Terrorism Laws, and Agent's policies and practices, Agent is required to obtain, verify and record certain information and documentation that identifies Borrowers and its principals, which information includes the name and address of each Borrower and its principals and such other information that will allow Agent to identify such party in accordance with Anti-Terrorism Laws. No Borrower will, or will permit any Subsidiary to, directly or indirectly, knowingly enter into any Material Contracts with any Blocked Person or any Person listed on the OFAC Lists. Each Borrower shall immediately notify Agent if such

Borrower has knowledge that any Borrower, any additional Credit Party or any of their respective Affiliates or agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement is or becomes a Blocked Person or (a) is convicted on, (b) pleads nolo contendere to, (c) is indicted on, or (d) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering. No Borrower will, or will permit any Subsidiary to, directly or indirectly, (i) conduct any business or engage in any transaction or dealing with any Blocked Person, including, without limitation, the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law, or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224 or other Anti-Terrorism Law.

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

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

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

(c) Prior to the date on which the Obligations have been indefeasibly paid in full, all in accordance with the terms of this Agreement, and this Agreement has been terminated, no Borrower will (i) pay any administrative expenses pursuant to Section 503(b) of the Bankruptcy Code, except (A) administrative expenses incurred in the Ordinary Course of Business of the Borrowers or approved by an order of the Bankruptcy Court and (B) Allowed Fees payable under Section 330 and 331 of the Bankruptcy Code, or (ii) permit or seek to permit the granting of adequate protection in favor of any Person.

(d) Except as provided in the Financing Orders, no Borrower will waive any claims under Section 506(c) of the Bankruptcy Code, or take any other action Agent deems adverse to Agent or the Lenders or their rights and remedies under the Financing Documents.

Section 5.17 Bankruptcy Actions.

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

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

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

ARTICLE 6 - FINANCIAL COVENANTS

Section 6.1 Definition of Minimum Liquidity. "**Minimum Liquidity**" means the sum of Revolving Loan Availability plus cash and cash equivalents that are (a) owned by any Borrower, and (b) not subject to any Lien other than a Lien in favor of Agent.

Section 6.2 Minimum Liquidity. Borrowers will not permit the Minimum Liquidity at any time during the term of this Agreement to be less than \$1,000,000.

Section 6.3 Evidence of Compliance. Borrowers shall furnish to Agent, together with the financial reporting required of Borrowers in Section 4.1, evidence (in form and content satisfactory to Agent) of Borrowers' compliance with the covenants in this Article and evidence that no Event of Default specified in this Article has occurred. Such evidence shall include, without limitation, (a) a statement and report, on a form approved by Agent, detailing Borrowers' calculations, and (b) if requested by Agent, back-up documentation (including, without limitation, invoices, receipts and other evidence of costs incurred during such quarter as Agent shall reasonably require) evidencing the propriety of the calculations.

ARTICLE 7 CONDITIONS

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

(a) the Interim Order shall be in effect and shall not have been reversed, modified, amended or stayed, and no motion seeking a reversal, modification, amendment or stay shall have been filed by any Person;

(b) the Agent shall have received the Budget, dated no more than seven (7) days prior to the Interim Hearing and covering the period of the first thirteen (13) weeks after the Closing Date, in form and substance satisfactory to the Agent;

(c) the Agent shall have received the Financing Documents, Amendment No. 8 to the Prepetition Term Credit Agreement and the Asset Sale Documents, each duly executed by an authorized officer of the Borrower and other parties thereto;

(d) evidence of the consummation of the transactions contemplated by the Operative Documents, including, without limitation, the Asset Sale;

(e) the payment of all fees, expenses and other amounts due and payable under the Financing Documents and the Interim Order;

(f) other than the filing of the Bankruptcy Cases, since December 31, 2012, the absence of any material adverse change in any aspect of the business, operations, properties, prospects or condition (financial or otherwise) of any Credit Party or any seller of any assets or business to be purchased by any Borrower contemporaneous with the Closing Date, or any event or condition which could reasonably be expected to result in such a material adverse change; and

(g) the receipt of the initial Borrowing Base Certificate, prepared as of the Closing Date; and

(h) the Agent shall have received original certificates of all insurance policies of the Borrowers confirming that they are in effect and that the premiums due and owing with respect thereto have been paid in full and endorsements naming Agent, for the benefit of itself and Lenders, as loss payee or additional insured, as appropriate.

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

Section 7.2 Conditions to Each Loan.

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

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

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

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

(d) the fact that the representations and warranties of each Credit Party contained in the Financing Documents shall be true, correct and complete on and as of the date of such borrowing or issuance, except to the extent that any such representation or warranty

relates to a specific date in which case such representation or warranty shall be true and correct as of such earlier date;

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

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

(g) in the case of any Revolving Loan that Borrowers request to be made on or after the Prepetition Revolving Loan Termination Date, the Agent has received the proceeds of the Prepetition Repayment Advance and all Prepetition Revolving Loan Obligations have been indefeasibly satisfied and paid in full in cash.

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

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

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

ARTICLE 8 – REGULATORY MATTERS

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

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

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

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

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

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

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

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

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

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

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

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

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

“Operator” means the singular or collective (as the context requires) reference to the following Persons: (a) any Borrower that is properly licensed to operate a Project, or is otherwise providing or furnishing goods or services, or is otherwise providing or furnishing goods or services (other than the mere leasing of a Project as a lessor and the collection of rentals in connection therewith) from a Project, and/or (b) any Person with whom a Borrower has contracted for management or other services for a Project.

“Project” means any facility from which a Borrower provides or furnishes goods or services, and includes, without limitation, any business location of a Borrower which is subject to any Healthcare Permit.

“Resident Agreements” means the singular or collective reference to all patient and resident care agreements, admission agreements and service agreements which include an occupancy agreement and all amendments, modifications or supplements thereto.

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

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

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

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

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

(b) Specific Licensing. The Project owned and operated by Medical Center is duly licensed as an acute care hospital under the applicable laws of the State of New York. The Project owned and operated by Nursing Home is duly licensed as a skilled nursing facility under the applicable laws of the State of New York. The Project owned and operated by Mt. Vernon is duly licensed as an acute care hospital under the applicable laws of the State of New York. The licensed bed or unit capacity of each Project is shown on Schedule 8.1. Borrowers have not granted to any third party the right to reduce the number of licensed beds, persons served or units in the Projects or the right to apply for approval to move any and all of the licensed beds, persons

served or units in the Projects to any other location, and there are no proceedings in process or contemplated to reduce the number of licensed beds, persons served or units in the Projects.

(c) Operating Leases. If required under applicable Healthcare Laws, the Operating Lease has been approved by all necessary Governmental Authorities. Under applicable Healthcare Laws in the state in which each Project is located, the reimbursement rate of the Operator under applicable Third Party Payor Programs is not affected by the rental rates under the Operating Lease. The rentals provided for under the Operating Lease comply with all applicable Healthcare Laws and do not exceed the sums permitted to be paid under applicable Healthcare Laws.

(d) Resident Agreements. The Resident Agreements comply with all applicable Laws, including Healthcare Laws. Without the prior written consent of Agent, Borrowers shall not, and shall not permit the Operator to: (i) modify the form of Resident Agreement previously approved by Agent; (ii) accept any payment under any Resident Agreement more than one month in advance of its due date or in violation of the cash management or lockbox provisions of this Agreement; (iii) enter into any subleases with respect to any Project; (iv) modify, amend, renew, surrender, terminate, consent to a sublease of, consent to a transfer of, abate rent or other payments due under or otherwise grant any financial or other concession under any sublease with respect to any Project; or (v) enter into any Resident Agreement for a term of more than one (1) year, or upon rates other than market rates or upon a form that fails to comply with applicable Laws.

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

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

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

(ii) The Borrowers, and, to the knowledge of the Borrowers, their contractors, have properly and legally billed all intermediaries and Third Party Payors for

services rendered with respect to the Projects and have maintained their records to reflect such billing practices. No funds relating to Borrowers are now, or, to the knowledge of Borrowers will be, withheld by any Third Party Payor.

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

(iv) All Medicare, Medicaid, and private insurance cost reports and financial reports submitted by the Borrowers are and will be materially accurate and complete and have not been and will not be misleading in any material respects. Other than the Medicare cost reports for the Project for the calendar years 2005 through 2010, no cost reports for the Projects remain "open" or unsettled and there are no current, pending or outstanding Medicare, Medicaid or other Third Party Payor Program reimbursement audits or appeals pending with respect to the Projects or the Borrowers.

(g) No Violation of Healthcare Laws.

(i) None of the Projects, the Borrowers or any manager thereof are in violation of any Healthcare Laws, except where any such violation would not have a Material Adverse Effect, provided, that Borrowers' failure to be HIPAA Compliant solely as a result of Agent's and any Lender's access, if any, to Protected Health Information shall not be a breach of the representation and warranty set forth in this Section 8.2(g)(i);

(ii) Borrowers are HIPAA Compliant, provided, however, that Borrowers' failure to be HIPAA Compliant solely as a result of Agent's and any Lender's access, if any, to Protected Health Information shall not be a breach of the representation and warranty set forth in this Section 8.2(g)(ii); and

(iii) No Project has received a statement of deficiencies or survey violation within the past three years for which a plan of correction has not been filed with the applicable state authority. No Project is currently subject to any material plan of correction that is currently the subject of a review by the applicable state authority.

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

(i) Hill-Burton. Except for Mt. Vernon, no Borrower is or will be a participant in any federal program whereby any federal, state or local government or quasi-governmental body, agency, board or other authority may have the right to recover funds by reason of the advance of federal funds, including, without limitation, those authorized under the

Hill-Burton Act (42 U.S.C. 291, et seq.). Mt. Vernon is in full compliance with its obligations under the Hill-Burton Act.

(j) Fraud and Abuse.

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

(ii) No Borrower or manager has been, or to its knowledge has been threatened to be, and no owner, officer, manager, employee or Person with a "direct or indirect ownership interest" (as that phrase is defined in 42 C.F.R. §420.201) in manager or any Borrower: (A) has had a civil monetary penalty assessed against him or her pursuant to 42 U.S.C. §1320a-7a or is the subject of a proceeding seeking to assess such penalty; (B) has been excluded from participation in a Federal Health Care Program (as that term is defined in 42 U.S.C. §1320a-7b) or is the subject of a proceeding seeking to assess such penalty, or has been "suspended" or "debarred" from selling products to the U.S. government or its agencies pursuant to the Federal Acquisition Regulation, relating to debarment and suspension applicable to federal government agencies generally (48 C.F.R. Subpart 9.4), or other applicable laws or regulations; (C) has been convicted (as that term is defined in 42 C.F.R. §1001.2) of any of those offenses described in 42 U.S.C. §1320a-7b or 18 U.S.C. §§669, 1035, 1347, 1518 or is the subject of a proceeding

seeking to assess such penalty; (D) has been involved or named in a U.S. Attorney complaint made or any other action taken pursuant to the False Claims Act under 31 U.S.C. §§3729-3731 or qui tam action brought pursuant to 31 U.S.C. §3729 et seq.; (E) has been made a party to any other action by any governmental authority that may prohibit it from selling products to any governmental or other purchaser pursuant to any law; or (F) was or has become subject to any federal, state, local governmental or private payor civil or criminal investigations or inquiries, proceedings, validation review, program integrity review or statement of charges involving and/or related to its compliance with Healthcare Laws or involving or threatening its participation in Medicare, Medicaid or other Third Party Payor Programs or its billing practices with respect thereto.

Section 8.3 Licensed Facilities.

(a) Certificates of Need.

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

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

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

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

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

(iii) The CON, if any, if not held by Borrower, has been demised to Borrower as part of the Operating Lease.

(b) Resident Deposits and Resident Agreements. Borrowers will maintain or cause to be maintained all deposits, including, without limitation, deposits relating to patients or Resident Agreements if such deposits are in cash such deposits are to be deposited and held by a Borrower (or the manager under any Management Agreement), as the case may be, at such commercial or savings bank or banks as may be reasonably satisfactory to Agent; if such deposits are in any other form, such deposits are to be maintained as Agent may expressly

permit. Any bond or other instrument which a Borrower (or a manager under any Management Agreement), as the case may be, is permitted to hold in lieu of cash deposits under any applicable legal requirements shall be maintained in full force and effect unless replaced by cash deposits as hereinabove described, shall be issued by an institution reasonably satisfactory to Agent, shall, if permitted pursuant to any legal requirements, name Agent as payee or mortgagee thereunder (or at Agent's option, be fully assignable to Agent) and shall, in all respects, comply with any applicable laws and legal requirements and otherwise be reasonably satisfactory to Agent. Borrower shall, upon request, provide Agent with evidence reasonably satisfactory to Agent of Borrower's compliance with the foregoing. Following the occurrence and during the continuance of any Event of Default, Borrower shall, upon Agent's request, if permitted by any applicable legal requirements, turn over to Agent the deposits (and any interest theretofore earned thereon) with respect to the Projects, to be held by Agent subject to the terms of their related agreements. No Resident Agreements (i) deviate or will deviate in any material adverse respect from the standard form approved by Agent prior to Closing, or (ii) conflict with any Laws.

(c) Manager. Borrowers shall each operate and manage their respective Projects at all times throughout the term of this Agreement, or shall cause the Projects to be managed by a manager approved by Agent and pursuant to management/operating agreements approved by Agent in writing and that comply with all applicable Healthcare Laws (the "Management Agreements"). In addition to (but not in limitation of) the covenants set forth in Section 5.10, Borrowers shall not (i) engage a manager of any Project or make any modification, amendment, termination or cancellation of any Management Agreements or agreements with brokers, (ii) enter into any other agreement relating to the management or operation of any Project, or (iii) waive or release any of its rights and remedies under any Management Agreement, in each case, without the prior written consent of Agent given or withheld in Agent's sole and absolute discretion. Any manager of a Project shall be required to enter into an assignment and subordination of management or operating agreement in form and substance reasonably satisfactory to Agent. Such restrictions and approval rights are solely for the purposes of assuring that the Projects are managed and operated in a first-class manner consistent with Healthcare Laws and the preservation and protection of the Projects as security for the Obligations and shall not place responsibility for the control, care, management or repair of the Projects upon Agent, or make Agent responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Projects.

Section 8.4 Healthcare Operations.

(a) Borrower will:

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

(ii) timely file or caused to be timely filed (after giving effect to any extension duly obtained), all cost reports required by Healthcare Laws, which reports shall be materially accurate and complete in all respects and not misleading in any material respect and which shall not remain open or unsettled, except in accordance with applicable settlement appeals procedures that are timely and diligently pursued and except for any processing delays of any Governmental Authority.

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

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

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

(ii) any pledge or hypothecation of any Healthcare Permit as collateral security for any indebtedness other than indebtedness to Agent;

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

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

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

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

(d) Borrower will maintain a corporate health care regulatory compliance program ("**CCP**") which includes at least the following components and allows Agent and/or any outside consultants from time to time to review such CCP: (i) standards of conduct and procedures that describe compliance policies regarding laws with an emphasis on prevention of fraud and abuse; (ii) specific officer within high-level personnel identified as having overall responsibility for compliance with such standards and procedures; (iii) training and education

programs which effectively communicate the compliance standards and procedures to employees and agents, including, without limitation, fraud and abuse laws and illegal billing practices; (iv) auditing and monitoring systems and reasonable steps for achieving compliance with such standards and procedures including, without limitation, publicizing a report system to allow employees and other agents to anonymously report criminal or suspect conduct and potential compliance problems; (v) disciplinary guidelines and consistent enforcement of compliance policies including, without limitation, discipline of individuals responsible for the failure to detect violations of the CCP; and (vi) mechanisms to immediately respond to detected violations of the CCP.

(e) Borrower will at all times be, and cause all managers to be, HIPAA Compliant, provided, that Borrowers' failure to be HIPAA Compliant solely as a result of Agent's and any Lender's access, if any, to Protected Health Information shall not be a breach of this Section 8.4(e).

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

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

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

subsections of Section 8.2 to be untrue, incomplete or incorrect or which could trigger a disclosure obligation under such subsections of Section 8.2: (a), (b), (f), (h) and (j).

Section 8.7 Special Lockbox Provisions. The terms of this Section 8.7 supplement Section 2.11 and shall override Section 2.11 where inconsistent. If any of the Account Debtors are Governmental Account Debtors, Borrowers shall establish and maintain additional lockboxes (also herein referred to collectively in the singular as the "**Lockbox**") and related Lockbox Accounts with the Lockbox Bank, subject to the provisions of this Agreement, and shall execute with the Lockbox Bank a Deposit Account Restriction Agreement and such other agreements related to such Lockbox as Agent may require. A separate Lockbox shall be established for each Borrower that is a licensed provider under the Medicaid or Medicare programs, if applicable. Borrowers shall ensure that all collections of Accounts due from Governmental Account Debtors are paid directly from such Account Debtors into the applicable Lockbox and/or Lockbox Account established pursuant to this subsection for deposit into the Lockbox Account established pursuant to this subsection. All funds deposited into a Lockbox Account that is subject (or required to be subject) to a Deposit Account Restriction Agreement shall be transferred into either (at Agent's option) (a) the Payment Account by the close of each Business Day, or (b) the Lockbox Account established pursuant to Section 2.11(a) which such transfer shall be made via an automatic immediate intrabank transfer, and then transferred to the Payment Account by the close of each Business Day.

ARTICLE 9 - SECURITY AGREEMENT

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

Section 9.2 Representations and Warranties and Covenants Relating to Collateral.

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

(b) Without limiting the generality of Section 3.2, except as indicated on Schedule 3.19 with respect to any rights of any Borrower as a licensee under any license of Intellectual Property owned by another Person, and except for the entry of the Financing Orders, no authorization, approval or other action by, and no notice to or filing with, any Governmental Authority or consent of any other Person is required for (i) the grant by each Borrower to Agent

of the security interests and Liens in the Collateral provided for under this Agreement and the other Security Documents (if any), or (ii) the exercise by Agent of its rights and remedies with respect to the Collateral provided for under this Agreement and the other Security Documents or under any applicable Law, including the UCC and neither any such grant of Liens in favor of Agent or exercise of rights by Agent shall violate or cause a default under any agreement between any Borrower and any other Person relating to any such collateral, including any license to which a Borrower is a party, whether as licensor or licensee, with respect to any Intellectual Property, whether owned by such Borrower or any other Person.

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

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

(e) Borrowers shall not adjust, settle or compromise the amount or payment of any Account, or release wholly or partly any Account Debtor, or allow any credit or discount thereon (other than adjustments, settlements, compromises, credits and discounts in the Ordinary Course of Business, made while no Default exists and in amounts which are not material with respect to the Account and which, after giving effect thereto, do not cause the Borrowing Base to be less than the Revolving Loan Outstandings) without the prior written consent of Agent. Without limiting the generality of this Agreement or any other provisions of any of the Financing Documents relating to the rights of Agent after the occurrence and during the continuance of an

Event of Default, Agent shall have the right at any time after the occurrence and during the continuance of an Event of Default to: (i) exercise the rights of Borrowers with respect to the obligation of any Account Debtor to make payment or otherwise render performance to Borrowers and with respect to any property that secures the obligations of any Account Debtor or any other Person obligated on the Collateral, and (ii) adjust, settle or compromise the amount or payment of such Accounts.

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

(i) [Reserved]

(ii) [Reserved]

(iii) [Reserved]

(iv) Except for Accounts and Inventory in an aggregate amount of \$25,000, no Accounts or Inventory or other Collateral shall at any time be in the possession or control of any warehouse, consignee, bailee or any of Borrowers' agents or processors without prior written notice to Agent and the receipt by Agent, if Agent has so requested, of warehouse receipts, consignment agreements or bailee lien waivers (as applicable) satisfactory to Agent prior to the commencement of such possession or control. Borrower has notified Agent that Inventory is currently located at the locations set forth on Schedule 9.2. Borrowers shall, upon the request of Agent, notify any such warehouse, consignee, bailee, agent or processor of the security interests and Liens in favor of Agent created pursuant to this Agreement and the Security Documents, instruct such Person to hold all such Collateral for Agent's account subject to Agent's instructions and shall obtain an acknowledgement from such Person that such Person holds the Collateral for Agent's benefit.

(v) [Reserved]

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

(vii) As of the Closing Date, no Borrower holds, and after the Closing Date Borrowers shall promptly notify Agent in writing upon creation or acquisition by any Borrower of, any Collateral which constitutes a claim against any Governmental Authority, including, without limitation, the federal government of the United States or

any instrumentality or agency thereof, the assignment of which claim is restricted by any applicable Law, including, without limitation, the federal Assignment of Claims Act and any other comparable Law. Upon the request of Agent, Borrowers shall take such steps as may be necessary or desirable, or that Agent may request, to comply with any such applicable Law.

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

ARTICLE 10 - EVENTS OF DEFAULT

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

(a) (i) any Borrower shall fail to pay when due any principal, interest, premium or fee under any Financing Document or any other amount payable under any Financing Document, (ii) there shall occur any default in the performance of or compliance with any of the following sections of this Agreement: Section 2.11; Section 4.4; Section 4.6; Section 4.7; Section 4.14; Section 4.15; Article 5; Article 6; and/or Section 8.7; or (iii) there shall occur any default in the performance of or compliance with Section 4.1, and such Default is not remedied by the Borrowers or waived by Agent within five (5) days of such Default.

(b) any Credit Party defaults in the performance of or compliance with any term contained in this Agreement or in any other Financing Document (other than occurrences described in other provisions of this Section 10.1 for which a different grace or cure period is specified or for which no grace or cure period is specified and thereby constitute immediate Events of Default) and such default is not remedied by the Credit Party or waived by Agent within fifteen (15) days after the earlier of (1) receipt by Borrower Representative of notice from Agent or Required Lenders of such default or (2) actual knowledge of any Borrower or any other Credit Party of such default;

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

(d) (i) failure of any Credit Party to pay when due or within any applicable grace period any principal, interest or other amount on Debt (other than the Loans), or the occurrence of any breach, default, condition or event with respect to any Debt (other than the Loans), if the effect of such failure or occurrence is to cause or to permit the holder or holders of any such Debt, to cause, Debt or other liabilities having an individual principal amount in excess of \$1,000,000 or having an aggregate principal amount in excess of \$1,000,000 to become or be declared due prior to its stated maturity, or (ii) the occurrence of any breach or default under any

terms or provisions of any Subordinated Debt Document or under any agreement subordinating the Subordinated Debt to all or any portion of the Obligations or the occurrence of any event requiring the prepayment of any Subordinated Debt;

(e) [reserved];

(f) [reserved];

(g) (i) institution of any steps by any Person to terminate a Pension Plan if as a result of such termination any Credit Party or any member of the Controlled Group could be required to make a contribution to such Pension Plan, or could incur a liability or obligation to such Pension Plan, in excess of \$25,000, (ii) a contribution failure occurs with respect to any Pension Plan sufficient to give rise to a Lien under Section 302(f) of ERISA, or (iii) there shall occur any withdrawal or partial withdrawal from a Multiemployer Plan and the withdrawal liability (without unaccrued interest) to Multiemployer Plans as a result of such withdrawal (including any outstanding withdrawal liability that any Credit Party or any member of the Controlled Group have incurred on the date of such withdrawal) exceeds \$25,000;

(h) one or more judgments or orders for the payment of money (not paid or fully covered by insurance maintained in accordance with the requirements of this Agreement and as to which the relevant insurance company has acknowledged coverage) aggregating in excess of \$25,000 shall be rendered against any or all Credit Parties and either (i) enforcement proceedings shall have been commenced by any creditor upon any such judgments or orders, or (ii) there shall be any period of twenty (20) consecutive days during which a stay of enforcement of any such judgments or orders, by reason of a pending appeal, bond or otherwise, shall not be in effect;

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

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

(k) a default or event of default occurs under any Guarantee of any portion of the Obligations;

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

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

(n) the occurrence of any fact, event or circumstance (other than the filing of the Bankruptcy Cases) that could reasonably be expected to result in a Material Adverse Effect,

if such default shall have continued unremedied for a period of ten (10) days after written notice from Agent;

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

(p) there shall occur any default or event of default under the Affiliated Financing Documents or any other Operative Document, including, without limitation, any Asset Sale Document; or

(q) there shall occur a material adverse change in the financial condition or business prospects of any Borrower or any Project, or if Agent in good faith deems the Lenders insecure as a result of acts or events bearing upon the financial condition of any Borrower or Project or the repayment of the Notes, which default shall have continued unremedied for a period of ten (10) days after written notice from Agent;

(r) if (i) any of the Bankruptcy Cases is converted to a case under Chapter 7 of the Bankruptcy Code, or (ii) any of the Bankruptcy Cases is dismissed;

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

(t) except with respect to the Carve-Out, if any super-priority administrative expense claim or any Lien that is *pari passu* with or senior to those of the Agent and the Lenders is granted to any Person other than Agent, or the authorization to use cash collateral without the consent of the Agent and the Required Lenders is granted to any Person other than the Agent;

(u) if any Person other than Agent is granted relief from the automatic stay provided for in the Bankruptcy Cases, or such automatic stay is otherwise modified, to permit enforcement of rights by such Person with respect to any asset of any Borrower or Guarantor having a fair market value in excess of \$50,000 unless otherwise consented to in writing by Agent;

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

(w) if any Borrower or Guarantor shall fail to comply with or perform any of the terms, conditions, covenants or other obligations under the Interim Order and the Final Order;

(x) the failure of the Closing Date to occur within three (3) Business Days after entry of the Interim Order without the prior written consent of the Agent;

(y) if the Final Order has not been entered within thirty (30) days after the date the Interim Order is entered without the prior written consent of the Agent;

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

(aa) except in connection with the Asset Sale, any assumption or rejection of any executory contract without the prior written consent of the Agent;

(bb) (i) the amendment, modification, reversal, revocation, issuance of a stay or order to vacate or supplement the Interim Order, the Final Order, the Asset Sale Order or any other order of the Bankruptcy Court affecting this Agreement, any other Financing Document, the Asset Sale or the transactions contemplated hereby or thereby, in each case, in any manner not acceptable to Agent and the Required Lenders, or (ii) the termination of the Asset Purchase Agreement by Buyer;

(cc) the order approving the procedures for the Asset Sale set forth in the Asset Sale Motion does not require that all bids bind the submitting bidder, if such bidder is the successful bidder, to (i) guarantee after the Asset Sale Effective Date all Obligations hereunder up to \$5,000,000 (the "Buyer Guaranteed Obligations"), and (ii) secure all such Buyer Guaranteed Obligations be secured by a first priority security interest on Accounts generated by the Borrowers' facilities sold pursuant to the Asset Sale, each on terms and conditions acceptable to Agent;

(dd) the Asset Sale Order does not require that after the Asset Sale Effective Date the Buyer (i) guarantee Buyer Guaranteed Obligations, and (ii) secure all such Buyer Guaranteed Obligations be secured by a first priority security interest on Accounts generated by the Borrowers' facilities sold pursuant to the Asset Sale, each on terms and conditions acceptable to Agent;

(ee) if the Borrowers fail to pay in full in cash, on the Closing Date, the Prepetition Revolving Loan Obligations, or if the Confirmation Order shall fail to provide for the payment in full, in cash of all Prepetition Obligations (to the extent not already paid in full in cash with the proceeds of the Obligations) and all Obligations and Affiliated Obligations on or before the Reorganization Effective Date;

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

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

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

(ii) if the Borrowers' (i) actual disbursements under any line item on the Budget for any four-week period (as tested weekly) exceed the budgeted disbursements for such four-week period in such line item by more than ten percent (10%) of the budgeted amount for such four-week period, (ii) aggregate actual disbursements under the Budget for any four-week period (as tested weekly) exceed the aggregate budgeted disbursements for such four-week period by more than five percent (5%) of the aggregate budgeted amount for such four-week period, or (iii) aggregate actual cash receipts during any four-week period (as tested weekly) are less than ninety percent (90%) of aggregate projected cash receipts set forth in the Budget for such four-week period; or

(jj) if the Revolving Loan Availability on the Prepetition Revolving Loan Termination Date is less than that Prepetition Revolving Loan Obligations.

Section 10.2 Acceleration and Suspension or Termination of Revolving Loan Commitment. Notwithstanding the provisions of Section 362 of the Bankruptcy Code and subject to the terms of the Financing Order, upon the occurrence and during the continuance of an Event of Default, Agent may, and shall if requested by Required Lenders, (a) by notice to Borrower Representative suspend or terminate the Revolving Loan Commitment and the obligations of Agent and the Lenders with respect thereto, in whole or in part (and, if in part, each Lender's Revolving Loan Commitment shall be reduced in accordance with its Pro Rata Share), and/or (b) by notice to Borrower Representative declare all or any portion of the Obligations to be, and the Obligations shall thereupon become, immediately due and payable, with accrued interest thereon, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Borrower and Borrowers will pay the same; provided, however, that in the case of any of the Events of Default specified in subsections (r), (s), (t), (u), (v), (w), (z), (bb), (cc), (dd), (ee), (ff) or (gg) of Section 10.1 without any notice to any Borrower or any other act by Agent or the Lenders, the Revolving Loan Commitment and the obligations of Agent and the Lenders with respect thereto shall thereupon immediately and automatically terminate and all of the Obligations shall become immediately and automatically due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Borrower and Borrowers will pay the same.

Section 10.3 Additional Remedies.

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

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

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

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

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

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

(b) Notwithstanding the provisions of Section 362 of the Bankruptcy Code and subject to the terms of the Financing Orders, each Borrower agrees that a notice received by it at least ten (10) days before the time of any intended public sale, or the time after which any private sale or other disposition of the Collateral is to be made, shall be deemed to be reasonable notice of such sale or other disposition. If permitted by applicable law, any perishable Collateral which threatens to speedily decline in value or which is sold on a recognized market may be sold immediately by Agent without prior notice to Borrowers. At any sale or disposition of Collateral, Agent may (to the extent permitted by applicable law) purchase all or any part of the Collateral, free from any right of redemption by Borrowers, which right is hereby waived and

released. Each Borrower covenants and agrees not to interfere with or impose any obstacle to Agent's exercise of its rights and remedies with respect to the Collateral. Agent shall have no obligation to clean-up or otherwise prepare the Collateral for sale. Agent may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral and compliance will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. Agent may sell the Collateral without giving any warranties as to the Collateral. Agent may specifically disclaim any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. If Agent sells any of the Collateral upon credit, Borrowers will be credited only with payments actually made by the purchaser, received by Agent and applied to the indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, Agent may resell the Collateral and Borrowers shall be credited with the proceeds of the sale. Borrowers shall remain liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all Obligations.

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

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

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

Section 10.5 Default Rate of Interest. Notwithstanding the provisions of Section 362 of the Bankruptcy Code and subject to the terms of the Financing Orders, at the election of Agent or Required Lenders, after the occurrence of an Event of Default and for so long as it continues, the

Loans and other Obligations shall bear interest at rates that are three percent (3.0%) per annum in excess of the rates otherwise payable under this Agreement.

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

Section 10.7 Application of Proceeds.

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

(b) Following the occurrence and continuance of an Event of Default, but absent the occurrence and continuance of an Acceleration Event, Agent shall apply any and all payments received by Agent in respect of the Obligations and Prepetition Obligations, and any and all proceeds of Collateral received by Agent, in such order as Agent may from time to time elect.

(c) Notwithstanding anything to the contrary contained in this Agreement, if an Acceleration Event shall have occurred, and so long as it continues, Agent shall apply any and all payments received by Agent in respect of the Obligations, and any and all proceeds of Collateral received by Agent, in the following order: first, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to Agent with respect to this Agreement, the other Financing Documents or the Collateral; second, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to any lender with respect to this Agreement, the other Financing Documents or the Collateral; third, to accrued and unpaid interest on the Prepetition Obligations (including any interest which, but for the provisions of the Bankruptcy Code, would have accrued on such amounts); fourth, to accrued and unpaid interest on the Obligations; fifth, to any other indebtedness or obligations of Borrowers owing to Agent

or any Lender under the Financing Documents; sixth, to any and all of the other Affiliated Obligations in the order and manner determined by Agent. Any balance remaining shall be delivered to Borrowers or to whoever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct. In carrying out the foregoing, (y) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (z) each of the Persons entitled to receive a payment in any particular category shall receive an amount equal to its Pro Rata Share of amounts available to be applied pursuant thereto for such category.

Section 10.8 Waivers.

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

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

(c) To the extent that Agent or any Lender may have acquiesced in any noncompliance with any requirements or conditions precedent to the closing of the Loans or to any subsequent disbursement of Loan proceeds, such acquiescence shall not be deemed to constitute a waiver by Agent or any Lender of such requirements with respect to any future disbursements of Loan proceeds and Agent may at any time after such acquiescence require Borrowers to comply with all such requirements. Any forbearance by Agent or Lender in exercising any right or remedy under any of the Financing Documents, or otherwise afforded by applicable law, including any failure to accelerate the maturity date of the Loans, shall not be a

waiver of or preclude the exercise of any right or remedy nor shall it serve as a novation of the Notes or as a reinstatement of the Loans or a waiver of such right of acceleration or the right to insist upon strict compliance of the terms of the Financing Documents. Agent's or any Lender's acceptance of payment of any sum secured by any of the Financing Documents after the due date of such payment shall not be a waiver of Agent's and such Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other Liens or charges by Agent as the result of an Event of Default shall not be a waiver of Agent's right to accelerate the maturity of the Loans, nor shall Agent's receipt of any condemnation awards, insurance proceeds, or damages under this Agreement operate to cure or waive any Credit Party's default in payment of sums secured by any of the Financing Documents.

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

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

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

of such foreclosure each Borrower does hereby expressly consent to and authorize, at the option of Agent, the foreclosure and sale either separately or together of each part of the Collateral.

Section 10.9 Injunctive Relief. The parties acknowledge and agree that, in the event of a breach or threatened breach of any Credit Party's obligations under any Financing Documents, Agent and Lenders may have no adequate remedy in money damages and, accordingly, shall be entitled to an injunction (including, without limitation, a temporary restraining order, preliminary injunction, writ of attachment, or order compelling an audit) against such breach or threatened breach, including, without limitation, maintaining any cash management and collection procedure described herein. However, no specification in this Agreement of a specific legal or equitable remedy shall be construed as a waiver or prohibition against any other legal or equitable remedies in the event of a breach or threatened breach of any provision of this Agreement. Each Credit Party waives, to the fullest extent permitted by law, the requirement of the posting of any bond in connection with such injunctive relief. By joining in the Financing Documents as a Credit Party, each Credit Party specifically joins in this Section as if this Section were a part of each Financing Document executed by such Credit Party.

Section 10.10 Marshalling; Payments Set Aside. Neither Agent nor any Lender shall be under any obligation to marshal any assets in payment of any or all of the Obligations. To the extent that Borrower makes any payment or Agent enforces its Liens or Agent or any Lender exercises its right of set-off, and such payment or the proceeds of such enforcement or set-off is subsequently invalidated, declared to be fraudulent or preferential, set aside, or required to be repaid by anyone, then to the extent of such recovery, the Obligations or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefore, shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or set-off had not occurred.

ARTICLE 11 - AGENT

Section 11.1 Appointment and Authorization. Each Lender hereby irrevocably appoints and authorizes Agent to enter into each of the Financing Documents to which it is a party (other than this Agreement) on its behalf and to take such actions as Agent on its behalf and to exercise such powers under the Financing Documents as are delegated to Agent by the terms thereof, together with all such powers as are reasonably incidental thereto. Subject to the terms of Section 11.16 and to the terms of the other Financing Documents, Agent is authorized and empowered to amend, modify, or waive any provisions of this Agreement or the other Financing Documents on behalf of Lenders. The provisions of this Article 11 are solely for the benefit of Agent and Lenders and neither any Borrower nor any other Credit Party shall have any rights as a third party beneficiary of any of the provisions hereof. In performing its functions and duties under this Agreement, Agent shall act solely as agent of Lenders and does not assume and shall not be deemed to have assumed any obligation toward or relationship of agency or trust with or for any Borrower or any other Credit Party. Agent may perform any of its duties hereunder, or under the Financing Documents, by or through its agents or employees.

Section 11.2 Agent and Affiliates. Agent shall have the same rights and powers under the Financing Documents as any other Lender and may exercise or refrain from exercising the same as though it were not Agent, and Agent and its Affiliates may lend money to, invest in and

generally engage in any kind of business with each Credit Party or Affiliate of any Credit Party as if it were not Agent hereunder.

Section 11.3 Action by Agent. The duties of Agent shall be mechanical and administrative in nature. Agent shall not have by reason of this Agreement a fiduciary relationship in respect of any Lender. Nothing in this Agreement or any of the Financing Documents is intended to or shall be construed to impose upon Agent any obligations in respect of this Agreement or any of the Financing Documents except as expressly set forth herein or therein.

Section 11.4 Consultation with Experts. Agent may consult with legal counsel, independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the advice of such counsel, accountants or experts.

Section 11.5 Liability of Agent. Neither Agent nor any of its directors, officers, agents or employees shall be liable to any Lender for any action taken or not taken by it in connection with the Financing Documents, except that Agent shall be liable with respect to its specific duties set forth hereunder but only to the extent of its own gross negligence or willful misconduct in the discharge thereof as determined by a final non-appealable judgment of a court of competent jurisdiction. Neither Agent nor any of its directors, officers, agents or employees shall be responsible for or have any duty to ascertain, inquire into or verify (a) any statement, warranty or representation made in connection with any Financing Document or any borrowing hereunder; (b) the performance or observance of any of the covenants or agreements specified in any Financing Document; (c) the satisfaction of any condition specified in any Financing Document; (d) the validity, effectiveness, sufficiency or genuineness of any Financing Document, any Lien purported to be created or perfected thereby or any other instrument or writing furnished in connection therewith; (e) the existence or non-existence of any Default or Event of Default; or (f) the financial condition of any Credit Party. Agent shall not incur any liability by acting in reliance upon any notice, consent, certificate, statement, or other writing (which may be a bank wire, facsimile or electronic transmission or similar writing) believed by it to be genuine or to be signed by the proper party or parties. Agent shall not be liable for any apportionment or distribution of payments made by it in good faith and if any such apportionment or distribution is subsequently determined to have been made in error the sole recourse of any Lender to whom payment was due but not made, shall be to recover from other Lenders any payment in excess of the amount to which they are determined to be entitled (and such other Lenders hereby agree to return to such Lender any such erroneous payments received by them).

Section 11.6 Indemnification. Each Lender shall, in accordance with its Pro Rata Share, indemnify Agent (to the extent not reimbursed by Borrowers) upon demand against any cost, expense (including counsel fees and disbursements), claim, demand, action, loss or liability (except such as result from Agent's gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction) that Agent may suffer or incur in connection with the Financing Documents or any action taken or omitted by Agent hereunder or thereunder. If any indemnity furnished to Agent for any purpose shall, in the opinion of Agent, be insufficient or become impaired, Agent may call for additional indemnity

and cease, or not commence, to do the acts indemnified against even if so directed by Required Lenders until such additional indemnity is furnished.

Section 11.7 Right to Request and Act on Instructions. Agent may at any time request instructions from Lenders with respect to any actions or approvals which by the terms of this Agreement or of any of the Financing Documents Agent is permitted or desires to take or to grant, and if such instructions are promptly requested, Agent shall be absolutely entitled to refrain from taking any action or to withhold any approval and shall not be under any liability whatsoever to any Person for refraining from any action or withholding any approval under any of the Financing Documents until it shall have received such instructions from Required Lenders or all or such other portion of the Lenders as shall be prescribed by this Agreement. Without limiting the foregoing, no Lender shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting under this Agreement or any of the other Financing Documents in accordance with the instructions of Required Lenders (or all or such other portion of the Lenders as shall be prescribed by this Agreement) and, notwithstanding the instructions of Required Lenders (or such other applicable portion of the Lenders), Agent shall have no obligation to take any action if it believes, in good faith, that such action would violate applicable Law or exposes Agent to any liability for which it has not received satisfactory indemnification in accordance with the provisions of Section 11.6.

Section 11.8 Credit Decision. Each Lender acknowledges that it has, independently and without reliance upon Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking any action under the Financing Documents.

Section 11.9 Collateral Matters. Lenders irrevocably authorize Agent, at its option and in its discretion, to (a) release any Lien granted to or held by Agent under any Security Document (i) upon termination of the Loan Commitment and payment in full of all Obligations; or (ii) constituting property sold or disposed of as part of or in connection with any disposition permitted under any Financing Document (it being understood and agreed that Agent may conclusively rely without further inquiry on a certificate of a Responsible Officer as to the sale or other disposition of property being made in full compliance with the provisions of the Financing Documents); and (b) release or subordinate any Lien granted to or held by Agent under any Security Document constituting personal property described in Section 5.6 (it being understood and agreed that Agent may conclusively rely without further inquiry on a certificate of a Responsible Officer as to the identification of any personal property described in Section 5.6). Upon request by Agent at any time, Lenders will confirm Agent's authority to release and/or subordinate particular types or items of Collateral pursuant to this Section 11.9.

Section 11.10 Agency for Perfection. Agent and each Lender hereby appoint each other Lender as agent for the purpose of perfecting Agent's security interest in assets which, in accordance with the Uniform Commercial Code in any applicable jurisdiction, can be perfected by possession or control. Should any Lender (other than Agent) obtain possession or control of any such assets, such Lender shall notify Agent thereof, and, promptly upon Agent's request

therefor, shall deliver such assets to Agent or in accordance with Agent's instructions or transfer control to Agent in accordance with Agent's instructions. Each Lender agrees that it will not have any right individually to enforce or seek to enforce any Security Document or to realize upon any Collateral for the Loan unless instructed to do so by Agent (or consented to by Agent, as provided in Section 11.5), it being understood and agreed that such rights and remedies may be exercised only by Agent.

Section 11.11 Notice of Default. Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default except with respect to defaults in the payment of principal, interest and fees required to be paid to Agent for the account of Lenders, unless Agent shall have received written notice from a Lender or a Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". Agent will notify each Lender of its receipt of any such notice. Agent shall take such action with respect to such Default or Event of Default as may be requested by Required Lenders (or all or such other portion of the Lenders as shall be prescribed by this Agreement) in accordance with the terms hereof. Unless and until Agent has received any such request, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable or in the best interests of Lenders.

Section 11.12 Assignment by Agent; Resignation of Agent; Successor Agent.

(a) Agent may at any time assign its rights, powers, privileges and duties hereunder to (i) another Lender, or (ii) any Person to whom Agent, in its capacity as a Lender, has assigned (or will assign, in conjunction with such assignment of agency rights hereunder) 50% or more of its Loan, in each case without the consent of the Lenders or Borrowers. Following any such assignment, Agent shall give notice to the Lenders and Borrowers. An assignment by Agent pursuant to this subsection (a) shall not be deemed a resignation by Agent for purposes of subsection (b) below.

(b) Without limiting the rights of Agent to designate an assignee pursuant to subsection (a) above, Agent may at any time give notice of its resignation to the Lenders and Borrowers. Upon receipt of any such notice of resignation, Required Lenders shall have the right to appoint a successor Agent. If no such successor shall have been so appointed by Required Lenders and shall have accepted such appointment within ten (10) Business Days after the retiring Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders, appoint a successor Agent; provided, however, that if Agent shall notify Borrowers and the Lenders that no Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice from Agent that no Person has accepted such appointment and, from and following delivery of such notice, (i) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Financing Documents, and (ii) all payments, communications and determinations provided to be made by, to or through Agent shall instead be made by or to each Lender directly, until such time as Required Lenders appoint a successor Agent as provided for above in this paragraph.

(c) Upon (i) an assignment permitted by subsection (a) above, or (ii) the acceptance of a successor's appointment as Agent pursuant to subsection (b) above, such

successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder and under the other Financing Documents (if not already discharged therefrom as provided above in this paragraph). The fees payable by Borrowers to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrowers and such successor. After the retiring Agent's resignation hereunder and under the other Financing Documents, the provisions of this Article and Section 11.12 shall continue in effect for the benefit of such retiring Agent and its sub-agents in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting or was continuing to act as Agent.

Section 11.13 Payment and Sharing of Payment.

(a) Revolving Loan Advances, Payments and Settlements; Interest and Fee Payments.

(i) Agent shall have the right, on behalf of Revolving Lenders to disburse funds to Borrowers for all Revolving Loans requested or deemed requested by Borrowers pursuant to the terms of this Agreement. Agent shall be conclusively entitled to assume, for purposes of the preceding sentence, that each Revolving Lender, other than any Non-Funding Revolving Lenders, will fund its Pro Rata Share of all Revolving Loans requested by Borrowers. Each Revolving Lender shall reimburse Agent on demand, in accordance with the provisions of the immediately following paragraph, for all funds disbursed on its behalf by Agent pursuant to the first sentence of this clause (i), or if Agent so requests, each Revolving Lender will remit to Agent its Pro Rata Share of any Revolving Loan before Agent disburses the same to a Borrower. If Agent elects to require that each Revolving Lender make funds available to Agent, prior to a disbursement by Agent to a Borrower, Agent shall advise each Revolving Lender by telephone, facsimile or e-mail of the amount of such Revolving Lender's Pro Rata Share of the Revolving Loan requested by such Borrower no later than noon (Eastern time) on the date of funding of such Revolving Loan, and each such Revolving Lender shall pay Agent on such date such Revolving Lender's Pro Rata Share of such requested Revolving Loan, in same day funds, by wire transfer to the Payment Account, or such other account as may be identified by Agent to Revolving Lenders from time to time. If any Lender fails to pay the amount of its Pro Rata Share of any funds advanced by Agent pursuant to the first sentence of this clause (i) within one (1) Business Day after Agent's demand, Agent shall promptly notify Borrower Representative, and Borrowers shall immediately repay such amount to Agent. Any repayment required by Borrowers pursuant to this Section 11.13 shall be accompanied by accrued interest thereon from and including the date such amount is made available to a Borrower to but excluding the date of payment at the rate of interest then applicable to Revolving Loans. Nothing in this Section 11.13 or elsewhere in this Agreement or the other Financing Documents shall be deemed to require Agent to advance funds on behalf of any Lender or to relieve any Lender from its obligation to fulfill its commitments hereunder or to prejudice any rights that Agent or any Borrower may have against any Lender as a result of any default by such Lender hereunder.

(ii) On a Business Day of each week as selected from time to time by Agent, or more frequently (including daily), if Agent so elects (each such day being a "**Settlement Date**"), Agent will advise each Revolving Lender by telephone, facsimile or e-mail of the amount of each such Revolving Lender's percentage interest of the Revolving Loan balance as of the close of business of the Business Day immediately preceding the Settlement Date. In the event that payments are necessary to adjust the amount of such Revolving Lender's actual percentage interest of the Revolving Loans to such Lender's required percentage interest of the Revolving Loan balance as of any Settlement Date, the Revolving Lender from which such payment is due shall pay Agent, without setoff or discount, to the Payment Account not later than 1:00 p.m. (Eastern time) on the Business Day following the Settlement Date the full amount necessary to make such adjustment. Any obligation arising pursuant to the immediately preceding sentence shall be absolute and unconditional and shall not be affected by any circumstance whatsoever. In the event settlement shall not have occurred by the date and time specified in the second preceding sentence, interest shall accrue on the unsettled amount at the rate of interest then applicable to Revolving Loans.

(iii) On each Settlement Date, Agent shall advise each Revolving Lender by telephone, facsimile or e-mail of the amount of such Revolving Lender's percentage interest of principal, interest and fees paid for the benefit of Revolving Lenders with respect to each applicable Revolving Loan, to the extent of such Revolving Lender's Revolving Loan Exposure with respect thereto, and shall make payment to such Revolving Lender not later than 1:00 p.m. (Eastern time) on the Business Day following the Settlement Date of such amounts in accordance with wire instructions delivered by such Revolving Lender to Agent, as the same may be modified from time to time by written notice to Agent; provided, however, that, in the case such Revolving Lender is a Defaulted Lender, Agent shall be entitled to set off the funding short-fall against that Defaulted Lender's respective share of all payments received from any Borrower.

(iv) On the Closing Date, Agent, on behalf of Lenders, may elect to advance to Borrowers the full amount of the initial Loans to be made on the Closing Date prior to receiving funds from Lenders, in reliance upon each Lender's commitment to make its Pro Rata Share of such Loans to Borrowers in a timely manner on such date. If Agent elects to advance the initial Loans to Borrower in such manner, Agent shall be entitled to receive all interest that accrues on the Closing Date on each Lender's Pro Rata Share of such Loans unless Agent receives such Lender's Pro Rata Share of such Loans by 3:00 p.m. (Eastern time) on the Closing Date.

(v) It is understood that for purposes of advances to Borrowers made pursuant to this Section 11.13, Agent will be using the funds of Agent, and pending settlement, (A) all funds transferred from the Payment Account to the outstanding Revolving Loans shall be applied first to advances made by Agent to Borrowers pursuant to this Section 11.13, and (B) all interest accruing on such advances shall be payable to Agent.

(vi) The provisions of this Section 11.13(a) shall be deemed to be binding upon Agent and Lenders notwithstanding the occurrence of any Default or Event

of Default, or any insolvency or bankruptcy proceeding pertaining to any Borrower or any other Credit Party.

(b) [Reserved]

(c) Return of Payments.

(i) If Agent pays an amount to a Lender under this Agreement in the belief or expectation that a related payment has been or will be received by Agent from a Borrower and such related payment is not received by Agent, then Agent will be entitled to recover such amount from such Lender on demand without setoff, counterclaim or deduction of any kind, together with interest accruing on a daily basis at the Federal Funds Rate.

(ii) If Agent determines at any time that any amount received by Agent under this Agreement must be returned to any Borrower or paid to any other Person pursuant to any insolvency law or otherwise, then, notwithstanding any other term or condition of this Agreement or any other Financing Document, Agent will not be required to distribute any portion thereof to any Lender. In addition, each Lender will repay to Agent on demand any portion of such amount that Agent has distributed to such Lender, together with interest at such rate, if any, as Agent is required to pay to any Borrower or such other Person, without setoff, counterclaim or deduction of any kind.

(d) Defaulted Lenders. The failure of any Defaulted Lender to make any payment required by it hereunder shall not relieve any other Lender of its obligations to make payment, but neither any other Lender nor Agent shall be responsible for the failure of any Defaulted Lender to make any payment required hereunder. Notwithstanding anything set forth herein to the contrary, a Defaulted Lender shall not have any voting or consent rights under or with respect to any Financing Document or constitute a "**Lender**" (or be included in the calculation of "**Required Lenders**" hereunder) for any voting or consent rights under or with respect to any Financing Document.

(e) Sharing of Payments. If any Lender shall obtain any payment or other recovery (whether voluntary, involuntary, by application of setoff or otherwise) on account of any Loan (other than pursuant to the terms of Section 2.8(d)) in excess of its Pro Rata Share of payments entitled pursuant to the other provisions of this Section 11.13, such Lender shall purchase from the other Lenders such participations in extensions of credit made by such other Lenders (without recourse, representation or warranty) as shall be necessary to cause such purchasing Lender to share the excess payment or other recovery ratably with each of them; provided, however, that if all or any portion of the excess payment or other recovery is thereafter required to be returned or otherwise recovered from such purchasing Lender, such portion of such purchase shall be rescinded and each Lender which has sold a participation to the purchasing Lender shall repay to the purchasing Lender the purchase price to the ratable extent of such return or recovery, without interest. Each Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this clause (e) may, to the fullest extent permitted by law, exercise all its rights of payment (including pursuant to Section 10.6) with respect to such participation as fully as if such Lender were the direct creditor of Borrowers

in the amount of such participation). If under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a setoff to which this clause (e) applies, such Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of the Lenders entitled under this clause (e) to share in the benefits of any recovery on such secured claim.

Section 11.14 Right to Perform, Preserve and Protect. If any Credit Party fails to perform any obligation hereunder or under any other Financing Document, Agent itself may, but shall not be obligated to, cause such obligation to be performed at Borrowers' expense. Agent is further authorized by Borrowers and the Lenders to make expenditures from time to time which Agent, in its reasonable business judgment, deems necessary or desirable to (a) preserve or protect the business conducted by Borrowers, the Collateral, or any portion thereof, and/or (b) enhance the likelihood of, or maximize the amount of, repayment of the Loan and other Obligations. Each Borrower hereby agrees to reimburse Agent on demand for any and all costs, liabilities and obligations incurred by Agent pursuant to this Section 11.14. Each Lender hereby agrees to indemnify Agent upon demand for any and all costs, liabilities and obligations incurred by Agent pursuant to this Section 11.14, in accordance with the provisions of Section 11.6.

Section 11.15 Additional Titled Agents. Except for rights and powers, if any, expressly reserved under this Agreement to any bookrunner, arranger or to any titled agent named on the cover page of this Agreement, other than Agent (collectively, the "***Additional Titled Agents***"), and except for obligations, liabilities, duties and responsibilities, if any, expressly assumed under this Agreement by any Additional Titled Agent, no Additional Titled Agent, in such capacity, has any rights, powers, liabilities, duties or responsibilities hereunder or under any of the other Financing Documents. Without limiting the foregoing, no Additional Titled Agent shall have nor be deemed to have a fiduciary relationship with any Lender. At any time that any Lender serving as an Additional Titled Agent shall have transferred to any other Person (other than any Affiliates) all of its interests in the Loan, such Lender shall be deemed to have concurrently resigned as such Additional Titled Agent.

Section 11.16 Amendments and Waivers.

(a) No provision of this Agreement or any other Financing Document may be materially amended, waived or otherwise modified unless such amendment, waiver or other modification is in writing and is signed or otherwise approved by Borrowers, the Required Lenders and any other Lender to the extent required under Section 11.16(b); provided, however, that Agent shall be entitled, in its sole and absolute discretion, to waive any financial covenant of any Credit Party (for no more than two consecutive quarters).

(b) In addition to the required signatures under Section 11.16(a), no provision of this Agreement or any other Financing Document may be amended, waived or otherwise modified unless such amendment, waiver or other modification is in writing and is signed or otherwise approved by the following Persons:

(i) if any amendment, waiver or other modification would increase a Lender's funding obligations in respect of any Loan, by such Lender; and/or

(ii) if the rights or duties of Agent are affected thereby, by Agent;

provided, however, that, in each of (i) and (ii) above, no such amendment, waiver or other modification shall, unless signed or otherwise approved in writing by all the Lenders directly affected thereby, (A) reduce the principal of, rate of interest on or any fees with respect to any Loan or forgive any principal, interest (other than default interest) or fees (other than late charges) with respect to any Loan; (B) postpone the date fixed for, or waive, any payment (other than any mandatory prepayment pursuant to Section 2.1(b)(iii)) of principal of any Loan, or of interest on any Loan (other than default interest) or any fees provided for hereunder (other than late charges) or postpone the date of termination of any commitment of any Lender hereunder; (C) change the definition of the term Required Lenders or the percentage of Lenders which shall be required for Lenders to take any action hereunder; (D) release all or substantially all of the Collateral, authorize any Borrower to sell or otherwise dispose of all or substantially all of the Collateral or release any Guarantor of all or any portion of the Obligations or its Guarantee obligations with respect thereto, except, in each case with respect to this clause (D), as otherwise may be provided in this Agreement or the other Financing Documents (including in connection with any disposition permitted hereunder); (E) amend, waive or otherwise modify this Section 11.16(b) or the definitions of the terms used in this Section 11.16(b) insofar as the definitions affect the substance of this Section 11.16(b); (F) consent to the assignment, delegation or other transfer by any Credit Party of any of its rights and obligations under any Financing Document or release any Borrower of its payment obligations under any Financing Document, except, in each case with respect to this clause (F), pursuant to a merger or consolidation permitted pursuant to this Agreement; or (G) amend any of the provisions of Section 10.7 or amend any of the definitions Pro Rata Share, Revolving Loan Commitment, Revolving Loan Commitment Amount, Revolving Loan Commitment Percentage, or that provide for the Lenders to receive their Pro Rata Shares of any fees, payments, setoffs or proceeds of Collateral hereunder. It is hereby understood and agreed that all Lenders shall be deemed directly affected by an amendment, waiver or other modification of the type described in the preceding clauses (C), (D), (E), (F) and (G) of the preceding sentence.

Section 11.17 Assignments and Participations.

(a) Assignments.

(i) Any Lender may at any time assign to one or more Eligible Assignees all or any portion of such Lender's Loan together with all related obligations of such Lender hereunder. Except as Agent may otherwise agree, the amount of any such assignment (determined as of the date of the applicable Assignment Agreement or, if a "Trade Date" is specified in such Assignment Agreement, as of such Trade Date) shall be in a minimum aggregate amount equal to \$1,000,000 or, if less, the assignor's entire interests in the outstanding Loan; provided, however, that, in connection with simultaneous assignments to two or more related Approved Funds, such Approved Funds shall be treated as one assignee for purposes of determining compliance with the minimum assignment size referred to above. Borrowers and Agent shall be entitled to continue to deal solely and directly with such Lender in connection with the interests so assigned to an Eligible Assignee until Agent shall have received and accepted an effective Assignment Agreement executed, delivered and fully completed by the

applicable parties thereto and a processing fee of \$3,500 to be paid by the assigning Lender; provided, however, that only one processing fee shall be payable in connection with simultaneous assignments to two or more related Approved Funds.

(ii) From and after the date on which the conditions described above have been met, (A) such Eligible Assignee shall be deemed automatically to have become a party hereto and, to the extent of the interests assigned to such Eligible Assignee pursuant to such Assignment Agreement, shall have the rights and obligations of a Lender hereunder, and (B) the assigning Lender, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment Agreement, shall be released from its rights and obligations hereunder (other than those that survive termination pursuant to Section 12.1). Upon the request of the Eligible Assignee (and, as applicable, the assigning Lender) pursuant to an effective Assignment Agreement, each Borrower shall execute and deliver to Agent for delivery to the Eligible Assignee (and, as applicable, the assigning Lender) Notes in the aggregate principal amount of the Eligible Assignee's Loan (and, as applicable, Notes in the principal amount of that portion of the principal amount of the Loan retained by the assigning Lender). Upon receipt by the assigning Lender of such Note, the assigning Lender shall return to Borrower Representative any prior Note held by it.

(iii) Agent, acting solely for this purpose as an agent of Borrower, shall maintain at its offices located in Bethesda, Maryland a copy of each Assignment Agreement delivered to it and a register for the recordation of the names and addresses of each Lender, and the commitments of, and principal amount of the Loan owing to, such Lender pursuant to the terms hereof. The entries in such register shall be conclusive, and Borrower, Agent and Lenders may treat each Person whose name is recorded therein pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. Such register shall be available for inspection by Borrower and any Lender, at any reasonable time upon reasonable prior notice to Agent.

(iv) Notwithstanding the foregoing provisions of this Section 11.17(a) or any other provision of this Agreement, any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided, however, that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(v) Notwithstanding the foregoing provisions of this Section 11.17(a) or any other provision of this Agreement, Agent has the right, but not the obligation, to effectuate assignments of Loan via an electronic settlement system acceptable to Agent as designated in writing from time to time to the Lenders by Agent (the "**Settlement Service**"). At any time when the Agent elects, in its sole discretion, to implement such Settlement Service, each such assignment shall be effected by the assigning Lender and proposed assignee pursuant to the procedures then in effect under the Settlement Service, which procedures shall be consistent with the other provisions of this Section 11.17(a). Each assigning Lender and proposed Eligible Assignee shall comply with the

requirements of the Settlement Service in connection with effecting any assignment of Loan pursuant to the Settlement Service. With the prior written approval of Agent, Agent's approval of such Eligible Assignee shall be deemed to have been automatically granted with respect to any transfer effected through the Settlement Service. Assignments and assumptions of the Loan shall be effected by the provisions otherwise set forth herein until Agent notifies Lenders of the Settlement Service as set forth herein.

(b) Participations. Any Lender may at any time, without the consent of, or notice to, any Borrower or Agent, sell to one or more Persons participating interests in its Loan, commitments or other interests hereunder (any such Person, a "**Participant**"). In the event of a sale by a Lender of a participating interest to a Participant, (i) such Lender's obligations hereunder shall remain unchanged for all purposes, (ii) Borrowers and Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations hereunder, and (iii) all amounts payable by each Borrower shall be determined as if such Lender had not sold such participation and shall be paid directly to such Lender. Each Borrower agrees that if amounts outstanding under this Agreement are due and payable (as a result of acceleration or otherwise), each Participant shall be deemed to have the right of set-off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement; provided, however, that such right of set-off shall be subject to the obligation of each Participant to share with Lenders, and Lenders agree to share with each Participant, as provided in Section 10.6.

(c) Replacement of Lenders. Within thirty (30) days after: (i) receipt by Agent of notice and demand from any Lender for payment of additional costs as provided in Section 2.8(d), which demand shall not have been revoked, (ii) any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.8(a), (iii) any Lender is a Defaulted Lender, and the circumstances causing such status shall not have been cured or waived; or (iv) any failure by any Lender to consent to a requested amendment, waiver or modification to any Financing Document in which Required Lenders have already consented to such amendment, waiver or modification but the consent of each Lender, or each Lender affected thereby, is required with respect thereto (each relevant Lender in the foregoing clauses (i) through (iv) being an "**Affected Lender**") each of Borrower Representative and Agent may, at its option, notify such Affected Lender and, in the case of Borrowers' election, the Agent, of such Borrower Representative's intention to obtain, at Borrowers' expense, a replacement Lender ("**Replacement Lender**") for such Lender, which Replacement Lender shall be an Eligible Assignee and, in the event the Replacement Lender is to replace an Affected Lender described in the preceding clause (iv), such Replacement Lender consents to the requested amendment, waiver or modification making the replaced Lender an Affected Lender. In the event Borrowers or Agent, as applicable, obtains a Replacement Lender within ninety (90) days following notice of its intention to do so, the Affected Lender shall sell, at par, and assign all of its Loan and funding commitments hereunder to such Replacement Lender in accordance with the procedures set forth in Section 11.17(a); provided, however, that (A) Borrowers shall have reimbursed such Lender for its increased costs and additional payments for which it is entitled to reimbursement under Section 2.8(a) or Section 2.8(d), as applicable, of this Agreement through the date of such sale and assignment, and (B) Borrowers shall pay to Agent the \$3,500 processing fee in respect of such assignment. In the event that a replaced Lender does not execute an Assignment Agreement pursuant to Section 11.17(a) within five

(5) Business Days after receipt by such replaced Lender of notice of replacement pursuant to this Section 11.17(c) and presentation to such replaced Lender of an Assignment Agreement evidencing an assignment pursuant to this Section 11.17(c), such replaced Lender shall be deemed to have consented to the terms of such Assignment Agreement, and any such Assignment Agreement executed by Agent, the Replacement Lender and, to the extent required pursuant to Section 11.17(a), Borrowers, shall be effective for purposes of this Section 11.17(c) and Section 11.17(a). Upon any such assignment and payment, such replaced Lender shall no longer constitute a "**Lender**" for purposes hereof, other than with respect to such rights and obligations that survive termination as set forth in Section 12.1.

(d) Credit Party Assignments. No Credit Party may assign, delegate or otherwise transfer any of its rights or other obligations hereunder or under any other Financing Document without the prior written consent of Agent and each Lender.

Section 11.18 Funding and Settlement Provisions Applicable When Non-Funding Lenders Exist. So long as Agent has not waived the conditions to the funding of Revolving Loans set forth in Section 7.2, any Lender may deliver a notice to Agent stating that such Lender shall cease making Revolving Loans due to the non-satisfaction of one or more conditions to funding Loans set forth in Section 7.2, and specifying any such non-satisfied conditions. Any Lender delivering any such notice shall become a non-funding Lender (a "**Non-Funding Lender**") for purposes of this Agreement commencing on the Business Day following receipt by Agent of such notice, and shall cease to be a Non-Funding Lender on the date on which such Lender has either revoked the effectiveness of such notice or acknowledged in writing to each of Agent the satisfaction of the condition(s) specified in such notice, or Required Lenders waive the conditions to the funding of such Loans giving rise to such notice by Non-Funding Lender. Each Non-Funding Lender shall remain a Lender for purposes of this Agreement to the extent that such Non-Funding Lender has Revolving Loans Outstanding in excess of zero; provided, however, that during any period of time that any Non-Funding Lender exists, and notwithstanding any provision to the contrary set forth herein, the following provisions shall apply:

(a) For purposes of determining the Pro Rata Share of each Revolving Lender under clause (c) of the definition of such term, each Non-Funding Lender shall be deemed to have a Revolving Loan Commitment Amount as in effect immediately before such Lender became a Non-Funding Lender.

(b) Except as provided in clause (a) above, the Revolving Loan Commitment Amount of each Non-Funding Lender shall be deemed to be zero.

(c) The Revolving Loan Commitment at any date of determination during such period shall be deemed to be equal to the sum of (i) the aggregate Revolving Loan Commitment Amounts of all Lenders, other than the Non-Funding Lenders as of such date *plus* (ii) the aggregate Revolving Loan Outstandings of all Non-Funding Lenders as of such date.

(d) Agent shall have no right to make or disburse Revolving Loans advances for the account of any Non-Funding Lender pursuant to Section 11.13, or to assume that any

Non-Funding Lender will fund its Pro Rata Share of any Revolving Loans requested by Borrower during such period.

(e) Agent shall have no right to make or disburse Revolving Loans for the account of any Non-Funding Lender pursuant to Section 2.1(b)(i) to pay interest, fees, expenses and other charges of any Credit Party.

(f) [Reserved]

(g) To the extent that Agent applies proceeds of Collateral or other payments received by Agent to repayment of Revolving Loans pursuant to Section 10.7, such payments and proceeds shall be applied first in respect of Revolving Loans made at the time any Non-Funding Lenders exist, and second in respect of all other outstanding Revolving Loans.

Section 11.19 Buy-Out Upon Refinancing. MCF shall have the right to purchase from the other Lenders all of their respective interests in the Loan at par in connection with any refinancing of the Loan upon one or more new economic terms, but which refinancing is structured as an amendment and restatement of the Loan rather than a payoff of the Loan.

Section 11.20 Definitions. As used in this Article 11, the following terms have the following meanings:

"Additional Titled Agents" has the meaning set forth in Section 11.15.

"Affected Lender" has the meaning set forth in Section 11.17(c).

"Approved Fund" means any (a) investment company, fund, trust, securitization vehicle or conduit that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the Ordinary Course of Business, or (b) any Person (other than a natural person) which temporarily warehouses loans for any Lender or any entity described in the preceding clause (a) and that, with respect to each of the preceding clauses (a) and (b), is administered or managed by (i) a Lender, (ii) an Affiliate of a Lender, or (iii) a Person (other than a natural person) or an Affiliate of a Person (other than a natural person) that administers or manages a Lender.

"Assignment Agreement" means an assignment agreement in form and substance acceptable to Agent.

"Defaulted Lender" means, so long as such failure shall remain in existence and uncured, any Lender which shall have failed to make any Loan or other credit accommodation, disbursement, settlement or reimbursement required pursuant to the terms of any Financing Document.

"Eligible Assignee" means (a) a Lender, (b) an Affiliate of a Lender, (c) an Approved Fund, and (d) any other Person (other than a natural person) approved by Agent; provided, however, that notwithstanding the foregoing, (x) ***"Eligible Assignee"*** shall not include any Borrower or any of a Borrower's Affiliates, and (y) no proposed assignee intending to assume all or any portion of the Revolving Loan Commitment shall be an Eligible Assignee unless such

proposed assignee either already holds a portion of such Revolving Loan Commitment or Term Loan Commitment, or has been approved as an Eligible Assignee by Agent.

"Federal Funds Rate" means, for any day, the rate of interest per annum (rounded upwards, if necessary, to the nearest whole multiple of 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day, provided, however, that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day, and (b) if no such rate is so published on such next preceding Business Day, the Federal Funds Rate for such day shall be the average rate quoted to Agent on such day on such transactions as determined by Agent.

"Replacement Lender" has the meaning set forth in Section 11.17(c).

"Settlement Service" has the meaning set forth in Section 11.17(a)(v).

ARTICLE 12 - MISCELLANEOUS

Section 12.1 Survival. All agreements, representations and warranties made herein and in every other Financing Document shall survive the execution and delivery of this Agreement and the other Financing Documents and the other Operative Documents. The provisions of Section 2.9 and Articles 11 and 12 shall survive the payment of the Obligations (both with respect to any Lender and all Lenders collectively) and any termination of this Agreement and any judgment with respect to any Obligations, including any final foreclosure judgment with respect to any Security Document, and no unpaid or unperformed, current or future, Obligations will merge into any such judgment.

Section 12.2 No Waivers. No failure or delay by Agent or any Lender in exercising any right, power or privilege under any Financing Document shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein and therein provided shall be cumulative and not exclusive of any rights or remedies provided by law. Any reference in any Financing Document to the "continuing" nature of any Event of Default shall not be construed as establishing or otherwise indicating that any Borrower or any other Credit Party has the independent right to cure any such Event of Default, but is rather presented merely for convenience should such Event of Default be waived in accordance with the terms of the applicable Financing Documents.

Section 12.3 Notices.

(a) All notices, requests and other communications to any party hereunder shall be in writing (including prepaid overnight courier, facsimile transmission or similar writing) and shall be given to such party at its address, facsimile number or e-mail address set forth on the signature pages hereof (or, in the case of any such Lender who becomes a Lender after the date hereof, in an assignment agreement or in a notice delivered to Borrower Representative and Agent by the assignee Lender forthwith upon such assignment) or at such other address, facsimile number or e-mail address as such party may hereafter specify for the

purpose by notice to Agent and Borrower Representative; provided, however, that notices, requests or other communications shall be permitted by electronic means only in accordance with the provisions of Section 12.3(b) and (c). Each such notice, request or other communication shall be effective (i) if given by facsimile, when such notice is transmitted to the facsimile number specified by this Section and the sender receives a confirmation of transmission from the sending facsimile machine, or (ii) if given by mail, prepaid overnight courier or any other means, when received or when receipt is refused at the applicable address specified by this Section 12.3(a).

(b) Notices and other communications to the parties hereto may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved from time to time by Agent, provided, however, that the foregoing shall not apply to notices sent directly to any Lender if such Lender has notified the Agent that it is incapable of receiving notices by electronic communication. The Agent or Borrower Representative may, in their discretion, agree to accept notices and other communications to them hereunder by electronic communications pursuant to procedures approved by it; provided, however, that approval of such procedures may be limited to particular notices or communications.

(c) Unless the Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgment), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided, however, that if any such notice or other communication is not sent or posted during normal business hours, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day.

Section 12.4 Severability. In case any provision of or obligation under this Agreement or any other Financing Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 12.5 Headings. Headings and captions used in the Financing Documents (including the Exhibits, Schedules and Annexes hereto and thereto) are included for convenience of reference only and shall not be given any substantive effect.

Section 12.6 Confidentiality. Agent and each Lender shall hold all non-public information regarding the Credit Parties and their respective businesses identified as such by Borrowers and obtained by Agent or any Lender pursuant to the requirements hereof in accordance with such Person's customary procedures for handling information of such nature, except that disclosure of such information may be made (a) to their respective agents, employees, Subsidiaries, Affiliates, attorneys, auditors, professional consultants, rating agencies, insurance

industry associations and portfolio management services, (b) to prospective transferees or purchasers of any interest in the Loans, the Agent or a Lender, provided, however, that any such Persons are bound by obligations of confidentiality, (c) as required by Law, subpoena, judicial order or similar order and in connection with any litigation, (d) as may be required in connection with the examination, audit or similar investigation of such Person, and (e) to a Person that is a trustee, investment advisor, collateral manager, servicer, noteholder or secured party in a Securitization (as hereinafter defined) in connection with the administration, servicing and reporting on the assets serving as collateral for such Securitization. For the purposes of this Section, "**Securitization**" shall mean (i) the pledge of the Loans as collateral security for loans to a Lender, or (ii) a public or private offering by a Lender or any of its Affiliates or their respective successors and assigns, of securities which represent an interest in, or which are collateralized, in whole or in part, by the Loans. Confidential information shall include only such information identified as such at the time provided to Agent and shall not include information that either: (y) is in the public domain, or becomes part of the public domain after disclosure to such Person through no fault of such Person, or (z) is disclosed to such Person by a Person other than a Credit Party, provided, however, Agent does not have actual knowledge that such Person is prohibited from disclosing such information. The obligations of Agent and Lenders under this Section 12.6 shall supersede and replace the obligations of Agent and Lenders under any confidentiality agreement in respect of this financing executed and delivered by Agent or any Lender prior to the date hereof.

Section 12.7 Waiver of Consequential and Other Damages. To the fullest extent permitted by applicable law, no Borrower shall assert, and each Borrower hereby waives, any claim against any Indemnitee (as defined below), on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of this Agreement, any other Financing Document or any agreement or instrument contemplated hereby or thereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Financing Documents or the transactions contemplated hereby or thereby.

Section 12.8 GOVERNING LAW; SUBMISSION TO JURISDICTION.

(a) THIS AGREEMENT, EACH NOTE AND EACH OTHER FINANCING DOCUMENT, AND ALL MATTERS RELATING HERETO OR THERETO OR ARISING THEREFROM (WHETHER SOUNDING IN CONTRACT LAW, TORT LAW OR OTHERWISE), SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF MARYLAND, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES.

(b) EACH PARTY HERETO HEREBY CONSENTS AND AGREES THAT THE BANKRUPTCY COURT SHALL HAVE EXCLUSIVE JURISDICTION (OR IF THE BANKRUPTCY COURT DOES NOT HAVE JURISDICTION, ANY FEDERAL OR STATE COURT OF COMPETENT JURISDICTION LOCATED IN THE STATE OF MARYLAND) TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN THE PARTIES

HERETO, ON THE ONE HAND, AND ANY AGENT OR ANY LENDER, ON THE OTHER HAND, PERTAINING TO THE AGREEMENT OR ANY OF THE OTHER FINANCING DOCUMENTS OR TO ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE OTHER FINANCING DOCUMENTS; PROVIDED THAT EACH PARTY ACKNOWLEDGES THAT ANY APPEALS FROM THE BANKRUPTCY COURT MAY HAVE TO BE HEARD BY A COURT OTHER THAN THE BANKRUPTCY COURT; PROVIDED, FURTHER, THAT NOTHING IN THE AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE ANY AGENT OR ANY LENDER FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION TO REALIZE ON THE COLLATERAL OR ANY OTHER SECURITY FOR THE OBLIGATIONS, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOR OF THE LENDER. EACH PARTY HERETO EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH COURT, AND EACH PARTY HEREBY WAIVES ANY OBJECTION THAT SUCH PARTY MAY HAVE BASED UPON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS, AND HEREBY CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT.

(c) Each Borrower, Agent and each Lender agree that each Loan (including those made on the Closing Date) shall be deemed to be made in, and the transaction contemplated hereunder and in any other Financing Documents shall be deemed to have been performed in, the State of Maryland.

Section 12.9 WAIVER OF JURY TRIAL. EACH BORROWER, AGENT AND THE LENDERS HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE FINANCING DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH BORROWER, AGENT AND EACH LENDER ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THE OTHER FINANCING DOCUMENTS, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH BORROWER, AGENT AND EACH LENDER WARRANTS AND REPRESENTS THAT IT HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

Section 12.10 Publication; Advertisement.

(a) Publication. Except as required in connection with the Bankruptcy Cases, no Credit Party will directly or indirectly publish, disclose or otherwise use in any public disclosure, advertising material, promotional material, press release or interview, any reference to the name, logo or any trademark of MCF or any of its Affiliates or any reference to this Agreement or the financing evidenced hereby, in any case except (i) as required by Law,

subpoena or judicial or similar order, in which case the applicable Credit Party shall give Agent prior written notice of such publication or other disclosure, or (ii) with MCF's prior written consent.

(b) Advertisement. Each Lender and each Credit Party hereby authorizes MCF to publish the name of such Lender and Credit Party, the existence of the financing arrangements referenced under this Agreement, the primary purpose and/or structure of those arrangements, the amount of credit extended under each facility, the title and role of each party to this Agreement, and the total amount of the financing evidenced hereby in any "tombstone", comparable advertisement or press release which MCF elects to submit for publication. In addition, each Lender and each Credit Party agrees that MCF may provide lending industry trade organizations with information necessary and customary for inclusion in league table measurements after the Closing Date. With respect to any of the foregoing, MCF shall provide Borrowers with an opportunity to review and confer with MCF regarding the contents of any such tombstone, advertisement or information, as applicable, prior to its submission for publication and, following such review period, MCF may, from time to time, publish such information in any media form desired by MCF, until such time that Borrowers shall have requested MCF cease any such further publication.

Section 12.11 Counterparts; Integration. This Agreement and the other Financing Documents may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Signatures by facsimile or by electronic mail delivery of an electronic version of any executed signature page shall bind the parties hereto. This Agreement and the other Financing Documents constitute the entire agreement and understanding among the parties hereto and supersede any and all prior agreements and understandings, oral or written, relating to the subject matter hereof.

Section 12.12 No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

Section 12.13 Lender Approvals. Unless expressly provided herein to the contrary, any approval, consent, waiver or satisfaction of Agent or Lenders with respect to any matter that is the subject of this Agreement, the other Financing Documents may be granted or withheld by Agent and Lenders in their sole and absolute discretion and credit judgment.

Section 12.14 Administrative Expenses; Indemnity

(a) Borrowers hereby agree to promptly pay (i) all costs and expenses of Agent (including, without limitation, the fees, costs and expenses of counsel to, and independent appraisers and consultants retained by Agent) in connection with the examination, review, due diligence investigation, documentation, negotiation, closing and syndication of the transactions contemplated by the Financing Documents, in connection with the performance by Agent of its rights and remedies under the Financing Documents and in connection with the continued administration of the Financing Documents including (A) any amendments, modifications,

consents and waivers to and/or under any and all Financing Documents, and (B) any periodic public record searches conducted by or at the request of Agent (including, without limitation, title investigations, UCC searches, fixture filing searches, judgment, pending litigation and tax lien searches and searches of applicable corporate, limited liability, partnership and related records concerning the continued existence, organization and good standing of certain Persons); (ii) without limitation of the preceding clause (i), all costs and expenses of Agent in connection with the creation, perfection and maintenance of Liens pursuant to the Financing Documents; (iii) without limitation of the preceding clause (i), all costs and expenses of Agent in connection with (A) protecting, storing, insuring, handling, maintaining or selling any Collateral, (B) any litigation, dispute, suit or proceeding relating to any Financing Document, and (C) any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all of the Financing Documents; (iv) without limitation of the preceding clause (i), all costs and expenses of Agent in connection with Agent's reservation of funds in anticipation of the funding of the initial Loans to be made hereunder; and (v) all costs and expenses incurred by Lenders in connection with any litigation, dispute, suit or proceeding relating to any Financing Document and in connection with any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all Financing Documents, whether or not Agent or Lenders are a party thereto. If Agent or any Lender uses in-house counsel for any of these purposes, Borrowers further agree that the Obligations include reasonable charges for such work commensurate with the fees that would otherwise be charged by outside legal counsel selected by Agent or such Lender for the work performed.

(b) Each Borrower hereby agrees to indemnify, pay and hold harmless Agent and Lenders and the officers, directors, employees, trustees, agents, investment advisors, collateral managers, servicers, and counsel of Agent and Lenders (collectively called the "*Indemnitees*") from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the fees and disbursements of counsel for such Indemnitee) in connection with any investigative, response, remedial, administrative or judicial matter or proceeding, whether or not such Indemnitee shall be designated a party thereto and including any such proceeding initiated by or on behalf of a Credit Party, and the reasonable expenses of investigation by engineers, environmental consultants and similar technical personnel and any commission, fee or compensation claimed by any broker (other than any broker retained by Agent or Lenders) asserting any right to payment for the transactions contemplated hereby, which may be imposed on, incurred by or asserted against such Indemnitee as a result of or in connection with the transactions contemplated hereby or by the other Operative Documents (including (i)(A) as a direct or indirect result of the presence on or under, or escape, seepage, leakage, spillage, discharge, emission or release from, any property now or previously owned, leased or operated by Borrower, any Subsidiary or any other Person of any Hazardous Materials, (B) arising out of or relating to the offsite disposal of any materials generated or present on any such property, or (C) arising out of or resulting from the environmental condition of any such property or the applicability of any governmental requirements relating to Hazardous Materials, whether or not occasioned wholly or in part by any condition, accident or event caused by any act or omission of Borrower or any Subsidiary, and (ii) proposed and actual extensions of credit under this Agreement) and the use or intended use of the proceeds of the Loans, except that Borrower shall have no obligation hereunder to an Indemnitee with respect to any liability resulting from the gross negligence or willful misconduct of such Indemnitee, as determined by a

final non-appealable judgment of a court of competent jurisdiction. To the extent that the undertaking set forth in the immediately preceding sentence may be unenforceable, Borrower shall contribute the maximum portion which it is permitted to pay and satisfy under applicable Law to the payment and satisfaction of all such indemnified liabilities incurred by the Indemnitees or any of them.

(c) Notwithstanding any contrary provision in this Agreement, the obligations of Borrowers under this Section 12.14 shall survive the payment in full of the Obligations and the termination of this Agreement. NO INDEMNITEE SHALL BE RESPONSIBLE OR LIABLE TO THE BORROWERS OR TO ANY OTHER PARTY TO ANY FINANCING DOCUMENT, ANY SUCCESSOR, ASSIGNEE OR THIRD PARTY BENEFICIARY OR ANY OTHER PERSON ASSERTING CLAIMS DERIVATIVELY THROUGH SUCH PARTY, FOR INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHICH MAY BE ALLEGED AS A RESULT OF CREDIT HAVING BEEN EXTENDED, SUSPENDED OR TERMINATED UNDER THIS AGREEMENT OR ANY OTHER FINANCING DOCUMENT OR AS A RESULT OF ANY OTHER TRANSACTION CONTEMPLATED HEREUNDER OR THEREUNDER.

Section 12.15 [Reserved]

Section 12.16 Reinstatement. This Agreement shall remain in full force and effect and continue to be effective or to be reinstated, as the case may be, if at any time payment and performance of the Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Obligations, whether as a fraudulent preference reviewable transaction or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

Section 12.17 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Borrowers and Agent and each Lender and their respective successors and permitted assigns.

Section 12.18 USA PATRIOT Act Notification. Agent (for itself and not on behalf of any Lender) and each Lender hereby notifies Borrowers that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record certain information and documentation that identifies Borrowers, which information includes the name and address of Borrower and such other information that will allow Agent or such Lender, as applicable, to identify Borrowers in accordance with the USA PATRIOT Act.

Section 12.19 Cross Default and Cross Collateralization to Affiliated Obligations.

(a) Cross-Default. As stated in Section 10.1, an Event of Default under any of the Affiliated Financing Documents shall be an Event of Default under this Agreement. In addition, a Default or Event of Default under any of the Financing Documents shall be an Event of Default under the Affiliated Financing Documents.

(b) Cross Collateralization. Borrowers acknowledge and agree that the Collateral securing this Loan also secures the Affiliated Obligations.

(c) Consent. Nursing Home, Medical Center and Mt. Vernon, as the Borrowers under the Affiliated Financing Documents, authorize Agent from time to time to:

(i) compromise, settle, renew, extend the time for payment, change the manner or terms of payment, discharge the performance of, decline to enforce, or release all or any of the Affiliated Obligations, or grant other indulgences to Nursing Home, Medical Center or Mt. Vernon in respect thereof, or modify in any manner any documents relating to the Affiliated Obligations;

(ii) declare all Affiliated Obligations due and payable upon the occurrence and during the continuance of an Event of Default;

(iii) take and hold security for the performance of the Affiliated Obligations of Nursing Home, Medical Center or Mt. Vernon and exchange, enforce, waive and release any such security;

(iv) apply and reapply such security and direct the order or manner of sale thereof as Agent, in its sole discretion, may determine;

(v) release, surrender or exchange any deposits or other property securing the Affiliated Obligations or on which Agent at any time may have a Lien; and

(vi) apply payments received by Agent from Borrower to any Obligations or Affiliated Obligations, as permitted in accordance with the terms of this Agreement and in such order as Agent shall determine.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

(Signature Page to Credit and Security Agreement)

IN WITNESS WHEREOF, intending to be legally bound, and intending that this Agreement constitute an agreement executed under seal, each of the parties have caused this Agreement to be executed under seal the day and year first above mentioned.

BORROWERS:

**SOUND SHORE MEDICAL CENTER OF
WESTCHESTER**

By: _____ (SEAL)

Name: _____

Title: _____

HOWE AVENUE NURSING HOME, INC.

By: _____ (SEAL)

Name: _____

Title: _____

THE MOUNT VERNON HOSPITAL

By: _____ (SEAL)

Name: _____

Title: _____

Address:

Sound Shore Medical Center of Westchester
16 Guion Place
New Rochelle, NY 10801
Attn: John Spicer, President and CEO
Facsimile: (914) 632-4938
E-Mail: jspicer@sshsw.org

(Signature Page to Credit and Security Agreement)

AGENT:

MIDCAP FINANCIAL, LLC, as Agent

By: _____

Name: Brett Robinson

Title: Managing Director

Address:

7255 Woodmont Avenue, Suite 200

Bethesda, MD 20814

Attn: Account Manager for Sound Shore DIP
transaction

Facsimile: 301-941-1450

Payment Account Designation:

Wells Fargo Bank, N.A.

(McLean, VA)

ABA #: 121-000-248

Account Name: MidCap Funding IV, LLC - Collections

Account #: 2000036282803

Attention: Sound Shore DIP Loan

(Signature Page to Credit and Security Agreement)

LENDER:

MIDCAP FINANCIAL, LLC, as Lender

By: _____

Name: Brett Robinson

Title: Managing Director

Address:

7255 Woodmont Avenue, Suite 200

Bethesda, MD 20814

Attn: Account Manager for Sound Shore DIP Loan

Facsimile: 301-941-1450

ANNEXES, EXHIBITS AND SCHEDULES

ANNEXES

Annex A Commitment Annex

EXHIBITS

Exhibit A [Reserved]
Exhibit B Compliance Certificate
Exhibit C Borrowing Base Certificate
Exhibit D Notice of Borrowing
Exhibit E Budget

SCHEDULES

Schedule 3.1 Existence, Organizational ID Numbers, Foreign Qualification, Prior Names
Schedule 3.4 Capitalization
Schedule 3.6 Litigation
Schedule 3.13 Taxes
Schedule 3.14 ERISA
Schedule 3.17 Material Contracts
Schedule 3.18 Environmental Compliance
Schedule 3.19 Intellectual Property
Schedule 4.4 Insurance
Schedule 4.9 Litigation, Governmental Proceedings and Other Notice Events
Schedule 5.1 Debt; Contingent Obligations
Schedule 5.2 Liens
Schedule 5.7 Permitted Investments
Schedule 5.8 Affiliate Transactions
Schedule 5.11 Business Description
Schedule 5.14 Deposit Accounts and Securities Accounts
Schedule 7.4 Post-Closing Obligations
Schedule 8.1 Licensing
Schedule 8.2 Exceptions to Healthcare Representations and Warranties
Schedule 9.1 Collateral
Schedule 9.2 Location of Collateral

Annex A to Credit Agreement (Commitment Annex)

Lender	Revolving Loan Commitment Amount	Revolving Loan Commitment Percentage
MidCap Financial, LLC	\$23,000,000	100%
TOTALS:	\$23,000,000	100%

Exhibit A to Credit Agreement (Reserved)

Exhibit B to Credit Agreement (Compliance Certificate)

[BORROWER REPRESENTATIVE LETTERHEAD]

COMPLIANCE CERTIFICATE

Date: _____, 201_

This Compliance Certificate is given by _____, a Responsible Officer of Sound Shore Medical Center of Westchester, as Borrower Representative (the "**Borrower Representative**"), pursuant to that certain Debtor In Possession Revolving Credit and Security Agreement dated as of May ___, 2013 by and among the Borrower Representative, Howe Avenue Nursing Home, Inc., The Mount Vernon Hospital, and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), MidCap Funding IV, LLC, individually as a Lender and as Agent (as assigned to it by MidCap Financial, LLC), and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

The undersigned Responsible Officer hereby certifies to Agent and Lenders that:

(a) The financial statements delivered with this certificate in accordance with Section 4.1 of the Credit Agreement fairly present in all material respects the results of operations and financial condition of Borrowers and their Consolidated Subsidiaries as of the dates and the accounting period covered by such financial statements.

(b) I have reviewed the terms of the Credit Agreement and have made, or caused to be made under my supervision, a review in reasonable detail of the transactions and conditions of Borrowers and their Consolidated Subsidiaries during the accounting period covered by such financial statements, and such review has not disclosed the existence during or at the end of such accounting period, and I have no knowledge of the existence as of the date hereof, of any condition or event that constitutes a Default or an Event of Default, except as set forth in Schedule 1 hereto, which includes a description of the nature and period of existence of such Default or an Event of Default and what action Borrowers have taken, are undertaking and propose to take with respect thereto. [If none, then so state "None" on Schedule 1.]

(d) Schedule 9.2 and Schedule 3.1 to the Credit Agreement contain a complete and accurate list of all business locations of Borrowers and Guarantors and all names under which Borrowers or Guarantors currently conduct business, and there have been no changes in the names under which Borrowers or Guarantors conduct business.

(e) Except as noted on Schedule 2 attached hereto, the undersigned has no knowledge of any federal or state tax liens having been filed against the Borrowers, Guarantors or any Collateral, and except as noted on Schedule 2 attached hereto, the undersigned has no knowledge of any failure of the Borrowers or Guarantors to make required payments of withholding or other tax obligations of the Borrowers or Guarantors during the accounting period to which the attached statements pertain or any subsequent period. [If none, then so state "None" on Schedule 2.]

(f) Schedule 5.14 to the Credit Agreement contains a complete and accurate statement of all deposit or investment accounts maintained by Borrowers or Guarantors.

(g) Except as described in Schedule 3.6 of the Credit Agreement and except as noted on Schedule 3 attached hereto, the undersigned has no knowledge of any current, pending or threatened:

(i) litigation against the Borrowers, Guarantors or any Affiliates that that could reasonably be expected to result in uninsured losses to any Borrower or any of its Subsidiaries of Two Hundred Fifty Thousand Dollars (\$250,000) or more;

(ii) inquiries, investigations or proceedings concerning the business affairs, practices, licensing or reimbursement entitlements of Borrowers or Guarantors;

(iii) default by Borrowers or Guarantors under any material contract to which either of them is a party, including, without limitation, any leases.

[If None, then so state "None" on Schedule 3.]

(h) No Borrower or Guarantor has acquired, by purchase, by the approval or granting of any application for registration (whether or not such application was previously disclosed to Agent by Borrowers) or otherwise, any Intellectual Property that is registered with any United States or foreign Governmental Authority, or has filed with any such United States or foreign Governmental Authority, any new application for the registration of any Intellectual Property, or acquired rights under a license as a licensee with respect to any such registered Intellectual Property (or any such application for the registration of Intellectual Property) owned by another Person, that has not previously been reported to Agent on Schedule 3.17 to the Credit Agreement.

(i) Except as noted on Schedule 4 attached hereto, no Borrower or Guarantor has acquired, by purchase or otherwise, any Chattel Paper, Letter of Credit Rights, Instruments, Documents or Investment Property that has not previously been reported to Agent on any Schedule 4 to any previous Compliance Certificate delivered by Borrower Representative to Agent.

(j) Except as noted on Schedule 5 attached hereto, no Borrower or Guarantor is aware of any Commercial Tort Claim that has not previously been reported to Agent on any Schedule 5 to any previous Compliance Certificate delivered by Borrower Representative to Agent.

(k) Borrower and Guarantor are in compliance with the covenants contained in Article 6 of the Credit Agreement, and in any Guarantee constituting a part of the Financing Documents, as demonstrated by the calculation of such covenants below, except as set forth below; in determining such compliance, the following calculations have been made: _____. Such calculations and the certifications contained therein are true, correct and complete.

(l) There has been no change to the Organizational Documents of the Borrower since the Closing Date.

Schedules to Compliance Certificate

Schedule 1 – Defaults or Events of Default

Schedule 2 – Federal or State Tax Liens against the Collateral; Withholdings or Tax Obligations

Schedule 3 – Pending Litigation, Inquiries or Investigations; Defaults under Material Contracts

Schedule 4 – Chattel Paper, Letter of Credit Rights, Instruments, Documents or Investment Property

Schedule 5 – Commercial Tort Claims

The foregoing certifications and computations are made as of _____,
(end of month) and delivered this ____ day of _____, 201__.

**SOUND SHORE MEDICAL CENTER OF
WESTCHESTER,**
as Borrower Representative

By: _____
Name: _____
Title: Authorized Signatory

Exhibit C to Credit Agreement (Borrowing Base Certificate)

Exhibit D to Credit Agreement (Notice of Borrowing)

[BORROWER LETTERHEAD]

Notice of Borrowing

Date: _____, 201__

This Notice of Borrowing is given by _____, a Responsible Officer of Sound Shore Medical Center of Westchester, as Borrower Representative (the "**Borrower Representative**"), pursuant to that certain Debtor In Possession Revolving Credit and Security Agreement dated as of May ___, 2013 by and among the Borrower Representative, Howe Avenue Nursing Home, Inc., The Mount Vernon Hospital and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), MidCap Funding IV, LLC, individually as a Lender and as Agent (as assigned to it by MidCap Financial, LLC), and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

The undersigned Responsible Officer hereby gives notice to Agent of Borrower Representative's request to borrow \$ _____ of Revolving Loans on _____, 201__. Attached is a Borrowing Base Certificate complying in all respects with the Credit Agreement and confirming that, after giving effect to the requested advance, the Revolving Loan Outstandings will not exceed the Revolving Loan Limit.

The undersigned officer hereby certifies that, both before and after giving effect to the request above (a) each of the conditions precedent set forth in Section 7.2 have been satisfied, (b) all of the representations and warranties contained in the Credit Agreement and the other Financing Documents are true, correct and complete as of the date hereof, except to the extent such representation or warranty relates to a specific date, in which case such representation or warranty is true, correct and complete as of such earlier date, and (c) no Default or Event of Default has occurred and is continuing on the date hereof.

IN WITNESS WHEREOF, the undersigned officer has executed and delivered this certificate this ____ day of _____, 201__.

**SOUND SHORE MEDICAL CENTER OF
WESTCHESTER,**
as Borrower Representative

By: _____
Name: _____
Title: Authorized Signatory

Schedule 7.4 – Post Closing Schedule

Borrowers shall satisfy and complete each of the following obligations, or provide Agent each of the items listed below, as applicable, on or before the date indicated below, all to the satisfaction of Agent in its sole and absolute discretion:

1.

Any Borrower's failure to complete and satisfy any of the above obligations on or before the date indicated above, or failure to deliver any of the above listed items on or before the date indicated above, shall constitute an immediate and automatic Event of Default, unless waived or extended in writing by Agent.

Schedule 9.1 – Collateral

The Collateral consists of all of Borrowers' right, title and interest in and to the following, whether now owned or hereafter created, acquired or arising, and all proceeds and products of the following: (i) all accounts, payment intangibles, instruments and other rights to receive payments of any Borrower (including without limitation, all Accounts), whether now existing or hereafter arising or acquired, (ii) all related general intangibles (including without limitation, contract rights and intellectual property), chattel paper, documents, supporting obligations, letter of credit rights, commercial tort claims, rights, remedies, guarantees and collateral evidencing, securing or otherwise relating to or associated with the property in subpart (i) above, including without limitation, all rights of enforcement and collection, (iii) all of Borrowers' now owned or hereafter acquired Deposit Accounts or Securities Accounts into which Accounts or the proceeds of Accounts are deposited, including the Lockbox Account, all funds received thereby or deposited therein, and any checks or instruments from time to time representing or evidencing the same, (iv) all books and records of any Borrower evidencing or relating to or associated with the foregoing, (v) all information and data compiled or derived by Borrower with respect to any of the foregoing (other than any such information and data subject to legal restrictions of patient confidentiality), and (vi) all collections, receipts and other proceeds (cash and noncash) derived from any of the foregoing.

As used in this Schedule 9.1 and this Agreement, the term "**Accounts**" means a right to payment of a monetary obligation, whether or not earned by performance for services rendered or to be rendered or for a secondary obligation incurred or to be incurred, including but not limited to (a) the third party reimbursable portion of accounts receivable owing to any Borrower (whether billed or unbilled) arising out of the delivery by any Borrower of medical, surgical, diagnostic or other professional, medical or dental services and/or the supply of goods related to any of such services (whether such services are supplied by a Borrower or a third party), including all rights to reimbursement under any agreements with an Account Debtor and any amounts received in settlement of a dispute, appeal or other arrangement with Medicare or Medicaid, (b) all accounts, general intangibles, rights, remedies, guarantees, and security interests in respect of the foregoing, all rights of enforcement and collection, all books and records evidencing or related to the foregoing, and all rights under this Agreement in respect of the foregoing, (c) all information and data compiled or derived by a Borrower in respect of such accounts receivable, subject to the confidentiality rights under applicable law, and (d) all proceeds of any of the foregoing. The term "**Accounts**" includes health-care insurance receivables. Notwithstanding anything else herein to the contrary, the term "**Accounts**" or "accounts" shall be not be deemed to include payments received from a Governmental Authority in respect of grants or gifts issued to Borrower pursuant to the following state and federal programs: the Women, Infant and Children program (WIC grants), the Healthcare Workforce Retraining Initiative program (HWRI grants), the Health Care Efficiency and Affordability Law program (HEAL grants), the Health Resources and Services Administration program (HRSA grants), the National Bioterrorism Hospital Preparedness Program (Bioterrorism grants), and the Women's Health program, and the foregoing grants shall not be deemed to part of Agent's Collateral.

Exhibit B

Term Loan Term Sheet

Exhibit to Interim DIP Order

Summary of Terms for DIP Term Loan

Borrowers: collectively, jointly and severally, Sound Shore Medical Center of Westchester ("SSMC"), The Mount Vernon Hospital, Inc. ("MVH"), and Howe Avenue Nursing Home d/b/a Schaffer Extended Care Center ("SECC"), each as debtor-in-possession under separate bankruptcy cases to be filed in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"; and such cases collectively, the "Chapter 11 Case")

Agent: MidCap Financial, LLC or one of its affiliates

Senior DIP Credit Facility: collectively, that certain debtor-in-possession senior secured revolving credit facility in the maximum aggregate amount of \$23,000,000 to be provided by DIP Lenders to Borrowers pursuant to that certain Debtor in Possession Credit and Security Agreement dated as of May __, 2013 by and among Agent, DIP Lenders and Borrowers (the "DIP Revolving Loan") and the DIP Term Loan

DIP Lenders: MidCap Financial, LLC and such other banks and financial institutions as may be arranged by Agent

Loan Amount: \$10,000,000

Term: The earliest of (a) twelve (12) months from the date of closing, (b) the termination of the DIP Revolving Loan, or (c) the occurrence of a DIP Credit Facility Termination Event (as defined below) (the "DIP Credit Facility Maturity Date"). The term "DIP Credit Facility Termination Event" has the meaning set forth in the last paragraph of this Term Sheet.

Use of Proceeds: The proceeds of the DIP Term Loan will be used to fund operating deficits and shortfalls of Borrowers incurred throughout the Chapter 11 Case in accordance with the Budget (as defined in the Interim Order (defined below)).

Principal Repayment: All obligations under the DIP Term Loan shall be due and payable in full by Borrowers to Agent at the DIP Credit Facility Maturity Date.

Interest and Fees: Interest on the outstanding balance of the DIP Term Loan shall be payable monthly in arrears at an annual rate of 30-day, reserve adjusted, LIBOR (subject to a 2.50% floor) plus 6.50%, reset monthly. Interest shall be calculated on the basis of the actual number of days elapsed in a 360 day year.

Collateral: All obligations of Borrowers under the DIP Term Loan (collectively, the "Obligations") will be secured by a letter of credit in favor of Agent issued by a nationally recognized banking institution

acceptable to Agent in its sole and absolute discretion, and the form and substance of which must be acceptable to Agent in its sole and absolute discretion (the "Collateral"). Accordingly, the Collateral shall secure no other obligations of the Borrowers and shall be subject to no other liens of any party.

Financial
Covenants:

Financial covenants shall include (a) a \$1,000,000 minimum liquidity covenant and (b) a budget compliance and variance covenant, each in form and substance substantially similar to those set forth in the DIP Revolving Loan.

Conditions to
Closing:

Customary conditions for financings of this type, including but not limited to:

- Execution of all necessary credit documentation, including a credit and security agreement incorporating the terms and conditions set forth in this Term Sheet, and otherwise on substantially similar terms as the credit documentation for the DIP Revolving Loan, together with customary closing instruments, documents, certificates, resolutions, opinions and assurances as are reasonable and customary for similar loans, and other items reasonably requested by the Agent, in each case in form and substance satisfactory to the Agent in its sole discretion (collectively, the "DIP Term Loan Documentation," and along with the credit documentation for the DIP Revolving Loan, the "Senior DIP Credit Facility Documentation").
- Payment of all fees and expenses.
- Execution by a stalking horse bidder of an asset purchase agreement (the "Stalking Horse APA") for the purchase of all or substantially all of the Borrower's assets in the Chapter 11 Case pursuant to Section 363 of the Bankruptcy Code (the "363 Sale") which is subject to no conditions other than Bankruptcy Court approval.
- The Bankruptcy Court shall have entered an interim financing order authorizing the secured financing under the Senior DIP Credit Facility on the terms and conditions contemplated by this Term Sheet and the Senior DIP Credit Facility Documentation, granting to Agent the security interests and liens and super-priority administrative expense claim status described above, modifying the automatic stay and other provisions required by Agent and its counsel (the "Interim Order"). The Interim Order shall limit the debtor's right to surcharge any of the Collateral.
- All obligations under that certain Amended and Restated Credit and Security Agreement, dated June 8, 2011, by and among SSEC and SSMC, as borrowers, and MidCap Funding IV, LLC, as successor agent and lender, shall have been repaid in full with the proceeds of the DIP Revolving Loan.
- All of the orders entered in the Chapter 11 Case shall be in form

and substance satisfactory to the Agent and its counsel.

- The Agent shall have received the Budget and the Budget shall have been satisfactory to the Agent in its sole discretion.
- Upon a DIP Credit Facility Termination Event, the DIP Term Loan shall be indefeasibly paid and satisfied in full by the purchaser of substantially all of Borrower's assets in the Chapter 11 Case ("Purchaser").

Senior DIP
Credit Facility
Costs:

All reasonable costs associated with the Facility, including, but not limited to Agent's out-of-pocket expenses associated with the transaction, professional fees, search fees and filing fees will be paid by Borrowers regardless of whether the transaction closes.

DIP Credit
Facility
Termination
Events:

Any of the following events further constitute a DIP Credit Facility Termination Event:

- the occurrence of an event of default under any of the DIP Term Loan Documentation or any Bankruptcy Court order approving the Senior DIP Credit Facility;
- the indefeasible payment in full of the indebtedness and obligations under the Senior DIP Credit Facility;
- a sale of all or substantially all or any material portion of the assets of any Borrower;
- the conversion of the Chapter 11 Case to a case under Chapter 7;
- the appointment of a trustee or examiner;
- failure of the Borrowers to have the Bankruptcy Court enter a final financing order authorizing the Senior DIP Credit Facility and approving all other terms provided in this Term Sheet, the Senior DIP Credit Facility Documentation and the Interim Order, unless otherwise agreed by Agent, within thirty (30) days of the Interim Order;
- failure of the Borrowers to file a motion (the "Sale Motion") within ten (10) days of filing of the Chapter 11 Case seeking entry of an order approving the 363 Sale, procedures for the 363 Sale and the form of the Stalking Horse APA;
- the failure of Borrowers to have the Bankruptcy Court enter an order within thirty-five (35) days of the filing of the Chapter 11 Case in form and substance acceptable to the Agent (a) approving the form of Stalking Horse APA and bidding procedures proposed in the Sale Motion, and (b) scheduling an auction for the sale of the assets in accordance with those bidding procedures (the "Auction") and a sale hearing with respect thereto;
- the failure of Borrowers to have the Bankruptcy Court enter an order approving the 363 Sale to Purchaser or other Successful Bidder, subject to the terms of the sale procedures approved by

the Bankruptcy Court, within one hundred (100) days following the filing of the Chapter 11 Case;

- the failure of Borrowers to close the 363 Sale on or before December 6, 2013, or such other date as agreed upon in the DIP Term Loan Documentation;
- the filing of a plan of reorganization or liquidation that is not in a form satisfactory to the Agent; and
- such other events as designated by Agent in the DIP Term Loan Documentation or set forth in the Bankruptcy Court order(s) approving the Senior DIP Credit Facility.

Exhibit C

Budget

As of:

5/29/2013

SSHS Cash Flow - Weekly

	Projection 31-May	Projection 7-Jun	Projection 14-Jun	Projection 21-Jun	Projection 28-Jun	Projection 5-Jul
Beginning Book Balance	\$ -	\$ 97,186	\$ 363,032	\$ 402,063	\$ 273,032	\$ 1,170,145
Receipts from Operations						
Medicare	\$ 618,972	\$ 1,537,926	\$ 1,007,574	\$ 1,529,891	\$ 987,423	\$ 1,317,314
Medicaid	635,217	635,217	635,217	622,512	622,512	622,512
Commercial	1,476,725	2,030,496	1,845,906	1,831,139	1,808,988	1,447,190
Pool Receipts	-	-	-	-	953,676	-
Self-Pay	7,445	9,306	9,306	9,306	9,306	7,445
Physicians & Clinics	72,663	90,829	90,829	90,829	90,829	72,663
Meaningful Use	-	-	-	-	-	-
Medicare Settlements	-	-	-	-	-	-
Other Receipts	330,506	420,902	410,951	402,226	410,951	321,781
Total Receipts from Operations	\$ 3,141,527	\$ 4,724,676	\$ 3,999,783	\$ 4,485,903	\$ 4,883,685	\$ 3,788,905
Disbursements from Operations						
Payroll & Taxes	\$ 1,717,178	\$ 3,520,335	\$ 1,717,178	\$ 3,520,335	\$ 1,717,178	\$ 3,520,335
Contract Labor	116,200	47,000	47,000	47,000	116,200	47,000
Benefits (Union)	411,000	1,250,000	175,000	-	61,000	1,100,000
Benefits (Non-Union)	224,000	480,000	280,000	280,000	280,000	534,000
AP Vendors & Supplies	943,685	1,105,996	996,238	1,269,446	903,718	930,868
Utilities	-	-	399,550	-	-	-
Insurance	-	58,500	16,786	90,000	-	1,183,500
Rent	-	24,000	-	-	-	24,000
Pool Disbursements	-	-	304,000	-	-	-
Secured Debt Payments	-	112,429	-	-	-	112,429
Other	-	750	25,000	-	-	750
Total Disbursements from Operations	\$ 3,412,063	\$ 6,599,010	\$ 3,960,752	\$ 5,206,781	\$ 3,078,096	\$ 7,452,882
Net Cash Flows from Operations	\$ (270,536)	\$ (1,874,334)	\$ 39,031	\$ (720,878)	\$ 1,805,589	\$ (3,663,978)
Non-Recurring Receipts/(Disbursements)						
HEAL	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Payroll Tax Payment (Arrears)	-	-	-	-	-	-
Restructuring Related Disbursements	(732,278)	-	-	-	(875,000)	(605,000)
Sale of Asset	-	-	-	-	-	-
Intercompany	-	-	-	-	-	-
Total Non-Recurring Activities	\$ (732,278)	\$ -	\$ -	\$ -	\$ (875,000)	\$ (605,000)
Net Cash Flows including Non-Recurring	\$ (1,002,814)	\$ (1,874,334)	\$ 39,031	\$ (720,878)	\$ 930,589	\$ (4,268,978)
Net Financing Activity (MidCap)	\$ 1,100,000	\$ 2,140,180	\$ -	\$ 591,847	\$ (33,476)	\$ 3,334,467
Ending Book Balance	\$ 97,186	\$ 363,032	\$ 402,063	\$ 273,032	\$ 1,170,145	\$ 235,634
Outstanding Checks	388,068	533,917	458,110	651,077	396,094	449,815
Ending Bank Balance	\$ 485,254	\$ 896,949	\$ 860,173	\$ 924,109	\$ 1,566,239	\$ 685,449
MidCap Financing Activities						
Beginning Balance	\$ 16,200,000	\$ 17,300,000	\$ 19,440,180	\$ 19,440,180	\$ 20,032,027	\$ 19,998,551
MidCap Paydown	(1,571,891)	(3,066,027)	(2,394,149)	(2,897,776)	(2,670,566)	(2,532,195)
MidCap Advances	2,671,891	4,880,045	2,394,149	3,489,623	2,637,090	5,500,582
Mortgage, Interest & Fees	-	326,162	-	-	-	366,080
Ending Balance per BB	\$ 17,300,000	\$ 19,440,180	\$ 19,440,180	\$ 20,032,027	\$ 19,998,551	\$ 23,333,017
SSMC BB Balance	15,000,000	15,000,000	15,000,000	15,000,000	15,000,000	7,733,017
SECC BB Balance	1,200,000	1,200,000	1,200,000	1,200,000	1,200,000	1,200,000
MVH BB Balance	1,100,000	3,240,180	3,240,180	3,832,027	3,798,551	4,400,000
Term Loan Balance	-	-	-	-	-	10,000,000
Term Loan Reserve	-	-	-	-	-	7,266,983

As of:

5/29/2013

SSHS Cash Flow - Weekly

	Projection 12-Jul	Projection 19-Jul	Projection 26-Jul	Projection 2-Aug	Projection 9-Aug	Projection 16-Aug
Beginning Book Balance	\$ 235,634	\$ 291,218	\$ 14,112	\$ 622,307	\$ 19,650	\$ 19,650
Receipts from Operations						
Medicare	\$ 987,423	\$ 1,514,167	\$ 987,423	\$ 1,514,167	\$ 987,423	\$ 1,514,167
Medicaid	622,512	622,512	622,512	622,512	622,512	622,512
Commercial	1,881,347	1,917,527	1,808,988	1,808,988	1,808,988	1,808,988
Pool Receipts	-	-	-	953,676	-	-
Self-Pay	9,306	9,306	9,306	9,306	9,306	9,306
Physicians & Clinics	90,829	90,829	90,829	90,829	90,829	90,829
Meaningful Use	-	-	-	-	-	-
Medicare Settlements	-	-	-	-	-	-
Other Receipts	418,421	413,432	410,951	402,226	410,951	402,226
Total Receipts from Operations	\$ 4,009,839	\$ 4,567,773	\$ 3,930,009	\$ 5,401,704	\$ 3,930,009	\$ 4,448,028
Disbursements from Operations						
Payroll & Taxes	\$ 1,717,178	\$ 3,726,635	\$ 1,717,178	\$ 3,726,635	\$ 1,717,178	\$ 3,726,635
Contract Labor	47,000	47,000	47,000	116,200	47,000	47,000
Benefits (Union)	-	175,000	-	1,161,000	-	175,000
Benefits (Non-Union)	280,000	280,000	280,000	480,000	280,000	280,000
AP Vendors & Supplies	1,081,528	1,060,366	1,152,636	977,949	1,084,447	967,366
Utilities	399,550	-	-	-	399,550	-
Insurance	125,000	141,786	125,000	183,500	125,000	141,786
Rent	-	-	-	24,000	-	-
Pool Disbursements	304,000	-	-	-	304,000	-
Secured Debt Payments	-	-	-	112,429	-	-
Other	-	25,000	-	-	750	25,000
Total Disbursements from Operations	\$ 3,954,255	\$ 5,455,787	\$ 3,321,814	\$ 6,781,713	\$ 3,957,925	\$ 5,362,787
Net Cash Flows from Operations	\$ 55,584	\$ (888,014)	\$ 608,195	\$ (1,380,009)	\$ (27,916)	\$ (914,759)
Non-Recurring Receipts/(Disbursements)						
HEAL	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Payroll Tax Payment (Arrears)	-	-	-	-	-	-
Restructuring Related Disbursements	-	-	-	(990,000)	-	-
Sale of Asset	-	-	-	-	-	-
Intercompany	-	-	-	-	-	-
Total Non-Recurring Activities	\$ -	\$ -	\$ -	\$ (990,000)	\$ -	\$ -
Net Cash Flows Including Non-Recurring	\$ 55,584	\$ (888,014)	\$ 608,195	\$ (2,370,009)	\$ (27,916)	\$ (914,759)
Net Financing Activity (MidCap)	\$ -	\$ 610,908	\$ -	\$ 1,767,352	\$ 27,916	\$ 914,759
Ending Book Balance	\$ 291,218	\$ 14,112	\$ 622,307	\$ 19,650	\$ 19,650	\$ 19,650
Outstanding Checks	430,342	523,813	595,229	447,479	472,678	469,413
Ending Bank Balance	\$ 721,560	\$ 537,925	\$ 1,217,536	\$ 467,129	\$ 492,327	\$ 489,063
MidCap Financing Activities						
Beginning Balance	\$ 23,333,017	\$ 23,333,017	\$ 23,943,926	\$ 23,943,926	\$ 25,711,277	\$ 25,739,193
MidCap Paydown	(2,415,236)	(2,957,684)	(2,350,397)	(3,197,311)	(2,350,397)	(2,877,142)
MidCap Advances	2,415,236	3,568,592	2,350,397	4,549,124	2,378,313	3,791,901
Mortgage, Interest & Fees	-	-	-	415,538	-	-
Ending Balance per BB	\$ 23,333,017	\$ 23,943,926	\$ 23,943,926	\$ 25,711,277	\$ 25,739,193	\$ 26,653,952
SSMC BB Balance	7,733,017	8,343,926	8,343,926	10,111,277	10,139,193	11,053,952
SECC BB Balance	1,200,000	1,200,000	1,200,000	1,200,000	1,200,000	1,200,000
MVH BB Balance	4,400,000	4,400,000	4,400,000	4,400,000	4,400,000	4,400,000
Term Loan Balance	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000
Term Loan Reserve	7,266,983	6,656,074	6,656,074	4,888,723	4,860,807	3,946,048

As of:

5/29/2013

SSHS Cash Flow - Weekly

	Projection 23-Aug	Projection 30-Aug	Projection 6-Sep	Projection 13-Sep	Projection 20-Sep	Projection 27-Sep
Beginning Book Balance	\$ 19,650	\$ 487,130	\$ 774,114	\$ 585,927	\$ 69,915	\$ 509,901
Receipts from Operations						
Medicare	\$ 987,423	\$ 1,514,167	\$ 790,569	\$ 1,514,167	\$ 991,440	\$ 1,537,926
Medicaid	622,512	622,512	622,512	622,512	622,512	635,217
Commercial	1,808,988	1,808,988	1,447,190	1,989,887	1,816,371	1,845,906
Pool Receipts	-	953,676	-	-	-	-
Self-Pay	9,306	9,306	7,445	9,306	9,306	9,306
Physicians & Clinics	90,829	90,829	72,663	90,829	90,829	90,829
Meaningful Use	-	-	-	-	-	-
Medicare Settlements	-	-	-	-	-	-
Other Receipts	410,951	402,226	330,506	420,902	410,951	402,226
Total Receipts from Operations	\$ 3,930,009	\$ 5,401,704	\$ 3,270,885	\$ 4,647,604	\$ 3,941,410	\$ 4,521,409
Disbursements from Operations						
Payroll & Taxes	\$ 1,717,178	\$ 3,726,635	\$ 1,717,178	\$ 3,726,635	\$ 1,717,178	\$ 3,726,635
Contract Labor	47,000	116,200	47,000	47,000	47,000	47,000
Benefits (Union)	-	61,000	1,100,000	175,000	-	-
Benefits (Non-Union)	280,000	280,000	424,000	280,000	280,000	280,000
AP Vendors & Supplies	1,293,351	805,885	1,189,868	962,366	1,307,246	765,918
Utilities	-	-	-	399,550	-	-
Insurance	125,000	125,000	183,500	141,786	125,000	125,000
Rent	-	-	24,000	-	-	-
Pool Disbursements	-	-	-	304,000	-	-
Secured Debt Payments	-	-	112,429	-	-	-
Other	-	-	750	-	25,000	-
Total Disbursements from Operations	\$ 3,462,528	\$ 5,114,721	\$ 4,798,725	\$ 6,036,337	\$ 3,501,424	\$ 4,944,553
Net Cash Flows from Operations	\$ 467,480	\$ 286,984	\$ (1,527,840)	\$ (1,388,733)	\$ 439,986	\$ (423,144)
Non-Recurring Receipts/(Disbursements)						
HEAL	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Payroll Tax Payment (Arrears)	-	-	-	-	-	-
Restructuring Related Disbursements	-	-	(415,000)	-	-	-
Sale of Asset	-	-	-	-	-	-
Intercompany	-	-	-	-	-	-
Total Non-Recurring Activities	\$ -	\$ -	\$ (415,000)	\$ -	\$ -	\$ -
Net Cash Flows Including Non-Recurring	\$ 467,480	\$ 286,984	\$ (1,942,840)	\$ (1,388,733)	\$ 439,986	\$ (423,144)
Net Financing Activity (MidCap)	\$ -	\$ -	\$ 1,754,653	\$ 872,721	\$ -	\$ -
Ending Book Balance	\$ 487,130	\$ 774,114	\$ 585,927	\$ 69,915	\$ 509,901	\$ 86,757
Outstanding Checks	647,801	349,828	569,015	423,013	689,317	317,854
Ending Bank Balance	\$ 1,134,931	\$ 1,123,942	\$ 1,154,942	\$ 492,927	\$ 1,199,217	\$ 404,611
MidCap Financing Activities						
Beginning Balance	\$ 26,653,952	\$ 26,653,952	\$ 26,653,952	\$ 28,408,606	\$ 29,281,326	\$ 29,281,326
MidCap Paydown	(2,350,397)	(3,117,570)	(2,091,877)	(3,015,837)	(2,358,221)	(2,924,501)
MidCap Advances	2,350,397	3,117,570	3,385,134	3,888,557	2,358,221	2,924,501
Mortgage, Interest & Fees	-	-	461,396	-	-	-
Ending Balance per BB	\$ 26,653,952	\$ 26,653,952	\$ 28,408,606	\$ 29,281,326	\$ 29,281,326	\$ 29,281,326
SSMC BB Balance	11,053,952	11,053,952	12,808,606	13,681,326	13,681,326	13,681,326
SECC BB Balance	1,200,000	1,200,000	1,200,000	1,200,000	1,200,000	1,200,000
MVH BB Balance	4,400,000	4,400,000	4,400,000	4,400,000	4,400,000	4,400,000
Term Loan Balance	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000
Term Loan Reserve	3,946,048	3,946,048	2,191,394	1,318,674	1,318,674	1,318,674

As of:

5/29/2013

SSHS Cash Flow - Weekly

	Projection 4-Oct	Projection 11-Oct	Projection 18-Oct	Projection 25-Oct	Projection 1-Nov
Beginning Book Balance	\$ 86,757	\$ 42,543	\$ (384,340)	\$ (468,211)	\$ (1,102,006)
Receipts from Operations					
Medicare	\$ 1,007,574	\$ 1,537,926	\$ 806,703	\$ 1,537,926	\$ 1,007,574
Medicaid	635,217	635,217	635,217	635,217	635,217
Commercial	1,845,906	1,845,906	1,476,725	2,030,496	1,845,906
Pool Receipts	953,676	-	-	-	953,676
Self-Pay	9,306	9,306	7,445	9,306	9,306
Physicians & Clinics	90,829	90,829	72,663	90,829	90,829
Meaningful Use	-	-	-	-	-
Medicare Settlements	-	-	-	-	-
Other Receipts	410,951	402,226	330,506	420,902	410,951
Total Receipts from Operations	\$ 4,953,459	\$ 4,521,409	\$ 3,329,258	\$ 4,724,676	\$ 4,953,459
Disbursements from Operations					
Payroll & Taxes	\$ 1,717,178	\$ 3,726,635	\$ 1,717,178	\$ 3,726,635	\$ 1,717,178
Contract Labor	116,200	47,000	47,000	47,000	116,200
Benefits (Union)	1,161,000	-	175,000	-	1,161,000
Benefits (Non-Union)	590,000	280,000	224,000	280,000	480,000
AP Vendors & Supplies	1,118,668	943,728	1,083,166	1,179,836	961,011
Utilities	-	399,550	-	-	-
Insurance	183,500	125,000	141,786	125,000	183,500
Rent	24,000	-	-	-	24,000
Pool Disbursements	-	304,000	-	-	-
Secured Debt Payments	112,429	-	-	-	112,429
Other	-	750	25,000	-	-
Total Disbursements from Operations	\$ 5,022,975	\$ 5,826,663	\$ 3,413,130	\$ 5,358,471	\$ 4,755,318
Net Cash Flows from Operations	\$ (69,516)	\$ (1,305,254)	\$ (83,872)	\$ (633,795)	\$ 198,141
Non-Recurring Receipts/(Disbursements)					
HEAL	\$ -	\$ -	\$ -	\$ -	\$ -
Payroll Tax Payment (Arrears)	-	-	-	-	-
Restructuring Related Disbursements	(415,000)	-	-	-	(280,000)
Sale of Asset	-	-	-	-	-
Intercompany	-	-	-	-	-
Total Non-Recurring Activities	\$ (415,000)	\$ -	\$ -	\$ -	\$ (280,000)
Net Cash Flows including Non-Recurring	\$ (484,516)	\$ (1,305,254)	\$ (83,872)	\$ (633,795)	\$ (81,859)
Net Financing Activity (MidCap)	\$ 440,303	\$ 878,371	\$ -	\$ -	\$ (0)
Ending Book Balance	\$ 42,543	\$ (384,340)	\$ (468,211)	\$ (1,102,006)	\$ (1,183,866)
Outstanding Checks	528,055	392,102	530,053	588,989	441,929
Ending Bank Balance	\$ 570,598	\$ 7,762	\$ 61,842	\$ (513,017)	\$ (741,937)
MidCap Financing Activities					
Beginning Balance	\$ 29,281,326	\$ 29,721,629	\$ 30,600,000	\$ 30,600,000	\$ 30,600,000
MidCap Paydown	(2,714,318)	(2,843,133)	(2,131,197)	(3,066,027)	(2,714,318)
MidCap Advances	2,656,419	3,721,504	2,131,197	3,066,027	2,218,786
Mortgage, Interest & Fees	498,203	-	-	-	495,532
Ending Balance per BB	\$ 29,721,629	\$ 30,600,000	\$ 30,600,000	\$ 30,600,000	\$ 30,600,000
SSMC BB Balance	14,121,629	15,000,000	15,000,000	15,000,000	15,000,000
SECC BB Balance	1,200,000	1,200,000	1,200,000	1,200,000	1,200,000
MVH BB Balance	4,400,000	4,400,000	4,400,000	4,400,000	4,400,000
Term Loan Balance	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000
Term Loan Reserve	878,371	-	-	-	-

Exhibit D
Interim Order

GARFUNKEL WILD, P.C.
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Proposed Counsel for Debtors
And Debtors in Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
In re: Chapter 11

SOUND SHORE MEDICAL CENTER OF Case No. 13-
WESTCHESTER, *et al.*

Debtors.

----- x

**INTERIM ORDER: (I) AUTHORIZING DEBTORS (A) TO OBTAIN POST-PETITION
SECURED, SUPERPRIORITY FINANCING PURSUANT TO 11 U.S.C. §§ 105, 361, 362,
363, AND 364 AND (B) TO UTILIZE CASH COLLATERAL PURSUANT TO 11 U.S.C.
§ 363; (II) GRANTING ADEQUATE PROTECTION TO PRE-PETITION SECURED
CREDITORS PURSUANT TO 11 U.S.C. §§ 361, 362, 363 AND 364; AND (III)
SCHEDULING A FINAL HEARING PURSUANT TO
BANKRUPTCY RULES 4001(b) AND 4001(c)**

Upon consideration of the motion dated May 29, 2013 (Dkt. No. XXXX) (the "**Motion**") filed
by Sound Shore Medical Center of Westchester ("**SSMC**"), The Mount Vernon Hospital, Inc.
("**MVH**"), and Howe Avenue Nursing Home d/b/a Schaffer Extended Care Center ("**SECC**"), as
debtors and debtors-in-possession herein (each a "**Debtor**" and collectively, the "**Debtors**")¹ in
these cases, pursuant to sections 105, 361, 362, 363(c)(2), 364(c)(1), 364(c)(2), 364(c)(3),
364(d)(1) and 364(e) of title 11 of the United States Code (the "**Bankruptcy Code**"), Rules 2002,

¹ Certain additional affiliates also filed voluntary Chapter 11 petitions, but each of these have limited operations and assets. They include: Sound Shore Health System, Inc., NRHMC Services Corporation, The M.V.H. Corporation, and New Rochelle Sound Shore Housing, LLC (0117). There are certain additional affiliates of the Debtors who are not debtors in these Chapter 11 Cases and have not sought relief under Chapter 11.

4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 4001-2 of the Local Bankruptcy Rules for the Southern District of New York (the “**Local Rules**”) seeking:

a) Authorization under sections 364(c) and 364(d) of the Bankruptcy Code and Rule 4001(c) of the Bankruptcy Rules for SSMC, MVH, and SECC to obtain secured, superpriority postpetition financing consisting of the following:

(i) a revolving facility with a principal amount of up to Twenty-Three Million Dollars (\$23,000,000) (the “**DIP Revolving Facility**”)² as set forth in that certain Debtor in Possession Revolving Credit and Security Agreement, dated as of May ___, 2013, by and between the Debtors and MidCap Financial, LLC (“**MidCap**”) or one of its affiliates (as lender, the “**DIP Revolving Lender**” and as agent, the “**DIP Revolving Agent**”), a true and correct copy of which is attached to this Interim Order as **Exhibit A** (the “**DIP Revolving Loan Agreement**”); and

(ii) a term loan facility in the principal amount of Ten Million Dollars (\$10,000,000) (the “**DIP Term Loan**”, and together with the DIP Revolving Facility, the “**DIP Financing**”) as set forth in that certain term sheet (the “**DIP Term Loan Term Sheet**”), a true and correct copy of which is attached to this Interim Order as **Exhibit B**, and which shall be governed by terms substantially similar to those contained in the DIP Revolving Loan Agreement with such revisions as are customary for a term loan facility to be memorialized in a Debtor In Possession Term Loan Agreement (the “**DIP Term Loan Agreement**” and, together with the DIP Revolving Loan Agreement, the “**DIP Credit**

² The actual available principal amount at any time under the DIP Revolving Facility shall be the Revolving Loan Availability (as defined in the DIP Revolving Loan Agreement). As further described in the DIP Revolving Loan Agreement, until payment in full of the outstanding Prepetition Revolving Loan Obligations (as defined herein), the Borrowing Base will be solely comprised of (a) the postpetition Eligible Accounts generated by SSMC and SECC and (b) the prepetition and postpetition Eligible Accounts generated by MVH.

Agreement”)³ entered into by and between the Debtors and MidCap or one of its affiliates (as lender, the “*DIP Term Loan Lender*” and as agent, the “*DIP Term Loan Agent*”)⁴

b) Authorization under section 363 of the Bankruptcy Code and Rules 4001(b) and 6004 of the Bankruptcy Rules for the Debtors to use any cash collateral the Debtors are holding or may obtain, and to use the proceeds from the DIP Financing for the payment of: (i) the obligations owing to MidCap Funding IV, LLC (“*MidCap Funding*”) under the Prepetition Revolving Loan Agreement (the “*Prepetition Revolving Loan Obligations*”); (ii) pay the fees and expenses due DIP Agent under the DIP Credit Agreement; (iii) pay all Prepetition Term Loan Obligations as they become due under the Prepetition Term Credit Agreement; (iii) for general working capital purposes and general corporate purposes relating to the postpetition operations; and (iv) the costs and expenses associated with these Chapter 11 cases (the “Chapter 11 Cases”), all in accordance with the terms of the Debtors’ proposed budget (the “*Budget*”), a copy of which is annexed hereto as Exhibit C;

c) authorization for the Debtors to grant security interests, liens, superpriority claims (including a superpriority administrative claim pursuant to section 364(c)(1) of the Bankruptcy Code and liens pursuant to sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code), and related protections to the DIP Agent and DIP Lender to secure all DIP Obligations (as defined herein), in accordance with the provisions of this Interim Order and as set forth in DIP Revolving Loan Agreement and DIP Term Loan Agreement;

d) authorization for the Debtors to execute and deliver the DIP Revolving Loan Agreement, the DIP Term Loan Term Sheet, the DIP Term Loan Agreement, Prepetition Term

³ Capitalized terms used in this Interim Order, unless herein defined, are used with the meanings ascribed to such terms in the DIP Credit Agreement.

⁴ The Dip Term Loan Lender, together with the DIP Revolving Loan Lender, shall be referred to as the “*DIP Lender*”. The DIP Term Loan Agent, together with the DIP Revolving Loan Agent, shall be referred to as the “*DIP Agent*”

Loan Amendment, a postpetition amendment to the Prepetition Revolving Credit Agreement (if deemed necessary by DIP Agent to effectuate the DIP Financing), and all other loan documents related thereto (collectively, the “**DIP Documents**”) and to perform such other acts as may be necessary or desirable in connection with the DIP Documents and pursuant to the provisions of this Interim Order and any Final Order (as hereinafter defined) (collectively, the “**Financing Orders**”);

e) the approval of certain stipulations by the Debtors with respect to the Original Loan (as defined below), Prepetition Revolving Loan, Prepetition Term Loan, and Prepetition Debt (each as defined herein), and the liens and security interests arising with respect thereto;

f) subject only to and effective upon entry of a final order granting the foregoing relief and such other relief as provided herein and in such final order (the “**Final Order**”), the limitation of the Debtors’ right to surcharge against collateral pursuant to section 506(c) of the Bankruptcy Code;

g) authorization for the Debtors to continue to use the “cash collateral” (as defined in section 363(a) of the Bankruptcy Code, “**Cash Collateral**”) of the Secured Creditors (as defined herein) and MidCap Funding;

h) authorization for the Debtors to grant the DIP Agent allowed, superpriority administrative expense claims in each of the Chapter 11 Cases and any Successor Cases (as defined herein) for the DIP Financing and all obligations owing thereunder and under the DIP Documents (collectively, and including all “Obligations” as described in the DIP Documents, the “**DIP Obligations**”), as more fully set forth in this Interim Order;

i) authorization for the Debtors to grant the DIP Agent automatically perfected security interests in and liens on all of the DIP Collateral (as defined herein), including, without

limitation, all property constituting Cash Collateral, which liens shall be subject to the priorities set forth in Paragraphs 9 and 10 below;

j) authorization for the Debtors to pay the principal, interest, fees, expenses and other amounts payable under each of the DIP Documents as they become due, including, without limitation, closing/origination fees, unused line fees, collateral management fees, appraisal and/or audit fees, exit fees, the fees and disbursements of the DIP Agent's attorneys, advisors, accountants, and other consultants, and any other legal expenses of the DIP Agent and DIP Lender, all to the extent provided by and in accordance with the terms of the respective DIP Documents;

k) authorization for the Debtors to use the proceeds of the DIP Financing in all cases in accordance with the Budget, and as otherwise provided in the DIP Documents;

l) authorization for the Debtors to provide adequate protection to the Secured Creditors (as defined herein) pursuant to the terms of this Interim Order for any diminution in value of their respective interests in the Prepetition Collateral (as defined below);

m) to vacate and modify the automatic stay imposed by section 362 of the Bankruptcy Code solely to the extent necessary to implement and effectuate the terms of the DIP Documents and this Interim Order; and

n) to waive any applicable stay as provided in the Bankruptcy Rules and provide for the immediate effectiveness of this Interim Order.

The Debtors having requested in the Motion that pending a final hearing on the Motion (the "***Final Hearing***"), a hearing be scheduled on an expedited basis (the "***Interim Hearing***") to consider the entry of this order approving the DIP Financing on an interim basis; and upon finding that notice of the Interim Hearing was given, where possible, to: (a) United States Trustee; (b) the Debtors' material prepetition and postpetition secured lenders or any agent therefor; (c) the

holders of the 30 largest unsecured claims on a consolidated basis; (d) the following state and local taxing and regulatory authorities: (i) the Centers for Medicare and Medicaid Services, (ii) the New York State Department of Health (“**DOH**”), (iii) the United States Attorney for the Southern District of New York, (iv) the Attorney General of the State of New York; (v) the Westchester County Attorney; (vi) the New Rochelle City Attorney, (vii) the Mount Vernon City Attorney; (viii) the Internal Revenue Service; (ix) the New York State Department of Taxation and Finance; (e) counsel to Montefiore Medical Center (“**MMC**”); (f) the United States Department of Justice, Commercial Litigation; (g) the United States Department of Health and Human Services; (h) all parties known by the Debtors claiming to have Liens on or security interests in any of the Debtors’ property; and (i) all parties in interest who have requested notice pursuant to Bankruptcy Rule 2002 (collectively, the “**Notice Parties**”), in accordance with Rules 2002, 4100(b), (c) and (d), and 9014 of the Bankruptcy Rules; and upon finding that this Court has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157(b) and 1334; and upon finding that venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and the Interim Hearing to consider the Motion on an interim basis having been held and concluded; and all objections, if any, to the relief requested in the Motion having been withdrawn, resolved or overruled by the Court; and it appearing to the Court that granting the relief is fair and reasonable and in the best interest of the Debtors, their estates, and their creditors and equity holders, and is essential for the continued operation of the Debtors’ businesses; and after due deliberation and consideration, and good and sufficient cause appearing therefor, it is hereby found:

A. Petition Date. On May ___, 2013 (the “**Petition Date**”), each of the Debtors filed a separate voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the “**Court**”), thereby commencing the Chapter 11 Cases.

B. Debtors in Possession. Each of the Debtors is continuing in the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code, and no trustee or examiner has been appointed in these Chapter 11 Cases. SSMC is a not-for-profit, 252-bed, community-based, teaching hospital offering primary, acute, emergency and long-term health care to the working class residents of southern Westchester. MVH is a voluntary, not-for-profit, 196-bed hospital located at 12 North Seventh Avenue, Mount Vernon, New York, serving the City of Mount Vernon, the Pelhams, East Yonkers, New Rochelle and North Bronx. SECC is a 150-bed, comprehensive facility offering short-term rehabilitation, sub-acute care, as well as skilled long-term care. Together, in furtherance of their charitable mission, the Debtors provide critical healthcare services to uninsured and indigent populations and are designated safety net providers.

C. Jurisdiction. This Court has core jurisdiction over the Chapter 11 Cases, this Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334.

D. Notice. Notice of the Motion, the relief requested in the Motion, and the Interim Hearing was served by the Debtors on the Notice Parties. The interim relief granted herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing. Under the circumstances, the notice given by the Debtors of the Motion and the Interim Hearing: (i) was, in the Debtors' good faith belief, the best available under the circumstances; (ii) constitutes due and sufficient notice thereof; and (iii) complies with Rules 4001(b) and 4001(c) of the Bankruptcy Rules. No further notice of the relief sought at the Interim Hearing is necessary or required.

E. Debtors' Stipulations. Without prejudice to the rights of any other party in interest (but subject to the limitations thereon contained in subparagraphs (x) and (xi) of Paragraph H of this Interim Order), the Debtors admit, stipulate and agree that:

i. *MidCap Prepetition Debt.* Prior to the Petition Date, pursuant to that certain Credit and Security Agreement dated April 8, 2011 and related financing documents (the "**Original Credit Agreement**") by and between SSMC and MidCap, as lender and agent (the "**Prepetition Revolving Loan Agent**"), the Prepetition Revolving Loan Agent made available to SSMC a revolving credit facility in an amount up to Fifteen Million Dollars (\$15,000,000) (the "**Original Loan**"), which Original Loan was secured by SSMC's accounts receivable arising out of the performance or delivery of any medical, surgical, diagnostic, dental or other professional services and/or the supply of goods related to such services (the "**Prepetition Accounts**"). The Prepetition Revolving Loan Agent immediately assigned its rights and obligations as agent under the Original Credit Agreement to MidCap Funding. Subsequently, pursuant to a certain Amended and Restated Credit and Security Agreement dated June 8, 2011, and related financing documents (the "**Prepetition Revolving Credit Agreement**"), the Original Credit Agreement was modified to add SECC as a borrower and increase the amount of the Original Loan to a revolving loan in an amount up to Eighteen Million Dollars (\$18,000,000) (the "**Prepetition Revolving Loan**"). In addition, in connection with the Prepetition Revolving Credit Agreement and Prepetition Revolving Loan, each of SSMC and SECC granted a lien in their respective Prepetition Accounts to secure the Prepetition Revolving Loan and a certain Prepetition Term Loan.⁵ As of the Petition

⁵ On the same date, SECC and MidCap, as lender and agent (the "**Prepetition Term Loan Agent**") entered into a Credit and Security Agreement and related Mortgage, Assignment of Leases and Rents and Security Agreement (collectively, the "**Prepetition Term Loan Agreement**" and, together with the Original Credit Agreement and Prepetition Revolving Credit Agreement, the "**Prepetition Credit Agreements**"), pursuant to which the Prepetition Term Loan Agent extended SECC a term loan in the original principal amount of Seven Million Dollars (\$7,000,000) (the "**Prepetition Term Loan**") secured by a first priority mortgage lien (the "**Prepetition Mortgage**") on SECC's real property located at 75 Glover Johnson Place, New Rochelle, NY (the "**SECC Property**"). The Prepetition Term Loan Agent immediately assigned its rights and obligations as agent under the Prepetition Term Loan Agreement to MidCap Funding. On or prior to the closing of the DIP Revolving Loan Agreement, SECC and MidCap Funding shall amend the Prepetition Term Loan Agreement (the "**Prepetition Term Loan Amendment**") to, *inter alia*, add the DIP Revolving Loan Agreement to the defined term "Affiliated Financing Documents" and the DIP Revolving Facility to the defined term "Affiliated Obligations".

Date, SSMC and SECC were indebted and liable to MidCap Funding, without defense, counterclaim or offset of any kind, in the outstanding principal amount of approximately \$16.2 million on account of the Prepetition Revolving Loan and approximately \$5.8 million on account of the Prepetition Term Loan (collectively, the “**MidCap Prepetition Debt**”).

ii. *MidCap Prepetition Liens.* The liens and security interests granted to MidCap Funding pursuant to and in connection with the Original Credit Agreement, Prepetition Revolving Credit Agreement, and Prepetition Term Loan Agreement (collectively, the “**MidCap Prepetition Liens**”) are: (i) valid, binding, perfected, enforceable, first-priority liens and security interest in the personal and real property described in the Prepetition Credit Agreements (the “**MidCap Prepetition Collateral**”); and (ii) not subject to avoidance, recharacterization, or subordination pursuant to the Bankruptcy Code or applicable nonbankruptcy law.

F. *MidCap Prepetition Collateral.* The aggregate value of the MidCap Prepetition Collateral substantially exceeds the aggregate amount of the MidCap Prepetition Debt.

G. *Other Secured Creditors.* Without prejudice to the rights of any other party in interest, the Debtors contend that

i. *Sun Life Assurance Company of Canada (US) (“Sun Life”).* On April 4, 2006, SSMC executed a Promissory Note (the “**Sun Life Note**”) and Mortgage and Security Agreement (the “**Sun Life Mortgage**”) in favor of Sun Life in the original principal amount of \$12 million, secured by a first mortgage on the SSMC real property which constitutes the main hospital campus and SSMC’s ambulatory care facility and clinics (the “**SSMC Property**”). The Debtors assert there is currently due to Sun Life approximately \$8.98 million under the Sun Life Note.

ii. *Pension Benefit Guaranty Corporation (“PBGC”).* PBGC holds two alleged secured claims:

1. First, as security for SSMC's failure to meet the terms of its minimum funding waiver under its defined benefit pension plan ("**SSMC Pension Plan**") for the 1995 and 1997 years (which was guaranteed by PBGC), and to secure its obligations to the PBGC for those amounts (the "**SSMC Pension Plan Claim**") SSMC granted the PBGC mortgage liens in the original principal amount of \$2.582 million in April, 1997 and \$3.488 million in November, 1998 encumbering certain parking lots (the "**SSMC Lots**") situate on the SSMC hospital campus (the "**PBGC Lot Mortgages**"). As of the Petition Date, the Debtors assert that the outstanding amount of the SSMC Pension Plan Claim is approximately \$5.763 million.

2. On July 31, 2010, MVH terminated the Mount Vernon Hospital Employees' Retirement Plan (the "**MVH Pension Plan**"), and PBGC asserted a claim for unfunded benefit liabilities as of the Plan termination date in the alleged amount of \$4.032 million (the "**MVH Pension Plan Claim**"). On July 15, 2010, PBGC filed a Notice of Federal Lien under IRC Section 412(n) against the MVH real and personal property (the "**PBGC MVH Lien**").

iii. *Dormitory Authority of the State of New York ("DASNY")*. DASNY holds two alleged secured claims:

1. On August 11, 2009, SSMC and DASNY entered into a Reimbursement Agreement (the "**2009 Reimbursement Agreement**") which provided for working capital advances by DASNY in the amount of \$5 million to SSMC (the "**DASNY 2009 SSMC Loan**"). As security for the DASNY 2009 SSMC Loan, DASNY was granted a lien in SECC's real property. To later facilitate the refinancing of SSMC's credit facility under the Prepetition Revolving Credit Agreement, DASNY agreed to subordinate its mortgage lien on SECC's real property to MidCap Funding. As of the Petition Date, DASNY asserts the outstanding amount of the DASNY 2009 SSMC Loan is approximately \$5.187 million.

2. On August 14, 2012, DASNY and SSMC executed an additional reimbursement agreement (the “**2012 SSMC Agreement**”), pursuant to which DASNY advanced a working capital loan in the amount of \$2.9 million to SSMC (“**DASNY 2012 SSMC Loan**”). As security for the DASNY 2012 SSMC Loan, DASNY was granted a second lien and security interest on the MVH real property and a lien on the proceeds of any HEAL NY Grants awarded to SSMC. As of the Petition Date, DASNY asserts the outstanding balance of the DASNY 2012 SSMC Loan is approximately \$2.92 million..

iv. *Hudson Valley Bank (“HVB”).* On April 6, 2004 and October 28, 2005, MVH procured two revolving lines of credit from HVB in the amounts of \$2 million and \$3 million respectively, which were ultimately consolidated into a single revolving line of credit (the “**HVB Revolving Loan**”) pursuant to a mortgage modification and extension agreement, dated as of October 28, 2005. As security for the HVB Revolving Loan, MVH was granted a first lien in the MVH Property. In addition, HVB was granted a first lien on all of MVH’s revenues, receipts, income, accounts, accounts receivables, inventory, personal property and general intangibles. As part of the arrangement, MVH also executed an Assignment of Leases and Rents, assigning all of MVH’s rights as lessor under any leases affecting the Property was also executed. As of the Petition Date, the Debtors assert HVB is owed approximately \$702,790.

v. *Internal Revenue Service (“IRS”).* The IRS holds two alleged secured claims:

1. On April 16, 2013, the IRS filed a Notice of Federal Tax Lien against the property of MVH in the amount of \$736,805.90 (“**MVH Tax Lien**”), covering unpaid penalties relating to the late payment of §941 withholding taxes for the periods ending March 31, June 30 and September 30, 2012. Any underlying tax and interest has been paid. Since the filing of the MVH Tax Lien, the IRS has issued a waiver of penalties. Thus, the Debtors contend that although there

has been no formal release of lien as of the Petition Date, the underlying liability has been satisfied and the lien is of no force and effect.

2. On March 28, 2013, the IRS filed a Notice of Federal Tax Lien against the property of SSMC in the amount of \$1461,400 ("**SSMC Tax Lien**"). The lien covered unpaid penalties relating to the late payment of §941 withholding taxes for the periods ending March 31, June 30 and September 30, 2012. The underlying taxes and interest have been paid. The Debtors have been advised that a waiver of penalties has been granted and a release of lien is forthcoming.

vi. *Other Judgments and Liens* (the "**Other Judgment and Lien Creditors**").

1. 1199 SEIU Healthcare Workers ("**Local 1199**"), one of the Debtors' principal unions, has obtained multiple judgments against each of SSMC and MVH for unpaid contributions and benefit payments due the 1199 Funds and has recorded the judgments against SSMC and MVH real property. Local 1199 currently asserts judgments liens on the SSMC and MVH real property in the approximate amount of \$908,000 and \$496,000 respectively. New York State Department of Labor has recorded judgments against SSMC in the aggregate amount of \$21,800 and against MVH in the aggregate amount of \$117,670.

2. Various mechanics lien have also been asserted of record as follows: SSMC: (i) Graybar Electric Company, Inc- \$17,458 recorded May 29, 2012; (ii) D&D Elevator Maintenance, Inc - \$525,880 recorded August 22, 2012; and (iii) Omega Environmental Services, Inc. - \$138,742, recorded February 13, 2013. and MVH: (i) StonCor Group, Inc. - \$4995.40, recorded May 25, 2012.⁶

⁶ Sun Life, PBGC, DASNY, HVB, IRS and the Other Judgment and Lien Creditors are collectively referred to herein as the "**Secured Creditors**". The prepetition liens and claims of the Secured Creditors and MidCap Funding are collectively referred to the "**Prepetition Liens**", and the real and personal property in which the Secured Creditors and MidCap Funding hold Prepetition Liens is collectively referred to herein at the "**Prepetition Collateral**". The prepetition claims and obligations of the Secured Creditors and MidCap Funding secured by their respective Prepetition Liens in Prepetition Collateral are collectively referred to as the "**Prepetition Obligations**".

H. Findings Regarding the DIP Financing.

i. *Good Cause.* Good cause has been shown for the entry of this Interim Order.

ii. *Immediate Need.* The Debtors have an immediate need to obtain the DIP Financing and use Cash Collateral. The access of the Debtors to sufficient working capital and liquidity through the incurrence of the DIP Financing and concomitant financial accommodations, along with the use of Cash Collateral, is vital to the preservation and maintenance of the going concern value of the Debtors. Absent the DIP Financing, the Debtors will not have sufficient sources of working capital to continue as a community based, acute care provider of essential medical services and maintain the value of their assets. The ability of the Debtors to pay their medical staff and other employees, provide critical patient care, maintain business relationships with vendors and suppliers, purchase new inventory, and otherwise finance their operations is essential to the Debtors' continued viability and the ultimate process of selling the Debtors' assets on a going concern basis to a stronger financial partner. Without the DIP Financing, serious and irreparable harm could result not only to the operations, but to the very persons who depend upon the Debtors' operations including, but not limited to, the Debtors' underserved patient population.

iii. *No Credit Available on More Favorable Terms.* Given the Debtors' current financial condition, financing arrangements, capital structure, and other factors described in the Motion, the Debtors are unable to obtain financing from sources other than the DIP Lender on terms more favorable than the DIP Financing. The Debtors have been unable to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code or solely in exchange for the grant of a special administrative expense priority pursuant to section 364(c)(1) of the Bankruptcy Code. The Debtors have also been unable to obtain credit: (a) having priority over that of administrative expenses of the kind specified in sections 502(b),

507(a) and 507(b) of the Bankruptcy Code; (b) secured by a lien on property of the Debtors and their estates that is not otherwise subject to a lien pursuant to section 364(c)(2) of the Bankruptcy Code; or (c) secured solely by a junior lien on property of the Debtors and their estates that is subject to a lien pursuant to section 364(c)(3) of the Bankruptcy Code. Within the timeframe required, financing on a postpetition basis is not otherwise available without granting the DIP Agent: (a) perfected security interest in and liens on (each as provided herein) all of the Debtors' existing and after-acquired assets with the priorities set forth in Paragraphs 9 and 10 hereof; (b) superpriority claims with the priorities set forth in Paragraph 11 hereof; and (c) the other protections, terms and conditions set forth in this Interim Order.

iv. *Fair and Reasonable Terms.* The terms of the DIP Financing and the use of Cash Collateral are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and constitute reasonably equivalent value and fair consideration.

v. *Business Judgment and Good Faith Pursuant to Section 364(e).* The terms and conditions of the DIP Financing and the DIP Documents, and the fees paid and to be paid thereunder, are fair, reasonable, and the best available to the Debtors under the circumstances, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and consideration. The DIP Financing was negotiated in good faith and at arms' length among the Debtors and the DIP Agent. The credit extended under the DIP Financing shall be deemed to have been so extended in good faith and for valid business purposes and uses within the meaning of section 364(e) of the Bankruptcy Code. Accordingly, the DIP Agent is entitled to the protection and benefits of section 364(e) of the Bankruptcy Code and this Interim Order will not be affected by any subsequent reversal or modification on appeal of this Interim Order or any other order.

vi. *Priming of Liens and Other Security Interests.* The priming of the Secured Creditors' Prepetition Liens to the extent set forth below pursuant to section 364(d) of the Bankruptcy Code is necessary to obtain the DIP Financing. In exchange for the priming of the Prepetition Liens set forth below, the Secured Creditors shall be entitled to receive adequate protection, as set forth in this Interim Order, pursuant to sections 361, 363 and 364 of the Bankruptcy Code for any diminution in the value of their respective interests in the Prepetition Collateral resulting from, among other things, the subordination to the Carve Out (as defined herein) and to the DIP Liens (as defined herein), the Debtors' use, sale or lease of such Prepetition Collateral, and the imposition of the automatic stay from and after the Petition Date (collectively, and solely to the extent of such diminution in value, the "***Diminution in Value***").

vii. *Use of Proceeds of the DIP Financing.* As a condition to the entry into the DIP Documents and the extension of credit under the DIP Revolving Facility and DIP Term Loan, the DIP Agent requires, and the Debtors have agreed, that the proceeds of the DIP Financing shall be used in a manner consistent with the terms and conditions of the DIP Documents, including any covenant contained therein pertaining to compliance with the Budget as the same may be modified from time to time in accordance with the consents required under the DIP Documents (the "***Budget Compliance Covenant***"), solely for: (a) subject to entry of a Final Order, refinancing the Prepetition Revolving Loan; (b) payment of all amounts owing on the Prepetition Term Loan as they come due pursuant to the terms of the Prepetition Term Loan Agreement; (c) working capital and other general corporate purposes; (d) permitted payment of costs of administration of the Chapter 11 Cases (subject to the limitations of the Carve Out); and (e) payment of fees and expenses due according to the terms of the DIP Documents.

viii. *Application of Proceeds of Collateral.* As a condition to the entry into the DIP Documents and the extension of credit under the DIP Facility, the Debtors have agreed that as

of and commencing on the date of entry of the Order, the Debtors shall apply the proceeds of DIP Collateral as set forth in the DIP Documents.

ix. *Irreparable Harm.* The Debtors have requested entry of this Interim Order pursuant to Rules 4001(b)(2) and Rule 4001(c)(2) of the Bankruptcy Rules and Rule 4001-2 of the Local Rules. Absent granting the relief set forth in this Interim Order, the Debtors' estates will be immediately and irreparably harmed. Consummation of the DIP Financing and the use of Cash Collateral in accordance with the provisions of this Interim Order and the DIP Documents is therefore in the best interests of the Debtors' estates.

x. *Challenge Period.* Notwithstanding anything contained herein to the contrary, all acknowledgments, admissions, and confirmations of the Debtors above regarding the extent, validity, priority, perfection, and enforceability of the MidCap Prepetition Liens are for all purposes subject to the rights of any party in interest (including any committee appointed under section 1102 of the Bankruptcy Code (the "*Committee*") and any trustee appointed or elected in the Chapter 11 Cases), other than the Debtors or any of their affiliates, to file a complaint pursuant to Rule 7001 of the Bankruptcy Rules seeking to invalidate, subordinate, or otherwise challenge (collectively, the "*Challenges*") the MidCap Prepetition Liens; provided, however, that any such Challenges must be filed in this Court within the later of sixty (60) days after the entry of a Final Order or any subsequent date ordered by the Bankruptcy Court, or that may be agreed to in writing by MidCap Funding with respect to the time to file any such Challenges. If no such Challenges are filed within such time period, then: (a) any and all Challenges shall be, without further notice to or order of the Court, deemed to have been forever relinquished, extinguished, released, and waived as to such Committee and other parties in interest; and (b) any and all claims and defenses against MidCap Funding shall be deemed, immediately and without further action, to have been

forever relinquished, extinguished, released, and waived as to such Committee and other parties in interest.

xi. Avoidance Rights of the Debtor. Nothing herein shall prejudice or adversely impact the right of the Debtors or any of their affiliates to seek to avoid any Prepetition Lien of any other Secured Creditor in accordance with the terms of the Bankruptcy Code.

Based upon the foregoing findings and conclusions, the Motion and the record before the Court with respect to the Motion, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED that:

1. *DIP Financing Approved.* The DIP Financing is authorized and approved on an interim basis, subject to the terms and conditions set forth in this Interim Order, the DIP Documents and the Budget. Subject to and upon entry of the Final Order, the Debtors are authorized and directed on a final basis to use proceeds of the DIP Revolving Facility to refinance the Prepetition Revolving Loan Obligations; provided, however, until the refinancing of the Prepetition Revolving Loan Obligations has been made, the Prepetition Revolving Loan Obligations shall receive adequate protection and adequate protection payments, and after the refinancing of the Prepetition Revolving Loan Obligations, the Debtors' indemnification obligations under the Prepetition Revolving Credit Agreement shall become DIP Obligations.

2. *Objections Overruled.* All objections to the entry of this Interim Order are hereby overruled to the extent they have not otherwise been resolved or withdrawn.

3. *Authorization of the DIP Financing and DIP Documents.* The DIP Documents are hereby approved for the DIP Financing on an interim basis. Subject to the limitations herein provided, the Debtors are expressly and immediately authorized, empowered and directed to execute and deliver the DIP Documents and to incur and to perform the DIP Obligations in accordance with, and subject to, the terms of this Interim Order and the DIP Documents, and to

deliver all instruments and documents which may be required or necessary for performance by the Debtors of their obligations in respect of the DIP Financing and the creation and perfection of the DIP Liens (as defined below) described in and provided for by this Interim Order and the DIP Documents. The Debtors are hereby authorized and directed to pay the principal, interest, fees, expenses and other amounts described in the DIP Documents as such become due and without need to obtain further Court approval, all to the extent provided in the DIP Documents, including, without limitation, origination fees, collateral fees, an unused line fee, appraisal and inspection fees and, whether or not the transactions contemplated hereby are consummated, any pre-closing fees and expenses, closing fees and expenses, audit fees to which DIP Agent is entitled and the reasonable fees and disbursements of the DIP Agent's attorneys, advisers, accountants, and other consultants. Upon payment, such amounts shall be deemed fully earned, indefeasibly paid, and non-refundable. The professional fees and expenses incurred by the DIP Agent and DIP Lender are not subject to the provisions of sections 327, 328, 329, 330, or 331 of the Bankruptcy Code, and shall be paid by the Debtors pursuant to the DIP Documents without further order of the Court; provided, that no disbursement shall be made by the Debtors on account of the fees and/or costs incurred by DIP Agent's or the DIP Lender's attorney, advisors, accountants or other consultants without (i) copies of detailed monthly invoices (redacted as necessary to protect privileged matters) for DIP Agent's and DIP Lender's professional fees and expenses having been provided at least ten (10) days in advance to (x) counsel for the Debtors, (y) counsel for any Committee and (z) the Office of the United States Trustee and (ii) unless no written objection as to the reasonableness of those fees and/or costs has been filed with this Court by the Debtors or the Committee within such ten (10) day period or such objection has been overruled by this Court or withdrawn. Professionals for the DIP Agent and DIP Lender shall not be required to file fee applications or comply with the U.S. Trustee fee guidelines.

4. Deposit of Proceeds. All collections and proceeds, whether from ordinary course collections, asset sales, debt or equity issuances, insurance recoveries, condemnations or otherwise, will be deposited and applied as required by this Interim Order and the DIP Documents. So long as the DIP Credit Agreement remains in effect or there are outstanding DIP Obligations, Debtors shall cause all proceeds of the DIP Collateral to be remitted to one or more lockboxes designated by the DIP Documents via electronic funds transfer, but if any such proceeds are received by Debtors, the same shall be promptly deposited to a dominion account or concentration account in the name or under the control of DIP Agent or, solely with respect to governmental lockbox accounts under the control of Debtors with standing instructions to transfer all amounts on deposit therein to DIP Agent on a daily basis, all as more fully set forth in the DIP Documents. Each of Debtors' deposit accounts, including, without limitation, those to which proceeds of DIP Collateral are deposited, shall be subject to such transfer instructions and other account agreements as are set forth in the DIP Documents or are required by the DIP Agent pursuant thereto, or which are otherwise necessary to effectuate the liens on and security interests in the DIP Collateral granted to DIP Agent herein. The DIP Agent shall be authorized to apply all such proceeds (subject to final payment or collection in the case of checks or other payment items) to the DIP Obligations in accordance with the DIP Documents. Prior to the remittance to the DIP Agent of any proceeds of the DIP Collateral, Debtors shall be deemed to hold such proceeds for the benefit of the DIP Agent. Upon execution and delivery, the DIP Documents shall represent valid and binding obligations of the Debtors, enforceable against each of the Debtors and their estates in accordance with their terms. All instructions and account agreements implemented in connection with Prepetition Revolving Credit Agreement shall remain in effect until otherwise agreed to in writing by the DIP Agent.

5. Authorization to Borrow. Until the earlier of (a) the Termination Date (as defined in Section 1.1 of the DIP Revolving Loan Agreement), (b) the termination of obligations under the DIP Documents by the DIP Agent upon the occurrence and during the continuation of an Event of Default (as defined below), and (c) the date of the filing of any Challenges (such earlier date, the “**Expiration Date**”), and subject to the terms, conditions, limitations on availability and reserves set forth in the DIP Documents and this Interim Order, the Debtors are hereby authorized to request, and DIP Agent shall provide to the Debtors, extensions of credit under the DIP Financing (in the form of loans).

6. Authorization to Use of Cash Collateral. The Debtors shall be authorized to use the Cash Collateral derived from the operations of SSMC, MVH, SECC and their real and personal property in accordance with the terms of this Interim Order, including, without limitation, in accordance with the Budget and Budget Compliance Covenant. For purposes of this Interim Order, Cash Collateral includes (a) all cash proceeds of Prepetition Collateral in which the Secured Creditors and MidCap Funding have an interest, whether such interest existed as of the Petition Date or arises thereafter pursuant to this Interim Order, any other order of this Court, applicable Law or otherwise, and (b) proceeds of the MidCap Prepetition Debt or the Prepetition Obligations. With respect to collections of Cash Collateral after the Petition Date that are proceeds of the MidCap Prepetition Collateral, MidCap Funding shall be permitted to apply such amounts against the Prepetition Revolving Loan Obligations and, after payment, in full of the Prepetition Revolving Loan Obligations, such amount shall be remitted to the DIP Revolving Agent for application against the DIP Revolving Facility Obligations. Notwithstanding the foregoing, in no event shall any Secured Creditor be required to fund any overdraft or overadvance or otherwise extend credit to any of the Debtors and any obligations to honor disbursements shall be based on collected funds.

7. DIP Obligations. The DIP Documents and this Interim Order shall constitute and evidence the validity and binding effect of the Debtors' DIP Obligations, which DIP Obligations shall be enforceable against the Debtors, their estates and any successors thereto, including without limitation, any trustee or other estate representative appointed in the Chapter 11 Cases, or any case under chapter 7 of the Bankruptcy Code upon the conversion of any of the Chapter 11 Cases, or in any other proceedings superseding or related to any of the foregoing (collectively, "**Successor Cases**"). Upon entry of this Interim Order, the DIP Obligations will include all loans and any other indebtedness or obligations, contingent or absolute, which may now or from time to time be owing by any of the Debtors to the DIP Lender under the DIP Documents or this Interim Order, including, without limitation, all principal, accrued interest, costs, fees, expenses and other amounts owed pursuant to the DIP Documents. The DIP Obligations shall be due and payable, without notice or demand, on the Termination Declaration Date (as defined herein).

8. Payment of Principal, Interest, Fees, Etc.. The Debtors shall pay to the DIP Agent and MidCap Funding, on account of the Prepetition Term Loan, principal and interest as provided in the DIP Documents and in accordance with the procedures set forth therein. In consideration of the financial accommodations made by the DIP Agent and DIP Lender under this Interim Order and the DIP Documents, in accordance with Paragraph 3 of this Interim Order, the Debtors are hereby authorized, without further order of this Court and as set forth in the DIP Documents, to: (a) pay to the DIP Agent all reasonable fees and charges, including, but not limited to, origination fees, collateral management fees, and any other administrative or service fees payable under the DIP Documents; and (b) reimburse the DIP Agent and DIP Lender for all reasonable out-of-pocket expenses, professional fees, and other disbursements incurred by them in connection with the preparation of the DIP Documents or other aspects of these Chapter 11 Cases.

9. DIP Liens and DIP Collateral. Effective immediately upon the entry of this Interim Order, pursuant to sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code:

(a) the DIP Revolving Loan Agent, as security and collateral for the DIP Revolving Facility, is hereby granted continuing, valid, binding, enforceable, non-avoidable and automatically and properly perfected: (i) first priority security interests in and liens on, and pledges of, such now existing and hereafter acquired assets of SSMC and SECC to the same extent as described in the Prepetition Revolving Credit Agreement; (ii) first priority security interests in and liens on the "Collateral" (as defined in Schedule 9.1 of the DIP Revolving Loan Agreement); (iii) subject and subordinate to any pre-existing liens, including the first mortgage lien presently existing in favor of Sun Life, any judgment liens in favor of the 1199 Funds and any other pre-existing liens of any other Judgment and Lien Creditor, security interests in and liens on all of the real and personal property comprising the Sound Shore Medical Center located at 16 Guion Place, New Rochelle, NY; (iv) subject and subordinate to any pre-existing liens, including the first mortgage lien presently existing in favor of HVB, any liens in favor of DASNY and PBGC, any judgment liens in favor of the 1199 Funds, and any other pre-existing lines of any other Judgment and Lien Creditor, security interests in and liens on all of the real and personal property comprising the Mount Vernon Hospital located at 12 N 7th Ave, Mt. Vernon, NY 10550; (v) subject and subordinate to any pre-existing liens, including the first mortgage lien presently existing in favor of MidCap Funding as per that certain Subordination Agreement, as may have been amended from time to time, made as of June 8, 2011 by and among DASNY and MidCap Funding, as successor to the Prepetition Term Loan Agent, any liens in favor of DASNY and PBGC, and any other pre-existing liens of any Other Judgment and Lien Creditor, security interests in and liens on all of the real and personal property comprising Howe Avenue Nursing

Home, d/b/a Schaffer Extended Care Center located at 16 Guion Place, New Rochelle, NY 10801, and (vi) all proceeds and products of the foregoing ((i)-(vi) collectively the “**DIP Revolving Facility Collateral**”);⁷ and

(b) the DIP Term Loan Agent, as security and collateral for the DIP Term Loan, shall receive: an irrevocable, unconditional, transferable standby letter of credit (the “**Letter of Credit**”) payable on sight draft only, the form and substance of which is acceptable to DIP Term Loan Agent in its sole and absolute discretion, with an initial expiration date of not less than one (1) year and with an evergreen provision (i.e., automatic renewals for one (1) year periods), provided by MMC in favor of DIP Term Loan Agent and entitling DIP Term Loan Agent to draw thereon in New York, New York or Washington, DC or in such other city as DIP Term Loan Agent may permit in writing in its sole and absolute discretion, issued by a nationally recognized bank or the U.S. agency or branch of a foreign bank acceptable to DIP Term Loan Agent in its sole and absolute discretion and approved in writing by DIP Term Loan Agent (the “**DIP Term Loan Collateral**” and together with the DIP Revolving Facility Collateral, the “**DIP Collateral**”)⁸; provided, however, pursuant to the Debtors’ proposed sale of assets to MMC that any successful bidder or purchaser other than MMC or its affiliate shall assume and be assigned all of MMC’s obligations under MMC’s guaranty of certain of the DIP Obligations, including the Letter of Credit, and provided further, that the Debtors and the DIP Revolving Agent stipulate and agree

⁷ As set forth more fully in the DIP Revolving Loan Agreement, in connection with the proposed sale of the Debtors’ assets, the purchaser thereof shall guarantee on a limited basis any shortfall in the collection of outstanding obligations under the DIP Revolving Loan Agreement after seventy-five (75) days after closing of such sale up to a maximum amount \$5,000,000, plus any costs of enforcement, and secure all such guaranteed obligations with a first priority security interest on all “Collateral” (as defined in Schedule 9.1 of the DIP Revolving Loan Agreement) generated by or in connection with the operation of the Debtors’ assets acquired in such sale pursuant to a limited recourse guaranty in a form mutually agreeable to DIP Agent and MMC.

⁸ All defined terms in the description of DIP Collateral shall have the meanings ascribed thereto in the DIP Documents. All terms not specifically defined in the DIP Documents shall have the meanings ascribed to such terms in Article 8 or 9 of the Uniform Commercial Code.

that certain collateral pledged to the DIP Revolving Agent by Debtors, subject and subordinate to pre-existing liens as described above, specifically, the DIP Collateral by each of the Borrowers, is pledged to MMC as security for MMC's right to seek payment from the Debtors in the event that there is a draw under the Letter of Credit with such security interest so granted being subordinate to the security interest of the DIP Revolving Agent in the subject DIP Collateral. Notwithstanding anything contrary herein or in the DIP Documents, the DIP Collateral shall exclude any commercial tort claims and any claims under chapter 5 of the Bankruptcy Code, including, in each instance, any and all proceeds thereof.

10. DIP Lien Priority. The DIP Liens securing the DIP Revolving Credit Facility shall be junior in payment and priority to the extent hereinabove provided and further only to the Carve Out. Other than as set forth herein, the DIP Liens shall not be made subject to or *pari passu* with any lien or security interest hereinafter granted in the Chapter 11 Cases or any Successor Cases. The DIP Liens shall be senior to all other rights in the DIP Term Loan Collateral. Notwithstanding anything in this Interim Order to the contrary, the DIP Term Loan Collateral shall not be subject to the Carve Out. The DIP Liens shall be valid and enforceable against any trustee or other estate representative appointed in the Chapter 11 Cases or any Successor Cases, upon the conversion of any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code (or in any other Successor Case), and/or upon the dismissal of any of the Chapter 11 Cases or Successor Cases. The DIP Liens shall not be subject to sections 506(c), 510, 549, or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of any estate pursuant to section 551 of the Bankruptcy Code shall be made *pari passu* with or senior to the DIP Liens.

11. DIP Superpriority Claims. Upon entry of this Interim Order, the DIP Agent is hereby granted, pursuant to section 364(c)(1) of the Bankruptcy Code, an allowed superpriority administrative expense claim in each of the Chapter 11 Cases and any Successor Cases

(collectively, the “**DIP Superpriority Claims**”) for all DIP Obligations. The DIP Superpriority Claims shall be subordinate in payment and priority only to the Carve Out, and shall (a) otherwise have priority over any and all administrative expenses and unsecured claims against the Debtors or their estates in any of the Chapter 11 Cases and any Successor Cases, at any time existing or arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to Bankruptcy Code §§ 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c), 507(a), 507(b) (except as set forth herein), 546(c), 546(d), 726 (to the extent permitted by law), 1113 and 1114, and any other provision of the Bankruptcy Code, except as set forth herein, and (b) at all times be senior to the rights of the Debtors and their estates, and any successor trustee or other estate representative, to the extent permitted by law. The DIP Superpriority Claims shall not extend to (i) commercial tort claims or (ii) any avoidance actions or claims arising under chapter 5 of the Bankruptcy Code, or any of the proceeds of (i) and (ii), except that the DIP Superpriority Claim shall extend to any avoidance actions or claims in each case arising under section 549 of the Bankruptcy Code and the proceeds thereof. The Debtors and the DIP Revolving Agent stipulate and agree that MMC is hereby granted, pursuant to section 364(c)(1) of the Bankruptcy Code, an allowed, subordinated superpriority administrative expense claim in each of the Chapter 11 Cases and any Successor Cases (collectively, the “**MMC Superpriority Claims**”), subordinated in right to the DIP Superpriority Claims of the DIP Revolving Agent, as security for MMC’s right to seek payment from the Debtors in the event that there is a draw under the Letter of Credit. Notwithstanding anything contrary herein or in the DIP Documents, the MMC Superpriority Claim shall exclude any commercial tort claims and any claims under chapter 5 of the Bankruptcy Code, including, in each instance, any and all proceeds thereof.

12. Adequate Protection Liens. The Secured Creditors and MidCap Funding are entitled to receive adequate protection on account of their respective interests in the Prepetition Collateral pursuant to sections 361, 362, and 364 of the Bankruptcy Code to the extent of any Diminution in Value of their respective interests in their Prepetition Collateral. Pursuant to sections 361, 364 and 507(b), but only to the extent that: (i) the Prepetition Obligations remain outstanding, (ii) the Secured Creditors and MidCap Funding hold valid and perfected Prepetition Liens in the Prepetition Collateral, and (iii) any Diminution in Value of their respective interests in the Prepetition Collateral, the Secured Creditors and MidCap Funding will receive hereby as adequate protection: (a) automatically perfected, replacement liens on the DIP Collateral to the same extent and priority of their respective Prepetition Liens and against each Debtor in which such Secured Creditor holds an Adequate Protection Lien (an "***Applicable Debtor***"). The Adequate Protection Liens shall be deemed a Permitted Lien within the meaning of the DIP Revolving Loan Agreement. The Adequate Protection Liens shall be valid and enforceable against any trustee or other estate representative appointed in the Chapter 11 Cases or any Successor Cases, upon the conversion of any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code (or in any other Successor Case), and/or upon the dismissal of any of the Chapter 11 Cases or Successor Cases. The Adequate Protection Liens shall not be subject to sections 506(c), 510, 549, or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of any estate pursuant to section 551 of the Bankruptcy Code shall be made *pari passu* with or senior to the Adequate Protection Liens (for any lien or interest avoided other than the Prepetition Liens).

13. Prepetition Lender Superpriority Claims. Junior only to the DIP Superpriority Claims, the MMC Superpriority Claims and the Carve Out, and only to the extent Adequate Protection Liens fail to protect the Secured Creditors against any Diminution in Value, the

Secured Creditors and MidCap Funding shall, upon such demonstration that the Adequate Protection Liens fail to protect the Secured Creditors and MidCap Funding against any Diminution in Value, be entitled, pursuant to sections 503(b) and 507(b) of the Bankruptcy Code, to an allowed superpriority administrative expense claim in each of the Chapter 11 Cases of the Applicable Debtors and any Successor Cases of the Applicable Debtors (collectively, the ***“Prepetition Lender Superpriority Claims”***) for all Diminution in Value claims. The Prepetition Lender Superpriority Claims, if permitted, shall be subordinate in payment and priority only to the DIP Superpriority Claims and the Carve Out, and shall (a) otherwise have priority over any and all administrative expenses and unsecured claims against the Debtors or their estates in any of the Chapter 11 Cases and any Successor Cases, at any time existing or arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to Bankruptcy Code §§ 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c), 507(a), 507(b) (except as set forth herein), 546(c), 546(d), 726 (to the extent permitted by law), 1113 and 1114, and any other provision of the Bankruptcy Code, except as set forth herein, and (b) at all times be senior to the rights of the Debtors and their estates, and any successor trustee or other estate representative, to the extent permitted by law. The Prepetition Lender Superpriority Claims, if permitted, shall not extend to (i) commercial tort claims or (ii) any avoidance actions or claims arising under chapter 5 of the Bankruptcy Code, or any of the proceeds of (i) and (ii), except that the Prepetition Lender Superpriority Claims shall extend to any avoidance actions or claims in each case arising under section 549 of the Bankruptcy Code and the proceeds thereof.

14. *No Obligation to Extend Credit.* Subject to Paragraph 29(b), the DIP Lender shall not have any obligation to make any loan or advance under the DIP Documents, unless all of the conditions precedent to the making of such extension of credit under the applicable DIP

Documents and this Interim Order have been satisfied in full or waived by the DIP Lender in its sole discretion.

15. Use of DIP Financing Proceeds. From and after the Petition Date until entry of the Final Order, the Debtors shall use advances of DIP Financing credit only for the purposes specifically set forth in this Interim Order, the DIP Documents and in compliance with the Budget Compliance Covenant. Notwithstanding any first-day orders entered authorizing the Debtors to pay any prepetition or other expenses, all such payments not otherwise paid before the entry of this Interim Order, shall be made in accordance with the Budget and Budget Compliance Covenant.

16. Amendment of the DIP Documents. The DIP Documents may from time to time be amended, modified or supplemented by the parties thereto without notice or a hearing if: (a) the amendment, modification, or supplement is (i) in accordance with the DIP Documents, (ii) beneficial to the Debtors, (iii) not prejudicial in any material respect to the rights of third parties, and (iv) does not increase the amount of the DIP Term Loan or the "Applicable Margin" or the "Revolving Loan Commitment" (each as defined in the DIP Revolving Loan Agreement) or extend the "Termination Date" (as defined in the DIP Revolving Loan Agreement); (b) the amendment, modification or supplement is filed with the Court; and (c) a copy (which may be provided through electronic mail or facsimile) of the substantially final amendment, modification or supplement is provided to counsel for any Committee, counsel for each of the Secured Creditors and MMC and the U.S. Trustee at least three (3) days (or such shorter period agreed to by the Secured Creditors, MMC, any Committee appointed by this Court and U.S. Trustee) prior to the effective date of such amendment, modification or supplement. Except as otherwise provided in this Paragraph, no waiver, modification, or amendment of any of the provisions of any DIP Document shall be effective unless set forth in writing, signed on behalf of the Debtors and

with the necessary consents required under and executed in accordance with the DIP Documents, and approved by the Court on notice.

17. Budget Maintenance. The Budget shall be in form and substance acceptable to and approved by the DIP Agent and MMC in their individual sole discretion. The Budget may be amended or modified in writing from time to time only with the written consents required under the DIP Documents. The Debtors shall update the Budget as provided in the DIP Documents (provided that any update shall be in form and substance acceptable to the DIP Agent and MMC in their individual sole discretion), with delivery to the DIP Agent in accordance with the DIP Documents, with copies to be provided to the counsel to MMC, any Committee appointed by this Court, the Secured Creditors and the U.S. Trustee within one (1) business day. The Debtors may exceed the Budget Compliance Covenant with the consent of the DIP Agent and MMC in their individual sole discretion. Notwithstanding anything herein to the contrary, to the extent that the Debtors have not expended the full disbursement amount for a category of expense for a specified time period set forth in the Budget, the Debtors may use the unexpended amount to pay items of the same type for a subsequent time period.

18. Modification of Automatic Stay. Subject to the terms of Paragraph 25, the automatic stay imposed under section 362(a) of the Bankruptcy Code is hereby modified as necessary to effectuate all of the terms and provisions of this Interim Order, including, without limitation, to: (a) permit the Debtors to grant the DIP Liens, Adequate Protection Liens, DIP Superpriority Claims, the MMC Superpriority Claims, and Prepetition Lender Superpriority Claims, if permitted; (b) permit the Debtors to incur all liabilities and obligations under the DIP Documents, the DIP Financing and this Interim Order; (c) permit the Debtors to perform such other acts as are necessary to effectuate the terms of this Interim Order; (d) authorize the Debtors to pay, and the DIP Agent and MidCap Funding to retain and apply, payments made in accordance

with the terms of this Interim Order; and (e) permit MidCap Funding and/or DIP Agent to apply the proceeds of the MidCap Prepetition Collateral to the Prepetition Revolving Loan Obligations in accordance with the terms of this Interim Order.

19. Perfection of DIP Liens and Adequate Protection Liens. This Interim Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the DIP Liens and Adequate Protection Liens without the necessity of filing or recording any financing statement, mortgage, notice of lien or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement) to validate or perfect (in accordance with applicable nonbankruptcy law) the DIP Liens and Adequate Protection Liens, or to entitle the DIP Agent, MMC and the Secured Creditors to the priorities granted herein. Notwithstanding the foregoing, each of the DIP Agent, MMC and the Secured Creditors is authorized to file, as it deems necessary in its sole discretion, such financing statements, mortgages, notices of liens and other similar documents to perfect in accordance with applicable nonbankruptcy law or to otherwise evidence the applicable DIP Liens or Adequate Protection Liens, and all such financing statements, mortgages, notices and other documents shall be deemed to have been filed or recorded as of the Petition Date; provided, however, that no such filing or recordation shall be necessary or required in order to create or perfect the DIP Liens or the Adequate Protection Liens. The Debtors are authorized and directed to execute and deliver promptly upon demand to the DIP Agent and Secured Creditors all such financing statements, mortgages, notices and other documents as any of the DIP Agent or Secured Creditors may reasonably request. The DIP Agent and Secured Creditors, each in its discretion, may file a photocopy of this Interim Order as a financing statement with any filing or recording office or

with any registry of deeds or similar office, in addition to or in lieu of such financing statements, notices of lien or similar instrument.

20. Proceeds of Subsequent Financing. If the Debtors, any trustee, any examiner with enlarged powers, any responsible officer or any other estate representative subsequently appointed in these Chapter 11 Cases or any Successor Cases, other than a receiver appointed pursuant to New York law, shall obtain credit or incur debt pursuant to sections 364(b), 364(c) or 364(d) of the Bankruptcy Code in violation of the DIP Documents at any time prior to the repayment in full of all DIP Obligations and the termination of the DIP Lender's obligation to extend credit under the DIP Financing, then all the cash proceeds derived from such credit or debt shall immediately be turned over to the DIP Agent to be applied as set forth in the DIP Documents. Any surplus shall be held in escrow for the benefit of MidCap Funding and the other Secured Creditors to the extent of any Diminution in Value claims, and thereafter to any party entitled thereto as determined by further order of the Court.

21. Maintenance of DIP Collateral. Until the payment in full in cash of all DIP Obligations, and the termination of the DIP Documents and the DIP Lender's obligations to extend credit under the DIP Revolving Facility and DIP Term Loan, the Debtors shall: (a) insure the DIP Collateral as required pursuant to the terms of the DIP Credit Agreement; and (b) maintain the cash management system which has first been agreed to by the required consents under the DIP Documents, or as otherwise required by the DIP Documents.

22. Disposition of DIP Collateral; Rights of DIP Agent. The Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral other than as permitted in the DIP Documents without the prior written consents as required under the DIP Documents, and no such consent shall be implied from any other action, inaction or acquiescence by the DIP Agent, Secured Creditors, or an order of this Court.

23. DIP Termination. On the Expiration Date, all DIP Obligations shall be immediately due and payable, and all commitments to extend credit with respect to the DIP Financing will terminate.

24. Events of Default. The occurrence of an "Event of Default" under the DIP Credit Agreement (subject to any extensions or waivers as permitted under the DIP Documents), shall constitute an event of default under the DIP Documents and this Interim Order, unless expressly waived in writing by the DIP Agent in accordance with the consents required in the DIP Documents (collectively, the "**Events of Default**").

25. Rights and Remedies Upon Event of Default. Immediately upon the occurrence and during the continuation of an Event of Default, the DIP Agent, as provided in the DIP Documents, may declare: (a) all DIP Obligations owing under the DIP Documents to be immediately due and payable; (b) the termination, reduction or restriction of any further commitment to extend credit to the Debtors to the extent any such commitment remains; and/or (c) the termination of the DIP Credit Agreement and any other DIP Document as to any future obligation of the DIP Agent or DIP Lender, but without affecting any of the DIP Liens or the DIP Obligations (any such declaration by the DIP Agent shall be referred to herein as a "**Termination Declaration**"). The Termination Declaration shall be given by email (or other electronic means) to counsel to the Debtors, counsel to the Secured Creditors, counsel to any Committee appointed by this Court (or if no Committee is appointed, to the Debtors' twenty (20) largest unsecured creditors), counsel to MMC and the U.S. Trustee (the earliest date any such Termination Declaration is made shall be referred to herein as the "**Termination Declaration Date**"). The DIP Obligations shall be due and payable, without notice or demand, on the Termination Declaration Date. Any automatic stay otherwise applicable to the DIP Agent is hereby modified so that beginning on the seventh (7th) day after the Termination Declaration Date (such seven day period being the "**Remedies Notice**

Period”), the DIP Agent shall be entitled to exercise all rights and remedies against the DIP Collateral in accordance with the DIP Documents and this Interim Order, and shall be permitted to satisfy the DIP Obligations and DIP Superpriority Claims, subject to, with respect to the DIP Revolving Credit Collateral, the Carve Out. Notwithstanding anything to the contrary, during the first five (5) days of the Remedies Notice Period, the Debtors or any Committee appointed by this Court shall be entitled to continue to use cash on hand, including any Cash Collateral, in accordance with the Budget. During the Remedies Notice Period, the Debtors or any Committee appointed by this Court shall be entitled seek an emergency hearing with the Court for the sole purpose of contesting whether an Event of Default has occurred and/or is continuing. Unless the Court determines during the Remedies Notice Period that an Event of Default has not occurred and/or is not continuing, the automatic stay shall automatically be terminated at the end of the Remedies Notice Period without further notice or order, and the DIP Agent shall be permitted to exercise all remedies set forth herein, in the DIP Credit Agreement, the DIP Documents, as applicable, and as otherwise available at law against the DIP Collateral without any further order of or application or motion to the Court, and without restriction or restraint by any stay under sections 362 or 105 of the Bankruptcy Code, or otherwise, against the enforcement of the liens and security interest in the DIP Collateral or any other rights and remedies granted to the DIP Agent with respect thereto pursuant to the DIP Credit Agreement, DIP Documents, or this Interim Order. In addition, notwithstanding the foregoing, and without order of or application or motion to the Court, if an Event of Default exists, the DIP Agent may do any one or more of the following at any time, including during the Remedies Notice Period, and in any order: (u) reduce the amount of the Revolving Loan Commitment or the Borrowing Base under the DIP Documents; (x) restrict the amount of or refuse to make loans under the DIP Loan Documents; (y) terminate the DIP Lender’s commitment to lend under the DIP Documents; or (z) declare the DIP Financing to be

immediately due and payable. The DIP Agent's failure to exercise any or all of its rights under this Paragraph shall not constitute a waiver of any of its rights hereunder or under the DIP Documents.

26. Indemnification of the DIP Agent. The Debtors shall defend, indemnify and hold harmless DIP Agent and each of its Affiliates (as defined in the DIP Credit Agreement) and their respective successors and assigns, and the directors, officers, partners, members, shareholders, participants, employees, professionals and agents of any of the foregoing and each other Person (as defined in the DIP Credit Agreement), if any, who controls DIP Agent, its Affiliates or any of the foregoing (the "**Indemnified Parties**"), to the extent and as set forth in the DIP Documents. Nothing herein shall limit the DIP Agent's exercise of its discretionary rights granted under the DIP Documents, including an Indemnified Party's right to select its own counsel with respect to any litigation, or preparation therefor, related to the enforcement of this Interim Order or its rights and remedies under the DIP Documents, which counsel's reasonable fees and expenses shall be promptly paid by the Debtors.

27. Reporting Requirements. Debtors shall observe and comply with all of the financial reporting and performance covenants and conditions set forth in the DIP Documents.

28. Rights of Access and Information. Without limiting the rights of access and information afforded the DIP Agent under the DIP Documents, the Debtors shall be, and hereby are, required to afford representatives, agents and/or employees of the DIP Agent and the Secured Creditors reasonable access to the Debtors' premises and their books and records in accordance with the DIP Documents or any applicable agreements between the Secured Creditors, and shall reasonably cooperate, consult with, and provide to such persons all such information as may be reasonably requested. In addition, the Debtors authorize their independent certified public accountants, financial advisors, investment bankers and consultants to cooperate, consult with, and

provide to the DIP Agent and the Secured Creditors all such information as may be reasonably requested with respect to the business, results of operations and financial condition of any Borrower. Notwithstanding anything to the contrary, any and all of the Debtors' obligations under this Paragraph shall be subject to the Debtors' and their advisors' fiduciary duties under the Bankruptcy Code, applicable privileges and reasonable and customary confidentiality agreements not entered into for purposes of protecting information pursuant to this Paragraph.

29. Carve Out.

(a) *Carve Out.* As used in this Interim Order, the "***Carve Out***" shall encompass the following expenses: (a) following the occurrence of a Triggering Event (as defined below): (i) allowed fees, and reimbursement for disbursements of professionals retained by the Debtors (the "***Debtors' Professional Fee Payments***") in an aggregate amount for all the Debtors' Professional Fee Payments not to exceed \$250,000 incurred after the Triggering Event; (ii) allowed fees and reimbursements for disbursements of professionals retained by any Committee appointed by this Court (the "***Committee's Professional Fee Payments***") in an aggregate amount for all of the Committee's Professional Fee Payments not to exceed \$150,000 incurred after the Triggering Event (collectively, (i) and (ii), the "***Carve Out Amount***"); (iii) quarterly fees pursuant to 28 U.S.C. § 1930(a)(6) and any fees payable to the clerk of the Bankruptcy Court; and (iv) fees payable to a chapter 7 trustee in an aggregate amount not to exceed \$15,000; and (b) without reducing the Carve Out Amount, all Debtors' Professional Fee Payments and Committee's Professional Fee Payments allowed, or subsequently allowed, and payable under sections 330 and 331 of the Bankruptcy Code, to the extent incurred prior to such Triggering Event (the "***Pipeline Period***"). The Debtors shall and are hereby authorized on a monthly basis to accrue, up to the Carve Out Amount, and hold in escrow in an interest bearing deposit account (the "***Professional Fee Account***") the amount contained in the Budget relating to the Debtors' Professional Fee

Payments and Committee's Professional Fee Payments, which amount is earmarked for, and shall be applied toward, the payment, upon proper application to, and allowance by, the Court, of such professionals' fees, including as provided in any order entered by this Court with respect to the procedures for seeking compensation and reimbursement for expenses (an "*Administrative Fee Order*"). As used in this Paragraph, the term "*Triggering Event*" shall mean the earlier to occur of: (a) the date the DIP Agent provides to the Borrowers and any Committee appointed by this Court, with a copy to Borrowers' counsel at the address set forth in the DIP Documents and to counsel for any Committee appointed by this Court, a notice of (i) an Event of Default and (ii) termination of the Pipeline Period for purposes of the Carve Out; or (b) the date upon which a failure of the Borrowers to notify the DIP Agent of the occurrence of a Default (as defined in the DIP Documents) or Event of Default (of which the DIP Agent is not otherwise aware of on such date) constitutes a failure to comply with the requirement to give such a notice under the DIP Documents.

(b) *No Direct Obligation to Pay Professional Fees; No Waiver of Right to Object to Fees.* With the exception that the DIP Agent must make available funds previously swept from the Debtors' bank accounts or resulting from the sale or other disposition of the DIP Collateral in order that the Debtors' Professional Fee Payments and Committee's Professional Fee Payments can be satisfied up to the Carve Out Amount (to the extent there are not sufficient funds in the Professional Fee Account or otherwise available) as provided for by the terms of this Interim Order, the DIP Agent and DIP Lender shall not be responsible for the direct payment or reimbursement of any fees or disbursements of any professionals retained by the Debtors and/or any Committee appointed by this Court incurred in connection with the Chapter 11 Cases or any Successor Cases. Until the occurrence of a Triggering Event, the allowed Debtors' Professional Fee Payments and Committee's Professional Fee Payments shall be paid in accordance with the

Administrative Fee Order, subject to the Budget, or further Order of this Court, and any payment made on account of the Debtors' Professional Fee Payments or the Committee's Professional Fee Payments on account of the Pipeline Period shall not reduce the Carve Out Amount. Except for funding the Carve Out Amount as provided above (to the extent there are not sufficient funds in the Professional Fee Account), nothing in this Interim Order or otherwise shall be construed: (i) to obligate the DIP Agent or DIP Lender, in any way to pay compensation to, or to reimburse expenses of, any professionals retained by the Debtors or any committee appointed by this Court, or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement; (ii) to increase the Carve Out Amount if actual Debtors' Professional Fee Payments and Committee's Professional Fee Payments incurred after or due and owing as of a Triggering Event exceed the Carve Out Amount; (iii) as consent to the allowance of any professional fees or expenses of any professionals retained by the Debtors or any Committee appointed by this Court; or (iv) to affect the right of the DIP Agent to object to the allowance and payment of such fees and expenses.

30. Limitations on the DIP Financing, DIP Collateral, and Carve Out. The DIP Financing, DIP Collateral, Carve Out and proceeds thereof may not be used: (a) in connection with or to finance any action, suit, arbitration, proceeding, application, motion or other litigation of any type (i) adverse to the DIP Agent's rights and remedies under the DIP Documents or this Interim Order, as applicable, including, without limitation, for the payment of any services rendered by the professionals retained by the Debtors or any Committee appointed by this Court in connection with the assertion of or joinder in any claim, counterclaim, action, proceeding, application, motion, objection, defense or other contested matter, the purpose of which is to seek, or the result of which would be to obtain, any order, judgment determination, declaration or similar relief, (ii) invalidating, setting aside, avoiding or subordinating, in whole or in part, the

DIP Obligations, (iii) for monetary, injunctive or other affirmative relief against the DIP Agent or DIP Lender or its collateral contrary to the DIP Documents or this Interim Order, or

(iv) preventing, hindering or otherwise delaying the exercise by the DIP Agent of any rights and/or remedies permitted under this Interim Order, the DIP Documents, or applicable law, or the enforcement or realization (whether by foreclosure, credit bid, further order of the Court or otherwise) by the DIP Agent upon any of the DIP Collateral; (b) to make any distribution under a plan of reorganization in any of the Chapter 11 Cases while the DIP Documents remains in effect or any DIP Obligations remain outstanding; (c) to make any payment in excess of \$50,000 in settlement of any claim, action or proceeding, before any court, arbitrator or other governmental body without the prior written consents required under the DIP Documents; (d) to pay any fees or similar amounts to any person who has proposed or may propose to purchase interests in any of the Debtors without the prior written consents required under the DIP Documents; (e) to object to, contest, or interfere with in any way the DIP Agent's enforcement or realization upon any of the DIP Collateral once an Event of Default has occurred, except as to any challenge as to the occurrence of such an Event of Default as provided for herein; (f) to sell or otherwise dispose of DIP Collateral without the consents required under the DIP Documents; (g) to use or seek to use any insurance proceeds constituting DIP Collateral other than as set forth in the DIP Documents; (h) to incur Debt (as defined in the DIP Credit Agreement) outside the ordinary course of business without the prior consents required under the DIP Documents; (i) to object to or challenge in any way the claims, liens, or interests (including interests in the Prepetition Collateral or DIP Collateral) held by or on behalf of the DIP Agent or the repayment or refinancing of the Prepetition Revolving Loan; (j) to assert, commence or prosecute any claims or causes of action whatsoever, including, without limitation, any actions under chapter 5 of the Bankruptcy Code, against the DIP Agent or DIP Lender; (k) to prosecute an objection to, priority, or enforceability of

any of the DIP Obligations or DIP Liens or any other rights or interests of DIP Agent or DIP Lender; or (l) to prevent (or attempt to prevent), hinder or otherwise delay the exercise by the DIP Agent of any rights and remedies granted under this Interim Order; provided, however, that notwithstanding anything else herein to the contrary, the Committee and its professionals may use the proceeds of the DIP Financing, DIP Collateral or Carve Out to investigate the liens and claims of the Secured Creditors, the DIP Lender, and the DIP Agent and, subject to any applicable law with respect to standing, commence and prosecute any related proceedings as a representative of the Debtors' estates at an aggregate expense for such investigation and prosecution not to exceed \$50,000.

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

32. No Deemed Control. In making decisions to advance any extensions of credit under the DIP Financing, or in taking any other actions related to this Interim Order or the DIP Documents (including, without limitation, the exercise of its approval rights with respect to any budget), the DIP Agent and DIP Lender shall have no liability to any third party and shall not be deemed to be in control of the operations of Debtors or to be acting as a "controlling person," "responsible person," or "owner or operator" with respect to the operation or management of the Debtors (as such term, or any similar terms, are used in the Internal Revenue Code, the United States Comprehensive Environmental Response, Compensation and Liability Act as amended, or any similar federal or state statute), and the DIP Agent's relationship with the Debtors shall not constitute or be deemed to constitute a joint venture or partnership of any kind.

33. Section 506(c) Claims. Subject only to entry of a Final Order, no costs or expenses of administration which have been or may be incurred in the Chapter 11 Cases or any Successor

Cases at any time shall be charged against the DIP Agent, or any of their claims or the DIP Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code, or otherwise, without the prior written consent of the DIP Agent, and no such consent shall be implied from any other action, inaction, or acquiescence by such lender.

34. No Marshaling/Applications of Proceeds. Neither the DIP Agent nor DIP Lender shall be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the DIP Collateral and proceeds shall be received and applied pursuant to the DIP Documents or such applicable Prepetition Loan Documents.

35. Joint and Several Liability. Nothing in this Interim Order shall be construed to constitute a substantive consolidation of any of the Debtors’ estates, it being understood, however, that the Debtors shall be jointly and severally liable for the obligations hereunder and in accordance with the terms of the DIP Facility and the DIP Documents.

36. Discharge Waiver. The Debtors expressly stipulate, and the Court finds and adjudicates that, the DIP Obligations shall not be discharged by the entry of an order confirming any plan of reorganization, notwithstanding the provisions of section 1141(d) of the Bankruptcy Code, unless the DIP Obligations have been paid in full in cash on or before the effective date of a confirmed plan of reorganization. Unless otherwise agreed to by the DIP Agent, none of the Debtors shall propose or support any plan of reorganization or sale of all or substantially all of the Debtors’ assets or entry of any confirmation order or sale order that is not conditioned upon the payment in full in cash, on the effective date of such plan of reorganization or sale, of all DIP Obligations and the cancellation, backing, or cash collateralization of all letters of credit issued under the DIP Documents.

37. Rights Preserved. Other than as expressly set forth in this Interim Order, any other rights, claims or privileges (whether legal, equitable or otherwise) of the DIP Agent, the Debtors, any Committee appointed by this Court and the Secured Creditors are preserved.

38. No Waiver by Failure to Seek Relief. The failure of the DIP Agent or any of the Secured Creditors, as the case may be, to seek relief or otherwise exercise its rights and remedies under this Interim Order, the DIP Documents (in the case of the DIP Agent), applicable prepetition claims (in the case of the Secured Creditors) or applicable law, as the case may be, shall not constitute a waiver of any of the rights hereunder, thereunder, or otherwise of the DIP Agent or such Secured Creditor.

39. Binding Effect of Order. Immediately upon entry by this Court (notwithstanding any applicable law or rule to the contrary), the terms and provisions of this Interim Order shall become valid and binding upon and inure to the benefit of the Debtors, DIP Agent, Secured Creditors, all other creditors of any of the Debtors or any Committee appointed by this Court in the Chapter 11 Cases, and all other parties in interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in any of the Chapter 11 Cases, any Successor Cases, or upon dismissal of any Chapter 11 Case or Successor Case.

40. No Modification of Order. Until and unless the DIP Obligations have been indefeasibly paid in full in cash, and all commitments to extend credit under the DIP Facility have been terminated, the Debtors irrevocably waive the right to seek and shall not seek or consent to, directly or indirectly: (a) without the prior written consents required in the DIP Documents: (i) any modification, stay, vacatur or amendment to this Interim Order; or (ii) a priority claim for any administrative expense or unsecured claim against the Debtors (now existing or hereafter arising of any kind or nature whatsoever, including, without limitation any administrative expense of the kind specified in sections 503(b), 507(a) or 507(b) of the Bankruptcy Code) in any of the Chapter

11 Cases or Successor Cases, equal or superior to the DIP Superpriority Claims, other than the Carve Out; and (b) without the prior written consents required under the DIP Documents, any lien on any of the DIP Collateral with priority equal or superior to the DIP Liens. The Debtors irrevocably waive any right to seek any amendment, modification or extension of this Interim Order without the prior written consent, as provided in the foregoing, of the DIP Agent and Secured Creditors, as applicable, and no such consent shall be implied by any other action, inaction or acquiescence of the DIP Agent or applicable Secured Creditors.

41. Reservation. Notwithstanding anything to the contrary herein, if a Challenge is properly brought in accordance with this Interim Order, and if such Challenge regarding the validity, enforceability, extent, perfection, or priority of the MidCap Prepetition Liens is successful, this Court expressly reserves the right to unwind the repayment of the MidCap Prepetition Debt and reverse, modify, or otherwise amend any findings or determinations set forth in this Interim Order regarding the validity, extent, or priority of the MidCap Prepetition Liens.

42. Order Controls. In the event of any inconsistency between the terms and conditions of the DIP Documents or this Interim Order, the provisions of this Interim Order shall govern and control.

43. Survival. The provisions of this Interim Order and any actions taken pursuant hereto shall survive entry of any order: (a) confirming any plan of reorganization in any of the Chapter 11 Cases; (b) converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code; (c) dismissing any of the Chapter 11 Cases or any Successor Cases; or (d) pursuant to which this Court abstains from hearing any of the Chapter 11 Cases or Successor Cases. The terms and provisions of this Interim Order, including the claims, liens, security interests and other protections granted to the DIP Agent and Secured Creditors pursuant to this Interim Order and/or the DIP Documents, notwithstanding the entry of any such order, shall

continue in the Chapter 11 Cases, in any Successor Cases, or following dismissal of the Chapter 11 Cases or any Successor Cases, and shall maintain their priority as provided by this Interim Order until all DIP Obligations and Diminution in Value claims have been indefeasibly paid in full and all commitments to extend credit under the DIP Facility are terminated. The terms and provisions concerning the indemnification of the DIP Agent shall continue in the Chapter 11 Cases, in any Successor Cases, following dismissal of the Chapter 11 Cases or any Successor Cases, following termination of the DIP Documents and/or the repayment of the DIP Obligations.

44. Governmental Authorities.

a. Notwithstanding anything to the contrary herein, nothing in this Interim Order shall modify any right of the Department of Health and Human Services and the Center for Medicare and Medicaid Services to administer the Debtors' Medicare provider agreements in accordance with federal law.

b. Except as expressly provided herein, nothing contained in this Interim Order shall impair or modify any rights, claims or defenses available in law or equity to the IRS.

c. If at any time the Debtors anticipate that the cash flows from the Debtors' operations will be insufficient to fund non-insider payroll for any given week, the Debtors will notify the U.S. Attorney, the State of New York Office of the Attorney General, and the DIP Agent at least three (3) days in advance of such payroll coming due.

45. Immediate Docketing and Effect of this Interim Order. The Clerk of the Court is hereby directed to forthwith enter this Interim Order on the docket of this Court maintained in regard to the Chapter 11 Cases. This Interim Order shall constitute findings of fact and conclusions of law pursuant to Rule 7052 of the Bankruptcy Rules and shall take effect and be enforceable *nunc pro tunc* to the Petition Date immediately upon execution hereof. To the extent

necessary, findings of fact shall be deemed conclusions of law, and conclusions of law shall be deemed findings of fact.

46. Final Hearing; Notice of Final Hearing. The Final Hearing shall be held on June ___, 2013 at 10:00 a.m. (prevailing Eastern time). The Debtors shall, within two (2) days of entry of this Interim Order, mail copies of a notice of the entry of this Interim Order, together with a copy of the Motion and a notice of the Final Hearing on each of the Notice Parties and to counsel for any Committee (if appointed). The notice of Final Hearing shall state that any party in interest objection to the DIP Financing shall file written objections with the Clerk of this Court no later than 4:00 p.m. (prevailing Eastern time) on June ___, 2013, and that objections shall be served so that they are received on or before such date and time by: (a) Garfunkel Wild, P.C., 111 Great Neck Road, Great Neck, NY 11021, Attention: Burton Weston; (b) Waller Lansden Dortch & Davis, LLP, 511 Union Street, Suite 2700, Nashville, TN 37219, Attention Katie G. Stenberg, Esq. and Robert P. Sweeter, Esq.; (c) Togut, Segal & Segal, LLP, One Penn Plaza, New York, NY 10119, Attention Frank Oswald, Esq. and Brian Moore, Esq. and (d) the Office of the United States Trustee for the Southern District of New York.

47. Retention of Jurisdiction. The Court has and will retain jurisdiction to enforce this Interim Order according to its terms.

Dated: May ___, 2013
White Plains, New York

Honorable Robert D. Drain
United States Bankruptcy Judge