

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
JUSTIN R. BERNBROCK (*pro hac vice* admission pending)
CATHERINE JUN (*pro hac vice* admission pending)
ROBERT B. McLELLARN (*pro hac vice* admission pending)
321 North Clark Street, 32nd Floor
Chicago, Illinois 60654
Telephone: 312.499.6300
Email: jbernbrock@sheppardmullin.com
cjun@sheppardmullin.com
rmclellarn@sheppardmullin.com

JENNIFER L. NASSIRI, SBN 209796
ALEXANDRIA G. LATTNER, SBN 314855
1901 Avenue of the Stars, Suite 1600
Los Angeles, CA 90067-6055
Telephone: 310.228.3700
Email: jnassiri@sheppardmullin.com
alattner@sheppardmullin.com

Proposed Counsel to Debtors and
Debtors-in-Possession

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION

In re:

BEVERLY COMMUNITY HOSPITAL
ASSOCIATION, dba BEVERLY
HOSPITAL (A NONPROFIT PUBLIC
BENEFIT CORPORATION), *et al*,¹

Debtors,

- ☒ Affects all Debtors
☐ Affects Beverly Community
Hospital Association
☐ Montebello Community Health
Services, Inc.
☐ Beverly Hospital Foundation

Lead Case No.: 2:23-bk-12359-SK

Jointly administration requested with:

Case No.: 2:23-bk-12360-SK

Case No. 2:23-bk-12361-SK

Hon. Sandra R. Klein

Chapter 11 Case

**DEBTORS' EMERGENCY MOTION FOR
INTERIM AND FINAL ORDERS (I)
AUTHORIZING THE DEBTORS TO OBTAIN
POST-PETITION FINANCING, (II)
GRANTING ADEQUATE PROTECTION TO
PREPETITION SECURED CREDITORS, AND
(III) GRANTING RELATED RELIEF;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: April 21, 2023

Time: 2:00pm

Judge: Sandra R. Klein

Place: Zoom.Gov

255 E. Temple St.

Los Angeles, CA 90012

¹ The Debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number, are: Beverly Community Hospital Association d/b/a Beverly Hospital (6005), Montebello Community Health Services, Inc. (3550), and Beverly Hospital Foundation (9685). The mailing address for the Debtors is 309 W. Beverly Blvd., Montebello, California 90640.



	<u>Page</u>
<u>TABLE OF CONTENTS</u>	
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	
EMERGENCY MOTION	1
SUMMARY OF REQUESTED RELIEF	2
ADDITIONAL INFORMATION	3
MEMORANDUM OF POINTS AND AUTHORITIES	6
I. STATEMENT OF FACTS	6
A. General Background.....	6
B. Facts Relevant to this Motion: Capital Structure and Need for Additional Financing.	8
II. BANKRUPTCY RULE 4001 STATEMENT	10
III. DISCLOSURE PURSUANT TO BANKRUPTCY RULE 4001 AND COMPLIANCE WITH LBR 4001–2.....	15
IV. RELIEF REQUESTED.....	16
V. JURISDICTION AND VENUE.....	17
VI. BASIS FOR RELIEF	17
A. The Debtors Need for Immediate Access to the DIP Facility.....	17
B. The Debtors’ Entry into the DIP Facility Is Authorized Under § 364 of the Bankruptcy Code.....	19
(i) The Debtors Are Unable to Obtain Unsecured or Junior Secured Credit.	22
(ii) The DIP Facility Is Fair, Reasonable, and in the Best Interests of the Estate.	23
VII. REQUEST FOR AN INTERIM AND FINAL HEARING.....	24
VIII. EMERGENCY CONSIDERATION.....	25
IX. WAIVER OF BANKRUPTCY RULE 6004(A) AND 6004(H)	25
X. RESERVATION OF RIGHTS.....	25
XI. NOTICE	26

TABLE OF AUTHORITIES

Page(s)

Federal Cases

In re Ames Dep't Stores, Inc.

115 B.R. 34 (Bankr. S.D.N.Y. 1990) 28, 29

Anchor Sav. Bank,

99 B.R. at 120 n.4..... 28

In re Aqua Assocs.

123 B.R. 192 (Bankr. E.D. Pa. 1991)..... 28

Bray v. Shenandoah Fed. Sav. & Loan Ass'n (In re Snowshoe Co.)

789 F.2d 1085 (4th Cir. 1986)..... 28, 29

In re Crouse Group, Inc.

71 B.R. 544 (Bankr. E.D. Pa. 1987)..... 28

In re Defender Drug Stores, Inc.

126 B.R. 76 (Bankr. D. Ariz. 1991),
aff'd, 145 B.R. 312 (B.A.P. 9th Cir. 1992) 26, 27

In re Dynaco Corp.

162 B.R. 389 (Bankr. D.N.H. 1993) 32

In re L.A. Dodgers LLC

457 B.R. 308 (Bankr. D. Del. 2011) 30

In re Oak Glen R-Vee

8 B.R. 213 (Bankr. C.D. Cal 1981) 32

Richmond Leasing Co. v. Capital Bank, N.A.

762 F.2d 1303 (5th Cir. 1985)..... 30

Simasko Prod.

47 B.R. at 449 30

In re Sky Valley, Inc.

100 B.R. 107,113 (Bankr. N.D. Ga. 1998),
aff'd sub nom., Anchor Sav. Bank, 99 B.R..... 29

In Re Stein

19 B.R. 458, 459 (Bankr. E.D. Pa. 1982)..... 32

In re Trans World Airlines, Inc.

163 B.R. 964 (Bankr. D. Del. 1994) 26, 30

1	<u>Federal: Statutes, Rules, Regulations, Constitutional Provisions</u>	
2	Federal Rules of Bankruptcy Procedure	
3	Rule 1007(d).....	34
4	Rule 1015(b).....	8
5	Rule 2002	24, 35
6	Rule 4001	10, 21, 24
7	Rule 4001(b)(2)	33
8	Rule 4001(c)(1)(B).....	10
9	Rule 4001 (c)(1)(B)(i)–(xi)	21
10	Rule 6003	33
11	Rule 6004	23
12	Rule 6004(a).....	34
13	Rule 6004(h).....	34
14	Rule 6004(h).....	34
15	Rule 9014	24
16	Title 28 United States Code	
17	§ 1334.....	24
18	§ 1408.....	24
19	§ 1409.....	24
20	§ 157.....	24
21	§ 157(b)	24
22	United States Bankruptcy Code	
23	Chapter 11	<i>passim</i>
24	§ 105.....	24
25	§ 105(a)	31
26	§ 1106(a)(3).....	19
27	§ 1106(a)(4).....	19
28	§ 1106(b)	19
	§ 1107(a)	7
	§ 1108.....	7
	§ 361.....	23, 24
	§ 362.....	23, 24
	§ 363.....	22, 24
	§ 363(c)(2).....	23, 31
	§ 363(e)	23, 31
	§ 364.....	<i>passim</i>
	§ 364(a)	29
	§ 364(b)	29
	§ 364(c)	22, 27, 28, 31
	§ 364(c)–(d)(1)	27
	§ 364(c)(1).....	16, 23
	§ 364(c)(2).....	22
	§ 364(c)(3).....	22
	§ 364(d)	22, 28
	§ 364(d)(1).....	23

1	§ 365	34
	§ 503	24
2	§ 507	24
3	<u>State: Statutes, Rules, Regulations, Constitutional Provisions</u>	
4	Title 11, California Code of Regulations	
5	§ 999.5	18
6	California Corporations Code	
	§ 5913	18
7	§ 5914	18
8	§ 5920	18
9	California Health & Safety Code	
	§ 1250	18
10	Local Bankruptcy Rules	
11	Rule 2081-1(a)(9)	33
	Rule 4001-2	24
12	Rule 5011-1(a)	24

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EMERGENCY MOTION

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”)¹ hereby move, on an emergency basis (the “Motion”), pursuant to §§ 105(a), 361, 362, 363, 364 and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 4001-2 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California (“LBR”) for entry of an interim order (substantially in the form attached hereto as **Exhibit A**, the “Interim Order”) and a final order (the “Final Order”² and together with the Interim Order, the “DIP Orders”) (i) authorizing the Debtors to enter into a senior secured, superpriority debtor in possession financing facility with HRE Montebello, LLC (the “DIP Lender”), in an (a) interim amount not to exceed \$6,000,000 (i.e. net funding amount of \$5,610,000 plus the Loan Fee of \$390,000) and only as needed to avoid immediate and irreparable harm, and (b) after a final hearing, an amount up to total lending of not more than \$13,250,000 (as amended, modified or otherwise in effect from time to time, the “DIP Facility”), substantially on the terms set forth in the Declaration of Jason Cohen, of Portage Point Partners (“Cohen Declaration”) filed in Support of this Motion and the Senior Secured Superpriority Debtor-In-Possession Loan Agreement attached as **Exhibit 1** to the proposed Interim Order (as amended, supplemented, or otherwise modified and in effect from time to time, the “DIP Credit Agreement,”³ and together with all other agreements, documents, notes, certificates, and instruments executed and/or delivered with, to or in favor of the DIP Lender, the “DIP Financing Agreements”), and (c) granting the DIP Liens and the DIP Superpriority Claims (in each case, as defined below); (ii) modifying the automatic stay as

¹ A detailed description of the Debtors and their business, and the facts and circumstances supporting the Debtors’ chapter 11 cases, are set forth in greater detail in the *Declaration of Alice Cheng in Support of the Debtors’ First Day Emergency Motions* (the “First Day Declaration”), filed contemporaneously with the Debtors’ voluntary petitions for relief filed under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), on the date hereof (the “Petition Date”). Capitalized terms used but not otherwise defined in this Motion shall have the meanings given to them in the First Day Declaration.

² The Debtors will file the form of Final Order prior to the Final Hearing (as defined herein).

³ Capitalized terms used but not defined herein shall have the meanings given to them in the DIP Credit Agreement or, if not defined in the DIP Credit Agreement, the DIP Financing Term Sheet or the Cohen Declaration.

imposed by § 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms of the DIP Facility and the DIP Orders; (iii) scheduling an interim hearing to approve the proposed Interim Order and a final hearing with respect to the relief requested herein (the “Final Hearing”); and (iv) granting related relief.

SUMMARY OF REQUESTED RELIEF

This Motion is necessary to avoid immediate and irreparable harm because the Debtors’ cash position is extremely perilous. Without the proposed DIP Facility, the Debtors cannot proceed through these chapter 11 cases and pursue a sale process to maximize value for all stakeholders.

<i>Key Economic Terms of the DIP Facility</i>	
Facility Size	\$13.25 million in DIP Commitments, consisting of three separate borrowings: (a) \$6,000,000 million upon entry of the Interim DIP Order, (b) \$7,000,000 million upon entry of the Final DIP Order and \$250,000 reserved for earthquake insurance (if required).
Interest Rate	Interest accrues at the Term SOFR 1 Month Rate + 12% per annum (in payment in kind)
Loan Commitment	\$13,250,000
Loan Fee	\$390,000
Exit Fee	A fee of 1.00% of the Loan Commitment

With only approximately \$5 million of cash as of the Petition Date, the Debtors cannot operate the hospital without immediate access to the DIP Facility. The Debtors anticipate the net proceeds from DIP Facility will fully offset the cash losses incurred during the three week period leading up to the final hearing. Accordingly, the Debtors’ need for immediate liquidity is urgent and the use of cash collateral will not be sufficient for the Debtors to operate in the normal course. Specifically, absent the proposed DIP Facility, the Debtors will not have the cash required to pay vendors or have sufficient liquidity to pay the administrative costs, both operational and statutory, required in these Chapter 11 Cases.

1 The Debtors sought out debtor-in-possession financing from many sources and signed up
2 ten (10) non-disclosure agreements (the “NDAs”) with interested parties. Following negotiations
3 with the parties to the NDAs, the Debtors received several proposals. The Debtors selected the DIP
4 Lender and entered into a non-binding, non-exclusive, letter of intent because its proposal provided
5 the most liquidity, better economics than the alternative proposals, the DIP Lender had done
6 substantial diligence and the DIP Lender had made a number of accommodations to the Debtors
7 during the negotiations leading up to the execution of the letter of intent. The DIP Lender’s proposal
8 provided the most certainty of closing a transaction under the extreme time constraints of the
9 Debtors.

10 In further support of the Motion, the Debtors rely upon and refer this Court to the Declaration
11 of Alice Cheng, Chief Executive Officer of the Debtors [Docket No. 9] (the “Cheng Declaration”
12 or “First Day Decl.”) in Support of the First Day Motions, the Declaration of Alyssa Lozynski in
13 Support of the DIP Motion filed contemporaneously herewith (the “Lozynski Declaration”) as well
14 as the Cohen Declaration.

15 **ADDITIONAL INFORMATION**

16 The Motion is based on the Notice of Emergency Motions that will be filed and served after
17 obtaining a hearing date for the Debtors’ “First Day Motions,” the attached Memorandum of Points
18 and Authorities, the Cohen Declaration, the arguments of counsel and other admissible evidence
19 properly brought before the Court at or before the hearing on this Motion. In addition, the Debtors
20 request that the Court take judicial notice of all documents filed with the Court in this Case.

21 The Debtors will provide notice of this Motion via first class mail, facsimile or email (where
22 available) to: (a) the Office of the U.S. Trustee Region 16; (b) the holders of the 30 largest unsecured
23 claims against the Debtors (on a consolidated basis); (c) U.S. Bank, N.A. and counsel thereto;
24 (d) Hanmi Bank and counsel thereto; (e) the DIP Lender and their counsel, (f) the Internal Revenue
25 Service; (g) the Office of the Attorney General of the State of California; (h) the National
26 Association of Attorneys General; and (i) all other parties who have filed a request for special notice
27 and service of papers with the clerk of this Court. To the extent necessary, the Debtors request that
28

1 the Court waive compliance with LBR 9075 1(a)(6) and approve service (in addition to the means
2 of service set forth in such LBR) by overnight delivery. Among other things, the Notice of
3 Emergency Motions will provide that any opposition or objection to the Motion may be presented
4 at any time before or at the hearing regarding the Motion, but that failure to timely object may be
5 deemed by the Court to constitute consent to the relief requested herein. In the event that the Court
6 grants the relief requested by the Motion, the Debtors shall provide notice of the entry of the order
7 granting such relief upon each of the foregoing parties and any other parties in interest as the Court
8 directs. The Debtors submit that such notice is sufficient and that no other or further notice be given.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 WHEREFORE, the Debtors respectfully request that the Court grant this Motion and enter
2 an interim order in the form attached hereto as **Exhibit A** and a final order in the form to be filed by
3 the Debtors prior to the Final Hearing, granting the relief requested herein and granting such other
4 relief as is just and proper.

5 Dated: April 20, 2023

6 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

7
8 By /s/ Jennifer L. Nassiri
9 Jennifer L. Nassiri

10 JUSTIN R. BERNBROCK
11 JENNIFER L. NASSIRI
12 CATHERINE JUN
13 ROBERT B. McLELLARN
14 ALEXANDRIA G. LATTNER

15
16
17
18
19
20
21
22
23
24
25
26
27
28
Proposed Attorneys for Debtors and
Debtors-in-Possession

MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF FACTS

A. General Background.

For decades, Beverly Hospital has been a beacon of hope and security in Montebello, offering critical healthcare services and essential jobs to its local community that is predominantly Latino. The hospital serves an area where half of the population lives under the 200% poverty line and is without private health insurance. Beverly Hospital's mission has and remains to bring the highest quality of care to meet its community members' needs. The hospital's care extends far beyond its beds, including public health programs and education. Beverly Hospital provides emergency services as well as a broad range of inpatient and outpatient care to support those living with long-term illnesses like diabetes and cancer. It is located in the City of Montebello and serves as a safety net hospital for Pico Rivera, Monterey Park, El Monte, Whittier, East Los Angeles and surrounding communities.

Beverly Hospital seeks bankruptcy protection through the chapter 11 process to ensure that the community area residents do not lose their local hospital as it faces the impossible: caring for those unable to pay or without health insurance as the costs of care increases and government reimbursements stagnate. Since the Covid-19 pandemic, Beverly Hospital has experienced accelerating expenses and costs that are unsustainable. Industry-wide and in California specifically, hospitals have experienced major increases in labor costs due to a shortage in nursing staff and increases in wages. Due to inflation and supply shortages, the cost of medical supplies increased by approximately 21%, the cost of most medications by 40%. Meanwhile, Diagnosis Related Groups ("DRGs") and All Patient Refined DRGs base rates—patient classification schemes that ultimately determine payment for Medicare and Medi-Cal beneficiaries—have not adjusted to accommodate such increases.

Beverly Hospital must address its severe financial distress through a formal restructuring process to keep its doors open. In an attempt to preserve its ongoing operations, Beverly Hospital

1 engaged in earnest discussions with potential buyers that had shown interest in the past. Between
2 August 2021 and February 2023, the Debtors negotiated potential mergers or affiliations with three
3 separate hospital systems. Certain of the counterparties ceased negotiations because of the Debtors'
4 overwhelming debt burden or, in some instances, the onerous review process imposed by the State.

5 Unfortunately, the financial challenges Beverly Hospital faces are not unique. California's
6 hospitals have greatly struggled since the pandemic and many are closing or on the verge of collapse.
7 A closure of Beverly Hospital would have a catastrophic and devastating impact on the health needs
8 of this community akin to what happened in Madera County, California. In January, Madera
9 Community Hospital shut down all its services and clinics before filing for chapter 11 bankruptcy.
10 The story and sequence of events leading up to Beverly Hospital's chapter 11 cases are similar to
11 that of Madera Hospital: Madera, too, had served largely low-income patients for decades, and its
12 financial struggles only worsened in the wake of the COVID-19 pandemic. Madera pursued a
13 prepetition sale process that was unsuccessful as a result of numerous, financial impracticable
14 conditions imposed by California Attorney General, who claims oversight authority in health care
15 mergers involving nonprofit hospitals.

16 The Debtors' chapter 11 cases were precipitated by the need to avoid what happened in
17 Madera. Since 2020, Beverly Hospital has ended each fiscal year in the red; in 2022, it ran a net
18 EBITDA margin loss of 17%. The Debtors seek the kind of reprieve that only this Court can
19 provide— an expedited sale of the hospital free and clear of certain interests, including the
20 California state's Attorney General's notice and consent rights. A sale process that is overseen by
21 this Court in accordance with the Bidding Procedures will enable the Debtors to save Beverly
22 Hospital and maintain the high quality of healthcare it provides to a community in desperate need
23 of care.

24 On the Petition Date, each of the Debtors filed a voluntary petition for relief under chapter
25 11 of the Bankruptcy Code. The Debtors are operating their business and managing their properties
26 as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.
27 Concurrently with the filing of this Motion, the Debtors filed a motion requesting procedural
28

consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no committees have been appointed or designated.

B. Facts Relevant to this Motion: Capital Structure and Need for Additional Financing.

As of the Petition Date, and as summarized in the table below, the Debtors' capital structure consists of outstanding funded-debt obligations in the aggregate principal amount of approximately \$65.0 million.

Obligation	Indenture Trustee/Lender	Maturity	Total Amount Outstanding on Petition Date
Series 2015 Revenue Bonds	U.S. Bank National Association	2/1/2045	\$35,620,000
Series 2017 Revenue Bonds	U.S. Bank National Association	2/1/2048	\$19,400,000
Revolving Loan	Hanmi Bank	1/1/2024	\$10,000,000
		Total	\$65,020,000

The Debtors, as borrowers, and U.S. Bank National Association, as master trustee (the "Master Trustee"), entered into that certain Master Trust Indenture, dated as of December 1, 2015 (including all supplemental indentures issued in connection therewith, as amended and supplemented, the "Master Trust Indenture").

Prior to the Petition Date, the California Statewide Communities Development Authority issued revenue bonds on behalf of Beverly Hospital (the "Authority").

The Debtors entered into (i) the First Supplemental Master Indenture, dated as of December 1, 2015, between Beverly Hospital, as Obligated Group Representative, and the Master Trustee (the "First Supplemental Master Indenture") and (ii) into that certain Loan Agreement, dated as of December 1, 2015, between the Authority, and Beverly Hospital (the "2015 Loan Agreement"). Pursuant to that certain Bond Indenture, dated as of December 1, 2015, between the Authority and U.S. Bank National Association, as trustee thereunder, the Authority authorized the issuance of the California Statewide Communities Development Authority Revenue Bonds (Beverly Community Hospital Association), Series 2015 pursuant to the Master Trust Indenture, in an aggregate principal

1 amount of \$39,725,000 (the “Series 2015 Revenue Bonds”) and lent the proceeds of the Series 2015
2 Revenue Bonds to the Debtors pursuant to the 2015 Loan Agreement to finance construction,
3 improvement, renovation and/or equipping the Debtors’ health facilities.

4 The Series 2015 Revenue Bonds are secured by certain real property assets, gross
5 receivables, and general intangibles. The Series 2015 Revenue Bonds were issued with a coupon
6 rate of 4.0-5.0% with serial maturity dates from February 2019 through 2045.

7 On May 1, 2017, the Debtors entered into that certain Second Supplemental Master
8 Indenture, between Beverly Hospital, as Obligated Group Representative, and the Master Trustee,
9 Beverly Hospital, as Obligated Group Representative. On May 1, 2017, pursuant to that certain
10 Bond Indenture dated as of May 1, 2017, between the Authority and U.S. Bank National
11 Association, as trustee thereunder, the Authority offered California Statewide Communities
12 Development Authority Revenue Bonds (Beverly Community Hospital Association), Series 2017
13 (the “Series 2017 Revenue Bonds”) in an aggregate principal amount of \$19,840,000. The Debtors
14 entered into that certain Loan Agreement, dated as of May 1, 2017, between the Authority, and
15 Beverly Hospital (the “2017 Loan Agreement”) specifying the terms and conditions of the loan by
16 the Authority to Beverly Hospital of the proceeds of the Series 2017 Revenue Bonds to provide for
17 further financing and the payment by Beverly Hospital to the Authority of amounts sufficient for
18 the payment of the principal of and interest on the bonds and certain related expenses.

19 The 2017 Series Revenue Bonds are secured by the same assets as the 2015 Series Revenue
20 Bonds and are *pari passu* to them. The 2017 Series Revenue Bonds were issued with a coupon rate
21 of 3.0-5.0% with serial maturity dates from November 1, 2021 through November 1, 2048.

22 Pursuant to that certain Revolving Loan Agreement dated as of August 1, 2019 (as may be
23 amended, restated, supplemented, or otherwise modified from time to time, the “Hanmi Revolving
24 Loan” and together with the Master Trust Indenture as may be supplemented from time to time, the
25 “Prepetition Secured Documents” and the obligations thereunder, the “Prepetition Secured
26 Obligations”) by and between Beverly Hospital, as Borrower, and Hanmi Bank, as Lender (“Hanmi
27 Bank”, together with the holders of the Series 2015 Revenue Bonds and Series 2017 Revenue Bonds,
28

1 and Hanmi Bank, the “Prepetition Secured Creditors”), Hanmi Bank agreed to provide a revolving
2 loan with a maximum draw of \$10 million to Beverly Hospital for the purpose of supplemental
3 working capital as needed for its business. On August 1, 2019, Beverly Hospital, as Obligated
4 Group Representative issued an Obligation to secure the obligations of the Hanmi Revolving Loan
5 relating to the extension of a revolving loan. The Debtors drew down on the Hanmi Revolving Loan
6 on August 20, 2019 for \$1.4 million followed by approximately \$8.6 million on August 28, 2019.
7 The total principal amount outstanding as of the Petition Date is \$10 million, such that the
8 commitments under the Hanmi Revolving Loan are fully drawn.

9 The Prepetition Secured Obligations are secured by either liens on virtually all of the
10 Debtors’ Gross Receivables (as defined in the Master Trust Indenture) (such liens collectively, the
11 “Prepetition Liens”).

12 II.

13 BANKRUPTCY RULE 4001 STATEMENT

14 In accordance with Bankruptcy Rule 4001, the following sets forth a concise summary of
15 material terms of the proposed DIP Facility and the DIP Orders:⁴

16 SECURED CREDITORS:

17 BR 4001(c)(1)(B) HRE Montebello, LLC
18 LBR 4001-2

19 BORROWERS:

20 BR 4001(c)(1)(B) Beverly Community Hospital Association and Montebello
21 LBR 4001-2 Community Health Services, Inc.

22 GUARANTORS:

23 BR 4001(c)(1)(B) None.
24 LBR 4001-2

25 DIP LENDER:

26 BR 4001(c)(1)(B) HRE Montebello, LLC
27 LBR 4001-2

28 ⁴ This summary is not intended to limit the terms of the DIP Facility, in each case as set forth in the DIP Credit Agreement, the Interim Order and the Final Order. Reference should be made to the Interim Order, the DIP Credit Agreement and the Final Order for the full terms thereof.

DIP FACILITY:
BR 4001(c)(1)(B)
LBR 4001-2

Senior Secured Superpriority \$13,250,000 Loan; provided that, prior to the entry of the Final Order, only up to \$6,000,000 (\$5,561,000 net funding and \$390,000 Loan Fee) will be made available by the DIP Lender, subject to the satisfaction of the “Interim Funding Conditions.”

AVAILABILITY:
BR 4001(c)(1)(B)
LBR 4001-2

\$13,250,000

CLOSING DATE:
BR 4001(c)(1)(B)
LBR 4001-2

The earliest date on which (a) the Interim Order has been entered by the Bankruptcy Court, and (b) all conditions precedent set forth in Section 4.1 of the DIP Credit Agreement have been satisfied or waived.

INTERIM FUNDING CONDITIONS:
BR 4001(c)(1)(B)
LBR 4001-2

The obligation of the DIP Lender to make an Advance of a Loan (which shall not exceed the Interim Availability Amount) on the Closing Date is subject to the satisfaction or waiver by the DIP Lender in writing of the conditions in Section 4.1 of the DIP Credit Agreement.

MATURITY DATE:
BR 4001(c)(1)(B)
LBR 4001-2

(a) the date on which the Loan becomes due and payable, which date shall initially be the Initial Maturity Date, and which date may be extended to the First Extended Maturity Date, and which date may be further extended to the Second Extended Maturity Date, only if Borrower satisfies the Extension Conditions; or (b) such other earlier date resulting from the acceleration of all sums due and owing under the Loan, as provided in the Loan Note and the other Loan Documents.

USE OF PROCEEDS:
BR 4001(b)(1)(B)(ii)–(iv)
LBR 4001–2

In accordance with the Initial Agreed Budget (defined in the DIP Credit Agreement) proceeds will be utilized to fund the Debtors’ day-to-day operations and general corporate purposes, pay the administrative expenses of the Chapter 11 cases, to maintain and preserve the Debtor’s assets.

1 INITIAL AGREED BUDGET: The cash flow forecast prepared by the Borrower (and approved
2 BR 4001(b)(1)(B)(ii) by the Lender in its sole discretion) in the form of Annex A to
3 LBR 4001-2 the DIP Credit Agreement covering the Three Month Period
4 commencing with the month in which the Closing Date occurs,
5 depicting, on a monthly and line item basis, (i) projected cash
6 receipts, (ii) projected disbursements (including ordinary
7 course operating expenses, bankruptcy-related expenses
8 (including professional fees of the Borrower's professionals
9 and advisors and the Committee's professionals and advisors),
10 and any other fees and expenses relating to the Loan
11 Documents), (iii) net cash flow and (iv) the other items set forth
12 therein and other information reasonably requested by the DIP
13 Lender for such Three Month Period, in form and substance
14 satisfactory to the DIP Lender in its reasonable discretion, as
15 updated by the Borrower from time to time (subject to the DIP
16 Lender's approval) in accordance with Section 6.13 of the DIP
17 Credit Agreement.

11 INTEREST RATE: Term SOFR 1 Month Rate plus 12.00%
12 BR 4001(c)(1)(B)
13 LBR 4001-2

14 FEES: Exit Fee. Upon the earlier of (i) the Termination Date and (ii)
15 BR 4001(b)(1)(B)(ii)-(c)(1)(B) the repayment of the outstanding principal and accrued interest
16 LBR 4001-2 on the DIP Loan in full or in part, the Borrower shall pay to the
17 DIP Lender an exit fee in an amount equal to one percent
18 (1.00%) of the Loan Commitment (the "Exit Fee"). For the
19 avoidance of doubt, the Exit Fee is fully earned as of the
20 Closing Date.

"Extension Fee" in an amount equal to three quarters of one
percent (0.75%) of the Loan Commitment.

"Loan Fee" of \$390,000

21 CARVE OUT:
22 BR 4001(c)(1)(B) See Interim Order ¶ 14.
23 LBR 4001-2

24 DIP LIENS: First-priority security interest in the Unencumbered Real Estate
25 BR 4001(c)(1)(B)(i), - and rents, tenant deposits and proceeds thereof.
26 (c)(1)(B)(vii), -(c)(1)(B)(x)

27 LBR 4001-2 See Interim Order ¶ 12.
28

ADEQUATE PROTECTION: See Interim Order ¶¶ 6 - 39.

BR 4001(b)(1)(B)(iv), -
(c)(1)(B)(i), -(c)(1)(B)(ii), -
(d)(1)(A)(i)
LBR 4001-2

PRIORITY:

BR 4001(c)(1)(B)(i), -
(c)(1)(B)(ii)
LBR 4001-2

The DIP Obligations shall, pursuant to § 364(c)(1) of the Bankruptcy Code, be entitled to superpriority administrative expense claim status in the Chapter 11 Case of each Borrower (the “DIP Superpriority Claims”), which DIP Superpriority Claims in respect of the DIP Facility shall have priority over any and all claims against the Borrowers.
See Interim Order ¶ 13.

FINANCIAL REPORTING:

BR 4001(c)(1)(B)
LBR 4001-2

Customary for financings of this type, as may be set forth more fully in the DIP Facility; including:

Monthly financial statements (Section 6.6(a) of DIP Credit Agreement);
Notice of material events (Section 6.6(b) of DIP Credit Agreement);
Approved Budget and Variance (Sections 6.12 and 6.14 of DIP Credit Agreement)

AFFIRMATIVE AND
NEGATIVE COVENANTS:

BR 4001(c)(1)(B)
LBR 4001-2

Customary for financings of this type, as may be set forth more fully in the DIP Facility. (Sections 6 and 7 of DIP Credit Agreement)

REPRESENTATIONS AND
WARRANTIES:

BR 4001(c)(1)(B)
LBR 4001-2

Customary for financings of this type, as may be set forth more fully in the DIP Facility. (Section 2 of the DIP Credit Agreement)

EVENTS OF DEFAULT:

BR 4001(c)(1)(B)
LBR 4001-2

Customary and appropriate for financings of this type (subject to customary and appropriate grace periods), including, without limitation, failure to make payments when due, failure to reach Milestones, breaches of representations and warranties, defaults under other agreements or instruments of indebtedness, and noncompliance with covenants. (Section 9 of the DIP Credit Agreement)

CONDITIONS PRECEDENT:

BR 4001(c)(1)(B)
LBR 4001-2

In addition to the prior satisfaction or waiver in writing of all conditions precedent described in **Section 4.1** of the DIP Credit Agreement, each Advance of a Loan requested under the DIP Credit Agreement (which shall not exceed the Loan Availability) shall also be subject to prior satisfaction or waiver in writing of conditions in Section 4.2 of the DIP Credit Agreement.

CONDITIONS TO EACH
EXTENSION OF CREDIT:

BR 4001(c)(1)(B)
LBR 4001-2

Include, *inter alia*: (i) no default or event of default shall have occurred, (ii) accuracy of representations in all material respects, and (iii) the Interim Order, or following entry thereof, the Final Order shall be in full force and effect.

Section 4.2 of the Credit Agreement

INDEMNIFICATION AND
RELEASE:

BR 4001(c)(1)(B)(viii), -
(c)(1)(B)(ix)
LBR 4001-2

The Borrower shall indemnify, defend and hold harmless the DIP Lender, and its respective officers, employees and agents, of and from any claims, demands, liabilities, obligations, judgments, injuries, losses, actual damages and reasonable and documented out-of-pocket costs and expenses (including, without limitation, reasonable and documented out-of-pocket legal fees of one outside counsel) resulting from (i) acts or conduct of the Borrower under, pursuant or related to this Agreement and the other Loan Documents, (ii) the Borrower's breach or violation of any representation, warranty, covenant or undertaking contained in this Agreement or the other Loan Documents, and (iii) the Borrower's failure to comply with any or all laws, statutes, ordinances, governmental rules, regulations or standards, whether federal, state or local, or court or administrative orders or decrees, (including without limitation environmental laws, etc.) and all costs, expenses, fines, penalties or other actual damages resulting therefrom, unless resulting from acts or conduct of the DIP Lender or its Affiliates, constituting willful misconduct or gross negligence.

LIFT OF AUTOMATIC
STAY:

BR 4001 (c)(1)(B)(iv)
LBR 4001-2

Subject to the Interim Order and Final Order, if any Event of Default then exists, the automatic stay shall be modified or vacated to permit Administrative Agent and the Lenders to exercise all rights and remedies under this Agreement, the other Loan Documents or Applicable Law, without notice, application or motion, hearing before, or order of the Bankruptcy Court.

PLAN FILING DEADLINE:

BR 4001(c)(1)(B)(vi)
LBR 4001-2

None.

III.

DISCLOSURE PURSUANT TO BANKRUPTCY RULE 4001

AND COMPLIANCE WITH LBR 4001-2

The provisions described in Bankruptcy Rule 4001 (c)(1)(B)(i)–(xi), to the extent applicable, are set out in the following sections of the DIP Credit Agreement and or the Interim Order:

- Grant of a Priority Claim or Lien on Property of the Estate: [Interim Order ¶11]
- Waiver or Modification of Bankruptcy Code Provisions or Applicable Rules Relating to Automatic Stay: [Interim Order ¶ 22]
- Waiver or Modification of Applicability of Nonbankruptcy Law Relating to Perfection of Lien on Property of Estate or on Foreclosure or Other Enforcement of Lien: [Interim Order ¶ 3]
- Indemnification or Release of any Entity: [DIP Credit Agreement ¶ 11.9; Interim Order ¶ 10.]
- Release, Waiver, or Limitation of any Right under § 506(c): [Interim Order ¶ 16.]
- Granting of a Lien on any Claim or Cause of Action Arising under §§ 544, 545, 547, 548, 549, 553(b), 723(a) or 724(a): [None.]

As discussed more fully below, the provisions of the DIP Credit Agreement are all justified under the circumstances of these Cases. Prepetition, the Debtors were unable to obtain financing on more favorable terms from sources other than the DIP Lender. The DIP Lender has agreed to lend \$13,250,000 million, but would not do so without the protections and priorities sought in this Motion. Without such financing, the Debtors' ability to provide patient care and ultimately reorganize and/or consummate the sale of all of their assets will be severely jeopardized, nigh impossible. The Debtors thus respectfully submit that the facts and circumstances of these Cases demonstrates that the above-described provisions, which are set forth in greater detail below, are necessary and appropriate and should be authorized and approved by this Court.

IV.

RELIEF REQUESTED

By this Motion, the Debtors seek entry of the DIP Orders, *inter alia*:

- (i) under §§ 363, 364(c) and 364(d) of the Bankruptcy Code, authorizing the Debtors, as Borrower, to obtain senior secured superpriority Debtors in possession financing under the terms and conditions of the DIP Credit Agreement and the other DIP Financing Agreements, consisting of a loan facility in an aggregate amount of \$13,250,000 million, from HRE Montebello, LLC, as DIP Lender, including interim financing in the amount of \$6,000,000 million, and authorizing the Debtors to enter into and comply in all respects with the DIP Financing Agreements, and approving the terms and conditions of the DIP Financing Agreements;
- (ii) under §§ 363 and 364 of the Bankruptcy Code, authorizing the Debtors to use the proceeds of the DIP Facility in a manner consistent with the terms and conditions of the DIP Financing Agreements, and in accordance with the DIP Budget, (i) to fund these Cases, (ii) to pay fees and expenses associated with the DIP Facility, and (iii) for working capital and other corporate purposes of the Debtors;
- (iii) under §§ 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code, as security for the repayment of the borrowings and all other obligations arising under the DIP Financing Agreements, authorizing the Debtors to grant to the DIP Lender (first priority, valid, perfected and enforceable liens, subject to certain exceptions, including the Carve Out, upon substantially all of the Debtors' property, as described below and in the DIP Orders, the DIP Credit Agreement and the other DIP Financing Agreements;
- (iv) under § 364(c)(1) of the Bankruptcy Code, granting in favor of the DIP Lender a superpriority administrative expense claim (the "DIP Superpriority Claim") in respect of all Obligations under (and as defined in) the DIP Credit Agreement (the "DIP Obligations"), subject only to the payment of the Carve Out, and that only on entry of a final order;
- (v) proceeds of sales of Hospital and other assets constituting Collateral shall be held in escrow, shall constitute Collateral and shall only be distributed, in whole or in part to the Prepetition Secured Creditors with the consent of the DIP Lender and upon further order of this Court;
- (vi) under §§ 361, 363(e) and 364(d)(1) of the Bankruptcy Code, authorizing the granting the Prepetition Secured Creditors, of the Adequate Protection Liens and Adequate Protection Claims to the extent of any Diminution in Value of the Prepetition Secured Creditor's interests in the Prepetition Collateral, and having the priorities set forth in the DIP Orders; as well

1 as additional adequate protection in the form of the payment of fees and
2 expenses incurred by the Prepetition Secured Creditors;

3 (vii) under § 362 of the Bankruptcy Code, modifying the automatic stay to the
4 extent necessary to implement and effectuate the terms and provisions of
5 the DIP Orders, the DIP Credit Agreement and the other DIP Financing
6 Agreements;

7 (viii) scheduling the Final Hearing on the earliest date permitted under the
8 Bankruptcy Rules and available in this Court after entry of the Interim
9 Order to consider entry of the Final Order granting the relief requested in
10 the Motion on a final basis, including final approval of the Debtors' and
11 entry into the DIP Credit Agreement, and approving the form of notice
12 with respect to the Final Hearing; and

13 (ix) waiving any applicable stay (including under Bankruptcy Rule 6004) and
14 providing for the immediate effectiveness of the DIP Orders.

15 **V.**

16 **JURISDICTION AND VENUE**

17 The United States Bankruptcy Court for the Central District of California (the "Court") has
18 jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *General Order No. 13-*
19 *05* (C.D. Cal. Jul. 1, 2013), and Rule 5011-1(a) of the Local Bankruptcy Rules for the United States
20 Bankruptcy Court Central District of California (the "Local Bankruptcy Rules"). This is a core
21 proceeding pursuant to 28 U.S.C. § 157(b).

22 Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

23 The bases for the relief requested herein are sections 105, 361, 362, 363, 364, 503, and 507
24 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, and 9014 of the Bankruptcy Rules, and Rule
25 4001-2 of the Local Bankruptcy Rules.

26 **VI.**

27 **BASIS FOR RELIEF**

28 **A. The Debtors Need for Immediate Access to the DIP Facility.**

As indicated above, the financing requested herein is being requested for up to two (2)
months or the duration of these reorganization cases. The Debtors' believe the two (2) month time
frame is the absolute minimum necessary period of time to facilitate the successful operation of the

1 Hospital in the hands of new owners, given their history and projection of continuing operating
2 losses until all of the Debtors' major assets have been sold. The Debtors do not see the possibility
3 of successfully reorganizing as a self-sustaining, cash flow positive, non-profit hospital, capable of
4 servicing the needed capital structure to effectuate the needed operational improvements to provide
5 safe and responsible medical services in their Montebello community.

6 The Debtors' payor mix, heavily weighted to Medi-Cal and Medicare, unfortunately has not
7 provided the necessary cash flow. Even with the proposed expedited term of these Cases, however,
8 such financing is critical to the Debtors' operation and their ability to preserve the value of the assets
9 pending the auction and approval of a sale. The proposed financing under the DIP Facility is needed
10 to maintain an appropriate level of liquidity and help fund the Debtors' day-to-day operations and
11 patient care. The alternative is the loss of the community's hospital.

12 During these Cases, the Debtors require sufficient liquidity to fund general corporate
13 requirements for essential, day-to-day operations to ensure continuity of patient care, and to preserve
14 the value of the Debtors' assets. Not to mention, preserving the value of the Prepetition Collateral.
15 The Debtors also need additional cash to fund the formal reorganization and sales processes, all in
16 accordance with the DIP Budget for the benefit of all stakeholders, including the Prepetition Secured
17 Creditors.

18 The Debtors require the immediate use of the DIP Facility, and other income generated from
19 their commercial activities in order to maintain the quality of patient care and the day-to-day
20 business operations. It is critical that the Debtors have the initial \$6,000,000 (\$5,610,000 net) of the
21 DIP Facility in place on an interim basis in order to ensure that the Debtors have enough cash to
22 maintain patient care services and to maintain their healthcare and to assure adequate trade credit to
23 prevent accelerating cash losses during operation. Absent such relief from the Court, the Debtors
24 will not have sufficient liquidity to ensure uninterrupted hospital and patient care operations and
25 will suffer an extreme loss of asset value to the detriment of all stakeholders. It is also important
26 that the Debtors demonstrate to their staff, vendors, and patients that the Hospital will continue to
27 provide high quality patient care, and to function without interruption and that the Debtors will
28

1 continue to pay vendors in the ordinary course of business. Without such a demonstration—and in
2 the event of any interruption or delay in the business—the Debtors’ patients could suffer and
3 employees may very well seek other employment opportunities with competitors, thereby crippling
4 the Debtors’ business and hope for a value-maximizing reorganization.

5 The interests of the Prepetition Secured Creditors will be protected and enhanced by the
6 Debtors’ use of the DIP Facility because such relief will ensure the uninterrupted operation of the
7 Debtors’ hospital and flow of receivables that secure the Prepetition Secured Creditors claims, thus
8 protecting the Debtors’ revenue streams and protecting the going concern value of the Debtors. In
9 the absence of approval of the DIP Facility, the Debtors’ patients, for whom time is of the essence,
10 would almost certainly seek treatment elsewhere if the Debtors’ business operations were halted,
11 even briefly, and the Debtors were unable to timely fulfill their medical obligations. The DIP
12 Facility is critical to the Debtors’ ability to continue to provide patient care and maintain the
13 supporting business functions during the chapter 11 process. Moreover, employees, doctors and
14 patients expect the Debtors to have access to ample liquidity in order to continue patient care
15 services and other crucial business operations.

16 The ability of the Debtors to finance their operations and the availability to the Debtors of
17 sufficient working capital and liquidity is imperative to the Debtors’ ability to provide needed
18 patient care services. If the Debtors are unable to obtain such financing for such purposes, the
19 recoveries to all creditors, including the Prepetition Secured Creditors, would be materially reduced
20 because the value of the Debtors’ estate would decline dramatically. Entry of the Interim Order is
21 therefore (i) critical to the Debtors’ ability to succeed in their plan to transition ownership and
22 control of the Hospitals into stronger hands freed from legacy liabilities pursuant to the Bankruptcy
23 Code, (ii) in the best interests of the Debtors and their estates, and (iii) necessary to avoid irreparable
24 harm to the Debtors, their patients, their creditors, and their assets, business, goodwill, reputation
25 and employees.

26 **B. The Debtors’ Entry into the DIP Facility Is Authorized Under § 364 of the**
27 **Bankruptcy Code.**
28

1 Bankruptcy courts grant a debtor in possession considerable deference in acting in
2 accordance with its business judgment in obtaining postpetition secured credit, so long as the
3 agreement to obtain such credit does not run afoul of the provisions of, and policies underlying, the
4 Bankruptcy Code. *See, e.g., In re Trans World Airlines, Inc.*, 163 B.R. 964, 974 (Bankr. D. Del.
5 1994) (approving a postpetition loan and receivables facility because such facility “reflect[ed] sound
6 and prudent business judgment”);

7 Section 364 of the Bankruptcy Code gives bankruptcy courts the power to authorize post-
8 petition financing for a chapter 11 debtors in possession. *See In re Defender Drug Stores, Inc.*, 126
9 B.R. 76, 81 (Bankr. D. Ariz. 1991), *aff’d*, 145 B.R. 312 (B.A.P. 9th Cir. 1992).

10 Bankruptcy courts have the power to authorize secured postpetition financing under § 364
11 of the Bankruptcy Code, which provides, in pertinent part, as follows:

12 (c) If the [Debtors in possession] is unable to obtain unsecured
13 credit allowable under section 503(b)(1) of this title as an
14 administrative expense, the court, after notice and a hearing, may
authorize the obtaining of credit or the incurring of debt –

15 (1) with priority over any or all administrative expenses
16 of the kind specified in section 503(b) or 507(b) of this title;

17 (2) secured by a lien on property of the estate that is not
otherwise subject to a lien; or

18 (3) secured by a junior lien on property of the estate that
19 is subject to a lien.

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

22 (A) the [Debtors in possession] is unable to obtain such
23 credit otherwise; and

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

26 11 U.S.C. § 364(c)–(d)(1).

27 “Having recognized the natural reluctance of lenders to extend credit to a company in
28 bankruptcy, Congress designed [section] 364 to provide ‘incentives to the creditor to extend post-

petition credit.”” *Defender Drug Stores*, 126 B.R. at 81 (quoting *Unsecured Creditors’ Comm. v. First Nat’l Bank & Trust Co. of Escanaba (In re Ellingsen MacLean Oil Co.)*, 834 F.2d 59, 603 (6th Cir. 1987). *cert. denied*, 488 U.S. 817 (1988)). The incentives enumerated in § 364 are not intended to be an exhaustive list of the inducements that a court may grant. *Id.* In fact, it is not uncommon for a court to approve a lending arrangement containing terms that far exceed those authorized by § 364. *Id.*

Bankruptcy courts generally apply a multi-part test to determine whether a Debtors in possession may obtain credit under § 364(c) of the Bankruptcy Code. Under such test, the Debtors may incur postpetition financing under the DIP Facility pursuant to § 364(c) if it demonstrates that (a) it cannot obtain credit unencumbered or without superpriority status, (b) the DIP Facility is necessary to preserve the assets of their estates, and (c) the terms of the DIP Facility are fair, reasonable and adequate given the circumstances of the Debtors, as Borrower, and the proposed lenders. *See In re Crouse Group, Inc.*, 71 B.R. 544, 549-50 (Bankr. E.D. Pa. 1987); *In re Aqua Assocs.*, 123 B.R. 192, 195-96 (Bankr. E.D. Pa. 1991).

Against this statutory backdrop, courts will evaluate the facts and circumstances of a debtor’s case and accord significant weight to the necessity for obtaining the financing. *See, e.g., In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 40-41 (Bankr. S.D.N.Y. 1990). Debtors in possession are generally permitted to exercise their business judgment consistent with their fiduciary duties when evaluating the necessity of proposed protections for a party extending credit under § 364 of the Bankruptcy Code. *Id.* at 38.

The Debtors’ decision to move forward with the DIP Facility is a sound exercise of their business judgment following an arm’s-length process and careful evaluation of the available alternatives. Specifically, the Debtors and their advisors determined that postpetition financing will create adequate liquidity necessary for the administration of these chapter 11 cases and to conduct a robust marketing process for the Debtors’ assets. The Debtors negotiated the DIP Credit Agreement and other DIP Financing Agreements with the DIP Lender in good faith, at arm’s length, and with the assistance of their respective advisors, and the Debtors believe that they have obtained

1 the best financing available under the circumstances. Accordingly, the Court should authorize the
2 Debtors' entry into the DIP Financing Agreements, as it is a sound exercise of the Debtors' business
3 judgment.

4 **(i) The Debtors Are Unable to Obtain Unsecured or Junior Secured Credit.**

5 To show that the credit required is not obtainable on an unsecured basis, the Debtors need
6 only demonstrate "by a good faith effort that credit was not available" without the protections
7 afforded to potential lenders by § 364(c) or (d) of the Bankruptcy Code. *Bray v. Shenandoah Fed.*
8 *Sav. & Loan Ass'n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986); *see also Anchor Sav.*
9 *Bank*, 99 B.R. at 120 n.4 (noting that the Debtors satisfied the requirement of § 364(d) by
10 "approach[ing] all lenders reasonably likely to be willing to make a junior or unsecured loan");
11 *Ames*, 115 B.R. at 37-40 (Debtors in possession must show that it has made a reasonable effort to
12 seek other sources of financing under §§ 364(a) and (b) of the Bankruptcy Code). Thus, "[the]
13 statute imposes no duty to seek credit from every possible lender before concluding that such credit
14 is unavailable." *Snowshoe*, 789 F.2d at 1088; *see also In re Sky Valley, Inc.*, 100 B.R. 107,113
15 (Bankr. N.D. Ga. 1998) (finding that "it would be unrealistic and unnecessary to require [the]
16 Debtors] to conduct such an exhaustive search for financing" where the Debtors "suffers some
17 financial stress and has little or no unencumbered property"), *aff'd sub nom., Anchor Sav. Bank*, 99
18 B.R. at 117.

19 As discussed above and in the Cohen Declaration filed in support of this Motion, the majority
20 of the Debtors' assets and gross receivables are subject to the Prepetition Liens asserted by the
21 Prepetition Secured Creditors. Because of the Debtors' prepetition debt, obtaining the financing
22 needed as unsecured debt on an administrative priority basis, or as debt which would be secured
23 solely by liens junior to the liens of the Prepetition Secured Creditors, was not a viable option,
24 especially from a third party without a financial interest in the Debtors to protect. The Debtors thus
25 concluded that adequate alternative financing terms more favorable than those to be provided by the
26 DIP Lender under the DIP Facility are currently unobtainable.

1 **(ii) The DIP Facility Is Fair, Reasonable, and in the Best Interests of the Estate.**

2 The Debtors believes that the terms and conditions of the DIP Facility are fair and
3 reasonable. The DIP Facility is necessary to support the Debtors' ongoing operations pending
4 approval and confirmation of a plan will signal the Debtors' continued strength to compete in the
5 marketplace for new patients. The DIP Facility will also ensure the continued high quality care to
6 the Debtors' patients and payments to critical vendors and suppliers. Furthermore, as is more fully
7 explained in the Cohen Declaration filed in support of this Motion, the Debtors, with Portage Point's
8 assistance, undertook an effort and process to obtain the very best available terms for post-petition
9 financing. Based upon these efforts, the interest rates and fees appear to be consistent with the
10 existing market for debtor in possession loans of this nature. The Debtors believe that the proposed
11 DIP Facility is the best financing available and well within the exercise of sound business judgment.

12 Bankruptcy courts consistently defer to a debtor's business judgment on most business
13 decisions, including the decision to borrow money, unless such decision is arbitrary and capricious.
14 *See Trans World Airlines, Inc. v. Travellers Int'l AG. (In re Trans World Airlines, Inc.)*, 163 B.R.
15 964, 974 (Bankr. D. Del. 1994) (approving a postpetition loan facility because such facility
16 "reflect[cd] sound and prudent business judgment . . . [was] reasonable under the circumstances and
17 in the best interests [of the Debtors] and its creditors"); *In re L.A. Dodgers LLC*, 457 B.R. 308, 313
18 (Bankr. D. Del. 2011) ("[C]ourts will almost always defer to the business judgment of a debtor in the
19 selection of the lender."). In fact, "[m]ore exacting scrutiny [of the Debtors' business decisions]
20 would slow the administration of the Debtors' estate and increase its cost, interfere with the
21 Bankruptcy Code's provision for private control of administration of the estate, and threaten the
22 court's ability to control a case impartially." *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d
23 1303, 1311 (5th Cir. 1985); *see also Simasko Prod.*, 47 B.R. at 449 ("[b]usiness judgments should
24 be left to the board room and not to this Court." (quoting *In re Lifeguard Indus. Inc.*, 37 B.R. 3, 17
25 (Bankr. S.D. Ohio 1983))). The Debtors therefore respectfully submit that the Court should approve
26 the Debtors' decision to accept and enter into the proposed DIP Facility.

Moreover, the Debtors have made a concerted good faith effort to obtain credit on the most favorable terms available. Specifically, prepetition, in connection with the marketing of the Debtors' assets, the Debtors also sought debtor in possession financing from interested parties, none of whom would agree to provide financing on better terms than the proposed DIP Facility. Given the dire circumstances facing the Debtors, the DIP Facility described in this Motion was ultimately determined to provide the requisite liquidity on the most advantageous terms given the circumstances. Absent consent, distracting and costly litigation over the propriety of any priming or pari passu third party debtor in possession financing would likely have ensued, with potentially severe consequences for the Debtors, their estates, and creditors. Against this backdrop, the Debtors carefully evaluated the proposed financing structure from the DIP Lender, engaged in negotiations with the DIP Lender regarding the proposed terms, and eventually agreed to the DIP Lender's proposal as the proposal best suited to the Debtors' needs. The terms and conditions of the DIP Facility were negotiated by the parties (and their legal and financial advisors) in good faith and at arms' length, and, as outlined above, were instituted for the purpose of enabling the Debtors to meet ongoing operational expenses while in chapter 11 and to preserve the going concern status of the Debtors as well as the value of the Prepetition Collateral. Accordingly, the DIP Lender should be provided with the benefit and protection of § 364(c) of the Bankruptcy Code, such that if any of the provisions of the DIP Facility are later modified, vacated, stayed or terminated by subsequent order of this or any other Court, the DIP Lender will be fully protected with respect to any amounts previously disbursed.

VII.

REQUEST FOR AN INTERIM AND FINAL HEARING

Pursuant to Bankruptcy Rule 4001(b)(2), the Debtors respectfully request that the Court set a date for the Interim hearing no later than April 21, 2023 and a Final Hearing 25 days from entry of the Interim Order or May , 2023, whichever is earlier and approve the provisions for notice of the Final Hearing and the objection procedures that are set forth in the Interim Order.

VIII.

EMERGENCY CONSIDERATION

Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the petition date “to the extent that relief is necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003. Additionally, Local Bankruptcy Rule 2081-1(a)(9) allows a movant to request the type of relief herein for emergency consideration. For the reasons discussed above, (a) authorizing the Debtors to (i) obtain postpetition financing, (ii) granting adequate protection to prepetition secured creditors, and (iii) granting related relief as requested herein is integral to the Debtors’ ability to transition their operations into these chapter 11 cases. Failure to receive such authorization and other relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors’ operations at this critical juncture. The relief requested is necessary in order for the Debtors to operate their business in the ordinary course and preserve the ongoing value of the Debtors’ operations and maximize the value of their estates for the benefit of all stakeholders. Accordingly, the Debtors submit that they have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 and request that the Court approve the relief requested in this Motion on an emergency basis.

IX.

WAIVER OF BANKRUPTCY RULE 6004(A) AND 6004(H)

To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

X.

RESERVATION OF RIGHTS

Nothing contained herein is intended or shall be construed as: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code, any foreign bankruptcy or insolvency law, or other applicable nonbankruptcy law; (b) a waiver of the Debtors’ or any other party in interest’s right to dispute any claim on any grounds, (c) a promise or

1 requirement to pay any particular claim; (d) an implication or admission that any particular claim is
2 of a type specified or defined in this Motion; (e) a request or authorization to assume, adopt, or reject
3 any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an
4 admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in,
5 or other encumbrance on property of the Debtors' estates; or (g) a waiver of any claims or causes of
6 action which may exist against any entity under the Bankruptcy Code or any other applicable law. If
7 the Court grants the relief sought herein, any payment made pursuant to this Interim Order or Final
8 Order is not intended and should not be construed as an admission as to the validity of any particular
9 claim or a waiver of the Debtors' rights to subsequently dispute such claim.

10 **XI.**

11 **NOTICE**

12 The Debtors will provide notice of this Motion via first class mail, facsimile or email (where
13 available) to: (a) the Office of the U.S. Trustee Region 16; (b) the holders of the 30 largest unsecured
14 claims against the Debtors (on a consolidated basis); (c) U.S. Bank, N.A. and counsel thereto;
15 (d) Hanmi Bank and counsel thereto; (e) the DIP Lender and their counsel, (f) the Internal Revenue
16 Service; (g) the Office of the Attorney General of the State of California; (h) the National
17 Association of Attorneys General; and (i) all other parties who have filed a request for special notice
18 and service of papers with the clerk of this Court.

19 No prior request for the relief sought in this Motion has been made by the Debtors to this
20 Court or any other court.

21 WHEREFORE, the Debtors respectfully request that the Court grant this Motion and enter
22 an interim order in the form attached hereto as **Exhibit A** and a final order in the form to be filed by
23 the Debtors prior to the Final Hearing, granting the relief requested herein and granting such other
24 relief as is just and proper.

1 Dated: April 20, 2023

2 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

3
4 By /s/ Jennifer L. Nassiri
5 Jennifer L. Nassiri

6 JUSTIN R. BERNBROCK
7 JENNIFER L. NASSIRI
8 CATHERINE JUN
9 ROBERT B. McLELLARN
10 ALEXANDRIA G. LATTNER

11 Proposed Attorneys for Debtors and
12 Debtors-in-Possession
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

[Proposed Interim Order]

#

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
JUSTIN R. BERNBROCK (*pro hac vice* admission pending)
CATHERINE JUN (*pro hac vice* admission pending)
ROBERT B. McLELLARN (*pro hac vice* admission pending)
321 North Clark Street, 32nd Floor
Chicago, Illinois 60654
Telephone: 312.499.6300
Facsimile: 312.499.6301
Email: jbernbrock@sheppardmullin.com
cjun@sheppardmullin.com
rmcclarn@sheppardmullin.com

JENNIFER L. NASSIRI, SBN 209796
ALEXANDRIA G. LATTNER, SBN 314855
1901 Avenue of the Stars, Suite 1600
Los Angeles, CA 90067-6055
Telephone: 310.228.3700
Facsimile: 310.228.3701
Email: jnassiri@sheppardmullin.com
alattner@sheppardmullin.com

Proposed Counsel for Debtors and
Debtors-in-Possession

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION**

In re:	Case No. [_____]
BEVERLY COMMUNITY HOSPITAL ASSOCIATION, <i>et al.</i> (A NONPROFIT PUBLIC BENEFIT CORPORATION), ¹	Chapter 11 Cases
Debtors.	Hon. Judge [____]
	INTERIM ORDER: (I) AUTHORIZING THE DEBTORS TO OBTAIN POST-PETITION FINANCING, (II) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED CREDITORS, AND (III) GRANTING RELATED RELIEF, AND, (II) SCHEDULING A FINAL HEARING; AND (III) GRANTING RELATED RELIEF

¹ The Debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number, are: Beverly Community Hospital Association d/b/a Beverly Hospital (6005), Montebello Community Health Services, Inc. (3550), and Beverly Hospital Foundation (9685). The mailing address for the Debtors is 309 W. Beverly Blvd., Montebello, California 90640.

Upon the emergency motion (the “DIP Motion”)², dated April [], 2023, filed by Beverly Community Hospital Association, Montebello Community Health Services, Inc., and Beverly Hospital Foundation (collectively, the “Debtors”), as debtors and debtors in possession in the above captioned chapter 11 cases (collectively, the “Chapter 11 Cases”), pursuant to sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e) and 507 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 4001-2 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Central District of California (the “Local Rules” or “LBR”), for entry of an emergency order (the “Interim Order”) authorizing the Debtors to, among other things: *inter alia*:

(1) authorization for the Debtors to (A) obtain postpetition secured debtor in possession financing in an aggregate principal amount of up to \$13,000,000 (the “DIP Facility”), pursuant to the terms and conditions set forth in the Senior Secured Superpriority Debtor-in-Possession Credit Agreement (substantially in the form attached hereto as Exhibit 1, and as hereafter amended, restated, supplemented, waived, or otherwise modified from time to time, all in accordance with, and subject to, the terms of this Interim Order, the “DIP Credit Agreement”), by and among the Debtors, as borrowers (collectively, the “DIP Borrowers”), and HRE Montebello, LLC, as lender (together with its successor or assigns, the “DIP Lender”), and (B) incur the “Obligations” under the DIP Credit Agreement (such Obligations, as defined in the DIP Credit Agreement, shall be referred to herein as the “DIP Obligations”) (the DIP Credit Agreement and the other “Loan Documents” (as defined in the DIP Credit Agreement), together with any related agreements, documents, guarantees, certificates, instruments, exhibits and schedules, each

² Capitalized terms used herein and not otherwise defined shall have the meaning ascribed in the DIP Motion.

as amended, restated, supplemented, waived, or otherwise modified from time to time, the “DIP Documents”);

(2) authorization for the Debtors to execute and deliver the DIP Documents and to perform all of their respective obligations thereunder and such other and further acts as may be necessary or desirable in connection with the DIP Documents;

(3) the grant of valid, enforceable, non-avoidable, automatically and properly perfected security interests, liens and superpriority claims, including allowed superpriority administrative expense claims pursuant to Section 364(c)(1) of the Bankruptcy Code and liens pursuant to Sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code to the DIP Lender in the DIP Collateral (as defined herein) (and all proceeds thereof), to secure all DIP Obligations, as more fully set forth in this Interim Order;

(4) modification of the automatic stay imposed under Section 362 of the Bankruptcy Code, to the extent necessary, to implement and effectuate the terms and provisions of the DIP Documents and this Interim Order;

(5) the scheduling of an emergency interim hearing (the “Interim Hearing”) on the Motion for this Court to consider entry of this Interim Order; and

(6) the scheduling of a final hearing (the “Final Hearing”) on the Motion for a date that is on or before the 30th day after the Petition Date (as defined herein) for this Court to consider entry of the Final Order, *inter alia*, authorizing the borrowings under the DIP Facility on a final basis.

This Court having found that notice of the interim relief sought in the Motion and the Interim Hearing was provided by the Debtors in accordance with Bankruptcy Rules 2002, 4001 and 9014 and all applicable Local Rules, and having held the Interim Hearing on April __, 2023;

and after considering the Motion, the First Day Declaration, the DIP Documents, and the evidence submitted and the arguments made on the record at the Interim Hearing; and there being no unresolved objections to the interim relief requested in the Motion; and it appearing to this Court that granting the interim relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing, and is otherwise fair and reasonable and in the best interests of the Debtors, their creditors, and their estates, represents a sound exercise of the Debtors' business judgment, and is necessary for the continued operation of the Debtors' businesses; and upon the record of the Chapter 11 Cases and after due deliberation and consideration and for good and sufficient cause appearing therefor:

THIS COURT HEREBY FINDS AND CONCLUDES AS FOLLOWS:

A. Petition Date. On April ___, 2023 (the "Petition Date"), each Debtor filed a voluntary petition with this Court commencing a case under chapter 11 of the Bankruptcy Code. The Debtors are continuing to operate their respective businesses and manage their respective properties as debtors in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. As of the date hereof, no trustee or examiner has been appointed in any of the Chapter 11 Cases.

B. Jurisdiction and Venue. This Court has jurisdiction over these proceedings pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Committee Formation. As of the date hereof, no official committee of unsecured creditors or any other statutory committee (collectively, the "Committee") has been appointed in any of the Chapter 11 Cases.

E. Permitted Prior Liens. As used herein, the term "Permitted Prior Liens" shall mean only the "Permitted Liens" (as defined in the DIP Credit Agreement) that constitute valid,

enforceable, prior, perfected, and non-avoidable Liens as of the Petition Date. Nothing contained herein shall constitute a finding or ruling by this Court that any alleged Permitted Prior Lien is valid, senior, enforceable, prior, perfected, or non-avoidable. Moreover, nothing shall prejudice the rights of any party-in-interest, including, but not limited to, the Debtors, the DIP Lender, or the Committee (if appointed) to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any alleged Prior Permitted Lien. The right of a seller of goods to reclaim or seek a return of such goods (whether under Section 546(c) of the Bankruptcy Code or otherwise) shall not be a Permitted Prior Lien and shall be expressly subject to the DIP Liens.

F. *Need for Postpetition Financing.* Based upon the pleadings and proceedings of record in the Chapter 11 Cases, the Debtors do not have sufficient available sources of working capital and financing to carry on the operation of their businesses without the DIP Facility. The Debtors' ability to maintain business relationships with their vendors and suppliers, to make payroll, to make capital expenditures, to make adequate protection payments, and to satisfy other working capital and operational needs and otherwise finance their operations and conduct their business affairs is essential to the Debtors' continued viability. In addition, based on the record presented at the Interim Hearing: (i) the Debtors' critical need for financing is immediate and the entry of this Interim Order is necessary to avoid immediate and irreparable harm to the Debtors' estates and the value of their assets; (ii) in the absence of the DIP Facility, the continued operation of the Debtors' businesses would not be possible and serious and irreparable harm to the Debtors and their estates would occur; and (iii) the preservation, maintenance and enhancement of the going concern value of the Debtors are of the utmost significance and importance.

G. No Credit Available on More Favorable Terms. Given their current financial condition, financing arrangements and capital structure, the Debtors are unable to obtain sufficient committed financing from sources other than the DIP Lender on terms more favorable than under the DIP Facility and the DIP Documents. The Debtors are not able to obtain unsecured committed financing allowable as an administrative expense under Section 503(b)(1) of the Bankruptcy Code. The Debtors also have been unable to obtain sufficient committed financing (a) having priority over administrative expenses of the kind specified in Sections 503(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, or (c) secured solely by a junior lien on property of the Debtors and their estates that is subject to a lien. Financing on a postpetition basis is unavailable to the Debtors without providing the DIP Lender: (i) the DIP Liens on the DIP Collateral (each as defined herein), as provided herein and in the DIP Documents with the priorities set forth herein; (ii) the DIP Superpriority Claims (as defined herein); and (iii) the other rights, protections and benefits set forth in this Interim Order. After considering all alternatives, the Debtors have concluded, in the exercise of their sound business judgment, that the DIP Facility represents the best financing available to them at this time and is in the best interests of their estates and creditors.

H. Sections 506(c). As a material inducement to the DIP Lender to agree to provide the DIP Facility, the DIP Lender shall receive a waiver of the provisions of Section 506(c) of the Bankruptcy Code.

I. Use of Proceeds of the DIP Facility. As a condition to entry into the DIP Documents and the extension of credit under the DIP Facility as provided in this Interim Order, the DIP Lender requires, and the Debtors have agreed, that proceeds of the DIP Facility shall be used only in a manner consistent with the terms and conditions of the DIP Documents and this

Interim Order and in accordance with the Budget Requirements, solely for the following: (a) funding of working capital, capital expenditures, and other general corporate needs in the ordinary course in compliance with the Budget Requirements (as defined below) and the DIP Documents, (b) the payment of costs of administration of the Chapter 11 Cases in compliance with the Budget Requirements and the DIP Documents, (c) payment of interest, fees, costs and expenses related to the DIP Facility as provided for in this Interim Order and the DIP Documents (including the reasonable and documented fees and expenses of the DIP Lender's professionals and advisors), (d) payment of such prepetition obligations as permitted under the DIP Documents, consented to by the DIP Lender, and approved by this Court, and (e) payment of such other amounts in compliance with the Budget Requirements and the DIP Documents.

J. Good Faith of the DIP Lender. The DIP Lender has indicated a willingness to provide financing to the Debtors subject to: (i) entry of this Interim Order and the Final Order; (ii) approval of the terms and conditions of the DIP Facility and the DIP Documents; (iii) satisfaction of the closing conditions set forth in the DIP Documents; and (iv) findings by this Court that the DIP Facility is essential to the Debtors' estates, that the DIP Lender is extending credit to the Debtors pursuant to the DIP Documents in good faith, and that the DIP Lender's claims, superpriority claims, security interests and liens and other protections granted pursuant to this Interim Order and the DIP Documents will have the protections provided by Section 364(e) of the Bankruptcy Code. Based upon the pleadings and proceedings of record in the Chapter 11 Cases, (x) the terms and conditions of the DIP Facility 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, are ordinary and appropriate for secured financing to debtors-in-possession, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are

supported by reasonably equivalent value and consideration, (y) the terms and conditions of the DIP Facility were negotiated in good faith and at arms' length among the Debtors and the DIP Lender, with the assistance and counsel of their respective advisors, and (z) any credit extended, loans made, and other financial accommodations extended to the Debtors by the DIP Lender, including, without limitation, pursuant to this Interim Order, have been extended, issued or made, as the case may be, in "good faith" within the meaning of Section 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by Section 364(e) of the Bankruptcy Code, and the DIP Facility, the DIP Liens, and the DIP Superpriority Claims shall be entitled to the full protection of Section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

K. Notice. Notice of the Interim Hearing and the proposed entry of this Interim Order has been provided by the Debtors, whether by facsimile, email, overnight courier, or hand delivery, to: (i) the thirty (30) largest unsecured creditors of the Debtors on a consolidated basis; (ii) the Office of the United States Trustee for the Central District of California (the "U.S. Trustee"); (iii) Bryan Cave Leighton Paisner LLP ("BCLP"), as counsel to the DIP Lender; (iv) the Office of the Attorney General of California; (v) the [Prepetition Secured Creditors]³ and their counsel, (vi) all other parties with liens of record on assets of the Debtors (as disclosed in lien searches completed by the Debtors prior to the Petition Date); and (vii) any other party that has filed a request for notice pursuant to Bankruptcy Rule 2002 or is required to receive notice under Bankruptcy Rules 2002, 4001, or 9014 and any applicable Local Rules. Requisite notice of the Motion and the relief requested thereby has been provided and no other notice need be provided for entry of this Interim Order.

³ NTD: Term defined in the motion to mean the Master Trustee, Indenture Trustees (all U.S. Bank) and Hanmi.

L. Immediate Entry. The Debtors have requested immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2). Absent entry of this Interim Order, the Debtors' businesses, properties and estates will be immediately and irreparably harmed. This Court concludes that entry of this Interim Order is in the best interests of the Debtors' respective estates and creditors as its implementation will, among other things, enhance the Debtors' prospects for their successful reorganization.

Based on the foregoing finding and conclusions, the DIP Motion, the First Day Declaration, and the record made before this Court at the Interim Hearing, and good and sufficient cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Approval of Interim Order. The Motion is approved, on an interim basis, on the terms and conditions set forth in this Interim Order. Any objections to the interim relief requested in the Motion that have not previously been withdrawn, waived, settled, or resolved, and all reservations of rights included therein, are hereby denied with prejudice and overruled on the merits. This Interim Order shall become effective immediately upon its entry.

2. Approval of DIP Documents; Authority Thereunder. The DIP Facility is hereby approved. The Debtors are hereby authorized to (a) execute and deliver the DIP Documents (including the DIP Credit Agreement) and such additional documents, instruments, certificates, and agreements as may be required or reasonably requested by the DIP Lender to implement the terms or effectuate the purposes of this Interim Order and the DIP Documents, (b) incur and perform the DIP Obligations in accordance with, and subject to, the terms of this Interim Order and the DIP Documents, and (c) following entry of the Interim Order and the occurrence of the Closing Date, request Advances up to the Interim Availability Amount.

3. Validity of DIP Documents and DIP Obligations. Upon execution and delivery, each of the DIP Documents shall constitute and evidence (and shall be deemed to be) the legal, valid, and binding obligation of the Debtors, enforceable against the Debtors, their estates and any successors thereto, including any trustee appointed in the Chapter 11 Cases or in any case under Chapter 7 of the Bankruptcy Code upon the conversion of any of the Chapter 11 Cases (collectively, the “Successor Cases”). Loans and advances made under the DIP Facility (the “DIP Loans”) will fund the Debtors’ working capital and general corporate needs in the ordinary course of business and to pay such other amounts as are required or permitted to be paid pursuant to the DIP Credit Agreement, this Interim Order and any other orders of this Court, in each case to the extent permitted under the DIP Credit Agreement and in compliance with the Budget Requirements. No DIP Obligations or any other obligation, payment, transfer, or grant of security under the DIP Documents or this Interim Order shall be stayed, restrained, voided, voidable, or recoverable under the Bankruptcy Code or under any applicable non-bankruptcy law, or subject to any avoidance, defense, reduction, setoff, recoupment, counterclaim, recharacterization, subordination, cross-claim, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity.

4. Authorization to Borrow. Subject to the terms and conditions of this Interim Order and the DIP Documents and in compliance with the Budget Requirements, upon entry of this Interim Order and through the earliest to occur of (a) the entry of the Final Order, and (b) the Termination Date (as defined herein), the DIP Borrowers are authorized to request Advances up to an aggregate outstanding principal amount of \$6,000,000 (which includes payment of the Loan Fee to DIP Lender, as defined in the DIP Credit Agreement) (the “Interim Availability Amount”). The DIP Lender shall have no obligation to make a DIP Loan unless all of the conditions precedent

to the making of such DIP Loan under the DIP Documents and this Interim Order have been (x) satisfied in full or (y) waived by the DIP Lender in its sole and absolute discretion.

5. Authorization to Use Cash Collateral. Subject to the terms and conditions of this Interim Order and the DIP Documents and in compliance with the Budget Requirements, the Debtors are authorized to use all DIP Collateral constituting “cash collateral,” as defined in Section 363(a) of the Bankruptcy Code (the “DIP Cash Collateral”) in compliance with the DIP Documents and this Interim Order until the Termination Date (as defined below), and all authority to use DIP Cash Collateral shall terminate automatically upon the Termination Date. For purposes of clarity, the DIP Cash Collateral shall include all rent, lease payments, fees, and all other cash generated from the leasing and operations of the DIP Collateral. The Debtors are permitted to continue to use DIP Cash Collateral during the pendency of any Remedies Notice Period (as defined below) in accordance with the Budget Requirements.

6. Use of Proceeds and Cash Collateral; Segregation; No Re-Borrowing.

(a) The Debtors shall segregate and deposit into the Clearing Account (as defined in the DIP Loan Agreement) all DIP Cash Collateral, and shall segregate and deposit into the Security Deposit Account (as defined in the DIP Loan Agreement) all tenant security deposits. The DIP Lender shall have a continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected first-priority security interest in the Clearing Account and Security Deposit Account and all amounts on deposit in the Clearing Account and Security Deposit Account.

(b) Notwithstanding anything to the contrary in any of the first-day orders, and after the entry of this Interim Order, the Debtors shall use proceeds of the DIP Facility and DIP Cash Collateral only for the purposes permitted by this Interim Order and the DIP

Documents and in compliance with the Budget Requirements. The DIP Liens shall continue to attach to the DIP Cash Collateral irrespective of the commingling of DIP Cash Collateral with other cash of the Debtors. Any failure by the Debtors on or after the Petition Date to comply with the segregation requirements of Section 363(c)(4) of the Bankruptcy Code in respect of any DIP Cash Collateral shall not be used as a basis to challenge the extent, validity, enforceability or perfected status of the DIP Liens on any DIP Cash Collateral.

(c) The DIP Loan is a term loan (not a revolving loan), and once Advances have been made to Debtors, Loan Availability under the DIP Loan shall be permanently reduced by the amounts of such Advances. The Debtors may not re-borrow any amounts Advanced under the DIP Facility after such amounts have been repaid to Lender.

7. Approved Budget.

(a) General. Except as otherwise provided herein or approved by the DIP Lender, proceeds of the DIP Facility shall be used only in compliance with the Budget Requirements.

(b) Initial Budget. Attached as Exhibit 2 hereto and incorporated by reference herein is a cash flow forecast covering the 9-week period commencing with the week in which the Petition Date occurs, depicting, on a weekly and line item basis, (i) projected cash receipts, (ii) projected disbursements (including ordinary course operating expenses, bankruptcy-related expenses (including professional fees of the Debtors' professionals and advisors), and any other fees and expenses relating to the DIP Documents), (iii) net cash flow, and (iv) the other items set forth therein and other information reasonably requested by the DIP Lender for such 9-week period, in form and substance satisfactory to the DIP

Lender in its sole discretion (the “Initial Budget”). Upon entry of this Interim Order, the Initial Budget shall be deemed the “Approved Budget.”⁴

(c) Updated Budget. No later than 5:00 p.m. prevailing Eastern Time on the first Wednesday of each month after the Petition Date, the Debtors shall deliver by email (or other electronic means) to the DIP Lender an update of the latest Approved Budget covering the 9-week period commencing with the week in which the Debtors deliver such update, which update shall be consistent with the form and level of detail set forth in the latest Approved Budget and satisfactory in form and substance to the DIP Lender in its sole discretion (each such update, an “Updated Budget”); provided that the Debtors shall comply with the requirements set forth in the DIP Credit Agreement with respect to the timing and content of each Updated Budget. The Updated Budget shall become the Approved Budget (and replace any prior Approved Budgets) only under the circumstances described in the DIP Credit Agreement.

(d) Variance Reporting. The Debtors shall deliver to the DIP Lender Variance Reports and Compliance Certificates (as defined in the DIP Credit Agreement) in accordance with the terms and on the dates set forth in the DIP Credit Agreement. From time to time upon reasonable request of the DIP Lender, the Debtors and their advisors shall participate in status calls with the DIP Lender and its professionals and advisors (but in no event less than on a bi-weekly basis), to discuss the financial operations and performance of the Debtors’ business and such other matters relating to the Debtors as the DIP Lender (or its agents or advisors) shall reasonably request.

⁴ [The Initial Budget attached to this Interim Order as Exhibit 2 has been approved by the DIP Lender.]

(e) Permitted Variances. (i) Actual Cash Receipts during any Applicable Measurement Period (as defined in the DIP Credit Agreement) shall not be less than 85% of the Budgeted Cash Receipts (as defined in the DIP Credit Agreement) for such Applicable Measurement Period, and (ii) the Actual Disbursement Amount (as defined in the DIP Credit Agreement) on a total-disbursements basis shall not exceed 115% of the Budgeted Disbursement Amount (as defined in the DIP Credit Agreement) for such Applicable Measurement Period (on a total-disbursements basis). No professional fees disbursed to Professional Persons (each as defined below) under the Approved Budget shall exceed the line-item budgeted amounts for such Professional Persons for any applicable calendar week when budgeted in the Approved Budget. All estimated fees, costs and expenses payable for DIP Fees and Lender Expenses budgeted under the Approved Budget shall be timely disbursed weekly when budgeted in the Approved Budget, and such payments shall in no way modify, limit, or cap the DIP Lender's right to timely receive DIP Fees and Lender Expenses under Section 9 hereof.

8. Budget Compliance. The Debtors shall at all times comply with the Approved Budget (subject to the Permitted Variances) and all other budget conditions, requirements, and limitations set forth in this Interim Order and in the DIP Documents (collectively, the "Budget Requirements"). The Debtors shall provide all reports and other documents and information required in the DIP Documents or reasonably requested by the DIP Lender, and the Debtors' failure to comply with the Budget Requirements or to provide the reports and other documents and information required in the DIP Documents or reasonably requested by the DIP Lender shall constitute an Event of Default under the DIP Credit Agreement.

9. Payment of DIP Fees and Expenses. The Debtors are hereby authorized and directed to pay weekly when budgeted in the Approved Budget and any other times upon demand all Lender Expenses (as defined in the DIP Credit Agreement) and all other fees, costs, expenses, premiums and other amounts payable under the terms of the DIP Documents, including, without limitation, the reasonable and documented prepetition and postpetition fees and out-of-pocket costs and expenses of BCLP and any other counsel, appraisers, advisors, professionals and/or consultants retained in connection with advising the DIP Lender. Payment of such amounts shall not be subject to Court approval or U.S. Trustee fee guidelines or subject to the provisions of Sections 327, 328, 329, 330 or 331 of the Bankruptcy Code, and no recipient of any such payment shall be required to file with respect thereto any interim or final fee application with this Court. Any professional of the DIP Lender that is seeking payment of fees and expenses from the Debtors shall provide summary copies of its invoices (which shall not be required to contain time entries and which may be redacted or modified to the extent necessary to delete any information subject to attorney-client privilege, any information constituting attorney work product, or any other confidential information) via email (or other electronic means) to the Debtors, the U.S. Trustee, and the Committee (if appointed). The Debtors shall pay the full amount invoiced within ten (10) calendar days (the “Review Period”), any amounts not already paid under the Approved Budget after receipt of the applicable invoice, regardless of whether such amounts are in excess of the amounts set forth in the Approved Budget. In the event that the U.S. Trustee or counsel to the Committee (if any) raises an objection with respect to any invoice during the applicable Review Period (which objection must be in a writing delivered by email (or other electronic means) to the relevant professional that states with particularity the fees and/or expenses being objected to and the grounds therefor) and the parties are unable to fully resolve such objection, this Court shall

hear and determine such dispute, provided that neither the raising of an objection to an invoice nor the inability of the parties to fully resolve such objection shall delay payment of such invoice, and the relevant professional shall only be required to disgorge amounts objected to upon being so ordered, pursuant to a final order of this Court. All unpaid Lender Expenses and other unpaid fees, costs, expenses and other amounts owed or payable to the DIP Lender shall be secured by the DIP Collateral and afforded all of the priorities and protections afforded to the DIP Obligations under this Interim Order and the DIP Documents. Any and all fees, costs, and expenses paid prior to the Petition Date by any of the Debtors to the DIP Lender in connection with or with respect to the DIP Facility are hereby approved in full and shall not be subject to avoidance, disgorgement, or any similar form of recovery by the Debtors or any other person.

10. Indemnification. The Debtors shall indemnify and hold harmless the DIP Lender in accordance with the terms and conditions contained in the DIP Credit Agreement.

11. DIP Superpriority Claims. Subject to the Carve Out (as defined below) and *pari passu* with any Permitted Superpriority Claim (as defined below), immediately upon and effective as of entry of this Interim Order, pursuant to Section 364(c)(1) of the Bankruptcy Code, the DIP Obligations shall constitute allowed superpriority administrative expense claims against each Debtor, on a joint and several basis (the “DIP Superpriority Claims”), senior to and with priority in payment over any and all administrative expenses and any other claims against the Debtors or their estates in the Chapter 11 Cases or any Successor Cases, at any time existing or arising, of any kind or nature whatsoever, including, without limitation, the kinds specified in or ordered pursuant to any provision of the Bankruptcy Code, including, but not limited to, Sections 105, 326, 328, 330, 331, 361, 364, 365, 503(b), 506(c) (subject to and upon entry of the Final Order), 507(a), 507(b), 546(c), 726, 1113 and 1114 of the Bankruptcy Code or otherwise, including those resulting

from the conversion of any of the Chapter 11 Cases pursuant to Section 1112 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment. The DIP Superpriority Claims shall, for purposes of Section 1129(a)(9)(A) of the Bankruptcy Code, be considered an administrative expense allowed under Section 503(b) of the Bankruptcy Code, shall be against each Debtor on a joint and several basis, and shall be payable from and have recourse to all DIP Collateral. Other than with respect to the Carve-Out and any Permitted Superpriority Claim, the DIP Superpriority Claims shall not be or be made junior to or *pari passu* with any claim heretofore or hereinafter granted or created in any of the Chapter 11 Cases or any Successor Cases and shall be valid and enforceable against the Debtors, their estates and any successors thereto, including, without limitation, any trustee appointed in any of the Chapter 11 Cases or any Successor Cases until such time as the DIP Obligations are paid in full. As used herein, the term “Permitted Superpriority Claim” means any superpriority administrative expense claim provided to any Prepetition Secured Creditors or to any lender that makes loans to any Debtor pursuant to Section 364 either on an unsecured basis or secured by collateral that is not subject to the DIP Liens (defined below). For avoidance of doubt, any Permitted Superpriority Claim shall not attach to or otherwise encumber the DIP Liens (defined below) or the DIP Collateral (defined below).

12. DIP Liens.

(a) Effective as of entry of this Interim Order, the DIP Lender is granted continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected first priority security interests in and liens on (collectively, the “DIP Liens”) the property identified as “Collateral” in the DIP Loan Agreement (the “DIP Collateral”) as

collateral security for the prompt and complete performance and payment when due (whether at the stated maturity, by acceleration, or otherwise) of the DIP Obligations.

(b) The prepetition and post-petition lien(s) and security interest(s) granted to Prepetition Secured Creditors do not extend to include the DIP Collateral (including the DIP Cash Collateral) and therefore shall not attach to or otherwise encumber the DIP Collateral or the DIP Cash Collateral or affect the DIP Liens in any way. No liens, including any adequate protection liens, provided to Prepetition Secured Creditors shall attach to or otherwise encumber the DIP Collateral or the DIP Cash Collateral.

(c) To the fullest extent permitted by the Bankruptcy Code or applicable law, any provision of any law, rule, regulation, lease, loan document, easement, use agreement, license, contract, organizational document, or other instrument or agreement that restricts the ability of any of the Debtors to pledge, grant, mortgage, sell, assign, or otherwise transfer any fee or leasehold interest in (or the proceeds thereof) the DIP Collateral (or requires the consent of or the payment of any fees or obligations to any entity in order for any of the Debtors to take such actions) shall have no force or effect with respect to the DIP Liens on such fee or leasehold interests or other DIP Collateral (or the proceeds of any assignment and/or sale thereof).

(d) The DIP Collateral does not include any real property and other assets that are used by the hospital in its operations as a health facility (as such term is defined under Cal. Health & Safety Code § 1250) or other facilities that provide similar health care (as defined under Cal. Code Regs. Tit.11, § 999.5), and therefore any sale, foreclosure, or other disposition of the DIP Collateral, either to a for-profit entity or non-profit entity, shall not require the consent of the Attorney General of the State of California under Cal. Corp.

Code § 5914 or § 5920. Further, service of this Interim Order shall be deemed written notice to the Attorney General under Cal. Corp. Code § 5913 of Debtors' intention to sell, lease, convey, exchange, transfer or otherwise dispose of all or substantially all of the DIP Collateral to either a non-profit or a for-profit entity, and no further notice to, or consent or approval by, the Attorney General shall be required.

13. Priority of DIP Liens.

(a) Effective as of entry of this Interim Order, the DIP Liens shall constitute continuing, valid, binding, enforceable, non-avoidable, automatically and properly perfected security interests in and liens on in the DIP Collateral as follows:

(i) pursuant to Section 364(c)(2) of the Bankruptcy Code, valid, binding, continuing, enforceable, non-avoidable, automatically and properly perfected first priority liens on and security interests in all DIP Collateral that is not otherwise subject to any Permitted Prior Liens; and

(ii) pursuant to Section 364(c)(3) of the Bankruptcy Code, valid, binding, continuing, enforceable, non-avoidable, automatically and properly perfected junior liens on and security interests in all DIP Collateral that is subject to any Permitted Prior Liens, which junior liens and security interests in favor of the DIP Lender shall be subject only to any such Permitted Prior Liens.

(b) Except as expressly set forth herein, the DIP Liens and the DIP Superpriority Claims: (i) shall not be or be made junior to or *pari passu* with (A) any lien, security interest or claim heretofore or hereinafter granted in the Chapter 11 Cases or any Successor Cases, and shall be valid and enforceable against the Debtors, their estates, any trustee or any other estate representative appointed or elected in the Chapter 11 Cases or any Successor Cases and/or upon the dismissal of any of the Chapter 11 Cases or any Successor Cases, (B) any lien or interest that is avoided and preserved for the benefit of the Debtors and their estates under Section 551 of the Bankruptcy Code or otherwise, and

(C) any intercompany or affiliate lien or claim of the Debtors; and (ii) shall not be subject to Sections 510, 549, or 550 of the Bankruptcy Code.

(c) Notwithstanding anything contained in this Interim Order or any other order of this Court to the contrary, the DIP Liens shall constitute first priority liens on and security interests in all DIP Cash Collateral.

14. Professional Fees; Carve Out.

(a) No Direct Obligation To Pay Allowed Professional Fees. The DIP Lender shall not be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with the Chapter 11 Cases or any Successor Cases. Nothing herein or otherwise shall be construed to obligate the DIP Lender, in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

(b) Carve Out. “Carve Out” means the following expenses: (i) all fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930(a) (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses incurred by a Trustee under section 726(b) of the Bankruptcy Code in an amount not exceed \$50,000 (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all (A) unpaid fees and expenses (including any restructuring, sale, success, or other transaction fee of any investment bankers or financial advisors of the Debtors (the “Allowed Debtor Professional Fees”) incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code

(collectively, the “Debtor Professionals”) and (B) unpaid fees and expenses (the “Allowed Committee Professional Fees” and together with the Allowed Debtor Professional Fees, collectively, the “Allowed Professional Fees”) incurred by persons or firms retained by any statutory committees appointed in the Chapter 11 Cases (each, a “Committee”) pursuant to section 328 or 1103 of the Bankruptcy Code (the “Committee Professionals” and, together with the Debtor Professionals, the “Professional Persons”) at any time before or on the first day following delivery by the DIP Lender of a Carve Out Trigger Notice (as defined below), whether allowed by the Bankruptcy Court prior to or after delivery of a Carve Out Trigger Notice (these clauses (i) through (iii), the “Pre-Carve Out Trigger Amounts”); and (iv) Allowed Professional Fees not to exceed \$750,000, plus (without duplication) any restructuring, sale, success or other transaction fee of any investment bankers or financial advisors of the Debtors, incurred after the first day following delivery by the DIP Lender of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the “Post-Carve Out Trigger Notice Cap,” and together with the Pre-Carve Out Trigger Amounts, the “Carve Out Amount”). For purposes of the foregoing, “Carve Out Trigger Notice” shall mean a written notice delivered by email (or other electronic means) by the DIP Lender to the Debtors, their lead restructuring counsel, the United States Trustee, and counsel to the Committee (if any), which notice may be delivered following the occurrence and during the continuation of an Event of Default and acceleration of the DIP Obligations under the DIP Facility, stating that the Post-Carve Out Trigger Notice Cap has been invoked.

(c) Carve Out Funded Reserve. For the period prior to the delivery of the Carve Out Trigger Notice, on a weekly basis, the Debtors shall fund from the DIP Facility or cash on hand into a segregated account (the “Funded Reserve Account”) held by [Western Alliance Bank] in trust for the benefit of Professional Persons the amounts set forth in the Approved Budget for Professional Persons. The Debtors shall use funds held in the Funded Reserve Account exclusively to pay Allowed Professional Fees and other obligations included within the Carve Out as they become allowed and payable pursuant to the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any interim or final orders of the Bankruptcy Court; provided that when all Allowed Professional Fees have been paid in full (regardless of when such Allowed Professional Fees are allowed by the Bankruptcy Court), any funds remaining in the Funded Reserve Account shall revert to the DIP Lender for the benefit of the DIP Lenders. Funds transferred to the Funded Reserve Account shall be subject to the DIP Liens, DIP Superpriority Claims, Adequate Protection Liens, and Adequate Protection Claims granted hereunder solely to the extent of such reversionary interest; provided, that, for the avoidance of doubt, such liens and claims shall be subject in all respects to the Carve Out. For avoidance of doubt, the Carve-Out shall be limited to the Funded Reserve Account and shall not attach to or otherwise encumber the DIP Collateral, the DIP Cash Collateral, the Clearing Account, the Security Deposit Account, or any proceeds from the sale of any DIP Collateral until such time as the DIP Obligations have been indefeasibly paid in full, in cash, and all Commitments have been terminated.

(d) Carve Out Funding. Notwithstanding anything in the DIP Credit Agreement to the contrary, on the day on which a Carve Out Trigger Notice is validly

delivered (the “Carve Out Trigger Notice Date”), the Carve Out Trigger Notice shall constitute a demand to the Debtors to utilize all cash on hand (excluding DIP Cash Collateral and cash held in the Clearing Account or Security Deposit Account or otherwise consisting of tenant security deposits) as of such date and any available cash thereafter held by any Debtor to first pay all DIP Fees and Lender Expenses payable under the Approved Budget through and including the week of the Carve Out Trigger Notice Date, then to fund to the Funded Reserve Account an amount equal to the then-unpaid amounts of the Allowed Professional Fees plus reasonably estimated fees that have accrued but are not yet allowed for the period through and including the Carve Out Trigger Notice Date. All funds in the Funded Reserve Account shall be used to pay the Pre-Carve Out Trigger Amounts, but not, for the avoidance of doubt, the Post-Carve Out Trigger Notice Cap, until paid in full, and then, to pay the obligations set forth in the Post-Carve Out Trigger Notice Cap, and then, to the extent the Funded Reserve Account has not been reduced to zero, to pay the DIP Lender for the benefit of the DIP Lenders, unless the DIP Obligations have been indefeasibly paid in full, in cash, and all Commitments have been terminated, in which case any such excess shall be paid to the Prepetition Secured Parties in accordance with their rights and priorities as of the Petition Date. Notwithstanding anything to the contrary in the DIP Documents or the Interim Order, following delivery of a Carve Out Trigger Notice, the DIP Lender shall not sweep or foreclose on cash of the Debtors (excluding DIP Cash Collateral and cash held in the Clearing Account or Security Deposit Account or otherwise consisting of tenant security deposits) until the Funded Reserve Account has been fully funded, but shall have a security interest in any residual interest of the Debtors in the Funded Reserve Account, with any excess paid to the DIP

Lender for application in accordance with the DIP Documents. Further, notwithstanding anything to the contrary in the Interim Order, (i) disbursements by the Debtors from the Funded Reserve Account shall not constitute DIP Loans or increase or reduce the DIP Obligations and (ii) the failure of the Funded Reserve Account to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve Out. For the avoidance of doubt and notwithstanding anything to the contrary in the Interim Order, the DIP Facility, or the Prepetition Loan Documents, the Carve Out shall be senior to all DIP Superpriority Claims.

(e) Notwithstanding anything to the contrary in the DIP Documents or the DIP Orders or any other order of the Bankruptcy Court, the Funded Reserve Account and the amounts on deposit in the Funded Reserve Account shall be available and used only to satisfy obligations of Professionals Persons benefitting from the Carve Out, and the other obligations that are a part of the Carve Out. The failure of the Funded Reserve Account to satisfy Professional Fees in full shall not affect the priority of the Carve Out; provided that, to the extent that the Funded Reserve Account is actually funded, the Carve Out shall be reduced by such funded amount dollar-for-dollar. In no way shall the Approved Budget, Carve Out, Post-Carve Out Trigger Notice Cap, Funded Reserve Account, or any of the terms of the Interim Order be construed as a cap or limitation on the amount of the Debtor Professional fees due and payable by the Debtors or that may be allowed by the Court at any time (whether by interim order, final order, or otherwise). Any payment or reimbursement made prior to the occurrence of the Carve Out Trigger Notice Date in respect of any Allowed Professional Fees shall not reduce the Post-Carve Out Trigger Notice Cap.

(f) Objection Rights. Nothing contained herein is intended to constitute, nor shall be construed as consent to, the allowance of any Professional Person's fees, costs or expenses by any party and shall not affect the right of the Debtors, the DIP Lender, or any other party-in-interest to object to the allowance and/or payment of any such amounts incurred or requested.

(g) In the event that Debtors agree to a carve out or carve out funded reserve with the Prepetition Secured Creditors that differs from the Carve Out and/or Carve Out Funded Reserve as set forth hereunder, the DIP Lender shall have the option at its sole discretion to replace the Carve Out and Carve Out Funded Reserve set forth herein with such alternative provisions *mutatis mutandis*.

15. Limitation on Use of DIP Facility Proceeds. Notwithstanding anything herein to the contrary, no portion of the DIP Facility or the DIP Collateral (or the proceeds of any of the foregoing) shall include, apply to, be available for, or be used for payment of any fees, costs or expenses incurred by any party, including the Debtors or the Committee, in connection with any of the following: (a) investigation (including by way of examinations or discovery proceedings), preparation for, initiation, assertion, joining, commencement, support or prosecution of any claims, counter-claims, actions, causes of action, proceedings, adversary proceedings, applications, motions, objections, defenses, or other contested matters against the DIP Lender or any of its successors, assigns, affiliates, parents, subsidiaries, partners, controlling persons, representatives, agents, attorneys, advisors, financial advisors, consultants, professionals, officers, directors, members, managers, shareholders, and employees, past, present and future, and their respective heirs, predecessors, successors and assigns, in each case in their respective capacities as such and with respect to any transaction, occurrence, omission, action or other matter (each, a "Secured

Party Claim”), including, without limitation, (i) investigating or challenging in any way the DIP Obligations, the DIP Documents, the DIP Liens, the DIP Superpriority Claims, or any other security interests, liens, or claims of the DIP Lender (including with respect to the validity, enforceability, priority, extent, nature, or amount of any of the foregoing or any defense, counterclaim, or offset to any of the foregoing), or (ii) investigating or asserting any action seeking to invalidate, modify, set aside, recharacterize, avoid, or subordinate, in whole or in part, the DIP Obligations; (b) the assertion of any claims or causes of action against the DIP Lender, including, without limitation, claims or actions to prevent, hinder or delay the DIP Lender’s enforcement or realization on the DIP Collateral in accordance with this Interim Order, the Final Order, or the DIP Documents, as applicable; (c) seeking to amend or modify any of the rights, remedies, priorities, privileges, protections and benefits granted to the DIP Lender under this Interim Order, the Final Order, or the DIP Documents; (d) payment of any amount on account of any claims arising prior to the Petition Date unless such payments are (i) in accordance with the DIP Credit Agreement, and (ii) approved by order of this Court; or (e) any purpose that is prohibited under the Bankruptcy Code.

16. Section 506(c) Waiver. The Debtors irrevocably waive and are prohibited from asserting any surcharge claim, whether under Sections 105(a) or 506(c) of the Bankruptcy Code or otherwise, for any costs and expenses incurred in connection with the preservation, protection or enhancement of, or realization by the DIP Lender upon, the DIP Collateral, and no costs or expenses of administration that have been or may be incurred in any of the Chapter 11 Cases or any Successor Cases at any time shall be charged against the DIP Lender any of its claims or liens (including any claims or liens granted pursuant to this Interim Order) or the DIP Collateral pursuant to Sections 105(a) or 506(c) of the Bankruptcy Code or otherwise.

17. No Marshaling/Application of Proceeds. The Debtors irrevocably waive and are prohibited from asserting the equitable doctrine of “marshaling” or any other similar doctrine with respect to the DIP Collateral, and in no event shall the DIP Lender be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to the DIP Collateral. All proceeds of the DIP Collateral shall be received and used in accordance with this Interim Order and the DIP Documents.

18. Disposition of Collateral. Except as expressly permitted by the DIP Documents, (a) the Debtors shall not sell, transfer, lease, encumber, or otherwise dispose of any of the DIP Collateral without an order of this Court or the prior written consent of the DIP Lender, and (b) shall apply all net proceeds of the DIP Collateral, whether sold in the ordinary course or otherwise, as provided in the DIP Credit Agreement.

19. Proceeds of Subsequent Financing. If the Debtors, any trustee, any examiner with expanded powers, or any responsible officer subsequently appointed in the Chapter 11 Cases or any Successor Cases shall obtain credit or incur debt in violation of the DIP Documents at any time prior to the indefeasible repayment in full of the DIP Obligations and the termination of DIP Lender’s obligation to extend credit under the DIP Facility (including subsequent to the confirmation of any Chapter 11 plan with respect to any or all of the Debtors and the Debtors’ estates) and such facilities are secured by any DIP Collateral, then all the cash proceeds derived from such credit or debt shall immediately be turned over to the DIP Lender to be applied in accordance with this Interim Order and the DIP Documents.

20. Protections of Rights of DIP Lender.

(a) Unless the DIP Lender shall have provided its prior written consent, or all DIP Obligations have been indefeasibly paid in full in cash and the lending commitments

under the DIP Facility have terminated, there shall not be entered in the Chapter 11 Cases or any Successor Cases any order (including any order confirming a Chapter 11 plan) that authorizes any of the following: (i) the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage, or collateral interest or other lien on all or any portion of the DIP Collateral and/or that is entitled to administrative priority status, in each case that is superior to or *pari passu* with the DIP Liens and/or the DIP Superpriority Claims except as expressly set forth in this Interim Order or the DIP Documents; or (ii) the modification of any of the DIP Lender's rights under this Interim Order or the DIP Documents with respect any DIP Obligations.

(b) The Debtors (and/or their legal and financial advisors in the case of clauses (i) through (iii) below) will (i) reasonably cooperate with, consult with, and provide to the DIP Lender all such information and documents that any or all of the Debtors are obligated (including upon reasonable request by the DIP Lender) to provide under the DIP Documents or the provisions of this Interim Order; (ii) upon reasonable advance notice, during normal business hours, permit the DIP Lender and its advisors to visit and inspect any of the Debtors' business premises and other properties, to examine and make abstracts or copies from any of their respective books, records, reports, and other papers, and to discuss their respective affairs, finances, properties, business operations, and accounts with their respective officers, employees, independent public accountants, and other professional advisors; (iii) permit the DIP Lender to consult with the Debtors' management and advisors on matters concerning the Debtors' businesses, financial condition, operations, and assets; and (iv) upon reasonable advance notice, permit the DIP Lender to conduct, at its discretion and at the Debtors' cost and expense, field audits, collateral

examinations, liquidation valuations, environmental surveys, and appraisals at reasonable times in respect of any or all of the DIP Collateral in accordance with the DIP Documents.

21. Automatic Effectiveness of Liens. The DIP Liens shall become valid, perfected, binding, enforceable, non-avoidable and effective liens by operation of law as of the Petition Date without any further action by the Debtors or the DIP Lender and without the necessity of executing, filing or recording any financing statements, security agreements, mortgages, filings with a governmental unit, or other documents, agreements, or instruments or the taking of any other actions (including, for the avoidance of doubt, taking possession of any collateral) to validate or perfect (in accordance with applicable law) the DIP Liens or to entitle the DIP Lender to the priorities granted herein. If the DIP Lender hereafter requests that the Debtors execute and deliver any financing statements, security agreements, mortgages, filings with a governmental unit, or other documents, agreements, or instruments considered by the DIP Lender to be reasonably necessary or desirable to further evidence the perfection of the DIP Liens, the Debtors are hereby authorized and directed to execute and deliver any such documents, agreements, and instruments to the DIP Lender, and the DIP Lender is hereby authorized to file or record any such documents, agreements or instruments in its discretion without seeking modification of the automatic stay under Section 362 of the Bankruptcy Code, in which event all such documents shall be deemed to have been filed or recorded at the time and on 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. The DIP Lender, in its sole discretion, may file a copy 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, mortgages, notices of liens or similar documents, agreements,

or instruments, and any such filing, recording, or similar office is directed to accept such filing as a financing statement.

22. Modification of Automatic Stay. The automatic stay imposed under Section 362(a) of the Bankruptcy Code is hereby modified as necessary to effectuate all of the terms, rights, benefits, privileges, remedies and provisions of this Interim Order and the DIP Documents (without further notice, motion, application to, order of, or hearing before this Court), including, without limitation, to permit: (a) the Debtors to take all appropriate actions necessary or reasonably requested by the DIP Lender to (i) grant the DIP Liens, the DIP Superpriority Claims, or any other liens or claims set forth herein, and (ii) ensure that the DIP Liens or any other liens granted hereunder are perfected and maintain the priority set forth herein; (b) the Debtors to incur all liabilities and obligations (including the DIP Obligations) to the DIP Lender, as contemplated under this Interim Order and the DIP Documents; (c) the Debtors to pay all amounts required under, in accordance with, and subject to the DIP Documents and this Interim Order; (d) the DIP Lender to retain and apply payments made in accordance with the DIP Documents and this Interim Order; (e) the DIP Lender to exercise, upon the occurrence and during the continuance of any Event of Default under the DIP Documents, all rights and remedies provided for in this Interim Order and the DIP Documents and take any or all actions provided therein, in each case without further notice, motion, application to, order of, or hearing before, this Court; and (f) the implementation of all of the terms, rights, benefits, privileges, remedies, and provisions of this Interim Order and the DIP Documents.

23. Case Milestones. As a condition to the DIP Facility, the Debtor shall comply with each of the Milestones (as defined in the DIP Credit Agreement). For the avoidance of doubt, the failure of the Debtors to comply with any of the Milestones shall, unless waived in writing by the

DIP Lender, (a) constitute an immediate Event of Default under the DIP Credit Agreement and this Interim Order, and (b) subject to paragraph 24 below, permit the DIP Lender to exercise all rights and remedies provided for in this Interim Order and the DIP Documents.

24. Rights and Remedies Upon Event of Default. Immediately upon the occurrence and during the continuation of an Event of Default under any of the DIP Documents, notwithstanding the provisions of Section 362 of the Bankruptcy Code, without any application, motion or notice to, hearing before, or order from this Court, but subject to the terms of this Interim Order, the DIP Lender may declare (any such declaration shall be referred to herein as a “Termination Declaration”) (i) the unpaid principal amount of all outstanding DIP Loans, all interest accrued and unpaid thereon, and all other DIP Obligations to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Debtors, (ii) the termination, reduction or restriction of any further commitment to extend credit to the Debtors to the extent any such commitment remains under the DIP Facility, and (iii) the termination of the DIP Facility and the DIP Documents as to any future liability or obligation of the DIP Lender, but without affecting any of the DIP Liens or the DIP Obligations. The Termination Declaration shall be delivered by email (or other electronic means) to counsel to the Debtors, counsel to the Committee (if appointed), and the U.S. Trustee. The Debtors and/or the Committee (if appointed) shall be entitled to seek an emergency hearing with this Court to be held within five (5) days after the Termination Date (the “Remedies Notice Period”, provided that the sole issue that the Debtors and/or the Committee may bring before this Court at any such emergency hearing is whether an Event of Default has occurred and/or is continuing. The date on which the Remedies Notice Period expires, unless the Court orders otherwise, is referred to herein as the “Termination Date”). Unless this Court orders otherwise,

the automatic stay in the Chapter 11 Cases otherwise applicable to the DIP Lender shall automatically terminate at the end of the Remedies Notice Period without further notice or order, and the DIP Lender shall be entitled (without further order of or application or motion to this Court) to enforce all rights and remedies of the DIP Lender under the DIP Documents, this Interim Order, and applicable law to satisfy the DIP Obligations, the DIP Superpriority Claims, and the DIP Liens. The DIP Liens shall maintain all right, priority, perfection, and other protections granted pursuant to this Interim Order and provided under the DIP Documents until all of the DIP Obligations are indefeasibly paid in cash and discharged, and none of the DIP Liens shall be released until all of the DIP Obligations have been indefeasibly paid in cash and discharged. The Debtors and the Committee (if appointed) shall cooperate with the DIP Lender in the exercise of its rights and remedies (whether against the DIP Collateral or otherwise), shall not challenge or raise any objection to the exercise of such rights and remedies except during the Remedies Notice Period, and shall waive any right to seek relief under the Bankruptcy Code, including under Section 105 thereof, to the extent that such relief would restrict or impair the rights and remedies of the DIP Lender set forth in this Interim Order and the DIP Documents. For the avoidance of doubt, no party in interest shall have the right to contest the enforcement of the rights and remedies set forth in this Interim Order or the DIP Documents on any basis other than an assertion that no Event of Default has occurred and is continuing. This Court shall retain exclusive jurisdiction to hear and resolve any disputes and enter any orders required by the provisions of this paragraph and relating to the application, re-imposition or continuance of the automatic stay as provided hereunder. The delay or failure to exercise rights and remedies under the applicable DIP Documents or this Interim Order by the DIP Lender shall not constitute a waiver of the DIP Lender's rights hereunder, thereunder or otherwise, unless such waiver is pursuant to a written

instrument executed in accordance with the terms of the DIP Documents and this Interim Order, as applicable.

25. Maintenance of DIP Collateral. Until the indefeasible payment in full or otherwise acceptable satisfaction of all DIP Obligations and the termination of the DIP Lender's obligation to extend credit under the DIP Facility, the Debtors shall (x) insure the DIP Collateral as required under the DIP Documents, (y) conduct all business activities required to manage the rental properties, including, but not limited to, collecting rents, timely paying real estate taxes when due, maintaining the properties and premises in the condition and in the manner set forth and required by the DIP Documents, and (z) maintain books, records, and accounts to the extent and as required by the DIP Documents.

26. Binding Effect. Immediately upon entry, the terms and provisions of this Interim Order shall inure to the benefit of the Debtors, the DIP Lender, and each of their respective successors and assigns, and shall be binding upon the Debtors, the DIP Lender, the Committee (if appointed), and any and all other creditors of the Debtors or other parties in interest and their respective successors and assigns, including without limitation, any trustee hereafter appointed for the estate of any of the Debtors, whether in the Chapter 11 Cases or any Successor Cases. Such binding effect is an integral part of this Interim Order.

27. Survival. The terms and provisions of this Interim Order and any actions taken pursuant hereto (including, but not limited to, the granting of the DIP Liens and the DIP Superpriority Claims) shall survive the entry of any order: (a) converting any of the Chapter 11 Cases to a Chapter 7 case; or (b) dismissing any of the Chapter 11 Cases or any Successor Cases, and the terms and provisions of this Interim Order and any actions taken pursuant hereto shall continue in full force and effect notwithstanding the entry of any such order. The terms and

provisions of this Interim Order shall continue in the Chapter 11 Cases and any Successor Cases, and all liens and claims granted pursuant to this Interim Order shall maintain their priority as provided by this Interim Order and the DIP Documents until all of the DIP Obligations are indefeasibly paid in cash and discharged and all commitments to extend credit under the DIP Facility are terminated. If an order dismissing any of the Chapter 11 Cases or any Successor Cases is at any time entered, such order shall provide (in accordance with Sections 105 and 349 of the Bankruptcy Code) that: (a) the DIP Liens and the DIP Superpriority Claims granted to and conferred upon the DIP Lender and the protections afforded to the DIP Lender pursuant to this Interim Order and the DIP Documents shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order until all DIP Obligations shall have been paid and satisfied in full in cash (and that such DIP Liens, DIP Superpriority Claims and other protections shall, notwithstanding such dismissal, remain binding on all interested parties); and (b) to the maximum extent permitted by applicable law, this Court shall retain jurisdiction, notwithstanding such dismissal, for the purpose of enforcing the DIP Liens and the DIP Superpriority Claims.

28. Amendment of DIP Documents. The Debtors and the DIP Lender are hereby authorized (without further notice, motion or application to, order of or hearing before, this Court) to amend, modify, or supplement any of the DIP Documents if such amendment, modification, or supplement is (a) non-material or non-adverse to the Debtor, and (b) in accordance with the terms of the DIP Documents. In the case of a material amendment, modification, or supplement to the DIP Documents that is adverse to the Debtors, the Debtors or the DIP Lender shall provide notice (which may be provided through email) of any such amendment, modification, or supplement to counsel for the Committee (if appointed) and the U.S. Trustee, each of whom shall have five (5) days from the date of such notice to object in writing to such amendment, modification, or

supplement; provided, however, that any forbearance from, or waiver of, a breach by the Debtors of a covenant, representation or any other agreement or a default or an Event of Default, in each case under the DIP Documents, shall not constitute a material amendment, modification or supplement. If no objections are timely received by the Debtors or the DIP Lender, as applicable, during such five (5) day notice period, the Debtors and the DIP Lender are authorized and empowered to implement, in accordance with the terms of the DIP Documents, such material amendment, modification or supplement to the DIP Documents, without further notice, hearing or approval of this Court. Any proposed material amendment, modification, or supplement to the DIP Documents that is subject to a timely filed objection in accordance with this paragraph shall be subject to further order of this Court (which may be sought on an expedited basis).

29. Insurance Policies. Upon entry of this Interim Order, on each insurance policy maintained by the Debtors which insures or consists of DIP Collateral: (i) the DIP Lender shall be, and shall be deemed to be, without any further action by or notice to any person, named as an additional insured; and (ii) the DIP Lender shall be, and shall be deemed to be, without any further action by or notice to any person, named as a loss payee. The Debtors are hereby authorized and, upon the written request of the DIP Lender, shall use commercially reasonable efforts to have the DIP Lender added as an additional insured and loss payee on each insurance policy maintained by the Debtors which in any way relates to the DIP Collateral.

30. Protection Under Section 364(e) of the Bankruptcy Code. The DIP Lender has acted in good faith in connection with this Interim Order and its reliance on this Interim Order is in good faith. Based on the findings set forth in this Interim Order and the record of the Chapter 11 Cases, and in accordance with Section 364(e) of the Bankruptcy Code, if any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated or stayed, such reversal, modification,

vacation or stay shall not affect (a) the validity of any DIP Obligations owing to the DIP Lender, incurred prior to the actual receipt by the DIP Lender of written notice of the effective date of such reversal, modification, vacation or stay, or (b) the validity or enforceability of any DIP Loans or other advances previously made or any claim, lien, security interest or priority authorized or created hereby or pursuant to the DIP Documents with respect to any DIP Obligations owing to the DIP Lender. Notwithstanding any such reversal, modification, vacation or stay, any incurrence of DIP Obligations prior to the actual receipt by the DIP Lender of written notice of the effective date of such reversal, modification, vacation or stay, shall be governed in all respects by the provisions of this Interim Order, and the DIP Lender shall be entitled to all of the rights, remedies, protections and benefits granted under Section 364(e) of the Bankruptcy Code, this Interim Order, and the DIP Documents with respect to the incurrence of DIP Obligations.

31. Sale Process; Credit Bidding.

(a) The Debtors' selection of a broker or investment banker for a sale of any of the DIP Collateral (the "DIP Collateral Broker") shall be subject to the written approval of the DIP Lender, which approval shall not be unreasonably withheld, delayed or denied. The Debtors and the DIP Collateral Broker shall keep the DIP Lender informed on a current basis of the status of all offers received (whether written or oral) for any of the DIP Collateral and shall provide the DIP Lender copies of all such offers within one business day after receipt. Pending completion of a sale of the DIP Collateral, the Debtors (i) shall take all actions necessary to preserve the leases (including the Ground Lease) covering any of the DIP Collateral (including all actions necessary to prevent the deemed rejection of any such leases under Section 365 of the Bankruptcy Code), and (ii) shall take no action

that could reasonably result in the rejection of any of the leases (including the Ground Lease) covering any of the DIP Collateral.

(b) The DIP Lender shall be considered a qualified bidder (whether described as “Qualified Bidder” or similar term or not specifically defined) in connection with any sale of DIP Collateral. The DIP Lender shall have the right to “credit bid”, in full or in part, up to the full amount of the applicable outstanding DIP Obligations in connection with the sale of all or any portion of the DIP Collateral (including without limitation, any sale pursuant to Section 363 of the Bankruptcy Code, any sale included as part of any Chapter 11 plan subject to confirmation under Section 1129(b)(2)(A)(ii) - (iii) of the Bankruptcy Code, or any sale made by a Chapter 7 trustee under Section 725 of the Bankruptcy Code), whether (a) after the occurrence of an Event of Default under the DIP Credit Agreement, or (b) as a bidder in any sale. Auction or other disposition of DIP Collateral conducted in the Chapter 11 Cases. The foregoing rights shall be not be stayed during or otherwise affected by the Remedies Notice Period.

32. Discharge Waiver. The DIP Obligations and the obligations of the Debtors with respect to the liens, claims and adequate protection provided to the DIP Lender under this Interim Order shall survive (and not be discharged by) the entry of an order confirming a Chapter 11 plan in any of the Chapter 11 Cases, notwithstanding the provisions of Section 1141(d) of the Bankruptcy Code, unless such obligations have been indefeasibly paid in full in cash on or before the effective date of the confirmed Chapter 11 plan. The Debtors shall not propose or support any Chapter 11 plan that is not conditioned upon the indefeasible payment in full in cash of all DIP Obligations upon the earlier of the effective date of the confirmed Chapter 11 plan or the Termination Date. In no event shall a Chapter 11 plan alter the terms of repayment of any of the

DIP Obligations from those set forth in the DIP Documents unless agreed to by and among the Debtors and the DIP Lender.

33. 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 other than the DIP Lender.

34. 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 all obligations under this Interim Order and the DIP Documents, including without limitation, the DIP Obligations and the DIP Superpriority Claims in accordance with the terms of this Interim Order and the DIP Documents.

35. Limitations on Liability. In determining to make extensions of credit under the DIP Facility or in exercising any rights or remedies as and when permitted pursuant to this Interim Order, the Final Order, or the DIP Documents, as applicable, the DIP Lender shall not be deemed to be in control of the operations of the Debtors or any affiliate (as defined in Section 101(2) of the Bankruptcy Code) of the Debtors, or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors or any affiliate of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601 *et seq.*, as amended, or any similar federal or state statute). Furthermore, nothing in this Interim Order, the DIP Documents, or any other documents related thereto shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Lender of any liability for any claims arising from the prepetition or postpetition activities of the Debtors or any affiliate of the Debtors, including any and all activities by the Debtors in the operation of their business or the administration of the Chapter 11 Cases.

36. Findings of Fact and Conclusions of Law. This Interim Order constitutes, where applicable, findings of fact and conclusions of law and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry hereof. The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052. To the extent any findings of fact constitute conclusions of law, they are adopted as such. To the extent any conclusions of law constitute findings of fact, they are adopted as such.

37. Entry of this Interim Order; Waiver of Stay. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062 or 9024, any other Bankruptcy Rule or Local Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Interim Order.

38. Choice of Law; Jurisdiction. The DIP Facility and DIP Documents (and the rights and obligations of the parties thereto) provide that they shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York and, to the extent applicable, California law and the Bankruptcy Code. This Court shall have exclusive jurisdiction with respect to any and all disputes or matters under, or arising out of, or in connection with, either the DIP Facility or the DIP Documents.

39. No Modification of Interim 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, without the prior written consent of the DIP Lender: (a) any modification, stay, vacatur, amendment, or extension of this Interim Order; (b) any priority claim for any

administrative expense or unsecured claim against the Debtors (now existing or hereafter arising of any kind or nature whatsoever, including any administrative expense of the kind specified in Sections 503(b), 506(c), 507(a) or 507(b) of the Bankruptcy Code) in any of the Chapter 11 Cases or any Successor Cases, equal or superior to the DIP Superpriority Claims other than the Carve Out and the Permitted Superpriority Claims to the extent permitted under this Interim Order; or (c) any lien on any of the DIP Collateral with priority equal or superior to the DIP Liens, except as specifically provided in the DIP Documents.

40. Controlling Effect of Interim Order. To the extent any provision of this Interim Order conflicts with any provision of the Motion or any DIP Document, the provisions of this Interim Order shall control.

41. Service. Service of this Interim Order and notice of the Final Hearing shall be made upon the parties described in paragraph P above, the Committee (if appointed as of the date hereof), and any person who, as of the date hereof, has filed a notice pursuant to Bankruptcy Rule 2002.

42. Objections. Objections to the entry of the Final Order shall be in writing and shall be filed with the Clerk of this Court, on or before 4:00 p.m. (prevailing Eastern time) on _____, 2023, with a copy served upon: (a) counsel to the Debtors, Sheppard, Mullin, Richter & Hampton LLP, 321 N. Clark Street, 32nd Floor, Chicago, IL 60654 (Attn: Justin R. Bernbrock (jbernbrock@sheppardmullin.com); Catherine Jun (cjun@sheppardmullin.com)); (b) counsel to the DIP Lender, Bryan Cave Leighton Paisner LLP, 161 N. Clark St., #4300, Chicago, Illinois 60601 (Attn: Eric Prezant, Esq.) (email: eric.prezant@bclplaw.com), and 120 Broadway, #300, Santa Monica, California 90401 (Attn: Sharon Weiss) (email: sharon.weiss@bclplaw.com) (c) counsel to be selected by the Committee upon its formation if selected by such date, and (f) the Office of the United States Trustee, [address] (Attn.: _____, Esq.).

43. Final Hearing. A final hearing on the Motion (the “Final Hearing”) shall be heard before this Court on _____, 2023 at _____ a.m. (prevailing Pacific Time) in Courtroom No. _____ at the United States Bankruptcy Court for the Central District of California, [address].

EXHIBIT 1

(DIP Credit Agreement)

**SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION
LOAN AGREEMENT**

By and between

BEVERLY COMMUNITY HOSPITAL ASSOCIATION,
a California nonprofit public benefit corporation,

and

MONTEBELLO COMMUNITY HEALTH SERVICES, INC.,
a California nonprofit public benefit corporation,

together, jointly and severally, **as Borrower,**

and

HRE MONTEBELLO, LLC,
a Delaware limited liability company

as Lender

April __, 2023

Table of Contents

	Page
Section 1 - Definitions.....	2
Section 2 - Warranties and Representations	12
2.1 Due Organization	13
2.2 Power and Authority to Own and Operate; Compliance with Laws	13
2.3 No Untrue Statements	13
2.4 No Pending or Threatened Proceedings.....	13
2.5 Power and Authority to Execute Loan Documents	13
2.6 Consents and Approvals	13
2.7 No Defaults	14
2.8 Orders	14
Section 3 - THE MULTIPLE ADVANCE LOAN	17
3.1 General Terms and Conditions	17
3.2 Advance Procedures; Limit on Advances	18
3.3 Mandatory Prepayments.....	19
3.4 Prepayment.....	20
3.5 Cash Management.	20
Section 4 - Conditions Precedent to Advances	22
4.1 Conditions Precedent to the Closing Date and an Advance of a Loan	22
4.2 Conditions to All Advances	24
Section 5 - SECURITY AND COLLATERAL	27
5.1 Required Documents.....	27
5.2 Grant of Security Interest	27
5.3 Perfection	28
5.4 Superpriority Nature of Obligations and Status of Lender Liens	28
Section 6 - Affirmative Covenants	28
6.1 Payment of Taxes and Claims	28
6.2 Maintenance of Insurance, Financial Records and Corporate Existence	29
6.3 Business Conducted.....	29
6.4 Litigation.....	29

6.5	Taxes	29
6.6	Financial and Business Information.....	29
6.7	Inspections.....	31
6.8	Maintenance of Properties	32
6.9	Material Adverse Developments	32
6.10	Places of Business	32
6.11	Permitted Variances.....	32
6.12	Updates to Approved Budget.....	33
6.13	Milestones	33
6.14	Reports.....	33
6.15	Leases	33
6.16	Ground.....	34
Section 7 - Negative Covenants.....		35
7.1	Transfer; Merger, Consolidation, Dissolution or Liquidation.....	36
7.2	Liens and Encumbrances	36
7.3	Indebtedness	36
7.4	Transactions with Affiliates.....	36
7.5	Guarantees.....	36
7.6	Loans to Other Persons	37
7.7	Reclamation Claims.....	37
7.8	Liens.....	37
Section 8 - Application of Proceeds		37
Section 9 - Events of Default and Remedies.....		38
9.1	Events of Default.....	38
9.2	Advances Optional during Default	40
9.3	Remedies.....	40
Section 10 - Acceptance of Proceeds.....		41
Section 11 - Miscellaneous		41
11.1	Borrower to Pay Fees and Expenses	41
11.2	Lender's Right of Setoff.....	42
11.3	Remedies Cumulative	42
11.4	Relationship of Parties	42
11.5	Choice of Law.....	42

11.6	Notices	44
11.7	Successors and Assigns	45
11.8	Waiver of Marshalling	45
11.9	Indemnity	45
11.10	Additional Assurances	46
11.11	Time of the Essence	46
11.12	Headings Descriptive Only	46
11.13	Counterparts	46
11.14	Entire Agreement; Amendments; Waivers	46
11.15	Recitals Incorporated	46
11.16	Waiver of Jury Trial	46
11.17	No Third-Party Beneficiaries	47
11.18	Provisions Severable	47
11.19	Joint and Several Liability	47
11.20	Conflict with Orders	47

SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT

This SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT (this “Agreement”) is made as of April [], 2023, by and between BEVERLY COMMUNITY HOSPITAL ASSOCIATION, a California nonprofit public benefit corporation, also known as: Beverly Community Hospital Association, a non-profit corporation; Beverly Community Hospital Association, a California Nonprofit Corporation; and Beverly Community Hospital Association dba Beverly Hospital (together with its successors and assigns, “BCHA”), and MONTEBELLO COMMUNITY HEALTH SERVICES, INC., a California nonprofit public benefit corporation, also known as: MONTEBELLO COMMUNITY HEALTH SERVICES, INC., a Calif. Corp.; MONTEBELLO COMMUNITY HEALTH SERVICES, INC.; MONTEBELLO COMMUNITY HEALTH SERVICES, INC., a nonprofit public benefit corporation; Montebello Community Health Services, Inc., a California Nonprofit Corporation; Montebello Community Health Services, Inc., a California Corporation, jointly and severally (together with its successors and assigns, “MCHS,” and together, jointly and severally with BCHA, “Borrower” or “Debtor”), and HRE MONTEBELLO, LLC, a Delaware limited liability company (together with its successors and/or assigns, “Lender”).

RECITALS:

- A. BCHA is the fee simple owner of land generally located at 101 East Beverly Boulevard in the City of Los Montebello (“City”), County of Los Angeles (the “County”), State of California (the “State”), and legally described on Exhibit A attached hereto and incorporated herein by reference (the “BCHA Real Property”). MCHS is (i) the fee simple owner of land generally located at 105, 108, 116, 208-224, and 312-320 West Beverly Boulevard, 117 East Beverly Boulevard, 409 and 413 North Poplar Avenue, 344 North 1st Street, 509-523 North 3rd Street, 1920 West Whittier Boulevard, 100 East Harding, and a stand-alone parking lot located in the City, County and State, and legally described on Exhibit A attached hereto and incorporated herein by reference (the “MCHS Fee Property”), and (ii) owner of a leasehold interest in the BCHA Real Property pursuant to that certain Ground Lease Agreement dated effective as of April 2, 1979 by and between MCHS (as successor-in-interest to Beverly Medical Plaza, Ltd.), as ground lessee, and BCHA, as ground lessor (the “Ground Lease”), as evidenced by that certain Amended and Restated Memorandum of Ground Lease Agreement and Subordination Agreement dated as of April [], 2023 and recorded in the Recorder’s Office, Los Angeles County (“Recorder’s Office”) substantially concurrently herewith (the “Memorandum of Lease”) (the “MCHS Leasehold Property” and, together with the MCHS Fee Property, the “MCHS Property”). The BCHA Real Property and MCHS Property, together with all improvements thereon and appurtenances thereto (as more fully described in the Deed of Trust), shall be collectively referred to herein as the “Real Property.”
- B. On the Petition Date, the Borrower filed a voluntary petition with the Bankruptcy Court initiating the Chapter 11 Case and has continued in the possession of its assets and in the management of its businesses pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

- C. The Borrower has applied to the Lender for a multiple-advance loan in an aggregate principal amount not to exceed \$13,250,000 (subject to the terms and conditions of this Agreement) (the “**Loan**”).
- D. The proceeds of the Loan will be used to fund the working capital requirements of the Borrower during the pendency of the Chapter 11 Case in accordance with the Approved Budget.
- E. The Borrower has agreed to secure the Obligations by granting to the Lender a security interest in and lien on the Real Property and personal property relating thereto (subject to the limitations contained in the Loan Documents and the Orders) and superpriority administrative claims.
- F. Capitalized terms used but not otherwise defined herein have the respective meanings given them in **Section 1** of this Agreement.

In consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged (and these recitals being an integral part of this Agreement), the parties agree as follows:

Section 1 - Definitions

In addition to the terms defined elsewhere in this Agreement, the following definitions shall apply for purposes of this Agreement:

“Advance” and “Advances” have the meaning set forth in Section 3.1(a) of this Agreement.

“Account” has the meaning specified in Article 9 of the UCC, and shall include, without limitation, any right to payment owed to any Person arising out of the sale of goods or services by such Person.

“Accrued Interest” shall have the meaning ascribed to such term in the Loan Note.

“Actual Cash Receipts” means, for any period, the sum of all cash receipts received by the Borrower during such period.

“Actual Disbursement Amount” means, for any period, the sum of all cash expenditures made by the Borrower during such period.

“Advance” means an advance of Loan proceeds to or for the account of a Borrower.

“Advance Date” means a Business Day on which an Advance is made.

“Affiliate” means, when used with respect to any corporation, limited liability company, partnership, joint venture, or other legal entity, any Person who directly or indirectly Controls or is Controlled by or is under common Control with such corporation, limited liability company, partnership, joint venture, or other legal entity.

“AG” has means the Attorney General of the State of California.

“Applicable Measurement Period” means each rolling three week period commencing on the week of the Petition Date and ending on the last date of the most recently ended calendar week.

“Approved Budget” means the cash flow forecast prepared by the Borrower (and approved by the Lender in its sole discretion) in the form of Annex A covering the Nine Week Period depicting, on a weekly and line item basis, (i) projected cash receipts, (ii) projected disbursements (including ordinary course operating expenses, bankruptcy-related expenses (including professional fees of the Borrower’s professionals and advisors and the Committee’s professionals and advisors), and any other fees and expenses relating to the Loan Documents), (iii) net cash flow and (iv) the other items set forth therein and other information reasonably requested by the Lender for such Nine Week Period, in form and substance satisfactory to the Lender in its reasonable discretion, as updated by the Borrower from time to time (subject to the Lender’s approval) in accordance with **Section 6.126.12** of this Agreement.

“Approved Budget Report Date” means Tuesday of each week.

“Assignment of Agreements” means that certain Assignment of Agreements, Permits, Licenses and Approvals, dated as of the date hereof, executed by Borrower in connection with the Loan for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Assignment of Leases” means that certain Assignment of Leases and Rents, dated as of the date hereof, executed by Borrower in connection with the Loan for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Automatic Stay” means the automatic stay provided under Section 362 of the Bankruptcy Code.

“Bankruptcy Code” means Title 11 of the United States Code (11 U.S.C. Section 101 et seq.) as now or hereafter in effect, or any successor thereto.

“Bankruptcy Court” means the United States Bankruptcy Court for the Central District of California, Los Angeles Division.

“Borrower” has the meaning set forth in the preamble to this Agreement.

“Borrowing Certificate” means a certificate signed by a Responsible Officer of the Borrower in substantially the form attached to this Agreement as **Exhibit B**.

“Budget Period” means the period of time covered by the Approved Budget. “Budgeted Cash Receipts” means, for any period, the sum of all budgeted cash receipts described in the Approved Budget under the heading “Cash Receipts” for such period.

“Budgeted Disbursement Amount” means, for any period, the sum of all expenditures described in each line item contained in the Approved Budget under the heading “Total Disbursements” for such period.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the laws of, or are in fact closed in, the State of California.

“Cash Collateral Orders” means (i) [_____], and (ii) any other orders entered by the Bankruptcy Court in respect of the Borrower’s use of cash collateral and satisfactory to the Lender in form and substance.

“Chapter 11 Case” means the Chapter 11 bankruptcy case initiated by the Borrower in the Bankruptcy Court, Case No. 2:23-bk-12361-SK.

“Clearing Account” has the meaning given such term in **Section 3.5** of this Agreement.

“Clearing Bank” has the meaning given such term in **Section 3.5** of this Agreement.

“Closing Date” means the earliest date on which (a) the Interim Order has been entered by the Bankruptcy Court, and (b) all conditions precedent set forth in **Section 4.1** of this Agreement have been satisfied or waived.

“Collateral” means all “Property” (as defined in the Deed of Trust), including, without limitation, the Clearing Account and the Security Deposit Account and the funds therein.

“Committee” means, if appointed, the official committee of unsecured creditors appointed in the Chapter 11 Case.

“Compliance Certificate” means a certificate signed by a Responsible Officer of the Borrower in substantially the form attached to this Agreement as **Exhibit C**, certifying as to whether an Event of Default or Unmatured Event of Default has occurred as of the date of delivery and, if an Event of Default or an Unmatured Event of Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto.

“Control” shall mean the possession, directly or indirectly, of the power to cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, family relationship or otherwise. Controlled and Controlling shall have correlative meaning.

“Cumulative Period” means the period commencing on the first date of the Approved Budget (as updated pursuant to the express terms hereof) and ending on the last date of the week prior to the Approved Budget Report Date.

“Deed of Trust” means, collectively and/or individually, as the context may require: (i) that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement (including Fixture Filing) of even date herewith granted by the BCHA to a trustee for the benefit of the Lender and

encumbering the “Property” (as defined therein) (the “**BCHA Deed of Trust**”), and (ii) that certain Fee and Leasehold Deed of Trust, Assignment of Leases and Rents, Security Agreement (including Fixture Filing) of even date herewith granted by MCHS to a trustee for the benefit of the Lender and encumbering the “Property” (as defined therein) (the “**MCHS Deed of Trust**”).

“Default Interest Rate” shall have the meaning ascribed to such term in the Loan Note.

“Earthquake Insurance Holdback” has the meaning given such term in **Section 3.2(b)** of this Agreement.

“Earthquake Insurance” has the meaning given such term in **Schedule 6.2(a)** of this Agreement.

“Earthquake Insurance Premium” means the amount of the premium required to implement such Earthquake Insurance.

“Earthquake Insurance Requirement” has the meaning given such term in **Section 3.2(b)** of this Agreement.

“Earthquake Insurance Requirement Notice” has the meaning given such term in **Section 3.2(b)** of this Agreement.

“Environmental Indemnity” means that certain Environmental Indemnity, dated as of the date hereof, executed by Borrower in connection with the Loan for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Event of Default” has the meaning given such term in **Section 9** of this Agreement.

“Exit Fee” has the meaning given such term in **Section 3.1(c)** of this Agreement.

“Extension Conditions” means the following conditions, which must be satisfied by Borrower prior to the extension of the term of this Loan to the First Extended Maturity Date or the Second Extended Maturity Date:

(a) If required by Lender in its sole discretion, Borrower shall furnish to Lender with respect to the proposed extension any such endorsement to Lender's Title Policy as Lender may reasonably request showing no additional exceptions to title or survey other than the Permitted Liens. Such Endorsement shall be furnished at Borrower's sole cost and expense;

(b) Payment by Borrower to Lender of the Extension Fee on the effective date of said extension;

(c) Lender shall have received from Borrower written notice of the proposed extension at least thirty (30) days prior to the Initial Maturity Date or First Extended Maturity Date, as applicable;

(d) No Event of Default or Unmatured Event of Default shall exist;

(e) Borrower shall be in full compliance with all the terms, conditions and covenants for the Loan as set forth in the Loan Documents; and

(f) Borrower shall pay all actual third party out of pocket costs and expenses incurred by Lender in connection with any extension, including, without limitation, reasonable attorneys' fees, title costs, appraisal fees, recording charges and other closing fees and costs.

"Extension Fee" means an amount equal to three quarters of one percent (0.75%) of the Loan Commitment.

"Final Order" means the order of the Bankruptcy Court entered in the Chapter 11 Case after a final hearing under Bankruptcy Rule 4001 or such other procedures as approved by the Court, which order shall be substantially on the terms provided in the Interim Order (with such changes thereto that are satisfactory to the Lender) and satisfactory to the Lender in form and substance (together with all extensions, modifications, and amendments thereto, each also satisfactory to the Lender in form and substance), which includes, among other things, authorization, on a final basis, of the Borrower to execute and perform under the terms of this Agreement and the other Loan Documents.

"First Extended Maturity Date" means October [], 2023.

"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 U.S. accounting profession), which are applicable to the circumstances as of the date of determination.

"Governmental Authority" means any federal, state, District of Columbia, county, municipal, national, local or other governmental department, court, commission, board, bureau, agency or instrumentality or political subdivision thereof, or any entity or officer exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court (including without limitation all Medicare or Medicaid programs), whether federal, state or local in nature.

"Ground Lease Estoppel" means that certain Mutual Estoppel Certificate and Agreement executed by Borrowers for the benefit of Lender dated as of the date hereof.

"Hospital" means Beverly Hospital located at 309 West Beverly Boulevard in the Montebello, California, which is subject to License No. 930000389 issued by the State of California Department of Public Health to operate and maintain a general acute care hospital (the "License").

“Indebtedness” of a Person at a particular date shall mean all liabilities and obligations of such Person, including without limitation, those which in accordance with GAAP would be classified upon a balance sheet as liabilities and all other indebtedness, debt and other similar monetary obligations of such Person whether direct or guaranteed, contingent or liquidated, matured or unmatured and all premiums, if any, due at the required prepayment dates of such any indebtedness, and all indebtedness secured by a lien on assets owned by such Person, whether or not such indebtedness actually shall have been created, assumed or incurred by such Person. Any indebtedness of such Person resulting from the acquisition by such Person of any assets subject to any lien shall be deemed, for the purposes hereof, to be the equivalent of the creation, assumption and incurring of the indebtedness secured thereby, whether or not actually so created, assumed or incurred. “Initial Maturity Date” means July __, 2023.

“Interest Rate” shall have the meaning ascribed to such term in the Loan Note.

“Interim Availability Amount” means Six Million Dollars (\$6,000,000.00) (a portion of which shall be applied to the Loan Fee on the Closing Date), as may be increased by any Advances made from the Earthquake Insurance Holdback in accordance with the express terms hereof.

“Interim Availability Period” means the period commencing on the Closing Date and ending on the earlier of (a) the first Business Day after the entry of the Final Order, and (b) the Termination Date.

“Interim Order” means the order of the Bankruptcy Court entered in the Chapter 11 Case after an interim hearing under Bankruptcy Rule 4001 or such other procedures as approved by the Court, which order shall be satisfactory to the Lender in form and substance (together with all extensions, modifications, and amendments thereto, each also satisfactory to the Lender in form and substance), which, among other matters (unless otherwise waived by the Lender), approves this Agreement and the other Loan Documents to be entered into on or about the Closing Date in all respects, and authorizes, on an interim basis, the Borrower to execute and perform under the terms of this Agreement and the other Loan Documents.

“Knowledge” means the actual knowledge of Alice Cheng and Sridhar Chadalavada and each other Responsible Officer.

“Leases” shall mean any lease, occupancy agreement, sublease or other agreement creating possessory rights in all or any portion of the Real Property, but shall expressly exclude the Ground Lease.

“Lender Expenses” has the meaning set forth in **Section 11.1** of this Agreement.

“Lender Liens” means the Liens on the Collateral granted to the Lender pursuant to the Loan Documents and the Orders.

“Lien” means any mortgage, deed of trust, pledge, hypothecation, collateral assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other

encumbrance on title to real property) whether or not filed, recorded or perfected under applicable law.

“Loan Documents” means this Agreement, the Loan Note, the Deed of Trust, the Assignment of Leases, the Environmental Indemnity, the Assignment of Agreements, the deposit account control agreements related to the Clearing Account and the Security Deposit Account, the Ground Lease Estoppel, all Approved Budgets, all Variance Reports, all Compliance Certificates, and every other agreement, note, document, contract, instrument or written matter executed by or on behalf of the Borrower and delivered to the Lender at any time.

“Loan Availability” means, as of any date of determination, the amount equal to the Loan Commitment (or, if prior to the Bankruptcy Court’s entry of the Final Order, the Interim Availability Amount) minus the Loan Outstandings (calculated as of such date of determination).

“Loan Commitment” means the commitment of the Lender to make the Loan to the Borrower. As of the date of this Agreement, the Loan Commitment is \$13,250,000.00.

“Loan Fee” means \$390,000.00.

“Loan Note” means that certain Promissory Note Secured by Deed of Trust of even date herewith executed by the Borrower, together with all renewals, extensions, amendments, modifications or replacements thereof.

“Loan Outstandings” means, at any time, the then aggregate outstanding principal balance of the Loan.

“Master Trust Indenture” means that certain Master Trust Indenture dated as of December 1, 2015, by and among BCHA, MCHS, Beverly Hospital Foundation, and the Master Trustee.

“Master Trustee” means U.S. Bank National Association, a national banking association duly organized and existing under the laws of the United State of America.

“Material Adverse Effect” means any material adverse effect whatsoever upon (a) the validity, performance or enforceability of any Loan Documents, (b) the value of the Collateral, or (c) the business, assets, properties, liabilities, financial condition, or results of operations of the Borrower; *provided, however*, that “Material Adverse Effect” shall not include any event, effect, circumstance, change, occurrence, fact, factor or development, directly or indirectly, arising out of or attributable to: (i) general economic or political conditions; (ii) conditions generally affecting the industries in which the Borrower operate; (iii) any changes in financial, banking or securities markets in general, including any disruption thereof and any decline in the price of any security or any market index or any change in prevailing interest rates; (iv) natural disasters or Acts of God, acts of war (whether or not declared), armed hostilities or terrorism, or the escalation or worsening thereof; (v) any changes in applicable laws or GAAP or the enforcement, implementation or interpretation thereof; (vi) any epidemic, pandemic or disease outbreak (including the COVID-19 pandemic), or the escalation or worsening thereof; or (vii) the events occurring prior to the commencement of the Chapter 11 Case (except to the extent arising out of the gross negligence or willful misconduct of the Borrower).

“Maturity Date” means, as applicable: (a) the date on which the Loan becomes due and payable, which date shall initially be the Initial Maturity Date, and which date may be extended to the First Extended Maturity Date, and which date may be further extended to the Second Extended Maturity Date, only if Borrower satisfies the Extension Conditions; or (b) such other earlier date resulting from the acceleration of all sums due and owing under the Loan, as provided in the Loan Note and the other Loan Documents.

“Milestones” means the covenants set forth on **Schedule 6.14**.

“Minimum Aggregate Tenant Estoppel Requirement” means (i) all leases at 208-224 West Beverly Boulevard, 312-320 West Beverly Boulevard, and 1920 Whittier Boulevard, (ii) all leases with Beverly Care and/or its affiliates located at the Real Property (the “**Beverly Care Leases**”), and (iii) leases at 101 East Beverly Boulevard (other than any Beverly Care Leases), which, in the aggregate, provide for annual base rent of not less than \$538,000.

“Nine Week Period” means a period of nine (9) consecutive weeks.

“Notice of Loan Borrowing” has the meaning set forth in **Section 3.2** of this Agreement.

“Obligations” means all now existing or hereafter arising debts, Indebtedness, obligations, covenants, and duties of payment or performance of every kind, matured or unmatured, direct or contingent, owing, arising, due, or payable to the Lender, by or from the Borrower, or any of them, arising under this Agreement, any other Loan Document or the Orders, including, without limitation, all obligations to repay principal of and interest on all Advances, and to pay interest, fees, costs, charges, expenses, professional fees, and all sums chargeable or owed to the Borrower, or any of them, under the Loan Documents or the Orders, whether or not evidenced by any note or other instrument.

“Obligor” means the party primarily obligated to pay an Account.

“Orders” means the Interim Order and the Final Order, as each is applicable and in effect with respect to this Agreement at any time.

“Ordinary Course” means, with respect to the Borrower, any activity performed in accordance with the historical or customary practices of the Borrower and which does not require authorization or approval by the Bankruptcy Court to be performed.

“Permits” means any permit, provider number, approval, authorization, license, registration, accreditation, certification, certificate of authority, variance, permission, franchise, qualification, order, filing or consent required from a Governmental Authority or other Person under an applicable requirement of law.

“Permitted Discretion” means a determination made in good faith and in the exercise of reasonable (from the perspective of a debtor-in-possession lender) business judgment.

“Permitted Liens” means, collectively, (a) the lien and security interests created by the Deed of Trust and the other Loan Documents, (b) all liens, encumbrances and other matters

disclosed in the Title Policy delivered to Lender in connection with the Loan, (c) liens, if any, for taxes, assessments or other charges imposed by any Governmental Authority not yet due or which are being contested in good faith with due diligence by appropriate proceedings, (d) such other title and survey exceptions as Lender has approved or may approve in writing in Lender's sole and absolute discretion, (e) the liens set forth on **Schedule 1**, and (f) liens on assets of the Borrower that are not Collateral.

"Permitted Variances" shall mean the variances permitted and limitations established pursuant to **Section 6.12** of this Agreement.

"Person" means an individual, partnership, corporation, trust, joint venture, joint stock company, limited liability company, association, unincorporated organization, Governmental Authority, or any other entity.

"Petition Date" means April [], 2023.

"Prepetition Secured Parties" means [].

"Prescribed Laws" means, collectively, (a) laws, regulations and sanctions, state and federal, criminal and civil that: (i) limit the use of and/or seek the forfeiture of proceeds from illegal transactions; (ii) prohibit transactions that are intended to conceal or disguise the nature, location, source, ownership, or control of the proceeds of specified unlawful activity; (iii) require identification and documentation of the parties with whom a financial institution conducts business; or (iv) are designed to disrupt the flow of funds to terrorist organizations. Such laws, regulations and sanctions shall be deemed to include applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the Bank Secrecy Act as amended by the USA PATRIOT Act of 2001, and the Money Laundering Control Act of 1986 including the laws relating to prevention and detection of money laundering under 18 USC Section 1956 and 1957, (b) Sanctions Regulations, (c) the U.S. Foreign Corrupt Practices Act and all other applicable anti-corruption laws and regulations, as amended from time to time, and (d) all other legal requirements relating to money laundering, terrorism, bribery or corruption.

"Remaining Availability Amount" means the Loan Commitment less the Interim Availability Amount.

"Rent Roll" has the meaning given such term in **Section 2.14** of this Agreement.

"Required Policies" has the meaning given such term in **Schedule 6.2(a)** of this Agreement.

"Responsible Officer" means the chief restructuring officer, chief executive officer, president, vice president, chief financial officer, secretary or assistant secretary, treasurer or assistant treasurer or other similar officer of the Borrower. Any document delivered hereunder that is signed by a Responsible Officer of the Borrower shall be conclusively presumed to have been authorized by all necessary corporate, partnership or other action on the part of the Borrower

and such Responsible Officer shall be conclusively presumed to have acted on behalf of the Borrower.

“Sanctioned Country” means a country, territory or region that is the subject or target of comprehensive territorial Sanctions Laws and Regulations, (currently including Crimea, Cuba, Iran, North Korea, and Syria).

“Sanctioned Person” means a Person that is the subject or target of any restrictive measures under any laws, regulations, Executive Orders or programs administered by the U.S. Department of State, OFAC, OFSI, the United Nations Security Council or the Council of the European Union, as amended from time to time (collectively, “Sanctions Regulations”).

“Second Extended Maturity Date” means January [], 2024.

“Security Deposit Account” has the meaning given such term in **Section 3.5(a)** of this Agreement.

“Security Documents” means the Deed of Trust, the Assignment of Leases, and each other security agreement or other related agreements, documents, and instruments that creates a Lien in favor of the Lender to secure any of the Obligations, each as may be amended, restated, supplemented, or otherwise modified from time to time.

“Subsidiary” of a Person means a corporation, limited liability company, partnership, joint venture, or other legal entity of which a majority of the share of securities or other equity interests having ordinary voting power for the election of directors or other governing body are at any time beneficially owned, directly or indirectly, by such Person.

“Successor Case” means the Chapter 11 Case upon its conversion to a case under Chapter 7 of the Bankruptcy Code.

“Tenant Redirect Letters” means, collectively, letters, in the form attached hereto as **Exhibit D**, and otherwise in a form and substance satisfactory to Lender, addressed to each tenant of the Real Property (and any new tenants with whom Borrower enters into Leases after the date hereof for space at the Real Property in accordance with the Loan Documents) executed by Borrower, which letters shall require each tenant to deliver its respective rent (and all other sums owed by such tenant to Borrower under the applicable Lease) in accordance with the instructions contained in such letters to the Clearing Account established with the Clearing Bank and controlled by Lender to be held by Lender in accordance with **Section 3.5** hereof.

“Termination Date” means the date that is the earliest to occur of (i) the Maturity Date, (ii) the date of the substantial consummation (as defined in Section 1101 of the Bankruptcy Code) of a plan of reorganization confirmed in the Chapter 11 Case, and (iii) the acceleration of the Loan and termination of the Loan Commitment in accordance with the terms hereof.

“Title Company” means First American Title Insurance Company.

“Title Policy” means the title insurance policy obtained by Lender in connection with the closing of the Loan.

“Transfer” shall mean a change in Control of Borrower, the sale, transfer, hypothecation, encumbrance, mortgage, conveyance, lease, license, alienation, assignment, pledge, disposition, divestment, or leasing with option to purchase, or assignment of the Collateral, or any portion thereof or interest therein (whether direct or indirect, legal or equitable, including the issuance, sale, assignment, pledge, alienation, conveyance, divestment, transfer, disposition, hypothecation, mortgage or encumbrance of any direct or indirect ownership interest in Borrower or in any entity having an ownership interest in Borrower, whether direct or indirect, or the division of any assets and liabilities of Borrower amongst one or more new or existing entities) (or entering into any agreement or contract to do any of the foregoing that is not conditioned on compliance with the terms of the Loan Documents), or undertaking, suffering or causing any of the foregoing to occur voluntarily, involuntarily or by operation of law.

“UCC” means the Uniform Commercial Code as in effect in the State of California from time to time.

“Unmatured Event of Default” means the occurrence of an event or existence of a condition that with the giving of notice or the passage of time, or both, would constitute an Event of Default.

“Variance Report” means a report delivered by the Borrower to the Lender on or prior to the Approved Budget Report Date, dated as of the last day of the immediately preceding Approved Budget Report Date, setting forth: (i) Actual Cash Receipts for the most recently ended calendar week and Cumulative Period; (ii) the Actual Disbursement Amount for the most recently ended calendar week and Cumulative Period; (iii) Loan Availability as of the date of such report; (iv) the Borrower’s current total available liquidity (the sum of Loan Availability and the Borrower’s cash and cash equivalents) as of the date of such report, noting therein all variances from the Budgeted Cash Receipts and the Budgeted Disbursement Amount for such recently ended calendar week and Cumulative Period (both on a line-item and a total-disbursements basis), and including explanations for all variances in excess of the Permitted Variances; and (v) the amount by which the Actual Disbursement Amount for such recently ended calendar week and/or Cumulative Period exceeds the Actual Cash Receipts for such period. Each Variance Report shall be certified by a Responsible Officer of the Parent Borrower and shall be in a form, and shall contain supporting information, satisfactory to the Lender in its sole discretion.

“Yield Maintenance” means an amount equal to the difference between (i) the amount of interest that Lender reasonably determines would have accrued on the Loan Commitment from the Closing Date through the Initial Maturity Date, *less* (ii) the amount of regular interest paid on the Loan at the Interest Rate (and expressly excluding any interest accrued at the Default Interest Rate) as of the date of repayment of all the Obligations, if any.

Section 2 - Warranties and Representations

To induce the Lender to enter into this Agreement and to make the Loan, the Borrower represents and warrants to the Lender that the following statements are true, correct and accurate on the date hereof and will be true and correct in all material respects at all times hereafter:

2.1 Due Organization. Each Borrower is a corporation duly incorporated and validly existing under the laws of the State of California and qualified to do business under the law of each jurisdiction in which the failure to be so qualified could reasonably be expected to have a Material Adverse Effect.

2.2 Power and Authority to Own and Operate; Compliance with Laws. The Borrower has all requisite legal power and authority and all necessary licenses and permits to own and operate its businesses as currently conducted, including the ownership and operation of the Real Property for commercial use, and has satisfied any and all conditions to the effectiveness thereof in all material respects. The Borrower is in compliance with all laws, rules, and regulations, the non-compliance with which could reasonably be expected to have a Material Adverse Effect.

2.3 No Untrue Statements. Neither this Agreement nor any other written statement furnished by or on behalf of the Borrower to the Lender in connection with the negotiation of this Agreement contains any untrue statement of a material fact or omits a material fact necessary to make the statements contained therein or herein not misleading. To the Borrower's Knowledge, there is no fact that the Borrower has not disclosed to the Lender that has, or in the future could reasonably be expected to have, a Material Adverse Effect (for the avoidance of doubt, other than as customarily occurs as a result of events leading up to and following the commencement of the Chapter 11 Case).

2.4 No Pending or Threatened Proceedings. There are no proceedings pending, or, to the Borrower's Knowledge threatened, before any court, governmental authority or arbitration board or tribunal, against or affecting the Borrower or the Collateral that, if adversely determined, could reasonably be expected to have a Material Adverse Effect. The Borrower is not in default with respect to any order, judgment or decree of any court, governmental authority or arbitration board or tribunal that could reasonably be expected to have a Material Adverse Effect.

2.5 Power and Authority to Execute Loan Documents. The Borrower has full power and authority to execute, deliver and perform the Loan Documents; the execution, delivery and performance of the Loan Documents required to be given hereunder by the Borrower have been duly authorized by appropriate action and will not violate the provisions of the articles of incorporation or bylaws of the Borrower or of any law, rule, judgment, order, agreement or instrument to which the Borrower is a party or by which it is bound, or to which any of its assets are subject, nor do the same require any approval or consent of any public authority or other third party (other than the Bankruptcy Court); and the Loan Documents have been duly executed and delivered by, and are the valid and binding obligations of, the parties thereto, enforceable in accordance with their terms, subject to the Orders.

2.6 Consents and Approvals. The execution, delivery and performance by the Borrower of each Loan Document to which it is a party, the issuance, delivery and performance of the Loan Note, and the consummation of the transactions contemplated hereby or related hereto do not and will not (a) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any material contractual obligation of the Borrower, or (b) require any approval or consent of any governmental authority or other person or entity that, as of the date of this Agreement, has not been obtained in writing and delivered to the Lender (other than the

Bankruptcy Court), subject to **Section 4.2(e)(iii)** of this Agreement, but only to the extent that the failure to receive such approval or consent prior to the date hereof could reasonably be expected to have a Material Adverse Effect.

2.7 No Defaults. Except for any defaults arising solely as a result of the commencement of the Chapter 11 Case, the Borrower is not in default in the performance, observance or fulfilment of any of the obligations, covenants or conditions contained in any contractual obligation of the Borrower, and no condition exists that, with the giving of notice or the lapse of time, or both, would constitute such a default, in each case only to the extent that any such default(s), individually or collectively, could reasonably be expected to have a Material Adverse Effect.

2.8 Orders. The Borrower is in full compliance with (a) the Interim Order at all times during the Interim Availability Period, and (b) the Final Order on and after the date it is entered by the Bankruptcy Court. On the date of the making of any Loan, the Interim Order (or the Final Order, as applicable) shall have been entered and shall not have been amended, stayed, vacated, reversed, or rescinded except as approved in writing by the Lender, in its sole discretion. Upon the maturity (whether by the acceleration or otherwise) of any of the Obligations, the Lender shall, subject to the Orders, be entitled to immediate payment of such Obligations, and to enforce all rights and remedies provided for hereunder, without further order of or application or motion to the Bankruptcy Court.

2.9 Prescribed Laws. Each Borrower and its respective shareholders are in compliance with all Prescribed Laws. Lender shall have the right to audit such compliance with the Prescribed Laws. If requested by Lender, Borrower shall provide Lender with evidence reasonably satisfactory to Lender that each Borrower Party and the Collateral comply with all Prescribed Laws. Neither (x) Borrower, (y) to Borrower's Knowledge, any shareholder of either Borrower, nor (z) to Borrower's Knowledge, any of their respective directors, officers, employees or agents, is a Person that is, or is owned or controlled by Persons that are: (i) a Sanctioned Person, (ii) located, organized or resident in a Sanctioned Country; (iii) has been previously indicted for or convicted of any felony involving a crime or crimes of moral turpitude, or any criminal violation of any of the Prescribed Laws, (iv) is currently under investigation by any Governmental Authority for alleged criminal activity. Neither (x) Borrower, (y) to Borrower's Knowledge, any shareholder of either Borrower, nor (z) to Borrower's Knowledge, any of their respective directors, officers, employees or agents, has taken or will take any action in furtherance of an offer, payment, promise to pay, or authorization or approval of the payment or giving of money, property, gifts or anything else of value, directly or indirectly, to any person while knowing that all or some portion of the money or value will be offered, given or promised to anyone to improperly influence official action, to obtain or retain business or otherwise to secure any improper advantage.

2.10 Business Loan. The Loan is a business loan transaction in the stated amount solely for the purpose of carrying on the business of Borrower and none of the proceeds of the Loan will be used for the personal, family or agricultural purposes of Borrower.

2.11 Title. BCHA has good, marketable and insurable fee simple title to the BCHA Real Property, free and clear of all liens whatsoever except the Permitted Liens. MCHS has good,

marketable and insurable (i) fee simple title to the MCHS Real Property, and (ii) leasehold title to the MCHS Leasehold Property, free and clear of all liens whatsoever except the Permitted Liens. The Permitted Liens in the aggregate do not materially and adversely affect the value, operation or use of the Real Property (as currently used) or Borrower's ability to repay the Loan. To Borrower's Knowledge, there are no claims for payment for work, labor or materials affecting the Real Property which are or may become a lien prior to, or of equal priority with, the liens created by the Loan Documents. To Borrower's Knowledge, Borrower has provided to Lender copies of (i) all agreements which were material to completion of the improvements; (ii) all building permits and similar permits, licenses, approvals, zoning and land use approval, development agreements and other authorizations of governmental agencies, if any, required in connection with the development of the Real Property; (iii) any reciprocal easement agreements, development agreements, covenants, conditions and restrictions or similar agreements affecting the Real Property; and (iv) any initial study, negative declaration, mitigated negative declaration, environmental impact report, notice of determination or notice of exemption prepared, adopted, certified or filed by or with any Governmental Authority in connection with the Real Property.

2.12 Physical Condition. The Real Property, including, without limitation, all buildings, improvements, parking facilities, sidewalks, storm drainage systems, roofs, plumbing systems, HVAC systems, fire protection systems, electrical systems, equipment, elevators, exterior sidings and doors, landscaping, irrigation systems and all structural components are in good condition, order and repair in all material respects. There exists no structural or other material defects or damages in the Real Property, whether latent or otherwise, and Borrower has not received notice from any insurance company or bonding company of any defects or inadequacies in the Real Property, or any part thereof, which would adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon or of any termination or threatened termination of any policy of insurance or bond.

2.13 Utilities and Public Access. The Real Property has rights of access to public ways and is served by water, sewer, sanitary sewer and storm drain facilities adequate to service the Real Property for its intended use. All utility services, including, without limitation, gas, water, sewage, electrical and telephone, necessary for the development and occupancy of the Real Property and improvements are available at or within the boundaries of the Real Property. All roads necessary for the use of the Real Property for its current purpose have been completed and dedicated to public use and accepted by all Governmental Authorities.

2.14 Leases. To Borrower's Knowledge, (a) the rent roll attached hereto as **Schedule 2.14** hereto (the "Rent Roll") is true and correct in all material respects and the Real Property is not subject to any Leases or occupancy agreements other than as described in the Rent Roll, (b) the Leases identified on the Rent Roll are in full force and effect and there are no defaults thereunder by either party (except as disclosed in the rent roll), (c) except as disclosed by the Rent Roll, no rent (including security deposits) has been paid more than one (1) month in advance of its due date (d) all work to be performed by Borrower under each Lease has been performed as required and has been accepted by the applicable tenant, (d) any payments, free rent, partial rent, rebate of rent or other payments, credits, allowances or abatements required to be given by Borrower to any tenant has already been received by such tenant (except as disclosed in the rent roll), and (e) tenants under the Leases have accepted possession of and are in occupancy of all of

their respective demised premises and have commenced the payment of rent under the Leases. There are no existing assignments of any of the Leases or the rents due thereunder other than in favor of Lender pursuant to the Deed of Trust.

2.15 Ground Lease.

(a) Parking Leases. Borrower has delivered to Lender a true, correct, and complete copy of the Ground Lease, together with all amendments, modifications, supplements, assignments, or other transfers thereto, and any and all guaranties thereof. The Ground Lease has been amended, modified, supplemented, assigned, or transferred.

(b) Possession of Leasehold; Leasehold Interest; Exercise of Options. The interests of the lessee/tenant under the Ground Lease is presently vested in MCHS, and MCHS is the holder of the sole leasehold estate in the property encumbered by the Ground Lease, except for the Permitted Liens, in accordance with the provisions of the Ground Lease. Other than pursuant to the Loan Documents, Borrower has not executed any other mortgage, deed of trust, pledge, assignment, hypothecation, or other transfer, lien, security interest, or other encumbrance of all or any portion of MCHS' right, title and interest under the Ground Lease. MCHS has not executed any instrument or agreement with respect to the Ground Lease which could reasonably be expected to prevent or restrict Lender from exercising its rights and remedies under the Loan Documents relating in any way to the Ground Lease. MCHS shall hereby forever warrant, defend, protect, and preserve against the claims of all persons: (i) MCHS' leasehold interest in the property and premises pursuant to the Ground Lease, and (ii) the validity and priority of the respective lien and title interest of Lender granted by Borrower to Lender in the Loan Documents.

(c) No Existing Default. There is no existing default (or occurrence which with the passage of time would constitute a default) or grounds for default (however defined or described) under the provisions of the Ground Lease or in the performance of any of the terms, covenants, conditions or warranties thereof on the part of MCHS or BCHA thereof to be kept, performed and observed under the Parking Lease.

2.16 Tax Liability. Borrower has filed all required federal, state, county and municipal tax returns and has paid all taxes and assessments owed and payable, and Borrower has no knowledge of any basis for any additional payment with respect to any such taxes and assessments. There are no pending or proposed special or other assessments for public improvements or otherwise affecting the Real Property, nor are there any contemplated improvements to the Real Property that may result in such special or other assessments.

2.17 Permitted Liens. Borrower has examined and is familiar with all covenants, conditions, restrictions and reservations affecting the Real Property, and to the best of Borrower's Knowledge, there now exists no violation of any such restrictions. Neither Borrower has received written notice that any of the improvements located on the Real Property encroach upon any easements over the Real Property or upon adjacent property owned by others.

2.18 Other Agreements. Except for the Leases shown on the Rent Roll and the Permitted Liens, neither Borrower is a party to any agreement or instrument affecting the Real Property or the operation or condition thereof.

Section 3 - THE MULTIPLE ADVANCE LOAN

3.1 General Terms and Conditions. The Loan shall be advanced subject to and in conformity with the following terms and conditions:

<i>Loan Maximum</i>	The Loan Commitment
<i>Minimum Draw</i>	\$500,000, and each Advance shall be in minimum increments of \$500,000 (excluding Advances from the Earthquake Insurance Holdback).
<i>Frequency of Draws</i>	No more frequently than monthly.
<i>Payments</i>	On the Termination Date, the principal balance of the Loan then outstanding, together with all accrued and unpaid interest thereon (including Accrued Interest), shall be due and payable in full.
<i>Due Date</i>	The Termination Date.
<i>Interest Rate</i>	The Interest Rate (or, during the continuance of an Event of Default, the Default Interest Rate).
<i>Purpose</i>	Loan shall be used solely for payment of expenses identified in the Approved Budget and in accordance with the terms and conditions contained in the Orders and the Loan Documents.

(a) Advances of Loan. Subject to and in accordance with the terms and conditions of this Agreement, the Lender shall be obligated from time to time to advances to the Borrower (each, an “Advance” and collectively, the “Advances”) in an aggregate amount not to exceed the Loan Commitment, and subject in all respects to the limitations set forth in Section 3.2(b) hereof.

(b) Yield Maintenance. Upon the earlier of (i) the Termination Date and (ii) the repayment of the outstanding principal and accrued interest on the Loan (including Accrued Interest) in full prior to the Initial Maturity Date, the Borrower shall pay to the Lender the Yield Maintenance, which, for the avoidance of doubt, is fully earned as of the Closing Date.

(c) Exit Fee. Upon the earlier of (i) the Termination Date and (ii) the repayment of the outstanding principal and accrued interest on the Loan (including Accrued Interest) in full or in part, the Borrower shall pay to the Lender an exit fee in an amount equal to one percent

(1.00%) of the Loan Commitment (the “Exit Fee”). For the avoidance of doubt, the Exit Fee is fully earned as of the Closing Date.

(d) Termination of Loan Commitment. The Borrower may pre-pay the outstanding principal and accrued interest on the Loan (including Accrued Interest) in whole and terminate the Loan Commitment in its entirety by providing the Lender with five (5) days prior written notice stating (i) the date of prepayment and (ii) that such date shall constitute the Termination Date (and the Exit Fee and Yield Maintenance shall be due and payable on such date). Upon receipt of such notice, the obligation of the Lender to make Advances of Loan under this Agreement shall terminate.

3.2 Advance Procedures; Limit on Advances.

(a) Notice of Requested Borrowing. The Borrower shall give the Lender notice of a request for an Advance of a Loan (each a “Notice of Loan Borrowing”) not later than 2:00 p.m., prevailing Central time, at least three (3) Business Days before the date upon which such Advance is requested to be made (provided that the initial Notice of Borrowing may be made one (1) Business Day before the date upon which the first Advance is requested to be made). Subject to the terms and conditions of this Agreement, the proceeds of each such requested Advance of a Loan shall be made available to the Borrower by wire transfer of funds to the Borrower’s account specified in the Notice of Loan Borrowing within three (3) Business Days after the Lender’s receipt of a Notice of Loan Borrowing complying with this Agreement (provided that the initial Advance will be made within one (1) Business Day of the Lender’s receipt of the initial Notice of Loan Borrowing). The Notice of Loan Borrowing shall be on the Lender’s current form and shall include the amount of the Advance requested. In connection with each Notice of Loan Borrowing, the Borrower shall deliver to the Lender an updated Borrowing Certificate.

(b) Earthquake Insurance Holdback. A portion of the Remaining Availability Amount in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) (the “Earthquake Insurance Holdback”) shall not be made available for disbursement to Borrower except for payment of the Earthquake Premium, but only in the event that Lender determines in its sole and absolute discretion that Earthquake Insurance is required to be obtained by Borrower for the Collateral (or any portion thereof) (the “Earthquake Insurance Requirement”). In the event that Lender delivers written notice to Borrower of its election to implement the Earthquake Insurance Requirement (the “Earthquake Insurance Requirement Notice”), (i) Borrower shall within ten (10) Business Days of receipt of such Earthquake Insurance Requirement Notice cause the Earthquake Insurance to be obtained with evidence thereof delivered to Lender, and (ii) funds in the Earthquake Insurance Holdback in an amount not to exceed the Earthquake Premium shall be made available to Borrower as an Advance, subject to Borrower’s compliance with the terms and conditions set forth herein with respect to Advances (other than the Minimum Draw restrictions). In the event that (i) Earthquake Insurance Requirement is exercised and the Earthquake Premium is less than the funds available in the Earthquake Insurance Holdback, a portion of the Loan Commitment with respect to the unfunded balance of the Earthquake Insurance Holdback shall be deemed terminated, in which case, Lender shall have no obligation to fund any such amounts. In the event that Lender never exercises the Earthquake Insurance Requirement, Lender shall have no obligation to fund any amounts from the Earthquake Insurance Holdback. Borrower’s failure

to obtain Earthquake Insurance within ten (10) Business Days of receipt of such Earthquake Insurance Requirement Notice shall be an Event of Default hereunder.

(c) Limit on Advances. Each Advance of a Loan shall be limited to the amount of the Loan Availability as of the Advance Date, and shall be subject to the express limitations set forth in Section 3.2(b) hereof. Notwithstanding anything to the contrary contained in this Agreement or in any other Loan Document, the Loan Outstandings shall at no time exceed the Loan Commitment.

(d) Voluntary Prepayments. The Borrower may pre-pay, in whole but not in part, the outstanding principal and accrued interest on the Loan (including Accrued Interest) by providing the Lender with five (5) days prior written notice stating the date of prepayment, which payment shall be accompanied by the Exit Fee and the Yield Maintenance (as applicable). The Borrower's prepayment of the Loan in whole shall be subject to compliance with **Article 3** of this Agreement.

(e) Termination of Obligation to Make Advances. In any event, the Loan Commitment and the obligation of the Lender to make Advances shall cease on the first to occur of (i) an Event of Default, and (ii) the Termination Date.

3.3 Mandatory Prepayments. The Loan shall be subject to repayment in the amounts and under the circumstances set forth below:

(a) If at any time Loan Availability is less than zero, the Borrower shall immediately prepay the Loan in an amount necessary to eliminate such deficiency.

(b) No later than the first Business Day following the date of receipt by the Borrower of proceeds of the Collateral (or any portion thereof) not customarily received in the Ordinary Course, including, without limitation: (i) proceeds under any business interruption or casualty insurance policy in respect of a covered loss thereunder relating to the Collateral (or any portion thereof); (ii) proceeds received as a result of the taking of any assets of the Borrower pursuant to the power of eminent domain, condemnation or otherwise, or pursuant to a sale of any such assets to a purchaser with such power under threat of such a taking; (iii) deposit refunds, pension plan reversions, indemnity payments, or any purchase price adjustments related to a sale or disposition of any Collateral (or any portion thereof), or (iv) proceeds from any incurrence of Indebtedness by the Borrower which is not permitted under **Section 7.3** of this Agreement, the Borrower shall prepay the Obligations in an amount equal to 100% of such proceeds (in each case net of any actual and reasonable documented out-of-pocket costs incurred by the Borrower in connection with the receipt of such proceeds) in accordance with **Section 8** of this Agreement; *provided, however*, any such payment shall be accompanied by payment of the applicable Exit Fee and the Yield Maintenance, as applicable.

(c) Upon the sale or disposition of all or any portion of the assets of the Borrower (other than any sale or disposition in the Ordinary Course), the Borrower shall prepay the Obligations in an amount equal to 100% of the proceeds of such sale or disposition (net of any actual and reasonable documented closing costs and brokerage fees incurred by the Borrower in connection with such sale or disposition) in accordance with **Section 8** of this Agreement;

provided, however, any such payment shall be accompanied by payment of the applicable Exit Fee and the Yield Maintenance, as applicable.

3.4 Prepayment and Repayment Charges. Borrower acknowledges that (a) Lender is making the Loan in consideration of the receipt by Lender of all interest and other benefits intended to be conferred by the Loan Documents that is not prepayable (except as otherwise provided in the Loan Note), and (b) if payments of principal are made to a Lender prior to the regularly scheduled due date for such payment, for any reason whatsoever, whether voluntary, as a result of Lender's acceleration of the Loan during the existence of an Event of Default, by operation of law or otherwise, Lender will not receive all such interest and other benefits and may, in addition, incur costs and expenses. For these reasons, and to induce Lender to make the Loan, Borrower expressly waives any right or privilege to prepay or repay the Loan except as otherwise may be specifically permitted herein and agrees that all prepayments or repayments, if any, whether voluntary or involuntary, will be accompanied by (a) the Exit Fee, and (b) in connection with payment in full of the Obligations, the Yield Maintenance, all of which shall constitute liquidated damages to compensate Lender for its anticipated transaction costs associated with such prepayment or repayment. Such Exit Fee and the Yield Maintenance (as applicable) shall be required whether payment is made by Borrower, by a Person on behalf of Borrower, or by the purchaser at any foreclosure sale, and may be included in any bid by Lender at such sale. Borrower further acknowledges that (i) it is a knowledgeable real estate developer or investor, (ii) it fully understands the effect of the provisions of this **Section 3**, as well as the other provisions of this Agreement and the other Loan Documents, (iii) the making of the Loan by Lender at the Interest Rate and other terms set forth in the Loan Documents are sufficient consideration for Borrower's obligation to pay the Exit Fee, and (iv) Lender would not make the Loan on the terms set forth herein without the inclusion of such provisions. Borrower also acknowledges that the provisions of this Agreement limiting the right of prepayment and repayment and providing for the payment of the Exit Fee and Yield Maintenance and other charges specified herein were independently negotiated and bargained for and constitute a specific material part of the consideration given by Borrower to Lender for the making of the Loan. Amounts repaid with respect to the Loan may not be reborrowed.

3.5 Cash Management.

(a) A deposit account ("**Clearing Account**") shall be established on the Closing Date. During the term of the Loan, Borrower shall cause each tenant at the Real Property to pay all amounts, payments, fees, rentals, additional rentals, expense reimbursements (including, without limitation, all reimbursements) paid under the Leases excluding any tenant security deposits (collectively, "**Gross Operating Income**") directly into the Clearing Account pursuant to the terms hereof. Borrower hereby agrees that Borrower shall execute the Tenant Redirect Letters addressed to each existing tenant on the Closing Date and to each future tenant executing a Lease subsequent to the Closing Date. Borrower hereby irrevocably constitutes and appoints Lender the attorney-in-fact of Borrower, coupled with an interest, to, upon Borrower's failure to deliver any such Tenant Redirect Letters, execute and deliver such Tenant Redirect Letters in the name of and on behalf of Borrower. Lender agrees to terminate such Tenant Redirect Letters on written request by Borrower after repayment in full of the Loan and all obligations secured by the Deed of Trust. The Clearing Account shall be a non-interest bearing demand deposit account in

the name of Borrower and Lender (as pledgee) with WESTERN ALLIANCE BANK, an Arizona corporation, or such other bank approved by Lender in writing (the “**Clearing Bank**”). Borrower hereby (i) irrevocably pledges to Lender, and grants Lender a lien on, and a first priority security interest in, the Clearing Account and all funds on deposit in the Clearing Account at any time and all proceeds and products thereof to secure all of Borrower’s obligations hereunder and under the Loan Documents and (ii) will take all actions necessary to maintain in favor of Lender a perfected first priority security interest in the Clearing Account, including, without limitation, the execution of any account control agreement required by Lender. Borrower will not in any way alter, modify or close the Clearing Account, without Lender’s consent, and will notify Lender of the account number thereof. To the extent Borrower receives any Gross Operating Income, Borrower shall hold such Gross Operating Income in trust for Lender and shall cause all Gross Operating Income to be deposited into the Clearing Account within one (1) Business Day following Borrower’s receipt thereof. All monies now or hereafter deposited into the Clearing Account shall be deemed additional security for the Loan.

(b) After the Clearing Account has been established, unless an Event of Default shall be continuing, funds deposited in the Clearing Account shall be swept by the Clearing Bank on a daily basis into the Borrower’s operating account, and Borrower shall apply such amounts (1) first, to costs, expenses and other trade payables due and owing in connection with the Collateral, and (2) second, only in the event all costs, expenses and other trade payables due and owing in connection with the Collateral have been paid in full, to Borrower to be applied in accordance with the Approved Budget. Subject to the terms of the Orders, upon the occurrence of an Event of Default, Lender shall have the continuing exclusive control of, right to withdraw and apply, the funds in the Clearing Account to payment of any and all Obligations. Borrower agrees that after the occurrence and during the continuance of an Event of Default (i) Borrower shall not have any right to withdraw or make use of any amounts from the Clearing Account (and, in the case of an Event of Default, neither Borrower nor any other party claiming on behalf of, or through, such parties shall have any right, title or interest, whether express or implied, in the Clearing Account), and (ii) unless required by applicable law, Borrower shall not be entitled to any interest on amounts held in the Clearing Account.

(c) If and to the extent that Lender shall determine that Borrower shall have failed to cause any Gross Operating Income or funds in the Clearing Account to be applied to Real Property operating expenses in accordance with the Approved Budget, then within one (1) Business Day following written notice thereof from Lender to Borrower, Borrower shall cause such misapplied Gross Operating Income or funds in the Clearing Account to be restored into the Clearing Account and/or applied in the manner required under this Agreement, as directed by Lender.

(d) A deposit account (“**Security Deposit Account**”) shall be established on the Closing Date. During the term of the Loan, Borrower shall deposit all tenant security deposits directly into the Security Deposit Account within one (1) Business Day after receipt thereof. The Security Deposit Account shall be a non-interest bearing demand deposit account in the name of Borrower and Lender (as pledgee) with Clearing Bank. Borrower hereby (i) irrevocably pledges to Lender, and grants Lender a lien on, and a first priority security interest in, the Security Deposit Account and all funds on deposit in the Security Deposit Account at any time and all proceeds and

products thereof to secure all of Borrower's obligations hereunder and under the Loan Documents and (ii) will take all actions necessary to maintain in favor of Lender a perfected first priority security interest in the Security Deposit Account, including, without limitation, the execution of any account control agreement required by Lender. Borrower will not in any way alter, modify or close the Security Deposit Account, without Lender's consent, and will notify Lender of the account number thereof. All tenant security deposits shall only be disbursed to (i) the applicable Borrower when reimbursement to the applicable tenant is required under the applicable lease and/or applicable law, (ii) the applicable Borrower when such Borrower is entitled to retain such amounts under the terms of the applicable lease and/or applicable law, so long as such Borrower promptly applies such amounts to maintenance and repair of the Collateral. Subject to the terms of the Orders, Borrower agrees that after the occurrence and during the continuance of an Event of Default (i) Borrower shall not have any right to withdraw or make use of any amounts from the Security Deposit Account (and, in the case of an Event of Default, neither Borrower nor any other party claiming on behalf of, or through, such parties shall have any right, title or interest, whether express or implied, in the Security Deposit Account) without Lender's prior written consent, which shall not be unreasonably withheld, delayed or conditioned prior to Lender taking control of the Real Property (either through a completed foreclosure, deed-in-lieu thereof, or receivership) so long as such amounts are due and owing to a tenant under a Lease and Borrower provides evidence to Lender promptly upon receipt of such amounts that such amounts have been returned to the applicable tenant, and (ii) unless required by applicable law, Borrower shall not be entitled to any interest on amounts held in the Security Deposit Account.

Section 4 - Conditions Precedent to Advances

4.1 Conditions Precedent to the Closing Date and an Advance of a Loan. The obligation of the Lender to make an Advance of a Loan (which shall not exceed the Interim Availability Amount) on the Closing Date is subject to the satisfaction or waiver by the Lender in writing of each of the following:

(a) Delivery of Documents. The Borrower shall have delivered to the Lender, in form and substance acceptable to the Lender, executed copies of this Agreement and each of the other Loan Documents required to be executed and delivered by the Borrower.

(b) Fees and Expenses. The Borrower shall have paid to the Lender all accrued and unpaid Lender Expenses and other costs, charges, fees, expenses, and other compensation payable or reimbursable to the Lender pursuant to this Agreement and the Loan Documents, which payments due on the Closing Date may be made with the proceeds of the Loan.

(c) Entry of the Interim Order. The Interim Order shall have been entered in the Chapter 11 Case and (i) shall be in full force and effect, and (ii) shall not be the subject of a pending appeal and shall not have been stayed, reversed, modified or amended in any respect without the written consent of the Lender.

(d) Motions, Pleadings, and Other Documents. The Borrower shall have provided the Lender with copies of all motions, pleadings, and other documents to be filed by the Borrower with and submitted to the Bankruptcy Court in connection with the Loan, which motions,

pleadings, and other documents shall be in form and substance reasonably satisfactory to the Lender. The Borrower shall not have filed any motion, pleading, or other document which has a material adverse effect on the rights granted to the Lender under this Agreement or under the Orders without first providing the Lender with sufficient and reasonable notice of such motion, pleading, or document.

(e) Lien Searches. The Lender shall have received lien searches conducted in the jurisdictions in which the Borrower is organized or conducts business, satisfactory to the Lender (dated as of a date reasonably satisfactory to the Lender), reflecting the absence of Liens on the assets of the Borrower other than the Permitted Liens.

(f) Evidence of Insurance. The Lender shall have received evidence of insurance policies for the Borrower satisfactory in form and substance to the Lender as required by Section 6.2 of this Agreement.

(g) No Pending or Threatened Claims. There shall not be pending or, to the best of the Borrower's Knowledge, threatened: (a) any action, suit, proceeding, governmental investigation or arbitration against or affecting the Borrower, or any property of the Borrower, that could reasonably be expected to have a Material Adverse Effect upon the Borrower; and (b) there shall have occurred no development in any action, suit, proceeding, governmental investigation or arbitration previously disclosed to the Lender pursuant to this Agreement, that could reasonably be expected to have a Material Adverse Effect upon the Borrower. No injunction or other restraining order shall have been issued and no hearing to cause an injunction or other restraining order shall be pending or noticed with respect to any action, suit or proceeding seeking to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, this Agreement or the making of the Loan hereunder.

(h) Approved Budget. The Lender shall have received and approved the Approved Budget in its sole discretion.

(i) Notice of Loan Borrowing. In connection with the Advance of a Loan, the Lender shall have received a Notice of Loan Borrowing, which request shall include the amount of the Advance requested. The furnishing by the Borrower of this request shall be deemed to constitute a representation and warranty of the Borrower to the effect that all the conditions set forth in **Section 4.1** of this Agreement for the requested Advance of the Loan will be satisfied (or waived by the Lender in writing) on the applicable Advance Date.

(j) Funds Flow. The Borrower shall have delivered a funds flow statement to Lender setting forth payment amounts and wire instructions, and which funds flow statement shall be otherwise in form and substance satisfactory to Lender in its Permitted Discretion.

(k) Know Your Customer. The Lender shall have received documents and information required by it in connection with its know-your-customer review, in form and substance satisfactory to the Lender.

(l) Additional Documents. The Lender shall have received such other papers, reports, certificates, and documents regarding the Borrower or the Collateral as the Lender or its counsel may reasonably require.

(m) Due Diligence. Completion of due diligence satisfactory to the Lender in its sole discretion.

(n) Title Policy. The Title Company shall be irrevocably committed to issue to Lender the Title Policy which shall include extended coverage policies of title insurance, together with such endorsements as required by Lender, in the amount of the Loan (or other amount approved by Lender) and issued by Title Company, with such reinsurance or co insurance as may be required by Lender, in form and substance satisfactory to Lender insuring that Borrower is the owner of the Real Property, and that the Deed of Trust creating the insurable interest of Lender under the Title Policy is a valid lien on the Real Property encumbered thereby, in favor of Lender, its successors and assigns, as the insured, free and clear of all liens, encumbrances and exceptions to title whatsoever, other than the Permitted Liens, consistent with the terms of the Interim Order.

(o) Leases. Borrower shall have provided Lender with copies of signed Leases and amendments and lease guarantees for the Real Property acceptable to Lender in its sole discretion.

(p) Charter Documents. Lender shall have received from Borrower, certified copies of all organizational documents relating to such Person (other than a natural Person) as Lender may request, including, but not limited to, all bylaws and operating agreements evidencing the organization, existence and authority of Borrower and such other corporate documents with respect to Borrower and its constituent entities as Lender shall require, including evidence of authorization and incumbency of all Persons executing the Loan Documents on behalf of Borrower, good standing certificates, qualifications to do business in the appropriate jurisdictions, resolutions authorizing the execution, delivery and performance of the Loan Documents, and incumbency certificates.

(q) Environmental Reports. Lender shall have received and approved of the Environmental Desktop Review and Preliminary Findings Summary for the Real Property which is acceptable to Lender. As provided in the Environmental Indemnity, upon the occurrence and during the continuance of an Event of Default, or if Lender reasonably believes there has been a release, Lender shall have the right at any time and from time to time during the term of the Loan to require Borrower to obtain additional soils and/or toxic studies, tests and reports with respect to the Real Property, and to require Borrower to take any corrective action required by law as indicated by such studies, tests and reports.

(r) Loan Fee. The Loan Fee, which is fully earned as of the Closing Date, shall have been paid to Lender.

4.2 Conditions to All Advances. In addition to the prior satisfaction or waiver in writing of all conditions precedent described in **Section 4.1** of this Agreement, each Advance of a Loan requested under this Agreement (including, without limitation, Advances from the Earthquake Insurance Holdback) (which shall not exceed the Loan Availability and shall be subject

to the limitations set forth in Section 3.2(b) in all respects) shall also be subject to prior satisfaction or waiver in writing of the following conditions:

(a) Representations and Warranties. The representations and warranties contained herein and in the other Loan Documents shall be true, correct and accurate in all material respects on and as of the Advance Date of such requested Advance, except for those relating to specific dates or time periods.

(b) No Event of Default or Unmatured Event of Default. No Event of Default or Unmatured Event of Default shall exist and be continuing.

(c) Compliance with Budget. Before and after giving effect to the requested Advance, (a) the Borrower shall be in compliance with the Approved Budget, subject to any Permitted Variances, (b) the proposed use of the proceeds of the Advance is consistent with the Approved Budget, subject to any Permitted Variances, and (c) during the Interim Availability Period, the Loan Outstandings shall not exceed the Interim Availability Amount.

(d) Borrowing Notice. In connection with any Advance of a Loan, the Lender shall have received a Notice of Loan Borrowing at the time and in the form required by **Section 3.2(a)** of this Agreement. The furnishing by the Borrower of a Notice of Loan Borrowing shall be deemed to constitute a representation and warranty of the Borrower to the effect that all the conditions set forth in **Sections 4.2(a), 4.2(b) and 4.2(c)** of this Agreement for the requested Advance of a Loan are satisfied (or have been waived in writing by the Lender) as of the date of delivery and will be satisfied or waived by the Lender in writing on the applicable Advance Date.

(e) Orders.

(i) The Lender shall have received a copy of the Interim Order no later than two (2) Business Days after entry of the Interim Order by the Bankruptcy Code.

(ii) At all times during the Interim Availability Period, the Interim Order (i) shall be in full force and effect, (ii) shall not be the subject of a pending appeal and shall not have been stayed, reversed, modified or amended in any respect without the written consent of the Lender.

(iii) The Lender shall have received a copy of the Final Order no later than two (2) Business Days after entry of the Final Order by the Bankruptcy Court.

(iv) The Final Order shall provide that (i) the Collateral does not include any real property and other assets that are used by the hospital in its operations as a health facility (as such term is defined under Cal. Health & Safety Code § 1250) or other facilities that provide similar health care (as defined by Cal. Code Regs. tit. 11, § 999.5), and therefore any sale, foreclosure, or other disposition of the Collateral (or any part thereof) pursuant to the Loan Documents or otherwise, either to a for-profit entity or

non-profit entity, shall not require the consent of the AG under Cal. Corp. Code § 5914 or § 5920. Further, the Final Order shall be deemed written notice to the AG under Cal. Corp. Code § 5913 of Borrower's intention to sell, lease, convey, exchange, transfer or otherwise dispose of all or substantially all of the Collateral to either a non-profit or a for-profit entity, and no further notice to, or consent or approval by, the AG shall be required, and (ii) the prepetition and post-petition lien(s) and security interest(s) granted to Prepetition Secured Parties do not extend to include the Collateral (including the DIP Cash Collateral (as defined in the Interim Order) and therefore shall not attach to or otherwise encumber the Collateral or the DIP Cash Collateral or affect the Lender Liens in any way, and no liens, including any adequate protection liens, provided to Prepetition Secured Parties shall attach to or otherwise encumber the Collateral or the DIP Cash Collateral.

(v) At all times following entry of the Final Order by the Bankruptcy Court, the Final Order (i) shall be in full force and effect, and (ii) shall not be the subject of a pending appeal and shall not have been stayed, reversed, modified or amended in any respect without the written consent of the Lender.

(vi) No order shall have been entered in the Chapter 11 Case (w) for the appointment of a Chapter 11 trustee, (x) for the appointment of an examiner with enlarged powers (beyond those set forth in Sections 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code, (y) to convert the Chapter 11 Case to any chapter, other than chapter 11, of the Bankruptcy Code, or (z) to dismiss the Chapter 11 Case.

(f) Title Endorsements. Borrower shall have obtained (or shall have obtained an irrevocable commitment to issue, as of the date that the Advances are disbursed) from the Title Company that issued the Title Policy (i) to the extent available in the applicable jurisdiction, a continuation of title endorsement (and if such endorsement is not available, such other evidence as may be required by Lender, including an updated title report) showing title to the Real Property to be vested in Borrower, with no subordinate items and with no exceptions to title of the Real Property other than Permitted Liens (with affirmative insurance that no property or other taxes are delinquent, no mechanic's or supplier's liens have attached (or if inchoate mechanic's or supplier's liens have, that they are subordinate to the lien of the Deed of Trust), and, if available and applicable, that neither public nor private conditions, covenants or restrictions, if any, affecting the Real Property have been violated); and (ii) if the insured amount under the Title Policy is not the maximum amount of the Loan, an endorsement insuring the continued priority of the lien of the Deed of Trust, subject only to the Permitted Liens, increasing the coverage amount of the Title Policy by an amount equal to the Advance.

(g) Fees and Expenses. The Borrower shall have paid to the Lender all accrued and unpaid Lender Expenses and other costs, charges, fees, expenses, and other compensation

payable or reimbursable to the Lender pursuant to this Agreement and the Loan Documents, which payments due on the Closing Date may be made with the proceeds of a Loan. All such amounts shall be fully earned upon the execution of this Agreement.

(h) Tenant Estoppels. Borrower shall have provided Lender with tenant estoppel certificates satisfying the Minimum Aggregate Tenant Estoppel Requirement which (i) are consistent in all material respects with the rents reflected in the Rent Roll, and (ii) are in substantially the form attached hereto as Exhibit E, or otherwise in form, substance and scope satisfactory to Lender in its sole but good faith discretion (in which, without limiting the generality of the foregoing, the applicable tenant shall certify, represent and warrant to Lender that, among other things, (i) such lease is in effect in accordance with its terms, (ii) there are no existing defaults under the lease, (iii) there are no material defaults by the landlord under the lease, (iv) there are no outstanding obligations of the landlord to perform any work or provide any allowances pursuant to the lease, and (v) the tenants do not have any options, rights of first offer, or rights of first refusal to purchase any portion of the Collateral). Notwithstanding the Minimum Aggregate Requirement, Borrower shall (i) deliver to Lender all estoppel certificates received, and (ii) use commercially reasonable efforts to obtain tenant estoppel certificates which satisfy the foregoing criteria from all tenants with leases at the Real Property.

Section 5 - SECURITY AND COLLATERAL

5.1 Required Documents. Subject to entry of the Orders, without limiting the terms and conditions of any of the Loan Documents, to secure payment of all obligations and Indebtedness of the Borrower to the Lender under this Agreement and the other Loan Documents, the Borrower shall execute and deliver to the Lender (or, in the case of documents to be executed and delivered by others, shall cause such documents to be executed and delivered to the Lender):

- (a) the Loan Note;
- (b) the Deed of Trust;
- (c) the other Loan Documents; and

(d) all financing statements, assignments, documents of title, and other documents, agreements, and instruments as the Lender reasonably may request in connection with the creation, perfection and priority of any security described above.

5.2 Grant of Security Interest. The Borrower hereby assigns and transfers to the Lender, and hereby grants to the Lender, a continuing security interest in and Lien on the Collateral to secure the payment and performance of all Obligations. Borrower shall take all such actions as Lender reasonably requests from time to time to perfect or continue the perfection of the security interests granted hereunder and in the Deed of Trust. The security interests in favor of Lender shall be valid, binding, continuing, enforceable, non-avoidable automatically and properly perfected first priority liens on and security interests in all the Collateral subject only to the Permitted Liens by entry of the Orders.

5.3 Perfection. Subject to entry of the Orders, Borrower hereby irrevocably authorizes the Lender, at any time and from time to time, pursuant to the provisions of this Agreement, to take any and all actions the Lender may reasonably determine to be necessary to assure that the security interests granted hereby are and remain perfected, including without limitation, filing financing statements, continuation statements and amendments thereto that describe the Collateral as all assets of the Borrower or words of similar effect and which contain any other information required by Part 5 of Article 9 of the UCC. The Borrower agrees to furnish any such information to the Lender promptly upon request. Any such financing statements, continuation statements or amendments may be signed by the Lender on behalf of the Borrower, and may be filed at any time in any jurisdiction deemed appropriate by the Lender. The Borrower further agrees to execute and deliver to the Lender, concurrently with the Borrower's execution of this Agreement, and at any time or times hereafter at the request of the Lender, all financing statements and continuation financing statements (where not covered by the first sentence of this paragraph), and to use commercially reasonable efforts to execute and deliver to the Lender, concurrently with the Borrower's execution of this Agreement, and at any time or times hereafter at the request of the Lender, assignments, affidavits, reports, notices, letters of authority, vehicle title notations and all other documents that the Lender may reasonably request, in a form reasonably satisfactory to the Lender, to perfect and maintain perfected the Lender's security interests in the Collateral. The Borrower also agrees to make appropriate entries on its books and records disclosing the Lender's security interests in the Collateral. The Borrower shall at any time and from time to time use commercially reasonable efforts to take such steps as the Lender may reasonably request for the Lender (i) to obtain an acknowledgment, in form and substance reasonably satisfactory to the Lender, of any bailee having possession of any of the Collateral in an amount in excess of \$100,000 that the bailee holds such Collateral for the benefit of the Lender, (ii) to obtain "control" of any investment property, deposit accounts, letter-of-credit rights or electronic chattel paper, in each case in an amount in excess of \$100,000, with any agreements establishing control to be in form and substance reasonably satisfactory to the Lender, and (iii) otherwise to insure the continued perfection and priority of the Lender's security interest in any of the Collateral, and of the preservation of its rights therein. The foregoing shall be in addition to, and not in substitution for, any rights granted to the Lender, and obligations imposed on the Borrower, pursuant to the Orders.

5.4 Superpriority Nature of Obligations and Status of Lender Liens. The superpriority nature and priority of the Lender's claims against the Borrower with respect to the Obligations and the priority and extent of the Lender Liens on the Collateral shall be as set forth in the Orders, and all relevant provisions in the Orders related to same shall be deemed incorporated into this Agreement by reference as if fully set forth herein.

Section 6 - Affirmative Covenants

Beginning on the date of this Agreement and continuing until the Lender has no further obligation to make Advances to the Borrower pursuant to this Agreement and the Loan and all Obligations have been repaid in full:

6.1 Payment of Taxes and Claims. The Borrower shall pay, before they become delinquent, all taxes, assessments and governmental charges or levies imposed upon it or upon the Borrower's real and personal property, except for those being contested in good faith with due

diligence by appropriate proceedings. For the avoidance of doubt, nothing herein requires payment of any obligation subject to the Automatic Stay unless the nonpayment of such obligations would result in the imposition of a Lien on the Collateral.

6.2 Maintenance of Insurance, Financial Records and Corporate Existence.

(a) Borrower shall maintain insurance with respect to its property and business, (including without limitation, property and casualty and business interruption insurance) in accordance with **Schedule 6.2(a)** hereof.

(b) The Borrower shall keep current and accurate books of records and accounts in which full and correct entries will be made of all of its business transactions, and will reflect in its financial statements adequate accruals and appropriations to reserves, all in accordance with GAAP. The Borrower shall not change its fiscal year end date without prior written notice to the Lender.

(c) The Borrower shall do (or cause to be done) all things necessary to preserve and keep in full force and effect its existence and good standing.

(d) The Borrower shall be in compliance with any and all Prescribed Laws. The Borrower shall be in compliance with any and all Prescribed Laws and all other material laws, ordinances, governmental rules and regulations, and court or administrative orders or decrees to which it is subject, whether federal, state or local, (including without limitation environmental or environmental-related laws, statutes, ordinances, rules, regulations and notices), and shall obtain and maintain any and all applicable licenses, permits, franchises, certificates of need or other governmental authorizations necessary to the ownership of its property or to the conduct of its businesses, which violation or failure to obtain could reasonably be expected to have a Material Adverse Effect on the business, property, financial conditions or prospects of the Borrower.

6.3 Business Conducted. Subject to the Orders, the Borrower shall continue in the business presently operated by it. The Borrower shall not engage, directly or indirectly, in any material respect in any line of business substantially different from the businesses conducted by it immediately prior to the date of this Agreement.

6.4 Litigation. The Borrower shall give prompt notice to the Lender of any litigation which individually or in the aggregate with all other litigation could reasonably be expected to have a Material Adverse Effect, and with respect to any litigation relating to the Collateral, Borrower shall provide routine updates to Lender of the status of said litigation.

6.5 Taxes. The Borrower shall pay all taxes, if any, in connection with the Loan or the recording of any financing statements or other Loan Documents. The Obligations of the Borrower under this **Section 6.5** of this Agreement shall survive the payment of the Obligations and the termination of this Agreement.

6.6 Financial and Business Information. The Borrower shall deliver to the Lender the following:

(a) Financial Statements.

(i) As soon as available, but in any event not later than thirty (30) days after the end of each month occurring during each fiscal year of the Borrower, the unaudited consolidated balance sheets of the Borrower and its Subsidiaries as at the end of such month and the related unaudited consolidated statements of income and of cash flows for such month and the portion of the fiscal year through the end of such month, setting forth in each case in comparative form the figures for the previous year, certified by a Responsible Officer as being fairly stated in all material respects (subject to normal year-end audit adjustments).

(ii) All such financial statements shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP applied (except as approved by such accountants or Responsible Officer, as the case may be, and disclosed in reasonable detail therein) consistently throughout the periods reflected therein and with prior periods.

(b) Certificates; Other Information. The Borrower shall furnish the following to the Lender:

(i) Promptly, after the same are sent, copies of any statement or report sent to any holder of debt securities of the Borrower pursuant to the terms of any indenture, loan agreement or similar agreement and not otherwise required to be furnished to the Lender pursuant to any other clause of this Section;

(ii) Promptly, after receipt of the same, copies of all notices, requests and other documents received by the Borrower under or pursuant to any material contract or instrument, indenture, loan agreement regarding or related to any breach or default by any party thereto or any other event that could materially impair the value of the interests or the rights of the Borrower or otherwise have a Material Adverse Effect and copies of the foregoing and such information and reports regarding such material contracts and such instruments, indentures, loan agreements as the Lender may request from time to time;

(iii) Such other information respecting the business, condition (financial or otherwise), operations, performance, properties or prospects of the Borrower as the Lender may from time to time reasonably request;

(iv) Promptly upon becoming aware of the existence of any condition or event which constitutes an Event of Default or

Unmatured Event of Default under this Agreement, a written notice specifying the nature and period of existence thereof and what action the Borrower is taking (and proposes to take) with respect thereto;

(v) Promptly after receipt by the Borrower, written correspondence from the Office of the AG relating to the Collateral and/or the Hospital;

(vi) Promptly after receipt by the Borrower, copies of any notice of termination of eligibility of the Borrower to participate in any reimbursement program of any private insurance carrier, managed care or similar organization, or other obligor applicable to it;

(vii) Promptly after receipt by the Borrower, copies of any notice of any reimbursement payment contract or process that results or is reasonably expected to result in any claim against the Borrower (including on account of overpayments, settlement payments, appeals, repayment plan requests);

(viii) Promptly after receipt by the Borrower, copies of any report or communication from any Governmental Authority in connection with any inspection of any facility of the Borrower other than those which are routine and non-material; and

(ix) Promptly after receipt by the Borrower, written notice of default given to the Borrower by any creditor for borrowed money in excess of \$100,000.00, other than in connection with or as a result of the filing of the Chapter 11 Case.

6.7 Inspections. The Borrower (and its legal and financial advisors in the case of clauses (i) through (iii) below) will, so long as the Obligations (excluding contingent indemnification obligations for which no claim has been asserted) have not been indefeasibly paid in full in cash, (i) reasonably cooperate with, consult with, and provide to the Lender all such information and documents that the Borrower is obligated (including upon reasonable request by the Lender) to provide under the Loan Documents or the provisions of the Orders; (ii) upon reasonable advance notice during normal business hours, permit the Lender to visit and inspect any of the Borrower's business premises and other properties, to examine and make abstracts or copies from any of its books, records, reports, and other papers, and to discuss its affairs, finances, properties, business operations, and accounts with its officers, employees, independent public accountants, and other professional advisors; (iii) permit the Lender to consult with the Borrower's management and advisors on matters concerning the Borrower's businesses, financial condition, operations, and assets; and (iv) upon reasonable advance notice, permit the Lender to conduct, at the Lender's discretion and at the Borrower's cost and expense, field audits, collateral examinations, liquidation valuations, environmental surveys, and appraisals at reasonable times in respect of any or all of the Collateral in accordance with the Loan Documents.

6.8 Maintenance of Properties. The Borrower shall cause the Collateral to be maintained consistent with the level of maintenance in place as of the Closing Date, and shall cause all property used or useful in the conduct of its business to be maintained and kept in good condition, repair and working order and supplied with all necessary equipment and shall cause to be made all necessary repairs, renewals, replacements, betterments and improvements thereof. In the event Lender determines in its sole but good faith discretion that Borrower has failed to comply with the foregoing, at Lender's written request, Borrower shall promptly cause a third party property manager reasonably approved by Lender to be engaged to maintain the Collateral in accordance with the foregoing requirements pursuant to a property management agreement reasonably approved by Lender. Any property management agreement shall (i) at all times be terminable without payment of a premium or fee immediately upon an Event of Default and otherwise upon not less than thirty (30) days' prior written notice and (ii) expressly provide that they are subordinate to Lender's rights and interests under the Loan and the Loan Documents in all respects.

6.9 Material Adverse Developments. The Borrower agrees that promptly upon it or any of its officers having Knowledge of any development or other information which could reasonably be expected to have a Material Adverse Effect, it shall give to the Lender written notice specifying the nature of such development or information and such anticipated effect.

6.10 Places of Business. The Borrower shall give thirty (30) days prior written notice to the Lender of any changes (a) to its jurisdiction of organization and (b) the location of any of its chief executive office or any other places of business, or the establishment of any new, or the discontinuance of any existing place of business.

6.11 Permitted Variances. The Borrower shall incur and make expenditures only in strict compliance with the Approved Budget, subject to the following permissible variances (the "Permitted Variances") (a) Actual Cash Receipts during any Applicable Measurement Period covered by the most recently delivered Variance Report shall not be less than 85% of the Budgeted Cash Receipts for the Applicable Measurement Period, and (b) Actual Disbursement Amount during the period covered by the most recently delivered Variance Report shall not exceed (i) 115% of the Budgeted Disbursement Amount for the Applicable Measurement Period (on a total-disbursements basis). No professional fees disbursed to Professional Persons (each as defined in the Interim Order) under the Approved Budget shall exceed the line-item budgeted amounts for such Professional Persons for any applicable calendar week when budgeted in the Approved Budget. All estimated fees, costs and expenses payable for DIP Fees and Lender Expenses budgeted under the Approved Budget shall be timely disbursed weekly when budgeted in the Approved Budget, and such payments shall in no way modify, limit, or cap the DIP Lender's right to timely receive DIP Fees and Lender Expenses (as defined in the Interim Order). Both (A) the aggregate amount of fees and expenses paid to professionals or professional firms retained by the Borrower or the Committee from the Petition Date through the end of the period covered by the most recent Variance Report (determined based upon billing invoices submitted by such professionals to the Borrower) shall not exceed the aggregate amount of such fees and expenses set forth in the Approved Budget for the same period regardless of when such fees and expenses are actually allowed and paid, and (B) the Compliance Certificate shall certify compliance with the foregoing limitation. Any professional fees disbursed to Professional Persons (as defined in

the Interim Order) under the Approved Budget during any Applicable Measurement Period shall not exceed the line-item budgeted amounts for such Professional Persons for that Applicable Measurement Period.

6.12 Updates to Approved Budget. No later than 5:00 p.m. prevailing Central time on the third (3rd) Business Day after the end of each four calendar week period, the Borrower shall deliver by email (or other electronic means) to the Lender an update of the latest Approved Budget covering the following Nine Week Period, which update shall be consistent with the form, substance and level of detail set forth in the latest Approved Budget and shall be subject to approval by the Lender in its sole but good faith discretion and accompanied by such supporting documentation as reasonably requested by the Lender. Upon (and only upon) the Lender's approval of such update, such update shall thereafter constitute the Approved Budget (and replace the latest Approved Budget) for the purposes of this Agreement. Lender's failure to approve in writing any updated Approved Budget within three (3) Business Days of receipt shall be deemed Lender's disapproval thereof. In the event that Lender does not approve of such updated Approved Budget (or if Lender is deemed to have disapproved of any such updated Approved Budget), (i) Borrower and Lender shall cooperate in good faith for at least three (3) Business Days to agree upon an updated Approved Budget (to be approved by Lender in its sole but good faith discretion), and (ii) if an updated Approved Budget is not agreed to by Lender and Borrower within such three (3) Business Day Period, it is expressly agreed by Borrower that the prior Approved Budget previously approved by Lender shall govern. The Borrower and its advisors shall be available to discuss with the Lender and the Lender's agents or advisors upon the Lender's request (but in any event no less frequently than two times per month) (a) each Approved Budget (including all updates and supplements thereto), (b) the financial operations and performance of the Borrower, and (c) such other matters as the Lender (or its agents or advisors) may reasonably request.

6.13 Milestones. The Borrower shall timely and completely comply with each of the Milestones.

6.14 Reports. Commencing on the first Tuesday after the Petition Date and thereafter on each Approved Budget Report Date, no later than 5:00 p.m. prevailing Central time on such day, the Borrower shall deliver to the Lender a Variance Report and a Compliance Certificate, each in form and substance satisfactory to the Lender in its sole discretion.

6.15 Leases.

(a) From and after the Closing Date, Borrower shall use commercially reasonable efforts to cause all rentable space at the Real Property (other than the Leases identified on the Rent Roll) to be leased at not less than prevailing market rental rates from time to time, taking into account market standard rental concessions, rent abatement and free rent. Borrower shall timely perform all obligations that are required to be performed by the landlord under the Leases. Borrower shall use commercially reasonable efforts to obtain tenant estoppel certificates from all tenants leasing space at the Real Property prior to the issuance of the Final Order.

(b) From and after the Closing Date, all Leases (other than the Leases identified on the Rent Roll) of all or any part of the Real Property shall be with tenants approved by Lender

in writing and upon terms approved in writing by Lender in its sole but good faith discretion prior to Borrower's execution of any such Lease (or any such expansion, renewal or modification of such Lease, or any cancellation or termination of any such Lease) and, at Lender's request with respect to new commercial Leases only, Borrower shall provide Lender with a subordination, non-disturbance and attornment agreement with all tenants on Lender's form as a condition to the approval of any such new commercial Lease. Without limitation on the foregoing, all Leases (other than the Leases identified on the Rent Roll and residential leases) shall include estoppel, subordination, attornment and Lender protection provisions satisfactory to Lender. Borrower shall deliver to Lender true, complete and correct copies of any proposed Lease (or proposed expansion, renewal or modification of a Lease) requiring Lender's approval and Lender shall approve or disapprove such proposed Lease (or proposed expansion, renewal or modification of a Lease) within ten (10) Business Days after its receipt of the same. In the event Lender does not approve or disapprove the proposed Lease (or proposed expansion, renewal or modification of a Lease) within such ten (10) Business Day period, then the proposed lease shall be deemed disapproved.

(c) Borrower shall not permit or consent to any assignment or sublease of any Lease without Lender's prior written approval (other than assignments or subleases expressly permitted under any Lease pursuant to a unilateral right of the tenant thereunder not requiring the consent of Borrower).

(d) Borrower shall (1) timely perform all material obligations that are required to be performed by the landlord under the Leases; (2) use commercially reasonable efforts to enforce the obligations to be performed by the tenants; (3) not collect any rents for more than one (1) month in advance of the time when the same shall become due, unless approved by Lender in its reasonable discretion; (4) not further assign or encumber any Lease; and (5) prohibit any pornographic or other offensive use at the Real Property, including, without limitation, the sale of any marijuana or associated paraphernalia. Any letter of credit or other instrument that Borrower receives in lieu of a cash security deposit under any Lease shall (a) be maintained in full force and effect in the full amount, and (b) if permitted pursuant to applicable laws, name Lender as payee or mortgagee thereunder (or at Lender's option, be fully assignable to Lender).

6.16 Ground Lease.

(a) Rent and Other Payments under Ground Lease. MCHS shall promptly pay, as and when due and payable, all rent, any additional rent and/or percentage rent, and all other sums and charges described in and required to be paid by MCHS under the terms and conditions of the Ground Lease, including, without limitation, all taxes, assessments and other charges or levies and all insurance premiums required to be paid by MCHS thereunder.

(b) Compliance; Performance under Ground Lease. BCHA shall timely perform and observe all of the terms, covenants, and conditions required to be performed and observed by BCHA as landlord under the Ground Lease and shall do all things necessary to preserve and to keep unimpaired BCHA's rights under the Ground Lease. MCHS shall timely perform and observe all of the terms, covenants, and conditions required to be performed and observed by MCHS as tenant under the Ground Lease and shall do all things necessary to preserve and to keep unimpaired MCHS' rights under the Ground Lease. Without the express prior written

consent of Lender in each instance, Borrower shall not: (i) take any act which would destroy or materially impair the benefits to Lender pursuant to the Loan Documents; or (ii) take any action or omit to take any action which would affect or permit the termination of the Ground Lease.

(c) No Merger. Without the express prior written approval of Lender, there shall be no merger of the leasehold estate created by the Ground Lease with the fee estate of the real property encumbered by the Ground Lease, and MCHS' leasehold estate created by the Ground Lease shall not merge, but shall always remain separate and distinct, notwithstanding any union of such estates in BCHA, MCHS, or Lender by purchase, operation of law, or otherwise.

(d) No Amendment, Modification, Termination, Subordination of Ground Lease. Without the express prior written consent of Lender in each instance, Borrower shall not, either orally or in writing: (i) modify, amend, supplement, alter, or change the Ground Lease; (ii) terminate or cancel the Ground Lease or otherwise surrender all or any portion of MCHS' leasehold estate and interest under the Ground Lease; or (iii) assign, transfer, or sublease all or any portion of MCHS' leasehold estate and interest under the Ground Lease. Without limiting the generality of the foregoing, Lender's consent to any modification, amendment, supplement, alteration, alteration, sublease, transfer, or assignment respecting the Ground Lease on any one occasion shall not be deemed or construed to constitute a waiver of Lender's right to require consent to any other or further, future, or successive modification, amendment, supplement, alteration, alteration, sublease, transfer, or assignment thereof.

(e) Renewals; Options. Without Lender's express prior written consent in each instance, Borrower: (i) shall not fail to timely exercise any option or right to renew or extend the term of the Ground Lease, at least ten (10) business days prior to the expiration thereof, in accordance with the terms and conditions of the Ground Lease; (ii) shall provide immediate written notice to Lender with respect to any such exercise of any option or right to renew or extend the term of the Ground Lease; and (iii) shall execute, acknowledge, deliver and record any document requested by Lender to evidence the respective lien and title interest of the Deed of Trust on such extended or renewed lease term of the Ground Lease. In the event MCHS shall fail to timely exercise any such option or right as and when provided above, Lender may exercise such option or right as MCHS' attorney-in-fact in Lender's own name or in the name of and on behalf of a nominee of Lender, as and when Lender may determine in the exercise of its sole and exclusive discretion. Without limiting the other provisions of this Agreement, MCHS hereby irrevocably constitutes and appoints Lender and any officer or agent of MCHS, with full power of substitution, as its true and lawful attorney-in-fact, coupled with an interest, with full irrevocable power and authority in the place and stead of MCHS or in MCHS' own name to execute in MCHS' name any such documents and to otherwise carry out the purposes of this Section.

Section 7 - Negative Covenants

Beginning on the date of this Agreement and continuing until the Lender has no further obligation to make advances of the Loan to the Borrower pursuant to this Agreement and the Terms Loan and other Obligations of the Borrower to the Lender have been repaid in full, the Borrower shall not, without the prior written consent of the Lender take any of the following action or permit any of the following to occur:

7.1 Transfer; Merger, Consolidation, Dissolution or Liquidation.

(a) The Borrower shall not Transfer or otherwise dispose of the Collateral (including, without limitation, the Real Property) without the Lender's prior written consent thereto, other than the Lender Liens and the Permitted Liens.

(b) The Borrower shall not merge or consolidate with, or acquire, any other Person unless the Borrower pays or causes to be paid all of the Obligations in full as a condition precedent to the effectiveness of such merger or consolidation, or commence a dissolution or liquidation.

7.2 Liens and Encumbrances. The Borrower shall not: (i) execute a negative pledge agreement with any Person covering any of the Collateral, or (ii) cause or permit or agree or consent to cause or permit in the future (upon the happening of a contingency or otherwise) the Collateral, whether now owned or hereafter acquired, to be subject to any Lien other than (a) the Lender Liens, and (b) the Permitted Liens. Notwithstanding the foregoing, (x) the Permitted Liens shall at all times be junior and subordinate to the Lender Liens, and (y) the prohibition in this **Section 7.2** of this Agreement specifically includes any efforts by the Borrower, the Committee, or any other party in interest in the Chapter 11 Case to have any other Lien, claim, or interest "prime" or become pari passu with any Lien, claim, or interest of the Lender other than as permitted in the Orders.

7.3 Indebtedness. The Borrower shall not hereafter borrow money or incur other Indebtedness for borrowed money secured by the Collateral, other than the Obligations. Borrower shall cause all trade payables and other expenses of maintaining, repairing, and operating the Collateral (including, without limitation, all utilities) to be paid promptly upon such expenses becoming due and payable.

7.4 Transactions with Affiliates.

(a) The Borrower shall not enter into any transaction with any Affiliate unless (i) the transaction is in the Ordinary Course of and pursuant to the reasonable requirements of the Borrower's business and upon terms substantially the same and no less favorable to the Borrower as it would obtain in a comparable arm's length transactions with any Person not an Affiliate, and (ii) such transaction is not prohibited under the Loan Documents.

(b) Subject in any event to the limitations of **Section 7.4(a)** of this Agreement, except with the prior written consent of the Lender, which consent shall not be unreasonably withheld or delayed, the Borrower shall not create or acquire any Subsidiary unless such Subsidiary engages in a business substantially related to the business of the Borrower as conducted immediately prior to the date of this Agreement, and if required by the Lender, such Subsidiary becomes a co-borrower hereunder.

7.5 Guarantees. Except for the endorsement in the Ordinary Course of negotiable instruments for deposit or collection and the transactions contemplated hereby, the Borrower shall not become or be liable, directly or indirectly, primary or secondary, matured or contingent, in any

manner, whether as guarantor, surety, accommodation maker, or otherwise, for the existing or future Indebtedness of any kind of any other Person.

7.6 Loans to Other Persons. Except as permitted by the Loan Documents, the Borrower shall not make or be permitted to have outstanding any loans, advances or extensions of credit to any Person without the prior written consent of the Lender.

7.7 Reclamation Claims. Unless expressly required pursuant to an order of the Bankruptcy Court entered over the objection of the Borrower, the Borrower shall not agree to return goods under Sections 546(c) or (h) of the Bankruptcy Code (or to otherwise return goods on account of any prepetition Indebtedness) to any creditor or to allow any creditor to exercise a right of setoff or recoupment against any of its prepetition Indebtedness based upon any such return of goods pursuant to Section 553 of the Bankruptcy Code or otherwise.

7.8 Liens. The Borrower shall not directly or indirectly create, incur, assume or permit to exist any Lien on or with respect to any of their respective property or assets, except:

- (a) the Lender Liens, and
- (b) the Permitted Liens.

7.9 Water Shares. Borrower shall pay prior to delinquency all assessments levied upon the shares of stock appurtenant to the Real Property issued pursuant to the Certified Bylaws of Mutual Water company recorded in the Recorder's Office on February 12, 2009 as Instrument No. 20090198891 (the "Bylaws"). Borrower shall reasonably cooperate in good faith with Lender to obtain certificates for the shares of capital stock appurtenant to the Real Property issued pursuant to the Bylaws.

Section 8 - Application of Proceeds

Monies to be applied to the Obligations, whether arising from payments from the Borrower, disposition of or realization on Collateral, setoff, or otherwise, shall be allocated as follows

- (a) First, to payment of Lender Expenses and all other fees, expenses, costs, indemnities, and other amounts (other than principal and interest) owing to the Lender, until paid in full;
- (b) Second, to payment of all interest and fees on the Loan then due and payable (including Accrued Interest), until paid in full;
- (c) Third, to payment of principal of the Loan, until paid in full;
- (d) Fourth, to payment of all other Obligations then due and owing, until paid in full; and

(e) Fifth, the balance, if any, after all of the Obligations (other than contingent indemnification obligations for which no claim has been made) have been indefeasibly paid in full, to the Borrower or as otherwise required by law.

Section 9 - Events of Default and Remedies

9.1 Events of Default. The following events shall constitute an “Event of Default” under this Agreement, the occurrence of which shall entitle the Lender to pursue any and all rights and remedies, legal and equitable, available to it under any Loan Document or otherwise. The occurrence of an Event of Default under this Agreement shall constitute a default under each and every other Loan Document. The Lender’s rights and remedies are cumulative and may be exercised concurrently or successively from time to time. Any action by the Lender against any property or party shall not serve to release or discharge any other security, property or party in connection with this transaction. An Event of Default shall be deemed to continue until duly waived in writing by the Lender. The Events of Default are as follows:

(a) Failure to pay (i) the principal on the Borrower’s Indebtedness to the Lender (whether arising pursuant to the Loan Documents or the Orders) on the day the same shall first come due and payable, whether by acceleration or otherwise or (ii) the interest on the Borrower’s Indebtedness to the Lender (whether arising pursuant to the Loan Documents or the Orders) within three (3) Business Days after the same shall first come due and payable, whether by acceleration or otherwise;

(b) Failure to pay when due any Lender Expenses or other amounts (other than payments described in **Section 9.1(a)** of this Agreement) due under this Agreement within ten (10) days after the same shall first come due and payable subject to compliance with the Orders;

(c) The Borrower fails to observe or perform any term, covenant or condition under **Sections 6.2** through 6.14, or **Section 7** of this Agreement;

(d) Borrower fails to observe or perform any term, covenant or condition of this Agreement or any other Loan Document (other than those which constitute a default under another provision of this **Section 9.1** of this Agreement) within a period of fifteen (15) Business Days after the earlier of (x) the Borrower’s Knowledge of such failure, or (y) Notice thereof from Lender;

(e) The occurrence and continuance of an Event of Default (whether described as an “Event of Default”, “Default”, “Security Agreement Default” or similar term) under any other Loan Document after any applicable cure periods, provided that such Event of Default has not been waived;

(f) The material inaccuracy in any statement, assurance, representation, covenant, warranty, term or condition by the Borrower contained in this Agreement or in any document delivered or to be delivered by or on behalf of the Borrower pursuant to this Agreement or any of the other Loan Documents, which inaccuracy could reasonably be expected to have a Material Adverse Effect;

(g) The Chapter 11 Case shall be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code;

(h) The Borrower shall file, support or fail to oppose: (i) a motion or other pleading seeking the dismissal of the Chapter 11 Case under Section 1112 of the Bankruptcy Code or otherwise; (ii) a motion or other pleading seeking a change of venue with respect to the Chapter 11 Case; (iii) a motion for approval of any superpriority claim in the Chapter 11 Case which is pari passu with or senior to the claims of the Lender against the Borrower hereunder, or there shall arise or be granted any such pari passu or senior superpriority claim other than as expressly permitted under the Orders; (iv) any challenge (whether by commencement of a contested matter, adversary proceeding, or otherwise) to (x) any of the admissions, acknowledgments, agreements, or stipulations related to the Lender made by the Borrower in the Orders or (y) any transaction, occurrence, omissions, action, or other matter related to the Lender; (v) any motion seeking entry of an order authorizing or approving the sale or assignment of any of its assets or procedures in respect thereof (x) without first obtaining the consent of the Lender or (y) unless the Borrower pays or causes to be paid all of the Obligations in full as a condition precedent to the effectiveness of such sale or assignment; or (vi) a motion seeking authority for the Borrower to obtain alternative financing secured by the Collateral (or any part thereof) or to use Collateral without the prior consent of the Lender;

(i) A trustee under Chapter 11 of the Bankruptcy Code, a responsible officer or an examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code shall be appointed in the Chapter 11 Case;

(j) The Bankruptcy Court shall enter an order (i) terminating or modifying the Borrower's use of Collateral without the consent of the Lender; or (ii) charging any of the Collateral under Sections 105(a) or 506(c) of the Bankruptcy Code;

(k) The Borrower or any of its Subsidiaries or Affiliates shall fail to comply with the terms of the Orders or any other order of the Bankruptcy Court (including, without limitation, the Cash Collateral Orders), or shall file, support, or fail to oppose a motion for reconsideration or other motion with respect to any such orders which seeks to materially and adversely affect the Lender's rights;

(l) (i) The Interim Order shall not have been entered by the Bankruptcy Court on or before [_____]; (ii) the Closing Date shall not have occurred within two (2) Business Days after entry of the Interim Order in the Chapter 11 Case; (iii) the Final Order shall not have been entered by the Bankruptcy Court on or before [_____]; or (iv) the Orders shall cease to create a valid and perfected Lien on the Collateral, cease to be in full force and effect, or shall be amended, supplemented, stayed, reversed, vacated or otherwise modified without the written consent of the Lender;

(m) The Borrower fails to achieve any of the Milestones in accordance with the timeframes set forth on **Schedule 6.14**.

(n) The Bankruptcy Court shall enter an order or orders granting relief from the Automatic Stay to the holder or holders of any security interest to permit foreclosure or enforcement of any kind (or the granting of a deed in lieu of foreclosure or the like) on any assets of the Borrower which have a value in excess of \$100,000 in the aggregate;

(o) (i) Any judgment or order as to a post-petition liability or debt for the payment money in excess of \$100,000 shall be rendered against any of the Borrower and such judgment shall remain undischarged and there shall be any period of thirty (30) consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; or (ii) any non-monetary judgment or order with respect to a post-petition event shall be rendered against the Borrower which has or could reasonably be expected to have a Material Adverse Effect;

(p) The garnishment, attachment, levy or other similar action taken by or on behalf of any creditor of the Borrower, any Affiliate, or any of their respective properties which could reasonably be expected to have a Material Adverse Effect;

(q) The Borrower's exclusive right granted under the Bankruptcy Code to file a plan of reorganization for the Borrower shall terminate for any reason whatsoever;

(r) The Bankruptcy Court determines that one or more Liens exist that secure Indebtedness which are not identified on **Schedule 1** to this Agreement;

(s) [Reserved];

(t) The occurrence of (i) any default or event of default (however defined or described) under the terms and conditions of the Ground Lease if such default is not cured within any grace period applicable thereto, (ii) any termination or avoidance (or attempted termination or avoidance) of the Ground Lease, and (iii) the rejection (or attempted rejection) of the Ground Lease under the Bankruptcy Code; or

(u) The failure to provide services at the Hospital which are required per the terms of its License for a period of more than one (1) Business Day.

9.2 Advances Optional during Default. The Lender may, at its option and subject to compliance with the Interim Order (or the Final Order, as applicable), terminate its obligation to make Advances, without notice to the Borrower, upon the occurrence and during the continuance of any Unmatured Event of Default or Event of Default.

9.3 Remedies. Immediately upon the occurrence and during the continuation of any Event of Default, the Lender shall have the right, subject to compliance with the Interim Order (or the Final Order, as applicable), (a) to declare the unpaid principal amount of the outstanding Loan, all interest accrued thereon (including Accrued Interest), and all other Obligations to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower, (b) to terminate, reduce or restrict any further commitment to extend credit to the Borrower to the extent any such commitment remains, (c) to terminate the Loan Documents as to any future liability or obligation of the Lender, but

without affecting any of the Lender Liens or the Obligations, and (d) to exercise any and all remedies that it may have for default under any Loan Document, the Orders, or at law or in equity, and such remedies may be exercised concurrently or separately until all of the Obligations have been fully repaid and satisfied. In connection with the enforcement of any such remedies of the Lender, the Lender and its employees, attorneys, agents and other persons and entities designated by the Lender, shall have the right, without notice, to enter the Borrower's places of business for such purposes as reasonably may be required to permit the Lender to preserve, protect, take possession of or sell or otherwise dispose of any Collateral, and to store the Collateral at the Borrower's places of business, without charge, for such periods as may be determined by the Lender.

Section 10 - Acceptance of Proceeds

The acceptance of the proceeds of the Loan and any Advance shall constitute the representation and warranty by the Borrower to the Lender that all of the applicable conditions specified herein have been satisfied as of that time, except for such conditions that have been expressly waived in writing hereunder by the Lender.

Section 11 - Miscellaneous

11.1 Borrower to Pay Fees and Expenses. The Borrower shall pay or reimburse the Lender for all reasonable and documented out-of-pocket expenses incurred by the Lender, including attorneys' fees, costs, charges, compensation, and other amounts incurred by the Lender or its Affiliates in connection with the Loan (including any monitoring, workout, restructuring, or negotiations in respect of the Loan), the Loan Documents (including the preparation, negotiation, execution, delivery, administration, amendment, modification, waiver, or termination of the Loan Documents, the Orders and any transactions contemplated thereby), the Collateral (including any actions taken to perfect or maintain the perfection of the Lender Liens, to maintain insurance on the Collateral, to monitor, audit, inspect, evaluate, observe, verify assess, appraise, collect, sell, liquidate or otherwise dispose of the Collateral, the costs related to any audit, inspection, or appraisal related to the Borrower or the Collateral), or the Chapter 11 Case or any Successor Case (including the preparation and review of pleadings, documents, and reports related to the Chapter 11 Case and any Successor Case, attendance at meetings, court hearings, or conferences related to the Chapter 11 Case or any Successor Case, or the general monitoring of the Chapter 11 Case and any Successor Case), including without limitation, all professional fees and expenses (including attorneys' fees and other legal, accounting, consulting, appraisal, and valuation-related fees and expenses), title and lien search costs, audit fees, appraisal fees, title insurance premiums, recording fees, reconveyance fees and other costs paid or incurred by the Lender (including in connection with any litigation, contest, dispute, suit, proceeding or action in any way relating to the Loan, the Loan Documents, or the Collateral), whether incurred before or after the Petition Date and without the necessity of filing fee applications with the Bankruptcy Court (collectively, the "Lender Expenses"). All such Lender Expenses shall be due on written demand of the Lender. Any Lender Expenses not paid within five (5) Business Days when due shall bear interest at the Default Rate applicable to the Loan.

11.2 Lender's Right of Setoff. The Borrower acknowledges that, subject to compliance with the Interim Order (or the Final Order, as applicable), the Lender shall have the right, upon an Event of Default, or any event that with the giving of notice or lapse of time, or both, would constitute an Event of Default, to set off any Indebtedness from time to time owing to the Borrower by the Lender against any Indebtedness that shall at any time be due and payable by the Borrower to the Lender.

11.3 Remedies Cumulative. Each and every right granted to the Lender hereunder or under any other Loan Document, or allowed it by law or equity, shall be cumulative and may be exercised from time to time. No failure on the part of the Lender to exercise, and no delay in exercising, any right shall operate as a waiver thereof or as a waiver of any other right. No single or partial exercise by the Lender of any right or remedy shall preclude any other future exercise of it or the exercise of any other right or remedy. No waiver or indulgence by the Lender of any default shall be effective unless in writing and signed by the Lender, nor shall a waiver on one occasion be construed as a bar to or waiver of that right on any future occasion. This Agreement may not be amended except by a writing signed by all the parties hereto.

11.4 Relationship of Parties. The relationship between the Borrower and the Lender is solely that of borrower and lender. The Lender has no fiduciary responsibilities to the Borrower as a result of this Agreement, the other Loan Documents or the consummation of the transactions contemplated hereby or thereby. The Lender does not undertake any responsibility to the Borrower to review or inform the Borrower of any matter in connection with any phase of the Borrower's business or operations. The Borrower shall rely entirely upon its own judgment with respect to its business, and any review, inspection, supervision, or information supplied to the Borrower by the Lender is for the protection of the Lender and neither the Borrower nor any third party is entitled to rely thereon.

11.5 Choice of Law. **THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE LOAN DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT, THE LOAN NOTE AND THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS (OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAW)) AND ANY APPLICABLE LEGAL REQUIREMENTS OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT TO THE DEED OF TRUST AND THE ASSIGNMENT OF LEASES SHALL BE GOVERNED BY AND**

CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE REAL PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, THE LOAN NOTE AND THE OTHER LOAN DOCUMENTS, AND THIS AGREEMENT, THE LOAN NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(B) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF MONTEBELLO, COUNTY OF LOS ANGELES, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

[_____]

[_____]

[_____]

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN MONTEBELLO, CALIFORNIA, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF CALIFORNIA. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN MONTEBELLO, CALIFORNIA (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE

SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN MONTEBELLO, CALIFORNIA OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR. NOTHING CONTAINED HEREIN SHALL AFFECT THE RIGHT OF LENDER TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST BORROWER IN ANY OTHER JURISDICTION. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

11.6 Notices. Any notice or request under this Agreement shall be given to the Borrower or to the Lender at their respective addresses set forth below or at such other address as such Person may hereafter specify in a notice given in the manner required under this **Section 11.6** of this Agreement. Any notice or request hereunder shall be given by and shall be deemed to have been received upon: (i) registered or certified mail, return receipt requested on the date on which such is received as indicated in such return receipt; (ii) receipt of delivery by a nationally recognized overnight courier; or (iii) facsimile upon telephone or further electronic communication from the recipient acknowledging receipt (whether automatic or manual from recipient), as applicable.

If to the Borrower:

[]

[]

[]

Attn.: []

Telephone No.: []

Facsimile No.: []

E-mail: []

With a courtesy copy to:

[]

[]

[]

Attn.: []

Telephone No.: []

Facsimile No.: []

E-mail: []

If to Lender:

HRP Montebello, LLC
c/o Hilco Real Estate
5 Revere Drive, Suite 410
Northbrook, IL 60062
Attn: Ryan Lawlor, Executive Vice President
rlawlor@hilcoglobal.com

With a courtesy copy to:

Bryan Cave Leighton Paisner LLP
Attn: Eric Prezant, Esq.
161 North Clark Street, Suite 4300
Chicago, IL 60601-3315
E-mail: eric.prezant@bclplaw.com

11.7 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Borrower and the Lender and their respective successors and assigns. The Borrower shall not have any right to assign, transfer, hypothecate or otherwise transfer or dispose of any of its rights or obligations under this Agreement or the other Loan Documents (voluntarily, by operation of law, as security, by gift or otherwise) without the Lender's consent, which consent may be withheld in the sole discretion of the Lender. The Lender may, without the consent of the Borrower, assign, negotiate, pledge or otherwise hypothecate all or any portion of this Agreement, or grant participations herein and in the Loan Documents, or in any of its rights or security hereunder or thereunder, including, without limitation, the instruments securing the Borrower's obligations hereunder; *provided, however*, that the Lender promptly will inform the Borrower of any such assignment, negotiation, pledge or other hypothecation and of the parties involved therewith. In connection with any assignment or participation, the Lender may disclose to the proposed assignee or participant any information that the Borrower are required to deliver to the Lender pursuant to this Agreement.

11.8 Waiver of Marshalling. The Borrower waives and releases any and all right that it may have to require that the Lender marshal any of the Collateral. The Borrower shall upon the request of the Lender promptly execute and deliver to the Lender a written statement, in form and substance reasonably satisfactory to the Lender, identifying all of the Collateral in which the Lender holds an interest as security for the Loan made pursuant to this Agreement. The Lender may file or record such written statements in the appropriate public records as determined by the Lender in its sole discretion.

11.9 Indemnity. The Borrower shall indemnify, defend and hold harmless the Lender, and its respective officers, employees and agents, of and from any claims, demands, liabilities, obligations, judgments, injuries, losses, actual damages and reasonable and documented out-of-pocket costs and expenses (including, without limitation, reasonable and documented out-of-pocket legal fees of one outside counsel) resulting from (i) acts or conduct of the Borrower under, pursuant or related to this Agreement and the other Loan Documents, (ii) the Borrower's breach

or violation of any representation, warranty, covenant or undertaking contained in this Agreement or the other Loan Documents, and (iii) the Borrower's failure to comply with any or all laws, statutes, ordinances, governmental rules, regulations or standards, whether federal, state or local, or court or administrative orders or decrees, (including without limitation environmental laws, etc.) and all costs, expenses, fines, penalties or other actual damages resulting therefrom, unless resulting from acts or conduct of the Lender or its Affiliates, constituting willful misconduct or gross negligence.

11.10 Additional Assurances. The Borrower shall take such action, including the execution, delivery or filing of any and all additional or supplemental documentation, as the Lender may reasonably require to give full effect to the terms and conditions of this Agreement; including, without limitation, such actions as may be necessary or advisable to authorize, approve, ratify or confirm the Borrower's execution, delivery and performance of this Agreement and the other Loan Documents and the incurrence of the Obligations.

11.11 Time of the Essence. Time is of the essence with respect to all provisions of this Agreement.

11.12 Headings Descriptive Only. The headings in this Agreement have been inserted for convenience only and shall not affect the meaning or interpretation of this Agreement.

11.13 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be considered an original and all of which shall constitute the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by email, facsimile or similar electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement

11.14 Entire Agreement; Amendments; Waivers. This Agreement, the other Loan Documents and the Orders contain the entire agreement of the parties hereto with respect to the subject matter hereof. Neither this Agreement nor the other Loan Documents may be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of the Borrower or Lender. The Lender and the Borrower may enter into agreements supplemental hereto for the purpose of adding to or modifying any provisions of this Agreement or the other Loan Documents or changing in any manner the rights of Lender or the Borrower hereunder or waiving any Event of Default hereunder

11.15 Recitals Incorporated. The Recitals are incorporated into and form a part of this Agreement.

11.16 Waiver of Jury Trial. The Lender and the Borrower, after consulting or having had the opportunity to consult with counsel, knowingly, voluntarily and intentionally waive any right either of them may have to a trial by jury in any litigation based upon or arising out of this Agreement or any related instrument or agreement or any of the transactions contemplated by this Agreement or any course of conduct, dealing, statements (whether oral or written), or actions of either of them. Neither the Lender nor the Borrower shall seek to consolidate, by counterclaim or otherwise, any such action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived. These provisions shall not be deemed to have been

modified in any respect or relinquished by either the Lender or the Borrower except by a written instrument executed by both of them.

11.17 No Third-Party Beneficiaries. There are no third party beneficiaries of this Agreement.

11.18 Provisions Severable. Should any part, term or provision of this Agreement, or of any documents incorporated herein or executed in connection herewith, be determined by the courts to be illegal, unenforceable or in conflict with any law of the State of California, federal law or any other applicable law, the validity and enforceability of the remaining portions or provisions of such document(s) shall not be affected thereby.

11.19 Joint and Several Liability. If Borrower consists of more than one (1) person or entity, each shall be jointly and severally liable to perform the obligations of Borrower.

11.20 Conflict with Orders. In the event of a conflict between the provisions of this Agreement and any other Loan Document, on the one hand, and the Orders, on the other hand, the terms of the Orders shall control.

11.21

[The balance of this page is intentionally left blank.]

Signature Page to
SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT

BORROWER

BEVERLY COMMUNITY HOSPITAL ASSOCIATION,
a California nonprofit public benefit corporation

By: _____

Name: _____

Title: _____

MONTEBELLO COMMUNITY HEALTH SERVICES, INC.,
a California nonprofit public benefit corporation

By: _____

Name: _____

Title: _____

[Signatures continued on next page.]

Signature Page to
SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT

LENDER

HRE MONTEBELLO, LLC,
a Delaware limited liability company

By: _____

Name: _____

Title: _____

SCHEDULE 1

Additional Permitted Liens

SCHEDULE 2.14

Rent Roll

SCHEDULE 6.2(a)

Insurance

Borrower shall maintain or shall cause to be maintained at all times (collectively, the **“Required Policies”**):

(a) Comprehensive “all risk” or “special form” insurance, including wind/hail/named storm, on the portion of the Collateral constituting improvements and personal property (**“Improvements and Personal Property”**), (i) in an amount equal to the greater of (A) one hundred percent (100%) of the “Full Replacement Cost,” which for purposes of this Agreement means actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation or (B) the Loan; (ii) written on a no coinsurance form and containing an agreed amount endorsement with respect to the Improvements and Personal Property; (iii) providing for no deductible in excess of Fifty Thousand and No/100ths Dollars (\$50,000.00) for all such insurance coverage or as otherwise set forth below and approved by Lender in its sole discretion; (iv) if any of the improvements or the use of the Real Property shall at any time constitute legal non-conforming structures or uses, then coverage containing “Ordinance or Law Coverage,” including coverage for loss to the undamaged portion of the building, demolition costs and increased costs of construction in amounts acceptable to Lender, in its sole discretion and (v) including: (A) if any portion of the Improvements is located in a federally designated “special flood hazard area,” flood hazard insurance in an amount equal to the maximum amount of such insurance available under the National Flood Insurance Program as governed by the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973, or the National Flood Insurance Reform Act of 1994, as each may be amended, with a deductible not greater than Fifty Thousand and No/100ths Dollars (\$50,000.00) and (2) such limits, whether excess or otherwise, as Lender may require in its sole discretion; (B) at all times from and after the date that is ten (10) days after delivery of the Earthquake Insurance Requirement Notice, earthquake insurance in form and substance and in an amount satisfactory to Lender (**“Earthquake Insurance”**); and (C) named windstorm insurance, regardless of exclusion from the all-risk policy, in amounts and in form and substance satisfactory to Lender, provided, that the insurance pursuant to the preceding clauses (A), (B), and C hereof shall be on terms consistent with the comprehensive “all risk” insurance policy required under this clause (a);

(b) Commercial general liability insurance, including a broad form comprehensive general liability endorsement and coverage against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Collateral, such insurance (i) to be on the so-called “occurrence” form with a combined limit of not less than Two Million and No/100ths Dollars (\$2,000,000) in the aggregate and One Million and No/100ths Dollars (\$1,000,000) per occurrence (and, if on a blanket policy, containing an “Aggregate Per Location” endorsement) with the coverage primary and non-contributory to any other valid and collectible insurance, (ii) to continue at not less than the aforesaid limit until required to be changed by Lender in writing by reason of changed economic conditions making such protection inadequate (and consistent with the requirements Lender or its servicer is then imposing for properties similar to the Collateral in the region where the Real Property is located), and (iii) to cover at least the following hazards: (A) premises and operations; (B) products and completed operations on an “if any” basis, with such products and completed operations coverage providing coverage up to the applicable statute

of limitations and/or repose; (C) independent contractors; (D) contractual liability for all insured contracts; and (E) providing for no deductible;

(c) Rental loss and/or business income interruption insurance in an amount equal to one hundred percent (100%) of the projected rents (which may be reduced to reflect non-continuing expenses) for a period of at least eighteen (18) months from the date of such casualty (assuming such casualty had not occurred, and notwithstanding that the policy may expire at the end of such period) (i) with loss payable to Lender as its interest shall appear, (ii) covering all risks or “special form” required to be covered by the insurance provided for in clause (a) above, and (iii) containing an extended period of indemnity endorsement which provides that after the physical loss to the Improvements and the Personal Property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of at least twelve (12) months from the date that the Real Property is repaired or replaced and operations are resumed, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period;

(d) At all times during which structural construction, repairs or alterations are being made with respect to the Improvements, and only if the property and liability coverage forms do not otherwise apply, (i) Borrower and General Contractor shall obtain and maintain commercial general liability and umbrella liability insurance with the coverage primary and non-contributory to any other valid and collectible insurance covering claims related to the structural construction, repairs or alterations being made at the Real Property which are not covered by or under the terms or provisions of the commercial general liability and umbrella liability insurance policies required herein, and shall require all subcontractors to provide per occurrence limits of at least \$2,000,000 or as otherwise approved by Lender and (ii) the insurance provided for in clause (i) above written in a so-called builder’s risk completed value form and include 100% of the Hard Costs and recurring Soft Costs identified in the then current budget, with other terms, conditions and sub-limits acceptable to Lender (A) on a non-reporting basis, (B) against all risks insured against pursuant to clause (a) above, (C) including permission to occupy the Real Property, and (D) with an agreed amount endorsement waiving co-insurance provisions;

(e) If applicable, worker’s compensation insurance or the equivalent thereof, with respect to any employees of Borrower, or any contractor performing work at the Real Property, as required by statute or any Governmental Authority or applicable law and employer’s liability in amounts acceptable to Lender;

(f) Comprehensive boiler and machinery insurance/equipment breakdown and testing insurance, if applicable, in amounts as shall be required by Lender on terms consistent with the commercial property insurance policy required under clause (a) above;

(g) Umbrella/excess liability insurance in an amount not less than Twenty-Five Million and No/100ths Dollars (\$25,000,000.00) per occurrence on terms consistent with and on a follow-form basis to the commercial general liability insurance policy, employers liability, and automobile liability policies required under clause (b), clause (e), and clause (h) included herein;

(h) Commercial automobile liability coverage for all owned, hired and non-owned vehicles, including rented and leased vehicles containing minimum limits per occurrence of One Million and No/100ths Dollars (\$1,000,000);

(i) The commercial property, business income, commercial general liability and umbrella liability insurance required under clauses (a), (b), (c) and (g) above shall provide Terrorism Coverage (defined below), whether caused by a foreign or domestic source and Borrower shall maintain Terrorism Coverage on terms (including amounts) consistent with those required under clauses (a), (b), (c) and (g) above at all times during the term of the Loan; provided, however, in the event the insurance required under clauses (a) and (c) above shall contain an exclusion for loss resulting from perils and acts of terrorism, Borrower shall maintain a separate, stand-alone terrorism insurance policy satisfactory to Lender. As used above, “Terrorism Coverage” means acts of terror or similar acts of sabotage; provided, that, for so long as the Terrorism Risk Insurance Act of 2002, as extended and modified by the Terrorism Risk Insurance Program Authorization Act of 2007 (i) remains in full force and effect and (2) continues to cover both foreign and domestic acts of terror, the provisions of such law that define “covered acts” shall determine what is deemed to be included within this definition of “Terrorism Coverage”; and

(j) Such other insurance coverages in such amounts as may be required by Lender.

All Required Policies shall (i) be obtained under valid and enforceable policies, and shall be subject to the approval of Lender as to insurance companies, amounts, deductibles, loss payees and insureds; (ii) be issued by insurance companies authorized to do business in the State in which the Real Property is located and having a claims paying ability rating of “AA” or better by S&P, or “Aa2” or better by Moody’s, or “aa” or better by AM Best (but in such case only to the extent that such Rating Agency rates the applicable insurer) (provided that if a Securitization has occurred, they shall have a claims paying ability rating of “AA” or better by S&P and “Aa2” or better by Moody’s, but in such case only to the extent that such Rating Agency is rating the Securities and rating the applicable insurance companies); (iii) name Borrower as a named insured, and in the case of liability coverages (except for workers’ compensation and motor vehicle coverages), shall name Lender as the additional insured, as its interests may appear; (iv) in the case of all property coverages, shall contain a standard non-contributing mortgagee clause in favor of Lender providing that the loss thereunder shall be payable to Lender; (v) provide that no act or negligence of Borrower, or foreclosure or similar action, or failure to comply with the provisions of any Required Policies, which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Lender is concerned; (vi) provide that the Required Policies shall not be canceled without at least thirty (30) days’ notice to Lender (except ten (10) days’ notice for non-payment of premium); (vii) provide that the issuers thereof shall give notice to Lender if the Required Policies have not been renewed ten (10) days prior to its expiration; and (viii) not contain provisions that would make Lender liable for any Insurance Premiums thereon or subject to any assessments thereunder. All insurance shall be obtained under valid and enforceable policies and shall be subject to the approval of Lender, including insurance companies, amounts, deductibles, loss payees and insureds. Any blanket insurance policy shall provide the same protection as would a separate Policy insuring only the Real Property in compliance with the provisions hereof. All policies shall include a Waiver of Subrogation reasonably acceptable to the Lender.

SCHEDULE 6.14

Milestones

A. Borrower shall proceed by way of an auction process under Section 363 (and as applicable Section 365) of the Bankruptcy Code (“Auction”):

1. By no later than [**May 1, 2023**], the Borrower shall have filed a motion seeking approval of a bid procedures order (the “**Bid Procedures Order**”) in form and substance satisfactory to the Lender that includes the following deadlines:

- (a) [**July 12, 2023**] to conduct an Auction by the Borrower with respect to all Collateral.
- (b) [**July 14, 2023**] to conduct a hearing before the Bankruptcy Court to approve the highest and best bids.

2. By no later than [**May 5, 2023**], the Bankruptcy Court shall have entered the Bid Procedures Order.

3. By no later than [**July 19, 2023**], the Bankruptcy Court shall have entered an order in form and substance satisfactory to the Lender approving the sale of all or substantially all of the Borrower’s assets (the “**Sale Transaction(s)**”).

4. By no later than [**July 31, 2023**], the Sale Transaction(s) shall have closed and all Obligations under this Agreement shall have been indefeasibly satisfied in full.

EXHIBIT A

Legal Description

EXHIBIT B

Form of Borrowing Certificate

BORROWING CERTIFICATE

Dated as of _____, 202__

The Borrower (as defined below) hereby certifies to the Lender (as defined below) in accordance with the SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT (as amended, supplemented or modified from time to time, the “Credit Agreement”), made as of [_____], by and among BEVERLY COMMUNITY HOSPITAL ASSOCIATION, a California nonprofit public benefit corporation (together with its successors and assigns, “BCHA”), and MONTEBELLO COMMUNITY HEALTH SERVICES, INC., a California nonprofit public benefit corporation, jointly and severally (together with its successors and assigns, “MCHS,” and together, jointly and severally with BCHA, “Borrower” or “Debtor”), [_____], as the Lender (as defined therein; all capitalized terms not defined herein have the meanings given them in the Credit Agreement) and the other Loan Documents that:

A. Compliance

(1) Pursuant to the Loan Documents and the Orders, the Lender has been granted a lien on all of the Collateral. The amounts, calculations and representations set forth below are true and correct in all respects and were determined in accordance with the Credit Agreement and GAAP.

(2) The Borrower certifies to the Lender that, as of the date hereof and the Advance Date (a) the Loan Documents, other documents required pursuant thereto and security interests and liens created thereby are in full force and effect, (b) each representation and warranty in the Loan Documents is true and correct in all material respects as if made on and as of such date (except where such representation or warranty is otherwise expressly made as of a particular date, in which case it is or was true and correct on and as of such other date), (c) the Borrower is in compliance in all material respects with all, and not in violation, breach or default of any, covenants, agreements or other provisions of or under any of the Loan Documents, (d) no Event of Default or Unmatured Event of Default under any Loan Document has occurred or is continuing or exists or, if applicable, will exist on such date or after giving effect to the requested Advance, (e) no event or occurrence which could have a Material Adverse Effect has occurred and there are no liabilities or obligations with respect to Borrower of any nature whatsoever (whether absolute, accrued, contingent or otherwise and whether or not due) which, individually or in the aggregate, could reasonably be expected to have or result in a Material Adverse Effect, (f) no variance other than a Permitted Variance from the Approved Budget has occurred, (g) no event(s), fact(s), condition(s) or circumstance(s) has occurred which, individually or in the aggregate, make it improbable that the Borrower will be able to observe or perform in all material respects any of the Obligations under the Loan Documents, and (h) the Borrower is in full compliance with (i) the Interim Order at all times during the Interim Availability Period, and (ii) with the Final Order on and after the date it is entered by the Bankruptcy Court.

(3) The total outstanding balance under the Loan Documents as of the date of this Certificate is:

Principal (Loan)	\$_____
Accrued Interest (Loan)	\$_____
Fees	\$_____
<u>Other Amounts</u>	\$_____
Total	\$_____

B. Borrowing Notice *(to be completed and effective only if the Borrower is requesting an Advance)*

(1) In accordance with Sections 3.[2][3] and 4 of the Credit Agreement, the Borrower hereby irrevocably requests from the Lender an Advance of a Loan pursuant to the Credit Agreement in the aggregate principal amount of \$_____ (“Requested Advance”) to be made on _____, 202__ (the “Borrowing Date”), which day is a Business Day. Unless otherwise indicated here, such advance is requested to be wire transferred to the deposit account previously designated in writing by the Borrower.

(2) The Borrower further certifies to the Lender that: (a) the certifications, representations, calculations and statements herein will be true and correct on the Borrowing Date, (b) immediately after giving effect to the Requested Advance, the aggregate outstanding principal amount of Advances will not exceed the Loan Commitment, and (c) all conditions and provisions of Section 4 of the Credit Agreement are and will be as of the Advance Date fully satisfied, including, without limitation, receipt by the Lender of all fees, charges and expenses payable to the Lender on or prior to such Borrowing Date pursuant to the Loan Documents.

Attached hereto are all consents, approvals and agreements, if any, from third parties necessary or desirable with respect to the Requested Advance.

[SIGNATURE PAGE NEXT FOLLOWS]

BORROWER:

BEVERLY COMMUNITY HOSPITAL ASSOCIATION,
a California nonprofit public benefit corporation

By: _____

Name: _____

Title: _____

MONTEBELLO COMMUNITY HEALTH SERVICES, INC.,
a California nonprofit public benefit corporation

By: _____

Name: _____

Title: _____

EXHIBIT C

Form of Compliance Certificate

COMPLIANCE CERTIFICATE

To: [_____]
Date: _____, 202__
Subject: Compliance Certificate for the month ending _____, 202__

In accordance with that certain Senior Secured Superpriority Debtor-in-Possession Credit Agreement dated as of [_____] (as amended from time to time, the "Credit Agreement"), by and among BEVERLY COMMUNITY HOSPITAL ASSOCIATION, a California nonprofit public benefit corporation, also known as: Beverly Community Hospital Association, a non-profit corporation; Beverly Community Hospital Association, a California Nonprofit Corporation; and Beverly Community Hospital Association dba Beverly Hospital (together with its successors and assigns, "BCHA"), and MONTEBELLO COMMUNITY HEALTH SERVICES, INC., a California nonprofit public benefit corporation, also known as: MONTEBELLO COMMUNITY HEALTH SERVICES, INC., a Calif. Corp.; MONTEBELLO COMMUNITY HEALTH SERVICES, INC.; MONTEBELLO COMMUNITY HEALTH SERVICES, INC., a nonprofit public benefit corporation; Montebello Community Health Services, Inc., a California Nonprofit Corporation; Montebello Community Health Services, Inc., a California Corporation, jointly and severally (together with its successors and assigns, "MCHS," and together, jointly and severally with BCHA, "Borrower" or "Debtor"), and HRE MONTEBELLO, LLC, a Delaware limited liability company, as the Lender, attached is the Variance Report for the Borrower dated _____, 202__ (the "Reporting Date") and the year-to-date period then ended (the "Current Variance Report"). All terms used in this certificate have the meanings given in the Credit Agreement.

A. Preparation of the Variance Report. I certify that the Current Variance Report has been prepared in a manner consistent with the preparation of the Approved Budget [and the preparation of previously delivered Variance Reports].

B. Professional Fees. The aggregate amount of fees and expenses incurred by professionals or professional firms retained by the Borrower or the Committee from the Petition Date through the Reporting Date (determined based upon billing invoices submitted by such professionals to the Borrower) does not exceed the aggregate amount of such fees and expenses set forth in the Approved Budget for the same period regardless of which month such fees and expenses are actually allowed and paid.

[The balance of this page is intentionally left blank.]

C. Events of Default. I certify that:

(Check one)

- ☐ I have no knowledge of the occurrence of an Event of Default or Unmatured Event of Default under the Credit Agreement, except as previously reported to the Lender in writing.
- ☐ I have knowledge of an Event of Default or Unmatured Event of Default under the Credit Agreement not previously reported to the Lender in writing, as more fully described in the statement of facts attached to this Certificate, and further, I acknowledge that the Lender may under the terms of the Credit Agreement impose the Default Rate at any time during the continuance of such Event of Default.

[Signatures continued on next page.]

BEVERLY COMMUNITY HOSPITAL ASSOCIATION,
a California nonprofit public benefit corporation

By: _____

Name: _____

Title: _____

MONTEBELLO COMMUNITY HEALTH SERVICES, INC.,
a California nonprofit public benefit corporation

By: _____

Name: _____

Title: _____

ANNEX A

APPROVED BUDGET

[see attached]

EXHIBIT D

Tenant Redirect Letter

[Date]

[_____]
[_____]
[_____]

Dear Tenant:

To facilitate the processing of income and expenses, we have entered into certain cash management arrangements with our lender. In accordance therewith, you are hereby directed to remit all rent, reimbursement, contribution and other payments, as and when they become due under your lease, to the following address:

Payment of rent in accordance with this letter shall constitute payment as required under your lease. To ensure proper credit, checks should be made payable to: [_____] and should be mailed to the address stated above, on or before the due dates provided in your lease. This payment direction is irrevocable except by notice from [_____] , or its successors and assigns.

[Signatures continued on next page.]

Very truly yours,

MONTEBELLO COMMUNITY HEALTH SERVICES, INC.,
a California nonprofit public benefit corporation

By: _____

Name: _____

Title: _____

EXHIBIT E

Form of Tenant Estoppel

TENANT ESTOPPEL CERTIFICATE

To:

Lender (as defined below)
c/o Hilco Real Estate
5 Revere Drive, Suite 410
Northbrook, IL 60062

Re: Lease by and between _____, as tenant ("**Tenant**") and
Montebello Community Health Services, Inc. ("**Landlord**").

Address: _____ ("**Property**")

Premises: _____, as further described in the Lease (defined below) ("**Premises**")

Ladies/Gentlemen:

Tenant understands that one or more lenders (such lenders are collectively, together with their respective successors and/or assigns, "**Lender**"), may be making one or more loan(s), the repayment of which would be secured by, among other things, certain mortgages on the above-referenced Property, and that Lender will be relying upon this letter in connection with the making of such loan(s).

The undersigned hereby certifies to Landlord and Lender as follows:

1. Tenant is a tenant at the Property under that certain [**Lease Agreement dated as of _____, 20____, between Tenant and Landlord**] and that lease has not been amended, supplemented, terminated or otherwise modified, except as follows (if none, please state "N/A" or "none", if left blank will be deemed "none"):

(collectively, the "**Lease**")

The Lease represents the entire agreement between the parties with respect to the Premises. There are no other agreements or understandings, whether written or oral, between Tenant and Landlord with respect to the Property, the Premises or the Lease. All capitalized terms used herein but not defined shall be given the meaning assigned to them in the Lease.

2. The Lease is in full force and effect.

3. Tenant has accepted the Premises demised under the Lease and Landlord has

completed all construction and improvements required under the terms of the Lease to be completed by Landlord. The Premises is comprised of approximately _____ square feet.

4. The amount of the security deposit being held by Landlord is \$_____.

5. The term of the Lease is scheduled to expire on _____.
Tenant has no options to renew or extend the term of the Lease except as follows:
_____ (if left blank will be deemed "none").

6. Tenant has no right to terminate the Lease prior to its stated expiration (other than as specifically set forth in the Lease with respect to casualty and condemnation) except as follows: _____ (if left blank, will be deemed "none").

7. Base rent under the Lease is currently payable in the amount of \$_____ per month. Tenant is currently making payments for all additional rent (including any percentage rent, Tenant's proportionate share of real estate taxes, insurance and operating expenses and all other sums or charges due and payable under the Lease, if any) in the amount of \$_____ per month (if none, write "N/A" or "none", if left blank will be deemed "none"). All base rent, additional rent and any other sums or charges due and payable under the Lease by Tenant, if any have been paid through and including _____. Tenant has not paid any base rent or additional rent more than one (1) month in advance of the due date thereof and Tenant agrees not to pay any such rents, additional rents, percentage rents or other sums or charges more than one (1) month in advance unless otherwise specified in the Lease. Tenant agrees that upon notification by Lender in writing that rental payments are to be made to Lender because of a default by Landlord under the loan agreement, Tenant will cease making rental payments to Landlord, or its successors and assigns, and will begin making such rental payments directly to Lender.

8. Neither Landlord nor Tenant is in default under the Lease and there are no existing conditions which upon the giving of notice or the lapse of time or both would constitute a default by Landlord or Tenant under the Lease except as follows: _____ (if left blank, will be deemed "none").

9. All of Landlord's and Tenant's obligations under the Lease have been performed and the Tenant has no defense, claim, right of set-off or counterclaim under the Lease or otherwise, against Landlord. Specifically, Landlord has fulfilled all of its obligations under the Lease to date, including without limitation (i) completion of the improvements and the space required to be completed by Landlord to date according to the Lease, and (ii) any Tenant finish and other construction costs or allowances payable by Landlord have been paid and no such costs are payable hereafter under the Lease.

10. Tenant has no rights or options to purchase all or any part of the Property.

11. Tenant has no notice of any prior assignment, hypothecation or pledge of the

Lease or the rents due thereunder. Tenant has not assigned the Lease nor subleased the Premises.

12. Tenant has not filed any petition in bankruptcy, voluntary or otherwise, any assignment for the benefit of creditors, any petition seeking reorganization or arrangement under the bankruptcy laws of the United States, or any state thereof, or any other action brought under said bankruptcy laws with respect to Tenant.

13. To Tenant's knowledge, it has not violated any laws affecting the Premises.

The undersigned individual hereby certifies that he or she is duly authorized to sign, acknowledge and deliver this Estoppel Certificate on behalf of Tenant.

Dated: _____, 2023.

By: _____

Name: _____

Title: _____

EXHIBIT 2

(Initial Budget)

	Post-Petition	Post-Petition	Post-Petition	Post-Petition	Post-Petition	Post-Petition	Post-Petition	Post-Petition	Post-Petition	Post-Petition	
Week Number -->	1	2	3	4	5	6	7	8	9		
Week Ending	4/23	4/30	5/7	5/14	5/21	5/28	6/4	6/11	6/18		9-week Total
Cash Receipts											
Patient Collections	\$ 600	\$ 1,962	\$ 1,962	\$ 1,962	\$ 1,962	\$ 1,962	\$ 1,958	\$ 1,954	\$ 1,914	\$	16,233
Other Collections	-	-	-	108	-	-	-	108	-		215
Net Cash Receipts	\$ 600	\$ 1,962	\$ 1,962	\$ 2,069	\$ 1,962	\$ 1,962	\$ 1,958	\$ 2,061	\$ 1,914	\$	16,448
Methodology Disbursements											
Payroll	\$ -	\$ 2,505	\$ -	\$ 2,516	\$ -	\$ 2,505	\$ -	\$ 2,516	\$ -	\$	10,042
Employee Benefits	-	525	255	544	257	530	255	544	257		3,166
Temp Nursing	-	255	270	286	312	312	312	286	286		2,319
Physicians	-	410	-	-	-	410	-	-	-		820
Other Staffing	-	-	-	-	523	-	-	523	-		1,046
Leases & Rentals	-	-	338	11	12	56	338	11	10		776
Utilities	-	-	266	-	-	-	266	-	-		531
Insurance	-	-	117	-	-	-	117	-	-		234
Total Methodology Disbursements	\$ -	\$ 3,695	\$ 1,246	\$ 3,356	\$ 1,104	\$ 3,813	\$ 1,287	\$ 3,879	\$ 553	\$	18,934
Non-Methodology Disbursements											
Medical Supplies	\$ -	\$ 549	\$ 126	\$ 399	\$ 309	\$ 126	\$ 549	\$ 399	\$ 309	\$	2,766
Pharmaceuticals	34	70	70	70	70	70	70	70	70		594
Professional Fees	-	-	-	-	218	-	-	218	-		435
Repairs & Maintenance	32	11	42	23	17	32	42	23	16		239
Other G&A	105	70	131	103	128	205	212	153	296		1,402
Total Non-Methodology Disbursements	\$ 171	\$ 700	\$ 370	\$ 595	\$ 741	\$ 433	\$ 873	\$ 862	\$ 691	\$	5,436
Operating Cash Flow	\$ 429	\$ (2,434)	\$ 346	\$ (1,882)	\$ 116	\$ (2,285)	\$ (202)	\$ (2,680)	\$ 670	\$	(7,922)
Cumulative Operating Cash Flow	429	(2,005)	(1,658)	(3,541)	(3,424)	(5,709)	(5,912)	(8,592)	(7,922)		(7,922)
Non-Operating Disbursements											
Capital Expenditures	\$ -	\$ -	\$ 140	\$ -	\$ -	\$ -	\$ 100	\$ -	\$ -	\$	240
Debt Service	-	-	-	-	-	-	-	-	-		-
Pre-Petition Payment Plans	-	-	-	77	-	-	-	77	-		155
Other Disbursements	-	-	-	-	-	900	-	-	-		900
Total Non-Operating Disbursements	\$ -	\$ -	\$ 140	\$ 77	\$ -	\$ 900	\$ 100	\$ 77	\$ -	\$	1,295
Restructuring Costs											
Debtor Professionals	\$ 300	\$ 550	\$ 425	\$ 425	\$ 760	\$ 500	\$ 600	\$ 425	\$ 1,675	\$	5,660
DIP Lender Professionals	100	-	100	-	100	-	-	-	-		300
Secured Lender Professionals	-	-	-	-	250	-	-	-	-		250
UCC Professionals	-	-	-	-	50	50	50	50	50		250
Vendor Relief	-	300	-	-	700	150	150	150	425		1,875
Other Restructuring Costs	243	43	43	43	43	43	43	43	418		965
Total Restructuring Costs¹	\$ 643	\$ 893	\$ 568	\$ 468	\$ 1,903	\$ 743	\$ 843	\$ 668	\$ 2,568	\$	9,300
Total Disbursements	\$ 814	\$ 5,289	\$ 2,324	\$ 4,497	\$ 3,749	\$ 5,890	\$ 3,104	\$ 5,487	\$ 3,812	\$	34,965
Beginning Unrestricted Cash (Book)	\$ 5,915	\$ 5,700	\$ 7,983	\$ 7,621	\$ 5,194	\$ 10,406	\$ 6,478	\$ 5,332	\$ 1,907	\$	5,915
Net Cash Flow	(214)	(3,327)	(362)	(2,428)	(1,787)	(3,928)	(1,146)	(3,426)	(1,898)		(18,516)
Net DIP Funding	-	5,610	-	-	7,000	-	-	-	-		12,610
Ending Unrestricted Cash (Book)	\$ 5,700	\$ 7,983	\$ 7,621	\$ 5,194	\$ 10,406	\$ 6,478	\$ 5,332	\$ 1,907	\$ 8	\$	8
Beverly Care	752	752	752	752	752	752	752	752	752		752
Capitation Cash	11,344	11,344	11,344	11,344	11,344	11,344	11,344	11,344	11,344		11,344
Certificates of Deposit	2,129	2,129	2,129	2,129	2,129	2,129	2,129	2,129	2,129		2,129
Foundation Cash	2,128	2,128	2,128	2,128	2,128	2,128	2,128	2,128	2,128		2,128
Total Ending Cash (Including Restricted)	\$ 22,054	\$ 24,337	\$ 23,975	\$ 21,547	\$ 26,760	\$ 22,832	\$ 21,686	\$ 18,260	\$ 16,362		
Debt Rollforward											
Beginning DIP Balance	\$ -	\$ -	\$ 6,000	\$ 6,000	\$ 6,000	\$ 13,000	\$ 13,000	\$ 13,000	\$ 13,000	\$	13,000
Draw (Repayment)	-	6,000	-	-	7,000	-	-	-	-		-
Ending DIP Balance	\$ -	\$ 6,000	\$ 6,000	\$ 6,000	\$ 13,000	\$ 13,000	\$ 13,000	\$ 13,000	\$ 13,000	\$	13,000
DIP Availability	6,000	-	-	-	-	-	-	-	-		-
DIP Commitment	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 13,000	\$ 13,000	\$ 13,000	\$ 13,000	\$ 13,000		13,000
Total Liquidity	\$ 11,700	\$ 7,983	\$ 7,621	\$ 5,194	\$ 10,406	\$ 6,478	\$ 5,332	\$ 1,907	\$ 8		

1. To be updated for Patient Care Ombudsman fees at a later date