

SAMUEL R. MAIZEL (Bar No. 189301)  
samuel.maizel@dentons.com  
JOHN A. MOE, II (Bar No. 066893)  
john.moe@dentons.com  
TANIA M. MOYRON (Bar No. 235736)  
tania.moyron@dentons.com  
Claude D. Montgomery (Admitted *Pro Hac Vice*)  
DENTONS US LLP  
601 South Figueroa Street, Suite 2500  
Los Angeles, California 90017-5704  
Tel: (213) 623-9300 / Fax: (213) 623-9924

Proposed Attorneys for the Chapter 11 Debtors and  
Debtors In Possession

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

In re

VERITY HEALTH SYSTEM OF  
CALIFORNIA, INC., *et al.*,

Debtors and Debtors In Possession.

- ☒ Affects All Debtors
- ☐ Affects Verity Health System of California, Inc.
- ☐ Affects O'Connor Hospital
- ☐ Affects Saint Louise Regional Hospital
- ☐ Affects St. Francis Medical Center
- ☐ Affects St. Vincent Medical Center
- ☐ Affects Seton Medical Center
- ☐ Affects O'Connor Hospital Foundation
- ☐ Affects Saint Louise Regional Hospital Foundation
- ☐ Affects St. Francis Medical Center of Lynwood Foundation
- ☐ Affects St. Vincent Foundation
- ☐ Affects St. Vincent Dialysis Center, Inc.
- ☐ Affects Seton Medical Center Foundation
- ☐ Affects Verity Business Services
- ☐ Affects Verity Medical Foundation
- ☐ Affects Verity Holdings, LLC
- ☐ Affects De Paul Ventures, LLC
- ☐ Affects De Paul Ventures - San Jose Dialysis, LLC

Debtors and Debtors In Possession.

Lead Case No. 18-20151

Jointly Administered With:

CASE NO.: 2:18-bk-20162-ER  
CASE NO.: 2:18-bk-20163-ER  
CASE NO.: 2:18-bk-20164-ER  
CASE NO.: 2:18-bk-20165-ER  
CASE NO.: 2:18-bk-20167-ER  
CASE NO.: 2:18-bk-20168-ER  
CASE NO.: 2:18-bk-20169-ER  
CASE NO.: 2:18-bk-20171-ER  
CASE NO.: 2:18-bk-20172-ER  
CASE NO.: 2:18-bk-20173-ER  
CASE NO.: 2:18-bk-20175-ER  
CASE NO.: 2:18-bk-20176-ER  
CASE NO.: 2:18-bk-20178-ER  
CASE NO.: 2:18-bk-20179-ER  
CASE NO.: 2:18-bk-20180-ER  
CASE NO.: 2:18-bk-20171-ER

Chapter 11 Cases

Hon. Ernest M. Robles

**OMNIBUS REPLY OF DEBTORS' TO THE  
OBJECTIONS TO THE DEBTORS' MOTION FOR  
FINAL ORDER (A) AUTHORIZING THE  
DEBTORS TO OBTAIN POST PETITION  
FINANCING; (B) AUTHORIZING THE DEBTORS  
TO USE CASH COLLATERAL; AND (C)  
GRANTING ADEQUATE PROTECTION TO  
PREPETITION SECURED CREDITORS  
PURSUANT TO 11 U.S.C. §§105, 363, 364, 1107 AND  
1108**

FINAL HEARING:

Date: October 3, 2018

Time: 10:00 a.m.

Place: Courtroom 1568

DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300



1820151180926000000000021

**TABLE OF CONTENTS**

I. PRELIMINARY STATEMENT.....	1
II. OMNIBUS REPLY TO DIP OBJECTIONS.....	2
A. Response to the SEIU Objection.....	3
B. Response to the RPHE Objection .....	6
C. Response to the U.S. Bank Reservation of Rights .....	8
D. Response to the AG Objection.....	9
E. Response to the Swinerton Objection .....	11
F. Response to the McKesson Objection.....	12
G. Response to the 2005 Bond Parties' Objection.....	12
H. Response to the UNAC Objection .....	14
III. RESOLUTION OF INFORMAL OBJECTIONS.....	14
IV. CONCLUSION .....	16

DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300



Verity Health System of California, Inc. (“VHS”), and the above-referenced affiliated debtors, the Debtors and Debtors in possession (the “Debtors”) in the above-captioned chapter 11 cases (the “Cases”), submits this Omnibus Reply (the “Omnibus Reply”) to the objections to the Debtors’ Motion for Final Order (A) Authorizing the Debtors to Obtain Post-Petition Financing, (B) Authorizing the Debtors to Use Cash Collateral and (C) Granting Adequate Protection to Prepetition Secured Creditors Pursuant to 11 U.S.C. §§105, 363, 364, 1107 and 1108 (the “DIP Motion”)<sup>1</sup> [Docket No. 31], dated August 31, 2018 and hereby state and declare as follows:

### **I. PRELIMINARY STATEMENT**

The DIP Motion requests authority for the Debtors to, among other things, (i) enter into a senior secured, superpriority debtor in possession financing facility with the DIP Lender in an amount up to total lending of not more than \$185,000,000, (ii) authorize the interim use of Cash Collateral; (iii) grant “adequate protection” to the Prepetition Secured Creditors; and (iv) modify the automatic stay as imposed by § 362 of the Bankruptcy Code<sup>2</sup> to the extent necessary to implement and effectuate the terms of the DIP Facility. On September 5, 2018, the Court entered the Interim Order [Docket No. 86] granting the Debtors authority to enter into the DIP Facility, in an interim amount not to exceed \$30,000,000 and only as needed to avoid immediate and irreparable harm, on an interim basis. The Debtors now seeks the entry of the proposed Final Order, a copy of which is attached hereto as **Exhibit 1**.

Most of the objecting parties do not object to the fundamental relief sought by the Debtors in the DIP Motion. Instead, most objections (described in more detail below) seek to either clarify the parties rights, vis a vis the Debtors, or priorities, vis a vis other creditors in this Case. In addition, certain objectors have raised similar objections to this DIP Motion] in their objection to the Debtors’ Motion to Pay Employee Wages and Salaries. For the avoidance of doubt, the

---

<sup>1</sup> Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to them in the DIP Motion.

<sup>2</sup> All references to “sections” or “§” herein are to sections of the Bankruptcy Code, 11 U.S.C. §§ 101, et seq. unless otherwise noted.

Debtors incorporate all arguments and responses contained in its Wage Motion Response (defined below) here.

## II. OMNIBUS REPLY TO DIP OBJECTIONS

1. The facts, circumstances and arguments relevant to this Reply are fully set forth in the DIP Motion, the Chou Declaration submitted in support thereof, the supplemental declaration of Anita Chou submitted in support hereof (the “**Supplemental Chou Decl.**”), attached hereto as **Exhibit 2**, the declaration of James Moloney, a Managing Director and Co-Head of the Health Systems M&A Group at Cain Brothers, a division of KeyBanc Capital Markets Inc. (the “**Moloney Decl.**”), submitted in support hereof, attached hereto as **Exhibit 3**, and the declaration of Carlos De La Parra (the “**De La Parra Decl.**”), a Director at WillisTowersWatson (“**WTW**”), attached as Exhibit 1 to the Debtors Motion Response (defined below). Such facts, circumstances and arguments are incorporated by reference as though fully set forth herein.

2. The following objections have been filed in opposition to the DIP Motion:

- (a) SEIU-UHW’s (“**SEIU**”) Objection to Emergency Motion for Order (I) Authorizing the Debtors to (A) Pay Prepetition Employee Wages and Salaries, and (B) Pay and Honor Employee Benefits and other Workforce Obligations and Objection to Emergency Motion for Orders (A) Authorizing Debtors to Obtain Post Petition Financing (B) Authorizing Debtors to Use Cash Collateral [Docket No. 213] (the “**SEIU Objection**”);
- (b) Objection of Retirement Plan For Hospital Employees (“**RPHE**”) to Motion of Debtors for Final Orders (A) Authorizing the Debtors to Obtain Post Petition Financing Etc. [Docket No. 218] (the “**RPHE Objection**”);
- (c) Renewed Reservation of Rights of U.S. Bank National Association (“**U.S. Bank**”), As Series 2015 Note Trustee and Series 2017 Note Trustee, to Emergency Motion of the Debtors for Interim and Final Orders (A) ) Authorizing the Debtors to Obtain Post Petition Financing, (B) Authorizing Debtors to Use Cash Collateral, (C) Granting Adequate Protection to Prepetition Secured Creditors Pursuant to 11 U.S.C. §§105, 363, 364, 1107 and 1108 [Docket No. 219] (the “**U.S. Bank Objection**”);
- (d) Attorney General’s (“**AG**”) Limited Objection to Debtors’ Emergency Motions for Interim and Final Orders (A) Authorizing the Debtors to Obtain Post Petition Financing, (B) Authorizing Debtors to Use Cash Collateral, (C) Granting Adequate Protection to Prepetition Secured



Creditors Pursuant to 11 U.S.C. §§105, 363, 364, 1107 and 1108; Memorandum of Points and Authorities in Support Thereof [Docket No. 220] (the “**AG Objection**”);

(e) Swinerton Builders’ (“**Swinerton**”) Limited Objection to Motion of Debtors for Final Orders (A) Authorizing the Debtors to Obtain Post Petition Financing Etc. [Docket No. 269] (the “**Swinerton Objection**”);

(f) McKesson Corporation's (“**McKesson**”) Opposition to Emergency Motion of Debtors For Interim and Final Orders (A) Authorizing the Debtors to Obtain Post Petition Financing (B) Authorizing the Debtors to Use Cash Collateral and (C) Granting Adequate Protection to Prepetition Secured Creditors Pursuant to 11 U.S.C. §§ 105, 363, 364, 1107 and 1108 [Docket No. 279] (the “**McKesson Objection**”);

(g) UMB Bank N.A. (the “**Master Trustee**”) and Wells Fargo National Association’s (the “**2005 Bond Trustee**” and together with the Master Trustee, the “**2005 Bond Parties**”) Objection to Motion of Debtors for Final Order (A) Authorizing the Debtors to Obtain Post Petition Financing (B) Authorizing the Debtors to Use Cash Collateral and (C) Granting Adequate Protection to Prepetition Secured Creditors Pursuant to 11 U.S.C. §§ 105, 363, 364, 1107 and 1108 [Docket No. 292] (the “**2005 Bond Parties’ Objection**”); and

(h) The United Nurses Association of California/Union of Health Care Professionals’ (“**UNAC**”) Limited Objection to Debtors’ Motion for Entry of Final Orders (A) Authorizing the Debtors to Obtain Post-Petition Financing, Etc. [Docket No. 297] (the “**UNAC Objection**”).

**A. Response to the SEIU Objection**

3. SEIU does not challenge either the necessity of the DIP Financing or its terms. SEIU objects to the Debtors’ DIP Motion solely to the extent certain post-petition “minimum funding” contributions to the defined benefit retirement plans covering its members are not reflected in the Initial Agreed Budget. SEIU contends that these amounts should be incorporated into the budget and paid in the ordinary course of business. Further, SEIU contends that since the Debtors are using the postpetition labor of some of the employees that it represents, all contributions required by the collective bargaining agreement that covers such labor is entitled to administrative expense priority no matter when those contributions accrue or what services are reflected in the demanded contributions.

DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300

1           4.       SEIU does not challenge the proposition compensation for prepetition services  
2 typically gives rise to a general unsecured claim. However, it asserts that in the context of its  
3 unrejected, but not yet assumed, collective bargaining agreement pension contributions utilized  
4 to amortize the unfunded actuarial accrued liability of the RPHE, should be considered a “current  
5 obligation” entitled to expense of administration treatment or even superpriority treatment. In  
6 support of its position, SEIU cites to *Teamsters Indus. Sec. Fund v. World Sales (In re World*  
7 *Sales)*, where the court found that a “debtor’s unperformed post-petition obligations under an  
8 unmodified or unrejected CBA are beyond the scope of §365(g), and claims based on such post-  
9 petition breaches must be given administrative status.” 183 B.R. 872, 878 (B.A.P. 9th Cir. 1995).  
10 The *In re World Sales* case, however, deals with facts that are wholly distinguishable from the  
11 facts here.  
12

13           5.       In *World Sales*, per the terms of the applicable collective bargaining agreement,  
14 the Debtor had agreed to make a monthly contribution for health and medical benefits to  
15 qualifying employees’ who worked one day or more in any calendar month. *Id.* at 873. *World*  
16 *Sales* filed for chapter 11 protection in October of 1992 and employed 57 qualifying employees  
17 for 18 days during that month before laying them off. *Id.* *World Sales* did not make any payment  
18 on the monthly contribution due to those 57 employees in October of 1992 and never sought to  
19 reject the collective bargaining agreement under section 1113 prior to sale of its assets and  
20 subsequent layoff of the employees. As a result, the union representing them filed a motion to  
21 compel the one month of health and welfare payments as an administrative expense claim.  
22

23           6.       The Bankruptcy Court for the Central District of California initially allowed only  
24 18/31 of the monthly contribution as an administrative expense, and considered the remainder of  
25 the contribution as a general unsecured claim. On appeal, however, the 9th Circuit B.A.P. found  
26 that the commercially reasonable unit of health insurance, unlike wages, is monthly coverage. *Id.*  
27  
28



DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300

1 at 876. Since the parties agreed and intended that a single day of work entitled an employee to  
2 the monthly benefit, the entire month's contribution would be entitled to full administrative  
3 expense priority. *Id.*

4 7. Here, unlike in *World Sales*, each of the items SEIU seeks to include in the budget  
5 accrued prepetition and therefore are not post-petition claims under their collective bargaining  
6 agreement. As indicated in Exhibit A to the Declaration of David Miller in Support of SEIU-  
7 UHW's Opposition to Emergency Motion of Debtors for Entry of Order Authorizing Payment of  
8 Employee Benefits and Other Workforce Obligations [Docket No 215] ("**Miller Decl.**"), (a) "for  
9 participants at the O'Connor and St. Louise division, there will be no more credited service  
10 granted after December 31, 2000; (b) "Benefits were from for non-contractual participants  
11 effective February 28, 2011"; (c) "Benefits were frozen for members of UNAC effective  
12 December 31, 2011"; and (d) "Benefits were frozen for member of SEIU effective December 21,  
13 2012." Miller Decl. Exhibit A at 30, Docket No. 215 at 15 of 42. Indeed the Debtors were  
14 contractually obligated to make those contributions even if every employee had been terminated  
15 prior to the filing. Therefore, the obligations do not qualify for administrative expense priority  
16 status.  
17

18 8. Similarly, for the Daughters of Charity Retirement Plan (Verity Retirement Plan  
19 listed in De La Parra Decl, Exhibit 1) "The initial unfunded liability determined as of the January  
20 1, 2012 actuarial valuation will be amortized over a ten (10) year fixed period." See Miller Decl.  
21 Exhibit B at 63, [Docket No 215 at 31 of 42]. The obligations have nothing to do with activities  
22 of the current workforce. Moreover, as indicated in the Chou Decl. at ¶12, Verity is already  
23 paying all of its obligations arising from post-petition labor. Any assertion by SEIU to the  
24 contrary is not accurate.  
25  
26  
27  
28

1           9.       The SEIU Objection makes additional assertions with respect to their entitlements  
2 that are addressed further in the Debtors' Omnibus Response to the Objections to Motion to Pay  
3 Employee Wages and Salaries (the "**Wage Motion Response**") and the Debtors incorporate in  
4 full the Wage Motion Response herein.

5  
6           **B.       Response to the RPHE Objection**

7           10.       RPHE has objected to the Debtors' DIP Motion arguing both a timing problem and  
8 an amount problem. On the timing problem, RPHE first asserts that all contribution obligations  
9 arising from and after September 1, 2018 constitute administrative expenses under §§ 503(b) and  
10 507(a)(2) and argues that these expenses should be included in the DIP Budget. RPHE further  
11 takes issue with the fact that the Debtors have reserved for those obligations when they actually  
12 become due, rather than in advance. RPHE acknowledges that the annual invoices for 2018 are  
13 not typically issued until 2019. But despite this acknowledgement, RPHE seems to suggest that  
14 they should be paid out sooner.

15  
16           11.       There is no basis under the Bankruptcy Code to prepay or escrow administrative  
17 employee claims before they come due. In fact, this Court has rejected the idea that CBA claims  
18 should be treated any different than other claims regarding priority. *In in re Certified Air*  
19 *Technologies, Inc.*, 300 B.R. 355, 369 (Bankr. C.D. Cal. 2003) (criticizing efforts of CBA  
20 claimants to upset the "ordered hierarchy of priorities embodied in § 507.") (followed and quoted  
21 by *In re Steiny*, 2017 WL 1788414, at \*3 (Bankr. C.D. Cal. May 3, 2017) ("Had Congress  
22 intended for § 1113 to create a super-priority for pre-petition wage and benefit claims arising  
23 under a collective bargaining agreement, it would have either included language in § 1113. . .or  
24 amended section 507 to reflect [that] change.") The 2017 *Steiny* case, in fact, expressly  
25 distinguished and rejected the pre-Code case - *Matter of Pacific Far East* - on which the  
26 Objectors rely. *In re Steiny*, 2017 WL 1788414, at \*3) (interpreting *Matter of Pacific Far East*  
27  
28



DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300

1 *Line, Inc.*, 713 F.2d 476 (9th Cir. 1983) (This Court believes that *Matter of Pacific Far East Line*  
2 has limited persuasive authority because it was decided under the old Act and before the  
3 enactment of both § 1113, which addresses the assumption and rejection of collective bargaining  
4 agreements, and § 507(a)(5), which assigns fifth priority unsecured status to contributions to  
5 employee benefit plans.). As *Steiny* noted, with the passage of § 1113 and the § 507 employee  
6 caps, CBA claimant's already have substantial protection **under the Code** - but they are not  
7 entitled to recalibrate the Code's priority scheme without a statutory basis. *Id.*; see also *In re*  
8 *Murray Indus., Inc.*, 110 B.R. 585, 587 (Bankr. M.D. Fla. 1990), vacated on other grounds, 140  
9 B.R. 298 (M.D. Fla. 1992) ("[If a party argues that] a Chapter 11 debtor must pay [benefits]  
10 immediately. . .this. . .is in direct conflict with the treatment of claims established by the  
11 Bankruptcy Code, especially with the priority scheme established by § 507 and § 1129(9)(B).");  
12 *In re Moline*, 144 B.R. 75, 78-79 (Bankr. N.D. Ill. 1992) (expressly rejecting the argument that §  
13 1113 requires the "immediate" payment of obligations that arise or might arise postpetition  
14 because there was no statutory basis).

15  
16  
17 12. Further, on the amount issue, RPHE contends that the Debtors are required to pay  
18 (i) administrative expenses based on the normal cost of benefits, as determined by IRS rules and  
19 actuarial determinations and (ii) the Debtors' share of the Unfunded Actuarial Accrued Liability  
20 of the RPHE plan under ERISA, which is paid over a ten-year amortization. See Miller Decl. at  
21 63, *supra*. As indicated in the Chou Decl. at 11 and De La Parra Decl. Exhibit 1, the Debtors  
22 intend to pay and have budgeted payment of the postpetition accruals with respect to normal cost  
23 and PBGC expenses.  
24  
25  
26  
27  
28

1           **C.     Response to the U.S. Bank Reservation of Rights**

2           13.     U.S. Bank serves as the note indenture trustee and as the collateral agent under  
3 each of the note indentures relating to the 2015 Working Capital Notes and the 2017 Working  
4 Capital Notes, respectively. U.S. Bank asserts that the Working Capital Notes are secured by a (i)  
5 senior first priority security interest and lien on certain of the Debtors' assets, including (x)  
6 Accounts of St. Francis Medical Center, St. Vincent Medical Center, O'Connor Hospital, Saint  
7 Louise Regional Hospital, and Seton Medical Center, including Seton Medical Center Coastsides  
8 and (y) real property and certain personal property comprising St. Francis Medical Center and  
9 Saint Louise Regional Hospital and (ii) a parity security interest and lien on the collateral pledged  
10 to secure all of the obligations under the Master Indenture, including the Series 2005 Bonds. The  
11 2017 Notes are additionally secured by the Moss Deed of Trust.

12           14.     U.S. Bank asserts that there is a risk that the sale proceeds of the two most cash  
13 flow positive hospitals in which the Notes Trustee holds senior liens may be used to repay the  
14 DIP Facility, thereby causing the Notes Trustee to suffer a significant Diminution in Value as a  
15 result of the loss of its senior Cash Collateral. The Notes Trustee states that the Replacement  
16 Lien Provision (i.e. section 4(a) of the Interim Order) properly protects and preserves the lien  
17 rights of the Prepetition Secured Creditors against the risks that their priority or exclusively-  
18 pledged Cash Collateral will be used to repay the DIP Loan and states that this Replacement Lien  
19 Provision must be included in the Final Order approving the DIP Motion. The Notes Trustee  
20 reserves its right to object to any modification, without its consent, of the Replacement Lien  
21 Provision in the Final Order.

22           15.     The Debtors' professionals have worked closely with U.S. Bank's counsel and has  
23 shared copies of the draft proposed Final Order with them in advance of the Final Hearing. The  
24  
25  
26  
27  
28



1 Debtors believe the Final Order preserves the Replacement Lien Provision and satisfies the  
2 concerns raised in the U.S. Bank Objection.

3 **D. Response to the AG Objection**

4 16. The AG objects to the DIP Motion on the grounds that the relief sought *may* seek  
5 to use restricted charitable funds as cash collateral and *may* be used by the Debtors as a shield for  
6 compliance with applicable non-bankruptcy laws which protect the public health, safety and  
7 welfare of the people of California. The AG argues that all of the Debtors' restricted and  
8 temporarily restricted assets are under the jurisdiction of the AG and cannot be used to satisfy  
9 creditor claims or be the subject of the DIP Liens.  
10

11 17. While the AG correctly asserts that it is within its supervisory and regulatory  
12 authority to ensure that all healthcare nonprofit corporations, who are subject to California's  
13 Nonprofit Public Benefit Corporation Law (Cal. Corp. Code §5110 et seq.), in fact comply with  
14 the law, the AG has not pointed to any actual violations of the law by the Debtors. Instead, it  
15 appears the AG is simply looking to ensure that the Debtors are in compliance with all of their  
16 legal obligations.  
17

18 18. As outlined in the Supplemental Chou Decl., the Debtors are aware of their  
19 obligations as a nonprofit corporation and believe they adequately comply with all requirements  
20 to maintain funds in segregated accounts, as further required by GAAP. The Debtors follow a  
21 specific set of internal guidelines to determine whether its funds qualify as restricted permanent  
22 donor restricted or temporarily restricted.  
23

24 19. The Debtors and their counsel have been in communication with the AG and have  
25 provided a preliminary list of all permanent donor restricted and temporarily restricted assets.  
26 The Debtors have proposed to the AG to undertake a 90 day review process wherein (a) the  
27 Debtors and counsel will review the documentation underlying their determination as to which  
28

1 funds are restricted and which funds are not restricted, and therefore would be subject to the DIP  
2 Liens, such review to be completed within 90 days. Thereafter the AG (and other interested  
3 parties, including the Committee) will have the opportunity to review the Debtors' conclusions  
4 and underlying documentation, and if the parties agree, file an accounting with the Court. If the  
5 parties do not agree, the matter will be submitted through motion practice to the Court for  
6 resolution. The Debtors are prepared to agree that to the extent certain funds are properly  
7 characterized as a donor restricted assets, then such funds will not constitute property of the  
8 Debtors' bankruptcy estates<sup>3</sup> and such funds will therefore not be subject to either the DIP Lien or  
9 the Prepetition Replacement Liens.

11 20. The AG also requests a "Carve Out" for "compliance with the California Attorney  
12 General's conditions". The AG attached a small portion of the conditions relating to the 2015  
13 Blue Mountain transactions to its Objections. However, the AG's exhibit is misleading. The  
14 Debtors have filed the entire document creating the AG's conditions at Docket No. 256. It is 433  
15 pages of single spaced text, imposing conditions on the Debtors including prepetition obligations  
16 related to employee pensions, requirements to borrow money for capital improvements,  
17 contracting with specific private parties and directed support to a specific private charity with  
18 funds from the Debtors' Philanthropic Foundations. The AG does not point to any provision of  
19 the DIP Credit Agreement or the Interim Order that is contrary to the AG conditions and  
20 incorporating 433 pages of single space text into the DIP Financing is unnecessary.<sup>4</sup> There is  
21  
22

24 \_\_\_\_\_  
25 <sup>3</sup> The AG argues that "California law determines whether restricted donations or property held in  
26 trust are property of the bankruptcy estate"; he is mistaken. What constitutes property of the  
27 bankruptcy estate is a federal question governed by § 541 of the Code; however, whether and to  
28 what extent a debtor has any legal or equitable interest in the subject property as of the  
commencement of the case may be determined under state law. *See Butner v. United States*, 440  
U.S. 48, 54-55.

<sup>4</sup> The AG's apparent efforts to exercise control over property of the Debtors' estates through  
enforcement of the prepetition imposed conditions also raises automatic stay implications. 11



nothing in 28 U.S.C. §959 that mandates postpetition fulfillment of third party beneficiary contract obligations and entitlements arising from commercial transaction approvals. Further, to the extent that the Debtors' are in the process of selling their hospitals and otherwise liquidating their assets, the majority of courts hold that a trustee's obligation to comply with state laws under 28 U.S.C. § 959(b) does not apply when the debtor is liquidating its assets. *See, e.g., SEC v. Wealth Mgmt. LLC*, 628 F.3d 323, 334 (7th Cir. 2010) ("[m]odern courts have ... concluded that § 959(b) does not apply to liquidations.").

21. Equally important the budget is built for compliance with the DIP Credit Agreement. It is an obvious affirmative covenant in the DIP Credit Agreement that the Debtors operate their business in compliance with relevant law. Section 5.5 of the DIP Credit Agreement specifically provides: "Each Borrower and each other Credit Party shall and shall cause any Manager to comply with the requirements of all Applicable Laws (including without limitation any Environmental Laws and Healthcare Laws) and obtain, maintain and comply with all Governmental Authorizations and Healthcare Authorizations, in each instance, applicable to it or to its business or property, in each case except to the extent any failure to comply with the foregoing could not reasonably be expected to have a Material Adverse Effect."

**E. Response to the Swinerton Objection**

22. Swinerton purports to hold an inchoate lien on the Seton Medical Center property, with rights to perfect its lien postpetition under both California law and the Bankruptcy Code. Swinerton asserts that it will record its lien, relating back to the date it commenced work at Seton Medical Center, "in the coming days". Swinerton and the Debtors have entered into a Stipulation Extending Deadlines for Swinerton to Object to the DIP Motion [Docket No. 282] which allows

---

U.S.C. § 362(a)(3) (West 2012); *Universal Life Church, Inc. v. United States (In re Universal Life Church, Inc.)*, 128 F.3d 1294 (9th Cir. 1997).

1 the Debtors until October 1, 2018 to reply to the Swinerton Objection. Accordingly, the Debtors  
2 will provide a more detailed response to the Swinerton Objection by that date.

3 **F. Response to the McKesson Objection**

4 23. McKesson is a supplier of pharmaceutical products and specialty drugs, many of  
5 which are both difficult to procure and essential for certain of the Debtors patients and practices.  
6 Following entry of the Interim Order, McKesson contacted the Debtors and asserted a properly  
7 perfected first position lien against all of VMF's personal property. McKesson indicated it would  
8 object to the DIP Motion to the extent the Debtors did not agree to certain changes to the  
9 proposed Final Order and concessions regarding outstanding prepetition obligations. McKesson  
10 and the Debtors have engaged in significant discussion and negotiation and have reached an  
11 agreement, whereby the Debtors have acknowledged McKesson's lien on the VMF assets, and  
12 McKesson has agreed to allow the Debtors use of its cash collateral in exchange for a  
13 replacement lien that will be subordinated only to the DIP Lien and Carve Out. In addition, the  
14 Debtors have agreed to provide adequate protection payments in the amount of \$3.055 million  
15 funded from the critical vendor funds in the Budget, plus reasonable attorneys' fees from the  
16 adequate protection funds in the Budget. As a result of this agreement, McKesson has agreed to  
17 formally withdraw the McKesson Objection.  
18

19 **G. Response to the 2005 Bond Parties' Objection**

20 24. The successor Master Trustee for the and the 2005 Bond Trustee lodged an  
21 Objection asserting that the Debtors have not obtained their consent to the DIP Liens as priming  
22 liens under § 364(c) and have not yet established that they can provide adequate protection to the  
23 2005 Bond Parties as required under § 364. Based upon the First Day Declaration, the DIP  
24 Motion and the cases cited therein, the Chou Decl. in support of the DIP Motion, the  
25  
26  
27  
28



1 Supplemental Chou Decl. in support of the Omnibus Reply and the Moloney Decl., the Debtors  
2 have met their required burdens.

3 25. Although the Debtors intend to supplement this response as to the 2005 Bond  
4 Parties, the Debtors also believe the proposed Final Order does, in fact, provide for adequate  
5 protection of the 2005 Bond Parties' interests. In particular, the Debtors observe that the 2005  
6 Bond Parties have subordinated interests in the Note Collateral and that the Working Capital  
7 Notes have both priority collateral and a senior position in the Note Collateral as defined in the  
8 Intercreditor Agreement (as defined in the Interim Order.) *See* Docket No. 219-1.

9  
10 26. U.S. Bank, as the Note Trustee within the meaning of the Intercreditor Agreement,  
11 has consented to the DIP Facility, the DIP Liens and the Prepetition Replacement Liens. Under  
12 the terms of the Intercreditor Agreement, such consent appears to be binding on the 2005 Bond  
13 Parties. In particular, section 2.4 of the Intercreditor Agreement appears to permit the U.S. Bank  
14 as Note Trustee to agree to the Prepetition Replacement Liens and consent to the DIP Liens in a  
15 manner that is binding on the 2005 Bond Parties. Section 2.4 is an "Unconditional  
16 Subordination" provision that, *inter alia*, provides "...the Master Trustee [UMB Bank] hereby  
17 expressly agrees that the Note Trustee [U.S. Bank] may... without notice to or consent of the  
18 Master Trustee ...(iv) take, exchange, amend, eliminate, surrender, release, or subordinate any or  
19 all security for any or all of the obligations of the Obligors [the Debtors] under the Note  
20 Documents or the MTI Note Obligations, accept additional or substituted security therefore, or  
21 perfect or fail to perfect the Note Trustee's rights in any or all security;... ."

22  
23  
24 27. As shown above, the Intercreditor Agreement expressly permits the U.S. Bank to  
25 consent to the Final DIP Order, the DIP Liens and the Adequate Protection provisions and the  
26 structure and terms of the Prepetition Secured Replacement Liens. Such consent is enforceable in  
27  
28

1 this Court pursuant to § 510(a). *See, In re Howland*, 545 B.R. 653 (Bankr. D. Or.  
2 2015)(discussing enforcement of contractual subordination under 11 U.S.C. §510(a)).

3 28. Notwithstanding, the Intercreditor Agreement, the Debtors and the 2005 Bond  
4 Parties have engaged in extensive discussions to attempt to resolve the expressed concerns.  
5 Nevertheless, the parties were not able to reach an agreement satisfactory to both sides. As a  
6 result, the Debtors and the 2005 Bond Parties have entered into a Stipulation Extending Deadlines  
7 for the 2005 Bond Parties to Object to the DIP Motion [Docket No. 243]. The Debtors will  
8 provide a more detailed response to the 2005 Bond Parties' Objection by the applicable reply  
9 deadline of October 1, 2018, set forth therein.  
10

11 **H. Response to the UNAC Objection**

12 29. The UNAC Objection provides that the UNAC objects to any financing  
13 arrangements that do not adequately budget for obligations owed to UNAC-represented  
14 employees, including, but not limited to, priority and administrative claims arising in connection  
15 with any and all funding obligations pertaining to pension plans in which UNAC-represented  
16 employees participate through the Debtors. The UNAC Objection makes similar arguments to  
17 those raised by SEIU and RPHE. The Debtors reiterate the responses to those arguments  
18 articulated above and incorporate herein in full the responses set forth in Wage Motion  
19 Response.  
20  
21

22 **III. RESOLUTION OF INFORMAL OBJECTIONS**

23 30. Several parties have raised informal objections to the DIP Motion with the Debtors  
24 in advance of the objection deadline. The Debtors have engaged in active negotiations with each  
25 party who raised an issue and have resolved each of these informal objections as follows.  
26

27 31. Aetna Life Insurance Company ("Aetna"), as a creditor of Verity Holdings,  
28 expressed concerns that another Debtor entity could benefit from the use of the DIP Facility to the



DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300

1 detriment of Aetna should Verity Holdings' assets be sold and used to pay back that other Debtor  
2 entity's draw under the DIP Facility. To resolve the issue, the Debtors and Aetna agreed to insert  
3 new language into the proposed Final Order, at paragraph 28(g), that provides that to the extent  
4 that either the DIP Loan or the prepetition secured loans of the other Debtors are paid by Verity  
5 Holdings in an amount greater than any draws it receives from the DIP Facility, plus interest,  
6 Verity Holdings would be subrogated to the priority of the creditors of the other Debtor who it  
7 has repaid. The Debtors believe this agreed to language prevents Verity Holdings from unfairly  
8 subsidizing any other Debtor and its creditors to the detriment of another Verity Holdings and its  
9 creditors.  
10

11 32. California Statewide Communities Development Authority ("CSCDA") the issuer  
12 of the Clean Fund Bonds and the NR2 Petros Bonds reached out to the Debtors to request that  
13 certain language be included in the Final Order clarifying their position and priority vis a vis the  
14 DIP Facility. Specifically, CSCDA has requested, and the Debtors have agreed to insert language  
15 into the proposed Final Order the following: (i) confirmation that the DIP Lien is subject to the  
16 prepetition tax liens arising in connection with the CSCDA Special Assessment (as defined in the  
17 Final Order), (ii) clarification that the Prepetition Liens of the Prepetition Secured Creditors are  
18 junior any tax lien arising in connection with the CSCDA Special Assessment, and (iii)  
19 confirmation that the Debtors will include the CSCDA's Special Assessments in the DIP Budget,  
20 as was originally intended by the Debtors.  
21

22 33. As a result of the above referenced changes the to the proposed Final Order, Aetna  
23 and CSCDA have each agreed not to object to the DIP Motion.  
24  
25  
26  
27  
28

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

IV. CONCLUSION

WHEREFORE, for the reasons set forth in the DIP Motion and above, the Debtors respectfully request entry of an order (i) granting the relief requested herein and (ii) granting the Debtors such other and further relief as the Court deems just and proper.

Dated: September 26, 2018

**DENTONS US LLP**

Samuel R. Maizel

John A. Moe, II

Tania Moyron

Claude D. Montgomery

By /s/ Samuel R. Maizel

Samuel R. Maizel

Proposed Attorneys for the  
Chapter 11 Debtors and Debtors In Possession

109110589\V-4

DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300



# EXHIBIT 1

# EXHIBIT 1

SAMUEL R. MAIZEL (Bar No. 189301)  
samuel.maizel@dentons.com  
JOHN A. MOE, II (Bar No. 066893)  
john.moe@dentons.com  
TANIA M. MOYRON (Bar No. 235736)  
tania.moyron@dentons.com  
DENTONS US LLP  
601 South Figueroa Street, Suite 2500  
Los Angeles, California 90017-5704  
Tel: (213) 623-9300/Fax: (213) 623-9924

Proposed Attorneys for the Chapter 11 Debtors and  
Debtors In Possession

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

In re

VERITY HEALTH SYSTEM OF  
CALIFORNIA, INC., *et al.*,

Debtors and Debtors In Possession.

☒ Affects All Debtors

- ☐ Affects O'Connor Hospital  
☐ Affects Saint Louise Regional Hospital  
☐ Affects St. Francis Medical Center  
☐ Affects St. Vincent Medical Center  
☐ Affects Seton Medical Center  
☐ Affects O'Connor Hospital Foundation  
☐ Affects Saint Louise Regional Hospital  
Foundation  
☐ Affects St. Francis Medical Center of  
Lynwood Foundation  
☐ Affects St. Vincent Foundation  
☐ Affects St. Vincent Dialysis Center, Inc.  
☐ Affects Seton Medical Center Foundation  
☐ Affects Verity Business Services  
☐ Affects Verity Medical Foundation  
☐ Affects Verity Holdings, LLC  
☐ Affects De Paul Ventures, LLC  
☐ Affects De Paul Ventures - San Jose  
Dialysis, LLC

Debtors and Debtors In Possession.

Lead Case No. 18-20151

Jointly Administered With:

CASE NO.: 2:18-bk-20162-ER  
CASE NO.: 2:18-bk-20163-ER  
CASE NO.: 2:18-bk-20164-ER  
CASE NO.: 2:18-bk-20165-ER  
CASE NO.: 2:18-bk-20167-ER  
CASE NO.: 2:18-bk-20168-ER  
CASE NO.: 2:18-bk-20169-ER  
CASE NO.: 2:18-bk-20171-ER  
CASE NO.: 2:18-bk-20172-ER  
CASE NO.: 2:18-bk-20173-ER  
CASE NO.: 2:18-bk-20175-ER  
CASE NO.: 2:18-bk-20176-ER  
CASE NO.: 2:18-bk-20178-ER  
CASE NO.: 2:18-bk-20179-ER  
CASE NO.: 2:18-bk-20180-ER  
CASE NO.: 2:18-bk-20171-ER

Chapter 11 Cases

Hon. Ernest M. Robles

**FINAL ORDER (I) AUTHORIZING  
POSTPETITION FINANCING, (II)  
AUTHORIZING USE OF CASH COLLATERAL,  
(III) GRANTING LIENS AND PROVIDING  
SUPERPRIORITY ADMINISTRATIVE  
EXPENSE STATUS, (IV) GRANTING  
ADEQUATE PROTECTION, (V) MODIFYING  
AUTOMATIC STAY, AND (VI) GRANTING  
RELATED RELIEF**

DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300



DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300

1 Upon the emergency motion (the “**DIP Motion**”)<sup>1</sup>, dated August 31, 2018, filed by Verity  
2 Health System of California, Inc., O’Connor Hospital, Saint Louise Regional Hospital, St. Francis  
3 Medical Center, St. Vincent Medical Center, Seton Medical Center, Verity Holdings, LLC, Verity  
4 Medical Foundation, O’Connor Hospital Foundation, Saint Louise Regional Hospital Foundation,  
5 St. Francis Medical Center of Lynwood Medical Foundation, St. Vincent Foundation, St. Vincent  
6 Dialysis Center, Inc., Seton Medical Center Foundation, Verity Business Services, DePaul  
7 Ventures, LLC, and DePaul Ventures - San Jose Dialysis, LLC (collectively, the “**Debtors**”), as  
8 debtors and debtors in possession in the above captioned chapter 11 cases (collectively,  
9 the “**Chapter 11 Cases**”), pursuant to sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3),  
10 364(d)(1), 364(e) and 507 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules  
11 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy**  
12 **Rules**”) and Rule 4001-2 of the Local Bankruptcy Rules for the United States Bankruptcy Court  
13 for the Central District of California (the “**Local Rules**” or “**LBR**”), for entry of an emergency  
14 order (the “**Interim Order**”) authorizing the Debtors to, among other things: *inter alia*:

15 (i) Obtain senior secured post-petition financing (the “**DIP Financing**” or “**DIP**  
16 **Facility**”) pursuant to the terms and conditions of the DIP Financing Agreements (as defined  
17 below), this Final Order, and the Final Order (as defined below), pursuant to sections 364(c)(1),  
18 364(d), and 364(e) of the Bankruptcy Code and Rule 4001(c) of the Bankruptcy Rules;

19 (ii) Enter into a Debtor-in-Possession Credit Agreement (the “**DIP Credit**  
20 **Agreement**”), substantially in the form attached as Exhibit 2 to the Supplemental Chou  
21 Declaration, and other related financing documents (together with the DIP Credit Agreement and  
22 DIP Security Agreement, the “**DIP Financing Agreements**”), by and among each of the Debtors  
23 and Ally Bank (“**Ally**”), in its capacity as agent (“**DIP Agent**”) and in its capacity as lender (“**DIP**  
24 **Lender**,”) under the DIP Credit Agreement;

25 (iii) Borrow, on an interim basis, pursuant to the DIP Financing Agreements,  
26 postpetition financing of up to \$30,000,000 on a revolving basis (the “**Interim DIP Loan**”) and  
27

28 <sup>1</sup> Capitalized terms used herein and not otherwise defined shall have the meaning ascribed in the  
DIP Motion.

1 seek other financial accommodations from the DIP Lender pursuant to the DIP Credit Agreement,  
2 the other DIP Financing Agreements, and this Final Order;

3 (iv) Borrow, on a final basis, pursuant to the DIP Financing Agreements, post-petition  
4 financing of up to an additional \$155,000,000, for a total of up to \$185,000,000, on a revolving  
5 basis, which includes the Interim DIP Loan (the "**Final DIP Loan**," and together with the Interim  
6 DIP Loan, the "**DIP Loan**") and seek other financial accommodations from the DIP Lender  
7 pursuant to the DIP Credit Agreement, the other DIP Financing Agreements, and the Final Order  
8 (as defined below);

9 (v) Execute and deliver the DIP Credit Agreement and the other DIP Financing  
10 Agreements;

11 (vi) Grant the DIP Lender allowed super-priority administrative expense claims,  
12 pursuant to section 364(c)(1) of the Bankruptcy Code, in each of the Chapter 11 Cases and any  
13 Successor Cases (as defined below) for the DIP Financing and all obligations of the Debtors  
14 owing under the DIP Financing Agreements (collectively, and including all "**Obligations**" of the  
15 Debtors as defined and described in the DIP Credit Agreement, the "**DIP Obligations**") subject  
16 only to the Carve Out (defined below) as set forth below;

17 (vii) Grant the DIP Lender automatically perfected first priority senior security interests  
18 in and liens on all of the DIP Collateral (as defined below) pursuant to section 364(d)(1) of the  
19 Bankruptcy Code, which liens shall not be subordinate to any other liens, charges, security  
20 interests or surcharges under section 506(c) or any other section of the Bankruptcy Code, with the  
21 exception of the Carve Out (defined below) as set forth below;

22 (viii) Obtain authorization to use the proceeds of the DIP Financing in all cases in  
23 accordance with the proposed initial agreed budget covering the initial 13 week period (the  
24 "**Initial Agreed Budget**") a copy of which is attached to the Chou Decl. [Docket No. 32] as  
25 **Exhibit 2**, as updated from time to time (the "**DIP Budget**") and as otherwise provided in the DIP  
26 Financing Agreements, the Interim Order and this Final Order;

27 (ix) Provide adequate protection to certain of the Prepetition Secured Creditors  
28 (defined herein) and McKesson (defined herein) pursuant to the terms of this Final Order for any



1 diminution in value of their respective interests in the Prepetition Collateral or VMF Collateral  
2 (each as defined herein) resulting from the DIP Liens (as defined herein) on the Prepetition  
3 Collateral or VMF Collateral, subordination to the Carve Out (as defined herein), or Debtors' use,  
4 sale, or lease of Prepetition Collateral or VMF Collateral, including cash collateral (such cash  
5 collateral that is Prepetition Collateral or VMF Collateral hereafter defined as "**Cash Collateral**");

6 (x) Grant authorization based upon the consent of the Prepetition Secured Creditors  
7 and McKesson to use of Cash Collateral in accordance with the DIP Budget upon the terms and  
8 conditions set forth herein;

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

12 (xii) Following the conclusion of a final hearing (the "**Final Hearing**") to consider  
13 entry of an order (the "**Final Order**") granting the relief requested in the DIP Motion on a final  
14 basis; and

15 (xiii) Waive any applicable stay as provided in the Bankruptcy Rules (expressly  
16 including Rule 6004) and provide for immediate effectiveness of this Final Order.

17 The Court, having considered the DIP Motion, the Declarations of Anita M. Chou, Chief  
18 Financial Officer filed in support of the DIP Motion and Rich Adcock, CEO filed in support of  
19 the First Day Motions each as Officers of the Debtors, in Support of Chapter 11 Petitions and  
20 First Day Pleadings, the DIP Motion, the proposed DIP Credit Agreement, and any the exhibits  
21 attached thereto, and the evidence submitted or adduced and the arguments of counsel made at the  
22 hearing on the Interim Order (the "**Interim Hearing**") and on the request for entry of the Final  
23 Order (the "**Final Hearing**"); and due and proper notice of the DIP Motion, an Interim Hearing,  
24 entry of the Interim Order, and Final Hearing having been provided in accordance with  
25 Bankruptcy Rules 2002, 4001(b) and (d), and 9014 and LBR 4001-2 and no other or further  
26 notice being required under the circumstances; and the Interim Hearing and Final Hearing having  
27 been held and concluded; and it appearing that approval of the and final relief requested in the  
28 DIP Motion is necessary to avoid immediate and irreparable harm to the Debtors and is otherwise

1 fair and reasonable and in the best interests of the Debtors, their estates and their creditors, and is  
2 essential for the preservation of the value of the Debtors' assets; and all objections, if any, to the  
3 entry of this Final Order having been withdrawn, resolved or overruled by the Court; and after  
4 due deliberation and consideration, and for good and sufficient cause appearing therefor:

5 **BASED UPON THE RECORD ESTABLISHED AT THE INTERIM AND FINAL**  
6 **HEARINGS, THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND**  
7 **CONCLUSIONS OF LAW:<sup>2</sup>**

8 A. **Petition Date.** On August 31, 2018 (the "*Petition Date*"), each of the Debtors  
9 filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the United  
10 States Bankruptcy Court for the Central District of California (the "*Court*"). The Debtors have  
11 continued in the management and operation of their businesses and properties as debtors in  
12 possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

13 B. **Jurisdiction and Venue.** This Court has jurisdiction over the Cases, the DIP  
14 Motion and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334(b),  
15 and over the persons and property affected hereby. Consideration of the DIP Motion constitutes a  
16 core proceeding as defined in 28 U.S.C. § 157(b)(2). Venue for these Chapter 11 Cases and  
17 proceedings on the DIP Motion is proper before this district pursuant to 28 U.S.C. §§ 1408 and  
18 1409.

19 C. **Committee Formation.** The Office of the United States Trustee (the "*U.S.*  
20 *Trustee*") has noticed the appointment of an official committee of unsecured creditors in these  
21 Cases pursuant to section 1102 of the Bankruptcy Code, the members of which are identified by  
22 the Office of the United States Trustee in that Notice of Appointment and Appointment of  
23 Committee of Creditors Holding Unsecured Claims dated September 17, 2018 [Docket No 197]  
24 (the "*Committee*").

25  
26 <sup>2</sup> The findings and conclusions set forth herein constitute the Court's findings of fact and  
27 conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding  
28 pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact  
constitute conclusions of law, they are adopted as such. To the extent any of the following  
conclusions of law constitute findings of fact, they are adopted as such.



DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300

1 D. **Notice.** Notice of the Court's entry of Interim Order on September 6, 2018  
2 [Docket 86] and Notice of the Final Hearing and on the DIP Motion [Docket 201] has been  
3 provided by the Debtors to: (i) the Office of the United States Trustee for the Central District of  
4 California (the "*U.S. Trustee*"); (ii) the United States Securities and Exchange Commission; (iii)  
5 the Office of the United States Attorney for the Central District of California; (iv) the Internal  
6 Revenue Service; (v) the Debtors' fifty (50) largest unsecured creditors on a consolidated basis;  
7 (vi) counsel to each of the Prepetition Secured Creditors (as defined below); (vii) counsel to the  
8 DIP Agent and the DIP Lender; (viii) the Office of the Attorney General for the State of  
9 California, Charities Division; and (ix) all other parties known to assert a lien on any of the  
10 Debtors' assets. Under the circumstances, such notice of the Final Hearing and the DIP Motion  
11 constitute due, sufficient and appropriate notice and complies with sections 102(1) and 363 of the  
12 Bankruptcy Code, Bankruptcy Rules 2002 and 4001(b), and the Local Rules, and no other or  
13 further notice is required under the circumstances.

14 E. **Findings Regarding Corporate Authority.** As set forth in the resolutions  
15 accompanying the Petitions and the Adcock Declaration, each Debtor has all requisite corporate  
16 power and authority to execute and deliver the DIP Financing Agreements to which it is a party  
17 and to perform its obligations thereunder.

18 F. **Intercreditor Agreement.** Pursuant to section 510(a) of the Bankruptcy Code,  
19 the Second Amended and Restated Intercreditor Agreement dated December 1, 2017 (the  
20 "*Intercreditor Agreement*") and any other applicable intercreditor or subordination provisions  
21 contained in any of the Prepetition Secured Documents (i) shall remain in full force and effect,  
22 with respect to prepetition and post-petition assets of the Debtors as provided thereunder, (ii) shall  
23 continue to govern the relative priorities, rights and remedies of the Prepetition Secured Creditors  
24 (including the relative priorities, rights and remedies of such parties with respect to the  
25 Prepetition Replacement Liens and Adequate Protection Superpriority Claims granted, or  
26 amounts payable, by the Debtors under the Interim Order, this Final Order or otherwise and the  
27 modification of the automatic stay), and (iii) shall not be deemed to be amended, altered or  
28



1 modified by the terms of this Final Order or the DIP Financing Agreements, unless expressly set  
2 forth herein.

3 G. **Prepetition Secured Credit Facilities.** As of the Petition Date, the Debtors were  
4 indebted and liable to the Prepetition Secured Creditors as follows:

5 (i) UMB Bank, N.A., ("**UMB Bank**") as successor Master Trustee (in such  
6 capacity, the "**Master Trustee**") under the Master Trust of Trust dated as of December 1, 2001, as  
7 amended and supplemented (the "**Master Indenture**") with respect to the MTI Obligations  
8 (defined below) securing the repayment by the Obligated Group (defined below) of its loan  
9 obligations with respect to (1) the California Statewide Communities Development Authority  
10 Revenue Bonds (Daughters of Charity Health System) Series 2005 A, G and H (the "**2005**  
11 **Bonds**"), (2) the California Public Finance Authority Revenue Notes (Verity Health System)  
12 Series 2015 A, B, C and D (the "**2015 Working Capital Notes**"), and (3) the California Public  
13 Finance Authority Revenue Notes (Verity Health System) Series 2017 A and B (the "**2017**  
14 **Working Capital Notes**" and, collectively with the 2015 Working Capital Notes, the "**Working**  
15 **Capital Notes**"). The joint and several obligations issued under the Master Indenture by Verity  
16 Health System of California, Inc., O'Connor Hospital, Saint Louise Regional Hospital, St. Francis  
17 Medical Center, St. Vincent Medical Center and Seton Medical Center (collectively, the  
18 "**Obligated Group**") in respect of the 2005 Bonds and the Working Capital Notes are collectively  
19 referred to as the "**MTI Obligations**". Wells Fargo Bank National Association ("**Wells Fargo**")  
20 serves as bond indenture trustee under the bond indentures relating to the 2005 Bonds. U.S. Bank  
21 National Association ("**U.S. Bank**") serves as the note indenture trustee and as the collateral agent  
22 under each of the note indentures relating to the 2015 Working Capital Notes and the 2017  
23 Working Capital Notes, respectively. The MTI Obligations are secured by, inter alia, security  
24 interests granted to the Master Trustee in the prepetition accounts of, and mortgages on the  
25 principal real estate assets of, the members of the Obligated Group.

26 In addition to the security provided to the Master Trustee to secure the MTI  
27 Obligations, U.S. Bank, as Note Trustee for the 2015 Working Capital Notes and the 2017  
28 Working Capital Notes is secured by first priority liens upon and security interests in the



DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300

Obligated Group's accounts and deeds of trust on the principal real estate assets of Saint Louise Regional Hospital and St. Francis Medical Center (collectively, the "**Priority Collateral**"). U.S. Bank as Notes Trustee for the 2017 Working Capital Notes has also been granted a deed of trust, dated as of December 1, 2017, by Verity Holdings in certain real property located in San Mateo California (the "**Moss Deed of Trust**") to further secure the 2017 Working Capital Notes.

(ii) Verity MOB Financing, LLC and Verity MOB Financing II, LLC (together, the "**MOB Lenders**") hold security interests in Verity Holdings' accounts, including rents arising from the prepetition MOB Financing, and mortgages on medical office buildings owned by Verity Holdings (the "**MOB Financing**").

The Master Trustee, Wells Fargo as bond indenture trustee for the 2005 Notes, U.S. Bank as Note Trustee for the Working Capital Notes, and the MOB Lenders are collectively hereafter referred to as the "**Prepetition Secured Creditors**;" the MTI Obligations, the Obligated Group's loan obligations with respect to the Working Capital Notes and the MOB Financing are hereinafter referred to as the "**Prepetition Secured Obligations**;" the prepetition interests (including the liens and security interests) of each Prepetition Secured Creditor in the property and assets of the Debtors are hereinafter referred to as the "**Prepetition Liens**;" and the documents, writings and agreements evidencing the Prepetition Secured Obligations are hereinafter referred to as the "**Prepetition Secured Documents**".

H. **Prepetition Secured Trade Vendor Arrangement.** Prior to the Petition Date, VMF entered into agreements for the sole source purchasing of certain critical chemotherapy and other pharmaceutical products and medical-surgical products with McKesson Corporation and certain affiliates ("**McKesson**"), and on or about March 27, 2018 granted to McKesson a prepetition perfected security interest ("**VMF Liens**") in VMF tangible and intangible personal property, including accounts (the "**VMF Collateral**"), but such perfected security interest excluded VMF cash (to the extent such cash does not represent proceeds of the VMF Collateral), personal property requiring possession for perfection and real property interests. As of the Petition Date, McKesson was owed approximately \$3,055,000.00 (the "**McKesson Prepetition Debt**"). Postpetition, and subject to McKesson's internal credit review and approval process,



McKesson has agreed to resume providing certain secured trade credit to VMF and the physician practices ordering through VMF for the purchase of pharmaceutical and medical-surgical products on 30 days from invoice payment terms (the "**McKesson Post-Petition Trade Credit**"). The McKesson Post-Petition Trade Credit will continued to be secured by the VMF Liens.

I. **Prepetition Collateral**. In order to secure the Prepetition Secured Obligations and the Prepetition Secured Trade Vendor Arrangement (as described in paragraph H above), the Debtors, excluding the Philanthropic Foundations, granted the Prepetition Liens and the VMF Liens to the Prepetition Secured Creditors and McKesson, respectively as provided and described in the Prepetition Secured Documents and the documents pertaining to the VMF Collateral. The assets subject to the Prepetition Liens (the "**Prepetition Collateral**") and the VMF Collateral constitute substantially all of the assets of the Debtors, excluding cash and assets of the Philanthropic Foundations.

J. **Prepetition Agreements to Pay Special Assessments**. Seton Medical Center, a Debtor, ("**SMC**") and California Statewide Communities Development Authority ("**CSCDA**") entered into an (i) Agreement to Pay Assessment and Finance Improvements dated May 11, 2017 under the CSCDA CaliforniaFirst Program ("**Clean Fund Agreement to Pay Assessment**"), and (ii) Agreement to Pay Assessment and Finance Improvements dated May 18, 2017 under the CSCDA CaliforniaFirst Program ("**Petros Agreement to Pay Assessment**", collectively, with Clean Fund Agreement to Pay Assessment, the "**Assessment Agreements**"), each for the limited purpose of providing financing for certain renewable energy, energy efficiency, water efficiency and seismic improvements permanently affixed to real property owned by SMC located in Daly City, California under the CSCDA CaliforniaFirst Program in the aggregate amount of \$40,000,000. As of the Petition Date, after payment of tax exempt bond issuance fees for the Clean Fund Bonds and the NR2 Petros Bonds (each as defined in the DIP Motion) and retention of capitalized interest reserves approximately \$34,379,450 is being held for authorized improvements (the "**Program Funds**") by Wilmington Trust N.A. ("**WTNA**") as indenture trustee, pursuant to, *inter alia*, the terms of two Indentures between CSCDA and WTNA dated as of May 11, 2017 and May 18, 2017 and the Assessment Agreements. Notwithstanding SMC's status as a

DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300



1 tax exempt California not for profit corporation, SMC agreed and consented to the CSCDA  
2 special tax assessments imposed pursuant to and under the Assessment Agreements (the "**CSCDA**  
3 **Special Assessments**"). The Debtors acknowledge that the CSCDA Special Assessments have  
4 the same lien priority and methods of collection as general municipal taxes on real property.  
5 Notices of Assessment and Payment of the Special Assessments were recorded in the official  
6 records of the County of San Mateo against the real property owned by SMC and consented to by  
7 the Prepetition Secured Lenders. The Debtors acknowledge that the Program Funds and other  
8 proceeds of the issuance of the Clean Fund Bonds or NR2 Petros Bond which are being held by  
9 WTNA are not property of the Debtors' estates, and are not subject to the Prepetition Liens, the  
10 DIP Liens, or the Prepetition Replacement Liens.

11 K. **Findings Regarding the Postpetition Financing.**

12 (i) **Consensual Priming of the Prepetition Liens.** The priming of the  
13 Prepetition Liens of the Prepetition Secured Creditors on the Prepetition Collateral, and the VMF  
14 Liens on the VMF Collateral under section 364(d) of the Bankruptcy Code, as contemplated by  
15 the DIP Financing Agreements, as authorized by this Final Order, and as further described below,  
16 is consented to by the Prepetition Secured Creditors and McKesson, and will enable the Debtors  
17 to continue borrowing under the DIP Facility and to continue operating their businesses for the  
18 benefit of their estates and creditors. The Prepetition Secured Creditors and McKesson are each  
19 entitled to receive adequate protection as set forth in this Final Order pursuant to sections 361,  
20 363, and 364 of the Bankruptcy Code, for any Diminution in Value (as defined herein) of each of  
21 their respective interests in the Prepetition Collateral (including Cash Collateral) or VMF  
22 Collateral.

23 (ii) **Good Cause; Need for Postpetition Financing.** Good cause has been  
24 shown for the entry of this Final Order. An immediate and continuing need exists for the Debtors  
25 to obtain funds from the DIP Loan in order to continue operations, continue to serve the Debtors  
26 mission to provide vital, lifesaving patient care for vulnerable populations and to administer and  
27 preserve the value of their estates. The ability of the Debtors to finance their operations, to  
28 preserve and maintain the value of the Debtors' assets and to maximize a return for all creditors



1 requires the availability of working capital from the DIP Loan, the absence of which would  
2 immediately and irreparably harm the Debtors, their estates and their creditors and the possibility  
3 for a successful reorganization or sale of the Debtors' assets as a going concern or otherwise. The  
4 proposed DIP Loan is in the best interests of the Debtors, their estates, and their creditors.

5 (iii) **No Credit Available on More Favorable Terms.** The Debtors have been  
6 unable to obtain (a) unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code  
7 as an administrative expense, (b) credit for money borrowed secured solely by a lien on property  
8 of the estate that it not otherwise subject to a lien, (c) credit for money borrowed secured by a  
9 junior lien on property of the estate which is subject to a lien, (d) or credit otherwise on more  
10 favorable terms and conditions than those provided in the DIP Credit Agreement and this Final  
11 Order. The Debtors are unable to obtain credit for borrowed money without granting to the DIP  
12 Lender the DIP Protections (as defined below).

13 L. **Use of Proceeds of the DIP Facility.** Proceeds of the DIP Facility (net of any  
14 amounts used to pay fees, costs and expenses under the DIP Financing Agreements) are to be  
15 utilized by the Debtors until the DIP Facility Termination Date in accordance with the DIP  
16 Budget and in a manner consistent with the terms and conditions of the DIP Credit Agreement,  
17 this Final Order, and the Final Order.

18 M. **Application of Sale Proceeds of DIP Collateral.** The Debtors have agree with  
19 the DIP Lender that, subject to the terms of this Final Order and the DIP Credit Agreement, DIP  
20 Liens shall attach as first priority liens and security interests, pursuant to section 364(d) of the  
21 Bankruptcy Code and the DIP Financing Agreements, to all proceeds of any sale or other  
22 disposition of the Debtors' property, including, without limitation, the Facilities and any other  
23 DIP Collateral (as defined below) (the "***Sale Proceeds***"). The Sale Proceeds for each Debtor shall  
24 be held in escrow in one or more deposit accounts subject to a deposit account control agreement  
25 in favor of the DIP Lender (the "***Escrow Deposit Account***"). Any funds held in the Escrow  
26 Deposit Account shall not be commingled with any other funds of the Debtor, the Sale Proceeds  
27 of any other Debtor or otherwise. The DIP Lender is granted a first priority lien on the Escrow  
28 Deposit Account and all Sale Proceeds, including any deposit provided by any buyer in



DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300

1 connection with any asset sale, and such proceeds, deposits, and the Escrow Deposit Account  
2 shall constitute Collateral under the DIP Credit Agreement and DIP Collateral under this Final  
3 Order. On the Revolving Loan Termination Date (as defined in the DIP Credit Agreement), the  
4 DIP Lender shall apply any and all amounts remaining on deposit in the Escrow Deposit Account  
5 to the outstanding principal amount of the DIP Loan, together with accrued and unpaid DIP  
6 Obligations, with any remaining balance to be delivered to the Debtors subject to any Prepetition  
7 Liens, VMF Liens, Prepetition Replacement Liens and VMF Replacement Liens; provided,  
8 however, that upon any Debtor's request and with the consent of the DIP Lender (which consent  
9 may, for the avoidance of doubt, be withheld in its sole discretion), any Sale Proceeds and  
10 deposits provided in connection with any asset sale may be disbursed to the Prepetition Secured  
11 Creditors or McKesson on terms and conditions that are acceptable to the DIP Lender in its sole  
12 discretion and upon further order of this Court.

13 N. **Adequate Protection for Prepetition Secured Creditors and McKesson.** The  
14 priming of the Prepetition Secured Creditors' Prepetition Liens to the extent set forth below  
15 pursuant to section 364(d) of the Bankruptcy Code is necessary to obtain the DIP Financing. In  
16 exchange for the priming of the Prepetition Liens set forth below, the Prepetition Secured  
17 Creditors and McKesson shall be entitled to receive adequate protection, as set forth in this Final  
18 Order, pursuant to sections 361, 363 and 364 of the Bankruptcy Code, for any diminution in the  
19 value of their respective interests in the Prepetition Collateral or VMF Collateral resulting from,  
20 among other things, the subordination to the Carve Out (as defined herein) and to the DIP Liens  
21 (as defined herein), the Debtors' use, sale or lease of such Prepetition Collateral or VMF  
22 Collateral, including Cash Collateral, and the imposition of the automatic stay from and after the  
23 Petition Date (collectively, and solely to the extent of such diminution in value, the "***Diminution***  
24 ***in Value***"). As to the VMF Collateral, any adequate protection, as set forth in this Final Order,  
25 pursuant to sections 361, 363 and 364 of the Bankruptcy Code, for any Diminution in Value of  
26 Prepetition Secured Creditors' interests in the Prepetition Collateral are subordinated to any  
27 similar adequate protection provided to McKesson. VMF shall also pay McKesson (A)  
28 \$3,055,000.00 in satisfaction of the balance of McKesson's Prepetition Secured Debt on the



DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300

1 following schedule: (1) October 5, 2018 - \$1,700,000.00; (2) October 26, 2018 - \$700,000.00;  
2 and (3) November 2, 2018 - \$655,000.00 (plus McKesson's attorneys' fees and costs incurred  
3 through October 31, 2018) (the "**McKesson Secured Payments**"). The McKesson Secured  
4 Payments will be included within the DIP Budget line item for Debtors' critical vendor program.  
5 Payment of McKesson's attorneys' fees will be included in the DIP Budget line item for  
6 Prepetition Secured Creditor Adequate Protection Payments. The Prepetition Secured Creditors  
7 have negotiated in good faith regarding the Debtors' use of the Prepetition Collateral to help fund  
8 the administration of the Debtors' estates along with the proceeds of the DIP Financing. Based  
9 on the DIP Motion and the record presented to the Court at the Interim Hearing and the Final  
10 Hearing, the terms of the proposed adequate protection arrangements are fair and reasonable,  
11 reflect the Debtors' prudent exercise of business judgment and constitute reasonably equivalent  
12 value and fair consideration for the consent of the Prepetition Secured Creditors and McKesson;  
13 provided, however, that nothing herein shall limit the rights of any of the Prepetition Secured  
14 Creditors or McKesson to hereafter seek new, additional, or different adequate protection.

15 O. **Extension of Financing.** The DIP Lender has indicated a willingness to provide  
16 financing to the Debtors in accordance with the DIP Credit Agreement. The DIP Lender is  
17 acting in good faith with respect to the DIP Facility and the terms and conditions of the DIP  
18 Credit Agreement and the other DIP Financing Agreements. The DIP Lender's claims,  
19 superpriority claims, security interests and liens and other protections granted pursuant to this  
20 Final Order and the DIP Financing Agreements will not be affected by any subsequent reversal or  
21 modification of this Final Order or the Final Order, as provided in section 364(e) of the  
22 Bankruptcy Code.

23 P. **Business Judgment and Good Faith Pursuant to Section 364(e).**

24 (i) The DIP Lender has indicated a willingness to provide DIP Financing to  
25 the Debtors in accordance with the DIP Financing Agreements. The terms and conditions of the  
26 DIP Facility and the DIP Financing Agreements, and the fees paid and to be paid thereunder are  
27 fair, reasonable, and the best available under the circumstances, reflect the Debtors' exercise of  
28



DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300

1 prudent business judgment consistent with their fiduciary duties, and are supported by reasonably  
2 equivalent value and consideration;

3 (ii) The DIP Financing Agreements were negotiated in good faith and at arms'  
4 length between the Debtors and the DIP Lender;

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

7 (iv) The DIP Lender is acting in good faith with respect to the DIP Facility and  
8 the terms and conditions of the DIP Financing Agreements, and the DIP Lender's claims,  
9 superpriority claims, security interests and liens and other protections granted pursuant to this  
10 Final Order and the DIP Financing Agreements will not be affected or avoided by any subsequent  
11 reversal or modification of this Final Order or the Final Order, as provided in section 364(e) of  
12 the Bankruptcy Code.

13 Q. **Relief Essential; Best Interest; Good Cause.** The relief requested in the DIP  
14 Motion (and as provided in this Final Order) is necessary, essential, and appropriate for the  
15 preservation of the Debtors' assets, business and property. It is in the best interest of the Debtors'  
16 estates to be allowed to establish the DIP Facility contemplated by the DIP Credit Agreement.  
17 Good cause has been shown for the relief requested in the DIP Motion (and as provided in this  
18 Final Order) solely on an interim basis.

19 R. **Consent to Use of Cash Collateral.** Each of the Prepetition Secured Creditors and  
20 McKesson have consented to the use of their respective interests in Cash Collateral, subject to the  
21 terms and conditions set forth in this Order.

22 **NOW, THEREFORE,** on the DIP Motion and the record before this Court with  
23 respect to the DIP Motion, including the record created during the Interim Hearing, and with the  
24 consent of the Debtors, the Prepetition Secured Creditors and the DIP Lender to the form and  
25 entry of this Final Order, and good and sufficient cause appearing therefor,

26 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

27 1. **Motion Granted.** The DIP Motion is granted on an interim basis in accordance  
28 with the terms and conditions set forth in this Final Order and the DIP Credit Agreement. Any

1 objections to the DIP Motion with respect to entry of this Final Order to the extent not withdrawn,  
2 waived or otherwise resolved, and all reservations of rights included therein, are hereby denied  
3 and overruled.

4           **2.     DIP Financing Agreements.**

5           **(a)     Approval of Entry Into DIP Financing Agreements.** The Debtors are  
6 authorized, empowered and directed to execute and deliver the DIP Financing Agreements and to  
7 incur and to perform the DIP Obligations in accordance with, and subject to, the terms of this  
8 Final Order and the DIP Financing Agreements, and to execute and deliver all instruments and  
9 documents which may be required or necessary for the performance by the Debtors under the DIP  
10 Financing Agreements and the creation and perfection of the DIP Liens described in and provided  
11 for by this Final Order and the DIP Financing Agreements. The Debtors are hereby authorized  
12 and directed to do and perform all acts, pay the principal, interest, fees, expenses, indemnities and  
13 other amounts described in the DIP Credit Agreement as such amounts become due and payable  
14 without need to obtain further Court approval, including closing fees, unused line fees,  
15 administrative agent's fees, collateral agent's fees, and the reasonable fees and disbursements of  
16 the DIP Agent's and the DIP Lenders' respective attorneys, advisors, accountants, and other  
17 consultants, whether or not such fees arose before or after the Petition Date, and whether or not  
18 the transactions contemplated hereby are consummated, to implement all applicable reserves and  
19 to take any other actions that may be necessary or appropriate, all to the extent provided in this  
20 Final Order or the DIP Financing Agreements. All collections and proceeds, whether from  
21 ordinary course collections, asset sales, debt or equity issuances, insurance recoveries,  
22 condemnations or otherwise, will be deposited and applied as required by this Final Order and the  
23 DIP Financing Agreements. The DIP Financing Agreements represent valid and binding  
24 obligations of the Debtors, enforceable against each of the Debtors and their estates in accordance  
25 with their terms, including, without limitation, commitment fees and reasonable attorneys' fees  
26 and disbursements as provided for in the DIP Credit Agreement, which amounts shall not  
27 otherwise be subject to approval of this Court, *provided however*, that notwithstanding section  
28 2.9(a) of the DIP Credit Agreement, following entry of this Final Order, the Debtors shall pay



DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300

1 only \$1,600,000 on account of the commitment fee. The Debtors shall pay the deferred balance  
2 of the commitment fee required by section 2.9(a) of the DIP Credit Agreement only upon entry of  
3 a Final Order approving the DIP Credit Agreement.

4 (b) **Authorization to Borrow and/or Guarantee.** To enable them to continue  
5 to preserve the value of their estates and dispose of their assets in an orderly fashion, during the  
6 period prior to termination of the DIP Credit Agreement and subject to the terms and conditions  
7 of this Final Order, upon the execution of the DIP Credit Agreement and the other Financing  
8 Documents the Debtors are hereby authorized to borrow the DIP Loan up to a total committed  
9 amount of \$185,000,000 under the DIP Financing Agreements.

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

14 (d) **DIP Collateral; DIP Liens.** Effective immediately upon the entry of this  
15 Final Order, on account of the DIP Loan, the DIP Lender shall be and is hereby granted first-  
16 priority security interests and liens (which shall immediately be valid, binding, permanent,  
17 continuing, enforceable, perfected and non-avoidable) on all of the Debtors' property, including,  
18 without limitation, the Sale Proceeds and the Escrow Deposit Account, whether arising before or  
19 after the Petition Date (collectively, the "**DIP Collateral**," and all such liens and security interests  
20 granted on or in the DIP Collateral pursuant to this Final Order and the DIP Financing  
21 Agreements, the "**DIP Liens**"), but shall exclude the Program Funds, and proceeds of the Clean  
22 Fund Bonds and NR2 Petros Bonds held by WTNA, donor restricted funds held at Philanthropic  
23 Foundations, Avoidance Actions (defined below) and any proceeds thereof and any funds held by  
24 the Prepetition Secured Creditors (including amounts set forth on **Exhibit 1** to the Chou Decl.).  
25 The DIP Collateral shall not be subject to any surcharge under section 506(c) or any other  
26 provision of the Bankruptcy Code or other applicable law, nor by order of this Court.

27 (e) **DIP Lien Priority.** Subject only to the Carve Out (as defined below) and  
28 the prepetition tax lien arising in connection with the CSCDA Special Assessments, the DIP

DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300

Liens shall, pursuant to section 364(d)(1) of the Bankruptcy Code, be perfected, continuing, enforceable, non-avoidable first priority senior priming liens and security interests on the DIP Collateral, and shall prime all other liens and security interests on the DIP Collateral, including any liens and security interests in existence on the Petition Date against the Prepetition Collateral and VMF Collateral, and any other current or future liens granted on the DIP Collateral, including any adequate protection or replacement liens granted on the DIP Collateral (collectively, the “*Primed Liens*”) (other than the Debtors’ claims and causes of action under sections 502(d), 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy Code, and any other avoidance or similar actions under the Bankruptcy Code or similar state law (the “*Avoidance Actions*”), whether received by judgment, settlement or otherwise. Without limiting the foregoing, the DIP Liens shall not be made subject to, subordinate to, or *pari passu* with any lien or security interest by any court order heretofore or hereafter granted in the Chapter 11 Cases. The DIP Liens shall be valid and enforceable against any trustee appointed in the Chapter 11 Cases, upon the conversion of any of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code or in any other proceedings related to any of the foregoing (any “*Successor Cases*”), and/or upon the dismissal of any of the Chapter 11 Cases or Successor Cases. Other than the Carve Out, no costs, expenses, claims, or liabilities that have been or may be incurred by Debtors during these Chapter 11 Case, or in any Successor Cases, will be senior to, prior to, or on parity with the DIP Liens.

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

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



DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300

(h) **Additional Protections of DIP Lender: Superpriority Administrative**

**Claim Status.** Subject to the Carve Out (as defined below), all DIP Obligations shall constitute an allowed superpriority administrative expense claim (the “**DIP Superpriority Claim**” and, together with the DIP Liens, the “**DIP Protections**”) with priority in all of the Chapter 11 Cases and Successor Cases over all other administrative expense claims under sections 364(c)(1), 503(b) and 507(b) of the Bankruptcy Code and otherwise over all administrative expense claims and unsecured claims against the Debtors or their estates, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 1113 and 1114 and any other provision of the Bankruptcy Code except as otherwise set forth herein, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment. The DIP Superpriority Claim shall be payable from and have recourse to all prepetition and post-petition property of the Debtors and all proceeds thereof. Without limiting the foregoing, the Superpriority Claim shall not be made subject to, subordinate to, or *pari passu* with any other administrative claim in the Chapter 11 Cases or Successor Cases, except for the Carve Out (as defined below). Other than the Carve Out, no costs, expenses, claims, or liabilities that have been or may be incurred by Debtors during these Chapter 11 Case, or in any Successor Cases, will be senior to, prior to, or on parity with the DIP Superpriority Claim.

3. **Authorization to Use Proceeds of DIP Facility.** Pursuant to the terms and conditions of this Final Order, the DIP Credit Agreement and the other DIP Financing Agreements, and in accordance with the DIP Budget and the variances thereto set forth in the DIP Credit Agreement, the Debtors are authorized to use the advances under the DIP Credit Agreement during the period commencing immediately after the entry of this Final Order and terminating upon the occurrence of an Event of Default (as defined below) and the termination of the DIP Credit Agreement in accordance with its terms and subject to the provisions hereof.

4. **Application of Sale Proceeds of DIP and Prepetition Secured Creditor Collateral.** The DIP Liens shall attach as first priority liens and security interests, pursuant to



DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300

1 section 364(d) of the Bankruptcy Code and the DIP Financing Agreements, to the Sale Proceeds.  
2 The Sale Proceeds shall be allocated by Debtor and held in escrow in the Escrow Deposit  
3 Accounts. Funds held in any Escrow Deposit Account shall not be commingled with any other  
4 funds of the applicable Debtor or any of the other Debtors and, without limitation of the rights of  
5 the DIP Lender upon the occurrence of an Event of Default under the DIP Financing Documents  
6 or pursuant to this Final Order, the Debtors shall not be permitted to use Cash Collateral of any of  
7 the Prepetition Secured Creditors held in any Escrow Deposit Account for any purpose without  
8 first obtaining the consent of the applicable Prepetition Secured Creditor or obtaining an order of  
9 the Court pursuant to Section 363 of the Bankruptcy Code after notice and a hearing. The DIP  
10 Lender is granted a first priority lien on the Escrow Deposit Accounts and all Sale Proceeds,  
11 including any deposit provided by any buyer in connection with any asset sale, and such proceeds,  
12 deposits, and the Escrow Deposit Account shall constitute Collateral under the DIP Credit  
13 Agreement and DIP Collateral under this Final Order. On the Revolving Loan Termination Date  
14 (as defined in the DIP Credit Agreement), the DIP Lender may apply amounts held in Escrow  
15 Deposit Accounts to the outstanding obligations under the DIP Loan. Without limiting the  
16 foregoing, and subject in all respects to the DIP Lender's first priority priming lien, the  
17 Prepetition Secured Creditors' Prepetition Liens shall be deemed to attach to the Escrow Deposit  
18 Accounts and the Sale Proceeds with the same relative priority, validity, force, extent and effect  
19 as the Prepetition Liens attached to the Prepetition Collateral giving rise to such Sale Proceeds.  
20 Each of the Prepetition Secured Creditors shall have the right to seek a declaration of their  
21 respective rights in and to any of the Sale Proceeds and funds held in a Deposit Escrow Account,  
22 consistent with and subject to the terms and conditions of this Final Order, and the Court shall  
23 determine all such disputes in accordance with this Final Order, the Prepetition Secured  
24 Documents, and applicable law.

25 **5. Adequate Protection for Prepetition Secured Creditors.** As adequate protection  
26 for the interests of the Prepetition Secured Creditors in the Prepetition Collateral and McKesson  
27 in the VMF Collateral, but subject to the rights of the Prepetition Secured Creditors in the Sale  
28 Proceeds and Deposit Escrow Accounts set forth above, on account of the granting of the DIP



1 Liens, subordination to the Carve Out (as defined below), any Diminution in Value arising out of  
2 the Debtors' use, sale, or disposition or other depreciation of the Prepetition Collateral, including  
3 Cash Collateral or the VMF Collateral, resulting from the automatic stay, the Prepetition Secured  
4 Creditors and McKesson shall receive adequate protection as follows:

5 (a) **Adequate Protection Replacement Liens.** To the extent of the  
6 Diminution in Value of the interest of the respective Prepetition Secured Creditors in Prepetition  
7 Collateral, each of the affected Prepetition Secured Creditors shall be granted, subject to the terms  
8 and conditions set forth below, pursuant to sections 361, 363(e), and 364(d) of the Bankruptcy  
9 Code additional valid, perfected and enforceable replacement security interests and Liens in the  
10 DIP Collateral, (the "***Prepetition Replacement Liens***"), which Prepetition Replacement Liens  
11 shall have the same relative priority, validity, force, extent and effect as the liens that they replace  
12 and which shall be junior only to (1) the Carve Out, (2) to the DIP Liens securing the DIP  
13 Obligations, (3) the VMF Liens in VMF Collateral and (4) any perfected, unavoidable,  
14 prepetition liens granted by Holdings pursuant to those certain deeds of trust issued in connection  
15 with the MOB Financing and that certain Deed of Trust with Fixture Filing and Security  
16 Agreement and Assignment of Leases and Rents by Holdings in favor of U.S. Bank as 2017 Note  
17 Trustee and Deed of Trust Beneficiary, dated as of September 15, 2017, as further amended or  
18 modified (the "***Moss Deed of Trust***") to secure the Series 2017 Working Capital Notes; *provided,*  
19 *however,* that any Prepetition Replacement Liens granted to the 2015 Note Trustee and/or 2017  
20 Note Trustee on account of the Diminution in Value of the Priority Assets as defined in the  
21 Intercreditor Agreement shall be senior to the Prepetition Replacement Liens granted to any other  
22 Prepetition Secured Creditors and junior to (i) the Carve Out, (ii) the DIP Liens securing the DIP  
23 Obligations, and (iii) perfected, unavoidable, prepetition liens granted by Holdings pursuant to  
24 those certain deeds of trust issued in connection with the MOB Financing and the Moss Deed of  
25 Trust, and *further provided* that any Prepetition Replacement Liens granted to the holders of  
26 deeds of trust issued in connection with the MOB Financing and the Moss Deed of Trust, on  
27 account of the Diminution in Value of such Prepetition Collateral shall be senior to the  
28 Prepetition Replacement Liens granted to any other Prepetition Secured Creditors and junior to (x)

DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300



1 the Carve Out, (y) the DIP Liens securing the DIP Obligations, and (z) perfected, unavoidable,  
2 prepetition liens of the Master Trustee, the 2015 Note Trustee and/or the 2017 Note Trustee on  
3 property other than the property subject to the Moss Deed of Trust. With respect to the Prepetition  
4 Collateral that is subject to the Intercreditor Agreement, any proceeds of such Prepetition  
5 Collateral or Prepetition Replacement Liens related thereto shall be allocated among the  
6 Prepetition Secured Creditors in accordance with the terms of the Second Amended and Restated  
7 Intercreditor Agreement. With respect to the VMF Collateral, McKesson shall be entitled to a  
8 replacement lien on the postpetition assets of VMF, excluding Avoidance Actions ("**VMF**  
9 **Replacement Lien**"), to the extent of (1) any Diminution in Value in such VMF Collateral, and (2)  
10 any McKesson Post-Petition Trade Credit, which amounts shall be senior to the Prepetition  
11 Replacement Liens, but junior to the (m) Carve Out, and (n) the DIP Liens.

12 (b) **Adequate Protection Payments and Protections.** So long as there is no  
13 Default or Event of Default under the Interim Order, this Final Order, or the DIP Financing  
14 Agreements, the Debtors are also authorized and directed to provide (I) to the Prepetition Secured  
15 Creditors monthly adequate protection payments equal to the amount of postpetition, non-default  
16 contractual interest on the outstanding balances of the Prepetition Secured Obligations, provided  
17 that reference to the non-default contractual rate of interest shall not include any Penalty Rate,  
18 Default Rate or the Tax Rate as defined in the Prepetition Secured Documents, plus monthly  
19 payment of reasonable trustee fees for each of (1) Wells Fargo, (2) UMB Bank as Master Trustee,  
20 (3) U.S. Bank as 2015 Note Trustee, and (4) U.S. Bank as 2017 Note Trustee, respectively, and  
21 reimbursement of reasonable attorney's fees for one set of attorneys for (1) Wells Fargo as the  
22 successor indenture trustee for the 2005 Bonds, (2) UMB Bank as Master Trustee, (3) U.S. Bank  
23 as 2015 Note Trustee, (4) U.S. Bank as 2017 Note Trustee, and (5) MOB Financing and  
24 reimbursement of reasonable financial advisor fees for one set of financial advisors for (1) Wells  
25 Fargo as the successor indenture trustee for the 2005 Bonds and UMB Bank as Master Trustee, (2)  
26 U.S. Bank as 2015 Note Trustee and 2017 Note Trustee and (3) MOB Financing; and (II)  
27 payments by the Debtors to McKesson consistent with certain terms of the interim and final  
28 orders authorizing the Critical Vendor Program (as defined in the Debtors First Day Motions) in



1 an amount of \$3,055,000.00 (collectively I and II are the “**Prepetition Adequate Protection**  
2 **Payments**”). Notwithstanding the foregoing, to the extent the Court enters a final and non-  
3 appealable order that determines, pursuant to sections 506(a) or (b) of the Bankruptcy Code, that  
4 the Prepetition Adequate Protection Payments under (I) above are not properly allocable to  
5 interest on one or more of the respective Prepetition Secured Obligations to which they were  
6 made, the Prepetition Adequate Protection Payments may be re-characterized as payment(s)  
7 applied to the principal amount of the respective Prepetition Secured Obligations.

8 (c) **McKesson Secured Payments.** As set forth herein, the Debtors are hereby  
9 authorized and directed to make all McKesson Secured Payments on or before their respective  
10 due dates and authorized to make payments on McKesson’s Post-Petition Trade Credit, on the  
11 terms agreed to between McKesson and the Debtors provided herein.

12 (d) **Prepetition Superpriority Claim.** To the extent of the Diminution in  
13 Value of the interest of the respective Prepetition Secured Creditors in Prepetition Collateral, each  
14 of the affected Prepetition Secured Creditors shall be granted, subject to the terms and conditions  
15 set forth below, an allowed superpriority administrative expense claim (the “**Prepetition**  
16 **Superpriority Claims**”), which shall have priority (except with respect to (i) the DIP Liens, (ii)  
17 the DIP Superpriority Claim, (iii) the Carve Out, and (iv) any claims granted by Holdings  
18 pursuant to those certain deeds of trust issued in connection with the MOB Financing and the  
19 Moss Deed of Trust) in the Chapter 11 Cases under sections 363(c)(1), 503(b) and 507(b) of the  
20 Bankruptcy Code and otherwise over all administrative expense claims and unsecured claims  
21 against the Debtors and their estates, now existing or hereafter arising of any kind or nature  
22 whatsoever including, without limitation, administrative expenses of the kind specified or ordered  
23 pursuant to sections 105, 326, 328, 330, 331, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d) 552,  
24 726, 1113 and 1114 of the Bankruptcy Code, and upon entry of the Final Order, section 506(c) of  
25 the Bankruptcy Code, whether or not such expenses or claims may become secured by a  
26 judgment Lien or other non-consensual Lien, levy or attachment; *provided, however*, that any  
27 Prepetition Superpriority Claim granted to the 2015 Note Trustee and/or 2017 Note Trustee on  
28 account of the Diminution in Value of the Priority Assets as defined in the Intercreditor



DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300

1 Agreement shall have priority over the Prepetition Superpriority Claims granted to any other  
2 Prepetition Secured Creditors (except with respect to (i) the DIP Liens, (ii) the DIP Superpriority  
3 Claim, (iii) the Carve Out, and (iv) claims associated with the MOB Financing and the Moss  
4 Deed of Trust) and *further provided* that any Prepetition Superpriority Claim granted to the  
5 holders of those certain deeds of trust issued in connection with the MOB Financing and the Moss  
6 Deed of Trust, on account of the Diminution in Value of such Prepetition Collateral shall be  
7 senior to the Prepetition Superpriority Claims granted to any other Prepetition Secured Creditors  
8 (except with respect to (i) the DIP Liens, (ii) the DIP Superpriority Claim, (iii) the Carve Out, and  
9 (iv) the claims of the Master Trustee, the 2015 Note Trustee and/or the 2017 Note Trustee on  
10 property other than the property subject to the Moss Deed of Trust). With respect to the  
11 Prepetition Collateral that is subject to the Second Amended and Restated Intercreditor  
12 Agreement, any proceeds of such Prepetition Collateral or Prepetition Superpriority Claim related  
13 thereto shall be allocated among the Prepetition Secured Creditors in accordance with the terms  
14 of the Second Amended and Restated Intercreditor Agreement.

15 (e) **Validity, Perfection and Amount of Prepetition Liens.** The Debtors  
16 further acknowledge and agree that, as of the Petition Date, (a) the Prepetition Liens securing the  
17 Prepetition Secured Obligations on the Prepetition Collateral and the VMF Liens on the VMF  
18 Collateral were valid, binding, enforceable, non-avoidable, and properly perfected and were  
19 granted to, or for the benefit of, the Prepetition Secured Creditors and McKesson, (b) the  
20 Prepetition Liens were senior in priority over any and all other Liens on the Prepetition Collateral  
21 except the prepetition tax lien arising in connection with the CSCDA Special Assessments, and (c)  
22 the VMF Liens were senior in priority over any and all other Liens on VMF Collateral. The  
23 findings and stipulations set forth in this Final Order with respect to the validity, enforceability  
24 and amount of the Prepetition Secured Obligation and the Prepetition Liens shall be binding on  
25 any subsequent trustee, responsible person, examiner with expanded powers, any other estate  
26 representative, and all creditors and parties in interest and all of their successors in interest and  
27 assigns, including the Committee, unless, and solely to the extent that, a party in interest with  
28 requisite standing and authority (other than the Debtors, as to which any Challenge (as defined



DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300

below) is irrevocably waived and relinquished) has timely filed the appropriate pleadings, and timely commenced the appropriate proceeding required under the Bankruptcy Code and Bankruptcy Rules, including as required pursuant to Part VII of the Bankruptcy Rules (in each case subject to the limitations set forth in this paragraph 4(d)) challenging the Prepetition Liens (each such proceeding or appropriate pleading commencing a proceeding or other contested matter, a “**Challenge**”) within ninety (90) days from the formation of the Committee (the “**Challenge Deadline**”); *provided however* that the filing by the Committee of a motion for standing to prosecute a Challenge shall automatically toll the Challenge Deadline; and *provided further*, that the “Challenge Deadline” for matters solely relating to the value of the Prepetition Collateral may be further extended to such time as may be agreed by the parties or further ordered by the Court. The foregoing limitation on use of Prepetition Collateral or its proceeds shall only be amended upon further order of this Court and the consent of both the Prepetition Secured Creditors and the DIP Lender. The Debtors shall not use the Prepetition Collateral, VMF Collateral or their proceeds to investigate or prosecute claims against the Prepetition Secured Creditors or McKesson, including Avoidance Actions, *provided however* that the Committee may investigate the existence of such claims and have allowed fees paid from the Prepetition Collateral or VMF Collateral and the proceeds of the DIP Facility up to the amount of \$100,000, *provided further however* that no Prepetition Collateral or VMF Collateral, the proceeds thereof or the proceeds of the DIP Facility may be used to prosecute claims against Prepetition Secured Creditors or McKesson. For the avoidance of doubt, the Debtors, on behalf of their estates, do not release or indemnify the Prepetition Secured Creditors or McKesson from any Challenge raised by third parties, including the Committee, to the validity, amount or enforceability of the Prepetition Secured Obligations and the Prepetition Liens or the VMF Liens.

(f) **Sections 506(c) and 552(b).** In light of the Prepetition Secured Creditors’ and McKesson’s agreements that their Prepetition Liens and VMF Liens, respectively, shall be subject to the Carve Out and subordinate to the DIP Liens, the Prepetition Secured Creditors and McKesson are each entitled to a waiver of any “equities of the case” exception under section



1 552(b) of the Bankruptcy Code, and a waiver of the provisions of section 506(c) of the  
2 Bankruptcy Code.

3 (g) Nothing contained in this Final Order shall prevent the Prepetition Secured  
4 Creditors from application or use of the funds held thereby in accordance with the Prepetition  
5 Secured Documents. Each of the Prepetition Secured Creditors reserves the right to seek  
6 additional or further adequate protection from the Court.

7 6. **Budget Maintenance.** The proceeds of the DIP Loan under the DIP Facility and the  
8 use of Cash Collateral shall be subject to, and in accordance with, the terms and conditions of the  
9 DIP Financing Agreements and the DIP Budget. The Initial Agreed Budget delivered to the DIP  
10 Agent shall be accompanied by such supporting documentation as reasonably requested by the  
11 DIP Agent. The DIP Budget shall be prepared in good faith based upon assumptions that the  
12 Debtors believe to be reasonable. A copy of any DIP Budget shall be delivered to counsel for the  
13 Committee and the U.S. Trustee and counsel for the Prepetition Secured Creditors after it has  
14 been approved in accordance with the DIP Financing Agreements. The Debtors shall provide at  
15 least two (2) business days' notice to counsel for the Committee and the Prepetition Secured  
16 Creditors prior to the effective date of any change in the DIP Budget.

17 7. **Budget Compliance and Reporting.** The proceeds of the DIP Facility and the use  
18 of Cash Collateral shall be subject to, and used in accordance with, the terms and conditions of  
19 the DIP Financing Agreement and the DIP Budget (subject to the variances set forth therein).  
20 Debtors acknowledge and confirm that the DIP Budget includes the payment of CSCDA Special  
21 Assessments. The Debtors shall provide all reports and other information as required in the DIP  
22 Credit Agreement (subject to the grace periods provided therein), with copies delivered  
23 substantially contemporaneously to counsel for the Prepetition Secured Creditors and counsel to  
24 the Committee, such information to include reasonably complete details on the payments  
25 contemplated by the Critical Vendors Motion and the Utilities Motion, as defined in the Adcock  
26 Declaration, and such information to be timely provided, sufficient for the Prepetition Secured  
27 Creditors to file an objection with this Court on two business days' notice. The Debtors' failure  
28 to comply with the DIP Budget (including the variances set forth in the DIP Credit Agreement) or



DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300

1 to provide the reports and other information required in the DIP Credit Agreement shall constitute  
2 an Event of Default (as defined herein), following the expiration of any applicable grace period  
3 set forth in the DIP Credit Agreement. Subject to the execution and continuation of valid and  
4 binding confidentiality agreements, prior to any hearing to consider entry of a Final Order related  
5 to this DIP Motion, the Debtors shall provide to the Prepetition Secured Creditors information  
6 concerning (i) the Debtors' efforts to obtain debtor in possession financing proposals, including  
7 any proposals the Debtors received, and (ii) the Debtors' ongoing efforts to market their assets,  
8 including all marketing materials used by the Debtors in this process, information identifying the  
9 parties the Debtors have contacted, copies of any proposals or expressions of interest, and other  
10 information concerning these matters the Prepetition Secured Creditors may reasonably request.

11 **8. Postpetition Lien Perfection.** This Final Order shall be sufficient and conclusive  
12 evidence of the validity, perfection, and priority of the DIP Liens, the Prepetition Replacement  
13 Liens and the VMF Replacement Lien, and all rights granted in and to the Escrow Deposit  
14 Accounts and the Sale Proceeds, without the necessity of filing or recording any financing  
15 statement, deeds of trust, mortgages, or other instruments or documents which may otherwise be  
16 required under the law of any jurisdiction or the taking of any other action (including, for the  
17 avoidance of doubt, entering into any deposit account control agreement or obtaining possession  
18 of any possessory collateral) to validate or perfect the DIP Liens, Prepetition Replacement Liens  
19 or VMF Replacement Lien, or to entitle the DIP Liens, Prepetition Replacement Liens and VMF  
20 Replacement Lien the respective priorities granted herein. Notwithstanding and without limiting  
21 the foregoing, the DIP Lender may file such financing statements, mortgages, deeds of trust,  
22 notices of liens and other similar documents as it deems appropriate, and it is hereby granted  
23 relief from the automatic stay of section 362 of the Bankruptcy Code in order to do so, and all  
24 such financing statements, mortgages, deeds of trust, notices and other documents shall be  
25 deemed to have been filed or recorded at the time and on the date of the commencement of the  
26 Chapter 11 Cases. Notwithstanding and without limiting the foregoing provisions regarding the  
27 validity, perfection, and priority of the DIP Liens, the Debtors shall execute and deliver to the  
28 DIP Lender all such financing statements, mortgages, deeds of trust, deposit account control



DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300

1 agreements, notices and other documents as the DIP Lender may reasonably request to evidence,  
2 confirm, validate or perfect, or to insure the contemplated priority of, the DIP Liens granted  
3 pursuant hereto and the DIP Financing Agreements. Any such financing statements, mortgages,  
4 deeds of trust, deposit account control agreements, notices and other documents shall be  
5 considered DIP Financing Agreements for all intents and purposes. The DIP Lender, in its  
6 discretion, may file a certified copy of this Final Order as a financing statement with any  
7 recording officer designated to file financing statements or with any registry of deeds or similar  
8 office in any jurisdiction in which any Debtor has real or personal property, and in such event, the  
9 recording officer shall be authorized to file or record such copy of this Final Order. To the extent  
10 that any Prepetition Secured Creditor is the secured party under any security agreement, mortgage,  
11 leasehold mortgage, landlord waiver, credit card processor notices or agreements, bailee letters,  
12 custom broker agreements, financing statement, account control agreements, or any other  
13 Prepetition Secured Documents or is listed as loss payee or additional insured under any of the  
14 Debtors' insurance policies, the DIP Agent shall also be deemed to be the secured party under  
15 such documents or to be the loss payee or additional insured, as applicable.

16       **9. Application of Proceeds of Collateral.** As a condition to the continued extension  
17 of credit under the DIP Facility and the continued authorization to use Cash Collateral, the  
18 Debtors have agreed that as of and commencing on the Closing Date the Debtors shall apply all  
19 advances under the DIP Facility, as follows: (i) first, to fund the day to day operations and  
20 general corporate purposes of the Debtors' estates; (ii) second, to pay the administrative expenses  
21 of the Chapter 11 Cases; and (iii) third, to make the Prepetition Adequate Protection Payments all  
22 in accordance with the DIP Budget.

23       **10. Proceeds of Subsequent Financing.** If the Debtors, any trustee, any examiner with  
24 expanded powers, or any responsible officer subsequently appointed in these Chapter 11 Cases or  
25 any Successor Cases, shall obtain credit or incur debt pursuant to Bankruptcy Code sections  
26 364(b), 364(c), or 364(d) or in violation of the DIP Financing Agreements at any time prior to the  
27 infeasible repayment in full of all DIP Obligations and Prepetition Secured Obligations (to the  
28 extent such remain outstanding), and the termination of the DIP Agent's and the DIP Lenders'



1 obligation to extend credit under the DIP Facility, including subsequent to the confirmation of  
2 any chapter 11 plan of reorganization with respect to any or all of the Debtors and the Debtors'  
3 estates, and such facility is secured by any DIP Collateral, then all the cash proceeds derived from  
4 such credit or debit shall immediately be turned over to the DIP Agent to be applied in  
5 accordance with this Final Order and the DIP Financing Agreements.

6 **11. Cash Collection.**

7 (a) From and after the date of the entry of this Final Order, all collections and proceeds  
8 of any DIP Collateral or Prepetition Collateral and all Cash Collateral that shall at any time come  
9 into the possession, custody, or control of any Debtor, or to which any Debtor is now or shall  
10 become entitled at any time, shall be promptly deposited in accounts as specified in the DIP  
11 Credit Agreement (or in such other accounts as are designated by the DIP Agent from time to  
12 time) (collectively, the "**Cash Collection Accounts**"), which accounts shall be subject to the sole  
13 dominion and control of the DIP Agent. It is understood and agreed by the Debtors and the DIP  
14 Agent that, unless a "Default" or an "Event of Default" under the DIP Credit Agreement has  
15 occurred and is continuing, for so long as there are no amounts outstanding under the DIP Facility,  
16 proceeds in the Cash Collection Accounts shall be returned to the Debtors and the Debtors shall  
17 be authorized to use such Cash Collateral in accordance with this Final Order. All proceeds and  
18 other amounts in the Cash Collection Accounts shall be remitted to the DIP Agent for application  
19 in accordance with the DIP Financing Agreements. Unless otherwise agreed to in writing by the  
20 DIP Agent and the Prepetition Secured Creditors or as set forth in this Final Order, the Debtors  
21 shall maintain no accounts except those identified in the interim cash management order entered  
22 by the Court with respect thereto (the "**Cash Management Order**"), whether now existing or  
23 hereafter established. The Debtors and the financial institutions where the Debtors' Cash  
24 Collection Accounts are maintained (including those accounts identified in the Cash Management  
25 Order), are authorized and directed to remit, without offset or deduction, funds in such Cash  
26 Collection Accounts upon receipt of any direction to that effect from the DIP Agent. To the  
27 extent that a Prepetition Secured Creditor's perfection in or control over bank accounts or  
28 investment accounts, including any funds or investments therein, may be affected by reason of the



DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300

1 transfer of control to the DIP Agent or any agent of the DIP Agent in accordance with this Final  
2 Order, the perfection and control rights of such Prepetition Secured Creditor therein shall be  
3 deemed to continue, subject to the senior, priming rights of the DIP Lender, for so long as the DIP  
4 Obligations remain outstanding, and thereafter shall revert back to such Prepetition Secured  
5 Creditor.

6 (b) Notwithstanding anything in this Final Order or any of the DIP Financing  
7 Agreements, from and after the date of the entry of this Final Order, all collections and proceeds  
8 of any DIP Collateral or Prepetition Collateral that shall at any time come into the possession,  
9 custody, or control of any Debtor, or to which any Debtor is now or shall become entitled at any  
10 time, shall promptly be deposited into a depository account furnished by a depository bank  
11 acceptable to the DIP Agent and such account shall be in the name of the DIP Agent and subject  
12 to the sole dominion and control of the DIP Agent (such account, the "***DIP Collateral Account***").  
13 The Debtors' use of the proceeds in the DIP Collateral Account shall be subject to this Final  
14 Order and the DIP Financing Agreements.

15 12. **Maintenance of DIP Collateral.** Until the indefeasible payment in full of all DIP  
16 Obligations, all Prepetition Secured Obligations, and the termination of the DIP Agent's and the  
17 DIP Lenders' obligation to extend credit under the DIP Facility, the Debtors shall: (a) insure the  
18 DIP Collateral as required under the DIP Facility or the Prepetition Secured Documents, as  
19 applicable; and (b) maintain the cash management system in effect as of the Petition Date, as  
20 modified by the Cash Management Order, and maintain books and records sufficient to account  
21 for postpetition intercompany transfers in a manner required by the Cash Management Order at  
22 paragraph 6 and the DIP Credit Agreement at section 5.6 or as otherwise agreed to by the DIP  
23 Agent or otherwise required or permitted by the DIP Financing Agreements or this Final Order.

24 13. **DIP and Other Expenses.** The Debtors are authorized and directed to pay all  
25 reasonable and documented prepetition and postpetition fees and expenses of the (1) DIP Agent,  
26 (including the fees, expenses, and disbursements of Waller, Lansden, Dortch & Davis, LLP, as  
27 counsel to the DIP Agent), (2) the DIP Lenders in connection with the DIP Facility, as provided  
28 herein and in the DIP Financing Agreements, or, if requested by the Debtors, incurred with a



DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300

1 proposed conversion of the DIP Facility into exit financing (including the preparation and  
2 negotiation of the documentation relating to the exit facility), and (3) the Prepetition Secured  
3 Creditors and McKesson, whether or not the transactions contemplated hereby are consummated,  
4 including attorneys' fees, monitoring and appraisal fees, financial advisory fees, fees and  
5 expenses of other consultants, and indemnification and reimbursement of fees and expenses.  
6 Payment of all such fees and expenses shall not be subject to allowance by the Court.  
7 Professionals for the DIP Agent, the DIP Lenders and the Prepetition Secured Creditors and  
8 McKesson shall not be required to comply with the U.S. Trustee fee guidelines; however, any  
9 time that such professionals seek payment of fees and expenses from the Debtors, each  
10 professional shall provide summary copies of its invoices to the U.S. Trustee contemporaneously  
11 with the delivery of such invoices to the Debtors. Any objections raised by the Debtors, the U.S.  
12 Trustee or the Committee, with respect to such invoices must be in writing and state with  
13 particularity the grounds therefor and must be submitted to the applicable professional within ten  
14 (10) days of the receipt of such invoice; if after ten (10) days such objection remains unresolved,  
15 it will be subject to resolution by the Court. Pending such resolution, the undisputed portion of  
16 any such invoice will be paid promptly by the Debtors. Notwithstanding the foregoing, the  
17 Debtors are authorized and directed to pay on the Closing Date all reasonable and documented  
18 fees, costs, and out-of-pocket expenses of the DIP Agent, the DIP Lenders and the Prepetition  
19 Secured Creditors incurred on or prior to such date without the need for any professional engaged  
20 by such parties to first deliver a copy of its invoice or other supporting documentation. No  
21 attorney or advisor to the DIP Agent, the DIP Lenders any Prepetition Secured Creditor or  
22 McKesson shall be required to file an application seeking compensation for services or  
23 reimbursement of expenses with the Court. Upon entry of this Final Order, any and all fees, costs,  
24 and expenses paid prior to the Petition Date by any of the Debtors to the (i) DIP Agent or the DIP  
25 Lenders in connection with or with respect to the DIP Facility, and (ii) Prepetition Secured  
26 Creditors and McKesson in connection with or with respect to these matters, were approved in  
27 full and shall not be subject to avoidance, disgorgement or any similar form of recovery by the  
28 Debtors or any other person.



DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300

1           14. **Indemnification.** The Debtors shall indemnify and hold harmless the DIP Agent  
2 and the DIP Lenders in accordance with the terms and conditions of the DIP Credit Agreement.

3           15. **Right to Credit Bid.** The DIP Lender shall have the right, but not the obligation, to  
4 “credit bid” the DIP Obligations during any sale of the DIP Collateral, including without  
5 limitation, sales occurring pursuant to section 363 of the Bankruptcy Code or included as part of  
6 any reorganization plan subject to confirmation under section 1129(b)(2)(A)(iii) of the  
7 Bankruptcy Code. Subject to the indefeasible payment in full of the DIP Obligations, the  
8 Prepetition Secured Creditors shall have the right but not the obligation to credit bid the  
9 Prepetition Secured Obligations during any sale of the Prepetition Collateral, including without  
10 limitation, sales occurring pursuant to section 363 of the Bankruptcy Code.

11           16. **Carve Out.** The DIP Liens, DIP Superpriority Claim, and Prepetition Replacement  
12 Liens are subordinate only to the following: (i) all fees required to be paid to the clerk of the  
13 Court and to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6) (the “*U.S.*  
14 *Trustee Fees*”), together with interest, if any, at the statutory rate; and (ii) all allowed claims for  
15 unpaid fees, costs and expenses incurred by persons or firms retained by the Debtors or the  
16 Committee, if any, whose retention is approved by the Court pursuant to any one or more of  
17 sections 327, 328, 363, and 1103 of the Bankruptcy Code, to the extent such claims for fees, costs  
18 and expenses are both (a) allowed by the Court pursuant to the Final Order, and (b) in accordance  
19 with, and solely up to the total respective amounts set forth in the DIP Budget for the applicable  
20 time frame (the “*Carve Out Expenses*”); provided that the aggregate amount of such Carve Out  
21 Expenses shall not exceed (a) \$2,000,000 with respect to persons or firms retained by the Debtors,  
22 and (b) \$150,000 with respect to persons or firms retained by the Committee (collectively, the  
23 “*Carve Out Amount*”). Any payment or reimbursement made after the Carve Out Trigger Date in  
24 respect of any Carve Out expenses shall permanently reduce the Carve Out Amount on a dollar-  
25 for-dollar basis.

26           17. **Limitation of Use of Proceeds.** Notwithstanding anything set forth herein and  
27 except as provided in the following paragraph, the Carve Out shall exclude any fees and expenses  
28 incurred in connection with initiating or prosecuting any claims, causes of action, adversary



DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300

proceedings, or other litigation against the DIP Lender or any of the Prepetition Secured Creditors, including, without limitation, the assertion or joinder in any claim, counterclaim, action, proceeding, application, motion, objection, defenses or other contested matter, the purpose of which is to seek any order, judgment, determination or similar relief (i) invalidating, setting aside, disallowing, avoiding, challenging or subordinating, in whole or in part, (a) the DIP Obligations, (b) the Prepetition Secured Obligations, (c) the Prepetition Liens, (d) the VMF Liens or (e) the DIP Liens, or (ii) preventing, hindering or delaying, whether directly or indirectly, the DIP Lender or Prepetition Secured Creditors' or McKesson's assertion or enforcement of their liens or security interests or realization upon any DIP Collateral or Prepetition Collateral, or the VMF Collateral, or (iii) prosecuting any Avoidance Actions against the DIP Lender or any Prepetition Secured Creditor or McKesson, or (iv) challenging the amount, validity, extent, perfection, priority, or enforceability of, or asserting any defense, counterclaim, or offset to, the Prepetition Secured Obligations, or the McKesson Prepetition Debt, or the adequate protection granted herein, *provided however*, that nothing in this Final Order shall limit the right of the Debtors to challenge the reasonableness of attorney and financial advisory fees paid or proposed to be paid to Prepetition Secured Creditors or McKesson as adequate protection payments.

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

19. **Section 506(c) Claims; Equities of the Case.** Nothing contained in this Final Order shall be deemed a consent by the DIP Lender or any Prepetition Secured Creditor to any charge, lien, assessment or claim against the DIP Collateral under Section 506(c) of the Bankruptcy Code or otherwise. The "equities of the case" exception under Section 552(b) of the Bankruptcy Code and surcharge powers under section 506(c) of the Bankruptcy Code are waived as to the Prepetition Creditors and all pre and postpetition collateral securing their claims.

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

(a) The Debtors shall not seek entry, in these proceedings, or in any Successor Case, of any order which authorizes the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage, or collateral interest or other lien on all or any portion of the DIP Collateral and/or entitled to priority administrative status which is senior or *pari passu* to the DIP Liens granted to the DIP Lender pursuant to this Final Order, the DIP Financing Agreements or otherwise;

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

(c) In the event that the Debtors seek entry of an order in violation of subsection (a) hereof, the DIP Lender shall be granted relief from the automatic stay with respect to the DIP Collateral pursuant to the notice procedures set forth in this Order.

(d) The Parties to the DIP Credit Agreement agree that the Final Order does not impair the claims, rights, or ability, if any, to recoup, setoff or otherwise recover Medicare overpayments related to prepetition services by a Debtor ("**Prepetition Medicare Overpayments**") of the United States, its agencies, departments, agents or entities (collectively, "**United States**") from the payments made to such Debtor for services rendered after the Petition Date ("**Postpetition Medicare Payments**"), in accordance with the Medicare statutes, regulations, policies and procedures. The Parties to the DIP Credit Agreement further agree that the Final Order does not impair the United States' claims, rights or ability, if any, to recoup, setoff or otherwise recover any other prepetition debt a Debtor may owe to the United States from the Postpetition Medicare Payments due such Debtor in accordance with applicable law.

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



DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300

1 the DIP Facility shall cease, on the date that is the earliest to occur of: (i) September 5, 2019 (the  
2 ***“Scheduled Termination Date”***); (ii) the earlier of: (a) the date that is thirty (30) days from entry  
3 of this Final Order unless a final, non-appealable order of the Court authorizing the DIP Facility  
4 in form and substance satisfactory to the DIP Lender in its sole and absolute discretion has been  
5 entered and has become effective prior to the expiration of such period (or such later date as the  
6 DIP Lender may approve in writing in its sole and absolute discretion), (b) the date the Court  
7 denies entry of the Final Order, or (c) the date of revocation of this Final Order, as applicable; (iii)  
8 the substantial consummation (as defined in Section 1101 of the Bankruptcy Code and which for  
9 purposes hereof shall be no later than the *“effective date”*) of a plan of reorganization filed in the  
10 Chapter 11 Cases that is confirmed pursuant to an order entered by the Court; (iv) the  
11 consummation of a sale of all or substantially all of the DIP Collateral; (v) the date the Court  
12 orders the conversion of the Chapter 11 Cases to a Chapter 7 liquidation or the dismissal of the  
13 Chapter 11 Cases or the appointment of a trustee or examiner with expanded power in the  
14 Chapter 11 Cases; and (vi) the acceleration of the DIP Loan and the termination of the  
15 commitments with respect to the DIP Facility in accordance with the DIP Financing Agreements  
16 (the earliest of such dates, the ***“Commitment Termination Date”***). The occurrence of the  
17 Commitment Termination Date, shall also constitute, subject to further Court order, termination  
18 of the Prepetition Secured Creditors’ and McKesson consent to the Debtors’ use of their  
19 prepetition cash collateral (the ***“Carve Out Trigger Date”***).

20       **22. Disposition of Collateral.** The Debtors shall not sell, transfer, lease, encumber or  
21 otherwise dispose of any portion of the DIP Collateral, without the prior written consent of the  
22 DIP Lender (and no such consent shall be implied, from any other action, inaction or  
23 acquiescence by the DIP Lender or an order of this Court), except as provided in the DIP  
24 Financing Agreements and this Final Order and approved by the Court to the extent required  
25 under applicable bankruptcy law. Nothing herein shall prevent the Debtors from making sales in  
26 the ordinary course of business to the extent consistent with the DIP Budget and as permitted in  
27 the DIP Financing Agreements.  
28

23. **Events of Default.** The occurrence of a “Default” or an “Event of Default” pursuant to Section 9.1 the DIP Credit Agreement, including, without limitation, the “Bankruptcy Defaults” enumerated in Section 9.1(q) of the DIP Credit Agreement, shall constitute an event of default under this Final Order, unless expressly waived in writing in accordance with the consents required in the DIP Financing Agreements.

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

(a) Any otherwise applicable automatic stay is hereby modified so that after the occurrence of any Event of Default and at any time thereafter during the continuance of such Event of Default, the DIP Lender shall be entitled to exercise its rights and remedies with respect to the Debtors and the DIP Collateral provided in the DIP Financing Agreements and by applicable law, including, without limitation, foreclosing on and selling the DIP Collateral, without the need for further court approval or the consent of any other party.

(b) Notwithstanding the preceding paragraph, immediately following the giving of notice by the DIP Lender of the occurrence and continuance of an Event of Default, the DIP Lender shall have the right in its sole discretion to take any or all of the following actions: (i) declare the commitment of the DIP Lender to make the DIP Loan to be terminated; (ii) declare the unpaid principal amount of all outstanding DIP Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other DIP Financing Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by any Debtor; (iii) reduce the advance rates in respect of Eligible Accounts (as defined in the DIP Credit Agreement) or take additional reserves against or otherwise modify the Borrowing Base; and (iv) exercise all rights and remedies available to the DIP Agent and the DIP Lenders under the DIP Financing Documents, including any right of set-off under Section 11.21 of the DIP Credit Agreement, or under the UCC or any other applicable law; *provided, however*, that upon the occurrence of an Event of Default under the DIP Credit Agreement, the obligation of the DIP Lenders to make the DIP Loan shall automatically terminate, the unpaid principal amount of all outstanding DIP Loans and other DIP



Obligations and all interest and other amounts as aforesaid shall automatically become due and payable without further act of the DIP Agent or any DIP Lender.

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

25. **Limitation on Lender Liability.** Nothing in this Final Order, any of the DIP Financing Agreements, or any other documents related thereto shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent, the DIP Lenders or the Prepetition Secured Parties Creditors of any liability for any claims arising from any activities by the Debtors in the operation of their businesses or in connection with the administration of these Cases. The DIP Agent, the DIP Lenders and the Prepetition Secured Creditors shall not, solely by reason of having made loans under the DIP Facility, be deemed in control of the operations 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 (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., as amended, or any similar federal or state statute). Nothing in this Final Order or the DIP Financing Agreements shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent, the DIP Lenders, or any of the Prepetition Secured Creditors of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors.

26. **Insurance Proceeds and Policies.** As of the entry of this Final Order and to the fullest extent provided by applicable law, the DIP Agent (on behalf of the DIP Lenders) and the Prepetition Secured Creditors, shall be, and shall be deemed to be, without any further action or notice, named as additional insured and as lender's loss payee with the priority as to all rights and remedies as set forth herein and in the DIP Credit Agreement.

27. **Proofs of Claim.** The DIP Lender will not be required to file proofs of claim in the Chapter 11 Cases. Any proof of claim so filed shall be deemed to be in addition and not in lieu of any other proof of claim that may be filed by any of the Prepetition Secured Creditors.

1           28.     **Other Rights and Obligations.**

2                   (a)     **Good Faith Under Section 364(e) of the Bankruptcy Code. No**  
3     **Modification or Stay of this Final Order.** The Debtor, the DIP Lender, the Prepetition Secured  
4     Creditors and McKesson have acted in good faith in connection with negotiating the DIP  
5     Financing Agreements, extending credit under the DIP Facility, and authorizing use of Cash  
6     Collateral and rely on this Final Order in good faith. Based on the findings set forth in this Final  
7     Order and the record made during the Interim Hearing and the Final Hearing, and in accordance  
8     with section 364(e) of the Bankruptcy Code, in the event any or all of the provisions of this Final  
9     Order are hereafter reversed, modified amended or vacated by a subsequent order of this or any  
10    other Court, the DIP Lender, Prepetition Secured Creditors and McKesson are entitled to the  
11    protections provided in section 364(e) of the Bankruptcy Code. Any such reversal, modification,  
12    amendment or *vacatur* shall not affect the validity and enforceability of any advances made  
13    pursuant to , Order or the DIP Financing Agreements, nor shall it affect the validity, priority,  
14    enforceability, or perfection of the DIP Liens, the Prepetition Replacement Liens or the VMF  
15    Replacement Lien. Any claims or DIP Protections granted to the DIP Lender hereunder, or  
16    adequate protection granted to the Prepetition Secured Creditors and McKesson hereunder,  
17    arising prior to the effective date of such reversal, modification, amendment or *vacatur*, shall be  
18    governed in all respects by the original provisions of this Final Order, and the DIP Lender,  
19    Prepetition Secured Creditors or McKesson shall be entitled to all of the rights, remedies,  
20    privileges and benefits, including the DIP Protections and adequate protection granted herein,  
21    with respect to any such claims. Since the loans made pursuant to the DIP Credit Agreement are  
22    made in reliance on this Final Order, the obligations owed to the DIP Lender, the Prepetition  
23    Secured Creditors or McKesson prior to the effective date of any reversal or modification of this  
24    Final Order cannot, as a result of any subsequent order in the Chapter 11 Cases or in any  
25    Successor Cases, be subordinated, lose their lien priority or superpriority administrative expense  
26    claim status, or be deprived of the benefit of the status of the liens and claims granted to the DIP  
27    Lender, the Prepetition Secured Creditors or McKesson under this Final Order and/or the DIP  
28    Financing Agreements.



1 (b) **Binding Effect.** The provisions of this Final Order shall be binding upon  
2 and inure to the benefit of the DIP Lender, the Debtors, the Prepetition Secured Lenders,  
3 McKesson, the Committee, all other Parties in Interest, and all creditors, and each of their  
4 respective successors and assigns (including any trustee or other fiduciary hereinafter appointed  
5 as a legal representative of the Debtors or with respect to the property of the estates of the  
6 Debtors) whether in the Chapter 11 Cases, in any Successor Cases, or upon dismissal of any such  
7 chapter 11 or chapter 7 case.

8 (c) **No Waiver.** The failure of the DIP Lender to seek relief or otherwise  
9 exercise its rights and remedies under the DIP Financing Agreements, the DIP Facility, this Final  
10 Order or otherwise, as applicable, shall not constitute a waiver of the DIP Lender's rights  
11 hereunder, thereunder, or otherwise. Notwithstanding anything herein, the entry of this Final  
12 Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or  
13 otherwise impair the DIP Lender under the Bankruptcy Code or under non-bankruptcy law,  
14 including without limitation, the rights of the DIP Lender to (i) request conversion of the Chapter  
15 11 Cases to cases under Chapter 7, dismissal of the Chapter 11 Cases, or the appointment of a  
16 trustee in the Chapter 11 Cases, (ii) propose, subject to the provisions of section 1121 of the  
17 Bankruptcy Code, a plan of reorganization, or (iii) exercise any of the rights, claims or privileges  
18 (whether legal, equitable or otherwise) the DIP Lender may have pursuant to this Final Order, the  
19 DIP Financing Agreements, or applicable law. Nothing in this Final Order shall interfere with the  
20 rights of any party with respect to any non-Debtors.

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

24 (e) **No Marshaling.** The DIP Lender shall not be subject to the equitable  
25 doctrine of "marshaling" or any other similar doctrine with respect to any of the DIP Collateral.

26 (f) **Amendment.** The Debtors and the DIP Lender may amend or waive any  
27 provision of the DIP Financing Agreements, on notice to the Office of the U.S. Trustee, the  
28 Committee, the Prepetition Secured Creditors and McKesson. The Debtors shall give each

DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300

1 Prepetition Secured Creditor and McKesson notice concurrent with giving such notice or request  
2 to the DIP Agent for any amendment or waiver of the DIP Financing Agreements and, without  
3 prejudice to the effectiveness of any such amendment or waiver, each Prepetition Secured  
4 Creditor shall have the right to file a motion objecting to such amendment. Nothing in this DIP  
5 Order shall authorize the DIP Agent or DIP Lenders to increase the commitments in excess of the  
6 commitments set forth in this Final Order, increase the contract interest rate, defined in the DIP  
7 Credit Agreement as the Applicable LIBOR Margin, or Default Rate or extend the maturity date,  
8 defined in the DIP Credit Agreement as the "Scheduled Termination Date". Except as otherwise  
9 provided herein, no waiver, modification, or amendment of any of the provisions of the DIP  
10 Financing Agreements shall be effective unless set forth in writing, signed on behalf of all the  
11 Debtors and the DIP Lender, and, if material, approved by the Court. Nothing herein shall  
12 preclude the Debtors and the DIP Lender from implementing any amendment or waiver of any  
13 provision of the DIP Financing Agreements.

14 (g) **Estate Subrogation.** Debtor Verity Holdings shall have an allowed  
15 unsecured superpriority administrative expense claim granted to it pursuant to section 364(c)(1),  
16 against each of the other Debtors that is a "Net Borrower" (as defined below) based on the  
17 consolidated cash management process and DIP Loan, which claim shall be subordinate to the  
18 DIP Obligations, including the DIP Superpriority Claim, and to the Adequate Protection Claims  
19 of the Prepetition Secured Creditors and McKesson, but shall have priority over all other  
20 administrative claims, in an amount equal to the sum of (a) the amount, if any, by which Debtor  
21 Verity Holdings' assets that are used to satisfy the DIP Loan, the Prepetition Replacement Liens  
22 or VMF Liens, exceeds the amount, if any, of any draws on the DIP Loan used by Verity  
23 Holdings plus interest, and (b) any postpetition net intercompany advances by Verity Holdings to  
24 any other Debtor. "Net Borrower" shall mean any Debtor for which the sum of all cash received  
25 from the concentration account or draws on the DIP Loan and its allocation of interest paid or  
26 payable under the DIP Loan based on amounts received by it and amounts received by other  
27 Debtors, exceeds any cash it has transferred to the concentration account during the Chapter 11  
28 Cases.



DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300

29. **Survival of Interim Order and Other Matters.** The provisions of this Final Order and any actions taken pursuant hereto shall survive entry of any order which may be entered (i) confirming any Plan in the Chapter 11 Cases, (ii) converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code or any Successor Cases, (iii) to the extent authorized by applicable law, dismissing any of the Chapter 11 Cases, (iv) withdrawing of the reference of any of the Chapter 11 Cases from this Court, or (v) providing for abstention from handling or retaining of jurisdiction of any of the Chapter 11 Cases in this Court. The terms and provisions of this Final Order including the DIP Protections granted pursuant to this Final Order and the DIP Financing Agreements, shall continue in full force and effect notwithstanding the entry of such order, and such DIP Protections shall maintain their priority as provided by this Final Order until all the obligations of the Debtors to the DIP Lender pursuant to the DIP Financing Agreements have been indefeasibly paid in full and in cash and discharged (such payment being without prejudice to any terms or provisions contained in the DIP Financing Agreements which survive such discharge by their terms). The terms and provisions of this Final Order including any protections granted to the Prepetition Secured Creditors and McKesson, shall continue in full force and effect notwithstanding the entry of such order, and such protections for the Prepetition Secured Creditors and McKesson shall maintain their priority as provided by this Final Order until all the obligations of the Debtors to the Prepetition Secured Creditors and McKesson pursuant to applicable documentation have been discharged. The DIP Obligations shall not be discharged by the entry of an order confirming a plan of reorganization, the Debtors having waived such discharge pursuant to section 1141(d)(4) of the Bankruptcy Code.

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

(b) **Enforceability.** This Final Order shall constitute findings of fact and conclusions of law pursuant to the Bankruptcy Rule 7052 and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry of this Final Order. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, 9024, or any other

1 Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Final Order shall be  
2 immediately effective and enforceable upon its entry and there shall be no stay of execution or  
3 effectiveness of this Final Order.

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

6 (d) **No Waivers or Modification of Interim Order.** The Debtors irrevocably  
7 waive any right to seek any modification or extension of this Final Order without the prior written  
8 consent of the DIP Lender and no such consent shall be implied by any other action, inaction or  
9 acquiescence of the DIP Lender. No Effect on Non-Debtor Collateral. Notwithstanding anything  
10 set forth herein, neither the liens nor claims granted in respect of the Carve Out shall be senior to  
11 any liens or claims of the DIP Lender with respect to any other non-Debtor or any of their assets.

12  
13  
14  
15 Dated: \_\_\_\_\_  
Los Angeles, California

16  
17 /s/ \_\_\_\_\_  
18 HONORABLE JUDGE ROBLES  
19 UNITED STATES BANKRUPTCY JUDGE  
20  
21  
22  
23  
24  
25  
26  
27  
28



DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300

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

# **EXHIBIT 2**

# **EXHIBIT 2**



DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300

SAMUEL R. MAIZEL (Bar No. 189301)  
samuel.maizel@dentons.com  
JOHN A. MOE, II (Bar No. 066893)  
john.moe@dentons.com  
TANIA M. MOYRON (Bar No. 235736)  
tania.moyron@dentons.com  
DENTONS US LLP  
601 South Figueroa Street, Suite 2500  
Los Angeles, California 90017-5704  
Tel: (213) 623-9300 / Fax: (213) 623-9924

Proposed Attorneys for the Chapter 11 Debtors and  
Debtors In Possession

**UNITED STATES BANKRUPTCY COURT**

**CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

In re

VERITY HEALTH SYSTEM OF  
CALIFORNIA, INC., *et al.*,

Debtors and Debtors In Possession.

- ☒ Affects All Debtors
- ☐ Affects Verity Health System of California, Inc.
- ☐ Affects O'Connor Hospital
- ☐ Affects Saint Louise Regional Hospital
- ☐ Affects St. Francis Medical Center
- ☐ Affects St. Vincent Medical Center
- ☐ Affects Seton Medical Center
- ☐ Affects O'Connor Hospital Foundation
- ☐ Affects Saint Louise Regional Hospital Foundation
- ☐ Affects St. Francis Medical Center of Lynwood Foundation
- ☐ Affects St. Vincent Foundation
- ☐ Affects St. Vincent Dialysis Center, Inc.
- ☐ Affects Seton Medical Center Foundation
- ☐ Affects Verity Business Services
- ☐ Affects Verity Medical Foundation
- ☐ Affects Verity Holdings, LLC
- ☐ Affects De Paul Ventures, LLC
- ☐ Affects De Paul Ventures - San Jose Dialysis, LLC

Debtors and Debtors In Possession.

Lead Case No. 18-20151

Jointly Administered With:

CASE NO.: 2:18-bk-20162-ER  
CASE NO.: 2:18-bk-20163-ER  
CASE NO.: 2:18-bk-20164-ER  
CASE NO.: 2:18-bk-20165-ER  
CASE NO.: 2:18-bk-20167-ER  
CASE NO.: 2:18-bk-20168-ER  
CASE NO.: 2:18-bk-20169-ER  
CASE NO.: 2:18-bk-20171-ER  
CASE NO.: 2:18-bk-20172-ER  
CASE NO.: 2:18-bk-20173-ER  
CASE NO.: 2:18-bk-20175-ER  
CASE NO.: 2:18-bk-20176-ER  
CASE NO.: 2:18-bk-20178-ER  
CASE NO.: 2:18-bk-20179-ER  
CASE NO.: 2:18-bk-20180-ER  
CASE NO.: 2:18-bk-20171-ER

Chapter 11 Cases

Hon. Judge Ernest M. Robles

**SUPPLEMENTAL DECLARATION OF ANITA CHOU, CHIEF FINANCIAL OFFICER, IN SUPPORT OF MOTION FOR FINAL ORDER AUTHORIZING (A) AUTHORIZING THE DEBTORS TO OBTAIN POST PETITION FINANCING (B) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL; (C) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED CREDITORS PURSUANT TO 11 U.S.C. §§105, 363, 364, 1107 AND 1108**

FINAL HEARING:

Date: October 3, 2018

Time: 10:00 a.m.

Place: Courtroom 1568

DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300

1 I, Anita Chou, submit this Supplemental Declaration in support of the Debtors' Omnibus  
2 Reply (the "**DIP Reply**") in Support of Debtors' Motion for Final Order (A) Authorizing the  
3 Debtors to Obtain Post Petition Financing, (B) Authorizing the Debtors to Use Cash Collateral  
4 and (C) Granting Adequate Protection to Prepetition Secured Creditors Pursuant to 11 U.S.C.  
5 §§105, 363, 364, 1107 and 1108 (the "**DIP Motion**")<sup>1</sup>, and hereby state and declare as follows:  
6

7 1. I am the Chief Financial Officer ("**CFO**") of Verity Health System of California,  
8 Inc. ("**VHS**"). I became the Debtors' acting CFO on August 20, 2018, and on August 29, 2018,  
9 the board of directors appointed me as the CFO. On August 31, 2018, I submitted to the Court  
10 my Declaration in Support of the DIP Motion [Docket 32] (the "**Initial Declaration**"). I submit  
11 this Supplemental Declaration with information that may be of interest to the Court in light of the  
12 objections filed by various parties to the DIP Motion, and issues raised by parties that have  
13 resulted in the Debtors proposed modifications to the Interim Order [Docket 86] authorizing use  
14 of cash collateral, authorizing borrowing under the DIP Credit Agreement (an executed copy of  
15 which is attached hereto as **Exhibit 2**) up to \$30 million on an interim basis and granting  
16 superpriority priming liens to DIP Lender, granting junior replacement liens as adequate  
17 protection to certain prepetition secured parties.

18 2. The statements herein are based upon my personal knowledge of the facts and  
19 information gathered by me in my capacity as CFO for VHS.

20 **I. Prepetition Secured Trade Debt**

21 3. The consolidated funded secured debt of the Debtors is described on Exhibit 1 to  
22 my Initial Declaration. At the time of my Initial Declaration, I was unaware of actions by a  
23 former senior employee of Verity Medical Foundation ("**VMF**") granting a security interest in  
24 personal property and general intangibles to McKesson Corporation and its affiliates  
25 ("**McKesson**"). McKesson supplies pharmaceuticals to VMF on behalf of physician groups  
26 servicing hospitals and clinics that are part of the operations of the Verity Health System. Such  
27

28 <sup>1</sup> Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to them  
in the DIP Motion.



DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300

1 pharmaceutical supplies from McKesson include critical patient care drugs for cancer treatments,  
2 for which delivery delays can force patients to change treatment centers and doctors. Although  
3 McKesson filed a UCC-1 prior to the Petition Date, it did not record any mortgages, took no  
4 assignments of contracts and did not take possession or control of any deposit accounts. As of the  
5 Petition Date, VMF owed McKesson approximately \$3.055 million (the "*McKesson Prepetition*  
6 *Debt*").

7 4. On September 25, 2018, VMF and McKesson agreed to a payment schedule to be  
8 included in the proposed Final Order for the payment of the McKesson Prepetition Debt.  
9 Pursuant to that agreement, utilizing funds that will be allocated in the Revised Interim Budget  
10 for payments under the critical vendor program, the McKesson Prepetition Debt will be paid in  
11 three (3) installments the last of which will be November 2, 2018. In addition, McKesson has  
12 agreed to limited restoration of normal trade terms of 30 days with respect to all postpetition  
13 invoices to VMF and to consent to the modified language of the proposed Final Order that has  
14 been filed by the Debtors in connection with their DIP Reply.

15 **II. Access to Restricted Cash and Investments**

16 5. As explained in the First Day Declaration of Richard Adcock [Docket No. 8] and  
17 in my Initial Declaration, there are five (5) Philanthropic Foundations that are affiliated Debtors.  
18 O'Connor Hospital Foundation, Saint Louise Regional Hospital Foundation, St. Francis Medical  
19 Center of Lynwood Foundation, St. Vincent Foundation, Seton Medical Center Foundation are  
20 collectively referred to as the "Philanthropic Foundations." Each of the Philanthropic  
21 Foundations operates at a loss on an annual basis and each is a Borrower under the DIP Credit  
22 Agreement. *See* §2.4(h). In addition, the Philanthropic Foundations are the recipients of donor  
23 restricted funds. Under the terms of the DIP Credit Agreement, the Interim Order and the  
24 proposed Final Order, donor restricted funds are not subject to the DIP Liens or the Prepetition  
25 Replacement Liens.

26 6. As of the Petition Date donor restricted funds at the Philanthropic Foundations  
27 totaled \$12,085,018. Donor restricted funds are either funds of an endowment nature, where the  
28 donor directly or indirectly specified that only interest and dividends could be used by the

DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300

1 Philanthropic Foundation ("*Permanent Donor Restricted Funds*") or the donor directly or  
2 indirectly specified that use of the donation had a program limitation and a timing limitation in  
3 connection with certain grant agreements ("*Temporarily Restricted Funds*"). Temporarily  
4 restricted funds is a management designation, applied to both grants and funds that are not  
5 Permanent Donor Restricted Funds either by way of express or implied donor limitation of  
6 principal or express or implied donor limitations on programmatic use or asset acquisition  
7 limitations, but for which management has limited their use consistent with its understanding of  
8 the donor's intent. As of the Petition Date, Temporarily Restricted Funds at the Philanthropic  
9 Foundations totaled \$6,598,637. It is my understanding that the balances of such funds will  
10 fluctuate with receipt of additional donations and the expiration of restrictions. The Philanthropic  
11 Foundations also have unrestricted funds which are all funds and investments that are neither  
12 Permanent Donor Restricted Funds or Temporarily Restricted Funds. The Debtors adequately  
13 comply with all requirements to keep the Permanent Donor Restricted Funds and the Temporarily  
14 Restricted Funds segregated, as required by GAAP.

15 7. An example of a Permanent Donor Restricted Fund exists at O'Connor Hospital  
16 Foundation, where, as of the Petition Date, \$300,000 in donor funds are being held on behalf of  
17 the Wound Care Endowment, which such funds were specifically raised for, and are restricted for  
18 research and education in wound healing and regenerative medicine. As Permanent Donor  
19 Restricted Funds, the Wound Care Endowment funds are not subject to the DIP Liens.  
20 Temporarily Restricted Funds are subject to the DIP Liens and the Prepetition Replacement Liens  
21 only in the event they are determined not to be donor restricted funds.

22 8. By separate stipulation, the Debtors and the Attorney General have agreed to  
23 provide the parties with a 90 day period for examination of the Temporarily Restricted Funds to  
24 determine whether they are properly considered donor restricted funds within the meaning the  
25 DIP Credit Agreement and California law. The Debtors' determination will be subject to  
26 challenge by the parties in interest in this Case.

27 **III. Postpetition Employee Related Issues under the Budget.**  
28



DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300

1           9. As explained in the First Day Declaration of Rich Adcock, the Debtors have  
2 consistently lost money for many years due to, among other things, unfavorable payor contracts  
3 and burdensome labor agreements with accelerating pension costs for union and non-union  
4 employees. The VHS Hospitals also are dramatically under invested in structural improvements  
5 necessary to meet California's state mandated seismic and clean energy requirements. The  
6 combined effect of these issues has resulted in a consistent decline in operating cash balances  
7 absent additional financing.

8           10. The Initial Agreed Budget and its updates are a cornerstone of the contractual  
9 relationship between Ally Bank and the Debtors. It provides for the Debtors' best current  
10 estimate of the amount and timing of expenditures needed to operate the Cases and maximize the  
11 value of the estates for the benefit of creditor. In response to concerns raised by the Committee,  
12 the Initial Agreed Budget has now been modified from the version approved by the Court.

13           11. No change will be made in the Revised Initial Budget to reflect payment of  
14 prepetition pension contributions for any defined benefit plans. Although the Service Employees  
15 International Union, United Healthcare Workers-West ("*SEIU*"), United Nurses Association of  
16 California ("*UNAC*") and Retirement Plan for Hospitals Employees ("*RPHE*") have objected to  
17 the Debtors' failure to make pension contributions allegedly required by their respective  
18 collective bargaining agreements, all postpetition benefit service accrual funding and PBGC  
19 premium payments for continuing service accruals in fact are provided for in the Initial Agreed  
20 Budget. The DIP Budget does not include contributions that prepetition had been scheduled to be  
21 made on account of (a) prepetition benefit accruals, (b) PBGC premiums on account of  
22 prepetition service, or (c) make up contributions designed to reduce prepetition underfunding in  
23 the Debtors defined benefit plans.

24           12. The Initial Agreed Budget does not and the Revised Initial Budget will not include  
25 expenditures for postpetition defined benefit accruals for active employees under the Verity  
26 Retirement Plan A, and the RPHE Plan as determined by the Debtors' actuarial consultants. *See*  
27 Declaration of Carlos De La Parra In Support of Debtors' Omnibus Response to Objections to  
28 Motion to Pay Employee Wages and Salaries (the "*De La Parra Decl.*") attached as Exhibit 1 to

1 Debtors' Omnibus Response to Objections to Motion to Pay Employee Wages and Salaries (the  
2 "*Wage Motion Response*"), each of which is filed contemporaneously herewith [Related Docket  
3 Nos. 22, 75, 213, 214, 215, & 223]. However, wherever negotiated benefit plan contributions are  
4 monthly and measured exclusively by the number of employees working for a given month, as is  
5 the case with Local 39, Operating Engineers Health and Welfare Trust Fund, and with respect to  
6 postpetition accruals for unfrozen CNA represented employees, the Debtors have treated such  
7 anticipated monthly contributions as expenses of administration and they are included in the  
8 Interim Agreed Budget.

9 13. The SEIU employees and retirees are covered by the Verity Health System  
10 Retirement Plan A. Contributions for postpetition pension benefit accruals for employees  
11 represented by the SEIU are provided for in the Interim Agreed Budget in the amounts and timing  
12 indicated by Mr. De La Parra. *See*, Exhibit 1 to the De La Para Decl. Neither the Interim Agreed  
13 Budget nor the Revised Interim Budget provides for use of the DIP Facility to fund either  
14 prepetition benefit accruals or prepetition pension plan underfunding.

15 14. The California Nurses Association ("*CNA*") represents employees who are  
16 participants in the RPHE. Contributions for postpetition pension benefit accruals for employees  
17 represented by the CNA are provided for in the Initial Agreed Budget in the amounts indicated by  
18 Mr. De La Parra and in the schedule attached as Exhibit 1 to the De La Para Decl. The Interim  
19 Agreed Budget does not and the Revised Initial Budget will not provide for use of the DIP  
20 Facility to fund either prepetition benefit accruals or prepetition pension plan underfunding with  
21 respect to the RPHE and CNA represented employees.

22 15. The UNAC are also participants in the RPHE. Contributions for postpetition  
23 pension benefit accruals for employees represented by the UNAC are provided for in the Interim  
24 Agreed Budget in the amounts indicated for the RPHE plan on Exhibit 1 to the De La Para Decl.  
25 The Initial Agreed Budget does not and the Revised Initial Budget will not provide for use of the  
26 DIP Facility to fund either prepetition benefit accruals or prepetition pension plan underfunding  
27 with respect to the RPHE and UNAC represented employees.

28

DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300



DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300

1           16. Absent granting continued access to the Debtors' cash collateral, the Debtors will  
2 not be able to meet all of the obligations critical to the maintenance of safe facilities and the  
3 delivery of effective acute care services for its patients during the course of the Debtors' Cases.  
4 Absent emergency access to postpetition financing, the Debtors also will lose vendor support for  
5 critical postpetition deliveries of goods and services, further burdening the Debtors use of cash.  
6 Absent entry of a final order granting the requested relief, the very existence of the Hospitals will  
7 be threatened and the ability of the Hospitals to survive as going concerns, whether or not owned  
8 by the Debtors, will be irreparably harmed.

9           17. In addition, the Debtors continue to have needs for access to debtor in possession  
10 financing over the next 11 months. The Debtors have substantial trade payables consistent with  
11 the operations of a large organization that receives substantial trade support in the form of  
12 traditional credit terms. Many creditors have threatened to cease doing business with the Debtors  
13 creating continuous supply disruptions with respect to goods and services. While the length of  
14 terms has begun to shorten as the trade balances grow, and many vendors have simply cut off  
15 unsecured trade credit to the Debtors, I continue believe, after consultation with financial and  
16 capital markets advisers from the Berkley Research Group ("**BRG**") and Cain Brothers, a division  
17 of KeyBanc Capital Markets ("**Cain Brothers**"), that with appropriate use of the critical vendor  
18 payments the Debtors will regain access to normal or near normal credit terms providing the  
19 Debtors have access to substantial liquidity in the form of postpetition financing and such  
20 financing can be used to support the critical vendor program.

21           **IV. The Budget**

22           18. As indicated above, the financing requested herein is being requested for up to the  
23 lesser period of (a) the first anniversary of the Interim Order approving the DIP Facility or (b) the  
24 earlier of (i) the date that is 30 days from entry of the Interim Order, unless a Final Order has  
25 been entered and has become effective prior to the expiration of such period (or such later date as  
26 the DIP Agent may approve in writing in its sole and absolute discretion), (ii) the date the Court  
27 denies entry of the Final Order, or (iii) the date of revocation of the Interim Order or the Final  
28 Order, as applicable; (c) the substantial consummation (as defined in § 1101 of the Bankruptcy

DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300

1 Code and which for purposes hereof shall be no later than the "effective date") of a plan of  
2 reorganization filed in the Chapter 11 Cases that is confirmed pursuant to an order entered by the  
3 Bankruptcy Court; (d) the consummation of a sale of all or substantially all of the Collateral; (e)  
4 the date the Bankruptcy Court orders the conversion of the Chapter 11 Cases to a Chapter 7  
5 liquidation or the dismissal of the Chapter 11 Cases or the appointment of a trustee or examiner  
6 with expanded power in the Chapter 11 Cases; and (f) the acceleration of the DIP Loans and the  
7 termination of the commitments with respect to the DIP Facility in accordance with the DIP Loan  
8 Documents (the earliest of such dates, the "*Termination Date*").

9 19. In my judgment, after consultation with advisers from Cain and BRG, the twelve-  
10 month time frame remains the reasonably necessary period of time to reorganize or complete a  
11 plan of liquidation. The Initial Agreed Budget approved by the Interim Order will be revised in  
12 accordance with the schedule provided in the DIP Credit Agreement ("*Revised Initial Budget*").  
13 The Initial Agreed Budget is reattached hereto as **Exhibit 1**. Changes reflected in the Revised  
14 Initial Budget will include higher initial cash receipts, higher restructuring event expenditures due  
15 to Prepetition Secured Creditor adequate protection payments and higher fees for chapter 11  
16 professionals, including Committee professionals.

17 **V. Changes in Adequate Protection**

18 20. McKesson has been added to the list of secured creditors for whom adequate  
19 protection is proposed. Specifically, the Debtors have proposed to include McKesson in the  
20 critical vendor program and to apply those payments as adequate protection reducing the amount  
21 of its prepetition claims by the amount of the payments and preserving its valid and perfected  
22 prepetition liens and preserving the senior secured nature of its VMF Liens in VMF Collateral (as  
23 such terms are defined in the proposed Final Order, which is attached to the DIP Reply as Exhibit  
24 1), subject only to priming by the Carve Out and the DIP Liens.

25 21. It remains my judgment based upon the current book value of the Debtors' assets  
26 (approximately \$847 million as of June 30, 2018), that utilizing the services of Cain Brothers as  
27 professionals in the healthcare mergers and acquisition space that the realizable value of the  
28 prepetition collateral securing the obligations due the Prepetition Secured Lenders, exceeds the



1 value of such obligations (approximately \$568 million). To preserve the prepetition value of the  
2 Debtors' real property and improvements, the Debtors will use DIP Facility in accordance with  
3 the Initial Agreed Budget and in the ordinary course to continue to maintain all of the pre-petition  
4 real property securing the Debtors' obligations due to the Prepetition Secured Creditors in good  
5 repair.

6 22. In order to clarify McKesson's treatment, the proposed Final Order has been  
7 modified to include replacement liens for McKesson to the extent of any Diminution in Value of  
8 the VMF Collateral. Paragraph 5(a) of the proposed Final Order now reads as follows:

9 (a) **Adequate Protection Replacement Liens.** To the extent of the  
10 Diminution in Value of the interest of the respective Prepetition Secured Creditors in Prepetition  
11 Collateral, each of the affected Prepetition Secured Creditors shall be granted, subject to the terms  
12 and conditions set forth below, pursuant to sections 361, 363(e), and 364(d) of the Bankruptcy  
13 Code additional valid, perfected and enforceable replacement security interests and Liens in the  
14 DIP Collateral, (the "***Prepetition Replacement Liens***"), which Prepetition Replacement Liens  
15 shall have the same relative priority, validity, force, extent and effect as the liens that they replace  
16 and which shall be junior only to (1) the Carve Out, (2) to the DIP Liens securing the DIP  
17 Obligations, (3) any perfected, unavoidable, prepetition VMF Liens in VMF Collateral and (4)  
18 any perfected, unavoidable, prepetition liens granted by Holdings pursuant to those certain deeds  
19 of trust issued in connection with the MOB Financing and that certain Deed of Trust with Fixture  
20 Filing and Security Agreement and Assignment of Leases and Rents by Holdings in favor of U.S.  
21 Bank as 2017 Note Trustee and Deed of Trust Beneficiary, dated as of September 15, 2017, as  
22 further amended or modified (the "***Moss Deed of Trust***") to secure the Series 2017 Working  
23 Capital Notes; *provided, however*, that any Prepetition Replacement Liens granted to the 2015  
24 Note Trustee and/or 2017 Note Trustee on account of the Diminution in Value of the Priority  
25 Assets as defined in the Intercreditor Agreement shall be senior to the Prepetition Replacement  
26 Liens granted to any other Prepetition Secured Creditors and junior to (i) the Carve Out, (ii) the  
27 DIP Liens securing the DIP Obligations, and (iii) perfected, unavoidable, prepetition liens granted  
28 by Holdings pursuant to those certain deeds of trust issued in connection with the MOB Financing

DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300

DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300

1 and the Moss Deed of Trust, and *further provided* that any Prepetition Replacement Liens granted  
2 to the holders of deeds of trust issued in connection with the MOB Financing and the Moss Deed  
3 of Trust, on account of the Diminution in Value of such Prepetition Collateral shall be senior to  
4 the Prepetition Replacement Liens granted to any other Prepetition Secured Creditors and junior  
5 to (x) the Carve Out, (y) the DIP Liens securing the DIP Obligations, and (z) perfected,  
6 unavoidable, prepetition liens of the Master Trustee, the 2015 Note Trustee and/or the 2017 Note  
7 Trustee on property other than the property subject to the Moss Deed of Trust. With respect to the  
8 Prepetition Collateral that is subject to the Intercreditor Agreement, any proceeds of such  
9 Prepetition Collateral or Prepetition Replacement Liens related thereto shall be allocated among  
10 the Prepetition Secured Creditors in accordance with the terms of the Second Amended and  
11 Restated Intercreditor Agreement. With respect to the VMF Collateral, McKesson shall be  
12 entitled to a replacement lien on the postpetition assets of VMF, excluding Avoidance Actions  
13 ("*VMF Replacement Lien*"), to the extent of any Diminution in Value in such VMF Collateral,  
14 and shall be senior to the Prepetition Replacement Liens, but junior to the (m) Carve Out, and (n)  
15 the DIP Liens.

16 23. All of the adequate protection and property maintenance expenses undertaken by  
17 the Debtors in the ordinary course of business are included in the Initial Agreed Budget. Thus,  
18 the DIP Facility, along with the use of cash derived from pre-petition cash collateral, will  
19 preserve the Debtors going concern values. In the event one or more Hospitals are sold, I am  
20 advised that the Prepetition Replacement Liens, the VMF Replacement Liens and the DIP Liens,  
21 will attach to the proceeds such sale providing more generalized protection of the collateral  
22 values as of the Petition Date.

23 24. As a final consideration of the adequacy of the Debtors protection proposal, based  
24 upon my experience and training as an operating finance professional, informed by the judgment  
25 of James Moloney from Cain Brothers as a healthcare industry investment adviser, I believe,  
26 based upon current book value of the Obligated Group assets of approximately \$709 million,  
27 excluding related party receivables, that the realizable value of such assets exceeds the prepetition  
28 value of the secured Obligated Group liabilities of approximately \$501 million. I also believe,



1 based upon the current book value of the non-Obligated Group assets of \$144 million, excluding  
2 related party receivables, that the realizable value of such assets exceeds the prepetition value of  
3 the secured non-Obligated Group liabilities of \$66 million under the MOB Financings. Indeed,  
4 the book value, of the assets are respectively more than 20% above (a) the combined outstanding  
5 2005 Bonds and Working Capital Notes and (b) the MOB Financings. My views are further  
6 informed by the confident expression of realizable value by Cain Brothers, as the Debtors'  
7 investment advisors. *See* Declaration of James Moloney filed in connection with the DIP Reply  
8 and in further support of the DIP Motion.

9 **VI. Other Proposed Changes in Final Order**

10 25. In response to requests for clarification, the Debtors have made additional changes  
11 to the proposed Final Order to clarify the role of the Intercreditor Agreement, dated December 1,  
12 2017, attached to the Renewed Reservation of Rights of U.S. Bank National Association, as  
13 Series 2015 Note Trustee and Series 2017 Note Trustee to the DIP Motion [Docket No. 219].

14 26. In response to issues raised by the Committee, the Debtors have proposed  
15 numerous changes to the proposed Final Order, including (a) increasing the Carve Out amount for  
16 the Committee to \$150,000, (b) increasing the Investigation Budget to \$100,000, (c) providing for  
17 two (2) business days prior to effective date notice of any changes to the Budget or the Initial  
18 Budget to counsel for the Committee as well counsel for each of the Prepetition Secured  
19 Creditors.

20 27. In response to issues raised by Aetna Life Insurance Company, to the extent Verity  
21 Holdings LLC is a net postpetition creditor of another Debtor, and Verity Holdings' assets have  
22 been used to satisfy either the DIP Liens or Prepetition Replacement Liens, Verity Holdings shall  
23 be given a superpriority expense of administration claim against the net postpetition Debtor.

24 ///

25 ///

26 ///

27 ///

28

DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300

1 I declare under penalty of perjury that, to the best of my knowledge and after reasonable  
2 inquiry, the foregoing is true and correct.

3 Executed this 26th of September 2018, at Los Angeles, California.  
4  
5  
6

7   
8 \_\_\_\_\_  
9 Anita M. Chou  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300



## **EXHIBIT 1**

## **EXHIBIT 1**

Exhibit 2												
Verity Health												
13 Week												
Totals												
Projected												
Weeks	1	2	3	4	5	6	7	8	9	10	11	12
Actuals	9/8/2018	9/15/2018	9/22/2018	9/29/2018	10/6/2018	10/13/2018	10/20/2018	10/27/2018	11/3/2018	11/10/2018	11/17/2018	11/24/2018
Week Ending	9/8/2018	9/15/2018	9/22/2018	9/29/2018	10/6/2018	10/13/2018	10/20/2018	10/27/2018	11/3/2018	11/10/2018	11/17/2018	11/24/2018
Cash Inflows												
Patient Revenue	16,337	21,010	20,421	21,010	17,291	17,880	17,291	17,880	17,858	19,296	18,707	15,554
Capital Premium	-	2,148	8,591	2,148	-	2,148	8,591	2,148	-	2,148	8,591	2,148
QAF / DSH / Trauma	-	5,059	-	-	-	-	-	5,025	-	-	-	-
Other Operating Receipts	297	146	24	780	297	146	24	132	944	146	24	132
Subtotal: Cash Inflows	16,633	32,362	29,036	23,937	17,588	20,173	25,907	25,185	18,802	21,589	27,322	17,834
Operating Cash Outflows												
Operating Expenses	(26,300)	(30,260)	(29,107)	(27,236)	(24,371)	(32,572)	(25,764)	(24,824)	(29,388)	(26,122)	(29,510)	(28,122)
Critical Vendor Pre-Paid Relief	-	-	(2,500)	(2,500)	(2,500)	(5,000)	(5,000)	(2,500)	-	-	(200)	(200)
Capeex	(200)	(313)	(313)	(2,047)	(200)	(200)	(200)	(200)	(1,285)	(382)	-	(1,226)
Adequate Protection Debt Service	(372)	-	-	(2,522)	-	(377)	-	(1,226)	(329)	-	-	(473)
DIP Debt Service	(2,313)	-	-	(160)	-	-	-	-	(1,540)	-	-	-
Professional Fees - Restructuring	(705)	(303)	(360)	-	(2,928)	(225)	-	-	42	-	1,024	1,024
Restructuring Events	-	-	-	-	-	512	512	387	-	24	-	-
Subtotal: Cash Outflows	(29,889)	(30,876)	(32,279)	(34,467)	(29,998)	(37,862)	(30,453)	(28,563)	(34,538)	(26,880)	(28,686)	(28,525)
Net Cash Flow	(13,256)	1,487	(3,243)	(10,530)	(12,410)	(17,689)	(4,546)	(3,178)	(15,736)	(5,091)	(1,364)	(10,690)
Net Cash, Beginning	\$ 32,404	\$ 49,148	\$ 40,772	\$ 30,993	\$ 19,673	\$ 19,985	\$ 19,985	\$ 19,985	\$ 19,985	\$ 19,985	\$ 19,985	\$ 19,985
Net Cash Flow	(13,256)	1,487	(3,243)	(10,530)	(12,410)	(17,689)	(4,546)	(3,178)	(15,736)	(5,091)	(1,364)	(10,690)
DIP Financing Proceeds/ (Paydown)	30,000	(9,862)	(6,536)	(790)	12,722	17,689	4,546	3,178	15,736	5,091	1,364	10,690
Total Cash Balance, Ending	49,148	40,772	30,993	19,673	19,985	19,985	19,985	19,985	19,985	19,985	19,985	19,985
DIP Revolver Loan Balance												
Beginning Balance	-	30,000	20,138	13,601	12,812	25,533	43,222	47,768	50,946	66,682	71,773	73,137
DIP Financing Proceeds/ (Paydown)	30,000	(9,862)	(6,536)	(790)	12,722	17,689	4,546	3,178	15,736	5,091	1,364	10,690
Ending Balance	30,000	20,138	13,601	12,812	25,533	43,222	47,768	50,946	66,682	71,773	73,137	83,827
Asset Sales												
Asset Sale Proceeds	-	-	-	-	-	-	-	-	-	-	-	-
Subtotal: Balance	-	-	-	-	-	-	-	-	-	-	-	-
Total Cash Balance, w / DIP & Asset Sales	49,148	40,772	30,993	19,673	19,985	19,985	19,985	19,985	19,985	19,985	19,985	19,985

Notes

1) Cash balances are net of outstanding checks



## **EXHIBIT 2**

## **EXHIBIT 2**

Execution Version

---

**DEBTOR IN POSSESSION REVOLVING CREDIT AGREEMENT**

Dated as of September 7, 2018

by and among

**VERITY HEALTH SYSTEM OF CALIFORNIA, INC. AND EACH OF THE OTHER PERSONS  
SIGNATORY HERETO AS BORROWERS,**

**THE OTHER PERSONS PARTY HERETO THAT ARE DESIGNATED AS CREDIT PARTIES,**

**ALLY BANK,**

for itself as a Lender and as Administrative Agent for all Lenders,

and

**THE OTHER FINANCIAL INSTITUTIONS PARTY HERETO AS LENDERS**

---



**TABLE OF CONTENTS**

	<b>Page</b>
ARTICLE 1	
DEFINITIONS; PRINCIPLES OF CONSTRUCTION.....	1
1.1 Specific Definitions .....	1
1.2 Other Interpretive Provisions .....	29
1.3 Accounting Terms.....	30
1.4 Rounding.....	31
1.5 Times of Day.....	31
ARTICLE 2	
GENERAL REVOLVING LOAN TERMS.....	31
2.1 The Revolving Loans and Swingline Loans.....	31
2.2 [Reserved].....	32
2.3 Funding of the Revolving Loans and Swingline Loans.....	32
2.4 Deposit Accounts and Control Agreements.....	33
2.5 Borrowing Base Exceeded.....	35
2.6 Repayment of the Loans.....	35
2.7 Interest.....	35
2.8 Additional Interest Provisions.....	35
2.9 Fees and Charges.....	35
2.10 Use of Proceeds.....	36
2.11 Evidence of Indebtedness.....	37
2.12 Payments Generally.....	37
2.13 Protective Advances.....	37
2.14 Taxes.....	38
2.15 Increased Costs.....	41
2.16 Effective Date and Termination.....	42
2.17 Effect of Termination.....	43
ARTICLE 3	
CONDITIONS PRECEDENT TO LOANS.....	43
3.1 Conditions of Initial Revolving Loan.....	43
3.2 Conditions to all Loans.....	45
3.3 Final Funding Conditions.....	45
3.4 Limited Waiver of Conditions Precedent.....	46
ARTICLE 4	
REPRESENTATIONS AND WARRANTIES.....	46
4.1 Organization.....	46

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
4.2 Authorization; Enforceability .....	46
4.3 No Conflicts .....	46
4.4 Litigation .....	47
4.5 Restrictive Agreement .....	47
4.6 Title .....	47
4.7 [Reserved] .....	47
4.8 [Reserved] .....	47
4.9 Full and Accurate Disclosure .....	47
4.10 Tax Filings .....	48
4.11 No Plan Assets .....	48
4.12 Compliance .....	48
4.13 Federal Reserve Regulations; Investment Company Act .....	48
4.14 Ownership of Borrowers and other Credit Parties .....	48
4.15 Material Contracts .....	48
4.16 Compliance with Environmental Laws .....	49
4.17 Employee Matters .....	49
4.18 Intellectual Property .....	49
4.19 Healthcare Authorizations .....	49
4.20 HIPAA Compliance .....	49
4.21 Reimbursement; Third-Party Payors .....	49
4.22 Compliance with Healthcare Laws .....	50
4.23 Licensed Beds .....	51
4.24 No Defaults .....	51
4.25 Patriot Act and OFAC Compliance .....	52
4.26 Survival .....	52
4.27 Subordinated Indebtedness .....	52
4.28 Federal Employer Identification Number .....	52
4.29 Appointment of a Trustee or Examiner; Liquidation .....	52
4.30 Reorganization Matters .....	52
ARTICLE 5 AFFIRMATIVE COVENANTS .....	53
5.1 Payment of Obligations .....	53
5.2 Preservation of Existence, Etc .....	53



**TABLE OF CONTENTS**  
(continued)

		<b>Page</b>
5.3	Maintenance of Properties .....	53
5.4	Maintenance of Insurance .....	54
5.5	Compliance With Laws .....	55
5.6	Books and Records .....	55
5.7	Inspection Rights; Field Audits .....	55
5.8	Landlord and Warehouse Agreements .....	55
5.9	Licenses .....	56
5.10	Healthcare Operations .....	56
5.11	Further Assurances .....	57
5.12	[Reserved] .....	57
5.13	Environmental Matters .....	57
5.14	Account Control Agreements .....	58
5.15	Patriot Act Compliance .....	58
5.16	Reorganization Milestones .....	58
5.17	Bankruptcy Reports .....	58
5.18	Escrow of Asset Sale Proceeds and Deposits .....	58
5.19	Post-Closing Items .....	59
ARTICLE 6	NEGATIVE COVENANTS .....	59
6.1	Liens .....	59
6.2	Investments .....	59
6.3	Indebtedness .....	59
6.4	Loans .....	59
6.5	Asset Dispositions; Settlement of Debts .....	59
6.6	Distributions .....	60
6.7	Fundamental Changes; Change to Organization Documents .....	60
6.8	Transactions With Affiliates .....	60
6.9	Use of Proceeds .....	60
6.10	Payroll Service .....	60
6.11	Certain Accounting Changes .....	60
6.12	Healthcare Matters .....	60
6.13	ERISA .....	61
6.14	Management Agreement; Leases, Subordinated Indebtedness and other Material Contracts .....	61

**TABLE OF CONTENTS**  
(continued)

		<b>Page</b>
6.15	<b>Restrictive Agreements</b> .....	62
6.16	<b>Swap Agreements</b> .....	62
6.17	<b>IRS Form 8821; Federal Employer Identification Number</b> .....	62
6.18	<b>Burdensome Agreements</b> .....	62
6.19	<b>Interim Order; Final Order; Asset Sale Order; Administrative Expense Priority; Payments</b> .....	62
6.20	<b>Bankruptcy Actions</b> .....	63
6.21	<b>Right of Subrogation</b> .....	63
6.22	<b>Subsidiaries</b> .....	63
ARTICLE 7	<b>FINANCIAL COVENANTS</b> .....	63
7.1	<b>Maximum Budget Variance</b> .....	63
7.2	<b>Minimum Liquidity</b> .....	64
ARTICLE 8	<b>NOTICES AND REPORTING</b> .....	64
8.1	<b>Notices</b> .....	64
8.2	<b>Required Notices from Credit Parties</b> .....	66
8.3	<b>Borrowing Base Certificates</b> .....	68
8.4	<b>Financial Statements, Compliance Certificates and Projections</b> .....	68
8.5	<b>Protected Health Information</b> .....	69
ARTICLE 9	<b>DEFAULTS AND REMEDIES</b> .....	70
9.1	<b>Events of Default</b> .....	70
9.2	<b>Remedies</b> .....	76
9.3	<b>Application of Payments</b> .....	76
9.4	<b>Rights to Appoint Receiver</b> .....	77
9.5	<b>Remedies Cumulative</b> .....	78
9.6	<b>Severance</b> .....	78
9.7	<b>Administrative Agent's Right to Perform</b> .....	79
9.8	<b>License</b> .....	79
9.9	<b>Injunctive Relief</b> .....	79
9.10	<b>Collection of Accounts</b> .....	79
9.11	<b>Assistance and Cooperation</b> .....	80
9.12	<b>Terminated Use of Cash Collateral</b> .....	80
9.13	<b>Lift of Automatic Stay</b> .....	80
ARTICLE 10	<b>PARTICIPATIONS AND ASSIGNMENTS</b> .....	80



**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
10.1 Participations and Assignments.....	80
ARTICLE 11 MISCELLANEOUS.....	82
11.1 Financial Advisors .....	82
11.2 Administrative Agent's Discretion .....	82
11.3 Governing Law.....	82
11.4 Modification, Waiver in Writing.....	83
11.5 Waiver of Trial by Jury.....	85
11.6 Waiver of Consequential Damages, Etc.....	85
11.7 Headings/Exhibits .....	85
11.8 Severability .....	85
11.9 Preferences .....	86
11.10 Waiver of Notice.....	86
11.11 Remedies of Borrowers .....	86
11.12 Prior Agreements.....	86
11.13 Offsets, Counterclaims and Defenses .....	86
11.14 Publicity .....	86
11.15 Indemnification; Expenses .....	87
11.16 Survival.....	88
11.17 No Usury .....	88
11.18 Conflict; Construction of Documents.....	88
11.19 No Third Party Beneficiaries .....	88
11.20 Assignment .....	88
11.21 Set-Off.....	89
11.22 Confidentiality.....	89
11.23 Patriot Act Compliance .....	89
11.24 [Reserved].....	89
11.25 Counterparts .....	89
11.26 Borrower Representative .....	90
11.27 Joint and Several.....	90
11.28 Release of Claims .....	93
11.29 Acting Through Agents .....	93
ARTICLE 12 AGENCY PROVISIONS; SETTLEMENT .....	93

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
<b>12.1 Appointment and Authorization .....</b>	<b>93</b>
<b>12.2 Delegation of Duties .....</b>	<b>94</b>
<b>12.3 Exculpation of Administrative Agent .....</b>	<b>94</b>
<b>12.4 Reliance by Administrative Agent .....</b>	<b>95</b>
<b>12.5 Notice of Default .....</b>	<b>95</b>
<b>12.6 Credit Decision .....</b>	<b>96</b>
<b>12.7 Indemnification .....</b>	<b>96</b>
<b>12.8 Administrative Agent in Individual Capacity .....</b>	<b>97</b>
<b>12.9 Successor Administrative Agent .....</b>	<b>97</b>
<b>12.10 Collateral Matters; Restriction on Lenders .....</b>	<b>97</b>
<b>12.11 Administrative Agent May File Proofs of Claim .....</b>	<b>99</b>
<b>12.12 Return of Payments .....</b>	<b>99</b>
<b>12.13 Sharing of Payments by Lenders .....</b>	<b>100</b>
<b>12.14 Settlements; Payments .....</b>	<b>100</b>
<b>12.15 Defaulting Lender .....</b>	<b>101</b>
<b>12.16 Acknowledgement and Consent to Bail-In of EEA Financial Institutions .....</b>	<b>102</b>



Annex A	- Revolving Commitments
Schedule 1	- Borrowers and Guarantors
Schedule 2	- Supplements to Specific Definitions
Schedule 4.4	- Litigation
Schedule 4.14	-- Ownership of Borrowers and other Credit Parties
Schedule 4.15	- Material Contracts
Schedule 4.23	- Healthcare Facilities and Number of Licensed Beds
Schedule 4.27	- Federal Employer Identification Number
Schedule 5.19	- Post-Closing Obligations
Schedule 6.8	- Transactions with Affiliates
Exhibit A	Form of Borrowing Base Certificate
Exhibit B	Form of Compliance Certificate
Exhibit C	Form of Revolving Note
Exhibit D	Form of Loan Notice
Exhibit E	Form of Assignment Agreement
Exhibit F	Initial Cash Flow Forecast

## DEBTOR IN POSSESSION REVOLVING CREDIT AGREEMENT

THIS DEBTOR IN POSSESSION REVOLVING CREDIT AGREEMENT is dated as of September 7, 2018 (as the same may be amended, restated, supplemented or otherwise modified from time to time, this "**Agreement**") by and among each of the Persons signatory hereto and named on Schedule 1 hereto as a Borrower (each a "**Borrower**" and, collectively, the "**Borrowers**"), each of the Persons signatory hereto and named on Schedule 1 hereto as a Guarantor, the financial institutions from time to time party hereto as lenders (each, a "**Lender**" and collectively the "**Lenders**") and ALLY BANK, a Utah state chartered bank ("**Ally Bank**"), in its capacity as administrative agent for Lenders (together with its successors and assigns, the "**Administrative Agent**"), documentation agent and joint bookrunner.

### RECITALS

A. On August 31, 2018 (the "**Petition Date**"), each Borrower filed a separate voluntary petition for relief under chapter 11 of the Bankruptcy Code (defined below) in the United States Bankruptcy Court for the Central District of California (the "**Bankruptcy Court**") and is continuing to operate its respective businesses and manage its properties as a debtor and debtor in possession under sections 1107 and 1109 of the Bankruptcy Code.

B. Borrowers have requested that Lenders provide financing to Borrowers in the form of a revolving loan in the maximum aggregate amount of \$185,000,000 subject to the terms set forth herein, in the Financing Orders and pursuant to sections 364(c)(1), 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code, the proceeds of which will be used solely for (i) payment of all fees and expenses due to Administrative Agent and Lenders pursuant to this Agreement, (ii) financing ongoing debtor in possession working capital needs, maintenance and preservation of Borrowers' assets, general corporate purposes relating to postpetition operations and related costs, fees and expenses of the Bankruptcy Cases, (iii) payment of the administration expenses of the Bankruptcy Cases as approved by the Bankruptcy Court, (iv) to make adequate protection payments to the Specified Prepetition Secured Creditors and (v) to pay Daly City, California special tax assessments, for the benefit of Wilmington Trust National Association, as Trustee (the "**PACE Bond Trustee**") for the California Statewide Communities Development Authority for the CaliforniaFirst Clean Program and CaliforniaFirst Seismic Program ("**PACE**") Bonds.

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

### AGREEMENT

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

#### ARTICLE 1 DEFINITIONS; PRINCIPLES OF CONSTRUCTION

1.1 **Specific Definitions.** The following terms have the meanings set forth below:



**"Account(s)":** (i) any right to payment of a monetary obligation, whether or not earned by performance, (ii) without duplication, any "account" (as defined in Article 9 of the UCC), any accounts receivable (whether in the form of payments for services rendered or goods sold, rents, license fees or otherwise), any Health-Care-Insurance Receivables (as defined in the UCC), any Payment Intangibles (as defined in the UCC) and all other rights to payment and/or reimbursement of every kind and description, whether or not earned by performance, (iii) all accounts, General Intangibles (as defined in the UCC), Intellectual Property, rights, remedies, guarantees, Supporting Obligations (as defined in the UCC), Letter-of-Credit Rights (as defined in the UCC) and security interests in respect of the foregoing, all rights of enforcement and collection, all books and records evidencing or related to the foregoing, and all rights under the Loan Documents in respect of the foregoing, (iv) all information and data compiled or derived by any Credit Party or to which any Credit Party is entitled in respect of or related to the foregoing, and (v) all Proceeds (as defined in the UCC) of any of the foregoing. For the avoidance of doubt, "Account" shall include any account receivable, Payment Intangible and/or right to payment and/or reimbursement of every kind and description, whether or not earned by performance arising under any QAF Program.

**"Account Debtor":** any Person obligated on any Account.

**"ACH":** the Automated Clearing House or any successor reasonably acceptable to Lender.

**"Administrative Agent":** the meaning set forth in the preamble to this Agreement.

**"Administrative Agent's Account":** the following deposit account of Administrative Agent:

JPMorgan Chase Bank, N.A.  
New York, New York  
Wire ABA No.: 021-000-021  
ACH ABA No.: 072-000-326  
Account Name: Ally Bank  
Account No.: 361-324-984  
Attention: Loan Operations  
Reference: Verity Health System

**"Affiliate":** as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such Person or is a director or officer of such Person or of an Affiliate of such Person.

**"Agreement":** the meaning set forth in the preamble to this Agreement.

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

**"Ally Bank":** the meaning set forth in the preamble to this Agreement.

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

***“Applicable Law”***: all Laws applicable to any Credit Party or any other Person, or any conduct, transaction, agreement or matter in question, including all applicable statutory law, common law and equitable principles, and all provisions of constitutions, treaties, statutes, rules, regulations, orders and decrees of Governmental Authorities.

***“Applicable LIBOR Margin”***: 4.5% per annum.

***“Approved Cash Management Obligations”***: any obligations to Administrative Agent, any Lender or any Affiliate of any of the foregoing pursuant to any Cash Management Agreement of which (a) if such cash management obligations were established prior to the date of this Agreement, the Lender or its Affiliate has provided written notice to Administrative Agent executed by an authorized signatory of such Lender disclosing the existence of such Cash Management Agreement and the maximum liability of Borrowers or (b) if such Cash Management Agreement is established following the date of this Agreement, then (i) such Lender or its Affiliate (which in no case may be a Defaulting Lender) shall have provided written notice to Administrative Agent executed by an authorized signatory of such Lender disclosing the existence of such Cash Management Agreement and the maximum liability of Borrowers thereunder and (b) as of the date of delivery of such notice to Administrative Agent, no Event of Default shall have occurred and be continuing. In all events, the Approved Cash Management Obligations shall not exceed the maximum liability so disclosed in the notice to Administrative Agent.

***“Asset Disposition”***: a sale, lease, license, consignment, transfer or other disposition of any property or assets of any Credit Party, including a disposition in connection with a sale-leaseback transaction or synthetic lease.

***“Asset Purchase Agreement(s)”***: each Asset Purchase Agreement entered into with respect to the purchase of substantially all of the assets of any Borrower, including any Healthcare Facility, in a “363 sale” pursuant to Section 363 of the Bankruptcy Code.

***“Asset Sale”***: the sale of all or some portion of the assets of a Borrower pursuant to an Asset Purchase Agreement approved by the Bankruptcy Court in an Asset Sale Order pursuant to Section 363 of the Bankruptcy Code.

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

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

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



***“Asset Sale Orders”***: each order of the Bankruptcy Court, in form and substance satisfactory to Administrative Agent, approving each applicable Asset Sale and distribution of proceeds to Administrative Agent.

***“Assignee”***: the meaning set forth in Section 10.1(b).

***“Assignment Agreement”***: an Assignment and Assumption Agreement substantially in the form attached hereto as Exhibit E, with such amendments or modifications as may be approved by the Administrative Agent.

***“Authorized Officer”***: the chief executive officer, president, chief financial officer, chief operating officer, or treasurer of a Credit Party authorized to bind such Credit Party and, solely for purposes of notices given pursuant to Article 2, any other officer or employee of the applicable Credit Party so designated by any of the foregoing officers in a written notice to Administrative Agent. Any document delivered hereunder that is signed by an Authorized Officer of a Credit Party shall be conclusively presumed to have been authorized by all necessary corporate, limited liability company, partnership and/or other action on the part of such Credit Party and such Authorized Officer shall be conclusively presumed to have acted on behalf of such Credit Party.

***“Availability”***: the meaning set forth in Section 2.1(a).

***“Availability Period”***: the period from and including the Closing Date to the earliest of (a) the Revolving Loan Termination Date, and (b) the date of termination of the commitment of Lenders to make Loans pursuant to Section 9.2.

***“Bail-In Action”***: the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

***“Bail-In Legislation”***: with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

***“Bankruptcy Cases”***: In re: Verity Health System of California, Inc., et al., (Case No. 18-20151), jointly administered with: Case No.: 2:18-bk-20162-ER; Case No.: 2:18-bk-20163-ER; Case No.: 2:18-bk-20164-ER; Case No.: 2:18-bk-20165-ER; Case No.: 2:18-bk-20167-ER; Case No.: 2:18-bk-20168-ER; Case No.: 2:18-bk-20169-ER; Case No.: 2:18-bk-20171-ER; Case No.: 2:18-bk-20172-ER; Case No.: 2:18-bk-20173-ER; Case No.: 2:18-bk-20175-ER; Case No.: 2:18-bk-20176-ER; Case No.: 2:18-bk-20178-ER; Case No.: 2:18-bk-20179-ER; Case No.: 2:18-bk-20180-ER; and Case No.: 2:18-bk-20181-ER, in each case pending before the Bankruptcy Court.

***“Bankruptcy Code”***: Title 11 of the United States Code entitled “Bankruptcy”, as now or hereinafter in effect, or any successor statute.

***“Bankruptcy Court”***: the meaning specified therefor in the recitals to this Agreement.

***“Base Rate”***: with respect to each Reset Date, a rate per annum equal to the greatest of (i) the rate of interest from time to time published by the Board of Governors of the Federal Reserve System as the “Bank Prime Loan” rate in Federal Reserve Statistical Release H.15(519) entitled “Selected Interest Rates” or any successor publication of the Federal Reserve System reporting the Bank Prime Loan rate or its equivalent, (ii) the Federal Funds Effective Rate in effect on such day plus ½ of one percent (0.5%),

and (iii) the LIBOR Rate plus 1.0%. Any change in the Base Rate due to a change in any of the rates described in the immediately preceding sentence shall become effective immediately upon the next succeeding Reset Date.

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

**"Borrower Operating Account"**: the following deposit account of Borrower Representative:

Bank Name:  
Bank Address:  
ABA No.:  
Account Name:  
Account No.:  
Reference:

**"Borrower Representative"**: VHS.

**"Borrowing Base"**: as of any date of determination (as calculated with reference to the most recent Borrowing Base Certificate acceptable to Administrative Agent and otherwise in accordance with this Agreement), an amount equal to the sum of:

(a) eighty-five percent (85%) of the Net Collectable Value of the Eligible Accounts; plus

(b) sixty percent (60%) of the sum of (x) the Eligible QAF Accounts, minus (y) the corresponding QAF Required Payments (provided, however, availability under this clause (b) shall be \$0 if (i) the Borrowers have failed to file with the Bankruptcy Court within thirty (30) days following the Petition Date either (A) the Saint Louise/O'Connor Hospital Bid Procedures Motion, or (B) the Consolidated Sale Motion, in each case unless and until either the Saint Louise/O'Connor Hospital Bid Procedures Motion or the Consolidated Sale Motion is thereafter filed with the Bankruptcy Court within 60 days following the Petition Date, or (ii) the Borrowers have failed to present to the Administrative Agent the Seton Cash Burn Elimination Plan within sixty (60) days following the Petition Date); plus

(c) ninety-five percent (95%) of the amounts held in the Escrow Deposit Account; plus

(d) Ten Million Dollars (\$10,000,000) (provided, however, availability under this clause (d) shall be \$0 if (i) the Borrowers have failed to file with the Bankruptcy Court within thirty (30) days following the Petition Date either (A) the Saint Louise/O'Connor Hospital Bid Procedures Motion, or (B) the Consolidated Sale Motion, in each case unless and until either the Saint Louise/O'Connor Hospital Bid Procedures Motion or the Consolidated Sale Motion is thereafter filed with the Bankruptcy Court within 60 days following the Petition Date, or (ii) the Borrowers have failed to present to the Administrative Agent the Seton Cash Burn Elimination Plan within sixty (60) days following the Petition Date); minus



(e) such reserves (including a reserve with respect to the Carve-Out Reserve and the Minimum Liquidity required pursuant to Section 7.2), in such amounts and with respect to such matters, as Administrative Agent may deem reasonably necessary from time to time.

***"Borrowing Base Certificate"***: a certificate to be delivered by Borrower Representative setting forth a calculation of the Borrowing Base as of the date of such certificate, which certificate shall be substantially in the form of Exhibit A.

***"Budget"***: the Initial Budget, together with the updates thereto in form and substance satisfactory to Administrative Agent in its sole discretion, delivered to Administrative Agent and the Lenders pursuant to Section 8.4(b).

***"Business Day"***: any day other than a Saturday, Sunday or any day on which commercial banks in New York, New York are authorized or required to close by law or executive order.

***"Buyer"***: any purchaser of any Borrower's assets pursuant to the applicable Asset Purchase Agreement and the applicable Asset Sale Order.

***"Capitalized Lease Obligations"***: any Indebtedness represented by obligations under a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP.

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

***"Carve-Out Reserve"***: a reserve against the Borrowing Base in an amount equal to the amount of the Carve-Out, which may be increased or decreased from time to time in Administrative Agent's sole discretion.

***"Cash Equivalents"***: (i) readily marketable obligations issued or fully guaranteed by the United States of America or any agency thereof having maturities of not more than twelve (12) months from the date of acquisition thereof, (ii) commercial paper with maturities of not more than 180 days and a published rating of the highest rating attainable by a Rating Agency, (iii) certificates of time deposit and bankers' acceptances having maturities of not more than 180 days and repurchase agreements backed by United States government securities, in each case of a commercial bank if (A) such bank has a combined capital and surplus of at least \$500,000,000, or (B) such bank's debt obligations, or those of a holding company of which it is a Subsidiary, are rated not less than Aa (or the equivalent rating) by a Rating Agency, and (iv) U.S. money market funds that invest solely in obligations issued or fully guaranteed by the United States of America or an agency thereof.

***"Cash Flow Forecast"***: the Initial Cash Flow Forecast, together with the updates thereto in form and substance satisfactory to Administrative Agent in its sole discretion, delivered to Administrative Agent and the Lenders pursuant to Section 8.4(b).

***"Cash Management Agreements"***: any and all cash management, overdraft, treasury, foreign exchange, lockbox, sweep-to-line, controlled disbursement, credit or debit card, EFT, ACH and other agreements entered into from time to time between any Credit Party and Administrative Agent or any Lender or any Lender Affiliate.

***"Cash Management Order"***: the order of the Bankruptcy Court entered in the Bankruptcy Cases after the "first day" hearing, together with all extensions, modifications and amendments thereto or any "second day" order, in form and substance satisfactory to the Administrative

Agent, which among other matters authorizes such cash management and treasury arrangements as shall be acceptable to the Administrative Agent.

**"CCP"**: the meaning set forth in Section 4.22(g).

**"Change in Law"**: the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the interpretation or application thereof by any Governmental Authority or (c) compliance by Administrative Agent or any Lender with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; provided, however, that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements and directives thereunder or issued in connection therewith or in implementation thereof and (ii) all requests, rules, guidelines, requirements and directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall be deemed to be a "Change in Law", regardless of the date enacted, adopted, issued or implemented.

**"Change of Control"**: (i) the result caused by the occurrence of any event or series of events which results in VHS owning (beneficially, legally or otherwise), in the aggregate, less than one hundred percent (100%) of any class of the issued and outstanding Equity Interests of any other Borrower, (ii) the pledge, hypothecation or encumbrance of any direct or indirect Equity Interests in any Credit Party, (iii) Rich Adcock ceases for any reason to be the Chief Executive Officer of VHS or to otherwise be involved in the day to day operation of VHS and each Borrower.

**"Closing"**: the meaning set forth in Section 3.1.

**"Closing Date"**: the date of the making of the initial Revolving Loan (or other extension of credit) hereunder.

**"CMS"**: the Centers for Medicare & Medicaid Services or any Governmental Authority succeeding to any of its principal functions.

**"Code"**: the Internal Revenue Code of 1986, as amended and as it may be further amended from time to time, any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

**"Collateral"**: any and all assets and rights and interests in or to property, whether real or personal, tangible or intangible, now or hereafter acquired, in which a Lien is granted or purported to be granted pursuant to the Collateral Documents as security for all or any portion of the Obligations.

**"Collateral Access Agreement"**: an agreement, satisfactory in form and substance to Administrative Agent in its reasonable credit judgment, by which (a) for any material Collateral located on leased premises, the lessor waives or subordinates any Lien it may have on the Collateral, and agrees to permit Administrative Agent to enter upon the premises and remove the Collateral or to use the premises to store or dispose of the Collateral; (b) for any Collateral held by a warehouseman, processor, shipper or freight forwarder, such Person waives or subordinates any Lien it may have on the Collateral, agrees to hold any Documents in its possession relating to the Collateral as agent for Administrative Agent, and agrees to deliver the Collateral to Administrative Agent upon request; (c) for any Collateral held by a repairman, mechanic or bailee, such Person acknowledges Administrative Agent's Lien, waives or subordinates any Lien it may have on the Collateral, and agrees to deliver the Collateral to



Administrative Agent upon request; and (d) for any Collateral subject to a Licensor's Intellectual Property rights, the Licensor grants to Administrative Agent the right, vis-à-vis such Licensor, to enforce Administrative Agent's Liens with respect to the Collateral, including the right to dispose of it with the benefit of the Intellectual Property, whether or not a default exists under any applicable License.

**"Collateral Assignment of Material Agreements"**: each collateral assignment of material agreements executed by any Borrower or any other Credit Party in favor of Administrative Agent (for the benefit of itself and the Lenders) satisfactory in form and substance to Administrative Agent, as the same may be amended, restated or otherwise modified from time to time.

**"Collateral Documents"**: all agreements, instruments and documents now or hereafter executed and delivered in connection with this Agreement that are intended to create, perfect or evidence Liens in Collateral to Administrative Agent for the benefit of Lenders to secure all or part of the Obligations each in form and substance satisfactory to Administrative Agent, including the Security Agreement, the Pledge Agreement, any Collateral Access Agreements, the Subordination Agreements, the Collateral Assignment of Material Agreements, each deposit account control agreement, the Mortgages and the Financing Order.

**"Collections"**: with respect to any Account, all cash collections on such Account.

**"Compliance Certificate"**: a certificate executed by an Authorized Officer of Borrower Representative with respect to the compliance by the Borrowers and the other Credit Parties with the terms, conditions and covenants set forth in this Agreement as of the date of such certificate, which certificate shall be substantially in the form of Exhibit B.

**"CON"**: a written statement issued by any state authority authorizing a new health facility at a particular location or within a certain geographic region.

**"Concentration Account"** shall have the meaning set forth in Section 2.4(a).

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

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

**"Connection Income Taxes"**: Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

**"Consolidated Sale Motion"**: a motion for approval of a negotiated asset sale on terms satisfactory to Administrative Agent executed by a Person that is not an Affiliate of a Borrower for substantially all assets of the Borrowers with expected consideration in the form of cash or assumption of prepetition secured Indebtedness in an amount not less than \$700,000,000 and the simultaneous payment in full of the Obligations and termination of all the Revolving Commitments.

**"Contingent Obligation"**: as to any Person, any obligation of such Person guaranteeing or intended to guarantee (whether directly or indirectly guaranteed, endorsed, co-made, discounted, or sold with recourse) any Indebtedness of any other Person, or the granting of a Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person. The amount of any Contingent Obligation shall be equal to the amount of the obligation so guaranteed or otherwise supported or, if not a fixed and determined amount, the maximum reasonably anticipated net liability in respect thereof

(assuming such Person is required to perform thereunder) as determined by the guaranteeing Person in good faith.

**“Contract Provider”**: any Person or any employee, agent or subcontractor of such Person who provides professional health care services under or pursuant to any contract or other arrangement with any Credit Party.

**“Contractual Obligation”**: as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

**“Control”**: with respect to any Person, either (i) ownership directly or indirectly of more than 50% of all Equity Interests in such Person or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, through the ownership of voting securities, by contract or otherwise.

**“Credit Party”**: each Borrower and each Guarantor.

**“Debtor Relief Laws”**: the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws from time to time in effect and affecting the rights of creditors generally.

**“Default”**: the occurrence of any event, fact or circumstance which, with the giving of notice or passage of time, or both, would be an Event of Default.

**“Default Rate”**: at any time, a rate per annum equal to the lesser of (i) the maximum rate permitted by Applicable Law, or (ii) the per annum effective rate of interest otherwise applicable at such time to the Revolving Loans plus an additional five percent (5%).

**“Defaulting Lender”**: subject to Section 12.15(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within one (1) Business Day of the date such Loans were required to be funded hereunder unless such Lender notifies Administrative Agent and Borrowers in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to Administrative Agent, Swingline Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Swingline Loans) within one (1) Business Day of the date when due, (b) has notified Borrowers, Administrative Agent or Swingline Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within two (2) Business Days after written request by Administrative Agent or Borrowers, to confirm in writing to Administrative Agent and Borrowers that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by Administrative Agent and Borrowers), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance



Corporation or any other state or federal regulatory authority acting in such a capacity; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 12.15(b)) upon delivery of written notice of such determination to Borrowers, Swingline Lender and each other Lender.

***"Deposit Account Bank"***: the meaning set forth in Section 2.4(a).

***"Derivative Obligations"***: every obligation of a Person under any forward contract, futures contract, exchange contract, swap, option or other financing agreement or arrangement (including caps, floors, collars and similar agreement), the value of which is dependent upon interest rates, currency exchange rates, commodities or other indices.

***"Distributions"***: any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of any Borrower or any other Credit Party, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such capital stock or other Equity Interest or on account of any return of capital to any Borrower's or any other Credit Party's stockholders, partners or members (or the equivalent Person thereof).

***"Documents"***: any and all of the "documents" (as that term is defined in the UCC), whether now existing or hereafter arising.

***"Dollars"*** and ***"\$"***: lawful money of the United States.

***"EEA Financial Institution"***: (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

***"EEA Member Country"***: any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

***"EEA Resolution Authority"***: any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

***"Eligible Account"***: subject to the criteria below, an Account of any Borrower that was generated in the ordinary course of such Borrower's business and consistent with past practices which was generated originally in the name of such Borrower and not acquired via assignment or otherwise, and that Administrative Agent, in its reasonable credit judgment, deems to be an Eligible Account. The net amount of Eligible Accounts at any time shall be (a) the face amount of such Eligible Accounts as

originally billed minus (b) all cash collections and other proceeds of such Account received from or on behalf of the Account Debtor thereunder as of such date and any and all returns, rebates, discounts (which may, at Administrative Agent's option, be calculated on shortest terms), credits, allowances or excise taxes of any nature at any time issued, owing, claimed by Account Debtors, granted, outstanding or payable in connection with such Accounts at such time. Without limiting the generality of the foregoing, no Account shall be an Eligible Account if:

(a) the Account or any portion of the Account is payable by a Person other than a Third-Party Payor;

(b) the Account is an obligation of an Account Debtor that has suspended business, made a general assignment for the benefit of creditors, is unable to pay its debts as they become due or is subject to an Insolvency Proceeding, or the Account is an Account as to which any facts, events or occurrences exist which could reasonably be expected to impair the validity, enforceability or collectability of such Account or reduce the amount payable or delay payment thereunder;

(c) the Account Debtor is a natural person (i.e. an individual), or an Affiliate of any Borrower;

(d) any representation and warranty contained in any Loan Document with respect to such Account is not true and correct;

(e) the Account remains unpaid more than one hundred and eighty (180) days past the applicable discharge date;

(f) more than fifty percent (50%) of the net aggregate balance of all Accounts owing from the Account Debtor (and its Affiliates but not including any Government Account Debtor making payments under Medicare or Medicaid) obligated on the Account are outstanding more than one hundred and eighty (180) days after the applicable discharge date;

(g) without limiting the provisions of clause (f) above, fifty percent (50%) or more of the aggregate unpaid Accounts from the Account Debtor (but not including any Government Account Debtor making payments under a Government Reimbursement Program) obligated on the Account are not deemed Eligible Accounts hereunder for any reason;

(h) to the extent that the Account and all other Accounts owed by any particular Account Debtor and its Affiliates (but not including any Government Account Debtor making payments under a Government Reimbursement Program) exceed twenty percent (20%) of the net amount of all Eligible Accounts (calculated as set forth above) at any one time (including Accounts from any Government Account Debtor making payments under a Government Reimbursement Program);

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

(j) the Account involves (i) a workers' compensation claim which is not covered by a Third-Party Payor or (ii) services delivered for injury sustained in a motor vehicle accident, the repayment of which is contingent on litigation;



(k) the applicable Account Debtor for such Account is any Governmental Authority, and, following a written request by Administrative Agent to Borrowers, rights to payment of such Account have not been assigned to Administrative Agent (for the benefit of itself and the Lenders) pursuant to the Federal Assignment of Claims Act, 31 U.S.C. § 3727 et seq. (as amended from time to time), or all other applicable statutes or regulations respecting the assignment of Lockbox Accounts have not been complied with (for example, with respect to all Accounts payable directly by a Government Account Debtor);

(l) if the Account arises from the performance of services, the services have not actually been performed, or the services were undertaken in violation of any Applicable Law;

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

(n) the Account arises out of a cost report settlement or constitutes a disproportionate share hospital payment;

(o) the Account is not subject to a valid and enforceable First Priority Lien in favor of Administrative Agent (for the benefit of itself and the Lenders);

(p) the Account is not evidenced by an invoice, statement or other documentary evidence satisfactory to Administrative Agent; provided, however, that Eligible Unbilled Accounts in an aggregate amount not to exceed twelve and one half percent (12.5%) of Availability at any time may constitute Eligible Accounts notwithstanding that such Accounts have not been billed to the applicable Account Debtor as described in this clause (p);

(q) the Account (or the right to payment on or proceeds of such Account) has been sold or otherwise disposed of, or the Account (i) arises from a Healthcare Facility that has been sold or otherwise disposed of and (ii) remains unpaid after the earlier to occur of (x) sixty (60) days past the date the applicable Healthcare Facility was sold or otherwise transferred or (y) forty-five (45) days before the Scheduled Termination Date; or

(r) the Account or Account Debtor fails to meet such other specifications and requirements which may from time to time be established by Administrative Agent in its reasonable credit judgment;

provided, that neither QAF Accounts nor Eligible QAF Accounts shall constitute Eligible Accounts.

***“Eligible QAF Account(s)”***: QAF Accounts of a Borrower arising under the QAF Phase V Program constituting fully earned (a) managed care “Cycle 1” receivables expected to be collected by the managed care health plan by April 30, 2019 (“*Cycle 1 Accounts*”), or (b) managed care “Cycle 2” pass-through receivables expected to be collected by the managed care health plan by September 30, 2019 (“*Cycle 2 Accounts*”), the value of which, in each case, shall be at any time the amount of expected estimated payments as reasonably determined by Administrative Agent in accordance with the documentation provided by Borrowers to Administrative Agent. Without limiting the generality of the foregoing, no QAF Account shall be an Eligible Account if: (i) any rights to payment with respect to the QAF Account are held by any Person not a Credit Party and not subject to a Subordination Agreement in form and substance satisfactory to Administrative Agent in its sole discretion, (ii) the QAF Account is not subject to a valid and enforceable First Priority Lien in favor of Administrative Agent; (iii) with respect to Cycle 1 Accounts, the QAF Account has not been received by the Borrowers May 31, 2019, (iv) with

respect to Cycle 2 Accounts, the QAF Account has not been received by the Borrowers by October 31, 2019, or (v) the QAF Account (or the right to payment on or proceeds of such QAF Account) has been sold or otherwise disposed of or arises from a Healthcare Facility that has been sold or otherwise disposed of.

**“Eligible Unbilled Account(s)”**: an Account of any Borrower meeting all of the criteria of an Eligible Account except that an invoice, statement or other billing document has not yet been created or sent, provided, that, any such Account will cease to be an Eligible Unbilled Account on the earlier to occur of (i) the date on which such Account becomes evidenced by an invoice, statement or other documentary evidence of any kind, or (ii) the twenty-second (22<sup>nd</sup>) day following the date on which the applicable patient was discharged.

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

**“Environmental Notice”**: a notice (whether written or oral) from any Governmental Authority or other Person of any possible material noncompliance with, investigation of a possible material violation of, litigation relating to, or potential fine or liability under any Environmental Law, or with respect to any material Environmental Release, environmental pollution or Hazardous Materials, including any complaint, summons, citation, order, claim, demand or request for correction, remediation or otherwise.

**“Environmental Release”**: a release of Hazardous Materials as defined in or under any Environmental Law.

**“Equity Interests”**: with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in, including membership interests in) such Person, whether voting or non-voting, and all warrants, options or other rights (regardless of how designated) for the purchase or acquisition from such Person of such shares of capital stock of (or other ownership or profit interests in, including membership interests in or beneficial interest in a trust of) such Person.

**“ERISA”**: the Employee Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder.

**“ERISA Affiliate”**: all members of a controlled group of corporations and all trades and business (whether or not incorporated) under common control and all other entities which, together with



each Borrower and each other Credit Party, are treated as a single employer under any or all of Section 414(b), (c), (m) or (o) of the Code.

***“EU Bail-In Legislation Schedule”***: the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

***“Event of Default”***: the meaning set forth in Section 9.1.

***“Excess Availability”***: as of any date of determination, the amount that Borrowers are entitled to borrow as Revolving Loans under Section 2.1 of this Agreement (after giving effect to the Outstanding Amount).

***“Excluded Swap Obligation”***: any and all of each Credit Party’s Swap Obligations if, and to the extent that, all or a portion of the guarantee of such Credit Party of, or the grant by such Credit Party of a Lien to secure, such Swap Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act (or the application or official interpretation thereof) by virtue of such Credit Party’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act (determined after giving effect to any “keepwell, support or other agreement” for the benefit of such Credit Party and any and all guarantees of such Credit Party’s Swap Obligations by the other Credit Parties) at the time the guarantee of such Credit Party, or grant by such Credit Party of a Lien, becomes effective with respect to such Swap Obligation.

***“Excluded Taxes”***: any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Revolving Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loans or Revolving Commitment (other than pursuant to an assignment request by the Borrowers under Section 12.15) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.14, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient’s failure to comply with Section 2.14 and (d) any U.S. federal withholding Taxes imposed under FATCA.

***“Expenses”***: (i) any and all reasonable costs, fees and expenses of Administrative Agent add any Lender in connection with the analysis, negotiation, preparation, execution, administration, syndication, delivery, termination and court approval of this Agreement, the Financing Orders, the other Loan Documents and the documents and instruments referred to herein and therein, and any amendment, restatement, supplement, waiver or consent relating hereto or thereto, whether or not any such amendment, restatement, supplement, waiver or consent is executed or becomes effective, (ii) any and all reasonable costs, fees and expenses of Administrative Agent and each Lender in connection with the enforcement of Administrative Agent’s and Lenders’ rights hereunder (including, without limitation, field examination expenses), or the collection of any payments owing from, the Credit Parties hereunder and/or the other Loan Documents or the protection, preservation or defense of the rights of Administrative Agent and Lenders hereunder and under the other Loan Documents, (iii) the analysis, negotiation, and preparation of the Financing Orders, the Asset Sale Documents and any other documents filed in or prepared in connection with the Bankruptcy Cases, and the preparation for, travel to and participation in any hearings or proceedings in connection with any of the foregoing, and (iv) any Lien, litigation and

other search costs, the reasonable fees, expenses and disbursements of legal counsel for Administrative Agent and Lenders, including the charges of internal legal counsel, any fees or expenses incurred by Administrative Agent under Section 11.15 for which any Borrower or any other Credit Party are obligated thereunder, and charges of any expert, appraiser, auditor or other consultant to Administrative Agent and Lenders.

**"FATCA"**: Sections 1471 through 1474 of the Code as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b) of the Code.

**"Federal Funds Effective Rate"**: with respect to each Reset Date, the rate per annum (expressed, as a decimal, rounded upwards, if necessary, to the next higher one one-hundredth of one percent (1/100 of 1%)) equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided, (i) if such day is not a Business Day, the Federal Funds Effective Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (ii) if no such rate is so published on such next succeeding Business Day, the Federal Funds Effective Rate for such day shall be the average rate charged to Ally Bank or any other Lender selected by the Administrative Agent on such day on such transactions as determined by the Administrative Agent.

**"Final Order"**: an order of the Bankruptcy Court in the Bankruptcy Cases which approves the transactions contemplated by this Agreement, the other Loan Documents and the Liens and Guaranties, if any, granted hereunder and thereunder and the other transactions contemplated hereby and thereby on a final basis and is in form and substance acceptable to Administrative Agent and the Lenders, as the same may be amended, modified or otherwise supplemented from time to time in compliance with this Agreement.

**"Financing Orders"**: the Interim Order or, when applicable, the Final Order.

**"First Priority"**: with respect to any Lien purported to be created in any Collateral pursuant to any Collateral Document, that such Lien is the only Lien to which such Collateral is subject other than Permitted Liens that are non-consensual Permitted Liens or those purchase money Liens expressly permitted hereunder.

**"Fiscal Quarter"**: the fiscal period of each Borrower and the other Credit Parties ending on March 31, June 30, September 30 and December 31 in each Fiscal Year.

**"Fiscal Year"**: the fiscal year of each Borrower and the other Credit Parties ending on June 30 in each calendar year.

**"Foreign Lender"**: (a) if any Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if any Borrower is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which such Borrower is resident for tax purposes.

**"GAAP"**: generally accepted accounting principles in the United States of America as of the date of the applicable financial report.

**"Government Account Debtor"**: an Account Debtor that is a Government Reimbursement Program.



***“Government Lists”***: (i) the Specially Designated Nationals and Blocked Persons lists maintained by Office of Foreign Assets Control (***“OFAC”***), (ii) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the Rules and Regulations of OFAC that Administrative Agent notified Borrowers in writing is now included in “Government Lists”, or (iii) any similar lists maintained by the United States Department of State, the United States Department of Commerce or any other Governmental Authority or pursuant to any Executive Order of the President of the United States of America that Administrative Agent notified Borrowers in writing is now included in “Government Lists”.

***“Government Reimbursement Program”***: (i) Medicare (including any Medicare managed care program), (ii) Medicaid (including any Medicaid managed care program), (iii) TRICARE, (iv) the Federal Employees Health Benefit Program under 5 U.S.C. §§ 8902 et seq., (v) the Civilian Health and Medical Program of the Department of Veteran Affairs, (vi) any other Federal, state or local health care reimbursement program, and (vii) any agent, administrator, intermediary or carrier for any of the foregoing.

***“Governmental Authority”***: any court, board, agency, commission, office or authority of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) now or hereafter in existence.

***“Governmental Authorization”***: any permit, license, registration, authorization, certificate, accreditation, plan, directive, consent order or consent decree of or from, or notice to, any Governmental Authority.

***“Guarantor”***: each Person who on or after the Closing Date guarantees the payment and performance of the Obligations.

***“Guaranty”***: each guaranty agreement executed by any Guarantor in favor of Administrative Agent (for the benefit of itself and the Lenders), pursuant to which such Guarantor guarantees the payment and performance of the Obligations, in form and substance satisfactory to Administrative Agent, in each case as the same may be amended, restated, replaced or otherwise modified from time to time.

***“Hazardous Materials”***: any and all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

***“Healthcare Authorizations”***: any and all Governmental Authorizations and permits, licenses, provider agreements, authorizations, approvals, certificates, certificates of need, accreditations and plans of third-party accreditation agencies (such as the Joint Commission), provider agreements with Government Reimbursement Programs and Non-Government Payors, in each case that are (a) necessary to enable any Borrower to engage in the Healthcare Services, participate in and receive payment under Government Reimbursement Programs and plans of Non-Government Payors to conduct the Credit Parties’ business and operations as presently conducted or (b) required under any Healthcare Laws to continue to conduct its business as it is conducted on the date of this Agreement or otherwise applicable to the ownership of a Healthcare Facility.

***“Healthcare Facility”***: each facility set forth on Schedule 4.23 and each other facility, including, without limitation, any hospital, medical office building, or similar facility, owned or leased by

a Borrower which is subject to any Healthcare Authorization and from which any Borrower or any other Person provides or furnishes Healthcare Services.

***"Healthcare Laws"***: any and all Applicable Laws relating to the possession, control, warehousing, marketing, sale and distribution of pharmaceuticals, the operation of medical or senior housing facilities (such as, but not limited to, hospitals, ambulatory surgery centers, behavioral health facilities, nursing homes, skilled nursing facilities and rehabilitation hospitals), patient healthcare, patient healthcare information, patient abuse, the quality and adequacy of medical care, rate setting, equipment, personnel, operating policies, fee splitting, including (a) all federal and state fraud and abuse Laws, including, the federal Anti-Kickback Statute (42 U.S.C. §1320a-7b(b)), the Stark Law (42 U.S.C. §1395nn), the civil False Claims Act (31 U.S.C. §3729 et seq.), the federal health care program exclusion provisions (42 U.S.C. §1320a-7) and the Civil Monetary Penalties Act (42 U.S.C. §1320a-7a), (b) HIPAA, (c) Medicare, (d) Medicaid, (e) quality of medical care and accreditation standards and requirements of all applicable state Laws or regulatory bodies, (f) all laws, policies, procedures, requirements and regulations pursuant to which Healthcare Authorizations are issued, and (g) any and all other applicable healthcare laws, regulations, manual provisions, policies and administrative guidance, each of (a) through (g) as may be amended from time to time.

***"Healthcare Services"***: providing or arranging to provide or administering, managing or monitoring healthcare goods and services including physician services, nurse and therapist services, hospital services, outpatient services, long-term care or any business or activity that is reasonably similar thereto or a reasonable extension, development or expansion thereof or ancillary thereto.

***"HIPAA"***: the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act of 2009, and any state and local laws regulating the privacy and/or security of individually identifiable information, in each case as the same may be amended, modified or supplemented from time to time, and any successor statute thereto, and any and all rules or regulations promulgated from time to time thereunder.

***"Indebtedness"***: without duplication, (a) all indebtedness of such Person for borrowed money, whether or not evidenced by bonds, debentures, notes or similar instruments, (b) all Capitalized Lease Obligations of such Person, (c) all obligations of such Person to pay the deferred purchase price of property or services (excluding trade accounts payable in the ordinary course of business), (d) all obligations, contingent or otherwise, with respect to the face amount of all letters of credit (whether or not drawn) and banker's acceptances issued for the account of such Person, (e) all Derivative Obligations of such Person, (f) all Contingent Obligations, (g) all liabilities of any partnership or joint venture of which such Person is a general partner or joint venturer, (h) all obligations of such Person to make any payment in connection with any warrants or any other Equity Interests including any put, redemption and mandatory dividends, of such Person or any Affiliate thereof and (i) all indebtedness secured by a Lien on the property of such Person, whether or not such indebtedness shall have been assumed by such Person.

***"Indemnified Taxes"***: (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Credit Party under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

***"Ineligible Assignee"***: (i) any natural person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person), (ii) any Credit Party or any of its Affiliates or (iii) any Defaulting Lender or any Affiliate of any Defaulting Lender or any Person who, upon becoming a Lender hereunder, would constitute a Defaulting Lender or an Affiliate thereof.



***“Initial Budget”***: the statement of projected receipts and disbursements of the Borrowers for the period beginning on the Closing Date and ending on the Scheduled Termination Date, broken down by week, including the anticipated uses of the Revolving Loans for such period, delivered to Administrative Agent on or about the Petition Date, in form and substance acceptable to Administrative Agent and the Lenders in their sole discretion and in effect as of the Petition Date.

***“Initial Cash Flow Forecast”***: the initial cash flow forecast delivered pursuant to Section 3.1(a)(ii), attached hereto as Exhibit F, depicting on a weekly basis cash revenue, receipts, expenses, disbursements, outstanding advances under the Loans and other information for the 13 fiscal week period following the Closing Date.

***“Insolvency Proceeding”***: with respect to any Person, (a) a case, action or proceeding with respect to such Person: (i) before any court or any other Governmental Authority under any Debtor Relief Law, or (ii) for the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator, conservator (or similar official) of any Person or otherwise relating to the liquidation, dissolution, winding-up or relief of such Person, or (b) any general assignment for the benefit of creditors, composition, marshaling of assets for creditors, or other, similar arrangement in respect of such Person’s creditors generally or any substantial portion of its creditors; undertaken under any Law.

***“Intellectual Property”***: all intellectual and similar property of a Person, including inventions, designs, patents, patent applications, copyrights, trademarks, service marks, trade names, trade secrets, confidential or proprietary information, customer lists, know-how, software and databases; all embodiments or fixations thereof and all related documentation, registrations and franchises; all books and records describing or used in connection with the foregoing; and all licenses or other rights to use any of the foregoing.

***“Interim Commitment Amount”***: Thirty Million Dollars (\$30,000,000).

***“Interim Hearing”***: the meaning set forth in Section 4.30(b).

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

***“Inventory”***: any and all “inventory” (as that term is defined in the UCC) of any Person, whether now existing or hereafter arising.

***“Investment”***: as to any Person, (a) any direct or indirect acquisition or investment by such Person, whether by means of the purchase or other acquisition of the properties and assets or Equity Interests or other securities of another Person, including the acquisition, operation, management or lease of any Healthcare Facility other than the Healthcare Facilities operated by Borrowers as of the Closing Date, (b) any loan, advance or capital contribution to, assumption of debt of, or purchase or other acquisition of any other debt or Equity Interests in, another Person, including any partnership, membership or joint venture interest in such other Person and any arrangement pursuant to which the investor provides a Contingent Obligation for such other Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit.

**"IRS"**: the United States Internal Revenue Service, or any Governmental Authority succeeding to any of its principal functions.

**"Joint Commission"**: the Joint Commission, formerly known as the Joint Commission on Accreditation of Healthcare Organizations or other similar agency.

**"Laws"**: collectively, all international, foreign, federal, state and local statutes, laws (including common law), treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents, authorities, rulings, decrees, judgments, writs, injunctions, orders, awards or opinions, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, in each case whether or not having the force of law.

**"Lease Agreement(s)"**: each real property lease agreement to which any Borrower or other Credit Party is subject for which breach, termination, nonperformance or failure to renew could reasonably be expected to have a Material Adverse Effect, as the same may be amended, restated, replaced, or otherwise modified from time to time in accordance with the terms and conditions of this Agreement.

**"Lender(s)"**: the meaning set forth in the introductory paragraph hereto, and including Revolving Lenders and Swingline Lender.

**"Lender Affiliate"**: with respect to any Lender, any Person which, directly or indirectly, is in Control of, is Controlled by, or is under common Control with such Lender.

**"LIBOR Rate"**: with respect to each Reset Date, the higher of (i) 2.0% and (ii) a rate per annum equal to:

- (1) the offered rate for deposits in U.S. Dollars in an amount comparable to the amount of the applicable Loan for a period of one month which is published by the ICE Benchmark Administration (or any successor thereto) and currently appears on the Reuters LIBOR01 Page as of 11:00 a.m. (London time), on the day that is two (2) London banking days preceding such Reset Date; provided, however, that if such a rate ceases to be available to Administrative Agent on that or any other source from the ICE Benchmark Administration (or any successor thereto), the LIBOR Rate shall be equal to a rate per annum equal to the average rate (rounded upwards, if necessary, to the nearest 1/100 of 1%) at which Administrative Agent determines that Dollars in an amount comparable to the amount of the applicable Loans are being offered to prime banks at approximately 11:00 a.m. (London time) on the day which is two (2) Business Days prior to the Reset Date for a term of one month for settlement in immediately available funds by leading banks in the London interbank market selected by Administrative Agent; divided by
- (2) a number equal to one (1.0) minus the maximum reserve percentages (expressed as a decimal fraction) (including, without limitation, basic, supplemental, marginal and emergency reserves under any regulations of the Board of Governors of the Federal Reserve System or other Governmental Authority having jurisdiction with respect thereto, as now and from time to time in effect) for Eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of such Board) which are required to be maintained by any Lender by the Board of Governors of the Federal Reserve System; such rate to be rounded upward to the next whole multiple of one-



sixteenth of one percent (0.0625%). The LIBOR Rate shall be adjusted automatically on and as of the effective date of any change in any such reserve percentage.

**"License"**: any license or agreement under which any Borrower or any other Credit Party is authorized to use Intellectual Property in connection with any manufacture, marketing, distribution or disposition of Collateral, any use of property, the operation of any Healthcare Facility or any other conduct of its business.

**"Licensor"**: any Person from whom any Borrower or any other Credit Party obtains the right to use any Intellectual Property.

**"Lien"**: any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest 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, and any financing lease having substantially the same economic effect as any of the foregoing). **"Lien"** shall not include the rights of any Government Account Debtor to recoup or setoff against any Account of such Government Account Debtor.

**"Loan Documents"**: collectively, this Agreement, the Collateral Documents, any Revolving Note, each Guaranty, and all other documents, agreements and instruments now or hereafter evidencing, securing or delivered to Administrative Agent or any Lender in connection with the Loans or transactions contemplated by this Agreement, as each may be amended, restated or otherwise modified from time to time.

**"Loan Notice"**: a notice requesting the making of a Revolving Loan or a Swingline Loan which shall either be included as a part of a Borrowing Base Certificate or be delivered separately in the form of Exhibit D.

**"Loans"**: the collective reference to the Revolving Loans and the Swingline Loans, and **"Loan"** means any of such Loans.

**"Lockbox Account"**: those certain deposit accounts maintained by Borrowers with the Deposit Account Bank into which all collections of Accounts of such Borrower from Government Account Debtors and/or Non-Government Payors are obligated are paid directly.

**"Management Agreements"**: each management agreement or similar agreement for the day-to-day management of one or more Healthcare Facilities for a Borrower, as same may be amended, restated, replaced, supplemented or otherwise modified from time to time in accordance with Section 6.14.

**"Management Fee Subordination Agreement"**: any Management Fee Subordination Agreement by and among Administrative Agent, Borrowers and Manager.

**"Management Fees"**: the management fees as set forth in each Management Agreement.

**"Manager"**: each manager under a Management Agreement.

**"Material Adverse Effect"**: (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, liabilities (actual or contingent), condition (financial or otherwise) or prospects of the Borrowers, taken as a whole (other than as customarily occurs as a result of

the commencement of a proceeding under Chapter 11 of the Bankruptcy Code by the Borrowers and the commencement of the Bankruptcy Cases), on the value of any material Collateral, on the enforceability of any Loan Documents, or on the validity or priority of Liens on any material Collateral in favor of Administrative Agent (for the benefit of itself and the Lenders); (b) a material impairment of the ability of any Credit Party to perform its obligations under any Loan Document to which it is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Credit Party of any Loan Document to which it is a party.

**“Material Citation”:** any operational, compliance or physical plant deficiency with respect to any Healthcare Facility of which any Borrower or any other Credit Party is notified in writing by any Governmental Authority or Government Reimbursement Program, and with respect to which the potential penalty for such deficiency is a loss of licensure, decertification of such Healthcare Facility from participation in any Government Reimbursement Program, the appointment of a temporary manager for such Healthcare Facility, the denial of payment for new admissions to such Healthcare Facility, the initiation of state monitoring of such Healthcare Facility, or the closure of such Healthcare Facility.

**“Material Contract”:** each of the Lease Agreement, any Management Agreements and any other contract or other arrangement to which any Borrower or any other Credit Party is a party (other than the Loan Documents) for which breach, termination, nonperformance or failure to renew could reasonably be expected to have a Material Adverse Effect.

**“Maximum Swingline Loan Amount”:** at any time the lesser of (a) Ten Million Dollars (\$10,000,000) and (b) the amount that would cause the Revolving Loan to exceed the Availability.

**“Medicaid”:** collectively, the healthcare assistance program established by Title XIX of the Social Security Act (42 U.S.C. §§ 1396 *et seq.*) and any statutes succeeding thereto, all state statutes and plans for medical assistance enacted in connection with such program, and all laws, rules, regulations, manuals, orders, guidelines or requirements (whether or not having the force of law) pertaining to such program, in each case as the same may be amended, supplemented or otherwise modified from time to time.

**“Medicare”:** collectively, the health insurance program for the aged and disabled established by Title XVIII of the Social Security Act (42 U.S.C. §§ 1395 *et seq.*) and any statutes succeeding thereto, and all laws, rules, regulations, manuals, orders or guidelines (whether or not having the force of law) pertaining to such program, in each case as the same may be amended, supplemented or otherwise modified from time to time.

**“Minimum Liquidity”:** as of any date, the sum of the following for Borrowers collectively on a consolidated basis for the most recently ended Test Period: (a) the average daily balance of unrestricted cash on hand (net of checks or other items of payment issued but not yet cashed or otherwise posted) in operating deposit accounts of Borrowers, *plus* (b) the average daily Excess Availability; provided that Excess Availability shall be calculated for purposes of this definition without giving effect to a reserve for Minimum Liquidity. Credit Parties shall provide to Administrative Agent, promptly upon Administrative Agent’s request therefor, a “screen shot” of the account page on the official website of the Deposit Account Bank showing the current account balance with respect to each deposit account utilized in the calculation of Minimum Liquidity.

**“Mortgage”:** each mortgages, deeds of trust and comparable documents executed by any Borrower in favor of Administrative Agent (for the benefit of itself and the Lenders), by which such Borrower has granted to Administrative Agent, as security for the Obligations, a Lien upon the real property of such Borrower.

***“Net Collectable Value”*** percentages that Administrative Agent, in the exercise of its reasonable credit judgment, applies from time to time to Eligible Accounts by payor class (e.g., Medicare, Medicaid, Medicare managed care, Medicaid managed care, commercial insurance, etc.) based upon Administrative Agent’s review and analysis of, among other things, any Borrower’s historical collection history, contractual allowances, returns, rebates, discounts, credits and other allowances for each such payor class and taking into account other factors deemed appropriate by Administrative Agent which may result in the possible non-payment of Accounts for any reason or possible diminution of the value of any Collateral, all in a manner consistent with Administrative Agent’s underwriting practices and procedures.

***“Non-Government Payors”***: any Third-Party Payors other than the Government Reimbursement Programs.

***“Notes”***: the collective reference to the Revolving Notes and the Swingline Notes (in each case, if any), and ***“Note”*** means any of such Notes.

***“Obligations”***: any and all Loans and other existing and future debts, liabilities and obligations of every kind or nature at any time owing by any Borrower and any other Credit Party to Administrative Agent, Lenders, Swingline Lenders or any Lender Affiliate arising out of, under, pursuant to, in connection with, or evidenced by this Agreement or any of the other Loan Documents, whether joint or several, related or unrelated, primary or secondary, matured or contingent, due or to become due, and whether constituting principal, interest, fees, indemnification obligations or Expenses (and specifically including any interest, fees or expenses accruing after the commencement of any Insolvency Proceeding with respect to any Borrower or any other Credit Party, whether or not a claim for such post-commencement interest, fees or expenses is allowed); any Approved Cash Management Obligations; and the payment of all Protective Advances and other amounts advanced by Administrative Agent, any Lender or any Lender Affiliate to preserve, protect and enforce rights hereunder and in the Collateral. Notwithstanding anything in this definition to the contrary, ***“Obligations”*** as used herein and in the Loan Documents, shall not include any Credit Party’s Excluded Swap Obligations.

***“O’Connor Hospital”***: the hospital commonly known as O’Connor Hospital, located at 2105 Forest Avenue, San Jose, California 95128.

***“OFAC”***: the meaning set forth in the definition of ***“Government Lists”***.

***“Organization Documents”***: (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement or limited liability company agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

***“Other Connection Taxes”***: with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).



***“Other Taxes”***: all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment of any interest in any Loan or Loan Document.

***“Outstanding Amount”***: with respect to the Revolving Facility on any date, the sum of (i) the aggregate outstanding principal amount of all Revolving Loans as of such date and (ii) the aggregate outstanding principal amount of all Swingline Loans, after giving effect, without duplication, to any borrowings and prepayments or repayments of Revolving Loans or Swingline Loans occurring on such date.

***“PACE Bond Trustee”***: the meaning set forth in the recitals.

***“Participant”***: the meaning set forth in Section 10.01(d).

***“Patriot Act”***: the meaning set forth in Section 5.15(a).

***“Patriot Act Offense”***: any violation of the criminal laws of the United States of America or of any of the several states, or that would be a criminal violation if committed within the jurisdiction of the United States of America or any of the several states, relating to terrorism or the laundering of monetary instruments, including any offense under (a) the criminal laws against terrorism; (b) the criminal laws against money laundering, (c) the Bank Secrecy Act, as amended, (d) the Money Laundering Control Act of 1986, as amended, or the (e) Patriot Act. ***“Patriot Act Offense”*** also includes the crimes of conspiracy to commit, or aiding and abetting another to commit, a Patriot Act Offense.

***“Payment Date”***: the first day of each calendar month, commencing on the first day of the first full calendar month after the Closing Date.

***“PBGC”***: the Pension Benefit Guaranty Corporation or any Governmental Authority succeeding to any of its principal functions.

***“Permitted Asset Disposition”***: an Asset Disposition that is (a) a sale of Inventory in the ordinary course of business or any other disposition of Inventory that is obsolete, unmerchantable or otherwise unsaleable in the ordinary course of business; (b) a disposition of equipment that, in the aggregate during any 12 month period, has a fair market or book value (whichever is more) of \$100,000 or less; (c) a termination of a lease of real or personal property (other than one that is a Material Contract) that is not necessary for the ordinary course of business, could not reasonably be expected to have a Material Adverse Effect and does not result from a default by any Borrower or any other Credit Party; or (d) any Asset Sale pursuant to Asset Sale Documents in form and substance satisfactory to Administrative Agent in its reasonable discretion.

***“Permitted Contingent Obligations”***: (a) Guaranties of Indebtedness hereunder made by the Guarantors, (b) endorsements of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business, (c) the unsecured Contingent Obligations described on Schedule 2 hereto (which for the avoidance of doubt shall be subordinate to the Obligations) and (d) Contingent Obligations (which for the avoidance of doubt shall be subordinate to the Obligations) incurred in the ordinary course of business with respect to surety, appeal or performance bonds or other similar obligations not to exceed \$500,000 in the aggregate at any time outstanding.

***"Permitted Indebtedness"***: (a) Indebtedness to Administrative Agent and Lenders in connection with the Loans or otherwise pursuant to the Loan Documents; (b) purchase money Indebtedness incurred by any Credit Party to finance the purchase of fixed assets, provided that (i) such Indebtedness outstanding in the aggregate at any time shall not exceed \$1,000,000, (ii) such Indebtedness shall not exceed the purchase price of the assets funded and (iii) no such Indebtedness may be refinanced for a principal amount in excess of the principal amount outstanding at the time of such refinancing; (c) unsecured trade payables incurred in the ordinary course of a Credit Party's business and which do not remain unpaid more than ninety (90) days after the due date thereof; (d) [reserved], (e) Indebtedness existing on the Closing Date, (f) Permitted Contingent Obligations, (g) [reserved], (h) other unsecured Indebtedness (which for the avoidance of doubt shall be subordinate to the Obligations) in an aggregate outstanding amount not to exceed \$250,000 at any one time, and (i) Subordinated Indebtedness, provided that any Subordinated Indebtedness shall require the approval of Administrative Agent.

***"Permitted Intercompany Loans"***: loans in the nature of intercompany debits and credits made on the books of any Borrower to any other Borrower.

***"Permitted Investments"***: (a) Investments existing on the Closing Date that are disclosed under the heading "Permitted Investments" on Schedule 2 hereto, and (b) Investments in Cash Equivalents.

***"Permitted Liens"***: (a) Liens securing taxes, assessments or governmental charges or levies not delinquent; (b) Liens incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance, social security and other like laws; (c) Liens on fixed assets securing purchase money Indebtedness permitted under the definition of ***"Permitted Indebtedness"***; provided that, such Lien attached to such assets concurrently, or within 20 days of the acquisition thereof, and only to the assets so acquired; (d) Liens existing on the Closing Date and disclosed under the heading "Permitted Liens" on Schedule 2 hereto; (e) Liens in favor of Administrative Agent (for the benefit of itself and the Lenders) securing the Obligations; (f) other Liens which do not secure Indebtedness for borrowed money or letters of credit and as to which the aggregate amount of the obligations secured thereby does not exceed \$100,000; and (g) such other Liens as approved in the Financing Orders.

***"Person"***: any individual, corporation, partnership, limited liability company, joint venture, estate, trust, unincorporated association, Governmental Authority, any other person or entity, and any fiduciary acting in such capacity on behalf of any of the foregoing.

***"Petition Date"***: the meaning set forth in the recitals.

***"Plan"***: (i) an employee benefit or other plan established or maintained by any Borrower or any ERISA Affiliate or any such Plan or to which any Borrower or any ERISA Affiliate makes or is obligated to make contributions and (ii) which is subject to Title IV of ERISA or Section 302 of ERISA or Section 412 of the Code.

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

***"Plan of Reorganization"***: as the same may be amended, modified or otherwise supplemented in compliance with this Agreement, one or more plans of reorganization of the Borrowers in their Bankruptcy Cases which singly or in the aggregate provide for the indefeasible payment in full, in

cash and in accordance with the terms of this Agreement of all Obligations which are due and owing as of the effective date of such plan(s) of reorganization.

**“Pledge Agreement”**: that certain Pledge Agreement, dated as of the Closing Date, executed by each Pledgor in favor of Administrative Agent (for the benefit of itself and the Lenders), and each other pledge agreement executed by any Pledgor in favor of Administrative Agent (for the benefit of itself and the Lenders), in each case as the same may be amended, restated, replaced, severed, split, supplemented or otherwise modified from time to time.

**“Pledgor”**: VHS and any other Person who executes a Pledge Agreement and grants a security interest in any Equity Interests of a Borrower or another Credit Party that are owned by such Person to secure the Obligations.

**“Postpetition” or “postpetition”**: the time period commencing on the Petition Date and ending on the Reorganization Effective Date.

**“Prepetition” or “prepetition”**: the time period prior to the Petition Date.

**“Pro Rata Share”**: with respect to a Lender’s obligation to make its share of Revolving Loans and receive payments of principal, interest, fees, costs, and expenses with respect thereto and for all other purposes hereunder (including the indemnification obligations arising under Section 12.7), the percentage obtained by dividing (i) such Lender’s Revolving Commitment (or, after the termination of the Revolving Commitment, the Outstanding Amount of such Lender), by (ii) the aggregate amount of all Lenders’ Revolving Commitments (or, after the termination of the Revolving Commitment, the Outstanding Amount of all Lenders).

**“Protective Advances”**: the meaning set forth in Section 2.13.

**“QAF Account(s)”**: Accounts arising under the QAF Program.

**“QAF Phase V Program”**: the meaning set forth in the definition of “QAF Program.”

**“QAF Program”**: the Medi-Cal supplemental payments program that imposes a quality assurance fee to be paid by hospitals that is used to obtain increased federal Medicaid matching funds as implemented: (a) with respect to the January 1, 2014 – December 31, 2016, program period, pursuant to the Medi-Cal Hospital Reimbursement Improvement Act of 2013 (Article 5.230 (commencing with Section 14169.50) of Chapter 7 of Part 3 of Division 9 of the California Welfare and Institutions Code, enacted by California Senate Bill 239 (Stats. 2013, Ch. 637)); (b) the January 1, 2017 – June 30, 2019 program period, pursuant to the Medi-Cal Hospital Reimbursement Improvement Act of 2013 (Article 5.230 (commencing with Section 14169.50) of Chapter 7 of Part 3 of Division 9 of the California Welfare and Institutions Code, enacted by California Senate Bill 239 (Stats. 2013, Ch. 637)) (the **“QAF Phase V Program”**); (c) with respect to the July 1, 2011 – December 31, 2013, program period pursuant to the Medi-Cal Hospital Provider Rate Improvement Act of 2011 and Private Hospital Quality Assurance Fee Act of 2011 (Article 5.228 (commencing with Section 14169.1) and Article 5.229 (commencing with Section 14169.31) of Chapter 7 of Part 3 of Division 9 of the California Welfare and Institutions Code, enacted by California Senate Bill 335 (Stats. 2011, Ch. 286)); (d) with respect to prior program periods pursuant to the Medi-Cal Hospital Provider Rate Stabilization Act and the Quality Assurance Fee Act enacted by California Assembly Bill 1383 (Stats. 2009, Ch. 627) and its amendments, and the Medi-Cal Hospital Rate Stabilization Act of 2011 and Hospital Quality Assurance Fee Act of 2011 enacted by California Senate Bill 90 (Stats. 2011, Ch. 19); and (e) with respect to any subsequent program period for which Medi-Cal supplemental payments are provided pursuant to the current quality assurance fee



program, or legislation modifying or extending the quality assurance fee program or enacting a successor quality assurance fee program or similar statewide hospital fee program.

***“QAF Required Payment”***: each required periodic payment pursuant to the QAF Program of the (a) managed care tax and (b) pledge fee payable to the California non-profit foundation required pursuant to the QAF Program.

***“Rating Agency”***: each of Standard & Poor’s, a division of The McGraw-Hill Companies, Inc., Moody’s Investors Service, Inc., and Fitch, Inc., a division of Fitch Ratings Ltd. or any other nationally-recognized statistical rating organization.

***“Recipient”***: the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any Obligation of any Credit Party hereunder or under any other Loan Document.

***“Related Parties”*** with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates.

***“Reorganization Effective Date”***: the effective date the Plan of Reorganization.

***“Reorganization Milestones”***: (a) the filing by the Borrowers in the Bankruptcy Cases of a Plan of Reorganization on or before the date that is one hundred and twenty (120) days following the Petition Date and accompanying disclosure statement with respect to such Plan of Reorganization, provided that such date is further extended to the end of the Borrower’s exclusivity period in the related Bankruptcy Case upon entry of an order extending the Borrower’s exclusivity period, and (b) the filing by the Borrowers within sixty (60) days following the Petition Date of either (i) the Saint Louise/O’Connor Hospital Bid Procedures Motion, or (ii) the Consolidated Sale Motion.

***“Required Insurance”***: the meaning set forth in Section 5.4.

***“Required Lenders”***: as of any date of determination, (a) if there are two (2) or fewer Lenders, Lenders holding one hundred percent (100%) of the aggregate Revolving Commitments, or (b) if there are more than two (2) Lenders, Lenders that are not Affiliates holding greater than sixty-six and two thirds percent (66 2/3%) of the aggregate Revolving Commitments (or, after the termination of the Revolving Commitments, Lenders that are not Affiliates holding greater than sixty-six and two thirds percent (66 2/3%) of the Outstanding Amount), provided, that the Revolving Commitment of, and the portion of the liabilities held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

***“Reset Date”***: the Closing Date and the first day of each calendar month thereafter.

***“Restrictive Agreement”***: an agreement (other than a Loan Document) that conditions or restricts the right of any Borrower or any other Credit Party to incur or repay Indebtedness, to grant Liens on any assets, to declare or make Distributions, to modify, extend or renew any agreement evidencing Indebtedness, or to repay any intercompany Indebtedness.

***“Revolving Commitment”***: as to any Revolving Lender, such Revolving Lender’s commitment to make Pro Rata Share of the Revolving Loans hereunder, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Revolving Lender’s name on Annex A or in the Assignment Agreement pursuant to which such Revolving Lender becomes a party

hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. The aggregate Revolving Commitments of the Revolving Lenders on the Closing Date is equal to the Interim Commitment Amount; provided that the aggregate Revolving Commitments of the Revolving Lenders shall increase to One Hundred Eighty-Five Million Dollars (\$185,000,000) upon the satisfaction of the satisfaction of the funding conditions set forth in each of Sections 3.2 and 3.3.

***“Revolving Facility”***: the meaning set forth in Section 2.1(a).

***“Revolving Lender”***: each Lender with a Revolving Commitment.

***“Revolving Loan”***: the meaning set forth in Section 2.1(a).

***“Revolving Loan Termination Date”***: the earliest to occur of (a) the Scheduled Termination Date; (b) the earlier of (i) the date that is 30 days from entry of the Interim Order unless the Final Order has been entered and has become effective prior to the expiration of such period (or such later date as the Administrative Agent may approve in writing in its sole and absolute discretion), (ii) the date the Bankruptcy Court denies entry of the Final Order, or (iii) the date of revocation of the Interim Order or the Final Order, as applicable; (c) the substantial consummation (as defined in Section 1101 of the Bankruptcy Code and which for purposes hereof shall be no later than the “effective date”) of a plan of reorganization filed in the Bankruptcy Cases that is confirmed pursuant to an order entered by the Bankruptcy Court; (d) the consummation of a sale of all or substantially all of the Collateral; (e) the date the Bankruptcy Court orders the conversion of the Bankruptcy Cases to a Chapter 7 liquidation or the dismissal of the Bankruptcy Cases or the appointment of a trustee or examiner with expanded power in the Bankruptcy Cases; and (f) the acceleration of the Loans and the termination of the Revolving Commitment in accordance with this Agreement.

***“Revolving Loans”***: each Revolving Loan, collectively.

***“Revolving Note”***: any promissory notes, if requested by a Lender pursuant to Section 2.11, made by each Borrower in favor of such Lender evidencing the Revolving Loans of such Lender, substantially in the form of Exhibit C.

***“Sanctions”***: any international economic sanctions or trade embargo administered or enforced by the United States Government, including OFAC, the United Nations Security Council, the European Union or other relevant sanctions authority.

***“Scheduled Termination Date”***: September 7, 2019.

***“Security Agreement”***: that certain Security Agreement, dated as of the Closing Date, executed by each Credit Party in favor of Administrative Agent (for the benefit of itself and the Lenders), and each other security agreement executed by any Borrower or any other Credit Party in favor of Administrative Agent (for the benefit of itself and the Lenders), in each case as the same may be amended, restated or otherwise modified from time to time.

***“Seton Cash Burn Elimination Plan”***: a plan for the reduction and eventual elimination of the cash burn from the operation of Seton Medical Center and Seton Medical Center Coastsides (which may be by a sale of such facilities to an identified stalking horse bidder, sale pursuant to the Consolidated Sale Motion or by other means, in either case on terms and conditions satisfactory to the Administrative Agent).

***“Seton Medical Center”***: the hospital commonly known as Seton Medical Center, located at 1900 Sullivan Avenue, Daly City, California 94015.

***“Seton Medical Center Coastsides”***: the hospital commonly known as Seton Medical Center Coastsides, located at 600 Marine Boulevard, Moss Beach, California 94038.

***“Specified Prepetition Secured Creditors”***: (1) U.S. Bank as Note Trustee for 2015 and 2017 Working Capital Notes; (2) U.S. Bank as Master Trustee for 2005 Series Bonds; and (3) Verity MOB Financing, LLC and Verity MOB Financing II, LLC.

***“Saint Louise Hospital”***: the hospital commonly known as Saint Louise Regional Hospital, located at 9400 No Name Uno, Gilroy, California 95020.

***“Saint Louise/O’Connor Hospital Bid Procedures Motion”***: a motion for approval of bid procedures for an identified stalking horse bidder in an amount of at least \$235,000,000 of cash consideration in connection with the sale (exclusive of accounts receivable and QAF Accounts) of the Saint Louise Hospital and the O’Connor Hospital and related assets pursuant to section 363(b) and (f) of the Bankruptcy Code on terms and conditions acceptable to the Administrative Agent.

***“Subordinated Indebtedness”***: any Indebtedness of any Credit Party or any Subsidiary (a) that is subordinated to the Obligations in a manner satisfactory to Administrative Agent, and contains terms, including payment terms, satisfactory to Administrative Agent or (b) subordinated to the Obligations pursuant to the Financing Orders. All Subordinated Indebtedness as of the Closing Date is identified and described under the heading “Subordinated Indebtedness” on Schedule 2 hereto.

***“Subordinated Indebtedness Documents”***: the Subordination Agreements and all other documents and instruments relating to the Subordinated Indebtedness and all amendments and modifications thereof permitted hereby. Permitted Intercompany Loans shall constitute Subordinated Indebtedness; provided that Permitted Intercompany Loans shall not be required to be subject to a Subordination Agreement unless requested by Administrative Agent.

***“Subordination Agreements”***: All subordination agreements, intercreditor agreements, consents and similar agreements among any Credit Party, Administrative Agent and any holder of Indebtedness, whether entered into on or prior to the date hereof or from time to time hereafter, in each case together with all modifications, amendments and restatements of any of the foregoing.

***“Subsidiary”***: of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of a Borrower.

***“Swap Agreement”***: a swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), if any, between any Borrower or any other Credit Party and Administrative Agent, any Lender or any Lender Affiliate.

***“Swap Obligations”***: with respect to any Borrower or any other Credit Party, any obligation to pay or perform under any Swap Agreement.



**“Swingline Advance”**: each Revolving Loan converted by Administrative Agent into an advance under the Swingline Loan pursuant to Section 2.1(c).

**“Swingline Lender”**: Ally Bank, or if Ally Bank shall resign as Swingline Lender, another Lender selected by Administrative Agent and reasonably acceptable to Borrower Representative.

**“Swingline Loan”**: the outstanding balance of all Swingline Advances and any amounts added to the principal balance of the Swingline Loan pursuant to this Agreement.

**“Swingline Note”**: any promissory note, if requested by Swingline Lender pursuant to Section 2.11, made by each Borrower in favor of Swingline Lender evidencing the Swingline Loan of Swingline Lender.

**“Taxes”**: all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

**“Test Period”**: (i) with respect to the first three Test Periods, the period beginning on August 31, 2018 and ending on the then most recent Saturday and (ii) thereafter, the consecutive four (4) week period ending on the then most recent Saturday (taken as one accounting period).

**“Third-Party Payor”**: (i) any commercial medical insurance company having its principal office in the United States and licensed as an insurer in the state in which the Healthcare Services giving rise to any Account were rendered, (ii) a Blue Cross/Blue Shield Plan, (iii) any Government Account Debtor making payments under a Government Reimbursement Program, and (iv) any HMO, PPO, managed care plan or other institutional Person or entity having its principal office in the United States that reimburses providers for Healthcare Services.

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

**“UCC”**: the Uniform Commercial Code as in effect in the state of New York or of any other state the laws of which are required to be applied in connection with the perfection of security interests in any Collateral.

**“U.S. Person”**: any Person that is a “United States person” as defined in Section 7701(a)(30) of the Code.

**“VHS”**: Verity Health System of California, Inc., a California nonprofit corporation.

**“Welfare Plan”**: an employee welfare benefit plan, as defined in Section 3(1) of ERISA.

**“Write-Down and Conversion Powers”**: with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

**1.2 Other Interpretive Provisions.** With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" and the word "shall" will be construed to have the same meaning and effect. Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document and any Loan Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, extended, renewed, supplemented or otherwise modified in writing from time to time (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "herein," "hereof," "hereto" and "hereunder," and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, clauses, Sections, Exhibits and Schedules shall be construed to refer to Articles, clauses and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such Law and any reference to any Law or regulation shall, unless otherwise specified, refer to such Law or regulation as amended, modified or supplemented from time to time, and (vi) unless otherwise specified, the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights. As used hereunder or in the other Loan Documents, the phrase "to Borrowers' knowledge" or "to the best of Borrowers' knowledge" or similar phrases, means each Borrower's and each other Credit Party's knowledge after due and diligent inquiry.

(b) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including;" the words "to" and "until" each mean "to but excluding;" and the word "through" means "to and including."

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

### **1.3 Accounting Terms.**

(a) **Generally.** All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, except as otherwise specifically prescribed herein.

(b) **Changes in GAAP.** If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and Borrowers or Administrative Agent shall so request, Administrative Agent and Borrowers shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of Administrative Agent); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) Borrowers shall provide to Administrative Agent and Lenders financial statements and other documents required hereunder or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

**1.4 Rounding.** Any financial ratios required to be maintained by Borrowers pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

**1.5 Times of Day.** Unless otherwise specified, all references herein to times of day shall be references to United States Eastern time (daylight or standard, as applicable).

## **ARTICLE 2 GENERAL REVOLVING LOAN TERMS**

### **2.1 The Revolving Loans and Swingline Loans.**

(a) **Revolving Facility.** Subject to the terms and conditions set forth herein and in the Financing Orders, the Lenders hereby establish for the benefit of Borrowers a revolving credit facility (the "**Revolving Facility**") pursuant to which each Lender agrees to make its Pro Rata Share of loans (each such loan, a "**Revolving Loan**") to Borrowers from time to time, on any Business Day during the Availability Period, in an aggregate principal amount at any one time outstanding not to exceed such Lender's Revolving Commitment. The Outstanding Amount shall not exceed at any time the lesser of (i) the Revolving Commitment and (ii) the Borrowing Base (such lesser amount at any time, the "**Availability**"). Subject to the terms and conditions hereof, Borrowers may borrow, repay and reborrow Revolving Loans hereunder until the Revolving Loan Termination Date. The calculation of the Borrowing Base as of any time shall originally be made by Borrowers and certified by an Authorized Officer of Borrower Representative pursuant to the delivery of a Borrowing Base Certificate under Section 8.3 hereof; provided, however, that Administrative Agent shall have the right to review and adjust any such calculation, in its reasonable credit judgment, to the extent that the calculation was not made in accordance with this Agreement.

(b) **Reduction of Eligible Accounts and Establishment of Reserves; Eligible QAF Accounts.** Administrative Agent shall also have the right, in its reasonable credit judgment, and at any time and for any reason, to (i) reduce the dollar amount of Eligible Accounts by the amount of discounts, credits, allowances and returns of any kind then outstanding, issued, granted, owing, accrued or liable to be accrued; (ii) establish and fund reserves against the Borrowing Base and/or charge the same against the Revolving Facility as Revolving Loans at such time as it deems appropriate (including without limitation for any liabilities consisting of Approved Cash Management Obligations) and (iii) with respect to any Eligible QAF Accounts, the Administrative Agent in its reasonable credit judgment may adjust the advance rates, the reserves and eligibility periods.

#### **(c) Swingline Loans.**

(i) Administrative Agent may convert any request by a Borrower for a Revolving Loan into a request for an advance under the Swingline Loan. The Swingline Loan shall not exceed in the aggregate at any time outstanding the Maximum Swingline Loan Amount. In the event that on any Business Day Swingline Lender desires that all or any portion of the Swingline Loan should be reduced in whole or in part, Swingline Lender shall promptly notify Administrative Agent to that effect and indicate the portion of the Swingline Loan to be reduced. Swingline Lender hereby agrees that it shall notify Administrative Agent to reduce the Swingline Loan to \$0 at least once every week. Administrative Agent agrees to transmit to Revolving Lenders the information contained in each notice received by Administrative Agent from Swingline Lender and shall concurrently notify Revolving Lenders of each Revolving Lender's Pro Rata Share of the obligation to make a Revolving Loan to repay the Swingline Loan (or portion thereof).



(ii) Each of the Revolving Lenders hereby unconditionally and irrevocably agrees to fund to Administrative Agent for the benefit of Swingline Lender, in lawful money of the United States and in same day funds, not later than 1:00 p.m. (New York City time) on the Business Day immediately following the Business Day of such Revolving Lender's receipt of such notice from Administrative Agent (provided that if any Revolving Lender shall receive such notice at or prior to 1:00 p.m. (New York City time) on a Business Day, such funding shall be made by such Revolving Lender on such Business Day), such Revolving Lender's Pro Rata Share of a Revolving Loan (which Revolving Loan shall be deemed to be requested by Borrowers) in the principal amount of such portion of the Swingline Loan which is required to be paid to Swingline Lender under this Section 2.1(c) (regardless of whether the conditions precedent thereto set forth in Article 3 are then satisfied and whether or not Borrower Representative has provided a Loan Notice and whether or not any Default or Event of Default exists or all or any of the Loans have been accelerated, but subject to the other provisions of this Section 2.1(c)). The proceeds of any such Revolving Loan shall be immediately paid over to Administrative Agent for the benefit of Swingline Lender for application to the Swingline Loan.

(iii) In the event that an Event of Default shall occur and either (A) such Event of Default is of the type described in Section 9.1(e) hereof or (B) no further Revolving Loans are being made under this Agreement, so long as any such Event of Default is continuing, then, each of Revolving Lenders (other than Swingline Lender) shall be deemed to have irrevocably, unconditionally and immediately purchased a participation in the Swingline Loan from Swingline Lender in an amount equal to such Revolving Lender's Pro Rata Share of the Revolving Commitment multiplied by the total amount of the Swingline Loan outstanding. Each Revolving Lender shall effect such purchase by making available the amount of such Revolving Lender's participation in the Swingline Loan in U.S. Dollars in immediately available funds to Administrative Agent's Account for the benefit of Swingline Lender. In the event any Revolving Lender fails to make available to Swingline Lender when due the amount of such Revolving Lender's participation in the Swingline Loan, Swingline Lender shall be entitled to recover such amount on demand from such Revolving Lender together with interest at the Federal Funds Effective Rate. Each such purchase by a Revolving Lender shall be made without recourse to Swingline Lender, without representation or warranty of any kind, and shall be effected and evidenced pursuant to documents reasonably acceptable to Swingline Lender. The obligations of Revolving Lenders under this Section 2.1(c) shall be absolute, irrevocable and unconditional, shall be made under all circumstances and shall not be affected, reduced or impaired for any reason whatsoever.

(iv) The unpaid principal amount of all Swingline Loans shall bear interest, subject to the terms hereof, at a per annum rate equal to LIBOR Rate plus the Applicable LIBOR Margin.

**2.2 [Reserved].**

**2.3 Funding of the Revolving Loans and Swingline Loans.**

(a) Each Revolving Loan and Swingline Loan shall be made upon Borrower Representative's irrevocable notice to Administrative Agent, which may be given by telephone by an Authorized Officer of Borrower Representative (so long as such telephonic notice is confirmed by the delivery of a written Loan Notice in accordance with the terms and conditions set forth in the next sentence). Each notice by Borrower Representative pursuant to this Section 2.3 must be confirmed promptly by delivery to Administrative Agent of a written Loan Notice, appropriately completed and signed by an Authorized Officer of Borrower Representative. Such Loan Notice must be received by

Administrative Agent (1) not later than 1:00 p.m. (New York City time) one (1) Business Day prior to the requested date of any Swingline Loan or (2) not later than 1:00 p.m. (New York City time) on the Business Day that is two (2) Business Days prior to the requested date of any Revolving Loan. Loan Notices received after 1:00 p.m. (New York City time) shall be deemed received on the next Business Day. Each Revolving Loan shall be in a principal amount of at least \$250,000.00 and integral multiples of \$50,000 in excess of such amount.

(b) Upon receipt of a Loan Notice, Administrative Agent will promptly notify each Lender of such Loan Notice and of the amount of such Lender's Pro Rata Share of the requested Revolving Loan. Each Lender shall promptly remit to Administrative Agent its Pro Rata Share of all funds disbursed on its behalf by Administrative Agent either before or after such disbursement as requested by Administrative Agent. If Administrative Agent requires funds from a Lender prior to disbursement to Borrowers, which Administrative Agent may so require in its sole and absolute discretion, Administrative Agent shall advise each such Lender by written notice in accordance with this Agreement of the amount of such Lender's Pro Rata Share of such requested disbursement no later than 5:00 p.m. (New York City time) on the Business Day prior to the funding date thereof, and each such Lender shall pay Administrative Agent its Pro Rata Share of such requested Revolving Loan, in same day funds, by wire transfer to Administrative Agent's account not later than 2:00 p.m. (New York City time) on the intended date of disbursement to Borrowers. If Administrative Agent shall have already disbursed funds to Borrowers, each Lender shall pay its Pro Rata Share thereof to Administrative Agent within one (1) Business Day of Administrative Agent's request therefor. If Administrative Agent shall have disbursed funds to Borrowers and any Lender fails to pay its Pro Rata Share thereof in accordance with this Agreement within one (1) Business Day of Administrative Agent's request therefor, Administrative Agent shall promptly notify Borrower Representative and Borrowers shall immediately repay such amount to Administrative Agent without premium or penalty. Nothing in any Loan Document shall be deemed to require Administrative Agent to advance funds on behalf of any Lender or to relieve any Lender from its obligation to fulfill its commitments under the Loan Documents (including those set forth in Section 12.12) or to prejudice any rights that Administrative Agent may have against any Lender as a result of any default by such Lender under the Loan Documents.

#### **2.4 Deposit Accounts and Control Agreements.**

(a) The Borrowers have established and shall maintain one or more Lockbox Accounts with Bank of America, N.A. (such depository institution, a "***Deposit Account Bank***"), subject to the provisions of this Agreement. Borrowers shall execute with the Deposit Account Bank a deposit account control agreement for each Lockbox Account in form and substance acceptable to Administrative Agent. Each Borrower shall ensure that all Collections of Accounts (including QAF Accounts) are paid directly into and deposited in the Lockbox Account of the applicable Borrower, and that all funds deposited into the Lockbox Account are immediately transferred into a depository account owned by a Borrower and subject to a deposit account control agreement in form and substance acceptable to Administrative Agent (the "***Concentration Account***") and that all funds deposited into the Concentration Account shall immediately be transferred to the Administrative Agent's Account for application to the Obligations in accordance with the terms and conditions of this Agreement. In addition, each Borrower shall ensure that the net proceeds from any Asset Disposition and any proceeds of insurance or condemnation awards paid are paid directly into the Escrow Deposit Account.

(b) The Borrowers may establish subaccounts of the Escrow Deposit Account as appropriate to hold funds on account of separate prepetition collateral pools, as may be directed by the Bankruptcy Court; provided that such subaccounts shall be subject to the requirements of Section 5.18.

(c) If any Borrower receives any Collections that should have been sent to a Lockbox Account, such Borrower shall promptly upon receipt (and in any event within one (1) Business Day of receipt) forward such Collections directly to the applicable Lockbox Account or the Concentration Account, as applicable, in the form received, and promptly notify Administrative Agent of such event. Until so forwarded, such Collections shall be held in trust for the benefit of Administrative Agent and Lenders.

(d) No Credit Party shall withdraw any amounts from any Lockbox Account, nor shall any Credit Party change the procedures or sweep instructions under any agreement governing a Lockbox Account. Each Credit Party shall cooperate with Administrative Agent in the identification and reconciliation on a daily basis of all amounts received in or required to be deposited into a Lockbox Account.

(e) Notwithstanding anything in any account instruction agreement or deposit account agreement to the contrary, each Credit Party agrees that it shall be liable for any fees and charges in effect from time to time and charged by the Deposit Account Bank in connection with the deposit accounts, and that neither Administrative Agent nor any Lender shall have any liability therefor. Each Credit Party agrees that all payments made to the Administrative Agent's Account or otherwise received by Administrative Agent, whether in respect of the Accounts or as proceeds of other Collateral or otherwise, may be applied by Administrative Agent on account of the Obligations. Each Credit Party further acknowledges and agrees that, to the extent such fees and charges are not paid by such Credit Party directly but are satisfied using Collections in the Deposit Accounts, such fees and charges shall be deemed to be Revolving Loans made by Lenders hereunder and, to the extent that the payment of such fees or charges by such Credit Party as provided herein results in any overadvance under Section 2.5 of this Agreement, such Credit Party agrees to immediately (upon notice to Borrower Representative) repay to Administrative Agent (for the benefit of itself and the Lenders) the amount of such overadvance. Each Credit Party agrees to indemnify and hold Administrative Agent harmless from any and all liabilities, claims, losses and demands whatsoever, including the fees and disbursements of legal counsel for Administrative Agent, including the charges of internal legal counsel, arising from or relating to actions of Administrative Agent or the Deposit Account Bank pursuant to this Section 2.4 or any deposit account agreement.

(f) Each Credit Party agrees that all payments made to the Administrative Agent's Account or otherwise received by Administrative Agent, whether in respect of the Accounts or as proceeds of other Collateral or otherwise, will be applied on account of the Obligations in accordance with the terms of this Agreement, but, for purposes of calculating interest and fees hereunder, shall be subject to a two (2) Business Day clearance period.

(g) Each Credit Party acknowledges and agrees that compliance with the provisions of this Section 2.4 is a material term of this Agreement and that, in addition to and notwithstanding any other rights Administrative Agent and the Lenders may have hereunder, under any other Loan Document, under Applicable Law or at equity, upon each and every failure by any Credit Party to comply with any of such provisions Administrative Agent shall be entitled to assess a non-compliance fee which shall operate to increase the rate of interest otherwise in effect hereunder with respect to the Loans by two percent (2.0%) per annum during any period of non-compliance, whether or not a Default or an Event of Default occurs or is declared, provided that nothing shall prevent Administrative Agent from considering any failure to comply with the provisions of this Section 2.4 to be a Default or an Event of Default.

(h) Each Borrower and each other Credit Party shall maintain at all times a valid and enforceable deposit account control agreement with respect to each deposit account of any such Borrower and any such other Credit Party (other than any deposit account dedicated exclusively to payroll purposes



or donor restricted funds), in form and substance satisfactory to Administrative Agent in its reasonable discretion. Borrowers shall not maintain a greater balance in their payroll accounts than is necessary to support Borrowers' current payroll and payroll for one additional payroll cycle (bi-monthly or weekly as applicable). No Borrower shall (i) permit any donor restricted funds to be deposited or held in a Lockbox Account, the Concentration Account or any operating account that holds funds other than donor restricted funds or (ii) otherwise allow such funds to be commingled with any other funds of the Borrowers.

**2.5 Borrowing Base Exceeded.** If for any reason the Outstanding Amount at any time exceeds Availability, Borrowers shall immediately prepay outstanding Loans in an aggregate amount equal to such excess.

**2.6 Repayment of the Loans.** Notwithstanding the provisions of Section 362 of the Bankruptcy Code, and without further application to or order of the Bankruptcy Court, all of the Obligations shall be immediately due and payable upon the Revolving Loan Termination Date. Borrowers hereby unconditionally promise to pay to the Administrative Agent, on behalf of the Lenders, on the Revolving Loan Termination Date, the aggregate outstanding principal amount of the Loans as of such date together with interest (with interest being determined in accordance with the provisions of Section 2.7(a)) and all other Obligations outstanding and unpaid hereunder.

**2.7 Interest.**

(a) The unpaid principal amount of all Loans under the Revolving Facility shall bear interest, subject to the terms hereof, at a per annum rate equal to the LIBOR Rate plus the Applicable LIBOR Margin.

(b) Interest shall be payable monthly, in arrears, on each Payment Date, on the Revolving Loan Termination Date and as otherwise provided in this Agreement.

**2.8 Additional Interest Provisions.**

(a) All computations of interest for the Loans shall be made on the basis of a year of 360 days and calculated for actual days elapsed.

(b) Notwithstanding the provisions of Section 362 of the Bankruptcy Code, after the occurrence and during the continuance of an Event of Default hereunder, Administrative Agent may, in its sole discretion, or upon the request of the Required Lenders shall, increase the per annum effective rate of interest applicable to the Loans to the Default Rate. All such increases may be applied retroactively to the date of the occurrence of the Event of Default. Each Borrower agrees that the Default Rate payable to Lenders is a reasonable estimate of Lenders' damages and is not a penalty.

(c) All contractual rates of interest chargeable on outstanding principal under the Revolving Loans shall continue to accrue and be paid even after Default, an Event of Default, maturity, acceleration, judgment, Insolvency Proceedings or the happening of any other event or occurrence similar or dissimilar to the foregoing.

**2.9 Fees and Charges.**

(a) Contemporaneously with Borrowers' execution of this Agreement, Borrowers shall pay Administrative Agent, for the benefit of all Lenders committed to make Revolving Loans on the Closing Date, in accordance with their respective Pro Rata Share, a fee in an amount equal to (i) the

Revolving Commitment, *multiplied by* (ii) one and one quarter percent (1.25%). All fees payable pursuant to this clause (f) shall be non-refundable as of the Closing Date.

(b) [Reserved].

(c) On each Payment Date, on the Revolving Loan Termination Date and as otherwise provided in this Agreement, Borrowers shall pay to Administrative Agent, for the benefit of Lenders in accordance with their Pro Rata Shares, an unused fee in an amount equal to 0.75% per annum of the difference derived by subtracting (i) the average daily Outstanding Amount during the preceding month, from (ii) the Revolving Commitment.

(d) All fees hereunder shall be computed on the basis of a year of 360 days and calculated for the actual number of days elapsed in each calculation period. All fees hereunder shall be non-refundable and deemed fully earned when due and payable.

## **2.10 Use of Proceeds.**

(a) The extensions of credit under and proceeds of the Revolving Loans pursuant to the Revolving Facility shall be made available subject to the terms and conditions herein (including but not limited to the absence of an Event of Default) and used in accordance with the Budget exclusively for (i) payment of all fees and expenses due to Administrative Agent and Lenders pursuant to this Agreement, (ii) financing ongoing debtor in possession working capital needs, maintenance and preservation of Borrowers' assets, general corporate purposes relating to postpetition operations and related costs, fees and expenses of the Bankruptcy Cases, (iii) payment of the administration expenses of the Bankruptcy Cases as approved by the Bankruptcy Court, (iv) to make adequate protection payments (absent the existence of a Default or Event of Default) to the Specified Prepetition Secured Creditors and (v) to pay Daly City, California special tax assessments, for the benefit of the PACE Bond Trustee.

(b) Notwithstanding anything to the contrary set forth herein or in any other Loan Document, no portion of the Revolving Loans, the Collateral, the Carve-Out funds or cash collateral of Administrative Agent or Lenders may be used to fund any activities: (i) preventing, hindering, or delaying any of Administrative Agent's or the Lenders' enforcement or realization upon any of the Collateral; (ii) using or seeking to use Administrative Agent's or any Lenders' cash collateral or selling or otherwise disposing of any of the Collateral (other than Permitted Asset Dispositions) without the consent of the Administrative Agent and the Required Lenders; (iii) using or seeking to use any insurance proceeds constituting Collateral without the consent of the Administrative Agent and the Required Lenders; (iv) except as permitted under Section 6.3, incurring Indebtedness without the prior written consent of Administrative Agent and the Required Lenders; (v) objecting or challenging in any way any claims, Liens, Collateral (including cash collateral) held by or on behalf of any of Administrative Agent or the Lenders; (vi) asserting any claims or causes of action including, without limitation, any action under Chapter 5 of the Bankruptcy Code, against any of Administrative Agent, the Lenders, or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees; (vii) prosecuting an objection to, or contesting in any manner, or raising defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the Obligations, the Liens of Administrative Agent securing the Obligations or any other rights or interests of any of Administrative Agent or the Lenders; or (viii) taking any action which (A) has or could have the effect of adversely modifying or compromising the rights and remedies of Administrative Agent or the Lenders, or (B) is contrary, in a manner adverse to Administrative Agent or the Lenders, to any term or condition set forth in any of the Financing Orders or the other Loan Documents.

**2.11 Evidence of Indebtedness.** The Loans made by any Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be prima facie evidence of the existence and amounts of the Loans and shall be conclusive absent manifest error with respect to the amount of the Loans and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrowers hereunder to pay any amount owing with respect to the Obligations. The Borrowers shall, upon the request of any Lender, execute and deliver to the Administrative Agent a Revolving Note or Swingline Note (as applicable) for such Lender, which Note shall evidence such Lender's applicable Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, amount and maturity of its Loans and payments with respect thereto.

**2.12 Payments Generally.** All payments to be made by Borrowers shall be made without condition or deduction for any counterclaim, defense, recoupment or set-off. Except as otherwise expressly provided herein, all payments by Borrowers hereunder shall be made in Dollars immediately available to Administrative Agent, on behalf of Lenders, by 11:00 a.m. (New York City time), on the date such payment is due, to Administrative Agent by deposit to the Administrative Agent's Account or to such other deposit account as Administrative Agent may designate by written notice to Borrower Representative. All payments received by Administrative Agent after 11:00 a.m. (New York City time) shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by Borrowers shall become due on a day other than a Business Day, payment shall be made on the next following Business Day. Each Borrower hereby grants to Administrative Agent the right, in Administrative Agent's discretion, without notice to any Borrower, to make Loans to make payments on the Obligations, including any and all interest, fees and Expenses, as and when due hereunder. Each Borrower acknowledges that such Borrower's failure to maintain sufficient funds in any deposit account for payment of any of the Obligations, or Administrative Agent's failure to make a Loan or withdrawal from any deposit account shall not relieve Borrowers of any payment obligation hereunder or any other Loan Document.

**2.13 Protective Advances.** (a) Borrowers and Lenders authorize Administrative Agent, in its sole discretion, at any time that a Default or Event of Default exists or any conditions in Article 3 are not satisfied, and without regard to the Revolving Commitment or the Borrowing Base, to make Revolving Loans ("**Protective Advances**") (a) in such amounts as Administrative Agent deems necessary or desirable to preserve or protect any Collateral, or to enhance the collectability or repayment of Obligations, or (b) to pay any other amounts chargeable to Borrowers under any Loan Documents, including fees, Expenses, taxes, assessments, insurance, repairs, maintenance, storage and other charges and expenditures upon, against or otherwise relating to the Collateral; provided, however, that the aggregate amount of Protective Advances outstanding at any time shall not exceed ten percent (10%) of the Revolving Commitment without the consent of the Required Lenders. All Protective Advances constitute Obligations, are secured by the Collateral, and shall be treated for all purposes as Revolving Loans.

(b) Upon Administrative Agent's making of any Protective Advances under this Section 2.13, each of the Lenders shall be deemed to have irrevocably, unconditionally and immediately purchased from Administrative Agent a participation in such Protective Advances in an amount equal to such Lender's Pro Rata Share of the Revolving Commitment multiplied by the total amount of such Protective Advances outstanding under this Section 2.13. Each Lender shall effect such purchase by making available the amount of such Lender's participation in such Protective Advances in U.S. Dollars in immediately available funds to Administrative Agent's Account. In the event any Lender fails to make available to Administrative Agent when due the amount of such Lender's participation in such Protective Advances, Administrative Agent shall be entitled to recover such amount on demand from such Lender



together with interest at the Federal Funds Effective Rate. Each such purchase by a Lender shall be made without recourse to Administrative Agent, without representation or warranty of any kind, and shall be effected and evidenced pursuant to documents reasonably acceptable to Administrative Agent. The obligations of the Lenders under this Section 2.13(b) shall be absolute, irrevocable and unconditional, shall be made under all circumstances and shall not be affected, reduced or impaired for any reason whatsoever.

#### **2.14 Taxes.**

(a) Defined Terms. For purposes of this Section 2.14, the term “Applicable Law” includes FATCA.

(b) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Credit Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If any Applicable Law (as determined in the good faith discretion of the Administrative Agent) requires the deduction or withholding of any Tax from any such payment by the Administrative Agent or a Credit Party, then the Administrative Agent or such Credit Party shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Credit Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(c) Payment of Other Taxes by the Credit Parties. The Credit Parties shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(d) Indemnification by the Borrower. The Credit Parties shall jointly and severally indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Credit Parties by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Credit Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Credit Parties to do so), (ii) any Taxes attributable to such Lender’s failure to comply with the provisions of Article 10 relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan

Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this Section 2.14(e).

(f) Evidence of Payments. As soon as practicable after any payment of Taxes by any Credit Party to a Governmental Authority pursuant to this Section 2.14, such Credit Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(g) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrowers and the Administrative Agent, at the time or times reasonably requested by the Borrowers or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrowers or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrowers or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrowers or the Administrative Agent as will enable the Borrowers or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in clauses (ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, if any Borrower is a U.S. Person,

A. any Lender that is a U.S. Person shall deliver to the Borrowers and the Administrative Agent on or prior to the date on which such Lender becomes a Lender hereunder (and from time to time thereafter upon the reasonable request of the Borrowers or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

B. any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrowers and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender hereunder (and from time to time thereafter upon the reasonable request of the Borrowers or the Administrative Agent), whichever of the following is applicable:

1. in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. federal

withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

2. executed copies of IRS Form W-8ECI;

3. in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in form reasonably acceptable to Administrative Agent to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of any Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "*U.S. Tax Compliance Certificate*") and (y) executed copies of IRS Form W-8BEN; or

4. to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, a U.S. Tax Compliance Certificate substantially in the form reasonably acceptable to Administrative Agent, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form reasonably acceptable to Administrative Agent on behalf of each such direct and indirect partner;

C. any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrowers and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender hereunder (and from time to time thereafter upon the reasonable request of the Borrowers or the Administrative Agent), executed copies of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit the Borrowers or the Administrative Agent to determine the withholding or deduction required to be made; and

D. if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrowers and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrowers or the Administrative Agent such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrowers or the Administrative Agent as may be necessary for the Borrowers and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.



Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrowers and the Administrative Agent in writing of its legal inability to do so.

(h) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.14 (including by the payment of additional amounts pursuant to this Section 2.14), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this Section 2.14(h) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) if such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 2.14(h), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 2.14(h) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 2.14(h) shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(i) Survival. Each party's obligations under this Section 2.14 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Revolving Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

## **2.15 Increased Costs.**

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, converting to, continuing or maintaining any Loan or of maintaining its obligation to make any such Loan, or to reduce the amount of any sum received or receivable by such Lender or other Recipient hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or other Recipient, the Borrowers will pay to such Lender or other Recipient, as the case may be,

such additional amount or amounts as will compensate such Lender or other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender determines that any Change in Law affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Revolving Commitments of such Lender or the Loans made by, or participations in Swingline Loans held by, such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time the Borrowers will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in Sections 2.15(a) or (b) and delivered to the Borrowers, shall be conclusive absent manifest error. The Borrowers shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Borrowers shall not be required to compensate a Lender pursuant to this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender notifies the Borrowers of the Change in Law giving rise to such increased costs or reductions, and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) In the event that any change in market conditions or any Change in Law shall at any time after the date hereof, in the reasonable opinion of any Lender, make it unlawful or impractical for such Lender to determine or charge interest rates at the LIBOR Rate, such Lender shall give notice of such changed circumstances to Administrative Agent and Borrowers and Administrative Agent promptly shall transmit the notice to each other Lender and while such circumstances continue, the Revolving Loans held by such Lender shall be converted from accruing interest a per annum rate equal to the LIBOR Rate plus the LIBOR Rate Margin to accruing interest at a per annum rate equal to the Base Rate plus such applicable margin as will result in the same effective rate of interest applicable immediately prior to such conversion.

(f) After the occurrence and during the continuance of an Event of Default hereunder, each Lender may, in its sole discretion, provide Administrative Agent and Borrowers notice of its election to charge interest rates at the Base Rate, and Administrative Agent promptly shall transmit the notice to each other Lender and during the continuance of such Event of Default, the Revolving Loans held by such Lender shall be converted from accruing interest a per annum rate equal to the LIBOR Rate plus the LIBOR Rate Margin to accruing interest at a per annum rate equal to the Base Rate plus such applicable margin as will result in the same effective rate of interest applicable immediately prior to such conversion.

**2.16 Effective Date and Termination.** This Agreement shall become effective on the Closing Date and shall continue in full force and effect until the Revolving Loan Termination Date unless sooner terminated as herein provided. Borrowers may terminate this Agreement prior to the Revolving

Loan Termination Date with at least thirty (30) Business Days' prior written notice thereof to Administrative Agent, upon (a) the payment in full of all outstanding Loans, together with accrued and unpaid interest thereon, and (b) the payment in full of all fees, Expenses and other Obligations together with accrued and unpaid interest thereon.

**2.17 Effect of Termination.** The termination of this Agreement shall not affect any Credit Party's, the Administrative Agent's, any Lender's or any Lender Affiliate's rights, or any of the Obligations having their inception prior to the effective date of such termination, and the provisions hereof shall continue to be fully operative until all transactions entered into, rights or interests created or Obligations have been fully disposed of, concluded or liquidated. The security interests, Liens and rights granted to the Administrative Agent and Lenders hereunder and under the other Loan Documents shall continue in full force and effect, notwithstanding the termination of this Agreement or the fact that the Revolving Facility may from time to time be temporarily in a zero position, until all of the Obligations of each Credit Party have been paid in full after the termination of this Agreement. Accordingly, each Credit Party waives any rights which it may have under the UCC to demand the filing of termination statements with respect to the Collateral, and the Administrative Agent shall not be required to send such termination statements to each Credit Party, or to file them with any filing office, unless and until this Agreement shall have been terminated in accordance with its terms and all Obligations shall have been paid in full in immediately available funds.

### **ARTICLE 3 CONDITIONS PRECEDENT TO LOANS**

**3.1 Conditions of Initial Revolving Loan.** The obligation of Lenders to make the initial Revolving Loan hereunder on the Closing Date (the "**Closing**") is subject to satisfaction of each of the following conditions precedent:

(a) Administrative Agent shall have received all of the following deliverables, each in form and substance satisfactory to Administrative Agent:

(i) the Interim Order shall (A) have been entered without opposition by any Specified Prepetition Secured Creditor, the PACE Bond Trustee, NantWorks, LLC or any other Person identified by Administrative Agent, (B) shall have been entered not later than three (3) days following the Petition Date and (C) be in effect and shall not have been reversed, modified, amended or stayed, and no motion seeking a reversal, modification, amendment or stay shall have been filed by any Person;

(ii) Administrative Agent shall have received the Initial Cash Flow Forecast, which shall be dated no more than seven (7) days prior to the Interim Hearing, and the Initial Budget, in each case in form and substance satisfactory to the Administrative Agent;

(iii) executed counterparts of this Agreement and the other Loan Documents required by Administrative Agent to be executed on the Closing Date;

(iv) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Authorized Officers of each Credit Party as Administrative Agent may require;

(v) such Organization Documents and certifications as Administrative Agent may require to evidence that each Credit Party is duly organized or formed, and that each Credit Party is validly existing, in good standing and qualified to engage in business in each jurisdiction



where its ownership, lease or operation of properties or the conduct of its business requires such qualification;

(vi) a certificate signed by an Authorized Officer of each Credit Party either (A) certifying that all consents, licenses and approvals required in connection with the execution, delivery and performance by the Credit Parties and the validity against the Credit Parties of the Loan Documents are in full force and effect and have been delivered to Administrative Agent, or (B) stating that no such consents, licenses or approvals are so required;

(vii) a certificate signed by an Authorized Officer of Borrowers certifying: (A) that the conditions specified in Section 3.1 have been satisfied, (B) that there has been no event or circumstance since the public disclosures on August 14, 2018 for the period ending June 30, 2018 that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect, and (C) that no event or circumstance has occurred or exists that constitutes a Default or an Event of Default;

(viii) correct and complete certified copies of (i) each Lease Agreement, (ii) each Material Contract, (iii) [reserved], and (iv) all "first day orders" entered at the time of commencement of the Bankruptcy Cases, in each case together with all applicable amendments thereto, all of which shall be acceptable to Administrative Agent in its sole and absolute discretion; and

(ix) evidence that all Required Insurance has been obtained and is in effect;

(b) Administrative Agent, for the benefit of itself and the Lenders, as applicable, shall have received payment in full of all fees required to be paid under Section 2.9 on or before the Closing Date;

(c) Administrative Agent shall have valid and perfected super-priority Liens on the Collateral pursuant to the Financing Orders, and no further action by any entity shall be required to perfect such Liens; *provided* that Administrative Agent may, in its sole and absolute discretion, file UCC financing statements, require delivery of certificated equity interests required to be pledged, and require execution and delivery of intellectual property security agreements, in each case in suitable form for filing;

(d) Administrative Agent shall have received a completed Borrowing Base Certificate and a pro forma Compliance Certificate;

(e) Administrative Agent shall have received such financial statements, reports, certifications, and other operational information required to be delivered hereunder or otherwise required by Administrative Agent, which shall include financial statements of the type required to be delivered under (i) Section 8.4(d) for the three (3) Fiscal Years preceding the Closing Date and (ii) Section 8.4(b) for the calendar month and year-to-date period most recently ended at least thirty (30) days prior to the Closing Date;

(f) the payment of all reasonable and documented out-of-pocket fees, costs and expenses associated with the transactions contemplated by this Agreement, the Interim Order and the other Loan Documents incurred by the Administrative Agent or the Lenders;

(g) each Borrower and each other Credit Party shall have executed and filed IRS Form 8821 with the appropriate office of the Internal Revenue Service;

(h) at least three (3) days prior to the Closing Date, each Credit Party shall have provided all documentation and other information that the Administrative Agent or such Lender requests at least five (5) Business Days prior to the Closing Date in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act;

(i) Administrative Agent shall have received and be satisfied with background checks on certain owners and senior management of the Borrowers;

(j) Administrative Agent shall be satisfied with the results of its review of a quality of earnings report, a field examination, site visits, and due diligence with respect to the Credit Parties, including healthcare and regulatory due diligence;

(k) the Closing Date shall have occurred on or prior to two (2) business days after the entry of the Interim Order; and

(l) Administrative Agent shall have received such other assurances, certificates, documents, consents or opinions as Administrative Agent or any Lender reasonably may require.

**3.2 Conditions to all Loans.** The obligation of the Lenders to make any Revolving Loan is subject to satisfaction of each of the following conditions precedent:

(a) The representations and warranties of each Borrower and each other Credit Party contained in Article 4 or any other Loan Document (excluding the representation that there exists no Default (but only to the extent such Default has not become an Event of Default)), shall be true and correct in all material respects (provided that any representation or warranty that is qualified as to "materiality", "Material Adverse Effect" or similar language shall be true and correct in all respects) on and as of the date of such Revolving Loan, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (provided that any representation or warranty that is qualified as to "materiality", "Material Adverse Effect" or similar language shall be true and correct in all respects) as of such earlier date, and except that for purposes of this Section 3.2, the representations and warranties contained in Section 4.9 shall be deemed to refer to the most recent Borrowing Base Certificate and financial statements furnished pursuant to Sections 8.3 and 8.4;

(b) No Event of Default shall exist, or would result from such proposed Loan or from the application of the proceeds thereof;

(c) Administrative Agent shall have received, in form and substance satisfactory to it, such other assurances, certificates, documents or consents related to the foregoing as Administrative Agent reasonably may require; and

(d) Each Loan Notice submitted by Borrowers shall be deemed to be a representation and warranty that the conditions specified in this Section 3.2 have been satisfied on and as of the date of the applicable Loan.

**3.3 Final Funding Conditions.** The obligation of Lenders to make Revolving Loans in excess of the Interim Commitment Amount is subject to satisfaction of each of the following conditions precedent:

(a) the conditions set forth in Sections 3.1 and 3.2 shall be met on and as of such date;

(b) the Final Order shall (A) have been entered without opposition by any Specified Prepetition Secured Creditor, the PACE Bond Trustee, NantWorks, LLC or any other Person identified by Administrative Agent, (B) shall have been entered not later than thirty (30) days following the entry of the Interim Order and (C) be in effect and shall not have been reversed, modified, amended or stayed, and no motion seeking a reversal, modification, amendment or stay shall have been filed by any Person;

(c) the final report with respect to the full scope of the field exam shall be completed in form and substance satisfactory to Administrative Agent; and

(d) Administrative Agent shall have received, in form and substance satisfactory to it, such other assurances, certificates, documents or consents related to the foregoing as Administrative Agent reasonably may require.

**3.4 Limited Waiver of Conditions Precedent.** If any Lender funds any Loan or grants any other accommodation, or if Swingline Lender funds any Swingline Loan, when any conditions precedent are not satisfied (regardless of whether the lack of satisfaction was known or unknown at the time), it shall not operate as a waiver of (a) the right of such Lender to insist upon satisfaction of all conditions precedent with respect to any subsequent funding, issuance, creation or grant; or (b) any Default or Event of Default due to such failure of conditions or otherwise.

#### **ARTICLE 4 REPRESENTATIONS AND WARRANTIES**

Each Borrower and each other Credit Party represents and warrants to Administrative Agent and Lenders that, as of the Closing Date and as of the date of the making of each Loan or other extension of credit hereunder:

**4.1 Organization.** Each Borrower and each other Credit Party has been duly organized and is validly existing and in good standing under the laws of the state of its formation, with requisite power and authority, and all rights, licenses, permits and authorizations, governmental or otherwise, necessary to own its properties and to transact its business. Each Borrower and each other Credit Party is duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, business and operations.

**4.2 Authorization; Enforceability.** Each Borrower and each other Credit Party has taken all necessary action to authorize the execution, delivery and performance of the Loan Documents to which it is a party. The Loan Documents have been duly executed and delivered by each Borrower and each other Credit Party and constitute legal, valid and binding obligations of each Borrower and each other Credit Party enforceable against such Borrower and such other Credit Party in accordance with their respective terms, subject to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and general principles of equity. The Loan Documents are not subject to, and neither Borrower nor any other Credit Party has asserted, any right of rescission, set-off, counterclaim or defense, including the defense of usury. No exercise of any of the terms or conditions of the Loan Documents, or any right thereunder, will render any Loan Document unenforceable.

**4.3 No Conflicts.** The execution, delivery and performance of the Loan Documents by each Borrower and each other Credit Party and the transactions contemplated thereby will not (a) conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any Lien (other than pursuant to the Loan Documents) upon any of the



properties and assets of any Borrower or any other Credit Party pursuant to the terms of, any agreement or instrument to which such Borrower or such other Credit Party is a party or by which its property is subject or (b) result in any violation of any Applicable Laws relating to any Borrower, any Credit Party or the property or assets of the foregoing. Other than the entry of the Financing Orders, any consent, approval, authorization, order, registration or qualification of or with any Governmental Authority required for the execution, delivery and performance by each Borrower and each other Credit Party of the Loan Documents has been obtained and is in full force and effect.

**4.4 Litigation.** As of the Closing Date, there are no actions, suits or other proceedings at law or in equity by or before any Governmental Authority pending or threatened against or affecting any Borrower, any other Credit Party or any Healthcare Facility or otherwise relating to the operations of any Healthcare Facility, in which the amount of claimed damages, fines or other liabilities is in excess of \$500,000, except as set forth on Schedule 4.4 hereto. There are no facts, circumstances or conditions that would reasonably be expected to form the basis for any material investigation, suit, claim, audit, action (legal or regulatory) or proceeding (legal or regulatory) by a Governmental Authority against or affecting any Credit Party relating to any Healthcare Law. There are no actions, suits or other proceedings at law or in equity by or before any Governmental Authority now pending or threatened against or affecting any Borrower, any other Credit Party or any Healthcare Facility (other than the Bankruptcy Cases), which could reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect.

**4.5 Restrictive Agreement.** No Borrower or Credit Party is a party to any Restrictive Agreement (other than a Restrictive Agreement entered into in connection with a purchase or lease of fixed or capital assets, including real property, that prohibits Liens on such fixed or capital assets).

**4.6 Title.** Each Borrower and each other Credit Party owns the property granted by it as Collateral under the Collateral Documents, free and clear of any and all Liens (other than Permitted Liens). Upon the entry of the Financing Orders, the Liens granted pursuant to the Collateral Documents will constitute valid and enforceable First Priority Liens on the Collateral in favor of Administrative Agent (for the benefit of itself and the Lenders).

**4.7 [Reserved].**

**4.8 [Reserved].**

**4.9 Full and Accurate Disclosure.** No statement of fact made by any Borrower or any other Credit Party in any Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained therein not misleading. There is no material fact presently known to any Borrower or any other Credit Party that has not been disclosed to Administrative Agent and Lenders which adversely affects, or, as far as any Borrower or any other Credit Party can foresee, might adversely affect, the Healthcare Facilities or the business, operations or condition (financial or otherwise) of any Borrower or any other Credit Party. All financial data, including the statements of cash flow and income and operating expense, that have been delivered to Administrative Agent and Lenders in respect of each Borrower, each other Credit Party and the Healthcare Facilities (i) are true, complete and correct in all material respects, (ii) accurately represent the financial condition of each Borrower, each other Credit Party and the Healthcare Facilities as of the date of such reports, and (iii) to the extent prepared by an independent certified public accounting firm, have been prepared in accordance with GAAP consistently applied throughout the periods covered, except as disclosed therein. No Credit Party has any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments, unrealized or anticipated losses from any unfavorable commitments or any liabilities or obligations not expressly permitted by this Agreement. Since the financial statements delivered to Administrative Agent and the Lenders dated as of May 31, 2018, except for the filing of the Bankruptcy

Cases and the Asset Sales, there has been no material adverse change in the financial condition, operations or business of any Borrower, any other Credit Party or the Healthcare Facilities from that set forth in such financial statements which has not been disclosed to the Administrative Agent in writing.

**4.10 Tax Filings.** To the extent required, each Borrower and each other Credit Party has filed or has filed on its behalf (or has obtained effective extensions for filing) all federal, state and local tax returns required to be filed and have paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments payable by each Borrower and each other Credit Party. The tax returns of each Borrower and each other Credit Party (if any) properly reflect the income and taxes of such Borrower and such other Credit Party for the periods covered thereby, subject only to reasonable adjustments required by the Internal Revenue Service or other applicable tax authority upon audit.

**4.11 No Plan Assets.** As of the Closing Date and at all times thereafter (i) no Credit Party is and will not be an "employee benefit plan," as defined in Section 3(3) of ERISA, (ii) none of the assets of any Credit Party constitutes or will constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101, (iii) no Credit Party is nor will be a "governmental plan" within the meaning of Section 3(32) of ERISA, and (iv) transactions by or with Credit Parties are not and will not be subject to state statutes regulating investment of, and fiduciary obligations with respect to, governmental plans.

**4.12 Compliance.** Each Borrower and each other Credit Party is in compliance with the requirements of all Applicable Laws and all Governmental Authorizations applicable to it or to its properties, except in such instances in which (a) such requirement of Applicable Law or order, writ, injunction or decree is being reasonably contested in good faith by appropriate proceedings diligently conducted, or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

**4.13 Federal Reserve Regulations; Investment Company Act.** No part of the proceeds of the Loans will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose that would be inconsistent with such Regulation U or any other regulation of such Board of Governors, or for any purpose prohibited by Laws or any Loan Document. No Credit Party is (i) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; (ii) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 2005, as amended; or (iii) subject to any other Laws which purport to restrict or regulate its ability to borrow money.

**4.14 Ownership of Borrowers and other Credit Parties.** A list of the holders of the Equity Interests of each Borrower and each other Credit Party is set forth on Schedule 4.14 hereto, and no other Person has any rights and/or claim to any issued or unissued Equity Interest of any Borrower or any other Credit Party, except as set forth on Schedule 4.14.

**4.15 Material Contracts.** A list of all Material Contracts as of the Closing Date is set forth on Schedule 4.15. Borrowers have delivered to Administrative Agent true and correct copies of all Material Contracts. Each Material Contract is in full force and effect. Except as a result of the filing of the Bankruptcy Cases, there is no default, breach or violation existing thereunder, and no event has occurred (other than payments due but not yet delinquent) that, with the passage of time or the giving of notice, or both, would constitute a default, breach or violation thereunder, by either party thereto. None of the Material Contracts have been amended or modified except pursuant to a written agreement which has been delivered to Administrative Agent.

**4.16 Compliance with Environmental Laws.** Each Credit Party's past or present operations, real estate or other properties and assets, including the Healthcare Facilities, are not subject to any investigation of any Governmental Authority to determine whether any remedial action is needed to address any environmental pollution, Hazardous Material or environmental clean-up. No Credit Party has received any Environmental Notice. No Credit Party has any contingent liability with respect to any Environmental Release, environmental pollution or Hazardous Materials on any real estate now or previously owned, leased or operated by it, including the Healthcare Facilities.

**4.17 Employee Matters.** There are no controversies pending or, to the knowledge of any Credit Party, threatened between any Credit Party and any of its employees, agents or independent contractors, other than employee grievances arising in the ordinary course of business which, in the aggregate, could not reasonably be expected to have a Material Adverse Effect, and each Credit Party is in compliance with all Applicable Laws respecting employment and employment terms, conditions and practices, except for such noncompliance which could not reasonably be expected to have a Material Adverse Effect.

**4.18 Intellectual Property.** Each Credit Party owns or has the legal right to use adequate Intellectual Property to conduct its business as heretofore conducted by it, except to the extent that any such failure could not reasonably be expected to have a Material Adverse Effect. No claim or litigation regarding any of the foregoing is pending or, to the best knowledge of any Credit Party, threatened, by any Licensor or other Person against any Credit Party, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

**4.19 Healthcare Authorizations.** Each Borrower and each other Credit Party (a) have, or have made timely application for all Healthcare Authorizations and other rights from, and have made all declarations and filings with, all applicable Governmental Authorities, all self-regulatory authorities and all courts and other tribunals necessary to engage in the ownership, management and operation of the Healthcare Facilities as presently conducted, and (b) have not received a Material Citation, nor have any knowledge that any Governmental Authority is considering limiting, suspending or revoking any Healthcare Authorization. All of such Healthcare Authorizations are valid and in full force and effect and Borrower and each other Credit Party are in material compliance with the terms and conditions of all such Healthcare Authorizations.

**4.20 HIPAA Compliance.** Each Borrower and other Credit Party and, with respect to the Healthcare Facilities, any Manager (a) is in compliance in all material respects with HIPAA, (b) has undertaken or will promptly undertake all necessary surveys, audits, inventories, reviews, analyses and/or assessments (including any necessary risk assessments) of all areas of its business and operations required by HIPAA and (c) has in place a HIPAA compliance program and is in material compliance with its HIPAA compliance program. Neither the Borrower nor any other Credit Party has received any request to make available to the Secretary of the U.S. Department of Health and Human Services or any other Governmental Authority any of its internal practices, books and records relating to the use and disclosure of protected health information. There has not been any Breach of PHI as defined at 45 C.F.R. §164.402, or violations of any security policy regarding, or any unauthorized access of, any data or information used by the Borrower and the other Credit Parties.

**4.21 Reimbursement; Third-Party Payors.** Each Borrower and each other Credit Party has provided to Administrative Agent copies of all participation agreements with Third-Party Payors with respect to the business operations of each Borrower and each other Credit Party. The Healthcare Facilities and the Healthcare Services provided at such Healthcare Facilities are qualified for participation in the Government Reimbursement Programs, and each Borrower and each other Credit Party is entitled to reimbursement under the Government Reimbursement Programs for Healthcare Services rendered at



such Healthcare Facilities to qualified beneficiaries, and each Borrower and each other Credit Party complies with the conditions of participation in all Government Reimbursement Programs and related contracts. Each Borrower and each other Credit Party is in compliance in all material respects with contracts with Non-Government Payors and is entitled to reimbursement under such contracts. Without limitation, there is no condition not complied with that could reasonably be expected to jeopardize participation in any Government Reimbursement Program or related contracts or otherwise could reasonably be expected to have a Material Adverse Effect. Borrowers are in compliance, and will continue to comply, with all requirements for eligibility for supplemental payments under the QAF Program.

#### **4.22 Compliance with Healthcare Laws.**

(a) Each Borrower and each other Credit Party has timely filed or caused to be timely filed, all material cost reports and other reports of every kind whatsoever required by a Government Reimbursement Program, to have been filed or made with respect to the business operations of any such Borrower and any such Credit Party. There are no materials claims, actions or appeals filed, pending or threatened (and neither any Borrower nor any other Credit Party has filed any claims or reports which would result in any such material claims, actions or appeals) before any Governmental Authority pertaining to any such Borrower's or any such Credit Party's business operations including any intermediary or contractor, the Provider Reimbursement Review Board or the Administrator of CMS, with respect to any Medicare or Medicaid cost reports or claims filed by any such Borrower or any such other Credit Party, or any disallowance by any Governmental Authority in connection with any audit of such cost reports;

(b) No Borrower, Credit Party or Manager (i) has been served with or received any written search warrant, subpoena, civil investigative demand or contact letter from any Governmental Authority related to its business operations or any Healthcare Facility or (ii) is currently (nor has been) subject to: (1) any investigation, inspection or inquiry by any Governmental Authority related to any license or licensure standards applicable to any Borrower or any other Credit Party; (2) any civil or criminal investigations, inquiries or audits involving and/or related to any federal, state or private payor healthcare fraud and abuse provisions or contractual prohibitions of healthcare fraud and abuse; or (3) any federal, state or private payor inquiry, investigation, inspection or audit regarding any Borrower or any other Credit Party or their activities, including any federal, state or private payor inquiry or investigation of any Person having "ownership, financial or control interest" in any Borrower or any other Credit Party (as that term is defined in 42 C.F.R. §420.201 et seq.) involving and/or related to healthcare fraud and abuse, false claims under 31 U.S.C. §§3729-3731 or any similar contractual prohibition, or any qui tam action brought pursuant to 31 U.S.C. § 3729 et seq.;

(c) No Credit Party, nor any director, officer, shareholder, employee, agent or Person with a "direct or indirect ownership or control interest" (as that phrase is defined in 42 C.F.R. §420.201) in any Borrower or any other Credit Party or Manager: (1) has had a civil monetary penalty assessed against him or her pursuant to 42 U.S.C. §1320a-7a; (2) has been excluded from participation in a Federal Health Care Program (as that term is defined in 42 U.S.C. §1320a-7b); (3) has been convicted (as that term is defined in 42 C.F.R. §1001.2) of any of those offenses described in 42 U.S.C. §1320a-7b or 18 U.S.C. §§669, 1035, 1347, 1518, including any of the following categories of offenses: (A) criminal offenses relating to the delivery of an item or service under any Federal Health Care Program (as that term is defined in 42 U.S.C. §1320a-7b) or healthcare benefit program (as that term is defined in 18 U.S.C. §24b); (B) criminal offenses under federal or state law relating to patient neglect or abuse in connection with the delivery of a healthcare item or service; (C) criminal offenses under Applicable Laws relating to fraud and abuse, theft, embezzlement, false statements to third parties, money laundering, kickbacks, breach of fiduciary responsibility or other financial misconduct in connection with the delivery

of a healthcare item or service or with respect to any act or omission in a program operated by or financed in whole or in part by any Governmental Authority; (D) Applicable Laws relating to the interference with or obstruction of any investigations into any criminal offenses described in (1) through (3) above; or (E) criminal offenses under Applicable Laws relating to the unlawful manufacturing, distribution, prescription or dispensing of a controlled substance; or (4) has been involved or named in a U.S. Attorney complaint made or any other action taken pursuant to the False Claims Act under 31 U.S.C. §§3729-3731 or qui tam action brought pursuant to 31 U.S.C. §3729 et seq.;

(d) Each Borrower and each other Credit Party is and shall continue to be in material compliance with all Applicable Laws relating to its relationships with physicians;

(e) All Persons providing Healthcare Services for or on behalf of any Borrower or any other Credit Party (either as an employee or independent contractor) are appropriately licensed in every jurisdiction in which they hold themselves out as professional health care providers;

(f) Except as previously disclosed in writing to the Administrative Agent, no Credit Party (i) has retained any overpayment received from, or failed to refund any overpayment due to, any Third-Party Payor in violation of any Healthcare Law or contract; or (ii) has received written notice of, or has knowledge of, any overpayment or refunds due to any Third-Party Payor;

(g) Each Borrower and each other Credit Party has developed and implemented a current and effective corporate and health care regulatory compliance program ("*CCP*") in accordance with applicable state and federal guidelines to ensure that all aspects of its operations, its employees and healthcare providers under contract comply with all applicable Healthcare Laws. As of the Closing Date, neither any Borrower nor any other Credit Party (i) is a party to a corporate integrity agreement or (ii) has any reporting or other obligations pursuant to a settlement agreement, plan of correction, or other remedial measure entered into with a Governmental Authority;

(h) Each Credit Party has obtained all necessary accreditations to operate its business as now conducted, and currently is in material compliance with all statutory and regulatory requirements applicable to it;

(i) Each Credit Party and their employees and contractors, in the exercise of their duties on behalf of any Credit Party, is and shall continue to be in compliance in all material respects with all Healthcare Laws, and any Laws applicable to the collections on Accounts, any contracts relating thereto or any other Collateral, or otherwise applicable to its business and properties, a violation of which could materially affect its ability to collect on the Accounts, or, in the case of the Credit Parties, repay the Obligations; and

(j) No Healthcare Authorizations of any Credit Party necessary to conduct its business are currently or are likely to be suspended, revoked, limited or denied renewal at any time, which suspension, revocation, limitation or denial could reasonably be expected to have a Material Adverse Effect.

**4.23 Licensed Beds.** As of the Closing Date, the number of licensed beds authorized for use in each Healthcare Facility is set forth on Schedule 4.23 hereto.

**4.24 No Defaults.** No event or circumstance has occurred or exists that constitutes a Default or Event of Default.

**4.25 Patriot Act and OFAC Compliance.** Neither any Borrower nor any other Credit Party nor any officer, director, shareholder or partner in any Borrower or member of such partner nor any owner of a direct or indirect interest in any Borrower (a) is listed on any Government Lists, (b) is a person who has been determined by competent authority to be subject to the prohibitions contained in Presidential Executive Order No. 13224 (Sept. 23, 2001) or any other similar prohibitions contained in the rules and regulations of OFAC or in any enabling legislation or other Presidential Executive Orders in respect thereof, (c) has been previously indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any Patriot Act Offense, (d) is currently under investigation by any Governmental Authority for alleged criminal activity or (e) is currently the subject or target of any Sanctions or located, organized or resident in any country or territory targeted by any Sanctions.

**4.26 Survival.** All of the representations and warranties in this Article 4 and elsewhere in the Loan Documents (i) shall survive until the repayment in full of the Obligations and the termination of this Agreement as described herein and (ii) shall be deemed to have been relied upon by Administrative Agent and Lenders notwithstanding any investigation heretofore or hereafter made by Administrative Agent or any Lender, or on its or their behalf.

**4.27 Subordinated Indebtedness.** The Credit Parties have delivered to Administrative Agent true and correct copies of all Subordinated Indebtedness Documents. None of the Subordinated Indebtedness Documents have been amended or modified except pursuant to a written agreement which has been delivered to Administrative Agent. No breach or default (beyond any applicable notice or cure period) has occurred or is continuing under any Subordinated Indebtedness Documents.

**4.28 Federal Employer Identification Number.** Each Credit Party's federal employer identification number is listed on Schedule 4.27 hereto.

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

**4.30 Reorganization Matters.**

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

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

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

(d) After entry of the Interim Order, and pursuant to the Interim Order and Final Order, the Obligations will constitute allowed administrative expense claims in the Bankruptcy Case,



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

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

(f) Notwithstanding the provisions of Section 362 of the Bankruptcy Code, and subject to the applicable provisions of the Interim Order or Final Order and Section 9.2, as the case may be, on the Revolving Loan Termination Date the Administrative Agent and Lenders shall be entitled to payment of such Obligations and to enforce the remedies provided for hereunder or under applicable Law, without further application to or order by the Bankruptcy Court.

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

## ARTICLE 5 AFFIRMATIVE COVENANTS

So long as any Lender shall have any commitment to make any Loan hereunder, or any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, each Borrower and each other Credit Party that is a party hereto covenants and agrees as follows:

**5.1 Payment of Obligations.** Subject to the entry of appropriate orders of the Bankruptcy Court (if any), each Borrower and each other Credit Party shall pay and discharge as the same shall become due and payable, all its obligations and liabilities, including (a) all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being reasonably contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by such Borrower or such other Credit Party; (b) all lawful claims which, if unpaid, would by law become a Lien upon its property (other than Permitted Liens); and (c) all Indebtedness, as and when due and payable (subject to any applicable grace or cure periods), but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness.

**5.2 Preservation of Existence, Etc.** Each Borrower and each other Credit Party shall (a) preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization; and (b) take all action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

**5.3 Maintenance of Properties.** Each Borrower and each other Credit Party shall (a) maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted; (b) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) use the standard of care typical in the industry in the operation and maintenance of its Healthcare Facilities. Subject to entry of the appropriate

order or orders of the Bankruptcy Court (if any), Borrowers will pay or cause to be paid all Taxes on or prior to the date due, and in any event, prior to the date upon which any fine, penalty, interest or cost for nonpayment could be imposed, and furnish to Administrative Agent, upon request, receipted bills of the appropriate taxing authority or other documentation reasonably satisfactory to Administrative Agent evidencing the payment thereof. If any Borrower shall fail to pay any Taxes in accordance with this section (unless such Taxes are being reasonably contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by such Borrower or such other Credit Party), Administrative Agent shall have the right, but shall not be obligated, to (for the account of all Lenders) pay such Taxes, and Borrowers shall repay to Administrative Agent, on written demand, any amount paid by Administrative Agent, with interest thereon from the date of the advance thereof to the date of repayment, at the rate applicable during periods of Default hereunder, and such amount shall constitute a portion of the Obligations. Borrowers shall not pay any Taxes or other obligations in installments unless permitted by applicable Laws, and shall, upon the request of Administrative Agent, deliver copies of all notices and bills relating to any Taxes or other charge covered by this section to Administrative Agent.

**5.4 Maintenance of Insurance.** Subject to entry of the appropriate order or orders of the Bankruptcy Court (if any), each Borrower and each other Credit Party shall maintain at all times insurance on all of their respective properties and assets covering the repair and replacement costs of all such property (including the perils of flood and earthquake) and coverage for business interruption and professional liability, comprehensive general liability and excess liability/umbrella insurance with financially sound and reputable insurance companies, in such reasonable amounts and covering such insurable risks as are at all times reasonably satisfactory to Administrative Agent and with respect to coverage limits, the limits and coverages as in effect on the Closing Date (the “*Required Insurance*”).<sup>1</sup> All policies relating to Required Insurance are to contain such other provisions as Administrative Agent reasonably may require to fully protect Administrative Agent’s and Lenders’ interest in the Collateral and to any payments to be made under such policies. All professional and general liability insurance policies, including umbrella/excess policies, relating to Required Insurance shall name Administrative Agent, on behalf of itself and the Lenders, as an “additional insured,” and all property insurance policies relating to Required Insurance shall name Administrative Agent, on behalf of itself and the Lenders, as lender’s loss payee. Each loss payable endorsement in favor of Administrative Agent, on behalf of itself and the Lenders, shall provide (x) for not less than thirty (30) days prior written notice to Administrative Agent of the exercise of any right of cancellation or material alteration and (y) that Administrative Agent’s, on behalf of itself and the Lenders, right to payment under any property insurance policy will not be invalidated by any act or neglect of, or any breach of warranty or condition by, Borrowers (or any of them) or any other party. If an Event of Default shall have occurred and remain outstanding, Administrative Agent shall have the sole right, in the name of Administrative Agent, on behalf of itself and the Lenders, or Borrowers (or any of them), to file claims under any insurance policies, to receive, receipt and give acquittances for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies. In the event any Borrower or any other Credit Party fails to provide Administrative Agent with evidence of the Required Insurance in the manner set forth in this Section 5.4, Administrative Agent (for the benefit of itself and the Lenders) may, following three (3) days’ written notice to Borrower Representative, purchase insurance at Borrowers’ expense to protect Administrative Agent’s and the Lenders’ interests in the Collateral. The insurance purchased by Administrative Agent (for the benefit of itself and the Lenders) may, but need not, protect Borrowers’ interests in the Collateral, and therefor such insurance may not pay any claim that any Borrower may make or any claim that is made against any Borrower in connection with the Collateral. Borrowers may later request that Administrative Agent cancel any insurance

---

<sup>1</sup> Ally still reviewing.

purchased by Administrative Agent, but only after providing Administrative Agent with satisfactory evidence that Borrowers have the Required Insurance. If Administrative Agent purchases insurance covering all or any portion of the Collateral, Borrowers shall be responsible for the costs of such insurance, including interest (at the applicable rate set forth hereunder for Revolving Loans) and other charges accruing on the purchase price thereof, until the effective date of the cancellation or the expiration of the insurance, and Administrative Agent may add all of such costs, interest and other charges to the Obligations. The costs of the premiums of any insurance purchased by Administrative Agent may exceed the costs of insurance that Borrowers may be able to purchase on their own.

**5.5 Compliance With Laws.** Each Borrower and each other Credit Party shall and shall cause any Manager to comply with the requirements of all Applicable Laws (including without limitation any Environmental Laws and Healthcare Laws) and obtain, maintain and comply with all Governmental Authorizations and Healthcare Authorizations, in each instance, applicable to it or to its business or property, in each case except to the extent any failure to comply with the foregoing could not reasonably be expected to have a Material Adverse Effect. Without limiting the generality of the foregoing, if any Environmental Release occurs at any Healthcare Facility or any other properties of any Borrower or any other Credit Party, the applicable Borrower or other Credit Party shall act promptly and diligently to investigate and report to Administrative Agent and all appropriate Governmental Authorities the extent of, and to make appropriate remedial action to eliminate, such Environmental Release, whether or not directed to do so by any Governmental Authority.

**5.6 Books and Records.** Each Borrower and each other Credit Party shall (a) maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP, consistently applied shall be made of all financial transactions and matters involving the assets and business of such Borrower or such other Credit Party; and (b) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over such Borrower or such other Credit Party. Each Credit Party shall maintain or cause to be maintained at all times books and records pertaining to the Collateral in such detail, form and scope as Administrative Agent shall reasonably require.

**5.7 Inspection Rights; Field Audits.** Each Borrower and each other Credit Party will cause the Bankruptcy Court to provide access, pursuant to court order, to and will permit (and shall direct each Subsidiary and any Manager to permit) agents, representatives, consultants and other independent contractors of Administrative Agent to visit and inspect any of its Healthcare Facilities and other properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, and to conduct a field examination and audit of the Collateral, all at the expense of Borrowers and at such reasonable times during normal business hours and as often as may be reasonably desired (provided that so long as no Event of Default exists, not more than once every three (3) months), and so long as no Event of Default exists, upon reasonable advance notice to Borrower Representative.

**5.8 Landlord and Warehouse Agreements.** Each Borrower and each other Credit Party shall, upon request, provide Administrative Agent with copies of all existing agreements, and promptly after execution thereof provide Administrative Agent with copies of all future agreements, between any Borrower, any other Credit Party and any landlord, warehouseman, processor, shipper, bailee or other Person that owns any premises at which any Collateral may be kept or that otherwise may possess or handle any Collateral and obtain a Collateral Access Agreement with any such landlord, warehouseman, processor, shipper, bailee or other Person. Upon Administrative Agent's request, each Borrower and each other Credit Party shall deliver to Administrative Agent fully-executed agreements, in form and substance satisfactory to Administrative Agent, between each Borrower and each other Credit Party, the Administrative Agent and the Credit Parties' vendors that provide off-site data storage, network hosting



or management, shared application services or other "cloud-based" services to Borrowers or other Credit Parties, which shall provide Administrative Agent with such access to Borrowers' and other Credit Parties' billing and Accounts records as Administrative Agent deems necessary or helpful in connection with Administrative Agent's and Lenders' audit and inspection rights under the Loan Documents and the collection or realization of or on the Collateral.

**5.9 Licenses.** Each Borrower and each other Credit Party shall (a) keep each License affecting any Collateral or any other properties and assets of any Credit Party in full force and effect, and pay all Royalties, in each case, except where the failure to do so would not reasonably be likely to result in a Material Adverse Effect (each such License shall be referred to herein as a "*Material License*"); (b) promptly notify Administrative Agent of any proposed modification to any Material License, or entry into any new Material License, in each case at least ten (10) days prior to its closing date; and (c) notify Administrative Agent of any default or breach (beyond any applicable cure period) asserted by any Person to have occurred under any Material License.

**5.10 Healthcare Operations.**

(a) Each Borrower and each other Credit Party shall maintain in full force and effect, and free from restrictions, probations, conditions or known conflicts which would materially impair the use or operation of any Healthcare Facility for its current use, all Healthcare Authorizations necessary under Healthcare Laws (A) to carry on the business of Borrowers as it is conducted on the Closing Date, and (B) to continue to receive reimbursement thereunder in substantial compliance with all requirements for participation in, and for the licensure required to provide the Healthcare Services that are reimbursable under, any Third-Party Payor programs as to which any Borrower or any other Credit Party receives or has applied for reimbursement as part of its business.

(b) Each Borrower and each other Credit Party shall cause all Healthcare Authorizations and any other agreements necessary for the use and operation of the Healthcare Facilities or as may be necessary for participation in Third-Party Payor programs to remain in full force and effect.

(c) Each Borrower and each other Credit Party shall maintain a CCP to ensure that all aspects of its operations, its employees and healthcare providers under contract comply with all applicable Healthcare Laws, and shall, upon request, allow Administrative Agent and/or any outside consultants from time to time to review such CCP.

(d) If any Healthcare Facility is currently accredited by the Joint Commission, Borrower and each other Credit Party shall (i) maintain such accreditation in good standing and without limitation or impairment, (ii) timely submit to the Joint Commission a plan of correction for any deficiencies listed on any Joint Commission accreditation survey report, and (iii) cure all such deficiencies within such time frame as is necessary to preserve and maintain in good standing and without limitation or impairment such Joint Commission accreditation.

(e) Each Borrower and each other Credit Party shall timely file all cost reports, cost statements, documents, notices and other reports required to be filed by any Governmental Authority or any Third-Party Payor program. All such filings shall be complete and accurate in all material respects and shall comply with all requirements of Applicable Law and all conditions of participation, conditions of payment, contracts, standards, policies, manuals, procedures and other requirements of all applicable Third-Party Payor programs.

(f) All documentation, coding, billing and collection practices of each Borrower and each other Credit Party, and of any billing or collection agent acting on behalf of any Borrower or any

other Credit Party, shall be in compliance with all Applicable Laws and all conditions of participation, conditions of payment, contracts, standards, policies, manuals, procedures and other requirements of all applicable Third-Party Payor programs. Each Borrower and each other Credit Party shall document, code, bill and process claims for reimbursement and report and refund any overpayments received from Third-Party Payor programs in material compliance with all Applicable Law and Third-Party Payor programs.

(g) Each Credit Party shall use commercially reasonable efforts to obtain and provide to Administrative Agent upon request, (i) an accurate, complete and current list of all participation agreements with Third-Party Payors and (ii) Medicare certification letters, in each case, with respect to the business of such Credit Party.

(h) Each Credit Party shall maintain each CON required under applicable Healthcare Laws in full force and effect and free from restrictions or known conflicts which would materially impair the use or operation of such Healthcare Facility for its current use, and shall not permit any such CON to become provisional, probationary or restricted in any way, except for such restrictions existing on the Closing Date with respect to which such Healthcare Facility's operations are compliant.

**5.11 Further Assurances.** Each Borrower and each other Credit Party shall (a) execute and deliver to Administrative Agent promptly upon request such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect the Collateral and/or for the better and more effective carrying out of the intents and purposes of the Loan Documents, as Administrative Agent may reasonably require from time to time including the filing of a financing statement or financing statement change to establish or maintain the validity, perfection and priority of the security interest granted herein in the event of the name change of a Credit Party, delivery of certificated equity interests required to be pledged, execution and delivery of intellectual property security agreements or other actions that are necessary or desirable to perfect the Liens of Administrative Agent on the Collateral; (b) upon Administrative Agent's request therefor given from time to time, pay for reports of UCC, federal tax Lien, state tax Lien, judgment and pending litigation searches with respect to each Borrower and each other Credit Party, each such search to be conducted by search firms designated by Administrative Agent in each of the locations designated by Administrative Agent; and (c) comply with the requirements of all Applicable Laws in order to grant to Administrative Agent, for the benefit of itself and Lenders, valid and perfected First Priority security interests in the Collateral, with perfection, in the case of any investment property, deposit account or letter of credit, being effected by giving Administrative Agent control of such investment property or deposit account or letter of credit.

**5.12 [Reserved].**

**5.13 Environmental Matters.** In addition to and without limiting the generality of Section 5.5, each Credit Party shall (a) comply with all applicable Environmental Laws to the extent that noncompliance could reasonably be expected to have a Material Adverse Effect; (b) obtain and comply with any and all Governmental Authorizations required by applicable Environmental Laws to the extent that not obtaining and not complying with such licenses, approvals, notifications, and registrations could reasonably be expected to have a Material Adverse Effect; and (c) conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions required under applicable Environmental Laws following any Environmental Release, and promptly comply with all lawful orders and directives of any Governmental Authority regarding such Environmental Laws, except orders and directives that are being challenged in good faith. Without limiting the generality of the foregoing, if any material Environmental Release occurs at or on any properties of any Credit Party, it shall act promptly and diligently to investigate and report the extent of such Environmental Release to Administrative Agent and, if required by Applicable Law, all appropriate Governmental Authorities, and,

to the extent required by Applicable Law, to take appropriate remedial action to address, such Environmental Release, whether or not directed to do so by any Governmental Authority.

**5.14 Account Control Agreements.** Each Credit Party shall maintain at all times a valid and enforceable account control agreement with respect to each Lockbox Account, the Concentration Account, the Borrower Operating Account and any other deposit account or securities account owned by any Credit Party (other than any deposit account dedicated exclusively to payroll purposes), in each case in form and substance satisfactory to Administrative Agent.

**5.15 Patriot Act Compliance.**

(a) Each Credit Party shall comply with the Patriot Act and all applicable requirements of Governmental Authorities having jurisdiction over such Credit Party or the Collateral, including those relating to money laundering and terrorism. Administrative Agent shall have the right to audit each Credit Party's compliance with the Patriot Act and all applicable requirements of any Governmental Authority having jurisdiction over any such Credit Party and the Collateral, including those relating to money laundering and terrorism. In the event that any Credit Party fails to comply with the Patriot Act or any such requirements of any such Governmental Authority, then Administrative Agent may, at its option, cause such Credit Party to comply therewith and any and all reasonable costs and expenses incurred by Administrative Agent in connection therewith shall be added to the Obligations, shall be secured by the Collateral and the other Loan Documents and shall be immediately due and payable. For purposes hereof, the term "*Patriot Act*" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, as the same may be amended from time to time, and corresponding provisions of future laws.

(b) No Credit Party nor any officer, director, shareholder or partner in any Credit Party or member of such partner nor any owner of a direct or indirect interest in any Credit Party (a) is listed on any Government Lists, (b) is a person who has been determined by competent authority to be subject to the prohibitions contained in Presidential Executive Order No. 13224 (Sept. 23, 2001) or any other similar prohibitions contained in the rules and regulations of OFAC or in any enabling legislation or other Presidential Executive Orders in respect thereof, (c) has been previously indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any Patriot Act Offense, or (d) is currently under investigation by any Governmental Authority for alleged criminal activity.

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

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

**5.18 Escrow of Asset Sale Proceeds and Deposits.** Prior to the date on which the Obligations have been indefeasibly paid in full, all in accordance with the terms of this Agreement, and this Agreement has been terminated (or as otherwise expressly consented to by Administrative Agent on terms and conditions that are acceptable to Administrative Agent, which consent may be withheld in its sole discretion), all proceeds and deposits received by any Borrower in connection with any Asset Sale shall be held in escrow in a deposit account subject to a deposit account control agreement in favor of Administrative Agent (including all subaccounts thereof, the "*Escrow Deposit Account*"). Any funds held in the Escrow Deposit Account shall not be commingled with any other funds of the Borrowers or otherwise. Administrative Agent, on behalf of the Lenders, is hereby granted a first priority Lien on the



Escrow Deposit Account and all proceeds of any Asset Sale, including any deposit provided by any Buyer in connection with any Asset Sale, and such proceeds, deposits, and the Escrow Deposit Account shall constitute Collateral hereunder. On the Revolving Loan Termination Date, Administrative Agent shall apply any and all amounts remaining on deposit in the Escrow Deposit Account to the outstanding principal amount of each Revolving Loan, together with accrued and unpaid Obligations, with any remaining balance to be delivered to Borrowers; provided, however, that upon any Borrower's request and with the consent of the Administrative Agent (which consent may, for the avoidance of doubt, be withheld in its sole discretion), proceeds of any Asset Sales and deposits provided in connection with any Asset Sales may be disbursed to Specified Prepetition Secured Creditors on terms and conditions that are acceptable to the Administrative Agent in its sole discretion.

**5.19 Post-Closing Items.** Each Borrower and each other Credit Party shall satisfy the requirements, and provide to the Administrative Agent each of the agreements, instruments and documents, in each case described on Schedule 5.19 on or before the date specified for such requirement or delivery on Schedule 5.19 (or such later date as agreed to by the Administrative Agent in its sole discretion), and any failure of the Borrowers and Credit Parties to satisfy any such requirement or delivery shall constitute an immediate Event of Default.

## ARTICLE 6 NEGATIVE COVENANTS

So long as any Lender shall have any commitment to make any Loan hereunder, or any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, each Borrower and each other Credit Party that is a party hereto covenants and agrees as follows:

**6.1 Liens.** Each Borrower and each other Credit Party shall not create, incur, assume or suffer to exist any Lien upon any Collateral or any of its other property, assets or revenues, whether now owned or hereafter acquired, other than Permitted Liens. The designation of any Lien or other encumbrance as a Permitted Lien shall not limit the Administrative Agent's right to take a reserve against Availability with respect thereto. The prohibition provided for in this Section 6.1 specifically includes any effort by any Borrower, any Committee or any other party in interest in the Bankruptcy Cases to prime or create *pari passu* to any claims Liens or interests of the Administrative Agent and the Lenders, other than as set forth in the applicable Financing Order and irrespective of whether such claims, Liens or interests may be "adequately protected."

**6.2 Investments.** Each Borrower and each other Credit Party shall not make any Investments, except for Permitted Investments.

**6.3 Indebtedness.** Each Borrower and each other Credit Party shall not create, incur, assume or suffer to exist any Indebtedness, except for Permitted Indebtedness.

**6.4 Loans.** Each Borrower and each other Credit Party shall not make any loans or other advances of money to any Person, except (a) advances to an officer or employee for salary, travel expenses, commissions and similar items in the ordinary course of business; (b) prepaid expenses and extensions of trade credit made in the ordinary course of business; (c) deposits with financial institutions permitted hereunder; and (d) Permitted Intercompany Loans.

**6.5 Asset Dispositions; Settlement of Debts.** Each Borrower and each other Credit Party shall not make any Asset Disposition, except a Permitted Asset Disposition (whereupon the net proceeds of any such Permitted Asset Disposition shall be promptly deposited into the Escrow Deposit Account). Each Borrower and each other Credit Party shall not cancel or otherwise forgive or release any claim or

debt owed to such Borrower or such other Credit Party by any Person, except for adequate consideration and in the ordinary course of such Borrower's or such other Credit Party's business.

**6.6 Distributions.** Each Borrower and each other Credit Party shall not declare or make, directly or indirectly, any Distribution, or incur any obligation (contingent or otherwise) to do so.

**6.7 Fundamental Changes; Change to Organization Documents.** Each Borrower and each other Credit Party shall not (a) engage in any business activity not related to the ownership or operation of the Healthcare Facilities or any business substantially related or incidental thereto, (b) cease operating any material portion of the Healthcare Facilities or its business as conducted on the Closing Date, except with respect to the Seton Cash Burn Elimination Plan, (c) amend any of their respective Organization Documents in a manner adverse to any Credit Party or the Lenders, (d) change their jurisdiction of formation or organization or their type or form of organization (e.g., corporation or limited liability company), (e) change their name or identity (including trade name), (f) change their principal place of business, chief executive office, or location of any Collateral, without providing Administrative Agent at least thirty (30) days' prior written notice of such change in location, or (g) merge, dissolve, liquidate, or consolidate with or into another Person, or transfer (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person. No Borrower or other Credit Party will utilize or enter into any agreement with any remote access or internet-based/cloud-based billing services or records repository provider without first entering into such agreements with Administrative Agent and such service provider, in form and substance satisfactory to Administrative Agent, as Administrative Agent shall deem necessary or helpful in the collection or realization of or on its Collateral.

**6.8 Transactions With Affiliates.** Each Borrower and each other Credit Party shall not enter into any transaction of any kind with any of such Borrower's or such other Credit Party's Affiliates, except (a) transactions expressly permitted by the Loan Documents; (b) payment of regularly scheduled compensation to officers and employees, and loans and advances permitted by Section 6.4; (c) payment of reasonable directors' fees and directors' indemnities to natural Persons; (d) transactions solely between Credit Parties (provided no indebtedness may exist other than Permitted Intercompany Loans); and (e) transactions with Affiliates that were consummated on or prior to the Closing Date, as shown on Schedule 6.8.

**6.9 Use of Proceeds.** Each Borrower and each other Credit Party shall not use the proceeds of any Loans, whether directly or indirectly, and whether immediately, incidentally or ultimately, for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose that would be inconsistent with such Regulation U or any other regulation of such Board of Governors, or for any purpose prohibited by Laws or any Loan Document.

**6.10 Payroll Service.** Verity Medical Foundation, as a Borrower, shall not fail to maintain a contractual relationship with a payroll tax service provider acceptable to Administrative Agent, in its reasonable discretion, at any time.

**6.11 Certain Accounting Changes.** Each Borrower and each other Credit Party shall not (a) change its Fiscal Year end or (b) make any change in its accounting treatment and reporting practices except as required or permitted by GAAP.

**6.12 Healthcare Matters.** Each Borrower and each other Credit Party shall not suffer or permit to occur any of the following:

(a) any transfer of a Healthcare Authorization or rights thereunder to any Person (other than a Borrower or Administrative Agent) or to any location other than a Healthcare Facility approved by Administrative Agent in advance in writing; or

(b) any rescission, withdrawal, revocation, amendment or modification of or other alteration to the nature, tenor or scope of any Healthcare Authorization without Administrative Agent's prior written consent, including (I) any change to the authorized licensed beds or units capacity of any Healthcare Facility and/or the number of licensed beds or units approved by the applicable Governmental Authority, and (II) any transfer all or any part of any Healthcare Facility's authorized units or licensed beds to another site or location.

Notwithstanding the foregoing, no Credit Party shall enter into arrangements which (i) provide remuneration to Persons in return for referrals to any Credit Party; (ii) receive remuneration from Persons in return for referrals by any Credit Party; or (iii) otherwise violate the provisions of the Federal health care program exclusion provisions (42 U.S.C. §1320a-7); the Civil Monetary Penalties Act (42 U.S.C. §1320a-7a), the Federal health care program fraud and abuse provision (42 U.S.C. §1320-7b) and other such Healthcare Laws.

**6.13 ERISA.** Each Borrower and each other Credit Party shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Administrative Agent or any Lender of any of its rights hereunder or the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA.

**6.14 Management Agreement; Leases, Subordinated Indebtedness and other Material Contracts.**

(a) Each Borrower and each other Credit Party shall not retain, substitute or replace any Manager or make or enter into, consent to any modification, amendment, assignment, termination or cancellation of any Management Agreement without the prior written consent of the Administrative Agent. The covenants, agreements and restrictions contained in this Section 6.14 are solely for the purposes of assuring that the Healthcare Facilities are managed and operated in a first-class manner consistent with Healthcare Laws and the preservation and protection of the Healthcare Facilities as security for the Obligations and shall not place responsibility for the control, care, management or repair of the Healthcare Facilities upon Administrative Agent or any Lender, or make Administrative Agent or any Lender responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Healthcare Facilities. No Borrower shall suffer or permit any material breach or default to occur in any of such Borrower's obligations under any Management Agreement, nor suffer or permit the same to terminate by reason of any failure of such Borrower to meet any requirement thereof.

(b) Each Credit Party shall cause any Manager to enter into a Management Fee Subordination Agreement, in form and substance satisfactory to Administrative Agent, pursuant to which (i) all compensation due to such Manager is subordinated in right and time of payment to all Obligations hereunder, (ii) all compensation due to such Manager is subordinated in right and time of payment to all Obligations hereunder, and (iii) Administrative Agent has the right to terminate the engagement of such Manager upon or following the occurrence of any Default or Event of Default.

(c) No Borrower nor any other Credit Party shall amend, otherwise modify or terminate any Lease Agreement, Subordinated Indebtedness Document, Asset Sale Document or other Material Contract except as approved by the Administrative Agent.



**6.15 Restrictive Agreements.** Each Borrower and each other Credit Party shall not enter into any Restrictive Agreement, except (a) a Restrictive Agreement relating to secured Permitted Indebtedness, if such restrictions apply only to the collateral for such Permitted Indebtedness; and (b) customary provisions in leases and other contracts restricting assignment thereof or Liens in the assets or real property covered thereby.

**6.16 Swap Agreements.** Each Borrower and each other Credit Party shall not enter into any Swap Agreement.

**6.17 IRS Form 8821; Federal Employer Identification Number.** Each Borrower and each other Credit Party shall not alter, amend, restate, or otherwise modify, or withdraw, terminate or re-file the IRS Form 8821 required to be filed pursuant to Section 3.1(f). No Borrower or other Credit Party shall change its federal employer identification number.

**6.18 Burdensome Agreements.** Each Borrower and each other Credit Party shall not, directly or indirectly, enter into any Contractual Obligation (other than this Agreement and any other Loan Document) that (a) limits the ability (i) of any Credit Party or any Subsidiary to make Distributions to any Credit Party or to otherwise transfer property to any Credit Party, (ii) of any Credit Party or any Subsidiary to guarantee the Indebtedness of any Credit Party or (iii) of any Credit Party or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person (other than Permitted Liens and customary anti-assignment provisions in leases, sub-lease, licenses, sub-licenses and contracts); or (b) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person.

**6.19 Interim Order; Final Order; Asset Sale Order; Administrative Expense Priority; Payments.**

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

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

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

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

#### **6.20 Bankruptcy Actions.**

(a) No Borrower shall enter into any agreement to return any of its inventory or other Collateral outside the ordinary course of business to any of its creditors for application against any prepetition Indebtedness, prepetition trade payables, or other prepetition claims under Section 546(h) of the Bankruptcy Code or allow any creditor to take any setoff or recoupment against any of its prepetition Indebtedness, prepetition trade payables, or other prepetition claims based upon any such return pursuant to Section 553(b)(1) of the Bankruptcy Code or otherwise.

(b) No Borrower shall make (i) any payments on account of any creditor's claims against any Borrowers (including any defeasance with respect to any bonds or other Indebtedness) or, except pursuant to the Budget, any other payments or transfers with respect to any Lien or Indebtedness, (ii) payments on account of claims or expenses arising under Section 503(b)(9) of the Bankruptcy Code, (iii) payments in respect of a reclamation program, or (iv) payments under any management incentive plan or on account of claims or expenses arising under Section 503(c) of the Bankruptcy Code, except in each case, in amounts and on terms and conditions that (A) are approved by order of the Bankruptcy Court and (B) are expressly permitted by the Budget, or otherwise approved by the Administrative Agent in writing. Without limiting the foregoing, no Borrower shall make any adequate protection payments (including any adequate protection payment to a Specified Prepetition Secured Creditor otherwise permitted hereby or by the Financing Orders) during the continuance of a Default or Event of Default.

(c) No Borrower shall insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law wherever enacted (to the extent that it may lawfully do so), now or at any time hereafter in force, that may affect the covenants or the performance of its obligations under this Agreement or the other Loan Documents, and each Credit Party hereby expressly waives all benefit or advantage of any such law, and covenants that it shall not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to Lenders, but shall suffer and permit the execution of every such power as though no such law has been enacted. Without limiting the foregoing, no Borrower shall obtain, or seek to obtain, any stay on the exercise of the remedies of the Administrative Agent or any Lender hereunder, under any Loan Document or the Financing Orders.

(d) No Borrower shall incur, create, assume, suffer to exist or permit any other super-priority administrative claim which is *pari passu* with or senior to the claims of Administrative Agent and the Lenders against the Borrowers, except as set forth in the applicable Financing Order.

(e) No Borrower shall seek, consent to, or permit to exist, without the prior written consent of the Administrative Agent, any order granting authority to take any action that is prohibited by the terms of this Agreement or the other Loan Documents or refrain from taking any action that is required to be taken by the terms of this Agreement or any of the other Loan Documents.

**6.21 Right of Subrogation.** No Credit Party shall assert any right of subrogation or contribution against any Credit Party or Subsidiary.

**6.22 Subsidiaries.** No Credit Party shall create or acquire any Subsidiary other than the Subsidiaries listed on Schedule 4.14.

### **ARTICLE 7 FINANCIAL COVENANTS**

**7.1 Maximum Budget Variance.** Except as otherwise approved by Administrative Agent, Borrowers shall not permit the (a) aggregate actual disbursements under the Budget for any Test Period

(as tested weekly) to exceed the aggregate budgeted disbursements for such Test Period by more than seven and one half percent (7.5%) of the aggregate budgeted amount for such Test Period; provided that with respect to the foregoing clause (a), the amount by which the actual disbursements thereunder during such period are less than the relevant budgeted disbursements may be carried forward to reduce the disbursements under clause (a) in the next succeeding periods until used in full; or (b) aggregate actual cash receipts under the Budget for any Test Period (as tested weekly) to be less ninety-two and one half percent (92.5%) of the aggregate budgeted cash receipts for such Test Period; provided that with respect to the foregoing clause (b), the amount by which the actual cash receipts thereunder during such period are greater than the relevant budgeted cash receipts may be carried forward to increase the cash receipts under clause (b) in the next succeeding periods until used in full.

**7.2 Minimum Liquidity.** From the entry of the Interim Order until the entry of the Final Order, Minimum Liquidity shall not be less than the greater of \$3,000,000 and 10% of Availability, as tested weekly for the most recent Test Period then ended. After entry of the Final Order, Minimum Liquidity shall not be less than the greater of \$10,000,000 and 10% of Availability, as tested weekly for the most recent Test Period then ended; provided, however, Minimum Liquidity shall not be less than the greater of \$15,000,000 and 15% of Availability, as tested weekly for the most recent Test Period then ended, if (i) the Borrowers have failed to file with the Bankruptcy Court within thirty (30) days following the Petition Date either (A) the Saint Louise/O'Connor Hospital Bid Procedures Motion, or (B) the Consolidated Sale Motion, in each case unless and until either the Saint Louise/O'Connor Hospital Bid Procedures Motion or the Consolidated Sale Motion is thereafter filed with the Bankruptcy Court within sixty (60) days following the Petition Date, or (ii) the Borrowers have failed to present to the Administrative Agent the Seton Cash Burn Elimination Plan within sixty (60) days following the Petition Date.

## **ARTICLE 8 NOTICES AND REPORTING**

### **8.1 Notices.**

(a) All notices, consents, approvals and requests required or permitted hereunder or any other Loan Document shall be given in writing and shall be effective for all purposes if either hand delivered with receipt acknowledged, or by a nationally recognized overnight delivery service (such as Federal Express), or by certified or registered United States mail, return receipt requested, postage prepaid, or, with respect to routine or administrative notices (but specifically excluding notices of Default, Events of Default or acceleration of the Loans) by electronic mail, in each case addressed as follows (or to such other address or Person as a party shall designate from time to time by notice to the other party):

If to Administrative Agent:

Ally Bank  
3 Bethesda Metro Center, Suite 792  
Bethesda, MD 20814  
Attention: Portfolio Manager  
Telecopier No.: (301) 657-9776

with a copy to:

Ally Bank  
300 Park Avenue, 4th Floor  
New York, New York 10022  
Attention: Legal Services



Telecopier No.: 212-884-7189

and

Waller Lansden Dortch & Davis, LLP  
511 Union Street, Suite 2700  
Nashville, TN 37219  
Attn: Gerald Mace and David Lemke

If to a Lender, to the address of such Lender listed on the signature pages hereof;

If to a Borrower:

Verity Health Systems of California, Inc.  
2040 E. Mariposa Ave  
El Segundo, CA 90245  
Attention: Anita Chou  
Telecopier No.: ( ) -

with a copy to:

Verity Health Systems of California, Inc.  
2040 E. Mariposa Ave  
El Segundo, CA 90245  
Attention: Elspeth Delaney-Paul, General Counsel  
Telecopier No.: ( ) -

A notice given hereunder or any other Loan Document shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; in the case of overnight delivery, upon the first attempted delivery on a Business Day; or, in the case of electronic mail, at the time of delivery.

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and internet or intranet websites) pursuant to procedures approved by the Administrative Agent; provided that, the foregoing shall not apply to notices to any Lender pursuant to Article 2 if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article 2 by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that, approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement); provided that, if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an internet or intranet

website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF ANY MATERIALS OR INFORMATION PROVIDED BY OR ON BEHALF OF THE BORROWERS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM ANY MATERIALS OR INFORMATION PROVIDED BY OR ON BEHALF OF THE BORROWERS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH ANY MATERIALS OR INFORMATION PROVIDED BY OR ON BEHALF OF THE BORROWERS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Affiliates, partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives (collectively, the "*Agent Parties*") have any liability to the Borrowers, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrowers' or the Administrative Agent's transmission of any materials or information provided by or on behalf of the Borrowers through the internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to the Borrowers, any Lender or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages). As used in this Section 8.1, "*Platform*" means any electronic system, including Intralinks®, ClearPar® and any other internet or extranet-based site, whether such electronic system is owned, operated or hosted by the Administrative Agent, any other Agent Party or any other Person, providing for access to data protected by passcodes or other security system.

**8.2 Required Notices from Credit Parties.** Each Borrower and each other Credit Party shall promptly, and in any event within three (3) Business Days after such Person or any Authorized Officer of such Person obtains knowledge thereof, provide telephonic and written notice to Administrative Agent and each Lender of any of the following applicable to it:

(a) the commencement of any litigation, proceedings or investigations, including those by or before any Governmental Authority, and all actions and proceedings in any court or before any arbitrator against or involving any Borrower or any other Credit Party or any of its properties, assets or businesses in which the amount of claimed damages, fines or other liabilities is \$500,000 or more;

(b) any Material Citation or other notice of any material violation received by any Borrower or any other Credit Party from any Governmental Authority, including any notice of violation of Healthcare Laws or Environmental Laws or any rescission or threatened revocation of any Healthcare Authorization;

(c) any attachment, judgment, Lien, levy or order exceeding \$250,000.00 that may be assessed against any Borrower or any other Credit Party;

(d) the occurrence of any "reportable event" (as defined in ERISA) which might result in the termination by the PBGC of any Plan covering any officers or employees of any Credit Party, any benefits of which are, or are required to be, guaranteed by the PBGC, (y) receipt of any notice from

the PBGC of its intention to seek termination of any Plan or appointment of a trustee therefor or (z) its intention to terminate or withdraw from any Plan;

(e) the occurrence of any Default or Event of Default;

(f) any material Environmental Release by any Credit Party or on any Healthcare Facility or any other property owned, leased or occupied by any Credit Party; or receipt of any Environmental Notice;

(g) copies of all material reports, if any, submitted to any Borrower, its Board of Directors or members by its independent public accountants in connection with their auditing function, including any management report and any management responses thereto or any notice given or received regarding the discharge of or any withdrawal or resignation by any Borrower's or Credit Party's certified independent accountants;

(h) promptly after any material property owned or used by any Borrower or any other Credit Party is materially damaged or destroyed, or suffers any other material loss in excess of \$1,000,000;

(i) (i) the receipt of any complaint, notice or request from any Governmental Authority or Government Reimbursement Program regarding any investigation or claim of liability, (ii) any pending, threatened or actual investigation or survey of any Borrower, any other Credit Party, or their directors, officers or managing employees by any Third-Party Payor, (iii) any Borrower or any other Credit Party becoming a party to a corporate integrity agreement with the Office of Inspector General of the Department of Health and Human Services, (iv) any Borrower or any other Credit Party entering into any settlement agreement with any Governmental Authority, (v) any Borrower or any other Credit Party becoming a defendant in any qui tam/False Claims Act litigation, (vi) any Borrower or other Credit Party being served with or receiving any search warrant, subpoena, civil investigative demand or contact letter by or from any federal or state enforcement agency relating to an investigation, but only to the extent that a Borrower or other Credit Party or any Contract Provider material to the applicable Healthcare Facility is the subject of any such investigation, or (viii) any Borrower or other Credit Party becoming subject to any written complaint filed with or submitted to any Governmental Authority having jurisdiction over such Borrower or Credit Party or filed with or submitted to such Borrower or such Credit Party pursuant to their policies relating to the filing or submissions of such types of complaints, from employees, independent contractors, vendors, physicians, or any other Person that would indicate that such Borrower or such Credit Party has violated any Law; the violation thereof which could reasonably be expected to have a Material Adverse Effect;

(j) the receipt of any cost reports, operating surveys, rate reports, rate computation reports, licensing reports, deficiency notices, recoupment orders or similar reports from any Government Reimbursement Program, each together with true and correct copies thereof;

(k) any termination or default (after the lapse of any cure period) or any material notice given or received by a Borrower or any other Credit Party under any Material Contract;

(l) the assertion of any Intellectual Property claim, if an adverse resolution could reasonably be expected to have a Material Adverse Effect; or

(m) the occurrence of any event or circumstance that could reasonably be expected to result in a Material Adverse Effect.



**8.3 Borrowing Base Certificates.** Each time a Loan is requested and, in any event and regardless of whether a Loan is being requested, not later than Thursday of each week during the Availability Period (and more frequently if Administrative Agent shall request from time to time), Borrower Representative shall deliver to Administrative Agent and each Lender: (A) a Borrowing Base Certificate in form and substance satisfactory to Administrative Agent and signed by an Authorized Officer of Borrower Representative, (B) an aging of gross accounts receivable for Borrowers in form and substance satisfactory to Administrative Agent, and (C) such other information in respect of Eligible Accounts and other Collateral as Administrative Agent may reasonably request, all prepared in accordance with GAAP and in a form reasonably satisfactory to Administrative Agent.

**8.4 Financial Statements, Compliance Certificates and Projections.**

(a) Weekly.

(i) Commencing on the second Wednesday after the Petition Date and continuing on Wednesday of each week thereafter, Borrowers shall provide a "Variance Report" to Administrative Agent, certified by an Authorized Officer of each Borrower, containing (A) a reconciliation for the immediately preceding week (or two weeks, with respect to the first such report) of budgeted and actual revenue and expense/disbursement amounts, noting therein all variances, on a line-item basis, from amounts set forth for such period in the Cash Flow Forecast, (B) a written narrative explanation (including (1) the cause of the variance, (2) whether this variance is expected to impact the Budget, (3) if known, the degree to which the variance is a permanent variance from the Budget and (4) if appropriate, how the source of such variance will be addressed in subsequent forecasts) if (w) actual disbursements under any line item on the Budget for any week or the then most recently ended Test Period exceed the budgeted disbursements for either such period in such line item by more than ten percent (10%), (x) aggregate actual disbursements under the Budget for any week or the then most recently ended Test Period exceed the aggregate budgeted disbursements for either such period by more than seven and one half percent (7.5%), (y) actual cash receipts under any line item on the Budget for any week or the then most recently ended Test Period are less than ninety percent (90%) of the budgeted cash receipts for either such period in such line item or (z) aggregate actual cash receipts during any week or the then most recently ended Test Period are less than ninety-two and one half percent (92.5%) of aggregate projected cash receipts set forth in the Budget for either such period, (C) an update of the Cash Flow Forecast to reflect the prior week's actual cash receipts and disbursements, and, as appropriate, an update to the remaining weeks under the then-current Cash Flow Forecast, and (D) an aged report listing current gross accounts receivable and current postpetition accounts payable.

(ii) Contemporaneously with delivery of the Variance Report referred to in clause (a)(i) above, Borrowers shall deliver to Administrative Agent and each Lender a Compliance Certificate executed by an Authorized Officer of Borrower Representative.

(b) Monthly.

(i) As soon as available, but in no event later than thirty (30) days after the last day of each calendar month, Borrowers shall deliver to Administrative Agent and each Lender consolidated and consolidating financial statements of Borrowers, the other Credit Parties and their Subsidiaries for such month certified by an Authorized Officer of Borrower Representative, which consolidated and consolidating financial statements shall include the consolidated and consolidating balance sheet of Borrowers, the other Credit Parties and their Subsidiaries at the end of such month and the consolidated and consolidating statement of

income, statement of retained earnings and statement of cash flows for such month, all of which shall be in reasonable detail and prepared in accordance with GAAP.

(ii) Contemporaneously with delivery of financial statements referred to in clause (a)(i) above, Borrowers shall deliver to Administrative Agent and each Lender: (A) a Compliance Certificate executed by an Authorized Officer of Borrower Representative, (B) evidence satisfactory to Administrative Agent that all federal and state taxes to the extent such federal and state taxes are due, if any, have been paid in full, including payroll taxes, and (C) a reconciliation of the account trial balance for accounts receivable to the general ledgers.

(iii) On the first Thursday of each month following the Petition Date, Borrowers shall deliver to Administrative Agent and each Lender (A) an updated "rolling" 13-week Cash Flow Forecast in a form similar to the Initial Cash Flow Forecast, which, once approved in writing by the Administrative Agent in its reasonable discretion, shall supplement and replace the prior Cash Flow Forecast without further notice, motion, application to, order of, or hearing before the Bankruptcy Court; (B) a reconciliation of the immediately preceding month's budgeted and actual revenue and expense/disbursement amounts to the corresponding period in the Initial Budget; (C) if there has been a material change in the then current Budget (and in any case if requested by Administrative Agent) an updated budget in a form similar to the Initial Budget (the most recent such updated Budget, the "**Updated Budget**"), which, once approved in writing by the Administrative Agent in its reasonable discretion, shall supplement and replace the prior Budget without further notice, motion, application to, order of, or hearing before the Bankruptcy Court; and (D) if an Updated Budget has been delivered, a reconciliation of the immediately preceding month's budgeted and actual revenue and expense/disbursement amounts to the corresponding period in the Updated Budget.

(c) [Reserved].

(d) Annually.

(i) As soon as available and in any event within one hundred twenty (120) days after the last day of each Fiscal Year, Borrowers shall deliver to Administrative Agent and each Lender: (A) the consolidated and consolidating balance sheet of Borrowers, the other Credit Parties and their Subsidiaries as at the end of such Fiscal Year and the related consolidated and consolidating statements of income, stockholders' equity and cash flow for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the previous Fiscal Year, in reasonable detail and consistent in all material respects with the manner of presentation as of the Closing Date and (B) which shall be certified by an Authorized Officer of Borrower Representative.

(e) Upon Request. Borrowers shall deliver to Administrative Agent and Lenders such other financial reports and other information regarding the operations, business affairs and financial condition of Borrowers and the other Credit Parties as Administrative Agent may reasonably request.

**8.5 Protected Health Information.** All written information, reports, statements and other papers and data furnished by or on behalf of each Borrower and each other Credit Party to Administrative Agent and Lenders shall be furnished by each Borrower and each other Credit Party in material compliance with all Applicable Laws regarding the use and/or disclosure of patient health information, including, but not limited to, regulations, standards and rules promulgated under the HIPAA. Each Borrower and each other Credit Party, agrees not to include or disclose any "protected health

information” in any such information, reports, statements and other papers or data furnished by or on behalf of each Borrower and each other Credit Party to Administrative Agent and Lenders and further agrees to indemnify Administrative Agent and each Lender pursuant to Section 11.15 for any Indemnified Liabilities Administrative Agent or any Lender may incur as a result of the provision of any “protected health information,” other than any breach by Administrative Agent or such Lender that results from its own gross negligence or willful misconduct.

## ARTICLE 9 DEFAULTS AND REMEDIES

**9.1 Events of Default.** An “Event of Default” shall exist hereunder if any of the following shall occur:

(a) **Payment:** If any Borrower fails to make any payment of principal on the Loans when due, including any overadvance pursuant to Section 2.5, or fails to make any payment of interest when due and such failure shall continue unremedied for a period of two (2) Business Days;

(b) **Other Obligations:** If any Borrower fails to make any payment of fees, Expenses or other monetary obligations (other than as described in Section 9.1(a)), arising out of or incurred in connection with this Agreement and the other Loan Documents on the date any such payment is due and payable, and such failure continues for a period of three (3) Business Days;

(c) **Covenants:** If any Borrower or any other Credit Party:

(i) shall be in violation, breach or default of, or shall fail to perform, observe or comply with any covenant, obligation or agreement set forth in (A) Sections 5.2, 5.4, 5.7, 5.11, 5.14 or 5.16 of this Agreement or (B) Article 6, Article 7 (at such time as written notice thereof is given to Borrowers by Administrative Agent) or Article 8 of this Agreement; or

(ii) shall be in violation, breach or default of, or shall fail to perform, observe or comply with, any other covenant, obligation or agreement in this Agreement or any other Loan Document (other than any such covenant, obligation or agreement described in Sections 9.1(a), 9.1(b), or 9.1(c)(i) above), and such violation, breach, default or failure continues for a period of thirty (30) calendar days after the earlier of (i) the date on which any Authorized Officer of any Borrower or other Credit Party first knew or became aware (or should have known or been aware) of such failure, violation, breach or default, and (ii) the date on which written notice thereof is given to Borrowers by Administrative Agent;

(d) **Representations, Warranties and Information:** If any representation or warranty made, or financial or other information provided, by any Borrower or any other Credit Party or Affiliate thereof in this Agreement and any other Loan Document, or in any report, certificate, financial statement or other instrument, agreement or document that is delivered in connection with the Loan Documents shall be false or misleading in any material respect (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of the date the representation or warranty was made or the financial or other information was provided;

(e) **[Reserved];**

(f) **Other Indebtedness:** If (i) any Borrower or any other Credit Party shall default beyond any grace period in the payment of principal or interest of any Indebtedness of such Credit Party in excess of \$100,000 in the aggregate to any Person (other than to the Administrative Agent and Lenders



under Section 9.1(a) or (b)), or (ii) any Borrower or any other Credit Party otherwise defaults under the terms of any such Indebtedness and the holder of such Indebtedness accelerates the payment of such Credit Party's obligations thereunder prior to the maturity date or prior to the regularly scheduled date of payment (without regard to the provisions of any intercreditor agreement that would restrict the ability of the holder to so accelerate or exercise any remedies), in the case of (i) or (ii), other than defaults existing prior to the Petition Date or occurring solely as a result of the commencement of the Bankruptcy Cases or resulting from a Permitted Asset Disposition or entry into the Financing Orders;

(g) **Loan Documents Validity and Enforceability:** The validity or enforceability of any Loan Document shall at any time for any reason be declared to be null and void, or a proceeding shall be commenced by any Borrower, any other Credit Party or any Affiliate thereof, or by any Governmental Authority, seeking to establish the invalidity or unenforceability thereof, or any Borrower or any other Credit Party or any Affiliate of any of the foregoing that is a party thereto shall deny that it has any liability or obligation purported to be created under any Loan Document or shall otherwise attempt to rescind any of their obligations under the Loan Documents;

(h) **Loan Documents:** The occurrence of any event identified in any other Loan Document as an Event of Default;

(i) **Liens:** If any Lien in favor of Administrative Agent shall cease to be a valid, enforceable First Priority Lien or if any Borrower, any Credit Party, any Affiliate of any of the foregoing or any Governmental Authority shall assert any of the foregoing;

(j) **Deposit Account Agreement Instructions:** If (i) any instruction or agreement relating to any Lockbox Account, or any related depository account is amended or terminated without the written consent of Administrative Agent, (ii) any Credit Party instructs or gives any notice to a Deposit Account Bank to cause amounts on deposit in any Lockbox Account to be transferred or disposed of other than as required under Section 2.4, (iii) any Borrower fails to forward any Collections to the applicable Lockbox Account as required under Section 2.4, (iv) any Borrower directs any Account Debtor to make a payment in respect of any Account to any place or deposit account other than the applicable Lockbox Account as required under Section 2.4, or (v) any Borrower fails to remit any other Collections it receives to the Concentration Account in the time period provided under Section 2.4;

(k) **Healthcare Laws and Healthcare Authorizations:** If any of the following shall occur:

(i) any Healthcare Authorizations of any Borrower or any other Credit Party necessary for the operation of any Healthcare Facility in all material respects as presently operated shall be revoked, fail to be renewed, restricted, suspended or terminated;

(ii) any Borrower or any other Credit Party shall fail to be eligible for any reason to participate in any Government Reimbursement Program or to accept assignments or rights to reimbursement thereunder;

(iii) any Non-Government Payor shall terminate, revoke or fail to renew any Borrower's or any other Credit Party's right to participate in any program that provides reimbursement for Healthcare Services, and such termination, revocation or failure to renew has or could reasonably be expected to have a Material Adverse Effect;

(iv) any Credit Party or any Authorized Officer shall have been found guilty of an act of fraud or shall have been indicted for or convicted of a felony crime that relates to any

Healthcare Services, any Government Reimbursement Program or any other reimbursement program with a Third-Party Payor; or

(v) If any Credit Party is found to have been overpaid by a Government Account Debtor by more than \$1,000,000 (individually or the aggregate) during any period covered by an audit conducted by such Government Account Debtor, and such overpayment is not repaid within 30 days of its due date or subject to an extended repayment plan or similar agreement with a Governmental Authority, unless the same is being contested in good faith and reserved for in a manner reasonably acceptable to the Administrative Agent;

(l) **Material Contracts:** If (i) a default or event of default shall occur under any Material Contract, any Asset Sale Document or any Lease Agreement that has not been cured within the time period set forth therein, or (ii) the termination of any Material Contract or any Lease Agreement;

(m) **Change of Control:** If any Change of Control shall occur;

(n) **Judgments:** If one or more judgments, orders, or awards for the payment of money involving an aggregate amount of \$250,000, or more (except to the extent fully covered by insurance pursuant to which the insurer has not denied coverage) is entered or filed against any Borrower or any other Credit Party, or with respect to any of their respective assets, and either (a) there is a period of thirty (30) consecutive days at any time after the entry of any such judgment, order, or award following obtaining relief from the automatic stay during which (1) the same is not discharged, satisfied, vacated, or bonded pending appeal, or (2) a stay of enforcement thereof is not in effect, or (b) enforcement proceedings are commenced upon such judgment, order, or award;

(o) **Material Adverse Change:** If any material adverse change occurs in the Collateral, business, property, assets, prospects, operations or condition, financial or otherwise of any Borrower or any other Credit Party, or the occurrence of any other event which has or would have a Material Adverse Effect;

(p) **Admissions Default:** Any Governmental Authority ceases to permit new patients to be admitted to any Healthcare Facility other than in connection with the Seton Cash Burn Elimination Plan or Permitted Asset Dispositions; or

(q) **Bankruptcy Defaults:**

(i) if (i) any of the Bankruptcy Cases is converted to a case under Chapter 7 of the Bankruptcy Code, or (ii) any of the Bankruptcy Cases is dismissed, or (iii) any Credit Party shall file a motion or other pleading seeking the dismissal of the Bankruptcy Cases under Section 1112 of the Bankruptcy Code or otherwise or the conversion of the Bankruptcy Cases to Chapter 7 of the Bankruptcy Code;

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

(iii) except with respect to the Carve-Out, the existence of any claims or charges, or the entry of any order of the Bankruptcy Court authorizing any claims or charges entitled to any super-priority administrative expense claim status or any Lien that is *pari passu*

with or senior to those of Administrative Agent and the Lenders is granted to any Person other than Administrative Agent;

(iv) the entry of any order by the Bankruptcy Court granting, or the filing by any Credit Party or any of its Subsidiaries of any motion or other request with the Bankruptcy Court (in each case, other than the Financing Orders and motions seeking entry thereof or permitted amendments or modifications thereto) seeking, authority to use any cash proceeds of any of the Collateral without the Administrative Agent's consent or to obtain any financing under Section 364 of the Bankruptcy Code, in each case, other than as permitted by the Loan Documents or the Financing Orders

(v) if any Credit Party shall file a motion seeking, or the Bankruptcy Court shall enter an order granting, relief from or modifying the automatic stay of Section 362 of the Bankruptcy Code (A) to allow any creditor (other than the Administrative Agent) to execute upon or enforce a Lien on any Collateral having a value in excess of \$50,000, (B) approving any settlement or other stipulation not approved by the Administrative Agent with any secured creditor of any Credit Party providing for payments as adequate protection or otherwise to such secured creditor, (C) with respect to any Lien of or the granting of any Lien on any Collateral to any federal, state or local environmental or regulatory agency or authority, which in either case involves a claim of \$100,000 or more or (D) permit other actions not permitted hereunder that could reasonably be expected to have a Material Adverse Effect;

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

(vii) if any Borrower or Guarantor shall fail to comply with or perform any of the terms, conditions, covenants or other obligations under the Interim Order, the Final Order or any Asset Sale Order or to perform in any material respect its obligations under any order of the Bankruptcy Court approving bidding procedures;

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

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

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

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

(xii) (A) the amendment, modification, reversal, revocation, issuance of a stay or order to vacate or supplement the Interim Order, the Final Order, any Asset Sale Order or any other order of the Bankruptcy Court affecting this Agreement, any other Loan Document, any Asset Sale or the transactions contemplated hereby or thereby, in each case, in any manner not acceptable to Administrative Agent and the Required Lenders, (B) the filing of a motion by a



Credit Party for reconsideration with respect to the Interim Order, the Final Order or the Cash Management Order, (C) the Interim Order, the Final Order or the cash management order, as applicable, shall otherwise not be in full force and effect or (D) the termination of any Asset Purchase Agreement by the applicable Buyer;

(xiii) if the Confirmation Order shall fail to provide for the payment in full, in cash of all Obligations on or before the Reorganization Effective Date;

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

(xv) if (A) any Plan Documentation is executed, filed, delivered, or any confirmation order is entered which is not acceptable to the Administrative Agent in its sole discretion or does not provide for repayment in full in cash of all Obligations before or at the Reorganization Effective Date or any of the Credit Parties or their Subsidiaries shall seek, support or fail to contest in good faith the filing or confirmation of any such plan or entry of any such order, (B) the entry of any order terminating any Credit Party's exclusive right to file a plan of reorganization, or (C) the expiration of any Credit Party's exclusive right to file a plan of reorganization;

(xvi) the failure of the Bankruptcy Court to approve any Asset Sale Bid Procedure Order or the Consolidated Sale Motion within thirty (30) days of the filing of the applicable Asset Sale Bid Procedure Order or Consolidated Sale Motion, respectively;

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

(xviii) the bringing of a motion, taking of any action or the filing of any plan of reorganization or disclosure statement attendant thereto by any of the Credit Parties or any Subsidiary, or any Person claiming by or through any Credit Party or any Subsidiary, in the Bankruptcy Cases: (A) to obtain additional financing under Section 364(c) or Section 364(d) of the Bankruptcy Code not otherwise permitted pursuant to this Agreement; (B) to grant any Lien other than Permitted Liens upon or affecting any Collateral; (C) except as provided in the Interim Order or Final Order or permitted hereunder, as the case may be, to use "cash collateral" of Administrative Agent and the Lender under Section 363(c) of the Bankruptcy Code without the prior written consent of the Administrative Agent; or (D) any other action or actions materially adverse to the Administrative Agent and Lenders or their rights and remedies hereunder, under any other Loan Documents, or their interest in the Collateral, other than as provided in the Financing Orders;

(xix) the payment of, or application for authority to pay, any prepetition claim (including by defeasance) without the Administrative Agent's prior written consent unless in accordance with the Budget or as contemplated by the Financing Orders;

(xx) the allowance of any claim or claims under Section 506(c) of the Bankruptcy Code or otherwise against the Administrative Agent, any Lender or any of the Collateral in excess of \$100,000;

(xxi) the commencement of a suit or an action (but not including a motion for standing to commence a suit or an action) against either the Administrative Agent or any Lender by a Credit Party and, as to any suit or action brought by any Person other than an Credit Party or a Subsidiary or a Credit Party, officer or employee of a Credit Party, the continuation thereof without dismissal for sixty (60) days after service thereof on either the Administrative Agent or such Lender, that asserts or seeks by or on behalf of a Credit Party, any state of federal environmental protection or health and safety agency, any official committee in any Bankruptcy Case or any other party in interest in any of the Bankruptcy Cases, a claim or any legal or equitable remedy that would (x) have the effect of invalidating, subordinating or challenging any or all of the Obligations or Liens of the Administrative Agent or any Lender under the Loan Documents to any other claim, or (y) have a material adverse effect on the rights and remedies of the Administrative Agent or any Lender or the collectability of all or any portion of the Obligations;

(xxii) the entry of an order in the Bankruptcy Cases avoiding or permitting recovery of any portion of the payments made on account of the Obligations;

(xxiii) the Financing Orders shall cease to create a valid and perfected Lien on the Collateral as contemplated therein or to be in full force and effect, shall have been reversed, modified, amended, stayed, vacated, or subject to stay pending appeal, in the case of modification or amendment, without the prior written consent of the Administrative Agent;

(xxiv) an order in the Bankruptcy Cases shall be entered charging any of the Collateral in an amount greater than \$100,000 under Section 506(c) of the Bankruptcy Code against the Administrative Agent or any Lender, or the commencement of other actions that is materially adverse to the Administrative Agent, the Lenders or their respective rights and remedies under the Loan Documents in any of the Bankruptcy Cases or inconsistent with any of the Loan Documents, except as provided in the Financing Orders with respect to the Carve-Out;

(xxv) if the Final Order does not include a waiver, in form and substance satisfactory to the Administrative Agent, of the right to surcharge the Collateral under Section 506(c) of the Bankruptcy Code;

(xxvi) an order of the Bankruptcy Court shall be entered denying or terminating use of cash collateral by the Credit Parties;

(xxvii) an order materially adversely impacting the rights and interests of the Administrative Agent and the Lenders, as determined by the Administrative Agent in its reasonable discretion, shall have been entered by the Bankruptcy Court or any other court of competent jurisdiction;

(xxviii) any Credit Party shall challenge, support or encourage a challenge of any payments made to the Administrative Agent or any Lender with respect to the Obligations, or without the consent of the Administrative Agent, the filing of any motion by the Credit Parties seeking approval of (or the entry of an order by the Bankruptcy Court approving) adequate protection to any prepetition agent or lender that is inconsistent with the Financing Orders;

(xxix) if, unless otherwise approved by the Administrative Agent, an order of the Bankruptcy Court shall be entered providing for a change in venue with respect to the Bankruptcy Cases and such order shall not be reversed or vacated within ten (10) days;

(xxx) without the Administrative Agent's consent, any Credit Party or any Subsidiary thereof shall file any motion or other request with the Bankruptcy Court seeking (A) to grant or impose, under Section 364 of the Bankruptcy Code or otherwise, liens or security interests in any DIP Collateral (as defined in the Financing Orders), whether senior, equal or subordinate to the Administrative Agent's and Lenders' liens and security interests other than as permitted hereunder; or (B) to modify or affect in any material respect any of the rights of the Administrative Agent or the Lenders under the Financing Orders, the Loan Documents, and related documents by any plan of reorganization confirmed in the Bankruptcy Cases or subsequent order entered in the Bankruptcy Cases; or

(xxxi) any Credit Party or any Subsidiary thereof shall take any action in support of any matter prohibited by this Section 9.1(r) or any other Person shall do so and such application is not contested in good faith by the Credit Parties and the relief requested is granted in an order that is not stayed pending appeal.

**9.2 Remedies.** Notwithstanding the provisions of Section 362 of the Bankruptcy Code, if any Event of Default occurs and is continuing, Administrative Agent shall have the right in its sole discretion (or at the discretion of the Required Lenders) to take any or all of the following actions:

- (a) declare the commitment of the Lenders to make Loans to be terminated;
- (b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by any Borrower;
- (c) reduce the advance rates in respect of Eligible Accounts or take additional reserves against or otherwise modify the Borrowing Base; and
- (d) exercise all rights and remedies available to Administrative Agent and the Lenders under the Loan Documents, including any right of set-off under Section 11.21, or under the UCC or any other Applicable Law;

provided, however, that upon the occurrence of an Event of Default described in Section 9.1(r), the obligation of Lenders to make Loans shall automatically terminate, the unpaid principal amount of all outstanding Loans and other Obligations and all interest and other amounts as aforesaid shall automatically become due and payable without further act of Administrative Agent or any Lender.

**9.3 Application of Payments.**

(a) So long as no Event of Default has occurred and is continuing, all proceeds of any repayment, including any prepayments of the Loans, shall be applied by Administrative Agent in the following order of priority:

FIRST, to fees, Expenses and any other amounts then due and owing under the Loan Documents;

SECOND, to accrued and unpaid interest on the Loans of each Lender, ratably among them in accordance with their Pro Rata Shares; and



THIRD, to principal on the Loans of each Lender, ratably among them in accordance with their Pro Rata Shares.

(b) Notwithstanding any other provisions of this Agreement to the contrary, upon the occurrence and during the continuance of an Event of Default (or after the Loans and all other Obligations under the Loan Documents have otherwise become due and payable in accordance with the terms of Section 9.2), all amounts collected or received by Administrative Agent and any Lender on account of the Obligations or any other amounts outstanding under any of the Loan Documents or in respect of the Collateral or any disposition of the Collateral shall be applied as follows (and each Borrower irrevocably waives the right to direct the application of any such amounts in any other manner):

FIRST, to the payment of all fees, costs, Expenses and indemnities of Administrative Agent and any Protective Advances made by Administrative Agent pursuant to the terms of the Loan Documents;

SECOND, to payment of that portion of the Obligations constituting fees, costs, Expenses and indemnities of the Lenders as provided herein, ratably among them in accordance with their Pro Rata Shares;

THIRD, to the payment of all of the Obligations consisting of accrued and unpaid interest owing to the Lenders, ratably among them in accordance with their Pro Rata Shares;

FOURTH, to the payment on a pari passu basis of (1) all Obligations consisting of unpaid principal on the Loans, ratably among the Lenders in accordance with their Pro Rata Shares and (2) any amounts due under any Approved Cash Management Obligations;

FIFTH, to all other Obligations which shall have become due and payable under the Loan Documents or otherwise and not repaid pursuant to clauses "FIRST" through "FOURTH" above; and

SIXTH, to the payment of the surplus, if any, to Borrowers or whoever else may be lawfully entitled to receive such surplus.

In carrying out the foregoing, amounts received shall be applied in the numerical order provided above until exhausted prior to application to the next succeeding category.

**9.4 Rights to Appoint Receiver.** Without limiting and in addition to any other rights, options and remedies Administrative Agent and Lenders have hereunder, the other Loan Documents, the UCC, at law or in equity, upon the occurrence and continuation of an Event of Default or the acceleration of the Loans pursuant to Section 9.2, Administrative Agent shall have the right to apply for and have a receiver appointed by a court of competent jurisdiction to enforce the rights and remedies of the Administrative Agent and the Lenders in order to manage, protect, preserve, sell or dispose the Collateral and continue the operation of the business of Borrowers and the Credit Parties and to collect all revenues and profits thereof and apply the same to the payment of all expenses and other charges of such receivership including the compensation of the receiver and to the payments as aforesaid until a sale or other disposition of such Collateral shall be finally made and consummated. EACH BORROWER AND EACH OTHER CREDIT PARTY HEREBY IRREVOCABLY CONSENTS TO AND WAIVES ANY RIGHT TO OBJECT TO OR OTHERWISE CONTEST THE APPOINTMENT OF RECEIVER AS PROVIDED ABOVE. EACH BORROWER AND EACH OTHER CREDIT PARTY (I) GRANTS SUCH WAIVER AND CONSENT KNOWINGLY AFTER HAVING DISCUSSED THE IMPLICATIONS THEREOF WITH COUNSEL, (II) ACKNOWLEDGES THAT (A) THE

UNCONTESTED RIGHT TO HAVE A RECEIVER APPOINTED FOR THE FOREGOING PURPOSES IS CONSIDERED ESSENTIAL BY THE ADMINISTRATIVE AGENT AND LENDERS IN CONNECTION WITH THE ENFORCEMENT OF ITS RIGHTS AND REMEDIES HEREUNDER AND THE OTHER LOAN DOCUMENTS, AND (B) THE AVAILABILITY OF SUCH APPOINTMENT AS A REMEDY UNDER THE FOREGOING CIRCUMSTANCES WAS A MATERIAL FACTOR IN INDUCING ADMINISTRATIVE AGENT AND LENDERS TO MAKE THE LOANS; AND (III) AGREES TO ENTER INTO ANY AND ALL STIPULATIONS IN ANY LEGAL ACTIONS, OR AGREEMENTS OR OTHER INSTRUMENTS IN CONNECTION WITH THE FOREGOING AND TO COOPERATE FULLY WITH ADMINISTRATIVE AGENT AND LENDERS IN CONNECTION WITH THE ASSUMPTION AND EXERCISE OF CONTROL BY THE RECEIVER OVER ALL OR ANY PORTION OF THE COLLATERAL, THE HEALTHCARE FACILITIES OR ANY OTHER PROPERTY OF ANY BORROWER OR ANY OTHER CREDIT PARTY.

**9.5 Remedies Cumulative.** Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Administrative Agent or any Lender against any Borrower or any of the other Credit Parties under the Loan Documents or at law or in equity may be exercised by Administrative Agent at any time and from time to time, whether or not all or any of the Obligations shall be declared, or be automatically, due and payable, and whether or not Administrative Agent shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents. Any such actions taken by Administrative Agent shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as Administrative Agent may determine in its discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Administrative Agent and Lenders permitted by law, equity or contract or as set forth in the Loan Documents. Without limiting the generality of the foregoing, each Borrower agrees that if an Event of Default is continuing, (i) to the extent permitted by Applicable Law, Administrative Agent is not subject to any "one action" or "election of remedies" law or rule, and (ii) all Liens and other rights, remedies or privileges provided to Administrative Agent and Lenders shall remain in full force and effect until Administrative Agent has exhausted all of its remedies against the Collateral, the Collateral has been sold and/or otherwise realized upon in satisfaction of the Obligations or the Obligations have been paid in full. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default, or the granting of any indulgence or compromise by Administrative Agent or any Lender shall impair any such remedy, right or power hereunder or be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. Any suspension or waiver by Administrative Agent or Lenders, as applicable, of a Default or Event of Default shall not suspend, waive or affect any other Default or Event of Default, whether the same is prior or subsequent thereto and whether of the same or of a different kind or character.

**9.6 Severance.** Administrative Agent shall have the right from time to time to sever this Agreement, any Revolving Notes, and the other Loan Documents into one or more separate notes, mortgages and other security documents in such denominations and priorities of payment and Liens as Administrative Agent shall determine in its discretion for purposes of evidencing and enforcing the rights and remedies of the Administrative Agent and the other Lenders hereunder. Each Credit Party shall execute and deliver to Administrative Agent from time to time, promptly after the request of Administrative Agent, a severance agreement and such other documents as Administrative Agent shall request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Administrative Agent. Each Credit Party hereby absolutely and irrevocably appoints Administrative Agent as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to effect such severance, each Credit Party ratifying all that such attorney shall do by virtue thereof.

**9.7 Administrative Agent's Right to Perform.** If any Borrower or any other Credit Party fails to perform any covenant or obligation contained herein and such failure shall continue for a period of five (5) Business Days after any Borrower's or any other Credit Party's receipt of written notice thereof from Administrative Agent, without in any way limiting Administrative Agent's and Lenders' right to exercise any of their rights, powers or remedies as provided hereunder, or under any of the other Loan Documents, Administrative Agent may, but shall have no obligation to, perform, or cause performance of, such covenant or obligation, and all costs, expenses, liabilities, penalties and fines of Administrative Agent incurred or paid in connection therewith shall be payable by Borrowers to Administrative Agent upon demand and if not paid shall be added to the Obligations, shall be secured by the Collateral and shall bear interest thereafter at the Default Rate. Notwithstanding the foregoing, Administrative Agent shall have no obligation to send notice to Borrower Representative or any Credit Party of any such failure.

**9.8 License.** Administrative Agent, on behalf of itself and the Lenders, is hereby granted an irrevocable, non-exclusive license or other right to use, license or sub-license (without payment of royalty or other compensation to any Person) any or all Intellectual Property of any Borrower or any other Credit Party, computer hardware and software, trade secrets, brochures, customer lists, promotional and advertising materials, labels, packaging materials and other property, in advertising for sale, marketing, selling, collecting, completing manufacture of, or otherwise exercising any rights or remedies with respect to, any Collateral. Each Credit Party's rights and interests under Intellectual Property shall inure to Administrative Agent's and Lenders' benefit.

**9.9 Injunctive Relief.** Each Borrower and each other Credit Party acknowledges and agrees that if any Borrower or other Credit Party fails to perform any covenant or obligation contained herein or under any of the other Loan Documents, Administrative Agent and Lenders may have no adequate remedy in monetary damages and, accordingly, shall be entitled to an injunction, (including a temporary restraining order, preliminary injunction, writ of attachment or order compelling performance) against such non-performance, including maintaining the procedure set forth in this Agreement with respect to Collections. Neither Administrative Agent nor Lenders shall be deemed to have waived any other legal or equitable remedies hereunder, the other Loan Documents or at law if Administrative Agent and Lenders shall seek injunctive relief under this Section 9.9. Each Borrower waives any requirement for the posting of a bond or other security by Administrative Agent and Lenders in connection with any such injunctive relief.

**9.10 Collection of Accounts.** Subject to Applicable Law regarding Government Account Debtors, Administrative Agent may, at any time and from time to time after the occurrence and during the continuance of an Event of Default, whether before or after notification to any Account Debtor and whether before or after the maturity of any of the Obligations, (i) enforce collection of any Accounts of any Credit Party or other amounts owed to any Credit Party by suit or otherwise; (ii) exercise all of any Credit Party's rights and remedies with respect to proceedings brought to collect any Accounts or other amounts owed to such Credit Party; (iii) surrender, release or exchange all or any part of any Accounts or other amounts owed to any Credit Party, or compromise or extend or renew for any period (whether or not longer than the original period) any indebtedness thereunder; (iv) sell or assign any Account of any Credit Party or other amount owed to any Credit Party upon such terms, for such amount and at such time or times as Administrative Agent deems advisable; (v) prepare, file and sign any Credit Party's name on any proof of claim in bankruptcy or other similar document against any Account Debtor or other Person obligated to any Credit Party; and (vi) do all other acts and things which are necessary, in Administrative Agent's sole discretion, to fulfill any Credit Party's obligations under this Agreement and the other Loan Documents and to allow Administrative Agent to collect the Accounts or other amounts owed to any Credit Party. In addition to any other provision hereof, Administrative Agent may at any time, after the occurrence and during the continuance of an Event of Default, at Borrowers' expense, notify Account Debtors (subject to Applicable Law regarding Government Account Debtors) to make payment directly to



Administrative Agent of any amounts due or to become due thereunder (and once such notice has been given to an Account Debtor, no Credit Party shall give any contrary instructions to such Account Debtor during the continuance of an Event of Default without Administrative Agent's prior written consent).

**9.11 Assistance and Cooperation.** Each Credit Party agrees to assist and cooperate with Administrative Agent, and take any action which Administrative Agent may reasonably request or require of such Credit Party, in order to enable Administrative Agent and Lenders to obtain and enjoy the full rights and benefits granted to Administrative Agent and Lenders by the Credit Parties under this Agreement and the other Loan Documents, including specifically, at the cost and expense of Borrowers, the use of their commercially reasonable efforts to assist in obtaining approval of any Governmental Authority for any transaction or action contemplated thereunder which is necessary under any Law or Contractual Obligation, and specifically, without limitation, the preparation, execution and filing with any such Person of any application for consent to assignment of Governmental Authorizations or otherwise.

**9.12 Terminated Use of Cash Collateral.** Without limitation of any of the remedies set forth in this Agreement and the other Loan Documents, upon the occurrence and during the continuance of any Event of Default, or upon the occurrence of the Revolving Loan Termination Date, no Borrower or Guarantor shall have any right to use any cash collateral (as defined in Section 363(a) of the Bankruptcy Code) in which Administrative Agent or the Lenders has an interest other than amounts used for purposes and in a manner otherwise permitted by this Agreement and held in operating accounts subject to "springing" deposit account control agreements in favor of Administrative Agent for which Administrative Agent has not given a notice of exclusive control or similar blocking notice.

**9.13 Lift of Automatic Stay.** Subject to the Financing Orders, 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.

## **ARTICLE 10 PARTICIPATIONS AND ASSIGNMENTS**

### **10.1 Participations and Assignments.**

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the Borrower nor any other Credit Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of paragraph (b) of this Section, (ii) by way of participation in accordance with the provisions of paragraph (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (e) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby and Participants to the extent provided in paragraph (d) of this Section) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Any Lender may at any time assign to one or more assignees (any such assignee, an "Assignee") all or any portion of such Lender's Pro Rata Share of the Revolving Commitment, the Loans and its other rights and obligations hereunder, with the prior written consent of Administrative Agent, Swingline Lender and, so long as no Default or Event of Default has occurred and is continuing, with the prior written consent of Borrowers (all of which consents shall not be unreasonably withheld, conditioned or delayed and shall not be required for an assignment by a Lender to another Lender or an

Affiliate of a Lender). Except as Administrative Agent may otherwise agree, any such assignment shall be in a minimum aggregate amount equal to \$5,000,000 or, if less, the remaining Revolving Commitment and Loans held by the assigning Lender. Borrowers and Administrative Agent shall be entitled to continue to deal solely and directly with such assigning Lender in connection with the interests so assigned to an Assignee until Administrative Agent shall have received an Assignment Agreement executed, delivered and fully completed by the applicable parties thereto and a processing fee paid by such applicable parties of \$3,500.00. No assignment hereunder shall be permitted if to any Ineligible Assignee. Any attempted assignment not made in accordance with this Section 10.1(b) shall be treated as the sale of a participation under Section 10.1(d).

(c) From and after the date on which the conditions described in Section 10.1(b) above have been met, (i) such Assignee shall be deemed automatically to have become a party hereto and, to the extent that rights and obligations hereunder have been assigned to such Assignee pursuant to such Assignment Agreement, shall have the rights and obligations of a Lender hereunder, and (ii) the assigning Lender, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment Agreement, shall be released from its rights (other than its indemnification rights) and obligations hereunder. Upon the request of the Assignee (and, as applicable, the assigning Lender) pursuant to an effective Assignment Agreement, Borrowers shall execute and deliver to Administrative Agent for delivery to the Assignee (and, as applicable, the assigning Lender) a Revolving Note in the principal amount of the Assignee's Revolving Commitment (and, as applicable, a Revolving Note in the principal amount of the Revolving Commitment retained by the assigning Lender). Each such Revolving Note shall be dated the effective date of such assignment. Upon receipt by the assigning Lender of such Revolving Note, the assigning Lender shall return to Borrowers any prior Revolving Note held by it.

(d) Any Lender may at any time (without any required consent) sell to one or more Persons (other than a Person that is an Ineligible Assignee) participating interests in its respective Revolving Commitment and Loans or other interests hereunder (any such Person, a "**Participant**"). In the event of a sale by a Lender of a participating interest to a Participant, (a) such Lender's obligations hereunder shall remain unchanged for all purposes, (b) Administrative Agent and Borrowers shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations hereunder and (c) all amounts payable by Borrowers shall be determined as if such Lender had not sold such participation and shall be paid directly to such Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "**Participant Register**"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. No Participant shall have any direct or indirect voting rights hereunder except with respect to any event described in Section 11.4 expressly requiring the unanimous vote of all Lenders or, as applicable, all affected Lenders. Each Lender agrees to incorporate the requirements of the preceding sentence into each participation agreement which such Lender enters into with any Participant. Each Borrower agrees that if amounts outstanding hereunder are due and payable (as a result of acceleration or otherwise), each Participant shall be deemed to have the right of set-off in respect of its participating interest in amounts owing hereunder to the same extent as if the amount of its participating interest were owing directly to it as a Lender hereunder; provided that such right of set-off shall be subject to the obligation of each Participant to share with Lenders, and Lenders agree to share with each Participant, as provided in Section 11.21. Each Borrower agrees that each Participant shall be entitled to the benefits of Section 2.15 as if it were a Lender (provided that on the date of the participation

no Participant shall be entitled to any greater compensation pursuant to Section 2.15 than would have been paid to the participating Lender on such date if no participation had been sold and that each Participant complies with Section 2.15 as if it were an Assignee).

(e) Notwithstanding anything to the contrary set forth herein, any Lender may at any time pledge or assign a security interest in all or any portion of its rights hereunder and applicable Revolving Note to secure obligations of such Lender, including any pledge or assignment to secure obligations to any Federal Reserve Bank (including as collateral security pursuant to Regulation A and any Operating Circular issued by such Federal Reserve Bank), and such Loans and Revolving Note(s) shall be fully transferable as provided therein, and this Section 10.1 shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) Administrative Agent will maintain a copy of each Assignment Agreement delivered and accepted by it and register (the "**Register**") for the recordation of names and addresses of Lenders, the Pro Rata Share of each Lender and the portion of the Revolving Commitment and the Loans of each Lender and whether such Lender is the original Lender or the Assignee. All records of transfer of a Lender's interest in the Register shall be conclusive, absent manifest error, as to the ownership of the interests in such Revolving Commitment and the Loans. Administrative Agent shall not incur any liability of any kind with respect to any Lender with respect to the maintenance of the Register or for any failure to ensure that any assignment is made in accordance with the terms hereof. Upon the reasonable written request of Borrower Representative, Administrative Agent will furnish a copy of the Register to Borrower Representative or another Borrower (at the cost, if any, to Borrowers).

## ARTICLE 11 MISCELLANEOUS

**11.1 Financial Advisors.** Each Borrower (except for Cain Brothers and Berkeley Research Group, LLC) shall indemnify and hold Administrative Agent and Lenders harmless from and against any and all claims, liabilities, costs and expenses (including the reasonable fees and disbursements of legal counsel for Administrative Agent and Lenders, including the reasonable charges of internal legal counsel, whether incurred in connection with enforcing this indemnity or defending claims of third parties) of any kind in any way relating to or arising from a claim by any Person that such Person acted on behalf of such Borrower in connection with the transactions contemplated herein.

**11.2 Administrative Agent's Discretion.** Whenever pursuant to this Agreement or any other Loan Document, Administrative Agent exercises any right given to it to approve or disapprove, or consent or withhold consent, or any arrangement or term is to be satisfactory to Administrative Agent or is to be in Administrative Agent's discretion, the decision of Administrative Agent to approve or disapprove, to consent or withhold consent, or to decide whether arrangements or terms are satisfactory or not satisfactory, or acceptable or unacceptable or in Administrative Agent's discretion shall (except as is otherwise specifically herein provided) be in the sole discretion of Administrative Agent (unless another standard is specified herein, in which event such other standard shall be applied) and shall be final and conclusive.

### 11.3 Governing Law.

(a) IN ALL RESPECTS, INCLUDING MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT 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 AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH BORROWER AND EACH OTHER CREDIT PARTY HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, AND THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

(b) EACH PARTY HERETO HEREBY CONSENTS AND AGREES THAT THE BANKRUPTCY COURT SHALL HAVE EXCLUSIVE JURISDICTION (OR IF THE BANKRUPTCY COURT DOES NOT HAVE JURISDICTION, ANY FEDERAL OR STATE COURT OF COMPETENT JURISDICTION LOCATED IN NEW YORK, NEW YORK) TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN THE PARTIES HERETO, ON THE ONE HAND, AND ADMINISTRATIVE AGENT OR ANY LENDER, ON THE OTHER HAND, PERTAINING TO THE AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR TO ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS; PROVIDED THAT EACH PARTY ACKNOWLEDGES THAT ANY APPEALS FROM THE BANKRUPTCY COURT MAY HAVE TO BE HEARD BY A COURT OTHER THAN THE BANKRUPTCY COURT; PROVIDED, FURTHER, THAT NOTHING IN THE AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE ADMINISTRATIVE AGENT OR ANY LENDER FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION TO REALIZE ON THE COLLATERAL OR ANY OTHER SECURITY FOR THE OBLIGATIONS, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOR OF ADMINISTRATIVE AGENT OR ANY LENDER. EACH PARTY HERETO EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH COURT, AND EACH PARTY HEREBY WAIVES ANY OBJECTION THAT SUCH PARTY MAY HAVE BASED UPON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS, AND HEREBY CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT.

#### **11.4 Modification, Waiver in Writing.**

(a) **No Deemed Consent.** Administrative Agent's or Lenders' failure, at any time or times hereafter, to require strict performance by Borrowers or other Credit Parties of any provision of this Agreement shall not waive, affect or diminish any right of Administrative Agent or Lenders thereafter to demand strict compliance and performance therewith. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under any Loan Document, neither Administrative Agent nor any Lender shall be deemed to have waived any right either to require prompt payment when due of all other amounts due under the Loan Documents, or to declare an Event of Default for failure to effect prompt payment of any such other amount. None of the undertakings, agreements, warranties, covenants and representations of Borrowers and the other Credit Parties contained in this Agreement or any of the other Loan Documents and no Default or Event of Default shall be deemed to have been suspended or waived by Administrative Agent and Lenders unless such suspension or waiver is in writing signed by an officer of Administrative Agent and Required Lenders, and directed to Borrower specifying such suspension or waiver.

(b) **Amendments, Consents and Waivers Generally.** Except as otherwise expressly provided in this Agreement, (i) any consent or approval required or permitted by this Agreement or in any Loan Document to be given by the Lenders may be given, (ii) any term of this Agreement or of any other Loan Document may be amended, (iii) the performance or observance by the Borrower or any other Credit Party of any terms of this Agreement or any other Loan Document may be waived, and (iv) the continuance of any Default or Event of Default may be waived (either generally or in

a particular instance and either retroactively or prospectively) with, but only with, the written consent of the Required Lenders (or the Administrative Agent at the written direction of the Required Lenders), and, in the case of an amendment to any Loan Document, the written consent of each Credit Party which is party thereto, provided that no such amendment, modification or waiver or consent shall:

(i) extend or increase the Revolving Commitment of any Lender without the written consent of such Lender;

(ii) extend any date scheduled for the payment of principal or interest without the written consent of each Lender directly affected thereby;

(iii) extend the Revolving Loan Termination Date without the written consent of all Lenders;

(iv) reduce the principal amount of the Loans, the rate of interest thereon (including applicable margins and interest rate floors) or any fees payable hereunder, without the consent of each Lender directly affected thereby (except for any periodic adjustments of interest rates and fees as provided for in this Agreement or any right to waive the Default Rate);

(v) release any Borrower or any Guarantor from its obligations hereunder or under any Guaranty;

(vi) release all or substantially all of the Collateral granted hereunder or under any of the Loan Documents (except as otherwise specifically permitted or provided in this Agreement);

(vii) change the payment application waterfall in Section 9.3, the definition of Required Lenders, any provision of this Section 11.4 or reduce the aggregate Pro Rata Share required to effect an amendment, modification, waiver or consent, without, in each case, the written consent of all Lenders; or

(viii) provide, or otherwise permit, the subordination of any Loan, or authorize Administrative Agent to subordinate its Lien in all or substantially all of the Collateral to a third party (except as otherwise specifically permitted or provided in this Agreement) without the written consent of each Lender.

(c) **Administrative Agent Consent.** This Agreement or any Loan Document may be amended or waived pursuant to an agreement in writing entered into by the Administrative Agent and the Borrower or other applicable Credit Parties (without the consent of any Lender) (1) to cure a defect or error, (2) to grant a new Lien for the benefit of the Administrative Agent and the Lenders or extend an existing Lien over additional property or (3) to make modifications required under Applicable Law that are not materially adverse to the Lenders. No provision of Article 12 or other provision of this Agreement affecting Administrative Agent as such shall be amended, modified or waived without the prior written consent of Administrative Agent. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Revolving Commitment of such Lender may not be increased or extended without the consent of such Defaulting Lender.

(d) **Swingline Lender Consent.** No amendment, waiver or consent shall, unless in writing and signed by the Swingline Lender in addition to the Lenders otherwise required under this Section 11.4 affect the rights or duties of the Swingline Lender hereunder.

**11.5 Waiver of Trial by Jury.**

(a) EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION. ADMINISTRATIVE AGENT AND EACH LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION 11.5 IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY ANY BORROWER AND ANY OTHER CREDIT PARTY.

(b) In the event any such action or proceeding is brought or filed in any United States federal court sitting in the State of California or in any state court of the State of California, and the waiver of jury trial set forth in Section 11.5(a) hereof is determined or held to be ineffective or unenforceable, the parties agree that all actions or proceedings shall be resolved by reference to a private judge sitting without a jury, pursuant to California Code of Civil Procedure Section 638, before a mutually acceptable referee or, if the parties cannot agree, a referee selected by the Presiding Judge of the Los Angeles County, California. Such proceeding shall be conducted in Los Angeles County, California, with California rules of evidence and discovery applicable to such proceeding. In the event any actions or proceedings are to be resolved by judicial reference, any party may seek from any court having jurisdiction thereover any prejudgment order, writ or other relief and have such prejudgment order, writ or other relief enforced to the fullest extent permitted by Law notwithstanding that all actions or proceedings are otherwise subject to resolution by judicial reference.

**11.6 Waiver of Consequential Damages, Etc.** To the fullest extent permitted by Applicable Law, each Borrower and each other Credit Party agree not to assert, and hereby waive, in any legal action or other proceeding, any claim against Administrative Agent, any Lender or any Lender Affiliate, on any theory of liability, for special, indirect, consequential, special, exemplary or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof.

**11.7 Headings/Exhibits.** The section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose. The Exhibits attached hereto, are hereby incorporated by reference as a part of this Agreement with the same force and effect as if set forth in the body hereof.

**11.8 Severability.** Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under Applicable Law, but if any provision of this Agreement shall be prohibited by or invalid under Applicable Law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.



**11.9 Preferences.** To the extent Borrowers make a payment to Administrative Agent or any Lender hereunder, or Administrative Agent or any Lender receives proceeds of any Collateral, which is in whole or part subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any Debtor Relief Law, common law or equitable cause, then, to the extent of such payment or proceeds received, the Indebtedness or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Administrative Agent or such Lender.

**11.10 Waiver of Notice.** Each Borrower and each other Credit Party hereby expressly waives the right to receive any notice from Administrative Agent or any Lender with respect to any matter, except to the extent that this Agreement or any other Loan Document specifically and expressly requires the giving of notice by Administrative Agent or any Lender to any Borrower and except with respect to matters for which Borrowers are not, pursuant to Applicable Laws, permitted to waive the giving of notice.

**11.11 Remedies of Borrowers.** If a claim or adjudication is made that Administrative Agent or any Lender or any of their respective agents has acted unreasonably or unreasonably delayed acting in any case where by law or under any Loan Document, Administrative Agent, such Lender or any such agent, as the case may be, has an obligation to act reasonably or promptly, each Borrower and each other Credit Party agrees that neither Administrative Agent, any Lender nor its respective agents shall be liable for any monetary damages, and such Borrower's or Credit Party's sole remedy shall be to commence an action seeking injunctive relief or declaratory judgment. Any action or proceeding to determine whether Administrative Agent or any Lender has acted reasonably shall be determined by an action seeking declaratory judgment. Each Borrower and each other Credit Party specifically waives any claim against Administrative Agent, each Lender and its respective agents with respect to actions taken by Administrative Agent, each Lender or its respective agents on any Borrower's or Credit Party's behalf.

**11.12 Prior Agreements.** This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements, understandings and negotiations among or between such parties, whether oral or written, are superseded by the terms of this Agreement and the other Loan Documents.

**11.13 Offsets, Counterclaims and Defenses.** Each Borrower and each other Credit Party hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Administrative Agent, any Lender or their respective agents or otherwise offset any obligations to make payments required under the Loan Documents. Any Assignee of Administrative Agent's or any Lender's interest in and to the Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which such Borrower or such other Credit Party may otherwise have against any assignor of such documents, and no such offset, counterclaim or defense shall be interposed or asserted by such Borrower or such other Credit Party in any action or proceeding brought by any such Assignee upon such documents, and any such right to interpose or assert any such offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by such Borrower or such other Credit Party.

**11.14 Publicity.** Except as required in connection with the Bankruptcy Cases, neither any Borrower nor any other Credit Party shall, whether now or in the future issue, any press releases or other public disclosure using the name "Ally Bank", the name of any other Lender or the name of any of their respective Lender Affiliates or referring to this Agreement or the other Loan Documents without at least five (5) Business Days' prior notice to Administrative Agent (and in the case of a disclosure of a Lender's name, such Lender) and without the prior written consent of Administrative Agent (and in the case of a disclosure of a Lender's name, such Lender) unless (and only to the extent that) such Borrower or such

other Credit Party is required to do so under Applicable Law and then, in any event, such Borrower or such other Credit Party will consult with Administrative Agent (and in the case of a disclosure of a Lender's name, such Lender) before issuing such press release or other public disclosure. Each Borrower and each other Credit Party expressly consents to and authorizes the publication by Administrative Agent and Lenders of a summary description of the transaction(s) contemplated by this Agreement in any format (including tombstones, deal listings or similar advertising materials), which may be published in one or more of financial or other industry periodicals, newspapers, reporting services, trade organizations, written promotional materials, web site, or otherwise. In addition, each Borrower or each other Credit Party expressly consents to and authorizes Administrative Agent and Lenders to provide to financial or other industry periodicals, newspapers, reporting services or trade organizations information necessary and customary for inclusion of the transaction(s) in league table measurements, including the aggregate dollar value of the transaction.

#### **11.15 Indemnification; Expenses.**

(a) Expenses. Each Borrower and each other Credit Party shall reimburse Administrative Agent (or any Lender, as applicable) upon receipt of notice for all Expenses. Any Expenses due and payable by any Borrower or any other Credit Party hereunder which are not paid within five (5) days after demand shall accrue interest at the Default Rate and may be paid by Administrative Agent, in its sole discretion, pursuant to Section 2.8.

(b) Indemnity. Each Borrower and each other Credit Party shall defend, indemnify and hold harmless Administrative Agent, each Lender, each Lender Affiliate, each of their respective directors, officers, partners, members, shareholders, participants, employees, professionals and agents, and each of their respective successors and assigns (each, an "**Indemnified Party**"), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the fees and disbursements of counsel for an Indemnified Party in connection with any investigative, administrative or judicial proceeding commenced or threatened, court costs and costs of appeal at all appellate levels, investigation and laboratory fees, consultant fees and litigation expenses), that may be imposed on, incurred by, or asserted against any Indemnified Party (collectively, the "**Indemnified Liabilities**") arising out of or related to (i) the execution, enforcement, performance, or administration of this Agreement, any of the other Loan Documents, the transactions contemplated hereby; (ii) any breach by any Borrower, any other Credit Party or any Affiliate thereof of their obligations under, or any misrepresentation by any of the foregoing contained in, any Loan Document; (iii) any Environmental Release or the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release, or threatened release of any Hazardous Materials on, from or affecting any Healthcare Facility; (iv) any violation of any Laws by Borrower, any other Credit Party or any Affiliate thereof and (v) any other matter arising out of or related to the Revolving Loans, any Credit Party, any Healthcare Facility or any Collateral; provided, however, that Borrowers shall not have any obligation to any Indemnified Party hereunder to the extent that it is judicially determined by a court of competent jurisdiction in a final, non-appealable judgment that such Indemnified Liabilities are the result of the gross negligence or willful misconduct of such Indemnified Party. Any amounts payable to any Indemnified Party by reason of the application of this Section 11.15 shall be payable on demand and shall bear interest at the Default Rate from the date loss or damage is sustained by any Indemnified Party until paid.

(c) Each Borrower and each other Credit Party for itself and all endorsers, guarantors and sureties and their heirs, legal representatives, successors and assigns, hereby further specifically waives any rights that it may have under Section 1542 of the California Civil Code (to the extent applicable), which provides as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT

THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR," and further waives any similar rights under applicable Laws.

**11.16 Survival.** All obligations, covenants, agreements, representations, warranties, waivers and indemnities made by any Borrower in any Loan Document shall survive the execution and delivery of the Loan Documents, the Closing, the making of the Loans and any termination of this Agreement until all Obligations are fully performed and indefeasibly paid in full in cash. The obligations and provisions of Sections 2.2(k), 2.14, 2.15, 5.13, 9.9, 11.1, 11.3, 11.5, 11.6, 11.8, 11.9, 11.11, 11.13, 11.14, 11.15, 11.16, 11.17, 11.20, 11.27, 12.3, 12.6, 12.7 and 12.13 shall survive the termination of this Agreement and the other Loan Documents and any payment, in full or in part, of the Obligations.

**11.17 No Usury.** If Applicable Law is ever judicially interpreted so as to render usurious any amount called for hereunder or any other Loan Document, or contracted for, charged, taken, reserved or received with respect to the Obligations, or if Administrative Agent's and Lenders' exercise of the option to accelerate the maturity of the Loans or any prepayment by any Borrower results in Borrowers having paid any interest in excess of that permitted by Applicable Law, then it is each Borrower's, Administrative Agent's and Lenders' express intent that all excess amounts theretofore collected by Administrative Agent or any Lender shall be credited against the unpaid principal amount of the Obligations (or, if the Obligations have been or would thereby be paid in full, refunded to Borrowers), and the provisions of the Loan Documents immediately be deemed reformed and the amounts thereafter collectible thereunder reduced, without the necessity of the execution of any new document, so as to comply with Applicable Law, but so as to permit the recovery of the fullest amount otherwise called for thereunder. All sums paid or agreed to be paid to Lenders for the use, forbearance or detention of the Loans shall, to the extent permitted by Applicable Law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loans until payment in full so that the rate or amount of interest on account of the Loans does not exceed the maximum lawful rate from time to time in effect and applicable to the Loans for so long as the Loans are outstanding. Notwithstanding anything to the contrary contained in any Loan Document, it is not the intention of Administrative Agent or any Lender to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

**11.18 Conflict; Construction of Documents.** In the event of any conflict between the provisions of this Agreement and any of the other Loan Documents, the provisions of this Agreement shall control. The parties hereto acknowledge that each is represented by separate counsel in connection with the negotiation and drafting of the Loan Documents and that the Loan Documents shall not be subject to the principle of construing their meaning against the party that drafted them.

**11.19 No Third Party Beneficiaries.** The Loan Documents are solely for the benefit of Administrative Agent, Lenders and Credit Parties and nothing contained in any Loan Document shall be deemed to confer upon any Person (other than Administrative Agent, Lenders, Credit Parties, Indemnified Parties under Section 11.15 and Indemnified Agent Parties under Section 12.7, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, Affiliates of each of Administrative Agent and Lenders) any right to insist upon or to enforce the performance or observance of any of the obligations contained therein.

**11.20 Assignment.** The Loans, any Notes, the Loan Documents and/or any Lender's rights, title, obligations and interests therein may be assigned by such Lender and any of its successors and assigns in accordance with the terms and conditions set forth in Article 10. Neither any Borrower nor any other Credit Party may assign its rights, title, interests or obligations hereunder or under any of the other Loan Documents.



**11.21 Set-Off.** Subject in all events to Section 12.13 hereunder, if an Event of Default shall have occurred and be continuing, each Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Administrative Agent, to the fullest extent permitted by Applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of any Borrower or any other Credit Party against any and all of the obligations of such Borrower or such other Credit Party now or hereafter existing hereunder or any other Loan Document to such Lender, irrespective of whether or not such Lender shall have made any demand hereunder or any other Loan Document and although such obligations of such Borrower or such other Credit Party may be contingent or unmatured or are owed to a branch or office or Affiliate of such Lender different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; provided, that if any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 12.15 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender and their respective Affiliates under this Section 11.21 are in addition to other rights and remedies (including other rights of setoff) that such Lender or their respective Affiliates may have. Each Lender agrees to notify the Borrower Representative and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

**11.22 Confidentiality.** Except as required in connection with the Bankruptcy Cases, each Credit Party agrees (i) not to transmit or disclose provisions of any Loan Document to any Person (other than to Borrowers' advisors and officers on a need-to-know basis (as reasonably determined by the applicable Credit Party) or as otherwise may be required by Law) without the Administrative Agent's prior written consent and (ii) to inform all Persons of the confidential nature of the Loan Documents and to direct them not to disclose the same to any other Person and to require each of them to be bound by these provisions.

**11.23 Patriot Act Compliance.** Each Lender that is subject to the Patriot Act (as defined below) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies each Credit Party that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies each Credit Party, which information includes the name, address and tax identification number of each Credit Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Credit Party in accordance with the Patriot Act. The Borrowers shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act.

**11.24 [Reserved].**

**11.25 Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by telecopier, facsimile machine, portable document format ("**PDF**") or other electronic means shall be as effective as delivery of a manually executed counterpart of this Agreement. The effectiveness of any such documents and signatures shall, subject to Applicable Laws, have the same force and effect as

manually signed originals and shall be binding on Borrowers, Administrative Agent and Lenders. Administrative Agent may also require that any such documents and signatures be confirmed by a manually signed original thereof; provided, however, that the failure to request or deliver the same shall not limit the effectiveness of any facsimile document or signature. No party may raise the use of a telecopier, facsimile machine, PDF or other electronic means, or the fact that any signature was transmitted through the use of a telecopier, facsimile machine, PDF or other electronic means, as a defense to the enforcement of this Agreement.

#### **11.26 Borrower Representative.**

(a) Each Credit Party hereby irrevocably appoints and constitutes Borrower Representative as its agent to (i) request and receive the proceeds of advances in respect of the Loans (and to otherwise act on behalf of such Credit Party pursuant to this Agreement and the other Loan Documents) from Administrative Agent and Lenders in the name or on behalf of each such Credit Party, (ii) receive statements of account and all other notices from Administrative Agent or any Lender, as applicable, with respect to the Obligations or otherwise under or in connection with this Agreement and the other Loan Documents, (iii) execute and deliver Borrowing Base Certificates, Compliance Certificates and all other notices, certificates and documents to be executed and/or delivered by any Credit Party hereunder or the other Loan Documents; and (iv) otherwise act on behalf of such Credit Party pursuant to this Agreement and the other Loan Documents.

(b) The authorizations contained in this Section 11.26 are coupled with an interest and shall be irrevocable, and Administrative Agent and Lenders may rely on any notice, request, information supplied by Borrower Representative, every document executed by Borrower Representative, every agreement made by Borrower Representative or other action taken by Borrower Representative in respect of any Borrower or other Credit Party as if the same were supplied, made or taken by such Borrower or such other Credit Party. Without limiting the generality of the foregoing, the failure of one or more Borrowers or other Credit Parties to join in the execution of any writing in connection herewith shall not relieve any Borrower or other Credit Party from obligations in respect of such writing. No purported termination of the appointment of Borrower Representative as agent shall be effective without the prior written consent of Administrative Agent.

#### **11.27 Joint and Several.**

(a) Each Borrower shall be jointly and severally liable for all of the Obligations of Borrowers hereunder, regardless of which of Borrowers actually receives the proceeds or other benefits of the Loans or other extensions of credit hereunder or the manner in which Borrowers, the Administrative Agent or the Lenders account therefor in their respective books and records.

(b) Each Borrower is accepting joint and several liability hereunder and under the other Loan Documents in consideration of the financial accommodations to be provided by the Administrative Agent and Lenders hereunder, for the mutual benefit, directly and indirectly, of each Borrower and in consideration of the undertakings of the other Borrowers to accept joint and several liability for the Obligations.

(c) To the extent that Applicable Law otherwise would render the full amount of the joint and several obligations of any Borrower hereunder and under the other Loan Documents invalid or unenforceable, such Person's obligations hereunder and under the other Loan Documents shall be limited to the maximum amount which does not result in such invalidity or unenforceability; provided, however, that each Borrower's obligations hereunder and under the other Loan Documents shall be presumptively

valid and enforceable to their fullest extent in accordance with the terms hereof or thereof, as if this Section 11.27 were not a part of this Agreement.

(d) To the extent that any Borrower shall make a payment under this Section 11.27 of all or any of the Obligations (as used in this clause (g), a "**Joint Liability Payment**") which, taking into account all other Joint Liability Payments then previously or concurrently made by any other Borrower, exceeds the amount that such Borrower would otherwise have paid if each Borrower had paid the aggregate Obligations satisfied by such Joint Liability Payments in the same proportion that such Person's "Allocable Amount" (as defined below) (as determined immediately prior to such Joint Liability Payments) bore to the aggregate Allocable Amounts of each of Borrowers as determined immediately prior to the making of such Joint Liability Payments, then, following indefeasible payment in full in cash of the Obligations (other than contingent obligations that survive the repayment in full of the Loans and the termination of the Loan Documents and for which no claim has been asserted) and termination of the Revolving Commitment, such Borrower shall be entitled to receive contribution and indemnification payments from, and be reimbursed by, each other Borrower for the amount of such excess, *pro rata* based upon their respective Allocable Amounts in effect immediately prior to such Joint Liability Payments. As of any date of determination, the "Allocable Amount" of any Borrower shall be equal to the maximum amount of the claim which could then be recovered from such Borrower under this Section 11.27 without rendering such claim voidable or avoidable under §548 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law.

(e) Each Borrower assumes responsibility for keeping itself informed of the financial condition of each other Borrower, and any and all endorsers and/or guarantors of any instrument or document evidencing all or any part of such other Borrower's Obligations, and of all other circumstances bearing upon the risk of nonpayment by such other Borrower of their Obligations and each Borrower agrees that neither Administrative Agent nor any Lender has any duty to advise such Borrower of information known to Administrative Agent or any Lender regarding such condition or any such circumstances or to undertake any investigation not a part of its regular business routine. If Administrative Agent or any Lender, in its sole discretion, undertakes at any time or from time to time to provide any such information to a Borrower, Administrative Agent or such Lender shall not be under any obligation to update any such information or to provide any such information to such Borrower or any other Person on any subsequent occasion.

(f) Administrative Agent and Lenders are hereby authorized, without notice or demand and without affecting the liability of a Borrower hereunder, to, at any time and from time to time, (A) renew, extend, accelerate or otherwise change the time for payment of, or other terms relating to, Obligations incurred by any Borrower or other Credit Party, otherwise modify, amend or change the terms of any promissory note or other agreement, document or instrument now or hereafter executed by any Borrower or other Credit Party and delivered to Administrative Agent or any Lender; (B) accept partial payments on an Obligation incurred by any Borrower; (C) take and hold security or collateral for the payment of an Obligation incurred by any Borrower hereunder or for the payment of any guaranties of an Obligation incurred by any Borrower or other liabilities of any Borrower and exchange, enforce, waive and release any such security or collateral; (D) apply such security or collateral and direct the order or manner of sale thereof as Administrative Agent may determine in its sole discretion; and (E) settle, release, compromise, collect or otherwise liquidate an Obligation incurred by any Borrower and any security or collateral therefor in any manner, without affecting or impairing the obligations of any other Borrower. Administrative Agent shall have the exclusive right to determine the time and manner of application of any payments or credits, whether received from a Borrower or any other source, and such determination shall be binding on each Borrower. All such payments and credits may be applied, reversed and reapplied, in whole or in part, to any of an Obligation incurred by any Borrower as



Administrative Agent shall determine in their sole discretion without affecting the validity or enforceability of the Obligations of the other Borrowers.

(g) Each Borrower hereby agrees that, except as hereinafter provided, its obligations hereunder shall be unconditional, irrespective of and each Borrower hereby waives notice of: (A) the absence of any attempt to collect an Obligation incurred by a Borrower from any Borrower or any guarantor or other action to enforce the same; (B) the waiver or consent by Administrative Agent and Lenders with respect to any provision of any instrument evidencing an Obligation incurred by any other Borrower, or any part thereof, or any other agreement heretofore, now or hereafter executed by any other Borrower and delivered to Administrative Agent or any Lender; (C) failure by Administrative Agent to take any steps to perfect and maintain its security interest in, or to preserve its rights to, any security or collateral for an Obligation incurred by any Borrower; (D) Administrative Agent's or any Lender's election in any of the Bankruptcy Cases of the application of §1111(b)(2) of the Bankruptcy Code; (E) any other borrowing or grant of a security interest by a Borrower to any third party in the Bankruptcy Cases; (F) the disallowance, under Section 502 of the Bankruptcy Code, of all or any portion of Administrative Agent's claim(s) for repayment of any of the Obligations; or (G) any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor.

(h) This Section 11.27 is intended only to define the relative rights of Borrowers and nothing set forth in this Section 11.27 is intended to or shall impair the obligations of Borrowers, jointly and severally, to pay any amounts as and when the same shall become due and payable in accordance with the terms of this Agreement or any other Loan Documents. Nothing contained in this Section 11.27 shall limit the liability of any Borrower to pay the Loans made directly or indirectly to such Borrower and accrued interest, fees and Expenses with respect thereto for which such Borrower shall be primarily liable.

(i) No payment made by or for the account of any Borrower, including (A) a payment made by such Borrower on behalf of an Obligation of another Borrower or (B) a payment made by any other person under any guaranty, shall entitle such Borrower, by subrogation or otherwise, to any payment from such other Borrower or from or out of property of such other Borrower and such Borrower shall not exercise any right or remedy against such other Borrower or any property of such other Borrower by reason of any performance of such Borrower of its joint and several obligations hereunder until the Obligations (other than contingent obligations that survive the repayment in full of the Loans and the termination of the Loan Documents and for which no claim has been asserted) are paid in full.

(j) Each Borrower hereby agrees that after the occurrence and during the continuance of any Default or Event of Default, such Borrower will not demand, sue for or otherwise attempt to collect any indebtedness of any other Borrower owing to such Borrower until the Obligations (other than contingent obligations that survive the repayment in full of the Loans and the termination of the Loan Documents and for which no claim has been asserted) are paid in full. If, notwithstanding the foregoing sentence, such Borrower shall collect, enforce or receive any amounts in respect of such indebtedness, such amounts shall be collected, enforced and received by such Borrower as trustee for Administrative Agent, and such Borrower shall deliver any such amounts to Administrative Agent for application to the Obligations in accordance with Section 9.3.

(k) Any notice given by Borrower Representative hereunder shall constitute and be deemed to be notice given by all Borrowers, jointly and severally. Notice given by Administrative Agent or any Lender to Borrower Representative hereunder or pursuant to any other Loan Documents in accordance with the terms hereof or thereof shall constitute notice to all Borrowers. The knowledge of any Borrower shall be imputed to all Borrowers and any consent by Borrower Representative or any Borrower shall constitute the consent of and shall bind all Borrowers.

(l) The parties hereto acknowledge that the rights of contribution and indemnification hereunder shall constitute assets of each Borrower to which such contribution and indemnification is owing. The rights of any indemnifying Borrower against the other Borrowers under this Section shall be exercisable upon the full and indefeasible payment of the Obligations (other than contingent obligations that survive the repayment in full of the Loans and the termination of the Loan Documents and for which no claim has been asserted) and the termination of the Revolving Facility.

**11.28 Release of Claims.** Each Borrower and each other Credit Party does hereby (i) waive any claim in tort, contract or otherwise which such Borrower or such other Credit Party may have against Administrative Agent, any Lender, any of their respective Affiliates or their respective officers, directors, agents, or employees (collectively, "**Lender Agents**") which may arise out of the relationship between any such Borrower or such other Credit Party and any such Person prior to the Closing Date; and (ii) absolutely and unconditionally releases and discharges the Administrative Agent, each Lender, each of their respective Affiliates and the Lender Agents from any and all claims, causes of action, losses, damages or expenses which may arise out of any relationship between it and the Administrative Agent, such Lender, any such Affiliate or the Lender Agents which such Borrower or such other Credit Party may have as of the Closing Date. Each Borrower and each other Credit Party acknowledges that it makes this waiver and release knowingly, voluntarily and only after considering the ramifications of this waiver and release with its legal counsel.

**11.29 Acting Through Agents.** In exercising any rights under the Loan Documents or taking any actions provided for therein, Administrative Agent may act through its employees, agents or independent contractors as authorized by Administrative Agent. Each Borrower shall authorize its accounting firm and/or service bureaus to provide Administrative Agent with such information as is requested by Administrative Agent in accordance with this Agreement. Each Borrower authorizes Administrative Agent to contact directly any such accounting firm and/or service bureaus to obtain such information.

## ARTICLE 12 AGENCY PROVISIONS; SETTLEMENT

Administrative Agent, Lenders, Borrowers and each other Credit Party agree that, except for the rights expressly granted to Borrowers under Section 12.9, no Borrower or other Credit Party shall be a party to the agreements contained in this Article 12. Without limitation of the foregoing, Administrative Agent, Lenders, Borrowers and each other Credit Party agree that in no event shall Borrowers or other Credit Parties be required to seek comment from, deliver notices to or otherwise deal with any Lender other than Administrative Agent (except as otherwise specifically stated in this Agreement). No Borrower or other Credit Party shall have any benefits or rights as a third party beneficiary of any term or condition contained in this Article 12.

### 12.1 Appointment and Authorization.

(a) **Generally.** Each Lender hereby irrevocably (subject to Section 12.9) appoints, designates and authorizes Administrative Agent to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorized Administrative Agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document, Administrative Agent shall not have any duty or responsibility except those expressly set forth herein, nor shall Administrative Agent have or be deemed to have any fiduciary relationship with any Lender or Participant, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be

read into this Agreement or any other Loan Document or otherwise exist against Administrative Agent. The duties of Administrative Agent shall be mechanical and administrative in nature. Without limiting the generality of the foregoing sentence, the use of the term "agent" herein and in other Loan Documents with reference to Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any Applicable Law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

(b) **Specific Authorizations.** Except as otherwise specified in this Agreement, Administrative Agent shall have the right to exercise its sole and absolute discretion to act or not to act under the Loan Documents. Without limiting the generality of the foregoing, Administrative Agent shall have the sole and exclusive right and authority to:

A. act as the disbursing and collecting agent for the Lenders with respect to all payments and collections arising in connection with this Agreement and the Loan Documents relating to the Collateral securing the Loans;

B. make any subsequent advances to the Borrower for the purposes described in this Agreement;

C. approve or disapprove any form of real property lease agreement to which the Borrowers or other Credit Parties are subject;

D. execute and deliver each Collateral Document and accept delivery of each such agreement delivered by the Credit Parties;

E. act as collateral agent for the Lenders for purposes of the perfection of all security interests and Liens created by such agreements and all other purposes stated therein;

F. take such action as is necessary or desirable to maintain the perfection and priority of the security interest and Liens created or purported to be created by the Loan Documents;

G. release or assign (without recourse, representation or warranty, other than representations as to title and as to no encumbrances by Administrative Agent) any or all Collateral upon payment and satisfaction in full of the Loans; and

H. enter into any so-called "pre-negotiation agreement" with Borrower or any other Credit Party (provided that as a condition precedent to such authority, all Lenders have been given a reasonable opportunity to (i) comment on the proposed form of pre-negotiation agreement and (ii) discuss such comments with Administrative Agent).

**12.2 Delegation of Duties.** Administrative Agent may execute any of its duties hereunder or any other Loan Document by or through agents, employees or attorneys-in-fact and shall be entitled to advice of legal counsel and other consultants, independent public accountants or experts concerning all matters pertaining to such duties. Administrative Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct as finally determined in a non-appealable judicial proceeding.

**12.3 Exculpation of Administrative Agent.** None of Administrative Agent nor any of its directors, officers, employees, Affiliates or agents shall (a) be liable to any Lender or any other Person for



any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except to the extent resulting from its own gross negligence or willful misconduct in connection with its duties expressly set forth herein as determined by a final, nonappealable judgment by a court of competent jurisdiction), or (b) be responsible in any manner to any Lender or Participant for any recital, statement, representation or warranty made by any Borrower, any Credit Party or any of their Affiliates, or any officer thereof, contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by Administrative Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document (or the creation, perfection or priority of any Lien or security interest therein), or for any failure of any Borrower, any Credit Party or any other party to any Loan Document to perform its obligations and liabilities hereunder or thereunder, or be responsible for or have any duty to ascertain or verify the satisfaction of any conditions specified in this Agreement or any other Loan Document. Administrative Agent shall not be under any obligation to any Lender to ascertain or to inquire as to (i) the performance or observance of any of the terms, provisions or conditions of this Agreement or any of the other Loan Documents, (ii) the financial condition of any Credit Party, (iii) the contents of any certificate, report or other document delivered hereunder or any other Loan Document or in connection herewith or therewith, (iv) the existence or possible existence of any Default or Event of Default, or (v) the satisfaction of any condition set forth in Section 3 of this Agreement or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to Administrative Agent.

**12.4 Reliance by Administrative Agent.** Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, communication, signature, resolution, representation, notice, consent, certificate, electronic mail message, affidavit, letter, telegram, facsimile, telex or telephone message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including legal counsel to Borrowers), independent accountants and other experts selected by Administrative Agent. Administrative Agent shall be fully justified in failing or refusing to take any action hereunder or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lenders or such other number or percentage of Lenders as shall be required elsewhere in this Agreement as it deems appropriate and, if it so requests, confirmation from Lenders of their obligation to indemnify Administrative Agent against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder or any other Loan Document in accordance with a request or consent of the Required Lenders or such other number or percentage of Lenders as shall be required elsewhere in this Agreement and such request and any action taken or failure to act pursuant thereto shall be binding upon each Lender. For purposes of determining compliance with the conditions specified in Section 3.2, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless Administrative Agent shall have received written notice from such Lender prior to the Closing Date specifying its objection thereto.

**12.5 Notice of Default.** Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default except with respect to defaults in the payment of principal, interest and fees required to be paid to Administrative Agent for the account of Lenders, unless Administrative Agent shall have received written notice from a Lender or a Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". Administrative Agent will notify Lenders of its receipt of any such notice. Administrative Agent shall take such action with respect to such Default or Event of Default as may be requested by the

Required Lenders in accordance with Section 9.5; provided that unless and until Administrative Agent has received any such request, Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable or in the best interest of Lenders.

**12.6 Credit Decision.** Each Lender acknowledges that Administrative Agent has not made any representation or warranty to it, and that no act by Administrative Agent hereafter taken, including any consent and acceptance of any assignment or review of the affairs of Borrowers or the other Credit Parties, shall be deemed to constitute any representation or warranty by Administrative Agent to any Lender as to any matter, including whether Administrative Agent has disclosed material information in its possession. Each Lender represents to Administrative Agent that it has, independently and without reliance upon Administrative Agent and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of Borrowers and the other Credit Parties, and made its own decision to enter into this Agreement and to extend credit to Borrowers hereunder. Each Lender also represents that it will, independently and without reliance upon Administrative Agent and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action hereunder and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of Borrowers and the other Credit Parties. Except for notices, reports and other documents expressly herein required to be furnished to Lenders by Administrative Agent, Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial or other condition or creditworthiness of Borrowers and the other Credit Parties which may come into the possession of Administrative Agent. Each Lender hereby acknowledges and agrees that it is not entitled to rely upon any notice, report or other document furnished by the Administrative Agent from time to time in connection with this Agreement and the other Loan Documents and the transactions contemplated hereby, and hereby release any and all claims it may have against Administrative Agent or any agent thereof as a result of any reliance by any Lender in any such notice, report, document or other information furnished by Administrative Agent.

**12.7 Indemnification.** Whether or not the transactions contemplated hereby are consummated, each Lender shall indemnify, defend and hold harmless upon demand Administrative Agent and its directors, officers, employees, Affiliates and agents (each an "*Indemnified Agent Party*") (to the extent not reimbursed by or on behalf of any Borrower and without limiting the obligation of any Borrower to do so), according to its applicable Pro Rata Share, from and against any and all Indemnified Liabilities (as defined in Section 11.15), provided, that no Lender shall be liable for any payment to any such Person of any portion of the Indemnified Liabilities to the extent determined by a final, non-appealable judgment by a court of competent jurisdiction to have resulted from the applicable Indemnified Agent Party's own gross negligence or willful misconduct. No action taken in accordance with the directions of Required Lenders shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section 12.7. Without limitation of the foregoing, each Lender shall reimburse Administrative Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including all Expenses) incurred by Administrative Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that Administrative Agent is not reimbursed for such expenses by or on behalf of Borrowers. If any indemnity furnished to Administrative Agent for any purpose shall, in the reasonable, good faith opinion of Administrative Agent, be insufficient or become impaired, Administrative Agent may call for additional reasonable indemnity and cease, or not commence, to do the acts indemnified against even if so

directed by Required Lenders until such additional reasonable indemnity is furnished. The undertaking in this Section 12.7 shall survive repayment of the Loans and other liabilities, cancellation of any promissory notes, any foreclosure under, or modification, release or discharge of, any or all of the Loan Documents, termination of this Agreement and the resignation or replacement of Administrative Agent.

**12.8 Administrative Agent in Individual Capacity.** Ally Bank and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with any Credit Party and its Affiliates as though Ally Bank were not Administrative Agent hereunder and without notice to or consent of any Lender; provided, however, if Ally Bank acquires equity interests in any Credit Party or any Affiliate of any Credit Party and such equity interests are not publicly traded, Ally Bank will provide written notice to the Lenders. Each Lender acknowledges that, pursuant to such activities, Ally Bank or its Affiliates may receive information regarding a Credit Party or its Affiliates (including information that may be subject to confidentiality obligations in favor of such Credit Party or such Affiliates) and acknowledge that Administrative Agent shall be under no obligation to provide such information to them. With respect to its portion of the Loans, Ally Bank and its Affiliates shall have the same rights and powers hereunder as any other Lender and may exercise the same as though Ally Bank were not Administrative Agent, and the terms "Lender" and "Lenders" include Ally Bank and its Affiliates, to the extent applicable, in their individual capacities.

**12.9 Successor Administrative Agent.** Administrative Agent may resign as Administrative Agent upon thirty (30) days' notice to Lenders. If Administrative Agent resigns hereunder, Required Lenders shall, with (so long as no Default or Event of Default exists) the consent of Borrowers (which shall not be unreasonably withheld, conditioned or delayed), appoint from among Lenders a successor agent for Lenders. Notwithstanding the immediately foregoing sentence, if no successor agent is appointed prior to the effective date of the resignation of Administrative Agent, Administrative Agent may appoint, after consulting with Lenders and Borrowers, a successor agent from among Lenders. Upon the acceptance of its appointment as successor agent hereunder, such successor agent shall succeed to and become vested with all the rights, powers and duties of the retiring Administrative Agent and the term "Administrative Agent" shall mean such successor agent, and the retiring Administrative Agent's appointment, powers and duties as Administrative Agent shall be terminated. After any retiring Administrative Agent's resignation hereunder as Administrative Agent, the provisions of this Article 12 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent hereunder. If no successor agent has accepted appointment as Administrative Agent by the date which is thirty (30) days following a retiring Administrative Agent's notice of resignation, the retiring Administrative Agent's resignation shall nevertheless thereupon become effective and Lenders shall perform all of the duties of Administrative Agent hereunder until such time, if any, as Required Lenders appoint a successor agent as provided for above.

**12.10 Collateral Matters; Restriction on Lenders.** (a) Each Lender authorizes and directs Administrative Agent to enter into the other Loan Documents for the benefit of Administrative Agent and Lenders. Each Lender hereby agrees that, except as otherwise set forth herein, any action taken by Administrative Agent or Required Lenders in accordance with the provisions of this Agreement or the other Loan Documents, and the exercise by the Administrative Agent or Required Lenders of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all Lenders. Administrative Agent is hereby authorized on behalf of all Lenders, without the necessity of any notice to or further consent from any Lender, to take any action with respect to any Collateral and any of the other collateral pursuant to Loan Documents that may be necessary to perfect and maintain perfected the Liens upon the Collateral and the other collateral pursuant to the other Loan Documents. Lenders irrevocably authorize Administrative Agent, at its option and in its discretion, (i) to release any Lien granted to or held by Administrative Agent hereunder and any other



Loan Document (x) upon the termination of this Agreement in accordance with Section 2.17; (y) constituting property sold or to be sold or disposed of, financed or refinanced, as part of or in connection with any sale, disposition, financing or refinancing which is expressly permitted by this Agreement at any time; or (z) subject to Section 11.4, if approved, authorized or ratified in writing by Required Lenders; or (ii) to subordinate its interest in any Collateral to any holder of a Lien on such Collateral which is expressly permitted by this Agreement. Upon request by Administrative Agent at any time, Lenders will promptly confirm in writing Administrative Agent's authority to release, or subordinate its interest in, particular types or items of Collateral pursuant to this Section 12.10. Administrative Agent and each Lender hereby appoint each other Lender as agent for the purpose of perfecting Administrative Agent's security interest in assets and Collateral (and other collateral pursuant to other Loan Documents) which, in accordance with the Uniform Commercial Code in any applicable jurisdiction, can be perfected by possession or control. Should any Lender (other than Administrative Agent) obtain possession or control of any such assets or Collateral, such Lender shall promptly notify Administrative Agent thereof in writing, and, promptly upon Administrative Agent's written request therefor, shall deliver such assets or Collateral to Administrative Agent or in accordance with Administrative Agent's instructions or transfer control to Administrative Agent in accordance with Administrative Agent's instructions. Each Lender agrees that, except as otherwise expressly provided herein, it will not have any right individually to enforce or seek to enforce this Agreement or any other Loan Document or to realize upon any Collateral for the liabilities unless instructed in writing to do so by Administrative Agent, it being understood and agreed that such rights and remedies may be exercised only by Administrative Agent.

(b) Each Lender agrees that it shall not, without the express written consent of Administrative Agent, and shall, upon the written request of Administrative Agent (to the extent it is lawfully entitled to do so), set off against the liabilities, any amounts owing by such Lender to a Credit Party or any deposit accounts of any Credit Party now or hereafter maintained with such Lender. Each of the Lenders further agrees that it shall not, unless specifically requested to do so in writing by Administrative Agent, take or cause to be taken, any action, including the commencement of any legal or equitable proceedings to foreclose any loan or otherwise enforce any security interest in any of the Collateral or to enforce all or any part of this Agreement or the other Loan Documents. All enforcement actions hereunder and the other Loan Documents against the Credit Parties or any third party with respect to the liabilities or the Collateral may only be taken by Administrative Agent (at the direction of the Required Lenders or as otherwise permitted in this Agreement) or by its agents at the direction of Administrative Agent.

(c) If any Lender, directly or through an Affiliate or branch office thereof, obtains any payment of any Obligation of any Credit Party (whether voluntary, involuntary or through the exercise of any right of setoff or the receipt of any Collateral or "proceeds" (as defined under the applicable UCC) of Collateral) other than from the Administrative Agent in accordance with this Agreement and such payment exceeds the amount such Lender would have been entitled to receive if all payments had gone to, and been distributed by, Administrative Agent in accordance with the provisions of the Loan Documents, such Lender shall purchase for cash from other Lenders such participations in their Obligations as necessary for such Lender to share such excess payment with such Lenders to ensure such payment is applied as though it had been received by Administrative Agent and applied in accordance with this Agreement (or, if such application would then be at the discretion of the Borrowers, applied to repay the Obligations in accordance herewith); provided, however, that (a) if such payment is rescinded or otherwise recovered from such Lender in whole or in part, such purchase shall be rescinded and the purchase price therefor shall be returned to such Lender without interest and (b) such Lender shall, to the fullest extent permitted by Applicable Law, be able to exercise all its rights of payment (including the right of setoff) with respect to such participation as fully as if such Lender were the direct creditor of the applicable Credit Party in the amount of such participation.

**12.11 Administrative Agent May File Proofs of Claim.** In case of the pendency of any Insolvency Proceeding relative to any Borrower or other Credit Party, Administrative Agent (irrespective of whether the principal of the Loans shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Administrative Agent shall have made any demand on a Borrower or other Credit Party) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, and all other liabilities that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of Lenders and Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of Lenders and Administrative Agent and their respective agents and attorneys and all other amounts due Lenders and Administrative Agent hereunder) allowed in such judicial proceedings; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to Administrative Agent and, if Administrative Agent shall consent to the making of such payments directly to Lenders, to pay to Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Administrative Agent and its agents and attorneys, and any other amounts due Administrative Agent hereunder.

Nothing contained herein shall be deemed to authorize Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, affecting the liabilities or to authorize Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

**12.12 Return of Payments.**

(a) If Administrative Agent pays an amount to a Lender hereunder in the belief or expectation that a related payment has been or will be received by Administrative Agent from any Borrower and such related payment is not received by Administrative Agent, or if Administrative Agent overpays an amount to a Lender hereunder or otherwise in error, then Administrative Agent shall be entitled to recover such amount from such Lender on demand without setoff, counterclaim or deduction of any kind, together with interest accruing on a daily basis at the Federal Funds Effective Rate. If Administrative Agent determines at any time that any amount received by Administrative Agent hereunder must be returned to Borrowers or paid to any other Person pursuant to any insolvency law or otherwise, then, notwithstanding any other term or condition of this Agreement or any other Loan Document, Administrative Agent will not be required to distribute any portion thereof to any Lender. In addition, each Lender shall repay to Administrative Agent on demand any portion of such amount that Administrative Agent has distributed to such Lender, together with interest at such rate, if any, as Administrative Agent is required to pay to Borrowers or such other Person, without setoff, counterclaim or deduction of any kind.

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of the making of any Loan that such Lender will not make available to the Administrative Agent such Lender's share of such Loan, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.3(b) and may, in reliance upon such assumption, make available to the Borrowers a corresponding amount. If a Lender has not in

fact made its share of the applicable Loan available to Administrative Agent, then the applicable Lender agrees to pay to Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the applicable Borrower to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. The obligations of each Lender hereunder are in addition to any obligation of Borrowers to make any repayment to Lender (including those provided in Section 2.3(b)).

**12.13 Sharing of Payments by Lenders.** If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or other obligations hereunder resulting in such Lender receiving payment of a proportion of the aggregate amount of its Loans and accrued interest thereon or other such obligations greater than its Pro Rata Share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them; provided that:

(a) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(b) the provisions of this Section 12.13 shall not be construed to apply to (x) any payment made by the Borrowers pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any Assignee or Participant.

Each Credit Party consents to the foregoing and agrees, to the extent it may effectively do so under Applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against each Borrower and each other Credit Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of each Borrower and each other Credit Party in the amount of such participation.

**12.14 Settlements; Payments.** The Outstanding Amount may fluctuate from day to day through Administrative Agent's disbursement of funds to, and receipt of funds from, Borrowers. In order to minimize the frequency of transfers of funds between Administrative Agent and each Lender, repayments of Loans may, at the election of Administrative Agent, be settled according to the procedures set forth in this Section 12.14. Notwithstanding the procedures set forth in this Section 12.14, each Lender's obligation to fund its portion of any advances made by Administrative Agent to Borrowers will commence on the date such advances are made by Administrative Agent. Such payments will be made by such Lender without set-off, counterclaim or reduction of any kind.

(a) At least once each calendar week, or more frequently if Administrative Agent so elects (each such day being a "**Settlement Date**"), Administrative Agent will advise each Lender by 1:00 p.m. (New York City time) on a Business Day by telephone or written notice in accordance with this Agreement of the amount of each such Lender's Pro Rata Share of the Outstanding Amount. If payments are necessary to adjust the amount of such Lender's share of the Outstanding Amount to such Lender's Pro Rata Share of the Outstanding Amount, the party from which such payment is due will pay the other



party, in same day funds, by wire transfer to the other's account, not later than 1:00 p.m. (New York City time) on the Business Day immediately following the Settlement Date (provided that if Administrative Agent gives such notice at or prior to 1:00 p.m. (New York City time) on the Settlement Date, such funding shall be made on the Settlement Date).

(b) On the first Business Day of each month (each, an "*Interest Settlement Date*"), Administrative Agent will advise each Lender by written notice in accordance with this Agreement of the amount of interest and fees charged to and collected from Borrowers for the preceding month in respect of the Loans. Provided that such Lender is not then a Defaulting Lender, Administrative Agent will pay to such Lender, by wire transfer to such Lender's account (as specified by such Lender in accordance with this Agreement) such Lender's Pro Rata Share of such interest and fees not later than the next Business Day following the Interest Settlement Date.

#### **12.15 Defaulting Lender.**

(a) **Defaulting Lender Adjustments.** Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(i) Any amount payable to a Defaulting Lender hereunder (whether on account of principal, interest, fees or otherwise) shall, in lieu of being distributed to such Defaulting Lender, be retained by Administrative Agent in a segregated account and, subject to any Applicable Law, be applied at such time or times as may be determined by Administrative Agent (i) first, to the payment of any amounts owing by such Defaulting Lender to Administrative Agent hereunder, (ii) second, if so determined by Administrative Agent and Borrowers, held in such account as cash collateral for future funding obligations (if any) of the Defaulting Lender hereunder, (iii) third, pro rata, to the payment of any amounts owing to Borrowers, Administrative Agent or the Lenders as a result of any judgment of a court of competent jurisdiction obtained by Borrowers, Administrative Agent or any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations hereunder, and (iv) fourth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided, that if such payment is a prepayment of the principal amount of the Loan, such payment shall be applied solely to prepay the Loans of all Lenders that are not Defaulting Lenders pro rata prior to being applied to the prepayment of any Loans of any Defaulting Lender.

(ii) Notwithstanding anything set forth herein to the contrary, a Defaulting Lender shall not have any voting or consent rights under or with respect to this Agreement or any other Loan Document or constitute a "Lender" (or be included in the calculation of "Required Lenders" hereunder) for any voting or consent rights under or with respect to this Agreement or any other Loan Document except with respect to items described in Section 11.4(c) which require the vote or consent of all Lenders or all affected Lenders, and no Defaulting Lender shall have any other right to approve or disapprove any amendment, waiver, consent or any other action the Lenders or the Required Lenders have taken or may take hereunder (including any consent to any amendment or waiver pursuant to Section 11.4), provided that any waiver, amendment or modification described in Section 11.4(c) requiring the consent of all Lenders or each directly affected Lender which affects such Defaulting Lender differently than other affected Lenders shall require the consent of such Defaulting Lender.

(iii) The failure of any Defaulting Lender to make any Loan, advance or any payment required by it hereunder shall not relieve any other Lender of its obligations to make such Loan, advance or payment, but neither any Lender nor Administrative Agent shall be

responsible for the failure of any Defaulting Lender to make a Loan, advance or make any other payment required hereunder.

(iv) At the written request of the Borrower Representative, Administrative Agent or a Person reasonably acceptable to Administrative Agent shall have the right with Administrative Agent's written consent and in Administrative Agent's sole discretion (but without any obligation whatsoever on Administrative Agent) to purchase from any Defaulting Lender, and each Defaulting Lender agrees that it shall, at Administrative Agent's written request, promptly sell and assign to Administrative Agent or such Person, all of the lending commitments and commitment interests of that Defaulting Lender for an amount equal to the principal balance of all Loans held by such Defaulting Lender and all accrued interest and fees with respect thereto through the date of sale, such purchase and sale to be consummated (if at all upon Administrative Agent's election) pursuant to an executed Assignment Agreement.

(b) **Defaulting Lender Cure.** If Borrowers and Administrative Agent agree in writing that a Lender is no longer a Defaulting Lender, Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any cash collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Swingline Loans to be held pro rata by the Lenders in accordance with their Pro Rata Shares, whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of Borrowers while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

**12.16 Acknowledgement and Consent to Bail-In of EEA Financial Institutions.** Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

*[Remainder of Page Intentionally Left Blank]*



IN WITNESS WHEREOF, the parties hereto have caused this Debtor in Possession Revolving Credit Agreement to be duly executed by their duly authorized representatives, all as of the day and year first above written.

**BORROWERS:**

VERITY HEALTH SYSTEM OF CALIFORNIA,  
INC.

O'CONNOR HOSPITAL  
SAINT LOUISE REGIONAL HOSPITAL

ST. FRANCIS MEDICAL CENTER

ST. VINCENT MEDICAL CENTER

SETON MEDICAL CENTER

VERITY HOLDINGS, LLC

VERITY MEDICAL FOUNDATION

O'CONNOR HOSPITAL FOUNDATION

SAINT LOUISE REGIONAL HOSPITAL  
FOUNDATION

ST. FRANCIS MEDICAL CENTER OF  
LYNWOOD FOUNDATION

ST. VINCENT FOUNDATION

ST. VINCENT DIALYSIS CENTER, INC.

SETON MEDICAL CENTER FOUNDATION

VERITY BUSINESS SERVICES

DE PAUL VENTURES, LLC

DE PAUL VENTURES - SAN JOSE DIALYSIS,  
LLC

By: 

Name: Rich Adcock

Title: Chief Executive Officer

**ADMINISTRATIVE AGENT:**

**ALLY BANK**

By:   
Name: Whitney Parker  
Title: Authorized Signatory

**LENDER AND SWINGLINE LENDER:**

**ALLY BANK**

By:   
Name: Whitney Parker  
Title: Authorized Signatory



**ANNEX A**

Revolving Commitments

<b><u>Name of Lender</u></b>	<b><u>Final Commitment of such Lender</u></b>	<b><u>Interim Commitment of such Lender</u></b>	<b><u>Pro Rata Share</u></b>
ALLY BANK	\$185,000,000	\$30,000,000	100%
TOTAL	\$185,000,000	\$30,000,000	100%

# **EXHIBIT 3**

# **EXHIBIT 3**

SAMUEL R. MAIZEL (Bar No. 189301)  
samuel.maizel@dentons.com  
JOHN A. MOE, II (Bar No. 066893)  
john.moe@dentons.com  
TANIA M. MOYRON (Bar No. 235736)  
tania.moyron@dentons.com  
DENTONS US LLP  
601 South Figueroa Street, Suite 2500  
Los Angeles, California 90017-5704  
Tel: (213) 623-9300 / Fax: (213) 623-9924

Proposed Attorneys for the Chapter 11 Debtors and  
Debtors In Possession

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

In re

VERITY HEALTH SYSTEM OF  
CALIFORNIA, INC., *et al.*,

Debtors and Debtors In Possession.

- ☒ Affects All Debtors
- ☐ Affects Verity Health System of California, Inc.
- ☐ Affects O'Connor Hospital
- ☐ Affects Saint Louise Regional Hospital
- ☐ Affects St. Francis Medical Center
- ☐ Affects St. Vincent Medical Center
- ☐ Affects Seton Medical Center
- ☐ Affects O'Connor Hospital Foundation
- ☐ Affects Saint Louise Regional Hospital  
Foundation
- ☐ Affects St. Francis Medical Center of Lynwood  
Foundation
- ☐ Affects St. Vincent Foundation
- ☐ Affects St. Vincent Dialysis Center, Inc.
- ☐ Affects Seton Medical Center Foundation
- ☐ Affects Verity Business Services
- ☐ Affects Verity Medical Foundation
- ☐ Affects Verity Holdings, LLC
- ☐ Affects De Paul Ventures, LLC
- ☐ Affects De Paul Ventures - San Jose Dialysis,  
LLC

Debtors and Debtors In Possession.

Lead Case No. 18-20151

Jointly Administered With:

CASE NO.: 2:18-bk-20162-ER  
CASE NO.: 2:18-bk-20163-ER  
CASE NO.: 2:18-bk-20164-ER  
CASE NO.: 2:18-bk-20165-ER  
CASE NO.: 2:18-bk-20167-ER  
CASE NO.: 2:18-bk-20168-ER  
CASE NO.: 2:18-bk-20169-ER  
CASE NO.: 2:18-bk-20171-ER  
CASE NO.: 2:18-bk-20172-ER  
CASE NO.: 2:18-bk-20173-ER  
CASE NO.: 2:18-bk-20175-ER  
CASE NO.: 2:18-bk-20176-ER  
CASE NO.: 2:18-bk-20178-ER  
CASE NO.: 2:18-bk-20179-ER  
CASE NO.: 2:18-bk-20180-ER  
CASE NO.: 2:18-bk-20171-ER

Chapter 11 Cases

Hon. Judge Ernest M. Robles

**DECLARATION OF JAMES MOLONEY, IN  
SUPPORT OF MOTION FOR FINAL ORDER  
AUTHORIZING (A) USE OF CASH COLLATERAL;  
(B) DEBTOR IN POSSESSION CREDIT  
AGREEMENT; (C) GRANT OF SUPERPRIORITY  
PRIMING LIENS TO DIP LENDER AND; (D)  
GRANT OF JUNIOR LIENS ON POST PETITION  
ACCOUNTS AND INVENTORY AS ADEQUATE  
PROTECTION TO PREPETITION SECURED  
PARTIES PURSUANT TO 11 U.S.C. §§105(A),  
363(C)(2), AND 364(C) AND (D)**

FINAL HEARING:

Date: October 3, 2018

Time: 10:00 a.m.

Place: Courtroom 1568

DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300



DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300

1 I, James Moloney, submit this Supplemental Declaration in support of the Debtors' Reply  
2 in Support of MOTION FOR FINAL ORDER AUTHORIZING (A) USE OF CASH  
3 COLLATERAL, (B) DEBTOR IN POSSESSION CREDIT AGREEMENT, (C) GRANT OF  
4 SUPERPRIORITY PRIMING LIENS TO DIP LENDER, (D) GRANT OF JUNIOR LIENS ON  
5 POST PETITION ACCOUNTS AND INVENTORY AS ADEQUATE PROTECTION TO  
6 PREPETITION SECURED PARTIES PURSUANT TO 11 U.S.C. §§105(A), 363(C)(2), AND  
7 364(C) AND (D) (the "DIP Motion") [Docket No 31], and hereby state and declare as follows:  
8

9 1. I am a Managing Director at Cain Brothers ("Cain Brothers"), a division of  
10 KeyBanc Capital Markets Inc. ("KBCM").

11 2. The statements herein are based upon my personal knowledge of the facts and  
12 information gathered by me in my capacity as CFO for VHS.

13 3. I am the Co-Head of Cain Brothers' Health Systems M&A Group and a member  
14 of the Firm's Executive Committee. I joined Cain Brothers in 1995 and have 27 years' experience  
15 in mergers, acquisitions, financings, and real estate transactions. I have led engagements for the  
16 firm's clients over a broad range of academic medical centers, not-for-profit health systems,  
17 publicly-traded and privately-owned healthcare providers, medical groups, real estate  
18 development companies, and real estate investors. Some recent notable engagements of mine  
19 include Group Health Physicians affiliation with Kaiser Permanente, MultiCare Health System's  
20 pending acquisition of Rockwood Health System from Community Health Systems, Tenet's sale  
21 of five Atlanta area hospitals to WellStar and Meriter's Health Services affiliation with  
22 UnityPoint. Prior to my current role, I founded and was the head of the Firm's Real Estate Group  
23 and have advised clients on real estate transactions valued in excess of \$2 billion and involving  
24 more than 200 healthcare properties.

25 Prior to joining Cain Brothers, I was a member of Citicorp Securities Health Care Group  
26 for five years. I earned a BA in Business from University of Washington and an MBA from the  
27 University of Rochester's William E. Simon School of Business. I am a member of the board of  
28

DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300

1 ICA Christo Rey Academy.

2 4. Cain Brothers is a division of KBCM, which is a wholly-owned broker/dealer  
3 subsidiary of KeyCorp and an affiliate of KeyBank National Association. Cain Brothers was  
4 acquired in October 2017 by KBCM and prior to the KBCM acquisition was a privately owned  
5 investment banking firm. Cain Brothers was founded in 1982 and for thirty-six years has been  
6 focused exclusively on providing investment banking services to the health care industry.  
7 Currently, the Cain Brothers division of KBCM has approximately 100 investment banking  
8 professionals and is headquartered in New York, NY with a major office in San Francisco and  
9 additional office in Chicago, IL.

10 5. My firm's primary banking focus is on mergers, acquisition and other change of  
11 control transactions having advised clients on more than 175 M&A transactions in the health care  
12 sector since the beginning of 2012. Cain Brothers has been involved as advisor with respect to  
13 financial restructurings, capital raising, mergers, acquisitions, divestitures, and other advisory  
14 assignments. Its investment banking professionals apply expert technical, analytical, and  
15 negotiating skills to structure transactions and resolve situations in which multiple stakeholders  
16 frequently have conflicting interests and objectives. Cain Brothers' senior bankers are actively  
17 involved in the day-to-day activities throughout engagements from the initial planning of the sale  
18 strategy through the negotiation and execution of each transaction. Cain Brothers has developed  
19 significant relevant experience and expertise regarding the sale and/or recapitalization of hospitals  
20 and hospital systems, has extensive experience in the healthcare space, and has an excellent  
21 reputation for investment banking services that it has rendered to various parties in interest in  
22 large and complex healthcare-related bankruptcy proceedings, including the following  
23 representative chapter 11 cases: St. Vincent's, Hawaii Medical Center, Texarkana, Forum,  
24 Doctor's Healthcare and California Proton Treatment Center. Moreover, Cain Brothers' extensive  
25 healthcare sector experience includes being involved as advisors with respect to the raising of  
26 capital, mergers, acquisitions, and divestitures for companies in this space. Accordingly, Cain  
27 Brothers and the professionals it employs are well qualified to represent the Debtors in the  
28 matters for which Cain Brothers is proposed to be employed.



DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300

1           6. I personally have participated in many of the above mentioned Cain Brothers'  
2 transactions as the lead or co-lead professional which, along with my formal training, a enables  
3 me to competently express my assessment and judgment on the reasonable range of results that  
4 may occur from the Cain marketing efforts for sales of the Debtors' assets as going concerns.  
5 Such opinion is not a formal appraisal, and is not intended to substitute for such an opinion if  
6 needed by the Court.

7           7. Cain Brothers, moreover, has been engaged by the Debtors since June 2018 and, as  
8 a result, is familiar with the Debtors' corporate and capital structure, management and business  
9 operations. In addition, Cain Brothers advised the Debtors prior to the Petition Date regarding,  
10 among other things, the identification of potential buyers of some or all of the Verity hospitals  
11 and related assets, and commenced discussions with those potential buyers. Cain Brothers  
12 assisted Verity in preparing a Confidential Information Memorandum and organized an online  
13 data site to share information with potential buyers. Beginning in July 2018, Cain Brothers  
14 contacted over 110 strategic and financial buyers to solicit their interest in exploring a transaction  
15 regarding the Debtors and has assisted in the Debtors in making significant progress toward  
16 completing sales. Specifically, as of the time just prior to the Petition Date, as a result of its  
17 ongoing and broad marketing process, 51 potential buyers and 8 DIP financing parties signed  
18 confidentiality agreements and Cain Brothers had received 11 Indications of Interest ("IOI") for  
19 the Debtors' operating assets and expects to receive additional proposals. Since receipt of those  
20 IOIs, I and others at Cain have had multiple conversations and communications with all eleven  
21 parties submitting an IOI and others.

22           **I. Realizable Value of the Debtors' Assets**

23           8. As of the Petition Date, according to the Chou Declaration dated August 31, 2018  
24 [Docket 32], the book value of the Debtors assets were approximately [\$857 million]. Based  
25 upon the work done by Cain Brothers in connection with the Marketing of the Debtors assets, the  
26 expressions of interest received by Cain in connection with those solicitations and the follow up  
27 communications between the parties delivering the IOI and my experience, the aggregate  
28 realizable value of the Debtors assets with continued use of professional marketing and access to



DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300

1 this Court's ability to sell assets unencumbered by prepetition claims and agreement is in the  
2 range of [\$725 million to \$800 million] within the next 12 months.

3 9. It is my understanding from the Chou Declaration, that the aggregate secured  
4 funded debt liability reflecting on the Debtors balance sheet as of the Petition Date was  
5 approximately [\$565 million]. Based upon the Debtors' consolidated balance sheet and my  
6 assessment of the realizable value of the Debtors assets, I conclude that there is realizable value in  
7 excess of the prepetition secured liabilities of [\$150 - \$225 million]. That excess is sometimes  
8 referred to as the Debtors' "equity cushion". The equity cushion can be expressed as a percentage  
9 is 26% - 40%.

10 10. I have reviewed the pleadings requesting authority to borrow up to \$185 million in  
11 postpetition senior secured priming asset based lending facility. I have also reviewed the Debtors'  
12 budget and forecast, which projects a base case borrowing ceiling of approximately [\$100  
13 million]. Based upon my experience and judgment, the based case appears to be a reasonable  
14 one. Based upon the base case, the realizable value of the Debtors' assets will exceed the sum of  
15 prepetition secured liabilities and outstanding borrowings under the DIP Facility at its termination  
16 date.

17 11. I have also examined the question of whether the assets can be sold more quickly  
18 utilizing a lower borrowing total. Based on my experience and judgement as an investment  
19 banker in the health care field, it is not reasonably possible to keep the hospitals open and serving  
20 patients and not fully fund the Debtors operating expenses as provided. While certain assets might  
21 sell for more as vacant real estate or alternative use buildings, a forced sale of all the assets would  
22 yield far less than I have projected as the realizable value.

23 I declare under penalty of perjury that, to the best of my knowledge and after reasonable  
24 inquiry, the foregoing is true and correct.  
25  
26  
27  
28

1 Dated: September 26, 2018

JAMES MOLONEY

2  
3 By:   
4 James Moloney

5  
6  
7  
8  
9  
10 DENTONS US LLP  
11 601 SOUTH FIGUEROA STREET, SUITE 2500  
12 LOS ANGELES, CALIFORNIA 90017-5704  
13 (213) 623-9300  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28