

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:	:	Chapter 11
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NORTH GENERAL HOSPITAL, et al. <sup>1</sup>	:	Case No. 10-13553 (SCC)
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Debtors.	:	(Jointly Administered)
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FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER  
CONFIRMING THE FURTHER REVISED SECOND AMENDED PLAN OF  
LIQUIDATION AS MODIFIED OF NORTH GENERAL HOSPITAL AND  
AFFILIATED DEBTORS

James L. Garrity Jr., as the Chapter 11 trustee (the “Trustee”) of the estates of North General Hospital (“North General”), North General Service Corporation and North General Diagnostic & Treatment Center, each a debtor (collectively the “Debtors”) having proposed the Further Revised Second Amended Plan of Liquidation as Modified for North General and Affiliated Debtors, dated June 3, 2011 (as may be supplemented, amended or otherwise modified, the “Plan”);<sup>2</sup> this Court having conducted an evidentiary hearing to consider confirmation of the Plan (the “Confirmation Hearing”); and this Court having considered the Plan and other relevant factors affecting the Debtors’ above-captioned Chapter 11 cases (the “Chapter 11 Cases”); and upon the Revised Second Amended Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code for Chapter 11 Plan of Liquidation for Debtors, dated January 10, 2011 [Docket No. 439] (the “Disclosure Statement”); upon the January 10, 2011

<sup>1</sup> The Debtors, along with each Debtor’s federal tax identification number are North General Hospital (13-2996345), North General Services Corp. (13-3696783) and North General Diagnostic and Treatment Center (20-0561166).

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Plan and the Second Amended Disclosure Statement as subsequently revised on January 10, 2011.

hearing to consider approval of the Disclosure Statement; upon that certain Amended Order (A) approving the Disclosure Statement; (B) fixing the Voting Record Date; (C) approving the solicitation materials and procedures for distribution thereof; (D) approving the forms of ballots and establishing procedures for voting on the Debtors' Plan of Liquidation; and (E) scheduling a hearing and establishing notice and objection procedures in respect of confirmation of Debtors' Plan of Liquidation, entered on January 13, 2011 [Docket No. 445] (the "**Approval Order**"); upon the declaration and certifications of the Declaration of Stephanie Kjontvedt, dated February 14, 2011 [Docket No. 534]; upon the (i) testimony, affidavits, declarations and exhibits admitted into evidence at the Confirmation Hearing, (ii) arguments of counsel presented at the Confirmation Hearing, and (iii) pleadings filed in support of confirmation of the Plan, including (a) the Joint Memorandum of Law of the Debtors and DASNY in Support of Confirmation of the Debtors' Plan of Liquidation, filed on March 17, 2011 [Docket No. 633], (b) the Trustee's Motion for Order Under 11 U.S.C. §§ 105 and 1127 and Fed. R. Bankr. P. 2012 and 3019(a) (I) Finding that Plan Modifications are Not Material and (II) Deeming the Plan, as Modified, Accepted by All Creditors who Previously Accepted the Plan (the "**Plan Modification Motion**") [Docket No. 722], filed on June 3, 2011, and (c) this Court's order granting the Plan Modification Motion, dated June 20, 2011; and upon the (i) Declaration of James L. Garrity, Jr., in Support of the Further Revised Second Amended Plan of Liquidation as Modified Under Chapter 11 of the Bankruptcy Code [Docket No. 730, Ex. B], (ii) Declaration of John P. Maher in Support of the Trustee's Further Revised Second Amended Plan of Liquidation as Modified [Docket No. 730, Ex. C], (iii) Declaration of Laray Brown of the New York City Health and Hospitals Corporation in Support of the Debtors Further Revised Second Amended Plan of Liquidation as Modified [Docket No. 727], (iv) Declaration of Dr. Neil Calman in Support of the

Debtors Further Revised Second Amended Plan of Liquidation as Modified [Docket No. 728] and (v) Declaration of Larry N. Volk in Support of the Debtors Further Revised Second Amended Plan of Liquidation as Modified [Docket No. 729]; and all pleadings and other documents filed, all orders entered, evidence and arguments made, proffered or adduced at, and the hearings held before the Court during the pendency of these Chapter 11 Cases, including, but not limited to, any order of the Court establishing deadlines for filing proofs of claim in these Chapter 11 Cases, including the Order Establishing Deadline for Filing Proofs of Claim and Approving the Form and Manner of Notice, entered on October 14, 2010 [Docket No. 255] and the Order Establishing the Initial Deadline for Filing Administrative Expense Claim Requests and Approving the Form and Manner of Notice Thereof, entered on October 14, 2010 [Docket No. 258]; upon the Court having found that due and proper notice has been given with respect to the Confirmation Hearing and the deadlines and procedures for filing objections to the Plan; upon the Court having found that the Plan fulfills the requirements of Rule 3019(a) of the Federal Rules of Bankruptcy Procedure; upon the appearance of interested parties having been duly noted in the record of the Confirmation Hearing; on the record of the Confirmation Hearing and these Chapter 11 Cases; and, after due deliberation thereon, and sufficient cause appearing therefor;

**THE COURT HEREBY FINDS AND CONCLUDES, AND IT IS HEREBY ORDERED THAT:**<sup>3</sup>

### **JURISDICTION AND VENUE**

A. The Court has jurisdiction over this matter and these Chapter 11 Cases pursuant to 28 U.S.C. § 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

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<sup>3</sup> The findings set forth herein and in the record of the Confirmation Hearing constitute this Court's findings of fact pursuant to Rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Rules 7052 and 9014 of the Federal Rules of Bankruptcy Procedure. Each finding of fact set forth or incorporated herein, to the extent it is or may be deemed a conclusion of law, shall also constitute a conclusion of law. Each conclusion of law set forth or incorporated herein, to the extent it is or may be deemed a finding of fact, shall also constitute a finding of fact.

B. Confirmation of the Plan is a “core proceeding” pursuant to 28 U.S.C. § 157(b)(2)(L) and this Bankruptcy Court has jurisdiction to determine whether the Plan complies with the applicable provisions of Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”), to determine whether the Plan should be confirmed and to enter a final order with respect hereto.

**STANDARDS FOR CONFIRMATION  
UNDER SECTION 1129 OF THE BANKRUPTCY CODE**

C. Section 1129(a)(1). The Plan complies with each applicable provision of the Bankruptcy Code. In particular, the Plan complies with the requirements of Sections 1122 and 1123 of the Bankruptcy Code. Among other things:

1. In accordance with Section 1122(a) of the Bankruptcy Code, Article 2 of the Plan classifies each Claim against and Interest in the Debtors into a Class containing only substantially similar Claims or Interests;
2. In accordance with Section 1123(a)(1) of the Bankruptcy Code, Article 2 of the Plan properly classifies all Claims and Interests that require classification;
3. In accordance with Section 1123(a)(2) of the Bankruptcy Code, Article 2 of the Plan properly specifies each Class of Claims that is not impaired under the Plan;
4. In accordance with Section 1123(a)(3) of the Bankruptcy Code, Articles 5-7 of the Plan (including the Mediation Procedures annexed thereto as Exhibit B) properly specify the treatment of each Class of Claims or Interests that is impaired under the Plan;
5. In accordance with Section 1123(a)(4) of the Bankruptcy Code, the Plan provides the same treatment for each Claim or Interest of a particular Class unless the holder of such a Claim or Interest agrees to less favorable treatment;
6. In accordance with Section 1123(a)(5) of the Bankruptcy Code, the Plan provides adequate means for its implementation, including, without limitation: (a) administration of the Estate Assets after the Effective Date, and the appointment of the Liquidation Trustee; and (b) the vesting of the Estate Assets in the Debtors upon the Effective

Date, free and clear of Liens and Claims;

7. In accordance with Section 1123(b)(2) of the Bankruptcy Code, Article 11 of the Plan provides for the assumption, assumption and assignment or rejection of the Debtors' executory contracts and unexpired leases that have not been previously assumed, assumed and assigned or rejected pursuant to Section 365 of the Bankruptcy Code and orders of the Court;
8. In accordance with Section 1123(b)(3) of the Bankruptcy Code, Section 8.11 of the Plan provides that the Liquidation Trustee may pursue all Causes of Action for the benefit of the holders of Class 3 Claims. Any distributions provided for in the Plan and the allowance of any Claim for the purpose of voting on the Plan is and shall be without prejudice to the rights of the Liquidation Trustee to pursue and prosecute any Causes of Action. Except as otherwise set forth in the Plan, all Causes of Action of the Debtors shall survive confirmation of the Plan and the commencement and prosecution of Causes of Action of the Debtors shall not be barred or limited by any estoppel or res-judicata, whether judicial, equitable or otherwise;
9. In accordance with Section 1123(b)(4) of the Bankruptcy Code, Sections 8.4 and 8.7(b) of the Plan provide for the transfer and vesting of all remaining assets in the Debtors' Estates and the administration of such Estate Assets by the Liquidation Trustee to effectuate the orderly liquidation of all assets contributed thereto and the distribution of any proceeds thereof to creditors in accordance with the Plan;
10. In accordance with Section 1123(b)(5) of the Bankruptcy Code, Article 5 of the Plan modifies or leaves unaffected, as the case may be, the rights of holders of Claims in each Class of Claims, and no such Claim is secured by a security interest in real property that is a Debtor's principal residence; and,
11. In accordance with Section 1123(b)(6) of the Bankruptcy Code, the Plan includes numerous other provisions designed to ensure its implementation and that are not inconsistent with the Bankruptcy Code, including, but not limited to, provisions: (i) regarding Confirmation of the Plan (Plan, Article 14); (ii) establishing means for implementation of the Plan (Plan, Article 8); (iii) establishing procedures for resolving Disputed Claims and making distributions on account of such Disputed Claims from the Disputed Unsecured Claims Reserve once resolved (Plan, Article 13); (iv) governing distributions on account of Allowed Claims (Plan, Article 8); (v) consolidating the Debtors' Estates solely for the purposes of

implementing the Plan (Plan, Article 10); (vi) regarding the retention of jurisdiction by the Bankruptcy Court over certain matters after the Effective Date (Plan, Article 17); (vii) regarding other miscellaneous matters, including permitted modifications to the Plan (Plan, Articles 15 and 16); and (viii) establishing defined terms under the Plan (Plan, Article 1).

D. Section 1129(a)(2). The Debtors have complied with all applicable provisions of the Bankruptcy Code with respect to the Plan and the solicitation of acceptances or rejections thereof. In particular, the Plan complies with the requirements of Sections 1125 and 1126 of the Bankruptcy Code and Rule 3019(a) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) as follows:

1. All persons entitled to receive notice of the Disclosure Statement, the Plan and the Confirmation Hearing have received proper, timely and adequate notice in accordance with the Approval Order, applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and the Local Bankruptcy Rules for the Southern District of New York (the “**Local Bankruptcy Rules**”), and have had an opportunity to appear and be heard with respect thereto.
2. The Debtors solicited votes with respect to the Plan in good faith and in a manner consistent with the Bankruptcy Code, the Bankruptcy Rules and the Approval Order. Accordingly, the Debtors are entitled to the protections afforded by Section 1125(e) of the Bankruptcy Code, and the Exculpated Parties are entitled to the protections afforded by the exculpation provisions set forth in Section 12.3 of the Plan.
3. Claims in Classes 1(a), 1(b) and 2 under the Plan are unimpaired, and such Classes are deemed to have accepted the Plan pursuant to Section 1126(f) of the Bankruptcy Code. In accordance with Section 1126 of the Bankruptcy Code, the Debtors solicited acceptances from the holders of all Claims asserted in each Class of Impaired Claims entitled to receive distributions under the Plan. Claims in Classes 1(c), 1(d) and 3 are designated as impaired under the Plan, and holders of such Claims are entitled to receive distributions (or the potential for distributions) on account of such Claims under the Plan.
4. The Debtors have made a final determination of the validity of, and tabulation with respect to, all acceptances and rejections of the Plan by holders of Claims entitled to vote on the Plan, including

the amount and number of accepting and rejecting Claims for all Classes entitled to vote under the Plan.

5. At least one Class entitled to vote under the Plan has accepted the Plan by at least two-thirds in amount and a majority in number of the Claims in such Classes actually voting.
6. No modification to the Plan prior to the confirmation date adversely changes the treatment of any holder of a Claim or Interest.

E. Section 1129(a)(3). The Plan has been proposed in good faith and not by any means forbidden by law. In so finding, the Court has considered the totality of the circumstances in these Chapter 11 Cases. The Plan is the result of extensive, good faith, arm's-length negotiations among the Debtors or the Trustee, as the case may be, and certain of the Debtors' principal constituencies, reflects substantial input from the principal constituencies having an interest in these cases, and achieves the goal of consensual liquidation embodied by the Bankruptcy Code.

F. Section 1129(a)(4). No payment to the Debtors' retained professionals, the Trustee, the Trustee's professionals, and other professionals for services or costs and expenses in or in connection with these cases, or in connection with the Plan and incident to these cases, has been or will be made by the Trustee or the Debtors, other than payments that have been (or subsequently are) authorized by order of the Court, including, but not limited to, the Final Order (I) Authorizing Debtors to Obtain Postpetition Financing; (II) Authorizing Debtors to Use Cash Collateral; and (III) Granting Adequate Protection to Prepetition Secured Lenders entered on August 3, 2010 [Docket No. 103]. Pursuant to Article 3 of the Plan, and except as otherwise provided herein, all payments to be made to Professional Persons or other entities asserting Professional Fee Claims for services rendered before the Effective Date will be subject to review and approval by this Court.

G. Section 1129(a)(5). The Trustee and the Debtors have satisfied the disclosure requirements of Section 1129(a)(5). Pursuant to Article 8 of the Plan, the Debtors are liquidating and the Debtors will retain no assets other than the Estate Assets. Therefore, the Debtors will have no officers, managers, directors or trustees other than the Liquidation Trustee from and after the Effective Date. The identity, compensation and affiliations of the Liquidation Trustee are set forth in the Plan, including in the Liquidation Trustee employment agreement (the “**Liquidation Trustee Employment Agreement**”), attached thereto as Exhibit A.

H. Section 1129(a)(6). The Plan does not provide for any changes in rates that require regulatory approval of any governmental agency.

I. Section 1129(a)(7). Each holder of an Impaired Claim or Interest in each impaired Class of Claims or Interests that has not accepted the Plan will, on account of such Claim or Interest, receive or retain property under the Plan having a value, as of the Effective Date, that is not less than the amount that such holder would have received or retained if the Debtors were liquidated under Chapter 7 of the Bankruptcy Code on the Effective Date.

J. Section 1129(a)(8). The Plan is confirmable under Section 1129(b) of the Bankruptcy Code with respect to all non-accepting Classes of Claims and Interests.

K. Section 1129(a)(9). Except to the extent that the holder of a particular Claim has agreed to different treatment, the Plan provides treatment for Administrative Claims, Priority Tax Claims, Professional Fee Claims and Priority Non-Tax Claims that is consistent with the requirements of Section 1129(a)(9) of the Bankruptcy Code.

L. Section 1129(a)(10). The Plan has been accepted by all impaired Classes entitled to vote, after excluding the votes of any insiders.



M. Section 1129(a)(11).

1. As reflected in the Debtors' Confirmation Budget annexed as Annex A to the Declaration of John Maher dated June 13, 2011 [Docket No. 730, Ex. C], the Debtors project that, if all professional, priority and administrative claims were allowed in their asserted amount, there would be a shortfall in funds (the "**Funding Deficit**") needed to make certain of those payments (the "**Plan Payments**") in addition to the other payments required under the Plan, and that the Funding Deficit could total as much as \$1.3 million. Without assuming any liability to creditors and other parties for the Funding Deficit, and solely as an accommodation to the Debtors, if there is a Funding Deficit, DASNY has agreed to contribute up to \$1.3 million to the Debtors to be used by the Debtors solely to fund the Plan Payments to the extent of a Funding Deficit with respect to allowed professional, priority and administrative expense claims. This contribution shall be in addition to other commitments by DASNY (including with respect to the \$500,000 being provided by DASNY as Estate Assets) under the Plan and based upon DASNY's commitment to fund the Funding Deficit, DASNY shall have standing to be heard on all applications and claims filed in these cases for the payment of professional, priority and administration expense claims.

2. The Trustee asserts that the New York City Human Resources Administration ("**HRA**") owes the Debtors and their wholly owned subsidiary, North General Aids Housing Development Fund Corporation (the "**HDHC**") certain sums currently estimated to be \$531,000 (the "**Disputed HRA Receivable**"). HRA disputes the Trustee's assertions. HRA asserts that it is significant that no adversary proceeding has been commenced by the Debtors or the HDHC against HRA, and HRA further asserts that it has no legal obligation to pay the Disputed HRA Receivable. The Trustee disputes HRA's assertions.

3. In an effort to resolve the dispute between the Trustee and HRA, with respect to the proposed contract (the “**Contract**”) between the HDFC and HRA from July 1, 2010 to June 30, 2011 (the “**Term**”), HRA agrees that it will submit the Contract to the Comptroller of the City of New York (the “**Comptroller**”) for registration, pursuant to the terms of Section 328 of the City Charter, and HRA will make good faith efforts to take any subsequent steps that may be necessary to effectuate registration of the Contract, including by responding promptly to any requests by the Comptroller. Assuming services were provided by the Debtors and HDFC during the Term and assuming that the Contract is registered by the Comptroller, HRA will reimburse the Debtor or HDFC and pay in full for the services provided during the Term of the Contract, subject to the right of the Comptroller and the City to audit North General Hospital and the HDFC with respect to such payment. The Trustee and HRA are currently not in agreement concerning the amount of the reimbursement. HRA represents that the reimbursement can occur even if the Contract is registered after the end of the Term. HRA further represents that it routinely pays not- for-profit entities during later fiscal years, using expired contracts from prior years (for services completed during those later fiscal years), and, subject to the conditions above, HRA agrees it will take this approach in this case.

4. To the extent that HRA fails to pay the entire Disputed HRA Receivable, the Liquidation Trustee, DASNY, its wholly owned subsidiary, NGHP Holding Corporation (“**NGHP**”) and the New York City Health and Hospitals Corporation (“**HHC**”) shall have standing to pursue all appropriate remedies and causes of action in this Court. Any recoveries from HRA, whether as a result of litigation or otherwise, with respect to the reimbursement payments from HRA shall be the property of the Debtors and their estates and not DASNY or NGHP, except if there has been a payment in respect of the Disputed HRA Receivable by HHC

as set forth in the immediately succeeding paragraph, in which case such reimbursement shall be paid to HHC up to the amount paid by HHC. Similarly, HRA reserves all of its rights, remedies and causes of action with respect to any matter.

5. Without assuming any liability to creditors and other parties for the Disputed HRA Receivable, and solely as an accommodation to the Debtors, should there be no reimbursement from HRA on account of the Disputed HRA Receivable or a shortfall between the amount of the HRA reimbursement and the amount alleged by the Debtors as being owed with respect to the Disputed HRA Receivable, HHC agrees to contribute up to \$520,000 (the “**HHC Contribution**”), an amount agreeable to the Trustee and DASNY, to compensate the Debtors and their estates for any alleged shortfall and fund the Plan Payments, even if the HHC Contribution may exceed the HRA reimbursement as reflected in the audit; provided, however, that nothing herein shall authorize or entitle HHC to recover any shortfall from HRA, it being agreed and understood that HRA shall not be obligated to pay any reimbursement amount in excess of that reflected in the audit and approved by the Comptroller, if any. HHC agrees to make the HHC Contribution as soon as 45 days from the Effective Date, but only to the extent HRA did not pay the Disputed HRA Receivable or the amount thereof is less than \$520,000. In consideration of the foregoing, HHC will receive a credit over no more than ten years of its lease payments to DASNY and NGHP for the main hospital building for any amounts paid in respect of the HHC Contribution. HHC will use its best efforts to make sure that HRA promptly makes the reimbursement to the Debtors and HDHC on account of the Disputed HRA Receivable.

6. With the addition, if necessary, of the commitment of (i) DASNY to fund the Funding Deficit and (ii) HHC to provide the funds in respect of the Disputed HRA Receivable, and the other considerations set forth in this Paragraph M, the Debtors project that

they will have sufficient funds to make the Plan Payments.

N. Section 1129(a)(12). Section 16.1 of the Plan provides that all fees payable pursuant to Section 1930 of Title 28 of the United States Code and Section 3717 of Title 31 of the United States Code due and payable through the Effective Date shall be paid by the Debtors on or before the Effective Date.

O. Section 1129(a)(13). The Plan complies with Section 1129(a)(13) of the Bankruptcy Code through the appointment of the PBGC as the statutory trustee of the Pension Plan. In addition, each union pension plan continues in existence, as each such fund is a multiemployer pension plan.

P. Section 1129(a)(16). All transfers of property will be made in accordance with applicable non-bankruptcy law.

Q. Section 1129(b). The Plan does not “discriminate unfairly” and is “fair and equitable” with respect to Class 4, which Class is impaired and deemed to reject the Plan. The Plan does not discriminate unfairly with respect to Class 4 because there is no other Class of Claims or Interests under the Plan that is similarly situated. The Plan is “fair and equitable” with respect to Class 4 because it does not provide (i) a recovery on account of any Claim or Interest that is junior to Class 4 or (ii) any senior Class with a recovery in excess of 100%.

R. Section 1129(c). The Plan is the only plan that has been filed in these cases that has been found to satisfy the requirements of subsections (a) and (b) of Section 1129 of the Bankruptcy Code. Accordingly, the requirements of Section 1129(c) of the Bankruptcy Code have been satisfied.

S. Section 1129(d). No party in interest, including, but not limited to, any Governmental Unit (as defined in Section 101(27) of the Bankruptcy Code), has requested that

the Court deny confirmation of the Plan on grounds that the principal purpose of the Plan is the avoidance of taxes or the avoidance of the application of Section 5 of the Securities Act of 1933, and the principal purpose of the Plan is not such avoidance. Accordingly, the Plan satisfies the requirements of Section 1129(d) of the Bankruptcy Code.

**DISCHARGE, INDEMNIFICATION,  
INJUNCTIONS, RELEASES AND EXCULPATION**

T. The indemnification, injunction, discharge, release and exculpation provisions set forth in the Plan constitute good-faith compromises and settlements of the matters covered thereby. Such compromises and settlements are made in exchange for consideration and: (i) are in the best interests of the Debtors, their Estates and holders of Claims and Interests; (ii) are fair, equitable and reasonable; and (iii) are integral elements of the restructuring and resolution of the Chapter 11 Cases in accordance with the Plan. Specific and sufficient consideration has been provided for the injunction, discharge, release and exculpation provisions in Article 13 of the Plan (the “**Plan Releases**”). The failure to effect the indemnification, injunction, discharge, exculpation and release provisions described in the Plan would seriously impair the Debtors’ ability to confirm the Plan. Each of the discharge, release, indemnification, injunction and exculpation provisions set forth in the Plan:

- (i) is within the jurisdiction of the Court under 28 U.S.C. §§ 1334(a), (b) and (d);
- (ii) is an essential means of implementing the Plan pursuant to Section 1123(a)(5) of the Bankruptcy Code;
- (iii) is an integral element of the settlements and transactions incorporated into the Plan;
- (iv) confers material benefit on, and is in the best interests of, the Debtors, their estates and the holders of Claims and Interests;
- (v) is important to the overall objectives of the Plan to finally

resolve all Claims among or against the parties in interest in the Chapter 11 Cases; and

- (vi) is consistent with Sections 105, 1123 and 1129 of the Bankruptcy Code and applicable law.

### **CONDITIONS PRECEDENT**

U. Each of the conditions precedent to the entry of this Order has been satisfied in accordance with Sections 14.1 and 14.2 of the Plan or properly waived in accordance with Section 14.3 of the Plan.

V. The Plan, and all transactions contemplated thereby, complies with all applicable law.

Accordingly, it is hereby

**ORDERED, ADJUDGED AND DECREED**, that:

1. The Plan and Exhibits A and B to the Plan, and all provisions, terms and conditions thereto, are approved and confirmed in substantially the forms as filed, as having satisfied all of the requirements of Chapter 11 of the Bankruptcy Code. The terms of the Plan and exhibits thereto, are incorporated herein by reference and are an integral part of this Order.

#### **A. Objections**

2. Any Objections or responses to confirmation of the Plan and any reservation of rights contained therein that (a) have not been withdrawn, waived or settled prior to the entry of this Order, or (b) are not cured by the relief granted herein, are hereby overruled in their entirety and on their merits, and all objections or responses are hereby deemed withdrawn with prejudice.

#### **B. Solicitation and Notice**

3. Notice of the Confirmation Hearing complied with the terms of the Approval Order, was appropriate and satisfactory based on the circumstances of the Chapter 11 Cases, and complied with the provisions of the Bankruptcy Code and the Bankruptcy Rules. The

solicitation of votes on the Plan complied with the solicitation procedures in the Approval Order, was appropriate and satisfactory based upon the circumstances of the Chapter 11 Cases, and complied with the provisions of the Bankruptcy Code and the Bankruptcy Rules.

**C. Plan Classifications Controlling**

4. The classification of Claims and Interests for purposes of distributions made under the Plan shall be governed solely by the terms of the Plan. The classifications set forth on the Ballots tendered to or returned by Creditors in connection with voting on the Plan: (a) were set forth on the Ballots solely for purposes of voting to accept or reject the Plan; (b) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of such Claims under the Plan for distribution purposes; and (c) shall not be binding on the Debtors.

**D. Transfer of Collateral to DASNY**

5. On the Effective Date, pursuant to Section 5.1(d) of the Plan, DASNY (or its designee) shall receive, free and clear of all Liens, Claims, interests, Membership Interests and encumbrances, including (without limitation) all mortgages, restrictions (including, without limitation, any restriction on the use, voting rights, transfer rights, claims for receipt of income or other exercise of any attributes of ownership), hypothecations, charges, indentures, loan agreements, instruments, leases, licenses, options, deeds of trust, security interests, equity interests, conditional sale rights or other title retention agreements, pledges, judgments; demands, rights of first refusal, consent rights, offsets, contract rights, recoupment rights, rights of recovery, reimbursement rights, contribution claims, indemnity rights, exoneration rights, product liability claims, alter-ego claims, environmental rights and claims (including, without limitation, toxic tort claims), labor rights and claims, employment rights and claims, pension rights and claims, tax claims, regulatory violations by any governmental entity, decrees of any

court or foreign or domestic governmental entity, charges of any kind or nature, debts arising in any way in connection with any agreements, acts, or failures to act, reclamation claims, obligation claims, demands, guaranties, option rights or claims, rights, contractual or other commitment rights and claims, and all other matters of any kind and nature, whether known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, whether arising prior to or subsequent to the commencement of these Chapter 11 Cases (but, for the avoidance of doubt, in each case prior to the closing), and whether imposed by agreement, understanding, law, equity or otherwise, including claims otherwise arising under any theory, law or doctrine of successor liability, (i) fee simple title to the Real Property, (ii) any equipment and other assets that DASNY in its sole discretion believes is necessary for the continuing healthcare mission (as set forth in the MOU) at the Real Property, (iii) the assignment of any amounts paid or otherwise due to the Debtors from IFH, under the IFH Lease and the IFH Note, (iv) the assignment of the IFH Lease and the IFH Note, (v) the assignment of any grants or other funding, that the Debtors may receive from the United States and/or New York State, which grants and other funding may be used as a source of payment of the Debtors' Administration, Priority and other Secured Claims, and (vi) a full and general release of any and all claims from the Debtors and their Estates; provided, however, the Liens of the Water Board shall continue to encumber the Real Property and shall be paid in full with statutory interest thereon on or prior to July 31, 2011 from the proceeds of the sale of the Parking Lot and the Annex, prior to the transfer of these properties to HHC and IFH, respectively, as consented to by DASNY.



**E. Administration of Estate Assets By Liquidation Trustee**

6. Pursuant to Section 8.4 of the Plan, on the Effective Date, all Estate Assets (and, for the avoidance of doubt, Estate Assets include the Debtors' membership interests in the HDFC and do not include assets transferred to DASNY (or its designee)) shall pass to and vest in the Debtors free and clear of all Liens, Claims, interests, Membership Interests and encumbrances, including (without limitation) all mortgages, restrictions (including, without limitation, any restriction on the use, voting rights, transfer rights, claims for receipt of income or other exercise of any attributes of ownership), hypothecations, charges, indentures, loan agreements, instruments, leases, licenses, options, deeds of trust, security interests, equity interests, conditional sale rights or other title retention agreements, pledges, judgments; demands, rights of first refusal, consent rights, offsets, contract rights, recoupment rights, rights of recovery, reimbursement rights, contribution claims, indemnity rights, exoneration rights, product liability claims, alter-ego claims, environmental rights and claims (including, without limitation, toxic tort claims), labor rights and claims, employment rights and claims, pension rights and claims, tax claims, regulatory violations by any governmental entity, decrees of any court or foreign or domestic governmental entity, charges of any kind or nature, debts arising in any way in connection with any agreements, acts, or failures to act, reclamation claims, obligation claims, demands, guaranties, option rights or claims, rights, contractual or other commitment rights and claims, and all other matters of any kind and nature, whether known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, whether arising prior to or subsequent to the commencement of these Chapter 11 Cases (but, for the avoidance of doubt, in each case prior to the closing),

and whether imposed by agreement, understanding, law, equity or otherwise, including claims otherwise arising under any theory, law or doctrine of successor liability, arising on or before the Effective Date, but subject to the terms and conditions of the Plan and this Confirmation Order. Pursuant to Section 8.4 of the Plan, on the Effective Date, the administration of the Estate Assets shall become the general responsibility of the Liquidation Trustee. Pursuant to Bankruptcy Code Section 1129(a)(5)(A)(ii), the Court approves, as consistent with the interests of holders of claims and interests and with public policy, the selection of the Liquidation Trustee, and Lori Lapin Jones is hereby appointed to serve as the Liquidation Trustee on the terms set forth in this Order and the Plan. The Liquidation Trustee Employment Agreement, annexed to the Plan as Exhibit A, is approved.

7. The Estate Assets shall include an amount of not less than \$500,000.00 to be provided by DASNY. The Estate Assets shall not include any assets conveyed to DASNY. The Estate Assets shall include, without limitation (after the payment on the Effective Date, or as soon thereafter as is practicable, of Administrative and Priority Claims and Priority Tax Claims and the return of any Collateral), collections of patient and accounts receivable, any remaining proceeds and any causes of action; provided, however, nothing in the Plan or this Order shall serve to extinguish or limit any federal interest which, pursuant to 45 CFR Part 74 exists with respect to property or equipment purchased by the Debtors with grant monies provided by the U.S. Department of Health and Human Services.

8. The Liquidation Trustee does not, and shall not be deemed to assume any liability whatsoever for any acts or omissions of the Trustee, the Debtors, their Estates or any other person, that may have occurred prior to the Liquidation Trustee's appointment.

9. With respect to (i) the Estate Assets administered by the Liquidation Trustee and (ii) the assets conveyed to DASNY (or its designee), the Liquidation Trustee and DASNY (or its designee) shall have no liability whatsoever with respect to the Debtors' (or their predecessors' or affiliates') respective businesses or operations or any of the Debtors' (or their predecessors' or affiliates') obligations based, in whole or part, directly or indirectly, on any theory of successor or vicarious liability of any kind or character, or based upon any theory of antitrust, environmental, successor or transferee liability, *de facto* merger or substantial continuity, labor and employment or products liability, whether known or unknown as of the closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated, including liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the Estates prior to the Effective Date, including, without limitation, with respect to any liability or obligation under the WARN Act (29 U.S.C. §§ 2101 *et seq.*), the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. §§ 9601 *et seq.*), or any foreign, federal, state or local labor, employment, or environmental law whether of similar import or otherwise, provided, however, nothing herein shall be held to limit any obligations that may arise from and after the Effective Date.

10. The Trustee, the Debtors and the Debtors' officers, management and professionals shall cooperate fully to assist the Liquidation Trustee in the transition of the administration of the Estate Assets, including, without limitation, to ensure that from and after the Effective Date, the signatories on all bank and other accounts are changed over to the Liquidation Trustee as sole signatory.

11. The settlement of any Cause of Action or claim for the pursuit of Estate Assets shall not require the approval of the Bankruptcy Court unless the amount in controversy exceeds \$200,000; provided that nothing contained herein shall prevent the Liquidation Trustee from seeking Bankruptcy Court approval of any such settlement.

12. For the avoidance of doubt, nothing contained in Article 8 of the Plan shall limit the right of the U.S. Trustee to review and be heard on matters relating to the payment of executive severance claims.

**F. Executory Contracts and Unexpired Leases**

13. Subject to Article 11 of the Plan, this Order shall constitute an order of the Bankruptcy Court approving the assumption or rejection, as applicable, of executory contracts and unexpired leases, pursuant to Sections 365 and 1123 of the Bankruptcy Code, and such assumption or rejection shall be deemed effective as of the Effective Date. Any executory contracts not expressly assumed shall be deemed rejected.

**G. Certain Corporate Actions**

14. Prior to the Effective Date, the Debtors are authorized to take such actions necessary or desirable to implement this Order and the Plan, including, without limitation, (i) transfer the Real Property and other assets to DASNY (or its designee) pursuant to Section 5.1 of the Plan; (ii) pay, arrange for payment, escrow or reserve for payment, or otherwise satisfy Administrative and Priority Claims; (iii) return collateral in respect of Secured Claims; and (iv) modify the corporate structure of the Debtors, including, without limitation, through the transfer of assets (including an Interest in a Debtor) from the Debtor entity at which such assets are held to another Debtor entity, or the merger, dissolution, or consolidation of one or more of the Debtors. The Liquidation Trustee shall administer the Estate Assets and effectuate the wind-down and dissolution of the Debtors. All assets, including, without limitation, all

rights, title and interest in any assets or Causes of Action of North General Service Corporation, North General Diagnostic & Treatment Center and the HDFC may be transferred by the Liquidation Trustee to North General without further approval of the Court.

**H. Injunctions, Plan Releases, and Exculpations**

15. The injunctions set forth in Section 12.1 of the Plan are approved in all respects. All Persons releasing claims pursuant to the Plan are permanently enjoined from and after the Confirmation Date from taking any actions in violation of the Plan against any party with respect to any claim released pursuant to the Plan.

16. The Plan Releases set forth in Section 12.2 of the Plan are approved in all respects, are so ordered and shall be immediately effective on the Effective Date of the Plan without further order or action on the part of the Court, any of the parties to such Plan Releases or any other party.

17. The exculpations set forth in Section 12.3 of the Plan are approved in all respects. The commencement or prosecution by any person or entity, whether directly, derivatively or otherwise, of any claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities released pursuant to Section 12.3 of the Plan is hereby permanently enjoined.

**I. Termination of Interests**

18. On the Effective Date, all Interests in the Debtors, including without limitation, the Interests in Class 4, will be cancelled, annulled, and extinguished and will be of no further force or effect, without any further action by any party. Entities holding Interests in the Debtors will retain no rights and receive no consideration on account of those Interests.

**J. Order Binding on All Parties**

19. In accordance with Section 1141(a) of the Bankruptcy Code and notwithstanding any otherwise applicable law, upon the occurrence of the Effective Date, the terms of the Plan and this Order shall be binding upon, and inure to the benefit of, the Debtors, all holders of Claims and Interests, and their respective successors and assigns.

**K. Exemption from Certain Transfer Taxes**

20. Pursuant to Section 1146(a) of the Bankruptcy Code, the issuance, transfer, or exchange of any security under the Plan; or the execution, delivery, or recording of an instrument of transfer pursuant to, in implementation of or as contemplated by the Plan; or the vesting, transfer, or sale of any Real Property of the Debtors, including but not limited to a transfer pursuant to that certain Deed from the Trustee on behalf of the Debtors and their Estates, as Grantor and NGHP Holding Corporation, a New York public benefit corporation and wholly owned subsidiary of DASNY, as Grantee, dated June 30, 2011, pursuant to, in implementation of or as contemplated by the Plan shall not be taxed under any state or local law imposing a stamp tax, transfer tax, or similar tax or fee. Consistent with the foregoing, each recorder of deeds or similar official for any county, municipal or governmental unit in which any instrument hereunder is to be recorded shall, pursuant to this Order, be ordered and directed to accept such instrument, without requiring the payment of any documentary stamp tax, deed stamps, stamp tax, transfer tax, intangible tax, or similar tax.

21. All filing and recording officers are hereby directed to accept for filing or recording all instruments to be filed and recorded in accordance with the Plan or the Plan exhibits without payment of any such taxes described herein. Notice of entry of this Order in the form approved by the Bankruptcy Court: (a) shall have the effect of an order of the Bankruptcy Court; (b) shall constitute sufficient notice of the entry of this Order to such filing and recording

officers; and (c) shall be a recordable instrument notwithstanding any contrary provision of applicable nonbankruptcy law. The Bankruptcy Court retains jurisdiction to enforce the foregoing direction by contempt proceedings or otherwise.

22. Any transfers of owned or leased real property undertaken by the Debtors or the Liquidation Trustee pursuant to the Plan are specifically for the purpose of effectuating the orderly winddown of the Debtors' Estates under Chapter 11 of the Bankruptcy Code and shall not trigger (a) any increase in applicable real property taxes or (b) a reappraisal of any real property so transferred.

#### **L. Claims Bar Dates**

23. **Administrative Bar Date.** Pursuant to Article 4 of the Plan, each holder of an Administrative Claim must file with the Bankruptcy Court and serve on DASNY and the Liquidation Trustee (collectively, the "**Notice Parties**") proof of such Administrative Claim no later than thirty (30) days after the Effective Date, unless such Administrative Claim has previously been filed. Failure to timely file and properly serve on the Notice Parties such proof of Administrative Claim shall result, without any further order of the Court, in the Administrative Claim holder being forever barred from asserting such Administrative Claims against the Debtors or their property, and such holder shall be enjoined from commencing or continuing any action to collect, offset or otherwise recover such Administrative Claim. Claimants who were required to file proofs of Administrative Claims on or before the Initial Administrative Claims Bar Date, but who failed to do so, are barred from filing Administrative Claims herein on account of such claims, and such Administrative Claims shall be deemed Disallowed under the Plan and the holder thereof shall be enjoined from commencing or continuing any action to collect, offset, recoup or recover such Administrative Claim.

24. **Professional Fee Claims.** Pursuant to Article 3 of the Plan, all final applications for payment of Professional Fee Claims for the period through and including the Effective Date shall be filed with the Court and served on the Liquidation Trustee, DASNY and the other parties entitled to notice pursuant to the Interim Compensation and Reimbursement Procedures Order [Docket No. 143] no later than forty-five (45) days after the Effective Date. Any Person that fails to timely file and properly serve a Professional Fee Claim shall be forever barred from asserting such Professional Fee Claim against the Debtors, and such Professional Fee Claim shall be deemed Disallowed under the Plan and the holder thereof shall be enjoined from commencing or continuing any action to collect, offset, recoup or recover such Professional Fee Claim.

25. Pursuant to Section 13.1 of the Plan, the Liquidation Trustee and any other party in interest, including DASNY, may object to Administrative and Priority Claims up to the later of (i) one hundred twenty (120) days after the Effective Date or (ii) the deadline for filing an objection established by Order of the Court; provided, however, that an objection to a Claim based on Section 502(d) of the Bankruptcy Code may be made at any time in any adversary proceeding against the holder of any relevant Claim. The filing of a motion to extend the deadline to object to any Claims shall automatically extend such deadline until a Final Order is entered on such motion. In the event that such motion to extend the deadline to object to Claims is denied by the Bankruptcy Court, such deadline shall be the later of the current deadline (as previously extended, if applicable) or thirty (30) days after the Bankruptcy Court's entry of an Order denying the motion to extend such deadline.

**M. Plan Implementation**

26. Without further action by the Bankruptcy Court, the Trustee, the Debtors, or the members, partners, directors, managers or trustees of any Debtor, (a) the Debtors; and (b) the Liquidation Trustee are authorized to: (i) take any and all actions necessary or appropriate to



implement, effectuate and consummate the Plan, this Order or the transactions contemplated thereby or hereby, and (ii) execute and deliver, adopt or amend, as the case may be, any contracts, instruments, releases, agreements and documents necessary to implement, effectuate and consummate the Plan.

27. To the extent that, under applicable non-bankruptcy law, any of the foregoing actions would otherwise require the consent or approval of the stockholders, members or directors of any of the Debtors, this Order shall, pursuant to Section 1142 of the Bankruptcy Code (and, to the extent applicable, relevant state statutes), constitute such consent or approval, and such actions are deemed to have been taken by unanimous action of the directors, managers, stockholders, partners, members or trustees of the appropriate Debtor.

28. Each federal, state, commonwealth, local, foreign or other governmental agency is hereby directed and authorized to accept any and all documents, mortgages and instruments necessary or appropriate to effectuate, implement or consummate the transactions contemplated by the Plan and this Order.

29. Subject to and to the extent set forth in the Plan, this Order, the Liquidation Trustee Employment Agreement, or other agreement (or any other Final Order of the Bankruptcy Court entered pursuant to or in furtherance hereof), the Debtors and the Liquidation Trustee on behalf of the Debtors shall be empowered to, among other things, effectuate any and all actions and execute all agreements, instruments and other documents necessary to implement the Plan.

30. Prior to the Effective Date, the Trustee, subject to the prior written consent of DASNY, may make appropriate technical adjustments and modifications to the Plan without further order or approval of this Court, provided that such technical adjustments and

modifications do not adversely affect in a material way the treatment of holders of claims or interests.

**N. No Stay of Confirmation Order**

31. The Effective Date of the Plan shall be June 30, 2011. Pursuant to Bankruptcy Rule 3020(e), this Order shall be effective immediately upon the entry of the Order.

**O. Binding Effect of Prior Orders**

32. Pursuant to Section 1141 of the Bankruptcy Code, effective as of and subject to the occurrence of the Effective Date, and subject to the terms of the Plan and this Order, all prior orders entered in the Chapter 11 Cases, all documents and agreements executed by the Debtors or the Trustee as authorized and directed thereunder, and all motions or requests for relief by the Debtors or the Trustee pending before the Court as of the Effective Date shall be binding upon and shall inure to the benefit of the Debtors and their respective successors and assigns, the Trustee, the Liquidation Trustee, any and all holders of Claims against or Interests in the Debtors, including all governmental entities or recording offices (irrespective of whether such claims or interests are impaired under the Plan or whether the holders of such claims or interests accepted, rejected or are deemed to have accepted or rejected the Plan), any and all non-debtor parties to executory contracts or unexpired leases with the Debtors, and any and all entities that are parties to or are subject to the settlements, compromises, releases, discharges and injunctions described in the Plan. Upon the Effective Date, the Plan shall be deemed to be substantially consummated under Section 1101 of the Bankruptcy Code.

**P. Plan Modifications**

33. Pursuant to Section 1127 of the Bankruptcy Code, the modifications of the Plan contained in the Further Revised Second Amended Plan of Liquidation as Modified are hereby approved.

**Q. Notice of Confirmation of the Plan**

34. Pursuant to Bankruptcy Rules 2002(f)(7) and 3020(c)(2), the Debtors are directed to serve a notice of the entry of this Order.

**R. Retention of Jurisdiction**

35. Notwithstanding confirmation of the Plan or the occurrence of the Effective Date, the Bankruptcy Court shall retain jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases and the Plan to the fullest extent permitted by law, including among other things, jurisdiction over the matters set forth in the Plan, which provisions are incorporated herein by reference and matters relating to the Debtors' membership interests in the HDFC.

**S. Miscellaneous Provisions**

36. This Order is and shall be a separate Order with respect to each of the Debtors in each Debtor's separate Chapter 11 Case for all purposes.

37. Except as otherwise expressly provided in the Plan, this Order or a separate Order of this Court, all injunctions or stays provided for in these Chapter 11 Cases under Sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect through and including the Effective Date.

38. After the entry of this Order, subject to Section 15.1 of the Plan, the Trustee may modify the Plan to remedy any defect or omission or to reconcile any inconsistencies in the Plan or in this Order, as may be necessary to carry out the purposes and effects of the Plan.

39. As of the Effective Date, the Trustee shall be relieved of his duties and obligations to the estate under the Bankruptcy Code, Bankruptcy Rules and Local Bankruptcy Rules, including, but not limited to, any obligation to file a final report pursuant to Local Bankruptcy Rule 3022-1, or otherwise.

40. As of the Effective Date, the duties of the Committee shall terminate, except with respect to the pursuit of or objection to any Professional Fee Claims as provided in the Plan; provided, however, the Committee's professionals will not request the payment of any fees or expenses in connection with any objections to the Professional Fee Claims made or filed on behalf of the Committee.

41. On the Effective Date, the engagement of each professional Person retained by the Debtors, the Trustee and the Committee shall be terminated without further order of the Bankruptcy Court or act of the parties; provided, however, such professional Persons shall be entitled to prosecute their respective Professional Fee Claims and represent their respective constituents with respect to applications for payment of such Professional Fee Claims.

42. The failure to reference or discuss any particular provision of the Plan in this Order shall have no effect on the validity, binding effect and enforceability of such provision and such provision shall have the same validity, binding effect and enforceability as every other provision of the Plan.

43. In the event of an inconsistency between the Plan, on the one hand, and any other agreement, instrument, or document intended to implement the provisions of the Plan, on the other, the provisions of the Plan shall govern (unless otherwise expressly provided for in such agreement, instrument, or document). In the event of any inconsistency between the Plan and any agreement, instrument, or document intended to implement the Plan, on the one hand, and this Order, on the other, the provisions of this Order shall govern.

Dated: New York, New York  
June 22, 2011

/s/ Shelley C. Chapman  
Hon. Shelley C. Chapman  
United States Bankruptcy Judge