

EXHIBIT B

\$[14,000,000]
SENIOR SECURED PRIMING AND SUPERPRIORITY
DEBTOR-IN-POSSESSION CREDIT AGREEMENT,

dated as of July 2, 2010,

among

NORTH GENERAL HOSPITAL, as a Borrower,

THE GUARANTORS PARTY HERETO,

and

DORMITORY AUTHORITY OF THE STATE OF NEW YORK,
as DIP Lender

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SENIOR SECURED PRIMING AND SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT dated as of July 2, 2010 (this “**DIP Credit Agreement**”), among NORTH GENERAL HOSPITAL, a New York not-for-profit general hospital (“**NORTH GENERAL**” or the “**Borrower**”), NORTH GENERAL SERVICES CORPORATION, a New York not-for-profit corporation (“**CORPORATION**”), and NORTH GENERAL DIAGNOSTIC AND TREATMENT CENTER, a New York not-for-profit corporation (“**D&TC**”) (Corporation and D&TC are collectively referred to as the “**Guarantors**”), and the DORMITORY AUTHORITY OF THE STATE OF NEW YORK (“**DASNY**”), a public benefit corporation organized pursuant to the provisions of Title’s 4 and 4-B of Article 8 of the Public Authorities Law of the State of New York, as amended (in its capacity as lender hereunder, the “**Authority**” or the “**DIP Lender**”).

WHEREAS, Borrower and Guarantors have commenced a case under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of New York, and Debtors have retained possession of their respective assets and are authorized under the Bankruptcy Code to continue the operation of their businesses as debtors-in-possession;

WHEREAS, prior to the commencement of the Chapter 11 Cases, the Prepetition Lender made loans and advances and provided other financial or credit accommodations to North General pursuant to, *inter alia*, the Loan Agreement dated as of January 3, 2003 and that certain Amended and Restated Reimbursement Agreement dated July 23, 2004 in each case as heretofore amended, secured by certain of the assets and properties of North General as set forth in the Prepetition Loan Documents;

WHEREAS, the Authority has established the health facility restructuring pool (the “**Restructuring Pool**”) pursuant to Section 2815 of the Public Health Law of the State of New York (the “**Act**”);

WHEREAS, the Authority, the Commissioner of Health (the “**Commissioner**”) and the New York State Housing Finance Agency have entered into an agreement, for the purpose of administering funds in the Restructuring Pool (the “**Restructuring Pool MOU**”);

WHEREAS, the Authority has informed North General that pursuant to the Act and the Restructuring Pool MOU, loans from the Restructuring Pool may, subject to the approval of the Department of Health, be made by the Authority pursuant to agreements with Participating General Hospitals (as defined in the Act);

WHEREAS, North General is a not-for-profit general hospital which has received written approval of the Commissioner to participate in the Health Facility Restructuring Program pursuant to the Act;

WHEREAS, the Bankruptcy Court has entered an Interim Order pursuant to which the Authority may make certain postpetition loans and advances, and provide other financial accommodations, to Debtors secured by substantially all the assets and properties of Debtors as set forth in, as applicable, the Interim Order or Final Order, as applicable, and this DIP Credit Agreement;

WHEREAS, the Interim Order or Final Order, as applicable, provides that as a condition to the making of such postpetition loans, advances and other financial accommodations, Debtors shall execute and deliver this DIP Credit Agreement;

WHEREAS, North General desires to reaffirm its obligations to the Prepetition Lender pursuant to the Prepetition Loan Documents and acknowledge its continuing liabilities to the Prepetition Lender in order to induce the Authority to make such postpetition loans and advances, and provide such other financial accommodations, to Debtors;

WHEREAS, Debtors have requested that the Authority make postpetition loans and advances and provide other financial or credit accommodations from the Restructuring Pool to Borrower and Guarantors, and the Authority is willing to do so, subject to the terms and conditions contained herein; and

WHEREAS, DOH's approval shall be required for such postpetition loans from the Restructuring Pool by the Authority to the Debtors.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of the Authority and each Loan Party covenants, warrants and agrees as follows:

ARTICLE 1 DEFINITIONS

Section 1.01. *Defined Terms.* As used in this DIP Credit Agreement, the following terms shall have the meanings specified below:

“**Accounts**” shall have the meaning given to such term in Section 5.13.

“**Act**” shall have the meaning given to such term in the Recitals.

“**Acknowledgment**” shall have the meaning given to such term in Section 5.12.

“**Additional \$1.2MM Loan**” shall mean (i) the loan made by DASNY pursuant to that certain Nineteenth Amendment of Amended and Restated Reimbursement Agreement dated as of June 30, 2010 (“**19th Amendment**”) between DASNY and the Hospital together with any and all interest and other obligations and liabilities arising out of or relating to the “**Additional Loan**” as defined in such Nineteenth Amendment; and (ii) the assignment by the Debtors of their interests in that certain “Transition Fund” payment approved by the DOH in the amount of One Million, Two Hundred Thousand Dollars (\$1,200,000), which the Debtors, in accordance with the terms of the 19th Amendment, have directed DOH to pay over to DASNY in repayment of the amounts due under the 19th Amendment.

“**Adequate Protection Lien**” shall have the meaning ascribed to such term in the Interim Order or the Final Order, as applicable.

“Adequate Protection Obligations” shall have the meaning given to such term in the Interim Order or the Final Order, as applicable.

“Adequate Protection Payments” shall have the meaning given to such term in the Interim Order or the Final Order, as applicable.

“Administrative Questionnaire” shall mean an Administrative Questionnaire in such form as may be supplied from time to time by the Authority.

“Affiliate” shall mean, when used with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified; *provided, however*, that, for purposes of the definition of the term **“Eligible Assignee”** and Section 6.07, the term **“Affiliate”** shall also include any Person that directly or indirectly owns 10% or more of any class of Equity Interests of the Person specified or that is an officer or director of the Person specified. No DIP Lender, or Affiliate thereof shall be deemed to be an **“Affiliate”** of any Loan Party for purposes of this DIP Credit Agreement.

“Asset Transaction” shall mean the sale, lease, sub-lease, sale and leaseback, assumption, assignment, conveyance, transfer, issuance or other disposition (by way of merger, casualty, condemnation or otherwise) by any Loan Party or any of the Subsidiaries to any Person other than a Loan Party or any Subsidiary Guarantor of assets of any Loan Party or any of the Subsidiaries (other than any disposition of assets giving rise to a Recovery Event).

“Assignment and Acceptance” shall mean an assignment and acceptance entered into by the DIP Lender and an Eligible Assignee, in such form as shall be approved by the Authority.

“Authority” shall have the meaning given to such term in the Recitals.

“Bankruptcy Code” shall mean the United States Bankruptcy Code, being Title 11 of the United States Code as enacted in 1978, 11 U.S.C. §§101 *et seq.*, as the same has heretofore been or may hereafter be amended, recodified, modified or supplemented, together with all rules, regulations and interpretations thereunder or related thereto.

“Bankruptcy Court” shall mean the United States Bankruptcy Court for the Southern District of New York.

“Bankruptcy Rules” shall mean the Federal Rules of Bankruptcy Procedure, as the same may from time to time be in effect and applicable to the Chapter 11 Cases.

“Benefit Plan” shall mean any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 307 of ERISA, and in respect of which a Loan Party or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Borrower” shall have the meaning given to such term in the Recitals.

“Borrowing” shall mean a borrowing of Loans hereunder.

“Borrowing Request” shall mean a request by the Borrower in accordance with the terms of Section 2.03 and substantially in the form of Exhibit A, or such other form as shall be approved by DIP Lender.

“Business Day” shall mean any day other than a Saturday, Sunday or day on which banks in New York City are authorized or required by law to close.

“Capital Expenditures” shall mean, for any period, with respect to any Person, the sum of (a) the additions to property, plant and equipment and other capital expenditures of such Person and its consolidated subsidiaries that are (or are required to be) set forth in a consolidated statement of cash flows of such Person for such period prepared in accordance with GAAP plus (b) Capital Lease Obligations incurred by such Person and its consolidated subsidiaries during such period; *provided* that the term **“Capital Expenditures”** shall not include (i) any such expenditure made to restore, replace or rebuild property to the condition of such property immediately prior to any damage, loss, destruction or condemnation of such property, to the extent such expenditure is made with insurance proceeds, condemnation awards or damage recovery proceeds relating to any such damage, loss destruction or condemnation, or (ii) expenditures that are accounted for as capital expenditures of such Person and that are actually paid for by a Person other than a Loan Party or any of their Subsidiaries and for which none of the Loan Parties or any of their Subsidiaries has provided or is required to provide or incur, directly or indirectly, any consideration or obligation to such other Person.

“Capital Lease Obligations” of any Person shall mean the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with GAAP.

“Carve-Out” shall have the meaning given to such term in the Interim Order or the Final Order, as applicable.

“Cash Collateral” shall mean and include all “cash collateral” as defined by section 363(a) of the Bankruptcy Code.

“Chapter 11 Cases” shall mean the Chapter 11 cases of Borrower and all other Debtors which are being jointly administered under the Bankruptcy Code and are pending in the Bankruptcy Court.

“Charges” shall have the meaning assigned to such term in Section 9.09.

“Closing Date” shall mean the date of the first Credit Event.

“Closure Plan” shall mean the plan of action in regard to the use and disposition of the Loan Parties’ properties, as such plan may be amended from time to time, submitted to the DOH

relating, among other things, to the cessation by North General of acceptance of admissions and at all times in form and substance satisfactory to the Authority.

“**CMS**” shall mean the Centers of Medicare and Medicaid Services of the United States Department of Health and Human Services.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended from time to time.

“**Commissioner**” shall have the meaning given to such term in the Recitals.

“**Commitment Schedule**” shall mean the Schedule attached hereto identified as such.

“**Commitment(s)**” shall mean the aggregate amount of the DIP Lender’s Initial Loan Commitment and Subsequent Loan Commitment as set forth on the Commitment Schedule, as applicable, as the same may be (a) reduced from time to time pursuant to Section 2.09, and (b) reduced or increased from time to time pursuant to assignments by or to the DIP Lender pursuant to Section 9.04. The initial aggregate amount of the Commitments is \$[14,000,000].

“**Committee**” shall mean collectively, the official committee of unsecured creditors and any other official committee formed, appointed or approved in any Chapter 11 Case and each of such committees shall be referred to herein as a “**Committee**”.

“**Communications**” shall have the meaning assigned to such term in Section 9.01.

“**Contractual Obligation**” of any Person means any obligation, agreement, undertaking or similar provision of any Equity Interests issued by such Person or of any agreement, undertaking, contract, lease, indenture, mortgage, deed of trust or other instrument (excluding a DIP Loan Document) to which such Person is a party or by which it or any of its property is bound or to which any of its properties is subject.

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

“**Credit Event**” shall have the meaning assigned to such term in Section 4.01.

“**Cumulative Net Cash Flow**” shall have the meaning assigned to such term in Section 6.14.

“**DASNY**” shall have the meaning given to such term in the preamble to this DIP Credit Agreement.

“**Debtors**” shall mean, collectively, Borrower and Guarantors and other Affiliates, who file Chapter 11 Cases, as Debtors and Debtors-in-Possession in the Chapter 11 Cases.

“**Default**” shall mean any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would constitute an Event of Default.

“Definitive Agreement” shall mean the Definitive Agreement Regarding Asset Purchase and Services in form and substance satisfactory to the Authority by and among certain of the Borrower and Guarantors and Institute for Family Health, and to the extent amended, modified or supplemented as permitted hereunder.

“DIP Budget” shall mean the aggregate, without duplication, of all items approved by the Authority in its sole discretion that are set forth in the budget attached to the Interim Order, as modified or supplemented from time to time by additional budgets to which Borrower and the Authority mutually agree, and taking into account computation of amounts as and to the extent that variances permitted under Section 6.13 are not exceeded or violated.

“DIP Collateral” shall mean all property and assets of the Loan Parties, of any nature whatsoever and wherever located, real or personal, tangible or intangible, now owned or hereafter acquired, that may at any time become subject to a Lien or upon which a Lien is purported to be created pursuant to any DIP Order or by any DIP Loan Document in favor of the Authority to secure the DIP Obligations (including, without limitation, all accounts, all chattel paper, commercial tort claims, all deposit accounts, all documents, all equipment, all general intangibles, all instruments, all inventory, all investment property, all letter-of-credit rights, all books and records, and all proceeds, rents, profits, and products of the foregoing (including Cash Collateral), and subject to the entry of the Final Order, all proceeds of **“Avoidance Actions”** (as defined in the DIP Order)), and shall include the Mortgaged Properties and the **“Collateral”** as defined in any Perfection Document.

“DIP Credit Agreement” shall have the meaning assigned to such term in the preamble.

“DIP Facility” shall mean the Commitments and the Loans made thereunder.

“DIP Lender” shall mean the Authority in its capacity as lender hereunder, together with its successors and assigns in such capacity.

“DIP Liens” shall have the meaning ascribed to it in the DIP Order.

“DIP Loan Documents” shall mean this DIP Credit Agreement, the Perfection Documents (if any), the Interim Order, the Final Order, and each other document executed by a Loan Party and delivered to the DIP Lender in connection with this DIP Credit Agreement.

“DIP Obligations” means all loans, advances, debts, liabilities and all other amounts (including the principal of, interest on, fees, costs, attorneys’ and professionals’ fees, expenses and any other charges owing in respect of such amounts, including all interest that accrues after the commencement of any case or proceeding by or against any Loan Party in bankruptcy, whether or not allowed in such case or proceeding, and interest, fees, costs, expenses and charges accruing after the maturity of the Loans or the Additional \$1.2MM Loan) and obligations for the performance of covenants, tasks or duties or for payment of monetary amounts (whether or not such performance is then required or contingent, or such amounts are liquidated or determinable) owing by any Loan Party to the Authority, the DIP Lender or any Indemnified Person, and all covenants, tasks and duties of any kind or nature (whether by reason of an extension of credit, loan, guaranty, indemnification, hedging transaction or otherwise), present or future, whether direct or indirect (including those acquired by assignment), absolute or

contingent, whether or not evidenced by any note, agreement or other instrument, arising under this DIP Credit Agreement, the DIP Order, or any of the other DIP Loan Documents and shall also include the Additional \$1.2MM Loan and all of the foregoing type liabilities and other amounts owing in respect of the Additional \$1.2MM Loan. **"DIP Obligations"** includes all obligations defined as **"Secured Obligations"** in the Guarantee and Collateral Agreement and the other Perfection Documents.

"DIP Order" shall mean the Interim Order or the Final Order, as applicable and in effect.

"DIP Superpriority Claims" shall have the meaning ascribed to it in Section 2.18.

"DOH" shall mean the New York State Department of Health.

"Dollars" or **"\$"** shall mean lawful money of the United States of America.

"Eligible Assignee" shall mean (a) DIP Lender, (b) an Affiliate of the DIP Lender, (c) an Eligible Financial Institution, or (d) any other Person (other than a natural person) approved (which approvals shall not be unreasonably withheld) by the Authority and, so long as no Default or Event of Default is continuing, the Borrower (and which approval shall be deemed to have been given by the Borrower unless an objection is delivered to the Authority within five (5) Business Days after notice of a proposed assignment is delivered to the Borrower); provided, that, notwithstanding the foregoing, **"Eligible Assignee"** shall not include any Loan Party or any Affiliate of any Loan Party.

"Eligible Financial Institution" means any (i) commercial bank, savings bank, saving and loan association or similar financial institution or (ii) insurance company or mutual fund which has at least \$100,000,000 in total assets (in name or under management).

"Environmental Laws" shall mean all former, current and future Federal, state, local and foreign laws (including common law), treaties, regulations, rules, ordinances, codes, decrees, judgments, directives, orders (including consent orders), and agreements in each case, relating to protection of the environment, natural resources, human health and safety or the presence, Environmental Release of, threatened Environmental Release, or exposure to, Hazardous Materials, or the generation, manufacture, processing, distribution, use, treatment, storage, transport, recycling or handling of, or the arrangement for such activities with respect to, Hazardous Materials.

"Environmental Liability" shall mean all liabilities, obligations, damages, losses, claims, actions, suits, judgments, orders, fines, penalties, fees, expenses and costs (including administrative oversight costs, natural resource damages and remediation costs), whether contingent or otherwise, arising out of or relating to (a) compliance or non-compliance with any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Environmental Release or threatened Environmental Release of any Hazardous Materials or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Environmental Release” shall mean any release, spill, emission, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching, or migration into or through the environment or within or upon any building, structure, facility or fixture.

“Equity Interests” shall mean shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity interests in any person, or any obligations convertible into or exchangeable for, or giving any person a right, option or warrant to acquire, such equity interests or such convertible or exchangeable obligations.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time.

“ERISA Affiliate” shall mean any trade or business (whether or not incorporated) that, together with any Loan Party, is treated as a single employer under Section 414(b) or (c) of the Code, or solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“ERISA Event” shall mean (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder, with respect to a Benefit Plan (other than an event for which the 30-day notice period is waived); (b) the failure to meet the minimum funding standards of Sections 412 or 430 of the Code; (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Benefit Plan; (d) the incurrence by a Loan Party or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Benefit Plan or the withdrawal or partial withdrawal of a Loan Party or any of its ERISA Affiliates from any Benefit Plan or Multiemployer Plan; (e) the receipt by a Loan Party or any of its ERISA Affiliates from the PBGC or a plan administrator of any notice or its (i) serious consideration of an intent to or (ii) decision to terminate any Benefit Plan or Benefit Plans or the appointment of a trustee pursuant to Section 4042 of ERISA to administer any Benefit Plan; (f) the adoption of any amendment to a Benefit Plan that would require the provision of security pursuant to Section 436(f)(1) of the Code; (g) the receipt by a Loan Party or any of its ERISA Affiliates of any notice of the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA; (h) the occurrence of a “prohibited transaction” with respect to which a Loan Party or any of the Subsidiaries is a “disqualified person” (within the meaning of Section 4975 of the Code) or with respect to which a Loan Party or any such Subsidiary could otherwise be liable; (i) the conditions exist for an imposition of a lien under Section 303(k) of ERISA; (j) the failure of a Benefit Plan and its trust to meet the requirements of Section 436 of the Code; or (k) any other event or condition with respect to a Benefit Plan or Multiemployer Plan that could result in liability of a Loan Party or any Subsidiary.

“Event of Default” shall have the meaning assigned to such term in Article 7 and shall include any additional “Event of Default” under the DIP Order.

“Extraordinary Receipt” means any cash received by or paid to or for the account of any Loan Party not in the ordinary course of business, including, without limitation, purchase

price adjustments, tax refunds, judgments and litigation settlements, pension plan reversions, proceeds of insurance (excluding proceeds of business interruption insurance to the extent such proceeds constitute compensation for lost earnings and excluding proceeds of product liability insurance received by such Loan Party for the benefit of a third party that is not an Affiliate of a Loan Party), condemnation awards (and payments in lieu thereof) and indemnity payments, but excluding such cash received by or paid to or for the account of any Loan Party with respect to a Recovery Event including.

“Final Order” shall mean, collectively, the order of the Bankruptcy Court entered in the Chapter 11 Cases after a final hearing under Bankruptcy Rule 4001(c)(2) or such other procedures as approved by the Bankruptcy Court which order shall be satisfactory in form and substance to the Authority, and which order is in effect and not stayed, together with all extensions, modifications and amendments thereto, in form and substance satisfactory to the Authority, which, among other matters but not by way of limitation, authorizes the Loan Parties to obtain credit, incur (or guaranty) Indebtedness, and grant Liens under this DIP Credit Agreement and the other DIP Loan Documents, as the case may be, provides for the super priority of the Authority’s claims and authorizes the use of Cash Collateral.

“Final Order Entry Date” shall mean the date upon which the Final Order is entered by the Bankruptcy Court.

“Financial Officer” of any Person shall mean the chief financial officer, principal accounting officer, treasurer, controller or other similar officer of such Person.

“GAAP” shall mean United States generally accepted accounting principles applied on a basis consistent with the financial statements delivered pursuant to Section 5.04.

“Governmental Authority” shall mean any Federal, state, local or foreign court or governmental agency, authority, instrumentality or regulatory body.

“Government Receivables Account” shall mean any deposit account into which a Governmental Authority directly deposits government health care program receivables or into which a Loan Party deposits or directs the deposit of checks received from a Governmental Authority representing government health care receivables.

“Guarantee” of or by any Person shall mean any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment of such Indebtedness or other obligation, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment of such Indebtedness or other obligation, or (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation; *provided, however*, that

the term “Guarantee” shall not include endorsements for collection or deposit in the ordinary course of business.

“**Guarantee and Collateral Agreement**” shall mean a Guarantee and Collateral Agreement in form and substance acceptable to the Authority, to be executed and delivered by the Borrower and (if any) each Subsidiary Guarantor, if and to the extent requested by the Authority.

“**Guarantors**” shall have the meaning given to such term in the Recitals and shall also include guarantors of the DIP Obligations pursuant to any other guaranty agreement executed in favor of the Authority.

“**Hazardous Materials**” shall mean any petroleum (including crude oil or fraction thereof) or petroleum products or byproducts, or any pollutant, contaminant, chemical, compound, constituent, or hazardous, toxic or other substances, materials or wastes defined, or regulated as such by or pursuant to any Environmental Law, or requires removal, remediation or reporting under any Environmental Law, including asbestos, or asbestos containing material, radon or other radioactive material, polychlorinated biphenyls and urea formaldehyde insulation.

“**Healthcare Laws**” shall mean all applicable statutes, laws, ordinances, rules and regulations of any Governmental Authority with respect to the regulation of patient health care and the submission of claims for reimbursement including: (1) federal fraud and abuse laws and regulations, including, the federal patient referral law, 42 U.S.C. §1395nn, commonly known as “**Stark II**”, the federal anti-kickback law, 42 U.S.C. §1320a-7b, the federal civil monetary penalty statute 42 U.S.C. §1320a-7a, federal laws regarding the submission of false claims, false billing, false coding, and similar state laws and regulations; (2) federal and state laws applicable to reimbursement and reassignment; (3) HIPAA; (4) federal statutes and regulations affecting the health insurance program for the aged and disabled established by Title XVIII of the Social Security Act and any statutes succeeding thereto; (5) statutes affecting the Tricare, CHAMPUS, Veterans, and black lung disease programs and any other health care program financed with United States government funds; (6) all federal statutes and regulations affecting the medical assistance program established by Titles V, XIX, XX, and XXI of the Social Security Act and any statutes succeeding thereto, and all state statutes and plans for medical assistance enacted in connection with the federal statutes and regulations; (7) the Emergency Medical Treatment and Labor Act, commonly known as “**EMTALA**”; and (8) any other federal or state law or regulation governing health care.

“**HHC**” shall mean New York City Health and Hospitals Corporation.

“**IFH Lease**” shall mean collectively (a) the lease between North General and Institute for Family Health, Inc. relating to space in the hospital of NGH, and (b) the lease between North General and Institute for Family Health, Inc. relating to the “Annex”, in each case as referred to in the Definitive Agreement in form and substance satisfactory to the Authority and as amended, modified or supplemented to the extent permitted under this DIP Credit Agreement.

“**Indebtedness**” of any Person shall mean, without duplication, (a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind, (b) all

obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property or assets purchased by such Person, (d) all obligations of such Person issued or assumed as the deferred purchase price of property or services (excluding trade accounts payable and accrued obligations incurred in the ordinary course of business), (e) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed, (f) all Guarantees by such Person of Indebtedness of others, (g) all Capital Lease Obligations of such Person, (h) all synthetic lease obligations of such Person, (i) net obligations of such Person under any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement, valued at the Agreement Value thereof, (j) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interests of such Person or any other Person or any warrants, rights or options to acquire such equity interests, valued, in the case of redeemable preferred interests, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends, (k) all obligations of such Person as an account party in respect of letters of credit, and (l) all obligations of such Person in respect of bankers' acceptances. The Indebtedness of any Person shall include the Indebtedness of any partnership in which such Person is a general partner.

"Indemnified Person" shall have the meaning assigned to such term in Section 9.05(b).

"Indemnified Taxes" shall mean Taxes other than (a) Other Taxes and (b) with respect to the DIP Lender or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, Taxes (including branch profits taxes) imposed on or measured by its overall net income or overall gross receipts (however denominated), and franchise taxes imposed on it (in lieu of income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of the DIP Lender, participant or SPV, in which its lending office is located.

"Information" shall have the meaning assigned to such term in Section 9.16.

"Initial Loan Commitment" shall mean the commitment, if any, of the DIP Lender to make an Initial Loan hereunder as set forth on the Commitment Schedule.

"Initial Loans" shall mean the term loans made by the DIP Lender to the Borrower pursuant to clause (a) of Section 2.01.

"Interest Payment Date" shall mean the last Business Day of each month.

"Interim Order" shall mean, collectively, the order of the Bankruptcy Court entered in the Chapter 11 Cases after an interim hearing, which order is in effect and not stayed, together with all extension, modifications, and amendments thereto, in form and substance satisfactory to the Authority, which, among other matters but not by way of limitation, authorizes, on an interim basis, the Loan Parties to execute and perform under the terms of this DIP Credit Agreement and the other DIP Loan Documents.

“Investments” shall have the meaning assigned to such term in Section 6.04.

“Lien” shall mean, with respect to any asset, (a) any mortgage, deed of trust, lien (statutory or otherwise), pledge, hypothecation, encumbrance, collateral assignment, charge or security interest in, on or on such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

“Loan Maturity Date” shall mean the date that is the earliest of the following: (a) 120 days from the date that the Chapter 11 Cases were filed; (b) the earlier of (i) the date upon which the Interim Order expires or (ii) thirty-five (35) days after the entry of the Interim Order, in either case, if the Final Order has not been entered prior to the expiration of such period; (c) if a plan of reorganization has been confirmed by order of the Bankruptcy Court, the earlier of (i) the effective date of such plan of reorganization or (ii) the 30th day after the date of entry of the confirmation order; (d) the closing of a sale of substantially all of the equity or assets of the Borrower and the Guarantors; (e) the date of indefeasible prepayment in full by Borrower of all DIP Obligations hereunder in accordance with the terms hereof; or (f) upon acceleration of the DIP Obligations hereunder.

“Loan Parties” shall mean the Borrower and Guarantors and each Subsidiary that is or becomes a party to this DIP Credit Agreement, any of the Perfection Documents or any other document executed and delivered to or for the benefit of the DIP Lender pursuant to, and in connection with, this DIP Credit Agreement.

“Loans” shall mean, collectively, the Initial Loans and the Subsequent Loans.

“Margin Stock” shall have the meaning assigned to such term in Regulation U.

“Material Adverse Effect” shall mean (a) a materially adverse effect, other than (1) the filing of the Chapter 11 Cases or (2) the consummation of any transaction or the taking of any action contemplated by the Closure Plan, on the business, assets, liabilities, operations, condition (financial or otherwise) or operating results of the Loan Parties and the Subsidiaries, taken as a whole, (b) a material impairment of the ability of the Borrower or any other Loan Party to perform any of its obligations under any DIP Loan Document to which it is or will be a party, or (c) a material impairment of the rights and remedies of or benefits available to the DIP Lender on the DIP Collateral or under any DIP Loan Document or the priority of such Liens.

“Material Indebtedness” shall mean Indebtedness (other than the Loans and other than Indebtedness which is stayed by the filing of the Chapter 11 Cases) of any one or more of the Loan Parties and the Subsidiaries in an aggregate principal amount exceeding \$250,000.

“Maximum Rate” shall have the meaning assigned to such term in Section 9.09.

“Medical Services” means medical and health care services provided to a patient, including medical and health care services provided to a patient, inpatient hospital services, outpatient hospital services which are covered by a policy of insurance issued by an Insurer, and

includes but is not limited to physician services, nurse and therapist services, dental services, hospital services, skilled nursing facility services, comprehensive outpatient rehabilitation services, home health care services, residential and out-patient behavioral healthcare services, and medicine or health care equipment provided to a patient for a necessary or specifically requested valid and proper medical or health purpose.

“Mortgaged Properties” shall mean, initially, each parcel of real property and the improvements thereto owned by a Loan Party and specified on Schedule 1.01(a) or referred to in a DIP Order, and shall include each other parcel of real property and improvements thereto with respect to which a Mortgage is granted pursuant to Section 5.11 or 5.12.

“Mortgages” shall mean the fee mortgages or deeds of trust, assignments of leases and rents and other security documents granting a Lien on any Mortgaged Property to secure the DIP Obligations, in each case as may from time to time be requested by the Authority to be executed by any Loan Party, in form and substance satisfactory to the Authority, with such changes as shall be advisable under the law of the jurisdiction in which such Mortgage is to be recorded and as are reasonably satisfactory to the Authority, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with this DIP Credit Agreement.

[**“MOU”** shall mean the Memorandum of Understanding in the (unexecuted) form delivered to the Authority by electronic mail on June 25, 2010 by and among the Authority, the Borrower, HHC, The City of New York and DOH, which shall at all times, including the final execution version thereof, be in form and substance satisfactory to the Authority, and to the extent amended as permitted hereunder.]

“Multiemployer Plan” shall mean a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

“Net Cash Proceeds” shall mean (a) with respect to any Asset Transaction or Recovery Event, the proceeds thereof in the form of cash and Permitted Investments (including any such proceeds subsequently received (as and when received) in respect of non-cash consideration initially received), net of (i) selling expenses (including reasonable and customary broker’s fees or commissions, legal fees, transfer and similar taxes incurred by the Loan Parties and the Subsidiaries in connection therewith), (ii) amounts provided as a reserve, in accordance with GAAP, against any liabilities under any indemnification obligations or purchase price adjustment associated with such Asset Transaction (*provided* that, to the extent and at the time any such amounts are released from such reserve, such amounts shall constitute Net Cash Proceeds), (iii) the principal amount, premium or penalty, if any, interest and other amounts on any Indebtedness for borrowed money which is secured by the asset sold in such Asset Transaction and which is required to be repaid with such proceeds (other than any such Indebtedness assumed by the purchaser of such asset) and (iv) with respect to any Recovery Event, any amounts that are paid or payable to a third party that is not an Affiliate of the Loan Parties, by the Loan Parties and the Subsidiaries pursuant to any applicable contract, lease or other legal obligation entered into with such third party in the ordinary course of the Loan Parties’ business; (b) with respect to any issuance or disposition of Indebtedness (other than Indebtedness permitted under this DIP Credit Agreement) or any equity issuance, the cash proceeds thereof, net of all taxes and reasonable and customary fees, commissions, costs and other expenses incurred by the Loan Parties and the

Subsidiaries in connection therewith; and (c) with respect to any Extraordinary Receipt, the cash proceeds received by or paid to or for the account of any Loan Party.

“Other Taxes” shall mean any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies (including, interest, fines, penalties and additions to tax), in each case, arising from any payment made under any DIP Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, any DIP Loan Document.

“PBGC” shall mean the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“Perfection Documents” shall mean, if any, the Guarantee and Collateral Agreement, the Mortgages, and each of the other security agreements, pledges, mortgages, consents and other instruments and documents executed and delivered pursuant to any of the foregoing or pursuant to Section 5.11 or Section 5.12.

“Permits” shall mean any and all franchises, licenses, leases, permits, approvals, notifications, certifications, registrations, authorizations, exemptions, qualifications, easements, rights of way, Liens and other rights, privileges and approvals required under any Requirement of Law.

“Permitted Investments” shall mean:

(a) investments approved by Order of the Bankruptcy Court pursuant to a motion made by Debtors to waive the deposit guidelines provided by Bankruptcy Code section 345, which Order shall be in form and substance satisfactory to the Authority;

(b) any investment permitted under Bankruptcy Code section 345;

(c) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof;

(d) investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, the highest credit rating obtainable from S&P or from Moody's;

(e) investments in certificates of deposit, banker's acceptances and time deposits maturing within 180 days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof that has a combined capital and surplus and undivided profits of not less than \$1,500,000,000;

(f) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (c) above and entered into with a financial institution satisfying the criteria of clause (e) above; and

(g) investments in “money market funds” within the meaning of Rule 2a-7 of the Investment Company Act of 1940, as amended, substantially all of whose assets are invested in investments of the type described in clauses (a) through (f) above.

“**Permitted Priority Liens**” shall mean Liens (if any) in existence as of the Petition Date permitted by Section 6.02 and having priority to the DIP Liens (i) by operation of law or (ii) as agreed by the DIP Lender in the DIP Order or otherwise by the DIP Lender in writing from time to time.

“**Permitted Refinancing Indebtedness**” shall mean Indebtedness issued or incurred (including by means of the extension or renewal of existing Indebtedness) to refinance, refund, extend, renew or replace existing Indebtedness (“**Refinanced Indebtedness**”); *provided that* (a) the principal amount of such refinancing, refunding, extending, renewing or replacing Indebtedness is not greater than the principal amount of such Refinanced Indebtedness plus the amount of any premiums or penalties and accrued and unpaid interest paid thereon and reasonable fees and expenses, in each case associated with such refinancing, refunding, extension, renewal or replacement, (b) such refinancing, refunding, extending, renewing or replacing Indebtedness has a final maturity that is no sooner than, and a weighted average life to maturity that is no shorter than, such Refinanced Indebtedness, (c) if such Refinanced Indebtedness or any Guarantees thereof are subordinated to the DIP Obligations, such refinancing, refunding, extending, renewing or replacing Indebtedness and any Guarantees thereof remain so subordinated on terms no less favorable to the DIP Lender, (d) the obligors in respect of such Refinanced Indebtedness immediately prior to such refinancing, refunding, extending, renewing or replacing are the only obligors on such refinancing, refunding extending, renewing or replacing Indebtedness and (e) such refinancing, refunding, extending, renewing or replacing Indebtedness contains covenants and events of default and is benefited by guarantees, if any, which, taken as a whole, are determined in good faith by a Financial Officer of the Borrower to be no less favorable to any Loan Party or the applicable Subsidiary and the DIP Lender in any material respect than the covenants and events of default or Guarantees, if any, in respect of such Refinanced Indebtedness.

“**Person**” shall mean any natural person, corporation, trust, business trust, joint venture, joint stock company, association, company, limited liability company, partnership, Governmental Authority or other entity.

“**Petition Date**” means July 2, 2010.

“**Postpetition**” means the time period beginning immediately upon the filing of the Chapter 11 Cases.

“**Prepetition**” means the time period ending immediately prior to the filing of the Chapter 11 Cases.

“Prepetition Credit Agreements” shall mean, collectively, (a) (i) that certain Loan Agreement dated as of January 3, 2003 between the Authority and North General relating to the Secured Hospital Revenue Refunding Bonds (North General Hospital), Series 2003 (**“Series 2003 Bonds”**); (ii) that certain Amended and Restated 1989 Mortgage made by North General as Mortgagor to DASNY as Mortgagee, as amended and restated as of January 23, 2003; (iii) that certain Amended and Restated 1998 Mortgage made by North General as Mortgagor to DASNY as Mortgagee, as amended and restated as of January 23, 2003; and (iv) all loan and security agreements related to any of the preceding clauses (a) (i), (ii) and (iii) or the Series 2003 Bonds (all of the agreements, instruments and documents referred to in this clause (a) being collectively referred to as the **“2003 Loan Documents”**); and (b) (i) that certain Amended and Restated Reimbursement Agreement dated July 23, 2004 between the Authority and North General (also sometimes referred to as the **“HCRA Loan”**); (ii) all amendments to such Amended and Restated Reimbursement Agreement, including the First Amendment through the Nineteenth Amendment; (iii) that certain Mortgage dated May 14, 2007 made by North General as Mortgagor to DASNY as Mortgagee; and (iv) all loan and security agreements related to any of the preceding clauses (b) (i), (ii) and (iii) (all of the agreements, instruments and documents referred to in this clause (b) being collectively referred to as the **“HCRA Loan Documents”**); in each of the foregoing cases in clauses (a) and (b), as amended, restated, supplemented or otherwise modified to date.

“Prepetition Indebtedness” shall mean all Indebtedness of the Loan Parties outstanding on the Petition Date immediately prior to the filing of the Chapter 11 Cases other than Indebtedness under any one or more of the Prepetition Credit Agreement.

“Prepetition Lender” shall mean the Authority as party to the Prepetition Credit Agreements.

“Prepetition Loan Documents” shall mean all agreements, instruments and documents executed or delivered by any of the Borrower or Guarantors in connection with any one or more of the Prepetition Credit Agreements.

“Prepetition Loans” shall mean the loans and other obligations and indebtedness, including reimbursement obligations, incurred under any one or more of the Prepetition Credit Agreements.

“Professional Fees” shall mean Postpetition allowed fees and expenses incurred by the Loan Parties’ professionals and provided for in the DIP Budget (including, without limitation, a claims and notice agent) during the administration of the Chapter 11 Cases, and taking into account computation of amounts as and to the extent that variances permitted under Section 6.13 are not exceeded or violated.

“Real Property” shall mean all Mortgaged Property and all other real property owned or leased from time to time by any of the Borrower, the Guarantors and the Subsidiaries.

“Recovery Event” shall mean any settlement of or payment, in each case in excess of \$25,000, in respect of any property or casualty insurance claim (excluding product liability insurance claims settled or paid for the benefit of a third party that is not an Affiliate of the Borrower or Guarantors) or any taking under power of eminent domain or by condemnation or

similar proceeding of or relating to any property or asset of the Borrower, any Guarantor or any Subsidiary.

“Register” shall have the meaning assigned to such term in Section 9.04(d).

“Required Prepayment Amount” shall have the meaning given to such term in Section 2.13.

“Related Parties” shall mean, with respect to any specified Person, such Person’s Affiliates and the respective directors, trustees, officers, employees, Authority and advisors of such Person and such Person’s Affiliates.

“Required Prepayment Percentage” shall be equal to 100%.

“Requirement of Law” shall mean as to any Person, the governing documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its Real Property or personal property or to which such Person or any of its property of any nature is subject.

“Responsible Officer” of any Person shall mean any executive officer or Financial Officer of such Person and any other officer or similar official thereof responsible for the administration of the obligations of such Person in respect of this DIP Credit Agreement.

“Restricted Indebtedness” shall mean Indebtedness of the Borrower, any Guarantor or any Subsidiary, the payment, prepayment, repurchase or defeasance of which is restricted under Section 6.09(b).

“Restricted Payment” shall mean any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in the Borrower, any Guarantor or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, defeasance, retirement, acquisition, cancellation or termination of any Equity Interests in the Borrower, any Guarantor or any Subsidiary, or any option, warrant or other right to acquire any such Equity Interests in the Borrower, any Guarantor or any Subsidiary.

“Restructuring Pool” shall have the meaning given to such term in the Recitals.

“Subsequent Loan Commitment” shall mean, the commitment, if any, of the DIP Lender to make a Subsequent Loan hereunder as set forth on the Commitment Schedule, as the same may be reduced from time to time pursuant to Section 2.09.

“Subsequent Loans” shall mean the term loans made by the DIP Lender to the Borrower pursuant to clause (b) of Section 2.01.

“subsidiary” shall mean, with respect to any Person (herein referred to as the “parent”), any corporation, partnership, limited liability company, association or other business entity (a) of which securities or other ownership interests representing more than 50% of the equity or more

than 50% of the ordinary voting power or more than 50% of the general partnership interests are, at the time any determination is being made, owned, Controlled or held, or (b) that is, at the time any determination is made, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

“Subsidiary” shall mean any subsidiary of the Borrower or any Guarantor, of which there are none as of the Closing Date other than the Borrower or a Guarantor being subsidiaries of each other.

“Subsidiary Guarantor” shall mean, each Subsidiary, if any.

“Taxes” shall mean any and all present or future taxes, levies, imposts, duties, deductions, charges, liabilities or withholdings imposed by any Governmental Authority, including interest, penalties or additions to tax with respect to the foregoing.

“Thirteen Week Forecast” shall mean each of (i) an initial thirteen (13) week cash flow forecast with respect to the Loan Parties and (ii) each subsequently delivered thirteen (13) week cash flow forecast, each in form and substance satisfactory to the Authority.

“Total Debt” shall mean, at any time, the aggregate amount of Indebtedness for borrowed money of the Loan Parties and the Subsidiaries outstanding at such time, in the amount that would be reflected on a balance sheet prepared at such time on a consolidated basis in accordance with GAAP.

“Transactions” shall mean, collectively, (a) the execution, delivery and performance by the Loan Parties of the DIP Loan Documents to which they are a party, (b) the borrowings hereunder and the use of proceeds of each of the foregoing, (c) the granting of Liens pursuant to the Perfection Documents, (d) any other transactions related to or entered into in connection with any of the foregoing, and (e) the transactions contemplated by any of the MOU, the Closure Plan and the Definitive Agreement.

“UCC” shall mean the Uniform Commercial Code.

“USA PATRIOT Act” shall mean The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)).

“wholly owned subsidiary” of any Person shall mean a subsidiary of such Person of which securities (except for directors’ qualifying shares) or other ownership interests representing 100% of the Equity Interests are, at the time any determination is being made, owned, Controlled or held by such Person or one or more wholly owned subsidiaries of such Person or by such Person and one or more wholly owned subsidiaries of such Person; a **“wholly owned Subsidiary”** shall mean any wholly owned subsidiary of the Borrower or Guarantor.

“Withdrawal Liability” shall mean liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

Section 1.02. *Terms Generally; Pro Forma Calculations.* The definitions in Section 1.01 shall apply equally to both 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” and words of similar import, shall not be limiting and shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. The words “asset” and “property” shall be construed as having the same meaning and effect and to refer to any and all rights and interests in tangible and intangible assets and properties of any kind whatsoever, whether real, personal or mixed, including cash, securities, Equity Interests, accounts and contract rights. The words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this DIP Credit Agreement in its entirety and not to any particular provision of this DIP Credit Agreement unless the context shall otherwise require. All references herein to Articles, Sections, Exhibits and Schedules shall be deemed references to Articles and Sections of, and Exhibits and Schedules to, this DIP Credit Agreement unless the context shall otherwise require. Except as otherwise expressly provided herein, (a) any definition of, or reference to, any DIP Loan Document or any other agreement, instrument or document in this DIP Credit Agreement shall mean such DIP Loan Document or other agreement, instrument or document as amended, restated, supplemented or otherwise modified from time to time (subject to any restrictions on such amendments, restatements, supplements or modifications set forth herein) and (b) all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; *provided, however*, that if the Borrower notifies the Authority that the Borrower wishes to amend any covenant in Article 6 or any related definition to eliminate the effect of any change in GAAP occurring after the date of this DIP Credit Agreement on the operation of such covenant (or if the Authority notifies the Borrower that the DIP Lender wishes to amend Article 6 or any related definition for such purpose), then the Borrower’s compliance with such covenant shall be determined on the basis of GAAP in effect immediately before the relevant change in GAAP became effective, until either such notice is withdrawn or such covenant is amended in a manner satisfactory to the Borrower and the DIP Lender.

Section 1.03. *Pro Forma Calculations.* All *pro forma* calculations permitted or required to be made by any Loan Party or any Subsidiary pursuant to this DIP Credit Agreement shall include only those adjustments that would be permitted or required by Regulation S-X under the Securities Act of 1933, as amended, together with those adjustments that (i) have been certified by a Financial Officer of the Borrower as having been prepared in good faith based upon reasonable assumptions and (ii) are based on reasonably detailed written assumptions reasonably acceptable to the Authority.

ARTICLE 2 THE CREDITS

Section 2.01. *Commitments.* Subject to the terms and conditions hereof, and relying upon the representations and warranties set forth herein, the DIP Lender agrees to make : (a) an Initial Loan to the Borrower on the Closing Date in a principal amount not to exceed its Initial Loan Commitment; and (b) Subsequent Loans to the Borrower after the Final Order Entry Date, in drawings in a principal amount not to exceed its Subsequent Loan Commitment. Amounts paid or prepaid in respect of Loans may not be reborrowed.

Section 2.02. *Loans.* (a) The Loans comprising any Borrowing shall be in an aggregate principal amount that is (i) an integral multiple of \$10,000 and not less than \$10,000 or (ii) equal to the remaining available balance of the applicable Commitments.

(b) The DIP Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds to an account in the name of the Borrower designated by the Borrower in the applicable Borrowing Request or, if a Borrowing shall not occur on such date because any condition precedent herein specified shall not have been met, return the amounts so received to the DIP Lender.

Section 2.03. *Borrowing Procedure.* In order to request a Borrowing, the Borrower shall hand deliver or fax or email to the Authority a duly completed Borrowing Request, not later than 1:00 p.m., New York City time, two Business Days before a proposed Borrowing. Each Borrowing Request shall be irrevocable, shall be signed by or on behalf of the Borrower and shall specify the following information: (i) the date of such Borrowing (which shall be a Business Day); (ii) the number and location of the account to which funds are to be disbursed; (iii) the amount of such Borrowing; and (iv) the current need for funds as reflected in the DIP Budget and the Thirteen-Week Forecast; *provided, however*, that, notwithstanding any contrary specification in any Borrowing Request, each requested Borrowing shall comply with the requirements set forth in Section 2.02; and *provided further* that the Borrower may make a telephonic request for a Borrowing, provided that each such telephonic request is confirmed promptly by delivery to the DIP Lender of a written Borrowing Request.

Section 2.04. *Repayment of Loans; Evidence of Debt.* (a) The Borrower hereby unconditionally promises to pay to the DIP Lender the then unpaid principal amount of each Loan of the DIP Lender made to the Borrower as provided in Section 2.11.

(b) The DIP Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to the DIP Lender resulting from each Loan made by the DIP Lender to the Borrower from time to time, including the amounts of principal and interest payable and paid to the DIP Lender from time to time under this DIP Credit Agreement.

(c) The entries made in the accounts maintained pursuant to paragraph (b) of this Section shall, absent manifest error, be *prima facie* evidence of the existence and amounts of the obligations therein recorded; *provided, however*, that the failure of the DIP Lender to maintain such accounts or any error therein shall not in any manner affect the obligations of the Borrower to repay the Loans made to the Borrower in accordance with the terms of this DIP Credit Agreement.

(d) The DIP Lender may request that Loans made by it hereunder be evidenced by a promissory note. In such event, the Borrower shall execute and deliver to the DIP Lender a promissory note payable to the DIP Lender and its registered assigns and in a form and substance reasonably acceptable to the Authority. Notwithstanding any other provision of this DIP Credit Agreement, in the event the DIP Lender shall request and receive such a promissory note, the interests represented by the note shall at all times (including after any assignment of all or part of

such interests pursuant to Section 9.04) be represented by one or more promissory notes payable to the payee named therein or its registered assigns.

Section 2.05. *Guarantor Obligations Absolute.* Each Guarantor hereby agrees, as more fully set forth in Article 10 hereof, that such Guarantor is jointly and severally liable for, and, hereby absolutely and unconditionally guarantees to the Authority and DIP Lender and their respective successors and assigns, the full and prompt payment (whether at stated maturity, by acceleration or otherwise) and performance of, all DIP Obligations owed or hereafter owing to the Authority and DIP Lender by the Borrower. Each Guarantor agrees that its guaranty obligation hereunder is a continuing guaranty of payment and performance and not of collection, that its obligation shall not be discharged until payment and performance, in full, of the DIP Obligations has occurred, and that its obligations under this Section 2.05 shall be absolute and unconditional, irrespective of, and unaffected by any action or circumstances that might constitute a legal or equitable discharge or defense of a surety or guarantor, and each Guarantor hereby irrevocably waives all rights of defense based on any acts or omissions of the Borrower.

Section 2.06. *Interest on Loans.* (a) Subject to the provisions of Section 2.07, the Loans shall bear interest (computed on the basis of the actual number of days elapsed over a year of 360 days calculated from and including the date of such Borrowing to but excluding the date of repayment thereof) at a fixed rate per annum equal to one (1%) percent.

(b) Interest on each Loan shall be payable on the Interest Payment Dates applicable to such Loan except as otherwise provided in this DIP Credit Agreement, shall be determined by the Authority, and such determination shall be conclusive absent manifest error.

Section 2.07. *Default Interest.* If (i) the Borrower shall default in the payment of any principal of or interest on any Loan or any other amount due hereunder or under any other DIP Loan Document, by acceleration or otherwise, or (ii) if any Event of Default under Article 7 has occurred and is continuing and the DIP Lender so elects, then, in the case of clause (i) above, until such defaulted amount shall have been paid in full or, in the case of clause (ii) above, from the date on which such Event of Default arose and for so long as such Event of Default is continuing, to the extent permitted by law, all amounts outstanding under this DIP Credit Agreement and the other DIP Loan Documents shall bear interest (after as well as before judgment), payable on demand, (a) in the case of principal, at the rate otherwise applicable to such Loan pursuant to Section 2.06 plus 2.00% per annum and (b) in all other cases, at a rate per annum (computed on the basis of the actual number of days elapsed over a year of 360 days) equal to the rate that would be applicable to such Loan plus 2.00% per annum.

Section 2.08. *[Reserved]*.

Section 2.09. *Termination and Reduction of Commitments.* Unless previously terminated in accordance with the terms hereof, (a) the Borrower's right to borrow under the Initial Loan Commitments shall automatically terminate at 5:00 p.m., New York City time, on the Closing Date and (b) the Borrower's right to borrow under the Subsequent Loan Commitment shall automatically terminate at 5:00 p.m., New York City time, on the Loan Maturity Date. Notwithstanding the foregoing, all the Commitments shall automatically terminate at 5:00 p.m.,

New York City time, on July 30, 2010, if the initial Credit Event shall not have occurred by such time.

Section 2.10. *[Reserved]*.

Section 2.11. *Repayment of Borrowings.* To the extent not previously paid, all Loans shall be due and payable on the Loan Maturity Date, together with accrued and unpaid interest on the principal amount to be paid to but excluding the date of payment.

Section 2.12. *Voluntary Prepayment.* (a) The Borrower shall have the right at any time and from time to time to prepay any Borrowing, in whole or in part, upon written or fax notice (or telephone notice promptly confirmed by written or fax notice) at least one Business Day prior to the date of prepayment.

(b) Voluntary prepayments of Loans shall be applied to the principal due in respect of the Loans.

(c) Each notice of prepayment shall specify the prepayment date and the principal amount of each Borrowing (or portion thereof) to be prepaid, shall be irrevocable and shall commit the Borrower to prepay such Borrowing by the amount stated therein on the date stated therein. All prepayments under this Section 2.12 shall be without premium or penalty. All prepayments under this Section 2.12 shall be accompanied by accrued and unpaid interest on the principal amount to be prepaid to but excluding the date of payment.

Section 2.13. *Mandatory Prepayments.* (a) Concurrently with the completion of any Asset Transaction (other than an Asset Transaction permitted under Section 6.05) or the occurrence of any Recovery Event, or any Loan Party's receipt of Net Cash Proceeds from any Extraordinary Receipt, the Borrower shall apply the Required Prepayment Percentage of the Net Cash Proceeds received with respect thereto to prepay outstanding Loans but such prepayment shall not reduce the Commitments.

(b) In the event that any Loan Party or any subsidiary of a Loan Party shall receive Net Cash Proceeds from the issuance or other incurrence of Indebtedness of or any equity issuance by any Loan Party or any subsidiary of a Loan Party (other than Indebtedness permitted pursuant to Section 6.01), the Borrower shall, substantially simultaneously with (and in any event not later than the first Business Day next following) the receipt of such Net Cash Proceeds by such Loan Party or such subsidiary, apply an amount equal to the Required Prepayment Percentage of such Net Cash Proceeds to prepay outstanding Loans in accordance with Section 2.13(f).

(c) Not later than the third Business Day after the financial statements with respect to each calendar month are delivered pursuant to Section 5.04(c) or if such financial statements are not delivered within the time period specified in Section 5.04(c), no later than the fifth Business Day after the end of each calendar month, the Borrower shall prepay outstanding Loans in an amount equal to the Required Prepayment Percentage of Cumulative Net Cash Flow excluding the amount of any Subsequent Loan received by the Borrower on or after the 25th calendar day of such month plus \$1,000,000 ("**Required Prepayment Amount**") for the month then ended.

(d) The Borrower shall deliver to the Authority, at the time of each prepayment required under this Section 2.13, a certificate signed by a Financial Officer of the Borrower setting forth in reasonable detail the calculation of the amount of such prepayment. All prepayments of Borrowings pursuant to this Section 2.13 shall be without premium or penalty.

(e) Mandatory prepayments under paragraphs (a), (b), and (c) of this Section shall be applied:

(i) *first*, to prepay the outstanding Loans (and the corresponding accrued and unpaid interest on the principal amount of Loans so prepaid);

(ii) *second*, to the extent that the Required Prepayment Amount exceeds the Loans, to prepay the Prepetition Loans in accordance with the terms of the Prepetition Credit Agreements; and

(iii) *third*, any remaining amounts to be retained by the Borrower, subject to the terms of the Interim Order or the Final Order, as applicable.

Such mandatory prepayments of the Loans shall not cause a corresponding reduction in the Commitments.

Section 2.14. *[Reserved]*.

Section 2.15. *[Reserved]*.

Section 2.16. *Payments.* (a) The Borrower shall make each payment (including principal of or interest on any Borrowing or other amounts) hereunder and under any other DIP Loan Document not later than 12:00 (noon), New York City time, on the date when due in immediately available Dollars, without setoff, defense or counterclaim. Each such payment shall be made to the Authority at its offices at as set forth in Section 9.01 or at such other place as may be designated in writing by the Authority.

(b) Except as otherwise expressly provided herein, whenever any payment (including principal of or interest on any Borrowing or other amounts) hereunder or under any other DIP Loan Document shall become due, or otherwise would occur, on a day that is not a Business Day, such payment may be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of interest, if applicable.

Section 2.17. *Taxes.* (a) Any and all payments by or on account of any obligation of the Borrower or any other Loan Party hereunder or under any other DIP Loan Document shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes; *provided* that if any Indemnified Taxes or Other Taxes are required to be withheld or deducted from such payments, then (i) the sum payable by the Borrower or such Loan Party shall be increased as necessary so that after all required deductions or withholding (including deductions or withholdings applicable to additional sums payable under this Section) the DIP Lender receives an amount equal to the sum it would have received had no such deductions or withholdings been made, (ii) the Borrower or such other Loan Party shall make such deductions

or withholdings and (iii) the Borrower or such other Loan Party shall pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law.

(b) In addition, the Borrower or any other Loan Parties shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law, for the avoidance of doubt, as the same may be modified by the Bankruptcy Code.

(c) The Borrower and each other Loan Party shall jointly and severally indemnify the DIP Lender, within 10 Business Days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by the DIP Lender, as the case may be, or any of their respective Affiliates, on or with respect to any payment by or on account of any obligation of the Borrower or any Loan Party hereunder or under any other DIP Loan Document (including Indemnified Taxes or Other Taxes imposed on or attributable to amounts payable under this Section) and any penalties, interest and expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by the DIP Lender, shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower or any other Loan Party to a Governmental Authority, the Borrower shall deliver to the Authority 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 Authority.

(e) Without prejudice to the survival of any other agreement of the Loan Parties hereunder, the agreements and obligations of the Loan Parties contained in this Section 2.17 shall survive the payment in full of all amounts due hereunder.

Section 2.18. Super Priority Nature of Loans and DIP Lender's Liens. At all times during the Chapter 11 Cases:

(a) The DIP Liens shall have the priority and senior secured status as more fully set forth in the DIP Order and shall be subject and junior only to the Permitted Priority Liens and the Carve Out.

(b) All DIP Obligations shall constitute allowed administrative expense claims of the Loan Parties in the Chapter 11 Cases with administrative priority under Sections 364(c)(1) of the Bankruptcy Code (the "**DIP Superpriority Claims**"). Subject to the Carve-Out and the Section 507(b) Claims (as defined in the DIP Order) to the extent set forth in the DIP Order, such DIP Superpriority Claims shall have priority over all other costs and expenses of administration of any kind, including those specified in, or ordered pursuant to, Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1114 or any other provision of the Bankruptcy Code or otherwise, and shall be payable from and have recourse to all assets and property of the Loan Parties, as set forth in the DIP Order.

Except as set forth herein and in the DIP Order, no other claim or Lien having a priority superior or pari passu to that granted to the Authority by the DIP Order shall be granted or approved while any DIP Obligations or Commitments under this DIP Credit Agreement remain

outstanding. Except for the Carve-Out and subject to entry of the DIP Order, no costs or expenses of administration shall be imposed against the DIP Lender or any of its DIP Collateral under Section 506(c) of the Bankruptcy Code or otherwise, and each of the Loan Parties hereby waives for itself and on behalf of its estate in bankruptcy, any and all rights, to assert or impose or seek to assert or impose, any such costs or expenses of administration against the DIP Lender.

Section 2.19. *No Discharge; Survival of Claims.* Each of the Borrower and Guarantors agrees that (a) the DIP Obligations hereunder shall not be discharged by the entry of an order confirming a plan of reorganization in the Chapter 11 Cases (and the Borrower and Guarantors each hereby waives any such discharge pursuant to Section 1141(d)(4) of the Bankruptcy Code) and (b) the DIP Superpriority Claim and the DIP Liens shall not be affected, altered or limited in any manner by the entry of an order confirming a plan of reorganization in any Chapter 11 Case.

Section 2.20. *Waiver of Priming Rights.* On the date hereof, and on behalf of themselves and their estates, and for so long as any DIP Obligation or Commitment shall be outstanding under any DIP Loan Document, without limiting any terms or conditions of the DIP Order, the Borrower and Guarantors hereby irrevocably waive any right, (i) to grant or impose, or request that the Bankruptcy Court grant or impose, under Section 364 of the Bankruptcy Code or otherwise, Liens on or security interests in the DIP Collateral that are of equal or greater priority than the DIP Liens, and/or (ii) to grant or impose, or request that the Bankruptcy Court grant or impose, under Section 364 of the Bankruptcy Code or otherwise, claims or expenses against any Loan Party, which are equal or superior to the DIP Superpriority Claims.

Section 2.21. *Payment of DIP Obligations.* Notwithstanding the provisions of section 362 of the Bankruptcy Code, and subject to the applicable provisions of the Interim Order or Final Order, as the case may be, upon the maturity (whether by acceleration or otherwise) of any of the DIP Obligations, DIP Lender shall be entitled to immediate payment of such DIP Obligations and to enforce the remedies provided for hereunder or under applicable law, in accordance with provisions of the Interim Order and the Final Order, as applicable.

Section 2.22. *Joint and Several Liability of Borrower and Guarantors.* Notwithstanding any other provision or implication in this DIP Credit Agreement, or any failure to designate whether liability is joint or several, the Borrower and each Guarantor hereby agrees that such party is jointly and severally liable for the full and prompt payment (whether at stated maturity, by acceleration or otherwise) and performance of all DIP Obligations under the DIP Loan Documents owed or hereafter owing to the DIP Lender by the Borrower. The Borrower and each Guarantor agrees that its liability for such DIP Obligations is absolute and unconditional, irrespective of, and unaffected by:

(a) the genuineness, validity, regularity, enforceability or any future amendment of, or change in, this DIP Credit Agreement, any other DIP Loan Document or any other agreement, document or instrument to which the Borrower is or may become a party;

(b) the absence of any action to enforce this DIP Credit Agreement (including this Section 2.23) or any other DIP Loan Document or any waiver or consent by the DIP Lender Parties with respect to any of the provisions thereof;

(c) the existence, value or condition of, or failure to perfect its Lien against, any security for such DIP Obligations or any action, or the absence of any action, by the Lender in respect thereof (including, without limitation, the release of any such security);

(d) the insolvency of any Loan Party; or

(e) any other action or circumstances which might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor,

it being agreed by the Borrower and each Guarantor that its DIP Obligations under this DIP Credit Agreement and the other DIP Loan Documents shall not be discharged until the payment and performance, in full, of such DIP Obligations has occurred, and any allocations of any payments or prepayments made hereunder shall not affect the Borrower's and Guarantors' joint and several liability for such DIP Obligations. The Borrower and each Guarantor shall be regarded as principal debtor with respect to such DIP Obligations. The Borrower and each Guarantor expressly waives all rights it may have now or in the future under any statute, or at common law, or at law or in equity, or otherwise to compel the Lender to marshal assets or to proceed in respect of the DIP Obligations against any other Loan Party, any other party or against any security for the payment and performance of the DIP Obligations before proceeding against, or as a condition to proceeding against, the Borrower or any Guarantor. It is agreed among the Borrower and Guarantors and the Lender that the foregoing waivers are of the essence of the transaction contemplated by this DIP Credit Agreement and the other DIP Loan Documents and that, but for the provisions of this Section 2.22 and such waivers, the Lender would decline to enter into this DIP Credit Agreement.

Section 2.23. *UCC Filings.* The Borrower and each Guarantor hereby irrevocably appoints the Authority during the term hereof as its lawful attorney-in-fact to execute and file (if so determined by the Authority), on behalf of the Borrower and Guarantors, one or more financing statements or continuation statements thereof as to the security interests granted to the Authority in the DIP Collateral, and the rights to receive the same, pledged to the Authority hereunder and to file such financing statements and continuation statements therefore in any appropriate public office. The Authority shall forward to Borrower, in due course, a copy of any such financing or continuation statement executed on behalf of the Borrower and Guarantors as provided herein.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES

Each of Borrower and Guarantors jointly and severally represents and warrants to Authority and the Lender that:

Section 3.01. *Organization; Powers.* North General is a not-for-profit general hospital that has been approved for participation in the Health Facility Restructuring Pool program by the Commissioner, and each of the Guarantors constitutes a New York not-for-profit entity, each of Borrower and Guarantors and each of the Subsidiaries (a) is duly organized or formed, validly existing and in good standing under the laws of the jurisdiction of its organization or formation, (b) has all requisite power and authority, and the legal right, to own and operate its property and

assets, to lease the property it operates as lessee and to carry on its business as now conducted and as proposed to be conducted, (c) is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required, except where the failure to be so qualified could not reasonably be expected to have a Material Adverse Effect and (d) has the power and authority, and the legal right, to execute, deliver and perform its obligations under this DIP Credit Agreement, each of the other DIP Loan Documents, and each other agreement or instrument contemplated hereby or thereby to which it is or will be a party, including, in the case of the Borrower, to borrow hereunder, in the case of each Loan Party, to grant the DIP Liens and the Liens contemplated to be granted by it under the Perfection Documents (if any) and, in the case of each Guarantor and Subsidiary Guarantor, to Guarantee the DIP Obligations as contemplated by the Guarantee and Collateral Agreement (if any).

Section 3.02. *Authorization; No Conflicts.* The Transactions (a) have been duly authorized by all requisite corporate and, if required, member action and (b) will not (i) violate (A) any provision of law, statute, rule or regulation, including any Healthcare Laws, (B) any provision of the certificate or articles of incorporation or other constitutive documents or by-laws of the Borrower and Guarantors or any Subsidiary, (C) any order of any Governmental Authority or arbitrator or (D) subject to entry of the Interim Order (or the Final Order, as applicable), any provision of any indenture, agreement or other instrument to which the Borrower and Guarantors or any Subsidiary is a party or by which any of them or any of their property is or may be bound, (ii) subject to entry of the Interim Order (or the Final Order, as applicable), be in conflict with, result in a breach of or constitute (alone or with notice or lapse of time or both) a default under, or give rise to any right to accelerate or to require the prepayment, repurchase or redemption of any obligation under any such indenture, agreement or other instrument or (iii) result in the creation or imposition of any Lien upon or with respect to any property or assets now owned or hereafter acquired by the Borrower and Guarantors or any Subsidiary (other than Liens created under the Perfection Documents).

Section 3.03. *Enforceability.* This DIP Credit Agreement has been duly executed and delivered by each of the Borrower and Guarantors and, subject to the entry of the Interim Order (or the Final Order, as applicable), constitutes, and each other DIP Loan Document when executed and delivered by each Loan Party thereto will constitute, a legal, valid and binding obligation of such Loan Party enforceable against such Loan Party in accordance with its terms, subject to general principles of equity.

Section 3.04. *Governmental Approvals.* Except for the entry of the Interim Order (or the Final Order, as applicable) and except for approval from DOH no action, consent or approval of, registration or filing with, Permit from, notice to, or any other action by, any Governmental Authority is or will be required in connection with the Transactions.

Section 3.05. *Financial Statements.* (a) The Borrower has heretofore furnished to the Lender the consolidated balance sheets and related statements of income, fund balance and cash flows of the Loan Parties (i) as of June 9, 2009 for the fiscal years set forth therein for the years ended December 31, 2008 and December 31, 2007, and for the related fiscal periods identified therein, in each case audited by and accompanied by the opinion of BDO Seidman LLP, independent public accountants and (ii) as of and for the five-month period ended May 31, 2010 certified by the Borrower's chief financial officer. Such financial statements present fairly in all

material respects the financial condition and results of operations and cash flows of the Loan Parties and their consolidated Subsidiaries as of such dates and for such periods. Such balance sheets and the notes thereto disclose all material liabilities, direct or contingent, of the Loan Parties and their consolidated Subsidiaries as of the dates thereof. Except as set forth on Schedule 3.05(a), such financial statements were prepared in accordance with GAAP applied on a consistent basis, subject in the case of unaudited financial statements, to year-end adjustments and the absence of footnotes.

(b) The DIP Budget delivered on or prior to the Closing Date pursuant to Section 4.02(k) have been prepared on the basis of assumptions accompanying them believed by the Loan Parties to be reasonable at the time made and reflect as of the date thereof the Loan Parties' good faith projections, after reasonable analysis, of the matters set forth therein, based on such assumptions.

(c) The DIP Budget delivered on or prior to the Closing Date and the updated DIP Budgets delivered pursuant to Section 5.04 represent and will represent, as of the date thereof, the good faith estimate of the Loan Parties and their senior management concerning the most probable course of their business.

Section 3.06. *No Material Adverse Change.* No event, change or condition has occurred since the Petition Date that has caused, or could reasonably be expected to cause, a Material Adverse Effect, other than the commencement of the Chapter 11 Cases.

Section 3.07. *Title to Properties; Possession Under Leases.* (a) Each of the Borrower and Guarantors and the Subsidiaries has good and marketable title to, or valid leasehold interests in, all its material properties and assets (including all Mortgaged Property), except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties and assets for their intended purposes. All such material properties and assets are free and clear of Liens, other than Liens expressly permitted by Section 6.02.

(b) Except to the extent the Bankruptcy Code excuses Postpetition performance of obligations, each of the Borrower and Guarantors and the Subsidiaries has complied in all material respects with all obligations under all material leases to which it is a party and all such leases are in full force and effect. Each of the Borrower and Guarantors and the Subsidiaries enjoys peaceful and undisturbed possession under all such material leases.

(c) During the period commencing January 1, 2005 and ending on the Closing Date, none of the Loan Parties has received any notice of, nor has any knowledge of, any pending or contemplated condemnation proceeding affecting the Mortgaged Properties or any sale or disposition thereof in lieu of condemnation.

Section 3.08. *Subsidiaries.* Borrower and Guarantors have no Subsidiaries as of the Closing Date. The members of the Borrower and Guarantors are fully set forth on Schedule 3.08, and no Liens exist on any such membership interests.

Section 3.09. *Litigation; Compliance with Laws.* (a) Except for the Chapter 11 Cases and as set forth on Schedule 3.09, there are no actions, suits or proceedings at law or in equity or by or before any Governmental Authority now pending or, to the knowledge of the Loan Parties,

threatened against or affecting any Loan Party or any Subsidiary or any business, property or rights of any such Person (i) that involve any DIP Loan Document or the Transactions or (ii) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(b) Since the date of this DIP Credit Agreement, there has been no change in the status of the matters disclosed on Schedule 3.09 that, individually or in the aggregate, has resulted in, or materially increased the likelihood of, a Material Adverse Effect.

(c) None of the Loan Parties or any of the Subsidiaries or any of their respective material properties or assets is in violation of, nor will the continued operation of their material properties and assets as currently conducted violate, any law, rule or regulation (including any zoning, building, Environmental Law, ordinance, code or approval or any building permits) or any restrictions of record or agreements affecting the Mortgaged Properties, or is in default with respect to any judgment, writ, injunction, decree or order of any Governmental Authority, where such violation or default, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

Section 3.10. *Agreements.* (a) None of the Borrower or Guarantors or any of the Subsidiaries is a party to any agreement or instrument, or subject to any corporate restriction, that, individually or in the aggregate, has resulted or could reasonably be expected to result in a Material Adverse Effect.

(b) Except for amounts owed under the Prepetition Credit Agreements, none of the Borrower or Guarantors or any of the Subsidiaries is in default, after giving effect to any applicable protections provided by the Bankruptcy Code, in any manner under any provision of any indenture or other agreement or instrument evidencing Indebtedness, or any other material agreement or instrument to which it is a party or by which it or any of its properties or assets are or may be bound where such default, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. Except for the filing of the Chapter 11 Cases, and the Events of Default (as defined in the Prepetition Credit Agreements) that have occurred and that are continuing under the Prepetition Credit Agreements, no Default has occurred and is continuing.

Section 3.11. *Use of Proceeds.* The Borrower will use the proceeds of the Loans solely in accordance with the Budget: (a) to fund working capital requirements of the Borrower and the other Loan Parties, operating expenses of the Loan Parties, capital expenditures and other line items in accordance with the terms of the DIP Budget, including operating expenses and other expenses associated with the implementation of the Closure Plan and the MOU and, to the extent permitted pursuant to the terms of the DIP Budget, other fees, costs and expenses associated with the Chapter 11 Cases; (b) fund the payment of the Professional Fees; (c) to fund the payment of interest payments with respect to the Loans; (d) to fund the payment of fees and expenses of the Authority and the Lender with respect to the Loans and the Chapter 11 Cases, including, without limitation, attorneys' fees and fees of professional advisors; (e) to fund the payment of Adequate Protection Payments to the Prepetition Lender; and (f) subject to the entry of the Final Order, to fund the payment of the fees and expenses of the Prepetition Lender

provided for in the Prepetition Loan Documents. Neither the proceeds of the Loans nor the Prepetition Lender's Cash Collateral shall in any event directly or indirectly be transferred to, or used by or for the benefit of, any entity other than the Borrower for itself or the other Loan Parties. No portion of the Loans, the Carve-Out, or any Cash Collateral of the Prepetition Lender or the Lender shall be used to assert any claim, cause of action or objection against the Authority, the Prepetition Lender, or their advisors, including, without limitation, to challenge any claim or lien of the Prepetition Lender or the validity or enforceability of the Prepetition Loan Documents, and/or challenging any Prepetition payment to or transfer to the Prepetition Lender; provided, however, that a maximum of \$15,000 of the Loans, the Carve-Out and/or Cash Collateral may be used by any official creditors committee appointed in the Chapter 11 Cases for purposes of investigating (but not prosecuting) any of the foregoing claims and/or challenges; provided, however, that any such investigation must be concluded by no later than 60 days from the entry of the Final Order and, thereafter, the acknowledgements and releases provided by the Loan Parties and their estates to the Prepetition Lender set forth in the Final Order and the other DIP Loan Documents shall be binding and effective.

Section 3.12. *Tax Returns.* Each of Borrower and Guarantors and each of the Subsidiaries has timely filed all Federal, state, local and foreign tax returns or materials required to have been filed by it and all such tax returns are correct and complete in all material respects. Each of Borrower and Guarantors and each of the Subsidiaries has timely paid or timely caused to be paid all material Taxes that were shown to be due on such tax returns, except Taxes that are being contested in good faith by appropriate proceedings and for which the Borrower or Guarantor or such Subsidiary, as applicable, shall have set aside on its books adequate reserves in accordance with GAAP. Each of Borrower and Guarantors and each of the Subsidiaries has made adequate provision in accordance with GAAP for all Taxes not yet due and payable. Except as disclosed in Schedule 3.12, no Lien in respect of Taxes has been filed, and to the knowledge of each Loan Party and each of the Subsidiaries, no claim is being asserted (other than proofs of claim filed under Rule 3001 of the Federal Rules of Bankruptcy Procedure asserting Prepetition claims), with respect to any Tax. None of Borrower, any Guarantor or any of the Subsidiaries (a) intends to treat the Loans or any of the transactions contemplated by any DIP Loan Document as being a "reportable transaction" (within the meaning of Treasury Regulation Section 1.6011-4) or (b) is aware of any facts or events that would result in such treatment.

Section 3.13. *No Material Misstatements.* No report, financial statement, exhibit, schedule or other written information furnished by or on behalf of the Borrower or any Guarantor or any Subsidiary to the Lender for use in connection with the transactions contemplated by the DIP Loan Documents or in connection with the negotiation of any DIP Loan Document or included therein or delivered pursuant thereto contained, contains or will contain any material misstatement of fact or omitted, omits or will omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were, are or will be made, not misleading; *provided* that to the extent any such report, financial statement, exhibit, schedule or other written information was based upon or constitutes a forecast or projection, each Loan Party represents only that it acted in good faith and utilized reasonable assumptions (based upon accounting principles consistent with the historical audited financial statements of the Loan Parties (and subject to year-end adjustments and the absence of footnotes), except where accounting principles are not applicable to information outside of a

financial statement) and due care in the preparation of such information, report, financial statement, exhibit, schedule or other written information.

Section 3.14. *Deposit Accounts and Other Accounts.* Schedule 3.14 lists all banks and other financial institutions at which any Loan Party maintains deposit or other accounts as of the Closing Date, and such Schedule correctly identifies the name, address and telephone number of each depository, the name in which the account is held, a description of the purpose of the account, and the complete account number therefor.

Section 3.15. *Environmental Matters.* (a) Except as set forth in Schedule 3.15 and except with respect to any other matters that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, none of Loan Party or any of the Subsidiaries: (i) has failed to comply with any Environmental Law or to take, in a timely manner, all actions necessary to obtain, maintain, renew and comply with any Environmental Permit, and all such Environmental Permits are in full force and effect and not subject to any administrative or judicial appeal; (ii) has become subject to any Environmental Liability; (iii) has received notice of any claim with respect to any Environmental Liability; (iv) possesses knowledge that any Mortgaged Property is subject to any Lien, restriction on ownership, occupancy, use or transferability imposed pursuant to Environmental Law or contains or previously contained Hazardous Materials of a form or type of in a quantity or location that could reasonably be expected to result in any Environmental Liability; (v) possesses knowledge that there has been an Environmental Release or threat of Environmental Release of Hazardous Materials at or from the Mortgaged Properties (or from any facilities or other properties formerly owned, leased or operated by any Loan Party or any of the Subsidiaries) in violation of, or in amounts or in a manner that could give rise to liability under, any Environmental Law; (vi) has generated, treated, stored, transported, or allowed or suffered an Environmental Release of, Hazardous Materials from the Mortgaged Properties (or from any facilities or other properties formerly owned, leased or operated by any of Borrower and Guarantors or any of the Subsidiaries) in violation of, or in a manner or to a location that could give rise to liability under, any Environmental Law; (vii) is aware of any facts, circumstances, conditions or occurrences in respect of any of the facilities and properties owned, leased or operated that could form the basis of any action, suit, claim or other judicial or administrative proceeding relating to liability under or noncompliance with Environmental Law on the part of any of Borrower and Guarantors or any of the Subsidiaries or interfere with or prevent continued compliance with Environmental Laws by any of Borrower and Guarantors or the Subsidiaries; or (viii) knows of any basis for any Environmental Liability.

(b) Since the date of this DIP Credit Agreement, there has been no change in the status of the matters disclosed on Schedule 3.15 that, individually or in the aggregate, has resulted in, or materially increased the likelihood of, a Material Adverse Effect.

Section 3.16. *Insurance.* Schedule 3.16 sets forth a true, complete and correct description of all insurance maintained by the Borrower and Guarantors or by the Borrower and Guarantors for their Subsidiaries as of the date hereof and the Closing Date. As of such date, such insurance is in full force and effect and all premiums have been duly paid. The Borrower and Guarantors and their Subsidiaries have insurance in such amounts and covering such risks and liabilities as are in accordance with normal and prudent industry practice. None of the

Borrower and Guarantors or any of their Subsidiaries has received notice from any insurer (or agent thereof) that substantial capital improvements or other substantial expenditures will have to be made in order to continue such insurance or has any reason to believe that it will not be able to, assuming Bankruptcy Court approval of the Debtors' first day motions related to insurance, renew its existing coverage as and when such coverage expires or to obtain similar coverage from similar insurers at a substantially similar cost.

Section 3.17. *Security.* Subject to the terms of the DIP Order, the DIP Order is effective to create in favor of the Authority, for the benefit of the Lender, a legal, valid and enforceable security interest in the DIP Collateral described therein and proceeds thereof and constitutes a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in such DIP Collateral and the proceeds thereof, as security for the DIP Obligations, in each case prior and superior in right to any other Person (except for the Permitted Priority Liens and the Carve-Out). At all times during the Chapter 11 Cases, once the DIP Order is entered, all of the DIP Obligations of the Loan Parties under the DIP Loan Documents shall be secured by the DIP Liens, in favor of the Authority, for its benefit and for the benefit of the Lender, subject in priority only to Permitted Priority Liens and the Carve-Out.

Section 3.18. *Location of Real Property and Leased Premises.* (a) Schedule 3.18(a) lists completely and correctly as of the Closing Date all real property owned by the Borrower and Guarantors and the Subsidiaries and the addresses thereof. The Borrower and Guarantors and the Subsidiaries own in fee or have valid leasehold interests in, as the case may be, all the Real Property set forth on Schedules 3.18(a) and (b) immediately prior to the Petition Date.

(b) Schedule 3.18(b) lists completely and correctly as of the Closing Date all real property leased by the Borrower and Guarantors and the Subsidiaries and the addresses thereof, and lists the landlord name, lease date and lease expiration date. The Borrower and Guarantors and the Subsidiaries have valid leases in all the real property set forth on Schedule 3.18(b).

Section 3.19. *Labor Matters.* As of the Closing Date, there are no strikes, lockouts or slowdowns against any Loan Party or any Subsidiary pending or, to the knowledge of the any Loan Party, threatened. The hours worked by and payments made to employees of any Loan Party and the Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Federal, state, local or foreign law dealing with such matters. All payments due from any Loan Party or any Subsidiary, or for which any claim may be made against any Loan Party or any Subsidiary, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of any Loan Party or such Subsidiary. The consummation of the Transactions will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Loan Party or any Subsidiary is bound.

Section 3.20. *Liens.* There are no Liens of any nature whatsoever on any of the properties or assets of any of Borrower and Guarantors or any of the Subsidiaries (other than Liens expressly permitted by Section 6.02).

Section 3.21. *Intellectual Property.* Each of Borrower and Guarantors and each of the Subsidiaries owns, is licensed or otherwise has the right to use, all trademarks, tradenames,

copyrights, patents and other intellectual property material to its business, and the use thereof by each of Borrower and Guarantors and the Subsidiaries does not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

Section 3.22. *Permits.* (a) Except as could not reasonably be expected to have a Material Adverse Effect, each Loan Party has obtained and holds all Permits required in respect of all Real Property and for any other property otherwise operated by or on behalf of, or for the benefit of, such Person and for the operation of each of its businesses as presently conducted and as proposed to be conducted, (b) all such Permits are in full force and effect, and each Loan Party has performed and observed all requirements of such Permits, (c) no event has occurred that allows or results in, or after notice or lapse of time would allow or result in, revocation or termination by the issuer thereof or in any other impairment of the rights of the holder of any such Permit, (d) no such Permits contain any restrictions, either individually or in the aggregate, that are materially burdensome to any Loan Party, or to the operation of any of its businesses or any property owned, leased or otherwise operated by such Person, (e) each Loan Party reasonably believes that each of its Permits will be timely renewed and complied with, without material expense, and that any additional Permits that may be required of such Person will be timely obtained and complied with, without material expense and (f) no Borrower has any knowledge or reason to believe that any Governmental Authority is considering limiting, suspending, revoking or renewing on materially burdensome terms any such Permit.

Section 3.23. *Reorganization Matters.* (a) The Chapter 11 Cases were commenced on the Petition Date in accordance with applicable law and proper notice thereof and the proper notice for (x) the motion seeking approval of the DIP Loan Documents and the Interim Order and Final Order, (y) the hearing for the approval of the Interim Order, and (z) the hearing for the approval of the Final Order will be given. Borrower shall give, on a timely basis as specified in the Interim Order or the Final Order, as applicable, all notices required to be given to all parties specified in the Interim Order or Final Order, as applicable.

(b) After the entry of the Interim Order, and pursuant to and to the extent permitted in the Interim Order and the Final Order, the DIP Obligations will constitute allowed superpriority administrative expense claims in the Chapter 11 Cases having priority over all administrative expense claims and unsecured claims against the Borrower and the 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, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1114 or any other provision of the Bankruptcy Code or otherwise, as provided under section 364(c)(1) of the Bankruptcy Code, subject, as to priority only, to the Carve-Out.

(c) After the entry of the Interim Order and pursuant to and to the extent provided in the Interim Order and the Final Order, the DIP Obligations will be secured by a valid and perfected first priority Lien on all of the DIP Collateral, subject, as to priority only, to the Carve-Out and the Permitted Priority Liens.

(d) 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 has not been reversed, stayed, modified or amended without the Authority's consent.

Section 3.24. *Sanctioned Persons; USA PATRIOT Act.* None of the Borrower and Guarantors or any Subsidiary nor, to the knowledge of the Borrower, any director, officer, agent, employee or Affiliate of the Borrower or any Guarantor or any Subsidiary is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("OFAC"); and the Borrower will not directly or indirectly use the proceeds of the Loans or otherwise make available such proceeds to any Person, for the purpose of financing the activities of any Person currently subject to any U.S. sanctions administered by OFAC. The Loan Parties, each of their Subsidiaries and each of their Affiliates are in compliance with (a) the Trading with the Enemy Act, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B Chapter V, as amended) and any other enabling legislation or executive order relating thereto, (b) the USA PATRIOT Act and (c) other federal or state laws relating to "know your customer" and anti-money laundering rules and regulations. No part of the proceeds of any Loan will be used directly or indirectly for any payments to any government official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977.

Section 3.25. *HIPAA Compliance.* To the extent that and for so long as any of Borrower and Guarantors is a "covered entity" within the meaning of HIPAA, such party (i) has undertaken all reasonable steps, including surveys, audits, inventories, reviews, analyses and/or assessments (including any necessary risk assessments) of all areas of its business and operations to be in compliance with HIPAA except to the extent such non-compliance would not constitute a Material Adverse Effect; (ii) has developed a compliance plan (a "**HIPAA Compliance Plan**") for being HIPAA Compliant; and (iii) has implemented those provisions of such HIPAA Compliance Plan in all material respects necessary to ensure that Borrower is HIPAA Compliant. For purposes hereof, "**HIPAA Compliant**" shall mean that a Borrower (x) is or will be in compliance in all material respects with each of the applicable requirements of the so-called "Administrative Simplification" provisions of HIPAA on and as of each date that any part thereof, or any final rule or regulation thereunder, becomes effective in accordance with its or their terms, as the case may be (each such date, a "**HIPAA Compliance Date**") except to the extent failure to be so compliant could not reasonably be expected to have a Material Adverse Effect and (y) is not and could not reasonably be expected to become, as of any date following any such HIPAA Compliance Date, the subject of any civil or criminal penalty, process, claim, action or proceeding, or any administrative or other regulatory review, survey, process or proceeding (other than routine surveys or reviews conducted by any government health plan or other accreditation entity and other than minor or insignificant matters) that could reasonably be expected to materially and adversely affect a Loan Party's business, operations, assets, properties or condition (financial or otherwise), in connection with any actual or potential violation by any Loan Party of the then effective provisions of HIPAA.

Section 3.26. *Certificate of Need.* The Borrower and Guarantors are the respective lawful owners of any certificate of need or other required license for the respective ownership and operation of its facilities and its services.

Section 3.27. *Hill-Burton Act.* To any Loan Party's knowledge, no facility is, as of the Closing Date, subject to any material obligations as a result of any funding for such facility under the federal Hill-Burton Act.

Section 3.28. *Chapter 11 Cases.*

(a) The Chapter 11 Cases were commenced on the Petition Date in accordance with the Requirements of Law and proper notice thereof and the proper notice for (x) the motion seeking approval of the DIP Loan Documents and the Interim Order and Final Order, (y) the hearing for the approval of the Interim Order, and (z) the hearing for the approval of the Final Order were or, if applicable, will be given. The Borrower and Guarantors have given, on a timely basis as specified in the Interim Order or the Final Order, as applicable, all notices required to be given to all parties specified in the Interim Order or Final Order, as applicable.

(b) After the entry of the Interim Order, and pursuant to and as more fully set forth in the Interim Order and the Final Order, the DIP Obligations will constitute allowed administrative expense claims in the Chapter 11 Cases having priority over all administrative expense claims and unsecured claims against the Borrower or any Guarantor now existing or hereafter arising, of any kind whatsoever, including all administrative expenses (except for the Carve-Out) of the kind specified in Bankruptcy Code Sections 105, 326, 330, 331, 503(b), 504(a), 506(c), 507(a), 507(b), 546(c), 726 and 1114.

(c) 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.

ARTICLE 4 CONDITIONS OF LENDING

The obligations of the Lender to make Loans hereunder are subject to the satisfaction (or waiver in accordance with Section 9.08) of the following conditions:

Section 4.01. *All Credit Events.* On the date of each Borrowing (each such event being called a "**Credit Event**");

(a) The Authority shall have received a notice of such Borrowing as required by Section 2.03 (or such notice shall have been deemed given in accordance with Section 2.03).

(b) The representations and warranties set forth in each DIP Loan Document shall be true and correct in all material respects on and as of the date of such Credit Event with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall be true and correct in all material respects on and as of such earlier date.

(c) At the time of and after giving effect to such Credit Event, no Event of Default or Default shall have occurred and be continuing.

(d) Such Credit Event shall not cause the aggregate outstanding amount of the Loans to exceed the amount then authorized by the Interim Order or the Final Order, as the case may be, or any order modifying, reversing, staying or vacating either such order shall have been entered.

(e) The Interim Order or the Final Order, as the case may be, shall not have been vacated, stayed, reversed, modified or amended without the Authority's consent (except that the preceding reference to the Interim Order shall not be deemed to include, for purposes of this paragraph (e), the DIP Budget attached thereto) or shall not otherwise not be in full force and effect; no appeal of either such order shall have been timely filed and no such order shall be subject to a stay pending appeal.

Each Credit Event shall be deemed to constitute a joint and several representation and warranty by each Loan Party on the date of such Credit Event as to the matters specified in paragraphs (b) and (c) of this Section 4.01.

Section 4.02. First Credit Event. On the Closing Date:

(a) The Authority shall have received any and all fees and other amounts due and payable to the Authority in connection with this DIP Credit Agreement on or prior to the Closing Date.

(b) The Authority shall have received for each Loan Party (i) a copy of its current certificate or articles of incorporation, including all amendments thereto, certified as of a recent date by the Secretary of State of the state of its organization, and a good standing certificate as of a recent date, from such Secretary of State; (ii) a certificate of its secretary or assistant secretary dated the Closing Date and certifying (A) that attached thereto is a true and complete copy of (1) its by-laws (or other governing documents) and certificate or articles of incorporation as in effect on the Closing Date and at all times since the date of the resolutions described in clause (B) below, (2) resolutions duly adopted by its Board of Directors (or other governing body) authorizing the execution, delivery and performance of the DIP Loan Documents to which such Person is a party, the borrowings hereunder, the granting of the Liens contemplated to be granted by it, and that such resolutions have not been modified, rescinded or amended and are in full force and effect, and (B) as to the incumbency and specimen signature of each officer executing any DIP Loan Document or any other document delivered in connection herewith on behalf of such Loan Party; (iii) a certificate of another officer as to the incumbency and specimen signature of the secretary or assistant secretary executing the certificate pursuant to (ii) above; and (iv) such other documents as the Authority may reasonably request.

(c) The Authority shall have received a certificate, dated the Closing Date and signed by a Financial Officer of the Borrower, confirming (i) compliance with the conditions precedent set forth in paragraphs (b) and (c) of Section 4.01; and (ii) since the Petition Date, no event or condition has occurred or exists (other than the commencement of the Chapter 11 Cases) that has resulted or would reasonably be expected to result in a Material Adverse Effect.

(d) The Authority shall have received (i) this DIP Credit Agreement, executed and delivered by a duly authorized officer of each of Borrower and Guarantors, (ii) if required by the

Authority, a promissory note or notes conforming to the requirements of Section 2.04 and executed and delivered by a duly authorized officer of Borrower and (iii) the Authority shall have received a copy of, or a certificate as to coverage under, the insurance required by Section 5.02 and the applicable provisions of the Perfection Documents (if any) each of which shall name the Authority as additional insured or loss payee, as applicable, in form and substance reasonably satisfactory to the Authority.

(e) The Authority shall have been granted on the Closing Date first priority perfected Liens on the DIP Collateral (subject only to Liens expressly and to the extent permitted by Section 6.02) and shall have received such other reports, documents and agreements as the Authority shall reasonably request and which are customarily delivered in connection with security interests in real property assets.

(f) The Authority shall have received the financial statements described in Section 3.05.

(g) All governmental and third party consents and approvals with respect to the Transactions and the other transactions contemplated hereby to the extent required by the Authority shall have been obtained, all applicable appeal periods shall have expired and there shall be no litigation, governmental, administrative or judicial action, actual or threatened, if successful, that could reasonably be expected to restrain, prevent or impose materially burdensome conditions on the Transactions or the other transactions contemplated hereby.

(h) North General shall be in compliance with the Closure Plan and shall have delivered WARN Act notices to all employees affected by the Closure Plan.

(i) If requested by the Authority, the Authority shall have received a HIPAA Business Associate Agreement satisfactory to the Authority.

(j) The Authority shall have received the DIP Budget, which shall be in form and substance satisfactory to the Authority.

(k) The Authority shall have received the initial Thirteen Week Forecast, which shall be in form and substance satisfactory to the Authority.

(l) The "first day" orders in form, scope and substance satisfactory to the Authority shall have been entered in the Chapter 11 Cases.

(m) All legal matters incident to this DIP Credit Agreement, the Borrowings and the other DIP Loan Documents shall be satisfactory to the Authority.

(n) The Authority shall have received the approval of the Bankruptcy Court with respect to the Interim Order, in form and substance satisfactory to Authority.

Section 4.03. Subsequent Loans. In addition to the conditions set forth in the preceding Sections 4.01 and 4.02, on or prior to the date of the Borrowing of the Subsequent Loans:

(a) The Authority shall have received the approval of the Bankruptcy Court with respect to the Final Order in form and substance satisfactory to Authority.

(b) The Authority shall have received a copy of the MOU, certified by a duly authorized officer of the Borrower as being true and complete and in full force and effect, and the MOU shall be in form and substance satisfactory to the Authority.

(c) The Loan Parties shall have duly filed motions for approval by the Bankruptcy Court of the Closure Plan, the Definitive Agreement and the IFH Lease, and each such document shall be in form and substance satisfactory to the Authority (including allowing collateral assignment thereof to the Authority).

(d) After giving effect to the terms of the Final Order, the Loan Parties shall have received all consents and authorizations required pursuant to any material Contractual Obligation and shall have obtained all consents and authorizations of, and effected all notices to and filings with, any Governmental Authority, in each case, as may be necessary after giving effect to the Chapter 11 Cases to allow each of the Loan Parties lawfully (x) to execute, deliver and perform, its obligations under this DIP Credit Agreement and each DIP Loan Document to which it is, or shall be, a party and each other agreement or instrument to be executed and delivered by it pursuant thereto or in connection therewith and (y) to maintain the perfection of the Liens on the DIP Collateral in conformity with the representations made in Article 3.

(e) The Authority shall have received a Thirteen Week Forecast reflecting a current cash need, which Forecast shall be in form and substance satisfactory to the Authority.

ARTICLE 5 AFFIRMATIVE COVENANTS

Each of the Borrower and Guarantors covenants and agrees with the Lender that so long as this DIP Credit Agreement shall remain in effect and until the Commitments have been terminated and the principal of and interest on each Loan, all fees and all other expenses or amounts payable under any DIP Loan Document shall have been paid in full, each Loan Party shall, and shall cause each of its Subsidiaries to:

Section 5.01. *Existence; Businesses and Properties.* (a) Do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence, except as occasioned by the Chapter 11 Cases, and as otherwise expressly permitted under Section 6.05.

(b) (i) Do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the rights, licenses, permits, franchises, authorizations, patents, copyrights, trademarks and trade names material to the conduct of its business; (ii) maintain and operate such business in substantially the manner in which it is presently conducted and operated, except if the failure to do so could not reasonably be expected to have a Material Adverse Effect; (iii) except for obligations with respect to which the Bankruptcy Code prohibits any Loan Party from complying, comply in all material respects with all applicable laws, rules, regulations and decrees and orders of any Governmental Authority, including all Healthcare Laws, whether now in effect or hereafter enacted; and (iv) at all times maintain and preserve all property material to the conduct of such business and keep such property in good repair, working

order and condition, ordinary wear and tear excepted, and from time to time make, or cause to be made, all needful and proper repairs, renewals, additions, improvements and replacements thereto necessary in order that the business carried on in connection therewith may be properly conducted at all times.

Section 5.02. *Insurance.* (a) Keep its insurable properties adequately insured at all times by financially sound and reputable insurers; maintain such other insurance, to such extent and against such risks (and with such deductibles, retentions, and exclusions), including fire and other risks insured against by extended coverage, as is customary with companies in the same or similar businesses operating in the same or similar locations, including public liability insurance against claims for personal injury or death or property damage occurring upon, in, about or in connection with the use of any properties owned, occupied or controlled by it; and maintain such other insurance as may be required by law; and maintain such other insurance as otherwise required by the DIP Orders or the Perfection Documents (if any) (and comply with all covenants in the Perfection Documents with respect thereto).

(b) Cause all such policies covering any DIP Collateral to be endorsed or otherwise amended to include a customary lender's loss payable endorsement, in form and substance satisfactory to the Authority, which endorsement shall provide that, from and after the Closing Date, if the insurance carrier shall have received written notice from the Authority of the occurrence of an Event of Default, the insurance carrier shall pay all proceeds otherwise payable to the Borrower or the Loan Parties under such policies directly to the Authority; cause all such policies to provide that neither the Borrower, any other Loan Party, the Authority nor any other party shall be a coinsurer thereunder and to contain a "Replacement Cost Endorsement", without any deduction for depreciation, and such other provisions as the Authority may reasonably require from time to time to protect their interests; deliver original or certified copies of all such policies to the Authority; cause each such policy to provide that it shall not be canceled, modified or not renewed (i) by reason of nonpayment of premium upon not less than 10 days' prior written notice thereof by the insurer to the Authority (giving the Authority the right to cure defaults in the payment of premiums) or (ii) for any other reason upon not less than 30 days' prior written notice thereof by the insurer to the Authority; deliver to the Authority, prior to the cancellation, modification or nonrenewal of any such policy of insurance, a copy of a renewal or replacement policy (or other evidence of renewal of a policy previously delivered to the Authority) together with evidence satisfactory to the Authority of payment of the premium therefor.

(c) If at any time the area in which the Borrower's and Guarantors' properties are located is designated (i) a "flood hazard area" in any Flood Insurance Rate Map published by the Federal Emergency Management Agency (or any successor agency), obtain flood insurance in such total amount as the Authority may from time to time require, and otherwise comply with the National Flood Insurance Program as set forth in the Flood Disaster Protection Act of 1973, as it may be amended from time to time, or (ii) a "Zone 1" area, obtain earthquake insurance in such total amount as the Authority may from time to time require.

(d) With respect to any Mortgaged Property, carry and maintain comprehensive general liability insurance including the "broad form CGL endorsement" and coverage on an occurrence basis against claims made for personal injury (including bodily injury, death and

property damage) and umbrella liability insurance against any and all claims, in no event for a combined single limit of less than that which is customary for companies in the same or similar businesses operating in the same or similar locations, naming the Authority as an additional insured, on forms satisfactory to the Authority.

(e) Notify the Authority promptly whenever any separate insurance concurrent in form or contributing in the event of loss with that required to be maintained under this Section 5.02 is taken out by any Loan Party; and promptly deliver to the Authority a duplicate original copy of such policy or policies.

Section 5.03. *Obligations and Taxes.* Pay its Indebtedness and other obligations which are not subject to the automatic stay, promptly and in accordance with their terms and pay and discharge promptly when due all taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or in respect of its property, before the same shall become delinquent or in default, as well as all lawful claims for labor, materials and supplies or otherwise that, if unpaid, might give rise to a Lien upon such properties or any part thereof; *provided, however,* that such payment and discharge shall not be required with respect to any such tax, assessment, charge, levy or claim so long as the validity or amount thereof shall be contested in good faith by appropriate proceedings and the Borrower or the applicable Loan Party or Subsidiary shall have set aside on its books adequate reserves with respect thereto in accordance with GAAP and such contest operates to suspend collection of the contested obligation, tax, assessment or charge and enforcement of a Lien and, in the case of a Mortgaged Property, there is no risk of forfeiture of such property.

Section 5.04. *Financial Statements, Reports, etc.* In the case of the Borrower and Guarantors, furnish to the Lender:

(a) within 120 days after the end of each fiscal year, its consolidated balance sheet and related statements of income, stockholders' equity and cash flows showing the financial condition of the Borrower and Guarantors and their consolidated Subsidiaries as of the close of such fiscal year and the results of its operations and the operations of such Subsidiaries during such year, together with comparative figures for the immediately preceding fiscal year, certified by one of its Financial Officers to the effect that such consolidated financial statements fairly present in all material respects the financial condition and results of operations of the Borrower and Guarantors and their consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(b) within 45 days after the end of each of the first three fiscal quarters of each fiscal year, its consolidated balance sheet and related statements of income and cash flows showing the financial condition of the Borrower and Guarantors and their consolidated Subsidiaries as of the close of such fiscal quarter and the results of its operations and the operations of such Subsidiaries during such fiscal quarter and the then elapsed portion of the fiscal year, and comparative figures for the same periods in the immediately preceding fiscal year, all certified by one of its Financial Officers as fairly presenting in all material respects the financial condition and results of operations of the Borrower and Guarantors and their consolidated Subsidiaries on a

consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes.

(c) within 30 days after the end of the first two fiscal months of each fiscal quarter, its consolidated balance sheet and related statements of income and cash flows showing the financial condition of the Borrower and Guarantors and their consolidated Subsidiaries during such fiscal month and the then elapsed portion of the fiscal year, all certified by one of its Financial Officers as fairly presenting in all material respects the financial condition and results of operations of the Borrower and Guarantors and their consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(d) concurrently with any delivery of financial statements under paragraph (a) or (b) above, a certificate of the Financial Officer certifying such statements (i) certifying that no Event of Default or Default has occurred or, if such an Event of Default or Default has occurred, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto and (ii) setting forth computations in reasonable detail satisfactory to the Authority demonstrating compliance with the terms of Section 6.13;

(e) within 90 days after the end of each fiscal year of the Borrower, a detailed consolidated budget for the following fiscal year (including a projected consolidated balance sheet and related statements of projected operations and cash flows as of the end of and for such following fiscal year and setting forth the assumptions used for purposes of preparing such budget);

(f) [Reserved];

(g) if and to the extent requested by the Authority from time to time, a duly executed Perfection Certificate, and the Authority shall have received the results of a recent Lien and judgment search in each relevant jurisdiction with respect to the Borrower and Guarantors and such search shall reveal no Liens on any of the assets of the Borrower or Guarantors except for Liens expressly permitted by Section 6.02 and except for Liens to be discharged on or prior to the Closing Date pursuant to documentation reasonably satisfactory to the Authority;

(h) promptly, from time to time, such other information regarding the operations, business affairs and financial condition of any Loan Party or any Subsidiary, or compliance with the terms of any DIP Loan Document, as the Authority may reasonably request;

(i) (A) on the Closing Date, Borrower will deliver the initial DIP Budget (which shall be deemed to be the same as the initial Thirteen Week Forecast); (B) together with each Subsequent Loan request, Borrower shall deliver an update to the most recently delivered Thirteen Week Forecast or supplemental Thirteen Week Forecast, as the case may be; (C) no later than 8 days prior to the commencement of any subsequent relevant 13 week period, Borrower shall deliver an updated cumulative DIP Budget for the succeeding 13 week period (which shall also be deemed to be a supplemental Thirteen Week Forecast); (D) on the last Business Day of each month, Borrower shall deliver a monthly update to the most recently delivered Thirteen Week Forecast or supplemental Thirteen Week Forecast, as the case may be.

Within four (4) Business Days following the end of each customary reporting period of the Borrower, Borrower shall also deliver a variance report, in form and substance reasonably satisfactory to the Authority (which variance report will include the Borrower's calculation of Cumulative Net Cash Flow and cumulative disbursements for the applicable period certified by the Financial Officer), for the preceding customary reporting period and on a cumulative basis from the Petition Date to the report date comparing actual cash receipts and disbursements to amounts projected in the DIP Budget;

(j) copies of all monthly reports, projections, or other information respecting any Loan Party's business or financial condition or prospects as well as all pleadings, motions, applications and judicial information filed by or on behalf of any of Borrower and Guarantors with the Bankruptcy Court or provided by or to the U.S. Trustee (or any monitor or interim receiver, if any, appointed in any Chapter 11 Case) or the Committee, at the time such document is filed with the Bankruptcy Court, or provided by or to the U.S. Trustee (or any monitor or interim receiver, if any, appointed in any Chapter 11 Case) or the Committee; and

(k) monthly at reasonable times upon the request of the Authority, confirmation of availability for, and arrange for, the chief executive officer and chief financial officer and other members of management of the Borrower and Guarantors to participate in a call with the Authority to discuss matters relating to the Borrower and Guarantors.

Section 5.05. *Litigation and Other Notices.* Furnish to the Authority prompt written notice of any of the following, but in any event no later than five (5) Business Days after knowledge of the existence of any of the following:

(a) any Event of Default or Default, specifying the nature and extent thereof and the corrective action (if any) taken or proposed to be taken with respect thereto;

(b) the filing or commencement of, or any threat or notice of intention of any Person to file or commence, any action, suit or proceeding, whether at law or in equity or by or before any Governmental Authority, against any of Borrower and Guarantors or any Affiliate thereof that could reasonably be expected to result in a Material Adverse Effect;

(c) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in liability of the Loan Parties and the Subsidiaries in an aggregate amount exceeding the amount referred to in respect of such liability in the June 2009 financial statements described in Section 3.05 delivered on or prior to the Petition Date; and

(d) any development (individually or in the aggregate with other developments) that has resulted in, or could reasonably be expected to result in, a Material Adverse Effect.

Section 5.06. *Information Regarding DIP Collateral.* (a) Furnish to the Authority prompt written notice of any change (i) in any Loan Party's corporate name, (ii) in the jurisdiction of organization or formation of any Loan Party, (iii) in any Loan Party's identity or corporate structure or (iv) in any Loan Party's Federal Taxpayer Identification Number. The Loan Parties agree not to effect or permit any change referred to in the preceding sentence unless all filings have been made under the Uniform Commercial Code or otherwise and all other

actions have been taken that are required in order for the Authority to continue at all times following such change to have a valid, legal and perfected security interest in all the DIP Collateral. The Loan Party also agrees promptly to notify the Authority if any material portion of the DIP Collateral is damaged or destroyed.

(b) In the case of the Borrower, each year, at the time of delivery of the annual financial statements with respect to the preceding fiscal year pursuant to Section 5.04(a), deliver to the Authority a certificate of a Financial Officer confirming that there has been no change in information relating to the Loan Party's names and location of assets and properties of the Loan Party since the date of the most recent certificate delivered pursuant to this Section 5.06.

Section 5.07. Maintaining Records; Access to Properties and Inspections. (a) Keep proper books of record and account in which full, true and correct entries in conformity with GAAP and all requirements of law are made of all dealings and transactions in relation to its business and activities. Each Loan Party will, and will cause each of its subsidiaries to, permit any representatives designated by the Authority to visit and inspect the financial records and the properties of such Person at reasonable times during normal business hours and as often as reasonably requested and to make extracts from and copies of such financial records, and permit any representatives designated by the to discuss the affairs, finances and condition any Loan Party.

(b) At its election, the Authority may, at its own cost and expense retain an independent engineer or environmental consultant to conduct an environmental assessment of any Mortgaged Property or facility of any Loan Party. Each of Borrower and Guarantors shall, and shall cause each of the Subsidiaries to, cooperate in the performance of any such environmental assessment and permit any such engineer or consultant designated by the Authority to have full access to each property or facility at reasonable times and after reasonable notice to the Borrower of the plans to conduct such an environmental assessment. Environmental assessments conducted under this paragraph shall be limited to visual inspections of the Mortgaged Property or facility, interviews with representatives of the Loan Parties or facility personnel, and review of applicable records and documents pertaining to the property or facility.

(c) In the event that the Authority shall have reason to believe that Hazardous Materials have been Released or are threatened to be Released on or from any Mortgaged Property or other facility of any Loan Party or the Subsidiaries or that any such property or facility is not being operated in compliance with applicable Environmental Law, the Authority may, at its election and at its own cost and expense and after reasonable notice to the Borrower, retain an independent engineer or other qualified environmental consultant to evaluate whether Hazardous Materials are present in the soil, groundwater, or surface water at such Mortgaged Property or facility or whether the facilities or properties are being operated and maintained in compliance with applicable Environmental Laws. Such environmental assessments may include detailed visual inspections of the Mortgaged Property or facility, including any and all storage areas, storage tanks, drains, dry wells and leaching areas, and the taking of soil samples, surface water samples and groundwater samples as well as such other reasonable investigations or analyses as are necessary. The scope of any such environmental assessments under this paragraph shall be determined in the reasonable discretion of the Authority after consultation

with the Borrower. Each of Borrower and Guarantors shall, and shall cause each of the Subsidiaries to, cooperate in the performance of any such environmental assessment and permit any such engineer or consultant designated by the Authority to have full access to each property or facility at reasonable times and after reasonable notice to the Borrower of the plans to conduct such an environmental assessment.

Section 5.08. *Use of Proceeds.* Use the proceeds of the Loans only for the purposes set forth in Section 3.11.

Section 5.09. *Compliance with Environmental Laws.* Comply, and cause all lessees and other Person occupying its properties to comply, in all material respects with all Environmental Laws applicable to its operations and properties; obtain and renew all material environmental permits necessary for its operations and properties; and conduct any remedial action in accordance with Environmental Laws; *provided, however*, that none of Borrower and Guarantors or any Subsidiary shall be required to undertake any remedial action required by Environmental Laws to the extent that its obligation to do so is being contested in good faith and by proper proceedings and appropriate reserves are being maintained with respect to such circumstances in accordance with GAAP.

Section 5.10. *Preparation of Environmental Reports.* If a Default caused by reason of a breach of Section 3.15 or Section 5.9 shall have occurred and be continuing for more than 20 days without any Loan Party or any Subsidiary commencing activities reasonably likely to cure such Default, at the written request of the Authority, provide to the Authority within 45 days after such request, at the expense of the Loan Parties, an environmental site assessment report regarding the matters which are the subject of such Default prepared by an environmental consulting firm reasonably acceptable to the Authority and indicating the presence or absence of Hazardous Materials and the estimated cost of any compliance or remedial action in connection with such Default.

Section 5.11. *Additional DIP Collateral, Etc.* (a) Except as otherwise provided pursuant to Section 5.11(b), with respect to any DIP Collateral acquired after the Closing Date or, in the case of inventory or equipment (other than inventory or equipment in transit), any material DIP Collateral moved after the Closing Date by the Borrower or any other Loan Party (other than any DIP Collateral described in paragraphs (b), (c) or (d) of this Section) as to which the Authority does not have a first priority (subject to Liens permitted under this DIP Credit Agreement) perfected security interest, promptly (and, in any event, within 10 days following the date of such acquisition or move or such longer period as agreed by the Authority) (i) execute and deliver to the Authority such documents, including a Guarantee and Security Agreement and/or such amendments to the Guarantee and Collateral Agreement or such other Perfection Documents as the Authority deems necessary or advisable to grant to the Authority a security interest in such DIP Collateral and (ii) take all actions necessary or advisable to grant to, or continue on behalf of, the Authority, for the benefit of the Lender, a perfected first priority (subject to Permitted Priority Liens) security interest in such DIP Collateral, including the filing of UCC financing statements in such jurisdictions as may be required by the Guarantee and Collateral Agreement or by law or as may be reasonably requested by the Authority.

(b) With respect to any fee interest in any DIP Collateral consisting of Real Property having a fair market value in excess of \$50,000 acquired after the Closing Date by the Borrower or any other Loan Party, promptly (and, in any event, within 5 days or such longer period as agreed by the Authority following the date of such acquisition) (i) execute and deliver a first priority (subject to Liens permitted under this DIP Credit Agreement) Lien (including, if requested by the Authority, a Mortgage) in favor of the Authority, for the benefit of the Secured Parties, covering such real property and complying with the provisions in this DIP Credit Agreement, the Final Order and in the Perfection Documents (if any), (ii) provide the Lender with title and extended coverage insurance in an amount reasonably acceptable to the Authority (not to exceed the purchase price of such Real Property, surveys, and if applicable, flood insurance, lease estoppel certificates, memoranda or amendments, (iii) if requested by the Authority, deliver to the Authority legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Authority and (iv) deliver to the Authority a notice identifying, and upon the Authority's request, provide a copy of, the consultant's reports, environmental site assessments or other material documents, if any, relied upon by a Borrower or any other Loan Party to determine that any such real property included in such DIP Collateral does not contain Hazardous Materials of a form or type or in a quantity or location that could reasonably be expected to result in a material Environmental Liability. As reasonably requested by the Authority and to the extent not otherwise addressed to the Authority's reasonable satisfaction in the Final Order, each Loan Party shall use reasonable efforts to obtain a landlord's agreement, mortgagee agreement or bailee letter, as applicable, from the lessor of each leased property, mortgagee of owned property or bailee with respect to any warehouse, processor or converter facility or other location where DIP Collateral is stored or located, which agreement or letter shall contain a waiver or subordination of all Liens or claims that the landlord, mortgagee or bailee may assert against the DIP Collateral at that location, and shall otherwise be reasonably satisfactory in form and substance to Authority. After the Closing Date, no real property or warehouse space shall be leased by any Loan Party or its Subsidiary (excluding renewals of existing leases and arrangements) without the prior written consent of the Authority, unless and until a satisfactory landlord agreement or bailee letter, as appropriate, shall first have been obtained with respect to such location.

(c) With respect to any Subsidiary created or acquired after the Closing Date (such creation or acquisition to be subject to the prior written consent of the Authority) by the Borrower or any Guarantor or any of the Subsidiaries, promptly (and, in any event, within 5 days following such creation or the date of such acquisition or such longer period as agreed by the Authority) (i) execute and deliver to the Authority, a Guarantee and Collateral Agreement, and such amendments to the Guarantee and Collateral Agreement as the Authority deem necessary or advisable to grant to the Authority, a valid, perfected first priority (subject to Liens permitted under this DIP Credit Agreement) security interest in the Equity Interests in such new Subsidiary that are owned by such Loan Party or any such Subsidiary, (ii) deliver to the Authority the certificates, if any, representing such Equity Interests, together with undated stock powers, in blank, executed and delivered by a duly authorized officer of such Loan Party, as the case may be, (iii) cause such new Subsidiary (A) if so requested by the Authority, to become a party to the Guarantee and Collateral Agreement (and provide Guarantees of the DIP Obligations) and (B) to take such actions necessary or advisable to grant to the Authority, for the benefit of the Lender, a perfected first priority (subject to Liens permitted under this DIP Credit Agreement) security

interest in the DIP Collateral (including all DIP Collateral described in the Guarantee and Collateral Agreement (if any)) and the filing of UCC financing statements in such jurisdictions as may be required by the Guarantee and Collateral Agreement (if any), or by law or as may be reasonably requested by the Authority and (iv) if reasonably requested by the Authority, deliver to the Authority legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Authority.

Section 5.12. *Further Assurances.* Execute promptly upon request by the Authority any and all further documents, financing statements, agreements and instruments, and take all further action (including filing Uniform Commercial Code and other financing statements, mortgages and deeds of trust, including a Mortgage on the Mortgaged Properties) that may be required under applicable law, or that the Authority may reasonably request, in order to effectuate the transactions contemplated by the DIP Loan Documents and in order to grant, preserve, protect and perfect the validity and first priority (subject to Permitted Priority Liens, if any) of the security interests created or intended to be created by the Perfection Documents. The Borrower and Guarantors will cause any subsequently acquired or organized Subsidiary to become a Loan Party by executing the Guarantee and Collateral Agreement and each applicable Perfection Document in favor of the Authority. In addition, from time to time, the applicable Loan Party will, at its cost and expense, promptly secure the DIP Obligations by pledging or creating, or causing to be pledged or created, perfected security interests with respect to such of its assets and properties as the Authority shall designate (it being understood that it is the intent of the parties that the DIP Obligations shall be secured by substantially all the assets of the Borrower and Guarantors and their Subsidiaries (including real and other properties acquired subsequent to the Closing Date). Such security interests and Liens will be created under the Perfection Documents and other security agreements, mortgages, deeds of trust and other instruments and documents in form and substance satisfactory to the Authority, and the Borrower and Guarantors shall deliver or cause to be delivered to the Lender all such instruments and documents (including legal opinions, title insurance policies and lien searches) as the Authority shall reasonably request to evidence compliance with this Section. The Borrower and Guarantors agree to provide such evidence as the Authority shall reasonably request as to the perfection and priority status of each such security interest and Lien and the Authority shall have the right to record a duly executed acknowledgment of a court-certified copy of the DIP Orders (the “**Acknowledgment**”) on any real property on which the Authority may take a Lien. In furtherance of the foregoing, the Borrower will give prompt notice to the Authority of the acquisition by any Loan Party of any real property (or any interest in real property) having a value in excess of \$50,000.

Section 5.13. *Certain Collateral Matters.* (a) At all times, to the extent permitted by law, defend, preserve and protect the security interest and lien in and on the DIP Collateral and all rights of the Lender hereunder against all claims and demands of all persons whatsoever.

(b) Use commercially reasonable efforts to cause to be collected from its account debtors, when due, all amounts owing under its accounts (as defined in the UCC and including without limitation healthcare insurance receivables (“**Accounts**”) (including delinquent Accounts, which will be collected in accordance with lawful collection procedures) and will apply all amounts collected thereon, forthwith upon receipt thereof, to the outstanding balances of such Accounts.

(c) If payments with respect to any Loan Party's Accounts are received in a lockbox account or similar account, such Loan Party will, at the Authority's request and to the extent permitted by applicable law, and subject to the exclusion of any such account having a de minimis balance, (i) at all times cause such account to be a controlled deposit account on customary terms reasonably acceptable to the Authority. The Authority will instruct the relevant depository bank to transfer funds credited to any such account, as promptly as practicable after receipt thereof, to a controlled deposit account designated by such Loan Party consistent with the terms of this DIP Credit Agreement, provided that, if an Event of Default shall have occurred and be continuing, the Authority may designate the controlled deposit account to which such funds are transferred, in each case, to the extent permitted by applicable law.

(d) With respect to account debtors other than Federal/State Healthcare Program account debtors, the Authority may at any time after an Event of Default has occurred and is continuing (or if any rights of set-off (other than set-offs against an Account arising under the contract giving rise to the same Account) or contra accounts may be asserted by an account debtor with respect to the following), notify such Loan Party's account debtors and all other Persons obligated on any of the DIP Collateral that the Authority has a security interest therein and that payments shall be made directly to the Authority. Upon the request of the Authority, each Loan Party shall so notify such account debtors and other Persons obligated on DIP Collateral. Once any such notice has been given to any account debtor or other Person obligated on the DIP Collateral, no Loan Party shall give any contrary instructions to such account debtor or other Person without the Authority's prior written consent.

(e) Upon the occurrence and continuance of an Event of Default, the Authority may in the Authority's own name, in the name of a nominee of the Authority or in the name of any Loan Party communicate (by mail, telephone, facsimile or otherwise) with any account debtor other than government payors, parties to contracts of such Loan Party, and obligors in respect of instruments or chattel paper or payment intangibles of such Loan Party to verify with such Persons, to the Authority's reasonable satisfaction, the existence, amount and terms of, and any other matter relating to, Accounts, instruments, chattel paper or payment intangibles.

(f) Subject to any applicable Medicare/Medicaid laws, rules and regulations, on the Closing Date, each Loan Party shall at the request of the Authority execute and deliver to the Authority a power of attorney (the "**Power of Attorney**") in form and substance satisfactory to the Authority in all respects. The power of attorney granted pursuant to the Power of Attorney is a power coupled with an interest and shall be irrevocable until all DIP Obligations shall have been paid indefeasibly in full. The powers conferred on the Authority under the Power of Attorney are solely to protect the Authority's interests in the DIP Collateral and shall not impose any duty upon the Authority to exercise any such powers. NONE OF THE AUTHORITY NOR ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES SHALL BE RESPONSIBLE TO ANY LOAN PARTY FOR ANY ACT OR FAILURE TO ACT UNDER ANY POWER OF ATTORNEY OR OTHERWISE, EXCEPT IN RESPECT OF DAMAGES ATTRIBUTABLE SOLELY TO THEIR OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AS FINALLY DETERMINED BY A COURT OF COMPETENT JURISDICTION, NOR FOR ANY PUNITIVE EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES.

Section 5.14. *Licensure; Medicaid/Medicare Cost Reports.* Except as consistent with the Closure Plan, each Loan Party will maintain all certificates of need, provider numbers and licenses necessary to conduct its business as currently conducted, and take any steps required to comply with any new or additional applicable requirements that may be imposed on providers of medical products and Medical Services, except in each case where the failure to do so, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. If required, all Medicaid/Medicare cost reports will be properly filed.

Section 5.15. *Certificates of Need.* Except to the extent consistent with the Closure Plan, the Loan Parties will not (a) apply for a certificate of need to amend or change in any materially adverse way, or suspend or terminate or make provisional in any material way its operating certificate; or (b) change in any materially adverse way, or suspend or terminate its Medicare or Medicaid provider agreement or any participation agreement, without the prior written consent of the Authority, which consent shall not be unreasonably withheld. The Borrower and Guarantors shall immediately notify the Authority in writing if (x) the State of New York, without application by any Loan Party, makes any amendment or change in any materially adverse way or suspends or terminates or makes provisional any Loan Party's operating certificates (as applicable); or (y) CMS or the New York State Medicaid agency or a commercial third-party payor (as applicable), without the request of any of Borrower and Guarantors, changes in any materially adverse way, or suspends or terminates the Borrower's or any Guarantor's Medicare or Medicaid provider agreement or any participation agreement.

Section 5.16. *Tax Issues.*

(a) None of Loan Parties nor any of their Subsidiaries shall perform any act or enter into any agreement which shall adversely affect its federal income tax status as a Section 501(c)(3) public charity organization, and each shall conduct its operations in the manner which will conform in all material respects to the standards necessary to retain its status as a Section 501(c)(3) public charity organization.

(b) The Borrower shall immediately advise the Authority in the event that any of the Loan Parties shall have received a letter or other notification from the IRS indicating that their status as a Section 501(c)(3) public charity organization has been modified, limited or revoked, or adversely implicating their status as a "foundation".

Section 5.17. *Credit and Collection.* The Borrower and Guarantors shall not amend, waive or otherwise permit or agree to any deviation from the terms or conditions of any Account, except in accordance in all material respects with the credit and collection policy as in effect on the Petition Date. The Borrower and Guarantors shall not make any material change in such credit and collection policy without the prior written consent of the Authority.

ARTICLE 6 NEGATIVE COVENANTS

Each of Borrower and Guarantors covenants and agrees with the Lender that, so long as this DIP Credit Agreement shall remain in effect and until the Commitments have been terminated and the principal of and interest on each Loan, all fees and all other expenses or

amounts payable under any DIP Loan Document have been paid in full, no Loan Party will, nor will it cause or permit any of the Subsidiaries to:

Section 6.01. *Indebtedness.* Incur, create, assume or permit to exist any Indebtedness, except:

(a) Indebtedness existing on the date hereof and set forth in Schedule 6.01, and any Permitted Refinancing Indebtedness in respect of any such Indebtedness;

(b) Indebtedness created hereunder and under the other DIP Loan Documents;

(c) unsecured intercompany Indebtedness of the Loan Parties to the extent permitted by Section 6.04(a), so long as such Indebtedness is subordinated to the DIP Obligations pursuant to a subordination agreement in form and substance satisfactory to the Authority;

(d) purchase money Indebtedness of any Loan Party or any Subsidiary incurred to finance the acquisition, construction or improvement of any fixed or capital assets, and extensions, renewals and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof; provided that the aggregate principal amount of Indebtedness permitted by this Section 6.01(d), when combined with the aggregate principal amount of all Capital Lease obligations and synthetic lease obligations incurred pursuant to Section 6.01(e) shall not exceed \$25,000 at any time outstanding;

(e) Capital Lease Obligations and synthetic lease obligations in an aggregate principal amount, when combined with the aggregate principal amount of all Indebtedness incurred pursuant to Section 6.01(d) not exceeding \$25,000 at any time outstanding;

(f) Indebtedness under performance bonds or with respect to workers' compensation claims, in each case incurred in the ordinary course of business;

(g) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds in the ordinary course of business; *provided* that such Indebtedness is promptly covered by the Loan Party or any Subsidiary;

(h) Guarantees of Borrower or any Guarantor in respect of Indebtedness of Borrower or any other Guarantor otherwise permitted hereunder;

(i) Customary indemnification obligations incurred by Borrower and Guarantors or their Subsidiaries in connection with a disposition of assets permitted under this DIP Credit Agreement;

(j) Indebtedness consisting of the financing of insurance premiums in the ordinary course of business consistent with past practice, in an aggregate principal amount not exceeding \$110,000 at any time outstanding;

(k) the Adequate Protection Obligations and the Prepetition Loans;

(l) other Indebtedness of the Borrower and Guarantors or the Subsidiaries in an aggregate principal amount not exceeding \$110,000 at any time outstanding, of which no amounts may be secured except with the approval of the Authority in writing; and

Notwithstanding the foregoing, no Indebtedness permitted under Section 6.01 shall be permitted to have an administrative expense claim status under the Bankruptcy Code senior to or pari passu with the superpriority administrative expense claims of the Authority as set forth herein and in the Interim Order and Final Order.

Section 6.02. *Liens.* Create, incur, assume or permit to exist any Lien on any property or assets (including Equity Interests or other securities of any Person, including any Subsidiary) now owned or hereafter acquired by it or on any income or revenues or rights in respect of any thereof, except any of the following Liens, subject to the priorities provided in the DIP Order:

(a) Liens on property or assets of the Loan Parties and the Subsidiaries existing on the date hereof and set forth in Schedule 6.02; *provided* that such Liens shall secure only those obligations which they secure on the date hereof and refinancings, extensions, renewals and replacements thereof permitted hereunder;

(b) any Lien created under the DIP Loan Documents;

(c) any Lien existing on any property or asset prior to the acquisition thereof by the Loan Party or any Subsidiary; *provided* that (i) such Lien is not created in contemplation of or in connection with such acquisition, (ii) such Lien does not apply to any other property or assets of the Loan Party or any Subsidiary, other than accessions thereto and products and proceeds thereof, and (iii) such Lien does not materially interfere with the use, occupancy and operation of any Mortgaged Property;

(d) Liens for taxes or assessments or other governmental charges not yet due or which are being contested in compliance with Section 5.03 or to the extent that the Loan Parties do not take any action (including, without limitation, by way of motion or application to the Bankruptcy Court) to pay, and are permitted under the Bankruptcy Code to not pay such charges;

(e) (i) carriers', warehousemen's, suppliers, materialmen's, repairmen's or other like Liens arising after the Petition Date in the ordinary course of business that are not overdue for a period of more than 30 days or that are being contested in good faith by appropriate proceedings, so long as such Liens attached only to inventory; (ii) inchoate and unperfected workers', mechanics' or similar Liens arising in the ordinary course of business, so long as such Liens attach only to equipment, fixtures and/or real estate;

(f) pledges and deposits made after the Petition Date in the ordinary course of business in compliance with workmen's compensation, unemployment insurance and other social security laws or regulations (excluding Liens under ERISA);

(g) deposits made after the Petition Date to secure the performance of bids, trade contracts (other than for Indebtedness), leases to the extent expressly approved in writing by the Authority in the exercise of its sole discretion (other than Capital Lease Obligations), statutory

obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(h) zoning restrictions, easements, rights-of-way, restrictions on use of real property and other similar encumbrances arising after the Petition Date and incurred in the ordinary course of business which, in the aggregate, do not materially interfere with the ordinary conduct of the business of any Loan Party or any of the Subsidiaries or the ability of any Loan Party or any of the Subsidiaries to utilize such property for its intended purpose;

(i) purchase money security interests arising after the Petition Date in real property, improvements thereto or other fixed or capital assets hereafter acquired (or, in the case of improvements, constructed) by any Loan Party to the extent expressly approved in writing by the Authority in the exercise of its sole discretion; *provided* that in any event (i) such security interests secure Indebtedness permitted by Section 6.01(d), (ii) such security interests are incurred, and the Indebtedness secured thereby is created, within 90 days after such acquisition (or construction) and (iii) such security interests do not apply to any other property or assets of any Loan Party other than accessions thereto and products and proceeds thereof;

(j) judgment Liens arising after the Petition Date and securing judgments not constituting an Event of Default under Article 7;

(k) any interest or title of a lessor or sublessor arising after the Petition Date under the IFH Lease or the MOU or to the extent expressly approved in writing by the Authority in the exercise of its sole discretion under any lease entered into by Borrower or any Guarantor or any Subsidiaries and covering only the assets so leased;

(l) Liens after the Petition Date on cash deposits and other funds maintained with a depository institution, in each case arising in the ordinary course of business by virtue of any statutory or common law provision relating to banker's liens, if any;

(m) Liens on the DIP Collateral securing obligations under the Prepetition Credit Agreements and Prepetition Loan Documents; *provided* that all such Liens are subordinated to the Liens securing the DIP Obligations in accordance with, and otherwise pursuant to the DIP Order;

(n) leases, licenses, subleases or sublicenses granted after the Petition Date to others in the ordinary course of business to the extent expressly approved in writing by the Authority in the exercise of its sole discretion that do not (i) interfere in any material respect with the business of any of Borrower and Guarantors or any of the Subsidiaries or (ii) secure any Indebtedness;

(o) the Adequate Protection Liens; and

(p) valid, perfected, enforceable and otherwise not avoidable Liens existing on the Petition Date whether or not referred to in the DIP Budget.

The prohibition provided for in this Section 6.02 specifically includes, without limitation, any effort by any of Borrower and Guarantors, any Committee, or any other party-in-interest in any Chapter 11 Case to create any Liens that prime, or are *pari passu* to, any claims, Liens or

interests of the Authority (other than for the Carve-Out and the Permitted Priority Liens) irrespective of whether such claims, Liens or interests may be “adequately protected”.

Section 6.03. *Sale and Lease-Back Transactions.* Enter into any arrangement, directly or indirectly, with any Person whereby it shall sell or transfer any property, real or personal or mixed, used or useful in its business, whether now owned or hereafter acquired, and in connection with such sale or transfer, thereafter rent or lease such property or other property which it intends to use for substantially the same purpose or purposes as the property being sold or transferred unless (a) the sale of such property is first approved by the Authority in writing and (b) any Capital Lease Obligations or Liens arising in connection therewith are permitted by Sections 6.01 and 6.02 respectively.

Section 6.04. *Investments, Loans and Advances.* Purchase, hold or acquire any Equity Interests, evidences of indebtedness or other securities of, make or permit to exist any loans or advances or capital contributions to, or make or permit to exist any investment or any other interest in, any other Person (all of the foregoing, “**Investments**”), except for the following:

(a) to the extent approved by the Authority in the exercise of its sole discretion, Investments by the Borrower and Guarantors in the Borrower and Guarantors and the Subsidiaries;

(b) Permitted Investments;

(c) Investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with, customers and suppliers, in each case in the ordinary course of business;

(d) loans and advances in the ordinary course of business to the respective employees of the Borrower and Guarantors and the Subsidiaries so long as the aggregate principal amount thereof at any time outstanding (determined without regard to any write-downs or write-offs of such loans and advances) shall not exceed \$25,000;

(e) Investments existing on the date hereof and set forth on Schedule 6.04;

(f) extensions of trade credit in the ordinary course of business;

(g) Investments made as a result of the receipt of non-cash consideration from a sale, transfer or other disposition of any asset in compliance with Section 6.05;

(h) Investments by Loan Parties to the extent expressly described in the MOU or the Definitive Agreement in joint ventures in an aggregate amount not to exceed \$50,000; provided that in no event shall any Loan Party’s liabilities with respect to such joint venture exceed its Investment in such joint venture;

(i) promissory notes and other non-cash consideration received in connection with Asset Transactions permitted under Section 6.05;

(j) Guarantees constituting Indebtedness permitted under Section 6.01; and

- (k) other Investments approved in writing by the Authority.

Without limiting the generality of the foregoing and for purposes of clarification notwithstanding any implication to the contrary contained in this Agreement, in no event shall proceeds of the Loans directly or indirectly be used by, or advanced, distributed or in any way transferred directly or indirectly to or for the benefit of, any entity other than the Borrower or the Guarantors.

Section 6.05. *Mergers, Consolidations, Sales of Assets and Acquisitions.* (a) Merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or liquidate or dissolve, or sell, transfer, lease, issue or otherwise dispose of (in one transaction or in a series of transactions) all or substantially all the assets (whether now owned or hereafter acquired) of the Borrower and Guarantors or less than all the Equity Interests of any Subsidiary, or purchase, lease or otherwise acquire (in one transaction or a series of transactions) all or any substantial part of the assets of any other Person, except, if all of the following conditions shall have been satisfied: (i) the Authority shall have first approved such transaction in writing; and (ii) at the time thereof and immediately after giving effect thereto no Event of Default or Default shall have occurred and be continuing, (x) the merger or consolidation of any wholly owned Subsidiary into or with a Loan Party in a transaction in which such Loan Party is the surviving corporation, and (y) the merger or consolidation of any wholly owned Subsidiary into or with any other wholly owned Subsidiary in a transaction in which the surviving entity is a wholly owned Subsidiary and no Person other than Borrower or a Guarantor or a wholly owned Subsidiary receives any consideration (*provided* that if any party to any such transaction is (A) a Loan Party, the surviving entity of such transaction shall be a Loan Party and (B) a Subsidiary, the surviving entity of such transaction shall be a U.S. Subsidiary).

(b) Engage in any Asset Transaction not covered by paragraph (a) above unless consistent with the terms of the Closure Plan, MOU, Definitive Agreement and/or IFH Lease and in any event upon terms and conditions (to the extent not expressly set forth in the Closure Plan, MOU Definitive Agreement or IFH Lease) approved in writing by the Authority in the exercise of its reasonable discretion.

Section 6.06. *Restricted Payments; Restrictive Agreements.* (a) Declare or make, or agree to declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so; except that the Loan Parties and their Subsidiaries may make Restricted Payments that are Investments permitted under Section 6.04 or Indebtedness permitted under Section 6.01.

(b) Enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (i) the ability of any of Borrower, Guarantors or any Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets, or (ii) the ability of any of Borrower, Guarantors or Subsidiaries to pay dividends or other distributions with respect to any of its Equity Interests or to make or repay loans or advances to any of Borrower, Guarantors or any other Subsidiary or to Guarantee Indebtedness of any of Borrower, Guarantors or any other Subsidiary; *provided* that, if the Authority has first approved such agreement or arrangement in writing, then (A) the foregoing shall not apply to restrictions and conditions imposed by law or by any DIP Loan Document or the Prepetition Credit

Agreements as in effect on the date hereof (or as amended as permitted hereunder) or related documents (or any agreement relating to any refinancing of the Prepetition Credit Agreements that is permitted hereunder), (B) the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary or any other asset transaction, pending such sale, *provided* such restrictions and conditions apply only to the Subsidiary or other assets that are to be sold and such sale is permitted under this DIP Credit Agreement, (C) the foregoing shall not apply to (1) customary restrictions on leases, subleases, licenses or Asset Transaction agreements otherwise permitted hereby so long as such restrictions may relate to the assets subject thereto, (2) customary provisions restricting subletting or assignment of any lease governing a leasehold interest, (3) customary provisions restricting assignment of any agreement entered into in the ordinary course of business, and (4) customary restrictions in joint venture agreements permitted hereby, (D) clause (i) of the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this DIP Credit Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness, and (E) clause (i) of the foregoing shall not apply to customary provisions in leases and other contracts restricting the assignment thereof;

(c) make any payment on account of, purchase, defease, redeem, prepay, decrease or otherwise acquire or retire for value any Prepetition Indebtedness other than, prior to the occurrence and during the continuance of an Event of Default, payment, in an amount not to exceed the amounts permitted therefor (if any) in the DIP Budget, of (i) Prepetition employee wages, benefits and related employee taxes, (ii) Prepetition sales, use and real property taxes, (iii) Prepetition amounts due in respect of insurance financings, (iv) amounts approved in accordance with other "first day" orders satisfactory to the Authority, and (v) cure amounts satisfactory to the Authority under assumed leases and executory contracts.

Without limiting the generality of the foregoing and for purposes of clarification notwithstanding any implication to the contrary contained in this Agreement, in no event shall proceeds of the Loans directly or indirectly be used by, or advanced, distributed or in any way transferred directly or indirectly to or for the benefit of, any entity other than the Borrower or the Guarantors.

Section 6.07. *Transactions with Affiliates.* Except as set forth on Schedule 6.07, sell or transfer any property or assets to, or purchase or acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates; except (a) if the Authority first approves such transactions in writing, any of Borrower and Guarantors or any Subsidiary may engage in any of the foregoing transactions at prices and on terms and conditions not less favorable to Borrower or such Guarantor or such Subsidiary than could be obtained on an arm's-length basis from unrelated third parties, (b) Restricted Payments may be made to the extent permitted under Section 6.06, (c) payment of reasonable compensation to officers and employees of the Borrower and Guarantors for actual services rendered to such Loan Party in the ordinary course of business consistent with past practice on terms in effect on the Petition Date, and (d) the Borrower and Guarantors and the Subsidiaries may make payments in respect of customary reimbursable out-of-pocket expenses to directors, of the Borrower and Guarantors to attend board meetings after the Petition Date in the ordinary course of business.

Without limiting the generality of the foregoing and for purposes of clarification notwithstanding any implication to the contrary contained in this Agreement, in no event shall proceeds of the Loans directly or indirectly be used by, or advanced, distributed or in any way transferred directly or indirectly to or for the benefit of, any entity other than the Borrower or the Guarantors.

Section 6.08. Business of the Borrower and Guarantors and Subsidiaries; Limitation on Hedging Agreements.

(a) With respect to the Borrower and Guarantors and the Subsidiaries, engage at any time in any business or business activity other than: (i) the business conducted by it as of the date hereof and business activities reasonably related or incidental thereto or that constitute a reasonable extension thereof, in each case consistent with the terms of the MOU and the Closure Plan, or fail or omit to take actions or to cooperate with the Authority in order to effectuate actions on a timely basis consistent with the terms of the MOU and the Closure Plan, and (ii) the Chapter 11 Cases (including, without limitation, the implementation of a plan of reorganization) and activities incidental thereto.

(b) Enter into any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement other than, to the extent first approved by the Authority in writing and not exceeding such amounts permitted therefor (if any) in the DIP Budget, (i) any such agreement or arrangement entered into in the ordinary course of business and consistent with prudent business practice to hedge or mitigate risks to which any of Borrower and Guarantors or any Subsidiary is exposed in the conduct of its business or the management of its liabilities or (ii) any such agreement entered into to hedge against fluctuations in interest rates or currency incurred in the ordinary course of business and consistent with prudent business practice; *provided* that in each case such agreements or arrangements shall not have been entered into for speculation purposes.

Section 6.09. Other Indebtedness and Agreements. (a) Except in each case for changes to the Prepetition Credit Agreements that are consented to in writing by the Authority, permit any waiver, supplement, modification, amendment, termination or release of any Prepetition Credit Agreement.

(b) (i) Make any distribution, whether in cash, property, securities or a combination thereof, other than regular scheduled payments of principal and interest as and when due (to the extent not prohibited by applicable subordination provisions), in respect of, or pay, or offer or commit to pay, or directly or indirectly (including pursuant to any synthetic purchase agreement) redeem, repurchase, retire or otherwise acquire for consideration, or set apart any sum for the aforesaid purposes, any Indebtedness, except (A) the payment of the Indebtedness created or permitted hereunder, (B) refinancings of Indebtedness permitted by Section 6.01 and (C) the payment of secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, *provided* that such sale or transfer is first approved by the Authority, or (ii) pay in cash any amount in respect of any Indebtedness or preferred Equity Interests that may at the obligor's option be paid in kind or in other securities contemplated by the MOU or Definitive Agreement and permitted under Section 6.05.

(c) Permit any waiver, supplement, modification, amendment, termination or release of any terms of the Closure Plan, MOU, Definitive Agreement or IFH Lease except in each case for any of the foregoing approved in advance in writing by the Authority.

Section 6.10. *Capital Expenditures.* Permit the aggregate amount of Capital Expenditures made by the Borrower, the Guarantors and the Subsidiaries in any calendar month to exceed the amount permitted therefor (if any) in the DIP Budget.

Section 6.11. *[Reserved]*.

Section 6.12. *[Reserved]*.

Section 6.13. *Cumulative Net Cash Flow.* Permit either: (a) actual cumulative disbursements of the Borrower and Guarantors and their Subsidiaries to be more than, 115% of projected cumulative disbursements in the DIP Budget as of the end of any week after the Petition Date and continuing thereafter; or (b) actual cumulative cash receipts received on or after the Petition Date by the Borrower and Guarantors and their Subsidiaries less cumulative disbursements paid by the Borrower and Guarantors and their Subsidiaries on or after the Petition Date ("**Cumulative Net Cash Flow**"), (A) if negative, to be more than 115% of the projected Cumulative Net Cash Flow in the DIP Budget, and, (B) if positive, to be less than 85% of the projected Cumulative Net Cash Flow in the DIP Budget, in each case, as determined on a cumulative weekly basis commencing on the Petition Date on a total budget basis (as opposed to a line-by-line basis).

Section 6.14. *Fiscal Year.* With respect to any Loan Party, change its fiscal year-end to a date other than December 31 without the prior written consent of the Authority (which consent shall not be unreasonably withheld).

Section 6.15. *Prepayments of Other Indebtedness.* Except pursuant to a confirmed reorganization plan or except as specifically permitted hereunder, without the express prior written consent of the Authority or pursuant to an order of the Bankruptcy Court after notice and hearing, make any payment or transfer with respect to any Lien or Indebtedness incurred or arising prior to the filing of the Chapter 11 Cases that is subject to the automatic stay provisions of the Bankruptcy Code whether by way of "adequate protection" under the Bankruptcy Code or otherwise.

Section 6.16. *Reclamation Claims.* Enter into any agreement to return any of its inventory to any of its creditors for application against any Prepetition Indebtedness, Prepetition trade payables or other Prepetition claims under Section 546(c) 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 if, after giving effect to any such agreement, setoff or recoupment, the aggregate amount of Prepetition Indebtedness, Prepetition trade payables and other Prepetition claims subject to all such agreements, setoffs and recoupments since the Petition Date would exceed \$10,000,000.

Section 6.17. *Chapter 11 Claims.* Incur, create, assume, suffer to exist or permit any other superpriority administrative claim which is pari passu with or senior to the claims of the

Authority against any Loan Party, except as set forth in the Interim Order or Final Order, as applicable.

Section 6.18. *Budget Compliance.* Fail to comply with the following terms and conditions: Borrower shall remain obligated to pay any and all DIP Obligations in accordance with the terms of the DIP Loan Documents, the Interim Order and the Final Order, it being acknowledged that the Authority (A) may assume that the Borrower will comply with the DIP Budget, (B) shall have no duty to monitor such compliance, (C) other than with respect to the Carve-Out, shall not be obligated to pay (directly or indirectly from the DIP Collateral) any unpaid expenses incurred or authorized to be incurred pursuant to any DIP Budget and (D) the line items in the DIP Budget for payment of interest, expenses and other amounts to the Authority are estimates only.

Section 6.19. *Reorganization Plan and Disclosure Statement.* Fail, within 180 days of the commencement of the Chapter 11 Cases, to have filed a Chapter 11 reorganization plan and disclosure statement, each in form and substance reasonably satisfactory to the Authority; provided that such disclosure statement shall have been approved by the Bankruptcy Court within 45 days after the filing of such reorganization plan and disclosure statement, and provided further that such reorganization plan shall have been confirmed by the Bankruptcy Court within 45 days after the approval of such disclosure statement.

Section 6.20. *Certain Equity Securities.* Issue any Equity Interest.

Section 6.21. *Cash Management.* Fail, at all times, to maintain cash management arrangements satisfactory to the Authority; and shall not and shall not cause or permit their Subsidiaries to establish any new bank accounts without prior written notice to the Authority.

ARTICLE 7 EVENTS OF DEFAULT

Section 7.01. *Events Of Default.* Except for defaults occasioned by the filing of the Chapter 11 Cases and defaults resulting from obligations with respect to which the Bankruptcy Court prohibits any Loan Party from complying or permits any Loan Party not to comply, in case of the happening of any of the following events ("**Events of Default**"):

(a) any representation or warranty made or deemed made in or in connection with any DIP Loan Document or the Borrowings, or any representation, warranty, statement or information contained in any report, certificate, financial statement or other instrument furnished in connection with or pursuant to any DIP Loan Document, shall prove to have been false or misleading in any material respect when so made, deemed made or furnished;

(b) default shall be made in the payment of any principal of any Loan when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or by acceleration thereof or otherwise;

(c) default shall be made in the payment of any interest on any Loan or any fee or any other amount (other than an amount referred to in (b) above) due under any DIP Loan Document,

when and as the same shall become due and payable, and such default shall continue unremedied for a period of three Business Days;

(d) default shall be made in the due observance or performance by any Loan Party or any Subsidiary of any covenant, condition or agreement contained in Section 5.01(a), 5.02 (other than any default under Section 5.02 that in the reasonable judgment of the DIP Lender is immaterial and could not reasonably be expected to have an adverse impact on the DIP Lender's rights or remedies or ability to realize on the benefits of insurance relating to any of the DIP Collateral), 5.04 (which remains uncured for a period of 5 days), 5.05 or 5.08 or in Article 6;

(e) default shall be made in the due observance or performance by any Loan Party or any Subsidiary of any covenant, condition or agreement contained in any DIP Loan Document (other than those specified in clauses (b), (c) or (d) above) and such default shall continue unremedied for a period of 15 days after the earlier to occur of (i) the date upon which a Responsible Officer of any Loan Party becomes aware of such default and (ii) the date upon which written notice thereof is given to the Borrower by the DIP Lender, in any event after giving effect to the protections provided by Bankruptcy Code Section 362;

(f) any Loan Party or any Subsidiary shall (i) fail to pay any principal or interest, regardless of amount, due in respect of any Material Indebtedness, when and as the same shall become due and payable, or (ii) any other event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; *provided* that this clause (ii) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness;

(g) other than as set forth on Schedule 7.01(g), one or more judgments for the payment of money in an aggregate amount in excess of \$100,000 or other judgments that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect (other than any judgment described in this clause (g) as to which, and only to the extent, a reputable insurance company has expressly accepted actual liability for payment and is not disputing or disclaiming its payment responsibility) shall be rendered against any Loan Party or any combination thereof and the same shall remain undischarged for a period of 45 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to levy upon assets or properties of any Loan Party to enforce any such judgment and such action is not stayed within 45 days;

(h) an ERISA Event (other than an ERISA Event that results from the termination of a Benefit Plan under Section 4041 or 4042 of ERISA or, solely if a decision is made to terminate a Benefit Plan, any non compliance with the minimum funding standards of Section 412 and 430 of the Code or sections 302 and 303 of ERISA) shall have occurred that, when taken together with all other such ERISA Events could reasonably be expected to result in liability of the Loan Parties and their ERISA Affiliates in an aggregate amount exceeding that amount set forth in the

June 2009 financial statements specifically identified in Section 3.05 delivered on or prior to the Petition Date;

(i) any Guarantee under the Guarantee and Collateral Agreement (if theretofore executed) for any reason shall cease to be in full force and effect (other than in accordance with its terms), or any Guarantor shall deny that it has any further liability under its Guarantee (other than as a result of the discharge of such Guarantor in accordance with the terms of the DIP Loan Documents);

(j) any Lien purported to be created pursuant to a DIP Order or under any Perfection Document shall cease to be, or shall be asserted by Borrower or any other Loan Party not to be, a valid, perfected and, with respect to the DIP Lender, first priority (except for Permitted Priority Liens, if any, expressly provided in this DIP Credit Agreement or such Perfection Document) Lien on any material DIP Collateral covered thereby;

(k) Any Government Receivables Account depositary agreement, or other depositary agreement or cash sweep instructions between any Loan Party and any bank or other financial institution, whether pursuant to the cash management systems established pursuant to this DIP Credit Agreement and the other DIP Loan Documents or otherwise, is terminated or materially modified for any reason by any Loan Party without the Authority's prior written consent;

(l) Any Loan Party (i) breaches any material provision of or terminates the HIPAA Business Associate Agreement, or (ii) except as required by applicable Healthcare Laws in effect from time to time, any Loan Party agrees to be bound by restrictions on use and/or disclosure of PHI (as defined in the HIPAA Business Associate Agreement) that in the credit judgment of the Authority unreasonably limits the Authority's access to the DIP Collateral or information about the DIP Collateral;

(m) the Borrower's failure to implement the Closure Plan on terms substantially consistent with its terms or pursuant to a DIP Order;

(n) within 60 days following the Petition Date, the Loan Parties shall not have received final approval by the Bankruptcy Court of the terms of each of the following: the Definitive Agreement, the IFH Lease and the Closure Plan; or the terms of any of the foregoing documents shall not be acceptable to the Authority or shall not have been approved by DOH;

(o) there shall have occurred any of the following in any Chapter 11 Case:

(i) the bringing of a motion, taking of any action or the filing of any plan of reorganization or disclosure statement attendant thereto, in each case, by any Loan Party in any Chapter 11 Case, or the entry of any order by the Bankruptcy Court in any Chapter 11 Case: (w) to obtain additional financing under Section 364(c) or (d) of the Bankruptcy Code not otherwise permitted pursuant to this DIP Credit Agreement; (x) to grant any Lien other than Liens expressly permitted under Section 6.02 of this DIP Credit Agreement upon or affecting any DIP Collateral; (y) except as provided in the Interim or Final Order, as the case may be, to use Cash Collateral of the Authority under Section 363(c) of the Bankruptcy Code without the prior written consent of the Authority; or (z) that (in the case of any Loan Party) requests or seeks authority for or that (in the case of

an order entered by the Bankruptcy Court on account of a request by any Loan Party) approves or provides authority to take any other action or actions adverse to the Authority or its rights and remedies hereunder or their interest in the DIP Collateral;

(ii) the filing of any plan of reorganization or disclosure statement attendant thereto, or any direct or indirect amendment to such plan or disclosure statement, by any Loan Party which does not provide for the repayment of all DIP Obligations under this DIP Credit Agreement in full in cash on the Effective Date of such plan and to which the Authority do not consent or otherwise agree to the treatment of their claims or the loss by any Loan Party of the exclusive right to file and solicit acceptances of a plan of reorganization;

(iii) the entry of an order in any of the Chapter 11 Cases confirming a plan or plans of reorganization that does not contain a provision for termination of the Commitments and repayment in full in cash of all of the DIP Obligations under this DIP Credit Agreement on or before the effective date of such plan or plans;

(iv) the entry of an order amending, supplementing, staying, vacating or otherwise modifying the DIP Loan Documents or the Interim Order or the Final Order without the prior written consent of the Authority;

(v) the Final Order is not entered within thirty (30) days (or such other period as Authority may agree to in writing) following the entry of the Interim Order;

(vi) a Chapter 11 plan of reorganization has not been confirmed within nine (9) months following the date that the Chapter 11 Cases were filed;

(vii) the payment of, or application by any Loan Party for authority to pay, any prepetition claim without the Authority's prior written consent other than as provided in any "first day order" in form and substance acceptable to the Authority and as set forth in the DIP Budget or unless otherwise permitted under this DIP Credit Agreement;

(viii) the appointment of an interim or permanent trustee in any Chapter 11 Case or the appointment of a receiver or an examiner under section 1104 of the Bankruptcy Code in any Chapter 11 Case with expanded powers (beyond those set forth in sections 1106(a)(3) and 1106(a)(4) of the Bankruptcy Code) to operate or manage the financial affairs, the business, or reorganization of the Loan Parties or with the power to conduct an investigation of (or compel discovery from) the Authority or against agent or lenders under the Prepetition Credit Agreements; or the sale without the Authority's consent, of all or substantially all of a Loan Party's assets either through a sale under section 363 of the Bankruptcy Code, through a confirmed plan of reorganization in the Chapter 11 Cases, or otherwise that does not provide for payment in full in cash of the DIP Obligations and termination of the Commitments;

(ix) the dismissal of any Chapter 11 Case, or the conversion of any Chapter 11 Case from one under chapter 11 to one under chapter 7 of the Bankruptcy Code or any Loan Party shall file a motion or other pleading seeking the dismissal of any Chapter 11 Case under section 1112 of the Bankruptcy Code or otherwise;

(x) the entry of an order by the Bankruptcy Court granting relief from or modifying the automatic stay of section 362 of the Bankruptcy Code (x) to allow any creditor to execute upon or enforce a Lien on any DIP Collateral, or (y) with respect to any Lien of or the granting of any Lien on any DIP Collateral to any state or local environmental or regulatory agency or authority, which in either case would have a Material Adverse Effect;

(xi) the entry of an order in any Chapter 11 Case avoiding or requiring repayment of any portion of the payments made on account of the DIP Obligations owing under this DIP Credit Agreement or the other DIP Loan Documents;

(xii) the failure of any Loan Party to perform any of its obligations under the Interim Order or the Final Order or any violation of any of the terms of the Interim Order or the Final Order;

(xiii) the challenge by any Loan Party to the validity, extent, perfection or priority of any liens granted under the Prepetition Credit Agreements;

(xiv) the remittance, use or application of the proceeds of DIP Collateral other than in accordance with cash management procedures and agreements acceptable to the Authority;

(xv) the use of Cash Collateral of the Prepetition Lender for any purpose other than to pay expenditures set forth in the DIP Budget;

(xvi) the entry of an order in any of the Chapter 11 Cases granting any other super priority administrative claim or Lien equal or superior to that granted to the Authority, without the consent in writing of the Authority;

(xvii) other than with respect to the appointment of an ombudsman appointed by the trustee of the Chapter 11 Cases, the appointment of a responsible officer or examiner with enlarged powers relating to the operation of the business of any Loan Party;

(xviii) the filing of a motion by any Loan Party requesting, or the entry of any order granting, any super-priority claim which is senior or pari passu with the DIP Lender's claims or with the claims of the Prepetition Lender under the Prepetition Loan Documents;

(xix) the entry of an order without the prior consent of the DIP Lender amending, supplementing or otherwise modifying either the Interim Order or the Final Order;

(xx) the obtaining of additional financing or the granting of Liens not expressly permitted hereunder;

(xxi) the use of Cash Collateral without the consent of the Authority;

(xxii) any attempt to reduce, set off or subordinate the DIP Obligations or the Liens securing such DIP Obligations to any other Indebtedness;

(xxiii) the reversal, vacation or stay of the effectiveness of either the Interim Order or the Final Order;

(xxiv) the payment of or granting adequate protection (except for Adequate Protection Payments) with respect to any Prepetition Indebtedness (other than with respect to payment permitted under any "first day order" in form and substance satisfactory to the Authority or as set forth in the Interim Order or the Final Order); or

(xxv) the cessation of Liens or super-priority claims granted with respect to this DIP Credit Agreement to be valid, perfected and enforceable in all respects.

(p) a change in the condition of the assets of any Loan Party shall have occurred that would reasonably be expected to have a material adverse effect on the Authority's interest in the DIP Collateral, other than the filing of the Chapter 11 cases, the closures pursuant to the Closure Plan and the termination of other businesses of any Loan Party as provided in the Closure Plan;

(q) a petition to dissolve the Borrower shall be filed by any Loan Party with the Secretary of State of the State of New York, the legislature of the State or any other governmental authority having jurisdiction over any Loan Party;

(r) an order of dissolution of any Loan Party shall be made by the State of New York, the legislature of the State or any other governmental authority having jurisdiction over any Loan Party which order shall remain undismissed or unstayed for an aggregate of thirty (30) days; or

(s) By not later than 120 days following the Petition Date on terms reasonably acceptable to the DIP Lender, the Borrower and Guarantors shall have failed (i) to file a motion to sell their owned real-property assets (including for the approval of accompanying bidding procedures) and deliver all proceeds thereof to the Authority in respect of the DIP Obligations, or (ii) otherwise to transfer such real-property assets to the Authority in respect of the DIP Obligations or the Prepetition Loans;

then, and in every such event, and at any time thereafter during the continuance of such event each or any of the following actions may be taken: the Authority may (i) terminate the Subsequent Loan Commitment, (ii) terminate the Debtors' use of Cash Collateral on five days' notice and (iii) declare the Loans then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and any unpaid accrued fees and all other liabilities of the Borrower and Guarantors accrued hereunder and under any other DIP Loan Document, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrower and Guarantors, anything contained herein or in any other DIP Loan Document to the contrary notwithstanding, and the Authority shall have the right (exercisable upon seven days' prior written notice to the Borrower and other parties required under Local Rule 4001-2) to take all or any actions and exercise any remedies available to a secured party under the Perfection Documents or applicable law or in equity, or as otherwise provided for in the Interim Order and/or Final Order. If any Event of Default has

occurred and is continuing, the Authority may, subject to and in accordance with the terms of the Interim Order or the Final Order, as applicable, (i) terminate the Commitments with respect to further Borrowings; (ii) reduce the Commitments from time to time; (iii) declare all or any portion of the DIP Obligations, including all or any portion of any Loan to be forthwith due and payable, in accordance with the terms of the Interim Order or the Final Order; or (iv) exercise any rights and remedies provided to the Authority under the DIP Loan Documents, the Interim Order or the Final Order or at law or equity. The sole issue as to which the Borrower or any Guarantor may seek Bankruptcy Court intervention at any hearing seeking to delay or prevent the DIP Lender from exercising remedies shall be whether an Event of Default has, in fact, occurred and is continuing.

ARTICLE 8
[RESERVED]

ARTICLE 9
MISCELLANEOUS

Section 9.01. *Notices; Electronic Communications.* Notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by fax, as follows:

(a) If to Borrower or any Debtor, to the Borrower at:

North General Hospital
1879 Madison Avenue
New York, NY 10035
Attention: John P. Maher, Executive Vice President and
Chief Financial Officer
Tel: (212) 423-4060
Fax: (212) 423-4204

With a copy to:

Charles E. Simpson, Esq.
Windels Marx Lane & Mittendorf, LLP
156 West 56th Street
New York, New York 10019
Tel: (212) 237-1070
Fax: (212) 262-1215

(b) If to the Authority, to:

Dormitory Authority
of the State of New York
515 Broadway
Albany, New York 12207
Attention: Managing Director for Public Finance and
Portfolio Monitoring
Tel: (518) 257-3160
Fax: (518) 257-3100
With a copy to its General Counsel (at the same
address) and to its outside counsel:

David Neier, Esq.
Winston & Strawn LLP
200 Park Avenue
New York, New York 10166
Tel: (212) 294-6700
Fax: (212) 294-4700

All notices and other communications given to any party hereto in accordance with the provisions of this DIP Credit Agreement shall be deemed to have been given on the date of receipt if delivered by hand or overnight courier service or sent by fax or on the date five Business Days after dispatch by certified or registered mail if mailed, in each case delivered, sent or mailed (properly addressed) to such party as provided in this Section 9.01 or in accordance with the latest unrevoked direction from such party given in accordance with this Section 9.01. As may be agreed to in writing among the Borrower, the Authority from time to time, notices and other communications may also be delivered by e-mail to the e-mail address of a representative of the applicable Person provided from time to time by such Person.

The Borrower and Guarantors hereby agree, unless directed otherwise by the Authority or unless the electronic mail address referred to below has not been provided by the Authority to the Borrower and Guarantors, that they will, or will cause their Subsidiaries to, provide to the Authority all information, documents and other materials that it is obligated to furnish to the Authority pursuant to the DIP Loan Documents, including all notices, requests, financial statements, financial and other reports, certificates and other information materials, but excluding any such communication that (i) is or relates to a Borrowing Request, (ii) relates to the payment of any principal or other amount due under this DIP Credit Agreement prior to the scheduled date therefor, (iii) provides notice of any Default or Event of Default under this DIP Credit Agreement or any other DIP Loan Document or (iv) is required to be delivered to satisfy any condition precedent to the effectiveness of this DIP Credit Agreement and/or any Borrowing or other extension of credit hereunder (all such non-excluded communications being referred to herein collectively as "**Communications**"), by transmitting the Communications in an electronic/soft medium that is properly identified in a format acceptable to the Authority to an electronic mail address as directed by the Authority. In addition, the Borrower and Guarantors agree, and agree to cause their Subsidiaries, to continue to provide the Communications to the

Authority, as the case may be, in the manner specified in the DIP Loan Documents but only to the extent requested by the Authority.

IN NO EVENT SHALL THE AUTHORITY OR ANY OF ITS RELATED PARTIES HAVE ANY LIABILITY TO ANY LOAN PARTY, THE DIP LENDER OR ANY OTHER PERSON FOR DAMAGES OF ANY KIND, WHETHER OR NOT BASED ON STRICT LIABILITY AND INCLUDING DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT, CONTRACT OR OTHERWISE) ARISING OUT OF ANY LOAN PARTY'S OR THE AUTHORITY'S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET, EXCEPT TO THE EXTENT THE LIABILITY OF ANY SUCH PERSON IS FOUND IN A FINAL RULING BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED PRIMARILY FROM SUCH PERSON'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

Nothing herein shall prejudice the right of the DIP Lender to give any notice or other communication pursuant to any DIP Loan Document in any other manner specified in such DIP Loan Document.

Section 9.02. *Survival of DIP Credit Agreement.* All covenants, agreements, representations and warranties made by the Loan Parties in the DIP Loan Documents and in the certificates or other documents delivered in connection with or pursuant to this DIP Credit Agreement or any other DIP Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the DIP Loan Documents and the making of any Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that any such other party may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any other amount payable under this DIP Credit Agreement or any other DIP Loan Document is outstanding and unpaid and so long as the Commitments have not expired or terminated. The provisions of Sections 2.17 and 9.05 shall survive and remain operative and in full force and effect regardless of the expiration or termination of this DIP Credit Agreement (or any provisions hereof), the consummation of the transactions contemplated hereby, the repayment of any Loan, the expiration or termination of the Commitments, the invalidity or unenforceability of any provision of this DIP Credit Agreement or any other DIP Loan Document or any investigation made by or on behalf of the Authority.

Section 9.03. *Binding Effect.* This DIP Credit Agreement shall become effective when it shall have been executed by each of the parties hereto and when the Authority shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto.

Section 9.04. *Successors and Assigns.* (a) Whenever in this DIP Credit Agreement any of the parties hereto is referred to, such reference shall be deemed to include the permitted successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the Borrowers, each other Loan Party or the DIP Lender that are contained in this DIP Credit Agreement shall bind and inure to the benefit of their respective successors and assigns.

(b) The DIP Lender may assign to one or more Eligible Assignees all or a portion of its interests, rights and obligations under this DIP Credit Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); *provided, however*, that (i) the parties to each assignment shall execute and deliver to the Authority an Assignment and Acceptance, and (ii) the assignee, if it shall not be the DIP Lender, shall deliver to the Authority an Administrative Questionnaire in form and substance acceptable to the Authority. Upon acceptance and recording pursuant to paragraph (e) of this Section 9.04, from and after the effective date specified in each Assignment and Acceptance, (A) the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of the DIP Lender under this DIP Credit Agreement and (B) the assigning DIP Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this DIP Credit Agreement (and, in the case of an Assignment and Acceptance covering all or the remaining portion of the assigning DIP Lender's rights and obligations under this DIP Credit Agreement, the DIP Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.17 and 9.05, as well as to any fees accrued for its account and not yet paid).

(c) [Reserved].

(d) The Authority, acting for this purpose as an agent of the Borrower, shall maintain at one of its offices in The City of New York a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the name and address of the DIP Lender, and the Commitment of, and principal amount of the Loans owing to, the DIP Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall, absent manifest error, be conclusive and the Borrower and the Authority may treat each Person whose name is recorded in the Register pursuant to the terms hereof as the DIP Lender hereunder for all purposes of this DIP Credit Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and the DIP Lender, at any reasonable time and from time to time upon reasonable prior notice.

(e) Upon its receipt of, and consent to, a duly completed Assignment and Acceptance executed by the assigning DIP Lender and an assignee, an Administrative Questionnaire completed in respect of the assignee (unless the assignee shall already be the DIP Lender hereunder), the processing and recordation fee referred to in paragraph (b) above, if applicable and the written consent of the Authority and any applicable tax forms, the Authority shall promptly (i) accept such Assignment and Acceptance and (ii) record the information contained therein in the Register. No assignment shall be effective unless it has been recorded in the Register as provided in this paragraph (e).

(f) The DIP Lender may without the consent of the Borrower sell participations to one or more banks or other Persons in all or a portion of its rights and obligations under this DIP Credit Agreement (including all or a portion of its Commitment and the Loans owing to it) upon terms and conditions acceptable to the Authority. No lender that is organized outside of the laws of the United States of America or a state thereof shall be permitted to become the DIP Lender hereunder without the consent of the Authority. The DIP Lender granting any participation shall maintain a register comparable to and in accordance with the principles set forth in Section

9.04(d) in which there is recorded in each case any grant of a participation to a participant. Each such participant shall be entitled to a complete exemption from withholding tax.

(g) The DIP Lender or participant may, in connection with any assignment or participation or proposed assignment or participation pursuant to this Section 9.04, disclose to the assignee or participant or proposed assignee or participant any information relating to any Loan Party furnished to the DIP Lender by or on behalf of the Loan Parties; *provided* that, prior to any such disclosure of information designated by any Loan Party as confidential, each such assignee or participant or proposed assignee or participant shall execute an agreement whereby such assignee or participant shall agree (subject to customary exceptions) to preserve the confidentiality of such confidential information on terms no less restrictive than those applicable to the DIP Lender pursuant to Section 9.16.

(h) The DIP Lender may at any time assign all or any portion of its rights under this DIP Credit Agreement to secure extensions of credit to the DIP Lender or in support of obligations owed by the DIP Lender; *provided* that no such assignment shall release the DIP Lender from any of its obligations hereunder or substitute any such assignee for the DIP Lender as a party hereto.

(i) No Borrower shall assign or delegate any of its rights or duties hereunder without the prior written consent of the Authority, and any attempted assignment without such consent shall be null and void.

Section 9.05. *Expenses; Indemnity.* (a) Each of the Borrower and Guarantors agrees, jointly and severally, to pay all out-of-pocket expenses incurred by the Authority in connection with the preparation and administration of this DIP Credit Agreement and the other DIP Loan Documents or in connection with any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions hereby or thereby contemplated shall be consummated) or incurred by the Authority in connection with the enforcement or protection of its rights in connection with this DIP Credit Agreement and the other DIP Loan Documents or in connection with the Loans made hereunder, including the fees, charges and disbursements of Winston & Strawn LLP, counsel for the Authority.

(b) Each of the Borrower and Guarantors agree, jointly and severally, to indemnify the DIP Lender and each Related Party thereof (each such Person being called an “**Indemnified Person**”) against, and to hold each Indemnified Person harmless from, any and all losses, claims, damages, liabilities and related expenses, including reasonable counsel fees, charges and disbursements, incurred by or asserted against any Indemnified Person arising out of, in any way connected with, or as a result of (i) the execution or delivery of this DIP Credit Agreement or any other DIP Loan Document or any agreement or instrument contemplated thereby, the performance by the parties thereto of their respective obligations thereunder or the consummation of the Transactions and the other transactions contemplated thereby, (ii) the use of the proceeds of the Loans, (iii) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnified Person is a party thereto, (and regardless of whether such matter is initiated by a third party or by the Borrower, any other Loan Party or any of their respective Affiliates), or (iv) any actual or alleged presence or Environmental Release of Hazardous Materials on any property currently or formerly owned or operated by any Loan Party

or any of the Subsidiaries, or any Environmental Liability related in any way to any Loan Party or the Subsidiaries; *provided* that such indemnity shall not, as to any Indemnified Person, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnified Person.

(c) [Reserved].

(d) To the extent permitted by applicable law, no Borrower shall assert, and hereby waives, any claim against any Indemnified Person, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this DIP Credit Agreement or any agreement or instrument contemplated hereby, the Transactions, any Loan or the use of the proceeds thereof.

(e) The provisions of this Section 9.05 shall remain operative and in full force and effect regardless of the expiration of the term of this DIP Credit Agreement, the consummation of the Transactions or the other transactions contemplated hereby, the repayment of any of the Loans, the expiration of the Commitments, the invalidity or unenforceability of any term or provision of this DIP Credit Agreement or any other DIP Loan Document, or any investigation made by or on behalf of the DIP Lender. All amounts due under this Section 9.05 shall be payable on written demand therefor.

Section 9.06. *Right of Setoff.* If an Event of Default shall have occurred and be continuing, the DIP Lender is hereby authorized at any time and from time to time, except to the extent prohibited by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by the DIP Lender to or for the credit or the account of any Loan Party against any of and all the obligations of the Loan Parties now or hereafter existing under this DIP Credit Agreement and other DIP Loan Documents held by the DIP Lender, irrespective of whether or not the DIP Lender has made any demand under this DIP Credit Agreement or such other DIP Loan Document and although such obligations may be unmatured. The rights of the DIP Lender under this Section 9.06 are in addition to other rights and remedies (including other rights of setoff) which the DIP Lender may have.

Section 9.07. *Applicable Law.* THIS DIP CREDIT AGREEMENT AND THE OTHER DIP LOAN DOCUMENTS (OTHER THAN AS EXPRESSLY SET FORTH IN OTHER DIP LOAN DOCUMENTS) SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK.

Section 9.08. *Waivers; Amendment.* (a) No failure or delay of the Authority in exercising any power or right hereunder or under any other DIP Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Authority hereunder and under the other DIP Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this DIP Credit Agreement or any other DIP Loan Document or consent to any departure by

the Borrower or any other Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) below, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on the Borrower or any other Loan Party in any case shall entitle the Borrower or any other Loan Party to any other or further notice or demand in similar or other circumstances.

(b) Neither this DIP Credit Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrowers and the Authority.

Section 9.09. *Interest Rate Limitation.* Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively the “Charges”), shall exceed the maximum lawful rate (the “Maximum Rate”) which may be contracted for, charged, taken, received or reserved by the DIP Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section 9.09 shall be cumulated and the interest and Charges payable to the DIP Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds effective rate to the date of repayment, shall have been received by the DIP Lender.

Section 9.10. *Entire Agreement.* This DIP Credit Agreement and the other DIP Loan Documents constitute the entire contract between the parties relative to the subject matter hereof. Any other previous agreement among the parties with respect to the subject matter hereof is superseded by this DIP Credit Agreement and the other DIP Loan Documents. Nothing in this DIP Credit Agreement or in the other DIP Loan Documents, expressed or implied, is intended to confer upon any Person (other than the parties hereto and thereto, their respective successors and assigns permitted hereunder and, to the extent expressly contemplated hereby, the Related Parties of the DIP Lender) any rights, remedies, obligations or liabilities under or by reason of this DIP Credit Agreement or the other DIP Loan Documents.

Section 9.11. *WAIVER OF JURY TRIAL.* EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS DIP CREDIT AGREEMENT OR ANY OF THE OTHER DIP LOAN DOCUMENTS. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY 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 DIP CREDIT AGREEMENT AND THE OTHER DIP LOAN DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.11.

Section 9.12. *Severability.* In the event any one or more of the provisions contained in this DIP Credit Agreement or in any other DIP Loan Document should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 9.13. *Counterparts.* This DIP Credit Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original but all of which when taken together shall constitute a single contract, and shall become effective as provided in Section 9.03. Delivery of an executed signature page to this DIP Credit Agreement by facsimile transmission shall be as effective as delivery of a manually signed counterpart of this DIP Credit Agreement.

Section 9.14. *Headings.* Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this DIP Credit Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this DIP Credit Agreement.

Section 9.15. *Jurisdiction; Consent to Service of Process.* (a) Each of the Borrower and Guarantors hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the Bankruptcy Court, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this DIP Credit Agreement shall affect any right that the Authority may otherwise have to bring any action or proceeding relating to this DIP Credit Agreement or the other DIP Loan Documents against any of the Loan Parties or their properties in the courts of any jurisdiction.

(b) Each of the Borrower and Guarantors hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this DIP Credit Agreement or the other DIP Loan Documents in the Bankruptcy Court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in such court.

(c) Each party to this DIP Credit Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this DIP Credit Agreement will affect the right of any party to this DIP Credit Agreement to serve process in any other manner permitted by law.

Section 9.16. *Confidentiality.* The DIP Lender agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its

Affiliates' officers, directors, employees and Authority, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority or quasi-regulatory authority (such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) in connection with the exercise of any remedies hereunder or under the other DIP Loan Documents or any suit, action or proceeding relating to the enforcement of its rights hereunder or thereunder, (e) subject to an agreement containing provisions substantially the same as those of this Section 9.16, to (i) any actual or prospective assignee of or participant in (or its advisors) any of its rights or obligations under this DIP Credit Agreement and the other DIP Loan Documents or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to any Loan Party or any Subsidiary or any of their respective obligations; provided, however, that such counterparty shall be informed of the confidentiality of such Information and that they are bound to maintain such confidentiality, (f) with the consent of the Borrower, (g) to the extent such Information becomes publicly available other than as a result of a breach of this Section 9.16, (h) to (i) any bank or financial institution and (ii) S&P, Moody's, Fitch Ratings and/or other ratings agency, as the DIP Lender reasonably deems necessary or appropriate in connection with the DIP Lender's obtaining financing; provided, however, that such financial institution or ratings agency shall be informed of the confidentiality of such Information and that they are bound to maintain such confidentiality, or (i) making such disclosures to its investors or potential investors as the DIP Lender reasonably deems necessary or appropriate; provided, however, that such investors or potential investors shall be informed of the confidentiality of such Information and that they are bound to maintain such confidentiality. For the purposes of this Section, "**Information**" shall mean all information received from any Loan Party and related to any Loan Party or its business, other than any such information that was available to the DIP Lender on a nonconfidential basis prior to its disclosure by any Loan party or such information that any Loan Party identifies as nonconfidential. Any Person required to maintain the confidentiality of Information as provided in this Section 9.16 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord its own confidential information.

Section 9.17. *[Reserved]*.

Section 9.18. *USA PATRIOT Act Notice*. The Authority hereby notifies the Loan Parties that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies the Loan Parties, which information includes the name and address of the Loan Parties and other information that will allow the DIP Lender or the Authority, as applicable, to identify the Loan Parties in accordance with the USA PATRIOT Act.

Section 9.19. *Parties Including Trustees; Bankruptcy Court Proceedings*. This DIP Credit Agreement, the other DIP Loan Documents, and all Liens and other rights and privileges created hereby or pursuant hereto or to any other DIP Loan Document shall be binding upon each Loan Party, the estate of each Loan Party, and any trustee, other estate representative or any successor in interest of each Loan Party in any Chapter 11 Case or any subsequent case commenced under chapter 7 of the Bankruptcy Code, and shall not be subject to Section 365 of

the Bankruptcy Code. This DIP Credit Agreement and the other DIP Loan Documents shall be binding upon, and inure to the benefit of, the successors of the DIP Lender and its respective assigns, transferees and endorsees. The Liens created by this DIP Credit Agreement and the other DIP Loan Documents shall be and remain valid and perfected in the event of the substantive consolidation or conversion of any Chapter 11 Case or any other bankruptcy case of any Loan Party to a case under chapter 7 of the Bankruptcy Code or in the event of dismissal of any Chapter 11 Case or the release of any DIP Collateral from the jurisdiction of the Bankruptcy Court for any reason, without the necessity that the Authority file financing statements or otherwise perfect its Liens under applicable law. No Loan Party may assign, transfer, hypothecate or otherwise convey its rights, benefits, obligations or duties hereunder or under any of the other DIP Loan Documents without the prior express written consent of the Authority. Any such purported assignment, transfer, hypothecation or other conveyance by any Loan Party without the prior express written consent of the Authority shall be void. The terms and provisions of this DIP Credit Agreement are for the purpose of defining the relative rights and obligations of each Loan Party and the DIP Lender with respect to the transactions contemplated hereby and no Person shall be a third party beneficiary of any of the terms and provisions of this DIP Credit Agreement or any of the other DIP Loan Documents.

Section 9.20. *Prepetition Loan Documents.* Borrower and each other Loan Party hereby agrees that (i) this DIP Credit Agreement is separate and distinct from the Prepetition Credit Agreements and (ii) each Prepetition Credit Agreement is in full force and effect. h Borrower and each other Loan Party further agrees that by entering into this DIP Credit Agreement (but subject to the DIP Order), DIP Lender does not waive any Default or Event of Default under the Prepetition Loan Documents or any of its liens, claims, priorities, rights and remedies thereunder.

ARTICLE 10 GUARANTY

Section 10.01. *Guaranty.* Each of Borrower and Guarantors hereby agrees that the Borrower and each Guarantor is jointly and severally liable for, and hereby absolutely and unconditionally guarantees to the DIP Lender and its respective successors and assigns, the full and prompt payment (whether at stated maturity, by acceleration or otherwise) and performance of, all DIP Obligations owed or hereafter owing to the DIP Lender by Borrower or any other Guarantor. Each Guarantor agrees that its guaranty obligation hereunder is a continuing guaranty of payment and performance and not of collection, that its obligations under this Article 10 shall not be discharged until payment and performance, in full, of the DIP Obligations has occurred, and that its obligations under this Article 10 shall be absolute and unconditional, irrespective of, and unaffected by:

(a) the genuineness, validity, regularity, enforceability or any future amendment of, or change in, this DIP Credit Agreement, any other DIP Loan Document or any other agreement, document or instrument to which any Loan Party is or may become a party and that relates to the Loans;

(b) the absence of any action to enforce this DIP Credit Agreement (including this Article 10) or any other DIP Loan Document or the waiver or consent by the DIP Lender with respect to any of the provisions thereof;

(c) the existence, value or condition of, or failure to perfect its Lien against, any security for the DIP Obligations or any action, or the absence of any action, by the DIP Lender in respect thereof (including the release of any such security);

(d) the insolvency of any Loan Party; or

(e) any other action or circumstances that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor.

Each Guarantor shall be regarded, and shall be in the same position, as principal debtor with respect to the DIP Obligations guaranteed hereunder.

Section 10.02. *Waivers By Borrower and Guarantors.* Each of Borrower and Guarantors expressly waives all rights it may have now or in the future under any statute, or at common law, or at law or in equity, or otherwise, to compel the DIP Lender to marshal assets or to proceed in respect of the DIP Obligations guaranteed hereunder against any other Loan Party, any other party or against any security for the payment and performance of the DIP Obligations before proceeding against, or as a condition to proceeding against, the Borrower or Guarantor. It is agreed among each of Borrower and Guarantors and the DIP Lender that the foregoing waivers are of the essence of the transaction contemplated by this DIP Credit Agreement and the other DIP Loan Documents and that, but for the provisions of this Article 10 and such waivers, the DIP Lender would decline to enter into this DIP Credit Agreement.

Section 10.03. *Benefit of Guaranty.* Each of Borrower and Guarantors agrees that the provisions of this Article 10 are for the benefit of the DIP Lender and its respective successors, transferees, endorsees and assigns, and nothing herein contained shall impair, as between any other party and the DIP Lender, the obligations of such other party under the DIP Loan Documents.

Section 10.04. *Waiver of Subrogation, Etc.* Notwithstanding anything to the contrary in this DIP Credit Agreement or in any other DIP Loan Document, and except as set forth in Section 10.7, each of Borrower and Guarantors hereby expressly and irrevocably waives any and all rights at law or in equity to subrogation, reimbursement, exoneration, contribution, indemnification or set off and any and all defenses available to a surety, guarantor or accommodation co-obligor. Each of Borrower and Guarantors acknowledges and agrees that this waiver is intended to benefit the Authority and shall not limit or otherwise affect the Borrower's or Guarantor's liability hereunder or the enforceability of this Article 10, and that the DIP Lender and its respective successors and assigns are intended third party beneficiaries of the waivers and agreements set forth in this Section 10.4.

Section 10.05. *Election of Remedies.* If the Authority may, under applicable law, proceed to realize its benefits under any of the DIP Loan Documents giving the Authority a Lien upon any DIP Collateral, whether owned by any Loan Party or by any other Person, either by judicial foreclosure or by non-judicial sale or enforcement, the Authority may, at its sole option,

determine which of its remedies or rights it may pursue without affecting any of its rights and remedies under this Article 10. If, in the exercise of any of its rights and remedies, the Authority shall forfeit any of its rights or remedies, including its right to enter a deficiency judgment against Borrower or any other Person, whether because of any applicable laws pertaining to "election of remedies" or the like, each of Borrower and Guarantors hereby consents to such action by the Authority and waives any claim based upon such action, even if such action by the Authority shall result in a full or partial loss of any rights of subrogation that each Loan Party might otherwise have had but for such action by the Authority. Any election of remedies that results in the denial or impairment of the right of the Authority to seek a deficiency judgment against any of Borrower and Guarantors shall not impair Borrower's or any Guarantor's obligation to pay the full amount of the DIP Obligations. In the event the Authority shall bid at any foreclosure or trustee's sale or at any private sale permitted by law or the DIP Loan Documents, the Authority may bid all or less than the amount of the DIP Obligations and the amount of such bid need not be paid by the Authority but shall be credited against the DIP Obligations. The amount of the successful bid at any such sale, whether the Authority or any other party is the successful bidder, shall be conclusively deemed to be the fair market value of the DIP Collateral and the difference between such bid amount and the remaining balance of the DIP Obligations shall be conclusively deemed to be the amount of the DIP Obligations guaranteed under this Article 10, notwithstanding that any present or future law or court decision or ruling may have the effect of reducing the amount of any deficiency claim to which the Authority might otherwise be entitled but for such bidding at any such sale.

Section 10.06. *Limitation.* Notwithstanding any provision herein contained to the contrary, each Guarantor's liability under this Article 10 shall be limited to an amount not to exceed as of any date of determination the greater of:

(a) the net amount of all Loans advanced to the Borrower under this DIP Credit Agreement and then re-loaned or otherwise transferred to, or for the benefit of, such Loan Party; and

(b) the amount that could be claimed by the Authority from any Loan Party under this Article 10 without rendering such claim voidable or avoidable under Section 548 of Chapter 11 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law after taking into account, among other things, such Loan Party's right of contribution and indemnification from each other Borrower under Section 10.7.

Section 10.07. *Liability Cumulative.* The liability of Guarantors under this Article 10 is in addition to and shall be cumulative with all liabilities of each other Loan Party to the Authority under this DIP Credit Agreement and the other DIP Loan Documents to which such Loan Party is a party or in respect of any DIP Obligations or obligation of the other Loan Parties, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

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

NORTH GENERAL HOSPITAL
as a Borrower

By: _____
Name:
Title:

**NORTH GENERAL SERVICE
CORPORATION**
as a Guarantor

By: _____
Name:
Title:

**NORTH GENERAL DIAGNOSTIC
AND TREATMENT CENTER**
as a Guarantor

By: _____
Name:
Title:

**THE DORMITORY AUTHORITY OF
THE STATE OF NEW YORK**

By: _____
Name:
Title:

ACKNOWLEDGMENT IN NEW YORK STATE

STATE OF NEW YORK, COUNTY OF

ss.:

On before me, the undersigned, personally appeared

personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

(signature and office of individual taking acknowledgment)

ACKNOWLEDGMENT OUTSIDE NEW YORK STATE

STATE OF

COUNTY OF

ss.:

On before me, the undersigned, personally appeared

personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in

(insert city or political subdivision and state or county or other place acknowledgment taken).

(signature and office of individual taking acknowledgment)

COMMITMENT SCHEDULE

Initial Loan Commitment

\$[3,500,000]

Subsequent Loan Commitment

\$[10,500,000]