

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO**

In re

OTERO COUNTY HOSPITAL
ASSOCIATION, INC. (d/b/a Gerald
Champion Regional Medical Center, d/b/a
Mountain View Catering),

Debtor.

No. 11-11-13686-JA

Objection Deadline: **February 14, 2012
at 4:00 p.m. MST**

**DEBTOR’S MOTION PURSUANT TO 11 U.S.C. §§ 105, 361, AND 363, RULE 4001(D)
OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE, AND LOCAL RULE
4001-2 FOR ENTRY OF AN ORDER (I) APPROVING AGREEMENT TO EXTEND
STIPULATION BY AND BETWEEN THE DEBTOR AND BANK OF AMERICA, N.A
PROVIDING ADEQUATE PROTECTION AND AUTHORIZING THE USE OF CASH
COLLATERAL; (II) APPROVING PAYMENT OF EXTENSION FEE; AND (III)
GRANTING RELATED RELIEF**

TO THE HONORABLE ROBERT H. JACOBVITZ
UNITED STATES BANKRUPTCY JUDGE:

The Otero County Hospital Association, Inc. d/b/a Gerald Champion Regional Medical Center, d/b/a Mountain View Catering (the “Debtor”), pursuant to sections 105, 361, and 363 of title 11 of the United States Code (the “Bankruptcy Code”), Rule 4001(d) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rule 4001-2 of the Local Rules of the United States Bankruptcy Court, District of New Mexico (the “Local Rules”) hereby files its *Motion Pursuant to 11 U.S.C. §§ 105, 361, and 363 and Bankruptcy Rule 4001(d) of the Federal Rules of Bankruptcy Procedure for Entry of an Order (i) Approving Agreement to Extend Stipulation by and between the Debtor and Bank of America, N.A Providing Adequate Protection and Authorizing the Use of Cash Collateral; (ii) Approving Payment of Extension Fee; and (iii) Granting Related Relief* (the “Motion”) and respectfully represents as follows



I.

4001(d) STATEMENT

1. Pursuant to Bankruptcy Rule 4001(d), the Debtor provides the following (i) concise statement of the relief requested in this Motion, and (ii) list of material provisions of the *Agreement to Extend Stipulation by and between the Debtor and Bank of America, N.A. Providing Adequate Protection and Authorizing the Use of Cash Collateral* (the “Extension Agreement”) attached hereto as Exhibit A, including the provisions of the type listed in Bankruptcy Rule 4001(c)(1)(B). Fed. R. Bankr. P. 4001(d)(1)(B).

A. Statement of Relief Requested

2. By this Motion, the Debtor seeks the entry of an order approving the Extension Agreement pursuant to sections 105, 361, and 363 of the Bankruptcy Code and Bankruptcy Rule 4001(d). The Extension Agreement extends the term of the *Stipulation by and between the Debtor and Bank of America, N.A. Providing Adequate Protection and Authorizing Use of Case Collateral* (the “Stipulation”), which currently expires on February 16, 2012,¹ with certain modifications. The Extension Agreement contains the following material terms:²

- The term of the Stipulation shall be extended to the earliest to occur of (i) November 15, 2012, or (ii) the occurrence of a Termination Event. (Extension Agreement, ¶ 3).
- The cash on hand covenant set forth in the Stipulation is reduced from 75 days cash on hand in the Stipulation to 55 days of cash on hand. (Id. at ¶ 4(a)). In short, the Debtor must maintain at least 55 days cash on hand on

¹ Where the context requires, each capitalized term used but not otherwise defined herein shall have the meaning ascribed to such term in the Stipulation.

² This summary is qualified in its entirety by the Extension Agreement and is intended solely to give the Bankruptcy Court and interested parties a brief overview of the significant terms of the Extension Agreement and comply with Bankruptcy Rule 4001(d). Interested parties should refer to the Extension Agreement for the complete and detailed terms thereof.

the last day of each fiscal quarter in order to prevent a default under the terms of the Reimbursement Agreement with Bank of America, N.A. (the “Bank”).

- The debt service coverage ratio set forth in the Reimbursement Agreement shall be 1.25:1.0, for (i) for the three-month period ending March 31, 2012, (ii) the six month-period ending June 30, 2012, and (iii) the nine-month ending September 30, 2012. (Id. at ¶ 4(b)). The debt service coverage ratio shall not include income or expenses for Alamogordo Surgery Ventures and all reorganization expenses shall be excluded from the debt service coverage ratio calculation. (Id.). Currently, under the Reimbursement Agreement, the debt service coverage ratio is calculated on twelve month rolling basis. Accordingly, this modification allows the Debtor to exclude last year’s results from the calculation, a significant benefit for the Debtor.
- The Debtor shall provide the Bank with certain financial and operational reporting materials including, but not limited to, (i) weekly cash-flow reports; (ii) monthly financial statements, among other monthly reporting requirements; and (iii) quarterly financial packages, including a summary of capital expenditures and management’s discussion and analysis of financial results. (Id. at ¶ 6). Currently, the Debtor’s reporting requirements are limited to quarterly financials. This change permits the Bank of monitor the Debtor’s financial performance more closely.
- The Parties have agreed to reduce the Debtor’s minimum cash on hand requirements, such that the Debtor’s cash shall not be less than (i) \$12,000,000 for a period of five (5) consecutive business days, or (ii) \$10,000,000 at any given time. (Id. at ¶ 7(a)). Currently, the Stipulation forbids the Debtor from having less than \$15 million cash for a period of five (5) consecutive business days or less than \$12 million at any given time. This change allows for greater fluctuations in cash, which is critical in light of certain delays that have occurred in the payment to the Debtor of approximately \$2.3 million in “sole community provider payments” from the State of New Mexico.
- In addition to the replacement liens granted under the Stipulation, the Debtor will grant the Bank additional replacement liens in all non-Hospital real estate located on the Debtor’s main medical campus. (Id. at ¶ 8). The additional replacement liens will secure all of the Debtor’s obligations to the Bank, including prepetition obligations. Under the current Stipulation, the Bank’s replacement liens upon such real estate are limited to diminution.
- The Bank shall be entitled to retain a financial advisor of its choice at the expense of the Debtor to conduct financial and other analysis of the

Debtor and its operations. (Id. at ¶ 9). The Bank will provide notice to the Debtor, the Creditors' Committee, and the U.S. Trustee regarding the terms of compensation of the financial advisor and such parties may file an objection to such terms within ten days of receiving notice. (Id. at 9(a)). If the parties cannot resolve the dispute, the Court may review the reasonableness of the terms. (Id.).

- The Debtor shall pay to the Bank an Extension fee in the amount of \$225,000, which shall be fully earned on the date the Court enters an Order approving this Motion. (Id. at ¶ 11). Of that amount, \$75,000 shall be payable on the Effective Date, an additional \$75,000 shall be payable on May 16, 2012, and the final \$75,000 shall be payable on August 16, 2012. (Id.).
- The Debtor will pay for an appraisal of the Bank's collateral prior to November 15, 2012. (Id. at ¶ 10).

II.

PRELIMINARY STATEMENT

For the bulk of this case, the Debtor has operated under the terms of the Stipulation. The term expires on February 16, 2012. With this in mind, the Debtor began negotiating an extension the term of the Stipulation in January of 2012. The Debtor had two principle goals in its negotiations with the Bank, each of which are satisfied by the Extension Agreement. First, the Debtor sought a nine month extension of the term. The Debtor believes that such an extension will resolve all cash collateral issues through the remainder of the case and will permit the Debtor to reorganize without the need for any further extensions.

Second, the Debtor sought additional covenant relief from the Bank. Among other things, for reasons unrelated to the Debtor, the State of New Mexico has delayed paying approximately \$2.3 million in "sole community provider payments" to the Debtor, which has strained the Debtor's cash position. In addition, the patient census at the Debtor's hospital was unusually low from August to November of 2011, which affected the Debtor's revenue. The

new financial covenants set forth in the Extension Agreement will allow the Debtor to function comfortably for the remainder of the case.

In exchange for these accommodations, the Debtor has agreed to provide the Bank with additional adequate protection. First, the Debtor will grant the Bank an additional replacement lien in the real estate and improvements located on the Debtor's main medical campus that were to not part of the Bank's prepetition collateral (i.e., the land and buildings ancillary to the hospital located on the Debtor's main medical campus). Such additional replacement lien will secure all of the Debtor's obligations to the Bank, including any prepetition obligations. The Stipulation currently provides the Bank with a lien on such real estate to secure any diminution in the value of the Bank's prepetition collateral. The Extension Agreement expands such lien to secure the prepetition obligations themselves. Second, the Debtor will agree to pay the reasonable cost of a financial advisor for the Bank. Third, the Debtor will provide additional financial reporting to the Bank. Fourth, the Debtor will pay for an appraisal of the Bank's collateral, and, finally, the Debtor will pay an extension fee of \$225,000.

The Debtor believes that the additional adequate protection provided to the Bank in the Extension Agreement is warranted under the circumstances. Most importantly, the Extension Agreement will keep the Debtor's highly favorable bond financing in place. Without an extension, the trustee of the bonds could draw on the letter of credit, which would accelerate the bonds and result in over a \$1 million of additional financing costs alone. Further, the Bank has agreed to modify the Debtor's financial covenants for the extended term of the Stipulation, and the additional adequate protection is intended to compensate the Bank for the additional risk it will bear as a result. Importantly, the Extension Agreement does not provide the Bank with any additional liens on accounts receivable or cash, which should preserve value for unsecured

creditors in the event the Debtor is unable to reorganize, and, the Extension Agreement does not provide the Bank with any additional control of the Debtor's budget. Accordingly, the Debtor believes that the Stipulation properly balances the interests of the Bank with those of unsecured creditors.

In short, the Extension Agreement, if approved, will allow the Debtor to operate comfortably for the remainder of the case and focus on resolving issues with its personal injury claimants while balancing the interests of all of its constituents. The Extension Agreement should be approved.

III.

BACKGROUND

A. General Background

1. The Case. On August 16, 2011 (the "Petition Date"), the Debtor filed its voluntary petition (the "Petition") for relief under chapter 11 of the Bankruptcy Code, thereby commencing the above-captioned chapter 11 case (the "Chapter 11 Case"). The Debtor continues to manage and operate its business as a debtor in possession pursuant to Bankruptcy Code sections 1107 and 1108. No trustee or examiner has been requested or appointed in the Chapter 11 Case.

2. The Creditors' Committee. On September 1, 2011, the Office of the United States Trustee for Region 20 (the "U.S. Trustee") appointed an official committee of unsecured creditors for the Chapter 11 Case (the "Creditors' Committee").

3. Patient Care Ombudsman. On September 7, 2011, pursuant to section 333 of the Bankruptcy Code, the U.S. Trustee filed a *Motion for Determination that the Debtor is a Health Care Business and Directing the Appointment of a Patient Care Ombudsman* [Docket No. 103].

The U.S. Trustee's motion was granted on September 12, 2011 [Docket No. 124], and, accordingly, the U.S. Trustee appointed a patient care ombudsman on September 13, 2011 [Docket No. 126].

4. Non-Profit Corporation. The Debtor is a New Mexico non-profit corporation qualified to do business pursuant to section 501(c)(3) of the United States Internal Revenue Code as a public charity. Its mission is to provide healthcare services and education to the greater-Otero County community. The Debtor has been fulfilling its mission since 1949. In furtherance of its mission, the Debtor developed and operates the Gerald Champion Regional Medical Center (the "Hospital") in Alamogordo, New Mexico. The Hospital is the only acute care facility within 75 miles driving distance of Alamogordo and over 70% of Otero County residents use the Hospital to satisfy their healthcare needs. In order to operate the Hospital, the Debtor relies on a workforce of over 700 employees, making it the largest non-governmental employer in Otero County.

5. The Lawsuits. Since June of 2010, the Debtor, along with a number of other defendants, has been subject to an onslaught of personal injury lawsuits stemming from a series of procedures performed at the Hospital (the "Lawsuits") between 2006 and 2008. Over fifty individuals who underwent such procedures have filed Lawsuits. Only two physicians, one operating independently and one employed by the Hospital, were involved in some manner with the Lawsuits. Currently, neither of the physicians implicated in the Lawsuits have any affiliation with the Debtor.

6. The Debtor disputes the claims asserted in the Lawsuits, but recognizes that it faces significant uncertainty as well as administrative and financial burdens in defending the Lawsuits. Moreover, the pendency of the Lawsuits has affected the Debtor's ability to raise the

funds necessary to continue to meet the healthcare needs of Otero County and its surrounding communities. Accordingly, the Debtor voluntarily filed its Petition with the objective of resolving the Lawsuits in a fair, reasonable, and efficient manner while ensuring its long-term stability for the benefit of the community it serves.

B. Background Facts Specific to the Motion

i. The Financing Documents

7. On or about November 1, 2007, the City of Alamogordo, New Mexico (the “City”) and The Bank of New York Trust Company, National Association, as trustee (the “Indenture Trustee”), entered into that certain Trust Indenture (the “Trust Indenture”) to issue certain bonds to finance certain improvements and the operations of the Debtor.

8. On or about that same date, pursuant to the Trust Indenture, the City issued (i) \$30,465,000 in aggregate principal amount of its Hospital Improvement and Refunding Revenue Bonds (Gerald Champion Regional Medical Center Project) Series 2007A (the “Series 2007A Bonds”) and (ii) \$8,020,000 in aggregate principal amount of its Taxable Hospital Improvement and Refunding Revenue Bonds (Gerald Champion Regional Medical Center Project) Series 2007B (the “Series 2007B Bonds,” collectively with the Series 2007A Bonds, the “Bonds”). The Series 2007A Bonds mature on July 1, 2037. The Series 2007B Bonds mature on July 1, 2018. Both the 2007A Bonds and 2007B Bonds are payable in yearly installments through maturity. The aggregate balance on the Bonds as of June 30, 2011 was \$36,955,000.

9. In order to fund the payments due in respect of the Bonds, on or about November 1, 2007, the City and the Debtor entered into that certain Lease Agreement (the “Lease Agreement”) whereby the City leased the hospital, related health-care facilities, and equipment (collectively, the “Facilities”) to the Debtor. The payments pursuant to the Lease Agreement

(the “Lease Payments”) are in such amounts as are necessary to provide funds to the City to pay the principal and purchase or redemption price and interest on the Bonds when due.

10. On November 1, 2007, the City and the Debtor entered into that certain Tax Regulatory Agreement (the “Tax Regulatory Agreement”) in order to ensure compliance with the Internal Revenue Code and Regulations thereunder (the “IRC”) as to the Bonds so that interest on the Series 2007A Bonds is and will remain excludible from gross income under the IRC.

11. On or about that same day, the Debtor and the Bank entered into that certain Letter of Credit and Reimbursement Agreement (the “Reimbursement Agreement”), whereby the Debtor agreed to reimburse the Bank for any draws that may occur under that certain letter of credit dated November 15, 2007 (the “Letter of Credit”).³

12. Immediately prior to the closing of the transactions contemplated by the Trust Indenture, the City transferred all of its right, title and interest in and to the Facilities to the Debtor (which included fee simple title to the real property upon which the Facilities are located) and the Debtor executed that certain Mortgage and Assignment of Rents and Leases, Security Agreement and Financing Statement (the “Mortgage Agreement”) in favor of the Bank to secure the Debtor’s obligations under the Reimbursement Agreement. The Mortgage Agreement was recorded on November 15, 2007 with the County Clerk of Otero County, New Mexico.

13. Pursuant to the Mortgage Agreement, the Debtor granted the Bank a security interest and lien in and upon the collateral described therein (the “Mortgage Collateral”), which includes, among other things, the real property upon which the Facilities are situated and any proceeds thereof, any improvements on such real property, including all buildings and other

³ The procedure for funding bond payments under the Lease is set forth in the Reimbursement Agreement. In short, on the first day of each month, the Debtor makes a payment equal to monthly interest plus one-twelfth of the yearly amortization due in respect of the bonds for the applicable year into a sinking fund. Thereafter, the Bank makes payments in respect of the Bonds when due through the Letter of Credit and deducts the amounts paid to bond holders from the sinking fund.

structures, and all proceeds and rents relating to or arising out of such real property.

Immediately after the Debtor executed the Mortgage Agreement, the Facilities were transferred to the City subject to the security interests and liens granted under the Mortgage Agreement, the Bonds were issued, and the Facilities were leased back to the Debtor pursuant to the Lease Agreement.

14. On October 1, 2007, the Debtor also executed a Security Agreement (the “Security Agreement”) in favor of the Bank to secure further the Debtor’s obligations under the Reimbursement Agreement. The Security Agreement grants the Bank a security interest in and upon the collateral described therein (the “Security Agreement Collateral,” and, together with the Mortgage Collateral, the “Prepetition Collateral”), including all machinery, furniture, fixtures and other equipment owned by the Debtor. A UCC-1 Financing Statement covering the Security Agreement Collateral was filed with the Secretary of State of New Mexico on November 14, 2007.

15. The Tax Regulatory Agreement, Letter of Credit, Reimbursement Agreement, Mortgage Agreement and Security Agreement are referred to herein as the “Prepetition Financing Documents,” and the obligations of the Debtor under or in connection with the Prepetition Financing Documents are referred to herein as the “Prepetition Obligations”.

ii. The Stipulation

16. Under the Prepetition Financing Documents and the Trust Indenture, certain “Events of Default” may trigger acceleration of the Bonds or permit the Bank to cause the Indenture Trustee to redeem the Bonds through a draw on the Letter of Credit. Such Events of Default include the filing of a voluntary petition under the Bankruptcy Code by the Debtor and a breach of the financial covenants set forth in the Reimbursement Agreement. For example, Section 5.01(q) of the Reimbursement Agreement makes it an “Event of Default” for the Debtor

to fail to maintain unrestricted cash and investments in an amount equal to or greater than 110 days “cash on hand” measured on the last day of each fiscal quarter, which is calculated by determining the amount needed to fund operating expenses (including interest) minus depreciation and amortization for a 110 day period.

17. Upon determining that a chapter 11 proceeding would provide it with the best opportunity to resolve the disputes set forth in the Lawsuits in a reasonable manner, the Debtor became concerned that a filing would cause the Bank to force the redemption of the Bonds prematurely. The Debtor was also concerned that it likely would be unable to comply with the “cash on hand” requirements set forth in Section 5.01(q) of the Reimbursement Agreement and would need covenant relief to avoid a default. As a result, prior to the Petition Date, the Debtor contacted the Bank in an effort to resolve these issues.

18. After significant arm’s-length and good-faith negotiations, on or about August 16, 2011, the Debtor and the Bank tentatively agreed to the terms of the Stipulation. The Stipulation granted the Bank (a) Replacement Liens upon the personal property postpetition assets of the Debtor of the same type as the Bank’s prepetition collateral (i.e., equipment and the proceeds thereof) to secure all of the Debtor’s obligations to the Bank, including any prepetition obligations; (b) the Replacement Liens on the Debtor’s cash, cash equivalents, and investments in an amount not to exceed 55 days’ “cash on hand” plus the amount of any postpetition diminution in the Debtor’s cash and (c) Replacement Liens on all of the Debtor’s other property to secure any diminution in the value of the Bank’s prepetition collateral. The Stipulation also authorized the Debtor to use cash collateral in its reasonable business judgment through February 16, 2012, and required that the Bank forbear from causing the Indenture Trustee to redeem the Bonds so long as Stipulation was in place. Additionally, the Stipulation granted the Debtor

covenant relief. More specifically, the “cash on hand” requirement in the Reimbursement Agreement was reduced from 110 days to 75 days. Finally, the Debtor also agreed to pay the Bank a \$225,000 stipulation fee.

19. On August 17, 2011, the Court entered an order approving the Stipulation on an interim basis [Docket No. 45]. Thereafter, on September 12, 2011, the Court entered a final order approving the Stipulation (with certain modifications) [Docket No. 120].

iii. The Extension Agreement

20. The Stipulation terminates by its own terms on February 16, 2012. Unless the term of the Stipulation is extended, the Prepetition Financing Documents and the Trust Indenture may trigger acceleration of the Bonds or permit the Bank to cause the Indenture Trustee to redeem the Bonds through a draw on the Letter of Credit. If the Indenture Trustee redeems the Bonds, the Debtor will be required to reimburse the entire amount outstanding on the Bonds. Moreover, the Debtor’s borrowing costs would increase by over \$1 million per year.

21. To prevent these potentially disastrous results, the Debtor and the Bank have negotiated an extension of the Stipulation. The material terms of such extension are as follows:⁴

- The term of the Stipulation shall be extended to the earliest to occur of (i) November 15, 2012, or (ii) the occurrence of a Termination Event. (Extension Agreement, ¶ 3).
- The cash on hand covenant set forth in the Stipulation is reduced from 75 days cash on hand in the Stipulation to 55 days of cash on hand. (*Id.* at ¶ 4(a)). In short, the Debtor must maintain at least 55 days cash on hand on the last day of each fiscal quarter in order to prevent a default under the terms of the Reimbursement Agreement with the Bank.
- The debt service coverage ratio set forth in the Reimbursement Agreement shall be 1.25:1.0, for (i) for the three-month period ending March 31, 2012, (ii) the six month-period ending June 30, 2012, and (iii) the nine-

⁴ This summary is qualified in its entirety by the Extension Agreement and is intended solely to give the Bankruptcy Court and interested parties a brief overview of the significant terms of the Extension Agreement. Interested parties should refer to the Extension Agreement for the complete and detailed terms thereof.

month ending September 30, 2012. (Id. at ¶ 4(b)). The debt service coverage ratio shall not include income or expenses for Alamogordo Surgery Ventures and all reorganization expenses shall be excluded from the debt service coverage ratio calculation. (Id.). Currently, under the Reimbursement Agreement, the debt service coverage ratio is calculated on twelve month rolling basis. Accordingly, this modification allows the Debtor to exclude last year's results from the calculation, a significant benefit for the Debtor.

- The Debtor shall provide the Bank with certain financial and operational reporting materials including, but not limited to, (i) weekly cash-flow reports; (ii) monthly financial statements, among other monthly reporting requirements; and (iii) quarterly financial packages, including a summary of capital expenditures and management's discussion and analysis of financial results. (Id. at ¶ 6). Currently, the Debtor's reporting requirements are limited to quarterly financials. This change permits the Bank of monitor the Debtor's financial performance more closely.
- The Parties have agreed to reduce the Debtor's minimum cash on hand requirements, such that the Debtor's cash shall not be less than (i) \$12,000,000 for a period of five (5) consecutive business days, or (ii) \$10,000,000 at any given time. (Id. at ¶ 7(a)). Currently, the Stipulation forbids the Debtor from having less than \$15 million cash for a period of five (5) consecutive business days or less than \$12 million at any given time. This change allows for greater fluctuations in cash, which is critical in light of certain delays that have occurred in the payment to the Debtor of approximately \$2.3 million in "sole community provider payments" from the State of New Mexico.
- In addition to the replacement liens granted under the Stipulation, the Debtor will grant the Bank additional replacement liens in all non-Hospital real estate located on the Debtor's main medical campus. (Id. at ¶ 8). The additional replacement liens will secure all of the Debtor's obligations to the Bank, including prepetition obligations. Under the current Stipulation, the Bank's replacement liens upon such real estate are limited to diminution.
- The Bank shall be entitled to retain a financial advisor of its choice at the expense of the Debtor to conduct financial and other analysis of the Debtor and its operations. (Id. at ¶ 9). The Bank will provide notice to the Debtor, the Creditors' Committee, and the U.S. Trustee regarding the terms of compensation of the financial advisor and such parties may file an objection to such terms within ten days of receiving notice. (Id. at 9(a)). If the parties cannot resolve the dispute, the Court may review the reasonableness of the terms. (Id.).

- The Debtor shall pay to the Bank an Extension fee in the amount of \$225,000, which shall be fully earned on the date the Court enters an Order approving this Motion. (Id. at ¶ 11). Of that amount, \$75,000 shall be payable on the Effective Date, an additional \$75,000 shall be payable on May 16, 2012, and the final \$75,000 shall be payable on August 16, 2012. (Id.).
- The Debtor will pay for an appraisal of the Bank's collateral prior to November 15, 2012. (Id. at ¶ 10).

IV.

JURISDICTION

22. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, and Miscellaneous Order No. 84-0324 filed in the United States District Court for the District of New Mexico on March 19, 1992. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

V.

RELIEF REQUESTED

23. By this Motion and pursuant to sections 105, 361, and 363 of the Bankruptcy Code, Bankruptcy Rule 4001(d), and Local Rule 4001-2 the Debtor seeks the entry of an order approving the Extension Agreement and granting the Bank the adequate protection set forth therein.

VI.

ARGUMENT

24. By this Motion, the Debtor requests that the Court approve the Extension Agreement. The Extension Agreement has two main purposes. First, the Extension Agreement requires the Bank to forbear from causing the Indenture Trustee to draw on the Letter of Credit, which will keep in place the Debtor's highly favorable Bond financing for the next nine months.

Second, the Extension Agreement will authorize the Debtor to continue to use cash collateral through November 15, 2012, which the Debtor believes will be sufficient time to conclude its reorganization.

25. As previously discussed, the Bonds are fully backed by the Letter of Credit, which allows interest rates to be set based on the Bank's credit, not the Debtor's. As a result, the interest rates on the Bonds fluctuate between approximately 0.24% per annum for the approximately \$30.5 million in outstanding "Series 2007A Bonds" and approximately 0.45% per annum for the approximately \$5.8 million in "Series 2007B Bonds."⁵ These rates are highly favorable to the Debtor. On the other hand, if the Letter of Credit is drawn, in addition to the fixing of the Bank's contingent claim and acceleration of the Bonds, the interest rates under the Reimbursement Agreement would be equal to one month LIBOR plus 4%, or approximately 4.265% based on the one month LIBOR rate quoted in the Wall Street Journal on February 1, 2012. This represents increased financing costs of over \$1 million per annum and would be costly for the Debtor to absorb. The Extension Agreement prevents this result.

26. Importantly, the Bank is willing to forbear from causing the Indenture Trustee to draw on the Letter of Credit while *also* providing the Debtor with additional covenant relief. Indeed, the Extension Agreement further reduces the "Days' Cash on Hand" requirement from 75 days to 55 days, and reduces the minimum cash that the Debtor is required to maintain. Under the current Stipulation, the Debtor's cash on hand cannot fall below \$15 million for five consecutive business days and can never fall below \$10 million. Under the Extension Agreement, the \$15 million requirement will be reduced to \$12 million, and the \$12 million requirement will be reduced to \$10 million.

⁵ Pursuant to the Letter of Credit, there is an additional letter of credit fee which adds to the cost of funds borrowed in connection with the Bonds approximately 0.4% per annum of the maximum amounts owing thereunder.

27. The Extension Agreement will also modify the debt service coverage ratio set forth in the Reimbursement Agreement. Currently, the Debtor must maintain a 1:25 to 1 coverage ratio. The ratio is measured as of the end of each fiscal quarter and is based on the results of the previous twelve months of operations. Under the Extension Agreement, the debt service coverage ratio will remain the same, however, reorganization expenses will be excluded from the calculations and the debt service coverage ratio will be based solely on the Debtor's post-January 1, 2012 results.

28. The additional covenant relief has become necessary for two principle reasons. As an initial matter, the Debtor's cash position has been adversely affected by two unexpected events. First, the State of New Mexico has delayed paying \$2.3 million of "sole community provider payments" for reasons unrelated to the Debtor. The Debtor has been assured that those payments will be paid this year in four roughly equal quarterly installments, however, the Debtor may be unable to comply with the current cash covenants set forth in the Stipulation if there are any further delays in receiving such payments. Second, the Debtor's cash position has been reduced due to an unusually low patient census from August 2011 through November 2011. The patient census has now improved and the Debtor expects it to remain at more normal levels; however, the Debtor will be unable to build cash if the patient census falls once again. The modified cash covenants allow the Debtor to operate without violating the financial covenants regardless of when it ultimately receives the sole community provider payments or if the patient census once again unexpectedly declines.

29. Further, the delay in receiving sole community provider payments, the low patient census and reorganization costs have caused the Debtor to operate at a loss during the last two quarters. Calculating the debt service coverage ratio from the beginning of this year and without

regard to reorganization expenses (as provided in the Extension Agreement) will allow the Debtor to meet the debt service coverage ratio on a going forward basis.

30. In exchange for these accommodations, the Debtor has agreed to provide the Bank with additional adequate protection. First, the Bank will receive additional replacement liens on any real property located at its main medical practice that is not already prepetition collateral (the “Hospital Campus Real Property Collateral”), mainly the new patient tower and various ancillary medical and administrative buildings located on the Debtor’s main campus. The additional liens will secure all of the Debtor’s obligations to the Bank, including prepetition obligations. Under the current Stipulation, the Bank’s replacement liens on such collateral are limited to the amount of postpetition diminution in the Bank’s prepetition collateral. Second, the Debtor will agree to provide the Bank with additional financial reports, including weekly cash flow reports and monthly and quarterly financial statements. Third, the Bank will be entitled to retain a financial advisor on reasonable terms at the Debtor’s expense. Fourth, the Bank will be entitled to conduct an appraisal of its collateral at the Debtor’s expense, and, finally, the Debtor will pay the Bank a \$225,000 extension fee, payable in three quarterly installments of \$75,000.

31. The concept of the “adequate protection” of a secured creditor’s interest in collateral, as required under Section 363 of the Bankruptcy Code, was derived by Congress from the constitutional protection of property interests granted by the Fifth Amendment, and is intended to “insure that the secured creditor receives the value for which he bargained.” S. Rep. No. 95-989, at 53 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5839; accord H.R. Rep. No. 95-595, at 339 (1978), reprinted in 1978 U.S.C.C.A.N. 5963, 6295; see also *In re O.P. Held, Inc.*, 74 B.R. 777, 782-84 (Bankr. N.D.N.Y. 1987) (holding that secured lender must be assured of the maintenance and recoverability of its lien, and that debtor must prove that secured creditor will

realize the value of its bargain); *In re Certified Corp.*, 51 B.R. 768, 771 (Bankr. D. Haw. 1985) (holding that secured creditors should not be deprived of the benefit of their bargain).

32. Examples of adequate protection include, but are not limited to: periodic cash payments (11 U.S.C. § 361(1)), additional or replacement liens (11 U.S.C. § 361(2)), or such other relief as will provide the “indubitable equivalent” of the secured creditor’s interest in the collateral (11 U.S.C. § 361(3)). The law is clear that Section 361 of the Bankruptcy Code does not limit adequate protection to the enumerated examples, and it is well accepted that the Bankruptcy Code provides courts with authority to fashion adequate protection as they deem appropriate under the circumstances. *See, e.g., In re O.P. Held, Inc.*, 74 B.R. at 782 (noting that Section 361 “has been consistently interpreted as not containing an exclusive list” of forms of adequate protection); *Lend Lease v. Briggs Transp. Co. (In re Briggs Transp. Co.)*, 780 F.2d 1339, 1344 (8th Cir. 1985) (“[I]t is generally acknowledged that, as demonstrated by the non-exclusive examples of Section 361, adequate protection is the protection of a secured creditor’s ‘interest in property’ from any decrease in ‘value’ [sic] attributable to the stay. It also is generally accepted that the concept requires the debtor to propose some form of relief that will preserve a secured creditor’s interest in the collateral.” (internal citations omitted)).

33. Here, the adequate protection provided to the Bank under the Extension Agreement is reasonable and should be approved. Most importantly, the Extension Agreement permits the Debtor to keep the Bonds in place and to pay interest based on the Bank’s credit, a significant benefit to the Debtor. Further, the Extension Agreement permits the Debtor to use the Bank’s cash collateral by consent and continue normal operations. In the alternative, the Debtor would be saddled with significantly higher financing costs and would have to litigate its ability to use cash collateral. Neither circumstance benefits the estate.

34. Moreover, the additional adequate protection provided to the Bank is reasonable under the circumstances. The Bank has agreed to keep the Letter of Credit in place while also modifying the Debtor's financial covenants in a manner that is advantageous to the Debtor. The additional adequate protection provided by the Extension Agreement compensates the Bank for such additional risk and is reasonable in light of the fact that the Debtor will continue to use the Bank's credit for the remainder of the case to set the interest rates on the Bonds.

35. In addition, the Bank already has a replacement lien in the Hospital Campus Real Property Collateral under the Stipulation to protect it from any diminution in the value of its prepetition collateral, and the Debtor believes that the Bank was fully secured on the Petition Date. Accordingly, the Bank likely must be repaid in full in order to satisfy the Bank's current replacement liens whether or not the Extension Agreement is approved. Further, the remainder of the adequate protection being provided to the Bank (i.e., additional reporting, the cost of a financial advisor and an appraisal, and the Extension Fee) is customary and was negotiated on an arm's length basis. With respect to the Bank's financial advisor, the Debtor expects to negotiate an extension of the Letter of Credit (and perhaps other exit financing) with the Bank and the hiring of a financial advisor and appraiser will be critical to that effort. Moreover, the Extension Agreement permits the Debtor, the Creditors' Committee and the U.S. Trustee to object to the financial terms of the financial advisor's retention if any such party believes they are unreasonable.

36. Importantly, the Extension Agreement continues to contain no defaults based on the Debtor's failure to meet its proposed budget and contains no additional replacement liens on accounts receivable or cash. Accordingly, the Debtor will retain considerable operational flexibility throughout the extended term of the Stipulation and has preserved significant assets

for the benefit of unsecured creditors. Indeed, the Debtor's accounts receivable as of December 31, 2011 totaled approximately \$19 million net of bad debt reserves, an amount close to five times the Debtor's trade debt.

37. In short, the Extension Agreement keeps the Bond financing in place, authorizes the Debtor to use cash collateral for a nine-month period and properly balances the interests of the Bank with those of the Debtor and unsecured creditors. The Extension Agreement should be approved.

VII.

CONCLUSION

WHEREFORE, the Debtor respectfully requests that the Court grant (a) the relief requested herein; and (b) such other relief as the Court deems just and proper.

Dated: February 1, 2012
Albuquerque, New Mexico

WHITE & CASE LLP

By: /s/ Craig H. Averch
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Roberto J. Kampfner
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—and—

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Attorneys for the Debtor in Possession

NOTICE

I directed Kurtzman Carson Consultants LLC, the Debtor’s Noticing, Claims and Balloting Agent to serve the Notice of Motion and the Motion via overnight mail in accordance with NM LBR 9013-1.1(c)(1) setting forth (a) the time for filing and objection hereto; (b) enclosing the Motion; and (c) the statement that “IF NO OBJECTIONS ARE TIMELY FILED TO THE MOTION, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR A HEARING,” on the following parties, as well as the Master Service List:

/s/ Craig H. Averch
Craig H. Averch

Robert P. Harris Brian Sirow Quarles & Brady LLP One Renaissance Square Two North Central Avenue Phoenix, Arizona 85004-2391	
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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO**

In re

OTERO COUNTY HOSPITAL
ASSOCIATION, INC. (d/b/a Gerald
Champion Regional Medical Center, d/b/a
Mountain View Catering),

Debtor.

No. 11-11-13686-JA

Re: Docket No. ____

[PROPOSED] ORDER APPROVING DEBTOR’S MOTION PURSUANT TO 11 U.S.C. §§ 105, 361, AND 363, RULE 4001(D) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE, AND LOCAL RULE 4001-2 FOR ENTRY OF AN ORDER (I) APPROVING AGREEMENT TO EXTEND STIPULATION BY AND BETWEEN THE DEBTOR AND BANK OF AMERICA, N.A PROVIDING ADEQUATE PROTECTION AND AUTHORIZING THE USE OF CASH COLLATERAL; (II) APPROVING PAYMENT OF EXTENSION FEE; AND (III) GRANTING RELATED RELIEF

Upon the motion (the “Motion”)¹ of the Otero County Hospital Association, Inc. d/b/a Gerald Champion Regional Medical Center, d/b/a Mountain View Catering (the “Debtor”), pursuant to 11 U.S.C. §§ 105, 361, and 363, Rule 4001(d) of the Federal Rules of Bankruptcy Procedure, and Local Rule 4001-2 of the Local Rules of the United States Bankruptcy Court, District of New Mexico for entry of an order approving the *Agreement to Extend Stipulation by and between the Debtor and Bank of America N.A.* (the “Extension Agreement”); and there appearing that the objection deadline expired on February 14, 2012 and no objections to the Motion were filed; and it appearing that the Court has jurisdiction over this matter; and it appearing that notice of the Motion is sufficient under the circumstances as notice was served on February 1, 2012 to all the parties on the Master Service List and on the Bank’s counsel, and that no other or further notice need be provided; and it further appearing that the relief requested in the Motion is in the best interests of the Debtor, its estate and all parties in interest; and upon all

¹ Where the context requires, each capitalized term used but not otherwise defined shall have the meaning ascribed to such term in the Motion.

of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor; it is hereby

ORDERED that the Motion is granted; and it is further

ORDERED that the Extension Agreement, attached hereto as Exhibit A, is approved in all respects and is fully enforceable by the Bank and the Debtor according to its terms; and it is further

ORDERED that that Replacement Liens granted to the Bank upon the Hospital Campus Real Property Collateral are valid, perfected, fully enforceable and non-avoidable as and to the extent provided for in the Extension Agreement; and it is further

ORDERED that this Court shall, and hereby does, retain jurisdiction with respect to all matters arising from or related to the implementation and interpretation of this Order.

United States Bankruptcy Judge

Entered on Docket: [DATE], 2012

Proposed Order Submitted by:

Craig H. Averch
(admitted *pro hac vice*)
Roberto J. Kampfner
(admitted *pro hac vice*)
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-- and --

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Attorneys for the Debtor in Possession

Approved as to form by:

/s/ Approved via email on [DATE]_____

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/s/ Approved via email on [DATE]_____

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A copy of this Order will be served by Kurtzman Carson Consultants LLC, the Debtor's Noticing, Claims and Balloting Agent, on the Master Service List per the Order approving the Debtor's *Motion Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9007 Seeking Authority to Implement Certain Notice and Hearing Procedures* [Docket No. 148].

EXHIBIT A

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO**

In re

OTERO COUNTY HOSPITAL
ASSOCIATION, INC. (d/b/a Gerald
Champion Regional Medical Center, d/b/a
Mountain View Catering),

Debtor.

No. 11-11-13686-JA

**AGREEMENT TO EXTEND STIPULATION BY AND BETWEEN THE DEBTOR AND
BANK OF AMERICA, N.A. PROVIDING ADEQUATE PROTECTION AND
AUTHORIZING THE USE OF CASH COLLATERAL**

This Agreement to Extend Stipulation By and Between the Debtor and Bank of America, N.A. Providing Adequate Protection and Authorizing the Use of Cash Collateral (the “Extension Agreement”) is made as of February 1, 2012 by and between the OTERO COUNTY HOSPITAL ASSOCIATION, INC. d/b/a Gerald Champion Regional Medical Center, d/b/a Mountain View Catering (the “Debtor”) and BANK OF AMERICA, N.A. (the “Bank,” and collectively with the Debtor, the “Parties”).

RECITALS

WHEREAS, on August 16, 2011 (the “Petition Date”), the Debtor filed a voluntary petition (the “Petition”) under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), thereby commencing the above-captioned bankruptcy case (the “Bankruptcy Case”); and

WHEREAS, on August 16, 2011, the Debtor and the Bank entered into that certain Stipulation By and Between the Debtor and Bank of America, N.A. Providing Adequate Protection and Authorizing the Use of Cash Collateral (as approved by the Court, the “Stipulation”); and

WHEREAS, the above-captioned court (the “Bankruptcy Court” or Court”) entered an order approving the Stipulation on an interim basis on August 17, 2011 [Docket No. 45] (the “Interim Order”); and

WHEREAS, the Court entered an order approving the Stipulation on a final basis (with certain modifications) on September 12, 2011 [Docket No. 130] (the “Final Order” and, collectively with the Interim Order, the “Approval Orders”); and

WHEREAS, among other things, the Stipulation authorizes the Debtor to use cash collateral subject to the terms of the Stipulation and provides the Bank with adequate protection in respect of its secured claims against the Debtor; and

WHEREAS, the Stipulation is critical to the Debtor’s reorganization efforts because it allows the Debtor to use its cash resources to fund its continuing operations and to maintain the Debtor’s highly favorable bond financing facility; and

WHEREAS, the Term of the Stipulation expires on February 16, 2012; and

WHEREAS, the Debtor has requested that the Bank extend the Term of the Stipulation through November 15, 2012; and

WHEREAS, as part of the extension request, the Debtor has also requested that the Bank provide additional accommodations to the Debtor in order to allow the Debtor to maintain continued operations; and

WHEREAS, the Bank has agreed to extend the Term of the Stipulation and provide the additional accommodations requested by the Debtor on the terms and conditions set forth herein.

NOW THEREFORE, for valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

1. Defined Terms. Capitalized terms used herein, but not defined herein, shall have the meaning ascribed to such terms in the Stipulation.
2. Bank’s Rights Unaffected. All of the Bank’s Prepetition Liens, Replacement Liens, 507(b) Claim, and all other rights and remedies under the Stipulation and the Approval Orders (or otherwise) are fully preserved and are not limited or affected by this Extension Agreement.
3. Extension Of Term Of Stipulation. The Term of the Stipulation shall be extended from February 16, 2012 and shall terminate on the earliest to occur of: (a) November 15, 2012 or

(b) the occurrence of a Termination Event (the “Extended Term”). The Bank shall have no obligation to extend the Term of the Stipulation beyond the Extended Term, and the Bank shall be entitled to withhold its consent to any extension request in its sole discretion and for any reason. For purposes of this Extension Agreement, references in the Stipulation to the “Term” shall include the Extended Term hereunder.

4. Additional Accommodations By The Bank During The Extended Term. Subject to the terms and conditions of the Stipulation, the Approval Orders, and this Extension Agreement (as approved by the Court through the Extension Order (defined below)), during the Extended Term and in addition to the agreements by the Bank stated in paragraph 7 of the Stipulation:

(a) The Bank will forbear from asserting an Event Of Default under Article VI of the Reimbursement Agreement arising solely from the Debtor's failure to maintain 130 Days' Cash on Hand as provided and defined in Section 5.01(q) of the Reimbursement Agreement so long as the Debtor maintains at least 55 Days' Cash on Hand (within the meaning of Section 5.01(q) of the Reimbursement Agreement). The Bank will continue to be entitled to payment of any fees provided under Section 5.01(q) of the Reimbursement Agreement or otherwise if the Debtor does not maintain 130 Days' Cash on Hand (as defined in Section 5.01(q) of the Reimbursement Agreement). Without limiting any other rights that the Bank may have under the Prepetition Financing Documents, the Stipulation, the Approval Orders or the Extension Agreement (as approved by the Court through the Extension Order), after the Extended Term expires the Bank shall no longer be obligated to forbear from asserting an Event of Default under the Reimbursement Agreement arising from the Debtor's failure to comply with Section 5.01(q) of the Reimbursement Agreement.

(b) The Bank will forbear from asserting an Event of Default under Article VI of the Reimbursement Agreement arising solely from the Debtor's failure to meet the Debt Service Coverage Ratio as provided and defined in Section 5.01(p) of the Reimbursement Agreement so long as the Debtor maintains a Debt Service Coverage Ratio of at least 1.25:1.0

for the following periods: (i) calculated as of March 31, 2012, for the prior three month period ending that date; (ii) calculated as of June 30, 2012, for the prior six month period ending that date, and (iii) calculated as of September 30, 2012, for the prior nine month period ending that date. For purposes of this Section, the Debt Service Coverage Ratio will be calculated as provided in Section 5.01(p) of the Reimbursement Agreement, provided, however, that the calculation will not include income or expenses for Alamogordo Surgery Ventures (ASV), and thus will be based on the “Combined” income and expenses shown in the Debtor's financial statements, and “Reorganization Expenses” will be excluded for purposes of this calculation. The Bank will continue to be entitled to payment of any fees provided under the Reimbursement Agreement if the Debtor does not meet the Debt Service Coverage Ratio as stated in Section 5.01(p) of the Reimbursement Agreement. Without limiting any other rights that the Bank may have under the Prepetition Financing Documents, the Stipulation, the Approval Orders, or the Extension Agreement (as approved by the Court through the Extension Order), after the Extended Term expires the Bank shall no longer be obligated to forbear from asserting an Event of Default under the Reimbursement Agreement arising from the Debtor's failure to comply with Section 5.01(p) of the Reimbursement Agreement.

5. Budget For Extended Term. The Budget attached hereto as **Exhibit A** shall be the Budget that is applicable to the Extended Term, including for purposes of, and under the terms and conditions stated in, paragraph 4 of the Stipulation.

6. Reporting Package. During the Extended Term, and in addition to the requirements of paragraph 3(c) of the Stipulation and the Prepetition Financing Documents, the Debtor shall deliver to the Bank the following financial and operational reporting materials (each, a “Reporting Package”), in form, content, and detail acceptable to the Bank: (i) on or before each Thursday during the Extended Period, a cash flow report for the prior week, including a comparison with the Budget for such week; (ii) on or before the 25th day of each month, financial statements for the prior month, including (among other things) a consolidating statement of operations and changes in net assets, a hospital financial summary, hospital

statistics, and a hospital financial indicators report (all in the same form as provided to the Bank previously); and (iii) on or before the 45th day of the month following the end of each calendar quarter, a financial package consistent with the financial package provided to the Bank with respect to the quarter ending 3/31/2011, including, without limitation, a summary of capital expenditures, management's discussion and analysis of financial results, and a compliance certificate regarding financial statements and information substantially in the form submitted by the Debtor previously. Further, the Debtor will provide representatives, agents and/or employees of the Bank (including, but not limited to, the Financial Advisor described below) reasonable access to the Debtor's premises and records, and will otherwise cooperate with and provide to such persons all such non-privileged information and information not subject to a binding confidentiality agreement as they may reasonably request.

7. Modification Of Termination Events During Extended Term. For purposes of the Extended Term, the Termination Events stated in paragraph 12 of the Stipulation shall be modified as follows:

(a) The Termination Event specified in paragraph 12(d) of the Stipulation shall be modified to provide that a Termination Event shall occur if during the Extended Term the value of the Liquidity Collateral is less than (i) \$12,000,000 for a period of five (5) consecutive business days, or (ii) \$10,000,000 at any given time.

(b) Paragraph 12 of the Stipulation shall be modified to include the following additional Termination Events:

(i) the Debtor shall fail to pay any portion of the Extension Fee when due and such failure shall continue for three (3) business days;

(ii) the Debtor shall fail to timely deliver any Reporting Package to the Bank and such failure is not cured within five (5) business days after the due date for the Reporting Package; and

(iii) an Extension Order approving this Extension Agreement on a final basis shall not have been entered by the Court on or before February 23, 2012 (or such later date acceptable to the Bank, in its sole discretion).

(e) All other Termination Events stated in paragraph 12 of the Stipulation shall remain in full force and effect during the Extended Term. The Extension Order(s) approving this Extension Agreement shall be included in the definition "Stipulation Approval Order" for purposes of the Extended Term.

8. Additional Replacement Lien. The Replacement Liens granted to the Bank pursuant to the Stipulation and the Approval Orders shall remain in full force and effect. In addition, the Bank shall be granted additional Replacement Liens in the "Hospital Campus Real Property" defined below. The "Hospital Campus Real Property" shall mean all of the real property which comprises the Debtor's main hospital campus that is not Mortgage Collateral, and includes, without limitation, all real property (other than the Mortgage Collateral) included in REPLAT G, LOMAS DEL SOL ADDITION 1, ALAMOGORDO, OTERO COUNTY, NEW MEXICO, a copy of which Replat is attached hereto as **Exhibit B**, and all improvements on such real property, including all buildings and other structures, and all accounts, rents, and products relating to or arising out of such real property and/or its operations, and all proceeds thereof. In the interest of clarity, the Parties acknowledge and agree that the term "Hospital Campus Real Property" does not include any accounts receivable or cash generated by the Debtor's operations. With respect to the additional Replacement Lien in the Hospital Campus Real Property:

(a) Notwithstanding anything in section 552 of the Bankruptcy Code to the contrary, and in addition to (and without limiting in any way) the Prepetition Liens or other Replacement Liens held by the Bank, the Bank shall have and is hereby granted valid and perfected security interests and liens in the Hospital Campus Real Property as security for the repayment of the full amount of the Prepetition Obligations. (For avoidance of doubt, the Replacement Lien in the Hospital Campus Real Property will not be limited in amount by paragraph 2(a)(vii) of the Stipulation.)

(b) The Replacement Lien in the Hospital Campus Real Property shall be junior and subject to (i) any valid, enforceable and non-avoidable liens or security interests, if any, in such property existing as of the Petition Date, and (ii) any valid and enforceable real property leases, if any, existing as of the Petition Date.

(c) The Replacement Lien in the Hospital Campus Real Property will be in addition to, and will not in any way limit, the Prepetition Liens (including proceeds therefrom) or the other Replacement Liens granted to the Bank under the Stipulation and the Approval Orders.

(d) The Replacement Lien in the Hospital Campus Real Property shall be effective, perfected, and continuing immediately upon the date of the entry of the Extension Order approving this Extension Agreement, and without the necessity of the execution, filing, and/or recordation of mortgages, security agreements, patent security agreements, control agreements, trademarks security agreements, pledge agreements, financing statements or any other documents.

(e) The Replacement Lien in the Hospital Campus Real Property shall not be (i) subject or subordinate to (x) any lien or security interest that is avoided and preserved for the benefit of the Debtor and the Debtor's estate under section 551 of the Bankruptcy Code or (y) any liens arising after the Petition Date including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other governmental unit, commission, board or court for any liability of the Debtor, or (ii) subordinated to or made *pari passu* with any other lien or security interest under section 361, 363 or 364 of the Bankruptcy Code or otherwise.

(f) The Bank shall be authorized, but shall not be required, to file or record a form of mortgage(s) and/or other security documents regarding the Replacement Lien in the Hospital Campus Real Property, all as provided in paragraph 6 of the Stipulation, and the Debtor is authorized and directed to execute any such documents if requested by the Bank.

(g) For purposes of this Extension Agreement, the term "Replacements Liens" as defined in the Stipulation will include, without limitation, the additional Replacement Lien in

the Hospital Campus Real Property granted to the Bank in accordance with this Extension Agreement, and the term "Replacement Collateral" as defined in the Stipulation will include, without limitation, the Hospital Campus Real Property.

9. Financial Advisor. The Bank (either directly or through counsel on the Bank's behalf) shall be entitled to retain, as a confidential consulting expert, a financial advisor of its choice to conduct analyses relating to the Debtor (the "Financial Advisor").

(a) The Bank will provide to the Debtor, the Committee and the United States Trustee notice regarding the terms of compensation for the Financial Advisor under the retention agreement between the Bank and the Financial Advisor. If the Debtor, the Committee, or the United States Trustee files an objection regarding the agreed terms of compensation for the Financial Advisor within ten (10) days after the notice from the Bank is served, the Court then may review the reasonableness of the terms for compensation to the Financial Advisor.

(b) In addition to the other amounts owing by the Debtor under the Prepetition Financing Documents, the Stipulation, and the Approval Orders, the Debtor shall reimburse the Bank for all fees and expenses charged by the Financial Advisor. The Bank shall be paid from the Debtor each month the amount of such fees and expenses within ten (10) days of receipt by the Debtor of an invoice for such fees and expenses (which may be redacted to the extent necessary to preserve confidential and privileged information) without the necessity of filing any application with the Bankruptcy Court. The fees and expenses of the Financial Advisor are not subject to the provisions of Bankruptcy Code Sections 327, 328, 329, 330 or 331, and will be paid without further order of the Court, provided, however, that the redacted invoices shall be served on the United States Trustee and the Creditors' Committee and payment to the Bank relating to the fees and expenses of the Financial Advisor shall not be made until five (5) business days after such service. If the United States Trustee, the Debtor, or the Committee files an objection to any fees and costs included in an invoice within ten (10) days after that invoice is served, the Court then may review the reasonableness of the Financial Advisor fees and expenses in dispute.

10. Appraisals. During the Extended Term, the Bank shall be entitled to obtain an appraisal of each of the real estate parcels (and improvements) comprising the Mortgage Collateral and the Hospital Campus Real Property. In addition to the other amounts owing by the Debtor under the Prepetition Financing Documents, the Stipulation, and the Approval Orders, the Debtor shall reimburse the Bank for all fees and expenses charged for these appraisals. The Bank shall be paid from the Debtor the amount of such fees and expenses within ten (10) days of receipt by the Debtor of an invoice for such fees and expenses without the necessity of filing any application with the Bankruptcy Court. The fees and expenses of the appraiser(s) retained by the Bank are not subject to the provisions of Bankruptcy Code Sections 327, 328, 329, 330 or 331, and will be paid without further order of the Court.

11. Extension Fee. The Debtor shall pay to the Bank an extension fee in the amount of \$225,000 (the "Extension Fee"), which shall be fully earned as an administrative expense on the date the Court enters an Extension Order approving this Extension Agreement. The Extension Fee shall be paid to the Bank as follows: (a) \$75,000 shall be payable within five (5) business days after the date an Extension Order is entered; (b) \$75,000 shall be paid to the Bank on or before May 16, 2012; and (c) \$75,000 shall be paid to the Bank on or before August 16, 2012. If a Termination Event occurs, the entire unpaid amount of the Extension Fee shall be fully due and payable to the Bank on the date of the Termination Event.

12. Approval And Effectiveness. The Debtor shall file a motion seeking approval of this Extension Agreement, and requesting that the Court consider final approval of this Extension Agreement on or before February 1, 2012. The Order(s) approving this Extension Agreement (the "Extension Order") shall be in form, content, and detail reasonably acceptable to the Bank. This Extension Agreement will only be effective and binding on the Bank upon entry of the Extension Order. For purposes of this Extension Agreement, references in the Stipulation to the "Stipulation Approval Order" will include, without limitation, the Extension Order.

13. Ratification of Representations and Warranties.

(a) The Debtor hereby ratifies and confirms each representation, warranty and admission contained in Paragraph 1 of the Stipulation, and expressly acknowledges that each such representation, warranty and admission remains true and correct in all respects.

(b) In addition to the foregoing, and without limiting any previous releases given to the Bank, all of which are ratified and confirmed by the Debtor, the Debtor and its estate hereby fully, finally, absolutely, and forever release and discharge the Bank and its present and former directors, shareholders, officers, employees, agents, representatives, attorneys, consultants, fiduciaries, predecessors, successors, assigns, and affiliates, and their separate and respective heirs, personal representatives, attorneys, successors, assigns, and affiliates (collectively, "Released Parties") from any and all Claims (as defined in the Bankruptcy Code), counterclaims, actions, causes of action, debts, damages, demands, liabilities, obligations, suits, judgments, executions, expenses, defenses or setoff rights (i) relating in any way to the Prepetition Financing Documents, the Prepetition Obligations, the Prepetition Collateral, the Lease, the Stipulation, the Approval Orders, or the actions or omissions of the Bank and the other Released Parties in relation thereto, whether arising at law or in equity, including, but not limited to, any recharacterization, subordination, avoidance or claim arising under or pursuant to section 105 or Chapter 5 of the Bankruptcy Code or under any other similar provisions of applicable state or federal law, and (ii) arising from events occurring prior to and including the date of this Extension Agreement.

14. Effective Date. The "Effective Date" of this Extension Agreement shall be the first day upon which each of the following conditions have been met: (a) the Court enters an order, in form and substance reasonably satisfactory to the Bank, approving this Extension Agreement, and (b) the Debtor has paid the first installment of the Extension Fee described in Paragraph 10 above.

15. Continued Effectiveness Of Stipulation And Approval Orders. Except as expressly provided in this Extension Agreement, all terms, covenants, representations,

warranties, admissions and other provisions of the Stipulation and the Approval Orders remain in full force and effect and will apply to this Extension Agreement. (For purposes of this Extension Agreement, references in the Stipulation to the "Stipulation" will include, without limitation, this Extension Agreement.) Except only as expressly stated in this Extension Agreement, nothing in this Extension Agreement will cause, or be deemed, a waiver or modification of any claim, lien, right, power, or remedy of the Bank under the Stipulation and the Approval Orders or otherwise, and all such claims, liens, rights, powers, and remedies of the Bank are hereby reaffirmed and fully preserved.

16. Reservation of Rights. The Debtor acknowledges and agrees that neither the execution nor the delivery by the Bank of this Extension Agreement shall be deemed to create a course of dealing or otherwise obligate the Bank to execute any further amendments or modifications to the Stipulation.

17. Miscellaneous.

(a) The headings of the paragraphs of this Extension Agreement are for convenience of reference only, and do not form a part hereof, and do not in any way modify, interpret, or construe the meaning of the sections themselves or the intentions of the Parties.

(b) The provisions of this Extension Agreement shall be binding upon all parties in interest in this case, including, without limitation, the Bank and the Debtor and their respective successors and assigns (including any chapter 7 or chapter 11 trustee or examiner hereinafter appointed or elected for the Debtor's estate) and shall inure to the benefit of the Bank and the Debtor and any of their respective successors and assigns.

(c) This Extension Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed an original instrument, but all such counterparts together shall constitute one agreement.

(d) No waiver, modification, or amendment of any of the provisions of this Extension Agreement shall be effective unless it is set forth in writing, signed by the parties hereto, and approved by the Court.

(e) Except as expressly provided in this Extension Agreement and the Stipulation, the terms and conditions of the Prepetition Financing Documents shall remain in full force and effect and the Bank shall have all of its rights and remedies thereunder, subject to the provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any other applicable law, and any orders of the Court.

IN WITNESS WHEREOF the Parties have caused this Stipulation to be dully executed as of the date and year first written above.

ACKNOWLEDGED AND AGREED:

OTERO COUNTY HOSPITAL ASSOCIATION, INC.

d/b/a GERALD CHAMPION REGIONAL
MEDICAL CENTER

By: _____

Name:

Title:

BANK OF AMERICA, N.A.

By: _____

Name:

Title:

EXHIBIT A

CONFIDENTIAL FOR DISCUSSION P WORK IN PROGRESS																															
	Q3	Q3	Q3	Q3	Q3	Q3	Q3	Q3	Q3	Q3	Q3	Q3	Q3	Q3	Q3	Q3	Q3	Q3	Q3	Q3	Q3	Q3	Q3	Q3	Q3	Q3					
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26					
	1/27/2012	2/3/2012	2/10/2012	2/17/2012	2/24/2012	3/2/2012	3/9/2012	3/16/2012	3/23/2012	3/30/2012	4/6/2012	4/13/2012	4/20/2012	4/27/2012	5/4/2012	5/11/2012	5/18/2012	5/25/2012	6/1/2012	6/8/2012	6/15/2012	6/22/2012	6/29/2012	7/6/2012	7/13/2012	7/20/2012	52 Wk Total				
	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected				
Beginning Cash Balance - Operating	\$ 11,982,019	\$ 12,566,812	\$ 13,390,514	\$ 12,368,976	\$ 12,213,306	\$ 12,080,241	\$ 11,179,429	\$ 11,626,880	\$ 12,214,412	\$ 13,888,718	\$ 14,456,526	\$ 12,374,909	\$ 11,653,147	\$ 12,274,232	\$ 11,585,689	\$ 12,641,689	\$ 11,402,293	\$ 12,659,406	\$ 11,681,791	\$ 12,719,038	\$ 11,162,059	\$ 12,589,003	\$ 13,727,703	\$ 15,234,929	\$ 11,120,362	\$ 13,143,683	\$ 11,982,019				
Operating Cash Receipts																															
Cash Receipts from Patient Care																															
Hospital	1,532,681	1,532,681	1,532,681	1,532,681	1,532,681	1,532,681	1,532,681	1,532,681	1,532,681	1,532,681	1,532,681	1,532,681	1,532,681	1,532,681	1,532,681	1,532,681	1,532,681	1,532,681	1,532,681	1,532,681	1,532,681	1,532,681	1,532,681	1,532,681	1,532,681	1,532,681	39,849,696				
Physician Practice	140,000	150,000	150,000	150,000	150,000	160,000	160,000	160,000	160,000	160,000	160,000	160,000	160,000	160,000	160,000	160,000	160,000	160,000	160,000	160,000	160,000	160,000	160,000	160,000	160,000	160,000	160,000	4,100,000			
New Service Lines	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	780,000			
Total Cash Receipts from Patient Care	1,702,681	1,712,681	1,712,681	1,712,681	1,712,681	1,722,681	1,722,681	1,722,681	1,722,681	1,722,681	1,722,681	1,722,681	1,722,681	1,722,681	1,722,681	1,722,681	1,722,681	1,722,681	1,722,681	1,722,681	1,722,681	1,722,681	1,722,681	1,722,681	1,722,681	1,722,681	1,722,681	44,729,696			
Other Receipts																															
Dietary	18,710	18,371	18,117	18,117	17,568	16,836	16,836	16,836	16,836	16,836	16,836	16,836	16,836	16,836	16,836	16,836	16,836	16,836	16,836	16,836	16,836	16,836	16,836	16,836	16,836	16,836	16,836	443,193			
Rent Revenue	19,487	19,487	19,487	19,487	19,487	19,487	19,487	19,487	19,487	19,487	19,487	19,487	19,487	19,487	19,487	19,487	19,487	19,487	19,487	19,487	19,487	19,487	19,487	19,487	19,487	19,487	19,487	506,672			
Joint Venture Distributions	-	51,554	112,219	112,219	112,219	112,219	112,219	112,219	112,219	112,219	112,219	112,219	112,219	112,219	112,219	112,219	112,219	112,219	112,219	112,219	112,219	112,219	112,219	112,219	112,219	112,219	112,219	724,865			
Misc. Other Revenue	2,500	789,289	818,426	800,225	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	5,600,890			
Subtotal Other Receipts	40,697	878,701	856,031	950,048	40,105	39,556	38,824	38,824	38,824	38,824	38,824	38,824	38,824	38,824	38,824	38,824	38,824	38,824	38,824	38,824	38,824	38,824	38,824	38,824	38,824	38,824	38,824	7,135,621			
Liquidated Investments																															
Total Other Cash Receipts	40,697	878,701	856,031	950,048	40,105	39,556	38,824	38,824	38,824	38,824	38,824	38,824	38,824	38,824	38,824	38,824	38,824	38,824	38,824	38,824	38,824	38,824	38,824	38,824	38,824	38,824	38,824	7,135,621			
Total Cash Available	\$13,725,396	\$15,158,194	\$13,959,225	\$15,031,705	\$13,966,091	\$13,842,477	\$12,940,934	\$14,900,603	\$13,975,916	\$15,650,222	\$16,217,293	\$14,247,654	\$14,212,838	\$14,471,288	\$13,346,283	\$14,514,433	\$13,167,436	\$14,419,932	\$13,442,729	\$14,481,004	\$13,036,244	\$14,350,970	\$15,489,670	\$16,996,895	\$13,893,951	\$14,905,649	\$64,389,286				
Operational Expenditures																															
Net Salaries & Wages	-	1,536,037	-	1,536,037	150,000	1,536,037	-	1,536,037	-	1,536,037	-	1,536,037	-	1,536,037	-	1,536,037	-	1,536,037	-	1,536,037	-	1,536,037	-	1,536,037	-	1,589,798	-	1,589,798	20,226,000		
401(k) Contribution Match	-	76,802	-	76,802	-	76,802	-	76,802	-	76,802	-	76,802	-	76,802	-	76,802	-	76,802	-	76,802	-	76,802	-	76,802	-	79,490	-	79,490	2,403,800		
Employee Benefits	-	345,055	-	363,558	-	368,603	-	305,497	-	280,253	-	400,777	-	381,026	-	381,026	-	345,475	-	367,905	-	502,485	-	502,485	-	355,689	-	355,689	4,859,324		
Supplies	290,156	326,962	354,566	354,566	354,566	341,163	323,293	323,293	323,293	319,327	319,327	319,327	319,327	319,327	306,684	301,626	301,626	301,626	294,577	276,954	276,954	276,954	276,954	276,954	276,954	276,954	276,954	8,098,569			
Other Supplies	4,389	4,657	4,859	4,859	4,859	4,657	4,389	4,389	4,389	4,389	4,389	4,389	4,389	4,389	4,431	4,389	4,389	4,389	4,405	4,444	4,444	4,444	4,444	4,444	4,444	4,444	4,444	117,088			
Professional Fees	72,282	76,503	79,844	79,844	79,844	75,867	70,565	70,565	70,565	70,565	70,565	70,565	70,565	70,565	72,974	72,457	72,457	72,457	73,143	74,858	74,858	74,858	74,858	74,858	74,858	74,858	74,858	1,926,208			
Estimated Claims Defense	50,000	-	-	-	50,000	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	250,000		
Purchased Services	156,665	169,072	794,326	178,377	178,377	170,455	775,842	159,893	159,893	159,893	782,971	167,022	167,022	167,022	171,077	788,648	172,699	172,699	173,842	792,661	176,700	176,700	176,700	176,700	176,700	176,700	176,700	832,929	216,968	216,968	8,255,428
Leases/Rentals	30,687	30,658	30,637	30,637	34,771	40,283	40,283	40,283	40,283	29,641	29,641	29,641	29,641	29,641	23,041	20,401	20,401	20,401	19,740	18,090	18,090	18,090	18,090	18,090	18,090	18,090	18,090	18,090	738,293		
Utilities	37,075	34,703	32,924	32,924	32,924	33,998	35,430	35,430	35,430	38,707	38,707	38,707	38,707	38,707	39,089	39,242	39,242	39,242	38,892	38,016	38,016	38,016	38,016	38,016	38,016	38,016	38,016	42,397	976,063		
License/Taxes/Insurance	55,536	56,733	57,630	57,630	57,630	55,629	55,629	55,629	55,629	56,188	56,188	56,188	56,188	56,188	55,722	55,536	55,536	55,536	55,721	56,186	56,186	56,186	56,186	56,186	56,186	56,186	56,186	55,536	1,458,600		
Repairs/Maintenance	82,460	88,310	92,697	92,697	92,697	88,935	83,918	83,918	83,918	83,918	86,721	86,721	86,721	86,721	84,428	83,510	83,510	83,510	83,013	81,768	81,768	81,768	81,768	81,768	81,768	81,768	81,768	81,731	2,210,586		
Other Expenses	35,737	38,859	41,200	41,200	41,200	39,887	38,137	38,137	38,137	414,930	39,930	39,930	39,930	39,930	162,051	35,900	35,900	35,900	160,260	33,659	33,659	33,659	33,659	33,659	33,659	33,659	33,659	1,721,805			
Debt Service Payments	57,500	15,000	-	35,702	57,500	15,000	-	35,702	64,094	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	655,809		
Interest Financing	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Patient Refunds	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Donations-Support Payments Order	14,581	-	-	-	-	-	-	-	-	25,000	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Post-Petition Deposits	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
AP Catch-up/Vendor Cure Payments	-	1,000,000	200,000	-	-	-	-	-	-	(500,000)	(1,500,000)	2,000,000	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Financial Improvement Plan/Exp	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Reduction	(104,731)	(104,731)	(104,731)	(104,731)	(104,731)	(104,731)	(104,731)	(104,731)	(104,731)	(104,731)	(104,731)	(104,731)	(104,731)	(104,731)	(104,731)	(104,731)	(104,731)	(104,731)	(104,731)	(104,731)	(104,731)	(104,731)	(104,731)	(104,731)	(104,731)	(104,731)	(104,731)	(104,731)	(2,723,006)		
Adjustment Factor	(220,241)	(220,241)	(220,241)	(220,241)	(220,241)	(220,241)	(220,241)	(220,241)	(220,241)	(220,241)	(220,241)	(220,241)	(220,241)	(220,241)	(220,241)	(220,241)	(220,241)	(220,241)	(220,241)	(220,241)	(220,241)	(220,241)	(220,241)	(220,241)	(220,241)	(220,241)	(220,241)	(220,241)	(220,241)	(5,726,266)	
Subtotal Operational Expenses	562,096	3,474,478	1,363,711	2,559,861	805,262	2,517,978	1,102,515	2,440,603	75,660	929,658	3,497,314	2,444,718	1,927,067	2,627,061	609,525	3,070,602	496,491	2,501,602	578,621	3,047,407	455,702	611,728	18,203	5,816,464	638,730	2,574,410	46,727,464				
Capital Equipment/New Construction	</																														

EXHIBIT B

