

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE: ) CHAPTER 11  
)  
SOUTHERN REGIONAL HEALTH ) Jointly Administered Under  
SYSTEM, INC., d/b/a/ SOUTHERN ) CASE NO. 15-64266-wlh  
REGIONAL MEDICAL CENTER, et al., )  
)  
Debtors.

**DEBTORS’ MOTION FOR INTERIM AND FINAL ORDERS PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, 364 AND 507: (A) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING; (B) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS; AND (C) GRANTING RELATED RELIEF; AND MEMORANDUM OF POINTS AND AUTHORITIES**

COME NOW Southern Regional Health System, Inc., d/b/a Southern Regional Medical Center (“**Southern Regional**”), Southern Crescent Physicians’ Group, Inc., (“**SCPG**”), Southern Crescent Real Estate, Inc., (“**SCRE**”), Southern Regional Ambulatory Surgery, Inc., (“**SRAS**”), Southlake Ambulatory Surgery Center, L.L.P., d/b/a Mount Zion Surgery Center, a/k/a Spivey Station Surgery Center (“**Spivey Station**”) and Southern Regional Medical Services, Inc., (“**SRMS**”), debtors and debtors-in-possession (collectively, the “**Debtors**”) in the above-styled jointly administered case (the “**Case**”), and pursuant to Sections 105, 361, 362, 363, 364 and 507 of Title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* as amended (the “**Bankruptcy Code**”), and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), hereby move the Court for entry of interim and final orders (A) authorizing the Debtors to obtain post-petition financing (the “**Post-Petition Financing**”) from Prime Healthcare Foundation, Inc. (the “**DIP Lender**”), (B) granting liens and providing superpriority administrative expense status, (C) granting related relief, (D) modifying the



automatic stay, and (E) scheduling a final hearing pursuant to Rules 4001(b) and 4001(c) of the Bankruptcy Rules. In support of this Motion (the “**DIP Motion**”), the Debtors respectfully represent as follows:

**I. BANKRUPTCY RULE 4001 STATEMENT OF RELIEF REQUESTED**

**A. Summary of Material Terms of DIP Facility.**

**1. General Overview**

As of July 30, 2015, the date of the filing of the petitions in the above-captioned cases (the “**Petition Date**”), the Debtors were not indebted to the DIP Lender. The proposed Post-Petition Financing would be new money financing from a new lender. The terms of that certain Senior Secured Debtor-In-Possession Loan Agreement, attached hereto as Exhibit A (the “**DIP Loan Agreement**”; together with the agreements, documents, instruments, security deeds and certificates executed by the Debtors or otherwise delivered in connection therewith, the “**DIP Loan Documents**”), together with any interim order and any final order entered by the Court with respect to the DIP Motion, will govern the proposed post-petition financing arrangement (the “**DIP Facility**”).

**2. Material Terms**

**a. Summary of Rates, Fees and Charges for DIP Facility:** The Debtor will pay interest on the amounts borrowed under the DIP Facility (the “**Indebtedness**”) at a fixed rate of 8% per annum, calculated on a 360-day per year basis, payable upon the maturity date of the DIP Facility. (DIP Loan Agreement, Sect. 3(a)). Upon an event of default under the DIP Facility, the Debtor will pay interest on the Indebtedness at a fixed rate equal to 10%, calculated on a 360 day per year basis. (DIP Loan Agreement, Sects. 1 (definition of “**Default Rate**”), 3(a)). The only additional fee is a one-time DIP Facility commitment fee of 2% of the committed loan amount \$9,200,000, which shall be fully earned upon the closing date of the DIP Facility and payable upon the maturity date of the DIP Facility. (DIP Loan Agreement, Sect. 3(c)). The Debtors shall also pay all of the DIP Lender’s reasonable fees and expenses relating to the DIP Facility and the DIP Loan Documents. (DIP Loan Agreement, Sect. 12).

**b. Maturity Date:** The DIP Facility shall mature on the earlier to occur of a Termination Event, as set forth in Paragraph 11 of the proposed interim order on the DIP Motion (the “**Interim Order**”), attached hereto as Exhibit B, December 15, 2015, the date the Debtors enter into a definitive agreement to sell their assets to a party other than the DIP Lender, and the date that the DIP Lender accelerates the obligations under the DIP Facility as a result of an Event of Default. (DIP Loan Agreement, Sect. 1 (definition of “**Maturity Date**”)).

**c. Events of Default:** The DIP Loan Agreement contains standard events of default for a loan of this nature. (DIP Loan Agreement, Sect. 9). Further, the proposed Interim Order sets forth standard “**Termination Events**” for a loan of this nature. (Interim Order, Par. 11).

**d. Liens:** Pursuant to Section 364(c)(2) of the Bankruptcy Code, the DIP Lender will be granted first priority liens on and security interests in all present and after-acquired property of the Debtors that is not otherwise subject to a valid, perfected and unavoidable security interest or lien as of the Petition Date, subject only to the Carve-Out (as defined below); and, pursuant to Section 364(c)(3) of the Bankruptcy Code, the DIP Lender will be granted junior liens on all property of the Debtors that is subject to a valid, perfected and unavoidable security interest or lien as of the Petition Date, subject only to any such valid, perfected and unavoidable security interest or lien, the Carve-Out and adequate protection liens previously granted. (DIP Loan Agreement, Sect. 11; Interim Order, Pars. 6 - 7).

**e. Borrowing Limits:** Subject to the limits in the DIP Loan Agreement, and the limits set forth in the budget attached to the Interim Order (as may be modified pursuant to the terms of the DIP Loan Agreement), the maximum loan limit under the DIP Facility during the period the Interim Order is in effect is \$2,000,000, and \$9,200,000 once a final order is entered approving the DIP Facility (the “**Final Order**”). (Interim Order, Par. 4; DIP Loan Agreement, Sect. 2(a)).

**f. Borrowing Conditions:** Entry of Interim Order and Final Order acceptable to DIP Lender in its sole discretion, execution of the DIP Loan Documents, execution of a letter of intent with regard to the DIP Lender’s proposed purchase of the Debtors’ assets, and compliance with orders and DIP Loan Documents by Debtors. (DIP Loan Agreement, Sects. 4 and 5).

### **3. Summary and Identification of Additional Required Provisions**

**a. Liens under Section 364(c) or (d) of the Bankruptcy Code:** As security for the Indebtedness, the DIP Lender is granted the following security and liens in the Collateral (as such term is defined in the DIP Loan Agreement), subject only to, in the event of the termination of the DIP Facility, the payment of the Carve Out (Interim Order, Par. 6):

(1) Pursuant to Section 364(c)(2) of the Bankruptcy Code, a perfected first priority senior security interest in and lien upon the Collateral, whether existing on the Petition Date or thereafter acquired, that, as of the Petition Date, is not subject to valid, perfected and non-avoidable liens;

(2) Pursuant to Section 364(c)(3) of the Bankruptcy Code, a perfected security interest in and lien upon the Collateral, whether existing on the Petition Date or thereafter acquired, that is subject to valid, perfected and unavoidable liens in existence as of the Petition Date, immediately junior in priority to such valid, perfected and unavoidable liens and any adequate protection liens granted thereon; and

(3) In addition, the liens granted to the DIP Lender shall not be subject to subordination to any other liens, security interests or claims under Sections 510, 549 or 550 of the Bankruptcy Code, or, upon entry of a Final Order, Section 506(c) of the Bankruptcy Code, or otherwise. (Interim Order, Par. 7(b)).

**b. Superpriority Claims:** Subject to the Carve-Out described in paragraph 33 of the Interim Order, all of the Indebtedness shall have the highest administrative priority

under Section 364(c)(1) of the Bankruptcy Code, and shall have priority over all other costs and expenses of administration of any kind, including, without limitation, any and all adequate protection claims under Section 507(b) of the Bankruptcy Code. (Interim Order, Par. 8).

**c. Modification of Automatic Stay:**

(1) Except as otherwise provided in the Interim Order or the Final Order, the automatic stay pursuant to Section 362 of the Bankruptcy Code is modified as to the DIP Lender to permit it to perform in accordance with, and exercise, enjoy and enforce their rights, benefits, privileges and remedies pursuant to the DIP Loan Documents without further application or motion to, or order from, the Bankruptcy Court. (Interim Order, Par. 18). The automatic stay under Section 362(a) of the Bankruptcy Code is to be modified to the extent necessary to permit DIP Lender to retrieve, collect and apply payments and proceeds in respect of the Collateral in accordance with the terms and provisions of the Interim Order or the Final Order, as applicable, the DIP Loan Documents. (Interim Order, Par. 18).

(2) Upon the occurrence of a Termination Event (as defined in Paragraph 11 of the Interim Order) and five (5) calendar days after the DIP Lender has served written notice on counsel to the Debtors and counsel to the Committee (if any) and the Office of the United States Trustee, a notice identifying any act which gave rise to the occurrence of a Termination Event, the automatic stay under Section 362 of the Bankruptcy Code shall be deemed vacated and modified with respect to the DIP Lender for the purpose of exercising all of their rights and remedies; provided that the Debtors, the Committee (if any), and/or the United States Trustee have not obtained an order of the Bankruptcy Court that a Termination Event has not occurred. (Interim Order, Par. 26).

**d. Waivers of Plan and Other Financing Rights:** It shall be a Termination Event under the Interim Order or the Final Order, as applicable, for the Debtors to seek further financing or file a plan without payment in full of the Indebtedness, unless the DIP Lender otherwise consents. (Interim Order, Par. 11).

**e. Waiver of State Law Perfection Requirements:** The liens granted to the DIP Lender are deemed duly perfected and recorded under all applicable federal or state or other laws as of the date of the Interim Order. (Interim Order, Par. 6).

**f. Waiver of Certain Rights:** It shall be a Termination Event under the Interim Order or the Final Order, as applicable, for the Debtors to, among other things: (i) grant liens on or security interests in any of the Collateral, which are pari passu with or senior to the DIP Facility liens; (ii) propose a plan of reorganization or liquidation which does not repay the Indebtedness in full, without the DIP Lender's written consent; or (iii) propose a sale of their assets unless certain conditions are met. (Interim Order, Par. 11).

**g. Milestones.** It shall be a Termination Event under the Interim Order or the Final Order, as applicable, for the Debtors to fail to meet certain milestones with regard to implementing a sale process for their assets. (Interim Order, Par. 11(o)).

**h. Indemnification:** The DIP Lender and its directors, officers, employees, affiliates, representatives, attorneys and agents, are indemnified by the Debtors for all liabilities relating to the DIP Facility or the extension of credit, other than resulting from the gross negligence or willful misconduct of the indemnified party. (Interim Order, Par. 29).

**i. Waiver of Surcharge Right:** The Debtors waive their right to seek a surcharge against the Pre-Petition Collateral or the DIP Facility Collateral under § 506(c). (Interim Order, Par. 36).

**j. Provisions Remaining Effective if Interim Relief Granted but Final Relief Denied:** The provisions of the Interim Order are binding upon and inure to the benefit of the DIP Lender and the Debtors, and their respective successors and assigns (including any trustee or other estate representative appointed as a representative of the Debtors' estate or of any estate in any successor cases). (Interim Order, Par. 43). If any of the provisions of the Interim Order are subsequently modified, vacated or stayed by subsequent order, such stay, modification or vacatur shall not affect the validity of any obligation outstanding immediately prior to the effective time of such stay, modification or vacation, or the validity and enforceability of any lien, priority, right, privilege or benefit authorized hereby with respect to any such obligations. Notwithstanding any such stay, modification or vacatur, any obligation outstanding immediately prior to the effective time of such modification, stay or vacatur shall be governed in all respects by the original provisions of the Interim Order, and DIP Lender shall be entitled to all the rights, privileges and benefits, including, without limitation, the security interests and priorities granted therein, with respect to all such obligations. (Interim Order, Par. 27).

## **II. STATEMENT OF FACTS AND BACKGROUND**

### **A. Bankruptcy Filings.**

1. As noted above, the Debtors commenced their bankruptcy cases by filing voluntary petitions under Chapter 11 of the Bankruptcy Code on July 30, 2015. The Debtors continue to manage their financial affairs as debtors in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these cases, and no official creditors' committee has been formed as of the date hereof.

### **B. The Debtors' Business Structure and Background.**

2. The Debtors are a family of healthcare providers servicing residents of Clayton County and others throughout the region south of Atlanta through traditional hospital, outpatient clinic and ambulatory care services. Southern Regional operates a 331-bed full-service hospital located in Riverdale, Georgia and managed by Emory Healthcare. In addition to hospital based

services, the Debtors offer ambulatory care services at a second campus Spivey Station, located in Jonesboro, Georgia. Additional information about the Debtors' businesses and the events leading up to the Petition Date can be found in the Declaration of Kimberly J. Ryan in Support of First Day Applications and Motions (the "**Ryan Declaration**") which is incorporated herein by reference.

**C. The Financings with DIP Lender and the Requested Relief.**

3. As of the Petition Date, the Debtors were not indebted to the DIP Lender. Rather the DIP Lender is a new money lender with whom the Debtors have not previously engaged in a business relationship.

4. By this DIP Motion, the Debtors seek the authority to obtain the DIP Facility under the terms set forth in the proposed Interim Order granting this DIP Motion as Exhibit B. The terms of the Interim Order shall control in the event of any inconsistency between the terms of the Interim Order and this DIP Motion. The key provisions of the Interim Order are summarized in Section I above.

5. The Debtors submit that the protections requested by the DIP Lender are reasonable in light of the risk that the DIP Lender is taking by agreeing to lend the Debtors significant sums post-petition. The Debtors have been unable to procure financing in the form of unsecured credit allowable under Section 503(b)(1) of the Bankruptcy Code as an administrative expense under Section 364(a) or (b) of the Bankruptcy Code, or in exchange for the grant of an administrative expense priority pursuant to Section 364(c)(1) of the Bankruptcy Code without the granting of liens on their assets. The Debtors have been unable to procure the necessary financing on terms more favorable than the Interim Order. No other lender was prepared to provide the immediate financing needed by the Debtors on more favorable terms.

6. The Debtors require an immediate order of this Court authorizing them to obtain post-petition financing to pay their normal and ordinary operating expenses (such as payroll, rent, utilities and payments to suppliers) as they come due in the ordinary course of the Debtors' business and to make those purchases necessary to preserve the going concern value of their businesses, assets pending any sale or reorganization efforts. An immediate court order is necessary to avoid immediate and irreparable harm to the Debtors, their estates and their patients.

7. The Debtors therefore seek authority to obtain the post-petition financing and to use cash collateral on an interim basis pending a final hearing in accordance with the terms and conditions set forth in the Interim Order. Given the devastating impact that a closure of the Debtors' business would have on their going concern value, their creditors, their employees and their patients, not to mention the community at large, the Debtors submit that the relief requested herein is clearly warranted and appropriate.

### **III. DISCUSSION**

8. Pursuant to Bankruptcy Code Sections 364(c) and (d), the Debtors request authority to incur the Post-Petition Financing allowable as an administrative expense, having priority over other administrative expenses and secured by a senior lien on substantially all of the property of the Debtors' estates (other than property as to which the Debtors' prepetition lender held a lien prior to the Petition Date). The Debtors need cash to meet ongoing obligations necessary to operate their businesses, administer their Chapter 11 estates and maintain the going concern value of their businesses as they conclude an asset sale or reorganize so as to achieve the highest values possible for their creditors. The Debtors need to use their cash receipts and the proceeds of the Post-Petition Financing to pay insurance, payroll, payroll expenses, rent, utility charges, professionals and general overhead, to purchase necessary materials, and otherwise

continue their businesses and operations. The Debtors believe that the Post-Petition Financing will provide funds sufficient to permit them to operate their businesses pending the sales and reorganization efforts.

9. Pursuant to Bankruptcy Code Section 364(c), a debtor may, in the exercise of its business judgment, incur secured debt if it has been unable to obtain unsecured credit and the borrowing is in the best interest of the estate. See, e.g., In re Simasko Production Co., 47 B.R. 444, 448-9 (Bankr. D. Colo. 1985) (authorizing interim financing where debtor's business judgment was that financing was necessary and of benefit to the estate); In re Ames Department Stores, 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990) (with respect to post-petition credit, courts "permit debtors-in-possession to exercise their basic business judgment consistent with their fiduciary duties"); see also 2 Collier on Bankruptcy ¶ 364.04, at 364-9-1 (2007).

10. Section 364 of the Bankruptcy Code is structured with an escalating series of inducements which a debtor in possession may offer to attract credit during the post-petition period. In re Photo Promotion Associates, Inc., 87 B.R. 835, 839 (Bankr. S.D.N.Y. 1988). If a trustee or debtor in possession cannot otherwise obtain unsecured post-petition credit, such credit may be obtained under certain carefully permitted conditions. In re T.M. Sweeney & Sons LTL Services, Inc., 131 B.R. 984, 989 (Bankr. N.D. Ill. 1991). For example, if creditors are unwilling to extend unsecured credit to a debtor in possession, further inducements are offered, with court approval after notice and a hearing, including liens equal to or senior to existing liens on encumbered property in accordance with 11 U.S.C § 364(d). In re Photo Promotion Associates, Inc., 87 B.R. at 839.

11. Section 364(c) of the Bankruptcy Code also contains incentives that a court may grant to post-petition lenders. These inducements are not exhaustive. Courts frequently have



authorized the use of other protections not specified in the statute. See, e.g., In re Ellinssen MacLean Oil Co., 834 F.2d 599 (6th Cir. 1987) (affirming financing order which prohibited any challenges to the validity of already existing liens); In re Defender Drug Stores, 126 B.R. 76 (Bankr. D. Ariz. 1991) aff'd 145 B.R. 312, 316 (BAP 9th Cir. 1992) (“[b]ankruptcy courts . . . have regularly authorized postpetition financial arrangements containing lender incentives beyond the explicit priorities and liens specified in section 364”); In re Antico Mfg. Co., 31 B.R. 103 (Bankr. E.D.N.Y. 1983) (authorizing lien on pre-petition collateral to secure post-petition indebtedness). The Debtors have agreed to grant the DIP Lender such enhancements in the form of senior liens against their pre-petition and post-petition assets which were unencumbered prior to the Petition Date, and junior liens on all other assets. The Debtors believe that such enhancements are plainly reasonable requests by DIP Lender in return for the Post-Petition Financing.

12. Two factors courts consider in determining whether to authorize post-petition financing which grants a security interest in favor of the lender are (1) whether the debtor is unable to obtain unsecured credit as an administrative claim under Section 364(b)(1)(A) of the Bankruptcy Code and whether the terms of the transaction are fair, reasonable and adequate, given the circumstances of the debtor and lender. In re Crouse Group, Inc., 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987); see also In re Aqua Assoc., 123 B.R. 192, 195 (Bankr. E.D.Pa. 1991).The Debtor submits that all, of these standards have clearly been satisfied in this case.<sup>1</sup>

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<sup>1</sup> As to all of the facts relevant to the requests for relief set forth in the Interim Order, the Debtors intend to proffer testimony at the hearing held with respect to the DIP Motion.

**A. The Debtor Was Unable to Obtain Unsecured Credit.**

13. In satisfying the standards of Section 364, a debtor need not seek credit from every available source, but should make a reasonable effort to seek other sources of credit available under Sections 364(a) and (b). See, e.g., In re Snowshoe Co., 789 F.2d 1085, 1088 (4th Cir. 1986) (trustee had demonstrated good faith effort that credit was not available without senior lien by contacting other financial institutions in immediate geographic area; the statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable); In re Ames Department Stores, supra, 115 B.R. at 40 (finding that debtors demonstrated the unavailability of unsecured financing where debtors approached four lending institutions).

14. As mentioned above and as will be demonstrated at the hearing, the Debtors have been unable to procure financing in the form of unsecured credit allowable under Section 503(b)(1) of the Bankruptcy Code, as an administrative expense under Section 364(a) or (b) of the Bankruptcy Code, or in exchange for the grant of an administrative expense priority pursuant to Section 364(c) (1) of the Bankruptcy Code without the grant of liens on assets. The Debtors have been unable to procure the necessary financing on terms more favorable than the Interim Order. No other lender was prepared to provide the financing needed by the Debtors.

**B. The Terms Of The Proposed Post-Petition Financing Are Fair, Reasonable and Adequate.**

15. The terms of the proposed Post-Petition Financing from the DIP Lender are fair, reasonable and adequate. The DIP Lender is taking an economic risk by lending the Debtors significant sums. Notwithstanding the economic risk that the DIP Lender is taking, the DIP Lender has agreed to provide such post-petition financing in order to enable the Debtors to preserve the going concern value of their businesses. The terms of the Interim Order were

negotiated by and between the Debtors, the DIP Lender, and their respective counsel prior to the bankruptcy filing.

**C. The Debtors, In The Exercise Of Their Business Judgment, Believe That The Financing From The DIP Lender Is Necessary And Proper.**

16. In determining whether to approve a financing transaction, the Bankruptcy Court should use its informed discretion, but give deference to the business decision of a Chapter 11 debtor. Richmond Leasing Co. v. Capital Bank N.A., 762 F.2d 1303, 1311 (5th Cir. 1985). The best available financing commitment for the Debtors comes from the DIP Lender.

**D. The Debtors Have Satisfied The Procedural Requirements Regarding Authority To Obtain Credit.**

17. Bankruptcy Rule 4001(c) sets forth the procedural requirements for obtaining credit. Bankruptcy Rule 4001(c)(1) requires in relevant part that: “A motion for authority to obtain credit shall be made in accordance with Rule 9014 and shall be served on . . . the creditors included on the list filed pursuant to Rule 1007(d), and on such other entities as the court may direct. The motion shall be accompanied by the copy of the agreement.” Concurrently with the filing of this Motion with the Court, the Debtors are providing notice of the Motion to: (a) the U.S. Trustee; (b) the Internal Revenue Service; (c) the parties included on the Debtors’ consolidated list of their thirty (30) largest unsecured creditors; (d) counsel to the DIP Lender; (e) counsel to the Debtors’ prepetition lender; (f) all other known parties with liens of record on assets of the Debtors as of the Petition Date; (g) all financial institutions at which the Debtors maintain deposit accounts; (h) the landlords for all non-residential real properties occupied by the Debtors as of the Petition Date; (i) the Attorney General for the State of Georgia; (j) the Centers for Medicare & Medicaid Services; and (k) all other parties required to receive notice pursuant to the Order Granting Motion Of The Debtors For Approval Of Notice Procedures entered by the Bankruptcy Court on August 6, 2015 [Dkt. No. 37]. Accordingly, the Motion complies with

the requirements of Bankruptcy Rule 4001(c)(1) and the Debtors request that the Court authorize them to enter into the Post-Petition Financing.

#### **IV. CONCLUSION**

WHEREFORE, the Debtors respectfully request that this Court:

- (i) enter the Interim Order;
- (ii) grant interim approval of the Post-Petition Financing pending a final hearing pursuant to the terms and conditions set forth in the DIP Motion;
- (iii) set a final hearing to consider approval of the DIP Motion; and
- (iv) grant such other and further relief as the Court deems just and proper.

This 12th day of August, 2015.

SCROGGINS & WILLIAMSON, P.C.

/s/ Matthew W. Levin

J. ROBERT WILLIAMSON  
Georgia Bar No. 765214  
ASHLEY REYNOLDS RAY  
Georgia Bar No. 601559  
MATTHEW W. LEVIN  
Georgia Bar No. 448270

*Proposed Counsel for the Debtors*

1500 Candler Building  
127 Peachtree Street, NE  
Atlanta, Georgia 30303  
Telephone: (404) 893-3880  
Telecopier: (404) 893-3886  
rwilliamson@swlawfirm.com  
aray@swlawfirm.com  
mlevin@swlawfirm.com

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

This SENIOR SECURED DEBTOR-IN-POSSESSION LOAN AGREEMENT (this "Agreement") is dated as of August [ ], 2015 and is by and among Southern Regional Health System, Inc. ("SRHS"), Southern Crescent Physicians' Group, Inc., Southern Crescent Real Estate, Inc., Southern Regional Ambulatory Surgery, Inc., Southlake Ambulatory Surgery Center, L.L.P. (d/b/a Spivey Station Surgery Center), and Southern Regional Medical Services, Inc., each as debtors and debtors-in-possession under the Bankruptcy Code (as defined below) (collectively, the "Borrowers" and each, individually, a "Borrower"), and Prime Healthcare Foundation, Inc., as lender (the "DIP Lender").

**WITNESSETH:**

WHEREAS, each of the Borrowers filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Georgia, Atlanta Division (the "Bankruptcy Court") on July 30, 2015 (the "Petition Date");

WHEREAS, each of the Borrowers is continuing in the possession of its assets and in the management of its business as a debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, the Borrowers have requested the DIP Lender to provide a multi-draw term loan credit facility (the "DIP Facility") to the Borrowers in an aggregate principal amount of \$9,200,000 for the purposes described herein;

WHEREAS, to provide security for the repayment of the loans made available pursuant hereto and payment of the other obligations of the Borrowers hereunder, the Borrowers have agreed to provide the DIP Lender, in each case, with Liens on the Collateral (as defined below); and

WHEREAS, the DIP Lender is willing to make the requested DIP Facility available on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the Borrowers and the DIP Lender agree as follows:

**1. Definitions.** The terms listed below shall be defined as follows:

"\$" "USD" and "dollars" denotes the lawful currency of the United States of America.

"ABL Adequate Protection Order" shall mean that certain *Interim Order on Debtor's Motion for Authority to Use Cash Collateral and Notice of Final Hearing* entered by the Bankruptcy Court on August 6, 2015 (docket no. 43) and/or any additional interim or final orders granting adequate protection to the ABL Lender that are acceptable in form and content to the DIP Lender.

"ABL Collateral" shall mean any Collateral of SRHS that is subject to a valid, perfected and unavoidable Lien held by and otherwise granted in favor of the ABL Lender as of the Petition Date.

“ABL Lender” shall mean Gemino Healthcare Finance, LLC.

“Adequate Protection Liens” shall mean the adequate protection liens granted to the ABL Lender in the ABL Adequate Protection Order.

“Approved Budget” shall have the meaning set forth in Section 8(a) hereof.

“Auction” shall have the meaning set forth in the Bid Procedures Order.

“Availability Period” shall mean the period from the Closing Date to, but excluding, the Maturity Date.

“Banking Day” shall mean any day that is not a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by Law to remain closed.

“Bankruptcy Code” shall mean Title 11 of the United States Code entitled “Bankruptcy,” as now and hereafter in effect, or any successor statute.

“Bankruptcy Court” shall have the meaning set forth in the recitals.

“Bidding Procedures” shall mean the bidding procedures set forth in the Bid Procedures Order.

“Bid Procedures Order” shall mean the *Order (A) Authorizing and Scheduling an Auction at which the Debtors will Solicit the Highest or Best Bid for the Sale of their Assets; and (B) Approving Bid Procedures Governing the Proposed Sale, including Payment of Expense Reimbursement and Breakup Fee* (docket no. [\_\_]) entered by the Bankruptcy Court in the Chapter 11 Cases on August [\_\_], 2015.

“Borrowing Request” shall mean a Borrowing Request in the form attached hereto as Exhibit A, or such other form acceptable to the DIP Lender.

“Budget” shall mean the Initial Approved Budget and each subsequent Approved Budget.

“Carve-Out”<sup>1</sup> shall mean an amount equal to the sum of the following: (a) all fees required to be paid to the Clerk of the Court and to the U.S. Trustee under 28 U.S.C. § 1930(a) plus interest pursuant to 31 U.S.C. § 3717; (b) all reasonable fees and expenses incurred by a trustee under section 726(b) of the Bankruptcy Code in an aggregate amount not to exceed \$25,000; (c) all reasonable fees and expenses incurred by a patient care ombudsman appointed under section 333 of the Bankruptcy Code in an aggregate amount not to exceed \$25,000; and (d) to the extent allowed by the Bankruptcy Court at any time, and subject to the Budget, all accrued and unpaid fees, disbursements, costs and expenses incurred by professionals or professional firms retained by the Borrowers and any official committee of creditors at any time before or on the date and time of the delivery by the DIP Lender of a Carve Out Trigger Notice,

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<sup>1</sup> [If ABL Lender expects to receive a 506(c) waiver in the Final Cash Collateral Order, then DIP Lender would expect ABL Lender to agree to 1/2 of Carve-Out.]

whether allowed by the Bankruptcy Court prior to or after delivery of a Carve Out Trigger Notice; provided, however, that nothing in this Agreement shall be construed to impair the ability of any party to object to any fees, expenses, reimbursement or compensation sought by any such professionals or any other person or entity.

“Carve Out Trigger Notice” shall mean a written notice delivered by the DIP Lender to the Borrowers and their counsel, the U.S. Trustee, and lead counsel to any official committee, which notice may be delivered following the occurrence of an Event of Default.

“Chapter 11 Cases” shall mean the cases filed under Chapter 11 of the Bankruptcy Code by each Borrower in its capacity as a debtor and debtor-in-possession in the Bankruptcy Court, together with the cases of its affiliated debtors and debtors-in-possession, which are jointly administered under Southern Regional Health System, Inc., case number 15-64266.

“Chief Financial Officer” shall mean G.E. Hoffman, Jr., the Borrowers’ Chief Financial Officer, or any successor thereto.

“Closing Date” shall mean [\_\_\_\_], 2015.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Collateral” shall mean all personal property, real property and other assets, whether now owned by or owing to, or hereafter acquired by or arising in favor of the Borrowers (including under any trade names, styles or derivations thereof), and whether owned or consigned by or to, or leased from, the Borrowers, and regardless of where located, including, without limitation: (a) all ABL Collateral; (b) cash and cash equivalents; (c) all funds in any account of the Borrowers; (d) all accounts and other receivables; (e) contract rights; (f) instruments, documents and chattel paper; (g) securities (whether or not marketable); (h) equipment, inventory and fixtures; (i) real property and interests in real property; (j) leaseholds and interests in leaseholds; (k) franchise rights; (l) patents, tradenames, trademarks, copyrights and all other intellectual property; (m) general intangibles; (n) capital stock; (o) investment property; (p) supporting obligations; (q) letter of credit rights; (r) all commercial tort claims and all other claims and causes of action; (s) the proceeds of all claims or causes of action (including the proceeds of avoidance actions under chapter 5 of the Bankruptcy Code); (t) all avoidance actions and proceeds of avoidance actions under chapter 5 of the Bankruptcy Code; and (u) to the extent not covered by the foregoing, all other assets or property of the Borrowers, whether tangible, intangible, real, personal or mixed, and all proceeds and products of each of the foregoing and all accessions to, substitutions and replacements for, and rents, profits and products of, each of the foregoing, any and all proceeds of any insurance, indemnity, warranty or guaranty payable to such Borrower from time to time with respect to any of the foregoing.

“Commitment” shall have the meaning set forth in Section 2(a) hereof.

“Commitment Fee” shall have the meaning set forth in Section 3(c) hereof.

“Deed to Secure Debt” shall have the meaning set forth in Section 4(a)(iv) hereof.

“Default” shall mean any condition or event that, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

“Default Rate” shall mean, for any Loan, a fixed rate per annum equal to 10.0%.

“DIP Facility” shall have the meaning set forth in the recitals.

“DIP Financing Orders” shall mean the Interim Order and the Final Order, as may be applicable.

“DIP Loan Documents” shall mean this Agreement, the DIP Financing Orders, and any other documents, instruments, or agreements delivered as security or collateral for, or a guaranty of, the Loans, or in connection with, or as support for, any of the foregoing, whether by a Borrower or a Third Party, and any updates or renewals thereof.

“Event of Default” shall have the meaning set forth in Section 9 hereof.

“Excluded Taxes” shall mean (i) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, imposed by the United States of America or the jurisdiction where the DIP Lender’s applicable lending office is located, (ii) U.S. Federal withholding Taxes imposed on amounts payable hereunder pursuant to the Law in effect as of the date of this Agreement, and (iii) U.S. Federal withholding Taxes imposed under FATCA.

“FATCA” shall mean Sections 1471 through 1474 of the Code as of the date of this Agreement (or any amended or successor version of such sections that are substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, and any agreement entered into pursuant to Section 1471(b)(1) of the Code.

“Final Order” shall mean a final, non-appealable order of the Bankruptcy Court approving the DIP Facility, in form and substance satisfactory to the DIP Lender in its sole discretion.

“Indemnified Taxes” shall mean (i) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Borrower under this Agreement or any other DIP Loan Document, and (ii) without duplication of any Taxes covered in subclause (i) of this definition, Other Taxes.

“Initial Approved Budget” shall mean the Budget attached hereto as Exhibit B.

“Interim Order” shall mean an interim order of the Bankruptcy Court approving the DIP Facility and entered in the Chapter 11 Cases, in form and substance satisfactory to the DIP Lender in its sole discretion.

“Law” shall mean any international, foreign, Federal, state or local statute, treaty, rule, guideline, regulation, ordinance, code, or administrative or judicial precedent or authority, including the interpretation or administration thereof by any governmental authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders,



directed duties, requests, licenses, authorizations and permits of, and agreements with, any governmental authority, in each case whether or not having the force of law.

“Letter of Intent” shall have the meaning set forth in Section 4(f) hereof.

“Lien” shall mean, with respect to any asset, any mortgage, pledge, hypothecation, assignment, deposit arrangement, lien (statutory or other) or other security interest or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement under the UCC or comparable Laws of any jurisdiction).

“Loans” shall have the meaning set forth in Section 2(a) hereof.

“Main Office” shall mean the main office of the DIP Lender, currently located at 3300 E. Guasti Road, 3rd Floor, Ontario, CA 91761, or such other location as the DIP Lender may designate as its main office.

“Material Adverse Effect” shall mean, with respect to any event, act, condition or occurrence of whatever nature (including any adverse determination in any litigation, arbitration, or governmental investigation or proceeding), whether singularly or in conjunction with any other event or events, act or acts, condition or conditions, occurrence or occurrences, whether or not related, resulting in a material adverse change in, or a material adverse effect on, (i) the business, results of operations, financial condition, assets, liabilities or prospects of the Borrowers taken as a whole (other than the commencement of the Chapter 11 Cases and the continuation of the Chapter 11 Cases), (ii) the ability of the Borrowers to perform any of their respective obligations under the DIP Loan Documents, (iii) the rights and remedies of the DIP Lender under any of the DIP Loan Documents, (iv) the legality, validity or enforceability of any of the DIP Loan Documents and the DIP Financing Orders, (v) the value of the Collateral, or (vi) the perfection or priority of the Liens granted pursuant to the DIP Loan Documents or the DIP Financing Orders.

“Maturity Date” shall mean the earliest of (i) December 15, 2015, (ii) the date the Borrowers enter into a definitive agreement to sell all or substantially all of their assets to a third party other than the DIP Lender or one of its affiliates, (iii) if the Final Order has not been entered, the date that is forty-five (45) calendar days after the Closing Date, (iv) the date of the acceleration of the Loans and/or the termination of the Commitment pursuant to Section 9, and (v) the occurrence of any “Termination Event” set forth in any DIP Financing Order.

“Obligations” shall mean all amounts owing by the Borrowers to the DIP Lender pursuant to or in connection with this Agreement or any other DIP Loan Document including, without limitation, all principal, interest, fees, expenses, indemnification and reimbursement payments, costs and expenses (including all fees and expenses of counsel to the DIP Lender incurred pursuant to this Agreement or any other DIP Loan Document), whether direct or indirect, absolute or contingent, liquidated or unliquidated, now existing or hereafter arising hereunder or thereunder.

“Other Taxes” shall mean, collectively, all present or future stamp, court, or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement, or registration of, from the receipt of security interests in, or otherwise with respect to this Agreement or any other DIP Loan Document.

“Permitted Variance” shall mean (i) any favorable variance, (ii) an unfavorable variance of not more than 10% with respect to (A) any disbursement line item or (B) the aggregate cash receipts, and (iii) an unfavorable variance of not more than 5% with respect to combined aggregate receipts and disbursements.

“Prevailing Bid” shall have the meaning ascribed to it in the Bid Procedures Order.

“Prior Permitted Liens” shall have the meaning set forth in Section 11(a) hereof.

“Requirements of Law” shall mean, as to any Borrower, the articles or certificate of incorporation and by-laws or other organizational or governing documents of such Borrower, and each federal, state, local and foreign 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 Borrower or any of its property or to which such Borrower or any of its property is subject.

“Superpriority DIP Claims” shall mean all of the claims of the DIP Lender on account of the Obligations, which claims shall be entitled to the benefits of Section 364(c)(1) of the Bankruptcy Code, having a superpriority over any and all administrative expenses of the kind that are specified in Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1114 or any other provisions of the Bankruptcy Code.

“Tax” or “Taxes” shall mean all present or future taxes, levies, imposts, duties, deductions, withholding (including backup withholding), assessments, fees, value added tax or any other goods, services, use or sales tax, or other charges imposed by any governmental authority, including, without limitation, any interest, additions to tax, or penalties applicable thereto.

“Testing Period” shall have the meaning set forth in Section 8(i) hereof.

“Third Party” shall mean any party liable with respect to, or otherwise granting support for, this Agreement, whether by guaranty, subordination, grant of security or otherwise.

“UCC” shall mean the Uniform Commercial Code as in effect from time to time in the State of Georgia; provided that if by reason of mandatory provisions of Law, the perfection, the effect of perfection or non-perfection or the priority of the security interests of the DIP Lender in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than Georgia, “UCC” means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“Variance Report” shall have the meaning set forth in Section 8(a) hereof.

Unless otherwise defined herein or the context otherwise requires, any uncapitalized terms used herein which are defined in the UCC, have the respective meanings provided in the UCC including, without limitation: (i) as-extracted collateral; (ii) certificated security; (iii) chattel paper; (iv) documents; (v) electronic chattel paper; (vi) financial assets; (vii) goods, (viii) instruments; (ix) inventory; (x) investment property; (xi) payment intangibles; (xii) proceeds; (xiii) securities account; (xiv) securities intermediary; (xv) security; (xvi) security certificate; (xvii) security entitlements; and (xviii) uncertificated security.

## **2. Borrowings, Conversions, Renewals and Payments.**

(a) Subject to the terms and conditions set forth herein (including the conditions to borrowing set forth in Sections 4 and 5 hereof), the DIP Lender agrees to make multi-draw term loans (“Loans”) to the Borrowers, from time to time during the Availability Period, in an aggregate principal amount outstanding of \$9,200,000 (the “Commitment”). During the Availability Period, the Borrowers shall be entitled to borrow and prepay Loans in accordance with the terms and conditions of this Agreement; provided, however, that (i) the Borrowers may not borrow any amounts hereunder should there exist an Event of Default; and (ii) the Borrower may not re-borrow Loans that have been repaid.

(b) The Chief Financial Officer, on behalf of the Borrowers, shall give the DIP Lender irrevocable notice of each borrowing by delivering a Borrowing Request by 12:00 noon Atlanta, Georgia time not less than two (2) Business Days prior to the date of each requested borrowing of a Loan; provided, however, that (i) no Loan shall be in an amount less than \$25,000, (ii) the Borrowers shall not be permitted to deliver a Borrowing Request more frequently than once per calendar week, and (iii) Borrowers shall not be permitted to request Loans (and DIP Lender shall not be required to fund Loans) in excess of the Borrowers’ cash needs for the two (2) calendar weeks immediately following the date of the Borrowing Request (as set forth in an Approved Budget).

(c) Each Borrower, on a joint and several basis, hereby promises to pay to the order of the DIP Lender at its Main Office the principal amount of all outstanding Loans on the Maturity Date, plus all accrued interest, fees and other Obligations then outstanding.

(d) The Borrowers shall have the right to make prepayments of principal at any time or from time to time, provided that: (i) the Borrowers shall give the DIP Lender irrevocable notice of each prepayment by 12:00 noon New York, New York time on the date of prepayment of a Loan; and (ii) all prepayments of Loans shall be in a minimum amount equal to the lesser of \$25,000 or the unpaid principal amount of this Agreement.

## **3. Interest and Fees.**

(a) The Borrowers, jointly and severally, promise to pay interest on the unpaid balance of the principal amount of each Loan for the period commencing with the date of such Loan was made and ending on the Maturity Date at a fixed rate equal to 8.00% per annum. After the occurrence of an Event of Default, all outstanding principal shall bear interest from and including the date of such Event of Default until paid in full at a rate per annum equal to the Default Rate,

such interest to be payable on demand. Interest shall be due and payable on the Maturity Date and shall be calculated on the basis of a year of 360 days for the actual number of days elapsed.

(b) All payments hereunder shall be made in lawful money of the United States and in immediately available funds. Any extension of time for the payment of the principal of this Agreement resulting from the due date falling on a non-Banking Day shall be included in the computation of interest. The date, amount, and the interest rate with respect to each Loan evidenced hereby and all payments of principal thereof shall be recorded by the DIP Lender on its books and, at the discretion of the DIP Lender prior to any transfer of this Agreement at any other time, may be endorsed by the DIP Lender on a schedule. Any such endorsement shall be conclusive absent manifest error. Each Borrower waives presentment, notice of dishonor, protest and any other notice or formality with respect to this Agreement.

(c) The Borrower agrees to pay to the DIP Lender a commitment fee (the “Commitment Fee”) in an amount equal to 2% of the Commitment, which shall be fully-earned upon the Closing Date and shall be payable on the Maturity Date.

**4. Conditions To Effectiveness.** The obligation of the DIP Lender to make Loans shall not become effective until the date on which each of the following conditions is satisfied (or waived in the sole and absolute discretion of the DIP Lender):

(a) The DIP Lender (or its counsel) shall have received the following:

(i) a counterpart of this Agreement signed by each Borrower;

(ii) copies of duly executed resolutions, in form and substance satisfactory to the DIP Lender in its sole discretion, of the board of directors (or similar governing body) of each Borrower authorizing the execution, delivery and performance of the DIP Loan Documents to which it is a party;

(iii) a duly executed Borrowing Request with respect to any Loan made on the Closing Date; and

(iv) duly executed Deeds to Secure Debt in form and substance satisfactory to the DIP Lender in its sole discretion (collectively, the “Deeds to Secure Debt”) and lender’s policies of title insurance for all real property of the Debtors in form and substance satisfactory to the DIP Lender in its sole discretion (including with respect to the nature and magnitude of any title exceptions set forth therein).

(b) All legal matters incident to this Agreement and the borrowings hereunder shall be satisfactory to the DIP Lender.

(c) All motions and other documents to be filed with and submitted to the Bankruptcy Court related to the DIP Facility and the approval thereof shall be in form and substance satisfactory to the DIP Lender in its sole discretion.

(d) The Bankruptcy Court shall have entered the Interim Order, in form and substance satisfactory to the DIP Lender in its sole discretion.

(e) The DIP Lender shall have a valid and perfected Lien on and security interest in the Collateral on the basis and with the priority set forth in the Interim Order, and such Lien of the DIP Lender shall be senior to all other Liens except as otherwise provided in any DIP Financing Order and Section 11 of this Agreement.

(f) The DIP Lender and the Borrowers shall have executed a letter of intent (the "Letter of Intent"), in form and substance satisfactory to the DIP Lender in its sole discretion, providing for the sale by the Borrowers to the DIP Lender of substantially all of the assets of the Borrowers and providing for other related transactions.

(g) The DIP Lender and the ABL Lender shall have executed a subordination agreement in form and substance satisfactory to the DIP Lender in its sole discretion pursuant to which the ABL Lender shall subordinate its Adequate Protection Liens on any property of the Borrowers that is not ABL Collateral to the DIP Lender's liens on such property.

**5. Conditions to All Credit Extensions.** The obligation of the DIP Lender to make a Loan on the occasion of any borrowing is subject to the satisfaction of each of the conditions set forth in Section 4 on the date of such Loan (other than those conditions expressly required to be satisfied on the Closing Date) and the following additional conditions:

(a) The Borrowers shall have delivered to the DIP Lender an appropriate Borrowing Request, duly executed and completed, by the time specified in, and otherwise as permitted by, this Agreement.

(b) The representations and warranties made by the Borrowers herein shall be true and correct in all respects at and as if made as of such date (in each case immediately prior to, and after giving effect to, the funding of any Loans) except to the extent they expressly relate to an earlier date, in which case such representations and warranties shall be true and correct in all respects on and as of such earlier date.

(c) No Default or Event of Default shall exist or be continuing either prior to or after giving effect to the making of such Loan.

(d) The making of such Loan (and the use of the proceeds therefrom) shall not violate any Law and shall not be enjoined, temporarily, preliminarily or permanently.

(e) No Material Adverse Effect shall have occurred.

(f) The making of such Loan complies with the Budget, in all respects, or has otherwise been approved in writing by the DIP Lender.

(g) With respect to any Loans made after the Closing Date, the DIP Financing Order shall have been entered approving the DIP Facility, in form and substance satisfactory to the DIP Lender in its sole discretion, which DIP Financing Order shall be in full force and effect and shall

not have been reversed, vacated or stayed, and shall not have been amended, supplemented or otherwise modified without the prior written consent of the DIP Lender.

(h) There shall not exist any Law, ruling, judgment, order, injunction or other restraint that, in the reasonable judgment of the DIP Lender, prohibits, restricts or imposes a materially adverse condition on the Borrowers, the DIP Facility or the exercise by the DIP Lender of its rights as a secured party with respect to the Collateral.

(i) Any borrowing hereunder shall be limited to the amount that is required to fund disbursements permitted under the Budget after giving effect to any Cash Collateral (as defined in the ABL Adequate Protection Order) otherwise available for use by the Borrowers.

The delivery of each Borrowing Request shall constitute a representation and warranty by the Borrowers of the correctness of the matters specified in subsections (b) through (i) above.

**6. Indemnified Taxes.** The Borrowers agree that all payments made pursuant to or on account of this Agreement or any other DIP Loan Document shall be made by the Borrowers free and clear and without deduction or withholding for any Tax, except as required by applicable Law. If any applicable Law requires the deduction of or withholding of any Tax from any such payment, then the Borrowers shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant governmental authority in accordance with applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by the Borrowers pursuant to or on account of this Agreement or any other DIP Loan Document shall be increased as necessary so that after such deduction or withholding has been made (including any such deduction or withholding that may be applicable to additional sums payable under this Section) the DIP Lender shall receive an amount equal to the amount it would have received had no such deduction or withholding been made. The Borrowers shall provide to the DIP Lender evidence of such payment made to the relevant governmental authority within thirty (30) days thereof and shall also provide to the DIP Lender any official tax receipt or other documentation issued by the appropriate governmental authorities with respect to the payment of Indemnified Taxes. The Borrowers hereby agree that they shall indemnify and reimburse the DIP Lender, on demand, for any loss, liability, or expense incurred by the DIP Lender as a result of any failure by the Borrowers to pay Indemnified Taxes as and when due, whether or not such Indemnified Taxes were correctly or legally imposed by the relevant governmental authority. The Borrowers shall timely pay to the relevant governmental authority or, at the option of the DIP Lender, reimburse it for Other Taxes.

**7. Representations.** Each Borrower represents and warrants that:

(a) The DIP Loan Documents constitute the legal, valid and binding obligations of such Borrower, enforceable against such Borrower in accordance with their terms.

(b) The execution, delivery and performance by such Borrower of the DIP Loan Documents and all other documents contemplated hereby or thereby, and the use of the proceeds of any of the Loans, do not and will not: (i) conflict with or constitute a breach of, or default under, or require any consent under, or result in the creation of any Lien, charge or encumbrance upon the property or assets of such Borrower pursuant to any other agreement or instrument (other than any

pledge of or security interest granted in any Collateral pursuant to any DIP Loan Document) to which such Borrower is a party or is bound or by which its properties may be bound or affected; or (ii) violate any provision of any Law (including, without limitation, Regulation U of the Federal Reserve Board), order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to such Borrower.

(c) Upon entry of the Interim Order, no consent, approval or authorization of, or registration, declaration or filing with, any governmental authority or other person or entity is required as a condition to or in connection with the due and valid execution, delivery and performance by such Borrower of any DIP Loan Document.

(d) Except for the Chapter 11 Cases, there are no actions, suits, investigations or proceedings pending or threatened at law, in equity, in arbitration or by or before any other authority involving or affecting: (i) such Borrower that, if adversely determined, are likely to have a Material Adverse Effect; (ii) any material part of the assets or properties of such Borrower or any part of the Collateral (if any) under any DIP Loan Document; or (iii) any of the transactions contemplated in the DIP Loan Documents or in the Letter of Intent. There are currently no material judgments entered against such Borrower and such Borrower is not in default with respect to any judgment, writ, injunction, order, decree or consent of any court or other judicial authority, which default is likely to have or has had a Material Adverse Effect.

(e) Each Borrower is in compliance with all Requirements of Law, except to the extent that the failure to comply therewith would not, in the aggregate, be reasonably expected to have a Material Adverse Effect.

(f) This Agreement, taken together with the Interim Order and/or the Final Order is effective to create in favor of the DIP Lender legal, valid, enforceable and continuing first priority Liens on, and security interests in, the Collateral pledged hereunder or thereunder, in each case subject to no Liens other than with respect to Liens permitted under the DIP Financing Orders. Pursuant to the terms of the Interim Order and/or Final Order, no filing or other action will be necessary to perfect or protect such Liens. Pursuant to and to the extent provided in the Interim Order and the Final Order, the Obligations of the Borrowers under this Agreement will constitute allowed administrative expense claims in the Chapter 11 Cases under Section 364(c) of the Bankruptcy Code, having priority over all administrative expense claims and unsecured claims against such Borrowers now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expense claims of the kind specified in Sections 503(b) and 507(b) of the Bankruptcy Code and all super-priority administrative expense claims granted to any other Person.

(g) The Borrowers are in compliance with the terms and conditions of the DIP Financing Orders. Each of the Interim Order (to the extent necessary, with respect to the period prior to the entry of the Final Order) or the Final Order (from after the date the Final Order is entered) is in full force and effect and has not been vacated, reversed or rescinded or, without the prior written consent of the DIP Lender, in its sole discretion, amended or modified and no appeal of such order has been timely filed or, if timely filed, no stay pending such appeal is currently effective.

(h) A true and complete copy of the Initial Approved Budget, as agreed to with the DIP Lender as of the Closing Date, is attached as Exhibit B hereto.

Each borrowing request by the Borrowers under this Agreement shall constitute a representation and warranty that the statements above are true and correct both on the date of such request and on the date of the borrowing. Each borrowing request shall also constitute a representation that no Default or Event of Default under this Agreement has occurred and is continuing or would result from such borrowing.

**8. Covenants.** Each Borrower agrees that so long as the DIP Lender has any Commitment hereunder or any Obligation or other amount payable hereunder or under any DIP Loan Document (in each case other than contingent indemnification obligations) remains unpaid:

(a) The Borrowers shall provide to the DIP Lender: (i) monthly consolidated unaudited financial statements of the Borrowers and their subsidiaries within thirty (30) days of month-end, certified by the Chief Financial Officer; (ii) quarterly consolidated unaudited financial statements of the Borrowers within forty-five (45) days of fiscal quarter-end, certified by the Chief Financial Officer; (iii) every four weeks after the Closing Date, an updated 13-week cash flow forecast, in each case, in form and substance satisfactory to the DIP Lender in its sole discretion (each such forecast approved by the DIP Lender, an “Approved Budget”) for the subsequent 13 week period consistent with the form of the Initial Approved Budget; (iv) beginning on the second Wednesday following the Closing Date and on each Wednesday following, a variance report (the “Variance Report”) setting forth actual cash receipts and disbursements of the Borrowers for the prior week and setting forth all the variances, on a line-item and aggregate basis, from the amount set forth for such week as compared to the Initial Approved Budget or the most recently Approved Budget delivered prior to such Variance Report (as applicable) on a weekly and cumulative basis, and each such Variance Report shall include explanations for all material variances and shall be certified by the Chief Financial Officer of the Borrowers; and (v) all reports and statements provided to the ABL Lender in connection with an ABL Adequate Protection Order (on a contemporaneous basis with the delivery of such reports and statements to the ABL Lender). The Borrowers will promptly provide notice to the DIP Lender of any Material Adverse Effect.

(b) Further, the Borrowers will provide to the DIP Lender such other reports and information as may be reasonably requested by the DIP Lender. In addition, the Borrowers’ accountants, financial advisors, consultants and parties providing management services to the Borrowers shall cooperate, consult with and provide to the DIP Lender all such information as may be reasonably requested with respect to the businesses, results of operations, and financial condition of the Borrowers.

(c) Each Borrower will execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements, fixture filings, mortgages, deeds of trust and other documents), which may be required under any applicable Law, or which the DIP Lender may reasonably request, to effectuate the transactions contemplated by this Agreement and the other DIP Loan Documents or to grant, preserve, protect or perfect the Liens created by this Agreement, the DIP Financing Orders or other DIP Loan Documents or the validity or priority of an such Lien, all at the expense of the Borrowers.



(d) Except for and to the extent permitted under the DIP Financing Orders, the Borrowers will not, directly or indirectly, incur, create, assume, suffer to exist or permit any administrative expense claim or Lien which is pari passu with or senior to the claims or Liens, as the case may be, of the DIP Lender against the Borrowers hereunder or under the DIP Financing Orders, or apply to the Bankruptcy Court for authority to do so.

(e) The Borrowers will not, directly or indirectly (i) seek, support, consent to or suffer to exist any modification, stay, vacation or amendment of the Interim Order or the Final Order except for any modifications and amendments agreed to in writing by the DIP Lender, (ii) apply to the Bankruptcy Court for authority to take any action prohibited by this Agreement (except to the extent such application and the taking of such action is conditioned upon receiving the written consent of the DIP Lender) or (iii) seek authorization for, or permit the existence of, any claims other than that of the DIP Lender entitled to a superpriority under Section 364(c)(1) of the Bankruptcy Code that is senior or pari passu with the DIP Lender's Section 364(c)(1) claim.

(f) No Borrower shall make or commit to make payments to critical vendors (other than those critical vendors that are approved in writing by the DIP Lender) in respect of prepetition amounts in excess of the amount included in the Budget, without first obtaining the prior written consent of the DIP Lender.

(g) Except as otherwise provided herein or approved by the DIP Lender, the Borrowers will not, and will not permit any subsidiary to directly or indirectly (i) use any cash or the proceeds of any Loans in a manner or for a purpose other than those consistent with this Agreement, the DIP Financing Orders and the Budget, (ii) permit a disbursement that would cause any Budget variance that would not otherwise constitute a Permitted Variance without the prior written consent of the DIP Lender or (iii) make any payment (as adequate protection or otherwise), or application for authority to pay, on account of any claim or debt arising prior to the Petition Date other than payments authorized by the Bankruptcy Court and in compliance with the Budget.

(h) No Collateral or proceeds of Loans may be used directly or indirectly by any of the Borrowers, any committee, any trustee or other estate representative appointed in the Chapter 11 Cases (or any successor case) or any other person or entity (or to pay any professional fees, disbursements, costs or expenses incurred in connection therewith):

(i) to seek authorization to obtain Liens that are senior to, or on a parity with, the Liens in favor of the DIP Lender or the Superpriority DIP Claims (except to the extent expressly set forth in this Agreement); or

(ii) to investigate (including by way of examinations or discovery proceedings), prepare, assert, join, commence, support or prosecute any action for any claim, counterclaim, action, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination or similar relief against, or adverse to the interests of the DIP Lender, solely in its capacity as DIP Lender, its controlling persons, affiliates or successors or assigns, and each of the respective officers, directors, employees, agents, attorneys, or advisors of each of the foregoing, with respect to any transaction, occurrence, omission, action or other matter (including formal discovery proceedings in

anticipation thereof), including, without limitation, (A) any claims or causes of action arising under chapter 5 of the Bankruptcy Code, (B) any so-called “lender liability” claims and causes of action, (C) any action with respect to the validity, enforceability, priority and extent of, or asserting any defense, counterclaim, or offset to, the Obligations, the Superpriority DIP Claims or the DIP Loan Documents, (D) any action seeking to invalidate, modify, set aside, avoid or subordinate, in whole or in part, the Obligations, (E) any action seeking to modify any of the rights, remedies, priorities, privileges, protections and benefits granted to the DIP Lender in the DIP Financing Orders or under any of the DIP Loan Documents (including, without limitation, claims, proceedings or actions that might prevent, hinder or delay the DIP Lender’s assertions, enforcements, realizations or remedies on or against the Collateral in accordance with the applicable DIP Loan Documents and the Interim and/or Final Orders), or (F) objecting to, contesting, or interfering with, in any way, the DIP Lender’s enforcement or realization upon any of the Collateral once an Event of Default has occurred.

(i) The Borrowers shall remain in compliance with the Initial Approved Budget and any subsequent Approved Budget for each Testing Period. To comply with the Initial Approved Budget or any subsequent Approved Budget, the Borrowers (i) shall not exceed any disbursement line item set forth in the Initial Approved Budget or any subsequently Approved Budget, as applicable, for any Testing Period by more than the Permitted Variance, (ii) shall collect cash receipts (excluding proceeds of the DIP Facility that may be deemed a receipt) in an amount not less than the aggregate amount of such cash receipts in the Initial Approved Budget or any subsequently Approved Budget, as applicable, for each Testing Period (subject to the Permitted Variance), and (iii) shall not have combined net receipts and disbursements less than the combined net amount in the Initial Approved Budget or any subsequently Approved Budget, as applicable, for any Testing Period (subject to the Permitted Variance). The Permitted Variance with respect to each Testing Period shall be determined and reported to the DIP Lender not later than the Wednesday immediately following each such Testing Period. Budget compliance shall be tested each week after the Closing Date and shall be tested on a weekly and cumulative basis from the Closing Date (each, a “Testing Period”).

(j) Except as otherwise provided herein or approved by the DIP Lender, the Borrowers will not, and will not permit any subsidiary directly or indirectly to, use any cash or the proceeds of the DIP Facility in a manner or for a purpose other than those consistent with an Approved Budget and this Interim Order.

**9. Events of Default.** If any of the following events of default shall occur (each an “Event of Default”):

(a) The Borrowers shall fail to pay (i) the principal of this Agreement as and when due and payable, or (ii) interest on this Agreement, or any other amount payable under this Agreement, as and when due and payable.

(b) Any representation or warranty made or deemed made by any Borrower in this Agreement or by any Borrower or any Third Party in any DIP Loan Document to which it is a party, or in any certificate, document, opinion or financial or other statement furnished under or in

connection with a DIP Loan Document, shall prove to have been incorrect in any material and adverse respect on or after the date hereof.

(c) Any Borrower or any Third Party shall fail to perform or observe any term, covenant or agreement contained in any DIP Loan Document on its part to be performed or observed.

(d) Any Borrower or any Third Party is involved in a proceeding which would reasonably be expected to result in a forfeiture of all or a substantial part of any such party's assets or a material judgment is entered against any Borrower or any Third Party.

(e) Any Lien or security interest purported to be created by any DIP Loan Document or DIP Financing Order shall cease to be, or shall be asserted by any Borrower not to be, a valid, perfected, first-priority (except as otherwise expressly provided in such DIP Loan Document or any DIP Financing Order) security interest in the assets or properties covered thereby.

(f) Any of the following shall occur in any Chapter 11 Case:

(i) filing of a plan of reorganization or liquidation under Chapter 11 of the Bankruptcy Code by the Borrowers that does not propose to indefeasibly repay the Obligations in full in cash, unless otherwise consented to by the DIP Lender;

(ii) any of the Borrowers shall file a pleading seeking to vacate or modify any of the DIP Financing Orders without the prior written consent of the DIP Lender;

(iii) entry of an order without the prior consent of the DIP Lender amending, supplementing or otherwise modifying any DIP Financing Order;

(iv) reversal, vacation or stay of the effectiveness of any DIP Financing Order;

(v) any violation of the terms of any DIP Financing Order;

(vi) dismissal of any Chapter 11 Case or conversion of any Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code;

(vii) appointment of a Chapter 11 trustee in any Chapter 11 Case;

(viii) the Debtors seek to sell any of their assets outside the ordinary course of business, unless such sale is pursuant to the Bidding Procedures;

(ix) appointment of a responsible officer or examiner with enlarged powers relating to the operation of the business of the Borrowers without the prior written consent of the DIP Lender (other than a patient care ombudsman appointed under section 333 of the Bankruptcy Code);

(x) granting of relief from the automatic stay in the Chapter 11 Cases to permit foreclosure or enforcement on, or any right or remedy with respect to, assets of any Borrower;

(xi) the Borrowers filing of (or supporting another party in the filing of) a motion seeking entry of, or the entry of an order, granting any superpriority claim or Lien (except as contemplated herein) which is senior to or pari passu with the DIP Lender's claims and Liens under the DIP Facility;

(xii) payment of or granting adequate protection with respect to prepetition debt, other than as expressly provided herein or in the DIP Financing Orders;

(xiii) the Borrowers' loss of their exclusive right, pursuant to Section 1121 of the Bankruptcy Code, to file a plan of reorganization (or any modification of such right);

(xiv) unless otherwise provided in the Interim Order or the Final Order, or upon the written permission of the DIP Lender, any of the Borrowers seek or if there is entered, an order under Section 365 of the Bankruptcy Code rejecting a material lease that is part of (or whose premises contain any of ) the Collateral;

(xv) cessation of the Liens of the DIP Lender to be valid, perfected and enforceable in all respects in accordance with the DIP Financing Orders; or

(xvi) the entry by the Bankruptcy Court of an order terminating the Borrowers' right to use the cash collateral of the ABL Lender (or otherwise modifying such rights set forth in an ABL Adequate Protection Order).

(g) Any of the Borrowers shall (i) use cash collateral or Loan proceeds for any item other than those set forth in, and in accordance with, the Budget and as approved by the Bankruptcy Court or prepays any pre-petition debt, (ii) assert any right of subrogation or contribution against any other Borrower prior to the payment in full of the Obligations and the termination of the Commitment.

(h) Any of the Borrowers shall fail to comply with any milestone set forth on Exhibit C.

(i) Any of the Borrowers shall select a bid other than a bid submitted by the DIP Lender as the Prevailing Bid at the conclusion of the Auction.

THEN, the DIP Lender may deliver written notice to the Bankruptcy Court that the automatic stay provisions of Section 362 of the Bankruptcy Code have been vacated and modified to the extent necessary to permit the DIP Lender to exercise all rights and remedies provided for in the DIP Loan Documents, and to take any or all of the following actions without further order of or application to the Bankruptcy Court (as applicable):

(a) declare the Commitment terminated whereupon the Commitment shall be immediately terminated;

(b) declare the unpaid principal of and any accrued interest in respect of all Loans and any and all other indebtedness or obligations of any and every kind owing by a Borrower to the DIP Lender hereunder to be due whereupon the same shall be

immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrowers;

(c) enforce any and all rights against the Collateral in the possession of the DIP Lender, including, without limitation, disposition of the Collateral solely for application towards the Obligations; and/or

(d) take any other actions or exercise any other rights or remedies permitted under the DIP Financing Orders, the DIP Loan Documents or applicable Law to effectuate the repayment of the Obligations.

The Borrowers shall cooperate fully with the DIP Lender in its exercise of rights and remedies, whether against the Collateral or otherwise. The Borrowers hereby waive any right to seek relief under the Bankruptcy Code, including under Section 105 thereof, to the extent such relief would restrict or impair the rights and remedies of the DIP Lender set forth in the DIP Financing Orders and in the DIP Loan Documents.

In case any one or more of the covenants and/or agreements set forth in this Agreement or any other DIP Loan Document shall have been breached by any Borrower, then the DIP Lender may proceed to protect and enforce the DIP Lender's rights either by suit in equity and/or by action at law, including an action for damages as a result of any such breach and/or an action for specific performance of any such covenant or agreement contained in this Agreement or such other DIP Loan Document. Without limitation of the foregoing, the Borrowers agree that failure to comply with any of the covenants contained herein will cause irreparable harm and that specific performance shall be available in the event of any breach thereof. The DIP Lender acting pursuant to this paragraph shall be indemnified by the Borrowers against all liability, loss or damage, together with all reasonable costs and expenses related thereto (including reasonable legal and accounting fees and expenses).

#### **10. Certain Bankruptcy Matters.**

(a) Except to the extent provided otherwise in a DIP Financing Order, the Borrowers hereby agree that the Obligations shall (i) constitute Superpriority DIP Claims over all administrative expense claims and unsecured claims against the Borrowers now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, all administrative expense claims of the kind specified in Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1114 or any other provisions of the Bankruptcy Code and all super-priority administrative expense claims granted to any other Person the establishment of which super-priority shall have been approved and authorized by the Bankruptcy Court, subject only to the Carve-Out and (ii) be secured pursuant to Sections 364(c)(2) and (c)(3) of the Bankruptcy Code and, to the extent provided in any of the DIP Financing Orders, shall not be subject to any claims against the Collateral pursuant to Section 506(c) of the Bankruptcy Code, subject only to the Carve-Out.

(b) In the event of a conflict between, or inconsistency among, the Interim Order or the Final Order, on the one hand, and any other DIP Loan Document, on the other hand, the Interim Order or the Final Order, as the case may be, shall control.

(c) Notwithstanding anything to the contrary contained herein or elsewhere:

(i) The Lender shall not be required to prepare, file, register or publish any financing statements, mortgages, hypothecs, account control agreements, notices of Lien or similar instruments in any jurisdiction or filing or registration office, or to take possession of any Collateral or to take any other action in order to validate, render enforceable or perfect the Liens on the Collateral granted by or pursuant to this Agreement, the DIP Financing Orders or any other DIP Loan Document. If the DIP Lender shall, in its sole discretion, from time to time elect to prepare, file, register or publish any such financing statements, mortgages, hypothecs, account control agreements, notices of Lien or similar instruments, take possession of any Collateral, or take any other action to validate, render enforceable or perfect all or any portion of the DIP Lender's Liens on the Collateral, (A) all such documents and actions shall be deemed to have been filed, registered, published or recorded or taken at the time and on the date that the Interim Order is entered, and (B) shall not negate or impair the validity or effectiveness of this Section or of the perfection of any other Liens in favor of the DIP Lender on the Collateral.

(ii) Except as otherwise agreed to by the DIP Lender, the Liens, lien priorities, Superpriority DIP Claims and other rights and remedies granted to the DIP Lender pursuant to this Agreement, the DIP Financing Orders or the other DIP Loan Documents (specifically including, but not limited to, the existence, perfection, enforceability and priority of the Liens provided for herein and therein, and the Superpriority DIP Claims provided herein and therein) shall not be modified, altered or impaired in any manner by any other financing or extension of credit or incurrence of debt by the Borrowers (pursuant to Section 364 of the Bankruptcy Code or otherwise), or by dismissal or conversion of any of the Chapter 11 Cases, or by any other act or omission whatsoever.

(d) Without limiting the generality of the foregoing, notwithstanding any such financing, extension, incurrence, dismissal, conversion, act or omission:

(i) except to the extent provided in any of the DIP Financing Orders and subject to the DIP Financing Orders, no costs or expenses of administration which have been or may be incurred in the Chapter 11 Cases or any conversion of the same or in any other proceedings related thereto, and no priority claims, are or will be prior to or on a parity with any claim of the DIP Lender against the Borrowers in respect of any Obligations;

(ii) other than as provided in the DIP Financing Orders or the DIP Loan Documents, the DIP Lender's Liens on the Collateral shall constitute valid, enforceable and perfected first priority Liens, and shall be prior to all other Liens, now existing or hereafter arising, in favor of any other creditor or other Person; and

(iii) the DIP Lender's Liens on the Collateral shall continue to be valid, enforceable and perfected without the need for the DIP Lender to prepare, file, register or publish any financing statements, mortgages, hypothecs, account control agreements, notices of Lien or similar instruments or to otherwise perfect the DIP Lender's Liens under applicable non-bankruptcy Law.

(e) In connection with any sale of all or any portion of the Collateral, including pursuant to Sections 9-610 or 9-620 of the UCC, at any sale thereof conducted under the provisions of the Bankruptcy Code, including Section 363 of the Bankruptcy Code or as part of restructuring plan subject to confirmation under Section 1129(b)(2)(A)(iii) of the Bankruptcy Code, or at any sale or foreclosure conducted by the DIP Lender, in accordance with applicable Law, each Borrower hereby gives the DIP Lender the power and right, without assent by such Borrower, to “credit bid” the full amount of all Obligations in order to purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral. In connection with the foregoing, the DIP Lender shall have the right to assign its right to purchase all or any portion of the Borrowers’ assets in connection with any such “credit bid” to a newly-formed acquisition vehicle or affiliate.

## **11. Grant of Security.**

(a) To secure the Obligations, effective immediately upon entry of the Interim Order, pursuant to Sections 361, 362, 364(c)(2) and 364(c)(3) of the Bankruptcy Code, the DIP Lender is hereby granted continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected post-petition (x) first-priority security interests in and liens on all Collateral that is not otherwise subject to a valid, properly perfected and unavoidable security interest or lien as of the Petition Date (collectively, the “Prior Permitted Liens”), subject only to the Carve-Out, and (y) junior security interests in and liens on all Collateral subject to a Prior Permitted Lien (including, without limitation, the ABL Collateral), subject only to the Carve-Out and the Adequate Protection Liens against the ABL Collateral.

(b) To the extent permitted by applicable Law, each Borrower hereby irrevocably authorizes DIP Lender and its affiliates, counsel and other representatives, at any time and from time to time, to file in the name of such Borrower or otherwise and without separate authorization or authentication of such Borrower appearing thereon, such UCC financing statements or continuation statements as the DIP Lender may reasonably deem necessary or reasonably appropriate to further perfect or maintain the perfection of the Lien of the DIP Lender under this Agreement, and such financing statements and amendments may describe the Collateral covered thereby “all of the debtor's personal property and assets” or words to similar effect, whether now owned or hereafter acquired, notwithstanding that such description may be broader in scope than the Collateral described in this Agreement. Each Borrower hereby also authorizes DIP Lender and its affiliates, counsel and other representatives, at any time and from time to time, to execute and file any and all agreements, instruments, documents and papers as the DIP Lender may reasonably request to evidence the Lien of the DIP Lender in any patent, trademark, copyright or other intellectual property, including without limitation the goodwill or accounts and general intangibles of such Borrower relating thereto or represented thereby. Such Borrower agrees that, except to the extent that any filing office requires otherwise, a carbon, photographic, photostatic or other reproduction of this Agreement or of a financing statement is sufficient as a financing statement. The Borrowers shall pay the costs of, or incidental to, any recording or filing of any financing or continuation statements or other assignment documents concerning the Collateral.

(c) Each Borrower will promptly deliver each instrument and any other document, and take any other action, that may be reasonably requested by the DIP Lender in order to perfect the DIP Lender’s Lien in the Collateral, all at the sole cost and expense of the Borrowers.

**12. Expenses.** The Borrowers agree to reimburse the DIP Lender on demand for all costs, expenses and charges (including, without limitation, reasonable fees and charges of counsel) in connection with the preparation or modification of the DIP Loan Documents, performance or enforcement of the DIP Loan Documents, or the defense or prosecution of any rights of the DIP Lender pursuant to any DIP Loan Documents.

**13. Jurisdiction.** To the maximum extent not prohibited by applicable Law, each Borrower hereby irrevocably: (i) submits to the jurisdiction of any Georgia state or United States federal court sitting in Atlanta, Georgia over any action or proceeding arising out of this Agreement; (ii) agrees that all claims in respect of such action or proceeding may be held and determined in such Georgia state or federal court; (iii) agrees that any action or proceeding brought against the DIP Lender may be brought only in a Georgia state or United States federal court sitting in Atlanta, Georgia; (iv) consents to the service of process in any such action or proceeding in either of said courts by mailing thereof by the DIP Lender by registered or certified mail, postage prepaid, to such Borrower at its address specified on the signature page hereof, or at such Borrower's most recent mailing address as set forth in the records of the DIP Lender; and (v) waives any defense on the basis of an inconvenient forum. Notwithstanding any other provision of this Section 13, the Bankruptcy Court shall have exclusive jurisdiction over any action or dispute involving, relating to or arising out of this Agreement or the other DIP Loan Documents. Each Borrower agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in any other jurisdiction by suit or proceeding in such state and hereby waives any defense on the basis of an inconvenient forum. Nothing herein shall affect the right of the DIP Lender to serve legal process in any other manner permitted by Law or affect the right of the DIP Lender to bring any action or proceeding against any Borrower or its property in the courts of any other jurisdiction.

**14. Waiver of Jury Trial.**

EACH PARTY HERETO IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF THIS AGREEMENT OR ANY OTHER DIP LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER 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 AGREEMENT AND THE OTHER DIP LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

**15. Miscellaneous.**

(a) The provisions of this Agreement are intended to be severable. If for any reason any provisions of this Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such



invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions thereof in any jurisdiction.

(b) No amendment, modification, supplement or waiver of any provision of this Agreement nor consent to departure by any Borrower therefrom shall be effective unless the same shall be in writing and signed by such Borrower and the DIP Lender, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

(c) No failure on the part of the DIP Lender to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof or preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by Law.

(d) As used herein, the term Borrowers shall include all signatories hereto, if more than one. In such event, the obligations, representations and warranties of the Borrowers hereunder shall be joint and several. This Agreement shall be binding on the Borrowers and their respective successors and assigns and shall inure to the benefit of the DIP Lender and its successors and assigns, except that no Borrower may delegate any of its obligations hereunder without the prior written consent of the DIP Lender. With the consent of the Borrowers, not to be unreasonably withheld, the DIP Lender may assign all or a portion of its rights and obligations under this Agreement; provided that such consent shall not be required (i) at any time that an Event of Default has occurred and is continuing, (ii) in connection with any assignment to an affiliate of the DIP Lender, or (iii) in connection with any merger or consolidation.

(e) Anything herein to the contrary notwithstanding, the obligations of the Borrowers under this Agreement shall be subject to the limitation that payments of interest shall not be required to the extent that receipt thereof would be contrary to provisions of Law applicable to the DIP Lender limiting rates of interest which may be charged or collected by the DIP Lender.

(f) Unless otherwise agreed in writing, notices shall be given to the DIP Lender and the Borrowers at their addresses set forth in the signature page of this Agreement, or such other address communicated in writing by either such party to the other. Notices to the DIP Lender shall be effective upon receipt.

(g) The obligations of the Borrowers under Sections 6, 12, 13 and 14 hereof shall survive the repayment of the Loans.

(h) Each reference herein to the DIP Lender shall be deemed to include its successors, endorsees, and assigns, in whose favor the provisions hereof shall inure. Each reference herein to the Borrowers shall be deemed to include the respective heirs, executors, administrators, legal representatives, successors and assigns of the Borrowers, all of whom shall be bound by the provisions hereof.

**16. Governing Law.** This Agreement shall be governed by and construed in accordance with federal Law applicable to the DIP Lender and, to the extent not preempted by federal Law, the Law of the State of New York, without regard to its conflicts of laws principles.

**The remainder of this page is intentionally blank.**

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the date first written above.

**BORROWERS:**

Southern Regional Health System, Inc.

By: \_\_\_\_\_

Name:

Title:

Southern Crescent Physicians' Group, Inc.

By: \_\_\_\_\_

Name:

Title:

Southern Crescent Real Estate, Inc.

By: \_\_\_\_\_

Name:

Title:

Southern Regional Ambulatory Surgery, Inc.

By: \_\_\_\_\_

Name:

Title:

Southlake Ambulatory Surgery Center, L.L.L.P.  
(d/b/a Spivey Station Surgery Center)

By: \_\_\_\_\_

Name:

Title:

Southern Regional Medical Services, Inc.

By: \_\_\_\_\_

Name:

Title:

**Address for notices to any Borrower:**

c/o Southern Regional Health System, Inc.

\_\_\_\_\_

\_\_\_\_\_

Attn:

**DIP LENDER:**

Prime Healthcare Foundation, Inc.

By: \_\_\_\_\_

Name:

Title:

**Address for notices to DIP Lender:**

Prime Healthcare Foundation, Inc.  
3300 E. Guasti Road, 3rd Floor  
Ontario, CA 91761  
Attn: Troy Schell

Exhibit A

Form of Borrowing Request

[Date]

Prime Healthcare Foundation, Inc.  
3300 E. Guasti Road, 3rd Floor  
Ontario, CA 91761  
Attn: Troy Schell

Ladies and Gentlemen:

Reference is made to that certain SENIOR SECURED DEBTOR-IN-POSSESSION LOAN AGREEMENT, dated as of August [ ], 2015 (the "Loan Agreement"), by and among Southern Regional Health System, Inc., Southern Crescent Physicians' Group, Inc., Southern Crescent Real Estate, Inc., Southern Regional Ambulatory Surgery, Inc., Southlake Ambulatory Surgery Center, L.L.P. (d/b/a Spivey Station Surgery Center), and Southern Regional Medical Services, Inc., each as debtors and debtors-in-possession under the Bankruptcy Code (as defined below) (collectively, the "Borrowers" and each, individually, a "Borrower"), and Prime Healthcare Foundation, Inc., as lender (the "DIP Lender"). Terms defined in the Loan Agreement are used herein with the same meanings. This notice constitutes a Borrowing Request, and the Chief Financial Officer, on behalf of the Borrowers, hereby requests a Loan under the Loan Agreement, and in that connection the Chief Financial Officer specifies the following information with respect to the Loan requested hereby:

- (A) Aggregate principal amount of Loan<sup>1</sup>: \_\_\_\_\_
- (B) Date of Loan (which is a Business Day): \_\_\_\_\_
- (C) Location and number of the applicable Borrower's account to which proceeds of the Loan are to be disbursed: \_\_\_\_\_
- (D) Purpose of the Loan and use of proceeds therefrom:  
\_\_\_\_\_

---

<sup>1</sup> Not less than \$25,000

The Chief Financial Officer hereby represents and warrants that the conditions specified in paragraphs (b) through (i) of Section 5 of the Loan Agreement are satisfied as of the date hereof.

Very truly yours,

**CHIEF FINANCIAL OFFICER**

By: \_\_\_\_\_

Name:

Title:

Exhibit B

Initial Approved Budget

See Attached.



EXHIBIT C

**Milestones**

Unless otherwise waived by the DIP Lender in its sole discretion, the Borrowers shall achieve the following milestones by the dates set forth below (or such later date as may be agreed to by the DIP Lender in its sole discretion):

1. On or before August 25, 2015, the Bankruptcy Court shall have entered an order in form and substance reasonably satisfactory to the DIP Lender approving the Bidding Procedures;
2. On or before September 4, 2015, the Borrowers and the DIP Lender (or its assignee) shall have agreed, in principle, to a definitive asset purchase agreement pursuant to which the DIP Lender shall serve as the “stalking horse” buyer for the Borrowers’ assets, which agreement shall be final in all respects but for the execution by the Borrowers once approval has been received from the Georgia Attorney General’s office;
3. On or before September 17, 2015, an auction for the sale of the Borrowers’ assets pursuant to Section 363 of the Bankruptcy Code shall have occurred (in the event that multiple qualifying bids were received for the Borrowers’ assets in compliance with the Bidding Procedures);
4. On or before September 23, 2015, the Bankruptcy Court shall have entered an order or orders in form and substance reasonably satisfactory to Lender authorizing the sale of the Borrowers’ assets to the DIP Lender, pursuant to Sections 105, 363 and 365 of the Bankruptcy Code; and
5. On or before December 15, 2015, the closing of the sale(s) of the Borrower’s assets to the DIP Lender shall have occurred.

**EXHIBIT "B"**

**IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

In re:

SOUTHERN REGIONAL HEALTH SYSTEM, INC., a  
Georgia non-profit corporation, *et al.*,<sup>1</sup>  
  
Debtors.

Chapter 11

Case No. 15-64266-wlh

Jointly Administered

**INTERIM ORDER PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, 364 AND 507:  
(A) AUTHORIZING THE DEBTORS TO OBTAIN POST-PETITION  
FINANCING; (B) GRANTING LIENS AND PROVIDING SUPERPRIORITY  
ADMINISTRATIVE EXPENSE STATUS; AND (C) GRANTING RELATED RELIEF**

This matter having come before this Court upon the motion, dated August [\_\_\_], 2015 (the "Motion"),<sup>2</sup> filed by Southern Regional Health System, Inc. ("SRHS"), Southern Crescent

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Southern Regional Health System, Inc. (5423), Southern Crescent Physicians' Group, Inc. (5425), Southern Crescent Real Estate, Inc. (5424), Southern Regional Ambulatory Surgery, Inc. (1044), Southlake Ambulatory Surgery Center, L.L.P. d/b/a Spivey Station Surgery Center (2588), and Southern Regional Medical Services, Inc. (4854). The location of the Debtors' corporate headquarters is 11 Upper Riverdale Road, S.W., Riverdale, Georgia 30274.

Physicians' Group, Inc., Southern Crescent Real Estate, Inc., Southern Regional Ambulatory Surgery, Inc., Southlake Ambulatory Surgery Center, L.L.L.P. d/b/a Spivey Station Surgery Center, and Southern Regional Medical Services, Inc. (collectively, the "Debtors"), each as a debtor and debtor in possession in the above-captioned chapter 11 cases (collectively with any Successor Cases (as defined below), the "Cases"), pursuant to Sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(e) and 507 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), seeking entry of an interim order (this "Interim Order"), *inter alia*:

(i) authorizing the Debtors to obtain senior secured post-petition financing on a superpriority basis pursuant to the terms and conditions of that certain Senior Secured Debtor-In-Possession Loan Agreement attached hereto as Exhibit A (the "DIP Loan Agreement"; together with the agreements, documents, instruments, security deeds and certificates executed by the Debtors or otherwise delivered in connection therewith, the "DIP Loan Documents"), by and among the Debtors, as co-borrowers, and Prime Healthcare Foundation, Inc. (the "DIP Lender"), as lender, providing for, *inter alia*, a superpriority, new money, multi-draw, term loan credit facility providing for the borrowing of loans in accordance with the Approved Budget (as defined below) in an aggregate principal amount not to exceed \$9,200,000 (the "DIP Facility");

(ii) authorizing the Debtors to execute and deliver the DIP Loan Agreement and the other DIP Loan Documents and to perform such other acts as may be necessary or desirable in connection with the DIP Loan Documents;

(iii) pursuant to Section 364(c)(2) of the Bankruptcy Code, granting the DIP Lender valid, enforceable, non-avoidable, automatically and fully perfected first priority liens on and security interests in all present and after-acquired DIP Collateral (as defined below), wherever located, that is not otherwise subject to a valid, perfected and unavoidable security interest or lien as of the Petition Date (as defined below) to secure any and all obligations owing under and with respect to the DIP Facility and the DIP Loan Documents (collectively, and including, without limitation, all "Obligations" as defined in the DIP Loan Agreement, the "DIP Obligations"), subject only to the Carve-Out (as defined below);

(iv) pursuant to Section 364(c)(3) of the Bankruptcy Code, granting the DIP Lender for the purpose of securing the DIP Obligations, valid, enforceable, non-avoidable, automatically

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

and fully perfected junior liens on and security interests in all present and after-acquired DIP Collateral, wherever located, that is subject to a valid, perfected and unavoidable security interest or lien as of the Petition Date (including, without limitation, property of SRHS (the “ABL Collateral”) that is subject to valid, perfected and unavoidable security interests and liens (the “ABL Liens”) held by Gemino Healthcare Finance, LLC (the “ABL Lender”), subject only to any such valid, perfected and unavoidable security interest or lien, the Carve-Out and the adequate protection liens granted to the ABL Lender in the ABL Collateral (the “ABL Adequate Protection Liens”) pursuant to that certain *Interim Order on Debtor’s Motion for Authority to Use Cash Collateral and Notice of Final Hearing* entered by this Court on August 6, 2015 (docket no. 43) and/or any additional interim or final orders granting adequate protection to the ABL Lender that are acceptable in form and content to the DIP Lender (each, an “ABL Adequate Protection Order”);

(v) pursuant to Section 364(c)(1) of the Bankruptcy Code, granting all of the claims of the DIP Lender on account of the DIP Obligations allowed superpriority administrative expense claim status in each of the Cases with priority over any and all administrative expenses of the kind specified in or arising under any section of the Bankruptcy Code (including, without limitation, Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726 or 1114 of the Bankruptcy Code), subject only to the Carve-Out;

(vi) authorizing the Debtors to pay the principal, interest, fees, expenses and other amounts payable under the DIP Loan Documents as such amounts become due and payable, including, without limitation, commitment fees and the fees and disbursements of the respective attorneys, advisors, accountants and other consultants engaged by the DIP Lender, all to the extent provided in, and in accordance with the terms of, this Interim Order, the DIP Loan Agreement and the other DIP Loan Documents;

(vii) modifying the automatic stay imposed by Section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Loan Documents and this Interim Order; and

(viii) scheduling a final hearing (the “Final Hearing”) to consider the relief requested in the Motion and approving the form of notice with respect to the Final Hearing;

and this Court having considered the Motion, the exhibits attached thereto, the DIP Loan Documents, and the record established at the interim hearing held on August 21, 2015 to consider the interim relief requested in the Motion (the “Interim Hearing”); and notice of the Interim Hearing having been given in accordance with Bankruptcy Rules 4001(b), (c) and (d), and 9014 and all applicable local rules of this Court (the “Local Rules”); and the Interim Hearing having been held and concluded; and all objections, if any, to the interim relief requested in the Motion having been withdrawn, resolved or overruled by this Court; and it appearing to this

Court that granting the interim relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing, and otherwise is fair and reasonable and in the best interests of the Debtors, their estates, their creditors and their patients, and is essential for the continued operation of the Debtors' businesses; and it further appearing that the Debtors are unable to obtain unsecured credit for money borrowed allowable as an administrative expense under Section 503(b)(1) of the Bankruptcy Code; and adequate protection being provided on account of the interests of certain holders of liens on the property of the Debtors' estates on which liens are to be granted; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

BASED UPON THE RECORD ESTABLISHED AT THE INTERIM HEARING, THIS COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:<sup>3</sup>

A. Petition Date. On July 30, 2015 (the "Petition Date"), each of the Debtors filed a separate, voluntary petition under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Georgia (this "Court") commencing these Cases.

B. Debtors-in-Possession. The Debtors continue to manage and operate their businesses and properties as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in any of the Cases.

C. Jurisdiction and Venue. This Court has jurisdiction, pursuant to 28 U.S.C. §§ 157(b) and 1334, over these proceedings, and over the persons and property affected hereby. Consideration of the Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2), and the

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<sup>3</sup> Where appropriate in this Interim Order, findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact pursuant to Bankruptcy Rule 7052.

Debtors confirmed their consent to the entry of a final order by the Court in connection with the Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection with the Motion consistent with Article III of the United States Constitution. The statutory predicates for the relief set forth herein are Sections 105, 361, 362, 363, 364 and 507 of the Bankruptcy Code and Rules 2002, 4001 and 9014 of the Bankruptcy Rules. Venue for these Cases and proceedings on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

D. Committee Formation. On August 11, 2015, the United States Trustee (the “U.S. Trustee”) appointed an official committee of unsecured creditors in these Cases (the “Committee”).

E. Findings Regarding the Post-Petition Financing.

(i) Request for Post-Petition Financing. The Debtors seek authority to:

- (a) enter into the DIP Facility on the terms described herein and in the DIP Loan Documents; and
- (b) use the proceeds of the DIP Facility on the terms described herein. At the Final Hearing, the Debtors will seek final approval of the DIP Loan Documents and the proposed post-petition financing arrangements contained therein pursuant to a proposed final order (the “Final Order”), which shall be in form and substance acceptable to the DIP Lender in all respects, and notice of the Final Hearing and Final Order will be provided in accordance with this Interim Order. Good cause has been shown for the entry of this Interim Order.

(ii) Need for Post-Petition Financing. The Debtors’ obtaining credit on an interim basis pursuant to the DIP Facility as provided for herein is necessary to avoid immediate and irreparable harm to the Debtors, their estates, their creditors, their patients and other parties-in-interest, and to enable the Debtors to continue operations and to administer and preserve the

value of their estates. The ability of the Debtors to finance their operations, to maintain business relationships with their vendors, suppliers and customers, to provide care to their patients, to pay their employees and otherwise to finance their operations through the chapter 11 process requires the availability of working capital from the DIP Facility. Without the ability to access the Interim Financing (as defined below) and the DIP Facility, the Debtors, their estates, their creditors and their patients would suffer immediate and irreparable harm. The Debtors do not have sufficient available sources of working capital or financing to operate their businesses or maintain their properties in the ordinary course of business without the DIP Facility.

(iii) *No Credit Available on More Favorable Terms.* Given their current financial condition, financing arrangements and capital structure, the Debtors are unable to obtain financing from sources other than the DIP Lender on terms more favorable than provided for in the DIP Facility. The Debtors have been unable to obtain unsecured credit allowable under Section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors also have been unable to obtain sufficient credit (a) having priority over that of administrative expenses of the kind specified in Sections 503(b), 507(a) and 507(b) of the Bankruptcy Code, (b) secured solely by a lien on property of the Debtors and their estates that is not otherwise subject to a lien, or (c) secured solely by a junior lien on property of the Debtors and their estates that is subject to a lien. Financing on a post-petition basis is not otherwise available without granting the DIP Lender (x) perfected security interests in and liens on (each as provided herein) all of the Debtors' existing and after-acquired assets with the priorities set forth herein, (y) superpriority administrative expense claims, and (z) the other protections set forth in this Interim Order.

(iv) *Use of Proceeds of the DIP Facility.* As a condition to entering into the DIP Loan Agreement, the extension of credit under the DIP Facility and the authorization to use

the proceeds of the DIP Facility, the DIP Lender requires, and the Debtors have agreed, that the proceeds of the DIP Facility shall be used, in each case in a manner consistent with the terms and conditions of the DIP Loan Documents and in accordance with an Approved Budget, solely for (a) working capital and other general corporate purposes of the Debtors, (b) payment of the costs of administration of the Cases, including, without limitation, the costs, fees and expenses incurred in connection with the DIP Facility, and (c) payment of any adequate protection payments to the ABL Lender contemplated by an ABL Adequate Protection Order.

F. Adequate Protection. The ABL Lender is entitled to receive adequate protection to the extent of any diminution in value of its interests in the ABL Collateral. Pursuant to Sections 361, 363 and 507(b) of the Bankruptcy Code, as adequate protection, the ABL Lender has received (and may receive in the future) the ABL Adequate Protection Liens and claims, and the professional and other expense reimbursements, as more fully set forth in each ABL Adequate Protection Order.

G. Sections 506(c). In exchange for the DIP Lender's agreement to subordinate its liens and superpriority claims to the Carve-Out, upon entry of a Final Order providing such relief, the DIP Lender shall receive a waiver of the provisions of Section 506(c) of the Bankruptcy Code.

H. Good Faith of the DIP Lender; Debtors' Business Judgment.

(i) Willingness to Provide Financing. The DIP Lender has indicated a willingness to provide financing to the Debtors subject to: (a) the entry by this Court of this Interim Order and the Final Order; (b) approval by this Court of the terms and conditions of the DIP Facility and the DIP Loan Documents; and (c) entry of findings by this Court that such financing is essential to the Debtors' estates, that the Lender is extending post-petition credit to



the Debtors pursuant to the DIP Loan Documents and this Interim Order in good faith, and that the DIP Lender's claims, superpriority claims, security interests and liens and other protections granted pursuant to this Interim Order and the DIP Loan Documents will have the protections provided in Section 364(e) of the Bankruptcy Code and will not be affected by any subsequent reversal, modification, vacatur, amendment, reargument or reconsideration of this Interim Order or any other order for amounts loaned or advanced pursuant to this Interim Order.

(ii) *Business Judgment and Good Faith Pursuant to Section 364(e)*. The extension of credit under the DIP Facility, governed by the terms and conditions of the DIP Loan Documents, the fees paid and to be paid thereunder, and this Interim Order as it relates to the Interim Financing: (a) are fair and reasonable; (b) are the best available to the Debtors under the circumstances; (c) reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties; and (d) are supported by reasonably equivalent value and fair consideration. The DIP Facility was negotiated in good faith and at arms' length among the Debtors and the DIP Lender. The credit to be extended under the DIP Facility shall be deemed to have been allowed, advanced, made, used and/or extended in good faith, and for valid business purposes and uses, within the meaning of Section 364(e) of the Bankruptcy Code, and the DIP Lender is therefore entitled to the protection and benefits of Section 364(e) of the Bankruptcy Code and this Interim Order.

I. *Notice*. Notice of the Interim Hearing and the emergency relief requested in the Motion has been provided by the Debtors to certain parties-in-interest, including: (i) the U.S. Trustee; (ii) the Internal Revenue Service; (iii) all parties required to receive notice pursuant to the *Order Granting Motion Of The Debtors For Approval Of Notice Procedures* entered by the Bankruptcy Court on August 6, 2015 [Dkt. No. 37]; (iv) counsel to the DIP Lender; (v) counsel to

the ABL Lender; (vi) all other known parties with liens of record on assets of the Debtors as of the Petition Date; (vii) all financial institutions at which the Debtors maintain deposit accounts; (viii) the landlords for all non-residential real properties occupied by the Debtors as of the Petition Date; (ix) the Attorney General for the State of Georgia; (x) the Centers for Medicare & Medicaid Services; (xi) counsel for Clayton County, Georgia; (xii) the Hospital Authority of Clayton County, Georgia; (xiii) Georgia Department of Community Health, Division of Healthcare Facility Regulation; (xiv) Georgia Department of Community Health, Office of General Counsel; (xv) Georgia Department of Community Health, Division of Medical Assistance (Medicaid); (xvi) Georgia Department of Community Health, Office of Health Planning; (xvii) Georgia Board of Pharmacy; (xviii) Centers for Medicare & Medicaid Services, Division of Laboratory Services, Survey and Certification Group; (xix) Centers for Medicare & Medicaid Services, Office of Financial Management; (xx) Cahaba GBA; (xxi) City of Riverdale, Business License division; (xxii) The Joint Commission (formerly known as JCAHO); (xxiii) United States Department of Justice, Drug Enforcement Administration; (xxiv) Georgia Department of Labor; (xxv) Office of the Attorney General of the State of Georgia; Attn: Julie Jacobs, Esq.; and (xxvi) Georgia Department of Public Health, Food Service Permit division. The Debtors have made reasonable efforts to afford appropriate notice under the circumstances, and such notice of the Motion and the Interim Hearing is good and sufficient to permit the interim relief set forth in this Interim Order.

J. Immediate Entry. The Debtors have requested immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and the Local Rules. Absent entry of this Interim Order, the Debtors' businesses, properties and estates will be immediately and irreparably harmed. This Court concludes that sufficient cause exists therefor and that entry

of this Interim Order is in the best interest of the Debtors' respective estates, creditors and patients, as its implementation will, among other things, allow for the continued operation of the Debtors' existing businesses.

Based upon the foregoing findings and conclusions, the Motion and the record made before this Court with respect to the Motion at the Interim Hearing, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED that:

1. Interim Financing Approved. The Motion is granted to the extent provided herein, and the Interim Financing is authorized and approved, subject to the terms and conditions set forth in this Interim Order and the DIP Loan Documents.

2. Objections Overruled. All objections to the interim relief sought in the Motion to the extent not previously withdrawn, overruled or resolved are hereby overruled on the merits and denied with prejudice.

**DIP Facility Authorization**

3. Authorization of the DIP Facility. The DIP Facility and the Interim Financing are hereby approved by this Interim Order. The Debtors are expressly and immediately authorized and empowered to execute and deliver the DIP Loan Documents, and to incur and to perform the DIP Obligations in accordance with, and subject to, the terms of this Interim Order and the DIP Loan Documents, and to deliver any and all instruments and documents that may be required or necessary for the performance by the Debtors under the DIP Facility and the creation and perfection of the DIP Liens. The Debtors are hereby authorized, empowered and directed to pay, in accordance with this Interim Order, the principal, interest, fees, expenses, legal fees and other amounts described in the DIP Loan Documents, as such become due and payable and without the need to obtain further approval of this Court, including, without limitation, commitment fees and

the fees and disbursements that are chargeable and reimbursable under the DIP Loan Agreement. Each officer of the Debtors is hereby authorized to execute and deliver each of the DIP Loan Documents, such execution and delivery to be conclusive of such officer's authority to act in the name of and on behalf of the Debtors. Upon execution and delivery, the DIP Loan Documents shall represent valid and binding obligations of the Debtors, enforceable against each of the Debtors and their estates in accordance with their terms.

4. Authorization to Borrow. Prior to the entry of the Final Order, and to prevent immediate and irreparable harm to the Debtors' estates, the Debtors are hereby authorized to borrow an aggregate principal amount of \$2,000,000 (the "Interim Financing"), subject to the terms and conditions set forth in the DIP Loan Documents and this Interim Order.

5. DIP Obligations. Upon its entry, this Interim Order shall constitute and evidence the validity and binding effect of the DIP Obligations, which DIP Obligations shall be enforceable against the Debtors, their estates and any successors thereto, including, without limitation, any trustee appointed in any of the Cases, or any case under chapter 7 of the Bankruptcy Code upon the conversion of any of the Cases, or in any other proceedings superseding or related to any of the foregoing (collectively, the "Successor Cases"). Upon entry of this Interim Order, the DIP Obligations will include all post-petition loans and any other post-petition indebtedness or obligations, contingent or absolute, that may now or from time-to-time be owing by any of the Debtors to the DIP Lender under this Interim Order and the DIP Loan Documents, including, without limitation, all principal, accrued interest, costs, fees, expenses and other amounts due under the DIP Facility as set forth therein. The DIP Obligations shall be due and payable as provided for herein and in the DIP Loan Documents.

6. DIP Liens. To secure the DIP Obligations, effective immediately upon entry of this Interim Order, pursuant to Sections 361, 362, 364(c)(2) and 364(c)(3) of the Bankruptcy Code, the DIP Lender is hereby granted continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected post-petition (x) first-priority security interests in and liens on all DIP Collateral that is not otherwise subject to a valid, properly perfected and unavoidable security interest or lien as of the Petition Date (collectively, the “Prior Permitted Liens”), subject only to the Carve-Out, and (y) junior security interests in and liens on all DIP Collateral subject to a Prior Permitted Lien (including, without limitation, the ABL Collateral), subject only to the Carve-Out and the ABL Adequate Protection Liens against the ABL Collateral (the liens securing the DIP Obligations described in clauses (x) and (y), collectively, the “DIP Liens”), in each case, whether now owned by or owing to, or hereafter acquired by or arising in favor of the Debtors (including under any trade names, styles or derivations thereof), and whether owned or consigned by or to, or leased from, the Debtors, and regardless of where located, including, without limitation: (a) all ABL Collateral; (b) cash and cash equivalents (including escrows and reserves); (c) all funds in any account of the Debtors (including all escrows and reserves); (d) all accounts and other receivables; (e) contract rights; (f) instruments, documents and chattel paper; (g) securities (whether or not marketable); (h) equipment, inventory and fixtures; (i) real property and interests in real property; (j) leaseholds and interests in leaseholds; (k) franchise rights; (l) patents, tradenames, trademarks, copyrights and all other intellectual property; (m) general intangibles; (n) capital stock; (o) investment property; (p) supporting obligations; (q) letter of credit rights; (r) all commercial tort claims and all other claims and causes of action; (s) the proceeds of all claims or causes of action (including the proceeds of avoidance actions under chapter 5 of the Bankruptcy Code); (t) all avoidance actions

and proceeds of avoidance actions under chapter 5 of the Bankruptcy Code; and (u) to the extent not covered by the foregoing, all other assets or property of the Debtors, whether tangible, intangible, real, personal or mixed, and all proceeds and products of each of the foregoing and all accessions to, substitutions and replacements for, and rents, profits and products of, each of the foregoing, any and all proceeds of any insurance, indemnity, warranty or guaranty payable to such Debtor from time to time with respect to any of the foregoing (all of which being hereinafter collectively referred to as the “DIP Collateral”), as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of the DIP Obligations. For the sake of clarity, the DIP Liens granted to the DIP Lender in all DIP Collateral (other than the ABL Collateral) shall be senior in priority to the ABL Adequate Protection Liens. Notwithstanding anything contained herein to the contrary, upon entry of a Final Order providing for such relief, any provision of any lease or other license, contract or other agreement that requires (x) the consent or approval of one or more landlords or other parties or (y) the payment of any fees or obligations to any governmental entity, in order for any Debtor to pledge, grant, sell, assign or otherwise transfer any such leasehold interest or other license, contract or other agreement, or the proceeds thereof, or other post-petition collateral related thereto, will be deemed to be inconsistent with the applicable provisions of the Bankruptcy Code. Any such provision shall have no force and effect with respect to the transactions granting post-petition liens in such leasehold interest or other license, contract or other agreement, or the proceeds of any assignment and/or sale thereof by any Debtor, in favor of the DIP Lender in accordance with the terms of the DIP Loan Documents or this Interim Order.

7. DIP Lien Priority.

(a) For the purpose of securing the DIP Obligations, the DIP Lender shall have the following DIP Liens with the following lien priorities:

(i) Pursuant to Section 364(c)(2) of the Bankruptcy Code, valid, enforceable, non-avoidable, automatically and fully perfected first priority liens on and security interests in all present and after-acquired DIP Collateral, wherever located, that is not otherwise subject to a Prior Permitted Lien (including, without limitation, the ABL Liens), subject only to the Carve-Out; and

(ii) Pursuant to Section 364(c)(3) of the Bankruptcy Code, valid, enforceable, non-avoidable, automatically and fully perfected junior liens on and security interests in all DIP Collateral, wherever located, that is subject to a Prior Permitted Lien (including, without limitation, the ABL Collateral), subject only to the Carve-Out and the ABL Adequate Protection Liens against the ABL Collateral;

(b) Except as expressly set forth herein, the DIP Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in the Cases, and shall be valid and enforceable against any trustee appointed in the Cases, upon the conversion of any of the Cases to a case under chapter 7 of the Bankruptcy Code, and/or upon the dismissal of any of the Cases or any Successor Cases, subject only to the Carve-Out. The DIP Liens shall not be subject to (i) Sections 510, 549 or 550 of the Bankruptcy Code, or (ii) upon entry of a Final Order providing for such relief, Sections 506(c) of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of the estate pursuant to Section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the DIP Liens.

8. Superpriority DIP Claim. Subject to the Carve-Out, upon entry of this Interim Order, the DIP Lender is hereby granted, pursuant to Section 364(c)(1) of the Bankruptcy Code, an allowed superpriority administrative expense claim (the “Superpriority DIP Claim”), in each of the Cases, for all of the DIP Obligations with priority over any and all administrative expense claims and unsecured claims against the Debtors or their estates in any of the Cases, at any time existing or arising, of any kind or nature whatsoever, including, without limitation, (a) administrative expenses of the kinds specified in or ordered pursuant to Sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726 (to the extent permitted by law), 1113 and 1114 of the Bankruptcy Code, and any other provision of the Bankruptcy Code, as provided under Section 364(c)(1) of the Bankruptcy Code, and (b) all claims granted to the ABL Lender in connection with an ABL Adequate Protection Order or otherwise.

9. Extension of Credit. The DIP Lender shall have no obligation to make any loan or advance under the DIP Loan Documents, unless all of the conditions precedent to the making of such extension of credit under this Interim Order and the DIP Loan Documents have been satisfied in full or waived in accordance with the DIP Loan Documents.

10. Use of DIP Facility Proceeds.

(a) The proceeds of the DIP Facility will be used only for the following purposes, in each case in accordance with and subject to an Approved Budget and except as otherwise agreed by the DIP Lender: (i) working capital and other general corporate purposes of the Debtors, (ii) payment of the costs of administration of the Cases, including, without limitation, the costs, fees and expenses incurred in connection with the DIP Facility, and (iii) payment of any adequate protection payments to the ABL Lender contemplated by an ABL Adequate Protection Order.



(b) Without in any way limiting the foregoing, no DIP Collateral, proceeds of the DIP Loans, or any portion of the Carve-Out may be used directly or indirectly, without the prior written consent of the DIP Lender, by any of the Debtors, the Committee, any other committee, or any trustee or other estate representative appointed in the Cases or any other person or entity (or to pay any professional fees, disbursements, costs or expenses incurred in connection therewith): (i) to seek authorization to obtain liens or security interests that are senior to, or on a parity with, the DIP Liens or the Superpriority DIP Claim; or (ii) to investigate (including by way of examinations or discovery proceedings), prepare, assert, join, commence, support or prosecute any action for any claim, counter-claim, action, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination or similar relief against, or adverse to the interests of the DIP Lender, solely in its capacity as DIP Lender, its controlling persons, affiliates or successors or assigns, and each of the respective officers, directors, employees, agents, attorneys, or advisors of each of the foregoing (collectively, the “Released Parties”), with respect to any transaction, occurrence, omission, action or other matter (including formal discovery proceedings in anticipation thereof), including, without limitation, (A) any claims or causes of action arising under chapter 5 of the Bankruptcy Code, (B) any so-called “lender liability” claims and causes of action, (C) any action with respect to the validity, enforceability, priority and extent of, or asserting any defense, counterclaim, or offset to, the DIP Obligations, the Superpriority DIP Claim or the DIP Loan Documents, (D) any action seeking to invalidate, modify, set aside, avoid or subordinate, in whole or in part, the DIP Obligations, (E) any action seeking to modify any of the rights, remedies, priorities, privileges, protections and benefits granted to the DIP Lender hereunder or under any of the DIP Loan Documents (including, without limitation, claims, proceedings or

actions that might prevent, hinder or delay the DIP Lender's assertions, enforcements, realizations or remedies on or against the DIP Collateral in accordance with the applicable DIP Loan Documents and the Interim and/or Final Orders), or (F) objecting to, contesting, or interfering with, in any way, the DIP Lender's enforcement or realization upon any of the DIP Collateral once an Event of Default (as defined in the DIP Loan Agreement) has occurred.

11. Termination Events. The occurrence of any of the following events (the "Termination Events") shall constitute an Event of Default under the DIP Loan Agreement and a Termination Event under this Interim Order:

(a) for a period in excess of three (3) calendar days, reversal, vacatur or stay of the effectiveness of this Interim Order or the Final Order without the express prior written consent of the DIP Lender;

(b) without the written consent of the DIP Lender, (i) dismissal of any of the Cases or conversion of any of the Cases to chapter 7 cases, or appointment of a chapter 11 trustee or examiner or other responsible officer with enlarged powers relating to the operation of the business of the Debtors, other than a patient care ombudsman appointed pursuant to Section 333 of the Bankruptcy Code, in any of the Cases, which dismissal, conversion or appointment shall not have been reversed, stayed or vacated within three (3) calendar days, (ii) termination of the exclusive period for the Debtors to file a plan of reorganization in the Cases, or (iii) the Debtors shall seek or request the entry of any order to effect any of the events described in subclause (i) of this clause (b);

(c) the occurrence of any Event of Default (as defined in the DIP Loan Agreement), or the occurrence of any Default following the passage of any applicable notice or cure period set forth in the DIP Loan Agreement;

(d) the entry by this Court of an order granting relief from the automatic stay imposed by Section 362 of the Bankruptcy Code sought by any party that materially and adversely affects the Debtors' property, without the written consent of the DIP Lender;

(e) three (3) business days after written notice to the Debtors of the failure by the Debtors to deliver to the DIP Lender any of the documents or other information required to be delivered pursuant to the Interim Order or the Final Order (collectively, the "Orders") when due (during which time the Debtors may cure) or any such documents or other information shall contain a material and adverse misrepresentation of a material fact when made;

(f) except as set forth herein, three (3) business days after written notice to the Debtors of the failure by the Debtors to observe or perform any of the material terms or provisions contained in the Orders (during which time the Debtors may cure, if possible);

(g) the entry by this Court of an order terminating the Debtors' right to use the cash collateral of the ABL Lender (or otherwise adversely modifying such rights set forth in an ABL Adequate Protection Order);

(h) the entry of an order of this Court granting any lien on or security interest in any of the DIP Collateral that is pari passu with or senior to the DIP Liens held by the DIP Lender on or as security interests in the DIP Collateral, or the Debtors shall seek or request the entry of any such order, except for the ABL Adequate Protection Liens;

(i) the Debtors' creating or permitting to exist any other superpriority claim which is pari passu with or senior to the Superpriority DIP Claims of the DIP Lender, except for the Carve-Out;

(j) the Debtors filing a pleading, or in any way support another party's pleading, seeking to modify or otherwise alter any of the terms and conditions set forth in the Orders without the prior written consent of the DIP Lender;

(k) the entry of an order of this Court amending, supplementing or otherwise altering any of the terms and conditions set forth in the Orders without the prior written consent of the DIP Lender;

(l) any of the Debtors uses the DIP Facility for any item other than those set forth in the Approved Budget or the Carve-Out, except as agreed in writing in advance by the DIP Lender;

(m) any of the Debtors (or any party with the support of any of the Debtors) shall file a plan of reorganization or liquidation in any of the Cases that does not propose to indefeasibly repay the Obligations in full in cash, if the filing of such plan is made without the prior written consent of the DIP Lender;

(n) any uninsured judgments are entered with respect to any post-petition liabilities against any of the Debtors or any of their respective properties in a combined aggregate amount in excess of \$25,000 unless stayed, vacated or satisfied for a period of twenty (20) calendar days after entry thereof;

(o) the failure of the Debtors to meet any of the following milestones unless extended or waived by the DIP Lender (in the DIP Lender's sole discretion):

(i) within forty-five (45) days after the Petition Date, to obtain entry of the Final Order in form and substance satisfactory to the DIP Lender in its sole discretion;

(ii) on or before August 25, 2105, to obtain entry of the Bankruptcy Court order in form and substance reasonably satisfactory to the DIP Lender approving the Bidding Procedures (as defined in the DIP Loan Agreement);

(iii) on or before September 4, 2015, to have agreed, in principle, to a definitive asset purchase agreement pursuant to which the DIP Lender (or its assignee)

shall serve as the “stalking horse” buyer for the Borrowers’ assets, which agreement shall be final in all respects but for the execution by the Borrowers once approval has been received from the Georgia Attorney General’s office;

(iv) on or before September 17, 2015, to have conducted an auction for the sale of the Debtors’ assets pursuant to Section 363 of the Bankruptcy Code (in the event that multiple qualifying bids were received for the Debtors’ assets in compliance with the Bidding Procedures);

(v) on or before September 23, 2015, to obtain entry of a Court order or orders in form and substance reasonably satisfactory to the DIP Lender authorizing the sale of the Debtors’ assets to the DIP Lender (or its assignee), pursuant to Sections 105, 363 and 365 of the Bankruptcy Code; and

(vi) on or before December 15, 2015, to have closed the sale(s) of the Debtors’ assets to the DIP Lender (or its assignee).

(p) any Debtor asserts a right of subrogation or contribution against any other Debtor prior to the date upon which all DIP Obligations have been paid in full and all commitments under the DIP Facility have been terminated;

(q) the Debtors seek to sell any of their assets outside the ordinary course of business, unless such sale is pursuant to the Bidding Procedures or with the written consent of the DIP Lender;

(r) any of the Debtors (or any party with the support of any of the Debtors) shall challenge the validity or enforceability of any of the DIP Loan Documents;

(s) other than payments to the ABL Lender provided for in an ABL Adequate Protection Order, any Debtor shall make any payment (by way of adequate protection or otherwise) of principal or interest or otherwise on account of any pre-petition indebtedness, trade payables or other pre-petition claims against any Debtor, unless expressly provided in the Orders or consented to by the DIP Lender; or

(t) any of the Debtors shall select a bid other than a bid submitted by the DIP Lender as the Prevailing Bid at the conclusion of the Auction (as those terms are defined in the DIP Loan Agreement).

#### **Authorization to Use Proceeds of DIP Facility**

12. Authorization to Use Proceeds of DIP Facility. Subject to the terms and conditions of this Interim Order and the DIP Loan Documents, and in accordance with an Approved Budget, the Debtors are authorized to use the proceeds of the DIP Facility in accordance with this Interim Order. Nothing in this Interim Order shall authorize the disposition

of any assets of the Debtors or their estates outside the ordinary course of business, except as permitted in this Interim Order and the DIP Loan Documents, and in accordance with an Approved Budget.

13. Reporting. The Debtors shall provide to the DIP Lender: (i) monthly consolidated unaudited financial statements of the Debtors and their subsidiaries within thirty (30) days of month-end, certified by the Debtors' chief financial officer; (ii) quarterly consolidated unaudited financial statements of the Debtors within forty-five (45) days of fiscal quarter-end, certified by the Debtors' chief financial officer; (iii) following delivery of the Initial Approved Budget (as defined below), and every four weeks thereafter during the Cases, an updated 13-week cash flow forecast, in each case, in form and substance satisfactory to the DIP Lender in its sole discretion (each such forecast approved by the DIP Lender, an "Approved Budget") for the subsequent 13 week period consistent with the form of the Initial Approved Budget; (v) beginning on the second Wednesday following the date on which all conditions precedent to the effectiveness of the DIP Facility have been satisfied or waived as provided therein (such date, the "Closing Date"), and on each Wednesday following, a variance report (the "Variance Report") setting forth actual cash receipts and disbursements of the Debtors for the prior week and setting forth all the variances, on a line-item and aggregate basis, from the amount set forth for such week as compared to the Initial Approved Budget or the most recently Approved Budget delivered prior to such Variance Report (as applicable) on a weekly and cumulative basis, and each such Variance Report shall include explanations for all material variances and shall be certified by the chief financial officer of the Debtors; and (vi) all reports and statements provided to the ABL Lender in connection with an ABL Adequate Protection Order (on a contemporaneous basis with the delivery of such reports and statements to the ABL Lender). The Debtors will promptly

provide notice to the DIP Lender of any Material Adverse Effect (as defined in the DIP Loan Agreement).

14. Additional Reports and Information. Further, the Debtors will provide to the DIP Lender such other reports and information as may be reasonably requested by the DIP Lender. In addition, the Debtors' accountants, financial advisors, consultants and all parties providing management services to the Debtors are hereby authorized and directed to cooperate, consult with and provide to the DIP Lender all such information as may be reasonably requested with respect to the businesses, results of operations, and financial condition of the Debtors.

**Provisions Common to DIP Facility**

15. Amendment of the DIP Loan Documents or this Interim Order. Except for actions expressly permitted to be taken by the DIP Lender, no amendment, modification, termination or waiver of any provision of the DIP Loan Documents or this Interim Order or any other related documents, or any consent to any departure by any of the Debtors therefrom, shall in any event be effective unless the same shall be in writing (it being understood that any necessary signatures may be on a document consenting to such amendment, modification, termination or waiver) and signed by the DIP Lender and the Debtors. In the event of any such amendment, modification, termination or waiver, the Debtors shall provide notice thereof to the ABL Lender, the Committee and the U.S. Trustee not less than three (3) business days prior to the effective date thereof (or such shorter period as to which such parties may agree).

16. Budget.

(a) The Debtors have prepared and delivered an initial 13-week budget to the DIP Lender (as attached hereto as Exhibit B, the "Initial Approved Budget"), which reflects the Debtors' anticipated cumulative cash receipts, expenditures and net cash flow on a weekly basis and all necessary and required cumulative expenses that the Debtors, in consultation with any

financial advisors engaged by the DIP Lender and any parties providing management services to the Debtors, expect to incur during each week of the Initial Approved Budget. To comply with the Initial Approved Budget or any subsequently Approved Budget, the Debtors (i) shall not exceed any disbursement line item set forth in the Initial Approved Budget or any subsequently Approved Budget, as applicable, for each Testing Period (as defined below) by more than the Permitted Variance (as defined below), (ii) shall collect cash receipts (excluding proceeds of the DIP Facility that may be deemed a receipt) in an amount not less than the aggregate amount of such cash receipts in the Initial Approved Budget or any subsequently Approved Budget, as applicable, for each Testing Period (subject to the Permitted Variance), and (iii) shall not have combined net receipts and disbursements less than the combined net amount in the Initial Approved Budget or any subsequently Approved Budget, as applicable, for any Testing Period (subject to the Permitted Variance).

(b) “Permitted Variance” will mean (i) any favorable variance, (ii) an unfavorable variance of not more than 10% with respect to (A) any disbursement line item or (B) the aggregate cash receipts, and (iii) an unfavorable variance of not more than 5% with respect to combined aggregate receipts and disbursements. Budget compliance shall be tested each week after the Closing Date (as defined in the DIP Loan Agreement) and shall be tested on a weekly and cumulative basis from the Closing Date (each, a “Testing Period”). Subject to paragraph 16(a), variances, if any, from the Initial Approved Budget or any subsequently Approved Budget, and any proposed changes to the Initial Approved Budget or any Approved Budget, shall be subject to the approval of the DIP Lender.

(c) The Initial Approved Budget shall be modified or supplemented from time to time consistent with the provisions of paragraph 13 hereof (i.e., a revised 13-week cash flow

forecast that must be approved by the DIP Lender), in each case without further notice, motion or application to, order of, or hearing before, this Court. For all purposes hereunder, (i) the Initial Approved Budget shall constitute an “Approved Budget,” and (ii) any Approved Budget shall replace any prior Approved Budgets (including the Initial Approved Budget) for all Testing Periods ending after the approval of such Approved Budget.

17. Budget Compliance. Except as otherwise provided herein or approved by the DIP Lender, the Debtors will not, and will not permit any subsidiary directly or indirectly to, use any cash or the proceeds of the DIP Facility in a manner or for a purpose other than those consistent with an Approved Budget and this Interim Order.

18. Modification of Automatic Stay. The automatic stay imposed by Section 362(a) of the Bankruptcy Code is hereby modified as necessary to permit: (a) the Debtors to grant the DIP Liens and the Superpriority DIP Claims, and to perform such acts as the DIP Lender may request to assure the perfection and priority of the DIP Liens; (b) the Debtors to incur all liabilities and obligations to the DIP Lender as contemplated under this Interim Order; (c) the Debtors to pay all amounts referred to, required under, in accordance with, and subject to the DIP Loan Documents and this Interim Order; (d) the DIP Lender to exercise, upon the occurrence and during the continuance of any Event of Default under the DIP Loan Documents, all rights and remedies provided for in the DIP Loan Documents and to take any or all actions provided therein; (e) the Debtors to execute any amendments to the DIP Loan Documents agreed to in writing with the DIP Lender; and (f) the implementation of the terms of this Interim Order.

19. Perfection of DIP Liens and Post-Petition Liens. This Interim Order shall be sufficient and conclusive evidence of the validity, perfection and priority of the DIP Liens granted herein without the necessity of execution, filing or recording any financing statement,



mortgage, notice or other instrument or document that may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action to validate or perfect (in accordance with applicable law) such liens, or to entitle the DIP Lender to the priorities granted herein. Notwithstanding the foregoing, the DIP Lender is authorized to execute, file or record and the DIP Lender may require the execution, filing or recording, as it deems necessary in its sole discretion, such financing statements, mortgages, security deeds, notices of lien and other similar documents to perfect in accordance with applicable law or to otherwise evidence the DIP Liens, as applicable, and all such financing statements, mortgages, notices, and other documents shall be deemed to have been filed or recorded as of the Petition Date; provided, however, that no such filing or recordation shall be necessary or required in order to create or perfect the DIP Liens. The Debtors are authorized and directed to execute and deliver promptly upon demand to the DIP Lender all such financing statements, mortgages, security deeds, notices and other documents as the DIP Lender may reasonably request. The DIP Lender may file a photocopy of this Interim Order as a financing statement or security deed with any filing or recording office or with any registry of deeds or similar office, in addition to or in lieu of such financing statements, notices of lien or similar instruments.

20. After-Acquired Property. Except as otherwise provided in this Interim Order, pursuant to Section 552(a) of the Bankruptcy Code, all property acquired by the Debtors after the Petition Date, including, without limitation, all DIP Collateral pledged or otherwise granted to the DIP Lender pursuant to this Interim Order, is not and shall not be subject to any lien of any person or entity resulting from any security agreement entered into by the Debtors prior to the Petition Date, except to the extent that such property constitutes (x) ABL Collateral, or (y) proceeds of property of the Debtors that is subject to a Prior Permitted Lien.

21. Proceeds of Subsequent Financing. If the Debtors, any trustee, any examiner with enlarged powers, or any responsible officer subsequently appointed in any of the Cases or any Successor Cases, shall obtain credit or incur debt pursuant to Sections 364(b), (c), or (d) of the Bankruptcy Code in violation of this Interim Order or the DIP Loan Documents at any time prior to the indefeasible payment in full in cash of all of the DIP Obligations, the satisfaction of the Superpriority DIP Claims, and the termination of the DIP Lender's obligations to extend credit under the DIP Facility and this Interim Order, including subsequent to the confirmation of any plan with respect to any or all of the Debtors and the Debtors' estates, then all of the cash proceeds derived from such credit or debt shall immediately be turned over to the DIP Lender to be applied, subject to the Carve-Out, to the DIP Obligations.

22. Maintenance of DIP Collateral. Until the indefeasible payment in full in cash of all DIP Obligations and the termination of the DIP Lender's obligation to extend credit under the DIP Facility, the Debtors shall insure the DIP Collateral as required under this Interim Order and the DIP Loan Documents, as applicable.

23. Insurance Policies. The Debtors shall continue to maintain all property, operational and other insurance as required and as specified in the DIP Loan Documents. Upon entry of this Interim Order, the DIP Lender shall be, and shall be deemed to be, without any further action or notice, named as an additional insured and loss payee on each insurance policy maintained by the Debtors that in any way relates to the DIP Collateral.

24. Disposition of or New Liens on DIP Collateral. The Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral other than in the ordinary course of business (other than encumbering the ABL Collateral) unless such sale, transfer, lease, encumbrance or other disposition (i) results in payment in full of the DIP

Obligations in cash, without the prior written consent of the DIP Lender (and no such consent shall be implied from any other action, inaction or acquiescence by the DIP Lender), or (ii) is expressly permitted by the DIP Loan Documents. Absent further order of this Court, the Debtors shall not create or permit to exist any post-petition liens or encumbrances on any of their assets or property except any post-petition liens allowed pursuant to the DIP Loan Documents, the ABL Adequate Protection Liens and as otherwise agreed to by DIP Lender in writing.

25. DIP Termination Date. On the Maturity Date (as defined in the DIP Loan Agreement), all DIP Obligations shall be immediately due and payable, and all commitments to extend credit under the DIP Facility will terminate.

26. Rights and Remedies Upon Termination Event. Notwithstanding the provisions of Section 362 of the Bankruptcy Code, and without order of or application or motion to this Court, immediately upon the occurrence and during the continuance of a Termination Event: (a) the DIP Lender may, by written notice to the Debtors, their counsel, the U.S. Trustee and any counsel for the Committee, if any, terminate the DIP Facility, declare the DIP Obligations to be immediately due and payable and, subject to the immediately following clause (b), exercise all rights and remedies under the DIP Loan Documents and this Interim Order; and (b) the automatic stay provisions of Section 362 of the Bankruptcy Code shall be vacated and modified to the extent necessary to permit the DIP Lender to exercise all rights and remedies provided for in the DIP Loan Documents, including to take any or all of the following actions, without further order of or application to this Court (as applicable): (i) cease making any extensions of credit under the DIP Facility to the Debtors; (ii) declare all DIP Obligations to be immediately due and payable; (iii) immediately enforce any and all rights against the DIP Collateral in the possession of the DIP Lender, including, without limitation, disposition of the DIP Collateral solely for

application towards the DIP Obligations; and (iv) take any other actions or exercise any other rights or remedies permitted under this Interim Order, the DIP Loan Documents or applicable law to effect the repayment of the DIP Obligations; provided, however, that prior to the exercise of any right in clauses (iii) or (iv), the DIP Lender shall be required to provide five (5) calendar days written notice (the “Remedies Notice Period”) to the Debtors and the Committee of the DIP Lender’s intent to exercise such rights and remedies; provided, further, that none of the Debtors, the Committee or any other party-in-interest (including, without limitation, the ABL Lender) shall have the right to contest the enforcement of the remedies set forth in this Interim Order and the DIP Loan Documents on any basis other than an assertion that a Termination Event has not occurred or has been cured within the cure periods expressly set forth herein or in the applicable DIP Loan Documents. During the Remedies Notice Period, the Debtors and the Committee shall be entitled to seek an emergency hearing with the Court in connection therewith. With respect to the aforementioned clauses (iii) and (iv), unless the Court determines during the Remedies Notice Period that a Termination Event has not occurred, or to the extent of an applicable cure period was cured within the applicable cure period as provided under the DIP Loan Documents: (i) the automatic stay shall automatically be terminated at the end of the Remedies Notice Period without further notice or order and the DIP Lender shall be permitted to exercise all rights and remedies set forth herein; (ii) the Debtors shall cooperate fully with the DIP Lender in its exercise of rights and remedies, whether against the DIP Collateral or otherwise; and (iii) the Debtors shall waive any right to seek relief under the Bankruptcy Code, including under Section 105 thereof, to the extent such relief would restrict or impair the rights and remedies of the DIP Lender set forth in the Interim and/or Final Orders and in the DIP Loan Documents. Any remedies taken affecting any leases or premises subject to any leases shall be in accordance with

applicable federal and state law, the Bankruptcy Code, the governing leases, consent of the applicable landlord (if required), or as otherwise ordered by the Court.

27. Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Interim Order. Based on the record, the DIP Lender has acted in good faith in connection with the DIP Facility, the Interim Financing, and with this Interim Order, and its reliance on this Interim Order is in good faith. Based on the findings set forth in this Interim Order and the record made during the Interim Hearing, and in accordance with Section 364(e) of the Bankruptcy Code for any amounts loaned or advanced under this Interim Order, in the event any or all of the provisions of this Interim Order are hereafter modified, amended or vacated by a subsequent order of this Court or any other court, the DIP Lender is entitled to the protections provided in Section 364(e) of the Bankruptcy Code. Any such modification, amendment or vacatur shall not affect the validity and enforceability of any advances previously made or made hereunder, or lien, claim or priority authorized or created hereby. Any liens or claims granted to the DIP Lender arising prior to the effective date of any such modification, amendment, or vacatur of this Interim Order shall be governed in all respects by the original provisions of this Interim Order, including entitlement to all rights, remedies, privileges and benefits granted herein.

28. DIP and Other Expenses.

(a) The Debtors are authorized to pay promptly all (i) reasonable and documented (in summary form) out-of-pocket fees, costs, disbursements and expenses of the DIP Lender (including all reasonable fees, costs, disbursements and expenses of the DIP Lender's outside counsel, King & Spalding LLP), incurred in connection with the negotiations, preparation, execution and delivery of the DIP Loan Documents and the funding of all

extensions of credit under the DIP Facility, including, without limitation, all due diligence, transportation, computer, duplication, messenger, audit, insurance, appraisal, valuation and consultant costs and expenses, and all search, filing and recording fees, incurred or sustained by the DIP Lender and its counsel and professional advisors in connection with the DIP Facility, the DIP Loan Documents or the transaction contemplated thereby, the administration of the DIP Facility and any amendment or waiver of any provision of the DIP Loan Documents, and (ii) without duplication, reasonable and documented (in summary form) out-of-pocket fees, costs, disbursements and expenses of the DIP Lender (including all reasonable fees, costs, disbursements and expenses of outside counsel) and its professional advisors in connection with the enforcement of any rights and remedies under the DIP Loan Documents.

(b) The payment of fees, costs, disbursements and expenses set forth in this paragraph 28 and paragraph 29 shall be made within ten (10) days after the receipt by the Debtors, the Committee and the U.S. Trustee (the “Review Period”) of summary invoices thereof (the “Invoiced Fees”) (subject in all respects to applicable privilege or work product doctrines), including a description of the services provided and the expenses incurred by the applicable professional arising before or after the Petition Date, as applicable. The Debtors, the Committee and the U.S. Trustee may preserve their right to dispute the payment of any portion of the Invoiced Fees (the “Disputed Invoiced Fees”) if, within the Review Period, (i) the Debtors pay in full the Invoiced Fees, including the Disputed Invoiced Fees; and (ii) the Debtors, the Committee or the U.S. Trustee files with the Court a motion or other pleading, on at least ten (10) calendar days prior written notice to the applicable parties of any hearing on such motion or other pleading, which must contain a specific basis for the objection to the Disputed Invoiced Fees and quantification of the undisputed amount of the fees and expenses invoiced. Failure to object with

specificity or to quantify the undisputed amount of the invoice subject to such objection will constitute a waiver of any objection to such invoice. None of the Invoiced Fees shall be subject to this Court's approval or required to be maintained in accordance with the U.S. Trustee Guidelines, and no recipient of any payment on account thereof shall be required to file with respect thereto any interim or final fee application with this Court. Payment of Invoiced Fees shall not be delayed based on any objections thereto, and the relevant professional shall only be required to disgorge amounts objected to upon being "so ordered" pursuant to a final non-appealable order of this Court.

29. Indemnification. The Debtors shall jointly and severally indemnify and hold harmless the DIP Lender, each of its affiliates and each of the respective officers, directors, employees, controlling persons, agents, advisors, attorneys and representatives of each in their respective capacities as such (each, an "Indemnified Party"), from and against any and all claims, damages, losses, liabilities and expenses (including, without limitation, reasonable fees and disbursements of counsel), joint or several, that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or relating to any investigation, litigation or proceeding or the preparation of any defense with respect thereto, arising out of or in connection with or relating to the DIP Facility, the DIP Loan Documents or the transactions contemplated thereby, or any use made or proposed to be made with the proceeds of the DIP Facility, whether or not such investigation, litigation or proceeding is brought by any Debtor or any of its subsidiaries, any shareholders or creditors of the foregoing, an Indemnified Party or any other person, or an Indemnified Party is otherwise a party thereto and whether or not the transactions contemplated hereby or under the DIP Loan Documents are consummated, except, with respect to any Indemnified Party, to the extent such claim, damage,

loss, liability or expense is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted solely from the bad faith, gross negligence or willful misconduct of such Indemnified Party. No Indemnified Party shall have any liability (whether direct or indirect, in contract, tort or otherwise) to any Debtor or any of its subsidiaries or any shareholders or creditors of the foregoing for or in connection with the transactions contemplated hereby, except, with respect to any Indemnified Party, to the extent such liability is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted solely from the bad faith, gross negligence or willful misconduct of such Indemnified Party. In no event, however, shall any person be liable on any theory of liability for any special, indirect, consequential or punitive damages. The foregoing indemnity includes indemnification for the DIP Lender's exercise of discretionary rights granted under this Interim Order or the DIP Loan Documents. In all such litigation or the preparation therefor, subject to paragraph 28, the DIP Lender shall be entitled to select its own counsel and, in addition to the foregoing indemnity, the Debtors agree to promptly pay the reasonable fees and expenses of such counsel.

30. Proofs of Claim. The DIP Lender shall not be required to file proofs of claim in any of the Cases for any claim allowed herein. Any proof of claim filed by the DIP Lender shall be deemed to be in addition to (and not in lieu of) any other proof of claim that may be filed by the DIP Lender.

31. Rights of Access and Information. Without limiting the rights of access and information afforded the DIP Lender under this Interim Order and/or the DIP Loan Documents, the Debtors shall afford representatives, agents and/or employees of the DIP Lender reasonable access to the Debtors' premises and their books and records and shall reasonably cooperate, consult with and provide to such persons all such information as may be reasonably requested.



In addition, the Debtors shall authorize and direct their independent certified public accountants, financial advisors, investment bankers, consultants and parties providing management services to the Debtors to cooperate, consult with, and provide to the DIP Lender all such information as may be reasonably requested with respect to the business, results of operations and financial condition of any of the Debtors.

32. Access to DIP Collateral/No Landlord's Liens. Upon entry of a final order providing for such relief and subject to applicable state law, notwithstanding anything contained herein to the contrary and without limiting any other rights or remedies of the DIP Lender contained in this Interim Order, or otherwise available at law or in equity, and subject to the terms of this Interim Order, upon written notice to the landlord of any leased premises that an Event of Default has occurred and is continuing under the DIP Facility, the DIP Lender may, subject to any separate agreement by and between such landlord and the DIP Lender (a "Separate Agreement"), enter upon any leased premises of the Debtors for the purpose of exercising any remedy with respect to DIP Collateral located thereon and, subject to any Separate Agreement, shall be entitled to all of the Debtors' rights and privileges as lessee under such lease without interference from such landlord; provided, however, that, subject to any such Separate Agreement, the DIP Lender shall only pay rent of the Debtors that first accrues after the written notice referenced above and that is payable during the period of such occupancy by the DIP Lender, calculated on a per diem basis. Nothing herein shall require the DIP Lender to assume any lease as a condition to the rights afforded to the DIP Lender in this paragraph.

33. Carve-Out.<sup>4</sup>

(a) For the purposes of this Interim Order, the “Carve-Out” shall mean an amount equal to the sum of the following: (i) all fees required to be paid to the Clerk of the Court and to the U.S. Trustee under 28 U.S.C. § 1930(a) plus interest pursuant to 31 U.S.C. § 3717; (ii) all reasonable fees and expenses incurred by a trustee under section 726(b) of the Bankruptcy Code in an aggregate amount not to exceed \$25,000; (iii) all reasonable fees and expenses incurred by a patient care ombudsman appointed under Section 333 of the Bankruptcy Code, not to exceed \$25,000; and (iv) to the extent allowed by this Court at any time, and subject to the Budget, all accrued and unpaid fees, disbursements, costs and expenses incurred by professionals or professional firms retained by the Debtors and the Committee at any time before or on the date and time of the delivery by the DIP Lender of a Carve Out Trigger Notice (as defined below), whether allowed by this Court prior to or after delivery of a Carve Out Trigger Notice; provided, however, nothing herein shall be construed to impair the ability of any party to object to any fees, expenses, reimbursement or compensation sought by any such professionals or any other person or entity. For purposes of the foregoing, “Carve Out Trigger Notice” shall mean a written notice delivered by the DIP Lender to the Debtors and their counsel, the U.S. Trustee, and lead counsel to the Committee, which notice may be delivered following the occurrence of an Event of Default.

(b) For the avoidance of doubt, the Carve-Out shall be senior to all liens and claims (including administrative and superpriority claims) securing the DIP Obligations and any other liens, security interests, and claims (including administrative and superpriority claims) granted herein to the DIP Lender.

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<sup>4</sup> [If ABL Lender expects to receive a 506(c) waiver in the Final Cash Collateral Order, then DIP Lender would expect ABL Lender to agree to 1/2 of Carve-Out.]

(c) Notwithstanding anything to the contrary herein, neither the Carve-Out nor any other DIP Collateral may be used for the payment of any fees or disbursements incurred in connection with: (i) attempting to modify or otherwise alter any of the terms and conditions set forth in this Interim Order, without the prior written consent of the DIP Lender; (ii) asserting, alleging, bringing, supporting any claim or cause of action, or the initiation or prosecution of any claim or action against the DIP Lender, including, without limitation, challenging the amount, extent, priority, validity, perfection or enforcement of the DIP Obligations or the DIP Lender's security interests and liens; or (iii) bringing or asserting any claims or causes of actions against the DIP Lender under the DIP Facility, or its advisors, attorneys or agents, including formal discovery proceedings in anticipation thereof, and/or challenging any lien, security or interest of the DIP Lender under this Interim Order in the DIP Collateral.

34. Payment of Compensation. So long as an unwaived Termination Event has not occurred, and to the extent permitted under this Interim Order, the Debtors are authorized to pay fees and expenses allowed and payable, as applicable, by any interim, procedural or final order of this Court (that has not been vacated or stayed, unless the stay has been vacated) under Sections 330 and 331 of the Bankruptcy Code, as the same may be due and payable (but subject, in all respects, to the Approved Budget).

35. No Third Party Rights. Except as explicitly provided for herein, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder, or any direct, indirect, or incidental beneficiary.

36. Section 506(c) Claims. Upon entry of a Final Order providing for such relief, except for the Carve-Out, no costs or expenses of administration that have been or may be incurred in any of the Cases at any time shall be charged against the DIP Lender or any of its

claims or liens (including any claims or liens granted pursuant to this Interim Order) or the DIP Collateral pursuant to Sections 105 or 506(c) of the Bankruptcy Code, or otherwise.

37. No Marshaling/Application of Proceeds. Upon entry of a Final Order providing for such relief, in no event shall the DIP Lender be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to the DIP Collateral, and all proceeds shall be received and applied in accordance with this Interim Order.

38. Right to Credit Bid. The DIP Lender shall have the right, without further Court authorization, to “credit bid” the full amount of its claims (including interest and fees) in connection with any sale of all or any portion of the Debtors’ assets, including, without limitation, sales occurring pursuant to Section 363 of the Bankruptcy Code or included as part of any restructuring plan subject to confirmation under Section 1129(b)(2)(A)(iii) of the Bankruptcy Code. In connection with the foregoing, the DIP Lender shall have the right to assign its right to purchase all or any portion of the Debtors’ assets in connection with any such “credit bid” to a newly-formed acquisition vehicle or affiliate.

39. Release. The Debtors agree to forever waive and release any and all claims and causes of action against the DIP Lender, solely in its capacity as DIP Lender, whether at law or in equity, arising under or relating to the DIP Facility, Section 105 and chapter 5 of the Bankruptcy Code and under any other similar provisions of applicable state or federal law.

40. Rights Preserved. Notwithstanding anything herein to the contrary, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly: (a) the DIP Lender’s rights to seek any other or supplemental relief in respect of the Debtors; (b) the rights of the DIP Lender under the DIP Loan Documents, the Bankruptcy Code or under applicable law, including, without limitation, the right (i) upon the occurrence and

during the continuation of a Termination Event, to (A) request modification of the automatic stay of Section 362 of the Bankruptcy Code, (B) request dismissal of any of the Cases, conversion of any or all of the Cases to a case under chapter 7, or appointment of a chapter 11 trustee or examiner with expanded powers, or (C) propose, subject to the provisions of Section 1121 of the Bankruptcy Code, a chapter 11 plan or plans of reorganization or liquidation, or (ii) to object to the application or motion by any professionals retained by the Debtors or any Committee for the payment of fees and expenses, including, without limitation, in connection with the Carve-Out; or (c) any other rights, claims, or privileges (whether legal, equitable or otherwise) of the DIP Lender. Notwithstanding anything herein to the contrary, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the Debtors' or any party-in-interest's right to oppose any of the relief requested in accordance with the immediately preceding sentence except as expressly set forth in this Interim Order.

41. Joint and Several Liability. Nothing in this Interim Order shall be construed to constitute a substantive consolidation of any of the Debtors' estates, it being understood, however, that the Debtors shall be jointly and severally liable for the obligations hereunder and in accordance with the terms of this Interim Order.

42. No Waiver by Failure to Seek Relief. The DIP Lender's delay or failure to exercise rights and remedies under the DIP Loan Documents, applicable law, or this Interim Order shall not constitute a waiver of any of the DIP Lender's rights hereunder, thereunder or otherwise, unless any such waiver is pursuant to a written instrument executed by the DIP Lender.

43. Binding Effect of this Interim Order. Pursuant to Bankruptcy Rules 6004(h) and 7062, immediately upon entry by this Court, this Interim Order shall inure to the benefit of the

Debtors and the DIP Lender, and it shall become valid and binding upon the Debtors and the DIP Lender, their respective successors and assigns, any and all other creditors of the Debtors, any committee appointed in any of the Cases or any Successor Cases, including, without limitation, the Committee, and all other parties-in-interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed as legal representative of any of the Debtors in any of the Cases or any Successor Cases, or upon dismissal of any of the Cases or any Successor Cases. Further, upon entry of this Interim Order: (a) the Debtors' admissions contained herein shall be binding on the Debtors; and (b) the DIP Obligations of the Debtors under the DIP Loan Documents shall constitute allowed claims for all purposes in any of the Cases or any Successor Cases for any amounts loaned or advanced pursuant to this Interim Order.

44. Interim Order Controls. In the event of any inconsistency between the terms and conditions of the DIP Loan Documents, any other document or any other order of this Court approving the DIP Loan Documents (other than the Final Order) and of this Interim Order, the provisions of this Interim Order shall govern and control.

45. Survival. Unless otherwise agreed to by the DIP Lender, the provisions of this Interim Order and any actions taken pursuant hereto shall survive entry of any order that may be entered: (a) confirming any plan of reorganization or liquidation in any of the Cases; (b) converting any or all of the Cases to a case under chapter 7 of the Bankruptcy Code; (c) dismissing any or all of the Cases; or (d) pursuant to which this Court abstains from hearing any of the Cases or any Successor Cases. The terms and provisions of this Interim Order, including the claims, liens, security interests, and other protections (as applicable) granted to the DIP Lender pursuant to this Interim Order, notwithstanding the entry of any such order, shall

continue in any of the Cases or any Successor Cases, or following dismissal of any of the Cases or any Successor Cases, and shall maintain their priority as provided by this Interim Order. The terms and provisions concerning the indemnification of the DIP Lender shall continue in any of the Cases or any Successor Cases following dismissal of any of the Cases or any Successor Cases, termination of the provisions of this Interim Order, and/or the indefeasible repayment of the DIP Obligations.

46. Entry of this Interim Order/Waiver of Applicable Stay. The Clerk of this Court is hereby directed to forthwith enter this Interim Order on the docket of this Court maintained in regard to the Cases. This Interim Order shall be effective upon its entry and not subject to any stay (all of which are hereby waived), notwithstanding anything to the contrary contained Bankruptcy Rule 4001(a)(3).

47. Notice of Entry of this Interim Order. The Debtors' counsel shall serve a copy of this Interim Order or a suitable notice respecting same on all of the following parties: (i) the U.S. Trustee; (ii) the Internal Revenue Service; (iii) all parties required to receive notice pursuant to the *Order Granting Motion Of The Debtors For Approval Of Notice Procedures* entered by the Bankruptcy Court on August 6, 2015 [Dkt. No. 37]; (iv) counsel to the DIP Lender; (v) counsel to the ABL Lender; (vi) all other known parties with liens of record on assets of the Debtors as of the Petition Date; (vii) all financial institutions at which the Debtors maintain deposit accounts; (viii) the landlords for all non-residential real properties occupied by the Debtors as of the Petition Date; (ix) the Attorney General for the State of Georgia; (x) the Centers for Medicare & Medicaid Services; (xi) counsel for Clayton County, Georgia; (xii) the Hospital Authority of Clayton County, Georgia; (xiii) Georgia Department of Community Health, Division of Healthcare Facility Regulation; (xiv) Georgia Department of Community Health, Office of

General Counsel; (xv) Georgia Department of Community Health, Division of Medical Assistance (Medicaid); (xvi) Georgia Department of Community Health, Office of Health Planning; (xvii) Georgia Board of Pharmacy; (xviii) Centers for Medicare & Medicaid Services, Division of Laboratory Services, Survey and Certification Group; (xix) Centers for Medicare & Medicaid Services, Office of Financial Management; (xx) Cahaba GBA; (xxi) City of Riverdale, Business License division; (xxii) The Joint Commission (formerly known as JCAHO); (xxiii) United States Department of Justice, Drug Enforcement Administration; (xxiv) Georgia Department of Labor; (xxv) Office of the Attorney General of the State of Georgia; Attn: Julie Jacobs, Esq.; and (xxvi) Georgia Department of Public Health, Food Service Permit division.

48. Final Hearing. The Final Hearing shall take place on [\_\_\_\_\_], 2015 at [\_\_\_\_\_] [a.m./p.m.], and parties shall have until [\_\_\_\_\_], 2015 at [\_\_\_\_\_] [a.m./p.m.] to file an objection if necessary and serve such objection on [\_\_\_\_\_]. In the event this Court modifies any of the provisions of this Interim Order or other documents following the Final Hearing, such modifications shall not affect the rights and priorities of the DIP Lender pursuant to this Interim Order with respect to the DIP Collateral and any portion of the DIP Facility that arises, or is incurred or is advanced prior to such modifications (or otherwise arising prior to such modifications), and this Interim Order shall remain in full force and effect except as specifically modified pursuant to the Final Hearing.

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



requirements set forth in Bankruptcy Rule 6003(b) have been satisfied. The requirements of Bankruptcy Rule 6004(a) are waived.

50. Retention of Jurisdiction. This Court shall retain jurisdiction to hear, determine and, if applicable, enforce the terms of, any and all matters arising from or related to the DIP Facility and/or this Interim Order.

**END OF DOCUMENT**

Prepared and presented by:

SCROGGINS & WILLIAMSON, P.C.

/s/ Matthew W. Levin

J. ROBERT WILLIAMSON  
Georgia Bar No. 765214  
ASHLEY REYNOLDS RAY  
Georgia Bar No. 601559  
MATTHEW W. LEVIN  
Georgia Bar No. 448270

1500 Candler Building  
127 Peachtree Street, NE  
Atlanta, Georgia 30303  
T: (404) 893-3880  
F: (404) 893-3886  
E: rwilliamson@swlawfirm.com  
aray@swlawfirm.com  
mlevin@swlawfirm.com

*Counsel for the Debtors*

Exhibit A

Debtor-in-Possession Loan Agreement

**STARTING CASH DAY 7/31**

	1	2	3	4	5	6
	8/3/2015	8/10/2015	8/17/2015	8/24/2015	8/31/2015	9/7/2015
	\$ 3,958,087					

**CASH IN**

Weekly Revenue	2,750,000	2,750,000	2,750,000	2,750,000	2,950,000	2,950,000
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**TOTAL CASH IN \$ 2,750,000 \$ 2,750,000 \$ 2,750,000 \$ 2,750,000 \$ 2,950,000 \$ 2,950,000**

**CASH OUT**

Net Pay	1,607,495	-	1,607,495	-	1,607,495	-
Payroll Taxes	595,275	104,699	595,275	104,699	595,275	104,699
Medicaid Quarterly Provider Tax	-	-	-	-	-	-
US Trustee Fee	-	-	-	-	-	-
Debtor's Professionals	-	-	-	-	-	225,000
DIP Lender Fees	-	-	-	-	-	100,000
Gemino Interest	-	-	-	35,000	-	40,000
Other Professionals	-	-	-	75,000	-	10,000
Notice Agent	-	-	-	-	-	10,000
Committee Professional Fees	-	-	-	-	-	18,750
Other Operating Expenses & Overhead	1,950,701	1,978,875	2,281,701	2,265,375	2,500,701	2,366,375

**TOTAL CASH OUT \$ 4,153,471 \$ 2,083,574 \$ 4,484,471 \$ 2,480,074 \$ 4,743,471 \$ 2,834,824**

**WEEKLY NET CASH \$ (1,403,471) \$ 666,426 \$ (1,734,471) \$ 269,926 \$ (1,793,471) \$ 115,176**

**CUMULATIVE NET CASH \$ 2,554,616 \$ 3,221,042 \$ 1,486,571 \$ 1,756,497 \$ (36,974) \$ 78,202**

	7	8	9	10	11	12	13	14	15
	9/14/2015	9/21/2015	9/28/2015	10/5/2015	10/12/2015	10/19/2015	10/26/2015	11/2/2015	11/9/2015
	2,950,000	2,950,000	3,100,000	3,100,000	3,100,000	3,160,000	3,100,000	3,100,000	3,100,000
<b>\$ 2,950,000</b>	<b>\$ 2,950,000</b>	<b>\$ 3,100,000</b>	<b>\$ 3,100,000</b>	<b>\$ 3,100,000</b>	<b>\$ 3,100,000</b>	<b>\$ 3,160,000</b>	<b>\$ 3,100,000</b>	<b>\$ 3,100,000</b>	<b>\$ 3,100,000</b>
1,607,495	-	1,607,495	-	1,607,495	-	-	1,607,495	-	1,607,495
595,275	104,699	595,275	104,699	595,275	104,699	104,699	595,275	104,699	595,275
-	-	-	785,000	-	-	-	-	-	-
-	-	-	-	-	20,000	-	-	-	-
-	-	-	225,000	-	-	-	-	225,000	-
5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000
-	15,000	40,000	-	-	15,000	-	40,000	-	-
-	-	-	10,000	10,000	-	-	-	10,000	-
-	-	-	10,000	10,000	-	-	-	10,000	-
-	-	-	18,750	-	-	-	-	18,750	-
2,569,201	2,498,875	2,638,201	2,366,375	2,569,201	2,498,875	2,578,201	2,426,375	2,569,201	2,569,201
<b>\$ 4,776,971</b>	<b>\$ 2,623,574</b>	<b>\$ 4,885,971</b>	<b>\$ 3,524,824</b>	<b>\$ 4,776,971</b>	<b>\$ 2,643,574</b>	<b>\$ 4,825,971</b>	<b>\$ 2,799,824</b>	<b>\$ 4,776,971</b>	<b>\$ 4,776,971</b>
<b>\$ (1,826,971)</b>	<b>\$ 326,426</b>	<b>\$ (1,785,971)</b>	<b>\$ (424,824)</b>	<b>\$ (1,676,971)</b>	<b>\$ 516,426</b>	<b>\$ (1,725,971)</b>	<b>\$ 300,176</b>	<b>\$ (1,676,971)</b>	<b>\$ (1,676,971)</b>
<b>\$ (1,748,769)</b>	<b>\$ (1,422,343)</b>	<b>\$ (3,208,314)</b>	<b>\$ (3,633,138)</b>	<b>\$ (5,310,109)</b>	<b>\$ (4,793,683)</b>	<b>\$ (6,519,654)</b>	<b>\$ (6,219,478)</b>	<b>\$ (7,896,449)</b>	<b>\$ (7,896,449)</b>

	16	17	18	Total
	11/16/2015	11/23/2015	11/30/2015	18 Weeks
	3,100,000	3,100,000	3,100,000	53,860,000
<b>\$ 3,100,000</b>	<b>\$ 3,100,000</b>	<b>\$ 3,100,000</b>	<b>\$ 3,100,000</b>	<b>\$ 53,860,000</b>
	-	1,607,495	-	14,467,455
104,699	595,275	104,699	-	6,299,766
-	-	-	-	785,000
-	-	-	-	20,000
5,000	-	-	225,000	900,000
-	-	-	-	150,000
-	55,000	-	-	240,000
-	-	-	10,000	115,000
-	-	-	10,000	40,000
-	-	-	18,750	75,000
2,356,875	2,720,201	2,426,375	43,561,684	
<b>\$ 2,466,574</b>	<b>\$ 4,977,971</b>	<b>\$ 2,794,824</b>	<b>\$ 66,653,905</b>	
<b>\$ 633,426</b>	<b>\$ (1,877,971)</b>	<b>\$ 305,176</b>		
<b>\$ (7,263,023)</b>	<b>\$ (9,140,994)</b>	<b>\$ (8,835,818)</b>		