

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

AMERICAN HOSPICE MANAGEMENT  
HOLDINGS, LLC et al.,<sup>1</sup>

Debtors.

Chapter 11

Case No. 16-10670 (LSS)

Jointly Administered

Docket Ref. Nos. 14 & 42

**FINAL ORDER UNDER SECTIONS 105, 361, 362, 363(c),  
363(e), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), AND 507  
OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 2002,  
4001 AND 9014 (I) AUTHORIZING DEBTORS TO OBTAIN POSTPETITION  
FINANCING; (II) AUTHORIZING DEBTORS TO USE CASH COLLATERAL;  
(III) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTY  
AND THE UNITED STATES; AND (IV) GRANTING RELATED RELIEF**

Upon the motion, dated March 20, 2016 (the “**Motion**”), of debtor American Hospice Management Holdings, LLC, a Delaware corporation, and its affiliated debtors and debtors-in-possession (collectively, the “**Debtors**”) in the above-captioned cases (the “**Cases**”) commenced on March 20, 2016 (the “**Petition Date**”), for interim and final orders under sections 105, 361, 362, 363(c), 363(e), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e) 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 (as amended, the “**Bankruptcy Rules**”), and Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), seeking:

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of each Debtor’s U.S. tax identification number are as follows: American Hospice Management, LLC (4237), Hospice of Central Virginia, LLC (6612), Embracing HospiceCare, LLC (2674), Embracing HospiceCare South Atlanta, LLC (2689), American Hospice Management Holdings, LLC (2689), Frontier Hospice, LLC (0349), Hospice of New Jersey, LLC (9123), FMC Hospice - Conroe, LLC (8960), FMC - Deep East Texas, LLC (8614), Hospice of Arizona, LC (1618), and Hospice of Pennsylvania, LLC (9749). The Debtors’ headquarters is located at 50 North Laura Street, Suite 1800, Jacksonville, Florida 32202.



(i) the authority for the Debtors to enter into that certain Superpriority Secured Debtor-In-Possession Credit Agreement dated as of March 20, 2016, as amended by that certain Amendment No. 1 to the Superpriority Senior Secured Debtor-in-Possession Credit Agreement dated as of April 12, 2016 (as amended, restated, supplemented or otherwise modified from time to time, the “**DIP Agreement**”), substantially in the form attached hereto as **Exhibit A**, together with the other agreements delivered or executed from time to time in connection therewith (as hereafter amended, restated, supplemented or otherwise modified from time to time, together with the DIP Agreement, the “**DIP Loan Documents**”), pursuant to which the Debtors shall (a) obtain up to \$500,000 in aggregate postpetition senior secured super-priority debtor-in-possession financing (“**DIP Loan**”) from Hospice Partners of America, LLC (the “**DIP Lender**”) and (b) grant security interests and liens and accord superpriority claim status in favor of the DIP Lender pursuant to Sections 361, 364(c) and 364(d)(1) of the Bankruptcy Code in accordance with the DIP Loan Documents;<sup>2</sup>

(ii) authorization for the Debtors to execute and deliver the DIP Agreement and the other DIP Loan Documents and to perform such other and further acts as may be necessary or appropriate in connection therewith;

(iii) authorization for the Debtors to use Cash Collateral (as defined in paragraph 4(i) below) pursuant to Sections 361, 362, and 363 of the Bankruptcy Code, and all other Prepetition Collateral (as defined in paragraph 4(a) below);

(iv) to grant adequate protection with respect to the use of Cash Collateral and any diminution in the value of the Prepetition Collateral (as defined below) securing the Debtors’ Prepetition Secured Obligations (as defined below) to 2000 Riverside Capital Appreciation Fund,

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the DIP Loan Documents.

L.P. (the “**Senior Secured Lender**”) and to grant adequate protection with respect to the use of Cash Collateral and any diminution in the value of the setoff and recoupment rights, if any, to the United States;

(v) at an interim hearing (the “**Interim Hearing**”) on the Motion held on March 22, 2016 before this Court, pursuant to Bankruptcy Rule 4001, entry of an interim order (the “**Interim Order**”): (a) authorizing the Debtors, on an interim basis, to borrow under the DIP Agreement an aggregate principal amount not to exceed \$250,000 at any time outstanding prior to the entry of the Final Order (as defined below); (b) authorizing the Debtors, on an interim basis, to use Cash Collateral and the other Prepetition Collateral; and (c) granting, on an interim basis, adequate protection to the Senior Secured Lender;

(vi) scheduling, pursuant to Bankruptcy Rule 4001, a final hearing (the “**Final Hearing**”) for this Court to consider entry of a final order (the “**Final Order**”), authorizing and approving on a final basis the relief requested in the Motion, including without limitation, the Debtors’ ability on a final basis to utilize the DIP Loan and the Debtors’ ability to continue to use Cash Collateral and the other Prepetition Collateral, subject to the terms of the DIP Loan Documents and the Final Order; and

(vii) granting other related relief as described in the Motion;

(viii) and the Court having held and concluded the Interim Hearing on March 22, 2016, and the Interim Order having been entered by the Court on March 23, 2016, and notice of the Final Hearing having been given in the manner required by the Interim Order, and the Court having held the Final Hearing on April 18, 2016, and upon the record made by the Debtors at the Interim Hearing and Final Hearing, including, without limitation, the admission into evidence of the **Declaration of Scott Mahosky in Support of First Day Motions** [D.I. 8], which was filed

with the Court, and the other evidence submitted or adduced and the arguments of counsel made at the Interim Hearing and Final Hearing, and notice of the Final Hearing having been given in accordance with the Bankruptcy Rules; and all objections to the relief requested in the Motion having been withdrawn, resolved, or overruled by the Court; and it appearing to the Court that the final relief set forth in this Order is fair and reasonable and in the best interests of the Debtors, their estates, their creditors, and other parties in interest, and is essential for the continued operation of the Debtors' business; and it further appearing that the Debtors were 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 estate on which liens are to be granted; and after due deliberation and consideration, and good and sufficient cause appearing therefor;

**IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED**, as applicable, on a final basis, that:

1. Grant of Motion. The Motion is hereby GRANTED on a final basis as hereinafter set forth. Any and all objections to the relief requested in the Motion, to the extent not withdrawn with prejudice, waived or resolved by consent at or before the Final Hearing, are hereby OVERRULED and DENIED.

2. Jurisdiction/Venue. This Court has core jurisdiction over the Case, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. The Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. Notice. The Final Hearing was held pursuant to the authorization of Bankruptcy Rules 2002, 4001(b), (c), and (d) and Rule 9014, and the Local Rules. Notice of the Final Hearing and the relief requested in the Motion has been provided by the Debtors to certain parties in interest, including: (a) the Office of the United States Trustee; (b) the holders of the 20 largest unsecured claims against the Debtor; (c) counsel to Riverside; (d) counsel to the DIP Lender; (e) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (f) any such other party entitled to notice pursuant to Rule 9013-1(m) of the Local Rules. Under the circumstances, such notice of the Final Hearing and the relief requested in the Motion complies with Bankruptcy Rules 2002 and Local Rule 4001-2.

4. Debtors' Stipulations and Releases. Without prejudice to the rights of any other party (but which rights are subject to the limitations thereon contained in paragraph 23 of this Final Order), the Debtors admit, stipulate and agree that:

(a) as of the Petition Date, the Debtors, without defense, counterclaim, recoupment or offset of any kind, are indebted and liable to the Senior Secured Lender in the aggregate principal amount of \$8,000,000 (the "**Prepetition Secured Obligations**"), which Prepetition Secured Obligations are secured by (i) first-priority security interests in and liens on substantially all of the Debtors' assets, including accounts, inventory, contract rights, instruments, documents, chattel paper, drafts and acceptances, general intangibles, and all other forms of obligations owing to the Debtors (and the proceeds, product and offspring therefrom, collectively, the "**Prepetition Collateral**");

(b) the Prepetition Secured Obligations constitute the legal, valid, and binding obligations of the Debtors, enforceable in accordance with their terms (other

than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code);

(c) the liens granted to the Senior Secured Lender on the Prepetition Collateral pursuant to and in connection with the prepetition secured agreements (collectively, the “**Prepetition Liens**”) are (i) valid, binding, perfected, and enforceable liens and security interests, (ii) not, pursuant to the Bankruptcy Code or other applicable law, subject to avoidance, recharacterization, recovery, subordination, attack, offset, recoupment, counterclaim, defense or “claim” (as such term is defined in the Bankruptcy Code) of any kind, and (iii) subject and subordinate only to (A) the DIP Loans and DIP Liens (as defined below) and (B) the Carve-Out (as defined below) to which the DIP Liens are subject;

(d) no portion of the Prepetition Secured Obligations or any payments made to the Prepetition Secured Parties or applied to the Prepetition Secured Obligations prior to the Petition Date is subject to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense or “claim” (as such term is defined in the Bankruptcy Code) of any kind pursuant to the Bankruptcy Code or other applicable law;

(e) the Debtors hereby forever waive and release any and all “claims” (as such term is defined in the Bankruptcy Code), counterclaims, causes of action, defenses and setoff rights against the Senior Secured Lender, in its capacity as such, whether arising at law or in equity, including, without limitation, any recharacterization, subordination, avoidance or other claim arising under or pursuant

to Section 105 or Chapter 5 of the Bankruptcy Code or under any other similar provisions of applicable state or federal law; and

(f) substantially all cash, securities, or other property (and the proceeds therefrom) as of the Petition Date, including without limitation, all cash, securities or other property (and the proceeds, product, and offspring therefrom) and other amounts on deposit or maintained by the Debtors in accounts pursuant to the Prepetition Secured Agreements were subject to rights of setoff and valid, perfected, enforceable, first priority liens for the benefit of the Senior Secured Lender. All proceeds of the Prepetition Collateral are Cash Collateral of the Prepetition Secured Parties within the meaning of section 363(a) of the Bankruptcy Code (collectively, the “**Cash Collateral**”).

5. Need for Financing and Cash Collateral Use.

(a) The Debtors have an immediate need to obtain all amounts available under the DIP Loan and to continue to use the Prepetition Collateral, including any cash that constitutes Prepetition Collateral, in order to, among other things, permit the orderly continuation of the operation of their businesses, preserve the going concern value of the Debtors, pay the costs of administration of their estates and for the other purposes set forth in the DIP Loan Documents. The Debtors’ use of the Prepetition Collateral (including the Cash Collateral) and the DIP Loan on the terms described herein is necessary to prevent immediate and irreparable harm to the Debtors’ estates.

(b) The Debtors are unable to obtain financing on more favorable terms from sources other than the DIP Lender pursuant to, and for the purposes set forth in, the DIP Loan Documents and are unable to obtain adequate unsecured credit

allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors are also unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code without the Debtors granting to the DIP Lender, subject to the Carve-Out (as defined in paragraph 17 below), (i) the DIP Liens (as defined in paragraph 12(a) below), including the priming DIP Liens and (ii) the Superpriority DIP Claims (as defined in paragraph 13(a) below), in each case on the terms and conditions set forth in this Final Order and the DIP Loan Documents. No party or parties other than the DIP Lender would provide postpetition financing to the Debtors absent the Debtors granting such parties priming liens on the Debtors' assets pursuant to Section 364(d)(1) of the Bankruptcy Code or other impracticable conditions, and the Debtors were unable to satisfy the requirements of section 364(d)(1) of the Bankruptcy Code.

6. Proposed DIP Loan. The Debtors have requested the DIP Lender to establish the DIP Loan pursuant to which the Debtors may from time to time obtain loans ("**DIP Loans**") in an aggregate principal amount of up to \$500,000 outstanding at any time pursuant to the terms of the DIP Loan Documents. The DIP Lender is willing to establish the DIP Loan, upon the terms and conditions set forth herein and in the DIP Loan Documents.

7. Certain Conditions to DIP Loan. The DIP Lender's willingness to establish the DIP Loan is conditioned upon, among other things: (a) the Debtors obtaining final Court approval of the DIP Agreement (and all extensions of credit thereunder), as well as all of the other DIP Loan Documents; (b) the Debtors' continued provision of adequate protection pursuant to Sections 361 and 363 of the Bankruptcy Code of the interests of the Senior Secured Lender with respect to the Prepetition Liens and to the United States; (c) the DIP Lender



continuing to receive, as security for the payment of the DIP Obligations (as defined below), security interests in and liens upon the DIP Collateral (as defined below) and the DIP Loan Documents; and (d) the Debtors' continued satisfaction of all conditions precedent in the DIP Agreement and DIP Loan Documents, unless waived in writing by the DIP Lender in its sole discretion.

8. Finding of Cause. Good cause has been shown for the entry of this Final Order and authorization for the Debtors to continue to use Cash Collateral and to obtain extensions of credit under the DIP Loan (the "**DIP Credit Extensions**") pursuant to the terms of the DIP Loan Documents. The Debtors' need for use of Cash Collateral and financing of the type afforded by the DIP Agreement is ongoing, immediate, and critical. Entry of this Final Order will minimize disruption of the Debtors' businesses and operations, will preserve the assets of the Debtors' estates and their value and is in the best interests of the Debtors, their creditors and their estates. The terms of the proposed financing are fair and reasonable, reflect the Debtors' exercise of prudent business judgment and are supported by reasonably equivalent value and fair consideration.

9. Finding of Good Faith. Based upon the record presented at the Interim Hearing and Final Hearing, the Court finds that the DIP Agreement and the other DIP Loan Documents, as well as the terms of this Final Order, have been negotiated in good faith and at arm's length between the Debtors, on the one hand, and the DIP Lender, on the other hand. Therefore, all DIP Credit Extensions heretofore and hereafter made to the Debtors pursuant to the DIP Loan Documents shall be deemed to have been extended and made in good faith within the meaning of section 364(e) of the Bankruptcy Code.

10. Authorization of Financing: Budget.

(a) The Court hereby authorizes (i) the execution, delivery and performance by Debtors of and under the DIP Agreement and other DIP Loan Documents, as applicable, in substantially the form annexed to the Motion (with such changes, if any, as were addressed to the Court at the Final Hearing or are authorized to be made as amendments to the DIP Agreement and other DIP Loan Documents in accordance with this Final Order) and all other instruments, security agreements, assignments, pledges, and other documents referred to therein or required by the DIP Agreement to be executed by the Debtors; (ii) the Debtor to obtain DIP Loans and other DIP Credit Extensions in accordance with the DIP Loan Documents from time to time up to an aggregate principal amount outstanding at any time of \$500,000, and (iii) the Debtors to satisfy all conditions precedent and perform all obligations hereunder and under the DIP Loan Documents in accordance with the terms hereof and thereof; provided, however, that the authorization to use proceeds of DIP Loans shall be limited solely to the purposes specified and authorized in this Final Order or the DIP Loan Documents (collectively, the **"Permitted Uses"**).

(b) The DIP Lender shall not have any obligation or responsibility to monitor the Debtors' use of any DIP Loans, and may rely upon the Debtors' representations that the amount of the DIP Credit Extensions requested at any time, and the use thereof, are in accordance with the requirements of the Interim Order, this Final Order, and the DIP Loan Documents.

(c) The Debtors shall continue to deliver to the DIP Lender and Senior Secured Lender, on a periodic basis as required under the DIP Loan from and after

the closing of the DIP Loan, updates to the "Budget" (as defined in the DIP Agreement), acceptable to the DIP Lender and Senior Secured Lender as and to the extent required by the DIP Agreement (such Budget, together with any updated Budgets acceptable to the DIP Lender, the "**Budget**"). The Debtors shall also file a copy of any updated Budgets with the Court.

11. Execution, Delivery, and Performance of DIP Loan Documents. The Debtors are authorized to execute, deliver, and perform under all the terms and conditions of each and every DIP Document. In furtherance of the provisions of this Final Order, the Debtors are authorized to do and perform all acts, to make, execute, and deliver all instruments and documents and to pay all filing and recording fees as may be necessary or, in the opinion of the DIP Lender, are desirable to give effect to any of the terms and conditions of the DIP Loan Documents or as otherwise required or contemplated by the DIP Loan Documents.

12. DIP Collateral and DIP Liens.

(a) All "Obligations" under (and as defined in) the DIP Agreement, including, without limitation, all DIP Credit Extensions and all amounts owing (then existing, contingent or otherwise, all of the foregoing being collectively called the "**DIP Obligations**") shall be, and hereby are, secured, subject and subordinate only to the Carve-Out (as defined in paragraph 17 below), by perfected, first priority liens (collectively, the "**DIP Liens**") in favor of the DIP Lender on and in all of the Prepetition Collateral and all other assets of the Debtors in existence or created prior to, on or after the Petition Date and, subject to entry of the Final Order, any claims pursuant to sections 502(d), 544, 545, 547, 548, 549, 550, 551 or 553 of the Bankruptcy Code (collectively, the "**DIP Collateral**").

(b) The DIP Liens with respect to the DIP Collateral shall have the following priorities:

- i Unencumbered Collateral. Pursuant to section 364(c)(2) of the Bankruptcy Code, and subject only to the Carve-Out, first priority, valid, binding, enforceable and perfected security interests in, and Liens upon, all unencumbered tangible and intangible property of the Debtors, including such property that is subject to valid and perfected Liens in existence on the Petition Date, which Liens are thereafter released or otherwise extinguished in connection with the satisfaction of the obligations secured by such Liens, other than the DIP Collateral on which there are liens and security interests as described in clause (iii) below;
- ii Encumbered Collateral. Pursuant to section 364(c)(3) of the Bankruptcy Code, and subject only to the Carve-out, junior, valid, binding, enforceable and perfected security interests in, and Liens upon, all (A) property of the Debtors' estates that, on the Petition Date, was subject to a valid and perfected Lien or becomes subject to a valid Lien perfected (but not granted) after the Petition Date to the extent such post-Petition Date perfection in respect of prepetition claims is expressly permitted under the Bankruptcy Code (the "**Permitted Prior Liens**"), and (B) property of the Debtors' estates that is subject to such other Liens as are expressly permitted under this Agreement; *provided however*, that with respect to the Prepetition Liens of the Prepetition Secured Lender, the Lender is receiving (and the Prepetition Debt and Prepetition Liens shall be subordinate to) a priming lien granted to Lender pursuant to 364(d)(1) as hereinafter provided; and *provided further* however, that the Liens granted under the DIP Loan Documents shall not be subject to or subordinate to (1) notwithstanding anything to the contrary in the DIP Loan Documents or the Financing Orders, any Permitted Prior Lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates, (2) any Liens arising after the Petition Date, including any Liens or security interests granted in favor of any federal, state, municipal or other governmental unit, commission, board or court for any liability of the Debtors, and (3) any intercompany or affiliate Liens of the Debtors; and (4) the Prepetition Secured Debt and Prepetition Liens;
- iii Extent of Priming DIP Lien. Pursuant to section 364(d)(1) of the Bankruptcy Code, a first priority, senior priming lien on

and security interest in all Prepetition Collateral that is or was intended or required to be subject to valid and perfected liens existing on the Petition Date in favor of the Senior Secured Lender and any other person or entity, and senior to any setoff, recoupment or off set rights of any governmental agency with respect to Medicare provider payments or CMS accounts receivable; and

- iv Carve-Out. The DIP Liens shall be subject and subordinate in all respects to the Carve-Out in accordance with paragraph 17 of this Final Order.

13. Superiority DIP Claim; Surcharge.

(a) Scope of Superpriority DIP Claim. Subject to the Carve-Out in accordance with paragraph 17 of this Final Order, and in addition to being secured as provided in the Interim Order and this Final Order, all DIP Obligations shall constitute an allowed administrative expense claim under section 503(b) of the Bankruptcy Code and shall constitute an allowed superpriority claim (the “**Superpriority DIP Claim**”) pursuant to section 364(c)(1) of the Bankruptcy Code over all other administrative expenses in the Debtors’ cases of the kind specified in, or ordered pursuant to, Sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c) (subject to the Final Order), 507(a), 507(b), 546(c), 726 or 1114 of the Bankruptcy Code.

(b) No Surcharge. Subject to the Carve-Out in accordance with paragraph 17 of this Final Order, it shall be an Event of Default under (and as defined in) the DIP Agreement for any costs or administrative expenses that have been or may be incurred in these Chapter 11 cases, in any matters or proceedings related hereto or in any superseding Chapter 7 case, to be prior to or on a parity with the Superpriority DIP Claim of the DIP Lender for the DIP Obligations. In no event shall any costs or expenses of administration be imposed upon the DIP Lender or any of the DIP

Collateral pursuant to Sections 105, 506(c) or 552(b) of the Bankruptcy Code, or otherwise, without the prior written consent of the DIP Lender, and no such consent shall be implied from any action, inaction or acquiescence by the DIP Lender; and in no event shall any costs or expenses of administration be imposed upon the Senior Secured Lender or any Prepetition Collateral, whether pursuant to Sections 105, 506(c) or 552(b) of the Bankruptcy Code, or otherwise, without the prior written consent of the Senior Secured Lender, and no such consent shall be implied from any action, inaction, or acquiescence by the Senior Secured Lender.

14. Debtor Reimbursement Claims. The DIP Obligations shall be due and payable, and shall be paid, as and when provided in the DIP Loan Documents and as provided herein, without offset, counterclaim, deduction, or other claim of avoidance of any nature or type. In no event shall the Debtors be authorized to offset, deduct, avoid, or recoup any amounts owed, or alleged to be owed, by the DIP Lender or the Senior Secured Lender against any of the DIP Obligations, unless and to the extent expressly otherwise agreed to in writing by each of the DIP Lender and the Senior Secured Lender, as applicable.

15. Cash Collateral; Other Matters. Subject to the terms of this Final Order and the DIP Loan Documents, the Debtors are authorized to use Cash Collateral that is secured by the DIP Liens or the Prepetition Liens or that is arguably subject to setoff and or recoupment rights by the United States in accordance with this Final Order and the DIP Loan Documents.

16. Adequate Protection of the Senior Secured Lender. As adequate protection pursuant to Sections 361 and 363 of the Bankruptcy Code for the Debtors' use, consumption, sale, collection, or other disposition of any of the Prepetition Collateral, the Senior Secured Lender shall receive the following as adequate protection:

(a) to the extent there is a diminution in the value of the interests of the Senior Secured Lender in the Prepetition Collateral (whether the reason for such diminution is as a result of or from, arises from, or is attributable to, the imposition of the automatic stay, the priming of the Senior Secured Lender, the use of Cash Collateral, or the physical deterioration, consumption, use, sale, lease, disposition, shrinkage or decline in market value of the Prepetition Collateral), the Senior Secured Lender is granted replacement liens on the Prepetition Collateral (the “**Replacement Liens**”), which liens are valid, binding, enforceable and fully perfected as of the date hereof, but are subject to the Carve-Out and subordinate to the DIP Loan and DIP Liens; and

(b) an allowed administrative claim (the “**Credit Facility Administrative Claim**”) against the Debtors’ estates under section 507(b) of the Bankruptcy Code to the extent that the Replacement Liens do not adequately protect the diminution in the value of the Prepetition Collateral, which Credit Facility Administrative Claim, if any, shall be junior and subordinate to the Carve-Out and the Superpriority DIP Claim.

17. Payment of Certain Fees and Expenses.

(a) Payment of Professional Expenses. Subject to the Budget, the Debtors are authorized to use proceeds of DIP Loans solely for the uses permitted under the DIP Agreement, including (i) to pay any fees required to be paid to the Clerk of the Court; (ii) to pay the fees of the U.S. Trustee pursuant to 28 U.S.C. § 1930 and payment of interest, if any, pursuant to 31 U.S.C. § 3717; (iii) to pay the professional fees of the DIP Lender in negotiating and documenting the DIP Agreement in an

amount not to exceed \$25,000 and (iv) to pay the Commitment Fee to the Lender. For so long as no Event of Default under (and as defined in) the DIP Agreement shall have occurred and be continuing, the Debtors are also authorized to use the proceeds of the DIP Loans, without limitation, to pay fees, compensation, costs, expenses, and disbursements (collectively, "**Professional Expenses**") of professionals (including, without limitation, attorneys, accountants, appraisers, consultants and investment bankers) retained by the Debtors (the "**Debtor Professionals**") or an official committee of unsecured creditors, if any, appointed in this Chapter 11 case (any such official committee being referred to as a "**Committee**"), and the professionals retained by such Committee, all in accordance with and subject to the Budget; provided, however, that, except as provided in the final sentence of this paragraph no proceeds of DIP Loans or any Cash Collateral of the DIP Lender or the Senior Secured Lender shall be used to pay Professional Expenses of the Debtor Professionals or Committees (collectively, the "**Professional Persons**") or any other costs incurred in connection with (i) commencing or continuing any claims, causes of actions, adversary proceedings, or contested matters against the DIP Lender or the Senior Secured Lender with respect to any loan, repayment, or other transaction, act, or inaction under or in connection with the Prepetition Secured Agreements or DIP Loan Documents (as the case may be), including, without limitation, discovery proceedings subsequent to the commencement of any such claims or causes of action; (ii) preventing, hindering, or delaying performance or enforcement by the DIP Lender or the Senior Secured Lender of their rights or remedies under this Final Order or any of the DIP Loan Documents (except to contest whether an Event of Default has



occurred and exists under the DIP Agreement); (iii) challenging any liens granted in connection with the Prepetition Secured Agreements, the DIP Liens or the Superpriority DIP Claim; (iv) challenging the DIP Obligations or the Prepetition Secured Obligations; or (v) that would otherwise be expenses not permitted pursuant to the Budget. Notwithstanding the foregoing limitations, and so long as no Event of Default shall have occurred and be continuing, up to \$10,000 may be used by the Committee solely to investigate claims, causes of action, or adversary proceedings against the Senior Secured Lender with respect to the Prepetition Liens granted to the Senior Secured Lender on Prepetition Collateral.

(b) Carve-Out. All liens and claims granted pursuant to this Final Order shall be subject and subordinate to the Carve-Out. For the purposes of this Final Order, the "Carve-Out" shall mean: (A) Unless and until the DIP Loans and all DIP Loan Obligations, all accrued interest and all costs and fees, including any Out of Pocket Expenses and any other fees and expenses permitted under the DIP Loan Documents are repaid in full (i) U.S. Trustee fees, pursuant to 28 U.S.C. § 1930 (the "U.S. Trustee Fees") and (ii) a total of \$50,000 for all Professional Expenses incurred by all Professional Persons at any time, whether or not then allowed or paid (but subject to ultimate allowance) payable out of the DIP Collateral; and (B) following repayment in full of all DIP Loans, all DIP Loan Obligations, all accrued interest and all costs and fees, including any Out of Pocket Expenses and any other fees and expenses permitted under the DIP Loan Documents, (i) Professional Expenses incurred by Professional Persons at any time, whether or not then allowed or paid (but subject to ultimate allowance), whether by the Interim Order, the Final Order, any

procedural order, or otherwise. Notwithstanding anything contained in this paragraph 17 to the contrary nothing in this paragraph 17 shall be construed to impair the ability of any interested party to object to any Professional Expenses sought by any Professional Person.

18. Preservation of Rights Granted Under this Final Order.

(a) Protection From Subsequent Financing Order. It shall constitute an Event of Default under (and as defined in) the DIP Agreement if the Debtors seek, or if there is entered in these Chapter 11 cases, or in any successor case, any order that authorizes the obtaining of credit or the incurrence of indebtedness by the Debtors (or any trustee or examiner) that (i) is secured by a security, mortgage, collateral interest, or lien on all or any part of the DIP Collateral that is equal or senior to the DIP Liens or Credit Facility Replacement Liens, except as expressly authorized by the DIP Agreement, or (ii) has priority administrative expense status that is equal or senior to the Superpriority DIP Claim; provided, however, that nothing herein shall prevent the entry of an order that specifically provides that, as a condition to the granting of the benefits of clauses (i) or (ii) above, all of the DIP Obligations and Prepetition Secured Obligations must be fully paid from the proceeds of such credit or indebtedness, and all contingent obligations owed to the DIP Lender or the Senior Secured Lender fully cash collateralized as provided in the DIP Loan Documents or Prepetition Secured Agreements (as applicable).

(b) Rights Upon Dismissal, Conversion or Consolidation. If these Cases are dismissed, converted to cases under Chapter 7 of the Bankruptcy Code, or substantively consolidated with another case, then neither the entry of this Final

Order nor the dismissal, conversion, or substantive consolidation of these Cases shall affect the rights or remedies of the DIP Lender under the DIP Loan Documents or the rights or remedies of the Senior Secured Lender or the DIP Lender under this Final Order, and all of the respective rights and remedies hereunder and thereunder of the Senior Secured Lender and the DIP Lender shall remain in full force and effect as if the Cases had not been dismissed, converted, or substantively consolidated. It shall constitute an Event of Default if the Debtors seek, or if there is entered, any order dismissing the Cases. Notwithstanding any order that may be entered in the future dismissing the Cases (i) all of the liens and claims granted hereunder shall continue in full force and effect and shall maintain their priorities as provided in the Interim Order and this Final Order (and that such liens and claims shall, notwithstanding such dismissal, remain binding on all interested parties) and (ii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purpose of enforcing all the liens and claims of the Senior Secured Lender and the DIP Lender to the greatest extent permitted by applicable law.

(c) No Discharge; Credit Bid Rights. Unless and until Full Payment of the DIP Obligations shall occur or are otherwise satisfied with the consent of the DIP Lender in its sole discretion, all such obligations shall not be discharged by the entry of any order confirming a plan of reorganization in these Cases and, pursuant to Section 1141(d)(4) of the Bankruptcy Code, the Debtors have waived such discharge. No plan of reorganization or liquidation, nor any order entered in connection with a sale of assets under Section 363 of the Bankruptcy Code or otherwise, shall limit or otherwise restrict the right of the Senior Secured Lender or the DIP Lender to submit

a credit bid for all or any part of the DIP Collateral (including a joint credit bid by the Senior Secured Lender and the DIP Lender).

(d) No Marshaling. The Debtors agree not to assert rights pursuant to the equitable doctrine of “marshaling” or any similar doctrine with respect to any DIP Collateral at any time securing any of the DIP Obligations, and in no event shall any DIP Liens be subject to any pre-petition or post-petition lien or security interest that is avoided and preserved for the benefit of the Debtors’ estates pursuant to Section 551 of the Bankruptcy Code.

(e) No Requirement to File Proof of Claim or File Request for Allowance of Administrative Expense Claim. Notwithstanding anything to the contrary contained in any prior or subsequent order of the Court, including, without limitation, any bar order establishing a deadline for the filing of proofs of claims or motions for entitlement to administrative expense treatment under section 503(b) of the Bankruptcy Code, the Senior Secured Lender and the DIP Lender shall not be required to file any proof of claim or request with respect to any of the DIP Obligations or the Prepetition Secured Obligations, all of which shall be due and payable in accordance with the DIP Loan Documents and the Prepetition Secured Agreements, as applicable, without the necessity of filing any such proof of claim or request, and the failure to file any such proof of claim shall not affect the validity or enforceability of any of the DIP Loan Documents or the Existing Facility Agreement, as applicable, or prejudice or otherwise adversely affect the DIP Lender’s or Senior Secured Lender’s rights, remedies, powers, or privileges under the DIP Loan Documents, the Existing Facility Agreement, or this Final Order.

(f) Reservation of Rights. The terms, conditions, and provisions of this Final Order are in addition to, and without prejudice to the rights of, the DIP Lender and Senior Secured Lender to pursue any and all rights and remedies available to them under the Bankruptcy Code, the Existing Facility Agreement, and the DIP Loan Documents, the Interim Order, or any other applicable agreement or law including, without limitation, the right to seek adequate protection and/or additional or differing adequate protection, to seek relief from the automatic stay, to seek an injunction, to oppose any request for use of Cash Collateral or the granting of any interest in the DIP Collateral or priority in favor of any other party, to object to any sale of assets, and to object to applications for allowance and/or payment of compensation of Professional Persons, or other parties seeking compensation in the Chapter 11 case.

19. Automatic Perfection of Liens. Notwithstanding anything to the contrary in the DIP Loan Documents, or the Existing Facility Agreement, the DIP Liens and Replacement Liens (collectively, the “**DIP Order Liens**”) shall, as of the Petition Date, be deemed valid, binding, enforceable and fully perfected with respect to all of the DIP Collateral or Prepetition Collateral, as applicable. The DIP Lender and Senior Secured Lender shall not be required to file any UCC-1 financing statements, mortgages, deeds of trust, security deeds, notices of lien or any similar document (including, but not limited to, deposit account control agreements) or take any other action in order to validate the perfection of any DIP Order Liens. If the DIP Lender or Senior Secured Lender chooses to file or record any such mortgages, deeds of trust, security deeds, notices of lien or UCC-1 financing statements, or take any other action to validate the perfection of any DIP Order Liens (including, but not limited to, executing deposit control agreements), the Debtors and their officers are authorized to execute any documents or

instruments as the DIP Lender or Senior Secured Lender shall reasonably request. The DIP Lender and Senior Secured Lender, may, in its or their discretion, file a certified copy of this Final Order in any filing office in any jurisdiction in which the Debtors are organized or have or maintain any DIP Collateral or an office, and each filing office is authorized to accept such certified copy of this Final Order for filing and recording.

20. Amendments to DIP Loan Documents. The Debtors and the DIP Lender are hereby authorized to execute, deliver, and implement, in accordance with the terms of the DIP Loan Documents and without further order of the Court, any amendments to and modifications of any of the DIP Loan Documents on the following conditions: (a) the amendment or modification must not constitute a material change to the terms of the DIP Loan Documents, (b) copies of the amendment or modification must be served upon counsel to the Senior Secured Lender, counsel for the Committee, if any, the U.S. Trustee and other interested parties specifically requesting such notice, and (c) notice of the amendment is filed with the Court. Any amendment or modification that constitutes a material change, to be effective, must be approved by the Court. For purposes hereof, a "material change" shall mean a change that operates to shorten the maturity date of the DIP Loan, increase the aggregate amount of the commitment for DIP Loans under the DIP Loan, increase the rate of interest other than as provided in or contemplated by the DIP Loan Documents, add additional specific events of default, or enlarge the nature and extent of default remedies available to the DIP Lender following an Event of Default under (and as defined in) the DIP Agreement. Without limiting the foregoing, any other change that does not materially and adversely affect the rights of the Debtors under the DIP Loan shall not constitute a material change to the terms of the DIP Loan Documents and may be affected by the Debtor and the DIP Lenders without the need for further

approval of the Court.

21. Events of Default; Remedies.

(a) Events of Default and Remedies. An Event of Default shall be deemed to have occurred and exist for purposes of this Final Order upon the occurrence of an "Event of Default" under (and as defined in) the DIP Agreement, including, without limitation, any breach or failure of compliance by the Debtors with respect to any of the provisions of this Final Order.

(b) Enforcement of Remedies. Upon or after the occurrence of any Event of Default, the DIP Lender shall be fully authorized, in its sole discretion, to exercise all remedies available to it under the DIP Loan Documents and applicable law, provided that other than termination of the Debtors' right to use Cash Collateral, which can be immediate, the DIP Lender shall provide five (5) business days' notice to the Debtors' counsel (with a copy to counsel to the Senior Secured Lender, counsel to the Committee, if any, and the U.S. Trustee) prior to the enforcement of the DIP Liens or exercise of any other rights or remedies against the DIP Collateral. The foregoing notices shall be served via electronic mail or facsimile on the Debtors' counsel, counsel to the Senior Secured Lender, counsel to the Committee (if any), and the Office of the U.S. Trustee. The foregoing notice provisions are without prejudice to the rights of the DIP Lender, as applicable, to seek earlier relief from this Court upon appropriate notice and hearing pursuant to the Bankruptcy Code and Bankruptcy Rules. Upon or after the occurrence of an Event of Default, and notwithstanding the notice periods referred to above, the DIP Lender shall not be obligated to make any DIP Credit Extensions to any of the Debtors. The automatic

stay provisions of Section 362 of the Bankruptcy Code are modified to the extent necessary to implement the provisions of this paragraph. Additionally, injunctive or other similar provisions contained in any plan of reorganization or any order confirming any such plan or plans of reorganization, shall not preclude the Senior Secured Lender or the DIP Lender from exercising the rights and remedies provided to them pursuant to and in accordance with this Final Order, the Interim Order, and the DIP Loan Documents.

(c) Application of DIP Collateral Proceeds. Notwithstanding any contrary provision contained in this Final Order, (A) for so long as the DIP Loan or any DIP Loan Obligations remain outstanding, only the DIP Lender (and not the Prepetition Secured Lender) may enforce the DIP Liens or any other liens or claims granted to it in respect of any DIP Collateral, and if the DIP Lender shall proceed to enforce the DIP Liens or any other liens or claims granted to it in respect of any DIP Collateral, then the DIP Lender may, in its discretion, elect to apply all proceeds of the DIP Collateral to the payment or cash collateralization of the DIP Loan Obligations then outstanding, if any, in such order of application as the DIP Lender may elect in its discretion; and (B) once the DIP Loan and all DIP Loan Obligations have been fully repaid to DIP Lender and are no longer outstanding, if the Senior Secured Lender shall proceed to enforce its lien and claims against any remaining DIP Collateral or Prepetition Collateral, then the proceeds of the remaining DIP Collateral or Prepetition Collateral, as applicable, to the payment or cash collateralization of the Prepetition Secured Obligations then outstanding, if any, in such order of application as the Senior Secured Lender may elect in its discretion.



(d) Rights Cumulative. The rights, remedies, powers, and privileges conferred upon the DIP Lender and Senior Secured Lender pursuant to this Final Order shall be in addition to, and cumulative with, those contained in the Interim Order, DIP Loan Documents, and Existing Facility Agreement, as applicable.

22. Modification of Automatic Stay. The automatic stay provisions of Section 362 of the Bankruptcy Code are modified to the extent necessary to implement the provisions of this Final Order and the DIP Loan Documents, thereby permitting (a) the DIP Lender to receive collections of DIP Collateral for application to the DIP Obligations as provided herein, (b) the DIP Lender to file or record any UCC-1 financing statements, mortgages, deeds of trust, security deeds, and other instruments and documents evidencing or validating the perfection of the DIP Liens and (c) the DIP Lender to enforce the DIP Liens and exercise any of its rights and remedies as set forth in paragraph 21 of this Final Order and the DIP Loan Documents, all without further order modifying or terminating the automatic stay of Section 362 of the Bankruptcy Code.

23. Deadline for Challenge to Prepetition Secured Obligations. In consideration of the DIP Lender's agreement to provide DIP Credit Extensions pursuant to the DIP Loan Documents, and the Senior Secured Lender's consent to the use of Cash Collateral and to the DIP Liens, the Debtors have voluntarily made the stipulations and releases contained in paragraph 4 above (the "**Debtors' Stipulations**"). The Debtors' Stipulations shall be binding on the Debtors, but shall be subject only to the right of a party-in-interest, including the Committee and any Chapter 11 trustee or Chapter 7 trustee that is appointed prior to the expiration of the Challenge Deadline (as defined below), to the extent that such party has or is otherwise granted standing to do so, to commence an appropriate adversary proceeding (a "**Challenge**") objecting

to the validity, priority, amount, or allowance of any Prepetition Secured Obligations, or the extent, validity, priority, perfection, or avoidability of any liens granted to the Senior Secured Lender on the Prepetition Collateral, or seeking disgorgement of, recharacterization or subordination of, or offset or recoupment, against all or part of the payment of Prepetition Secured Obligations by a Debtor, or asserting any claim under contract, tort, or other theory (including, without limitation, lender liability), including, without limitation, theories of recovery or pursuant to Section 105 or Chapter 5 of the Bankruptcy Code, which adversary proceeding or contested matter must be filed no later than the earlier to occur of (a) June 6, 2016 (i.e. seventy-five (75) days from the entry of the Interim Order), or (b) sixty (60) days from the date of the formation of any creditors' committee (the "**Challenge Deadline**"); provided, however, that if a Chapter 7 trustee or Chapter 11 trustee is appointed prior to the Challenge Deadline, the Challenge Deadline applicable to such trustee shall extend until the later of (i) thirty (30) days from such appointment or (ii) the existing Challenge Deadline. If the party-in-interest has not obtained an order from the Court granting such party standing to pursue any such Challenge, then such party shall be required promptly to seek such an order as a condition to its further prosecution of such Challenge, subject to any objection by the Debtors, the Senior Secured Lender, or any other interested party, and a party's authority to prosecute such Challenge shall be contingent upon its obtaining such an order granting standing. In no event shall the filing of any such Challenge affect any of the rights, privileges, powers or remedies of the Debtors, the Senior Secured Lender, or the DIP Lender under this Final Order, the DIP Loan Documents, or the Prepetition Secured Agreements. If such Challenge is not timely filed (or, if filed, is denied or overruled), or if standing in connection with any such Challenge is not granted, (i) with respect to any Prepetition Secured Obligations, all of such Prepetition Secured Obligations shall be

deemed a legal, valid, binding, and enforceable claim that is allowed in full as a secured claim, and not subject to subordination or recharacterization in these Cases, including any superseding Chapter 7 case, or in any other proceedings; (ii) with respect to any liens granted to secure the Prepetition Secured Obligations, such Prepetition Liens shall be deemed to be legal, valid, binding, enforceable, perfected (having the priority set forth in this Final Order), and unavoidable in these Cases, including any superseding Chapter 7 case, and in any other proceedings; and (iii) all claims and other causes of action (including, without limitation, "lender liability" theories) and causes of action or theories of recovery pursuant to Section 105 or chapter 5 of the Bankruptcy Code) against the Senior Secured Lender shall be forever waived and barred. For the avoidance of doubt, any Chapter 7 trustee or Chapter 11 trustee appointed or elected prior to the Challenge Deadline, or during the pendency of any adversary proceeding or contested matter commenced by the Committee or any other party in interest to this paragraph 23, shall be deemed to be a party other than the Debtors and shall not, for purposes of such adversary proceeding or contested matter, be bound by the acknowledgments, admissions, confirmations, stipulations and waivers of the Debtors in this Order. If this Case is converted to a case under Chapter 7 of the Bankruptcy Code, the trustee shall be permitted to continue prosecution of any pending adversary proceeding or contested matter theretofore commenced pursuant to this paragraph 23 on behalf of Debtors' estates.

24. Adequate Protection for the United States. The United States shall receive the following adequate protection:

- (a) The Debtors agree to provide to the Centers for Medicare & Medicaid Services of the U.S. Department of Health and Human Services ("CMS") with notice no later than two (2) business days, if any, of the following occurs:

- i Bi-Weekly Medicare billings by any one individual Debtor drops by 20% of the average weekly amount of Medicare billings for the month of March 2016 for that individual Debtor;
- ii Any one individual Debtor voluntarily closes or terminates its participation in the Medicare program, ceases operating or ceases billing Medicare;
- iii A motion is granted to convert any one of the chapter 11 bankruptcy cases to a case under chapter 7;
- iv A motion is granted to dismiss any one of the chapter 11 bankruptcy cases;
- v A plan of liquidation or a plan which contemplates liquidation of substantially all the assets is filed in any one of the Debtors' cases;
- vi Authority to use cash collateral under the Cash Collateral Order (defined herein) terminates and (i) the Debtors do not have authority to use cash collateral under a subsequent cash collateral order, or (ii) the Debtors do not have authority to use cash collateral under a postpetition financing order;
- vii A motion is granted appointing a trustee, or an examiner with the powers equivalent to a trustee;
- viii Hospice Partners of America, LLC (the "**DIP Lender**") declares a default under the DIP Credit Agreement (D.I. 14-2) (the "**DIP Agreement**") or any court order authorizing debtor in possession financing, which is not cured within 5 business days, or the DIP Lender declares that an Event of Default has occurred and all loan obligations under the DIP Agreement are immediately due and payable;
- ix The DIP Lender terminates the DIP Agreement;
- x The Purchaser (as defined in the Asset Purchase Agreement (D.I. 12-2) or any other subsequent purchaser terminates any sale agreement, including the Asset Purchase Agreement;
- xi A motion is granted that provides for bidding procedures on terms which are not acceptable to the United States, in its sole discretion; or
- xii A motion is granted that provides for the disposition of any applicable Medicare Provider Agreements on terms which are

not acceptable to the United States, in its sole discretion (collectively, the "**CMS Events of Default**").

(b) Any information required to be sent to the United States pursuant to this Order shall be provided by electronic mail to: (1) Leah V. Lerman, U.S. Department of Justice ("**DOJ**"), at leah.v.lerman@usdoj.gov, and (2) Matthew E.K. Howatt, U.S. Department of Health and Human Services, at matthew.howatt@hhs.gov (collectively, "**CMS Counsel**").

(c) In order to verify the above-described reporting requirements, the Debtors agree to provide CMS Counsel a spreadsheet by individual Debtor, on a bi-weekly basis, specifying the amount billed to any Medicare Administrative Contractor for the prior two weeks, with a comparison of the prior two week period's billing amounts against the average bi-weekly billings for the month of March 2016.

(d) Other than as set forth in this Order, the Debtors agree that this Order does not affect or impair the United States' claims, rights, or ability, if any, to recoup, setoff or otherwise recover Medicare overpayments related to prepetition services ("**Prepetition Overpayments**") from the payments made to the Debtors for services rendered after the Petition Date ("**Postpetition Payments**") in accordance with the Medicare statutes, regulations, policies and procedures. Other than as set forth in this Order, the Debtors agree that this Order does not affect or impair the United States' claims, rights or ability, if any, to recoup, setoff or otherwise recover any other prepetition debt the Debtors owe to the United States from the Postpetition Payments in accordance with applicable law.

(e) Upon the occurrence of any CMS Events of Default, the United States shall be permitted to exercise its defenses, claims and rights, if any, to freeze, recoup

or recover any payments not yet made for services provided by the Debtors, in accordance with the Medicare statutes, regulations, policies and procedures, provided that this provision does not create or enhance any setoff or recoupment rights of the United States.

(f) The United States agrees that the Debtors will receive the ongoing payments made to the Debtors from the Medicare program after the Petition Date for services rendered before the Petition Date ("**Prepetition Payments**") and Postpetition Payments and the United States shall not administratively freeze, recoup, setoff or otherwise recover the Prepetition Payments or Postpetition Payments due now and in the future so long as none of the CMS Events of Default occur.

(g) As adequate protection under section 361 of the Bankruptcy Code for the use of the Prepetition Payments, notwithstanding the mutuality requirements of Bankruptcy Code section 553, to the extent the United States' interest and setoff rights in the Prepetition Payments has been or will be reduced by payments made by the United States to the Debtors on or after the Petition Date, the United States shall have setoff rights against the Postpetition Payments, to the same extent it had setoff rights against the Prepetition Payments as of the Petition Date.

(h) To the extent that the United States does not satisfy its prepetition debts, if any, against the Debtors via setoff, the United States will have an allowed administrative expense claim under section 507(b) of the Bankruptcy Code in the Debtors' bankruptcy cases in an amount equal to the amount of the Prepetition Payments made on or after the Petition Date minus all amounts set off by the United States against the Prepetition Payments or the Postpetition Payments (the "**Allowed**

**U.S. Administrative Expense Claim**”), provided, however, for the avoidance of doubt, the Allowed U.S. Administrative Expense Claim shall not exceed the amount of the Prepetition Payments made on or after the Petition Date minus all amounts set off by the United States against the Prepetition Payments or the Postpetition Payments. The Allowed U.S. Administrative Expense Claim shall be junior and subordinate to the Carve Out and the Superpriority DIP Claim as defined in this Order.

(i) Nothing in this Order shall affect: (a) CMS’s authority to review and approve or deny Debtors’ Medicare claims in the ordinary course or the Debtors’ rights concerning the same; (b) CMS’s right to determine overpayments for prepetition and postpetition claims in the ordinary course or the Debtors’ rights concerning the same; (c) the settlement agreement executed on March 19, 2013, as amended on August 4, 2014, between the Debtors and the United States (the “**DOJ Settlement Agreement**”); or (d) any rights, claims or defenses of the United States or the Debtors concerning (i) the False Claims Act, 31 U.S.C. § 3729 et seq., the Program Frauds Civil Remedies Act, 31 U.S.C. § 3801 et seq., the Civil Monetary Penalties Statute, 42 U.S.C. § 1320a-7a, or common law fraud, (ii) any civil, criminal or administrative liability arising under Title 26 of the United States Code, (iii) any criminal liability arising under Title 18 of the United States Code, or (iv) any civil, criminal or administrative liability under federal environmental laws.

(j) Nothing in paragraphs 24(a) through 24(l) of this Order shall be deemed to affect the rights and claims of any other federal entity other than CMS,

including, but not limited to, the Office of Inspector General for the US Department of Health and Human Services, and the US Department of Justice

(k) Nothing in this Order shall be deemed to affect or impair the United States' ability to request the allowance of an administrative expense claim for overpayments attributable to postpetition services or any other administrative expense that arises postpetition.

(l) Nothing in this Order shall be deemed to affect or impair the United States' ability to object to the sale of any of the Debtors' assets.

25. Service of Order. Promptly after the entry of this Final Order, the Debtors shall mail a copy of this Final Order, to: (a) the Office of the U.S. Trustee; (b) counsel to Riverside; (c) counsel to the DIP Lender; (d) each of the Debtor's twenty (20) largest unsecured creditors; (e) any known holders of prepetition liens on the Prepetition Collateral; and (f) all parties (if any) who have filed requests for notices under Rule 2002 of the Bankruptcy Rules as of the date hereof, and (g) any such other party entitled to notice pursuant to Rule 9013-1(m) of the Local Rules, and shall file a certificate of service regarding same with the Clerk of the Court.

26. No Deemed Control. By consenting to this Final Order, making DIP Credit Extensions to the Debtors, and administering the financing relationship with the Debtors pursuant to the DIP Loan Documents, the DIP Lender shall not, solely by reason thereof, be deemed to be in control of the Debtors or the Debtors' operations, or to be acting as a "responsible person," "managing agent" or "owner or operator" (as such terms are defined in the United States Comprehensive Environmental Response, Compensation and Liability Act, as amended, or any similar state or federal statute) with respect to the operations or management of the Debtors.



27. Binding Effect; Successors and Assigns. Immediately upon entry of this Final Order by the Court (notwithstanding any applicable law or rule to the contrary), the provisions of this Final Order shall be binding upon and inure to the benefit of all parties in interest in these Cases, including, without limitation, the DIP Lender, the Senior Secured Lender, the Debtors, and their respective successors and assigns (including, without limitation, any Chapter 11 trustee hereafter appointed or elected for the estates the Debtors, or any Chapter 7 trustee appointed in any superseding Chapter 7 case); provided, however that the DIP Lender shall have no obligation to make DIP Credit Extensions to, or consent to the use of Cash Collateral by, any Chapter 7 or Chapter 11 trustee appointed or elected for the estates of the Debtors.

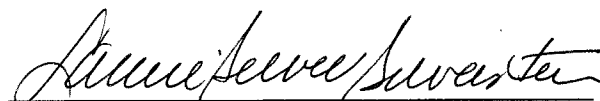
28. Order Controls. In the event of any irreconcilable inconsistency between the terms of the DIP Loan Documents and this Final Order, the provisions of this Final Order shall govern and control.

29. Effect of Appeal. Consistent with section 364(e) of the Bankruptcy Code, if any or all of the provisions of this Final Order are hereafter modified, vacated, or stayed on appeal, such reversal or modification shall not affect the validity of any obligation, indebtedness, priority or DIP Liens granted to the DIP Lender hereunder, who, in good faith, extended the DIP Loan, whether or not the DIP Lender knows of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, is stayed pending appeal.

30. Effectiveness. This Final Order shall take effect and be enforceable immediately upon entry hereof notwithstanding any contrary Bankruptcy Rule or Rule of Civil Procedure and there shall be no stay of execution or effectiveness of this Final Order.

31. Retention of Jurisdiction. The Court has and will retain jurisdiction to enforce this Final Order according to its terms.

Date: April 18, 2016  
Wilmington, Delaware

A handwritten signature in dark ink, appearing to read "Laurie Selber Silverstein", written over a horizontal line.

The Honorable Laurie Selber Silverstein  
United States Bankruptcy Judge

**EXHIBIT A**

**DIP AGREEMENT**

**SUPERPRIORITY SENIOR SECURED**  
**DEBTOR-IN-POSSESSION CREDIT AGREEMENT**

**HOSPICE PARTNERS OF AMERICA, LLC**  
**(as Lender and Secured Party)**

**and**

**American Hospice Management Holdings, LLC**  
**American Hospice Management, LLC**  
**Hospice of Central Virginia, L.L.C.**  
**Embracing HospiceCare, LLC**  
**Embracing HospiceCare South Atlanta, LLC**  
**Frontier Hospice, LLC**  
**Hospice of New Jersey, LLC**  
**FMC Hospice – Conroe, LLC**  
**FMC – Deep East Texas, LLC**  
**Hospice of Arizona, LC**  
**Hospice Partners of Pennsylvania, LLC**  
**(as Joint and Several Borrowers)**

**Dated: March 20, 2016**

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**EXHIBITS**

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Exhibit B - Form of Borrowing Notice

**SCHEDULES**

Schedule 1 — Collateral Information

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**SUPERPRIORITY SENIOR SECURED DEBTOR-IN-POSSESSION  
CREDIT AGREEMENT**

**SUPERPRIORITY SENIOR SECURED DEBTOR-IN-POSSESSION CREDIT AGREEMENT**, dated as of March 20, 2016 (as amended, restated, supplemented or otherwise modified from time to time, this "Agreement"), by and among **HOSPICE PARTNERS OF AMERICA, LLC** in its capacity as a Lender hereunder ("**Lender**" or "**Secured Party**"), and **AMERICAN HOSPICE MANAGEMENT HOLDINGS, LLC, AMERICAN HOSPICE MANAGEMENT, LLC, HOSPICE OF CENTRAL VIRGINIA, L.L.C., EMBRACING HOSPICECARE, LLC, EMBRACING HOSPICECARE SOUTH ATLANTA, LLC, FRONTIER HOSPICE, LLC, HOSPICE OF NEW JERSEY, LLC, FMC HOSPICE – CONROE, LLC, FMC – DEEP EAST TEXAS, LLC, HOSPICE OF ARIZONA, LC, and HOSPICE PARTNERS OF PENNSYLVANIA, LLC** each individually a "Company" and a "Debtor" and collectively the "Companies" and the "Debtors").

**BACKGROUND**

A. The Companies are indebted to 2000 Riverside Capital Appreciation Fund, L.P. (the "**Prepetition Secured Lender**") in the principal amount of \$8 million, plus any interest, fees and other charges due Prepetition Secured Lender on the related loan documents ("**Prepetition Secured Debt**"). The Prepetition Secured Lender has a blanket Lien (the "**Prepetition Liens**") on substantially all of the Companies' assets (the "**Prepetition Collateral**"). As a material part of the financing sought pursuant to this Agreement, the Prepetition Secured Lender has consented, in writing, to the Prepetition Liens on the Prepetition Collateral being primed by Lender, such that the Prepetition Secured Debt will be subordinate to all DIP Loan Obligations, and such that the Prepetition Liens will be subordinate to all Liens granted to the Lender hereunder.

B. On March 20, 2016, the Companies filed voluntary cases under Chapter 11 of the Bankruptcy Code pending in the United States Bankruptcy Court for the District of Delaware (the "**Chapter 11 Cases**"), and the Companies have retained possession of their assets and are authorized under the Bankruptcy Code to continue the operation of their businesses as debtors-in-possession.

C. In connection with the Chapter 11 Cases, the Debtors have requested that the Lender provide it with a senior secured superpriority debtor-in-possession term loan facility in an aggregate principal amount not to exceed \$500,000.00, consisting of \$250,000.00 on an interim basis and an additional \$250,000.00 on a final basis. All of the Debtors' obligations under the DIP Loan are to be secured by first priority priming Liens (subject only to the Carve-Out and other exceptions set forth herein and in the other DIP Loan Documents) on the Collateral. The Lender is willing to extend such credit under such facility to the Debtors on the terms and subject to the conditions set forth herein.

D. This Agreement and the rights and obligations of the Lender and Companies hereunder shall be subject to approval of the Bankruptcy Court in the Chapter 11 Cases pursuant to an Interim Financing Order and Final Financing Order each in form and substance acceptable to Lender in its sole and absolute discretion.

**NOW, THEREFORE**, in consideration of the mutual covenants and undertakings herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

## **SECTION I. Definitions**

**Accounts** shall mean all of each of the Companies' now existing and future: (a) accounts (as defined in the UCC), and any and all other receivables (whether or not specifically listed on schedules furnished to the Lender), including, without limitation, all accounts created by, or arising from, all of each of the Companies' operations, sales, leases, rentals of goods or renditions of services to their patients and customers, including but not limited to, those accounts arising under any of the Companies' trade names or styles, or through any of the Companies' divisions; (b) any and all instruments, documents, chattel paper (including electronic chattel paper) (all as defined in the UCC); (c) unpaid seller's or lessor's rights (including rescission, replevin, reclamation, repossession and stoppage in transit) relating to the foregoing or arising therefrom; (d) rights to any goods represented by any of the foregoing, including rights to returned, reclaimed or repossessed goods; (e) reserves and credit balances arising in connection with or pursuant hereto; (f) guarantees, supporting obligations, payment intangibles and letter of credit rights (all as defined in the UCC); (g) insurance policies or rights relating to any of the foregoing; (h) general intangibles pertaining to any and all of the foregoing (including all rights to payment, including those arising in connection with bank and non-bank credit cards), and including books and records and any electronic media and software thereto; (i) notes, deposits or property of account debtors securing the obligations of any such account debtors to the Companies or any of them; and (j) cash and non-cash proceeds (as defined in the UCC) of any and all of the foregoing.

**Availability** shall mean, as at any time of calculation, the amount by which: (a) the Line of Credit exceeds (b) the outstanding aggregate amount of all DIP Loans.

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

**Bankruptcy Court** shall mean the United States Bankruptcy Court or the United States District Court for the District of Delaware.

**Borrower(s)** shall mean each Company and the Companies.

**Business Day** shall mean any day that is not Saturday, Sunday or a Legal Holiday as such term is defined in Rule 9006(a)(6) of the Federal Rules of Bankruptcy Procedure.

**Carve-Out** shall mean (A) Unless and until the DIP Loans and all DIP Loan Obligations, all accrued interest and all costs and fees, including any Out of Pocket Expenses and any other fees and expenses permitted under the DIP Loan Documents are repaid in full (i) U.S. Trustee fees, pursuant to 28 U.S.C. § 1930 (the "U.S. Trustee Fees") and (ii) a total of \$50,000 for all Professional Expenses incurred by all Professional Persons at any time, whether or not then allowed or paid (but subject to ultimate allowance) payable out of the DIP Collateral; and (B) following repayment in full of all DIP Loans, all DIP Loan Obligations, all accrued interest and all

costs and fees, including any Out of Pocket Expenses and any other fees and expenses permitted under the DIP Loan Documents, (i) Professional Expenses incurred by Professional Persons at any time, whether or not then allowed or paid (but subject to ultimate allowance), whether by the Interim Order, procedural order, or otherwise, but only to the extent all such Professional Expenses set forth in this clause do not exceed the amount permitted through such time for such expenses in the Budget as then applicable. Notwithstanding anything contained in this paragraph 17 to the contrary nothing in this paragraph 17 shall be construed to impair the ability of any interested party to object to any Professional Expenses sought by any Professional Person.

**Closing Date** shall mean the later of (i) the date that this Agreement has been duly executed by the parties hereto and delivered to each other (ii) the date of entry of the Interim Financing Order and (iii) the date all conditions to financing set forth in Section 4.1 hereof have been satisfied.

**Collateral** shall have the meaning set forth in Section 6 of this Agreement.

**Commitment Fee** shall mean a \$10,000 fee payable immediately on the Closing Date by the Companies to the Lender from the proceeds of the DIP Loan.

**Company or Debtor** shall have the meaning set forth in the preamble of this Agreement and shall be deemed to include such Company as Debtor and debtor-in-possession, and its successors and assigns (including any trustee or other fiduciary hereafter appointed as its legal representative or with respect to the property of the estate of such Company, whether under Chapter 11 of the Bankruptcy Code or any subsequent Chapter 7 case and its successor upon conclusion of the Chapter 11 Cases.

**Copyrights** shall mean all of each of the Companies' present and hereafter acquired copyrights, copyright registrations, recordings, applications, designs, styles, licenses, marks, prints and labels bearing any of the foregoing, goodwill, any and all general intangibles, intellectual property and rights pertaining thereto, and all cash and non-cash proceeds thereof.

**Default** shall mean any event specified in Section 10 hereof, whether or not any requirement for the giving of notice, the lapse of time, or both, or any other condition, event or act, has been satisfied.

**Default Rate of Interest** shall mean a fixed rate of interest per annum on any DIP Loan Obligations hereunder, equal to twelve percent (12%), which the Lender shall be entitled to charge the Companies on all DIP Loan Obligations due the Lender by the Companies, as further set forth in Paragraph 10.2 of Section 10 of this Agreement.

**Depository Accounts** shall mean the collection accounts which are subject to the Lender's instructions as specified in Paragraph 3.4 of Section 3 of this Agreement.

**DIP Budget** shall mean the budget agreed to by the Debtors and the Lender and attached hereto.

**DIP Loan Account** shall mean the account on the Lender's books, in the Companies' name and on behalf of the Companies, in which each Company will be charged with all DIP Loan Obligations.

**DIP Loan Documents** shall mean this Agreement, the Promissory Notes, mortgages on any Real



Estate or Real Estate Leases securing the Secured Obligations, deposit account control agreements securing the Secured Obligations, the other closing documents and any other ancillary loan and security agreements executed from time to time in connection with this Agreement, all as may be renewed, amended, extended, increased or supplemented from time to time.

**DIP Loan Obligations** shall mean all loans, advances and extensions of credit made or to be made by the Lender to the Companies, or any of them, or to others for the Companies' account, pursuant to this Agreement (including, without limitation, all DIP Loans), whether now in existence or incurred by the Companies or any of them from time to time hereafter; whether principal, interest, fees, costs, expenses or otherwise, and including, without limitation all Out-of-Pocket-Expenses; whether secured by pledge, Lien upon or security interest in any of the Companies' Collateral, assets or property or the assets or property of any other Person; whether such indebtedness is absolute or contingent, joint or several, matured or unmatured, direct or indirect and whether the Companies are liable to the Lender for such indebtedness as principal, surety, endorser, guarantor or otherwise. DIP Loan Obligations shall also include all indebtedness and obligations owing to the Lender and/or any affiliate thereof by the Companies or any of them under any DIP Loan.

**DIP Loans** shall mean the loans made by the Lenders to the Companies pursuant to Section 3.1.

**Documents of Title** shall mean all of each of the Companies' present and future documents (as defined in the UCC), and any and all warehouse receipts, bills of lading, shipping documents, chattel paper, instruments and similar documents, all whether negotiable or not and all goods and Inventory relating thereto and all cash and non-cash proceeds of the foregoing.

**Equipment** shall mean all of each Companies' present and hereafter acquired equipment (as defined in the UCC) including, without limitation, all machinery, equipment, furnishings and fixtures, and all additions, substitutions and replacements thereof, wherever located, together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto and all proceeds thereof of whatever sort.

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

**Event(s) of Default** shall have the meaning provided for in Section 10 of this Agreement.

**Financing Orders** shall mean the Interim Financing Order and Final Financing Order.

**Final Financing Order** shall mean a final financing order, entered by the Bankruptcy Court prior to the expiration of the Interim Financing Order, authorizing the financing on terms and conditions set forth in this Agreement, granting to Lender the senior security interests and Liens described above and super-priority administrative expense claims (subject to the carve-out expenses described in, and except as otherwise specifically provided in, the Interim Financing Order), and modifying the automatic stay and other provisions required by Lender and its counsel.

**GAAP** shall mean generally accepted accounting principles in the United States of America as in effect from time to time and for the period as to which such accounting principles are to apply.

**General Intangibles** shall mean all of each of the Companies' present and hereafter acquired general intangibles (as defined in the UCC), and shall include, without limitation, all present and future right, title and interest in and to: (a) all trademarks, tradenames, corporate names, business names, logos and any other designs or sources of business identities, (b) Patents, together with any improvements on said Patents, utility, models, industrial models, and designs, (c) Copyrights, (d) trade secrets, (e) licenses, permits and franchises, (f) all applications with respect to the foregoing, (g) all right, title and interest in and to any and all extensions and renewals, (h) goodwill with respect to any of the foregoing, (i) any other forms of similar intellectual property, (j) all customer lists, distribution agreements, supply agreements, blue prints, indemnification rights and tax refunds, and (k) all uncertificated equity interests in other Companies, together with all monies and claims for monies now or hereafter due and payable in connection with any of the foregoing or otherwise, and all cash and non-cash proceeds thereof, including, without limitation, the proceeds or royalties of any licensing agreements between any Company and any licensee of any such Company's General Intangibles.

**Indebtedness** shall mean, without duplication, all liabilities, contingent or otherwise, which are any of the following: (a) obligations in respect of borrowed money or for the deferred purchase price of property, services or assets, (b) lease obligations which, in accordance with GAAP, have been, or which should be capitalized.

**Insurance Proceeds** shall mean proceeds or payments from an insurance carrier with respect to any loss, casualty or damage to Collateral.

**Interim Financing Order** shall have the meaning provided for in the recitals of this Agreement.

**Inventory** shall mean all of each of the Companies' present and hereafter acquired inventory (as defined in the UCC) and including, without limitation, all merchandise, inventory and goods, and all additions, substitutions and replacements thereof, wherever located, together with all goods and materials used or usable in manufacturing, processing, packaging or shipping same in all stages of production from raw materials through work-in-process to finished goods and all proceeds thereof of whatever sort.

**Investment Property** shall mean all now owned and hereafter acquired investment property (as defined in the UCC), together with all equity interests (whether or not constituting securities as defined in the UCC) held by any Company in any other Company, all certificates representing any such equity interests, all dividends, distributions and other amounts payable on or in respect of such equity interests, and all proceeds of the foregoing.

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

**Line of Credit** shall mean the aggregate obligation of the Lenders to make DIP Loans pursuant to Section 3 of this Agreement in the aggregate principal amount equal to \$500,000.00.

**Maturity Date** shall mean the earlier of (i) May 30, 2016, (ii) the effective date of any plan of

reorganization of the Debtors, (iii) conversion of the Chapter 11 Cases or any one of them to a case under Chapter 7 of the Bankruptcy Code, (iv) dismissal of any of the Chapter 11 Cases, (v) appointment of a Chapter 11 or Chapter 7 trustee, or (vi) closing of any sale of substantially all the assets of any individual Debtor.

**Maximum DIP Loan Amount** shall mean, with respect to the Lender, the maximum principal amount of DIP Loans that such Lender is obligated (subject to the provisions of this Agreement), to make to the Companies. As of the Closing Date, the aggregate Maximum DIP Loan Amount of the Lender is \$500,000.00.

**Milestones** shall have the meaning set forth in section 10.1(j) of this Agreement.

**Other Collateral** shall mean all of each of the Companies' now owned and hereafter acquired lockbox, blocked account and any other deposit accounts maintained with any bank or financial institutions into which the proceeds of Collateral are or may be deposited; all other deposit accounts and all Investment Property; all cash and other monies and property in the possession or control of the Lender; all books, records, ledger cards, disks and related data processing software at any time evidencing or containing information relating to any of the Collateral described herein or otherwise necessary or helpful in the collection thereof or realization thereon; and all cash and non-cash proceeds of the foregoing.

**Out-of-Pocket Expenses** shall mean all of the present and future expenses of the Lender, not to exceed \$25,000, incurred relative to this Agreement, or other DIP Loan Document, or negotiation or approval of the same in the Chapter 11 Case, whether incurred heretofore or hereafter, which expenses shall include, without being limited to: the cost of record searches, all costs and expenses incurred by the Lender in opening bank accounts, depositing checks, receiving and transferring funds, and wire transfer charges, any charges imposed on the Lender due to returned items and "insufficient funds" of deposited checks; expenses in connection with any amendment or modification of this Agreement or any other DIP Loan Document; travel, lodging and similar customary expenses of the Lender's personnel in connection with inspecting and monitoring the Collateral from time to time hereunder, any applicable counsel fees and disbursements, and fees and taxes relative to the filing of financing statements, *provided however*, that Out-of-Pocket Expenses incurred in connection with and following an Event of Default and all expenses, costs and fees set forth in Paragraph 10.3 of Section 10 of this Agreement shall not be capped at \$25,000.

**Patents** shall mean all of each of the Companies' present and hereafter acquired patents, patent applications, registrations, any reissues or renewals thereof, licenses, any inventions and improvements claimed thereunder, and all general intangible, intellectual property and patent rights with respect thereto of the Companies or any of them and all income, royalties, cash and non-cash proceeds thereof.

**Permitted Encumbrances** shall mean: (a) Liens consented to in writing by the Lender; (b) Liens held by the Prepetition Secured Lender (subject to priming by Lender as provided herein); (c) Liens of local or state authorities for franchise or other like Taxes, provided that the aggregate amounts of such Liens shall not exceed \$25,000 in the aggregate at any time; (d) statutory Liens of landlords and Liens of carriers, warehousemen, bailees, mechanics, materialmen and other like Liens imposed by law, created in the ordinary course of business and for amounts not yet due (or

which are being contested in good faith, by appropriate proceedings or other appropriate actions which are sufficient to prevent imminent foreclosure of such Liens) and with respect to which adequate reserves or other appropriate provisions are being maintained by each of the Companies, as applicable, in accordance with GAAP; (e) deposits made (and the Liens thereon) in the ordinary course of business of any of the Companies (including, without limitation, security deposits for leases, indemnity bonds, surety bonds and appeal bonds) in connection with workers' compensation, unemployment insurance and other types of social security benefits or to secure the performance of tenders, bids, contracts (other than for the repayment or guarantee of borrowed money or purchase money obligations), statutory obligations and other similar obligations arising as a result of progress payments under government contracts; (f) easements (including, without limitation, reciprocal easement agreements and utility agreements), encroachments, minor defects or irregularities in title, variation and other restrictions, charges or encumbrances (whether or not recorded) affecting the Real Estate, if applicable, and which in the aggregate (A) do not materially interfere with the occupation, use or enjoyment by any of the Companies of its business or property so encumbered and (B) in the reasonable business judgment of the Lender do not materially and adversely affect the value of such Real Estate; and (g) Liens granted to the Lender by the Companies or any of them securing DIP Loan Obligations; (h) [intentionally omitted]; and (i) tax Liens which are not yet due and payable or which are being diligently contested in good faith by the Companies by appropriate proceedings, and which Liens are not (x) filed on any public records, (y) other than with respect to Real Estate, senior to the Liens of the Lender or (z) for Taxes due the United States of America or any state thereof having similar priority statutes, as further set forth in paragraph 7.6 hereof.

**Permitted Indebtedness** shall mean: (a) current Indebtedness maturing in less than one year and incurred in the ordinary course of business for raw materials, supplies, equipment, services, Taxes or labor; (b) Indebtedness in respect of the Prepetition Secured Debt; (c) [Intentionally Omitted]; (d) deferred Taxes and other expenses incurred in the ordinary course of business; and (e) other Indebtedness existing on the date of execution of this Agreement and listed in the most recent financial statement delivered to the Lender or otherwise disclosed to the Lender in writing prior to the Closing Date.

**Person** shall mean any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, governmental authority or other entity.

**Petition Date** shall mean the date of the commencement of the Chapter 11 Cases.

**Pre-Petition Collateral** shall have the meaning provided in the preamble to this Agreement.

**Pre-Petition Obligations** shall mean the Prepetition Secured Debt.

**Post-Petition Obligations** shall mean, collectively, all Secured Obligations (as defined in this Agreement) arising on or after the Petition Date.

**Promissory Notes** shall mean the notes, if any, in the form of Exhibit A attached hereto, delivered by any Company to the Lender to evidence the DIP Loans pursuant to, and repayable in accordance with, the provisions of Section 3 of this Agreement.

**Real Estate** shall mean each of the Companies' fee interests in real property.

**Real Estate Leases** shall mean each of the Companies' leasehold interests in real property.

**Sale Transaction** shall mean a sale of some or all of the Debtors' assets approved by the Bankruptcy Court pursuant to Section 363 of the Bankruptcy Code.

**Secured Obligations** shall mean the DIP Loan Obligations.

**Superpriority Claim** shall mean a claim by Lender against each Debtor in any of the Chapter 11 Cases which is an administrative expense claim having priority over any or all other administrative expenses of any kind specified in Section 503(b) of the Bankruptcy Code.

**Taxes** shall mean all federal, state, municipal and other governmental taxes, levies, charges, claims and assessments which are or may be due by the Companies with respect to their business, operations, Collateral or otherwise.

**Trademarks** shall mean all of each of the Companies' present and hereafter acquired trademarks, trademark registrations, recordings, applications, tradenames, trade styles, service marks, prints and labels (on which any of the foregoing may appear), licenses, reissues, renewals, and any other intellectual property and trademark rights pertaining to any of the foregoing, together with the goodwill associated therewith, and all cash and non-cash proceeds thereof.

**UCC** shall mean the Uniform Commercial Code as the same may be amended and in effect from time to time in the state of Delaware or any other applicable jurisdiction.

## **SECTION 2. Commitment Fees**

**2.0** On the Closing Date, the Companies shall pay Lender from the proceeds of the DIP Loan the Commitment Fee for providing the financing under this Agreement.

## **SECTION 3. DIP Loans**

### **3.0 [Intentionally Omitted]**

**3.1** (a) The Lender shall, subject to the terms and conditions of this Agreement and the Financing Orders, from time to time, and within (x) Availability, (y) the Line of Credit, and (z) the DIP Budget set forth on Schedule 3, make DIP Loans at the request of Companies; provided, however, that the aggregate outstanding principal amount of such DIP Loans shall not exceed the Line of Credit. All requests for DIP Loans must be received by the Lender no later than 1:00 p.m., New York time, two (2) Business Days prior to the day on which any such DIP Loan is required unless otherwise agreed by the Lender and the Companies. Amounts borrowed at any one time shall be in an amount not less than \$100,000. Amounts repaid at any time to Lender may not be reborrowed.

(b) To the extent a DIP Loan is made, each and every Company unconditionally agrees that it is and shall be jointly and severally responsible for repayment to Lender of the entire amount of all outstanding DIP Loans and all other charges, fees and expenses incurred by the Lender in connection with the DIP Loans, including but not limited to, any costs, expenses and fees, including reasonable attorney fees, in connection with remedies exercised by the Lender in the connection with the DIP Loans.

(c) Whenever the Companies desire the Lender to make a DIP Loan pursuant to this Section 3, the Companies shall give the Lender notice in writing or irrevocable telephonic notice confirmed promptly in writing, substantially in the form of borrowing notice attached hereto as Exhibit B (the "Borrowing Notice") specifying (A) the amount to be borrowed, (B) the requested borrowing date (which **shall be** a Business Day and shall be prior to the Maturity Date, and prior to any effective termination date of this Agreement, all as further set forth herein), and (C) the other matters set forth in the Borrowing Notice. All Borrowing Notices must be received by the Lender no later than 1:00 P.M. New York time two (2) Business Days prior to the borrowing date. The procedure for DIP Loans to be made on a requested borrowing date may be such other procedure as is mutually satisfactory to the Companies and the Lender.

(d) Upon the request of any Lender, the Companies' DIP Loan Obligations hereunder to the Lender shall be evidenced by a Promissory Note in the form of Exhibit A attached hereto.

(e) Notwithstanding any provision of this Agreement to the contrary, all payments due by the Companies under this Agreement, whether for principal, interest, fees, costs, indemnities, expenses or otherwise, shall be payable in United States dollars at the Lender's office specified in Section 12.6 of this Agreement without setoff, counterclaim or other deduction of any kind.

### **3.2 [Intentionally Omitted]**

**3.3** Each of the Companies hereby represents and warrants that it is a duly and validly existing corporation or limited liability company and is qualified in all states where the failure to so qualify would have an adverse effect on its business. The Companies agree to maintain such books and records as the Lender may reasonably require. All of the books and records of the Companies will be available to the Lender at normal business hours, including any records handled or maintained for the Companies or any of them by any other company or entity.

**3.4** Each of the Companies will provide to Lender one or more properly executed deposit account control agreements, in form and substance satisfactory to Lender, providing Lender with a first priority, properly perfected security interest in each of the Companies' accounts held at Wells Fargo Bank and any other bank or lending institution.

### **3.5 [Intentionally Omitted].**

**3.6** (a) The Lender shall maintain a single DIP Loan Account on its books in which each of the Companies will be charged with all loans and advances made by the Lender to the Companies, and with any other DIP Loan Obligations. The Companies will be credited with all amounts received by the Lender from the Companies or from others for the Companies' account, including, as above set forth, all amounts received by the Lender in payment of Accounts, and such amounts will be applied to payment of the Secured Obligations as set forth herein. In no

event shall prior recourse to any Accounts or other security granted to or by the Companies be a prerequisite to the Lender's right to demand payment of any Secured Obligation. Further, it is understood that the Lender shall have no obligation whatsoever to perform in any respect any of the Companies contracts or obligations relating to the Accounts.

(b) [Intentionally Omitted]

3.7 After the end of each month, the Lender shall promptly send the Companies a statement showing the accounting for the charges, loans, advances and other transactions occurring between the Lender and the Companies collectively during that month. The monthly statements shall be deemed correct and binding upon each of the Companies and shall constitute an account stated between the Companies and the Lender absent manifest error unless the Lender receives a written statement of the exceptions within thirty (30) days of the date of the monthly statement. Notwithstanding the foregoing, failure by the Lender to deliver any such statement shall not affect in any manner the amount, validity or enforceability of any such charge, loan advance or other transaction.

3.8. The proceeds of the DIP Loans shall be used strictly in accordance with the DIP Budget to: (i) provide working capital to the Debtors in the Chapter 11 Cases in order to facilitate a Sale Transaction; and (ii) to fund the professional fees set forth in the DIP Budget. The proceeds of the DIP Loans shall not be used to fund the operations of, or the administration of any Chapter 11 Case of, any subsidiary or affiliate of the Debtors that is not a Debtor.

#### **SECTION 4. Conditions to Effectiveness and Lending**

4.1 Conditions to Funding Under any Interim Financing Order. The effectiveness of this Agreement and the obligation of the Lender to make any of the loans under any Interim Financing Order or this Agreement is subject to the satisfaction by Debtors or waiver by Lender of the following conditions precedent:

(a) This Agreement and each of the other DIP Loan Documents and other documentation relating to the DIP Loans provided hereunder shall be in form and substance reasonably satisfactory to the Lender, and shall have been duly executed by the applicable Debtors and any other necessary parties (including, with respect to any deposit account control agreements, the applicable lending institution(s)) and delivered to the Lender.

(b) [Intentionally Omitted].

(c) The Petition Date shall have occurred, and the Lender shall be reasonably satisfied with the form and substance of the First Day Orders sought by the Debtors, and such First Day Orders shall have been entered on or prior to the Closing Date.

(d) The Interim Financing Order shall have occurred not later than seven (7) days after the Petition Date.

(e) The Lender shall have received, and shall be reasonably satisfied with, the DIP Budget commencing with the week during which the Petition Date occurred.

(f) No trustee under chapter 7 or chapter 11 of the Bankruptcy Code or examiner with enlarged powers beyond those set forth in Sections 1106(a)(3) and (4) of the Bankruptcy Code shall have been appointed in any of the Chapter 11 Cases.

(g) The amount of the DIP Loans made on the Closing Date shall not exceed the amount authorized by the Interim Financing Order.

(h) The Interim Financing Order shall be in full force and effect, shall not have been vacated or reversed, shall not be subject to a stay and shall not have been modified or amended in any respect without the prior written consent of the Lender; *provided however*, that if the Interim Financing Order is the subject of a pending appeal in any respect, neither the making of the DIP Loans nor the performance by the Debtors of their obligations under any of the DIP Loan Documents shall be the subject of a presently effective stay pending appeal.

**4.2 Conditions to Funding Under any Final Financing Order.** The effectiveness of this Agreement and the obligation of the Lender to make any of the loans under any Final Financing Order or this Agreement is subject to the satisfaction by Debtors or waiver by Lender of the following conditions precedent:

(a) The Final Financing Order shall be in full force and effect and shall not have been vacated or reversed, shall not be subject to a stay and shall not have been modified or amended in any respect without the prior written consent of the Lender; *provided however*, that if the Final Financing Order is the subject of a pending appeal in any respect, neither the making of the DIP Loans nor the performance by the Debtors of their obligations under any of the DIP Loan Documents shall be the subject of a presently effective stay pending appeal.

(b) (i) All material second day orders and all related pleadings intended to be entered on or prior to the date of entry of the Final Financing Order, including a final cash management order and any order establishing procedures for administration of the Chapter 11 Cases, shall have been entered by the Bankruptcy Court and (ii) all pleadings related to procedures for approval of significant transactions, including, without limitation, asset sale procedures, regardless of when filed or entered, shall be reasonably satisfactory in form and substance to the Lender.

(c) The Debtors shall pay all fees and reasonable and documented Out of Pocket expenses of the Lender (including the reasonable and documented fees and expenses of outside counsel and financial advisors), accrued and payable on or prior to the date of any borrowing, *provided however*, that neither the Lender nor its advisors shall be required to file any fee applications or otherwise seek Bankruptcy Court approval of such Out of Pocket Expenses.

(d) The Court shall have entered an order approving sale and bid procedures in form and substance acceptable to Lender in its sole discretion.

(e) The aggregate amount of the DIP Loans made on or prior to such date shall not exceed the aggregate amount authorized by the Final Financing Order.



**SECTION 5. [Intentionally Omitted]**

**SECTION 6. Collateral**

**6.1** The Debtors hereby acknowledge, confirm and agree that, pursuant to Section 364(c)(1) of the Bankruptcy Code, and subject only to the Carve-Out, the DIP Loan Obligations shall at all times constitute an allowed Superpriority Claim on a joint and several basis in the Chapter 11 Cases of each Debtor.

**6.2** The Debtors hereby acknowledge, confirm and agree that, pursuant to Section 364(c)(2) of the Bankruptcy Code, and subject only to the Carve-Out, the DIP Loan Obligations shall at all times be secured by first priority, valid, binding, enforceable and perfected security interests in, and Liens upon, all unencumbered tangible and intangible property of the Debtors, including such property that is subject to valid and perfected Liens in existence on the Petition Date, which Liens are thereafter released or otherwise extinguished in connection with the satisfaction of the obligations secured by such Liens.

**6.3** The Debtors hereby acknowledge, confirm and agree that, pursuant to Section 364(c)(3) of the Bankruptcy Code, and subject only to the Carve-Out, the DIP Loan Obligations shall at all times, be secured by junior, valid, binding, enforceable and perfected security interests in, and Liens upon, all (A) property of the Debtors' estates that, on the Petition Date, was subject to a valid and perfected Lien or becomes subject to a valid Lien perfected (but not granted) after the Petition Date to the extent such post-Petition Date perfection in respect of prepetition claims is expressly permitted under the Bankruptcy Code (the "**Permitted Prior Liens**"), (B) [intentionally omitted], and (C) property of the Debtors' estates that is subject to such other Liens as are expressly permitted under this Agreement; *provided however*, that with respect to the Prepetition Liens of the Prepetition Secured Lender, the Lender is receiving (and the Prepetition Debt and Prepetition Liens shall be subordinate to) a priming lien granted to Lender pursuant to 364(d)(1) as hereinafter provided; and *provided further* however, that the Liens granted under the DIP Loan Documents shall not be subject to or subordinate to (1) notwithstanding anything to the contrary in the DIP Loan Documents or the Financing Orders, any Permitted Prior Lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates, (2) except as provided in the Financing Orders and the DIP Loan Documents, any Liens arising after the Petition Date, including any Liens or security interests granted in favor of any federal, state, municipal or other governmental unit, commission, board or court for any liability of the Debtors, and (3) any intercompany or affiliate Liens of the Debtors; and (4) the Prepetition Secured Debt and Prepetition Liens.

**6.4** The Debtors hereby acknowledge, confirm and agree that, pursuant to Section 364(d)(1) of the Bankruptcy Code and subject only to the Carve-Out, the DIP Loan Obligations shall at all times be secured by first priority, priming, valid, binding enforceable and perfected security interests in, and Liens upon, the Pre-Petition Collateral and all other assets of the Debtors (the "**Priming Liens**") to the extent the Prepetition Collateral and any other assets of the Debtors are subject to existing Liens existing on the Petition Date, and to any setoff, recoupment or off set rights of any governmental agency with respect to medicare provider payments or CMS accounts receiveable (the "**Primed Liens**"). The Priming Liens shall be

senior in all respects to the interests in such property of the Prepetition Secured Lender and any other Person and shall also be senior to any Liens granted to provide adequate protection in respect of any of the Primed Liens.

**6.5** As security for the prompt payment in full of all DIP Loan Obligations each of the Companies hereby pledges and grants to the Lender a continuing, valid, perfected, priming, first priority and senior general Lien upon, and security interest in, all right, title and interest in and to all of the assets of such Company, whether now existing or hereafter arising or acquired and wherever located, including without limitation any such property in which a Lien is granted to Lender pursuant to any DIP Loan Document, the Financing Order or any other order entered or issued by the Bankruptcy Court, and including, but not limited to, the following (collectively, the "Collateral"):

- (a) Accounts, including accounts receivable;
- (b) Cash and cash collateral as defined in Section 363(a) of the Bankruptcy Code;
- (c) Inventory;
- (d) General Intangibles;
- (e) Documents of Title;
- (f) Other Collateral;
- (g) Equipment;
- (g) Real Estate and Real Estate Leases (including security deposits);
- (h) the Pre-Petition Collateral
- (i) subject to approval by the Bankruptcy Court, all present and future claims, rights, interests, assets and properties recovered by or on behalf of any Debtor or any trustee of any Debtor (whether in the Chapter 11 Cases or any subsequent case to which any Chapter 11 Case is converted), including, without limitation, all such property recovered as a result of transfers or obligations avoided or actions maintained or taken pursuant to, inter alia, Sections 542, 545, 547, 548, 549, 550, 552 and 553 of the Bankruptcy Code, subject to the terms of any applicable order of the Bankruptcy Court; and
- (j) all products and proceeds of the foregoing, including all additions, attachments, substitutions, replacements, accessions and accessories, and all insurance policies and Insurance Proceeds relating in whole or part to the foregoing.

**6.6** As additional security for the prompt payment in full of all DIP Loan Obligations, the applicable Companies that own Real Estate shall execute mortgages and deeds of trust on all Real Estate owned by such Companies in form and substance satisfactory to the Lender, and such Real Estate shall constitute Collateral for all purposes of this Agreement and the DIP Loan Documents.

6.7 Each of the Companies agrees to safeguard, protect and hold all Inventory for the Lender's account and make no disposition thereof except in the ordinary course of business of the Companies. Upon the request of the Lender at any time, the Companies hereby agree to immediately forward any and all proceeds of Collateral to the Lender, and to hold any such proceeds in trust for the Lender pending delivery to the Lender. Irrespective of the Lender's perfection status in any and all of the General Intangibles, including, without limitations, any Patents, Trademarks, Copyrights or licenses with respect thereto, each of the Companies hereby irrevocably grants the Lender a royalty free license to sell, or otherwise dispose of or transfer, in accordance with Paragraph 10.3 of Section 10 of this Agreement, and the applicable terms hereof, any of the Inventory upon the occurrence and during the continuance of an Event of Default which has not been waived in writing by the Lender.

6.8 Each of the Companies agrees at its own cost and expense to keep the Equipment in as good and substantial repair and condition as the same is now or at the time the Lien and security interest granted herein shall attach thereto, reasonable wear and tear excepted, making any and all repairs and replacements when and where necessary. Absent the prior written consent of the Lender, the Companies shall not make any sale, exchange or other disposition of any Equipment, other than through a Sale Transaction.

6.9 The rights and security interests granted to the Lender hereunder are to continue in full force and effect, notwithstanding the termination of this Agreement, until the final payment in full to the Lender of all DIP Loan Obligations and the termination of this Agreement. Any delay, or omission by the Lender to exercise any right hereunder shall not be deemed a waiver thereof, or be deemed a waiver of any other right, unless such waiver shall be in writing and signed by the Lender. A waiver on any occasion shall not be construed as a bar to, or waiver of, any right or remedy on any future occasion.

6.10 Notwithstanding any other provision of this Agreement, any DIP Loan Document or any document, agreement or instrument relating to the DIP Obligations, and notwithstanding the Lender's security interest in the Collateral, and the extent to which the DIP Obligations are now or hereafter secured by any assets or property other than the Collateral or by any security interest, guarantee, endorsement, assets or property of any other Person or in favor of the Lender, the Lender shall have the sole right in its sole discretion to determine which rights, Liens, security interests or remedies the Lender shall at any time pursue, foreclose upon, relinquish, subordinate, modify or take any other action with respect to all or any of the Collateral, without in any way modifying or affecting any of them, or any of the Lender's rights as against the Companies or any of them.

6.11. Except for the Carve-Out, no costs or expenses of administration shall be imposed against the Lender or any of the Collateral under Sections 105 or 506(c) of the Bankruptcy Code, or otherwise, and the Debtors hereby waive for themselves and on behalf of their estates in bankruptcy, any and all rights under Sections 105 or 506(c) of the Bankruptcy Code, or otherwise, to assert or impose to assert or impose, any such costs or expenses of administration against the Lender.

6.12 Except for the Carve-Out, the Superpriority Claims shall at all times be senior to the rights of the Debtors, any chapter 11 trustee and, subject to section 726 of the Bankruptcy Code, any chapter 7 trustee, or any other creditor (including, without limitation, post-petition

counterparties and other post-petition creditors) in the Chapter 11 Cases or any subsequent proceedings under the Bankruptcy Code, including, without limitation, chapter 7 cases (if any of the Debtors' cases are converted to cases under chapter 7 of the Bankruptcy Code).

#### **6.13 [Intentionally Omitted]**

**6.14** Each of the Companies possesses all General Intangibles and rights thereto necessary to conduct its business as conducted as of the Closing Date and the Companies shall maintain their rights in, and the value of, the foregoing in the ordinary course of their business, including, without limitation, by making timely payment with respect to any applicable licensed rights. The Companies shall deliver to the Lender, and/or shall cause the appropriate party to deliver to the Lender, from time to time such pledge or security agreements with respect to General Intangibles (now or hereafter acquired) of the Companies as the Lender shall require to obtain valid first Liens thereon. In furtherance of the foregoing, the Companies shall provide timely notice to the Lender of any additional Patents, Trademarks, tradenames, service marks, Copyrights, brand names, trade names, logos and other trade designations acquired or applied for subsequent to the Closing Date and the Companies shall execute such documentation as the Lender may reasonably require to obtain and perfect its Lien thereon. The Companies hereby confirm that they shall deliver, or cause to be delivered, any pledged equity interests issued subsequent to the Closing Date to the Lender and prior to such delivery, shall hold any such equity interests in trust for the Lender. Each of the Companies hereby irrevocably grants to the Lender a royalty-free, non-exclusive license in the General Intangibles, including trademarks, Trademarks, Copyrights, Patents, licenses, and any other proprietary and intellectual property rights, if any, and any and all right, title and interest of such Company in any of the foregoing, for the sole purpose, upon the occurrence of an Event of Default, of enabling Lender to: (i) advertise for sale and sell or transfer any Inventory bearing any of the General Intangibles, and (ii) to the extent applicable to any Company, make, assemble, prepare for sale or complete, or cause others to do so with respect to, any applicable raw materials or Inventory bearing any of the General Intangibles, including use of the Equipment and Real Estate for the purpose of completing the manufacture of unfinished goods, raw materials or work-in-process comprising Inventory, and apply the proceeds thereof to the Secured Obligations, all as further set forth in this Agreement and irrespective of the Lender's Lien and perfection in any General Intangibles.

### **SECTION 7. Representations, Warranties and Covenants**

**7.1** The Companies warrant and represent that: (i) Schedule 1 hereto correctly and completely sets forth the Companies' (A) chief executive office, (B) Collateral locations, (C) tradenames, (D) exact legal names and jurisdictions of formation, and (E) all the other information listed on said Schedule; (ii) except for the Permitted Encumbrances, after filing of financing statements in the applicable filing clerks' offices at the locations set forth in Schedule 1, this Agreement creates a valid, perfected and first priority security interest in the Collateral and the security interests granted herein constitute and shall at all times constitute the first and only Liens on the Collateral; (iii) except for the Permitted Encumbrances, the Companies are, or will be, at the time additional Collateral is acquired by them, the absolute owner of the Collateral with full right to pledge, sell, consign, transfer and create a security interest therein, free and clear of any and all claims or Liens in favor of others; (iv) the Companies will, at their expense, forever warrant and, at the Lender's request, defend the Collateral from any and all claims and demands of any other Person other than a holder of a Permitted Encumbrance; (v) the Companies, or any of

them, will not grant, create or permit to exist, any Lien upon, or security interest in, the Collateral, or any proceeds thereof, in favor of any other Person other than the holders of the Permitted Encumbrances; and that the Equipment does not comprise a part of any Company's Inventory; (vi) the Equipment is and will only be used by the Companies in their business and will not be held for sale or lease, or removed from their premises, or otherwise disposed of by the Companies except as otherwise permitted in this Agreement.

7.2 Each of the Companies agrees to maintain books and records pertaining to the Collateral in accordance with GAAP and in such additional detail, form and scope as the Lender shall reasonably require. The Companies agree that the Lender or its agents may enter upon the Companies' premises at any time during normal business hours, and from time to time in its reasonable business judgment, for the purpose of inspecting the Collateral and any and all records pertaining thereto. Each of the Companies are also to advise the Lender's promptly, in sufficient detail, of any material adverse change relating to the type, quantity or quality of the Collateral or on the security interests granted to the Lender therein.

7.3 Each of the Companies agrees to: execute and deliver to the Lender, from time to time, solely for the Lender's convenience in maintaining a record of the Collateral, such written statements, and schedules as the Lender may reasonably require, designating, identifying or describing the Collateral. Any failure, however, to promptly give the Lender such statements, or schedules shall not affect, diminish, modify or otherwise limit the Lender's security interests in the Collateral.

7.4 Each of the Companies agrees to comply with the requirements of all state and federal laws in order to grant to the Lender valid and perfected first security interests in the Collateral, subject only to the Permitted Encumbrances. The Lender is hereby authorized by the Companies to file (including pursuant to the applicable terms of the UCC) from time to time any financing statements, continuations or amendments covering the Collateral (including, without limitation, financing statements describing the Collateral as "all assets" or "all personal property") and such mortgages, deeds of trust or documents relating thereto with respect to the Real Estate. The Companies hereby consent to and ratify any and all execution and/or filing of financing statements on or prior to the Closing Date by the Lender. The Companies agree to do whatever the Lender may reasonably request, from time to time, by way of: (a) filing notices of Liens, financing statements, amendments, renewals and continuations thereof; (b) cooperating with the Lender's agents and employees; (c) keeping Collateral records; (d) transferring proceeds of Collateral to the Lender's possession; and (e) performing such further acts as the Lender may reasonably require in order to effect the purposes of this Agreement and the mortgages with respect to the Real Estate, including but not limited to obtaining control agreements with respect to deposit accounts and/or Investment Property.

7.5 (a) Each of the Companies agrees to maintain insurance on its Real Estate, Equipment, Inventory and other Collateral, together with comprehensive general liability insurance, director and officer insurance and other insurance, in each case on a "all-risk" basis under such policies of insurance, with such insurance companies, in such reasonable amounts and covering such insurable risks as are at all times reasonably satisfactory to the Lender. Upon the request of the Lender, all policies covering the Real Estate, Equipment and Inventory are to be made payable to the Lender on behalf of the Secured Parties, in case of loss, under a standard non-contributory "mortgagee", "lender" or "secured party" clause and are to contain such other

provisions as the Lender may require to fully protect the Lender's interest in the Real Estate, Inventory and Equipment and to any payments to be made under such policies. Upon the request of the Lender, all original policies or true copies thereof are to be delivered to the Lender, with the loss payable endorsement in the Lender's favor, and shall provide for not less than thirty (30) days prior written notice to the Lender of the exercise of any right of cancellation. At the Companies' request, or if the Companies fail to maintain such insurance, the Lender may arrange for such insurance, but at the Companies' expense and without any responsibility on the Lender's part for: (i) obtaining the insurance; (ii) the solvency of the insurance companies; (iii) the adequacy of the coverage; or (iv) the collection of claims. The full amount of any premiums paid by the Lender shall be payable by the Companies on demand. Upon the occurrence of an Event of Default which is not waived in writing by the Lender, the Lender shall have the sole right and at its option, in the name of the Lender or the Companies or any of them, to file claims under any insurance policies, to receive, receipt and give acquittance for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies.

(b) In the event of any loss or damage by fire or other casualty, Insurance Proceeds shall be delivered to Lender and applied to reduce the DIP Loan in accordance with the provisions of Paragraph 10.4 of Section 10 of this Agreement unless otherwise agreed to by the Lender.

7.6 Each of the Companies has filed all federal, state and local tax or information returns and other reports each is required by law to file and has paid all taxes, assessments, fees and other governmental charges that are due and payable. Each of the Companies agrees to pay, when due, all Taxes, including sales taxes, assessments, claims and other charges lawfully levied or assessed upon the Companies or the Collateral unless such Taxes are being diligently contested in good faith by the applicable Companies by appropriate proceedings and adequate reserves are established in accordance with GAAP. Notwithstanding the foregoing, if any Lien shall be filed or claimed thereunder: (a) for Taxes due the United States of America, or (b) which in the Lender's opinion might create a valid obligation having priority over the rights granted to the Lender herein (exclusive of Real Estate), such Lien shall not be deemed to be a Permitted Encumbrance hereunder and the Companies shall immediately pay such tax and remove the Lien of record. Failure to do so will constitute an Event of Default under this Agreement.

7.7 Each of the Companies: (a) represents that it is in compliance with, and agrees to comply with, all acts, rules, regulations and orders of any legislative, administrative or judicial body or official, which the failure to comply with would have a material and adverse impact on the Collateral, or any material part thereof, or on the business or operations of the Companies, provided that the Companies may contest any acts, rules, regulations, orders and directions of such bodies or officials in any reasonable manner which will not, in the Lender's reasonable opinion, materially and adversely affect the Lender's rights or priority in the Collateral; and (b) represents that it is in compliance with, and agrees to comply with, all environmental statutes, acts, rules, regulations or orders as presently existing or as adopted or amended in the future, applicable to the Collateral, the ownership and/or use of their real property and operation of their business, which the failure to comply with would have a material and adverse impact on the Collateral, or any material part thereof, or on the operation of the business of the Companies.

7.8 If requested by Lender, until termination of this Agreement and payment and satisfaction of all DIP Loan Obligations, the Companies will furnish to the Lender such financial reports and information in such detail as shall be reasonably satisfactory to the Lender.

7.9 Until termination of this Agreement and payment and satisfaction of all DIP Loan Obligations, each of the Companies agrees that, without the prior written consent of the Lender, the Companies or any of them will not:

- (a) Mortgage, assign, pledge, transfer or otherwise permit any Lien, charge, security interest, encumbrance or judgment, (whether as a result of a purchase money or title retention transaction, or other security interest, or otherwise) to exist on any of the Companies' Collateral or any other assets, whether now owned or hereafter acquired, except for the Permitted Encumbrances;
- (b) Incur or create any Indebtedness other than the Permitted Indebtedness;
- (c) Sell, lease, assign, transfer or otherwise dispose of (i) Collateral, except as otherwise specifically permitted by this Agreement, or (ii) any of any Company's assets which do not constitute Collateral;
- (d) Merge, consolidate, amalgamate or otherwise alter or modify their respective organizational names, principal places of business, structure, or existence, reincorporate or re-organize, or enter into or engage in any operation or activity materially different from that presently being conducted by the Companies or any of them;
- (e) Assume, guarantee, endorse, or otherwise become liable upon the obligations of any Person;
- (f) Declare or pay any dividend or distributions of *any* kind on, or purchase, acquire, redeem or retire, any of the capital stock of or equity interest in, any Company, of any class whatsoever, whether now or hereafter outstanding;
- (g) Make any advance or loan to, or any investment in, any Person (other than another Company) or purchase or acquire all or substantially all of the stock or other equity interests in or assets of any Person;
- (h) Form or acquire any subsidiary unless (i) such subsidiary executes (x) a joinder agreement to this Agreement in form and substance satisfactory to the Lender pursuant to which such subsidiary agrees to be bound by the terms of this Agreement and the other DIP Loan Documents as a Company and (y) executes such other documents and takes such other actions as are deemed necessary or desirable by Lender to create and perfect Lender's Lien in the Collateral of such subsidiary, and (ii) the Companies which own all of the capital stock of or other equity interests in such subsidiary take all actions deemed necessary or desirable by Lender to cause the stock of or other equity interests in such subsidiary to be pledged to Lender as Collateral for the Secured Obligations;

(i) Pay any principal on any Indebtedness other than Permitted Indebtedness (but excluding Indebtedness subordinate to this Agreement) in accordance with the terms of such Permitted Indebtedness

7.10 Each of the Companies shall promptly provide to the Lender such due diligence information regarding the Companies (including, without limitation, access to the Companies' offices, personnel and files during regular business hours) as the Lender shall request.

7.11 Each of the Companies agrees to advise the Lender in writing of any notices received from any local, state or federal authority advising of any environmental liability (real or potential) stemming from any of the Companies' operations, their premises, their waste disposal practices, or waste disposal sites used by any of the Companies and to provide the Lender with copies of all such notices if so required.

7.12 Each of the Companies hereby agrees to indemnify and hold harmless the Lender, and the officers, directors, members, managers, employees, attorneys and agents of the Lender (each an "Indemnified Party") from, and holds each of them harmless against, (a) any and all losses, liabilities, obligations, claims, actions, damages, costs and expenses (including attorney's fees) and any payments made by any Indemnified Party pursuant to any indemnity provided by an Indemnified Party with respect to or to which any Indemnified Party could be subject insofar as such losses, liabilities, obligations, claims, actions, damages, costs, fees or expenses with respect to the DIP Loan and DIP Loan Documents, except and to the extent that the same results solely and directly from the gross negligence or willful misconduct of such Indemnified Party as finally determined by a court of competent jurisdiction. The Companies hereby agree that this indemnity shall survive termination of this Agreement, as well as payments of the DIP Loan Obligations.

7.13 [Intentionally Omitted].

7.14 [Intentionally Omitted].

7.15 [Intentionally Omitted].

7.16 Each of the Companies hereby represents and warrants to the Lender that:

(a) Each of the Companies and each of its subsidiaries is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority to carry on its business as now conducted and, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a material adverse effect in the financial condition, business, prospects, profitability assets or operations of the Companies taken as a whole, is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required.



(b) The transactions contemplated by this Agreement, and the other DIP Loan Documents, are within each Company's organizational powers and have been duly authorized by all necessary organizational actions. The DIP Loan Documents have been duly executed and delivered by such Company and constitute a legal, valid and binding obligation of such Company, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(c) The transactions contemplated by this Agreement, and the other DIP Loan Documents (a) do not require any consent or approval of, registration or filing with, or any other action by, any governmental authority, except such as have been obtained or made and are in full force and effect and except for filings necessary to perfect Liens created pursuant to the DIP Loan Documents, (b) will not violate any applicable requirement of law or any governmental authority applicable to any Company or any of its subsidiaries, (c) will not violate or result in a default under any indenture, agreement or other instrument binding upon any Company or any of its subsidiaries or its assets, or give rise to a right thereunder to require any payment to be made by any Company or any of its subsidiaries, and (d) will not result in the creation or imposition of any Lien on any asset of any Company or any of its subsidiaries, except Liens created pursuant to the DIP Loan Documents and Permitted Encumbrances.

(d) There are no actions, suits or proceedings by or before any arbitrator or governmental authority pending against or, to the knowledge of any Company, threatened against or affecting the Companies or any of their subsidiaries except as set forth on Schedule 2 hereto. There is no reasonable likelihood of an adverse determination with respect to any such action, suit or proceeding that could reasonably be expected, individually or in the aggregate, to result in a material adverse effect in the financial condition, business, prospects, profitability assets or operations of the Companies taken as a whole, and no such action, suit or proceeding involves this Agreement or the transactions contemplated hereby, by any of the other DIP Loan Documents.

## **SECTION 8. Interest, Fees and Expenses**

**8.1** Interest on the DIP Loans shall be payable monthly as of the end of each month. DIP Loans shall bear interest at a fixed rate per annum of ten percent (10%). The rate hereunder for DIP Loans shall be calculated based on a 365-day year. Upon the occurrence and during the continuance of an Event of Default and the giving of any required notice by the Lender in accordance with the provisions of Section 10, Paragraph 10.2 hereof, all DIP Loan Obligations shall bear interest at the Default Rate of Interest.

**8.2** Each of the Companies shall reimburse or pay the Lender for all Out-of-Pocket Expenses, provided however, that neither Lender nor its advisors shall be required to file fee applications or otherwise seek Bankruptcy Court approval for the payment of such Out of Pocket Expenses.

## **SECTION 9. Releases**

**9.1 [Intentionally Omitted]**

**9.2** Upon (a) the receipt by Lender of payment in full of all DIP Loan Obligations in cash or other immediately available funds, plus cash collateral or other collateral security acceptable to Lender to secure any DIP Loan Obligations that survive or continue beyond the termination of this Agreement and the other DIP Loan Documents, and (b) the termination of this Agreement and the other DIP Loan Documents (the "Payment Date"), in consideration of the agreements of Lender and the Secured Parties contained herein and the making of any DIP Loan by Lender, the Debtors, jointly and severally, hereby covenant and agree to execute and deliver in favor of Lender a valid and binding termination and release agreement, in form and substance satisfactory to Lender. If any Debtor violates such covenant, the Debtors, jointly and severally, agree to pay, in addition to such other damages as Lender may sustain as a result of such violation, all attorneys' fees and costs incurred by Lender as a result of such violation.

**9.3** (a) Each Debtor understands, acknowledges and agrees that the releases set forth above in Section 9.2 hereof may be pleaded as a full and complete defense and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of such releases.

(b) Each Debtor agrees that no fact, event, circumstance, evidence or transaction which could now be asserted or which may hereafter be discovered shall affect in any manner the final and unconditional nature of the releases set forth in Section 9.2 hereof and, when made, Section 10.2 hereof.

**SECTION 10. Events of Default and Remedies**

**10.1** Notwithstanding anything hereinabove to the contrary, each of the following shall constitute an "Event of Default":

- (a) [Intentionally Omitted];
- (b) [Intentionally Omitted];
- (c) [Intentionally Omitted];
- (d) breach by any Company of any warranty, representation or covenant contained herein (other than those referred to in sub-paragraph (e) below) or in any other written agreement between such Company or the Lender, provided that such Default by such Company of any of the warranties, representations or covenants referred in this clause (d) shall not be deemed to be an Event of Default unless and until such Default shall remain unremedied to the Lender's satisfaction for a period of five (5) days from the date of such breach;
- (e) breach by any Company of any warranties, representations or covenants made in this Agreement or any of the other DIP Loan Documents.
- (f) failure of the Companies or any of them to pay any of the DIP Loan Obligations

on the Maturity Date or any other date of termination of this Agreement or termination of any obligation of any of the Lenders to make DIP Loans hereunder, or otherwise within one (1) Business Day of the due date thereof;

- (g) the Companies or any of them shall (i) engage in any "prohibited transaction" as defined in ERISA, (ii) have any "accumulated funding deficiency" as defined in ERISA, (iii) terminate any "plan", as defined in ERISA or (iv) be engaged in any proceeding in which the Pension Benefit Guaranty Corporation shall seek appointment, or is appointed, as trustee or administrator of any "plan", as defined in ERISA, and with respect to this sub-paragraph (h) such event or condition (x) remains uncured for a period of thirty (30) days from date of occurrence and (y) could, in the reasonable opinion of the Agent, subject any of the Companies to any tax, penalty or other liability material to the business, operations or financial condition of any such Company;
- (h) [Intentionally Omitted];
- (i) the occurrence of any Default or Event of Default (after giving effect to any applicable grace or cure periods) by any Company under any instrument or agreement evidencing any other Indebtedness of the Companies or any of them having a principal amount in excess of \$25,000;
- (j) the failure of the Debtors or any one of them to meet the milestones ("Milestones") for the contemplated Bankruptcy cases as set forth herein without the written consent of Lender:
  - (i) the Petition Date shall have occurred on or before March 20, 2016.
  - (ii) The Debtors shall have filed a motion seeking approval of the DIP Loans on or before March 20, 2016, and the Interim Financing Order shall be entered by the Bankruptcy Court in the Chapter 11 Cases no later than March 25, 2016.
  - (iii) On or prior to the Petition Date, the board of directors or other applicable governing body shall have authorized each of the Debtors to file a chapter 11 petition with the Bankruptcy Court.
  - (iv) A motion in a form and substance acceptable to Lender to establish procedures ("Bid Procedures") governing a proposed sale of substantially all of Debtors' assets and seeking the approval of a sale of substantially all the Debtors' assets shall be filed on or before March 20, 2016.
  - (v) The Bankruptcy Court shall enter an order in form and substance satisfactory to Lender in its reasonable discretion, approving the Bid Procedures (which shall include a proposed sale of substantially all the assets of FMC- Deep East Texas, LLC, FMC Hospice-Conroe, LLC and Hospice of Central Virginia, L.L.C. to Lender in its capacity as Stalking Horse) on or before April 8, 2016.

- (vi) The Bankruptcy Court shall enter a Final Financing Order in form and substance satisfactory to Lender in its sole and absolute discretion on or before April 18, 2016.
- (vii) The Bankruptcy Court shall enter an order approving the sale of substantially all the assets of FMC- Deep East Texas, LLC, FMC Hospice-Conroe, LLC and Hospice of Central Virginia, L.L.C. ("Sale Order") on or before April 29, 2016, and such Sale Order shall not be stayed.
- (viii) Any sale of substantially all the assets of FMC – Deep East Texas, LLC, FMC Hospice – Conroe, LLC and Hospice of Central Virginia, L.L.C. shall close and be effective no later than April 30, 2016 (unless the Lender is in default under the terms of the Asset Purchase Agreement executed between Lender and certain of the Debtors on March 16, 2016);
- (k) Any government or governmental or regulatory body thereof or any court or arbitrator effects an administratively freeze, setoff, or recoupment against any medicare provider payments or CMS accounts receivable due to Debtors, and such freeze, setoff, or recoupment is not reversed or otherwise rescinded within five (5) business days, or the Debtors' cash on hand falls below the amount then outstanding under the DIP Loans plus 10%;
- (l) the occurrence of any condition or event which permits Lender to exercise any of the remedies set forth in any Financing Order including, without limitation, any "Event of Default" (as defined in the Financing Order);
- (m) any Debtor suspends or discontinues or is enjoined by any court or governmental agency from continuing to conduct all or any material part of its business, or a trustee, receiver or custodian is appointed for any Debtor, or any of their respective properties;
- (n) conversion of any Chapter 11 Case to a Chapter 7 case under the Bankruptcy Code;
- (o) dismissal of any Chapter 11 Case or any subsequent Chapter 7 case either voluntarily or involuntarily;
- (p) the grant of a Lien on or other interest in any property of any Debtor (other than a Permitted Encumbrance or by the Financing Order) or an administrative expense claim (other than such administrative expense claim permitted by the Financing Order or this Agreement), including by the grant of or allowance by the Bankruptcy Court which is superior to or ranks in parity with Lender's and security interest in or Lien upon the Collateral or its Superpriority Claim (as defined in the Financing Order);
- (q) the Financing Order shall be modified, reversed, revoked, remanded, stayed, rescinded, vacated or amended on appeal or by the Bankruptcy Court without the prior express written consent of Lender);

- (r) the appointment of a trustee pursuant to Sections 1104(a)(1) or 1104(a)(2) of the Bankruptcy Code;
- (s) the appointment of an examiner with special powers pursuant to Section 1104(a) of the Bankruptcy Code; or
- (t) the filing or confirmation of a plan of reorganization or liquidation by or on behalf of any Debtor, to which Lender has not consented in writing, which does not provide for treatment of the DIP Loan Obligations.

**10.2** Subject to the Financing Orders, upon the occurrence and during the continuance of an Event of Default which has not been waived by the Lender, in its discretion the Lender may declare to Debtors by written notice that the Lender shall make no further DIP Loans unless such Default or Event of Default is cured to the satisfaction of the Lender. Upon the occurrence of an Event of Default, the Lender may (a) declare that all DIP Loan Obligations are immediately due and payable; and (b) immediately terminate this Agreement upon notice to the Companies. Upon the occurrence of an Event of Default, the Lender may charge the Companies the Default Rate of Interest on all then outstanding or thereafter incurred DIP Loan Obligations, in lieu of the interest provided for in Section 8 of this Agreement, provided that the Lender has given the Companies written notice of the Event of Default, provided further however, that no notice is required if the Event of Default is the Event listed in Paragraph 10.1(c) of this Section 10. The exercise of any option is not exclusive of any other option, which may be exercised at any time by the Lender in its discretion and is in addition to any other rights granted to the Lender under any other agreement.

**10.3** Except to the extent otherwise provided in the Financing Order, immediately upon the occurrence of any Event of Default, notwithstanding any other provision of this Agreement, any DIP Loan Document or any document, agreement or instrument the Lender may, to the extent permitted by law: (a) remove from any premises where same may be located any and all books and records, computers, electronic media and software programs associated with any Collateral or Real Estate (including any electronic records, contracts and signatures pertaining thereto), documents, instruments, files and records, and any receptacles or cabinets containing same, relating to the Accounts, or the Lender may use, at the Companies' expense, such of the Companies' personnel, supplies or space at the Companies' places of business or otherwise, as may be necessary to properly administer and control the Accounts or the handling of collections and realizations thereon; (b) bring suit, in the name of the Companies or the Lender, and generally shall have all other rights respecting said Accounts, including without limitation the right to: accelerate or extend the time of payment, settle, compromise, release in whole or in part any amounts owing on any Accounts and issue credits in the name of the Companies or the Lender; (c) sell, assign and deliver the Collateral or any Real Estate and any returned, reclaimed or repossessed Inventory, with or without advertisement, at public or private sale, for cash, on credit or otherwise, and the Agent may, or upon the direction of the Required Lenders shall, bid or become a purchaser at any such sale, free from any right of redemption, which right is hereby expressly waived by the Companies; (d) foreclose the security interests in the Collateral or the Real Estate created herein by any available judicial procedure, or to take possession of any or all

of the Collateral or the Real Estate, including any Inventory, Equipment and/or Other Collateral without judicial process, and to enter any premises where any Inventory and Equipment and/or Other Collateral may be located for the purpose of taking possession of or removing the same; and (e) exercise any other rights and remedies provided in law, in equity, by contract or otherwise. The Lender, in its discretion, shall have the right, without notice or advertisement, to sell, lease, or otherwise dispose of all or any part of the Collateral, the Real Estate or any other property securing the DIP Obligations, whether in its then condition or after further preparation or processing, in the name of the Companies or the Lender, or in the name of such other party as the Lender may designate, either at public or private sale or at any broker's board, in lots or in bulk, for cash or for credit, with or without warranties or representations (including but not limited to warranties of title, possession, quiet enjoyment and the like), and upon such other terms and conditions as the Lender may deem advisable, and the Lender, in its discretion, shall have the right to purchase at any such sale. If any Inventory and Equipment shall require rebuilding, repairing, maintenance or preparation, the Lender, in its discretion, shall have the right, at its option, to do such of the aforesaid as is necessary, for the purpose of putting the Inventory and Equipment in such saleable form as the Lender shall deem appropriate and any such costs shall be deemed a DIP Loan Obligation hereunder. Any action taken by the Lender pursuant to this paragraph shall not affect commercial reasonableness of the sale. The Companies agree, at the request of the Lender, to assemble the Inventory and Equipment and to make it available to the Lender at premises of the Companies or elsewhere and to make available to the Lender the premises and facilities of the Companies for the purpose of the Lender's taking possession of, removing or putting the Inventory and Equipment in saleable form. If notice of intended disposition of any Collateral is required by law, it is agreed that ten (10) days notice shall constitute reasonable notification and full compliance with the law. The net cash proceeds resulting from the Lender's exercise of any of the foregoing rights, (after deducting all charges, costs and expenses, including reasonable attorneys' fees) shall be applied by the Lender to the payment of the DIP Obligations, whether due or to become due, in such order as is set forth in Section 10.4, and the Companies shall remain liable to the Lender for any deficiencies, and the Lender in turn agrees to remit to the Companies or their successors or assigns, any surplus resulting therefrom. The enumeration of the foregoing rights is not intended to be exhaustive and the exercise of any right shall not preclude the exercise of any other rights, all of which shall be cumulative. The Companies hereby indemnify the Lender and hold the Lender harmless from any and all costs, expenses, claims, liabilities, Out-of-Pocket Expenses or otherwise, incurred or imposed on the Lender by reason of the exercise of any of its rights, remedies and interests hereunder, including, without limitation, from any sale or transfer of Collateral or Real Estate, preserving, maintaining or securing the Collateral or Real Estate, defending its interests in Collateral and Real Estate (including pursuant to any claims brought by the Companies, the Companies as debtor-in-possession, any secured or unsecured creditors of the Companies, any trustee or receiver in bankruptcy, or otherwise), and the Companies hereby agree to pay any such amount to Lender upon demand (and hereby authorized the Lender to add such amount to the DIP Loan Obligations) and to so indemnify and hold the Lender and each other Secured Party harmless, absent the gross negligence or willful misconduct of the applicable Secured Party as finally determined by a non-appealable judgment of a court of competent jurisdiction. The foregoing indemnification shall survive termination of this Agreement until such time as all Secured Obligations (including the foregoing) have been finally and indefeasibly paid in full. In furtherance thereof the Lender may establish such reserves for Secured Obligations (including any contingent Secured Obligations) as it may deem advisable in its reasonable business judgment. Any applicable mortgage(s), deed(s) of trust or assignment(s) issued to the Lender on

the Real Estate shall govern the rights and remedies of the Lender thereto.

**10.4** Subject to the provisions of the Financing Orders, during the period that any DIP Loan Obligations remain outstanding, the automatic stay imposed under Section 362(a) of the Bankruptcy Code by the filing of the Chapter 11 Cases shall not apply to the Lender, or any actions that may be taken by Lender, to enforce the rights and remedies granted the Lender by the DIP Loan, the DIP Loan Documents or the Financing Orders.

## **SECTION 11. Termination**

**11.1** Notwithstanding any other provision herein to the contrary, the Lender may terminate this Agreement (i) immediately upon the occurrence of an Event of Default, provided, however, that if the Event of Default is an event listed in Paragraph 10.1(c) of Section 10 of this Agreement, this Agreement shall terminate in accordance with paragraph 10.2 of Section 10, and (ii) on the Maturity Date.

**11.2** [Intentionally Omitted]

**11.3** [Intentionally Omitted]

**11.4** All DIP Loan Obligations shall become immediately due and payable as of any termination of this Agreement, whether under this Section 11 or under Section 10 hereof. Notwithstanding any other provision of this Agreement, all of the Lender's rights, Liens and security interests shall continue for the benefit of the Lender after any termination until all DIP Loan Obligations have been paid and satisfied in full.

## **SECTION 12. Miscellaneous**

**12.1** The Companies hereby waive diligence, notice of intent to accelerate, notice of acceleration, demand, presentment and protest and any notices thereof as well as notice of nonpayment. No delay or omission of the Lender to exercise any right or remedy hereunder, whether before or after the happening of any Event of Default, shall impair any such right or shall operate as a waiver thereof or as a waiver of any such Event of Default. No single or partial exercise by the Lender of any right or remedy precludes any other or further exercise thereof, or precludes any other right or remedy.

**12.2** This Agreement, the DIP Loan Documents executed and delivered in connection therewith, and with respect to the Secured Obligations, constitute the entire agreement between the Companies and the Lender with respect to the matters contained herein and therein; supersede any prior agreements; can be waived or changed only by a writing signed by each party hereto or thereto, and shall bind and benefit each party hereto or thereto and their

respective successors and assigns, and any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

**12.3** In no event shall the Companies, upon demand by the Lender for payment of any DIP Loan Obligations, by acceleration of the maturity thereof, or otherwise, be obligated to pay interest and fees in excess of the amount permitted by law. Regardless of any provision herein or in any agreement made in connection herewith, the Lender shall never be entitled to receive, charge or apply, as interest on any DIP Loan Obligations, any amount in excess of the maximum amount of interest permissible under applicable law. If the Lender ever receives, collects or applies any such excess, it shall be deemed a partial repayment of principal and treated as such; and if principal is paid in full, any remaining excess shall be refunded to the Companies. This paragraph shall control every other provision hereof, the DIP Loan Documents and of any other agreement made in connection with the DIP Loans.

**12.4** If any provision hereof or of any other agreement made in connection herewith is held to be illegal or unenforceable, such provision shall be fully severable, and the remaining provisions of the applicable agreement shall remain in full force and effect and shall not be affected by such provision's severance. Furthermore, in lieu of any such provision, there shall be added automatically as a part of the applicable agreement a legal and enforceable provision as similar in terms to the severed provision as may be possible.

**12.5 EACH OF THE COMPANIES AND THE LENDER EACH HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF THE DIP LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREUNDER. EACH OF THE COMPANIES HEREBY IRREVOCABLY WAIVES PERSONAL SERVICE OF PROCESS AND CONSENTS TO SERVICE OF PROCESS BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED. IN NO EVENT WILL THE AGENT BE LIABLE FOR LOST PROFITS OR OTHER SPECIAL OR CONSEQUENTIAL DAMAGES. EACH OF THE COMPANIES AND THE LENDER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE AND THE DELAWARE STATE COURTS TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES PERTAINING DIRECTLY OR INDIRECTLY TO THIS AGREEMENT OR THE DIP LOAN DOCUMENTS OR TO ANY MATTER ARISING THEREFROM. EACH COMPANY HERETO EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED IN SUCH COURT,**

**12.6** Except as otherwise herein provided, any notice or other communication required hereunder shall be in writing (provided that, any electronic communications from any of the Companies with respect to any request, transmission, document, electronic signature, electronic mail or facsimile transmission shall be deemed binding on the Companies for purposes of this Agreement, provided further that any such transmission shall not relieve the Companies from any other obligation hereunder to communicate further in writing), and shall be *deemed* to have been validly served, given or delivered when hand delivered or one (1) Business Day after deposit with a nationally recognized overnight delivery service, or three Business Days after deposit in the United States mails, with proper first class postage prepaid, return receipt requested, and addressed to the party to be notified or to such other address as any party hereto



may designate for itself by like notice, as follows:

(A) if to the Lender, at:

Hospice Partners of America, LLC.  
3201 Lorna Rd, Suite 200  
Birmingham, AL 35216  
Attn: Norma English  
(nenglish@hospicepartners.com)

With a copy to:  
Daniel D. Sparks, Esq.  
Christian & Small LLP  
505 North 20<sup>th</sup> Street, Suite 1800  
Birmingham, AL 35203-2696  
ddsparks@csattorneys.com

(B) if to the Companies, to

American Hospice Management Holdings, LLC  
50 North Laura Street , Suite 1800  
Jacksonville, FL 32202  
Attn: Scott Mahosky  
(Scott.Mahosky@americanhospice.com)

With a copy to:

Samuel R. Maizel  
Dentons US LLP  
601 S. Figueroa Street, Suite 2500  
Los Angeles, CA 90017  
(samuel.maizel@dentons.com)

**12.7 THE VALIDITY, INTERPRETATION AND ENFORCEMENT OF THIS AGREEMENT AND THE OTHER DIP LOAN DOCUMENTS SHALL BE GOVERNED BY THE LAWS OF THE STATE OF DELAWARE, EXCEPT TO THE EXTENT THAT ANY OTHER DIP LOAN DOCUMENT INCLUDES AN EXPRESS ELECTION TO BE GOVERNED BY THE LAWS OF ANOTHER JURISDICTION, AND EXCEPT TO THE EXTENT THAT THE PROVISIONS OF THE BANKRUPTCY CODE ARE APPLICABLE AND SPECIFICALLY CONFLICT WITH THE FOREGOING.**

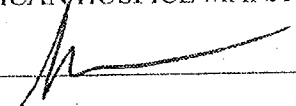
**12.8** In the event of any inconsistency between the terms of the Financing Orders, on the one hand, and this Agreement and the other DIP Loan Documents, on the other hand, the terms of the Financing Orders shall control.

**12.9** The Lender shall have the absolute right to credit bid (pursuant to 363(k) or otherwise) a portion of or all of the DIP Loan and DIP Loan Obligations at any proposed sale of substantially all of the assets of the Debtors (or any one of them), in its sole discretion.

[SIGNATURE PAGES FOLLOW]

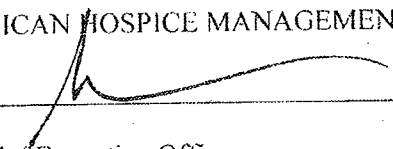
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be effective, executed, accepted and delivered at Wilmington, Delaware, by their proper and duly authorized officers as of the date set forth above.

AMERICAN HOSPICE MANAGEMENT HOLDINGS, LLC

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

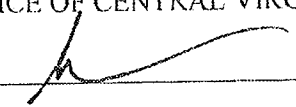
Its: Chief Executive Officer

AMERICAN HOSPICE MANAGEMENT, LLC

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


Its: Chief Executive Officer

HOSPICE OF CENTRAL VIRGINIA, L.L.C.

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

Its: Chief Executive Officer

EMBRACING HOSPICECARE, LLC

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

Its: Chief Executive Officer

EMBRACING HOSPICECARE SOUTH ATLANTA, LLC

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


Its: Chief Executive Officer

FRONTIER HOSPICE, LLC

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

Its: Chief Executive Officer

HOSPICE OF NEW JERSEY, LLC

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

Its: Chief Executive Officer

FMC HOSPICE - CONROE, LLC

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

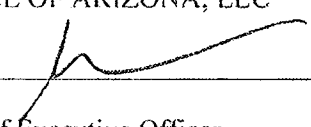
Its: Chief Executive Officer

FMC - DEEP EAST TEXAS, LLC

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

Its: Chief Executive Officer

HOSPICE OF ARIZONA, LLC

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

Its: Chief Executive Officer

HOSPICE PARTNERS OF PENNSYLVANIA, LLC

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

Its: Chief Executive Officer

Each as a joint and several Borrower under this Agreement; and

HOSPICE PARTNERS OF AMERICA, LLC

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

Its: \_\_\_\_\_

as Lender

FMC HOSPICE – CONROE, LLC

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

Its: \_\_\_\_\_

FMC – DEEP EAST TEXAS, LLC

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

Its: \_\_\_\_\_

HOSPICE OF ARIZONA, LLC

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

Its: \_\_\_\_\_

HOSPICE PARTNERS OF PENNSYLVANIA, LLC

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

Its: \_\_\_\_\_

Each as a joint and several Borrower under this Agreement; and

HOSPICE PARTNERS OF AMERICA, LLC

By: Salma English

Its: CEO

as Lender

EXHIBIT A

DIP LOAN NOTE

Dated March \_\_, 2016

[\$ \_\_\_\_\_]

FOR VALUE RECEIVED, the undersigned, and all other parties that become "Companies" from time to time pursuant to the terms of the Superpriority Senior Secured Debtor-in-Possession Credit Agreement (each herein individually a "Company" and collectively, the "Companies"), hereby, jointly and severally, absolutely and unconditionally promise to pay to the order of Hospice Partners of America, LLC and its assigns (hereinafter "Payee") at the offices of Hospice Partners of America, LLC 3201 Lorna Road, Suite 200, Birmingham, Alabama 35216 in lawful money of the United States of America and in immediately available funds, the principal amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), or if different from such amount, the unpaid principal balance of DIP Loans advanced by Payee pursuant to Section 3.1 of the DIP Financing Agreement (as herein defined) as may be due and owing from time to time under the DIP Financing Agreement. A final balloon payment in an amount equal to the entire outstanding aggregate balance of principal and interest remaining unpaid, if any, under this Note as shown on the books and records of the Lender, including any outstanding Out of Pocket Expenses, including, but not limited to, reasonable attorneys' fees and expenses, shall be due and payable on the earlier of (i) the Maturity Date or (ii) termination of the Agreement, as set forth in Section 11 thereof.

The Companies, jointly and severally, further absolutely and unconditionally promise to pay to the order of the Payee and its assigns at said office, interest, in like money, on the unpaid principal amount owing hereunder from time to time from the date hereof on the dates and at the rates specified in Section 8 of the DIP Financing Agreement.

If any payment on this Note becomes due and payable on a day other **than a business day**, the maturity thereof shall be extended to the next succeeding business day, and with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension. All payments hereunder shall be made without setoff, counterclaim or deduction of any kind.

This Note is one of the Promissory Notes referred to in the Superpriority Senior Secured Debtor-in-Possession Credit Agreement, dated as of March \_\_, 2016, as the same may be amended, restated, supplemented or otherwise modified and in effect from time to time, among the Companies, as Borrowers, and the Payee, as Lender, thereto from time to time (the "DIP Financing Agreement"), and is subject to, and entitled to, all of the terms, provisions and benefits thereof and is subject to optional and mandatory prepayment, in whole or in part, as provided therein. All capitalized terms used herein shall have the meaning provided therefor in the DIP Financing Agreement, unless otherwise defined herein.

The date and amount of the advance(s) made hereunder may be recorded on the grid page or pages which are attached hereto and hereby made part of this Note or the separate ledgers maintained by the Lender. The aggregate unpaid principal amount of all advances made pursuant hereto may be set forth in the balance column on said grid page or such ledgers maintained by the Lender. All such advances, whether or not so recorded, shall be due as part of this Note.

The Companies confirm that any amount received by or paid to the Lender in connection with the DIP Financing Agreement and/or any balances standing to its credit on any of its or their accounts on the Lender's books under the DIP Financing Agreement may in accordance with the terms of the DIP Financing Agreement be applied in reduction of this Note, but no balance or amounts shall be deemed to effect payment in whole or in part of this Note unless the Lender shall have actually charged such account or accounts for the purposes of such reduction or payment of this Note.

Upon the occurrence of any one or more of the Events of Default specified in the DIP Financing Agreement or upon termination of the DIP Financing Agreement, all amounts then remaining unpaid on this Note may become, or be declared to be, immediately due and payable as provided in the DIP Financing Agreement.

[SIGNATURE BLOCK HERE]



## SCHEDULE TO GRID

[illegible]

**EXHIBIT B**

**Form of Borrowing Notice**

Exhibit B

Form of Borrowing Notice

\_\_\_\_\_ 2009

Hospice Partners of America, LLC

Attn.: Norma English

Ladies and Gentlemen:

The undersigned authorized representative of the Debtors, refers to the Superpriority Senior Secured Debtor-in-Possession Credit Agreement dated as of March \_\_\_\_, 2016 (as amended, supplemented or otherwise modified from time to time, the "DIP Financing Agreement"; capitalized terms used and not otherwise defined herein shall have the meanings given such terms in the DIP Financing Agreement among Hospice Partners of America, LLC as lenders and secured parties and the Debtors (collectively, the "Companies"), and, on behalf of the Companies, hereby gives you irrevocable notice, pursuant to Section 3.1 of the DIP Financing Agreement, that the Companies hereby requests a DIP Loan as set forth below.

1. Requested DIP Loan.

(a) The undersigned authorized representative of the Debtors requests that the requested DIP Loan be in the aggregate amount of \$\_\_\_\_\_.

(b) The undersigned authorized representative of the Debtors requests that the requested DIP Loan be made on the following Business Day: \_\_\_\_\_, 2016, which day is at least two (2) Business Days following the date of this notice.

2. Certifications. The undersigned authorized representative of the Debtors hereby certifies to the Lender that the following statements will be true and correct on the date that the requested DIP Loan is made:

(a) All DIP Loans previously requested by the Debtors have been applied in accordance with the DIP Budget and uses for such DIP Loans previously presented to the Lenders.

(b) The DIP Loans requested in this Borrowing Notice shall be used in accordance with the DIP Budget and uses set forth on the attached Schedule 1.

(c) The representations and warranties contained in the DIP Financing Agreement and the other DIP Loan Documents are true and correct in all material respects, other than representations and warranties that expressly relate solely to an earlier date (in which case they were true and correct on and as of such earlier date).

(d) No Default or Event of Default has occurred and is continuing or would result from the requested DIP Loan.

The undersigned understands that the Lenders are relying on the foregoing certification in making the requested DIP Loan to the Debtors and to induce the Lenders to make the requested DIP Loan.

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT B**

**Form of Borrowing Notice**

Exhibit B

Form of Borrowing Notice

Hospice Partners of America, LLC

\_\_\_\_\_ 2016

Attn.: Norma English

Ladies and Gentlemen:

The undersigned authorized representative of the Debtors, refers to the Priming DIP Financing Agreement dated as of March \_\_\_\_, 2016 (as amended, supplemented or otherwise modified from time to time, the "DIP Financing Agreement"; capitalized terms used and not otherwise defined herein shall have the meanings given such terms in the DIP Financing Agreement among Hospice Partners of America, LLC as lenders and secured parties and the Debtors (collectively, the "Companies"), and, on behalf of the Companies, hereby gives you irrevocable notice, pursuant to Section 3.1 of the DIP Financing Agreement, that the Companies hereby requests a DIP Loan as set forth below.

1. Requested DIP Loan.

(c) The undersigned authorized representative of the Debtors requests that the requested DIP Loan be in the aggregate amount of \$ \_\_\_\_\_.

(d) The undersigned authorized representative of the Debtors requests that the requested DIP Loan be made on the following Business Day: \_\_\_\_\_, 2016, which day is at least two (2) Business Days following the date of this notice.

2. Certifications. The undersigned authorized representative of the Debtors hereby certifies to the Lender that the following statements will be true and correct on the date that the requested DIP Loan is made:

(c) All DIP Loans previously requested by the Debtors have been applied in accordance with the DIP Budget and uses for such DIP Loans previously presented to the Lenders.

(d) The DIP Loans requested in this Borrowing Notice shall be used in accordance with the DIP Budget and uses set forth on the attached Schedule 1.

(e) The representations and warranties contained in the DIP Financing Agreement and the other DIP Loan Documents are true and correct in all material respects, other than representations and warranties that expressly relate solely to an earlier date (in which case they were true and correct on and as of such earlier date).

(f) No Default or Event of Default has occurred and is continuing or would result from the requested DIP Loan.

The undersigned understands that the Lenders are relying on the foregoing certification in making the requested DIP Loan to the Debtors and to induce the Lenders to make the requested DIP Loan.

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

Name:

Title:

**Schedule 1 – Collateral Information**

<b>Legal Name &amp; Jurisdiction</b>	<b>Chief Executive Office</b>	<b>Collateral Location(s)</b>	<b>Tradenames</b>
American Hospice Management Holdings, LLC, a Delaware LLC	50 North Laura Street Suite 1800 Jacksonville, FL 32202		
American Hospice Management, LLC, a Florida LLC			
Hospice of Central Virginia LLC, a Virginia LLC		<ul style="list-style-type: none"> <li>• Tappahanock office – 1328 Tappahanock Blvd, PO 2098, Tappahanock VA 22560</li> <li>• Farmville office – 202 Clark Street, Farmville VA 23901</li> <li>• Newport News office – 825 Diligence Drive, Newport News VA 23606</li> <li>• Retreat IPU – 7231 Forest Ave, Ste 100, Richmond VA 23226</li> </ul>	Hospice of Virginia
Embracing HospiceCare, LLC, a Georgia LLC			
Embracing HospiceCare South Atlanta, LLC, a Georgia LLC			
Frontier Hospice, an Oklahoma LLC			
Hospice of New Jersey, LLC, a New Jersey LLC			
FMC Hospice – Conroe, LLC, a Texas LLC			
FMC – Deep East Texas, LLC, a Texas			



LLC			
Hospice of Arizona, LC, an Arizona LLC			
Hospice Partners of Pennsylvania LLC, a Delaware LLC			

**Schedule 2 - Litigation**

1. Susan Tenebruso v. Hospice of New Jersey, Pat Skogen, and Jody Shepperd, Superior Court of New Jersey, Middlesex County
2. Tequila Brooks v. American Hospice Management -- Hospice of New Jersey, United States District Court for the District of New Jersey
3. Frontier Hospice, American Hospice Management, LLC, and American Hospice Management Holdings, LLC v. Vesta Ridenour, District Court for Oklahoma City, Oklahoma
4. Hospice of Arizona v. Kristi Mitchell, Hospice of the West, and Marc Miles, Superior Court of Arizona, Maricopa County.

**Schedule 3 – DIP Budget & DIP Loans**

## AHM - Weekly Cash Flow Forecast

	Forecast W/E 25-Mar-16	Forecast W/E 1-Apr-16	Forecast W/E 8-Apr-16	Forecast W/E 15-Apr-16	Forecast W/E 22-Apr-16	Forecast W/E 29-Apr-16	Forecast W/E 6-May-16	Total
<b>Deposits:</b>								
Medicare Deposits	-	1,353,000	-	1,353,000	-	1,353,000	-	4,059,000
Medicaid Deposits	166,000	63,000	63,000	63,000	168,000	63,000	-	586,000
Commercial Deposits	119,000	41,000	41,000	41,000	110,000	41,000	-	393,000
<b>Deposits</b>	<b>285,000</b>	<b>1,457,000</b>	<b>104,000</b>	<b>1,457,000</b>	<b>278,000</b>	<b>1,457,000</b>	<b>-</b>	<b>5,038,000</b>
<b>Accounts Payable:</b>								
Pharmacy	-	(76,000)	(17,000)	(191,000)	(38,000)	(38,000)	-	(360,000)
Medical Supplies	-	(20,000)	(5,000)	(46,000)	(9,000)	(9,000)	-	(89,000)
Rent	-	(166,000)	-	-	-	-	-	(166,000)
Medical Directors	-	(72,000)	-	-	(92,000)	-	-	(164,000)
Nursing Homes	-	-	-	(315,000)	-	-	-	(620,000)
Other Clinical Costs	(2,000)	(54,000)	(12,000)	(97,000)	(56,000)	(36,000)	(305,000)	(620,000)
Comm & Utilities	-	(17,000)	(9,000)	(24,000)	(16,000)	(16,000)	(2,000)	(259,000)
Utilities Deposit	-	-	(35,000)	-	-	-	(32,000)	(114,000)
Other	(46,000)	(152,000)	(58,000)	(199,000)	(120,000)	(192,000)	(175,000)	(942,000)
Critical vendors (pre-petition)	(75,000)	(75,000)	(75,000)	(75,000)	-	-	-	(300,000)
<b>Total A/P</b>	<b>(123,000)</b>	<b>(632,000)</b>	<b>(211,000)</b>	<b>(947,000)</b>	<b>(331,000)</b>	<b>(291,000)</b>	<b>(514,000)</b>	<b>(3,049,000)</b>
<b>Benefits</b>	<b>-</b>	<b>(258,000)</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>(253,000)</b>	<b>-</b>	<b>(511,000)</b>
<b>Payroll</b>	<b>(855,000)</b>	<b>-</b>	<b>(855,000)</b>	<b>-</b>	<b>(855,000)</b>	<b>-</b>	<b>(855,000)</b>	<b>(3,420,000)</b>
<b>Professional Services:</b>								
Debtor Lead - Dentons <sup>(1)</sup>	-	-	-	-	-	-	(465,000)	(465,000)
Debtor Local - Pachulski Stang <sup>(1)</sup>	-	-	-	-	-	-	(125,000)	(125,000)
Debtor FA - Alvarez & Marsal <sup>(1)</sup>	-	-	-	-	-	-	(75,000)	(75,000)
Inv. Banker - Harris Williams	-	-	-	-	-	-	-	-
Claims Agent - KCC <sup>(1)</sup>	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(35,000)
Ordinary Course Professionals	(5,000)	(5,000)	(20,000)	(20,000)	-	(30,000)	(30,000)	(110,000)
US Trustee	-	-	-	-	(9,750)	-	(16,250)	(26,000)
Creditors Committee Counsel	-	-	-	-	-	-	(50,000)	(50,000)
<b>Total Professional Services</b>	<b>(10,000)</b>	<b>(10,000)</b>	<b>(25,000)</b>	<b>(25,000)</b>	<b>(14,750)</b>	<b>(35,000)</b>	<b>(766,250)</b>	<b>(886,000)</b>
<b>DIP Financing</b>	<b>240,000</b>	<b>-</b>	<b>220,000</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>460,000</b>
<b>Beginning Cash Balance</b>	<b>1,871,994</b>	<b>1,408,994</b>	<b>1,965,994</b>	<b>1,198,994</b>	<b>1,683,994</b>	<b>761,244</b>	<b>1,639,244</b>	
<b>Net Inflow / (Outflow)</b>	<b>(463,000)</b>	<b>557,000</b>	<b>(767,000)</b>	<b>485,000</b>	<b>(922,750)</b>	<b>878,000</b>	<b>(2,135,250)</b>	
<b>Ending Cash Balance</b>	<b>1,408,994</b>	<b>1,965,994</b>	<b>1,198,994</b>	<b>1,683,994</b>	<b>761,244</b>	<b>1,639,244</b>	<b>(496,006)</b>	

(1) These professionals are holding partial retainers.