



ENTERED  
07/13/2015

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**IN RE:**

**UNIVERSITY GENERAL HEALTH  
SYSTEM, INC., et al.,**

**Debtors.<sup>1</sup>**

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§

**Chapter 11**

**Case No. 15-31086**

**Jointly Administered**

**FINAL ORDER (I) AUTHORIZING SECURED POST-PETITION  
FINANCING ON A SUPER PRIORITY BASIS PURSUANT TO  
11 U.S.C. §§363, 364, AND 507(B); (II) GRANTING RELIEF FROM THE  
AUTOMATIC STAY PURSUANT TO 11 U.S.C. §362; AND (III)  
GRANTING RELATED RELIEF**

This matter comes before the Court pursuant to the motion [Docket No. 31] (the "Motion") of the debtors and debtors-in-possession in the above-captioned, jointly administered cases (collectively, the "Debtors"). In the Motion, pursuant to §§ 364 and 507(b) of Title 11 of the United States Code, 11 U.S.C. §§101, et seq. (as amended, the "Bankruptcy Code") and Rules 2002, 4001(c) and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the Debtors request this Court's authorization for the Debtors to obtain post-petition financing (the "Post-Petition Financing") from MidCap Funding IV Trust, successor to its

<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: University General Health System, Inc. (2436), UGHS Autimis Billing, Inc. (3352), UGHS Autimis Coding (3425), UGHS ER Services, Inc. (6646), UGHS Hospitals, Inc. (3583), UGHS Management Services, Inc. (4100), UGHS Support Services, Inc. (3511), University General Hospital, LP (7964), and University Hospital Systems, LLP (3778).

affiliate MidCap Financial Trust (collectively, "MidCap") in the form of a secured revolving credit facility of up to an aggregate principal amount of \$16,000,000 (subject to borrowing availability), under the terms and conditions of that "Debtor in Possession Credit and Security Agreement" dated as of March 5, 2015, which is by this reference incorporated herein (as amended, supplemented or otherwise modified from time to time, the "New Loan Agreement" and, along with any promissory notes and all ancillary documents at any time executed in connection therewith, collectively, the "New Loan Documents").<sup>2</sup> In connection with the Post-Petition Financing, the Debtors request authorization (i) to grant MidCap, pursuant to Bankruptcy Code §§ 364(c) and (d), liens and security interests in all of the Collateral described in the New Loan Agreement to secure the Obligations under the New Loan Documents, including, without limitation, a continuing first priority lien and security interest with respect to all of the Debtors' Accounts; and (ii) to grant MidCap super-priority administrative expense status with respect to the Obligations under the New Loan Documents, with priority over any and all administrative expenses of the kinds specified in Bankruptcy Code §§503(b), 507(b) and 546(c) (other than as described below).

After due and sufficient notice of the Motion under the circumstances, a preliminary hearing on the Motion was held before this Court on March 4, 2015 (the "Preliminary Hearing"). After the Preliminary Hearing, the Court entered its *Interim Order (I) Authorizing Secured Post-Petition Financing On A Super Priority Basis Pursuant To 11 U.S.C. §§363, 364, And 507(b); (II) Granting Relief From The Automatic Stay Pursuant To 11 U.S.C. §362; (III) Granting Related Relief; And (IV) Scheduling A Final Hearing Pursuant To Bankruptcy Rule 4001*

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<sup>2</sup> Terms not otherwise defined in this Final Order shall have the meaning ascribed to them in the New Loan Agreement.

[Docket No. 57] (the "Interim Order") approving the Post-Petition Financing on an interim basis under the terms and conditions stated therein.

Among other things, the Interim Order: (i) set a deadline (the "Objection Deadline") of March 24, 2015 for parties to file any objections to the Court's entry of a Final Order approving the Post-Petition Financing; and (ii) set a hearing to consider final approval of the Motion for March 30, 2015 (the "Final Hearing"). Notice of the Interim Order and the scheduled Final Hearing was given to parties in accordance with Paragraph 25 of the Interim Order. Notice regarding the proposed form of Final Order also was provided to the same parties. *See* Docket No. 140.

At the request of the Debtors and the Official Joint Committee of Unsecured Creditors appointed in the Bankruptcy Cases (the "Committee") and with the consent of MidCap, the Court continued the Final Hearing to April 13, 2015, April 27, 2015, May 11, 2015, May 18, 2015, June 22, 2015, July 6, 2015 and July 13, 2015 through a series of agreed continuance orders (collectively, the "Continuance Orders"). *See* Docket Nos. 189, 229, 277, 310, 329, 377, and 412.

The notice described above being sufficient notice under the circumstances; and the continued Final Hearing on the Motion having been held before this Court on July 13, 2015; and upon the entire record made at the Preliminary Hearing and Final Hearing, including the Declaration of Edward T. Laborde, Jr. submitted in support of the Motion, and all other evidence and argument presented at the Preliminary Hearing and Final Hearing; and this Court having found good and sufficient cause appearing therefor;

**IT IS HEREBY FOUND AND CONCLUDED** that:

A. On February 27, 2015 (the "Filing Date"), the Debtors each filed a voluntary petition for relief with this Court under Chapter 11 of the Bankruptcy Code commencing the above-captioned Chapter 11 cases (the "Bankruptcy Cases"). The Debtors are continuing in possession of their property, and operating and managing their businesses, as debtors-in-possession, pursuant to Bankruptcy Code §§1107 and 1108.

B. This Court has jurisdiction over the Bankruptcy Cases and the Motion pursuant to 28 U.S.C. §§157(b) and 1334. The Motion presents a core proceeding as defined in 28 U.S.C. §157(b)(2).

C. Prior to the Filing Date, certain of the Debtors entered into that certain Credit and Security Agreement, as amended, modified, or supplemented from time to time (collectively, the "Prepetition Credit Agreement").<sup>3</sup> The Prepetition Credit Agreement provided for (i) a secured revolving credit facility of up to an aggregate principal amount of \$22,500,000, and (ii) a secured term loan in the principal amount of up to \$4,000,000. (The Prepetition Credit Agreement, as amended, supplemented or otherwise modified prior to the Filing Date, together with all collateral and ancillary documents executed in connection therewith are referred to herein as the "Prepetition Loan Documents", and the principal, interest, fees, expenses and other amounts owing under the Prepetition Loan Documents are referred to herein as the "Prepetition Obligations"). The Prepetition Obligations are guaranteed by Debtor University General Health System, Inc. (the "Guarantor"). The Guarantor is an affiliate of the Debtors, and is also a Debtor in the Bankruptcy Cases.

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<sup>3</sup> The following Debtors are borrowers under the Prepetition Credit Agreement: University General Hospital, L.P., UGHS Hospitals, Inc., University Hospital Systems, LLP, UGHS Support Services, Inc., UGHS Autimis Billing, Inc., and UGHS Autimis Coding, Inc.

D. Computed as of February 27, 2015, the Debtors admit and stipulate that they were indebted to MidCap on the Prepetition Obligations in an amount in excess of \$15,362,630.52, comprised of the unpaid principal amount of \$14,846,699.24, plus accrued interest in the amount of \$66,878.65, plus accrued fees and costs in the amount of \$449,052.63, plus other accrued and accruing interest, costs, fees (including attorneys' fees), and other amounts chargeable under the Prepetition Loan Documents.

E. The Debtors also admit and stipulate that as security for repayment of the Prepetition Obligations, MidCap holds valid, perfected, and enforceable liens and security interests in all of the collateral described in the Prepetition Credit Agreement and the other Prepetition Loan Documents, which includes, among other things, first priority liens and security interests in the Debtors' Accounts. Prior to the expiration of the Lookback Period, the Committee informed MidCap that it did not believe that MidCap properly perfected a security interest in the Debtors' prepetition commercial tort claims under the Prepetition Loan Documents. MidCap and the Committee have stipulated that both (1) the Committee's right to contest the validity and perfection of MidCap's asserted security interest in the Debtors' prepetition commercial tort claims under the Prepetition Loan Documents and (2) MidCap's rights and defenses with regard to its asserted security interest in the Debtors' prepetition commercial tort claims are hereby reserved in all respects. Subject to and as limited by this stipulation, with the expiration of the Lookback Period as provided in Paragraph 28 of the Interim Order without any timely Challenge having been made by the Committee, or by any other party (if any) with standing to make any such Challenge, (i) the Prepetition Obligations are and will be deemed and adjudicated to be allowed as provided herein, (ii) MidCap is and will be deemed and adjudicated to hold valid, perfected, and enforceable liens and security interests in

all of the collateral described in the Prepetition Loan Documents, and (iii) any affirmative claim(s) or cause(s) of action of any kind that the Debtors or their estates have against MidCap with respect to the Prepetition Loan Documents, the Prepetition Obligations, or the liens and security interests securing the Prepetition Obligations, are and will be forever barred.

F. The Debtors did not, and do not, have sufficient available sources of working capital and financing to carry on the operation of their businesses without the Post-Petition Financing. The ability of the Debtors to pay employees, maintain business relationships with vendors and suppliers, purchase new inventory, and otherwise care for their patients and finance their operations is essential to the Debtors' continued viability. In addition, the Debtors' critical need for financing is immediate. Without the Post-Petition Financing, the continued operation of the Debtors' businesses would not be possible, and serious and irreparable harm to the Debtors and their estates would occur. Serious and irreparable harm also could result to patients who depend on the Debtors and who may be unable to protect their interests. The preservation, maintenance, and enhancement of the going concern value of the Debtors, as well as the protection of others as described above, are of the utmost importance to a successful reorganization of the Debtors under Chapter 11 of the Bankruptcy Code.

G. Given the Debtors' current financial condition and capital structure, the Debtors are unable to sustain their operations with the use of cash collateral and are unable to obtain unsecured credit allowable under Bankruptcy Code §503(b)(1) as an administrative expense. The Debtors have been unable to obtain the post-petition financing that they need on terms more favorable than those provided in the New Loan Agreement. Without limiting the foregoing, necessary post-petition financing is not available to the Debtors without the Debtors granting the priming lien provided under the New Loan Agreement, the Interim Order and this Final Order.

H. To the extent that entities other than MidCap have validly perfected liens or security interests in the Debtors' Accounts (in which MidCap has been granted a continuing first position lien and security interest under the New Loan Agreement, the Interim Order and this Final Order) or any of the other Collateral, those entities' interests are adequately protected. Among other things, the Post-Petition Financing will enable the Debtors to continue operating their businesses, thereby preserving the value of the collateral for those other entities.

I. Based on the record before this Court (including the certificates of service that have been submitted by Debtors' counsel), the Court finds that sufficient and adequate notice under the circumstances of the Final Hearing and the relief requested in the Motion has been given pursuant to Bankruptcy Code §§102(1) and 364(c) and (d), and Bankruptcy Rules 2002 and 4001(c).

J. Based on the record before this Court, it appears that the Post-Petition Financing has been negotiated in good faith and at arms-length between the Debtors and MidCap, and any credit extended and loans made to the Debtors ("DIP Loans") pursuant to the New Loan Agreement, the Interim Order and this Final Order shall be deemed to have been extended, issued or made, as the case may be, in good faith as required by, and within the meaning of, Bankruptcy Code §364(e) and MidCap is entitled to the protections of Bankruptcy Code §364(e).

K. Based on the record before this Court, it appears that the terms of the Post-Petition Financing are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration.

L. This Court concludes that entry of this Final Order is in the best interests of the Debtors' estates and creditors because its implementation, among other things, will allow for the

availability to the Debtors of working capital which is necessary to sustain the operations of the Debtors' existing businesses and enhance the Debtors' prospects for successful reorganization.

M. Pursuant to Bankruptcy Code §§361 and 364, the interests of the holders of any liens (including setoff rights or similar charges) in the Debtors' Accounts which are primed by the Liens granted to MidCap are adequately protected under the facts and circumstances of these cases.

N. The only objections to the final approval of the Motion were those filed by (i) the Committee [Docket No. 300], (ii) the Texas Health and Human Services Commission ("Texas HHSC") and Texas Department of State Health Services ("Texas DSHS," and, together with Texas HHSC, "Texas HHSC/DSHS") [Docket Nos. 153 and 265], (iii) Harris County [Docket No. 154], (iv) Alpha Capital Anstalt and Osher Capital Partner LLC [Docket No. 156], (v) Texas Comptroller of Public Accounts [Docket No. 158], (vi) the United States of America on behalf of the United States Department of Health and Human Services ("HHS"), Centers for Medicare and Medicaid Services ("CMS," and together with HHS, "HHS-CMS"), and the Internal Revenue Service [Docket No. 159], and (vii) PlainsCapital Bank [Docket No. 161] (collectively, the "Objecting Parties"). The objections filed by the Objecting Parties will be referred to as an "Objection" of each of the Objecting Parties, and collectively as the "Objections." In accordance with the Court's ruling stated on the record at the July 13, 2015 Final Hearing, the Objections of the Committee and Texas HHSC/DSHS have been resolved under the terms of this Order. All of the other Objections either have been resolved under the terms of this Order or shall be overruled.

O. MidCap has been granted under the Interim Order a first priority, priming lien on all of the Debtors' pre-petition and post-petition Accounts as provided in Paragraph 8 of the



Interim Order. These Accounts include, among others, the accounts receivable generated before and after the Filing Date with respect to services performed by the Debtors under the Debtors' respective Medicare provider agreements with HHS-CMS (or any other Governmental Entity paying Medicare funds to a Debtor) (collectively, the "Medicare Receivables"), and the accounts receivable generated before and after the Filing Date with respect to services performed by the Debtors under the Debtors' respective Medicaid provider agreements with Texas HHSC/DSHS (or any other Governmental Entity paying Medicaid funds to a Debtor) (the "Medicaid Receivables").

P. Each of HHS-CMS and Texas HHSC/DSHS filed an Objection. While HHS-CMS and Texas HHSC/DSHS do not object to MidCap's first priority priming lien on Accounts other than Medicare Receivables and Medicaid Receivables, (i) HHS-CMS contends that the first priority, priming lien granted to MidCap improperly interferes with the rights of HHS-CMS, under certain circumstances, to recoup from the Medicare Receivables owing to a Debtor on account of previously made overpayments ("Overpayments") with respect to Medicare Receivables paid to that Debtor, and (ii) Texas HHSC/DSHS contends that the first priority, priming lien granted to MidCap improperly interferes with the rights of Texas HHSC, under certain circumstances, to recoup from the Medicaid Receivables owing to a Debtor on account of previously made Overpayments with respect to Medicaid Receivables paid to that Debtor.

Q. HHS-CMS does not assert that any of the Debtors currently are liable for Overpayments in relation to Medicare Receivables. Texas HHSC/DSHS does not assert that any of the Debtors currently are liable for Overpayments in relation to Medicaid Receivables. However, HHS-CMS and Texas HHSC/DSHS reserve all rights of recoupment with respect to any Overpayments that may be subsequently identified.

R. The Objections of HHS-CMS and Texas HHSC/DSHS with respect to recoupment of Overpayments are addressed through the terms of this Final Order.

S. Each of the foregoing findings by the Court will be deemed a finding of fact if and to the full extent that it makes and contains factual findings and a conclusion of law if and to the full extent that it makes legal conclusions.

Based upon the foregoing findings and conclusions, and upon the record made before this Court at the Preliminary Hearing and the Final Hearing, and good and sufficient cause appearing therefor;

**IT IS HEREBY ORDERED** that:

1. The Motion is granted, subject to the terms and conditions set forth in this Final Order. All objections to the entry of this Final Order have either been resolved as stated on the record at the Final Hearing, or shall be overruled.

2. In accordance with the authority granted to the Debtor in the Interim Order (which authority is hereby ratified and confirmed), the execution and delivery of the New Loan Agreement by the Debtors has been (and is) authorized and approved. Further, the Debtors are expressly authorized and empowered to execute and deliver to MidCap any other document of any kind required to be executed and delivered in connection with the New Loan Agreement, including, without limitation, the proposed Amendment No. 1 To Debtor In Possession Credit And Security Agreement attached to this Final Order as **Exhibit A** (the "Amendment"), which amends the New Loan Agreement. The Debtors are each authorized and obligated to comply with and perform all of the terms and conditions contained in the New Loan Agreement and other New Loan Documents, and the Debtors are each authorized and obligated to repay amounts owing, with interest and any other charges, to MidCap in accordance with and subject to the

terms and conditions set forth in the New Loan Documents and this Final Order. The Debtors are further authorized and obligated to pay all fees and expenses, including, without limitation, all reasonable fees and expenses of professionals engaged by MidCap in accordance with the terms of the New Loan Agreement. The professional fees and expenses incurred by MidCap are not subject to the provisions of Bankruptcy Code §§327, 328, 329, 330 or 331, and will be paid pursuant to the New Loan Agreement without further order of this Court. Commencing on or before July 31, 2015 and on a monthly basis thereafter, MidCap will inform the Committee of the amount of fees and expenses incurred by MidCap that are included in the Obligations (defined below). All loans made under the New Loan Agreement and interest thereon, and all fees, costs, expenses, indebtedness, obligations and liabilities of the Debtors to MidCap under or in respect of the New Loan Documents, the Interim Order and this Final Order are referred to herein as the "Obligations."

3. The Debtors are expressly authorized to borrow from MidCap a total of up to \$16,500,000 of DIP Loans, on the terms and subject to the conditions and limitations in availability set forth in the New Loan Documents and this Final Order.

a. The Debtors are authorized to use the proceeds of the DIP Loans in the operation of the Debtors' businesses, provided that (i) the proposed borrowing is in compliance with the terms of the New Loan Agreement and this Final Order, and (ii) the Debtors' use of funds is in accordance with the "Budget" prepared by the Debtors and approved by MidCap as defined in the New Loan Agreement (the "Budget"), so that the Debtors' use of funds does not exceed either the aggregate weekly amounts shown in the Budget, or, on a line item basis, 10% over the line item amount shown in the Budget, provided that individual line items for bankruptcy professional fees may vary from amounts stated in the Budget so long as the

aggregate amount for bankruptcy professional fees does not exceed \$300,000 per month by more than 10% in any given month. A copy of the initial Budget is attached is attached to the Interim Order as Exhibit "A." A copy of the Budget in effect as of the date of the Final Hearing is attached to this Final Order as **Exhibit B.**

b. From and after the date of this Final Order, the Debtors shall send to the Committee each updated Budget they propose to MidCap in accordance with Section 4.1 of the New Loan Agreement when sent to MidCap. The Committee may review and submit to the Debtors and MidCap concerns relating to any proposed Budget. If such concerns are not resolved, the Committee may file an objection with the Court with respect to any line items in an updated Budget after it has been approved by MidCap (provided, however, that the updated Budget approved by MidCap will be effective unless and until the Court enters an Order with respect to any such Committee objection).

c. The Debtors and Cambridge Properties ("Cambridge") agree that (i) Debtor University General Hospital, LP has paid rent for March, April, May, June and July, 2015 pursuant to the terms of that certain Lease Agreement originally by and between Cambridge and University Hospital Systems, LLP dated as of July 21, 2005 (as subsequently amended and including any related agreements, the "Cambridge Lease"), and (ii) Debtor University General Hospital, LP shall pay the monthly rental payments for months from and after August 2015 when due pursuant to the terms of the Cambridge Lease. So long as the foregoing payments are made in accordance with the Cambridge Lease, Cambridge shall not seek to modify the automatic stay to exercise its rights under the Cambridge Lease, seek a determination by this Court that the Cambridge Lease has been terminated or otherwise seek to remove the Debtors from the leased premises covered by the Cambridge Lease until the earlier of September 25, 2015 or the date of

the entry of an Order in these Bankruptcy Cases confirming a plan of reorganization. Acceptance of any payments by Cambridge under the Interim Order or this Final Order is without prejudice to Cambridge's rights to assert that the Cambridge Lease was terminated prior to the Filing Date and the Debtors' and MidCap's rights to contest same and Cambridge, MidCap and the Debtors reserve all of their respective claims, rights, and remedies under, and with respect to, the Cambridge Lease and the related Landlord Agreement.

4. The Debtors shall maintain and comply with the existing cash management systems required and established pursuant to the Prepetition Credit Agreement, including, without limitation, all provisions concerning the Lockbox, Lockbox Account and Payment Account (owned by MidCap) set forth in the Prepetition Credit Agreement (as continued by the New Loan Agreement). The Debtors will continue to deposit, sequester, and segregate all of the proceeds from the Debtors' Accounts and other Collateral in the existing Lockbox as provided in the New Loan Agreement. All funds paid into the Lockbox shall be deposited into the related Lockbox Account, and then immediately transferred into the Payment Account. MidCap shall be entitled to apply all funds from the Payment Account as provided in the New Loan Agreement and this Final Order. Without limiting the foregoing in any way, the Debtors immediately and continuously will direct their Account Debtors to send directly to the Lockbox all proceeds of Accounts of the Debtors.

5. As provided in the New Loan Agreement, MidCap is authorized to apply, on a daily basis, all funds transferred into the Payment Account to reduce permanently the outstanding Prepetition Obligations.

6. The Debtors have waived and released pursuant to the Interim Order, and hereby confirm that they waive and release, any right to, and shall be forever barred from any attempt to,

object to, challenge or seek to avoid, the amount, validity, or enforceability of the Prepetition Obligations or MidCap's liens and security interests in the collateral securing the Prepetition Obligations. The Debtors also hereby waive and release any and all claims or causes of action of any kind against MidCap with respect to the Prepetition Loan Documents, the Prepetition Obligations, or the liens and security interests securing the Prepetition Obligations, including, without limitation, any avoidance actions under Chapter 5 of the Bankruptcy Code. Notwithstanding the foregoing, the Committee's right to contest the validity and perfection of MidCap's asserted security interest in the Debtors' prepetition commercial tort claims under the Prepetition Loan Documents and MidCap's rights and defenses with regard to its asserted security interest in the Debtors' prepetition commercial tort claims are hereby reserved in all respects.

7. MidCap shall have a modification of the automatic stay and any other applicable stay(s) or injunction(s) as provided herein. Pursuant to such stay relief, all stays and injunctions in the Bankruptcy Cases, including, but not limited to, the automatic stay under Bankruptcy Code §362(a), will be modified as to MidCap and with respect to the enforcement of its remedies against the Collateral under the New Loan Documents. In accordance with such stay relief modifying the automatic stay and any and all other applicable stays and injunctions: (i) MidCap will have the right to enforce its remedies against the Collateral in the manner provided in Paragraph 14 of this Final Order; and (ii) the Debtors expressly and irrevocably waive and release and shall be barred from asserting (on their own behalf and as the representatives of their estates) any right to claim, in this Court or in any other federal court or state court, that any stay, injunction, or other restraint or prohibition of any kind should be issued, imposed, or reimposed against or with respect to MidCap, or any item of Collateral. The Debtors' waiver and release

stated above includes, without limitation, any and all proceedings for injunctive relief of any kind filed by or on behalf of the Debtors under authority of Section 105 or Section 362 of the Bankruptcy Code, Bankruptcy Rule 7065, Rule 65 of the Federal Rules of Civil Procedure, or any other or similar substantive or procedural provisions of federal law, or state law, or federal or state rules of procedures. Without limiting the foregoing, the Debtors or other parties in interest will have the limited right to challenge the occurrence of an Event of Default under the New Loan Agreement as stated below in Paragraph 14 of this Final Order.

8. In accordance with Bankruptcy Code §§364(c)(1) and 507(b), the Obligations shall constitute claims (the "Super-Priority Claims") with priority in payment over any and all administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including, but not limited to, Bankruptcy Code §§105, 326, 328, 330, 331, 503(b), 507(a), 507(b) and 546(c), and shall at all times be senior to the rights of the Debtors or any other creditor in the Bankruptcy Cases. No cost or expense of administration under Bankruptcy Code §§105, 364(c)(1), 503(b), 507(b) or otherwise, shall be senior to, equal to, or pari passu with, the Super-Priority Claims of MidCap arising out of the Obligations, subject only to the Carve-Out (defined below). The Prepetition Obligations shall not constitute Super-Priority Claims.

9. As security for the Obligations and for the Prepetition Obligations, and as provided in the New Loan Documents and the Interim Order (and confirmed in this Final Order), MidCap shall have and has been granted (effective and continuing without the necessity of the execution, filing and/or recordation of mortgages, security agreements, control agreements, patent security agreements, trademarks security agreements, pledge agreements, financing statements or otherwise), valid and perfected security interests and liens (the "Liens") in all



present and after-acquired personal and real property of the Debtors as described in the New Loan Agreement (defined in the New Loan Agreement as the "Collateral"); provided, however, that the Collateral does not include any avoidance actions pursuant to Bankruptcy Code §§ 544, 545, 547, 548, and 553(b) and any proceeds therefrom; and provided, further, that the Collateral does not include the Debtors' interest in the leasehold under the Cambridge Lease. The Liens in the Collateral held by or granted to MidCap as security for the Obligations and for the Prepetition Obligations shall have the following priority:

(a) MidCap's Liens in the Collateral in which MidCap holds existing first priority liens and security interests under the Prepetition Loan Documents (whether such Collateral was existing on the Filing Date or thereafter arises) shall continue as first priority, senior, perfected Liens securing the full amount of the Obligations and the Prepetition Obligations. Without limiting the foregoing, and notwithstanding any other provision of the New Loan Agreement, the Interim Order or this Final Order, MidCap's Liens shall include, inter alia, first priority, senior, perfected liens and security interests in all of the Debtors' pre-petition and post-petition Accounts (as defined in the New Loan Agreement), and all proceeds therefrom.

(b) MidCap's Liens in the Collateral that is not otherwise encumbered by a valid and perfected, non-avoidable security interest or lien prior and superior to the liens and security interests held by MidCap under the Prepetition Loan Documents shall be first priority, senior, perfected Liens securing the Obligations and the Prepetition Obligations.

(c) MidCap's Liens in the Collateral other than Accounts in which any other creditor holds a valid and perfected, non-avoidable security interest or lien prior and superior to the liens and security interests held by MidCap under the Prepetition Loan Documents shall be perfected Liens securing the Obligations and the Prepetition Obligations junior only to such existing valid and perfected, non-avoidable security interest or lien in that Collateral (the "Prepetition Senior Liens").

(d) Pursuant to Bankruptcy Code Section 364(d)(1), MidCap's first priority Lien in pre-petition and post-petition Accounts of the Debtors (and proceeds therefrom) will be senior to



and prime any valid lien (if any) asserted by any Governmental Authority or any other creditor with respect to the Accounts of the Debtors.

Without limiting the foregoing, MidCap's first priority Lien on the Debtors' Accounts (and proceeds therefrom) shall be senior to any right of a holder of a claim, including without limitation, any mortgagee, Governmental Authority or landlord, that arose, or is deemed to arise, prior to the Filing Date, of any right of set off, tax lien, tax levy, or to otherwise assert a charge against any such Accounts (except only with respect to any recoupment rights as set forth in Paragraph 11 of this Final Order). ("Governmental Authority," as used in this Final Order, means and includes any "governmental unit" as defined in Bankruptcy Code §101(27) and specifically includes, without limitation, the federal and state agencies and their intermediaries administering the Medicare and Medicaid programs with which the Debtors deal.) In addition, pursuant to Bankruptcy Code §§105 and 362, any such holder shall be stayed and prohibited from asserting any such setoff or other charge against the Debtors' Accounts (except only with respect to any recoupment rights as set forth in Paragraph 11 of this Final Order).

10. The Liens and Super-Priority Claims granted to MidCap pursuant to the New Loan Agreement, the Interim Order and this Final Order shall be subject only to the following (collectively, the "Carve-Out"):

(a) After the Termination Date of the New Loan Agreement (a "Carve-Out Event"), the payment of allowed professional fees and disbursements incurred by the professionals retained, pursuant to Bankruptcy Code §§327 or 1103(a), by the Debtors and any statutory committees, patient care ombudsman, trustee, examiner or other representative or professional appointed in the Bankruptcy Cases, and any unpaid fees of the United States Trustee (collectively, the "Professional Fees"), in an aggregate amount not to exceed \$300,000, exclusive of any retainers paid by the Debtors prior to the date of this Final Order, and exclusive of any amounts funded to the Debtors pursuant to the New Loan

Agreement which are held and segregated by the Debtors for payment of estate professionals.

(b) If a cash sale of the Debtors' assets acceptable to MidCap closes (and MidCap receives payment from sale proceeds at closing) on or before November 1, 2015, (i) MidCap will receive payment from the cash sale proceeds at closing (to be applied as a payment on the Obligations) totaling (A) the amount necessary to repay all outstanding Overadvances, plus (B) the first \$11,500,000 of cash sale proceeds (after repayment of Overadvances), plus (C) 90% of the remaining cash sale proceeds (after MidCap has received payment of the outstanding Overadvances plus \$11,500,000) until the Obligations have been repaid in full, and (ii) 10% of the remaining cash sale proceeds (after MidCap has received payment of the outstanding Overadvances plus \$11,500,000), in an amount of up to \$500,000, will be reserved for payment of Professional Fees.

(c) The Liens (but not the Super-Priority Claims) granted pursuant to the Interim Order and this Final Order to MidCap shall be further subject and subordinate to the Prepetition Senior Liens to the extent they encumber assets other than the Debtors' Accounts.

(d) The Carve-Out will not be available to pay Professional Fees and/or disbursements incurred in connection with the assertion of any claims or causes of action against MidCap, including without limitation any avoidance action under Chapter 5 of the Bankruptcy Code, any objection or other challenge to the amount, validity or enforceability of any claims or liens of MidCap, or any discovery proceedings in anticipation thereof.

(e) The Carve-Out will not be available if and to the extent that the Debtors have other unencumbered or less than fully encumbered assets available to pay Professional Fees when such fees are approved by the Court for payment by a final, and non-appealable order .

(f) None of the DIP Loans or proceeds therefrom and none of the cash collateral subject to liens or security interests in favor of MidCap (notwithstanding the Carve-Out) may be used to fund, directly or indirectly, any effort to: (i) object to or contest in any manner, or raise any defenses to the validity, perfection, priority or enforceability of the Obligations owing to MidCap, or the liens in favor of MidCap securing such Obligations; (ii) object

to or contest in any manner, or raise any defenses to the validity, perfection, priority or enforceability of the Prepetition Obligations owing to MidCap, or the liens in favor of MidCap securing the Prepetition Obligations (provided, however, that this prohibition on the use of DIP Loan proceeds or cash collateral in this subsection (ii) does not apply to the Committee's investigation of the validity, perfection, priority or enforceability of the Prepetition Obligations and the liens in favor of MidCap securing them); or (iii) assert any claims or causes of action against MidCap of any type, including, without limitation, any avoidance actions under Chapter 5 of the Bankruptcy Code, or any claim or cause of action against MidCap in its capacity as lender under the Post-Petition Financing, the Prepetition Credit Agreement or otherwise.

11. Except as expressly provided in this paragraph, no Person will be permitted to surcharge the Collateral under Bankruptcy Code §506(c) or to obtain a lien with respect to the Collateral which is equal or senior to the Liens of MidCap on the Collateral (other than with respect to the Prepetition Senior Liens as stated herein), subject only to the following:

a. If and to the extent HHS-CMS (or any other Governmental Entity paying Medicare funds to a Debtor) asserts that any Debtor is liable for any Overpayments in relation to Medicare Receivables, the following shall apply:

(i) Nothing in this Final Order shall affect the rights of HHS-CMS (or any other Governmental Entity paying Medicare funds to a Debtor) from exercising its rights of recoupment. The Debtors, MidCap and the Committee fully reserve all of their rights and remedies to challenge any recoupment rights asserted or exercised by HHS-CMS.

(ii) Upon any Debtor's receipt of any notice from HHS-CMS with respect to any recoupment or charge, proposed recoupment or charge, or payment hold in relation to any Medicare Receivables, the Debtors shall immediately notify MidCap (including, without limitation, providing to MidCap a copy of any such written notice, and any supporting information, if any, provided to the Debtors with such notice) in order to inform MidCap that such notice has been given to any of the Debtors by HHS-CMS.

b. If and to the extent Texas HHSC (or any other Governmental Entity paying Medicaid funds to a Debtor) asserts that any Debtor is liable for any Overpayments in relation to Medicaid Receivables, the following shall apply:

(i) Nothing in this Final Order shall affect the rights of Texas HHSC (or any other Governmental Entity paying Medicaid funds to a Debtor) from exercising its rights of recoupment. The Debtors, MidCap and the Committee fully reserve all of their rights and remedies to challenge any recoupment rights asserted or exercised by Texas HHSC.

(ii) Upon any Debtor's receipt of any notice from Texas HHSC with respect to any recoupment or charge, proposed recoupment or charge, or payment hold in relation to any Medicaid Receivables, the Debtors shall immediately notify MidCap (including, without limitation, providing to MidCap a copy of any such written notice, and any supporting information, if any, provided to the Debtors with such notice) in order to inform MidCap that such notice has been given to any of the Debtors by Texas HHSC.

c. In the event any of the Bankruptcy Cases are converted to a proceeding under Chapter 7, a Chapter 7 trustee appointed in such Chapter 7 case will not be precluded by this Final Order from seeking to surcharge the Collateral under Bankruptcy Code §506(c) for expenses incurred by the Chapter 7 trustee after the conversion date only (and MidCap will have, and fully reserves, all of its rights to oppose any such surcharge claim).

d. Except as expressly provided in this paragraph, the prohibition on surcharging or priming of the liens of MidCap on the Collateral will survive the termination of the New Loan Agreement such that no Person, including but not limited to Governmental Authorities, will be permitted to obtain a lien (through any means, including setoff) which is equal or senior to the liens of MidCap on the Collateral.

e. Upon the termination of the New Loan Agreement, the Bankruptcy Court will retain jurisdiction over the Collateral for the limited purpose of enforcing this paragraph.

12. The Debtors have waived and released, and are barred from asserting, any and all claims under Bankruptcy Code §506(c) for any costs and expenses incurred in connection with the preservation, protection or enhancement of, or realization by MidCap upon, the Collateral. MidCap will not be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the Collateral. As provided in the Interim Order and confirmed by this Final Order, the post-petition Liens granted to MidCap on the Collateral by virtue of the Interim Order, this Final Order and the New Loan Documents will be (and hereby are) adjudicated as first, valid, and perfected as against all third parties (except for the holders of the Prepetition Senior Liens with respect to the Collateral other than the Debtors' Accounts), without regard to applicable federal, state, or local filing or recording statutes, *nunc pro tunc* as of the Filing Date, and without further action of any party, including MidCap; provided, that MidCap may, but need not, take such steps as it deems desirable and applicable to comply with such statutes, and all financing statements which are filed listing Debtors as debtor and MidCap as secured party, all mortgages or similar instruments which are filed granting to MidCap liens upon and security interests in Collateral shall be deemed to have been filed and the security interest and liens evidenced thereby will be deemed perfected *nunc pro tunc* as of the Filing Date.

13. As long as any portion of the Obligations or the Prepetition Obligations remains unpaid, or any of the New Loan Documents or Prepetition Loan Documents remain in effect, the Debtors shall not request, and the Bankruptcy Court will not enter any Order approving or authorizing (under Bankruptcy Code §§105 or 364, or otherwise) (i) the granting of any lien or security interest in any of the Collateral in favor of any party other than MidCap, or (ii) the obtaining of credit or the incurring of indebtedness that is entitled to super-priority

administrative status, in either case equal or superior to that granted to MidCap pursuant to the Interim Order and this Final Order, unless, in connection with any transaction cited in clause (i) or (ii) of this Paragraph, such request by the Debtors seeks to authorize and direct and such Order requires that the full amount of the Obligations and the Prepetition Obligations shall first be paid indefeasibly and in full.

14. Upon the occurrence and during the continuance of an Event of Default, MidCap may, acting pursuant to the New Loan Agreement, exercise its rights and remedies and take all or any of the following actions without further relief from the automatic stay pursuant to Bankruptcy Code §362(a) or any other applicable stay or injunction (which will be modified by the Final Order), or further order of or application to this Court: (a) cease making DIP Loans to the Debtors; (b) declare the principal and accrued interest, fees, and other liabilities constituting the Obligations to be immediately due and payable; (c) take possession of the Collateral and enforce rights against any Collateral in the possession of MidCap; (d) charge a default rate of interest as set forth in the New Loan Agreement; and (e) take any other action or exercise any other right or remedy permitted to MidCap under the New Loan Documents, this Final Order, or by operation of law. Notwithstanding modification of the stay, it shall not be terminated, and MidCap shall not complete the enforcement of its remedies, pending a final stay relief hearing before this Court which MidCap may obtain as an emergency hearing upon five (5) business days' notice, *depending on court availability.* At such hearing, the Debtors or other parties in interest will have the limited right

to challenge the occurrence of an Event of Default. The hearing will be limited strictly to the issue of whether an Event of Default has occurred. No other arguments or issues relating to MidCap's enforcement of its rights or remedies may be presented for adjudication by the Court and no other relief against MidCap may be requested. Pending the outcome of the hearing,

MidCap will refrain from completing enforcement of its remedies with respect to the Collateral; provided, however, that, MidCap's rights to accelerate the Obligations and/or cease making DIP Loans shall not be delayed or otherwise limited and MidCap shall be entitled to take all actions which it considers, in good faith, to be necessary to protect against loss or diminution of its Collateral.

15. As provided in the New Loan Agreement, MidCap will provide DIP Loans to the Debtors only during the term of the New Loan Agreement (including any earlier termination thereof), under the terms and conditions set forth in the New Loan Agreement and this Final Order.

16. The Debtors are authorized to perform all acts, and execute and comply with the terms of such other documents, instruments and agreements in addition to the New Loan Documents, as MidCap may reasonably require, as evidence of and for the protection of the Obligations, or which otherwise may be deemed reasonably necessary by MidCap to effectuate the terms and conditions of this Final Order and the New Loan Documents. The Debtors and MidCap are hereby authorized to implement, in accordance with the terms of the New Loan Agreement, any non-material modifications of the New Loan Agreement without further order of this Court.

17. Without limiting the rights of access and information afforded MidCap under the New Loan Documents, the Debtors shall be required to afford representatives, agents and/or employees of MidCap access to the Debtors' premises and their records in accordance with the New Loan Documents and shall cooperate, consult with, and provide to such persons all such non-privileged information and information not subject to a binding confidentiality agreement, as they may reasonably request. The Debtors shall also provide to MidCap, at the time filed or



provided, all statements, schedules or financial reports which the Debtors file in the Bankruptcy Cases or provide to the United States Trustee in accordance with applicable Bankruptcy Rules, local bankruptcy rules, or guidelines of the United States Trustee.

18. The Debtors, and each of them, shall be liable for all Obligations and all Prepetition Obligations.

19. Based on the record presented, this Court has found that MidCap is extending credit and making DIP Loans to the Debtors in good faith. Accordingly, MidCap is entitled to the full protection of Bankruptcy Code §364(e) with respect to the Obligations and the Liens created, adjudicated or authorized by this Final Order in the event that this Final Order or any finding, adjudication, or authorization contained herein is stayed, vacated, reversed or modified on appeal. Any stay, modification, reversal or vacation of this Final Order shall not affect the validity and enforceability of any Obligations of the Debtors to MidCap incurred pursuant to the Interim Order and this Final Order, or the validity, priority or enforceability of any of the Liens granted to MidCap under the Interim Order and this Final Order. Notwithstanding any such stay, modification, reversal or vacation, all Liens granted under the Interim Order and this Final Order, all DIP Loans made pursuant to the Interim Order and this Final Order in respect of the New Loan Agreement and all Obligations incurred by the Debtors pursuant hereto prior to the effective date of any such stay, modification, reversal or vacation shall be governed in all respects by the original provisions of this Final Order, and MidCap shall be entitled to all the rights, privileges and benefits, including without limitation, the liens, security interests and first priorities granted herein with respect to all such Obligations.

20. The provisions of this Final Order and any actions taken pursuant hereto shall survive entry of any order which may be entered (a) confirming any plan of reorganization in the



Bankruptcy Cases (and, to the extent not satisfied in full, the Obligations shall not be discharged by the entry of any such order, or pursuant to Bankruptcy Code §1141(d)(4), the Debtors having hereby waived such discharge); (b) converting any of the Bankruptcy Cases to a Chapter 7 case; or (c) dismissing any of the Bankruptcy Cases, and the terms and provisions of this Final Order as well as the Super-Priority Claims and Liens granted pursuant to the Interim Order, this Final Order and the New Loan Documents shall continue in full force and effect notwithstanding the entry of such order, and such Super-Priority Claims and Liens shall maintain their priority as provided by this Final Order until all of the Obligations are paid indefeasibly and in full.

21. Any Plan of Reorganization filed by the Debtors (including, but not limited to, any amendment or modification of a Plan of Reorganization, whether before or after confirmation) shall provide for payment and performance in full of all of the Obligations on the earlier of the effective date or thirty (30) days after confirmation of the Plan of Reorganization. Nothing in the New Loan Agreement or this Final Order shall be construed as a consent by MidCap, or an approval by MidCap, of the terms of any Plan of Reorganization or any amendment or modification thereto.

22. As long as any portion of the Obligations remains unpaid, or any New Loan Document remains in effect, the Debtors shall not assume, and no Order shall be entered authorizing the assumption of, any provider agreements between the Debtors and any Governmental Authority without the prior written consent of MidCap.

23. Except as otherwise provided in this Final Order, pursuant to Bankruptcy Code §552(a), all property acquired by the Debtors after the Filing Date, including, without limitation, all Collateral pledged to MidCap pursuant to the New Loan Agreement, the Interim Order and this Final Order, is not and shall not be subject to a lien of any other entity resulting from any

security agreement entered into by the Debtors prior to the Filing Date or otherwise, except only to the extent that such property constitutes proceeds of property of the Debtors existing on or before the Filing Date.

24. MidCap shall be deemed to be a party-in-interest for all purposes in the Bankruptcy Cases with the right and opportunity to appear and be heard on all matters arising in the Bankruptcy Cases, including, without limitation, (i) the employment and payment of professionals by the Debtors' estates, (ii) the sale of any estate property, (iii) any plan of reorganization proposed in the Bankruptcy Cases, and (iv) any proposed conversion or dismissal of any of the Bankruptcy Cases.

25. The provisions of this Final Order shall be binding upon and inure to the benefit of MidCap, the Debtors, and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in the Bankruptcy Cases as a legal representative of the Debtors or their estates.

26. If there is any inconsistency between the terms of the New Loan Agreement and the provisions of this Final Order, the provisions of this Final Order shall control.

27. To the extent there is any holder of a Prepetition Senior Lien in the Debtors' Accounts which is affected by the first and prior Lien in Accounts granted to MidCap under the Interim Order and this Final Order, and that holder can demonstrate that it did not receive actual or constructive notice of the Motion, the holder's sole and exclusive remedy is, and shall be limited to, requesting that other or additional adequate protection of its Prepetition Senior Lien in the Debtors' Accounts must be provided by the Debtors. The first priority liens in the Debtors' Accounts and all other rights granted to MidCap pursuant to the Interim Order and this Final Order shall not be affected thereby in any way.

28. The Interim Order provided that, no later than the date seventy five (75) days after the Filing Date (the "Lookback Period"), any statutory committee (a "Committee") in the Bankruptcy Cases or any other party (if any) with standing to make any such Challenge could object to, challenge, or seek to avoid the amount, validity, or enforceability of the Prepetition Obligations or MidCap's liens and security interests in the collateral securing the Prepetition Obligations (separately and collectively, a "Challenge"). Prior to the expiration of the Lookback Period, the Committee informed MidCap that it did not believe that MidCap properly perfected a security interest in the Debtors' prepetition commercial tort claims under the Prepetition Loan Documents. MidCap and the Committee have stipulated that both (a) the Committee's right to contest the validity and perfection of MidCap's asserted security interest in the Debtors' prepetition commercial tort claims under the Prepetition Loan Documents and (b) MidCap's rights and defenses with regard to its asserted security interest in the Debtors' prepetition commercial tort claims are hereby reserved in all respects. Apart from this stipulation, no such action, objection or other Challenge was commenced by a Committee (or any other party (if any) with standing) within the Lookback Period. Accordingly, subject only to the foregoing stipulation between MidCap and the Committee, the Prepetition Obligations shall be deemed and adjudicated finally and indefeasibly as valid and enforceable, MidCap's liens and security interests in the collateral securing the Prepetition Obligations shall be deemed and adjudicated finally and indefeasibly as valid, enforceable and perfected liens and security interests in that collateral, and any affirmative claim(s) or cause(s) of action of any kind against MidCap with respect to the Prepetition Loan Documents, the Prepetition Obligations, or the liens and security interests securing the Prepetition Obligations, shall be forever barred. The Debtors hereby waive and release, and shall be forever barred from asserting, any right to object to, challenge or seek to

avoid, the amount, validity, or enforceability of the Prepetition Obligations or MidCap's liens and security interests in the collateral securing the Prepetition Obligations. Further, no objection or other action by any Committee or by any other party shall affect in any way the validity, enforceability or amount of the post-petition Obligations owing under the New Loan Documents, or the validity, enforceability, perfection or priority of MidCap's Liens granted to MidCap under the New Loan Documents, the Interim Order and this Final Order.

29. The Court has and will retain jurisdiction to enforce this Final Order according to its terms.

Dated: July 13, 2015



**THE HONORABLE LETITIA Z. PAUL**  
**UNITED STATES BANKRUPTCY JUDGE**

**AMENDMENT NO. 1 TO DEBTOR IN POSSESSION  
CREDIT AND SECURITY AGREEMENT**

THIS AMENDMENT NO. 1 TO DEBTOR IN POSSESSION CREDIT AND SECURITY AGREEMENT (this "**Amendment**") is made and entered into as of July \_\_\_\_, 2015 by and among UNIVERSITY GENERAL HEALTH SYSTEM, INC., a Nevada corporation ("**Parent**"), UGHS HOSPITALS, INC., a Texas corporation, UNIVERSITY HOSPITAL SYSTEMS, LLP, a Delaware limited liability partnership, UNIVERSITY GENERAL HOSPITAL, LP, a Texas limited partnership ("**Houston**"), UGHS MANAGEMENT SERVICES, INC., a Texas corporation ("**Management Services**"), UGHS AUTIMIS BILLING, INC., a Texas corporation, UGHS AUTIMIS CODING, INC., a Texas corporation, UGHS SUPPORT SERVICES, INC., a Texas corporation, UGHS ER SERVICES, INC., a Texas corporation ("**ER Services**"), and any additional borrower that may hereafter be added to the DIP Credit Agreement referenced below (each individually as a "**Borrower**", and collectively as "**Borrowers**"), MIDCAP FUNDING IV TRUST, a Delaware statutory trust, as successor by assignment to MidCap Financial Trust, individually as a Lender, and as Agent, and the financial institutions or other entities from time to time parties to the DIP Credit Agreement referenced below, each as a Lender.

**RECITALS**

A. Borrowers, Lenders, and Agent are parties to that certain Debtor In Possession Credit And Security Agreement dated as of March 5, 2015 (as amended hereby, and as it may be further amended, modified or restated from time to time, the "**DIP Credit Agreement**"). Pursuant to the DIP Credit Agreement, Lenders have made certain Revolving Loans to Borrower.

B. On February 27, 2015, each of the Borrowers filed a voluntary petition for relief under the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas (the "**Bankruptcy Court**"). The Borrowers are continuing to operate their respective businesses and manage their properties as debtors and debtors in possession under sections 1107 and 1108 of the Bankruptcy Code.

C. On March 4, 2015, the Bankruptcy Court entered its Interim Order approving the DIP Credit Agreement and the lending transactions thereunder. On July \_\_\_\_, 2015, the Bankruptcy Court entered its Final Order approving on a final basis the DIP Credit Agreement and the lending transactions thereunder.

D. Borrowers have requested certain financial accommodations and other amendments to the DIP Credit Agreement. In reliance upon the representations, warranties, acknowledgments, and agreements made herein by Borrowers and upon the entry of the Final

7/12/15 Q&B DRAFT

Order, Agent and Lenders are willing to accommodate Borrowers' request for amendments to the DIP Credit Agreement, but only under the terms and conditions set forth in this Amendment.

### AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the premises and agreements, provisions and covenants herein contained, Borrowers, Lenders and Agent agree as follows:

1. Definitions. Unless otherwise defined in this Amendment, all capitalized terms used herein shall have the meanings ascribed to them in the DIP Credit Agreement.
2. Recitals. The parties hereby acknowledge that all of the Recitals stated above are true and accurate and by this reference are incorporated into and made a part of the body of this Amendment.
3. Financing Document. This Amendment shall constitute a Financing Document.
4. Effectiveness. This Amendment shall become effective as of the date stated above when (i) it is duly executed by each of Borrowers, Lenders, and Agent, and (ii) the Final Order has been entered by the Bankruptcy Court.
5. Amendment To Credit Agreement. The Credit Agreement is hereby amended as follows:

5.1 Borrowing Base. The definition of "Borrowing Base" in Section 1.1 of the DIP Credit Agreement is hereby deleted and replaced in its entirety with the following:

**"Borrowing Base"** means:

(a) On any Business Day during the period beginning on July 13, 2015 through August 15, 2015, the product of one hundred percent (100%) *multiplied by* the aggregate amount of Collections received by Agent the immediately prior Business Day;

(b) On any Business Day during the period from August 16, 2015 through August 31, 2015, the product of ninety five percent (95%) *multiplied by* the aggregate amount of Collections received by Agent the immediately prior Business Day; and

(c) On any Business Day from September 1, 2015 through the Commitment Expiry Date, the product of ninety percent (90%) *multiplied by* the

7/12/15 Q&B DRAFT

aggregate amount of Collections received by Agent the immediately prior Business Day.

5.2 Reorganization Milestones. The definition of "Reorganization Milestones" in Section 1.1 of the DIP Credit Agreement is hereby deleted and replaced in its entirety with the following:

**"Reorganization Milestones"** means, collectively: (a) the filing by the Borrowers in the Bankruptcy Cases of either an Asset Sale Motion or a Plan of Reorganization on or before September 1, 2015; (b) on or before October 1, 2015, (i) the entry of an order by the Bankruptcy Court satisfactory to Agent approving the asset sale transaction pursuant to the Asset Sale Motion, or (ii) the entry of a Confirmation Order by the Bankruptcy Court; and (d) on or before November 1, 2015, the occurrence of either (i) the closing of the asset sale transaction pursuant to the Asset Sale Motion, or (ii) the Plan Effective Date.

5.3 Temporary Increase in Revolving Loan Commitment Amount. During the period from the date of this Amendment through August 15, 2015 only, the Revolving Loan Commitment Amount for Lender MidCap Funding IV Trust will be increased from \$16,000,000.00 to \$16,500,000.00. From and after August 16, 2015, the Revolving Loan Commitment Amount for Lender MidCap Funding IV Trust will return to, and will thereafter be, \$16,000,000.00.

5.4 Temporary Increase in Limit on Overadvances. During the period from the date of this Amendment through August 15, 2015 only, the limit on the aggregate amount of Overadvances outstanding stated in Section 2.1(b)(i) will be increased from \$750,000.00 to \$1,250,000.00. From and after August 16, 2015, the limit on the aggregate amount of Overadvances outstanding stated in Section 2.1(b)(i) will return to, and will thereafter be, \$750,000.00.

5.5 Temporary Suspension of Deadlines for Repayment of Overadvances. During the period from the date of this Amendment through August 15, 2015 only, the mandatory repayment deadlines with respect to Overadvances stated in Section 2.1(b)(ii)(B) will be suspended. From and after August 16, 2015, the Borrowers will comply fully with the provisions of Section 2.1(b)(ii)(B).

5.6 Temporary Suspension of Revolving Loan Limit. During the period from the date of this Amendment through August 15, 2015 only, the Borrowers will not be required to make mandatory repayments if the Revolving Loan Outstandings exceed the Revolving Loan Limit stated in Section 2.1(b)(ii)(C). From and after August 16, 2015, the Borrowers will comply fully with the provisions of Section 2.1(b)(ii)(C).



7/12/15 Q&B DRAFT

5.7 Success Fee. Section 2.2(f) of the DIP Credit Agreement is hereby deleted and replaced in its entirety with the following:

Success Fee. On the Termination Date, Borrowers shall pay to Agent, as compensation for the costs of making funds available to Borrowers under this Agreement, a success fee (the “**Success Fee**”) in an amount equal to the Revolving Loan Commitment Amount *multiplied by* three percent (3.0%); *provided, however*, (i) in the event that, on or before August 15, 2015, (A) the Obligations and the Prepetition Loan Obligations have been indefeasibly repaid in full and/or refinanced with a replacement debtor in possession credit facility, and (B) all commitments of the Lenders under this Agreement are terminated, then the Success Fee shall be waived by Agent and Lenders, and (ii) in the event that, after August 15, 2015 and on or before September 1, 2015, (A) the Obligations and the Prepetition Loan Obligations have been indefeasibly repaid in full and/or refinanced with a replacement debtor in possession credit facility, and (B) all commitments of the Lenders under this Agreement are terminated, then fifty percent (50%) of the Success Fee shall be waived by Agent and Lenders (so that the Success Fee in that event would be an amount equal to the Revolving Loan Commitment Amount *multiplied by* one and one-half percent (1.5%)).

5.8 Certain Events of Default. Subsections 10.1 (d), (g), (h), and (aa) of the DIP Credit Agreement are hereby deleted and replaced in their entirety with the following:

(d) (i) failure of any Credit Party to pay when due or within any applicable grace period any principal, interest or other amount on Debt (other than the Loans), or the occurrence of any breach, default, condition or event with respect to any Debt (other than the Loans), if the effect of such failure or occurrence is to cause, or to permit the holder or holders of any such Debt to cause, Debt or other liabilities having an individual principal amount in excess of \$75,000 or having an aggregate principal amount in excess of \$75,000 to become or be declared due prior to its stated maturity, or (ii) the occurrence of any breach or default under any terms or provisions of any Subordinated Debt Document or under any agreement subordinating the Subordinated Debt to all or any portion of the Obligations or the occurrence of any event requiring the prepayment of any Subordinated Debt; *provided, however, that* any Borrower’s failure to pay any Debt while the holder of that Debt is stayed by the filing of the Bankruptcy Cases from taking action to collect that Debt shall not be a Default or Event of Default under this subsection;

...



7/12/15 Q&amp;B DRAFT

(g) (i) institution of any steps by any Person to terminate a Pension Plan if as a result of such termination any Credit Party or any member of the Controlled Group could be required to make a contribution to such Pension Plan, or could incur a liability or obligation to such Pension Plan, in excess of \$75,000, (ii) a contribution failure occurs with respect to any Pension Plan sufficient to give rise to a Lien under Section 302(f) of ERISA, or (iii) there shall occur any withdrawal or partial withdrawal from a Multiemployer Plan and the withdrawal liability (without unaccrued interest) to Multiemployer Plans as a result of such withdrawal (including any outstanding withdrawal liability that any Credit Party or any member of the Controlled Group have incurred on the date of such withdrawal) exceeds \$75,000;

(h) one or more judgments or orders for the payment of money (not paid or fully covered by insurance maintained in accordance with the requirements of this Agreement and as to which the relevant insurance company has acknowledged coverage) aggregating in excess of \$75,000 shall be rendered against any or all Credit Parties and either (i) enforcement proceedings shall have been commenced by any creditor upon any such judgments or orders, or (ii) there shall be any period of twenty (20) consecutive days during which a stay of enforcement of any such judgments or orders, by reason of a pending appeal, bond, the automatic stay in the Bankruptcy Cases, or otherwise, shall not be in effect;

...

(aa) if the Final Order has not been entered by July 21, 2015 without the prior written consent of the Agent;

6. Field Examination. Without limiting the rights of access and information afforded Agent under the New Loan Documents and the Financing Orders, Borrowers shall cooperate fully with a field examination by representatives of Agent the week of July 13, 2015 (and/or such later time identified by Agent) and shall otherwise provide representatives, agents and/or employees of Agent access to Borrowers' premises and their records and shall cooperate, consult with, and provide to such persons all such non-privileged information and information not subject to a binding confidentiality agreement as they may reasonably request.

7. Chief Restructuring Officer. On or before August 15, 2015, Borrowers, with the approval of the Bankruptcy Court, will engage a chief restructuring officer ("CRO") acceptable to Agent, pursuant to an agreement in form, content and detail acceptable to Agent, and with powers and duties acceptable to Agent. In conjunction with Borrowers' engagement of the CRO, Borrowers will make reductions in expenses included in the Budget such that the fees and costs

7/12/15 Q&B DRAFT

incurred in retaining the CRO are offset by such expense reductions and there is no aggregate increase in the total expenses under the Budget.

8. Acknowledgements. Borrowers hereby acknowledge, confirm, and agree that:

8.1 As of July \_\_, 2015, (i) the aggregate outstanding principal balance of the Revolving Loans owing by Borrower under the DIP Credit Agreement and other Financing Documents totals at least \$\_\_\_\_\_.

8.2 All amounts (including, but not limited to, principal, interest accrued and accruing thereon, and fees, costs, expense and other charges) due under the terms of the Financing Documents are owed by Borrowers without any defense of any kind, nature or description whatsoever of Borrowers or any right of Borrowers to set off, recoup, or counterclaim.

8.3 With the entry of the Final Order, Borrowers have full authority and power to enter into, execute, deliver and perform this Amendment.

9. Costs and Expenses. In accordance with Section 12.14 of the DIP Credit Agreement, Borrowers hereby agree to pay all costs and expenses payable to Agent and each of the Lenders under the terms thereof, including, but not limited to, Agent's and Lenders' costs and expenses (including, but not limited to, attorneys' fees) incurred in relation to the negotiation and drafting of this Amendment and in all proceedings in the Bankruptcy Cases relating to the financing pursuant to the DIP Credit Agreement.

10. Continuing Full Force And Effect. Except as expressly set forth herein, this Amendment does not, and shall not be construed to, affect or limit in any way the terms and provisions of, or waive any right or remedy contained in the DIP Credit Agreement, any other Financing Document, or the Financing Orders, or the rights and remedies of Agent thereunder. Borrowers acknowledge and agree that the DIP Credit Agreement and other Financing Documents, including but not limited to all representations and warranties made by Borrowers therein (except as expressly modified by this Amendment), all continue in full force and effect, and Agent retains all of its rights and remedies under the DIP Credit Agreement, the other Financing Documents, the Financing Orders, and otherwise. Except as expressly provided in this Amendment, the execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of Agent or Lenders, nor constitute a waiver of any provision of the DIP Credit Agreement, the other Financing Documents, or the Financing Orders.

11. Release.

11.1 For the good and valuable consideration provided herein, and other than with respect to the obligations of Agent and Lenders pursuant to this Amendment and the other

7/12/15 Q&amp;B DRAFT

Financing Documents, each Borrower hereby fully, finally, absolutely, and forever releases and discharges Lenders, Agent and their respective present and former directors, shareholders, officers, employees, agents, representatives, attorneys, consultants, fiduciaries, predecessors, successors, assigns, and affiliates, related corporate divisions, and their separate and respective heirs, personal representatives, attorneys, successors, assigns, and affiliates (collectively, "**Released Parties**") from any and all actions, causes of action, claims, debts, damages, demands, liabilities, obligations, suits, judgments, executions, and expenses and any and all other claims, counterclaims, defenses, rights of set-off, demands and liabilities whatsoever (individually, a "**Claim**" and collectively, "**Claims**") of any and every character, now known or unknown, direct and/or indirect, contingent or matured, of whatever kind or nature, for or because of any matter or things done, omitted or permitted to be done by any of the Released Parties, at law or in equity: (i) in respect of each and all of the Revolving Loans, the DIP Credit Agreement, the other Financing Documents, and the Financing Orders, and the actions or omissions of Lenders or Agent in respect of each and all of the Revolving Loans, the DIP Credit Agreement, the other Financing Documents and the Financing Orders, and (ii) arising from events occurring prior to and including the date of execution hereof.

12. Miscellaneous.

12.1 Amendment. This Amendment may be amended or modified only explicitly in a writing signed by all parties to this Amendment.

12.2 Successors and Assigns. This Amendment shall be binding upon Borrowers and their successors and assigns, except that Borrowers may not assign any of their rights or duties under this Amendment without the prior written consent of Agent. This Amendment shall be binding upon and inure to the benefit of Agent and Lenders and their respective successors and assigns.

12.3 Interpretation; Headings. No provision of this Amendment shall be interpreted or construed against any party because that party or its legal representative drafted that provision. Each of the parties hereto shall be deemed to have drafted this Amendment. The rule of law that provides that ambiguities, inconsistencies and the like shall be construed against the author of a document or contract shall not apply to this Amendment. The titles of the Sections of this Amendment are for convenience of reference only and are not to be considered in construing this Amendment. Any pronoun used in this Amendment shall be deemed to include singular and plural and masculine, feminine and neuter gender as the case may be. The words "herein," "hereinabove," "hereof," and "hereunder" shall be deemed to refer to this entire Amendment, except as the context otherwise requires.

12.4 Time of the Essence. Time is of the essence for the performance of Borrowers of the obligations set forth in this Amendment and the other Financing Documents.

7/12/15 Q&B DRAFT

Borrowers acknowledge and agree that, notwithstanding any prior forbearance, actual or implied, of any nature by Agent and/or Lenders, time is of the essence in connection with all the Financing Documents, and Borrower understands, acknowledges and agrees that Agent and Lenders require the performance of, and Borrower will perform each and every covenant, condition, provision and agreement in each of the Financing Documents, strictly in accordance with the terms thereof.

12.5 Authorized. This Amendment has been duly and validly authorized by all necessary action on the part of all parties hereto.

12.6 Counterparts. This Amendment may be executed in any number of counterparts, each of which shall constitute an original, but which counterparts together shall constitute but one and the same instrument. Unless otherwise required by Agent, the telecopied or pdf signature of a person shall be deemed the original signature of that person and shall be binding for all purposes.

SIGNATURES FOLLOW ON THE NEXT PAGE

**IN WITNESS WHEREOF**, intending to be legally bound, and intending that this Agreement constitute an agreement executed under seal, each of the parties have caused this Agreement to be executed under seal the day and year first above mentioned.

**BORROWERS:**

**UNIVERSITY GENERAL HEALTH SYSTEM, INC.**

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

**UGHS HOSPITALS, INC.**

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

**UNIVERSITY HOSPITAL SYSTEMS, LLP**

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

**UNIVERSITY GENERAL HOSPITAL, LP**

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

**UGHS MANAGEMENT SERVICES, INC.**

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

**UGHS AUTIMIS BILLING, INC.**

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

**UGHS AUTIMIS CODING, INC.**

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

**UGHS SUPPORT SERVICES, INC.**

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

**UGHS ER SERVICES, INC.**

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

**AGENT:**

**MIDCAP FUNDING IV TRUST**

By: Apollo Capital Management, L.P.,  
its investment manager

By: Apollo Capital Management GP, LLC,  
its general partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Authorized Signatory

**LENDER:**

**MIDCAP FUNDING IV TRUST**

By: Apollo Capital Management, L.P.,  
its investment manager

By: Apollo Capital Management GP, LLC,  
its general partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Authorized Signatory

## University General Hospital

## 30 Day Forecast

S.No.	Budget Line Item	Week Ending:	PostPetition	PostPetition	PostPetition	PostPetition
		07/18/15	07/25/15	08/01/15	08/08/15	
		1	2	3	4	
		Projected	Projected	Projected	Projected	
<b>Cash Disbursements</b>						
<b>Direct Personnel Operating Costs</b>						
6	Houston & Mgmt salaries and benefits	(627,000)	(102,000)	(627,000)	(102,000)	
7	Taxes	(222,000)	(42,000)	(222,000)	(42,000)	
8	Health Insurance	(56,330)	(56,330)	(56,330)	(56,330)	
9	Employee Expenses	(3,000)	(3,000)	(3,000)	(3,000)	
10	Agency Staffing	(1,000)	(1,000)	(1,000)	(1,000)	
	Subtotal -- Direct Personnel Costs	(909,330)	(204,330)	(909,330)	(204,330)	
<b>Direct Medical Operating Costs</b>						
11	Medical Supplies	(150,000)	(150,000)	(150,000)	(150,000)	
14	Blood	(15,000)	-	(15,000)	-	
15	Drugs	(43,000)	(43,000)	(43,000)	(43,000)	
16	Medical Directorships **	-	-	-	(43,000)	
17	Cath Lab	-	(6,000)	-	(6,000)	
18	ER Group - Mint Staffing	(22,000)	(22,000)	(22,000)	(22,000)	
	Subtotal - Medical Costs	(230,000)	(221,000)	(230,000)	(264,000)	
<b>Operating Costs</b>						
19	Rent Houston Hospital	-	(321,000)	-	-	
20	HOPD Rent & Mgmt fee	-	(22,757)	(29,000)	-	
	HOPD Baytown Imaging and Surgery	(54,000)	(54,000)	(54,000)	(54,000)	
21	Equipment, Maintenance & Service Contracts	-	-	-	(104,000)	
22	Utilities	(10,000)	(10,000)	(10,000)	(10,000)	
23	Operations & Creditialing	(24,000)	(35,000)	(24,000)	(25,000)	
	Subtotal - Operating Costs	(1,227,330)	(868,087)	(1,256,330)	(661,330)	
<b>Non-Operating Costs</b>						
24	Autimis Operating Expenses	-	-	(5,000)	-	
25	Replacement Rev Cycle Firm -- Billing, Coding Collection Fee	-	-	-	-	
26	Commercial / Property Insurance	-	-	(43,500)	(146,500)	
	Appointment of CRO	(15,000)	(15,000)	(15,000)	(15,000)	
	Interest on Loan	-	-	(80,000)	-	
42	Other Non-Operating Costs	-	-	-	-	
	Subtotal - Non-Operating Costs	(15,000)	(15,000)	(143,500)	(161,500)	
<b>Total Operating and Non-operating costs</b>		(1,242,330)	(883,087)	(1,399,830)	(822,830)	