



Northern Inyo County Local Hospital District

Board of Directors Special Meeting

Wednesday May 31 2012; 12:00 Noon

*Administration Meeting Room
Northern Inyo Hospital
150 Pioneer Lane, Bishop, CA*

**NOTICE OF SPECIAL MEETING OF THE BOARD OF
DIRECTORS OF THE
NORTHERN INYO COUNTY LOCAL HOSPITAL DISTRICT**

NOTICE IS HEREBY GIVEN that a Special Meeting of the Board of Directors of the Northern Inyo County Local Hospital District will be held starting at 12:00 noon on Thursday, May 31, 2012, in the Administration Meeting Room at Northern Inyo Hospital, at 150 Pioneer Lane, Bishop, California.

The agenda for this Special Meeting is as follows:

1. Call to Order
2. Opportunity for members of the public to address the Board of Directors on items described in this Notice, and/or on items of interest.
3. Approval of Holman Capital / Alliance Bank of Arizona Line of Credit documents (*action item*).
4. Opportunity for members of the public to address the Board of Directors on any items of interest.
5. Adjournment.



John Halfen, Administrator
Northern Inyo County Local Hospital District

Dated: May 28, 2012

LOAN AND SECURITY AGREEMENT

This Loan and Security Agreement ("Agreement") is made as of the ___ day of June 2012, by and between ALLIANCE BANK OF ARIZONA, a Division of Western Alliance Bank ("Bank"), and NORTHERN INYO COUNTY LOCAL HOSPITAL DISTRICT ("Borrower").

RECITALS:

A. Borrower may, from time to time, request loans from Bank, and the parties wish to provide for the terms and conditions upon which such loans shall be made.

B. In consideration of any loan or advance or grant of credit (including any loan or advance or grant of credit Renewal or extension) hereafter made to Borrower by Bank, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT:

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Bank agree as follows:

1. DEFINITIONS AND OTHER TERMS.

1.1 Definitions. In addition to terms defined elsewhere in this Agreement or any Schedule or Exhibit hereto, when used herein, the following terms shall have the following meanings (such meanings shall be equally applicable to the singular and plural forms of the terms used, as the context requires):

"Account Debtor" means any Person who is or who may become obligated to Borrower under, with respect to, or on account of an Account, Contract Right, General Intangible or other Collateral, including without limitation, any Insurer and any Medicaid/Medicare Account Debtor.

"Account" means any right to payment of a monetary obligation, whether or not earned by performance, including, but not limited to, any "account" (as that term is defined in the UCC), any accounts receivable, any "health-care-insurance receivables" (as that term is defined in the UCC), any "payment intangibles" (as that term is defined in the UCC) and all other rights to payment of every kind and description, whether or not earned by performance.

"Advance" shall mean a disbursement of proceeds pursuant to this Agreement.

"Agreement" means this Loan Agreement, as it may be amended, modified, supplemented or extended from time to time.

"Attorneys' Fees" means the reasonable fees, charges expenses of the attorneys (and all paralegals, secretaries, accountants and other staff employed by such attorneys) employed by Bank from time to time.

“Bank” — see Preamble.

“Bond Indenture” means that certain Indenture, dated as of December 1, 1998, by and between Borrower and U.S. Trust Company, National Association, since succeeded by the Trustee, as supplemented by the First Supplemental Indenture, dated as of April 1, 2010, between the District and the Trustee, as the same may be amended and/or supplemented from time to time.

“Borrowing Base Amount” means seventy-five percent of Borrower’s Eligible Accounts.

“Borrowing Base Certificate” has the meaning ascribed to such term in **Section 2.3(b)**.

“Borrower” — see Preamble.

“Business Day” means any day except a Saturday, Sunday or any other day designated as a holiday under Federal or California statute or regulation.

“Capitalized Lease” means any lease which is or should be capitalized on the balance sheet of the lessee in accordance with GAAP.

“Closing Date” means the date of this Agreement.

“Collateral” has the meaning ascribed to such term in **Section 3.1**.

“Computer Hardware, and Software Collateral” means:

(a) all of Borrower’s: computer and other electronic data processing hardware, integrated computer systems, central processing units, memory units, display terminals, printers, features, computer elements, card readers, tape drives, hard and soft disk drives, cables, electrical supply hardware, generators, power equalizers, accessories and all peripheral devices and other related computer hardware;

(b) all software programs (including both source code, object code and all related applications and data files), whether now owned, licensed or leased or hereafter acquired by Borrower, designed for use on the computers and electronic data processing hardware described in clause (a) above;

(c) all firmware associated with the property described in clauses (a) and (b) of this definition;

(d) all documentation (including flow charts, logic diagrams, manuals, guides and specifications) with respect to such hardware, software and firmware described in the preceding clauses (a) through (c); and

(e) all rights with respect to all of the foregoing, including without limitation, any and all copyrights, licenses, options, warranties, service contracts, program services, test rights, maintenance rights, support rights, improvement rights, renewal rights and

indemnifications and any substitutions, replacements, additions or model conversions of any of the foregoing.

This definition shall not include any patient database or any information otherwise protected by Legal Requirements.

“Contract Right” means any right of Borrower to payment under a contract.

“Daily Balance” shall mean the amount determined by taking the amount of the Loan owed at the beginning of a given day, adding any new Advances made on such date, and subtracting any payments or collections which are deemed to be paid and are applied by Bank in reduction of the Loan on that date under the provisions of this Agreement.

“De Minimis Amounts” means any Hazardous Material either (a) being transported on or from Borrower’s facilities or being stored for use by Borrower or their tenants on its Facilities within a year from original arrival on the facility in connection with Borrower’s current operations or (b) being currently used by Borrower or their tenants on its facilities, in either case in such quantities and in a manner that both (i) does not constitute a violation or threatened violation of any Environmental Law and (ii) is consistent with customary business practice for such operations in the state of California and has been reported or disclosed to the extent required by Environmental Law.

“EBITDA” means for any period, (a) consolidated net income for such period plus, (b) to the extent deducted in determining such consolidated net income, (i) Interest Expense, (ii) net income tax expense, (iii) depreciation, and (iv) amortization.

“Eligible Account” means an Account owing to Borrower, generated in the ordinary course of Borrower’s business from the rendition of services which Bank, in its sole credit judgment, deems to be an Eligible Account. Without limiting the generality of the foregoing, no Account shall be an Eligible Account if:

- (a) such Account is more than 180 days past the patient’s discharge date;
- (b) any warranty contained in the Loan Documents with respect to such specific Account is not true and correct with respect to such Account;
- (c) the Account Debtor on such Account has (i) filed a petition for bankruptcy or any other relief under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, (ii) made an assignment for the benefit of creditors, (iii) accommodation or (v) had or suffered a receiver or a trustee to be appointed for all or a significant portion of its assets or affairs;
- (d) the services rendered or the goods sold represented by such Account were rendered or sold to an Account Debtor located outside the United States;
- (e) such Account is subject to a lien in favor of any Person other than (i) Bank or (ii) any other Person to the extent such Lien is permitted under the Loan Documents and is subordinated (on terms acceptable to Bank) to Bank’s Lien thereon;

(f) such Account is not genuine, is evidenced by a judgment or is subject to any, defense, deduction or counterclaim; *provided*, that such Account shall be ineligible pursuant to this *clause (f)* only to the extent of such defense, deduction or counterclaim;

(g) if such Account arises from the rendering of services, such services have not actually been performed or were undertaken in material violation of any applicable law;

(h) such Account was generated by Borrower from a facility with respect to which any applicable Governmental Authority: (i) has revoked or suspended the applicable Medicaid, Medicare or similar governmental program qualification pertaining to such facility, or (ii) has revoked or suspended any material healthcare permit pertaining to such facility, and, in each case, to the extent that such Account arose after the date of such Governmental Authority action and such Governmental Authority action has not been reversed or rescinded;

(i) the Account Debtor on such Account is located in any State of the United States requiring the holder of such Account, as a precondition to commencing or maintaining any action in the courts of such State, either to (i) receive a certificate of authorization to do business in such State or be in good standing in such State or (ii) file a Notice of Business Activities Report with the appropriate office or agency of such State, in each case unless (x) the holder of such Account has received such a certificate of authority to do business, is in good standing or, as the case may be, has duly filed such a notice in such State or (y) the failure to take one of the actions described in *clause (i)* or *(ii)* may be cured retrospectively by the holder of such Account;

(j) such Account is not evidenced by an invoice or other writing in form acceptable to Bank, in its sole discretion; or (l) Borrower, in order to be entitled to collect such Account, is required to perform any additional service for, or perform or incur any additional obligation to, the Person to whom or to which it was made; or (m) the total Accounts (except in the case of Medicare/Medicaid Accounts) of such Account Debtor to Borrower represent more than 25% of the Eligible Accounts of Borrower at such time, but only to the extent of such excess.

Additionally, the amount of Self-Pay Accounts comprising Eligible Accounts shall be limited to Five Hundred Thousand and No/100 Dollars (\$500,000.00).

An Account which is at any time an Eligible Account, but which subsequently fails to meet any of the foregoing requirements, shall forthwith cease to be an Eligible Account. Further, with respect to any Account, if Bank at any time or times hereafter determines in its reasonable credit judgment, exercised from the perspective of a prudent asset based lender extending credit to a borrower of credit quality comparable to Borrower or the applicable Account Debtor, that the prospect of payment or performance by the Account Debtor with respect thereto is or will be impaired for any reason whatsoever, notwithstanding anything to the contrary contained above, such Account shall forthwith cease to an Eligible Account.

“Environmental Laws” means the Resource Conservation Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, any so-called “Superfund” or “Superlien” law, the Toxic Substances Control Act, and any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree or other requirement

regulating, relating to, or imposing liability or standards of conduct (including, but not limited to, permit requirements, and emission or effluent restrictions) concerning any Hazardous Materials or any hazardous, toxic or dangerous waste, substance or constituent, or any pollutant or contaminant or other substance, whether solid, liquid or gas, as now or at any time hereafter in effect.

“Environmental Lien” means a Lien in favor of any governmental entity for (1) any liability under any Environmental Law or (2) damages arising from or costs incurred by such governmental entity relating to a spillage, disposal, release or threatened release into the environment of any Hazardous Material or other hazardous, toxic or dangerous waste, substance or constituent, or any pollutant or contaminant or other substance, whether solid, liquid or gas.

“Equipment” means all equipment of Borrower of every description, including, without limitation, fixtures, furniture, vehicles and trade fixtures, together with any and all accessions, parts and equipment attached thereto or used in connection therewith, and any substitutions therefor and replacements thereof.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute of similar import, together with the regulations thereunder, in each case as in effect from time to time. References to sections of ERISA shall be construed to also refer to any successor sections.

“ERISA Affiliate” means any corporation, partnership, or other trade or business (whether or not incorporated) that is, along with either Borrower, a member of a controlled group of corporations or a controlled group of trades or businesses, as described in sections 414(b) and 414(c), respectively, of the Code or section 4001 of ERISA, or a member of the same affiliated service group within the meaning of section 414(m) of the Code.

“Event of Default” has the meaning ascribed to such term in **Section 7.1**.

“Federal Reserve Board” means the Board of Governors of Federal Reserve System or any successor thereto.

“Fiscal Quarter” means any quarter of a Fiscal Year.

“Fiscal Year” means any period of 12 consecutive calendar months ending on the last day of December. References to a Fiscal Year with a number corresponding to any calendar year (e.g. “Fiscal Year 2011”) refer to the Fiscal Year ending on the last day of December occurring during such calendar year.

“Fixed Charge Coverage Ratio” means Free Cash Flow divided by Fixed Charges.

“Fixed Charges” means, for any period, the sum of, without duplications, (a) interest expense, plus (b) scheduled or required payments of principal on total Indebtedness, plus (c) scheduled payments on Capitalized Leases.

“Fixtures” means all fixtures of either Borrower of every description and all substitutions and replacements of any thereof.

“Free Cash Flow” means, for any period, (a) EBITDA, less (b) capital expenditures (other than capital expenditures financed with the proceeds of purchase money indebtedness).

“GAAP” means generally accepted accounting principles as applied in the preparation of the audited financial statement of Borrower referred to in **Section 6.1**.

“General Intangibles” means all of Borrower’s “General Intangibles,” as such term is defined in the UCC.

“Governmental Authority” means the United States of America, the State of California, the County of Inyo, the City of Bishop, and any political subdivision, agency, department, commission, district, board, bureau or instrumentality of any of the foregoing, which now or hereafter has jurisdiction over Borrower or all or any portion of its facilities.

“Hazardous Materials” means any toxic substance, hazardous substance, hazardous material, hazardous chemical or hazardous waste defined or qualifying as such in (or for the purposes of) any Environmental Law, or any pollutant or contaminant, and shall include, but not be limited to, petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature or pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), any radioactive material, including, but not limited to, any source, special nuclear or by-product material as defined at 42 U.S.C. section 2011 et. seq., as amended or hereafter amended, polychlorinated biphenyls, and asbestos in any form or condition.

“Health Care District Law” means the Local Health Care District Law of the State of California, California Health and Safety Code, Division 23-Hospital Districts, Sections 3200-32492, inclusive.

“Health Care Laws” means all relevant federal and state laws regulating health services or payment, including, but not limited to, the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)), the Stark Law (42 U.S.C. § 1395nn), the Anti-Inducement Law (42 U.S.C. § 1320a-7a(a)(5)), the civil False Claims Act (31 U.S.C. § 3729 et seq.), the administrative False Claims Law (42 U.S.C. § 1320a-7b(a)), the exclusion laws (42 U.S.C. § 1320a-7), the civil monetary penalty laws (42 U.S.C. § 1320a-7a), the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. §§ 1320d-1320d-8), Medicare (Title XVIII of the Social Security Act), Medicaid (Title XIX of the Social Security Act), and any other state or federal law, regulation, guidance document, manual provision, program memorandum, opinion letter, or other issuance which regulates kickbacks, patient or program charges, recordkeeping, referrals, the hiring of employees or acquisition of services or supplies from those who have been excluded from government health care programs, quality, safety, privacy, security, licensure, accreditation, or any other aspect of providing health care.

“Health Care Reportable Event” means (i) Borrower or any of its Subsidiaries becomes subject to any civil or criminal investigations, or any material inquiries, validation reviews, program integrity reviews, reimbursement audits or statements of deficiencies, involving and/or related to its compliance with Health Care Laws; (ii) any material exclusion, voluntary disclosure, notice of claim to recover material overpayments, revocation, suspension, termination, probation, restriction, limitation, denial, or non-renewal affecting Borrower or any

of its Subsidiaries with respect to any material Program; or (iii) the occurrence of any reportable event under any settlement agreement or corporate integrity agreement involving and/or related to its compliance with Health Care Laws entered into with any Governmental Authority.

“Indebtedness” of any Person means, without duplication, (i) any obligation of such Person for borrowed money, including, without limitation, (a) any obligation of such Person evidenced by bonds, debentures, notes or other similar debt instruments and (b) any obligation for borrowed money which is non-recourse to the credit of such Person but which is secured by a Lien on any asset of such Person, (ii) any obligation of such Person on account of deposits or advances, (iii) any obligation of such Person for the deferred purchase price of any property or services, except trade accounts payable, (iv) any obligation of such Person as lessee under a Capitalized Lease and (v) any Indebtedness of another Person secured by a Lien on any asset of such first Person, whether or not such Indebtedness is assumed by such first Person. For all purposes of this Agreement, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture in which such Person is a general partner or joint venturer.

“Insurer” means a Person that insures any Person against certain of the costs incurred in the receipt by such Person of goods or services, or that has an agreement with a Borrower to compensate Borrower for providing goods or services to a Person.

“Intellectual Property Collateral” means, collectively, Computer Hardware and Software Collateral and the Trademark Collateral.

“Intercreditor Agreement” means that certain Intercreditor Agreement (With Subordination) dated of even date herewith by and between Bank and Trustee, as acknowledged and consented to by Borrower.

“Inventory” means any and all of Borrower’s goods, (including, without limitation, goods in transit) wheresoever located which are or may at any time be leased by Borrower to a lessee, held for sale or lease, furnished under any contract of service, or held as raw materials, work in process, or supplies or materials used or consumed in Borrower’s business, or which are held for use in connection with the manufacture, packing, shipping, advertising, selling or finishing of such goods, and all goods the sale or other disposition of which has given rise to an Account, Contract Right, General Intangible, instrument or chattel paper which are returned to and/or repossessed and/or stopped in transit by Borrower or Bank or any agent or bailee of either of them, and all documents of title or other documents representing the same.

“Investment” of any Person means any investment, made in cash or by delivery of any kind of property or asset, in any other Person, whether by acquisition of shares of stock or similar interest, Indebtedness or other obligation or security, or by loan, advance or capital contribution, or otherwise.

“Legal Requirements” means any applicable laws, ordinances, orders, decrees, rules, regulations or requirements of any Governmental Authority, including applicable subdivision laws, regulations and ordinances, and any requirements, terms or conditions contained in any restrictions, restrictive covenants, easements, licenses or leases, building codes, flood protection laws and ordinances, zoning ordinances or stipulations, subdivision plats, master plans,

development plans, or other instruments or documents now or in the future affecting any portion of the facilities of Borrower or Borrower's operations, including, but not limited to, all Health Care laws.

"Leverage Ratio" means, as of the last day of any computation period, the ratio of Total Funded Debt, as of the last day of such computation period to Tangible Net Worth for the applicable computation period.

"Lien" means any mortgage, pledge, hypothecation, judgment lien or similar legal process, title retention lien, or other lien, encumbrance or security interest, including, without limitation, the interest of a vendor under any conditional sale or other title retention agreement and the interest of a lessor under any Capitalized Lease.

"Loan" means the revolving line of credit loan made pursuant to this Agreement and evidenced by the Note.

"Loan Documents" shall mean this Agreement, the Note and any other agreements, documents, or instruments evidencing, guarantying, securing, or otherwise relating to the Loan, as such agreements, documents, and instruments may be amended, modified, extended, renewed, or supplemented from time to time.

"Margin Stock" has the meaning ascribed to such term in Regulation U of the Federal Reserve Board or any regulation substituted therefor, as in effect from time to time.

"Material Adverse Effect" means a material adverse effect on (i) the business, property, condition (financial or otherwise), results of operations, or prospects of Borrower or (ii) the ability of Borrower to perform its obligations under the Loan Documents, or (iii) the validity or enforceability of any of the Loan Documents or the rights or remedies of Bank thereunder.

"Maturity Date" shall have the same meaning as set forth in the Note.

"Medicaid/Medicare Account" means any Account owing from a Medicaid/Medicare Account Debtor.

"Medicaid/Medicare Account Debtor" means any Account Debtor which is (a) the United States of America acting under the Medicaid/Medicare program established pursuant to the Social Security Act, (b) any state or the District of Columbia acting pursuant to a health plan adopted pursuant to Title XIX of the Social Security Act or (c) any agent, carrier, administrator or intermediary for any of the foregoing.

"Medicaid/Medicare Deposit Account" means a separate deposit account maintained by Borrower into which only Medicaid/Medicare Account receipts are deposited.

"Multiemployer Plan" means a "multiemployer plan" as defined in Section 4001(a) (3) of ERISA which is maintained for employees of Borrower or any ERISA Affiliate.

"Net Cash Proceeds" means proceeds received by Borrower after the Closing Date in cash or cash equivalents from any asset sale consisting of Collateral, net of (i) the reasonable

cash costs of sale, assignment or other disposition, (ii) taxes paid or reasonably estimated to be payable as a result thereof and (iii) any amount required to be paid or prepaid on Indebtedness).

“**Note**” means the Revolving Promissory Note of Borrower dated of even date herewith, as it may be amended, modified, supplemented or extended from time to time.

“**Obligations**” means all of the liabilities, obligations and indebtedness of Borrower to Bank of any kind or nature, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing or due or to become due, and including but not limited to (i) Borrower’s obligations under any Note, (ii) Borrower’s obligations under this Agreement, (iii) interest, charges, expenses, Attorneys’ Fees and other sums chargeable to either Borrower by Bank under this Agreement or any Related Agreement and (iv) the obligations of either Borrower under any Related Agreement, including obligations of performance. “Obligations” shall also include any and all amendments, extensions, renewals, refundings or refinancings of any of the foregoing.

“**Occupational Safety and Health Law**” means the Occupational Safety and Health Act of 1970, as amended, and any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning employee health and/or safety.

“**Participant**” means any Person, now or at any time or times hereafter, participating with Bank in the Loan made to Borrower pursuant to this Agreement or any Related Agreement.

“**PBGC**” means the Pension Benefit Guaranty Corporation and any entity succeeding to any or all of its functions under ERISA.

“**Pension Plan**” means a “pension plan,” as such term is defined in Section 3(2) of ERISA, which is subject to the provisions of Title IV of ERISA (other than a Multiemployer Plan) and to which Borrower or any ERISA Affiliate may have any liability, including any liability by reason of having been a substantial employer within the meaning of Section 4063 of ERISA for any time within the preceding five years or by reason of being deemed to be a contributing sponsor under Section 4069 of ERISA.

“**Permitted Liens**” means:

- (a) liens in favor of Bank, to secure the Obligations;
- (b) liens for taxes, assessments or governmental charges or levies not yet due and payable or liens for taxes being contested in good faith by appropriate proceedings for which adequate reserves determined in accordance with GAAP have been established;
- (c) licenses, leases or subleases granted to others not interfering in any material respect with the business of Borrower;
- (d) liens of a collecting bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection;

(e) liens existing as of the date of this Agreement, including, but not limited to, the liens of the Trustee under the Bond Indenture, subject to the further provisions of the Intercreditor Agreement; and

(f) purchase money security interest subject to the capital expenditure limitation of **Section 6.22**.

“Person” means any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, institution, entity, or government (whether national, federal, state, county, city, municipal or otherwise, including, without limitation, any instrumentality, division, agency, body or department thereof).

“Plan” means any Welfare Plan, Pension Plan or any employee benefit plan, as such term is defined in Section 3(3) of ERISA, to which either Borrower may have any liability.

“Programs” shall mean collectively, the Medicare program (Title XVIII of the Social Security Act) and Medicaid program (Title XIX of the Social Security Act).

“Providers” shall mean the key suppliers, vendors, and customers of Borrower whose business failure would, with reasonable probability, have a Material Adverse Effect.

“Reportable Event” has the meaning given to such term in ERISA, but shall not include any event for which the 30-day reporting requirement has been waived by the PBGC.

“Revolving Credit Amount” means Five Million and 00/100 Dollars (\$5,000,000.00).

“Revolving Loan Availability” means the lesser of (a) the Revolving Credit Amount and (b) the Borrowing Base Amount.

“Self-Pay Account” means any Account for which the Account Debtor is a Medicaid/Medicare Account Debtor or other third party payor as more particularly referenced on **Schedule 5.8(b)**; provided, Self-Pay Accounts shall not include Accounts for which the Account Debtor is a credit card or debit card company or processor.

“Subsidiary” means any Person of which or in which a Borrower and its other Subsidiaries own directly or indirectly 50% or more of (i) the combined voting power of all classes of stock having general voting power under ordinary circumstances to elect a majority of the board of directors of such Person, if it is a corporation, (ii) the capital interest or profits interest of such Person, if it is a partnership, joint venture or similar entity or (iii) the beneficial interest of such Person, if it is a trust, association or other unincorporated organization.

“Supplemental Documents” has the meaning ascribed to such term in **Section 3.3**.

“Tangible Net Worth” means the book value of Borrower’s consolidated equity accounts less all intangible assets.

“Total Funded Debt” means all Indebtedness of Borrower including Capitalized Leases.

“Trademark” has the meaning ascribed to that term in the definition of Trademark Collateral.

“Trademark Collateral” means:

(a) all of Borrower’s: trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, certification marks, collective marks, logos, other source of business identifiers, prints and labels on which any of the foregoing have appeared or appear, designs and general intangibles of a like nature (all of the foregoing items in this clause (a) being collectively called a “Trademark”), now existing anywhere in the world or hereafter adopted or acquired, whether currently in use or not, all registrations and recordings thereof and all applications in connection therewith, whether pending or in preparation for filing, including registrations, recordings and applications in the United States Patent and Trademark Office or in any office or agency of the United States of America or any State thereof or any foreign country;

(b) all Trademark licenses (whether as licensee or licensor);

(c) all reissues, extensions or renewals of any of the items described in clauses (a) and (b) of this definition;

(d) all of the goodwill of the business connected with the use of, and symbolized by the items described in, clauses (a) and (b); and

(e) all proceeds of, and rights associated with, the foregoing, including any claim by Borrower against third parties for past, present or future infringement or dilution of any Trademark, Trademark registration or Trademark license or for any injury to the goodwill associated with the use of any such Trademark or for breach or enforcement of any Trademark license.

“Trustee” means The Bank of New York Mellon Trust Company, N.A.

“UCC” means the Uniform Commercial Code as in effect in the State of California, and any successor statute, together with any regulations thereunder, in each case as in effect from time to time. References to sections of the UCC shall be construed to also refer to any successor sections.

“Unmatured Event of Default” means any event or condition which, with the lapse of time or giving of notice to Borrower would constitute an Event of Default.

“Welfare Plan” means an “employee welfare benefit plan” as such term is defined in ERISA.

1.2 **Other Definitional Provisions.** Unless otherwise defined or the context otherwise requires, all financial and accounting terms used herein or in any certificate or other document made or delivered pursuant hereto shall be defined in accordance with GAAP. Unless otherwise defined therein, all terms defined in this Agreement shall have the defined meanings

when used in any Note or in any certificate or other document made or delivered pursuant hereto. Terms used in this Agreement which are defined in any Exhibit hereto shall, unless the context otherwise indicates, have the meanings given them in such Exhibit. Other terms used in this Agreement shall, unless the context indicates otherwise, have the meanings provided for by the UCC to the extent the same are used or defined therein.

1.3 **Interpretation of Agreement.** A **Section**, an **Exhibit** or **Schedule** is, unless otherwise stated, a reference to a section hereof, an exhibit hereto or a schedule hereto, as the case may be. Section captions used in this Agreement are for convenience only and shall not affect the construction of this Agreement. The words “hereof”, “herein”, “hereto” and “hereunder” and words of similar import when used in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement.

1.4 **Compliance with Financial Restrictions.** Compliance with each of the financial ratios and restrictions contained in **Section 6** shall, except as otherwise provided herein, be determined in accordance with GAAP consistently followed.

2. **LOAN; OTHER MATTERS.**

2.1 **The Loan.**

(a) **Revolving Loan.**

(i) **Commitment.** Subject to the terms and conditions of this Agreement and the Loan Documents, and in reliance upon the representations and warranties of Borrower set forth herein and in the Loan Documents, Bank agrees to make Advances to Borrower from time to time until, but not including, the Maturity Date, as Borrower may from time to time request, up to but not in excess of the Revolving Loan Availability. Advances made by Bank may be repaid and, subject to the terms and conditions hereof, reborrowed to but not including the Maturity Date unless the Loan is otherwise terminated as provided in this Agreement.

(ii) **Reduction of Revolving Credit.** Borrower shall for a period not less than thirty (30) days during the term of the Loan maintain an outstanding principal balance not greater than three (3%) of Total Revenues (as such term is defined in the Bond Indenture).

(iii) **Repayment of the Loan.** All Advances shall be repaid by Borrower at the time and in the manner set forth in the Note; provided; however, upon receipt by Borrower of Net Cash Proceeds arising from an asset sale of any Collateral, Borrower shall immediately pay down the Loan in an amount equal to 100% of such Net Cash Proceeds.

(iv) **Maturity Date Extension.** The Maturity Date may be extended in Bank’s sole and absolute discretion and upon such terms as are agreeable to both Bank and Borrower for subsequent annual periods, provided, Borrower has requested such extension of the Maturity Date no earlier than ninety (90) days prior to such Maturity Date and no later than sixty (60) days prior to such Maturity Date.

2.2 **Interest and Fees.**

(a) **Interest:** Interest payable on the Loan shall be as provided in the Note.

(b) **Fees.**

(i) **Loan Origination Fee.** Bank has earned, and Borrower shall pay to Bank on the Closing Date, a nonrefundable loan origination fee equal to 1.75% of the Revolving Credit Amount (\$87,500.00), which shall be fully earned and nonrefundable effective on the Closing Date. The foregoing fee will not be rebated or refunded if the Loan is prepaid in full or in part.

(ii) **Unused Fee.** On September 5, 2012, December 5, 2012, March 5, 2013 and June 5, 2013 (or if such date is not a Business Day, the next following Business Day), Borrower shall pay to Bank an unused facility fee, payable in arrears, in an amount equal to 35/100ths one percent (.35%) per annum times the result of (i) the Revolving Credit Amount, less (ii) the average Daily Balance of the Advances that were outstanding during the quarterly period then ended.

2.3 **Requests for Advances; Borrowing Base Certificates; Other Information.**

(a) **Requests for Advance**

(i) **Draw Requests.** Within five (5) Business Days after receipt of a request for Advance and all required information and/or documents, Bank agrees to make the requested Advance, subject to the terms and conditions of this Agreement.

(ii) **Limitations on Disbursements.** Borrower shall be entitled to Advances only in accordance with and subject to the following:

(A) The representations and warranties of Borrower contained in this Agreement and all applicable Loan Documents shall be correct on and as of the date of each disbursement as though made on and as of that date and no Event of Default or Unmatured Event of Default shall have occurred and be continuing as of the date of each disbursement;

(B) All Advances shall be limited to the purposes and amounts set forth in this Agreement;

(C) Bank shall have no obligation to disburse funds under the Loan in excess of the Revolving Loan Availability; and

(iii) No disbursement shall be made after the Maturity Date.

(b) **Borrowing Base Certificates.** Borrower agrees to provide to Bank a current Borrowing Base Certificate within 15 days after the end of each month. Such Borrowing Base Certificate shall be in substantially the form of **Schedule 2.3(b)** attached hereto, executed and certified as accurate by such officers or employees of Borrower as Borrower designates in writing to Bank pursuant to duly adopted resolutions of Borrower authorizing such action.

(c) **Authorization.** Borrower shall provide Bank with documentation satisfactory to Bank indicating the names of those employees of Borrower authorized by Borrower to sign Borrowing Base Certificates and/or to make telephonic requests for Advances, and/or to authorize disbursement of the proceeds of Advances by wire transfer or otherwise, and Bank shall be entitled to rely upon such documentation until notified in writing by Borrower of any change(s) in the names of the employees so authorized. Bank shall be entitled to act on the instructions of anyone identifying himself as one of the persons authorized to request Advances by telephone and Borrower shall be bound thereby in the same manner as if the person were actually so authorized. Borrower agrees to indemnify and hold Bank harmless from any and all claims, damages, liabilities, losses, costs and expenses (including Attorneys' Fees) which may arise or be created by the acceptance of instructions for making or paying the Loan by wire transfer or telephone.

2.4 **Amount Outstanding.** All Advances and payments hereunder shall be recorded on Bank's books, which shall be rebuttably presumptive evidence of the amount outstanding at any time under the Loan. Bank will account monthly as to all Advances and payments hereunder and, absent demonstrable error, each monthly accounting will be fully binding on Borrower. Notwithstanding any term or condition of this Agreement to the contrary, however, the failure of Bank to record the date and amount of any Advance hereunder shall not limit or otherwise affect the obligation of Borrower to repay any such Advance.

2.5 **Making of Payments; Application of Collections; Charging of Accounts.**

(a) **Time and Place of Payment.** All payments hereunder (including payment of reimbursement obligations and payments with respect to the Note) shall be made without set-off or counterclaim and shall be made to Bank in immediately available funds (except as Bank may otherwise consent) prior to 12:30 p.m., Mountain Standard time, on the date due at the following address: Alliance Bank, One East Washington Street, Phoenix, Arizona 85004, or at such other place as may be designated by Bank to Borrower in writing. Any payments received after such time shall be deemed received on the next Business Day (except to the extent provided, and for the purpose, set forth, in the last sentence of paragraph (b) below). Whenever any payment to be made hereunder or under any Note shall be stated to be due on a date other than a Business Day, such payment may be made on the next succeeding Business Day, and such extension of time shall be included in the calculation of interest and any fees.

(b) **Application.** Borrower authorizes Bank, and Bank will, subject to the provisions of this **Section 2.5(b)**, apply the whole or any part of any amounts received by Bank from the collection of items of payment and proceeds of any Collateral (whether received upon any sale or other disposition of Collateral by Bank or otherwise), as follows:

(i) so long as no Event of Default exists,

First, to payment of amounts then due in respect of fees and expenses for which Borrower is obligated under this Agreement or any Loan Document; and

Second, to payment of amounts then due in respect of interest on the Loan;
and

Third, to the repayment of the outstanding principal balance of the Loan.

(ii) during the continuance of an Event of Default, against the Obligations, whether or not then due, in such order of application as Bank may determine, unless such payments or proceeds are, in Bank's discretion, released to Borrower; provided, however, that no checks, drafts or other instruments received by Bank shall constitute final payment to Bank unless and until such item of payment has actually been collected. All items or amounts which are delivered to Bank by or on behalf of Borrower or any Account Debtor on account of partial or full payment or otherwise as proceeds of any of the Collateral may from time to time in Bank's sole and absolute discretion be released to Borrower or may be applied by Bank towards payment of the Obligations, in accordance with the preceding sentence. Notwithstanding anything to the contrary herein, (i) all cash, checks instruments and other items of payment, solely for purposes of determining the occurrence of an Event of Default, shall be deemed received upon actual receipt by Bank, unless the same is subsequently dishonored for any reason whatsoever, (ii) for purposes of determining whether, under Section 2.1(a), there is availability for Advances, all cash, checks, instruments and other items of payment shall be applied against the Obligations on the first Business Day after receipt thereof by Bank and (iii) solely for purposes of interest calculation hereunder, all cash, checks, instruments and other items of payment shall be deemed to have been applied against the Obligations on the second Business Day after receipt by Bank of available federal funds with respect thereto.

2.6 **Bank's Election Not to Enforce**. Notwithstanding any term or condition of this Agreement to the contrary, Bank, in its sole and absolute discretion, at any time and from time to time may suspend or refrain from enforcing any or all of the restrictions imposed in this Section 2, but no such suspension or failure to enforce shall impair any right or power of Bank under this Agreement, including, without limitation, any right of Bank to refrain from making a Loan if all conditions precedent to Bank's obligation to making such Loan.

2.7 **Reaffirmation**. Each request by Borrower for an Advance pursuant to this Agreement shall constitute an automatic certification by Borrower to Bank that (i) all of the representations and warranties of Borrower in this Agreement and of the Loan Documents are true and correct on the date of such request to the same extent as if made on such date, except for such changes as are specifically permitted hereunder or under such Loan Document) and (ii) immediately before and after making the requested Loan, no Event of Default, or Unmatured Event of Default, exists or would result therefrom.

2.8 **Setoff**. In addition to and not in limitation of all other rights and remedies (including other rights of offset or banker's lien) that Bank or any other holder of any Note may have under applicable law, Bank or such other holder shall, upon the occurrence of any Event of Default described in Section 7.1, or any Unmatured Event of Default described in Section 7.1, have the right to appropriate and apply to the payment of the Obligations (whether or not then due), in such order of application as Bank or such other holder may elect, all balances, credits, deposits (general or special, time or demand, provisional or final), accounts or moneys of Borrower then or thereafter with Bank or such other holder. Bank shall promptly advise

Borrower of any such setoff and application but failure to do so shall not affect the validity of such setoff application.

3. **COLLATERAL.**

3.1 **Grant of Security Interest.** As security for the payment of all Advances now or hereafter made by Bank to Borrower hereunder or under the Note, and as security for the payment or other satisfaction of all other Obligations, Borrower hereby grants to Bank a security interest in and to the following property of Borrower, whether now owned or existing, or hereafter acquired or coming into existence, wherever now or hereafter located (all such property is hereinafter referred to collectively as the "**Collateral**"):

(a) Accounts, whether or not Eligible Accounts;

(b) Equipment and Fixtures;

(c) Inventory;

(d) General Intangibles;

(e) Contract Rights and documents of title;

(f) All chattel paper and instruments, including but not limited to any evidencing, arising out of or relating to any obligation to Borrower for goods sold or leased or services rendered, or otherwise arising out of or relating to any property described in clauses (a) through (e) above;

(h) Any and all balances, credits, deposits (general or special, time or demand, provisional or final), accounts or monies of or in the name of Borrower now or hereafter with Bank or any Participant or any agent of or bailee for Bank or any Participant (including but not limited to any account maintained in Bank's name with any other bank or financial institution for the collection of any Accounts or cash proceeds of other Collateral) and any and all property of every kind or description of or in the name of Borrower now or hereafter, for any reason or purpose whatsoever, in the possession or control of, or in transit to, or standing to Borrower's credit on the books of, Bank or any Participant, or any agent of or bailee for Bank or any Participant;

(i) All interest of Borrower in any goods the sale or lease of which shall have given or shall give rise to, and in all guaranties and other property securing the payment of or performance under, any Account, Contract Right, General Intangible or any chattel paper or instrument referred to in clause (g) above;

(j) Any and all other property of Borrower, of any kind or description, including, without limitation, any property of Borrower subject to a separate mortgage, pledge or security interest in favor of Bank or in which Bank now or hereafter has or acquires a security interest securing any Obligations, whether pursuant to a written agreement or instrument other than this Agreement or otherwise;

- (k) All Intellectual Property Collateral;
- (l) All replacements, substitutions, additions or accessions to or for any of the foregoing;
- (m) To the extent related to the property described in clauses (a) through (l) above, all books, correspondence, credit files, records, invoices and other papers and documents, including, without limitation, to the extent so related, all tapes, cards, computer runs, computer programs and other papers and documents in the possession or control of Borrower or any computer bureau from time to time acting for Borrower;
- (n) All rights in, to and under all policies of insurance, including claims of rights to payments thereunder and proceeds therefrom, including any credit insurance; and
- (o) All products and proceeds (including but not limited to any Accounts or other proceeds arising from the sale or other disposition of any Collateral, any returns of any Equipment or Inventory sold by Borrower, and the proceeds of any insurance covering any of the Collateral) of any of the foregoing.

3.2 **Accounts.**

(a) **Borrower Warranties.** Borrower warrants that: (i) all of the Accounts are and will continue to be bona fide existing obligations created by the sale of goods, the rendering of services, or the furnishing of other good and sufficient consideration to Account Debtors in the regular course of business; and (ii) none of the Accounts identified or included on any schedule, Borrowing Base Certificate or report as Eligible Accounts fail at the time so identified or included to satisfy any of the requirements for eligibility set forth in the definition of Eligible Accounts.

(b) **Bank's Powers.** Subject to any applicable rules, regulations and laws applicable to Medicaid/Medicare Account Debtors, Bank is authorized and empowered (which authorization and power, being coupled with an interest, is irrevocable until the last to occur of termination of this agreement and payment and performance in full of all of the liabilities under this Agreement) at any time in its sole and absolute discretion:

(i) To request, in Bank's name, Borrower's name or the name of a third party, confirmation from any Account Debtor or party obligated under or with respect to any Collateral of the amount shown by the Accounts or other Collateral to be payable, or any other matter stated therein;

(ii) To endorse in Borrower's name and to collect any chattel paper, checks, notes, drafts, instruments or other items of payment tendered to or received by Bank in payment of any Account or other obligation owing to Borrower;

(iii) After the occurrence and during the continuance of an Event of Default, to notify, either in Bank's name or Borrower's name, and/or to require Borrower to

notify, any Account Debtor or other Person obligated under or in respect of any Collateral, of the fact of Bank's Lien thereon and of the collateral assignment thereof to Bank;

(iv) After the occurrence and during the continuance of an Event of Default, to direct, either in Bank's name or Borrower's name, and/or to require Borrower to direct, any Account Debtor or other Person obligated under or in respect of any Collateral to make payment directly to Bank of any amounts due or to become due thereunder or with respect thereto; and

(v) After the occurrence and during the continuance of an Event of Default, to demand, collect, surrender, release or exchange all or any part of any Collateral or any amounts due thereunder or with respect thereto, or compromise or extend or renew for any period (whether or not longer than the initial period) any and all sums which are now or may hereafter become due or owing upon or with respect to any of the Collateral, or enforce, by suit or otherwise, payment or performance of any of the Collateral either in Bank's own name or in the name of Borrower.

(c) Under no circumstances shall Bank be under any duty to act in regard to any of the foregoing matters. The costs relating to any of the foregoing matters, including attorneys' Fees and out-of-pocket expenses, or bank account or accounts which may be required hereunder, shall be borne solely by Borrower whether the same are incurred by Bank or Borrower, and Bank may advance same to Borrower as an Advance of the Loan.

(d) **Power of Attorney.** Effective only upon the occurrence and continuance of an Event of Default, Borrower appoints Bank or any other person whom Bank may designate as Borrower's attorney-in-fact, with power: to endorse Borrower's name on any checks, notes, acceptances, money order, drafts or other forms of payment or security that may come into Bank's possession; to sign Borrower's name on any invoice or bill of lading relating to any Accounts, on drafts against account debtors, on schedules and assignments of Accounts, on verifications of Accounts and on notices to account debtors; to establish a lock box arrangement and/or to notify the post office authorities to change the address for delivery of Borrower's mail addressed to Borrower to an address designated by Bank, to receive and open all mail addressed to Borrower, and to retain all mail relating to the Collateral and forward all other mail to Borrower; to send, whether in writing or by telephone, requests for verification of Accounts; and to do all things necessary to carry out this Agreement. Borrower ratifies and approves all acts of the attorney-in-fact. Neither Bank nor its attorney-in-fact will be liable for any acts or omissions or for any error of judgment or mistake of fact or law absent its gross negligence or willful misconduct. This power being coupled with an interest is irrevocable so long as any Accounts in which Bank has a security interest remain unpaid and until the Indebtedness has been paid in full.

(e) **Federal Contracts.** If any Account (other than a Medicaid/Medicare Account), Contract Right or General Intangible arises out of a contract with the United States or any department, agency, or instrumentality thereof, Borrower will, unless Bank shall otherwise agree, immediately notify Bank in writing and execute any instruments and take any steps required by Bank in order that all monies due and to become due under such contract shall be

assigned to Bank and notice thereof given to the government under the Federal Assignment of Claims Act of 1940, as amended or other applicable laws or regulations.

(f) **Delivery of Original Documents.** If any Account or Contract Right is evidenced by chattel paper or promissory notes, trade acceptances, or other instruments for the payment of money, Borrower will, unless Bank shall otherwise agree, deliver the originals of same to Bank, appropriately endorsed to Bank's order and, regardless of the form of such endorsement, Borrower hereby expressly waives presentment, demand, notice of dishonor, protest and notice of protest and all other notices with respect thereto.

3.3 **Supplemental Documents.** At Bank's request, Borrowers shall execute and/or deliver to Bank, at any time or hereafter, such agreements, documents, financing statements, notices of assignment of Accounts, schedules of Accounts assigned, and other written matter necessary or reasonably requested by Bank to perfect and maintain perfected Bank's security interest in the Collateral (all the above hereinafter referred to as "**Supplemental Documents**"), in form and substance acceptable to Bank, and pay all Taxes, fees and other costs and expenses associated with any recording or filing of the Supplemental Documents. Borrowers hereby irrevocably makes, constitutes and appoints Bank (and all Persons designated by Bank for that purpose) as Borrowers' true and lawful attorney (and agent-in-fact) (which appointment and power, coupled with an interest, is irrevocable until the last to occur of termination of this Agreement and payment and performance in full of all of the Obligations under this Agreement) to sign the name of Borrowers on any of the Supplemental Documents and to deliver any of the Supplemental Documents to such Persons as Bank in its sole and absolute discretion, may elect. Borrowers agree that a carbon, photographic, photostatic, or other reproduction of this Agreement or of a financing statement is sufficient as a financing statement.

4. **CONDITIONS PRECEDENT; DELIVERY OF DOCUMENTS AND OTHER MATTERS.**

4.1 **Conditions Precedent to Initial Advance.** The obligation of Bank to make the Initial Advance of the Loan is subject to satisfaction of the following conditions precedent (in addition to those provided in **Section 4.2**):

(a) **Audit.** Bank shall have completed its due diligence audit of the business, operations and assets of Borrower, the results of which shall provide Bank with results and information which, in Bank's sole determination, are satisfactory to permit Bank to enter into the secured financing transaction described in this Agreement and the Loan Documents. Bank's due diligence examination may include but need not be limited to (i) a field examination of Borrower's books and records, (ii) a physical audit and inspection of Borrower's real and personal property, (iii) a review of the terms of any material contracts to which Borrower is a party, (iv) an analysis of all of Borrower's contingent liabilities, including but not limited to those pertaining to pending or anticipated product liability claims, environmental and health and safety matters, union contracts, employee benefit plans and pending or threatened litigation, (v) review of such fair market value and liquidation value appraisals of the assets of Borrower as Bank shall determine to be necessary, in each case prepared by independent appraisers and using such assumptions and methods of analysis as Bank shall determine to be acceptable and (vi) a

review of Borrower's current financial condition and any pro forma financial information or cash flow projections required by Bank.

(b) **Security Interest.** The security interest in the Collateral granted under this Agreement and the Loan Documents, and all other Liens granted to Bank to secure the Obligations, shall be a senior, perfected Lien in the Accounts and with respect to all other Collateral subject only to the Permitted Liens, and all financing statements and other documents relating to Collateral shall have been filed as appropriate.

(c) **Solvency.** After giving effect to the Loan, Borrower shall have sufficient assets (excluding goodwill and other intangible assets not capable of valuation) having a value, both at present fair salable value and at fair valuation, greater than the amount of Borrower's liabilities (including trade debt and Indebtedness to Bank). Bank shall be satisfied that all of the assets supporting the Loan shall be sufficient in value to provide Borrower with sufficient cash flow and working capital to enable it to profitably operate its business and to meet its obligations as they become due.

(d) **Effect of Law.** No law or regulation affecting Bank's entering into the secured financing transaction contemplated by this Agreement shall impose upon Bank any material obligation, fee, liability, loss, cost, expense or damage.

(e) **Exhibits; Schedules.** All Exhibits and Schedules to this Agreement and each Loan Document shall have been completed and submitted to Bank, shall be in form and substance satisfactory to Bank and shall contain no facts or information which Bank, in its sole judgment, determines to be unacceptable.

(f) **Environmental Audit.** Bank shall have received copies of any final environmental assessment made with respect to Borrower's facilities, which assessments shall not disclose any facts or information which Bank, in its sole judgment, determines to be unacceptable.

(g) **Fees.** If not funded with the proceeds of the initial Advance, Bank shall have received the fees referred to in **Section 2.2(b)** and any other fees due and payable by Borrower or any other Person on the funding of the initial Advance to the extent then invoiced

(h) **Material Adverse Effect.** Nothing shall have occurred to cause a Material Adverse Effect during the period commencing December 31, 2011 and ending on the date of Closing ("**Interim Period**")

(i) **Litigation.** There shall not have been instituted or threatened, during the Interim Period, any litigation or proceeding in any court or administrative forum to which Borrower is, or is threatened to be, a party that would have a Material Adverse Effect.

(j) **Financing Statements.** All financing statements relating to the Collateral described herein shall have been filed.

(k) **Interim Financial Statements.** Borrower shall have delivered to Bank company prepared financial statements through for the Fiscal Quarter ending March 31, 2012.

(l) **Due Diligence.** Bank shall have received due diligence materials as reasonably requested. Such materials shall be satisfactory to Bank.

(m) **Documents.** Bank shall have received all of the following, each duly executed where appropriate and dated as of the date of this Agreement (or such other date as shall be satisfactory to Bank), in form and substance satisfactory to Bank:

(i) **Loan Documents.** The fully executed Loan Documents.

(ii) **Borrower Resolutions.** A copy, duly certified by the secretary or an assistant secretary of Borrower of (1) authorizing (A) the borrowings by Borrower hereunder, (B) the execution, delivery and performance by Borrower of this Agreement and each Loan Document to which Borrower is a party or by which it is bound, and (C) certain officers or employees of Borrower to request Advances by telephone and to execute Borrowing Base Certificates, (2) all documents evidencing any other necessary corporate action with respect to this Agreement and the Loan Documents, and (3) all approvals or consents, if any, with respect to this Agreement and the Loan Documents;

(iii) **Borrower Incumbency Certificate.** A certificate of the secretary of Borrower certifying the names of the officers of Borrower authorized to sign this Agreement and each Loan Document to which Borrower is a party or by which it is bound, and all other documents and certificates to be delivered by Borrower hereunder, together with the true signatures of such officers;

(iv) **Borrower's Bylaws.** A copy of Borrower's bylaws, as amended;

(v) **Borrower's Resolutions.** Copies of those resolutions forming the Northern Inyo County Local Hospital District, duly certified by the Secretary of Borrower;

(vi) **Legal Opinions.** A legal opinion from Borrower's counsel, addressed to Bank;

(vii) **Insurance.** Evidence satisfactory to Bank of the existence of insurance on the Collateral and business of Borrower in amounts and with insurers acceptable to Bank, together with evidence establishing that Bank is named as a loss payee and/or additional insured, as applicable, on all related insurance policies;

(viii) **Disbursement Letter.** Written authorization and instructions from Borrower, in form satisfactory to Bank, for disbursement of the proceeds of the initial Advance;

(ix) **Intercreditor Agreement.** The fully executed Intercreditor Agreement;

(x) **Bond Indenture Modification.** A copy of the Bond Indenture modification amending the Bond Indenture to delete the reference to a 35% Collateral cap on Accounts as more particularly referenced in the definition of "Permitted Encumbrances" in Article I of the Bond Indenture;

(xi) **Other Documents.** Such other documents as Bank shall determine to be necessary or desirable.

4.2 **Continuing Conditions Precedent to Loan; Certification.** The obligation of Bank to make the initial Advance and each subsequent Advance is subject to satisfaction of the following conditions precedent in addition to those provided in **Section 4.1:**

(a) **Default.** Before and after giving effect to such Advance, no Event of Default or Unmatured Event of Default shall have occurred and be continuing;

(b) **Insurance.** There shall have been no material change, or notice of prospective material change (whether such notice is formal or informal), in the nature, extent, scope or cost of the insurance policies of Borrower which change would have a Material Adverse Effect;

(c) **Representations and Warranties.** Before and after giving effect to such Advance, the representations and warranties in **Section 5** shall be true and correct as though made on the date of such Advance, except for such changes as are specifically permitted hereunder;

(d) **Accounting Methods.** Borrower shall not have made any material (as determined by Bank) change in its accounting methods or principles except as required by GAAP.

Each request for an Advance hereunder made or deemed to have been made by Borrower shall be deemed to be a certificate of Borrower as to the matters set out in the foregoing provisions of this **Section 4.2.**

5. **REPRESENTATIONS AND WARRANTIES.** To induce Bank to make Advances to Borrower under this Agreement, Borrower makes the following representations and warranties, all of which shall be true and correct as of the date the initial Advance is made and shall survive the execution of this Agreement and the making of the initial Advance:

5.1 **Organization.** Borrower is duly created and validly existing as a public body, corporate and politic under the Health Care District Law.

5.2 **Authorization.** Borrower is duly authorized to execute and deliver this Agreement, the Note and any Loan Documents or Supplemental Documents contemplated by this Agreement, and is and will continue to be duly authorized to borrow monies hereunder and to perform its obligations under this Agreement, the Note and any such Loan Documents and Supplemental Documents. The execution, delivery and performance by Borrower of this Agreement, the Note and any Loan Documents or Supplemental Documents contemplated by this Agreement, and the borrowings hereunder, do not and will not require any consent or approval of any governmental agency or authority.

5.3 **No Conflicts.** Borrower's execution, delivery and performance of this Agreement, the Note, and any Loan Documents or Supplemental Documents contemplated by this Agreement do not and will not conflict with (i) any provision of law, (ii) the bylaws of

Borrower, (iii) the Bond Indenture, (iv) any other agreement binding upon Borrower or (v) any court or administrative order or decree applicable to either Borrower, and do not and will not require, or result in, the creation or imposition of any Lien on any asset of Borrower except as provided herein.

5.4 **Validity and Binding Effect.** This Agreement, the Note, and any Loan Documents or Supplemental Documents contemplated by this Agreement, when duly executed and delivered will be legal, valid and binding obligations of Borrower, enforceable against Borrower in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency or other similar laws of general application affecting the enforcement of creditors' rights or by general principles of equity limiting the availability of equitable remedies.

5.5 **No Default.** Borrower is not in default under the Bond Indenture or any other agreement or instrument to which Borrower is a party or by which any of their respective properties or assets is bound or affected, which default might have a Material Adverse Effect. No Event of Default or Unmatured Event of Default has occurred and is continuing.

5.6 **Licensure.**

(a) **Licensures and Reports.** Borrower has all licenses, permits, determinations of need, non-reviewability determination letters, approvals, authorizations and certifications that are necessary and required for its ownership, business and operation.

(b) **Compliance.**

(i) To Borrower's Knowledge, Borrower is, and at all times since has been, in full compliance with all of the terms and requirements of each License applicable to it except where the failure to be in such compliance has been corrected or does not and would not be grounds for the loss, revocation, suspension or other compromise of any such License, or otherwise have a Material Adverse Effect;

(ii) No event has occurred or circumstance exists that may (with or without notice or lapse of time): (i) constitute or result directly or indirectly in a material violation of or a material failure to comply with any term or requirement of any License; or (ii) result directly or indirectly in the revocation, withdrawal, suspension, cancellation or termination of, or any modification to, any License;

(iii) Borrower has not received any notice or other communication (whether oral or written) from any Governmental Authority or any other person regarding: (i) any actual, alleged, possible or potential material violation of or material failure to comply with any term or requirement of any License; or (ii) any actual, proposed, possible or potential revocation, withdrawal, suspension, cancellation, termination of or modification to any License which in either case has not been cured; and

(iv) All applications required to have been filed for the renewal of the Licenses have been duly filed on a timely basis, or with appropriate extensions, each with the appropriate Governmental Authority, and all other filings required to have been made with

respect to such Licenses have been duly made, each with the appropriate Governmental Authority.

5.7 **Accreditations.**

(a) **JCAHO.** Borrower is duly accredited, with no contingencies, for each and all of its operations as are subject to such review and accreditation, by the Joint Commission on Accreditation of Healthcare Organizations ("**JCAHO**").

(b) **No Notice.** Borrower has not received a notice with respect to any threatened, pending or possible revocation, early termination, suspension or limitation of any of Borrower's accreditations or certifications.

5.8 **Medicare, Medicaid and Other Third-Party Payors.**

(a) **Program Participation.** Borrower is qualified for participation in the Programs has a current and valid provider contract with each of the Programs, and is in compliance with the conditions of participation of the Programs. There is not pending or, to Borrower's Knowledge, threatened, any proceeding or investigation under the Programs involving Borrower; all cost reports required of Borrower were filed when due, or with appropriate extension, and all payments reflected as due to or from Borrower thereunder were made, and to Borrower's Knowledge, such reports to do not claim, and Borrower has not received, any payment or reimbursement in excess of amounts allowed by law or any applicable agreement; and (iii) Borrower has not received any notice of any dispute with any Governmental Authority, any fiscal intermediary or any other party regarding any cost report which has not been resolved, and any required payment which has not been made.

(b) **Non-Program Third-Party Payors.** In addition to the Programs, the Borrower currently has contractual arrangements with the third-party payors listed on **Schedule 5.8(b)**, and copies of all such contracts have been provided to Buyer. Borrower is in material compliance with all conditions of such contracts and of such third-party payors applicable to it. Except as set forth on **Schedule 5.8(b)**, there is not pending or, to Borrower's Knowledge, threatened, any proceeding or investigation under such third-party payor contracts involving Borrower or under any other third-party payor contract or program in which Borrower has participated.

(c) **Liabilities and Contractual Adjustments Reflected.** All liabilities and contractual adjustments of Borrower under any Program or under any third-party payor contract have been properly reflected in the Financial Statements in accordance with GAAP.

(d) **Medicaid/Medicare Deposit Account.** Borrower shall maintain at all times a separate Medicaid/Medicare Deposit Account.

5.9 **Regulatory Compliance.**

(a) **Full Compliance.** Borrower is in full compliance with each Legal Requirement that is or was applicable to it.

(b) **No Event or Circumstance.** To Borrower's Knowledge, no event has occurred or circumstance exist that (with or without notice or lapse of time): (i) constitutes or may result in a material violation by Borrower of, or a material failure on the part of Borrower to comply with, any Legal Requirement; or (ii) may give rise to any obligation on the part of Borrower to undertake, or to bear all or any portion of the costs of, any remedial action of any nature.

(c) **No Notice Received.** Borrower has not received any notice or other communication (whether oral or written) from any Governmental Authority or any other person having standing to assert such a claim regarding: (i) any actual, alleged or potential violation of, or failure to comply with, any Legal Requirement; or (ii) any actual, alleged or potential obligation on the part of Borrower to undertake, or to bear all or any portion of the costs of, any remedial action of any nature.

5.10 **Litigation; Contingent Liabilities.**

(a) **No Litigation.** Except for those listed on **Schedule 5.10(a)** attached hereto, no claims, litigation, arbitration proceedings or governmental proceedings are pending or, to the best of Borrower's knowledge, threatened against or are affecting Borrower, the results of which (i) are not insured and, with respect to which, no insurer has assumed responsibility in writing (ii) might materially and adversely affect the financial condition or operations of Borrower or (ii) might materially and adversely affect Bank's interest in or Lien on any material Collateral.

(b) **No Contingent Liabilities.** Borrower has no contingent liabilities which are material to Borrower.

5.11 **Liens.** Except for the Permitted Liens, none of the Collateral or other property, revenues or assets of Borrower are subject to any Lien.

5.12 **Partnerships; Joint Ventures.** Borrower is not a partner or joint venturer in any partnership or joint venture.

5.13 **Business and Collateral Locations.**

(a) **Chief Executive Office.** On the date hereof the office where Borrower keeps its books and records concerning Borrower's Accounts and other Collateral, and Borrower's chief place of business, is located at the address of Borrower set forth on the signature pages of this Agreement.

5.14 **Eligibility of Collateral.** Each Account which Borrower shall, expressly or by implication (by inclusion on a Borrowing Base Certificate or otherwise), request Bank to classify as an Eligible Account will, as of the time when such request is made, conform in all respects to the requirements of such classification set forth in the respective definitions of "Eligible Account" set forth herein.

5.15 **Solvency.** Borrower now has capital sufficient to carry on its business and actions and all business and transactions in which it is about to engage, and is now solvent and

able to pay its respective debts as they mature, and Borrower now owns property having a value, both at fair valuation and at present fair salable value, greater than the amount required to pay Borrower's debts.

5.16 **Pension and Welfare Plans.** Each Plan complies in all material respects with all applicable statutes and governmental rules and regulations; no Reportable Event has occurred and is continuing with respect to any Pension Plan; neither Borrower nor any ERISA Affiliate has withdrawn from any Multiemployer Plan in a "complete withdrawal" or a "partial withdrawal" as defined in Sections 4203 or 4205 of ERISA, respectively; no steps have been instituted to terminate any Pension Plan; no contribution failure has occurred with respect to any Pension Plan sufficient to give rise to a Lien under Section 302(f) of ERISA; no condition exists or event or transaction has occurred in connection with any Pension Plan or Multiemployer Plan which could result in the incurrence by Borrower or any ERISA Affiliate of any material liability, fine or penalty; and neither Borrower nor any ERISA Affiliate is a "contributing sponsor" as defined in Section 4001(a)(13) of ERISA of a "single-employer plan" as defined in Section 4001(a)(15) of ERISA which has two or more contributing sponsors at least two of whom are not under common control. Borrower does not have any contingent liability with respect to any Welfare Plan which covers retired or terminated employees and their beneficiaries.

5.17 **Regulation U.** Borrower is not engaged in the business of purchasing or selling Margin Stock or extending credit to others for the purpose of purchasing or carrying Margin Stock, and no part of the proceeds of any borrowing hereunder will be used to purchase or carry any Margin Stock or for any other purpose which would violate any of the margin regulations of the Federal Reserve Board.

5.18 **Compliance.** Borrower is in compliance with all statutes, judicial or administrative orders, licenses, permits, and governmental rules and regulations applicable to them.

5.19 **Taxes.** Borrower has filed all tax returns which are required to have been filed and has paid, or made adequate provisions for the payment of, all of its Taxes which are due and payable, except such Taxes, if any, as are being contested in good faith and by appropriate proceedings and as to which such reserves or other appropriate provisions as may be required by GAAP have been maintained. Borrower is not aware of any proposed assessment against either Borrower for additional Taxes (or any basis for any such assessment) which might be material to Borrower.

5.20 **Investment Company Act Representation.** Borrower is not an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

5.21 **Public Utility Holding Company Act Representation.** Borrower is not a "holding company" or a "subsidiary company" of "holding company" or an "affiliate" of a "holding company" within the meaning of the Public Utility Holding Company Act of 1935, as amended.

5.22 **Environmental and Safety and Health Matters.** Except in De Minimis Amounts, Borrower and each property, operation and facility that Borrower may own, operate or control (i) complies in all respects with (A) all applicable Environmental Laws and (B) all applicable Occupational Safety and Health Laws, except to the extent the noncompliance would not have a Material Adverse Effect; (ii) is not subject to any judicial or administrative proceeding alleging the violation of any Environmental Law or Occupational Safety and Health Law; (iii) has not received any notice (A) that it may be in violation of any Environmental Law or Occupational Safety and Health Law, (B) threatening the commencement of any proceeding relating to allegedly unlawful, unsafe or unhealthy conditions or (C) alleging that it is or may be responsible for any response, cleanup, or corrective action, including but not limited to any remedial investigation/feasibility studies, under any Environmental Law or Occupational Safety and Health Law; (iv) is not the subject of federal or state investigation evaluating whether any investigation, remedial action or other response is needed to respond to (A) a spillage, disposal or release or threatened release into the environment of any Hazardous Material or other hazardous, toxic or dangerous waste, substance or constituent, or other substance or (B) any allegedly unsafe or unhealthful condition; (v) has not filed any notice under or relating to any Environmental Law or Occupational Safety and Health Law indicating or reporting (A) any past or present spillage, disposal or release into the environment of, or treatment, storage or disposal of, any Hazardous Material or hazardous, toxic or dangerous waste, substance or constituent, or other substance or (B) any potentially unsafe or unhealthful condition, and there exists no basis for such notice irrespective of whether or not such notice was actually filed; and (vi) has no contingent liability in connection with (A) any actual, threatened, or potential spillage, disposal or release (by Borrower, or any employee of Borrower, or, to the best of Borrower's knowledge, by any independent contractor of Borrower) into the environment of, or otherwise with respect to, any Hazardous Material or other hazardous, toxic or dangerous waste, substance or constituent, or other substance, whether on any premises owned or occupied by either Borrower or on any other premises or (B) any unsafe or unhealthful condition. Except in De Minimis Amounts, there are no Hazardous Materials on, in or under any property or facilities owned, operated or controlled by either Borrower, including but not limited to such Hazardous Materials that may be contained in underground storage tanks, but excepting such Hazardous Materials used in accordance with all applicable laws and in the same manner as an ordinary consumer (e.g., gasoline in tanks of motor vehicles, small amounts of domestic cleaners, etc.).

5.23 **Health Care Reportable Events.** Except as previously disclosed to Bank in writing, there are no existing Health Care Reportable Events that would have a Material Adverse Effect.

5.24 **Health Care Laws.** Borrower is in compliance with all Health Care Laws.

5.25 **Related Agreements.** All representations and warranties of either Borrower contained in any Loan Documents are true and correct as if made on the date hereof and Borrower hereby adopts and confirms all such representations and warranties which Borrower agrees shall be incorporated by reference herein and made a part hereof.

6. **BORROWER'S COVENANTS.** From the date of this Agreement and thereafter until the Loan is terminated and all Obligations of Borrower hereunder are paid in full, Borrower agrees that unless Bank shall otherwise consent in writing, it will:

6.1 **Financial Statements and Other Reports.** Furnish to Bank in form satisfactory to Bank:

(a) **Financial Reports:**

(i) **Borrower's Annual Audit Report.** Within one hundred twenty (120) days after each Fiscal Year of Borrower, a copy of the annual audited report of Borrower prepared on a consolidating and consolidated basis and in conformity with GAAP and certified by an independent certified public accountant who shall be satisfactory to Bank, together with a certificate from such accountant (i) acknowledging to Bank such accountant's understanding that Bank and any Participant is relying on such annual audit report, (ii) containing a computation of, and showing compliance with, each of the financial ratios and restrictions contained in this **Section 6**, and (iii) to the effect that, in making the examination necessary for the signing of such annual audit report, such accountant has not become aware of any Event of Default or Unmatured Event of Default that has occurred and is continuing, or, if such accountant has become aware of any such event, describing it and the steps, if any, being taken to cure it;

(ii) **Borrower's Quarterly Financial Statement.** Within thirty (30) days after the end of Fiscal Quarter of Borrower (including the fourth (4th) quarter), a copy of the management prepared financial statements of Borrower prepared in the same manner as the audit report referred to in preceding **Section 6.1(a)(i)** (subject to year-end adjustments), signed by Borrower's chief financial officer and consisting of at least a balance sheet as at the close of such month and statements of earnings and cash flows for such month and for the period from the beginning of such Fiscal Year to the close of such month;

(iii) **Officer's Certificate.** Together with the financial statements furnished by Borrower under the preceding **Sections 6.1(a)(i)** and **6.1(a)(ii)**, a certificate of Borrower's chief financial officer, dated the date of such annual audit report or such quarterly or monthly financial statement, as the case may be, containing a statement that no Event of Default or Unmatured Event of Default has occurred and is continuing, or, if there is any such event, describing it and the steps, if any, being taken to cure it, and containing a computation of, and showing compliance with, each of the financial ratios and restrictions contained in this **Section 6**;

(b) **Agings.** Within fifteen (15) days after the end of each month, an aging of all Accounts, an aging of all accounts payable and an Inventory report as of the end of such month, in form and content acceptable to Bank.

(c) **Self-Pay Accounts Collection Analysis.** Within fifteen (15) days after the end of each month, Borrower's analysis of write-offs and collectability of Self-Pay Accounts of Borrower and Subsidiaries as of the last day of each calendar month for the twelve (12) consecutive month period ending on the last day of such month.

(d) **Projections.** Within thirty (30) days after the end of each Fiscal Year, an annual business plan including monthly projections for the Fiscal Year then commencing.

(e) **Other Reports.** Any information required to be provided pursuant to other provisions of this Agreement, and such other reports or information from time to time reasonably requested by Bank.

6.2 **Notices.** Notify Bank in writing of any of the following promptly, and in any event within forty-eight (48) hours after learning of the occurrence thereof (or, in the case **Section 6.2(e)** and **Section 6.2(e)**, at least 30 days prior to the occurrence thereof to the extent applicable to Borrower), describing the same and, if applicable, the steps being taken by the Person(s) affected with respect thereto:

(a) **Default.** The occurrence of (i) an Event of Default or Unmatured Event of Default and (ii) to the extent not included in **clause (i)** of this **Section 5.2(a)**, the default by either Borrower under the Bond Indenture or any other material note, indenture, loan agreement, mortgage, lease, deed or other material similar agreement to which Borrower is a party or by which it is bound;

(b) **Litigation.** The institution of any litigation, arbitration proceeding or governmental proceeding affecting Borrower, any Collateral, and claiming or involving an amount in excess of \$500,000.00 whether or not considered to be covered by insurance;

(c) **Judgment.** The entry of any judgment or decree against Borrower, if the amount of such judgment exceeds \$500,000.00;

(d) **Pension Plans and Welfare Plans.** The occurrence of a Reportable Event with respect to any Pension Plan; the filing of a notice of intent to terminate a Pension Plan by either Borrower or any ERISA Affiliate; the institution of proceedings to terminate a Pension Plan by the PBGC or any other Person; the withdrawal in a “complete withdrawal” or a “partial withdrawal” as defined in Sections 4203 and 4205, respectively, of ERISA by Borrower or any ERISA Affiliate from any Multiemployer Plan; the failure of Borrower or any ERISA Affiliate to make a required contribution to any Pension Plan, including but not limited to any failure to pay an amount sufficient to give rise to a Lien under Section 302(f) of ERISA; the taking of any action with respect to a Pension Plan which could result in the requirement that Borrower or any ERISA Affiliate furnish a bond or other security to the PBGC or such Pension Plan; the occurrence of any other event with respect to any Pension Plan which could result in the incurrence by Borrower or any ERISA Affiliate of any material liability, fine or penalty; or the incurrence of any material increase in the contingent liability of Borrower with respect to any Welfare Plan which covers retired or terminated employees and their beneficiaries;

(e) **Environmental and Safety and Health Matters.** The occurrence of any event, or the acquisition of any information which, if it had occurred, had been acquired, or was true on or before the Closing Date, including but not limited to existence of any Environmental Lien and receipt of any notice from any entity, or federal, state or local government or agency with respect to any actual or alleged violation of, or potential liability under, any Environmental Law or any Occupational Safety and Health Law;

(f) **Material Adverse Effect.** Any occurrence that would have a Material Adverse Effect;

(g) **Default by Others.** Any material default by any Account Debtor or other Person obligated to Borrower under any contract, chattel paper, note or other evidence of amounts payable or due or to become due to Borrower if the amount payable under such contract, chattel paper, note or other evidence of amounts payable or due or to become due involves an amount of \$100,000.00 or more or otherwise is material;

(h) **Change in Management.** Any substantial change in the senior management of Borrower; and

(i) **Other Notices.** Any notices required to be provided pursuant to any Loan Document or the other provisions of this Agreement, and notice of the occurrence of such other events as Bank may reasonably from time to time specify.

6.3 **Existence.** Maintain and preserve, and cause each diary to maintain and preserve, its existence as a local hospital district pursuant to the Health Care District Law and all rights, privileges, licenses, patents, patent rights, copyrights, trademarks, trade names, trade styles, franchises and other authority to the extent material and necessary for the conduct of its respective business in the ordinary course as conducted from time to time.

6.4 **Nature of Business.** Engage in substantially the same fields of business as it is engaged in on the date hereof.

6.5 **Books, Records and Access.** Maintain complete and accurate books and records (including but not limited to records relating to Accounts, Inventory, Equipment and other Collateral), in which full and correct entries in conformity with GAAP shall be made of all dealings and transactions in relation to its respective business and activities. Cause its books and records as at the end of any calendar month to be posted and closed not more than fifteen (15) days after the last Business Day of such month. Permit access by Bank and its agents or employees to the books and records of Borrower at Borrower's place or places of business at intervals to be determined by Bank and without hindrance or delay, and permit Bank or its agents and employees to inspect its Inventory and Equipment, to perform appraisals of its Equipment, and to inspect, audit, check and make copies and/or extracts from the books, records, computer data and records, computer programs, journals, orders, receipts, correspondence and other data relating to Inventory, Accounts, Contract Rights, General Intangibles, Equipment and any other Collateral, or relating to any other transactions between the parties hereto. Any and all such inspections and/or audits shall be at Borrower's expense, and Bank may make an Advance to Borrower under the Loan to pay such amounts. Notwithstanding the foregoing, as long as no Event of Default or Unmatured Event of Default has occurred or is continuing, Borrower shall not be required to reimburse Bank for audits more frequently than once each Fiscal Year.

6.6 **Insurance.** Maintain insurance to such extent and against such hazards and liabilities as is commonly maintained by companies similarly situated or as Bank may reasonably request from time to time. Keep the Collateral properly housed and insured for its full insurable value against loss or damage by fire, theft, explosion, sprinklers, collision (in the case of motor vehicles) and such other risks as are customarily insured against by persons engaged in business similar to that of Borrower, with such companies, in such amounts and under policies in such form as shall be satisfactory to Bank. Certificates of such policies of insurance have been

delivered to Bank prior to the date hereof together with evidence of payment of all premiums therefor. Borrower shall cause each issuer of an insurance policy to provide Bank, prior to the Closing Date, with an endorsement or an independent instrument (i) substantially in such form and containing such other terms as shall be acceptable to Bank and (ii) showing loss payable to Bank and, if required by Bank, naming Bank as an additional insured. Borrower agrees to execute and deliver such separate assignments or agreements, and cause the same to be accepted and agreed to by its insurers and take such other action as Bank shall determine to be necessary or desirable to cause the proceeds of any business interruption, reconstruction of records or similar insurance to be assigned to Bank as part of the Collateral and paid to Bank. Borrower hereby assigns all proceeds of all policies of insurance to Bank and directs all insurers under such policies of insurance to pay all proceeds thereunder directly to Bank. Borrower hereby appoint Bank and any Person whom Bank may from time to time designate (and all officers, employees or agents designated by Bank or such Person) as Borrower's true and lawful attorney and agent-in-fact with power to make, settle and adjust claims under such policies of insurance, endorse the name of Borrower on any check, draft, instrument or other item of payment for the proceeds of such policies of insurance and make all determinations and decisions with respect to such policies of insurance. The foregoing appointment and power, being coupled with an interest, is irrevocable until all Obligations under this Agreement are paid and performed in full and this Agreement is terminated. In the event either Borrower at any time or times hereafter shall fail to obtain or maintain any of the policies of insurance required herein or to pay any premium in whole or in part relating thereto, then Bank, without waiving or releasing any obligation of or default by Borrower hereunder, may at any time or times thereafter (but shall be under no obligation to do so) obtain and maintain such policies of insurance and pay such premiums and take any other action with respect thereto which Bank deems advisable. All sums so disbursed by Bank, including reasonable Attorneys' Fees, court costs, expenses and other charges relating thereto, shall be payable on demand by Borrower to Bank, and Bank may, in its sole and absolute discretion, make an Advance to Borrower under the Loan.

6.7 **Repair.** Maintain, preserve and keep its properties in operating condition and repair, ordinary wear and tear excepted, and from time to time make all necessary and proper repairs, renewals, replacements, additions, betterments and improvements thereto so that at all times the efficiency thereof shall be fully preserved and maintained.

6.8 **Taxes.** Pay when due, all of its Taxes, unless and only to the extent that Borrower is contesting such Taxes in good faith and by appropriate proceedings and Borrower has set aside on its books such reserves or other appropriate provisions therefor as may be required by GAAP. File its federal income tax return for each tax year not later than September 30th of the following calendar year. Not change its fiscal or tax year without Bank's prior consent.

6.9 **Compliance.** Comply with all statutes, judicial or administrative orders, licenses, permits, and governmental rules and regulations applicable to it.

6.10 **Use of Proceeds.** Use the proceeds of the Loan to finance the working capital and certain capital expenditure requirements of Borrower.

6.11 **Pension Plans**. Not permit any condition to exist in connection with any Pension Plan which might constitute grounds for the PBGC to institute proceedings to have such Pension Plan terminated or a trustee appointed to administer such Pension Plan; not fail to make a required contribution to any Pension Plan if such failure is sufficient to give rise to a Lien under Section 302(f) of ERISA; and not engage in, or permit to exist or occur, any other condition, event or transaction with respect to any Pension Plan which could result in the incurrence by either Borrower of any material liability, fine or penalty.

6.12 **Merger, Purchase and Sale**. Not to: (a) be a party to any merger, liquidation or consolidation; (b) except in the normal course of its business, sell, transfer, convey, lease or otherwise dispose of any of its assets; (c) sell or assign, with or without recourse, any Accounts, Contract Rights, notes receivable or chattel paper, except as provided in this Agreement or (d) purchase or otherwise acquire all or substantially all the assets of any Person.

6.13 **Indebtedness**. Not to incur or permit to exist any Indebtedness (including but not limited to Indebtedness as lessee under Capitalized Leases), except: (a) Indebtedness under the terms of this Agreement; (b) Subordinated Debt; and (c) Indebtedness hereafter incurred in connection with the Permitted Liens.

6.14 **Liens**. Not create or permit to exist any Lien with respect to any property, revenue or assets now owned or hereafter acquired, except Permitted Liens.

6.15 **Guaranties**. Not become or be a guarantor or surety of, or otherwise become or be responsible in any manner (whether by agreement to purchase any obligations, stock, assets, goods or services, or to supply or advance any funds, assets, goods or services, or otherwise) with respect to, any undertaking of any other Person, except for the endorsement, in the ordinary course of collection, of instruments payable to it or its order.

6.16 **Investments**. Not make or permit to exist any Investment in any Person.

6.17 **Subsidiaries**. Not acquire any stock or similar interest in any Person, and not create, establish or acquire any Subsidiaries.

6.18 **Change in Accounts**. After the occurrence of an Event of Default or Unmatured Event of Default, permit or agree to any extension, compromise or settlement or make any change or modification of any kind or nature with respect to any Account, including any of the terms relating thereto.

6.19 **Future Environmental Assessments**. Provide such information and certifications which Bank may reasonably request from time to time pertaining to the environmental aspects of Borrower and any property owned, operated or controlled by Borrower. To investigate environmental aspects of Borrower and its properties, facilities and operations, Bank or its agents shall have the right, but no obligation at any time to enter upon the property of Borrower, take samples, review the books, records or other documents of Borrower, interview officers and employees and independent contractors of Borrower, and conduct such other activities as Bank, in its sole discretion, deems appropriate. Borrower shall cooperate fully in the conduct of any such assessment. If Bank decides to cause such an assessment to be conducted because of (a) Bank's considering taking possession of or title to the property after the

occurrence of an Event of Default or (b) a material change in the use of the property which, in Bank's opinion, increases the risk of non-compliance with Environmental Laws or increases the risk of costs or liabilities thereunder, then Borrower shall pay upon demand all costs and expenses (including Attorney's Fees) connected with such assessment. Bank, may, in its discretion, provide for the payment of any amount due from Borrower under this **Section 6.19** by making an Advance under the Loan. Nothing in this **Section 6.19**, and no actions taken by Bank pursuant thereto, shall give, or be construed as affecting, directing, influencing, or controlling, or giving, to Bank the right, capacity or obligation to direct or control the conduct or action or inaction of Borrower with respect to any environmental matters, including but not limited to those pertaining to compliance with any Environmental Laws and Hazardous Material disposal.

6.20 **Loan Documents**. Not enter into any agreement containing any provision which would be violated or breached by the performance by either Borrower of its obligations hereunder or under any Loan Document or any instrument or document delivered or to be delivered by either Borrower in connection herewith.

6.21 **Use of Proceeds**. Not use or permit any proceeds of the Loan to be used, either directly or indirectly, for the purpose, whether immediate, incidental or ultimate, of "purchasing or carrying" any Margin Stock, and furnish to Bank upon request, a statement in conformity with the requirements of Federal Reserve Form U-1 referred to in Regulation U of the Board of Governors of the Federal Reserve System.

6.22 **Capital Expenditures**. Borrower shall not acquire in any Fiscal Year, fixed or capital assets, by purchase, conditional sale, Capitalized Lease, or otherwise, in excess of \$1,500,000.00;

6.23 **Financial Covenants**. Not permit:

(a) **Fixed Charge Coverage Ratio**. Borrower shall maintain at all times a Fixed Charge Coverage Ratio of not less than 1.50:1.00. This ratio shall be measured quarterly commencing with the Fiscal Quarter ended June 30, 2012 and thereafter on a rolling four quarter basis and calculated by Bank based on the financial statements provided to Bank by Borrower in **Sections 6.1**.

(b) **Leverage Ratio**. Borrower shall maintain at all times a Leverage Ratio of not greater than (i) 1.25:1.00. This ratio shall be measured quarterly commencing with the Fiscal Quarter ended June 30, 2012 and calculated by Bank based on the financial statements provided to Bank by Borrower in **Sections 6.1**.

6.24 **Health Care Reportable Events**. Promptly after becoming aware of the same, Borrower shall give Bank written notice of any Health Care Reportable Event that would have a Material Adverse Effect.

6.25 **Health Care Laws**. Borrower shall be in compliance at all times with Health Care Laws.

6.26 **S&P Credit Rating**. Borrower shall maintain at all times a Standard and Poor's credit rating of not less than BBB-/Stable (or Moody's equivalent credit rating).

7. **DEFAULT.**

7.1 **Event of Default.** Each of the following shall constitute an Event of Default under this Agreement:

(a) **Non-Payment.** Default in the payment, when due or declared due, of any of the Obligations.

(b) **Non-Payment of Other Indebtedness.** Default in the payment when due, whether by acceleration or otherwise (subject to any applicable grace period), of any Indebtedness (exceeding either singly or in the aggregate \$100,000.00) of, or guaranteed by, Borrower (other than any Indebtedness under this Agreement and the Note).

(c) **Acceleration of Other Indebtedness.** Any event or condition shall occur which results in the acceleration of the maturity of any Indebtedness (exceeding either singly or in the aggregate \$100,000.00) of, or guaranteed by, Borrower (other than the Indebtedness under this Agreement the Note).

(d) **Other Obligations.** Default in the payment when due, whether by acceleration or otherwise, or in the performance or observance (subject to any applicable grace period or waiver of such default) of (i) any other obligation or agreement of Borrower to or with Bank (other than any obligation or agreement of Borrower hereunder and under the Note) or (ii) any material obligation or agreement of Borrower to or with any other Person, including, but not limited to, the Bond Indenture, except only to the extent that the existence of any such default is being contested by Borrower in good faith and by appropriate proceedings and Borrower shall have set aside on its books such reserves or other appropriate provisions therefor as may be required by GAAP.

(e) **Insolvency.** Borrower becomes insolvent, or generally fails to pay, or admits in writing its inability to pay, its debts as they mature, or applies for, consents to, or acquiesces in the appointment of a trustee, receiver or other custodian for Borrower or for a substantial part of the property of Borrower or makes a general assignment for the benefit of creditors; or, in the absence of such application, consent or acquiescence, a trustee, receiver or other custodian is appointed for Borrower or for a substantial part of the property of Borrower and is not discharged or dismissed within 30 days; or any bankruptcy, reorganization, debt arrangement or other proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceeding, is instituted by or against Borrower or any warrant of attachment or similar legal process is issued against any substantial part of the property of Borrower.

(f) **Pension Plans.** The institution by Borrower or any ERISA Affiliate of steps to terminate any Pension Plan if, in order to effectuate such termination, Borrower or any ERISA Affiliate would be required to make a contribution to such Pension Plan, or would incur a liability or obligation to such Pension Plan, in excess of \$50,000.00; the institution by the PBGC of steps to terminate any Pension Plan and the continuation of either such condition after notice thereof from Bank; or a contribution failure occurs with respect to any Pension Plan sufficient to give rise to a Lien under Section 302(f) of ERISA.

(g) **Non-Compliance With This Agreement.** Default in the performance of any of Borrower's agreements set forth in **Section 6.1** or **6.2** (and not constituting an Event of Default under any of the other subsections of this **Section 7.1**), and continuance of such default for fifteen (15) days after notice thereof to Borrower from Bank; or default in the performance of any of Borrower's other agreements herein set forth (and not constituting an Event of Default under any of the other subsections of this **Section 7.1**), and continuance of such default for thirty (30) days after notice thereof to Borrower from Bank.

(h) **Non-Compliance With Loan Documents.** Default in the performance by Borrower of any of its agreements set forth in any Loan Document (and not constituting an Event of Default under any of the other subsections of this **Section 7.1**), and continuance of such default after notice from Bank and the expiration of thirty (30) days.

(i) **Warranty.** Any warranty made by Borrower herein or in any Loan Document is untrue or misleading in any material respect when made or deemed made; or any schedule, statement, report, notice, certificate or other writing furnished by Borrower to Bank is untrue or misleading in any material respect on the date as of which the facts set forth therein are stated or certified; or any certification made or deemed made by Borrower to Bank is untrue or misleading in any material respect on or as of the date made or deemed made.

(j) **Litigation.** There shall be entered against Borrower one or more judgments or decrees in excess of \$500,000.00 in the aggregate at any one time outstanding, excluding those judgments or decrees (i) that shall have been outstanding less than 30 calendar days from the entry thereof, (ii) that shall be subject to a stay of enforcement by reason of a pending appeal or otherwise if no Lien shall have been granted in respect of such judgment or decree, or (iii) for and to the extent which Borrower is insured and with respect to which the insurer has assumed responsibility in writing or for and to the extent which Borrower is otherwise indemnified if the terms of such indemnification are satisfactory to Bank.

(k) **Validity.** If the validity or enforceability of this Agreement or any Loan Document shall be challenged by Borrower or any other Person, or shall fail to remain in full force and effect.

(l) **Conduct of Business.** If Borrower is enjoined, restrained or in any way prevented by court order, which has not been dissolved or stayed within five (5) Business Days, from conducting all or any material part of its business affairs.

(m) **Material Adverse Effect.** Bank shall have determined in good faith that an occurrence has caused a Material Adverse Effect.

7.2 **Effect of Event of Default; Remedies.**

(a) **Acceleration; Termination of Commitment.** In the event an Event of Default shall occur, then Bank's commitment shall terminate and Bank may declare all Obligations hereunder and under the Note immediately due and payable without demand or notice of any kind whatsoever, whereupon the obligation to Advance Loan funds under this Agreement shall terminate and all Obligations hereunder and under the Note shall be

immediately due and payable. Bank shall promptly advise Borrower of any such declaration, but failure to do so shall not impair the effect of such declaration.

(b) **Remedies.** In the event of the occurrence of any Event of Default, Bank may exercise any one or more or all of the following remedies, all of which are cumulative and non-exclusive:

(i) Any remedy contained in this Agreement or in any of the Loan Documents or any Supplemental Documents;

(ii) Any rights and remedies available to Bank under the UCC, and any other applicable law;

(iii) To the extent permitted by applicable law, Bank may, without notice, demand or legal process of any kind, take possession of any or all of the Collateral (in addition to Collateral which it may already have in its possession), wherever it may be found, and for that purpose may pursue the same wherever it may be found, and may enter into any premises where any of the Collateral may be or is supposed to be, and search for, take possession of, remove, keep and store any of the Collateral until the same shall be sold or otherwise disposed of, and Bank shall have the right to store the same in any of Borrower's premises without cost to Bank;

(iv) At Bank's request, Borrower will, at Borrower's expense, assemble the Collateral and make it available to Bank at a place or places to be designated by Bank which is reasonably convenient to Bank and Borrower; and

(v) Bank at its option, and pursuant to notification given to Borrower as provided for below, may sell any Collateral actually or constructively in its possession at public or private sale and apply the proceeds thereof as provided below.

8. ADDITIONAL PROVISIONS REGARDING COLLATERAL AND BANK'S RIGHTS.

8.1 **Notice of Disposition of Collateral.** Any notification of intended disposition of any of the Collateral required by law shall be deemed reasonably and properly given if given at least ten (10) calendar days before such disposition.

8.2 **Application of Proceeds of Collateral.** Any proceeds of any disposition by Bank of any of the Collateral may be applied by Bank to the payment of expenses in connection with the taking possession of, storing, preparing for sale, and disposition of Collateral, including Attorneys' Fees and legal expenses, and any balance of such proceeds may be applied by Bank toward the payment of such of the Obligations, and in such order of application, as Bank may from time to time elect.

8.3 **Care of Collateral.** Bank shall be deemed to have exercised reasonable care in the custody and preservation of any Collateral in its possession if it takes such action for that purpose as Borrower requests in writing, but failure of Bank to comply with such request shall not, of itself, be deemed a failure to exercise reasonable care, and no failure of Bank to preserve

or protect any rights with respect to such Collateral against prior parties, or to do any act with respect to the preservation of such Collateral not so requested by Borrower, shall be deemed a failure to exercise reasonable care in the custody or preservation of such Collateral.

8.4 **Performance of Borrower's Obligations.** Bank shall have the right, but shall not be obligated, to discharge any claims against or Liens, and any Taxes at any time levied or placed upon any or all Collateral including, without limitation, those arising under statute or in favor of landlords, taxing authorities, government, public and/or private warehousemen, common and/or private carriers, processors, finishers, draymen, coopers, dryers, mechanics, artisans, laborers, attorneys, courts, or others. Bank may also pay for maintenance and preservation of Collateral. Bank may, but is not obligated to, perform or fulfill any of Borrower's responsibilities under this Agreement which Borrower has failed to perform or fulfill. Bank may make an Advance under the Loan for any payment made or expense incurred by Bank under this **Section 8.4.**

8.5 **Bank's Rights.** None of the following shall affect the obligations of Borrower to Bank under this Agreement or Bank's right with respect to the remaining Collateral (any or all of which actions may be taken by Bank at any time, whether before or after an Event of Default, at its sole and absolute discretion and without notice to Borrower):

(a) acceptance or retention by Bank of other property or interests in property as security for the Obligations;

(b) release of its security interest in, or surrender or release of, or the substitution or exchange of or for, all or any part of the Collateral or any other property securing any of the Obligations or any extension or renewal for one or more periods (whether or not longer than the original period);

9. **INDEMNITY.**

9.1 **Environmental and Safety and Health Indemnity.** Borrower hereby indemnifies Bank and agree to hold Bank harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any and every kind whatsoever (including, without limitation, court costs and Attorneys' Fees) (i) relating to or arising under any Environmental Law or Occupational Safety and Health Law; or (ii) which otherwise may be paid, incurred or suffered by or asserted against Bank for, with respect to, or as a direct or indirect result of the violation by Borrower, or any immediate or remote predecessor of any of them, of any Environmental Law or Occupational Safety and Health Law; or (iii) with respect to, or as a direct or indirect result of (A) the presence, of more than a De Minimis Amount, on or under, or the escape, seepage, leakage, spillage, disposal, discharge, emission, threat of release, or release of any Hazardous Material from, any property allegedly owned or operated by Borrower (or any immediate or remote predecessors of any of them), or any property at which Hazardous Material allegedly generated by Borrower, or any immediate or remote predecessors of any of them, may have come to be located, or (B) the existence of any unsafe or unhealthful condition on or at any premises utilized by Borrower or any immediate or remote predecessor of any of them. The provisions of and undertakings and indemnification set out in this **Section 9.1** shall survive satisfaction and payment of the Obligations and termination of this Agreement.

9.2 **General Indemnity.** In addition to and without limitation of the indemnity set forth in **Section 9.1** and in addition to the payment of expenses pursuant to **Section 10.3**, whether or not the transactions contemplated hereby shall be consummated, Borrower agree to indemnify, pay and hold Bank and any holder of the Note, and the officers, directors, employees, agents, and affiliates of Bank and such holders (collectively, the "**Indemnitees**") harmless from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for any of such Indemnitees in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not any of such Indemnitees shall be designated a party thereto) that may be imposed on, incurred by, or asserted against any Indemnitee, in any manner relating to or arising out of this Agreement, any Loan Document or any other agreements executed and delivered by Borrower in connection herewith, the statements contained in any commitment letter delivered by Bank, Bank's agreement to make the Loan hereunder, or the use or intended use of the proceeds of the Loan hereunder (the "**Indemnified Liabilities**"); provided that Borrower shall have no obligation to an Indemnitee hereunder with respect to indemnified liabilities arising from the gross negligence or willful misconduct of such Indemnitee. To the extent that the undertaking to indemnify, pay and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrower shall contribute the maximum portion that it is permitted to pay under applicable law to the payment and satisfaction of all indemnified liabilities incurred by the Indemnitees or any of them. The provisions of the undertakings and indemnification set out in this **Section 9.2** shall survive satisfaction and payment of the Obligations and termination of this Agreement.

9.3 **Capital Adequacy.** If Bank shall reasonably determine that the application or adoption of any law, rule, regulation, directive, interpretation, treaty or guideline regarding capital adequacy, or any change therein or in the interpretation or administration thereof, whether or not having the force of law (including, without limitation, application of changes to Regulation H and Regulation Y of the Federal Reserve Board issued by the Federal Reserve Board on January 19, 1989 and regulations of the Comptroller of the Currency, Department of the Treasury, 12 CFR Part 3, Appendix A, issued by the Comptroller of the Currency on January 27, 1989) increases the amount of capital required or expected to be maintained by Bank or any Person controlling Bank, and such increase is based upon the existence of Bank's obligations hereunder and other commitments of this type, then from time to time, within 10 days after demand from Bank, Borrower shall pay to Bank such amount or amounts as will compensate Bank or such controlling Person, as the case may be, for such increased capital requirement. The determination of any amount to be paid by Borrower under this **Section 9.3** shall take into consideration the policies of Bank or any Person controlling Bank with respect to capital adequacy and shall be based upon any reasonable averaging, attribution and allocation methods. A certificate of Bank setting forth the amount or amounts as shall be necessary to compensate Bank as specified in this **Section 9.3** shall be delivered to Borrower and shall be conclusive in the absence of manifest error.

10. **GENERAL.**

10.1 **Borrower's Waiver.** Except as otherwise provided for in this Agreement, Borrower, for itself and its successors and assigns, (i) waives presentment, demand and protest

and notice of presentment, protest, default, non-payment, maturity, release, compromise, settlement, one or more extensions or renewals of any or all commercial paper, accounts, contract rights, documents, instruments, chattel paper and guaranties at any time held by Bank on which Borrower may in any way be liable and hereby ratifies and confirms whatever Bank may do in this regard; (ii) waives all rights to notice and a hearing prior to Bank's taking possession or control of, or Bank's levy, attachment or levy on or of, the Collateral or any bond or security which might be required by any court prior to allowing Bank to exercise any of Bank's remedies; (iii) waives the benefit of all valuation, appraisal and exemption laws; and (iv) releases Bank from all liability under any Environmental Law, and waives and agrees not to make any claim or bring any cost recovery or contribution action against Bank under CERCLA or any other Environmental Law now existing or hereafter enacted. Borrower acknowledges that it has been advised by counsel of its choice with respect to this Agreement and the transactions evidenced by this Agreement.

10.2 **Power of Attorney.** Borrower appoints Bank, or any Person whom Bank may from time to time designate, as Borrower's attorney and agent-in-fact with power (which appointment and power, being coupled with an interest, is irrevocable until all Obligations under this Agreement are paid and performed in full and this Agreement is terminated), without notice to Borrower, to:

(a) At such time or times hereafter as Bank or said agent, in its sole and absolute discretion, may determine in Borrower's or Bank's name (i) endorse Borrower's name on any checks, notes, drafts or any other items of payment relating to and/or proceeds of the Collateral which come into the possession of Bank or under Bank's control and apply such payment or proceeds to the Obligations; (ii) endorse Borrower's name on any chattel paper, document, instrument, invoice, freight bill, bill of lading or similar document or agreement in Bank's possession relating to Accounts, Inventory or any other Collateral; (iii) use the information recorded on or contained in any data processing equipment and computer hardware and software to which Borrower has access relating to Accounts, Inventory and/or other Collateral; (iv) use Borrower's stationery and sign the name of Borrower to verification of Accounts, and (v) if not done by Borrower and if an Event of Default or Unmatured Event of Default shall be existing, do all acts and things determined by Bank to be necessary, to fulfill Borrower's obligations under this Agreement; and

(b) At such time or times after the occurrence of an Event of Default, as Bank or said agent, in its sole and absolute discretion, may determine, in Borrower's or Bank's name, if permitted by applicable law, (i) demand payment of the Accounts; (ii) enforce payment of the Accounts, by legal proceedings or otherwise; (iii) exercise all of Borrower's rights and remedies with respect to the collection of the Accounts and other Collateral; (iv) settle, adjust, compromise, extend or renew the Accounts; (v) settle, adjust or compromise any legal proceedings brought to collect the Accounts; (vi) sell or assign the Accounts and/or other Collateral upon such terms for such amounts and at such time or times as Bank may deem advisable; (vii) discharge and release the Accounts and/or other Collateral; (viii) prepare, file and sign Borrower's name on any proof of claim in bankruptcy or similar document against any Account Debtor; (ix) prepare, file and sign Borrower's name on any notice of lien, assignment or satisfaction of lien or similar document in connection with the Accounts and/or other Collateral

and (x) do all acts and things necessary, in Bank's sole and absolute discretion, to obtain repayment of the Obligations and to fulfill Borrower's other obligations under this Agreement.

10.3 **Expenses; Attorney's Fees.** Borrower agrees, whether or not any Loan is made hereunder, to pay upon demand all Attorney's Fees and all other reasonable expenses incurred by Bank (i) in connection with negotiation, preparation, execution, delivery, administration and enforcement of this Agreement, any Loan Document, and Supplemental Documents and all other documents or instruments provided for herein or in any thereof or delivered or to be delivered hereunder or under any thereof or in connection herewith or with any thereof, (ii) in connection with any due diligence examination or investigation with respect to Borrower in connection with this Agreement, any Loan Document or any other document, instrument or agreement related thereto, (iii) to prepare documentation related to the Loan made and other Obligations incurred hereunder, (iv) to prepare any amendment to or waiver under this Agreement or any Loan Document and any documents or instruments related thereto, (v) to represent Bank in any litigation, contest, dispute, suit or proceeding or to commence, defend or intervene in any litigation, contest, dispute, suit or proceeding or to file a petition, complaint, answer, motion or other pleading, or to take any other action in or with respect to, any litigation, contest, dispute, suit or proceeding (whether instituted by Bank, Borrower or any other Person and whether in bankruptcy or otherwise) in any way or respect relating to the Collateral, this Agreement, any Loan Document or any Supplemental Documents, or Borrower's affairs, (vi) to protect, collect, lease, sell, take possession of, or liquidate any of the Collateral, (vii) to attempt to enforce any security interest in any of the Collateral or to give any advice with respect to such enforcement and (viii) to enforce any right of Bank to collect any of the Obligations. Bank may make an Advance under the Loan for all such amounts to Borrower. Borrower also agrees (a) to indemnify and hold Bank harmless from any loss or expense which may arise or be created by the acceptance of telephonic or other instructions for making Advances and (b) to pay, and save Bank harmless from all liability for, any stamp or other taxes which may be payable with respect to the execution or delivery of this Agreement, or any Loan Document or Supplemental Documents, or the issuance of any Note or of any other instruments or documents provided for herein or to be delivered hereunder or in connection herewith. Borrower's foregoing obligations shall survive any termination of this Agreement.

10.4 **Bank Fees and Charges.** Borrower agrees to pay Bank on demand the customary fees and charges of Bank for maintenance of accounts with Bank or for providing other services to Borrower. Bank may, in its sole and absolute discretion, provide for such payment by making an Advance under the Loan to Borrower.

10.5 **Lawful Interest.** In no contingency or event whatsoever shall the interest rate charged pursuant to the terms of this Agreement exceed the highest rate permissible under any law which a court of competent jurisdiction shall, in a final determination, deem applicable hereto. In the event that such a court determines that Bank has received interest hereunder in excess of the highest applicable rate, Bank shall promptly refund such excess interest to Borrower.

10.6 **No Waiver by Bank; Amendments.** No failure or delay on the part of Bank in the exercise of any power or right, and no course of dealing between Borrower and Bank shall operate as a waiver of such power or right, nor shall any single or partial exercise of any power

or right preclude other or further exercise thereof or the exercise of any other power or right. The remedies provided for herein are cumulative and not exclusive of any remedies which may be available to Bank at law or in equity. No notice to or demand on Borrower not required hereunder shall in any event entitle Borrower to any other or further notice or demand in similar or other circumstances or constitute a waiver of the right of Bank to any other or further action in any circumstances without notice or demand. No amendment, modification or waiver of, or consent with respect to, any provision of this Agreement or any Loan Document shall in any event be effective unless the same shall be in writing and signed and delivered by Bank. Any waiver of any provision of this Agreement, and any consent to any departure by Borrower from the terms of any provision of this Agreement, shall be effective only in the specific instance and for the specific purpose for which given.

10.7 **Termination of Loan.** If not sooner terminated pursuant to the terms of this Agreement or the Note, the Loan shall terminate, and all Obligations under this Agreement shall become due and payable, on the Maturity Date. Borrower may terminate the Loan at any time upon at least thirty (30) days prior written notice to Bank and payment in full of the outstanding principal balance of the Loan and all other Obligations under this Agreement and the Loan Documents. All of Bank's rights and remedies, the liens and security interests of Bank in the Collateral and all of Borrower's duties and obligations under this Agreement shall survive termination of the Loan extended to Borrower hereunder until all of the Obligations hereunder have been finally paid and performed in full. The termination or cancellation of the Loan shall not affect or impair the liabilities and obligations of Borrower to Bank or Bank's rights with respect to the Loan and Advances made and other Obligations incurred prior to such termination or with respect to the Collateral.

10.8 **Notices.** Except as otherwise expressly provided herein, any notice hereunder to Borrower or Bank shall be in writing (including telegraphic, telex, or telecopy communication) and shall be given to Borrower or Bank at its address, telex number or telecopy number set forth on the signature pages hereof or at such other address, telex number or telecopy number as Borrower or Bank may, by written notice, designate as its address, telex number or telecopy number for purposes of notices hereunder. All such notices shall be deemed to be given when transmitted by telex and the appropriate answer back is received, transmitted by telecopy, delivered to the telegraph office, delivered by courier, personally delivered or, in the case of notice by mail, three (3) Business Days following deposit in the United States certified mail, return receipt requested, properly addressed as herein provided, with proper postage prepaid; provided, however, that notice to Bank of Borrower's intent to terminate the Loan shall not be effective until actually received by Bank.

10.9 **Assignments and Participations; Information.** Borrower hereby consents to Bank's grant of participations in or sale, assignment, transfer or other disposition, at any time and from time to time hereafter, of this Agreement or any Loan Document, or of any portion of any thereof, including without limitation Bank's rights, titles, interests, remedies, powers and/or duties. Bank may furnish any information concerning Borrower in the possession of Bank from time to time to assignees of the rights and/or obligations of Bank hereunder and to participants in any Loan (including prospective assignees and participants) and may furnish information in response to credit inquiries consistent with general banking practice. Bank shall promptly notify Borrower of Bank's grant of any participation in or sale, assignment, transfer or other disposition

of this Agreement or any Loan Document, or of any portion of any thereof. Borrower shall use its best efforts to assist Bank in its efforts to sell assignments and participations.

10.10 **Severability.** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

10.11 **Successors.** This Agreement shall be binding upon Borrower and Bank and their respective successors and assigns, and shall inure to the benefit of Borrower and Bank and the successors and assigns of Bank. Borrower shall not assign its rights or duties hereunder without the consent of Bank.

10.12 **Construction.** Borrower acknowledges that this Agreement shall not be binding upon Bank or become effective until and unless accepted by Bank, in writing. If so accepted by Bank, this Agreement and the Loan Documents and Supplemental Documents shall, unless otherwise expressly provided therein, be deemed to have been negotiated and entered into in, and shall be governed and controlled by the laws of, the State of California as to interpretation, enforcement, validity, construction, effect, choice of law, and in all other respects, including, but not limited to, the legality of the interest rate and other charges, but excluding perfection of security interests and liens which shall be governed and controlled by the laws of the relevant jurisdiction.

10.13 **Choice of Law and Jurisdiction.** THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA. THE COURTS OF CALIFORNIA, FEDERAL OR STATE, SHALL HAVE EXCLUSIVE JURISDICTION OF ALL LEGAL ACTIONS ARISING OUT OF THIS AGREEMENT. BY EXECUTING THIS AGREEMENT, THE UNDERSIGNED SUBMITS TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS OF CALIFORNIA.

10.14 **Subsidiary Reference.** Any reference herein to a Subsidiary or Subsidiaries of Borrower, and any financial definition, ratio, restriction or other provision of this Agreement which is stated to be applicable to "Borrower and its Subsidiaries" or which is to be determined on a "consolidated" or "consolidating" basis, shall apply only to the extent a Borrower has any Subsidiaries and, where applicable, to the extent any such Subsidiaries are consolidated with Borrower for financial reporting purposes.

10.15 **WAIVER OF JURY TRIAL AND JUDICIAL REFERENCE PROVISION.** EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE

THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION. In the event any legal proceeding is filed in a court of the State of California (the "Court") by or against any party hereto in connection with any controversy, dispute or claim directly or indirectly arising out of or relating to this agreement or the transactions contemplated hereby (whether based on contract, tort or any other theory) (each, a "Claim") and the waiver set forth in the preceding paragraph is not enforceable in such action or proceeding, the parties hereto agree as follows:

(a) With the exception of the matters specified in Paragraph (b) below, any Claim will be determined by a General Reference Proceeding in accordance with the provisions of California Code of Civil Procedure Sections 638 through 645.1. The parties intend this General Reference Agreement to be specifically enforceable in accordance with California Code of Civil Procedure Section 638. Except as otherwise provided in the Credit Documents, venue for the reference proceeding will be in the State or Federal court in the county or district where venue is otherwise appropriate under applicable law.

(b) The following matters shall not be subject to a General Reference Proceeding: (i) non-judicial foreclosure of any security interests in real or personal property, (ii) exercise of self-help remedies (including, without limitation, set-off), (iii) appointment of a receiver and (iv) temporary, provisional or ancillary remedies (including, without limitation, writs of attachment, writs of possession, temporary restraining orders or preliminary injunctions). This agreement does not limit the right of any party to exercise or oppose any of the rights and remedies described in clauses (i) - (iv) and any such exercise or opposition does not waive the right of any party to a reference proceeding pursuant to this agreement.

(c) Upon the written request of any party, the parties shall select a single referee, who shall be a retired judge or justice. If the parties do not agree upon a referee within ten (10) days of such written request, then, any party may request the court to appoint a referee pursuant to California Code of Civil Procedure Section 640(b). A request for appointment of a referee may be heard on an ex parte or expedited basis, and the parties agree that irreparable harm would result if ex parte relief is not granted.

(d) All proceedings and hearings conducted before the referee, except for trial, shall be conducted without a court reporter, except when any party so requests, a court reporter will be used and the referee will be provided a courtesy copy of the transcript. The party making such request shall have the obligation to arrange for and pay costs of the court reporter, provided that such costs, along with the referee's fees, shall ultimately be borne by the party who does not prevail, as determined by the referee.

(e) The referee may require one or more prehearing conferences. The parties hereto shall be entitled to discovery, and the referee shall oversee discovery in accordance with the rules of discovery, and may enforce all discovery orders in the same manner as any trial court judge in proceedings at law in the State of California. The referee shall apply the rules of evidence applicable to proceedings at law in the State of California and shall determine all issues in accordance with applicable state and federal law. The referee shall be empowered to enter

equitable as well as legal relief and rule on any motion which would be authorized in a trial, including, without limitation, motions for default judgment or summary judgment. The referee shall report his decision, which report shall also include findings of fact and conclusions of law.

(f) The parties recognize and agree that all claims resolved in a general reference proceeding pursuant hereto will be decided by a referee and not by a jury.

10.16 **Parties and Binding Effect.** This Agreement is made solely between Bank and Borrower, and no other Person shall have any rights hereunder or be a third-party beneficiary hereof. This Loan Agreement shall be binding upon the undersigned, and upon the heirs, legal representatives, successors and assigns of the undersigned; and to the extent that Borrower is a limited liability company, partnership or a corporation, all references herein to Borrower shall be deemed to include any successor or successors, whether immediate or remote, to such limited liability company, partnership or corporation. Borrower may not assign any of its rights or delegate any of its obligations under the Loan Documents without the prior express written consent of Bank, and any purported assignment by Borrower made in contravention hereof shall be void. Bank may from time to time assign, or sell participation interests in, any part or all of the Obligations and its rights and obligations under the Loan Documents in its absolute and sole discretion.

10.17 **Inconsistencies with Loan Documents.** In the event of any inconsistencies between the terms of this Agreement and any terms of any of the Loan Documents or any loan application, the terms of this Agreement shall govern and prevail.

10.18 **No Waiver.** No disbursement of proceeds of the Loan shall constitute a waiver of any conditions to Bank's obligation to make further disbursements nor, in the event Borrower is unable to satisfy any such conditions, shall any such waiver have the effect of precluding Bank from thereafter declaring such inability a default under this Agreement.

10.19 **Captions.** Section captions used in this Agreement are for convenience only, and shall not affect the construction of this Agreement.

10.20 **Time of the Essence.** Time is of the essence with regard to each provision of this Agreement as to which time is a factor.

10.21 **No Construction Against Bank or Borrower.** The Loan Documents are the result of negotiations between Borrower and Bank. Accordingly, the Loan Documents shall not be construed for or against Borrower or Bank, regardless of which party drafted the Loan Documents or any part thereof.

10.22 **Rescission or Return of Payments.** If at any time or from time to time, whether before or after payment and performance of the Obligations, all or any part of any amount received by Bank in payment of, or on account of, any Obligation is or must be, or is claimed to be, avoided, rescinded, or returned by Bank to Borrower or any other Person for any reason whatsoever (including, without limitation, bankruptcy, insolvency, or reorganization of Borrower or any other Person), such Obligation and the Liens on property, and rights to property that were the Collateral at the time such avoided, rescinded, or returned payment was received by Bank

shall be deemed to have continued in existence or shall be reinstated, as the case may be, all as though such payment had not been received.

10.23 **Waiver of Statute of Limitations**. Borrower waives, to the full extent permitted by law, the right to plead and any statutes of limitations as a defense in any action or proceeding in respect of the Loan Documents.

10.24 **Bank's Right of Set-Off**. Borrower (i) as security for payment and performance of the Obligations grants to Bank a continuing security interest in any and all deposits (general, special, time, or demand, whether provisional or final) at any time held and any other indebtedness at any time owing by Bank for the credit or for the account of Borrower, and (ii) authorizes Bank at any time and from time to time after any failure by Borrower to timely pay or perform any Obligation, without notice to Borrower (any notice being waived by Borrower), to segregate and/or set-off and apply such deposits and indebtedness to or for such Obligations, regardless of whether such deposits or indebtedness are contingent or matured.

10.25 **Number and Gender**. In this Agreement the singular shall include the plural and the masculine shall include the feminine and neuter genders, and vice versa.

10.26 **Headings and References**. The headings at the beginning of each section of this Agreement are solely for convenience and are not part of this Agreement. Reference herein to a section, attachment, exhibit, or schedule is to the respective section, attachment, exhibit, or schedule herein or hereto, unless otherwise specified.

10.27 **Counterpart Execution**. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document. Signature pages may be detached from the counterparts and attached to a single copy of this document to physically form one document.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the date first written above.

BORROWER:

NORTHERN INYO COUNTY LOCAL
HOSPITAL DISTRICT

By: _____

Name: John Halfen

Title: Chief Executive Officer

Address: 150 Pioneer Way
Bishop, California 93514
Attention: John Halfen

BANK:

**ALLIANCE BANK OF ARIZONA, a Division of
Western Alliance Bank**

By: _____

Name: _____

Title: _____

Address: One East Washington Street,
Suite 600
Phoenix, Arizona 85004
Attention: William E. Koenig

Schedule 2.3(b)

Compliance Certificate

Northern Inyo County Local Hospital District (“Borrower”) represents and warrants as of the fiscal _____ ending _____, _____, that (i) the foregoing information is accurate and complete as of the date of this Certificate, (ii) no Event of Default or Unmatured Event of Default has occurred, and (iii) any amounts and percentages under the heading “Financial Covenant(s) Computation” below were calculated in accordance with the provisions of **Section 6.23** of the Loan Agreement using financial information current and accurate as of the fiscal period referenced above. Terms defined in the Loan Agreement dated June __, 2012, between Borrower and Bank shall have the same meanings when used in this certificate.

FINANCIAL COVENANT(S) COMPUTATION

	<u>MINIMUM</u>	<u>ACTUAL</u>
<u>Fixed Charge Coverage Ratio</u>	1.50X	_____

	<u>MAXIMUM</u>	<u>ACTUAL</u>
<u>Leverage Ratio</u>	1.25X	_____

Dated: _____

NORTHERN INYO COUNTY LOCAL
HOSPITAL DISTRICT

By: _____
Name: John Halfen
Title: Chief Executive Officer

Schedule 5.8(b)

Non-Program Third-Party Payors

Schedule 5.10(a)

Litigation

**INTERCREDITOR AGREEMENT
(With Subordination)**

This Intercreditor Agreement (With Subordination) is made and entered into as of June __, 2012, between ALLIANCE BANK OF ARIZONA, a Division of Western Alliance Bank (“**Alliance**”), and The Bank of New York Mellon Trust Company, N.A. (“**Trustee**”), and is acknowledged and consented to by NORTHERN INYO COUNTY LOCAL HOSPITAL DISTRICT (“**Borrower**”), by Borrower’s execution and delivery of the Acknowledgment, Consent and Agreement attached hereto (the “**Consent**”).

Recitals

1. Trustee is currently the “Trustee” under that certain providing financing to Borrower, pursuant to that certain Indenture, dated as of December 1, 1998, by and between Borrower and U.S. Trust Company, National Association, since succeeded by the Trustee, as supplemented by the First Supplemental Indenture, dated as of April 1, 2010, between the District and the Trustee, as the same may be amended and/or supplemented from time to time (the “**Bond Indenture**”). Trustee has a security interest in certain of the personal property assets of Borrower to secure the foregoing indebtedness, which personal property includes, but is not limited to, Accounts.

2. Borrower is entering into a revolving line of credit facility with Alliance (the “**Alliance Credit Facility**”) to provide financing for Borrower pursuant to that certain Loan and Security Agreement by and between Borrower and Alliance dated of even date herewith (the “**Loan Agreement**”). Alliance will receive a security interest in the personal property assets of Borrower, including Accounts.

3. Alliance and Trustee desire to enter into the this Agreement in order to (i) memorialize Trustee’s acknowledgment that the Alliance Credit Facility is authorized pursuant to the Bond Indenture as “Short-Term Indebtedness” as such term is defined in Article I of the Indenture, (ii) agree to and confirm the relative priorities between them with respect to the collateral securing their respective indebtedness, and (iii) agree to certain other rights, priorities and interests.

Agreement

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Alliance and Trustee hereby agree as follows:

1. Definitions. As used herein, the terms:
 - a. “**Account**” means all accounts, as such term is defined in the Uniform Commercial Code, presently existing or hereafter created, all accounts receivable, amounts owing to Borrower under any rental agreement or lease, payments on construction contracts, promissory notes or on any other indebtedness, any rights to payment customarily or for accounting

purposes classified as an account receivable (including health care receivables), and all rights to payment, proceeds or distributions under any contract or agreement, of Borrower , in each case whether presently existing or hereafter created, and all proceeds thereof.

- b. **“Agreement”** means this Intercreditor Agreement, as it may be amended, supplemented, or modified from time to time in accordance with the provisions hereof.
- c. **“Alliance Collateral”** means all personal property of Borrower securing the Alliance Obligations, whether presently existing or hereafter acquired or created, and all products and proceeds thereof, which includes, without limitation, Accounts.
- d. **“Alliance Documents”** means any and all agreements, instruments and documents, together with any amendments thereto or replacements thereof, now or hereafter evidencing or securing the Alliance Obligations.
- e. **“Alliance Enforcement Action”** means the commencement of enforcement, collection (including judicial or non-judicial foreclosure) or similar proceedings with respect to the Alliance Collateral, any set-off, any repossession or other self-help remedy, or any other collection or recovery efforts by Alliance or its agents with respect to the Alliance Collateral.
- f. **“Alliance Obligations”** means the obligations of Borrower arising under the Alliance Credit Facility.
- g. **“Trustee Collateral”** means all personal property of Borrower securing the Trustee Obligations, whether presently existing or hereafter acquired or created, and all products and proceeds thereof, which includes, without limitation, Accounts.
- h. **“Trustee Documents”** means the Bond Indenture and any and all agreements, instruments and documents, together with any amendments thereto or replacements thereof, now or hereafter evidencing or securing the Trustee Obligations .
- i. **“Trustee Enforcement Action”** means the commencement of enforcement, collection (including judicial or non-judicial foreclosure) or similar proceedings with respect to the Trustee Collateral, any set-off, any repossession or other self-help remedy, or any other collection or recovery efforts by Trustee or its agents with respect to the Trustee Collateral.
- j. **“Trustee Obligations”** means all outstanding and unpaid obligations of every nature of Borrower from time to time owing to Trustee, now existing or created in the future, arising under the Bond Indenture, and any modifications, amendments or extensions thereof.

2. Subordination and Notice Under Default.
 - a. Subordination of Trustee's Interest in Accounts. Trustee hereby subordinates any and all interests of Trustee in and to Borrower's Accounts together with all proceeds of the foregoing to any and all interests of Alliance in and to the foregoing personal property of Borrower, whether now existing or arising or created in the future. Such subordination shall not be effective with respect to any Alliance Collateral that is also Trustee Collateral except the Accounts, it being the intent of the parties that Trustee shall retain a superior security interest in all Trustee Collateral other than the Accounts.
 - b. Relative Priorities. Notwithstanding the order of the execution, delivery, filing or recording of any security agreement or financing statement with respect to the Trustee Collateral or Alliance Collateral, or the order of the completion of any other act relating to any lien or security interest that Alliance or Trustee may have on or in the Alliance Collateral or Trustee Collateral, Alliance and Trustee agree that the respective priorities of the interests in the Trustee Collateral and Alliance Collateral shall be as set forth in this Agreement.
 - d. Survival and Termination. This Agreement shall remain in full force and effect until the earlier of the Alliance Credit Facility's termination in accordance with its terms and all of the Alliance Obligations have been paid in full or the Trustee Documents have been terminated in accordance with its terms and all of the Trustee Obligations have been paid in full.
3. Consent and to and Acknowledgment of Alliance Credit Facility and Waiver. Trustee hereby acknowledges that the Alliance Credit Facility is authorized Short-Term Indebtedness as such term is defined in the Article I of the Bond Indenture and consents to Borrower entering into the Alliance Credit Facility with Alliance and waives any provision in the Bond Indenture which prohibits, restricts, or limits the right of Borrower to enter into the Alliance Credit Facility and related agreements and perform its duties and obligations thereunder.
4. Tender of Collections. Each of Alliance and Trustee agrees that (a) if either party obtains any proceeds of Trustee Collateral or Alliance Collateral to which the other party is entitled pursuant to this Agreement, such party will hold such proceeds in trust for, and promptly deliver such proceeds to, such other party, (b) if any proceeds of Trustee Collateral or Alliance Collateral must be returned (whether on account of the bankruptcy or insolvency of Borrower or otherwise), then the parties will make such adjustments between themselves as are necessary to cause the distributions and applications pursuant to this Agreement to have been properly made after giving effect to such rescission or return, and (c) it will promptly provide to the other party such information as such other party may from time to time reasonably request to confirm that all proceeds of Trustee Collateral or Alliance Collateral have been distributed and applied in accordance

with the terms of this Agreement. By Borrower's execution and delivery of the Consent, Borrower hereby consents to the disclosure of the parties to each other of the information contemplated by this Section 4 Tender of Collections.

5. Indemnification. By Borrower's execution and delivery of the Consent, Borrower agrees to indemnify and hold Alliance and Trustee harmless for all payments, out-of-pocket costs, expenses, claims, and damages incurred in performance by Alliance or Trustee of their respective obligations under this Agreement.
6. Notices. All payments shall be sent by first class U.S. mail, postage prepaid, or as otherwise agreed by Alliance and Trustee, to the following addresses. All notices hereunder shall be in writing and may be sent by U.S. mail, postage prepaid, Federal Express overnight courier (or the equivalent) or hand delivered to the following addresses. Any notice so mailed shall be effective upon receipt.

If to Alliance:

One East Washington Street,
Suite 1400
Phoenix, Arizona 85004
Attention: William E. Koenig

If to Trustee:

The Bank of New York Mellon Trust Company, N.A.

Attention: _____

Copies to Borrower as follows:

Northern Inyo County Local Hospital District
150 Pioneer Way
Bishop, California 93514
Attention: John Halfen

The parties hereto may change the addresses at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other parties hereto, *provided*, that any address for notice shall be a physical address (and not a post office box) located in the continental United States. The failure to send a copy of notice to individuals who are shown above as being required to receive copies shall not invalidate or otherwise affect the validity of a notice that is otherwise effectively given.

7. No Agency or Joint Venture. Nothing in this Agreement shall be construed to create any agency relationship between Trustee and Alliance. Neither Trustee nor Alliance shall have any authority to act for or bind the other. Nothing in this

Agreement shall be construed to create any joint venture or partnership relationship between Trustee and Alliance.

8. No Benefit to Third Parties. The terms and provisions of this Agreement shall be for the sole benefit of Trustee and Alliance and their respective successors and assigns, and no other person, firm, entity, or corporation shall have any right, benefit, priority, or interest under, or because of this Agreement.
9. Attorney's Fees in the Event of Default. Upon the occurrence of an event of default or breach hereunder, the non-defaulting party shall be entitled to recover reasonable attorney's fees and legal expenses incurred as a result of such default or breach and in exercising any rights and remedies.
10. Severability of Invalid Provisions. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction only, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
11. Warranty of Signing Representative. The representative signing this Agreement or the Consent, as applicable, on behalf of Alliance, Trustee and Borrower each represents and warrants that he or she has been duly authorized by his or her respective Board of Directors or partners to execute and deliver this Agreement or the Consent, as applicable, and that upon execution and delivery of this Agreement and the Consent by all parties hereto, this Agreement and the Consent will be binding and enforceable in accordance with its terms against such party for whom such representative has signed.
12. Integrated Agreement and Subsequent Amendment. This Agreement, including the Consent, constitutes the entire agreement between the parties hereto concerning the subject matter hereof and may not be altered or amended except by written agreement signed by Alliance, Trustee and Borrower. All other prior and contemporaneous agreements, arrangements, and understandings between the parties hereto as to the subject matter hereof are rescinded.
13. Successors and Assigns. This Agreement, including the Consent, is binding upon and inures to the benefit of the successors and assigns of all the parties hereto. Trustee and Alliance agree that if either party shall sell, assign, pledge or give a security interest in the Trustee Obligations or Alliance Obligations, respectively, that any such sale, assignment, pledge or security interest shall be subject to terms and conditions of this Agreement and Trustee and Alliance agree to provide any purchaser, assignee, pledgee or secured party a copy hereof and shall secure such purchaser's, assignee's, pledgee's or secured party's written acknowledgement of the terms hereof and the binding effect hereof on such party.

14. Counterparts. This Agreement, including the Consent, may be executed in any number of counterparts, each of which shall be deemed to be an original, admissible into evidence, and all of which together shall be deemed to be a single instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date set forth in the introductory paragraph hereof.

“Alliance”:

ALLIANCE BANK OF ARIZONA, a Division of Western Alliance Bank

By: _____
Name: _____
Title: _____

“Trustee”:

The Bank of New York Mellon Trust Company, N.A.

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT, CONSENT AND AGREEMENT TO BE BOUND

NORTHERN INYO COUNTY LOCAL HOSPITAL DISTRICT , the "Borrower" referred to in the foregoing Intercreditor Agreement, hereby acknowledges that it has received a copy of the Intercreditor Agreement and consents thereto, and will not do any act or perform any obligation which is not in accordance with the priorities and agreements set forth in the Intercreditor Agreement. NORTHERN INYO COUNTY LOCAL HOSPITAL DISTRICT further agrees that Alliance and Trustee may exchange financial and other information about NORTHERN INYO COUNTY LOCAL HOSPITAL DISTRICT with each other and their affiliates and other related entities, without restriction, in furtherance of the transactions contemplated by or referenced in the foregoing Intercreditor Agreement or with respect to the enforcement of the Alliance Obligations and Alliance Documents and/or the Trustee Obligations and Trustee Documents.

"Borrower":

NORTHERN INYO COUNTY LOCAL HOSPITAL
DISTRICT

By: _____

Name: _____

Title: _____

Dated: _____, 2012