

**IN RE: NORTHERN BERKSHIRE HEALTHCARE, INC., ET AL.
BANKRUPTCY No. 14-30327-HJB**

**EXHIBIT A TO
MOTION BY CHAPTER 7 TRUSTEE FOR AUTHORITY TO ENTER
INTO TERM SHEET AND USE AND OCCUPANCY AGREEMENT**

Term Sheet for Stalking Horse Bid for Hospital and Family Medicine Building

This term sheet is between Berkshire Medical Center, Inc. ("BMC") and Harold B. Murphy, not individually, but as chapter 7 trustee ("Trustee") for the following debtors (collectively, the "Debtors") in the following chapter 7 bankruptcy cases (collectively, the "Cases") pending in the United States Bankruptcy Court for the District of Massachusetts (the "Court"): Northern Berkshire Healthcare, Inc., case no. 14-30327-HJB, Northern Berkshire Healthcare Physicians Group, Inc., case no. 14-30329-HJB; and Visiting Nurse & Hospice of Northern Berkshire, Inc., case no. 14-30330-HJB regarding the potential sale by the Trustee to BMC of the Purchased Assets (as defined below) as a stalking horse bidder, free and clear of all liens and interests and with a finding of no successor liability therefor as permitted by Section 363(f) of the Bankruptcy Code (including without limitation, any liability or obligation under any collective bargaining agreements of any of the Debtors, or any WARN Act or pension liabilities) and subject to higher and better offers solicited under sale procedures approved by the Court, and for the interim occupancy of the Buildings (as defined below).

1. The Trustee would sell, and BMC would purchase all of the interests of the Debtors in and to the following property:

(a) the North Adams Regional Hospital (the "Hospital"), including the hospital campus consisting of the Debtors' interests in and to the real property, hospital building and other improvements located on campus and legally described on Exhibit A attached hereto (the "Hospital Campus"), as well as all of the Debtors' interests in and to the following personal property located on the Hospital campus: all non-leased furniture, fixtures and equipment, and supplies and inventory (including pharmaceuticals for emergency department not previously purchased by BMC). The purchase price for the Hospital real estate and personal property will be \$3,400,000 cash; and

(b) the family medicine building (the "Family Medicine Building") located at 820 State Road, North Adams [(Parcel 142 0 2A)], the Debtors' interest under any ground lease relating thereto (the "Ground Lease"), and furniture and fixtures contained in the Family Medicine Building. The purchase price for the Family Medicine Building real estate and personal property will be \$600,000 cash.

The Hospital Campus and the Family Medicine Building are collectively referred to as the "Buildings" and the real and personal property to be purchased by BMC are collectively referred to as the "Purchased Assets". For the avoidance of doubt, (i) BMC's offer is to purchase all of the Purchased Assets and BMC's purchase of both the Hospital and the Family Medicine Building (and all other Purchased Assets), shall be a condition to BMC's obligation to purchase any of the Purchased Assets; provided, however, that if the Trustee is unable simultaneously to obtain an order selling the Family Medicine Building free and clear of all liens despite his reasonable efforts to do so, BMC will be obligated to purchase the Hospital in accordance with paragraph 1(a) above so long as the Trustee extends the term of BMC's occupancy agreement with respect to the

Family Medicine Building to 365 days after the sale of the Hospital; and provided further, that if the Trustee is unable to effect the sale of the Family Medicine Building within 180 days after the closing of the sale of the Hospital, the Trustee will within 30 days after the expiration of such 180 day period file a notice of abandonment of the bankruptcy estate's interest in the Family Medicine Building. The Purchased Assets would not include the Debtors' interests in, to and under cash, accounts receivable, licenses, general intangibles (including, without limitation, claims and causes of action of the Debtors and their bankruptcy estates); employment agreements, collective bargaining agreements, provider agreements and other executory contracts and unexpired leases (other than the Ground Lease and equipment leases designated by BMC in the APA and assumed and assigned as discussed in paragraph 4 below) and other books and records relating to the Debtors' organization, business, personnel, assets, liabilities and operations (other than the operation of the Buildings and other Purchased Assets).

2. The sale of the Purchased Assets would be documented by an asset purchase agreement (the "APA"), orders by the Court approving the sale and Sale Procedures (discussed below) and other instruments of transfer, in each case mutually agreeable to BMC, the Trustee and Wells Fargo Bank, N.A., not individually but as indenture trustee and successor indenture trustee (the "Indenture Trustee").

3. Promptly after execution and delivery of the APA, the Court would approve sale procedures governing the solicitation of competing bids for the Purchased Assets that are higher and better offers from the perspective of the Debtors' bankruptcy estates (the "Sale Procedures").

(a) Such competing bids may be solicited during a 45-day marketing period from the entry of the Court's sale procedures order and buyers may bid on the Purchased Assets in bulk or in component lots, such as (i) the Hospital Campus, (ii) the Family Medicine Building real estate, and (iii) equipment and personal property included in the Purchased Assets. Notwithstanding the foregoing, BMC may, but shall not be obligated to, proceed with any sale for less than all of the Purchased Assets if it is not the high bidder for all of the Purchased Assets.

(b) The Court's order shall approve payment to BMC of a reasonable breakup fee from the proceeds of alternative transaction(s) approved by the Court (not to exceed 5% of BMC's proposed purchase price for such of the Hospital, Family Medicine Building assets, or all Purchased Assets, as applicable, that are sold to a competing bidder), establish a minimum overbid in the amount not less than such breakup fee, and provide that any auction will be set in the Trustee's reasonable discretion (subject to Court approval) based on the other offers received, if any.

(c) BMC may, without increasing its bulk bid for the Purchased Assets, increase its lot bid for either the Hospital or the Family Medicine Building if an auction develops.

(d) The Court's order shall require competing bidders to allow BMC or, in BMC's discretion with the agreement of the Commonwealth of Massachusetts, the

Commonwealth of Massachusetts to occupy the Buildings under the terms of an occupancy agreement for the period after the closing of an alternative transaction that the Commonwealth of Massachusetts determines, in its sole judgment, is reasonably necessary, pursuant to M.G.L. Chapter 111, Section 51G and 105 C.M.R. 130.122, for BMC to continue providing satellite emergency medicine department and ancillary radiology, laboratory and records services (collectively, the "EMD"), with BMC retaining the right to terminate on 90 days' notice to the purchaser and the Commonwealth of Massachusetts consistent with such statutes and as reasonably necessary to allow BMC to wind down the operation of BMC's proposed EMD and other operations and services in the Buildings in a manner consistent with such statutes and regulations and to make available appropriate EMD services to the community at an alternate location; provided, however, that such occupancy shall not exceed 365 days from the closing of such alternative transaction and shall be subject to the rent, cost reimbursement and restrictions in the occupancy agreement set forth in paragraph 5 below. The rights and obligations of BMC under any use and occupancy agreement for the Hospital from and after the closing of an alternative transaction therefor shall be assignable by BMC to the Commonwealth of Massachusetts at the election of, and on terms and conditions acceptable to, BMC and the Commonwealth.

4. The Trustee will use reasonable efforts to assume and assign to BMC any equipment leases or executory contracts designated by BMC in the APA to the extent assignable under applicable law, but, except for the assumption and assignment of the Ground Lease, such assumption shall not be a condition to BMC's obligation to purchase the Purchased Assets. BMC shall identify such leases and executory contracts in the APA and agree to pay all carrying costs prior to closing of the sale and, in addition to the purchase price for the Purchased Assets, to pay all cure costs associated with the assumption and assignment thereof that are required under Section 365 of the Bankruptcy Code. The Trustee will have no obligation to maintain in force any equipment leases or executory contracts that are not designated in the APA and funded by BMC pending the closing of the sale as an operating expense payable by BMC under the occupancy agreements.

5. As soon as practicable, BMC will occupy the Buildings pursuant to one or more use and occupancy agreements satisfactory in form to BMC, the Trustee and the Indenture Trustee and approved by the Court.

(a) During the occupancy period until the earlier of the sale of the Purchased Assets to BMC or 90 days after the closing of one or more alternative transactions, BMC would not pay an occupancy fee but will pay all of the actual operating costs of the Buildings accrued or payable from the date of Court approval of the occupancy agreement through the end of the occupancy period, including, without limitation, the purchase at the commencement of occupancy of all consumables used in BMC's sale of goods and provision of service in proposed satellite EMD and the payment when due of insurance premiums, equipment rental for equipment designated and used by BMC during its occupancy, and accrued utilities, security, maintenance, supplies and mortgage and Ground Lease payments (on the Family Medicine Building only).

(b) Except as otherwise agreed between BMC and the successful purchaser under an alternative transaction, from and after the 91st day after such closing: (i) BMC may only occupy a mutually-agreeable footprint in the main Hospital building, (ii) BMC's obligation to pay all operating expenses of the Buildings shall be reduced from and after such date to BMC's share of such expenses determined by multiplying the total operating expenses of the Hospital by the percentage of the total floor area of the Hospital actually occupied by BMC, and (iii) BMC shall pay such purchaser monthly, fair market, triple net rent (as determined by the agreement of the parties or, if they cannot agree, by the Court) for the area of the Buildings that BMC actually occupies. The use and occupancy of the Buildings after the closing of such alternative transaction by either of BMC or the successful purchaser shall not unreasonably interfere with such use and occupancy by the other.

(c) Among other things, the occupancy agreements will indemnify the Trustee, Indenture Trustee and the Debtors' bankruptcy estates against any losses or claims arising from the acts or omissions of BMC, its employees, agents, patients or visitors to the Buildings and provide evidence of reasonable property and casualty and comprehensive general liability coverage from carriers and in reasonable amounts that name the Trustee, Indenture Trustee and the Debtors' bankruptcy estates as loss payees or additional insureds.

(d) Among other things, the occupancy agreements will permit the former employees of the Debtors (collectively the "Employees") that the Trustee retains to occupy the Buildings and use the Purchased Assets as reasonably necessary to perform their duties on behalf of the Trustee during the period of BMC's occupancy prior to closings of the sales and at no charge to the Trustee. BMC will have no responsibility to pay the payroll and payroll taxes relating to the Employees as part of the expenses paid with respect to its occupancy.

6. BMC's offer to (a) purchase and (b) commence operations are conditioned on the understanding by the Commonwealth of Massachusetts that BMC may, in the event that BMC is not successful in purchasing the Purchased Assets as a stalking horse bidder, cease operations at the Hospital or the Family Medicine Building, provided that BMC complies with the requirements of M.G.L. Chapter 111, Section 51G and 105 C.M.R. 130.122.

7. As soon as practicable, BMC will, at no charge to the Debtors and pursuant to a mutually-agreeable custody agreement approved by the Bankruptcy Court, assume custody of all of the electronic and paper patient records of the Debtors, and of third-party medical practices in the custody and control of Debtors which the Debtors are obligated to maintain, and maintain such records in compliance with all applicable state and federal laws and regulations.

8. BMC's rights and obligations under this term sheet, the APA and any applicable use and occupancy agreement shall be assignable to Berkshire Health Systems at the election of BMC.

9. This term sheet is not exclusive, but will be documented by the APA, occupancy agreements, Court orders and other documents reasonably satisfactory to BMC, the Trustee and Indenture Trustee but not be inconsistent with the terms hereof. It may be executed in

counterparts, which, when delivered by electronic means or otherwise is one complete instrument. Promptly upon full execution of this term sheet the Trustee and BMC will proceed to expeditiously seek the Bankruptcy Court's authorization to enter into this term sheet and to approve the occupancy agreement, APA and the motions and orders approving same; provided that the Trustee and BMC intend this term sheet to provide an adequate description of the terms of BMC's occupancy and use of the Buildings so that BMC, the Commonwealth of Massachusetts and other licensing authorities may proceed with the inspection and licensing of such occupancy and use.

BMC

Trustee

By: _____

By: _____

Its: _____

Its: _____

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EXHIBIT A

Legal Description

Parcel A

The land with the buildings thereon situate on the northerly side of Hospital Avenue in North Adams in the County of Berkshire, Massachusetts, bounded and described as follows, viz:

Beginning at a point on the northerly side of Hospital Avenue at the southwesterly corner of land now or formerly of Partenope;

Thence westerly and southwesterly along the general northerly line of said Hospital Avenue to a stone monument in the easterly line of land conveyed by The North Adams Hospital to Roy S. Astorino et ux, dated April 20, 1955, recorded with the Registry, in Book 496, Page 446;

Thence North 26° 54' East 20.43 feet to an iron pipe;

Thence North 63° 06' West along said land of Astorino 351.95 feet to an iron pipe and land now or formerly of one Jones;

Thence northerly along land of said Jones and others a distance of 1,348 feet, more or less, to the North Adams-Clarksburg Town line;

Thence easterly along said North Adams-Clarksburg Town line a distance of 644 feet, more or less, to the northwesterly corner of land now or formerly of Coulter;

Thence southerly along said land of Coulter and others a distance of 1,468 feet, more or less, to the northerly side of Hospital Avenue and the place of beginning.

Excepting therefrom the following conveyances by NARH:

1. Roy S. Astorino and Clotilde A. Astorino dated April 20, 1955 and recorded with Registry in Book 496, Page 446, as affected by Acknowledgment dated August 14, 1969 in Book 628, Page 194;
2. Roy S. Astorino and Clotilde A. Astorino, dated September 19, 1951 and recorded with the Registry in Book 476, Page 380;
3. Mae Benoit dated July 1, 1944 and recorded with the Registry in Book 441, Page 314;
4. Cornelius Wylde dated June 5, 1944 and recorded with the Registry in Book 441, Page 294;
5. Webster H. Ottman and Mildred B. Ottman dated November 27, 1942 and recorded with the Registry in Book 441, Page 106;
6. Ernest L DeMarco dated June 17, 1938 and recorded with the Registry in Book 416, Page 195; and
7. Inhabitants of City of North Adams dated December 9, 1899 and recorded with the Registry in Book 247, Page 353.

MEANING and INTENDING to describe and hereby expressly describing, all and singular, the premises conveyed to NARH herein by deed of Henry G. B. Fisher, et al, and recorded with the Registry in Book 188, Page 195.

Parcel B

The land with the buildings thereon situate off Hospital Avenue in North Adams in the County of Berkshire, Massachusetts, bounded and described as follows, viz:

Beginning at a point marking the southwest corner of the parcel;

thence N 21° 38' 07" E, a distance of 67.59 feet to a point marking the northwest corner of this parcel;

thence S 72° 33' 47" E, a distance of 46.00 feet; to a point marking the northeast corner of this parcel;

thence S 17° 26' 13" W, a distance of 63.81 feet to a point marking the southeast corner of this parcel;

thence N 76° 36' 01" W, a distance of 51.07 feet to the point and place of beginning.

Being Parcel 1 as shown on a plan entitled "Division of Land Prepared for North Adams Regional Hospital, Inc., Eagle Street, North Adams, MA, Scale 1"=20', Date 10/22/02", prepared by Hill Engineers, Architects, Planners, Inc., and recorded with the Registry in Drawer 4, Plan 277.

MEANING and INTENDING to describe and hereby expressly describing, all and singular, the premises conveyed to NARH herein by deed of David R. Moresi, dated June 2, 2004 and recorded with the Registry in Book 1160, Page 312

END OF DOCUMENT
Northern Berkshire Registry of Deeds

**IN RE: NORTHERN BERKSHIRE HEALTHCARE, INC., ET AL.
BANKRUPTCY NO. 14-30327-HJB**

EXHIBIT B TO

**MOTION BY CHAPTER 7 TRUSTEE FOR AUTHORITY TO ENTER
INTO TERM SHEET AND USE AND OCCUPANCY AGREEMENT**

USE AND OCCUPANCY AGREEMENT

This Use and Occupancy Agreement (this "Agreement") is made and entered into this _____ day of April 2014 and is by and between **HAROLD B. MURPHY, CHAPTER 7 TRUSTEE IN THE BANKRUPTCY OF NORTHERN BERKSHIRE HEALTHCARE, INC., NORTHERN BERKSHIRE HEALTHCARE PHYSICIANS GROUP, INC. AND VISITING NURSE & HOSPICE OF NORTHERN BERKSHIRE, INC.** (the "Trustee"), in the United States Bankruptcy Court for the District of Massachusetts, Western Division (the "Court"), and **BERKSHIRE MEDICAL CENTER, INC.**, a Massachusetts non-profit corporation (the "Occupant").

STATEMENT OF FACTS

A. Northern Berkshire Healthcare, Inc., Northern Berkshire Healthcare Physicians Group, Inc. and Visiting Nurse & Hospice of Northern Berkshire, Inc. (collectively, the "Debtors") filed a Voluntary Petition under Chapter 7 of the United States Bankruptcy Code on April 3, 2014 (the "Petition Date").

B. On the Petition Date, the Trustee was appointed as Chapter 7 Trustee and he continues to serve as such.

C. Prior to the Petition Date, the Debtors ceased providing healthcare services previously provided at their locations in North Adams, Massachusetts, including (i) the North Adams Regional Hospital utilizing the real estate described on Exhibit 1 attached hereto and improvements located thereon at 71 Hospital Avenue in North Adams, Massachusetts, including the hospital building and all associated improvements located on the hospital campus (the "Hospital Campus"), and (ii) the Family Medicine Building utilizing the real estate described on Exhibit 2 attached hereto and improvements located thereon at 820 State Road, North Adams, Massachusetts including the building and all associated improvements thereon (the "Family Medicine Premises" and, together with the Hospital Campus, the "Premises"). The Debtors occupied the Family Medicine Premises pursuant to a ground lease, a notice of which is recorded with the Northern Berkshire District Registry of Deeds at Book 1025, Page 403, as amended (the "Ground Lease").

D. Prior to the Petition Date, the Commonwealth of Massachusetts (the "Commonwealth") requested a temporary order from the Berkshire County Superior Court that would allow the Occupant to provide temporary emergency medical and other ancillary radiology, laboratory and records services in North Adams (the "Use").

E. The Trustee wishes to accommodate the Commonwealth's requests for the Occupant to conduct the Use in North Adams by allowing the Occupant (i) access and use of the Premises, and (ii) access and use of the personal property and equipment of the Debtors located at the Premises (the "Personal Property"), in each case subject to, and on the terms set forth in, this Agreement.

F. For valuable consideration paid, the receipt and sufficiency of which the Trustee and the Occupant acknowledge the parties hereby agree as follows:

TERMS OF AGREEMENT

1. **Premises.** Subject to the provisions of Sections 9 and 10 below, the Occupant shall have the exclusive right to use and occupy the Premises. The Occupant shall have access to the Premises twenty-four (24) hours per day, seven (7) days per week.

2. **Personal Property.** Subject to the provisions of Sections 9 and 10 below, the Occupant shall have the exclusive right to use the Personal Property.

3. **Term.**

(a) This Agreement shall have a term (the "Term") commencing on the date this Agreement is signed by the parties and approved by the Court (the "Effective Date") and shall end (i) upon the closing of the purchase of the Premises by Occupant, provided, however, that if Occupant only purchases the Hospital Campus or the Family Medicine Premises, then this Agreement shall terminate only with respect to the portion of the Premises so purchased by Occupant, or (ii) if a third party (the "Purchaser") purchases either the Hospital Campus, or the Family Medicine Premises, or both of them, on a date after the closing with the Purchaser that the Commonwealth determines, in its sole judgment, is reasonably necessary, pursuant to M.G.L. Chapter 111, Section 51G and 105 C.M.R. 130.122, for Occupant to continue providing satellite emergency medicine department ("EMD") and other services permitted as part of the Use, with Occupant retaining the right to terminate on 90 days' notice to the Purchaser and the Commonwealth consistent with such statutes and as reasonably necessary to allow Occupant to wind down the operation of Occupant's proposed EMD and other operations and services included in the Use at the Premises in a manner consistent with such statutes and regulations and to make available appropriate EMD services to the community at an alternate location; provided, however, that the Term as set forth in this subsection (ii) shall not extend beyond the earlier of 365 days from the closing with the Purchaser, or (iii) in the event there is no sale of the Premises to any party, on a date that the Commonwealth determines, in its sole judgment, is reasonably necessary, pursuant to M.G.L. Chapter 111, Section 51G and 105 C.M.R. 130.122 for Occupant to continue providing EMD and other services included in the Use, with Occupant retaining the right to terminate on 90 days' notice to the Commonwealth and the other parties hereto, consistent with such statutes and as reasonably necessary to allow Occupant to wind down the operation of Occupant's proposed EMD and other operations and services included in the Use in a manner consistent with such statutes and regulations and to make available appropriate EMD services to the community at an alternate location; provided, however, that the Term as set forth in this subsection (iii) shall not extend beyond September 1, 2015.

(b) At the commencement of the Term, Occupant and Trustee shall conduct an inspection of the Premises and a joint inventory of (i) the supplies and other consumables (including pharmaceuticals Occupant agrees to acquire) (the "Inventory") and (ii) the Personal Property at the Premises, and Occupant shall execute a certificate of acceptance of the Premises, the Inventory and Personal Property in "as is, where is" condition and with all faults. Occupant shall purchase the Inventory as provided in Section 5.

4. **Use.** The Occupant may conduct the Use at the Premises and may use the Personal Property in connection with the Use. No use other than the Use shall be conducted at the Premises unless otherwise previously permitted by Trustee in writing. Throughout the Term, Occupant, at Occupant's sole expense, shall comply with all applicable laws, ordinances and regulations and bear all expenses required to comply with state and federal laws, ordinances and regulations relating to Occupant's occupancy, use and operation of the Premises and to its use of the Personal Property and Inventory. Subject to the provisions of Sections 9 and 10 below, the Trustee, his Employees, his invitees to the Premises and the Purchaser shall not unreasonably interfere with the conduct of the Use by Occupant. In connection with the Occupant's use and occupancy of the Premises, Occupant shall refrain from (i) injuring, defacing or otherwise harming the Premises, (ii) committing any nuisance, (iii) making, allowing or suffering any waste, or (iv) making any use of the Premises which is contrary to any law or ordinance or which will invalidate any of the Trustee's or the Debtor's insurance.

5. **No Use and Occupancy Fee; Operating Expense Payment or Reimbursement.** Subject to Section 9 below, the Occupant shall not be obligated to pay Trustee a fee for the use and occupancy of the Premises or the Personal Property. Occupant shall, however, pay, or reimburse the Trustee within 10 business days of presentation by the Trustee of a written invoice by email or otherwise, for (i) the purchase at the commencement of the Term of all Inventory by Occupant as provided in Section 3(b) above; and (ii) all of the costs incurred, accrued or due with respect to the operation of the Premises and the Personal Property and the Use from and after the Effective Date through the expiration of the Term, including, without limitation, the payment when due of all insurance premiums for insurance carried by Trustee, all equipment lease costs (capital or otherwise), all utilities, the provision of security services for the Premises, loan payments owed on the Family Medicine Premises (but for no other portion of the Premises), and amounts payable pursuant to the Ground Lease, as well as accrued costs of utilities, security, maintenance, and supplies (all such expenses and payments being collectively referred to in this Agreement as "Operating Expenses").

6. **Maintenance and Repair Obligations.** Occupant shall, during the Term, clean, maintain and repair the Premises and Personal Property, including, without limitation, plate glass, the roof, exterior and structure of all improvements thereon, floor and wall coverings and the interior surface of windows, in the same order, condition and repair as they are in on the Effective Date hereof and in compliance with all equipment operating manuals, applicable laws and regulations and current best practices applicable in the health care industry. Occupant shall repair and maintain the HVAC, electrical, heating, mechanical and plumbing fixtures and systems servicing the Premises, shall maintain the landscaping and provide for snow removal and all other ordinary repairs and maintenance for the interior and exterior of the Premises in the same order, condition and repair as they are in on the Effective Date, ordinary wear and tear and damage by fire and other casualty excepted. Except in the event of an emergency, the Trustee shall provide the Occupant with reasonable advance notice prior to making any alterations, repairs or improvements to the Premises.

7. **Quiet Enjoyment.** Subject to Section 10 and Section 19, below, the Trustee covenants that Occupant shall have quiet and peaceful possession of the Premises and the Personal Property as against any person or entity claiming the same by, through or under the Trustee.

8. Disclaimer of Warranties and Representations by Trustee; Indemnity by Occupant.

(a) In light of the “fee free” terms of the Occupant’s use and occupancy of the Premises and Personal Property for the Use, the Trustee makes no representations or warranties whatsoever regarding the Premises or the Personal Property, including their age, condition, operating condition, capacity or functionality, merchantability and fitness for any intended or unintended use by Occupant, and its employees, agents, invitees or visitors at the Premises. Occupant acknowledges that the Premises has been closed and the Personal Property unused for several weeks and agrees that its occupancy and use shall be on an “as is, where is” basis and “with all faults” known and unknown. The Trustee and the bankruptcy estates shall have no obligation to make structural repairs, replacements or improvements to the Premises and shall have no liability whatsoever to Occupant for any condition of the Premises or any defect or failure of any Personal Property or for the loss of, or limitation on, the Use of the Premises or Personal Property arising during the Term. Following the closing of a transaction with a Purchaser, the Purchaser shall have no liability whatsoever to Occupant for any condition of the portion of the Premises occupied by Occupant or any defect or failure of any Personal Property used by Occupant or for the loss of, or limitation on, the Use of the Premises occupied by Occupant or Personal Property used by Occupant arising during the Term.

(b) Occupant hereby agrees to defend, indemnify, protect and hold harmless Trustee, Wells Fargo Bank, N.A. (the “Indenture Trustee”), the Debtors’ bankruptcy estates and, if a Purchaser acquires the Premises, effective upon the closing of such a Purchaser’s acquisition, the Purchaser (together, the “Indemnified Parties”), from and against any and all damage, loss, claim, liability and expense, including reasonable attorneys’ fees and expenses (any or all of the foregoing being herein called a “Claim” or “Claims”) incurred by reason of any claim, suit or judgment brought by or on behalf of any person or persons, including, but not limited to, Occupant’s employees, agents, patients or visitors, for damage, loss or expense due to, but not limited to, bodily injury or property damage sustained by such person or persons which arise out of, are occasioned by, or attributable to, Occupant’s use or occupancy of the Premises and the Personal Property, including tort liabilities incident to the use, occupancy or control of the Premises, or, whether intentional or not, any omission, fault, negligence or other misconduct, of Occupant or its employees, agents, patients or visitors, or the failure on the part of the Occupant to comply with any of its obligations under this Agreement, except to the extent any such damage, loss, claim, liability or expense is attributable to the negligence or willful misconduct of the Indemnified Parties. Occupant shall promptly notify the Indemnified Parties, of any Claim asserted against the Indemnified Parties with respect to which any of the Indemnified Parties is hereby indemnified by Occupant, and Occupant shall promptly deliver to the Indemnified Parties the original or a true copy of any summons or other process, pleading, or notice issued or served in any suit or other proceeding to assert or enforce any such Claim. The provisions of this Section 8 shall survive the termination or expiration of this Agreement.

9. Post-Sale Fees and Expenses. If a Purchaser purchases the Hospital Campus, then (i) following the closing of such transaction, Occupant may occupy that portion of the Hospital Campus determined by Occupant reasonably necessary for the conduct of the Use or otherwise required by the Commonwealth within a footprint occupied by Occupant at Closing unless otherwise agreed to by Occupant and Purchaser or otherwise ordered by the Bankruptcy Court,

(ii) through and including the 90th day following the closing of such purchase, Occupant shall pay the amounts set forth in Section 5 above, (iii) commencing on the 91st day following such closing until the end of the Term, Occupant shall pay Occupant's proportionate share of Operating Expenses determined by multiplying the total Operating Expenses of the Hospital Campus by the percentage of the total floor area of the buildings on the Hospital Campus used or occupied by Occupant, and (iv) Occupant shall pay the Purchaser a monthly fair market use and occupancy fee (equivalent to triple net rent) as reasonably determined by the Occupant and the Purchaser, or if the Occupant and the Purchaser cannot agree, then a fair market use and occupancy fee (equivalent to triple net rent) determined by the Court, in either case solely for the area of the Buildings that Occupant actually occupies. The use and occupancy of the Hospital Campus after the closing of such transaction by either Occupant or the Purchaser shall not unreasonably interfere with use and occupancy by the other party. Without limiting the foregoing, in the event of any dispute regarding this Agreement, the footprint, costs, payments or other terms of occupancy of the Premises after such closing, such disputes shall be decided by the Court.

10. Trustee Employees and Invitees; Inspection.

(a) Occupant shall permit at no charge to Trustee the former employees of the Debtors (the "Employees") that the Trustee retains to use the Premises and the Personal Property as reasonably necessary to perform their duties on behalf of the Trustee during the Term. Occupant shall have no responsibility to pay the payroll or the payroll taxes relating to the Employees as part of the expenses paid with respect to Occupant's occupancy. Occupant shall not unreasonably interfere with the activities of the Employees at the Premises.

(b) Trustee and his representatives may also inspect the Premises and Personal Property and invite potential buyers thereof to visit and inspect the Premises and Personal Property during normal business hours on 24 hours telephone or email notice to Occupant, provided that such inspection shall not unreasonably interfere with Occupant's use and occupancy of the Premises.

11. Trustee's Insurance. The Trustee shall obtain and keep in force during the Term, a policy or policies of insurance, for (a) the protection of Trustee and subject to reimbursement by Occupant as set forth in Section 5 above, covering commercial general liability claims with a minimum combined single limit of Two Million Dollars (\$2,000,000) for any single occurrence, and (b) worker's compensation liability.

12. Occupant's Insurance Occupant shall maintain in full force and effect at all times during the Term, at its sole cost and expense, for the protection of Occupant (with Trustee and Indenture Trustee, where customary and appropriate, named as an additional insured and loss payee with respect to their interests), coverage or policies of insurance all in such form, types and coverage amounts as maintained by Occupant with regard to its other operations prior to the Term, including in particular:

- (i) commercial general liability coverage with a minimum combined single limit of Two Million Dollars (\$2,000,000) for any single occurrence and a general aggregate limit of Six Million Dollars (\$6,000,000) in the case of entities, but sub-

- limited in the case of individuals to One Million Dollars (\$1,000,000) for any single occurrence and a general aggregate limit of Three Million Dollars (\$3,000,000);
- (ii) loss or damage to the Premises and the Personal Property at least in the amount of the full replacement cost thereof, against all perils included within the classification of "special form" coverage (as such term is used in the insurance industry);
 - (iii) health care facility professional liability coverage with a minimum combined single limit of Two Million Dollars (\$2,000,000) for any single occurrence and a general aggregate limit of Six Million Dollars (\$6,000,000) in the case of entities, but sub-limited in the case of individuals to One Million Dollars (\$1,000,000) for any single occurrence and a general aggregate limit of Three Million Dollars (\$3,000,000);
 - (iv) excess medical professional and umbrella liability with a minimum combined single limit of Three Million Dollars (\$3,000,000) for any single occurrence;
 - (v) automobile liability with a minimum combined single limit of One Million Dollars (\$1,000,000) for any single occurrence;
 - (vi) worker's compensation liability; and
 - (vii) commercial crime liability with a minimum combined single limit of Two Hundred and Fifty Thousand Dollars (\$250,000) for any single occurrence;

Occupant shall be permitted to (a) provide the coverage through its existing program of self-insurance (as further described in Section 13 below) or (b) carry the insurance required in this Agreement under a blanket policy covering other real property of the Occupant, provided that the coverage afforded by reason of the use of such blanket policy shall not be reduced or diminished from the requirements for such insurance or coverage set forth in this Section. Occupant acknowledges and agrees that the foregoing specified dollar limits for any insurance or coverage shall not limit the rights of Trustee to recover as against Occupant, and the minimum amounts of insurance or coverage specified herein shall be deemed increased to the amount actually carried by Occupant from time to time, if higher.

13. Policy Requirements. Any policy of insurance required of Trustee or Occupant: (i) shall be issued either by (a) financially responsible insurance companies licensed and authorized to do business in the Commonwealth or (b) in the case of Occupant's insurance or coverage, through Occupant's existing program of self-insurance provided that such program is funded in accordance with the annual recommendations of an independent nationally-recognized insurance actuarial firm; (ii) shall provide that such policies shall not be subject to cancellation except after at least thirty (30) days (ten (10) days in the event of cancellation due to nonpayment of premium) prior written notice to both Trustee and Occupant; and (iii) shall be primary, and any insurance carried by the other party shall be noncontributing. Each party, upon the written request of the other party, shall provide that other party with reasonable evidence of the existence of the insurance coverages required by this Agreement.

14. Waiver of Subrogation. Trustee and Occupant each hereby waive all rights of recovery, including any action for negligence, against the other on account of loss and damage occasioned to such waiving party to the extent that such loss or damage is insured under any insurance policies required by this Agreement. Trustee and Occupant shall, upon obtaining

policies of insurance required in this Agreement, give notice to the insurance carriers that the foregoing waiver of subrogation is contained in this Agreement. Each party shall cause each insurance policy(ies) required of it pursuant to this Agreement to provide that the insurance company acquiesces to the waiver of claims (i.e., waiver of subrogation) under this Section (if not included in the policy itself) and each party shall provide the other with written evidence of an endorsement or provision providing such consent to the foregoing waiver of subrogation by the insurer. The above waiver shall only be effective and binding if and to the extent that standard policy or policies of insurance covering the damage, injury or loss are then actually in force in favor of the insured party and permit such waiver, and to the extent that actual recovery is had thereon.

15. Medical Records. Simultaneously with or subsequent to the execution of this Agreement, the parties shall execute a mutually acceptable Medical Records Custody Agreement

16. No Tenancy. Trustee and Occupant hereby acknowledge that no lease or tenancy shall arise or exist because of, or in connection with, Occupant's occupancy of the Premises and use of the Personal Property pursuant to the terms of this Agreement.

17. Taxes. The Occupant shall pay all real estate and personal property taxes associated with the Premises or personal property taxes associated with the Personal Property, if any, when and as they are due. Occupant's obligation to pay all such taxes will end with respect to any portion of the Premises purchased by Purchaser effective as of the date of closing of the purchase, and any such taxes assessed or levied that cover any period of time during the Term as well as portions outside the Term shall be prorated based on the period of time within the Term Occupant is entitled to use or occupy the Premises or any portion thereof. Occupant shall pay all such taxes in a timely manner so as to prevent any lien or encumbrance to be asserted against the Premises.

18. Bankruptcy Court Approval. This Agreement is contingent on approval by the Court and neither party shall have any obligation under this Agreement until the Court has approved this Agreement.

19. Default and Remedies. If Occupant or Trustee fails to observe any obligation contained in this Agreement, then the non-defaulting party shall send a notice to the party in default setting forth in reasonable detail the nature of the breach (the "Default Notice"). The defaulting party shall then have a period of thirty (30) days from receipt of the Default Notice to cure the default. If the defaulting party does not cure the default within the thirty (30) day period, then the non-defaulting party shall at its option (i) terminate this Agreement as of a date set forth in a second notice to the defaulting party, or (ii) pursue any other remedy provided under this Agreement or available at law or in equity, or (iii) pursue the remedies in both (i) and (ii).

20. Alterations. Upon obtaining prior approval from the Trustee and Indenture Trustee, such approval not to be unreasonably withheld or delayed, the Occupant shall have the right to make, at its own expense, such alterations to the Premises and the Personal Property as Occupant may desire; provided, however, such work and alterations (i) when completed will not

impair the structural integrity or soundness of the Premises or the Personal Property or diminish its value, and (ii) shall be done in a good and workmanlike manner, in conformity with all laws, ordinances and regulations of all public authorities and all insurance inspection or rating bureaus having jurisdiction with respect thereto. Occupant will repair any and all damage caused by or resulting from any such alterations. Occupant agrees to pay promptly when due all charges for labor and materials in connection with any work done by Occupant or anyone claiming under Occupant upon the Premises so that the Premises and the Personal Property shall at all times be free of liens, including mechanics liens or other liens or encumbrances on the Premises or the Personal Property or any portion thereof. Occupant agrees to save Trustee, the bankruptcy estates, any Purchaser and Indenture Trustee harmless from, and indemnify the Trustee, the bankruptcy estates, any Purchaser and Indenture Trustee against, any and all claims for injury, loss or damage to person or property caused by or resulting from the doing of any such alteration together with all reasonable attorneys' fees relating to same. Trustee hereby constitutes and appoints Occupant as Trustee's true and lawful attorney-in-fact in Trustee's name to apply for and secure from any governmental authority having jurisdiction over the Premises, such permits and licenses as may be necessary in connection with any work which Occupant is authorized to perform under the provisions of this Section and Trustee agrees upon request by Occupant to execute or join in the execution of any application for such permits and licenses. Occupant shall also have the right at all times to install, at its own cost, and without Trustee's consent, partitions, draperies, shelves, cabinet work, floor and wall coverings, trade fixtures and equipment (including the relocation of such trade fixtures and equipment). Any provision of this Agreement to the contrary notwithstanding, Occupant shall have the right to remove its trade fixtures, furnishings, equipment, signage and inventory from the Premises but any improvements and fixtures affixed to the Premises shall become part of the Premises and, at the expiration of the Term shall, if Occupant does not purchase such Premises or any portion thereof, remain with the Premises or, at the election of the Trustee or the Purchaser, be removed by Occupant at its expense and the Premises be restored to its condition at the commencement of the Term.

21. Hazardous Materials; Environmental Indemnity. Occupant hereby agrees to properly handle and dispose of all hazardous materials generated or used in connection with the Use and the use and occupancy of the Premises and to indemnify, protect, defend and hold harmless Trustee and the Indenture Trustee from and against any and all liabilities, losses, damages, judgments, fines, demands, claims, recoveries, deficiencies, costs and expenses (including, but not limited to, reasonable attorneys' fees and court costs) arising out of or related to the use, generation, storage, treatment, disposal or transportation of hazardous materials (as hereinafter defined). For purposes of this Agreement, the term "hazardous materials" means (a) any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the Commonwealth or the United States. Hazardous materials include, without limitation, the following: (i) any pollutant, oil or hazardous substance, identified or listed pursuant to Sections 307, 311 or 502 of the Federal Water Pollution Control Act (33 U.S.C. §1317, §1321 and §1362); (ii) any element, compound, mixture, solution or substance designated pursuant to Section 102 of the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") (42 U.S.C. §9602); (iii) any substance or material having the characteristics identified under or listed pursuant to Section 3001 of the Resource Conservation and Recovery Act ("RCRA") (42 U.S.C. §6921) or equivalent law or regulation in the state in which the Premises are located; (iv) any petroleum, crude oil, or any fraction of either which is not otherwise specifically listed or designated under items (i)-(iii); (v) any hazardous waste,

extremely hazardous waste, hazardous substance or hazardous material, as defined or listed under applicable laws, regulations or ordinances; and (vi) mold, or any waste, material or building contaminant, including asbestos and lead, which is listed or meets any identification or toxicity criterion under applicable laws, regulations or ordinances and (b) any biohazardous materials, nuclear medical hazardous materials and any medical use or waste materials, brought onto, generated within or otherwise used or arising out of the use and occupancy of the Premises by Occupant, its employees, patients, invitees, contractors, suppliers, or employees, the use, disposal or treatment of which is regulated by the Commonwealth or federal statute or regulation. The provisions of this Section shall survive the termination or expiration of this Agreement.

22. Notices. All notices (other than invoices) required or permitted to be given hereunder shall be in writing and delivered by certified mail, postage pre-paid, return receipt requested, by express mail, express courier service, by facsimile transmission, or confirmed electronic transmission, in the case of the Occupant to the address above or:

To the Trustee:

Harold Murphy, Chapter 7 Trustee
in the Bankruptcy of Northern Berkshire
Healthcare, Inc.
Murphy & King, P.C.
One Beacon Street, 21st Floor
Boston, Massachusetts 02108
Facsimile: (617) 423-0498
Email: hbm@murphyking.com

with a copy to the Indenture Trustee:

Wells Fargo Bank, N.A.
625 Marquette Avenue
MAC N9311-161
Minneapolis, MN 55479
Attention: Gil Hernandez
Vice President, Corporate Trust Services
Facsimile: (612) 619-7427
Email: gil.hernandez@wellsfargo.com

To the Occupant:

Berkshire Medical Center, Inc.
725 North Street
Pittsfield, MA 01201
Attn: John F. Rogers, Esq.
Facsimile: (413) 445-9530
Email: jrogers@bhs1.org

With a copy to the Occupant's attorney:

Joseph Baldiga Esquire
Mirick, O'Connell, DeMallie & Lougee
1800 West Park Drive, Suite 400
Westborough, Massachusetts 01581
Fax: (508) 793-6232
Email: jbaldiga@mirickoconnell.com

Notices given by electronic means shall be effective when read or at the close of business of the next Business Day following the dispatch thereof. Invoices and payments shall be delivered in accordance with the Billing and Payment Schedule attached hereto as Exhibit 5. As used herein, "Business Day" means any day other than a Saturday or Sunday or a day when national banks are required or permitted to be closed in Boston or Minneapolis.

23. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth and the United States Bankruptcy Code.

24. Assignment. Neither party may assign their rights or obligations under this Agreement without the prior written consent of the other, which may be withheld in the sole and absolute discretion of the party whose consent is sought. Notwithstanding the foregoing to the contrary, the Occupant may assign its rights and obligations under this Agreement to Berkshire Health Systems, Inc. (or controlled affiliate thereof) or to the Commonwealth without the prior written consent of the Trustee and the Trustee may assign this Agreement to a Purchaser (any such assignee being referred to herein as a "Permitted Assignee"), provided, however, that the Occupant shall send prior written notice of any such assignment to a Permitted Assignee. Any assignee shall be deemed to have assumed all of the obligations of the assignor under this Agreement effective as of the effective date of the assignment. Notwithstanding any assignment (whether to a Permitted Assignee or any other assignee consented to by Trustee), Occupant and its affiliates shall remain liable for the performance of all of the Occupant's obligations contained herein.

25. Surrender. At the end of the Term, Occupant agrees to vacate the Premises and leave the Premises broom clean and in the same repair and condition as at the Effective Date, and return the Personal Property to Trustee, in each case excepting reasonable wear and tear, and damage by fire or other casualty.

26. Captions. The captions herein used are for reference only and are not substantive provisions.

27. Waiver of Trial by Jury; Jurisdiction of Bankruptcy Court. To the fullest extent permitted by law, Trustee and Occupant hereby waive all right to trial by jury in any claim, action, proceeding or counterclaim by either party against each other on any matters arising out of or in any way connected with this Agreement. Occupant agrees that the Court shall have exclusive jurisdiction to hear and determine any disputes arising out of, or relating to this Agreement or the Occupant's use and occupancy of the Premises and the Personal Property.

28. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which together shall constitute but one and the same instrument. An electronically transmitted (*e.g.*, a .pdf file) or facsimile of a signature shall have the same legal effect as an originally drawn signature.

29. **No Oral Modification.** This Agreement may not be modified, altered or terminated except by a writing signed by all parties. No provision of this Agreement may be waived except by an instrument signed by the party against whom the enforcement of such waiver is sought and then only to the extent set forth in such written instrument of waiver.

[SIGNATURES FOLLOW ON NEXT PAGE]

Executed under seal in multiple counterparts this _____ day of April, 2014.

TRUSTEE:

Harold Murphy, Chapter 7 Trustee in
The Bankruptcy of Northern Berkshire
Healthcare, Inc.

OCCUPANT:

BERKSHIRE MEDICAL CENTER, INC.

By: _____
Name: John F. Rogers, Esq.
Title: Vice President and General Counsel

CONSENTED AND AGREED TO:

WELLS FARGO BANK, N.A.,
AS INDENTURE TRUSTEE

By: _____
Name: Gil Hernandez
Title: Vice President

EXHIBIT 1

EXHIBIT A

Legal Description

Parcel A

The land with the buildings thereon situate on the northerly side of Hospital Avenue in North Adams in the County of Berkshire, Massachusetts, bounded and described as follows, viz:

Beginning at a point on the northerly side of Hospital Avenue at the southwesterly corner of land now or formerly of Partenope;

Thence westerly and southwesterly along the general northerly line of said Hospital Avenue to a stone monument in the easterly line of land conveyed by The North Adams Hospital to Roy S. Astorino et ux, dated April 20, 1955, recorded with the Registry, in Book 496, Page 446;

Thence North 26° 54' East 20.43 feet to an iron pipe;

Thence North 63° 06' West along said land of Astorino 351.95 feet to an iron pipe and land now or formerly of one Jones;

Thence northerly along land of said Jones and others a distance of 1,348 feet, more or less, to the North Adams-Clarksburg Town line;

Thence easterly along said North Adams-Clarksburg Town line a distance of 644 feet, more or less, to the northwesterly corner of land now or formerly of Coulter;

Thence southerly along said land of Coulter and others a distance of 1,468 feet, more or less, to the northerly side of Hospital Avenue and the place of beginning.

Excepting therefrom the following conveyances by NARH:

1. Roy S. Astorino and Clotilde A. Astorino dated April 20, 1955 and recorded with Registry in Book 496, Page 446, as affected by Acknowledgment dated August 14, 1969 in Book 628, Page 194;
2. Roy S. Astorino and Clotilde A. Astorino, dated September 19, 1951 and recorded with the Registry in Book 476, Page 380;
3. Mae Benoit dated July 1, 1944 and recorded with the Registry in Book 441, Page 314;
4. Cornelius Wylde dated June 5, 1944 and recorded with the Registry in Book 441, Page 294;
5. Webster H. Ottman and Mildred B. Ottman dated November 27, 1942 and recorded with the Registry in Book 441, Page 106;
6. Ernest L DeMarco dated June 17, 1938 and recorded with the Registry in Book 416, Page 195; and
7. Inhabitants of City of North Adams dated December 9, 1899 and recorded with the Registry in Book 247, Page 353.

MEANING and INTENDING to describe and hereby expressly describing, all and singular, the premises conveyed to NARH herein by deed of Henry G. B. Fisher, et al, and recorded with the Registry in Book 188, Page 195.

Parcel B

The land with the buildings thereon situate off Hospital Avenue in North Adams in the County of Berkshire, Massachusetts, bounded and described as follows, viz:

Beginning at a point marking the southwest corner of the parcel;

thence N 21° 38' 07" E, a distance of 67.59 feet to a point marking the northwest corner of this parcel;

thence S 72° 33' 47" E, a distance of 46.00 feet; to a point marking the northeast corner of this parcel;

thence S 17° 26' 13" W, a distance of 63.81 feet to a point marking the southeast corner of this parcel;

thence N 76° 36' 01" W, a distance of 51.07 feet to the point and place of beginning.

Being Parcel 1 as shown on a plan entitled "Division of Land Prepared for North Adams Regional Hospital, Inc., Eagle Street, North Adams, MA, Scale 1"=20', Date 10/22/02", prepared by Hill Engineers, Architects, Planners, Inc., and recorded with the Registry in Drawer 4, Plan 277.

MEANING and INTENDING to describe and hereby expressly describing, all and singular, the premises conveyed to NARH herein by deed of David R. Moresi, dated June 2, 2004 and recorded with the Registry in Book 1160, Page 312

END OF DOCUMENT
Northern Berkshire Registry of Deeds

EXHIBIT 2

