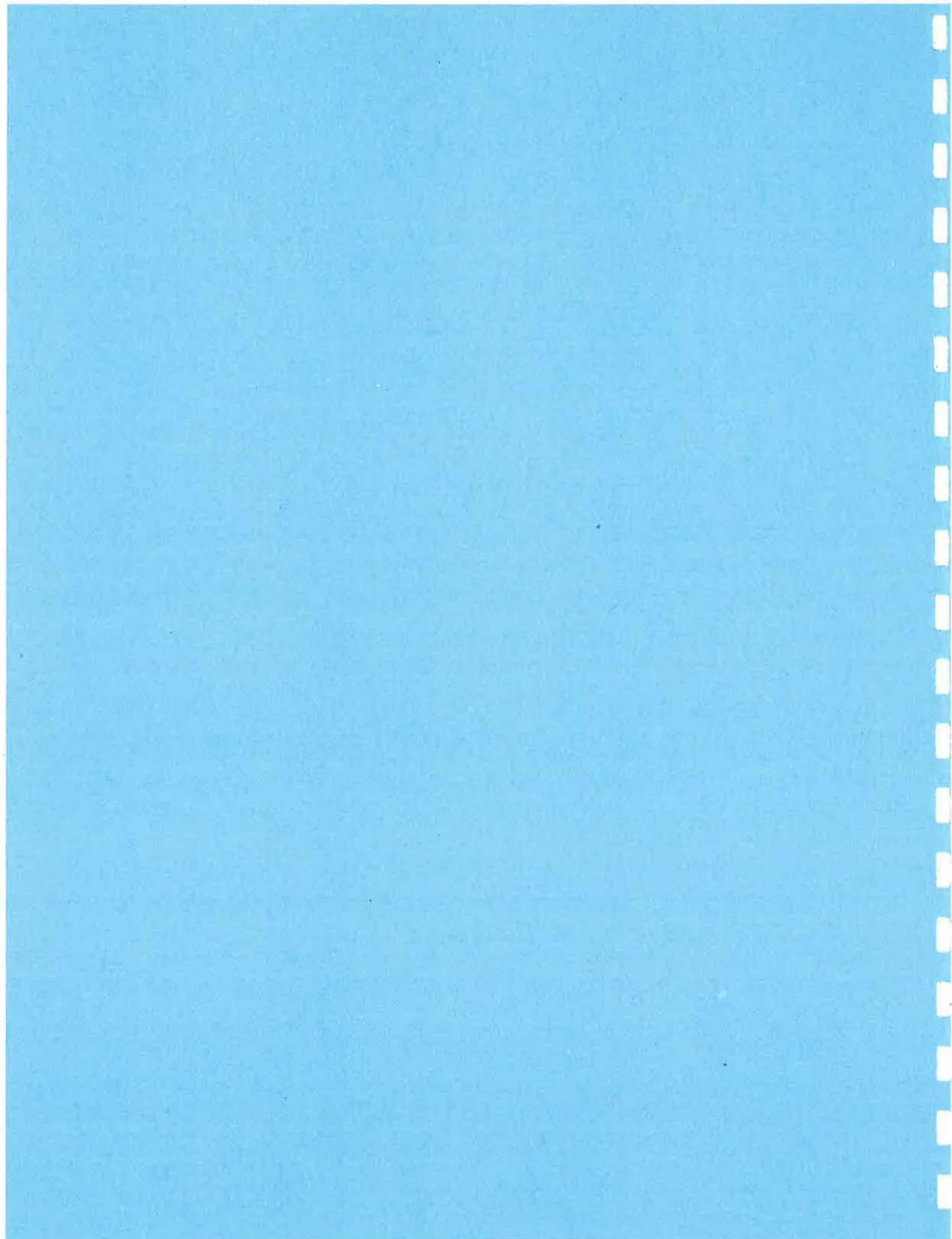


**Exhibit "C"**  
**To**  
**Restructuring, Conversion and Disaffiliation Agreement**  
**Form of Asset Purchase Option Agreement**

See attached.



**Exhibit "A"**  
**To**  
**Asset Purchase Option Agreement**  
**Asset Purchase Agreement**

See attached.

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ASSET PURCHASE AGREEMENT

BY AND AMONG

THE SELLERS NAMED HEREIN

AND

[PURCHASER]

Dated as of [●], 201[●]

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## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (as amended, modified or supplemented from time to time, this “Agreement”) is made and entered into as of the [DAY] day of [MONTH], 201[●] (the “Effective Date”) by and among each Person listed as a “Seller” on the signature pages hereto (each such entity, a “Seller” and collectively, “Sellers”)¹ and [●] (“Purchaser”). Sellers and Purchaser are sometimes referred to in this Agreement collectively as the “Parties” or individually as a “Party.”

### RECITALS

WHEREAS, Sellers engage in the business of delivering healthcare services to the public through the Health Care System; and

WHEREAS, Purchaser desires to, through one or more designated Affiliates, purchase from Sellers and Sellers desire to sell to Purchaser or one or more of its designated Affiliates, as applicable, at the Closing (as defined below in Section 4.03), the Transferred Assets (as defined below in Section 2.01), subject to the Assumed Liabilities (as defined below in Section 3.01), for the consideration, upon the terms and subject to the conditions set forth in this Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the premises and mutual promises herein made, and in consideration of the representations, warranties and covenants herein contained, the Parties hereby agree as follows:

### ARTICLE I.

#### DEFINITIONS; CERTAIN RULES OF CONSTRUCTION

**Section 1.01. Definitions.** In addition to the other terms defined throughout this Agreement, the following terms shall have the following meanings when used in this Agreement:

“Action” means any claim, controversy, action, cause of action, suit, litigation, inquiry, arbitration, investigation, opposition, interference, audit (including any audit initiated by the Centers for Medicare & Medicaid Services, such as those initiated by a Recovery Audit Contractor or similar audits), assessment, hearing, complaint, demand or other legal proceeding (whether sounding in contract, tort or otherwise, whether civil or criminal and whether brought at law or in equity) that is commenced, brought, conducted, tried or heard by or before, or otherwise involves, any Governmental Authority.

“Agency Settlements” has the meaning given in Section 12.02(c) of this Agreement.

“Agreement” has the meaning given in the preamble to this Agreement.

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<sup>1</sup> **Note to DOCHS:** All of the DOCHS system entities other than the Captive Insurance Company and the Medical Foundation will be included as Sellers prior to finalization, with a note to draft that any other new affiliate of Parent Seller would be included as a Seller prior to execution.

“Allocation Schedule” has the meaning given in Section 12.01(b) of this Agreement.

“Ancillary Agreements” means each of the agreements, certificates, instruments and documents to be executed and delivered by the Parties in connection with the Contemplated Transactions as set forth on Schedule 1.01(a).

“Application” has the meaning given in Section 7.01(c) of this Agreement.

“Asset Due Date” has the meaning given in Section 13.01(b) of this Agreement.

“Assumed Liabilities” has the meaning given in Section 3.01 of this Agreement.

“Balance Sheet Date” has the meaning given in Section 5.10(a) of this Agreement.

“Bill of Sale” has the meaning given in Section 4.04(a) of this Agreement.

“Bond Obligations” means, collectively, Obligations Nos. 7, 8, 10, 11, 13, 14 [and 15] issued pursuant to the Master Indenture.

“Bonds”<sup>2</sup> means (i) the California Statewide Communities Development Authority Revenue Bonds (Daughters of Charity Health System) Series 2005A outstanding in the principal amount as of June 30, 2013 of \$259,124,000, secured by Obligation No. 7 issued under the Master Indenture and the Deeds of Trust and (ii) the California Statewide Communities Development Authority Revenue Bonds (Daughters of Charity Health System – St. Francis Medical Center) Series 2005F, 2005G and 2005H outstanding in the principal amount as of June 30, 2013 of \$30,860,000, secured by Obligations Nos. 8, 10 and 11 issued under the Master Indenture and by the Deeds of Trust.

“Business Day” means any day other than a Saturday, a Sunday or a day on which the banks located in Los Angeles or New York City are authorized by law to be closed.

“Captive Financial Statements” has the meaning given in Section 5.21(h) of this Agreement.

“Captive Insurance Company” means Marillac Insurance Company, Ltd., an international insurance company incorporated in the Cayman Islands.

“Cash Purchase Price” has the meaning given in Section 4.01 of this Agreement.

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and implementing regulations thereto, all as amended from time to time.

“CERCLIS” means the Comprehensive Environmental Response, Compensation, and Liability Information System established pursuant to CERCLA.

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<sup>2</sup> Note to Draft: To be revised to include a description of any outstanding tax-exempt bonds at the time this Agreement is executed.

“Closing” has the meaning given in Section 4.03 of this Agreement.

“Closing Date” means the date on which the Closing actually occurs.

“Closing of Financials” has the meaning given in Section 13.04 of this Agreement.

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

“Collective Bargaining Agreements” means the collective bargaining agreements and other labor union contracts listed on Schedule 1.01(b).

“Contemplated Transactions” means the transactions contemplated by this Agreement, including (a) the purchase and sale of the Transferred Assets; (b) the execution, delivery and performance of the Ancillary Agreements; (c) the assumption of the Assumed Liabilities; (d) the defeasance of the Bonds; and (e) the assumption or repayment of any Funded Indebtedness.

“Contract” means any contract, agreement, arrangement, commitment, understanding, indenture, instrument, lease, purchase order or license, whether written or oral.

“Contract Consents” has the meaning given in Section 4.04(p) of this Agreement.

“Cost Reports” means all cost and other reports related to the Health Care System filed pursuant to the requirements of the Government Reimbursement Programs for cost-based payments or reimbursement due to or claimed by the Sellers from the Government Reimbursement Programs or their fiscal intermediaries or payor agents, including all related appeals and appeal rights, but excluding from this definition form UB-92, UB-04, CMS 1450, CMS 1500 and other forms or claims filed or submitted by the Sellers to the Government Reimbursement Programs or their fiscal intermediaries or payor agents with respect to the Hospitals for payment or reimbursement due to or claimed by the Sellers on a fee-for-service, prospective payment, fee schedule or other similar basis.

“Deeds of Trust” means each Deed of Trust with Fixture Filing and Security Agreement dated as of December 1, 2001 granted by a Member of the DCHS Obligated Group to the Master Trustee under the Master Indenture.

“Disclosure Schedules” means those schedules attached to this Agreement and referred to in one or more sections or subsections of this Agreement.

“DSH Payments” means all disproportionate share replacement payments from any Government Payment Program including Medi-Cal and Medicare accrued by Sellers before or on the Closing Date.

“Effective Date” has the meaning given in the preamble to this Agreement.

“Employee Pension Benefit Plan” has the meaning set forth in Section 3(2) of ERISA.

“Employee Welfare Benefit Plan” has the meaning set forth in Section 3(1) of ERISA.

“Employees” has the meaning given in Section 8.02(a) of this Agreement.

“Environmental Law” means all applicable laws, statutes, ordinances, rules, regulations, policies, rulings, writs, injunctions, decrees, orders or other requirements imposed by any Governmental Authority now or hereafter in effect, governing or relating to pollution, the protection of human health and safety (including worker health or safety) or the environment (including ambient air, surface water, ground water, land, surface or subsurface strata, and natural resources), or the presence, use, production, generation, handling, transport, treatment, storage, disposal, distribution, labeling, testing, processing, discharge, Release, threatened Release, control, or cleanup of, or exposure to, Hazardous Materials.

“Environmental Permits” means any approval, authorization, certificate, consent, easement, filing, franchise, license, notice, order, permit or right to which any Person is a party, that is or may be binding upon or inure to the benefit of any Person or its securities, assets or business, or that is required under, any Environmental Law.

“Equity Interests” means any stock, limited liability company interests or other equity securities of any Person.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“Excluded Liabilities” has the meaning given in Section 3.02 of this Agreement.

“Foundations” means the foundations identified on Schedule 1.01(f) that raise funds for the benefit of, and make grants or pledges of funds to, one or more Sellers.

“Funded Indebtedness” means, with respect to any Person, without duplication: (a) indebtedness of such Person for borrowed money, whether secured or unsecured, together with accrued and unpaid interest thereon, and (b) all prepayment and redemption premiums (including any make-whole premiums or payments) and penalties, and any other fees, breakage charges, expenses, indemnities and other amounts payable as a result of the prepayment or discharge in full of any item set forth in clause (a) above.

“GAAP” means generally accepted accounting principles in the United States as in effect from time to time, consistently applied.

“Governance Documents” means, with respect to any Person, any articles of incorporation, bylaws, charters, operating agreements, partnership agreements, governance agreements, voting agreements, proxies, delegations of authority and other documents and instruments setting forth the corporate (or company or partnership, as the case may be) and legal powers, rights, duties and authorities relating to the governance and management of such Person.

“Government Order” means any order, writ, judgment, injunction, decree, stipulation, restriction, ruling, decision, verdict, determination or award made, issued or entered by or with any Governmental Authority.

“Government Payment Programs” means the federal Medicare program, TRICARE, the State of California Medi-Cal program, and similar or successor health care payment programs with or for the benefit of Governmental Authorities.

“Governmental Approval” has the meaning given in Section 5.15 of this Agreement.

“Governmental Authorities” means any and all agencies, authorities, bodies, boards, bureaus, commissions, courts, departments, directorates, instrumentalities, legislatures, officials, tribunals and offices of any nature whatsoever of any United States federal, state, or local government unit or political subdivision and any self-regulatory organization.

“Government Reimbursement Programs” means the Medicare Program, the California Medicaid program, the federal TRICARE program, and any other, similar or successor federal, state or local health care payment programs with or sponsored by Governmental Authorities, including current [California reimbursement programs], current federal DSH reimbursement or adjustments applicable to the Health Care System.

“Guarantee” means, with respect to any Person, (a) any guarantee of the payment or performance of, or any contingent obligation in respect of, any debt or other liability of any other Person or (b) any other arrangement whereby credit is extended to any obligor (other than such Person) on the basis of any promise or undertaking of such Person (i) to pay the debt or other liability of such obligor; (ii) to purchase any obligation owed by such obligor; (iii) to purchase or lease assets under circumstances that are designed to enable such obligor to discharge one or more of its obligations; or (iv) to maintain the capital, working capital, solvency or general financial condition of such obligor.

“Hazardous Materials” means any chemical, pollutant, contaminant, waste, toxic or hazardous substance or material, crude oil, petroleum and petroleum products or by-products, polychlorinated biphenyls, asbestos or asbestos-containing materials, lead or lead-based paints or materials, free crystalline silicates or silica, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas), excessive moisture, mildew, mold, microbial growth or other fungi (which in each case is present in sufficient quantities to pose a material risk to human health or the environment), or radioactive material and any and all other terms of similar import, substances, materials or wastes that (x) are identified, listed, regulated or as to which losses or liabilities may be imposed at any time under Environmental Laws, or (y) may pose a material risk to human health or the environment, whether or not such substance, material or waste is defined as hazardous under Environmental Laws.

“Health Care System” means the Hospitals and the health services provided by the Sellers.

“HIPAA” has the meaning given in Section 13.02(a) of this Agreement.

“Hired Employee” has the meaning given in Section 8.02(a) of this Agreement.

“Historical Financial Statements” has the meaning given in Section 5.10 of this Agreement.

“Hospitals” means the hospitals set forth on Schedule 1.01(e).

“HSR Act” has the meaning given in Section 5.15 of this Agreement.

“Immediate Family” shall have the meaning set for in 42 C.F.R. §411.351.

“Insurance Contract” means any all insurance Contracts, binders, slips, certificates, endorsements, riders, treaties, policies, products or other arrangements, other than the Reinsurance Agreements, sold, issued, entered into, serviced or administered by the Captive Insurance Company, in each case as such Contract, binder, slip, certificate, endorsement, rider, treaty, policy, product or other arrangement may have been amended, modified or supplemented.

“Intellectual Property” means patents, patent applications, trademarks, service marks, trademark and service mark registrations and registration applications, trade names, trade name registrations, logos, uniform resource locators (URLs), domain names, trade dress, copyrights, copyright registrations, website content, know-how, and trade secrets.

“Interim Financial Statement” has the meaning given in Section 7.05 of this Agreement.

“Inventory” has the meaning given in Section 2.01(g) of this Agreement.

“Leased Real Property” has the meaning given in Section 2.01(c) of this Agreement.

“Leases” has the meaning given in Section 2.01(e) of this Agreement.

“Legal Requirements” means, with respect to any Person, all constitutional provisions, statutes, laws, ordinances, bylaws, codes, rules, regulations, restrictions, Government Orders, judgments, orders, writs, permits, Licenses, injunctions, decrees, determinations, resolutions, rulings, promulgations, policies, interpretations, awards or any similar provision having the force or effect of law of, or any guideline adopted or issued by, any Governmental Authority having jurisdiction over such Person or any of such Person’s assets or businesses.

“Liabilities Assumption” has the meaning given in Section 4.01 of this Agreement.

“Licenses” has the meaning given in Section 2.01(o) of this Agreement.

“Liens” means, with respect to any property or asset, any mortgage, lien, pledge, restriction on transfer (such as a right of first refusal or other similar right), defect of title, charge, security interest or encumbrance of any kind whatsoever, whether voluntarily incurred or arising by operation of law or otherwise, in respect of such property or asset.

“Management Services Agreement” means that certain Management Services Agreement, dated as of [\_\_\_\_], by and between [\_\_\_\_] and [\_\_\_\_].

“Master Indenture”<sup>3</sup> means the Master Indenture of Trust dated as of December 1, 2001 among the Members of the DCHS Obligated Group and the Master Trustee, as amended and supplemented.

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<sup>3</sup> Note to Draft: To be revised as necessary to appropriately define the master indenture related to the Bonds.

“Master Trustee” means U.S. Bank Trust National Association.

“Material Adverse Effect” means any event, change, fact, condition, circumstance or occurrence that, individually or in the aggregate with other events, changes, facts, conditions, circumstances, or occurrences, has had or would reasonably be likely to result in a material adverse effect on (i) the Transferred Assets, taken as a whole, (ii) the Assumed Liabilities, taken as a whole, or (iii) the ability of Sellers to perform their respective obligations under this Agreement; provided, however, that none of the following (or the results thereof) shall be deemed to constitute, and none of the following shall be taken into account in determining whether there has been, a Material Adverse Effect: (a) events, changes, facts, conditions, circumstances or occurrences generally affecting the health care industry to the extent they do not disproportionately affect the Health Care System; (b) events, changes, facts, conditions, circumstances or occurrences generally affecting the United States of America or world economy or the debt, credit or securities markets of the United States of America or world (including any decline in the price of any security or any market index); (c) changes in the general economic conditions in the State of California to the extent such changes do not disproportionately affect the Health Care System; (d) any outbreak or escalation of hostilities or declared or undeclared acts of war or terrorism; (e) changes or proposed changes in Legal Requirements or the interpretation thereof by a Governmental Authority to the extent such changes or proposed changes do not disproportionately affect the Health Care System; (f) changes or proposed changes in GAAP or other accounting requirements or principles (or interpretations thereof) applicable to owners or operators of hospitals; (g) events, changes, facts, conditions, circumstances or occurrences resulting from actions taken by Sellers to the extent to which Purchaser has requested in writing, or to which Purchaser has consented in writing, to such actions; (h) any failure of Sellers to meet projections, forecasts or revenue or earning predictions for any period (it being understood that the exception set forth in this clause (h) shall not prevent or otherwise affect a determination that the underlying cause of any failure referred to in this clause (h) (if not otherwise falling within any of the exceptions provided under this definition) is a Material Adverse Effect); or (i) events, changes, facts, conditions, circumstances or occurrences resulting from the announcement or execution or the existence of, or compliance with, this Agreement and the Contemplated Transactions.

“Material Contract” has the meaning given in Section 5.20 of this Agreement.

“Medicare Program” means the federal health insurance program for the aged and disabled under Title XVIII of the Social Security Act.

“Member of the DCHS Obligated Group”<sup>4</sup> means each of Daughters of Charity Health System, O’Connor Hospital, Saint Louise Regional Hospital, Seton Medical Center, St. Francis Medical Center and St. Vincent Medical Center.

“Multiemployer Plan” means a "multiemployer plan" as defined in Section 4001(a)(3) of ERISA to which any Seller is obligated to contribute pursuant to any Collective Bargaining Agreement.

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<sup>4</sup> Note to Draft: To be revised to reflect any name changes occurring prior to the Effective Date.

“Ordinary Course of Business” means the ordinary course of the operation of the Health Care System consistent with the past customs and practices of Sellers; *provided that*, that if a Seller takes an action that is necessary to comply with any Legal Requirement, such action, to the extent necessary to comply with such Legal Requirement, shall be deemed to have been taken by such Seller in the Ordinary Course of Business.

“Outside Date” has the meaning set forth in Section 11.01(d) of this Agreement.

“Owned Real Property” has the meaning given in Section 2.01(a) of this Agreement.

“Parent Seller” means [Daughters of Charity Health System, a California nonprofit public benefit corporation].<sup>5</sup>

“Parties” has the meaning given in the preamble to this Agreement.

“Permitted Exceptions” means and includes (a) as of any date, as to the Owned Real Property, (i) those matters identified on Schedule 1.01(c), (ii) the Leases and the Real Property (Landlord) Leases; (iii) statutory Liens for current Taxes and assessments not yet due and payable or the amount or validity of which is being contested in good faith by appropriate proceedings; (iv) mechanics’, materialmen’s, carriers’, workmen’s, repairmen’s and other similar statutory Liens, if any, arising or incurred in the Ordinary Course of Business; (v) zoning, entitlement, building, and other land use regulations imposed by Governmental Authorities having jurisdiction over the Real Property; (vi) those standard printed exceptions customarily set forth in title reports or title policies; and (vii) any easements, covenants, conditions, restrictions, encumbrances, rights of way, reservations, and any other similar matters of record, other than matters placed on record by Sellers after the Effective Date with respect to the Owned Real Property without the consent or approval of Purchaser; (b) as of any date, as to the Leased Real Property, (i) those matters identified on Schedule 1.01(d), and (ii) the Real Property (Tenant) Leases; (c) as of any date, as to all other Transferred Assets other than the Real Property, “Permitted Exceptions” means and includes any and all matters affecting title to such Transferred Assets, including those matters arising from any failure by Sellers to comply with any Legal Requirement or any overpayments or other amounts due that may be owed with respect to the participation of Sellers in any Government Program, that are, in the aggregate, not material to the Transferred Assets; and (d) as of the Effective Date, the Liens existing under the Master Trust Indenture and the Deeds of Trust.

“Person” means any individual or any corporation, association, partnership, limited liability company, joint venture, joint stock or other company, business trust, trust, organization, Governmental Authority or other entity of any kind.

“Personal Property” has the meaning given in Section 2.01(f) of this Agreement.

“Personal Property Assignments” has the meaning given in Section 4.04(c) of this Agreement.

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<sup>5</sup> Note to Draft: To be revised to reflect the new name of this entity, after conversion from religious to public benefit nonprofit.

“Personal Property Leases” has the meaning given in Section 2.01(e) of this Agreement.

“Physician” shall have the meaning set for in 42 C.F.R. §411.351.

“Physician Agreements” means any Contract or other economic arrangement, whether direct or indirect and regardless of the form or amount of compensation attendant thereto, by or between any Seller or its Subsidiaries on the one hand, and any Referring Physician (or any Immediate Family of a Referring Physician) on the other hand, including all Referring Physician employment agreements, medical director agreements, administrative services agreements, professional services agreements, teaching services agreements, preceptorship agreements, call coverage agreements, moonlighting agreements, per-diem services agreements, research agreements, any lease agreement (including leases of space or equipment), recruitment agreements, income guarantee arrangements, loan agreements, loan guarantee arrangements, billing services agreements, practice support agreements, management services agreements, agreements for the provision of personnel, agreements for the sale or purchase of assets, joint venture arrangements of any structure, and risk-sharing or shared-savings agreements.

“Physician Referral Laws” means Section 1128B(b) of the Social Security Act, as amended, 42 U.S.C. Section 1320a 7(b) and related regulations (Criminal Penalties Involving Medicare or State Health Care Programs), commonly referred to as the “Federal Anti-Kickback Statute,” Section 1877 of the Social Security Act, as amended, 42 U.S.C. Section 1395nn and California Business & Professions Code section 650 et seq., related regulations and any similar provision of California law.

“Post-Closing CFO” has the meaning given in Section 13.04 of this Agreement.

“Power of Attorney” has the meaning given in Section 4.04(o) of this Agreement.

“Prepaid Expenses” has the meaning given in Section 2.01(h) of this Agreement.

“Privacy Laws” has the meaning given in Section 13.02(a) of this Agreement.

“Purchase Price” has the meaning given in Section 4.01 of this Agreement.

“Purchaser” has the meaning given in the preamble of this Agreement.

“Qualifying Physician Agreement” means any Physician Agreement that is (a) entered prior to the Reorganization Date, but only to the extent compliant with applicable Legal Requirements, including any Physician Referral Laws, and (b) entered on or after the Reorganization Date.

“Real Estate Assignments” has the meaning given in Section 4.04(b).

“Real Property” has the meaning given in Section 2.01(c) of this Agreement.

“Real Property (Landlord) Leases” has the meaning given in Section 2.01(d) of this Agreement.

“Real Property Leases” has the meaning given in Section 2.01(d) of this Agreement.

“Real Property (Tenant) Leases” has the meaning given in Section 2.01(c) of this Agreement.

“Records” means all files, data, documents, records, correspondence, work papers, operating manuals and other documents, including Employee records, financial records, equipment records, construction plans and specifications, patient records, medical records and medical and administrative libraries, medical staff, peer review and physician credentialing records and files, and on-site regulatory compliance records, including in each case electronically stored files, data, documents and records.

“Referral” means a request or order for any item or services, including the request for a consultation with another Physician (and any test or procedure ordered by or performed by or under the supervision of the other Physician), provided to patients.

“Referring Physician” means a Physician in a position to make Referrals to a Seller or Subsidiary of a Seller.

“Released Parties” has the meaning given in Section 4.01(d) of this Agreement.

“Reinsurance Agreement” means any reinsurance or retrocessional treaty or agreement to which the Captive Insurance Company is a party and (a) which is in force as of the date hereof, (b) is terminated or expired as of the date hereof but under which the Captive Insurance Company may continue to receive benefits or have obligations or (c) is a novation or an assumption reinsurance agreement.

“Release” means any release, spill, emission, leaking, pumping, pouring, dumping, emptying, injection, deposit, disposal, discharge, dispersal, leaching or migration onto or into the environment (including ambient air, surface water, ground water, land, surface or subsurface strata, and natural resources).

“Reorganization Date” means [\_\_\_\_].<sup>6</sup>

“Representatives” means, with respect to a particular Person, any Affiliate thereof, and such Person’s and such Person’s Affiliates’ respective controlling shareholders, general partners, managing members, directors, officers, employees, consultants, advisors, agents, and other representatives, including legal counsel, accountants, and financial advisors.

“Restricted Investments” means investment assets resulting from charitable donations to a Seller and reflected in such Seller’s financial statements as restricted as a result of the terms of the donation.

“Retained Assets” has the meaning given in Section 2.02 of this Agreement.

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<sup>6</sup> Note to Draft: Date to be the Closing Date of the transactions contemplated by that certain Reorganization, Conversion and Disaffiliation Agreement, dated as of [\_\_\_\_], 2014.

“Retained Records” means all Records (a) relating to the Retained Assets or Excluded Liabilities or (b) that Sellers are required to retain pursuant to Privacy Laws, all other Legal Requirements or the requirements of any relevant insurance carrier.

“Seller” and “Sellers” have the meanings given in the preamble of this Agreement.

“Seller Accounts Receivable” has the meaning given in Section 2.01(i) of this Agreement.

“Seller Cost Reports” means all cost and other reports filed by a Seller for payment and/or reimbursement from Government Payment Programs and other payors.

“Seller Plans” has the meaning given in Section 5.12(a) of this Agreement.

“Software” has the meaning given in Section 2.01(p) of this Agreement.

“Special Employee Liabilities” means the amount of vacation, holiday, sick time, paid time off, extended illness or similar benefits accrued as of the Closing Date by employees of Sellers.

“Subsidiary” or “Subsidiaries” means, with respect to any Person, all entities currently owned or controlled, directly or indirectly, by such Person.

“Tax” means any and all foreign or United States federal, state, or local income, gross receipts, License, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar, including FICA), unemployment, disability, real property, personal property, sales, use, transfer, registration, escheat, unclaimed property, value added, alternative or add-on minimum, estimated, or other tax of any kind including any interest, penalty, or addition thereto.

“Tax Return” means any return, declaration, report, claim for refund or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“Transfer Taxes” has the meaning given in Section 4.02 of this Agreement.

“Transferred Assets” has the meaning given in Section 2.01 of this Agreement.

“Transferred Assets POA” has the meaning given in Section 4.04(q) of this Agreement.

“Transferred Intellectual Property” has the meaning given in Section 2.01(p) of this Agreement.

“Transferred Records” has the meaning given in Section 2.01(n) of this Agreement.

“Unions”<sup>7</sup> means the Services Employees International Union, the California Nurses Association, the International Union of Operating Engineers Local 39, Engineers and Scientists

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<sup>7</sup> Note to Draft: To be revised appropriately to include a reference to all unions involved with the Hospitals.

of California Local 20, California Licensed Vocational Nurses' Association, and the United Nurses Association of California (each, a "Union").

"Utilities" means water, sewer, gas, electricity, telephone services, cable television, internet, and other telecommunications.

"WARN Act" has the meaning given in Section 3.01(d) of this Agreement.

**Section 1.02. Certain Matters of Construction.**

(a) Section and subsection headings contained in this Agreement are not to be considered part of this Agreement, are included solely for convenience, are not intended to be full or accurate descriptions of the content of the sections or subsections of this Agreement and shall not affect the construction of this Agreement.

(b) Except as otherwise explicitly specified to the contrary in this Agreement, (i) the words "hereof," "herein," "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular section or subsection of this Agreement and reference to a particular section of this Agreement shall include all subsections thereof; (ii) references to a section, Disclosure Schedule, other schedule, or annex means a section of, or Disclosure Schedule, other schedule, or annex to this Agreement, unless another agreement is specified; (iii) definitions shall be equally applicable to both the singular and plural forms of the terms defined, and references to the masculine, feminine or neuter gender shall include each other gender; (iv) the word "including" means including without limitation; (v) any reference to "\$" or "dollars" means United States dollars; and (vi) references to a particular statute or regulation include all rules and regulations thereunder and any successor statute, rule or regulation, in each case as amended or otherwise modified from time to time.

(c) References in this Agreement to "Sellers' knowledge", "knowledge of Sellers" or words of substantially similar import, mean the actual then current knowledge of [the Chief Executive Officer of Sellers as of the Effective Date and the Closing based on reasonable inquiry. No constructive or imputed knowledge shall be attributed to any such individual by virtue of any position held, relationship to any other Person or for any other reason.

(d) References in this Agreement to "Purchaser's knowledge", "knowledge of Purchaser" or words of substantially similar import, mean the actual then current knowledge of the Chief Executive Officer of Purchaser as of the Closing based on reasonable inquiry. No constructive or imputed knowledge shall be attributed to such individual by virtue of any position held, relationship to any other Person or for any other reason.

(e) Unless the context clearly requires otherwise, when used herein "or" shall not be exclusive (*i.e.*, "or" shall mean "and/or").

(f) Time is of the essence with regard to all dates and time periods set forth or referred to in this Agreement.

**ARTICLE II.**

## TRANSFERRED ASSETS

**Section 2.01. Transferred Assets.** On the Closing Date and subject to the terms and conditions of this Agreement, each Seller shall sell, assign, transfer, convey and deliver to Purchaser, free and clear of all Liens, other than the Permitted Exceptions and the Assumed Liabilities, and Purchaser shall purchase, acquire, receive and accept, all of the right, title and interest of each Seller in and to the Transferred Assets. “Transferred Assets” shall mean all of the rights, titles and interests of Sellers on the Closing Date in the following (other than the Retained Assets):

- (a) all of the real property, together with all plant, buildings, structures, installments, improvements, fixtures, betterments and additions situated thereon, owned by the Sellers, including as identified on Schedule 2.01(a) (collectively, the “Owned Real Property”);
- (b) all construction in progress related to the Health Care System;
- (c) all of the leasehold interests of Sellers in all real property that is leased to any Seller as lessee or tenant, including as identified on Schedule 2.01(c) (collectively, the “Leased Real Property” and together with the Owned Real Property, the “Real Property”) pursuant to any lease, sublease, or other contractual obligation (collectively, the “Real Property (Tenant) Leases”);
- (d) all of the interests of Sellers as lessor in and to each lease, sublease, or other contractual obligation under which the Real Property is occupied or used by a third-party (collectively, the “Real Property (Landlord) Leases” and together with the Real Property (Tenant) Leases, the “Real Property Leases”).
- (e) all of the interests of Sellers as lessee in and to each lease, sublease, License or other contractual obligation under which the Personal Property is used by any Seller, including as identified on Schedule 2.01(e) (collectively, the “Personal Property Leases” and together with the Real Property Leases, the “Leases”);
- (f) all of the tangible personal property owned, leased, subleased or licensed by any Seller and used with respect to the operation of the Health Care System, including equipment, furniture, fixtures, machinery, vehicles, office furnishings, and leasehold improvements (collectively, the “Personal Property”);
- (g) all inventories of usable supplies, drugs, medical supplies, food, janitorial and office supplies and other disposables and consumables that are owned by any Seller (collectively, the “Inventory”);
- (h) all advance payments, prepayments, prepaid expenses, and deposits (other than such payments, prepayments or deposits in respect of Taxes or prepaid insurance premiums, if any) made by Sellers as of the Closing Date, including as set forth on Schedule 2.01(h) (collectively the “Prepaid Expenses”);
- (i) all accounts, notes, interest and other health care receivables generated in connection with the operation of the Health Care System by Sellers before or on the Closing

Date, whether billed or unbilled, recorded or unrecorded, or payable by a Government Payment Program, medically indigent assistance program, private payors or any other payor (including an insurance company), health care provider, independent practice association network (such as a health maintenance organization, preferred provider organization or any other managed care program), any fiscal intermediary of the foregoing, private pay patients, private insurance or any other source, including DSH Payments and accounts, notes or other amounts receivable from physicians ("Seller Accounts Receivable");

(j) all rights to the Seller Cost Reports, including the right to appeal any determinations relating to Medicare and/or Medicaid receivables, and all rights to receive Medicare bad debt reimbursements;

(k) all rights, claims and causes of action of Sellers related to and/or arising out of the Seller Accounts Receivable, and any payments, awards or other proceeds arising therefrom;

(l) all insurance proceeds (including applicable deductibles, copayments or self-insured requirements) arising in connection with the ownership or operation of the Transferred Assets or the Health Care System before or on the Closing Date;

(m) all surpluses arising out of any risk pools to which any Seller is party on the Closing Date;

(n) all Records except the Retained Records (collectively, the "Transferred Records");

(o) all of the rights of Sellers to all licenses issued by or received from a Governmental Authority, provider numbers, permits, approvals, certificates of exemption, franchises, accreditations, registrations, authorizations, filings, consents, permits or approvals issued to any Seller, together with all waivers which such Seller has of any such requirements, if any (collectively, the "Licenses"), including the licenses and Medicare provider numbers listed on Schedule 2.01(o);

(p) (i) all Intellectual Property identified in Schedule 2.01(p)(i), and (ii) all computer software and code identified in Schedule 2.01(p)(ii) (the "Software") and together with the items identified in Schedule 2.01(p)(i), the "Transferred Intellectual Property", together with all rights to sue and recover damages for past, present and future infringement, dilution, misappropriation or other violation or conflict associated with any Transferred Intellectual Property accruing after the Closing Date;

(q) all systems, servers, computers, hardware, firmware, middleware, telecom equipment, networks, data communications lines, routers, hubs, switches and all other information technology equipment, and all associated documentation owned or licensed by and used by Sellers, including as identified on Schedule 2.01(q);

(r) all telephone numbers and facsimile numbers that are used by Sellers, including with respect to the operation of the Health Care System;

- (s) all goodwill of Sellers evidenced by the Transferred Assets;
- (t) all transferable unclaimed property of any Person in any Seller's possession as of the Closing Date, including property which is subject to applicable escheat laws;
- (u) all right and interest of Sellers in and to all Contracts to which a Seller is a party other than in respect of the Bonds, including the Contracts identified on Schedule 2.01(u);<sup>8</sup>
- (v) all warranties on the Transferred Assets in favor of the Health Care System;
- (w) all restricted and unrestricted cash and cash equivalents, including investments in marketable securities, certificates of deposit, bank accounts, financial accounts, investment accounts, debt service reserve funds and promissory notes owned or held by, or on behalf or for the benefit, of Sellers, the Health Care System and/or the Foundations on the Closing Date;
- (x) all restricted and unrestricted cash and cash equivalents, including investments in marketable securities, certificates of deposit, bank accounts, financial accounts, investment accounts and promissory notes owned or held by Sellers, the Health Care System and/or the Foundations on the Closing Date;
- (y) any gift or grant, and the proceeds therefrom made to or for the benefit of Sellers or the Health Care System, whether before, on or after the Closing Date;<sup>9</sup>
- (z) all regulatory settlements, rebates, adjustments, refunds or group appeals, including pursuant to any Seller Cost Reports arising out of time periods prior to the Closing Date; and
- (aa) all Equity Interests of the Captive Insurance Company.

**Section 2.02. Retained Assets.** Notwithstanding anything to the contrary in Section 2.01, Sellers shall retain the following assets (collectively, the "Retained Assets"):

- (a) subject to Purchaser's rights under Section 13.02, the Retained Records;
- (b) all Equity Interests held by Sellers (other than Equity Interests of the Captive Insurance Company);
- (c) any Physician Agreement that is not a Qualifying Physician Agreement;
- (d) the Restricted Investments;
- (e) all claims, rights and causes of action relating to the Excluded Liabilities or the Retained Assets; and

<sup>8</sup> Note to Draft: Capitalized Leases, Software licenses and other material contracts to be identified on this schedule.

<sup>9</sup> Note to Draft: To be adjusted to the extent the ultimate buyer is or is not a for-profit entity..

- (f) [any assets designated by Purchaser in Schedule 2.02(g)].<sup>10</sup>

### ARTICLE III.

#### OBLIGATIONS AND LIABILITIES

**Section 3.01. Assumed Liabilities.** On the Closing Date, Purchaser shall assume, and agree to discharge, perform and satisfy, on and after the Closing Date, the following liabilities and obligations of Sellers (collectively, the “Assumed Liabilities”):

- (a) all liabilities and obligations of Sellers arising under or relating to any Government Payment Program, including overpayments or other amounts due to Medicare or Medi-Cal;
- (b) the liabilities and obligations of Sellers under all Contracts included in the Transferred Assets, including the Leases;
- (c) accounts payable and all other current operating liabilities arising before and after the Closing;
- (d) all liabilities and obligations of Sellers arising out of or related to the employment of the Employees, including (i) the liabilities and obligations set forth in Section 8.02; (ii) liabilities and obligations arising under any Seller Plan, Multiemployer Plan, severance pay program or arrangement, discrimination claim, unfair labor practice, wage and hour practice, or arising under the Worker Adjustment and Retraining Notification Act (the “WARN Act”), including accrued payroll and paid time off with respect to the Employees as of the Closing Date; (iii) liabilities and obligations arising out of or related to each Collective Bargaining Agreement; (iv) liabilities and obligations of Sellers under the Consolidated Omnibus Budget Reconciliation Act; (v) any liabilities or obligations to former or retired Employees; and (vi) the Special Employee Liabilities;
- (e) all liabilities and obligations of Sellers relating to Utilities being furnished to the Transferred Assets;
- (f) all liabilities and obligations of Sellers arising out of or related to any Action, including in connection with claims of medical malpractice to the extent arising from events occurring before the Closing Date;
- (g) all liabilities and obligations of Sellers arising under the Public Health Service Act, 42 U.S.C. § 291, et seq. or other restricted grant or loan programs;
- (h) all liens and other assessments with respect to the Health Care System or the Transferred Assets levied by any Governmental Authority;

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<sup>10</sup> Note to Draft: This schedule should only include assets that create liabilities for Purchaser or its Assignee, but do not constitute material liabilities if in Seller's control, if any.

- (i) all liabilities and obligations of Sellers (including incurred but not reported liabilities) related to any risk pools to which any Seller is a party arising before or on the Closing Date;
- (j) all penalties, fines, settlements, interest, costs and expenses arising out of or incurred as a result of any actual or alleged violation of any Legal Requirement;
- (k) all liabilities and obligations of Sellers related to Seller Cost Reports; and
- (l) all other liabilities and obligations of Sellers that are not Excluded Liabilities.

Sellers shall have no liability with respect to the Transferred Assets from and after the Closing Date.

**Section 3.02. Excluded Liabilities.** Purchaser shall not assume, and shall not be liable for, any of Sellers' duties, obligations or liabilities associated with any Retained Assets (the "Excluded Liabilities"), which shall be and remain liabilities of Sellers:

- (a) all liabilities and obligations of Sellers for commissions or fees owed to any finder or broker in connection with the Contemplated Transactions;
- (b) any Tax liabilities incurred by Sellers as a result of the consummation of the Contemplated Transactions (other than as provided in Section 4.02);
- (c) all liabilities and obligations of Sellers to the extent relating to the defeasance of the Bonds;
- (d) all liabilities of the Sellers relating to pre-Reorganization Date participation in the Medicare Program, including those related to the Cost Reports, except liabilities for ordinary course audit adjustments;
- (e) all liabilities arising prior to the Reorganization Date from any violation of Legal Requirements by the Sellers;
- (f) all liabilities of the Sellers under, relating to or arising out of the Retained Assets (including the Physician Agreements which are not Qualifying Physician Agreements);
- (g) any liabilities of the Sellers related to the Restricted Investments;
- (h) all liabilities of the Sellers in connection with claims of professional malpractice to the extent arising out of or relating to acts, omissions, events or occurrences prior to Reorganization Date;
- (i) all liabilities of the Sellers in connection with the claims of workers compensation arising out of or relating to acts, omissions, events or occurrences prior to Reorganization Date that are either in excess of unpaid workers compensation losses carried as

reserves or are not covered under existing workers compensation policies that are a Transferred Asset or for which the Purchaser does not receive the benefit of insurance proceeds; and

(j) [any liabilities designated by Purchaser in Schedule 3.02(j)].<sup>11</sup>

**Section 3.03. Certain Accounts.** On the Closing Date, the Sellers shall cause all patient and resident funds and accounts not considered Restricted Investments that any Seller maintains or holds for the benefit of patients or residents (whether or not payable to patients, residents or third party payment sources), if any, to be transferred to Purchaser to be held for the same purposes and subject to the same restrictions, as applicable: provided, however, that to the extent such funds are held by a Seller in trust, such Seller will convey such funds to the Purchaser in trust for the benefit of the beneficiaries of the same, which funds the Purchaser shall hold in compliance with applicable Legal Requirements.

## ARTICLE IV.

### CONSIDERATION; CLOSING

**Section 4.01. Purchase Price.** Subject to the terms and conditions of this Agreement, the aggregate consideration for the sale, conveyance assignment, transfer and delivery of the Transferred Assets shall be comprised of (i) a cash payment in an amount as agreed upon by Parent Seller and Purchaser equal to the amount required for the [discharge, redemption or defeasance]<sup>12</sup> of the Bonds and the Bond Obligations (such amount, the "Cash Purchase Price"), which shall be deposited by Purchaser with the Master Trustee on behalf of Sellers, (ii) the assumption by Purchaser of the Assumed Liabilities (the "Liabilities Assumption"), and (iii) the assumption or repayment by Purchaser of any Funded Indebtedness of the Health Care System (such assumption or repayment, together with the Liabilities Assumption and the Cash Purchase Price, the "Purchase Price").

**Section 4.02. Transfer Taxes.** Notwithstanding any provision in this Agreement to the contrary, all sales, use, transfer, documentary, stamp, recording and all other similar non-income Taxes arising out of or in connection with the purchase and sale of the Transferred Assets as contemplated in this Agreement (the "Transfer Taxes") shall be paid by Purchaser. Purchaser shall file all necessary Tax Returns and other documents required to be filed with respect to such Transfer Taxes and each Seller shall cooperate with Purchaser to the extent reasonably necessary to make such filings or Tax Returns as may be required.

**Section 4.03. The Closing.** The consummation of the Contemplated Transactions (the "Closing") will take place at [TIME] Pacific Time [location TBD] as promptly as practicable following, but in no event later than the seventh (7<sup>th</sup>) Business Day following the satisfaction or waiver of each of the conditions set forth in ARTICLE IX and ARTICLE X (other than those conditions that by their terms are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions at Closing) or such other time and place as Parent Seller and Purchaser

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<sup>11</sup> Note to Draft: This schedule should only include liabilities that create liabilities for Purchaser or its Assignee, but do not constitute material liabilities if in Seller's control, if any.

<sup>12</sup> Note to Draft: Path to eliminate Bonds to be at Purchaser's election.

may agree. Subject to the provisions of ARTICLE XI, the failure to consummate the Closing on the date and time determined pursuant to this Section 4.03 shall not result in the termination of this Agreement and shall not relieve any Party to this Agreement of any obligation under this Agreement.

**Section 4.04. Items to be Delivered by Sellers at Closing.** At or before the Closing, Sellers shall deliver to Purchaser the following, duly executed by each applicable Seller where appropriate:

(a) Assignment, Bill of Sale and Assumption of Liabilities dated and effective as of the Closing Date and in the form of Exhibit A attached hereto (the "Bill of Sale");

(b) an Assignment and Assumption of each Real Property Lease in the form of Exhibit B, dated and effective as of the Closing Date (the "Real Estate Assignments");

(c) Assignment and Assumption of Personal Property Leases in the form of Exhibit C, dated and effective as of the Closing Date (the "Personal Property Assignments");

(d) certified articles of incorporation, bylaws and, of each Seller and the certified memorandum of association and articles of association of the Captive Insurance Company;

(e) reconveyance deeds terminating any Deeds of Trust encumbering the Owned Real Property and conveying title to the Owned Real Property from the trustee under such Deed of Trust to Seller;

(f) grant deeds from each applicable Seller to Purchaser conveying to Purchaser fee simple title to the Owned Real Property, free and clear of all encumbrances except for the Permitted Exceptions;

(g) release of all Liens (i) under the Master Indenture or the Deeds of Trust on the Transferred Assets and (ii) otherwise on the Transferred Assets, except in the case of clause (ii) for the Permitted Exceptions;

(h) favorable original certificates of good standing or comparable status of each Seller, issued by the State of California, and of the Captive Insurance Company, issued by the Cayman Islands Monetary Authority, in each case dated no earlier than a date which is ten (10) Business Days prior to the Closing Date;

(i) a certificate of an authorized signatory of Parent Seller certifying to the satisfaction of Purchaser by Sellers of the provisions set forth in ARTICLE V and ARTICLE VII of this Agreement;

(j) a certificate certifying to Purchaser (i) the incumbency of the authorized signatory of each Seller on the Effective Date and on the Closing Date and bearing the authentic signatures of such authorized signatory who shall execute this Agreement and each of the Ancillary Agreements and (ii) the due adoption and text of the resolutions of the board of directors of Parent Seller and the due adoption and text of the resolutions of the board of

directors and sole corporate member of each other Seller, in each case which resolutions shall not be amended or rescinded and shall remain in full force and effect at the Closing Date, authorizing (A) the transfer of the Transferred Assets and Assumed Liabilities by Sellers to Purchaser and (B) the execution, delivery and performance of this Agreement and all Ancillary Agreements and instruments by or on behalf of Sellers, as applicable;

(k) an executed certificate confirming each Seller's non-foreign status sufficient to comply with the requirements of Section 1445 of the Code, commonly known as the Foreign Investment in Real Property Tax Act of 1980, and regulations applicable thereto;

(l) Owner's Title Affidavit or any other documents reasonably requested by a title company in order to issue an Owner's Title Policy for each parcel included in the Owned Real Property in the name of the Purchaser at Closing;

(m) written evidence in a form reasonably satisfactory to Purchaser with respect to the discharge, redemption or defeasance of the Bonds and the Bond Obligations in accordance with the terms of the respective bond indentures for the Bonds and the Master Indenture, including an opinion or opinions of [Perkins Coie][Orrick] to the effect that, upon receipt by the Master Trustee of the Cash Purchase Price, (i) the defeasance requirements of the applicable loan agreements and bond indentures for each of the Bonds will be satisfied and that such Bonds are no longer deemed outstanding thereunder and (ii) the discharge and satisfaction requirements of the Master Indenture with respect to the Bond Obligations will be satisfied and that the Master Indenture will be released and of no further effect in accordance with its terms;

(n) certificates from the California Department of Revenue for each Seller, showing that such Seller has no amount of tax due, in particular with respect to sales and use tax;

(o) to the extent the provisions thereof are permitted by and consistent with applicable Legal Requirements, a limited Power of Attorney for use of Pharmacy License, DEA and other Registration Numbers, and DEA Order Forms, in the form reasonably satisfactory to Purchaser (the "Power of Attorney");

(p) the consents to the assignment of the Material Contracts from the third parties which have been received by the Sellers to assign such Material Contracts (the "Contract Consents"), subject to Section 13.03 hereof;

(q) a binding and enforceable power of attorney authorizing the Purchaser to act on behalf of any and all of the Sellers to cause the transfer of the Transferred Assets (the "Transferred Assets POA"); and

(r) such other instruments and other documents which are reasonably requested by Purchaser to effect the intent of this Agreement.

**Section 4.05. Items to be Delivered by Purchaser at Closing.** At or before the Closing, Purchaser shall execute and deliver or cause to be delivered to Sellers the following, duly executed by Purchaser where appropriate:

- (a) evidence of the payment by Purchaser to the Master Trustee of the Cash Purchase Price;
- (b) a certificate of an authorized signatory of Purchaser certifying to Sellers' satisfaction the provisions set forth in ARTICLE VI and ARTICLE VIII of this Agreement;
- (c) a certificate certifying to Sellers (i) the incumbency of the officers of Purchaser on the Effective Date and on the Closing Date and bearing the authentic signatures of all such officers who shall execute this Agreement and each Ancillary Agreement and (ii) the due adoption and text of the resolutions of the board of directors of Purchaser, which resolutions shall not be amended or rescinded and shall remain in full force and effect after the Closing Date, authorizing (A) the purchase and assumption of the Transferred Assets and the Assumed Liabilities and (B) the execution, delivery and performance of this Agreement and all Ancillary Agreements and instruments by Purchaser;
- (d) favorable original certificate of good standing, or comparable status, of Purchaser, issued by the State of California, dated no earlier than a date which is ten (10) Business Days prior to the Closing Date;
- (e) a counterpart to the Bill of Sale;
- (f) a counterpart to each of the Real Estate Assignments;
- (g) the Power of Attorney;
- (h) a counterpart to each of the Personal Property Assignments; and
- (i) such other instruments and other documents which are reasonably requested by Parent Seller to effect the intent of this Agreement.

**Section 4.06. Disclaimer of Warranties; Release.**

(a) Except as expressly provided in this Agreement, Sellers have not made, does not make and specifically disclaims, any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to: (i) the nature, quality, sufficiency or condition of the Transferred Assets; (ii) the income to be derived from the Transferred Assets; or (iii) the compliance of or by the Transferred Assets or their operation with any Legal Requirement. Except as expressly provided in this Agreement, the Transferred Assets transferred to Purchaser will be sold by Sellers and purchased by Purchaser in their physical condition on the Closing Date, "AS IS," "WHERE IS" AND "WITH ALL FAULTS AND NONCOMPLIANCE WITH LAWS," THAT IS, IN THEIR PRESENT CONDITION AND WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND, WITH NO WARRANTY OF HABITABILITY OR FITNESS FOR HABITATION with respect to the Real Property, including the land, the buildings and the improvements and fixtures thereon, and WITH NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE with respect to the physical condition of the Real Property, the Personal Property and the Inventory, any and all of which warranties (both express and implied) Sellers hereby disclaim.

All of the Real Property and Personal Property shall be further subject to wear and tear and use of the Inventory and other supplies in the Ordinary Course of Business on and before the Closing Date.

(b) Purchaser acknowledges, covenants and agrees, on behalf of itself and its affiliates: (i) that it has completed to its satisfaction its own due diligence investigation, and based thereon, formed its own independent judgment with respect to the Transferred Assets and Assumed Liabilities; (ii) that it has been furnished with or given full access to such documents and information about Sellers and their respective businesses and operations as it and its Representatives have deemed necessary to enable it to make an informed decision with respect to the execution, delivery and performance of this Agreement and the Contemplated Transactions; (iii) that in entering into this Agreement, it has relied solely upon its own investigation and analysis and the representations, warranties, covenants and agreements set forth in this Agreement; and (iv) that (A) no representation or warranty has been or is being made by Sellers or any other Person as to the accuracy or completeness of any of the information provided or made available to Purchaser except as expressly set forth in ARTICLE V, and (B) there are uncertainties inherent in attempting to make estimates, projections, forecasts, plans, budgets and similar materials and information, Purchaser is familiar with such uncertainties, Purchaser is taking full responsibility for making its own evaluations of the adequacy and accuracy of any and all estimates, projections, forecasts, plans, budgets and other similar materials or information that may have been delivered or made available to it or any of its respective agents or Representatives, Purchaser has relied or will rely on such information, and Purchaser will not assert, and will cause its affiliates not to assert, any claims against Sellers or Released Parties with respect thereto. PURCHASER RELEASES SELLER FROM ALL RESPONSIBILITY AND LIABILITY REGARDING THE CONDITION, VALUATION, SALABILITY OR UTILITY OF THE HOSPITAL AND THE TRANSFERRED ASSETS, OR THE SUITABILITY OF THE HOSPITAL AND THE ASSETS FOR ANY PURPOSE WHATSOEVER.

(c) Purchaser understands and expressly waives any rights or benefits available under Section 1542 of the Civil Code of California or any similar provision in any other jurisdiction.

(d) Except in the case of fraud or intentional misrepresentation, Purchaser and each of its members, directors, officers, employees, controlling Persons, Representatives, agents, successors, and assigns (I) WAIVE, RELEASE, INDEMNIFY AND HOLD HARMLESS SELLERS AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, CONTROLLING PERSONS, REPRESENTATIVES, AGENTS, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "RELEASED PARTIES"), FROM ANY AND ALL LOSSES AND (II) WAIVE, RELEASE, INDEMNIFY AND HOLD HARMLESS FROM ANY AND ALL LOSSES AGAINST EACH OF THE RELEASED PARTIES, IN EACH CASE (I) AND (II), THAT (X) ARISE UNDER ENVIRONMENTAL LAW WITH RESPECT TO THE PROPERTY OR (Y) ARISE FROM OR RELATE TO AN ACTUAL, THREATENED OR SUSPECTED PRESENCE OR RELEASE OF MATERIALS OF ENVIRONMENTAL CONCERN AT, ON, UNDER, OR FROM THE REAL PROPERTY NO MATTER WHEN THE SAME MAY HAVE OCCURRED.

**Section 4.07. Risk of Loss.** If any part of the Transferred Assets is damaged, lost or destroyed (whether by fire, theft, or other cause or causality event), in whole or in part, prior to the Closing Date, the Parties agree that, other than termination of this Agreement in accordance with the applicable provisions hereof, Purchaser's sole remedy will be insurance proceeds or other claims against third parties, and Sellers shall assign, transfer and set over to Purchaser all of Sellers' right, title and interest in and to any insurance proceeds with respect to such damage, destruction or loss.

## ARTICLE V.

### REPRESENTATIONS AND WARRANTIES OF SELLERS

Sellers hereby, jointly and severally, represent, warrant and covenant to Purchaser as to the following matters as of the Effective Date and the Closing Date, except as set forth in the Disclosure Schedules of Sellers:

**Section 5.01. Power and Authorization.** Each Seller has full corporate, limited liability company or partnership power and authority, as applicable, to enter into this Agreement and each Ancillary Agreement, and to carry out the Contemplated Transactions.

**Section 5.02. Binding Agreement.** All actions required to be taken by each Seller to authorize the execution, delivery and performance of this Agreement, each Ancillary Agreement and the Contemplated Transactions have been duly and properly taken or obtained by such Seller. No other corporate or other action on the part of any Seller is necessary to authorize the execution, delivery and performance of this Agreement, each Ancillary Agreement and the Contemplated Transactions. This Agreement and each Ancillary Agreement has been, or will be, as applicable, duly and validly executed and delivered by each Seller and, assuming due and valid execution by Purchaser, this Agreement and each Ancillary Agreement constitutes a valid and binding obligation of each Seller enforceable in accordance with its terms.

**Section 5.03. Organization and Good Standing.** Each Seller is duly organized, validly existing and in good standing under the laws of the state of its incorporation. Each Seller has full power and authority to own, operate and lease its properties and to carry on its business as now conducted.

**Section 5.04. Non-Contravention.** Neither the execution and delivery of this Agreement and each Ancillary Agreement nor performance of any of the material provisions hereof by Sellers, will (a) violate, conflict with or result in a breach of any material provision of the Governance Documents of any Seller, (b) except as set forth in Schedule 5.04, require the consent of any other Person to consummate the Contemplated Transactions, (c) result in a breach of any term or provision of, or constitute (with or without notice or lapse of time or both) a default under, any Material Contract, or give any other party to any such Material Contract a right to cancel or terminate the same, a right to modify or amend the terms thereof, or result in an acceleration of the maturity or performance of any obligation under any such Material Contracts; or (d) result in the creation of any material Lien on any Transferred Assets; except in the case of clauses (b), (c) and (d) above, as would not have a Material Adverse Effect.

**Section 5.05. Compliance With Legal Requirements.**

(a) Except as set forth in Schedule 5.05(a), each Seller and the Captive Insurance Company is, and during the three years prior to the Effective Date has been, in compliance with all Legal Requirements, including with respect to the operation of the Health Care System, except where the failure to be in such compliance would not be material to the Transferred Assets. Except as set forth in Schedule 5.05(b), Sellers have not received any notice from any Governmental Authority asserting that any Seller or the Captive Insurance Company is not in material compliance with any Legal Requirement, including with respect to the operation of the Health Care System, and, to the knowledge of Sellers, no Seller is and the Captive Insurance Company is not under any investigation with respect to any actual or alleged material violation of any applicable Legal Requirements. Except as set forth in Schedule 5.05(c), all returns, data, notices, reports, statements or other filings currently required to be filed by Sellers or the Captive Insurance Company with any Governmental Authority have been filed and when filed complied with all applicable requirements of such Governmental Authorities except where such failure or non-compliance would not be material to the Transferred Assets.

(b) Without limiting the generality of the foregoing, to the knowledge of Sellers, none of Sellers' employees, or persons who provide professional services under agreements with the Sellers at the facilities within the Health Care System, has engaged in any activities which are prohibited under the federal Controlled Substances Act (21 U.S.C. §801 et seq.), as amended, or the regulations promulgated pursuant to such statute or any related state or local statutes or regulations concerning the acquisition, storage, disposal, dispensing and sale of controlled substances.

**Section 5.06. Environmental Representations and Warranties.** Except as set forth on Schedule 5.06:

(a) Sellers are, and during the past five (5) years have been, in compliance in all material respects with all Environmental Laws and all Environmental Permits applicable to the operation of the Health Care System and the Real Property;

(b) None of Sellers, the Hospitals or the Real Property are subject to any existing or pending Action that involves a demand for, or that may impose, damages, injunctive relief, penalties, continuing or future obligations, or other losses or liabilities with respect to violations of, or liability under, any Environmental Law or Environmental Permit, and, to the knowledge of Sellers, no such Action is threatened and no facts or circumstances exist with respect to the Hospitals or the Real Property that would reasonably be expected to result in an Action or other claim for losses or liabilities incurred under Environmental Laws or Environmental Permits;

(c) There have been no Releases of Hazardous Materials on, into, to, or from the Real Property or in connection with the operation of the Health Care System in violation of Environmental Laws or Environmental Permits or in excess of any reportable quantity under Environmental Laws that have not been fully remediated as required by Environmental Laws, or that could otherwise give rise to losses or liability under Environmental Laws or Permits;

(d) To the knowledge of Sellers, no Seller has exposed any person to any Hazardous Materials in connection with its ownership or operation of the Hospitals or the Real Property in such a manner that could reasonably be expected to give rise to an Action or otherwise give rise to losses or liabilities;

(e) Sellers have not sent, disposed of, arranged for disposal or treatment, arranged with a transporter for transport for disposal or treatment, transported, or accepted for transport any Hazardous Materials to any facility, site, or location: (i) so as to give rise to any losses or liabilities under Environmental Laws or Environmental Permits; or (ii) that has, pursuant to CERCLA or any similar law, been placed, or to the knowledge of Sellers is proposed to be placed, on the National Priorities List, the CERCLIS, or any state or regional equivalent list or known or suspected contaminated site;

(f) Neither Sellers nor the Hospitals have, either expressly or by operation of law, assumed or undertaken any liability of any Person or other third party relating to Environmental Laws or Environmental Permits, or agreed to indemnify any Person or other third party against any liabilities under any Environmental Laws or Environmental Permits;

(g) To the knowledge of Sellers, the Real Property does not contain any (i) underground storage tanks or landfills, surface impoundments, pits, ponds, lagoons, wastewater treatment units, or dumps; (ii) PCBs or PCB-containing equipment; (iii) asbestos or asbestos-containing materials; or (iv) excessive moisture, mildew, mold, microbial growth or other fungi which is present in sufficient quantities to pose a material risk to human health or the environment; and

(h) Sellers have disclosed and made available to Purchaser all environmental studies, environmental site assessments, environmental compliance audits, and similar environmental reports, analyses, and test results that are in Sellers' possession, custody, and control with respect to the Hospitals and the Real Property.

**Section 5.07. Title; All Transferred Assets.**

(a) Sellers have good and clear, record and marketable fee simple or leasehold title, as the case may be, to the Transferred Assets, subject to the matters set forth in Schedule 5.07(a) and to the Permitted Exceptions.

(b) None of the Real Property is subject to a pending or, to the knowledge of Sellers, threatened condemnation or similar proceeding.

**Section 5.08. Certain Other Representations With Respect to the Health Care System and the Real Property.**

(a) All Licenses which are material to the operation of the Health Care System by Sellers are valid and in good standing.

(b) The Health Care System is certified for participation in the Medicare, Medi-Cal and TRICARE programs, and the Hospitals have current and valid provider contracts

with each such program, except where the failure to have such provider contracts would not have a Material Adverse Effect.

(c) Sellers have not been excluded from Medicare, Medi-Cal or any federal or state health care program, and there is no pending or, to the knowledge of Sellers, threatened exclusion action by a Governmental Authority against Sellers with respect to the operation of the Health Care System.

(d) There is no Action pending, or to the Sellers' knowledge threatened or being contemplated, against or involving any Seller relating to the Owned Real Property or any part thereof (including any Action relating to (i) the amount of real property taxes or assessments levied against the Owned Real Property or any part thereof, (ii) the assessed value of the Owned Real Property or any part thereof for real property tax purposes, (iii) general plan, land use or zoning, (iv) general or special assessment or (v) condemnation or eminent domain) and, to the Sellers' knowledge, there is no valid basis for any such Action. Each Owned Real Property consists of one (1) separate tax parcel, and no real property other than each such Owned Real Property is assessed for real property tax purposes as a portion of that tax parcel.

(e) All water, sewer, gas, electric, steam, telephone and drainage facilities and all other utilities required by law or reasonably necessary or proper and usual for the full operation, use and occupancy of the Owned Real Property are installed to the boundary lines of the Owned Real Property, are connected with valid permits, and are adequate to service the Owned Real Property and the Business and to allow full compliance with all applicable laws, and the cost of installation and connection of all such utilities to the Owned Real Property has been fully paid.

(f) Sellers have delivered or made available to Purchaser true and complete copies of all Real Property Leases.

(g) With respect to each Real Property, (i) to the knowledge of Sellers, no Seller has received any written notice of default (or the occurrence of an event which with notice or lapse of time or both would constitute a default) by the Sellers or any of them under any Real Property Lease, and (ii) the Sellers have not assigned, transferred, conveyed, mortgaged, deeded in trust or encumbered its leasehold interest in such Real Property, and, other than the Real Property (Landlord) Leases, none of the Sellers have entered into any lease, sublease, license or other agreement granting to any other Person any right to use, occupancy or enjoyment of such Leased Property or any part thereof.

(h) To the knowledge of Sellers, Sellers have not received any written notice that: (i) any buildings, structures or appurtenances situated on any of the Owned Real Property, or the operation or maintenance thereof, materially violate any restrictive covenant or any provision of any Law; or (ii) any Permitted Encumbrances prohibit the use of any of the Owned Real Property as it is currently being used. To the knowledge of Sellers, there is no pending or threatened condemnation, eminent domain or similar proceeding with respect to any Owned Real Property.

**Section 5.09. Brokers and Finders.** Neither Sellers nor any officer or director thereof, have engaged or incurred any liability to any finder, broker or agent in connection with the Contemplated Transactions, except as set forth on Schedule 5.09.

**Section 5.10. Financial Statements.**

(a) Schedule 5.10 hereto contains the following financial statements (collectively, the "Historical Financial Statements"): (a) the combined, unaudited balance sheets of Sellers dated as of June 30, 20[ ] (the "Balance Sheet Date"), June 30, 20[ ], and June 30, 20[ ],<sup>13</sup> and (b) combined, unaudited income statements of Sellers for the twelve-month periods ended on June 30, 20[ ], June 30, 20[ ], and June 30, 20[ ]. Except as set forth on Schedule 5.10(b), the income statements contained in the Historical Financial Statements present[, and contained in the Interim Financial Statements,] shall present, fairly in all material respects the results of the operations of Sellers as of and for the periods covered therein and, except as set forth on Schedule 5.10(c), the balance sheets contained in the Historical Financial Statements present, and in the Interim Financial Statements shall present, taken together as a whole, fairly in all material respects the financial condition of Sellers as of the dates indicated thereon, in each case in accordance with GAAP.

(b) Since the Balance Sheet Date, the Sellers have operated the Health Care System in the ordinary course of business consistent with past practice and there has not occurred any Material Adverse Effect or any event or circumstance has occurred that individually or in the aggregate could reasonably be expected to have a Material Adverse Effect.

**Section 5.11. Legal Proceedings.** Except as set forth on Schedule 5.11(a), there are no material claims, proceedings or investigations pending or, to the knowledge of Sellers, threatened, against any Seller or with respect to the operation of the Health Care System before any Governmental Authority. Except as set forth on Schedule 5.11(b), no Seller is subject to any Government Order, including with respect to the operation of the Health Care System or the Transferred Assets. Except as set forth on Schedule 5.11(c), Sellers are in substantial compliance with respect to each Government Order.

**Section 5.12. Employee Benefits.**

(a) Schedule 5.12(a) contains a list of (i) each pension, profit sharing, bonus, deferred compensation, or other retirement plan or arrangement of Sellers, whether oral or written, which constitutes an Employee Pension Benefit Plan, (ii) each medical, health, disability, insurance or other plan or arrangement of Sellers, whether oral or written, which constitutes an Employee Welfare Benefit Plan, (iii) each other material employee benefit, bonus, incentive, deferred compensation, severance, change in control, fringe benefit, performance or retention plan, in each case, that is maintained, contributed to or provided by Sellers and that covers any current or former officers, directors, employees, independent contractors or consultants of Sellers (collectively, the "Seller Plans") and (iv) each Multiemployer Plan.

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<sup>13</sup> Note to Draft: These dates and the dates in clause (b) to reflect the most recent three completed fiscal years of Sellers.

(b) Sellers have made available to the Purchaser true, complete and correct copies of: (i) each Seller Plan (or, in the case of any unwritten Seller Plan, a description thereof); (ii) the most recent annual report on Form 5500 filed with the Internal Revenue Service with respect to each Seller Plan (if any such report was required); (iii) the most recent summary plan description for each Seller Plan for which such summary plan description is required; and (iv) each trust agreement and group annuity contract relating to any Seller Plan, if any; and (v) each Multiemployer Plan.

(c) Except as otherwise provided on Schedule 5.12(c), to the knowledge of Sellers, Sellers do not have any direct or indirect, actual or contingent liability with respect to any Seller Plan or Multiemployer Plan, other than to make payments for contributions, premiums or benefits when due in the Ordinary Course of Business, all of which payments that are due having been made. Neither the Health Care System nor any of the Transferred Assets are subject to any lien under ERISA or the Code.

(d) All of the Seller Plans have been administered in material compliance with ERISA and the Code, to the extent applicable. There are no “accumulated funding deficiencies” in respect of any Seller Plan subject to ERISA or the Code or any federal excise Tax or other liability on account of any deficient fundings in respect of the Seller Plans.

(e) Except as otherwise provided on Schedule 5.12(e), no Seller Plan provides retiree medical or other retiree welfare benefits to any person (other than health care continuation coverage as required by the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, or analogous state law).

(f) No Seller Plan contains any provisions, or is subject to any restrictions, that would preclude its assumption in connection with the transactions contemplated by this agreement.

### **Section 5.13. Personnel.**

(a) Schedule 5.13(a) sets forth a complete list (as of the date set forth therein) of names, positions and current annual salaries or wage rates, bonus and other compensation and/or benefit arrangements, and the paid time off pay of all Employees. Schedule 5.13(a) also indicates whether each such Employee is a part-time or full-time employee.

(b) Except as listed in Schedule 5.13(b), there is no grievance or unfair labor practice complaint against any Seller pending, or to the knowledge of Sellers threatened, before the National Labor Relations Board, and there is no labor strike, arbitration, dispute, slowdown or stoppage, and no union organizing campaign, pending or, to the knowledge of Sellers, threatened, by or involving the Employees, that would have a Material Adverse Effect.

(c) Schedule 5.13(c) sets forth a complete list of the names and positions of all full-time Employees that have been terminated without cause during the ninety (90) calendar days immediately preceding the Effective Date. Sellers shall update Schedule 5.13(c) at Closing to reflect such terminations occurring during the ninety (90) calendar days immediately preceding the Closing Date.

(d) Except as provided in Schedule 5.13(d), Sellers have complied with all applicable Legal Requirements relating to employee health and safety in all material respects, and no Seller has received any written notice from any Governmental Authority that past or present conditions of the Health Care System or the Transferred Assets violate any applicable Legal Requirements or otherwise will be made the basis of any claim, proceeding, or investigation based on violations of the Occupational Safety and Health Act of 1970 or otherwise related to employee health and safety.

**Section 5.14. Insurance.** Sellers maintain, and have maintained, without interruption, at all times during Sellers' ownership of the Transferred Assets prior to the Closing Date, self-insurance or policies or binders of insurance covering such risks and events, including personal injury, property damage, malpractice and general liability, to provide adequate and sufficient insurance coverage for the Transferred Assets and operation of the Health Care System. Schedule 5.14 contains a list of all such insurance maintained by Sellers with respect to the Transferred Assets and the operation of the Health Care System as of the Effective Date.

**Section 5.15. Required Consents.** No consent, waiver, approval, order or authorization of, accreditation by, clearance, certification, License, permit, entitlement, or approval from, registration, declaration or filing with, agreements to own and operate the Health Care System or participate in any Government Payment Program, or notice to any Governmental Authority or accrediting or certifying body, including Environmental Permits (each, a "Governmental Approval") is necessary or required for the execution and delivery of this Agreement by Sellers or for the consummation by Sellers of the Contemplated Transactions, except for such Governmental Approvals set forth in Schedule 5.15 or as may be required under the Hart-Scott Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act").

**Section 5.16. Tax Matters.**

(a) Except as otherwise noted on Schedule 5.16(a), each Seller is an organization described in section 501(c)(3) of the Code that is not a private foundation because it is described in sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code and, as such, is exempt from federal and state income taxes. No Seller has received any indication or notice, written or oral, from Governmental Authorities to the effect that its exemption under Section 501(c)(3) of the Code has been revoked or modified, or that Governmental Authorities is considering revoking or modifying such exemption.

(b) Each Seller and the Captive Insurance Company has timely filed (taking into account valid extensions of the time for filing) all Tax returns required to have been filed and all such Tax returns were true, correct and complete in all material respects. All Taxes owed by each Seller and the Captive Insurance Company (whether or not shown on any Tax return) that have become due and payable have been paid. Neither any Seller nor the Captive Insurance Company is currently the beneficiary of any extension of time within which to file any Tax return. No claim has ever been made by a Governmental Authority in a jurisdiction where any Seller (or the Captive Insurance Company) does not file Tax returns that it is or may be subject to taxation by that jurisdiction.

(c) Each Seller and the Captive Insurance Company has withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, member, or other third party.

(d) There are no Liens on any of the Transferred Assets that arose in connection with any failure (or alleged failure) to pay any Tax.

(e) Neither any Seller nor the Captive Insurance Company has participated in, or is currently participating in, a listed or reportable transaction within the meaning of sections 6011, 6111, or 6112 of the Code or a corresponding or similar provision of state or local Legal Requirements.

(f) As of immediately prior to Closing, each Bond is a “qualified 501(c)(3) bond” under Section 145 of the Code, and, to the knowledge of Sellers, no Seller has been given written notice of, and no Seller is under investigation with respect to, any violation of Tax law in respect of any Bonds.

(g) Neither any Seller nor the Captive Insurance Company is currently the subject of an audit or other examination relating to the payment of Taxes by any Governmental Authority nor has any Seller or the Captive Insurance Company received any written notice from any Governmental Authority that such an audit or other examination is pending.

(h) Neither any Seller nor the Captive Insurance Company has liability for the Taxes of any Person as a transferee or successor, or otherwise.

(i) The Captive Insurance Company has not agreed, nor is it required, to make any adjustment to taxable income in any period (or portion thereof) ending after the Closing Date by reason of (i) a change in method of accounting for any taxable period (or portion thereof) ending on or before the Closing Date, (ii) an installment sale or open transaction disposition made on or prior to the Closing Date; or (iii) a prepaid amount received on or prior to the Closing Date.

**Section 5.17. Intellectual Property.**

(a) The Transferred Intellectual Property constitutes all of the Intellectual Property used in connection with the operation of the Health Care System. Sellers have diligently prosecuted in accordance with applicable Legal Requirements, and have timely made all filings and paid all fees required to be paid or filed in connection with the continued prosecution and maintenance of all material Transferred Intellectual Property that is the subject of a registration or a registration application.

(b) To the knowledge of Sellers, the operation of the Health Care System and the ownership and use of the Transferred Assets and the use of the Transferred Intellectual Property in connection therewith does not infringe, misappropriate or otherwise violate the Intellectual Property of any Person. To the knowledge of Sellers, no Person is infringing, misappropriating, or otherwise violating the Transferred Intellectual Property.

(c) Sellers have taken commercially reasonable measures to protect and maintain the confidentiality and secrecy of the confidential information or trade secrets that comprise part of the Transferred Intellectual Property and otherwise to maintain and protect the value of all material Transferred Intellectual Property. To the knowledge of Sellers, no Person has any basis for claiming any right, title or interest in and to any Transferred Intellectual Property.

(d) Neither the execution, delivery, or performance of this Agreement nor the consummation of any of the Contemplated Transactions contemplated by this Agreement will, with or without notice or lapse of time, result in, or give any other Person the right or option to cause or declare, (i) a loss or disclosure of any Transferred Intellectual Property or (ii) the grant, assignment, or transfer to any other Person of any license or other right or interest under, to, or in any of the Transferred Intellectual Property, in either case that is material to the Health Care System.

**Section 5.18. Bond Obligations.** Other than the Bond Obligations that have been issued pursuant to the Master Indenture to secure the Bonds, no “Obligations” (as defined in the Master Indenture) have been issued under the Master Indenture and remain outstanding thereunder.

**Section 5.19. Third Party Payors and Suppliers.**

(a) Schedule 5.19 lists the names of and describes all Contracts with, and the respective percentage of the revenues of Sellers for the twelve months preceding the Effective Date attributable to, the ten largest third party payors for each Hospital (based on net patient service revenues, as determined in accordance with Sellers’ historical accounting policies) and any material sole-source suppliers of significant goods or services for each Hospital (other than electricity, gas, telephone or water) with respect to which alternative sources of supply are not readily available on comparable terms and conditions.

(b) None of the third party payors listed on Schedule 5.19 has provided written notice to any Seller of cancellation or termination of its relationship with such Seller during the past twelve months or has, during the last twelve months, materially decreased, or provided notice to such Seller of its intent to materially decrease or materially limit, its services, supplies or materials to any Seller or its usage of the services or products, as the case may be, of any Seller or Sellers, considered collectively. No Seller has received any written notice during the past twelve months that any of the third party payors listed on Schedule 5.19 intends, or is reasonably likely, to terminate, materially reduce or materially modify its business relationship with the Health Care System, including as a result of the Contemplated Transactions.

**Section 5.20. Material Contracts.** (a) Schedule 5.23 lists each Material Contract to which any Seller is a party or to which any of its properties are subject or by which any Seller or its properties are bound, other than any Physician Agreement that is not a Qualifying Physician Agreement. As used herein, “Material Contract” means any Contract that:

(i) obligates any Seller to pay an amount of \$[5] million or more in any one twelve-month period;

(ii) has an unexpired term as of the date hereof in excess of 12 months that is not terminable upon ninety calendar days or less notice by the Seller at any time during the term, without penalty;

(iii) contains a covenant not to compete or otherwise significantly restricts business activities;

(iv) grants a power of attorney, agency or similar authority to another person or entity;

(v) contains a right of first refusal or right of first offer;

(vi) constitutes a collective bargaining agreement, including any collective bargaining agreement with Physicians or any other referral source;

(vii) constitutes an employment or severance agreement with any director, officer or employee of any Seller;

(viii) provides for marketing, joint marketing or sale of the products or services of the Health Care System;

(ix) represents a Contract with a Physician, or to the knowledge of Sellers, an Immediate Family member of a Physician or any other referral source, including any contract with a pharmacy or any other supplier of medical products to patients of the Health Care System;

(x) to the knowledge of Sellers, represents a Contract with an entity in which a referring Physician (as that term is defined in 42 U.S.C. § 1395m(h)(7)) or a member of a referring Physician's Immediate Family has an ownership or investment interest;

(xi) represents a third party payor, managed care or preferred provider organization contract;

(xii) relating to or evidencing any indebtedness of the Health Care System, including, without limitation, any agreements provided by any Seller with respect to any guarantees of performance or other obligations;

(xiii) constitutes a joint venture in which any Seller has any equity interest or pursuant to which any revenue or income is paid or distributed to a third party;  
or

(xiv) was not made in the ordinary course of business.

(b) Except as would not be reasonably expected to have a Material Adverse Effect, (i) the Sellers have made available to the Purchaser true, correct and complete copies of the Material Contracts, including all amendments and supplements; (ii) The Sellers have not received any written claim of breach of any Material Contract; (iii) except as set forth in Schedule 5.23(b), the Sellers have performed all obligations required to be performed by them

under each Material Contract in all material respects; (iv) each of the Material Contracts is a valid and binding obligation of the applicable Seller and, to the Sellers' knowledge, is in full force and effect and is enforceable by the applicable Seller in accordance with its terms, except as may be limited by (A) applicable bankruptcy, insolvency, moratorium, reorganization or similar Laws from time to time in effect which affect creditors' rights generally, or (B) legal and equitable limitations on the availability of specific remedies; (v) to the Sellers' Knowledge, all parties to each Material Contract (other than the Sellers) have performed all material obligations required to be performed by them to date under such Material Contract in all material respects and are not (with or without the lapse of time or the giving of notice, or both) in breach or default thereunder; and (vi) no party with whom any Seller has entered into any Material Contract has given written notice to such Seller of its intention to terminate or has sought in writing to repudiate or disclaim or modify any material term of such Material Contract.

**Section 5.21. Captive Insurance Company.**

(a) Sellers own, beneficially and of record, all of the Equity Interests of the Captive Insurance Company, free and clear of all Liens. No Seller is a party to any voting trust, proxy or other Contract with respect to the voting of any Equity Interests of the Captive Insurance Company. Upon the Closing, good and valid title to all of Sellers' Equity Interests of the Captive Insurance Company shall pass to Purchaser, free and clear of all Liens.

(b) The Captive Insurance Company is duly organized, validly existing and in good standing under the laws of the Cayman Islands and has full power and authority to own, operate and lease its properties and to carry on its business as now conducted. The Captive Insurance Company is duly qualified to do business as a foreign corporation or other organization and is in good standing in each of the jurisdictions set forth in Schedule 5.21(b), which includes each jurisdiction in which the nature of its business or the properties owned, leased or operated by it makes such qualification necessary.

(c) Sellers have made available to Purchaser true, complete and correct copies of the Governance Documents of the Captive Insurance Company as amended to date, and the Captive Insurance Company is not in violation of any provision of such Governance Documents. The Governance Documents for the Captive Insurance Company as made available to Purchaser are in full force and effect.

(d) The authorized, issued and outstanding Equity Interests in the Captive Insurance Company are identified in Schedule 5.21(d). All of such Equity Interests have been duly authorized and validly issued and are fully paid and nonassessable and are not subject to and were not issued in violation of any preemptive or similar rights. There are no outstanding (i) shares of capital stock of or other voting or Equity Interests in the Captive Insurance Company, (ii) securities of the Captive Insurance Company convertible into or exercisable or exchangeable for shares of capital stock of or other voting or Equity Interests in the Captive Insurance Company or (iii) options or other rights or Contracts, commitments or understandings of any kind to acquire from the Captive Insurance Company, or other obligation of any Seller, or the Captive Insurance Company to issue, transfer or sell, any capital stock of or voting or Equity Interests in the Captive Insurance Company or securities convertible into or exercisable or exchangeable for capital stock of or other voting or Equity Interests in the Captive Insurance

Company. There are no outstanding obligations of any Seller or the Captive Insurance Company to repurchase, redeem or otherwise acquire any Equity Interests of the Captive Insurance company. The Captive Insurance Company is not party to or otherwise bound by any Contract to provide funds to, or make any investment (in the form of a loan, capital contribution or otherwise) in, any other Person.

(e) Sellers have made available to Purchaser true, complete and correct copies of (i) all reports of examination (including financial, market conduct and similar examinations) of the Captive Insurance Company issued by any Governmental Authority and all material correspondence or consent orders related thereto, (ii) all insurance holding company filings or submissions with respect to the Captive Insurance Company since January 1, 2012 and all material correspondence related thereto and (iii) all other registrations, filings and submissions made with respect to the Captive Insurance Company since January 1, 2012, and all material correspondence related thereto.

(f) The Captive Insurance Company is not and has not been a “commercially domiciled insurer” under the laws of any jurisdiction and is not and has not been otherwise treated as domiciled in a jurisdiction other than the Cayman Islands.

(g) There are no insurance policies issued, reinsured or assumed by the Captive Insurance Company that are currently in force under which the Captive Insurance Company may be required to allocate profit or pay dividends to the holders thereof.

(h) Sellers have delivered to Purchaser true, complete and correct copies of the audited financial statements of the Captive Insurance Company, as filed with the Cayman Islands Monetary Authority, for the fiscal years ended June 30, 20[\_\_\_], June 30, 20[\_\_\_], and June 30, 20[\_\_\_],<sup>14</sup> in each case together with the exhibits, schedules and notes thereto and the independent auditors’ report thereon (the “Captive Financial Statements”). Except as set forth in Schedule 5.21(h), the Captive Financial Statements (A) were derived from and are consistent with the books and records of the Captive Insurance Company, (B) were prepared in accordance with GAAP, (C) present fairly, in all material respects, the financial position of the Captive Insurance Company at the respective dates thereof, and the results of their operations and cash flows for the periods then ended and (D) were prepared in compliance with the internal control procedures of the Captive Insurance Company. No material weakness, deficiency or required adjustment has been asserted by any Governmental Authority with respect to any of the Captive Financial Statements and there are no permitted practices utilized in the preparation of the Captive Financial Statements.

(i) Schedule 5.21(i) sets forth a true, complete and correct list of all of the Reinsurance Agreements and any related letters of credit, reinsurance trusts or other collateral arrangements. True, complete and correct copies of all of the Reinsurance Agreements and any related letters of credit, reinsurance trusts or other collateral arrangements have been made available to Purchaser. No Reinsurance Agreement contains any provision (i) providing that the other party thereto may terminate or otherwise modify such Reinsurance Agreement by reason of the Contemplated Transactions or (ii) which by its own terms would result in a modification in

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<sup>14</sup> Note to Draft: These dates to reflect the most recent three completed fiscal years of Sellers.

the operation of such Reinsurance Agreement by reason of the Contemplated Transactions. All amounts due or coming due in the future under each Reinsurance Agreement are or will be collectible in full in the Ordinary Course of Business. To the knowledge of Sellers, no party to any Reinsurance Agreement is impaired such that a default thereunder would reasonably be expected. The Captive Insurance Company is entitled under applicable Legal Requirements to take full credit in its Captive Financial Statements for all amounts recoverable by it pursuant to any Reinsurance Agreement, and all such amounts have been properly recorded in the Captive Insurance Company's books and records and are properly reflected in its Captive Financial Statements. Such Reinsurance Agreements transfer such risk as would be required for them to be properly accounted for as reinsurance. All collateral provided by any reinsurer in connection with any Reinsurance Agreement (A) is in a form permitting the Captive Insurance Company to take credit for reinsurance under the insurance laws and regulations of its state of domicile, (B) if other than a letter of credit, is subject to a perfected security interest in favor of the Captive Insurance Company, (C) is not subject to any Contract allowing that such collateral be reduced or diminished in any manner and (D) is sufficient to discharge the obligations of such reinsurer under the related Reinsurance Agreements.

(j) The aggregate loss and loss adjustment expense reserves (including reserves for incurred but not reported losses and loss adjustment expenses) of the Captive Insurance Company recorded in its Captive Financial Statements, as of their respective dates: (a) were determined in all material respects in accordance with generally accepted actuarial standards consistently applied (except as otherwise noted therein); (b) were fairly stated in all material respects in accordance with sound actuarial principles; (c) satisfied all applicable Legal Requirements in all material respects and were computed on the basis of methodologies consistent in all material respects with those used in computing the corresponding reserves in the prior fiscal years, except as otherwise noted in the financial statements and notes thereto included in such Captive Financial Statements and related actuarial opinions for the most recent full fiscal year, copies of which have been made available to Purchaser; (d) include provisions for all actuarial reserves and related items which ought to be established in accordance with applicable Legal Requirements and in accordance with prudent insurance practices generally followed in the insurance industry; and (e) were adequate as of the respective dates of such Captive Financial Statements, to cover the total amount of all reasonably anticipated claims and other liabilities of the Captive Insurance Company under all Insurance Contracts under which the Captive Insurance Company had any liability (including any liability arising under or as a result of any reinsurance, coinsurance or similar contract) on the respective dates of such Captive Financial Statements. There are no known facts or circumstances existing or, to the knowledge of Sellers, threatened, which would necessitate any material change in such reserves.

(k) No agent, broker or other Person who is not an employee of the Captive Insurance Company (a) has or had "binding authority" or permission to bind or obligate the Captive Insurance Company to issue any Insurance Contract, and (b) to the knowledge of Sellers, is in violation of or has violated any Legal Requirements with respect to the marketing or sale of any Insurance Contract issued by the Captive Insurance Company.

(l) The Captive Insurance Company is not party to any written agreement, consent, decree or memorandum or understanding with, or party to any commitment letter or similar undertaking to, or subject to any cease-and-desist or other order or directive by, or

recipients of any extraordinary supervisory letter from, or has adopted any policies, procedures or board resolutions at the request of, any Governmental Authority which restricts materially the conduct of its business, or in any manner relates to its capital adequacy, credit or risk management policies or management, nor has the Captive Insurance Company been advised by any Governmental Authority that it is contemplating any such undertaking. The Captive Insurance Company is not subject to any assessments or similar charges arising on account of or in connection with its participation, whether voluntary or involuntary, in any guarantee association or comparable entity established or governed by any state or other jurisdiction, other than any such assessments or charges for which appropriate accruals have been made or appropriate reserves have been established on its Captive Financial Statements.

(m) All amounts claimed by any Person under any contract of insurance issued by the Captive Insurance Company have in all material respects been paid (or provision for payment thereof has been made) in accordance with the terms of the contracts under which they arose, such payments were not materially delinquent and were paid (or will be paid) without fines or penalties, except for any such claim for benefits for which the Captive Insurance Company reasonably believes or believed that there is a reasonable basis to contest payment and is taking such action.

(n) Schedule 5.21(n) sets forth a list of (i) bank names, locations and account numbers of all bank and safe deposit box accounts of the Captive Insurance Company, including any custodial accounts for securities owned by the Captive Insurance Company, and the names of all persons authorized to draw thereon or to have access thereto, and (ii) all instruments or Contracts to which the Captive Insurance Company is a party as an endorser, surety or guarantor, other than checks endorsed for collection or depositing in the Ordinary Course of Business.

(o) The books and records of the Captive Insurance Company included in the Transferred Assets are true, complete and correct in all material respects, have been maintained in accordance with sound business practices and accurately present and reflect in all material respects all of the transactions and actions therein described and constitute all of the files and data necessary for the operation of the Captive Insurance Company.

**Section 5.22. Solvency.** Sellers are not insolvent and will not be rendered insolvent as a result of the consummation of the Contemplated Transactions. For purposes hereof, “solvency” means that, with respect to any Person or Persons: (a) the fair salable value of such Person or Persons' tangible assets is in excess of the total amount of its liabilities (including for purposes of this definition all liabilities, whether or not reflected on a balance sheet prepared in accordance with GAAP, and whether direct or indirect, fixed or contingent, secured or unsecured, and disputed or undisputed); (b) such Person or Persons are able to pay their debts or obligations in the Ordinary Course of Business as they mature; and (c) such Person or Persons have capital sufficient to carry on their businesses and all businesses which they are about to engage.

## ARTICLE VI.

### REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents, warrants and covenants to Sellers as to the following matters as of the Effective Date and the Closing Date, except as set forth in the Disclosure Schedules of Purchaser:

**Section 6.01. Power and Authorization.** Purchaser has all necessary power and authority to enter into this Agreement and each Ancillary Agreement, and to carry out the Contemplated Transactions.

**Section 6.02. Binding Agreement.** All corporate and other actions required to be taken by Purchaser to authorize the execution, delivery and performance of this Agreement and each Ancillary Agreement, and the Contemplated Transactions, have been duly and properly taken or obtained by Purchaser. No other corporate or other action on the part of Purchaser is necessary to authorize the execution, delivery and performance of this Agreement, each Ancillary Agreement, and the Contemplated Transactions. This Agreement and each Ancillary Agreement has been, or will be, as applicable, duly and validly executed and delivered by Purchaser and, assuming due and valid execution by Sellers, this Agreement and each Ancillary Agreement constitute valid and binding obligations of Purchaser enforceable in accordance with their terms.

**Section 6.03. Organization and Good Standing.** Purchaser is a [●] duly organized, validly existing and in good standing under the laws of Delaware and has full power and authority to own, operate and lease its properties and to carry on its business as now conducted.

**Section 6.04. Noncontravention.** Neither the execution and delivery by Purchaser of this Agreement and the Ancillary Agreements, nor the consummation of the Contemplated Transactions nor compliance with any of the provisions hereof by Purchaser will violate, will constitute a violation of, or be in conflict with, or constitute or create a default or accelerate or adversely affect any obligations under (a) the Governance Documents of Purchaser or (b) except as set forth in Schedule 6.04(b), any Legal Requirement.

**Section 6.05. Brokers and Finders.** Neither Purchaser nor any affiliate thereof, nor any officer or director thereof, has engaged or incurred any liability to any finder, broker or agent in connection with the Contemplated Transactions.

**Section 6.06. Legal Proceedings.** Except as set forth on Schedule 6.06(a), there are no claims, proceedings or investigations pending or, to the knowledge of Purchaser, threatened, which would either have a material adverse effect on the properties or business condition (financial or otherwise) of Purchaser or would adversely affect Purchaser's ability to consummate the Contemplated Transactions. Except as set forth on Schedule 6.06(b), Purchaser is not subject to any Government Order that would either have a material adverse effect on the properties or business condition (financial or otherwise) of Purchaser or would adversely affect Purchaser's ability to consummate the Contemplated Transactions. Except as set forth on Schedule 6.06(c), Purchaser is in substantial compliance with respect to any Government Order the noncompliance with which could reasonably be expected to have a material adverse effect,

on the properties or business condition (financial or otherwise) of Purchaser or would adversely affect Purchaser's ability to consummate the Contemplated Transactions.

**Section 6.07. Ability to Perform.** Purchaser has, or will have prior to or at the Closing, sufficient access to funds or available financing in an amount sufficient to pay the Cash Purchase Price, and to pay any other amounts payable pursuant to this Agreement and each Ancillary Agreement, and to consummate the Contemplated Transactions.

**Section 6.08. Required Consents.** No Governmental Approval is necessary or required for the execution and delivery of this Agreement by Purchaser or for the consummation by Purchaser of the Contemplated Transactions, except for such Governmental Approvals set forth in Schedule 6.08 or as may be required under the HSR Act.

**Section 6.09. Solvency; Availability of Funds.**

(a) Purchaser is solvent and will not be rendered insolvent as a result of the consummation of the Contemplated Transactions.

(b) The Purchaser has as of the date hereof, and will have at and after the Closing, available funds, which will be sufficient to pay the Purchase Price and any other amounts required to be paid by it in connection with the consummation of the Contemplated Transactions, and to pay all related fees and expenses.

**Section 6.10. No Other Representations.** Except for the representations and warranties contained in this ARTICLE VI (including the related portions of the Disclosure Schedules of Purchaser), neither Purchaser nor any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of Purchaser.

## ARTICLE VII.

### COVENANTS OF SELLERS<sup>15</sup>

**Section 7.01. Required Approvals; Change in Ownership Applications.**

(a) Sellers shall (i) use diligent efforts, as reasonably requested by Purchaser, to assist Purchaser in the securing of, as promptly as practicable and before the Closing Date, all Governmental Approvals, and (ii) will provide such other information and communications to Governmental Authorities and accrediting and certifying bodies as Purchaser or such authorities and bodies may reasonably request.

(b) As soon as practicable after the Effective Date, Sellers shall file with the U.S. Federal Trade Commission and the U.S. Department of Justice Antitrust Division the required Notification and Report Form for Certain Mergers and Acquisitions under the HSR Act. As promptly as is practicable after receiving any request from the U.S. Department of Justice or

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<sup>15</sup> Note to Draft: Upon exercise of option, the parties will agree to provisions regarding the treatment of straddle patients (i.e. those patients admitted pre-Closing and discharged post-Closing) and how billing is handled for reimbursements related to such patients.

the U.S. Federal Trade Commission for information, documents or other materials, Sellers shall use reasonable efforts to comply with such request. Sellers shall promptly inform Purchaser of any material communication with, and any proposed understanding, agreement or undertaking with, the U.S. Department of Justice or the U.S. Federal Trade Commission relating to the Contemplated Transactions. Sellers shall give Purchaser reasonable advance notice of, and the opportunity to participate in any inquiry or investigation by, or any material meeting or conference (whether by telecommunications or in person) with, the U.S. Department of Justice or the U.S. Federal Trade Commission relating to the Contemplated Transactions.

(c) Sellers shall reasonably assist Purchaser to complete change of ownership applications and notices with respect to the Captive Insurance Company, Licenses, billing numbers, provider applications and other permits relating to the Health Care System for each of the functions at any Hospital which require approval of the change of ownership by a Governmental Authority or by a third party payor (an "Application"). Sellers shall provide Purchaser in a timely manner with such information about the Health Care System as may be needed for the completion and filing of each Application.

**Section 7.02. Consents to Assignment.** Sellers shall use commercially reasonable efforts to obtain prior to the Closing, any and all consents to assign any Contracts and Leased Real Property. As soon as commercially reasonable, Sellers shall send consent requests with respect to each Contract. Sellers shall cooperate with Purchaser as reasonably requested to obtain any such consents.

**Section 7.03. Conduct of the Business Generally.** From the Effective Date until the Closing, or the earlier termination of this Agreement in accordance with ARTICLE XI, without the prior written consent of Purchaser (which Purchaser shall not unreasonably withhold, condition or delay), Sellers shall:

(a) carry on their respective businesses, including operation of the Health Care System, consistently with applicable Legal Requirements and in substantially the same manner as presently conducted and shall not make any material change in personnel, operations, finance, accounting policies or practices (unless Sellers are required to adopt such changes under GAAP), Tax elections or Tax Returns or real or personal property;

(b) maintain in effect the insurance and equipment replacement coverage as in effect on the Effective Date;

(c) make such capital expenditures as may be necessary to maintain the Health Care System and the Transferred Assets in good operating condition and repair in a manner consistent with past practices, subject to ordinary wear and tear;

(d) perform all of its material obligations under agreements relating to, affecting or constituting the Transferred Assets; and

(e) use reasonable efforts to preserve intact Sellers' business organization and relationships with third parties (including lessors, lessees, licensors, suppliers, distributors, Unions and patients) and Employees.

**Section 7.04. Conduct of Business.** From the Effective Date until the Closing, or the earlier termination of this Agreement in accordance with ARTICLE XI, without the prior written consent of Purchaser, which consent shall not be unreasonably withheld, conditioned or delayed, Sellers shall not take any of the following actions:

- (a) amend the Governance Documents of any Seller;
- (b) merge or consolidate any Seller with any other Person;
- (c) increase any benefits under any Seller Plan or increase the compensation payable or paid, whether conditionally or otherwise, to any employee of any Seller in an amount over [\$100,000], other than any such increase in benefits or compensation required by Legal Requirements or required pursuant to the terms of an existing Seller Plan or an existing employment, consulting, indemnification, change of control, severance, retention or similar agreement with any current or former director, officer, employee or consultant of the Health Care System; or
- (d) sell, lease, license or otherwise dispose of any of the material Transferred Assets.

**Section 7.05. [Additional Financial Information]** Within thirty (30) days following the end of each calendar month prior to Closing or forty-five (45) days in the case of the end of the calendar year, Sellers shall deliver to Purchaser complete copies of the unaudited balance sheets and related unaudited statements of income of Sellers with respect to the operation of the Health Care System for each month then ended, together with corresponding year-to-date amounts (the “Interim Financial Statements”), the presentation of which shall be consistent with the provisions of Section 5.10.]

**Section 7.06. Notice to Purchaser.** From the Effective Date until the Closing; or the earlier termination of this Agreement in accordance with ARTICLE XI, Sellers shall (i) notify Purchaser in writing (with any such writing to include a written update to the Disclosure Schedules to the extent applicable) of any Material Adverse Effect of which Sellers have knowledge and (ii) promptly upon becoming aware of any material breach by Sellers of this Agreement, give written notice to Purchaser thereof. For the avoidance of doubt, the conditions to Purchaser’s obligations at the Closing set forth in Section 10.01 and Section 10.02 shall be read without giving effect to any update to the Disclosure Schedules or other written notices delivered pursuant to this Section 7.06.

**Section 7.07. Collective Bargaining Agreements.** From the Effective Date until the Closing Date, Sellers shall not, without Purchaser’s prior written consent (in its sole discretion), amend the material conditions of employment or extend the term of any Collective Bargaining Agreement.

**Section 7.08. Termination of Employees.** On the Closing Date, the Employees shall cease to be employees of Sellers, and shall be removed from Sellers’ payrolls.

**Section 7.09. Financing Cooperation.**

(a) Sellers agree to use their respective reasonable best efforts to provide, and to cause their respective Representatives to use their reasonable best efforts to provide, all cooperation in connection with the arrangement, syndication and consummation of any proposed debt financing of the Contemplated Transactions as may be reasonably requested by the Purchaser, which cooperation shall include (i) furnishing the Purchaser and its prospective financing sources with certain reasonably requested information as promptly as practicable; (ii) participating in a reasonable number of meetings (including one-on-one meetings or conference calls with the parties acting as agents or arrangers for, and prospective lenders of, the prospective financing, and senior management and the employees, investment bankers, attorneys, accountants and other Representatives of the Health Care System) and other syndication activities, in each case that are customary for financings of a type similar to such prospective financing; (iii) assisting in the preparation of any lender presentations, bank information memoranda, and similar documents reasonably requested by the Purchaser and customary for financings of a type similar to such prospective financing; (iv) reasonably cooperating with the marketing efforts of the Purchaser and its prospective financing sources for any such prospective financing; (v) executing and delivering any credit agreements, indentures, pledge and security documents, guarantees, certificates, representation and authorization letters to accountants and auditors, authorization letters relating to financial statements and other financial information for the Health Care System for inclusion in any offering or marketing documentation, customary closing certificates and any other certificates, letters and documents as may be reasonably requested by the Purchaser, (vi) assisting in the negotiation of any such agreements and other documents, including those set forth in subclause (v); (vii) using reasonable best efforts to facilitate the obtaining of audit reports, comfort letters, authorization letters and consents of accountants and auditors, (viii) obtaining payoff letters and lien terminations; (ix) obtaining legal opinions of internal and local legal counsel, in each case as reasonably requested by the Purchaser and customary for financings similar to such prospective financing; (x) otherwise reasonably facilitating the granting of a security interest (and perfection thereof) in collateral, the pay-off of existing Indebtedness and the release of related Liens, guarantees and other security interests; (xi) providing information regarding the Health Care System required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations; (xii) providing monthly financial statements in the form provided internally to senior management of the Health Care System as promptly as practicable and not later than five calendar days after providing such monthly financial statements internally to senior management at the Health Care System; (xiii) using reasonable best efforts to obtain waivers, consents, estoppels, approvals, authorizations and instruments which may be reasonably requested by the Purchaser; and (xiv) taking all corporate actions, subject to the occurrence of the Closing, reasonably requested by the Purchaser to permit the consummation of such prospective financing and to permit the proceeds thereof, together with the cash and cash equivalents of the Health Care System (not needed for other purposes), to be made available to the Sellers on the Closing Date to consummate the Contemplated Transactions. Notwithstanding the foregoing, (x) prior to the Closing, None of the Sellers shall be required to pay any commitment or other similar fee or incur or become subject to any other monetary liability or obligation in connection with any prospective financing, (y) none of the Sellers or their respective Representatives shall be required to authorize, execute or enter into or perform any agreement (other than customary authorization and representation letters) with respect to any prospective financing that is not contingent upon the Closing or that would be effective prior to the Closing and (z) nothing shall obligate the

Sellers to provide, or cause to be provided, any legal opinion by their counsel, or to provide any information or take any action to the extent it would result in a violation of a Legal Obligation or loss of any privilege. The Sellers hereby consent to the use of their logos in connection with a prospective financing; provided, that such logos are used in a manner that is not intended to, nor reasonably likely to, harm or disparage the Sellers.

(b) Sellers shall make reasonable and appropriate arrangements for the release of all material Liens and other security over the Health Care System securing their obligations, together with the return of any collateral in the possession thereof, at or immediately prior to the Closing Date.

**Section 7.10. Insurance Cooperation.** To the extent permitted under the terms of any insurance held by Sellers for the benefit of the Health Care System, the Sellers shall assign and transfer all of their respective rights under such policies to the Purchaser or an Affiliate thereof. If the Sellers' rights under any such insurance policy are not assignable or transferable, to the extent permitted under applicable Legal Requirements and the terms of the insurance policy, from and after the Closing, the Purchaser shall be entitled to obtain the benefits under the insurance policies that relate to the Health Care System. The Sellers shall, at the request and expense of the Purchaser, file claims under any such insurance policies that relate to the Health Care System. The Sellers shall file any such insurance claim within ten Business Days after presentation thereof by Purchaser. The form of any such insurance claims shall be prepared by the Purchaser. Thereafter, the Sellers shall keep the Purchaser informed of the status of the insurance claims and shall promptly provide the Purchaser or the Health Care System with copies of any and all written communications regarding the insurance claims. After an insurance claim has been filed, the Sellers shall take no action with respect thereto or compromise or settle any insurance claim unless directed to do so by the Purchaser. At the expense of the Purchaser, the Sellers shall take all lawful actions in respect of insurance claims as are reasonably requested by the Purchaser, including the prosecution of insurance claims against insurers providing the insurance policies, using legal counsel selected by the Purchaser. From and after the Closing, the Purchaser shall have the right, as the attorney-in-fact of the Sellers, to make any filing and to prosecute, settle or compromise any insurance claim under the insurance policies in the name of and on behalf of the Sellers to the extent related to the Health Care System. New Sponsor shall indemnify or hold harmless the Sellers against any Action arising from any insurance claims made by the Health Care System after the Closing Date at the request of the Purchaser; provided that the Sellers shall not be in breach of their obligations under this Section 7.10. To the extent permitted under applicable Legal Requirements and the terms of the insurance policies, the Sellers shall, upon making an insurance claim requested by the Purchaser under the insurance policies, notify the relevant insurer(s) that it has assigned to the Purchaser any amounts to be paid by such insurer(s) pursuant to such insurance claim and that all payments of such insurance proceeds or benefits relating to such insurance claim should be paid directly to the Purchaser. The Sellers shall promptly pay to the Purchaser all insurance proceeds (net of previously unreimbursed expenses) received by the Sellers in respect of insurance claims under the insurance policies which requested to be made, or otherwise prosecuted, settled or compromised, by the Purchaser in accordance with this Section 7.10. Notwithstanding the foregoing, nothing shall prevent the Sellers from pursuing insurance claims under their insurance policies for coverage of claims against them for matters relating to the pre-Closing operation of the Health Care System.

**Section 7.11. Surveys.** On the date of this Agreement or as promptly thereafter as practicable, Sellers shall, at the expense of Sellers, deliver to Purchaser one or more surveys of each Owned Real Property prepared by a licensed land surveyor or a registered civil engineer. Each such survey (a) shall comply with the current minimum standard detail requirements for land title surveys established by the American Land Title Association and the American Congress on Surveying and Mapping, (b) shall contain the legal description of the applicable Owned Real Property, (c) shall include the surveyor's or engineer's certification (signed by the surveyor or engineer, and in form and substance satisfactory to Purchaser), as of a date not earlier than the date hereof and not earlier than sixty (60) days prior to the Closing Date, to Purchaser, the Title Company and any other person designated by Purchaser, that the survey correctly shows such Owned Real Property on the basis of a field survey and satisfies clause (a) of this Section 7.11, (d) shall contain all of the information detailed in Table A of the ACSM requested by Purchaser and (e) shall otherwise be in form and substance satisfactory to Purchaser.

## ARTICLE VIII.

### COVENANTS OF PURCHASER

**Section 8.01. Required Governmental Approvals and Accrediting Approvals; Change of Ownership Applications.**

(a) Subject to the terms and conditions of this Agreement, from the Effective Date to the Closing, or the earlier termination of this Agreement pursuant to ARTICLE XI, Purchaser shall use reasonable efforts to cause to be received by the Parties all Governmental Approvals, and to do or cause to be done all other things necessary, proper or advisable, in order to consummate and make effective the Contemplated Transactions as soon as practicable following the Effective Date including satisfaction, but not waiver, of the conditions set forth in ARTICLE IX and ARTICLE X, including the following:

(i) Purchaser shall use reasonable efforts to secure as promptly as practicable before the Closing Date, and, as reasonably requested by Sellers, aid Sellers with respect to assisting Purchaser in securing, all Governmental Approvals; and

(ii) Purchaser shall provide such other information and communications to Governmental Authorities and accrediting and certifying bodies as Sellers or such authorities or bodies may reasonably request.

(b) Purchaser shall act diligently and reasonably to complete change of ownership applications and notices, and seek any and all applicable consents, with respect to all Applications, including with respect to the change in ownership of the Captive Insurance Company. Purchaser shall complete and file all Applications that are required by a Governmental Authority or by a third party payor to be filed by the transferor, and seek any applicable consents, including with respect to the Captive Insurance Company. Promptly after the filing of each such Application and other filing, or the submission of any request for consent relating to the Captive Insurance Company, Purchaser shall provide one full copy of such Applications, requests and other filings to Sellers. Purchaser shall pay the entirety of any fees

charged by a Governmental Authority in connection with such Applications, filings or consent requests, including fees charged in connection therewith that must be filed by the transferor.

(c) As soon as practicable after the Effective Date, Purchaser shall file with the U.S. Federal Trade Commission and the U.S. Department of Justice Antitrust Division the required Notification and Report Form for Certain Mergers and Acquisitions under the HSR Act. As promptly as is practicable after receiving any request from the U.S. Department of Justice or the U.S. Federal Trade Commission for information, documents or other materials in connection with the Contemplated Transactions, Purchaser shall use reasonable efforts to comply with such request. Purchaser shall cooperate with Sellers in connection with resolving any inquiry or investigation by the U.S. Department of Justice or the U.S. Federal Trade Commission relating to the Contemplated Transactions. Purchaser shall promptly inform Sellers of any communication with, and any proposed understanding, agreement or undertaking with, the U.S. Department of Justice or the U.S. Federal Trade Commission relating to the Contemplated Transactions. Purchaser shall give Sellers reasonable advance notice of, and the opportunity to participate in any inquiry or investigation by, or any meeting or conference (whether by telecommunications or in person) with, the U.S. Department of Justice or the U.S. Federal Trade Commission relating to the Contemplated Transactions. All fees required to be paid to the U.S. Federal Trade Commission in connection with the Contemplated Transactions shall be paid solely by Purchaser at the time of filing.

(d) Notwithstanding the foregoing, nothing in this Section 8.01 shall require, or be construed to require, Purchaser or any of its affiliates to agree to: (i) sell, hold, divest, discontinue or limit, before or after the Closing Date, any assets, businesses or interests of Purchaser or any of its Affiliates (including any of the Transferred Assets); (ii) any conditions relating to, or changes or restrictions in, the operations of any such assets, businesses or interests which, in either case, could reasonably be expected to result in a Material Adverse Effect or materially and adversely impact the economic or business benefits to Purchaser of the Contemplated Transactions; or (iii) any material modification or waiver of the terms and conditions of this Agreement.

#### **Section 8.02. Employees.**

(a) Subject to the exclusions set forth in this Section 8.02, Purchaser will offer to employ, effective as of the Closing Date, all employees of Sellers working for Sellers immediately prior to the Closing, whether such employees are full time employees, part-time employees, on vacation, layoff, short-term or long-term disability or on leave of absence pursuant to Sellers' policies, the Family and Medical Leave Act of 1993 or other similar Legal Requirements (the "Employees") (i) on the same terms and conditions (including base salary, wage levels and bonus opportunities, and job duties, titles and responsibilities) as those in effect immediately prior to the Closing Date, and (ii) to provide benefits to such Employees that are consistent with the benefits provided by Sellers immediately prior to the Closing Date, in each case, consistent with each Employee's terms of employment immediately prior to the Closing Date and, if applicable, subject to any requirements as may be provided under a Collective Bargaining Agreement. Each Employee who accepts an offer of employment with Purchaser as of or after the Closing Date shall be referred to in this Agreement as a "Hired Employee."

(b) Purchaser will (i) waive any “pre-existing condition” exclusions or “actively at work” clauses under Purchaser’s applicable employee benefit plans for each Hired Employee (and his or her dependents, if applicable) to the extent such conditions were waived under Seller Plans as of the Closing Date, and (ii) credit such Hired Employee for any deductibles and out-of-pocket expenses paid prior to the Closing Date in satisfying any deductibles and out-of-pocket expenses in the applicable plan year to which such deductibles and out-of-pocket expenses relate. Purchaser shall give each Hired Employee credit for the Special Employee Liabilities accrued by such Hired Employee as of the Closing Date. Purchaser shall give each Hired Employee credit for his or her years of service with Sellers and Scllers’ predecessors in interest for purposes of determining eligibility, vesting and the amount of holiday, vacation or sick pay to which each such Hired Employee is entitled under the applicable benefit plans, programs and arrangements of Purchaser.

(c) Purchaser shall indemnify, defend and hold harmless Sellers from any liability under the WARN Act arising from Purchaser’s termination after the Closing of any Hired Employee or arising from the failure by Purchaser to offer employment to any Employee.

(d) Purchaser shall assume, effective at Closing, each Collective Bargaining Agreement.

(e) On the Closing Date or as soon as practicable thereafter, Sellers shall (i) cause the trustee of [SELLERS 401(k) PLAN] (the “Individual Account Plan”) to segregate the assets of such Individual Account Plan representing the full account balances of Hired Employees as of the Closing Date, (ii) make any and all filings and submissions to the appropriate governmental agencies arising in connection with such segregation of assets, (iii) make all necessary amendments to the Individual Account Plan and related trust agreement to provide for such segregation of assets and the transfer of assets as described below, and (iv) fully vest the account balance of each Transferred Employee. The manner in which the account balances of Transferred Employees under the Individual Account Plans are invested shall not be affected by such segregation of assets. As soon as practicable after the Closing Date, Purchaser shall establish or designate an individual account plan for the benefit of Hired Employees (the “Successor Individual Account Plan”), shall take all necessary action, if any, to qualify such plan under the applicable provisions of the Code and shall make any and all filings and submissions to the appropriate governmental agencies required to be made by it in connection with the transfer of assets described below. As soon as practicable following the earlier of the delivery to Sellers of a favorable determination letter from the Internal Revenue Service regarding the qualified status of the Successor Individual Account Plan as amended to the date of transfer, or the issuance of indemnities satisfactory to Sellers and Purchaser, Sellers shall cause the trustee of the Individual Account Plan to transfer in the form of cash (or such other form as may be agreed by Purchaser and Sellers) the full account balances of the Hired Employees under the Individual Account Plan (which account balances will have been credited with appropriate earnings attributable to the period from the Closing Date to the date of transfer described herein), reduced by any necessary benefit or withdrawal payments to or in respect of Hired Employees occurring during the period from the Closing Date to the date of transfer described herein, to the appropriate trustee as designated by Purchaser under the trust agreement forming a part of the Successor Individual Account Plan. In consideration for the transfer of assets described herein, Purchaser shall, effective as of the date of transfer described herein,

assume all of the obligations of Sellers and any of its ERISA Affiliates in respect of the account balances accumulated by Transferred Employees under the Individual Account Plan (exclusive of any portion of such account balances which are paid or otherwise withdrawn prior to the date of transfer described herein) on or prior to the Closing Date. Neither Purchaser nor any of its Affiliates shall assume any other obligations or liabilities arising under or attributable to the Individual Account Plan.

(f) The Parties acknowledge and agree that all provisions contained in this Section 8.02 are included for the sole benefit of the Parties and shall not create any right, including any third party beneficiary right, (i) in any other Person, including any Employee, former employee or any participant or any beneficiary thereof in any Seller Plan or employee benefit plan, program or arrangement of Purchaser, or (ii) to employment or continued employment or any term or condition of employment with Sellers or Purchaser or any of the subsidiaries or affiliates thereof. Nothing contained in this Section 8.02 is intended to be or shall be considered to be an amendment or adoption of any plan, program, agreement, arrangement or policy of Sellers, Purchaser or any subsidiary or affiliate thereof, nor shall it interfere with or limit Purchaser's right to amend, modify or terminate any Seller Plan or any other benefit or compensation plan, program, agreement, policy, contract or arrangement or to terminate the employment of any Employee for any reason, except as otherwise permitted by the applicable Collective Bargaining Agreement, provided that the Purchaser shall be subject to the provisions of this Section 8.02.

**Section 8.03. Consents to Assignment.** Purchaser shall cooperate with Sellers as reasonably requested to obtain any consents to assign all Contracts and Leased Real Property. Without Sellers' prior written consent, Purchaser shall not seek consent from a party to assignment of any specific Contract.

**Section 8.04. Waiver of Bulk Sales Law Compliance.** Purchaser hereby waives compliance by Sellers with the requirements of Article 6 of the Uniform Commercial Code as in force in any state in which the Transferred Assets are located and all other similar Legal Requirements applicable to "bulk sales" and "bulk transfers".

**Section 8.05. Sale of Assets Under Section 4204 of ERISA.**

(a) **General.** Sellers and Purchaser intend by this Section 8.05 to use the sale of assets rule of Section 4204 of ERISA and this Section 8.05 shall be interpreted and applied consistently with that intent.

(b) **Nature of the Transaction.** The sale reflected in this Agreement is a bona fide, arm's length sale of assets. Purchaser is "unrelated" to Sellers within the meaning of Section 4204 of ERISA.

(c) **Contribution Base Units.** From and after the Closing Date, Purchaser and its Affiliates agree that they shall have an obligation to contribute to each Multiemployer Plan or substantially the same number of contribution base unit for which the Sellers and their Affiliates had an obligation to contribute to such Multiemployer Plan prior to the Closing. Purchaser agrees that the determination of the number of contribution base units and the duration of the

obligation to maintain such contribution base units necessary to satisfy Section 4204 of ERISA shall be made in accordance with Section 4204 of ERISA and the applicable rules of the applicable Multiemployer Plans.

(d) Security. During the period commencing on the first day of the first plan year of each applicable Multiemployer Plan beginning after the Closing Date and ending on the expiration of the fifth such plan year of the applicable Multiemployer Plan (the "Contribution Period"), if required, Purchaser shall provide to each Multiemployer Plan either a bond, letter of credit or an escrow in an amount and manner meeting the requirements of Section 4204 of ERISA. If requested by Sellers, Purchaser shall cooperate with Seller to obtain a waiver of the bond, letter of credit or escrow requirement. [The cost of any bond, letter of credit or escrow provided under this Section 8.05 shall be paid by Sellers.]

(e) Attribution of Contribution History to Purchaser. Purchaser acknowledges that any withdrawal liability of Purchaser or its Affiliates to the Multiemployer Plan shall be determined as if Purchaser and its Affiliates had been required to contribute to the Multiemployer Plan in the year in which the applicable Closing Date occurs and the four preceding plan years the amount that the Sellers and their respective Affiliates were required to contribute with respect to the Covered Employees for such five plan years.

(f) If Purchaser Withdraws Within Five Years. If Purchaser or its Affiliates withdraw from any Multiemployer Plan in a complete or partial withdrawal during the Contribution Period, then:

(i) Purchaser agrees that the Purchaser and its Affiliates shall pay the Multiemployer Plan any and all withdrawal liability on account of such withdrawal when due;

(ii) If Purchaser and its Affiliates fail or refuse to pay the Multiemployer Plan any part of its withdrawal liability on account of such withdrawal when due, Sellers shall have the right (but no obligation) to make such payment on behalf of Purchaser; and

(iii) Sellers agree that, if Purchaser's withdrawal liability to the Multiemployer Plan (if any) is not paid, then Sellers shall, or shall cause their Affiliates to, to the extent required by Section 4204 of ERISA, be secondarily liable to the Multiemployer Plan for any withdrawal liability that Sellers or their respective Affiliates would have had to the Multiemployer Plan with respect to the Covered Employees but for Section 4204 of ERISA.

(g) Seller in Liquidation. If all or substantially all of Sellers' assets are distributed, or if Sellers are liquidated, during the Contribution Period, then:

(i) Sellers agree to provide a bond or amount in escrow equal to the present value of the withdrawal liability that Sellers would have had as a result of this sale of assets but for Section 4204 of ERISA, unless Sellers timely secure a waiver of such requirement by the Pension Benefit Guaranty Corporation,

(ii) such bond or escrow shall be paid to the Multiemployer Plan if Sellers become secondarily liable to the Multiemployer Plan as described in the preceding Section and fail or refuse to pay its withdrawal liability, but

(iii) such bond shall be cancelled or escrow returned to Sellers if (A) Sellers become secondarily liable to the Multiemployer Plans as described in Section 8.05(f)(ii) and pay their secondary liability to the Multiemployer Plan in full or (B) such five plan years have elapsed and Sellers have not become secondarily liable to the Multiemployer Plan as described in Section 8.05(f)(ii).

(h) Indemnification. Purchaser and its Affiliates agree to indemnify the Sellers and their Affiliates against any and all liability, including interest, penalties and attorney's fees, that is incurred or assessed against such Seller or Affiliate thereof by reason of Purchaser's failure or refusal to comply with any provision of this Section 8.05 or Section 4204 of ERISA, including but not limited to (i) the failure or refusal to comply with the requirements of this Section 8.05 or Section 4204 of ERISA or (ii) the withdrawal by Purchaser or any Affiliate from a Multiemployer Plan coupled with failure or refusal by Purchaser and its Affiliates to pay the withdrawal liability attendant hereto.

## ARTICLE IX.

### CONDITIONS TO SELLERS' OBLIGATIONS AT CLOSING

Sellers' obligations to sell the Transferred Assets and to close the Contemplated Transactions are subject to the fulfillment of, or, to the extent permitted by applicable Legal Requirements, waiver by Parent Seller of each of the following conditions:

**Section 9.01. Representations and Warranties.** The representations and warranties of Purchaser contained in this Agreement that are qualified by materiality, Material Adverse Effect or a similar material qualifier will be true and correct in all respects at the Closing with the same force and effect as if made as of the Closing Date, in each case, other than such representations and warranties that expressly speak only as of a specific date or time, which will be true and correct in all material respects as of such specified date or time, and all other representations and warranties of Purchaser contained in this Agreement are true and correct except for such inaccuracies as would, in the aggregate, result in a Material Adverse Effect.

**Section 9.02. Performance.** Purchaser will have performed and complied with, in all material respects, all agreements, obligations and covenants contained in this Agreement that are required to be performed or complied with by Purchaser at or prior to the Closing.

**Section 9.03. Signing and Delivery of Instruments.** Purchaser shall have executed, as applicable, and delivered all items required to be executed and delivered pursuant to Section 4.05 of this Agreement, including the Cash Purchase Price.

**Section 9.04. Absence of Litigation.** No Action will be pending which seeks a Government Order, nor will there be any Government Order in effect, (a) which would prevent

consummation of any of the Contemplated Transactions or (b) which would require any of the Contemplated Transactions to be rescinded following their consummation.

**Section 9.05. Governmental Approvals.** Sellers shall have obtained the Governmental Approvals set forth on Schedule 9.05.

**Section 9.06. Antitrust Approvals.** The waiting period required pursuant to the HSR Act shall have expired or been terminated and any approvals required in connection with the HSR Act shall have been obtained.

**Section 9.07. Collective Bargaining Agreements.** Purchaser shall have agreed to assume, effective at Closing, each Collective Bargaining Agreement.

**Section 9.08. Ancillary Agreements.** The agreements set forth on Schedule 9.08 to which any Seller is party will have been executed and delivered to Sellers by each of the other parties thereto.

## ARTICLE X.

### CONDITIONS TO PURCHASER'S OBLIGATIONS AT CLOSING

Purchaser's obligations to purchase the Transferred Assets and to close the Contemplated Transactions are subject to the fulfillment of, or, to the extent permitted by applicable Legal Requirements, waiver by Purchaser of each of the following conditions:

**Section 10.01. Representations and Warranties.** The representations and warranties of Sellers contained in this Agreement, disregarding all qualifiers and exceptions relating to materiality and Material Adverse Effect, will be true and correct in all respects at and as of the Closing with the same force and effect as if made as of the Closing Date, or if given as of a specific date, at and as of such specific date, except where the failure of such representations and warranties to be so true and correct would not, individually or in the aggregate, have a Material Adverse Effect.

**Section 10.02. Performance.** Sellers will have performed and complied with, in all material respects, all agreements, obligations and covenants contained in this Agreement that are required to be performed or complied with by Sellers at or prior to the Closing.

**Section 10.03. Signing and Delivery of Instruments.** Sellers shall have executed, as applicable, and delivered all items required to be executed and delivered pursuant to Section 4.04.

**Section 10.04. Absence of Litigation.** No Action will be pending which seeks a Government Order, nor will there be any Government Order in effect, (a) which would prevent consummation of any of the Contemplated Transactions or (b) which would require any of the Contemplated Transactions to be rescinded following their consummation.

**Section 10.05. Governmental Approvals and Other Required Consents.** Purchaser shall have received documentation or reasonable assurance the Governmental Approvals and other

required consents set forth on Schedule 10.05<sup>16</sup> have been obtained without the imposition of any materially burdensome conditions.

**Section 10.06. Antitrust Approvals.** The waiting period required pursuant to the HSR Act shall have expired or been terminated and any approvals required in connection with the HSR Act shall have been obtained.

**Section 10.07. Ancillary Agreements.** The agreements set forth on Schedule 10.07 to which Purchaser is a party will have been executed and delivered to Purchaser by each of the other parties thereto.

**Section 10.08. No Material Adverse Effect.** There shall not have occurred any Material Adverse Effect, nor shall any event or circumstances have occurred that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

**Section 10.09. Licenses and Permits.** Purchaser shall have obtained or received all permits, licenses, certificates and other approvals that are necessary for it to own and operate the Health Care System.

## ARTICLE XI.

### TERMINATION

**Section 11.01. Termination.** This Agreement may be terminated at any time prior to Closing:

- (a) by the mutual written consent of Parent Seller and Purchaser;
- (b) by Sellers in the event of a failure of any condition set forth in ARTICLE IX if failure has not been (i) waived in writing by Parent Seller or (b) cured by Purchaser within thirty (30) calendar days after service by Sellers upon Purchaser of a written notice which describes the nature of such breach; *provided, however*, that Sellers shall not be permitted to terminate the Agreement pursuant to this Section 11.01(b) if such failure was caused by Sellers or if Sellers are in material breach of this Agreement;
- (c) by Purchaser in the event of a failure condition set forth in ARTICLE X if such failure has not been (i) waived in writing by Purchaser or (ii) cured by Sellers within thirty (30) calendar days after service by Purchaser upon Sellers of a written notice which describes the nature of such breach; *provided, however*, Purchaser shall not be permitted to terminate this Agreement pursuant to this Section 11.01(c) if such failure was caused by Purchaser or if Purchaser is in material breach of this Agreement;
- (d) by Purchaser or Sellers if the Closing has not occurred on or before the date (the “Outside Date”) which is one hundred twenty (120) calendar days following the Effective Date; *provided, however*, that no Party may terminate this Agreement under this

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<sup>16</sup> Note to Draft: Schedule 10.05 will include any consents under Contract determined by Purchaser (in its sole discretion) to be material.

Section 11.01(d) if on the Outside Date all conditions to the obligations of Purchaser or Sellers at Closing set forth in ARTICLE IX and ARTICLE X, as applicable, have been satisfied. If the Closing has not occurred on or before the Outside Date because a Governmental Approval that must be received prior to the consummation of the Contemplated Transactions has not been received before or on the Outside Date, then such Outside Date shall be extended until such Governmental Approval is obtained; *provided, however*, that either Purchaser or Sellers may terminate this Agreement in writing if such date is more than [one hundred eighty (180)] calendar days after the date that would otherwise be the Outside Date. Notwithstanding any of the foregoing of this Section 11.01(d), the right to terminate this Agreement under this Section 11.01(d) shall not be available to any Party whose material breach (or, in respect of Sellers, if any material breach by any Seller) of this Agreement has been the cause of the failure of the Contemplated Transactions to have been consummated on or before the Outside Date without the mutual written consent of the other Parties; or

(e) by Purchaser or Sellers if a Governmental Authority of competent jurisdiction shall have issued a judgment or taken any other action, in each case, which has become final and non-appealable and which enjoins or otherwise prohibits the Contemplated Transactions, subject to Section 11.01(d) above.

**Section 11.02. Termination Consequences.** If this Agreement is terminated pursuant to Section 11.01,

(a) all further obligations of the Parties under this Agreement shall terminate, except that the obligations set forth in Section 14.07 and Section 14.09 shall survive the termination of this Agreement pursuant to Section 11.01; and

(b) nothing in this Agreement shall relieve any Party of any liability for an intentional breach of this Agreement.

**Section 11.03. Survival.** All representations, warranties, covenants and agreements of Purchaser and Seller, respectively, contained in this Agreement or any Ancillary Agreement shall cease to be effective and enforceable following the Closing Date, except that the obligations set forth in Section 4.01, Section 4.02, Section 4.06, Section 4.07, ARTICLE XII and ARTICLE XIII shall survive the Closing Date. Notwithstanding the foregoing but except as otherwise provided in this Agreement, the Parties expressly agree that (i) Purchaser shall indemnify Sellers against and hold the Sellers harmless from any liabilities or obligations relating to the Assumed Liabilities, and (ii) the Sellers shall indemnify the Purchaser against and hold the Purchaser harmless from any liabilities or obligations relating to the Retained Assets.

## ARTICLE XII.

### TAX AND COST REPORT MATTERS

#### **Section 12.01. Tax Matters; Allocation of Purchase Price.**

(a) Cooperation on Tax Matters. The Parties shall cooperate fully with each other, as and to the extent reasonably requested by the other Party, in connection with any Tax matter related to the Transferred Assets or the operation of the Health Care System (including by the provision of reasonably relevant Records or information subject to the other terms and conditions of this Agreement applicable to such Records, including without limitation, Section 2.02(a), and Section 13.02). In the event that Purchaser requests such cooperation from Sellers, Purchaser will pay the reasonable out-of-pocket expenses incurred by Sellers pursuant to such request.

(b) As soon as practicable after the Closing Date, Purchaser will provide Sellers a schedule (the "Allocation Schedule") allocating the Purchase Price among the Transferred Assets. The Allocation Schedule will be subject to the reasonable approval of Parent Seller if such Allocation Schedule would have a material adverse effect on Sellers; provided, that Sellers shall be deemed to have consented if they have not responded to a written request for approval within fifteen (15) Business Days after receipt thereof. Subject to the preceding sentence, the Parties shall (i) be bound by the Allocation Schedule for purposes of accounting for and reporting the purchase and sale of the Transferred Assets for federal and state tax purposes, (ii) prepare and file all Tax Returns and reports to be filed with any Governmental Authorities, including Internal Revenue Service Form 8594, if necessary, in a manner consistent with the Allocation Schedule and (iii) take no position inconsistent with the Allocation Schedule on any Tax Return, any discussion with or proceeding before any tax authority or otherwise.

#### **Section 12.02. Filing Cost Reports; Amounts Due To or From Third Party Payors; Cost Report Audits and Contests.**

(a) Filing Procedures. After the Closing, Sellers shall prepare and timely file, in a manner that complies with applicable Legal Requirements, all Seller Cost Reports (including terminating cost reports) and all other filings which are required to be filed with Medicare, any other payors or any Governmental Authority with respect to the operations of the Health Care System for any and all periods ending on or prior to the Closing Date. Prior to filing any such Seller Cost Reports and other filings, Sellers shall deliver a copy of each to Purchaser. Upon the reasonable request and instruction of Sellers, and at the reasonable cost of Purchaser, Purchaser shall assist Sellers in the preparation of such Seller Cost Reports and other filings by providing the reasonable support of Purchaser's employees in obtaining financial information or data deemed by Sellers to be reasonably necessary for the preparation of such Seller Cost Reports and other filings. Within a reasonable period of time after filing each such Seller Cost Report and other filings (but in no event later than fifteen (15) Business Days following each such filing), Sellers shall provide Purchaser with a copy of such filed Seller Cost Reports and other filings.

(b) Retained Rights and Obligations. Sellers acknowledge and agree that all rights to any amounts receivable from Government Payment Programs with respect to Seller

Cost Reports or other filings filed for the periods ending on or before the Closing Date (as reflected thereon or as finally determined by the audit, administrative or judicial appeal, contest or other adjustment of such reports or filings) are included in the Transferred Assets and Purchaser is hereby being assigned all of the same. Sellers shall not have any right, title or interest in any such amounts and shall hold all such amounts received in trust for the benefit of Purchaser. Sellers shall remit to Purchaser or its designee any receipts relating to the Seller Cost Reports or the Agency Settlements within five (5) Business Days after actual receipt of such receipts by any Seller.

(c) Cost Report and Other Audits and Contests. After the Closing and for the period of time necessary to conclude any pending or potential audit, administrative or judicial appeal, or contest of any Seller Cost Reports or reimbursement or payments made with respect to the Health Care System concerning periods ending on or before the Closing Date, Purchaser shall within five (5) days of Purchaser's receipt of the same, forward to Sellers all information received from payors relating to periods prior to and as of the Closing Date, including any and all correspondence relating to the Seller Cost Reports or rights to settlements and retroactive adjustments on Seller Cost Reports ("Agency Settlements"), notices of program reimbursement, proposed audit adjustments and the like. To the extent Sellers reasonably require any information or data to respond to such correspondence and information, Purchaser shall provide, at Purchaser's cost, the reasonable and timely support of Purchaser's employees in obtaining such information or data. Upon the reasonable request of Sellers, and at Purchaser's cost, Purchaser shall assist Sellers in obtaining information deemed by Sellers to be necessary or convenient in connection with any audit, and administrative or judicial appeal or any contest of such matters.

## ARTICLE XIII.

### POST-CLOSING MATTERS

#### **Section 13.01. Retained Assets and Excluded Liabilities.**

(a) Any asset, liability, remittance, mail and other communication that is a Retained Asset or an Excluded Liability pursuant to the terms of this Agreement which comes into or remains in the possession, custody or control of Purchaser shall promptly be transferred, assigned or conveyed by Purchaser to Sellers at Purchaser's cost. Purchaser shall not have any right, title or interest in or obligation or responsibility with respect to such Retained Assets or Excluded Liabilities except that Purchaser shall hold such Retained Assets and Excluded Liabilities in trust for the benefit of Sellers.

(b) Any asset, liability, remittance, mail and other communication that is a Transferred Asset or an Assumed Liability pursuant to the terms of this Agreement which comes into or remains in the possession, custody or control of Sellers shall within five (5) Business Days following receipt of such be transferred, assigned or conveyed by Sellers to Purchaser at Purchaser's cost. Sellers shall not have any right, title or interest in or obligation or responsibility with respect to such Transferred Assets or Assumed Liabilities except that Sellers shall hold such Transferred Assets and Assumed Liabilities in trust for the benefit of Purchaser.

**Section 13.02. Preservation and Access to Records After the Closing.**

(a) From the Closing Date until seven (7) years after the Closing Date or such longer period as required by applicable Legal Requirements, Purchaser shall keep and preserve all Transferred Records. Purchaser acknowledges that, as a result of entering into this Agreement and operating the Health Care System, Purchaser will gain access to patient records and other information which are subject to Legal Requirements concerning confidentiality (“Privacy Laws”), which Privacy Laws include the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as amended by the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009 and as otherwise may be amended from time to time, as well as all implementing regulations and guidance issued by the Secretary of the Department of Health and Human Services, as such regulations and guidance may be amended from time to time. Purchaser shall comply with and shall maintain the Transferred Records in accordance with Privacy Law, all other applicable Legal Requirements, and the requirements of all relevant insurance carriers.

(b) After the Closing, each Party shall grant to each other Party access to and permit each other Party to make copies of any of the Transferred Records and Retained Records in its possession as may be reasonably necessary for the receiving Party (i) to provide patient care, (ii) to comply with any Legal Requirement, (iii) in connection with any Action to which the receiving Party is a party or (iv) for any lawful purpose including actions by the receiving Party in performance of its respective obligations, or the exercise of its respective rights, under this Agreement. Any Transferred Records or Retained Records delivered to or made available to any Party (i) shall not be used to the detriment of the transferring Party and (ii) shall be returned to the transferring Party when such use therefor has terminated. The receiving Party shall comply with and maintain such Records in accordance with Privacy Law, all other applicable Legal Requirements, and the requirements of all relevant insurance carriers. The transferring Party shall instruct its employees to cooperate in providing access to the requested Transferred Records or Retained Records, as applicable, to the receiving Party.

(c) Access to Transferred Records and Retained Records pursuant to Section 13.02(b) shall be, whenever reasonably possible, during normal business hours and with reasonable prior written notice of the time when such access shall be needed. The receiving Party’s employees, representatives and agents shall conduct themselves in such a manner so that the normal business activities of the transferring Party shall not be unduly or unnecessarily disrupted.

(d) Purchaser shall cooperate with Sellers, on a timely basis and as reasonably requested by Sellers, in connection with the provision of Hospital data and other information required for Sellers to report to The Joint Commission, the California Department of Public Health and the California Office of Statewide Healthcare Planning and Development as Sellers may be required or desire to do.

(e) Sellers shall cooperate with Purchaser, on a timely basis and as reasonably requested by Purchaser, in connection with the provision of all Hospital data and other information required by Purchaser for Purchaser to report to The Joint Commission, the

California Department of Public Health and the California Office of Statewide Healthcare Planning and Development as Purchaser may be required or desire to do.

(f) To the maximum extent permitted by any Legal Requirement, if any Person requests or demands, by subpoena or otherwise, any documents relating to the Excluded Liabilities or Retained Assets, promptly after receiving the request for such documents and prior to any disclosure of such documents, Purchaser shall notify Sellers and shall provide Sellers with the opportunity to object to, such request or demand.

(g) To the maximum extent permitted by any Legal Requirement, if any Person requests or demands, by subpoena or otherwise, any documents relating to the Transferred Assets or Assumed Liabilities, promptly after receiving the request for such documents and prior to any disclosure of such documents, Sellers shall notify Purchaser and shall provide Purchaser with the opportunity to object to, and otherwise coordinate with respect to, such request or demand.

**Section 13.03. Consents; Provision of Benefits of Certain Contracts.** Sellers and Purchaser shall each use reasonable efforts and cooperate in good faith (i) to obtain any additional consents, approvals, authorizations, accreditations, certifications, clearances and Licenses required to carry out the Contemplated Transactions (including, Governmental Approvals) or which Sellers and Purchaser agree to be necessary or appropriate and which have not been obtained as of the Closing Date; (ii) in the preparation of any document or other material which may be required by any Governmental Authority or accrediting or certifying bodies as a predicate to or result of the Contemplated Transactions; and (iii) to effectuate the assignment or provision of benefit of any additional Contracts or Leased Real Property to Purchaser that have not already been assigned as of the Closing Date in accordance with Section 7.02. To the extent that Sellers' rights under any Contract or Permit constituting a Purchased Transferred Asset may not be assigned to Purchaser without the consent of another Person which has not been obtained as of the Closing Date, this Agreement shall not constitute an agreement to assign the same if an attempted assignment would constitute a breach thereof or be unlawful, and Sellers shall, to the maximum extent permitted by Legal Requirements, act after the Closing as Purchaser's agent in order to obtain for it the benefits thereunder and shall cooperate, to the maximum extent permitted by Legal Requirements, with Purchaser in any other reasonable arrangement designed to provide such benefits to Purchaser.

**Section 13.04. Closing of Financials.** Purchaser shall cause the individual acting as the chief financial officer of Purchaser after the Closing Date (the "Post-Closing CFO") to complete the standardized closing of Sellers' financial records through the Closing Date including the closing of general ledger account reconciliations (collectively, the "Closing of Financials"). Purchaser shall cause the Post-Closing CFO to use his or her reasonable efforts to complete the Closing of Financials by no later than the date which is thirty (30) calendar days after the Closing Date. The Post-Closing CFO and other appropriate personnel shall be available to Sellers for a period of one hundred-fifty (150) calendar days after the Closing Date to assist Sellers in the completion of any post-Closing audit by Sellers.

**ARTICLE XIV.**

**MISCELLANEOUS**

**Section 14.01. Notices.** Any notice, request, demand, claim or other communication required or permitted to be delivered, given or otherwise provided under this Agreement must be in writing and must be delivered personally, delivered by nationally recognized overnight courier service, sent by certified or registered mail, postage prepaid, or (if a facsimile number is provided below) sent by facsimile (subject to electronic confirmation of good facsimile transmission). Any such notice, request, demand, claim or other communication shall be deemed to have been delivered and given (a) when delivered, if delivered personally; (b) the Business Day after it is deposited with such nationally recognized overnight courier service, if sent for overnight delivery by a nationally recognized overnight courier service; (c) the day of sending, if sent by facsimile prior to 5:00 p.m. (Pacific time) on any Business Day or the next succeeding Business Day if sent by facsimile after 5:00 p.m. (Pacific time) on any Business Day or on any day other than a Business Day; or (d) five Business Days after the date of mailing, if mailed by certified or registered mail, postage prepaid, in each case, to the following address or, if applicable, facsimile number, or to such other address or addresses or facsimile number or numbers as such Party may subsequently designate to the other Parties by notice given hereunder:

If to Sellers, to:

[ADDRESS]  
Telephone number:  
Facsimile number:  
Attention:

with a copy (which shall not constitute notice) to:

[NAME OF COUNSEL]  
[ADDRESS]  
Telephone number:  
Facsimile number:  
Attention:

If to Purchaser, to:

[ADDRESS]  
Telephone number:  
Facsimile number:  
Attention:

with a copy (which shall not constitute notice) to:

[NAME OF COUNSEL]

[ADDRESS]

Telephone number:

Facsimile number:

Attention:

Each of the Parties to this Agreement may specify a different address or addresses or facsimile number or facsimile numbers by giving notice in accordance with this Section 14.01 to each of the other Parties.

**Section 14.02. Succession and Assignment; No Third-Party Beneficiaries.** Subject to the immediately following sentence, this Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns, each of which such successors and permitted assigns will be deemed to be a Party for all purposes hereof. No Seller may assign, delegate or otherwise transfer either this Agreement or any of such Seller's rights, interests and obligations under this Agreement without the prior written approval of Purchaser, and any attempt to do so will be null and void *ab initio*. Notwithstanding anything to the contrary herein, the Purchaser may assign its rights, interests and obligations under this Agreement to any Person that has sufficient funds to pay the Purchase Price and other amounts required to be paid by the Purchaser in connection with the consummation of the Contemplated Transactions, provided, that such assignment shall not be reasonably expected to prevent or materially delay the consummation of the Contemplated Transactions. This Agreement is for the sole benefit of the Parties and their successors and permitted assignees and nothing herein expressed or implied will give or be construed to give any Person, other than the Parties and such successors and permitted assignees, any other right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**Section 14.03. Exhibits, Schedules and Disclosure Schedules.** The Disclosure Schedules and all exhibits and schedules referred to in this Agreement shall be attached hereto and are incorporated by reference herein.

**Section 14.04. Amendments and Waivers.** No amendment or waiver of any provision of this Agreement will be valid and binding unless it is in writing and signed, in the case of an amendment, by Purchaser and Sellers, or in the case of a waiver, by the Party against whom the waiver is to be effective. No waiver by a Party of any breach or violation of, default under or inaccuracy in any representation, warranty or covenant hereunder, whether intentional or not, will be deemed to extend to any prior or subsequent breach or violation of, default under, or inaccuracy in, any such representation, warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence. No delay or omission on the part of a Party in exercising any right, power or remedy under this Agreement will operate as a waiver thereof.

**Section 14.05. Entire Agreement.** This Agreement, together with the Ancillary Agreements, constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, proposals, undertakings,

understandings and agreements, whether written or oral, with respect thereto. There are no restrictions, promises, warranties, covenants, or undertakings, other than those expressly provided for in this Agreement and in the Ancillary Agreements.

**Section 14.06. Counterparts; Facsimile Signature.** This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute but one and the same instrument. This Agreement will become effective when duly executed and delivered by each Party. Counterpart signature pages to this Agreement may be delivered by facsimile or electronic delivery (*i.e.*, by email of a PDF signature page) and each such counterpart signature page will constitute an original for all purposes.

**Section 14.07. Attorneys' Fees; Certain Expenses.** Except as otherwise provided in this Agreement, each Party will pay its own respective financial advisory, legal, accounting and other expenses incurred by it or for its benefit in connection with the preparation and execution of this Agreement and the Ancillary Agreements, the compliance herewith and therewith and the Contemplated Transactions.

**Section 14.08. Severability.** Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction will not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. In the event that any provision hereof would, under applicable Legal Requirements, be invalid or unenforceable in any respect, each Party intends that such provision will be construed by modifying or limiting it so as to be valid and enforceable to the maximum extent compatible with, and possible under, applicable Legal Requirements.

**Section 14.09. Governing Law.** This Agreement, the rights of the Parties hereunder and all Actions arising in whole or in part under or in connection herewith, will be governed by and construed and enforced in accordance with the laws of the State of California, without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any other jurisdiction.

**Section 14.10. Publicity.** No public announcement or disclosure (including any general announcement to employees, customers or suppliers or Sellers or Purchaser) will be made by any Party concerning this Agreement, the Ancillary Agreements, the Contemplated Transactions or the subject matter thereof without the prior written consent of each other Party; *provided*, that the provisions of this Section 14.10 shall not prohibit any disclosure (i) required by any Legal Requirements (in which case the disclosing Party will provide the other Parties with the opportunity to review and comment in advance of such disclosure) or (ii) made in connection with the enforcement of any right or remedy relating to this Agreement, the Ancillary Agreements or the Contemplated Transactions pursuant to Section 14.09.

**Section 14.11. Specific Performance.** Sellers acknowledge and agree that Purchaser would be damaged irreparably in the event any of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached or violated. Accordingly, each Seller agrees that, without posting a bond or other undertaking, Purchaser will be entitled to an injunction or injunctions to prevent breaches or violations of the provisions of

this Agreement and to enforce specifically this Agreement and the terms and provisions hereof in addition to any other remedy to which Purchaser may be entitled, at law or in equity. Each Seller further agrees that, in the event of any Action for specific performance in respect of such breach or violation, it will not assert that the defense that a remedy at law would be adequate.

**Section 14.12. Service of Process.** Each Party hereby (i) consents to service of process in any Action among any of the Parties relating to or arising in whole or in part under or in connection with this Agreement, any Ancillary Agreement or the Contemplated Transactions in any manner permitted by California law; (ii) agrees that service of process made in accordance with clause (i) or made by registered or certified mail, return receipt requested, at its address specified pursuant to Section 14.01, will constitute good and valid service of process in any such Action; and (iii) waives and agrees not to assert (by way of motion, as a defense, or otherwise) in any such Action any claim that service of process made in accordance with clause (i) or (ii) does not constitute good and valid service of process.

**[Signature Pages Follow]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in multiple originals by their officers, all as of the date and year first above written.

**SELLERS:**

**[SELLERS' SIGNATURE BLOCKS TO BE INCLUDED]**

**PURCHASER:**

**[PURCHASER]**

By:

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_