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## 2018 Southeast Bankruptcy Workshop

# Rescuing Hospitals from the Emergency Room

**Margaret R. Westbrook, Moderator**

*K & L Gates LLP; Raleigh, N.C.*

**Hon. Paul W. Bonapfel**

*U.S. Bankruptcy Court (N.D. Ga.); Atlanta*

**Paul K. Ferdinands**

*King & Spalding LLP; Atlanta*

**Samuel R. Maziel**

*Dentons US LLP; Los Angeles*

**Louis E. Robichaux**

*Ankura Consulting Group, LLC; Dallas*

**RESCUING HOSPITALS FROM THE EMERGENCY ROOM:  
BUYING AND SELLING HOSPITALS THROUGH BANKRUPTCY**

Presentation for:  
AMERICAN BANKRUPTCY INSTITUTE SOUTHEAST BANKRUPTCY WORKSHOP  
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**PANELISTS:**

THE HONORABLE PAUL BONAPFEL  
US BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA, GEORGIA

LOUIS E. ROBICHAUX, IV  
ANKURA CONSULTING GROUP, LLC  
DALLAS, TEXAS

SAMUEL R. MAIZEL  
DENTONS US LLP  
LOS ANGELES, CALIFORNIA

PAUL FERDINANDS  
KING & SPALDING  
ATLANTA, GEORGIA

## 2018 SOUTHEAST BANKRUPTCY WORKSHOP

This panel provides some guidance on the unique issues that arise in a hospital bankruptcy and the specific provisions of the Bankruptcy Code that govern issues particular to hospital bankruptcy cases and the sales of hospitals in chapter 11. Over the past decade, many hospitals have sought bankruptcy protection. Counsel handling hospital bankruptcies will encounter high-profile cases with difficult and unique issues that arise from the intersection of bankruptcy law, various federal and state statutes and regulations, and great public interest and concern. Such cases frequently garner a great deal of high-profile publicity and public scrutiny, which may affect strategic management of the case. The unique legal issues arise, in part, from the fact that the healthcare industry in general, and hospitals in particular, are among the most heavily regulated industries in the United States. Many of those regulations relate only to care or services provided to Medicare or Medicaid patients. Hospitals are governed by intricate statutes and regulations,<sup>1</sup> which vary in scope. Some relate only to care and services provided to Medicare or Medicaid patients;<sup>2</sup> others apply more broadly. This panel provides a roadmap to the unique issues these complications present in hospital bankruptcy cases.

**Our scenario:** A not-for-profit hospital is facing a Medicare recoupment resulting from the audit of a cost report from 2015. Medicare will start recouping 50% of the payments due for patient treatments in the next month. The hospital is 80% dependent on Medicare payments. The hospital Board of Directors has concluded that this is the final straw, as the hospital has been losing money for several years. They have negotiated an agreement with a buyer, who is a for-profit company, to acquire all the assets through a sale in bankruptcy under section 363. The buyer wants to take the Medicare and Medicaid Provider Agreements as well, but is very concerned about successor liability, and wants to reduce the purchase price significantly to account for that risk. The state has a hospital quality assurance fee program, which is a net money maker for the hospital, but its cash flow doesn't permit it to make the annual fee required. The state is also threatening to recoup funds owed to the hospital both for treatments to Medicaid patients as well as future payments under the state's hospital quality assurance fee program. The hospital Board has been hearing rumors that there is a

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<sup>1</sup> Authors have described the intersection of the Medicare and Medicaid statutes and the Bankruptcy Code as an “accident scene.” Robert G. Richardson, *Accident Scene—Medicare and Bankruptcy Code Collide*, AM. BANK. INST. J. 10 (Apr. 1995). This is in no small measure because the Medicare Act is very complex. See, e.g., *Rehab. Assoc. of Va., Inc. v. Kozlowski*, 42 F.3d 1444, 1450 (4th Cir. 1994) (describing the Medicare Act as “among the most completely impenetrable texts within human experience”); *Brown v. Thompson*, 374 F.3d 253, 261 n.5 (4th Cir. 2004) (quoting *Beverly Cmty. Hosp. Ass’n v. Belshe*, 132 F.3d 1259, 1266 (9th Cir. 1997)) (noting that “any quality of crystal clarity is uniformly recognized as totally absent from the Medicaid and Medicare statutes”).

<sup>2</sup> For example, Medicare pays for 22 percent of total national health expenditures, 26 percent of spending on hospital care, and 22 percent of spending on physician services. Ctrs. for Medicare & Medicaid Servs., Office of the Actuary, Nat’l Health Statistics Grp., Nat’l Health Expenditures Tables (Dec. 2014).

false claims act lawsuit pending under seal in the federal district court, but isn't sure of it, since the government refuses to confirm it, and the lawsuit is under seal.

**Issues for discussion:**

1. Does the bankruptcy court have jurisdiction over the issues related to Medicare? Medicaid?
2. Do you transfer the provider agreements under section 365 or 363? If so, what issues go with it, and which issues can be stripped away?
3. If you sell the hospital is that sale subject to review under state law? If so, are there any limits which can be imposed on the buyer or seller by the State Attorney General? Does the bankruptcy court have to defer to a state court if the Attorney General has issues with the sale, or can the bankruptcy court resolve those issues?
4. What factors, if any, other than monetary factors, may the debtor and the court consider in approving a sale?
5. How does the profit or non-profit status of the hospital and the buyer affect the approval of the sale?

**Dealing with the Federal and State Governments**

Issues related to the resolution of disputes with the Centers for Medicare and Medicaid Services (CMS)<sup>3</sup> (which runs the Medicare program<sup>4</sup>) and the various state agencies that run the individual state Medicaid programs<sup>5</sup> can frequently be the most important issues in the case. This is due to the relative importance in the healthcare industry of the federal and state governments, both as payors and regulators.

The United States can be expected to argue that bankruptcy courts do not have jurisdiction over any dispute regarding Medicare payments or decisions unless and until the debtor exhausts its administrative remedies under the Medicare rules. This is a huge problem in healthcare bankruptcy cases because the Medicare program's appeal process is simply broken. Staffed to handle approximately 70,000 appeals annually, it currently has more than 700,000

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<sup>3</sup> CMS is an agency within the U.S. Department of Health and Human Services.

<sup>4</sup> Medicare is the federal program that provides health insurance to, primarily, people aged 65 or older, as well as younger people with disabilities, end-stage renal disease, and amyotrophic lateral sclerosis. Social Security Amendments of 1965, Pub. L. No. 89-97, 79 Stat. 286; 42 U.S.C. §§ 1395 *et seq.* More information is available at <https://www.medicare.gov>.

<sup>5</sup> Medicaid is a government insurance program, jointly funded and supervised by the federal and state governments, that provides insurance primarily for low-income adults, their children, and people with certain disabilities. Social Security Amendments of 1965, Pub. L. No. 89-97, 79 Stat. 286; 42 U.S.C. §§ 1396 *et seq.* More information is available at <https://www.medicaid.gov>.

appeals pending.<sup>6</sup> If the federal government's position is sustained, it effectively denies meaningful bankruptcy protection to healthcare businesses forced into bankruptcy by a dispute with the Medicare program. This issue is usually litigated early in the bankruptcy case. A loss on this issue can eliminate the usefulness of the bankruptcy filing by effectively denying a healthcare debtor any bankruptcy relief.

To support its position, the federal government relies on 42 U.S.C. § 405(h), which expressly states that federal courts may take jurisdiction over Medicare disputes only after a party exhausts applicable appeal processes within the Medicare system. A complete discussion of this issue would be too lengthy to include here. It should be noted, however, that there is currently a split among the circuits regarding whether bankruptcy courts are barred by this provision from adjudicating disputes with CMS.<sup>7</sup> In short, the controversy is based on the plain language of section 405(h). This provision expressly restricts courts from taking jurisdiction under 28 U.S.C. §§ 1331 and 1336. It does not expressly refer to section 1334 of title 28, which grants federal bankruptcy court jurisdiction. Thus, the plain language of the statute<sup>8</sup> supports the argument that the debtor need not exhaust its administrative remedies before a bankruptcy court may take jurisdiction in order to rule on non-Medicare-specific classic bankruptcy issues. For purposes of this discussion, such determinations specifically include whether the debtor can

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<sup>6</sup> See *Am. Hosp. Ass'n v. Burwell*, 812 F.3d 183 (D.C. Cir. 2016) (discussing delays in the Medicare appeals process and concluding, among other things, that the delays in Medicare appeals "are having a real impact on 'human health and welfare.'").

<sup>7</sup> Compare *Florida Agency For Health Care Admin., et al v. Bayou Shores, SNF, LLC (In re Bayou Shores, SNF, LLC)*, 828 F.3d 1297, 1331 (11th Cir. 2016) ("The bankruptcy court was without § 1334 jurisdiction under the § 405(h) bar to issue orders enjoining the termination of the provider agreements and to further order the assumption of the provider agreements.") with *Do Sung Uhm v. Humana, Inc.*, 620 F.3d 1134, 1140 n.11 (9th Cir. 2010) (noting the "special status" of bankruptcy court jurisdiction over bankruptcy issues); and *University Medical Center, Inc. v. Sullivan (In re Univ. Med. Ctr.)*, 973 F.2d 1065, 1072 (3d Cir. 1992) ("Because we agree . . . that the Bankruptcy Code supplies an independent basis for jurisdiction in this case, we reject the Secretary's arguments and find that the district and bankruptcy courts properly had jurisdiction. . . ."); and *Sullivan v. Town & Country Home Nursing Servs., Inc. (In re Town & Country Home Nursing Services, Inc.)*, 963 F.2d 1146, 1155 (9th Cir. 1992) ("Section 405(h) only bars actions under 28 U.S.C. §§ 1331 and 1346; it in no way prohibits an assertion of jurisdiction under section 1334."); and *Nurse's Registry & Home Health Corp. v. Burwell (In re Nurses' Registry & Home Health Corp.)*, 533 B.R. 590, 593 (Bankr. E.D. Ky. 2015) (Court holds that "the statutory bar on federal jurisdiction over unexhausted Medicare Act disputes .. did not apply to bankruptcy jurisdiction".); see also Samuel R. Maizel & Michael B. Potere, *Killing the Patient to Cure the Disease: Medicare's Jurisdictional Bar Does Not Apply to Bankruptcy Courts*, 32 EMORY BANKR. DEV. J. 1 (2015).

<sup>8</sup> *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989) (stating that statutory interpretation begins "with the language of the statute itself," and that "is also where the inquiry should end," if "the statute's language is plain").

assume and assign an executory contract under section 365 of the Bankruptcy Code<sup>9</sup> and/or sell debtor assets free and clear of liens, claims, and interests under section 363 of the Bankruptcy Code. (As discussed later herein, these are two essential issues for hospital bankruptcy cases.) Nevertheless, the government has argued with some success that the absence of a reference to section 1334 of title 28 is a “scrivener’s error,” and therefore, the statute should be read as if a reference to section 1334 were expressly included.<sup>10</sup>

### The Provider Agreement as a License or Contract?

The relationship between the Medicare or Medicaid programs and the providers of healthcare goods and services is captured in a document commonly referred to as a “provider agreement.” The treatment of provider agreements in a bankruptcy proceeding is often vital to the success of a bankruptcy case involving a sale of assets, but it can present difficult legal issues. Inside of bankruptcy proceedings, the government takes the position that the provider agreement is an executory contract that must be assumed by the debtor and assigned to the buyer under section 365 of the Bankruptcy Code. If the provider agreement is an executory contract, the debtor must cure existing defaults in the Medicare relationship (i.e., pay any existing prepetition obligations). Moreover, the buyer must take successor liability for the debtor’s prior overpayments from Medicare and perhaps even for damages resulting from federal False Claims Act lawsuits.<sup>11</sup> What makes this issue controversial is that, outside of bankruptcy proceedings, the government argues, with success, that the Medicare provider agreement is not a contract.<sup>12</sup> The government does this to avoid giving Medicare providers

<sup>9</sup> Unless otherwise noted, all references in this chapter to “section” are to the U.S. Bankruptcy Code, 11 U.S.C. §§ 101-1531, as amended.

<sup>10</sup> See, e.g., *Bayou Shores*, 828 F.3d at 1304 (“we conclude that the lack of reference to section 1334 in section 405(h) is the result of a codification error”).

<sup>11</sup> Outside of bankruptcy, courts have held that parties that take a provider agreement take it with liability for their predecessors, i.e., with successor liability. See, e.g., *United States v. Vernon Home Health, Inc.*, 21 F.3d 693 (5th Cir. 1994), *cert. denied*, 513 U.S. 1015 (1994).

<sup>12</sup> *PAMC, Ltd. v. Sebelius*, 747 F.3d 1214, 1221 (9th Cir. 2014) (“We have, on occasion, stated that providers and others have contracts with the government in this area, but our decisions have turned on the regulatory regime rather than on contract principles. . . . As the Eleventh Circuit Court of Appeals held when hospitals complained of legislative impairment of their contract rights in this area because they had agreements with the Secretary: ‘Upon joining the Medicare program, however, the hospitals received a statutory entitlement, not a contract right.’”) (quoting *Mem’l Hosp. v. Heckler*, 706 F.2d 1130, 1136 (11th Cir. 1983)); *Germantown Hosp. & Med. Ctr. v. Heckler*, 590 F. Supp. 24, 30–31 (E.D. Pa. 1983), *aff’d*, 738 F.2d 631 (3d Cir. 1984) (“There is no contractual obligation requiring HHS to provide Medicare reimbursement.”); *In re BDK Health Mgmt., Inc.*, Case Nos. 98-609-B1, Order Authorizing Sale of Assets out of the Ordinary Course of Business, 1998 Bankr. LEXIS 2031 (Bankr. M.D. Fla., Nov. 16, 1998). But see *In re Univ. Med. Ctr.*, 973 F.2d 1065, 1075 n.13, 1076 (3d Cir. 1992) (reasoning that the “complexity of the Medicare scheme” does not exclude a provider agreement from the ambit of section 365, and that “a Medicare provider agreement easily fits”

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contract-based rights and remedies. The Bankruptcy Code does not define the word *contract*. Instead, applicable non-bankruptcy law defines the nature of the debtor's property and contract rights. Therefore, it is hard to fathom why the filing of a bankruptcy case would change the essential character of a document from a noncontract to a contract.

Are provider agreements executory contracts, or licenses?<sup>13</sup> The impact of this determination on a healthcare bankruptcy case is profound. A detailed discussion is beyond the scope of this paper;<sup>14</sup> however, several implications are clear. A license becomes property of the bankruptcy estate<sup>15</sup> and can be sold under section 363, without successor liability passing to the buyer. An executory contract is also property of the estate,<sup>16</sup> but it must be transferred under section 365, and the buyer must assume the contract *cum onere*.<sup>17</sup> Such a transfer could result in the party taking the assignment of the Medicare provider agreement subject to successor liability.<sup>18</sup> Thus, an assignment of the provider agreement under section 365 is likely to generate significantly less value than a sale of the provider agreement under section 363 as a license.

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within the judicial definition of an executory contract). Lower courts in the Third Circuit have concluded that the decision in *University Medical Center* on this issue is limited. See, e.g., *Health Care Fin. Admin. v. Sun Healthcare Grp., Inc. (In re Sun Healthcare Grp., Inc.)*, 2002 U.S. Dist. LEXIS 17868 (D. Del. 2002) (holding that “although the Medicare provider agreement may not be a license in the strictest sense of the word, it is clearly similar to a license for section 525 purposes”).

<sup>13</sup> Oddly, the United States, when pressed, generally agrees that the provider agreement is not a contract. For example, the United States responded in a non-bankruptcy case to a provider's citation to a bankruptcy case holding that the Medicare Provider Agreement was an executory contract by saying: “[I]n neither context, bankruptcy nor federal court, are Medicare Provider Agreements enforceable as contracts.” United States Sur-Reply to Tenant's Reply to Its Motion for Summary Adjudication (Statute of Limitations), at 3, *United States v. Tenant Healthcare Corp.*, 2005 WL 3784642 (C.D. Cal. Dec. 22, 2005).

<sup>14</sup> For a more detailed discussion of this issue, see Samuel R. Maizel & Jody A. Bedenbaugh, *The Medicare Provider Agreement: Is It a Contract or Not? And Why Does Anyone Care?*, 71 Bus. Law. 4 (Fall 2016).

<sup>15</sup> See, e.g., *In re Re Tak Commc'ns*, 985 F.2d 916 (7th Cir. 1993). This is consistent with the general rule that all of a debtor's property, including all legal and equitable interests, becomes property of the bankruptcy estate. See, e.g., 11 U.S.C. § 541; *Taylor v. Freeland & Kronz*, 503 U.S. 638, 642 (1992); *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 203–05 (1983).

<sup>16</sup> See, e.g., *In re Palace Quality Servs. Indus., Inc.*, 283 B.R. 868, 892–98 (Bankr. E.D. Mich. 2002) (discussing impact of section 541(a)(1) on whether contract rights become property of the estate).

<sup>17</sup> See, e.g., *In re Monroeville Dodge, Ltd.*, 166 B.R. 264 (E.D. Pa. 1994).

<sup>18</sup> See, e.g., *Cinicola v. Scharffenberger*, 248 F.3d 110 (3d Cir. 2001) (discussing the interrelationship between assumption under section 365 and a sale under section 363).

If the provider agreement is governed by section 363 rather than section 365, then section 363(f) allows the debtor to sell the provider agreement “free and clear of *any interest* in such property,” including any successor liability. The Second, Third, Fourth and Seventh Circuits, and many lower courts, have interpreted “any interest” expansively to include not only *in rem* interests in property, but also other obligations that may “arise from the property being sold.”<sup>19</sup> Allowing a debtor to transfer a Medicare provider agreement without subjecting the buyer to the risk of successor liability fosters the Bankruptcy Code’s goal of maximizing recovery for creditors.<sup>20</sup>

### Setoff and Recoupment by the Government

Outside of bankruptcy, the federal government and its contractors routinely withhold Medicare and Medicaid payments when they determine that a healthcare provider has been overpaid.<sup>21</sup> Section 362 automatically stays creditors’ efforts to exercise control over property of the estate or collect on the debtor’s prepetition obligations.<sup>22</sup>

Medicare and Medicaid withholdings might be characterized either as setoff or recoupment. Simply stated, *recoupment* is the assertion against the debtor of a claim or defense that arises from the same contract (or transaction or relationship), whereas *setoff* is the assertion of a claim that arises between the same parties but under a different contract (or transaction or relationship). Outside of bankruptcy, the distinction may be insignificant; inside of bankruptcy it can be key. The Bankruptcy Code strictly limits creditors’ setoff rights but does

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<sup>19</sup> See *In re Grumman Olson Indus. Inc.*, 467 B.R. 694, 702–03 (S.D.N.Y. 2012); see also *United Mine Workers of Am. 1992 Benefit Plan v. Leckie Smokeless Coal Co.* (*In re Leckie Smokeless Coal Co.*), 99 F.3d 573 (4th Cir. 1996) (holding that coal mine operators could sell their assets free and clear of their obligations to a benefits plan and fund under the Coal Act); *PBBPC, Inc. v. OPK Biotech, LLC* (*In re PBBPC, Inc.*), 484 B.R. 860 (1st Cir. B.A.P. 2013) (holding that debtor’s assets could be sold free and clear of Commonwealth of Massachusetts’s right to treat a purchaser of substantially all of the assets of chapter 11 debtor as a “successor employer” to which debtor’s experience rating could be imputed to determine purchaser’s unemployment insurance contribution); *In re Tougher Indus.*, 2013 WL 1276501 (Bankr. N.D.N.Y. Mar. 27, 2013) (holding that debtor’s assets could be sold free and clear of New York State Department of Labor’s right to use the debtor’s experience rating to access the buyer’s tax liability as successor to the debtor); *WBO P’ship v. Va. Dep’t of Med. Assistance Servs.* (*In re WBO P’ship*), 189 B.R. 97, 104–05 (Bankr. E.D. Va. 1995) (holding that Commonwealth of Virginia’s right to recapture depreciation is an “interest” as used in section 363(f)).

<sup>20</sup> This is not to suggest that the buyer need not be subject to change of ownership rules related to the transfer of the provider agreement other than pecuniary interests. Medicare considers certain business transactions, including sales, to constitute a “change of ownership.” 42 C.F.R. § 489.18. When a change of ownership occurs, the provider agreement is automatically assigned to the new owner. 42 C.F.R. § 489.18(c).

<sup>21</sup> 42 U.S.C. § 1395(g)(a).

<sup>22</sup> 11 U.S.C. § 362(a)(7).



not restrict creditors' recoupment rights.<sup>23</sup> For example, the Bankruptcy Code allows setoff only with respect to mutual prepetition obligations; however, precedent uniformly holds that recoupment is not so limited.<sup>24</sup> Additionally, while setoff is subject to the automatic stay and requires a creditor to obtain court approval, recoupment is not subject to the automatic stay and does not require court approval.<sup>25</sup> Consequently, in bankruptcy cases the government argues that its withholding of Medicare payments to recover prior overpayments constitutes recoupment. While a complete discussion of this issue is beyond the scope of this paper,<sup>26</sup> it should be noted that there is a split in the circuits on whether the withholding is recoupment or setoff.<sup>27</sup>

The same arguments that apply to federal Medicare recoupments/setoffs also generally apply to state governments' efforts to recover prior Medicaid overpayments from ongoing Medicaid programs. There are, however, differences arising from the different approaches states have applied to the provider agreements. As with Medicare, courts are split on the issue.<sup>28</sup> More recently, cases have been reported that deal with states' efforts to offset payments owed to a debtor in bankruptcy arising out of patient care payments against payments owed to the debtor for other reasons, frequently Hospital Quality Assurance Fee program payments. Results with regard to whether these payments and claims arise out of the same transaction or occurrence are mixed.<sup>29</sup>

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<sup>23</sup> See, e.g., *University Med. Ctr.*, 973 F.2d at 1079-80 (discussing the differences between setoff and recoupment in bankruptcy).

<sup>24</sup> 11 U.S.C. § 553(a); see, e.g., *In re Holford*, 896 F.2d 176, 179 (5th Cir. 1990).

<sup>25</sup> See, e.g., *In re Visiting Nurse Ass'n of Tampa Bay, Inc.*, 121 B.R. 114, 119 (M.D. Fla. 1990).

<sup>26</sup> For a more detailed discussion of this issue, see Samuel R. Maizel, *An Issue That Just Won't Go Away*, 16(6) AM. BANKR. INST. J. 34 (Jul/Aug. 2004); Samuel R. Maizel, *Medicare's Recoupment Rights Get More Confusing*, 16(7) AM. BANKR. INST. J. (Sept. 1997).

<sup>27</sup> Compare *Univ. Med. Ctr.*, 973 F.2d at 1081-82 (holding that Medicare could only recoup overpayments within the same cost report year as the ongoing payments) with *United States v. Consumer Health Servs. of Am., Inc.*, 108 F.3d 390 (D.C. Cir. 1997) (holding that Medicare adjustments were recoupment); and *Sims v. United States Dep't of Health & Human Servs. (In re TLC Hosps., Inc.)*, 224 F.3d 1008 (9th Cir. 2000) (same); and *Holyoke Nursing Home, Inc. v. Health Care Fin. Admin. (In re Holyoke Nursing Home, Inc.)*, 372 F.3d 1 (1st Cir. 2004) (same).

<sup>28</sup> Compare *In re Doctors Hosp. of Hyde Park*, 2002 WL 1770528 (N.D. Ill. 2002) (allowing recoupment of Medicaid payments) with *In re Dartmouth House Nursing Home, Inc.*, 24 B.R. 256 (Bankr. D. Mass. 1982) (denying Medicaid's recoupment arguments), *appeal dismissed*, 30 B.R. 56 (1st Cir. B.A.P. 1983), *aff'd on other grounds*, 726 F.2d 26 (1st Cir. 1984).

<sup>29</sup> Compare *In re Gardens Regional Med. Hosp. and Med. Ctr., Inc.*, 569 B.R. 788 (Bankr. C.D. Cal. 2017) with *In re Saint Catherine Hosp. of Ind., LLC*, 511 B.R. 117, 127 (S.D. Ind. 2014), *rev'd on other grounds*, *Saint Catherine Hosp. of Ind., LLC v. Ind. Family & Soc. Servs. Admin.*, 800 F.3d 312 (7th Cir. 2015).

### Impact of Hospital Bankruptcy on Healthcare Fraud Cases

One of the most powerful statutes that addresses fraud against the United States is the federal False Claims Act.<sup>30</sup> The government has vigorously applied this law against the healthcare industry over the past two decades.<sup>31</sup> Although most litigation is subject to the automatic stay imposed by section 362(a), section 362(b)(4) exempts from the stay acts by the government to enforce police or regulatory powers. Cases arising under the False Claims Act are generally thought to be exempt from the automatic stay as an exercise of a police or regulatory power.<sup>32</sup> Nevertheless, the exemption extends only to prosecution of the case, not to recovery of any damage award. Despite the inapplicability of the automatic stay, the filing of a bankruptcy petition is not without benefits for a hospital facing a False Claims Act case.

First, False Claims Act lawsuits are usually filed under seal by *qui tam* relators.<sup>33</sup> While the case is still under seal, the United States can decide whether to intervene. During this process, the debtor/defendant is not aware that a lawsuit is pending against it. Nevertheless, if the United States wants to recover in the bankruptcy case any damages that might be awarded in the False Claims Act case, the government must file a proof of claim by the applicable bar date. This requirement provides the debtor with knowledge of and the ability to address what may have been unknown litigation prepetition. Moreover, the United States may be required to

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<sup>30</sup> 31 U.S.C. §§ 3729–3733. Many states also have false claims acts. *See, e.g.*, CAL. GOV'T CODE §§ 12650–12655 (1992); Florida False Claims Act, Civ. Practice and Pro., title VI, chapter 68, sections 68.081-68.092 (2018); Georgia Taxpayer Protection False Claims Act, GA. CODE ANN. §§ 23-3-120—23-3-127 (which in 2012 replaced the 2007 Georgia Medicaid False Claims Act, GA. CODE ANN. §§ 49-4-168—49-4-168.6) *but see* South Carolina, which really has nothing similar to the federal False Claims Act.

<sup>31</sup> For example, the Lexington County Health Services District Inc. d/b/a Lexington Medical Center located in West Columbia, South Carolina, paid \$17 million in 2016 to resolve allegations that it violated the Physician Self-Referral Law (the Stark Law) and the federal False Claims Act by maintaining improper financial arrangements with 28 physicians. In 2015 the United States resolved a \$237 million judgment against Tuomey Healthcare System in Columbia, South Carolina, for illegally billing the Medicare program for services referred by physicians with whom the hospital had improper financial relationships. Under the terms of the settlement agreement, the United States was paid \$72.4 million.

<sup>32</sup> *In re Commonwealth Cos.*, 913 F.2d 518 (8th Cir. 1990) (holding that suits for violation of False Claims Act not subject to automatic stay); *In re Selma Apparel Corp.*, 132 B.R. 968 (S.D. Ala. 1991) (same). Nevertheless, some courts have held that automatic stay applies if the action could be considered analogous to a lawsuit for contract damages. *See Commonwealth Cos.*, 913 F.2d at 525; *see generally In re Corporacion de Servicios Medicos Hospitalarios de Fajardo*, 805 F.2d 440, 445–47 (1st Cir. 1986) (holding that that section 362(b)(4) does not apply to an action by a governmental unit to enforce contractual rights).

<sup>33</sup> The False Claims Act permits a private person, known as a *qui tam* relator, to bring a lawsuit on behalf of the United States, based on information possessed by the relator without regard to whether damages are suffered by the relator. *See, e.g.*, 31 U.S.C. § 3730.

defend that claim in the bankruptcy court, which it may view as a less favorable forum than the district court. The time for doing so may be much shorter than the time allowed outside of bankruptcy. Finally, section 502(c) permits a bankruptcy court to estimate claims for the purposes of (1) allowance of the claim as to amount, (2) voting on a plan, (3) feasibility of a plan, and (4) distributions under a plan.<sup>34</sup> The court may also estimate a claim in order to determine the amount to be paid as “cure” when the Medicare and or Medicaid Provider Agreements are assumed by a debtor and/or assigned to a buyer.<sup>35</sup> The key question in determining whether a court should estimate a claim otherwise pending in another forum is “whether the liquidation of that claim” outside of bankruptcy “would unduly delay the . . . reorganization.”<sup>36</sup> If so, a debtor could employ a bankruptcy case estimation proceeding to compel the government to assert claims otherwise pending in a False Claims Act case. This strategy has the potential benefit of forcing a resolution much more quickly than could be obtained outside of bankruptcy.

### Not-for-Profit Hospital Sale Issues

Many hospitals are not -for-profit entities.<sup>37</sup> Three provisions of the Bankruptcy Code address the sale of not-for-profit assets. Those provisions arise out of and are frequently invoked in hospital bankruptcies.<sup>38</sup> *In re Allegheny Health Education and Research Foundation* provided the catalyst for these BAPCPA provisions. In *Allegheny*, the bankruptcy court rejected the Pennsylvania Attorney General’s attempt to intervene in the chapter 11 sale of not-for-profit hospitals.<sup>39</sup> BAPCPA amended section 363 to require the trustee to comply with all applicable non-bankruptcy laws governing the transfer, sale, or lease of not-for-profit entities’

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<sup>34</sup> *In re Trident Shipworks, Inc.*, 247 B.R. 513 (Bankr. M.D. Fla. 2000).

<sup>35</sup> *In re Ground Round, Inc.*, 2004 WL 1732007 (Bankr. D. Mass. July 12, 2004).

<sup>36</sup> *In re Apex Oil Co.*, 107 B.R. 189 (Bankr. E.D. Mo. 1989).

<sup>37</sup> For example, 59 percent of all community hospitals in the United States are nongovernment, not-for-profit community hospitals. American Hosp. Ass’n, Fast Facts on US Hospitals, <http://www.aha.org/research/rc/stat-studies/fast-facts.shtml> (last updated Jan. 2017).

<sup>38</sup> For a more detailed discussion of the sale of not-for-profit healthcare assets in bankruptcy proceedings, see Samuel R. Maizel & Mary D. Lane, *The Sale of Nonprofit Hospitals through Bankruptcy: What BAPCPA Wrought*, 30(5) AM. BANKR. INST. J. (June 2011).

<sup>39</sup> *In re Bankruptcy Appeal of Allegheny, Health, Educ. & Res. Found.*, Appeal of Order Staying/Enjoining Orphans Court Proceedings, 252 B.R. 309 (W.D. Pa. 1999). These provisions had their genesis in the Business Bankruptcy Reform Act of 1998, S. 1914, introduced by Sen. Grassley (R.-Iowa), and its counterpart in the House of Representatives, the Consumer Bankruptcy Reform Act of 1998, H.R. 3150, introduced by Rep. Gekas (R.-Pa.). Those statutes were never enacted, but many of their concepts were incorporated into BAPCPA.

property.<sup>40</sup> Under newly added section 1129(a)(16), the court cannot confirm a plan of reorganization without a finding that all transfers of not-for-profit assets comply with applicable non-bankruptcy law. Similarly, newly added section 541(f) allows a not-for-profit hospital to transfer property to a for-profit entity, but only under the same conditions that would apply if the debtor were not in bankruptcy.

It is important to note two sections of BAPCPA that were not codified into the U.S. Code but that are still binding and relate to the sale of not-for-profit assets in bankruptcy.<sup>41</sup> First, BAPCPA section 1221(d) states that “the court shall not confirm a plan . . . without considering whether this section<sup>42</sup> would substantially affect the rights of a party in interest. . . . The parties who may appear and be heard in a proceeding under this section include the attorney general of the State in which the debtor is incorporated, was formed, or does business.” Second, BAPCPA section 1221(e) states that “[n]othing in this section [which is now section 363(d)(1)] shall be construed to require the [bankruptcy] court in which a case under [the Bankruptcy Code] is pending to remand or refer any proceeding, issue, or controversy to any other court or to require the approval of any other court for the transfer of property.” These provisions make clear both that the state Attorney General has standing to appear on issues related to the sale of not-for-profit assets and that the bankruptcy court need not defer to a state court to decide issues related to the transfer of assets.

Additionally, debtors and courts may consider non-monetary issues when choosing the “best offer” for assets in the sale of a not-for-profit hospital. For example, debtors may require bidders to submit evidence of their ability to obtain regulatory approvals, and sales of hospitals are frequently conditioned upon the buyer actually obtaining such approvals. Moreover, because there is frequently some amount of time required to obtain these approvals, sales of not-for-profit hospitals frequently include provisions for a “sale-leaseback” to accommodate the buyer; the debtor will sell the hospital to the buyer, then lease the hospital back from the buyer and enter into a management contract with the buyer, where the buyer manages the

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<sup>40</sup> See *In re Gardens Reg. Hosp. and Med. Ctr., Inc.*, 567 B.R. 820 (Bankr. C.D. Cal. 2017) (discussing sale of not for profit hospital under California statutes); see also Samuel R. Maizel, Khoi Ta & Matt Weiss, *Extent of State's Power at Issue in Nonprofit Hospital's Asset Sale*, J. of Corporate Renewal, Vol. 30 (Mar. 2017).

<sup>41</sup> The Code of Laws of the United States of America (also known as United States Code (U.S.C.)) is the official consolidation and codification of the general and permanent federal statutes of the United States. It is published every six years by the Office of the Law Revision Counsel of the House of Representatives. Cumulative supplements are published annually. Portions of some congressional acts, such as these two from BAPCPA, however, are not codified. Library of Congress, Researching Federal Statutes, <https://www.loc.gov/law/help/statutes.php> (last updated June 9, 2015). These statutes may be found by referring to the acts as published in “slip law” and “session law” form. The official version of those laws not codified in the U.S. Code can be found in United States Statutes at Large. 2 U.S.C. § 285.

<sup>42</sup> Section 1221 of the BAPCPA, which deals with transfers made by nonprofit charitable corporations.

hospital using the debtor's license or other regulatory consents, pending the buyer obtaining its own license or other regulatory approvals. Further, debtors and courts may consider, among other things, (i) the effects of the sale on the various constituencies and the communities where the hospital is located, (ii) the short-term and long-term interests of the hospital and the community as consistent or inconsistent with the charitable mission of the hospital, and (iii) the resources, intent and conduct (past, stated and potential) of the potential purchaser.<sup>43</sup>

### Disposal of Medical Records

BAPCPA added a provision dealing with the destruction of medical records.<sup>44</sup> This provision was necessary because federal and state regulations require most medical records to be stored for years and for some medical records to be stored for more than 20 years.<sup>45</sup> This storage can be very expensive. Section 351 preempts such non-bankruptcy rules and provides a mechanism by which a debtor or trustee who does not have sufficient funds to comply with non-bankruptcy storage standards may destroy medical records rather than pay for storing them. It requires the trustee to publish notice in appropriate newspapers, stating that patient records will be destroyed if they are not claimed by the patient or an insurance provider within 365 days of publication of the notice. In the 180 days after publication, the trustee must promptly attempt to notify each patient with patient records being held, and any appropriate insurance carrier, of how and when they may obtain the medical records. If records remain unclaimed after the 365-day period expires, section 351 requires the trustee to mail a request to an "appropriate" federal agency before destroying the records. No such agency is identified, however, and it is not clear that any such agency exists. Oddly, there are state agencies that are available to take on the storage of medical records, but the statute makes no mention of contacting the appropriate state agency. If no federal agency accepts the request to take on storage of the records, the trustee is authorized to destroy the records by shredding or burning paper records, or by "otherwise" destroying magnetic, optical, or electronic records.<sup>46</sup>

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<sup>43</sup> See *In re United Healthcare Sys., Inc.*, No. 97-1159, 1997 WL 176574, \*3 (D.N.J. Mar. 26, 1997).

<sup>44</sup> Pub. L. No. 109-8, § 1102, 119 Stat. 23, 189–90 (codified at 11 U.S.C. § 351).

<sup>45</sup> The Medicare program requires that Medicare beneficiaries' patient records be retained for five years. 42 C.F.R. § 482.24(b). Medicaid requirements vary state by state. See *State Medical Records Laws: Minimum Medical Record Retention Periods for Records Held by Medicaid Doctors and Hospitals* tbl. A-7, available at <https://www.healthit.gov>. The American Health Information Management Association usually has current information on the state-by-state retention of medical records requirements.

<sup>46</sup> For a detailed discussion of some issues with the text of section 351, see Samuel R. Maizel & Michael Maizel, *Revising § 351: Dealing with Unwanted Medical Records*, Problems in the Code column, AM. BANKR. INST. J. (May 2017).

### Discrimination against Hospital by Governmental Entities

The Bankruptcy Code prohibits the government from refusing to enter into a new provider agreement with a hospital based solely upon the fact that a hospital did not repay monies owed to the government because the hospital is or was in bankruptcy. Section 525 expressly states that a governmental unit may not “deny, revoke, suspend, or refuse to renew a charter, franchise, or other similar grant to, condition such grant to discriminate with respect to such grant against . . . a person that is or has been a debtor under the Bankruptcy Code or a person associated with a debtor.” Courts have held that this applies to contractual relationships as well, even though contracts are not expressly listed.<sup>47</sup> Consequently, it should apply regardless of whether the Medicare provider agreement is deemed to be a contract or a license.<sup>48</sup> Courts have also held that section 525 protects purchasers of assets from a bankruptcy estate.<sup>49</sup> Nonetheless, states have continued to push the limits on these protections. For example, in *In re Gardens Regional Medical Center and Hospital, Inc.*, the California Attorney General imposed a condition of the sale of a not-for-profit that required the debtor or the purchaser of its assets to pay approximately \$2.4 million that the debtor owed to the state. The state threatened to deny the purchaser the right to continue to participate in the state’s Hospital Quality Assurance Fee program if the amount was not paid, which would have resulted in the purchaser forfeiting millions of dollars. The matter was not litigated, and it is thus unclear how this condition would have been resolved.<sup>50</sup>

### Conclusion

Some, or all, of the issues discussed in this paper arise in most bankruptcy cases involving a hospital. Any one of them may be complex and case dispositive. Hospital bankruptcy cases almost always involve interactions with federal and state governments, in which the government entities act as both creditors and regulators. The cases also almost always involve the intersection of bankruptcy law and federal healthcare statutes and regulations and great community interest with high profile press coverage and possibly political

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<sup>47</sup> *In re Exquisito Servs., Inc.*, 823 F.2d 151 (5th Cir. 1987); see generally *Toth v. Mich. State Hous. Auth.*, 136 F.3d 477, 480 (6th Cir. 1998) (holding that section 525(a) prohibits governmental conduct where the “government’s role [is] as a gatekeeper in determining who may pursue certain livelihoods”).

<sup>48</sup> At least some commentators disagree. See EH Sperow, *Section 525(a) of the Bankruptcy Code Plainly Does Not Apply to Medicare Provider Agreements*, 34 J. HEALTH LAW 487 (2001).

<sup>49</sup> Compare *In re Betty Owen Sch.*, 195 B.R. 23 (Bankr. S.D.N.Y. 1996) (holding that purchaser of a bankrupt school’s assets qualifies as an entity “associated” with the debtor under section 525(a)) with *In re Draughon Training Inst., Inc.*, 119 B.R. 927 (Bankr. W.D. La. 1990) (holding that state agency does not violate section 525(a) when it denies purchaser of schools the transfer of a license).

<sup>50</sup> For a more detailed discussion of this issue, see Samuel R. Maizel, Khoi Ta & Matt Weiss, *Extent of State’s Power at Issue in Nonprofit Hospital’s Asset Sale*, J. of Corporate Renewal (Vol. 30), Mar. 2017.

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considerations. Most importantly, many of the issues are disposed of differently in different jurisdictions. For all these reasons, hospital bankruptcy cases are particularly challenging.

SO ORDERED.

SIGNED this 30th day of November, 2017.



*Benjamin A. Kahn*  
BENJAMIN A. KAHN  
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
GREENSBORO DIVISION

IN RE:	)	
	)	Case No. 17-10775
MOREHEAD MEMORIAL HOSPITAL,	)	
	)	Chapter 11
Debtor.	)	

**ORDER (A) AUTHORIZING AND APPROVING THE SALE OF ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, (B) APPROVING THE ASSET PURCHASE AGREEMENT, AND (C) GRANTING RELATED RELIEF**

THIS MATTER came before the Court upon the motion (the “Sale Motion”) filed on August 30, 2017, by Morehead Memorial Hospital, Chapter 11 debtor and debtor-in-possession (the “Debtor”), for entry of an order (the “Sale Order” or the “Order”) (a) authorizing and approving the Sale<sup>1</sup> of the Transferred Assets<sup>2</sup> free and clear of all liens, claims, and interests under Section 363(f) of the Bankruptcy Code (defined below) pursuant to that certain Asset Purchase Agreement (the “APA” or the “Agreement”), in substantially the form attached as **Exhibit A** to this Sale Order, by and between the Debtor (the “Seller”) and University of North Carolina Health Care System (“UNCHCS” or the “Purchaser”); (b) approving the Agreement; and

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Sale Motion.

<sup>2</sup> As used in this Order, the term “Transferred Assets” shall have the meaning ascribed to the term “Assets” in the Agreement (defined below).



(c) granting related relief; and the Court having entered the Order (A) Establishing Bid Procedures Related to the Sale of the Debtor's Assets, (B) Scheduling a Hearing to Consider the Proposed Sale Approving the Form and Manner of Notice Thereof, (C) Establishing Procedures Relating to the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, Including Notice of Proposed Cure Amounts, and (D) Granting Related Relief on September 19, 2017 [Dkt. No. 220] (the "Bid Procedures Order"); and upon adequate and sufficient notice of the Sale Motion, the hearing before the Court on November 8, 2017 and November 13, 2017 (the "Sale Hearing"); and the Court having reviewed and considered (x) the Sale Motion and all relief related thereto, (y) the objections thereto, and (z) the statements of counsel and evidence presented in support of the relief requested at the Sale Hearing; and it appearing that the Court has jurisdiction over this matter; and it further appearing that the legal and factual bases set forth in the Sale Motion and at the Sale Hearing establish just cause for the relief granted herein; and it appearing that the relief requested in the Sale Motion is in the best interest of the Debtor, its estate, and creditors, and other parties-in-interest; and upon the record of the Sale Hearing and all other pleadings and proceedings in this Chapter 11 case, including the Sale Motion; and after due deliberation thereon and good and sufficient cause appearing therefore, the Court hereby finds and determines that:

**Jurisdiction and Venue**

1. This Court has jurisdiction to hear and determine the Sale Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N), and (O). Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

**Sale Necessity and Purpose**

2. The Debtor does not have the resources to continue to operate and will shut down

in the near future if a sale is not accomplished. There is insufficient time to obtain confirmation of a plan of reorganization prior to a sale.

3. This Court, at the request of all constituencies including the secured and unsecured creditors, approved and expedited a post-petition marketing period in recognition of this reality. The marketing in this case further was supported by extensive pre-petition exposure of the assets and operations to potential purchasers or investors during that time.

4. In furtherance of this effort, the parties requested that the Court enter the Bid Procedures Order, which it did on September 19, 2017. The Bid Procedures Order granted the Debtor and the other Consultation Parties, defined in the Bid Procedures Order to include the Official Committee of Unsecured Creditors (the "Committee"), Berkadia Commercial Mortgage, LLC ("Berkadia"), and the Department of Housing and Urban Development ("HUD"), broad latitude to conduct a sale with the primary purpose of maximizing the return for all constituencies in this case. Certain assets were marketed for sale as defined in the Bid Procedures Order as Transferred Assets while other assets were defined as Excluded Assets.

5. In a case such as this, those constituencies include entities beyond the creditors, and can include the community, such as the one in which this hospital is located. Specifically, the Bid Procedures Order provided that, notwithstanding any other provisions in the Bid Procedures Order, the Debtor, in consultation with the Consultation Parties, was permitted "to conduct the auction in any manner that may result in one or more of the highest and best offers for any or all of the Transferred Assets that will maximize the value of any of the Transferred Assets."

6. The Bid Procedures Order further provided a mechanism for the Debtor alone, in the exercise of its business judgment, to request that the Court consider a bid submitted after the

conclusion of the Auction.

**Auction**

7. Pursuant to the Bid Procedures Order, the Bid Procedures Order and the notice containing the date of the Auction, the Sale Hearing, and the deadline to file objections to the Sale were provided to all potential purchasers previously identified or solicited by the Debtor and its professionals, the office of the Bankruptcy Administrator, counsel for the Committee, the North Carolina Department of Health and Human Services, all parties that are known to possess or assert a lien claim, encumbrance or interest in or upon any of the transferred assets, all applicable United States state and local regulatory or taxing authorities, recording offices, or any governmental entity that have a reasonably known interest in the Transferred Assets, and all parties on the most current Master Service List filed in this case.

8. In accordance with the Bid Procedures Order, potential bidders were required to submit bids by 5:00 p.m. on October 23, 2017. The Debtor received multiple bids, and the Auction was scheduled for October 30, 2017.

9. At the Auction, the Debtor received seven bids, including bids for the Transferred Assets from Empower IHCC, Inc. ("Empower") and UNCHCS. The Debtor's board of trustees (the "Board") at the time determined that Empower's bid was the highest and best offer. After the Auction, the Board designated UNCHCS as the backup bidder that would be entitled to purchase the Transferred Assets subject to bankruptcy court approval if the Empower bid were not consummated or were disapproved by the Court.

10. Nevertheless, Berkadia, HUD, and First Citizens objected to the Empower bid, arguing that it did not recover the highest return for their claims, and they did not consent to the sale free and clear of the liens under 363(f). These objections started a negotiation whereby

Empower submitted a new and enhanced bid in order to resolve the objections (the “Empower Final Bid”).

11. The Debtor requested additional time for this negotiation to occur, and the Sale Hearing originally scheduled for November 6, 2017 was continued to November 8, 2017 at the Debtor’s request to facilitate this negotiation and the Empower Final Bid. When the parties requested the continuance, the Court informed them that the Court would have limited availability on November 8, 2017 and would have to leave before 12:45 p.m.

**Sale Hearing**

**I. November 8, 2017**

12. The Sale Hearing on November 8, 2017 did not go well for Empower. The evidence and testimony was not credible and tended to demonstrate that Empower did not have the ability to consummate the transaction or fulfill its obligations post-closing, or that the estate or any other entity would be able to enforce any breach. Empower testified that it only had \$5,000 in its bank account, but submitted a purported letter of commitment for up to \$15 million in funding. The commitment, however, required that the real estate assets that Empower was attempting to purchase from the estate for \$11 million, including the operating assets, be appraised for nearly twice that amount in order for the funding commitment to provide sufficient funds to close, let alone to operate post-closing. The testimony from the Debtor’s experts was that the hospital was operating at a \$475,000 per week loss. Therefore, instant cash would be needed for operations, as evidenced by Empower’s desire to have access to collections from the Debtor’s accounts receivable for 150 days after the collection of those accounts, which collections could total in the millions of dollars, and for which there would be no security for repayment to the estate after Empower uses them for operating capital.

13. Furthermore, it was troubling to the Court that the Debtor's financial advisor and investment banker each testified that neither had done any due diligence with respect to Empower's ability to close the transaction, but that they advised the Board to accept the Empower Final Bid. Two things were apparent from that testimony. First, it is difficult to understand how the Board exercised reasonable business judgment when it had no information or advice regarding Empower's ability to close. Second, the Board cared little about feasibility because Empower was apparently the only option to keep its hospital open. At the time the Debtor designated Empower as the highest and best offer, the higher monetary offer was the piecemeal sale that would not keep the hospital operating. Therefore, the only way the Board could have placed a higher value on the Empower bid was if it believed in the feasibility of the post-operations portion of the offer. Moreover, the Empower CEO conceded that an offer by a solvent corporation might be more valuable than a higher offer by an entity without significant assets.

14. When it became clear that the evidence would be insufficient to approve a sale to Empower, the Court adjourned the Sale Hearing for a conference with counsel, at which time the Court made clear that the parties should be ready with their evidence regarding consummation for November 13, 2017.

**II. November 13, 2017**

15. The continued Sale Hearing on November 13, 2017 did not ameliorate the Court's concerns, and Empower failed to meet its burden to establish its ability to close on this transaction and operate the business as the proposed asset purchase agreement (the "Empower APA") obligated it to do.

16. Empower testified that it would have no trouble obtaining funds from its banking

relationships, but had no explanation as to why it did not even request a funding commitment from its two main relationships. Empower attempted to convince the parties that it could perform by agreeing during the hearing to have an additional Empower entity, Empower HMS, commit to financial obligations in the Empower APA. In its presentation, Empower presented financial exhibits as though it owned significant and unencumbered assets outright. At least two things came to light in cross examination, however. First, Empower did not directly own the assets, but the assets were owned by subsidiaries. Second, and more troubling, Empower was a minority owner of the entities. Empower argues that even though it is a minority interest, it controls the entities as CEO and chairman of the board. But its only answer to how it intended to raid those corporations in which it holds a minority stake for the benefit of its own business venture was that the companies are informally operated and operated more like family businesses.

17. Also troubling is that Empower testified that it is currently in negotiations to acquire remaining assets in the various Empower HMS subsidiaries, but offered no testimony on how that would affect its ability to close or its cash flow. On the contrary, the testimony was that, if Empower depleted cash to close, it would be stretched even further operationally.

18. Finally, the Empower Final Bid had added post-Auction contingencies that put the estate at significant risk, including a contingency for regulatory approvals and a potential additional 60-day delay for attempting to obtain those approvals, during which time the Debtor would be burning through \$475,000 of negative cash flow each week. The current authority for the Debtor to use cash collateral was set to expire on November 17, 2017, subject to extensions by consent or by order of this Court.

19. Not only did the Court find that the Board could not have exercised its sound

business judgment in accepting the Empower Final Bid after the October 30 Auction, but the Court was now further in the awkward position of having had that business judgment changed in light of a revision to UNCHCS's bid for the Transferred Assets as fully set forth in the APA (the "UNCHCS Final Bid").

20. The Court agreed with the Board's revised business judgment and found it informed. The Debtor supported UNCHCS's Final Bid.

21. As did Empower, UNCHCS improved its bid after the Auction, and the UNCHCS Final Bid is now actually higher and better than the Empower Final Bid. UNCHCS offered its state-audited financials in support of its bid, which demonstrated that UNCHCS can close its bid. UNCHCS is a government entity with government and charitable subsidiaries. The North Carolina Attorney General (the "NCAG") supported the Sale to UNCHCS.

22. The Court considered exercising its discretion to reopen the bidding in this case to permit further bidding at an auction the afternoon of November 13, 2017, and the following factors weighed heavily in favor of reopening the bidding to permit the Court to consider both the UNCHCS Final Bid and the Empower Final Bid: the increased price; the heavy weight of evidence in favor of the feasibility of UNCHCS's offer, including the commitment of UNCHCS to operate the hospital in accordance with its charitable mission; the fact that both parties increased their offers post-Auction; and the Debtor's request that the Court consider the UNCHCS in furtherance of the Debtor's fiduciary obligations to the estate.

23. Opening the bidding might have created a higher offer from UNCHCS or Empower, but the Court still would have been unable to confirm any sale to Empower. A higher bid from Empower only would have exacerbated the Court's feasibility concerns. Therefore, the Court approved the Sale to the backup bidder, UNCHCS.

**Notice of Sale**

24. Notice of the Sale of the Transferred Assets and the Sale Hearing was reasonably calculated to provide all interested parties with timely and proper notice of the Sale and Sale Hearing. As evidenced by the affidavits of service previously filed with the Court, proper, timely, adequate, and sufficient notice of the Sale Hearing, and the transaction contemplated thereby, was provided in accordance with the orders previously entered by this Court, Section 363 of Title 11 of the United States Code (the "Bankruptcy Code"), and Rules 2002, 6004, 6006, 9007 and 9008 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"). The notices described herein were good, sufficient, and appropriate under the circumstances, and no other or further notice of the Sale Motion, Sale Hearing, or Sale shall be required. The disclosures made by the Debtor concerning the Sale Motion, the Auction, and the designations regarding the successful and backup bidders were good, complete and adequate. A reasonable opportunity to object and to be heard with respect to the Sale and the Sale Motion and the relief requested has been afforded to all interested persons and entities.

**Good Faith of the Purchaser**

25. The Sale was negotiated, proposed, and entered into by the Debtor and by the Purchaser without collusion, in good faith and from arms-length bargaining positions. The Purchaser is not an insider or affiliate of the Debtor as those terms are defined by the Bankruptcy Code. Neither the Debtor nor the Purchaser have engaged in any conduct that could cause or permit the Agreement to be avoided or costs and damages to be imposed under Section 363(n) of the Bankruptcy Code. Specifically, the Purchaser has not acted in a collusive manner with any person, and the aggregate price paid by the Purchaser for the Transferred Assets was not controlled by an agreement among the bidders. The Purchaser is purchasing the Transferred



Assets in good faith and is a good faith buyer within the meaning of Section 363(n) of the Bankruptcy Code. The Purchaser proceeded in good faith in all aspects of the Sale; accordingly the Purchaser is entitled to all of the protections afforded under Section 363(m) of the Bankruptcy Code.

**No Fraudulent Transfer**

26. The consideration provided by the Purchaser pursuant to the Agreement (i) is fair and reasonable, (ii) is the highest or otherwise best offer for the Transferred Assets, (iii) will provide a greater recovery for the Debtor's estate than would be provided by any other available alternative, and (iv) constitutes reasonably equivalent value (as those terms are defined in each of the Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, and Section 548 of the Bankruptcy Code) and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia. The Debtor's determination that the Agreement constitutes the highest or otherwise best offer for the Transferred Assets constitutes a valid and sound exercise of the Debtor's business judgment. Approval of the Sale Motion and the Agreement, and the consummation of the transactions contemplated thereby, is in the best interests of the Debtor, its estate, creditors, and other parties-in-interest.

27. The Purchaser is not a mere continuation of the Debtor or its estate, and there is no continuity of enterprise between the Purchaser and the Debtor. The Purchaser is not holding itself out to the public as a continuation of the Debtor. The Purchaser is not a successor to the Debtor or its estate, and the Sale does not amount to a consolidation, merger, or de facto merger of the Purchaser and the Debtor.

**Validity of Transfer**

28. The Debtor has (i) full corporate power and authority to execute and deliver the Agreement and all other documents contemplated thereby, (ii) all corporate and partnership authority necessary to consummate the transactions contemplated by the Agreement, and (iii) taken all corporate action necessary to authorize and approve the Agreement and the consummation of the transactions contemplated thereby. The Sale has been duly and validly authorized by all necessary corporate action. No consents or approvals, other than those expressly provided for in the Agreement, are required for the Debtor to consummate the Sale, Agreement, or transactions contemplated thereby.

29. The Agreement was not entered into for the purpose of hindering, delaying, or defrauding creditors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession, or the District of Columbia. Neither the Debtor nor the Purchaser is fraudulently entering into the transaction contemplated by the Agreement.

30. The Debtor has good and marketable title to the Transferred Assets and is the lawful owner of the Transferred Assets. Subject to the indefeasible payment in full of the purchase price by the Purchaser and all other provisions of the Agreement, and pursuant to Section 363(f) of the Bankruptcy Code, the transfer of the Transferred Assets to the Purchaser will be, as of the closing of the transaction contemplated by the Agreement and this Order (the "Closing Date"), a legal, valid, and effective transfer of the Transferred Assets, which will vest the Purchaser with all right, title, and interest of the Seller to the Transferred Assets free and clear of (i) all liens (as that term is defined in Section 101(37) of the Bankruptcy Code), claims, and Encumbrances (defined below) (including any right of first offer or refusal regarding or option to purchase any real property) relating to, accruing or arising any time prior to the Closing Date (collectively, the "Liens") and (ii) all debts arising under, relating to, or in

connection with any act of the Debtor or claims (as that term is defined in Section 101(5) of the Bankruptcy Code), liabilities, obligations, demands, guaranties, options, rights, contractual commitments, restrictions, interests, and matters of any kind and nature, whether arising prior to or subsequent to the commencement of this case, and whether imposed by agreement, understanding, law, equity, or otherwise (including, without limitation, rights with respect to Claims (defined below) and Liens (x) that purport to give to any party a right of setoff or recoupment against, or a right or option to effect any forfeiture, modification, profit sharing interest, right of first refusal, purchase, or repurchase right or option, or termination of, the Debtor's or the Purchaser's interests in the Transferred Assets, or any similar rights, or (y) in respect of taxes, restrictions, rights of first refusal, charges of interests of any kind or nature, if any, including, without limitation, any restriction of use, assignment, voting, transfer, receipt of income or other exercise of any attributes of ownership) (collectively, as defined in this clause (ii), "Claims"), relating to, accruing, or arising any time prior to the Closing Date, except as expressly provided in this Order and/or the Agreement.

**Section 363(f) Is Satisfied**

31. The conditions of Section 363(f) of the Bankruptcy Code have been satisfied in full; therefore, the Debtor may sell the Transferred Assets free and clear of all Liens, Claims, Encumbrances and other interests of any kind or nature whatsoever against the Debtor, its estate, or any of the Transferred Assets (except as otherwise provided in this Order and/or the Agreement).

**Compelling Circumstances for an Immediate Sale**

32. Good and sufficient reasons for approval of the Agreement and the Sale have been articulated. The relief requested in the Sale Motion is in the best interests of the Debtor,

its estate, its creditors, and other parties-in-interest. The Debtor has demonstrated (i) good, sufficient, and sound business purposes and justifications for approving the Agreement and (ii) compelling circumstances for the Sale outside of (a) the ordinary course of business, pursuant to Section 363(b) of the Bankruptcy Code and (b) a plan of reorganization, in that, among other things, the immediate consummation of the Sale to the Purchaser is necessary and appropriate to maximize the value of the Debtor's estate and the Sale will provide the means for the Debtor to maximize distributions to their creditors.

33. Given all of the circumstances of this Chapter 11 case and the adequacy and fair value of the consideration under the Agreement, the proposed Sale constitutes a reasonable and sound exercise of the Debtor's business judgment and should be approved.

34. The Sale does not constitute a sub rosa Chapter 11 plan for which approval has been sought without the protections that a disclosure statement would afford. The Sale neither impermissibly restructures the rights of the Debtor's creditors nor impermissibly dictates a liquidating plan of reorganization for the Debtor.

35. The inclusion of patients' personally identifiable information in the Transferred Assets is consistent with the Debtor's pre-petition privacy policy because the transfer is necessary to the ongoing provision of health care services. Pursuant to 11 U.S.C. § 363(b)(1)(A), the Debtor may sell patients' personally identifiable information without the need for the appointment of a consumer privacy ombudsman.

36. The consummation of the Sale is legal, valid, and properly authorized under all applicable provisions of the Bankruptcy Code, including, without limitation, Section 363(b), Section 363(f), and Section 363(m) thereof.

**Objections**

**I. North Carolina Attorney General**

37. There were a number of objections to the Sale, the first of which was the objection of the NCAG. The Court previously overruled the objection by the NCAG to the extent that it sought to delay the Sale in order to review Empower under N.C. Gen Stat 55A-12-02(g). This section requires a charitable organization to give the NCAG at least 30 days prior notice to the sale or disposition of a majority of its assets. The NCAG may require an additional 30-day period to review the proposed transaction by providing written notice to the selling organization prior to the expiration of the first 30 days.

38. In this case, the NCAG received written notice of the proposed Sale on August 30, 2017. The Bid Procedures Order was mailed on September 19, 2017 and provided objections were due before November 2, 2017. The NCAG neither objected to the Sale prior to November 2, 2017, nor requested additional time to review the Sale within the 30-day period after receiving the Sale Motion. Therefore, the Court overruled the objection with respect to the request for additional time for the NCAG to review and/or approve of the Sale.

39. Moreover, Section 1221(e) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, which has not made its way into the Bankruptcy Code, but nevertheless is law, made clear that the approval of this Court for a sale under Section 363 is all that is necessary to effectuate the sale and that no further approval by another state agency or court is necessary. See In re HHH Choices Health Plan, LLC, 554 B.R. 697, 700 (Bankr. S.D.N.Y. 2016). Specifically, Section 1221(e) states as follows:

Nothing in this section shall be construed to require the court in which a case under chapter 11 of title 11, United States Code, is pending to remand or refer any proceeding, issue, or controversy to any other court or to require the approval of any other court for the transfer of property.

Pub. L. No. 109-8, § 1221(e) (2005).

40. As the court recognized in the HHH Choices case, nothing here can be construed to affect any regulatory requirements, licensing issues, or other approvals that may be necessary, only that the NCAG has received sufficient notice and has been heard on its concerns regarding the charitable nature of the Debtor and any successor entity, and the Court has considered the objections of the NCAG in considering whether to approve the Sale to Empower and, subsequently, UNCHCS. The NCAG's objection is overruled to the extent it was not withdrawn with respect to the proposed sale to UNCHCS, which the NCAG ultimately supported.

**II. First-Citizens Bank & Trust Company**

41. First-Citizens Bank & Trust Company ("First-Citizens") objects to the Sale, free and clear of its asserted liens, to the extent that it is not paid in full at closing. First Citizens filed proof of claim number 14 in this case asserting a claim in the amount of \$1,328,452.44. Two pieces of real property purportedly secure its claim. Under the Bid Procedures Order, First Citizens reserved its right to credit bid under Section 363(k), which it did at the Auction, allocating the total of its claim between its two properties. First Citizens argues that its credit bid establishes the value of its collateral and that it is therefore fully secured. No party disputes that contention. Nevertheless, that does not mean First Citizens is entitled to be paid in full at closing of any Sale. First Citizens' consent is unnecessary to sell the property securing its liens free and clear of those liens in this case. With respect to that property, the sale price is in an amount at least as much as the face value of those liens due to its credit bid. Therefore, the sale can be consummated free and clear of First Citizens' liens under Section 363(f)(3) with all liens transferred to proceeds, and the rights of the estate to seek a surcharge of those proceeds is

preserved. First Citizens' objection is overruled.

**III. Other Objections**

42. All other objections to the Sale are overruled to the extent they have not been withdrawn, waived, or settled, as set forth below.

**IT IS HEREBY ORDERED THAT:**

**General Provisions**

43. The relief requested in the Sale Motion, including the Sale, is granted and approved to the extent set forth in this Order.

44. Any objections to the Sale Motion or the relief requested therein that have not been withdrawn, waived, or settled by announcement to the Court during the Sale Hearing, the provisions of this Order, or by stipulation filed with the Court, including any and all reservations of rights included in such objections or otherwise (except the reservations of right and objections expressly preserved in this Order), are hereby denied and overruled with prejudice.

**Approval of the Agreement**

45. The Agreement and all of the terms and conditions thereof are hereby approved and incorporated herein by reference.

46. The Sale of the Transferred Assets and the consideration provided by the Purchaser under the Agreement is fair and reasonable and shall be deemed for all purposes to constitute a transfer for reasonably equivalent value and fair consideration under the Bankruptcy Code and any other applicable law.

47. Pursuant to Sections 363(b) and (f) of the Bankruptcy Code, the Debtor is authorized and empowered to take any and all actions necessary or appropriate to (i) consummate the Sale pursuant to and in accordance with the terms and conditions of the

Agreement, (ii) close the Sale as contemplated in the Agreement and this Order, and (iii) execute and deliver, perform under, consummate, implement, and fully close the Agreement to the Purchaser, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Agreement and the Sale.

48. This Order shall be binding in all respects upon (a) the Debtor, (b) its estate, (c) all creditors of the Debtor, (d) all holders of Liens, Claims, Encumbrances or other interests (whether known or unknown) in, against, or on all or any portion of the Transferred Assets, (d) the Purchaser and all successors and assigns of the Purchaser, (e) the Transferred Assets, and (f) any trustees, if any, subsequently appointed in the Debtor's Chapter 11 case or upon a conversion of this case to a case under Chapter 7 under the Bankruptcy Code. This Order and the Agreement shall inure to the benefit of the Debtor, its estate and creditors, the Purchaser, and the respective successors and assigns of each of the foregoing.

**Transfer of the Assets**

49. Pursuant to Sections 363(b) and 363(f) of the Bankruptcy Code, the Debtor is authorized to transfer the Transferred Assets to the Purchaser on the Closing Date upon satisfaction and fulfillment or waiver of the conditions to Closing contained in the Agreement, and such transfer shall (a) constitute a legal, valid, binding, and effective transfer of the Transferred Assets, (b) vest the Purchaser with title to the Transferred Assets, and (c) upon the Debtor's receipt of the purchase price and all other provisions of the Agreement, be free and clear of all Liens, Claims, Encumbrances and other interests of any kind or nature whatsoever (except as otherwise provided in this Order and/or the Agreement), including but not limited to, successor or successor-in-interest liability and Claims, with such Liens, Claims, Encumbrances and other interests to attach to the proceeds of the Sale in the order of their priority, with the



same validity, extent, force, and effect that they have against the Transferred Assets as of the Closing Date. Upon the closing of the Sale (the “Closing”), the Purchaser shall take title to and possession of the Transferred Assets subject only to any interests and/or obligations expressly provided for in this Order and/or the Agreement.

50. Except as expressly provided for in this Order and/or the Agreement, all persons and entities that are in possession of some or all of the Transferred Assets on the Closing Date are directed to surrender possession of such Transferred Assets to the Purchaser or its assignee at the Closing. The provisions of this Order authorizing the sale of the Transferred Assets free and clear of Liens, Claims, Encumbrances and other interests of any kind or nature whatsoever (other than as expressly provided for in this Order and/or the Agreement) shall be self-executing, and neither the Debtor nor the Purchaser shall be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate, and implement the provisions of this Order; provided, however, that this paragraph shall not excuse the Debtor or the Purchaser from performing any and all of their respective obligations under the Agreement.

51. The Debtor is hereby authorized to take any and all actions necessary to consummate the Agreement, including any actions that otherwise would require further approval by the Debtor’s Board, without the need of obtaining such approvals.

52. After the Closing has occurred in accordance with the Agreement and this Order, a certified copy of this Order may be filed with the appropriate clerk and/or recorded with the recorder to act to cancel any liens and other Encumbrances (defined below) of record except with respect to any interests expressly provided for in this Order and/or the Agreement.

53. On the Closing Date (and after the Closing has occurred in accordance with the

Agreement and this Order), this Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance, and transfer of the Seller's interests in the Transferred Assets. This Order is and shall be effective as a determination that, on the Closing Date (and after the Closing has occurred in accordance with the Agreement and this Order), all encumbrances and other interests of any kind or nature whatsoever existing as to the Transferred Assets prior to the Closing Date, including without limitation any hypothecation, encumbrance, liability, Lien, Claim, Interest, security interest, security agreement, interest, mortgage, pledge, restriction, covenant, charge, license, preference, reclamation claim, cause of action, suit, contract, right of first refusal, offset and recoupment (except as specifically excepted in this Order and/or the Agreement), alter-ego, transferee, or successor liability claims, tax (including federal, state, and local tax), governmental order of any kind or nature, conditional sale, or other title retention agreement or lease having substantially the same effect as any of the foregoing, assignment or deposit arrangement in the nature of a security device, whether secured, unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, perfected or unperfected, allowed or disallowed, matured or unmatured, disputed or undisputed, material or immaterial, known or unknown (referred collectively, whether having arisen, been incurred or accrued pre-petition or post-petition, whether imposed by agreement, understanding, law, equity, or otherwise, as "Encumbrances") pursuant to Section 363(f) of the Bankruptcy Code, except as otherwise provided in this Order and/or the Agreement, shall have been unconditionally released, discharged, and terminated with respect to the Transferred Assets, and that the conveyances described herein have been effected. This Order is and shall be binding upon and govern the acts of all persons and entities, including, without limitation, all filing agents, filing officers, title agents, title

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companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease; and each of the foregoing persons and entities is hereby authorized to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Agreement.

54. To the greatest extent available under applicable law, the Purchaser shall be authorized, as of the Closing Date (and after the Closing has occurred in accordance with the Agreement and this Order), subject to the provisions of the Agreement, to operate under any (i) federal, state, or local governmental or regulatory license, permit, registration, and (ii) governmental authorization or approval of the Debtor with respect to the Transferred Assets, and all such licenses, permits, registrations, and governmental authorizations and approvals are deemed to have been, and hereby are, deemed to be transferred to the Purchaser as of the Closing Date free and clear of Liens, Claims, Encumbrances and other interests of any kind or nature whatsoever.

55. To the extent permitted by Section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any permit or license relating to the operation of the Transferred Assets sold, transferred, or conveyed to the Purchaser on account of the filing or pendency of the Debtor's Chapter 11 case or the consummation of the transactions contemplated by the Agreement. Each and every federal, state, and local governmental agency or department is hereby authorized to accept any and all documents and instruments necessary and appropriate to

consummate the transactions contemplated by the Agreement and this Order.

56. Notwithstanding anything contained in this Order or the Agreement to the contrary, nothing in this Order or the Agreement releases the Purchaser from compliance with any applicable governmental license, permit, registration, authorization, or approval of or with respect to a governmental unit as though such sale took place outside of bankruptcy. The Purchaser shall continue to honor and comply with the terms and requirements of any such applicable license, permit, registration, authorization, or approval.

57. Notwithstanding anything contained in this Order or the Agreement to the contrary, nothing in this Order or the Agreement shall authorize the transfer or assignment of any governmental license if such transfer or assignment is prohibited by applicable non-bankruptcy law.

58. The Debtor is authorized and empowered to cause to be filed with the secretary of state of any state or other applicable officials of any applicable governmental units any and all certificates, agreements, or amendments necessary or appropriate to effectuate the transaction contemplated by the Agreement, any related agreements, and this Order, including amended and restated certificates or articles of incorporation and by-laws or certificates or articles of amendment, and all such other actions, filings, or recordings as may be required under appropriate provisions of the applicable laws of all applicable governmental units or as any of the officers of the Debtor may determine are necessary or appropriate. The execution of any such document or the taking of any such action shall be, and hereby is, deemed conclusive evidence of the authority of such person to so act. Without limiting the generality of the foregoing, this Order shall constitute all approvals and consents, if any, required by the applicable business corporation, trust, and other laws of the applicable governmental units,

including for the change of the Debtor's corporate name, with respect to the implementation and consummation of the Agreement, any related agreements and this Order, and the transactions contemplated thereby and hereby.

59. All persons and entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Debtor to sell and transfer the Transferred Assets to the Purchaser in accordance with the terms of the Agreement and this Order.

60. The Excluded Assets (as defined in the Agreement, the "Excluded Assets") are not being sold to and are not property of the Purchaser. If any Excluded Assets and/or proceeds thereof come into the possession of the Purchaser, (i) the Purchaser shall hold such Excluded Asset and/or the proceeds thereof in trust for the benefit of the Debtor and (ii) the Purchaser shall promptly deliver such Excluded Asset and/or the proceeds thereof to the Debtor or its designated assignee.

**Assumption and Assignment of Executory Contracts and Unexpired Leases**

61. Pursuant to Sections 365(a), (b), (c), and (f) of the Bankruptcy Code, the Debtor is authorized to assume the Assumed Executory Contracts subject to the procedures provided herein; provided, however, that there shall be no assumption of any such Assumed Executory Contract absent simultaneous assignment thereof to the Purchaser.

62. The Assumed Executory Contracts identified on Schedule 2.7 of the Agreement are deemed assumed by the Debtor and assigned to the Purchaser effective as of the Closing Date, with cure amounts as follows: (i) if the relevant counterparty did not object to the Debtor's Amended Notice of Executory Contracts and Unexpired Leases Subject to Possible Assumption and Assignment and Proposed Cure Amounts [Dkt. 301] (the "Cure Notice") by

November 10, 2017 (the “Cure Objection Deadline”), in the amount stated in the Cure Notice; or (ii) if the relevant counterparty did object to the Cure Notice by the Cure Objection Deadline, in an amount agreed to by the Purchaser and the relevant counterparty or determined by order of this Court.

63. The Purchaser shall not be responsible for any Liabilities (as defined in the Agreement) of the Debtor related to the Debtor’s participation in Programs (as defined in the Agreement), including any liability or obligation for overpayments, recapture, recoupment, or setoff for previously paid or reimbursed amounts, and all such Liabilities are determined to be in the amount of zero dollars (\$0) pursuant to the Cure Notice.

64. Notwithstanding Section 2.7 and Schedule 2.7 of the Agreement, no later than one (1) day before the Closing Date, the Purchaser may serve written notice to the Debtor and the Committee of the Purchaser’s modification of Schedule 2.7 of the Agreement to add any executory contract or unexpired lease as an Assumed Executory Contract (each an “Additional Assumed Executory Contract” which shall also be an “Assumed Executory Contract” for the purposes of this Order), it being understood and agreed that any such assumption and assignment shall be treated consistent with the terms of the Agreement and this Order. The Debtor shall file a notice identifying the Additional Assumed Executory Contracts and the counterparties thereto with the Court as soon as practical after receiving written notice from the Purchaser pursuant to this paragraph. The notice filed with the Court shall also be served upon the counterparties to the Additional Assumed Executory Contracts, the Committee, the Purchaser, and the Bankruptcy Administrator.

65. The Additional Assumed Executory Contracts are deemed assumed by the Debtor and assigned to the Purchaser effective as of the Closing Date, with cure amounts as

follows: (i) if the relevant counterparty did not object to the Cure Notice by the Cure Deadline, in the amount stated in the Cure Notice; or (ii) if the relevant counterparty did object to the Cure Notice by the Cure Objection Deadline, in an amount agreed to by the Purchaser and the relevant counterparty or determined by order of this Court.

66. The Court will schedule a hearing to consider any objections to the Cure Notice that were filed by the Cure Objection Deadline to the extent that any such objections concern Assumed Executory Contracts (the “Disputed Assumed Contracts”). In the event that the Court declines to approve the assumption and assignment of any Disputed Assumed Contract following the hearing, such contract or lease shall be deemed rejected. Notwithstanding anything to the contrary herein or in the Agreement, the Purchaser shall be solely responsible for performance of all obligations and payment of all amounts arising under the Disputed Assumed Contracts from and after the Closing Date through the rejection date of each such contract.

67. As part of its consideration for the Transferred Assets and except as provided in and limited by the Agreement and this Order with respect to Cure Payments (as defined in the Agreement), the Purchaser will cure any and all defaults with respect to the Assumed Executory Contracts and compensate all counterparties for any actual pecuniary loss resulting from such defaults.

68. On or as promptly after the Closing Date as is practical, the cure amounts relating to the Assumed Executory Contracts (including the Additional Assumed Executory Contracts) to which the Purchaser and the applicable counterparty have agreed, or that have been fixed by operation of this Order or another order of this Court, shall be paid by the Purchaser. Cure amounts for Assumed Executory Contracts that are still subject to dispute at

that time shall be paid (i) on or as promptly after the Closing Date as is practical or (ii) fourteen (14) days after a final, non-appealable order determining the cure amount has been entered by this Court, whichever is later. Payment of the cure amounts shall be deemed to discharge the Debtor's obligations to (i) cure, or provide adequate assurance that the Debtor will promptly cure, any defaults under the Assumed Executory Contracts; and (ii) compensate, or provide adequate assurance that the Debtor will promptly compensate, any counterparty to the Assumed Executory Contracts for any actual pecuniary loss resulting from any default under the Assumed Contracts. Pursuant to Section 365(k) of the Bankruptcy Code, the Debtor shall have no liabilities for any claims arising or relating to or accruing post-Closing under any of the Assumed Executory Contracts.

69. Except as provided in the Agreement and this Sale Order, the Debtor shall be responsible for all obligations that arise between the Petition Date and Closing Date relating to all Assumed Executory Contracts unless otherwise agreed to by and between the Debtor, the Purchaser, and the counterparty to the relevant Assumed Executory Contract.

70. In accordance with Sections 365(b)(2) and (f) of the Bankruptcy Code, upon assignment of the Assumed Executory Contracts to the Purchaser, (i) the Purchaser shall have all of the rights of the Debtor thereunder and each provision of such Assumed Executory Contracts shall remain in full force and effect for the benefit of the Purchaser notwithstanding any provision in any such Assumed Executory Contract or in applicable law that prohibits, restricts, or limits in any way such assignment or transfer, and (ii) no Assumed Executory Contract may be terminated, or the rights of any party modified in any respect, including pursuant to any "change of control" clause, by any other party thereto as a result of the consummation of the transactions contemplated by the Agreement.



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71. Any party to a personal services contract that has not objected to the assignment thereof is deemed to consent to such assignment pursuant to Section 365(c) of the Bankruptcy Code to the extent that such contract is an Assumed Executory Contract.

72. The failure of the Debtor or the Purchaser to enforce, at any time, one or more terms or conditions of any Assumed Executory Contract shall not be a waiver of such terms and conditions or of the Debtor's or the Purchaser's rights to enforce every term and condition of the Assumed Executory Contracts.

73. Except as otherwise provided herein, unless and until an Assumed Executory Contract is assumed and assigned pursuant to the terms of this Order, the Purchaser shall have no liability under any such Assumed Executory Contract; provided, however, that the Purchaser shall remain solely responsible for all accrued but unpaid costs and obligations arising under such contracts and leases between the Closing Date and the assumption/assignment or rejection date.

74. All executory contracts and unexpired leases other than the Assumed Executory Contracts (including the Additional Assumed Executory Contracts) are deemed rejected effective as of the Closing Date (the "Rejected Contracts"). Not later than five (5) days after the Closing Date, the Debtor shall file with the Court and serve on all counterparties to the Rejected Contracts, the Committee, the Purchaser, and the Bankruptcy Administrator a notice of all Rejected Contracts (the "Rejection Notice"). The Rejection Notice shall (i) identify the name of the rejected contract or lease, (ii) identify the names of the parties to such rejected contract or lease, and (iii) provide notice to the recipients that any proof of claim asserting damages arising from the rejection of the Rejected Contracts shall be filed with the Court and served on the Debtor and the Committee no later than thirty (30) days after the date of the

Rejection Notice. The Court specifically approves the thirtieth (30<sup>th</sup>) day after the date of the Rejection Notice (the “Rejection Damages Bar Date”) as the bar date for filing proofs of claim with respect to rejection damages claims associated with the Rejected Contracts. Any rejection damages claim filed after the Rejection Damages Bar Date shall be forever barred and be deemed disallowed without any further order of the Court.

75. In the event that the Sale does not close, none of the Debtor’s executory contracts or unexpired leases shall be assumed or rejected by virtue of this Order and shall remain subject to further administration in this case.

**Other Provisions**

76. This Order and the Agreement shall be binding in all respects upon the Purchaser, all creditors of the Debtor, all successors and assigns of the Debtor, any of their respective affiliates and subsidiaries, and any trustees, examiners, “responsible persons,” or other fiduciaries appointed in the Debtor’s bankruptcy case or upon a conversion of such case to a case under Chapter 7 of the Bankruptcy Code in accordance with the Bankruptcy Code and other applicable law. The Agreement shall not be subject to rejection or avoidance under any circumstances.

77. The Agreement may be modified, amended, or supplemented by the parties thereto, in consultation with the Committee, in a writing signed by the parties, and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment, or supplement does not have a material adverse effect on the Debtor’s estate and is consistent with the terms of this Order.

78. The consideration provided by the Purchaser to the Debtor pursuant to the Agreement for the Transferred Assets constitutes reasonably equivalent value and fair

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consideration under the Bankruptcy Code, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, and under the laws of the United States, any state, territory, possession or the District of Columbia.

79. Except as otherwise expressly provided for in this Order or the Agreement, the Purchaser shall not assume, nor be deemed to assume, or in any way be responsible for any liability or obligation of the Debtor and/or its estate, including, but not limited to, any bulk sales or similar law, successor or transferee liability, antitrust law, labor law, de facto merger or substantial continuity, whether known or unknown as of the Closing Date, now existing or hereafter raised, which may be asserted or unasserted, fixed or contingent, liquidated or unliquidated with respect to the Debtor, or any of their predecessors or affiliates or any obligations of the Debtor or their predecessors or affiliates arising prior to the Closing Date, for any liabilities, debts, commitments or obligations (whether known or unknown, disclosed or undisclosed, absolute, contingent, inchoate, fixed or otherwise) in any way whatsoever relating to or arising from the Transferred Assets or the Debtor's operation of its businesses or use of the Transferred Assets on or prior to the Closing Date, including, but not limited to, any liabilities, debts, commitments, or obligations arising prior to the Closing and under or in connection with: (a) any employment or labor agreements (including any collective bargaining agreements), consulting agreements, severance arrangements, change-in-control agreements or other similar agreement to which the Debtor are a party; (b) any pension, welfare, compensation or other employee benefit plans, agreements, practices and programs, including, without limitation, any pension plan of the Debtor; (c) the cessation of the Debtor's operations, pension, welfare, compensation, or other employee benefit plans, agreements, practices, and programs, obligations that might otherwise arise from or pursuant to applicable law; (d) workmen's compensation,

occupational disease, or unemployment or temporary disability insurance claims; (e) environmental liabilities, debts, claims, or obligations arising from conditions first existing on or prior to Closing; (f) any liabilities, debts, commitments or obligations of, or required to be paid by, the Debtor for any taxes of any kind for any period; (g) any liabilities, debts, commitments or obligations for any taxes relating to the business of the Debtor or the Transferred Assets for or applicable to the pre-Closing period; (h) any litigation; (i) any products liability, other tort or similar claims, whether pursuant to any state or any federal law; and (j) any excluded liabilities in the Agreement. The Purchaser has given substantial consideration under the Agreement for the benefit of the holders of any Liens. The consideration given by the Purchaser shall constitute valid and valuable consideration for the releases of any potential claims of successor or transferee liability of the Purchaser, which releases shall be deemed to have been given in favor of the Purchaser by all holders of Liens against or interests in the Debtor or any of the Transferred Assets.

80. The transactions contemplated by the Agreement are undertaken by the Purchaser without collusion and in good faith, as that term is defined in section 363(m) of the Bankruptcy Code, and, accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale, unless such authorization and such Sale are duly stayed pending such appeal. The Purchaser is a good faith buyer within the meaning of Section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of Section 363(m) of the Bankruptcy Code.

81. Nothing contained in any plan of reorganization or liquidation, or order of any type or kind entered in (a) this Chapter 11 case, (b) any subsequent Chapter 7 case into which this Chapter 11 case may be converted, or (c) any related proceeding subsequent to entry of this

Order, shall conflict with or derogate from the provisions of the Agreement (as modified by this Order) or the terms of this Order.

82. The failure to specifically include any particular provision of the Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Agreement be authorized and approved in its entirety; *provided, however*, that this Order shall govern if there is any inconsistency between the Agreement (including all Ancillary Agreements) and this Order. Likewise, all of the provisions of this Order are non-severable and mutually dependent.

83. As the sale, transfer, assignment, conveyance and delivery of the Transferred Assets are in exchange for the purchase price and provisions of the Agreement, no withholding of U.S. federal income tax pursuant to sections 1441 or 1442 of the Internal Revenue code is required.

84. The Court shall retain jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Order and the Agreement, all amendments thereto and any waivers and consents thereunder and each of the agreements executed in connection therewith to which the Debtor is a party, and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Sale, including, but not limited to, retaining jurisdiction to (a) compel delivery of the Transferred Assets to the Purchaser, (b) interpret, implement, and enforce the provisions of this Order, and (c) protect the Purchaser against any Liens, Claims, Encumbrances or other interest in or against the Debtor or the Transferred Assets of any kind or nature whatsoever.

85. This Order shall take effect immediately, shall not be stayed, and the Court finds and concludes that good cause exists to waive any applicable stay provided under Bankruptcy

Rules 6004(g), 6004(h), 6006(d), 7062, 9014, or otherwise. Accordingly, any such stay is hereby waived, and the Debtor and the Purchaser are authorized to close the Sale immediately upon entry of this Order in accordance with and subject in all respects to the terms and conditions of the Agreement.

86. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a) notwithstanding Bankruptcy Rules 6004(h) and 6006(d).

87. To the extent that this Order is inconsistent with any prior order or pleading with respect to the Sale Motion in this Chapter 11 case, the terms of this Order shall govern.

88. The Debtor and the Purchaser shall provide reasonable updates to the Committee, the Bankruptcy Administrator, and those parties asserting liens on the Transferred Assets regarding their respective efforts to satisfy the conditions to Closing set forth in the Agreement. If it becomes apparent that the Debtor and the Purchaser will be unable to satisfy any condition to Closing set forth in the Agreement, the Debtor and the Purchaser shall promptly notify each other, the Committee, the Bankruptcy Administrator, those parties asserting liens on the Transferred Assets, and if necessary, the Court.

89. Subject to the entry of an order confirming a plan of liquidation in this case or other further order of this Court, there shall be no distribution of cash proceeds of the Sale to any party.

90. Nothing contained in this Order shall be deemed an allocation of the purchase price to any of the Transferred Assets, and all rights, claims, and objections of all parties in interest with respect to such an allocation are expressly reserved and preserved.

--END OF DOCUMENT--

# EXHIBIT A

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**ASSET PURCHASE AGREEMENT**

**BY AND BETWEEN**

**MOREHEAD MEMORIAL HOSPITAL**

(AS SELLER)

**AND**

**UNIVERSITY OF NORTH CAROLINA HEALTH CARE SYSTEM**

(AS PURCHASER)

**Dated as of November \_\_, 2017**

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**ASSET PURCHASE AGREEMENT**

This Asset Purchase Agreement is made as of the day of November, 2017, by and between Morehead Memorial Hospital, a North Carolina non-profit corporation ("Seller" or "Debtor") and University of North Carolina Health Care System, a statutory entity created by the State of North Carolina pursuant to NCGS § 116-37 ("Purchaser").

**WITNESSETH:**

WHEREAS, on July 10, 2017, Seller filed a voluntary petition for relief under the Bankruptcy Code in the Bankruptcy Court and currently Seller is a debtor-in-possession in its Bankruptcy Case entitled to exercise all the rights and powers provided for in Section 1107 of the Bankruptcy Code;

WHEREAS, Seller presently owns and operates the Hospital, provides hospital services and other health care programs and services at the Hospital; operates the Other Businesses, and owns the Other Assets;

WHEREAS, Seller desires to sell to Purchaser all right, title, and interest of Seller and its bankruptcy estate in, to, and under the Assets and to assign to Purchaser the Assumed Contracts, on the terms and conditions set forth in this Agreement, pursuant to Sections 363 and 365 of the Bankruptcy Code;

WHEREAS, Purchaser desires to purchase from Seller all right, title, and interest of Seller and its bankruptcy estate in, to, and under the Assets and to assume the Assumed Contracts, on the terms and conditions set forth in this Agreement, pursuant to Sections 363 and 365 of the Bankruptcy Code; and

WHEREAS, the execution and delivery of this Agreement and Seller's ability to consummate the transactions set forth in this Agreement are subject to entry of the Sale Order.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

**ARTICLE I  
DEFINITIONS**

1.1 **Certain Definitions.** For purposes of this Agreement, defined terms used herein have the meanings specified in this Section 1.1.

"Action" means any suit, action, Claim, hearing, administrative action, demand, demand letter, Governmental investigation, notice of violation, or proceeding arising out of any violation or alleged violation of any Law or any breach or alleged breach of any Contract or Order.

"Affiliate" means a Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the Person referred to.

In this definition, “control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of securities, by contract, or otherwise.

“Agreement” means this Agreement, as hereafter amended, supplemented, or otherwise modified.

“Assessed Cost Report Liability” means the aggregate liability as finally determined and assessed by any Healthcare Program arising from any Cost Reports ending prior to the Effective Time.

“Assets” has the meaning ascribed to it in Section 2.1 herein, provided that (whether or not expressly stated) for all purposes of this Agreement, Assets always exclude Excluded Assets.

“Assignment of Lease” has the meaning ascribed to it in Section 2.6.

“Assumed Contracts” has the meaning ascribed to in Section 2.7.

“Assumed Liabilities” has the meaning ascribed to it in Section 2.8(a).

“Authorizations” means all Healthcare Regulatory Consents, Permits, licenses, certificates, grants, or other authorizations of Governmental Authorities.

“Bankruptcy Case” means the case commenced by Seller under chapter 11 of the Bankruptcy Code, styled *In re Morehead Memorial Hospital*, Case No. 17-10775, pending before the Bankruptcy Court.

“Bankruptcy Code” means title 11 of the United States Code Section 101, et seq. (11 U.S.C. § 101, *et seq.*).

“Bankruptcy Court” means the United States Bankruptcy Court for the Middle District of North Carolina and, to the extent of the withdrawal of any reference made pursuant to 28 U.S.C. § 157, the United States District Court for the Middle District of North Carolina with jurisdiction over Seller’s Bankruptcy Case.

“Bill of Sale” has the meaning ascribed to it in Section 2.6.

“Billing Services” has the meaning ascribed to it in Section 2.15.

“Books and Records” includes, without limitation, books, ledgers, files, reports, records, inventory data, accounts receivable records, accounts payable records, vendor lists, financing records, personnel and payroll records and other business books and records (including without limitation documents), regardless of the form of and the medium on which such books and records are maintained.

“Business” means the Hospital, the services and programs provided thereat, and the Other Businesses.

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“Business Day” means any day of the year, other than Saturday or Sunday, on which national banking institutions in North Carolina are open to the public for conducting business and are not permitted, required, or authorized to close.

“Business Confidential Information” has the meaning ascribed to it in Section 5.15(b).

“Business Records” has the meaning ascribed to it in Section 5.1(e).

“Casualty” has the meaning ascribed to it in Section 5.10.

“Claims” has the meaning given that term in Section 101(5) of the Bankruptcy Code and includes, *inter alia*, any and all deeds of trust, Liens, mortgages, assessments, security interests, encumbrances, claims, defenses, demands, damages, causes of action, offset rights, setoff rights, recoupment rights, interests, debts, obligations, guaranties, options, commitments, product liability claims (relating to all products sold or produced prior to the Closing), warranty claims, claims of employees or former employees or their beneficiaries or dependents, including but not limited to, severance or termination payments, pension or employee benefit claims, Taxes, all tort or contractual claims and any claims or obligations arising from Environmental Law, whether absolute or contingent, matured or unmatured, accrued or unaccrued, asserted or unasserted, known or unknown, in law or in equity, including, without limitation, any claims predicated upon any theory of successor liability or any similar theory, and all Liabilities or guaranties of any kind or nature, arising from or in any way connected with any action or inaction of Seller, arising prior to the Closing Date but excluding the Permitted Encumbrances.

“CLIA” means Clinical Laboratory Improvement Amendments (CLIA) of 1988, which are United States federal regulatory standards that apply to all clinical laboratory testing performed on humans in the United States.

“Closing” means the consummation of the transactions contemplated by this Agreement.

“Closing Date” means such date following the satisfaction of each Party’s conditions to Closing or, where permitted, waiver by each Party of the other Party’s conditions to Closing as set forth in Articles VI, VII and VIII to this Agreement, as shall be selected by the Parties, but in no event later than sixty (60) days after November 13, 2017, or such later date, as may be required to obtain Authorizations, or as the Parties may in writing agree; provided that if the Closing shall not have occurred by such outside date and this Agreement shall not have been terminated in accordance with its terms by Purchaser based on an uncured material breach hereunder by Seller, then Seller shall have the right to extend the outside closing date for an additional sixty (60) days.

“CMS” means the Centers for Medicare & Medicaid Services.

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

“Committee” means the Official Committee of Unsecured Creditors established in the Bankruptcy Case.

“Committee Parties” means the Committee, the Committee’s successors, any estate representative, any liquidating trust relating to the Seller and each of their respective professionals.

“Contract” means any contract, agreement, arrangement, understanding, lease, indenture, note, bond, evidence of indebtedness, license, sublicense, undertaking, binding commitment or instrument, or purchase order entered into or made by or on behalf of Seller in connection with the Business.

“Cost Reports” means all cost and other reports filed pursuant to the requirements of Healthcare Programs for payment or reimbursement of amounts due from such programs for services provided.

“Court” means any court, administrative or regulatory body, Government agency, arbitration or mediation panel or similar body.

“Cure Payments” means the amounts necessary to cure defaults, if any, under each Assumed Contract.

“Data Room” has the meaning ascribed to it in Section 1.2(a)(viii) herein.

“Deed” has the meaning ascribed to it in Section 2.6.

“Deposit” has the meaning ascribed to it in the Order (A) Establishing Bid Procedures Related to the Sale of the Debtor’s Assets, (B) Scheduling a Hearing to Consider the Proposed Sale and Approving the Form and Manner of Notice Thereof, (C) Establishing Procedures Relating to the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, Including Notice of Proposed Cure Amounts, and (D) Granting Related Relief, and (II) an Order (A) Approving the Proposed Sale, (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (C) Granting Related Relief entered on September 19, 2017 [Docket No. 220].

“DMA” has the meaning ascribed to it in Section 2.15.

“Dispute” has the meaning ascribed to it in Section 11.10(a)

“Effective Time” means the effective time of the Closing, which shall be as of 12:00:01 a.m. prevailing Eastern Time, on the day of the Closing Date.

“Environmental Law” means any federal, state or local statute, law, regulation, code, ordinance, or rule of common law currently in effect relating to the protection or pollution of the environment or natural resources, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. App. § 1801 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*), the Clean Water Act (33 U.S.C. § 1251 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*) the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*), the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § 136 *et seq.*), The Medical Waste Tracking Act (42 U.S.C. § 6992 *et seq.*), the Oil Pollution Act (33 U.S.C. § 2701 *et seq.*), the Emergency Planning and Community Right to Know Act (42 U.S.C. § 11001 *et*



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*seq.*), the Occupational Safety and Health Act (29 U.S.C. § 651 *et seq.*), and the Occupational Safety Health Act (29 U.S.C. § 651 *et seq.*).

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

“Excluded Assets” means those assets of the Seller that are set forth on Schedule 1 attached hereto.

“Excluded Liabilities” means each and every Liability, obligation, debt, or commitment of the Business or Seller, as principal, or a successor of any kind or nature (provided Seller shall take no action causing or resulting in Purchaser being deemed to be a successor owner or operator of the Business for purposes of any Environmental Law), whether absolute or contingent, accrued or unaccrued, asserted or unasserted, known or unknown, liquidated or unliquidated, due or to become due, or otherwise, other than the Assumed Liabilities.

“Excluded Records” means (a) any materials about employees, disclosure of which would violate Law, (b) any materials that are subject to a Privilege or requirement to maintain confidentiality or (c) any Patient Records but only to the extent access to Patient Records is prohibited by Law.

“Exhibits” means the exhibits provided for and referred to in this Agreement.

“Final Cost Report Liability” means the amounts necessary, if any, to satisfy liability incurred as a result of the filing of any Cost Report including, without limitation, the Assessed Cost Report Liability.

“FIRPTA” means the Foreign Investment in Real Property Tax Act.

“Government” or “Governmental” means or refers to the United States of America, any other nation or sovereign state, any federal, bilateral or multilateral governmental authority, state, possession, territory, county, district, city or other governmental unit or subdivision, and any branch, agency, or judicial body of any of the foregoing.

“Governmental Authority” means (i) any federal, state, county, municipal or other local Government or governmental authority, including, without limitation, any regulatory or administrative agency, commission, department, board, bureau, agency, instrumentality or Court and (ii) any arbitrator or arbitral body of any Government.

“Health Care Laws” means, all applicable laws of any Governmental Authority regulating health services or payment, including, but not limited to, the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)), the Stark Law (42 U.S.C. § 1395nn), the Anti-Inducement Law (42 U.S.C. § 1320a-7a(a)(5)), the civil False Claims Act (31 U.S.C. § 3729 *et seq.*), the administrative False Claims Law (42 U.S.C. § 1320a-7b(a)), the exclusion laws (42 U.S.C. § 1320a-7), the civil monetary penalty laws (42 U.S.C. § 1320a-7a), the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. §§ 1320d-1320d-8), the Medicare Prescription Drug, Improvement and Modernization Act of 2003, Medicare (Title XVIII of the Social Security Act), Medicaid (Title XIX of the Social Security Act), the Food, Drug and Cosmetic Act (21 U.S.C. §§ 301 *et seq.*), the Prescription Drug Marketing Act of 1987, the Deficit Reduction Act of 2005, the

Controlled Substances Act (21 U.S.C. §§ 801 et seq.), the regulations promulgated pursuant to such laws, and any other law, regulation, guidance document, manual provision, program memorandum, opinion letter, or other issuance of any Governmental Authority with legally binding effect which regulates kickbacks, patient or program charges, recordkeeping, claims process, documentation requirements, medical necessity, referrals, the hiring of employees or acquisition of services or supplies from those who have been excluded from government health care programs, quality, safety, privacy, security, pharmacy practice, licensure, accreditation or any other aspect of providing health care.

“Healthcare Programs” shall have the meaning set forth in Section 3.8 of this Agreement.

“Healthcare Regulatory Consents” means in respect of Seller or Purchaser, as the case may be, such consents, approvals, authorizations, waivers, Orders, licenses or Permits of any Governmental Authority as shall be required to be obtained by such party in order for such party to consummate the transactions contemplated of it by this Agreement in compliance with all applicable Law relating to health care or healthcare services of any kind, to the extent necessary, under or through CLIA, CMS, DEA, and any other approvals, authorizations, waivers, Orders, licenses, or Permits of any Governmental Authority required to consummate the transactions contemplated hereby and for Purchaser to operate the Business.

“Hospital” means the hospital operated by Seller located in Rockingham County, North Carolina, known as Morehead Memorial Hospital and operated in connection with the Business.

“Knowledge” means (a) as to Seller, the actual knowledge, after due inquiry, of those senior leadership team members of the Business listed on part 1 of Schedule 2 and (b) as to Purchaser, the actual knowledge, after due inquiry, of the senior leadership team members of Purchaser’s ultimate parent company listed on Part 2 of Schedule 2.

“Law” means any statute, law, code, treaty, ordinance, rule, regulation, instrument, directive, decree, agreement, policy, Order, consent decrees and consent orders, or injunction of or with any Government, Governmental Authority, quasi-Governmental Authority, or Court, and includes, without limitation, all judicial and administrative interpretations thereof, and all rules or regulations of any regulatory or self-regulatory authority compliance with which is required by Law.

“Liabilities” means debts and liabilities, whether known or unknown, contingent or absolute, liquidated or unliquidated, and whether or not required to be reflected on the financial statements of a business, whether arising under any Contract, Law, Lien, Order or otherwise.

“Lien” means any lien, security interest, mortgage, deed of trust, option, lease, tenancy, occupancy, covenant, condition, easement, agreement, royalty, pledge, hypothecation, charge, claim or other encumbrance.

“Nonassignable Asset” shall have the meaning set forth in Section 2.5 of this Agreement.

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“North Carolina Regulations” means the North Carolina General Statutes as well as the rules and regulations imposed by the North Carolina Division of Health Service Regulation.

“Order” means any order, judgment, writ, injunction, award or decree of any Court or Governmental Authority.

“Ordinary Course of Business” means with respect to the Business, the ordinary course of commercial operations customarily engaged in by the Business reasonably consistent with past practices.

“Other Assets” means and refers to (1) the Skilled Nursing Facility; (2) the Thompson building located at 515 Thompson Street (tax parcel 141542); (3) the Dayspring building located at 250 W. Kings Highway (tax parcel 141290); (4) 516 and 518 S. Van Buren Boulevard (tax parcel 109464); (5) unimproved land adjacent to 618 Pierce Street (tax parcel 17749); (6) 618 Pierce Street (tax parcel 169261); and Seller’s 1.172% equity or membership interest in Advanced Home Care, Inc., all as more particularly described on Schedule 4 attached hereto.

“Other Businesses” means the outpatient, ancillary, and other healthcare businesses incident to the operation of the Hospital or the Skilled Nursing Facility set forth in Schedule 3 attached hereto.

“Party” or “party” means either Purchaser or Seller, and “Parties” means both Purchaser and Seller together.

“Patient Records” shall mean any documents containing information concerning medical, health care or behavioral health services provided to, or the medical, health care or behavioral health of any individual, or that are otherwise subject to regulation under applicable Law, including the Health Insurance Portability and Accountability Act of 1996 and all regulations promulgated pursuant thereto, including the Transaction Code Set Standards, the Privacy Rules and the Security Rules set forth at 45 C.F.R. Parts 160 and 164.

“Permits” means any approvals, authorizations, consents, licenses, permits, provider numbers, including, without limitation, Medicare and Medicaid provider numbers and agreements, certificates of need, certificates of exemption, franchises, accreditations, registrations or certificates of a Governmental Authority.

“Permitted Encumbrances” means (i) the Assumed Liabilities and other obligations assumed by Purchaser under this Agreement, (ii) those Liens or exceptions listed on or described in Schedule 5 attached hereto, and (iii) Liens imposed pursuant to any Assumed Contract.

“Permitted Parties” has the meaning ascribed to it in Section 5.1(e).

“Person” means any natural person, any corporation, partnership, limited liability company, limited liability partnership, joint venture, trust, association, company, or other legal entity, and any Government or Governmental Authority.

“Private Programs” means any private insurance or reimbursement programs.

“Privilege” means the attorney-client privilege (including the common interest privilege) or the attorney work product doctrine.

“Privileged Materials” means any materials that are protected by or the subject of a Privilege.

“Provider Agreements” means Seller’s existing provider agreements with the Medicare and Medicaid programs.

“Purchased Intellectual Property Licenses” means those licenses of the Seller included within the Assets.

“Purchase Price” has the meaning ascribed to it in Section 2.12(a).

“Purchaser” has the meaning set forth in the Preamble to this Agreement.

“Real Property” means each parcel of real property included in the Assets, including, without limitation, all rights of way, easements, facilities and other improvements and fixtures thereon and appurtenances thereto and all rights associated therewith, to the extent owned or leased by Seller, as set forth in Schedule 6 attached hereto.

“Relating to” means arising from, in connection with or otherwise relating to. “Relates to” and “relate to” have corresponding meanings.

“Sale Hearing” means the hearing(s) on the Sale Motion held before the Bankruptcy Court.

“Sale Motion” means the Debtor’s Motion for (I) an Order (A) Establishing Bid Procedures Related to the Sale of the Debtor’s Assets, (B) Scheduling a Hearing to Consider the Proposed Sale and Approving the Form and Manner of Notice Thereof, (C) Establishing Procedures Relating to the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, Including Notice of Proposed Cure Amounts, and (D) Granting Related Relief, and (II) an Order (A) Approving the Proposed Sale, (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (C) Granting Related Relief filed on August 30, 2017 [Docket No. 190].

“Sale Order” has the meaning ascribed to it in Section 6.1.

“Schedules” means the schedules provided for and referred to in this Agreement.

“Seller” has the meaning set forth in the Preamble to this Agreement.

“Seller’s Affidavit” has the meaning ascribed to it in Section 2.6.

“Seller’s Confidential Information” has the meaning ascribed to it in Section 5.15(a).

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“Skilled Nursing Facility” means and refers to (1) the skilled nursing facility referred to as Morehead Nursing Center and located at 205 E. Kings Hwy, Eden, North Carolina.

“Survey” has the meaning ascribed to it in Section 2.19.

“Tax” or “Taxes” means (i) all federal, state, local or foreign taxes, charges or other assessments, including all net income, gross receipts, capital, sales, use, ad valorem, value added, transfer, franchise, profits, inventory, capital stock, license, withholding, payroll, employment, social security, unemployment, excise, severance, stamp, occupation, property, excise taxes under Section 4979 of the Code, unrelated business income taxes, and estimated taxes, whether disputed or not, and (ii) all interest, penalties, fines, additions to tax or additional amounts imposed by any taxing authority in connection with any item described in clause (i).

“Taxing Authority” means any Government or Governmental Authority responsible for the imposition or collection of any Tax.

“Title Company” has the meaning ascribed to it in Section 2.19.

“Title Report” has the meaning ascribed to it in Section 2.19.

“Transferred Business Records” has the meaning ascribed to it in Section 5.1(f).

“Transfer Taxes” means all excise, sales, use, transfer (including Real Property transfer or gains), value added, stamp, documentary, filing, recording and similar Taxes and fees which may be imposed or assessed as a result of the transactions effected pursuant to this Agreement together with any interest, additions, penalties with respect thereto and any interest in respect of such additions or penalties. Income taxes do not constitute Transfer Taxes.

### 1.2 Other Definitional and Interpretive Matters.

(a) Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

(i) Calculation of Time Periods. When calculating the period before which, within which, or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

(ii) Dollars. Any reference in this Agreement to “\$” means United States dollars.

(iii) Exhibits/Schedules. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any matter or item disclosed on one Schedule shall be deemed to have been disclosed on each other Schedule to the extent it is reasonably apparent that it is pertinent to the subject matter of such other Schedule. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement.

(iv) Gender and Number. Any reference in this Agreement to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

(v) Headings. The provision of a Table of Contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement. All references in this Agreement to any "Section" are to the corresponding Section of this Agreement unless otherwise specified.

(vi) Herein. The words such as "herein," "hereinafter," "hereof," and "hereunder" refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

(vii) Including. The word "including" means "including, without limitation," and "includes" and "include" have corresponding meanings, and such words shall not be construed to limit any general statement to the specific or similar items or matters immediately following it.

(viii) Made Available to Purchaser. The phrase "made available to Purchaser" means, for all purposes of this Agreement, made available to Purchaser through posting in Seller's electronic data room (the "Data Room"), via email, facsimile or other electronic transfer or through other written means for all purposes of this Agreement.

(b) No Construction Against Drafter. No presumption, burden of proof, burden of persuasion or similar method of interpretation or standard shall arise or otherwise apply favoring or disfavoring any Party (including, without limitation, the draftsman) by virtue of the authorship of any one or more provisions of this Agreement, including in any arbitration or litigation proceeding.

**ARTICLE II  
PURCHASE AND SALE OF ASSETS**

2.1 **Sale of Assets.** At the Closing and as of the Effective Time but in all events subject to the approval of the Bankruptcy Court by and through the Sale Order, Seller agrees, upon and subject to the terms and conditions hereinafter set forth, to sell, transfer, convey, assign and deliver or cause to be sold, transferred, conveyed, assigned and delivered to Purchaser, all right, title and interest of Seller and Seller's bankruptcy estate in, to and under all of the assets and properties and associated rights and interests, real, personal and mixed, tangible and intangible, of whatever kind, owned by Seller (no matter where located, including without limitation, on leased property) including, without limitation, all of the assets and properties used in or related to the Business and the Other Assets, but excluding the Excluded Assets (collectively, after excluding the Excluded Assets, the "Assets"). The Assets shall include, to the extent transferrable, all Patient Records (Seller and its representatives shall continue to have access to all Patient Records as necessary to respond to governmental or other inquiries or issues, to defend malpractice claims, and for other reasonable legitimate reason upon request) but excluding any Excluded Documents. None of the Excluded Assets will be conveyed to Purchaser.

2.2 **Purchase of Assets.** Purchaser agrees to purchase the Assets upon and subject to the terms, conditions and provisions set forth herein and pursuant to the terms in the Sale Order.

2.3 **Excluded Liabilities.** Except for the Permitted Encumbrances, the Assets shall be transferred pursuant to the Sale Order and Section 363 of the Bankruptcy Code, to the fullest extent permitted by applicable Law, free and clear of all Liens, Claims, interests, and encumbrances.

(a) Purchaser shall not assume, satisfy, discharge, or otherwise be responsible for any Excluded Liabilities. Purchaser shall at the Closing, assume the Assumed Liabilities pursuant to the terms of Section 2.8 of this Agreement.

(b) Purchaser shall not assume, satisfy, discharge, or otherwise be responsible for any Liabilities of Seller related to any pension or retirement plans or programs.

(c) Subject to, and consistent with the Sale Order, Purchaser shall not be responsible for any Liabilities of Seller related to Seller's participation in the Healthcare Programs, including any liability or obligation for overpayments, recapture, recoupment, or set off for previously paid or reimbursed amounts.

(d) The Parties hereto further agree that, as between Purchaser and Seller, all the Excluded Liabilities shall remain the sole, exclusive obligation and responsibility of Seller.

(e) Notwithstanding the foregoing, Purchaser shall be responsible for all Liabilities applicable to and incurred with respect to the period after the Effective Time that relate to the Business, the Hospital or Purchaser's post-Closing ownership or operation of the Assets; provided, however, that no statement made in this Agreement shall be deemed to allocate or attribute any Liability or obligation to Purchaser which has been released pursuant to the Sale Order. To the extent this Section 2.3(d) conflicts with any other provision of this Agreement, this Section 2.3(d) controls.

2.4 **Excluded Assets.** Nothing herein contained shall be deemed to obligate Seller to sell, transfer, assign, or convey any Excluded Asset, as described on Schedule 1, to Purchaser. The Seller shall retain all right, title, and interest to, in and under the Excluded Assets. To the extent this Section 2.4 conflicts with any other provision of this Agreement, this Section 2.4 controls.

(a) Notwithstanding the foregoing, post-Closing, Purchaser shall use commercially reasonable efforts to, for a period of six (6) months following the Closing Date, collect accounts receivable arising from patient services rendered prior to the Effective Time and transfer such collections to the Debtor with the first distribution occurring 2 weeks from the Closing Date and continuing thereafter on a monthly basis, together with an accounting for same. Purchaser shall retain three percent (3%) of all collections as compensation for managing collection of such accounts receivable for the Debtor.

2.5 **Nonassignable Assets.** To the extent that the assignment of any Asset shall require the consent of any other party and such consent shall still be required notwithstanding the Sale Order and Sections 363 and 365 of the Bankruptcy Code (each, a "Nonassignable Asset") nothing in this Agreement nor the consummation of the transactions contemplated hereby shall be

construed as an attempt or agreement to assign such Nonassignable Asset unless and until such consent shall have been obtained.

**2.6 Method of Conveyance.** The sale, transfer, conveyance, assignment, and delivery by Seller of the Assets to Purchaser hereunder shall be effected on the Closing Date by delivery by Seller of: (a) an assignment of deed, substantially in the form of Exhibit A, conveying to Purchaser all right, title, and interest of Seller in and to the Real Property, such title to be free and clear of all Liens pursuant to Section 363 of the Bankruptcy Code, except for Permitted Encumbrances (the “Deed”); (b) an affidavit of Seller, which shall be to Seller’s Knowledge, issued to Purchaser and to the Title Company (if Purchaser elects, at Purchaser’s sole cost and expense, to obtain title insurance), substantially in the form of Exhibit B (“Seller’s Affidavit”), if necessary; and (c) assignment(s) and bill(s) of sale and such other instruments of conveyance in the form of Exhibit C (collectively, “Bill of Sale”) conveying all right, title, and interest of Seller in all Assets that comprise tangible or intangible personal property, including separate assignment(s) of any U.S. trademark registrations and applications, if any, included within the purchased intellectual property in a form suitable for recording with the U.S. Patent and Trademark Office, all to the fullest extent permitted by Law, free and clear of any and all Liens, except for Permitted Encumbrances.

**2.7 Assumed Contracts.** On and after the Effective Time, Purchaser shall assume and be responsible for, and shall timely pay, perform, and discharge in accordance with their terms, all obligations (i) arising after the Effective Time with respect to executory contracts and unexpired leases identified on Schedule 2.7 (the “Assumed Contracts”). Except for the Assumed Contracts, Purchaser shall not assume and shall not be responsible for any of Seller’s contracts or leases.

**2.8 Assumption of Liabilities.**

(a) As of the Effective Time, Purchaser shall assume and be responsible for, and shall timely pay, perform, and discharge in accordance with their respective terms all Liabilities of the Hospital or the Business (the “Assumed Liabilities”) accruing from and after the Effective Time incurred in connection with or otherwise relating to the Assets or the Business.

(b) As of the Effective Time, Purchaser shall assume and be responsible for, and shall timely pay, perform, and discharge in accordance with their respective terms the obligations of Seller arising from and after the Effective Time under Assumed Contracts which Seller shall assign and as to which Purchaser shall assume all obligations thereunder, including that Purchaser shall, subject to the provisions of Section 2.8(e), assume the obligations to pay Cure Payments relating to the Assumed Contracts.

(c) On the Closing Date, Purchaser shall assume liability for Seller’s accrued payroll, accrued payroll taxes, and accrued paid annual leave for a total assumed liability amount not exceeding \$1,000,000 (collectively the “Assumed Employee Obligations”); provided, however, that Seller shall remain current on all post-petition payroll, payroll taxes, and paid time off through the last payroll period prior to the Closing Date and Seller shall accrue paid time off in accordance with generally accepted accounting principles. Purchaser shall pay or otherwise satisfy the Assumed Employee Obligations as and when such obligations become due in the ordinary course. To the extent the Assumed Employee Obligations are determined to be less than



\$1,000,000, Purchaser shall transfer the difference between \$1,000,000 and the Assumed Employee Obligations to the Debtor's estate for distribution to general unsecured creditors pursuant to a plan of liquidation.

(d) On the Closing Date, Purchaser shall assume liability for Seller's accrued but unpaid allowed administrative expense claims in an amount not exceeding \$1,000,000 incurred prior to the Closing Date ("Assumed Administrative Expenses") other than the Assumed Employee Obligations. The Debtor, in consultation with the Committee, shall provide Purchaser written notice of Assumed Administrative Expenses ("Reconciled Claims Notice") as and when such Assumed Administrative Expenses become consensually reconciled or determined by final orders of the Bankruptcy Court. Purchaser shall pay the Assumed Administrative Expenses set forth on the Reconciled Claims Notice within five (5) business days after receipt of the Reconciled Claims Notice. To the extent the reconciled Assumed Administrative Expenses are determined to be less than \$1,000,000, Purchaser shall transfer the difference between \$1,000,000 and the reconciled Assumed Administrative Expenses to the Debtor's estate for distribution to general unsecured creditors pursuant to a plan of liquidation.

(e) Purchaser shall, subject to the limitations set forth below, be responsible for the payment of the Cure Payments, if any, required with respect to the Assumed Contracts with said payments being made to the counterparty to the Assumed Contracts when the Cure Payments become due pursuant to the Sale Order unless the Purchaser and the counterparty to an Assumed Contract agree otherwise.

(f) Notwithstanding anything to the contrary in this Agreement, (i) Purchaser shall consult with Seller and the Committee with respect to the terms of the assumption of the Assumed Contracts provided that Purchaser shall not modify any terms thereof without the prior written consent of Seller and the Committee if such modification would be or could reasonably be expected to be adverse to Seller in any respect, and (ii) the rights of each of Seller and the Committee to object to such terms are expressly preserved and reserved. In addition, the rights of the Committee to object to any assumption of Assumed Contracts is expressly preserved and reserved as to any assumption that the Committee reasonably concludes is not in the best interests of the Debtor or the Debtor's estate, including any assumption that may or will discharge the obligations of a counterparty with respect to preferences.

(g) Debtor shall not assume any contracts and/or assign any contracts to Purchaser unless Purchaser agrees to pay the full Cure Payments with respect to any contract so assumed and any non-permitted assumption or assignment shall be void and of no effect.

(h) Purchaser shall be responsible for prosecuting all objections to the Cure Payments. Purchaser shall, at Purchaser's sole cost, (i) negotiate the amount of all Cure Payments and/or (ii) pay all of Purchaser's legal and other fees and expenses (and, if any, Seller's legal fees and expenses to the extent incurred because of Seller being required to intervene or defend) relating to any litigation or other dispute in connection with or otherwise relating to Cure Payments.

(i) The Committee is a third-party beneficiary of Sections 2.8(c), 2.8(d), 2.8(e), 2.8(f), 2.8(g), 2.8(h), and 5.21 of this Agreement as fully as if the Committee was a signatory to this Agreement, including that (i) such Sections may not be amended or directly or indirectly

superseded or otherwise overridden without the Committee's written consent and (ii) the Committee may fully enforce its rights and each Party's obligations under or otherwise relating to such Sections.

**2.9 Taxes and Assessments.** The Liability for payment of accrued but unbilled or unpaid Taxes (including, but not limited to, real estate taxes, personal property tax, ad valorem tax and similar non-income Taxes) and other assessments relating to, or arising out of the ownership or transfer of, the Assets or the Assumed Contracts (including, but not limited to any water, sewer and other municipal charges owed to any Governmental Authority), imposed on a periodic basis beginning before and ending after the Effective Time or as a result of the consummation of the transactions evidenced by this Agreement or otherwise, shall be paid by Seller at the Closing, provided that Seller has received at Closing the purchase price required to be paid by Purchaser pursuant to this Section. All Taxes and other assessments shall be listed on Schedule 7, which shall be prepared and delivered at Closing. If any Taxes or other assessments paid by Seller at any time on or prior to the Closing Date are attributable in whole or in part to any period following the Closing, then the Purchase Price payable at Closing shall be increased to adjust for the prior payment of such Taxes and assessments by Seller attributable to the post-closing period.

**2.10 Intentionally Deleted.**

**2.11 Purchaser's Deposit.**

(a) Upon entry of the Sale Order, Seller and Purchaser shall have the obligation to consummate the Closing pursuant to and subject to the terms of this Agreement and the Sale Order. If Purchaser fails to consummate the purchase of the Assets within sixty (60) days after November 13, 2017 (unless such failure arises from Seller's uncured material breach and unless Seller, in consultation with the Committee, and Purchaser agree to extend such deadline in writing), Seller, in consultation with the Committee, is authorized but not required to effect the sale of the Assets to one or more third parties as soon as is commercially reasonable subject to further Orders of the Bankruptcy Court. If Purchaser fails to consummate the purchase of Assets hereunder through no fault of its own, Seller shall not consummate any transaction unless the Deposit is repaid to Purchaser. If Purchaser fails to consummate the transaction as a result of Purchaser's uncured material default, the entire Deposit and all accrued interest thereon will be retained by Seller as liquidated damages (it being agreed that it may be difficult to measure damages arising from such failure and such amount is a reasonable estimate of the amount of damages Seller will suffer under the circumstances), which, except in cases of an intentional tort, shall constitute Seller's sole or exclusive remedy and limitation of damages for any default hereunder by Purchaser.

**2.12 Purchase Price.**

(a) In consideration of the sale, transfer, conveyance, and assignment of the Assets to Purchaser, Purchaser shall at Closing: (i) assume the Assumed Liabilities, (ii) pay or deliver to Seller cash by wire transfer of immediately available funds in the amount of \$11,500,000 (the "Cash Purchase Price"); (iii) assume the liabilities described in Sections 2.7 and 2.8 on the terms contained therein; (iv) pay the amount required under Section 2.9; and (v) pay all Transfer

Taxes due in connection with the closing of the transactions contemplated herein (collectively, the "Purchase Price").

(b) As additional consideration for the sale, transfer, conveyance, and assignment of the Assets to the Purchaser, Purchaser shall spend at least \$20,000,000 in capital investments at the Hospital during the three (3) year period following the Closing Date. As used in this Section 2.12(b), the term "capital investments" shall mean investments in new equipment including information technology systems, equipment replacement, facility renovations, new facilities (including additional personnel), medical office space, development of new services and expansion of existing clinical services, working capital, information systems, physician recruitment, and other capital improvements, including commitments incurred pursuant to operating or capital leases, or other off balance sheet financing mechanisms. The dollar amount of capitalized expenditures made under this Section 2.12(b) will be determined in accordance with GAAP.

(c) The Parties agree to report this transaction for federal, state, and local Tax purposes consistently and in accordance with this Section 2.12.

**2.13 Order of the Bankruptcy Court.** Seller and Purchaser shall take all reasonable steps and use all reasonable efforts necessary or appropriate in order (a) to obtain the Sale Order from the Bankruptcy Court authorizing the Seller to sell the Assets to the Purchaser; and (b) to consummate the transactions contemplated by the Sale Order.

**2.14 Closing.** The Closing shall take place at 10:00 a.m., prevailing Eastern Time, on the Closing Date at the offices of Seller's bankruptcy counsel, or at such other time and place as the Parties may agree in writing. The Closing shall be deemed to have occurred and to be effective as between the parties as of the Effective Time. Seller will own, control the management of, and operate the Business until immediately prior to the Effective Time.

**2.15 Medicare and Medicaid Provider Agreements.** Purchaser shall seek to have assigned to Purchaser all current and valid provider contracts of Seller with the Medicare, Medicaid and TRICARE programs, including, without limitation, the Provider Agreements, subject to the Government's approval of Seller's assignment and Purchaser's assumption thereof. Seller shall provide Purchaser with information and other assistance as may be reasonably requested by Purchaser with respect to its request to assume the Provider Agreements. Purchaser shall be solely liable for any and all amounts that are or may become due in connection with the assignment of such Provider Agreements.

(a) Upon the Effective Date, to the extent permitted by applicable laws, Purchaser may use Seller's National Provider Identifier and Medicare/Medicaid provider/supplier numbers and provider/supplier agreements to submit claims to the Part A Medicare Administrative Contractor and the North Carolina Department of Health and Human Services, Department of Medical Assistance ("DMA", collectively with the Part A Medicare Administrative Contractor, the "Payors") for health care services provided after the Effective Date (the "Billing Services").

(b) Seller agrees not to take any action to change its EFT/bank account information used by Payors to deposit monies to be paid as a result of the Billing Services (any

such monies deposited to be referred to herein as a "Payment"). Seller acknowledges and agrees that any Payments deposited into the Seller's bank account for Billing Services for services provider after the Effective Date shall be the property of Purchaser and shall be provided to Purchaser by wire transfer along with an accounting of all payments received on a weekly basis or by some other method mutually agreed to by the parties.

(c) In the event Seller receives notice of any adjustment to any Payments related to Billing Services, Seller agrees to inform Purchaser and send a copy of such notice to Purchaser by overnight mail or electronic transmission no later than three (3) business days after receipt of such notice.

(d) Whenever a Payor sends other notice to or requests information from Seller regarding a claim for services rendered after the Closing Date, Seller shall send a copy of such notice or inform Purchaser of such request by overnight mail or electronic transmission no later than three (3) business days after receipt of such notice or request.

2.16 **Closing Payments.** No later than five (5) Business Days prior to the Closing Date, Seller shall provide to Purchaser, in writing, Seller's calculation of the Closing payments due as of the Effective Time based on the payment of the Purchase Price, as set forth in Section 2.12, and the estimated apportionment of Taxes and assessments. If within three (3) Business Days following receipt of such calculation, Purchaser has not given Seller written notice of its good faith objection to Seller's calculations, then the transaction shall close based on Seller's calculations. If Purchaser gives such notice of objection, then the Parties will work together in good faith to resolve the estimated apportionment of Taxes and assessments provided that if they are unable to agree, the Parties shall close and the disputed amount shall be appropriately escrowed.

2.17 **Closing Deliveries of Seller.** At the Closing, in addition to any other documents, assignments, certificates, letters, orders, or agreements described in Section 2.6 or otherwise required to be delivered pursuant to the terms of this Agreement, and the satisfaction of all the conditions set forth in Articles VI and VIII, Seller shall deliver to Purchaser the following:

(a) copies of the resolutions of all corporate bodies of Seller necessary to authorize the transactions contemplated hereby, authorizing the sale of the Assets and the execution and delivery of this Agreement by Seller and the consummation by Seller of the transactions contemplated hereby, certified by the Secretary or an Assistant Secretary of Seller;

(b) a true and complete copy of the certificate of incorporation of Seller, certified by the State of North Carolina, a true and complete copy of the bylaws of Seller, certified by an authorized officer, and a certificate of existence of Seller from the State of North Carolina, together with a certificate by the Secretary or Assistant Secretary of Seller that the certificate of incorporation of Seller has not been amended since the date of the certification by the State of North Carolina described above and that nothing has occurred since the date of issuance of the certificate of existence that would adversely affect Seller's corporate existence;

(c) certificates from the Secretary or Assistant Secretary of Seller as to the incumbency and signatures of each officer of Seller executing this Agreement and any other documents required under this Agreement;

(d) a certified copy of the final, non-appealable Sale Order authorizing and ratifying the execution and delivery of this Agreement by Seller and the consummation of the transactions contemplated hereby;

(e) a certificate of an officer of Seller certifying to Purchaser (a) compliance in all material respects with Seller's covenants set forth in this Agreement, (b) that all of the conditions contained in Articles VI and VII have been satisfied except those, if any, waived in writing by Seller, and (c) that all of the representations and warranties set forth in Article III and the matters set forth in the Schedules are true and correct in all material respects as of the Closing Date;

(f) a duly executed Seller's Affidavit in a form acceptable to the Title Company;

(g) a duly executed FIRPTA Affidavit; and

(h) copies of Seller's most recent Cost Reports as filed with the Medicare and Medicaid programs.

**2.18 Closing Deliveries of Purchaser.** At the Closing, in addition to any other documents otherwise required to be delivered by Purchaser pursuant to the terms of this Agreement and the satisfaction of all other conditions set forth in Articles VI and VII, Purchaser shall deliver to Seller the following:

(a) the payment of the Cash Purchase Price, by wire transfer of immediately available funds, pursuant to Section 2.12 herein;

(b) a true and complete copy of Purchaser's organizational documents and, if applicable, a certificate of existence of Purchaser from the State of North Carolina, together with a certificate by an authorized officer of Purchaser that the certificate of formation of Purchaser has not been amended since the date of the certification described above and that nothing has occurred since the date of issuance of the certificate of existence that would adversely affect Purchaser's existence;

(c) certificates from an authorized officer of Purchaser as to the incumbency and signatures of each officer of Purchaser executing this Agreement and any other documents required under this Agreement;

(d) a certificate of an officer of Purchaser certifying to Seller (a) compliance in all material respects with Purchaser's covenants set forth in this Agreement, (b) that all of the conditions contained in Articles VI and VII have been satisfied except those, if any, waived in writing by Purchaser, and (c) that all of the representations and warranties set forth in Article IV are true and correct in all material respects as of the Closing Date; and

(e) copies of the resolutions of all corporate bodies of Purchaser necessary to authorize the transactions contemplated hereby, authorizing the purchase of the Assets and the execution and delivery by Purchaser of this Agreement and the consummation by Purchaser of the transactions contemplated hereby, certified by an authorized signatory of Purchaser.

2.19 **Intentionally Deleted.**

2.20 **Further Conveyances and Assumptions.** From time to time following Closing, each Party shall, and shall cause their respective Affiliates to execute, acknowledge, and deliver all such further conveyances, notices, assumptions, releases, and other instruments, and shall take such further actions, as may be reasonably necessary or appropriate (i) to assure fully to Purchaser and its successors and permitted assigns, all of the properties, rights, titles, interests, estates, remedies, powers, and privileges intended to be conveyed to Purchaser under this Agreement and (ii) to assure fully to Seller and its successors and permitted assigns, the assumption of the Assumed Liabilities and other obligations intended to be assumed by Purchaser under this Agreement, and to otherwise make effective the transactions contemplated herein. Without limiting the generality of the foregoing, if Seller receives any Assets or payments related to the Assets after the Closing Date, it will promptly turn over same to Purchaser.

2.21 **Right to Pay Off Monetary Liens.** Seller shall have the right to pay off on the Closing Date any monetary Liens that do not constitute Permitted Encumbrances from the sale proceeds then payable by Purchaser and the Parties shall cooperate to facilitate deletion of such encumbrance from the Title Policy by the Title Company. Seller shall pay the costs of cancelling or discharging all such monetary Liens.

**ARTICLE III  
REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller hereby makes the following representations and warranties, subject to any exceptions included in Seller's Disclosure Schedule:

3.1 **Corporate Existence and Power of Seller.** Seller is a non-profit corporation duly organized, validly existing, and in good standing under the laws of the State of North Carolina. Subject to the provisions of the Bankruptcy Code, the Seller has the corporate power to enter into this Agreement, to perform its obligations hereunder, and to consummate the transactions contemplated hereby. Seller has all necessary power and authority to enter into this Agreement and all other documents that the Seller is required to execute and deliver hereunder, to perform its obligations hereunder and thereunder, and to consummate the transactions contemplated hereby and thereby.

3.2 **Validity and Enforceability of Agreement.** Upon the entry of the Sale Order approving the sale of the Assets to the Purchaser, this Agreement constitutes a legal, valid, and binding obligation of Purchaser, this Agreement constitutes, and all documents required to be executed and delivered at Closing by Seller hereunder or in connection herewith will each constitute, the legal, valid, and binding obligations of Seller, enforceable against it in accordance with their respective terms, subject to general principles of equity.

3.3 **Consents; Waivers and Approvals.** Except for the approval of the Bankruptcy Court as required by Section 363 of the Bankruptcy Code and approvals relating to the Healthcare Regulatory Consents, no consent, waiver, approval, authorization, license or order of, registration or filing with, or notice to, any Governmental Authority or any other Person is necessary to be obtained, made or given by Seller in connection with the execution and delivery of this Agreement,

the performance by Seller of its obligations hereunder or the consummation by Seller of the transactions contemplated hereby.

3.4 **No Conflict.** Subject to the issuance of the Sale Order and approvals relating to the Healthcare Regulatory Consents and the transfer of the Provider Agreements, the execution and delivery by Seller of this Agreement and the other agreements, documents and instruments required to be executed and delivered by Seller pursuant to this Agreement and the consummation by Seller of the transactions contemplated hereby or thereby, and compliance by Seller with any of the provisions hereof or thereof, will not:

(a) conflict with or result in a breach of any provision of any organizational document of Seller; or

(b) violate (with or without the giving of notice or the lapse of time or both) any Law or any Order to which Seller, the Assets, or the Business is subject to.

3.5 **Rights to Acquire Assets.** Except for Ordinary Course of Business transactions involving the disposition of personal property that are not, individually or in the aggregate, material to the Seller, there are no agreements, options, or other rights to which Seller is a party pursuant to which a Claim exists that Seller is, or may become, obligated to sell or grant any Lien in any of the Assets. Notwithstanding the foregoing, Seller acknowledges and agrees that the Assets shall be transferred pursuant to the Sale Order and Section 363 of the Bankruptcy Code, to the fullest extent permitted by applicable Law, free and clear of all Liens, Claims, interests, and encumbrances other than the Permitted Encumbrances.

3.6 **Title to and Adequacy of the Assets.** Seller owns each of the Assets and, subject to the approval of this Agreement by the Bankruptcy Court, title to the Assets will be transferred free and clear of any Liens by Order of the Bankruptcy Court pursuant to Section 363 of the Bankruptcy Code, except for Permitted Encumbrances. The Assets and the Real Property comprise all items used in the operation of the Hospital and the Business except for (i) Contracts that require consents to the transfer of Contracts made available to Purchaser prior to the date hereof that have not been obtained, (ii) Authorizations that are not transferrable or not transferrable without a consent that has not been obtained, and (iii) the Provider Agreements.

3.7 **Government Reimbursement Participation; Health Care Law Compliance.**

(a) To the Knowledge of Seller, Seller's operation of the Business is and, during the three (3) year period prior to the Closing Date, has been in substantial compliance with all Health Care Laws. Seller has not received notice of, and there are no pending or, to the Knowledge of Seller, threatened legal proceedings relating to violations by Seller of any Health Care Law.

(b) Schedule 3.7(b) sets forth a complete list of Seller's Health Care Permits. Seller has not: (i) received notice and has no Knowledge that any such Governmental Authority is considering limiting, suspending, terminating, adversely amending or revoking any such Health Care Permit; and (ii) received notice of any deficiencies requiring corrective action plans that have not been completed and accepted by the Governmental Authority. All such Health Care Permits are valid and in full force and effect and Seller is in substantial compliance with the terms and

conditions of all such Health Care Permits and with the applicable Health Care Laws and rules and regulations of the Governmental Authorities having jurisdiction with respect to such Health Care Permits, except to the extent that any violation with respect to any of the foregoing has not resulted and is not reasonably likely to result in a material adverse effect.

(c) Seller meets all of the material requirements of participation and payment of, and where applicable is a party to valid provider, supplier or other participation agreements for payment by, Medicare, Medicaid, any other state or federal government health care programs, any private insurance company, health maintenance organization, preferred provider organization, managed care organization, government contracting agency, or any other public or private third party payor program ("Programs") to the extent Seller bills or receives reimbursement from a particular Program. There are no legal proceedings pending or, to the Knowledge of Seller, threatened which would be reasonably likely to result in a revocation, suspension, termination, probation, restriction, limitation, or non-renewal of any Program supplier or other participation agreement or result in the exclusion of Seller or any of its directors, officers, employees or agents from any Program. To the Knowledge of Seller, neither Seller, nor, its officers, directors or managing employees (as defined in 42 U.S.C. §1320a-5(b)) have engaged in any activities which are cause for civil penalties or mandatory or permissive exclusion from any Program.

(d) To the Knowledge of Seller, all material reports, documents, claims, applications, and notices required to be filed, maintained or furnished to any Governmental Authority, under any Program have been so filed, maintained or furnished and all such reports, documents, claims, applications and notices were complete and correct in all material respects on the date filed (or were corrected or supplemented by a subsequent filing).

(e) Neither Seller's rights, nor, to the Knowledge of Seller, the right of any licensed professional or other individual employed by Seller to receive reimbursements pursuant to any Government Program or Private Program has been terminated, suspended or materially limited as a result of any investigation or action whether by any federal or state Governmental Authority or other third party. Schedule 3.7(e) sets forth a true, complete and accurate description of inspections, investigations, surveys, audits, monitoring or other form of review conducted by any Governmental Authority, professional review organization, accrediting organization or certifying agency based upon any alleged improper activity related to any Health Care Law or Program during the three (3) year period prior to the Closing Date.

(f) Except as disclosed to Purchaser, Seller does not have any reimbursement or payment rate appeals, disputes or contested positions currently pending before any Governmental Authority or any administrator of any Private Programs outside the ordinary course of Seller's Business.

(g) Seller is certified for participation and reimbursement under Titles XVIII and XIX of the Social Security Act and has current provider agreements for such Government Programs and with such Private Programs, including any private insurance program under which it directly or indirectly is presently receiving payments. Set forth in Schedule 3.7(g) is a correct and complete list, with respect to Seller, of all provider numbers under all Government Programs.



(h) During the three (3) year period prior to the Closing Date, Seller has timely filed all reports required to be filed and timely filed all claims or billings prior to the date hereof in accordance with the Government and Private Programs, all fiscal intermediaries and other insurance carriers; and all such reports and billings are complete and accurate in all material respects and have been prepared in substantial compliance with all applicable Health Care Laws relating to reimbursement and payment. During the three (3) year period prior to the Closing Date, and except as set forth on Schedule 3.7(h), Seller has paid or caused to be paid all known and undisputed refunds, overpayments, discounts or adjustments which have become due pursuant to such reports and billings and, except as disclosed to Purchaser, to the Knowledge of Seller, has no liability under any Government or Private Program for any refund, overpayment, discount or adjustment pursuant to such reports. To the Knowledge of Seller, there are no other reports or claims or billings required to be filed by Seller in order to be paid under any Government Program or Private Program for services rendered in connection with the Business, except for reports not yet due.

(i) The Hospital is fully accredited by DNV GL-Healthcare (“DNV”). Seller has made available to Purchaser true and complete copies of the most recent DNV accreditation survey report and deficiency list for the Hospital, if any, and the Hospital’s plan of correction, if any. Seller has not received any notices of deficiency from DNV with respect to the Hospital’s current accreditation period which require or request any material action or response by Seller or the Hospital except for any such material deficiencies that have been corrected or otherwise remedied in all material respects.

**3.8 Existing Medicare and Medicaid Provider Agreements.** Seller is eligible to receive payment under Titles XVIII and XIX of the Social Security Act, is a “provider” under the Provider Agreements with the Medicare and Medicaid programs (collectively, the “Healthcare Programs”) through the applicable intermediaries, and is in material compliance of applicable conditions of participation and payment required by such Healthcare Programs.

**3.9 Subsidiaries.** Schedule 3.9 sets forth the name and jurisdiction of each entity in which Seller holds an equity interest, which equity or membership interest is being conveyed hereunder, and the amount of Seller’s equity interest in such entity.

**3.10 Intangible Property.** The schedules filed by the Seller in the Bankruptcy Case contain a list of all Intangible Property owned or used by, or developed for, Seller, in each case, which is primarily used in the Business. In the immediately preceding two (2) years, Seller has not received any written claims or assertions made by others that Seller has infringed any intellectual property rights of any third party in the preceding two-year period, and there has been no such infringement by Seller during such period. To Seller’s Knowledge, no third party is infringing on rights of Seller with respect to the Intangible Property listed on the schedules filed by the Seller in the Bankruptcy Case. All issued patents and registered trademarks, copyrights and service marks owned by Seller are recorded on the public record in the name of Seller. Except as set forth on the schedules filed by the Seller in the Bankruptcy Case and except for Permitted Liens, Seller has clear and unencumbered title to, or otherwise has the right to use, the Intangible Property listed on the schedules filed by the Seller in the Bankruptcy Case and, to Seller’s Knowledge, such title or right has not been challenged by others in writing in the last two (2) years. True and complete copies of all documentation relating to the Intangible Property listed on the

schedules filed by the Seller in the Bankruptcy Case have been delivered or made available to Purchaser.

3.11 **Hill Burton.** Seller has not received any loans, grants, or loan guarantees pursuant to, or currently has any outstanding unfulfilled obligations arising from, the Hill-Burton Act, 42 U.S.C. § 291a, et seq.

3.12 **Medical Staff.** To Seller's Knowledge, (i) no member of the medical staff of the Hospital has been excluded from participating in Medicare or any federal health care program (as defined in 42 U.S.C. §1320a-7b(f)) and (ii) none of the Seller's or Hospital's current officers, directors or managing employees (as such term is defined in 42 U.S.C. §1320a-5(b)), has been excluded from Medicare or any federal health care program (as defined in 42 U.S.C. §1320a-7b(f)) or been subject to sanction pursuant to 42 U.S.C. §1320a-7a or 1320a-8 or been convicted of a crime described at 42 U.S.C. §1320a-7b.

3.13 **Intentionally Deleted.**

3.14 **Compliance with Laws; Permits.**

(a) The Hospital is duly licensed and authorized by all applicable Governmental Authorities including, but not limited to, the State of North Carolina, to operate all of its health care and medical services.

(b) Seller is duly licensed and authorized by all applicable Governmental Authorities to own and operate the Hospital and its related health care and medical services.

(c) Seller has all permits that are necessary to enable it to own, lease or otherwise hold the Assets and to enable it to operate the Business as currently conducted. All such permits are in full force and effect. To the Knowledge of Seller, no proceedings are pending or threatened where the remedy sought is to revoke or materially modify any such permit, materially restrict any renewal of any such permit or deny the right to transfer any such permit that is permitted to be transferred with consent.

(d) To Seller's Knowledge, Seller is in compliance in all material respects with all applicable Laws respecting the Business. There are no charges of a material violation of a Law pending or to the Knowledge of Seller threatened against Seller.

(e) To Seller's Knowledge, Seller's ownership and operation of the Business and the Assets are and have been in substantial compliance with all Environmental Laws, except where failure to be in such compliance would not have a material adverse effect on the Debtor's Business or Assets. There is not now pending or, to Seller's Knowledge, threatened, any claim, investigation or enforcement action by any governmental authority (whether judicial, executive or administrative) concerning Seller's potential liability under Environmental Laws in connection with the ownership or operation of the Business or the Assets. To Seller's Knowledge, there is not any radon, asbestos or PCBs or any condition with respect to surface soil, subsurface soil, ambient air, surface waters, groundwaters, leachate, run-on or run-off, stream or other sediments, wetlands or similar environmental media on, in, under, above, from or off any of the Real Property, which radon, asbestos, PCBs or condition does or may: (i) require investigation and/or remedial or

corrective action pursuant to applicable Environmental Laws on or off such Real Property by Seller or any other owner or occupant thereof; (ii) require compliance by Seller with Environmental Laws; or (iii) result in any claim for personal injury, property damage or natural resources damage or any other proceeding against Purchaser or any of its Affiliates by any Governmental Authority or other Person pursuant to Environmental Laws. To Seller's Knowledge, no portion of the Real Property has been used as a dump or landfill or a storage, recycling or disposal facility for any hazardous substance, other than for the storage and disposal of medical waste in connection with the ordinary course operation of the Business.

**ARTICLE IV  
REPRESENTATIONS AND WARRANTIES OF PURCHASER**

Purchaser hereby makes the following representations and warranties:

4.1 **Corporate Existence of Purchaser.** Purchaser is a statutory entity created by the State of North Carolina pursuant to NCGS § 116-37, validly existing, and in good standing in the State of North Carolina, and Purchaser is duly authorized to conduct business in North Carolina. Purchaser has all necessary power and authority to enter into this Agreement and all other documents that the Purchaser is required to execute and deliver hereunder, to perform its obligations hereunder and thereunder, and to consummate the transactions contemplated hereby and thereby.

4.2 **Validity and Enforceability of Agreement.** Upon the entry of the Sale Order approving the sale of the Assets to the Purchaser, this Agreement constitutes, and all documents executed and delivered by Purchaser at Closing hereunder or in connection herewith will each constitute, the legal, valid, and binding obligations of Purchaser, enforceable against it in accordance with their respective terms, except as enforcement hereof may be limited by general principles of equity.

4.3 **Authorization and Authority.** The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized, approved and ratified by all necessary action on the part of Purchaser. Purchaser has full authority to enter into and deliver this Agreement, to perform its obligations hereunder, and to consummate the transactions contemplated hereby.

4.4 **No Conflict.** Neither the execution and delivery by Purchaser of this Agreement nor the performance by Purchaser of its obligations hereunder, (a) (i) violates or breaches the terms of or causes a default under any legal requirement applicable to Purchaser, (ii) contravenes the certificate of incorporation or bylaws or the certificate of formation and operating agreement or other organizational documents of Purchaser, or (iii) violates or breaches the terms or causes a default under any contract, indenture, evidence of indebtedness or other commitment to which Purchaser is a party or by which it or its properties is bound, or (b) will, with or without the passage of time, the giving of notice or the taking of any action by a third person, have any of the effects set forth in this subsection, except to the extent that any such matter would reasonably be expected to have a material adverse change with regard to Purchaser.

4.5 **Ability to Consummate Transaction.** Purchaser has or will have sufficient immediately available funds and/or access to credit facilities necessary to consummate the purchase of the Assets and perform of its obligations under this Agreement.

4.6 **Solvency.** Purchaser is solvent. The consummation of the transactions provided for in this Agreement will not render Purchaser insolvent. There are no conditions, obligations or commitments of Purchaser, or Claims against Purchaser, which will or could be reasonably expected to render Purchaser insolvent.

4.7 **Litigation and Arbitration.**

(a) There is no Action pending or, to the Knowledge of Purchaser, threatened against Purchaser, including any before any Governmental Authority or any arbitration panel, that seeks to prevent the consummation of the transactions contemplated by this Agreement.

(b) There is no Action pending or, to the Knowledge of Purchaser, threatened against Purchaser or any of its Affiliates, or any of their respective members, owners, managers, officers, directors, or other senior executives, and there are no existing facts relating to any Person referred to in this Section 4.7(b), that may cause any required Health Care Regulatory Consent or other consent to the transactions contemplated hereby to not be given.

(c) There is no Action pending or, to the Knowledge of Purchaser, threatened against Purchaser or any of its Affiliates, or any of their respective members, owners, managers, officers, directors, or other senior executives or to which Purchaser is otherwise a party before any Governmental Authority, which, if adversely determined, would reasonably be expected to have a material adverse effect on the ability of Purchaser to perform its obligations under this Agreement or the ability of Purchaser to consummate the transactions contemplated hereby. Purchaser or any of its Affiliates, or any of their respective members, owners, managers, officers, or senior executives are not subject to any Order of any Governmental Authority except to the extent the same would not reasonably be expected to have a material adverse effect on the ability of Purchaser to perform its obligations under this Agreement or the ability of Purchaser to consummate the transactions contemplated hereby.

(d) There are no judicial or administrative actions, proceedings or investigations or, to Seller's Knowledge, threatened in writing against Seller in connection with any part of the Business.

4.8 **Brokers and Intermediaries.** Neither Purchaser nor any of its Affiliates has employed any broker, finder, advisor or intermediary that is entitled, in connection with the consummation of the transactions contemplated hereby, to a broker's, finder's, or similar fee or commission. Provided, however, the Parties acknowledge and agree that, to the extent allowed by Order of the Bankruptcy Court, the Operational and Strategic Advisor fees and any success fees payable by the Debtor to Hammond Hanlon Camp LLC (H2C) shall be paid from the cash proceeds of the Sale.

ARTICLE V  
CERTAIN COVENANTS AND AGREEMENTS OF SELLER AND PURCHASER

5.1 Access and Information.

(a) Purchaser agrees to retain and maintain all employee and medical records as required under all applicable laws and regulations.

(b) Before the Closing and to the extent permitted by Law, and except as required to preserve any Privilege, Seller will provide Purchaser and its representatives with reasonable access during normal business hours, to all of the assets, properties, facilities, employees, medical staff members, agents, accountants, and books and records of Seller and will furnish or make available to Purchaser and its representatives during such period all such information and data concerning Seller in its possession or control as Purchaser reasonably may request; *provided, however*, such access shall be coordinated through such persons as may be designated in writing by Seller for such purpose. Purchaser's access shall include IT access to allow Purchaser to prepare to transition/preserve any electronic data as may be customary or required.

(c) Before the Closing, Seller shall permit Purchaser to engage in discussions and negotiations with Seller's vendors for the purpose of negotiating the terms of contracts between Purchaser and such vendors in connection with Purchaser's purchase of the Assets.

(d) Before the Closing, Seller shall grant Purchaser and its representatives reasonable access to Seller's employees within the Hospital for the purpose of administering the hiring process as to such employees. Thus, by way of example and without limitation, except to the extent prohibited by applicable Law, Seller will grant reasonable access to enable Purchaser and its representatives to disseminate documents and information to such employees; collect documents and information from such employees; interview such employees and their supervisors and managers; investigate the backgrounds, experience, education, qualifications and work records of such employees; offer employment to such employees; and hire such employees. Purchaser agrees to conduct all such activities in compliance with applicable Law.

(e) After the Closing, Purchaser shall permit, for a period of not less than six (6) years, each of the Seller, any direct or indirect successor to the Seller and their respective professionals, and the Committee Parties (collectively, the "Permitted Parties") access to all Books and Records that are in connection with or that otherwise relate to the Hospital (including the Business) prior to the Closing and/or to Seller and that are in the control or the possession of Purchaser or any of its Affiliates or their respective agents or representatives except for Excluded Records (collectively, "Business Records") for the purposes of (i) pursuing, assessing, settling, or otherwise dealing with any Excluded Assets, (ii) pursuing, assessing, defending, settling, or otherwise dealing with (including, without limitation, exercising rights and remedies with respect to) any Claim, Action, or cause of action, including, without limitation, any objection or motion, that any Permitted Party has the right to pursue, (iii) performing and/or otherwise dealing with any obligations of the Seller pursuant to this Agreement, including the Excluded Liabilities, (iv) assisting any one or more of the Permitted Parties in connection with or otherwise relating to the Claims reconciliation process relating to Seller, including, without limitation, with respect to

Claims against any Person, including, without limitation, assessing, resolving, settling, and/or otherwise dealing with priority and administrative Claims and any other general unsecured Claims that accrue prior to the Closing Date and (v) without limiting the generality of the immediately preceding clauses (i) through (iv), otherwise administering Seller's estate including, without limitation, the preparation and confirmation of a plan relating to Seller and the preparation of a disclosure statement relating to Seller, and compliance with any subpoena, document request, or order of any court compelling any Permitted Party to produce documents to third parties, winding down Seller's estate, preparing or filing tax returns and causing audits to be performed and/or for any other reasonable purpose.

(f) The right of access for the Permitted Parties shall include, without limitation, (a) (i) the right of such Permitted Party to copy at the Permitted Party's premises or the Hospital at each requesting Permitted Party's expense, such documents and records as they may request in furtherance of any of the purposes referred to in Section 5.1(e) and (ii) Purchaser's copying and delivering, at the Permitted Party's cost, to such Permitted Party such documents and records as may be requested, but only to the extent as to this clause (ii) such Permitted Party furnishes Purchaser with reasonable written descriptions of the materials to be so copied. Purchaser shall not dispose of or destroy any of the Business Records transferred to Purchaser ("Transferred Business Records") before the seventh anniversary of the Closing Date and will provide the Permitted Parties and the Bankruptcy Court pursuant to a filing with the Bankruptcy Court with at least ninety (90) days written notice before doing so and will provide each Party that requests copies of any Transferred Business Records within such ninety (90) day period copies of all requested Transferred Business Records at the cost of the requesting Permitted Party.

(g) Subsequent to the Closing Date, Purchaser will cooperate with each of the Permitted Parties relating to all matters in connection with the administration of the Seller's estate, including without limitation, in connection with all Claims, Actions, and causes of action relating to the Excluded Assets or Excluded Liabilities that any Permitted Party elects to pursue, dispute, or defend. Without limiting the generality of the preceding sentence, Purchaser shall use commercially reasonable efforts to make reasonably available to Seller employees of the Business who became employees of Purchaser to assist Seller in connection with the administration of Seller's estate, including, without limitation, in connection with Excluded Assets and/or Excluded Liabilities.

(h) Seller shall provide to Purchaser at the Closing or as soon thereafter as is reasonably possible all appropriate books and records and other documents in the possession or control of Seller, its representatives or its agents relating to the Assets being sold pursuant to this Agreement and the transactions contemplated hereby. Such books, records, and documents shall include, but are not limited to, patient records, all paper and electronic financial, operational, administrative, research, regulatory reporting, maintenance, and HR records.

5.2 **Authorizations.** Purchaser shall use its commercially reasonable efforts to promptly obtain all Authorizations required to enable Purchaser to purchase the Assets and/or operate the Hospital. Purchaser shall provide to Seller and the Committee a weekly report as to the status of obtaining such Authorizations. Seller agrees to execute and deliver such instruments and documents reasonably satisfactory to Seller, and to take all such other and further actions reasonably satisfactory to Seller, that Purchaser cannot take or cause to be taken by any Person

other than Seller, that are required to enable Purchaser to obtain such Authorizations or transfer such Authorizations from Seller to Purchaser, provided that Seller shall not be obligated to undertake any material Liabilities or other obligations, individually or in the aggregate, relating to such obligations. Notwithstanding the foregoing, Purchaser shall not be obligated to consent to the imposition of materially burdensome conditions on Purchaser or its lenders in order to obtain the Authorizations it being specifically understood and agreed that conditions required under the North Carolina Regulations (or any Federal corollary) shall not constitute a materially burdensome condition.

**5.3 Conduct of Business.**

(a) Prior to the Closing, except as otherwise contemplated by this Agreement or required by applicable Law or with the prior written consent of Purchaser (which consent shall not be unreasonably withheld or delayed), Seller shall:

(i) operate the Business in the Ordinary Course of Business in all material respects;

(ii) use commercially reasonable efforts to (A) maintain the Assets in good working order and condition consistent (including inventory) with past practices, including but not limited to paying when due all reasonable maintenance expenses necessary to maintain the current state of the Assets until Closing, normal wear and tear excepted and (B) maintain the insurance coverage currently in place with respect to the Assets or obtain comparable replacement coverage;

(iii) perform when due all undisputed post-petition obligations under its contracts, including Purchased Intellectual Property Licenses, and leases of Real Property or personalty to the extent of available funds;

(iv) comply in all material respects with all Laws and Orders pertaining to the Business and the Assets;

(v) accurately maintain the books and records of the Business consistent with past practice;

(vi) without being obligated to make any payment to any Person to preserve any goodwill or relationship, and subject to changes incident to Seller's bankruptcy filing and related intention to sell its assets, use commercially reasonable efforts reasonably consistent with past practices to preserve the goodwill thereof and Seller's relationships with the patients, employees, physicians, suppliers, and others with whom it deals; and

(vii) perform all undisputed post-petition obligations under Excluded Contracts and timely pay, perform, and discharge in accordance with their respective terms the undisputed post-petition Excluded Liabilities to the extent of available funds.

(b) Prior to the Closing, except as otherwise contemplated by this Agreement or required by applicable Law or with the prior written consent of Purchaser (which consent shall not be unreasonably withheld or delayed), Seller shall not:

(i) make or enter into any Contract that would be required to be assumed by Purchaser;

(ii) permit any Person other than Seller (to include Dana Weston although she is not an employee of the Debtor) to manage its Assets or Business;

(iii) other than in the Ordinary Course of Business, (A) increase the annual level of compensation of any employee or other Person who works in the Business, (B) grant any bonus, similar benefit, or increase in other direct or indirect compensation to any employee or other Person who works in the Business, (C) with respect to any employee or other Person who works in the Business, increase the coverage or benefits available under any (or create any new) employee benefits plan, or (D) enter into any employment, deferred compensation, severance, consulting, non-competition, or similar agreement (or amend any such agreement) with any employee or other Person who works in the Business, except, as to each of clauses (A) through (D), as required by applicable Law from time to time in effect, by any employee benefits plan maintained or sponsored by Seller or by any existing Contract or CBA made available to Purchaser that the Seller is a party to or bound by;

(iv) subject any of the Assets to any Lien, other than (A) any Permitted Encumbrances or (B) as approved by Order of the Bankruptcy Court;

(v) other than pursuant to an existing Contract made available to Purchaser, acquire or lease any material assets that would be Assets or sell, assign, license, transfer, convey, lease, or otherwise dispose of any of the Assets, provided that any other removal shall be permitted if the assets removed, taken as a whole, are replaced with reasonably equivalent or better assets;

(vi) cancel or compromise any material debt or claim or waive or release any material right of Seller that constitutes an Asset except in the Ordinary Course of Business;

(vii) permit or allow relocation of (other than within the Hospital or the Hospital's owned Real Property), any services or programs of the Business; or

(viii) other than in the Ordinary Course of Business or pursuant to an existing Contract made available to Purchaser, remove from the Real Property any furniture, equipment, or other tangible personal property used in the Ordinary Course of Business provided further that any other removal shall be permitted if the assets removed, taken as a whole, are replaced with reasonably equivalent or better assets.

**5.4 Commercially Reasonable Efforts.** Each Party shall use its commercially reasonable efforts to fulfill or cause the fulfillment of the conditions of the Closing, including, without limitation, the execution and delivery of all agreements contemplated hereunder to be so executed and delivered provided that it shall be the responsibility of Purchaser to obtain the Authorizations and any required consents with respect to the assumption of the Assumed Contracts and satisfy conditions required under the North Carolina Regulations.

**5.5 Adequacy of Purchaser's Review.** Purchaser agrees that it (a) had a full and complete opportunity to conduct due diligence regarding the Assets prior to making its offer and



does not require further due diligence, (b) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Assets in making its bid and executing and delivering this Agreement, and (c) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties of any kind or nature, including, without limitation, any that are express, are implied, arise by operation of law, or that may otherwise be deemed to apply, regarding the Assets, or the completeness of any information provided in connection therewith except, as to clauses (b) and (c), solely for Seller's representations and warranties that are contained in Article 3 of this Agreement.

5.6 **Intentionally Deleted.**

5.7 **Tax Matters.**

(a) The Parties agree to request that the Bankruptcy Court find that the sale of the Assets constitutes a sale in furtherance of effectuating a plan of reorganization, and, in accordance with section 1146(a) of the Bankruptcy Code, all transfers in connection therewith shall be exempt from any and all Transfer Taxes. To the extent that the Bankruptcy Court does not so order, Purchaser shall be responsible for the payment of all Transfer Taxes (whether or not payable by Seller as a matter of law), including that Purchaser shall promptly reimburse Seller for its share of all Transfer Taxes paid by Seller upon receipt of reasonable documentation evidencing such amount. Purchaser and Seller will cooperate in the timely preparation and filing of any Tax return that must be filed in connection with any Transfer Taxes. Any such Taxes or fees resulting from any subsequent transfer of the acquired Assets or Assumed Contracts shall be borne by Purchaser.

(b) After the Closing Date, Seller and Purchaser shall, and shall cause their respective Affiliates to:

(i) assist the other Party and its Affiliates in preparing any tax returns that such Party is responsible for preparing and filing relating to the Assets, the Excluded Assets or the Business;

(ii) cooperate fully in preparing for any tax audit relating to or arising out of the ownership or use of the Assets or the Business;

(iii) make available to the other Party and its Affiliates and to any Taxing Authority as reasonably requested all information, Books and Records, and documents relating to Taxes arising out of the conduct of the Business or the ownership or use of the Assets; and

(iv) furnish the other Party with copies of all correspondence received from any Taxing Authority in connection with any tax audit relating to the conduct of the Business or the ownership or use of the Assets with respect to any such taxable period.

5.8 **Announcement.** Other than confirming information that is already a part of the public record or that is contained in filings a Party hereafter makes with the Bankruptcy Court, Seller will not issue any press release or otherwise make any public statement with respect to this Agreement or the transactions contemplated hereby without the prior written consent of Purchaser(which consent shall not be unreasonably withheld or delayed), except as may be

required by applicable Law or the applicable regulations of any exchange. Subject to the last sentence of this Section 5.8, if Seller is required by Law or pursuant to applicable regulations of any exchange to issue a press release or otherwise make any public statement or disclosure with respect to this Agreement and the transactions contemplated hereby, Seller will use commercially reasonable efforts to promptly notify Purchaser so that Purchaser may seek a protective order or other appropriate remedy, and in the event that no such protective order or other remedy is obtained, Seller may make such disclosure as Purchaser is advised in writing by counsel as may be required by Law or pursuant to applicable regulations of any exchange. The preceding sentence shall not apply to any filing that Seller reasonably concludes may be required to be made with, or is appropriate to be made with, the Bankruptcy Court.

**5.9 Post-Closing Business Operations Commitment.** Purchaser shall operate the Hospital as an acute care hospital with an open and accessible emergency department and medical/surgical services for a period of not less than five (5) years after the Closing Date.

**5.10 Risk of Loss; Casualty Loss.** All risk of loss or damage to or destruction of the Assets, in whole or in part, shall be and remain with Seller until the Effective Time and from and after the Effective Time, the risk of loss or damages to or destruction of the Assets in whole or in part shall be and remain with Purchaser. If, between the date of this Agreement and the Closing, any of the Assets having a value in excess of \$100,000, individually or in the aggregate, shall be destroyed or damaged in whole or in part by fire, earthquake, flood, other casualty or any other cause (the "Casualty"), individually or in the aggregate, then, with respect to a loss in value in excess of \$100,000 (a) Purchaser shall have the option to acquire such Assets on an "as is" basis and take an assignment, without representation, warranty or recourse, from Seller of any insurance proceeds payable to Seller in respect of the Casualty (excluding proceeds under any directors or officers insurance policies) or (b) Seller shall have the option exercisable on or before the Closing Date by the delivery of written notice thereof to Purchaser (i) to fix such Casualty within sixty (60) days after the Closing Date, or (ii) pay Purchaser the loss in value arising from such Casualty, and if Seller does not elect within twenty (20) days of the occurrence of the Casualty an option set forth in (b)(i) or (b)(ii) above, then Seller shall be deemed to have elected the option in clause (b)(ii).

**5.11 Bankruptcy Actions.**

(a) Seller and Purchaser acknowledge that this Agreement and the sale of the Assets are subject to Bankruptcy Court approval and entry of the Sale Order.

(b) If an appeal is taken or a stay pending appeal is requested, with respect to the Sale Order, Seller shall promptly notify Purchaser of such appeal or stay request. Seller shall promptly provide to Purchaser a copy of the related notice of appeal or order of stay. Seller shall also provide Purchaser with written notice of any motion or application filed in connection with any appeal from such order. In the event of an appeal of the Sale Order, Seller shall, at its own expense, be primarily responsible for drafting pleadings and attending hearings as necessary to defend against the appeal.

(c) From and after the date hereof, Seller shall not take any action that is intended to reverse, void, materially modify, or stay the Sale Order.

(d) Seller will provide Purchaser with a reasonable opportunity to review and comment upon all motions, applications, and supporting papers prepared by Seller (including forms of orders and notices to interested parties) related to the Assets, the Business, or any appeal as described in paragraph 5.11(b), prior to the filing thereof in the Bankruptcy Case, except any involving adversarial matters between Seller and Purchaser.

**5.12 Intentionally Deleted.**

**5.13 DISCLAIMERS.** EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES IN ARTICLE 3, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE TO PURCHASER, EXPRESS OR IMPLIED, WITH RESPECT TO THE TRANSACTIONS CONTEMPLATED HEREBY. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES IN ARTICLE 3, OR EXCEPT AS EXPRESSLY SET FORTH IN THE SALE ORDER, THE ASSETS TO BE SOLD AND TRANSFERRED HEREUNDER SHALL BE SOLD (A) IN THEIR THEN EXISTING PHYSICAL CONDITION, WITH ALL DEFECTS, IF ANY, AND SUBJECT TO WEAR AND TEAR FROM THE DATE HEREOF TO THE CLOSING DATE AND (B) ON AN "AS IS, WHERE IS" BASIS

**5.14 Further Assurances.** Each party shall use its commercially reasonable efforts to (i) take all actions necessary or appropriate to consummate the transactions contemplated herein and (ii) cause the fulfillment at the earliest practicable date of all of the conditions to their respective obligations to consummate same. Without limiting the generality of the foregoing, promptly after the discovery by Seller of any item included within the definition of Assets but not transferred, conveyed, or assigned to Purchaser, (x) Seller will deliver written notice to Purchaser of the existence and non-transfer, non-conveyance, or non-assumption of such item and provide Purchaser with all the information in Seller's possession about, and with access to such item in Seller's possession as Purchaser may reasonably request, and (y) if requested by Purchaser, Seller shall use commercially reasonable efforts to transfer, convey, or assign to Purchaser such item in the manner and on the terms and conditions as applicable to an Asset.

**5.15 Confidentiality.**

(a) From and after the date hereof, Purchaser shall maintain in confidence, including that it shall not disclose to any third party without the prior written consent of Seller, and not use to the detriment of Seller, any Seller's Confidential Information relating to or obtained from Seller; provided, however, the foregoing restriction shall not apply to any disclosure by Purchaser of Seller's Confidential Information to any Affiliate of Purchaser or to its lenders and legal and financial advisors. For purposes of this Section 5.15, "Seller's Confidential Information" shall mean any information that is confidential or proprietary in nature that is related to the Assets, the Assumed Liabilities, the Business, the Excluded Assets, or the Excluded Liabilities, including methods of operation, patient information, prices, fees, costs, technology, software, know-how, marketing methods, plans, personnel, suppliers, competitors, markets or other specialized information or proprietary matters; provided, however, that Seller's Confidential Information does not include, and there shall be no obligation hereunder with respect to, information that (i) becomes generally available to the public other than as a result of a disclosure by Purchaser or its agents or other representatives, (ii) becomes available to Purchaser on a non-confidential basis from a source

other than Seller, provided that such source is not known by Purchaser to be bound by a confidentiality agreement with, or other obligation of secrecy to, Seller, (iii) is lawfully received by Purchaser from a third party having the right to disseminate Seller's Confidential Information without restriction on disclosure or (iv) can be shown by Purchaser through written documents or evidence maintained by Purchaser to have been independently developed by Purchaser; and provided further, that upon the Closing, the restrictions contained in this Section 5.15 shall not apply to confidential or proprietary information related primarily to the Assets, the Assumed Liabilities or the Business. Purchaser may disclose Seller's Confidential Information to those who need to know it for the purpose of effectuating the transactions contemplated herein and who agree to keep it confidential. Purchaser shall instruct such Persons having access to Seller's Confidential Information of such obligation of confidentiality. If Purchaser or anyone to whom they has transmitted Seller's Confidential Information subject to the confidentiality obligations herein becomes legally compelled, including, but not limited to, through an action brought pursuant to N.C.G.S. 132-9 (North Carolina Public Records Act), to disclose any of such Confidential Information, Purchaser shall provide Seller with notice prior to making any disclosure so that Seller may seek a protective order or other appropriate remedy. If such protective order or other remedy is not obtained, or Seller waives compliance with the provisions of this Section 5.15(a), Purchaser shall furnish only that portion of Seller's Confidential Information that it is advised by written opinion of counsel is legally required to be disclosed. Purchaser shall have no liability to Seller with respect to the disclosure of Seller's Confidential Information ordered by a court of competent jurisdiction pursuant to N.C.G.S. 132-9 or other applicable law, or required by law or regulatory or accrediting agencies.

(b) From and after the date on which the Sale Order is entered, unless this Agreement is terminated, Seller shall maintain in confidence, not disclose to any third party without the prior written consent of Purchaser, and not use to the detriment of Purchaser, any Business Confidential Information, other than in connection with (i) operating the Business in the Ordinary Course of Business prior to the Closing Date, (ii) any investigations by any Governmental Authority or any filings with the Bankruptcy Court, (iii) compliance activities prior to or after the Closing related to periods occurring prior to the Closing Date; (iv) any legal proceedings; (v) enforcing any rights or other claims of Seller under this Agreement or otherwise; and (vi) performing any obligations of Seller under this Agreement. For purposes of this Section 5.15(b), "Business Confidential Information" means any information that is confidential or proprietary in nature that is related to Purchaser or to the Assets, the Assumed Liabilities or the Business, other than information primarily pertaining to the Excluded Assets, or the Excluded Liabilities, including methods of operation, patient information, prices, fees, costs, technology, software, know-how, marketing methods, plans, personnel, suppliers, competitors, markets or other specialized information or proprietary matters; provided, however, that Business Confidential Information does not include, and there shall be no obligation hereunder with respect to, information that (i) becomes generally available to the public other than as a result of a disclosure by Seller (other than in connection with filings with the Bankruptcy Court), (ii) becomes available to Seller on a non-confidential basis from a source other than Purchaser, provided that such source is not known by Seller to be bound by a confidentiality agreement with, or other obligation of secrecy to, Purchaser or (iii) is lawfully received by Seller from a third party having the right to disseminate the Business Confidential Information without restriction on disclosure. Seller may disclose Business Confidential Information to those who need to know it for the purpose of effectuating the transactions contemplated herein and who agree to keep it confidential

subject to the same confidentiality obligations herein. Seller shall instruct such Persons having access to Business Confidential Information of such obligation of confidentiality. If Seller or anyone to whom it has transmitted Business Confidential Information subject to the confidentiality obligations herein becomes legally compelled to disclose any of such Business Confidential Information (other than in connection with filings with the Bankruptcy Court), Seller shall provide Purchaser with prompt notice prior to making any disclosure so that Purchaser may seek a protective order or other appropriate remedy. If such protective order or other remedy is not obtained, or Purchaser waives compliance with the provisions of this Section 5.15(b), Seller shall furnish only that portion of the Business Confidential Information that it is advised by written opinion of counsel is legally required to be disclosed.

(c) The obligations contained in this Section 5.15 shall survive the Closing and are in addition to any separate confidentiality agreements between Seller and Purchaser.

5.16 **Acceptance and Discharge.** Except to the extent, if at all, Liabilities of Seller to Purchaser are specifically stated herein to survive the Closing, (i) Seller shall cease to have any Liability of any kind or nature relating to its representations and warranties hereunder and/or covenants and agreements to be performed prior to the Effective Time, and (ii) Seller will, without any further writing or other act by Purchaser, at such time be fully and forever, irrevocably and unconditionally, released and discharged from all such Liabilities.

5.17 **Cooperation.** Seller and Purchaser agree to reasonably cooperate with each other in good faith from the date hereof up through and following the Closing Date, in any effort to satisfy all further conditions, undertakings and agreements contemplated by this Agreement to be effected after the Closing.

5.18 **Surrender of License.** Following the Closing and in accordance with the timing and other requirements of applicable Law, Seller shall surrender all licenses and operating certificates issued to it relating to the Business, except for the licenses and operating certificates transferred to Purchaser pursuant to this Agreement.

5.19 **Removal of Certain Liens.** If any Liens other than Permitted Encumbrances encumber any Assets, Seller shall have the right, within thirty (30) days of Seller's receiving Purchaser's written notice of any such Lien, to cause such Lien to be removed.

5.20 **Insurance.** Neither Purchaser nor Seller shall have an obligation to purchase tail director and officer insurance coverage or tail professional liability insurance coverage.

5.21 **Final Cost Report.** Purchaser shall file or cause to be filed on Seller's behalf, at Purchaser's sole cost, the final Cost Reports for the period prior to the Closing required to be filed with the Medicare or Medicaid programs or any other Third-Party Payor or Governmental Body as a result of the consummation of the contemplated transactions. Any payments owed and paid to Seller for final settled Cost Reports for any periods prior to Closing are acknowledged as part of the Excluded Assets and are not conveyed to Purchaser by this Agreement. All Cost Reports shall be prepared in accordance with applicable Law and consistent with past practices.

ARTICLE VI  
CONDITIONS TO PURCHASER'S AND SELLER'S OBLIGATIONS

The obligations of the Parties to consummate the transaction provided for in this Agreement shall be subject to the satisfaction of the following conditions on or before the Closing Date:

6.1 **Entry of the Sale Order.** The Bankruptcy Court shall have entered a sale order in form and substance reasonably satisfactory to the Parties and the Committee (the "Sale Order"), which approves this Agreement and the consummation of the transactions contemplated hereby in their entirety; and which provides for the following rulings and/or findings: (a) Purchaser is a "good faith" purchaser under Section 363(m) of the Bankruptcy Code; (b) timely, adequate, and sufficient notice of the sale was provided; (c) the Assets to be transferred to the Purchaser are property of the bankruptcy estate and Seller has all requisite authority and approval to transfer the Assets; (d) the total consideration to be realized by the Seller represents fair consideration and reasonably equivalent value in the context of any state or federal law governing the rights of creditors; (e) the conveyance and assignment of the Assets pursuant to this Agreement is a legal, valid, and effective transfer of the Assets to the Purchaser, and will vest the Purchaser with all right, title, and interest of the Seller in and to the Assets free and clear of all Liens, Claims, interests and encumbrances except for those (i) liabilities to be assumed by Purchaser pursuant to this Agreement and (ii) Permitted Encumbrances, and (f) neither the Seller nor the Purchaser has engaged in any conduct that would cause or permit the Agreement, or the transfers contemplated thereby, to be avoided under Bankruptcy Code section 363(n). In addition, unless waived by Purchaser in writing in its sole discretion, the Sale Order shall have become a final, non-appealable order.

6.2 **No Injunctions.** No injunction or restraining Order (whether temporary, preliminary or permanent) of any Governmental Authority shall exist against Purchaser or Seller that prevents the transactions contemplated hereby and approved in the Sale Order. No other Governmental Authority shall have enacted, issued, promulgated, enforced, or entered any statute, rule, regulation, or non-appealable judgment which prohibits or renders illegal the consummation of the Closing or the transactions provided for herein and approved in the Sale Order.

6.3 **Compliance with Applicable Law.** To the extent required by Law, the filing and waiting period requirements relating to any and all approvals necessary under the Healthcare Regulatory Consents and any other applicable Law, if necessary, relating to consummation of the Closing or the transactions provided for herein shall have been duly complied with and/or such approvals shall have been obtained.

6.4 **Consents.** Purchaser shall have obtained (or shall have had transferred to it) those Healthcare Regulatory Consents and other Authorizations that Purchaser is required to apply for and/or obtain in order to operate the Business, it being specifically understood and agreed that Purchaser shall be required to satisfy conditions required under the North Carolina Regulations.

6.5 **Intentionally Deleted.**

**ARTICLE VII  
CONDITIONS TO PURCHASER'S OBLIGATIONS**

The obligations of Purchaser to consummate the transactions provided for in this Agreement shall be subject to the satisfaction of each of the following conditions on or before the Closing Date, subject to the right of Purchaser, in its sole discretion, to waive any one or more of the conditions set forth below:

7.1 **Representations and Warranties of Seller.** The representations and warranties of Seller contained in this Agreement, taken as a whole, shall be true and correct in all material respects on the Closing Date, except to the extent that any representation or warranty is made only as of a specified date, in which case the accuracy of such representation or warranty shall be measured as of such date, and except to the extent of changes permitted by the terms of this Agreement.

7.2 **Schedules.** The matters set forth on the Schedules shall be true and correct in all material respects on the Closing Date, except to the extent of changes permitted by the terms of this Agreement.

7.3 **Documents.** Purchaser shall have received a signed copy of this Agreement with all Schedules and Exhibits attached, as updated through and including the Closing, together with copies of all other documents and certificates to be executed and delivered by Seller at Closing.

7.4 **Performance of Obligations.** Seller shall have performed and complied in all material respects with all obligations and agreements required in this Agreement to be performed or complied with by it prior to the Closing Date.

7.5 **No Changes to Business.** Since the date of this Agreement, there shall have been no material changes to the Business or Assets that, in the aggregate, have had a material adverse effect on the Business, excluding adverse changes that (i) were projected to occur in any forecast or budget provided by Seller and/or (ii) relate to a proposed sale of all or substantially all of Seller's assets, thereby leaving Seller without an operating business.

7.6 **Intentionally Deleted.**

7.7 **Release of Liens.** All Liens on the Assets shall have been released, satisfied or otherwise removed or discharged pursuant to Bankruptcy Court order or otherwise, except for the Permitted Encumbrances.

7.8 **Consents.** Purchaser shall have obtained (or shall have had transferred to it) those Healthcare Regulatory Consents and other Authorizations, including any judicial proceedings and appeals related thereto, which Purchaser is required to apply for and obtain in order to operate the Business, it being specifically understood and agreed that Purchaser shall be required to satisfy conditions required under the North Carolina Regulations.

7.9 **Intentionally Deleted.**

7.10 **FIRPTA Affidavit.** Seller shall deliver to Purchaser a non-foreign affidavit dated as of the Closing Date and in form and substance required under the Treasury Regulations issued pursuant to Section 1445 of the Code so that Purchaser is exempt from withholding any portion of the Purchase Price thereunder (the “FIRPTA Affidavit”).

**ARTICLE VIII  
CONDITIONS TO SELLER’S OBLIGATIONS**

The obligations of Seller to consummate the transactions provided for in this Agreement shall be subject to the satisfaction of each of the following conditions on or before the Closing Date, subject to the right of Seller, in its sole discretion to waive any one or more of the conditions set forth below:

8.1 **Representations and Warranties of Purchaser.** The representations and warranties of Purchaser contained in this Agreement, taken as a whole, shall be true and correct in all material respects on the Closing Date, except to the extent that any representation or warranty is made as of a specified date, in which case such representation or warranty shall be true in all material respects as of such date, and except to the extent of changes permitted by the terms of this Agreement.

8.2 **Performance of this Agreement.** Purchaser shall have materially performed or complied with all of the obligations to be performed or complied with by it under the terms of this Agreement on or prior to the Closing Date. The Purchaser shall have delivered to the Seller a certificate signed by a duly authorized officer of the Purchaser, dated as of the Closing Date, to the foregoing effect.

8.3 **Payment of Purchase Price and Assumption of Liabilities and Assumed Contracts.** Seller shall receive from Purchaser on the Closing Date the Purchase Price pursuant to Section 2.12 of this Agreement and Purchaser shall have assumed the Assumed Liabilities pursuant to a document that is reasonably satisfactory to Seller.

8.4 **Documents.** Seller shall have received a signed copy of this Agreement with all Schedules and Exhibits attached, as updated through and including the Closing and copies of all such other documents and certificates executed and delivered hereunder.

**ARTICLE IX  
SURVIVAL**

9.1 **Survival.** Sections 2.7, 2.8, 2.9, 2.20, 5.1, 5.5, 5.7, 5.8, 5.9, 5.13, 5.14, 5.15, 5.16, 5.17, 5.18, 5.19, 5.20 and 5.21, this Section 9.1 and Article 11, and all defined terms used therein, shall survive the Closing, except to the extent (if at all) that such survival is expressly limited herein. The representations and warranties of the Parties shall expire upon the consummation of the Closing.



**ARTICLE X  
LIMITED AGREEMENT TERMINATION RIGHTS**

10.1 **Termination of Agreement.** This Agreement and the transactions contemplated hereby may be terminated prior to the Closing Date only as follows:

- (a) by mutual written consent of Purchaser and Seller;
- (b) except as otherwise provided in this Agreement, by either Party if the Closing shall not have occurred on or before the Closing Date;
- (c) by Purchaser if any of the conditions to the obligations of Purchaser to close set forth in Article VII shall have become incapable of fulfillment other than because of a breach by Purchaser of any covenant or agreement contained in this Agreement and such condition is not waived by Purchaser;
- (d) by Purchaser if there shall be a material breach by Seller, as determined by the Bankruptcy Court, of the representations and warranties, taken as a whole, or of any material covenant or agreement contained in this Agreement which breach cannot be or has not been cured within ten (10) Business Days after the giving of written notice by Purchaser to Seller of such breach;
- (e) by Seller if any of the conditions to the obligations of Seller to close set forth in Article VIII shall have become incapable of fulfillment other than as a result of a breach by Seller of any covenant or agreement contained in this Agreement and such condition is not waived by Seller;
- (f) by Seller if there is a material breach by Purchaser, as determined by the Bankruptcy Court, of the representations and warranties, taken as a whole, or of any material covenant or agreement contained in this Agreement which breach cannot be or has not been cured within ten (10) Business Days after the giving of written notice by Seller to Purchaser of such breach; or
- (g) by Seller or Purchaser if the Bankruptcy Court fails to approve this Agreement and enter the Sale Order by November 30, 2017, subject to Seller's right to extend the date of Closing as provided in the definition of Closing Date.

10.2 **Procedure for Termination.** If this Agreement is terminated by Purchaser or Seller, or both, pursuant to Section 10.1, written notice thereof shall forthwith be given to the other party, and upon the giving of such notice (or at such time as specified in the particular termination right set forth in Section 10.1) the transactions contemplated hereunder shall be abandoned and this Agreement shall terminate to the extent and with the effect provided in Section 10.3, without further action by the parties.

10.3 **Effects of Termination.** If this Agreement is validly terminated as provided herein, then each party shall be relieved of its duties and obligations arising under this Agreement after the date of such termination and such termination shall be without Liability to any party; provided, however, that (i) the obligations of the parties set forth in Article XI of this Agreement,

and to the extent necessary to effectuate the foregoing enumerated provisions, Article I of this Agreement, shall survive any such termination and shall be enforceable in accordance with their terms, and (ii) if this Agreement is terminated as provided herein, each party shall upon request redeliver or destroy as soon as practicable any or all documents, work papers and other material of the other party relating to its business or affairs or the transactions contemplated hereunder, whether obtained before or after the execution hereof, to the party furnishing the same, other than any material which is of public record. Nothing in this Section 10.3 shall relieve the parties of any Liability for a breach of this Agreement prior to the date of termination or alter the right of Seller to retain the Deposit if permitted to do so pursuant to this Agreement. Notwithstanding the foregoing, no attorneys' fees reasonably incurred by a party in connection with the transactions contemplated herein, or out-of-pocket expense reimbursement or other fees, shall be payable to any party upon termination of this Agreement pursuant to Section 10.1.

**ARTICLE XI  
MISCELLANEOUS**

**11.1 Assignment; Binding Agreement.**

(a) Except as set forth in Section 11.1(c), neither this Agreement nor any rights or obligations of a Party hereunder may be assigned or delegated without the other Party's prior written consent. Any purported assignment or delegation without such consent shall be void. Provided, however, Purchaser may assign any or all of its rights under this Agreement, provided that it remains responsible for performance hereunder. Purchaser intends to operate the Hospital as a not-for-profit entity, separately formed to hold the provider contracts.

(b) This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by the Parties hereto and to their respective successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any other Person any rights, remedies, obligations, or Liabilities.

(c) Purchaser shall have the right to assign its rights and obligations under this Agreement including, without limitation, its right to acquire all or any portion of the Assets to its Affiliates, any successor to Purchaser, and/or to its lender if a sale/leaseback transaction is used to finance the transactions contemplated by this Agreement. Notwithstanding any transfer permitted by this Section 11.1(c), Purchaser shall remain liable to Seller with respect to its obligations under this Agreement.

**11.2 Post-Closing Cooperation.** From time to time after the Closing, Seller will execute and deliver, or cause to be executed and delivered, such documents to Purchaser as Purchaser shall reasonably request in order to consummate more effectively the transactions contemplated by this Agreement, including, without limitation, the transfer of the Assets to Purchaser. From time to time after the Closing, Purchaser will execute and deliver, or cause to be executed and delivered, such documents to Seller as Seller shall reasonably request in order to consummate more effectively the transactions contemplated by this Agreement, including, without limitation, Purchaser's assumption of the Assumed Liabilities. From and after the Closing, Seller shall use its commercially reasonable efforts to deliver to Purchaser all such books, reports and other documents that constitute or relate to Assets (which may be redacted to the extent not relevant

to the Assets) as may be requested by Purchaser which were not delivered on or before the Closing Date, and to assist the Purchaser in obtaining any Authorizations not obtained by Purchaser prior to the Closing.

11.3 **Expenses.** Except as set forth in this Agreement, each Party shall pay the fees and expenses of its respective counsel, accountants, and other experts and shall pay all other expenses incurred by it in connection with the negotiation, preparation, and execution of this Agreement and the consummation of the transactions contemplated hereby.

11.4 **Entire Agreement and Modification.** This Agreement, including any Exhibits and Schedules attached hereto and thereto and any other documents hereby required to be delivered at the Closing, and any confidentiality agreement previously executed by Seller and Purchaser or Purchaser's Affiliate, constitute the entire agreement between the Parties and supersede all prior discussions, negotiations, or agreements relating to the subject matter of this Agreement. No changes of, additions to, or other modifications of this Agreement shall be valid unless the same is in writing and signed by the Parties.

11.5 **Severability.** If any provision of this Agreement shall be determined to be contrary to Law and unenforceable by any Court, the remaining provisions shall be severable and enforceable in accordance with their terms. To the extent any provision of this Agreement is enforceable in part but not in whole, such provision shall be enforced to the maximum extent permitted by applicable Law.

11.6 **Waiver.** Any of the conditions to Closing set forth in this Agreement, except for those set forth in Article VI, may be waived at any time prior to or at the Closing hereunder by the Party entitled to the benefit thereof. Any such waiver shall only be effective if it is in writing and signed by the Party to be charged with such waiver. The failure of any Party hereto to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver of any other breach of such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of such Party thereafter to enforce each and every such provision. No waiver of any breach of or non-compliance with this Agreement shall be held to be a waiver of any other or subsequent breach or non-compliance.

11.7 **Counterparts.** This Agreement may be executed in multiple counterparts, by the Parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. All signatures of the Parties to this Agreement may be transmitted by email or facsimile, and such email or facsimile of signature will, for all purposes, be deemed to be the original signature of such Party whose signature it reproduces and will be binding upon such Party.

11.8 **Headings; Interpretation.** The table of contents and article and section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

11.9 **Governing Law.** This Agreement shall be construed and interpreted according to the Laws of the State of North Carolina, without regard to the application of the choice of law principles thereof. All of the conveyance documents executed and delivered pursuant to the terms

hereof shall be governed by and continued and interpreted according to the Laws of the State of North Carolina, without regard to the application of the choice of law principles thereof.

11.10 Bankruptcy Court Jurisdiction.

(a) Purchaser and Seller agree that the Bankruptcy Court shall have exclusive jurisdiction over all disputes, Claims, and other controversies (collectively, "Disputes") and other matters relating to (a) the interpretation and enforcement of this Agreement or any document executed pursuant hereto; (b) the Assets; (c) the Assumed Liabilities and other obligations assumed by the Purchaser under this Agreement; and (d) any obligations surviving Closing, as long as the Bankruptcy Court reserves such jurisdiction, and Purchaser expressly consents to and agrees not to contest such exclusive jurisdiction.

(b) The parties shall jointly request that the Bankruptcy Court reserve jurisdiction to consider Disputes arising under this Agreement even after the closing of the Bankruptcy Case. To the extent allowed under existing and controlling law in the Fourth Circuit as of the Closing Date, the parties consent to the jurisdiction of the Bankruptcy Court to hear all such Disputes and to enter final orders with respect to all matters and issues raised therein.

11.11 Notices. All notices, requests, demands and other communications hereunder shall be deemed to have been duly given if the same shall be in writing and shall be delivered or sent (a) by personal delivery against a receipted copy, (b) by certified mail, return receipt requested, or (c) by e-mail if the addressee confirms receipt of the e-mail, and addressed as set forth below:

If to Purchaser to:

UNC Health Care System  
101 Manning Drive  
Med Wing E, 3<sup>rd</sup> Floor  
Chapel Hill, NC 27514  
Attn: Chris Ellington,  
President – Network Affiliations  
E-Mail: [chris.ellington@unchealth.unc.edu](mailto:chris.ellington@unchealth.unc.edu)

If to Seller, to:

Morehead Memorial Hospital  
117 E Kings Hwy  
Eden, NC, 27288  
Attention: Dana Weston, CEO  
E-Mail: [dana.weston@morehead.org](mailto:dana.weston@morehead.org)

With copies to:

K&L Gates LLP  
4350 Lassiter at North Hills Avenue  
Suite 300  
Raleigh, NC 27609  
E-Mail: [Margaret.westbrook@klgates.com](mailto:Margaret.westbrook@klgates.com)

With copies to:

Waldrep LLP  
101 S. Stratford Rd., Suite 210  
Winston-Salem, NC 27104  
Attention: Thomas W. Waldrep, Jr., Esq.  
E-Mail: [twaldrep@waldrepllp.com](mailto:twaldrep@waldrepllp.com)

and

UNCHCS Legal Office  
101 Manning Drive  
Med Wing E, 2<sup>nd</sup> Floor

and

Sills Cummis & Gross P.C.  
One Riverfront Plaza  
Newark, New Jersey 07102

**2018 SOUTHEAST BANKRUPTCY WORKSHOP**

Chapel Hill, NC 27514  
Attn: C. Scott Strickland, Esq.  
E-mail: [christopher.strickland@unchealth.unc.edu](mailto:christopher.strickland@unchealth.unc.edu)

Attn: Andrew H. Sherman, Esq.  
E-Mail: [asherman@sillscurmuis.com](mailto:asherman@sillscurmuis.com)  
and

Womble Bond Dickenson (US) LLP  
One West Fourth Street  
Winston-Salem, NC 27101  
Attn: Anthony H. Brett, Esq.  
E-Mail: [anthony.brett@wbd-us.com](mailto:anthony.brett@wbd-us.com)

A Party may change the address to which notices hereunder are to be sent to it by giving notice of such change of address in the manner provided above. Any notice delivered personally shall be deemed to have been given on the date it is so delivered, or upon attempted delivery if acceptance of delivery is refused.

11.12 **Effectiveness.** This Agreement shall be effective only when duly signed by Seller in accordance with the order of the Bankruptcy Court approving the sale to Purchaser.

11.13 **No Third Party Beneficiaries.** Except as otherwise provided herein with respect to the Committee, nothing expressed or referred to in this Agreement will be construed to give any person other than the Parties to this Agreement any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement, except as such rights as shall inure to a successor or permitted assignee pursuant to this Agreement; provided the Morehead Memorial Hospital Foundation, Inc. shall be an express third-party beneficiary hereof solely for the purpose of enforcing Purchaser's obligations under Section 2.12(b) of this Agreement on behalf of Seller or any successor thereto.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

SELLER: MOREHEAD MEMORIAL  
HOSPITAL

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

PURCHASER: UNCHCS

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

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**Schedules and Exhibits**

Schedule 1	List of Excluded Assets
Schedule 2	Senior Leadership Team and Managers of the Business and Purchaser's Ultimate Parent Company
Schedule 3	List of Other Businesses
Schedule 4	List of Other Assets
Schedule 5	List of Permitted Encumbrances
Schedule 6	List of Real Property
Schedule 7	List of Taxes and Assessments
Schedule 2.7	Assumed Contracts
Schedule 3.7(b)	List of Seller's Health Care Permits
Schedule 3.7(e)	List of Inspections
Schedule 3.7(g)	List of Seller's Provider Numbers
Schedule 3.7 (h)	List of Seller's Undisputed Refunds and Overpayments
Schedule 3.9	Subsidiaries
Exhibit A	Form of Deed
Exhibit B	Form of Seller's Affidavit
Exhibit C	Form of Bill of Sale and Assignments

**SCHEDULE 1**

**Excluded Assets**

“Excluded Assets” means the following assets, properties, interests, and rights of Seller:

- (a) all cash and cash equivalents on hand as of the Closing;
- (b) Seller’s accounts receivable for services rendered through and including the day before Closing, subject to the provisions of Section 2.4(a) of this Agreement;
- (c) The mortgage reserve fund required to be maintained pursuant to the Regulatory Agreement between Seller and the United States Department of Housing and Urban Development, dated as of December 14, 2012;
- (d) The assets of Morehead Memorial Hospital Foundation, Inc.;
- (e) any rights, Claims, counterclaims, third party Claims or causes of action of Seller against any Person and any actions under Chapter 5 of the Bankruptcy Code, including, without limitation, under Sections 542, 544, 545, 547, 548, 549, 550, 551, 553 and 724(a) of the Bankruptcy Code;
- (f) all Actions and/or causes of actions that Seller has brought and/or may bring against any Person relating to any Excluded Asset and/or Excluded Liabilities, including, without limitation, all Actions and/or causes of action that Seller may bring against any current or former director, officer, employee or consultant;
- (g) all insurance policies and all rights to proceeds thereunder, including, without limitation, any director or officer insurance policies relating to any matter, event or circumstance occurring on or prior to the Closing Date, except as otherwise provided for in Section 5.10;
- (h) the residual rights in and proceeds of any employee benefits plans that are not transferred to Seller;
- (i) all Contracts, Permits, and other assets that require a consent (taking into consideration the provisions of the Bankruptcy Code), to transfer same unless (i) such written consent is obtained and (ii) the Purchaser assumes all liabilities arising thereunder, including all Cure Payments, if applicable (it being understood that Seller shall not be required to obtain or attempt to obtain any such consent);
- (j) all rights or documents relating to any Excluded Liability or other Excluded Asset;
- (k) any rights or remedies provided to Seller under this Agreement and applicable Law and each other document executed in connection with the Closing;
- (l) all rights relating to all applications for grants filed prior to the Effective Time, including all proceeds of grants awarded (including awards made and/or grant funds provided after the Closing);

- (m) any (i) personnel files for employees of Seller who are not hired by Purchaser; (ii) other books and records that Seller is required by Law to retain; provided, however, that except as prohibited by Law and subject to Article 5, Purchaser shall have the right, at Purchaser's sole expense, to receive or make copies of any portions of such retained books and records that relate to the Business as conducted before the Closing or that relate to any of the Assets; (iii) documents which Seller is not permitted to transfer pursuant to any contractual obligation owed to any third party; (iv) documents primarily related to any Excluded Assets; and (v) documents necessary to prepare tax returns (Purchaser shall be entitled to a copy of such documents referred to in this clause (v)). With respect to documents necessary to prepare cost reports, which shall be specified in writing by the Purchaser, the Purchaser shall receive the original document (to the extent such original can reasonably be located by Seller) and Seller shall be entitled to retain a copy of such documents for any period ending on or prior to the Closing Date;
- (n) all of Seller's deposits and other prepaid charges and expenses paid in connection with or relating to any Excluded Assets;
- (o) any assets disposed of or consumed in the ordinary course of business (except any disposed of or consumed in breach of the provisions of this Agreement) during the period between the date hereof and the Closing Date;
- (p) Seller's minute book and similar corporate records;
- (q) payments received from any Medicare Dependent Status claim made prior to the Closing Date;
- (r) any payments from, and all rights to payments that may become due from, Medicare or Medicaid programs based on adjustments to cost reports covering services prior to the Effective Time, including the Final Cost Reports;
- (s) any Privilege that relates to any Excluded Asset or any Excluded Liability; and
- (t) All funds with respect to the Debtors' self-funded (i) insurance, (ii) benefits, or (iii) similar programs.
- (u) All assets of the Morehead Memorial Hospital Auxiliary.



**SCHEDULE 2**

**Part 1**

**Senior Leadership and Managers of the Business**

- Dana Weston, President and Chief Executive Officer
- Ray Owings, Interim Chief Financial Officer
- JoAnn Smith, Chief Nursing Officer and Vice President of Patient Care Services
- Thomas Stevens, Vice President of Human Resources
- Susan Netherland, Director of Quality and Risk Management

**Part 2**

**Selected Senior Managers of Purchaser's Ultimate Parent Company**

[To Be Determined]

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**SCHEDULE 3**

**Other Businesses**

<i>Property Name</i>	<i>Location</i>
Women's Health Center	522 S. Van Buren Road, Eden, North Carolina
Dayspring Building	250 W. Kings Highway, Eden, North Carolina
Thompson Street Building	515 Thompson Street, Eden, North Carolina
Smith McMichael Cancer Center	516 S. Van Buren Road, Eden, North Carolina
Medical Office Building No.1	518 S. Van Buren Road, Eden, North Carolina
Medical Office Building No.2	522 S. Van Buren Road, Eden, North Carolina
Wright Diagnostic Center	618 S. Pierce Street, Eden, North Carolina

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**SCHEDULE 4**

**Other Assets**

<b>Address</b>	<b>Parcel No.</b>
117 E. Kings Highway, Eden, NC	Tax Parcel 141594
205 E. Kings Hwy, Eden, NC	Tax Parcel 141594
520 and 522 S. Van Buren Boulevard, Eden, NC	Tax Parcel 141594
515 Thompson Street, Eden, NC	Tax Parcel 141542
250 W. Kings Highway, Eden, NC	Tax Parcel 141290
516 and 518 S. Van Buren Boulevard, Eden, NC	Tax Parcel 109464
Land adjacent to 618 Pierce Street, Eden, NC	Tax Parcel 17749
618 Pierce Street, Eden, NC	Tax Parcel 169261
<b>Equity or Membership Interest/Name</b>	<b>Amount</b>
Advanced Home Care, Inc.	1.172%

**SCHEDULE 5**

**Permitted Encumbrances**

Track Title Report

1. [To Be Determined]

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**SCHEDULE 6**

**Real Property**

<b>Address</b>	<b>Parcel No.</b>
117 E. Kings Highway, Eden, NC	Tax Parcel 141594
205 E. Kings Hwy, Eden, NC	Tax Parcel 141594
520 and 522 S. Van Buren Boulevard, Eden, NC	Tax Parcel 141594
515 Thompson Street, Eden, NC	Tax Parcel 141542
250 W. Kings Highway, Eden, NC	Tax Parcel 141290
516 and 518 S. Van Buren Boulevard, Eden, NC	Tax Parcel 109464
Land adjacent to 618 Pierce Street, Eden, NC	Tax Parcel 17749
618 Pierce Street, Eden, NC	Tax Parcel 169261

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**SCHEDULE 7**

**Taxes and Assessments**

[To Be Determined]

301275683 v2  
301288837 v1

51

**SCHEDULE 2.7**

**Assumed Contracts**

1. Roma Realty LLC – Lease for Morehead Urgent Care West
2. Rockingham County Airport Authority – Lease Agreement
3. Advanced Home Care, Inc. – Member Agreement



**SCHEDULE 3.7(b)**

**Seller's Health Care Permits**

[To Be Determined]

**SCHEDULE 3.7(e)**

**Inspections**

[To Be Determined]

**SCHEDULE 3.7(g)**

**Seller's Provider Numbers**

[To Be Determined]

**SCHEDULE 3.7(h)**

**Seller's Undisputed Refunds and Overpayments**

[To Be Determined]

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### SCHEDULE 3.9

#### Subsidiaries

- Seller owns a 1.172% interest in Advanced Home Care, Inc., a North Carolina non-profit corporation.

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**IT IS ORDERED as set forth below:**

**Date: October 27, 2015**

*Wendy L. Hagenau*

Wendy L. Hagenau  
U.S. Bankruptcy Court Judge

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**In re:** ) **Chapter 11**  
)  
**SOUTHERN REGIONAL** ) **Case No. 15-64266-wlh**  
**HEALTH SYSTEM, INC., et al.,** )  
)  
**Debtors.** ) **Jointly Administered**  
)

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**ORDER (A) APPROVING ASSET PURCHASE AGREEMENT AND AUTHORIZING THE SALE OF ASSETS OF THE DEBTORS OUTSIDE THE ORDINARY COURSE OF BUSINESS, (B) AUTHORIZING THE SALE OF ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS, (C) AUTHORIZING THE ASSUMPTION AND SALE AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (D) GRANTING RELATED RELIEF**

Upon the Motion (docket no. 75) (the "Sale Motion") of the above captioned debtors and debtors-in-possession (collectively, the "Debtors" or "Sellers") for, among other things, the entry of an order pursuant to § § 105, 363, and 365 of title 11 of the United States Code (the "Bankruptcy Code"), and Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") authorizing the Debtors to: (a) enter into an asset purchase agreement with the party submitting the highest or best bid for the Debtors' assets in connection

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with the Debtors' sale and bidding process; (b) sell the Assets,<sup>1</sup> which include substantially all of the Debtors' assets, free and clear of all Liens (as used in this Order, the term "Liens" shall have the meaning ascribed to it below), with such sale to be in accordance with the terms and conditions of the Agreement; (c) assume and sell and assign certain executory contracts and unexpired leases; and (d) granting related relief; and this Court having entered an order on August 26, 2015 (docket no. 177) (the "Bid Procedures Order") authorizing the Debtors to conduct, and approving the terms and conditions of, an auction (the "Auction") as set forth in the Bid Procedures Order to consider offers for the Assets, establishing a date for the Auction, and approving, among other things: (i) certain Bid Procedures to be used in connection with the sale of the Debtors' assets, including the establishment of a deadline for submission of competing bids (the "Overbid Deadline") and the Auction; (ii) the form and manner of notice of the Auction and Bid Procedures; (iii) procedures relating to certain unexpired leases and executory contracts, including notice of proposed cure amounts; and (iv) payment of the Breakup Fee and the Expense Reimbursement in accordance with Section 7.7 of the Agreement; and the Court having established the date of the hearing on the Sale Motion (the "Sale Hearing"); and the Court having entered an Order on October 1, 2015 (docket no. 315) continuing the Sale Hearing until October 8, 2015, at 10:00 a.m., extending until 10:00 a.m. on October 7, 2015, the Overbid Deadline for Grady Memorial Hospital Corporation ("Grady") to submit a qualified competing bid and, if necessary, continuing the Auction until 2:00 p.m. on October 7, 2015; and, there being no

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Asset Purchase Agreement, filed with the Court (docket no. 254) and dated as of September 15, 2015, between Prime Healthcare Foundation, Inc., Prime Healthcare Foundation-Southern Regional, LLC (collectively, together with their respective successors and assigns, the "Purchaser"), the Debtors and the Clayton County Hospital Authority, as amended by the First Amendment to Asset Purchase Agreement filed with the Court on October 27, 2015 (docket no. 371) (the "Agreement").

qualified competing bid submitted by the Overbid Deadline such that it was unnecessary to conduct the Auction; and the Debtors having determined that it was in the best interests of the Debtors' estates to seek approval of the Purchaser's bid for the Assets; and the Court having jurisdiction to consider the Sale Motion and the relief requested therein in accordance with 28 U.S.C. § § 157(b)(2) and 1334; and in consideration of the Sale Motion, the relief requested therein, and the responses thereto being a core proceeding in accordance with 28 U.S.C. § 157(b); and the Sale Hearing having been held over three days, on October 8, 2015, October 13, 2015, and October 16, 2015; and the appearance of all interested parties and all responses and objections to the Sale Motion having been duly noted in the record of the Sale Hearing; and upon the record of the Sale Hearing and all other pleadings and proceedings in these Bankruptcy Cases, including (without limitation) the Sale Motion and the certificate of service regarding the Sale Motion (docket no. 99); and it appearing that the relief requested in the Sale Motion is in the best interests of the Debtors, their estates, their creditors, their patients, their employees, their other stakeholders and all other parties in interest; and after due deliberation and sufficient cause appearing therefore;

**IT IS HEREBY FOUND, DETERMINED AND CONCLUDED THAT:<sup>2</sup>**

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. Specific provisions of this Order govern over general provisions.

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<sup>2</sup> All findings of fact and conclusions of law announced by the Court at the Sale Hearing in relation to the Sale Motion are incorporated herein to the extent not inconsistent herewith.



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B. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

C. The Court has jurisdiction over this matter and over the property of the Debtors' estates, including the Assets to be sold, transferred, or conveyed pursuant to the Agreement, pursuant to 28 U.S.C. § § 157 and 1334. This matter is a "core proceeding" pursuant to 28 U.S.C. § 157(b)(2). Venue of these Bankruptcy Cases and the Sale Motion in this district is proper pursuant to 28 U.S.C. § § 1408 and 1409.

D. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). To any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, the Court expressly finds that there is no just reason for delay in the implementation of this Order, and expressly directs entry of judgment as set forth herein.

E. The statutory bases for the relief requested in the Sale Motion and for the approvals and authorizations herein are (i) Bankruptcy Code § § 102, 105, 362, 363 and 365, and (ii) Bankruptcy Rules 2002, 4001, 6004, 6006, and 9014.

F. On July 30, 2015 (the "Petition Date"), the Debtors filed voluntary petitions under chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtors have continued in possession and management of their businesses and properties as debtors-in-possession pursuant to Bankruptcy Code § § 1107(a) and 1108.

G. As evidenced by the certificates of service filed with the Court (including, without limitation, docket nos. 99, 212, 258, 292 and 293), proper, timely, adequate, and sufficient notice of the Sale Motion, the Bid Procedures, the Auction, the Sale Hearing, the Agreement, the sale of

the Assets free and clear of all Liens, and the transactions between the Debtors and Purchaser contemplated by the Agreement (all such actions including the sale of Assets are referred to as the “Debtor Transactions”) has been provided in accordance with Bankruptcy Code § § 102(1) and 363(b), Bankruptcy Rules 2002, 6004, 6006, 9006, 9007, 9008, and 9014, the local rules of the Court, the procedural due process requirements of the United States Constitution, and in compliance with the Bid Procedures Order. The Debtors also gave due and proper notice of the assumption, sale, and assignment of each contract or lease listed on Exhibits C-1 and C-2 to the Sale Motion, as amended or modified by Exhibit B to the Agreement, the Supplement to Sale Motion Identifying Proposed Cure Costs (docket no. 252), and the Amended Exhibit B to the Agreement (docket no. 340) (collectively, the “Contract Notice”), to each non-debtor party under each such contract or lease.<sup>3</sup> Such notice was good and sufficient and appropriate under the particular circumstances. No other or further notice of the Sale Motion, the Bid Procedures, the Auction, the Sale Hearing, the Agreement, the sale of the Assets free and clear of all Liens, the Debtor Transactions, the assumption and assignment of the Assumed Contracts, or of the entry of this Order is necessary or shall be required.

H. Notice and a reasonable opportunity to object and/or be heard regarding the Sale Motion, the Auction, the Sale Hearing, the Agreement, the sale of the Assets free and clear of all Liens, the Debtor Transactions, the assumption and assignment of the Assumed Contracts, and the entry of this Order have been provided to all interested Persons, including, without limitation (a) the Office of the United States Trustee for the Northern District of Georgia; (b) all non-debtor parties to the Assumed Contracts; (c) all Persons who have asserted any Liens (other than

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<sup>3</sup> The contracts, leases and agreements listed in the Contract Notice that are included in the Assets are identified on Exhibit 1 to this Order (the “Amended Contract List”) and are referred to in this Order as the “Assumed Contracts”.

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Permitted Liens) in or upon any of the Assets; (d) the Internal Revenue Service and all taxing authorities in each jurisdiction applicable to any Seller; (e) the “Master Service List” established in the Bankruptcy Cases; (f) all Governmental Entities exercising jurisdiction with respect to environmental matters affecting or relating to the Assets; (g) the Department of Health and Human Services and its Centers for Medicare and Medicaid Services; (h) the Office of the Attorney General of the State of Georgia; (i) the landlords for all non-residential real properties occupied by the Debtors as of the Petition Date; (j) counsel for Clayton County, Georgia; (k) the Hospital Authority of Clayton County, Georgia; (l) Georgia Department of Community Health, Division of Healthcare Facility Regulation; (m) Georgia Department of Community Health, Office of General Counsel; (n) Georgia Department of Community Health, Division of Medical Assistance (Medicaid); (o) Georgia Department of Community Health, Office of Health Planning; (p) Georgia Board of Pharmacy; (q) Centers for Medicare & Medicaid Services, Division of Laboratory Services, Survey and Certification Group; (r) Centers for Medicare & Medicaid Services, Office of Financial Management; (s) Cahaba GBA; (t) City of Riverdale, Business License division; (u) The Joint Commission (formerly known as JCAHO); (v) United States Department of Justice, Drug Enforcement Administration; (w) Georgia Department of Labor; and (x) Georgia Department of Public Health, Food Service Permit division.

I. The Assets are property of the Debtors’ estates and title thereto is vested in the Debtors’ estates.<sup>4</sup>

J. The Debtors have demonstrated a sufficient basis and the existence of reasonable and appropriate circumstances requiring them to enter into the Agreement, sell the Assets, and

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<sup>4</sup> The Assets do not include the County Transferred Property or any other assets owned by the County, the Authority or any other non-Debtor third party and nothing in this Order shall be construed as approval of the sale of or any transaction involving any non-Debtor property.

assume and assign the Assumed Contracts under Bankruptcy Code § § 363 and 365, and such actions are appropriate exercises of the Debtors' business judgment, are consistent in all respects with the Debtors' fiduciary duties, and are in the best interests of the Debtors, their estates, their creditors, their patients, their employees, and their other stakeholders. Such circumstances include, but are not limited to, the fact that (i) there is a substantial risk of deterioration of the value of the Assets if the sale of the Assets is not consummated quickly, (ii) the Agreement and the Closing present the best opportunity to realize the value of the Assets on a going concern basis, to avoid a decline and devaluation of the Debtors' businesses, and to avoid a shutdown of the Hospital, (iii) the Agreement constitutes the highest and/or best offer for the Assets, (iv) unless the sale of the Assets is concluded expeditiously as provided for in the Sale Motion and the Agreement, the stakeholders' recoveries will likely be diminished, and (v) the sale of the Assets to Purchaser and the consummation of the other Debtor Transactions are consistent with and support SRHS's charitable mission and will help address important public health needs in Clayton County, Georgia. In the event the Agreement and the Debtor Transactions are not approved by this Court, a closure of the Hospital is likely and the Debtors do not have the funding needed to implement a closure of the Hospital.

K. The Bid Procedures were non-collusive, substantively and procedurally fair to all parties, and were the result of arm's length negotiations between the Debtors and the Purchaser.

L. The Debtors and their professionals have complied, in good faith, in all respects with the Bid Procedures Order and the Bid Procedures. As demonstrated by the entire record in these Bankruptcy Cases, including, without limitation, (i) the testimony and other evidence proffered or adduced at the Sale Hearing and the hearing held in this Court on August 21, 2015 to consider entry of the Bid Procedures Order (the "Bid Procedures Hearing"), and (ii) the

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representations of counsel made on the record at the Sale Hearing, through marketing efforts and a competitive sale process conducted in accordance with the Bid Procedures Order, the Debtors (a) afforded interested potential purchasers a full, fair, and reasonable opportunity to qualify as bidders and submit their highest or otherwise best offer to purchase all of the Debtors' assets, (b) provided potential purchasers, upon request, sufficient information to enable them to make an informed judgment on whether to bid on the Assets, and (c) considered in good faith any bids submitted on or before the deadline to submit bids as set forth in the Bid Procedures.

M. The Purchaser was the only Qualified Bidder (as such term is defined in the Bid Procedures Order) and, therefore, there was no need to conduct the Auction. The Bid Procedures obtained the highest value for the Assets for the Debtors and their estates that was reasonably obtainable under the circumstances of these Bankruptcy Cases.

N. The offer of the Purchaser, upon the terms and conditions set forth in the Agreement, including the form and total consideration to be realized by the Debtors pursuant to the Agreement, (i) is the highest or best offer received by the Debtors, (ii) is fair and reasonable, (iii) is in the best interests of the Debtors' creditors, patients, employees, stakeholders and estates, (iv) constitutes full and fair consideration and reasonably equivalent value for the Assets, and (v) will provide a greater recovery for the Debtors' creditors, stakeholders and other interested parties than would be provided by any other practically available alternative. In reaching this determination, the Court has taken into account both the consideration to be realized directly by the Debtors, including the Purchaser's agreement to satisfy (or to provide funds to enable the Debtors to satisfy) certain claims against the Debtors and the assumption by Purchaser of the Assumed Liabilities, and the indirect benefits of the Debtor Transactions for the Debtors' employees, vendors, patients and the citizens of Clayton County, Georgia.

O. SRHS is a non-profit corporation that has a charitable mission. As part of its charitable mission, SRHS provides uncompensated care to a large number of citizens of Clayton County, Georgia who do not have health insurance. The number of patients who do not have health insurance and who receive uncompensated care at the Hospital has continued to escalate during the last couple years. The sale of the Assets to Purchaser and the consummation of the other Debtor Transactions are consistent with and support SRHS's charitable mission and will help address critical public health needs in Clayton County.

P. The Purchaser is not an "insider" or "affiliate" of the Debtors as those terms are defined in the Bankruptcy Code and the decisions thereunder. The Purchaser is a purchaser in "good faith," as that term is used in the Bankruptcy Code and the decisions thereunder, and is entitled to the protections of Bankruptcy Code § 363(m) with respect to all of the Assets. The Agreement was negotiated and entered into in good faith, based upon arm's length bargaining, and without collusion or fraud of any kind. Neither the Debtors nor the Purchaser have engaged in any conduct that would prevent the application of Bankruptcy Code § 363(m) or cause the application of, or implicate, Bankruptcy Code § 363(n) to the Agreement or to the consummation of the Debtor Transactions and transfer of the Assets and Assumed Contracts to the Purchaser. The Purchaser is purchasing the Assets (including the Assumed Contracts) in good faith, is a good faith purchaser within the meaning of Bankruptcy Code § 363(m), is an assignee in good faith of the Assumed Contracts, and is, therefore, together with the Debtors, entitled to the protection of Bankruptcy Code § 363(m). Additionally, the Purchaser otherwise has proceeded in good faith in all respects in connection with this proceeding in that: (i) the Purchaser recognized that the Debtors were free to deal with any other party interested in acquiring the Assets, (ii) the Purchaser complied with the Bid Procedures, (iii) all consideration to be paid by

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the Purchaser and other agreements or arrangements entered into by the Purchaser in connection with the sale have been disclosed, (iv) the Purchaser has not violated Bankruptcy Code § 363(n) by any action or inaction, and (v) the negotiation and execution of the Agreement and any other agreements or instruments related thereto was in good faith.

Q. The Debtors have full corporate, limited liability partnership and other power and authority to execute the Agreement (and all other documents contemplated thereby) and to consummate the Debtor Transactions, and the sale of the Assets has been duly and validly authorized by all necessary corporate, limited liability partnership and other actions on the part of the Debtors. No consents or approvals, other than as may be expressly provided for in the Agreement, are required by the Debtors to consummate such Debtor Transactions.

R. The Debtors have advanced sound business reasons for seeking to enter into the Agreement and to sell and/or assume and sell and assign the Assets, as more fully set forth in the Sale Motion and as demonstrated at the Sale Hearing, and it is a reasonable exercise of the Debtors' business judgment to sell the Assets and to consummate the Debtor Transactions contemplated by the Agreement. Notwithstanding any requirement for approval or consent by any Person, the transfer of the Assets to the Purchaser and the assumption and assignment of the Assumed Contracts is a legal, valid, and effective transfer of the Assets (including the Assumed Contracts).

S. The terms and conditions of the Agreement, including the total consideration to be realized by the Debtors pursuant to the Agreement, are fair and reasonable, and the Debtor Transactions contemplated by the Agreement are in the best interests of the Debtors' estates.

T. The Assets shall be sold free and clear of any and all liens, claims (as used in this Order, the term "claims" shall have the definition set forth in the Bankruptcy Code), liabilities,

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encumbrances and interests of any kind or nature whatsoever including, without limitation, all liens, mechanics' liens, materialmen's liens, consensual liens, non-consensual liens, statutory liens, hypothecations, encumbrances, security interests, mortgages, security deeds, deeds of trust, debts, levies, indentures, pledges, restrictions (whether on voting, sale, transfer, disposition or otherwise), charges, leases, licenses, easements, rights of way, instruments, preferences, priorities, security agreements, conditional sales agreements, title retention contracts, options, judgments, offsets, rights of recovery, rights of pre-emption, rights of setoff, rights of first refusal, other third party rights, other impositions, imperfections or defects of title or restrictions on transfer or use of any nature whatsoever, claims for reimbursement, claims for contribution, claims for indemnity, claims for exoneration, products liability claims, alter-ego claims, successor-in-interest claims, successor liability claims, substantial continuation claims, COBRA Coverage claims, withdrawal liability claims (including under any Employee Benefit Plan), environmental claims, claims under or relating to any Company Benefit Plan or ERISA Affiliate Plan (including the Pension Plan and any other pension or retirement plan), Tax claims (including claims for any and all foreign, federal, state and local Taxes), decrees of any court or foreign or domestic Governmental Entity, orders and claims of any Governmental Entity, of any kind or nature (including (i) any conditional sale or other title retention agreement and any lease having substantially the same effect as any of the foregoing, (ii) any assignment or deposit arrangement in the nature of a security devise, and (iii) any claim based on any theory that the Purchaser is a successor, successor-in-interest, continuation or a substantial continuation of the Debtors or the Debtors' business), reclamation claims, obligations, liabilities, demands, and guaranties, whether any of the foregoing are known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, secured or



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unsecured, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, whether arising prior to or subsequent to the commencement of the Bankruptcy Cases, and whether imposed by agreement, understanding, Law, equity or otherwise, including claims otherwise arising under doctrines of successor liability, successor-in-interest liability, continuation liability or substantial continuation liability including, without limitation, that Purchaser is in any way a successor, successor-in-interest, continuation or substantial continuation of the Debtors or their businesses (collectively, the “Liens”), other than the Permitted Liens and Assumed Liabilities. Purchaser would not have entered into the Agreement, and would not have agreed to purchase and acquire the Assets, if the sale of the Assets was not free and clear of any and all Liens (other than Permitted Liens and Assumed Liabilities).

U. Liens (other than the Permitted Liens) shall attach to the consideration to be received by the Debtors in the same priority and subject to the same defenses and avoidability, if any, as before the Closing.

V. The transfer of the Assets to the Purchaser will be a legal, valid, and effective transfer of the Assets and shall vest Purchaser with all right, title, and interest of the Debtors to the Assets and such Assets shall be free and clear of any and all Liens (other than the Permitted Liens). Except as specifically provided in the Agreement or this Order, the Purchaser shall not assume or become liable for any Liens other than the Permitted Liens and Assumed Liabilities.<sup>5</sup>

W. The transfer of the Assets to the Purchaser free and clear of Liens (other than the Permitted Liens) will not result in any undue burden or prejudice to any holders of any Liens,

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<sup>5</sup> In the event of any conflict between the provisions of this Order and the Agreement, the terms of this Order shall govern.

because all such Liens of any kind or nature whatsoever shall attach to the net proceeds of the sale of the Assets received by the Debtors in the order of their priority, with the same validity, force, and effect which they now have as against the Assets and subject to any claims and defenses the Debtors or other parties may possess with respect thereto. All persons having Liens of any kind or nature whatsoever against or in any of the Debtors or the Assets are and shall be forever barred, estopped and permanently enjoined from pursuing or asserting such Liens (other than the Assumed Liabilities and Permitted Liens) against the Purchaser, any of its assets, property, successors or assigns, or the Assets.

X. The Debtors may sell the Assets free and clear of Liens of any kind or nature whatsoever (other than the Permitted Liens) because, in each case, one or more of the standards set forth in Bankruptcy Code § 363(f) has been satisfied. Those (i) holders of Liens in or with respect to the Assets and (ii) non-debtor parties to the Assumed Contracts, who did not object, or who withdrew their objections, to the sale of the Assets and the Sale Motion are deemed to have consented pursuant to Bankruptcy Code § 363(f)(2). All objections to the Sale Motion have been overruled or resolved. Those holders of Liens in or with respect to the Assets who did object fall within one or more of the other subsections of Bankruptcy Code § 363(f) and are adequately protected by having their Liens, if any, attach to the proceeds of the sale of the Assets ultimately attributable to the property against or in which they claim or may claim any Liens, with such Liens being subject to treatment as may be prescribed in the Debtors' chapter 11 plan or by separate order of this Court.

Y. Not selling the Assets free and clear of Liens (other than the Permitted Liens and Assumed Liabilities) would adversely impact the Debtors' estates, and the sale of Assets other

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than one free and clear of Liens (other than the Permitted Liens and Assumed Liabilities) would be of substantially less value to the Debtors' estates.

Z. The Debtors and the Purchaser have, to the extent necessary, and contingent upon the payment at closing of all Cure Costs and all sums due under the Assumed Contracts between the effective date of the Cure Costs per Exhibit 1 to this Order and the Closing ("Additional Cure Costs") satisfied the requirements of Bankruptcy Code § 365, including Bankruptcy Code § § 365(b)(1)(A), (B) and 365(f), in connection with the sale and the assumption and assignment of the Assumed Contracts. The Purchaser has demonstrated adequate assurance of future performance with respect to the Assumed Contracts pursuant to Bankruptcy Code § 365(b)(1)(C). The assumption and assignment of the Assumed Contracts pursuant to the terms of this Order are integral to the Agreement and are in the best interests of the Debtors, their estates, their creditors, their patients, their employees, their stakeholders and other parties in interest, and represent the exercise of sound and prudent business judgment by the Debtors.

AA. The Assumed Contracts are assignable notwithstanding any provisions contained therein to the contrary. Subject to the provisions of Section 2.3(b) and Section 3.1(e) of the Agreement, the Debtors shall have sole responsibility for paying all Cure Costs required to assume and assign the Assumed Contracts to the Purchaser.<sup>6</sup>

BB. The Purchaser has acted in good faith, pursuant to Bankruptcy Code § 363(m), and the Purchaser's future actions in closing the Debtor Transactions and the sale of the Assets shall be presumed to be in good faith to the extent consistent with the Agreement and this Order and cause has been shown as to why this Order should not be subject to the stay provided by Bankruptcy Rules 6004(h) and 6006(d).

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<sup>6</sup> The Court approved Cure Costs, if any, for each of the Assumed Contracts are listed on the Amended Contract List (attached hereto).

CC. The Debtor Transactions do not amount to or constitute a consolidation, merger, or *de facto* merger of the Purchaser and the Debtors or the Debtors' estates, there is not substantial continuity between the Purchaser and the Debtors or the Debtors' estates, there is no continuity of enterprise between the Purchaser and the Debtors or the Debtors' estates, the Purchaser is not a continuation or substantial continuation of the Debtors or their estates, and the Purchaser is not a successor or successor-in-interest to the Debtors or their estates.

DD. The total consideration provided by the Purchaser for the Assets was the highest or best offer received by the Debtors, and the Purchase Price constitutes (a) reasonably equivalent value under the Bankruptcy Code and the Uniform Fraudulent Transfer Act, (b) fair consideration under the Uniform Fraudulent Conveyance Act, and (c) reasonably equivalent value, fair consideration, and fair value under any other applicable Laws of the United States, any state, territory or possession, or the District of Columbia, for the Assets.

EE. Time is of the essence in consummating the sale. There is no credible basis for concluding that a delay in the sale of the Assets would result in a higher or better offer for the Assets than the offer reflected in the Agreement. In order to maximize the value of the Assets, it is essential that the sale of the Assets occur within the time constraints set forth in the Agreement. Accordingly, there is cause to modify the stays contemplated by Bankruptcy Rules 6004(h) and 6006(d).

FF. At and effective as of the Closing, the Purchaser shall assume sole responsibility for paying and satisfying the Assumed Liabilities as provided in the Agreement. For the avoidance of doubt, nothing in this Order (including, without limitation, any provisions in this Order regarding the sale, transfer or conveyance of the Assets free and clear of Liens) nor in the Agreement shall be construed to mean that the Purchaser is not assuming from the Debtors and

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thereafter becoming solely responsible for the payment, performance and discharge of the Assumed Liabilities as provided in the Agreement. After the Closing, the Debtors shall have no liability whatsoever with respect to the Assumed Liabilities. The Purchaser shall have no obligations or responsibility whatsoever with respect to any claims against the Debtors (including, without limitation, the Excluded Liabilities) other than the Assumed Liabilities.

GG. Gemino Healthcare Finance, LLC ("Gemino") filed an objection to the Sale Motion (docket no. 272) (the "Gemino Objection") arguing, among other things, that Purchaser should be required to pay in cash at closing all Obligations under (and as defined in) the Credit Agreement dated September 26, 2014, between Gemino and SRHS (as at any time amended, the "Gemino Credit Agreement"). The Gemino Objection is resolved pursuant to the terms and conditions of this Order.

**NOW, THEREFORE, BASED UPON ALL OF THE FOREGOING, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. The relief requested in the Sale Motion is granted in its entirety, and the Agreement and the provisions thereof are approved in their entirety, subject to the terms and conditions contained herein; PROVIDED, however, that, pursuant to Section 363(d)(1) of the Bankruptcy Code, the Debtor's authority under this Order is subject to applicable non-bankruptcy law as to the consummation of the sale of the Assets.

2. All objections, responses, reservations of rights, and requests for continuance concerning the Sale Motion are resolved in accordance with the terms of this Order and as set forth in the record of the Sale Hearing. To the extent any such objection, response, reservation of rights, or request for continuance was not otherwise withdrawn, waived, or settled, it is overruled and denied on the merits.

3. Notice of the Sale Motion, the Bid Procedures, the Auction, the Sale Hearing, the

Agreement, the sale of the Assets free and clear of all Liens, the Debtor Transactions, the assumption and assignment of the Assumed Contracts, and the proposed Cure Costs, was reasonable, fair and equitable under the circumstances and complied in all respects with 11 U.S.C. § 102(1) and Bankruptcy Rules 2002, 6004, and 6006.

4. The sale of the Assets, the terms and conditions of the Agreement (including all schedules and exhibits affixed thereto), and the Debtor Transactions be, and hereby are, authorized and approved in all respects.<sup>7</sup>

5. The sale of the Assets and the consideration provided by the Purchaser under the Agreement are fair and reasonable and shall be deemed for all purposes to constitute a transfer for reasonably equivalent value and fair consideration under the Bankruptcy Code and any other applicable Law.

6. The Purchaser is hereby granted and is entitled to all of the protections provided to a good faith purchaser under Bankruptcy Code § 363(m), including, without limitation, with respect to all of the Debtor Transactions (part of which includes the transfer of the Assumed Contracts as part of the sale of the Assets pursuant to Bankruptcy Code § 365 and this Order).

7. The Debtors shall be, and hereby are, authorized and directed to fully assume, perform under, consummate, and implement the terms of the Agreement together with any and all additional instruments and documents that may be necessary or desirable in connection with implementing and effectuating the terms of the Agreement, this Order, and/or the sale of the Assets including, without limitation, bills of sale, certificates, deeds, assignments, and other instruments of transfer, and to take all further actions as may reasonably be requested by the Purchaser for the purpose of assigning, transferring, granting, conveying, and conferring to the

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<sup>7</sup> The Debtor Transactions being approved pursuant to this Order do not include transactions between the Purchaser and any non-Debtor third party.

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Purchaser, or reducing to possession, any or all of the Assets or Assumed Liabilities, as may be necessary or appropriate to the performance of the Debtors' obligations as contemplated by the Agreement, without any further corporate, limited liability partnership, or other action or orders of this Court.

8. The Debtors and each other Person having duties or responsibilities under the Agreement, any agreements or instruments related thereto or this Order, and their respective directors, officers, employees, members, managers, partners, agents, representatives, and attorneys, are authorized, directed and empowered, subject to the terms and conditions contained in the Agreement and this Order, to carry out all of the provisions of the Agreement and any related agreements or instruments; to issue, execute, deliver, file, and record, as appropriate, the documents evidencing and consummating the Agreement and any related agreements or instruments; to take any and all actions contemplated by the Agreement, any related agreements or instruments, or this Order; and to issue, execute, deliver, file, and record, as appropriate, such other contracts, instruments, releases, termination statements, indentures, mortgages, quitclaim deeds, deeds, bills of sale, assignments, leases, or other agreements or documents and to perform such other acts and execute and deliver such other documents, as are consistent with, and necessary, desirable or appropriate to implement, effectuate, and consummate, the Agreement, any related agreements or instruments, this Order and the Debtor Transactions, all without further application to, or order of, the Court or further action by their respective directors, officers, employees, members, managers, partners, agents, representatives, and attorneys, and with like effect as if such actions had been taken by unanimous action of the respective directors, officers, employees, members, managers, partners, agents, representatives, and attorneys of such entities. The secretary or any assistant secretary of each Debtor (or any comparable officer) shall

be, and hereby is, authorized to certify or attest to any of the foregoing actions (but no such certification or attestation shall be required to make any such action valid, binding, and enforceable). The Debtors are further authorized and empowered to cause to be filed with the secretary of state of any state or other applicable officials of any applicable Governmental Entity any and all certificates, agreements, or amendments necessary or appropriate to effectuate the Debtor Transactions and this Order, and all such other actions, filings, or recordings as may be required under appropriate provisions of the applicable Laws of all applicable Governmental Entities or as any of the officers of the Debtors may determine are necessary, desirable or appropriate. The execution of any such document or the taking of any such action shall be, and hereby is, deemed conclusive evidence of the authority of such person to so act. Without limiting the generality of the foregoing, this Order shall constitute all approvals and consents, if any, required by the corporate Laws of the State of Georgia and all other applicable business, corporation, non-profit, limited liability partnership, trust, and other Laws of the applicable Governmental Entities with respect to the implementation and consummation of the Agreement, any related agreements or instruments, this Order, and the Debtor Transactions; provided, however, nothing in this Order shall be construed as eliminating or waiving the Debtors' obligation to comply with the provisions of Section 363(d)(1) of the Bankruptcy Code.

9. Effective as of the Closing, (a) the sale of the Assets by the Debtors to the Purchaser shall constitute a legal, valid, and effective transfer of the Assets notwithstanding any requirement for approval or consent by any Person and shall vest the Purchaser with good, valid and marketable title in and to the Assets, free and clear of any and all Liens of any kind or nature whatsoever (other than the Permitted Liens and Assumed Liabilities) pursuant to Bankruptcy Code § 363(f), and (b) the assumption of the Assumed Liabilities by the Purchaser shall



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constitute a legal, valid and effective delegation and assignment of all Assumed Liabilities to the Purchaser and shall divest the Debtors of all liability with respect to any Assumed Liabilities.

10. The sale of the Assets is not subject to avoidance pursuant to Bankruptcy Code § 363(n).

11. At the Closing, the Debtors shall be, and hereby are, authorized, empowered, and directed, pursuant to Bankruptcy Code §§ 105, 363(b), 363(f) and 365, to sell the Assets and to assume and assign the Assumed Contracts to the Purchaser. The sale of the Assets shall vest the Purchaser with all right, title and interest of the Debtors to the Assets free and clear of any and all Liens (other than the Permitted Liens and Assumed Liabilities), with all such Liens to attach only to the proceeds of the sale with the same priority, validity, force, and effect, if any, as they now have in or against the Assets, subject to all claims and defenses the Debtors may possess with respect thereto. Following the Closing Date, no holder of any Liens in the Assets (other than the Permitted Liens and Assumed Liabilities) shall interfere with the Purchaser's use and enjoyment of the Assets based on or related to such Liens, or any actions that the Debtors may take in the Bankruptcy Cases. All Persons having Liens of any kind or nature whatsoever against or in any of the Debtors or the Assets are forever barred, estopped and permanently enjoined from pursuing or asserting any such Liens (other than the Permitted Liens and the Assumed Liabilities) against the Purchaser, any of Purchaser's assets, property, successors or assigns, or the Assets. No Person with actual or constructive notice of the Sale Motion and the opportunity to object thereto shall take any action to prevent, interfere with or otherwise enjoin consummation of the Debtor Transactions.

12. The provisions of this Order authorizing the sale of the Assets free and clear of Liens (other than the Permitted Liens and Assumed Liabilities) shall be self-executing, and

neither the Debtors nor the Purchaser shall be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate, and implement the provisions of this Order. However, the Debtors and the Purchaser, and each of their respective officers, employees, and agents, are hereby authorized and empowered to take all actions and to execute and deliver any and all documents and instruments that either the Debtors or the Purchaser deem necessary, desirable or appropriate to implement and effectuate the terms of the Agreement as to the Debtor Transactions and this Order.

13. On or before the Closing Date, the Debtors' creditors are authorized and directed to execute such documents and take all other actions as may be necessary to release any Liens (other than the Permitted Liens) of any kind against the Assets, as such Liens may have been recorded or may otherwise exist, and deliver such executed documents to the Debtors' counsel to be held in escrow. If any Person that has filed financing statements, mortgages or other documents, instruments or agreements evidencing any Liens in or against the Assets (other than the Permitted Liens) shall not have delivered to the Debtors' counsel prior to the Closing after request therefor, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, or releases of all such Liens that the Person has with respect to the Assets, the Debtors and each of the Debtors' officers are hereby authorized and directed to execute and file such statements, instruments, releases, and other documents on behalf of the Person with respect to such Assets at Closing, and the Purchaser and each of the Purchaser's officers are hereby authorized to execute and file such statements, instruments, releases, and other documents on behalf of the Person with respect to such Assets after the Closing. In addition, after Closing, the Purchaser and the Debtors are authorized to file a copy of this Order in the appropriate real estate records, the secretary of state records and any other filing

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location selected by the Purchaser or the Debtors and, once filed, this Order shall constitute conclusive evidence of the release of all Liens (other than Permitted Liens) from the Assets.

14. To the greatest extent available under applicable Law, (a) the Purchaser shall be authorized, as of the Closing Date, to operate under any License, permit, approval, certificate of occupancy, certificate of need, authorization, accreditation, operating permit, registration, plan and the like of any Governmental Entity relating to the Assets (collectively, the "Permits"), (b) all such Permits are deemed to have been, and hereby are, deemed to be transferred to the Purchaser as of the Closing Date, and (c) each Governmental Entity that has issued or granted a Permit and who did not object to the sale of the Assets shall be deemed to have consented to the transfer of such Permit to the Purchaser as of the Closing Date.

15. All of the Debtors' interests in the Assets to be acquired by the Purchaser under the Agreement shall be, as of the Closing Date and upon the occurrence of the Closing, transferred to and vested in the Purchaser. Upon the occurrence of the Closing, this Order shall be considered and shall constitute for any and all purposes a full and complete general assignment, conveyance, and transfer of the Assets acquired by the Purchaser under the Agreement and/or a bill of sale, deed, or assignment transferring good and marketable, indefeasible title and interest in the Assets to the Purchaser.

16. Except as expressly provided in the Agreement, the Purchaser is not assuming nor shall it or any affiliate of the Purchaser be in any way liable or responsible, as a successor, successor-in-interest, continuation, substantial continuation, or otherwise, for any claims, debts, or obligations of the Debtors in any way whatsoever relating to or arising from the Debtors' ownership or use of the Assets prior to the consummation of the Debtor Transactions, or any claims or liabilities calculable by reference to the Debtors or their operations or the Assets, or

relating to continuing or other conditions existing on or prior to consummation of the Debtor Transactions, which liabilities, claims, debts, and obligations are hereby extinguished insofar as they may give rise to liability, successor, successor-in-interest, continuation, substantial continuation, or otherwise, against the Purchaser or any affiliate of the Purchaser.

17. On the Closing Date, each of the Debtors' creditors is authorized and directed to execute such documents and take all other actions as may be necessary to release their respective Liens (other than the Permitted Liens) against the Assets, if any, as may have been recorded or may otherwise exist.

18. All Persons presently or on or after the Closing Date in possession of some or all of the Assets are directed to surrender possession of the Assets to the Purchaser on the Closing Date or at such time thereafter as the Purchaser may request.

19. Subject to the terms of the Agreement and the occurrence of the Closing Date, and subject to the payment of the Cure Costs and any Additional Cure Costs, the assumption by the Debtors of the Assumed Contracts and the sale and assignment of such agreements and unexpired leases to the Purchaser, as provided for or contemplated by the Agreement, be, and hereby are, authorized and approved pursuant to Bankruptcy Code § § 363 and 365; provided, however, that on or before the Closing of the Debtor Transactions, the Purchaser shall be permitted (in Purchaser's sole discretion) to modify the list of Assumed Contracts to delete any contract, lease or other agreement (other than the Facilities Service Agreement with HealthSpring Life & Health Insurance Company, Inc. which may not be deleted after October 30, 2015), in which case the deleted item shall not be deemed an Assumed Contract and shall not be assumed and assigned to the Purchaser.

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20. The Assumed Contracts shall be deemed valid and binding and in full force and effect and assumed by the Debtors and sold and assigned to the Purchaser at the Closing, pursuant to Bankruptcy Code § § 363 and 365, subject only to the payment of the Cure Costs and any Additional Cure Costs.

21. Upon the Closing, in accordance with Bankruptcy Code § § 363 and 365, the Purchaser shall be fully and irrevocably vested in all right, title, and interest in and to each Assumed Contract. The Debtors shall reasonably cooperate with, and take all actions reasonably requested by, the Purchaser to effectuate the foregoing.

22. Pursuant to Bankruptcy Code § § 365(b)(1)(A) and (B), subject to Section 2.3(b) and Section 3.1(e) of the Agreement, the Debtors shall promptly pay at Closing or cause to be paid at Closing to the non-debtor parties to any Assumed Contracts the requisite Cure Costs, if any, set forth on Exhibit 1 hereto. The Cure Costs are hereby fixed at the amounts set forth on the Exhibit 1 hereto, and the non-debtor parties to the Assumed Contracts are forever bound by such Cure Costs; provided, however, that nothing in this Order constitutes a waiver of the right of any non-debtor party to an Assumed Contract to assert a claim with respect to any Additional Cure Costs.

23. Subject to the terms of this Order, all defaults or other obligations under the Assumed Contracts arising prior to the Closing (without giving effect to any acceleration clauses, assignment fees, increases, advertising rates, or any other default provisions of the kind specified in Bankruptcy Code § 365(b)(2)) shall be deemed cured by payment of the Cure Costs and any Additional Cure Costs.

24. Any provision in any Assumed Contract that purports to declare a breach, default, or payment right as a result of an assignment or a change of control in respect of the Debtors is

unenforceable, and all Assumed Contracts shall remain in full force and effect, subject only to payment of the appropriate Cure Costs and Additional Cure Costs, if any. No sections or provisions of any Assumed Contract that purport to provide for additional payments, penalties, charges, or other financial accommodations in favor of the non-debtor party to the Assumed Contract shall have any force and effect with respect to the Debtor Transactions and assignments authorized by this Order, and such provisions constitute unenforceable anti-assignment provisions under Bankruptcy Code § 365(f) and/or are otherwise unenforceable under Bankruptcy Code § 365(e) and no assignment of any Assumed Contract pursuant to the terms of the Agreement shall in any respect constitute a default under any Assumed Contract. The non-debtor party to each Assumed Contract shall be deemed to have consented to such assignment under Bankruptcy Code § 365(c)(1)(B), and the Purchaser shall enjoy all of the Debtors' rights and benefits under each such Assumed Contract as of the applicable date of assumption without the necessity of obtaining such non-debtor party's written consent to the assumption or assignment thereof.

25. The Purchaser has satisfied all requirements under Bankruptcy Code § 365(b)(1)(C) and 365(f)(2)(b) to provide adequate assurance of future performance under the Assumed Contracts.

26. The Debtors and their estates shall be relieved of any liability for any breach of any of the Assumed Contracts occurring from and after Closing, pursuant to and in accordance with Bankruptcy Code § 365(k).

27. Pursuant to Bankruptcy Code §§ 105(a), 363, and 365, all parties to the Assumed Contracts are forever barred and enjoined from raising or asserting against the Purchaser any assignment fee, default, breach or claim or pecuniary loss, or condition to assignment, arising

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under or related to the Assumed Contracts existing as of the Closing or arising by reason of the Closing, except for any amounts that are Assumed Liabilities being assumed by the Purchaser under the Agreement.

28. Each and every federal, state, and local governmental agency or department (including each Governmental Entity) is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the Debtor Transactions contemplated by the Agreement and this Order. This Order and the Agreement shall govern the acts of all such federal, state, and local governmental agencies and departments, including any filing agents, filing officers, title agents, recording agencies, secretaries of state, and all other persons and entities who may be required by operation of Law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title in or to the Assets, and each such entity is hereby directed to accept this Order for recordation as conclusive evidence of the free, clear, and unencumbered transfer of title to the Assets conveyed to Purchaser pursuant to the Agreement.

29. To the maximum extent permitted by Bankruptcy Code § 525, no Governmental Entity may revoke or suspend any Permit relating to the operation of the Assets sold, transferred, or conveyed to the Purchaser on account of the filing or pendency of these Bankruptcy Cases or the consummation of the Debtor Transactions.

30. The Purchaser has not assumed and is not otherwise obligated for any of the claims against the Debtors (including, without limitation, the Excluded Liabilities) other than the Assumed Liabilities as set forth in the Agreement, and the Purchaser has not purchased any of the Excluded Assets as set forth in the Agreement. Effective as of the Closing, the Purchaser and its Affiliates shall have no liability or obligation with respect to the Excluded Liabilities.

Consequently, all Persons, Governmental Units (as defined in Bankruptcy Code § § 101(27) and 101(41)) and all holders of Liens (other than the Permitted Liens) based upon or arising out of claims retained by the Debtors are hereby enjoined from taking any action against the Purchaser or the Assets to recover any Liens or on account of any claims against the Debtors other than Assumed Liabilities pursuant to the Agreement. All Persons holding or asserting any Liens in or relating to the Excluded Assets are hereby enjoined from asserting or prosecuting such Liens or any cause of action against the Purchaser or the Assets for any Liens associated with the Excluded Assets.

31. The Purchaser is not a “successor,” “successor-in-interest,” “continuation,” or “substantial continuation” to or of the Debtors or their estates by reason of any theory of Law or equity, and the Purchaser shall not assume, nor be deemed to assume, or in any way be responsible for any liability, claim or obligation of any of the Debtors and/or their estates including, but not limited to, any bulk sales Law, successor liability, successor-in-interest liability, substantial continuation liability, or similar liability except to the extent expressly included in the Assumed Liabilities or provided in the Agreement. Neither the purchase of the Assets by the Purchaser, nor the fact that the Purchaser is using any of the Assets previously operated by the Debtors, will cause the Purchaser or any of its affiliates to be deemed a successor, successor-in-interest, continuation, or substantial continuation in any respect to the Debtors’ business within the meaning of any foreign, federal, state or local revenue, pension, ERISA, COBRA Coverage, FMLA, WARN, Tax, labor, employment, environmental, or other Law, rule or regulation (including, without limitation, filing requirements under any such Laws, rules or regulations), or under any products liability Law or doctrine with respect to the Debtors’



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liability under such Law, rule or regulation or doctrine, except to the extent expressly included in the Assumed Liabilities or provided in the Agreement.

32. For the avoidance of doubt, transfer of title and possession of the Assets shall be free and clear of any claims and other Liens pursuant to any successor, successor-in-interest, continuation, or substantial continuation theory, including the following: (a) any employment or labor agreements, (b) all deeds of trust, security deeds, mortgages, liens, and security interests, (c) any pension or medical benefit plan of the Debtors, compensation or other Employee Benefit Plan of the Debtors, welfare, agreements, practices and programs, (d) any other employee, worker's compensation, occupational disease or unemployment or temporary disability related claim, including, without limitation, claims and other Liens that might otherwise arise under or pursuant to (i) ERISA, (ii) the Fair Labor Standards Act, (iii) Title VII of the Civil Rights Act of 1964, (iv) the Federal Rehabilitation Act of 1973, (v) the National Labor Relations Act, (vi) WARN, (vii) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended, (viii) the Americans with Disabilities Act of 1990, (ix) the Consolidated Omnibus Budget Reconciliation Act of 1985, (x) state discrimination Laws, (xi) state unemployment compensation Laws or any other similar state Laws, or (xii) any other state or federal benefits or claims and other Liens relating to any employment with the Debtors or any predecessors, (e) environmental or other claims and other Liens arising from existing conditions on or prior to the Closing (including, without limitation, the presence of Hazardous Materials) that may be asserted on any basis, including, without limitation, under CERCLA or any other state or federal statute, (f) any bulk sales or similar Law, (g) any Tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended, and

(h) any and all theories of successor liability, including any theories on successor products liability grounds or otherwise.

33. Except to the extent expressly included in the Assumed Liabilities or provided in the Agreement, the Purchaser and its affiliates shall have no liability, obligation, or responsibility under WARN or CERCLA, or any foreign, federal, state or local labor, employment, or environmental Law by virtue of the Purchaser's purchase of the Assets or assumption of the Assumed Liabilities.

34. Except to the extent expressly included in the Assumed Liabilities, pursuant to Bankruptcy Code § § 105 and 363, all Persons including, but not limited to, the Debtors, the official committee of unsecured creditors, all debt holders, equity security holders, the Debtors' employees or former employees, Governmental Entities, lenders, parties to or beneficiaries under any Company Benefit Plan, trade and other creditors asserting or holding a Lien of any kind or nature whatsoever against, in, or with respect to any of the Debtors or the Assets (other than the Permitted Liens and Assumed Liabilities), arising under or out of, in connection with, or in any way relating to the Debtors, the Assets, the operation of the Debtors' businesses prior to the Closing Date, or the transfer of the Assets to the Purchaser, shall be forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing such Lien, including assertion of any right of setoff or subrogation, and enforcement, attachment, or collection of any judgment, award, decree, or order, against the Purchaser or any affiliate, successor or assign thereof and each of their respective current and former shareholders, members, managers, officers, directors, attorneys, employees, partners, affiliates, financial advisors, and representatives (each of the foregoing in its individual capacity), or the Assets.

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35. Without limiting the generality of the foregoing, the Purchaser shall not assume or be obligated to pay, perform or otherwise discharge any workers' compensation debts, obligations, and liabilities of the Debtors arising pursuant to state Law or otherwise. This Order is intended to be all inclusive and shall encompass, but not be limited to, workers' compensation claims or suits of any type, whether now known or unknown, whenever incurred or filed, which have occurred or which arise from work-related injuries, diseases, death, exposures, intentional torts, acts of discrimination, or other incidents, acts, or injuries prior to the Closing Date, including, but not limited to, any and all workers' compensation claims filed or to be filed, or reopenings of those claims, by or on behalf of any of the Debtors' current or former employees, persons on laid-off, inactive or retired status, or their respective dependents, heirs or assigns, as well as any and all premiums, assessments, or other obligations of any nature whatsoever of the Debtors relating in any way to workers' compensation liability.

36. Subject to the terms of the Agreement, the Agreement and any related agreements and/or instruments may be waived, modified, amended, or supplemented by agreement of the Debtors and the Purchaser, without further action or order of the Court; provided, however, that any such waiver, modification, amendment, or supplement is not materially adverse to the Debtors.

37. The failure specifically to include any particular provisions of the Agreement or any related agreements or instruments in this Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court, the Debtors, and the Purchaser that the Agreement and any related agreements and instruments are authorized and approved in their entirety with such amendments thereto as may be made by the parties in accordance with this Order prior to Closing, subject to Footnote 5 of this Order.

38. Nothing in this Order or the Agreement releases, nullifies, precludes, or enjoins the United States' enforcement of any liability under environmental Laws against the Purchaser or other future owner or operator as the current owner or operator of the Assets from and after the Closing Date.

39. No bulk sale Law or any similar Law of any state or other jurisdiction shall apply in any way to the sale and the Debtor Transactions contemplated by the Agreement.

40. Nothing in this Order shall alter or amend the Agreement and the obligations of the Debtors and the Purchaser thereunder, except as expressly provided herein.

41. At Closing, Purchaser shall pay to Gemino by wire transfer of immediately available funds (i) all unpaid principal, interest at the default rate, and reasonable legal fees and expenses then owed by SRHS to Gemino, (ii) the Termination Fee owed under the Gemino Credit Agreement in the amount of \$450,000; (iii) \$23,416.27 to reimburse Gemino for funds delivered by Gemino to First Financial on October 7, 2015, and (iv) all other unpaid Obligations (as defined in the Gemino Credit Agreement) owed to Gemino, as listed in a payoff letter (a "Payoff Letter") executed and delivered by Gemino to SRHS and Purchaser as of the date of Closing (provided that SRHS has given Gemino at least three business days' prior written notice of the date of Closing). SRHS is hereby authorized to execute and deliver the Payoff Letter, including, without limitation, releases of claims in favor of Gemino contained therein, and any other document or agreement that is necessary or appropriate to evidence the release of Gemino's liens and security interests. Gemino is authorized to receive and apply, and shall be entitled to retain forever, all funds at any time paid by SRHS or Purchaser to Gemino. Upon Purchaser's payment of the amount set forth in the Payoff Letter to Gemino, all Liens held by Gemino on the Assets shall be deemed released and Gemino shall (at no material expense to

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Gemino) provide such documents and instruments reasonably requested by Purchaser to evidence same.

42. Prior to or at Closing, the Debtors shall fully fund the Carve-Out (as defined in this Court's orders authorizing use of cash collateral)<sup>8</sup> by depositing funds to all applicable Carve-Out Escrow Accounts (as such term is defined in the Cash Collateral Order). After Closing, neither Gemino nor the DIP Lender (as such term is defined in the Cash Collateral Order) shall have any duties, responsibilities or liability whatsoever for, relating to or arising out of the Carve-Out.

43. To the extent the Assets contain records of the Southern Regional Health System Inc. Retirement Plan ("Pension Plan") or employment records of Pension Plan participants, except as provided below in this Paragraph 43, the Purchaser shall store and preserve any such records until the PBGC has completed its investigation regarding the Pension Plan and shall make such documents available to the PBGC (at reasonable times and upon reasonable advance notice to the Purchaser) for inspection and copying at the PBGC's sole cost and expense. Such records include, but are not limited to, any Pension Plan governing documents, actuarial documents, and employment records (collectively, the "Pension Plan Documents"). The Debtors shall retain and not abandon any Pension Plan Documents that are not Assets until the PBGC has completed its investigation regarding the Pension Plan. If the Closing shall have occurred prior to the PBGC having completed its investigation regarding the Pension Plan, the Purchaser agrees to take custody of any such Pension Plan Documents being held by the Debtors, unless the PBGC takes custody of such Pension Plan Documents, and (except as provided below in this Paragraph 43) further agrees to store and preserve any such records until the PBGC has

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<sup>8</sup> See docket numbers 43, 179, 324 and 356 (collectively, but without duplication, the "Cash Collateral Order").

completed its investigation regarding the Pension Plan and to make such documents available to the PBGC (at reasonable times and upon reasonable advance notice to the Purchaser) for inspection and copying at the PBGC's sole cost and expense. From and after six months after the Closing, the Purchaser shall be entitled to return to the Debtor's estate any Pension Plan Documents following 60 days' advance notice to the PBGC of such proposed return; provided, however, the PBGC shall be entitled to take custody of any such Pension Plan Documents prior to the expiration of such 60-day period. Nothing herein shall prohibit the Debtors from seeking reimbursement for the cost of storage from the PBGC.

44. This Order and the Agreement shall be binding upon and govern the acts of all Persons including, without limitation, the Debtors, the Debtors' estates, the Purchaser, and each of their respective directors, officers, employees, agents, successors, and permitted assigns, including, without limitation, any Chapter 11 trustee hereinafter appointed for the Debtors' estates, any trustee appointed in a Chapter 7 case if these Bankruptcy Cases are converted from Chapter 11, any Chapter 11 plan agent or trustee, liquidating agent or trustee, or any other agent or trustee charged with administering any assets of the Debtors or their estates, all creditors of each Debtor (whether known or unknown), the official committee of unsecured creditors and its professionals, holders of Liens in or with respect to the Assets, filing agents, filing officers, title agents, recording agencies, secretaries of state, and all other Persons who may be required by operation of Law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title in or to the Assets.

45. Nothing in any Order of this Court or contained in any plan of reorganization or liquidation confirmed in these Bankruptcy Cases, or in any subsequent or converted cases of the

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Debtors under chapter 7 or chapter 11 of the Bankruptcy Code, shall conflict with or derogate from the provisions of the Agreement or the terms of this Order.

46. The stays imposed by Bankruptcy Rules 6004(h), 6006(d), and 7062 are hereby waived, and this Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing. In the absence of any Person obtaining a stay pending appeal, the Debtors and the Purchaser are free to close under the Agreement at any time, subject to the terms of the Agreement. In the absence of any Person obtaining a stay pending appeal, if the Debtors and the Purchaser close under the Agreement, the Purchaser shall be deemed to be acting in “good faith” and shall be entitled to the protections of Bankruptcy Code § 363(m) as to all aspects of the Debtor Transactions if this Order or any authorization contained herein is reversed or modified on appeal.

47. The sale of the Assets to the Purchaser outside of a plan of reorganization pursuant to the Agreement neither impermissibly restructures the rights of the Debtors’ creditors nor impermissibly dictates the terms of a liquidating plan or plan of reorganization of the Debtors. The Agreement and the Debtor Transactions do not constitute a *sub rosa* Chapter 11 plan.

48. The automatic stay provisions of Bankruptcy Code § 362 are vacated and modified to the extent necessary to implement the terms and conditions of the Agreement and the provisions of this Order, and the stay imposed by Bankruptcy Rule 4001(a)(3) is hereby waived with respect thereto.

49. Nothing in this Order shall be construed to constitute a release of any claims held by third parties against any Person (other than the Purchaser and its Affiliates to the extent provided herein).

50. Notwithstanding anything to the contrary in this Order or the Agreement, it shall be an express and nonwaivable condition precedent to the Debtors' authority and obligation to close under the Agreement and to consummate the Debtor Transactions that, at or prior to the Closing, the Debtors shall have determined in good faith, and so certified in writing delivered to Purchaser, that, immediately following the Closing and payment by Purchaser of the consideration provided under the Agreement, the Debtors shall have sufficient funds on hand to satisfy all Cure Costs and the Debtors' reasonable estimate of all operating expenses arising post-petition, incurred by the Debtors in the ordinary course of business at or prior to Closing, and properly due and payable (exclusive of professional fees and expenses), which are unpaid as of the Closing. Upon delivery of such certificate by Debtors to Purchaser and the Committee, the Debtors and Purchaser shall be authorized to close under the Agreement and consummate the Debtor Transactions (it being understood that the Purchaser shall be entitled to conclusively rely upon the delivery of such certificate that the condition precedent set forth in this Paragraph 50 shall have been satisfied).

51. This Court shall retain jurisdiction to enforce the terms and provisions of this Order, the Bid Procedures Order, and the Agreement (including, without limitation, all documents and instruments executed in connection with the Closing) in all respects and to decide any disputes concerning this Order, the Agreement, or the rights and duties of the parties hereunder or thereunder or any issues relating to the Agreement and this Order including, but not limited to, the interpretation of the terms, conditions and provisions hereof and thereof, the status, nature and extent of the Assets and any Assumed Contracts, and all issues and disputes arising in connection with the relief authorized herein, inclusive of those concerning the transfer



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of the Assets free and clear of any and all Liens (except Permitted Liens and Assumed Liabilities).

52. Nothing in this Order shall be deemed to authorize or approve the Debtors or the Debtors' estates release, waiver, settlement or discharge of any claims, causes of action, rights or defenses relating to: (i) Emory Healthcare, Inc., except as arise under any Assumed Contracts; (ii) Insured Claims or D&O Claims as defined in the Agreement; (iii) any Excluded Assets; (iv) any Excluded Contracts; (v) any Excluded Liabilities; or (vi) any claims or causes of action not assigned to the Purchaser under the Agreement or this Order.

53. Nothing in this Order shall be deemed to authorize or approve the release, waiver, settlement or discharge of any claims, causes of action, rights or defenses held by any Person (other than the Debtors and their estates) against: (i) Clayton County, Georgia; (ii) the Clayton County Hospital Authority; or (iii) the County Transferred Property.

54. The provisions of this Order are non-severable and mutually dependent. The terms and conditions of the Agreement (including all schedules and exhibits thereto) constitute a single, integrated transaction and are mutually dependent and non-severable.

55. As soon as practicable after the Closing, the Debtors shall file a report of sale in accordance with Bankruptcy Rule 6004(f)(1).

56. Notwithstanding anything to the contrary in the Agreement or this Order Purchaser shall not obtain any right, title or interest in the accounts receivable (the "Purchased Receivables") sold by Debtors to First Financial Investment Fund V, LLC ("First Financial") prior to the Petition Date or the proceeds thereof. Purchaser and First Financial shall work together to resolve issues regarding First Financial's access to the Debtors' books, records and legacy computer systems and the delivery of any funds Purchaser may receive on the Purchased

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Receivables. Purchaser and First Financial shall file a report with the Court by November 15, 2015 as to whether any issues remain between them. As provided in Paragraph 49 above, neither the Debtors nor any third party (except for Gemino) shall be released from any past, current or future liability that such party may have to First Financial related to the Purchased Receivables.

57. On or before the Closing Date, the Debtors are authorized and directed to satisfy the US Foods Pre-Petition Claim from the US Foods Reserve established under Paragraph 5(d) of the Cash Collateral Order. The terms “US Foods Pre-Petition Claim” and “US Foods Reserve” shall have the meanings ascribed to them in the Cash Collateral Order.

ORDERED FURTHER that counsel for the Debtors shall cause a copy of this Order to be served upon those parties identified on the Master Service List approved by prior order of the Court.

[END OF ORDER]

Prepared and presented by:

/s/ J. Robert Williamson  
J. Robert Williamson  
Georgia Bar No. 765214  
Scroggins & Williamson, P.C.  
1500 Candler Building  
127 Peachtree Street, N.E.  
Atlanta, GA 30303  
Phone: (404) 893-3880  
Fax: (404) 893-3886  
E-mail: rwilliamson@swlawfirm.com

ATTORNEYS FOR THE DEBTORS

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**EXHIBIT 1**

	<b>Name of Other Parties to Lease or Contract</b>	<b>Contract Type</b>	<b>Contract Description</b>	<b>Contract Date</b>	<b>Cure Amount (As of October 9, 2015, unless otherwise noted)</b>
1.	Clayton County Hospital Authority	Lease (Debtor is Tenant)	Lease Agreement by and between Clayton County Hospital Authority, as Lessor, and Southern Regional Medical Center, Inc., as Lessee, as restated (including all amendments thereto)	August 14, 1997	\$ 0.00
2.	Spivey Station ASC Building, L.P. and Southlake Ambulatory Surgery Center, L.L.L.P. and Southern Regional Health Systems, Inc.	Lease (Debtor is Tenant)  Landlord CHP Spivey II-Jonesboro GA MOB Owner, LLC	7813 Spivey Station Boulevard, Suite 100, Jonesboro, GA	May 1, 2008	\$0.00
3.	Highway 138 Physicians Center I, L.L.L.P. and Southern Regional Health Systems, Inc.	Lease (Debtor is Tenant)  Landlord CHP Spivey I-Jonesboro GA MOB Owner, LLC	7823 Spivey Station Boulevard, Suite 110, Jonesboro, GA	May 25, 2006	\$86,922.30
4.	Spivey Station ASC Building, L.P. and Southern Regional Health Systems, Inc.	Lease (Debtor is Tenant)  Landlord CHP Spivey II-Jonesboro GA MOB Owner, LLC	7813 Spivey Station Boulevard, Suite 200, Jonesboro, GA	May 1, 2008	\$179,676.24

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	<b>Name of Other Parties to Lease or Contract</b>	<b>Contract Type</b>	<b>Contract Description</b>	<b>Contract Date</b>	<b>Cure Amount (As of October 9, 2015, unless otherwise noted)</b>
5.	Spivey Station Physicians Center I, L.P. and Southern Regional Health Systems, Inc.	Lease (Debtor is Tenant)  Landlord CHP Spivey I-Jonesboro GA MOB Owner, LLC	7823 Spivey Station Boulevard, Suite 205, Jonesboro, GA	November 17, 2014	\$28,662.36
6.	Highway 138 Physicians Center I, L.P. and Southern Regional Health Systems, Inc.	Lease (Debtor is Tenant)  Landlord CHP Spivey I-Jonesboro GA MOB Owner, LLC	7823 Spivey Station Boulevard, Suite 250, Jonesboro, GA	May 25, 2006	\$62,305.83
7.	Highway 138 Physicians Center I, L.P. and Southern Regional Health Systems, Inc.	Lease (Debtor is Tenant)  Landlord CHP Spivey I-Jonesboro GA MOB Owner, LLC	7823 Spivey Station Boulevard, Suite 350, Jonesboro, GA	May 25, 2006	\$16,192.04
8.	Georgia Cancer Specialists I, P.C. and Spivey Station Physicians Center I, L.P.	Sublease (Debtor is Subtenant)	Landlord Consent and Sublease Agreement by and between Georgia Cancer Specialists I, P.C., as Tenant, Southern Regional Health System, Inc., as Subtenant and Spivey Station Physicians Center I, L.P., as Prime Landlord	November 1, 2013	\$750.00
9.	Southern Crescent Physicians Group, Inc.	Lease (Debtor is Landlord)	Lease Agreement by and between Southern Regional Health System, Inc., as Landlord, and Southern Crescent Physicians Group, Inc., as Tenant	June 1, 2012	\$0.00

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	<b>Name of Other Parties to Lease or Contract</b>	<b>Contract Type</b>	<b>Contract Description</b>	<b>Contract Date</b>	<b>Cure Amount (As of October 9, 2015, unless otherwise noted)</b>
10.	Georgia Urology P.C.	Lease (Debtor is Landlord)	Lease Agreement by and between Southern Regional Health System, Inc., as Landlord, and Georgia Urology, P.A. as Tenant	December 4, 2012	\$0.00
11.	Riverwoods Behavioral Health Systems, LLC	Lease (Debtor is Landlord)	Lease by and between Southern Regional Health System, Inc., as Landlord, and Riverwoods Behavioral Health Systems, LLC, as Tenant, as amended	December 18, 2014	\$0.00
12.	Glenn Shear MD, P.C.	Lease (Debtor is Landlord)	Lease Agreement by and between Southern Regional Health System, Inc., as Landlord, and Glenn S. Shear, M.D., P.C., as Tenant	March 1, 2014	\$0.00
13.	South Atlanta Primary Care, P.C.	Lease (Debtor is Landlord)	Lease by and between South Atlanta Primary Care, P.C., as Tenant, and Southern Regional Health System, Inc., as Landlord, as amended	March 24, 2014	\$0.00
14.	Southern Crescent Hospital for Specialty Care, Inc.	Lease (Debtor is Landlord)	Lease Agreement by and between Southern Regional Health System, Inc., as Lessor, and Southern Crescent Hospital for Specialty Care, Inc., as Lessee	December 1, 2003	\$0.00

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	<b>Name of Other Parties to Lease or Contract</b>	<b>Contract Type</b>	<b>Contract Description</b>	<b>Contract Date</b>	<b>Cure Amount (As of October 9, 2015, unless otherwise noted)</b>
15.	L&D Van, Inc. d/b/a Especially for Kids Christian Academy	Lease (Debtor is Landlord)	Childcare Facility Lease Agreement by and between Southern Regional Health System, Inc., as Landlord, and L&D Van, Inc. d/b/a Especially for Kids Christian Academy, as Tenant	May 18, 2012	\$0.00
16.	Suncrest Home Health of Georgia, Inc.	Lease (Debtor is Landlord)	Lease Agreement by and between Southern Regional Health System, Inc., as Landlord, and Suncrest Home Health of Georgia, Inc., as Tenant	December 31, 2014	\$0.00
17.	MetroPCS Georgia, LLC	Communications Site Sublease (Debtor is Landlord)	Communications Site Sublease Agreement by and between MetroPCS Georgia, LLC, as Lessee, and Southern Regional Health System, Inc., as Lessor	October 20, 2011	\$0.00
18.	Northside Hospital, Inc. and Atlanta Cancer P.C.	Sublease (Debtor is Landlord)	Sublease Agreement by and between Southern Regional Health System, Inc., as Landlord, Northside Hospital, Inc., as Tenant, and Atlanta Cancer P.C., as Sublessor, as amended	March 15, 2015	\$0.00
19.	Georgia Eye Bank, Inc.	Professional Services Agreement	Cooperative Agreement for Eye Donation by and between Georgia Eye Bank, Inc. and Southern Regional Medical Center	August 28, 2012	\$3,170.00

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	<b>Name of Other Parties to Lease or Contract</b>	<b>Contract Type</b>	<b>Contract Description</b>	<b>Contract Date</b>	<b>Cure Amount (As of October 9, 2015, unless otherwise noted)</b>
20.	Clayton County Board of Health	Professional Services Agreement	Strategic National Stockpile Enrollment Agreement by and between Clayton County Board of Health and Southern Regional Medical Center	June 24, 2003	\$0.00
21.	LifeLink Foundation Inc., d/b/a LifeLink of Georgia	Professional Services Agreement	Organ/Tissue Procurement Agreement by and between LifeLink Foundation Inc., d/b/a Life Link of Georgia, and Southern Regional Medical Center, as amended	October 2, 2014	\$599.00
22.	Acadia RiverWoods, LLC d/b/a RiverWoods Behavioral Health System	Patient Transfer Agreement	Patient Transfer Agreement by and between Southern Regional Health System, Inc. d/b/a Southern Regional Medical Center and Acadia RiverWoods, LLC d/b/a RiverWoods Behavioral Health System	September 16, 2008	\$0.00
23.	Southern Crescent Long Term Care Hospital, Inc. d/b/a Southern Crescent Hospital for Specialty Care	Patient Transfer Agreement	Patient Transfer Agreement between Southern Crescent Long Term Care Hospital, Inc. d/b/a Southern Crescent Hospital For Specialty Care and Southern Regional Health System, Inc. d/b/a Southern Regional Medical Center	October 28, 2003	\$0.00
24.	Adair Dialysis, LLC	Patient Transfer Agreement	Patient Transfer Agreement by and between Southern Regional Medical Center and Adair Dialysis, LLC	December 17, 2013	\$0.00

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	<b>Name of Other Parties to Lease or Contract</b>	<b>Contract Type</b>	<b>Contract Description</b>	<b>Contract Date</b>	<b>Cure Amount (As of October 9, 2015, unless otherwise noted)</b>
25.	Southside Kidney Clinics	Transfer Agreement	Letter Agreement between Southside Kidney Clinics and Southern Regional Medical Center	March 31, 2015	\$0.00
26.	Cancer Treatment Centers of America of the Southeast, Inc.	Transfer Agreement	Affiliation Agreement by and between Southern Regional Medical Center and Cancer Treatment Centers of America of the Southeast, Inc.	July 13, 2009	\$0.00
27.	Clayton County Dialysis, LLC	Transfer Agreement	Transfer Agreement by and between Southern Regional Medical Center and Clayton County Dialysis, LLC	May 5, 2004	\$0.00
28.	Emory University Hospital, Crawford Long Hospital of Emory University, Egleston Children's Hospital of Emory University, Wesley Woods, Inc., and Emory University System of Health Care, Inc.	Transfer Agreement	Transfer Agreement by and between Emory University Hospital, Crawford Long Hospital of Emory University, Egleston Children's Hospital of Emory University, Wesley Woods, Inc. and Emory University System of Health Care, Inc., as agent, and Southern Regional Medical Center Inc., d/b/a/ Southern Regional Medical Center	September 20, 1994	\$0.00
29.	Fairburn Health Care Center	Transfer Agreement	Agreement by and between Southern Regional Medical Center and Fairburn Health Care Center	March 2, 1994	\$0.00



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	<b>Name of Other Parties to Lease or Contract</b>	<b>Contract Type</b>	<b>Contract Description</b>	<b>Contract Date</b>	<b>Cure Amount (As of October 9, 2015, unless otherwise noted)</b>
30.	Martha K. Glaze Regional Youth Detention Center	Transfer Agreement	Letter Agreement between Martha K. Glaze Regional Youth Detention Center and Southern Regional Medical Center	May 14, 2015	\$0.00
31.	SunBridge Retirement Care Associates, L.L.C., d/b/a Riverdale Place Care and Rehabilitation Center	Transfer Agreement	Transfer Agreement by and between SunBridge Retirement Care Associates, L.L.C., d/b/a Riverdale Place Care and Rehabilitation Center, and Southern Regional Medical Center	September 1, 2011	\$0.00
32.	Southern Heart Specialist, P.C.	Transfer Agreement	Letter Agreement between Southern Heart Specialist, P.C. and Southern Regional Medical Center	March 27, 2013	\$0.00
33.	Talbott Recovery Campus	Transfer Agreement	Letter of Agreement for Medical Services between Talbott Recovery Campus and Southern Regional Medical Center	October 17, 2001	\$0.00
34.	Total Renal Care, Inc.	Transfer Agreement	Patient Transfer Agreement by and between Southern Regional Medical Center and Total Renal Care, Inc.	April 15, 2013	\$0.00
35.	Regency Hospital Company of South Atlanta, LLC	Clinical Services Agreement	Clinical Laboratory Services Agreement by and between Regency Hospital Company of South Atlanta, LLC and Southern Regional Medical Center	June 1, 2011	\$0.00

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	<b>Name of Other Parties to Lease or Contract</b>	<b>Contract Type</b>	<b>Contract Description</b>	<b>Contract Date</b>	<b>Cure Amount (As of October 9, 2015, unless otherwise noted)</b>
36.	Renal Treatment Centers-Mid-Atlantic, Inc.	Clinical Services Agreement	Stat Laboratory Services Agreement by and between Southern Regional Medical Center and Renal Treatment Centers-Mid-Atlantic, Inc.	March 1, 2011	\$0.00
37.	Clinical Laboratory Services, Incorporated	Clinical Services Agreement	Clinical Laboratory Services Agreement by and between Clinical Laboratory Services, Incorporated and Southern Regional Medical Center	March 1, 2015	\$0.00
38.	Southern Crescent Hospital for Specialty Care, Inc.	Clinical Services Agreement	Ancillary Services Agreement by and between Southern Regional Medical Center, Inc. and Southern Crescent Hospital for Specialty Care, Inc.	December 3, 2003	\$0.00
39.	Acadia RiverWoods, LLC d/b/a RiverWoods Behavioral Health System	Clinical Services Agreement	Clinical Assessment Services Agreement by and between Acadia RiverWoods, LLC d/b/a RiverWoods Behavioral Health System and Southern Regional Health System, Inc. d/b/a Southern Regional Health Medical Center	September 16, 2008	\$208,076.66

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	<b>Name of Other Parties to Lease or Contract</b>	<b>Contract Type</b>	<b>Contract Description</b>	<b>Contract Date</b>	<b>Cure Amount (As of October 9, 2015, unless otherwise noted)</b>
40.	Acadia RiverWoods, LLC d/b/a RiverWoods Behavioral Health System	Clinical Services Agreement	Rehabilitative Services Agreement by and between Acadia RiverWoods, LLC d/b/a RiverWoods Behavioral Health System and Southern Regional Health System, Inc. d/b/a Southern Regional Health Medical Center	September 15, 2008	\$0.00
41.	Centers for Disease Control and Prevention	Affiliation Agreement	Participation Agreement in Georgia Coverdell Acute Stroke Registry	September 21, 2007	\$0.00
42.	Clayton County Board of Health	Affiliation Agreement	Affiliation Agreement by and between Southern Regional Health System, Inc. and Clayton County Board of Health	January 1, 2009	\$0.00
43.	Georgia Department of Community Health Division of Public Health	Affiliation Agreement	Agreement by and between the Georgia Department of Community Health Division of Public Health and Southern Regional Medical Center	April 14, 2009	\$81,361.30
44.	Georgia Department of Human Resources, Division of Public Health	Affiliation Agreement	Memorandum of Understanding by and between Georgia Department of Human Resources, Division of Public Health, and Southern Regional Health System, Inc.	August 23, 2004	197,556.54

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	<b>Name of Other Parties to Lease or Contract</b>	<b>Contract Type</b>	<b>Contract Description</b>	<b>Contract Date</b>	<b>Cure Amount (As of October 9, 2015, unless otherwise noted)</b>
45.	Georgia Hospital Association	Affiliation Agreement	Mutual Aid Compact by and between Southern Regional Medical Center and every other GHA member hospital/health system or any hospital in a contiguous state that signs an identical Compact	April 25, 2006	\$0.00
46.	National Medical Disaster System	Affiliation Agreement	Memorandum of Agreement for Definitive Medical Care by and between Southern Regional Medical Center and the National Disaster Medical System	November 20, 2012	\$0.00
47.	South University LLC	Affiliation Agreement	Affiliation Agreement by and between South University LLC and Southern Regional Medical Center	February 1, 2012	\$0.00
48.	Southern Crescent Technical College	Affiliation Agreement	Memorandum of Understanding by and between Southern Crescent Technical College and Southern Regional Medical Center	February 20, 2014	\$0.00
49.	University of Southern California	Affiliation Agreement	Memorandum of Understanding by and between University of Southern California on behalf of its Division of Biokinesiology and Physical Therapy and Southern Regional Medical Center	July 30, 2015	\$0.00

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	<b>Name of Other Parties to Lease or Contract</b>	<b>Contract Type</b>	<b>Contract Description</b>	<b>Contract Date</b>	<b>Cure Amount (As of October 9, 2015, unless otherwise noted)</b>
50.	The Interventional Spine and Pain Management Center, PC	Sublease (Debtor as Sub-Tenant)	Medical Office Sublease by and between The Interventional Spine and Pain Management Center, PC and Southern Crescent Physician's Group	January 10, 2014	\$0.00
51.	Southlake Ambulatory Surgery Center, LLLP	Note	Promissory Note by Southlake Ambulatory Surgery Center, LLLP in favor of Southern Regional Health System, Inc.	October 1, 2012	\$0.00
52.	Southlake Ambulatory Surgery Center, LLLP	Note	Promissory Note by Southlake Ambulatory Surgery Center, LLLP in favor of Southern Regional Health System, Inc.	August 23, 2012	\$0.00
53.	Southlake Ambulatory Surgery Center, LLLP	Note	Promissory Note by Southlake Ambulatory Surgery Center, LLLP in favor of Southern Regional Health System, Inc.	February 27, 2013	\$0.00
54.	American Academy of Sleep Medicine	Business Associate Agreement	Business Associate Agreement by and between the American Academy of Sleep Medicine and Southern Regional Health System	December 22, 2009	\$0.00
55.	Coca-Cola Refreshments USA, Inc.	Other	Beverage Agreement by and between Coca-Cola Refreshments USA, Inc. and Southern Regional System, Inc. d/b/a Southern Regional Medical Center	December 31, 2014	\$23,919.35

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56.	American College of Cardiology	Participation Agreement	Agreement by and between the American College of Cardiology Foundation ACC-NCDR and Southern Regional Medical Center	January 13, 2006	\$0.00
57.	American College of Radiology	Accreditation Agreement	Practice Site Accreditation Survey Agreement by and between the American College of Radiology and Southern Regional Medical Center	March 4, 2010	\$1,575.00
58.	Ascend Clinical, LLC	Services Agreement	Laboratory Services Agreement by and between Ascend Clinical, LLC and Southern Regional Medical Center	April 1, 2015	\$728.50
59.	Consumer Products Safety Commission	Other	Solicitation/contract order for National Electronic Injury Surveillance System	March 22, 2012	\$0.00
60.	Georgia Department of Natural Resources	Other	Georgia Radioactive Materials License issued to Southern Regional Medical Center	October 16, 2012	\$0.00
61.	Georgia Hospital Association	Other	GHA Data Services and Licensing Agreement by and between the Georgia Hospital Association, Inc., Georgia Hospital Health Services, Inc., and Georgia Hospital Association Research and Education Foundation, Inc. and Southern Regional Medical Center, Inc.	July 1, 2013	\$0.00

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62.	KEPRO	Other	Memorandum of Agreement between KEPRO and Southern Regional Medical Center	July 28, 2014	\$0.00
63.	Alan Levy	Note	Promissory Note by Alan Levy in favor of Southern Regional Medical Center	April 26, 2012	\$0.00
64.	Society of Cardiovascular Patient Care, Inc./Society of Chest Pain Centers, Inc.	Business Agreement	Patient Care Business Agreement by and between Southern Regional Medical Center and Society of Cardiovascular Patient Care, Inc.	May 29, 2014	\$0.00
65.	Transcomm Services Inc.	Other	FCC Radio License Renewal	September 23, 2011	\$0.00
66.	Belmont University	Internship/Education	Memorandum of Understanding between Belmont University and Southern Regional Medical Center	June 02, 2014	\$0.00
67.	Brown Mackie College	Internship/Education	Memorandum of Understanding between Brown Mackie College and Southern Regional Medical Center	August 10, 2015	\$0.00
68.	Charles Drew High School and Hearts to Nourish Hope	Internship/Education	Memorandum of Understanding between Charles Drew High School and Hearts to Nourish Hope and Southern Regional Medical Center	March 20, 2015	\$0.00

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	<b>Name of Other Parties to Lease or Contract</b>	<b>Contract Type</b>	<b>Contract Description</b>	<b>Contract Date</b>	<b>Cure Amount (As of October 9, 2015, unless otherwise noted)</b>
69.	Clayton County Board of Commissioners on behalf of Clayton County Fire and Emergency Services	Internship/Education	Memorandum of Understanding between Clayton County Board of Commissioners on behalf of Clayton County Fire and Emergency Services and Southern Regional Medical Center	March 31, 2015	\$0.00
70.	Clinical Site Agreement by and between GGNSC Atlanta LLC d/b/a Golden Living Center - Dunwoody	Internship/Education	Clinical Site Agreement by and between GGNSC Atlanta LLC d/b/a Golden Living Center - Dunwoody	September 9, 2014	\$0.00
71.	Marcus Autism Center, Inc.	Internship/Education	Academic Education Program School Affiliation Agreement by and between Southern Regional Medical Center and Marcus Autism Center, Inc.	March 1, 2011	\$0.00
72.	Morrison Management Specialists, Inc.	Internship/Education	Agreement by and between Southern Regional Health System, Inc. and Morrison Management Specialists, Inc.	February 17, 2013	\$0.00
73.	DVA Healthcare Renal Care, Inc., d/b/a South Fulton Dialysis	Internship/Education	Student Training Agreement by and between Southern Regional Health System and DVA Healthcare Renal Care, Inc., d/b/a South Fulton Dialysis	January 11, 2010	\$0.00



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	<b>Name of Other Parties to Lease or Contract</b>	<b>Contract Type</b>	<b>Contract Description</b>	<b>Contract Date</b>	<b>Cure Amount (As of October 9, 2015, unless otherwise noted)</b>
74.	South University – Physician Assistant Program	Internship/Education	Affiliation Agreement by and between Southern Regional Health System, Inc. and South University – Physician Assistant Program	October 27, 2003	\$0.00
75.	Alabama State University	Internship/Education	Memorandum of Understanding between Alabama State University and Southern Regional Medical Center	November 15, 2013	\$0.00
76.	Andrews University	Internship/Education	Memorandum of Understanding between Andrews University and Southern Regional Medical Center	November 15, 2014	\$0.00
77.	Atlanta Clinical & Translational Science Institute	Internship/Education	Memorandum of Understanding Concerning Affiliation of Students for Dietetic Training between Southern Regional Medical Center and Atlanta Clinical & Translational Science Institute	April 21, 2015	\$0.00
78.	Tenet HealthSystem GB, Inc., doing business as Atlanta Medical Center	Internship/Education	Agreement for Clinical Rotations by and between Tenet HealthSystem GB, Inc., doing business as Atlanta Medical Center and Southern Regional Medical Center	December 20, 2007	\$0.00
79.	Atlanta Technical College	Internship/Education	Memorandum of Understanding between Atlanta Technical College and Southern Regional Medical Center	February 27, 2015	\$0.00

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	<b>Name of Other Parties to Lease or Contract</b>	<b>Contract Type</b>	<b>Contract Description</b>	<b>Contract Date</b>	<b>Cure Amount (As of October 9, 2015, unless otherwise noted)</b>
80.	Bailey Koch/Private Practice	Internship/Education	Memorandum of Understanding Concerning Affiliation of Students for Dietetic Training between Southern Regional Medical Center and Bailey Koch/Private Practice	August 25, 2015	\$0.00
81.	Board of Regents of the University System of Georgia	Internship/Education	Memorandum of Understanding between the Board of Regents of the University System of Georgia by and on behalf of the University of Georgia College of Pharmacy, Athens, Georgia and Complete Rx and Southern Regional Medical Center	July 1, 2015	\$0.00
82.	Board of Regents of the University System of Georgia	Internship/Education	Memorandum of Understanding between the Board of Regents of the University System of Georgia on behalf of Georgia Regents University, College of Nursing and Southern Regional Medical Center	July 1, 2015	\$0.00

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	<b>Name of Other Parties to Lease or Contract</b>	<b>Contract Type</b>	<b>Contract Description</b>	<b>Contract Date</b>	<b>Cure Amount (As of October 9, 2015, unless otherwise noted)</b>
83.	Board of Regents of the University System of Georgia	Internship/Education	Memorandum of Understanding between the Board of Regents of the University System of Georgia on behalf of Georgia Regents University, departments of Medical Laboratory, Imaging and Radiologic Sciences, Nuclear Medicine Technology, Radiation Therapy, Occupational Therapy, Health Informatics, Physical Therapy and Respiratory Therapy and Southern Regional Medical Center	September 1, 2014	\$0.00
84.	Brenau University	Internship/Education	Memorandum of Understanding between Brenau University and Southern Regional Medical Center	December 1, 2014	\$0.00
85.	Cambridge Institute of Allied Health and Technology	Internship/Education	Memorandum of Understanding between Cambridge Institute of Allied Health and Technology and Southern Regional Medical Center	March 25, 2015	\$0.00
86.	Central Georgia Technical College	Internship/Education	Memorandum of Understanding between Central Georgia Technical College and Southern Regional Medical Center	August 10, 2015	\$0.00

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	<b>Name of Other Parties to Lease or Contract</b>	<b>Contract Type</b>	<b>Contract Description</b>	<b>Contract Date</b>	<b>Cure Amount (As of October 9, 2015, unless otherwise noted)</b>
87.	Chattahoochee Technical College	Internship/Education	Memorandum of Understanding between Chattahoochee Technical College and Southern Regional Medical Center	February 10, 2015	\$0.00
88.	Chattahoochee Technical College	Internship/Education	Memorandum of Understanding between Chattahoochee Technical College and Southern Regional Medical Center	May 10, 2015	\$0.00
89.	Board of Regents of the University System of Georgia by and on behalf of Clayton State University	Internship/Education	Memorandum of Understanding between the Board of Regents of the University System of Georgia by and on behalf of the University of Georgia College of Pharmacy, Athens, Georgia and Complete Rx and Southern Regional Medical Center	January 9, 2015	\$0.00
90.	Cobb County School District	Internship/Education	Memorandum of Understanding Concerning Affiliation of Interns for Dietetic Training between Southern Regional Medical Center Dietetic Internship and Cobb County School District	August 1, 2015	\$0.00
91.	Creighton University and Complete Rx	Internship/Education	Memorandum of Understanding between Southern Regional Medical Center, Creighton University and Complete Rx	March 15, 2015	\$0.00

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92.	Darton State College	Internship/Education	Memorandum of Understanding between Darton State College and Southern Regional Medical Center	May 1, 2015	\$0.00
93.	Diabetes Association of Atlanta	Internship/Education	Memorandum of Understanding Concerning Affiliation of Students for Dietetic Training between Southern Regional Medical Center and Diabetes Association of Atlanta	March 1, 2014	\$1,690.02
94.	District 4 Nutrition Services, Public Health	Internship/Education	Memorandum of Understanding Concerning Affiliation of Students for Dietetic Training between Southern Regional Medical Center and District 4 Nutrition Services, Public Health	August 1, 2014	\$0.00
95.	Douglas County School District	Internship/Education	Memorandum of Understanding Concerning Affiliation of Students for Dietetic Training between Southern Regional Medical Center and Douglas County School District	August 1, 2015	\$0.00
96.	Emory University School of Medicine	Internship/Education	Academic Affiliation Agreement by and between Emory University through its School of Medicine and Southern Regional Medical Center	September 1, 2015	\$0.00

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97.	Emory University School of Medicine on behalf of its Department of Rehabilitation Medicine, Division of Physical Therapy	Internship/Education	Memorandum of Understanding between Southern Regional Medical Center and Emory University through its School of Medicine on behalf of its Department of Rehabilitation Medicine, Division of Physical Therapy	August 31, 2014	\$0.00
98.	Emory University through its Nell Hodgson Woodruff School of Nursing	Internship/Education	Memorandum of Understanding between Southern Regional Medical Center and Emory University through its Nell Hodgson Woodruff School of Nursing	July 30, 2013	\$0.00
99.	Emory University School of Medicine on behalf of its Department of Rehabilitation Medicine, Division of Physical Therapy	Internship/Education	Memorandum of Understanding between Southern Regional Medical Center and Emory University through its School of Medicine on behalf of its Department of Rehabilitation Medicine, Division of Physical Therapy	August 31, 2015	\$0.00
100.	Fortis College	Internship/Education	Memorandum of Understanding between Southern Regional Medical Center and Fortis College	November 15, 2014	\$0.00
101.	Georgetown University	Internship/Education	Memorandum of Understanding between Southern Regional Medical Center and Georgetown University	August 20, 2014	\$0.00

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102.	Georgia Department of Public Health's Special Supplemental Nutrition Program for Women, Infants, and Children	Internship/Education	Affiliation Agreement by and between the Georgia Department of Public Health's Special Supplemental Nutrition Program for Women, Infants, and Children and Southern Regional Medical Center	November 30, 2014	\$0.00
103.	Georgia Nurses Association (which operates and holds title to Southern Performance Assessment Center, a testing center for Excelsior College School of Nursing)	Internship/Education	Memorandum of Understanding between Southern Regional Medical Center and Georgia Nurses Association (which operates and holds title to Southern Performance Assessment Center, a testing center for Excelsior College School of Nursing)	November 1, 2015	\$0.00
104.	Georgia Piedmont Technical College	Internship/Education	Memorandum of Understanding between Southern Regional Medical Center and Georgia Piedmont Technical College	May 23, 2014	\$0.00
105.	Board of Regents of the University System of Georgia by and behalf of Georgia State University	Internship/Education	Memorandum of Understanding between Southern Regional Medical Center and the Board of Regents of the University System of Georgia by and behalf of Georgia State University	August 28, 2015	\$0.00

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106.	Golden Living Center Kennestone	Internship/Education	Memorandum of Understanding Concerning Affiliation of Students for Dietetic Training between Southern Regional Medical Center and Golden Living Center Kennestone	August 1, 2015	\$0.00
107.	Gordon State College	Internship/Education	Memorandum of Understanding between Southern Regional Medical Center and Gordon State College	July 1, 2015	\$0.00
108.	Grady Health System	Internship/Education	Memorandum of Understanding between Southern Regional Medical Center and Grady Health System	November 1, 2015	\$0.00
109.	Henry County Fire Department	Internship/Education	Memorandum of Understanding between Southern Regional Medical Center and Henry County Fire Department	September 1, 2015	\$0.00
110.	Independence University	Internship/Education	Memorandum of Understanding between Southern Regional Medical Center and Independence University	December 15, 2014	\$0.00
111.	Board of Regents of the University System of Georgia by and behalf of Kennesaw State University	Internship/Education	Memorandum of Understanding between Southern Regional Medical Center and the Board of Regents of the University System of Georgia by and behalf of Kennesaw State University	May 10, 2015	\$0.00



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112.	Lesley Ann Nutrition, Inc.	Internship/Education	Memorandum of Understanding Concerning Affiliation of Students for Dietetic Training between Southern Regional Medical Center and Lesley Ann Nutrition, Inc.	July 1, 2014	\$0.00
113.	Marietta City School District	Internship/Education	Memorandum of Understanding Concerning Affiliation of Students for Dietetic Training between Southern Regional Medical Center and Marietta City School District	August 1, 2014	\$0.00
114.	Marisa Moore Nutrition	Internship/Education	Memorandum of Understanding Concerning Affiliation of Students for Dietetic Training between Southern Regional Medical Center and Marisa Moore Nutrition	August 1, 2013	\$0.00
115.	Mercer University and Complete Rx	Internship/Education	Memorandum of Understanding between Southern Regional Medical Center, Mercer University and Complete Rx	November 20, 2014	\$0.00
116.	Middle Georgia State College	Internship/Education	Memorandum of Understanding between Southern Regional Medical Center and Middle Georgia State College	August 1, 2015	\$0.00

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117.	Northside Hospital	Internship/Education	Memorandum of Understanding Concerning Affiliation of Students for Dietetic Training between Southern Regional Medical Center and Northside Hospital	April 1, 2011	\$0.00
118.	Nutrifit	Internship/Education	Memorandum of Understanding Concerning Affiliation of Students for Dietetic Training between Southern Regional Medical Center and Nutrifit	September 1, 2014	\$0.00
119.	Piedmont Healthcare, Inc.	Internship/Education	Academic Education Program School Affiliation Agreement by and among Southern Regional Medical Center and Piedmont Healthcare, Inc.	April 1, 2015	\$172.50
120.	Ridgeview Institute	Internship/Education	Memorandum of Understanding Concerning Affiliation of Students for Dietetic Training between Southern Regional Medical Center and Ridgeview Institute	September 1, 2014	\$0.00
121.	Sanford Brown College	Internship/Education	Memorandum of Understanding between Southern Regional Medical Center and Sanford Brown College	July 15, 2015	\$0.00

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122.	South University, LLC d/b/a South University – Savannah	Internship/Education	Memorandum of Understanding between Southern Regional Medical Center and South University, LLC d/b/a South University – Savannah	March 1, 2015	\$0.00
123.	Spiritual Health at Emory Healthcare	Internship/Education	Pastoral Care and Clinical Education Agreement by and between Spiritual Health at Emory Healthcare and Southern Regional Medical Center	September 1, 2014	\$1,941.66
124.	The Emory Clinic, Inc.	Internship/Education	Affiliation Agreement for Clinical Training of Southern Regional Medical Center Students at Emory Healthcare between The Emory Clinic, Inc. and Southern Regional Medical Center	January 8, 2015	\$0.00
125.	Total Renal Care, Inc., DVA Healthcare Renal Care, Inc., DVA Renal Healthcare, Inc., and Southwest Atlanta Dialysis Centers, LLC	Internship/Education	Student Training Agreement by and between Southern Regional Medical Center and Total Renal Care, Inc., DVA Healthcare Renal Care, Inc., DVA Renal Healthcare, Inc., and Southwest Atlanta Dialysis Centers, LLC	August 16, 2011	\$0.00
126.	Troy State University	Internship/Education	Memorandum of Understanding between Southern Regional Medical Center and Troy State University	January 15, 2015	\$0.00

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127.	Troy University	Internship/Education	Memorandum of Understanding between Southern Regional Medical Center and Troy University	November 10, 2014	\$0.00
128.	Board of Regents of the University System of Georgia by and on behalf of the University of Georgia	Internship/Education	Memorandum of Understanding between Southern Regional Medical Center and the Board of Regents of the University System of Georgia by and on behalf of the University of Georgia	January 1, 2014	\$0.00
129.	Training Centers of the University of Miami, Leonard Miller School of Medicine, Gordon Center for Research in Medical Education, Division of Prehospital and Emergency Healthcare	Internship/Education	Terms and Conditions for Training Centers of the University of Miami, Leonard Miller School of Medicine, Gordon Center for Research in Medical Education, Division of Prehospital and Emergency Healthcare	March 12, 2013	\$0.00
130.	Board of Regents of the University System of Georgia by and on behalf of the University of North Georgia	Internship/Education	Memorandum of Understanding between Southern Regional Medical Center and the Board of Regents of the University System of Georgia by and on behalf of the University of North Georgia	June 6, 2015	\$0.00

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131.	University of West Georgia	Internship/Education	Memorandum of Understanding between Southern Regional Medical Center and the University of West Georgia	July 25, 2015	\$0.00
132.	Board of Regents of the University System of Georgia by and on behalf of Valdosta State University	Internship/Education	Memorandum of Understanding between Southern Regional Medical Center and the Board of Regents of the University System of Georgia by and on behalf of Valdosta State University	November 20, 2014	\$0.00
133.	Walden University, LLC	Internship/Education	Memorandum of Understanding between Southern Regional Medical Center and Walden University, LLC	June 1, 2015	\$0.00
134.	AT&T Corp.	Utility Service Agreement	Master Agreement between Southern Regional Health System and AT&T Corp.	July 6, 2011	\$0.00
135.	Verizon Wireless (VAW) LLC	Utility Service Agreement	In Building Radio Distribution Agreement between Southern Regional Health System, Inc. and Verizon Wireless (VAW) LLC	October 22, 2004	\$0.00
136.	Georgia Power Company	Utility Service Agreement	Agreement between Georgia Power Company and Southern Regional Medical Center under the Company's Fixed Pricing Alternative Tariff	December 21, 2005	\$254,902.07

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137.	Southlake Ambulatory Surgery Center, LLLP	Management Agreement	Management Agreement between Southlake Ambulatory Surgery Center, LLLP and Southern Regional Ambulatory Surgery, Inc.	December 1, 2009	\$0.00
138.	Institute for Radiation Therapy, Inc.	Services Agreement	Agreement for Radiation Oncology Services by and between Southern Regional Health System, Inc. d/b/a Southern Regional Medical Center and Institute for Radiation Therapy, Inc.	September 4, 2002	\$0.00
139.	Institute for Radiation Therapy, Inc.	Services Agreement	Agreement for Brachytherapy Services by and between Southern Regional Health System, Inc. d/b/a Southern Regional Medical Center and Institute for Radiation Therapy, Inc.	September 4, 2002	\$11,124.91
140.	Alliance HealthCare Services, Inc. d/b/a Alliance Imaging	Services Agreement	Positron Emission Tomography/Computer Tomography Master Services Agreement between Alliance HealthCare Services, Inc. d/b/a Alliance Imaging and Southern Regional Medical Center	November 22, 2010	\$79,944.00
141.	Specialty Data, Inc.	Services Agreement	Tumor Registry Agreement by and between Southern Regional Health System and Specialty Data, Inc.	February 28, 2015	\$7,850.00

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142.	District 4 Public Health	Managed Care Agreement	Contract Agreement between Butts, Carroll, Coweta, Fayette, Heard, Henry, Lamar, Meriwether, Pike, Spalding, Troup and Upson County Health Departments and Southern Regional Medical Center for the Georgia Breast and Cervical Cancer Program	September 1, 2015	\$0.00
143.	Peach State Health Plan	Managed Care Agreement	Physician Hospital Organization Agreement by and between Southern Crescent Health Network and Peach State Health Plan, Inc.	June 1, 2006	\$0.00
144.	NovaNet, Inc.	Managed Care Agreement	Health Care Services Agreement by and between NovaNet, Inc. and Southern Crescent Health Network, Inc.	December 27, 2004	\$0.00
145.	AmeriGroup Georgia	Managed Care Agreement	Participating Provider Agreement by and between AMGP Georgia Managed Care Company, Inc. d/b/a AmeriGroup Georgia and Southern Crescent Health Network, Inc.	December 1, 2006	\$0.00

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146.	HealthSpring Life & Health Insurance Company	Managed Care Agreement	Facilities Agreement by and between HealthSpring Life & Health Insurance Company, Inc. and Southern Regional Health System, Inc.	March 8, 2013	\$0.00 <sup>1</sup>
147.	Humana Military Healthcare Services, Inc.	Managed Care Agreement	Agreement by and between Humana Military Healthcare Services, Inc. and PROMINA Health Systems, Inc.	September 16, 1998	\$0.00
148.	WellCare of Georgia, Inc.	Managed Care Agreement	Hospital Participation Agreement by and between Southern Regional Health System and WellCare of Georgia, Inc.	December 9, 2011	\$0.00
149.	WellCare of Georgia, Inc.	Managed Care Agreement	Hospital Services Agreement by and between WellCare of Georgia, Inc. and Southern Regional Medical Center	July 1, 2006	\$0.00
150.	SCANA Energy Marketing, Inc.	Sales Agreement	Natural Gas Sales Agreement by and between Southern Regional Medical Center and SCANA Energy Marketing, Inc.	November 1, 2013	\$33,750.00

<sup>1</sup> As of September 30, 2015, without prejudice to HealthSpring's right to seek to recover any amounts accruing but unpaid after that date.



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151.	Medical Information Technology, Inc.	Software/Hardware & Support Agreements	Health Care Information System Software Agreement by and between Medical Information Technology, Inc. and Southern Regional Health System	March 19, 2012	\$18,425.99
152.	Agfa Finance Corporation, as assignee of Agfa HealthCare Corporation	Software License, Equipment and Services Lease	Revised TalkStation Site Addendum dated July 1, 2011 (“ <b>Lease 20788</b> ”) to the Master Imaging Services and Supply Agreement dated April 3, 2007 (the “ <b>Master Lease</b> ”) between Agfa HealthCare Corporation and Southern Regional Health System, assigned to Agfa Finance Corporation	July 1, 2011	\$44,481.71
153.	Agfa Finance Corporation, as assignee of Agfa HealthCare Corporation	Software License, Equipment and Services Lease	Radiology Site Addendum dated April 9, 2007 and Radiology Site Addendum Extension Amendment #No. 1 dated March 16, 2012 (“ <b>Lease 20894</b> ”) to the Master Lease between Agfa HealthCare Corporation and Southern Regional Health System, assigned to Agfa Finance Corporation	March 16, 2012	\$481,830.53

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154.	Agfa Finance Corporation, as assignee of Agfa HealthCare Corporation	Software License, Equipment and Services Lease	Amendment No. 1 to Lease 20894 dated June 27, 2013 (“ <b>Lease 20894-001</b> ”) between Agfa HealthCare Corporation and Southern Regional Health System, assigned to Agfa Finance Corporation	June 27, 2013	\$7,449.47
155.	Agfa Finance Corporation, as assignee of Agfa HealthCare Corporation	Software License, Equipment and Services Lease	Radiology Site Addendum dated June 28, 2007 and Radiology Site Addendum Extension Amendment No. 1 dated March 16, 2012 (“ <b>Lease 20895</b> ”) to the Master Lease between Agfa HealthCare Corporation and Southern Regional Health System, on behalf of its Spivey Station facility, assigned to Agfa Finance Corporation	March 16, 2012	\$51,247.41
156.	Agfa Finance Corporation, as assignee of Agfa HealthCare Corporation	Software License, Equipment and Services Lease	Revised Cardiology Site Addendum dated November 20, 2014 (“ <b>Lease 21041</b> ”) to the Master Lease between Agfa HealthCare Corporation and Southern Regional Health System, assigned to Agfa Finance Corporation	November 20, 2014	\$88,679.89

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157.	Macquarie Equipment Finance, Inc.	Equipment Lease	Master Equipment Lease Agreement by and between Southern Regional Health System Inc. d/b/a Southern Regional Medical Center and Macquarie Equipment Finance, Inc.	March 26, 2013	\$579,314.70
158.	Med One Capital Funding LLC	Equipment Lease	Purchase Order for Lease between Omnicell Inc. and Southern Regional Medical Center	July 1, 2011	\$59,171.40
159.	Med One Capital Funding LLC	Equipment Lease	Capital Lease between Stryker Finance and Southern Regional Medical Center	June 22, 2011	\$58,041.87
160.	Med One Capital Funding LLC	Equipment Lease	Equipment Lease between Stryker Finance and Southern Regional Medical Center	January 25, 2011	\$10,014.18
161.	EverBank Commercial Finance, Inc.	Equipment Lease	Master Equipment Lease Agreement by and between EverBank Commercial Finance, Inc. and Southern Regional Health System, Inc.	August 29, 2011	\$0.00
162.	Omnicell, Inc.	Equipment Lease	Corporate Master Agreement by and between Omnicell, Inc. and Southern Regional Health System	January 30, 2012	\$7,459.79
163.	Beckman Coulter, Inc.	Equipment Lease	Agreement between Southern Regional Medical Center and Beckman Coulter, Inc.	April 11, 2013	\$58,532.85

**DISTRIBUTION LIST**

J. Robert Williamson  
Ashley Reynolds Ray  
Matthew W. Levin  
Scroggins & Williamson, PC  
1500 Candler Building  
127 Peachtree Street NE  
Atlanta, GA 30303

Francis J. Lawall  
Pepper Hamilton LLP  
3000 Two Logan Square  
Eighteenth and Arch Streets  
Philadelphia, PA 19103-2799

Donald J. Detweiler  
Pepper Hamilton LLP  
Hercules Plaza, Suite 5100  
1313 N. Market Street  
Wilmington, DE 19899-1709

J. Michael Lamberth  
Lamberth Cifelli Ellis & Nason PA  
3343 Peachtree Road NE, Suite 550  
Atlanta, GA 30326

C. Edward Dobbs  
James S. Rankin, Jr.  
Parker, Hudson, Rainer & Dobbs LLP  
1500 Marquis Two Tower  
285 Peachtree Center Avenue, N.E.  
Atlanta, Georgia 30303

Paul K. Ferdinands  
W. Austin Jowers  
King & Spalding LLP  
1180 Peachtree Street, NE  
Atlanta GA 30309

Thomas W. Dworschak  
Office of the United States Trustee  
362 Richard Russell Building  
75 Spring Street, SW  
Atlanta, GA 30303

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Michael I. Baird  
Pension Benefit Guaranty Corporation  
1200 K Street NW, Suite 340  
Washington, DC 20005

John W. Mills, III  
Barnes & Thornburg LLP  
3475 Piedmont Road NE, Suite 1700  
Atlanta, GA 30305-2954

William A. Rountree  
Macey, Wilensky & Hennings, LLC  
303 Peachtree Street NE, Suite 4420  
Atlanta, GA 30308