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Proposed Attorneys for the Chapter 11 Debtor and  
Debtor In Possession

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

In re

BORREGO COMMUNITY HEALTH  
FOUNDATION,

Debtor and Debtor In  
Possession.

Case No. 22-02384-11

Chapter 11 Case

Judge: Honorable Laura S. Taylor

**SECOND SUPPLEMENT TO MOTION FOR  
THE ENTRY OF (I) AN ORDER (1)  
APPROVING FORM OF ASSET PURCHASE  
AGREEMENT; (2) APPROVING AUCTION  
SALE FORMAT AND BIDDING  
PROCEDURES; (3) APPROVING PROCESS  
FOR DISCRETIONARY SELECTION OF  
STALKING HORSE BIDDER AND BID  
PROTECTIONS; (4) APPROVING FORM OF  
NOTICE TO BE PROVIDED TO  
INTERESTED PARTIES; (5) SCHEDULING A  
COURT HEARING TO CONSIDER  
APPROVAL OF THE SALE TO THE  
HIGHEST AND BEST BIDDER; AND (6)  
APPROVING PROCEDURES RELATED TO  
THE ASSUMPTION OF CERTAIN  
EXECUTORY CONTRACTS AND  
UNEXPIRED LEASES; AND (II) AN ORDER  
AUTHORIZING THE SALE OF PROPERTY  
FREE AND CLEAR OF ALL CLAIMS, LIENS  
AND ENCUMBRANCES**

Hearing:

Date: December 22, 2022

Time: 1:00 p.m.

Location: Jacob Weinberger United States  
Courthouse

325 West F. Street, San Diego, California 92101

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On November 10, 2022, Borrego Community Health Foundation, the above-captioned debtor and debtor in possession (the “Debtor”), filed the *Debtor’s Motion for the Entry of (I) An Order Approving Form of Asset Purchase Agreement; (2) Approving Auction Sale Format and Bidding Procedures; (3) Approving Process for Discretionary Selection of Stalking Horse Bidder and Bid Protections; (4) Approving Form of Notice to Be Provided to Interested Parties; (5) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest and Best Bidder; And (6) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; and (II) An Order Authorizing the Sale of Property Free and Clear of All Claims, Liens and Encumbrances* (the “Motion”) [Docket No. 161] and attached the proposed bidding procedures (the “Bidding Procedures”),<sup>1</sup> which the Court granted at the hearing on December 7, 2022 (the “Hearing”).

The Bidding Procedures require, among other things, that prospective bidders submit an executed asset purchase agreement, in the form of the APA, and a marked version of the APA reflecting any changes to the APA. [Docket No. 267 at Ex. 1]. The Debtor hereby files and attaches hereto the APA as **Exhibit “A.”** For the avoidance of doubt, the Court did not approve the APA at the Hearing. The APA instead is being filed as the form APA for potential bidders to submit in accordance with the Bidding Procedures. The Debtor also will post the APA in the data room.

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<sup>1</sup> On December 5, 2022, the Debtor filed the Supplement to the Motion, which revised the Bidding Procedures. [Docket No. 267].

1 Dated: December 8, 2022

DENTONS US LLP  
SAMUEL R. MAIZEL  
TANIA M. MOYRON

4 By /s/ Tania M. Moyron  
Tania M. Moyron

6 Proposed Attorneys for the Chapter 11 Debtor  
and Debtor In Possession

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**Exhibit A**  
**(Asset Purchase Agreement)**

**ASSET PURCHASE AGREEMENT**

**By and Between**

**BORREGO COMMUNITY HEALTH FOUNDATION**

**and**

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**Dated \_\_\_\_\_, 2022**

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## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (the “**Agreement**”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2022 (the “**Signing Date**”) by and between Borrego Community Health Foundation, a California nonprofit public benefit corporation (“**Seller**”) and \_\_\_\_\_, a \_\_\_\_\_ (“**Purchaser**”).

### RECITALS:

A. Seller engages in the business of the operation of \_\_\_\_\_ (collectively, the “**Facilities**”).

B. Purchaser desires to purchase from Seller, and Seller desires to sell to Purchaser, the assets described in Section 1.7 below (the “**Assets**”) owned by Seller and used with respect to the operation of Facilities, for the consideration and upon the terms and conditions contained in this Agreement.

C. Seller has filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”) with the United States Bankruptcy Court for the Southern District of California (the “**Bankruptcy Court**”), commencing Case No. 22-02384-1, and the Bankruptcy Court entered or is expected to enter an order approving procedures in connection with the sale of the Seller’s Assets, Docket No. \_\_\_\_\_, which requests that the Bankruptcy Court enter a “**Sale Order**” following an auction and selection of a successful bidder.

D. The parties intend to effectuate the transactions contemplated by this Agreement through a sale of the Assets approved by the Bankruptcy Court pursuant to Section 363 of Chapter 11 of Title 11 of the Bankruptcy Code.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and covenants contained in this Agreement, and for their mutual reliance and incorporating into this Agreement the above recitals, the parties hereto agree as follows:

### ARTICLE 1

#### SALE AND TRANSFER OF ASSETS; CONSIDERATION; CLOSING

1.1 Purchase Price. Subject to the terms and conditions of this Agreement, the purchase price (“**Purchase Price**”) shall consist of the following:

(a) Cash payment to Seller (the “**Cash Consideration**”) of \_\_\_\_\_ (\$\_\_\_\_\_); and

(b) Payment of Cure Costs (defined below) associated with any Assumed Leases and/ or Assumed Contracts.

1.2 Deposit. Purchaser has made a good faith deposit in the amount of \_\_\_\_\_ (\$\_\_\_\_\_) [TO BE THE GREATER OF \$200,000 OR TEN

PERCENT (10%) OF THE AGGREGATE PURCHASE PRICE] (the “**Deposit**”) by wire transfer to an account designated by Seller. Purchaser has agreed to increase the Deposit by \$\_\_\_\_\_, for a total deposit of \$\_\_\_\_\_ [INCREASED SO THAT THE DEPOSIT IS THE GREATER OF \$200,000 OR TEN PERCENT (10%) OF THE AGGREGATE PURCHASE PRICE] upon entry of an order approving this transaction. The Deposit shall be non-refundable in all events, except in the event the Closing does not occur due to (i) Seller accepting the bid of a rival bidder or (ii) Purchaser terminates this Agreement pursuant to Section 9.1(c). Upon Closing, the Deposit will be credited against the Purchase Price.

1.3 Closing Date. The consummation of the transactions contemplated by this Agreement (the “**Closing**”) shall take place at \_\_\_\_\_ local time at the offices of Dentons US LLP, 601 South Figueroa St., Suite 2500, Los Angeles, CA 90017-5704 (the day on which Closing actually occurs, the “**Closing Date**”) within five (5) business days following the satisfaction or waiver of the conditions set forth in ARTICLE 7 and ARTICLE 8, other than those conditions that by their nature are to be satisfied at Closing but subject to fulfillment or waiver of those conditions. The Closing shall be deemed to occur and to be effective as of 12:00 a.m. Pacific time on the day immediately after the Closing Date (the “**Effective Time**”).

1.4 Items to be Delivered by Seller at Closing. At or before the Closing, Seller shall deliver, or cause to be delivered, to Purchaser the following:

1.4.1 a Bill of Sale substantially in the form of Exhibit 1.4.1 attached hereto (the “**Bill of Sale**”), duly executed by Seller;

1.4.2 Real Estate Assignment and Assumption Agreements (the “**Real Estate Assignments**”) in the form of Exhibit 1.4.2 attached hereto with respect to (i) the Leased Real Property, and (ii) the Tenant Leases, each duly executed by Seller;

1.4.3 a Quitclaim Deed (the “**Deed**”) in the form of Exhibit 1.4.2 attached hereto with respect to the real property listed in Schedule 1.4.3 (the “**Owned Real Property**”) duly executed by Seller;

1.4.4 an Assumption Agreement (the “**Assumption Agreement**”) in the form of Exhibit 1.4.2 attached hereto with respect to the Assumed Liabilities duly executed by Seller;

1.4.5 a favorable original certificate of good standing, of Seller, issued by the State of California, dated no earlier than a date which is fifteen (15) calendar days prior to the Closing Date;

1.4.6 a duly executed certificate of an officer of Seller certifying to Purchaser (i) the incumbency of the officers of Seller on the Signing Date and on the Closing Date and bearing the authentic signatures of all such officers who shall execute this Agreement and any additional documents contemplated by this Agreement and (ii) the due adoption and text of the resolutions or consents of the Board of Directors of Seller authorizing (I) the transfer of the Assets and transfer of the Assumed Obligations by Seller to Purchaser and (II) the due execution, delivery and performance of this Agreement and all additional documents contemplated by this Agreement, and that such resolutions have not been amended or rescinded and remain in full force and effect on the Closing Date;

1.4.7 a certified copy of the Sale Order (as defined below); and

1.4.8 Any such other instruments, certificates, consents or other documents which Purchaser and Seller mutually deem reasonably necessary to carry out the transactions contemplated by this Agreement and to comply with the terms hereof.

1.5 Items to be Delivered by Purchaser at Closing.¶ At or before the Closing, Purchaser shall deliver or cause to be delivered to Seller the following:

1.5.1 payment of the Cash Consideration subject to credits or plus payment to Seller of all amounts as provided under Section 1.6;

1.5.2 evidence of payment of all Cure Costs required hereunder to be paid by Purchaser;

1.5.3 a duly executed certificate of the Secretary of Purchaser certifying to Seller (a) the incumbency of the officers of Purchaser on the Signing Date and on the Closing Date and bearing the authentic signatures of all such officers who shall execute this Agreement and any additional documents contemplated by this Agreement and (b) the due adoption and text of the resolutions of the Board of Directors of Purchaser authorizing the execution, delivery and performance of this Agreement and all additional documents contemplated by this Agreement, and that such resolutions have not been amended or rescinded and remain in full force and effect on the Closing Date;

1.5.4 a favorable original certificate of good standing of Purchaser, issued by the [California] Secretary of State dated no earlier than a date which is fifteen (15) calendar days prior to the Closing Date;

1.5.5 the Bill of Sale, duly executed by Purchaser;

1.5.6 [the Real Estate Assignment(s), duly executed by Purchaser;]

1.5.7 the Assumption Agreement, duly executed by Purchaser; and

1.5.8 any such other instruments, certificates, consents or other documents which Purchaser and Seller mutually deem reasonably necessary to carry out the transactions contemplated by this Agreement and to comply with the terms hereof.

1.6 Prorations and Utilities.¶ All items of income and expense listed below with respect to the Assets shall be prorated in accordance with the principles and the rules for the specific items set forth hereafter:

1.6.1 All transfer, conveyance, sales, use, stamp, similar state and local taxes arising from the sale of the Assets hereunder shall be the responsibility of, and allocated to, Purchaser.

1.6.2 Other than the Utility Deposits (defined below), which are governed by Section 1.8(j), and other than with respect to Cure Costs payable by Purchaser, the following costs

and expenses shall be prorated based upon the payment period (*i.e.*, calendar or other tax fiscal year) to which the same are attributable: all real estate and personal property lease payments, real estate and personal property taxes, real estate assessments and other similar charges against real estate, and power and utility charges (collectively, the “**Prorated Charges**”) on the Assets. Seller shall pay its portion at or prior to the Closing (or Purchaser shall receive credit for) of any unpaid Prorated Charges attributable to periods or portions thereof occurring prior to the Effective Time, and Purchaser shall assume as an Assumed Liability or, to the extent previously paid by Seller, pay to Seller at the Closing all Prorated Charges attributable to periods or portions thereof occurring from and after the Effective Time. In the event that as of the Closing Date the actual tax bills for the tax year or years in question are not available and the amount of taxes to be prorated as aforesaid cannot be ascertained, then rates, millages and assessed valuation of the previous year, with known changes, shall be used. The parties agree that if the real estate and personal property tax prorations are made based upon the taxes for the preceding tax period, the prorations shall be re-prorated after the Closing. As to power and utility charges, “final readings” as of the Closing Date shall be ordered from the utilities; the cost of obtaining such “final readings,” if any, shall be paid by Purchaser.

1.6.3 Seller shall be entitled to all rents and other payments under Tenant Leases accruing for the period prior to the Effective Time (“**Pre Effective Time Lease Amounts**”), and Purchaser shall be entitled to all rents and other payments under tenant leases accruing for the period after the Effective Time (“**Post Effective Time Lease Amounts**” and together with the Pre Effective Time Lease Amounts, the “**Lease Amounts**”). All Lease Amounts that are collected prior to the Closing shall be prorated as of the Closing in accordance with the immediately preceding sentence. All Lease Amounts that are accrued but unpaid as of the Closing (including, without limitation, rents and other payments accrued prior to the Closing but payable in arrears after the Closing) (collectively, the “**Unpaid Amounts**”) shall belong to Seller, and Purchaser shall, upon receipt of said rents and other payments, receive the same in trust for Seller and shall promptly remit any of such amounts to Seller within ten (10) days after Purchaser’s receipt of same.

1.6.4 All prorations and payments to be made under the foregoing provisions shall be agreed upon by Purchaser and Seller prior to the Closing and shall be binding upon the parties; provided, however, with respect to the Unpaid Amounts, in the event any proration, apportionment or computation shall prove to be incorrect for any reason, then either the Seller or Purchaser shall be entitled to an adjustment to correct the same, provided that said party makes written demand on the party from whom it is entitled to such adjustment within thirty (30) calendar days after the erroneous payment or computation was made, or such later time as may be required, in the exercise of due diligence, to obtain the necessary information for proration. This Section 1.6 shall survive Closing.

1.7 Transfer of Assets of Seller¶ On the Closing Date and subject to the terms and conditions of this Agreement, Seller shall sell, assign, transfer, convey and deliver to Purchaser, free and clear of all liens and encumbrances other than the Permitted Exceptions (defined below), and Purchaser shall acquire, all of Seller’s right, title and interest in and to only the following assets and properties, as such assets shall exist on the Closing Date, with respect to the operation of the Facilities, to the extent not included among the Excluded Assets, such transfer being deemed to be effective at the Effective Time:

(a) all of the tangible personal property owned by Seller and used by Seller in the operation of the Facilities, including equipment, furniture, machinery, vehicles and office furnishings (the “**Personal Property**”);

(b) all of Seller’s rights, to the extent assignable or transferable, to all licenses, provider numbers, permits, approvals, certificates of exemption, franchises, accreditations and registrations and other governmental licenses, permits or approvals issued to Seller for use in the operation of the Facilities (the “**Licenses**”), including, without limitation, the Licenses and Medicare and Medi-Cal Provider Numbers set forth on **Schedule 1.7(b)**;

(c) all of Seller’s interest in and to the Owned Real Property and all of Seller’s interest, to the extent assignable or transferable, in and to all of the following (the “**Assumed Leases**”): (i) personal property leases with respect to the operation of the Facilities, (ii) the real property leases for all real property leased by Seller and set forth on **Schedule 1.7(c)(ii)** (the “**Leased Real Property**”), and (iii) the real property leased or subleased by Seller to a third party and set forth on **Schedule 1.7(c)(iii)** (the “**Tenant Leases**”);

(d) all of Seller’s interest, to the extent assignable or transferable, in and to all contracts and agreements (including, but not limited to, purchase orders) with respect to the operation of the Facilities that have been designated by Purchaser as a contract to be assumed pursuant to **Section 1.11** (the “**Assumed Contracts**”);

(e) all claims, rights, interests and proceeds (whether received in cash or by credit to amounts otherwise due to a third party) with respect to amounts overpaid by Seller to any third party with respect to periods prior to the Effective Time (e.g. such overpaid amounts may be determined by billing audits undertaken by Seller or Seller’s consultants), except with respect to any causes of action or proceeds thereof arising under Chapter 5 of the Bankruptcy Code other than with respect to Assumed Contracts and Assumed Leases;

(f) to the extent assignable or transferable, all inventories of supplies, drugs, food, janitorial and office supplies and other disposables and consumables (i) located at the Facilities or (ii) used in the operation of the Facilities (the “**Inventory**”) except as set forth in **Section 1.8(e)**;

(g) other than Utility Deposits, all prepaid rentals, deposits, prepayments and similar amounts relating to the Assumed Contracts and/or the Assumed Leases, which were made with respect to the operation of the Facilities (the “**Prepays**”);

(h) to the extent assignable or transferrable, and permitted by applicable law all of the following that are not proprietary to Seller and/or owned by or proprietary to Seller’s affiliates: operating manuals, files and computer software with respect to the operation of the Facilities, including, without limitation, all patient records, medical records, financial records, equipment records, construction plans and specifications, and medical and administrative libraries; *provided, however*, that any patient records and medical records which are not required by law to be maintained by Seller as of the Effective Time shall be an Excluded Asset;

(i) to the extent assignable or transferable, all rights in all warranties of any manufacturer or vendor in connection with the Personal Property;

- (j) the right to use the name “Borrego Community Health Foundation”;
- (k) all goodwill of the Facilities evidenced by the Assets;
- (l) to the extent transferable or assignable, Seller’s right or interest in the telephone and facsimile numbers used with respect to the operation of the Facilities;
- (m) to the extent assignable or transferable, Seller’s Medicare and Medi-Cal provider numbers and lock box account(s) subject to approval by the appropriate governmental and regulatory agencies; and
- (n) except for the Excluded Assets, to the extent assignable or transferable, any other assets owned by Seller (which are not otherwise specifically described above in this Section 1.7) that are used in the operation of the Facilities.

As used herein, the term “**Permitted Exceptions**” means (i) the Assumed Obligations; (ii) liens for taxes not yet due and payable (iii) easements, rights of way, zoning ordinances and other similar encumbrances affecting real property; and (iv) other imperfections of title or encumbrances, if any, which are not monetary in nature and that are not, individually or in the aggregate, material to the business of the Facilities.

1.8 Excluded Assets.¶ Notwithstanding anything to the contrary in Section 1.7, Seller shall retain all interests, rights and other assets owned directly or indirectly by it (or any of Seller’s affiliates) which are not among the Assets, including, without limitation, the following interests, rights and other assets of Seller (collectively, the “**Excluded Assets**”):

- (a) cash, cash equivalents and short-term investments;
- (b) all Seller Plans (defined below) and the assets of all Seller Plans and any asset that would revert to the employer upon the termination of any Seller Plan, including, without limitation, any assets representing a surplus or overfunding of any Seller Plan;
- (c) all contracts that are not Assumed Contracts;
- (d) all leases that are not Assumed Leases;
- (e) the portions of Inventory, Prepaids, and other assets disposed of, expended or canceled, as the case may be, by Seller after the Signing Date and prior to the Effective Time in the ordinary course of business;
- (f) assets owned and provided by vendors of services or goods to the Facilities;
- (g) all of Seller’s organizational or corporate record books, minute books and tax records;
- (h) all claims, counterclaims and causes of action of Seller or Seller’s bankruptcy estate (including parties acting for or on behalf of Seller’s bankruptcy estate, including, but not limited to, the official committee of unsecured creditors appointed in the Bankruptcy Case)



not specifically set forth in Section 1.7(i) hereof, including, without limitation, causes of action arising out of any claims and causes of action under chapter 5 of the Bankruptcy Code and any related claims, counterclaims and causes of action under applicable non-bankruptcy law, and any rights to challenge liens asserted against property of Seller's bankruptcy estate, including, but not limited to, liens attaching to the Purchase Price paid to Seller, and the proceeds from any of the foregoing; provided, however that Purchaser shall acquire and be deemed to release and waive as of the Effective Time causes of action under Sections 544, 547, 548, and 550 of the Bankruptcy Code against counterparties to executory contracts and unexpired leases being assumed by a Seller and assigned to Purchaser;

(i) all insurance policies and contracts and coverages obtained by Seller or listing Seller as insured party, a beneficiary or loss payee, including prepaid insurance premiums, and all rights to insurance proceeds under any of the foregoing, and all subrogation proceeds related to any insurance benefits arising from or relating to Assets prior to the Closing Date;

(j) all deposits made with any entity that provides utilities to the Facilities (the **"Utility Deposits"**);

(k) all rents, deposits, prepayments, and similar amounts relating to any contract or lease that is not an Assumed Contract or Assumed Lease;

(l) all unclaimed property of any third party as of the Effective Time, including, without limitation, property which is subject to applicable escheat laws;

(m) all bank accounts of Seller;

(n) all writings and other items that are protected from discovery by the attorney-client privilege, the attorney work product doctrine or any other cognizable privilege or protection;

(o) the rights of Seller to receive mail and other communications with respect to Excluded Assets or Excluded Liabilities;

(p) all director and officer insurance;

(q) all tax refunds of Seller;

(r) all documents, records, operating manuals and film pertaining to the Facilities that Seller is required by law to retain;

(s) all patient records and medical records which are not required by law to be maintained by Seller as of the Effective Time;

(t) all documents, records, correspondence, work papers and other patient records that may not be transferred under applicable law, and any other documents, records, or correspondence (including with respect to any employees) that may not be transferred under applicable law;

(u) any rights or documents relating to any Excluded Liability or other Excluded Asset;

(v) any rights or remedies provided to Seller under this Agreement and each other document executed in connection with the Closing;

(w) 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 to make copies of any portions of such retained books and records that relate to the business of the Facilities 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). With respect to documents necessary to prepare cost reports, Purchaser shall receive the original document and Seller shall be entitled to retain a copy of such documents for any period ending on or prior to the Closing Date;

(x) all deposits or other prepaid charges and expenses paid in connection with or relating to any other Excluded Assets;

(y) all accounts and interest thereupon, notes and interest thereupon and other receivables of Seller, including, without limitation, accounts, notes or other amounts receivable, and all claims, rights, interests and proceeds related thereto, including all accounts and other receivables, disproportionate share payments and Seller Cost Report settlements related thereto, in each case arising from the rendering of services or provision of goods, products or supplies to inpatients and outpatients at the Facilities, billed and unbilled, recorded and unrecorded, for services, goods, products and supplies provided by Seller prior to the Effective Time whether payable by Medicare, Medi-Cal, or any other payor (including an insurance company), or any health care provider or network (such as a health maintenance organization, preferred provider organization or any other managed care program) or any fiscal intermediary of the foregoing, private pay patients, private insurance or by any other source (collectively, “**Accounts Receivable**”);

(z) all documents, records, correspondence, work papers and other documents, other than patient records, primarily relating to the Accounts Receivable;

(aa) (i) all rights, claims and causes of action of Seller to the extent related to and/or to the extent arising out of the Accounts Receivable and rights to settlements and retroactive adjustments, if any, whether arising under a Seller Cost Report or otherwise, for any reporting periods ending on or prior to the Effective Time, whether open or closed, arising from or against the United States government under the terms of the Medicare program or TRICARE (formerly the Civilian Health and Medical Program of the Uniformed Services); (ii) all rights, claims and causes of action arising from or against the State of California government under the terms of the Medi-Cal program; and (iii) causes of action under Sections 544, 547, 548, and 550 of the Bankruptcy Code against the counterparties to the Assumed Contracts and Assumed Leases listed on Schedule 1.8(aa); and



(bb) any assets, including but not limited to assets purchased with HRSA funds and which HRSA will not consent to allow the Debtor to transfer and which the Debtor cannot obtain a Court order allowing the sale pursuant to section 363 of the Bankruptcy Code, identified in **Schedule 1.8(cc)**.

For the avoidance of doubt, Purchaser is not acquiring any asset owned by any affiliate of Seller.

1.9 **Assumed Obligations**¶ On the Closing Date, Seller shall assign, and Purchaser shall assume and agrees to discharge, perform and satisfy fully, on and after the Effective Time, the following liabilities and obligations of Seller and only the following liabilities and obligations (collectively, the “**Assumed Obligations**”):

(a) the Assumed Contracts and all liabilities of Seller under the Assumed Contracts, including related Cure Costs;

(b) the Assumed Leases and all liabilities of Seller under the Assumed Leases, including related Cure Costs;

(c) all liabilities and obligations arising out of or relating to any act, omission, event or occurrence connected with the use, ownership or operation by Purchaser of the Facilities or any of the Assets on or after the Effective Time;

(d) all accrued paid time off pay;

(e) all liabilities and obligations of Seller related to the Hired Employees arising on or following the Effective Time;

(f) all unpaid real and personal property taxes, if any, that are attributable to the Assets after the Effective Time, subject to the prorations provided in Section 1.6;

(g) all liabilities and obligations relating to utilities being furnished to the Assets, subject to the prorations provided in Section 1.6;

(h) any documentary, sales and transfer tax liabilities of Seller incurred as a result of the consummation of the transaction contemplated by this Agreement;

(i) any and all liabilities and obligations arising under the law or bankruptcy court order(s) relating to any collective bargaining agreement or other contract with any labor union or labor relations entity applicable to and/or covering employees of the Facilities;

(j) all liabilities or obligations provided for in Section 5.3;

(k) any other obligations and liabilities identified in **Schedule 1.9(k)**.

1.10 **Excluded Liabilities**¶ Purchaser shall not assume or become responsible for any duties, obligations or liabilities of Seller that are not assumed by Purchaser pursuant to the terms of this Agreement, the Bill of Sale, the Assumption Agreement or the Real Estate Assignment(s) (the “**Excluded Liabilities**”), and Seller shall remain fully and solely responsible for all of Seller’s

debts, liabilities, contract obligations, expenses, obligations and claims of any nature whatsoever related to the Assets or the Facilities unless assumed by Purchaser under this Agreement, in the Bill of Sale, the Assumption Agreement or in the Real Estate Assignment(s).

1.11 Designation of Assumed Contracts and Assumed Leases.

(a) Except as provided in Section 1.11(b), all contracts and leases will be subject to evaluation by Purchaser for assumption or rejection (collectively “**Evaluated Contracts**”). Not later than February, 9, 2023, (i) Purchaser shall notify Seller in writing of which Evaluated Contracts are to be assumed by Seller and assigned to Purchaser and (ii) Purchaser shall notify Seller in writing signed and dated by Purchaser of which Evaluated Contracts are to be rejected by Seller (collectively, the “**Rejected Contracts**”). Seller shall file such motions in the Bankruptcy Court and take such other actions as are reasonably necessary to ensure that final and non-appealable orders (x) assuming and assigning the Assumed Contracts or Assumed Leases to Purchaser are entered and (y) rejecting the Rejected Contracts are entered. With respect to each Assumed Lease, Seller shall execute and deliver to Purchaser an Assignment and Assumption of Lease. Notwithstanding anything to the contrary set forth in this Agreement, the Rejected Contracts shall constitute part of the Excluded Assets pursuant to, and as defined in, this Agreement.

(b) At Closing and pursuant to an order of the Bankruptcy Court, Seller will assume and immediately assign to Purchaser the leases of Seller for Leased Real Property and the Tenant Leases.

1.12 Disclaimer of Warranties; Release.

(a) THE ASSETS TRANSFERRED TO PURCHASER WILL BE SOLD BY SELLER AND PURCHASED BY PURCHASER IN THEIR PHYSICAL CONDITION AT THE EFFECTIVE TIME, “AS IS, WHERE IS AND WITH ALL FAULTS AND NONCOMPLIANCE WITH LAWS” WITH NO WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY, USAGE, WORKMANSHIP, QUALITY, PHYSICAL CONDITION, OR VALUE, AND ANY AND ALL SUCH OTHER REPRESENTATIONS AND WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED, AND WITH RESPECT TO THE LEASED REAL PROPERTY WITH NO WARRANTY OF HABITABILITY OR FITNESS FOR HABITATION, INCLUDING, WITHOUT LIMITATION, THE LAND, THE BUILDINGS AND THE IMPROVEMENTS. ALL OF THE PROPERTIES, ASSETS, RIGHTS, LICENSES, PERMITS, PRIVILEGES, LIABILITIES, AND OBLIGATIONS OF SELLER INCLUDED IN THE ASSETS AND THE ASSUMED OBLIGATIONS ARE BEING ACQUIRED OR ASSUMED “AS IS, WHERE IS” ON THE CLOSING DATE AND IN THEIR PRESENT CONDITION, WITH ALL FAULTS. ALL OF THE TANGIBLE ASSETS SHALL BE FURTHER SUBJECT TO NORMAL WEAR AND TEAR AND NORMAL AND CUSTOMARY USE OF THE INVENTORY AND SUPPLIES IN THE ORDINARY COURSE OF BUSINESS UP TO THE EFFECTIVE TIME.

(b) Purchaser acknowledges that Purchaser will be examining, reviewing and inspecting all matters which in Purchaser’s judgment bear upon the Assets, the Seller, the

Facilities, the business of the Facilities and their value and suitability for Purchaser's purposes and is relying solely on Purchaser's own examination, review and inspection of the Assets and Assumed Obligations. Purchaser releases Seller and its affiliates from all responsibility and liability regarding the condition, valuation, salability or utility of the business of the Facilities or the Assets, or their suitability for any purpose whatsoever. Purchaser further acknowledges that the representations and warranties of Seller contained in ARTICLE 2 of this Agreement are the sole and exclusive representations and warranties made by Seller to Purchaser (including with respect to the Facilities, the Assets and the Assumed liabilities) and shall expire, and be of no further force or effect at the Closing.

## ARTICLE 2

### REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents, warrants and covenants to Purchaser, severally (and not jointly) with respect to Seller only as to the following matters, except as disclosed in the disclosure schedule as of the Signing Date, as may be amended pursuant to the terms of this Agreement, (the "**Disclosure Schedule**") hereby delivered by Seller to Purchaser:

2.1 Authorization¶ Seller has all necessary corporate power and authority to enter into this Agreement and, subject to Bankruptcy Court approval, to carry out the transactions contemplated hereby.

2.2 Binding Agreement¶ This Agreement has been duly and validly executed and delivered by Seller and, assuming due and valid execution by Purchaser, this Agreement constitutes a valid and binding obligation of Seller enforceable in accordance with its terms subject to (a) applicable bankruptcy, reorganization, insolvency, moratorium and other laws affecting creditors' rights generally from time to time in effect and (b) limitations on the enforcement of equitable remedies.

2.3 Organization and Good Standing; No Violation¶

(a) Seller is a nonprofit public benefit corporation duly organized, validly existing and in good standing under the laws of the State of California. Seller has all necessary power and authority to own, operate and lease its properties and to carry on its businesses as now conducted.

(b) Neither the execution and delivery by Seller of this Agreement nor the consummation of the transactions contemplated hereby by Seller nor compliance with any of the material provisions hereof by Seller, will violate, conflict with or result in a breach of any material provision of Seller's articles of incorporation or bylaws or any other organizational documents of Seller.

2.4 Contracts¶ Except as set forth in Schedule 2.4, upon entry of the Sale Order and Purchaser's payment of the Cure Costs, to Seller's knowledge, Seller is not in breach or default of the Assumed Contracts or Assumed Leases. No provision of this Section 2.4 shall apply to any failure to obtain consents to the assignment of the Assumed Contracts and Assumed Leases from

third parties to the Assumed Contracts and Assumed Leases for which consent is required to assign the Assumed Contracts and Assumed Leases to Purchaser (the “**Contract and Lease Consents**”).

2.5 Brokers and Finders. Except as set forth on Schedule 2.5, neither Seller nor any affiliate thereof, nor any officer or director thereof, have engaged or incurred any liability to any finder, broker or agent in connection with the transactions contemplated hereunder.

2.6 Seller Knowledge. References in this Agreement to “Seller’s knowledge or “the knowledge of Seller” means the actual knowledge of the Chief Executive Officer or Chief Financial Officer of Seller, without independent research or investigation. No constructive or imputed knowledge shall be attributed to any such individual by virtue of any position held, relationship to any other Person or for any other reason.

### ARTICLE 3

#### REPRESENTATIONS AND WARRANTIES OF PURCHASER

As an inducement to Seller to enter into this Agreement and to consummate the transactions contemplated by this Agreement, Purchaser hereby represents, warrants and covenants to Seller as to the following matters as of the Signing Date and, except as otherwise provided herein, shall be deemed to remake all of the following representations, warranties and covenants as of the Closing Date:

3.1 Authorization. Purchaser has full power and authority to enter into this Agreement and has full power and authority to perform its obligations hereunder and to carry out the transactions contemplated hereby. No additional internal consents are required in order for Purchaser to perform its obligations and agreements hereunder.

3.2 Binding Agreement. This Agreement has been duly and validly executed and delivered by Purchaser and, assuming due and valid execution by Seller, this Agreement constitutes a valid and binding obligation of Purchaser enforceable in accordance with its terms subject to (a) applicable bankruptcy, reorganization, insolvency, moratorium and other laws affecting creditors’ rights generally from time to time in effect and (b) limitations on the enforcement of equitable remedies.

3.3 Organization and Good Standing. Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of California, is or will be duly authorized to transact business in the State of California, and has full power and authority to own, operate and lease its properties and to carry on its business as now conducted.

3.4 No Violation. Except as set forth in Schedule 3.4, neither the execution and delivery by Purchaser of this Agreement nor the consummation of the transactions contemplated hereby nor compliance with any of the material provisions hereof by Purchaser will (a) violate, conflict with or result in a breach of any material provision of the Articles of Incorporation, Bylaws or other organizational documents of Purchaser or any contract, lease or other instrument by which Purchaser is bound; (b) require any approval or consent of, or filing with, any governmental agency or authority, (c) violate any law, rule, regulation, or ordinance to which Purchaser is or may be

subject, (d) violate any judgment, order or decree of any court or other governmental agency or authority to which Purchaser is subject.

3.5 Brokers and Finders¶ Neither Purchaser nor any affiliate thereof nor any officer or director thereof has engaged any finder or broker in connection with the transactions contemplated hereunder.

3.6 Representations of Seller¶ Purchaser acknowledges that it is purchasing the Assets on an “AS IS, WHERE IS” basis (as more particularly described in Section 1.12), and that Purchaser is not relying on any representation or warranty (expressed or implied, oral or otherwise) made on behalf of Seller other than as expressly set forth in this Agreement. Purchaser further acknowledges that Seller is not making any representations or warranties herein relating to the Assets or the operation of the Facilities on and after the Effective Time.

3.7 Legal Proceedings¶ Except as described on Schedule 3.7, there are no claims, proceedings or investigations pending or, to the best knowledge of Purchaser, threatened relating to or affecting Purchaser or any affiliate of Purchaser before any court or governmental body (whether judicial, executive or administrative) in which an adverse determination would materially adversely affect the properties, business condition (financial or otherwise) of Purchaser or any affiliate of Purchaser or which would adversely affect Purchaser’s ability to consummate the transactions contemplated hereby. Neither Purchaser nor any affiliate of Purchaser is subject to any judgment, order, decree or other governmental restriction specifically (as distinct from generically) applicable to Purchaser or any affiliate of Purchaser which materially adversely affects the condition (financial or otherwise), operations or business of Purchaser or any affiliate of Purchaser or which would adversely affect Purchaser’s ability to consummate the transactions contemplated hereby.

3.8 No Knowledge of a Seller’s Breach¶ Neither Purchaser nor any of its affiliates has knowledge of any breach of any representation or warranty by Seller or of any other condition or circumstance that would give Purchaser a right to terminate this Agreement pursuant to Section 9.1(c). If information comes to Purchaser’s attention on or before the Closing Date (whether through a Seller or otherwise and whether before or after the Signing Date) which indicates that Seller has breached any of its representations and warranties under this Agreement, then the effect shall be as if the representations and warranties had been modified in this Agreement in accordance with the actual state of facts existing prior to the Effective Time such that there will be no breach under Seller’s representations and warranties in relation to such information; *provided, however*, that Purchaser must immediately notify Seller if any such breach comes to its attention on or before the Closing Date, and Purchaser’s failure to so notify Seller shall constitute a waiver by Purchaser of Seller’s breach, if any, of any representation or warranty. If any such information comes to Purchaser’s attention on or before the Closing Date (whether through a Seller or otherwise, including through updated schedules, and whether before or after the Signing Date) that would give Purchaser a right to terminate this Agreement pursuant to Section 9.1(c), Purchaser must immediately notify Seller if any such information comes to its attention on or before the Closing Date, and Purchaser’s failure to so notify Seller shall constitute a waiver of such right in relation to the relevant breach.

3.9 Ability to Perform. Purchaser has the ability to obtain funds in cash in amounts equal to the Purchase Price by means of credit facilities or otherwise and will at the Closing have immediately available funds in cash, which are sufficient to pay the Purchase Price and to pay any other amounts payable pursuant to this Agreement and to consummate the transactions contemplated by this Agreement.

3.10 Purchaser Knowledge. References in this Agreement to “Purchaser’s knowledge” or “the knowledge of Purchaser” means the actual knowledge of the Chief Executive Officer, Chief Financial Officer or Chief Operating Officer of Purchaser, without independent research. No constructive or imputed knowledge shall be attributed to any such individual by virtue of any position held, relationship to any other Person or for any other reason.

3.11 Investigation. Purchaser has been afforded reasonable access to, and has been provided adequate time to review, the books, records, information, operations, facilities and personnel of Seller and the Facilities for purposes of conducting a due diligence investigation of Seller and the Facilities. Purchaser has conducted a reasonable due diligence investigation of Seller and the Facilities and has received satisfactory answers to all inquiries it has made respecting Seller and the Facilities and has received all information it considers necessary to make an informed business evaluation of Seller and the Facilities. In connection with its due diligence investigation of Seller and the Facilities, Purchaser has not relied upon any books, records, information, operations, facilities and personnel provided by Seller, including in making its determination to enter into this Agreement and/or consummate the transactions contemplated hereby.

## ARTICLE 4

### COVENANTS OF SELLER

#### 4.1 Access and Information; Inspections.

4.1.1 From the Signing Date through the Effective Time, (a) Seller shall afford to the officers and agents of Purchaser (which shall include accountants, attorneys, bankers and other consultants and authorized agents of Purchaser) reasonable access during normal business hours at Seller’s corporate offices to, and the right to inspect, the books, accounts, records and all other relevant documents and information with respect to the assets, liabilities and business of the Facilities and the equipment and property of the Facilities and (b) Seller shall furnish Purchaser with such additional financial and operating data and other information in Seller’s possession as to businesses and properties of the Facilities as Purchaser or its representatives may from time to time reasonably request; *provided, however*, that Seller is not obligated to disclose information which is proprietary to Seller and would not be essential to the ongoing operation of the Facilities by Purchaser; *provided, further*, that all disclosures of information shall be consistent with the confidentiality agreements and any other non-disclosure agreements entered into (or to be entered into) among Purchaser, its representatives and Seller. Purchaser’s right of access and inspection shall be exercised in such a manner as not to interfere unreasonably with the operations of Seller or the Facilities.



4.1.2 Notwithstanding anything contained herein, Seller shall not be required to provide Purchaser or its representatives or agents access to or disclose information where such access or disclosure would violate the rights of its patients, jeopardize the attorney-client or similar privilege with respect to such information or contravene any law, judgment, fiduciary duty or contract entered into prior to or on the date of this Agreement with respect to such information.

#### 4.2 Cooperation

4.2.1 Seller shall reasonably cooperate with Purchaser and its authorized representatives and attorneys: (a) in Purchaser's efforts to obtain all consents, approvals, authorizations, clearances and licenses required to carry out the transactions contemplated by this Agreement (including, without limitation, those of governmental and regulatory authorities) or which Purchaser reasonably deems necessary or appropriate, (b) in the preparation of any document or other material which may be required by any governmental agency as a predicate to or result of the transactions contemplated in this Agreement, and (c) in Purchaser's efforts to effectuate the assignment of Assumed Contracts to Purchaser as of the Closing Date. Except as may be otherwise requested by a Seller in order to comply with applicable law or regulatory guidance, notwithstanding anything contained herein, other than Bankruptcy Court orders and authorizations, it shall be Purchaser's sole responsibility (including payment of any fees, expenses, filings costs or other amounts) to obtain the Contract and Lease Consents, as well as all governmental consents, approvals, assignments, authorizations, clearances and licenses required to (x) carry out the transactions contemplated by this Agreement, including but not limited to medical licenses and/or (y) transfer any of the Assets, including any Licenses. To the extent Purchaser needs certain information and data which is in the possession of a Seller in order for Purchaser to complete Purchaser's license and permit approval applications, Purchaser shall receive, upon request, reasonable assistance from Seller in connection with the provision of such information.

4.2.2 Notwithstanding any provision to the contrary contained in this Agreement, Seller shall not be obligated to obtain the approval or consent to the assignment, to Purchaser, of any Assumed Contracts or Assumed Leases, from any party to any of the Assumed Contracts or Assumed Leases even if any such contract or lease states that it is not assignable without such party's consent.

4.3 Other Bidders Purchaser expressly acknowledges and agrees that Seller has an obligation to seek out and determine the best and highest offer reasonably available for Seller's assets in accordance with the Bankruptcy Code, and nothing herein shall amend, modify, alter, diminish or affect such obligation.

4.4 Seller's Efforts to Close Seller shall use its reasonable commercial efforts to satisfy all of the conditions precedent set forth in ARTICLE 7 and ARTICLE 8 to its or Purchaser's obligations under this Agreement to the extent that Seller's action or inaction can control or materially influence the satisfaction of such conditions; provided, however, that Seller shall not be required to pay or commit to pay any amount to (or incur any obligation in favor of) any person (other than filing or application fees).

4.5 Termination Cost Reports¶ Seller shall file all Medicare, Medi-Cal and any other termination cost reports required to be filed as a result of the consummation of (a) the transfer of the Assets of Seller to Purchaser and (b) the transactions contemplated by this Agreement with respect to Seller, provided that Purchaser shall fund reasonable costs and expenses of preparation, filing and audit of such reports. Purchaser shall permit Seller access to all books and records of the Facilities to prepare such reports and shall assist Seller in the process of preparing, filing, and reviewing the termination cost reports. All such termination cost reports shall be filed by the Seller in a manner that is consistent with current laws, rules and regulations. Seller shall be responsible for filing governmental cost reports for the period \_\_\_\_\_ through the Closing Date. Purchaser shall be responsible for its own cost report filings relating to the Facilities beginning on the day immediately following the Effective Time.

## ARTICLE 5

### COVENANTS OF PURCHASER

5.1 Purchaser's Efforts to Close¶ Purchaser shall use its reasonable commercial efforts to satisfy all of the conditions precedent set forth in ARTICLE 7 and ARTICLE 8 to its or Seller's obligations under this Agreement to the extent that Purchaser's action or inaction can control or materially influence the satisfaction of such conditions.

5.2 Required Governmental Approvals¶ Purchaser (a) shall use its best efforts to secure, as promptly as practicable before the Closing Date, all consents, approvals (or exemptions therefrom), authorizations, clearances and licenses required to be obtained from governmental and regulatory authorities in order to carry out the transactions contemplated by this Agreement and to cause all of its covenants and agreements to be performed, satisfied and fulfilled, and (b) will provide such other information and communications to governmental and regulatory authorities as Seller or such authorities may reasonably request. Purchaser is responsible for all filings with and requests to governmental authorities necessary to enable Purchaser to operate the Facilities at and after the Effective Time. Purchaser shall, promptly, but no later than thirty (30) business days after the entry of the Sale Order or sooner if required by applicable governmental or regulatory authorities, file all applications, licensing packages and other similar documents with all applicable governmental and regulatory authorities which are a prerequisite to obtaining the material licenses, permits, authorizations and provider numbers described in Section 8.1. Purchaser shall be entitled, but not obligated, to obtain the Contract and Lease Consents. Purchaser shall be entitled, but not obligated, to solicit and obtain estoppel certificates from any third party to any Leased Real Property. Purchaser's failure to obtaining any or all of the Contract and Lease Consents or estoppel certificates as of the Closing Date shall not be a condition precedent to either party's obligation to close the transactions contemplated by this Agreement.

### 5.3 Certain Employee Matters¶

(a) Purchaser agrees to make offers of employment, effective as of the Effective Time, to substantially all persons (whether such persons are full time employees, part-time employees, on short-term or long-term disability or on leave of absence, military leave or workers compensation leave) (the "**Facility Employees**") who, immediately prior to the Effective time are: (i) employees of Seller; (ii) employed by an affiliate of Seller and are listed on Schedule 5.3. For



the avoidance of doubt, the Facility Employees shall not include any employees of any affiliate of Seller unless such individual is listed on **Schedule 5.3**. Any of the Facility Employees who accept an offer of employment with Purchaser as of or after the Effective Time shall be referred to in this Agreement as the “**Hired Employees**.” All employees who are Hired Employees shall cease to be employees of the Seller or its affiliates as of the Closing Date.

(b) Purchaser shall give all Hired Employees full credit for paid time off pay to such employees as of the Closing Date, either by (i) crediting such employees the time off reflected in the employment records of the Seller and/or any of its affiliates immediately prior to the Effective Time or (ii) by making full payments to such employees of the amounts which such employees would have received had they taken such paid time off.

(c) After the Closing Date, Purchaser’s human resources department will give reasonable assistance to Seller and its affiliates with respect to Seller’s and Seller’s affiliates’ post-Closing administration of Seller’s and Seller’s affiliates’ pre-Closing employee benefit plans for the Facility Employees. Within five (5) days after the Closing Date, Purchaser shall provide to Seller a list of all the Facility Employees who were offered employment by Purchaser but refused such employment along with a list of all Hired Employees (which such list Purchaser shall periodically update).

(d) The provisions of this Section 5.3 are solely for the benefit of the parties to this Agreement, and no employee or former employee or any other individual associated therewith or any employee benefit plan or trustee thereof shall be regarded for any purpose as a third party beneficiary of this Agreement, and nothing herein shall be construed as an amendment to any employee benefit plan for any purpose.

5.4 Excluded Assets¶ As soon as practicable after the Closing Date, Purchaser shall deliver to Seller or Seller’s designee any Excluded Assets of Seller found at the Facilities on and after the Effective Time, without imposing any charge on Seller for Purchaser’s storage or holding of same on and after the Effective Time.

5.5 Waiver of Bulk Sales Law Compliance¶ Purchaser hereby waives compliance by Seller with the requirements, if any, of Article 6 of the Uniform Commercial Code as in force in any state in which the Assets are located and all other laws applicable to bulk sales and transfers.

5.6 HRSA Filings¶ Promptly after entry of the Sale Order, Seller and Purchaser shall cooperate in obtaining any required review and consent by the U.S. Department of Health and Human Services Health Resources & Services Administration (“HRSA”) to the sale of the Assets to Purchaser in accordance with this Agreement and the Sale Order, including without limitation, preparing and submitting to the HRSA a notice of the transactions contemplated by this Agreement within ten (10) calendar days after entry of the Sale Order, participating in any required HRSA or public meetings, and negotiating any conditions proposed by the HRSA for the consummation of such transactions.

5.7 Conduct Pending Closing¶ Prior to consummation of the transactions contemplated hereby or the termination or expiration of this Agreement pursuant to its terms, unless Seller shall otherwise consent in writing, Purchaser shall not take any action or fail or omit to take any action

which would cause any of Purchaser's representations and warranties set forth in ARTICLE 4 to be inaccurate or untrue as of the Closing.

5.8 Resale Certificate¶ Purchaser agrees to furnish to Seller any resale certificate or certificates or other similar documents reasonably requested by Seller to comply with or obtain an exemption from pertinent excise, sales and use tax laws.

5.9 Cure Costs¶ Purchaser shall pay the Cure Costs for each Assumed Contract and Assumed Lease so that each such Assumed Contract and Assumed Lease may be assumed by the Seller and assigned to Purchaser in accordance with the provisions of section 365 of the Bankruptcy Code. For purposes of this Agreement, "**Cure Costs**" means all amounts that must be paid and all obligations that otherwise must be satisfied, including pursuant to Sections 365(b)(1)(A) and (B) of the Bankruptcy Code in connection with the assumption and/or assignment of the Assumed Contracts and Assumed Leases to Purchaser as provided herein.

5.10 Operating Covenant¶ Purchaser shall act in good faith and use Purchaser's commercially reasonable efforts to serve the medical needs of the Facilities' service area.

## **ARTICLE 6**

### **SELLER'S BANKRUPTCY AND BANKRUPTCY COURT APPROVAL**

#### **6.1 Bankruptcy Court Approval¶**

(a) Seller and Purchaser acknowledge that this Agreement and the sale of the Assets and the assumption and assignment of the Assumed Contracts and Assumed Leases are subject to Bankruptcy Court approval, and that this Agreement is subject to termination in the event Seller receives a better and higher offer for Seller's assets in accordance with the Bankruptcy Code.

(b) Seller shall at the Sale Hearing exercise reasonable efforts to obtain a "Sale Order" approving this Agreement, subject to its obligations in respect of any better and higher offer for Seller's assets in accordance with the Bankruptcy Code. For purposes of this Agreement, the term "Sale Order" shall mean an order of the Bankruptcy Court authorizing the sale of the Assets (including the assumption and assignment of the Assumed Contracts and Assumed Leases) to Purchaser consistent with this Agreement and in a form reasonably satisfactory to Purchaser.

(c) Seller agrees to proceed in good faith to obtain Bankruptcy Court approval of the sale contemplated herein with a determination that Purchaser is a good faith purchaser pursuant to Bankruptcy Code section 363(m) and to file such declarations and other evidence as may be required to support a finding of good faith.

(d) Seller shall seek an order from the Bankruptcy Court retaining jurisdiction over all matters relating to claims against Seller as debtor solely in the Bankruptcy Court.

6.2 Appeal of Sale Order¶ In the event an appeal is taken or a stay pending appeal is requested from the Sale Order, Seller shall immediately notify Purchaser of such appeal or stay request and shall provide to Purchaser promptly 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 either of such orders. In the event of an appeal of the Sale Order, Seller shall be primarily responsible for drafting pleadings and attending hearings as necessary to defend against the appeal.

## **ARTICLE 7**

### **CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLER**

Seller's obligation to sell the Assets and to close the transactions as contemplated by this Agreement shall be subject to the satisfaction of each of the following conditions on or prior to the Closing Date unless specifically waived in writing by Seller in whole or in part at or prior to the Closing:

7.1 Signing and Delivery of Instruments¶ Purchaser shall have executed and delivered all documents, instruments and certificates required to be executed and delivered pursuant to the provisions of this Agreement.

7.2 No Restraints¶ No temporary restraining order, preliminary or permanent injunction or other order preventing the consummation of the transactions contemplated in this Agreement shall have been issued by any court of competent jurisdiction or any other governmental body and shall remain in effect on the Closing Date, and further, no governmental entity shall have commenced any action or suit before any court of competent jurisdiction or other governmental authority that seeks to restrain or prohibit the consummation of the transactions contemplated hereby.

7.3 Performance of Covenants¶ Purchaser shall have in all material respects performed or complied with each and all of the obligations, covenants, agreements and conditions required to be performed or complied with by it on or prior to the Closing Date.

7.4 Governmental Authorizations¶ Purchaser shall have obtained all material licenses, permits and authorizations from governmental agencies or governmental bodies that are necessary or required for completion of the transactions contemplated by this Agreement, including reasonable assurances that any material licenses, permits and authorizations not actually issued as of the Closing will be issued following Closing (which may include oral assurances from appropriate governmental agencies or bodies).

7.5 HRSA Approval¶ The HRSA shall have approved the transactions contemplated by this Agreement.

7.6 Bankruptcy Court Approval¶ The Bankruptcy Court shall have entered the Sale Order.

## ARTICLE 8

### CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER

Purchaser's obligation to purchase the Assets and to close the transactions contemplated by this Agreement shall be subject to the satisfaction of each of the following conditions on or prior to the Closing Date unless specifically waived in writing by Purchaser in whole or in part at or prior to the Closing.

8.1 Governmental Authorizations¶ Purchaser shall have obtained licenses, permits and authorizations from governmental agencies or governmental bodies that are required for operation of the Facilities, except in such case where failure to obtain such license, permit or authorizations from a governmental agency or governmental body does not have a material adverse effect.

8.2 Bankruptcy Court Approval¶ The Bankruptcy Court shall have entered the Sale Order and made a finding that Purchaser is a "good faith" purchaser under Section 363(m) of the Bankruptcy Code.

8.3 Signing and Delivery of Instruments¶ Seller shall have executed and delivered all documents, instruments and certificates required to be executed and delivered pursuant to all of the provisions of this Agreement.

8.4 Performance of Covenants¶ Seller shall have in all material respects performed or complied with each and all of the obligations, covenants, agreements and conditions required to be performed or complied with by Seller on or prior to the Closing Date; *provided, however*, this condition will be deemed to be satisfied unless (a) Seller was given written notice of such failure to perform or comply and did not or could not cure such failure to perform or comply within fifteen (15) business days after receipt of such notice and (b) the respects in which such obligations, covenants, agreements and conditions have not been performed have had or would more likely than not result in a material adverse effect on the Assets.

8.5 No Restraints¶ No temporary restraining order, preliminary or permanent injunction or other order preventing the consummation of the transactions contemplated in this Agreement shall have been issued by any court of competent jurisdiction or any governmental body and shall remain in effect on the Closing Date, and further, no governmental entity shall have commenced any action or suit before any court of competent jurisdiction or other governmental authority that seeks to restrain or prohibit the consummation of the transactions contemplated hereby.

8.6 HRSA Approval¶ The HRSA shall have approved the transactions contemplated by this Agreement.

8.7 [Medicare and Medi-Cal Provider Agreements]¶ Following consultation with Purchaser, Seller shall have either (a) obtained final Court orders providing for the transfer of the Medicare and or Medi-Cal Provider Agreements, either (i) as an executory contract pursuant to section 365 of the Bankruptcy Code or (ii) as a license for a statutory entitlement pursuant to section 363 of the Bankruptcy Code, or (b) obtained agreements with the agencies administering

the Medicare and Medi-Cal programs with respect to the transfer of the Medicare and Medi-Cal Provider Agreements, which agreements shall be reasonably acceptable to Purchaser.]

## ARTICLE 9

### TERMINATION

9.1 Termination. This Agreement may be terminated at any time prior to Closing:

(a) by the mutual written consent of the parties;

(b) by Seller if a material breach of this Agreement has been committed by Purchaser and such breach has not been (i) waived in writing by Seller or (ii) cured by Purchaser to the reasonable satisfaction of Seller within fifteen (15) business days after service by Seller upon Purchaser of a written notice which describes the nature of such breach; *provided, however*, Seller shall not be permitted to terminate this Agreement pursuant to this Section 9.1(b) if Seller is also in material breach of this Agreement;

(c) by Purchaser if a material breach of this Agreement has been committed by Seller and such breach has not been (i) waived in writing by Purchaser or (ii) cured by Seller to the reasonable satisfaction of Purchaser within fifteen (15) business days after service by Purchaser upon Seller of a written notice which describes the nature of such breach; *provided, however*, Purchaser shall not be permitted to terminate this Agreement pursuant to this Section 9.1(c) if Purchaser is also in material breach of this Agreement;

(d) by Purchaser if satisfaction of any condition in ARTICLE 8 is or becomes impossible and Purchaser has not waived such condition in writing (provided that the failure to satisfy the applicable condition or conditions has occurred by reason other than (i) through the failure of Purchaser to comply with its obligations under this Agreement or (ii) Seller's failure to provide its closing deliveries on the Closing Date as a result of Purchaser not being ready, willing and able to close the transaction on the Closing Date);

(e) by Seller if any of the conditions in ARTICLE 7 have not been satisfied as of \_\_\_\_\_, or if satisfaction of any such condition in ARTICLE 7 is or becomes impossible and Seller has not waived such condition in writing on or before \_\_\_\_\_ (provided that the failure to satisfy the applicable condition or conditions has occurred by reason other than (i) through the failure of Seller to comply with its obligations under this Agreement or (ii) Purchaser's failure to provide its closing deliveries on the Closing Date as a result of Seller not being ready, willing and able to close the transaction on the Closing Date);

(f) by either Purchaser or Seller if the Bankruptcy Court enters an order dismissing the Bankruptcy Case or fails to approve the sale of the Assets to Purchaser; or

(g) by Seller if, in connection with the Bankruptcy Case, Seller receives a better and higher offer for Seller's assets in accordance with the Bankruptcy Code;

(h) by either Purchaser or Seller if the Closing has not occurred (other than through the failure of any party seeking to terminate this Agreement to comply fully with its obligations under this Agreement) on or before \_\_\_\_\_ (the “**Termination Date**”). The Termination Date may be extended to \_\_\_\_\_ by mutual consent of the Seller and Purchaser.

## 9.2 Termination Consequences¶

(a) If this Agreement is terminated pursuant to Section 9.1: (i) all further obligations of the parties under this Agreement shall terminate, provided that the provisions of ARTICLE 11, ARTICLE 12 and this Section 9.2 shall survive and (ii) each party shall pay the costs and expenses incurred by it in connection with this Agreement, subject to Sections 9.2(b), 9.2(c), 11.1 and 11.2, as applicable (it being agreed that Seller may exercise the rights set forth in Section 11.1 in the event Seller terminates this Agreement in accordance with Section 9.1(b) and that Purchaser may exercise the rights set forth in Section 11.2 in the event Purchaser terminates this Agreement in accordance with Section 9.1(c)).

(b) Without limiting Seller’s rights under ARTICLE 11, if this Agreement is terminated by Seller pursuant to (i) Section 9.1(b), (ii) Section 9.1(e), and at such time the conditions set forth in ARTICLE 8 have been satisfied (other than those conditions that by their nature are to be satisfied by actions taken at the Closing and those conditions that Purchaser’s breach of this Agreement has caused not to be satisfied), or (iii) Section 9.1(h), then Purchaser will forfeit the Deposit.

(c) In the event the Termination Fee is payable, such fee will be paid to Seller by Purchaser in immediately available funds within three (3) Business Days after the date of the event giving rise to the obligation to make such payment.

(c) Each Party acknowledges that the agreements contained in this Section 9.2 are an integral part of the transactions contemplated by this Agreement, that without these agreements such Party would not have entered into this Agreement.

## ARTICLE 10

### POST-CLOSING MATTERS

#### 10.1 Excluded Assets¶

Subject to Section 10.2 hereof, any Excluded Asset (or proceeds thereof) (a) pursuant to the terms of this Agreement, (b) as otherwise determined by the parties’ mutual written agreement or (c) absent such agreement, as determined by adjudication by the Bankruptcy Court, which comes into the possession, custody or control of Purchaser (or its respective successors-in-interest, assigns or affiliates) shall, within five (5) business days following receipt, be transferred, assigned or conveyed by Purchaser (and its respective successors-in-interest, assigns and affiliates) to Seller. Purchaser (and its respective successors-in-interest, assigns and affiliates) shall have neither the right to offset amounts payable to Seller under this Section 10.1 against, nor the right to contest its obligation to transfer, assign and convey to Seller because of, outstanding claims,



liabilities or obligations asserted by Purchaser against Seller. If Purchaser does not remit any monies included in the Excluded Assets (or proceeds thereof) to the Seller in accordance with the first sentence of this Section 10.1, such withheld funds shall bear interest at the Prime Rate in effect on the calendar day upon which such payment was required to be made to Seller (the “**Excluded Asset Due Date**”) plus five percent (5%) (or the maximum rate allowed by law, whichever is less), such interest accruing on each calendar day after the Excluded Asset Due Date until payment of the Excluded Assets and all interest thereon is made to the Seller.

#### 10.2 Preservation and Access to Records After the Closing

(a) From the Closing Date until seven (7) years after the Closing Date or such longer period as required by law (the “**Document Retention Period**”), Purchaser shall keep and preserve all medical records, patient records, medical staff records and other books and records which are among the Assets as of the Effective Time, but excluding any records which are among the Excluded Assets. Purchaser will afford to the representatives of Seller, any of their affiliates, the [**Official Committee of the Unsecured Creditors of the Seller**], Seller’s estate representative or any liquidating trustee of the Seller’s bankruptcy estate (“**Seller Parties**”), including their counsel and accountants, full and complete access to, and copies (including, without limitation, color laser copies) of, such records with respect to time periods prior to the Effective Time (including, without limitation, access to records of patients treated at the Facilities prior to the Effective Time) during normal business hours after the Effective Time, to the extent reasonably needed by any Seller Party for any lawful purpose. Purchaser acknowledges that, as a result of entering into this Agreement and operating the Facilities, it will gain access to patient records and other information which are subject to rules and regulations concerning confidentiality. Purchaser shall abide by any such rules and regulations relating to the confidential information it acquires. Purchaser shall maintain the patient and medical staff records at the Facilities in accordance with applicable law and the requirements of relevant insurance carriers. After the expiration of the Document Retention Period, if Purchaser intends to destroy or otherwise dispose of any of the documents described in this Section 10.2(a), Purchaser shall provide written notice to Seller of Purchaser’s intention no later than forty-five (45) calendar days prior to the date of such intended destruction or disposal. Any of the Seller Parties shall have the right, at its sole cost, to take possession of such documents during such forty-five (45) calendar day period. If any of the Seller Parties does not take possession of such documents during such forty-five (45) calendar day period, Purchaser shall be free to destroy or otherwise dispose of such documentation upon the expiration of such forty-five (45) calendar day period.

(b) Provided that Purchaser shall not incur any out of pocket costs, Purchaser shall give full cooperation to the Seller Parties and their insurance carriers in connection with the administration of Seller’s estate, including, without limitation, in connection with all claims, actions, causes of action or audits relating to the Excluded Assets, Excluded Liabilities or pre-Closing operation of the Seller or the Facilities that any Seller Party may elect to pursue, dispute or defend, in respect of events occurring prior to the Effective Time with respect to the operation of the Facilities. Such cooperation shall include, without limitation, making the Hired Employees available for interviews, depositions, hearings and trials and other assistance in connection with the administration of Seller’s estate and such cooperation shall also include making all of its employees available to assist in the securing and giving of evidence and in obtaining the presence and cooperation of witnesses (all of which shall be done without payment of any fees or expenses

to Purchaser or to such employees); provided that Purchaser shall not be required to incur any out of pocket costs in association therewith. In addition, Seller and its affiliates shall be entitled to remove from the Facilities originals of any such records, but only for purposes of pending litigation involving the persons to whom such records refer, as certified in writing prior to removal by counsel retained by Seller or any of its affiliates in connection with such litigation. Any records so removed from the Facilities shall be promptly returned to Purchaser following Seller's or its affiliate's use of such records.

(c) In connection with (i) the transition of the Facilities pursuant to the transaction contemplated by this Agreement, (ii) Seller's rights to the Excluded Assets, (iii) in connection with any claim, audit, or proceeding, including, without limitation, any tax claim, audit, or proceeding and (iv) the Seller's obligations under the Excluded Liabilities, Purchaser shall after the Effective Time give Seller access during normal business hours to Purchaser's books, personnel, accounts and records and all other relevant documents and information with respect to the assets, liabilities and business of the Facilities as representatives of Seller and its affiliates may from time to time reasonably request, all in such manner as not to unreasonably interfere with the operations of the Facilities.

(d) Purchaser and its representatives shall be given access by Seller during normal business hours to the extent reasonably needed by Purchaser for business purposes to all documents, records, correspondence, work papers and other documents retained by Seller pertaining to any of the Assets prior to the Effective Time (excluding confidential employee information, privileged materials and patient records), all in such manner as to not interfere unreasonably with Seller. Such documents and other materials shall be, at Seller's option, either (i) copied by Seller for Purchaser at Purchaser's expense, or (ii) removed by Purchaser from the premises, copied by Purchaser and promptly returned to Seller.

(e) Purchaser shall comply with, and be solely responsible for, all obligations under the Standards for Privacy of Individually Identifiable Health Information (45 CFR Parts 160 and 164) promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 with respect to the operation of the Facilities on and after the Effective Time.

(f) Purchaser shall cooperate with Seller, on a timely basis and as reasonably requested by Seller, in connection with the provision of all data of the Facilities and other information required by Seller for reporting to HFAP for the remainder of the quarterly period in which the Closing has occurred.

(g) To the maximum extent permitted by law, if any Person requests or demands, by subpoena or otherwise, any documents relating to the Excluded Liabilities or Excluded Assets, including without limitation, documents relating to the operations of any of the Facilities or any of the Facilities' committees prior to the Effective Time, prior to any disclosure of such documents, Purchaser shall notify Seller and shall provide Seller with the opportunity to object to, and otherwise coordinate with respect to, such request or demand.

(h) Provision of Benefits of Certain Contracts. Notwithstanding anything contained herein to the contrary, this Agreement shall not constitute an agreement to assign any Assumed Contract or Assumed Lease, if, notwithstanding the provisions of Sections 363 and 365



of the Bankruptcy Code, an attempted assignment thereof, without the consent of the third party thereto, would constitute a breach thereof or in any way negatively affect the rights of Seller or Purchaser, as the assignee of such Assumed Contract or Assumed Lease, as the case may be, thereunder. If, notwithstanding the provisions of Sections 363 and 365 of the Bankruptcy Code, such consent or approval is required but not obtained, Seller will cooperate with Purchaser in any reasonable arrangement designed to both (a) provide Purchaser with the benefits of or under any such Assumed Contract or Assumed Lease, and (b) cause Purchaser to bear all costs and obligations of or under any such Assumed Contract or Assumed Lease. Further, notwithstanding anything contained in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign any Account Receivable the assignment of which is either prohibited by law or by the terms of any contract with a payor without the consent of such payor. Any payments received by Seller after the Closing Date from patients, payors, clients, customers, or others who are the obligors on Accounts Receivables transferred to Purchaser as a part of the Assets on the Closing Date shall be paid over to Purchaser within ten (10) business days after receipt by Seller.

10.3 Medical Staff¶ To ensure continuity of care in the community, Purchaser agrees that the Facilities' medical staff members in good standing as of the Effective Time shall maintain medical staff privileges at the Facilities as of the Effective Time. On and after the Effective Time, the medical staff will be subject to the Facilities' medical staff bylaws then currently in effect, provided that such bylaws are in compliance with all applicable laws and regulations and contain customary obligations.

## ARTICLE 11

### DEFAULT, TAXES AND COST REPORTS

11.1 Purchaser Default¶ If Purchaser commits any material default under this Agreement, Seller shall be entitled to retain the Deposit, and Seller may, in addition thereto, pursue any rights or remedies that Seller may have under this Agreement or applicable law, including the right to sue for damages or specific performance.

11.2 Seller Default¶ If Seller commits any material default under this Agreement which permits Purchaser to terminate this Agreement pursuant to Section 9.1(c), and Purchaser does so terminate this Agreement, Purchaser shall have the right to demand and receive a refund of the Deposit, and Purchaser may, in addition thereto, pursue any rights or remedies that Purchaser may have under applicable law, including the right to sue for damages or specific performance.

#### 11.3 Tax Matters; Allocation of Purchase Price¶

(a) After the Closing Date, the parties shall cooperate fully with each other and shall make available to each other, as reasonably requested, all information, records or documents relating to tax liabilities or potential tax liabilities attributable to Seller with respect to the operation of the Facilities for all periods prior to the Effective Time and shall preserve all such information, records and documents at least until the expiration of any applicable statute of limitations or extensions thereof. The parties shall also make available to each other to the extent reasonably required, and at the reasonable cost of the requesting party (for out-of-pocket costs and expenses only), personnel responsible for preparing or maintaining information, records and documents in

connection with tax matters and as Seller reasonably may request in connection with the completion of any post-Closing audits of the Facilities.

(b) Within 20 days after the Signing Date, Purchaser shall deliver to Seller for Seller's review a schedule setting forth the allocation of the Purchase Price (including any liabilities that are considered to be an increase to the Purchase Price for United States federal income Tax purposes) among the Assets in accordance with Section 1060 of the Code and the Treasury Regulations promulgated thereunder (such schedule, as may be amended as contemplated below in this Section 11.3(b), the "**Allocation Schedule**"). The Allocation Schedule shall be deemed final and binding upon the parties upon Seller's approval thereof. The parties shall cooperate in good faith to finalize the Allocation Schedule within 10 days after delivery of the initial draft of the schedule by Purchaser to Seller. If within such 10 day period (or such other period as the parties may agree), the parties are unable to reach agreement on a final Allocation Schedule, the parties shall have no further obligations under this Section 11.3(b). If the parties are able to agree on an Allocation Schedule, the parties shall refrain from taking any position that is inconsistent with the Allocation Schedule.

#### 11.4 Cost Report Matters

(a) Consistent with Section 4.5, Seller shall, at Purchaser's expense, prepare and timely file all cost reports relating to the periods ending prior to the Effective Time or required as a result of the consummation of the transactions described in this Agreement, including, without limitation, those relating to Medicare, Medi-Cal, and other third party payors which settle on a cost report basis (the "**Seller Cost Reports**").

(b) Upon reasonable notice and during normal business office hours, Purchaser will cooperate reasonably with Seller in regard to Seller's preparation and filing of the Seller Cost Reports. Such cooperation shall include, at no cost to Seller, obtaining access to files at the Facilities and Purchaser's provision to Seller of data and statistics, and the coordination with Seller pursuant to reasonable notice of Medicare and Medi-Cal exit conferences or meetings. Seller shall have no obligations after the Effective Time with respect to Seller Cost Reports except for preparation and filing thereof.

## ARTICLE 12

### MISCELLANEOUS PROVISIONS

12.1 Further Assurances and Cooperation Seller shall execute, acknowledge and deliver to Purchaser any and all other assignments, consents, approvals, conveyances, assurances, documents and instruments reasonably requested by Purchaser at any time and shall take any and all other actions reasonably requested by Purchaser at any time for the purpose of more effectively assigning, transferring, granting, conveying and confirming to Purchaser, the Assets. After consummation of the transaction contemplated in this Agreement, the parties agree to cooperate with each other and take such further actions as may be necessary or appropriate to effectuate, carry out and comply with all of the terms of this Agreement, the documents referred to in this Agreement and the transactions contemplated hereby.

12.2 Successors and Assigns. All of the terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto; *provided, however*, that no party hereto may assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other parties.

12.3 Governing Law; Venue; Injunctive Relief. This Agreement shall be construed, performed, and enforced in accordance with, and governed by, the laws of the State of California (without giving effect to the principles of conflicts of laws thereof), except to the extent that the laws of such State are superseded by the Bankruptcy Code or other applicable federal law. For so long as Seller is subject to the jurisdiction of the Bankruptcy Court, the parties irrevocably elect, as the sole judicial forum for the adjudication of any matters arising under or in connection with the Agreement, and consent to the exclusive jurisdiction of, the Bankruptcy Court. The parties hereby consent to the jurisdiction of such court and waive their right to challenge any proceeding involving or relating to this Agreement on the basis of lack of jurisdiction over the Person or forum non conveniens. The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed by the parties in accordance with their specific terms or were otherwise breached. Accordingly, each party will be entitled to seek an injunction or injunctions, without the posting of any bond, to prevent breaches of this Agreement by another party and to enforce specifically the terms and provisions of this Agreement, in addition to any other remedy to which such party is entitled at law or in equity, but subject to any express limitations set forth in this Agreement.

12.4 Amendments. This Agreement may not be amended other than by written instrument signed by the parties hereto.

12.5 Exhibits, Schedules and Disclosure Schedule. The Disclosure Schedule and all exhibits and schedules referred to in this Agreement shall be attached hereto and are incorporated by reference herein. From the Signing Date until the Closing, the parties agree that Seller may update the Disclosure Schedule as necessary upon written notice to Purchaser, and the applicable representation and warranty shall thereafter be deemed amended for all purposes by such updated Disclosure Schedule. Notwithstanding the foregoing, should any exhibit or schedule not be completed and attached hereto as of the Signing Date, Seller and Purchaser shall promptly negotiate in good faith any such exhibit or schedule, which exhibit or schedule must be acceptable to each of Seller and Purchaser in their reasonable discretion prior to being attached hereto. Any matter disclosed in this Agreement or in the Disclosure Schedule with reference to any Section of this Agreement shall be deemed a disclosure in respect of all sections to which such disclosure may apply. The headings, if any, of the individual sections of the Disclosure Schedule are provided for convenience only and are not intended to affect the construction or interpretation of this Agreement. The Disclosure Schedule is arranged in sections and paragraphs corresponding to the numbered and lettered sections and paragraphs of Article III merely for convenience, and the disclosure of an item in one section of the Disclosure Schedule as an exception to a particular representation or warranty shall be deemed adequately disclosed as an exception with respect to all other representations or warranties to the extent that the relevance of such item to such representations or warranties is reasonably apparent on the face of such disclosure, notwithstanding the presence or absence of an appropriate section of the Disclosure Schedule with respect to such other representations or warranties or an appropriate cross reference thereto.

12.6 Notices. Any notice, demand or communication required, permitted, or desired to be given hereunder shall be deemed effectively given when personally delivered, when received by telegraphic or other electronic means (including facsimile) or overnight courier, or five (5) calendar days after being deposited in the United States mail, with postage prepaid thereon, certified or registered mail, return receipt requested, addressed as follows:

If to Seller:

Attention:  
Telephone:

With a copies to: Dentons US LLP  
(which copies shall 601 South Figueroa St., Suite 2500  
not constitute notice) Los Angeles, CA 90017-5704  
Attention: Samuel R. Maizel, Esq.  
Telephone: 213-892-2910  
Facsimile: 213-623-9924

If to Purchaser:

Attention:  
Telephone:  
Facsimile:

With a copy to:  
(which copies shall  
not constitute notice)

Attention:  
Telephone:  
Facsimile:

or at such other address as one party may designate by notice hereunder to the other parties.

12.7 Headings. The section and other headings contained in this Agreement and in the Disclosure Schedule, exhibits and schedules to this Agreement are included for the purpose of convenient reference only and shall not restrict, amplify, modify or otherwise affect in any way the meaning or interpretation of this Agreement or the Disclosure Schedule, exhibits and schedules hereto.

12.8 Publicity. Prior to the Closing Date, Seller and Purchaser shall consult with each other as to the form and substance of any press release or other public disclosure materially related to this Agreement or any other transaction contemplated hereby and each shall have the right to

review and comment on the other's press releases prior to issuance; *provided, however*, that nothing in this Section 12.8 shall be deemed to prohibit Seller or Purchaser from making any disclosure that its counsel deems necessary or advisable in order to satisfy either party's disclosure obligations imposed by law subject to reasonable prior notice to the other party thereof.

12.9 Fair Meaning¶ This Agreement shall be construed according to its fair meaning and as if prepared by all parties hereto.

12.10 Gender and Number; Construction; Affiliates¶ All references to the neuter gender shall include the feminine or masculine gender and vice versa, where applicable, and all references to the singular shall include the plural and vice versa, where applicable. Unless otherwise expressly provided, the word "including" followed by a listing does not limit the preceding words or terms and shall mean "including, without limitation." Any reference in this Agreement to an "affiliate" shall mean any Person directly or indirectly controlling, controlled by or under common control with a second Person. The term "control" (including the terms "controlled by" and "under common control with") 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 the ownership of voting securities, by contract or otherwise. A "Person" shall mean any natural person, partnership, corporation, limited liability company, association, trust or other legal entity.

12.11 Third Party Beneficiary¶ None of the provisions contained in this Agreement are intended by the parties, nor shall they be deemed, to confer any benefit on any person not a party to this Agreement, except for the parties' successors and permitted assigns, and except for any liquidating trustee or plan administrator for Seller's estate.

12.12 Expenses and Attorneys' Fees¶ Except as otherwise provided in this Agreement, each party shall bear and pay its own costs and expenses relating to the preparation of this Agreement and to the transactions contemplated by, or the performance of or compliance with any condition or covenant set forth in, this Agreement, including without limitation, the disbursements and fees of their respective attorneys, accountants, advisors, agents and other representatives, incidental to the preparation and carrying out of this Agreement, whether or not the transactions contemplated hereby are consummated. The parties expressly agree that (a) all sales, transfer, documentary transfer and similar taxes, fees, surcharges and the like in connection with the sale of the Assets shall be borne by Purchaser. If any action is brought by any party to enforce any provision of this Agreement, the prevailing party shall be entitled to recover its court costs and reasonable attorneys' fees.

12.13 Counterparts¶ This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement, binding on all of the parties hereto. The parties agree that facsimile copies of signatures shall be deemed originals for all purposes hereof and that a party may produce such copies, without the need to produce original signatures, to prove the existence of this Agreement in any proceeding brought hereunder.

12.14 Entire Agreement¶ This Agreement, the Disclosure Schedule, the exhibits and schedules, and the documents referred to in this Agreement contain the entire understanding between the parties with respect to the transactions contemplated hereby and supersede all prior or

contemporaneous agreements, understandings, representations and statements, oral or written, between the parties on the subject matter hereof (the “**Superseded Agreements**”), which Superseded Agreements shall be of no further force or effect.

12.15 No Waiver. Any term, covenant or condition of this Agreement may be waived at any time by the party which is entitled to the benefit thereof but only by a written notice signed by the party expressly waiving such term or condition. The subsequent acceptance of performance hereunder by a party shall not be deemed to be a waiver of any preceding breach by any other party of any term, covenant or condition of this Agreement, other than the failure of such other party to perform the particular duties so accepted, regardless of the accepting party’s knowledge of such preceding breach at the time of acceptance of such performance. The waiver of any term, covenant or condition shall not be construed as a waiver of any other term, covenant or condition of this Agreement.

12.16 Severability. If any term, provision, condition or covenant of this Agreement or the application thereof to any party or circumstance shall be held to be invalid or unenforceable to any extent in any jurisdiction, then the remainder of this Agreement and the application of such term, provision, condition or covenant in any other jurisdiction or to persons or circumstances other than those as to whom or which it is held to be invalid or unenforceable, shall not be affected thereby, and each term, provision, condition and covenant of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

12.17 Time is of the Essence. Time is of the essence for all dates and time periods set forth in this Agreement and each performance called for in this Agreement.

*[REMAINDER OF PAGE IS BLANK]*

IN WITNESS WHEREOF, this Agreement has been entered into as of the day and year first above written.

**PURCHASER:**

Signature By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**SELLER:**

Signature By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_