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7 Debtors In Possession

8 **UNITED STATES BANKRUPTCY COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

9 In re

10 VERITY HEALTH SYSTEM OF  
11 CALIFORNIA, INC., *et al.*,

12 Debtors and Debtors In  
13 Possession.

14  Affects All Debtors

- 15  Affects Verity Health System of California, Inc.
- 16  Affects O'Connor Hospital
- 17  Affects Saint Louise Regional Hospital
- 18  Affects St. Francis Medical Center
- 19  Affects St. Vincent Medical Center
- 20  Affects Seton Medical Center
- 21  Affects O'Connor Hospital Foundation
- 22  Affects Saint Louise Regional Hospital Foundation
- 23  Affects St. Francis Medical Center of Lynwood Foundation
- 24  Affects St. Vincent Foundation
- 25  Affects St. Vincent Dialysis Center, Inc.
- 26  Affects Seton Medical Center Foundation
- 27  Affects Verity Business Services
- 28  Affects Verity Medical Foundation
- Affects Verity Holdings, LLC
- Affects De Paul Ventures, LLC
- Affects De Paul Ventures - San Jose Dialysis, LLC

25 Debtors and Debtors In  
26 Possession.

Lead Case No. 18-20151-ER

Jointly Administered With:

- CASE NO.: 2:18-bk-20162-ER
- CASE NO.: 2:18-bk-20163-ER
- CASE NO.: 2:18-bk-20164-ER
- CASE NO.: 2:18-bk-20165-ER
- CASE NO.: 2:18-bk-20167-ER
- CASE NO.: 2:18-bk-20168-ER
- CASE NO.: 2:18-bk-20169-ER
- CASE NO.: 2:18-bk-20171-ER
- CASE NO.: 2:18-bk-20172-ER
- CASE NO.: 2:18-bk-20173-ER
- CASE NO.: 2:18-bk-20175-ER
- CASE NO.: 2:18-bk-20176-ER
- CASE NO.: 2:18-bk-20178-ER
- CASE NO.: 2:18-bk-20179-ER
- CASE NO.: 2:18-bk-20180-ER
- CASE NO.: 2:18-bk-20181-ER

Chapter 11 Cases  
Hon. Ernest M. Robles

**SUPPLEMENT TO MOTION RE  
UNSOLICITED SUBMISSION OF DRAFT  
ASSET PURCHASE AGREEMENT BY KPC  
GLOBAL MEDICAL CENTER OF SAN  
MATEO COUNTY, LLC RELATED TO  
PROPOSED PRIVATE SALE OF SETON  
MEDICAL CENTER TO AHMC  
HEALTHCARE INC.  
[Related Docket Nos. 4360, 4528, 4604, 4622]**

Hearing:

Date: April 22, 2020  
Time: 10:00 a.m.  
Location: Courtroom 1568  
255 E. Temple St., Los Angeles, CA

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1 Verity Health System of California, Inc., a California nonprofit benefit corporation and the  
2 Debtor herein (“VHS”), and the above-referenced affiliated debtors, the debtors and debtors in  
3 possession (collectively, the “Debtors”) in the above-captioned chapter 11 bankruptcy cases (the  
4 “Cases”), hereby file this supplement (the “Supplement”) to the motion [Docket No. 4360] (the  
5 “Motion”) <sup>1</sup> to approve a private sale (the “Sale”) of certain assets of Seton Medical Center  
6 (“Seton”) to AHMC Healthcare Inc. (“AHMC”) to provide further disclosure to the Court  
7 concerning the GMC Seton Offer and in response to the notice withdrawing the GMC Seton Offer  
8 [Docket No. 4622] (the “Notice”).

9 **I.**

10 **INTRODUCTION**

11 Strategic Global Management, Inc.’s (“SGM”) affiliate, KPC Global Medical Center of San  
12 Mateo County, LLC’s (“GMC”) submitted to the Debtors, via email correspondence, an unsigned  
13 draft asset purchase agreement (the “Draft APA”) for the acquisition of the Purchased Assets late  
14 in the afternoon on April 17th. The next day, pursuant to SGM’s/GMC’s request, the Debtors  
15 forwarded the Draft APA to their prepetition secured creditors (the Committee had already received  
16 a copy of the Draft APA). SGM/GMG did not file any papers with the Court in connection with  
17 the Motion, other than the Notice filed shortly before this Supplement.<sup>2</sup> In the Motion, the Debtors  
18 disclosed SGM/GMC’s unsolicited offers and the reasons such a bid was not in the best interest of  
19 the estates. The Debtors disclose the receipt of the Draft APA for full transparency, but, to be clear,  
20 the Debtors’ position with respect to SGM/GMC remains unchanged.

21 The Draft APA further demonstrates the infirmities of the GMC Seton Offer and highlights  
22 the risks inherent in SGM’s/GMC’s promises of enhanced recoveries. The Draft APA is replete  
23 with provisions which would be, and are, unacceptable to the Debtors, such as requirements that

24 \_\_\_\_\_  
25 <sup>1</sup> Capitalized terms not defined in this Supplement shall have the meaning ascribed to them in the  
Motion.

26 <sup>2</sup> The Debtors dispute the factual allegations in the Notice; however, the Debtors do not have  
27 sufficient time to address the litany of inaccuracies given that SGM/GMC filed the Notice just a  
28 day before the Sale hearing. The Debtors reserve all rights with respect to the Notice and nothing  
contained herein shall be construed as an admission, waiver, or release of claims, rights, or defenses  
with respect thereto.

1 (i) the Debtors expressly waive this Court’s jurisdiction to hear any dispute with respect to the Draft  
2 APA in favor of binding arbitration without the right to appeal, (ii) the Debtors enter into secret  
3 agreements laying-out the precise terms of any acceptable order or settlement involving the  
4 Attorney General, Medicare, or Medi-Cal, and (iii) the Debtors sign the Draft APA before receiving  
5 a deposit or finalizing the terms under which SGM/GMC could retain the deposit. These and other  
6 provisions serve only to improve SGM/GMC’s position to the disadvantage of the Debtors and their  
7 estates. From the Debtors’ perspective as fiduciaries, the Draft APA fails to meet a single one of  
8 the Committee’s proffered five “conditions” contained in its Response.<sup>3</sup> Accordingly, as set forth  
9 more fully below, the Debtors request that the Court grant the Motion.

10 **II.**

11 **BACKGROUND**

12 1. On March 29, 2020, the Debtors filed the Motion to approve a private sale of the  
13 Purchased Assets to AHMC. On April 10, 2020, the Official Committee of Unsecured Creditors  
14 (the “Committee”) filed the *Official Committee of Unsecured Creditors’ Response to the Debtors’*  
15 *Motion to Approve Private Sale of Seton Medical Center to AHMC Healthcare Inc.* [Docket. No.  
16 4528] (the “Response”). The Committee alleges in the Response that an unsolicited offer submitted  
17 to the Debtors by GMC for the Purchased Assets related to Seton would “bring *significantly* more  
18 funds into the estate” that the proposed AHMC sale, and should be considered by the Debtors if  
19 GMC revised its offer to meet five conditions proposed by the Committee. Response at 2 (emphasis  
20 in original).

21 2. On April 17, 2020, the Debtors filed a reply [Docket No. 4604] (the “Reply”) to the  
22 Response, and in support of the Motion. In the Reply, the Debtors argue, among other things, a  
23 sale to AHMC is in the best interests of the Debtors. The Debtors also demonstrated that GMC  
24 cannot meet the Committee’s conditions “to the Debtors’ satisfaction” because SGM’s past conduct  
25 renders the conditions illusory. The Debtors observed that, even if GMC agreed to the conditions  
26

27 \_\_\_\_\_  
28 <sup>3</sup> The filing of this Supplement does not waive the Debtors’ position that the Committee’s  
conditions are, themselves, inadequate benchmarks of a good faith SGM/GMC proposal.

1 in principle, the Debtors would still be required to engage in a notoriously “difficult and time  
2 consuming” negotiation with GMC just days before a hearing on the Motion.

3 **III.**

4 **SUPPLEMENT TO MOTION**

5 3. On April 17, 2020, counsel to the Debtors received from counsel to SGM/GMC an  
6 unsolicited submission of the Draft APA<sup>4</sup> and correspondence from Committee counsel regarding  
7 the same. Attached hereto as Exhibit “A” is a redline comparison of the Draft APA against the  
8 AHMC APA provided by SGM/GMC to the Debtors.

9 4. The Debtors, in exercising their business judgment, consider the AHMC bid the  
10 highest and best bid. The Debtors not do not consider entertaining an unsigned offer with “to be  
11 negotiated” provisions expressly stated in the a bid from SGM/GMC to in the best interest of the  
12 estates, for the reasons set forth in the Motion and Reply.

13 5. The Draft APA poses a high transactional risk to closing and collection of sale  
14 proceeds because it contains provisions that are “deal-killers” and are not practical under the  
15 circumstances, including, but not limited to:

- 16 • The APA would revoke the Court’s jurisdiction to adjudicate any dispute  
17 concerning the Draft APA, would require the Debtors submit such disputes to  
18 binding arbitration, and deprive the Debtors of any appeal right. *See* Draft APA at  
19 § 12.3(b).
- 20 • Despite the Debtors’ past history with SGM, damages would be capped at the  
21 amount of a deposit with GMC’s obligation to deposit funds contingent on the  
22 Debtors’ entry into the Draft APA, and negotiation and approval of a stipulation  
23 concerning GMC’s rights to the deposit. *See id.* at § 1.2(a), (b).
- 24 • SGM/GMC would have the right to advance approval (to be filed under seal) of any  
25 proposed order approving a motion or settlement of issues related to Attorney  
26 General conditions or the transfer of Medicare and Medi-Cal provider agreements,  
27 and could claim a breach if any such order or settlement is not identical to the  
28 versions to which SGM/GMC agreed in advance. *See id.* at §§ 8.5 n.4, 8.6 n.5. Putting aside the problems with the proposed secrecy of such agreements, these provisions afford SGM/GMC a “walk right” if the proposed order or settlement varies by a single word or comma. The provisions present a multitude of issues and the purpose of the walk-right is transparent—it is the language SGM/GMC stated it should have put in the previous sale agreement which would provide it complete

<sup>4</sup> The first unsolicited draft was received April 7, 2020.

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- 1 control over the process (i.e., SGM appealed a previous order that contained the  
2 exact language in the asset purchase agreement but not to their satisfaction). These  
3 provisions are unacceptable and impractical.
- 4 • The Attorney General closing condition is only satisfied if an order selling free and  
5 clear of additional conditions “is not stayed,” but does not preclude GMC from  
6 seeking a stay. *See id.* at § 8.5.
  - 7 • SGM would have an unlimited right to use any sale as evidence of mitigation in the  
8 Debtors’ pending lawsuit against SGM and its affiliates. *See id.* at § 6.1(c).
  - 9 • GMC requests indemnity for liabilities arising under the IMA and Leaseback  
10 Agreement, *i.e.*, during the post-closing period when 100% economic benefit  
11 belongs to GMC. *See id.* at § 4.8(a).
  - 12 • The obligation to pay “cashed out” paid time off for any hired employees is shifted  
13 to the Debtors without any funding from GMC. *See id.* at § 5.3(b).
  - 14 • GMC proposes to assume certain obligations of the Debtors, including paid time off  
15 and the “PACE Obligations,” which may result in the Debtors incurring remediation  
16 liability as referenced in the Motion and Reply. *See id.* at § 1.1(a)(ii), (iv).
- 17 6. Equally significant, the Draft APA does not satisfy the conditions<sup>5</sup> proposed by the

18 Committee in its Response:

- 19 • **Deposit.** The Committee suggested that GMC must provide a significant deposit to  
20 ensure that the estates are not worse off in the event of a breach than if the Debtors  
21 had accepted the AHMC offer and proceeded to close on that offer. *See* Response  
22 at 2-3. More specifically, GMC must put down a deposit in the amount of the larger  
23 of \$40 million (the AHMC purchase price) or 75% of GMC’s ultimate purchase  
24 price. *See id.* However, under the Draft APA, GMC would not provide the deposit  
25 until after the parties enter into the Draft APA and only upon Court approval of a to-  
26 be negotiated stipulation concerning GMC’s rights with respect to the deposit. *See*  
27 Draft APA at § 1.2(a), (b).
- 28 • **Waiver of Contingencies.** The Committee provided that GMC must waive all  
conditions and contingencies, such that GMC would be obligated to close. *See*  
Response at 3. Under the Committee’s condition, the Attorney General and  
Medicare/Medi-Cal provider agreement conditions must be deemed satisfied if the  
Debtors obtain the same orders entered with respect to these issues in the SGM Sale.  
*See id.* Such waiver is not present.

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<sup>5</sup> “Only if all five of these conditions are met *to the Debtors’ satisfaction* would the Committee expect the Debtors (and other parties in interest) to consider an auction involving GMC.” Response at 3 (emphasis added).

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- 1           ○ The Draft APA includes conditions to closing, including a “Material Adverse  
2           Effect” condition, which would be subject to binding arbitration rather than  
3           a determination by this Court. *See* Draft APA at §§ 8.3, 12.3.
- 4           ○ The Draft APA is not revised to reflect the Committee condition with respect  
5           to the Attorney General. Instead, GMC provides that it is only “prepared to  
6           agree” to the 2019 Attorney General conditions subject to (i) a “reasonable  
7           update” to the capital commitment condition and (ii) an update to the seismic  
8           compliance condition. *See id.* at § 8.5 n.4. The Debtors would be required  
9           to agree to the terms of any order approving a motion to sell free and clear  
10          of “Additional Conditions” (or any order settling such a motion) before the  
11          hearing on a motion to approve the Draft APA. *See id.* Once agreed (and  
12          before the hearing on a motion to approve the Draft APA), the terms would  
13          need to be filed under seal and confidential until any order approving such  
14          motion or settlement is entered. *See id.*
- 15          ○ The Draft APA is not revised to reflect the Committee Condition with respect  
16          to the transfer of provider agreements. Instead, GMC provides that the  
17          parties would be required to agree on the form of settlement that must be  
18          achieved with respect to HHS and DHCS (without HHS or DHCS  
19          involvement) in advance of the hearing to approve the Draft APA. *See id.* at  
20          § 8.6 n.5. GMC does not agree that the settlements will be consistent with  
21          the orders entered with respect to the SGM Sale. *See id.*
- 22          • **Express Waiver of Appellate Rights.** The Committee suggested that GMC must  
23          expressly waive any right to appeal any order related to the sale of the Seton assets.  
24          *See* Response at 3. However, the Draft APA only includes the narrow provision that  
25          disputes under the Draft APA will be submitted to binding arbitration without the  
26          right to appeal. *See* Draft APA at § 12.3 (b). Further, nothing precludes SGM/GMC  
27          from seeking a stay of any order that would otherwise satisfy the Attorney General  
28          condition. *See id.* at § 8.5.
- 29          • **Limitation on Use of Facts.** The Committee proposed that SGM and the other  
30          defendants in the Debtors’ Adversary Action must agree not to use any facts related  
31          to the sale of the Seton assets to support any defenses, arguments, setoffs, and the  
32          like in the Adversary Action. *See* Response at 3. The Draft APA provides for a  
33          reciprocal limitation such that no party, including the Debtors, their successors,  
34          parties in interest in the Debtors’ bankruptcy cases, and estate representatives, may  
35          use the Draft APA, the sale order, or any filings related thereto, in any dispute related  
36          to the SGM APA. *See* Draft APA at § 6.1(c).
- 37          • **Limitation on Damages.** The Committee also provided SGM and the other  
38          defendants in the Debtors’ Adversary Action must agree not to use any facts related  
39          to the sale of the Seton Assets to reduce the limitation on the amount of damages in  
40          the SGM APA that the defendants would have to pay the Debtors pursuant to the  
41          Adversary Action. *See* Response at 3. However, the Draft APA expressly provides  
42          that “the purchase price paid by Purchaser in this transaction *may* be used as  
43          evidence of mitigation” and that the Draft APA is only without prejudice to the

1 Debtors' claims "regarding the damage limitation in Section 11.1" of the SGM APA.  
2 See Draft APA at § 6.1(c) (emphasis added).

3 7. As stated in the Reply, the majority of the conditions created by the Committee  
4 represent minimum expectations of any good faith offer rather than the sole requirements  
5 reasonably necessary for the Debtors to engage with SGM/GMC. However, even as contemplated  
6 by the Committee in its Response, the foregoing provisions preclude consideration of the  
7 SGM/GMC Draft APA. See Response at 2 ("the Committee assumes that the Debtors could not be  
8 expected to engage on GMC's Offer unless GMC can meet five conditions to the Debtors'  
9 satisfaction"). The evidence in support of the Motion, including the Debtors' previous experience  
10 with SGM, supports the conclusion that a sale to AHMC maximizes value for the estates, as it offers  
11 the Debtors and their estates finality, stability, and an expeditious resolution of these Cases.

12 **IV.**

13 **CONCLUSION**

14 Given that neither GMC nor SGM have submitted any filing with respect to the Motion, the  
15 Debtors do not request that the Court enter findings with respect to GMC, SGM, or their affiliates.  
16 The Debtors continue to request that the Court finds that the Debtors' determination that the AHMC  
17 APA constitutes the highest and best offer for the Purchased Assets is a valid and sound exercise  
18 of the Debtors' business judgment.<sup>6</sup> In light of the foregoing, and as set forth more fully in the  
19 Motion and the Reply, the Debtors request that the Court enter an order granting the Motion.

20 Dated: April 21, 2020

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21  
22  
23  
24 By: /s/ Tania M. Moyron  
Tania M. Moyron

25 Attorneys for the Debtors  
26  
27

28 \_\_\_\_\_  
<sup>6</sup> The Debtors desire to avoid potential appeals on collateral findings.

**Exhibit A**

**Redline of Draft APA Against AHMC APA  
Prepared by SGM/GMC**



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**ASSET PURCHASE AGREEMENT**

**By and Among**

**Verity Health System of California, Inc.,**

**Verity Holdings, LLC,**

**Seton Medical Center**

**and**

~~**AHMC Healthcare Inc.**~~

**KPC Global Medical Center of San Mateo County, LLC**

**Dated ~~March 30~~ April [●], 2020**

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## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (the “**Agreement**”) is made and entered into as of ~~the 30<sup>th</sup> day of March~~ April 10, 2020 (the “**Signing Date**”) by and among Verity Health System of California, Inc., a California nonprofit public benefit corporation (“**Verity**”), Verity Holdings, LLC, a California limited liability company (“**Verity Holdings**”), and Seton Medical Center, a California nonprofit public benefit corporation (“**Seton**” or “**Hospital Seller**”) (Verity, Verity Holdings, and Seton are each referred to herein individually as a “**Seller**” and collectively as the “**Sellers**”), and ~~AHMC Healthcare Inc.~~ KPC Global Medical Center of San Mateo County, LLC, a California ~~corporation~~ limited liability company, or its designated affiliates or assignees (“**Purchaser**”).

### RECITALS:

A. Seton engages in the business of the operation of two general acute care hospitals under a single license, consisting of: (i) the hospital known as Seton Medical Center, located at 1900 Sullivan Avenue, Daly City, CA 94015, including the hospital pharmacy, laboratory and emergency department as well as through the medical office buildings and clinics owned or operated by Sellers (collectively, the “**Seton Hospital Facilities**”) and (ii) the hospital known as Seton Medical Center Coastside, located at 600 Marine Blvd, Moss Beach, CA 94038, including the hospital pharmacy, laboratory and emergency department as well as through the medical office buildings and clinics owned or operated by Sellers (collectively, the “**Seton Coastside Hospital Facilities**”, and together with the Seton Hospital Facilities, the “**Hospital**” or the “**Seton Medical Center Facilities**”; the business of the operation of the Seton Medical Center Facilities and related assets is referred to herein as the “**Business**”).

B. Purchaser desires to purchase from Sellers, and Sellers desire to sell to Purchaser, the Seton Medical Center Facilities’ assets described in Section 1.7 below (the “**Assets**”) owned by Sellers, for the consideration and upon the terms and conditions contained in this Agreement.

C. Sellers filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”) with the United States Bankruptcy Court for the Central District of California, Los Angeles Division (the “**Bankruptcy Court**”), lead Case No. 2:18-bk-201510ER, jointly administered or to be jointly administered with their affiliates (the “**Bankruptcy Cases**”).

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 Sections 105, 363 and 365 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 I  
SALE AND TRANSFER OF ASSETS;  
CONSIDERATION; CLOSING**

**1.1 Purchase Price.**

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

(i) Cash payment to Sellers (the “Cash Consideration”) of ~~Forty-Fifty~~ Million Dollars (\$~~40,000,000.00~~); and 50,000,000.00;

(ii) Assumption of Sellers’ accrued vacation and other paid time off as of the Closing, to be provided with respect to Hired Employees as provided in Section 5.3(b) in the form of credited vacation and PTO;

~~(iii)~~ (iii) An amount equal to the Cure Costs (defined below) associated with outstanding liabilities of Sellers under any Assigned Leases and/or Assigned Contracts, ~~other than amounts paid to CMS or DHCS to transfer provider agreements under the settlement agreements contemplated in Section 8.6~~ (the “Cure Pool”); and

(iv) Assumption of all liabilities of Seton as Obligated Party and Property Owner under the (i) Agreement to Pay Assessment and Finance Improvements dated May 17, 2017 with California Statewide Communities Development Authority (“CSCDA”) and (ii) Agreement to Pay Assessment and Finance Improvements dated May 18, 2017 with CSCDA (collectively the “Special Assessments”) each associated with the Property Assessed Clean Energy (“PACE”) (seismic and clean energy) loans (collectively the “PACE Obligations”).]<sup>1</sup>

(b) Purchaser (i) is acquiring the Assets; (ii) is not assuming any liabilities of Sellers [other than the PACE Obligations]; and (iii) is agreeing to be responsible for the Transferred Obligations (as defined below).

(c) At the Closing, Purchaser shall pay to Sellers, by wire transfer of immediately available funds to the accounts specified by Sellers to Purchaser in writing, an aggregate amount equal to the Cash Consideration, plus the Cure Pool, minus the Deposit (defined below) ~~and the amount of PTO to be credited to Hired Employees pursuant to Section 5.3(b).~~

**1.2 Deposit.**

(a) Promptly but not later than five (5) days following the Signing Date, the parties will work in good faith to prepare a stipulation protecting Purchaser’s rights and

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<sup>1</sup> In light of the recent stipulation regarding PACE obligations, the parties will negotiate new terms consistent with Purchaser’s prior commitment to assume the PACE obligations.

remedies with respect to the Deposit that are provided in this Agreement, including this Section 1.2, and file and seek approval of such stipulation with the Bankruptcy Court.

~~1.2 Deposit. (b)~~ Within two (2) business days after the approval of such stipulation by the Bankruptcy Court, Purchaser shall, by wire transfer to an account designated by Sellers ~~shall make~~, deliver a good faith deposit in ~~an amount equal to twenty percent (20%) of the Cash Consideration within two (2) business days after the Signing Date~~ the amount of Forty Million Dollars (\$40,000,000) (the “**Deposit**”). The Deposit shall be non-refundable in all events, except as provided in Section 6.1(b) or Section 6.2, or in the event Purchaser has terminated this Agreement pursuant to Section 9.1 (other than Section 9.1(b)) or as set forth in Section 9.2, in which case Sellers shall immediately return the Deposit to Purchaser with all interest earned thereon. Upon Closing, the Deposit will be credited against the Purchase Price. ~~Pending the Closing, or until this Agreement is terminated, the Deposit shall be deposited in an interest bearing account, with interest credited to Purchaser, at a federally insured financial institution mutually acceptable to Purchaser and Sellers.~~

(c) Pending the Closing, Sellers shall deposit the Deposit into a segregated and restricted interest bearing debtor-in-possession bank account, and Sellers shall arrange that such funds shall not be commingled with other funds of any of the Sellers or their affiliates and shall not be subject to any pre-petition or post-petition claims, liens or security interests securing any claims against any of the Sellers or their affiliates, including any DIP financing, or used to fund any operating expenses of any of the Sellers or their affiliates. In addition, no portion of the Deposit shall be available to any of the Sellers or their affiliates to be used for attachment, execution, set-off or enforcement of any claim relating to the lawsuit currently pending in the U.S. District Court (Case No. 2:20-CV-00613-DSE) or any other lawsuit or claim relating to the Asset Purchase Agreement, dated January 8, 2019 (the “2019 APA”), between Sellers and Strategic Global Management, Inc. (“SGM”), including any such lawsuit or claim involving or against any affiliates of SGM (the “Pending Litigation”).

(d) The Deposit and all interest earned thereon shall be disbursed to the Sellers at the Closing, with such amount to be credited against the Purchase Price; provided however, if the sale is terminated other than by virtue of Purchaser’s material breach of this Agreement (determined pursuant to Section 12.3 hereof), the Deposit and all interest earned thereon shall be returned to Purchaser.

**1.3 Closing Date.** The consummation of the transactions contemplated by this Agreement (the “**Closing**”) shall take place at 10:00 a.m. 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**”) promptly but no later than 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 11:59 p.m. Pacific time on the Closing Date (the “**Effective Time**”). Purchaser and Sellers agree that because the change of ownership and regulatory approval process may take an extended period of time, at the Effective Time, the Assets (less any Assets constituting drugs or pharmacy assets) will

be sold to Purchaser and immediately leased back to Sellers (substantially in the form of the [Sale Leaseback Agreement](#) attached hereto as [Exhibit 1.3\(a\)](#), the “**Leaseback Agreement**”), with a concurrent management arrangement (substantially in the form of the Interim Management Agreement attached hereto as [Exhibit 1.3\(b\)](#), the “**IMA**”). On the effective date that Purchaser obtains a general acute care hospital license from the California Department of Public Health (“**CDPH**”) and a hospital pharmacy permit from the California State Board of Pharmacy (“**BOP**”) (i) the Leaseback Agreement and IMA will terminate and (ii) the drugs and pharmacy assets will be transferred to Purchaser (without payment of any additional Purchase Price) (the “**Licensure Date**”). For the avoidance of any doubt, the Licensure Date shall be the date the Purchaser’s hospital license and pharmacy permit are effective, even if they are not actually issued until some time later. The Licensure Date may be determined based on oral assurances and/or temporary permits issued by CDPH and the BOP.

**1.4 Items to be Delivered by Sellers at Closing.** At or before the Closing, Sellers 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 each Seller, with respect to the Assets;

**1.4.2** Real Estate Assignment 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 each Seller;

**1.4.3** Quitclaim Deeds in the form of [Exhibit 1.4.3](#) attached hereto with respect to the real property listed in [Schedule 1.4.3](#), together with all plant, buildings, structures, installments, improvements, fixtures, betterments, additions and constructions in progress situated thereon (collectively, the “**Owned Real Property**”) as well as with respect to the Purchased Verity Holdings Assets (as defined below) duly executed by each Seller, as appropriate;

**1.4.4** an Assigned Contract Transfer Agreement (the “**Transfer Agreement**”) in the form of [Exhibit 1.4.4](#) attached hereto with respect to the Transferred Obligations duly executed by each Seller;

**1.4.5** favorable original certificates of good standing, of each 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 each Seller certifying to Purchaser: (i) the incumbency of the officers of such 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 such Seller authorizing: (I) the transfer of the Assets and transfer of the Transferred Obligations by such 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);

**1.4.8** a Transition Services Agreement (the “**Transition Services Agreement**”) in form and substance satisfactory to Sellers and Purchaser, in their reasonable discretion, granting to Sellers use of certain assets, systems and personnel identified in such agreement solely in connection with Sellers’ wind-down of the Business, the completion of the Bankruptcy Cases and the dissolution of Sellers (and following completion of such wind-down, Bankruptcy Cases and dissolution of Sellers, such Transition Services Agreement shall automatically terminate);

~~**1.4.9** the Indemnity Escrow Agreement (as defined in Section 4.8);~~

**1.4.9** ~~**1.4.10**~~ evidence of payment of all Cure Costs;

**1.4.10** [acknowledgements by CSCDA and the PACE Trustee that Purchaser is the Successor Property Owner and Obligated Party under the PACE Obligations and releases of the Sellers from any and all claims arising or accruing prior to the Closing Date;]

**1.4.11** reconveyances of Deeds of Trust for Owned Real Property and termination statements for all UCC financing statements, in each case which have been pledged or delivered as collateral under obligations which are repaid or extinguished at or before the Closing;

**1.4.12** ~~**1.4.11**~~ evidence of insurance coverage for Sellers as described in Section ~~**4.10**~~; **4.10**; and

**1.4.13** ~~**1.4.12**~~ any such other instruments, certificates, consents or other documents which Purchaser and Sellers 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 Sellers the following:

**1.5.1** payment of the Cash Consideration, plus the Cure Pool, minus the Deposit (defined below) ~~and the amount of PTO to be credited to Hired Employees pursuant to Section 5.3(b)~~, subject to credits or plus payment to Sellers of all amounts as provided under Section 1.6;

**1.5.2** a duly executed certificate of the Secretary of Purchaser certifying to Sellers: (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;

**1.5.3** 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;

**1.5.4** the Bill of Sale, duly executed by Purchaser;

**1.5.5** the Real Estate Assignment(s), duly executed by Purchaser;

**1.5.6** the Transfer Agreement, duly executed by Purchaser;

~~**1.5.7** the Indemnity Escrow Agreement;~~

**1.5.7** ~~**1.5.8**~~ the Transition Services Agreement; and

**1.5.8** ~~**1.5.9**~~ any such other instruments, certificates, consents or other documents which Purchaser and Sellers 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, [other than the PACE Special Assessments] and other similar charges against real estate, and power and utility charges (collectively, the “**Prorated Charges**”) on the Assets. Each Seller shall pay its respective 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 be responsible for as a Transferred Obligation or, to the extent previously paid by any Seller, pay to such 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, mileages 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** Sellers 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 uncollected 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 Sellers, and Purchaser shall, upon receipt of said rents and other payments, receive the same in trust for Sellers and shall promptly remit any of such amounts to the applicable Seller within ten (10) days after Purchaser’s receipt of same. For the avoidance of doubt, all rental payments received after Closing shall be first applied to any amounts owed to the Sellers under this Section 1.6.3.

**1.6.4** If Purchaser requests that Sellers transfer electronic medical records in a specific electronic format, then Purchaser shall reimburse, on the Closing Date, all amounts paid or to be paid by Sellers to transfer electronic medical records to Purchaser in such electronic format.

**1.6.5** All prorations and payments to be made under the foregoing provisions shall be agreed upon by Purchaser and Sellers 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 applicable 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 Sellers.** On and after the Closing Date, as applicable, and subject to the terms and conditions of this Agreement, each Seller shall sell, assign, transfer, convey and deliver to Purchaser, free and clear of all liens, claims, interests and encumbrances other than the Permitted Exceptions (defined below), and Purchaser shall acquire, all of each Seller’s right, title and interest in and to only the following assets and properties, as such assets and properties shall exist on and after the Closing Date, in each case (notwithstanding anything else in this Agreement) solely to the extent used primarily in the conduct of the Business and 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 Hospital Seller or other Seller (if applicable), or to the extent assignable or transferable by Hospital Seller or other Seller (if applicable), leased, subleased or licensed by Hospital Seller or other Seller, and used by Hospital Seller in the operation of the Hospital or used exclusively by any other Seller in the operation of the Hospital, including equipment, furniture, fixtures, machinery, vehicles, office furnishings and leasehold improvements (the “**Personal Property**”);

(b) on and after the Closing Date, all of Hospital Seller's rights, to the extent assignable or transferable, to and all of Hospital Seller's obligations due from and after the Closing Date under, all Medicare and Medi-Cal provider agreements, permits, approvals, certificates of exemption, franchises, accreditations and registrations and other governmental licenses, permits or approvals issued to Hospital Seller for use in the operation of the Hospital (the "**Licenses**"), including, without limitation, the Licenses and Medicare/Medi-Cal Provider Agreements set forth on **Schedule 1.7(b)**, except to the extent Purchaser elects, in its discretion, not to take assignment of any such Licenses;

(c) all of Sellers' interest in and to the Owned Real Property and all of Sellers' interest, to the extent assignable or transferable, in and to all of the following (the "**Assigned Leases**"): (i) personal property leases with respect to the operation of the Hospital (including leases for assets described in **Section 1.7(i)**), (ii) the real property leases for all real property leased by Hospital Seller and set forth on **Schedule 1.7(c)(ii)** (the "**Leased Real Property**"), and (iii) the real property leased or subleased by Hospital Seller to a third party and set forth on **Schedule 1.7(c)(iii)** (the "**Tenant Leases**");

(d) other than those contracts specified in 1.7(x), all of Hospital Seller's interest, to the extent assignable or transferable, in and to all contracts and agreements (including, but not limited to, purchase orders and the State Services Agreement) with respect to the operation of the Hospital that have been designated by Purchaser as a contract to be assumed and assigned pursuant to **Section 1.11** (the "**Assigned Contracts**");

(e) [Reserved];

(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 Hospital, or (ii) used in the operation of the Hospital (the "**Inventory**") except as set forth in **Section 1.8(f)**;

(g) other than Utility Deposits, all prepaid rentals, deposits, prepayments (excluding prepaid insurance and Base Payments (as defined in State Services Agreement) received prior to the Effective Time and prepaid taxes) and similar amounts relating to the Assigned Contracts and/or the Assigned Leases, which were made with respect to the operation of the Hospital (the "**Prepays**");

(h) to the extent assignable or transferrable, all of the following that are not proprietary to Sellers and/or owned by or proprietary to Sellers' affiliates: operating manuals, files and computer software with respect to the operation of the Hospital, including, without limitation, all patient records, medical records, employee records, billing records, financial records, equipment records, construction plans and specifications, and medical and administrative libraries; provided, however, that any electronic medical records may be transferred in paper or "pdf" if Sellers' EMR system and Purchaser's EMR system are not interoperable;

(i) to the extent assignable or transferrable (and if leased, to the extent the associated lease is transferrable), including any assignment which is made effective pursuant to

the Sale Order where the consent of a third party is required pursuant to the terms of an applicable agreement but not obtained, all systems, servers, computers, hardware, firmware, middleware, telecom equipment, networks, data communications lines, routers, hubs, switches and all other information technology equipment, and all associated documentation owned, leased or licensed by Hospital Seller and used by Hospital Seller with respect to the operations of the Hospital;

(j) all Measure B trauma funding received by Hospital Seller after the Closing Date, regardless of the state fiscal year for which the funding is made in reference to and regardless of the state fiscal year for which the data was derived to calculate eligibility for such funding;

(k) all funds received by or on behalf of Hospital Seller or the Hospital after the Closing Date under the QAF Program and any subsequent QAF Program ~~payment~~ payments (e.g., QAF VI and QAF VII), and all rights of Sellers in and to such funds, regardless of the state fiscal year for which the funding is made in reference to and regardless of the state fiscal year for which the data was derived to calculate eligibility for such funding; for purposes of this Agreement, the “QAF Program” means the California Department of Health Care Services Hospital Quality Assurance Fee Programs, including Program V (“QAF V”), and VI (“QAF VI”) Program VI (“QAF VI”) enacted pursuant to California SB 239 (2013) and codified as the Medi-Cal Hospital Reimbursement Improvement Act of 2013 at Section 14169.50 et seq. of the California Welfare & Institutions Code, as amended and superseded by any other California legislation, or any follow-on or successor quality assurance programs which imposes a fee or tax on hospitals that is used to generated additional or supplemental Medi-Cal payments to hospitals and/or Medi-Cal managed health care plans to be used for hospital services. To the extent Hospital Seller has paid QAF fees ~~for QAF funds identified by DHCS as required to be paid in connection with any specific QAF fund payments~~ that are not received until after the Closing Date, Purchaser will reimburse the Hospital Seller for any such fees that have been paid ~~by Sellers.~~ At or prior to Closing, Seller will deliver an accounting and reconciliation of fees paid and received under the QAF Program between the Signing Date and Closing Date with respect to the Hospital.

(l) all Medicare and Medi-Cal disproportionate share funds received by or on behalf Hospital Seller or the Hospital after the Closing Date, and all rights of Sellers in and to such funds, regardless of the state fiscal year for which the funding is made in reference to and regardless of the state fiscal year for which the data was derived to calculate eligibility for such funding;

(m) other than the Excluded Settlements and Actions, all regulatory settlements, rebates, adjustments, refunds or group appeals, including without limitation pursuant to all cost reports filed by Sellers for payment or reimbursement from government payment programs and other payors with respect to periods after the Signing Date;

(n) other than the Excluded Settlements and Actions, all casualty and property insurance proceeds arising in respect of losses occurring after the Closing Date, or occurring after the Signing Date to the extent the proceeds have not been applied by any Seller to repair the covered casualty or losses by Closing, in connection with the ownership or operation of, or damage or destruction to, the Assets;

(o) all transferable unclaimed property of any Person in Sellers' possession as of the Closing Date that relate to the Hospital or the Business, including, without limitation, property which is subject to applicable escheat laws;

(p) to the extent assignable or transferable by Sellers without out-of-pocket expense to Sellers, all warranties (including warranties of any manufacturer or vendor) on or in connection with the Assets (including the Personal Property) in favor of the Hospital or Sellers;

(q) the right to use the names "Seton Medical Center" and "Seton Medical Center Coastside", including any trademarks, service marks, trademark and service mark registrations and registration applications, trade names, trade name registrations, logos, domain names, trade dress, copyrights, copyright registrations, website content, know-how, trade secrets and the corporate or company names of Hospital Seller and the name of the Hospital, together with all rights to sue and recover damages for infringement, dilution, misappropriation or other violation or conflict associated with any of the foregoing; at the Closing, Purchaser will execute and deliver to Sellers the Transition Services Agreement granting to Sellers an unlimited, royalty free, irrevocable license to use any and all of the foregoing solely in connection with the wind-down of the Business, the completion of the Bankruptcy Cases and the dissolution of Sellers (and following completion of such wind-down, Bankruptcy Cases and dissolution of Sellers, such license shall automatically terminate);

(r) all goodwill of the Hospital evidenced by or associated with any of the Assets and the Business;

(s) to the extent transferable or assignable, Hospital Seller's right or interest in the telephone and facsimile numbers and uniform resource locaters used with respect to the operation of the Hospital and Business;

(t) all of Hospital Sellers' interest in and to, from and after the Licensure Date, to Hospital Seller's Medicare and Medi-Cal provider agreements and lockbox account(s) identified on Schedule 1.7(t), with the submission and payment of claims to be made in accordance with the provisions of Section 3.4 of the IMA;

(u) with respect to Verity Holdings, the real property assets represented by the assessor's parcel numbers (APN's) listed in Schedule 1.7(u) hereof, together with all plant, buildings, structures, installments, improvements, fixtures, personal property, betterments, additions and constructions in progress situated thereon (the "**Purchased Verity Holdings Assets**");

(v) except for the Excluded Assets, to the extent assignable or transferable, and subject to the Permitted Exceptions, any other assets owned by Hospital Seller (which are not otherwise specifically described above in this Section 1.7) that are used in the operation of the Hospital and Business;

(w) [all of Seton's interest in and to the PACE Obligations:]

(x) ~~(w)~~ all claims, counterclaims and causes of action of each Seller, Seller affiliate or such Seller's or Seller affiliate's bankruptcy estate (including parties acting for and on behalf of such Seller's bankruptcy estate, including, but not limited to, the official committee of unsecured creditors appointed in the Bankruptcy Cases), arising under or with respect to claims and causes of action against Purchaser or any Purchaser affiliate or that relate to the Assets or the Transferred Obligations but excluding any claims or causes of action: (i) relating to the Excluded Assets; (ii) arising under Chapter 5 of the Bankruptcy Code; or (iii) as set forth on Schedule 1.7(w); and

(y) ~~(z)~~ subject to Section 4.9 and the provisions of Exhibit 4.9, all of Sellers' interest in, and all of Sellers' obligations due under, from and after the Licensure Date, to the extent assignable or transferable, in and to any of the Hospital's services, participation or provider agreements with private health plans, insurers or other third party payors (collectively, the "**Private Payor Agreements**") that have been designated by Purchaser as an Assigned Contract pursuant to Section 1.11 (to the extent so designated, the "**Transferred Private Payor Agreements**"), provided that, (i) the submission and payment of claims shall be in accordance with the provisions of Section 3.4 of the IMA, and (ii) Private Payor Agreements shall not include any "risk-sharing" agreements with independent physician associations.;

As used herein, the term "**Permitted Exceptions**" means: (i) the Transferred Obligations; (ii) liens for taxes not yet due and payable; (iii) easements, rights of way, zoning ordinances and other similar encumbrances affecting real property; (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 Hospital; (v) any agreements made with any governmental authority in order to obtain any consent or approval, including, without limitation, in connection with the Medicare and Medi-Cal provider agreements; (vi) the PACE Obligations; and ~~(vii)~~ other imperfections of title or encumbrances that are expressly identified on Schedule 1.7 hereof.

**1.8 Excluded Assets.** Notwithstanding anything to the contrary in Section 1.7, each Seller shall retain all interests, rights and other assets owned directly or indirectly by it (or any of such Seller's affiliates) which are not among the Assets, including, without limitation, the following interests, rights and other assets of such 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 Assigned Contracts and all Private Payor Agreements that are not Transferred Private Payor Agreements;
- (d) all leases that are not Assigned Leases;

(e) the portions of Inventory, Prepaids, and other assets disposed of, expended or canceled, as the case may be, by such 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 Hospital;

(g) Except for ~~as stated~~ the assets and properties described in Section 1.7(j), Section 1.7(k), and Section 1.7(l), all accounts and interest thereupon, notes and interest thereupon and other receivables of Sellers, including, without limitation, accounts, notes or other amounts receivable, and all rights, interests and proceeds, and claims, counterclaims and causes of action, related thereto, including all accounts and other receivables, 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 Hospital, billed and unbilled, recorded and unrecorded, for services, goods, products and supplies provided by Sellers prior to the Effective Time whether payable by Medicare, Medicaid, 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**”); all documents, records, correspondence, work papers and other documents primarily relating to the Accounts Receivable; and all rights, claims and causes of action of Sellers to the extent related to and/or to the extent arising out of the Accounts Receivable;

(h) all of such Seller’s organizational or corporate record books, minute books, tax returns, tax records and reports, data, files and documents, including electronic data related thereto;

(i) except as set forth in Section 1.7(w) and 1.8(g), all claims, counterclaims and causes of action of such Seller or such Seller’s bankruptcy estate (including parties acting for or on behalf of such Seller’s bankruptcy estate, including, but not limited to, the official committee of unsecured creditors appointed in the Bankruptcy Cases), including, without limitation, rights of recovery or set-off of every kind and character against third parties, 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 such Seller’s bankruptcy estate, including, but not limited to, liens attaching to the Purchase Price paid to such Seller, and the proceeds from any of the foregoing;

(j) other than insurance proceeds described in Section 1.7(n), all insurance policies and contracts and coverages obtained by such Seller or listing such 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;

(k) all deposits made with any entity that provides utilities to the Hospital (the “**Utility Deposits**”);



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

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

(n) Subject to the terms of the IMA, all other bank accounts of such Sellers not listed on **Schedule 1.7(t)**;

(o) 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;

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

(q) all director and officer insurance;

(r) all tax refunds and tax assets of such Seller;

(s) all documents, records, operating manuals and film pertaining to the Hospital that the parties agree that such Seller is required by law to retain;

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

(u) 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;

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

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

(x) any: (i) personnel files for employees of such Seller who are not hired by Purchaser; (ii) other books and records that such 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 Hospital as conducted before the Closing or that relate to any of the Assets; (iii) documents which such 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

such Seller shall be entitled to retain a copy of such documents for any period ending on or prior to the Closing Date;

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

(z) all pre-Closing settlements or settlements pursuant to adversary proceedings in the Bankruptcy Cases, including, without limitation, any proceedings identified in Section 1.8(i) (together with the items identified in Section 1.8(i), the “**Excluded Settlements and Actions**”);

(aa) for the avoidance of doubt, all QAF IV and QAF V payments actually received prior to the Closing Date;

(bb) all assets of Verity Holdings other than the Purchased Verity Holdings Assets and all assets of any of the tenants located in the leased premises of the purchased Verity Holdings properties;

(cc) any rights or remedies, including deposits, against any individual or entity arising pursuant to (including in connection with Sellers’ termination of) or relating to that certain Asset Purchase Agreement dated January 8, 2019 between, inter alia, Sellers and Strategic Global Management, Inc.;

(dd) any and all rights and entitlements of Sellers in respect of that certain Settlement Agreement, executed as of April 29, 2019, by and between, on the one hand, Premier, Inc., Premier Services, LLC (“**Premier GP**”), Premier Healthcare Alliance, L.P. (“**Premier LP**”), Premier Healthcare Solutions, Inc. (“**PHSI**”) and each of Premier, Inc.’s other subsidiaries (collectively and including Premier GP, Premier LP and PHSI, “**Premier**”), and on the other hand, Verity Health System of California, Inc., formerly known as Daughters of Charity Health System (“**VHS**”), as approved by the Bankruptcy Court by order entered on May 29, 2019 [Docket No. 2461], including but not limited to the right to convert and exchange partnership interests arising under that certain Amended and Restated Limited Partnership Agreement, effective as of October 1, 2013, as amended, by and among Premier LP, Premier GP and the limited partners of Premier LP party thereto (including VHS);

(ee) any and all rights and entitlements of Sellers in respect of the compensations under that certain Services Agreement by and between the California Department of Public Health (the “**State**”), on the one hand, and on the other hand, Verity Healthcare System of California, Inc., (“**Verity**”) and Seton Medical Center, a California nonprofit public benefit corporation as approved by the Bankruptcy Court on March 20, 2020 [Docket No. 4315] (the “**State Services Agreement**”), as it may be amended, received or due on account of services provided prior to Effective Time;

(ff) any COVID-19 grants or related governmental awards or supplemental payments received, allocable to, or on account of the delivery of individual patient care services performed prior to the Effective Time. (All other COVID-19 grants or related government awards shall be the property of Purchaser.); and

(gg) any assets identified in **Schedule 1.8(gg)**.

**1.9 Transferred Obligations.** Purchaser is not assuming any liabilities of Sellers. Instead, on and after the Closing Date, Purchaser shall be responsible for and agrees to discharge, perform and satisfy fully, on and after the Effective Time, the following liabilities and obligations and only the following liabilities and obligations (collectively, the “**Transferred Obligations**”):

(a) the Assigned Contracts and all obligations under the Assigned Contracts but solely to the extent related to periods after the Effective Time;

(b) the Assigned Leases and all obligations under the Assigned Leases but solely to the extent related to periods after the Effective Time;

(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 Hospital or any of the Assets on or after the Effective Time;

(d) accrued payroll and related expenses with respect to Hired Employees arising on or following the Effective Time;

(e) all liabilities and obligations related to the Hired Employees arising ~~on or~~ **with respect to periods** 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 incurred as a result of the consummation of the transaction contemplated by this Agreement;

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

(j) on and after the Closing Date **and subject to the settlement agreements contemplated in Section 8.6, (i)** any obligations Purchaser may desire or need to undertake in order to have the Certifications/Licenses/Permits identified on **Schedule 1.7(b)** reissued to Purchaser, ~~as well as (ii)~~ any obligations associated with Hospital Seller’s Medicare and Medi-Cal provider agreements, ~~but subject to the satisfaction of the condition precedent set forth in Section 8.6, and~~ **and (iii)** any Medi-Cal liabilities or obligations needed to support ongoing Hospital Quality Assurance Fee Program payments; and

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

**1.10 Excluded Liabilities.** Purchaser shall have those duties, obligations and liabilities set forth in this Agreement, the IMA, the Leaseback Agreement, the Transition Services Agreement, the Bill of Sale, the Transfer Agreement and the Real Estate Assignment(s) and shall

be responsible for the Transferred Obligations. However, Purchaser shall not assume or become responsible for any liabilities of any Seller (the “**Excluded Liabilities**”), and each Seller shall remain fully and solely responsible for all of such Seller’s debts, liabilities, contract obligations, expenses, obligations and claims of any nature whatsoever related to the Assets or the Hospital other than the Transferred Obligations.

### **1.11 Designation of Assigned Contracts and Assigned 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 thirty (30) days prior to Closing (i) Purchaser shall notify each Seller in writing of which Evaluated Contracts are to be assumed by such Seller and assigned to Purchaser, and (ii) Purchaser shall notify each Seller in writing signed and dated by Purchaser of which Evaluated Contracts are to be rejected by such Seller (collectively, the “**Rejected Contracts**”); provided, that Purchaser shall have the right to designate additional Evaluated Contracts for assumption up to fourteen (14) days prior to Closing and Sellers shall have the absolute right to remove any Evaluated Contract from the list of Assigned Contracts in order to preserve avoidance claims. Each 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 are entered: (x) assuming and assigning the respective Assigned Contracts or Assigned Leases applicable to such Seller to Purchaser, and (y) rejecting the Rejected Contracts. With respect to each Assigned Lease, the applicable Seller shall execute and deliver to Purchaser an Assignment 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 and any applicable authority, including, but not limited to, section 365 of the Bankruptcy Code, each Seller will assume and immediately assign to Purchaser the leases of such Seller for Leased Real Property and the Tenant Leases.

(c) Notwithstanding the foregoing, except for those contracts set forth in Schedule 1.11(c) and subject to Section 4.9 (the “**Required Assigned Contracts**”), Purchaser’s obligation to consummate the transactions contemplated by this Agreement are not contingent upon the assumption, assignment or rejection of any contract or lease, or on the amount of any payment or other performance needed to cure any default thereunder.

### **1.12 Disclaimer of Warranties; Release.**

(a) THE ASSETS TRANSFERRED TO PURCHASER WILL BE SOLD BY SELLERS 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 SELLERS INCLUDED IN THE ASSETS AND THE TRANSFERRED OBLIGATIONS ARE BEING ACQUIRED “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 has examined, reviewed and inspected all matters which in Purchaser’s judgment bear upon the Assets, the Sellers, the Hospital, the business of the Hospital 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 Transferred Obligations. Purchaser releases each Seller and its affiliates from all responsibility and liability regarding the condition, valuation, salability or utility of the business of the Hospital or the Assets, or their suitability for any purpose whatsoever. Purchaser further acknowledges that the representations and warranties of Sellers contained in ARTICLE 2 of this Agreement are the sole and exclusive representations and warranties made by Sellers to Purchaser (including with respect to the Hospital, the Assets and the Transferred Obligations) and shall expire, and be of no further force or effect after the date which is twelve (12) months from the Closing Date, except that the Sale Order Date Representations shall expire, and be of no further force or effect upon the Sale Order Date, and in each case Sellers shall not have any liability in respect of any breach thereof following such expiration.

## ARTICLE II REPRESENTATIONS AND WARRANTIES OF SELLERS

Each Seller hereby represents, warrants and covenants to Purchaser, severally (and not jointly) with respect to such Seller that the following matters are true and correct as of the Signing Date, except as would not have a material adverse effect upon the Assets, taken as a whole (a “**Material Adverse Effect**”) and except as disclosed in the disclosure schedule, as may be amended pursuant to the terms of this Agreement (the “**Disclosure Schedule**”), provided that the representations and warranties set forth in Sections 2.1 (Authorization), 2.2 (Binding Agreement), 2.3 (Organization and Good Standing; No Violation), 2.8 (Compliance with Legal Requirements), 2.9 (Required Consents), 2.11 (Title), 2.14 (Legal Proceedings), and 2.22 (Bankruptcy Proceedings) (the “**Sale Order Date Representations**”) shall also be made as of immediately prior to the entry of the Sale Order (the “**Sale Order Date**”):

**2.1 Authorization.** Such 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 such Seller and, assuming due and valid execution by Purchaser, this Agreement

constitutes a valid and binding obligation of such 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. Except for such corporate actions which have been taken on or before the date hereof, no other corporate action on the part of Sellers is necessary to authorize the execution, delivery and performance of this Agreement and the transactions contemplated hereby and thereby.

### **2.3 Organization and Good Standing; No Violation.**

(a) Such Seller is an entity duly organized, validly existing and in good standing under the laws of the State of California. Such 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 such Seller of this Agreement nor the consummation of the transactions contemplated hereby by such Seller nor compliance with any of the material provisions hereof by such Seller, will violate, conflict with or result in a breach of any material provision of such Seller's articles of incorporation or bylaws or any other organizational documents of such 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 material breach or default of the Assigned Contracts or Assigned Leases except to the extent of defaults that will be cured in connection with assumption pursuant to Section 365 of the Bankruptcy Code, and no act or omission by the appropriate Seller has accrued or failed to occur which, with the giving of notice, the lapse of time or both would constitute a default under the Assigned Contracts or Assigned Leases except to the extent of defaults that will be cured in connection with assumption pursuant to Section 365 of the Bankruptcy Code. No provision of this Section 2.4 shall apply to any failure to obtain consents to the assignment of the Assigned Contracts and Assigned Leases from third parties to the Assigned Contracts and Assigned Leases for which consent is required to assign the Assigned Contracts and Assigned Leases to Purchaser (the "**Contract and Lease Consents**").

**2.5 Brokers and Finders.** Except as set forth on Schedule 2.5, neither such 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 "**Sellers' knowledge**" or "**the knowledge of Sellers**" means the actual knowledge of the Chief Executive Officer or Chief Financial Officer of the applicable Seller, 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.

**2.7 Non-Contravention.** Neither the execution and delivery by Sellers of this Agreement and each Ancillary Agreement nor performance of any of the material provisions hereof by Sellers, will violate, conflict with or result in a breach of any material provisions of the articles of incorporation or bylaws of Sellers.

**2.8 Compliance with Legal Requirements.** Except as set forth in **Schedule 2.8**, to the knowledge of Sellers: each Seller, with respect to the operation of the Hospital, is in material compliance with all applicable laws, statutes, ordinances, orders, rules, regulations, policies, guidelines, licenses, certificates, judgments or decrees of all judicial or governmental authorities (federal, state, local, foreign or otherwise) (collectively, “**Legal Requirements**”). Except as set forth in **Schedule 2.8**, to the knowledge of Sellers, none of the Sellers, with respect to the operation of the Hospital, has been charged in writing with or been given written notice of or is under investigation with respect to, any material violation of, or any obligation to take material remedial action under, any applicable Legal Requirements.

**2.9 Required Consents.** Except as set forth in **Schedule 2.9**, and other than in connection with any Licenses, any provider agreements (including any such agreements with a governmental authority) and the CA AG (defined below), Sellers are not a party to or bound by, nor are any of the Assets subject to, any mortgage, or any material lien, deed of trust, material lease, or material contract or any material order, judgment or decree which, after giving effect to the Sale Order: (a) will require the consent of any third party to the execution of this Agreement, or (b) will require the consent of any third party to consummate the transactions contemplated by this Agreement.

**2.10 Environmental Matters.**

(a) Sellers have provided Purchaser with the Phase I Environmental Site Assessments set forth in said **Schedule 2.10(a)**.

(b) Except as disclosed in **Schedule 2.10(b)**, to the knowledge of Sellers, the operations of the Hospital are not in material violation of any applicable limitations, restrictions, conditions, standards, prohibitions, requirements and obligations of Environmental Laws and related orders of any court or any other governmental authority.

(c) For the purposes of this Section, the term “**Environmental Laws**” shall mean all state, federal or local laws, ordinances, codes or regulations relating to Hazardous Substances or to the protection of the environment, including, without limitation, laws and regulations relating to the storage, treatment and disposal of medical and biological waste. For purposes of this Agreement, the term “**Hazardous Substances**” shall mean (i) any hazardous or toxic waste, substance, or material defined as such in (or for the purposes of) any Environmental Laws, (ii) asbestos-containing material, (iii) medical and biological waste, (iv) polychlorinated biphenyls, (v) petroleum products, including gasoline, fuel oil, crude oil and other various constituents of such products, and (vi) any other chemicals, materials or substances, exposure to which is prohibited, limited or regulated by any Environmental Laws.

**2.11 Title.** Within five (5) days after the Signing Date, Sellers shall have delivered at their own expense: (i) for all the Real Property preliminary title reports issued by Chicago Title (the “**Title Commitments**”), (ii) for all of the Real Property all underlying title documents listed on the Title Commitments (the “**Underlying Title Documents**”), and (iii) for the Hospital an as-built ALTA Survey (the “**Survey**”, and collectively with the Title Commitment and the Underlying Title Documents, the “**Title Documents**”).

## 2.12 Certain Other Representations with Respect to the Hospital.

(a) Except as set forth in **Schedule 2.12**, all Licenses which are material and necessary to the operation of the Hospital by Sellers are valid and in good standing and Sellers are in compliance with the terms and conditions of all such Licenses in all material respects. Except as set forth in **Schedule 2.12**, as of the Closing Date Sellers will have any and all material Licenses required under Legal Requirements to conduct the Hospital as presently conducted by Sellers. To the knowledge of Sellers, no loss or expiration of any License is pending or threatened.

(b) Hospital Seller is certified for participation in the Medicare, Medi-Cal and TRICARE programs and any other federal or state health care reimbursement programs in which it participates, and has current and valid provider agreements with each such program.

(c) Sellers have not been excluded from Medicare, Medi-Cal or any federal or state health care reimbursement program, and, to the knowledge of Sellers, there is no pending or threatened exclusion action by a governmental authority against Sellers.

## 2.13 Financial Statements.

(a) **Schedule 2.13(a)** hereto contains the following financial statements (the “**Historical Financial Statements**”): (i) the Sellers audited financial statement with consolidating statement of operations and consolidating balance sheets of Sellers for the years ended 2016 and 2017; (ii) the unaudited consolidating statement of operations and consolidating balance sheet of Sellers as of June 30, 2018; (iii) the Sellers’ unaudited monthly operating report and four month consolidating statement of operations and consolidating balance sheet for the period ending December 31, 2018 [ECF Docket No.1453]; (iv) the Sellers’ unaudited monthly operating report and sixteen (16) month consolidating statement of operations and consolidating balance sheet for the period ending of December 31, 2019 [ECF Docket No.4038] ; and (v) the Sellers’ unaudited monthly operating report and seventeen (17) month consolidating statement of operations and consolidating balance sheet for the period ending January 31, 2020 [ECF Docket No. 4198]. .

(b) The monthly operating statements and monthly consolidating balance sheets contained in the Historical Financial Statements were prepared under the Guidelines of the Office of the United States Trustee for Region 16 and to Seller’s knowledge present fairly the results of the operations of the Sellers as of and for the periods covered therein. Except as set forth on **Schedule 2.13(b)**, the Sellers’ balance sheets contained in the Historical Financial Statements: (i) are true, complete and correct in all material respects; and (ii) to the extent audited by an independent certified public accounting firm, to Sellers’ knowledge, have been prepared in accordance with generally accepted accounting principles consistently applied throughout the periods covered, except as disclosed therein.

**2.14 Legal Proceedings.** Except as set forth on **Schedule 2.14**, and except for any and all cases and/or pleadings filed or to be filed in the Bankruptcy Court, which shall be available through Sellers’ claims and noticing agent’s website at <http://www.kccfcc.com/VERITYHEALTH/>, to the knowledge of Sellers, there are no material claims, proceedings or investigations pending or threatened with respect to the ownership of the Assets or the operation of the Hospital by Sellers



before any governmental authority. Except as set forth on **Schedule 2.14**, and other than any action or proceeding brought in the Bankruptcy Court, to the knowledge of Sellers, Sellers are not subject to any government order with respect to the ownership or operation by Sellers of the Hospital or the other Assets or the Hospital and are in substantial compliance with respect to each such government order.

**2.15 Employee Benefits.** **Schedule 2.15** contains a list of: (i) each pension, profit sharing, bonus, deferred compensation, or other retirement plan or arrangement of Sellers with respect to the operation of the Hospital, whether oral or written, which constitutes an “**employee pension benefit plan**” as defined in Section 3(2) of ERISA, (ii) each medical, health, disability, insurance or other plan or arrangement of Sellers with respect to the operation of the Hospital, whether oral or written, which constitutes an “**employee welfare benefit plan**” as defined in Section 3(1) of ERISA, and (iii) each other employee benefit or perquisite provided by Sellers with respect to the operation of the Hospital, in which any employee of Sellers participates in his/her capacity as such (collectively, the “**Seller Plans**”).

**2.16 Personnel.** **Schedule 2.16** sets forth a complete list (as of the date set forth therein) of names, positions and current annual salaries or wage rates and any scheduled bonus of all employees of Seton immediately prior to the Signing Date, whether such employees are full time employees, part-time employees, on short-term or long-term disability or on leave of absence pursuant to Seton’s policies, the Family and Medical Leave Act of 1993 or other similar Legal Requirements (the “**Hospital Employees**”) and indicating whether the Hospital Employee is full-time or part-time. Sellers shall have the right to update to **Schedule 2.16** to reflect changes in employment status or new hires and terminations occurring after the Signing Date by providing a revised schedule to Purchaser no later than five (5) business days before the date scheduled for the Closing.

**2.17 Insurance.** **Schedule 2.17** contains a list of all material insurance maintained by Sellers with respect to the Assets and the Business, as of the Signing Date.

**2.18 Payer Contracts.** To the knowledge of Sellers, and subject to Section 365 of the Bankruptcy Code, **Schedule 2.18** sets forth a complete list of all written contracts with private third party payers including insurance companies and HMOs (“**Payer Contracts**”). Sellers have provided Purchaser with a true and correct copy of all material Payer Contracts, whether or not entered into in the ordinary course of business, or otherwise required to be disclosed on **Schedule 2.18**, in each case together with all amendments thereto.

**2.19 Excluded Individuals.** Except as set forth on **Schedule 2.19**, to the knowledge of Sellers: neither Sellers, the Hospital nor any director, officer or employee of Sellers or the Hospital: (a) was, is or is proposed to be, suspended, excluded from participation in, or sanctioned under, any federal or state health care program (including, without limitation, Medicare and Medicaid) (an “**Excluded Individual**”); (b) has been convicted of any criminal offense related to the delivery of any medical or health care services or supplies, or related to the neglect or abuse of patients; (c) has failed to maintain its current License to provide the services required to be provided by it to or on behalf of Sellers and the Hospital; or (d) is unable to obtain or maintain liability insurance consistent with commercially reasonable industry practices.

**2.20 Third Party Payor Cost Reports.** To Sellers' knowledge, Sellers have duly filed all required cost reports for the fiscal years set forth on Schedule 2.20, and copies of all such cost reports filed by or on behalf of Sellers have been provided to Purchaser. To Sellers' knowledge, all such cost reports accurately reflect in all material respects the information required to be included thereon and such cost reports do not claim, and Sellers have not, to their knowledge received, reimbursement in any amount in excess of the amounts provided by law or any applicable agreement. To Sellers' knowledge, there are no facts or circumstances that would give rise to any disallowance under such cost reports.

**2.21 Recoupment Claims.** To Sellers' knowledge, except as set forth on Schedule 2.21, and except for routine claim adjustments, denials, adjudications and reconciliations arising in the ordinary course, there are no outstanding Seton Overpayment (as such term is defined in Exhibit 4.9) claims pending or threatened against Seton. For the avoidance of doubt, responsibility for Seton Overpayments shall be addressed in accordance with Section 4.9 and Exhibit 4.9 of this Agreement.

**2.22 Bankruptcy Proceedings Compliance.** Sellers have duly complied with all Bankruptcy Court orders, directives, and requirements applicable with respect to giving appropriate notice, to creditors and parties in interest, of Sellers' request to authorize entry into this Agreement and to complete the transactions contemplated hereby, which notices shall be subject to Purchaser's prior written approval, which approval shall not be unreasonably withheld.

### **ARTICLE III REPRESENTATIONS AND WARRANTIES OF PURCHASER**

As an inducement to Sellers to enter into this Agreement and to consummate the transactions contemplated by this Agreement, Purchaser hereby represents, warrants and covenants to Sellers 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 Sellers, subject to entry of the Sale Order, 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 Sellers.** 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 covenant, representation or warranty (expressed or implied, oral or otherwise) made on behalf of any Seller other than as expressly set forth in this Agreement. Purchaser further acknowledges that no Seller is making any representations or warranties herein relating to the Assets or the operation of the Hospital 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 covenant, representation or warranty by any 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 Sellers have breached any of their covenants, representations or warranties under this Agreement, then the effect shall be as if the covenants, 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 Sellers’ covenants, representations and

warranties in relation to such information; provided, however, that Purchaser must immediately notify Sellers if any such breach comes to its attention on or before the Closing Date, and Purchaser's failure to so notify Sellers shall constitute a waiver by Purchaser of Sellers' breach, if any, of any covenant, 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 Sellers if any such information comes to its attention on or before the Closing Date, and Purchaser's failure to so notify Sellers shall constitute a waiver of such right in relation to the relevant breach.

**3.9 Ability to Perform.** Purchaser will have at the Closing 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. In furtherance of the foregoing, Purchaser has provided Seller with evidence of such available funds in deposit accounts with recognized banking institutions and shall maintain such deposit accounts with a balance of not less than ~~Forty~~ Fifty Million Dollars (~~\$40,000,000~~ \$50,000,000) at all times until the Closing.

**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.**<sup>2</sup> Purchaser has been afforded reasonable access to, and has been provided adequate time to review, the books, records, information, operations, facilities and personnel of each Seller and the Hospital for purposes of conducting a due diligence investigation of each Seller and the Hospital. Purchaser has conducted a reasonable due diligence investigation of each Seller and the Hospital and has received satisfactory answers to all inquiries it has made respecting each Seller and the Hospital and has received all information it considers necessary to make an informed business evaluation of each Seller and the Hospital. In connection with its due diligence investigation of each Seller and the Hospital, Purchaser has not relied upon any books, records, information, operations, facilities and personnel provided by any Seller, including in making its determination to enter into this Agreement and/or consummate the transactions contemplated hereby. Purchaser has completed all of its due diligence of Sellers and the Hospital and this Agreement is not subject to any further due diligence of Sellers and the Hospital by Purchaser.

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<sup>2</sup> [Modify language as needed to reflect actual access to due diligence information for Seton.](#)

## **ARTICLE IV COVENANTS OF SELLERS**

### **4.1 Access and Information; Inspections.**

**4.1.1** From the Signing Date through the Effective Time: (a) each 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 Sellers' corporate headquarters in Los Angeles, California 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 Hospital and the plant and property of the Hospital at the Hospital, and (b) each Seller shall furnish Purchaser with such additional financial and operating data and other information in such Seller's possession as to businesses and properties of the Hospital as Purchaser or its representatives may from time to time reasonably request; provided, however, that Sellers are not obligated to disclose information which is proprietary to Sellers and would not be essential to the ongoing operation of the Hospital 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(s). Purchaser's right of access and inspection shall be exercised in such a manner as not to interfere unreasonably with the operations of any Seller or the Hospital.

**4.1.2** Notwithstanding anything contained herein, no Seller shall 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** Each 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 Assigned 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 such Seller in connection with the provision of such information.

**4.2.2** Notwithstanding any provision to the contrary contained in this Agreement (including Section 8.6), no Seller shall be obligated to obtain the approval or consent to the assignment, to Purchaser, of any Assigned Contracts or Assigned Leases, from any party to any of the Assigned Contracts or Assigned Leases even if any such contract or lease states that it is not assignable without such party's consent.

**4.2.3** From the Signing Date until the Closing, the parties agree that Sellers may update the Disclosure Schedule as necessary upon written notice to, and with the prior written consent of (which consent shall not be unreasonably withheld), 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, Sellers and Purchaser shall promptly negotiate in good faith any such exhibit or schedule, which exhibit or schedule must be acceptable to each of Sellers and Purchaser in their reasonable discretion prior to being attached hereto.

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

**4.4 Sellers' Efforts to Close.** Each 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 such Seller's action or inaction can control or materially influence the satisfaction of such conditions; provided, however, that such 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.** Hospital 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 Hospital Seller to Purchaser, and (b) the transactions contemplated by this Agreement with respect to Hospital Seller, provided that Purchaser shall fund reasonable costs and expenses of preparation, filing and audit of such reports. Purchaser shall permit each Seller access to all Hospital books and records to prepare such reports and shall assist such Seller in the process of preparing, filing, and reviewing the termination cost reports. All such termination cost reports shall be filed by Hospital Seller in a manner that is consistent with current laws, rules and regulations. Hospital Seller shall be responsible for filing governmental cost reports for the period of January 1, 2020 through the Licensure Date. Purchaser shall be responsible for its own cost report filings relating to the Hospital beginning on the day immediately following the Licensure Date.

**4.6 Conduct of the Business.** From the Signing Date until the Closing, or the earlier termination of this Agreement, without the prior written consent of Purchaser, Sellers shall, with

respect to the ownership of the Assets and the operation of the Hospital, use commercially reasonable efforts to (except as otherwise noted):

(a) without regard to any Material Adverse Effect, carry on Sellers' ownership of the Assets and the operation of the Hospital consistent with past practice, but subject to the Bankruptcy Cases and Sellers' obligations and actions in connection therewith;

(b) without regard to any Material Adverse Effect, maintain in effect the insurance and equipment replacement coverage with respect to the Assets;

(c) without regard to any Material Adverse Effect, if and as permitted by the Bankruptcy Court, pay any bonuses payable under the Key Employee Retention Plan and Key Employee Incentive Plan of Sellers;

(d) without regard to any Material Adverse Effect, maintain the Assets in materially the same condition as at present, ordinary wear and tear excepted;

(e) without regard to any Material Adverse Effect, perform its obligations under all contracts with respect to the Assets in compliance with the Bankruptcy Code;

(f) following entry of the Sale Order, permit and allow reasonable access by Purchaser and its representatives (which shall include the right to send written materials, all of which shall be subject to Sellers' reasonable approval prior to delivery) to make offers of post-Closing employment to any of Sellers' personnel (including access by Purchaser and its representatives for the purpose of conducting open enrollment sessions for Purchaser's employee benefit plans and programs) and to establish relationships with physicians, medical staff and others having business relations with Sellers;

(g) with respect to material deficiencies, if any, cited by any governmental authority (other than the Attorney General of the State of California and other than with respect to seismic requirements) or accreditation body in the most recent surveys conducted by each, cure or develop and timely implement a plan of correction (without regard to Material Adverse Effect) that is reasonably acceptable to such governmental authority or such accreditation body;

(h) timely file or cause to be filed all material reports, notices and tax returns required to be filed and pay all required taxes as they come due, unless such failure would not have a Material Adverse Effect;

(i) in accordance with the Sellers' budget under their debtor in possession financing, timely pay any fees that are or become due and payable under QAF [Program, including QAF IV](#), QAF V, and QAF VI;

(j) without regard to any Material Adverse Effect, comply in all material respects with all Legal Requirements (including Environmental Laws) applicable to the conduct and operation of the Hospital; and

(k) without regard to any Material Adverse Effect, maintain all material approvals, permits and environmental permits relating to the Hospital and the Assets.

**4.7 Contract With Unions.** Representatives of Sellers who are parties to collective bargaining agreements and Purchaser shall meet and confer from time to time as reasonably requested by either party to discuss strategic business options and alternative approaches in negotiating each collective bargaining agreement. The applicable Sellers and Purchaser shall each participate in all union negotiations related to any specific collective bargaining agreement. Promptly following the Signing Date, applicable Sellers shall use commercially reasonable efforts to initiate discussions with Purchaser and conduct discussions to renegotiate each collective bargaining agreement currently in effect with each applicable union. The applicable Sellers will not unreasonably withhold, condition or delay approval or implementation of any successfully renegotiated collective bargaining agreement. The parties recognize that an applicable Seller's failure to secure a modification to any collective bargaining agreement, or to conclude a successor collective bargaining agreement shall not be a breach of Sellers' obligation under this Agreement, provided that if the unions refuse to negotiate, or otherwise are not timely, reasonable or realistic in renegotiating, the collective bargaining agreements during the period between the Signing Date and the Closing Date, Sellers and Purchaser will jointly consider, and negotiate mutually in good faith, alternative approaches that may be available and/or necessary to reduce Sellers' labor cost structure, including, but not limited to, seeking to reject the collective bargaining agreement(s).

#### 4.8 Indemnification.

~~(a) **4.8 Indemnity Escrow Agreement.** Purchaser and Sellers will enter into a mutually acceptable form of indemnity escrow agreement (the "**Indemnity Escrow Agreement**") providing for an indemnity escrow fund in an amount equal to **ten percent (10%) of the Cash Consideration** (the "**Indemnity Escrow Fund**") pursuant to which Sellers shall indemnify, defend Sellers shall defend, indemnify and hold harmless Purchaser from and against any losses incurred or suffered by Purchaser, directly or indirectly, as a result of or arising from: (a, its affiliates and their respective stockholders, directors, officers and employees from and against all claims, judgments, damages, liabilities, settlements, losses, costs and expenses arising from or relating to (i) any breach of any Sale Order Date Representation; (b, (ii) nonfulfillment of any covenant, agreement or other obligation of Sellers set forth in this Agreement or in any other related agreement or instrument; or (c) the Excluded Liabilities. Such ~~Indemnity Escrow Agreement shall have a term of twelve (12)~~ (including without limitation the Interim Management Agreement and Sale Leaseback Agreement), or (iii) any of the Excluded Liabilities; provided, that the aggregate amount for which Sellers may be liable under this Section 4.8(a) shall not exceed ten percent (10%) of the Cash Consideration. Solely for purposes of this Section 4.8(a), the Sale Order Date Representations shall survive for a period of 12 months following the Closing Date (the "**Escrow Period**"), with the remaining balance of escrow funds to be released to Sellers at the end of such Escrow Period, subject to retention of funds for any pending indemnity claims.~~

(b) All indemnification payments made by Sellers under this Section 4.8 shall be treated by the parties as an adjustment to the Purchase Price for tax purposes, unless otherwise required by law.



(c) The rights and remedies provided in this Section 4.8 are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

**4.9 Transferred Private Payor Agreements.** As more particularly set forth in Exhibit 4.9 and subject to the Interim Management Agreement, the parties intend that all rights and obligations under the Transferred Private Payor Agreements for dates of service prior to the Closing Date shall be Sellers' responsibility and all rights and obligations under the Transferred Private Payor Agreements for dates of service after the Closing Date shall be Purchaser's responsibility.

**4.10 Insurance Coverage.** Sellers, at their sole cost and expense, shall renew for the policy period 3/31/20-3/31/21 and maintain professional and general liability insurance coverage for the Seller Hospital through Verity's captive insurance company on the same terms as provided in Policy No. DOC PLGL-26000-019 in effect for the period 3/31/19-3/31/20, which terms include an automatic Extended Reporting Period of thirty (30) days, and Sellers, at their sole cost and expense, shall, together with and for the same periods as the foregoing insurance coverage, maintain excess and umbrella coverage for professional and general liability coverage in an amount of at least \$15 million per claim and annual aggregate limits.

## ARTICLE V 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 Sellers' obligations under this Agreement to the extent that Purchaser's action or inaction can control or materially influence the satisfaction of such conditions. Prior to consummation of the transactions contemplated hereby or the termination or expiration of this Agreement, Purchaser shall be permitted to communicate and meet with: (a) counter-parties to the agreements and contracts of the Hospital, including those included in Transferred Obligations, regarding the terms and conditions under which they may be assumed and assigned to Purchaser, and (b) applicable governmental and regulatory authorities regarding prospective compliance with regulatory requirements and related issues; so long as, in the case of each of (a) and (b): (i) such communications and meetings do not interfere with the operation of the Business or the conduct of the Bankruptcy Cases, and (ii) any communications or meetings with any governmental authority are approved in advance by Sellers as to timing and content (and Sellers are copied on such communications and afforded the opportunity to participate in such meetings).

**5.2 Required Governmental Approvals.** Purchaser, at its sole cost and expense: (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 provide Sellers copies of all materials relating to such consents, approvals, authorizations, clearances and licenses upon submission and all materials received from third parties in connection with such consents, approvals, authorizations, clearances and licenses

upon receipt), and (b) will provide such other information and communications to governmental and regulatory authorities as any Seller or such authorities may reasonably request. Purchaser will provide Sellers periodic and timely updates regarding all such consents, approvals, authorizations, clearances and licenses. Purchaser is responsible for all filings with and requests to governmental authorities necessary to enable Purchaser to operate the Hospital at and after the Closing Date, subject to the IMA. 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 necessary for operation of the Hospital. 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. Notwithstanding the foregoing, for the avoidance of doubt, it is acknowledged that the California Attorney General (the "CA AG") approval process of the proposed transaction in accordance with Section 5914 of the California Corporations Code shall be governed exclusively by Section 5.6 and Section 8.5 of 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); provided, that such employees satisfy Purchaser's screening and required employment background checks and meet the customary and reasonable conditions and qualifications for their respective positions (the "Hospital Employees") who, immediately prior to the Effective Time are: (i) employees of Hospital Seller; (ii) employees of any affiliate of any Seller which employs individuals at the Hospital and are listed on Schedule 5.3; or (iii) employed by an affiliate of any Seller and are listed on Schedule 5.3. For the avoidance of doubt, the Hospital Employees shall not include any employees of Verity or any other affiliate of Seller unless such individual is listed on Schedule 5.3. Any of the Hospital 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 applicable Seller or its affiliates as of the Effective Time.

(b) Purchaser shall give all Hired Employees full credit for paid time off ("PTO") accruing but unused under applicable Seller's PTO policy as of the Closing Date, ~~with the amount of such PTO to be credited against the Purchase Price at the Closing~~ subject to compliance with applicable law and regulation, including consent of such Hired Employees for transfer of their PTO if required; provided, that Purchaser shall not be required to give credit for PTO to the extent any of the Hired Employees (i) do not provide such consent or (ii) receive a cash payout from Sellers for their accrued PTO;

(c) After the Closing Date, Purchaser's human resources department will give reasonable assistance to Hospital Seller and its affiliates with respect to such Seller's and such Seller's affiliates' post-Closing administration of such Seller's and such Seller's affiliates' pre-Closing employee benefit plans for the Hospital Employees. Within five (5) business days after the Closing Date, Purchaser shall provide to Hospital Seller a list of all the Hospital 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) With respect to any collective bargaining agreements or labor contract with respect to any employees, Purchaser shall comply with the applicable laws and bankruptcy court orders relating to collective bargaining agreements or labor contracts.<sup>3</sup> ~~Nothing herein shall obligate Purchaser to accept Hospital Seller's collective bargaining agreements or labor contracts.~~

(e) 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 each Seller or such Seller's designee any Excluded Assets of such Seller found at the Hospital on and after the Effective Time, without imposing any charge on any 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 Sellers 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 Attorney General.** Promptly after entry of the Sale Order, but in any event within two (2) business days thereafter, Purchaser and Sellers shall notify the CA AG of the proposed transaction in accordance with Section 5914 of the California Corporations Code. Purchaser and Sellers shall use commercially reasonable efforts to file any other such filings and notices as soon as reasonably practicable, shall provide such other information as the CA AG shall request, and shall generally use their commercially reasonable efforts to obtain the CA AG's approval of the transaction. Purchaser shall provide such information and communications to the CA AG as Sellers may reasonably request and shall otherwise cooperate with Sellers in obtaining the Attorney General's approval of the transaction.

**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 Sellers shall otherwise consent in writing, Purchaser shall not take any action or fail or omit

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<sup>3</sup> [Purchaser is willing to assume the package of collective bargaining agreements and terms that SGM previously negotiated and agreed to with the applicable labor unions in 2019.](#)

to take any action which would cause any of Purchaser's representations and warranties set forth in ARTICLE 3 to be inaccurate or untrue as of the Closing.

**5.8 Cure Costs.** On or about the Closing Date, Sellers (from the proceeds of the Purchase Price) shall pay an amount equal to the Cure Costs to each counterparty to an Assigned Contract and Assigned Lease so that each such Assigned Contract and Assigned Lease may be assumed by the applicable 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 Assigned Contracts and Assigned Leases to Purchaser as provided herein. **For the avoidance of doubt, Cure Costs shall not include amounts paid by Sellers in connection with the settlement agreements referred to in Section 8.6.**

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

**5.10 Contract with Unions.** Representatives of Sellers who are parties to collective bargaining agreements and Purchaser shall meet and confer from time to time as reasonably requested by either party to discuss strategic business options and alternative approaches in negotiating each collective bargaining agreement. The applicable Sellers and Purchaser shall each participate in all union negotiations related to any specific collective bargaining agreement. Promptly following the Signing Date, applicable Sellers shall use commercially reasonable efforts to initiate discussions with Purchaser and conduct discussions to renegotiate each collective bargaining agreement currently in effect with each applicable union. The applicable Sellers will not unreasonably withhold, condition or delay approval or implementation of any successfully renegotiated collective bargaining agreement to be assigned to Purchaser. The parties recognize that an applicable Seller's failure to secure a modification to any collective bargaining agreement, or to conclude a successor collective bargaining agreement shall not be a breach of Sellers' obligation under this Agreement. In addition, Sellers may, in their discretion, seek to reject any or all of the collective bargaining agreement(s).

**5.11 Cooperation.** From the Signing Date until the Closing, the parties agree that Sellers may update the Disclosure Schedule as necessary upon written notice to, and with the prior written consent of (which consent shall not be unreasonably withheld), 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, Sellers and Purchaser shall promptly negotiate in good faith any such exhibit or schedule, which exhibit or schedule must be acceptable to each of Sellers and Purchaser in their reasonable discretion prior to being attached hereto.

## **ARTICLE VI SELLERS' BANKRUPTCY AND BANKRUPTCY COURT APPROVAL**

### **6.1 Bankruptcy Court Approval.**

(a) Sellers and Purchaser acknowledge that this Agreement and the sale of the Assets and the assumption and assignment of the Assigned Contracts and Assigned Leases are subject to Bankruptcy Court approval pursuant to sections 105(a), 363(b), 363(m), 363(f), and 365 of the Bankruptcy Code, and that this Agreement is subject to termination in its entirety in the event the Bankruptcy Court approves a better and higher offer for the Assets in accordance with the Bankruptcy Code and subject to the terms stated herein.

(b) Each Seller shall at the Sale Hearing exercise reasonable efforts to obtain a “Sale Order”, in a form acceptable to Purchaser in its reasonable discretion, approving this Agreement, subject to such Seller’s obligations in respect of any better and higher offer for such 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 Assigned Contracts and Assigned Leases) to Purchaser consistent with this Agreement and in a form satisfactory to Purchaser in its reasonable discretion pursuant to sections 105(a), 363(b), 363(m), 363(f), and 365 of the Bankruptcy Code, which is not stayed.

(c) The Sale Order will contain substantially the following provisions: No party hereto, or any other party in interest in Sellers’ Chapter 11 case, or any successor to any Seller, including any Chapter 7 Trustee, Liquidating Trustee or other estate representative appointed pursuant to a plan of liquidation or otherwise, or any other successor or assignee of any Seller, of any claims or causes of action of the Sellers, may use for any purpose or offer into evidence this Agreement or any terms or conditions hereof, the Sale Order or any pleadings filed in connection with the Agreement, in any court proceeding involving any dispute between any of the Sellers and SGM related to or arising from the 2019 APA, including without limitation the Pending Litigation. Without in any way limiting the foregoing: (i) the sale of Assets to Purchaser under this Agreement may not be used in any court proceeding, including in the Pending Litigation, to demonstrate the good faith of SGM; (ii) the sale of Assets to Purchaser under this Agreement shall be without prejudice to the plaintiffs’ claims in the Pending Litigation against SGM regarding the damage limitation in Section 11.1 of the 2019 APA, although the purchase price paid by Purchaser in this transaction may be used as evidence of mitigation; and (iii) Purchaser’s agreement to the conditions set forth in Sections 8.5 and 8.6 of this Agreement, and all communications in connection therewith, shall be kept confidential and not disclosed in any court proceeding for any purpose without Purchaser’s prior written consent.

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

(e) ~~(f)~~ Each Seller shall seek an order from the Bankruptcy Court retaining jurisdiction over all matters relating to claims against such Seller as debtor and the Sale Order 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 any sale order issued by the Bankruptcy Court, Sellers 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. Sellers 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 a sale order, Sellers shall be primarily responsible for drafting pleadings and attending hearings as necessary to defend against the appeal; provided, however, Purchaser, at its option, shall have the right to participate as a party in interest in such appeal. In the event a stay is issued by any appellate court, including the United States District Court, Bankruptcy Appellate Panel, and Circuit Court of Appeal, which prevents the sale from closing, as scheduled, Purchaser shall have the right to terminate this Agreement if such stay is not vacated on or before 45 days from the date the stay is issued, and Purchaser shall be entitled to the prompt return of the Deposit and any interest earned thereon. Notwithstanding the foregoing, for the avoidance of doubt, it is acknowledged that the provisions of Section 8.5 shall govern with respect to any Bankruptcy Court order relating to the CA AG approval process.

## ARTICLE VII CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLERS

Sellers' 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 Sellers 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 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 Attorney General Provisions.** The conditions to Purchaser's obligations to close set forth in Section 8.5 shall have been satisfied.

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

**7.7 [CSCDA Acknowledgement. The CSCDA and PACE Trustee shall have executed acknowledgements in form and substance acceptable to Sellers that Purchaser is the Successor Property Owner and Obligated Party under the PACE Obligations, and releases of the Sellers from any and all claims arising or accruing prior to the Closing Date.]**

## ARTICLE VIII 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 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. For the avoidance of doubt, it is acknowledged that Section 8.5 shall govern with respect to any Bankruptcy Court order relating to the CA AG approval process.

**8.2 Signing and Delivery of Instruments.** Sellers 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.

**8.3 Performance of Covenants.** Sellers 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 Sellers on or prior to the Closing Date, except where the failure to so perform or comply would not have a Material Adverse Effect; provided, however, this condition will be deemed to be satisfied unless Sellers were 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.

**8.4 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 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. For the avoidance of doubt, it is acknowledged that Section 8.5 shall govern with respect to any Bankruptcy Court order relating to the CA AG approval process.

**8.5 Attorney General Provisions.** Purchaser recognizes that the transactions contemplated by this Agreement may be subject to review and approval of the CA AG. Purchaser agrees to close the transactions contemplated by this Agreement so long as any conditions imposed by the CA AG are substantially consistent with the conditions set forth in **Schedule 8.5**.<sup>4</sup> In the event the CA AG imposes conditions on the transactions contemplated by this Agreement which are not as set forth on **Schedule 8.5** (the “Additional Conditions”), Sellers must file a motion with the Bankruptcy Court seeking the entry of an order finding that the Additional Conditions are an “interest in property” for purposes of 11 U.S.C. § 363(f), and that the Assets can be sold free and clear of the Additional Conditions. If Sellers do not obtain such an order, from the Bankruptcy Court or another court, within thirty (30) days of the CA AG’s imposition of conditions inconsistent with the conditions set forth in **Schedule 8.5**, Purchaser shall have the right, in Purchaser’s sole and absolute discretion, to terminate this Agreement and receive the return of its Deposit. If Sellers obtain such an order, from the Bankruptcy Court or another court, within the aforesaid thirty (30) period, then, so long as such order is not stayed, the condition precedent of obtaining the CA AG’s approval shall be deemed satisfied.

**8.6 Medicare and Medi-Cal Provider Agreements.**<sup>5</sup> Hospital Seller shall enter into a settlement agreement with the Centers for Medicare and Medicaid Services (“CMS”) which has the effect of allowing Hospital Seller to transfer its Medicare provider agreements in accordance with the IMA and Leaseback Agreement<sup>4</sup>, and shall enter into a settlement agreement with the California Department of Health Care Services (“DHCS”) which has the effect of allowing Hospital Seller to transfer its Medi-Cal provider agreements in accordance with the IMA and Leaseback Agreement, which such settlement agreements shall result in: (i) resolution of all outstanding financial defaults under Hospital Seller’s Medicare and Medi-Cal provider agreements, and (ii) full satisfaction, discharge, and release of any claims under the Medicare or Medi-Cal

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<sup>4</sup> Purchaser is prepared to agree to Attorney General conditions for this transactions which are substantially the same as the conditions relating to the Hospital which were issued by the Attorney General in its September 25, 2019 letter in the prior transaction with SGM, subject to (i) a reasonable update of the capital commitment condition (Condition XV) to reflect updated expenditures by Verity and tailored to a single hospital structure, and (ii) update the seismic compliance condition (Condition XVII) to reflect the current status, targets and requirements for the seismic project at the Hospital

In the event the Sellers make a motion to eliminate the Additional Conditions as provided for in section 8.5, the parties will agree, prior to the hearing to approve this Agreement, on the terms of the order granting such motion or in connection with a settlement of such motion which will be acceptable to Purchaser,; provided, that such terms shall remain confidential and shall be filed with the Bankruptcy Court under seal, and not disclosed to any person or entity without Purchaser’s approval, until such time as the California Attorney General has approved the sale as required by this section, or the bankruptcy court has made a ruling in connection with such approval.

<sup>5</sup> Prior to the hearing to approve this Agreement, the parties will agree on the form of settlement agreements with CMS and DHCS required to satisfy this conditions; provided, that such agreed form shall remain confidential, and shall be filed with the Bankruptcy Court under seal, and not disclosed to any person or entity without Purchaser’s approval until such time as CMS and DHCS have approved the transfer of the Medicare Provider Agreement and Medi-Cal Provider Agreement required by this section, or the bankruptcy court has made a ruling in connection with such transfers.



provider agreements, whether known or unknown, that CMS or DHCS, as applicable, has against Hospital Seller or Purchaser for monetary liability arising under the Medicare or Medi-Cal provider agreements before the Effective Time; provided, however, that Purchaser acknowledges that it will succeed to the quality history associated with the relevant Medicare or Medi-Cal provider agreements assigned and shall be treated, for purposes of survey and certification issues as if it is Hospital Seller and no change of ownership occurred.

**8.7 Title Policies.** Purchaser shall have received commitments for issuance as of the Closing Date one or more ALTA title insurance policies for the Owned Real Property which are substantially similar to those commitments referenced in Schedule 8.7, with such modifications as are specifically referenced in Schedule 8.7.

**8.8 Phase I Environmental Survey.** Purchaser shall have received a Phase I environmental survey covering the Owned Real Property which is substantially similar to the Phase I environmental survey referenced in Schedule 8.8, and if recommended in such Phase I, a Phase II environmental survey as so recommended.

**8.9 Insurance.** Sellers shall have obtained the insurance coverage to be maintained by Sellers as provided for in Section 4.10.

## **ARTICLE IX 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 Sellers if a material breach of this Agreement has been committed by Purchaser and such breach has not been: (i) waived in writing by Sellers, or (ii) cured by Purchaser to the reasonable satisfaction of Sellers within fifteen (15) business days after service by Sellers upon Purchaser of a written notice which describes the nature of such breach;
- (c) by Purchaser if a material breach of this Agreement has been committed by Sellers and such breach has not been: (i) waived in writing by Purchaser, or (ii) cured by Sellers to the reasonable satisfaction of Purchaser within fifteen (15) business days after service by Purchaser upon Sellers of a written notice which describes the nature of such breach;
- (d) by Purchaser if satisfaction of any of the conditions in ARTICLE 8 has not occurred by September 1, 2020, or becomes impossible, and Purchaser has not waived such condition in writing (provided that the failure to satisfy any of the applicable condition or conditions in Sections 8.1 through 8.4 inclusive has occurred by reason other than: (i) through the failure of Purchaser to comply with its obligations under this Agreement, or (ii) Sellers' failure to provide their 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 Sellers if satisfaction of any of the conditions in ARTICLE 7 has not occurred by September 1, 2020, or becomes impossible, and Sellers have 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 Sellers to comply with their obligations under this Agreement, or (ii) Purchaser's failure to provide its closing deliveries on the Closing Date as a result of Sellers not being ready, willing and able to close the transaction on the Closing Date);

(f) by either Purchaser or Sellers if the Bankruptcy Court enters an order dismissing the Bankruptcy Cases or fails to issue a Sales Order (as defined in Section 6.1(b)) approving this Agreement on or before August 1, 2020;

(g) by either Purchaser or Sellers 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 September 1, 2020; or

(h) by Purchaser if a force majeure event (such as acts of God, storms, floods, landslides, earthquakes, lightning, riots, fires, pandemics (excluding any arising from the SARS-CoV-2 virus or mutations therefrom or in connection with the disease COVID-19), sabotage, civil commotion or civil unrest, interference by civil or military authorities, acts of war (declared or undeclared) or armed hostilities, other national or international calamity, one or more acts of terrorism, or failure of energy sources) shall have occurred between the Signing Date and Closing Date, which event is reasonably likely to result in a Material Adverse Effect.

**9.2 Termination Consequences.** If this Agreement is terminated pursuant to Sections 6.2 or 9.1: (a) all further obligations of the parties under this Agreement shall terminate, provided that the provisions of ARTICLE 12, shall survive; and (b) each party shall pay only its own costs and expenses incurred by it in connection with this Agreement; provided, in the case of any termination based on Sections 9.1(b) or (c) the consequences of such termination shall be determined in accordance with ARTICLE 11 hereof. In addition, if this Agreement is terminated pursuant to Sections 6.2 or 9.1 (other than Section 9.1(b)), Seller shall immediately return the Deposit to Purchaser with all interest earned thereon. 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 X 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, and at no cost to Sellers, be transferred, assigned or conveyed by Purchaser (and its respective successors-in-interest, assigns and affiliates) to the applicable Seller. Purchaser (and

its respective successors-in-interest, assigns and affiliates) shall have neither the right to offset amounts payable to any Seller under this *Section 10.1* against, nor the right to contest its obligation to transfer, assign and convey to any Seller because of, outstanding claims, liabilities or obligations asserted by Purchaser against any Seller. If Purchaser does not remit any monies included in the Excluded Assets (or proceeds thereof) to the applicable 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 applicable Seller.

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

(a) From the Licensure Date until seven (7) years after the Licensure Date or such longer period as required by law (the “**Document Retention Period**”), Purchaser shall keep and preserve all medical records (including, without limitation, electronic 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 Sellers, any of their affiliates, the Official Committee of the Unsecured Creditors of the Sellers, Sellers’ estate representative or any liquidating trustee of the Sellers’ 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 Licensure Date (including, without limitation, access to records of patients treated at the Hospital prior to the Licensure Date) during normal business hours after the Licensure Date, 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 Hospital, 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 Hospital 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 Sellers 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 Sellers’ 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 Sellers or the Hospital that any Seller Party may elect to pursue, dispute or defend, in respect of events occurring prior to the Closing Date with respect to the operation of

the Hospital, subject to the terms of the IMA. 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 Sellers' 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, Sellers and their affiliates shall be entitled to remove from the Hospital 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 Sellers or any of their affiliates in connection with such litigation. Any records so removed from the Hospital shall be promptly returned to Purchaser following Sellers' or their applicable affiliate's use of such records.

(c) In connection with: (i) the transition of the Hospital pursuant to the transaction contemplated by this Agreement, (ii) Sellers' rights to the Excluded Assets, (iii) any claim, audit, or proceeding, including, without limitation, any tax claim, audit, or proceeding and (iv) the Sellers' obligations under the Excluded Liabilities, Purchaser shall after the Effective Time give Sellers 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 Hospital as representatives of Sellers and their affiliates may from time to time reasonably request, all in such manner as not to unreasonably interfere with the operations of the Hospital.

(d) Purchaser and its representatives shall be given access by Sellers 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 Sellers 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 Sellers. Such documents and other materials shall be, at Sellers' option, either: (i) copied by Sellers for Purchaser at Purchaser's expense, or (ii) removed by Purchaser from the premises, copied by Purchaser and promptly returned to Sellers.

(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 Hospital on and after the Closing Date.

(f) Purchaser shall cooperate with Sellers, on a timely basis and as reasonably requested by Sellers, in connection with the provision of all data of the Hospital and other information required by Sellers 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 Hospital or any of the Hospital's committees prior to the Closing Date, subject to the IMA, prior

to any disclosure of such documents, Purchaser shall notify Sellers and shall provide Sellers 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 Assigned Contract or Assigned 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 Sellers or Purchaser, as the assignee of such Assigned Contract or Assigned 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, Sellers will cooperate with Purchaser in any reasonable arrangement designed to both: (a) provide Purchaser with the benefits of or under any such Assigned Contract or Assigned Lease, and (b) cause Purchaser to bear all costs and obligations of or under any such Assigned Contract or Assigned 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 Sellers 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 Closing of Financials.** Provided that Purchaser shall not incur any out of pocket costs, Purchaser shall cause the individual acting as the chief financial officer of the Hospital after the Effective Time (the “**Post-Effective Time CFO**”) to cooperate with Sellers’ representatives in order to complete the standardized closing of Sellers’ financial records through the Licensure Date including, without limitation, the closing of general ledger account reconciliations (collectively, the “**Closing of Financials**”). Purchaser shall cause the Post-Effective Time CFO to use his or her good faith efforts to cooperate with Sellers’ representatives in order to complete the Closing of Financials by no later than the date which is thirty (30) calendar days after the Licensure Date. The Post-Effective Time CFO and other appropriate personnel shall be reasonably available to Sellers for a period of no less than one hundred eighty (180) calendar days after the Licensure Date to assist Sellers in the completion of Sellers’ post-Closing audit, such assistance not to interfere unreasonably with such Post-Effective Time CFO’s other duties.

**10.4 Medical Staff.** To ensure continuity of care in the community, Purchaser agrees that the Hospital’s medical staff members in good standing as of the Closing Date shall maintain medical staff privileges at the Hospital as of the Closing Date. On and after the Closing Date, the medical staff will be subject to the Hospital’s Medical Staff Bylaws then currently in effect, provided that such Bylaws are in compliance with all applicable laws and regulations and contain customary obligations.

**10.5 Shared Intangible Assets.** In the event and to the extent that certain intangible Assets transferred by Sellers have been used to operate businesses of Verity or Verity Holdings or their affiliates (“**Shared Intangible Assets**”) and such Shared Intangible Assets continue to be used by Verity or Verity Holdings or their affiliates to operate such businesses after Closing, Verity and Verity Holdings retain the rights to continue to use such Assets notwithstanding their sale to

Purchaser. Purchaser shall reasonably cooperate with Verity and Verity Holdings and their affiliates to give effect to such rights and shall provide Verity and Verity Holdings and their affiliates such documentation, records and information and reasonable access to such systems as necessary for Verity and Verity Holdings and their affiliates to continue to operate such businesses; all in such manner as not to reasonably interfere with the operations of the Hospitals; provided, however, Purchaser shall not be required to incur any out-of-pocket costs in association therewith unless reimbursed by Verity and Verity Holdings and their affiliates.

## ARTICLE XI DEFAULT, TAXES AND COST REPORTS

**11.1 Purchaser Default.** If Purchaser or any of its assignees commits any material default under this Agreement, Sellers shall have the right to sue Purchaser and any assignees for damages; provided, however that the amount of such damages shall ~~never exceed Ten Million Dollars (\$10,000,000)~~not exceed the amount of the Deposit. The Deposit shall serve as the sole source to satisfy any damages awarded to Sellers, and the balance of the Deposit shall be returned to Purchaser, after deducting all awards of damages in favor of Sellers, no later than the date such awards are finally determined and non-appealable. For the avoidance of doubt, Sellers shall have no right to sue for specific performance under this Agreement.

**11.2 Seller Default.** If Sellers commit any material default under this Agreement, Purchaser shall have the right to demand and receive a refund of the Deposit (if such material default occurs prior to Closing and Purchaser terminates this Agreement pursuant to Section 9.1(c)), and Purchaser shall have the right (i) to sue for damages; provided, however, that the amount of such damages shall never exceed Ten Million Dollars (\$10,000,000), or (ii) to sue for specific performance under this Agreement; provided, however, that in seeking specific performance Purchaser shall request only that all parties perform their respective obligations essentially as are set forth in this Agreement, including without limitation recognizing Purchaser's obligation for the Cash Consideration as set forth in Section 1.1(a)(i), without any diminution in such amount other than for such amounts as may be credited against such Cash Consideration as provided for in this Agreement.

### **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 Sellers with respect to the operation of the Hospital for all periods prior to the Licensure Date 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 Sellers reasonably may request in connection with the completion of any post-Closing audits of the Hospital.

(b) Solely for purposes of tax reporting, **Schedule 11.3** sets 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 (the “**Allocation Schedule**”). The Allocation Schedule shall be final and binding upon Sellers and Purchaser with respect to matters relating to required tax reporting by each such party. The parties shall refrain from taking any position that is inconsistent with the Allocation Schedule with respect to tax reporting.

#### **11.4 Cost Report Matters.**

(a) Consistent with Section 4.5, Sellers shall, at Purchaser’s expense, prepare and timely file all cost reports relating to the periods ending prior to the Licensure Date or required as a result of the consummation of the transactions described in this Agreement, including, without limitation, those relating to Medicare, Medicaid, 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 Sellers in regard to Sellers’ preparation and filing of the Seller Cost Reports. Such cooperation shall include, at no cost to Sellers, obtaining access to files at the Hospital and Purchaser’s provision to Sellers of data and statistics, and the coordination with Sellers pursuant to reasonable notice of Medicare and Medicaid exit conferences or meetings. Sellers shall have no obligations after the Licensure Date with respect to Seller Cost Reports except for preparation and filing thereof.

## **ARTICLE XII MISCELLANEOUS PROVISIONS**

**12.1 Further Assurances and Cooperation.** Sellers 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 which consent shall not be unreasonably withheld or delayed, except that Purchaser may, without the prior written consent of Sellers, assign all or any portion of its rights under this Agreement to one or more of its affiliates prior to the Closing Date (for the avoidance of doubt, such assignment shall not relieve Purchaser of any of its obligations under this Agreement).

### 12.3 Governing Law; Dispute Resolution.

~~12.3 Governing Law; Venue. (a)~~ 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 Sellers are 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.~~

(b) The Bankruptcy Court shall have no jurisdiction to consider or resolve any claims, disputes or controversies that may arise under or in connection with this Agreement, but rather any such claims, disputes or controversies shall be submitted to final and binding arbitration as mutually agreed by the Parties. The Parties waive their respective rights to appeal from the ruling of the Arbitrator.

**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. 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 ~~Sellers~~the Corporation: Seton Medical Center  
c/o Verity Health System of California, Inc.  
601 South Figueroa ~~St.~~Street, Suite 4050  
Los Angeles, CA 90017-5704  
Attention: ~~Rich Adeock, CEO~~Chief Executive  
Officer

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

Tania Moyron, Esq.  
Dentons US LLP  
601 South Figueroa St., Suite 2500  
Los Angeles, CA 90017-5704

~~Attention: Samuel R. Maizel, Esq.~~  
~~Telephone: 213-892-2910~~  
~~Facsimile: 213-623-9924~~  
and

~~If to Purchaser:~~

~~AHMC Healthcare Inc.~~  
~~55 S. Raymond Ave., Suite 105~~  
~~Alhambra, CA 91801~~  
~~Attention: Jonathan Wu~~  
~~Facsimile: 626-289-8952~~  
Hope Levy-Biehl, Esq.  
Davis Wright Tremaine LLP  
865 S Figueroa St.  
Los Angeles, CA 90017

If to Purchaser:

KPC Global Medical Center of San Mateo  
County, LLC  
9 KPC Parkway, Suite 301  
Corona, CA 92879  
Attention: William E. Thomas  
Facsimile: 951-782-8850

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

~~AHMC Healthcare Inc., Legal Department~~  
~~500 E. Main St., 5th Floor~~  
~~Alhambra, CA 91801~~  
Levene, Neale, Bender, Yoo & Brill L.L.P.  
10250 Constellation Blvd., Suite 1700  
Los Angeles, CA 90067  
Attention: Gary E. Klausner, Esq.  
Facsimile: 310-229-1244

and

Loeb & Loeb LLP  
10100 Santa Monica Blvd., Suite 2200  
Los Angeles, California 90067  
Attention: ~~Maan Huei Hung~~Allen Z. Sussman,  
Esq.  
Facsimile: ~~626-248-3303~~310-919-3934

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, Sellers 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 either Sellers 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 Sellers’ 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 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; provided, that notwithstanding the foregoing, the letter Confidentiality Agreement dated December 27, 2019, between Purchaser and Cain Brothers, a division of KeyBanc Capital Markets Inc., on behalf of Sellers and their related entities shall not be a Superseded Agreement and shall continue in full force in effect in accordance with its terms.

**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.

*[Signature Page Follows]*

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

**PURCHASER:**

~~AHMC HEALTHCARE INC.~~ KPC GLOBAL MEDICAL CENTER OF SAN MATEO COUNTY, LLC,  
a California ~~corporation~~ limited liability company

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

**SELLERS:**

**SETON MEDICAL CENTER,**  
a California nonprofit public benefit corporation

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

**VERITY HOLDINGS, LLC,**  
a California limited liability company

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

**Verity Health System of California, Inc.,**  
a California nonprofit public benefit corporation

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

**ADDITIONAL EXHIBITS AND SCHEDULES OMITTED**

The schedules and the exhibits to the Asset Purchase Agreement are omitted and will be filed subsequently, except for Exhibit 4.9 to the Asset Purchase Agreement, the Interim Management Agreement and the Sale Leaseback Agreement, which are attached hereto.

**Exhibit 4.9 to APA**

**Transferred Private Payor Agreements**

**1. Definitions:**

“**Payor**” means the non-debtor counter-party to a Private Payor Agreement.

“**Purchaser Contracted Payment**” means the contractual reimbursement or payment due from a Payor (i) to Sellers under a Private Payor Agreement for covered goods or services rendered by Hospital under such agreement with a date of service after the Effective Time and prior to the Licensure Date, ~~and~~ (ii) to Purchaser under a Transferred Private Payor Agreement for covered goods and services rendered by Hospital under such agreement with a date of service after the Licensure Date; and (iii) to Purchaser with respect to any Medi-Cal managed care plan payments relating to the QAF Program received after Closing, as addressed at Section 1.7(k) of the Agreement.

“**Purchaser Overpayment**” means an overpayment made by a Payor on account of a Purchaser Contracted Payment.

“**Purchaser Receivables**” means accounts (as that term is defined in the Uniform Commercial Code) earned by Purchaser (a) under any Private Payor Agreement pursuant to the IMA for covered goods and services rendered between the period from the Effective Time through the Licensure Date, and (b) under any Transferred Private Payor Agreement for covered goods and services rendered after the Licensure Date or otherwise relating to any Purchaser Contracted Payment.

“**Seton Contracted Payment**” means the contractual reimbursement due from a Payor to Sellers under a Private Payor Agreement for covered goods or services rendered by Hospital under such agreement with a date of service on or prior to the Effective Time.

“**Seton Overpayment**” means an overpayment made by a Payor on account of a Seton Contracted Payment.

“**Seton Receivables**” means Accounts Receivable earned under any Private Payor Agreement for goods and services provided prior to the Effective Time.

“**True-up**” shall refer to the following reconciliation procedure: On the last business day of each calendar quarter (or partial calendar quarter) commencing on the Licensure Date through December 31, 2021, (a) Sellers shall identify and report to Purchaser the amount and other applicable details of any Purchaser Overpayment that has been remitted to Sellers during the reporting period, and (b) Purchaser shall identify and report to Sellers the amount and other applicable details of any Seton Overpayment that has been remitted to Purchaser during the reporting period. For each reporting period, the foregoing amounts shall be offset and any net balance shall be paid by Sellers or Purchaser, as applicable, to the other party not later than five

business days following the date of delivery of each quarterly report. Sellers and Purchaser shall resolve any discrepancies in their respective reports under Section 12.1 of this Agreement.

**2. Seller Responsibility.** Sellers shall be responsible, vis-à-vis the Payors, for any Seton Overpayment that is remitted either to Sellers or to Purchaser. Purchaser agrees, however, that any Seton Overpayment that is remitted to Purchaser shall be subject to True-Up. Sellers agree to indemnify and hold harmless Purchaser for any Seton Overpayment that is deducted from, or recouped against, any Purchaser Receivables, ~~and in furtherance thereof Sellers agree that, pursuant to the terms of the Indemnity Escrow Agreement to be entered into between the parties, Purchaser shall be authorized to withdraw from the Indemnity Escrow Fund, upon Purchaser's written instruction to the escrow agent and with written notice to Sellers, any Seton Overpayment that is deducted from, or recouped against, any Purchaser Receivables. Notwithstanding the foregoing, in the event that Sellers dispute any such Seton Overpayment claim and prevail in such claim, to the extent that Purchaser is later credited for any such Payor deduction or recoupment against any Purchaser Receivables for which Purchaser had withdrawn funds from the Indemnity Escrow Fund as provided for herein, then Purchaser shall remit funds equal to such credit to Sellers within five (5) business days after Purchaser receives such credit.~~

**3. Purchaser Responsibility.** Purchaser shall be responsible, vis-à-vis the Payors, for any Purchaser Overpayment that is remitted either to Purchaser or to Sellers. Sellers agree, however, that any Purchaser Overpayment that is remitted to Sellers shall be subject to True-Up. Purchaser agrees to indemnify and hold harmless Sellers for any Purchaser Overpayment that is deducted from, or recouped against, any Seton Receivables.

**4. Payor Disputes.** Nothing in this Agreement shall affect the applicable party's right to dispute or appeal the validity of any alleged Seton Overpayment or alleged Purchaser Overpayment.

**5. Adequate Assurance.** The Seller and Purchaser agree to cooperate to confirm the provisions of this Exhibit 4.9 with any Payor under a Transferred Private Payor Agreement in order to provide adequate assurances of cure and compensation to such Payor pursuant to Sections 365(b) and (f) of the Bankruptcy Code. Sellers and Purchaser acknowledge and agree that (a) the Sale Order shall authorize a Payor to continue to exercise its defenses to reimbursement for covered goods and services based on an overpayment, and (b) overpayments do not constitute Cure Costs under this Agreement. If a Payor not relating to the QAF Program (which are also separately addressed in the Agreement) does not agree to the provisions of this Exhibit at least thirty (30) days prior to the Closing Date, such Private Payor Agreement shall be removed from Schedule 1.11(c) and shall be an Excluded Asset provided, however, that with respect to any Medi-Cal managed care plan Payors related the QAF Program, the parties shall continue to use their best efforts to seek agreement with such Payors until Closing and upon reaching such agreement they will added Schedule 1.11(c).

**6. Payor Release.** Following the Licensure Date, pursuant to Section 365(k) of the Bankruptcy Code, Sellers shall be relieved and released by a Payor from any obligation to any Payor on account of any overpayment or otherwise under any Transferred Private Payor Agreement.





[Exhibit 1.3\(b\) to APA](#)

**INTERIM MANAGEMENT AGREEMENT**

This Interim Management Agreement (the “**Agreement**”) is made and entered into as of ~~March 30~~ [April 10](#), 2020 (the “**Signing Date**”), by and among Seton Medical Center, a California nonprofit public benefit corporation (the “**Corporation**”) on the one hand, and ~~AHMC Healthcare Inc., a California corporation (“**Parent Company**”), and a legal entity to be formed and controlled by Parent Company (“**Hospital Newco**” or the “**Manager**,”~~ [KPC Global Medical Center of San Mateo County, LLC, a California limited liability company \(the “\*\*Manager\*\*”](#) and collectively with the Corporation ~~and Parent Company~~, the “**parties**”) on the other hand.

**RECITALS**

A. On August 31, 2018, the Corporation and certain of its affiliates each filed a voluntary petition for relief (collectively, the “**Bankruptcy Cases**”) under chapter 11 of title 11 of the United State Code (the “**Bankruptcy Code**”).

B. The Bankruptcy Cases are jointly administered under Lead Case No. 18-20151 and are currently pending in the United States Bankruptcy Court for the Central District of California Los Angeles Division (the “**Bankruptcy Court**”).

C. ~~Parent Company~~ [Manager](#), as purchaser, and the Corporation and certain of its affiliates (collectively, the “**Sellers**” as defined in the APA), as seller, entered into that certain Asset Purchase Agreement, dated of even date herewith (the “**APA**”), which provides for the sale of certain assets of the Sellers (collectively, the “**Assets**”, [as defined in the APA](#)). All terms not otherwise defined herein shall have the meaning ascribed to them in the APA.

D. The Corporation operates a two-campus general acute care hospital, consisting of: (i) the hospital campus known as Seton Medical Center, located at 1900 Sullivan Avenue, Daly City, CA 94015, including the related hospital pharmacy, laboratory and emergency department; and (ii) the hospital campus known as Seton Medical Center Coastside, located at 600 Marine Blvd., Moss Beach, CA 94038, including the related hospital pharmacy, laboratory and emergency department (collectively, the “**Hospital**”), and such other locations where the Hospital’s licensed services are provided (collectively, the “**Hospital Premises**”)

E. Pursuant to the APA, ~~Parent Company~~ [Manager](#) agreed to purchase the Assets, which include certain assets of the Corporation (the “**Corporation’s Assets**”).

~~F. Parent Company designated Hospital Newco as the owner of certain of the Corporation’s Assets and as the future operator of the Hospital.~~

~~G. Parent Company and the F. Manager~~ [has](#) requested this Agreement to afford ~~the~~ [the](#) Manager additional time to obtain its general acute care hospital license from the California Department of Public Health (“**CDPH**”), and its hospital pharmacy permit(s) from the California

Board of Pharmacy (together, the “**New Licenses**,” and the date on which the New Licenses are issued is the “**Licensure Date**”).

H. Pursuant to the APA, that portion of the Assets constituting drugs, dangerous devices, pharmacy systems, or other pharmacy assets (the “**Pharmacy Assets**”) shall transfer to ~~Hospital Newco~~ Manager as of the Licensure Date.

I. The Corporation shall maintain a possessory interest in the Hospital and the Hospital Premises, and ~~Parent Company, or its designated nominee, and Hospital Newco~~ Manager on the one hand as lessor, and the Corporation, on the other hand as lessee, are entering into that certain Sale Leaseback Agreement of even date herewith, pursuant to which certain of the Corporation’s Assets will be leased back to the Corporation (the “**Leaseback Agreement**”).

J. Until ~~Hospital Newco~~ Manager obtains the New Licenses, ~~the~~ Manager desires to assume the management of the Hospital, including its pharmacy, on behalf of the Corporation, and the Corporation desires to avail itself of such management services, upon the terms and conditions set forth in this Agreement.

K. The California Department of Public Health (the “**State**”), on the one hand, and on the other hand, Verity Healthcare System of California, Inc., (“**Verity**”) and Seton Medical Center, entered into that certain Services Agreement, as approved by the Bankruptcy Court on March 20, 2020 [Docket No. 4315] (the “**State Services Agreement**”),

## TERMS OF AGREEMENT

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

### 1. Term.

1.1. The term of this Agreement (the “**Management Period**”) shall commence as of the Effective Time (as defined in the APA) and shall continue until the Licensure Date. The parties acknowledge that, during the Management Period, the Corporation shall remain the licensee of the Hospital, and in that capacity, and during such period, shall retain statutory and regulatory authority and responsibility for the Hospital and for oversight of ~~the~~ Manager.

### 2. Acknowledgements and Covenants.

2.1. As of the Effective Time, ~~Parent Company~~ Manager and or its designated nominee shall have acquired all of the Corporation’s Assets (other than the Pharmacy Assets) as set forth in the APA, with those assets necessary for the operation of the Hospital leased back to the Corporation pursuant to the terms of the Leaseback Agreement during the term of this Agreement.

2.2. Pursuant to Section 1.3 of the APA, contemporaneously with the date the New Licenses are issued and the termination of the Leaseback Agreement, ownership of the Pharmacy

Assets shall be transferred to ~~Hospital Newco. Parent Company and the~~ Manager acknowledges, Manager acknowledges that this Agreement and the foregoing subsequent transfer of the Pharmacy Assets are made at the request of ~~Parent Company and the~~ Manager, to provide more time for ~~the~~ Manager to obtain its New Licenses. As such, ~~Parent Company~~ Manager acknowledges, covenants, and agrees that the total Purchase Price (as defined in the APA) shall be paid to the Sellers under the APA as if the Pharmacy Assets were transferred as of the Effective Time.

2.3. As of the Effective Time, the Corporation shall have ended the employment or engagement of all employees and contractors and, to the extent they received and accepted offers of employment been transferred to ~~the~~ Manager (or its affiliate) as employees or contractors of ~~the~~ Manager (collectively, the “**Hired Employees**”).

2.4. During the Management Period, the Corporation will (a) assign an individual to oversee the operation of the Hospital, subject to the terms of this Agreement, and serve as the president of the Corporation, as required by the Centers for Medicare & Medicaid Services, CDPH, and applicable California laws and regulations (the “**Responsible Officer**”), and (b) maintain proper oversight by a board of directors.

### 3. **Appointment of Manager.**

3.1. During the Management Period, the Corporation hereby appoints ~~the~~ Manager as the sole and exclusive provider of the Services (defined below) and hereby grants to ~~the~~ Manager the exclusive right to manage the Hospital under the Corporation’s Licenses (as defined in the APA) as a general acute care hospital, including without limitation, the right to undertake those certain management responsibilities and permitted activities described in Section 4 below. ~~The~~ Manager hereby accepts such appointment for all purposes with respect to the Corporation’s rights, duties, and responsibilities under the Licenses for the Hospital, to the fullest extent permitted by law, and agrees, to the fullest extent permitted by law, to provide management services to the Hospital on behalf of the Corporation (the “**Services**”).

3.2. The Services hereunder shall include management and operation of the Hospital’s pharmacy on behalf of the Hospital, even though the Pharmacy Assets will not be transferred to ~~Hospital Newco~~ Manager pursuant to the APA until the Licensure Date.

3.3. Upon the Licensure Date, the Services provided to the Hospital under the Corporation’s Licenses shall terminate and, thereafter, ~~Hospital Newco~~ Manager will be operating the Hospital as the licensee holding its own New Licenses.

3.4. During the Management Period, ~~the~~ Manager shall have the right and responsibility to submit claims for services rendered by the Hospital to various governmental and non-governmental entities, patients, and other third parties pursuant to the Corporation’s provider agreements, Transferred Private Payor Agreements and other payor contracts, and NPI numbers, as set forth in Schedule 3.4, attached hereto (collectively, the “**Corporation’s Billing Credentials**”). Because all billing and collecting shall be under the Corporation’s Billing Credentials, payments shall be made in the Corporation’s name and deposited in the Corporation’s

bank accounts, ~~Parent Company,~~ and handled in the manner provided herein. Manager shall indemnify and hold Corporation harmless for any and all costs or liabilities incurred by Corporation as a result of Manager's use of Corporation's Billing Credentials or any breach of the terms and conditions of Corporation's Billing Credentials during the Management Period. Manager shall be responsible for any overpayments that arise for services rendered during the Management Period. The parties acknowledge and agree that during the Management Period and as further provided below, the Corporation's bank accounts and lockboxes shall remain under the Corporation's name, subject to the further applicable provisions contained herein; provided except as to the Corporation's "AP" or other accounts at Bank of America segregated for use under the State Services Agreement, or as otherwise agreed by the Parties consistent with the terms of this Agreement, as of the Effective Time, the Corporation will provide transfers of ~~the~~ Manager Compensation one (1) business day after receipt. In addition, as of the Effective Time, Manager will be provided electronic read-only access to the Corporation's lockboxes and collection deposit accounts to review all Hospital Revenue. On and after the day that is thirty-one (31) days after the Effective Time, Corporation will provide automatic daily sweeps of all Hospital Revenue in its lockboxes and collection deposit accounts to Manager; Manager will then electronically transfer to Corporation all funds that are not ~~the~~ Manager Compensation one (1) business day after receipt. As soon as practicable, Manager shall have sole signing authority, provided Manager shall demonstrate that such authority shall be acceptable to the Medicare and Medi-Cal programs and the relevant depository institution without cost to Corporation. The Parties shall cooperate to ensure that any and all payments or revenues arising from or relating to any Excluded Asset, including without limitation Accounts Receivable and Census Payments under the State Services Agreement for services rendered by the Corporation at the Hospital prior to the Effective Time, shall be properly paid to the Corporation, with any and all payments or revenues constituting Management Compensation under this Agreement or purchased Assets under the APA properly paid to ~~the~~ Manager. Each Party shall have the right to audit by an independent and competent auditor, at the requesting Party's sole expense, the bank records and remittance advices of the other Party. Thereafter, upon the findings of the auditor that there has either been an overpayment or underpayment of funds due, the Party owing funds shall, within five (5) business days, make payment of such funds to the Party to whom they are owed. Manager shall, as soon as practical, set up its own bank accounts and direct payors to make deposits to such accounts immediately following the Licensure Date.

**3.5.** To the extent the Corporation's lenders continue to have liens, security interests, charges, mortgages, or any other encumbrances whatsoever (collectively, "**Encumbrances**") on the Corporation's bank accounts or lockboxes as of the Effective Time, which shall require Manager's consent, the Corporation, ~~Parent Company,~~ and ~~the~~ Manager shall work cooperatively to facilitate termination and release of such Encumbrances as soon as reasonably possible following the Closing.

**3.6.** The Corporation shall retain and, upon the Licensure Date, ~~the~~ Manager shall assume, any contracts necessary for the Corporation to continue to be the holder of the Licenses and to bill for Hospital services during the Management Period, in accordance with the APA including all compliance obligations thereunder. ~~Such contracts shall be,~~ as set forth in

**Schedule 3.6**, attached hereto (the “**Retained Contracts**”). ~~Parent Company~~ Manager hereby designates each Retained Contract as an Assigned Contract under Section 1.11 of the APA.

#### 4. Management Responsibility.

4.1. During the Management Period, ~~the~~ Manager shall, subject to all applicable legal and regulatory requirements and pursuant to the terms of this Agreement, only as and to the extent required by applicable legal and regulatory requirements and pursuant to the terms of this Agreement, the Corporation’s ultimate oversight and control, have responsibility for the management of the Hospital, and agrees to assume and discharge, in a commercially reasonable manner, all responsibilities, duties, liabilities, payments, and obligations in connection with properly maintaining the Hospital in full compliance with all regulations and standards required of a general acute care hospital facility so licensed. In furtherance thereof, the Services shall include, but not be limited to, the following duties, which duties shall be performed at ~~the~~ Manager’s sole cost and expense:

(a) Managing the operations of the Hospital as a general acute care hospital in compliance with all applicable laws, regulations, provider agreements, payor contracts, CDPH requirements for maintenance of the Licenses in good standing, Conditions of Participation and Payment with respect to governmental programs, and the requirements for maintenance of the Hospital’s accreditations, existing as of the Effective Time;

(b) Employing and managing the Hired Employees and any other non-clinical and clinical personnel (i) necessary for the operation of the Hospital as a general acute care hospital, or (ii) required by law and so as to meet the applicable regulatory requirements, pursuant to all applicable labor laws and regulations, and consistent with orders of the Bankruptcy Court;

(c) Ensuring that the Corporation is ~~able to pay itself out of the Hospital Revenues~~ timely paid in accordance with Section 4.5(d) for the costs and expenses set forth in Section 4.5(b);

(d) Maintaining and repairing, as needed, the Hospital Premises so as to ensure material compliance with all applicable local, state, and federal law, in at least the same material condition as existed immediately preceding the Effective Time, reasonable wear and tear excepted and except as otherwise provided herein;

(e) Providing security services reasonably necessary to prevent unlawful entry or damage to the Hospital Premises;

(f) Affording the Responsible Officer or his or her designee access, during normal business hours, to the Hospital Premises, the books and records at the Hospital Premises or in Manager’s possession, the Hired Employees and any other personnel of Manager or otherwise who are providing services associated with the operation of the Hospital, and such other access and assistance as reasonably requested by the Responsible Officer in support of his or her duties as Corporation’s Responsible Officer;

(g) Upon at least one (1) business day's prior written notice to ~~the~~ Manager, if applicable, providing access, during normal business hours, to the Hospital Premises to lessors of equipment at the Hospital Premises, if any, who have been authorized by order of the Bankruptcy Court to remove their equipment from the Hospital Premises, provided that ~~the~~ Manager shall have full power and authority to require that the removal of such equipment by such lessors does not damage the Hospital Premises;

(h) Providing access, upon at least one (1) business day's prior written notice, during normal business hours and without causing any disruption to or undue burden upon the ordinary operation of the Hospital business or the incurrence of any out-of-pocket expense by Manager, to the Hospital, the Hospital Premises, the Hospital's books and records, electronic health records, financial information systems, operating systems, laboratory systems, the Hired Employees and any other personnel of Manager or otherwise who are providing services associated with the operation of the Hospital, to the Corporation, the Corporation's directors, officers and representatives, and the Corporation's successors in interest, including, but not limited to, any plan administrator, liquidating trustee or similar representatives appointed or approved by the Bankruptcy Court solely for the purpose of winding down the Corporation's affairs, pursuing litigation and adversary proceedings against parties other than Manager or its affiliates, and to effectuate a plan of liquidation, as approved by the Bankruptcy Court (the "**Plan**");

(i) Maintaining all licenses, permits, consents, approvals, accreditations, and certifications currently held by the Corporation that are necessary in connection with the operation of the Hospital and the Hospital Premises in good standing, in active status, and in compliance with all applicable local, state, and federal laws, including the timely payment by Manager of all applicable fees to support or renew these approvals;

(j) Maintaining and obtaining all insurance coverages, from and after the Effective Time, for the Hospital that a prudent hospital operator or owner would maintain, including directors and officers insurance for Manager with no less coverage than was maintained for the Corporation's directors and officers just prior to the Effective Time;

(k) Maintaining and obtaining those insurance coverages required under the Leaseback Agreement, for its own account, with the Corporation included as a named insured, and paying all amounts required under the Leaseback Agreement in a timely manner, including rent, utilities, taxes, and insurance premiums;

(l) Opening and forwarding all mail relating to the financial or business affairs of the Corporation to the notice address below;

(m) Periodically reporting to the Corporation (or its designee), either in person or telephonically, the condition of the Hospital and the Hospital Premises;

(n) Coordinating with the governing board and the organized medical staff (each, as established by the Corporation and the Sellers) on the appropriateness and quality of medical care and all medical staff issues requiring governing board oversight;

(o) Paying all costs and expenses in connection with and incidental to ownership of the Corporation Assets ~~and used in the~~ management and operation of the Hospital hereunder, including but not limited to, all the Hospital operating costs, employee-related costs, and taxes, whether or not identified, described, or referenced in this Agreement;

(p) Cooperating with the Corporation in facilitating termination and release of any Encumbrances on the Corporation's bank accounts and lockboxes, except for Encumbrances otherwise permitted herein;

(q) Performing such other duties and activities as are reasonably necessary for ~~the~~ Manager to fulfill its responsibilities under this Agreement and the APA; and

(r) Providing access, upon at least one (1) business day's prior written notice, without causing any disruption to or undue burden upon the ordinary operation of the Hospital business or the incurrance of any out-of-pocket expense by Manager, to the Hospital, the Hospital Premises, the Hospital's electronic health records, the Hired Employees and any other personnel of Manager or otherwise any individual who is providing services associated with the Hospital's delivery of health care services to patients, to the Patient Care Ombudsman appointed in the Bankruptcy Cases under Section 333 of the Bankruptcy Code (the "PCO") [see Docket No. 430] solely to the extent reasonably required by PCO for exercising his or her responsibilities as such Patient Care Ombudsman for such Bankruptcy Cases, as applicable to the Corporation and Hospital.

**4.2. Permitted Manager Activities.** During the Management Period, ~~the~~ Manager may do any of the following, subject to the requirements of applicable local, state, and federal law, which activities may be performed by ~~the~~ Manager at ~~the~~ Manager's sole cost and expense:

(a) Make alterations, improvements, and repairs to the interior or exterior of the Hospital Premises and other Assets, including structural alterations, improvements, and repairs;

(b) Remove and dispose of furniture, fixtures, equipment (other than equipment owned by equipment lessors), and supplies at the Hospital Premises;

(c) Move into and install furniture, fixtures, equipment, and supplies at the Hospital Premises;

(d) Prepare the Hospital for a name change, except that no such name change may take effect, and no signage reflecting such change shall be installed, during the Management Period; and

(e) Perform, or permit to be performed, any other activities at the Hospital Premises that are not inconsistent with operating the Hospital under the Licenses, and receiving and retaining for ~~the~~ Manager's own account all revenues and proceeds of any such activities, to the extent they comprise ~~the~~ Manager Compensation.

**4.3. Prohibited Manager Activities.**



(a) Notwithstanding anything to the contrary in this Agreement, ~~the~~ Manager shall have no authority to take and shall not take any action with respect to any Excluded Assets or Excluded Liabilities (as such terms are defined in the APA) of the Corporation.

(b) ~~The~~ Manager's authority to manage and operate the Hospital is limited to those actions that Manager is expressly required or permitted to do hereunder.

(c) ~~The~~ Manager shall not ~~(i) take any action that interferes with the Corporation's transfer of funds to pay itself out of the Hospital Revenues~~ right to be paid as set forth in Sections ~~4.5(b); or (ii) remove, withdraw, or authorize removal or withdrawal of funds from the Corporation's bank accounts or lockboxes to the extent that the Corporation would be unable to fully pay itself for the costs and expenses set forth in~~ Section 4.5(b)~~4.5(d)~~.

#### 4.4. APA Provisions; Transition Services Agreement.

(a) Nothing herein shall modify the prorrations of expenses and utilities set forth in the APA, including specifically as set forth in Section 1.6 of the APA.

(b) None of the information accessed, learned or obtained by ~~Parent Company or the~~ Manager or any of their affiliates in the course of performing their duties hereunder may serve as the basis for payment of less than the full Purchase Price ~~or to otherwise assert a claim against the Sellers~~.

(c) Nothing herein shall modify the transfer of the Assets from the Sellers to ~~Parent Company~~ Manager as contemplated in the APA, including specifically as set forth in Section 1.7 of the APA.

(d) Nothing herein shall modify the APA in respect of the exclusion from purchase by ~~Parent Company~~ Manager of the Excluded Assets, including specifically as set forth in Section 1.8 of the APA.

(e) Pursuant to Section 1.4.8 and Section 1.5.8 of the APA, the Sellers and ~~Parent Company~~ Manager will be entering into a Transition Services Agreement to facilitate the winding down of the Sellers' businesses, the completion of the Bankruptcy Cases, and the dissolution of the Sellers. The parties hereto shall cooperate with each other to enable the Corporation and ~~Parent Company~~ Manager to carry out their obligations under, and give effect to the terms of, the Transition Services Agreement.

#### 4.5. Manager Compensation; Distribution of Revenue.

(a) As used in this Agreement, the term "Hospital Revenues" shall mean all revenues and reimbursement received by or on behalf of the Corporation or Business operations after the Effective Time, including, but not limited to, cash, accounts, notes, or other accounts receivable, disproportionate share payments, quality assurance fee (e.g. QAF Program) payments, Seller Cost Report (as defined in the APA) settlements, and capitation premiums, whether payable by Medicare, Medi-Cal or any other commercial or governmental payor, or any health maintenance

organization or any other managed care program or any private pay patients, and State Services Agreement revenues and reimbursement, but only to the extent they are not Excluded Assets (as defined in the APA). To the extent legally permissible, and as otherwise set forth herein, the Corporation hereby expressly transfers and assigns to Manager all of the Corporation's right, title and interest in and to all Hospital Revenues, together with all books, records, software and other items necessary to bill and collect same, with the authority and power to bill and collect same. Unless otherwise agreed by the Parties or otherwise expressly permitted herein, the Corporation agrees not to retain or permit any Encumbrances on the Corporation's bank accounts or lockboxes, or on any Hospital Revenues, on and at any time after the Effective Time.

(b) As full and complete payment for ~~the~~ Manager's Services, ~~the~~ Manager shall be entitled to receive an amount equal to the Hospital Revenues ~~less~~ subject to the required payments by Manager to Corporation pursuant to Section 4.5(d), of the following amounts ~~that will be retained by the Corporation~~ related to the Management Period (the "Manager Compensation"):

(i) All costs and expenses incurred by the Corporation for the Corporation's purchase of drugs and dangerous devices that ~~the~~ Manager determines are necessary for the operation of the Hospital;

(ii) All costs and expenses associated with the Corporation maintaining its Licenses and maintaining the Retained Contracts, if any are directly incurred by the Corporation; and

(iii) All revenue associated with Census Payments for services provided by Corporation under the State Services Agreement prior to the Effective Time.

(c) Except for and with respect to Hospital Revenues, under no circumstance may ~~the~~ Manager seek payment for ~~the~~ Manager's Services from the liquidating trustee, the Corporation, any of the Corporation's officers, directors, agents, contractors, personnel, affiliates or subsidiaries, Verity Health System of California, Inc. ("VHS"), or any of VHS' officers, directors, agents, contractors, personnel, affiliates or subsidiaries.

(d) The Corporation shall issue invoices to ~~the~~ Manager on a weekly basis for the items described in Section 4.5(b) (i), (ii) and (iii), with reasonable supporting detail therefor. ~~The~~ Manager shall pay such invoices within five (5) business days of receipt of such invoices. If ~~the~~ Manager does not remit payment in respect of such invoices in accordance with the immediately preceding sentence, the unpaid amount of such invoices shall bear interest at the Prime Rate in effect on the calendar day upon which such payment was required to be made to the Corporation (the "Invoice Payment 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 Invoice Payment Due Date until payment of such invoices and all interest thereon is made to the Corporation.

(e) The Parties acknowledge and agree that if the State consents in writing to assignment of the State Services Agreement to Manager at the Closing, then all payments under the State Services Agreement for services rendered during the Management Period at the Hospital after the Effective Time, shall be retained by Manager as part of ~~the~~ Manager Compensation.

#### 4.6. Liabilities and Losses.

(a) ~~Parent Company~~ Manager shall be responsible for all the Hospital liabilities and losses incurred or accrued during the Management Period.

(b) Nothing hereunder shall, or is intended to, modify or supersede ~~Parent Company's~~ Manager's responsibility for the Transferred Obligations (as defined in the APA) or the Corporation's responsibility for the Excluded Liabilities (as defined in the APA).

(c) Specifically with respect to quality assurance fee ("QAF") liabilities owed by the Corporation with respect to the Hospital, Parent Company as and to the extent provided in the APA, Manager shall pay all such QAF fees that become due and owing during the Management Period that relate to QAF payments constituting Assets transferred to ~~Hospital Newco~~ Manager under the APA, even though such fees may have been calculated based on data prior to the Effective Time.

**4.7. The Corporation's Ultimate Control.** Notwithstanding anything to the contrary in this Section 4 or in this Agreement more generally, the Corporation, as holder of the Licenses, shall remain ultimately responsible for the operation of the Hospital, and, during the Management Period, in consultation with ~~the~~ Manager, may take any action (with Manager's cooperation as may be reasonably requested and at ~~Parent Company's or the~~ Manager's sole cost and expense) necessary to ensure the Corporation's compliance with applicable laws and regulations.

#### 5. Continued Responsibility of the Corporation.

**5.1.** During the Management Period, the Corporation shall maintain (at its sole cost and expense, except as otherwise contemplated in this Agreement), and shall not take or voluntarily permit any actions which may adversely affect, the Corporation's corporate existence and its full rights as the licensee under the Licenses. In addition, during the Management Period, the Corporation and its officers shall reasonably cooperate with ~~the~~ Manager (at ~~Parent Company's or the~~ Manager's sole cost and expense) in ~~the~~ Manager's provision of the Services.

**5.2.** Notwithstanding the statutory and regulatory authority and responsibility of the Corporation for the continued management of the Hospital during the Management Period, the parties recognize and acknowledge that under this Agreement, ~~the~~ Manager shall, subject to the ultimate oversight by the Corporation as and to the extent legally required, be responsible for and have the right to manage, the day-to-day operation and maintenance of the Hospital as a general acute care hospital. In the event that any violation or alleged violation of or non-compliance with any statute or regulation applicable to the operation or maintenance of the Hospital as a general acute care hospital certified by the Medicare and Medi-Cal programs occurs during the

Management Period, then without regard to legal or statutory fault on the part of ~~the~~ Manager or of the Corporation, ~~the~~ Manager shall immediately notify the Corporation of such violation or alleged violation or non-compliance and take reasonable efforts to address and resolve the alleged violation or non-compliance, and avoid, mitigate or minimize any related adverse consequences. In addition to the indemnification in Section 3.4, ~~Parent Company and the~~ Manager shall be responsible for the costs of any penalty, fine or remediation identified during the Management Period arising from or relating to ~~the~~ Manager's operation of the Hospital during the Management Period, including, without limitation, the cost of engaging third party consultants or experts to help address or resolve the violation, alleged violation or non-compliance, and shall indemnify and hold the Corporation harmless for the same in accordance with Section 9.2. The Corporation retains the right to join ~~the~~ Manager in contesting said violations upon providing ~~the~~ Manager with notice of its intent to do so. Notwithstanding the preceding, or any other term herein to the contrary, Manager shall not be in breach hereunder due to any and all conditions of any Assets, including without limitation any buildings and other improvements used in connection with the operation of the Hospitals, which existed immediately prior to the Effective Time.

5.3. The Corporation shall be responsible for purchasing drugs and dangerous devices that ~~the~~ Manager determines are necessary for the operation of the Hospital at ~~the~~ Manager's sole cost and expense, as set forth in Section 4.5(b)(i).

5.4. The Corporation agrees to execute and deliver to ~~the~~ Manager such documents as ~~the~~ Manager may reasonably request to maintain the hospital license active and in good standing with CDPH and the other Licenses necessary or appropriate to maintain the Hospital as a general acute care hospital and to facilitate ~~the~~ Manager's obtaining of the New Licenses.

5.5. The Corporation agrees to execute and deliver to Manager such documents as Manager may reasonably request in connection with Manager's efforts to implement processes for the billing and collection of, and handling of, Governmental Payments and all other Hospital Revenues, and resulting collections consistent with applicable legal requirements and the other provisions herein.

5.6. All payments that are attributable to Hospital Revenues received from Medicare, Medi-Cal, TriCare and other programs established by federal or state law ("Governmental Payment Programs") that require payments of revenues for healthcare services to be made to the providers of such services ("Governmental Payments"), shall be deposited into the Special Account (as described below). The Parties shall cause all collections of Hospital Revenues other than Governmental Payments received or controlled by such Parties to be deposited to a lockbox and blocked account arrangement reasonably acceptable to Manager and Manager's Lender ("Designated Deposit Account") at a bank reasonably acceptable to Manager and Manager's Lender ("Lockbox Bank").

5.7. The Corporation shall, during the Management Period and for the additional period through the latest applicable Outside Billing Date set forth in Section 5.9. maintain its existing collections/operations bank account with account number: [ \_\_\_\_\_ ] ("Special Account"), at [ \_\_\_\_\_ ] (the "Special Account Bank"), into which

Manager and the Corporation (if it receives any) shall cause all payments from Manager that are Governmental Payments to be deposited.

5.8. If Managers elects to arrange financing to be applicable on or after Closing, then the Corporation will reasonably cooperate with Manager and Manager's lender or prospective lender ("Manager's Lender") in connection with any financing that Manager desires to obtain during the Management Period or thereafter ("Manager Financing"). In connection with such Manager Financing, the Corporation agrees to execute and deliver to Manager and Manager's Lender such financing documents that are reasonably requested by reason of the Corporation retaining rights with respect to Hospital and proceeds thereof, and in applicable Corporation bank accounts relating to the Hospital and Business. Without limiting the preceding, if Manager elects financing as noted above, the Corporation agrees as follows:

(a) The Corporation hereby grants to Manager and Manager's Lender, effective as of the Effective Time, a continuing first priority security interest in all of the Hospital Revenues whether now owned or hereafter acquired or arising, and all proceeds and products thereof.

(b) The Corporation hereby authorizes Manager and Manager's Lender to file, at any time on any after the Closing Date, financing statements that describe the Hospital Revenues, without notice to the Corporation as Manager and Manager Lender deems reasonably necessary or advisable to perfect or protect Manager's or Manager Lender's interest or rights hereunder.

(c) The Corporation agrees to enter into any commercially reasonable collateral assignment of this Agreement and the TSA, customary deposit account control agreements covering Corporation's bank accounts and lockboxes, including customary agreements to provide for entire balance of such Special Account shall be swept at the end of each business day to the Designated Account, and other customary document reasonably requested by Manager's Lender.

Notwithstanding the foregoing, nothing herein is intended to, or shall, create any condition for Manager to obtain any financing to close pursuant to the APA and the Corporation shall not be, nor shall the Corporation be required to become, liable with respect to any such Manager Financing.

5.9. To the extent legally permissible, and solely with respect to the operation of the Hospital, Manager shall have the right to act for and in the Corporation's name and stead, and act as the Corporation's agent, in dealing with any governmental, quasi-governmental or private agency, authority or intermediary having jurisdiction over any of the third party payor agreements or any aspect of the reimbursement process thereunder. Without limiting the preceding, effective as of the Effective Time and to the extent allowed by applicable law and regulations, the Corporation shall permit Manager to use (a) the Corporation's Billing Credentials and (b) such other information, in each case as may be

reasonably necessary for purposes of submitting and collecting claims under the Corporation's private and governmental third party payor contracts, and other billing rights, for services provided at the Hospital until the Outside Billing Dates specified in the following sentence. Manager's ability to utilize the Corporation's Billing Credentials and related information, and to act for Corporation, as provided above, will be effective as of the Effective Time and continue until the following outside dates, as applicable by payor type ("Outside Billing Dates") (x) for purposes of Medicare, until CMS and the applicable CMS Medicare Administrative Contractor approve Manager's Medicare change of ownership application and issue a tie-in notice and approval letter acknowledging that Manager may be reimbursed for claims submitted using Manager's billing identification information; (y) for purposes of Medi-Cal until the Medi-Cal program agent(s) approves Manager's provider enrollment application and/or approves assignment of the applicable provider contract and issues the appropriate notice acknowledging that Manager may be reimbursed by the Medi-Cal for claims submitted using Manager's identification information; and (z) for purposes of any other third party payor agreements and arrangements until the date by which substantially all of accounts receivable relating to Hospital Revenues under such third party payor arrangements have been collected or reasonably deemed by Manager to be uncollectable, but in any case not later than six (6) months after the Termination Date. Until the aforementioned Outside Billing Dates, the Corporation will not act to: (i) terminate any of the Corporation's Billing Credentials or other billing identification information except as required by applicable Law; (ii) close any bank accounts used by the Corporation for purposes of receiving payment of Hospital Revenues; or (iii) cancel or modify any electronic funds transfer agreements, or other payment instructions, with respect to any third party payor agreements, except as otherwise contemplated herein. The parties acknowledge and agree that the provision in this Section will survive termination of this Agreement and will only expire or terminate by the terms of this Section.

**6. The Parties' Cooperation with Regulatory Agencies.** ~~The~~ Manager shall use its best efforts to obtain the New Licenses as expeditiously as possible. ~~The~~ Manager and Corporation shall agree to the target Licensure Date identified in the change of ownership applications. ~~The~~ Manager shall provide updates to the Corporation as reasonably requested by the Corporation, on the status of ~~the~~ Manager's efforts to obtain the New Licenses. The Corporation shall, at ~~Parent Company's or the~~ Manager's cost, reasonably cooperate with ~~the~~ Manager's efforts to obtain the New Licenses, and may communicate and coordinate with licensing agencies as necessary in connection with obtaining the New Licenses. Notwithstanding the foregoing, obtaining all governmental consents, approvals, assignments, authorizations, and clearances necessary to obtain the New Licenses shall be solely ~~Parent Company's and the~~ Manager's (and not the Corporation's) responsibility, including payment of any fees, expenses, filing costs or other amounts related thereto.

**7. Risk of Loss.**

**7.1.** The Corporation assumes no risks or liability for damage to or injury occurring to the Hospital Premises, Assets or the Hospital during the term of this Agreement by any means whatsoever, including fire, storm, earthquake, vandalism, strike, cyberattack, accident or any other

casualty (collectively, “Casualty”), ~~and Parent Company~~ except to the extent caused by the negligence or intentional misconduct of any director, officer, employee, representative, or agent of the Corporation, and Manager shall have all right, title, and interest in and to the proceeds of any insurance it obtained and paid for covering such Casualty.

7.2. If, during the term of this Agreement, action is initiated to take the Hospital Premises or any portion thereof by eminent domain proceedings or by deed in lieu thereof (collectively, “Condemnation”), ~~Parent Company~~ Manager, and not the Corporation, shall have all right, title, and interest in and to the award from the Condemnation.

7.3. In the event of a Casualty or Condemnation, neither ~~Parent Company~~ Manager nor the Corporation may terminate this Agreement.

## 8. Exculpation; Indemnification.

8.1. The Corporation and the Corporation’s affiliates, members, officers, directors, employees, attorneys, accountants, consultants, agents, representatives, successors and assigns, including the liquidating trustee and responsible officer (collectively the “Corporation Indemnified Parties”) shall have no liability in contract, tort or otherwise in connection with the provisions of this Agreement unless and until a Chosen Court finds in a final, non-appealable judgment that any Damages result solely from a Corporation Indemnified party’s gross negligence or willful misconduct.

8.2. In addition to any other indemnification provided for in the Agreement, ~~Parent Company and the~~ Manager shall promptly and fully keep and hold the Corporation Indemnified Parties forever harmless from, and shall indemnify and defend the Corporation Indemnified Parties from and against, without regard to materiality, any and all obligations, judgments, fines, civil money penalties, sanctions, awards, liabilities, losses, penalties, claims, costs, demands, damages, expenses, liens, and encumbrances, including investigation costs, time spent in depositions and reasonable attorneys’ fees and expenses (collectively, “Damages”), whether civil or criminal, direct, indirect or consequential and no matter how arising, in any way related to, connected with, arising or resulting from, or under Manager’s obligations under this Agreement, ~~the APA, the Hired Employees (as defined in the APA), the~~ Manager’s performance of the Services, or the operation or management of the Hospital or the Corporation’s Assets ~~by~~ used in the operation of the Hospital by Manager after the Effective Time except to the extent that Damages result from the negligence or willful misconduct of any of the Corporation Indemnified Parties. Notwithstanding the foregoing, the parties understand that except as otherwise specifically provided for in the APA: (i) ~~Parent Company and the~~ Manager are not, by virtue of this Agreement or any term or provision herein, assuming any claim, liability, expense, debt or other obligation of the Corporation or Sellers that both relates to the operation of the Hospital or the Hospital Premises prior to the Effective Time and constitutes an Excluded Liability under the APA; and (ii) neither the Corporation, ~~nor~~ Manager ~~or Parent Company~~ are, by virtue of this Agreement or any term or provision herein, relieved or excused from any of their respective duties or obligations under the APA.

9. **HIPAA Compliance, Privacy and Confidentiality.** ~~The~~ Manager agrees to take such steps as are necessary to ensure compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the California Confidentiality of Medical Information Act, and other applicable federal and state privacy laws and regulations (collectively, the “**Privacy Laws**”) with respect to the Hospital and its operations, and the Corporation agrees not to take or voluntarily permit any actions which violate Privacy Laws with respect to the Hospital or its operations. Toward this end, ~~Parent Company, the~~ Manager, and the Corporation agree to execute and deliver that certain Business Associate Agreement, attached hereto as Exhibit A and incorporated by reference herein, upon execution of this Agreement. With respect to all access provided herein to Corporation and its agents, employees and representatives, the PCO and others hereunder, all such access shall be permitted only in a manner, and to such extent, which reasonably protects patient privacy and the confidentiality of patient information, under applicable Privacy Laws and protects the confidentiality of Manager’s trade secrets and other confidential and proprietary documents and information.

10. **Further Assurances.** Each of the parties hereto agree to execute and deliver any and all further agreements, documents or instruments necessary to effectuate this Agreement and the transactions referred to herein or contemplated hereby or reasonably requested by any other party hereto to perfect or evidence their rights hereunder.

11. **Relationship of Parties.** In performing their duties and permitted activities under this Agreement, ~~Parent Company, the~~ Manager, and the Corporation shall, at all times be acting and performing as independent contractors. ~~Parent Company, the~~ Manager, and the Corporation are not partners or joint venturers with each other and nothing herein shall be construed as making them partners or joint venturers or imposing upon any of them any liability as partners or joint venturers.

12. **Notices and Demands.** All notices and demands, requests, consents, approvals, and other similar communications under this Agreement shall be in writing and shall be sent by personal delivery or by either (a) United States certified or registered mail, return receipt requested, postage prepaid, or (b) Federal Express or similar generally recognized overnight carrier regularly providing proof of delivery, addressed as follows:

If to the Corporation:                      Seton Medical Center  
c/o Verity Health System of California, Inc.  
601 South Figueroa Street, Suite 4050  
Los Angeles, CA 90017-5704  
Attention: Chief Executive Officer

With copies to:                                Tania Moyron, Esq.  
(which copy shall not                        Dentons US LLP  
constitute notice)                            601 South Figueroa St., Suite 2500  
Los Angeles, CA 90017-5704

and



Hope Levy-Biehl, Esq. Davis Wright Tremaine LLP  
865 S Figueroa St,  
Los Angeles, CA 90017

If to ~~Parent~~  
~~Company~~Manager  
and/or  
~~the~~ Manager:

~~AHMC Healthcare Inc.~~  
~~55 S. Raymond Ave., Suite 105~~  
~~Alhambra, CA 91801~~  
KPC Global Medical Center of San Mateo County,  
LLC  
9 KPC Parkway, Suite 301  
Corona, CA 92879  
Attention: ~~Jonathan Wu~~ William E. Thomas  
~~Facsimile: 626-289-8952~~

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

~~AHMC Healthcare Inc., Legal Department~~  
~~500 E. Main St., 5th Floor~~  
~~Alhambra, CA 91801~~  
~~Attention: Maan Huei Hung, Esq.~~  
~~Facsimile: 626-248-3303~~  
Levene, Neale, Bender, Yoo & Brill L.L.P.  
10250 Constellation Blvd., Suite 1700  
Los Angeles, CA 90067  
Attn.: Gary E. Klausner, Esq.

and

Loeb & Loeb LLP  
10100 Santa Monica Blvd., Suite 2200  
Los Angeles, CA 90067  
Attn.: Allen Z. Sussman, Esq.

Any notice so given by mail shall be deemed to have been given as of the date of delivery (whether accepted or refused) established by U.S. Post Office return receipt or the overnight carrier's proof of delivery, as the case may be, whether accepted or refused. Any such notice not so given shall be deemed given upon receipt of the same by the party to whom the same is to be given. Any party hereto may designate a different address for itself by notice to the other party in accordance with this Section 13.

**13. Expenses.** Except for ~~Parent Company's and the~~ Manager's obligations to be responsible for certain costs, fees, and expenses as set forth elsewhere in this Agreement, each party to this Agreement shall pay its own expenses in connection with the preparation of this Agreement and

the consummation of the transactions contemplated hereby, including the fees of any attorneys, accountants, financial advisors, investment bankers or other professionals engaged by such party.

**14. Entire Agreement.** This Agreement, the Leaseback Agreement, and those provisions of the APA expressly identified in this Agreement, contain the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements, arrangements, and understandings relating to the subject matter hereof and thereof. There are no written or oral agreements, understandings, representations, or warranties among the parties other than those set forth in this Agreement, the Leaseback Agreement, and those provisions of the APA expressly identified in this Agreement. Nothing in this Agreement modifies or shall be construed as modifying any orders entered by the Bankruptcy Court, or the APA as approved by the Bankruptcy Court and in the event of any conflict between the APA and this Agreement, the provisions in the APA shall be controlling over the provisions herein.

**15. Amendment.** This Agreement may not be modified, amended, altered or supplemented except by a written agreement executed by all the parties hereto.

**16. Waiver.** Waiver by any party of any breach or failure to comply with any provision of this Agreement by any other party shall not be construed as or constitute, a continuing waiver of such provision, or a waiver of any other breach of, or failure to comply with, any other provision of this Agreement. No waiver of any such breach or failure or of any term or condition of this Agreement shall be effective unless in a written notice signed by the waiving party and delivered, in the manner required for notices generally, to each affected party.

**17. Severability.** In case any provision of this Agreement shall be found by a court of competent jurisdiction to be invalid, illegal or unenforceable, such provision shall be construed and enforced as if it had been narrowly drawn so as not to be invalid, illegal or unenforceable, and the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

**18. Successors and Assigns.** This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective permitted successors and assigns. The Corporation shall not be permitted to assign its rights or its obligations under this Agreement without the prior consent of ~~Parent Company and the~~ Manager. The parties further acknowledge and agree that ~~the~~ Manager may subcontract for any of the goods or services required to be provided by ~~the~~ Manager pursuant to this Agreement, and ~~the~~ Manager may assign any of its rights hereunder and/or delegate any of its obligations hereunder, so long as in each case ~~the~~ Manager remains responsible for such subcontracted goods or services and for any of such Manager obligations hereunder.

**19. Attorneys' Fees.** In the event of any litigation or arbitration between the parties hereto arising out of this Agreement, the prevailing party therein shall be allowed to recover from the other party all court costs and reasonable attorneys' fees which shall be fixed by the court or arbitrator.

**20. Headings.** The descriptive headings of sections and subsections of this Agreement are inserted for convenience only and do not constitute a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement.

**21. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to its conflicts of laws principles or decisions.

~~**22. — Jurisdiction.** The parties agree that the Bankruptcy Court shall have exclusive personal and subject matter jurisdiction over any action or proceeding with respect to any claim arising out of or related to this Agreement, and any of the documents or transactions contained in or contemplated by this Agreement; provided, however, that the parties agree that the United States District Court for the Central District of California (together with the Bankruptcy Court, the “Chosen Courts”) shall have exclusive jurisdiction over such claim if (i) the Bankruptcy Cases are closed and if the Bankruptcy Cases are not reopened to adjudicate such claim after request by the party bringing such claim or (ii) the Bankruptcy Court determines that it does not have jurisdiction over such claim. Solely in connection with claims arising under this Agreement, or any of the documents or transactions contemplated hereby, the parties (a) irrevocably submit to the exclusive jurisdiction of the Chosen Courts, (b) waive any objection to laying venue in any such action or proceeding in the Chosen Courts, (c) waive any objection that the Chosen Courts are an inconvenient forum or do not have jurisdiction over any party hereto, and (d) agree that service of process upon such party in any such action or proceeding shall be effective if notice is given in accordance with Section 13 hereof.~~

**22. Jurisdiction.** All claims, disputes or controversies that may arise under or in connection with this Agreement or any award or judgement arising hereunder shall be resolved in the manner provided in Section 12.3 of the APA.

**23. Commencement.** The parties acknowledge that commencement of ~~the~~ Manager’s Services under this Agreement is subject to and contingent upon the occurrence of the Closing (as defined in the APA). The Management Period shall not commence, and the parties’ obligations during the Management Period shall not commence, unless and until the Closing has occurred.

**24. Cooperation on Regulatory Compliance Matters.** ~~Parent Company and the Manager~~ **The parties** understand and acknowledge that ~~the Corporation~~ **each of parties** intends to comply with applicable federal and state laws, regulations, and guidance. In the event the terms of this Agreement need to be amended or supplemented based on guidance from or at the request or direction of a regulator made during the term of this Agreement, ~~Parent Company and the Manager~~ **parties** shall **all** cooperate with such amendment and/or supplement to ensure the ~~Corporation’s~~ **parties’** ability to comply with such guidance, request or directive.

**25. Survival.** Sections 4.4, 4.5, 4.6, 5.5, 5.6, 5.7, 5.9, 9, and 11 through 26 shall survive any termination or expiration of this Agreement

**26. 25. Counterparts.** This Agreement may be executed by one or more of the parties hereto on any number of separate counterparts (including by telecopy), and all of said counterparts taken

together shall be deemed to constitute one and the same instrument. It may be delivered by facsimile or electronic transmission, including by e-mail as a PDF, and facsimile or PDF copies of executed signature pages, which shall be binding as originals.

*[Signature page follows.]*

IN WITNESS WHEREOF, the parties agree to the foregoing terms of agreement through the execution below by their respective, duly authorized representatives as of the Signing Date.

~~MANAGER/HOSPITAL-NEWCO:~~

CORPORATION:

~~A LEGAL ENTITY TO BE FORMED  
AND CONTROLLED BY  
AHMC HEALTHCARE, INC.~~

SETON MEDICAL CENTER,  
a California non-profit public benefit

~~BY: AHMC HEALTHCARE, INC.~~

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

KPC GLOBAL MEDICAL CENTER OF  
SAN MATEO COUNTY, LLC

By: \_\_\_\_\_  
Name: ~~Jonathan~~  
~~Wu~~  
Title: ~~President/CEO~~ Manager

~~PARENT COMPANY:~~

~~AHMC HEALTHCARE, INC.~~

~~By: \_\_\_\_\_  
Name: Jonathan Wu  
Title: President/CEO~~

## Exhibit A To IMA

### BUSINESS ASSOCIATE AGREEMENT

The Business Associate Agreement (“**BA Agreement**”) is entered into as of and is in effect as of the first day of the Management Period (“**Effective Date**”) by and between Seton Medical Center (“**Covered Entity**” or “**CE**”) and ~~AHMC Healthcare~~ KPC Global Medical Center of San Mateo County, Inc.—LLC, a California limited liability company (“**Business Associate**” or “**BA**”).

### RECITALS

A. CE provides certain Protected Health Information (as defined below and referred to herein as “**PHI**”) to BA in the course of BA providing services under that certain Interim Management Agreement entered into by CE and BA as of ~~March 30~~ \_\_\_\_\_, 2020 (the “**IMA**”) and effective during the Management Period (as defined in the IMA).

B. In order to protect the privacy of the PHI and to comply with HIPAA, the HIPAA Regulations, and the California Confidentiality Laws (each as defined below), CE and BA desire to enter into this BA Agreement setting forth the terms and conditions of the use and disclosure of such PHI.

In consideration of the mutual promises set forth below, the parties agree as follows:

### ARTICLE I: DEFINITIONS

**1.1 General Rule.** Capitalized terms not otherwise defined in this BA Agreement shall have the same meaning as those terms have in the HIPAA Regulations.

**1.2** HIPAA means the Health Insurance Portability & Accountability Act of 1996, P.L. 104-191, as amended by the HITECH Act.

**1.3** HIPAA Regulations means the regulations promulgated under HIPAA by the U.S. Department of Health and Human Services, including, but not limited to, the Privacy Rule, the Security Rule, and the Breach Notification Rule, as currently in effect and as modified from time to time.

**1.4** HITECH Act means Subtitle D of the Health Information Technology for Economic and Clinical Health Act (“**HITECH**”), which is Title XIII of the American Recovery and Reinvestment Act of 2009, P.L. 111-5.

**1.5** Privacy Rule means the Standards for Privacy of Individually Identifiable Health Information, codified at 45 CFR Parts 160 and 164, Subparts A and E, as currently in effect and as modified from time to time.

**1.6** Protected Health Information or “**PHI**” shall have the meaning given to the term “**Protected Health Information**” under the Privacy Rule.

**1.7** Breach Notification Rule means the Standards for Notification in the Case of Breach of Unsecured Protected Health Information, codified at 45 CFR Parts 160 and 164, Subparts A and D, as currently in effect and as modified from time to time.

**1.8** Security Rule means the Security Standards for the Protection of Electronic Protected Health Information, codified at 45 CFR Parts 160 and 164, Subparts A and C, as currently in effect and as modified from time to time.

**1.9** California Confidentiality Laws means the laws of the State of California governing the confidentiality of PHI, including, but not limited to, the California Confidentiality of Medical Information Act (Cal. Civil Code §56 et seq.), the patient access law (Cal. Health & Safety Code §123100 et seq.), the HIV test result confidentiality law (Cal. Health & Safety Code §120975 et seq.), the Lanterman-Petris-Short Act (Cal. Wel. & Inst. Code §5328 et seq.), the medical identity theft law (Cal. Civil Code §1798.82), and the improper access notification law (Cal. Health & Safety Code §1280.15).

## ARTICLE II: OBLIGATIONS OF BA

**2.1 General Requirements.** Except as otherwise limited in this BA Agreement, BA may use or disclose PHI to perform functions, activities, or services for, or on behalf of, CE pursuant to one or more services agreements between CE and BA (the “**Services Agreements**”), as listed on Exhibit A to this BA Agreement, provided that such Use or Disclosure would not violate HIPAA, the HIPAA Regulations, or the California Confidentiality Laws if done by CE. BA and its agents and subcontractors shall only request, use, and disclose the minimum amount of PHI necessary to accomplish the purpose of the permitted Use or Disclosure. BA agrees to materially comply with all applicable provisions in HIPAA, the HIPAA Regulations, and the California Confidentiality Laws.

**2.2 Uses or Disclosures Permitted by Privacy Rule.** As permitted by the Privacy Rule, BA may use or disclose PHI: (a) as is necessary for the proper management and administration of BA’s organization, or (b) to carry out the legal responsibilities of BA; provided, however, that any permitted Disclosure to a third party must be either Required By Law or subject to reasonable assurances obtained by BA from the third party that the PHI will be held confidentially, and securely, and used or disclosed only as Required By Law or for the purposes for which it was disclosed to such third party, and that any breaches of confidentiality of the PHI which become known to such third party will be immediately reported to BA. BA shall obtain the prior permission of CE before making any such disclosure that is not Required by Law. BA shall notify CE in a timely manner prior to making any Disclosure that is Required By Law, in order to afford CE the opportunity to respond to the request for such a Disclosure, to the extent feasible consistent with applicable legal requirements for making such Disclosure.

**2.3 Data Aggregation.** BA may provide Data Aggregation services relating to the Health Care Operations of CE.

**2.4 Disclosures to Agents and Subcontractors.** BA shall ensure that any agent or subcontractor to whom it provides PHI agrees in writing to substantially the same restrictions,

conditions, and requirements that apply to BA with respect to such PHI and as set forth herein regarding the Use and Disclosure and security of PHI, including, but not limited to, implementation of administration, physical and technical safeguards, notice of prohibited Use or Disclosure, mitigation of harmful effects, responses to requests for access and amendment, and a term permitting immediate termination of the agent's or subcontractor's agreement with BA for improper Use or Disclosure of PHI. BA shall terminate its agreement with any agent or subcontractor to whom it provides PHI if such agent or subcontractor fails to abide by any material term of such agreement.

**2.5 Safeguards.** BA shall implement and use appropriate safeguards as necessary to prevent the Use or Disclosure of PHI in any manner that is not permitted by this BA Agreement, including but not limited to, safeguards designed to limit incidental Uses or Disclosures made pursuant to an otherwise permitted or required Use or Disclosure.

**2.6 Security Rule Safeguards.** To the extent that BA creates, receives, maintains, or transmits electronic PHI, BA shall comply with the Security Rule and implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic PHI that may be transmitted in conformity with the requirements of the Security Rule and prevent the Use or Disclosure of electronic PHI in any manner that is not permitted by this BA Agreement.

**2.7 Direct Access to CE's Electronic Systems.** If BA or its employees/agents are granted direct access to CE's electronic systems, BA will ensure that each of its employees and agents has access to only what is required for each employee/agent to perform the specific duties assigned by BA to that individual employee/agent pursuant to the Services Agreement with CE. Further, BA will provide immediate notice when its employees/agents are terminated or change roles or otherwise no longer have a need for access, BA will routinely monitor the list of employees/agents with access, BA will educate its employees/agents that sharing of login information among its employees/agents is prohibited, and BA will provide CE with a list of its employees/agents with access to CE's electronic systems upon request by CE.

**2.8 Minimum Necessary Use and Disclosure.** In conducting functions and/or activities under this BA Agreement or any other agreement between the parties hereto that involve the use and/or disclosure of PHI, BA shall make reasonable efforts to limit the use and/or disclosure of PHI to the minimum amount of information necessary as determined by CE to accomplish the intended purpose of the use or disclosure.

**2.9 Reporting.** BA agrees to provide written notice to CE of any Use or Disclosure of PHI that is in violation of this BA Agreement, the Privacy Rule, the California Confidentiality Laws, or other applicable federal or state law, within five (5) calendar days of becoming aware of such Use or Disclosure. BA shall also notify CE in writing within five (5) calendar days of receipt of any complaint that BA receives concerning the handling of PHI or compliance with this BA Agreement. BA further agrees to provide written notice to CE of any Security Incident within five (5) calendar days of BA's discovery of such Security Incident.



Notwithstanding the foregoing, BA shall immediately, and in no case longer than forty-eight (48) hours after, upon discovery of a Breach under HIPAA or breach under applicable state law, report to CE such Breach/breach, consistent with HIPAA, the HIPAA Regulations, and the California Confidentiality Laws. BA must also, without unreasonable delay, identify each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired or disclosed as a result of the Breach/breach, and provide such information to CE as needed in order to meet the data breach notification requirements under the Breach Notification Rule and the California Confidentiality Laws, and in any event within five (5) calendar days after the discovery of the Breach/breach. The Breach shall be considered “discovered” when the BA ~~knew or reasonably should have known when~~ on the first date on which the BA discovered or knew the Breach occurred.

BA agrees to fully cooperate, coordinate with and assist CE in gathering the information necessary to notify the affected individuals. BA agrees to cooperate with CE to ensure that all such Breach/breach notices are sent without unreasonable delay, and in no case more than five (5) business days from the discovery of the Breach/breach, as required under the applicable California Confidentiality Laws. BA agrees that it shall be solely responsible for all costs and expenses incurred by both CE and BA as a result of the Breach/breach, including costs associated with mitigation, preparation and delivery of the notices.

**2.10 Mitigation.** BA shall mitigate promptly, to the extent practicable, any harmful effect that is known to BA of a Use or Disclosure of PHI by BA in violation of this BA Agreement, the Privacy Rule, or other applicable federal or state law.

**2.11 Requests for Restrictions.** BA agrees to comply with requests for restrictions on Use or Disclosure of PHI that CE has agreed to or is required to abide by under 45 C.F.R. §164.522, to the extent that such restriction may affect BA’s use or disclosure of such PHI.

**2.12 Access and Amendment.** To enable CE to fulfill its obligations under the Privacy Rule, BA shall make PHI in Designated Record Sets that are maintained by BA or its agents or subcontractors available to CE for inspection, copying or amendment within ten (10) calendar days of a request by CE. If an Individual requests inspection, copying or amendment of PHI directly from BA or its agents or subcontractors, BA shall notify CE in writing within five (5) business days of receipt of the request, and shall defer to, and comply with, CE’s direction in a timely manner regarding the response to the Individual regarding the request for inspection, copying or amendment.

**2.13 Accounting.** BA shall implement a process for recording certain Disclosures of PHI by BA (“**Accounting Information**”) in order to enable CE to comply timely with its obligations under the Privacy Rule including, but not limited to, 45 CFR Section 164.528. At a minimum, this Accounting Information shall include for each such Disclosure recordation of (a) the name and date of birth of the Individual whose PHI was the subject of the Disclosure; (b) the date of Disclosure; (c) the name and address of the recipient of the PHI; (d) a brief description of the PHI disclosed; and (e) a brief statement of the purpose for the Disclosure that reasonably informs the Individual of the basis for the Disclosure. Within ten (10) calendar days of notice from CE of a request for an accounting of Disclosures of PHI, BA shall make available to CE this

Accounting Information. In addition, for any month in which BA makes a Disclosure of PHI, BA shall provide Accounting Information during the subsequent month pertaining to CE, in a format and medium specified by CE. If an Individual requests an accounting directly from BA or its agents or subcontractors, BA must notify CE in writing within five (5) business days of the request, and shall defer to, and comply in a timely manner with, CE's direction regarding the response to the Individual regarding the request for an accounting.

**2.14 Government Officials.** BA shall make its internal practices, books and records relating to the Use and Disclosure of PHI available to the Secretary of the U.S. Department of Health and Human Services ("Secretary") for purposes of determining CE's compliance with the Privacy Rule. BA shall notify CE regarding any PHI that BA provides to the Secretary concurrently with providing such PHI to the Secretary, and upon CE's request, shall provide CE with a duplicate copy of such PHI.

**2.15 Insurance and Indemnity.** BA shall maintain or cause to be maintained sufficient insurance coverage as shall be necessary to insure BA and its agents or subcontractors against any claim or claims for damages arising under this BA Agreement. Such insurance coverage shall apply to all sites of BA and to all services provided by BA or its agents or subcontractors under this BA Agreement.

BA shall indemnify, hold harmless and defend CE and its affiliated entities from and against any and all claims, losses, liabilities, costs and other expenses (including reasonable attorneys' fees and costs, and administrative penalties and fines) incurred as a result of, or arising directly or indirectly out of or in connection with any act or omission of BA, its agents or subcontractors, under this BA Agreement including, but not limited to, negligent or intentional acts or omissions. The indemnification obligation of BA shall survive termination of this BA Agreement.

**2.16 Prohibition on Sale of PHI.** BA agrees to comply with the prohibition of sale of PHI without authorization unless an exception under 45 C.F.R. § 164.508 applies.

**2.17 Compliance with CE's Obligations.** To the extent that BA carries out CE's obligations under HIPAA, the HIPAA Regulations, or the California Confidentiality Laws, BA shall comply with all of the requirements of HIPAA, the HIPAA Regulations, and the California Confidentiality Laws, in the performance of such obligations.

### ARTICLE III: OBLIGATIONS OF CE

**3.1 Notice of Privacy Practices.** CE shall notify BA of limitation(s) in its notice of privacy practices, in accordance with 45 CFR Section 164.520, to the extent such limitation affects BA's permitted Uses or Disclosures.

**3.2 Individual Permission.** CE shall notify BA of changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent such changes affect BA's permitted Uses or Disclosures.

**3.3 Restrictions.** CE shall notify BA of restriction(s) in the Use or Disclosure of PHI that CE has agreed to, in accordance with 45 CFR Section 164.522, to the extent such restriction affects BA's permitted Uses or Disclosures.

**3.4 Prohibited Requests.** CE shall not request BA to use or disclose PHI in any manner that would not be permissible under HIPAA, the HIPAA Regulations, or the California Confidentiality Laws, if done by CE.

#### ARTICLE IV: TERM AND TERMINATION

**4.1 Term.** This BA Agreement shall be effective as of the Effective Date, and shall continue in effect with respect to each Services Agreement until: (i) this BA Agreement is terminated in accordance with the provisions of Section 4.2 or (ii) the relevant Services Agreement (in its entirety) is terminated; provided, however, that in the event that CE has entered into more than one Services Agreements with BA and one or more, or a portion of one or more, but not all, of such Services Agreements are terminated, this BA Agreement shall terminate only with respect to the Services Agreement(s) (or portions thereof) that have been terminated. Under such circumstances, this BA Agreement shall continue in effect with respect to all Services Agreements (or portions thereof) between CE and BA which have not been terminated.

**4.2 Termination for Cause.** In the event of either party's material breach of this BA Agreement, the non-breaching party may terminate this BA Agreement upon ten (10) calendar days prior written notice to the breaching party in the event the breaching party does not cure such breach to the reasonable satisfaction of the non-breaching party within such ten (10) calendar day period. In the event that cure of a breach under this Section 4.2 is not reasonably possible, the non-breaching party may immediately terminate this BA Agreement; or if neither termination nor cure is feasible, the non-breaching party may, subject to all applicable legal privileges, report the violation to the Secretary of the Department of Health and Human Services. Either party may terminate this BA Agreement immediately if (a) the other party is named as a defendant in a criminal proceeding for a violation of HIPAA, HIPAA Regulations, or the California Confidentiality Laws, or (b) if a finding or stipulation that the other party has violated any standard or requirement of HIPAA, the HIPAA Regulations, the California Confidentiality Laws, or any other security or privacy law is made in any administrative or civil proceeding in which that party has been joined.

**4.3 Effects of Termination.** Upon termination of the business relationship between the parties and/or the BA Agreement for any reason, BA shall, at CE's direction, return or destroy all PHI that BA or its agents or subcontractors still maintain in any form, and shall retain no copies of such PHI. Upon CE's request, BA shall certify in writing that such return or destruction has occurred. If BA determines that return or destruction is not feasible, BA shall explain to CE in writing why conditions make the return or destruction of such PHI not feasible. If CE agrees that the return or destruction of PHI is not feasible, BA shall retain the PHI, subject to all of the protections of this BA Agreement, and shall make no further Use or Disclosure of the PHI, except as for those purposes that make the return or destruction of the PHI not feasible. In any event, upon termination of the business relationship between the parties and/or the BA Agreement, BA shall retain for no less than six (6) years the Accounting Information compiled by BA pursuant to

section 2.13 of this BA Agreement, and shall make such Accounting Information available to CE within five (5) business days of a request.

**4.4 Survival.** The obligations of BA under this Article IV shall survive the termination of the business relationship between the parties and/or the BA Agreement.

## ARTICLE V: MISCELLANEOUS

**5.1 Assistance.** In the event of an administrative or judicial action commenced against CE where BA may be at fault, in whole or in part, as the result of its performance under this BA Agreement, BA agrees to defend or to cooperate with CE in the defense against such action.

**5.2 Subcontracts and Assignment.** BA shall not subcontract its obligations, assign its rights, or delegate its duties under this BA Agreement without the express written consent of CE.

**5.3 Amendment.** If any modification to this BA Agreement is required for conformity with federal or state law or if CE reasonably concludes that an amendment to this BA Agreement is required because of a change in federal or state law, or by reason of CE's status as a business associate of another covered entity, CE shall notify BA in writing of such proposed modification(s) ("**Required Modifications**"). Such Required Modifications shall be deemed accepted by BA and this BA Agreement so amended, if BA does not, within thirty (30) calendar days following the date of the written notice, deliver to CE its written rejection of such Required Modifications. If BA submits a written rejection of the Required Modification, CE may terminate its business relationship with BA upon thirty (30) calendar days written notice, or such longer period as may be required by law. Other modifications to this BA Agreement may be made on mutual agreement of the parties.

**5.4 Business Relationship.** Except as specifically required to implement the purposes of this BA Agreement, and except to the extent inconsistent with this BA Agreement, all terms of the business relationship between the parties shall remain in full force and effect. In the event of a conflict between the terms of the business relationship between the parties and this BA Agreement, this BA Agreement shall control.

**5.5 Ambiguity.** Any ambiguity in this BA Agreement relating to the Use and Disclosure of PHI shall be resolved in favor of a meaning that furthers the obligations to protect the privacy and security of the PHI, whether electronic or other medium, in accordance with the Privacy Rule.

**5.6 Primacy.** To the extent that any provisions of this BA Agreement conflict with the provisions of any other agreement or understanding between the parties, this BA Agreement shall control with respect to the subject matter of this BA Agreement.

**5.7 Third Party Beneficiaries.** Except as expressly provided for in this BA Agreement or the Privacy Rule, there are no third-party beneficiaries to this BA Agreement.

**5.8 Independent Contractors.** No provision of this BA Agreement is intended to create, nor shall be deemed or construed to create, any employment, agency or joint venture relationship between CE and BA other than that of independent entities contracting with each other hereunder solely for the purpose of effectuating the provisions of this BA Agreement. None of the parties nor any of their respective representatives shall be construed to be the agent, employer, or representative of the other. The parties have reviewed the factors to determine whether an agency relationship exists under the federal common law of agency and it is not the intention of either CE or BA that BA constitute an “agent” under such common law.

**5.9 Counterparts; Facsimiles.** This BA Agreement and any exhibits hereto may be executed in one or more counterparts; each counterpart shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

**5.10 Notices.** All notices required or permitted to be given under this BA Agreement shall be in writing and shall be sufficient in all respects if delivered personally, by nationally recognized overnight delivery service, or by registered or certified mail, postage prepaid, addressed as set forth in the notice provisions under the IMA. Notice shall be deemed to have been given upon transmittal thereof as to those personally delivered, upon the first day after mailing as to those sent by nationally recognized overnight delivery service, and upon the third day after mailing as to those sent by United States Mail. The above addresses may be changed by giving notice in the manner provided for above.

IN WITNESS WHEREOF, the parties hereto have duly executed this BA Agreement to be effective as of the Effective Date.

<p><b>CE</b></p> <p><b>Seton Medical Center</b></p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>	<p><b>BA</b></p> <p><del>AHMC Healthcare, Inc.</del></p> <p><u><a href="#">KPC Global Medical Center of San Mateo County, LLC</a></u></p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>
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**Schedule 3.4 to IMA**

**Corporation's Billing Credentials**

<b>Provider Number Listing</b>	
<b>Medicare</b>	
05-0289	Seton Medical Center
ZZZ26237Z	Seton Medical Center (Part B)
55-5235	Seton Medical Center-SNF (hospital based)
05-S289	Seton Medical Center - Psych
05-7249	West Bay-HHA (closed Dec 2008 but number is technically still active)
<b>Medi-Cal</b>	
ZZR 00289G	Acute Inpatient Non-Contract
HSC 00289G	Acute Inpatient Contract
LTC 55235G	SNF Inpatient LTC
LTC 70037G	MAC Inpatient (LTC Subacute)
	<del>Gero-Psych</del> <a href="#">Geri-Psych</a>
HSP 40289G	Coastside - Outpatient
HHA 70027F	Home Health Agency (no longer used)

<b>Lockbox Accounts</b>			
<b>Account Name</b>	<b>Legal Entity</b>	<b>Bank</b>	<b>Account #</b>
Seton Medical Center (SMC) - Lockbox	Seton Medical Center	Bank of America	XXXXXX2902
Seton Medical Center Coastside (SMCC) - Lockbox	Seton Medical Center	Bank of America	XXXXXX2907



**Schedule 3.6 to IMA**

**Retained Contracts**

To be completed by the parties, in accordance with both the IMA and that certain Asset Purchase Agreement, dated as of ~~March 30~~ April 1, 2020 by and between CE and BA and certain other entities (the “APA”).



[Exhibit 1.3\(a\) to APA](#)

**SALE LEASEBACK AGREEMENT**

This Sale Leaseback Agreement (the “**Leaseback Agreement**”) is made and entered into as of ~~March 30~~[April \[●\]](#), 2020 (the “**Signing Date**”), by and among Seton Medical Center, a California nonprofit public benefit corporation (the “**Corporation**”) on the one hand, and ~~AHMC Healthcare Inc., a California corporation (“**Parent Company**”) and a legal entity to be formed and controlled by Parent Company (“**Hospital Newco**,” and collectively with Parent Company, **KPC Global Medical Center of San Mateo County, LLC, a California limited liability company (“**Parent Company**” or “**Manager**”) acting for itself and for any affiliates which acquired any of the Assets (as defined below) of the Corporation (collectively, the “**Parent Company Parties**”)**~~ on the other hand. The Corporation, Parent Company, and Hospital Newco may be referred to herein individually as a “**Party**,” and collectively as the “**parties**.”

**RECITALS**

**A.** On August 31, 2018, the Corporation and certain of its affiliates each filed a voluntary petition for relief (collectively, the “**Bankruptcy Cases**”) under chapter 11 of title 11 of the United State Code (the “**Bankruptcy Code**”).

**B.** The Bankruptcy Cases are jointly administered under Lead Case No. 18-20151 and are currently pending in the Bankruptcy Court for the Central District of California in Los Angeles (the “**Bankruptcy Court**”).

**C.** Parent Company, on the one hand, and the Corporation, Verity Health System of California, Inc., a California nonprofit public benefit corporation (“**Verity**”), and Verity Holdings, LLC, a California limited liability company (“**Verity Holdings**”, and together with Verity and the Corporation, “**Sellers**”), on the other, have entered into that certain Asset Purchase Agreement, dated of even date herewith (the “**APA**”), which provides for the sale of the assets of the Corporation and related assets (collectively, the “**Assets**”).

**D.** The Corporation operates two general acute care hospitals under a single license, consisting of: (i) the hospital known as Seton Medical Center, located at 1900 Sullivan Avenue, Daly City, CA 94015, including the related hospital pharmacy, laboratory and emergency department and (ii) the hospital known as Seton Medical Center Coastside, located at 600 Marine Blvd, Moss Beach, CA 94038, including the related hospital pharmacy, laboratory and emergency department (collectively, the “**Hospital**”), and such other locations where the Hospital’s services are provided (collectively, the “**Hospital Premises**”).

~~**E.** — Parent Company designated its affiliate, Hospital Newco, as the owner of the Corporation’s Assets purchased by Parent Company under the APA (the “**Designation**”), and its affiliate (the “**Manager**”) as the operator of the Hospital.~~

**FE.** Pursuant to Section 1.3 of the APA, the Corporation, Parent Company, ~~and as~~ the Manager, ~~are~~ is entering into that certain Interim Management Agreement (“**IMA**”) of even date herewith, and commencing at the Effective Time (as defined in the APA), to enable the Manager to manage the day-to-day operations of the Hospital following the Closing (as defined in the APA) until the Manager is issued the Licenses (as defined in the APA) necessary to operate the Hospital (for the avoidance of doubt, that date will occur when the Manager is issued both a license to operate the Hospital as an acute care hospital by the California Department of Public Health, and a permit to operate a hospital-based pharmacy by the California Board of Pharmacy (collectively, the “**New Licenses**”)).

**GF.** Pursuant to the APA, at the Effective Time, Parent Company will purchase the Hospital Assets, except for the Excluded Assets (as set forth in the APA). Also pursuant to the APA, that portion of the Assets constituting drugs, dangerous devices, pharmacy systems, or other pharmacy assets (the “**Pharmacy Assets**”) shall transfer to Parent Company (or its affiliate) as of the Licensure Date (as defined in the APA).

**G. To the extent Parent Company has designated any affiliate to acquire any part of the Assets, Parent Company has, and shall have, the authority (as both a lessor and sublessor) to enter into and lease back all of the Assets to the Corporation as contemplated herein.**

**H.** Immediately following the Closing, and until the ~~Manager~~ Parent Company obtains the New Licenses, the Parent Company Parties desire to lease back or license to the Corporation all of the then-acquired Hospital Assets used in the operation of the Hospital, and the Corporation desires to so lease or license such Hospital Assets from the Parent Company Parties on the terms and conditions set forth herein. The Hospital Assets shall exclude the Pharmacy Assets, which the Corporation shall own until the New Licenses are issued.

## AGREEMENT

NOW, THEREFORE, in consideration of the covenants and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

**1. Definitions.** Any capitalized term appearing herein that is not defined shall have the same definition ascribed to it under the IMA or the APA (as designated when such term first appears herein).

**2. Description of The Leased or Licensed Assets.**

**2.1 Leased or Licensed Assets.** The Parent Company Parties hereby lease or license to the Corporation, and the Corporation leases or licenses from the Parent Company Parties, all of the Assets used in the operation of the Hospital, except for the Pharmacy Assets, which the Corporation shall continue to own until the Licensure Date (as defined in the APA) (collectively, the “**Leased or Licensed Assets**”). Specifically, the Leased or Licensed Assets shall include:

(a) the Hospital Premises (which shall be leased); (b) tangible personal property, including, but not limited to, fixtures, furnishings, hard copy medical and financial records and equipment (including, but not limited to, hardware to operate and run the electronic health record systems, hospital operating systems, laboratory information systems, and financial reporting systems) (which shall be leased); and (c) intangible intellectual property saved or embodied in the electronic health record systems, hospital operating systems, laboratory information systems, and financial reporting systems (which shall be licensed for use by the Corporation).

## **2.2 Management of Pharmacy and Use of Pharmacy Assets.**

(a) The Corporation shall at all times during the term of this Leaseback Agreement be the owner of the Pharmacy Assets. The parties acknowledge, however, that under the IMA, the Manager will be managing the Corporation's pharmacy during the Management Period (as defined in the IMA), and the Corporation therefore grants the Manager (i) access to and authority to use the drugs, dangerous drug delivery devices, or other tangible pharmacy assets, and (ii) a license to use the intangible intellectual property saved or embodied in the pharmacy systems, in each case to the extent necessary for the Manager to fulfill its obligations under the IMA.

(b) Pursuant to the IMA, the Corporation shall be responsible for purchasing drugs and dangerous devices identified by the Manager as necessary for the operations of the Hospital, and the Manager shall reimburse the Corporation for all costs and expenses incurred for such purchases.

**3. Term; Termination.** This Leaseback Agreement shall have a term coextensive with the Management Period (as defined in the IMA) and shall automatically terminate upon the termination of the IMA.

## **4. Payments by the Parent Company Parties.**

**4.1 Utilities.** The Parent Company Parties shall pay all utilities and services supplied to the Hospital during the term hereof, including but not limited to water, gas, air conditioning, heat, light, power, telephone service, and waste removal services.

**4.2 Taxes.** The Parent Company Parties shall pay all taxes, assessments, and levies of any kind or nature whatsoever, including real property taxes, personal property taxes, income taxes, employment taxes, and sales or use taxes, that are taxed, assessed, levied, invoiced or imposed upon or against the Leased or Licensed Assets, the Hospital, and/or the Hospital Premises, after the Effective Time.

**4.3 Insurance.** The Parent Company Parties shall pay for all insurance coverages, including premiums, deductibles, stop-loss, and any other insurance covering the Leased or Licensed Assets, the Pharmacy Assets, the Hospital, and the Hospital Premises during the term hereof. The Parent Company Parties covenant and agree that the Leased or Licensed Assets, the Pharmacy Assets, the Hospital, and the Hospital Premises are covered as of the date hereof and will be covered at all times by general liability, fire, theft, business interruption, cyber,

professional liability, directors and officers insurance, employment practices liability, terrorism, workers' compensation & employers' liability, directors and officers, fiduciary, crime, punitive damages excess liability, physical damage, property liability, automobile, storage tank, helipad and non-owned aviation, sexual misconduct and molestation, medical provider professional liability, and provider capitation stop loss (managed care excess loss) insurance. All such insurance shall name the Parent Company Parties and the Corporation as insureds as their respective interests may appear.

**4.4 Repairs and Maintenance: Alterations.** The Parent Company Parties shall pay all costs of repairing (including replacement of) and maintaining the Leased or Licensed Assets and Hospital and every part thereof in good and sanitary order, condition and repair during the term hereof, reasonable wear and tear excepted, including, without limitation, all costs of all repairs, replacements and maintenance required by any applicable governmental law, statute, ordinance, rule or regulation, including the California Office of Statewide Health Planning and Development (OSHPD). The Corporation shall not make any alterations or changes to the Leased or Licensed Assets, the Hospital or the Hospital Premises without prior written approval of the Parent Company Parties, which may be given or withheld in the Parent Company Parties' sole discretion.

**4.5 Payment.** Nothing in this Section 4 shall in any way limit, reduce, or otherwise affect Parent Company's payment obligations under the IMA or the APA.

**5. Use.** The Leased or Licensed Assets shall be used for the operation of the Hospital, subject to the terms of the APA and the IMA.

**6. Risk of Loss.**

**6.1** The Corporation assumes no risks or liability for damage to or injury occurring to the Leased or Licensed Assets or Hospital during the term of this Leaseback Agreement by any means whatsoever, including fire, storm, earthquake, vandalism, strike, accident or any other casualty (collectively, "**Casualty**"), and the Parent Company Parties shall have all right, title, and interest in and to the proceeds of any insurance it obtained and paid for covering such Casualty.

**6.2** If, during the term of this Leaseback Agreement, action is initiated to take the Hospital Premises or any portion thereof by eminent domain proceedings or by deed in lieu thereof (collectively, "**Condemnation**"), the Parent Company Parties, and not the Corporation, shall have all right, title, and interest in and to the award from the Condemnation.

**6.3** In the event of a Casualty or Condemnation, neither the Parent Company Parties nor the Corporation may terminate this Leaseback Agreement.

**7. Continued Access.** Following termination of this Leaseback Agreement, and until the entry of final decrees closing the Bankruptcy Cases, the Patient Care Ombudsman, appointed by the United States Trustee pursuant to Bankruptcy Code § 333 and approved by the Bankruptcy

Court [*see* Docket No. 430], shall have continuing access to the Leased or Licensed Assets and related personnel during normal business hours and upon at least one (1) business day’s prior written notice to the Parent Company Parties, for the purpose of winding down the Corporation’s affairs, in connection with any litigation or adversary proceedings, and to effectuate the chapter 11 plan as approved by the Bankruptcy Court. All such access shall be permitted only in a manner, and to the extent, which reasonably protects patient privacy and the confidentiality of patient information under applicable Privacy Laws and protects the confidentiality of the Manager’s trade secrets and other confidential and proprietary documents and information.

**8. Miscellaneous.**

**8.1 Further Assurances.** Each of the parties hereto agrees to execute and deliver any and all further agreements, documents or instruments necessary to effectuate this Leaseback Agreement and the transactions referred to herein or contemplated hereby or reasonably requested by the other Party to perfect or evidence their rights hereunder.

**8.2 Notices and Demands.** All notices and demands, requests, consents, approvals, and other similar communications under this Leaseback Agreement shall be in writing and shall be sent by personal delivery or by either (a) United States certified or registered mail, return receipt requested, postage prepaid, or (b) Federal Express or similar generally recognized overnight carrier regularly providing proof of delivery, addressed as follows:

If to the Corporation: Seton Medical Center  
c/o Verity Health System of California, Inc.  
601 South Figueroa Street, Suite 4050  
Los Angeles, CA 90017-5704  
Attention: Chief Executive Officer

With copies to: Tania Moyron, Esq.  
(which copy shall not Dentons US LLP  
constitute notice) 601 South Figueroa St., Suite 2500  
Los Angeles, CA 90017-5704

and

Hope Levy-Biehl, Esq. Davis Wright Tremaine LLP  
865 S Figueroa St,  
Los Angeles, CA 90017

~~Hope Levy-Biehl, Esq.~~  
~~Davis Wright Tremaine LLP~~  
~~865 S Figueroa St,~~  
~~Los Angeles, CA 90017~~

If to ~~Purchaser:~~Manager  
and/or

~~AHMC Healthcare Inc.~~  
~~55 S. Raymond Ave., Suite 105~~

the Manager:

~~Alhambra, CA 91801~~  
~~Attention: Jonathan Wu~~  
~~Faeximile: 626-289-8952~~  
KPC Global Medical Center of San Mateo County,  
LLC  
9 KPC Parkway, Suite 301  
Corona, CA 92879  
Attention: William E. Thomas

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

~~AHMC Healthcare Inc., Legal Department~~  
~~500 E. Main St., 5th Floor~~  
~~Alhambra, CA 91801~~  
~~Attention: Maan Huei Hung, Esq.~~  
~~Faeximile: 626-248-3303~~  
Levene, Neale, Bender, Yoo & Brill L.L.P.  
10250 Constellation Blvd., Suite 1700  
Los Angeles, CA 90067  
Attn.: Gary E. Klausner, Esq.

and

Loeb & Loeb LLP  
10100 Santa Monica Blvd., Suite 2200  
Los Angeles, CA 90067  
Attn.: Allen Z. Sussman, Esq.

Any notice so given by mail shall be deemed to have been given as of the date of delivery (whether accepted or refused) established by U.S. Post Office return receipt or the overnight carrier's proof of delivery, as the case may be, whether accepted or refused. Any such notice not so given shall be deemed given upon receipt of the same by the Party to whom the same is to be given. Any Party hereto may designate a different address for itself by notice to the other parties in accordance with this Section 8.2.

**8.3 Payment of Expenses.** Except for the Parent Company Parties' obligation to be responsible for certain costs, fees, and expenses as set forth elsewhere in this Leaseback Agreement, each Party hereto shall bear its own legal, accounting, and other expenses incurred in connection with the preparation and negotiation of this Leaseback Agreement and the consummation of the transactions contemplated hereby, whether or not the transaction is consummated.

**8.4 Rent.** The Corporation has prepaid the sum of One Thousand Dollars (\$1,000.00), the receipt of which is hereby acknowledged by the Parent Company Parties, and the

Corporation shall not be required to pay the Parent Company Parties any additional rent under this Leaseback Agreement.

**8.5 Entire Agreement; Amendment; Waiver.** This Leaseback Agreement, the IMA, and those provisions of the APA expressly identified in this Leaseback Agreement contain the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements, arrangements, and understandings relating to the subject matter hereof and thereof. There are no written or oral agreements, understandings, representations, or warranties among the parties other than those set forth in this Leaseback Agreement, the IMA, and those provisions of the APA expressly identified in this Leaseback Agreement. Nothing in this Leaseback Agreement modifies or shall be construed as modifying any orders entered by the Bankruptcy Court, or the APA as approved by the Bankruptcy Court and in the event of any conflict between the APA and this Agreement, the provisions in the APA shall be controlling over the provisions herein. This Leaseback Agreement may not be modified or amended except in writing signed by the parties hereto. No waiver of any term, provision or condition of this Leaseback Agreement in any one or more instances, shall be deemed to be or be construed as a further or continuing waiver of any such term, provision or condition of this Leaseback Agreement. No failure to act shall be construed as a waiver of any term, provision, condition or rights granted hereunder.

**8.6 Assignment.** Neither this Leaseback Agreement nor the rights, duties or obligations arising hereunder shall be assignable or delegable by the Corporation or the Parent Company Parties without the prior written consent of the other parties, which may be granted, denied or conditioned in such Party's absolute discretion except that the Parent Company Parties may assign this Leaseback Agreement to any affiliate of the Parent Company Parties or otherwise in connection with any permitted assignment under the IMA. Subject to the foregoing, this Leaseback Agreement shall be binding upon, and inure to the benefit of, the respective successors and assigns of the parties hereto.

**8.7 Joint Venture; No Third Party Beneficiaries.** Nothing contained herein shall be construed as forming a joint venture or partnership among the parties hereto with respect to the subject matter hereof. The parties hereto do not intend that any third party shall have any rights under this Leaseback Agreement.

**8.8 Captions.** The section headings contained herein are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

**8.9 Governing Law.** This Leaseback Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to its conflicts of laws principles or decisions.

~~**8.10 Jurisdiction.** The parties agree that the Bankruptcy Court shall have exclusive personal and subject matter jurisdiction over any action or proceeding with respect to any claim arising out of or related to this Leaseback Agreement, and any of the documents or transactions contained in or contemplated by this Leaseback Agreement; provided, however, that the parties~~

~~agree that the United States District Court for the Central District of California (together with the Bankruptcy Court, the “Chosen Courts”) shall have exclusive jurisdiction over such claim if (i) the Bankruptcy Cases are closed and if the Bankruptcy Cases are not reopened to adjudicate such claim after request by the Party bringing such claim or (ii) the Bankruptcy Court determines that it does not have jurisdiction over such claim. Solely in connection with claims arising under this Leaseback Agreement, or any of the documents or transactions contemplated hereby, the parties (a) irrevocably submit to the exclusive jurisdiction of the Chosen Courts, (b) waive any objection to laying venue in any such action or proceeding in the Chosen Courts, (c) waive any objection that the Chosen Courts are an inconvenient forum or do not have jurisdiction over any Party hereto, and (d) agree that service of process upon such Party in any such action or proceeding shall be effective if notice is given in accordance with Section 8.2 hereof~~

**8.10 Jurisdiction. All claims, disputes or controversies that may arise under or in connection with this Leaseback Agreement or any award or judgement arising hereunder shall be resolved in the manner provided in Section 12.3 of the APA.**

**8.11 Conditions to Effectiveness.** The parties acknowledge that this Leaseback Agreement is subject to and contingent upon the occurrence of the Closing under the APA. This Leaseback Agreement shall not be effective, nor shall any Party have any obligations hereunder, unless and until the Closing under the APA has occurred.

**8.12 Cooperation on Regulatory Compliance Matters.** The Parent Company Parties understand and acknowledges that the Corporation intends to comply with applicable federal and state laws, regulations, and guidance, as well as the requirements or recommendations of any accrediting agencies. In the event the terms of this Leaseback Agreement need to be amended or supplemented based on guidance from or at the request or direction of a regulator made during the term of this Leaseback Agreement, the Parent Company Parties shall cooperate with such amendment and/or supplement to ensure the Corporation’s ability to comply with such guidance, request, recommendation or directive.

**8.13 Transition Services Agreement.** Pursuant to Section 1.4.8 and Section 1.5.8 of the APA, the Sellers and Parent Company will enter into a Transition Services Agreement to facilitate the winding down of the Sellers’ businesses, the completion of the Bankruptcy Cases, and the dissolution of the Sellers. The parties hereto shall cooperate with each other to enable the Corporation and the Parent Company Parties to carry out their obligations under, and give effect to the terms of, the Transition Services Agreement.

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

**8.15 Counterparts.** This Leaseback Agreement may be executed by one or more of the parties hereto on any number of separate counterparts (including by telecopy), and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Leaseback Agreement may be delivered by facsimile or electronic transmission, including by



e-mail as a PDF, and facsimile or PDF copies of executed signature pages, which shall be binding as originals.

*[Signature Page Follows.]*

IN WITNESS WHEREOF, the parties agree to the foregoing terms of agreement through the execution below by their respective, duly authorized representatives as of the Signing Date.

**Parent Company Parties:**

**Corporation:**

~~AHMC HEALTHCARE INC.~~

**SETON MEDICAL CENTER,  
a California non-profit public,  
benefit corporation**

KPC GLOBAL MEDICAL CENTER OF  
SAN MATEO COUNTY, LLC

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

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

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

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

Name: ~~Jonathan~~  
~~Wu~~ \_\_\_\_\_

Title: ~~President/CEO~~ Manager