

## HOSPITAL ASSET PURCHASE AGREEMENT

THIS HOSPITAL ASSET PURCHASE AGREEMENT (the “**Agreement**”), is entered into as of July 14, 2021 (the “**Execution Date**”), by and between Nacogdoches County Hospital District d/b/a Nacogdoches Memorial Hospital, a hospital district created by statute of the State of Texas (“**Seller**” or “**District**”), and Lion Star Nacogdoches Hospital, LLC, a Texas limited liability company (“**Buyer**”). Defined terms used but not otherwise defined herein shall have the meanings contained in **Exhibit A** hereto.

### RECITALS:

WHEREAS Seller owns and operates the Nacogdoches Memorial Hospital located at 1204 Mound Street, Nacogdoches, Texas (the “**Hospital**”) and various affiliated ancillary healthcare clinics or facilities (collectively the “**Ancillary Operations**”), all located in Nacogdoches County, Texas;

WHEREAS upon the terms and conditions provided for herein Seller desires to transfer operational and management control of the Hospital and Ancillary Operations to Buyer and to sell certain identified assets of the Hospital and Ancillary Operations to Buyer in consideration of Buyer’s agreement to pay the price specified herein, to pay the rent, subject to the charity care provisions, and to make the Capital Commitments provided for under the Lease (as defined below), and subject to Buyer’s undertaking to assume certain of the liabilities of the Seller, all on the terms and conditions set forth herein;

WHEREAS Seller desires (i) to lease pursuant to a concurrent Lease Agreement (the “**Lease**”) the Hospital and Ancillary Operations to Buyer, inclusive of not only the building and improvements to the Seller’s owned real property on the main campus at 1204 Mound Street, Nacogdoches, Texas and inclusive of the Seller-owned real estate and buildings indicated on **Exhibit A** and **Exhibit A-1** attached to such Lease (the “**Lease Premises**”), but also the furniture, fixtures and equipment, including computer hardware and equipment, located within such Lease Premises located in the Hospital and Ancillary Operations (the “**Seller FF&E**”, but excluding certain furniture, fixtures and equipment indicated in **Exhibit B** of such Lease and either used for the Seller’s continuing administration or operations or otherwise not used in the Hospital and Ancillary Operations), and electronic medical records (taken in total the assets referenced in this clause (i) as covered by such Lease, the “**Lease Assets**”) and (ii) pursuant to this Agreement, to sell certain of the assets of the Seller and Hospital and Ancillary Operations, including, but not limited to, all inventory and supplies used in the Hospital and Ancillary Operations (collectively, the “**Hospital Operations**”) and, subject to the provisions and exclusions herein, the accounts receivable of the Hospital Operations, and prepaid accounts and licenses of the Hospital Operations, to the extent assignable (collectively the “**Purchased Assets**”) as further identified herein, (iii) pursuant to this Agreement, to grant an exclusive license for the use of the trademark and name Nacogdoches Memorial Hospital” and a license for other intellectual property of the Seller used in association with the Hospital Operations during the term of the Lease, and (iv) to have Buyer assume certain of the liabilities of the Seller at the price and on the terms and conditions set forth below;

WHEREAS Buyer desires (i) to lease from the Seller pursuant to the concurrent Lease the Lease Assets, and (ii) pursuant to this Agreement, to purchase such Purchased Assets as further identified herein, (iii) to license the name and trademark and other intellectual property used in association with the Hospital Operations, and (iii) to assume certain of the liabilities of the Seller, all of the preceding at the price and on the terms and conditions set forth herein (all of the preceding in clauses (i), (ii) and (iii) of this and the preceding recital being collectively referred to as the “**Transactions**”); and

WHEREAS Seller has concluded that the Transactions contemplated by this Agreement are in its best interests and consistent with its mission of the promotion of health to the community served by the Hospital and the provision of medical and hospital care for the District’s needy inhabitants;

NOW, THEREFORE, for and in consideration of the premises, and the agreements, covenants, representations and warranties hereinafter set forth, and other good and valuable consideration, the receipt and adequacy of which are forever acknowledged and confessed, the Parties, intending to be legally bound, agree as follows:

## **ARTICLE I. PURCHASE AND SALE OF ASSETS**

**Section 1.01 Purchase and Sale of Assets.** At the Closing and subject to the terms and conditions of this Agreement and to the concurrent Closing of the Lease, Seller shall sell, transfer, convey, assign and deliver to Buyer, and Buyer shall purchase from Seller, all rights, title, and interest in and to the following Purchased Assets owned by Seller and held or used in the Seller’s Hospital Operations:

(a) All inventories of usable goods and supplies of the Hospital Operations owned by Seller, including pharmaceuticals and medications, food, janitorial supplies, office supplies, forms, consumables, disposables, linens, and medical supplies (collectively, the “**Purchased Inventory**”);

(b) all accounts receivable of the Hospital Operations related to patient revenue generated at the Hospital and Ancillary Operations and any accounts receivable that are legally attached to the Hospital license, and any security, claim, remedy or other right related to any of the foregoing (“**Accounts Receivable(s)**”), and including any of the accounts receivables or payments attributable to settlements related to tobacco, opioids, or other products where the claims arose and related services were performed after the Closing, except for accounts receivable or payment entitlements expressly provided for in Section 1.02;

(c) Those leases, leasehold interests or other contractual rights relating to the personal property used in the Hospital Operations (the “**Personal Property Leases**”) to which Seller is a Party described on Schedule 1.01(c);

(d) Those Contracts and contract rights of Seller relating to the Hospital Operations of any type or nature, including equipment leases, as determined in accordance

with the procedures set forth in Section 7.02 (the “**Assumed Contract(s)**” to which Seller is a Party as described on Schedule 1.01(d)), but excluding the Excluded Contracts;

(e) Those real property leases, leasehold interests or other contractual rights, interests, easements and appurtenances relating to the Hospital Operations (whether as (sub)lessor or (sub)lessee) (the “**Assumed Real Property Leases**”) to which Seller is a Party described on Schedule 1.01(e); provided, however, interests in such Assumed Real Property Leases and related premises may be conveyed by subleases conveying substantially all Seller’s rights as lessee and providing for assumption of substantially all Seller’s obligations from the Effective Time in the case of the premises at 1106-1108 South Street and 1018 North Mound Street (the “**South Street Sublease**” and “**Mound Street Sublease**” respectively and collectively the “**Subleases**”); and with regard to any representation and warranty made by Seller under the Agreement the term “**Assumed Real Property Leases**” shall also include the leases pursuant to which Seller holds an interest in the real estate subject to the Subleases); and provided further upon the termination of the Lease for any reason such Assumed Real Property Leases to the extent still in effect shall be reassigned to Seller, subject to landlord consents, if necessary, together with rights to security deposits provided by Seller, if any, deposited with such landlords and such Subleases shall be terminated;

(f) To the extent transferable or assignable and subject to any applicable consent requirements, rights to all state, federal, special or local licenses or permits (including, but not limited to, air, water or other environmental licenses and permits), rights, franchises, accreditations, registrations, permits, approvals and consents, and all applications therefor and waivers of any requirements pertaining thereto (each a “**License**” and collectively, the “**Licenses**”) issued to Seller for the Hospital Operations, including the Licenses described on Schedule 1.01(f);

(g) The deposits, escrows, prepaid expenses or other advance payments of Seller relating to the Hospital Operations which are assumable and usable by Buyer listed on Schedule 1.01(g) (collectively, the “**Prepaid Expenses**”);

(h) To the extent transferable or assignable and subject to any applicable consent requirements, all documents, books, records, operating and policy manuals, compliance policies, and files owned by Seller, pertaining to or used primarily in connection with the Hospital Operations, whether in hard copy or other form, patient records, medical records, medical staff records, clinical records, financial records, equipment records and medical and administrative libraries, personnel records and purchase and vendor records, existing and wherever located (collectively, the “**Transferred Records**”), but excluding the Excluded Records, subject to the Parties’ rights under Section 7.01; provided, however, ownership and rights to such Transferred Records shall revert to Seller without further consideration upon any termination of the Lease;

(i) In the event Seller makes any one or more intergovernmental transfers (“**IGT(s)**”) on behalf of the Hospital prior to the Effective Time, Seller shall remit to Buyer an amount equal to any net payment amounts received on or after July 1, 2021 that are

attributable to such IGTs, net of any related financing incurred therefor, for, among other purposes, providing indigent care in the community served by Seller, including but not limited to IGTs related to any Medicare or Medicaid Disproportionate Share Hospital (“**DSH**”) payments, Delivery System Reform Incentive Payments (“**DSRIP**”), or Uncompensated Care Payments (“**UC**”) (but excluding any Quality Incentive Payment Program (“**QIPP**”) payments);

(j) Any casualty insurance proceeds and casualty insurance proceeds receivable (subject to applicable deductibles, co-payments or self-insured requirements) arising from the Purchased Assets to the extent provided in Section 5.06;

(k) To the extent transferable or assignable, all provider numbers and related agreements related to any Government Reimbursement Programs and all contracts with any Government Reimbursement Program or other third-party payor or other party that reimburses Seller for the provision of medical services at the Hospital Operations;

(l) All claims of Seller against third parties, if any, relating to the Purchased Assets; and

(m) Seller’s motor vehicles used in the Hospital Operations (other than in the ambulance service) as listed on Schedule 1.01(m); provided, however, ownership and title to such vehicles shall be transferred back to Seller without further consideration upon termination of the Lease or, to the extent any of such vehicles become inoperable or are otherwise no longer in service, Buyer shall either transfer such particular vehicles to Seller at such time or pay to Seller the net proceeds realized by Buyer, if any, from the disposition of any such vehicle after deduction of all of Buyer’s sale expenses.

**Section 1.02 Excluded Assets.** Notwithstanding anything to the contrary, Seller is not selling, and Buyer is not purchasing the following assets which shall remain the property of Seller after the Closing (the “**Excluded Assets**”):

(a) Any ownership interest in (i) any of the Lease Assets owned by Seller, including computer hardware and equipment, all of such Lease Assets to be conveyed by leasehold interest to the Buyer pursuant to the Lease and (ii) any other real estate owned by Seller as indicated on Schedule 3.09(b) (collectively with such Lease Premises, the “**Owned Real Estate**”), and (iii) any of the furniture, fixtures and equipment owned by Seller indicated in **Exhibit B** of such Lease, or located at locations other than the Lease Premises; in addition, the Parties shall retain a qualified independent firm to conduct a detailed inventory of all such Seller FF&E owned by Seller located at the Lease Premises (the “**FF&E Inventory**”), including computer hardware and equipment, during the 180 days following the Closing; the Parties shall share equally the expense of such FF&E Inventory. Both Parties shall be presented the results of such FF&E Inventory and shall acknowledge in writing the results of such FF&E Inventory, except to the extent Buyer contests Seller’s ownership of any such recorded Seller FF&E (in which event Buyer shall present evidence of its own purchase or acquisition of any such furniture, fixtures or equipment or, if applicable, Buyer may contest the presence of any such recorded Seller

FF&E at the Lease Premises), with any dispute related to such FF&E Inventory being resolved in accordance with Section 11.18 hereof);

(b) Seller's interests in certain skilled nursing facilities located outside Nacogdoches County (the "**SNF Facility(ies)**"), as indicated on Schedule 1.02(b), and any of Seller's assets and liabilities related thereto, including any of the accounts receivables or rights to receive any governmental reimbursement or payments related to such SNF Facilities, and any inventories or supplies, or other personal property principally related to or located at the SNF Facilities;

(c) Any of the accounts receivables or payments (i) attributable to settlements related to tobacco, opioids, or other products where the claims arose and related services were performed prior to Closing; provided, however, Buyer shall be entitled to any accounts receivables or payments attributable to any opioid related settlements that are related to any treatment or medical services provided by Buyer on and after Closing Date. The Parties agree to work in good faith in apportioning any such receivables or payments; and (ii) for the avoidance of doubt, if IGTs were deemed to be Accounts Receivable then such IGTs shall be Excluded Assets;

(d) All rights to current and future sales tax or ad valorem tax proceeds (subject to any amounts owed by Seller under the Lease to the extent sourced from such proceeds);

(e) Except as set forth in Section 1.01(i), all cash, cash equivalents, investments in securities, and the accounts in which those assets are deposited, including without limitation, all bank accounts of the Seller;

(f) All cash, cash equivalents, investments in securities of the Nacogdoches Memorial Hospital Corporation (the "**Foundation**"), and the bank accounts in which those assets are deposited;

(g) All cash, cash equivalents, investments in securities of the Nacogdoches Memorial Hospital Auxiliary (the "**Auxiliary**") and the bank accounts in which those assets are deposited;

(h) All furniture, fixtures, equipment and inventory of the Auxiliary;

(i) All rights under Contracts identified on Schedule 1.02(i) as excluded from this Agreement pursuant to those procedures set forth in Section 7.02 (collectively, the "**Excluded Contracts**");

(j) any Employee Benefit Plan of any nature whatsoever applicable to Seller's employees (except that Buyer shall have liability for and to the extent provided in Section 7.10);

(k) The corporate record books, minute books, corporate seals and tax records of Seller and all records of any kind that Seller is required by Legal Requirements to retain in its own possession (collectively, the "**Excluded Records**"), subject to the Parties' rights under Section 7.01;

(l) the Seller's EMS ambulance service and all assets and liabilities and Contracts related thereto, including without limitation any vehicles or separate facilities of such ambulance service, and including the Durst Street EMS Building, 2723 Durst Street, Nacogdoches, Texas and the Ambulance Shop at 700 Woods Street, Nacogdoches, Texas;

(m) All claims of Seller against third parties relating to the Excluded Assets;

(n) Such other property and assets, if any, specifically described on Schedule 1.02(n);

(o) All rights of Seller under this Agreement or the Lease or any other Transaction Documents or other agreement contemplated hereby;

(p) All claims for refunds of Taxes, if any, and of other governmental charges of whatever nature;

(q) All personnel records and other books and records (or copies thereof, as applicable) that Seller is required by law to retain in its possession; provided, however, that the originals or copies of all such records shall be provided to Buyer at the Closing; and

**Section 1.03 Assumption of Liabilities.** As of the Effective Time, Buyer shall assume and agree to pay, discharge and perform according to their terms only the following liabilities and obligations of Seller (collectively, the "**Assumed Liabilities**"), and specifically excluding the Excluded Liabilities:

(a) All liabilities and obligations arising out of Buyer's operation of the Hospital Operations or the use or ownership of the Purchased Assets by Buyer from and after the Effective Time;

(b) All liabilities and obligations under or arising out of the Assumed Contracts and the Assumed Real Property Leases on and after the Effective Time; provided, however, Buyer shall not assume any liabilities or obligations arising out of or in connection with Seller's breach or alleged breach of such Assumed Contracts, CIA, or Assumed Real Property Leases;

(c) All liabilities and obligations arising under any Licenses from and after the Effective Time, to the extent such liabilities and obligations relate to Buyer's use or ownership of the Hospital Operations or the Purchased Assets, except to the extent that such liabilities and obligations otherwise constitute Excluded Liabilities or Excluded Assets;

(d) Except to the extent related to the Excluded Liabilities and/or Excluded Assets, Seller's outstanding accounts payable and trade liabilities related to the Hospital Operations to the extent no more than 12 months old from the Effective Time; and

(e) Liabilities and obligations of Seller as of the Effective Time for accrued paid time off, whether for vacation or otherwise, for each Seller employee that is offered and accepts employment with Buyer (each a "**Hired Employee(s)**") to the lesser of (i)

existing accrued amounts of vacation leave and other paid time off (“**PTO**”) of each such employee or (ii) eighty (80) hours of PTO for each such employee accrued through July 8, 2021 and all PTO accruing from July 9, 2021 through the Effective Time (the “**Assumed PTO**”); provided, however, Seller shall pay Hired Employees for all remaining PTO within ten (10) business days after Closing.

**Section 1.04 Excluded Liabilities.** Except for the Assumed Liabilities, Buyer shall not assume or become liable or obligated in any way and Seller shall retain and remain solely liable for any obligation to pay, perform and discharge all Liabilities of Seller, regardless of when asserted, including without limitation, any of the following (collectively, the “**Excluded Liabilities**”):

(a) Any obligations or liabilities of Seller under the Excluded Contracts, including leases and other contracts related to the operation of the SNF Facilities;

(b) All obligations related to Series 2013 Bonds issued in the original principal amount of \$44,360,000, the Series 2015 Bonds issued in the original principal amount of \$8,775,000, and the Series 2016 Bonds issued in the original principal amount of \$7,270,000 (collectively the “**Bonds**”);

(c) All obligations, liabilities, and/or repayment obligations, if any, related to Seller’s receipt and use of funds related to the Paycheck Protection Program (if any) or the Provider Relief Fund or Medicare Accelerated Payments Program (each to the extent specified in Section 1.09 (hereunder) arising out of the Coronavirus Aid, Relief and Economic Security Act (the “**CARES Act**”) or other similar COVID-19 relief programs;

(d) Seller will remain solely liable for any repayment obligations, recoupments, or reconciliations with respect to past and current IGTs and any payments made and received in respect thereof in and for periods prior to the Effective Time;

(e) Obligations or liabilities of Seller by reason of any failure to comply with the rules and regulations of any Government Reimbursement Program or Private Program which is attributable to any period of time ending prior to the Effective Time;

(f) Any obligation or liability of Seller arising out of or relating to any violation of any Legal Requirements prior to the Effective Time;

(g) All obligations related to the Nacogdoches County Hospital District Retirement Plan (the “**Pension**”) and any obligation or liability of Seller arising out of or relating to any Employee Benefit Plan of any nature whatsoever maintained by Seller or its Affiliates for the benefit of its or their employees (except that Buyer shall have liability for and to the extent provided in Section 7.10 and for Assumed PTO);

(h) All liabilities for PTO for Seller employees who do not become Hired Employees of Buyer and liabilities in excess of Assumed PTO for Seller employees that do become Hired Employees of Buyer, which liabilities shall be paid by Seller;

(i) Obligations or liabilities for Taxes arising from Hospital Operations or other sources for periods prior to the Effective Time, including, without limitation, (1) any Taxes arising as a result of Seller's operation of the Hospital Operations or ownership of the Purchased Assets or Lease Assets prior to the Effective Time; and (2) any deferred Taxes of any nature; provided however, if at any time following Closing the Purchased Assets and/or Leased Assets are assessed for real estate or personal property taxes, the Buyer shall be liable for such Taxes;

(j) Obligations or liabilities to Government Reimbursement Programs and/or Private Programs for overpayments, recoupments, and other financial obligations arising from adjustments or reductions in reimbursement attributable to events, transactions, circumstances, or conditions occurring or existing prior to the Effective Time (except that with respect to Accounts Receivable actually collected by Buyer, Seller shall have no liability to Buyer for any subsequent adjustments to those collected Accounts Receivable made in the Ordinary Course of Business attributable to routine adjustments, negotiated discounts, or cost report adjustments, unless such adjustments would cause a breach of the representations of Seller set forth in Section 3.14 hereof);

(k) Obligations or liabilities to Government Reimbursement Programs, Private Programs, and/or Governmental Authority arising from disposition, settlement, or resolution of the Children's Hospital Association of Texas (CHAT) v. Azar litigation and related litigation regarding Disproportionate Share Hospitals (DSH) costs and entitlements;

(l) Seller's expenses relating to this Agreement;

(m) All professional liability claims, general liability claims or other claims for acts or omissions of Seller;

(n) All liabilities and obligations arising out of Seller's operation of the SNF Facilities, Auxiliary, or Foundation or, except for Assumed Liabilities, all liabilities and obligations arising out of the Hospital Operations or the use or ownership of the Purchased Assets by Seller prior to the Effective Time;

(o) Any debts, obligations, expenses or liabilities that are not Assumed Liabilities, other than potential adjustments to collected Accounts Receivable as provided in Section 1.04(j) above;

(p) Any liabilities, debts, or obligations associated with or arising out of the Excluded Liabilities, Excluded Assets or Owned Real Estate (except as required under the Lease); and

(q) Any liabilities, debts, responsibilities, or obligations of Seller under Texas Health and Safety Code Chapter 61 (the Indigent Health Care and Treatment Act).

**Section 1.05 Intellectual Property License.** In consideration of Buyer's payment of the Purchase Price and the other mutual agreements of the parties herein, Seller hereby grants to Buyer a license (the "**Intellectual Property License**") for the following intellectual property (the "**Licensed Intellectual Property**") used in connection with the Hospital Operations effective at

the Effective Time and for a period to run coterminous with the Lease, and terminating without further action or consideration upon termination of such Lease for any reason:

(a) an exclusive license to the names, logos and symbols used by Seller in connection with the Hospital Operations, including the name “Nacogdoches Memorial Hospital,” and all telephone and facsimile numbers as currently used by Seller primarily in support of the Hospital Operations and to the extent held or used in or ancillary to the Hospital Operations and owned by Seller, other trademarks, trade names, service marks, copyrights and any applications therefor, and domain names;

(b) a co-exclusive license, to the extent also held or used in the Seller’s ambulance operations or with respect to other Excluded Assets, to mask works, net lists, schematics, technology, know-how, trade secrets, ideas, algorithms, process, or intangible proprietary information as well as any other intellectual property material set forth on Schedule 1.05(b) and in each case pertaining to or used in connection with the Hospital Operations, whether in hard copy or other form; and

(c) a co-exclusive license, to the extent also held or used in the Seller’s ambulance operations or with respect to other Excluded Assets, to operating and policy manuals, compliance policies, and similar files and records owned by Seller pertaining to or used in connection with the Hospital Operations, whether in hard copy or other form.

Buyer is hereby licensed and authorized after the Closing and during the term of the Lease to use any and all such intellectual property in substantially the manner used by Seller prior hereto and in such additional manner and for such additional purposes as (x) represent reasonable extensions of such use for Hospital Operations or other healthcare purposes, or (y) as may be consented to in writing by Seller, such consent not to be unreasonably withheld; provided further however, Buyer shall not discontinue use of the name and mark “Nacogdoches Memorial Hospital” as the principal business name of the Hospital except in connection with a Disposition of the Hospital in accordance with the transfer and assignment provisions of the Lease or otherwise with the prior written consent of Seller, not to be unreasonably withheld.

**Section 1.06 Purchase Price.** The consideration payable by Buyer for the Purchased Assets will be an amount equal to Three Million Dollars (\$3,000,000.00)(the “**Cash Closing Payment**”) payable by Buyer to Seller in cash at Closing by wire transfer of immediately available funds to the Seller in accordance with the wire transfer instructions provided to Buyer by Seller and, collectively with the Capital Commitments described in the Lease and the Assumption of Liabilities described in Section 1.03 hereof, the “**Purchase Price**”).

**Section 1.07** *[intentionally deleted]*

**Section 1.08 Tax Allocation.** The Purchase Price will be allocated among the Purchased Assets for all Tax purposes in accordance with Section 1060 of the Code as described on **Schedule 1.08** hereto. After the Closing, the Parties shall make consistent use of such allocation for all Tax purposes and in any Tax Returns filed with the Internal Revenue Service in respect thereof,

including IRS Form 8594. In any Proceeding related to the determination of any Tax, neither Buyer nor Seller shall contend or represent that such allocation is not a correct allocation.

### **Section 1.09 CARES Act Liabilities and Arrangements.**

(a) The Seller has received a total of Fourteen Million Eight Hundred Eighty Thousand Seven Hundred and Ninety-Nine Dollars (\$14,880,799) related to the CARES Act Provider Relief Fund (the “**Provider Relief Fund**”) or other similar funding related to COVID-19 relief provided by the United States or Texas arising out of the CARES Act, and may receive similar additional funds prior to the Effective Time (collectively the “**Provider Relief Fund Payments**”). To date, One Million Nine Hundred Fifty-Seven Thousand Three Hundred Forty-Nine Dollars (\$1,957,349.00) of such Provider Relief Fund Payments remains unexpended and on the Seller’s balance sheet. Until the Provider Relief Fund Payments are fully allocated, and justification of use is fully approved by HHS (or other applicable Governmental Authority) for either lost revenue attributable to COVID-19 or health-related expenditures used to prevent, prepare for, and respond to coronavirus, (including but not limited to: supplies, equipment, workforce training, reporting COVID-19 test results to federal, state, or local governments, building or constructing temporary structures for COVID-19 patient care or non-COVID-19 patients in a separate area, acquiring additional resources, including facilities, supplies, or staffing to expand or preserve care delivery, developing and staffing emergency operation centers or other HHS approved uses), it is mutually understood that, after the Effective Time and in accordance with the provisions of the Provider Relief Fund program in its current form or as it may be amended, HHS (or other applicable Governmental Authority) could demand repayment of or recoup some or all of such Provider Relief Fund Payments with interest (each an “**HHS Payback(s)**”) from the Hospital, notwithstanding that between the Parties the amount of such HHS Paybacks would be the exclusive liability of Seller. Accordingly, the Seller agrees that the HHS Paybacks of Provider Relief Fund Payments, or any similar payment made from the Provider Relief Fund program arising out of the CARES Act shall as between the Parties hereto remain the exclusive liability of Seller. If HHS (or other applicable Governmental Authority) demands any such HHS Payback of Provider Relief Fund Payments from the Hospital the Seller agrees to promptly pay back the full liability on behalf of the Buyer. The Seller shall not demand, expect, or request Buyer to accept as payment any offset to any future payments to Seller from Buyer that may become due hereunder or under any ancillary agreements. Further, Seller shall remain solely responsible for: (i) the submission of any documentation to HHS (or other Governmental Authority) to substantiate that Provider Relief Fund Payments were used for authorized health care-related expenses or lost revenue attributable to coronavirus; and (ii) retaining the original documentation for three (3) years, or the applicable time period, after the date of submission of the final expenditure report, in accordance with 2 CFR 200.333.

(b) The Seller has also received Seven Million Seven Hundred One Thousand Eight Hundred Ninety-Eight Dollars (\$7,701,898.00) specifically allocated to the Medicare Accelerated and Advance Payment Programs, arising out of the CARES Act and may receive similar additional funds prior to the Effective Time (“**CARES Accelerated Payments**”). It is mutually recognized that, after the Effective Time and in accordance with the provisions of the CARES Accelerated Payments program in its current form or

as it may be amended, unless treated as a grant and Reclassified CARES Accelerated Payment (as defined below), Centers for Medicare and Medicaid Services (“CMS”) (or other applicable Governmental Authority) might withhold payments from the Hospital’s patient accounts receivable or demand repayment with interest (each as the case may be a “**CMS Withhold/Payback**”) to pay back the advance of the CARES Accelerated Payments, notwithstanding that between the Parties the amount of such CMS Withhold/Paybacks or any similar payment made from any Accelerated and Advance Payment Programs would be the exclusive liability of Seller. Accordingly, the Seller shall at Closing deposit in escrow with Commercial Bank of Texas, N.A. or another mutually agreeable escrow agent Six Million Dollars (\$6,000,000.00) of such advanced CARES Accelerated Payments (or such lesser amount as may be agreed to by Seller and Buyer in writing), but in any event the “**CARES Escrow Funds**”), pursuant to an Escrow Agreement in substantially the form attached hereto as **Exhibit C** (“**CARES Escrow Agreement**”), in order to provide for a principal source for any CMS Withhold/Paybacks pursuant to the Medicare Accelerated Payments Program as a result of the CARES Accelerated Payments, with such CARES Escrow Funds to be released from escrow to Buyer from time to time to the extent that CMS Withhold/Paybacks are assessed by HHS (or other applicable Governmental Authority) against Buyer. In the event that the CARES Escrow Funds are insufficient to cover the full amount of the CMS Withhold/Payback, then Seller shall promptly remit the difference to Buyer. Seller hereby agrees to grant, and agrees to allow Buyer’s lender to place, a first lien on the CARES Escrow Funds deposited pursuant to the CARES Escrow Agreement. It is mutually agreed that the Seller shall compensate Buyer in cash from such CARES Escrow Funds and shall not demand or request Buyer to accept as payment an offset to any future payments to Seller from Buyer that may become payable hereunder or under any ancillary agreement at a later date. On the other hand, (i) to the extent that the CARES Accelerated Payments are modified and treated as a grant or otherwise are not treated as a full repayment obligation (“**Reclassified CARES Accelerated Payment**”), and (ii) to the extent there is no impairment and /or reduction of the Accounts Receivables attributable to related Medicare claims, and (iii) to the extent the amount of such Reclassified CARES Accelerated Payment has caused the remaining CARES Escrow Funds to exceed the remaining CMS Withhold/Payback, then 100% of such excess CARES Escrow Funds shall be released from the CARES Escrow Agreement to Seller, free and released from any lien of Buyer.

**Section 1.10** *[intentionally deleted]*

**Section 1.11 Seller Disposition Participation Right.** Seller shall be entitled to a percentage (the “**Disposition Participation**”) of any Net Proceeds (as defined below) received by Buyer or its equity holders from (i) any sale, assignment or other disposition of any lease or other assets acquired from Seller other than in the Ordinary Course of Business, (ii) a sale, assignment or other disposition of all or substantially all of the Buyer’s assets, (iii) the sale, assignment or other disposition of all or a controlling interest in the Buyer, including without limitation by way of a merger, consolidation, equity exchange or equity purchase transaction, and/or (iv) a sale, assignment or other disposition of all or a controlling interest in any entity which owns, of record or beneficially, more than 50% or otherwise controls Buyer, including without limitation by way of a merger, consolidation, equity exchange or equity purchase transaction (any of the preceding, a “**Disposition**”).

The percentage of Net Proceeds to which Seller shall be entitled shall be based on a sliding scale, with Seller entitled to 25% of such Net Proceeds received from a Disposition occurring during the initial 1-year period following the Closing, with such percentage of Net Proceeds reducing by 5% (to 20%, 15%, etc.) during each succeeding year following Closing; provided, however, Buyer shall not enter into any such Disposition transaction without prior written notice of at least 15 business days to Seller and without Seller's prior written consent, which shall not be unreasonably withheld. Non-approval must be given in writing to Buyer within forty-five (45) days after Seller has received notice of such Disposition, otherwise the Disposition shall be deemed approved. Buyer shall provide or otherwise make available information reasonably requested by Seller.

Such Disposition Participation shall become due and payable by Buyer to Seller at the closing of such Disposition, concurrently with any payment received by Buyer or its Affiliates. For purposes hereof, the "**Net Proceeds**" in a Disposition shall mean the net proceeds realized by the Buyer, or allocable to the Buyer's business if the Disposition is at the Buyer's equityholders' level (or, in each such case, net proceeds received by Buyer's members or other equityholders, if the Disposition is in a form that net proceeds are payable directly to such equityholders) from the Disposition actually received in connection with such transaction, after deduction of any liabilities of the Buyer required to be paid at Closing including but not limited to Taxes, Buyer's brokers' fees or commissions, attorneys' fees, and escrow fees; provided, however, such liabilities of the Buyer shall not include any debt incurred as part of a leveraged recapitalization of the Buyer. There shall be no deduction from the Net Proceeds, however, for any fees or bonuses paid or to be paid to Buyer or any Affiliate thereof arising from or relating to the Disposition. Subject to compliance with all of the conditions to payment set forth in this Section 1.11, Buyer shall as part of any transaction documents related to such a Disposition cause payment of the Disposition Participation to be made to the Seller simultaneously with payments of the Net Proceeds (or distributions of the same) by the acquirer(s) to the Buyer or the Buyer's equityholders, as the case may be, but in any event no later than five (5) days following the closing of the Disposition as follows: (A) if 100% of the Net Proceeds are received by the Buyer or the Buyer's equityholders in the form of cash, payment of the Disposition Participation shall be made to Seller in immediately available funds via wire transfer to such account(s) as directed by the Seller, or (B) if the Net Proceeds are received by the Buyer or the Buyer's equityholders either partially or in its entirety in a form other than cash, then: (1) any cash component of the Net Proceeds shall be paid to the Seller in immediately available funds via wire transfer to such account(s) as directed by the Seller and in the same proportion to all cash and non-cash consideration as the acquirer has agreed to pay to the Buyer or the Buyer's equityholders; and (2) any non-cash property being delivered to the Buyer or the Buyer's equityholders (including, *e.g.*, any equity or convertible securities or any rights) shall be delivered in the same relative proportion concurrently in-kind to the Seller as well; provided, however, that to the extent that any portion of the non-cash consideration consists of real estate or tangible assets that are not susceptible of division and allocation in a fungible proportional fashion, Buyer shall pay to Seller the then applicable participation percentage of the fair market value of all such non-cash consideration as determined by either mutual agreement of the Parties hereto or, if the Parties are unable to agree, as determined by an appraiser experienced and specializing in the valuation of such types of non-cash consideration and independent of either of the Parties, and with such appraiser to be determined either by agreement of the Parties or, if they are unable to agree, by each selecting such a qualified appraiser who together shall be charged with selecting a third such qualified appraiser, with the determination of fair market value of such third appraiser to be definitive and binding upon both Parties.

A proportionate amount of all holdbacks, earn-outs, reconciliations or deductions applied to the Net Proceeds, including, without limitation, those related to transaction expenses, indebtedness, indemnity holdbacks, working capital adjustments, or escrow funds, will be applied to any Disposition Participation, and Seller's portion of such consideration will be released or paid to the Seller concurrently but only upon release or payment of the same to the Buyer or Buyer's equityholders, as the case may be. If the Net Proceeds include deferred or contingent payments in the form of cash payments (including the payment of principal and interest under debt obligations) or additional stock or other securities payable after the initial closing of such Disposition, then the portion of the payment hereunder attributable to such deferred or contingent payments shall be paid when, and if, paid to and subject to the same conditions as, Buyer or Buyer's equityholders (as the case may be) are entitled to receive such deferred or contingent payments. The Buyer shall provide Seller true and complete copies of all purchase, merger, sale, exchange, contribution or other agreements relating to such a Disposition, along with all related, ancillary and/or closing agreements, certificates, schedules, exhibits and other documents and instruments reasonably necessary to determine the Net Proceeds at or prior to the payment of any Disposition Participation. Seller hereby covenants, to the extent permitted by Applicable Law to keep confidential all items so delivered (other than by sharing the same with its legal and tax advisors) and shall enter into, upon the Buyer's request, a confidentiality agreement in form reasonably acceptable to the Buyer and Seller relating to such covenant. The Buyer shall not in any manner avoid or seek to avoid the timely, full observance or performance of any of the terms to be observed or performed hereunder by the Buyer (including, *e.g.*, by amendment of Buyer's organizational documents, by provisions now or hereafter contained in the Buyer's limited liability company operating agreement or other governing instruments, by entering into agreements with third parties (such as bank or other loan or debt instruments), or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities, or any other voluntary action including, but not limited to, distributions from Buyer to equityholders (in excess of a reasonable management fee and tax distributions and, after satisfying or reserving for satisfaction of Capital Commitments and other obligations on an accrual basis, other distributions of current cash earnings) or any other action or omission.

## **ARTICLE II. CLOSING**

### **Section 2.01 Closing; Effective Time.**

(a) The closing of the Transactions contemplated by this Agreement, if a physical Closing occur, shall take place at 10 a.m., Nacogdoches local time, at the offices of Dykema Gossett, PLLC, 1717 Main Street, Suite 4200, Dallas, Texas 75201, on or before July 16, 2021, or, in the event all conditions to closing (other than conditions that by their nature are only to be satisfied at Closing) have not been satisfied at least two business days prior thereto at such time and date and/or at such other time and location as the Parties may mutually designate in writing (such closing being called the "**Closing**" and such date being called the "**Closing Date**"). In lieu of a physical Closing, the Parties agree that all requisite Transaction Documents may be exchanged electronically at the Closing, and that documents so exchanged shall be binding for all purposes.

(b) The Transactions contemplated by this Agreement shall be effective as of 12:01 a.m. on the Closing Date (“**Effective Time**”).

**Section 2.02 Closing Deliverables.**

(a) At the Closing, Seller shall deliver to Buyer the following (the “**Seller Closing Deliverables**”):

(i) a Lease for the Lease Assets in the form of **Exhibit E** hereto and duly executed by Seller;

(ii) a bill of sale in the form of **Exhibit F** hereto (the “**Bill of Sale**”) and duly executed by Seller, conveying to Buyer good and marketable title to all tangible personal property which are a part of the Purchased Assets and good and marketable title to all intangible assets which are a part of the Purchased Assets, free and clear of all liabilities, mortgages, claims, liens and encumbrances (other than the Assumed Liabilities) transferring the Purchased Assets to Buyer;

(iii) an assignment and assumption agreement in the form of **Exhibit G** hereto (the “**Assignment and Assumption Agreement**”) and duly executed by Seller, (i) conveying to Buyer all of Seller’s right, title and interest in, to and under the Assumed Contracts and, by one or more separate instruments, the Assumed Real Property Leases and, to the extent assignable, the Licenses, and (ii) pursuant to which Buyer shall assume the future payment and performance of the Assumed Liabilities;

(iv) a Transition Services Agreement effectuating the matters provided for by Section 7.13 and such other post-Closing matters as the Parties may mutually agree in writing, duly executed by Seller with terms and conditions substantially similar to those set forth in the form attached hereto as **Exhibit H**;

(v) for each Assumed Real Property Lease an Assignment and Assumption of Lease substantially in the form of **Exhibit I** (each, an “**Assignment and Assumption of Lease**”), duly executed by Seller and, if necessary, Seller’s signature shall be witnessed and/or notarized, and the applicable landlord (the documents in (i)-(v) herein together with this Agreement being referred to herein as the “**Transaction Documents**”);

(vi) a Seller’s Closing Certificate executed by Seller and dated as of the Closing Date and reasonably satisfactory in form and substance to Buyer, certifying that (i) each of the representations and warranties of Seller contained in the Agreement is true and correct in all material respects both when made and as of the Closing Date with the same effect as though made at and as of such Closing Date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date), and (ii) Seller has performed and complied with all agreements, obligations, covenants and conditions required to be performed or complied with by Seller

pursuant hereto on or prior to the Closing Date, except as may have been waived in writing by Buyer;

(vii) a Secretary's Certificate of Seller dated as of the Closing Date and certifying: (i) that attached thereto is a true and complete copy of all resolutions adopted by the board of directors of Seller authorizing the execution, delivery, and performance of this Agreement, the Lease and all Transactions contemplated by this Agreement in the form attached hereto as **Exhibit J** and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the Transactions contemplated by this Agreement; and (ii) to the incumbency and specimen signature of each officer of Seller executing this Agreement, the Lease or the other Transaction Documents to be delivered by Seller pursuant to this Agreement, and a certification by another officer of Seller as to the incumbency and signature of such Secretary;

(viii) title certificates, assignments and applications for transfer of title to the Seller's motor vehicles used in the Hospital Operations (other than in the ambulance service);

(ix) the CARES Escrow Agreement duly executed by Seller, and Seller shall concurrently deposit the amount of the CARES Escrow Funds thereto;

(x) a South Street Sublease in substantially the form attached hereto as **Exhibit K** duly executed by Seller;

(xi) a Mound Street Sublease in mutually agreeable form that provides for the assignment to Buyer of substantially all of Seller's rights and privileges and the assumption by Buyer of substantially all of Seller's duties and obligations arising on and after the Effective Date, duly executed by Seller;

(xii) a Collateral Assignment of Agreements between Buyer and its lender CNH Finance Fund I, L.P. in substantially the form attached hereto as **Exhibit L**, duly agreed to and acknowledged by Seller;

(xiii) a Landlord Waiver and Consent for the benefit of Buyer's lender CNH Finance Fund I, L.P. in substantially the form attached hereto as **Exhibit M**, duly executed by Seller; and

(xiv) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Buyer, as may be required to give effect to this Agreement and the Transactions.

(b) At the Closing, Buyer shall deliver to Seller the following (the "**Buyer Closing Deliverables**"):

(i) the Cash Closing Payment;

(ii) the Lease duly executed by Buyer;

(iii) the Assignment and Assumption Agreement duly executed by Buyer;

(iv) the Transition Services Agreement duly executed by Buyer;

(v) with respect to each Assumed Real Property Lease, an Assignment and Assumption of Lease duly executed by Buyer and, if necessary, Buyer's signature shall be witnessed and/or notarized;

(vi) the Buyer's Closing Certificate executed by Buyer and dated as of the Closing Date and reasonably satisfactory in form and substance to Seller, certifying that (i) each of the representations and warranties of Buyer contained herein is true and correct in all material respects both when made and as of the Closing Date with the same effect as though made at and as of such Closing Date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date), (ii) Buyer has performed and complied with all agreements, obligations, covenants and conditions required to be performed or complied with by Buyer pursuant hereto on or prior to the Closing Date, except as may have been waived in writing by Seller; (iii) that attached thereto is a true and complete copy of all resolutions adopted by the managers or members of Buyer authorizing the execution, delivery, and performance of this Agreement, the Lease and all Transactions contemplated by this Agreement and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the Transactions contemplated by this Agreement, and certifying to the incumbency and specimen signature of each officer of Buyer executing this Agreement, the Lease or the other Transaction Documents to be delivered by Buyer pursuant to this Agreement;

(vii) the CARES Escrow Agreement duly executed by Buyer;

(viii) a South Street Sublease in substantially the form attached hereto as **Exhibit K** duly executed by Buyer;

(ix) a Mound Street Sublease in mutually agreeable form that provides for the assignment to Buyer of substantially all of Seller's rights and privileges and the assumption by Buyer of substantially all of Seller's duties and obligations arising on and after the Effective Date, duly executed by Buyer;

(x) a Collateral Assignment of Agreements between Buyer and its lender CNH Finance Fund I, L.P. in substantially the form attached hereto as **Exhibit L**, duly executed by Buyer;

(xi) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Seller, as may be required to give effect to this Agreement.

**ARTICLE III.  
REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller represents and warrants to Buyer the following:

**Section 3.01 Organization, Company Power and Authority.**

(a) Seller is duly organized by Texas legislative act as a hospital district pursuant to Texas Special District Local Laws Code Chapter 1069, and is validly existing and in good standing under the laws of the State of Texas and has all necessary company or similar power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on the Hospital Operations as currently conducted. Seller is not licensed, qualified or admitted to do business in any jurisdiction other than in the State of Texas and there is no other jurisdiction in which the ownership, use or leasing of any of Seller's assets or properties, or the conduct or nature of its business, makes such licensing, qualification or admission necessary.

(b) Seller has full company and statutory power and authority to execute, deliver and perform the Seller obligations and covenants contained in this Agreement, the Lease and other Transaction Documents and Seller Closing Deliverables and to carry out the Transactions contemplated hereby and thereby. The execution and delivery of this Agreement, the Lease and other Transaction Documents and Seller Closing Deliverables by Seller and the consummation of the Transactions contemplated hereby and thereby have been duly authorized by all necessary company and statutory action on the part of Seller. This Agreement constitutes the legal, valid and binding obligation of Seller, enforceable in accordance with its terms, subject to applicable Exceptions. Each of the Seller Closing Deliverables, including the Agreement and the Lease, when duly executed and delivered by Seller and the other Parties thereto, will constitute the legal, valid and binding obligation of Seller enforceable in accordance with its respective terms, subject to applicable Exceptions.

**Section 3.02 No Breach.** Except as described on Schedule 3.02, the execution and delivery of this Agreement, the Lease and other Transaction Documents contemplated herein by Seller and the consummation or performance of the Transactions contemplated hereby or in the Seller Closing Deliverables (i) will not, directly or indirectly (with or without notice, lapse of time or both) conflict with or result in any violation of or constitute a breach or default under any term of (A) the organizing statute or other organizational documents of Seller, (B) any Contract, permit or other instrument to which Seller is a party, or by which Seller is bound or to which the Hospital Operations or any of the Purchased Assets or Lease Assets are subject, assuming however all third party consents to assignments of Contracts have been obtained, (C) any judgment to which Seller, the Hospital Operations or any of the Purchased Assets or Lease Assets are bound or subject, or (D) any Legal Requirement, (ii) except as expressly provided herein and for the benefit of the Buyer, will not result in the creation of any lien or other encumbrance upon the Hospital Operations or any property which is required to be part of the Purchased Assets or Lease Assets, and (iii) do not require any notice to or any permit, authorization, consent or approval of any Governmental Authority or of any other Person.

**Section 3.03 Financial Information.** (a) Schedule 3.03 hereto contains the following financial statements and financial information (collectively, the “**Seller Financial Statements**”): (i) audited balance sheets, statements of revenues, expenses and changes in net position, and statements of cash flows of the Seller for the twelve-month periods ended June 30, 2020, June 30, 2019; and June 30, 2018; and (ii) unaudited balance sheet and income statements of the Seller dated for the period from July 1, 2020 through May 31, 2021.

The Seller Financial Statements have been prepared in accordance with GAAP and other applicable requirements of GASB or FASB, applied on a consistent basis throughout the periods indicated except that the unaudited statements do not contain financial notes and are subject to customary year-end adjustments. The balance sheets contained in the Seller Financial Statements present fairly in all material respects the financial condition of Seller as of the dates indicated thereon, and the income statements contained in the Seller Financial Statements present fairly in all material respects the results of operations of Seller for the periods covered thereby.

(b) Except for (i) liabilities that are disclosed in this Agreement, the Seller Financial Statements, Contracts entered into in connection herewith and schedules and exhibits hereto, and (ii) liabilities that were incurred after June 30, 2020 in the ordinary course of business consistent with the past practice of Seller, or as indicated on Schedule 3.03(c), there are no material liabilities of any nature of Seller relating to the Hospital Operations or the Purchased Assets or Lease Assets.

**Section 3.04 Absence of Certain Changes or Events.**

Except as set forth in Schedule 3.04(a), since March 31, 2021:

(a) there has not occurred any Material Adverse Effect with respect to the Seller or Hospital Operations;

(b) Seller has not created or suffered to exist any liens, encumbrances or other restrictions with respect to any of the Purchased Assets or Lease Assets, except for the Permitted Real Property Encumbrances;

(c) Seller has not sold, leased to others, licensed to others, disposed of, or otherwise transferred any of the material assets or properties of the Hospital Operations, except for (i) sales of inventory in the usual and ordinary course of the Hospital Operations, (ii) sales of old or obsolete equipment that has been replaced with equipment that is functionally equivalent, and (iii) sales of other obsolete equipment with an aggregate value of less than \$50,000;

(d) Seller has not suffered any material loss, or material interruption in use, of any material asset or property of the Hospital Operations (whether or not covered by insurance) on account of fire, flood, riot, strike or other hazard or act of God in excess of \$50,000;

(e) Seller has not (A) increased the rate or terms of compensation (including termination and severance pay), commission, or other direct or indirect remuneration (or the rate thereof) payable or to become payable to any of Seller’s employees, officers, directors or persons otherwise serving in such capacities, other than regularly scheduled

increases in base salary in the ordinary course and consistent with past practice in all material respects; or (B) adopted, amended or terminated any Employee Benefit Plan, or entered into any written employment, consulting, severance or termination agreement;

(f) Seller has not waived any rights relating to the Hospital Operations or arising under or in connection with any of the Purchased Assets, individually or in the aggregate in excess of \$50,000;

(g) Seller has not acquired any assets or properties individually or in the aggregate in excess of \$50,000 other than in the ordinary course and consistent with past practice;

(h) Seller has not entered into any merger, consolidation, recapitalization or other business combination or reorganization;

(i) Seller has not made any loans, advances or capital contributions to or investments in any Person, other than loans and advances to employees in amounts that do not individually exceed \$10,000 or in the aggregate exceed \$50,000;

(j) Seller has not commenced or terminated any line of business;

(k) Seller has not received written notice from any customer or supplier representing during the last fiscal year sales or purchases of \$50,000 or more that such customer or supplier has ceased, may cease or will cease to do business with it;

(l) Seller has not without limiting the foregoing, entered into any material transaction resulting in a liability or expenditure in excess of \$50,000, other than in the ordinary course;

(m) Seller has not made or deferred any capital expenditure in each case in excess of \$50,000 individually and \$200,000 in the aggregate; and

(n) Seller has not made any agreement to do any of the foregoing or any action or omissions that would result in any of the foregoing.

### **Section 3.05 Assets.**

(a) Except as described on Schedule 3.05(a), Seller is the sole and exclusive legal and equitable owner of all right, title and interest in, has good and marketable title, free and clear of all liens and encumbrances, and is in possession of all Purchased Assets and Lease Assets and Licensed Intellectual Property. Except as described on Schedule 3.05(a), no Affiliate of Seller or any Person has any direct or indirect ownership, leasehold or other interest in the Purchased Assets, Lease Assets and Licensed Intellectual Property. As of the Closing Date, all of the Purchased Assets are free and clear of any encumbrances, except for Permitted Real Property Encumbrances.

(b) The Purchased Assets, Lease Assets and Licensed Intellectual Property and the Excluded Assets constitute all assets which are held or used by Seller in the conduct of

the Hospital Operations and operation of the Hospital. The Purchased Assets, Lease Assets and Licensed Intellectual Property constitute all assets, except for the Excluded Assets, that are necessary for Buyer to conduct the Hospital Operations and operation of the Hospital as currently conducted. Substantially all equipment and other items of tangible personal property and assets included in the Purchased Assets and Lease Assets that are material to and currently used in Hospital Operations: (a) are usable in the regular and ordinary course of business, and (b) conform to Applicable Laws in all materials respects.

**Section 3.06 Inventory.** The items of inventory of Seller, including the Purchased Inventory (i) are of a quality and quantity useable or saleable in the ordinary course and are of a quantity sufficient in all material respects to enable Buyer to carry on the Hospital Operations as currently conducted and as it has been conducted in the preceding fiscal year ended June 30, 2020, (ii) except as set forth in Schedule 3.06, are carried at amounts which reflect valuations pursuant to the Seller's normal inventory valuation policy and in accordance with GASB.

**Section 3.07 No Outstanding Rights.** Except as described on Schedule 3.07, there are no outstanding rights (including any right of first refusal), interests, options or Contracts giving any Person any current or future right to require Seller or, from and after the Effective Time, Buyer, to sell or transfer to such Person or to any third party any interest in any of the Purchased Assets, Lease Assets or Licensed Intellectual Property.

**Section 3.08 Equipment Leases.** Schedule 3.08 is an accurate and complete list of all equipment currently leased or subleased by Seller (the listed equipment being collectively referred to herein as the "**Existing Leased Equipment**"), including identification of the lease or sublease (each an "**Equipment Lease**") affecting such Existing Leased Equipment. The Seller has not entered into a Contract nor made a commitment to lease equipment other than as disclosed in Schedule 3.08 (or pursuant to the Lease). Seller is in peaceable possession of the Existing Leased Equipment and has exclusive use of the Existing Leased Equipment. Except as disclosed on Schedule 3.08, none of such Existing Leased Equipment is subject to any licenses, use restrictions, exceptions, reservations, limitations or other impediments which adversely affect the value to the Hospital Operations of the leasehold interest therein or which materially interfere with or impair the present and continued use thereof in the usual and normal conduct of the Hospital Operations as currently conducted (except for such restrictions as are customary in any commercial equipment lease). There is no existing default or breach of any Equipment Lease (or event or condition that, with notice or lapse of time or both could constitute a default or breach) and there is no such breach or default (or event or condition that, with notice or lapse of time or both, could constitute a default or breach) with respect to any third party to any Equipment Lease.

**Section 3.09 Real Property.**

(a) Schedule 3.09(a) sets forth an accurate and complete list of all leases of real property to which Seller is a party ("**Real Property Leases**"), including identification of the lease or sublease to which Seller is a party or by which any of Seller's interests in real property is bound affecting such real estate or any interest therein. Schedule 3.09(a) shall also identify and Real Property Leases that will be Assumed Real Property Leases or Subleases. Except as described on Schedule 3.09(a) with respect to the Assumed Real Property Leases or Subleases, the Seller does not lease any real property used in

conjunction with the operation of the Hospital Operations. Seller has made available to Buyer accurate, correct and complete copies of all Assumed Real Property Leases and all amendments thereto. Neither Seller nor any of its Affiliates have (i) any material liability with respect to any Assumed Real Property Lease except as expressly set forth therein, or (ii) received any notice from any other party to any Assumed Real Property Lease of any uncured defaults. Seller is in peaceable possession of the real property subject to the Real Property Leases (“**Leased Real Property**”), other than exceptions of record that do not materially interfere with the use of such property for its intended purpose, and none of the Leased Real Property with respect to any Assumed Real Property Lease is subject to any easements, rights of way, licenses, grants, building or use restrictions, exceptions, reservations, limitations or other impediments which materially interfere with or impair the present and continued use thereof in the usual and normal conduct of the Hospital Operations as currently conducted. There is no existing default or breach of any Assumed Real Property Lease (or event or condition that, with notice or lapse of time or both could constitute a default or breach).

(b) Schedule 3.09(b) sets forth an accurate and complete list of each parcel constituting the Owned Real Estate, and, with respect to each such parcel, includes its street address, if any, and identification as such of all Lease Premises included therein. Except as set forth in Schedule 3.09(b) and, except for Permitted Real Property Encumbrances, there are no easements, restrictions, ordinances, contracts or agreements, oral or written, relating to or affecting the Lease Premises or such other limitations that would affect or restrict rights to ownership, use for Hospital Operations, insurability or any interest therein. Except as set forth on Schedule 3.09(b) and subject to the Permitted Real Property Encumbrances, Seller is the sole and exclusive legal and equitable owner of all right, title and interest in and has good and marketable title in fee simple absolute to and is in possession of all Lease Premises, including the buildings, structures and improvements situated thereon and appurtenances thereto, in each case free and clear of all Encumbrances other than Permitted Real Property Encumbrances.

(c) Neither the whole nor any portion of any Owned Real Property or Leased Real Property (collectively, “**Real Property**”) has been condemned, requisitioned or otherwise taken by any public authority, no notice of any such condemnation, requisition or taking has been received, and no such condemnation, requisition or taking of the Real Property is threatened in writing. To Seller’s Knowledge, the Real Property and its operation is in material compliance with all applicable zoning ordinances, the consummation of the transactions contemplated herein will not result in a material violation of any applicable zoning ordinance or the termination of any applicable zoning variance now existing, and the buildings and improvements constituting the Real Property comply with all building codes in all material respects.

(d) Except as set forth on Schedule 3.09(d), Seller has received no written notice from any Governmental Authority that either any Lease Premises or the Leased Real Property with respect to any Assumed Real Property Lease is not in compliance with all applicable Legal Requirements, and Seller has received no written notice from any Governmental Authority that the buildings, structures, other improvements and fixtures on such Lease Premises or the Leased Real Property with respect to any Assumed Real

Property Lease or the operations of the Hospital Operations in or about any such Real Property therein conducted do not conform to all Legal Requirements. Seller has all easements and rights reasonably necessary or appropriate to conduct the Hospital Operations at the Lease Premises and the Leased Real Property with respect to any Assumed Real Property Lease.

(e) None of the utility companies serving any Real Property of Seller used in the Hospital Operations has threatened Seller in writing with any reduction in service. All installation and connection charges have been paid for in full.

**Section 3.10 Structural Defects; Condition of Real Property.** Except as described on Schedule 3.10, Seller has received no written notice from an architect, engineer or Governmental Authority that there are structural defects in any improvement or structure situated on the Real Property which would prevent Buyer from conducting the Hospital Operations following the Effective Time as currently conducted, except for routine maintenance and repairs which occur in the ordinary course of business. Moreover, to Seller's Knowledge, except as set forth on Schedule 3.10, there are no structural defects or other material defects in any improvement or structure situated on the Real Property which would prevent Buyer from conducting the Hospital Operations following the Effective Time as currently conducted, except for routine maintenance and repairs which occur in the ordinary course of business. NEVERTHELESS BUYER HAS HAD OPPORTUNITY TO THOROUGHLY INSPECT THE LEASE ASSETS PRIOR TO THE DATE HEREOF AND RECOGNIZES THAT BUYER'S CAPITAL COMMITMENT IS GIVEN IN RECOGNITION OF THE NECESSITY OR ADVISABILITY OF SIGNIFICANT REPAIRS OR UPGRADES TO THE ITEMS IDENTIFIED IN LEASE SCHEDULES, AND EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS AGREEMENT AND THE LEASE, BUYER ACCEPTS THE LEASE ASSETS IN ITS AS-IS, WHERE-IS CONDITION, WITHOUT EXPRESS OR IMPLIED WARRANTY WITH RESPECT TO THE CONDITION, QUALITY, REPAIR OR FITNESS OF ANY PORTION OF THE LEASE ASSETS FOR A PARTICULAR USE OR BEING IN ANY CONDITION OR A PARTICULAR CONDITION, ALL SUCH WARRANTIES BEING HEREBY DISCLAIMED BY SELLER AND WAIVED BY BUYER.

**Section 3.11 Reimbursement Participation; Health Care Law Compliance.**

(a) Seller is duly certified to participate in, and has current and valid Payor Agreements with those Government Reimbursement Programs and Private Programs set forth on Schedule 3.11. Seller is eligible to bill and receive payment and presently receives payments without restriction under such Government Reimbursement Programs and Private Programs and is a "provider" with valid and current provider agreements with one or more provider numbers with Government Reimbursement Programs through fiscal intermediaries and Private Programs. Seller is in compliance with the conditions of participation for the Government Reimbursement Programs and Private Programs in which it participates in all material respects. Except as described on Schedule 3.11(a), there are no pending or threatened Proceedings or investigations under the Government Reimbursement Programs or Private Programs involving Seller. The cost reports of Seller, as applicable, for the Government Reimbursement Programs referred to above, and for payment and reimbursement of any other cost report settlements, required to be filed prior

to the Effective Time, have been or will be properly filed and are or will be complete and correct in all material respects. The cost reports required to be filed by Seller, including without limitation, those filed by Seller to date in connection with the Medicare Accelerated Payments Program and the related CARES Accelerated Payments, do not claim, and Seller has not received any payment or reimbursement, whether from a Government Reimbursement Program or Private Program, in excess of, the amount provided by Applicable Law or any applicable agreement, except where excess reimbursement was noted on the cost report or herein. Except as described on Schedule 3.11(a), there are no claims, actions or appeals pending before any commission, board or agency, including any fiscal intermediary or carrier, Governmental Authority or the Administrator of CMS, with respect to any Government Reimbursement Program cost reports or claims filed on behalf of Seller referred to above or any disallowances by any commission, board or agency in connection with any such cost reports. Seller is in material compliance with the conditions of participation in the Government Reimbursement Programs and the Private Programs in which it participates, and all of the terms, conditions and provisions of the applicable Payor Agreements, as well as state and federal Applicable Law related thereto. The applicable Payor Agreements are each in full force and effect, and to Seller's Knowledge no events or facts exist that would cause any Payor Agreement to be suspended, terminated, restricted or withdrawn.

(b) Neither Seller nor, to Seller's Knowledge, any partner, member, director, officer or employee of Seller is a party to any Contract (including any joint venture or consulting agreement) related to Seller, its Hospital Operations or the Purchased Assets with any physician, healthcare facility, hospital, nursing facility, home health agency or other Person who is in a position to make or influence referrals to or otherwise generate business for Seller with respect to the Hospital or the Purchased Assets, to provide services, lease space, lease equipment or engage in any other venture or activity, to the extent that any of the foregoing is prohibited by Legal Requirements.

(c) The Hospital is fully accredited by The Joint Commission ("Joint Commission"), and Seller has made available to Buyer true and complete copies of the most recent Joint Commission accreditation survey report and deficiency list for the Hospital, if any, and the Hospital's plan of correction, if any.

(d) Seller is in material compliance with all Health Care Laws. Except as set forth on Schedule 3.11(d), since July 1, 2018, the Seller has not received any written notice from any Governmental Authority of any violation of, or alleged violation of any Health Care Law. To Seller's Knowledge, neither Seller, nor any manager, director, governing body member, officer or employee of Seller, acting in such capacity on behalf of Seller, nor any other Person acting on behalf of Seller, acting alone or together, has engaged in any activities which are prohibited under the Health Care Laws.

(e) Except as set forth on Schedule 3.11(e), Seller is in compliance in all materials respects with all Information Laws. Neither the Seller nor the Hospital: (i) is under investigation by any Governmental Authority for a violation of any Information Law; (ii) has received any notices from the United States Department of Health and Human Services Office for Civil Rights, Department of Justice, Federal Trade Commission, or the

Attorney General of any state or territory of the United States relating to any such violations; and (iii) except as set forth on Schedule 3.11 (e), has acted in any manner, and does not have knowledge of any incident, that would trigger a notification or reporting requirement under any HIPAA business associate agreement or any Information Laws, including any breach with respect to any unsecured protected health information maintained by or on behalf of the Hospital Operations. Seller has undertaken surveys, audits, inventories, reviews, analyses and/or assessments of all areas of their respective businesses and operations in material compliance with the HITECH Act and the administrative simplification provisions of HIPAA. Seller has entered into business associate agreements with all third parties acting as business associates as defined in 45 C.F.R. § 160.103. The Seller has provided to Buyer accurate and complete copies of the compliance policies and/or procedures and privacy notices of the Seller relating to Information Laws.

(f) The Seller has delivered to Buyer true, correct and complete copies of medical staff privilege and membership application forms, delineation of privilege forms, the medical staff bylaws and rules and regulations of the medical staff of the Hospital. With regard to each medical staff (including allied health professionals), and except as set forth on Schedule 3.11(f), there are no pending or, to the Seller's Knowledge, threatened formal disputes, challenges, disciplinary, corrective actions, or appeals with any medical staff member of the Hospital or applicants to join the medical staff of Hospital.

(g) The Hospital Operations have been conducted and operated in material compliance with, and Seller's Contracts and financial arrangements with physicians and other referral sources (including ownership interests and compensation relationships between Seller and physicians) are in compliance with the Health Care Laws. Except as set forth on Schedule 3.11(g), since July 1, 2018, (i) the Seller has not (a) received any written notice, citation, suspension, revocation, administrative proceeding, or, investigated by a Governmental Authority that alleges or asserts that the Seller has violated any Health Care Laws, or (b) been subject to a corporate integrity agreement, deferred prosecution agreement, consent decree, settlement agreement with, relating to or required by the Office of Inspector General of the United States Department of Health and Human Services ("OIG") or similar agreement or consent order of or with any other Governmental Authority (x) mandating or prohibiting future or past activities or (y) that requires any recoupment of money from the Seller by any Governmental Authority or third party and (ii) the Seller has not settled, or agreed to settle, any actions brought by any Governmental Authority for an alleged violation of any Health Care Laws, and (iii) there are no restrictions imposed by any Governmental Authority (through a written corrective action plan, order, or otherwise) on the Seller.

(h) Except as set forth on Schedule 3.11(h), other than other than routine state licensure and Government Reimbursement Program participation and certification surveys in the ordinary course of business (none of which would reasonably be expected to be material), the Seller has not (i) been subject to or received written notice of any Government Reimbursement Program integrity review or any other investigation conducted by any Governmental Authority in connection with any Government Reimbursement Programs, (ii) been a defendant in any qui tam, False Claims Act or similar

action, or (iii) made any voluntary disclosure to the OIG, or other Medicare contractor, Medicaid program or other Governmental Authority relating to any material violation of Health Care Laws.

(i) The Seller has compliance programs reasonably designed in all material respects with the criteria established by the OIG and other similar Health Care Laws and applicable guidance. The Seller has conducted periodic reviews of such compliance program and its operations comply in all material respects with such compliance program. Any and all material issues brought to the attention of the compliance officer of the Seller have been or are being investigated and, to the extent required by applicable Health Care Laws, corrective action has been or will be taken in compliance with applicable Health Care Laws and the Seller's compliance programs. To Seller's Knowledge, the Hospital Operations have been conducted in accordance with its compliance programs in all material respects.

(j) To Seller's knowledge, Seller has, and at all times has had, all Permits and Licenses required under all applicable regulations. Seller owns or possesses such Permits and Licenses free and clear of all encumbrances other than permitted encumbrances, but subject to all Applicable Law pertaining to such Permits and Licenses. All such Permits and Licenses are in full force and effect. Seller is not in default, nor has it received any notice of any claim of default, with respect to any such Permit or Licenses and there is no action, investigation or proceeding pending, nor to Seller's Knowledge threatened, which could reasonably be expected to cause or permit revocation or suspension of or otherwise materially adversely affect the maintenance of any such Permits or Licenses. Such Permits and Licenses constitute all Permits and Licenses necessary for Seller to own and operate the Hospital and to carry on the Hospital Operations as currently conducted.

(k) The billing practices of Seller with respect to the Hospital Operations are in compliance in all material respects with all applicable Legal Requirements and policies of third party payors, including Private Programs and Government Reimbursement Programs. Seller has not claimed or received reimbursements from any Government Reimbursement Programs (including any advances or pre-payments from the Texas Medicaid program), the Texas County Indigent Health Care Program, Medicaid Disproportionate Share Funds and Upper Payment Limit funding or any other governmental health benefit program materially in excess of the amounts permitted by Applicable Law, except as and to the extent that liability for such overpayment has already been satisfied in full. Seller has not claimed or received reimbursements from any Private Program or other payor materially in excess of the amounts permitted by the applicable benefit plan or any applicable contract of Seller with any such payor, except to the extent that liability for such overpayment has already been satisfied in full.

(l) No current officer, director or managing employee of the Seller and, to the Seller's Knowledge, no current independent contractor of the Seller, has been suspended, excluded, or otherwise terminated from participating in any Government Reimbursement Programs, and Seller has not been suspended, excluded, or otherwise terminated from any Government Reimbursement Programs or been subject to sanction pursuant to 42 U.S.C. §1320a-7a or 1320a-8 or been convicted of a crime described at 42 U.S.C. §1320a-7b.

(m) Except as disclosed on Schedule 3.11(m), (a) all necessary cost reports for Seller were filed when due for all fiscal years ending on or prior to June 30, 2020, and (b) to the Seller's Knowledge, there are no facts or circumstances that would give rise to any material disallowance under any of the Seller's cost reports. With respect to any cost reports for the Hospital which remain to be filed or settled: (i) each has been or will be timely filed by Seller, and (ii) each is or will be complete and accurate for the periods indicated. True and correct copies of all such reports for the two (2) most recent fiscal years of the Sellers have been made available to Buyer. To Seller's Knowledge, all liabilities and contractual adjustments of the Hospital Operations under any third party payor or reimbursement programs have in all material respects been properly reflected and adequately reserved for in the Seller's Financial Statements.

**Section 3.12 No Violation of Law.** Except as disclosed on Schedule 3.12, Seller (a) is in compliance with all applicable Legal Requirements in all material respects and (b) since July 1, 2018, has not received any current written notice of any alleged violation or noncompliance with any Legal Requirement.

**Section 3.13 Legal Proceedings.** Except as described on Schedule 3.13, there are no Proceedings instituted or pending or, to Seller's Knowledge, threatened against Seller that challenge, or may have the effect of preventing, delaying, making illegal or otherwise interfering with Hospital Operations, and the Transactions contemplated hereby, and there are no Orders outstanding or, to Seller's Knowledge, threatened against Seller that challenge, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with the Hospital Operations, and the Transactions contemplated hereby. Except as described on Schedule 3.13, Seller is not a party to any Proceedings, and Seller and the Purchased Assets are not subject to any Orders. Seller has not received notice of any pending action, suit, Proceeding or investigation by or before any court, arbitrator or Governmental Authority concerning the Hospital Operations or the affairs of Seller or to which the Purchased Assets, Lease Assets or Licensed Intellectual Property are subject, and, to Seller's Knowledge, there is no basis for any such action. There is no action, suit or Proceeding or investigation that is currently, to Seller's Knowledge, being threatened in writing against Seller or against any stockholder, officer, director, manager, member or employee of Seller in relation to or otherwise involving the Hospital Operations, Purchased Assets, Lease Assets, Licensed Intellectual Property or affairs of Seller.

**Section 3.14 Accounts Receivable.** All Accounts Receivable have arisen from bona fide transactions and bona fide indebtedness owing to Seller in the Ordinary Course of Business and in accordance with their terms with no known set-offs, deductions, compromises, or reductions in excess of reasonable allowances for bad debts and contractual allowances in an amount consistent with historical policies and procedures of Seller and which are taken into consideration in the preparation of Seller's Financial Statements.

**Section 3.15 Contracts.** Schedule 3.15 lists all of Seller's existing material Contracts. Except as described on Schedule 3.15, with respect to any Assumed Contract it (a) has been entered into by Seller in the normal course of its Hospital Operations, and (b) is valid and legally binding, and in full force and effect, and has not been amended or modified except as described on Schedule 3.15. Seller is not currently in default in any material respect, nor has Seller received any written notice that it is in default, with respect to any Assumed Contract, and, to Seller's Knowledge, no

other party to any Assumed Contract is currently in default in any material respect or has any defense, counterclaim or offset right. Seller has not assigned or encumbered any such Assumed Contract in any manner.

**Section 3.16 Insurance.** Schedule 3.16 sets forth a true and complete list of all insurance policies or self-insurance funds maintained by Seller covering the ownership and operation of the Hospital Operations and the Purchased Assets and Lease Assets, indicating the types of insurance, policy numbers, terms, identity of insurers and amounts and coverages (including applicable deductibles). All of such policies are now and will be until the Closing Date in full force and effect on an occurrence basis with no premium arrearages. Such policies of insurance shall not be assigned to Buyer as part of the Purchased Assets and Buyer acknowledges that all of the coverages listed on Schedule 3.16 with respect to the Purchased Assets and Lease Assets will cease with respect to events occurring after the Effective Time. To the Seller's knowledge, the policies of insurance or self-insurance arrangements maintained by the Seller on and prior to the Effective Time are sufficient and adequate, taking into account any applicable statutory limits on Seller's liability, to cover any and all claims, lawsuits, causes of action and damages which may be asserted against the Seller for the acts and/or omissions of the Seller on or prior to the Effective Time.

**Section 3.17 Tax Matters.** Seller as a hospital district created by legislation of the State of Texas is exempt from federal, state and local Taxes with respect to income, profits, gross receipts, margin, sales or use, ad valorem Taxes or other Taxes measured by operating performance or the value of its assets with respect to its operation of the Hospital Operations and has filed no Tax Returns with respect thereto, has paid no such Taxes, and has no Tax liability therefor. (i) All Tax Returns required to be filed by or on behalf of Seller in all cases have been duly filed on a timely basis or within the applicable final extension periods granted to it; (ii) such Tax Returns are true, complete and correct in all respects; and (iii) all such Taxes owed by Seller with respect to any taxable period or partial taxable period of Seller ending prior to the Effective Time have been paid or will be timely paid by Seller. No deficiencies for any such Taxes have been asserted or threatened, and no audit on any such returns is currently under way or threatened. There are no tax liens on any of the Purchased Assets or Leased Facilities, and to the Knowledge of Seller, no basis exists for the imposition of any such liens.

**Section 3.18 Environmental Matters.** Seller is in compliance with all terms and conditions of all permits, licenses and authorizations, and is in compliance in all material respects with all other Legal Requirements and regulations relating to pollution or the protection of human health and safety from an environmental standpoint or relating to the environment or the emission, discharge, release or threatened release of any Hazardous Materials into air, surface water, groundwater or lands ("**Environmental Requirements**"). Except as described on Schedule 3.18, no discharge or release of any Hazardous Material caused by Seller has occurred on or otherwise affects any property owned or operated by the Seller that is included within the Purchased Assets or Lease Assets which violates Environmental Requirements. Seller has not received any notice alleging or asserting either a pending or unresolved material violation of any Environmental Requirements.

**Section 3.19 Employees.**

(a) Schedule 3.19(a) lists the employees of Seller and their current rates of compensation, dates of hire, status (i.e., exempt or non-exempt) and eligibility for, and participation in, Employee Benefit Plans. Except as described on Schedule 3.19(a), (i) there are no collective agreements or bargaining relationships or other contracts or understandings with any labor organization with respect to Seller's employees, (ii) the Seller has no Knowledge of any organizational effort presently being made or threatened by or on behalf of any labor union with respect to employees of the Seller, and to the Seller's Knowledge no such efforts have occurred within the past three years, (iii) there is no worker's compensation liability, experience or matter outside the Ordinary Course of Business, (iv) there are no strikes, slowdowns, work stoppages, material grievances, material unfair labor practices claims or other material employee or labor disputes currently pending or threatened against or involving the Seller and none has occurred within the last three years, (v) the Seller has not engaged in any unfair labor practices within the meaning of the National Labor Relations Act, (vi) during the three year period preceding the Closing Date, the Seller has not implemented any layoffs of employees that could implicate the Worker Adjustment and Retraining Notification Act, 29 U.S. Stat. §2101 et seq. (the "WARN Act"), (vii) there are no pending or threatened in writing complaints or charges before any Governmental Authority regarding employment discrimination, safety or other employment-related charges or complaints, wage and hour claims, unemployment compensation claims, worker's compensation claims or the like involving any current or former employee of Seller, (viii) Seller is in compliance in all material respects with all Legal Requirements and Contracts respecting employment and employment practices, labor relations, terms and conditions of employment and wages and hours, (iv) Seller has not made any verbal commitments to any officer, employee, former employee, consultant or independent contractor of Seller with respect to compensation, promotion, retention, termination, severance or similar matters in connection with the Transactions contemplated hereby.

(b) All Employee Benefit Plans maintained by the Seller or to which the Seller is obligated to contribute, are listed on Schedule 3.19(b) hereto. With respect to the Employee Benefit Plans:

(c) a copy of each such Employee Benefit Plans has been made available to the Buyer and/or its agents;

(d) all such Employee Benefit Plans have been maintained, funded and administered in compliance in all material respects with all applicable Legal Requirements, including ERISA and the Code;

(e) no Employee Benefit Plan is or has within the last three years been subject to the minimum funding requirements of Section 412 or 430 of the Code or Title IV of ERISA;

(f) Except as described on Schedule 3.19(f), the Seller does not have any obligation to contribute to any "multiemployer plan" within the meaning of Section 3(37) of ERISA; each Employee Benefit Plan intended to qualify under Section 401(a) of the Code has received a favorable determination letter or is entitled to rely on an opinion letter

from the Internal Revenue Service that such Employee Benefit Plan is a “qualified plan” under Section 401(a) of the Code, the related trust is exempt from tax under Section 501(a) of the Code, and no facts or circumstances exist that would be reasonably likely to jeopardize the qualification of such Employee Benefit Plan; and

(g) with respect to the Employee Benefit Plans, all required contributions have been made or properly accrued on the Seller’s financial statements.

**Section 3.20 Intellectual Property.**

(a) Seller owns or has a valid right or license to use all Licensed Intellectual Property necessary to conduct the operations of the Hospital Operations as currently conducted. Except as described on Schedule 3.20, to Seller’s Knowledge there is no unauthorized use, disclosure, infringement or misappropriation of any intellectual property rights of Seller, any trade secret of Seller, or any intellectual property right of any third party to the extent licensed by or through Seller, including any employee or former employee of Seller, relating in any way to any of the Purchased Assets, Lease Assets or Licensed Intellectual Property. There are no royalties, fees or other payments payable by Seller to any Person by reason of the ownership, use, sale or disposition of intellectual property related to any of the Purchased Assets, Lease Assets or Licensed Intellectual Property except as set forth in the Contracts.

(b) Except as described on Schedule 3.20, Seller is not nor will be as a result of the execution and delivery of this Agreement or any of the documents described herein or the performance of its obligations under this Agreement or any of the documents described herein, in breach of any license, sublicense or other Contract relating to the intellectual property included in the Purchased Assets, Lease Assets or Licensed Intellectual Property.

(c) Except as described on Schedule 3.20, Seller has no patents, registered trademarks, registered service marks or registered copyrights related to any of the Purchased Assets, Lease Assets or Licensed Intellectual Property and, to Seller’s Knowledge, Seller is not infringing upon any patents, trademarks, service marks, copyrights or in violation of any trade secret or other proprietary right of any third party related to any of the Purchased Assets, Lease Assets or Licensed Intellectual Property. Seller has not brought any Proceeding against any third party for infringement of intellectual property or breach of any license or Contract involving intellectual property related to any of the Purchased Assets, Lease Assets or Licensed Intellectual Property.

**Section 3.21 Brokers.** Except as set forth on Schedule 3.21, Seller has not employed or engaged any broker, finder or investment banker or incurred any liability for any investment banking fees, financial advisory fees, brokerage fees or finders’ fees in connection with this Agreement or the Transactions contemplated hereby. Any fees associated with the retention of a financial advisor or other intermediary who has acted on behalf of Seller in connection with the negotiation or consummation of this Agreement or the Transactions contemplated thereby are the sole and exclusive obligation of the Seller, including any broker’s, finder’s or originator’s fees or commissions by reason of services rendered for or, at the instance of, Seller in connection with this Agreement or the Transactions contemplated hereby.

EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS ARTICLE III, THE PURCHASED ASSETS, LEASE ASSETS AND LICENSED INTELLECTUAL PROPERTY ARE BEING SOLD TO BUYER “AS IS, WHERE IS, AND WITH ALL FAULTS”, AND SELLER EXPRESSLY DISCLAIMS ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

#### **ARTICLE IV. REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Seller that, except as contained in the disclosure Schedules attached hereto and incorporated herein:

##### **Section 4.01 Organization, Corporate Power and Authority.**

(a) Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Texas.

(b) Buyer has full company power and authority to execute, deliver and perform the obligations and covenants contained in this Agreement, the Lease and other Transaction Documents and Buyer Closing Deliverables and to carry out the Transactions contemplated hereby and thereby. The execution and delivery of Agreement, the Lease and other Transaction Documents and Buyer Closing Deliverables by Buyer and the consummation of the Transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of Buyer. This Agreement constitutes the legal, valid, and binding obligation of Buyer, enforceable in accordance with its terms, subject to applicable Exceptions. Each of Buyer Closing Deliverables, including the Lease, when duly executed and delivered by Buyer and the other Parties thereto, will constitute the legal, valid and binding obligation of Buyer enforceable in accordance with its respective terms, subject to applicable Exceptions.

**Section 4.02 No Breach.** Neither the execution and delivery of this Agreement, the Lease and other Transaction Documents contemplated herein by Buyer nor the consummation or performance of the Transactions contemplated hereby or in the Buyer Closing Deliverables will, directly or indirectly (with or without notice, lapse of time, or both): (i) conflict with or result in the breach or violation of the governing documents of or resolutions adopted by Buyer; (ii) conflict with or result in the breach or violation of any provision of any Order of any Governmental Authority, in either such case, to which Buyer is bound, or cause any acceleration thereof; or (iii) contravene, conflict with, or result in a violation in any Legal Requirements. Except for the other approvals and consents described on Schedule 4.02, Buyer is not and will not be required to give any notice to or obtain any consent from any Governmental Authority in connection with the execution and delivery of this Agreement or the consummation of the Transactions contemplated hereby.

##### **Section 4.03 Financial Information; No Material Adverse Effect.**

Schedule 4.03 hereto contains a pro forma Sources and Uses statement for the Buyer estimated as of the Closing Date, giving effect to the funds available to Buyer to close the Transactions contemplated hereby, and to any indebtedness or other liabilities incurred with respect thereto. Such pro forma Sources and Uses statement has been prepared in accordance with GAAP, except to the extent of any variances from GAAP described in Schedule 4.03, and presents fairly in all material respects the anticipated financial condition of Seller as of the Closing Date. Furthermore, Except as set forth in Schedule 4.03, since its inception there has not occurred any Material Adverse Effect with respect to the Buyer.

**Section 4.04 Legal Proceedings.** Except as provided in Schedule 4.04, there are no Proceedings instituted, pending or threatened against Buyer, including but not limited to any such Proceedings that challenge, or may have the effect of preventing, delaying, making illegal or otherwise interfering with, the Transactions contemplated hereby, and there are no Orders outstanding or threatened against Buyer that challenge, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, the Transactions contemplated hereby.

**Section 4.05 Tax Returns.** (i) All Tax Returns, if any, required to be filed by or on behalf of Buyer in respect of income, assets or other items relating to Buyer, in all cases, have been duly filed on a timely basis or within the applicable final extension periods granted to it; (ii) such Tax Returns are true, complete and correct in all respects; and (iii) all Taxes owed by Buyer with respect to any taxable period or partial taxable period of Buyer ending prior to the Effective Time have been paid or will be timely paid by Buyer.

**Section 4.06 Legal Compliance.** Buyer and its Affiliates are in compliance with all applicable Legal Requirements in all material respects and (b) have not received any current written notice of any alleged violation or noncompliance with any Legal Requirement. Except as set forth on Schedule 4.06, the Buyer is in compliance in all materials respects with all Information Laws.

**Section 4.07 Brokers.** Except as set forth on Schedule 4.07, Buyer has not employed or engaged any broker, finder or investment banker or incurred any liability for any investment banking fees, financial advisory fees, brokerage fees or finders' fees in connection with this Agreement or the Transactions contemplated hereby. Any fees associated with the retention of a financial advisor or other intermediary who has acted on behalf of Buyer in connection with the negotiation or consummation of this Agreement or the Transactions contemplated thereby are the sole and exclusive obligation of the Buyer, including any broker's, finder's or originator's fees or commissions by reason of services rendered for or, at the instance of, Buyer in connection with this Agreement or the Transactions contemplated hereby.

**Section 4.08 Funding of Purchase Price.** The Buyer has sufficient cash available to enable it to fulfill its obligations hereunder and to make payment of all amounts to be paid by it hereunder on the Closing Date, it being acknowledged that there is no financing contingency as a condition to Buyer's obligations under this Agreement or to complete the Transactions contemplated hereby.

**ARTICLE V.**  
**CONDITIONS TO THE OBLIGATIONS OF BUYER**

The obligations of Buyer to consummate the purchase of the Purchased Assets and the lease of the Lease Assets and any other Transactions contemplated by this Agreement and the Lease are subject to the satisfaction, on or before the Closing Date, of the following conditions:

**Section 5.01 Representations and Warranties to be True and Correct.** The representations and warranties of Seller contained in Article III shall be true and correct in all material respects (other than representations and warranties that are qualified as to materiality or Material Adverse Effect, which representations and warranties shall be true in all respects) both when made and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date).

**Section 5.02 Covenants.** Seller shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the other Transaction Documents to be performed or complied with by it prior to or on the Closing Date.

**Section 5.03 No Action or Proceeding.** No Order of any Governmental Authority restraining, enjoining or otherwise preventing or delaying the consummation of this Agreement or the Transactions contemplated hereby shall be outstanding, and no Proceedings or investigations by or before, or otherwise involving, any Governmental Authority shall be threatened or pending against Seller or Buyer which seeks to enjoin or prevent the consummation of the Transactions contemplated under this Agreement or which seeks Damages in connection with the Transactions contemplated hereby.

**Section 5.04 Licenses and Permits.** Buyer shall have been issued, or shall have received approval or assurance of approval of the transfer of (or permitted utilization of Seller's existing Licenses and Permits under transition arrangements) all Licenses and Permits necessary to enable Buyer to own, operate, occupy and lease the Purchased Assets, Lease Assets, and operate the Hospital Operations.

**Section 5.05 Seller Closing Deliverables.** Buyer and its counsel shall have received copies executed by Seller of the Transaction Documents and all other of the Seller Closing Deliverables specified in Section 2.02.

**Section 5.06 No Material Casualty.** Between the Execution Date and the Effective Time, no Material Casualty shall have occurred. A "**Material Casualty**" shall mean damage or destruction of any part of the Purchased Assets or Lease Assets by fire or the elements or by any other cause and the cost to repair such damage is reasonably likely to exceed \$150,000.00. In the event of a Material Casualty, Seller shall within fifteen (15) business days after such Material Casualty provide written notice thereof to Buyer. Such notice shall include copies of all insurance policies then in force relating to the Purchased Assets or Lease Assets covering such Material Casualty and, Seller's initial good faith estimate of the cost to repair such damage or destruction ("**Cost Estimate**"). Buyer may, by written notice to Seller within twenty (20) days after Buyer's

receipt of notice of the Material Casualty, elect in writing to terminate this Agreement. Should Buyer terminate this Agreement in accordance with the provisions of this Section 5.06, this Agreement shall be terminated. If any part of the Purchased Assets or Lease Assets is damaged or destroyed prior to the Closing Date but this Agreement cannot be terminated or is not terminated by Buyer in accordance with the foregoing, this Agreement shall not be affected and the parties shall not be excused from performance hereunder, except as otherwise provided hereunder, but, as of the Effective Time, at Buyer's request, Seller shall assign to Buyer all of its right, title and interest in and to the proceeds of insurance insuring against the loss and Seller's interest in sums payable thereunder. To the extent that such proceeds are less than the Cost Estimate, Seller shall either make payment to Buyer in amount that together with such proceeds equals the Cost Estimate or Seller may, by written notice to Buyer within twenty (20) days after Seller's receipt of Buyer's election to proceed to Closing notwithstanding such Material Casualty, elect in writing to terminate this Agreement.

**Section 5.07 No Material Adverse Effect.** Between the Execution Date and the Effective Time, no Material Adverse Effect in the business affairs or financial condition of the Seller or Hospital Operations shall have occurred.

**Section 5.08 Receipt of Consents.** All approvals, consents and waivers that are listed on **Schedule 3.02** of the Disclosure Schedules shall have been received, and executed counterparts thereof shall have been delivered to Buyer at or prior to the Closing; provided, however if a South Street Sublease shall not have been consented to as required by the landlord with respect thereto on or before July 16, 2021, Buyer shall waive such landlord consent as a closing condition.

## **ARTICLE VI. CONDITIONS TO THE OBLIGATIONS OF SELLER**

The obligations of Seller to consummate the sale of the Purchased Assets and any other Transactions contemplated by this Agreement are subject to the satisfaction, on or before the Closing Date, of the following conditions.

**Section 6.01 Representations and Warranties to be True and Correct.** The representations and warranties of Buyer contained in Article IV shall be true and correct in all material respects (other than representations and warranties that are qualified as to materiality or Material Adverse Effect, which representations and warranties shall be true in all respects) both when made and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date).

**Section 6.02 Performance.** Buyer shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the other Transaction Documents to be performed or complied with by it prior to or on the Closing Date.

**Section 6.03 No Action or Proceeding.** No Order of any Governmental Authority restraining, enjoining or otherwise preventing or delaying the consummation of this Agreement or the Transactions contemplated hereby shall be outstanding, and no Proceeding or investigations

by or before, or otherwise involving, any Governmental Authority shall be threatened or pending against Seller or Buyer which seeks to enjoin or prevent the consummation of the Transactions contemplated under this Agreement or which seeks material Damages in connection with the Transactions contemplated hereby.

**Section 6.04 Buyer Closing Deliverables.** Seller and their counsel shall have received copies executed by Buyer of the Transaction Documents and all other of the Buyer Closing Deliverables specified in Section 2.02.

**Section 6.05 Insurance Coverage.** Buyer shall have obtained and have in effect all customary property and casualty insurance and customary commercial general liability, malpractice and directors and officers insurance required under the Lease.

**Section 6.06 Receipt of Consents.** All approvals, consents and waivers that are listed on **Schedule 3.02** of the Disclosure Schedules shall have been received, and executed counterparts thereof shall have been obtained by Seller at or prior to the Closing; provided, however, Seller shall have used reasonable commercial efforts to obtain such approvals, consents and waivers.

## **ARTICLE VII. ADDITIONAL COVENANTS AND AGREEMENTS**

**Section 7.01 Retention and Access to Records.** After the Closing Date, Buyer shall retain the Transferred Records for a period consistent with Buyer's record retention policies and practices, but in any event for at least the minimum period for which such Transferred Records are required to be retained under applicable Legal Requirements. Buyer also shall provide Seller and its representatives reasonable access thereto, during normal business hours and on reasonable prior written notice, to enable them to prepare financial statements, tax returns, respond to tax audits or any other reasonable business purpose. Seller shall retain copies of all records that may pertain to any Excluded Liabilities or Excluded Assets. After the Closing Date, Seller shall provide Buyer and its representatives reasonable access to Excluded Records during normal business hours and on reasonable prior written notice, for any business purpose reasonably related to Buyer's operation of the Hospital.

**Section 7.02 Access to Purchased Assets; Contracts.**

(a) Between the Execution Date and the Closing Date, Seller shall afford to the authorized representatives and agents of Buyer reasonable access to and the right to inspect the plants, properties, books and records of Seller relating to the Hospital Operations and the Purchased Assets, Lease Assets and Licensed Intellectual Property, and will furnish Buyer with such additional financial and operating data and other information as to the Hospital Operations and the Purchased Assets, Lease Assets and Licensed Intellectual Property as Buyer may from time to time reasonably request. Buyer's right of access and inspection shall be made in such a manner as not to interfere unreasonably with the operation of Seller's Hospital Operations or Seller's use of the Purchased Assets, Lease Assets and Licensed Intellectual Property. Buyer may not conduct any borings, drilling or other non-destructive testing without first requesting and obtaining Seller's prior written consent, which shall not be unreasonably withheld. Buyer shall keep all information and

data received or discovered in connection with the due diligence inspections of the Purchased Assets, Lease Assets and Licensed Intellectual Property strictly confidential, sharing all such information only with its consultants, its lenders, and any potential debt or equity investors in the Buyer entity. Buyer agrees that it will restore the Purchased Assets, Lease Assets and Licensed Intellectual Property to their respective condition as it existed prior to the conducting of any tests or inspections. Buyer will indemnify and hold Seller harmless from any and all liability for property damage and/or personal injuries arising out of or related in any way to the activities of Buyer or its contractors, agents, or employees in their conduct of any such investigations and tests.

(b) This Agreement shall not constitute an attempt to assign any Purchased Asset, Leased Assets or Licensed Intellectual Property or to assume any Assumed Liabilities, if the attempted assignment or assumption of same, as a result of the absence of a consent or authorization of a third party, would constitute a breach or default under any lease, agreement or commitment or would in any way adversely affect the rights, or increase the obligations, of Buyer or Seller with respect thereto. Except as otherwise agreed to by the Parties, Buyer and Seller shall cooperate in good faith and with reasonable diligence and using reasonable commercial efforts for obtaining any consent or authorization of a third party necessary for the assignment of any Purchased Asset to Buyer or the assumption by Buyer of any Assumed Liabilities. With respect to any Purchased Asset or Licensed Intellectual Property, if Seller fails to obtain the consent or authorization necessary for the assignment of such Purchased Asset or Licensed Intellectual Property prior to the Closing Date, then Buyer may, at its option and expense, require Seller to enter into such arrangement (including sublease, agency, pass-through, indemnity or payment arrangement) as reasonably necessary to provide Buyer with the benefits of such Purchased Asset or Licensed Intellectual Property, to the extent that Seller may legally and contractually serve as an intermediary party under such agreements to continue the provision of services to Buyer (but with appropriate reimbursement or advancement of all Seller's costs for doing so and indemnification of Seller and its affiliates by Buyer for serving in such role). With respect to any Assumed Liabilities, Buyer agrees to cooperate with Seller to the extent reasonably necessary to relieve Seller from the obligations of such Assumed Liabilities.

(c) As of the Execution Date, Buyer and Seller have not fully identified the Assumed Contracts referenced in Section 1.01(d) or the Excluded Contracts, other than those Excluded Contracts described in Section 1.02(i). Schedule 3.15 contains Seller's preliminary, good faith determination of those material Contracts in effect as of the Execution Date (collectively, the "**Existing Contracts**"), and Schedule 7.02(c) contains the preliminary determination of Buyer as to whether it wishes to assume or request termination of such Existing Contracts (each a "**Buyer Determined Contract**"). Contingent upon the Closing, Seller agrees to terminate each such Buyer Determined Contract that Buyer has designated on Schedule 7.02(c) for termination, subject to Section 7.02(e), each such Buyer Determined Contract shall be an Excluded Contract. Contingent upon the Closing, Seller agrees to assign to Buyer all other Buyer Determined Contracts and each such Buyer Determined Contract shall be an Assumed Contract and shall be listed on Schedule 1.01(d).

(d) Between the Execution Date and the Closing Date, Buyer and Seller shall work in good faith to (i) identify any Contracts identified by Seller on Schedule 3.15 as an Existing Contract for which Buyer has not reached a determination as to whether it will assume or seek termination of such Existing Contract on Schedule 7.02(c), (ii) identify any other Contract that, despite Buyer or Seller's good faith effort, as the case may be, was not included on Schedule 3.15 or Schedule 7.02(c) as of the Execution Date (each a "**Buyer Undetermined Contract**") or (iii) any Contract that Buyer or Seller determines was erroneously included preliminarily on Schedule 3.15 or Schedule 7.02(c) as of the Execution Date. Upon written request by Buyer, Seller agrees to terminate, contingent upon the Closing, any such Buyer Undetermined Contract, if such Contract is permitted to be terminated by Seller in accordance with its terms and without liability to Seller. Subject to the provisions of Section 7.02(e), each Buyer Undetermined Contract that is terminated pursuant to this Section 7.02(d) shall be an Excluded Contract. Each Buyer Undetermined Contract that is not terminated in accordance with this Section 7.02(d) shall be an Assumed Contract and shall be listed on Schedule 1.01(d).

(e) With respect to the termination of any Contract by Seller pursuant to this Section 7.02, Seller shall be entitled to pursue such terminations in a manner that will not result in Seller incurring any Damages, cost or expense relating to such termination if the Closing does not occur. Buyer acknowledges and agrees that for any Contract identified on Schedule 3.15 or 7.02(c) which Buyer does not indicate is to be terminated or assumed in accordance with this section 7.02, it shall indemnify and hold Seller harmless against any cost, expense or other Loss arising from such Contract from and after the Effective Time and from any cost, expense or other Loss arising from either the termination of such Contract or the failure to obtain a third party consent to the assignment of such Contract to Buyer. Notwithstanding the foregoing, Seller acknowledges and agrees that in no circumstance shall Buyer have any liability to Seller if Seller may terminate such Contract upon 30 days or less written notice without cost or penalty to Seller.

**Section 7.03 Misdirected Payments.** Seller shall promptly remit to Buyer any monies received by Seller after Closing constituting or in respect of the Purchased Assets or Assumed Liabilities or Buyer's operation of the Hospital Operations on or following the Effective Time. Except as provided in Section 7.17, Buyer shall promptly remit to Seller any monies received by Buyer after Closing constituting or in respect of the Excluded Assets or Excluded Liabilities or, to the extent not relating to the Assumed Liabilities or a Purchased Asset, related to Seller's operation of the Hospital Operations prior to the Effective Time. In addition, and without limitation except as otherwise provided by Section 1.04(j), in the event of a determination by any governmental or third party payor that payments to the Seller or the Hospital Operations resulted in an overpayment or other determination that funds previously paid by any program or plan to the Seller or Hospital Operations must be repaid, Seller shall be responsible for repayment of said monies (or defense of such actions) if such overpayment or other repayment determination was for services rendered prior to the Effective Time and Buyer shall be responsible for repayment of said monies (or defense of such actions) if such overpayment or other repayment determination was for services rendered after the Effective Time. In the event that, following the Effective Time, Buyer suffers any offsets against reimbursement under any third-party payor or reimbursement programs due to Buyer, relating to amounts owing under any such programs by Seller or any of its Affiliates for services rendered on and before the Effective Time, Seller shall promptly upon demand from Buyer pay to

Buyer the amounts so billed or offset. In accordance with the provisions of Schedule 7.03, Buyer and Seller shall develop a cash management system that provides for a daily sweep and transfer of monies owed to Buyer pursuant to the Agreement, including the Accounts Receivable, from the Seller's applicable bank account into an account or accounts that are the sole and exclusive property of Buyer and controlled by Buyer and shall provide Buyer with viewing or inspection rights as to Seller's account from which funds are swept for that purpose.

**Section 7.04 Cooperation on Tax Matters.** Following the Closing, the Parties shall reasonably cooperate with each other and shall make available to the other, as reasonably requested and at the expense of the requesting Party (but including only out-of-pocket expenses to third parties, photocopying and delivery costs and not the costs incurred by any Party for the wages or other benefits paid to its officers, directors or employees), or to any Tax authority, all information, records or documents relating to Tax liabilities or potential Tax liabilities, if any, of Seller for all periods on or prior to the Closing Date and any information which is relevant to determining the amount payable under this Agreement, and shall preserve all such information, records and documents (to the extent a part of the Purchased Assets delivered to Buyer at Closing) until the expiration of any applicable statute of limitations or extensions thereof. Seller shall make available to Buyer the records of individual wages of all employees, as well as copies of state unemployment Tax returns, to the extent reasonably necessary for Buyer to verify future unemployment Tax rates and to calculate the correct taxable payroll for the remainder of the calendar year in which the Closing occurs. Seller shall file terminating Forms W-2 and Forms 1099 with respect to all periods ending prior to the Closing Date, as appropriate.

**Section 7.05 Third Party Litigation Cooperation.** Seller, on the one hand, and Buyer, on the other hand, shall cooperate with the other, at the requesting Party's expense (but including only direct out-of-pocket expenses to third parties, photocopying and delivery costs, and not the indirect costs incurred by any Party, such as the wages or other benefits paid to its officers, directors or employees), in furnishing reasonably available information, testimony and other assistance in connection with any actions, Tax or cost report audits, Proceedings, arrangements or disputes involving any of the Parties hereto (other than in connection with disputes between the Parties hereto) and relating to the Purchased Assets, the Excluded Assets, Excluded Liabilities or Assumed Liabilities or the Transactions contemplated hereby, including arranging discussions with, and the calling as witnesses of, officers, directors, employees, agents and representatives of any Party.

**Section 7.06 Confidentiality; Publicity.**

(a) All information, instruments, documents and details concerning the respective Hospital Operations of Seller prior to the Effective Time and Buyer after the Effective Time are strictly confidential, and Seller and Buyer covenant and agree that they will not, nor will they allow any of their respective officers, directors, employees, attorneys or agents (including professional advisors) to, reproduce, distribute or disclose any matters relating to the business of the other or relating to the proposed Transactions, this Agreement, its negotiation, terms, provisions or conditions, including the Purchase Price (collectively, the "**Confidential Information**"), except for disclosure to their respective professional advisors (who shall be similarly bound) as reasonably necessary to effect the

Transactions contemplated hereby and in a manner consistent with the provisions of this Agreement or except as may otherwise be required by Applicable Law.

(b) Notwithstanding the foregoing, (i) nothing contained in this Section 7.06 shall prohibit either Buyer or Seller from disclosing the Transactions contemplated hereby to Governmental Authorities to the extent reasonably necessary to obtain the Licenses, participations and accreditations contemplated hereby or any other Governmental Authority approvals as may be required for the Transactions contemplated hereby; (ii) Buyer and Seller shall be entitled to disclose to third parties such information regarding the Transactions contemplated hereby as is necessary to obtain such third parties' consents to the assignment of any Assumed Contract; (iii) each Party shall be entitled to disclose any information relating to a breach by another Party of any of its obligations under this Agreement, but only in connection with a Proceeding, and (iv) disclosures required by any Legal Requirements are permitted.

(c) Without limiting the generality of the foregoing, except as specifically permitted by this Section 7.06 or as required by any Legal Requirement, no public announcement or other disclosure of the proposed sale or acquisition of the Purchased Assets or lease of the Lease Assets or any Confidential Information shall be made by or on behalf of either Buyer or Seller without the prior written consent of the other Party and such other Party's prior approval of the form and content of the same, which consent and approval shall not be unreasonably withheld or delayed.

(d) Except as specifically permitted by this Section 7.06, each Party shall keep all Confidential Information obtained from any other Party either before or after the date of this Agreement confidential, and no Party shall directly or indirectly, use, transfer, distribute, disclose or reveal such information to, nor produce copies of any such written information for, any Person outside its management group or its professional advisors without the prior written consent of the other Parties, unless the disclosing Party is compelled or required to disclose such information by judicial or administrative process or by any other Legal Requirements (including applicable securities laws). Notwithstanding the foregoing, in the event that Seller receives a Texas Public Information Act ("TPIA") request for Buyer's Confidential Information, Seller agrees to: (i) promptly (within 2 business days of receipt of a TPIA request) notify Buyer of such request for disclosure, and (ii) if instructed by Buyer in writing, decline any such request for disclosure and file a written request with the Texas Attorney General's office seeking a determination as to whether such disclosure may be withheld (Seller is not required to take any further action with respect to any request made for determination by the Attorney General, and after any such request is made, all responsibility for briefing, supplementing and challenging the results of any requests to the Attorney General shall be Buyer's sole responsibility).

(e) If the sale contemplated by this Agreement should fail to close for any reason, each Party shall return to the other or, in the case of copies, destroy as soon as possible all originals and copies of written information provided to such Party by or on behalf of such other Parties as well as all summaries, analyses, notes, and other embodiments of such information (except an attorneys' archival copy for records purposes

only), and none of such information shall be used by any Party, or its employees, agents or representatives, in the business operations of any Person.

(f) Notwithstanding the foregoing, each Party's obligations under this Section 7.06 shall not apply to any information or document which is or becomes available to the public (other than as a result of a disclosure in violation of any obligation or agreement) or becomes available to the Party on a non-confidential basis from a source other than another Party or its officers, directors, employees or agents. The Parties' obligations under this Section 7.06 shall survive for two (2) years after the termination of this Agreement or the Closing and shall be subject to all applicable Legal Requirements.

**Section 7.07 Covenant Not to Compete.** During the term of the Lease (the "**Restricted Period**"), Seller shall not compete with Buyer and Buyer's Hospital Operations through the operation of any other hospital or outpatient clinic offering diagnostic imaging, wound care, cardiac catheterization lab, or similar outpatient ancillary or specialty healthcare services without the written consent of Buyer within Nacogdoches County, Texas (the "**Restricted Territory**"); provided however, such covenant (i) shall be limited to operation of a hospital and outpatient ancillary or specialty health care services offered by the Hospital as of the Effective Time or in the future, and for avoidance of doubt shall not extend to any skilled nursing facilities, including those currently operated by Seller, provided such skilled nursing facilities do not to any material extent offer outpatient ancillary or specialty healthcare services provided by Hospital within the Restricted Territory, and (ii) shall not apply to specialty outpatient clinics to the extent of services that Buyer has offered post-Closing Date but subsequently withdraws from offering in the Restricted Territory.

**Section 7.08 Cooperation.**

(a) The Parties shall reasonably cooperate with each other and with their respective representatives in connection with any steps required to be taken as part of their respective obligations under this Agreement, and shall (i) furnish upon written request to each other such further information; (ii) execute and deliver to each other such other documents; (iii) cooperate and provide reasonable assistance during any payroll transition; and (iv) do such other acts and things, all as the other Party may reasonably request, for the purpose of carrying out the intent of this Agreement and the Transactions contemplated hereby.

(b) Buyer, upon reasonable notice from Seller, during normal business hours, will cooperate with Seller in regard to the preparation, filing, handling and appeals of all cost reports relating to the Hospital Operations for relevant periods or required as a result of the Transactions described herein, including, without limitation, those relating to the Medicare and Medicaid programs. Each Party will, upon reasonable notice to the other, during normal business hours, and subject to applicable Legal Requirements regarding privilege or confidentiality of patient records, provide reasonable access to the other Party to all records of the Hospital Operations and will allow the other Party to copy any documents reasonably relating to the cost reports and appeals thereof. Each Party agrees to forward to the other copies of all correspondence relating to the cost reports received from Medicare, Medicaid, TRICARE, or any other third party payor within five (5) business

days of receipt. Each Party also agrees to inform the other of all audits or other proceedings with respect to the cost reports within five (5) business days of notification. Additionally, each Party agrees to use its reasonable best efforts to ensure the other's right of access for at least three (3) years from the Closing Date in the event of any subsequent Disposition of the Hospital Operations.

#### **Section 7.09 Taxes, Costs and Charges.**

(a) Transfer and Other Taxes. Buyer shall be responsible for the cost of any and all state, county, local and municipal transfer and/or excise stamps or Taxes, however denominated, if any, required as a result of the Seller's transfer of the Purchased Assets hereunder to Buyer.

(b) Ad Valorem Taxes. Seller shall be liable for and shall pay all Taxes, if any, whether assessed or unassessed, applicable to Seller or any of the Purchased Assets for all periods prior to the Closing Date. Buyer shall be liable for and shall pay all Taxes, whether assessed or unassessed, applicable to Buyer or to Buyer's use of the Purchased Assets and/or Lease Assets for all periods beginning on or after the Closing Date.

(c) Professional Fees. Buyer and Seller shall each pay their own professionals' fees and expenses, including those of attorneys and accountants and other consultants and advisors.

#### **Section 7.10 Employees.**

(a) As of the Closing Date, the Buyer shall offer employment to Seller's current qualified eligible employees associated with the Hospital Operations, but excluding employees principally associated with Seller's SNF Facilities or other Excluded Assets (and except that executive and management personnel will be considered for hire by Buyer on a case-by-case basis). Buyer shall offer all of the Hospital's qualified eligible employees (including those on FMLA or other approved leave) ("**Employees**") continued employment. Qualified eligible employees are those Employees, subject to Buyer's review of Employees' employment performance files and any customary and reasonable background checks undertaken consistent with customary and reasonable hiring policies for the hospital industry, that Buyer elects to hire; furthermore, all hired Employees must accept Buyer's control and management of the Employee's PTO rollover. Any Employee that accepts employment with Buyer, shall be compensated at a level commensurate and at compensation levels consistent with those then being provided by the Seller, although Buyer reserves the right to periodically amend its pay, benefits, and retirement plans and policies. For purposes of this Agreement, Employees who are offered and accept employment with the Buyer shall be referred to herein as the "**Transferred Employees.**" For transition purposes, in the event that the Closing occurs during a payroll cycle, the Seller shall pay all Employees through the end of such payroll cycle, but Buyer must promptly on or before the date which is two business days prior to the payment date for such payroll cycle (which lags the end of such payroll cycle by five business days) pay to Seller the amount of all such compensation expense to be paid by Seller to Transferred Employees for the period from the Effective Time through the end of such payroll cycle.

(b) For purposes of eligibility to participate in and vesting of benefits under all Employee Benefit Plans of Buyer and programs, and subject to the Assumed PTO, each Transferred Employee shall be credited with all of his or her periods of service with Seller. In addition, Buyer shall cause each such Employee Benefit Plan of Buyer or program that is a health or welfare plan to (i) waive or cause to be waived any waiting period and any preexisting condition or restriction for Transferred Employees and their dependents and (ii) credit each Transferred Employee for all deductibles paid by such Transferred Employee under the corresponding Employee Benefit Plan of Seller for the portion of the plan year preceding the Closing Date, provided Seller or the administrator of Seller's Employee Benefit Plan provides to Buyer the data necessary for Buyer to comply with this clause (ii) on or before the thirtieth day after the end of the month immediately following the month in which the Closing occurs.

(c) Seller shall not increase the compensation or benefits of any Employees, except in the Ordinary Course of Business or pursuant to any existing disclosed obligations, from the Execution Date through the Effective Time.

(d) Buyer shall cause a qualified defined contribution plan maintained by Buyer to accept as a rollover contribution each Transferred Employee's eligible rollover distribution, both cash and in kind in the form of any outstanding loans, from the Seller's defined contribution plan from any of the Transferred Employees who elect to make any such rollover contributions.

(e) Effective as of Closing, Buyer shall (i) credit each Transferred Employee with his or her Assumed PTO, (ii) make such Assumed PTO available to such Transferred Employee at the same times and in the same form as such Assumed PTO was available under Seller's Employee Benefit Plans and (iii) provide such Assumed PTO in addition to, and not in lieu of, any paid time off accrued for service from and after the Closing Date under Buyer's employee benefit plans.

(f) Notwithstanding any other provision of this Agreement to the contrary, (i) Seller or an Affiliate of Seller shall retain sponsorship of each Employee Benefit Plan, program, or arrangement sponsored by Seller, (ii) Buyer shall not be entitled to any asset of (or associated with), or assume or be liable for any obligation of, any Employee Benefit Plan (or associated contract) or other such Employee Benefit Plan, program, or arrangement sponsored by Seller, and (iii) no Employee Benefit Plan (or associated contract) or other such Employee Benefit Plan, program, or arrangement sponsored by Seller shall be considered to be a Purchased Asset, a Assumed Contract, or Assumed Liabilities for purposes of this Agreement.

(g) Seller shall provide continuation coverage, to the extent it is required to do so under COBRA, (i) to all former employees of Seller who incur COBRA "qualifying events" prior to the Effective Time (and their covered dependents) and (ii) to all employees who do not become Transferred Employees (and their covered dependents). Buyer shall be responsible and liable for (and Seller shall not be so responsible or liable for) providing COBRA continuation coverage to all Transferred Employees and their dependents who experience a qualifying event after the Effective Time.

(h) Buyer shall employ and retain for such period of time following the Closing Date such number of Transferred Employees as shall be necessary to avoid any potential liability by Seller for a violation of the Workers Adjustment and Retraining Notification Act, 29 U.S. Stat. § 2101 et seq. (the “WARN Act”), attendant to Seller’s failure to notify such Transferred Employees of a “mass layoff” or “plant closing” (as such terms are defined in the WARN Act). Buyer shall be liable and responsible for any notification required under the WARN Act (or under any similar state or local Applicable Laws) and Buyer shall indemnify and hold Seller and its Affiliates harmless from and against any liability asserted against Seller or any Affiliate of Seller under the WARN Act as a result of Buyer’s failure to comply with the provision of the WARN Act as of or after the Closing Date or Buyer’s failure to comply with the provisions of this Section 7.10.

(i) At the Closing, Seller shall deliver to Buyer copies of all personnel records of the Transferred Employees to the extent permitted by Applicable Law. Seller shall coordinate with Buyer promptly after the Execution Date to provide Buyer reasonable access to employees of Seller and shall provide to Buyer employee data and information in each case to complete the documentation necessary to enroll Transferred Employees in the employee benefit plans to be provided to Transferred Employees by Buyer and its Affiliates from and after the Effective Time.

**Section 7.11 Medicare and Medicaid Cost Reports.** Seller shall timely file all Medicare and Medicaid cost reports for all cost reporting periods prior to the Effective Time for which the deadline for filing will arise after the Closing Date in accordance with all applicable Legal Requirements. Seller shall be liable for any Medicare or Medicaid overpayments or any other financial obligations arising from any adjustments or reductions in Medicare or Medicaid reimbursement for the period of time prior to the Effective Time or for any other obligations imposed by either the Medicare or Medicaid program for the period of time prior to the Effective Time.

**Section 7.12 Contact with Employees and Vendors.** Prior to the Closing, neither the Buyer nor any of the Buyer’s representatives shall contact or otherwise communicate with any employees, vendors or suppliers of the Seller in connection with or regarding the Transactions contemplated hereby, except to the extent approved in writing by Lisa King or Rhonda McCabe or their designee for Seller.

**Section 7.13 Transition Services Agreements.** To the extent necessary for a smooth transition of operations, the Parties shall execute at Closing a Transition Services Agreement in substantially the form attached hereto as **Exhibit H** to take effect at Closing (or at such period within the six months following Closing as the Parties may mutually agree) and to continue for a term in accordance with the provisions thereof; Seller agrees to pay administrative fees as specified in the Transition Services Agreement. In addition to providing for the Buyer’s provision of administrative services to Seller, the Transition Services Agreement will include and cover Contracts that do not allow for assignment to Buyer, to the extent that Seller may legally and contractually serve as an intermediary party under such Contracts to continue the provision of services to Buyer (but with appropriate reimbursement or advancement of all Seller’s costs for doing so and indemnification of Seller and its affiliates by Buyer for serving in such role). In addition, pursuant to such Transition Services Agreement Buyer shall offer and provide its

administrative oversight of the Seller-owned ambulance service as well as such other administrative services separate and apart from the ambulance services that Seller may require.

**Section 7.14 Advisory Board.** As of the Closing Date, Buyer shall establish a local governing advisory board to the Hospital. Buyer shall offer Seller two seats on the advisory board which seats shall be filled as set forth in this section (“Seller Advisory Board Member”). On or before Closing, and on an annual basis thereafter, the Seller’s Executive Committee shall provide Buyer the names of at least four members of Seller’s Board of Directors willing to serve in such capacity, from which Buyer shall make two selections for service on such advisory board; the initial Seller Advisory Board Members shall be Lisa King and Dr. Ryan Head. Any vacancies that may occur with regard to a Seller Advisory Board Member shall be filled by the Parties in the same manner as set forth above.

**Section 7.15 Medical Staff.** The current Hospital’s medical staff bylaws and clinical privileges for physicians and other practitioners at the Hospital will remain in place as of and immediately following the Closing Date, subject to Buyer’s reserved right to modify or amend such by-laws and clinical privileges from time to time after the Closing Date.

**Section 7.16 Corporate Integrity Agreement.** Prior to the Closing Date, Seller has submitted a request to the OIG to waive the successor liability provisions of the Corporate Integrity Agreement to which Seller and the Hospital Operations are currently subject. However, any such waiver from the OIG shall not be a condition precedent to the obligations of Buyer to close the Transactions.

**Section 7.17 IGT Payments.** Subject to all applicable state and federal laws, including such laws governing the permissible funding of Medicaid payments, the Seller and Buyer shall enter into an Indigent Care Affiliation Agreement. Seller agrees to work in good faith with the Buyer, to the extent allowed by federal, state, and county law and to the extent provided below, to provide support for the Hospital, through the making of Intergovernmental Transfers (“IGT(s)”) as it relates to the Texas Medicaid Uncompensated Care payment program, Delivery System Reform Incentive Payment programs (“DSRIP”), and/or any successor or other available supplemental payment program. Seller will remain solely liable for any repayment obligations or reconciliations with respect to past or current IGTs and payments made and received in periods prior to the Effective Time. However, in the event Seller has made an IGT on behalf of the Hospital prior to the Effective Time, Seller shall remit to Buyer an amount equal to any net payment amounts received on or after July 1, 2021 that are attributable to such IGTs, net of any related financing incurred therefor, for, among other purposes, providing indigent care in the community served by Seller. After the Closing, to the extent requested from time to time by Buyer, and as allowed by Applicable Law, the Seller will have the right, but not the obligation, to provide IGT funding from Seller funds, only to the extent that Seller is able to arrange to fund such IGTs. Subject to Applicable Law, the Seller will work cooperatively with the Buyer to provide Buyer the net proceeds of any such IGTs after deducting (a) the original payment amount of the IGT, (b) interest charged by any third party (or if advanced by the Seller without an underlying loan, interest at a market rate TBD) and (c) an administrative fee equal to 2% of the IGT made by Seller.

**Section 7.18 Performance Measurement and Standards.** Throughout the term of the Lease, the Buyer shall comply with those certain performance standards to be maintained by Buyer's Hospital operations specified in Schedule 7.18, including in the areas of growth, patient satisfaction, employee satisfaction, and beginning on the third year from the Effective Time, Buyer maintaining at least a 2-Star or higher rating under CMS's Overall Hospital Quality Star Rating (provided, however, if during the term of the Lease the CMS materially changes the requirements for maintaining a 2-Star rating then the Parties agree to meet and negotiate in good faith to reach agreement on new performance standards reasonably equivalent to the CMS 2-Star rating under current criteria).

**Section 7.19 Conduct of the Seller.** During the period from the date of this Agreement and continuing until the Effective Time, the Seller agrees that, except as expressly contemplated or permitted by this Agreement or the Schedules; as required by any Legal Requirement; or to the extent that the Buyer shall otherwise consent in writing, which consent shall not be unreasonably withheld, conditioned or delayed:

(a) the Seller shall: (i) use commercially reasonable efforts to carry on the Hospital Operations in the usual, regular and ordinary course in all material respects, in substantially the same manner as heretofore conducted; and (ii) use commercially reasonable efforts to maintain and preserve intact its current Hospital Operations organization, operations and to preserve the rights, goodwill and relationships of its Employees, customers, patients, suppliers, regulators and others having relationships with the Hospital Operations;

(b) other than as may be required by or in conformance with Legal Requirements in order to permit or facilitate the consummation of the Transactions contemplated hereby or the transactions disclosed in the Schedules, the Seller shall not sell, encumber or otherwise dispose of, or agree to sell, encumber or otherwise dispose of, any of its material assets other than in the Ordinary Course of Business consistent with past practice;

(c) other than as required by an existing Contract or agreement as in effect on the date hereof and other than in the Ordinary Course of Business consistent with past practice, the Seller shall not (i) increase the amount of cash compensation or severance pay of any officer or Employee, (ii) make any material increase in, or commitment to increase materially, any employee benefits or (iii) adopt or make any commitment to adopt any material new Employee Benefit Plan or make any material contribution, other than regularly scheduled contributions, to any Employee Benefit Plan.

**Section 7.20 Change of Ownership Documentation and Continued Billing.** The Parties shall be responsible for filing any necessary Change of Ownership applications (including, but not limited to, CMS Forms 855a / 855b) to reflect the transfer of ownership and responsibility for the Hospital Operations transferred hereunder. Notwithstanding the foregoing, to facilitate Buyer's operation of the Hospital Operations as of the Effective Time, the Seller shall permit Buyer to bill for services rendered from and after the Effective Time utilizing the existing applicable payor agreements, managed care agreements, and Medicaid and Medicare provider agreements presently held by the Seller for the Hospital Operations ("Existing Provider Agreements") and the

billing code numbers associated with such agreements ("Provider Numbers") until either new provider numbers are issued to Buyer or the Provider Numbers are transferred to Buyer. The Seller shall assign the Existing Provider Agreements to Buyer effective as of the Effective Time, and, so long as Buyer adheres to the requirements hereunder and remains compliant with its regulatory obligations in all material respects, shall take no action to terminate the Existing Provider Agreements or take any other action that would negatively impact the ability of Buyer to use the Provider Numbers.

## **ARTICLE VIII. TERMINATION**

**Section 8.01 Termination.** This Agreement may be terminated at any time prior to the Closing:

- (a) by the mutual written consent of the Buyer and the Seller;
- (b) by the Seller, if there has been a material breach by the Buyer of any covenant, representation or other agreement or term contained herein which has prevented the satisfaction of any condition to the obligations of the Seller at the Closing and such breach has not been waived by the Seller or cured by the Buyer within ten business days after the Buyer's receipt of written notice thereof from the Seller;
- (c) by the Buyer, if there has been a material breach by the Seller of any covenant, representation or other agreement or term contained herein which has prevented the satisfaction of any condition to the obligations of the Buyer at the Closing and such breach has not been waived by the Buyer or cured by the Seller within ten business days after the receipt of written notice thereof from the Buyer;
- (d) by the Seller, if the Transactions contemplated hereby have not been consummated on or before July 30, 2021; provided that the Seller shall not be entitled to terminate this Agreement pursuant to this Section 8.01(d) if the Seller's willful breach of this Agreement has prevented the consummation of the Transactions contemplated hereby;
- (e) by the Buyer, if the Transactions contemplated hereby have not been consummated on or before July 30, 2021; provided that the Buyer shall not be entitled to terminate this Agreement pursuant to this Section 8.01(e) if the Buyer's willful breach of this Agreement has prevented the consummation of the Transactions contemplated hereby;  
or
- (f) by the Buyer upon (i) the failure of the representations and warranties of Seller described in Section 3.01(b), Section 3.05(a) or Section 3.12 to be true and correct in all material respects as of the Closing Date, or (ii) a Governmental Authority orders in writing that the Transactions contemplated by this Agreement not be completed or notifies Buyer or Seller in writing that it is investigating such Transactions for compliance with Legal Requirements.

The party desiring to terminate this Agreement pursuant to clauses (b), (c), (d), (e) or (f) of this Section 8.01 shall give written notice of such termination to the other party hereto.

**Section 8.02 Effect of Termination.** Subject in all events to the terms of Section 8.02, in the event this Agreement is terminated by either the Buyer or the Seller as provided in Section 8.01, the provisions of this Agreement shall immediately become void and of no further force and effect (other than Section 7.06 (Confidentiality), this Article VIII and Article IX, each of which shall survive the termination of this Agreement), and there shall be no liability on the part of the Buyer or the Seller to any other party hereto except that any party whose breach or violation of the terms of this Agreement resulted in the termination of this Agreement shall be liable for Damages incurred by the other party hereto.

## **ARTICLE IX. INDEMNIFICATION**

**Section 9.01 Survival.** Subject to the limitations and other provisions of this Agreement, the representations and warranties contained in Article III and Article IV shall survive the Closing and shall remain in full force and effect until the date that is twenty-four (24) months following the Effective Time; *provided*, that the representations and warranties in (i) **Section 3.01, Section 3.05(a), Section 3.07, Section 3.21, Section 4.01 and Section 4.07** shall survive indefinitely, and (ii) **Section 3.17, Section 3.18, Section 3.19(b), and Section 4.05** shall survive for the full period of all applicable statutes of limitations (giving effect to any waiver, mitigation or extension thereof) plus 60 days (the representations and warranties referenced in clauses (i) and (ii), collectively, the “**Fundamental Representations**”), and any representations and warranties in the case of fraud or willful misconduct, shall survive indefinitely. All covenants and agreements of the Parties contained herein shall survive the Closing through the applicable statute of limitations or for the period explicitly specified therein. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching party to the breaching party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of such survival period and such claims shall survive until finally resolved.

**Section 9.02 Indemnification By Seller.** Subject to the other terms and conditions of this **Article IX** and to the extent permitted by Applicable Law, Seller shall indemnify and defend each of Buyer and its Affiliates and their respective officers, managers, directors, owners, members, agents, representatives, successors and assigns (collectively, the “**Buyer Indemnitees**”) against, and shall hold each Buyer Indemnitee harmless from and against, and shall pay and reimburse each of them for, any and all Damages incurred or sustained by, or imposed upon, any Buyer Indemnitee based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of Seller contained in Article III of this Agreement (and, for purposes of calculating Damages but not for purposes of determining the existence of such a breach, without giving effect to any materiality, Material Adverse Effect or similar limitations or qualifications thereto);

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Seller pursuant to this Agreement;

(c) any Liability based upon, resulting from or arising out of the Hospital Operations, Purchased Assets, Lease Assets, Licensed Intellectual Property or Liabilities of Seller (other than the Assumed Liabilities) existing or arising on or prior to the Effective Time;

(d) any Excluded Asset or any Excluded Liability; or

(e) any Liability (other than Assumed Liabilities) resulting from or arising out of Seller's ownership or operation of the Hospital Operations on or prior to the Effective Time.

**Section 9.03 Indemnification By Buyer.** Subject to the other terms and conditions of this **Article IX**, Buyer shall indemnify and defend each of Seller and its Affiliates and their respective officers, managers, directors, owners, members, agents, representatives, successors and assigns (collectively, the "**Seller Indemnitees**") against, and shall hold each Seller Indemnitee harmless from and against, and shall pay and reimburse each of them for, any and all Damages incurred or sustained by, or imposed upon, any Sellers Indemnitee based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of Buyer contained in Article IV of this Agreement (and, for purposes of calculating Damages but not for purposes of determining the existence of such a breach, without giving effect to any materiality, Material Adverse Effect or similar limitations or qualifications thereto);

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Buyer pursuant to this Agreement; or

(c) after the Effective Time, any Assumed Liabilities.

**Section 9.04 Certain Limitations.** The party making a claim under this **Article IX** is referred to as the "**Indemnified Party**", and the party against whom such claims are asserted under this **Article IX** is referred to as the "**Indemnifying Party**". The indemnification provided for in **Section 9.02** and **Section 9.03** shall be subject to the following limitations:

(a) The Indemnifying Party shall not be liable to the Indemnified Party for indemnification under **Section 9.02(a)** or **Section 9.03(a)**, as the case may be, until the aggregate amount of all Damages in respect of indemnification under **Section 9.02(a)** or **Section 9.03(a)** exceeds 1% of the Cash Closing Payment (the "**Deductible**"), in which event the Indemnifying Party shall only be required to pay or be liable for Damages in excess of the Deductible; *provided*, that the foregoing limitation as to the Deductible shall not apply to Damages based upon, arising out of, with respect to or by reason of any inaccuracy in or breach of any Fundamental Representation or any representations and warranties in the case of fraud or willful misconduct.

(b) The aggregate amount of all Damages for which an Indemnifying Party shall be liable pursuant to **Section 9.02(a)** or **Section 9.03(a)**, as the case may be, shall not exceed \$1,500,000.00 (the "**Cap**"), *provided*, that the foregoing limitation shall not apply to Damages based upon, arising out of, with respect to or by reason of any inaccuracy in

or breach of any of Fundamental Representation or any representations and warranties in the case of fraud or willful misconduct.

(c) Payments by an Indemnifying Party pursuant to **Section 9.02** or **Section 9.03** in respect of any Loss shall be limited to the amount of any Liability that remains after deducting therefrom any insurance proceeds and any indemnity, contribution or other similar payment received by the Indemnified Party in respect of any such claim. The Indemnified Party shall use its commercially reasonable efforts to recover under insurance policies or indemnity, contribution or other similar agreements, with mutual waiver of subrogation rights, for any Damages for which it seeks indemnification under this Agreement.

(d) Each Indemnified Party shall take, and cause its Affiliates to take, all reasonable steps to mitigate any Loss upon becoming aware of any event or circumstance that would be reasonably expected to, or does, give rise thereto.

#### **Section 9.05 Indemnification Procedures.**

(a) **Third Party Claims.** If any Indemnified Party receives notice of the assertion or commencement of any Proceeding made or brought by any Person who is not a Party to this Agreement or an Affiliate of a Party to this Agreement or their respective officers, managers, directors, owners, members, agents, representatives, successors and assigns (a “**Third Party Claim**”) against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party reasonably prompt written notice thereof. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure or is otherwise materially prejudiced by such delay. Such notice by the Indemnified Party shall describe the Third Party Claim in reasonable detail and shall indicate the estimated amount, to the extent reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party, to assume the defense of any Third Party Claim at the Indemnifying Party’s expense and by the Indemnifying Party’s own counsel, and the Indemnified Party shall cooperate in good faith in such defense; *provided, that* the Indemnifying Party shall not have the right to assume control of such defense if (i) the claim for indemnification is with respect to a criminal proceeding, action, indictment, or investigation, (ii) the Indemnifying Party has failed or is failing to diligently prosecute or defend any such claim, (iii) the Indemnifying Party has not acknowledged and agreed to its irrevocable and unconditional obligation to indemnify (subject to this Article IX) the Indemnified Party hereunder against Damages that may result from the Third Party Claim, (iv) if such Third Party Claim seeks an order, injunction, or other equitable or non-monetary relief against the Indemnified Party, (v) under applicable standards of professional conduct, a conflict or significant issue exists between the Indemnified Party and the Indemnifying Party in respect of the Third Party Claim, or the Indemnified Party has available to it one or more defenses or counterclaims that are inconsistent with or different from those that may be available to the Indemnifying Party with respect to such

Third Party Claim, or (vi) the Indemnified Party's third-party insurer has assumed the defense of such Third Party Claim (clauses (i)-(vi), the "**Assumption Conditions**"). In the event that the Indemnifying Party assumes the defense of any Third Party Claim, subject to **Section 9.05(b)**, it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party. To the extent the Assumption Conditions are satisfied and the Indemnifying Party assumes control of the defense of such Third Party Claim, the Indemnifying Party shall keep the Indemnified Party reasonably informed as to the status of the Third Party Claim, including prompt updates or responses to particular inquiries upon written request therefor. The Indemnified Party shall have the right to participate in the defense of any Third Party Claim with counsel selected by it subject to the Indemnifying Party's right to control the defense thereof so long as the Assumption Conditions are satisfied. The fees and disbursements of such counsel shall be at the expense of the Indemnified Party; *provided, that* if in the reasonable opinion of counsel to the Indemnified Party, (A) there are legal defenses available to an Indemnified Party that are different from or additional to those available to the Indemnifying Party, or (B) there exists a conflict of interest between the Indemnifying Party and the Indemnified Party that cannot be waived, the Indemnifying Party shall be liable for the reasonable fees and expenses of a single law firm as counsel (plus an additional single law firm if reasonably necessary as local counsel) to the Indemnified Party. If the Indemnifying Party elects not to compromise or defend such Third Party Claim or fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, or fails to diligently prosecute the defense of such Third Party Claim, the Indemnified Party may, subject to **Section 9.05(b)**, pay, compromise, defend such Third Party Claim and seek indemnification for any and all Damages based upon, arising from or relating to such Third Party Claim. Seller and Buyer shall cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available (subject to the provisions of **Section 7.05**) records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

(b) Settlement of Third Party Claims. Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld or delayed), except as provided in this **Section 9.05(b)**. If a firm offer is made to settle a Third Party Claim without leading to liability, the finding or admission of wrongdoing, or the creation of a financial or other obligation (including any equitable remedies) on the part of the Indemnified Party and provides, in customary form, for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third Party Claim and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to that effect to the Indemnified Party. If the Indemnified Party fails to consent to such firm offer within ten days after its receipt of such notice, the Indemnified Party may continue to contest or defend such Third Party Claim and in such event, the maximum liability of the Indemnifying Party as to such Third Party Claim shall not exceed the amount of such settlement offer. If the Indemnified Party fails to consent to such firm offer and also fails

to assume defense of such Third Party Claim, the Indemnifying Party may settle the Third Party Claim upon the terms set forth in such firm offer to settle such Third Party Claim. If the Indemnified Party has assumed the defense pursuant to **Section 9.05(a)**, it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

(c) **Direct Claims.** Any claim by an Indemnified Party on account of a Loss which does not result from a Third Party Claim (a “**Direct Claim**”) shall be asserted by the Indemnified Party giving the Indemnifying Party reasonably prompt written notice thereof. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party loses or forfeits rights or defenses by reason of such failure or is otherwise materially prejudiced by such delay. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail and, to the extent reasonably available, shall include copies of all material written evidence thereof and shall indicate the estimated amount, to the extent reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have 30 days after its receipt of such notice to respond in writing to such Direct Claim. During such 30-day period, the Indemnified Party shall allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Party shall reasonably assist the Indemnifying Party’s investigation by giving such information and assistance (including reasonable access to the Indemnified Party’s premises and personnel and the right to examine and copy any accounts, documents or records) as the Indemnifying Party or any of its professional advisors may reasonably request in writing, so long as such access does not violate Applicable Law or any confidentiality obligations of the Indemnified Party and subject to maintaining any applicable privileges. All such access shall be granted during normal business hours and shall be granted under conditions which shall not unreasonably interfere with the business and operations of the such Indemnified Party. If the Indemnifying Party does not so respond within such 30-day period, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement.

**Section 9.06 Tax Treatment of Indemnification Payments.** All indemnification payments made under this Agreement shall be treated by the parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Applicable Law.

## **ARTICLE X. EVENTS OF DEFAULT AND REMEDIES AS TO CERTAIN POST-CLOSING OBLIGATIONS**

**Section 10.01** Following the Closing, Buyer shall be considered to be in default of this Agreement, including the Intellectual Property License, and the Lease, upon the occurrence of any of the following events of default (each, after notice and cure opportunity, if applicable, an “**Event of Default**”):

(a) Buyer's default under the Lease, after notice and cure opportunity provided thereunder, if applicable;

(b) Buyer's failure to comply with its obligations as to a Disposition Participation under Section 1.11 of this Agreement, if the failure is not cured within 30 days after written notice to Buyer;

(c) Beginning on the third year from the Effective Time, Buyer's failure to comply with the performance standard established under Section 7.18 regarding its maintenance of at least a 2-Star CMS rating (or any mutually agreed alternative, in the event of a material change of such standards as provided for in Section 7.18), if the failure is not cured within three years after written notice thereof to Buyer;

(d) Buyer becomes insolvent, makes a transfer in fraud of creditors or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts when due; or Buyer shall file a petition under any section or chapter of the United States Bankruptcy Code, as amended, or under any similar law or statute of the United States or any State thereof, or Buyer shall be adjudged bankrupt or insolvent in proceedings filed against Buyer thereunder; or a petition or answer proposing the adjudication of Buyer as a bankrupt or its reorganization under any present or future federal or state bankruptcy or similar law shall be filed in any court and such petition or answer shall not be discharged or denied within 60 days after the filing thereof; or a receiver or trustee shall be appointed for all or substantially all of the assets of Buyer or of the Hospital or any of Buyer's property located thereon in any proceedings brought by Buyer; or any such receiver or trustee shall be appointed in any proceeding brought against Buyer and shall not be discharged within 60 days after such appointment or Buyer shall consent to or acquiesce in such appointment.

Upon any such Event of Default, Seller shall have the right without further notice or demand to pursue any of its rights and remedies at law or in equity under Applicable Law, including the right to seek such damages or relief to which it may be entitled and the right to immediate termination of the Lease and all of Buyer's rights to the Lease Assets under this Agreement and the immediate termination of Buyer's rights under the Intellectual Property License under **Section 1.05** hereof.

## **ARTICLE XI. MISCELLANEOUS**

**Section 11.01 Exclusivity Provision.** Seller will not, directly or indirectly, without the prior written approval of Buyer: (a) offer for sale or lease the Lease Assets or the Purchased Assets (or any material portion thereof) or any ownership interest in any entity owning the Lease Assets or any of the Purchased Assets (except in the case of each of clauses (a) through (d) herein for sales of Purchased Assets in the ordinary course of business), (b) solicit offers to buy or lease the Lease Assets or all or any material portion of the Purchased Assets or any ownership interest in any entity owning the Lease Assets or any of the Purchased Assets, (c) hold discussions with any party (other than Buyer) looking toward such an offer or solicitation or looking toward a merger or consolidation of any entity owning any of the Lease Assets or all or any material portion of the Purchased Assets, or (d) enter into any agreement with any party (other than Buyer) with respect to the sale or other disposition of the Lease Assets or the Purchased Assets (or any material portion

thereof) or any ownership interest in any entity owning the Lease Assets or all or any material portion of the Purchased Assets or with respect to any merger, consolidation, or similar transaction involving any entity owning the Lease Assets or all or any material portion of the Purchased Assets. Notwithstanding the foregoing, if this Agreement is terminated by Buyer or Seller the restrictions set forth in this Section 11.01 shall cease to apply as of the date of such termination.

**Section 11.02 Amendments.** This Agreement may not be amended, modified or supplemented, and no provision hereof shall be waived, without the signed written consent of all the Parties hereto and clearly expressing such intent.

**Section 11.03 Waiver.** Failure to insist upon strict compliance with any of the terms, covenants, or conditions of this Agreement at any one time shall not be deemed a waiver of such term, covenant, or condition at any other time, nor shall any waiver or relinquishment of any right or power herein at any time be deemed a waiver or relinquishment of the same or any other right or power at any other time.

**Section 11.04 Notices.** All notices, payments, or other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given **only if sent by hand delivery or by recognized overnight courier**, all charges prepaid, addressed as follows (or to such other addresses as subsequently designated by a Party from time to time pursuant to this Section 9.04):

If to Seller to:

Nacogdoches County Hospital District  
d/b/a Nacogdoches Memorial Hospital  
1204 Mound Street  
Nacogdoches, Texas 75961  
Attention: Administrator

with a copy to:

Dykema Gossett PLLC  
112 E. Pecan St.  
Suite 1800  
San Antonio, Texas 78205  
Attention: Deborah Williamson, Esq.

Holland & Knight LLP  
111 Congress Avenue, Suite 540  
Austin, Texas 78701  
Attention: Jerry W. Baker and Travis P. Clardy, Esqs.

which copy shall not constitute notice for the purposes of this Agreement.

If to Buyer, to:

Lion Star Nacogdoches Hospital, LLC  
1204 North Mound Street  
Nacogdoches, Texas 75961  
Attention: Sean Fowler, Chief Executive Officer

with a copy to:

Lion Star Group, LLC  
5351 N. Eagle View Dr.  
Lehi, Utah 84043  
Attention: Sean Fowler, Chief Executive Officer

with a copy to:

Reed, Claymon, Meeker & Hargett, PLLC  
5608 Parkcrest Drive  
Suite 200  
Austin, Texas 78731-4999  
Attention: Kevin Reed, Esq

**Section 11.05 Counterparts.** This Agreement may be executed in any number of counterparts (including by means of telecopied signature pages or signature pages sent electronically in a .pdf format), each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

**Section 11.06 Enforceability and Severability.** In the event any provision of this Agreement or portion thereof is found to be wholly or partially invalid, illegal, or unenforceable in any Proceeding, such provision shall be deemed to be modified or restricted to the extent and in the manner necessary to render the same valid and enforceable, or shall be deemed severed from this Agreement, as the case may require, and the balance of this Agreement shall be construed and enforced to the maximum extent permitted by Applicable Law, as if such provision had been originally incorporated herein as so modified or restricted or as if such provision had not been originally contained herein, as the case may be.

**Section 11.07 Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Texas, without regard to conflicts of laws principles.

**Section 11.08 Assignment.** This Agreement shall not be assigned or delegated by any Party without the signed prior written consent of the other Party; provided, however, that Buyer may, without the written consent of the others (a) assign any or all of its rights and interests hereunder to one or more of its Affiliates and (b) designate one or more of its Affiliates to perform its obligations hereunder, provided that such assignment shall not relieve Buyer of any of its obligations or liabilities hereunder. Absent an express written agreement among the Parties to the contrary, any assignment, delegation, or designation shall not release a Party from any obligations under this Agreement, and the delegating or designating Party shall remain liable with any delegate or designee with respect to all obligations of the delegating or designating Party under this Agreement. Notwithstanding the foregoing, the Parties hereby acknowledge that Buyer has assigned or may assign its right, title and interest under this Agreement and the CARES Escrow Agreement as security for financing provided to Buyer by one or more lenders and the Seller consents to the collateral assignment of this Agreement and the CARES Escrow Agreement to such lenders or their agents, for the benefit of the lenders. Any purported assignment, delegation, or designation in violation of this Section 11.08 is void.

**Section 11.09 Expenses.** Subject to the provisions of Section 11.18(b) below, each Party will pay its own expenses in connection with the Transactions contemplated hereby, whether or not such Transactions shall be consummated.

**Section 11.10 Parties in Interest.** All representations, covenants, and agreements contained in this Agreement by or on behalf of any of the Parties hereto shall bind and inure to the benefit of the respective successors and permitted assigns (if any) of the Parties hereto.

**Section 11.11 Consents.** No consent or approval contemplated hereunder shall be unreasonably withheld, conditioned, delayed or denied.

**Section 11.12 Third Parties.** Except as specifically contained herein, this Agreement does not and is not intended to create any rights in any Person which is not a Party to this Agreement.

**Section 11.13 Entire Agreement.** This Agreement, including the Schedules and Exhibits hereto and agreements referenced herein, constitutes the sole and entire agreement and understandings of the Parties with respect to the subject matter hereof, and supersedes and terminates any and all prior agreements, discussions, negotiations or communications. All Schedules and Exhibits hereto are incorporated herein by reference.

**Section 11.14 Specific Performance; Injunctive Relief.** Each Party shall have the right, in addition to any other rights and remedies existing in its favor, to enforce its rights and the obligations of the other Party hereunder not only by an action(s) for Damages but also by an action(s) for specific performance, injunctive and/or other equitable relief, without posting any bond or other undertaking. The Parties acknowledge and agree that any breach or threatened breach of any post-Closing covenant by any Party will likely result in some irreparable injury.

**Section 11.15 Headings; Construction.** The headings of Articles and Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All words used in this Agreement will be construed to be of such gender or number as the context requires. All references to documents, instruments or agreements will be deemed to refer as well to all addenda, exhibits, schedules or amendments thereto, but only to the extent existing as of the date hereof.

**Section 11.16 Applicable Date.** Any reference to any Legal Requirements or to any Contract means same as exists as of the Execution Date and again as of the Closing Date.

**Section 11.17 No Payments for Referrals.** Seller and Buyer acknowledge and agree that the Purchase Price has been determined to be consistent with the fair market value of the Purchased Assets and that no portion of the Purchase Price or any other benefit granted to any Party under this Agreement is conditioned on any requirement that Seller make referrals to, be in a position to make or influence referrals to, or otherwise generate business for, Buyer.

**Section 11.18 Dispute Resolution.**

(a) In the event of any dispute or disagreement between the Parties following the Closing Date as to the interpretation of any provision of this Agreement or the performance of any obligations hereunder the matter, upon the written request of any Party, shall be referred to representatives designated by each respective Party for resolution binding on the Parties. Such representatives shall promptly meet in a good faith effort to resolve the dispute. If the representatives do not agree upon a resolution within thirty (30) calendar days after reference of the matter to them, each Party shall be free to exercise the remedies available to it under Section 11.18(b).

(b) If any controversy, dispute or claim arising out or relating in any way to this Agreement or the Transactions contemplated hereunder is not resolved by negotiation pursuant to Section 11.18(a), then either Party involved in such controversy, dispute or claim may demand that the controversy, dispute or claim be resolved by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect by three arbitrators selected in accordance with such rules unless the parties shall agree on a single arbitrator. Such arbitrator(s) shall have at least ten (10)

years of experience in the healthcare field. The arbitrators shall reside or practice primarily in the State of Texas. The arbitration proceedings shall be held in Nacogdoches, Texas or another mutually acceptable neutral venue. Each Party shall bear all of its own expenses and the arbitrators' fees and expense shall be shared equally by the parties to the arbitration; provided, however, that at the conclusion of the arbitration, the arbitrator shall award costs and expenses (including the costs of the arbitration previously advanced and the fees and expenses of attorneys, accountants and other experts) to the prevailing Party or Parties. The decision of the arbitrators shall (i) be rendered in writing, and concurred in by a majority of the arbitrators, if more than one, and (ii) be final, binding and conclusive and entitled to be enforced to the fullest extent permitted by Applicable Law and entered in any court of competent jurisdiction. To the extent practical, the decision of the arbitrators shall be rendered no more than thirty (30) days following commencement of proceedings with respect thereto. The arbitrators shall have the power to grant equitable relief. The arbitrators shall cause their written decision to be delivered to the Parties. The Parties consent to the jurisdiction of the foregoing arbitrator or arbitrators and further consent to the jurisdiction of any state or federal court located in the State of Texas for the purpose of enforcing the decision or award of the arbitrators. The Parties agree that service of process may be made on any such Party by personal delivery or by registered or certified mail addressed to the appropriate Party at the address for such Party specified in Section 11.04. The submission to the jurisdiction of the courts referred to above for the purpose of enforcing the decision or award of the arbitrators shall not (and shall not be construed so as to) limit the right of any Party to file or commence a proceeding against the other in any other court of competent jurisdiction for the purpose of enforcing the decision or award of the arbitrators if and to the extent permitted by Applicable Law. In the event any suit or other Proceeding is brought for the enforcement of any decision or award of the arbitrators, the Parties agree that the prevailing Party or Parties shall be entitled to recover from the other Party or Parties upon final judgment on the merits reasonable attorneys' fees, including attorneys' fees for any appeal and costs incurred in bringing such suit or proceeding. Notwithstanding anything to the contrary provided in this Section 11.18(b), and without prejudice to the above procedures, any Party may apply to any court of competent jurisdiction for temporary injunctive or other provisional judicial relief if such action is necessary to avoid irreparable damage or to preserve the status quo until such time as the arbitrator is selected and available to hear such Party's request for temporary relief.

**Section 11.19 Specific Controls Over the General.** The Parties acknowledge the general rule of contract law that a limited or specific provision will prevail over one that is more broadly inclusive, and that such rule shall apply to the provisions of this Agreement, with the result that a recovery prohibited by or unavailable under the language of any one representation, warranty, covenant or section will not be allowed under an alternative representation, warranty, covenant or section.

**Section 11.20 Construction.** The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or law

shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The word “including” shall mean including without limitation.

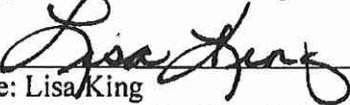
**Section 11.21 Incorporation of Exhibits and Schedules.** Notwithstanding any provision of this Agreement to the contrary, Buyer and Seller acknowledge and agree that, with respect to any exhibit and/or schedule referenced in this Agreement but not completed and attached hereto as of the Execution Date, Buyer and Seller shall, subject to the terms of **Section 7.02** hereof, in good faith negotiate the contents of such exhibit and/or schedule prior to the Closing Date. Subject to the foregoing, the exhibits, schedules and disclosure schedules identified in this Agreement are incorporated herein by reference and made a part hereof. Any matter contained in any one section or schedule shall be deemed to be included in any other section or schedule to the extent it is reasonably apparent on its face that such information is relevant to another section or schedule.

[Signature pages to follow]

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement effective as of the 14th day of July 2021.

**SELLER:**

Nacogdoches County Hospital District d/b/a  
Nacogdoches Memorial Hospital

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

Name: Lisa King

Title: President of the Board of Directors for  
Nacogdoches County Hospital District

**BUYER:**

Lion Star Nacogdoches Hospital, LLC

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

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

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

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement effective as of the 14th day of July 2021.

**SELLER:**

Nacogdoches County Hospital District d/b/a  
Nacogdoches Memorial Hospital

By: \_\_\_\_\_  
Name: Lisa King  
Title: President of the Board of Directors for  
Nacogdoches County Hospital District

**BUYER:**

Lion Star Nacogdoches Hospital, LLC

By: Sean Fowler  
Name: Sean Fowler  
Title: CEO

## Exhibit A

### Defined Terms

#### Index of Terms Defined Elsewhere in this Agreement (and not defined below)

Term	Section
Accounts Receivable	1.01(b)
Agreement	Preamble
Ancillary Operations	Preamble
Assignment and Assumption Agreement	Section 2.02(a)(iii)
Assumed Contracts	Section 1.01(d)
Assumed Liabilities	Section 1.03
Assumed PTO	Section 1.03(e)
Assumed Real Property Leases	Section 1.01(e)
Assumption Conditions	Section 9.05(a)
Auxiliary	Section 1.02(g)
Bill of Sale	Section 2.02(a)(ii)
Bonds	Section 1.04(b)
Buyer	Preamble
Buyer Closing Deliverable	Section 2.02(b)
Buyer Determined Contract	Section 7.02(c)
Buyer Undetermined Contract	Section 7.02(d)
CARES Accelerated Payments	Section 1.09
CARES Act	Section 1.04(c)
CARES Escrow Funds	Section 1.09
Cash Closing Payment	Section 1.06
Closing	Section 2.01(a)
Closing Date	Section 2.01(a)
CMS	Section 1.09
CMS Withhold/Payback	Section 1.09

Confidential Information	Section 7.06(a)
Corporate Integrity Agreement (CIA)	Section 1.03(b)
Cost Estimate	Section 5.06
Deductible	Section 9.04(a)
Direct Claim	Section 9.05(c)
Disposition	Section 1.11
Disposition Participation	Section 1.11
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Employees	Section 7.10(a)
Environmental Requirements	Section 3.18
Equipment Lease	Section 3.08
Event of Default	Section 10.01
Excluded Assets	Section 1.02
Excluded Contracts	Section 1.02(i)
Excluded Liabilities	Section 1.04
Excluded Records	Section 1.02(k)
Execution Date	Preamble
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Indemnifying Party	Section 9.04
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Leased Real Property	Section 3.09(a)
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Provider Relief Fund	Section 1.09
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Purchased Assets	Recitals
Purchased Inventory	Section 1.01(a)
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Transactions	Recitals

Transferred Employees	Section 7.10(a)
Transferred Records	Section 1.01(h)
WARN Act	Section 3.19(a)

For purposes of this Agreement, the following terms and variations thereof have the meanings specified or referred to in this **Exhibit A**:

“**Agreement**” has the meaning contained in the first paragraph of this Agreement.

“**Affiliate**” or “**Affiliated Persons**” means, with respect to any Person, any Person directly or indirectly Controlling, Controlled by or under common Control with such Person.

“**Applicable Law**” means any law, statute, ordinance, regulation, rule, interpretation, or order of any Governmental Authority of the United States or the State of Texas or any political subdivision thereof having jurisdiction over any of the Parties hereto, as of the date hereof.

“**COBRA**” means Section 4980B of the Code and Sections 601 through 608, inclusive, of ERISA. “**Code**” means the Internal Revenue Code of 1986, as amended.

“**Contract(s)**” means any contract or agreement (whether written or oral) (a) under which Seller has or may acquire any rights or benefits used primarily in the Hospital Operations, (b) under which Seller has or may become subject to any obligation or liability in the Hospital Operations, or (c) by which Seller or any of the assets owned or used by Seller is or may become bound in the Hospital Operations (including the Assumed Real Property Leases).

“**Control, Controlled, or Controlling**” (and variations thereon) means the possession, directly or indirectly, of the power to direct the management and policies of a Person whether through the ownership of voting securities, by contract, or otherwise; and control shall be presumed if a Person owns more than fifty percent (50%) of the voting equity in any other Person.

“**Damages**” mean any and all Liabilities, damages, fines, costs, fees, penalties, deficiencies, losses, amounts paid in settlement and expenses (including, without limitation, interest, court costs, reasonable fees of attorneys, accountants and other experts or other expenses of litigation or other proceedings) of a Party related to any claim, default or assessment described in, arising under or otherwise relating to the Agreement or the Transactions contemplated therein.

“**EEOC**” means Equal Employment Opportunity Commission.

“**Employee Benefit Plan**” means any employee benefit plan, program, arrangement, fund, policy, practice, or Contract with respect to which, through which, or under which the Seller or any Seller ERISA Affiliate (as hereinafter defined) has any liability to provide benefits or compensation to or on behalf of employees, former employees, or independent contractors of the Seller with respect to the Hospital Operations, whether formal or informal, written or not written, including (a) any bonus, incentive compensation, profit sharing, stock option, deferred compensation, commission, severance pay, golden parachute, or other compensation plan or rabbi trust; (b) any “employee benefit plan” (as defined in Section 3(3) of ERISA); and (c) any stock

purchase, vacation, scholarship, day care, prepaid legal services, dependent care, or other fringe benefit plans, programs, arrangements, Contracts, or practices.

**“Encumbrance”** means any charge, claim, equitable interest, lien, encumbrance, option, pledge, security interest, mortgage, encroachment, obligation to offer or transfer, right of first refusal or first option on transfer, or restriction of any kind, other than (i) Permitted Real Property Encumbrances and (ii) as set forth on Schedule 2.03(a).

**“Environmental Laws”** means shall mean all federal, state, local and foreign statutes, regulations, and ordinances concerning public health and safety, worker health and safety, and pollution or protection of the environment, including without limitation all those relating to the presence, use, production, generation, handling, transportation, treatment, storage, disposal, distribution, labeling, testing, processing, discharge, release, threatened release, control, or cleanup of any Hazardous Materials, as such requirements are enacted and in effect on or prior to the Closing Date.

**“Environmental Matters or Conditions”** means violations of Environmental Laws or notices of violations or investigations or threatened proceedings relating to same.

**“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended, and any successor thereto, and regulations and rules issued pursuant to that Act or any successor thereto.

**“Exceptions”** means bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors’ rights generally, limitations (including court discretion) upon the availability of equitable remedies (including injunctive relief and specific performance) and usury laws.

**“FASB”** means accounting standards and principles established by the Financial Accounting Standards Board, consistently applied.

**“GAAP”** means United States generally accepted accounting principles, consistently applied.

**“GASB”** means accounting standards and principles established by the Government Accounting Standards Board, consistently applied.

**“Government Reimbursement Program(s)”** means Medicare, Medicaid, the TRICARE program, and all other similar federal, state or local reimbursement or governmental programs for which the Hospital Operations is eligible.

**“Governmental Authority”** means any foreign, federal, state, local or municipal court, legislature, quasi-governmental, executive or regulatory authority, agency, licensing or accrediting body or commission, or other governmental entity, authority or instrumentality.

**“Hazardous Materials”** means any substance by character or concentration defined in or regulated under any Environmental Law to be a pollutant, hazardous substance, radioactive substance, toxic substance, hazardous waste, medical waste, radioactive waste, special waste, petroleum or petroleum-derived substance or waste, asbestos, polychlorinated biphenyls, or any

hazardous or toxic constituent thereof and includes, but is not limited to, any substance defined in or regulated under any Environmental Law.

**“Health Care Law(s)”** means all applicable Legal Requirements pertaining to health care regulatory matters, including, without limitation, (a) fraud and abuse (including without limitation the following statutes, as amended, modified or supplemented from time to time and any successor statutes thereto and regulations promulgated from time to time thereunder: the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)); the civil False Claims Act (31 U.S.C. § 3729 et seq.); Sections 1320a-7, 1320a-7a and 1320a-7b of Title 42 of the United States Code; the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. No. 108-173)) and the Stark Act (42 U.S.C. § 1395nn) ; (b) Government Reimbursement Programs; (c) quality, safety certification and accreditation standards and requirements; (d) the billing, coding or submission of claims or collection of accounts receivable or refund of overpayments; (e) any Legal Requirements concerning the provision of management or administrative services in connection with the practice of medicine and other medical professions; (f) all Information Laws as defined herein; (g) Legal Requirements regulating geriatric care, behavioral mental health issues and cognitive behavior therapy; and (j) any other Legal Requirement or regulation of any Governmental Authority which regulates kickbacks, patient or Government Reimbursement Program reimbursement, Government Reimbursement Program claims processing, medical record documentation requirements, the hiring of employees or acquisition of services or products from those who have been excluded from Government Reimbursement Programs, licensure, accreditation or any other aspect of providing health care applicable to the operations of a hospital or clinic or other regulated healthcare business.

**“HIPAA”** means the Health Insurance Portability and Accountability Act of 1996, as amended by the HITECH Act, and as otherwise may be amended from time to time, including the Privacy Standards (45 C.F.R. Parts 160 and 164), the Electronic Transactions Standards (45 C.F.R. Parts 160 and 162), and the Security Standards (45 C.F.R. Parts 160, 162 and 164) promulgated under the Administrative Simplifications subtitle of the Health Insurance Portability and Accountability Act of 1996, as amended by the HITECH Act.

**“HITECH Act”** means the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009, Pub. Law No. 111-5 and its implementing regulations 42 C.F.R. §§ 412, 413, 422 and 495.

**“Hospital”** means that hospital owned by the Seller, and which is the Seller’s principal place of Hospital Operations, located at the Nacogdoches Memorial Hospital Building (1024 N. Mound St.), the Nacogdoches Diagnostic Center (1023 N. Mound St., Suites A, B and H), the Cecil Bomar Rehabilitation Center (707 Woods St.), the Woods Street Warehouse (608 Woods St.), the Care First Clinic - Garrison (49 South Hwy. 59), the Raguet Street House (1230 Raguet St.), the Mound Street Lot (formerly 907 N. Mound St.) and the Accounting/IS Building (914 Raguet St.).

**“Including”** (whether or not capitalized) means for illustration but without limitation.

**“Indebtedness”** means, without duplication, the sum of (i) all obligations of Seller for borrowed money related to the Hospital Operations and any accrued interest or prepayment

premiums related thereto, and (ii) all obligations of Seller as lessee(s) under Assumed Contracts that have been recorded as capital leases in accordance with GAAP.

**“Information Laws”** means all applicable Legal Requirements concerning the privacy and/or security of personal data of or concerning an individual (including “Protected Health Information” as that term is defined under HIPAA), including, where applicable, HIPAA, the HITECH Act and state data breach notification Legal Requirements.

**“Knowledge”** or **“Sellers’ Knowledge”** and similar phrases means the actual knowledge of each of Lisa King and Rhonda McCabe, in each case after reasonable inquiry of other managerial personnel of Seller reporting to them and having managerial responsibility for the particular business function to which the particular warranty or representation or other affirmation relates when used with respect to Buyer or as to **“Buyer’s Knowledge”**, Knowledge shall mean the actual knowledge of Sean Fowler and Ed King.

**“Lease Assets”** means the Lease Premises, Seller FF&E, and electronic medical record replacement.

**“Legal Requirements”** means any federal, state, local or municipal laws, ordinances, codes, regulations, rules, orders, judgments, policies and guidelines or other legal requirements of any Governmental Authority of the United States as in effect and interpreted on the date hereof, and not as same or its interpretation may be subsequently changed or amended, including but not limited to Applicable Law, Environmental Laws, Health Care Laws, and/or Information Laws.

**“Liabilities”** or **“Liability”** mean all Indebtedness, claims, liabilities, obligations, responsibilities, losses, damages, judgments, punitive damages, economic damages, treble damages, costs and expenses (including, without limitation, reasonable attorney, expert, engineering and consulting fees and costs and any fees and costs associated with any investigation, feasibility, or remedial action studies), fines, penalties and monetary sanctions, and interest, whether accrued, absolute or contingent, and whether or not of a kind required by generally accepted accounting principles to be set forth on a financial statement or in notes thereto.

**“Material Adverse Effect”** means, as to any Person, any event, occurrence, fact, condition or change that is or would reasonably be expected to be materially adverse to (a) such Person’s business, results of operations, financial condition or assets, taken as a whole, or (b) the ability of such Person, if a Party hereto, to consummate the Transactions contemplated hereby; *provided, however,* that in the case of clause (a) “Material Adverse Effect” shall not include any event, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to: (i) general economic or political conditions; (ii) conditions generally affecting the healthcare industry in which the Hospital Operations operates; (iii) any changes in financial or securities markets in general; (iv) acts of war (whether or not declared), armed hostilities or terrorism, or the escalation or worsening thereof; (v) any action required by this Agreement; (vi) any changes in Applicable Law or accounting rules; or (vii) the public announcement, pendency or completion of the Transactions contemplated by this Agreement; *provided further, however,* that any event, occurrence, fact, condition or change referred to in clauses (i) through (iv) immediately above shall be taken into account in determining whether a Material Adverse Effect has occurred or would reasonably be expected to occur to the extent that such event, occurrence, fact, condition or change

has a disproportionate effect on such Person compared to other participants in the healthcare or hospital industries.

**“Material Contract”** means each contract, agreement or other commitment (other than this Agreement or the Lease), or series thereof among the same parties, to which Seller is a party and (i) which contains an obligation of any party thereto to pay at least Ten Thousand Dollars (\$10,000) in the aggregate, (ii) contains covenants of Seller not to compete in any line of business, industry or geographical area or covenants not to solicit or hire any employee or group of employees of any other Person that are currently in effect, (iii) relates to the acquisition or disposition (by merger, purchase or sale of stock or assets or otherwise) by Seller of any of its operating businesses or material assets or capital stock or equity interests of any Person; (iv) which creates a partnership, limited liability company or joint venture or similar arrangement; (v) under which Seller has made, or has agreed or committed to make, advances or loans to any other Person (except for any business advances to employees in the Ordinary Course of Business) or (vi) evidences Indebtedness or creates an Encumbrance.

**“Order”** means any order, injunction, judgment, determination, decree, award, ordinance, ruling or assessment of any Governmental Authority.

**“Ordinary Course of Business”** means with respect to any Person the ordinary and usual course of normal day-to-day operations of such Person consistent with past custom and practice in all material respects (including with respect to quantity and frequency) of such Person.

**“Owned Real Property”** means the real property and all improvements thereon which are owned by Seller and which are being leased to Buyer pursuant to the concurrent Lease, but excluding any real property which is an Excluded Asset.

**“Parties”** means Seller and Buyer.

**“Payor Agreement(s)”** means any Contract between Seller on the one hand, and a Government Reimbursement Program or a Private Program on the other hand, under which Seller directly or indirectly receives payments for medical services provided to such Government Reimbursement Program’s or Private Program’s beneficiaries.

**“Permits”** means, with respect to any Person, any license, franchise, permit, consent, approval, right, privilege, accreditation, certificate or other similar authorization issued by, or otherwise granted by, any Governmental Authority to which or by which such Person is subject or bound or to which or by which any property, business, operation or right of such Person is subject or bound.

**“Permitted Real Property Encumbrances”** shall mean: (a) public and utility easements, rights of ingress and egress and building lines and use or occupancy restrictions and covenants of record; (b) liens for Taxes that are not yet due and payable on the Closing Date; (c) minor survey exceptions, reciprocal and utility easement agreements and other customary encumbrances on title to real property that do not individually or in the aggregate diminish the value or use of such property for purposes of the Hospital Operations in any material respect; and (d) zoning, use and building laws, regulations, ordinances and codes of any Governmental Authority or agency applicable to the Real Property.

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

**“Private Program(s)”** means any private non-governmental payors or programs, including any private insurance payor or program, self-insured employer, or other third-party payor.

**“Proceeding”** means any action, arbitration, audit, hearing, investigation, litigation, or suit (whether civil, criminal, administrative, judicial or investigative, whether formal or informal, and whether public or private).

**“Seller ERISA Affiliate”** means each trade or business (whether or not incorporated) which together with any Seller is treated as a single employer under Section 414(b) or (c) of the Code.

**“Taxes”** means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Code §59A), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value-added, alternative or add-on minimum, estimated or other tax of any kind or nature whatsoever, including any interest, penalties or additions thereto, whether or not disputed.

**“Tax Returns”** means, with respect to any Person, all reports, estimates, declaration of estimated Tax, information statements and returns relating to, or required to be filed in connection with, any Taxes owed by or on behalf of such Person, and any schedules attached to or amendments of (including refund claims with respect to) any of the foregoing.