

SAMUEL R. MAIZEL (Bar No. 189301)
 samuel.maizel@dentons.com
 TANIA M. MOYRON (Bar No. 235736)
 tania.moyron@dentons.com
 REBECCA M. WICKS (Bar No. 313608)
 rebecca.wicks@dentons.com
 DENTONS US LLP
 601 South Figueroa Street, Suite 2500
 Los Angeles, California 90017-5704
 Telephone: 213 623-9300
 Facsimile: 213 623-9924

Attorneys for the Chapter 11 Debtor
 and Debtor In Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re

**BORREGO COMMUNITY
 HEALTH FOUNDATION,**

Debtor and Debtor In
 Possession.

Case No. 22-02384-11

Chapter 11 Case

Judge: Honorable Laura S. Taylor

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

**[RELATES TO DOCKET NOS. 161, 321,
 418, 438, 443, 453, 456]**

DENTONS US LLP
 601 SOUTH FIGUEROA STREET, SUITE 2500
 LOS ANGELES, CALIFORNIA 90017-5704
 213 623 9300



NOTICE OF WINNING BIDDER AND BACK-UP BIDDER

PLEASE TAKE NOTICE that, on December 19, 2022, the Court entered an order (the “Bidding Procedures Order”) [Docket No. 321] granting the *Debtor’s Motion For The Entry Of (I) An Order (1) Approving Form Of Asset Purchase Agreement; (2) Approving Auction Sale Format and Bidding Procedures, (3) Approving Process For Discretionary Selection Of Stalking Horse Bidder And Bid Protections; (4) Approving Form Of Notice To Be Provided To Interested Parties; (5) Scheduling A Court Hearing To Consider Approval Of The Sale To The Highest And Best Bidder; And (6) Approving Procedures Related To The Assumption Of Certain Executory Contracts And Unexpired Leases; And (II) An Order Authorizing The Sale Of Property Free And Clear Of All Claims, Liens And Encumbrances* [Docket No. 161].¹

PLEASE TAKE FURTHER NOTICE that the Bidding Procedures Order governs (i) the bidding process (the “Bid Procedures”) for the sale of substantially all of the Debtor’s assets (the “Purchased Assets”), and (ii) procedures for the assumption and assignment of certain of the Debtor’s executory contracts and unexpired leases, as detailed in the Bidding Procedures Order. In connection with the foregoing, the Debtor has filed several notices apprising the Court and interested parties of the status of the bidding process and the Sale. [Docket Nos. 418, 438, 453].

PLEASE TAKE FURTHER NOTICE that the Debtor hereby provides notice that it has selected (i) Desert AIDS Project d/b/a DAP Health (“DAP”) as the Winning Bidder, and (ii) Altamed Health Services Corporation (“Altamed”) as the Back-Up Bidder.

PLEASE TAKE FURTHER NOTICE that a true and correct copy of DAP’s asset purchase agreement is attached hereto as **Exhibit 1**.

PLEASE TAKE FURTHER NOTICE that a true and correct copy of Altamed’s asset purchase agreement is attached hereto as **Exhibit 2**.

PLEASE TAKE FURTHER NOTICE that, at a scheduled status conference on February 15, 2023, at 2:00 p.m. Pacific Standard Time [Docket No. 456], the Debtor will respectfully request that the Court modify the deadlines and the hearing date in the Bidding Procedures Order. The current form of Sale Order is attached hereto as **Exhibit 3**.

Dated: February 15, 2023

DENTONS US LLP
Samuel R. Maizel
Tania M. Moyron
Rebecca M. Wicks

By /s/ Tania M. Moyron
TANIA M. MOYRON

Attorneys for the Chapter 11 Debtor
and Debtor In Possession

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Bid Procedures.

Exhibit 1
(DAP Asset Purchase Agreement)

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
213 623 9300

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ASSET PURCHASE AGREEMENT

By and Between

BORREGO COMMUNITY HEALTH FOUNDATION

and

DESERT AIDS PROJECT d/b/a DAP HEALTH

Dated _____, 2023

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HB 2023-02-07 DRAFT

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (the “**Agreement**”) is made and entered into as of the ____ day of _____, 2023 (the “**Signing Date**”) by and between Borrego Community Health Foundation, a California nonprofit public benefit corporation (“**Seller**”) and Desert AIDS Project d/b/a DAP Health, a California nonprofit public benefit corporation (“**Purchaser**”).

RECITALS:

A. Seller engages in the business of the operation of healthcare facilities, dental clinics, intermittent clinics, pharmacies, mobile healthcare facilities, and other healthcare facilities (collectively, the “**Facilities**”) generally described as follows:

- (i) Anza Community Health Center, generally located at 58581 Highway 371 in Anza, California 92539 (“**Anza**”), together with the related Mobile Unit 4, Dental Unit 3, Dental Unit 6, and Dental Unit 8;
- (ii) Borrego Medical Clinic, generally located at 4343 Yaqui Pass Road in Borrego Springs, California 92004 (“**Borrego Springs**”);
- (iii) Centro Medico Cathedral City, generally located at 69175 Ramon Road in Cathedral City, California 92234, together with the related Coachella Mobile Clinic, Mobile Dental Trailer # 1, and Mobile Dental Trailer # 2;
- (iv) Centro Medico Coachella, generally located at 55497 Van Buren Street in Thermal, California 92274;
- (v) Coachella Valley Community Health Center, generally located at 49869 Calhoun Street in Coachella, California 92236;
- (vi) Centro Medico El Cajon, generally located at 133 West Main Street in El Cajon, California 92020;
- (vii) Centro Medico Escondido, generally located at 1121 East Washington Avenue in Escondido, California 92025;
- (viii) Centro Medico Oasis, generally located at 88775 Avenue 76 in Thermal, California 92274 (“**Oasis**”);
- (ix) College of the Desert Student Health Services, generally located at 43522 Monterrey Avenue in Palm Desert, California 92211;
- (x) Desert Hot Springs Community Health Center, generally located at 66675 Pierson Boulevard in Desert Hot Springs, California 92240, together with the related Dental Unit 7;
- (xi) Borrego Health Specialty Care Center/Desert Hot Springs Specialty, generally located at 12520 Palm Drive in Desert Hot Springs, California

92240;

- (xii) Desert Hot Springs Health and Wellness Center, generally located at 11-750 Cholla Drive in Desert Hot Springs, California 92240;
- (xiii) Jay Hoffman Health Center, generally located at 29490 Lakeview Avenue in Nuevo, California 92567;
- (xiv) Martha's Village Clinic, generally located at 83791 Date Avenue in Indio, California 92201;
- (xv) Palm Springs Family Health, generally located at 1100 North Palm Canyon Drive in Palm Springs, California 92262;
- (xvi) San Jacinto Health Center, generally located at 651 North State Street in San Jacinto, California 92583;
- (xvii) Stonewall Pharmacy/Borrego Pharmacy, generally located at 68555 Ramon Road in Cathedral City, California 92234;
- (xviii) Stonewall Medical Center, generally located at 68555 Ramon Road in Cathedral City, California 92234;
- (xix) Woolcott Dental, generally located at 590 Palm Canyon Drive in Borrego Springs, California 92004;
- (xx) Borrego Pharmacy, generally located at 590 Palm Canyon Drive in Borrego Springs, California 92004;
- (xxi) Vista Village Pediatrics, generally located at 950 Civic Center Drive in Vista, California 92083; and
- (xxii) La Mesa Pediatrics, generally located at 8881 Fletcher Parkway in La Mesa, California 91942.

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

C. Seller has filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”) with the United States Bankruptcy Court for the Southern District of California (the “**Bankruptcy Court**”), commencing Case No. 22-02384-1 (the “**Bankruptcy Case**”), and the Bankruptcy Court entered or is expected to enter the Bid Procedures Order (defined below) approving procedures in connection with the sale of the Seller's Assets, Docket No. 321, which requests that the Bankruptcy Court enter a “**Sale Order**” (defined below) following an auction and selection of a successful bidder.

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

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

ARTICLE 1

SALE AND TRANSFER OF ASSETS; CONSIDERATION; CLOSING

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

(a) Cash payment to Seller (the “**Cash Consideration**”) of Fifty Million Dollars (\$50,000,000.00);

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

(c) Assumption of the Assumed Obligations; and

(d) Funding of Pre-Closing Net Operational Cash Flow Losses pursuant to Section 1.13.

1.2 Deposit. Purchaser has caused a good faith deposit to be made in the amount of Four Million, Two Hundred Three Thousand, Nine Hundred Thirty-Three Dollars (\$4,203,933.00) (the “**Deposit**”) by wire transfer to an account designated by Seller. Except as set forth in Section 9.2(b), the Deposit shall be refundable if the Closing does not occur. Upon Closing, the Deposit will be credited against the Purchase Price.

1.3 Closing Date. The consummation of the transactions contemplated by this Agreement (the “**Closing**”) shall take place at 10:00 a.m. local time at the offices of Dentons US LLP, 601 South Figueroa St., Suite 2500, Los Angeles, CA 90017-5704 (the day on which Closing actually occurs, the “**Closing Date**”) within five (5) business days following the satisfaction or waiver of the conditions set forth in ARTICLE 7 and ARTICLE 8, other than those conditions that by their nature are to be satisfied at Closing but subject to fulfillment or waiver of those conditions. The Closing shall be deemed to occur and to be effective as of 12:00 a.m. Pacific time on the day immediately after the Closing Date (the “**Effective Time**”).

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

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

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

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

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

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

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

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

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

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

1.5.1 payment of the Cash Consideration, (a) less items of income allocated to Purchaser and items of expense allocated to Seller pursuant to **Section 1.6**; (b) plus items of income allocated to Seller and items of expense allocated to Purchaser pursuant to **Section 1.6**; and (c) less any credit under **Section 1.13** (with respect to any Pre-Closing Net Operational Cash Flow Losses funded by Purchaser in excess of \$6,000,000);

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

1.5.3 a duly executed certificate of the Secretary of Purchaser certifying to Seller (a) the incumbency of the officers of Purchaser on the Signing Date and on the Closing Date and bearing the authentic signatures of all such officers who shall execute this Agreement and any additional documents contemplated by this Agreement and (b) the due adoption and text of the resolutions of the Board of Directors of Purchaser authorizing the execution, delivery and

performance of this Agreement and all additional documents contemplated by this Agreement, and that such resolutions have not been amended or rescinded and remain in full force and effect on the Closing Date;

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

1.5.5 the Bill of Sale, duly executed by Purchaser;

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

1.5.7 the Assumption Agreement, duly executed by Purchaser; and

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

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

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

1.6.2 Other than the Utility Deposits (defined below), which are governed by Section 1.8(j), and other than with respect to Cure Costs payable by Purchaser, the following costs and expenses shall be prorated based upon the payment period (*i.e.*, calendar or other tax fiscal year) to which the same are attributable: all real estate and personal property lease payments, real estate and personal property taxes, real estate assessments and other similar charges against real estate, and power and utility charges (collectively, the “**Prorated Charges**”) on the Assets. Seller shall pay its portion at or prior to the Closing (or Purchaser shall receive credit for) of any unpaid Prorated Charges attributable to periods or portions thereof occurring prior to the Effective Time, and Purchaser shall assume as an Assumed Obligation or, to the extent previously paid by Seller, pay to Seller at the Closing all Prorated Charges attributable to periods or portions thereof occurring from and after the Effective Time. In the event that as of the Closing Date the actual tax bills for the tax year or years in question are not available and the amount of taxes to be prorated as aforesaid cannot be ascertained, then rates, millages and assessed valuation of the previous year, with known changes, shall be used. The parties agree that if the real estate and personal property tax prorations are made based upon the taxes for the preceding tax period, the prorations shall be re-prorated after the Closing. As to power and utility charges, “final readings” as of the Closing Date shall be ordered from the utilities; the cost of obtaining such “final readings,” if any, shall be paid by Purchaser.

1.6.3 Seller shall be entitled to all rents and other payments under Tenant Leases accruing for the period prior to the Effective Time (“**Pre Effective Time Lease Amounts**”), and Purchaser shall be entitled to all rents and other payments under tenant leases accruing for the

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

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

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

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

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

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

(d) all of Seller’s interest, to the extent assignable or transferable, in and to all contracts and agreements (including, but not limited to, purchase orders) with respect to the

operation of the Facilities that have been designated by Purchaser as a contract to be assumed pursuant to Section 1.11 (the “**Assumed Contracts**”);

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

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

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

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

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

(j) the right to use the name “Borrego Community Health Foundation”;

(k) all goodwill of the Facilities evidenced by the Assets;

(l) to the extent transferable or assignable, Seller’s right or interest in the telephone and facsimile numbers used with respect to the operation of the Facilities;

(m) to the extent assignable or transferable, Seller’s Medicare and Medi-Cal provider numbers and lock box account(s) subject to approval by the appropriate governmental and regulatory agencies; and

(n) except for the Excluded Assets, to the extent assignable or transferable, any other assets owned by Seller (which are not otherwise specifically described above in this Section 1.7) that are used in the operation of the Facilities.

As used herein, the term “**Permitted Exceptions**” means (i) the Assumed Obligations; (ii) liens for taxes not yet due and payable (iii) easements, rights of way, zoning ordinances and other similar encumbrances affecting real property; and (iv) other imperfections of title or

encumbrances, if any, which are not monetary in nature and that are not, individually or in the aggregate, material to the business of the Facilities.

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

- (a) cash, cash equivalents and short-term investments;
- (b) [omitted];
- (c) all contracts that are not Assumed Contracts;
- (d) all leases that are not Assumed Leases;
- (e) the portions of Inventory, Prepaids, and other assets disposed of, expended or canceled, as the case may be, by Seller after the Signing Date and prior to the Effective Time in the ordinary course of business;
- (f) assets owned and provided by vendors of services or goods to the Facilities;
- (g) all of Seller's organizational or corporate record books, minute books and tax records;
- (h) all claims, counterclaims and causes of action of Seller or Seller's bankruptcy estate (including parties acting for or on behalf of Seller's bankruptcy estate, including, but not limited to, the official committee of unsecured creditors appointed in the Bankruptcy Case) not specifically set forth in Section 1.7(e) hereof, including, without limitation, causes of action arising out of any claims and causes of action under chapter 5 of the Bankruptcy Code and any related claims, counterclaims and causes of action under applicable non-bankruptcy law, and any rights to challenge liens asserted against property of Seller's bankruptcy estate, including, but not limited to, liens attaching to the Purchase Price paid to Seller, and the proceeds from any of the foregoing; provided, however that Purchaser shall acquire and be deemed to release and waive as of the Effective Time causes of action under Sections 544, 547, 548, and 550 of the Bankruptcy Code against counterparties to executory contracts and unexpired leases being assumed by a Seller and assigned to Purchaser;
- (i) all insurance policies and contracts and coverages obtained by Seller or listing Seller as insured party, a beneficiary or loss payee, including prepaid insurance premiums, and all rights to insurance proceeds under any of the foregoing, and all subrogation proceeds related to any insurance benefits arising from or relating to Assets prior to the Closing Date;
- (j) all deposits made with any entity that provides utilities to the Facilities (the "**Utility Deposits**");
- (k) all rents, deposits, prepayments, and similar amounts relating to any contract or lease that is not an Assumed Contract or Assumed Lease;

- (l) all unclaimed property of any third party as of the Effective Time, including, without limitation, property which is subject to applicable escheat laws;
- (m) all bank accounts of Seller;
- (n) all writings and other items that are protected from discovery by the attorney-client privilege, the attorney work product doctrine or any other cognizable privilege or protection;
- (o) the rights of Seller to receive mail and other communications with respect to Excluded Assets or Excluded Liabilities;
- (p) all director and officer insurance;
- (q) all tax refunds of Seller;
- (r) all documents, records, operating manuals and film pertaining to the Facilities that Seller is required by law to retain;
- (s) all patient records and medical records which are not required by law to be maintained by Seller as of the Effective Time;
- (t) all documents, records, correspondence, work papers and other patient records that may not be transferred under applicable law, and any other documents, records, or correspondence (including with respect to any employees) that may not be transferred under applicable law;
- (u) any rights or documents relating to any Excluded Liability or other Excluded Asset;
- (v) any rights or remedies provided to Seller under this Agreement and each other document executed in connection with the Closing;
- (w) any (i) personnel files for employees of Seller who are not hired by Purchaser; (ii) other books and records that Seller is required by Law to retain; provided, however, that except as prohibited by Law and subject to Article 5, Purchaser shall have the right to make copies of any portions of such retained books and records that relate to the business of the Facilities as conducted before the Closing or that relate to any of the Assets; (iii) documents which Seller is not permitted to transfer pursuant to any contractual obligation owed to any third party; (iv) documents primarily related to any Excluded Assets; and (v) documents necessary to prepare tax returns (Purchaser shall be entitled to a copy of such documents). With respect to documents necessary to prepare cost reports, Purchaser shall receive the original document and Seller shall be entitled to retain a copy of such documents for any period ending on or prior to the Closing Date;
- (x) all deposits or other prepaid charges and expenses paid in connection with or relating to any other Excluded Assets;

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

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

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

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

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

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

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

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

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

- (d) all accrued paid time off pay;
- (e) all liabilities and obligations of Seller related to the Hired Employees arising on or following the Effective Time;
- (f) all unpaid real and personal property taxes, if any, that are attributable to the Assets after the Effective Time, subject to the prorations provided in Section 1.6;
- (g) all liabilities and obligations relating to utilities being furnished to the Assets, subject to the prorations provided in Section 1.6;
- (h) any documentary, sales and transfer tax liabilities of Seller incurred as a result of the consummation of the transaction contemplated by this Agreement;
- (i) any and all liabilities and obligations arising under the law or bankruptcy court order(s) relating to any collective bargaining agreement or other contract with any labor union or labor relations entity applicable to and/or covering employees of the Facilities;
- (j) all liabilities or obligations provided for in Section 5.3; and
- (k) any other obligations and liabilities identified in Schedule 1.9(k).

1.10 Excluded Liabilities¶ Purchaser shall not assume or become responsible for any duties, obligations or liabilities of Seller that are not assumed by Purchaser pursuant to the terms of this Agreement, the Bill of Sale, the Assumption Agreement or the Real Estate Assignment(s) (the “**Excluded Liabilities**”), and Seller shall remain fully and solely responsible for all of Seller’s debts, liabilities, contract obligations, expenses, obligations and claims of any nature whatsoever related to the Assets or the Facilities unless assumed by Purchaser under this Agreement, in the Bill of Sale, the Assumption Agreement or in the Real Estate Assignment(s).

1.11 Designation of Assumed Contracts and Assumed Leases¶

(a) All contracts and leases will be subject to evaluation by Purchaser for assumption or rejection (collectively “**Evaluated Contracts**”). Not later than February 3, 2023 (i) Purchaser shall notify Seller in writing of which Evaluated Contracts are to be assumed by Seller and assigned to Purchaser and (ii) Purchaser shall notify Seller in writing signed and dated by Purchaser of which Evaluated Contracts are to be rejected by Seller (collectively, the “**Rejected Contracts**”). Seller shall file such motions in the Bankruptcy Court and take such other actions as are reasonably necessary to ensure that final and non-appealable orders assuming and assigning the Assumed Contracts or Assumed Leases to Purchaser are entered. With respect to each Assumed Lease, Seller shall execute and deliver to Purchaser an Assignment and Assumption of Lease. Schedule 1.11(a) shall reflect the final list of the approved Assumed Contracts and Assumed Leases. Notwithstanding anything to the contrary set forth in this Agreement, the Rejected Contracts shall constitute part of the Excluded Assets pursuant to, and as defined in, this Agreement.

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

Tenant Leases, to the extent such Leased Real Property or Tenant Leases become Assumed Leases pursuant to Section 1.11(a), above.

1.12 Disclaimer of Warranties; Release.

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

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

1.13 Validation of Pre-Closing Assumed Operational Losses, Dispute Resolution.

(a) Purchaser shall fund all Pre-Closing Net Operational Cash Flow Losses (defined below) of Seller that are: (i) incurred during the period from the date of entry of the Sale Order through the Closing Date (the “**Pre-Closing Period**”) and (ii) in an amount not to exceed \$10,000,000 in the aggregate (with any Pre-Closing Net Operational Cash Flow Losses funded by Purchaser in excess of \$6,000,000 being credited against the Cash Consideration at Closing). The “**Pre-Closing Net Operational Cash Flow Losses**” shall mean the difference between (x) the amounts received by Seller during the Pre-Closing Period on account of patient services provided by Seller, including, but not limited to, capitation payments, interim payments, supplemental payments, cash payments, and any other payments for services provided that are received during

the Pre-Closing Period (but specifically excluding, for clarity, any American Rescue Plan Act grant funding) and (y) the amounts disbursed by Seller during the Pre-Closing Period on account of operating expenses incurred in the ordinary course of business and consistent with historical past practices, which amounts shall exclude any expenses related to or arising from the Bankruptcy Case (including, but not limited to, professional fees and costs and United States Trustee fees).

(b) The Sale Order shall provide that Purchaser shall hold an allowed administrative expense claim under section 503(b)(1) of the Bankruptcy Code with priority over every other claim allowable under such section in an amount equal to the Pre-Closing Net Operational Cash Flow Losses that are actually funded by Purchaser pursuant to Section 1.13(c) below (the “**Funded Loss Administrative Expense**”). For the avoidance of doubt, the allowed amount of the Funded Loss Administrative Expense shall be limited to, and shall not exceed, those amounts that are actually funded by Purchaser in cash to Seller pursuant to Section 1.13(c) below. The Sale Order shall further provide that the Funded Loss Administrative Expense shall be treated in only one of the following manners: (a) in the event the Closing under this Agreement occurs, then (i) that portion of the Funded Loss Administrative Expense up to \$6,000,000 shall be satisfied in full by application against the Purchase Price due under Section 1.1(d) of this Agreement, and (ii) that portion of the Funded Loss Administrative Expense in excess of \$6,000,000, if any, shall be satisfied in full by application against the Cash Consideration due under Section 1.1(a) of this Agreement; (b) in the event this Agreement is terminated by Seller pursuant to Section 9.1(g) of this Agreement, the Funded Loss Administrative Expense shall be satisfied in full by payment from the proceeds of any alternative transaction that is consummated by Seller; (c) in the event of a Specified Termination Event, the Funded Loss Administrative Expense shall be payable as an administrative expense in the Bankruptcy Case; (d) in the event the Bankruptcy Case is dismissed, the Funded Loss Administrative Expense shall be satisfied in full by payment from the Seller to the Purchaser in an amount equal to the Funded Loss Administrative Expense at the time of such dismissal or as otherwise agreed in writing by the Seller and Purchaser; or (e) in all other events, whether this Agreement is terminated or not and regardless of any other act, event or occurrence, the Funded Loss Administrative Expense shall be waived and released by Purchaser. A “**Specified Termination Event**” shall mean the termination of this Agreement by Purchaser under any of [i] Section 9.1(c) of this Agreement, [ii] Section 9.1(d) of this Agreement (including, but not limited to, termination because of the Seller and/or Purchaser not obtaining the government authorizations required under Section 7.4 of this Agreement or Section 8.1 of this Agreement), [iii] Section 9.1(h) of this Agreement, or [iv] Section 9.1(i) of this Agreement if the Termination Date has been extended to November 30, 2023 but the Closing does not occur by such date (provided, that neither Party shall unreasonably withhold, delay or deny its consent to extend the Termination Date to November 30, 2023 under Section 9.1(i)).

(c) Seller shall prepare and deliver to Purchaser, within ten (10) days following the end of each calendar month during the Pre-Closing Period, a statement (the “**Monthly Statement**”) setting forth Seller’s calculation of the Pre-Closing Net Operational Cash Flow Losses for such month, together with reasonable supporting documentation (which supporting documentation shall be consistent with the detail provided in Seller’s recurring weekly cash flow forecasts). Purchaser shall fund in cash, by wire transfer to an account designated by Seller in writing, the amount of the Pre-Closing Net Operational Cash Flow Losses (subject to the limitation in Section 1.13(a)) within five days of receipt of such statement.

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(d) During the 30 days immediately following the Closing Date, Seller shall cooperate fully with Purchaser in connection with the Purchaser's review of the Monthly Statements, including providing any supporting documentation reasonably requested by Purchaser and its agents and representatives that is reasonably related to preparation of the Monthly Statements. The Monthly Statements shall become final and binding upon the parties 30 days after the Closing Date unless Purchaser gives written notice of its disagreement (a "**Notice of Disagreement**") to Seller on or prior to such date; provided that the Monthly Statements shall become final and binding upon the parties upon delivery by Purchaser, prior to the expiration of such 30 day period, of written notice to Seller of its acceptance of the Monthly Statements. Any Notice of Disagreement shall specify in reasonable detail the nature and amount of any disagreement so asserted, and be accompanied by reasonable supporting documentation.

(e) If a timely Notice of Disagreement is delivered by Purchaser, then the Monthly Statements shall become final and binding upon the parties on the earlier of (i) the date any and all matters specified in the Notice of Disagreement are finally resolved in writing by Seller and Purchaser and (ii) the date any and all matters specified in the Notice of Disagreement not resolved by Seller and Purchaser are finally resolved in a written order issued by the Bankruptcy Court, which for purposes of this Section 1.13, shall retain jurisdiction. The Monthly Statements shall be revised to the extent necessary to reflect any resolution by Seller and Purchaser and any final resolution made by the Bankruptcy Court. During the 30 days immediately following the delivery of a Notice of Disagreement or such longer period as Seller and Purchaser may agree in writing, Seller and Purchaser shall seek in good faith to resolve in writing any differences which they may have with respect to any matter specified in the Notice of Disagreement. During such period, Purchaser, Seller and their respective representatives shall be permitted to review all supporting documentation relating to the Notice of Disagreement, including all invoices. At the end of such 30 day period, Seller and Purchaser shall submit to the Bankruptcy Court for review and resolution any and all matters (but only such matters) that remain in dispute and that were included in the Notice of Disagreement. The Bankruptcy Court shall be requested to render a determination of all matters that remain in dispute within 60 days after submittal to the Bankruptcy Court, which determination must be in a written order issued by the Bankruptcy Court and which such determination shall be conclusive, final and binding on each party. The Bankruptcy Court shall grant Purchaser and its agents and representatives access to relevant supporting information which Purchaser has a good faith, substantial reason to believe Seller has withheld or failed to produce which would be material to its preparation of the Notice of Disagreement. The costs, fees and expenses of any adjudication before the Bankruptcy Court of a dispute over the Monthly Statements shall be allocated between the Purchaser and the Seller based upon the relative difference between the asserted amount of each party and the amount determined by the Bankruptcy Court.

(f) Once the Monthly Statements are determined as final pursuant to Section 1.13(e), then, within five days following such final determination Seller shall pay to Purchaser (in cash, by wire transfer to an account designated in writing by Purchaser) the amount, if any, by which the aggregate Pre-Closing Net Operational Cash Flow Losses actually funded to Seller by Purchaser exceed the aggregate Pre-Closing Net Operational Cash Flow Losses reflected in the final Monthly Statements (as determined pursuant to Section 1.13(e)).

ARTICLE 2

REPRESENTATIONS AND WARRANTIES OF SELLER

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

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

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

2.3 Organization and Good Standing; No Violation.

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

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

(c) Seller is and through the time of closing will take all necessary action to continue to be in good standing with the California Secretary of State, the California Franchise Tax Board, and the California Attorney General.

2.4 Contracts. Except as set forth in **Schedule 2.4**, upon entry of the Sale Order and Purchaser’s payment of the Cure Costs, to Seller’s knowledge, Seller is not in breach or default of the Assumed Contracts or Assumed Leases. No provision of this Section 2.4 shall apply to any failure to obtain consents to the assignment of the Assumed Contracts and Assumed Leases from third parties to the Assumed Contracts and Assumed Leases for which consent is required to assign the Assumed Contracts and Assumed Leases to Purchaser (the “**Contract and Lease Consents**”).

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

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

ARTICLE 3

REPRESENTATIONS AND WARRANTIES OF PURCHASER

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

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

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

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

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

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

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

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

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

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

3.10 Purchaser Knowledge¶ References in this Agreement to “Purchaser’s knowledge” or “the knowledge of Purchaser” means the actual knowledge of the Chief Executive Officer, Chief

Financial Officer or Chief Operating Officer of Purchaser, without independent research. No constructive or imputed knowledge shall be attributed to any such individual by virtue of any position held, relationship to any other Person or for any other reason.

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

ARTICLE 4

COVENANTS OF SELLER

4.1 Access and Information; Inspections.¶

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

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

4.2 Cooperation

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

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

4.2.3 Prior to closing, and subject to obtaining any necessary regulatory approval, Seller shall cooperate with Purchaser and its representatives to allow Purchaser during such period to provide, at no additional cost to Seller, (a) reasonable operational management support, including support to clinic operations, facility maintenance, human resources, recruitment/retention, risk management, quality improvement, and grants management/fundraising; (b) financial management support, including support preparing monthly financial statements, creating and tracking budgets, support to billing/collections, revenue cycle management, financial/accounting policies, vendor contracting and management; (c) clinical management support, including coaching to existing medical director(s) and clinical leadership, management of peer review process, chart review and performance/productivity expectations for clinicians; (d) compliance management support, including maintenance of board and committee meeting schedules, federal award and HRSA compliance, overall policy and procedure review, federal grant reporting, applications, and management; and (e) along with other reasonable support as mutually agreed upon between Seller and Purchaser. Notwithstanding anything herein to the contrary, Seller shall at all times maintain operational and clinical control over the Facilities.

- a. Seller agrees to hold Purchaser harmless from any and all liability arising out of the Purchaser's provision of support services as described at Section 4.2.3.

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

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

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

4.6 Facilities Licensed¶ Seller has obtained all necessary material licenses for the Seller to operate the Facilities and all such material licenses will be valid and in good standing as of the Closing Date.

4.7 Notice to California Attorney General¶ Prior to the Closing Date, Seller will (a) provide notice to the California Attorney General in a form and manner that complies with section 5913 of the California Corporations Code or (b) shall obtain a written waiver from the California Attorney General of section 5913 of the California Corporations Code.

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

ARTICLE 5

COVENANTS OF PURCHASER

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

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

5.3 Certain Employee Matters.

(a) Purchaser agrees to make offers of employment, effective as of the Effective Time, to all persons (whether such persons are full time employees, part-time employees, on short-term or long-term disability or on leave of absence, military leave or workers compensation leave) (the "**Facility Employees**") who, immediately prior to the Effective time are: (i) employees of Seller; (ii) employed by an affiliate of Seller and are listed on Schedule 5.3. For the avoidance of doubt, the Facility Employees shall not include any employees of any affiliate of Seller unless such individual is listed on Schedule 5.3. Any of the Facility Employees who accept an offer of employment with Purchaser as of or after the Effective Time shall be referred to in this Agreement as the "**Hired Employees**." All employees who are Hired Employees shall cease to be employees of the Seller or its affiliates as of the Closing Date.

(b) Purchaser shall reserve an aggregate amount of \$750,000 as a signing bonus pool from which to pay each Hired Employee on the Effective Time, and an aggregate amount of \$750,000 as retention bonus pool from which to pay each Hired Employee who remains an employee of Purchaser six (6) months from the Effective Time.

(c) Within one year after the Closing Date, the Purchaser shall complete a market compensation survey to reveal updated market rates for all Hired Employee classes, noting geographical differences in cost of living. Purchaser shall then implement a pay normalization program thereafter to ensure employee compensation across the joint system reflects market rates. Any compensation increases beyond the date that is two years after the Closing Date shall be dependent on the joint system generating sufficient excess profits to support employee proposed compensation.

(d) Purchaser shall give all Hired Employees full credit for paid time off pay to such employees as of the Closing Date, either by (i) crediting such employees the time off reflected in the employment records of the Seller and/or any of its affiliates immediately prior to the Effective Time or (ii) by making full payments to such employees of the amounts which such employees would have received had they taken such paid time off. Purchaser further agrees that each Hired Employee will be offered wages and benefits packages that, in aggregate, are no less than the total compensation package such Hired Employee received from the Seller immediately prior to the Closing Date.

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

(f) With respect to any collective bargaining agreements or labor contract with respect to any union employees, Purchaser shall comply with the applicable laws and bankruptcy court orders relating to collective bargaining agreements or labor contracts.

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

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

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

5.6 HRSA Filings.¶ Promptly after entry of the Sale Order, Seller and Purchaser shall cooperate in obtaining any required review and consent by the HRSA to the sale of the Assets to Purchaser in accordance with this Agreement and the Sale Order, including without limitation,

preparing and submitting to the HRSA a notice of the transactions contemplated by this Agreement, including notice of the Purchaser's successor in interest application and associated changes in scope, within ten (10) calendar days after entry of the Sale Order, participating in any required HRSA or public meetings, and negotiating any conditions proposed by the HRSA for the consummation of such transactions.

5.7 Conduct Pending Closing. Prior to consummation of the transactions contemplated hereby or the termination or expiration of this Agreement pursuant to its terms, unless Seller shall otherwise consent in writing, Purchaser shall not take any action or fail or omit to take any action which would cause any of Purchaser's representations and warranties set forth in ARTICLE 4 to be inaccurate or untrue as of the Closing.

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

5.9 Cure Costs. Purchaser shall pay the Cure Costs for each Assumed Contract and Assumed Lease so that each such Assumed Contract and Assumed Lease may be assumed by the Seller and assigned to Purchaser in accordance with the provisions of section 365 of the Bankruptcy Code.

(a) In the event the aggregate actual Cure Costs for the Assumed Contracts and Assumed Leases are more than 150% of the Estimated Cure Costs for such Assumed Contracts and Assumed Leases, such excess (over 150%) will be credited against the Cash Consideration payable by Purchaser at Closing.

(b) In the event the aggregate actual Cure Costs for the Assumed Contracts and Assumed Leases are more than 200% of the Estimated Cure Costs for such Assumed Contracts and Assumed Leases, Seller shall have the right, but not the obligation, at Seller's sole discretion, to elect not to assume and assign one or more contracts and/or leases which would otherwise constitute Assumed Contracts or Assumed Leases such that the aggregate actual Cure Costs payable for the Assumed Contracts and Assumed Leases does not exceed 200% of the Estimated Cure Costs for the contracts and leases which Purchaser had elected to be Assumed Contracts and Assumed Leases; provided, that in the event that Seller elects not to assume and assign one or more contracts and/or leases set forth in Schedule 5.9(b), Purchaser may terminate this Agreement in accordance with the provisions of Section 9.1. For purposes of this Agreement, "**Cure Costs**" means all amounts that must be paid and all obligations that otherwise must be satisfied, including pursuant to Sections 365(b)(1)(A) and (B) of the Bankruptcy Code in connection with the assumption and/or assignment of the Assumed Contracts and Assumed Leases to Purchaser as provided herein. For purposes of this Agreement, "**Estimated Cure Costs**" means, with respect to a contract or lease, the amounts listed in (a) the Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtor that May Be Assumed and Assigned, filed as Docket No. 389 in the Bankruptcy Case, or (b) the Supplement to Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtor that May Be Assumed and Assigned, filed as Docket No. 409 in the Bankruptcy Case.

5.10 Operating Covenant¶ Purchaser shall act in good faith and use Purchaser's commercially reasonable efforts to serve the medical needs of the Facilities' service area. Without limiting the foregoing, Purchaser agrees to (a) use commercially reasonable efforts to cause each of the Facilities to remain operational for a period of at least one year following the Closing Date; provided, Purchaser shall cause Oasis, Anza, and Borrego Springs to remain operational for a period of at least three years following the Closing Date, and (b) promptly following the Closing (but in no event, later than three (3) months from the Closing Date), conduct a community health needs assessment.

5.11 Board of Directors Seats¶ Purchaser shall use good faith, commercially reasonable efforts to cause (including, to the extent necessary, amending and maintaining its bylaws and other organizational documents) 25% of its total board of directors seats to be filled by directors representing the geographical footprint of the Facilities.

5.12 Post Closing Capital Commitment¶ Provided that the system maintains an equivalent number of assigned lives from the period of the Sale Order to the Effective Time, Purchaser shall undertake commercially reasonable efforts to commit \$60,000,000 over a five (5) year period to: (a) fund expanded clinical staffing in accordance with community needs; and (b) fund investments in non-personnel expenses, including improvements to physical clinic infrastructure, quality and data systems, patient and community awareness, regulatory compliance, and any other needs required to achieve best practices in the FQHC industry.

ARTICLE 6

SELLER'S BANKRUPTCY AND BANKRUPTCY COURT APPROVAL

6.1 Bankruptcy Court Approval¶

(a) Seller and Purchaser acknowledge that this Agreement has been solicited in conformity with the Bidding Procedures approved by the Bankruptcy Court on December 19, 2022 [Docket No. 321] (the "**Bid Procedures Order**"), and that this Agreement, the sale of the Assets and the assumption and assignment of the Assumed Contracts and Assumed Leases remain subject to Bankruptcy Court approval. Purchaser further acknowledges that this Agreement and the transactions contemplated hereby are subject to Seller's right and ability to consider higher or better competing bids with respect to the Assets subject to the terms of the Bid Procedures Order. Pursuant to the Bid Procedures Order, Purchaser shall, if its bid is determined to be the second highest bid, serve as a back-up bidder (the "**Back-up Bidder**") subject to the provisions of the Bid Procedures Order.

(b) Purchaser further acknowledges that this Agreement is subject to termination, up to the time of entry of the Sale Order, except to the extent otherwise provided in the Bid Procedures Order, in the event Seller in the reasonable exercise of its fiduciary duties determines that it has received a higher and better offer for Seller's Assets and the Bankruptcy Court has authorized the Seller to accept and implement the terms of such offer in accordance with the Bankruptcy Code.

(c) Seller shall, at any hearing to consider approval of this Agreement (the “**Sale Hearing**”), exercise reasonable efforts to expeditiously obtain a “Sale Order” approving this Agreement subject to the reasonable exercise of its fiduciary duties to consider and accept a higher and better offer for Seller’s assets in accordance with the Bankruptcy Code and this Agreement. For purposes of this Agreement, the term “**Sale Order**” shall mean an order of the Bankruptcy Court in form and substance reasonably acceptable to Purchaser, authorizing the sale of the Assets pursuant to Section 363(b) of the Bankruptcy Code (including the Seller’s assumption and assignment to Purchaser of the Assumed Contracts and Assumed Leases pursuant to Section 365 of the Bankruptcy Code) on the terms and conditions set forth herein, free and clear of all encumbrances (other than Permitted Exceptions) and Excluded Liabilities, including, for the avoidance of doubt, any successor liability, to the maximum extent permitted by the Bankruptcy Code. For the avoidance of doubt, in the event the Sale Order is not in form and substance reasonably acceptable to Purchaser, Purchaser may, at its sole election, terminate the transaction proposed hereby.

(d) Seller agrees, subject to the reasonable exercise of its fiduciary duties, to expeditiously seek a Bankruptcy Court determination that Purchaser is a good faith purchaser within the meaning of Section 363(m) of the Bankruptcy Code and in good faith to file such declarations and other evidence as may be required to support such a determination.

(e) Seller shall seek expeditiously an order from the Bankruptcy Court retaining jurisdiction over all matters relating to claims against Seller, whether or not arising in connection with this Agreement, solely in the Bankruptcy Court.

6.2 Appeal of Sale Order¶ In the event an appeal is taken or a stay pending appeal is requested from the Sale Order, Seller shall immediately notify Purchaser of such appeal or stay request and shall provide to Purchaser promptly a copy of the related notice of appeal or order of stay. Seller shall also provide Purchaser with written notice of any motion or application filed in connection with any appeal from either of such orders. In the event of an appeal of the Sale Order, Seller shall be primarily responsible for drafting pleadings and attending hearings as necessary to defend against the appeal.

6.3 Bidding Procedures¶ Seller and Purchaser shall comply with the terms of the Bid Procedures Order. Seller shall sign this Agreement as and when permitted pursuant to the Bid Procedures Order and the Sale Order.

ARTICLE 7

CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLER

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

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

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

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

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

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

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

ARTICLE 8

CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER

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

8.1 Governmental Authorizations¶ Purchaser shall have obtained all approvals, licenses, certificates, permits, provider agreements, and authorizations from governmental agencies or governmental bodies (including but not limited to the California Department of Justice, HRSA and CDPH) that are required for operation of the Facilities, including reasonable assurances that any licenses, permits, certificates, provider agreements, and authorizations not actually issued as of the Closing will be issued following Closing, except in such case where failure to obtain such approval, license, certificate, permit, provider agreement, or authorizations from a governmental agency or governmental body does not have a material adverse effect. Specifically with respect to Seller's Section 330 grant from HRSA, HRSA shall have approved Seller's Service Area

Competition application for a minimum one-year period beginning March 1, 2023, at a level commensurate with Seller's most recent project period; Purchaser's successor-in-interest application; the transfer of Seller's HRSA award to Purchaser; Purchaser's change in scope of project requests associated with the transfer of Seller's HRSA award to Purchaser; and management agreements, as applicable.

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

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

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

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

8.6 Notice to California Attorney General¶ Seller has either (a) provided notice to the California Attorney General in a form and manner that complies with section 5913 of the California Corporations Code or (b) obtained a written waiver from the California Attorney General of section 5913 of the California Corporations Code.

ARTICLE 9

TERMINATION

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

- (a) by the mutual written consent of the parties;
- (b) by Seller if a material breach of this Agreement has been committed by Purchaser and such breach has not been (i) waived in writing by Seller or (ii) cured by Purchaser to the reasonable satisfaction of Seller within fifteen (15) business days after service by Seller upon Purchaser of a written notice which describes the nature of such breach; *provided, however*,

Seller shall not be permitted to terminate this Agreement pursuant to this Section 9.1(b) if Seller is also in material breach of this Agreement;

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

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

(e) by Seller if any of the conditions in ARTICLE 7 have not been satisfied as of August 31, 2023, or if satisfaction of any such condition in ARTICLE 7 is or becomes impossible and Seller has not waived such condition in writing on or before August 31, 2023 (provided that (i) all conditions in ARTICLE 8 have been satisfied as of August 31, 2023, and (ii) the failure to satisfy the applicable condition or conditions in ARTICLE 7 has occurred by reason other than (x) through the failure of Seller to comply with its obligations under this Agreement or (y) Purchaser's failure to provide its closing deliveries on the Closing Date as a result of Seller not being ready, willing and able to close the transaction on the Closing Date);

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

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

(h) by Purchaser in the event that Seller elects not to assume and assign one or more contracts and/or leases set forth in Schedule 5.9(b), which is not cured by Seller to the reasonable satisfaction of Purchaser within fifteen (15) business days after service by Purchaser upon Seller of a written demand to assume and assign such contracts; or

(i) by either Purchaser or Seller if the Closing has not occurred (other than through the failure of any party seeking to terminate this Agreement to comply fully with its obligations under this Agreement) on or before August 31, 2023 (the "**Termination Date**"). The Termination Date may be extended to November 30, 2023 by mutual consent of the Seller and Purchaser (provided, that neither Party shall unreasonably withhold, delay or deny its consent to extend the Termination Date to November 30, 2023 under this Section 9.1(i)).

9.2 Termination Consequences

(a) If this Agreement is terminated pursuant to Section 9.1: (i) all further obligations of the parties under this Agreement shall terminate, provided that the provisions of

ARTICLE 11, ARTICLE 12 and this Section 9.2 shall survive and (ii) each party shall pay the costs and expenses incurred by it in connection with this Agreement, subject to Sections 9.2(b) and 9.2(c).

(b) In the event that this Agreement is terminated by Seller pursuant to either Section 9.1(b) or Section 9.1(e), then Seller shall retain the Deposit.

(c) Except as otherwise set forth in Section 9.2(b), in the event that this Agreement is terminated by either Party as permitted pursuant to Section 9.1, then Purchaser shall have the right to demand and promptly receive the Deposit, and shall receive any Funded Administrative Expenses to the extent provided under Section 1.13(b).

(d) Each Party acknowledges that the agreements contained in this Section 9.2 are an integral part of the transactions contemplated by this Agreement, that without these agreements such Party would not have entered into this Agreement. In the event of a material breach of this Agreement by either Party, in addition to the remedies provided in Section 9.1(b) and Section 9.1(c), as applicable to the non-breaching party, the non-breaching party shall have the right to pursue any rights or remedies that that such Party may have under this Agreement or applicable law, including the right to sue for damages or specific performance.

9.3 Break-Up Fee. In the event that the Seller conducts an auction for the Assets consistent with the procedures set forth in the Bid Procedures Order and the Seller closes the sale of the Assets with a Qualified Bidder (as defined in the Bid Procedures Order) other than the Purchaser, the Seller shall make payment to the Purchaser in the amount of Four Hundred Twenty Thousand, Three Hundred Ninety-Three Dollars (\$420,393.00) (the “**Break-Up Fee Amount**”) from the proceeds of the sale of the Assets to such other Qualified Bidder as a Break-Up Fee (as defined in the Bid Procedures Order), which represents one percent (1.0%) of the Cash Consideration.

ARTICLE 10

POST-CLOSING MATTERS

10.1 Excluded Assets

Subject to Section 10.2 hereof, any Excluded Asset (or proceeds thereof) (a) pursuant to the terms of this Agreement, (b) as otherwise determined by the parties’ mutual written agreement or (c) absent such agreement, as determined by adjudication by the Bankruptcy Court, which comes into the possession, custody or control of Purchaser (or its respective successors-in-interest, assigns or affiliates) shall, within five (5) business days following receipt, be transferred, assigned or conveyed by Purchaser (and its respective successors-in-interest, assigns and affiliates) to Seller. Purchaser (and its respective successors-in-interest, assigns and affiliates) shall have neither the right to offset amounts payable to Seller under this Section 10.1 against, nor the right to contest its obligation to transfer, assign and convey to Seller because of, outstanding claims, liabilities or obligations asserted by Purchaser against Seller. If Purchaser does not remit any monies included in the Excluded Assets (or proceeds thereof) to the Seller in accordance with the first sentence of this Section 10.1, such withheld funds shall bear interest at the Prime Rate in

effect on the calendar day upon which such payment was required to be made to Seller (the “**Excluded Asset Due Date**”) plus five percent (5%) (or the maximum rate allowed by law, whichever is less), such interest accruing on each calendar day after the Excluded Asset Due Date until payment of the Excluded Assets and all interest thereon is made to the Seller.

10.2 Preservation and Access to Records After the Closing

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

(b) Provided that Purchaser shall not incur any out of pocket costs, Purchaser shall give full cooperation to the Seller Parties and their insurance carriers in connection with the administration of Seller’s estate, including, without limitation, in connection with all claims, actions, causes of action or audits relating to the Excluded Assets, Excluded Liabilities or pre-Closing operation of the Seller or the Facilities that any Seller Party may elect to pursue, dispute or defend, in respect of events occurring prior to the Effective Time with respect to the operation of the Facilities. Such cooperation shall include, without limitation, making the Hired Employees available for interviews, depositions, hearings and trials and other assistance in connection with the administration of Seller’s estate and such cooperation shall also include making all of its employees available to assist in the securing and giving of evidence and in obtaining the presence and cooperation of witnesses (all of which shall be done without payment of any fees or expenses to Purchaser or to such employees); provided that Purchaser shall not be required to incur any out of pocket costs in association therewith. In addition, Seller and its affiliates shall be entitled to remove from the Facilities originals of any such records, but only for purposes of pending litigation involving the persons to whom such records refer, as certified in writing prior to removal by

counsel retained by Seller or any of its affiliates in connection with such litigation. Any records so removed from the Facilities shall be promptly returned to Purchaser following Seller's or its affiliate's use of such records.

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

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

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

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

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

(h) Provision of Benefits of Certain Contracts. Notwithstanding anything contained herein to the contrary, this Agreement shall not constitute an agreement to assign any Assumed Contract or Assumed Lease, if, notwithstanding the provisions of Sections 363 and 365 of the Bankruptcy Code, an attempted assignment thereof, without the consent of the third party thereto, would constitute a breach thereof or in any way negatively affect the rights of Seller or Purchaser, as the assignee of such Assumed Contract or Assumed Lease, as the case may be, thereunder. If, notwithstanding the provisions of Sections 363 and 365 of the Bankruptcy Code,

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

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

ARTICLE 11

TAXES AND COST REPORTS

11.1 Tax Matters; Allocation of Purchase Price.

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

(b) Within 20 days after the Signing Date, Purchaser shall deliver to Seller for Seller's review a schedule setting forth the allocation of the Purchase Price (including any liabilities that are considered to be an increase to the Purchase Price for United States federal income Tax purposes) among the Assets in accordance with Section 1060 of the Code and the Treasury Regulations promulgated thereunder (such schedule, as may be amended as contemplated below in this Section 11.1(b), the "**Allocation Schedule**"). The Allocation Schedule shall be deemed final and binding upon the parties upon Seller's approval thereof. The parties shall cooperate in good faith to finalize the Allocation Schedule within 10 days after delivery of the initial draft of the schedule by Purchaser to Seller. If within such 10 day period (or such other period as the parties may agree), the parties are unable to reach agreement on a final Allocation Schedule, the parties shall have no further obligations under this Section 11.1(b). If the parties are

able to agree on an Allocation Schedule, the parties shall refrain from taking any position that is inconsistent with the Allocation Schedule.

11.2 Cost Report Matters

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

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

ARTICLE 12

MISCELLANEOUS PROVISIONS

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

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

12.3 Governing Law; Venue; Injunctive Relief This Agreement shall be construed, performed, and enforced in accordance with, and governed by, the laws of the State of California (without giving effect to the principles of conflicts of laws thereof), except to the extent that the laws of such State are superseded by the Bankruptcy Code or other applicable federal law. For so long as Seller is subject to the jurisdiction of the Bankruptcy Court, the parties irrevocably elect, as the sole judicial forum for the adjudication of any matters arising under or in connection with the Agreement, and consent to the exclusive jurisdiction of, the Bankruptcy Court. The parties hereby consent to the jurisdiction of such court and waive their right to challenge any proceeding

involving or relating to this Agreement on the basis of lack of jurisdiction over the Person or forum non conveniens. The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed by the parties in accordance with their specific terms or were otherwise breached. Accordingly, each party will be entitled to seek an injunction or injunctions, without the posting of any bond, to prevent breaches of this Agreement by another party and to enforce specifically the terms and provisions of this Agreement, in addition to any other remedy to which such party is entitled at law or in equity, but subject to any express limitations set forth in this Agreement.

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

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

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

If to Seller:

Borrego Community Health Foundation
Attention: Doug Habig, Chief Legal Officer
E-mail: dhabig@borregohealth.org

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

If to Purchaser: DAP Health
1695 N. Sunrise Way
Palm Springs, CA 92262
Attention: David Brinkman
Telephone: 760-992-0415

With a copy to: Hanson Bridgett LLP
(which copies shall 425 Market Street, 26th Floor
not constitute notice) San Francisco, California 94105
Attention: Michael L. Lateef
Telephone: 415-995-5095
Facsimile: 415-541-9366

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

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

12.8 Publicity.¶ Prior to the Closing Date, Seller and Purchaser shall consult with each other as to the form and substance of any press release or other public disclosure materially related to this Agreement or any other transaction contemplated hereby and each shall have the right to review and comment on the other's press releases prior to issuance; *provided, however*, that nothing in this Section 12.8 shall be deemed to prohibit Seller or Purchaser from making any disclosure that its counsel deems necessary or advisable in order to satisfy either party's disclosure obligations imposed by law subject to reasonable prior notice to the other party thereof.

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

12.10 Gender and Number; Construction; Affiliates.¶ All references to the neuter gender shall include the feminine or masculine gender and vice versa, where applicable, and all references to the singular shall include the plural and vice versa, where applicable. Unless otherwise expressly provided, the word "including" followed by a listing does not limit the preceding words or terms and shall mean "including, without limitation." Any reference in this Agreement to an "affiliate" shall mean any Person directly or indirectly controlling, controlled by or under common

control with a second Person. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. A “Person” shall mean any natural person, partnership, corporation, limited liability company, association, trust or other legal entity.

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

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

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

12.14 Entire Agreement¶ This Agreement, the Disclosure Schedule, the exhibits and schedules, and the documents referred to in this Agreement contain the entire understanding between the parties with respect to the transactions contemplated hereby and supersede all prior or contemporaneous agreements, understandings, representations and statements, oral or written, between the parties on the subject matter hereof (the “**Superseded Agreements**”), which Superseded Agreements shall be of no further force or effect.

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

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

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

[REMAINDER OF PAGE IS BLANK]

HB 2023-02-07 DRAFT

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

PURCHASER:

Signature By: _____
Print Name: _____
Title: _____
Date: _____

SELLER:

Signature By: _____
Print Name: _____
Title: _____
Date: _____

Exhibit 2
(Altamed Asset Purchase Agreement)

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
213 623 9300

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ASSET PURCHASE AGREEMENT

By and Between

BORREGO COMMUNITY HEALTH FOUNDATION

and

ALTAMED HEALTH SERVICES CORPORATION

Dated February 10, 2023

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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (the “**Agreement**”) is made and entered into as of the ____ day of _____, 2023 (the “**Signing Date**”) by and between Borrego Community Health Foundation, a California nonprofit public benefit corporation (“**Seller**”) and AltaMed Health Services Corporation, a California nonprofit public benefit corporation (“**Purchaser**”).

RECITALS:

A. Seller engages in the business of the operation of healthcare facilities, dental clinics, intermittent clinics, pharmacies, mobile healthcare facilities, and other supportive facilities (collectively, the “**Facilities**”) generally including, but not limited to, those described as follows:

- (i) Anza Community Health Center, generally located at 58581 Highway 371 in Anza, California 92539 (“**Anza**”), together with the related Mobile Unit 4, Dental Unit 3, Dental Unit 6, and Dental Unit 8;
- (ii) Borrego Medical Clinic, generally located at 4343 Yaqui Pass Road in Borrego Springs, California 92004 (“**Borrego Springs**”);
- (iii) Centro Medico Cathedral City, generally located at 69175 Ramon Road in Cathedral City, California 92234, together with the related Coachella Mobile Clinic, Mobile Dental Trailer # 1, and Mobile Dental Trailer # 2;
- (iv) Centro Medico Coachella, generally located at 55497 Van Buren Street in Thermal, California 92274;
- (v) Coachella Valley Community Health Center, generally located at 49869 Calhoun Street in Coachella, California 92236;
- (vi) Centro Medico El Cajon, generally located at 133 West Main Street in El Cajon, California 92020;
- (vii) Centro Medico Escondido, generally located at 1121 East Washington Avenue in Escondido, California 92025;
- (viii) Centro Medico Oasis, generally located at 88775 Avenue 76 in Thermal, California 92274 (“**Oasis**”);
- (ix) College of the Desert Student Health Services, generally located at 43522 Monterrey Avenue in Palm Desert, California 92211;
- (x) Desert Hot Springs Community Health Center, generally located at 66675 Pierson Boulevard in Desert Hot Springs, California 92240, together with the related Dental Unit 7;
- (xi) Borrego Health Specialty Care Center/Desert Hot Springs Specialty, generally located at 12520 Palm Drive in Desert Hot Springs, California

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92240;

- (xii) Desert Hot Springs Health and Wellness Center, generally located at 11-750 Cholla Drive in Desert Hot Springs, California 92240;
- (xiii) Jay Hoffman Health Center, generally located at 29490 Lakeview Avenue in Nuevo, California 92567;
- (xiv) Martha's Village Clinic, generally located at 83791 Date Avenue in Indio, California 92201;
- (xv) Palm Springs Family Health, generally located at 1100 North Palm Canyon Drive in Palm Springs, California 92262;
- (xvi) San Jacinto Health Center, generally located at 651 North State Street in San Jacinto, California 92583;
- (xvii) Stonewall Pharmacy/Borrego Pharmacy, generally located at 68555 Ramon Road in Cathedral City, California 92234;
- (xviii) Stonewall Medical Center, generally located at 68555 Ramon Road in Cathedral City, California 92234;
- (xix) Woolcott Dental, generally located at 590 Palm Canyon Drive in Borrego Springs, California 92004;
- (xx) Borrego Pharmacy, generally located at 590 Palm Canyon Drive in Borrego Springs, California 92004;
- (xxi) Vista Village Pediatrics, generally located at 950 Civic Center Drive in Vista, California 92083; and
- (xxii) La Mesa Pediatrics, generally located at 8881 Fletcher Parkway in La Mesa, California 91942.

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

C. Seller has filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "**Bankruptcy Code**") with the United States Bankruptcy Court for the Southern District of California (the "**Bankruptcy Court**"), commencing Case No. 22-02384-1 (the "**Bankruptcy Case**"), and the Bankruptcy Court entered or is expected to enter the Bid Procedures Order (defined below) approving procedures in connection with the sale of the Seller's Assets, Docket No. 321, which requests that the Bankruptcy Court enter a "**Sale Order**" (defined below) following an auction and selection of a successful bidder.

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

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

ARTICLE 1

SALE AND TRANSFER OF ASSETS; CONSIDERATION; CLOSING

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

(a) Cash payment to Seller (the “**Cash Consideration**”) of Fifty Five Million Dollars (\$55,000,000.00);

(b) Payment of Cure Costs (as defined in Section 5.9) associated with any Assumed Leases (as defined in Section 1.7(c)) and/or Assumed Contracts (as defined in Section 1.7(d));

(c) Assumption of the Assumed Obligations (as defined in Section 1.9); and

(d) Funding of Pre-Closing Net Operational Cash Flow Losses pursuant to Section 1.13.

1.2 Deposit. Purchaser has caused a good faith deposit to be made in the amount of Four Million, Three Hundred Thousand, Dollars (\$4,300,000.00) (the “**Deposit**”) by wire transfer to an account designated by Seller. Except as set forth in Section 9.2(b), the Deposit shall be refundable if the Closing does not occur. Upon Closing, the Deposit will be credited against the Purchase Price.

1.3 Closing Date. The consummation of the transactions contemplated by this Agreement (the “**Closing**”) shall take place at 10:00 a.m. local time at the offices of Dentons US LLP, 601 South Figueroa St., Suite 2500, Los Angeles, CA 90017-5704 (the day on which Closing actually occurs, the “**Closing Date**”) within five (5) business days following the satisfaction or waiver of the conditions set forth in ARTICLE 7 and ARTICLE 8, other than those conditions that by their nature are to be satisfied at Closing but subject to fulfillment or waiver of those conditions. The Closing shall be deemed to occur and to be effective as of 12:00 a.m. Pacific time on the day immediately after the Closing Date (the “**Effective Time**”).

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

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

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

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

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

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

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

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

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

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

1.5.1 payment of the Cash Consideration, (a) less items of income allocated to Purchaser and items of expense allocated to Seller pursuant to Section 1.6; (b) plus items of income allocated to Seller and items of expense allocated to Purchaser pursuant to Section 1.6; and (c) less any credit under Section 1.13 (with respect to any Pre-Closing Net Operational Cash Flow Losses funded by Purchaser in excess of \$6,000,000);

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

1.5.3 a duly executed certificate of the Secretary of Purchaser certifying to Seller (a) the incumbency of the officers of Purchaser on the Signing Date and on the Closing Date and bearing the authentic signatures of all such officers who shall execute this Agreement and any additional documents contemplated by this Agreement and (b) the due adoption and text of the resolutions of the Board of Directors of Purchaser authorizing the execution, delivery and

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performance of this Agreement and all additional documents contemplated by this Agreement, and that such resolutions have not been amended or rescinded and remain in full force and effect on the Closing Date;

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

1.5.5 the Bill of Sale, duly executed by Purchaser;

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

1.5.7 the Assumption Agreement, duly executed by Purchaser; and

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

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

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

1.6.2 Other than the Utility Deposits (defined below), which are governed by Section 1.8(j), and other than with respect to Cure Costs payable by Purchaser, the following costs and expenses shall be prorated based upon the payment period (*i.e.*, calendar or other tax fiscal year) to which the same are attributable: all real estate and personal property lease payments, real estate and personal property taxes, real estate assessments and other similar charges against real estate, and power and utility charges (collectively, the “**Prorated Charges**”) on the Assets. Seller shall pay its portion at or prior to the Closing (or Purchaser shall receive credit for) of any unpaid Prorated Charges attributable to periods or portions thereof occurring prior to the Effective Time, and Purchaser shall assume as an Assumed Obligation or, to the extent previously paid by Seller, pay to Seller at the Closing all Prorated Charges attributable to periods or portions thereof occurring from and after the Effective Time. In the event that as of the Closing Date the actual tax bills for the tax year or years in question are not available and the amount of taxes to be prorated as aforesaid cannot be ascertained, then rates, millages and assessed valuation of the previous year, with known changes, shall be used. The parties agree that if the real estate and personal property tax prorations are made based upon the taxes for the preceding tax period, the prorations shall be re-prorated after the Closing. As to power and utility charges, “final readings” as of the Closing Date shall be ordered from the utilities; the cost of obtaining such “final readings,” if any, shall be paid by Purchaser.

1.6.3 Seller shall be entitled to all rents and other payments under Tenant Leases accruing for the period prior to the Effective Time (“**Pre Effective Time Lease Amounts**”), and Purchaser shall be entitled to all rents and other payments under tenant leases accruing for the

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

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

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

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

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

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

(d) all of Seller’s interest, to the extent assignable or transferable, in and to all contracts and agreements (including, but not limited to, purchase orders) with respect to the

operation of the Facilities that have been designated by Purchaser as a contract to be assumed pursuant to Section 1.11 (the “**Assumed Contracts**”);

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

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

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

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

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

(j) the right to use the name “Borrego Community Health Foundation”;

(k) all goodwill of the Facilities evidenced by the Assets;

(l) to the extent transferable or assignable, Seller’s right or interest in the telephone and facsimile numbers used with respect to the operation of the Facilities;

(m) to the extent assignable or transferable, Seller’s Medicare and Medi-Cal provider numbers and lock box account(s) subject to approval by the appropriate governmental and regulatory agencies; and

(n) except for the Excluded Assets, to the extent assignable or transferable, any other assets owned by Seller (which are not otherwise specifically described above in this Section 1.7) that are used in the operation of the Facilities.

As used herein, the term “**Permitted Exceptions**” means (i) the Assumed Obligations; (ii) liens for taxes not yet due and payable (iii) easements, rights of way, zoning ordinances and other similar encumbrances affecting real property; and (iv) other imperfections of title or

encumbrances, if any, which are not monetary in nature and that are not, individually or in the aggregate, material to the business of the Facilities.

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

- (a) cash, cash equivalents and short-term investments;
- (b) [omitted];
- (c) all contracts that are not Assumed Contracts;
- (d) all leases that are not Assumed Leases;
- (e) the portions of Inventory, Prepaids, and other assets disposed of, expended or canceled, as the case may be, by Seller after the Signing Date and prior to the Effective Time in the ordinary course of business;
- (f) assets owned and provided by vendors of services or goods to the Facilities;
- (g) all of Seller's organizational or corporate record books, minute books and tax records;
- (h) all claims, counterclaims and causes of action of Seller or Seller's bankruptcy estate (including parties acting for or on behalf of Seller's bankruptcy estate, including, but not limited to, the official committee of unsecured creditors appointed in the Bankruptcy Case) not specifically set forth in Section 1.7(e) hereof, including, without limitation, causes of action arising out of any claims and causes of action under chapter 5 of the Bankruptcy Code and any related claims, counterclaims and causes of action under applicable non-bankruptcy law, and any rights to challenge liens asserted against property of Seller's bankruptcy estate, including, but not limited to, liens attaching to the Purchase Price paid to Seller, and the proceeds from any of the foregoing; provided, however that Purchaser shall acquire and be deemed to release and waive as of the Effective Time causes of action under Sections 544, 547, 548, and 550 of the Bankruptcy Code against counterparties to executory contracts and unexpired leases being assumed by a Seller and assigned to Purchaser;
- (i) all insurance policies and contracts and coverages obtained by Seller or listing Seller as insured party, a beneficiary or loss payee, including prepaid insurance premiums, and all rights to insurance proceeds under any of the foregoing, and all subrogation proceeds related to any insurance benefits arising from or relating to Assets prior to the Closing Date;
- (j) all deposits made with any entity that provides utilities to the Facilities (the "**Utility Deposits**");
- (k) all rents, deposits, prepayments, and similar amounts relating to any contract or lease that is not an Assumed Contract or Assumed Lease;

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

(m) all bank accounts of Seller;

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

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

(p) all director and officer insurance;

(q) all tax refunds of Seller;

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

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

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

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

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

(w) any (i) personnel files for employees of Seller who are not hired by Purchaser; (ii) other books and records that Seller is required by Law to retain; provided, however, that except as prohibited by Law and subject to Article 5, Purchaser shall have the right to make copies of any portions of such retained books and records that relate to the business of the Facilities as conducted before the Closing or that relate to any of the Assets; (iii) documents which Seller is not permitted to transfer pursuant to any contractual obligation owed to any third party; (iv) documents primarily related to any Excluded Assets; and (v) documents necessary to prepare tax returns (Purchaser shall be entitled to a copy of such documents). With respect to documents necessary to prepare cost reports, Purchaser shall receive the original document and Seller shall be entitled to retain a copy of such documents for any period ending on or prior to the Closing Date;

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

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

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

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

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

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

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

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

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

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

- (d) all accrued paid time off pay;
- (e) all liabilities and obligations of Seller related to the Hired Employees arising on or following the Effective Time;
- (f) all unpaid real and personal property taxes, if any, that are attributable to the Assets after the Effective Time, subject to the prorations provided in Section 1.6;
- (g) all liabilities and obligations relating to utilities being furnished to the Assets, subject to the prorations provided in Section 1.6;
- (h) any documentary, sales and transfer tax liabilities of Seller incurred as a result of the consummation of the transaction contemplated by this Agreement;
- (i) any and all liabilities and obligations arising under the law or bankruptcy court order(s) relating to any collective bargaining agreement or other contract with any labor union or labor relations entity applicable to and/or covering employees of the Facilities;
- (j) all liabilities or obligations provided for in Section 5.3; and
- (k) any other obligations and liabilities identified in Schedule 1.9(k).

1.10 Excluded Liabilities. For the avoidance of doubt, notwithstanding Section 1.9, Purchaser shall not assume or become responsible for any duties, obligations or liabilities of Seller that (i) were not legally-incurred or (ii) are not assumed by Purchaser pursuant to the terms of this Agreement, the Bill of Sale, the Assumption Agreement or the Real Estate Assignment(s) (the “**Excluded Liabilities**”), and Seller shall remain fully and solely responsible for all of Seller’s debts, liabilities, contract obligations, expenses, obligations and claims of any nature whatsoever related to the Assets or the Facilities unless assumed by Purchaser under this Agreement, in the Bill of Sale, the Assumption Agreement or in the Real Estate Assignment(s).

1.11 Designation of Assumed Contracts and Assumed Leases.

(a) All contracts and leases will be subject to evaluation by Purchaser for assumption or rejection (collectively “**Evaluated Contracts**”). Not later than February 3, 2023 (i) Purchaser shall notify Seller in writing of which Evaluated Contracts are to be assumed by Seller and assigned to Purchaser and (ii) Purchaser shall notify Seller in writing signed and dated by Purchaser of which Evaluated Contracts are to be rejected by Seller (collectively, the “**Rejected Contracts**”). Seller shall file such motions in the Bankruptcy Court and take such other actions as are reasonably necessary to ensure that final and non-appealable orders assuming and assigning the Assumed Contracts or Assumed Leases to Purchaser are entered. With respect to each Assumed Lease, Seller shall execute and deliver to Purchaser an Assignment and Assumption of Lease. Schedule 1.11(a) shall reflect the final list of the approved Assumed Contracts and Assumed Leases. Notwithstanding anything to the contrary set forth in this Agreement, the Rejected Contracts shall constitute part of the Excluded Assets pursuant to, and as defined in, this Agreement.

(b) At Closing and pursuant to an order of the Bankruptcy Court, Seller will assume and immediately assign to Purchaser the leases of Seller for Leased Real Property and the Tenant Leases, to the extent such Leased Real Property or Tenant Leases become Assumed Leases pursuant to Section 1.11(a), above.

1.12 Disclaimer of Warranties; Release.

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

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

1.13 Validation of Pre-Closing Assumed Operational Losses, Dispute Resolution.

(a) Purchaser shall fund all Pre-Closing Net Operational Cash Flow Losses (defined below) of Seller that are: (i) incurred during the period from the date of entry of the Sale Order through the Closing Date (the "**Pre-Closing Period**") and (ii) in an amount not to exceed \$10,000,000 in the aggregate (with any Pre-Closing Net Operational Cash Flow Losses funded by Purchaser in excess of \$6,000,000 being credited against the Cash Consideration at Closing). The "**Pre-Closing Net Operational Cash Flow Losses**" shall mean the difference between (x) the amounts received by Seller during the Pre-Closing Period on account of patient services provided

by Seller, including, but not limited to, capitation payments, interim payments, supplemental payments, cash payments, and any other payments for services provided that are received during the Pre-Closing Period (but specifically excluding, for clarity, any American Rescue Plan Act grant funding) and (y) the amounts disbursed by Seller during the Pre-Closing Period on account of operating expenses incurred in the ordinary course of business and consistent with historical past practices, which amounts shall exclude any expenses related to or arising from the Bankruptcy Case (including, but not limited to, professional fees and costs and United States Trustee fees).

(b) The Sale Order shall provide that Purchaser shall hold an allowed administrative expense claim under section 503(b)(1) of the Bankruptcy Code with priority over every other claim allowable under such section in an amount equal to the Pre-Closing Net Operational Cash Flow Losses that are actually funded by Purchaser pursuant to Section 1.13(c) below (the “**Funded Loss Administrative Expense**”). For the avoidance of doubt, the allowed amount of the Funded Loss Administrative Expense shall be limited to, and shall not exceed, those amounts that are actually funded by Purchaser in cash to Seller pursuant to Section 1.13(c) below. The Sale Order shall further provide that the Funded Loss Administrative Expense shall be treated in only one of the following manners: (a) in the event the Closing under this Agreement occurs, then (i) that portion of the Funded Loss Administrative Expense up to \$6,000,000 shall be satisfied in full by application against the Purchase Price due under Section 1.1(d) of this Agreement, and (ii) that portion of the Funded Loss Administrative Expense in excess of \$6,000,000, if any, shall be satisfied in full by application against the Cash Consideration due under Section 1.1(a) of this Agreement; (b) in the event this Agreement is terminated by Seller pursuant to Section 9.1(g) of this Agreement, the Funded Loss Administrative Expense shall be satisfied in full by payment from the proceeds of any alternative transaction that is consummated by Seller; (c) in the event of a Specified Termination Event, the Funded Loss Administrative Expense shall be payable as an administrative expense in the Bankruptcy Case; (d) in the event the Bankruptcy Case is dismissed, the Funded Loss Administrative Expense shall be satisfied in full by payment from the Seller to the Purchaser in an amount equal to the Funded Loss Administrative Expense at the time of such dismissal or as otherwise agreed in writing by the Seller and Purchaser; or (e) in all other events, whether this Agreement is terminated or not and regardless of any other act, event or occurrence, the Funded Loss Administrative Expense shall be waived and released by Purchaser. A “**Specified Termination Event**” shall mean the termination of this Agreement by Purchaser under any of [i] Section 9.1(c) of this Agreement, [ii] Section 9.1(d) of this Agreement (including, but not limited to, termination because of the Seller and/or Purchaser not obtaining the government authorizations required under Section 7.4 of this Agreement or Section 8.1 of this Agreement), [iii] Section 9.1(h) of this Agreement, or [iv] Section 9.1(i) of this Agreement if the Termination Date has been extended to November 30, 2023 but the Closing does not occur by such date (provided, that neither Party shall unreasonably withhold, delay or deny its consent to extend the Termination Date to November 30, 2023 under Section 9.1(i)).

(c) Seller shall prepare and deliver to Purchaser, within ten (10) days following the end of each calendar month during the Pre-Closing Period, a statement (the “**Monthly Statement**”) setting forth Seller’s calculation of the Pre-Closing Net Operational Cash Flow Losses for such month, together with reasonable supporting documentation (which supporting documentation shall be consistent with the detail provided in Seller’s recurring weekly cash flow forecasts). Purchaser shall fund in cash, by wire transfer to an account designated by Seller in

writing, the amount of the Pre-Closing Net Operational Cash Flow Losses (subject to the limitation in Section 1.13(a)) within five days of receipt of such statement.

(d) During the 30 days immediately following the Closing Date, Seller shall cooperate fully with Purchaser in connection with the Purchaser's review of the Monthly Statements, including providing any supporting documentation reasonably requested by Purchaser and its agents and representatives that is reasonably related to preparation of the Monthly Statements. The Monthly Statements shall become final and binding upon the parties 30 days after the Closing Date unless Purchaser gives written notice of its disagreement (a "**Notice of Disagreement**") to Seller on or prior to such date; provided that the Monthly Statements shall become final and binding upon the parties upon delivery by Purchaser, prior to the expiration of such 30 day period, of written notice to Seller of its acceptance of the Monthly Statements. Any Notice of Disagreement shall specify in reasonable detail the nature and amount of any disagreement so asserted, and be accompanied by reasonable supporting documentation.

(e) If a timely Notice of Disagreement is delivered by Purchaser, then the Monthly Statements shall become final and binding upon the parties on the earlier of (i) the date any and all matters specified in the Notice of Disagreement are finally resolved in writing by Seller and Purchaser and (ii) the date any and all matters specified in the Notice of Disagreement not resolved by Seller and Purchaser are finally resolved in a written order issued by the Bankruptcy Court, which for purposes of this Section 1.13, shall retain jurisdiction. The Monthly Statements shall be revised to the extent necessary to reflect any resolution by Seller and Purchaser and any final resolution made by the Bankruptcy Court. During the 30 days immediately following the delivery of a Notice of Disagreement or such longer period as Seller and Purchaser may agree in writing, Seller and Purchaser shall seek in good faith to resolve in writing any differences which they may have with respect to any matter specified in the Notice of Disagreement. During such period, Purchaser, Seller and their respective representatives shall be permitted to review all supporting documentation relating to the Notice of Disagreement, including all invoices. At the end of such 30 day period, Seller and Purchaser shall submit to the Bankruptcy Court for review and resolution any and all matters (but only such matters) that remain in dispute and that were included in the Notice of Disagreement. The Bankruptcy Court shall be requested to render a determination of all matters that remain in dispute within 60 days after submittal to the Bankruptcy Court, which determination must be in a written order issued by the Bankruptcy Court and which such determination shall be conclusive, final and binding on each party. The Bankruptcy Court shall grant Purchaser and its agents and representatives access to relevant supporting information which Purchaser has a good faith, substantial reason to believe Seller has withheld or failed to produce which would be material to its preparation of the Notice of Disagreement. The costs, fees and expenses of any adjudication before the Bankruptcy Court of a dispute over the Monthly Statements shall be allocated between the Purchaser and the Seller based upon the relative difference between the asserted amount of each party and the amount determined by the Bankruptcy Court.

(f) Once the Monthly Statements are determined as final pursuant to Section 1.13(e), then, within five days following such final determination Seller shall pay to Purchaser (in cash, by wire transfer to an account designated in writing by Purchaser) the amount, if any, by which the aggregate Pre-Closing Net Operational Cash Flow Losses actually funded to Seller by

Purchaser exceed the aggregate Pre-Closing Net Operational Cash Flow Losses reflected in the final Monthly Statements (as determined pursuant to Section 1.13(e)).

ARTICLE 2

REPRESENTATIONS AND WARRANTIES OF SELLER

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

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

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

2.3 Organization and Good Standing; No Violation.

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

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

(c) Seller is and through the time of closing will take all necessary action to continue to be in good standing with the California Secretary of State, the California Franchise Tax Board, and the California Attorney General.

2.4 Contracts. Except as set forth in Schedule 2.4, upon entry of the Sale Order and Purchaser’s payment of the Cure Costs, to Seller’s knowledge, Seller is not in breach or default of the Assumed Contracts or Assumed Leases. No provision of this Section 2.4 shall apply to any failure to obtain consents to the assignment of the Assumed Contracts and Assumed Leases from third parties to the Assumed Contracts and Assumed Leases for which consent is required to assign the Assumed Contracts and Assumed Leases to purchaser (“**Contract and Lease Consent**”).

Execution Copy

2.5 Brokers and Finders. Except as set forth on **Schedule 2.5**, neither Seller nor any affiliate thereof, nor any officer or director thereof, have engaged or incurred any liability to any finder, broker or agent in connection with the transactions contemplated hereunder. Seller shall be responsible for any commission or other compensation payable to any finder, broker or agent based upon communications with Seller or any officer, director, employee or agent thereof.

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

ARTICLE 3

REPRESENTATIONS AND WARRANTIES OF PURCHASER

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

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

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

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

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

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

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

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

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

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

Execution Copy

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

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

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

ARTICLE 4

COVENANTS OF SELLER

4.1 Access and Information; Inspections.

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

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

4.2 Cooperation.

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

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

4.2.3 Prior to closing, and subject to obtaining any necessary regulatory approval, Seller shall cooperate with Purchaser and its representatives to allow Purchaser during such period to provide, at no additional cost to Seller, (a) reasonable operational management support, including support to clinic operations, facility maintenance, human resources, recruitment/retention, risk management, quality improvement, and grants management/fundraising; (b) financial management support, including support preparing monthly financial statements, creating and tracking budgets, support to billing/collections, revenue cycle management, financial/accounting policies, vendor contracting and management; (c) clinical management support, including coaching to existing medical director(s) and clinical leadership, management of peer review process, chart review and performance/productivity expectations for clinicians; (d) compliance management support, including maintenance of board and committee meeting schedules, federal award and HRSA compliance, overall policy and procedure review, federal grant reporting, applications, and management; and (e) along with other reasonable support

as mutually agreed upon between Seller and Purchaser. Notwithstanding anything herein to the contrary, Seller shall at all times maintain operational and clinical control over the Facilities, and.

4.2.4 Seller agrees to hold Purchaser harmless from any and all liability arising out of the Purchaser's provision of support services as described in Section 4.2.3.

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

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

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

4.2.8 Facilities Licensed. Seller has obtained all necessary material licenses for the Seller to operate the Facilities and all such material licenses will be valid and in good standing as of the Closing Date.

4.2.9 Notice to California Attorney General. Prior to the Closing Date, Seller will (a) provide notice to the California Attorney General in a form and manner that complies with section 5913 of the California Corporations Code or (b) shall obtain a written waiver from the California Attorney General of section 5913 of the California Corporations Code.

4.2.10 HRSA Filings. Promptly after entry of the Sale Order, Seller and Purchaser shall cooperate in obtaining any required review and consent by the U.S. Department of Health and Human Services Health Resources & Services Administration ("HRSA") to the sale of the Assets to Purchaser in accordance with this Agreement and the Sale Order, including without limitation, preparing and submitting to the HRSA a notice of the transactions contemplated by this Agreement, including notice of the Purchaser's successor in interest application and associated changes in scope, within ten (10) calendar days after entry of the Sale Order, participating in any

required HRSA or public meetings, and negotiating any conditions proposed by the HRSA for the consummation of such transactions.

ARTICLE 5

COVENANTS OF PURCHASER

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

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

5.3 Certain Employee Matters.

(a) Purchaser agrees to make expedited offers of employment, effective as of the Effective Time, to all persons, whether such persons are full time employees, part-time employees, on short-term or long-term disability or on leave of absence, military leave or workers compensation leave (the "**Facility Employees**"), who (i) immediately prior to the Effective time are employees in good standing of Seller or an affiliate of Seller and are listed on Schedule 5.3 and (ii) apply to work for Purchaser, have the requisite skills and experience to perform their duties, and clear standard background checks. For the avoidance of doubt, the Facility Employees shall not include any employees of any affiliate of Seller unless such individual is listed on Schedule 5.3. Any of the Facility Employees who accept an offer of employment with Purchaser as of or after the Effective Time shall be referred to in this Agreement as the "**Hired Employees**."

(b) For the avoidance of doubt, in accordance with applicable federal, state and local law, regulation and/or ordinance, by the Effective Date Seller shall have terminated each and

all of the Hired Employees prior to their being eligible for and hired by Purchaser, such termination by Seller being a condition to Purchaser's hiring of same.

(c) Purchaser shall give all Hired Employees full credit for their paid time off pay as of the Closing Date, either by (i) crediting each Hired Employee the time off reflected as being due to them in the employment records of the Seller and/or any of its affiliates as of the Closing Date or (ii) at a Hired Employee's election, making full payment of the amount such employee would have received had they taken such paid time off prior to the Closing Date. Purchaser further agrees that each Hired Employee will be offered wages and benefits packages that, in aggregate, are no less than the total compensation package such Hired Employee received from the Seller immediately prior to the Closing Date. Finally, Purchaser will pay hourly employees no less than \$23 hourly in 2023, \$24 hourly in 2024, and \$25 hourly in 2025.

(d) Purchaser shall pay \$1 million in retention bonuses to eligible Hired Employees, to be determined by a formula based upon tenure. Hired Employees shall be eligible for such retention bonus provided Purchaser's new base salary is less than a thirty percent 30% increase from Seller's base salary. Eligible Hired Employees will be paid 40 percent (40%) of such retention bonus within 15 days from the Effective Time and shall become eligible for and be paid the additional 60 percent (60%) on the first business day following the six month anniversary of the Effective Time.

(e) After the Closing Date, Purchaser's human resources department will give reasonable assistance to Seller and its affiliates with respect to Seller's and Seller's affiliates' post-Closing administration of Seller's and Seller's affiliates' pre-Closing employee benefit plans for the Facility Employees. Within five (5) days after the Closing Date, Purchaser shall provide to Seller a list of all the Facility Employees by name, title/position, location, and salary.

(f) With respect to any collective bargaining agreements or labor contract with respect to any union employees, Purchaser shall comply with the applicable laws and bankruptcy court orders relating to collective bargaining agreements or labor contracts.

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

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

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

5.6 HRSA Filings. Promptly after entry of the Sale Order, Seller and Purchaser shall cooperate in obtaining any required review and consent by the HRSA to the sale of the Assets to

Purchaser in accordance with this Agreement and the Sale Order, including without limitation, preparing and submitting to the HRSA a notice of the transactions contemplated by this Agreement, including notice of the Purchaser's successor in interest application and associated changes in scope, within ten (10) calendar days after entry of the Sale Order, participating in any required HRSA or public meetings, and negotiating any conditions proposed by the HRSA for the consummation of such transactions.

5.7 Conduct Pending Closing. Prior to consummation of the transactions contemplated hereby or the termination or expiration of this Agreement pursuant to its terms, unless Seller shall otherwise consent in writing, Purchaser shall not take any action or fail or omit to take any action which would cause any of Purchaser's representations and warranties set forth in ARTICLE 4 to be inaccurate or untrue as of the Closing.

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

5.9 Cure Costs. Purchaser shall pay the Cure Costs for each Assumed Contract and Assumed Lease so that each such Assumed Contract and Assumed Lease may be assumed by the Seller and assigned to Purchaser in accordance with the provisions of section 365 of the Bankruptcy Code.

(a) In the event the aggregate actual Cure Costs for the Assumed Contracts and Assumed Leases are more than 150% of the Estimated Cure Costs for such Assumed Contracts and Assumed Leases, such excess (over 150%) will be credited against the Cash Consideration payable by Purchaser at Closing.

(b) In the event the aggregate actual Cure Costs for the Assumed Contracts and Assumed Leases, other than as set forth in Schedule 5.9(b), are more than 200% of the Estimated Cure Costs for such Assumed Contracts and Assumed Leases, Seller shall have the right, but not the obligation, at Seller's sole discretion, to elect not to assume and assign one or more contracts and/or leases which would otherwise constitute Assumed Contracts or Assumed Leases such that the aggregate actual Cure Costs payable for the Assumed Contracts and Assumed Leases does not exceed 200% of the Estimated Cure Costs for the contracts and leases which Purchaser had elected to be Assumed Contracts and Assumed Leases; provided, that in the event that Seller elects not to assume and assign one or more contracts and/or leases set forth in Schedule 5.9(b), Purchaser may terminate this Agreement in accordance with the provisions of Section 9.1. For purposes of this Agreement, "**Cure Costs**" means all amounts that must be paid and all obligations that otherwise must be satisfied, including pursuant to Sections 365(b)(1)(A) and (B) of the Bankruptcy Code in connection with the assumption and/or assignment of the Assumed Contracts and Assumed Leases to Purchaser as provided herein. For purposes of this Agreement, "**Estimated Cure Costs**" means, with respect to a contract or lease, the amounts listed in (a) the Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtor that May Be Assumed and Assigned, filed as Docket No. 389 in the Bankruptcy Case, or (b) the Supplement to Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtor that May Be Assumed and Assigned, filed as Docket No. 409 in the Bankruptcy Case.

5.10 Operating Covenants. Purchaser shall act in good faith and use its best efforts to serve the medical needs of those in the Facilities' service area. Purchaser understands and takes its obligations to provide continuity of care to existing and new patients seriously and has developed a plan to ensure continuity of care for Seller's patients, including, but not limited to:

(a) ensuring qualified former employees of Seller are available to provide care (i) by committing to hire all qualified former employees of Seller, consistent with Section 5.3(a); (ii) by guaranteeing these employees their individually accrued paid time off pay from their time working for Seller or its affiliates, consistent with Section 5.3(c); (iii) by paying retention bonuses to eligible employees, consistent with Section 5.3(d); and (iii) by ensuring all employees are paid a minimum hourly wage of \$23 in 2023, \$24 in 2024 and \$25 in 2025, consistent with Section 5.3(c);

(b) dedicating an exclusive FQHC-experienced executive leadership team to focus on the successful transition and operation of Seller's former facilities for not less than one-year;

(c) mobilizing Purchaser's previously proven Float Pool that ensures qualified professionals are available to work in any facility, regardless of location, where there is a need;

(d) by ensuring immediate patient access to Purchaser's 11 existing pharmacies so that those who require prescriptions have them, whether in person or by mail, on day one;

(e) by assuming all of Seller's contracts and leases to ensure the facilities and services are in place to provide care on day one;

(f) by conducting a region-specific needs and capacity assessment to develop and implement regional obstetrics and maternal and child health programs within eighteen months of Purchaser's operation of Seller's former clinics; and

(g) by agreeing to include regional board representation for the communities served by Seller consistent with HRSA requirements, which is just one of the many ways Purchaser ensures it provides high quality, culturally competent and consumer-friendly healthcare and services to all those it serves.

5.11 Board of Directors Seats. Purchaser shall use good faith, commercially reasonable efforts to cause (including, to the extent necessary, amending and maintaining its bylaws and other organizational documents) 25% of its total board of directors seats to be filled by directors representing the geographical footprint of the Facilities consistent with HRSA requirements.

5.12 Post-Closing Capital Commitment. Provided that the system maintains an equivalent number of assigned lives from the period of the Sale Order to the Effective Time, Purchaser shall undertake commercially reasonable efforts to commit \$80,000,000 over a five (5) year period to: (a) fund expanded clinical staffing in accordance with community needs; (b) develop and fund a physician long term incentive plan of at least \$1.8 million; and (c) fund investments in non-personnel expenses, including improvements to physical clinic infrastructure, quality and data systems, patient and community awareness, regulatory compliance, and any other needs required to achieve best practices in the FQHC industry.

ARTICLE 6

SELLER'S BANKRUPTCY AND BANKRUPTCY COURT APPROVAL

6.1 Bankruptcy Court Approval.

(a) Seller and Purchaser acknowledge that this Agreement has been solicited in conformity with the Bidding Procedures approved by the Bankruptcy Court on December 19, 2022 [Docket No. 321] (the “**Bid Procedures Order**”), and that this Agreement, the sale of the Assets and the assumption and assignment of the Assumed Contracts and Assumed Leases remain subject to Bankruptcy Court approval. Purchaser further acknowledges that this Agreement and the transactions contemplated hereby are subject to Seller’s right and ability to consider higher or better competing bids with respect to the Assets subject to the terms of the Bid Procedures Order. Pursuant to the Bid Procedures Order, Purchaser shall, if its bid is determined to be the second highest bid, serve as a back-up bidder (the “**Back-up Bidder**”) subject to the provisions of the Bid Procedures Order.

(b) Purchaser further acknowledges that this Agreement is subject to termination, up to the time of entry of the Sale Order, except to the extent otherwise provided in the Bid Procedures Order, in the event Seller in the reasonable exercise of its fiduciary duties determines that it has received a higher and better offer for Seller’s Assets and the Bankruptcy Court has authorized the Seller to accept and implement the terms of such offer in accordance with the Bankruptcy Code.

(c) Seller shall, at any hearing to consider approval of this Agreement (the “**Sale Hearing**”), exercise reasonable efforts to expeditiously obtain a “Sale Order” approving this Agreement subject to the reasonable exercise of its fiduciary duties to consider and accept a higher and better offer for Seller’s assets in accordance with the Bankruptcy Code and this Agreement. For purposes of this Agreement, the term “**Sale Order**” shall mean an order of the Bankruptcy Court in form and substance reasonably acceptable to Purchaser, authorizing the sale of the Assets pursuant to Section 363(b) of the Bankruptcy Code (including the Seller’s assumption and assignment to Purchaser of the Assumed Contracts and Assumed Leases pursuant to Section 365 of the Bankruptcy Code) on the terms and conditions set forth herein, free and clear of all encumbrances (other than Permitted Exceptions) and Excluded Liabilities, including, for the avoidance of doubt, any successor liability, to the maximum extent permitted by the Bankruptcy Code. For the avoidance of doubt, in the event the Sale Order is not in form and substance reasonably acceptable to Purchaser, Purchaser may, at its sole election, terminate the transaction proposed hereby.

(d) Seller agrees, subject to the reasonable exercise of its fiduciary duties, to expeditiously seek a Bankruptcy Court determination that Purchaser is a good faith purchaser within the meaning of Section 363(m) of the Bankruptcy Code and in good faith to file such declarations and other evidence as may be required to support such a determination.

(e) Seller shall seek expeditiously an order from the Bankruptcy Court retaining jurisdiction over all matters relating to claims against Seller, whether or not arising in connection with this Agreement, solely in the Bankruptcy Court.

6.2 Appeal of Sale Order. In the event an appeal is taken or a stay pending appeal is requested from the Sale Order, Seller shall immediately notify Purchaser of such appeal or stay request and shall provide to Purchaser promptly a copy of the related notice of appeal or order of stay. Seller shall also provide Purchaser with written notice of any motion or application filed in connection with any appeal from either of such orders. In the event of an appeal of the Sale Order, Seller shall be primarily responsible for drafting pleadings and attending hearings as necessary to defend against the appeal.

6.3 Bidding Procedures. Seller and Purchaser shall comply with the terms of the Bid Procedures Order. Seller shall sign this Agreement as and when permitted pursuant to the Bid Procedures Order and the Sale Order.

ARTICLE 7

CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLER

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

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

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

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

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

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

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

ARTICLE 8

CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER

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

8.1 Governmental Authorizations. Purchaser shall have obtained all approvals, licenses, certificates, permits, provider agreements, and authorizations from governmental agencies or governmental bodies (including but not limited to the California Department of Justice, HRSA and CDPH) that are required for operation of the Facilities, including reasonable assurances that any licenses, permits, certificates, provider agreements, and authorizations not actually issued as of the Closing will be issued following Closing, except in such case where failure to obtain such approval, license, certificate, permit, provider agreement, or authorizations from a governmental agency or governmental body does not have a material adverse effect. Specifically with respect to Seller's Section 330 grant from HRSA, HRSA shall have approved Seller's Service Area Competition application for a minimum one-year period beginning March 1, 2023, at a level commensurate with Seller's most recent project period; Purchaser's successor-in-interest application; the transfer of Seller's HRSA award to Purchaser; Purchaser's change in scope of project requests associated with the transfer of Seller's HRSA award to Purchaser; and management agreements, as applicable.

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

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

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

8.5 No Restraints. No temporary restraining order, preliminary or permanent injunction or other order preventing the consummation of the transactions contemplated in this Agreement shall have been issued by any court of competent jurisdiction or any governmental

body and shall remain in effect on the Closing Date, and further, no governmental entity shall have commenced any action or suit before any court of competent jurisdiction or other governmental authority that seeks to restrain or prohibit the consummation of the transactions contemplated hereby.

8.6 Notice to California Attorney General. Seller has either (a) provided notice to the California Attorney General in a form and manner that complies with section 5913 of the California Corporations Code or (b) obtained a written waiver from the California Attorney General of section 5913 of the California Corporations Code.

ARTICLE 9

TERMINATION

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

- (a) by the mutual written consent of the parties;
- (b) by Seller if a material breach of this Agreement has been committed by Purchaser and such breach has not been (i) waived in writing by Seller or (ii) cured by Purchaser to the reasonable satisfaction of Seller within fifteen (15) business days after service by Seller upon Purchaser of a written notice which describes the nature of such breach; *provided, however*, Seller shall not be permitted to terminate this Agreement pursuant to this Section 9.1(b) if Seller is also in material breach of this Agreement;
- (c) by Purchaser if a material breach of this Agreement has been committed by Seller and such breach has not been (i) waived in writing by Purchaser or (ii) cured by Seller to the reasonable satisfaction of Purchaser within fifteen (15) business days after service by Purchaser upon Seller of a written notice which describes the nature of such breach; *provided, however*, Purchaser shall not be permitted to terminate this Agreement pursuant to this Section 9.1(c) if Purchaser is also in material breach of this Agreement;
- (d) by Purchaser if satisfaction of any condition in ARTICLE 8 is or becomes impossible and Purchaser has not waived such condition in writing (provided that the failure to satisfy the applicable condition or conditions has occurred by reason other than (i) through the failure of Purchaser to comply with its obligations under this Agreement or (ii) Seller's failure to provide its closing deliveries on the Closing Date as a result of Purchaser not being ready, willing and able to close the transaction on the Closing Date);
- (e) by Seller if any of the conditions in ARTICLE 7 have not been satisfied as of August 31, 2023, or if satisfaction of any such condition in ARTICLE 7 is or becomes impossible and Seller has not waived such condition in writing on or before August 31, 2023 (provided that (i) all conditions in ARTICLE 8 have been satisfied as of August 31, 2023, and (ii) the failure to satisfy the applicable condition or conditions in ARTICLE 7 has occurred by reason other than (x) through the failure of Seller to comply with its obligations under this Agreement or (y) Purchaser's failure to provide its closing deliveries on the Closing Date as a result of Seller not being ready, willing and able to close the transaction on the Closing Date);

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

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

(h) by Purchaser in the event that Seller elects not to assume and assign one or more contracts and/or leases set forth in Schedule 5.9(b), which is not cured by Seller to the reasonable satisfaction of Purchaser within fifteen (15) business days after service by Purchaser upon Seller of a written demand to assume and assign such contracts; or

(i) by either Purchaser or Seller if the Closing has not occurred (other than through the failure of any party seeking to terminate this Agreement to comply fully with its obligations under this Agreement) on or before August 31, 2023 (the "**Termination Date**"). The Termination Date may be extended to November 30, 2023 by mutual consent of the Seller and Purchaser (provided, that neither Party shall unreasonably withhold, delay or deny its consent to extend the Termination Date to November 30, 2023 under this Section 9.1(i)).

9.2 Termination Consequences.

(a) If this Agreement is terminated pursuant to Section 9.1: (i) all further obligations of the parties under this Agreement shall terminate, provided that the provisions of ARTICLE 11, ARTICLE 12 and this Section 9.2 shall survive and (ii) each party shall pay the costs and expenses incurred by it in connection with this Agreement, subject to Sections 9.2(b) and 9.2(c).

(b) In the event that this Agreement is terminated by Seller pursuant to either Section 9.1(b) or Section 9.1(c), then Seller shall retain the Deposit.

(c) Except as otherwise set forth in Section 9.2(b), in the event that this Agreement is terminated by either Party as permitted pursuant to Section 9.1, then Purchaser shall have the right to demand and promptly receive the Deposit, and shall receive any Funded Administrative Expenses to the extent provided under Section 1.13(b).

(d) Each Party acknowledges that the agreements contained in this Section 9.2 are an integral part of the transactions contemplated by this Agreement, that without these agreements such Party would not have entered into this Agreement. In the event of a material breach of this Agreement by either Party, in addition to the remedies provided in Section 9.1(b) and Section 9.1(c), as applicable to the non-breaching party, the non-breaching party shall have the right to pursue any rights or remedies that that such Party may have under this Agreement or applicable law, including the right to sue for damages or specific performance.

ARTICLE 10

POST-CLOSING MATTERS

10.1 Excluded Assets.

Subject to Section 10.2 hereof, any Excluded Asset (or proceeds thereof) (a) pursuant to the terms of this Agreement, (b) as otherwise determined by the parties' mutual written agreement or (c) absent such agreement, as determined by adjudication by the Bankruptcy Court, which comes into the possession, custody or control of Purchaser (or its respective successors-in-interest, assigns or affiliates) shall, within five (5) business days following receipt, be transferred, assigned or conveyed by Purchaser (and its respective successors-in-interest, assigns and affiliates) to Seller. Purchaser (and its respective successors-in-interest, assigns and affiliates) shall have neither the right to offset amounts payable to Seller under this Section 10.1 against, nor the right to contest its obligation to transfer, assign and convey to Seller because of, outstanding claims, liabilities or obligations asserted by Purchaser against Seller. If Purchaser does not remit any monies included in the Excluded Assets (or proceeds thereof) to the Seller in accordance with the first sentence of this Section 10.1, such withheld funds shall bear interest at the Prime Rate in effect on the calendar day upon which such payment was required to be made to Seller (the "**Excluded Asset Due Date**") plus five percent (5%) (or the maximum rate allowed by law, whichever is less), such interest accruing on each calendar day after the Excluded Asset Due Date until payment of the Excluded Assets and all interest thereon is made to the Seller.

10.2 Preservation and Access to Records After the Closing.

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

forty-five (45) calendar day period, Purchaser shall be free to destroy or otherwise dispose of such documentation upon the expiration of such forty-five (45) calendar day period.

(b) Provided that Purchaser shall not incur any out of pocket costs, Purchaser shall give full cooperation to the Seller Parties and their insurance carriers in connection with the administration of Seller's estate, including, without limitation, in connection with all claims, actions, causes of action or audits relating to the Excluded Assets, Excluded Liabilities or pre-Closing operation of the Seller or the Facilities that any Seller Party may elect to pursue, dispute or defend, in respect of events occurring prior to the Effective Time with respect to the operation of the Facilities. Such cooperation shall include, without limitation, making the Hired Employees available for interviews, depositions, hearings and trials and other assistance in connection with the administration of Seller's estate and such cooperation shall also include making all of its employees available to assist in the securing and giving of evidence and in obtaining the presence and cooperation of witnesses (all of which shall be done without payment of any fees or expenses to Purchaser or to such employees); provided that Purchaser shall not be required to incur any out of pocket costs in association therewith. In addition, Seller and its affiliates shall be entitled to remove from the Facilities originals of any such records, but only for purposes of pending litigation involving the persons to whom such records refer, as certified in writing prior to removal by counsel retained by Seller or any of its affiliates in connection with such litigation. Any records so removed from the Facilities shall be promptly returned to Purchaser following Seller's or its affiliate's use of such records.

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

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

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

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

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

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

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

ARTICLE 11

TAXES AND COST REPORTS

11.1 Tax Matters: Allocation of Purchase Price.

(a) After the Closing Date, the parties shall cooperate fully with each other and shall make available to each other, as reasonably requested, all information, records or documents relating to tax liabilities or potential tax liabilities attributable to Seller with respect to the operation of the Facilities for all periods prior to the Effective Time and shall preserve all such information,

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records and documents at least until the expiration of any applicable statute of limitations or extensions thereof. The parties shall also make available to each other to the extent reasonably required, and at the reasonable cost of the requesting party (for out-of-pocket costs and expenses only), personnel responsible for preparing or maintaining information, records and documents in connection with tax matters and as Seller reasonably may request in connection with the completion of any post-Closing audits of the Facilities.

(b) Within 20 days after the Signing Date, Purchaser shall deliver to Seller for Seller's review a schedule setting forth the allocation of the Purchase Price (including any liabilities that are considered to be an increase to the Purchase Price for United States federal income Tax purposes) among the Assets in accordance with Section 1060 of the Code and the Treasury Regulations promulgated thereunder (such schedule, as may be amended as contemplated below in this Section 11.1(b), the "**Allocation Schedule**"). The Allocation Schedule shall be deemed final and binding upon the parties upon Seller's approval thereof. The parties shall cooperate in good faith to finalize the Allocation Schedule within 10 days after delivery of the initial draft of the schedule by Purchaser to Seller. If within such 10 day period (or such other period as the parties may agree), the parties are unable to reach agreement on a final Allocation Schedule, the parties shall have no further obligations under this Section 11.1(b). If the parties are able to agree on an Allocation Schedule, the parties shall refrain from taking any position that is inconsistent with the Allocation Schedule.

11.2 Cost Report Matters.

(a) Consistent with Section 4.2.7, Seller shall, at Purchaser's expense, prepare and timely file all cost reports relating to the periods ending prior to the Effective Time or required as a result of the consummation of the transactions described in this Agreement, including, without limitation, those relating to Medicare, Medi-Cal, and other third party payors which settle on a cost report basis (the "**Seller Cost Reports**").

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

ARTICLE 12

MISCELLANEOUS PROVISIONS

12.1 Further Assurances and Cooperation. Seller shall execute, acknowledge and deliver to Purchaser any and all other assignments, consents, approvals, conveyances, assurances, documents and instruments reasonably requested by Purchaser at any time and shall take any and all other actions reasonably requested by Purchaser at any time for the purpose of more effectively assigning, transferring, granting, conveying and confirming to Purchaser, the Assets. After consummation of the transaction contemplated in this Agreement, the parties agree to cooperate

with each other and take such further actions as may be necessary or appropriate to effectuate, carry out and comply with all of the terms of this Agreement, the documents referred to in this Agreement and the transactions contemplated hereby.

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

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

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

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

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all other representations or warranties to the extent that the relevance of such item to such representations or warranties is reasonably apparent on the face of such disclosure, notwithstanding the presence or absence of an appropriate section of the Disclosure Schedule with respect to such other representations or warranties or an appropriate cross reference thereto.

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

If to Seller: Borrego Community Health Foundation
Attention: Doug Habig, Chief Legal Officer
E-mail: dhabig@borregohealth.org

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

If to Purchaser: AltaMed Health Services Corporation
2035 Camfield Avenue
Commerce, CA 90040
Attention: Seema Kamal, General Counsel
Telephone: 323-720-5634

With a copy to: Manatt Phelps & Phillips LLP
(which copies shall 1215 K Street, Suite 1900
not constitute notice) Sacramento, California 95814
Attention: Thomas R. McMorro, Esq.
Telephone: 916-552-2310
Facsimile: 916-552-2323

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

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

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

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

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

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

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

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

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

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

Execution Copy

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

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

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

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

[REMAINDER OF PAGE IS BLANK]

Execution Copy

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

PURCHASER:

Signature By: _____

Print Name: _____

Title: _____

Date: _____

SELLER:

Signature By: _____

Print Name: _____

Title: _____

Date: _____

401966321.1

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Exhibit 3
(Proposed Sale Order)

SAMUEL R. MAIZEL (Bar No. 189301)
samuel.maizel@dentons.com
TANIA M. MOYRON (Bar No. 235736)
tania.moyron@dentons.com
DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
Tel: (213) 623-9300 / Fax: (213) 623-9924
Attorneys for the Chapter 11 Debtor and
Debtor In Possession

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

In re

**BORREGO COMMUNITY
HEALTH FOUNDATION,**

Debtor and Debtor In
Possession.

Case No. 22-02384-11

Chapter 11 Case

Judge: Honorable Laura S. Taylor

**ORDER (A) AUTHORIZING THE SALE
OF PROPERTY TO DESERT AIDS
PROJECT D/B/A DAP HEALTH FREE
AND CLEAR OF LIENS, CLAIMS,
ENCUMBRANCES, AND OTHER
INTERESTS; (B) APPROVING THE
ASSUMPTION AND ASSIGNMENT OF
AN UNEXPIRED LEASE RELATED
THERE TO; AND (C) GRANTING
RELATED RELIEF**

Hearing:

Date: February 22, 2023

Time: 1:00 p.m.

This matter came before the Court on the *Debtor's Notice of Motion and Motion for the Entry of (I) an Order (1) Approving Form of Asset Purchase Agreement; (2) Approving Auction and Sale Format and Bidding Procedures; (3) Approving Process for Discretionary Selection of Stalking Horse Bidder and Bid Protections; (4) Approving Form of Notice to be Provided to Interested Parties; (5) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest and Best Bidder; and (6) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; and (II) An Order Authorizing the Sale*

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LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

1 *of Property Free and Clear of All Claims Liens and Encumbrances* [Docket No. 161]
2 (the “Motion”), filed by Borrego Community Health Foundation, the debtor and
3 debtor in possession in the above-captioned chapter 11 bankruptcy case (the
4 “Debtor”), for the entry of an order, pursuant to §§ 105(a), 363, and 365 of title 11
5 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6004, 6006, 9007,
6 and 9014, and LBR 6004 and 9013.¹

7
8
9 At the previous hearing on the Motion on December 7, 2022 (the “Bidding
10 Procedures Hearing”), the Court considered various objections (the “Premature
11 Objections”) filed by: California Department of Health Care Services and U.S.
12 Department of Health and Human Services. The Court ruled that the Premature
13 Objections were premature and preserved for the Sale Hearing,² as set forth in order
14 granting the Motion [Docket No. 321] (the “Bidding Procedures Order”). Any
15 additional objections that were filed and overruled at the Bidding Procedures Hearing
16 are not listed herein.

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19
20 The Court, having reviewed the Memorandum [Docket No. ____] and the
21 Declaration of Isaac Lee [Docket No. 260] in support thereof, the *Notice To*
22 *Counterparties To Executory Contracts And Unexpired Leases Of The Debtor That*
23

24
25 _____
26 ¹ Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11
27 U.S.C. §§ 101-1532, all “Rule” references are to the Federal Rules of Bankruptcy Procedure, and
28 all “LBR” references are to the Local Bankruptcy Rules for the United States Bankruptcy Court for
the Southern District of California.

² Capitalized terms not otherwise defined herein shall have the meaning afforded in the Motion.

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1 *May Be Assumed And Assigned* [Docket No. 389] and the *Supplement to Notice to*
2 *Counterparties to Executory Contracts and Unexpired Leases of the Debtor that May*
3 *be Assumed and Assigned* [Docket No. 409] (collectively, the “Cure Notice”), the
4 *Notice of Executory Contracts and Unexpired Leases Designated for Assumption and*
5 *Assignment* [Docket No. ____] (the “Designation Notice”), the *Notice of Qualified*
6 *Bidders and Stalking Horse Bidder re Debtor's Notice of Motion and Motion for the*
7 *Entry of (I) an Order (1) Approving Form of Asset Purchase Agreement; (2)*
8 *Approving Auction Sale Format and Bidding Procedures; (3) Approving Process for*
9 *Discretionary Selection of Stalking Horse Bidder and Bid Protections; (4) Approving*
10 *Form of Notice to be Provided to Interested Parties; (5) Scheduling a Court Hearing*
11 *to Consider Approval of the Sale to the Highest and Best Bidder; and (6) Approving*
12 *Procedures Related to the Assumption of Certain Executory Contracts and*
13 *Unexpired Leases; and (II) an Order Authorizing the Sale of Property Free and Clear*
14 *of All Claims, Liens and Encumbrances* [Docket No. 418] (the “Auction Notice”),
15 the objections filed by various counterparties to certain executory contracts and
16 unexpired leases [Docket Nos. 426, 431, 440, 441, 445, 447 and 455] (the “Cure
17 Objections”), the Premature Objections, and any withdrawals thereof, the statements,
18 arguments and representations of the parties made at the Sale Hearing; and the entire
19 record of this case; and the Court, having determined that the relief sought in the
20 Motion is in the best interests of the Debtor, its estate, its creditors, and that the legal
21 and factual bases set forth in the Motion and presented at the Sale Hearing establish

just cause for the relief granted herein and for the reasons set forth in the Court's tentative ruling [Docket No. _____]; and all objections to the Motion, if any, having been withdrawn, continued or overruled; and after due deliberation and sufficient good cause appearing therefor:

THE COURT HEREBY FINDS AND CONCLUDES THAT:³

A. Jurisdiction and Venue. This Court has jurisdiction to hear and determine the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter relates to the administration of the Debtor's bankruptcy estate and is accordingly a core proceeding pursuant to 28 U.S.C. § 157(b) (2) (A), (M), (N) and (O). Venue of this case is proper in this District and in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. Statutory Predicates. The statutory predicates for the relief requested in the Motion are (i) §§ 105(a), 363(b), (f), (k), (l) and (m), and 365, (ii) Rules 2002(a)(2), 2002(c)(1) and (d), 6004 (a), (b), (c), (e), (f) and (h), 6006(a), (c) and (d), 9006, 9007, 9013 and 9014, and (iii) LBR 6004 and 9013.

C. Notice. As evidenced by the affidavits of service previously filed with the Court, the Debtor has provided proper, timely, adequate and sufficient notice with respect to the following: (i) the Motion and the relief sought therein, including the

³ The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Rule 7052, made applicable to this proceeding pursuant to Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

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1 entry of this Sale Order and the transfer and sale of the assets (the “Purchased
2 Assets”), as set forth in the Asset Purchase Agreement, dated [____], 2023, a copy
3 of which is attached as Exhibit “A” to Docket No. ____ (the “APA”); (ii) the Sale
4 Hearing; (iii) the Auction Notice; and (iv) the assumption and assignment of the
5 executory contracts and unexpired leases and proposed cure amounts owing under
6 such executory contracts and unexpired leases (the “Cure Amounts”); and no further
7 notice of the Motion, the relief requested therein or the Sale Hearing is required. The
8 Debtor has also complied with all obligations to provide notice of the Auction, the
9 Sale Hearing, the proposed sale and otherwise, as required by the Bidding Procedures
10 Order. A reasonable opportunity to object and to be heard regarding the relief
11 provided herein has been afforded to parties-in-interest.

12 D. Arm’s Length Transaction. The APA and other documents and
13 instruments (the “Transaction Documents”) related to and connected with this
14 transaction (the “Transaction”) and the consummation thereof were negotiated and
15 entered into by the Debtor and Desert AIDS Project d/b/a DAP Health (“DAP”), as
16 Purchaser under the APA without collusion, in good faith and through an arm’s
17 length bargaining process. Neither DAP nor any of its affiliates or representatives is
18 an “insider” of the Debtor, as that term is defined in § 101(31). None of the Debtor,
19 DAP, or their respective representatives engaged in any conduct that would cause or
20 permit the APA, any of the other Transaction Documents or the Transaction to be
21 avoided under § 363(n), or have acted in any improper or collusive manner. The terms
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1 and conditions of the APA and the other Transaction Documents, including, without
2 limitation, the consideration provided in respect thereof, are fair and reasonable, and
3 are not avoidable and shall not be avoided, and no damages may be assessed against
4 DAP or any other party, as set forth in § 363(n). The consideration provided by DAP
5 is fair, adequate and constitutes reasonably equivalent value and fair consideration
6 under the Bankruptcy Code and any other applicable laws of the United States or any
7 of its jurisdictions or subdivisions, including the State of California.
8

9
10 E. Good Faith Purchaser. DAP has proceeded in good faith and without
11 collusion in all respects in connection with the sale process, in that: (i) DAP, in
12 proposing and proceeding with the Transaction in accordance with the APA,
13 recognized that the Debtor was free to deal with other interested parties; (ii) DAP
14 agreed to provisions in the APA that would enable the Debtor to accept a higher and
15 better offer; (iii) DAP complied with all of the provisions in the Bidding Procedures
16 Order applicable to DAP; (iv) all payments to be made by DAP and other agreements
17 entered into or to be entered into between DAP and the Debtor in connection with
18 the Transaction have been disclosed; (v) the negotiation and execution of the APA
19 and related Transaction Documents were conducted in good faith and constituted an
20 arm's length transaction; (vi) DAP did not induce or cause the chapter 11 filing by
21 the Debtor; and (vii) the APA was not entered into, and the Transaction being
22 consummated pursuant to and in accordance with the APA is not being
23 consummated, for the purpose of hindering, delaying or defrauding creditors of the
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Debtor. DAP is therefore entitled to all of the benefits and protections provided to a good-faith purchaser under § 363(m). Accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Transaction shall not affect the validity of the Transaction, any terms or conditions of the Transaction or DAP's status as a "good faith" purchaser.

F. Justification for Relief. Good and sufficient reasons for approval of the APA and the other Transaction Documents and the Transaction have been articulated to this Court in the Motion and at the Sale Hearing, and the relief requested in the Motion and set forth in this Sale Order is in the best interests of the Debtor, its estate, and its creditors. The Debtor has demonstrated through the Motion and other evidence submitted at the Sale Hearing both (i) good, sufficient and sound business purpose and justification and (ii) compelling circumstances for the transfer and sale of the Purchased Assets as provided in the APA outside the ordinary course of business, and (iii) such transfer and sale is an appropriate exercise of the Debtor's business judgment and in the best interests of the Debtor, its estate, and its creditors.

G. Free and Clear. In accordance with §§ 363(b) and 363(f), the consummation of the Transaction pursuant to the Transaction Documents shall be a legal, valid, and effective transfer and sale of the Purchased Assets and shall vest in DAP, through the consummation of the Transaction, all of the Debtor's right, title, and interest in and to the Purchased Assets, free and clear of all liens, claims, interests, rights of setoff, recoupment, netting and deductions, rights of first offer,

1 first refusal and any other similar contractual property, legal or equitable rights, and
2 any successor or successor-in-interest liability theories (collectively, the
3 “Encumbrances”). The Debtor has demonstrated that one or more of the standards
4 set forth in § 363(f)(1)-(5) have been satisfied. Those holders of Encumbrances who
5 did not object, or who withdrew their objections, to the sale or the Motion are deemed
6 to have consented pursuant to § 363(f)(2). Those holders of Encumbrances who did
7 object fall within one or more of the other subsections of § 363(f). All holders of the
8 Encumbrances in the Purchased Assets are adequately protected by having their
9 respective Encumbrances attach to the Debtor’s interests in the proceeds of the sale
10 of the Purchased Assets under the APA, and any related documents or instruments
11 delivered in connection therewith, whenever and wherever received (the “Sale
12 Proceeds”) to the extent and manner herein provided.

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17 H. Restricted Charitable Assets. For the avoidance of doubt, the Debtor
18 did not have on the date the above-captioned bankruptcy case was commenced, and
19 has not had at any time since that date, any right, title, or interest in or to any restricted
20 charitable assets, and, therefore, the Sale does not include any sale or transfer of
21 restricted charitable assets to the Purchaser.

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24 I. Assumption of Executory Contracts and Unexpired Leases. The Debtor
25 has demonstrated that it is an exercise of its sound business judgment to assume and
26 assign to DAP the “Assumed Contracts” (as that term is defined in the APA), subject
27 to DAP’s right to designate any Evaluated Contracts (as that term is defined in the
28

1 APA) as “Rejected Contracts” (as that term is defined in the APA) pursuant to the
2 APA, in connection with the consummation of the Transaction, and the assumption
3 and assignment of the Assumed Contracts is in the best interests of the Debtor and
4 its estate.
5

6 J. Cure/Adequate Assurance. In connection with the Closing (as defined
7 in the APA), and pursuant to the APA, unless otherwise ordered, any and all defaults
8 existing on or prior to the Closing under any of the Assumed Contracts will have
9 been cured, within the meaning of § 365(b)(1)(A), by payment of the amounts (the
10 “Cure Amounts”) and in the manner set forth below, unless otherwise agreed by DAP
11 and the counterparty (each a “Counterparty”) or as ordered by the Court. DAP has
12 provided or will provide adequate assurance of future performance of and under the
13 Assumed Contracts within the meaning of § 365(b)(1)(C) and § 365(f)(2)(B), and
14 shall have no further obligation to provide assurance of performance to any
15 Counterparty to an Assumed Contract. Pursuant to § 365(f), the Assumed Contracts
16 to be assumed by the Debtor and assigned to DAP under the APA shall be assigned
17 and transferred to, and remain in full force and effect for the benefit of, DAP,
18 notwithstanding any provision in such Assumed Contracts prohibiting their
19 assignment or transfer. The Debtor has demonstrated that no other parties to any of
20 the Assumed Contracts has incurred any actual pecuniary loss resulting from a default
21 on or prior to the Closing under any of the Assumed Contracts within the meaning of
22 § 365(b)(1)(B).
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1 K. Highest or Otherwise Best Offer. The Debtor solicited offers and
2 noticed the Auction in accordance with the provisions of the Bidding Procedures
3 Order. The Auction was duly noticed, the sale process was conducted in a non-
4 collusive manner and the Debtor afforded a full, fair and reasonable opportunity for
5 any person or entity to make a higher or otherwise better offer to purchase the
6 Purchased Assets. Other than DAP's Bid, the Debtor received five other Qualified
7 Bids by the Bid Deadline (as such terms are defined by the Bidding Procedures
8 Order). The Debtor properly consulted with the Official Committee of Unsecured
9 Creditors (the "Committee") in selecting the DAP Bid as the highest and best bid (as
10 such terms are defined in the Bidding Procedures Order), as set forth in the Auction
11 Notice. The transfer and sale of the Purchased Assets to DAP on the terms set forth
12 in the APA constitutes the highest and best offer for the Purchased Assets. The
13 Debtor's determination, in consultation with the Committee, that the APA constitutes
14 the highest or best offer for the Purchased Assets constitutes a valid and sound
15 exercise of the Debtor's business judgment.

16 L. No De Facto or Sub Rosa Plan of Reorganization. The sale of the
17 Purchased Assets does not constitute a *de facto* or *sub rosa* plan of reorganization or
18 liquidation because it does not propose to (i) impair or restructure existing debt of,
19 or equity or membership interests in, the Debtor, (ii) impair or circumvent voting
20 rights with respect to any plan proposed by the Debtor, (iii) circumvent chapter 11

1 safeguards, including those set forth in §§ 1125 and 1129, or (iv) classify claims or
2 equity or membership interests.

3
4 M. Legal and Factual Bases. The legal and factual bases set forth in the
5 Motion and at the Sale Hearing establish just cause for the relief granted herein.

6 **NOW THEREFORE, IT IS HEREBY ORDERED THAT:**

7
8 1. The relief requested in the Motion is GRANTED and APPROVED in
9 all respects to the extent provided herein.

10 2. All objections with regard to the relief sought in the Motion that have
11 not been withdrawn, waived, settled, or provided for herein or in the Bidding
12 Procedures Order, including any reservation of rights included in such objections, are
13 overruled on the merits with prejudice. To the extent of any inconsistency between
14 this Sale Order and the Bidding Procedures Order, the terms of this Sale Order shall
15 prevail.
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18 3. Pursuant to §§ 105(a), 363(b), 363(f), and 365, the Transaction,
19 including the transfer and sale of the Purchased Assets to DAP on the terms set forth
20 in the APA, is approved in all respects, and the Debtor is authorized and directed to
21 consummate the Transaction in accordance with the APA, including, without
22 limitation, by executing all of the Transaction Documents (and any ancillary
23 documents or instruments that may be reasonably necessary or desirable to
24 implement the APA or the Transaction) and taking all actions necessary and
25 appropriate to effectuate and consummate the Transaction (including the transfer and
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LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

1 sale of the Purchased Assets) in consideration of the Purchase Price (as defined in §
2 1.1 of the APA) upon the terms set forth in the APA, including, without limitation,
3 assuming and assigning to DAP the Assumed Contracts. The Debtor and DAP shall
4 have the right to make any mutually agreeable, non-material changes to the APA,
5 which shall be in writing signed by both parties, without further order of the Court
6 provided, that after not less than five (5) business days' notice, the Committee does
7 not object to such changes. Any timely objection by the Committee to any agreed
8 non-material changes to the APA may be resolved by the Court on shortened notice.
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12 4. As of the Closing, (i) the Transaction set forth in the APA shall effect a
13 legal, valid, enforceable and effective transfer and sale of the Purchased Assets to
14 DAP free and clear of all Encumbrances as further set forth in the APA and this Sale
15 Order; and (ii) the APA, and the other Transaction Documents, and the Transaction,
16 shall be enforceable against and binding upon, and not subject to rejection or
17 avoidance by, the Debtor, any successor thereto including a trustee or estate
18 representative appointed in the Bankruptcy Case, the Debtor's estate, all holders of
19 any Claim(s) (as defined in the Bankruptcy Code) against the Debtor, whether known
20 or unknown, any holders of Encumbrances on all or any portion of the Purchased
21 Assets, all Counterparties to the Assumed Contracts and all other persons and
22 entities.
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26 5. Encumbrances in and to Purchased Assets shall attach to the Sale
27 Proceeds of such Purchased Assets with each such Encumbrance having the same
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1 force, extent, effect, validity and priority as such Encumbrance had on the Purchased
2 Assets giving rise to the Sale Proceeds immediately prior to the Closing.

3
4 6. Subject to the fulfillment of the terms and conditions of the APA, this
5 Sale Order shall, as of the Closing, be considered and constitute for all purposes a
6 full and complete general assignment, conveyance, and transfer of the Purchased
7 Assets and/or a bill of sale transferring all of the Debtor's rights, title and interest in
8 and to the Purchased Assets to DAP. Consistent with, but not in limitation of the
9 foregoing, each and every federal, state, and local governmental agency or
10 department, except as stated herein, is hereby authorized and directed to accept all
11 documents and instruments necessary and appropriate to consummate the
12 transactions contemplated by the APA and approved in this Sale Order. A certified
13 copy of this Order may be filed with the appropriate clerk and/or recorded with the
14 appropriate recorder to cancel any Encumbrances of record.
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18 7. Any person or entity that is currently, or on the Closing Date may be, in
19 possession of some or all of the Purchased Assets is hereby directed to surrender
20 possession of such Purchased Assets either to (a) the Debtor before the Closing or
21 (b) to DAP or its designee upon the Closing, and to cooperate with the Debtor and
22 DAP in the Debtor's and DAP's fulfillment of their obligations hereunder and
23 pursuant to the APA.
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25
26 8. The transfer of the Purchased Assets pursuant to the Transaction
27 Documents shall be a legal, valid, and effective transfer and shall, in accordance with
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1 §§ 105(a) and 363(f), and upon consummation of the Transaction, including, without
2 limitation, payment of the Purchase Price to the Debtor, vest DAP with all right, title,
3 and interest in the Purchased Assets, free and clear of all Encumbrances. Upon
4 closing of the Transaction, DAP shall take title to and possession of the Purchased
5 Assets as set forth in the APA. The transfer of the Purchased Assets from the Debtor
6 to DAP constitutes a transfer for reasonable equivalent value and fair consideration
7 under the Bankruptcy Code and the laws of the State of California.
8

9
10 9. Following the Closing, no holder of any Encumbrance against the
11 Debtor or upon the Purchased Assets shall interfere with DAP's respective rights in,
12 title to or use and enjoyment of the Purchased Assets. All persons and entities are
13 hereby forever prohibited and enjoined from taking any action that would adversely
14 affect or interfere with the ability of the Debtor to sell and transfer the Purchased
15 Assets to DAP, including the assumption and assignment of the Assumed Contracts.
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18 10. DAP shall not be deemed, as a result of any action taken in connection
19 with, or as a result of the Transaction (including the transfer and sale of the Purchased
20 Assets), to: (i) be a successor, continuation or alter ego (or other such similarly
21 situated party) to the Debtor or its estate by reason of any theory of law or equity,
22 including, without limitation, any bulk sales law, doctrine or theory of successor
23 liability, or any theory or basis of liability, regardless of source of origin; or (ii) have,
24 *de facto* or otherwise, merged with or into the Debtor; or (iii) be a mere continuation,
25 *alter ego*, or substantial continuation of the Debtor.
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1 11. This Sale Order (i) shall be effective as a determination that, on Closing,
2 all Encumbrances existing against the Purchased Assets before the Closing have been
3 unconditionally released, discharged and terminated, and that the transfers and
4 conveyances described herein have been effected, and (ii) shall be binding upon and
5 shall govern the acts of all persons and entities. If, following a reasonable written
6 request made by the Debtor, any person or entity that has filed financing statements
7 or other documents or agreements evidencing any Encumbrances against the
8 Purchased Assets shall not have delivered to the Debtor for use at or in connection
9 with Closing, in proper form for filing and executed by the appropriate parties,
10 termination statements, instruments of satisfaction, releases of all Encumbrances
11 which the person or entity has with respect to the Purchased Assets, then DAP and/or
12 the Debtor is hereby authorized to execute and file such statements, instruments,
13 releases and other documents on behalf of the person or entity with respect to such
14 Purchased Assets. For the avoidance of doubt, such statements, instruments, releases
15 and other documents shall not impair Encumbrances that attach to the Sale Proceeds
16 or the terms of this Order, including, but not limited to paragraph 5 hereof.

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22 12. In accordance with the APA, concurrently with the Closing, DAP shall
23 pay that portion of the Purchase Price due at Closing, by wire transfer of immediately
24 available funds, to an account designated by the Debtor, subject to the adjustments
25 set forth in the APA. Any direct expenses of the Sale shall be disclosed by Debtor to
26 the Committee in advance of the Closing.
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1 13. The Court shall resolve any and all disputes which may arise between
2 the Debtor, DAP, and any applicable Counterparty concerning (i) whether a
3 particular Assumed Contract is an executory contract or unexpired lease or (ii)
4 whether a Counterparty to an Assumed Contract is entitled to an allowed claim
5 against the Debtor which exceeds the Cure Amount set forth in the Cure Notice (an
6 “Assumption Dispute”).
7

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9 14. In the event the Court determines that a Counterparty has an allowed
10 cure claim against the Debtor which exceeds the Cure Amount set forth in the Cure
11 Notice (the “Excess Cure Amount”) with respect to an Assumed Contract, the
12 difference will be paid by DAP and shall not be the responsibility of the Debtor as
13 more specifically set forth below; provided, however, that an Assumed Contract
14 subject to an Assumption Dispute shall be deemed a “Rejected Contract” within the
15 meaning of § 1.11(a) of the APA if the Assumption Dispute is not resolved by entry
16 of an order on or before thirty (30) days prior to Closing unless the Debtor, DAP, and
17 the applicable Counterparty agree otherwise. To the extent an Assumption Dispute
18 relates solely to the Cure Amount, the Debtor may, with DAP’s consent, assume and
19 assign the applicable executory contract or unexpired lease at Closing and prior to
20 the resolution of the Assumption Dispute by the Bankruptcy Court, provided, that the
21 Bankruptcy Court has estimated the maximum cure payment, pursuant to 11 U.S.C.
22 § 502(c) and DAP remits such amount to the Debtor be held by the Debtor pending
23 resolution of such Assumption Dispute. The Debtor shall pay and hereby is
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1 authorized to pay disputed Cure Amounts upon entry of a final order by this Court to
2 the extent DAP remitted to Sellers the amount required by this paragraph of the
3 Order.
4

5 15. Upon the Closing, the Debtor is authorized and directed to assume, assign
6 and/or transfer each of the Assumed Contracts to DAP. Notwithstanding anything in
7 this Order to the contrary, and with the exception of Cure Amounts subject to
8 Assumption Disputes on the Closing Date (which shall be paid upon resolution of such
9 Assumption Dispute), DAP shall pay to the Debtor the applicable Cure Amount
10 (including, any Excess Cure Amount) upon the Closing or as soon thereafter as is
11 practicable in the Debtor's discretion. The Debtor shall then remit payment of such Cure
12 Amounts to the Counterparties of Assumed Contracts and such payments are deemed
13 the necessary and sufficient amounts to "cure" all "defaults" with respect to all such
14 Assumed Contracts under § 365(b). The foregoing payment shall (i) effect a cure of all
15 defaults existing under all such Assumed Contracts, and (ii) compensate all such
16 Counterparties for any actual pecuniary loss resulting from any such default. The Debtor
17 shall then have assumed and assigned to DAP, effective as of the Closing, all of the
18 Assumed Contracts, and, pursuant to § 365(f), the assignment by the Debtor of all such
19 Assumed Contracts to DAP shall not be a default thereunder. After the payment of the
20 Cure Amounts, neither the Debtor nor DAP shall have any further liabilities to any
21 Counterparties, other than DAP's obligations under the Assumed Contracts that accrue
22 and become due and payable after the Closing Date. In addition, adequate assurance of
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1 future performance has been demonstrated by or on behalf of DAP with respect to all of
2 the Assumed Contracts within the meaning of §§ 365(b)(1)(c), 365(b)(3) (to the extent
3 applicable) and 365(f)(2)(B). For the avoidance of doubt, DAP shall not be liable for the
4 payment of any liabilities or obligations arising from or related to any Rejected Contracts,
5 unless expressly assumed and assigned with DAP's consent.
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8 16. All of the Counterparties are forever barred, estopped, and permanently
9 enjoined from (i) raising or asserting against the Debtor or DAP, or any of their property,
10 any assignment fee, acceleration, default, breach, or claim of pecuniary loss, or condition
11 to assignment, arising under or related to the Assumed Contracts, existing as of the
12 Closing, or arising by reason of the consummation of the Transaction contemplated by
13 the APA, including, without limitation, the Transaction and the assumption and
14 assignment of the Assumed Contracts, including any asserted breach relating to or
15 arising out of the change-in-control provisions in such Assumed Contracts, or any
16 purported written or oral modification to the Assumed Contracts and (ii) asserting against
17 DAP any claim, counterclaim, breach, or condition asserted or assertable against the
18 Debtor existing as of the Closing or arising by reason of the transfer of the Purchased
19 Assets.
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24 17. Any provisions in any Assumed Contracts that prohibit or condition the
25 assignment of such Assumed Contract or allow the Counterparty to such Assumed
26 Contract to terminate, recapture, impose any penalty, condition on renewal or extension
27 or modify any term or condition upon the assignment of such Assumed Contract
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1 constitute unenforceable anti-assignment provisions that are void and of no force and
2 effect with respect to the Debtor's assumption and assignment of such Assumed Contract
3 to DAP in accordance with the APA, pursuant to § 363(f).
4

5 18. The terms and provisions of this Sale Order, as well as the rights granted
6 under the Transaction Documents, shall continue in full force and effect and are binding
7 upon any successor, reorganized Debtor, or chapter 7 or chapter 11 trustee applicable to
8 the Debtor, notwithstanding any such conversion, dismissal or order entry. Nothing
9 contained in any chapter 11 plan confirmed in the Debtor's case or in any order
10 confirming such a plan, nor any order dismissing the case or converting the case to a case
11 under chapter 7, shall conflict with or derogate from the provisions of the APA, any
12 documents or instruments executed in connection therewith, or the terms of this Sale
13 Order, provided however, that in the event of a conflict between this Sale Order and an
14 express or implied provision of the APA, this Sale Order shall govern. The provisions of
15 this Sale Order and any actions taken pursuant hereto shall survive any conversion or
16 dismissal of the case and the entry of any other order that may be entered in the case,
17 including any order (i) confirming any plan of reorganization; (ii) converting the case
18 from chapter 11 to chapter 7; (iii) appointing a trustee or examiner in the case; or (iv)
19 dismissing the case.
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25 19. The Transaction contemplated by the APA and other Transaction
26 Documents is undertaken without collusion and in "good faith," as that term is defined
27 in § 363(m) of the Bankruptcy Code. DAP is a good faith purchaser within the meaning
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1 of § 363(m) and, as such, is entitled to the full protections of § 363(m). Accordingly, the
2 reversal or modification on appeal of the authorization provided herein by this Sale Order
3 to consummate the Transaction shall not affect the validity of the sale of the Purchased
4 Assets to DAP. The APA and the Transactions contemplated thereby cannot be avoided
5 under § 363(n).
6

7
8 20. The failure to specifically include any particular provision of the APA or
9 the other Transaction Documents in this Sale Order shall not diminish or impair the
10 effectiveness of such provisions, it being the intent of the Bankruptcy Court that the
11 Transaction, the APA and the other Transaction Documents be authorized and approved
12 in their entirety. Likewise, all of the provisions of this Sale Order are non-severable and
13 mutually dependent.
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16 21. The automatic stay in effect pursuant to § 362 is hereby lifted with respect
17 to the Debtor to the extent necessary, without further order of this Court, to (i) allow DAP
18 to deliver any notice provided for in the APA and Transaction Documents and (ii) allow
19 DAP to take any and all actions permitted under the APA and Transaction Documents
20 in accordance with the terms and conditions thereof.
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23 22. Unless otherwise provided in this Sale Order, to the extent any
24 inconsistency exists between the provisions of the APA and this Sale Order, the
25 provisions contained in this Sale Order shall govern.
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27 23. This Court shall retain exclusive jurisdiction to interpret, construe, and
28 enforce the provisions of the APA and this Sale Order in all respects, and further,

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1 including, without limitation, to (i) hear and determine all disputes between the Debtor
2 and/or DAP, as the case may be, and any other non-Debtor party to, among other things,
3 the Assumed Contracts concerning, among other things, assignment thereof by the
4 Debtor to DAP and any dispute between DAP and the Debtor as to its respective
5 obligations with respect to any asset, liability, or claim arising hereunder; (ii) compel
6 delivery of the Purchased Assets to DAP free and clear of Encumbrances; (iii) compel
7 the delivery of the Purchase Price or performance of other obligations owed to the
8 Debtor; (iv) interpret, implement, and enforce the provisions of this Sale Order; and (v)
9 protect DAP against (A) claims made related to any of the Excluded Liabilities (as
10 defined in the APA), (B) any claims of successor or vicarious liability (or similar claims
11 or theories) related to the Purchased Assets or the Assumed Contracts, or (C) any
12 Encumbrances asserted on or against DAP or the Purchased Assets.

17 24. Following the date of entry of this Sale Order, the Debtor and DAP are
18 authorized to make changes to the APA and/or execute supplemental agreements
19 implementing the transactions contemplated by the APA without the need for any further
20 order of the Court provided that all such changes have been approved in writing by the
21 Debtor, DAP, and the Committee. Any other proposed changes to the APA or this Sale
22 Order shall require a further order of the Court, after reasonable notice under the
23 circumstances and a hearing.
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1 25. Nothing in this Sale Order constitutes a finding or determination on any
2 Cure Objection. All Cure Objections are preserved until resolved either by agreement
3 between the Debtor and the Counterparty or further order of the Court.
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5 26. The Committee's rights and its ability to participate and be heard at
6 hearings concerning the Sale, are hereby reserved. To the extent that the Committee
7 desires to file pleadings related to such hearings, its times for filing an objection or
8 response shall be the same as granted to the Debtor pursuant to the notice in each such
9 instance.
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11 **IT IS SO ORDERED.**
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(213) 623-9300